



JOURNAL FOR LATE ANTIQUE  
RELIGION AND CULTURE

E-ISSN: 1754-517X; Journal DOI: <https://doi.org/10.18573/issn.1754-517X>

Journal website: <https://jlarc.cardiffuniversitypress.org>

Volume 13, 2019, 1-21; Volume DOI: <https://doi.org/10.18573/jlarc.v13>

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Article DOI : <https://doi.org/10.18573/jlarc.109>

Date Accepted: 1 September 2018

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Cardiff University Press  

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## ***CODEX THEODOSIANUS 16.2.12 AND THE GENESIS OF THE ECCLESIASTIC PRIVILEGIUM FORI***

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### **Abstract**

The tolerance of the Roman state towards Christianity, which had been established by Constantine in 313, did not entail peace and religious stability for the Empire. The gradual accumulation of competences by bishops through their status as religious specialists as well as their uneasy relationship with political power throughout the increasingly radicalized the Arian-Nicene conflict and led the imperial authorities to adopt a series of legal measures. Those measures aimed at clarifying the status of the episcopate and its relationship with the legal authorities. In this context, the passing of the so-called ecclesiastical *privilegium fori* attempted to provide an answer to the pleas for legal independence by the bishops. Nevertheless, despite the fact that it was enacted in the context of the Constantinian dynasty granting a series of privileges to the Church, this legal measure, like all others, was not immune to the selfish manipulation of the very same authorities that had passed it.

**Key words:** *CTh* 16.2.12 – *privilegium fori* – Arian-Nicene Conflict – Constantius II.

It is likely that among those privileges that were gradually granted to the Church by the Roman Empire after the “decree” of tolerance in the early fourth century.<sup>1</sup> the recognition of jurisdiction, especially in religious matters, had already become an ecclesiastic competence under Constantine. Even though no legal dispositions to this end

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<sup>1</sup> Mirow and Kelley, 2000, 267-69. These privileges, which were acknowledged and protected by law, reveal the clear predisposition of Roman emperors to support the Christian religion and its ecclesiastic organization. On this subject, see Salzman, 1993, 365.

from the reign of Constantine survive, Augustine of Hippo stated, in the context of the Donatist controversy, that said emperor “did not dare to interfere in an Episcopal matter and delegated power to the bishops so that they may discuss and resolve it.”<sup>2</sup> This statement is also supported by Eusebius of Caesarea.<sup>3</sup> As a matter of fact, a passage from the earliest surviving constitution on this subject, the one sponsored by Constantius II in 355 and which is the subject of study of this research paper, reveals that this privilege had essentially already been acknowledged at a previous date: *dum ad futura ipsorum beneficio impunitas aestimatur*. Indeed, the legislator that authored the above was attempting to work around the alleged impunity that was derived from ecclesiastic tribunals in certain cases, thus presuming that this jurisdiction had been previously acknowledged.<sup>4</sup> *Privilegium fori* was indeed relevant to those cases in which the civil authorities stated that they lacked competence, as it was exclusively reserved to canon law tribunals. Despite its slight similarity in what concerns its religious motivations, this privilege had nothing to do with the *episcopalis audientia*. Said *episcopalis audientia* had an elective jurisdiction on some cases in which civil judges would also have competence but that could be freely taken up on purely religious grounds by an episcopal court whose competence was acknowledged in virtue of its particular authority in the field of *sacrosancta lex christiana*.<sup>5</sup>

However, the first surviving legislative measure on the recognition of the ecclesiastic *privilegium fori* corresponds to the abovementioned constitution, collected in the *Codex Theodosianus*, 16.2.12, and which had been enacted by emperor Constantius II and adopted by the Praetorian Prefect on September 23, 355.<sup>6</sup> It reads as follows:

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<sup>2</sup> Aug. *Ep.* 105.8 (CSEL 34: 601): [...] *Constantinus non est ausus de causa episcopi iudicare, eam discutiendam atque finiendam episcopis delegavit* [...]. See Biondi, 1952, I, 377; Gemmiti, 1991, 19. See the opinion of Ambrose of Milan, *Ep.* 75 (21).15 (CSEL 82.3: 80): *Si conferendum de fide sacerdotum debet esse ista collatio, sicut factum est sub Constantino, augustae memoriae principe, qui nullas leges ante praemisit, sed liberum dedit iudicium sacerdotibus*.

<sup>3</sup> Eus. Caes. *HE* 10.5.18 (ed. Schwartz, *GCS*).

<sup>4</sup> Biondi, 1952, I, 378; Gemmiti, 1991, 22.

<sup>5</sup> *CTh* 1.27.1, *Sirm.* 1. See Pal, 2005, 208; Sirks, 2013, 79; Cuenca Boy, 1985; Cimma, 1989; Crifò, 1992, 397-410; Vismara, 1995, 7-9, 26; *Idem*, 1987, 55-73; Harries, 1999, 191-211; Falchi, 2000, 152. Sobre los tribunales episcopales, see Lamoreaux, 1995, 143-167; Maymó Capdevila, 1997, I, 165-70; Cuenca Boy, 2016, 120-134.

<sup>6</sup> According to O. Seeck (1919, 11), the formula *data epistula* o *data epistula ppo*, as it appears in this and in other cases (*CTh* 16.2.15, 4.13.5, 8.1.8, 8.4.6) at the end of a legal document, indicates that the date does not correspond to that of the original text of the legislator, but rather to the letter whereby the Praetorian Prefect officially transmitted the imperial constitution.

The same Augustuses to their dear friend Severus, Greetings.

By a law of Our Clemency We prohibit bishops to be accused in the courts, lest there should be an unrestrained opportunity for fanatical spirits to accuse them, while the accusers assume that they will obtain impunity by the kindness of the bishops. Therefore, if any person should lodge any complaint, such complaint must unquestionably be examined before other bishops, in order that an opportune and suitable hearing may be arranged for the investigation of all concerned.

*Given as a letter on the ninth day before the kalends of October.- September 23. Received on the nones of October in the year of the consulship of Arbitio and Lollianus.- October 7, 355.*

INTERPRETATION: It is specifically prohibited that any person should dare to accuse a bishop before secular judges, but he shall not delay to submit to the hearing of bishops whatever he supposes may be due him according to the nature of the case, so that the assertions which he makes against the bishop may be decided in a court of other bishops.<sup>7</sup>

This law prohibited pressing charges against bishops (*arguendos eos*) before secular courts (*in iudiciis*), establishing the appropriate see (*opportuna adque commoda audientia*) of an Episcopal tribunal for this purpose (*apud alios episcopos*).<sup>8</sup> In other words, with the personal recognition of the *privilegium fori* for bishops,<sup>9</sup> lawmakers attempted to avoid the intervention of secular courts in disputes (*querellae*) that should

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<sup>7</sup> CTh 16.2.12 (ed. Th. Mommsen, pp. 838-39): *IDEM AA. SEVERO SVO SLVTEM. Mansuetudinis nostrae lege prohibemus in iudiciis episcopos accusari, ne, dum adfutura ipsorum beneficio inpunitas aestimatur, libera sit ad arguendos eos animis furialibus copia. Si quid est igitur querellarum, quod quispiam defert, apud alios potissimum episcopos convenit explorari, ut opportuna adque commoda cunctorum quaestionibus audientia commodetur. DATA EPISTVLA VIII KAL. OCTOB., ACC. NON., OCTOB. ARBITIONE ET LOLLIANO CONSS. INTERPRETATIO: Specialiter prohibetur, ne quis audeat apud iudices publicus episcopum accusare, sed in episcoporum audientiam perferre non differat, quidquid sibi proqualitate negotii putat posse competere, ut in episcoporum aliorum iudicio, quae adserit contra episcopum, debeant definiri.* English translation by Pharr, 1952, 442.

<sup>8</sup> As would happen with the remainder of the legislation of Constantius II, it is possible that this law would be repealed by emperor Justinian (Génestal, 1908, 165, 168-69). Nevertheless, Valentinian I would eventually ban bishops condemned by their peers from appealing to secular justice (CTh 16.36.20, year 369), and Ambrose of Milan refers to Constantius, for whom matters of faith or related to the Church should be judged by none other than the bishops themselves (Ep. 10.75.15 [CSEL 82, 3: 79-80], *Si tractandum est tractare in ecclesia didici; quod maiores fecerunt mei. Si conferendum de fide sacerdotum debet esse ista collatio, sicut factum est sub Constantino augustae memoriae principe, qui nullas leges ante praemisit, sed liberum dedit iudicium sacerdotibus. Factum est etiam sub Constantio augustae memoriae imperatore paternae dignitatis herede, sed quod bene coepit, aliter consummatum est. Nam episcopi sinceram primo scripserant fidem, sed dum volunt quidam de fide intra palatium iudicare, id egerunt ut circumscriptionibus illa episcoporum iudicia mutarentur [...]*). See Delmaire and Richard, 2005, 61.

<sup>9</sup> According to B. Biondi (1952, 378), this privilege had no restrictions on the matter of application. See Falchi, 1991, 22, 83; Lizzi Testa, 2004, 177; Delmaire, Rougé and Richard, 2005, 102; Banfi, 2005, 102-103; Pergami, 2011. *Sirm.* 3 would also extend the *privilegium fori* to clerics in general: *nomen episcoporum uel eorum [...] Habent illi iudices suos [...]*. See Cuenca Boy, 1985, 68. In fact, the Church barely displayed any interest in the consolidation of a true civil jurisdiction, but it constantly strived to consolidate and expand the *privilegium fori* of the Church through a series of laws enacted since the year 355: CTh 16.2.23 (año 375), *Sirm.* 3 (año 384); CTh 16.2.41, CTh 16.2.47 (*Sirm.* 6). See Cuenca Boy, 1985, 193; Falchi, 1991, 83; Banfi, 2005, 153-60, 167-76, 213-23, 233-41.

be solved exclusively in an episcopal court. It is very likely that said jurisdiction not only covered purely religious matters, but also those related to the sphere of criminal law.<sup>10</sup> The *ratio legis* is expressed in the legislative text itself: to avoid providing fanatics with opportunities to easily accuse bishops (*ne... libera sit ad arguendos eos animis furialibus copia*) outside of canon law, which was far more lenient and with a tendency towards pardons (*mansuetudinis nostra lege... animis furialibus copia*) and which therefore had a tendency to maintain the impunity of the accused parties (*dum ad futura ipsorum beneficio impunitas aestimatur*).<sup>11</sup>

It is obvious that this legal ruling by Constantius II was meant as an attempt to prevent civil courts from being exploited by members of the Church as a tool to strike at their rivals.<sup>12</sup> Considering that religious controversies had become a severe threat to the unity of the Empire, the emperor considered repressing them from their very roots a priority.<sup>13</sup> Following in the footsteps of his father, albeit with the same lack of success, Constantius sought to promote a process of effective pacification between Athanasians and Philo-Arians within the Church. That is why, after several years of open persecution directed against the former, Constantius began a period of intense diplomatic activity with his brother Constans, as a result of which Athanasius returned to his see in Alexandria, having been restored in his position as bishop, with the revocation of all previous measures that had been decreed against him.<sup>14</sup> This, however, was not to be the last episode in a

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<sup>10</sup> According to the majority of scholars, the use of the word *accusari* implies that the Episcopal jurisdiction also extended to the field of criminal law. On this subject, see Gaudemet, 1958, 241; Falchi, 1986, 179-212; Banfi, 2005, 101. Nevertheless, as G. L. Falchi pointed out, severe criminal cases were excluded from the *privilegium fori* (2000, 151 and 2008, 149). In fact, later on, in *CTh* 16.2.23 (year 376), the *privilegium fori* would be reduced in criminal matters to slight offenses related to the observance of religion (Blanco Cordero, 1944, 79-80; Cuenca Boy, 1985, 73). *Cfr.* Mommsen, 1899, 290; Robinson, 1995, 12. It is true that, in the Visigothic *interpretatio* (*Breviarium*, 16.1.2), the constitution of Constantius II appears to be restricted to *negotia*, that is, to matters exclusively related to the field of the Church, but said interpretation may have been adapted to the context of Alaric, deviating from the original spirit of the law (see Banfi, 2005, 102). On the different opinions reflected in doctrine on this subject, see Cimma, 1989, 101-12.

<sup>11</sup> Boyd, 1905, 92-3; Génestal, 1908, 164-65; Biondi, 1952, 377-78; Gaudemet, 1958, 256; Falchi, 1991, 23-4; Gemmiti, 1991, 22; Ombretta Cuneo, 1997, 277; De Giovanni, 2000<sup>5</sup>, 45-6; Magnou-Nortier, 2002, 118-19, n. 40; Delmaire, Rougé and Richard, 2005, 61; Banfi, 2005, 102-05.

<sup>12</sup> Blanco Cordero, 1944, 79; Banfi, 2005, 80, 96. This practice is particularly recurrent in the latter years of Constantine, a time during which a tendency to make use of civil courts of law to resolve disputes of a religious nature began to emerge. A clear example of this practice can be found in the Synod of Tyre (CE 335), which was summoned to judge Athanasius of Alexandria (*Athan. Apol. c. ar. 71* [*Athanasius Werke* II.4: 148-49]). See Girardet, 1975, 68; Twomey, 1982, 250; Arnold, 1991, 143, 149; Hess, 2002, 98.

<sup>13</sup> See Mozzillo, 1954, 109.

<sup>14</sup> *Athan. Hist. ar. 21-22* (AW II.5: 194-95); *Idem, Apol. ad Const. 4* (AW II, 8: 282-83); Socrates, *HE* 2.21-22 (ed. Hansen, *GCS*). *Vid.* A. Banfi, 2005, pp. 88-9.

controversy that would extend painfully through time and which affected vast swathes of the Church.

It is true that the recognition of the *privilegium fori* for bishops and the banning of the requirement to appear before a secular court in detriment to an episcopal instance were inspired by a number of canons that had been approved, to the same end, by Church councils.<sup>15</sup> Indeed, in the year 341, canon 11 of the Council of Antioch ruled that a bishop or any other member of the clergy who directly attended an Imperial court in the event of a dispute should be deposed and excommunicated unless his appeal to the emperor had been previously approved by his Metropolitan and the other bishops:

If a bishop, presbyter or any other member of the clergy should appeal directly to the emperor without having sought the council and appropriate letters from the bishops in his province, and especially the metropolitan, he shall be condemned and not only deprived of his communion, but also stripped of his dignity for having dared to bother our emperor, beloved by God, in contradiction with the Church canons. On the other hand, in the event of real necessities that required appealing to the emperor, he should do so with the support and consent of the metropolitan and the other bishops, who should provide him with the appropriate letters.<sup>16</sup>

Scarcely a year later, a council gathered at Sardica (modern Sofia: a city located at the border between both parts of the empire that were, respectively, subject to the two emperors) insisted once again on the jurisdictional independence of bishops. However, in this case, and under special circumstances, the postulates of the Western Church in favor of ultimate authority belonging to the bishop of Rome prevailed:

Bishop Hosius said: if any bishop were to be denounced and stripped of his dignity by his peers gathered in a synod, and he wished to appeal to the Most Holy Father of the Church of Rome, he should write to the bishops of the neighboring province if he wishes to be heard and to have the investigation on his cause be re-opened, so that they may research every

<sup>15</sup> Falchi, 1991, 24; Magnou-Nortier, 2002, 118-19, n. 40.

<sup>16</sup> Council of Antioch, c. 11 (ed. C. Dell'Osso, in Di Bernardino, 2006, 304-306): Εἴ τις ἐπίσκοπος ἢ πρεσβύτερος ἢ ὅλως τοῦ κανόνος ἄνευ γνώμης καὶ γραμμάτων τῶν ἐν τῇ ἐπαρχίᾳ ἐπισκοπῶν καὶ μάλιστα τοῦ κατὰ τὴν μητρόπολιν, ὀρμήσειε πρὸς βασιλεία, τοῦτον ἀποκηρύττεσθαι καὶ ἀπόβλητον γίνεσθαι, οὐ μόνον τῆς κοινωνίας, ἀλλὰ καὶ τῆς ἀξίας, ἣς μετέχων τυγχάνει, ὡς παρενοχλεῖν τολμώντα τὰς τοῦ θεοφιλεστάτου βασιλείας ἡμῶν ἀκοῆς παρὰ τὸν θεομὸν τῆς ἐκκλησίας. εἰ δὲ ἀναγκαῖα καλοῖη χρεια πρὸς τὸν βασιλέα ὀρμᾶν, τοῦτο πράττειν μετὰ σκέψεως καὶ γνώμης τοῦ κατὰ τὴν μητρόπολιν τῆν ἐπαρχίας ἐπισκόπου καὶ τῶν ἐν αὐτῇ, τοῖς τε τούτων ἐφοδιάζεσθαι γράμμασιν. Cfr. canons 4, 14 and 15 of this same council. See De Giovanni, 2000, 46; Banfi, 2005, 87.

aspect of it carefully and scrupulously, and explain their verdict in full. If said bishop were to consider that his case should be re-opened, and if he should send presbyters on his own initiative through his plea to the bishop of Rome, it must also be considered that the bishop of Rome himself is vested with the authority to send some of his emissaries to judge the case in collaboration with the bishops. On the other hand, if he should consider that the procedures have been sufficient for the trial of the indicted bishop he should act as he sees fit and according to his enlightened will. The bishops responded: “We approve of all that has been said”.<sup>17</sup>

Emperor Constantius had displayed an increasing tendency to intervene in the internal affairs of the Church,<sup>18</sup> albeit not always as a result of his own designs.<sup>19</sup> Due to this, the bishops gathered at Sardica demonstrated, through said canon, that they wished to be freed from any imperial interference in doctrinal controversies and disciplinary processes that may arise within the ecclesiastic sphere.<sup>20</sup> Nevertheless, the acknowledgement of the authority of the Episcopal see in Rome is remarkable, regardless of the fact that the Eastern bishops, who had been escorted by high-ranking civil servants of the administration of Constantius, refused to take part in the council deliberations from the beginning. Indeed, their refusal was due to the fact that the ranks of the Western bishops included some parties (among them, Athanasius himself) who, according to them, should only have been present as accused parties.<sup>21</sup> Ultimately, the Easterners decided to

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<sup>17</sup> Council of Sardica, c. 5 (ed. C. Dell’Osso, in Di Berardino, 2006, 320): Ὅσιος ἐπίσκοπος εἶπεν· Εἴ τις ἐπίσκοπος καταγγελεῖται καὶ συναθροισθέντες οἱ ἐπίσκοποι τῆς ἐνορίας τῆς αὐτῆς τοῦ βαθμοῦ αὐτὸν ἀποκινήσωσιν, καὶ ὡσπερ ἐκκαλεσάμενος καταφύγη ἐπὶ τὸν μακαριώτατον τῆς Ῥωμαίων ἐκκλησίας ἐπίσκοπον καὶ βουλευθεῖται αὐτοῦ διακοῦσαι, δίκαιόν τε εἶναι νομίση ἀνανεώσασθαι αὐτοῦ τὴν ἐξέτασιν τοῦ πράγματος, γράφειν τούτοις τοῖς ἐπισκόποις καταξιώσει τοῖς ἀγγιστεύουσι τῇ ἐπαρχίᾳ ἵνα αὐτοὶ ἐπιμελῶς καὶ μετὰ ἀληθείας ἕκαστα διερευνήσωσιν καὶ κατὰ τὴν τῆς ἀληθείας πίστιν ψῆφον περὶ τοῦ πράγματος ἐξενέγκωσιν. Εἰ δέ τις ἀξιοῖ καὶ πάλιν αὐτοῦ τὸ πρᾶγμα ἀκουσθῆναι καὶ τῇ δεήσει τῆ ἑαυτοῦ τὸν Ῥωμαίων ἐπίσκοπον κρίνειν δόξῃ, ἀπὸ τοῦ ἰδίου πλευροῦ πρεσβυτέρους ἀποστείλῃ, ἵνα ἐν τῇ ἐξουσίᾳ εἴῃ τοῦ αὐτοῦ ἐπισκόπου, ὅπερ ἂν καλῶς ἔχειν δοκιμάσῃ, καὶ ὀρίση δεῖν ἀποσταλῆναι τοὺς μετὰ τῶν ἐπισκόπων κρινούντας, ἔχοντάς τε τὴν αὐθεντίαν τούτου παρ’ οὗ ἀστάλησαν, καὶ τοῦτο θετέον. Εἰ δὲ ἐξαρκεῖν νομίζοι πρὸς τὴν τοῦ πράγματος ἐπίγνωσιν καὶ ἀπόφασιν τοῦ ἐπισκόπου, ποιήσει ὅπερ ἂ τῇ ἐμφρονεστάτῃ αὐτοῦ βοθητῇ καλῶς ἔχειν δόξῃ. Ἀπεκρίναντο οἱ ἐπίσκοποι· Τὰ λεχθέντα ἤρεσεν.

<sup>18</sup> See Gaudemet, 1958, 82. Notice the reproaches to this end made by several bishops (Athan. *Hist. ar.* 44.6-8 [AW II.6: 208]) which puts a clear reprimand on the subject in the words of Ossius. Furthermore, we may also observe an ideological development that runs parallel to the process of promotion of the *privilegium fori*, based on the most relevant biblical passages on the separation of powers. As the will of Constantius to control the Church through Synods intensified, so did the opposition of the Nicene bishops. See Kartaschow, 1976, 160-61; Barnes, 1993, 168-69; Roldanus, 2006, 106-108.

<sup>19</sup> In the words of A. Banfi (2005, 86), “l’imperatore si trovava coinvolto nelle dispute fra ecclesiastici anche suo malgrado, a causa della condotta degli ecclesiastici stessi, i quali ricorrevano all’autorità imperiale nella speranza di rafforzare le proprie posizioni a discapito dei loro avversari”.

<sup>20</sup> Athanasius had already previously stated this belief (*Apol. c. ar.* 39 [AW II.3: 117-18]).

<sup>21</sup> Hil. *Coll. ant. Par.* A IV.1, 14 (CSEL 65: 57-8). See Hefele, 1896, vol. 2, 121-9. (Hefele and Leclercq, 1907, vol. 1, 2, 770-7).

abandon the council sessions, and the Westerners were quick to seize this opportunity to confirm the absolution of Athanasius and his followers.<sup>22</sup> According to the account of the events presented by the bishop of Alexandria himself, the true reason for the Eastern bishops to withdraw from the council was the knowledge that the trial would be exclusively carried out according to the rules of an ecclesiastical tribunal (ὡς δὲ ἀπαντήσαντες ἐωράκασιν ἐκκλησιαστικὴν δίκην μόνην γενομένην) rather than a civil court in which the influence of the *comites* sent by Constantius would have been decisive.<sup>23</sup>

This aggressive religious controversy revealed, from its very origins, the tendency of the Eastern Church (which was often more willing to submit to imperial power) to involve secular jurisdiction in its struggle against its adversaries. The Western Church, on the other hand, was always more jealous of its prerogatives, staunchly defending its exclusive competence in matters of faith. To this we must add their defense of the primacy of Rome at the head of the universal Church which opposed them to the Eastern bishops.<sup>24</sup> Undoubtedly, in this respect, the strengthening of the authority of the Roman see granted by the Council of Sardica was a (momentary) triumph of the jurisdictional claims of the Western Church.<sup>25</sup> A few years later, Athanasius was once again deposed from his see in Alexandria and subjected to a condemnation which, at the behest of the imperial consistory, was confirmed by the Council of Milan in the year 355.<sup>26</sup> Some church sources insist on the fact that said condemnation took place under the obvious threat of exile uttered by the emperor.<sup>27</sup> In fact, the bishops were gathered for the council sessions

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<sup>22</sup> Hil. *Coll. ant. Par.* A IV.1, 17 (CSEL 65: 59).

<sup>23</sup> Athan. *Hist. ar.* 15 (AW II.5: 190). Cfr. Hil. *Coll. ant. Par.* B II.1, 7 (CSEL 65: 118-121). On this subject, Biondi, 1952, 378; Gaudemet, 1958, 241; De Giovanni, 2000, 46; Banfi, 2005, 83-84; Parvis, 2006, 210.

<sup>24</sup> The accentuation of this tendency is obvious since the Council held in Rome at the behest of the bishop Julius to deal with the accusations against Marcellus of Ancyra and Athanasius in 340 (Athan. *Apol. c. ar.* 22 [AW II.3: 103-04]). See Banfi, 2005, 79-80; Twomey, 1982, 334. As it can be seen in the Council of Sardica, the tendency of the Western bishops to accentuate the primacy of the bishop of Rome over the rest of the Church and the increasingly frequent recourse to appealing to Roman apostolic authority would lead to a gradual rift with the majority of the Eastern clergy. See Schmemmann, 1992, 147-154; Meyendorff, 1996, 7-27; Chadwick, 2003, 16.

<sup>25</sup> As can be seen from the comments of Athanasius on the trial (Athan. *Apol. c. ar.* 39 [AW II.3: 117-18]).

<sup>26</sup> Indeed, an edict can be found in the Synod of Arles that contained an effective condemnation of Athanasius, and all possible coercive means would be deployed in the Council of Milan to attempt to ratify it (Hil. *Coll. ant. Par.* B 1.4-6 [CSEL 65: 101-102]); Luc. *De conu.* 9.63 (CCL 8: 179); Athan. *Hist. ar.* 31 (AW II.5: 199-200) and *Fug.* 4 (AW II.2: 70-71). See Girardet, 1973, 72; Brennecke, 1984, 184-192; Gottlieb, 1976, 44-6.

<sup>27</sup> Soz. *HE* 4.9.1-5 (ed. Bidez-Hansen, *GCS*); Theod. *HE* 2.15 (ed. Parmentier, *GCS*). All those who refused to subscribe to the condemnation of Athanasius were deposed from their sees and condemned to exile. This fact led to a profound reaction from the foremost polemicists of the period, Hilary of Poitiers and Lucifer of Cagliari, who used the repressive measures adopted by the emperor to denounce the violence carried out against Nicene bishops for their



in the imperial palace, and were forced to subscribe to a document condemning Athanasius which had been previously prepared by the emperor himself.<sup>28</sup> Faced with such pressures, broad swathes of the Western Church stood firmly in their assertion of the exclusivity of ecclesiastical jurisdiction on matters of Episcopal authority.<sup>29</sup>

It is possible that, as some scholars have pointed out, the constitution whereby the *forum ecclesiasticum* was acknowledged was actually a sort of compensatory response to those bishops who had been forced to subscribe to the decisions approved in the Council of Milan. Those bishops also shared the same spirit that had compelled Hilary of Poitiers to express his most energetic protests against the policy the emperor had hitherto maintained in matters concerning ecclesiastical jurisdiction.<sup>30</sup> Despite the fact that he did not participate in the Council of Milan,<sup>31</sup> Hilary of Poitiers decided to recover a synodal letter from the Council of Sardica, to which he adjoined a text known as *Liber I ad Constantium*. Throughout this text, Hilary described the, in his view, unjust trials that were brought against Athanasius of Alexandria and Eusebius of Vercelli, among others,

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religious (and, therefore, political) opposition, such as the application of the *damnatio ad metalla* which was especially associated with Christians and religious opponents during the Arian crisis (see Athan. *Hist. ar.* 60 (AW II.6: 216) and the openly polemic productions of the abovementioned Luc. *Mor.* 3.16-21 (CCL 8: 270) and Hil. *In Const.* 11 (PL 10: 587-88), in which, furthermore, there are references to the fact that the condemnation to the mines was made explicit by tattooing the sentence itself on the foreheads of the condemned: *querella famosa est, iussos a te episcopos non esse, quos condemnare nullus audebat, etiam nunc in ecclesiasticis frontibus scriptos metalliace damnationis titulo recenserit*. On this subject, Davies, 1958, 99-107; Gustafson, 1994, 422 and *Idem*, 1997, 82, for other degrading practices such as tattooing, whose goal was making the sentence publicly visible). See Fournier, 2006, 157-166.

<sup>28</sup> The threats and intimidations against the bishops were largely responsible for the success of the imperial plans against the patriarch of Alexandria: see the account of Hilary on Dionysius of Milan, from whose hands Valens of Mursa ripped a document of adherence to the Nicene creed submitted to the Council (*Lib. I ad Const.* 8 [CSEL 65: 187], *Dionisius Mediolanensis episcopus cartam primus accepit. Vbi profitenda scribere coepit, Valens calamum et cartam e manibus eius uiolenter extorsit clamans non posse fieri [...]*). On the document presented in Milan and the pressure exerted on the bishops gathered there to condemn Athanasius, see Athan. *Fuga* 4 (AW II.2: 70-71) and *Hist. ar.* 33 (AW II.6: 201-202), which describes the exile of those who refused to sign the document proposed by the Council.

<sup>29</sup> Luc. *Athan.* I.1 (CCL 8: 3); see A. Banfi, 2005, 94. It is nevertheless surprising to note the fact that appealing to the authority of the bishop of Rome to resolve conflicts in the purely ecclesiastic sphere experienced a significant increase during the most acute period of the Arian polemic. It is possible that the very legal enunciation of the *privilegium fori* was, in some way, a strategy meant to put a stop to the growing influence and importance of the bishop of Rome who, according to the account of Soc. *HE* 2.15, was empowered to resolve such cases through the exercise of a “special privilege”. See Hess, 2002, 190-200, which provides an in-depth studies of the canons of appeal; Dupuy, 1987, 363-7; Hefele, 1896, vol. 2, 108-58 (Hefele and H. Leclercq, 1907, vol. 1, 2, 759-804). The right of the bishop of Rome to review passed sentences is specified in canons 3 and 4 of Sardica: Hefele, 1896, vol. 2, 112-3 and 116 (Hefele and H. Leclercq, 1907, vol. 1, 2, 762-63 and 766-67).

<sup>30</sup> See Boyd, 1905, p. 92; Biondi, 1952, 378; Gaudemet, 1958, 256; Gemmiti, 1991, 23; De Giovanni, 2000, 46; Banfi, 2005, 96. Athanasius of Alexandria himself, in exile after having fled from the executors of the sentence passed against him in the Council of Milan, clearly expresses the need for the existence of two separate jurisdictions, the civil and the ecclesiastic jurisdictions, as well as the central role of the bishop of Rome in the latter (Twomey, 1982, 428).

<sup>31</sup> The trial against Hilary of Poitiers seems to emerge from different causes than the one carried out in Milan, Brennecke, 1984, 135-36, 167 and 229; Williams, 1991, 202-217; Barnes, 1992, 129-140; Burns, 1994, 273-289; Beckwith, 2005, 221-238; Alba López, 2008, 277-301.

in the recent Council of Milan.<sup>32</sup> After demanding an immediate halt to all types of persecution against Nicenes,<sup>33</sup> Hilary demanded jurisdictional autonomy for the Church in order to allow it to free itself from all imperial impositions in religious and disciplinary matters:<sup>34</sup>

[...] May your Clemency pay heed and take the necessary steps so that the judges who have been charged with governing the provinces exclusively apply their zeal and attention to public matters and abstain from ruling on religious questions without exception; may they henceforth cease their usurpations and not dare to judge the cases of clergymen.<sup>35</sup>

This document was written immediately following the closure of the sessions of the Council of Milan and preceded the publication of the constitution of Constantius on *privilegium fori* (September 23rd, 355).<sup>36</sup> It is possible therefore that, faced with the heated reactions of bishops such as Hilary of Poitiers, the emperor felt inclined to adopt a position that was more in accord with the demands for greater jurisdictional independence of the Church from the civil courts. Nevertheless, it was essential to define the doctrinal orthodoxy to be followed by different tendencies within the Church; indeed, said orthodoxy was a necessary condition Imperial power imposed on the State-

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<sup>32</sup> Hil. *Lib. I ad Const.* 8 (CSEL 65: 186-87). Hunter, 2008, 304-305. With the so-called *Libri tres aduersus Valentem et Vrsacium*, with the *Liber I ad Constantium* that accompanied them and perhaps also with the *Liber II ad Constantium*, Hilary intended to exert a certain influence on the emperor, but as soon as this hope had vanished, he did not hesitate to sharpen his pen in far more aggressive writings such as *Contra Constantium* and *Contra Auxentium*. On this subject, Opelt, 1973, 203-217; Rosen, 1988, 67; Humphries, 1998, 219-220. On the historiographical debate on the historical context of these works, see also Smulders, 1995, 1-28; Alba López, 2013, 34-81.

<sup>33</sup> Hil. *Lib. I ad Const.* 1 (CSEL 65: 181): [...] *quod rogamus, facile nos impetrare posse confidimus. Non solum uerbis, sed etiam lacrymis deprecamur, ne diutius catholicae Ecclesiae grauissimis iniuriis afficiantur, et intolerabiles sustineant persecutiones et contumelias, et quod est nefarium, a fratribus nostris [...]*.

<sup>34</sup> This would nevertheless not be the only time in which he would defend Episcopal *libertas* above imperial power, Hil. *Coll. ant. Par. B I.5* (CSEL 65: 101): *Pretermitto autem, licet potissima regi sit deferenda reuerentia — quia enim a deo regnum est—, non tamen aequanimiter iudicium eius episcopalibus arbitriis admitti, quia Caesaris Caesari, deo autem reddenda, quae dei sunt*; Hil. *Lib. I ad Const.* 6 (CSEL 65: 184): [...] *ut post synodi sententias, quas pro sacerdotalis iudicii reuerentia fas fuerat sacerdotali uel ecclesiastica conscientia contineri*; Hil. *Tr. Psalm. 14.12* (CSEL 22: 93 ), *Non oportet humilitatem carerer constantia, et libertas Dei a nobis in ea quam omnibus debemus seruitute retinenda est, ne ad potentium impetus terreamur, ne ad maleuolorum arbitria cedamus*. A similar development can be found in his contemporary Eusebius of Vercelli, *Ep. ad Const.* 10 (CCL 9: 103), *Quicquid, domine imperator, cum in praesentiam uenero iustum fuerit uisum et deo placitum, id me facturum promitto*. See Studer, 1989, 34-7; Rosen, 1988, 69.

<sup>35</sup> Hilario de Poitiers, *Lib. I ad Const.* (CSEL 65:181): [...] *Prouideat et decernat clementia tua, ut omnes se ubique iudices, quibus prouinciarum administrationes creditae sunt, ad quos sola cura et sollicitudo publicorum negotiorum pertinere debet, a religiosa se obseruantia abstineant: neque posthac praesumant atque usurpent, et putent se causas cognoscere clericorum [...]*. See Génestal, 1908, 163-64, n. 2; Gemmiti, 1991, 23.

<sup>36</sup> Banfi, 2005, 95-6.

sponsored Church in exchange for a number of privileges.<sup>37</sup> Not only did Constantius II display remarkable balance in his favorable treatment of the Church and clergy in what concerns the general interests of the Empire —as, according to P. Ombretta Cuneo, in those cases in which these interests were under threat, he could display more generosity by granting bishops immunity in the criminal see—,<sup>38</sup> he also strove to favor the Church faction that was closest to his personal beliefs.

Keeping in mind the problems caused by the Donatist schism, and, especially, the Arian controversy, Constantius II intended to use this law to prevent dissident or minority groups from recurring to civil jurisdiction. Such groups were aware of their weakness and therefore attempted to avoid the ecclesiastical tribunals that were controlled by the dominant currents within the Church. In fact, the emperor was well aware of the fact that the ‘Arian’ doctrine he espoused had achieved a position of absolute pre-eminence within the Church (at least in the West) and that supporters of Athanasius would be unable to disturb the authority granted to the episcopal tribunals, which were beyond appeal.<sup>39</sup> Furthermore, by acknowledging exclusive ecclesiastic competence in relation to bishops, the emperor attempted to avoid the noxious and dangerous conflict of competences with civil courts of law, a chronic problem since the earliest periods of the reign of Constantine.<sup>40</sup>

Indeed, either as a cause or a consequence of the highly tense climate between the different actors involved in the Arian-Nicene conflict, the need to provide legal channels to the much-desired ecclesiastic jurisdiction must also be taken into account. This is particularly relevant in the light of the insistent demands for a separation of competences, which had mostly been formulated by the pro-Nicene side. Thus, it is not surprising to find an eminently political discourse on the concepts of authority and power among the direct protagonists of the conflict. Athanasius of Alexandria and Hilary of Poitiers, among

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<sup>37</sup> In the words of A. di Berardino, “era importante la distinzione tra un vescovo ortodosso, scismatico oppure eretico per l’applicazione delle leggi da parte delle autorità e del conseguente godimento dei privilegi” (1998, 47).

<sup>38</sup> Ombretta Cuneo, 1997, cx.

<sup>39</sup> Gaudemet, 1958, 241; Banfi, 2005, 100.

<sup>40</sup> Banfi, 2005, 99. Thus, in the context of the Donatist schism, Miltiades, the bishop of Rome, refused to act as an imperial court, as he had been ordered to by the emperor, and he gathered a traditional Roman synod to pass his sentence. Faced with the rejection of their theses, the Donatists appealed to Constantine once more, to which he responded by summoning another synod in Arles. The bishop of Rome refused to attend it and sent two legates, inaugurating a practice that has endured to this day for similar situations, even though the bishop of Rome ultimately maintains the ultimate decision, see Barnes, 1975, 20-21; Girardet, 1975, 6-26; *Idem*, 1989, 185-206; *Idem*, 2010, 141; Friend, and Clancy, 1977, 104-109; Lancel, 1979, 217-229.

others, were the ones to formulate most clearly the prevailing discourse of their peers on the need for a separation of the Church and the State. They also stressed the need for the former to exert a tutelary function over the latter, a nuance that would be definitively consolidated by Ambrose of Milan.<sup>41</sup>

The strong polarization of the conflict in the year in which the law was passed requires us to consider what the intentions of the legislator might have been, which leads us to the management of the conflict between the Nicenes and the Arians. On the one hand, the legal disposition that concerns us may be seen as the granting of the much-desired judicial independence of bishops. But on the other hand, we should keep in mind that the ability to redirect religious conflicts to episcopal courts in a context in which the bishoprics aligned with Athanasius of Alexandria and the Nicene Creed itself had been subjected to a purge (which became systematic after the conflicts of Sirmium in 351 and Arles in 353) was also an attractive prospect. In this context, the treatment of those conflicts of an ecclesiastic nature in which the defense of Athanasius and the Nicene Creed and other formulas played an essential role could by no means be fair or balanced. This eventually led the courts formed to judge these cases to become State-sponsored instruments of repression against ideological enemies.<sup>42</sup>

This variable seems to appear behind the audience held to judge and condemn Hilary of Poitiers in the context of the Synod of Beziers in 356. The proximity of this date with the legal disposition contained in *CTh* 16.2.12 and the nature of the trial, which was perfectly documented by its protagonist, allows us to suggest a biased application of the *priuilegium fori* as an instrument to purge dissidents. Likewise, years later, Hilary of Poitiers himself underwent a second trial (this time, against Auxentius of Milan) that may likewise suggest the use of the *priuilegium fori* as a purely repressive tool.

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<sup>41</sup> In this sense, it is important to view the figure of Ambrose of Milan as the heir and interpreter of the Nicene theological and political legacy insofar as he advocates the existence of a legal space between God and the sovereign to act as a reference for the correct use of power. See Nautin, 1974, 238-243; Williams, 1995, 520-23; Williams, 2002, 233-34; Antognazzi, 2004, 282-83; Alba López, 2011, 343-49.

<sup>42</sup> In this sense, it is relevant to point out the interview between Liberius of Rome and Constantius II soon after the transcendental council of Milan in 355. According to the account of Theodoret (*HE* 2.16), the bishop of Rome reminded the emperor of the rigor that should guide the passing of an Ecclesiastic sentence, and the need to observe due form (Βασιλεῦ, τὰ ἐκκλησιαστικά κρίματα μετὰ πολλῆς δικαιοκρισίας γίνεσθαι ὀφείλει. διόπερ εἰ δοκεῖ σου τῆ εὐσεβείᾳ, κριτήριον συσταθῆναι κέλευσον· καὶ εἰ ὀφθεῖν Ἀθανάσιος ἄξιος καταδίκης, τότε κατὰ τὸν τῆς ἐκκλησιαστικῆς ἀκολουθίας τύπον ἐξενεχθήσεται ἢ κατ' αὐτοῦ ψῆφος. οὐδὲ γὰρ οἶόν τε καταψηφίσασθαι ἀνδρὸς ὃν οὐκ ἐκρίναμεν).

Indeed, there is an observable tendency to grant bishops the functions and prerogatives of Imperial civil servants since the period of Constantine.<sup>43</sup> However, the granting of this legal authority has been viewed as a strategy of Imperial power with the sole goal of linking the bishoprics to the State administration.<sup>44</sup> Nevertheless, in order to understand the ambitions of Constantius II to exert more power over the bishops, it is necessary to reflect on the importance of having executed the various sentences against the foremost victims of the Council of Arles of 353 and Milan in 355 immediately prior to the passing of *CTh* 16.2.12. Said sentences intended to remove notorious pro-Nicene bishops from sees as significant as Milan or Trier and replace them with loyal collaborators who could, in any event, guarantee a verdict leading to the deposition of the pro-Nicene parties. This seems to have precisely been the case in the two abovementioned trials in which Hilary of Poitiers was involved, first in the Synod of Beziers (which condemned him to exile) and against the bishop Auxentius of Milan, after his return from exile,<sup>45</sup> with a few caveats: indeed, according to Hilary himself, this trial included the exceptional intervention of two envoys sent by emperor Valentinian (the *quaestor sacri palatii* and the *magister officiorum*) whose mission was to hear both parties and issue a ruling. As a result of their ruling, Auxentius of Milan was able to perpetuate himself in his see<sup>46</sup> and, thus, decree the expulsion of Hilary of Poitiers.<sup>47</sup> In any event, it emerges from these cases that, despite the prospects of independence that the ecclesiastical jurisdiction strove

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<sup>43</sup> Klauser, 1952<sup>2</sup>; Chrysos, 1969, 119-129; Jerg, 1970; Dupont, 1972, 742-48; Di Berardino, 1998, 35-38; Lizzi Testa, 1998, 81-104; Rapp, 2005, 236-38; Siniscalco, 2007<sup>6</sup>, 181-88.

<sup>44</sup> Pilara, 2004, 355.

<sup>45</sup> After having publicly denounced Auxentius, Hilary was submitted to the trial of ten bishops: Hil. *Aux.* 7 (*PL* 10: 613 B/C-614 A): *Cum edicto graui sanctus rex perturbari ecclesiam Mediolanensium [...] sub unitatis specie et uoluntate iussisset etiam importuna interpellatione suggesti Auxentium blasphemum esse et omnino hostem Christi habendum, idque adieci eum aliter credere quam rex ipse aut alii omnes haberent. Quibus rex permotus, audiri nos a quaestore et magistro praecepit, consedentibus una nobiscum episcopis fere decem.* A similar situation can be found in the *Altercatio Heracliani cum Germinio episcopo Sirmiensi* (*PLS* 1: 345-50), see Simonetti, 1967, 39-58; Doignon, 2005, 34-5.

<sup>46</sup> Valentinian I had stipulated through an edict that Auxentius should continue exerting his ministry in Milan, an action that is concordant with his policy of non-interference in Church matters (Soc. *HE* 4.1; Soz. *HE* 6.7; Ambr. *Ep.* 75 [21], 2 [*CSEL* 82.3: 74]; Theod. *HE* 3.16); see Meslin, 1967, 42-3; McLynn, 1994, 25-6; Williams, 2002, 71. In spite of this, according to Hilary, maintaining Auxentius in his see was due to the fact that he hid his true doctrinal alignment before the court in charge of settling the question (Hil. *Aux.* 7 and 13-15 [*PL* 10: 613 C-614 A and 617 A-618 C]). On the other hand, we know that, after the ruling of the synod of Beziers, Julian reviewed the case and stated that he did not find any evidence of guilt in Hilary, but there is no evidence that this ruling had anything to do with the development of the trial, Hil. *Lib. II ad Const.* 2 (*CSEL* 65: 198): *nec leuem habeo querellae meae testem dominum meum religiosum Caesarem tuum Iulianum, qui plus in exilio meo contumeliae a malis, quam ego iniuriarum, pertulit.*

<sup>47</sup> The bishop of Poitiers merely stated that he was forced to leave Milan by royal mandate (*Aux.* 9: *iubeor de Mediolano proficisci, cum consistendi mihi in ea inuito rege nulla esset libertas* [*PL* 10: 615 A-B]) and that an unfair image of Eusebius of Vercelli and himself as the promoters of the dispute was being spread (*Idem*, 15 [*PL* 10: 618 C]).

for with this legislation, the vigilant oversight of the emperor did not cease completely; rather, it inconspicuously receded into the background.

All in all, we may venture to state that the turbulent repression of Athanasius of Alexandria and those who supported his cause or simply voiced their public support to the Nicene Creed during the period of solitary reign of Constantius II (350-361) required legal arguments to support said repressive measures. This led to a progressive renunciation of violence by political power to sustain itself. As in the latter years of his rule, Constantine heavy-handedly used synods as a means to remove the stubborn opposition of his adversaries and they were also used to purge the ranks of the bishops during the reign of Constantius II. Nevertheless, in order to silence critical voices that demanded full jurisdictional independence for the Church, the emperor voluntarily renounced taking part, either actively or through his delegates, in the Council meetings, legally guaranteeing their independence. However, this did not imply that the emperor would renounce this useful tool, as his will was executed through those bishops who, by holding doctrinal positions opposed to those of their adversaries, had proven to be effective collaborators with civil power and its interests. Thus, even though Constantius apparently lost his sway over the Church through the promotion of the *privilegium fori*, he actually managed to exert a *de facto* stronger pressure through his collaborators than that which he could have achieved prior to passing this law.

### Bibliography

- Alba López, Almudena. 2008. “*Exsulo non autem crimine, sed factione*. El proceso contra Hilario de Poitiers y su manipulación política.” In *Corrupción en el Mundo Romano*, edited by Gonzalo Bravo and Raúl González Salinero, 277-301. Madrid: Signifer.
- . 2011. *Teología política y polémica arriana. La influencia de las doctrinas cristianas en la ideología política del siglo IV*. Salamanca: Universidad Pontificia de Salamanca.
- . 2013. *Autoridad y poder en los escritos polémicos de Hilario de Poitiers*. Madrid/Salamanca: Signifer.

- Antognazzi, C. 2004. "Ad Imperatorem palatia pertinent, ad sacerdotem ecclesiae. La teologia politica d'Ambrogio nei primi dodici anni del suo episcopato (374-386)." *Annali di Scienze Religiose* 9: 271-297.
- Arnold, Duane Wade Hampton. 1991. *The Early Episcopal Career of Athanasius*. Indiana: University of Notre Dame Press.
- Banfi, Antonio. 2005. *Habent illi iudices suos. Studi sull'esclusività della giurisdizione ecclesiastica e sulle origini del privilegium fori in diritto romano e bizantino*. Milano: Giuffrè.
- Barnes, Timothy D. 1975. "The Beginnings of Donatism," *Journal of Theological Studies* 26: 13-22. <https://doi.org/10.1093/jts/XXVI.1.13>
- . 1992. "Hilary of Poitiers on His Exile." *Vigiliae Christianae* 46: 129-140. <https://doi.org/10.1163/157007292X00034>
- . 1993. *Athanasius and Constantius. Theology and Politics in the Constantinian Empire*. Cambridge [Ma.]: Harvard University Press.
- Beckwith, Carl L. 2005. "The Condemnation and Exile of Hilary of Poitiers at the Synod of Béziers (C.E. 356)." *Journal of Early Christian Studies* 13: 21-38. <https://doi.org/10.1353/earl.2005.0002>
- Biondi, Biondo. 1952. *Il diritto romano cristiano, vol. 1. Orientamento religioso della legislazione*. Milano: Giuffrè.
- Blanco Cordero, Celestino. 1944. "El fuero especial del clero y su desarrollo en España hasta el siglo VIII." PhD diss., Pontificia Universidad Eclesiástica de Salamanca.
- Boyd, William Kenneth. 1905. *The Ecclesiastical Edicts of the Theodosian Code*. New York: Columbia University Press.
- Brennecke, Hanns Christof 1984. *Hilarius von Poitiers und die Bischofsopposition gegen Konstantius II: Untersuchungen zur dritten Phase des Arianischen Streites (337-361)*. Berlin/New York: Walter de Gruyter.
- Burns, Paul C. 1994. "Hilary of Poitiers' Road to Béziers: Politics or Religion?" *Journal of Early Christian Studies* 2: 273-289. <https://doi.org/10.1353/earl.0.0124>
- Chadwick, Henry. 2003. *East and West. The Making of a Rift in the Church from Apostolic Times until the Council of Florence*. Oxford: Oxford University Press.
- Chrysos, Evangelios K. 1969. "Die angebliche 'Nobilitierung' des Klerus durch Kaisern Konstantin der Grossen." *Historia* 18: 119-129.

- Cimma, Maria Rosa. 1989. *L'episcopalis audientia nelle costituzioni imperiali da Costantino a Giustiniano*. Torino: G. Giappichelli.
- Crifò, Giuliano. 1992. "A proposito di *episcopalis audientia*." In *Institutions, société et vie politique dans l'Empire romain au IV<sup>ème</sup> siècle ap. J. C.*, edited by M. Christol et alii, 397-410. Roma: École Française de Rome.
- Cuena Boy, Francisco Javier. 1985. *La "episcopalis audientia". La justicia Episcopal en las causas civiles*. Valladolid: Universidad de Valladolid.
- . 2016. "La *episcopalis audientia* de Constantino a Juliano el apóstata." *Studia et Documenta Historiae et Iuris* 83: 120-134.
- Davies, J. G. 1958. "Condemnation to the Mines: a Neglected Chapter in the History of Persecutions." *University of Birmingham Historical Journal* 6: 99-107.
- De Giovanni, Lucio. 2000<sup>5</sup>. *Chiesa e stato nel codice Teodosiano. Alle origini della Codificazione in tema di rapporti Chiesa-Stato*. Napoli: M. d'Auria (= 1980, Napoli: Tempi Moderni].
- Di Berardino, Angelo. 1998. "L'immagine del vescovo attraverso i suoi titoli nel Codice Teodosiano." In *L'évêque dans la cité de IV<sup>e</sup> au V<sup>e</sup> siècle. Image et autorité*, edited by Éric Rebillard and Claire Sotinel, 35-48. Roma: École Française de Rome.
- . (ed.). 2006. *I canoni dei concili della Chiesa antica, I. I concili greci*. Roma: Institutum Patristicum Augustinianum.
- Delmaire, Roland, Jean Rougé, and François Richard. 2005. *Les lois religieuses des empereurs romains de Constantin à Théodose II (312-438), vol. 1. Code Théodosien, livre XVI*. Paris: Les Éditions du Cerf.
- Doignon, Jean. 2005. *Hilaire de Poitiers, disciple et témoin de la vérité (356-367)*. Paris: Institut d'Études Augustiniennes.
- Dupont, C. 1972. "Les privilèges des clercs sous Constantin." *Révue d'Histoire Ecclésiastique*, 62: 729-52.
- Dupuy, B. 1987. "Les appels de l'Orient à Rome du concile de Nicée au concile de Chalcédoine." *Istina* 32: 361-77.
- Falchi, Gian Luigi. 1986. "Legislazione e politica ecclesiastica nell'Impero romano dal 380 d. C. al Codice Teodosiano." In (ed.), *Atti dell'Accademia Romanistica Costantiniana. VI Convegno Internazionale*, edited by G. Griffò, 179-212. Perugia: Università degli Studi di Perugia.



- . 1991. “La tradizione giustiniana del materiale teodosiano (CTh, XVI).” *Studia et Documenta Historiae et Iuris* 57: 1-123.
- . 2000. “La diffusione della legislazione imperiale ecclesiastica nei secoli IV e V.” In *Legislazione imperiale e religione nel IV secolo*, edited by Jean Gaudemet, Paolo Siniscalco, and Gian Luigi Falchi, 121-173. Roma: Istituto Patristico “Augustinianum”.
- . 2008. “Église et Empire au IV<sup>e</sup> siècle. De l’Empire ‘laïc’ à l’Empire ‘confessionnel’.” In *Empire chrétien et Église aux IV<sup>e</sup> et V<sup>e</sup> siècles. Integration ou “concordat”? Le témoignage du Code Théodosien*, edited by Jean-Noël Guinot and François Richard, 131-153. Paris: Les Éditions du Cerf.
- Fournier, Éric. 2006. “Exiled Bishops in the Christian Empire: Victims of the Imperial Violence?” In (ed.), *Violence in Late Antiquity. Perceptions and Practices*, edited by Harold Allen Drake, 157-166. Aldershot: Ashgate.
- Frend, William H. C. and K. Clancy. 1977. “When did the Donatist Schism Begin?” *Journal of Theological Studies* 28: 104-109.  
<https://doi.org/10.1093/jts/XXVIII.1.104>
- Gaudemet, Jean. 1958. *L’Église dans l’Empire romain (IV<sup>e</sup>-V<sup>e</sup> siècles)*. Paris: Sirey.
- Gemmiti, Dante. 1991. *La Chiesa privilegiata nel codice Teodosiano. Vescovo, clero e monaci: aspetti emblematici*. Napoli/Roma: LER.
- Généstal, Robert. 1908. “Les origines du privilège clérical.” *Nouvelle Revue Historique de Droit Français et Étranger* 32: 161-212.
- Girardet, Klaus Martin 1974. “Athanasie d’Alexandrie et l’édit d’Arles.” In (ed.), *Politique et théologie chez Athanasie d’Alexandrie*, edited by Charles Kannengiesser, 63-91. Paris: Beauchesne.
- . 1975. *Kaisergericht und Bischofsgericht: Studien zu den Anfängen des Donatistenstreites (313-315) und zum Prozess des Athanasius von Alexandrien (328-346)*. Bonn: Rudolf Habelt Verlag.
- . 1989. “Die Petition der Donatisten am Kaiser Konstantin (Frühjahr 313).” *Chiron* 19: 185-206.
- . 2010. *Der Kaiser und sein Gott: das Christentum im Denken und in der Religionspolitik Konstantins der Großen*. Berlin: De Gruyter.

- Gottlieb, Gunther. 1976. "Les évêques et les empereurs dans les affaires ecclésiastiques du 4<sup>e</sup> siècle." *Museum Helveticum* 33: 38-50.
- Gustafson, W. Mark 1994. "Condemnation to the Mines in the Later Roman Empire." *Harvard Theological Review* 87 (4): 421-433.  
<https://doi.org/10.1017/S0017816000030212>
- . 1997. "Inscripta in fronte: Penal Tattooing in Late Antiquity." *Classical Antiquity* 16: 79-105. <https://doi.org/10.2307/25011055>
- Harries, Jill. 1999. *Law and Empire in the Late Antiquity*. Cambridge: Cambridge University Press.
- Hefele, Charles Joseph. 1873-1890. *Conciliengeschichte*. Freiburg: Herder (9 vols.) [1894-1896. *A History of the Councils of the Church from the Original Documents* (transl. William R. Clarck et alii). Edinburg: T. & T. Clark; 1907-1908. *Histoire des conciles d'après les documents originaux* (transl. H. Leclercq). Paris: Leouzey et Ané].
- Hess, Hamilton. 2002. *The Early Development of Canon Law and the Council of Serdica*. Oxford/London: Oxford University Press.
- Humphries, Mark. 1998. "Savage Humour. Christian Anti-Panegyric in Hilary of Poitiers' *Against Constantius*." In *The Propaganda of Power. The Role of Panegyric in Late Antiquity*, edited by Mary Whitby, 201-23. Leiden/Boston: E. J. Brill.
- Hunter, David G. 2008. "Fourth-Century Latin Writers: Hilary, Victorinus, Ambrosiaster, Ambrose." In *The Cambridge History of Early Christian Literature*, edited by Frances Young, Lewis Ayres and Andrew Louth, 302-17. Cambridge: Cambridge University Press.
- Jerg, Ernst. 1970. *Vir venerabilis: Untersuchungen zur Titulatur der Bischöfe in den ausserkirchlichen. Texten der Spätantike als Beitrag zur Deutung ihrer öffentlichen Stellung*. Vienna: Herder.
- Kartaschow, Anton Wladimirowitsch. 1976. "Entstehung der kaiserlichen Synodalgewalt unter Konstantin dem Grossen, ihre theologische Begründung und ihre kirchliche Rezeption." In *Die Kirche angesichts der konstantinischen Wende*, edited by Gerhard Ruhbach, 149-67. Darmstadt: Wissenschaftliche Buchgesellschaft.
- Klauser, Th. 1952<sup>2</sup>. *Der Ursprung der bischöflichen Insignien und Ehrenrechte*. Krefeld: Scherpe (= 1949).

- Lamoreaux, John C. 1995. "Episcopal Courts in Late Antiquity." *Journal of Early Christian Studies* 3: 143-167. <https://doi.org/10.1353/earl.0.0052>
- Lancel, Serge. 1979. "Les débuts du donatisme: la date du 'protocole du Circa' et d'élection épiscopale de Silvanus." *Revue des Études Augustiniennes* 25: 217-29. <https://doi.org/10.1484/J.REA.5.104384>
- Lizzi Testa, Rita. 1998. "I vescovi e i potentes della terra: definizione e limite del ruolo episcopale nelle due partes imperii fra IV e V secolo d. C." In *L'évêque dans la cité di IV<sup>e</sup> au V<sup>e</sup> siècle. Image et autorité*, edited by Éric Rebillard and Claire Sotinel, 81-104. Roma: École Française de Rome.
- . 2004. *Senatori, popolo, papi. Il governo di Roma al tempo dei Valentiniani*. Bari: Edipuglia.
- Magnou-Nortier, Elisabeth. 2002. *Le Code Théodosien livre XVI et sa réception au Moyen Âge*. Paris: Les Éditions du Cerf.
- Maymó Capdevila, Pere. 1997. "La *episcopalis audientia* durante la dinastía teodosiana. Ensayo sobre el poder jurídico del obispo en la sociedad tardorromana." In *Congreso Internacional "La Hispania de Teodosio"*, edited by Ramón Teja and Cesáreo Pérez, I, 165-70. Salamanca: Junta de Castilla y León.
- McLynn, Neil Brendan, 1994. *Ambrose of Milan. Church and Court in a Christian Capital*. Berkeley: University of California Press.
- Meslin, Michel. 1967. *Les ariens d'Occident, 335-430*. Paris: Université.
- Meyendorff, John. 1996. *Rome, Constantinople, Moscow. Historical and Theological Studies*. Crestwood: St. Vladimirs Seminary Press.
- Mirow, Matthew C., and Kathleen A. Kelley. 2000. "Laws on Religion from the Theodosian and Justinianic Codes." In (ed.), *Late Antiquity in Practice*, edited by Richard Valantasis, 263-74, Princeton: Princeton University Press.
- Mommsen, Theodor. 1899. *Römische Strafrecht*. Leipzig: Duncker & Humblot.
- Mozzillo, Attanasio. 1954. "Dei rapporti tra gli imperatori ed i concili ecumenici da Costantino a Giustiniano." *Archivio Giuridico Filippo Serafini* 146: 105-128.
- Nautin, P. 1974. "Les premières relations d'Ambrose avec l'empereur Gratien. Le *De fide* (livres I et II)." In *Ambroise de Milan. XVI<sup>e</sup> centenaire de son élection épiscopale*, edited by Y. M. Duval, 229-44. Paris: Études Augustiniennes.

- Ombretta Cuneo, Paola. 1997. *La legislazione di Costantino II, Costanzo II e Costante (337-361)*. Milano: Giuffrè.
- Opelt, Ilona. 1973. "Hilarius von Poitiers als Polemiker," *Vigiliae Christianae* 27: 203-217. <https://doi.org/10.1163/157007273X00198>
- Opitz, Hans-Georg *et alii*. 1934ff. *Athanasius Werke*. Berlin: Walter de Gruyter.
- Pal, Maximilian, 2005. "Episcopalis audientia nelle fonti del Diritto romano cristiano da Costantino a Teodosio II." *Folia Canonica*, 8: 207-20.
- Parvis, Sara. 2006. *Marcellus of Ancyra and the Lost Years of the Arian Controversy (325-345)*. Oxford: Oxford University Press.
- Pergami, F. 2011. "Giurisdizione civile e giurisdizione ecclesiastica nella legislazione del tardo Impero." In *Processo civile e processo penale nell'esperienza giuridica del mondo antico. In memoria di Arnaldo Biscardi*, 215-23. Milano: LED.
- Pharr, Clyde. 1952. *The Theodosian Code and Novels and the Sirmondian Constitutions*. Princeton: Princeton University Press.
- Pilara, G. 2004. "Sui tribunali ecclesiastici nei IV e V secolo. Ulteriori considerazioni." *Studi Romani*, 52: 353-378.
- Rapp, Claudia. 2005. *Holy Bishops in Late Antiquity. The Nature of Christian Leadership in an Age of Transition*. Berkeley: University of California Press.
- Robinson, O. F. 1995. *The Criminal Law of Ancient Rome*. Baltimore: The Johns Hopkins University Press.
- Roldanus, Johannes. 2006. *The Church in the Age of Constantine. The Theological Challenges*. London/New York: Routledge.
- Rosen, Klaus. 1988. "Ilario di Poitiers e la relazione tra la Chiesa e lo Stato." In *I cristiani e l'Impero nel IV secolo*, edited by Giorgio Bonamente and Aldo Nestori, 63-74. Macerata: Università degli Studi di Macerata.
- Salzman, Michele Renee. 1993. "The Evidence for the Conversion of the Roman Empire to Christianity in Book 16 of the Theodosian Code." *Historia* 42: 362-78.
- Schememann, Alexander. 1992. "The Idea of Primacy in Orthodox Ecclesiology." In *The Primacy of Peter. Essays in Ecclesiology and the Early Church*, edited by John Meyendorff *et alii*, 145-71. Crestwood: St. Vladimirs Seminary Press.
- Seeck, Otto. 1919. *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr.* Stuttgart: J. B. Metzlersche Verlag.

- Simonetti, Manlio. 1967. "Osservazione sull'*Altercatio Heracliani cum Germinio*," *Vigiliae Christianae* 21: 39-58. <https://doi.org/10.1163/157007267X00069>
- Siniscalco, Paolo. *Il cammino di Cristo nel Impero romano*. Roma: Laterza, 2007<sup>6</sup> (= 1983).
- Sirks, Adriaan J. B. 2013. "The *episcopalis audientia* in Late Antiquity." *Droit & Cultures* 65: 79-88.
- Smulders, Pieter. 1995. *Hilary of Potiers' Preface to His Opus historicum*. Leiden: E. J. Brill.
- Studer, Basil. 1989. *La riflessione teologica nella chiesa imperiale (sec. IV e V)*. Roma: Istituto Patristico "Augustinianum".
- Twomey, Vincent. 1982. *Apostolikos Thronos. The Primacy of Rome as Reflected in the Church History of Eusebius and the Historico-Apologetic Writings of Saint Athanasius the Great*. Münster: Aschendorff.
- Vismara, Giulio. 1987. "Ancora sull'*episcopalis audientia* (Ambrogio, arbitro o giudice?)." *Storia et Documenta Historiae et Iuris* 53: 55-73.
- . 1995. *La giurisdizione civile dei vescovi (secoli I-IX)*. Milano: Giuffrè.
- Williams, Daniel H. 1991. "A Reassessment of the Early Career and Exile of Hilary of Poitiers." *Journal of Ecclesiastical History* 42: 202-217. <https://doi.org/10.1017/S0022046900000051>
- . 1995. "Polemics and Politics in Ambrose of Milan's *De Fide*." *Journal of Theological Studies* 46: 519-31. <https://doi.org/10.1093/jts/46.2.519>
- . 2002<sup>2</sup>. *Ambrose of Milan and the End of the Arian-Nicene Conflicts*. Oxford: Clarendon Press.