

Many Faiths and One Emperor.
Remarks about the Religious Legislation of
Theodosius the Great¹

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It is a common understanding that the emperor Theodosius the Great was central in the process of affirmation of Christianity in the Roman Empire. When he died, Ambrosius wrote a funeral oration calling him *'princeps cristianus'*². Twenty years after his death, Augustine referred to him as the ideal Christian emperor³. The

¹ This essay was given as a paper at the Tel Aviv University, 'Buchman Faculty of Law' on November 28, 2005 during 'The Second Tel-Aviv-Milan Conference' and at the Haifa University 'Faculty of Law' on November 30 during 'The First Haifa-Milan Conference', organized as part of a partnership between the 'Università degli Studi di Milano' and each one of the two Israeli universities; it is part of a wider research project about the legislation of Theodosius the Great, called 'Palingenesis of the Late Empire Constitutions' and financed for the years 2005-2007 by the Italian Ministry of Instruction, Technology and Research.

² Ambrosius, *De obitu Theodosii*, 51: *Prona enim potestas in vitium ferebatur et more pecudum vaga sese libidine polluebant, ignorabant deum. Restrinxit eos crux domini et revocavit a lapsu impietatis, levavit oculos eorum, ut Christum in coelum quaererent. Exuerunt se como perfidiae, susceperunt frena devotionis et fidei, secuti dicentem: 'tollite iugum meum super vos; iugum enim meum suave est et onus meum leve est'. (...) Inde reliqui principes Christiani – praeter unum Iulianum, qui salutis suae reliquit auctorem, dum philosophiae se dedit errori – inde Gratianus et Theodosius.*

³ Augustinus, *De Civitate Dei contra paganos*, 5.26: *Inter haec omnia ex ipso initio imperii sui non quievit iustissimis et misericordissimis legibus adversus impios laboranti ecclesiae subveniri, quam Valens haereticus favens Arrianis vehementer adflixerat; cuius ecclesiae se membrum esse magis quam in terris regnare gaudebat. Simulacra gentilium ubique evertenda praecepit, satis intelligens nec terrena munera in daemoniorum, sed in Dei veri esse posita potestate.*

Council of Chalcedon, convened by emperor Marcianus in 451, gave him the title of 'the Great'⁴. After Constantine, who recognized the right of tolerance in this religion on a par with other religions recognized by the State with the Milan edict in 313, Theodosius is thought to have issued one of the most important documents of European religious history, namely the Edict of Thessalonica, enacted on 27 February 380, which recognized as Christianity the religion of the State and defined the Roman Empire as 'Christian'⁵. This Edict defined the Nicene orthodoxy, directly forcing the unity of the Christians by law, so that it became one of the pillars of the historical alliance between State and Church.

Although Theodosius is remembered by history for his Edict giving an official character to the Christian religion, one should not overlook that the Edict is dated 380. This fundamental constitution in Christian history belongs to the beginning of his empire, which lasted 19 years after that date, namely until 395. In these 19 years the emperor had to face up to enormous obstacles not only of religious heterodoxy, but also of cohabitation between Christianity and other religious confessions. It was a particularly difficult moment in history. Subsequent to the official recognition of Christianity, enormous problems appeared as a reaction not only to paganism, which was still deeply tied to the highest classes of the society, but to Judaism also, especially when facing episodes of religious fanaticism, such as frequent attacks by monks and excited crowds, whether against temples or against synagogues. Although some few modern historians have already pointed out that this emperor was not antagonistic

⁴ Concilium Chalcedonense, ACO II, 3, 2, p.97.

⁵ CTh.16.1.2: IMPPP. GRATIANUS, VALENTINIANUS ET THEODOSIUS AAA. EDICTUM AD POPULUM URBIS CONSTANTINOPOLITANAE. *Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum Petrum apostolum tradidisse Romanis religio usque ad nunc ab ipso insinuata declarat quamque pontificem Damasum sequi claret et Petrum Alexandriae episcopum virum apostolicae sanctitatis, hoc est, ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub parili maiestate et sub pia trinitate credamus. 1. Hanc legem sequentes Christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere nec conciliabula eorum ecclesiarum nomen accipere, divina primum vindicta, post etiam motus nostri, quem ex caelesti arbitrio sumpserimus, ultione plectendos.* DAT. III KAL. MAR. THESSALONICAE GRATIANO A. V ET THEODOSIO A. I CONSS.

towards other religious believes⁶, Theodosius' religious policy mainly portrays him as a paladin of Christianity and as unyielding persecutor of paganism⁷.

⁶ Cf. O.SEECK, *Geschichte des Untergangs der antiken Welt* V, Stuttgart 1920, p.138ss. asserting about the Tesselonica Edict: «Dies klang sehr hart, war aber im Grunde nicht mehr als ein Glaubebekennniss des Kaisers. Er hing den Andersgläubigen Schimpfnamen an, bedrohte sie aber zunächst mit der Strafe des Himmels; dass auch er selbst sie strafen werde, war nur als eine künftige Möglichkeit angedeutet», A.LIPPOLD, *s.v. Theodosius I (10)*, PW Suppl.XIII, 1973, col.958: «scheint aber stets auf freiwillige Bekehrung zum wahren Glauben gehofft zu haben» and IDEM, *Theodosius der Große und seine Zeit*², München 1980, p.138: «in der Regel verzichtete er doch auf brutale Durchführung seiner Anordnungen», A.DI MAURO TODINI, *Aspetti della legislazione religiosa del IV secolo*, Roma 1990, especially p.135: «Teodosio manifesta sin dall'inizio del suo regno l'intento di promuovere l'unità dell'impero», but his Edict (p.137) «appare del tutto privo – al momento dell'emanazione – di quel valore epocale, che, invece, gli ha attribuito la legislazione successiva», the interesting essay about Theodosius' contemporaries writings of J.ERNESTI, *Princeps christianus und Kaiser aller Römer. Theodosius der Große im Lichte zeitgenössischer Quellen*, Padeborn-München-Wien-Zürich 1998, pp.475ff., who asserts: «Nimmt man noch die weitgehend positive Beurteilung durch seine heidnischen Zeitgenossen hinzu, so gelangt man zu dem Schluß, dass Theodosius versucht hat, *Kaiser aller Römer* zu sein, Heiden wie Christen, und dass sein christliches Bekenntnis in dieser Hinsicht kein Hindernis gewesen zu sein scheint» and lastly H.LEPPIN, *Theodosius der Große auf dem Weg zum Christlichen Imperium*, Darmstadt 2003, especially p.239: «Man sollte daher die Bedeutung der Förderung des Christentums durch Theodosius für den Prozess der Christianisierung des Reiches nicht zu hoch veranschlagen. Ein klares Konzept ist bei ihm nicht zu erkennen. Auch bei der Unterstützung der Nizäner und der Bekämpfung der Heiden hat er sich offenbar in einem hohen Maße von tagespolitischen Interessen leiten lassen».

⁷ Within the very wide literature about Theodosius (for a bibliographic framework about this emperor cf. the recent ERNESTI, *Princeps christianus*, pp.479ff. and LEPPIN, *Theodosius der Große*, pp.265ff.), see: E.GIBBON, *The Decline and Fall of the Roman Empire* IV, London 1782, ital. transl., from which I quote, P.ANGARANO, *Decadenza e caduta dell'impero romano*, Roma 1968, p.186: «Se Costantino ebbe il coraggio di inalberare il vessillo della croce, l'emulazione del suo successore ebbe il merito di soffocare l'eresia ariana e di abolire il culto degli idoli nel mondo romano», B.BIONDI, *Il diritto romano cristiano. I. Orientamento religioso nella legislazione*, Milano 1952, p.326: «L'opera legislativa di Teodosio a difesa della fede cattolica fu così importante e profonda che la Chiesa giustamente lo ha chiamato 'Teodosio Magno' e con tale qualifica tradizionalmente è passato alla storiografia», H.LIETZMAN, *Geschichte der Alten Kirche* V, Berlin 1953, transl. B.LWOOLF, *A History of the Early Church*, London 1961, pp.35ff. calls him one of the Church Fathers, W.ENBLIN, *Die Religionspolitik des Kaisers Theodosius des Grossen*, München 1953, p.88: «Gerade darin aber war Theodosius, wie wir zu zeigen versucht haben, wie kein Kaiser vor und nach ihm in der christlichen Spätantike oder, wenn wir lieber wollen, in der frühbyzantinischen Zeit getragen von einem hohen Verantwortungsgefühl der typische Repräsentant des autokratischen Kaiserthums».

The purpose of this paper is to examine whether Theodosius was different from many emperors from Constantine onwards, who issued laws condemning all forms of religious allegiance other than Christianity⁸. At issue is what it is possible to understand from the content of his laws, which have come down to us in the Theodosian Code. I think that, only by taking into account his constitutions about other faiths, contained in this Code promulgated by his grandchild Theodosius the Second, is it perhaps possible to understand something more about the purpose of Theodosius' decisions at that time, especially about his attitude towards other religious confessions.

The sixteenth book of the Theodosian Code, completely devoted to religious questions, also includes constitutions promulgated by Theodosius I about other faiths. The three titles, *De haereticis*, *De iudeaeis* and *De paganis*, focus on three general issues: heresy, Judaism and paganism.

E.STEIN-J.R.PALANQUE, *Histoire du Bas Empire (284-476)* I, Paris 1959, p.192: «Il a également réussi en grande partie là où tous les empereurs chrétiens avaient précédemment échoué, en rendant à l'Église une paix à peu près digne de ce nom», N.Q.KING, *The Emperor Theodosius and the establishment of Christianity*, London 1961, p.93: «Under Theodosius a tremendous mass movement into Christianity took place» and «few men since Theodosius have been able to exert so decisive an influence over the Church Universal», G.BARONE-ADESI, *Eresie 'sociali' ed inquisizione teodosiana*, Atti Accademia Romanistica Costantiniana VI, Perugia 1986, p.163 speaks about a Theodosius' plan to «unire spiritualmente tutto l'Impero nella confessione della ortodossia nicaena», see also IDEM, *Primi tentativi di Teodosio il Grande per l'unità religiosa dell'impero*, Atti Accademia Romanistica Costantiniana III, Perugia 1979, pp.49ff., G.NOCERA, *Cuius regio eius religio*, Atti Accademia Romanistica Costantiniana VI, Perugia 1986, p.305 tells about a: «severa repressione di tutti quei movimenti religiosi, che si profilavano intorno al cristianesimo, alimentando un giuoco di correnti, pericolo per l'unità religiosa e, di riflesso, per l'unità politica dell'impero» and «legame inscindibile tra l'umano e il divino di ogni grande comunità politica, quasi a riaffermare che non v'è organizzazione di potere, senza spiritualità di fondamento: *cuius regio eius religio*»; S.WILLIAMS-G.FRIELL, *Theodosius. The Empire at Bay*, London 1998, ital. transl., from which I quote, S.SIMONETTA, *Teodosio. L'ultima sfida*, Genova 1994, especially p.205.: «Se la maggior parte delle decisioni prese da Teodosio in qualunque ambito consistevano per forze di cose nel tentativo di trovare difficili equilibri, a ispirare il suo operato non fu certo la moderazione» and «Teodosio si era già avvalso di forme di coercizione legale per sopprimere l'eresia (...). Non esisteva quindi alcun motivo razionale che gli impedisse di adottare i medesimi provvedimenti contro il paganesimo, reo anch'esso di offendere Dio».

⁸ For a synthesis of the religious legislation in the Roman Empire after Theodosius see L.DE GIOVANNI, *Il libro XVI del Codice Teodosiano. Alle origini della codificazione in tema di rapporti Chiesa-Stato*, Napoli 1985, pp.26ff.

Let me first, then, consider Theodosius the Great's legislation about heresy. It is well known that it was customary in early Christianity to use violence to defend the truth against doctrinal mistakes, so much so that a false religious creed was identified with a diabolic contamination and associated with wicked intentions. This led to the dangerous view that faith, as distinct from ritual, was a voluntary behaviour which could be modified by force. The main doctrinal controversies concerned the nature of Christ and involved a lot of sects, which not only anathematised one another, but also caused violence and involved crowds of fanatics⁹.

Theodosius' legislation seems to be generally oriented to a radical persecution of heresies, which he considered dangerous, because he was a supporter of the orthodoxy of the Nicene creed. He issued several laws about heresy, more than any of those concerning other matters, and surely more than the constitutions about Jews and pagans¹⁰. The emperor intended to define who was to be considered a supporter of the Nicene faith and a real follower of the Catholic religion¹¹. Theodosius carried out a persecution against the minor heresies like the Eunomians¹², but especially against the Arian clergy. In 381 Theodosius decreed the expulsion of Arian ecclesiastics from their churches and suggested the names of Catholic bishops in individual dioceses; lower clergy had to obey them in performing pastoral tasks. There were popular demonstrations in support of the Arian creed and in Constantinople military intervention was necessary to allocate Nicene priests to their own churches, although some converted ecclesiastics remained in their place. The last breeding ground of the Arian resistance was Milan, where the energetic mother of Valentinian II, Justine, adopted the Arian creed and formed the

⁹ About the legislation against the heretics in the Late Empire cf. generally F.ZUCCOTTI, *'Furor haereticorum'*. *Studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione del Tardo Impero Romano*, Milano 1992, p.111ff.

¹⁰ Cf. G.DAGRON, *Naissance d'une capitale. Constantinople et ses institutions de 330 à 451*, Paris 1974, transl. A.SERAFINI, *Costantinopoli. Nascita di una capitale (330-451)*, Torino 1991, p.388 specifying that the heretics were considered more subversive than the pagans.

¹¹ Cf. CTh.16.5.6 enacted on 10 January 381 in Constantinople.

¹² CTh.16.5.17 enacted on 4 May 389 in Milan.

intention of fighting against Ambrosius and his Catholic followers¹³. Bishop Ambrosius, surely one of the most important religious personalities of all time, played a major role during the reign of Theodosius. Justine put pressure on her son to promulgate a law in January 386, which guaranteed freedom of association and liberalised Arian congregations¹⁴. The decisive clash with Ambrosius and his followers happened when Justine decreed that the Portian Basilica was to be reserved for Arian worship. Ambrose and his followers, paying no heed to the law's provisions, barricaded themselves in the basilica for four weeks. Justine understood that she could not use the garrison against the common people, who were mostly Catholic, and she was forced to give up. Hence the weight of Arianism, left without its places of worship, was all the more limited.

During the reign of Theodosius heretics had no right to build churches and churches were confiscated and passed onto the State or onto Catholics; it was forbidden to use private houses for assemblies and worship meetings. The emperor also wanted to deprive heretics of every human right, forbidding them, for instance, to appoint an heir by will and also to inherit something without a will¹⁵. But the sentences issued were never death sentences. They were fines or expulsions. For example, the emperor decreed that heretics be exiled somewhere outside the city¹⁶. The sentences seemed to be penalties of a different kind, very often designed to be models of correction rather than forms of punishment, so that heretics could be intimidated and persuaded to resume orthodoxy¹⁷. In essence, it seems that Theodosius' intention was to bring people back to the church, or if that proved impossible, to separate them from the community of the faithful.

¹³ See Ambrosius, *Epistula*, XX; Paulinus, *Vita Ambrosii*, XVI.1036.

¹⁴ About the Arian reaction see for example J.GAUDEMET, *Politique ecclésiastique et législation religieuse après l'édit de Théodose I de 380*, Atti Accademia Romanistica Costantiniana VI, Perugia 1986, p.17f.

¹⁵ CTh.16.5.7 enacted on 8 May 381 in Constantinople and CTh.16.5.9 enacted on 31 March 382 in Constantinople.

¹⁶ CTh.16.5.20 enacted on 19 May 391 in Rome.

¹⁷ In this sense J.GAUDEMET, *L'Église dans l'Empire Romain (IV^e-V^e siècles)*, Paris 1958, pp.623ff. and also LIPPOLD, *Theodosius*, col.958, DE GIOVANNI, *Il libro XVI*, pp.78ff.

If, on one hand, Theodosius wanted to persuade heretics to resume orthodoxy much more than to punish them for their error, on the other he was also tolerant towards Judaism. Jewish religious practices always appeared to the Romans as very original and different from all others. Christianity was born from the bosom of Judaism. Although Jews were the first to hinder the preaching of the Gospel, Romans at first respected them¹⁸.

The Theodosian Code hands down two constitutions drawn from the legislation of Theodosius I about the Jews. The most important is CTh.16.8.9, which very clearly asserts that the Jewish sect was not banned by any law: *Iudeorum sectam nulla lege prohibitum satis constat*¹⁹. This constitution also provides that punishments for the illegal acts of those people, who tried to destroy and strip the synagogues in the name of Christian religion, must be strict. Episodes such as the destruction of the synagogue of Callinicum, were not rare in the East. That event is well attested in the letters of Ambrosius (number 40 and 41) and in the *Vita sancti Ambrosii* by Paulinus²⁰. It

¹⁸ About Jews and the legislation in the Roman Empire until Theodosius see especially A.LINDER, *The Jews in Roman Imperial Legislation*, Detroit Michingan-Jerusalem 1987, *passim* and the recent A.M.RABELLO, *The Jews in the Roman Empire: Legal Problems from Herod to Justinian*, Aldershot-Burlington USA-Singapore-Sydney 2000, *passim*, as well as IDEM, *Giustiniano, Ebrei e Samaritani. Alla luce delle fonti storico-letterarie, ecclesiastiche e giuridiche II*, Milano 1988, pp.495ff. and IDEM, *La situazione giuridica degli ebrei nel diritto romano*, A.LEWIN ed., *Gli ebrei nell'impero romano. Saggi vari*, Firenze 2001, pp.125ff.

¹⁹ CTh.16.8.9 enacted on 29 September 393 in Constantinople and addressed to Addeus (cf. A.H.M.JONES-J.R.MARTINDALE-J.MORRIS, s.v. *Addaeus*, *The Prosopography of the Later Roman Empire*=PLRE I, Cambridge 1971, p.13): IDEM <THEODOSIUS, ARCADIUS ET HONORIUS> AAA. ADDEO COMITI ET MAGISTRO UTRIVSQUE MILITIAE PER ORIENTEM. *Iudaeorum sectam nulla lege prohibitam satis constat. Unde graviter commovemur interdictos quibusdam locis eorum fuisse conventus. Sublimis igitur magnitudo tua hac iussione suscepta nimietatem eorum, qui sub Christianae religionis nomine inlicita quaeque praesumunt et destruere synagogas adque expoliare conantur, congrua severitate cohibebit.* DAT. III KAL. OCTOB. CONSTANTINOPOLI THEODOSIO A. III ET ABUNDANTIO CONSS.; on this law cf. especially DE GIOVANNI, *Il libro XVI*, p.111, NOCERA, *Cuius regio eius religio*, p.335 n.52, LINDER, *The Jews*, pp.189ff., DI MAURO TODINI, *Aspetti della legislazione religiosa*, pp.6f., G.DE BONFILS, *Gli schiavi degli ebrei nella legislazione del IV secolo. Storia di un divieto*, Bari 1993, p.184.

²⁰ Paulinus Mediolanensis, *Vita sancti Ambrosii a Paulino eius notario ad Beatum Augustinum conscripta*, XXII.1ff. About this episode see especially LIETZMAN, *A History*, p. 87, L.CRACCO RUGGINI, *Ebrei e orientali nell'Italia settentrionale fra il IV e il VI secolo d.Cr.*, SDHI XXV, 1959, pp.198ff., M.PAVAN, *I cristiani e il mondo*

happened at the end of 388 in the *castrum* of Callinicum, a village on the northern bank of the Euphrates called Ar-Raqqah today, in the northern central part of Syria. On the bishop's instigation some monks set fire to the synagogue and sacked it; at the same time, probably fearing mutual solidarity between Jews and heretics, they also burned a chapel of Valentinian heretics. It should be noted that Theodosius, when he heard about the intolerant act against the Jews and heretics, refrained from exclusively judging the heretics, but punished the culprits of the synagogue's desecration and salvaged stolen objects. When Ambrosius was informed of that sanction, he sent the emperor the well known epistle in which he asserted the impossibility for the bishop to obey that order and persuaded the sovereign with mildness and with cleverly tinged threats, saying that the rebuilding of a *templum impietatis* would have a much worse connotation, as it was done by Christians²¹. At first, Theodosius tried to stick to his position and, though he exempted the bishop from reconstructing the Jews' worshipping temple, he reaffirmed that the act was against the law and had to be punished anyway. Nevertheless, he eventually decided to refrain from enforcing the penalty on Christians²² and issued the

ebraico nell'età di Teodosio il Grande, Annali Perugia III, 1965-66, pp.472ff., F.TRISOGLIO, *Ambrogio negli storici e nei cronisti bizantini*, G.LAZZATI ed., *Ambrosius episcopus. Atti del convegno internazionali di Studi Ambrosiani nel XVI centenario della elevazione di Sant'Ambrogio alla cattedra episcopale* II, Milano 1976, p.370, DI MAURO TODINI, *Aspetti della legislazione religiosa*, p.3ff. and, for other secondary literature on the synagogue of Callinicum, footnotes 1-2, M.SARGENTI-R.B.BRUNO SIOLA ed., *Normativa imperiale e diritto romano negli scritti di S. Ambrogio*, Milano 1991, p.94f. and lastly ERNESTI, *Princeps christianus*, p.162ff.

²¹ Ambrosius, *Epistola*, XL, especially 20: *Hunc dabis triumphum Iudaeis de ecclesia dei? Hoc tropaeum de Christi populo? Haec gaudia, imperator, perfidis? Hanc celebritatem synagogae, hos luctus ecclesiae? Referet Iudaeorum populos hanc solemnitatem in dies festos suos inter illos profecto numerabit, quibus aut de Amorreis aut de Chananeis triumphant aut de Pharao rege Aegypti aut de Nabuchodonosor regis Babyloniae manu liberari potuit. Addet hanc celebritatem significans se de Christi populo triumphum egisse*; cf. also Paulinus, *Vita Ambrosii*, XXII.3ff.

²² Ambrosius, *Epistola*, XLI.28; Paulinus, *Vita Ambrosii*, XXIII.4ff: in this letter Ambrosius tells his sister how he could show mercy for the Callinicum episode, when he was moving towards Theodosius who was coming for the Mass and how he had refused to begin Mass, before the emperor decided not to punish the Christians liable for the synagogue fire.

constitution of CTh.16.8.9 forbidding all profanations of Jewish liturgies.

Theodosius' second constitution about the Jews (CTh.16.8.8)²³ of 17 April 392, chronologically preceded the other one and granted the *primates* of the Hebraic communities the right to pronounce sentences about their religion. The *primates* were the leaders who supervised the communities in every province who fell immediately under the central authority based in Palestine, although we do not know which jurisdiction their religion belonged to. This constitution probably stems from a real event. We know of some Jews being expelled from the sect, but then readmitted by a judge's resolution. The leaders opposed this sentence and it was most probably on that account that the emperor issued a new law, by which he condemned what had happened and decreed that the Jews' reconciliation with that sect should be subject to their own leaders' consent and that a judge's intervention or an apposite new law would not suffice in this case.

It seems, therefore, that Theodosius protected the religious, civil and political interests of the Jews and tried to react to the violence of the Christians against the synagogues²⁴. Although Christianity generally made life worse for the Jews, Theodosius decided not to interfere with their freedoms or their privileges. In this respect his policy was very different from that of his successors, who, already at the beginning of the fifth century, issued unyielding laws against Jewish religious practices.

As for his legislation on paganism, Theodosius seems to be equally lenient, at least at the beginning of his reign. Pagan traditions were

²³ CTh.16.8.8: IMPPP. THEODOSIUS, ARCADIUS ET HONORIUS AAA. TATIANO PRAEFECTO PRAETORIO. *Iudaeorum querellae quosdam auctoritate iudicum recipi in sectam suam reclamantibus legis suae primatibus adseverant, quos ipsi iudicio suo ac voluntate proiciunt. Quam omnino submoveri iubemus iniuriam nec eorum in ea superstitione sedulus coetus aut per vim iudicum aut rescripti subreptione invitis primatibus suis, quos virorum clarissimorum et inlustrium patriarcharum arbitrio manifestum est habere sua de religione sententiam, opem reconciliationis mereatur indebitae.* DAT. XV KAL. MAI. CONSTANTINOPOLI ARCADIO A. II ET RUFINO CONSS.; for an exam in detail of this constitution, addressed to the *praefectus praetorio Orientis* Tatianus (cf. PLRE I, s.v. *Tatianus* 5, pp.876f.), see LINDER, *The Jews*, pp.186ff. and also DE GIOVANNI, *Il libro XVI*, pp.113f., NOCERA, *Cuius regio eius religio*, p.335 n.52.

²⁴ See A.H.M. JONES, *The Later Roman Empire. 284-602. A Social, Economic and Administrative Survey*² I, Oxford 1973, p.166 asserting: «Towards the Jews Theodosius was tolerant».

very widespread, but they were not a threat for the Church, because pagans had neither the fighting zeal nor the unified and disciplined organisation of Christianity. In particular, paganism was a polytheistic religion embracing an open number of gods, accepting not only foreign cults, but also addressing *evocationes* to their enemies' own gods, as it happened during the wars against Veium and Carthage. The pagan empire did not distinguish barbaric peoples on the basis of their religion: gods of every man, civilized or barbaric, were real or they were the same, but with different names.

At the same time the pagan religion was connected with public rituals and traditional divinities of the Roman State. In the age of Theodosius pagans were numerous in the high aristocracy, traditional education being the mark that distinguished the learned and the unlearned. And the most important State officials came from the aristocracy²⁵. Theodosius probably wanted to reduce the influence of pagan religion, but of course, in his position, he still needed the support of the pagan part of the leadership, in the same way as he needed the support of Christians. We do not know whether his action was really guided by such political considerations, but especially in the first part of his reign he was certainly tolerant. His only prohibition concerned sacrificial practises, of which Christians were particularly afraid. Generally those religious sacrifices had strong ties with the divinatory art and with related conspiracy risks. Theodosius issued three constitutions between 381 and 385 and forbade sacrifices, but he said nothing about other rituals like the use of incense, votive offerings and libations. In 381 the emperor decided that those who performed sacrifices to know the future had to be punished by proscription of all their property²⁶ and 385 he forbade everyone from

²⁵ About pagans in the age of Theodosius see especially GAUDEMET, *L'Église*, pp.633ff., A.H.H. JONES, *The Social Background of the Struggle between Paganism and Christianity*, ed. A.MOMIGLIANO, *The Conflict between Paganism and Christianity in the Fourth Century*, Oxford 1963, pp.17ff. and M.PAVAN, *Cristianesimo e impero romano nel IV secolo D.C.*, G.BONAMENTE-A.NESTORI ed., *I Cristiani e l'Impero nel IV secolo. Colloquio sul Cristianesimo nel mondo antico. Atti del Convegno* (Macerata 17-18 dicembre 1987), Macerata 1988, pp.1ff.

²⁶ So in CTh.16.10.7, enacted on 21 December 381 in Constantinople and addressed to the *praefectus praetorio* of Constantinople Florus (cf. PLRE, s.v. *Florus 1*, pp.367f.): IMPPPP. GRATIANUS, VALENTINIANUS ET THEODOSIUS AAA. FLORO PRAEFECTO PRAETORIO. *Si qui vetitis sacrificiis diurnis nocturnisque velut vesanus ac sacrilegus incertorum consultorem se immerserit fanumque sibi aut*

seeking to know the future, fixing the general sanction of an *acerbum supplicium*²⁷. Particularly meaningful is the constitution of 382, in which the emperor ordered that a temple, which was the appropriate venue for public meetings for pagans, had to remain open, holding that the statues of the pagan gods did not offend Christians²⁸. They were simply works of art and not idols. The traditional rituals of the Empire were not reorganized and the only reservation was that sacrifices within them were not permitted. Generally Theodosius maintained a good relationship with a lot of pagans: for example Temestius, a philosopher and State official, who would be the tutor of his first son Arcadius, and the orator Libanius from Antiochia, who

templum ad huiusmodi sceleris executionem adsumendum crediderit vel putaverit adeundum, proscriptione se noverit subiugandum, cum nos iusta institutione moneamus castis deum precibus excolendum, non diris carminibus profanandum. DAT. XII KAL. IAN. CONSTANTINOPOLI EUCHERIO ET SYAGRIO CONSS.; about this law see especially DE GIOVANNI, *Il libro XVI*, pp.129f., DI MAURO TODINI, *Aspetti della legislazione religiosa*, pp.193f.

²⁷ So in CTh.16.10.9 issued on 25 Mai. 385 in Constantinople and addressed to the very catholic Cynegius (see PLRE I, s.v. *Maternus Cynegius* 3, pp.235f.), who already in 384 had become *praefectus praetorio Orientis*: IDEM <GRATIANUS, VALENTINIANUS ET THEODOSIUS> AAA. CYNEGIO PRAEFECTO PRAETORIO. *Ne quis mortalium ita faciendi sacrificii sumat audaciam, ut inspectione iecoris extorumque praesagio vanae spem promissionis accipiat vel, quod est deterius, futura sub execrabili consultatione cognoscat. Acerbioris etenim imminet supplicii cruciatus eis, qui contra vetitum praesentium vel futurarum rerum explorare temptaverint veritatem.* DAT. VIII KAL. IUN. CONSTANTINOPOLI ARCADIO A. I ET BAUTONE V. C. CONSS.; the constitution is handed down with the identical text in Justinian Code, in C.1.11.2, about it see especially DE GIOVANNI, *Il libro XVI*, p.130, L.DESANTI, *Sileat omnibus perpetuo divinandi curiositas. Indovini e sanzioni nel diritto romano*, Milano 1990, p.155, and DI MAURO TODINI, *Aspetti della legislazione religiosa*, pp.193f.

²⁸ So in CTh.16.10.8, enacted on 30 November 382 and addressed to Palladius (PLRE I, s.v. *Palladius* 11, p.660), *dux* of the Roman province Osrhoene, where the temple was situated: IDEM <GRATIANUS, VALENTINIANUS ET THEODOSIUS> AAA. PALLADIO DUCI OSDROENAE. *Aedem olim frequentiae dedicatam coetui et iam populo quoque communem, in qua simulacra feruntur posita artis pretio quam divinitate metienda iugiter patere publici consilii auctoritate decernimus neque huic rei obreptivum officere sinimus oraculum. Ut conventu urbis et frequenti coetu videatur, experientia tua omni votorum celebritate servata auctoritate nostri ita patere templum permittat oraculi, ne illic prohibitorum usus sacrificiorum huius occasione aditus permissus esse credatur.* DAT. PRID. KAL. DEC. CONSTANTINOPOLI ANTONIO ET SYAGRIO CONSS.; concerning this constitution see especially DE GIOVANNI, *Il libro XVI*, p.133, DI MAURO TODINI, *Aspetti della legislazione religiosa*, pp.214f.

also wrote that Theodosius in his reign had only banned sacrifices²⁹. Libanius meant that the emperor, as a good Christian, wanted to see all pagans becoming Christians, but as a good ruler he knew that he could not achieve that goal by violence, as that would affect the significance of a conversion and was condemned by Christian law itself. In particular, pagan doctrines were not tantamount to treason and the representatives of that culture – poets, orators and philosophers – could continue to write and to teach across the Empire.

Meanwhile, it was becoming ever more customary in the East to see crowds of monks attacking, destroying and plundering temples. Especially after 384, when the zealous Spanish Catholic Maternius Cynegius was appointed prefect of Constantinople, groups of fanatics were encouraged and were free to operate while remaining unpunished. The big and wonderful temple of Edessa, situated in upper Mesopotamia, today Sanli Urfa in Turkey, was destroyed and robbed of all of its valuable artworks. It was the same temple where Theodosius issued the constitution of CTh.16.10.8 in 382³⁰, ordering that the temple should be kept open, because its images had to be measured by the value of their art rather than by their divinity (*in qua simulacra feruntur posita artis pretio quam divinitate metienda*). So the huge temple devoted to Zeus in Apamea, today a historic archaeological site in Syria, was beset by the troops of Denia, a provincial governor, and it collapsed when the basis of the columns were destroyed. This happened during the reign of Theodosius, but it is very interesting to note that the pagan Libanius deeply deplored these violent acts, and he attributed them to Cynegius, claiming that Theodosius surely would not allow such illegal acts³¹.

A sudden turning-point in his religious legislation came when Theodosius issued three constitutions repressing the pagan cults, forbidding not only all sacrifices, but also the traditional State ceremonies still in use in Rome. In 391 from Milan he prohibited every pagan ceremony, under the threat of general human and divine sanctions³² and in the same year, from Aquileia, he confirmed the

²⁹ Libanius, *Orationes*, 30 (*Oratio pro templis*).

³⁰ Cf. *supra* n.28.

³¹ Libanius, *Orationes*, 30 (*Oratio pro templis*).

³² So in CTh.16.10.10, issued on 24 February 391 in Milan and addressed to Albinus, quoted as *praefectus praetorio* in the manuscripts, but really *praefectus urbi Romae*

prohibition of pagan ritual practises, decreeing that it was to be observed by everyone leaving no room to invoke any kind of favours from the imperial power³³. Especially one year later, in 392, from Constantinople he promulgated a very hard edict, which forbade everyone from performing any pagan forms of religious worship across the whole Empire, stating that sacrifices could not take place anywhere (*in nulla urbe*)³⁴. It seems that after this law the ancient

from 389 to 391 (for this opinion cf. I.GOTOFREDO, *Codex Theodosianus cum perpetuis commentariis* VI, Lipsiae 1843, p.306 n.c; A.CHASTAGNOL, *La préfecture urbaine a Rome sous le Bas-Empire*, Paris 1960, p.162 e PLRE I, s.v. *Ceionius Rufius Albinus* 15, p.37f. and E.MAGNOU-NORTIER ed., *Le Code Théodosien. Livre XVI et sa réception au Moyen Age*, Paris 2002, p.376 n.25): IDEM <IMPP. VALENTINIANUS ET THEODOSIUS> AAA. AD ALBINUM PRAEFECTUM PRAETORIO. *Nemo se hostiis polluat, nemo insontem victimam caedat, nemo delubra adeat, templa perlustret et mortali opere formata simulacra suspiciat, ne divinis adque humanis sanctionibus reus fiat. Iudices quoque haec forma contineat, ut, si quis profano ritui deditus templum uspiam vel in itinere vel in urbe adoraturus intraverit, quindecim pondo auri ipse protinus inferre cogatur nec non officium eius parem summam simili maturitate dissolvat, si non et obstiterit iudici et confestim publica adtestatione rettulerit. Consulares senas, officia eorum simili modo, correctores et praesides quaternas, apparitiones illorum similem normam aequali sorte dissolvant.* DAT. VI KAL. MART. MEDIOLANO TATIANO ET SYMMACHO CONSS.; about this constitution see also C.CASTELLO, *L'umanesimo cristiano di Stilicone*, Atti Accademia Romanistica Costantiniana IV, Perugia 1981, p.68 n.3, p.70 n.12, S.MONTERO, *Política y advinación en el Bajo Imperio Romano: emperadores y haruspices (193 D.C.-408 D.C.)*, Bruxelles 1991, p.139.

³³ So in CTh.16.10.11 issued in Aquileia on 16 June 393 and addressed to Evagrius, *praefectus Augustalis et Romanus comes Aegypti* (cf. PLRE I, s.v. *Evagrius* 7, p.286): IDEM <IMPP. VALENTINIANUS ET THEODOSIUS AA.> EVAGRIO PRAEFECTO AUGUSTALI ET ROMANO COMITI AEGYPTI. *Nulli sacrificandi tributur potestas, nemo templa circumeat, nemo delubra suspiciat. Interclusos sibi nostrae legis obstaculo profanos aditus recognoscant adeo, ut, si qui vel de diis aliquid contra vetitum sacrisque molietur, nullis exuendum se indulgentiis recognoscat. Iudex quoque si quis tempore administrationis suae fretus privilegio potestatis polluta loca sacrilegus temerator intraverit, quindecim auri pondo, officium vero eius, nisi conlatis viribus obviarit, parem summam aerario nostro inferre cogatur.* DAT. XVI KAL. IUL. AQUILEIAE TATIANO ET SYMMACHO CONSS.; on this law see J.GAUDEMET, *La condamnation des pratiques païennes en 391*, *Epektasis. Mélanges patristiques offerts au Cardinal Jean Daniélou*, Paris 1972, p.599 and *Études de droit romain* I, Napoli 1979, p.255 n.19, DE GIOVANNI, *Il libro XVI*, p.128.

³⁴ So in CTh.16.10.12 issued on 8 November 392 in Constantinople and addressed to *praefectus praetorio Rufinus* (cf. PLRE I, s.v. *Flavius Rufinus* 18, pp.778f.): IMPPP. THEODOSIUS, ARCADIUS ET HONORIUS AAA. AD RUFINUM PRAEFECTUM PRAETORIO. *Nullus omnino ex quolibet genere ordine hominum dignitatum vel in potestate positus vel honore perfunctus, sive potens sorte nascendi*

Olympic games came to a stop³⁵. By this law the traditions and the myths of polytheism seemed to be cancelled. It is difficult to reconcile these decisions with the rest of his policy. One may envisage a systematic project at work in the emperor's mind: he would first want to oppose heresies successfully and only later to attack paganism. The

*seu humilis genere condicione ortuna in nullo penitus loco, in nulla urbe sensu carentibus simulacris vel insontem victimam caedat vel secretiore piaculo larem igne, mero genium, penates odore veneratus accendat lumina, inponat tura, sarta suspendat. 1. Quod si quispiam immolare hostiam sacrificaturus audebit aut spirantia exta consulere, ad exemplum maiestatis reus licita cunctis accusatione delatus excipiat sententiam competentem, etiamsi nihil contra salutem principum aut de salute quaesierit. Sufficit enim ad criminis molem naturae ipsius leges velle rescindere, illicita perscrutari, occulta recludere, interdicta temptare, finem quaerere salutis alienae, spem alieni interitus polliceri. 2. Si quis vero mortali opere facta et aevum passura simulacra inposito ture venerabitur ac ridiculo exemplo, metuens subito quae ipse simulaverit, vel redimita vittis arbore vel erecta effossis ara cespitibus, vanas imagines, humiliore licet muneris praemio, tamen plena religionis iniuria honorare temptaverit, is utpote violatae religionis reus ea domo seu possessione multabitur, in qua eum gentilicia constiterit superstitione famulatum. Namque omnia loca, quae turis constiterit vapore fumasse, si tamen ea in iure fuisse turificantium probantur, fisco nostro adsocianda censemus. 3. Sin vero in templis fanisve publicis aut in aedibus agrisque alienis tale quispiam sacrificandi genus exercere temptaverit, si ignorante domino usurpata constiterit, viginti quinque libras auri multae nomine cogetur inferre, coniventem vero huic sceleri par ac sacrificantem poena retinebit. 4. Quod quidem ita per iudices ac defensores et curiales singularum urbium volumus custodiri, ut ilico per hos comperta in iudicium deferantur, per illos delata plectantur. Si quid autem ii tegendum gratia aut incuria praetermittendum esse crediderint, commotioni iudiciariae, subiacebunt; illi vero moniti si vindictam dissimulatione distulerint, triginta librarum auri dispendio multabuntur, officiis quoque eorum damno parili subiugandis. DAT. VI ID. NOV. CONSTANTINOPOLI ARCADIO A. II ET RUFINO CONSS.; on this law within the wide literature F.MARTROYE, *La répression de la magie et le culte des gentils au IV^e siècle*, RH IX, 1930, p.697ff., B.BIONDI, *Il diritto romano cristiano I*, p.334, F.DE MARTINO, *Storia della costituzione romana V*, Napoli 1975, p.544, C.CASTELLO, *Una voce dissonante nella Roma cristiana di Onorio: il panegirico di Claudiano del 404 d.C.*, Atti Accademia Romanistica Costantiniana IV, Perugia 1979, p.189 n.121, J.GAUDEMET, *L'Eglise et l'Etat au IV^e siècle*, in Studi in onore di Biscardi I, Milano 1982, p.75, IDEM, *Politique ecclésiastique et législation religieuse*, p.8 n.40, DE GIOVANNI, *Il libro XVI*, p.128, O.BUCCI, *Intolleranza ellenica e libertà romana nel libro XVI del Codice Teodosiano*, Atti Accademia Romanistica Costantiniana VI, Perugia 1986, p.394ff., G.NOCERA, *Cuius regio eius religio*, p.317 n.25, MONTERO, *Política*, p.140ff., DESANTI, *Sileat omnibus perpetuo divinandis curiositas*, pp.156f., R.KLEIN, *Distruzione di templi nella tarda antichità. Un problema politico, culturale e sociale*, Atti Accademia Romanistica Costantiniana X, Napoli 1995, p.143 and lastly LEPPIN, *Theodosius der Große*, pp.175f.*

³⁵ Cf. my essay *Sulla 'caduta senza rumore' delle Olimpiadi classiche*, RIDA 50, 2003, pp.119ff.

change in Theodosius' policy may also be explained by reference to bishop Ambrosius' own influence on the emperor following the significant Thessalonica slaughter in 390³⁶. Driven by sudden anger, Theodosius wanted to repress a revolt in Thessalonica and ordered the butchering of all the people in a circus. Ambrosius, as he heard about the slaughter, invited the emperor to repent. Perhaps Theodosius did not obey the bishop immediately, but on Christmas Day of 390 he made public amends in the church of Milan thereby being allowed to be readmitted into the community of the faithful. Though this episode was probably embellished by Christians, who saw it as the sovereign's acknowledgement of the superiority of God's law and as a very important moment of the eternal struggle between religious and civil powers, it is possible to detect in these constitutions an expression of Ambrosius' influence over the emperor.

To be sure, one needs to acknowledge a real change in the emperor's intentions, but at the same time it is impossible to forget that the contemporaneous pagan sources sketch a very positive portrayal of this emperor claiming that Theodosius was tolerant to paganism. Only Eunapius from Sardes, a native from Lydia, held the view that the emperor would be responsible for the crisis of the Empire and claimed that the prosperity of the Roman Empire depended on the continuous observance of the State religion³⁷. «In Eunapios' opinion, Constantine began the destruction of the Roman Empire and Theodosius completed it³⁸». But other pagans, like the panegyrist Pacatus Drepanius, the poet Claudianus, the rhetor Libanius and the philosopher Themistius hand down to us the profile of a moderate emperor, who only wanted to make the conversion to the Christian religion easier³⁹. The wording of these constitutions can also be understood along the same lines, because in late antiquity legal

³⁶ For this opinion see, for example, DE MARTINO, *Storia della costituzione romana* V, p.536 asserting that after the Thessalonian massacre Theodosius «dovette modificare la sua politica religiosa, che era di notevole tolleranza verso il paganesimo ed adottare misure rigide contro la libertà di culto».

³⁷ On Eunapius' writings about Theodosius see M.PAVAN, *La politica gotica di Teodosio nella pubblicistica del suo tempo*, Roma 1964, pp.15f., D.F.BUCK, *Eunapios of Sardis and Theodosius the Great*, in *Byzantium. Revue Internationale des Études Byzantines*, LVIII, 1988, pp.36 ff. and ERNESTI, *Princeps*, p.474.

³⁸ BUCK, *Eunapios of Sardis*, p. 41.

³⁹ For this view see ERNESTI, *Princeps* cit., pp.321ff.

language was typically influenced by considerations which were not strictly legal, but which stemmed from the very nature of the imperial rule. So, for example, in a constitution of 391 (CTh.16.10.10)⁴⁰ the *profani ritus* are defined as *veneranda miseria* and the word used for paganism is *superstitio*, expressions that clearly betray the emperor's favourable inclination towards the new faith. Within this framework one should not forget how difficult it was to enforce the constitutions in the Late Empire. It is well known that the infliction of penalties, which the legislation proscribed in abstract terms against the religious heterodoxy, often depended not only on the contingent attitude of the political-religious power, but also on the very magistrate in charge of their enforcement. As a consequence, the latter was not so rigorous, because he was often subject to different and flexible considerations of opportunism⁴¹. For example, in Rome after 392 the ritual sacrifices of the State continued to be celebrated and temple attendance as well as votive inscriptions and other ritual symbols also continued⁴².

Therefore, it is evident that, despite my attempts to simplify the matter, the legislation of Theodosius on religion looks complicated and sometimes contradictory. One can see this especially in the legislation about pagans, in which the emperor seems to have changed his mind, but also in his provisions concerning the Jews following the episode of Callinicum: Theodosius did not punish the Christians responsible for destroying the synagogue, but rather he issued a law generally to protect Jewish synagogues. This attitude, which sometimes appears to be inconsistent, may be due to the lack of a real

⁴⁰ Cf. *supra* n.32.

⁴¹ Concerning Late Empire legislation against the religious heterodoxy, in which «l'effettiva irrogazione delle sanzioni previste in astratto sarebbe dipesa dalla temperie politica, dal contingente atteggiamento del potere politico-religioso, forse persino dallo stesso magistrato preposto alla loro attuazione» see ZUCCOTTI, *Furor haereticorum*, pp.132f.

⁴² About the pagan reaction in the West Empire repressed in the famous battle of the Frigidus, which was always described then as the fight 'à l'outrance' between Christianity and Paganism, see H.BLOCH, *The Pagan Revival in the West at the End of the Fourth Century*, I Cristiani e l'Impero nel IV secolo. Colloquio sul Cristianesimo nel mondo antico. Atti del Convegno (Macerata 17-18 dicembre 1987), Macerata 1988, pp.193ff., also for other secondary literature; for a new interpretation of this battle see LEPPIN, *Theodosius der Große*, p.219: «Doch am zweiten Tag errang er, auch dank einem Naturereignis einen Sieg. Wie immer man seine Rolle in der Schlacht einschätzt: Er hat Fortüne gehabt».

imperial strategy on religion, and his legislation may be seen as a response to emergency situations. Those situations forced him to make immediate decisions. I believe that his laws often seem to stem from contingent decisions, rather than be inspired by a conscious political plan. Sometimes he seems to have pleased the pagan aristocracy and on other occasions he wanted to please the charismatic bishop Ambrosius.

Despite such contradictions, Theodosius' legislation was undeniably very prudent about everything, especially about the Jews, protecting them from the crowds of fanatics and transmitting them a message of tolerance. But this seems to be his message also for the heretics, because he attempted to persuade them to resume orthodoxy instead of punishing them. Even for pagans, regardless of his laws in the second part of his reign, probably influenced by Ambrosius, he intended to respect them. This is proved from the feedback found in contemporaneous historians and in other important sources of his age.

All in all, it is difficult in Theodosius' multifaceted legislation to find firm evidence that he was the paladin of Christianity or a true enemy of paganism. No doubt his laws after the Edict of Thessalonica significantly point to a very complicated situation of coexistence not only of different ways to understand Christianity, but especially of the coexistence of different religions. And when he faced these difficult religious problems, sometimes very similar to our contemporary problems, he revealed some inconsistency and many contradictions, distraught as he was by huge moral problems and weighty doubts. It is not possible to simplify the figure of Theodosius as Christian sources have handed him down to us. His constitutions are eloquent proof that this emperor cannot be labeled as a model uncompromising and coherent defender of the faith.

Nevertheless, in the light of his constitutions' contents a main theme is perhaps detectable in Theodosius' legislation on religion. In his attempt to bring heretics to conversion, in his punishment of pagans only in the second part of his reign and especially in the defense of Judaism from Christian attaches, it is possible to trace his effort to manage religious otherness. In our present society, where the pluralism of people, languages and cultures, vis-à-vis different faiths and religious movements, constantly presents us with the problem of making different identities live side by side, the religious legislation

of Theodosius can prove how «The belief that we have to come from somewhere is closely linked with the belief that we are going somewhere⁴³».

⁴³ E.H.CARR, *History as Progress*, What is history? The George Macaulay Trevelyan. Lectures delivered in the University of Cambridge. January-March 1961, London 1962, p.126f.