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R. MALCOLM ERRINGTON

Church and State in the First Years of Theodosius I

I. Introduction

A study of the literary and historiographical tradition bearing on Theodosius' legislative activity in religious affairs shows a surprising ignorance of it among those who might have been expected to show great interest, Christian panegyrists and Church historians.¹ They support their general characterisation of the founder of the dynasty as orthodox, pious and favouring the catholic Church by and large with little concrete evidence. Some of the laws which have become classics of the modern view of Theodosius, such as *Cunctos populos* of February 380² or *Episcopis tradi* of July 381,³ when set into their proper historical contexts, show a precise and immediate, not a general and amorphous purpose; classic interpretations are therefore exaggerated, weak and wanting as historical explanations. It is necessary to take seriously the obvious lack of knowledge about Theodosius' legislation even in interested circles in the East, and to account for Sozomenos' careful selection of items which he thought historically relevant. Here we shall be concerned to pay particular attention to the precise aims and to the recipients of the laws included in the Theodosian Code. For not only were many of them, as Sozomenos says,⁴ and even the Praetorian Prefect Rufinus in 395 confirmed,⁵ not applied, or not properly applied, they were not even intended to be applied with the pious vigour which the language in which they are formulated would often seem to suggest. Modern historical interpretations have also largely ignored the indications which the Code offers and which historians of Roman law have long been aware of, that all laws issued at this time in the first instance had a limited geographical range.⁶ This fact alone serves to explain why the literary tradition, even that based

¹ R. M. ERRINGTON, *Christian Accounts of the Religious Legislation of Theodosius I*, *Klio* 79, 1997.

² CTh 16.1.2 *ad populum urbis Constantinopolitanae*.

³ CTh 16.1.3 *ad Auxonium procos. Asiae*. See below, p. 64f.

⁴ H. E. 7.12.12: καὶ χαλεπὰς τοῖς νόμοις ἐνέγραφε τιμωρίας. ἀλλ' οὐκ ἐπέζηει.

⁵ CTh 16.10.13: *quidquid divi genitoris nostri legibus est in ipsos vel supplicii vel dispendii constitutum, nunc acrius exsequendum*.

⁶ See esp. G. I. LUZZATO, *Ricerche sull' applicazione delle costituzioni imperiali nelle provincie*, *Scritti di diritto romano in onore di Contardo Ferrini* (ed. G. G. ARCHI), Milano

on Constantinople, had so little knowledge of them; but it also means that the frequent modern assertions that a particular law intended more than its transmitted text says, are quite illegitimate and merely prevent access to a proper assessment of legislative procedures and of Theodosius' policies. The transmitted religious laws, it is clear, in general meant less than they seem to say, in some cases, as Sozomenos felt the need to tell his readers, they were in effect mere propaganda.

The ecclesiastical problems facing Theodosius on his accession in 379 were not his first priority. The Gothic War, there can be no doubt, dominated the life of the Eastern Empire during Theodosius' first three years.⁷ Nevertheless, the task facing Theodosius was multi-faceted, since although the purely military disaster at Adrianople was the most striking single event, the death of Valens and Gratian's choice of Theodosius as Valens' successor⁸ brought with them the need to establish a new man, indeed, some might hope, a new dynasty in Constantinople: a potential heir in the two-year old Arcadius already existed. Theodosius had no personal experience of or connections with the East, can therefore have had few contacts with the Eastern ruling classes before his appointment as emperor. He was a thorough Westerner, supported by a staff which he had brought with him from the West,⁹ and it is scarcely surprising that he made Thessalonika his first imperial residence: it was indeed convenient for the war, but until Gratian added Illyricum to Theodosius' area of responsibility it had in recent years always belonged to the western part of the empire. Theodosius based himself there for some 18 months, only moving to Constantinople in November 380.¹⁰ Was he perhaps toying with the idea of making his residence there permanent, on the model of the tetrarch Galerius? Or did he merely require time to prepare the ground for his entry into Constantinople?¹¹ The question seems never to have been posed, yet it is far from irrelevant, for Constantinople, since its founding in 330, had not yet established itself undisputedly as the per-

1946, 265–293; J. GAUDEMET, *Le partage législatif dans la seconde moitié du iv^e siècle*, Studi in onore di Pietro di Francisci 2, Milano 1956, 319–354; A.M. DE DOMINICIS, *Il problema dei rapporti burocratico-legislativi tra «occidente ed oriente» nel basso impero alla luce delle iscrizioni e subscriptiones delle costituzioni imperiali*, RIL, Classe di lettere e scienze morali e storiche 87, iv, Milano 1954; B. SIRKS, *From the Theodosian to the Justinian Code*, Atti dell' accademia romanistica costantiniana 6, 1986, 265–302.

⁷ Cf. R.M. ERRINGTON, *Theodosius and the Goths*, Chiron 26, 1996, 1–27.

⁸ On the circumstances see R.M. ERRINGTON, *The accession of Theodosius*, Klio 78, 1996, 438–453.

⁹ See J.F. MATTHEWS, *Western Aristocracies and Imperial Court, AD 364–425*, Oxford 1975, 101 f.; ERRINGTON (as n. 7) 2.

¹⁰ Sokr. H.E. 5.6.6.

¹¹ The view of S. WILLIAMS and G. FRIELL, *Theodosius. The Empire at Bay*, London 1994, 29, that Constantinople was impractical because the Goths blocked the Balkan military road via Adrianople–Serdica–Naissus–Sirmium and endangered supplies, can be excluded as a factor. Communications with the East and Egypt were more important economically and were unaffected by the Balkan war.

manent residence of any emperor, though it is clear that Constantius, had he ever rested, planned Constantinople, as his father had foreseen it, as the main imperial residence in the East. Valens had maintained the imperial soldierly tradition and spent his last six years based on Antioch in anticipation of military problems on the eastern frontier, merely passing through Constantinople on his way to Adrianople. The delegation of senators from Constantinople which greeted Theodosius and congratulated him on his accession, despite the dangers of travelling in wartime, was doubtless seriously intended;¹² and Themistios' own semi-private plea listing the reasons why Constantinople needed the emperor – among others to increase the role of the Constantinopolitan Senate – to deliver which he had to travel to Thessalonika, must be seen against this background. There was serious reason for alarm, for thinking that the East might again have received a Western military man as emperor, who chose for whatever reason to reside elsewhere than in Constantine's city, that for important areas of imperial business the new Rome and its Senate could come to seem as irrelevant and merely symbolic as the old.¹³

The administration of the Empire could probably have functioned reasonably well from Thessalonika, even if at first certain transitional difficulties would be felt. The legislation preserved from Theodosius' period of residence there covers a wide range of areas – not just those financial and military matters which were immediately related to the war¹⁴ – and a wide range of top officials is named as «recipients» of laws issued at Thessalonika, which in most, if not all, cases will have implied their participation (or at least that of their official staffs) in some way in drafting the laws. Areas dealt with from Thessalonika in his 18-month residence there are marriage laws both for Illyricum and the East,¹⁵ lease-holding,¹⁶ treasure-trove at Constantinople,¹⁷ the status of officials within the administration at Constantinople,¹⁸ administrative rules about the use of palatine officials or the behaviour of provincial governors in various areas of the East and of Illyricum,¹⁹ *delatores* and *bona caduca*,²⁰ the repair of public buildings in Egypt and Illyricum,²¹ the city councils in Egypt, Phoenicia and in general in the

¹² Them. Or. 14. 260, 2–3 (180 c).

¹³ Them. Or. 14. esp. 264–5 (183 a–184 a). On Themistios' status at this time see ERRINGTON (as n. 7) 8 f.

¹⁴ On these see ERRINGTON (as n. 7) 7.

¹⁵ CTh 3.5.10, 3.5.11, 3.6.1; CJ 5.9.1 (to Eutropius, *PPO Illyrici*), 3.11.1 (to Neoterius *PPO Orientis*).

¹⁶ CTh 10.3.3 (Pancratius *CRP*).

¹⁷ CTh 10.18.2 (*ad populum urbis Constantinopolitanae*).

¹⁸ CTh 6.7.2; 6.9.2 (Restitutus PV [Const.]).

¹⁹ CTh 6.30.2 (Pancratius *CRP*); 3.11.1, 7.13.9, 7.18.3, 8.2.3, 9.27.1 (Neoterius *PPO Orientis*); 12.1.8. (Iulianus *Praef. Aug.*); 1.15.11 (Iustianus *Vic. Pont.*); 6.23.3, 8.15.6 (Florus *mag. off.*); 3.6.1, 6.10.1, 9.27.2 (Eutropius *PPO Illyrici*).

²⁰ CTh 10.10.12 (Pancratius *CRP*); 10.10.13 (*ad provinciales*).

²¹ CTh 15.1.20 (Iulianus *Praef. Aug.*); 15.1.21 (Eutropius *PPO Illyrici*).

East,²² and some other matters; in all fragments of no less than 29 laws of this period are preserved in the Codes. These areas are little related to the immediate military crisis – at least, not in any way which can be detected with certainty – and have nothing to do with any perceived ecclesiastical problem. The impression given by all this legislative activity, for what it is worth, is that the administrative offices of the empire (the *scrinia*) had developed a backlog of legislative needs during the last years of Valens, from which very few Eastern laws are preserved – in his last nine years 370–378 only 32 Eastern laws are known²³ – and if the amount of surviving legislation can serve as any kind of indicator of the frequency of legislative activity in general, then Theodosius' period of residence in Thessalonika, despite the war, is by comparison with the previous decade a boom period for legislators. All important officials are involved, in particular of course the two Praetorian Prefects, of Illyricum (Eutropius) and the East (Neoterius), but also the administration of the imperial patrimony (*comes rerum privatarum*, Pancratius), the *magister officiorum* (Florus), the Augustal Prefect of Egypt (Iulianus), the Vicars of the Macedonian and Pontic dioceses Albucianus and Justinus, the *consularis* of Phoenicia (Petrus), the *praefectus urbi* of Constantinople (Restitutus), the *comes orientis* Felix, in addition to edicts directed to all provincials or specifically to the population of Constantinople.

The scope of the legislation issued while Theodosius was based at Thessalonika suggests that his Western officials, who came with him to the East, were concerned not only to win (or, at least, end) the war, but at the same time to restore the civilian basis of the state, to return to the normality which ruled civil life in Illyricum and the East before the Gothic crisis of 376. This legislative activity will also presumably have employed Theodosius' *consistorium* for such time as the emperor was not directly involved in the war. Zosimos records that people came – indeed, had to come – to Thessalonika from all parts of the Empire to transact business both public and private.²⁴

II. Status Ecclesiae Orientis

When Theodosius became emperor he was confronted with a situation in the Church in the East, the true complexity of which cannot at first have been clear to him. Since Constantine had accepted the Christian Church as an important in-

²² CTh 12.1.80 (Iulianus *Praef. Aug.*); 7.22.11, 12.1.81, 12.1.82 (Neoterius *PPO Orientis*); 12.1.83 (Petrus *cons. Phoenices*).

²³ List in MOMMSEN-KRÜGER, CTh vol. I, pp. CCXLIX ff.

²⁴ Zos. 4.25.1: πολλοὶ πανταχόθεν κατὰ κοινὰς καὶ ἰδίας συρρέοντες χρειαί τῶν προσήκοντων τυγχάνοντες ἀπηλλάττοντο. N. B. McLYNN, Ambrose of Milan, Berkeley – Los Angeles – Oxford 1994, 107, includes Carterius, *cons. Syriae*, among these visitors to Thessalonika. But Lib. Or. 1. 186 says he went εἰς Θράκην, by which he can only mean Constantinople.

stitution within the Empire, successive emperors had tried to bring about an ecclesiastical structure which met their needs most effectively. Their main aim was always a unified Church, to run in harness with the unified empire, which it was to support. Already in Constantine's day the Church had acquired substantial wealth, the use of which for demonstrative church building purposes, but in particular also for social services in the cities, served the needs of the poorer people and turned the bishops responsible for it into influential local figures, who were often enough well able to compete for influence with the local representatives of the imperial administration.²⁵ For this and other reasons it was always important to the Christian imperial authorities that the Church functioned and was at peace with itself. This ideal situation was never realised in the Fourth Century. The Christian Church was not primarily a social or political organisation, but a moral and religious one, which increasingly attracted to it men of intellectual and philosophical inclination who were determined to found a competitive and universally valid philosophical system out of the confusing Christian biblical tradition. The main questions of dispute in the Fourth Century, particularly associated with the name of Arius, concerned above all the nature of the relationship between God the Father and the Son; the role of the Holy Spirit in the Trinity also received attention from intellectual theologians, and the Church, especially in the East, split in many directions as a result of speculative reasoning and attempts to define the ineffable.

The credal formula agreed at Nikaia in 325, through its adoption of the non-biblical adjective *homoousios*, genuinely disturbed many. After Constantine's death a series of Church councils tackled this problem repeatedly, until in 359, under severe pressure from the emperor Constantius II, parallel councils of West and East meeting at Ariminum and at Seleukeia on the Kalykadnos were brought to accept a compromise formulation based on the adjective *homoios*, while at the same time avoiding both the Nicene *homoousios* and the substantive *ousia* on which it was based. It pleased, inevitably, none of the fundamentalists, though with a little good will they might have accepted it, as at first many did. In the West, where there was in general less traditional interest in theological-philosophical speculation, most bishops saw no good reason to abandon the Nicene Creed, and saw Eastern attempts to amend it as opening the door for heresies by trying to satisfy too many special interests and therefore being too vague. At the latest by the time of Constantius' death in 362 the formula of Ariminum seems to have been largely abandoned in the West.²⁶ In the East where Constantius II spent his last years, he could assert imperial power to ensure that newly-appointed bishops

²⁵ See e.g. Julian's complaint that pagans were simply offering no competition in this important area (Ep. 84 BIDEZ-CUMONT).

²⁶ On this whole question see the critical discussion of H. C. BRENNKE, *Studien zur Geschichte der Homöer*, Tübingen 1988, 5 ff.; also R. P. C. HANSON, *The Search for the Christian Doctrine of God*, Edinburgh 1988.

accepted his doctrinal formula, and that any too vigorous objectors were deposed. He could not, however, prevent the Nicene faction (which, apart from Alexandria, where it was represented by the intractable Athanasius, had only slight support in the East) wrongly but aggressively describing him and those who supported his essentially conciliatory formula as «Arians», though what they professed had nothing much in common with what Arius had once evolved and preached. The short reigns of Julian (361–363) and Jovian (363–364), despite their quite different attitudes to the Church, brought no significant change in this situation.

Theodosius' predecessor Valens, as a simple Christian and officer of Constantius, had been brought up in and had inherited the imperial Church unified by Constantius on the basis of the «homoian» formula of Ariminum and Seleukeia. His inclination did not stretch beyond maintaining the status quo – or, where necessary, restoring the status quo ante Julianum. His general attitude seems to have been flexible, accepting without difficulty men like Basil of Kaisareia in Kappadokia, who though holding firm to their own interpretation of the Creed of Nikaia, impressed him as pious and sincere men and posed no threat to the stability of the state. Those who for whatever reason seemed less reliable could be and were expelled from their sees but, it seems, rather for disciplinary than for doctrinal reasons. It was thus possible for most of the sees of the province of Asia and other areas in Asia Minor to be occupied by «Macedonianists»,²⁷ who despite the Constantian compromise avoiding the word *ousia*, kept to it in the form of the composite adjective *homoiousios*, thus distinguishing themselves equally from the the Nicene *homoousios* – with which, however, they had more in common – and from the new Constantian orthodoxy. Traditional Nicenes were now to be found only in Alexandria and in small numbers in Antioch, so-called «new-Nicenes» with a particular definition of how they interpreted the Nicene *homoousios*, in areas particularly associated with Basil of Kaisareia – Kappadokia, Armenia and also in Antioch. It may be that local authorities or individual officials – never easy for the central government to control in such matters – occasionally acted on their own initiative in the interests of doctrine, or even just of persons, which or whom they favoured, but it would be wrong to continue to follow the victorious orthodox Church historiography and depict Valens – who, like Constantius, was immediately characterised by the sloganeering Nicenes as «Arian» – as a doctrinaire persecutor of those who did not share his doctrinal position, «a fanatical opponent of the pro-Nicenes».²⁸ The emperor was neither theologian nor bigot: he merely aimed conservatively at upholding the structure in the Eastern Church which he had seen Constantius struggle so long and conscientiously to establish.²⁹

²⁷ I prefer this term for the Greek Μακεδονιστῶν to the ambiguous «Macedonians» for those named after the bishop of Constantinople Macedonius.

²⁸ So HANSON (as n. 26) 582.

²⁹ On Valens' ecclesiastical policy in detail see BRENNEKE (as n. 26) 181 f., correcting generations of gullible orthodox historiography.

The ecclesiastical situation in the East facing Theodosius on his accession was thus shaped by Constantius and continued and developed by Valens. In Valens' last years he had demonstrated his basic lack of doctrinaire rigidity with a new initiative aimed at reconciling the unreconcilable. Shortly before his unexpected death, as he was beginning the fateful war against the Goths, Jerome's Chronicle records that he recalled «our people» as a result of his «late repentance».³⁰ Since Jerome was in Antioch at this time,³¹ he must have personally known this fact and his basic statement must be true, since he recorded it although it did not suit his own Nicene opinions. The reason he gives is personalised and trivial – «late repentance» – and betrays his lack of real knowledge of the motivation. His date is probably related to his own experience of exiles returned to Antioch. Another contemporary Westerner resident in the East at the time, Rufinus of Aquileia, records the same events, but gives the impression of knowing more. Rufinus takes indeed his pious motivation from Jerome – «late repentance», a catching, if superficial phrase – but otherwise knows that bishops and priests were restored, monks released from the mines. Since Rufinus had been in Nitria at the time of a local persecution of the Nitrian monks in 373, he will presumably have had his information about their restoration at first hand.³²

The evidence of Sokrates on these events is more complex. He knew and recorded the tradition represented by Rufinus, whom he seems to have used as a source for this item, since, as in Rufinus' account, it is embedded in his narrative of the Gothic war.³³ He does not repeat Rufinus' and Jerome's pious motivation, and he modifies their statement to «he stopped sending the believers in the *homooousion* into exile»,³⁴ perhaps in this modified phrase representing the embarrassment of the Orthodox under the later Theodosian dynasty, that it was after all the «Arian» Valens, not the founder of the dynasty or his orthodox imperial «Father» Gratian, who restored the Nicene bishops in the East. Sozomenos, whose history was dedicated to Theodosius II, solved this problem by simply ignoring Sokrates' information, though he must have read it.³⁵

³⁰ Chron. ad. ann. 378: *Valens de Antiochia exire compulsus sera paenitentia nostros de exiliis revocat.*

³¹ Cf. J.N.D.KELLY, Jerome. His Life, Writings and Controversies, London 1975, 57f.

³² H.E. 11.13; on the persecution in Nitria cf. ib. 11.4, Jerome Chron. ad ann. 375. On these texts see R.SNEE, Valens' Recall of the Nicene Exiles and Anti-Arian Propaganda, GRBS 26, 1985, 402 f.

³³ On Sokrates' use of Rufinus see G.C.HANSEN, Sokrates Kirchengeschichte (GCS), Berlin 1995, XLIII f.

³⁴ H.E. 4.35: τοῦ εἰς ἑξορίαν πέμπειν τοὺς φρονούντας τὸ ὁμοούσιον ἀφίστατο. Cf. ib. 37 on the return of Petros to Alexandria.

³⁵ On Sozomenos' intensive use of Sokrates see J.BIDEZ – G.C.HANSEN, Sozomenos Kirchengeschichte (GCS), Berlin 1960, XLIV f.

However embarrassing for those propagating the stereotype of Valens as a persecuting Arian, the information must be correct. Not only did Petros return to Alexandria, it seems in spring 378,³⁶ and Meletios to Antioch (though the precise date of this is unsure); the Chronicle of Edessa records the take-over of the church in Edessa by the Orthodox (i.e. Nicenes) already on 27 December 377; and if this date is correct and understood to mean the return of the exiled bishop Barses and his friends,³⁷ it implies that Valens must have relaxed the punishment of at least some of the exiles not just immediately before leaving Antioch in 378, as Jerome and, following his date, Rufinus imply, but already at the latest in autumn 377.³⁸

Sokrates however also has another version, which does not come from Rufinus, but which, while loyally repeating the orthodox view of Valens' «savagery against the Christians», asserts that Gratian, after Valens' death and before Theodosius' accession, ordered that all faiths except the Eunomians, Photinians, and Manichaeans were to have freedom of worship.³⁹ Sozomenos follows him again here,⁴⁰ but the Antiochene Theodoret has a different version, doubtless following local Antiochene tradition: according to him the law restored «those who held communion with Damasus» [bishop of Rome], and the famous general Sapores, who brought the law, also put it into effect by ordering the expulsion of the «Arians» [i.e. the representatives of Constantius' and Valens' imperial Church].⁴¹

³⁶ Cf. Sokr. H.E. 4.37; Soz. H.E. 6.39.1.

³⁷ As does GUIDI's Latin translation of Chron. Ed. 33 (CSCO, Script. Syr. Chron. Min. Ser. 3.4, Paris 1903).

³⁸ For discussion of this see SNEE (as n. 32) 397 f. Sokrates, H.E. 4.32, followed by Sozomenos, H.E. 6.36.6–7, with direct verbal echoes and showing no independent knowledge, mentions a speech of Themistios to Valens held in Antioch «while the barbarians remained in their own territories», recommending Valens to treat his religious opponents less violently and to tolerate doctrinal plurality. The date seems to be at the latest early 376, and if the speech is authentic – it is not included in the transmitted corpus of Themistios' speeches, though this is no argument against authenticity, since there is no reason to think we possess more than a selection of Themistios' speeches – it is an extraordinary subject for a pagan rhetor. This suggests strongly that the subject and general direction of the speech, which Sokrates must have read, had been already agreed with the emperor and certain court circles, and that it was intended as a first «outing» of a new policy of religious tolerance. Since it was then more than a year before concrete action took place, the delay may be related to opposition within the administration. In 376 Demosthenes, the Vicar of the Pontic diocese, could exile Gregory of Nyssa (Bas. Ep. 237, cf. PLRE 1 s.v. Demosthenes 2) – there is no good evidence that Valens himself had anything to do with this affair – but Modestus, the PPO who had distinguished himself in the «Homoian» cause of the emperor (cf. esp. Greg. Naz. Or. 43.48–51; 55) is last attested in office on 20 October 377 (CJ 8.10.8, not November as PLRE 1 s.v. Modestus 2 p. 607), thus perhaps opening the way for more moderate circles to initiate the policy aired on their behalf by Themistios in 376.

³⁹ Sokr. H.E. 5.2.

⁴⁰ Soz. H.E. 7.1.3.

⁴¹ Theod. H.E. 5.2.

Valens' law was not included in the Theodosian Code, but Jerome's and Rufinus' contemporary acceptance of it, together with their embarrassed motivation «late repentance», should suffice to guarantee its authenticity. The situation is different with Gratian's law, which is also not included in the Theodosian Code, for here there is no contemporary witness. A simple explanation of Sokrates', Sozomenos' and Theodoret's law of Gratian would be to assume that Gratian also issued such a law, in which case it must indeed have been while he had sole responsibility for the East during his residence at Sirmium, which began sometime after 9 August 378 (Valens' death) and ended on 19 January 379 (Theodosius' accession).⁴² As long as Valens' law was ignored, historians have been satisfied to accept this «Tolerance Law» of Gratian,⁴³ since it seemed to explain (with Theodoret) i. a. Meletios' return to Antioch – and no law is recorded for Theodosius, which could conceivably be argued to serve as a basis for this before that of 28 February 380,⁴⁴ which is far too late to explain events in Alexandria, Antioch and Edessa. But as soon as Valens' law is recognised as authentic, «Gratian's» becomes functionally superfluous, since at least in Alexandria and Edessa, probably also in Antioch and elsewhere, such Nicene clergy as had been exiled had by then already returned.⁴⁵

Sokrates did not know the Code; Sozomenos, who did, found no information confirming Sokrates there, otherwise he would not have followed him quite so closely.⁴⁶ A non-documentary ecclesiastical source – not in this case Rufinus, who does not record Gratian's law – must therefore be postulated. A hint towards a solution to the confusion, however, lies to hand in the list of exceptions which Sokrates gives for the exercise of tolerance, where Photinians are explicitly named. Photinians seem to be a serious problem only in Illyricum, where Photinus had been bishop of Sirmium;⁴⁷ and we happen to know that they were explicitly mentioned (and condemned) again in a law addressed to Theodosius' Praetorian Prefect for Illyricum

⁴² So most recently, SNEE (as n. 32) 410f.; McLYNN (as n. 24) 91.

⁴³ E.g. A. DEMANDT, *Die Spätantike. Römische Geschichte von Diokletian bis Justinian, 284–565 n. Chr.*, München 1989, 128.

⁴⁴ CTh 16.1.2. In practice this law, the much misunderstood *Cunctos populos*, had a quite different context and function: see ERRINGTON (as n. 1) ad n. 71 f.; below, p. 36f. On the date (28 Feb., not 27 Feb.) see W. ENSLIN, *Die Religionspolitik des Kaisers Theodosius d. Gr.*, SBAW phil.-hist. Klasse 1953, 2, 16 n. 1.

⁴⁵ On this see below, p. 32.

⁴⁶ On this see ERRINGTON (as n. 1) *passim*.

⁴⁷ Photinus was a Galatian, a pupil of Marcellus of Ankyra, but bishop in Sirmium, where he had a following (Sokr. H. E. 2.18.7). He was finally deposed and exiled in 351 (Sokr. H. E. 2.29.4; 30.45), after which he developed a vigorous literary activity both in Latin and in Greek (Sokr. H. E. 2.30.45–6). He died in exile in Galatia, according to Jerome (Chron. ad ann.) in 376, cannot however have had any following there, since this would have made nonsense of his being exiled. On Photinians in Illyricum cf. M. MESLIN, *Les Ariens d'occident, 335–440*, Paris 1967, 123–4; HANSON (as n. 26) 235 f.

Eutropius in 381,⁴⁸ and their activities at Sirmium are the subject of concern to Ambrose in autumn 381.⁴⁹ This suggests that Gratian's law should be interpreted as a ruling intended for the Prefecture of Illyricum, doubtless issued from Sirmium when he took up residence there after the battle of Adrianople in late summer 378.⁵⁰ There is however no question of this law's being identical with the *rescriptum* mentioned as having been produced at Sirmium in the law issued at Milan against the Donatists on 3 August 379, as many early and some recent writers have thought.⁵¹

Gratian's law so interpreted did no more than apply to Illyricum from an orthodox perspective the principles of Valens' law issued a whole year or more earlier in Antioch for the East, whereby those beliefs regarded as particularly pernicious in the local context in Illyricum were explicitly excluded from toleration. Sokrates' source has thus merely made the common mistake of over-interpreting a geographically restricted law (as historians continue to do to this day), which in itself makes admirable sense in the context of the war-scarred Illyricum of 378 – but at this time none at all in the East – as applying to the whole empire. Sozomenos' version is perhaps slightly more subtle than it seems at first sight for, knowing the nature of imperial legislation, he seems to have realised that there was no sense in recording two laws with the same basic substance, therefore chose to follow Sokrates and record Gratian's law, rather than Rufinus (who, being resident in the East at the time, shows no knowledge of Gratian's Illyrican law) in recording Valens' recall (or Sokrates' watered-down version of Rufinus' account of Valens' recall). His basic common sense for once misled him. Both laws were real, but intended for two different and distinct administrative areas. Valens could not have legislated for Illyricum in 377, since Gratian was the emperor responsible for it. Gratian was therefore merely following his «Arian» uncle's lead.⁵²

Theodoret's account, as so often, is a tendentious tissue of half-truths and inventive interpretation linked only through wilful chronological misplacement; it contains little which can be regarded as the substance of serious history. The Antiochene ecclesiastical tradition which he knew is independent of Sokrates, but is no more reliable when it attributes the law restoring the bishops, in particular Mele-

⁴⁸ CTh 16.5.6, see below p. 48 ff.

⁴⁹ Gesta conc. Aqu. ep. 2 [10], 12 (Sancti Ambrosii Opera, Pars X [CSEL 82], p. 325; also, but without Ambrose's synodal letters, in: R. GRYSON, *Scolies ariennes sur le concile d'Aquilée* [SC 267], with French translation).

⁵⁰ There is thus no need to adjust Sokrates' date, which fits perfectly. On Gratian's movements in 378 see ERRINGTON (as n. 7), appendix.

⁵¹ CTh 16.5.5, with G. GOTTLIEB, *Ambrosius von Mailand und Kaiser Gratian*, Göttingen 1973, 52f., still unknown to WILLIAMS and FRIELL (as n. 11) 52–3, who therefore perpetuate exploded error about the function of this edict.

⁵² On a similar delay in issuing broadly similar legislation for two different administrative areas see e.g. the Manichaean laws of Theodosius CTh 16.5.7 of 8 May 381 (Illyricum) and 16.5.9 of 31 March 382 (Oriens). Cf. below p. 51 ff.

tios to Antioch, to Gratian. Had he known of and recorded Valens' law, it would have devastated the lesson he drew for his readers from Valens' death as God's punishment for the emperor's raving against Him, which was important for the moral effect of his history.⁵³ But Theodoret knew a comfortable ecclesiastical tradition that it was the orthodox Gratian who recalled the orthodox exiles to Antioch, and this was obviously morally preferable, even if unhistorical. However, what he says about the substantive content of the law merely shows up his ignorance of it, for he has attributed to Gratian one element of Theodosius' *Cunctos populos*, issued on 28 February 380 to the *populus* of Constantinople, for he alleges that Gratian's law named Damasus (of Rome) as the one measure of orthodoxy, and *Cunctos populos* is the only place where this was done in an extant law – where it had a particular function in the historical context of its issue.⁵⁴ *Cunctos populos* was the first of two Theodosian attempts to describe orthodoxy for administrative purposes by naming guarantor bishops in a secular law;⁵⁵ and he did it indeed by naming Damasus, but also Petros of Alexandria. It would be no great surprise if an Antiochene Meletian author suppressed mention of Meletios' enemy Petros. But Theodoret has also blundered in his chronology – which was certainly less important to him than the moral lesson he was preaching – since in fact communion between Meletios and Damasus was achieved only as a result of the synod of Antioch held after and as a consequence of Meletios' return.⁵⁶ Before this Mele-

⁵³ Theod. H. E. 5.1.

⁵⁴ CTh 16.1.2, see below p. 36 f.; ERRINGTON (as n 1) ad n. 71 f.

⁵⁵ The second was CTh 16.1.3, not however mentioning Damasus. On this see below, p. 64 f. These are the only two laws mentioning «norm bishops» included in the Code. A passage of Sozomenos, however, to which BRENNECKE (as n. 26) 208 n. 189 draws attention, opens the possibility that the technique may go back to Valens as long ago as 365. The context is his anger at the results of the Council of Lampsacus. Soz. H. E. 6.7.9 writes: .ἡνιθεὶς πρὸς ὀργὴν τοὺς μὲν ὑπερορίαν οἰκεῖν προσέταξε, τὰς δὲ ἐκκλησίας παραδίδοσθαι τοῖς ἀμφὶ τὸν Εὐδόξιον. Since the problem facing Valens was technically similar to that facing Theodosius in 380 – of providing for his secular officials an administratively feasible way of deciding who might legitimately possess church property, without their having to carry out an inquisition – BRENNECKE may well be right to see Valens' homoian advisers in Constantinople as the inventors of this administrative technique.

⁵⁶ The date of the «Meletian» synod of Antioch, traditionally placed in October 379, depends on the date of the death of Basil of Kaisareia, which L. DE TILLEMONT, *Mémoires pour servir à l'histoire ecclésiastique des six premiers siècles*, Venezia 1730, vol. 9, 654–57, dated to 1 Jan. 379, but recently questioned by A. D. BOOTH, *The Chronology of Jerome's Early Years*, Phoenix 35, 1981, 237–59 and P. MARAVAL, *La date de la mort de Basile de Césarée*, Rev. Et. Aug. 34, 1988, 25–38. The latter's discussion concludes that Basil's death was summer/autumn 377, at about the time of Valens' recall of the bishops. His arguments have been criticised by R. J. POUCHET, *La date de l'élection épiscopale de Saint Basile et celle de sa mort*, RHE 87, 1992, 15–33, and in a searching demonstration shown to be inconclusive, except for his rejecting the traditional date of 1 January, which MARAVAL indeed showed to have no factual basis. POUCHET argues from Bas. Ep. 48 that Basil's episcopal accession was ca. Sept. 370, and since he was bishop for slightly more than 8 years (Greg. Nyss. Vita

tios was regarded with suspicion in the West.⁵⁷ Theodoret's causal connection between communion with Damasus and Meletios' return is proven fiction.

Moreover the role of the general Saporess – presumably a *magister militum*⁵⁸ – in Theodoret's account is also highly suspicious. He is said to have brought the law from Gratian to Antioch and set about putting it into effect. This was, however, no job for one of the most senior military officers of the Empire at the height of a severe military crisis. Moreover Saporess' Persian name makes him a bad candidate – though perhaps not an impossible one – for a high officer of Gratian's.⁵⁹ It is however, much more convincing to see in him the man whom Valens left behind in charge at Antioch when he set off against the Goths in 378 (being then confirmed in his post by Theodosius), and who therefore could not avoid being confronted by the local and regional problems caused by the return of the Nicene clergy as a result of Valens' law. His attested intimacy with Libanios at Antioch suggests a longer familiarity with the chief city of the diocese Oriens.⁶⁰

The results of this discussion may be summarised as follows. In the crisis caused by the Gothic settlements in Thrace after 376, but perhaps based on longer-term thinking, Valens decided to relax the penalties placed on those bishops, clergy and monks who for one reason or another had been exiled. This measure might have been effected as early as summer 377. His *magister militum* Saporess, whom he left at Antioch in charge of the eastern front in spring 378, was there when Meletios returned, and made efforts to accommodate the restored clergy. Sokrates, though recounting Valens' law, reduplicated it by also exaggerating the scope of Gratian's Illyrican law of 378. In this Sozomenos followed him, though like Theodoret he omits Valens' law. Theodoret, riding the orthodox bandwagon of his own time, added anachronistically the name of Damasus, perhaps thereby garbling inadequate information about Theodosius' *Cunctos populos* (of which however he otherwise knows nothing). If so, either he or his Antiochene source (probably oral) will have suppressed the unloved name of Meletios' Alexandrian rival Petros; but Damasus was useful and served to give the partisan but false impression that Meletios' Nicene orthodoxy was formally recognised by Damasus even before

Macrinae 14) his death will be ca. Sept. 378. The Council of Antioch, which was «in the ninth month, or a little more» after Basil's death (Greg. Nyss. Vita Macrinae 15), therefore met in early summer 379. The arguments of P. ROUSSEAU, Basil of Caesarea, Berkeley – Los Angeles – Oxford 1994, 360–363, who does not know POUCHET's work, against MARAVAL, are however inconclusive.

⁵⁷ As late as 376/7: Bas. Ep. 266,2.

⁵⁸ So PLRE 1, s.v. Saporess.

⁵⁹ Had he been with Valens at Adrianople and survived to join Gratian at Sirmium, he would surely have been named by Ammianus Marcellinus. If he came direct from Gratian, as Theodoret alleges, he must have belonged originally to Gratian's Western military staff. So A. DEMANDT, RE Suppl. 12, 599–600, who makes him Gratian's *mag. equ. praes.*

⁶⁰ Lib. Or. 2,9 of 381; by 390 Saporess had had property (οὐσία) confiscated by the emperor and again restored to him (Lib. Ep. 957); it was presumably somewhere in the East.

his return from exile. Gratian's famous «Tolerance Edict» issued in Sirmium sometime after his arrival there after Adrianople, had nothing to do with Antioch and the East, but merely extended to Illyricum the principle of religious tolerance (with certain named exceptions) which Valens had already introduced into the East more than a year before.⁶¹

III. Constantinople

The ecclesiastical problems facing Theodosius in the East were extremely complex and difficult. The net of dogmatic, regional-historical and personal differences and loyalties within the Church and the imperial administration had by the time of Valens' death reached a level of complexity which was unknown in the West. Not the least of these problems was the ambivalent ecclesiastical status of Constantine's city on the Bosphorus, which for political reasons claimed a dominating position in the East, the bishop of which however for historical reasons enjoyed no exceptional ecclesiastical status. Given that Theodosius was a Westerner surrounded by Western advisors and based on Thessalonika, one of the main urban centres of Illyrican support for the Nicene Creed,⁶² he was in grave danger of underestimating the problems facing the Eastern Church following the death of Valens. Moreover he had been chosen emperor for his qualities as a military man, not as a theologian, just as his predecessors Valentinian and Valens had been. There is no reason to think that he had much primary interest in or even knowledge of theological questions, nor despite ex post facto judgements by orthodox writers, that he indulged a more than conventional level of piety. He knew, or thought he knew, what he believed, and seems to have thought it would be good for the state of the Empire if his own belief could build a basis for unity. But Theodosius was no dogmatic fanatic – though in the course of time some of his aides and advisors may have become so. The uncomplicated inevitably Nicene piety of an active soldier brought up in the West – though whether he consciously regarded himself as a «Nicene» could be doubted – is all that can reasonably be postulated for him at this time.⁶³

⁶¹ The traditional but false assumption that it was relevant to the Praetorian Prefecture of the East was recently used as an argument for a late date of the Meletian Council of Antioch both by POUCHET (as n. 56) 27 and ROUSSEAU (as n. 56) 360–1.

⁶² Bishop Acholios was a trusted correspondent of Damasus (cf. Damasus [PL 13] Epp. 5; 6), a fact which may have stimulated the late orthodox fable of Theodosius' testing his orthodoxy before allowing himself to be baptised, when he thought he was dying in 380 (already in Sokrates H.E. 5.6.3–5).

⁶³ This was also the view of Greg. Naz. Carm. 11 (De vita sua) 1282–9. See also McLYNN (as n. 24) 106 f. Theodosius was the first emperor, it is usually asserted, who did not officially bear the old republican title *pontifex maximus*, but it is also not attested for Valentinian II, who was technically his senior. It is unclear what this means, despite general modern enthusiasm for it as another «turning point», since no ancient source – neither the hostile pagan Eunapios (Zosimos) nor the favourable Christian writers – seems to have noticed it, or at

In Constantinople itself the ecclesiastical situation was exceptionally difficult, and should he decide to reside there as emperor he would be confronted by a quite different and much more intractable situation in Church affairs than he was used to, since in 379 the Nicene community there was minute, and met in a private house.⁶⁴ The dominant ecclesiastical direction, represented by the highly respected and popular bishop Demophilos,⁶⁵ was that established by Constantius and followed by Valens, the «Homoian», the opponents of which, particularly virulent the Westerners among them, attacked it as «Arian». All the official churches of the city – and all the patronage and wealth associated with them – were thus controlled by Demophilos.⁶⁶

least to have thought it worth mentioning. In view of this silence it is difficult to regard it as an important action (so also N. Q. KING, *The Emperor Theodosius and the Establishment of Christianity*, London 1961, 21, but see the restatement of the traditional view in P. BARCELÓ – G. GOTTLIEB, *Das Glaubensedikt des Kaisers Theodosius vom 27. [sic] Februar 380: Adressaten und Zielsetzung*, in: K. DIETZ – D. HENNIG – H. KALETSCH [ed.], *Klassisches Altertum, Spätantike und frühes Christentum*. Adolf Lippold zum 65. Geburtstag gewidmet, Würzburg 1993, 410–11). – Zosimos (4.36) has an extraordinarily confused and confusing account of Gratian's refusing the title together with the «pontifical robe» (this object is known only from this passage!) when it was offered to him, and Zosimos implies that this was at the time of his accession: ἀμα γὰρ τῷ παραλαβεῖν ἑκαστον τὴν τῶν ὄλων ἀρχήν (3), though he recounts it shortly before the war with Maximus in 383. Gratian is named *pontifex maximus* in a Roman inscription of 369 (ILS 771) and in 379 was directly addressed by Ausonius as *pontifex maximus* (Grat. act. 42). This latter reference has been interpreted by PASCHOUD (Zosime, [Budé vol. II2], ad loc. n.174 p.420 with further references) as referring to the Christian priesthood, but the interpretation is extravagant and improbable. Perhaps the whole passage in Zosimos is mere fantasy – certainly much of it is, in particular its chronological positioning, which is governed solely by the pontifical pun on Maximus' name (36.5, «if the emperor does not want to be called *pontifex* then Maximus will soon become *pontifex*»: εἰ μὴ βούλεται ποντίφεξ ὁ βασιλεὺς ὀνομάζεσθαι, τάχιστα γενήσεται ποντίφεξ μάξιμος), and cannot be taken as serious chronological evidence, since it both implies knowledge of Gratian's death and ignores the fact that Maximus was an orthodox Christian. Confusion is perhaps possible with Gratian's withdrawal of funding for the pagan cults of Rome represented by the *pontifices*, for which an official senatorial (and pontifical) mission of protest, led by the senator and *pontifex* Symmachus to Gratian is known (mentioned in Symm. Rel. 3.1). If so, it must remain extremely doubtful whether Gratian in fact ever formally rejected the title *pontifex maximus*; it may just have died with him. But if he did, it seems more likely to have been c.382 and to have been connected with his cancelling the state subsidies. There is no good reason for ENSSLIN's view, (as n.44) 20, that Theodosius «als frommer Christ» will have influenced Gratian: even the hostile Zosimos does not suggest it.

⁶⁴ Greg. Naz. Carm. 11 (De vita sua), ed. and tr. C. JUNGCK, Heidelberg 1974, 589: λαὸν βραχύν; id. Carm. 12 (De se ipso et episcopis) (PG 37, 1172), 82: λαὸς ὁρθόδοξος, ἅλλ' οὕτω πλατύς; Or. 42,2: ποιμνιον . . . μικρόν τε καὶ ἀτελές.

⁶⁵ Bas. Ep. 48; Greg. Naz. Carm. 11 (De vita sua), 652–678 are witnesses, albeit involuntary ones, to Demophilos' success and popularity. Cf. BRENNECKE (as n.26) 181 ff., 239 f. On the general successes of the «heretics» in attracting and binding congregations to them cf. Bas. Ep. 243,4.

⁶⁶ Greg. Naz. Carm. 11 (De vita sua), 1475 f. complains that no proper accounts had been kept for the rich church possessions.

Should Theodosius and his western Nicene court move to Constantinople, there was in 379 no obvious place where they could worship, no established bishop of their persuasion who could provide the religious teaching they were used to – even if they were prepared to listen to sermons in Greek.

By Easter 379 at the latest⁶⁷ the small Nicene community had received a new organiser, preacher and potential bishop in Gregory of Nazianzos, the learned but unworldly friend of the recently deceased Basil of Kaisareia.⁶⁸ Precisely when Gregory arrived in Constantinople is not known. He himself counted three years for his activity there,⁶⁹ and since he left the city in summer (perhaps June) 381, in the middle of the synod,⁷⁰ he must have arrived some time after ca. June 378. He had been living in retreat at the Thekla sanctuary at Seleukeia on the Kalykadnos in Kilikia for several years,⁷¹ when Valens' decision to allow the exiled bishops to return home stimulated Nicene activity in the East, and raised i. a. the problem of re-introducing the Nicene faith into Constantinople, which will have become particularly acute after the sudden death of Valens in August 378. Gregory of Nazianzos himself says that «assemblies» of bishops and the small orthodox community in Constantinople had invited him;⁷² he had clearly been put under significant

⁶⁷ Greg. Naz. Carm. 11 (De vita sua), 665 f. with id. Ep. 77, esp. 3. Cf. P. GALLAY, *La vie de Saint Grégoire de Nazianze*, Paris 1943, 138 f., pointing out the usual baptismal date of Easter Saturday for the incident.

⁶⁸ The first preserved sermon of Gregory's residence in Constantinople is Or. 22, which plays i. a. on the theme of recent bloody disasters (2), is however not otherwise precisely datable, but with its equally fresh-seeming references to the Constantinopolitans' manic enthusiasm for theological discussion, it must surely belong to the earliest period of Gregory's activity, when these impressions were young; moreover, it is easy to imagine that Valens' recall of the bishops and his sudden violent death will have stimulated speculation of all kinds, doubtless not just theological. Cf. G. RAUSCHEN, *Jahrbücher der christlichen Kirche unter dem Kaiser Theodosius dem Großen*, Freiburg 1897, 53 and n. 2, on this, though Gregory's audience cannot have been wider than his own small Nicene community (perhaps including also potential priests), certainly not «eine Versammlung von Bischöfen», since those in possession in Constantinople were still «Homoian», or even worse!

⁶⁹ Carm. 12, 101.

⁷⁰ See below, p. 57.

⁷¹ Greg. Naz. Carm. 11 (De vita sua), 547 f., with GALLAY (as n. 67) 128 f. On the Thekla sanctuary in the fourth and fifth centuries see G. DAGRON, *Vie et miracles de Sainte Thèkle*. Texte grec, traduction et commentaire, Brussels 1978, 55 f.

⁷² Carm. 12, 81–82: σύλλογοι τε ποιμένων καὶ λαὸς ὁρθόδοξος. GALLAY (as n. 67) 135 n. 4, suggests that the σύλλογοι might have consisted of the bishops of the area around Constantinople. But they were not Nicene at this time. The obvious interpretation is one or more local synods or unofficial meetings of Gregory's Nicene friends in Kappadokia, or elsewhere in the East, though MARAVAL's cautious and superficially attractive suggestion, (as n. 56) 32 n. 45, based however only on the much vaguer phrase in Greg. Naz. Carm. 11 (De vita sua) 595: πολλῶν καλούντων ποιμένων καὶ θρεμμάτων, that the Meletian synod of Antioch might be meant, cannot be correct, since it depends on his dating it wrongly to May 378: see above n. 56.

peer pressure to undertake the unwelcome task,⁷³ and Basil, while he still lived, seems to have been one of the pressurisers.⁷⁴ We may therefore perhaps conclude that the direct stimulus to eject Gregory from the lethargy of his Kilikian retreat and mobilise him for the Nicene cause came from his Nicene friends, especially Basil, but no doubt also including Gregory of Nyssa and perhaps Meletios himself in the euphoria created by the return of the exiled bishops, and, after August 378, by the prospects of an orthodox emperor. During autumn 378 or winter 378/9 Gregory, having bowed to the pressure of his friends and in the meanwhile having been invited by the Nicene community in Constantinople, took up residence as their unofficial organiser in the imperial city.

IV. *Adventus Caesaris*

By early 380 Theodosius had decided what to do. A move to Constantinople was being planned; Thessalonika would in due course, once the improving war situation allowed it, be returned together with the rest of Illyricum to Western administration, as agreed with Gratian. Once the immediate military crisis was over, where all eastern roads led to Constantinople, Thessalonika was in the long term likely to prove an inconvenient base for the emperor; and there will have been enough visitors like Themistios who will by now have made this clear to Theodosius, should he ever seriously have thought otherwise.⁷⁵ It was therefore necessary to prepare the Constantinopolitans for the arrival of the court, to show that the new emperor and his administration were prepared to show specific interest in the affairs of the «new Rome» on the Bosphoros.

The edict *Cunctos populos* issued in Thessalonika on 28 February 380 to the *populus* of Constantinople,⁷⁶ was a decisive measure indicating Theodosius' interest in and will to fundamental clarification of control of the ecclesiastical apparatus

⁷³ Greg. Naz. Carm. 11 (De vita sua) 607–8: οὕτω μὲν ἦλθον, οὐχ ἐκόν, ἀλλ' ἀνδράσιν | κλαπείς βιαίους.

⁷⁴ This has always seemed a possible interpretation of Greg. Naz. Or. 43.2 (ed. BERNARDI, SC 384, 120, 21–24 = PG 36, 497 A) where Gregory says he was pressured, perhaps under the influence of God, to leave home καὶ οὐδ' ἀπὸ γνώμης ἐκείνῳ τῷ γενναίῳ τῆς ἀληθείας ἀγωνιστῇ. JUNGCK (as n. 64) 178 and MARAVAL (as n. 56) 32 n. 45, however point out that ἀπὸ γνώμης ἐκείνῳ – especially, one might add, in the context of a formal oration written later and in the present form never delivered (so BERNARDI, SC 384, 27 f.) – need mean no more than «consonant with his view». An earlier conversation or exchange of letters in which Basil expressed his view cannot therefore be ruled out. The older view is maintained by BERNARDI, SC 384, n. ad loc.; see also POUCHET (as n. 56) 25–26. Gregory certainly visited Kappadokia before going to Constantinople (Carm. 12, 93), where he may have been when he heard of Basil's death (Greg. Naz. Ep. 76; POUCHET [as n. 56] 22–23).

⁷⁵ Cf. Zos. 4.25.1; 27.

⁷⁶ CTh 16.1.2, see ERRINGTON (as n. 1) ad n. 71 f. for translation, text and detailed discussion of this document.

in Constantinople. It was, in effect, an announcement that Theodosius intended to come to the city,⁷⁷ and a declaration of imperial support for those representing the Nicene faction there. Theodosius announced in the preamble that he wished (*volumus*) all his subjects to believe what he believed in, included a précis of the Nicene creed, which he described as the faith brought by Peter to Rome, and added for those still in doubt of his meaning, that communion with Damasus (of Rome) and Petros of Alexandria would provide evidence of this.⁷⁸ He then ordered (*iubemus*) – here the substantive content of his law – that these were the only people allowed to claim the name «catholic», all others had no rights to it nor to the possession of churches. Given the place of issue and the firm Western tone of the law, it seems absurd to exclude the bishop of Thessalonika Acholios from the circle of advisers who drew up its terms.⁷⁹ In particular the strong Roman emphasis in the preamble – the explicit mention of Peter as having brought the faith to Rome, and as guarantors of orthodoxy Acholios' correspondent, the current bishop of Rome Damasus, and Damasus' friend Petros, recently restored to Alexandria from a period of exile in Rome – makes the Western influence on this law crystal clear. In terms of immediate ecclesiastical politics, the edict was Theodosius' first step towards defining the range of persons who came into question for imperial recognition as bishop of Constantinople, though addressed, as it was, more generally to the people of Constantinople, it will certainly also have aimed to encourage the small Nicene community, while dismaying the «Arian» majority, and stimulate their support for the new emperor. Even if the first approach on the subject had come from the Nicene community in Constantinople itself,⁸⁰ the strong Western tone, recognising in effect the rights of Alexandria to participate in the appointment of the bishop of Constantinople – even if this were only meant as a solution for the immediate crisis⁸¹ – cannot have represented the real wishes of the orthodox community led by Gregory of Nazianzos, with his Kappadokian-Antiochian traditions and independent Constantinopolitan ambitions.

Nevertheless the message was received, and in the course of the summer 380 Gregory of Nazianzos prepared his formal qualifications as demanded by the law, and duly obtained a letter from Petros of Alexandria confirming that they were in communion.⁸² The wily Petros, however, had other plans for Constantinople – thus, incidentally, showing the new emperor that not only doctrinal ques-

⁷⁷ The future punishments foreseen for those ignoring the edict, though only vaguely expressed, include *motus nostri ultione* (line 12), which implies an intended imperial presence.

⁷⁸ On «norm-bishops» see n. 55 above.

⁷⁹ So however, ENSSLIN (as n. 44) 17 f.

⁸⁰ The suggestion of McLynn (as n. 24) 107 f.

⁸¹ Canon II of Theodosius' Constantinopolitan Council of 381, in the light of intervening negative experience, explicitly tried to prevent such extra-diocesan activity in future (see below, p. 61).

⁸² Greg. Naz. Carm. 11 (De vita sua), 860.

tions troubled the Eastern Church. No doubt interpreting his mention in *Cunctos populos* as encouragement also for the political aims of his see, he jumped the gun and arranged for a protégé who was, like Gregory, currently resident in Constantinople, to be secretly elected bishop of the imperial city. This was done by three Egyptian bishops, whom Gregory alleged he had sent to Constantinople for the purpose. Gregory, who had earlier been happy to praise this Maximus,⁸³ nicknamed «the Cynic» because he behaved and dressed like a heathen philosopher, was appalled, as was his congregation, who made such trouble for Maximus that he fled Constantinople – though not before he had ordained at least some clergy⁸⁴ – and appealed direct to Theodosius in Thessalonika.

Theodosius, doubtless again advised by Acholios, took the view that Maximus was unsuitable and rejected his appeal, whereupon Maximus travelled on to Alexandria to consult his patron. Here, again according to his enemy and rival Gregory of Nazianzos, he put pressure on Petros, who had already supplied him, as he had Gregory himself,⁸⁵ with the necessary letters attesting his orthodoxy,⁸⁶ which *Cunctos populos* in practice seems to have demanded as proof of it. Petros, he hoped, would help him further with his schemes in Constantinople, but in the end Maximus caused such trouble also in Alexandria that, again according to his enemy Gregory, he was expelled by the secular authorities.⁸⁷ Whatever his real reason for leaving Alexandria, he did set off for Italy, where he soon turned up in Milan and impressed Ambrose with his letter of orthodoxy from Petros and his version of events at Constantinople relating to his ordination as bishop.⁸⁸ He also presented the emperor Gratian with a doctrinal work known to Jerome as *De fide adversum Arianos*.⁸⁹ Precisely when the Constantinopolitan part of this bizarre affair took place is not wholly clear, but it can scarcely have been later than September 380, and could well have been earlier, for Maximus' visit to Thessalonika and his rejection by Theodosius must have taken place by mid-November at the latest, since on 24 November Theodosius arrived at Constantinople and celebrated his *adventus*.⁹⁰

⁸³ Greg. Naz. Or. 25 and Or. 26 are directed to Maximus. On the chronology of the affair see appendix p. 67 ff.

⁸⁴ Canon IV of the Council of Constantinople 381 cancels these ordinations.

⁸⁵ Greg. Naz. Carm. 11 (de vita sua), 856f. Gregory, wildly exaggerating, claims Petros had appointed him (ἐγκαθίστη: 859) with this letter.

⁸⁶ Greg. Naz. Carm. 11 (de vita sua), 1015, alleges that Petros' letter for Maximus was ambiguous, whereas his own is earlier described (860) explicitly as being free from all ambiguity. It was, whatever Gregory may have claimed, unambiguous enough to satisfy Ambrose (Ep. extra coll. 9 [13], 3).

⁸⁷ This whole story is known only from the later verse account of Gregory of Nazianzos, which is neither unbiased nor always easy to comprehend in detail: Carm. 11 (de vita sua), 750 ff.

⁸⁸ Ambrose, Ep. extra coll. 9 (13), 3.

⁸⁹ Jerome, de vir. ill. 127.

⁹⁰ Sokr. H. E. 5.6.6.

The Maximus affair was only one, and hardly the most important, event of the nine months lying between the issue of *Cunctos populos* and Theodosius' arrival at Constantinople on 24 November. Not all events can be reconstructed, but the Gothic war and the emperor's own serious illness – so serious that, apparently anticipating death, he followed his father's example and let himself be baptised⁹¹ – will have been his primary occupations in this period. Acholios, who had the honour of baptising the emperor, will doubtless have rejoiced at his recovery and at the prospect of his confronting the heretics in Constantinople as a full member of the orthodox Church.

Among Theodosius' first actions in Constantinople was to address the question of the possession of church buildings, in effect to punish those church officials who refused to give up their possessions, though not accepting the administrative definition of catholic doctrine announced in the edict issued on 28 February from Thessalonika.⁹² In the language of the edict, the period of punishment by God was over, that of Theodosius at hand. According to Sokrates, Theodosius' first aim was to make peace and promote reconciliation; he therefore immediately summoned Demophilos, the «homoian» bishop of the city, and asked him whether he accepted the form of faith agreed at Nikaia – in effect establishing the factual basis set out in the proemion of the edict of Thessalonika, before proceeding to the action foreseen in the substantive ruling.⁹³ According to Sokrates, Demophilos refused, abandoned the churches in the city to Theodosius and forthwith assembled his flock outside the gates of the city – that is, outside the limits of jurisdiction set by the edict *Cunctos populos* directed *ad populum urbis Constantinopolitanae*. Sokrates sums up: after the «Arians» had had possession of the places of prayer for forty years, they left the city, refusing the concord offered by Theodosius.

Gregory of Nazianzos himself in his bitter autobiographical poem written a few years after his enforced retirement from Constantinople, describes Theodosius'

⁹¹ Sokr. H.E. 5.6.3–6. The precise time of year remains unclear despite ENSSLIN (as n.54) 17f. See ERRINGTON (as n.1) n.92. On Theodosius senior cf. Orosius, Hist. adv. pag.7.33.7.

⁹² The possession of buildings was a major point of dispute between the sects: see Bas. Ep.240,2 concerning Armenian Nikopolis, where he asserts the orthodox had to meet in the open.

⁹³ Sokr. H.E. 5.7. Sokrates does not know *Cunctos populos*, and his version of these events is strongly influenced by a pro-Gregory source (which is however not Gregory himself), which simplifies massively, even asserting that Gregory was already at this stage suspected in Constantinople as a «foreigner» (ὑπερόριος) and, though greeting Theodosius' arrival, refused to remain in Constantinople (τὴν ἐν Κωνσταντινουπόλει διαγωγὴν παρητήσατο: H.E. 5.7.2) an assertion omitted by Sozomenos, who in general knows more about Gregory, despite otherwise following Sokrates here. It is thus consequential when Sokrates also suppresses the candidature of Gregory at the Council of 381 (ib. 8). Given Sokrates' ignorance of *Cunctos populos*, it is hardly surprising that he depicts Theodosius' questioning of Demophilos not in the precise terms of the edict but in the simplified form of acceptance of the Nicene Creed or not.

entry into the city as it affected him.⁹⁴ Many parts of the poem are difficult to understand, but his characterisation of Theodosius' attitude in this early period is easily comprehensible. He makes clear, in this respect confirming the impression given by Sokrates, that Theodosius had not arrived in Constantinople with his mind made up that the next bishop of the city must at all costs be Gregory of Nazianzos. On Gregory's view – and as someone intimately affected by Theodosius' attitude and actions he is a capital witness – Theodosius wished to convince, not to oppress his ecclesiastical opponents. This Gregory seems to disapprove of, in view of his own experience on the other side.⁹⁵ His disapproval will doubtless have been primarily caused by Theodosius' attempt to «persuade» Demophilos. Even if moderns tend to regard this interview merely as an example of Theodosius' Western naivety, Gregory clearly saw it as a threat and took it seriously. According to him, persuasion was all-important to Theodosius. The emperor's conviction that it was consonant with the laws not to coerce but to persuade,⁹⁶ his wish, characterised in a cliché phrase as «the unwritten law of persuasion»⁹⁷ are the first bitter impressions of Theodosius which Gregory gives. He and his flock needed no persuasion, were therefore not Theodosius' first priority. Only after «persuasion» had failed with Demophilos did the emperor meet Gregory for the first time.

This first personal meeting between Gregory and Theodosius ended with Theodosius' announcing God's decision to give him the cathedral «through Us»;⁹⁸ there follows the dramatic account of Gregory's taking over the church against the will of the general population under military escort. «The moment had come. Armed troops had taken possession of the cathedral without being noticed, and the whole people opposed them in anger, as many as the grains of sea-sand or snowflakes or waves of the sea. Passion and prayer were mixed: passion against me, prayer against the powers that be. Full were the markets, streets, and open places, simply every-

⁹⁴ Greg. Naz. Carm. 11 (De vita sua), 1280 f.

⁹⁵ Esp. 1287–91.

⁹⁶ Carm. 11 (de vita sua), 1293–4: οὐ γὰρ κατείργειν, ἀλλὰ πείθειν ἔννομον | εἶναι νομίζων. Is this perhaps an expression of disappointment that *Cunctos populos* was not immediately applied to his full satisfaction?

⁹⁷ Ib. 1304: προθεῖς τὸ βούλεσθ' ἄγραφον πεπιθούς νόμον. That the idea is a cliché well used by Gregory is shown e.g. by Or. 4, 61; 93, cf. also Themistios Or. 5. 93,20 (64b) (Jovian); Or. 16. 304,3–4 (212d), Or. 19.331,7–11 (228a) (Theodosius). The phrase is, however, not wholly unproblematical here, where the emperor had in fact issued a relevant law, and the manuscripts moreover read ἔγγραφον, ἄγραφον being a conjecture by JUNGCK suggested by the parallel passage in Or. 4,61. Were ἔγγραφον correct, we would here have an example of Gregory's risking in *variatio* on a *topos* to criticise Theodosius' failure (in his view) to implement *Cunctos populos* with the required aggressiveness. The meaning would then be that even a written law was merely intended to persuade (for the idea see e.g. Sozomenos H. E. 7.12.12 on the heretic laws).

⁹⁸ 1311–12.

where; from the second and third stories men, women, children and old people leaned out to see; woes and groans, tears and shouts filled the air. It was the very picture of a city captured by force. But I, hero and leader of this army – and that in my sick and feeble body, scarcely able to breathe – in the midst of general and army, my gaze directed upwards. So I entered the cathedral with hope as my help, I do not really know how.»⁹⁹ He continues with a dramatic account of the meeting in the church, which nearly turned into a riot – he admits that one sword was drawn¹⁰⁰ – but the mob was controlled and had to make way, though Gregory himself had lost his voice and could only pass on a few calming words at second hand.

Theodosius then left the church, having accomplished what he had promised and threatened on 28 February: those in Constantinople who did not believe with him were to be treated as heretics; their meeting places were not churches. The corollary was that the recognised churches in Constantinople were not theirs. Gregory now had his churches by imperial authority, though he still needed formal appointment by at least three bishops to make his appointment canonical. But as long as the emperor held to him, he need have no fear. As far as Constantinople was concerned, within three days of his arrival Theodosius had created his own conditions under which he and his Western court could probably comfortably live. The demands and threats of *Cunctos populos* had been realised. Constantinople was indeed only one city among many, even if for the emperor currently the most important. Its decisive and rigorous treatment did not yet necessarily imply a policy for the Empire.

V. Preparations for the Council

The dramatic events associated with the arrival of Theodosius and his court at Constantinople did not end with the establishment of Gregory of Nazianzos in effective control of the churches and their property. Theodosius had sufficient experience to know that – for whatever reason – the «orthodox» were not united. The affair of Maximus had doubtless opened his eyes, while still at Thessalonika, to the possibilities and dangers of episcopal wheeler-dealing. One authoritative way of dealing with an episcopal vacancy was by a synod of bishops, which could then also – depending on its composition – rule on pressing ecclesiastical problems. Since Constantius' death no imperial invitation had been issued to bishops, but Theodosius, doubtless again advised by Acholios, chose to revive Constantine's method of attending to the multifarious ecclesiastical problems facing him in the East. For the new emperor this had the advantage that he would immediately get to know the leading bishops personally, through whom he hoped to work.¹⁰¹

⁹⁹ 1325–41.

¹⁰⁰ 1394–95.

¹⁰¹ Cf. Soz. H. E. 7.9.5.

In this respect also he was following the example set by Constantine, who within a year of defeating Licinius had held the Council of Nikaia.

Accordingly in May 381 a council of bishops «from various provinces»¹⁰² met on imperial invitation in Constantinople to formally appoint a bishop for the city and to restate the Nicene faith.¹⁰³ A year later, the synodal letter of the Constantinopolitan council of 382, preserved only by Theodoret, in recapitulating events of the previous year referred to the council of 381 as «the ecumenical council».¹⁰⁴ The phrase is unlikely to be authentic. Whether it slipped in merely as an anachronism introduced by Theodoret or, perhaps more likely, by a later copyist or reader of his text via a gloss,¹⁰⁵ it reflects in any case post-Chalcedonian views about the council of 381, was certainly unknown to Sokrates and Sozomenos, and was not even used by Theodoret himself in his account of the council. For Sokrates those invited by Theodosius were «bishops of his own faith»,¹⁰⁶ Sozomenos merely follows him,¹⁰⁷ and Theodoret, while asserting explicitly the Theodosian Easternness of the membership of the council,¹⁰⁸ justified it by alleging that the West was in any case free from «Arianism». Rufinus ignores it altogether, and an angry Ambrose a month or two later described those present as having rejected the idea (lanced by himself!) of a «general council».¹⁰⁹

Nevertheless this council, attended as it was by some 150 bishops, even if neither ecumenical nor representing the whole empire, nor even the whole of the East,

¹⁰² Ἐκ διαφόρων ἐπαρχίων, so the official self-designation of the participants in their Proshnetikos addressed to Theodosius at the end of the council in July 381 (MANSI III, 557).

¹⁰³ So Sokrates, H. E. 5.8.1, followed by Soz. H. E. 7.7.1.

¹⁰⁴ Theod. H. E. 7.9.13; 15.

¹⁰⁵ It is perhaps significant that the manuscript A apparently has the second mention only in the margin; it thus seems possible that a post-Chalcedonian gloss might have been absorbed into the text. For possible explanations which involve retaining the reading see A.-M. RITTER, *Das Konzil von Konstantinopel und sein Symbol*, Göttingen 1965, 209 f.

¹⁰⁶ H. E. 5.8.1: σύνοδον ἐπισκόπων τῆς αὐτοῦ πίστεως συγκαλεῖ.

¹⁰⁷ H. E. 7.7.1: σύνοδον ἐπισκόπων ὁμοδόξων αὐτῷ συνεκάλεσε.

¹⁰⁸ H. E. 5.6.3: τοὺς τῆς οἰκείας ἡγεμονίας ἐπισκόπους.

¹⁰⁹ Ep. extra coll. 9 (13), 4: *at eo ipso tempore qui generale concilium declinaverunt Constantinopoli quae gessisse dicuntur?* There has been much modern speculation about whether this idea of a general imperial council (recently described, following Ambrose in spirit, as «the fair way» [WILLIAMS and FRIELL (as n. 11) 54]) had ever been agreed between Gratian and Theodosius, perhaps as early as their joint residence in Sirmium in 378/9. But there is no Eastern evidence for this at all at this time (not since the death of Basil of Kaisareia, who had however met with no significant support, neither in the East nor in the West, for his suggestions in the 370s: Epp. 90; 92; cf. 138,2); it seems to have been desired only by interested Westerners, whether the Illyrican «homoians» Palladius and Secundianus, who desired Eastern participation («homoian», of course) at the synod planned by Ambrose to examine them, and only agreed to go when this was guaranteed (only to find their wish torpedoed by Ambrose [Acta conc. Aqu. 4]), or Ambrose and Damasus, who wanted to impose their views and solutions on various eastern problems. See further below, p. 45 f.

needed to be planned for, and since it met in May 381 its planning must go back to the earliest period after Theodosius' arrival in Constantinople in late November 380. Firm planning can scarcely be earlier than this, since Theodosius made a serious attempt to win over the «homoian» bishop Demophilos.¹¹⁰ Had he succeeded, the invitation list for the council would doubtless have looked quite different. As it was, it reflects almost exclusively the «New Nicene» group represented in Constantinople by Gregory of Nazianzos, with the addition of Theodosius' other old friend in the East, Acholios of Thessalonika and (after the death of Petros of Alexandria on 14 February) his brother and successor Timotheus, together with one other Egyptian bishop, Dorotheus of Oxyrhynchos. Historians have been puzzled about this selection, imagining in particular the hand of Meletios of Antioch at work.¹¹¹ But although Meletios is known to have arrived at Constantinople before the other participants,¹¹² even the highly flattering Antiochene tradition represented by Theodoret, for whom Meletios was a heroic figure, shows that he was not even personally known to the emperor before the opening of the Council, still less a major organiser of it.¹¹³ The obvious source for the choice of invitations is the orthodox community in Constantinople itself represented by Gregory of Nazianzos, who was certainly well-enough informed about the current *status episcopatus* in the East through his close contacts with Gregory of Nyssa and with Meletios himself. He will certainly have known who was present at the Antiochian synod in spring 379, and who remained doctrinally acceptable after it. That he did not himself support the invitation of the Macedonians (Acholios) and Egyptians (Timotheus), who arrived late and caused trouble for him, may be correct, but is a modern guess. But there is no difficulty in attributing their invitation to court circles, perhaps even to the emperor himself, who will have wanted Acholios there and, despite the Maximus affair, will hardly have wished to offend the Alexandrians, Nicene as they were, by omitting them less than a year after he had raised Petros to a standard for orthodoxy in an imperial edict.¹¹⁴

¹¹⁰ See above, p. 39.

¹¹¹ So particularly RITTER (as n. 105) 38, following ED. SCHWARTZ, *Zur Kirchengeschichte des vierten Jahrhunderts*, *Gesammelte Schriften* IV, Berlin 1960, 96; also now HANSON (as n. 26) 805.

¹¹² Sokr. H. E. 5.8.4: *πάλαι παρῆν*.

¹¹³ SCHWARTZ's view, (as n. 111) 96 followed by RITTER (as n. 105) 38, that Meletios had «hurried to the palace» on his arrival in Constantinople is mere fantasy, and is openly contradicted by Theodoret's story of their first meeting, which implies that it occurred at the opening of the council (H. E. 5.7.2–3). SCHWARTZ even has Meletios helping to formulate the Illyrican law CTh 16.5.6 issued to Eutropius on 10 January (on which see below, p. 48 ff.). Perhaps this is why HANSON asserts, (as n. 26) 805, that Meletios entered Constantinople in January.

¹¹⁴ SCHWARTZ's view, (as n. 111) 98, that the Macedonians and Egyptians were invited later than the others, again followed by RITTER (as n. 105) 97 f., is based on a misunderstanding of Greg. Naz. Carm. 11 (*de vita sua*), 1798. The «sudden call» (*ἐξαπίνης κεκλημένοι*) –

Information about the planned council in Constantinople had reached Italy in time for two Italian bishops to try to exert influence on it. Damasus wrote to Acholios and other Macedonian bishops at a time when he knew – presumably informed directly by Acholios – that a synod was to be held in Constantinople, which i. a. was to elect a bishop for the imperial city.¹¹⁵ He accepts Theodosius' secular condemnation of Maximus, whom he explicitly says was quite unsuitable,¹¹⁶ but at the same time he warns of potential technical problems associated with the election. Acholios and his Macedonian colleagues are to take care that any candidate was to be formally beyond suspicion, explicitly not already a bishop elsewhere. Although no name was mentioned, this was clearly a shot across the bows of Gregory of Nazianzos's ambitions, since technically Gregory had for many years been bishop of Kappadokian Sasima, though he had always refused to take up his office there and regarded himself as free.¹¹⁷ This suggests that Acholios must have instructed Damasus that after Maximus' rejection Gregory now enjoyed some imperial favour, and perhaps even asked his opinion.

Ambrose also learned of the planned synod early enough to protest about it: he had certainly met Maximus, who turned up in Milan after being rejected by Theodosius, presumably above all hoping to influence Gratian to interfere on his behalf. An Italian synod, meeting under Ambrose's chairmanship, checked his orthodoxy, to which Petros of Alexandria's letter attested, and then approved the legitimacy of his election to the see of Constantinople. This had happened in time for Ambrose to write to Theodosius urging the legitimacy of Maximus' original election and challenging the claims of Gregory of Nazianzos, about which, if he did not already know them, Maximus will have informed him; he urged that a general council, by which he meant one representing both East and West, should decide the question.¹¹⁸

As the Eastern ecclesiastical historians unanimously state, from the beginning it was planned as a council of Theodosius' own men, geographically and doctrinally limited in scope, and the invitation of Acholios of Thessalonika, Theodosius' first

not «late», as SCHWARTZ's view implies – is a call from God (1797), not from the emperor. So correctly JUNGCK (as n. 64) ad loc. HANSON (as n. 26) 805 perpetuates SCHWARTZ's error, and further misunderstands the context (n. 75) of Greg. Naz. Carm. 11, 1509 – ὅσον γὰρ ἤν ἐῶν Αἰγύπτου διχᾶ concerns not the membership of the council but those present at the point of Gregory's election, when the two Egyptian bishops had not yet arrived.

¹¹⁵ Damasus, Ep. 5 (PL 13), 365 f. SCHWARTZ's view, (as n. 111) 96, that Damasus might have heard of the planned council only «gerüchteweise» seems ruled out by the precision of Damasus' language (367–8): *quia cognovi dispositum esse Constantinopoli concilium fieri debere*.

¹¹⁶ Ib. 367: *Recte igitur factum est, ut id quid male coeptum erat, auctoritate publica destrueretur*.

¹¹⁷ Cf. Greg. Naz. Carm. 11 (de vita sua), 386 f.

¹¹⁸ Letter referred to in Ambrose, Ep. extra coll. 9 (13), 4. For this interpretation see appendix below p. 67 ff.

theological adviser after becoming emperor, together with some of Acholios' Macedonian friends, does not contradict this objective – indeed, it had the accidental positive advantage that, against Ambrose's objections, it could be argued, tongue in cheek indeed, that the West was after all represented at the election of the new bishop of Constantinople, which so interested the Italians.¹¹⁹ Italian advance knowledge of and attempts to exert influence on the council mean that Sokrates' chronology must be right when he says that the imperial summons to attend was sent out shortly after Theodosius took up residence in Constantinople.¹²⁰ For technical reasons it cannot have been much later, since the council met in May, but it cannot have been earlier, since its precise agenda depended on Theodosius' hearing Demophilos' attitude.

The only people not obviously committed in advance to what they were intended to decree were thirty-six leading bishops representing the «Macedonianists», those favouring the christological formula *homoios kat'ousian*, otherwise known as the «homoiousians», who were however themselves split into factions, which did not see eye to eye on all issues. Theodosius invited them – of the known «heretical» groups only them – to explore possibilities of unity.¹²¹ This must have seemed possible, since in the 360s agreement had been reached by their leader at the time, Eustathius of Pontic Sebaste, with the Roman bishop Liberius, that they should be in communion.¹²² Only since Valens' «Tolerance Edict» had the majority of the «Macedonianists», meeting in a synod held at Antiocheia in Karia, again agreed to insist on their differences from current Nicene orthodoxy.¹²³ These people were especially important because of their geographical spread, dominating bishoprics throughout western Asia Minor, in particular in the provinces of Helle-spontus, Asia, Lydia and Insulae.¹²⁴ Thus large parts of the immediate Asiatic hinterland of Constantinople were in their hands. Their ecclesiastical re-integration by negotiation would save the inevitable disturbance and potential disaffection in this important range of rich and populous cities caused by more vigorous methods.

The only voices arguing for a «general council» at this time are Western, and there are specific reasons for it in each case. The most prominent «homoian» bishops in Illyricum, Palladius of Ratiaria and Secundianus of Singidunum, claimed the participation of Easterners at the Western synod which Gratian planned to meet at

¹¹⁹ Ambrose, Ep. extra coll. 9 (13), 6 reversed this argument – whether or not it had actually been used – when arguing for a common East-West synod in Rome in 382.

¹²⁰ H.E. 5.8.1. Theodoret's chronological jumble and apologetic aims lead him to make this Theodosius' first act as emperor (H.E. 5.6.3), but he seems not to know of the period in Thessalonika.

¹²¹ Sokr. H.E. 5.8.2f.

¹²² Sokr. H.E. 4.12, cf. 5.8.7.

¹²³ Sokr. H.E. 5.4.1–4; Soz. H.E. 7.2.3–4.

¹²⁴ On this see ERRINGTON (as n.1) appendix, and below, p. 65.

Aquileia to examine their orthodoxy.¹²⁵ When the first plans for this poor affair were made is not known – perhaps in 378 after Adrianople, the only time when Gratian was present in Illyricum for a longer period of time: it was also a time when his unique responsibility for the whole empire and his right to summon a council of both East and West was indisputable. But by the time the council finally met at Aquileia in September 381 Ambrose had intervened to reduce the number of participants and to turn it into no more than a local North Italian synod, with some representatives (*legati*) from Africa and Gaul.¹²⁶ Palladius continued to claim that Gratian had promised him the invitation of Easterners at a personal meeting at Sirmium¹²⁷ – it seems, quite recently, therefore in summer 381: Gratian was at Viminacium on 5 July, doubtless on business connected with the Gothic war, in which the emperors cooperated closely¹²⁸ – but his protests were ignored by a domineering Ambrose.

It is clearly impossible that in June or July 381 Gratian did not know that such plans as he might once have had for a larger council with Eastern participation had been dropped; yet he told Palladius (according to Palladius' minuted statement) to attend the council – *vade* – and affirmed that Easterners (*orientales*) had been convened.¹²⁹ The investigating bishops abandoned this line of enquiry hastily, and changed their ground: «Let us leave aside the case of the Easterners, today I am investigating your views.»¹³⁰ The implication seems unavoidable that Gratian, whether deliberately or not, had concealed the fact from Palladius that the range of invitations to the council had been changed from what had originally been planned, and that nobody from the East was now expected, whether or not any Easterners had in the last resort been invited.¹³¹ By now, in summer 381, the presence of

¹²⁵ On this in general see G. GOTTLIEB, *Das Konzil von Aquileia (381)*, AHC 11, 1979, 291 f.; McLYNN (as n. 24), esp. 124 f.

¹²⁶ List of participants in *Acta conc. aqu.* (as n. 49). Ambrose's critical influence in crossing the hopes of the Illyrians is explicitly named by Gratian in *Acta* 4. McLYNN (as n. 24) 123, thinks it was Theodosius who «sabotaged» Gratian's plans, but there is no evidence that he had ever been consulted, still less that he had agreed to such a hopeless scheme.

¹²⁷ *Acta conc. aqu.* 10, lines 99 f.

¹²⁸ CTh 1.10.1; 12.1.89, cf. ERRINGTON, *The Praetorian Prefectures of Virius Nicomachus Flavianus*, *Historia* 41, 1992, 458–9; GOTTLIEB (as n. 125) 293; McLYNN (as n. 24) 112, puts this in 380, but Gratian is not known to have been farther East than Aquileia (CTh 6.35.10) in 380 (CTh 7.22.11 is an eastern law, addressed to Nectarius *PPO Orientis*). See ERRINGTON (as n. 7) 25 n. 140.

¹²⁹ *Acta conc. aqu.* 10, lines 102 f.

¹³⁰ *Acta conc. aqu.* 11, lines 106–7: *sequestrata sit causa orientalium, sententiam tuam hodie quaero*.

¹³¹ McLYNN (as n. 24) 112 n. 124 does not like the idea of Gratian's telling «an outright lie», but if the meeting at Sirmium was in summer 381, which seems the only possible date for it, the conclusion is difficult to avoid (on Gratian's movements cf. ERRINGTON [as n. 7] 4). Palladius obviously did not dare to imply that, so had to throw the blame onto Ambrose for changing Gratian's mind (Maximinus, *Comm.* [in GRYSOY (as n. 49)] 7–10), though the

Easterners would in any case hardly have helped the Illyrican «homoians» much, since Theodosius had already taken steps towards imposing Nicene orthodoxy on the East, the terms of which were re-asserted by the Constantinopolitan council before, or at least at about the time of, Gratian's interview with Palladius at Sir-mium.¹³² Palladius' arguments for a «general council» came merely from particularistic «homoian» interests, and aimed at finding support among Easterners for his own point of view, which he knew was not shared by Ambrose.

Ambrose also represented particularist interests when he claimed, or at least suggested, meetings of «general councils» in connection with his support of Maximus¹³³ and subsequent Western attempts to interfere in Eastern questions concerning Alexandria and the schism in Antioch.¹³⁴ In each case the aim was, realistically, not to achieve a real «general council» – in the sense implied by Ambrose there had never been one – but to provide justifying arguments for Western wishes, for whatever reasons, to interfere in Eastern affairs by supporting certain Eastern minority interests. The councils suggested by Ambrose were to meet in Alexandria and in Rome, though Ambrose must have been aware that Damasus could not support Maximus: was he merely trying to embarrass his Roman colleague?

VI. Some Religious Laws

Imperial interest, even at the cost of a certain disingenuousness, was reforming and aimed at establishing Nicene orthodoxy. The means might be regionally or even locally different, but the overall aim remained unchanged. Edicts could regulate local questions or lay down guidelines for action by the secular arm; where a synod of bishops could be relied upon to cope with questions of belief, this was the preferred method. So two councils, each with a limited agenda and carefully selected invitees met in 381, in May at Constantinople and in September at Aquileia. In both cases the ground for their activities seems to have been prepared by imperial

Illyrican version of what Palladius said that Gratian had said to him was even more direct than the official minutes of the synod: *imperator noster Gratianus iussit orientales venire* (ib. 7.35). The explanation of Ambrose's equivocation will perhaps lie in the face-saving form of the letter of invitation: *praefectus Italiae litteras dedit ut, si vellent convenire, in potestate haberent* (Acta conc. Aqu. 7, lines 66–7). Gratian thus perhaps did not «tell an outright lie», but certainly aimed to mislead.

¹³² The date of his meeting with Palladius, before or after Gratian's attested visit to Viminacium on 5 July, is not ascertainable; nor is precisely known when the Council of Constantinople formally reaffirmed the Nicene creed. It had happened before the Prosphonetikos dated 9 July which marked the end of the deliberations (MANSI III 557), but was of course foreseeable from the moment the invitations were sent out.

¹³³ Ep. extra coll. 9 (13), 4; 6–7.

¹³⁴ Ep. extra coll. 9 (13), 2; 6 (12), 5, cf. the refusal of the members of the Constantinopolitan synod of 382 to follow Damasus' invitation to come to Rome: Theod. H. E. 5.9. They sent three representatives (ib. 5.9.9).

edictal statements: for Constantinople by Theodosius' edict *Cunctos populos* to the people of Constantinople, for Aquileia by another Theodosian edict issued to Eutropius, his Praetorian Prefect of Illyricum, on 10 January 381 defining orthodoxy for Illyricum. For although the Illyrican bishops Palladius and Secundianus continued to regard themselves ecclesiastically as Westerners, because of the Gothic war secular legislation for Illyricum in 381, in accordance with Theodosius' agreement with Gratian, was issued by Theodosius.¹³⁵

Eutropius' edict has shared the fate of *Cunctos populos* of being much misunderstood through historians' failure to attend to its textual structure and the status and function of its recipient. In particular its specific application to Illyricum has been universally ignored, and this has led to the absurd suggestion – following up the equally grave misunderstanding of *Cunctos populos* – that it was a follow-up law to *Cunctos populos*, in some way modifying the definition of faith issued there, though in both cases the doctrine is merely described, rather than defined in official ecclesiastical terminology.¹³⁶ But laws issued to secular officials were in principle regional, and had above all the function of providing their official recipients with a legal basis for administrative actions or reactions in defined political and legal situations, which in the last resort would stand up in court. The present law is no exception, despite its occasional lapses into the slightly hysterical rhetoric which characterises so many imperial utterances, particularly on religious affairs, in late antiquity. It is not therefore primarily a definition of faith modifying in some way *Cunctos populos* for the edification of the population of the whole empire, but a set of instructions for the current and future governors of the war-ravaged provinces of the Praetorian Prefecture of Illyricum. The similarities with *Cunctos populos* are to be explained historically. The very success of *Cunctos populos* in preparing the ground for the emperor's taking up residence in Constantinople will doubtless have encouraged him, advised no doubt by Eutropius, to try out a similar programme for Illyricum, for by the time the edict to Eutropius was issued *Cunctos populos* had, it seems, already served its limited purpose in Constantinople. Both Maximus «the Cynic» and Gregory of Nazianzos had complied with the «compatible bishops» clause by obtaining letters stating their orthodoxy from Petros of Alexandria, and as a result of Theodosius' actions in fulfilling

¹³⁵ CTh 16.5.6. Clearly not a rescript (but so RITTER [as n.105] 32). On Eutropius cf. PLRE 1, s. v. Eutropius 2; ERRINGTON (as n.7) 24; on the responsibility for Illyricum see ERRINGTON, ib. appendix. HANSON (as n.26) 805 ignores PLRE and follows ENSSLIN and KING, based on MOMMSEN, in regarding Eutropius as *PPO Orientis*. So also D.H. WILLIAMS, *Ambrose of Milan and the End of the Arian-Nicene Conflicts*, Oxford 1995, 165 n.168–169, though noting its application in the West.

¹³⁶ As e.g. ENSSLIN (as n.44) 24, using the language of contemporary German administration («Ausführungsbestimmungen»), thought cf. also ib. 29. Followed i.a. by P. BARCELÓ in: G. GOTTLIEB – P. BARCELÓ, *Christen und Heiden in Staat und Gesellschaft des zweiten bis vierten Jahrhunderts*, München 1992, 183.

the demands of his edict, Nicene orthodoxy had taken possession of churches and church property in Constantinople.

The situation in Illyricum was, however, different from that in Constantinople. Gratian, following Valens' lead, had tried to establish orthodoxy in Illyricum through his «Tolerance Edict», excluding merely some extreme sects, the Eunomians («Anhomioians»), Photinians and Manichaeans, as recently as late 378.¹³⁷ The reason for his not including «Arians» (i.e. «Homoians») in his list of those excluded from tolerance is uncertain, must however be related to the specific situation of the Illyrican provinces, where such a global ban might have caused more trouble than it was worth. Moreover those Goths who were Christians had been converted under Valens by bishops of the «homoian», not the Nicene, direction,¹³⁸ and – whatever the ultimate outcome of the war – in late 378 it could well have seemed advisable not to offend such Goths as might prove peaceable, or even serviceable, by telling the provincial governors to treat them as heretics. Even so, Gratian's «Tolerance Edict» seems to have provoked a spate of lobbying at court, resulting in the issue of specific rescripts with which sects or persons regarded by the Nicene establishment – for whatever reason – as suspect tried to establish their rights under it.¹³⁹

Gratian's «Tolerance Edict» provides the Illyrican legal background to Theodosius' edict to Eutropius. The experience with *Cunctos populos* – itself conceived and formulated in a major Illyrican city – doubtless played its part in stimulating this new action, behind which it should not be difficult to espy once more the interests and influence of Acholios of Thessalonika, particularly now in explanation of the explicit inclusion of «Arians» among the named unpardonable heresies. The absence of Manichaeans, whom Gratian had included in his list of not-to-be-tolerateds, is best explained by the issue four months later on 8 May 381 of the law directed specifically against them,¹⁴⁰ which was presumably already intended when the much simpler law against the heretics was issued in January. The main practical point of the edict to Eutropius is identical with that of *Cunctos populos*: «to restore catholic churches in the whole world to all orthodox bishops, who hold the Nicene faith.»¹⁴¹ The way to this objective, however, was longer and more complex in Illyricum. The area concerned was much larger – not just a single city – the practical problems in this delicate area, where legislative new land was being trodden, more

¹³⁷ Sokr. H.E. 5.2.1, on this see above p. 28f.

¹³⁸ Cf. P.J. HEATHER, *The Crossing of the Danube and the Gothic Conversion*, GRBS 27, 1986, 289f.

¹³⁹ This will perhaps explain the prominence given to denying the validity of such rescripts in CTh 16.5.6, proem.: *sciunt omnes etiam si quid speciali quolibet rescripto per fraudem elicto ab huiusmodi hominum genere impetratum est, non valere.*

¹⁴⁰ CTh 16.5.7, see below p. 51ff.

¹⁴¹ CTh 16.5.6,3: *ut cunctis orthodoxis episcopis, qui Nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur.*

substantial than in Constantinople, where the emperor as «living law»¹⁴² was present in person to explain in case of doubt what he meant by what he wrote. Greater precision was therefore needed: particular regional heresies, or which were felt to be regionally particularly rampant – Photinians, Arians («Homoians»), Eunomians («Anhomoians») – are explicitly named in the general condemnation; a description of the faith, as in *Cunctos populos*, is added, so that those here described explicitly as Nicene might be better recognised, a description in which the recent Eastern discussion of the nature of the Holy Ghost also seems to have found a place.¹⁴³ The needs of a bilingual population, as present in Illyricum, seem also to have been considered, for at the critical point of the description of faith the Greek word *ousia* is included in the Latin text as an explanation of *substantia*.¹⁴⁴

No «norm bishops» to issue certificates of communion were named for Illyricum. The reason presumably will be that in contrast to Constantinople and its hinterland in 380 enough recognisably orthodox bishops were available in the Illyrican dioceses to operate the usual system of appointment. The only subsequent occasion when external «norm bishops» were named was in 381 for the Proconsulate of Asia, where again the reason, as in Constantinople, seems to have been lack of suitable local personnel to operate the usual system.¹⁴⁵ There is therefore no need to regard the omission of Damasus and Petros in the law issued to Eutropius as a concession to Eastern susceptibilities: their mention in *Cunctos populos* may or may not have offended the orthodox in Constantinople – since both Maximus and Gregory of Nazianzos acquired their letters attesting their orthodoxy from Petros without protesting, we have no way of knowing – but this was not a factor in Illyricum, where Eutropius' edict was to apply, since Damasus as bishop of Rome was in any case the natural and automatic authority, if Ambrose could not cope from Milan. There was simply no need to name anybody explicitly for Illyricum. The preparations for the Council of Aquileia to test the orthodoxy of the Illyricans Palladius and Secundianus demonstrate the functioning of the synodal system.

Those persons aimed at in the law in the first instance, as in *Cunctos populos*, seem to be church officials or leaders of the heresies; and just as in *Cunctos populos*

¹⁴² Cf. e.g. Them. Or. 16.304, 3–4 (212 d).

¹⁴³ CTh 16.5.6,2: *qui spiritum sanctum, quem ex summo rerum parente speramus et accipimus, negando non violat*. The formulation of the Faith included here resulted in the compilers of CJ placing an edited version of Eutropius' law – the explicitly condemned heresies are omitted and other minor changes made – in their work immediately after *Cunctos populos* in the first rubric of the first book of their Code, *De summa trinitate et de fide catholica et ut nemo de ea publice contendere audeat*, as CJ 1.1.2. Theodosius II's compilers seem to have had more idea of its specific original purpose when they included it not with *Cunctos populos* in CTh 16.1, *De fide catholica* but in 16.5, *De haereticis*.

¹⁴⁴ CTh 16.5.6,2: *apud quem intemeratae fidei sensu viget incorruptae trinitatis indivisa substantia, quae Graeci adsertione verbi οὐσία recte credentibus dicitur*.

¹⁴⁵ CTh 16.1.3, on which see below, p. 64 ff.

the penalty – there only indicated and practised by Theodosius, here spoken out – was, in extension of the treatment of Demophilos at Constantinople, in case of non-compliance, expulsion from the cities.¹⁴⁶ The critical section, where action and threats are prescribed, should be cited in full: «Those who do not follow these same terms of faith, should cease to bear the name of true religion, which because of the deceit they practice, they are not entitled to, and they should be marked down because of this flagrant delinquency. They shall be removed absolutely from the threshold of every church, since we forbid all heretics to conduct meetings within the cities and, should any violence break out, we order them to be expelled from the city walls, thus ejecting their madness, so that catholic churches in the whole world might be restored to all orthodox bishops who hold the Nicene faith.»¹⁴⁷

The law functioned in this sense. Already at the Council of Aquileia in the following September the main problem was the «arianism» of Palladius and Secundianus: the law issued to Eutropius gave the imperial authorities indisputable legal right to remove them from office, if Ambrose's inquisition council satisfied itself of their heretical position. Furthermore one of the synodal letters sent in autumn 381 after the Council of Aquileia to the three ruling emperors asks for imperial help in preventing Photinians meeting at Sirmium; it refers explicitly to their having been banned by «the earlier law», by which he must mean the edict to Eutropius, and suggests that this provided a legal basis for imperial action.¹⁴⁸ Ambrose had correctly assessed its intention.

Four months later, on 8 May 381, another law issued to Eutropius attacked the Manichaeans with a rigour unknown since Diocletian.¹⁴⁹ In 302, Diocletian had ordered the Proconsul of Africa, where the problem was felt to be particularly acute, to inflict the severest punishment and confiscation of property on associates of the cult.¹⁵⁰ Diocletian's law had not been forgotten, but neither had it been rigorously applied, not even in Proconsular Africa. The first known subsequent imperial objection to Manichaeans is a law issued by Valentinian from Trier to Amelius, the *praefectus urbi* of Rome, on 2 March 372. It prescribed fines for the

¹⁴⁶ ENSSLIN (as n.44) 30 fails to recognise that this was the penalty, and speculates about why none was foreseen!

¹⁴⁷ CTh 16.5.6,3: *qui vero isdem non inserviunt, desinant adfectatis dolis alienum verae religionis nomen adsumere et suis apertis criminibus denotentur. Ab omnium submoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitas agere intra oppida congregationes vetemus ac, si quid eruptio factiosa temptaverit, ab ipsis etiam urbium moenibus exterminato furore propelli iubeamus, ut cunctis orthodoxis episcopis, qui Nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur.*

¹⁴⁸ Gesta conc.aqu. ep. 2 (10), 12: *superiore lege.*

¹⁴⁹ CTh 16.5.7.

¹⁵⁰ Mos. et rom. leg. coll. XV,III. On the persecution of Manichaeism cf. S.N.C. LIEU, Manichaeism in the Later Roman Empire and Medieval China. A Historical Survey, Manchester 1985, 109f.

leaders of the sect, for their followers *infamia* and (it seems) expulsion from the city; meeting places were to be confiscated by the state.¹⁵¹ Theodosius' law to Eutropius of May 381 stands not only in this general tradition but also refers explicitly to a law «issued some time ago and originally by our elders».¹⁵² Theodosius lays down detailed rules about the withdrawal of testamentary succession going back to the date of the old law, which thus provides a base date for the application of his new rules. Property affected is to be confiscated. The «old law» is mentioned again later, where its contravention justifies the application of the present law, contrary to normal legislative practice, to wills already made.¹⁵³

Is the «old law» identifiable? The only possibility among those included in the Theodosian Code is Valentinian's law addressed to Ampelius. If this were the «old law», it must also have been issued to the *praefectus praetorio* for Italy, Africa and Illyricum, since only then could it have been applied in Illyricum, for which Eutropius is now responsible, and where the reference to the precedent must have been comprehensible. This is in principle perhaps not impossible, but since the «old law» employed merely a *divina monitio* (line 18) to keep the Manichaeans from their *inlicitis et profanis coitionibus*, this phrase seems to exclude identity with Valentinian's law, which explicitly foresaw the confiscation of buildings and the expulsion of Manichaeans from the city (*a coetu hominum*) by the secular authorities. (The *divina monitio* is reminiscent of the *divina vindicta* threatened for heretics in Constantinople before Theodosius' arrival in *Cunctos populos*, which in practice meant no punishment [in this world!] at all.) The «old law» applying to Manichaeans in Illyricum must therefore be a different, milder regulation, than that of Valentinian for Rome. It was not found by the compilers of the Theodosian Code, though it was obviously available in Constantinople to those drafting the current law addressed to Eutropius. This means either that an archive of Valentinian's (and/or Gratian's) laws already existed at Constantinople – not perhaps impossible, though there is no evidence for it¹⁵⁴ – or, more likely, that it belonged to the Illyrican archive of the Praetorian Prefect and had been brought by Theodosius from Sirmium when he took over responsibility for Illyricum in 379. The legal archive will presumably have been returned to Sirmium when Theodosius restored the prefecture to Western administration after the end of the Gothic war, and have been lost there before the Theodosian Code was compiled. Not only did the new

¹⁵¹ CTh 16.5.3.

¹⁵² CTh 16.5.7, proem.: *latae dudum legis ac primitus a nostris parentibus.*

¹⁵³ Ib. 1, lines 17ff.: *et eos, qui etiam post legem primitus datam nequaquam ab inlicitis et profanis coitionibus refrenari divina saltem monitione potuerunt, tamquam in ipsius depictae legis iniuriam veluti sacrilegii reos tenemus, severitatem praesentium statutorum non tam ad constituendae, sed ad ulciscendae legis sanximus exemplum, ita ut nec defensio temporis prosit.*

¹⁵⁴ See discussion of this problem in GAUDEMET (as n. 6), esp. 337f., though without reference to the problem created by the exceptional temporary status of Illyricum after 379.

law replace the Illyrican «old law» issued *a parentibus*, but it also followed up another much more recent Illyrican legal precedent. Restriction of testamentary rights had been prescribed in an Illyrican law concerning apostates issued to the same Eutropius six days earlier, and it seems unlikely that the same officials will not have drafted both laws.¹⁵⁵

The Illyrican law on Manichaeans seems to have stood as model for the first law concerning Manichaeism issued to an Eastern official, the Praetorian Prefect of the East Florus, dating from 31 March 382.¹⁵⁶ For definition of punishment and withdrawal of property rights this regulation refers to «the *exordium* of a law issued some time ago» as being relevant.¹⁵⁷ Almost a year after Eutropius' law, a back-reference of this sort with no further precision must be to a law issued by Theodosius himself and – if this previous law is preserved – the only one which comes into question is the law issued to Eutropius on 8 May 381, the *exordium* of which indeed lays down punishments for Manichaeans. Moreover Florus' law also names explicitly three of the four Manichaean splinter-groups listed in Eutropius' law – Encratitae, Saccophori and Hydroparastatae¹⁵⁸ – and adds a practical way of recognising them: if they do not assemble to celebrate Easter they can be considered to fall within the scope of this law.¹⁵⁹

These two laws, when interpreted in their contexts, give an insight not just into religious policy but also shed some rare light onto the complex legal processes of the empire at this time. The situation was abnormal, in that Illyricum had temporarily become an Eastern responsibility because of the war, therefore both Western and Eastern legal developments, which had been drifting apart since 364 at the latest,¹⁶⁰ had to be considered by Theodosius' legal experts. It cannot be denied that imperial legislation occasionally repeated rules once laid down, even within the same geographical area; but proper attention to the recipients and their areas of responsibility will show that repetition was nothing like as frequent as has often been imagined. Theodosius' first anti-Manichaean law was, as the Code indicates, intended for Illyricum; and direct reference was made in it to the precedent of a now lost Western law for Illyricum issued by Valentinian or Gratian, which was

¹⁵⁵ CTh 16.7.1 of 2 May. This initiative of Eutropius' Illyrican *scrimia* was not picked up and applied in the East until two years later (CTh 16.7.2, May 20, 383), when a concerted action also produced a similar law from Gratian for Italy and the West (CTh 16.7.3, May 21, 383). The texts show local variations, were therefore drafted independently, and therefore are all included in CTh.

¹⁵⁶ CTh 16.5.9.

¹⁵⁷ Ib. 1, lines 10–11: *a latae dudum legis exordio*.

¹⁵⁸ Ib. 1 lines 7–8, cf. 16.5.7,3 line 10. The omission of Apotactitae from Florus' law may be merely accidental, or there may have been a specific Illyrican reason for naming them in 16.5.7. There seems no way of deciding.

¹⁵⁹ Ib. 2.

¹⁶⁰ So convincingly GAUDEMET (as n.6) *passim*; cf. also DE DOMINICIS (as n.6) 333 f.

currently available in the Illyrican archive brought from Sirmium to Constantinople for Theodosius' Illyrican administration.

The law drafted by Eutropius' officials served in turn to stimulate the responsible *scrinium* of the *praefectus praetorio Orientis*, when the Eastern law on the same subject was produced in March 382. Its contents will have been well enough known to Florus and his staff, since he was either already *PPO* or at least *magister officiorum*, in any case a member of the imperial consistory, when Eutropius' anti-Manichaean law was issued in May 381.¹⁶¹ This knowledge enabled them to draw attention to the *exordium* of the Eutropian law for rules about loss of testamentary rights. The imprecision of their phrase suggests that the relevant section of the Illyrican law might now have been circulated together with the new rules throughout the Eastern provinces – otherwise the reference would be incomprehensible to the provincial governors who had to apply the rules. Moreover, the rule about Easter in a law issued on 31 March suggests that the law-giver this time had his eye not just on the general practical application of the law but on immediate action: in 382 Easter Sunday fell on 17 April. In general, however, Florus' law is more than merely a refinement and partial strengthening of Eutropius';¹⁶² in a purely legal sense it may be that also; but far more important politically, it was the first recent application of a ruling against Manichaeans to the area controlled by the *PPO Orientis*, and the lawyers responsible for it had, it seems, learned from what they clearly regarded as inadequacies in the drafting of Eutropius' law for Illyricum.

VII. A bishop for Constantinople

In spring 381 the select group of guaranteed orthodox bishops chosen and summoned by Theodosius to meet in Constantinople in May collected in the imperial city. Petros of Alexandria died before he could set off, and his replacement, his brother Timotheus, arrived late, accompanied by only one other Egyptian bishop, Dorotheus of Oxyrhynchos.¹⁶³ Acholios and some other bishops from Macedonia also arrived late, for reasons unknown. Even Gregory of Nazianzos gives no hint that their delay was caused by anything other than bad weather or health.¹⁶⁴

Nevertheless their late arrival meant that the first important phase of the synod was dominated by Meletios – who seems to have taken the chair – and his friends, and that Western objections to a *translatio sedis* already formulated in anticipation of this situation by Damasus in his letter to Acholios¹⁶⁵ could be voiced only after

¹⁶¹ Cf. PLRE 1 s. v. Florus 1.

¹⁶² So e.g. ENSSLIN (as n. 44) 43: «verschärfte Vorschriften».

¹⁶³ Not therefore «a large contingent», as HANSON (as n. 26) 807 would have it.

¹⁶⁴ Cf. appendix below p. 69 n. 230.

¹⁶⁵ Damasus Ep. 5.

the Meletians had already organised the election of Gregory of Nazianzos and consecrated him as bishop of Constantinople. It was presumably in this phase that Ambrose's letter supporting the claims of «the Cynic» Maximus was rejected,¹⁶⁶ since the rejection of Maximus' claims was a pre-requisite for a formal election of Gregory.¹⁶⁷ The absence of the Macedonians and Egyptians had no effect on this, since only Ambrose seems to have supported Maximus. The council formally declared that Maximus neither was now nor ever had been a bishop, and that the ordinations of clergy which he had carried out at Constantinople were null and void, a canon to which Timotheus of Alexandria in due course also subscribed.¹⁶⁸

Before this¹⁶⁹ Theodosius' attempt to persuade the «Macedonianists» to unite with the Nicene orthodox had failed, so that they did not formally participate in the council. Western Asia Minor with its important bishoprics such as Kyzikos, Smyrna and Ephesos was thus unrepresented. Nor does Theodosius himself seem to have participated directly, though his influence and wishes will have governed much of the synodal activity. The Meletians however soon suffered a serious blow, which had important consequences for the future direction of the council, when Meletios himself suddenly died.¹⁷⁰ Gregory of Nyssa – for some unknown reason, not his newly consecrated friend Gregory of Nazianzos – expressed the devastated feelings of the Meletians in his funeral oration held in the church of the Holy Apostles: «See there, it is time to deliberate and the leader of the deliberations is silent; war stalks us from all sides, war from the heretics, and our general is missing; the common body of the Church struggles with its weaknesses, and we find no healer.»¹⁷¹

All present must have realised that the death of Meletios would damage the effectiveness of the council, even if it is primarily the professional pessimism of the funeral orator which has coloured Gregory of Nyssa's choice of expression. It soon became clear that no competent alternative leader was present. Meletios' death automatically also put the future of the Antiochene Church on the agenda, one of the trickiest of all the problems left behind by the «homoian» policies of

¹⁶⁶ Mentioned in Ambrose, Ep. extra coll. 9 (13) 4f., cf. appendix below on this affair.

¹⁶⁷ So also RITTER (as n.105) 49f.

¹⁶⁸ Conc. Const. canon IV (Conciliorum Oecumenicorum Decreta [COD], Freiburg 1962, 28 = MANSI III 560).

¹⁶⁹ Sokr. H.E. 5.8.2f. The timetable of these discussions recorded by Sokrates is challenged by RITTER (as n.105) 68f., but his reasons for placing them after the death of Meletios result from his misunderstanding the point of Greg. Naz. Carm. 11 (de vita sua), 1753f., corrected by JUNGCK (as n.64) 220f. and 223, ad locc.

¹⁷⁰ The tradition followed by Sokrates and Sozomenos ignores this event. Information comes, not surprisingly, from the Antiochene Theodoret, H.E. 5.8.2, and in particular from Gregory of Nazianzos himself, who thus lost his main ecclesiastical patron (Carm. 11 [de vita sua], 1573f.).

¹⁷¹ Greg. Nyss. Or. fun. in Meletium 441–2 (Spira).

Constantius and Valens. Up to now, from the time of Valens' «Tolerance Edict» and the «Meletian» synod of Antioch in 379,¹⁷² two «orthodox» bishops, Meletios and Paulinus, had functioned in Antioch, of whom Paulinus alone had been continuously recognised in Rome, but of whom Meletios had by far the largest congregation, since after the expulsion of the «Arians» he had gained control of the «official» church. Both were in the meanwhile old men, and a Western compromise proposal had recently been made subsequent to the Antiochene synod's recognition of Damasus' doctrinal letter, that the congregation of whichever of the two bishops might die first should join with that of the other; a new election should take place only after the death of the second.¹⁷³ The suggestion, despite Ambrose's aggressive description of it as an agreement, was clearly no such thing.¹⁷⁴ The Antiochene Meletians, now led by the presbyter Flavianus, who had kept the congregation together during the years of Meletios' exile, certainly did not feel themselves bound to it – nor did the emperor feel obliged to intervene – and they were present at Constantinople in large numbers, whereas the Paulinians were not represented.

Against this background the unsuitability of Gregory of Nazianzos for the leading function in the Eastern Church was exposed, for even before the delayed «Westerners» – his expression for the traditionally Nicene Macedonians and Egyptians¹⁷⁵ – arrived, he had proposed accepting the Western solution for Antioch: this meant not selecting a successor for Meletios. Given the composition of the council, he cannot have had significant backing for this, but must have simply followed the innate logic of the Western suggestion. The Meletian majority, which had just elected him to the see of Constantinople – and doubtless expected some support for their problem in return – rejected his insensitive suggestion and insisted that Meletios needed a successor, clearly favouring Flavianus. Consecration would have to take place in Antioch, where there was, however, no doubt that Meletios' congregation would gladly accept him. The support of such a large imperially sponsored council would be a great boost to Flavianus' reputation.¹⁷⁶

During these discussions – the precise time can no longer be ascertained – Acholios of Thessalonika and Timotheus of Alexandria, each accompanied by one or more supporting bishops, arrived in Constantinople. Since evidence on this is restricted to Gregory of Nazianzos' view of the effect of their arrival on

¹⁷² See above, p. 27.

¹⁷³ Ambrose, Ep. extra coll. 6 (12), 5 (autumn 381); Ep. extra coll. 9 (13), 2 written in summer 381 (see appendix below), writes *scripseramus dudum* for the date of the Western compromise.

¹⁷⁴ Cf. F. CAVALLERA, *Le scisme d'Antioche (iv^e-v^e siècle)*, Paris 1905, 232 f. On Ambrose's motives see McLYNN (as n. 24) 139 f., though the date and context of Ambrose, Ep. extra coll. 9 is not as clear as he thinks: see appendix, below.

¹⁷⁵ Greg. Naz. Carm. 11 (de vita sua), 1802: φουσῶντες ἡμῖν ἐσπέρειόν τε καὶ τραχύ.

¹⁷⁶ See RITTER (as n. 105) 62 f.

his own position,¹⁷⁷ the legitimacy of which, according to the opinion of Damasus, already communicated to Acholios, and of Ambrose in a letter to Theodosius,¹⁷⁸ was distinctly challengeable, we hear nothing explicit about their attitude towards the Antiochene election. But in view of Damasus' longstanding support for Paulinus, who was to visit Rome in 382,¹⁷⁹ and Ambrose's angry reaction to the council's ignoring the Western suggestion, we may assume that they opposed it, perhaps even used it as a lever against Gregory of Nazianzos, under whose chairmanship, it seems, the discussions were taking place.¹⁸⁰ If so, this would be an additional cause for Gregory's bitterness, since on this issue his own view coincided with theirs. His solution to «Western» attacks on his own legitimacy was to offer his resignation to the emperor, who in the meanwhile had had sufficient experience of his new bishop's amazing political insensitivity to accept his offer gladly.¹⁸¹ The canonical ban on *translatio sedis* – which though agreed at Nikaia in an extreme form, applying also to priests and deacons,¹⁸² had been widely ignored in the East – was a Western wish, though whether Damasus and Ambrose insisted on it out of love of principle or out of *ad hominem* suspicion of Meletios' intellectual protégé Gregory, can no longer be determined. Ambrose, at least, supported the alternative candidate Maximus, who was rejected by Damasus, so no Western position had been agreed in detail. Under the circumstances Theodosius might well have concluded that Gregory and Meletios had misled him over the matter of the *translatio*, and once natural circumstances had removed Meletios, Gregory's patron and pusher, Gregory's own weakness in synodal combat provided a golden opportunity to please Acholios and the Italians, while diplomatically accepting the council's subsequent decision – this time, against the wishes of Acholios and Timotheus – on Flavianus, whose leadership qualities and general popularity and in-

¹⁷⁷ Greg. Naz. Carm. 11 (de vita sua), 1797f. («Egyptians and Macedonians»: 1800). That «the Macedonians» were above all Acholios is recorded by Sokr. H. E. 5.8.4. No Macedonian representative is listed among those signing the protocol of the synod, which suggests that Acholios and his colleagues may have left early, if the text of the list is complete. Timotheus and Dorotheus of Oxyrhynchos are listed (MANSI III 568).

¹⁷⁸ Damasus, Ep. 5; Ambrose, Ep. extra coll. 9 (13), 4: *revera advertebamus Gregorium nequaquam secundum traditionem patrum Constantinopolitanae ecclesiae sibi sacerdotium vindicare*.

¹⁷⁹ Jerome, Ep. 108,6.

¹⁸⁰ Greg. Naz. Carm. 11 (de vita sua), 1740f., with JUNGCK's commentary (as n. 64) 222 ad loc.

¹⁸¹ Greg. Naz. Carm. 11 (de vita sua), 1902f.: ταῦτ' ἐκρότει μὲν ἐν μέσοις αὐτοκράτωρ, κροτοῦσι δ' ἄλλοι. The speech preserved among the works of Gregory of Nazianzos and purporting to have been held before the assembled gathering before his departure (Or. 42) has until recently always been taken at face value, and therefore used as an immediate source for events surrounding Gregory's departure. BERNARDI has however shown convincingly, Discours 42–43 (SC 384), that it is a later rhetorical composition, never held in the form we have it, and not even written in Constantinople.

¹⁸² Nikaia, canon XV (COD 15).

fluence in Meletian circles in the East he will by now have recognised and wished to win over.

Theodosius' eager acceptance of Gregory's resignation meant that the council had lost two of its most prominent members before the election of an orthodox bishop for Constantinople had been satisfactorily completed. This left the emperor behind the scenes as the chief actor. There can be little doubt that Nectarius, who was finally elected, was his man, even though it may have taken some time to find him.¹⁸³ He was a native of Tarsos but senator in Constantinople, rich enough to have been praetor and made himself popular with the population.¹⁸⁴ He had the advantage of having been unburdened by the ecclesiastical struggles of recent years.¹⁸⁵ As a fellow Tarsian he had the support of the current bishop of Tarsos, Diodoros (another protégé of Meletios), who, after the council had lost both Meletios and Gregory of Nazianzos, seems to have played a major part in its affairs.¹⁸⁶ He shared with Nectarius, it seems, and with Ambrose, the embarrassingly uncanonical distinction of being unbaptised on election.¹⁸⁷ But Nectarius, even if still a catechumen, must have been orthodox in the Nicene sense described by Theodosius and shortly to be restated in full by the council, which means that if he had been resident in Constantinople during the unofficial activities of Gregory of Nazianzos before 381, he will presumably have been part of his Nicene congregation. This spiritual relationship may well explain why, in a later letter, Gregory of Nazianzos says that Nectarius writes to him as «son to father».¹⁸⁸

¹⁸³ The only source which is more than perfunctory is Soz. H. E. 7.7.9; 8.1–8; 10.1–3, who – despite all problems with details – makes the roles of Diodoros of Tarsos and of Theodosius himself quite clear.

¹⁸⁴ PLRE 1 s. v. Nectarius 2 covers his secular career; HANSON (as n. 26) 807, calls him misleadingly a «civil servant». Rufinus, H. E. 11.21, says he was *ex praetore urbano*. The *praetor urbanus* however seems not to have been an office in Constantinople, though Rufinus' «information» is repeated in all modern works including PLRE. It can only be either non-technical, «praetor in the city», a classicising expression, or a simple misunderstanding. The latter seems most probable. The law of 384 (CTh 6.4.25) which doubled the number of praetors at Constantinople, also gives the names of the posts existing before this date: they were the *praeturae Constantiniana*, *Constantiana*, *triumphalis* and *Romana* (the new ones were *Theodosiana*, *Arcadiana*, *Augustalis* and *laureata*). Has Rufinus perhaps garbled the title *praetor Romanus*?

¹⁸⁵ A good point made by KING (as n. 63) 40.

¹⁸⁶ Soz. H. E. 7.8 emphasises the role of Diodoros in finding Nectarius.

¹⁸⁷ Theod. H. E. 5.4.2 (Diodoros); Soz. H. E. 7.8.6; Rufinus H. E. 11.21 (Nectarius); Paulinus, Vita Ambrosii 7.2 (Ambrose). The canon is Nikaia canon II (COD 5).

¹⁸⁸ Greg. Naz. Ep. 185. RITTER (as n. 105) 113 n. 3, regards this pleasantry as evidence for Nectarius' being significantly younger than Gregory, but there is no need to reject Soz. H. E. 7.8.2, who in praising his person (so also Sokr. H. E. 5.8.12) mentions his grey hair (πολίαν). That Nectarius lived on until 397 is no argument for his being younger than Gregory of Nazianzos (but so RITTER, ib.). For a direct parallel among contemporaries see Lib. Or. 1.27, where Libanios writes of his friend Crispinus: ἡλικιώτης δὲ ὦν ἐμός, πατέρα με ᾤετο προσορᾶν.

The «Westerners» may not have liked the uncanonical aspects of this election, but given the general enthusiasm for Nectarius at the council, in the city¹⁸⁹ and at court, will have found it difficult to object to a man so obviously acceptable doctrinally. Moreover it would have been unwise to risk drawing attention to the bishop of the other imperial city, Ambrose. Ambrose might indeed himself be foolish enough to take this risk upon himself when he heard of Nectarius' election,¹⁹⁰ but why should Acholios provoke Theodosius and risk losing his influence? Nectarius also fulfilled admirably the specific social functions of the bishop of an imperial city. As a senator he represented the highest levels of Eastern society – precisely those which, if Theodosius had not known it himself, Themistios had urged him to cultivate¹⁹¹ – cut an elegant figure with his, perhaps prematurely, grey hair, and moved with ease in court circles, i. a. entertaining the court ladies to pious luncheons.¹⁹² Socially he was ideal for Constantinople at this time, in ecclesiastical affairs politically unblemished, supported by leading Meletians, who might well hope in their turn for his support in the Antiochian schism. If the Church was to be instrumentalised to consolidate Theodosius' imperial and dynastic rule and to help make it acceptable in the East, Nectarius seems to have been an ideal candidate for this post, which inevitably assumed a key position linking the court with the upper échelons of society in the imperial city and in the major centres of Eastern opinion. As the synodal letter composed by the Eastern council meeting again in 382 put it, «We elected the most respected and god-beloved Nectarius bishop at the ecumenical council by common agreement».¹⁹³ Unanimity was at least claimed.

VIII. *Canons and Laws*

The chronology of subsequent events cannot be reconstructed in detail. From the order in which the bishops are listed in the transmitted signature list, which is headed by Nectarius,¹⁹⁴ we must assume that he took over the chair for the rest

¹⁸⁹ Sokr. H.E. 5.8.12 thinks he was drafted by the people, and the official description of his election in the synodal letter of 382 (Theod. H.E. 5.9.15) confirms the view that his general popularity played a part.

¹⁹⁰ Ambrose, Ep. extra coll. 9 (13) 3; 5 of summer 381 (see appendix below) did take this risk, but his objections together with the rest of his attempt to interfere in Eastern affairs, seem to have been ignored.

¹⁹¹ Them. Or. 14. 264,9f. (183 b).

¹⁹² The contrast with his ascetic successor John Chrysostom, who insisted on eating alone (Sokr. H.E. 6.4.5; Palladius, Dial. 12.7 f. [MALINGREY (SC 341, 342)]) and on preaching objectionably to the rich (Sokr. H.E. 6.5.1), was particularly crass.

¹⁹³ Theod. H.E. 5.9.15. On the probably anachronistic adjective «ecumenical» see above p. 42.

¹⁹⁴ MANSI III 568 f., cf. ED. SCHWARTZ, Über die Bischofslisten der Synoden von Chalcedon, Nikaia und Konstantinopel, ABAW NF 13, 1937, 83 f.

of the council. Since the Antiochene problem had caused Gregory's downfall, Nectarius' first task will have been to conclude these deliberations. Given the composition of the council, an overwhelming majority for Flavianus was doubtless easy to achieve, as soon as the chairman himself ceased to pursue other objectives. As the synodal letter of 382 – perhaps even formulated by Nectarius himself – urbanely put it, «for the senior and truly apostolic Church of Antioch in Syria, in which the honoured name of the «Christians» was first used, the bishops of the province and of the diocese Oriens came together and elected the most respected and god-beloved Flavianus as bishop, and the whole Church agreed as if with one voice in honouring this man.»¹⁹⁵ Perhaps the «Westerners» chose discreetly to be absent at the critical moment. The long-term solution of the Antiochene problem was indeed merely postponed by this decision, but the Council of Constantinople was saved. Under the circumstances it was the only possible decision, for the council had more tasks to perform.

The chosen Nicene membership will have found no problem in agreeing to re-assert the Nicene Creed and to accept the formulations sent by Damasus, already accepted by the Meletians at Antioch in 379.¹⁹⁶ This was important to Theodosius: according to Sokrates and Sozomenos it, together with the appointment of a bishop for Constantinople, was the main point of Theodosius' summoning the council at all, since it was the precondition for drawing a line under past imperial attempts to interfere with doctrine. The Westerner Theodosius chose Western orthodoxy as his ecclesiastical programme. But it was critical for its success that it should be supported – and be seen to be supported – by as large and influential a group of Eastern bishops as possible. Minor verbal changes, which did not alter the substance of the original creed but – in particular in the article concerning the Holy Spirit and the omission of the Nicene anathemas directed specifically at Arius himself – took account of the Eastern disputes of the intervening period, have left no mark on the tradition about the course of the council and suggest that any discussions must have been moderate in tone.¹⁹⁷ Since the modified text of the Creed is not included in the canons of the council – indeed, is transmitted only in the *Acta* of the Council of Chalcedon – it seems possible that the bishops indeed did not feel that they had produced a substantially new text, but had done no more than what Theodosius, according to Sokrates, had expected of them: they had re-affirmed the Creed of Nikaia, and thereby broadcast the newly established symbiosis between the new secular and the newly restored ecclesiastical au-

¹⁹⁵ Theod. H.E. 5.9.16.

¹⁹⁶ Damasus Ep.4 (PG 13, 357f.).

¹⁹⁷ RITTER's view, (as n.105) 253 f. that discussions of the creed contributed to Gregory's *démise*, is based on his misunderstanding some difficult lines of Gregory's *De vita sua* (1753f.). See JUNGCK (as n.64) 220f., esp. 223. For discussions of the creed see after RITTER (as n.105). 132f., J.N.D. KELLY, *Early Christian Creeds*, London 1972³, 296 f.; HANSON (as n.26) 812 f., with further bibliography.

thorities in the East. They did this in canon I in the slightly odd form – which might reflect some uncertainty about the status of the textual modifications they had made – of banning the rejection of «the Faith of the Holy Fathers meeting at Nikaia in Bithynia», before asserting its validity and anathematising «every heresy, especially that of the Eunomians (or Anhomioians) and that of the Arians (or Eudoxians) [i. e. «Homoians»], the semi-Arians or Pneumatomachoi [i. e. the «Macedonianists»] and that of the Sabellians and of the Marcellians and of the Photinians and of the Appollinarians». This list seems to reflect the particular concerns of the bishops of the East and of Illyricum, who made up the membership of the council, though the list of heresies contained in Damasus' letter to Paulinus of Antioch, which the Antiochene council of 379 had accepted, may have stimulated the drafters. Manichaeans, omitted here, tend, as the separate laws to Eutropius and Florus suggest, to be regarded not so much as Christian heretics but rather as a separate class of persons: in this case therefore presumably omitted since, like pagans, synodal anathemata could not reach them.¹⁹⁸

The symbiosis of Church and State was given a major impulse by canon II,¹⁹⁹ which fixed local ecclesiastical responsibility within each of the secular dioceses in the East. The way this was done, however, reflects the reason for it, for the canon is formulated as a ban on bishops' interfering in ecclesiastical affairs outside their own dioceses (explicitly naming each diocese, beginning with Egypt) unless invited to do so for elections or other ecclesiastical administrative matters.²⁰⁰ It is a mere accident of ecclesiastical precedence that the bishop of Alexandria is first mentioned in this canon, but Petros' activities in promoting Maximus «the Cynic» in Constantinople and the comprehensive interference of the whole episcopal universe, not least by the Alexandrians, in the Antiochene schism, seems likely to have provided the immediate stimulus for this general canon. Much more provocative, but lying in the same tendency of the emperor's encouraging the Church to organise itself on the model of the state, was canon III concerning the status of the bishop of Constantinople. His role was increasingly felt to be anomalous: on the one hand he was bishop of the city from which the Empire was ruled, on the other hand his city, being a late foundation, had no traditional priority of status within the historical structure of the Church. Recent events had shown this yet again: both Petros of Alexandria and Meletios of Antioch had caused trouble by trying to impose their own unsuitable candidates, Maximus and Gregory of Nazianzos, on Constantinople. Theodosius would have none of it. His city, where he now intended to reside, and its bishop must have pre-eminence in the East, nothing else was tolerable. Only Rome – so spake the Westerner – had a superior claim, but a claim based on,

¹⁹⁸ COD 27 (MANSI III, 560).

¹⁹⁹ COD 27–28 (MANSI III 560).

²⁰⁰ Ἀκλήτους δὲ ἐπισκόπους ὑπὲρ διοίκησιν μὴ ἐπιβαίνειν ἐπὶ χειροτονία ἢ τισιν ἄλλαις οἰκονομίαις ἐκκλησιαστικαῖς.

it seems, fundamentally secular tradition. For the argument built into the canon which Nectarius now «managed», was that since Constantinople was «New Rome», so its bishop should have second rank in status after the bishop of (old) Rome.²⁰¹ That a secular argument was used may have been intended to sooth the sorrowed breasts of Eastern ecclesiastical traditionalists. But after the death of Meletios and observance of the fate of Gregory of Nazianzos, few will have felt strong enough to object seriously. All present already owed too much to Theodosius for his ready, indeed impetuous, favouring of the form of faith they all represented. Potential individual objectors were in a weak position: Timotheus of Alexandria was newly elected and his see in disfavour as a result of his brother Petros' trying to push through the ordination of Maximus «the Cynic» against Theodosius' will. Antioch also had nobody there to present its claims or to formulate objections. Meletios was dead, Paulinus had not come – perhaps had not even been invited – and Flavianus, though present and elected – an event which he owed to imperial grace and Nectarius' favouring chairmanship – had not yet been consecrated. In view of his need for future support at home he will not have wished to rock the boat, might even have been satisfied to see Alexandrian claims quashed in this way.

Canon III, together with the complementary disciplinary canon II, is prime evidence for the systematic adaptation of Church organisation to the developing secular administrative structures. It is also a firm statement by Theodosius that Constantinople was for him now the undisputed capital of the East. Constantinople had not yet achieved the dominating importance in ranking that a fixed imperial residence might claim, since both Constantius and Valens had spent long periods away, and even when in the East had resided longer in Antioch than in Constantinople. For them the precise status of the bishop of Constantinople within the total Church structure had been of secondary importance. Theodosius and his Western entourage saw the future structure of the East more clearly. Because Constantinople, the «New Rome», was to be the «imperial city» therefore the bishop of Constantinople was to be recognised by representatives of Theodosius' Church as «second in status to the bishop of Rome». The council thus agreed to ignore naturally grown traditions and formally accepted secular structures for ecclesiastical affairs. This was a statement of faith in the long-term future of Constantinople as imperial residence, which no emperor since the founder Constantine himself had given. Together with the appointment of the urbane and popular Constantinopolitan senator Nectarius to the newly important post of bishop there, the Constantinopolitan ruling classes will have looked with hope to the future of their city, despite the ongoing war against the Goths. The emperor, it must have seemed, was there to stay.

By 9 July the council felt its work was done, and directed a letter (the *Prosphor-netikos*) to the emperor reporting briefly on its activities (but omitting the elec-

²⁰¹ COD 28 (MANSI III 560): τὸν μέντοι Κωνσταντινουπόλεως ἐπίσκοπον ἔχειν τὰ πρεσβεία τῆς τιμῆς μετὰ τὸν Ῥώμης ἐπίσκοπον διὰ τὸ εἶναι αὐτὴν νέαν Ῥώμην.

tions), thanking him for calling them together and asking for his written agreement with their decisions, which were appended, as his seal of approval.²⁰² The precise status of the council seems to have caused some embarrassment, for the formulation chosen «The holy synod of bishops from various provinces meeting in Constantinople»²⁰³ begs the question entirely of whether it was intended to represent the East, the whole Empire, or the whole Church. The members perhaps did not know, nor was it at the moment of any great importance, as long as the emperor was satisfied with the work of «his» council, so ensuring that the moral and practical support of the secular arm would accompany their future work in their bishoprics. Whether the synodal request for a letter (singular) of agreement expressing imperial approval, which they say was to round off the procedure started by the imperial letters (plural) of invitation, means that they requested some kind of «publication» by the emperor²⁰⁴ – whatever that might mean in practice – seems unlikely; for the parallel letters of invitation were certainly not «public», but directed to specific persons or groups of persons chosen carefully by Theodosius' ecclesiastical advisers. It is therefore more probable that an imperial letter was requested merely to complete the documentation of the council, as the *Proshphonetikos* claims, indeed, as a parallel to the invitations; and that copies of this imperial seal of approval would be added to the convolute of documents which each bishop present will have taken home with him, and so made widely known also to those who had not been present. The request of the bishops will thus have a certain parallel in the imperial practice of issuing rescripts on request, whether to citizens or to imperial officials. The effective circulation of knowledge of a rescript was the responsibility of the recipient. There is then for once no need to see an implied criticism of Theodosius in Ambrose's wish, expressed in a letter written after the Council of Aquileia, that the canons of a synod which he suggested be held at Alexandria should be brought to his notice.²⁰⁵ If there were no im-

²⁰² MANSI III 557C: δεόμεθα τοίνυν τῆς σῆς ἡμερότητας γράμματι τῆς σῆς εὐσεβείας ἐπικυρωθῆναι τῆς συνόδου τὸν ψῆφον· ἵν' ὥσπερ τοῖς τῆς κλήσεως γράμμασι τὴν ἐκκλησίαν τετίμηκας, οὕτω καὶ τῶν δοξάντων ἐπισφραγίσῃς τὸ τέλος. This is how the ecclesiastical historians interpreted Theodosius' action now: he was σύμψηφος (Sokr. H. E. 5.8.20) or he ἐπεψηφίσατο (Soz. H. E. 7.9.5). This does not mean that he made them secular law, as ENSSLIN (as n. 44) 34, followed by A. LIPPOLD, RE Suppl. 13, 1973 s.v. Theodosius I, 20, think, for which there is no scrap of evidence.

²⁰³ See above, n. 101.

²⁰⁴ Imperial publication assumed by RITTER (as n. 105) 127 and n. 2, claiming to follow SCHWARTZ (as n. 194) 86, who however does not explicitly say who he thinks «published» the documentation – «sofort nach der Synode an die Öffentlichkeit gebracht» – though in view of SCHWARTZ's notion (ib. 85), rightly rejected by RITTER, that Theodosius chaired the sessions personally, he could be interpreted thus.

²⁰⁵ Ambrose, Ep. extra coll. 6 (12), 6: *et nobis deferri in notitiam censeatis*. Cf. ENSSLIN (as n. 44) 38: ... eine gewisse Befremdung ..., daß das Konzil ... seine Beschlüsse dem Abendland nicht mitgeteilt habe.»

perial publication in the East, Ambrose cannot reasonably complain about there having been none in the West. His speedy knowledge of events in Constantinople²⁰⁶ will no doubt go back to Acholios, either directly or via Damasus.

Two laws, both issued in July 381, have been interpreted by modern writers as consequences of the council.²⁰⁷ The first, dated 19 July, was issued to the *comes Orientis* Glychierius, and concerns a ban on church building by Eunomians, «Arians» and followers of Aetius, whether in town or country. Delinquents are to have their property, where the offence might have occurred, confiscated. Now such questions had not, to our knowledge, played any part at the council, though of course these, and many other groupings regarded as heretical, had been anathematised in canon I. Moreover three considerations suggest that this regulation was not an initiative of the imperial administration stimulated by the wish to consolidate the synodal decrees in the form of imperial laws. Firstly, the choice of precisely these three relatively easily distinguishable heresies out of the mass of current possibilities; not even all those listed in canon I are named here.²⁰⁸ Secondly, the very precise and limited question of the erection of new church buildings is the subject of the law, which had, as far as we know, not been a factor at the council. Thirdly the fact that the law was addressed not to the Praetorian Prefect but directly to the subordinate diocesan civilian official, the *comes Orientis*, is a characteristic of local initiatives. All these points suggest that the law did not originate in a central initiative arising from the council,²⁰⁹ but in a request from the officer concerned, who was confronted with the specific problem regulated, and covered himself before action by asking for instructions. The official residence of the *comes Orientis* was Antioch,²¹⁰ and it is easy enough to understand his wish, given the current difficult conditions of the Church in Antioch, neither to be inactive when faced with a growing problem nor to act without explicit authorisation of the imperial authorities in a delicate mission.

The second law, issued from Herakleia on 30 July to the Proconsul of Asia, Auxonius, seems much more likely to reflect decisions or deliberations of the council.²¹¹ Nevertheless it is wrong to interpret it *prima facie* as a copy of a gener-

²⁰⁶ Evidenced by Ep. extra coll. 9 (13), perhaps of summer 381. Cf. appendix below.

²⁰⁷ CTh 16.5.8; 16.1.3. ENSSLIN (as n. 44) 36; LIPPOLD, RE Suppl. 13, 1973, s.v. Theodosius I, 20.

²⁰⁸ Cf. as further possibilities e.g. the list in CTh 16.5.11.

²⁰⁹ So also RITTER (as n. 105) 130 n. 6, who rejects a connection of CTh 16.5.8 with the Council, though his reasons are inadequate.

²¹⁰ On his functions see J. H. W. G. LIEBESCHUETZ, Antioch. City and Imperial Administration in the Later Roman Empire, Oxford 1972, 110f.

²¹¹ CTh 16.1.3. Text of law and discussion of Sozomenos' version in ERRINGTON (as n. 1), ad n. 111. Neither ENSSLIN (as n. 44) 36, RITTER (as n. 105) 128, nor LIPPOLD, RE Suppl. 13, 1973, s.v. Theodosius I, 20 think the recipient or his office worth mentioning; KING (as n. 63) 45, bans him to a footnote (n. 1) and otherwise ignores him.

al law issued to all provinces, for which evidence is entirely lacking, since there are excellent reasons for believing that its regulations were particularly relevant to the area of responsibility of the Proconsul of Asia, and that it was, as the transmitted text in the Theodosian Code says, directed at particular problems faced by the Proconsul of Asia.²¹² From the three provinces for which he was responsible, Insulae, Hellespontus and Asia,²¹³ not one single bishop signed the synodal protocol. This probably means that none was invited to attend,²¹⁴ and the reason can only be that the incumbents were not reliable representatives of the Nicene faith. We know that the «Macedonianists», who sent thirty-six leading bishops to the preliminary discussions at Constantinople, were particularly strong in this area, and other heresies, in particular the «homoian», will doubtless also have been represented there. If no bishop was regarded as inevitable to the council, the implication is clear that after it Auxonius was faced with the problem of supervising the replacement of the incumbent of every single see in his group of provinces, for which he, as highest representative of the state and chief judge in his region, bore the administrative and legal responsibility.²¹⁵ In no other diocese or larger administrative unit of the Empire was the ecclesiastical situation for Nicene orthodoxy so serious, the change to be carried out so wholesale, the potential legal and administrative complexities for the secular arm so massive – and this is what the law is about.

It concerns the transfer (*tradi*) of all churches in Auxonius' area of responsibility to orthodox bishops, and it names for each administrative unit of the Eastern Empire bishops who are recognised explicitly as orthodox and who therefore are to be recognised as attesting orthodoxy in others by holding communion with incumbents or candidates for office. The point of stating this in a law addressed to a secular official is to lay down that attestations only from these explicitly named bishops were to be recognised by the secular authorities (who could not themselves test orthodoxy in any other acceptable way) as guarantors of doctrinal acceptability. For the Proconsulate of Asia alone of all the supra-provincial administrative units no such guarantor of orthodoxy was named, we must assume, could be named – because there was none.

²¹² Its function was not therefore that described by HANSON (as n.26) 821: «By this Edict Theodosius finally and decisively rendered the pro-Nicene version of the Christian faith the official religion of the Roman Empire.» On this and other laws addressed to the *procos. Asiae* cf. ERRINGTON (as n. 1), appendix. None of the transmitted rulings looks like a general law, and several are provably local.

²¹³ Not. Dign. Or. XX. Hellespontus came to Proconsular Asia under Theodosius on appeal (CTh 1.12.5). We do not know exactly when; I assume here that the appeal reached Theodosius soon after his accession – the best time for such things – but this might be wrong. If it were, it would not affect the substance of the argument.

²¹⁴ So SCHWARTZ (as n.194) 83.

²¹⁵ On this see ERRINGTON (as n. 1), appendix, esp. ad n.223.

Interpreted in this way the law *Episcopis tradi* receives an immediate significance as a direct consequence of the council, but not in the general and amorphous way – though not without occasional triumphalist tones – in which historians have usually interpreted it. Its primary concern is not to define faith in legal terminology, since its statement about this is a mere uncanonical expression of some of the main points of faith: nothing prevented the emperor from citing the whole creed – which the synod had just re-affirmed – if the purpose of the law to Auxonius had been to impose it. It was not. Its aim was to give practical administrative help to a named official, who would otherwise not be able to check that guaranteed orthodox persons were taking over the churches in his area, and give him a ruling with which to decide disputes emerging from the prospective massive exchange of control of ecclesiastical resources. The law was indeed a direct consequence of the council; its substance may well have been discussed and prepared there, for all the bishops named had been present; but it was also a further concrete step on the administrative path – begun from Thessalonika with *Cunctos populos* for Constantinople, continued with *Nullus haereticis* for Illyricum – of providing secular officials with working descriptions of faith shaped in the form of laws, but also with the practical means of applying them in administrative practice. Both Maximus and Gregory, the two first «candidates» for the see of Constantinople, had after all complied with the «compatible bishops» clause of *Cunctos populos* and obtained their written attestations of communion from Petros of Alexandria.²¹⁶

Theodosius' concern in this law was thus not just, perhaps not even primarily, that heresy should be stamped out – he was possibly realist enough to know that this would not be easy – but that the churches and ecclesiastical apparatus (including particularly their patronage, influence and wealth) should be placed, or replaced, in the hands of those he trusted because their orthodoxy was guaranteed. With the help of the council he had solved this problem in the most urgent area, Constantinople itself, where orthodoxy alone, without secular help, had proved unable to assert itself; with the help of the council he had also found an administratively acceptable means of guaranteeing the transfer by due legal process of churches and establishments in the immediate Asiatic hinterland of Constantinople, where in summer 381 heretics still controlled the rich churches of very populous cities, in the Proconsulate of Asia of whole provinces. This was urgent because it was near, and therefore needed a specific ad hoc regulation. Elsewhere, we may perhaps allow, the problem had not reached such dimensions that the existing orthodox bishops within each diocese with the help, if need be, of the secular authorities, could not deal with it by traditional means. In Asia, where there was no orthodox bishop to do this, the Proconsul had to be given administrative tools for implementing imperial policy.

²¹⁶ See above, p. 37f.

Appendix The Maximus Affair

The affair of the «cynic» Maximus and the episcopacy of Constantinople is presented in the orthodox literature following the account of Gregory of Nazianzos as a bizarre episode reflecting Egyptian ambitions to control the newly recognised orthodox Church in Constantinople. There is certainly something in this, but here I am concerned only with the chronology, since the currently accepted version of it and the interpretation of two letters of Ambrose, which have to do with it, seem unsatisfactory and reflect on other events.

The approximate date of events in Constantinople itself is clear enough. Maximus had been ejected from the city and had had his appeal to the emperor Theodosius in Thessalonika²¹⁷ rejected before Theodosius entered Constantinople on 24 November 380.²¹⁸ Via Alexandria, whence he was expelled for causing trouble,²¹⁹ he travelled to Italy, where he turned up in Milan bearing commendatory letters written by Petros²²⁰ and a theological work, *De fide adversus Arianos*, which he presented to Gratian.²²¹ This must have happened during winter 380/381 at the latest, since Ambrose had already convinced himself and some other Italian bishops, doubtless in a Milanese synod, that Maximus was orthodox and had a legitimate claim on the throne of Constantinople, and moreover he had written to Theodosius saying so, before the council of 381, meeting in May, elected Gregory of Nazianzos to this position.

This is a critical factor for dating subsequent events, and though it was seen by MANSI²²² has been overlooked by all recent researchers, who have interpreted the *concilium nuper* where Maximus showed his letters from Petros to Ambrose,²²³ as the Council of Aquileia,²²⁴ which did not meet until September 381.²²⁵ Yet Ambrose distinguishes clearly the *concilium nuper* (3) from the *synodo ea* (4), which is certainly the Council of Aquileia, and mentions a letter (*datis litteris*) sent to Constantinople before the Council of 381, the contents of which he summarises. This reference has been regularly overlooked, being interpreted as a mere otiose

²¹⁷ Greg. Naz. Carm. 11 (De vita sua), 898f., esp. 1001f.

²¹⁸ Sokr. H. E. 5.6.6.

²¹⁹ Greg. Naz. Carm. 11, 1009f.; Ambrose, Ep. extra coll. 9 (13), 3.

²²⁰ Ambrose, Ep. extra coll. 9.3: *lectis Petri sanctae memoriae viri litteris*. Petros died in spring 381.

²²¹ Jerome, De viris ill. 127. I regard the words *adversus Arianos* as part of the title (otherwise: RICHARDSON, ad loc.).

²²² MANSI III, 519–20.

²²³ Ambrose, Ep. cit. 3.

²²⁴ H. VON CAMPENHAUSEN, Ambrosius von Mailand als Kirchenpolitiker, Berlin – Leipzig 1929, 139f., J.-R. PALANQUE, Saint Ambroise et l'empire romain, Paris 1933, 94; McLYNN (as n.24) 142.

²²⁵ Acta conc. aqu. 1: *III. nonas septembres*.

mention of the current letter in which the words stand, but it is not that; it is a critical piece of evidence, since it shows Ambrose supporting Maximus before Gregory's appointment. Thus at the beginning of his advocacy for Maximus he was not just flogging a dead horse. He was originally trying to influence the course of events before Gregory's election, at a time when it was well enough known in Italy, doubtless through Maximus himself, that Gregory seemed to be the emperor's favourite for the job. Only so is Ambrose's otherwise otiose reference in this letter to Gregory comprehensible, since at the time of writing the letter *Sanctum* Gregory had already resigned and Ambrose's opponent was Nectarius.²²⁶

Since this has been so widely misunderstood, it will be necessary to attend to the structure of Ambrose's argument in context. Maximus is introduced (3) via an objection to Nectarius (*cuius ordinatio quem ordinem habuerit non videmus*): for in the recent council (*concilium nuper*) when bishop Maximus had proved through letter his communion with the Church of Alexandria (*communione manere ... litteris prodidisset*) and explained the circumstances of his ordination in Constantinople (*se creatum esse ... docuisset*) we had no reason to object to his legitimacy (*nihil habuimus ... in quo de episcopatu eius dubitare possemus*). «Nevertheless (*tamen*), so that we did not give the impression of deciding something prematurely in the absence of the parties concerned, we thought it necessary to instruct Your Clemency by letter, that his claims – in the interest of public order and concord – should be attended to, because in truth we recognised the fact that Gregory was in no way in a position to claim the bishopric of Constantinople according to the traditions of the Fathers. We therefore (*igitur*) decided that in that synod, which was seen to have been summoned for the bishops of the whole world, no rash decision should be taken. But at that very same time, what are those who rejected a general council said to have done at Constantinople?»²²⁷

The order of events is clear. Maximus' appearance at Milan was at a time when it still seemed possible to interfere in Constantinople on his behalf, therefore Ambrose's letter mentioned in *Sanctum* objecting to his treatment must have been sent off at the latest ca. March 381. Maximus was therefore in Milan during the winter 380/381 and Ambrose's *concilium nuper* will have to be placed then also. His statement that the Council of Aquileia wished to take no rash decision, therefore took none at all, on this matter, is doubtless disingenuous, as is his claim that

²²⁶ On the date of *Sanctum* (Ep. extra coll. 9 [13]), see below, p. 70 ff.

²²⁷ Ib. 4: *Tamen ne absentibus partibus praesumpto aliquid definisse videremur, clementiam tuam datis litteris putavimus instruendam, ut ei consuleretur ex usu publicae pacis atque concordiae, quia revera advertēbamus Gregorium nequaquam secundum traditionem patrum Constantinopolitanae ecclesiae sibi sacerdotium vindicare. Nos igitur in synodo ea quae totius orbis episcopis videbatur esse praescripta, nihil temere statuendum esse censuimus. At eo ipso tempore qui generale concilium declinaverunt Constantinopoli quae gessisse dicuntur?*

it was open to the whole world, since the *Acta*²²⁸ themselves show that it was Ambrose's own idea to restrict attendance.

Gregory's election was one of the first acts of the Constantinopolitan council, meeting in May 381. Both Ambrose and Damasus, for rather different reasons and in different ways, had objected in advance, as we now can see. Ambrose acted by supporting Maximus; Damasus wrote to Acholios supporting fully Theodosius' decision to reject Maximus (in which Acholios had doubtless played some part),²²⁹ but knowing that a council had been summoned which would appoint a new bishop of Constantinople, and that Acholios was invited, warned in effect against appointing Gregory of Nazianzos, because of the uncanonical *translatio* that this would imply. In this point at least he may have conformed to Ambrose's view. Damasus' letter must belong to about the same time as Ambrose's first letter supporting Maximus, therefore to winter 380/381 or early spring 381.²³⁰

The presence of Maximus at the *concilium nuper* is his last known public appearance, though his cause, once adopted by Ambrose, lingered on and gave rise to further acrimony, perhaps even embarrassment. The Council of Constantinople not only elected Gregory contrary to the wishes of Damasus and Ambrose, but also explicitly condemned Maximus, in this respect satisfying Damasus but rejecting Ambrose.²³¹ Sometime after he had heard of this Ambrose wrote a further letter to Theodosius, which is the extant letter *Sanctum*,²³² recounting with scarcely concealed passion the history of his own attempt, now seen to have been ineffective (which will doubtless account in part for the undiplomatically aggressive tone), to influence the East, and in effect objecting to the decisions of the Constantinopolitan council in connection with the appointment of Flavianus to Antioch and Nectarius to Constantinople after Gregory's resignation. This letter is written in the name of *Ambrosius et ceteri episcopi Italiae*, presumably therefore a local

²²⁸ *Acta Conc. Aqu.* 4.

²²⁹ So also McLynn (as n.24) 111.

²³⁰ Damasus Ep.5 (PG 13, 365 f.). On the date cf. CAMPENHAUSEN (as n.224) 141. (The opinion of LIETZMANN which he quotes as a possibility, that Damasus perhaps had Meletius in mind, is impossible. The whole context is concerned with the election to the throne of Constantinople – unless L. regarded Meletius as a candidate there!) It is thus not very probable that Maximus had «tried his luck» first in Rome before going on to Milan, though it cannot be excluded. Damasus' information probably came direct from Acholios, and Maximus' appearance in Italy will have been in an attempt to exert influence on Gratian (cf. Ambrose, Ep. extra coll. 9,8; Jerome, De viris ill. 127). Incidentally, this letter of Damasus and its clear expectation that Acholios would participate in the synod at Constantinople rules out RITTER's view, (as n.105) 97 f., that Acholios was only invited after other participants, and for this reason arrived late at the synod. Ἐξαπίνης κεκλημένοι in Greg. Naz. Carm. 11, 1798, must therefore mean that the late-comers were called providentially, cf. 1797 on God's solution of the crisis (correctly translated by JUNGCK [as n.64] ad loc.).

²³¹ Canon IV (COD 28 = MANSI III, 560).

²³² On the date cf. below, p.70ff.

Milanese synod,²³³ after consultation with Gratian, who is explicitly named as favouring their view.²³⁴

A further letter of Ambrose *Fidei*²³⁵ belongs in the same context, and has been recently restored to its position in the manuscript order, now standing immediately before *Sanctum*.²³⁶ There is, however, much to be said for the traditional view that it was written later, for the letters of Ambrose transmitted in the manuscripts of the *Epistolae extra collectionem* are not in general arranged chronologically, and the content of *Fidei* seems indeed to fit much better into a later stage of the controversy.²³⁷ It is a reply to a clearly negative letter from Theodosius.²³⁸ The tone is less hectoring, it restates and defends firmly the view put forward in the earlier letter that problems should have been dealt with at a joint synod of East and West, he even echoes the phrasing of *Sanctum*,²³⁹ adding merely that he had also wanted to deal with Apollinaris, and he seems dissatisfied with the way in which Apollinaris had been condemned at Constantinople.²⁴⁰ His main point of defence however was that his suggestion for a really proper council in the West – which Theodosius had obviously rejected – had been in itself legitimate. This letter was also written, doubtless after another meeting of the same local Milanese synod, in the name of *Ambrosius et ceteri episcopi Italiae*.

The precise date of these two letters is not easy to establish. If Ambrose's original (not extant) letter concerning Maximus was certainly sent before the Council of Constantinople, the letter *Sanctum*, complaining that the first letter had been ig-

²³³ It seems unclear, and in practice unlikely, that Ambrose by *ceteri* meant «(all) the other» Italian bishops, as CAMPENHAUSEN (as n.224) 141, suggests, still less likely is «die Abendländer», as RAUSCHEN (as n.68) 134 claims. Damasus, after his Ep.5, can have had no part in supporting Maximus. McLYNN (as n.24) 141, seems to think it was merely Ambrose claiming representative functions subsequent to the Council of Aquileia without additional formal backing. This seems less probable: Ambrose will scarcely have described the Council of Aquileia, for which he claimed wide representation in this very letter (4: *in synodo ea quae totius orbis episcopis videbatur esse praescripta*), in a letter to the emperor as merely *ceteri episcopi Italiae*, which this seems to imply.

²³⁴ Ib. 8.

²³⁵ Ep. extra coll. 8 (14).

²³⁶ Cf. M. ZELZER, *Sancti Ambrosii Opera*, pars X, tom. III (CSEL 82), pp. XCVI–XCVII.

²³⁷ So e.g. CAMPENHAUSEN (as n.224) 153 f., whose discussion is however marred by his belief that Maximus had first turned up at Aquileia in September; Mc LYNN (as n.24) 143, without discussion.

²³⁸ Ep. extra coll. 8,4.

²³⁹ Compare Extra coll. 8,1: *clementiam tuam obsecrandam pariter ac super ecclesiasticis negotiis instruendam nostris litteris aestimavimus* with Extra coll. 9,4: *clementiam tuam datis litteris putavimus instruendam*.

²⁴⁰ Canon I (COD 27 = MANSI III, 557–60), condemned Apollinaris along with others, but Ambrose's dissatisfaction is expressed ib. 4: *nam qui convictus non fuerit praesentibus partibus, quod vere augusto principaliq[ue] responso tua clementia definivit, referendam semper amplam quaestionis arripit*.

nored and about some decisions of the council, was equally certainly after it. Neither of them has anything immediately to do with the Council of Aquileia, which met in September 381, and which, to judge by the extant Acta and the synodal letters written by Ambrose, seems to have been concerned exclusively with various «Arian», especially Illyrican, questions, though the members could not resist expressing views on the Antiochene schism.²⁴¹ The synodal letters are written in the name of the *concilium quod convenit Aquileiae*. It is not easy to date the two letters of the *ceteri episcopi* exactly in relation to Aquileia, since the issues dealt with (apart from Antioch) are different.²⁴² Certainly neither of them is the letter sent to Theodosius «after the Synod of Aquileia» mentioned by the synodal letter of 382 transmitted by Theodoret, since this must have been written by Damasus, who is the first addressee of the Eastern epistle, and Damasus was not present at Aquileia.²⁴³ Moreover Damasus' letter of autumn 381 can have offered no support to Maximus – whose alleged legitimacy gave Ambrose his main argument against Nectarius in *Sanctum* – since he had rejected his claims from the beginning, explicitly in his letter to Acholios dating at the latest from early spring 381.²⁴⁴ The main subject of his letter seems to have been the Antiochene schism, for which Paulinus (accompanied by Jerome), Acholios and Epiphanius of Salamis, among others, in due course travelled to Italy, and representatives of the Constantinopolitan council of 382 joined them there.²⁴⁵

It therefore seems possible that Ambrose's letter *Sanctum* could have been written from Milan as early as August 381, when the agenda for the Council of Aquileia had already been fixed²⁴⁶ and when Gratian might well have been in Milan to lend naive support; by this time news of the Constantinopolitan council will certainly have reached Italy – and the letter seems to have been written while the news was still fresh enough to stimulate Ambrose's anger at its ignoring his intervention on behalf of Maximus.²⁴⁷ It cannot, however, be excluded that it was rather later, after the dissolution of the Council of Aquileia.²⁴⁸ *Fidei*, on the traditional view that it is later than *Sanctum*, will then have certainly been subsequent

²⁴¹ Discussion in McLYNN (as n.24) 124 f.

²⁴² The phrase *nos igitur in synodo ea ... nihil temere statuendum censuimus* (Ep. extra coll. 9.4), need not necessarily have been written after the Council of Aquileia, to which it refers (though of course it could have been). Ambrose could be referring to his intentions and to an already fixed agenda.

²⁴³ Theod. H.E. 5.9.9, so interpreted however by CAMPENHAUSEN (as n.224) 147 n.4 and 154 n.2.

²⁴⁴ Damasus Ep.5.

²⁴⁵ Theod. H.E. 5.9; Jerome, Ep.108,6. Cf. S.REBENICH, Hieronymus und sein Kreis, Stuttgart 1992, 141 f.

²⁴⁶ Cf. n.239.

²⁴⁷ Gratian was at Viminacium on 5 July (CTh 1.10.1; 12.1.89, cf. ERRINGTON [as n.128] 459), in Trier on 14 October (CTh 4.22.1).

²⁴⁸ So explicitly McLYNN (as n.24) 141 f.

to, but also formally independent of, the Council of Aquileia, sometime in autumn 381, since the imperial reply to *Sanctum* will doubtless have taken some time to arrive. The more careful tone of *Fidei* will have been conditioned not only by the clearly negative attitude of Theodosius, but also by the fact that by then Ambrose must have known of Damasus' plans for a Roman synod, agreed on by Gratian,²⁴⁹ and due to meet with at least certain Eastern representatives in early summer 382. He will also have known by then, if not earlier, that Damasus definitely had no interest or intention of supporting Maximus, the main issue in Ambrose's interferingly provocative letters of spring and summer 381. He is not mentioned in *Fidei*.²⁵⁰

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²⁴⁹ Summoned by *imperiales litterae*, according to Jerome, Ep. 108,6.

²⁵⁰ I am grateful to HANS-ULRICH WIEMER for much critical discussion of this paper.