A Struggle for Consensus: Constantine's Intervention in the Christian Quarrels of His Time

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Abstract: Eversince the Edict of Milan was issued in 313, Emperor Constantine implemented a tolerance-based religious policy in which his intervention, both personally and by proxy, played an essential role. Tolerance would ultimately fail due to the many religious conflicts and constant doctrinal disagreements between various Christian groups, requiring new solutions in order to rule over a more peaceful population. The will to reach a doctrinal consensus that would not undermine the emperor's powers in the management and arbitration of religious matters, as well as intervention by civil authority in fields that traditionally fell under ecclesiastic jurisdiction, would give rise to a confrontation with part of the Church which would resist the emperor's strategy to reach a consensus in religious matters.

Keywords: Constantine I, Athanasius of Alexandria, Arianism, Donatism, Church-State Relations, Religious toleration

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Introduction: A "tolerance-based" religious policy

Under the Tetrarchy, the Edict of Serdica (311) and the Edict of Milan (313) granted freedom of worship to Christians, with a number of nuances. The former demanded an end to disorderly conduct and due prayers for the safeguard of the Empire,[1] which clearly points to the fact that tolerance must be tempered with discipline, and that the religious group in question must conform to the rules and guidelines of the State. The latter guaranteed freedom of worship and the return of confiscated assets,[2] but even though it apparently granted individuals the right to choose their preferred religion, it did not in fact establish absolute freedom of worship,[3] as it implies the notion that all religions must worship a higher deity that watches over the State. This implies that the tolerance considered by power established what Peter Van Nuffelen has termed a "mínimum théologique partagé"[4] and which was therefore not understood in absolute terms or granted unconditionally. In spite of this, the edict defends the principle of *libertas religionis*, a notion that can be found throughout the document and which is its most distinctive trait. This notion, which originates in Tertullian,[5] would be further expanded upon a century later in the works of Lactantius, who extensively developed the notion in his *Diuinae Institutiones*. As we know, this work strongly influenced Constantine's thinking[6] and it was written as a reaction to the

[1] Lactantius, *De mort.* 34, 5; Eusebius of Caesarea, *HE* 8, 17, 9–10. According to Noel Lenski, "The Significance of the Edict of Milan," in *Constantine: Religious Faith and Imperial Policy*, ed. Edward A. Siecienski (London and New York: Routledge, 2017), 45–46, the Edict of Galerius was developed around the notion of *indulgentia* / συγχώρησις, understood as the emperor's capacity to display an indulgent magnanimity towards a religion that is repugnant to him, even though his subjects may be undeserving of it.

[2] On measures that led to the return of assets before and after 313, Lenski, "The Significance," 30–31.

[3] Lactantius, *De mort.* 48, 1–12; Eusebius of Caesarea, *HE* 10, 5, 1–14.

[4] Peter Van Nuffelen, *Penser la tolérance dans l'Antiquité tardive.* Les conférences de L'École Pratique des Hautes Études 10 (Paris: Les Éditions du Cerf, 2018), 52.

[5] Tertullian, *Apol.* 24, 5–6; 28, 1 and *Ad Scap.* 2, 2. Peter Garnsey, "Religious Toleration in Classical Antiquity," in *Persecution and Toleration,* Studies in Church History, vol. 21, ed. William J. Sheils (Oxford: Blackwell, 1984), 14–15; Maijastina Kahlos, *Forbearance and Complusion. The Rhetoric of Religious Tolerance and Intolerance in Late Antiquity* (London: Duckworth, 2009), 22–25; Tobias Georges, *Tertullian "Apologeticum"* (Herder: Freiburg, 2011), 406–411; Klaus M. Girardet, "*Libertas religionis*. 'Religionsfreiheit' bei Tertullian und Laktanz. Zwei Skizzen" in *Römische Jurisprudenz. Dogmatik,* Überlieferung*, Rezeption. Festschrift für Detlef Liebs zum 75. Geburtstag*, ed. Karlheinz Muscheler, (Berlin: Duncker & Humblot GmbH, 2011), 205–226; Lenski, "The Significance," 45–50.

[6] Timothy D. Barnes, "Lactantius and Contantine," *Journal of Roman Studies*, 63 (1973): 29–31; *Idem*, *Constantine and Eusebius* (Cambridge Mass.: Harvard University Press, 1981), 73–75; François Heim, "L'influence exercée par Constantin sur Lactance: sa théologie de la victoire," in *Lactance et son temps. Recherches actuelles. Actes du IV*e *Colloque de* Études *Historiques et Patristiques, Chantilly, 21–23 septembre 1976*, eds. Jacques Fontaine and Michel–Yves Perrin, (Paris: Beauchesne, 1978), 57–58; *Idem*, *La théologie de la victoire de Constantine à Théodose* (Paris: Beauchesne, 1992), 51–56; Michel-

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accusation of undermining the political and philosophical basis of Roman society that was levelled against Christianity and used as justification for persecution of the *noua religio*.[7]

Lactantius approached the problem of universal justice by exploring the notion that if the pagans of his time were truly just, they would not persecute Christians or followers of other cults, as religiosity cannot be the object of coercion.[8] As Noel Lenski points out,[9] according to Lactantius, the obligation to profess a religion one does not believe in and to follow its rites without sincerity is of no benefit to any of the parties involved;[10] rather, it sullies and questions the religion of the persecutors themselves to the point of causing desertions among their own fellow believers. Thus, religious freedom and, by extension, freedom of action, take on a crucial importance in the works of Lactantius,[11] according to whom human beings were created by God imbued with free will,[12] a quality persecuting emperors have ignored, thus defying God's designs through their coercive attitude. This condemnation of the repression of religious freedom did not prevent Lactantius from making a positive assessment of the existence of a dialectical confrontation between Christians and other religions, which he not only deemed not to be negative, but also beneficial insofar as it allowed for the exercise of the virtue of *patientia*.[13]

Yves Perrin, "La 'révolution constantinienne' vue à travers l'oeuvre de Lactance (250–325 ap. J.-C)," in *L'idée de révolution. Colloque ouvert organisé par le Centre d'Histoire des Idées (Université de Picardie) et dans le cadre du C.E.R.I.C.* Cahiers de Fontenay 63/64 (Fontenay: Université de Picardie, 1991), 81–94; Arnaldo Marcone, "Lattanzio e Costantino," in *Constantino, ¿el primer emperador cristiano? Religión y política en el siglo IV*, ed. Josep Vilella Masana, (Barcelona: Universitat de Barcelona, 2015), 21–29: Elizabeth D. Digeser, *The Making of a Christian Empire. Lactantius and Rome* (Ithaca and London: Cornell University Press: 2000), 136–143; Jeremy M. Schott, *Christianity, Empire and the Making of Religion in Late Antiquity*, (Philadelphia: University of Pennsylvania Press, 2008), 106–109; Gaetano Lettieri, "Lattanzio ideologo della svolta costantiniana," in *Costantino I. Enciclopedia costantiniana sulla figura e l'immagine dell'imperatore del cosidetto Editto di Milano 313–2013, vol. 2*, ed. Alberto Melloni, (Roma: Istituto dell'Enciclopedia Italiana, 2013), 45–47; Lenski, "The Significance," 48. Josef Lössl, "Imperial Involvement in Education and Theology–Constantine to Constantius II," *Journal for Late Antiquity Religion and Culture*, 13 (2019): 33, highlights the teaching Lactantius may have exerted upon the emperor himself during his youth in Nicomedia.

[7] Tessa Canella, *Il "peso della tolleranza." Cristianesimo antico e alterità* (Brescia: Morcelliana, 2017), 61; Digeser, *The Making of a Christian Empire,* 135; *Eadem*, *A Thread to Public Piety. Christians, Platonist, and the Great Persecution* (Ithaca and London: Cornell University Press, 2012), 164–192; Ben D. Wayman, "Lactantius's Power Struggle. A Theological Analysis of the Divine Institutes, Book V," *Political Theology* 14 (2013): 304–306.

[8] Lactantius *Div. Inst.* 5,19;11–13.22. See Perrin, "La révolution constantinienne," 88.

[9] Lenski, "The Significance," 47. The author provides a solid and systematic demonstration of the direct influence of the works of Lactantius on Constantine with regard to the drafting of the Edict of Milan.

[10] Lactantius, *Div. Inst.* 5,13,18.19,13.19,23.20,5–9.

[11] Lactantius, *Epit.* 49,1–2.

[12] Lactantius, *Div. Inst.* 2,8,4.

[13] Lactantius, *Div. Inst.* 2,17,1–3. See Kahlos, "The Rhetoric of Tolerance and Intolerance–From

Starting with what traditional historiography has termed the "Constantinian shift," Christianity experienced an unstoppable ascent that would only be checked under the reign of Julian II (361–363). Following this ascent, the repression or containment of other religions came to fore during the principate of Constantine (324–337), compromising the original notion of religious tolerance that has been attributed to his policies in this field[14] by promoting an ambiguous notion of tolerance in which the very same presuppositions used to justify it were likewise used to justify the exercise of intolerance and coercion against groups that were perceived as a threat to the peace and safeguard of the State, a concern that was shared by past emperors.[15] Thus, it would not be long before Manicheans[16] and Jews[17] suffered the weight of repression, and even traditional religions would not be spared the emperor's interest in bringing order to religious matters.[18] As for doctrinal discrepancies within Christianity itself, they were initially approached with moderation,[19] through

Lactantius to Firmicus Maternus" in *Changes and Continuities in Christian Apologetic, Early Christianity in the Context of Antiquity,* eds. Anders C. Jacobsen, Maijastina Kahlos, Jörg Ulrich, (Frankfurt am Main: Peter Lang: 2009), 4–11; Canella, *Il "peso della toleranza,"* 62.

[14] Van Nuffelen, *Penser la tolérance,* 93–94; Polymnia Athanassiadi, *Vers la pensée unique*: *la montée de l'intolérance dans la'Antiquité tardive* (Paris: Les Belles Lettres, 2010), 76.

[15] The emperor did not express his preferences in an obvious manner by proclaiming Christianity a *religio licita* but rather by granting privileges to that which he deemed to be καθολικὴ ἐκκλησία within Christianity itself (Eusebius of Caesarea, *HE* 10, 7, 1–2). Valerio M. Minale, *Legislazione imperiale e manicheismo da Diocleziano a Costantino. Genesi di un'eresia* (Napoli: Jovene, 2013), 132–133; Barnes, "From Toleration to Repression: The Evolution of Constantine's Religious Policies," *Scripta Classica Israelitica* 21 (2002): 189; Girardet, *Der Kaiser und sein Gott. Das Christentum im Denken und in der Religionspolitik Konstantins des Grossen*, Millennium Studies, 27 (Berlin/New York: De Gruyter, 2010), 124–128; Harold A. Drake, "The Impact of Constantine on Christianity," in *The Cambridge Companion to the Age of Constantine,* ed. Noel Lenski (Cambridge: Cambridge University Press, 2006), 111–136.

[16] Minale, *Legislazione imperiale*, 195-199 and 224–228.

[17] See the edict sent as a letter on the decisions adopted in the Council of Nicaea on the celebration of Christian Easter in Eusebius of Caesarea, *VC* 3, 17, 1–8. 2–4. Heinrich Kraft, *Kaiser Konstantins religiöse Entwicklung*, Beiträge zur historischen Theologie, 20 (Tübingen: Mohr Siebeck, 1955), 223–225. Michael J. Hollerich, *Eusebius of Caesarea's Commentary on Isaiah. Christian Exegesis in the Age of Constantine* (Oxford and New York: Clarendon Press, 1999), 35–36; Raúl González Salinero, "Entre la permisividad y el desprecio: los judíos en la legislación de Constantino," in, *Constantino*, ed. Vilella Masana, 402, n.1, points out that Eusebius may have "moulded the theological contents" of this document. On the anti-Jewish polemics of Eusebius of Caesarea, Jörg Ulrich, *Euseb von Caesarea und die Juden. Studien zur Rolle der Juden in der Theologie des Eusebius von Caesarea*, Patristische Texte und Studien, 49 (Berlin and NewYork: De Gruyter, 1999), 133–238.

[18] Barnes, "Constantine's Prohibition of Pagan Sacrifice," *The American Journal of Philology* 105 (1984): 69–72; Scott Bradbury, "Constantine and the Problem of Anti–Pagan Legislation in the Fourth Century," *Classical Philology* 89 (1994): 120–139; R. Malcolm Errington, "Constantine and the Pagans," *Greek, Roman and Byzantine Studies* 29 (1998): 309–318; Jorge Tomás García, "Testimonios de violencia y destrucción de imágenes en época de Lactancio," *Romanitas. Revista de estudios grecolatinos* 8 (2016): 152.

[19] Constantine's earliest interventions in the struggle between Arius and Alexander of Alexandria took on a conciliatory appearance, Eusebius of Caesarea, *VC* 2, 64–72; Socrates Scholasticus, *HE* 1, 15.

persuasion rather than coercion, as a display of the will to establish general concord within the State.[20] Nevertheless, it seems that the main force that guided the Augustus was the will to pacify the many quarrels and religious tensions that undermined social peace in the Empire.[21] Despite Constantine's efforts, religious tensions would erupt in a particularly virulent fashion shortly after the promulgation of the edict of tolerance. The Donatists[22] and other groups perceived as heretics or residual minorities[23] that came into the spotlight after the victory against Maxentius[24] were a whole separate issue. Whereas North Africa became the backdrop for bitter struggles over the doubts that arose over those who had apostatized during the persecutions and the validity of the sacraments they administered,[25] in Alexandria, a young presbyter from Baucalis

[20] Barnes, *Constantine. Dynasty, Religion and Power in the Later Roman Empire* (Chichester: Wiley-Blackwell, 2011), 107–143; Francesco Corsaro, "La pace religiosa nella 'Realpolitik' costantiniana," *Quaderni catanesi di studi classici e medievali* 10 (1988): 221–237.

[21] Constantine explicitly stated his concern and unease over religious disparities, Eusebius of Cesarea, *VC* 2, 64–65; 71, 4–5 (addressing Arius' followers).

[22] Yvette Duval, *Chrétienes d'Afrique à l'aube de la paix constantinienne. Les premiers* échos *de la grande persécution* (Paris: Institut d'Études Augustiniennes, 2000); Perrin, "Le dossier du donatisme dans l'Histoire ecclésiastique d'Eusèbe de Césarée," *Annuaire de l'École pratique des Hautes* Études *Section des Sciences Religeuses* 117 (2011): 225–230; *Idem*, "Eusèbe de Césarée, Constantin et le "dossier du donatisme" in, *Constantino*, ed. Vilella Masana, 183–192; David C. Alexander, "Rethinking Constantine's Interaction with the North African 'Donatist' Schism" in Edward.L. Smither (ed.), *Rethinking Constantine, History, Theology, and Legacy*, (Pickwick Publications: Eugene, 2014), 80–84; Lenski, "Constantine and the Donatists. Exploring the Limits of Religious Toleration" in *Religiöse Toleranz. 1700 Jahre nach dem Edikt von Mailand.* Colloquia Raurica 14, ed. Martin Wallraff, (Berlin: De Gruyter, 2015), 101–139; Paola Marone, "Some observations on the Anti–Donatist Legislation," in *The Uniquely African Controversy. Studies on Donatist Christianity*, eds. Anthony Dupont, Matthew A. Gaumer, Mathijs Lamberigts, (Leuven: Peeters, 2015), 72–73; Jesse A. Hoover, *The Donatist Church in an Apocalyptic Age* (Oxford: Oxford University Press, 2018), 88–89.

[23] Jean Gaudemet, "La politique religeuse imperial au IVe siècle (envers les païens, les juifs, les hérétiques, les donatistes)," in *La legislazione imperiale e religiosa nel IV secolo,* eds. Jean Gaudemet, Paolo Siniscalco, Gian Luigi Falchi, (Roma: Istituto Patristico Augustinianum, 2000), 7–11; Karl L. Noethlichs, "Éthique chrétienne dans la législation de Constantin le Grand?," in *Le Code Theodosien. Diversité des approches et nouvelles perspectives*, ed. Sylvie Crogiez–Pétréquin, Pierre Jaillette, (Roma: École française de Rome, 2009), p. 225–237; María V. Escribano "El edicto de Constantino contra los heréticos. La desviación religiosa como categoría legal," in *Constantino*, ed. J. Vilella Masana, 377–379.

[24] *Codex Theodosianus,* 16, 8, 1 (18 october 315) outlines which groups are susceptible to be branded as heretics (*si quis uero ex populo ad eorum nefariam sectam accesserit et conciliabulis eorum se adplicareuit, cum ipsis poenas meritas sustinebit. Dat. xv kal. Nou. Murgillo Constantino A. iiii et Licinio iiii conss.*).

[25] On the Donatist schism in this context, see Maureen A Tilley, *The Bible in Christian North Africa. The Donatist World* (Minneapolis: Fortress Press, 1997), 41–51; Drake, *Constantine and the Bishops. The Politics of Intolerance* (Baltimore: Johns Hopkins University Press, 2000), 212–221; Michael Gaddis, *There is no Crime for Those who Have Christ: Religious Violence in the Christian Roman Empire*, (Berkeley: University of California Press, 2005), 103–130; Mireille Labrousse, "Le Constantine d'Optat de Milève: l'empereur serviteur de Dieu (IV siècle)," in *Antiquité tardive et humanism. De Tertullien a Beatus Rhenanus. Mélanges offerts a François Heim à l'occasion de son 70e anniversaire*, eds. Yves Lehmann, Gérard Freyburger, James Hirstein, (Turnhout: Brepols, 2005), 237–256; Leslie Dossey, *Peasant and Empire in Christian North Africa* (Berkeley: University of California Press,

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called Arius was about to open one of the longest and most painful fractures ever suffered by the Church.[26] The beginning of the Donatist schism and Arius' activities and his subsequent influence on Christianity as a whole can explain the roots of the shift in Constantine's religious policies, and how the failure of the tolerance he had considered for his empire would give way to search for and imposition of a doctrinal consensus to ensure religious peace, exerting as much coercion as would be necessary to achieve this goal.[27]

The emperor's arbitration

Following his recently-inaugurated policy of religious tolerance, Constantine took on the Donatist crisis in Africa with the peaceable intent inspired by the recently-promoted Edict of Galerius of 311. The results, however, were disastrous due to the belief that a sum of money and the devolution of property would be enough to put a close to the disputes that had arisen from Caecilianus' election to the See of Carthage.[28] The disagreement between African bishops went back to the election of

2010), 173–194; Brent D. Shaw, *Sacred Violence: African Christians in the Age of Augustine* (Cambridge: Cambridge University Press, 2011), 62–74.

[26] Hans-Georg Opitz, "Die Zeitfolge des arianischen Streites von den Anfängen bis zum Jahr 328," *Zeitschrift für die Neutestamentliche Wissenschaft* 33 (1934): 131–159; William R. Telfer, "When Did the Arian Controversy Begin?," *Journal of Theological Studies* 47 (1946): 132–133; T. Evan Pollard, "The Origins of Arianism," *Journal of Theological Studies* 9 (1958): 103–111; Manlio Simonetti, *La crisi ariana nel IV* secolo (Roma: Istituto Patristico Augustinianum, 1975), 26–35; Richard P.C. Hanson, *The Search for the Christian Doctrine of God. The Arian Controversy 318–381* (Edinburgh: T&T Clark, 2005[2]), 3–17; Uta Loose, "Zur Chronologie des arianischen Streites," *Zeitschrift für Kirchengeschichte* 101, (1990): 88–92; Rowan Williams, *Arius. Heresy and Tradition* (Grand Rapids: Eerdmans, 2001[2]), 48–66; Rebecca Lyman, "A Topography of Heresy: Mapping the Rhetorical Creation of Arianism," in *Arianism after Arius: Essays on the Development of the Fourth Century Trinitarian Conflicts,* eds. Michel R. Barnes, Daniel H. Williams, (Edinburgh: T&T Clark, 1993), 45–62.

[27] On the *uituperio* and *crematio* of heretical works as an act of purification and repentance, as well as the coercive use of synods and the law, see Clementina Mazzuco, "Gli apostoli del diavolo: gli eretici nella Storia ecclesiastica di Eusebio di Cesarea," *Augustinianum* 25 (1985): 749–781; Ferdinando Zucotti, Furor haereticorum. *Studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione nel Tardo impero romano* (Milano: Giuffrè, 1992), 233–283; Caroline Humfress, "Roman Law, Forensic Argument and the Formation of Christian Orthodoxy (III–VI Centuries)," in *Orthodoxie, christianisme, histoire,* eds. Susana Elm, Éric Rebillard, Antonella Romano, (Roma: École Française de Rome, 2000), 129–131; Daniel Sarefield, "Bookburning in the Christian Roman Empire: Transforming a Pagan Rite of Purification" in *Violence in Late Antiquity. Perceptions and Practices*, ed. Harold. A. Drake, (Aldershot: Ashgate Publishing, 2006), 287–296.

[28] Constantine wrote to Caecilianus, notifying him that the *rationalis* Ursus would deliver him 3000 *folles* to distribute among his ministers (Eusebius of Caesarea, *HE* 10, 6, 1–5) and sent two missives to Anullinus, urging him to return the properties that had been confiscated during the persecutions (Eusebius of Caesarea, *HE* 10, 5, 15–17) and to exempt the clergy under Caecilianus from participating in public liturgy (Eusebius of Caesarea, *HE* 10, 7, 1–2). Anullinus' response, accounting for the application of imperial will in these matters, can be found in Augustine of Hippo, *Ep*. 88, 2.

Caecilianus in the Council of Carthage (311–312),[29] in the absence of the Numidian bishops, who were traditionally in charge of electing the bishop of Carthage, and to the election of *lector* Majorinus by said Numidian bishops in a subsequent council, which invalidated the elections carried out in Carthage. These events led Caecilianus to write a letter to Rome, reporting to Maxentius that this schism within the African church was preventing Constantine's orders from being carried out and was having a grievous effect on maintenance of public order. However, Maxentius was defeated before he had the chance to answer the letter, and Constantine sent a reply that was given directly to Anullinus a day after the battle of the Milvian Bridge,[30] in which he issued a ruling on the aforementioned distribution of money between the clergy that supported Caecilianus and the devolution of confiscated goods. Added to this, he also notified the bishop of Rome himself, Miltiades, of his intention to summon Caecilianus and ten bishops who deemed his appointment invalid along with ten of his supporters so that they may be given a legal hearing in his presence.[31] Thus, it was ultimately Miltiades, assisted by three Gallic bishops and with the emperor acting as the guarantor of the law, who ruled on who should remain in the See of Carthage and who should abandon it.

The bishop of Rome, however, added an essential nuance Constantine had not considered in his original idea of how to manage the proceedings: Miltiades acted according to his own judgment, in the presence of fifteen Italian bishops, and formulating the matter following the rules of a civil lawsuit,[32] turning what Constantine had initially conceived as a *iudicium episcopale* into a synod.[33] The

[29] See Jean Louis Maier, *Le dossier du donatisme: Des origines à la mort de Constance (306–361)*, Texte und Untersuchungen Geschichte der altchristlichen Literatur 134, vol. 1 (Berlin: De Gruyter 1987), 129–133; Drake, *Constantine and the Bishops*, 212–221; Lenski, "Constantine and the Donatists," 105; Dragos Boicu, "The Consolidation of Donatism in the First Half of the Fourth Century," *Studia Universitatis, Theologia Orthodoxa* 64, (2019): 84–85.

[30] Eusebius of Caesarea, *HE* 10, 6, 4.

[31] Eusebius of Caesarea, *HE* 10, 5, 19: ὡς ἂν καταμάθοιτε τῷ σεβασμιωτάτῳ νόμῳ ἁρμόττειν. Drake, *Constantine and the Bishops*, p. 218–219; Erica Carotenuto, "Six Constantinian Documents (Eus. H.E. 10,5–7," *Vigiliae Christianae*, 56 (2002): 56–74; James Corke-Webster, "Emperors, Bishops, Art and Jusrisprudence: The Transformation of Law in Eusebius of Caesarea," *Early Medieval Europe* 27, 1, (2019): 20–21.

[32] Drake, "The Impact of Constantine on Christianity," 118; Lenski, "Imperial Legislation and the Donatist Controversy: from Constantine to Honorius," in *The Donatist Schism. Controversy and Contexts*, ed. Richard Miles, (Liverpool: Liverpool University Press, 2016), 171–172.

[33] Salvatore Calderone, Costantino e il cattolicesimo, (Firenze: Le Monnier, 1962), 233; Girardet, *Kaisergericht und Bischofsgericht. Studien zu den Anfängen des Donatistenstreites (313–315) und zum Prozeß des Athanasius von Alexandrien (328–346)*, Antiquitas 1, 21 (Bonn: R. Habelt, 1975), 27–34; deems the Synod of Rome to be a *Reichskonzil* like the subsequent one in Arles; John C. Lamoreaux, "Episcopal Courts in Late Antiquity," *Journal of Early Christian Studies* 3 (1995): 143–167; Claudia Rapp, *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition* (Berkeley: University of California Press, 2005), 242–252; Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity*, (Oxford: Oxford University Press, 2007), 153–173; *Eadem*, "Bishops and

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opposing side was not pleased with the ruling in favour of Caecilianus, and it was not long before they wrote a petition to Constantine, asking him carry out an investigation in Africa on the innocence of Felix of Abthugni, who had consecrated the controversial bishop of Carthage,[34] which ultimately led to the calling of a new council to issue a definitive ruling. This council was convened in Arles (314) and the emperor conceived it as an earthly instrument of divine will, expressed through the verdict of the priesthood (*sacerdocium iudicium*).[35] This suggests that Miltiades and, most likely, Hosius of Corduba and the trusted Gallic bishops present in the council of Rome had convinced the Augustus that only a synod of priests, rather than a mere arbitration, could put an end to such a dispute. Indeed, the Augustus was endowed with sufficient authority to force the bishop of Rome to carry out simple arbitration proceedings, and if not for this reason he would have not felt the need to summon a new synod in Arles a year later, pressed by the need to involve a greater number of bishops.[36]

The management of the Donatist schism, which displays two ways of approaching the conflict (the emperor's and that of the bishop of Rome) is a foreshadowing of the problems Constantine would encounter when it came to implementing his original religious policy. Indeed, his will to establish a consensus-based religious peace would clash with the complexity of the relations and interests of the many religious groups, especially those doctrinal opinions which, as was the case in Christianity, struggled to impose their vision to the exclusion of the perceived falsehoods of rival groups. In this regard, the Arian crisis would prove to be the greatest challenge to the emperor's policy, and its consequences would resound throughout the fourth century. From the beginning of the activity of Arius of Baucalis around 317-318 to his deposition by Alexander of Alexandria and the calling of the Council of Nicaea in 325 to establish the doctrine of the Church and attempt to solve the conflict, Constantine's role within the Church became more and more defined as he took on new competencies.[37] Nevertheless, it could be argued

Law Courts in Late Antiquity: How to (Not) Make Sense of the Legal Evidence," *Journal of Early Christian Studies* 19 (2011): 375–400; Jill Harries, *Imperial Rome AD 284–363. The New Empire* (Edinburgh: Edinburgh University Press, 2012), 161–162; Lenski, *Constantine and the Cities: Imperial Authority and Civil Politics* (Philadelphia: University of Pennsylvania Press, 2016), 197–200.

[34] Optatus of Milevi, *Parm.* 1, 25–28.

[35] Karl Ziwsa, *S. Optati Mileuitani libri VII*, *CSEL* 26 (Wien, 1893), p. 209 (app. V, Epist. *Constantini ad episcopos catholicos*, 32b): *Dico enim, ut se ueritas habet, sacerdotum iudicium ita debet haberi, ac si ipse dominus residens iudicet.*

[36] Eusebius of Cesarea, *HE* 10, 5, 22–23.

[37] Eusebius of Caesarea, *VC* 4, 24. Daniel De Decker and Ginette Depuis-Masay, "L'épiscopat de l'empereur Constantin," *Byzantion* 50 (1980) : 118-157; Girardet, "Das chrtistliche Priestertum Konstantins des Grossen. Ein Aspekt der Herrscheridee des Eusebius von Caesarea," *Chiron* 10 (1980): 569-592; Rapp, "Imperial Ideology in the Making: Eusebius of Cesarea on Constantine as Bishop," *Journal of Theological Studies* 49 (1998): 685-695; Giuseppe Zecchini, "Costantino episcopus

that, by assuming leadership of the religion of the empire, Constantine was simply exerting the emperor's traditional prerogatives as *pontifex maximus*. The emperor's increasing encroachment upon Church matters to the point of eclipsing the bishop of Rome himself,[38] added to the tension caused by the rehabilitation of Arius in 327 and the appointment of Athanasius at the head of the diocese of Alexandria a year later, would lead to a major shift in the emperor's policy and a radical change in his modus operandi.

The failure of tolerance: the search for consensus

This shift in the direction of the emperor's religious policy, from his originally peaceable focus on tolerance to the quest for a single option (that which, moreover, was favourable to the exercise of power with the least amount of obstructions from Church authorities) took shape in the imposition of a consensus in favour of the non-Nicene faction during the last years of his reign. This shift, which was imbued with what Polymnia Athanassiadi accurately termed "monodoxy,"[39] signalled the *de facto* of the brief period of tolerance and the beginning of another that was characterised by coercion applied to all who opposed the emperor's religious policy. Thus, with regard to Christianity, there was a struggle between various Christian doctrines in which political power would intervene, supporting the one it intended to use to impose this religious consensus, purging any other options that differed from the favoured one, regardless of their orthodoxy. This process is more complex than what traditional theses on intolerance and the undermining of religious freedom as a characteristic manifestation and general trend of the fourth century would have us believe. Indeed, although such theses portray coercion (and, therefore, violence) as the natural result of monotheistic intolerance towards other forms of worship,[40] the same phenomenon

paganorum? in *Costantino prima e dopo Costantino*, eds. Giorgio Bonamente, Lenski and Rita Lizzi, (Bari: Edipuglia, 2012), 145-152.

[38] Sylvester did not preside the council and did not even participate in it. This remarkable absence may be due, as Canella point out in *Il "pesso della toleranza,"* 80–81, to Sylvester's refusal to participate in Constantine's initiatives, to differences in opinion between the bishop and the emperor, or to the former's old age (Eusebius of Caesarea, *VC* 3, 7, 2).

[39] Athanassiadi, *Vers la pensée unique,* 22.

[40] This classic tendency would affect all views of this phenomenon in Antiquity, and it is the heir of a conceptual model that arose during the Enlightenment that remains present to this day, see the influential work by Jan Assmann, *Die Mosaische Unterscheidung oder der Preis des Monotheismus* (München: Carl Hanser Verlag, 2003), 12, despite having been rebutted and severely criticized; Van Nuffelen, *Penser la tolérance*, 23; Garnsey, "Religious Toleration," 1–27; Drake, "Lambs into Lions: Explaining Early Christian Intolerance," *Past and Present* 153 (1996), p. 4–5; *Idem*, "Monotheism and Violence," *Journal of Late Antiquity* 6 (2013): 251–263; Joachim Losehand, "The Religious Harmony in the Ancient World: vom Mythos religiöser Toleranz in der Antike," *Göttinger Forum für Altertumswiessenschaft* 12 (2009): 111–112; Christoph Markschies, "The Price of Monotheism: Some New Observations on a Current Debate about Late Antiquity," in *One God. Pagan Monotheism in the*

took place between naturally monotheistic options, as was the case in the conflict between Nicene Christianity and so-called "Arianism." Therefore, just as polytheism is not inherently more tolerant than monotheism,[41] the Christian doctrinal option favoured by Constantine during the last years of his reign in order to remain faithful to the premises of his tolerance-based religious policy gave rise to a repression of the opposing doctrine which, by defending the independence of the Church from imperial power, undermined the emperor's designs to oversee the Church and to ensure civil peace through spiritual concord. Throughout this paper I will attempt to provide an answer to the various questions that arise from this paradox, which I conceptualise, as many other specialists on the period in question do, in the light of the victory of the eristic faction over the irenic faction within Christianity, and the subsequent influence said faction exerted on the governing of the Church and spiritual matters.[42]

As I pointed out earlier, the attitude and measures adopted by the emperor in the context of the Arian question would develop very differently from his management of other religious matters. In 324, when the emperor had managed to rid himself of his rival Licinius and had become the sole ruler of the empire, far from exerting coercion in favour of Christians, he chose to reinforce the tolerance-based political programme that had inspired his actions in 313,[43] promoting mercy and peaceful coexistence among its supporters in order to achieve the effective cohesion of his domains. Thus, even though he lambasted both paganism and Judaism alike[44]

Roman Empire, eds. Peter Van Nuffelen and Stephen Mitchell, (Cambridge: Cambridge University Press, 2010), 100; René Bloch, "Polytheismus und Monotheismus in der paganen Antike: Zu Jan Assmanns Monotheismus-Kritik," in *Fremdbilder-Selbstbilder. Imaginationem des Judentums von der Antike bis in die Neuzeit*, eds. René Bloch et al., (Basel: Verlag Schwabe: 2010), 5–24; Jan Bremmer, "Religious Violence and Its Roots. A View from Antiquity," *ASDIWAL, Révue genevoise d'anthropologie et d'histoire des religions* 6 (2011): 73.

[41] Bremmer, "Religious Violence," 77.

[42] Van Nuffelen, *Penser la tolérance,* 24; Drake, "Lambs into Lions," 3–36; Khalos, *Forbearance and Compusion*, 25; Mar Marcos, "Persecution, Apology, and the Reflection of Religious Freedom and Religious Coercion in Early Christianity," *Zeitschrift für Religionswissenschaft* 20 (2012): 35–69.

[43] The dispositions sent by Constantine to several points in the eastern provinces after his triumph over Licinius (Eusebius of Caesarea, *VC* 2, 48–60) outline his political programme with regard to religion, upholding tolerance towards the various religions in the Empire and reaffirming their legitimacy and the right to worship freely. Raffaele Farina, *L'Impero e l'imperatore cristiano in Eusebio di Cesarea. La prima teología política del cristianesimo* (Zürich: Pas Verlag, 1966), 312–319; Barnes, *Constantine and Eusebius*, 208–211; *Idem*, *Constantine. Dynasty, Religion and Power*, 16; Charles Pietri, "Constantin en 324. Propagande et théologie imperiales d'après les documents de la Vita Constantini," *Crise et redressement dans les provinces européennes de l'Empire (milieu du IIIe–milieu du IVe siècle ap. J.C.). Actes du colloque de Strasbourg (décembre 1981)*, (Strasbourg: Université de Strasbourg, 1983), 63–90; Giorgio Bonamente, "Costantino e l'editto ai 'provinciali d'Oriente'" in *Constantino*, ed. J. Vilella Masana, 274–275.

[44] Which he deemed to be a *secta nefaria* and *secta feralis*, *Codex Theodosianus* 16, 8, 1 (18 October 329). James Parkes, "Jews and Christians in Constantinian Empire," in *Papers Read at the First Winter*

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and openly manifested his clear preference and support for Christianity, Constantine ceaselessly demanded that his Christian subjects abstain from any violent actions against their adversaries.[45] Constantine stressed this point on several occasions,[46] being certain that civic peace was based on religious concord[47] and on arbitration between the parties in conflict. Thus, Constantine embraced Lactantius' notion of *libertas* applied to religion, and this trait would be indissolubly associated to Constantine's praxis beyond the issue of the Edict of Milan, as can be seen in the calls to respect religious freedom in documents as relevant as the letter addressed to the eastern provincials after the defeat of Licinius.[48] However, the sheer size of the Arian controversy, on the one hand, and Constantine's sole rule over the empire as a whole from 324 onwards would end up giving the emperor a far more important role in the management of spiritual affairs, opening a second phase in his religious policy.

Constantine's tolerance had a strong impact on the conception of power and of relations between the Church and the State. The emergence of a pro-Christian emperor after a period of persecution gave rise to a new scenario and opened new questions on the nature of power and the emperor's position within the Church. Late in Constantine's reign, Eusebius of Caesarea promoted the image of the empire and the emperor as the εἰκών and μίμησις of the Kingdom of the Father and of the *Logos*, respectively.[49] Through this, he justified the emperor's presence and activity in the Church by portraying him as the vicar of God in the light of his contribution to the universalisation of the empire of God through the earthly empire and the ability to lead men to salvation that emerged from this. This narrative proposed a direct and unmediated relationship between God and the sovereign who, as a vicar, was the legitimate representative of God and therefore at the apex of the ecclesiastical hierarchy, being entitled to carry out his teaching, ministry and government over the rest of the Church. In the Eusebian imaginary, the emperor is endowed with Episcopal characteristics to the point of being deemed to be ἐπίσκοπος τῶν ἐκτῶν,[50] endowed

and Summer Meetings of the Ecclesiastical History Society, eds. Charles W. Dugmore and Charles Duggan, (London: Nelson, 1964): 77; Amnon Linder, *The Jews in the Roman Imperial Legislation* (Detroit/Jerusalem: Wayne State University Press, 1987), 60; Noethlichs, *Die Juden im christlichen Imperium Romanum (4.–6. Jahrhundert)*. Studienbücher Geschichte und Kultur der Alten Welt (Berlin: Akademie Verlag, 2001), 104–106.

[45] Eusebius of Caesarea, *VC* 2,60, 1–2. Pietri, "Constantin en 324," 65; Kahlos, *Forbearance and Complulsion*, 60.

[46] Lactantius, *De mort.* 48, 6, *Quod a nobis factum est, ut neque cuiquam honori neque cuiquam religioni a nobis detractum aliquid a nobis uideatur*.

[47] Pietri, "Constantin en 324," 80–82. Indeed, Constantine conceived the great persecution as a sort of civil war, and he did not wish for such a situation during his rule, Eusebius of Caesarea, *VC* 2, 27, 1.49, 2.49, 53–54; *Laus Cons.* 7, 6–7.

[48] Eusebius of Caesarea, *VC* 2, 56, 2. 60, 1.

[49] Eusebius of Caesarea, *Laus Cons.* 3, 5–6.7, 12.

[50] Eusebius of Caesarea, *VC* 4, 24. See 1, 44, 1–2: ἐξαίρετον δὲ τῇ ἐκκλησίᾳ τοῦ θεοῦ τὴν παρ' αὐτοῦ

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with a rank and importance that rivalled those of bishops in the management and mediation between the earthly and celestial realms.[51] This is not only apparent in the leadership he took on in Nicaea, but also in the initiatives he undertook early on to solve the Arian controversy.[52] Precisely, in Nicaea (as had happened in the Council of Arles of 314), it is worth noting that Sylvester of Rome was absent, having sent envoys who kept a low profile.[53] In spite of his long pontificate (314–335), there are hardly any traces of the activity of this bishop of Rome, who was overshadowed by prelates such as Hosius of Corduba or Eusebius of Caesarea, who seemed to have been worthier of the emperor's trust.[54] This remarkable estrangement between the pope and the emperor may have stemmed from disagreements on the management of Church matters. It is indeed possible that Sylvester followed the line established

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νέμων φροντίδα, διαφερομένων τινῶν πρὸς ἀλλήλους κατὰ διαφόρους χώρας, οἷά τις κοινὸς ἐπίσκοπος ἐκ θεοῦ καθεσταμένος συνόδους τῶν τοῦ θεοῦ λειτουργῶν συνεκρότει. ἐν μέσῃ δὲ τῇ τούτων διατριβῇ οὐκ ἀπαξιῶν παρεῖναί τε καὶ συνιζάνειν κοινωνὸς τῶν ἐπισκοπουμένων ἐγίνετο, τὰ τῆς εἰρήνης τοῦ θεοῦ βραβεύων τοῖς πᾶσι, καθῆστό τε καὶ μέσος ὡσεὶ καὶ τῶν πολλῶν εἷς ("However, he paid special attention to the Church of God, and whenever disagreements emerged between different regions, he organized synods of ministers of God, as if he had been appointed something akin to a communal bishop by the will of God. As he was not above participating and taking a seat in the session, he actively participated in the questions subject to examination, teaching all with discernment on matters concerning God's peace; and he sat among them like any other [bishop]"). Moreover, the emperor, as *pontifex maximus* and, therefore, ultimate judge and mediator in all religious disputes to ensure *pax deorum*, was legitimized to supervise questions related to worship and the priesthood (Ulpianus, *Digest*. I, 1, 1, 2), see Girardet, *Die Konstantinische Wende. Voraussetzungen und geistige Grundlagen der Religionspolitik Konstantins des Grossen* (Darmstadt: Wissenschaftliche Bushgesellsschaft, 2006), 86–92; Fred Ledegang, "Eusebius' View on Constantine and His Policy," in *Violence in Ancient Christianity: Victims and Perpetrators*, Supplements to *Vigiliae Christianae* 125, eds. Albert C. Geljon and Riemer Roukema, (Leiden/Boston: Brill, 2014), 64–65.

[51] George H. Williams, "Christology and Church-State Relations in the Fourth Century," *Church History* 29 (1952): 18; Daniel Stringer, "Political Theology in Eusebius Pamphilii, Bishop of Caesarea," *Patristic and Byzantine Review*, 1 (1982): 142; Aloys Grillmeier, *Christ in the Christian Tradition*, vol. 1 (Atlanta: John Knox Press, 1986), 253–254; Hollerich, "Religion and Politics in the Writings of Eusebius: Reassessing the First 'Court Theologian'," *Church History* 59/3 (1990): 309–325; Rapp, "Imperial Ideology," 685– 695; Devin Singh, "Eusebius as Political Theologian: The Legend Continues," *Harvard Theological Review* 108, 1 (2015): 139–152.

[52] Constantine used Hosius of Corduba as a mediator and bearer of his correspondence with Arius and Alexander of Alexandria, Socrates Scholasticus, *HE* 1, 7, 1; Hermias Sozomenos, *HE* 1, 16, 1–5; Cassiodorus, *Hist. tripart.* 1, 20, 2–3; Gelasius of Cizicus, *HE* 2, 3, 22.

[53] Theodoret of Cyrrhus, *HE* 1, 7, 3.

[54] See Theodor Klauser, *Der Ursprung der bischöflichen Insignien und Ehrenrechte* (Krefeld: Scherpe Verlag, 1952[2]); Evangelos Chrysos, "Die angebliche "nobilitierung" des Klerus durch Kaiser Konstantin den Grossen," *Historia* 18 (1969): 119–128; Ernst Jerg, Vir venerabilis: *Untersuchungen zur Titulatur der Bischöfe in den ausserkirchlichen. Texten der Spätantike ald Beitrag zur Deutung ihrer* öffentlichen *Stellung* (Wien: Herder, 1970); Clémence Dupont, "Les privileges des clercs sous Constantin," *Revue d'Histoire Ecclésiastique* 62 (1972): 742–748; Angelo Di Berardino, "L'immagine del vescovo attraverso I suoi titoli nel Codice Teodosiano" in *L'évêque dans la cité du IV au V siècle: image et autorité*, eds. Éric Rébillard and Claire Sotinel (Roma: École française de Rome, 1998), 35–48; Rapp, *Holy Bishops*, 236–238.

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by Miltiades in the Council of Rome, thus interfering with Constantine's policy of tolerance, and that he was therefore sidelined to a secondary role.[55]

Far from reaching the desired consensus in Nicaea, the formulation of the consubstantiality of the Son to the Father sowed discontent among vast swathes of the episcopate. Those who did not subscribe to the Nicaean formula were sent into exile, and discontent festered among many who did, giving rise to a well-structured faction that defended a similarity of substance between the two persons of the Trinity in question. The rehabilitation of Arius (and, with it, that of Eusebius of Nicomedia and Theognis of Nicaea) took place one year before the ordination of Athanasius as bishop of Alexandria, further fuelling tensions between the emperor and the Church to the point of leading to a paradigm shift in the latter part of Constantine's reign owing to the radicalization of the Arian-Nicene conflict.[56] Indeed, nowhere was the shift from tolerance to the sometimes-violent imposition of a religious consensus became more apparent than in the struggle between the emperor and Athanasius of Alexandria from the moment of his ordination in 328.

The question of Athanasius of Alexandria

The clash with the young bishop of Alexandria would take place almost immediately, as it was not long before he became the object of the anger of the non-Nicene factions in Egypt and was accused of exerting violence against the followers of Melitius of Lycopolis, who refused his ascension which had been imposed, in a way, by his master and predecessor Alexander.[57] Athanasius was soon accused of

[55] Canella, *Il peso della tolleranza*, 81; Vincenzo Aiello, "Costantino e i vescovi di Roma," in *Costantino I*, ed. A. Melloni, 210.

[56] Farina, "Eusebio di Cesarea e la svolta costantiniana," *Augustinianum* 26 (1986): 315; *Idem*, "Costantino il Grande, primo imperatore cristiano. L'imperatore e il vescovo bibliotecario di Cesarea," in *Constantino*, ed. Vilella Masana, 32; Michele Giagnorio, "Ideological Premises and Legal Strategies in the Turning Point in Constantine's Attitude towards Christian Communities" in *Beyond Intolerance. The Milan Meeting in AD 313 and the Evolution of Imperial Religious Policy from the Age of the Tetrarchs to Julian the Apostate*, eds.Davide Dainese and Viola Gheller, (Turnhout: Brepols, 2018), 129–150. This problem intensified from the Council of Caesarea of 334 onwards, Barnes, *Constantine and Eusebius*, 233–235; *Idem*, *Athanasius and Constantius. Theology and Politics in the Constantinian Empire* (Cambridge, Mass.: Harvard University Press, 2011), 285–288; Duane W.H. Arnold, *The Early Episcopal Career of Athanasius of Alexandria* (Notre Dame: Notre Dame University Press, 1991), 126–142.

[57] Epiphanius of Salamis, *Adu.haer*. 68, 7; Philostorgius, *HE* 2, 11; Hermias Sozomenos, *HE* 2, 17. Gregory of Nazianzus, in *Or.* 21, 8 states that Athanasius' election was entirely legal, as there was unanimity between a sufficient number of electors who were present (ψήφῳ τοῦ λαοῦ παντός). Henric Nordberg, *Athanasius and the Emperor* (Helsinki: Societas Scientiarum Fennica, 1963), 17; Annick Martin, "Athanase et les mélitiens (325–335)," in *Politique et thélogie chez Athanase d'Alexandrie,* ed. Charles Kannengiesser, (Paris: Beauchesne, 1974), 40–41; M. Simonetti, *La crisi*, 110–115. On the relationship between Arians and Melitians, Rowan Williams, "Arius and the Melitian Schism," *Journal*

exerting violence against his opponents,[58] which led to the emperor sending him a letter urging him to follow his orders on religious matters and threatening him with deposition if he refused to admit to communion all those who wished to belong to the Alexandrian church.[59] Melitians continued to appeal to the emperor in their struggle against Athanasius, whom they accused, in a second audience with Constantine, of corruption and assault against a Melitian presbyter from Mareotis that resulted in a chalice being broken. This incident led Athanasius to be summoned before the emperor himself in Nicomedia in the year 331, where he was asked to defend himself from the many charges levelled against him,[60] including not only the matter of the chalice of Ischyras of Mareotis, but also the traditional accusations of irregularities in his ordination and of not having reached canonical age at the time of the same.[61] Indeed, even though relations between Athanasius of Alexandria and various Egyptian Christian groups were difficult and complex from the get-go, their antagonism would worsen from 330 onward with the involvement of civil authorities in the arbitration of differences between the followers of Melitius of Lycopolis and the patriarch of Alexandria. The strategy of pressing civil charges against Athanasius proved extremely successful in this context, as it would lead to the summoning of several synods in which ordinary legal proceedings would be carried out, processing problems of an ecclesiastic nature more expediently than what could be expected from proceedings in ecclesiastic jurisdiction.[62]

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of Theological Studies 37 (1986): 35–52; Annick Martin, "Les rélations entre Arius et Mellitios dans la tradition alexandrine: une histoire polémique," *Journal of Theological Studies* 40 (1989): 401–413; *Eadem, Athanase d'Alexandrie et l'Église d'Égypte au IV^e siècle* (Roma: École Française de Rome, 1996), 241–253.

[58] Athanasius refers to these accusations in *Apol.c.ar.* 9 and 11; Hermias Sozomenos, *HE* 2, 22.

[59] Athanasius of Alexandria, *Apol.c.ar.* 59, 6: Ἔχων τοίνυν τῆς ἐμῆς βουλήσεως τὸ γνώρισμα ἅπασι τοῖς βουλομένοις εἰς τὴν ἐκκλησίαν εἰσελθεῖν ἀκώλυτον παράσχου τὴν εἴσοδον. ἐὰν γὰρ γνῶ ὡς κεκώλυκάς τινας αὐτῶν τῆς ἐκκλησίας μεταποιουμένους ἢ ἀπεῖρξας τῆς εἰσόδου, ἀποστελῶ παραχρῆμα τὸν καὶ καθαιρήσοντά σε ἐξ ἐμῆς κελεύσεως καὶ τῶν τόπων μεταστήσοντα ("Therefore, being informed of my will, you are to grant free access to all who wish to enter the Church. Indeed, if I were to hear that you have hindered or excluded any who claim to be admitted into communion with the Church, I will immediately send someone to depose you and remove you from your place on my orders."). Athanasius (*Apol.c.ar.* 60) bluntly answered that communion (κοινωνία) between an anti-Christian heresy and the Church is impossible. Much has been said about whether the group to which the emperor refers in the letter is Melitian or Arian; most specialists believes they were Arians, but it is not impossible that they were opponents from both groups, see Leslie W. Barnard, "Athanasius and the Roman State," *Latomus* 36 (1977): 425; William H. C. Frend, *The Rise of Christianity* (London: Fortress Press, 1984), 525; Arnold, *The Early Episcopal Career*, 65, n. 283.

[60] Athanasius of Alexandria, *Apol.c.ar.* 60; *Idem, Ep.fest.* 4, 5; Socrates Scholasticus, *HE* 1, 27, 7–9: Hermias Sozomenos, *HE* 2, 27, 7–8.

[61] Epiphanius od Salamis, *Adu.haer.* 68, 7; Gregory of Nazianzus, *Or.* 21, 8; Philostorgius, *HE* 2, 2 and, especially, Hermias Sozomenus, *HE* 2, 17, in which he states the existence of a consensus in the succession of Alexander of Alexandria that was broken by seven bishops, who condemned young Athanasius on their own, who would later provide an enlightening account in *Apol.c.ar.* 6.

[62] On the nature of the charges levelled against Athanasius, Girardet, *Kaisergericht und*

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The clash between the patriarch of Alexandria and his opponents in this context would come to a head in 333, when said opponents petitioned the emperor to form a separate church if Athanasius continued to refuse to accept them in communion. Constantine was in favour of maintaining the status quo that had been achieved in Nicomedia two years earlier, ensuring that Athanasius would be able to maintain his precarious hold on the See of Alexandria for the time being. The patriarch's opponents, however, would not be so easily discouraged, and they summoned a synod in Tyre (335) in order to force Athanasius to face a court which, according to his own account, was entirely hostile to him[63] and was intended to draw the man who was seen as the source of all conflict from his sphere of action and authority.

The reasons stated by the emperor in the opening of the synod are imbued with the irenism that was characteristic of his traditional stance on religious affairs and that was intended to achieve a homogenization of the situation of the Church.[64] There can be no doubt that Constantine deemed Athanasius to be the main cause of the deep rift that divided the Alexandrian Church due to his intransigence towards the groups that had formed around other leaders. The Melitians and Eusebians would seize this opportunity to strike a fatal blow against their common enemy, who was ultimately sentenced to exile, not on the grounds of doctrinal disagreements, but rather for having committed violent acts unbefitting of his station for which he was summoned before the synod of Tyre in 335.[65] There is a substantial difference between this situation and that of Nicaea, and it is especially relevant insofar as it would become recurrent in subsequent synods : doctrinal matters would give way to disciplinary issues generally governed by civil authorities, even though bishops were ultimately in charge of issuing their sentence.[66]

Bischofsgericht, 57–60; Vincent Twomey, *Apostolikòs thrónos. The Primacy of Rome as Reflected in the Church History of Eusebius and the Historico–Apologetic Writings of Saint Athanasius the Great* (Münster: Aschendorff, 1982), 348; Arnold, *The Early Episcopal Career*, 106–107 (in Psamatia in 331).

[63] Athanasius denounces the fact that *comes* Dionysus belonged to the Eusebian faction in *Apol.c.ar.* 72.

[64] Constantine, according to Eusebius of Caesarea, *VC* 4, 42, 1, justified his decision based on the need to τοὺς ἀδελφοὺς ἰάσασθαι κινδυνεύοντας, εἰς ὁμόνοιαν ἐπαναγαγεῖν τὰ διεστῶτα τῶν μελῶν, διορθώσασθαι τὰ πλημμελούμενα, ἕως καιρὸς ἐπιτρέπει, ἵνα ταῖς τοσαύταις ἐπαρχίαις τὴν πρέπουσαν ἀποδώσητε συμφωνίαν ἥν, φεῦ τῆς ἀτοπίας, ἐλαχίστων ἀνθρώπων ἀπώλεσεν ὑπεροψία. ("heal your brethren who are in danger, to reunite the separate members in unanimity, to correct errors while there is still time, so that you may restore the concord which has absurdly been destroyed by the arrogance of a few to so many provinces").

[65] Athanasius of Alexandria, *Apol.c.ar.* 71, 2.

[66] According to Eusebius, a declaration of orthodoxy or heresy corresponded to the bishops by imperial decision, Barnes, "Emperor and Bishops, A.D.324–344: Some Problems," *American Journal of Ancient History* 3 (1978): 53–75. Subsequently, the conformation of Episcopal majorities around the prince will be essential for the legal definition of orthodoxy, as Sozomenus would later acknowledge (*HE* 1, 1, 15), Noethlichs, "Revolution from the Top. Orthodoxy and the Persecution

Constantine enhanced and institutionalized the role of bishops in civic affairs by granting them a number of legal privileges which granted them increased social status and responsibilities. Among them, the fact that conciliar decisions were given legal force, preventing provincial governors from terminating them, stands out in particular.[67] Nevertheless, actual practice granted the emperor the last say on all matters of his interest. Thus, as we have seen, the emperor adopted decisions regarding the Donatist schism without taking previous conciliar decisions into account and, in the various conflicts that arose from the Nicene-Arian controversy, Constantine imposed his line over the authority of the council and the Church in a number of episodes. In this regard, it is worth pointing out that in 327, when Arius petitioned the emperor to ask for rehabilitation,[68] Constantine asked Alexander of Alexandria to make peace with him and summoned Eusebius of Nicomedia back from exile.[69] In 331, he acquitted Athanasius, who had been accused of a number of outrages by the Melitians[70] and he did so again in 333, when he exonerated him of the accusation of having murdered a priest. Two years later, the Augustus forced the patriarch of Alexandria to attend a synod called in Tyre, where he was ultimately sentenced and exiled, being compelled to flee to Constantinople, where he sought the emperor's protection in vain.

Nonetheless, even though this measure was restricted by the emperor himself, we cannot overlook its significant spiritual and organisational impact on the Church. Firstly, the powers taken on in the councils, especially those that were sponsored by the emperor himself, further estranged doctrinal and disciplinary decision-making from congregations, thus undermining their autonomy and the individual authority of bishops and seriously disrupting the organisational model adopted by early Christians. Secondly, because these great councils structured and legitimised a supra-provincial, diocesan and imperial framework managed by the main metropolitan

of Heretics in Imperial Legislation from Constantine to Justinian" in *Religion and Law in Classical and Christian Rome* eds. Clifford Ando and Jörg Rüpke, (Stuttgart: Franz Steiner Verlag, 2006): 120. The term "heretic" was not an objective designation, but rather an accusation made against opponents, which allows us to suppose that there were quite a few imperial designs that were validated by rulings issued by trusted bishops and imposed through the sentences of councils gathered to said effect, according to Fergus Millar, in "Repentant Heretics in Fifth–Century Lidia: Identity and Literacy," *Scripta Classica Israelica* 23 (2004): 112, n. 4, who points out: "it perhaps hardly needs to be stated that the characterization, and naming, of groups by others within Christianity as 'heretical' represents a process of construction by others, and, as expressed by contemporaries (and indeed by moderns) can never be taken as constituting simple reports on observable realities." See Averil Cameron, "The Violence of Orthodoxy" in *Heresy and Identity in Late Antiquity*, Text and Studies in Ancient Judaism 119, eds. Eduard Iricinschi and Holger M. Zelletin, (Tübingen: Mohr Siebeck, 2008), 102–114.

[67] Eusebius of Caesarea, *VC* 4, 27, 2.

[68] Socrates Scholasticus, *HE* 1, 26.

[69] Pseudo Gelasius, *HE* 3, 15, 1–5.

[70] Athanasius of Alexandria, *Apol.c.ar*. 60–61.

bishops, thus promoting the creation of an internal hierarchy between Episcopal sees and their holders. This led to an increased control of the Church by the emperor, who used this structure for his own benefit, placing like-minded bishops in the main dioceses and exiling or deposing wayward bishops from others.

Likewise, the *episcopalis audientia*, a privilege that was maintained in Constantinian legislation but restricted by subsequent emperors,[71] became extremely relevant in this context. Sirmondian Constitution 1 allowed any of the parties in a lawsuit to appeal to the bishop at any time during the proceedings, and a ruling issued by said bishop was deemed sacred and unappealable; moreover, it was established that the aforementioned bishop's testimony should be taken by magistrates at faith value without being cross-examined with any other witness accounts.[72] Over time, the privileged bishops became corrupted much like their secular colleagues, and the scope of the *episcopalis audientia* was limited both with regard to unrestricted appeals[73] and the validity of testimony from a single bishop.[74] It is therefore logical that the emperor did not renounce intervening as the supreme arbitrator in any legalistic conflicts that severely disturbed the peace.

The Council of Tyre took on the forms and proceedings of an ordinary court of law in which, according to Klaus M. Girardet, Constantine acted as the *iudex* of the proceedings, speaking through his delegate, the *comes* Dionysius, whilst bishops acted as *consiliarii* in the trial,[75] and this formula, far from being coincidental, is in

[71] *Codex Theodosianus,* 1, 27, 1 (23 June 318), attributed to Licinius by Fergus Millar, in *The Emperor in the Roman World* (*31 B.C.–A.D. 337),* (Ithaca: Cornell University Press, 1977), p. 591, No. 7. *Constitutio Sirmondiana* 1 (rescript 5 May 333). Eusebius of Caesarea, *VC* 4, 27, 2; Hermias Sozomenus, *HE* 1, 9, 5. See Maximilian Pal, *"Episcopalis audientia* nelle fonti del Diritto romano cristiano da Costantino a Teodosio II," *Folia Canonica*, 8 (2005): 208; Adrian J. B. Sirks, "The *episcopalis audientia* in Late Antiquity," *Droit et cultures* 65 (2013): 79; Francisco J. Cuena Boy, *La "episcopalis audientia."* La *justicia Episcopal en las causas civiles* (Valladolid: Universidad de Valladolid, 1985); Maria Rosa Cimma, *L'episcopalis audientia nelle costituzioni imperiali da Costantino a Giustiniano* (Torino: Giappichelli, 1989); Giuliano Crifò, "A proposito di *episcopalis audientia*," in *Institutions, société et vie politique dans l'Empire romain au IV*ème *siècle ap. J.C.*, eds. Michel Christol *et alii*, (Roma: École Française de Rome, 1992), 397–410; Giulio Vismara, *La giurisdizione civile dei vescovi (secoli I–IX)*, (Milano: Giuffrè, 1995), 7–9, 26; *Idem*, "Ancora sull'*episcopalis audientia* (Ambrogio, arbitro o giudice?)," *Storia et Documenta Historiae et Iuris* 53 (1987): 55–73; Jill Harries, *Law and Empire in the Late Antiquity* (Cambridge: Cambridge University Press, 1999), 191–211; Gian Luigi Falchi, "La diffusione della legislazione imperiale ecclesiastica nei secoli IV e V," in *Legislazione imperiale e religione,* 152.

[72] The vast prerogatives of bishops in this law and the ability to appeal to bishops from a civil court of law have caused much perplexity. Harold A. Drake deems it to be a part of Constantine's social, rather than religious agenda, focused on protecting the downtrodden from the corruption of justice, see *Constantine and the Bishops*, 235–272.

[73] *Codex Theodosianus,* 1, 22, 2 (17 June 334).

[74] *Codex Theodosianus,* 11, 39, 3 (25 August 334).

[75] Girardet, *Kaisergericht und Bischofsgericht*, 68.

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line with the habitual practice of eastern synods.[76] The council sentenced Athanasius to exile in Trier,[77] where he would spend an unremarkable two years. Nevertheless, his departure from Tyre was no easy matter, as he was compelled to flee owing to the fact that the resolution of the conflict so inflamed the passions of the parties present that Athanasius' safety and integrity may have been compromised.[78] He found refuge in Constantinople, where he made a vain attempt to convince the emperor of the unfairness of his sentence, arguing that he had been compelled to go into exile despite not having been deposed in Tyre. Indeed, it is difficult to ascertain the reasons behind Constantine's decision, but accounts from several Church historians suggest that it was due to Athanasius' refusal to accept Arius, whose followers had been formally admitted to the synod held in Jerusalem in September 335,[79] and this refusal stood in stark contrast with Constantine's designs for religious unification.[80]

The doctrinal disagreements that emerged in Nicaea ten years before the calling of the Synod of Tyre ran contrary to the emperor's interests in matters of religious policy, as they were a source of constant confrontations within dioceses that deeply disturbed civil life within them. Faced with this challenge, the ruling powers would tackle the problem from a disciplinary perspective, combining civil and religious jurisdictions (supervised by the imperial authority), and this trend would become accentuated from 335 onwards and be carried on by Constantine's successors, especially Constantius II. To this action we must add the emperor's interest in obtaining ideological support to legitimize his decisions. In this regard, the Eusebian faction would prove far more participative than the Nicene one, and power drew nearer to the group that proved most docile and cooperative with the political programme to be applied in religious matters, both from a doctrinal and disciplinary point of view.

[76] Arnold, *The Early Episcopal Career*, 149; Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica* (Oxford/New York: Oxford University Press, 2002), 38–40.

[77] Athanasius of Alexandria, *Apol.sec.* 80; *Hist.ar.*, 50, 2. Jennifer Barry, *Bishops in Flight. Exile and Displacement in Late Antiquity* (Berkeley: University of California Press, 2019), 3–4.

[78] Barnes, *Constantine and Eusebius*, 239; Arnold, *The Early Episcopal Career*, 165; Drake, "Athanasius' First Exile," *Greek, Roman, and Byzantine Studies* (1986): 193–204; Paul Peters, "Comment Saint Athanase s'enfuit de Tyr en 335," *Bulletin de l'Académie Royale de Belgique, Classe des Lettres* 30 (1994): 131–177.

[79] Eusebius of Caesarea, *VC* 4, 43–44; Theodoret of Cyrrhus, *HE* 1, 31; Hermias Sozomenos., *HE* 2, 26, 1.

[80] Socrates Scholasticus, *HE* 1, 35; Hermias Sozomenos, *HE* 2, 28. In fact, everything suggests that Constantine wished to close these doctrinal disagreements before the dedication of the Church of the Holy Sepulchre, the central celebration of his *tricennalia* (Eusebius of Caesarea, *VC* 4, 41).

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Conclusion: The response to imperial intervention

Nevertheless, taking the short-term results that were achieved into account, the Melitians' strategy of entrusting Athanasius' condemnation to the application of civil mechanisms and proceedings and attempting to link them with a sentence for charges concerning a disciplinary question of an ecclesiastical nature, ended up in failure. Indeed, the main arguments put forward against Athanasius by the plaintiffs were based on the alleged irregularity of his election and on the violent behaviour highlighted by the breaking of the chalice of Ischyras,[81] and these charges of an ecclesiastical nature fell within the traditional jurisdiction of synods and could not be related to ordinary civil proceedings, even within the context of a session in a synod. In spite of this jurisdictional incompatibility, Athanasius' opponents had attempted to use this mechanism prior to the Council of Tyre without success due to the absence of the defendant himself.[82] This gave rise to the accusation of disobeying the emperor being levelled against Athanasius,[83] and Constantine would subsequently use this accusation to ensure that he and, by extension, all parties summoned to the council would be present in Tyre.[84] The reason why Athanasius of Alexandria was so reluctant to appear in the various synods summoned to "solve" his conflict with his Egyptian opponents was that not only was he facing traditional charges of alleged acts of violence committed in Mareotis or the alleged irregularities that surrounded his election, but also additional accusations, such as stirring up violence in Alexandria, murdering Arsenius of Hypsela or practicing magic with the severed hand of the aforementioned, were being levelled against him in order to justify the relevance of opening civil proceedings.[85]

The changes and consequences the Council of Tyre would give rise to with regards to the relationship between bishops and the imperial Church would have a strong impact, as the combination of civil and ecclesiastic jurisdictions under the direct supervision of the emperor would become a recurring model for future synods. This revealed the emperor's will to play a fundamental role in the Church, which was

[81] Athanasius of Alexandria, *Apol.c.ar*. 62, 3; Hermias Sozomenos, *HE* 2, 25, 3.

[82] Theodoret of Cyrrhus, *HE* 1, 28, 2; Hermias Sozomenos, *HE* 2, 25, 1. The fact that a synod was called in Caesarea (334) to process local disciplinary matters clearly highlights the fact that Athanasius' problem had surpassed the domestic ecclesiastic sphere and that his quarrels against the Melitians were the reflection of a greater issue: his conflict against the Eusebian faction and all bishops who held doctrinal positions closer to Arian or, at least, non-Nicene positions. See Twomey, *Apostolikòs thrónos*, 352.

[83] Hermias Sozomenos, *HE* 2, 25, 17.

[84] Eusebius of Caesarea, *VC* 4, 42, 2; Athanasius of Alexandria, *Apol.c ar*. 63; Hermias Sozomenos, *HE* 2, 23.

[85] Athanasius was exonerated from these charges by summoning Arsenius himself, in perfect health, *Apol.c.ar*. 72; Socrates Scholasticus, *HE* 1, 29; Hermias Sozomenos, *HE* 2, 25, 10; See Arnold, *The Early Episcopal Career*, 156; Barry, *Bishops in Flight*, 145.

in line with a long previous tradition and was also a consequence of the political-theological thought that was so successfully inaugurated by Eusebius of Caesarea. In this regard, as the representative of God on Earth, the emperor became a supreme judge and the source of all authority.

Nevertheless, even though Constantine was able to realize the usefulness of the Church's synodal structure, it is likely that the bishop of Rome was aware of his intentions from the outset, and Miltiades' actions in the early stages of the Donatist schism, when he chose to summon a traditional synod instead of accepting the emperor's request for arbitration, must be understood in this light.[86] The zeal with which the bishop of Rome guarded his prerogatives was noticed by Athanasius himself, and he would, along with other Eastern prelates who had also been wronged by the Eusebians, appeal to Rome for reparations,[87] relying on the apostolic nature of Episcopal authority to avoid being subjugated by the imperial Church. The Synod of Serdica (343) would be a milestone in the development of this aspect, taking shape as the answer of the apostolic Church to the mechanisms and synodal model of councils such as those of Caesarea (334), Tyre or Jerusalem (335), which attempted to use civil authority to uphold the religious interests of one faction over another.[88] Athanasius recurrently denounced that the reasons behind the severe and implacable attitude of his opponents lie in their refusal of the doctrine of Nicaea and, in particular, of the ὁμοούσιος. Even though this position was adopted for purely apologetic and even polemic purposes, it was nevertheless, as Vincent Twomey points out, "entirely consistent with his rejection of the imperial Church based on one earthly monarch representing on earth the one divine monarch in

[86] When Rome disregarded Donatist protests and they appealed to Constantine, who summoned a new council in Arles (314), the bishop of Rome refused to attend it and sent two legates. He did, however, reserve his final decision, inaugurating a practice that continues to this day. See Barnes, "The Beginnings of Donatism," *Journal of Theological Studies* 26, (1975): 20–21; Girardet, *Kaisergericht und Bischofsgericht*, 6–26; *Idem*, "Die Petition der Donatisten an Kaiser Konstantin (Frühjahr 313) – historische Voraussetzungen und Folgen," *Chiron* 19, (1989): 186–206; William H.C Frend and Kurt Clancy, "When did the Donatist Schism Begin?," *Journal of Theological Studies* 28, (1977): 104–109; Serge Lancel, "Les débuts du donatisme: la date du "protocole du Cirta" et de l'élection épiscopale de Silvanus," *Revue des Études Augustiniennes* 25 (1979): 217–229.

[87] The patriarch of Alexandria cleverly laid the groundwork to obtain the support of the Roman see and the Western prelates by sending an encyclical letter in 338 in which he explained all the vicissitudes of the ten years since his election, laying the blame on the Eusebian faction. In response, Julius of Rome summoned a council in 340 to hear the cases of Athanasius of Alexandria and Marcellus of Ancyra free from all civil tutelage (Socrates Scholasticus, *HE* 2, 15, 5; Hermias Sozomenos, *HE* 3, 8, 6); See David M. Gwynn, The Eusebians. *The Polemic of Athanasius of Alexandrian and the Construction of the Arian Controversy* (Oxford: Oxford University Press, 2007), 51; Uta Heil, "Markell von Ancyra und das Romanum," in *Von Arius zum Athanasianum. Studien zur Edition der »Athanasius Werke«*, Texte und Untersuchungen zur Geschichte der altchristliche Literatur 164, eds. Annette von Stockhausen and Hanns C. Brennecke, (Berlin: De Gruyter, 2010), 91–97.

[88] Hess, *The Early Development of the Canon Law*, 60–64; Twomey, *Apostolikòs Thrónos*, 453–462.

heaven, – which, in practice, undermined the teaching of Nicaea that the *Logos* was consubstantial with the Father."[89] PS

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[89] Twomey, "The Political Implications of Faith in the Triune God: Erik Peterson Revisited" in *The Mystery of the Holy Trinity in the Fathers of the Church. The Proceedings of the Fourth Patristic Conference, Maynooth, 1999*, eds. Vincent Twomey and Lewis Ayres, (Portland: Four Courts Press, 2007), 130.

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