



## Diocletian, Maxentius and the legal status of Christianity in imperial constitutions on religious freedom (303-312 AD): a review according to the latest findings

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### KEYWORDS

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### ABSTRACT

*In 2022, an interdisciplinary, preliminary study analyzed for the first time Diocletian's edict of persecution of Christianity, which was believed to be completely lost for 1700 years. Three imperial constitutions belonging to several manuscript traditions that come from 12 Byzantine and post-Byzantine Codes have been carefully studied from a legal-historical, legal-philological and critical-historical point of view. The selected documents have been examined under a comparative structured test that takes into consideration a selection of legal papyri from Roman Egypt as well as the Roman and Roman-Christian literary sources in order to assess their authenticity and the level of interpolation. The analysis of these documents seems to confirm what has been suggested in the recent studies on two unedited epistles of Maxentius, critically published for the first time in 2021. Maxentius' first epistle is the edict of legality of Christianity, quoted by bishop Eusebius of Caesarea and issued around 307-308, which officially put an end to the persecutory edicts of Diocletian in the West. Maxentius' second epistle, approximately dating back to 311-312 AD, is a rescript ruling against the first woman leading the Donatist schismatic Church, Lucilla of Carthage. Interestingly, Diocletian's edict makes direct reference to the principles of religious pluralism and tolerance as well as it points out unedited information on the historical Jesus.*

## 1

In a recent monograph<sup>1</sup>, three imperial constitutions<sup>2</sup> belonging to several handwritten traditions contained in twelve Byzantine and post-Byzantine codices dating back between the 9th and 17th centuries have been carefully analyzed.<sup>3</sup>

The Senateconsult was studied from Grec. 1470, *Μαρτύριον τοῦ ἁγίου Προκοπίου (Martyrion tou agiou Prokopiou)*, f. 120v-121r (BHG 1576, 9th century A.D., 890 A.D.)<sup>4</sup>, Bibliothèque National de

1 Serra and Cecini 2022, *El Senadoconsulto y el edicto de Diocleciano y Maximiano contra Christianos y el edicto abrogativo de Majencio: BHG 1576, BNF Grec. 1470, ff. 120v-121r. Anejos X, 2022, Antigüedad y Cristianismo, Universidad de Murcia.*

2 Senateconsult of Diocletian; forged edict of Diocletian and Maximian; Edict of Maximian.

3 The documents are currently preserved in the following libraries: Biblioteca Digital Hispánica; Bibliothèque National de France; Monastery of Saint Catherine of Mount Sinai-Egypt; Monastery of Vatopaidi-Mount Athos.

4 Serra and Cecini 2022: 59-77, 231. The document was transliterated by Delehaye 1909: 77-89; Delehaye 1955: 119-139.

France, the semi-integral copy of a Senateconsult of Diocletian<sup>5</sup>. Additionally, the documents studied in Serra 2021a and Serra 2021b were reconsidered in the light of new data<sup>6</sup>, which allowed us to suggest:

- i) a new updated and integrated edition of the two epistles of Maxentius (Serra and Cecini 2022:115-160, epistula 1; Serra and Cecini 2022:171-208, epistula 2); and
- ii) a revised edition of the persecutory edict of Maximianus Herculeus<sup>7</sup>. We evaluated their authenticity and the level of interpolation by means of a comparison with a selection of legal papyri; Roman law codes and Romano-Christian literature.

We studied, as follows:

i) Maxentius' epistles from Marcianus Gr. II, 145 (1238), f. 1r (Biblioteca Marciana of Venice, 16th century) y BHG 32, Biblioteca Digital Hispánica, Mss. 4672, year1550, f. 232<sup>8</sup>;

ii) Maxentius's edict of legality in Grec. 519, Monastery of Saint Catherine of Mount Sinai, f. 347r (BNF), BHG 1254 (1254-1254k, 10th century), that reports a forgery of the edict of Diocletian and Maximian; it actually contains an almost complete paraphrase of Maxentius' original edict of toleration<sup>9</sup>;

iii) Βατοπεδίου (*Vatopediou*) 802 f.35r, (BHG 546i), which refers to an edict attributed to Maximianus Herculeus, that has been previously studied in Serra 2021a, 118-122; Monastery Vatopaidi-Mount Athos<sup>10</sup>.

These documents have been scrutinized under a legal-historical, legal-philological<sup>11</sup> and historical-critical test<sup>12</sup> according to a comparative examination with a selection of the following sources:

- i) the legal papyri from Roman Egypt (1st-4th centuries A.D.)<sup>13</sup>; and
- ii) the epigraphic sources<sup>14</sup> and the Romano-Christian literature<sup>15</sup> to assess their authenticity and the level of interpolation.

5 The summarized versions of this Senateconsult are contained in the following *codices*: a) Grec. 771, Βίος και μαρτύριον τοῦ ἁγίου Προκοπίου και τῶν σὺν αὐτῶ, 353v-354r (BHG 1577, 14th century), Bibliothèque National de France, c) Grec. 897, Βίος και μαρτ(ύριον) τ(οῦ) ἁγίου μ(ε)γ(αλο)μ(ά)ρ(τυρον) Προκοπίου και τῶν σὺν αὐτῶ, 158r (BHG 1577, 15th century), Bibliothèque National de France b) Grec. 1556, Μαρτύριον τοῦ ἁγίου και ἐνδόξου μεγαλομάρτυρος Προκοπίου-και τῶν σὺν αὐτῶ, 93r-93v (BHG 1577, 15th century), Bibliothèque National de France e) Grec 1474, Μαρτύριον τοῦ ἁγίου και ἐνδόξου μεγαλομάρτυρος Προκοπίου, 75v-76r (BHG 1578, 11th century), Bibliothèque National de France c) Grec 1516, Μαρτύριον τοῦ ἁγίου και ἐνδόξου μεγαλομάρτυρος Προκοπίου, 26v-27r (BHG 1578, 10th-11th centuries), Bibliothèque National de France d) Cod. 79, Βίος και μαρτύριον τοῦ ἁγίου Προκοπίου και τῶν σὺν αὐτῶ (BHG 1577, Cod. 79, 10th century, monasterii Βατοπεδίου in monte Atho[s], f. 195 β - 207 á; Monastery of Vatopaidi-Mount Athos e) Ms. Medicaeo Regis Franciae, S. Procopii Ducis, fabulositatis suspecta, in Acta Graeco-Latina (BHG 1578): Serra and Cecini 2022, chapter 2; chapter 10.

6 See Serra and Cecini 2022: 115-160; 223-230; Serra 2021b.

7 Serra and Cecini 2022: 223.

8 Serra and Cecini 2022: 115-160.

9 Serra and Cecini 2022:139-160.

10 Serra and Cecini 2022: 223-230.

11 Serra and Cecini 2022: 77-115; 115-139; 223-230.

12 Serra and Cecini 2022: 209-231; 253-370.

13 Serra and Cecini 2022: 115, tabl. XIIa; 231-252, document no. 7. As for the list of references with the respect to the legal terminology, we recall in sum, for the purpose of this overview, as follows: Buongiorno 2016; Giglio 1990; Giglio 2012; Katzoff 1972; Lanata 1973; Mascellari 2021; Mason 1974; Mommsen 1888; Ronco 2008; Taubenschlag 1952.

14 As for the terminology and the epigraphs, see Sherk 1969. The primary sources analysed in the monograph amount to 94 works: see the table of references in Serra and Cecini 2022.

15 Serra and Cecini 2022: 373.

The resulting data have been collected in several tables of reference and comparison<sup>16</sup>.

An integrated method has been developed to verify the authenticity of this kind of documents contained in non-neutral sources (Acts of the Martyrs; *Passiones Sanctorum*) under a multi-structured evaluation test. Some additional parameters were integrated<sup>17</sup>, taking into account, as follows:

- a) the context in which a given document is quoted, considering that ancient historiographical and hagiographical literature cannot be regarded as a neutral context, but it tends to be manipulated for apologetic purposes;
- b) the lesser-known traditions, which are not necessarily written in Greek and Latin, to further assess a given document's authenticity through an extratextual analysis, if possible;
- c) the intratextual analysis, that is, the study of a given document to check its compatibility with other texts attributed to the same topic within the author's same work, if possible, with particular reference to the study of the language and terminology that had been used in that context by a given author (linguistic and legal-philological analysis);
- d) the intertextual comparative analysis, which verifies the compatibility of the document with the relevant, direct primary sources, such as the legal papyri and epigraphs, with specific reference to the technical language and terminology that a given author had used (legal-philological and legal-historical analysis);
- e) the extratextual comparative analysis, which draws a comparison between the documents at issue and the historical sources and context, to assess the document's reliability as to the facts it reports (historical and legal-historical analysis).

As Giuliana Lanata pointed out, the Acts of the Martyrs are documents of paramount importance not only for the reconstruction of the relations between Christianity and the Empire, but also for the law, since they are often the only written sources that allow us to understand the functioning of Roman law<sup>18</sup>.

Giuliana Lanata argued for the importance of studying such legislative and procedural documents and for performing an analysis of their reliability in relation to the historical-legal context, under a strict historical-philological test<sup>19</sup>.

It is important to distinguish the «*authentic*» acts, that are not the result of a forgery, from those documents that are less reliable when scrutinized under a test of assessment – as Lanata underlined<sup>20</sup>.

Accordingly, we provide for the paleographic transcription and the diplomatic edition of the document in BHG 1576, a semi-integral version of a Senateconsult attributed to Diocletian (chapters 1-2):

- i) with the purpose of carrying out the linguistic and grammatical analysis; and
- ii) in order to offer the document's literal translation<sup>21</sup>;

16 Serra and Cecini 2022: 77-115,, tabl. VIIIb; chapter 4, tabl. XI, XIIa, XIIb, XIIIc, chapter 5, table XIIIb, XIIIc, XIId, XIIE.

17 See Serra and Cecini 2022, introduction; 171-208; as for the structured test, see Barbero 2016 in Serra and Cecini 2022, 171-208, 231-252..

18 Lanata 1973, 3-12, 25.

19 Lanata 1973, 27-29.

20 Lanata 1973, 38-39.

21 Serra and Cecini 2022: 59-76. For the analyses, we just recall a selection of references within the narrow scope of this review: Arcaria 1996; Arcaria 1997; Archi 1986; Blass and Debrunner 1961; Buongiorno 2016; Capone 2012; Corcoran 2000; Corcoran 2006; Corcoran 2008; Corcoran 2014; Corcoran 2015; Corcoran 2017; Giglio 1990; Holton and Manolessou 2010; Holton et al. 2019; Katzoff 1972; Lenski 2018; Mascellari 2021; Mason 1974; Mentxaka 2021; Pergami 2011; Pergami 2014; Pergami 2019; Porena 2003; Ronco 2008; Sherk 1969; Solidoro 2003; Van Emde Boas 2019; Volterra 1971; Varvaro 2006.

iii) finally, the resulting text was scrutinized under a comparative, legal-historical and legal-philological examination targeting the document's structure, lexicon and content by means of a comparison with a selection of papyri, epigraphs; and literary sources.<sup>22</sup>

This document, from the manuscript BNF Grec. 1470, fol. 120v-121r (9th century), *Passio* of S. Procopius, belonging to the hagiographic tradition known as BHG 1576, preserves the almost complete version of the text of an epistle containing a Senateconsult of Emperor Diocletian (*δόγμα*, *dógma*); incorporated and sent as general *epistula-edictum* (*πρόσταγμα*, *próstagma*) in all parts of the empire (*ἐν παντί τόπῳ τῆς δεσποτείας μου*, *en pantí tópo tēs despotéias mou*) to all provincial administrations; coupled with the corresponding letters containing the imperial instructions (*γράμματα*, *grámmata*).

The legal-philological and legal-historical study of the document shows a legal-syntactic structure, a legal lexicon and a normative content that is fully compatible, as follows:

- i) with the scheme of the imperial constitutions;
- ii) the koine legal Greek of the papyri; and
- iii) the legal clauses of Roman law.<sup>23</sup> Especially, the document also contains crucial references that are consistent with our knowledge of the Late Roman criminal procedure.

Emperor Diocletian presents to the Senate the criminal charges against the Christians contained in the *libelli inscriptionis* for *crimen maiestatis* that had been previously sent to him, fiercely accusing the Christians of atheism and treason, using legal terms and philosophical concepts that find a comparison (i) with contemporary legal sources (Edict against the Manichaeans);<sup>24</sup> (ii) with Christian and anti-Christian literature such as Origen, Celsus and Eusebius of Caesarea.<sup>25</sup>

The charges can be divided, as follows:

- i) into matters relating to the religious norm (variously referring to impiety); and
- ii) into matters relating to the legal norm and the constitutional order (treason and *crimen maiestatis*).

These accusations fully echo what had already been affirmed by the Senate, according to the report of Tertullianus (Apol. V.1-2), who denounced the refusal of the Senators to recognize the legality of Christianity. The text is fully compatible with other legal sources such as:

- i) the *Collatio Legum* XV.3.14-15;<sup>26</sup>
- ii) the Digest (D. XLVIII.4);<sup>27</sup> and the well-known passage of Ulpianus in D. XLVIII.4.1pr.<sup>28</sup>. The conducts amounting to *crimen maiestatis* also included the involvement of the Christians in their illegal religious associations, that is, the *Collegia* or *Hetaeriae*.

This study would seem to confirm the conclusions that have just been published by Rosa Mentxaka on the Letter 80 of Ciprianus of Carthage.<sup>29</sup> Ciprianus expressly refers to a Senateconsult enacted by Valerianus and Gallienus against the Christians, in so describing the same legislative procedure recorded

22 Serra and Cecini 2022: 77-114, tabl. VIIIb.

23 Serra and Cecini 2022: 77-114, tabl. VIIIA-b; fig. 32-34; tabl. X; 231-252.

24 *Collatio Legum* XV.3.14-15; SEG 39:1698.

25 Serra and Cecini 2022, 77-114, tabl. VIIIb; *Contra Celsum* III.14; III.19-22; III.24-25; II.44; see also the echoes of such a debate in the questioned Talmud b. Sanhedrin 43a.

26 «Unde p̄t̄natiā pr̄aue mentis nequissimorum hominum punire ingens nobis studiū est».

27 *Ad legem Iuliam maiestatis*.

28 *Ulpianus, de officio proconsulis*.

29 Mentxaka 2021

in the *Passio* of S. Procopius.

Prof. Mentxaka, analyzing Letter no. 80 of Ciprianus of Carthage, points out the following elements<sup>30</sup>:

- Valerianus had addressed to the Senate a *rescriptum* (*rescripsisse Valerianum ad Senatum*);
- this *rescriptum* had been requested by the Senate as a form of prior consultation of the emperor;
- Ciprianus' use of the term *rescriptum* may be an error, a confusion between *edictum* and *rescriptum* (in a way not very different from what scholars highlighted with reference to Eusebius' account), since the legislative provision is an *edictum* that takes the form of a Senateconsult (*rescribere ad Senatum*). So, the Assembly is convened by means of a previous written *oratio* (that had been sent to Rome) in order to discuss the content of the measure before the *Patres*;
- it is possible to interpret this Senate's consultation as a request for clarification as to the interpretation and application of the first edict of persecution, enacted the previous year (257 AD) – assuming that the imperial measures had not produced the expected outcome;
- the *oratio principis* was formally accepted by the Senate, transforming it into a Senateconsult having the force of a general law, which reproduced this *oratio* that would take the form of an *edictum*. The Senate would not then have lost all its powers, retaining a subsidiary criminal jurisdiction, according to some leading scholars such as De Marini, Arcaria and Vincenti.<sup>31</sup>

Polybius refers to the traditional jurisdiction of the Senate to judge over the crimes of high treason and *crimen maiestatis* perpetrated in Italy. Consequently, we find reasonable evidence to suggest that, in the Late Antiquity, the Senate continued to exercise its criminal jurisdiction in matters that were traditionally reserved to the *Patres*, probably even when such crimes were committed by the senators themselves. It is therefore possible to argue that some *Patres* might have been among the supplicants activating Diocletian's *ius rescribendi ad Senatum*, in order to indict the Christians for high treason.

Considering the legal nature of the document at issue, BHG 1576 could be regarded as the epistle that contains the *rescriptum* with which Diocletian rules over the charges for *crimen maiestatis* by means of a judicial decision that creates a prohibitive binding precedent (*ἀπιγορευμένα, ὄρος; apēgoreuména; óros*).

It is possible that this ruling was issued in February 303 and was eventually sent to Rome «*ad Maximianum atque Costantium ut eadem facerent*». The dating proposals are discussed in Serra and Cecini 2002: 77-115, table IX, and are compatible with the account of Eusebius and Lactantius<sup>32</sup> as well as with the Acts of the Martyrs' chronology, carefully reconsidered in the light of prof. Giglio's studies.

Diocletian issues a *rescriptum* that contains the *relatio*: in deciding by means of a *rescriptum*, he transforms his decision into a general constitution, in so giving to his judgment the form of a general edict that would have also taken the form of a Senateconsult. The decision of the *rescriptum* coincides with the *decretum* voted by the *Patres*, and it is identified with the principle of law contained in the *αὐτοκρατορικὴ διάταξις* (*autokratoriké diátaxis*) of the *edictum*.

Therefore, the document in BHG 1576 would be considered as the epistle that contains the *relatio ad Senatum*, and the judicial decision of Diocletian (*rescriptum*) that judges the complaints contained in the supplications. The emperor formally responds by exercising a *ius rescribendi ad Senatum* which

30 Mentxaka 2021, 294-296, 298-300.

31 On the Senate in Late Antiquity, see: De Marini 1957; Vincenti 1986; Arcaria 1992; Annunziata 2014; Giglio 1990. See also: Corcoran 2000; Corcoran 2006, on Roman Law and legalepistolography; Holton and Manollessou 2010 and Holton et al. 2019 as for the Koine/Medieval Greek.

32 *Hi. Ecc.* VIII.2.4-5; *De Mart. Pal.* I.1-2; *De Mort. Pers.* XV.6-7.



states, as follows:

- i) the outline of the general edict to be enacted as a Senateconsult; and
- ii) the αὐτοκρατορικὴ διάταξις (*autokratoriké diátaxis*, with which the *verba* are later identified), which is the general principle of law voted by the *Patres*, containing the *sanctio*, the *concessio* and the final *salutatio*.

The *oratio principis* of April 22, 303 is delivered by Maximian as narrated in the *Passio* of Saint Sabinus, which recalls the *decretum in excerpta*, similar to that of BHG 1576: «*tamen Patres Conscripti concedam facultatem ut ubicunque inventi fuerint Christiani, teneantur a Praefecto nostro Urbis, et sacrificent Diis*». These are clearly the introductory words of an *oratio principis*, transcribed verbatim by the author of the *Passio*, reporting the prohibition by imperial law according to the emperor's ruling in his *rescriptum* (τὰ ἀπηγορευμένα; *ta apégoreuména*)

The *Passio* of Saint Sabinus also reports the *verba* of Maximian's legislation of April 30 that perfectly mirror the two dispositions of Diocletian's Senateconsult (*sanctio* and *concessio*): «*ut ubicunque Christiani, nomen auditum fuerit, superstitionem colentes, aut sacrificare cogantur diis, aut certe penis intereant, facultatibusque nudati, eadem fisco cum tributis adplicandae fociuntur. Vale Pater. Data pridie Kalendas Mai*».

This epistle of Maximian, addressed to an *Augustalis* of Tuscia, who is clearly the *Corrector Tusciae*, is presumably one of the implementation measures of Diocletian's orders, and it is absolutely incompatible with Maximian's Edict in Βατοπεδίου (*Vatopediou*) 802 f.35r,<sup>33</sup> which can therefore be considered a different (and a chronologically later) document, presumably the so-called fourth edict: 304 A.D.<sup>34</sup>

There are other textual elements that confirm the authenticity of Diocletian's text and its compatibility with Roman law. We carefully took into consideration the unprecedented reference – quoted in the *concessio* – to the *Fiscus* or *patrimonium principis* and to the donation that would be paid to those who – being summoned before the judge – had agreed to make the prescribed sacrifices, under threat of public execution<sup>35</sup>.

The authenticity of the *dispositio* seems to be confirmed by primary sources, such as: (i) the *Passio* of Agape, Irene and Chione; and (ii) *De Mort. Pers. XV.5*.<sup>36</sup> This can also be interpreted as a symptom of the emperor's political weakness, who seems aware that citizens (actually: subjects) are less interested in traditional public ceremonies.

As some authors emphasized, such as Giglio, public officials prepared *arae* in *secretariis ac pro tribunali*<sup>37,38</sup>. Precisely after the reconversion of some temples for public use, Lactantius tells us that *iudices per omnia templa dispersi universos ad sacrificia cogebant*. These two quotations from Lactantius, together with the testimony of the *Passio* of Saint Sabinus (which does not refer to the *Corrector* and *Augustalis Tusciae* Venustianus by mere chance), and the *Passio* of the Saints Agape, Irene and Chione (Vat. Graec. 1660, 916.5.1) seem to confirm Giglio's point of view.

In the temples that were partially converted for public use for the administration of justice and for

33 Ἐγκώμιον εἰς τὴν ἑορτὴν τοῦ Ἁγίου ἐνδόξου μεγαλομάρτυρος Δημητρίου (BHG 546i).

34 Serra and Cecini 2022: 223-230, 253-272.

35 Serra and Cecini 2022: 59-76, tabl. VIIIa; chapter 2, Fig. 34. Diocletian was known for his acts of charity towards the poor: Roberto 2015.

36 Serra and Cecini 2022: 77-114.

37 *De Mort. Pers. XV.5*.

38 Giglio 2009, 133-154.

the implementation of the imperial *edictum*, it was possible, as follows:

- to inflict the penalty of property's confiscation to those who did not recognize the imperial power by refusing to recognize the traditional Gods (*καθοσίσεις; kathosísis*);
- to grant the non-punishment of the offender (as a form of remission of punishment by imperial indulgence: *φιλανθρωπία, philanthropía*), to the advantage of those who, despite being Christians, recognized the existence of the traditional Gods before a *iudex* (in court);
- to allow those who sacrificed or recognized the existence of the traditional Gods, showing their respect for the deity (i.e. all deities), the possibility of withdrawing a sum of money (probably allocated *una tantum*), which could be intended not as 5,000 silver pieces for all the *omnia templa* in which the judges were administrating the law; but presumably 5,000 for the *Pars Orientis* and 5,000 for the *Pars Occidentis*, that were allocated in the imperial palace (*Fiscus* or *patrimonium principis*) of the two *Augusti*, (i) only for those who agreed to respect the Gods and (ii) only by reason of this manifestation of respect. This sum would then be likely distributed to each of the *arae in secretariis ac pro tribunali*.

It could be argued that such a measure is only compatible with Diocletian's presence in Rome, where his residence (palace) was certainly prepared for the *Vicennalia* (20-year anniversary of Diocletian's reign). Therefore, we may theoretically date the Senateconsult back to the autumn of 303. However, this hypothesis seems contradicted by the chronology of the above-analyzed Passions (Saints Sabinus, Agape, Irene and Chione), as well as by Eusebius' words, from which it can be clearly deduced that this *illud divinum edictum* was promulgated in the West in the spring of 303 A.D., close to Easter. The first provision had been enacted in the East between February and March of the same year.<sup>39</sup>

Several epitomes of the original text of the Senateconsult have been identified. A catalogue containing the critical editions of the imperial constitutions has been created, providing for each law a documentary-bibliographic note referring to the relevant, direct and indirect primary sources, with which they can be compared accordingly (Serra and Cecini 2022: 231-252). The study of these various versions of the Senateconsult has allowed us to show the *modus operandi*, used by hagiographers, for the abridgment of an originally complete legal text, which confirms the hypotheses suggested in Serra 2021a and Serra 2021b. Given the absence of a *datatio*, this study discusses some hypotheses about the place, month and year in which the Senateconsult would have been issued.<sup>40</sup>

Diocletian's choice, as argued in chapter 11, was due not only to legal reasons; but it also mirrored his policies. The emperor, aware of the unpopularity of a legislative measure that would have divided Roman society, probably aimed as follows: (i) to share the responsibility with the Senate; and (ii) to enhance the legal legitimacy of the prosecutions by means of a Senateconsult.

The data deduced from the study of the Senateconsult allow us to better understand the legal and political meaning of Maxentius' first epistle (edict of legality) and of the edict of Constantine and Licinius.<sup>41</sup> It also made it possible to infer some preliminary considerations about the content of Maxentius' provision, the legal-historical context that could have produced the document and its chronology,<sup>42</sup> by previously evaluating its authenticity in relation to primary sources and legal-historical parameters.

39 Serra and Cecini 2022: 77-114, tabl. IX. As for the Senateconsult's analysis, we recall again, ex multis: Mascellari 2021; Giglio 1990; Giglio 2009; Pergami 2011; Solidoro 2003.

40 Serra and Cecini 2022: 77-114, tabl. IX.

41 Serra and Cecini 2022: 161-170.

42 Serra and Cecini 2022: 77-114, IX; tabl. XV; chapter 8.

We verify the potential stratifications and interpolations that had occurred during the transcription chain, in light of the legal-historical study and the epistolography of the text.<sup>43</sup>

The analysis of these data seems to confirm what was stated in Anejos VIII<sup>44</sup> and Vol. 38/2021<sup>45</sup> of *Antigüedad y Cristianismo* and the reliability of Eusebius of Caesarea's account in the *Historia Ecclesiastica*, as suggested in Serra 2021b.

In the case of the Acts of Martyrs reported in Christian literature, such as Eusebius of Caesarea's works, Lanata highlighted how the *Historia Ecclesiastica*, particularly focused on martyrdom (Book VIII), along with the *De Martyribus Palaestinae* – which is the result of Eusebius' direct testimony – as follows: (i) could contain or it could be based on official documents that were put under a rhetorical-literary reworking; and (ii) under a «*hagiographic-parenetic adaptation*», frequently used by Eusebius.

This tendency, attributable not only to Eusebius but also to the hagiographies and martyrologists of the 8th and 9th centuries, was extensively studied in Serra 2021b, in which we underline how the epistles of Maxentius were turned into a hagiographic-literary text. Eusebius contains evidence explaining such a forgery, in so confirming what was stated in Serra 2021a: 138-143 and Serra 2021b: 94-108, giving the reason why Maxentius' texts had been historically preserved, as follows:

a) the inclusion of the epistles in Book VIII of Eusebius, in one of the *Historia's* versions prior to the defeat of Milvian Bridge, to underline Maxentius' pro-Christian and pro-Catholic policy (Serra 2021a: 94-100); and

b) the epistles' quotation («*suffragatory mention*»)<sup>46</sup> in the context of the Council of Carthage of 411 (Serra 2021a: 93), to unmask the falsity of the Donatists' claims, according to Saint Augustine.<sup>47</sup> Precisely, Lanata stressed the importance that the legal documents had in the legal-theological controversy between Catholics and Donatists.

## 2

The Donatists had been already accused of forgery with respect to the acts of Ciprianus (Lanata 1973: 27); they also tried to manipulate the restitution measure of the Catholic Church's property, which the Donatists had retained after the death of bishop Mensurius.<sup>48</sup> In fact, Lanata underlines that the doctrinal and dogmatic controversies had taken the form of *apud acta* declarations, often chaired by an imperial officer who was tasked to guarantee the authenticity of the litigants' arguments.<sup>49</sup> The reason why the epistles of Maxentius were preserved is probably due to the Donatist schism and his intervention in a longstanding legal lawsuit, which has been reconstructed in detail in Serra and Cecini 2022: 171-209.

In Serra and Cecini 2022, chapter 4, the original text of Maxentius' edict of legality has been critically reconstructed thanks to the comparative analysis with the primary sources; then, the legal content was compared with the legal nature of Diocletian's Senateconsult, which gave us crucial elements as to the authenticity of both texts.

The text of Maxentius' edict of legality (Serra and Cecini 2022: 115-138) suffered a naive attempt of

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43 Serra and Cecini 2022: 77-114, tabl. VIIIb; chapter 4, tabl. XIIb; chapter 5, tabl. XIIIe.

44 Serra 2021a.

45 Serra 2021b.

46 Lanata 1973: 25.

47 Serra 2021b: 89-94.

48 Serra 2021b: 99, footnote 41.

49 Lanata 1973, 28.



forgery by the little-cultured author of the Passion of Saint Catherine (BHG 32<sup>50</sup>).<sup>51</sup>

A table comparing the interpolated text with the reconstructed version of the edict is provided for in Serra and Cecini 2022: 115-138, tabl. XI.<sup>52</sup>

Maxentius' edict of legality shows the standardized request for legal exemptions known as *παρὰ τὰ ἀπηγορευμένα* (*pará ta apēgoreuména*, lit. «against the prohibitions of imperial laws» in requests for exemption from certain duties or obligations established by imperial laws: «contrary to the edicts») that finds complete comparison in the legal papyri that contain the requests of those supplicants asking for an exemption from imperial laws. The same terminology, that is, the same petitionary formula in Maxentius' edict, is also found in the work of Eusebius *Generalis Elementaria Introductio, Eclogae Prophaeticae*, which perfectly reflects the formula of the Roman papyri.<sup>53</sup>

According to Katzoff<sup>54</sup>, the *ἀπηγορευμένα* (*apēgoreuména*) are imperial judgments that can be included in the category of rescripts or imperial decisions, together with the *θεία αὐτοκρατορική διάταξις* (*théia autokratoriké diátaxis*, «divine imperial decision») with the same root as *διάταγμα* (*diatagma*), which fully mirrors Lactantius' definition of Diocletian's edict (*illud divinum edictum*).

This term reappears as a singular form (*ἀπηγορευμένην, apēgoreuménēn*) in Maxentius' edict of toleration: it would confirm the hypothesis of one *divinum edictum illud* ("monist theory") repealed by an abrogative edict (*παρὰ ὄρον pará óron*, «contrary to the judicial precedent; also: imperial decision, magistrate's decision») that brings about the end of the imperial prohibition's effects (*ἀπηγορευμένην ἐκπέσεται, apēgoreuménēn ekpésētai*) as a result of Maxentius' imperial indulgence (*μεγάλης φιλανθρωπίας*,

50 See Serra and Cecini 2022: 231-254, documents no. 8-9.

51 The Sinaitic monk, who, as follows: - eliminated the consecutive or causal conjunction, typical of the *αὐτοκρατορικὸν ὄρος* (see Serra and Cecini 2022: 115-160, Fig. 37 and Tab. XIV), by modifying it from a hypothetical *ὡς ὅτι* → *εἰδότες ὡς ὅτι*, preceded by a doubling of the aorist tense (*ἐπιδείξασθε* + *εἰδότες*) in order to create a declarative proposition. Based on the typical structure of the imperial constitutions, it seems absolutely naive and unthinkable to replace the typical conjunction of the *αὐτοκρατορική διάταξις* to insert an indirect or direct speech, in so eliminating: (i) the typical verb; (ii) the place of enactment; and (iii) the geographical effect of the law. As we have seen in Serra and Cecini 2022: 59-138, tabl. XIII and in the consolidated version of the edict, not even *ὡς ὅτι* can be considered authentic, but it should be considered as an abridged formula. - the author attempted to change the meaning of the abrogative *αὐτοκρατορική διάταξις* (*αὐτοκρατορικὸν ὄρος*) in BHG 32, from *παρ' ὄρον* (*παρά* + *ὄρος*: «abrogative») → *παρορών* (part. nom. sing. from *παροράω*), turning it into a participle ("he who violates this law"). In the *lectio marciana*, Marcianus Gr. II 145 (1238) f. 1r, it remains correctly written as *παρ' ὄρον*, with the correct vowel values. Both in BHG 32 and in the *lectio marciana*, the verb of the *αὐτοκρατορική διάταξις* and the place of the enactment are removed; part of the *sanctio* is analogously removed. If we observe the typical structure of the imperial constitutions the *αὐτοκρατορική διάταξις* (*αὐτοκρατορικὸν ὄρος* or *αὐτοκρατορική διάταξις*) contains three typical elements, as follows: a) the causal or consecutive conjunction (*ἀποτέλεσμα*); b) the typical verb used for the laws' promulgation or publication (*δημοσίευσις*); c) the indication of the geographical effect of the provision (*τόπος*). The part reserved to the *sanctio* is usually indicated in the *dispositio* (*sanctio, ποινή*), by means of an infinite tense, governed by a sentence in the indicative-active present tense; or with a governing middle-passive future tense. - he also wrote a partial phonetic transcription (*αι > ε*) in order to interpolate the legal noun *ἐταιρεία* (*collegium*, cult association), turning it into the noun *ἐτέρων* (*ι, ει, η, οι, υ > ι; αι > ε*).- finally, he changed the masculine genitive plural *νέων*, referring to the cults of the new Gods (which there would be no need to prohibit, since they had already prohibited by Diocletian's laws). In fact, *νέων* is modified to merge with the particle *ἀπό*, to transform it into the distinct and unambiguous plural genitive noun of *ἀπόνευσις* (*propensity towards other religions*).

52 The author of the *Passio* as follows: (i) has transformed the *decretum* clause into a declarative sentence (hiding the repealing nature of the edict); and (ii) he has transformed the noun *νέων* into *ἀπονέων*, to make it unrecognizable the "edict of toleration" in favor of the New Gods; (iii) additionally, he has divided the *concessio*'s clause by using the conjunction *τε*, by partially moving some words from their original location and removing the *sanctio*; (iv) then he adopted terms from literature (*ὠήθημεν* instead of the legal clause *ἀναγκαῖον ἡγησάμεθα*). Nevertheless, the original structure and terminology has been kept intact and can be easily read: Serra and Cecini 2022: 231-252.

53 See for example: P. Mich. III 174, 144-147p, P. Mich. VI 426 y BGU II 522.

54 Katzoff 1971, 278.

*megalēs filanthropías*).

We have reconsidered the previous interpretation – suggested as a secondary hypothesis – in Serra 2021b: 100-108, according to which it was argued that the verb ἐκπέσῃται could be a persecutory verb resulting from the interpolation of the anonymous hagiographer.

This verb must be considered authentic: it is not the result of an interpolation *in peius* on the part of the author of the *Passio*, in light of the reconsideration of the New Testament's koine. Therefore, the verb ἐκπέσῃται (*ekpésētai*), from ἐκπίπτω (*ekpíptō*), is used in testamentary koine in the sense of «*loosing efficacy*» or «*loosing effect*», such as for example Romans 9:6<sup>55</sup> and also, in the sense of «*reaching the end*»: 1 Peter 1.24;<sup>56</sup> Acts, 12.7; 27.17; 27.26; 27.29; 27.32; Galatians, 5.4;<sup>57</sup> Jacob, 1.11; 2 Peter 3.17.<sup>58</sup> Therefore, we must reconsider and revise the hypothesis in Serra 2021b: 99-108.

Maxentius' "edict of toleration" makes several references to the judicial precedent. In fact, we can point out four indicators, as follows:

- the petition clause παρὰ τὰ ἀπηγορευμένα (*pará ta apēgoreuména*), also related to the petitions of εὐεργεσία (*euergeσία*) and φιλοanthropία (*filanthropía*, fully confirmed by the clause φθάσαντες ἕως ἡμῶν, *ftásantes éos ēmón*);
- the αὐτοκρατορικὴ διάταξις (*autokratórikē diátaxis*) which contains the abrogative edict (διάταγμα παρ' ὄρον, *diátagma par' óron*) that abrogates the previous imperial legislation (δῶγμα, πρόσταγμα and γράμματα, *dógma, próstagma and grámmata*) and overrules the imperial precedents (*rescripta* of the Tetrarchs). Indeed, we have observed there were *supplicationes* at the origin of Diocletian's Senateconsult;
- the repealing edict puts an end to the effects of the imperial precedents, understood not only as rescripts but also as imperial decisions within the *petitio/responsio* mechanism, that is, δῶγμα, πρόσταγμα and γράμματα. As Eusebius confirms, the imperial decision (*rescriptum*) containing an *edictum* puts an end to the effects of the previous provisions, in so preventing judges from applying the persecutory legislation that has now been abrogated (*overruling* and *abolitio criminis*);
- that the *petitio/responsio* mechanism can create not only judicial precedents, but also imperial constitutions that go beyond the subjective sphere of the supplicants, is demonstrated not only by Diocletian's Senateconsult, but also by the terminology of the papyri that mirrors what Lactantius tells us with reference to the one edict of persecution.

The term ἑταιρεία (*etairéian*) is one more element of the authenticity of the original text, put under interpolation. This term has an important legal meaning<sup>59</sup> not only because it is the Greek equivalent of the Roman law's noun indicating «*associations*» – in general – and «*religious congregations*»<sup>60</sup>; but also, because it shows the pagan point of view towards Christianity. We find this term in Cassius Dio, regarding the persecution of the Jews by Claudius, who prevented the meetings of the *Collegia*. Therefore, this leads us to exclude that the interpretation we suggest would pretend to manipulate the text; instead, it fully reflects the hagiographer's *modus operandi* of interpolating an original text.

The use of the term *Hetaeriae* mirrors the legal position of the Church and the Christians within

55 «Ὁὐχ οἶον δὲ ὅτι ἐκπέπτωκεν ὁ λόγος τοῦ Θεοῦ».

56 «ἐξῆράνθη ὁ χόρτος, καὶ τὸ ἄνθος ἐξέπεσεν».

57 Aland 2014, 628.

58 Aland 2014, 782.

59 *Digesta*, XLVII.22.4

60 *Hetaeriae, Sodalitates*: Plinius, *Epistulae*, X. 43.

Roman law and society, in the phase prior to the Edict of Maxentius. This could provide a crucial argument for scholars such as Leclercq 1911 who, taking into account Plinius' opinion and Trajan's legislation, argued that the illegality of Christianity could be based not (or not only) on the *nomen christianum*, but on their illegitimacy *ex lege Iulia*, as follows:

- i) the lack of recognition as an association or congregation;
- ii) the illegitimacy of their cult's subject.

The illegality of the cult for the reasons indicated by Diocletian, some of which echo Plinius' words («*superstitionem pravam*») would have automatically resulted in the illegality of the association, considered as a secret association, which would potentially turn into a political faction (*Hetaeria*) that would have subverted the public order. Accordingly, such associations could be dissolved by the Senate.

The accusation of treason, *crimen maiestatis* and danger to the public order would have prevented the recognition of Christianity *ex lege Iulia* in accordance with the requirements established for the oldest and most legitimate Collegia («*Igitur grassaturas dispositis per opportuna loca stationibus inhiuit, ergastula recognovit, collegia praeter antiqua et legitima dissolvit*»). This *lex Iulia de collegiis*, in fact, only allowed Jews the freedom of assembly for worship purposes not only because they were considered an ancient collegium: therefore, such collegia did not violate public order as they promoted their ancient virtues, respecting the state by paying the annual tax for making the prescribed sacrifices.

Consequently, Maxentius' final decision displays its effects, as follows: (i) at constitutional level, as a new imperial constitution (*edictum*; διάταγμα, *diatagma*); and (ii) at procedural level, as a judicial precedent (*rescriptum*, ἐπιστολή, *epistolē*), that is, as an unquestionable, annulment ruling from a new *Maximus Augustus* who overrules Diocletian's *rescriptum* (ἄρος, *oros*) and the imperial prohibitions (ἀπηγορευμένη, *apēgoreuménē*). This mechanism could only be used by Maxentius when he had seized the title of *Maximus Augustus*, after defeating Severus and the Augustus Iovius Galerius, in so confirming what was argued in previous papers.<sup>61</sup>

While Diocletian shares the fierce denunciations against the Christians supported by Celsus (human nature of Christ; use of mystery writings; treason and *crimen maiestatis*: see Serra and Cecini 2022: 253-272), denying the divine nature of Jesus Christ on the basis of historical-legal reasons such as indicated in the text of the epistle; on the contrary, Maxentius recognizes the *Collegium* of the Christians and the cult of Jesus Christ as «*New Gods*», on the basis of Hellenistic philosophical-religious views that are compatible with Christianity (Dioscuri, Asclepius, Heracles), as Eusebius of Caesarea reports in a passage of his *Historia Ecclesiastica* explicitly referring to the Maxentius' Hellenism and Neoplatonism.<sup>62</sup>

The legal-historical and legal-philological analysis showed a full correspondence between Maxentius' edict of tolerance and the legal content of Diocletian's Senateconsult; and the primary sources' terminology such as the legal papyri, epigraphs and the Romano-Christian literature. For all these reasons, it was credibly possible to suggest a definitive and integrated critical edition of the edict of legality.<sup>63</sup>

However, the critical study of a third imperial constitution, contained in the Greek manuscript Graec. 1519, Saint Catherine of Mount Sinai Monastery (f. 109v) and Grec 1519, BHG 1254 (1254-1254k, 10<sup>th</sup> century), allowed us to suggest a complete and consolidated reconstruction of Maxentius' "edict of toleration".<sup>64</sup>

61 Serra 2021a: 131-132, Pasqualini 1979: 89.

62 *Hi. Ecc.* VIII.14.5, Serra and Cecini 2022: 115-160, and 273-370, as argued by M. Cecini.

63 Serra and Cecini 2022: 115-138.

64 This constitution is actually a forgery of Diocletian and Maximian's edict, as it contains an almost complete paraphrase of Maxentius' original edict of toleration (see Serra and Cecini 2022, chapter 5), as follows: a) the *occasio legis* is a perfect copy of Maxentius' edict of toleration (εὐεργεσίας παρὰ τῶν θεῶν τετυχηκότες); the author of the *Passio* completely

We provide as follows: (i) a comparison table on the terminology;<sup>65</sup> (ii) a consolidated critical edition of Maxentius' edict of toleration, with the *decretum* and *sanctio* that had been removed in BHG 32; and (iii) a proposed reconstruction of the *stemma codicum* of *epistula* 1.<sup>66</sup>

According to some primary sources such as Optatus of Milevi<sup>67</sup> after the edict of legality, there was still no time to bring back to the Christians the basilicas in May, when the council of Cirta was convened and held; therefore, we can assume that Maxentius promulgated his edict between the late summer of 307 and the early winter 308.

According to Optatus' information, we can deduce the exact moment in which Maxentius could have taken the legal title to legislate in "overruling", that is, the seizing of the *titulus primi nominis*<sup>68</sup> after the defeat of the Tetrarchs' armies. An indirect confirmation of Maxentius' seizing could also be deduced from an interesting sentence of the Trier Panegyric of 313, where Maxentius is accused of considering himself the only true emperor; while the other rulers would have been nothing more than his generals bound to fight on the borders: «*quotiens milites in contionem vocabat, se solum cum illis imperare, alios per limites pro se militare iactaba*». A sibylline passage from Lactantius would state the same concept: «*cum prior <esset> et maior filii potestas*»<sup>69</sup>.

After seizing the full powers of Augustus and the *titulus primi nominis* by right of victory as a result of Severus and Galerius' defeat, Maxentius would have finally been in the legal position to abrogate Diocletian's earlier provisions, exercising the same powers as an Augustus Iovius. This reconstruction would seem consistent with Optatus's testimony that the Council of Cirta was held *post persecutionem*, therefore plausibly in May 308.

It is therefore not surprising that Constantine, during his stay in Rome at the end of the year 312, was able to claim before the Senate – now under his control, with all the persuasive force of his army camped outside the city – the *titulus primi nominis* that Maxentius had held by virtue of his military success.

Constantine presumably obtained the positive vote of the Senate to confirm and legitimize the anathema previously cast by the Tetrarchs against Maxentius (*hostis publicus*), a *post mortem* criminal trial that had led: (i) to the partial rescissio of the tyrant's edicts (Maxentius' *secundum ius* rescripts<sup>70</sup> will be preserved by Constantine); and (ii) to Maxentius' *damnatio memoriae*. Lastly, Constantine would have astutely decided to put an end to any further attempts to persecute Christianity in the future, making sure that its legitimacy as a *religio licita* was not bound to the benevolence of a specific ruler. He made Christianity *religio licita* by means of the traditional and prestigious assent of the Senate, so that in the eyes of all, magistrates and citizens, this renewed tolerance would have obtained a chrism of unquestionable legal certainty.

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removed any reference to the reciprocal divine benevolence, and the petition clause; b) we find the complete paraphrase of what could be the original *αὐτοκρατορική διάταξις*, which in fact includes the standardized tripartite formula (*αποτέλεσμα + διακρίσεως δημοσίευσις + τόπος*); c) the publication order is addressed to all the provincial officers, and it exactly uses the verb *ἐκτίθημι*, which we find in fact in BHG 30; d) the imperial officials, addressees of the publication order, are *ἄρχοντες* and *κατὰ πόλιν στρατηγοί*. In the Greek epigraphs of the Roman period, *ἄρχοντες* is translatable as *praefecti* or *praesides provinciae*, and sometimes it more generically indicates magistrates or governors, which would be compatible with an authentic epistle of Maxentius sent to all his *praefecti* or *praesides* in Italy, Africa and Spain.

65 Serra and Cecini 2022:139-160 tabl. XIIIa-c.

66 Serra and Cecini 2022: 139-160, Fig. 42.

67 *De Schismate Donatista*, I. 14.

68 Pasqualini 1979, 89; Zosimus, *Historia Nova*, II, 10, 7; RIC, VI, 49 ss.

69 *De Mort. Pers.* XXVIII, 1: "*Sed iuveni magis parebatur quam seni, quippe cum prior et maior filii potestas, qui etiam patri reddiderat imperium*".

70 The constitutionally compatible laws of Maxentius.



The “Edict of Milan” has also been reconsidered from the point of view of its legal nature and terminology.<sup>71</sup>

In light of the studies by Sordi and Ramelli 2004 and Mentxaka 2021, the expression διατάξαι ἐδογματίσαμεν may mirror the same legislative tools used by Valerianus and Diocletian, although in the form of verbs. The verb δογματίζω (*dogmatizō*) fully recalls the decree of the *Patres* in a Senateconsult, or δόγμα.<sup>72</sup> The verb διατάσσω (*diatássō*) instead evokes the general constitution or διάταγμα (*diátagma*) and the judicial precedent as well.<sup>73</sup> In the Edict of Maximian, the verb θεσπίζω (*thespízō*) is used («*establish by edict*», θέσπισμα<sup>74</sup>, *théspisma*). Consequently, the verb δογματίζω could be translated as «*we [Constantine and Licinius] decree in the form of a Senateconsult to promulgate an edictum (διατάσσω; diatássō)*»; we find an analogous verb in Julian the Apostate’s edict on physicists.

The “Edict of Milan” seems to be composed of several provisions to be intended as a set of rules, by express mention of the text (νομοθεσίας καὶ τῆς καλοκάγαθίας ὁ ὅρος; *nomothesías kái kalokagathías o óros*). This collection contains a primary provision, the Senateconsult and edict, from which all the others stem according to the “cascade mechanism”, similarly to what is observed with respect to the Tetrarchic constitutions.

We can therefore classify, in the chronological and logical-legal order quoted by Eusebius,<sup>75</sup> as follows:

- a) a Senateconsult (δόγμα, *dóγμα*) and edict (διάταγμα, *diátagma*), that constitutes the logical-legal cornerstone of all the subsequent measures insofar as it makes Christianity lawful; on the basis of this primary norm, the emperors enacted
- b) a first measure implementing the δόγμα and διάταγμα, that expressly repeals the previous provisions (γράμματα) and grants everyone freedom of worship (*edictum?*);
- c) a second provision (*edictum?*) of implementation, which fully follows and reaffirms the three fundamental principles established for in the Senateconsult and *edictum*;
- d) a new restitution measure (presumably an *edictum*) implementing the δόγμα, giving details on the trials before the provincial governors;
- e) a second restitution measure; probably a *rescriptum*, coupled with
- f) a decision (*rescriptum*, an imperial judicial precedent: ὅρος, *óros*) that orders the publication of all the laws as a new collection of legal concessions, to be incorporated into the edict of the provincial magistrates (πρόσταγμα, *próstagma*).

Maxentius’ annulment of Diocletian’s *rescriptum*, his abrogation of the edicts of the Tetrarchs, and his rejection of any negotiations with Galerius and Constantine, were almost certainly the basis of a trial for *crimen maiestatis*, which in all probability took place in Rome after his death. The post mortem trial was held against the *inimicus populi Romani* who had been guilty of the crime of sacrilege and *laesa maiestas*,<sup>76</sup>

71 Serra and Cecini 2022: 161-170.

72 Joseph Flavius, *Jewish Antiquities*, XIV.10.22.

73 διατάξεις; Mason 1974: 127-130.

74 Serra 2021a: 119-120; Serra 2022b: 91-92.

75 *Hi. Ecc.* X.5.4-8.

76 Maxentius’ challenge to Tetrarchy might be dated back to the period before his ascension to the imperial throne. Therefore, it seems that Maxentius alone (amidst many scions, generals, officials who were all eager to pursue their brilliant careers by pleasing the reigning emperors) stubbornly refused to fulfil the rite of adoratio, introduced by Diocletian in the state ceremony, even in the presence of his own father as well as in his position as heir and member of the imperial family (Lactantius, *De Mort. Pers.* XVIII. 8). Scholars have questioned at length the reasons for this refusal to comply with the ritual of the of the emperors’ sacred adoration (Panegyrici Latini III (11), 11, 1: “... sacros vultos adoraturi erant.”) which could, again have led to Maxentius’ exclusion from the Tetrarchic succession, according to Lactantius (Lactantius, *De Mort.*



as the Digest clearly reports<sup>77</sup>.

The facts amounting to *crimen maiestatis*, perpetrated by Maxentius, could only be the repealing of Diocletian's previous legislation in relation to Christianity (that is, a gross violation of the Tetrarchic constitution). If the agreements offered to Maxentius by Galerius, mentioned in the *Origo Constantini Imperatoris*, perhaps contained a proposal of peace towards the integration of the Maxentius within the Tetrarchy, by no doubt Galerius would not have accepted the idea of religious toleration that Maxentius had supported as a top priority in his political agenda.

Maxentius' obstinacy in rejecting any negotiation or compromise on this question must have inevitably drawn the wrath of the Tetrarchy to condemn him as *hostis publicus*.

From October 28, 312 to the year 313 (for some scholars), or 326 (according to others) – that is, after a few months or after fourteen years, if we accept the second hypothesis – the laws of Maxentius suffered the fate of those convicted of *crimen maiestatis*, as follows:

- a) *rescissio actarum*, the annulment of all acts performed by the convicted person;
- b) *damnatio memoriae*, the cancellation of the convicted person's name, as a sacrilegious person, *inimicus populi*.

This was in all probability the ruling handed down by the Senate of Rome in 312 A.D., in the two months that Constantine was in Rome, coupled with the Senateconsult that will be merged in the so-called "Edict of Milan", that guaranteed freedom of worship to Christians and the restitution of Church's property.

With a constitution enacted in 326, Maxentius' *secundum ius rescripta* were not abolished by Constantine's law (C.Th. XV.14.3), and this presumably caused a reviviscence: it is probable that Maxentius' laws such as: (i) the *rescriptum* containing the *edictum* of toleration; (ii) the *rescriptum* on the Donatists; and (iii) the restitution of the Church's property quoted by Optatus<sup>78</sup> and Augustine,<sup>79</sup> were no longer considered repealed laws, since they could not be challenged before the judge and continued to have the force of law. This means that Constantine shared many aspects of Maxentius's policy, from the months after his death or from the year 326, when his vision of Donatism changed radically.

This reading of the *Codex Theodosianus*, the Digest and the "Edict of Milan" allows us to shed new light on the authorship and the legal nature of the only two anonymous laws contained in the *Historia Ecclesiastica*<sup>80</sup>

Eusebius himself gives us information on Maxentius' legislative measures prior to his death, before they were presumably made anonymous in the post-Milvian Bridge's version of *Historia Ecclesiastica*, alternatively by Eusebius or by the 9<sup>th</sup>-century Byzantine copyists. Eusebius tells us about the law(s) that Maxentius would have issued shortly before his death, as we know from Eusebius' index to Book IX.<sup>81</sup>

The linguistic and legal-historical analysis performed on the documents allows us to cast some doubts as to the attribution of the authorship to Constantine. These two imperial constitutions, in fact, show

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Pers., 18, 11: "'Ille', inquit, 'dignus non est. Qui enim me privatus contempsit, quid faciet, cum imperium acceperit?'). Thus reports the Christian rhetorician in quoting Galerius' opinion on Maxentius, referring to the moments in which Galerius and Diocletian had appointed the Caesars of the Second Tetrarchy.

77 D. XLVIII.4.11.

78 *de schismate Donatista*, I.14.

79 *Brev. Coll.* XVIII.36; XIX.37.

80 *Hi. Ecc.* X.5.15-17; X.7.1-2; Serra and Cecini 2022: 171-208; 209-222; Fig. 43-46.

81 See Serra 2021b.

the clear evidence of a *damnatio memoriae*, performed on the texts' *intitulatio* and *salutatio*, which is compatible with the post mortem punishment of Maxentius. In particular, the epistles of Constantine in the *Historia Ecclesiastica* clearly show Constantine's adherence to a strictly monotheistic religious belief, very close to Christianity, as opposed to that of an anonymous emperor, characterized by a clear reference to the Gods as well as by a rigid conception of morality and the *Mos Maiorum* (censorship). The anonymous texts are attached with Constantine's epistles, but the *intitulatio* and *salutatio* (which makes the emperor recognizable) are eliminated.

Additionally, the data deduced from this study<sup>82</sup> can be compared with Maxentius' language and historical-legal background in his second epistle, which shows many points of contact with the anonymous constitutions. The opinion against Lucilla, expressed by Maxentius in his second epistle, precisely applies strict moral norms for which Maxentius was known, as Saint Augustine and the epigraphic sources report.<sup>83</sup> We have highlighted few attempts of forgery.<sup>84</sup>

In the New Testament we find the term *γυναικάριον* (*gunaikáron*) that indicates a weak and sinful woman (2 Timothy III.6); therefore, women were prevented from exercising any activity related to the Christian ministry, as well as from prevailing over men<sup>85</sup>; τὸ γύναιον (*to gúnaiion*) refers to Hypatia of Alexandria, precisely to denounce her lack of modesty before men in her teachings, and to indicate an *old woman*. We find the same words in Procopius with (dis)respect to Empress Theodora. Also, in the New Testament (1 Timothy II.9), we have the noun *αἰδοῦς* (*aidús*) which refers to women who should dress modestly. A *muliercula* is also a woman of the highest rank who does not observe the virtue of *Αἰδώς* (*Aidós, pudicitia*, modesty), not showing morality in accordance with the law and ethical-moral customs.

Maxentius' sentence is therefore perfectly compatible with the emphasis placed on the moralizing attitude worthy of the ancient Censors ("*censurae veteris*") according to his epigraph in the Roman Forum<sup>86</sup> and with the invocation of the Goddess *Αἰδώς* in reference to society's respect of morality in religious matters. The condemnation of Maxentius is not only politically grounded, but it is morally justified since a *clarissima* like Lucilla, who behaves like a *muliercula* violating *pudor* and modesty that a woman must respect, creates a political counterpower by putting herself in chief of a parallel, schismatic Church for the few and the pure (*ἄσσιοι*), against the universal Church of Caecilianus.

The opinion of Maxentius is therefore based on his conception of morality, *pudicitia* and modesty, as a *Pontifex Maximus* and *Censor* who has the duty to regulate over the religious and moral life of the Empire.<sup>87</sup> Therefore, the lack of discipline that Optatus refers to Lucilla (*necnon et Lucilla quae iam dudum ferre non potuit disciplinam*) finds a confirmation in Maxentius's request to show τέχνη (*tékne*); as

82 Serra and Cecini 2022: 171-222.

83 Serra and Cecini 2022: 171-222; 273-370.

84 The author of the *Passio* tried to hide the identity of the Donatists by modifying ἄσσιοι → ἄσσιοι; a) typical ideological anachronisms have been inserted (μύθους, probably as a replacement for ἱστορίας from ἱστορία), as an insult to the pagan Gods, transforming an original plural nominative participle *καλυπτομένοι* (perfectly in line with the structure of the text and clearly referring to the Donatists) in an accusative plural referring to the Gods; b) simplifications have been inserted (*μεγάλαις δωρεαῖς*) which can no longer be reconstructed in their original meaning; therefore, we don't know what Maxentius specifically promised to the Donatists; c) finally, the *minatio* containing the first-person singular of the verb *δύναμαι* has been transformed into the noun *δύναμιν*, depriving the two final dispositions of the first-person singular verb (if we accept this interpretation of the sentence; contra, see chapter 7, *Epistula* 2, in a revised and updated critical edition). Serra and Cecini 2022: 171-208.

85 1 Timothy II.12.

86 CIL, VI, 1220=31394a=33857b (+p.4351): *Censurae veteris / pietatisque singularis / domino nostro / [[[[M] ἀρετῆ[ο]]]* (To our Lord Maxentius, a man worthy of the ancient Censures and of Pietas out of the ordinary).

87 Following this censorious and intransigent morality, Maxentius exiled the senator Vettius Cossinius Rufinus for being guilty of adultery: the episode would later be recounted in one of Augustine's *Epistulae*, which accused the emperor of his 'severa censura' (Serra and Cecini 2022: 337).

we suggested in our previous work, we also have other elements of correspondence between Maxentius' second epistle and Optatus' narrative about the Donatist women, who are regarded as schismatics and skilled in deception<sup>88</sup>. The universal Church of bishop Caecilianus<sup>89</sup> is now opposed by the Church of the Pure, chaired by Lucilla, mistress of deceit, the immodest, cunning and swindler *muliercula*.<sup>90</sup>

In chapters 11 and 12.1, it was therefore possible to analyze and reconsider all the primary and secondary sources on the Tetrarchy and Maxentius in the light of these new data. In particular, a careful study of Eusebius' statements against Maxentius (*Hi. Ecc.* VIII.14.5), would seem to open new scenarios regarding the hypothesis – already suggested in Serra 2021a – about Maxentius' Hellenism that we inferred from his words in the second epistle. According to Eusebius and the archaeological evidence, we found interesting clues providing a new key to the understanding of Maxentius' ambition and belief, a historical character who has been often misunderstood and regarded as a mere tyrant defeated by Constantine.

We can now suggest the following conclusions. Some scholars may state a formal objection, questioning the hypothesis of a Senateconsult: the sentence «ἐν παντί τόπῳ τῆς δεσποτείας μου» may only refer to the *Pars Orientis* and the noun δόγμα may be translated (even though legally incorrect) as “edict”, synonym of πρόσταγμα.

On the basis of the analyzed sources above, we should reconsider Diocletian's position of supremacy within the Tetrarchic *Collegium* (Serra and Cecini 2022: 77-114; 253-272). The *Maximus Augustus* has not only the legislative initiative over general matters: Diocletian retains a general *ius edicendi* according to which he sets the principles of law and the legal criteria that the other law-making institutions and the provincial magistrates have to respect when enacting new laws or deciding a lawsuit, so as to ensure the sources of law's hierarchy, the principle of unity and the respect of the “Tetrarchic constitution”.

The *ius edicendi* of the other constitutional bodies is therefore linked to, and limited by, the *ius edicendi* of the *Maximus Augustus* and the general principles he established for in his *edicta* and *rescripta*. Furthermore, Diocletian's *ius edicendi* does not seem to have precise geographical limits, especially for the implementation of his primary policies.

We could draw a comparison for didactic purposes – which it is not aimed at suggesting any anachronistic identification – with contemporary Italian administrative law and the theory of the “presupposed act”: the *edicta*, the *rescripta* and the Tetrarchs and the magistrates' rulings may be regarded as subsequent or “secondary acts” that are closely linked to, and part of, a single multi-structured procedure<sup>91</sup>.

In the case of the Tetrarchy's legislative procedure, the hypothesis of a superior *ius edicendi* of the *Maximus Augustus*, who is not subject to geographical limits when establishing general policies of top importance for his political agenda, is strongly linked with the military organization of the “Tetrarchic state”: Diocletian's unitary constitutional architecture is based on the respect of the hierarchy.

Therefore, to support the abovementioned hypotheses, we can quote, as follows:

88 *de schismate Donatista*, V.8.1.

89 καθολική ἐκκλησία ἢ Καικιλιανὸς ἐφέστηκεν.

90 ὅσοι μηχανῆς σοφώτατον τὸ γύναιον θαπτὸν ἐπιστήσοντες.

91 According to the Italian Council of State, in the “presupposed act” «there is such a close connection in content and effects as to suggest that the subsequent act is a direct and necessary emanation of the previous one. The acts are in a relationship of legal and chronological succession, or of necessary concatenation: the presupposed act not only precedes and prepares the presupposing one, but it is its exclusive base, to the extent that the existence and validity of the presupposed act are indispensable conditions so that the other act can legitimately exist and produce its own legal effect (Consiglio di Stato, sez. III, 10 novembre 2020 n. 6922)». On Eusebius, see Laqueur 1929; Parente 1979; Schwarte 1994.

- i) the edict against the Manichaeans;<sup>92</sup>
- ii) the epistle from Elephantine (in which the use of the first-person singular clearly indicates that Diocletian is the *primus auctor*);
- iii) the consequences of the violation of the *Maximus Augustus*' edict;<sup>93</sup>
- iv) the *ius rescribendi ad Senatum*, that had been already used by Valerianus and Gallienus.

This use of a Senateconsult for religious and criminal matters, in compliance with the formal powers of the Senate as the highest authority for introducing and judging new cults and Gods respectively; as well as for ruling over a selection of gross crimes committed in Italy; is actually the legal instrument according to which Diocletian imposes his will on the *Pars Occidentis*, in so binding the Senate and his colleague, the *Augustus Iunior*.

The sending of the edict's text to the West, in a completely analogous way to what had previously happened with the Manichaeans, does not address the need to safeguard the Senate's competencies, but, rather, to impose officers' loyalty at all levels of the hierarchy (the Tetrarchs and the magistrates).

In this way, Diocletian's political manifesto is legally transformed into a ruling of the highest authority on religious matters and high treason (the Senate), which obliges all the citizens and the public officers. As mentioned above, the Senateconsult allowed the *Augustus Maximus* to have an even greater capacity of persuasion in the sight of his officers and subjects, in compliance with the Senate's traditional powers and the constitutional order.

It could then be questioned that the reference to the *Fiscus* should in fact be interpreted exclusively as the *patrimonium principis* of the Eastern Augustus: this provision could also be considered as inauthentic since the sources only mention the confiscation and not any donation of money. In fact, the comparative analysis of the sources shows that the *Fiscus* takes part in the persecutions, since:

- if the defendant recognizes the traditional Gods, he/she has the chance of taking public money (from the *Fiscus* or from the *patrimonium principis*, which remains a public law body), that is, only the sums that are strictly necessary to actively participate in the ceremonies and to make sacrifices in honor of the Gods (after all, Diocletian was well known for his acts of benevolence towards the poor);
- if the defendant does not recognize the traditional Gods, his/her assets are confiscated by the *Fiscus*.

It is important to point out the *genus-species* relationship that exists between the general provision or "primary law", that only the *Maximus Augustus* has the competence to enact, setting the principles of law for a given matter; and the implementation measures, that we may conventionally call, for the purpose of this study, as "secondary legislation".<sup>94</sup>

Therefore, it is evident that Diocletian's edict contains the general principles to which the other members of the Tetrarchy and the judges must abide, as follows:

- i) the general obligation to sacrifice, the violation of which is punishable by capital execution for *crimen maiestatis*;
- ii) the non-punishment of those who comply with the obligation (even if they are Christians),

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92 It is worth remembering that the Proconsul of Africa, Iulianus, writes directly to Diocletian to express his concerns about the cult of the Manichees, and receives a reply from *Maximus Augustus*, not from his western colleague Maximianus, who also had authority over the territories of Proconsular Africa (Roberto 2014a: 189-191).

93 Serra and Cecini 2022: 115-138; 171-208.

94 On the Senate, see Giglio 2009.

without implying the legality of Christianity and the *Collegia tout court*.<sup>95</sup>

The edict does not contain individual provisions, which are obviously left to the initiative of both the other members of the Tetrarchy and the magistrates in court with *ius edicendi*.

In the Senate, on April 22, 303 A.D., in fact, Maximian does not refer to the application measures but to the general principle of law, as stated by the *Maximus Augustus*: all Christians must sacrifice to the Gods. In fact, in an applicable provision, addressed to the *Corrector* and *Augustalis* of Tuscia, Maximian explicitly refers to the confiscation of the convicted person's property, sentenced to death for *crimen maiestatis*.

Therefore, it is through the *ius edicendi* of the other "cabinet's members" and the provincial magistrates that some implementation measures were established, such as: (i) the delivery or burning of the sacred texts; (ii) the burning of the churches. But such measures are fully anticipated and implied by Diocletian's edict.

It is precisely the text of this first and only *edictum illud* that formally accuses the preachers and their sacred texts. It is therefore evident that "secondary laws" are enacted on the basis of the principles established by the *Maximus Augustus* (the other Tetrarchs' *edicta* or the measures enacted by those magistrates that have *ius edicendi*) to implement Diocletian's will both at legislative and procedural level.

Given that the Christian *Hetaeriae* are headed by preachers (bishops and other members of the hierarchy) accused of high treason, and given that these associations have – as their object – a cult that is not recognized by the "Roman constitution", we can infer that Diocletian's edict reaffirms the illegality of the Christian associations.

The arguments for such hypotheses directly come from the analysis of Maxentius' edict, which exactly annuls the "presupposed act" (Senateconsult and *illud edictum*) prohibiting the Christians' cult and their congregations. We can exclude that such documents are the result of a forgery, although they come from non-neutral textual traditions such as the Passions or Eusebius' accounts, insofar as they are fully compatible with the primary sources. According to Giuliana Lanata, the authenticity of a document from non-neutral sources can only be achieved by means of a legal-philological and legal-historical study on primary sources such as the papyri and the epigraphs (which are "closed contexts").

No primary source from non-neutral or literary contexts can be considered authentic *tout court* without first being scientifically analyzed with the tools offered by Roman law, legal philology and Roman history. For this reason, in effect, more interdisciplinary studies are highly desirable in future to better clarify and amend what it is suggested in this new preliminary note.

Therefore, Lactantius or Eusebius cannot be considered valid a priori, whereas – at the same time – we consider as a product of forgery all the sources that seem to contradict a given reasoning; nor we should consider Eusebius as partially valid to the extent of, and to the purpose of, supporting a given theory, especially when it results in recognizing some merits only to Constantine, in clear contrast with the primary sources and Roman law and to the detriment of historical objectivity and impartiality.

As Alessandro Barbero points out, historiography has sometimes been concerned only with recognizing Constantine as many merits as possible, obsessively focusing on this character without carefully considering the chronology and without strictly verifying the reliability of the sources.<sup>96</sup>

Another evidence supporting the authenticity of the texts at issue is given by the careful reinterpretation of the Greek text of the so-called "Edict of Milan". A new interpretation based on the Greek text could be criticized by scholars apodictically; however, the Greek version of the law(s) actually

95 On the Late roman law and its procedure, see Pergami 2011.

96 Barbero 2016: 473-472, 353-362, 511-512, 517.



shows several elements that are authentic and compatible with a normative collection by Constantine and Licinius, as the Greek text explicitly reports.

The Greek text reveals a legal terminology that finds a comparison in Roman law, which Maxentius' edict of legality mirrors explicitly. Diocletian's *illud edictum* and Senateconsult is in fact abrogated with the same legal form by Constantine and Licinius (Senateconsult and edict). The "edict of Milan" accurately shows the scheme of the "presupposed act" ("primary legislation") and the subsequent acts of implementation ("secondary legislation"), which are part of the same procedure and to which they are all closely related, since they are the implementation of the general principle of law established for in the primary act. Maxentius' "edict of toleration" is, therefore, "unconstitutional" and amounts to an act of high treason against the "Tetrarchic constitution" since he seized the authority of a *Maximus Augustus* to obtain the legal competence to repeal Diocletian's *rescriptum ad Senatum*.

From the point of view of the legal effects, it would therefore be more correct to refer to Maxentius and Constantine's legislation as edicts of legalization of Christianity, or edicts of legality (instead of toleration); whereas – from the point of view of its legal nature – as it has been previously said, Maxentius' rescript containing the edict can also be qualified as the highest court's overruling.

While the authenticity of Maxentius' edict of legalization is confirmed not only by primary literary sources, but especially by primary legal sources (such as the papyri and the legal epigraphs), the authenticity of the second epistle against Lucilla and the Donatists is determined by means of four indicators. We find confirmation in literary sources that have "historiographical" or chronograph elements, such as Optatus' *de schismate* and the *Breviculus Collationis* of Saint Augustine. These indicators, that we find in the second epistle, constitute the clear identikit of Lucilla and the Donatists, as follows:

- the anonymous little girl (*muliercula*), cunning and quick to deceive, who is at the head of an anonymous Christian faction, can only be Lucilla of Cartago; according to what Optatus of Milevi, Saint Augustine and Saint Jerome tell us in their works; accordingly
- the persuasive lie under which this anonymous Christian faction and its leader hide, during the reign of Maxentius, seems to mirror
  - i) a general mental attitude which Optatus reproaches to Donatist women;<sup>97</sup>
  - ii) or – more likely – it could refer to the Council of Cirta<sup>98</sup>, with particular reference to those who were to be considered as the true traitors<sup>99</sup>

97 *Quos aut factione aut subtilitate, ut vestros faceretis seducere potuistis, non solum masculi, sed etiam feminae: de schismate Donatista*, VI.8.1: Migne 1845, 1080.

98 As already discussed in Serra 2021b, based on the observations of Lancel 1979, Augustine suggests a chronology for the Council of Cirta that seems historically questionable, but is only instrumental in rejecting the Donatists' claims: *nam gesta martyrum quibus ostendebatur tempus persecutionis, consulibus facta sunt Diocletiano novies, et Maximiano octies, pridie idus februarias; gesta autem episcopalia decreti Cirtensis post eorundem consulatum, tertio nonas martias: ac per hoc tredecim menses interesse inventiuntur, plures utique quam undecim, quos prius Catholici minus diligenter computando responderant: sed Officium ut falleretur et mensem interesse responderet, eundem consulatum putavit, post consulatum autem non advertit, ubi annus iam alius agebatur* (*Breviculus Collationis, Tertii Diei*, 17.32: Migne 1865: 643-644); the dating proposed by Optatus (*post persecutionem, Die III Iduum Maiarum: de schismate Donatista* I.14: Migne 1845: 912) seems chronologically acceptable. *Post persecutionem* indicates that it was a period shortly after the edict of Maxentius, and the fact that the basilicas had not yet been brought back (*quia Basilicae necdum fuerunt restitutae*: Migne 1845: 912) means that the Council of Cirta was held shortly after the promulgation of the edict of legalization. Correctly, the Donatists argued that: *tunc dixerunt tempore persecutionis congregari non potuisse concilium* (*Breviculus Collationis, Tertii Diei*, 17.32: Migne 1865: 643-644).

99 *Sicut scripta Nundinarii tunc diaconi testantur, et vetustas membranarum testimonium perhibet, quas dubitantibus proferre poterimus. Harum namque plenitudinem in novissima parte istorum libellorum, ad implendam fidem adiunximus. Hi episcopi interrogante Secundo Tigitano, tradidisse se confessi sunt. Et cum ipse Secundus a Purpurio increparetur, quod et ipse diu apud stationarios fuerit, et non fugerit, sed dimissus sit, non sine causa dimissum fuisse, nisi quia tradiderat: iam omnes erecti coeperant murmurare; quorum spiritum Secundus metuens, consilium accepit a filio fratris sui Secundo minore, ut talem*

- the reference to the respect of the imperial *ius edicendi* (or the threat to use it) clearly indicates the Donatists, who did not recognize the authority of Rome and Maxentius'. Therefore, they were guilty of *crimen maiestatis*, *contumacia* and *seditio* because they did not recognize the legitimate election of Caecilianus and did not want to bring the Catholic Church's property back (which they had previously and unlawfully seized), despite the fact that Maxentius had issued several edicts and rulings. The conduct was considerably serious since Circa, which had been the stronghold of Domitius' rebellion, had just been destroyed, and the rebels who had supported Domitius had just been arrested and executed;
- therefore, it is no coincidence that Eusebius tells us that Maxentius sent to arrest an anonymous, noble Roman woman who committed suicide in her house before the servants («*the deacons of the tyrant*») had taken her away. It is evident that, as Lucilla was the shadow head of the Donatist faction, Maxentius intended to behead the rising movement by eliminating its leader; the unnamed Roman woman pursued by Maxentius and his servants (ambiguously called «*deacons*» in the Greek text) can only be Lucilla of Carthage;
- consequently, it is likely that ὄσοι (Latin: *quicunque*) is the typical interpolation used by the author of the *Passio*, who is not able to go beyond few phonetic or naive interpolations to hide the original meaning of the text, according to its cultural level. The text is easily and critically understandable to contemporary legal historians using the scientific method. Therefore, it is plausible to argue that the anonymous faction is actually the faction of the Pure, ὄσοι (*ósioi, de schismate donatista*, I.18: «*communioni misceri nolunt*») <sup>100</sup>, who hide behind the persuasive lie of purity and non-contamination, under Lucilla's deceptions;
- finally, we have one more element that contributes to confirm the identity of Lucilla and the Donatists. In fact, after the promulgation of this *rescriptum*, fifty rhetoricians or orators are convened to meet in council in order to reject the *muliercula's* theories theologically and philosophically. <sup>101</sup> As underlined in Serra 2021b, this fact reported by the hagiographer is not a product of forgery; instead, it is based on a real Ecclesiastical Synod which was held in Carthage, in which the theological aspects of the *traditores* and Caecilianus' appointment were discussed, presumably between 311 and 312 A.D. <sup>102</sup> This Council could only be the Proto-Donatist Council of Carthage, held in Lucilla's house (convened and chaired by her) in front of 70 bishops who

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*causam Deo servaret (...). Habes ergo qui manifesto fuerint traditores [de schismate Donatista, I.14: Migne 1845: 916]; illud Cirtense concilium falsum esse, ubi lectae fuerant confessiones traditorum invicem sibi ignoscentium ne schisma fieret [Saint Augustine, Breviculus Collationis, Tertii Diei, 15.27: Migne 1865: 642]; accordingly, Augustine states that the Donatists hoc ergo falsum demonstrare conantes, multa dixerunt [Breviculus Collationis, Tertii Diei, 17.31: Migne 1865: 641-642]; referring also to the letters of Mensurius and Secundus of Tigisis, whose authenticity does not seem to be definitively proven (Dictum est etiam a Catholicis, episcopalia gesta illa Cirtensia, quae diligentia maiorum usque ad haec tempora servari et inveniri potuerint, sic habenda quemadmodum illae epistolae Mensurii et Secundi, quas Donatistae recitaverunt. Concilium quippe Carthaginense, ubi absentem Caecilianum septuaginta damnaverunt, commemoratum est etiam <in iudicio> a Miltiade habito, ubi Caecilianus est absolutus. Litterae vero illae Mensurii et Secundi nusquam alibi commemoratae dicebantur, unde nullo alio testimonio veritas earum asserebatur, nec tamen ideo dicebant Catholici falsas esse. Dictum est etiam hoc a Catholicis, ut probarent Donatistae si possent, tempore persecutionis sic ad se invicem scripsisse episcopos, quemadmodum Mensurium et Secundum scripsisse proferebant. Quod non ideo dicebant Catholici, ut hinc illas Mensurii et Secundi litteras falsas esse monstrarent, quae seu verae seu falsae essent, causae nihil officerent; sed ut hinc intellegerent Donatistae, quam vana tergiversatione Catholicos cogere alia proferre concilia persecutionis tempore congregata: quia, si eis simili obstinatione diceretur [Migne 1865: 643-644]; Falsum enim erat quod Donatistae dixerant, convenire personas, convenire loca, convenire regiones [Migne 1865: 643-644];*

100 Migne 1845: 918-919.

101 BHG 32: τῶν γραμματῶν τοίνου πᾶσαν τὴν ὑπ' αὐτὸν ἀρχὴν ἐν ὀλίγῳ περιελθόντων, σουνηλθον πρὸς αὐτὸν ἐξεπιλογῆς, τὸν ἀριθμὸν πενήκοντα ῥήτορες.

102 See Serra and Cecini 2022, 171-222, and Serra 2021b.

finally elected Maiorinus, *domesticus Lucillae*.<sup>103</sup>

We can underline the *modus operandi* of the Egyptian monk who, in homage to the city of Alexandria (the place of the forgery's attempts indeed) and in order not to make the facts recognizable, reports a story that mirrors Lucilla's:

- i) Carthage becomes Alexandria, and the Synod ceases to be that of Carthage, that is, the Council that was convened to invalidate the election of Bishop Caecilianus;
- ii) instead, the author makes clear reference to the Synod of Rome, which judged the innocence of Athanasius Bishop of Alexandria, who is acquitted of all the accusations by the Arian heretics.

The Arians, in fact, by accusing Athanasius, had managed to remove him from his office. The symmetry of the account is thus evident: the Council of Carthage, chaired by a cunning *muliercula* who convened 70 bishops into her villa to question the election of Bishop Caecilianus,<sup>104</sup> is replaced by the Council of Rome, convened by 50 bishops, who declared illegitimate the charges and the deposition – by the Arian heretics – of Bishop Athanasius of Alexandria.

Therefore, it seems highly likely that the attempt of forgery of Maxentius' epistles, Maxentius' life, Lucilla's and the Donatism was performed in Alexandria, considering that:

- i) the *Passio* of Saint Catherine (BHG 32) and Saint Mena (BHG 1254), reports the life of Alexandrian martyrs;
- ii) the reference to the Council of Rome in BHG 32 in which the "Nicæan Orthodoxy" temporarily defeated the Arian heresy; in a symmetrical inverse way to the Council of Carthage, in which the Donatist heresy prevailed.

All these elements point to Alexandria directly. This symmetry (Council of Carthage, Catholic bishop deposed by a faction of heretics; Council of Rome, Orthodox bishop deposed by a faction of heretics and acquitted by the "Catholic" faction) cannot be considered accidental and therefore cannot have been unknown to the author of the *Passio*. It is likely that such documents, preserved in the North African ecclesiastical archives along with the reports and chronographs referring to the Donatist schism, which had been used at the Council of Carthage in 411, reached Alexandria between the 5<sup>th</sup> and 6<sup>th</sup> centuries, if not earlier. They had been preserved in several ecclesiastical or imperial archives.<sup>105</sup> This would confirm exactly what was argued in Serra 2021a: 112-121, 143, 168.

We do not know it for sure if earlier versions of the Book VIII of Eusebius' *Historia Ecclesiastica* containing the detailed account of the history of Donatism (the account and the attached documents) actually circulated before Eusebius' post-Milvian Bridge account in North Africa; and when such documents have been modified by the Egyptian monk for the creation of BHG 32 and BHG 1254 (presumably around 9<sup>th</sup> century A.D.).

In other words: (i) the translation of the original documents into Latin (where this hypothesis is preferred, contrary to what is stated in Serra 2021a and Serra 2021b and in accordance with what it is suggested in this work, being highly likely that the documents were conceived *ab origine* [also] in Greek); or (ii) the quotation would have been carried out directly by Eusebius of Caesarea before the

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103 Therefore, it is possible to assume that the hagiographer changed the number of bishops from 70 to 50 so as not to make the true historical facts directly recognizable, overlapping it on the Synod of Rome, held under Pope Julius I between 340 and 341 to judge Athanasius of Alexandria. After this act of rebellion against the imperial power, Maxentius would then have ordered the arrest of Lucilla with the probable accusation of *crimen maiestatis* and *seditionis*.

104 *Ubi absentem Caecilianum septuaginta damnaverunt*: Migne 1865: 643-644.

105 *Vetusta ecclesiastica archiva: Breviculus Collationis*, III.17.31: Migne 1865: 642; *veteres chartas in archivis ecclesiasticis: Breviculus Collationis*, III.17.32: Migne 1865, 643-644; in *archivo proconsulis: Breviculus Collationis*, III.7.8: Migne 1865: 627-628.

*damnatio memoriae* of Maxentius; and (iii) the text of his earlier versions of the *Historia Ecclesiastica* may have been transmitted for some years in some *Scriptoria* and preserved in some archives (imperial and ecclesiastical *Scrinia*) before A.D. 312.

Currently, both hypotheses about the circulation of the epistles in Alexandria are plausible and one does not exclude the other. It seems evident that the monk was able to work on the abridged (but not interpolated) versions of the texts, perhaps directly taken them from the imperial or ecclesiastical archives, naively modifying them to create the hagiographic narrative.

The creation of the winner's features is proportionally inverted to the loser's. From the Christian point of view, Maxentius had undoubtedly been Constantine's greatest rival, since he had displayed from the beginning of his reign those qualities of *pietas* and philanthropy typical of the ideal Christian emperor.

When Eusebius of Caesarea wrote a different version of his *Historia Ecclesiastica* after the battle of Milvian Bridge, the memory of Maxentius had not yet been lost, and the bishop had to distinguish between the two rulers who, formally, resembled each other.

For this reason, Eusebius of Caesarea was forced to point out that Constantine's case was different in that the emperor displayed a sincere *imitatio Dei* or *imitatio pietatis* (ζηλωτὴν τῆς πατρικῆς εὐσεβείας, *zēlōtēn patrikēs eusebeías*) whereas that of Maxentius was an insincere imitation of the *pietas* or *simulatio pietatis* (εὐσεβειαν ἐπιμορφάζων *eusebeian epimorfázōn*).<sup>106</sup>

Therefore, the position of Maxentius and Constantine is similar, both are characterized by *pietas*, except that, in the case of "Constantine the Winner", the *pietas* imitation is sincere; whereas, in the case of Maxentius, "the loser tyrant", the imitation is a simulation.

Both emperors show an outward imitation, but what changes is the *animus imitandi*. Hence, it is evident that this version of the account can be dated after the battle of Milvian Bridge and it is functional to an apology of Constantine, that is, an account that is not characterized by Eusebius' impartiality.

In conclusion, this study cannot be considered as definitive, but it constitutes a preliminary note: the previous studies performed in 2021 have been updated accordingly; in some cases, it has been possible to present new elements, evidence and data to support leading authors' theories as well as the hypotheses formulated in *Anejos VIII* (Serra 2021a) and in *Antigüedad y Cristianismo*, Vol. 38 (Serra 2021b).

106 [Hi. Ecc. VIII.13.14] Τούτου παῖς Κωνσταντίνος εὐθὺς ἀρχόμενος βασιλεὺς τελεώτατος καὶ Σεβαστὸς πρὸς τῶν στρατοπέδων καὶ ἐτι πολὺ τούτων πρότερον πρὸς αὐτοῦ τοῦ παμβασιλέως θεοῦ ἀναγορευθεὶς, ζηλωτὴν ἑαυτὸν τῆς πατρικῆς περι τὸν ἡμέτερον λόγον εὐσεβείας κατεστήσατο.

[Hi. Ecc. VIII.14.1]. Τούτου παῖς Μαξέντιος, ὁ τὴν ἐπὶ Ῥώμης τυραννίδα συστησάμενος, ἀρχόμενος μὲν τὴν καθ' ἡμᾶς πίστιν ἐπ' ἀρεσκείᾳ καὶ κολακείᾳ τοῦ δήμου Ῥωμαίων καθυπεκρίνατο ταύτη τε τοῖς ὑπηκόοις τὸν κατὰ Χριστιανῶν ἀνεῖναι προστάττει διωγμὸν, εὐσεβειαν ἐπιμορφάζων καὶ ὡς ἂν δεξιὸς καὶ πολὺ πρᾶος παρὰ τοὺς προτέρους φανείη.

However, the ambiguous meaning of *imitatio pietatis* (and not that of a zealous attitude) is also highlighted in the Syriac version of the *Historia Ecclesiastica*, by means of the noun ܡܡܪܝܢܐ, transl. mmryn': Payne Smith 1903: 279), which corresponds to the Greek noun μιμητής (e.g. Jews 6:12, «μιμηταὶ δὲ τῶν διὰ πίστεως).



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## Images

### Terminología jurídica, correspondencias e hipótesis sobre la cronología de las estratificaciones en BHG 1576

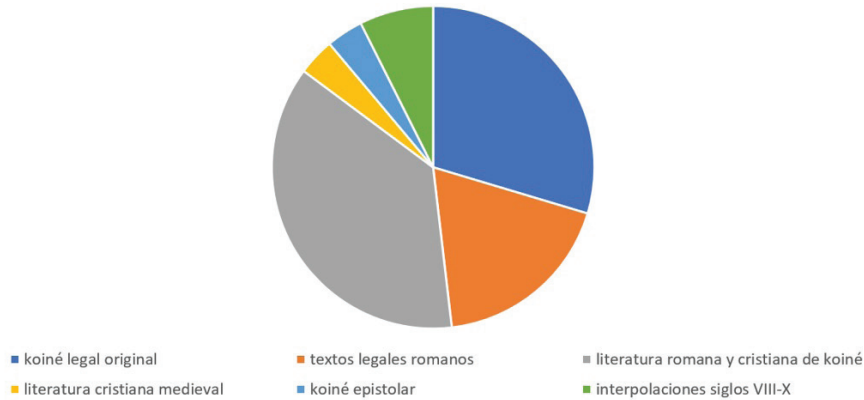


Fig.1. Diocletian's Senateconsult: pie chart indicating the linguistic stratification and the correspondence between the text and the Late Roman literature and legal terminology. Blue, orange and gray indicate the matches with koine literature and legal documents. From Serra and Cecini 2022: 110.

### Estratificación jurídica lingüística en BHG 32 y correspondencias



Fig. 2. Maxentius' edict of legality: linguistic layers and level of correspondence with authentic Roman law documents (juristic papyri and epigraphs). Blue, dark blue, gray and orange mark the document's matches with authentic koine texts. From Serra and Cecini 2022: 136.

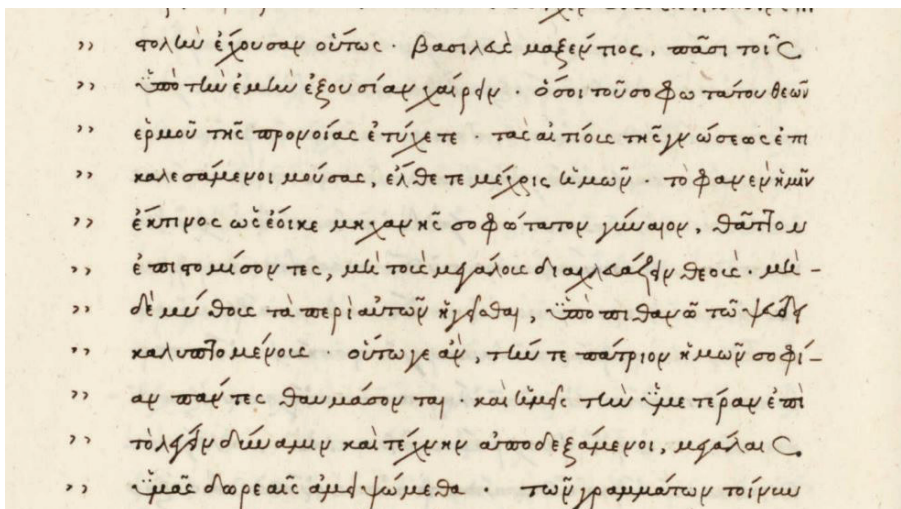


Fig.3. Maxentius' second epistle (rescript against Lucilla and the Donatists). Mss. 4672 (1550), f. 234v from Biblioteca Digital Hispánica, BNE (source: bdb.bne.es; <?> See Serra and Cecini 2022: 231-252.. From Serra and Cecini: 238.