

C. HUMFRESS, *Orthodoxy and The courts
in Late Antiquity* (2007)

Defining Heresy and Orthodoxy

DEFINING HERESY

Thus to capture in a strict definition what it is that makes a man a heretic is, in my opinion, either impossible or very difficult.¹

When Augustine died in 430 his *De Haeresibus* (*On Heresies*) lay unfinished: the treatise had been intended as a manual for the use of both 'Catholic' clerics and laity, enabling them to detect heretical error and defend the faith.² It had originally been requested by a deacon of the church at Carthage, Quodvultdeus, who was apparently experiencing problems in detecting heretics within his own congregation. Quodvultdeus had repeatedly asked Augustine to produce a brief, concise, and summary handbook of heresies (a *commonitorium*) for practical use. Augustine, however, wanted to do more. He mentions two potential models for his treatise: the six-volume work on the errors of the philosophers written by the second-century Platonist Celsus and the *Anakephalaisis*, a summary of Bishop Epiphanius of Salamis' 'medicine chest' (*Panarion*) of antidotes to the 'snakebites' of heretical sects.³ Augustine used the categories of the eighty heretical sects named by the Christian Epiphanius in his own classifications, but he wished a specific comparison to be made between his own project and that undertaken by the (pagan) philosopher. What was the point of this comparison with Celsus?

¹ Augustine, *De Haeresibus*, pr. 7 (CCSL 46. 289, ll. 100–2): 'Quid ergo faciat haereticum regulari quadam definitione comprehendi, sicut ego existimo, aut omnino non potest aut difficillime potest.'

² See Augustine *Eps.* 221–4 (CSEL 57. 442–54).

³ On these and other possible sources for Augustine's *De Haeresibus* see G. Bardy, 'Le "De haeresibus" et ses sources', in G. Morin and A. Casamassa (eds.), *Miscellanea Agostiniana: Testi e Studi*, ii (Rome: Tipografia Poliglotta Vaticana, 1931), 397–416.

Augustine explains that Celsus had laid out the opinions of all the philosophers who had founded 'schools' up to his own times, 'for he could do no more than that'.⁴ Augustine had higher ambitions: 'As for myself, I want to do more than this: I want to furnish a means, if it is also God's will, of avoiding every heresy, be it known or unknown; and likewise the means of judging each one as it makes its appearance.'⁵ Augustine's own plan for the *De Haeresibus* thus divided his treatise into two parts: the first was to classify existing heretical sects and the second was theoretically to define what makes a heretic 'heretical'.⁶ In this second part of his treatise Augustine wanted to lay down abstract rules for detecting and judging heretical error, rules which would encompass the future, as well as the present and the past.

The gulf separating philosophy from Christian theology, the project of Celsus from that of Augustine, is symbolized in their different understandings of the word *haeresis*. *Hairesis* for Celsus, as in everyday usage, would have implied a neutral choice to follow one path (or school of thought) rather than another, and for the Christian Augustine, on the other hand, it implied a bad personal choice, a deviation from the single right path that led to God.⁷ The best that Celsus could do, in Augustine's eyes, was thus to provide a list of the (mistaken) doctrines of past philosophers, whereas Augustine could set himself the task of laying down ground rules for the detection of errors that did not yet exist, precisely because he was certain that there was a set of timeless and universal Christian beliefs that future heretics would deviate from. However, as Karen King has noted in her brilliant and challenging *What is Gnosticism?* (2003) 'There was no predetermined orthodoxy that was simply there, waiting to be more carefully defined. Constructing a heretical other simultaneously and reciprocally exposes

⁴ Augustine, *De Haeresibus*, pr. 7 (CCSL 46. 288, ll. 71–3): 'Opiniones omnium philosophorum qui sectas varias condiderunt usque ad tempora sua—neque enim plus poterat—sex non parvulis voluminibus quidam Celsus absoluit.'

⁵ Ibid. pr. 7 (CCSL 46. 289, ll. 96–8): 'Ego vero magis hoc volo facere, si et deus velit, unde possit omnis haeresis, et quae nota est et quae ignota, vitari, et unde recte possit quaecumque innotuerit iudicari.'

⁶ Ibid. pr. 7 (CCSL 46. 289, ll. 108–10): '(Erunt ergo primae partes operas huius de haeresibus quae post Christi adventum et ascensum adversus doctrinam ipsius existerunt, et utcumque nobis innotescere potuerunt.) In posterioribus autem partibus, quod faciat haereticum disputabitur.'

⁷ For further discussion see S. Marcel, 'From Greek *Hairesis* to Christian Heresy', in W. R. Schoedel, and R. L. Wilken (eds.), *Early Christian Literature and the Classical Intellectual Tradition: In Honorem Robert M. Grant* (Paris: Éditions Beauchesne, 1979), 101–16.

the partial, mutable, and irregular character of orthodoxy.'⁸ That Augustine failed, after numerous attempts, to write the second section of his *De Haeresibus* perhaps illustrates King's point. However, the fact that he attempted to write the second section at all is testimony to Augustine's own conviction that a timeless and universal orthodoxy did in fact exist.

Recent historical scholarship on late antique heresy has taken a significant rhetorical turn, as noted by Virginia Burrus:

Patristic scholars have continued to be drawn to revisionist interpretations of ancient theological controversies. From one perspective, the recent fascination with controversy merely echoes the polemical preoccupations of the ancient texts, which inhabit a rhetorical universe shaped by the pressures of an intensely competitive society. But with the waves of postmodernist cultural theory beginning to lap at the edges even of the highly conservative fields of ancient history and historical theology, other answers to the question of the current lure of the heretical also suggest themselves. A heightened interest in the subaltern and the subversive flourishes in pockets of inquiry dispersed throughout the academy, as scholars seek to uncover the strategies by which men and women have historically resisted the social and discursive disciplines, the 'regimes of truth,' of which orthodoxies are formed. As the clarity of the monologic becomes suspect, a new appreciation emerges for the complexity of the dialogic, the many-voiced speech of the historical texts.⁹

The 'current lure of the heretical' is thus politically motivated. According to King it fosters an 'ethical, self-reflective critique', founded on an 'ethos of critical reflexivity, democratic debate, intellectual, multilingual, and multidisciplinary competence'.¹⁰ The historical deconstruction of

⁸ K. King, *What is Gnosticism?* (Cambridge, Mass. and London: Harvard University Press, 2003), 25.

⁹ V. Burrus, *The Making of a Heretic: Gender, Authority and the Priscillianist Controversy* (Berkeley, Los Angeles, and London: University of California Press, 1995), 1. See also A. Cameron, 'How to Read Heresiology', *Journal of Medieval and Early Modern Studies*, 33/3 (2003), 471–92; R. Lyman, 'Historical Methodologies and Ancient Theological Conflicts', in M. Zyniewicz, *The Papers of the Henry Luce III Fellows in Theology*, iii (Atlanta, Ga.: Scholars Press, 1999), 75–96; and T. M. Shaw, 'Ascetic Practice and the Genealogy of Heresy: Problems in Modern Scholarship and Ancient Textual Representation', in D. B. Martin and P. Cox Miller, *The Cultural Turn in Late Ancient Studies: Gender, Asceticism, and Historiography* (Durham, NC: Duke University Press, 2005), 213–36. Compare P. Athanassiadi, 'The Creation of Orthodoxy in Neoplatonism', in G. Clark and T. Rajak (eds.), *Philosophy and Power in the Graeco-Roman World* (Oxford: OUP, 2002), 271–91.

¹⁰ King, *What is Gnosticism?*, 245, quoting the words of Elisabeth Schüssler Fiorenza. Also *ibid.* 243, 'I am actually doing what I am critiquing: writing the origins and history

'monologic' discourse, however, does not necessarily reveal 'dialogic' perspectives.

As Burrus herself has argued, the 'heretical' and the 'orthodox' should be understood by the historian as 'performative' concepts, involving the scripting of social roles that were then played out on the level of textual strategies: crucially, Burrus argues, the orthodox themselves were expected to act a part.¹¹ In the fourth century, performing the socially scripted role for being recognizably orthodox included being in possession of the 'correct' or 'straight' belief, being unanimous with (or 'in') Christ, and believing a simple and artless truth. The social script for the 'heretic', on the other hand, required having the 'wrong' or 'deviant' belief, being splintered into many sects (separated from Christ), and being mendacious and fraudulent. Needless to say, the social script for being heretical was not produced by the 'heretic'. Hence no matter how much we deconstruct 'the heretic', the discursive space that we are left with remains, in this context, monologic. Burrus is undoubtedly correct that 'Late ancient Christian orthodoxy involved a bit of shamming', however a crucial part of the 'orthodox' social script involved believing precisely that there was no sham: that orthodoxy and heresy were 'real' concepts, that could *potentially* be given a definite historical content.

The second- and third-century polemicists Justin, Irenaeus, and Tertullian each claimed that the demand for a right path (understood as both orthodoxy and *orthopraxis*) had been built into the earliest Christianity through the pivotal idea of the Last Judgment¹²—a claim undoubtedly influenced by so-called Gnostic texts that argued for the almost universal salvation of humanity (*The Apocryphon of John*) or discarded the concept of a final judgment at all (*The Gospel of Truth*).¹³ The very concept of a universal tribunal, the Last Judgment, on the other

of Gnosticism in order to "Subvert the game" and 246, 'My objective has been, not to replace "orthodoxy" with "heresy" as a new normative foundation, but to further critical reflexivity with regard to the discourses and methods of historiographical scholarship.'

¹¹ V. Burrus, "In the Theater of this Life": The Performance of Orthodoxy in Late Antiquity, in W. Klingshirn and M. Vessey, *The Limits of Ancient Christianity: Essays on Late Antique Thought and Culture in Honor of R. A. Markus* (Ann Arbor: University of Michigan Press, 1999), 80–96.

¹² For instance, Matt. 25: 31–46, Christ seated on a throne, judging between sheep and goats, sending the former into life eternal and the latter into everlasting punishment; Acts 17: 31, a future day has been set aside for Christ's judgment; and James 4: 12, there is one lawgiver who is able to save and destroy. Also 2 Cor. 5: 10 and John 12: 48–50.

¹³ King, *What is Gnosticism?*, 27.

hand, implies some expectation of a universal legal order. According to Tertullian it also implied universal theological belief:

These testimonies of a strict discipline existing among us are an additional proof of truth, from which no one can safely turn away, who keeps in mind that future judgement, when we must all stand before the tribunal of Christ, to render an account of our faith itself. What then will they say, those who shall have defiled the virgin [i.e. faith], which Christ committed to them, by the adultery of heresy?¹⁴

For Tertullian all Christians shall be judged according to their faith as well as their actions. The revealed doctrines of Christ's divine mysteries do not themselves admit of rational interpretation; hence the mysteries contained in scripture are also 'the testimonies of a strict discipline', they are the *regula fidei* (the 'rule of faith'). The baptized Christian is bound by the rule of faith, and the 'heretic' will have no defence before the tribunal of Christ. The demand for a prescribed orthodoxy could thus be represented as having been built into the theology of Christianity from its inception. The central place of the Last Judgment suggested a set of 'Christian' ethical practices and beliefs that could be applied universally, and the fulfilment of the promises of the revelation implied that all individuals would be judged according to the same criteria. 'Orthodoxy may be as much a metamorphosis (or pseudo-metamorphosis) of the foundational religious idea as heresy.'¹⁵ Nonetheless in the second and third centuries, in certain circles at least, we can speak of a 'pre-Nicene orthodoxy': the concept existed, even if the content was (always) under construction.

The rhetorical classification and naming of the 'heretic' thus performed a crucial function in ancient theological polemic and discourse. According to the Gospel of Luke Christ appointed seventy-two apostles and sent them out ahead of him; they returned rejoicing:

'Lord', they said, 'even the devils submit to us when we use your name'. He said to them, 'I watched Satan fall like lightning from heaven. Truly, I have given you the power to tread underfoot serpents and scorpions and the whole

¹⁴ Tertullian, *De Praescriptione Haereticorum* 44 (CSEL 70. 56, ll. 1–7): 'Proinde haec pressioris apud nos testimonia disciplinae ad probationem ueritatis accedunt, a qua diuertere nemini expedit qui meminerit futuri iudicii, quo omnes nos necesse est apud Christi tribunal ad stare, reddentes rationem in primis fidei ipsius. Quid ergo dicent, qui illam stuprauerint adulterio haeretico uirginem traditam a Christo?'

¹⁵ R. Williams, 'Does it Make Sense to Speak of Pre-Nicene Orthodoxy?', in R. Williams (ed.), *The Making of Orthodoxy: Essays in Honour of Henry Chadwick* (Cambridge: CUP, 1989), 1–23, at 3.

strength of the enemy; nothing shall ever hurt you. Yet do not rejoice that the spirits submit to you; rejoice rather that your names are written in heaven.¹⁶

In this Lukan narrative, the power of the seventy-two apostles to cast out serpents, scorpions (both later understood to refer to heretics), and devils was confirmed by Christ himself, but was founded on the fact that their names had already been 'written in heaven'. By the second century the possession of Christ's name was used as a title to orthodoxy: Justin refused to apply the name of Christ to divergent sects, despite his theological position that all the baptized remain at least externally bound together as a unity.¹⁷ In effect, an individual who exercised choice over Christ's deposit of faith committed the same sin as Adam over the tree of knowledge: both turned away from God to self. The pride of the heretic could therefore be 'fittingly' symbolized by the application of his own name to doctrines that he had interpreted for himself, as opposed to trusting in the apostolic authorities confirmed by Christ.

In the fourth-century dialogue known as the *Consultationes Zacchei christiani et Apollonii philosophi*, the Christian character Zaccheus provides a typology of heretics and their errors, ostensibly for the benefit of his non-Christian interlocutor, a philosopher named Apollonius: heretics abandon the apostolic tradition, they follow their leaders into a perversion of the faith, and 'they change the name of their religion at the same time as they change what they think'.¹⁸ Rhetorical strategies of naming and classifying were widespread amongst fourth- and fifth-century Christians.¹⁹ According to Augustine, the Arians called Catholics (here understood as the 'true' Christians) Athanasians or Homoousians, whilst the Pelagians named them Traducians, the Donatists referred to them as Macharians, and the Manichaeans branded them Pharisees.²⁰ Of course, every Christian polemicist (with the singular exception of the Manichaean) claimed the title of 'true Christian' for himself.

¹⁶ Luke 10: 17–20.

¹⁷ Justin, *Dialogus cum Tryphone* 35. 4. 6. The most recent critical edn. of this text is M. Marcovich, *Iustini Martyris. Apologiae pro Christianis, Dialogus cum Tryphone* (Berlin and New York: Walter de Gruyter, 2005).

¹⁸ *Consultationes Zacchei christiani et Apollonii philosophi* 2. 11. 3 (SC 402. 78–82). Ibid. 2. 11. 6 names Mani, Marcion, Photinus, Sabellius, and Arius as founders of heresies, with the qualification that Patripassians got 'their name from their error'.

¹⁹ For general discussion see H. Inglebert, 'L'Histoire des hérésies chez les hérésiologues', in B. Pouderon and Y.-M. Duval (eds.), *L'Histoire des hérésies de l'Église des premiers siècles* (Paris: Beauchesne, 2001), 105–25.

²⁰ Augustine, *Contra Julianum Opus Imperfectum* 1. 71 (CSEL 85/1. 91–2, ll. 36–43).

As Ayers has argued with reference to fourth-century Trinitarian theology: 'Such heresiological labels enabled early theologians and ecclesiastical historians to portray theologians to whom they were opposed as distinct and coherent groups, and they enabled writers to tar enemies with the name of a figure already in dispute.'²¹ 'Heresiological labelling', Ayers comments astutely, thus has the effect of covering up 'the complexity of theological development'. With respect to the definition of Arianism, for example: 'No clear party sought to preserve Arius' theology. Many who are termed Arian justly protested their ignorance of his teaching or works; their theologies often have significantly different concerns and preoccupations.'²² The term 'Arian' was a polemical rhetorical label; nonetheless, as I shall argue below, this does not mean that we should approach 'Arianism' solely as a rhetorical construct.

PHILOSOPHY, LAW, AND ORTHODOXY

From at least the second century the application of philosophical techniques to scriptural exegesis encouraged the categorization of theological belief, despite the Pauline scriptural warnings against 'pointless philosophical discussions'.²³ Le Boulluec has studied the relationship between discursive strategies in ancient philosophical and theological contexts, focusing primarily on the application of philosophical methods of reasoning to the construction of heresiological categories in the second and third centuries.²⁴ In fact whether a 'proper use of philosophy' had been applied to the 'true faith', or not, became itself a normative discursive strategy.²⁵ By its very nature, however, philosophical debate could not provide the criteria from which an 'authoritative' content of

²¹ L. Ayers, *Nicaea and its Legacy: An Approach to Fourth-Century Trinitarian Theology* (Oxford: OUP, 2004), 2.

²² Ibid. 13.

²³ 2 Tim. 2: 14–19 and 1 Tim. 6: 20–1. For a carefully nuanced discussion see R. Lyman, 'Hellenism and Heresy', *Journal of Early Christian Studies*, 11/2 (2003), 209–22.

²⁴ A. Le Boulluec, *Le Notion d'hérésie dans la littérature grecque IIe–IIIe siècles* (Paris: Études Augustiniennes, 1985). See also E. G. Weltin, *Athens and Jerusalem: An Interpretative Essay on Christianity and Classical Culture* (Atlanta, Ga.: Scholar's Press, 1987).

²⁵ See M. Williams, *Rethinking 'Gnosticism': An Argument for Dismantling a Dubious Category* (Princeton: Princeton University Press, 1996) and E. F. Osborn, 'Reason and the Rule of Faith in the Second Century AD', in R. Williams (ed.), *The Making of Orthodoxy: Essays in Honour of Henry Chadwick* (Cambridge: CUP, 1989), 40–61.

orthodox beliefs could be derived and maintained; after the conversion of Constantine, on the other hand, Roman law held out the possibility that it could. The logic of the late Roman courtroom demanded an arguable case, and then it declared a winner and a loser.

Eusebius of Caesarea's account of the case of Paul of Samosata (bishop of Antioch c.261 until his synodal deposition c.268/9) is revealing in this context.²⁶ Eusebius devotes four chapters of his *Ecclesiastical History* to Paul, in which he cites evidence including excerpts taken from the synodal deposition letter itself, addressed to the then bishops of Rome and Alexandria and sent some forty years or so before Eusebius himself was writing.²⁷ According to Eusebius' narrative, then, Paul had already been condemned for heterodox belief, alongside innovations in liturgy and practice, by a synod at Antioch c.264—but to no effect. A second synod was thus assembled about five years later. At this second synod the bishops subjected Paul to a dialectical inquiry, but the 'person foremost in calling him to account and in utterly refuting his attempts at concealment was Malchion', who was 'a learned man' and head of an Antiochene school of rhetoric.²⁸ Eusebius thus styles Malchion as a rhetorically skilled interrogator, who was also renowned for 'the extraordinary authenticity of his Faith in Christ' and had been appointed a presbyter; it was the combination of Malchion's forensic acumen and his Christian faith that resulted in Paul's excommunication from the Antiochene church.²⁹ The synodal sanction, however, apparently lacked executive force. Paul refused to give up possession of the church house to his successor, Domnus. The bishops thus petitioned the Emperor Aurelian (270–5), who issued a rescript ruling that the building should be given to the bishop in communion with the bishops of Italy and Rome.³⁰

The heresy of Paul had of course been identified during the synodal proceedings and Eusebius is careful to stress that Malchion (whom

²⁶ On the geographical, political, and cultural background to the Paul of Samosata affair see F. Millar, 'Paul of Samosata, Zenobia and Aurelian: The Church, Local Culture and Political Allegiance in Third-Century Syria', *Journal of Roman Studies*, 61 (1971), 1–17.

²⁷ H. de Riedmatten, *Les Actes du procès de Paul de Samosate: Étude sur la Christologie du IIIe au IVe siècle* (Fribourg, Switzerland: Éditions St-Paul, 1952), 15.

²⁸ Eusebius, *HE* 7. 29. 1–2, on which see de Riedmatten, *Les Actes*, 20. For the rhetor Malchion see also Heath, *Menander: A Rhetor in Context*, 260, and Kaster, *Guardians of Language*, 73.

²⁹ De Riedmatten, *Les Actes*, 136–58 gives extant fragments from the acts of the Synodal depositional hearing against Paul.

³⁰ Eusebius, *HE* 7. 30. 19, see Millar, 'Paul of Samosata', 14–16.

he portrayed, remember, as the authentic Christian skilled in forensic rhetoric) had deliberately employed stenographers to take notes as he conducted his disputation with Paul—notes that Eusebius states he knows to be still extant.³¹ If these stenographic records stating that Paul had been judged a heretic really did exist, then they almost certainly would have been used as part of the legal dossier on Paul presented, in the form of a petition, to the imperial court of Aurelian. The fact that an emperor resolved the dispute over Paul's possession of a church house and (incidentally) confirmed his heresy, may well tell us more about the age of Eusebius than the age of Paul of Samosata. With his portrayal of Malchion however, Eusebius is very careful to represent the forensic skills needed to invoke imperial authority as being provided from within the Christian community itself.

In his attempts to urge the formation of a 'Catholic' and universal body of belief for an imperial church, the Emperor Constantine resorted to the sanctions of law in an attempt to enforce the anathemas against Arius and those 'of his opinions', pronounced at the Council of Nicaea (325). In a letter of 324, addressed to 'Arius and those of his name', Constantine had suggested a philosophical model for handling doctrinal disagreement:

But so that I may bring to the attention of your Wisdoms a slight comparison, you surely know how philosophers themselves all agree in one set of principles, and often when they disagree in some part of their statements, although they are separated by their learned skill, yet they agree together again in unity when it comes to basic principle. If this is so, surely it is far more right that we, who are the appointed servants of the great god should in a religious commitment of this kind, be of one mind with each other?³²

Less than a year after exhorting them to be more like philosophers, however, Constantine apparently condemned Arius (and his followers) with a sentence taken from Roman law: *infamia*.³³ *Infamia* involved the diminution of the esteem in which a person was held in Roman society (*existimatio*)—those declared *infames* could be excluded from the right of making applications in civil and criminal trials or from holding certain offices, as well as more specific disqualifications.³⁴ According to the

³¹ Eusebius, *HE* 7. 29. 2.

³² Eusebius, *Vita Con.* 2. 71. 2–3, tr. A. Cameron and S. Hall, *Eusebius, Life of Constantine* (Oxford: OUP, 1999), 182. See Ayers, *Nicaea and its Legacy*, 18.

³³ See *D. 3. 2, De his qui notantur infamia*. Also *CI* 2. 11 and 10. 59.

³⁴ Berger, *Encyclopedic Dictionary*, art. 'Infamia', 500. For the application of *infamia* as a punishment for crimes against the Christian faith see A. H. J. Greenidge, *Infamia*:

Constantinian text as given by the fifth-century ecclesiastical historian Socrates, the precedent cited for the condemnation of Arius and those who 'hold his opinions' was, ironically in the light of the 324 letter, a prior sentence issued against the Neoplatonic philosopher Porphyry:

Victor Constantine Maximus Augustus to the bishops and people. Since Arius has imitated wicked and impious persons, it is just that he should undergo the like *infamia*. Since Porphyry that enemy of piety, having composed licentious treatises against religion, found a suitable recompense and such as from that time forward branded him with *infamia*, overwhelming him with deserved reproach, his impious writings also having been destroyed; so now it seems fit that both Arius and such as hold his opinions should be denominated Porphyrians, that they may take their name from those whose conduct they have imitated.³⁵

Arius, and any who supported him, were to be branded with the name of Porphyrians; with a rhetorical flourish, the *legal* censure of divergent theological belief was achieved by defining a new group (Arius and his supporters) and branding it with an old name. The concept of 'Arianism' thus entered the Roman legislative arena.

Over one hundred years later, a constitution issued in the name of the Emperor Theodosius II looked back to this Constantinian measure to justify the condemnation of the theological 'innovations' of Nestorius.³⁶ This 435 condemnation, as Millar notes, is

known to us from three different sources: a Latin version, found in the *Codex Theodosianus* which is in the form of a letter addressed to Leontius, Prefect of Constantinople; an (apparently) complete text in Greek, with no addressee or date or place of issue, and headed simply 'Copy of an Imperial Law,' known from the Greek *Acta* [ACO 1. 1. 3, para. 111]; and a brief note in Rusticus's version of the *Tragoedia* [of Irenaeus], summarizing the content of the law.³⁷

Its Place in Roman Public and Private Law (Oxford: Clarendon Press, 1894), 144–53 and 209–13 (without discussion of Constantine's constitution against Arius).

³⁵ The only extant version of this text is at Socrates, *HE* 1. 9 (tr. in *NPNF* 2. 2. 14). On the date of Porphyry's *Against the Christians* see T. D. Barnes, 'Scholarship and Propaganda? Porphyry Against the Christians and its Historical Setting', *BICS* 39 (1994), 53–65; both Eusebius of Caesarea and Methodius of Olympus (Lycia) produced direct refutations (non-extant). Eusebius also included a polemic against Porphyry in the preface to the 2nd edn. of his *Chronicle*, probably composed 325/6 (see Barnes, *Constantine and Eusebius*, 113).

³⁶ On the theological and historical background to the controversy see S. Wessel, *Cyril of Alexandria and the Nestorian Controversy: The Making of a Saint and a Heretic* (New York and Oxford: OUP, 2004).

³⁷ Millar, *Greek Roman Empire*, 176. The version at *C.Th.* 16. 5. 66 is also excerpted at *CI* 1. 5. 6.

Millar's translation of this Theodosian constitution combines the extant Latin and Greek versions: the preface (cut from the Theodosian Code) begins by stating that 'those who behave impiously towards the divinity should be punished with appropriate penalties and *be addressed with names suitable to their baseness*'.³⁸ The constitution continues:

Since Nestorius, the leader of a monstrous teaching [Latin *superstitio*], has been condemned, it remains to apply to those who share his opinions and participate in his impiety a condemnatory name, so that they may not, by abusing the appellation of Christians, be adorned by the name of those from whose doctrines they have impiously separated themselves. Therefore we decree that those everywhere who share in the unlawful doctrines of Nestorius are to be called 'Simonians'. For it is appropriate that those who, in turning away from the divine, imitate his impiety should inherit the same appellation as he, just as the Arians, by a law of the deceased Constantine are called, because of the similarity of their impiety, 'Porphyrians' after Porphyry, who, having attempted to battle against the true religion by the power of reason, left behind books, but not records of (true) learning.³⁹

Appealing to a series of documents from Schwartz's *Acta Conciliorum Oecumenicorum* and the mid-fifth-century text of Irenaeus' *Tragoedia*, Millar has brilliantly traced the subsequent diffusion of this constitution through bureaucratic and ecclesiastical channels alike: culminating in a letter addressed back to the Emperors Theodosius and Valentinian by certain bishops (including the then metropolitan bishop of the province of Cilicia Prima, as well as the bishops of Rome, Constantinople, and Antioch), who state that they are 'co-anathematizing, along with Nestorius himself, also those who assert the same impious doctrines as he, that is the "Simoniani", as your order justly named them'.⁴⁰ A new legal classification, albeit one grafted onto the scriptural figure of Simon Magus, was thus laid down, and this measure provoked concrete action

³⁸ Tr. Millar, *Greek Roman Empire*, 176 (italics mine).

³⁹ *Ibid.* 176–7. 'Simonians' refers to Simon Magus—represented in late antique heresiology as the original heresiarch who founded the heretics' counterfeit genealogical line (in opposition, of course, to the true authority conveyed by apostolic succession). For discussion of Simon Magus see A. Tuzlak, 'The Magician and the Heretic: The Case of Simon Magus', in P. Mirecki and M. Meyer (eds.), *Magic and Ritual in the Ancient World* (Leiden: Brill, 2002), 416–26. Augustine's list of heresies in the *De Haeresibus* begins with 'Simonians'.

⁴⁰ Millar, *Greek Roman Empire*, 178; *ibid.* 179–91 on the various fates of Nestorius and those associated with him.

from the ecclesiastical hierarchy. This fact stands, whether the threat to anathematize the 'Simonians' remained on a symbolic level, or whether it was actually enforced against individuals for whom the name could be made to stick. In fact, through a process of naming, classifying, and reasoning out from existing precedents, any alleged 'deviation' from Christian doctrine could potentially become the focus of a legal case, subject to imperial constitutions, as well as ecclesiastical sanctions.

The use of private creeds and anathemas in the fourth and fifth centuries also underscores the fluidity of Christian doctrine, and the taxonomical processes at work in the formation of an agreed set of 'orthodox' beliefs in any given context, at any particular time. For example, at the 'dedication Council of Antioch' (341), Theophronius of Tyana apparently read out a private creed, in which he condemned Marcellus of Ancyra and 'those who taught as he did'.⁴¹ The wording of private creeds could, of course, be altered and anathemas revoked: within two or three years Arius and certain others who had been exiled in the wake of the Council of Nicaea (325) were readmitted to communion.⁴² The wording of the anathemas originally pronounced against them, however, continued to have a lasting effect—in fact, as Lienhard has suggested, the anathemas issued at Nicaea in 325 were possibly more important than the Creed itself, in terms of the development of doctrinal controversies between the 320s and 350s/360s.⁴³ The wording of private creeds and the issuing of anathemas against named individuals established concrete networks of ecclesiastical communication (i.e. 'communion'), as well as mapping out the 'acceptable' boundaries of a spiritual community.

At *Ecclesiastical History* 4. 24 Eusebius gives a highly rhetorical description of the bishop as shepherd of his flock, in the context of the pre-Nicene Eastern churches:

Since the heretics no less at that time were like tares despoiling the pure seed of apostolic teaching, the shepherds of the churches everywhere, as though frightening away wild beasts from Christ's sheep, sought to hold them back; so that at one time they would resort to persuasions and exhortations to the brethren, at another they would oppose them openly and partly through oral

⁴¹ J. T. Lienhard, *Contra Marcellum: Marcellus of Ancyra and Fourth-Century Theology* (Washington DC: Catholic University of America Press, 1999), 5. Marcellus of Ancyra was a vocal opponent of the 'heterousians' (adopting Lewis Ayer's term, intended to replace the traditional label of 'Arians').

⁴² Ayers, *Nicaea and its Legacy*, 19.

⁴³ As argued by Lienhard, *Contra Marcellum*, 'Introduction'.

discussions and refutations, partly through written efforts, expose their opinions as false by means of the most solid demonstrations.⁴⁴

Writing in the early fourth century, Eusebius clearly places a duty of separating wrong belief from right doctrine on the bishops themselves, as the leaders of their own individual communities. However, notwithstanding Eusebius' 'description' of episcopal engagement in oral and written controversies, 'control over the Eucharist and the liturgy was a bishop's main weapon against disorder in the Church'.⁴⁵ Disorder could, of course, include acts of violence against church property and clerics, alongside 'moral failings' by clergy and laity alike, as much as any accusation of suspect doctrine—as shown, for example, by petitions from penitents seeking to be readmitted to the Eucharist, after a period of exclusion, in Apa Abraham's communities (in and around the city of Hermonthis in Upper Egypt, late sixth- to early seventh-century).⁴⁶ An awareness of individuals or groups who had been excluded from a given community operated on the micro-level: hence the late fourth-century Council of Laodicea (Phrygia) laid down that the blessings (*eulogiae*) of heretics could not be received 'lawfully' as they were absurdities (*alogiai*); the sharing in blessings and prayers was a sign of communion—the implication being that the 'heretic' is always, potentially, 'one of us'.⁴⁷

In the charged atmosphere of mid to late fourth-century North Africa, on the other hand, Optatus berates the (schismatic) 'Donatists' for shirking on the duty of greeting other baptized Christians with the customary 'kiss in the Holy Spirit':

For there are some of you who themselves deny the usual kisses in a conventional greeting, and there are many who are taught not to say 'Hello' to any of us. And it seems to them that this is commanded by a lesson, which, however, they do not understand, not knowing of whom the Apostle said this: 'Do not even

⁴⁴ Eusebius, *HE* 4. 24, tr J. E. L. Oulton, *Eusebius Ecclesiastical History*, i (Cambridge Mass.: Harvard University Press, 1932), 384.

⁴⁵ A. Papaconstantinou, review of G. Schmelz, *Kirchliche Amtsträger im spätantiken Ägypten nach den Aussagen der griechischen und koptischen Papyri und Ostraka*, Archiv für Papyrusforschung und verwandte Gebiete, 13 (Munich and Leipzig: K.G. Saur, 2002).

⁴⁶ Ch. 4 of Schmelz, *Kirchliche Amtsträger*, discusses the Apa Abraham archive in this context.

⁴⁷ Council of Laodicea, canon 32. Also canon 6: heretics cannot enter the church whilst they persist in heresy; canons 7 and 8: procedures for readmission of catechumens, communicants, and clergy who had abjured their heresy, including renewed catechetical instruction; canons 10 and 31, church members are not to marry their children to heretics, without certain measures having been taken first.

take meals with these people, do not say hello to them, for their speech creeps like a cancer'.⁴⁸

Whether we should read this remark as part of Optatus' textual strategy of portraying the 'Donatists' as the party that persisted *in separating itself* from the 'True' church, or whether we approach it as a spotlight on the everyday life of late fourth-century North African Christians (and their exegetical practices), it nonetheless highlights the potential for ecclesiological and doctrinal conflict to be played out on the level of concrete social interaction. A further possible day-to-day context is catechetical instruction: Gregory of Nyssa, Augustine, and Cyril of Jerusalem each imply that catechetical instruction had to vary according to the 'starting point' of the catechumen: the instruction suitable for a 'manichee' will not work for an 'Arian', for example. Some catechumens were also instructed in how to spot a 'heretic'—if you are entering an unfamiliar city and need to ask for directions to the 'church', as Cyril of Alexandria and Augustine both argued, how otherwise will you be able to identify which 'church' you are being directed to?⁴⁹

The late fourth- to sixth-century 'handbooks against heresy', which circulated in both the Eastern and Western Empires, were clearly assembled with practical as well as ideological contexts in mind. Extant examples include Epiphanius of Salamis' *Panarion*, itself excerpted in a much shorter, more manageable form known as the *Anakephalaiosis* (probably not compiled by Epiphanius himself, but nonetheless circulating under his name) and Theodoret of Cyrrhus' *Compendium of Heretical Fables*, alongside diverse taxonomic works by Philastrius of Brescia, Augustine of Hippo, and Gennadius of Marseilles and an anonymous *Indiculus de haeresibus*, produced some time before 428.⁵⁰ The 'Donatists' in North Africa apparently circulated their own catalogues of heresies (no longer extant) and we should reckon on other

⁴⁸ Optatus 4. 5 (CSEL 26. 108): 'nam et vos ipsi aliqui in perfunctoria salutatione oscula denegatis solita et docentur multi, ne ave dicant cuiquam nostrum, et videntur sibi hoc de lectione, sed non intellecta mandari ignorantes, de quibus apostolus hoc dixerit; cum his nec cibum capere; ave illi ne dixeritis; serpit enim eorum sermo velut cancer'. Tr. M. Edwards, *Optatus: Against the Donatists* (Liverpool: Liverpool University Press, 1997), 88.

⁴⁹ See Humfress, 'Citizens and Heretics: Late Roman Lawyers on Christian Heresy', in E. Iricinschi and H. Zellentin (eds.), *Heresy and Identity in Late Antiquity* (Tübingen: Mohr Siebeck, 2007), for further discussion.

⁵⁰ Discussed by Cameron, 'How to Read Heresiology', and J. McClure, 'Handbooks Against Heresy in the West, from the Late Fourth to the Late Sixth Centuries', *Journal of Theological Studies*, 30 (1979), 186–97.

'distinct' communities of Christians doing likewise.⁵¹ Anti-heretical *Florilegia*, which claimed to do nothing more than 'cut and paste' existing texts were also in circulation: for example, the pseudo-Augustinian *Solutiones Diversarum Quaestionum ab Haereticis Obiectarum*, probably put together between 470 and 490 in North Africa, opens with the statement, 'In this corpus are contained the answers of Aurelius Augustinus to diverse questions thrown up by the heretics'.⁵² It is perhaps no coincidence that these handbooks circulated widely at the same time as imperial legislation against named heretical groups and individuals began to intensify.

A striking claim for the practical use of anti-heretical polemic is made in the anonymous work known as the *Contra Varimadum*, composed between 439 and 484 (perhaps c.445–50), by an African author, possibly writing in exile in Naples. The preface gives an account of how the text itself came into existence: a work by a certain Varimadus, a 'deacon of the Arian sect', was passed on by a 'learned and extremely pious man' to the present author, who decided that Varimadus' work demanded refutation not just in a 'private report', but rather in 'a full scale attack on his propositions which draws on weighty evidence'. Thus, the preface continues, everyone who reads the present work will be able to rebut the heretics' objections 'not, as they are usually met, with mere words, but with legal documents'—the aim being that, having been refuted in all respects 'those who endeavour to construct such fictions on the basis of the teachings of the prophets and the apostles shall be thrown into confusion, and reduced to nought'. The 'legal documents' that the reader of the *Contra Varimadum* is provided with are in fact extracts from sacred scripture.⁵³ Furthermore, the author styles himself as a *defensor* of the Catholic faith—from book 1, section 2 onwards the text takes the form of 'Arian' claims, followed by 'Catholic' refutations (in the form of 'if they say x, you should say y'). The fact that there is a broader context here than scriptural exegesis

⁵¹ As stated by Augustine in *Contra Cresconium* 2. 3. 4 (BA 31. 156).

⁵² *Solutiones diversarum quaestionum ab haereticis obiectarum*, pr. (CCSL 90. 141).

⁵³ *Contra Varimadum*, pr., CCSL 90. 9, ll. 3–11. 'Sed quia nunc conperimus eos nihil velle sibi privatis verbis opponi, sed magis propositiones suas desiderent testimoniorum virtutibus oppugnari, mediocribus et ingenii tardioribus consulentes, ita sancto nos spiritu adivante responsonem nostram universes eorum obiectionibus testimonialiter coaptavimus, ut is qui legerit, non nudis, ut solent obicere, verbis sed legalibus valeat refellere documentis: ut omni ex parte convicti confundantur, et ad nihilum redigantur, qui super fundamentum prophetarum apostolorumque doctorum talia figmenta construere moliantur.'

alone is noted in the mention of 'Arians' having been constrained by imperial law.⁵⁴ The forensic style of the *Contra Varimadum* thus intertwines scriptural exegesis and legal process on a number of different levels.

At the Last Judgment, according to Paul's First Epistle to the Corinthians, each of 'Christ's ministers' and the 'stewards of the mysteries of God' (later understood to refer to the episcopal office) would have to render an account of the trust placed in them—just as individuals in formal positions of trust were required to do by Roman law, at the end of their period of office. The trust placed in Christ's 'stewards', however, included the care of the souls of those for whom the bishop was responsible: hence the salvation of the bishop's own soul could be said to depend on his salvation of others. From Constantine onwards, the involvement of bishops in the prosecution of heresy cases could be justified within this soteriological context. In 396 or 397 Augustine wrote a letter to the Donatist Bishop Eusebius justifying the prosecution of Donatists under Roman law. Augustine first made a general argument based on citizenship rights: 'no one can blame me if I have brought them [certain Donatists] to public notice in the public records—a privilege which cannot be refused to me, I think, in a city which enjoys Roman citizenship'.⁵⁵ Entering an event into the public records validated its use as evidential proof in any future legal case.⁵⁶ Moreover, Augustine continues, he is instructed by scriptural authority not to remain silent before the public records—he must refute and legally condemn 'those who teach the things they ought not, as I can prove by the words of the Lord and the Apostles. Let no man think that I can be enjoined to silence in these matters.'⁵⁷ Thus Augustine could present the legal prosecution of 'schismatics' and 'heretics' as a logical outcome of scriptural commands.

⁵⁴ *Contra Varimadum*, 9, ll. 26–7.

⁵⁵ Augustine, *Ep.* 35. 3 (new edn. *CCSL* 31. 128, ll. 55–8): 'Aut si male facio, per tuam benivolentiam ista corrigenda curare, de me nullus queratur si haec illi perferri in notitiam per codices publicos fecero, qui mihi negari, ut arbitror, in Romana civitate non possunt.'

⁵⁶ Compare *CCSL* 149. 199–200, ll. 590–600: the 401 Council of Carthage (advised perhaps by Augustine himself) orders that letters should be sent from the council to the African judges so that they could aid 'the common mother, the Catholic Church' by recording events in public acts and thus enabling prosecutions.

⁵⁷ Augustine, *Ep.* 35. 3 (new edn. *CCSL* 31. 128–9, ll. 58–62): 'Nam cum Deus imperet ut loquamur et praedicemus verbum, et docentes quae non oportet refellamus, et instemus *opportune atque importune*, sicut dominicis in apostolicis Litteris probo, nullus hominum mihi silentium de his rebus persuadendum arbitretur.'

HERETICS AND ROMAN LAW

'Cast out the edict! Nobody believes by an edict!'⁵⁸ These formulaic phrases were chanted by a congregation assembled in the main church at Antioch, around 438, in reaction to the reading of an imperial edict that condemned Nestorius. Even if we agree with the Antiochene crowd that law cannot compel belief, anti-heretical legislation was an enduring feature of the late antique landscape. The remainder of this chapter will approach the late Roman anti-heretical 'laws' from the perspective of the legislator. Chapter 9 will attempt to contextualize the same material by viewing it from the angle of forensic practice.

It is worth stressing at the outset, however, that the concept of an autonomous, authoritative, 'law' that strove to enforce 'right belief', by outlawing 'criminal' deviations from it, may be an accurate portrayal of legislative intentions (or rather imperial bureaucratic rhetoric), but it is nonetheless a flawed paradigm for the late Roman historian to adopt. As the sociologists Goffman and Giddens have argued, 'social control should be viewed from the perspective of interaction, not of behaviour determined by institutional or other mechanisms'.⁵⁹ Thus rather than asking whether anti-heretical 'laws' were 'applied', or how successfully they were enforced, we should raise a series of questions like those posed by David Cohen with reference to ancient Athenian law. What legal norms regulated heresy? In what ways were these norms interpreted? What were 'the normative expectations of the community, or different parts of the community' with regard to heresy and anti-heresy legislation? Finally, how were these normative expectations 'translated into patterns of social control and definitions of deviance and normality'? As I have argued in Part I, a focus on forensic rhetoric stresses the 'practical knowledge' associated with legal processes—thus revealing the strategies that particular actors could use to manipulate a given system or structure. I shall return to this point with particular reference to late Roman heresy cases below.

⁵⁸ S. G. F. Perry, *The Second Synod of Ephesus* (Dartford: Orient Press, 1881), 129, quoted from Millar, *Greek Roman Empire*, 189.

⁵⁹ Quoted from D. J. Cohen, *Law, Sexuality and Society: The Enforcement of Morals in Classical Athens* (Cambridge: CUP, 1991), 7.

The potential to define wrong religious belief, or actions resulting from wrong religious belief, as a crime under Roman law only existed after Constantine had incorporated Christianity into the legal framework of the Empire.⁶⁰ Between the fourth and sixth centuries a significant body of imperial texts were issued against 'heretical' and 'schismatic' beliefs and practices, far outnumbering the surviving laws against 'paganism'. Attempting to define explicitly what was 'orthodox', rather than stating what was not, was also a strategy open to the drafters of late Roman constitutions; although, again, we should approach these definitions as specific reactions to concrete situations, rather than as 'general' definitions.⁶¹ Strictly speaking, legislation against Christian heretics (as well as other constructed groups such as 'apostates') was an innovation after Constantine—but there was nonetheless a pre-existing context within which that legislation was developed.

What we today might classify as an offence or crime against religion was understood under the Late Republic and Early Empire as a crime against the social fabric itself, and as an attack on public order, as it threatened the entire community's relationship with the gods.⁶² The juristic development of the *ius sacrum*, the branch of Roman law that had traditionally 'embraced the legal principles and institutions which are connected with the right relations of men to gods, with questions of cult, sacrifices, temples, consecrations, games and sacerdotal functions, wherever they may occur'⁶³, had undoubtedly come to a halt by at least the third century. However, ensuring right relations between the Empire and God(s) remained a focus of Roman law throughout the post-classical age.⁶⁴ What changed in the later Roman period was not

⁶⁰ See T. D. Barnes 'Legislation Against the Christians', *JRS* 58 (1968), 32–50, on Eusebius, *Vita Const.* 3. 66, which apparently reports a Constantinian 'edict', probably issued before Sept. 325, addressed to 'Novatians, Valentinians, Marcionites, Paulians, you who are called Cataphrygians and all you who devise and support heresies by means of your private assemblies'. These 'groups' are forbidden to assemble, their meeting houses are confiscated and they are 'encouraged' to join the Catholic church.

⁶¹ Discussion in C. Humfress, 'Roman Law, Forensic Argument and the Formation of Christian Orthodoxy (III–VI Centuries)', in S. Elm, E. Rebillard, and A. Romano (eds.), *Orthodoxie, christianisme, histoire—Orthodoxy, Christianity, History: Travaux du groupe de recherches 'Définir, maintenir et remettre en cause l'orthodoxie dans l'histoire du christianisme'* (Rome: École Française de Rome, 2001), 125–47 and Bianchini, *Caso concreto*, esp. 92–8 with specific reference to *Sirm. Const.* 6 and *C.Th.* 16. 5. 62.

⁶² Humfress, 'Citizens and Heretics'.

⁶³ Berger, art. 'Ius Sacrum', *Encyclopedic Dictionary*, 532.

⁶⁴ It is worth noting in this context that the text chosen by the compilers to head *C.Th.* 16. 1 (under the rubric *de fide catholica*) reads in its entirety: 'If any *iudex* or

the overall framework for maintaining men and God(s) in their proper relationship, but rather the legal definition of which cultic acts were to count as *religio* (i.e. as licit and thus promoting the health and welfare of the Empire).

For those late antique bishops whose voices we hear most frequently, Christianity alone could ensure right relations between men and a single (Christian) God—an argument that Roman Emperors from at least Theodosius I onwards seem to have accepted.⁶⁵ Not all 'Christian' acts, however, could be defined as *religio*. From a normative Christian perspective, maintaining right relations between the human and the divine demanded the establishment and maintenance of right doctrinal belief. For instance, according to an imperial letter addressed to Proclus, proconsul of Asia, and read out by a secretary of the divine consistory, Veronicianus, at the first session of the Council of Chalcedon (451), the Second Council of Ephesus was convened in order 'to completely excise the root of evil, so that by suppressing everywhere the unsettling of doctrine we may preserve in its purity proper prayer in men's minds and thereby secure the protection of the state and of human blessings'.⁶⁶ Late fourth- to sixth-century imperial legislators held that 'orthodoxy' had to be defined and enforced, and heresy identified and excluded, if the fabric of Empire was not to suffer. Moreover, a number of constitutions from the early fifth century onwards are orientated towards the 'conversion' of repentant heretics, rather than their punishment.⁶⁷

In the imperial constitutions collected in the Theodosian Code at 16. 5, under the rubric *de haereticis*, and in the Justinianic Code at 1. 5 under the rubric *de haereticis et manichaeis et samaritis*, the defence of

apparitor should appoint men of the Christian religion as *custodians of temples*, he shall know that neither his life nor his fortunes will be spared' (Valentinian to Symmachus PU, 365/4).

⁶⁵ On the relevant legislation of Theodosius I see J. Rougé, 'La Législation de Théodose contre les hérétiques: Traduction de *C.Th.* XVI. 5. 6–24', in J. Fontaine and C. Kannengiesser (eds.), *Épektasis: Mélanges patristiques offerts au Cardinal Jean Daniélou* (Paris: Beauchesne, 1972), 635–49; L. De Giovanni, 'Ortodossia, eresia, funzione dei chierici: Aspetti e problemi della legislazione religiosa tra Teodosio e Teodosio II', *AARC* 6 (1986), 59–73; Aiello, 'Costantino "eretico". Difesa della "ortodossia" e anticostantinianesimo in età teodosiana', *AARC* 10 (1995), 55–83; and R. M. Errington, 'Christian Accounts of the Religious Legislation of Theodosius I', *Klio*, 79/2 (1997), 398–443.

⁶⁶ Tr. Price and Gaddis, *The Acts of the Council of Chalcedon*, i. 138–9.

⁶⁷ See in general F. De Saint-Palais d'Aussac, *La Réconciliation des hérétiques dans l'église latine* (Paris: Éditions franciscaines, 1943). Also Ch. 9 below.

the 'Catholic' church is identified with the defence of the Empire itself: in the words of the drafter of a 409 constitution, legislation is issued 'for the health of all, that is in the interests of the sacrosanct Catholic church'.⁶⁸ Or, as the drafter of a 407 constitution specified, with particular reference to 'Manichaeans', 'Phyrgians', and 'Priscillianists': 'In the first place we want such heresy to be understood as a public crime, because that which is committed against divine religion works to the injury of all.'⁶⁹ Given this framework, the prosecution of 'illicit' Christian behaviour could be developed using a variety of 'criminal' classifications and categories already in existence.⁷⁰ In the late Roman Imperial constitutions heresy is referred to variously as a *sacrilegium*;⁷¹ a *criminoso religio*;⁷² a *perfidia*;⁷³ and a *nefaria superstitio*.⁷⁴ Heretics were thus potentially punishable under already defined Roman law penalties.⁷⁵ This ideological framework could also, of course, be justified by events on the ground: such as the occasions in 366, 372, and 418–19 when the Prefect of the City of Rome was called upon to intervene in

⁶⁸ *C.Th.* 16. 5. 47 (issued at Ravenna and addressed to Jovius PP): 'pro salute communi, hoc est pro utilitatibus catholicae sacrosanctae ecclesiae'. Compare *Nov.Th.* 3 pr. (438).

⁶⁹ *C.Th.* 16. 5. 40. 1 (issued at Rome, 407, addressed to Senator, Prefect of the City): 'ac primum quidem volumus esse publicum crimen, quia quod in religionem divinam committitur, in omnium fertur iniuriam'. For different perspectives on heresy as a 'crime' see H. H. Anton, 'Kaiserliches Selbstverständnis in der Religionsgesetzgebung der Spätantike und päpstliche Herrschaftsinterpretation im 5. Jahrhundert', *Zeitschrift für Kirchengeschichte*, 88 (1977), 38–84, and L. Barnard, 'The Criminalization of Heresy in the Later Roman Empire: A Sociopolitical Device?', *Journal of Legal History*, 121 (1995), 121–46.

⁷⁰ For discussion see Humfress, 'Roman Law, Forensic Argument and the Formation of Christian Orthodoxy'.

⁷¹ e.g. *C.Th.* 16. 2. 25 (issued at Thessalonica, 380) and *C.Th.* 16. 5. 8 (issued at Constantinople, 381, addressed to Glycerius, Count of the Orient), with reference to 'Eunomians' and 'Arians' or 'adherents of the dogma of Aetius'.

⁷² *C.Th.* 16. 5. 13 (issued at Constantinople, 384, addressed to Cynegius PP).

⁷³ e.g. *C.Th.* 16. 5. 63 (issued at Aquileia, 425, addressed to Georgius, Proconsul of Africa).

⁷⁴ *C.Th.* 16. 5. 48 (given at Constantinople, 410, addressed to Anthemius PP). Compare *C.Th.* 16. 5. 5 (given at Milan, 379, addressed to Hesperius PP); *C.Th.* 16. 5. 10 (given at Constantinople, 383, addressed to Constantianus, vicar of the diocese of Pontus), with specific reference to 'Tascodrogitae'; *C.Th.* 16. 5. 34 (given at Constantinople, 398, addressed to Eutythianus PP), with reference to 'Eunomian' and 'Montanist' clerics; and *C.Th.* 16. 5. 39 (given at Ravenna, 405, addressed to Diotimus), with reference to 'Donatists'.

⁷⁵ Discussed in detail by R. Macerati, *Ricerche sullo status giuridico dell'eretico nel diritto romano-cristiano e nel diritto canonico classico (da Graziano ad Ugucione)* (Padua: Edizioni CEDAM, 1994), 74–81 ('Le pene') and 81–96 ('Le conseguenze civili', including *infamia*).

cases concerning the maintenance of public order, because of violent clashes between Christians.⁷⁶

From the late Roman imperial legislators' (varied) perspectives, control over 'heretical' meeting places and assemblies was crucial on both practical and symbolic levels. The rhetoric in this respect, of course, meshes with ideas and concepts that we have already met: for example, a constitution issued at Constantinople in 381 and addressed to Eutropius PP, forbids the gathering of 'crowds' at the 'unlawful assemblies of all the heretics', and also orders that 'all persons' who do not subscribe to the stated Nicene credal formulation must be 'removed and completely excluded from the threshold of all churches'. The 'heretic' is here, once again, the 'other' who is already within the group—a fact underscored, in the same constitution, by the order that all inveterate heretics 'shall be driven away from the very walls of the cities'.⁷⁷ Three constitutions issued at Constantinople in 383 forbid the right of assembly, 'in any multitude', to 'Tascodrogitae', 'Eunomians', 'Arians', 'Macedonians', 'Pneumatomachi', 'Manichaeans', 'Encratites', 'Apotactites', 'Saccophori', 'Hydroparastatae', and 'Apollinarians'; houses where such meetings take place are to be confiscated to the imperial fisc.⁷⁸ Of course, the taxonomic naming and grouping in these constitutions externalizes the threat of the heretic, classifying them into categories already known from heresiological rhetoric—thus the legislation also functions 'symbolically', in that it allows the Emperors to style themselves as active and vigilant protectors of the Empire against the dangerous heretics lurking within.⁷⁹

⁷⁶ For discussion see Chastagnol, *La Préfecture Urbaine à Rome*, 87, and C. Pietri, 'L'Hérésie et l'hérétique selon l'église romaine (ive–vie s.)', *XIII Incontro di studiosi dell'antichità cristiana: Eresia ed eresologia nella chiesa antica, Augustinianum*, 25 (1985), 867–87. Gaddis, *There is No Crime*, discusses violence and religious conflict in general.

⁷⁷ *C.Th.* 16. 5. 6. 1: 'Arceantur cunctorum haereticorum ab illicitis congregationibus turbae'; *C.Th.* 16. 5. 6. 3: 'Ab-omnium submoti ecclesiarum limine penitus arceantur, cum omnes haereticos illicitos agere intra oppida congregationes vetemus ac, si quod eruptio factiosa temptaverit, ab ipsis etiam urbium moenibus exterminato furore propelli iubeamus ut cunctis orthodoxis episcopis, qui Nicaenam fidem tenent, catholicae ecclesiae toto orbe reddantur.'

⁷⁸ *C.Th.* 16. 5. 10 (addressed to Constantianus, vicar of the diocese of Pontus); *C.Th.* 16. 5. 11 and *C.Th.* 16. 5. 12 (both addressed to Postumianus, but with different dates).

⁷⁹ See also *C.Th.* 16. 5. 14 (given at Thessalonica, 388, to Cynegius PP), naming Apollinarians; *C.Th.* 16. 5. 15 (given at Stobi, 388, to Trifolius PP), 'no right of assembly, no discussions, no secret meetings, no altars, no ceremonies'; *C.Th.* 16. 7. 4 (given at Concordia, 391, to Flavianus PP), directed against the practice of second baptism; *C.Th.* 16. 5. 34 (given at Constantinople, 398, to Eutythianus PP), naming 'Eunomians' and 'Montanists'; *C.Th.* 16. 4. 6 (given at Constantinople, 404, to Eutythianus PP),

A number of constitutions target the teaching of 'heretical' doctrines directly: *C.Th.* 16. 6. 2 (issued at Constantinople in 377) instructs those who love their 'impious doctrine' to nurture their poison to their own detriment, 'in domestic secrecy and alone'. Two years later a constitution issued at Milan, and addressed to Hesperius PP, forbade the existence of all heresies(!), and in particular the practice of second baptism; the heretic must keep 'such noxious doctrines' to himself, and 'shall not reveal them to others to their hurt'.⁸⁰ Imperial constitutions that ban the teaching of 'heretical opinions' appeal to a traditional Graeco-Roman vocabulary concerning the polluting and contagious effect of *superstitiones*.⁸¹ On a practical level, however, these teaching bans were part of a wider targeting of the structure of 'heretical' congregations. The text excerpted at *C.Th.* 16. 5. 22 (given at Constantinople in 394, addressed to Victorius, proconsul of Asia) reads in its entirety: 'Heretics shall have no authority to create or legally to confirm bishops'.⁸² As we shall see in Chapter 9, however, defining who was, and who was not, 'heretical' or 'orthodox' was no easy matter, for imperial officials and ecclesiastics alike.

The following example of the mid-late fourth-century-so-called 'Luciferians' will serve to illustrate the potential fluidity and interdependence of theological and legal contexts. In 356 (under the Emperor Constantius, a supporter of the 'party of Arius') Bishop Hilary of Poitiers was indicted at the ecclesiastical Council of Béziers for his 'anti-Arian' views.⁸³ However, in 359 Hilary wrote the treatise *De Synodis*,

instructing governors that schismatic assemblies are also to be understood as illicit. On the later Justinianic material see A. Berger, 'La concezione di eretico nelle fonti giustiniane', *Rend. Accademia Nazionale dei Lincei, serie 8 Classe di scienze morali, storiche e filologiche*, 10 (1955), 353–68, and, in general, M. P. Baccari, 'Comunione e cittadinanza (a proposito della posizione giuridica di eretici, apostati, giudei e pagani secondo i codici di Teodosio II e Justiniano)', *SDHI* 57 (1991), 264–80.

⁸⁰ *C.Th.* 16. 5. 5: 'Quisquis opinionem plectibili ausu dei profanus inminuit, sibi tantummodo nocitura sentiat, aliis obfutura non pandat.' On 'heretical teachers', see also *C.Th.* 16. 5. 13 (384), 16. 5. 31–2 (396), and 16. 5. 33.

⁸¹ See also H. Maier, '“Manichee!” Leo the Great and the Orthodox Panopticon', *Journal of Early Christian Studies*, 4/4 (1996), 441–60, at 443, on the vocabulary used by Pope Leo with reference to Manichaeism. See in general, F. Zuccotti, *Furor Haereticorum: Studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione del tardo impero romano* (Milan: Guiffè, 1992).

⁸² *C.Th.* 16. 5. 22: 'Haeretici neque episcopi faciendi potestatem neque episcoporum confirmationes licitas habeant.' Compare *C.Th.* 16. 5. 45 (given at Ravenna, 408, to Theodorus PP).

⁸³ For discussion see C. L. Beckwith, 'The Condemnation and Exile of Hilary of Poitiers at the Synod of Béziers (356 C.E.)', *Journal of Early Christian Studies*,

intended as an attempt at contributing to the rapprochement between 'Arian' (heterousian) and 'anti-Arian' (homousian) views, before the coming ecclesiastical Councils of Rimini and Seleucia—on whose outcome the various parties in the dispute placed a decisive importance. In the second part of the *De Synodis* (chs. 66–92) Hilary compared the *homoousion* (i.e. the Nicene) formulation and the *homoioousion* (i.e. the Eastern formulation of the Nicene Creed, regarded as 'Arian' by the West), and interpreted the concept *like in substance* as equivalent to *equal in substance*. Hilary thus attempted to prove how either one or other of the terms could be interpreted in an orthodox and in a heterodox fashion, so that the one term was equivalent to the other, in the end. This conciliatory interpretation was criticized by Lucifer, bishop of Caralis (Sardinia), as 'heretical' and contrary to the Nicene faith.

In an appendix to the *De Synodis* Hilary attempted to vindicate himself against Lucifer's accusation, but admitted to having defended the *homoioousion* above all for tactical reasons. Thus between 356 and 361 it was Lucifer of Caralis, rather than Hilary of Poitiers, who claimed to be the title-bearer of Western 'anti-Arian orthodoxy'. In the pamphlet *Moriendum Esse Pro Dei Filio*, addressed to the Emperor Constantius himself, Lucifer insisted repeatedly that he was ready to die in defence of the Nicene faith.⁸⁴ Less than twenty years later (notwithstanding Theodosius I's defence of the 'Nicene faith' in the East) the category of 'Luciferian' was being used as a term of abuse.

In the *Collectio Avellana*, a collection of 'papal' letters addressed to the Emperors, the writer complains that his (homousian) party has been falsely classified as 'Luciferians':

But we have to discuss this matter of the odium that comes from the false name, that of Luciferians, which they throw against us. Who does not know that a name is attributed to acolytes of a man whose new doctrine of some kind has been handed down to his disciples on the authority of the master? But our master is Christ, we follow his doctrine, we are marked with the sacred appellation of his name, we should not be called rightly anything other than Christians because we follow nothing else than what Christ taught through the apostles. Heretics are marked by the names of men, because they hand down

13/1 (2005), 21–38. My account follows the outline given by Barnes, *Athanasius and Constantius*, 141–3 and 152–64.

⁸⁴ Lucifer had previously addressed the Emperor Constantius in his pamphlets *De Non Conveniendo cum Haereticis* and *De Regibus Apostaticis*.

the doctrines of men. He deprives himself of the name of Christian who does not follow the discipline of Christ.⁸⁵

The writer then challenges his opponents to prove that Lucifer himself was a heretic:

Let them now say what Lucifer taught that was new, not handed down from the teaching of Christ, not transmitted to posterity by the apostles, disciples of the saviour. Lucifer wrote books to Constantius not, like most people, courting intellectual fame, but collecting Scriptural evidence in the most skilful way against the heretics and against the patron of heretics himself [Arius]. Let them mark down what he wrote contrary to the Scriptures, what he wrote that was new as a heretic.⁸⁶

The author of this letter certainly does not repudiate the writings of Lucifer of Caralis, nor does he accept the charge that Lucifer was a heretic. The author—and the group on whose behalf he writes to the Emperor—is happy to be placed within the same theological camp as Lucifer, the objection is that this does not make them ‘Luciferians’: ‘our master is Christ, we follow his doctrine, we are marked with the sacred appellation of his name, we should not be called rightly anything other than Christians because we follow nothing else than what Christ taught through the apostles’. The only name personally acceptable to a late Roman Christian was Christ’s.

In 395 an imperial constitution issued at Constantinople instructed Aurelianus, the proconsul of Asia, to judge a bishop named Heuresius as a ‘Luciferian’ apparently because: ‘Those persons who may be discovered to deviate, even in a minor point of doctrine, from the tenets and the path of the Catholic religion are included under the

⁸⁵ *Collectio Avellana*, Ep. 2. 86 (CSEL 35. 30, ll. 27–31, l. 10): ‘name et hoc ipsum necessarium est, ut falsi cognomenti discutamus invidiam, qua nos iactant esse Luciferianos. Quis nesciat illis cognomentum tribui sectatoribus, cuius et nova aliqua doctrina transmissa est ad discipulos ex auctoritate magisterii? Sed nobis Christus magister est, illius doctrinam sequimur atque ideo cognomenti illius sacra appellatione censemur, ut non aliud iure dici debeamus quam Christiani, quia nec aliud sequimur quam quod Christus per apostolos docuit. Haereses autem ideo hominum appellationibus denotatae sunt, quia et hominum commenta tradiderunt. Perdit enim in se Christiani nominis appellationem, qui Christi non sequitur disciplinam.’

⁸⁶ *Collectio Avellana*, Ep. 2. 87 (CSEL 35. 31, ll. 10–17): ‘dicant nunc, quid Lucifer novum docerit, quod non ex Christi magisterio traditum est, quod non ab apostolis discipulis Salvatoris transmissum est in posteros. Et bene, quod libros scripsit ad Constantium, non, ut plerique, gloriam captans ingenii sed divina testimonia aptissime congerens contra haereticos et contra ipsum patronum haereticorum, ad divinam aemulationem pro filii dei amore succensus. Denotent, quod illic contrarium scripturis, quid novum quasi haereticus scripsit.’

designation of heretics and must be subject to the sanctions which have been issued against them.’⁸⁷ Despite the complexity of the internal theological arguments, ‘Luciferianism’ had entered the legislative sphere as a proscribed heretical sect. Moreover, according to letters transmitted within the *Collectio Avellana*, prosecutions were undertaken by ‘heterousian’ parties against ‘the orthodox’ (in this context ‘pro-Nicene’ or ‘homousian’) bishops using the legal category of Luciferianism.⁸⁸ The ability to make a theological name stick like mud became an important tool in the prosecution of heresy cases under the later Empire.

In conclusion, the ‘other’, as King has noted, ‘is a rhetorical tool to think with’—but by the mid to late fourth century virtually all Christian polemicists were rifling through the toolbox.⁸⁹ Tempting as it might be to view ‘the orthodox’ and ‘the heretical’ in terms of ‘the monologic’ pitted against ‘the dialogic’, the ‘heretic’ could in fact be just as monologic as the ‘orthodox’—precisely because they believed themselves to be *the* orthodox. Late Roman heresiology, then, was not simply a discourse controlled by the ‘orthodox’ at the expense of the ‘heretic’—all Christians were inscribed within it whether they wanted to be or not. Nor was the late Roman discourse of heresiology a ‘rhetorical construct’; rather it ‘produced its own field’. In other words, it created the very objects that previously it ‘had been thought merely to explain or describe’.⁹⁰ For example, an individual accused of being a ‘Priscillianist’ had to defend him or herself from this charge by engaging with a normative expectation of what a ‘Priscillianist’ was, regardless of what the defendant ‘actually’ was, or at least understood themselves to be.

⁸⁷ *C. Th.* 16. 5. 28. Jerome wrote a ‘dialogue against the Luciferians’, c.379, styled as a public debate, recorded by stenographers, between a ‘Luciferian’ named Helladius and one of the ‘Orthodox’—the dialogue begins by questioning whether Arians and heretics in general are ‘Christians’.

⁸⁸ *Collectio Avellana*, Ep. 2. 91 (CSEL 35. 32): ‘Those impious scoundrels . . . tried to blacken supporters of the true faith by calling them *Luciferi*, unaware in their pitiable state that they were committing the grossest sacrilege . . . But this fraud, this atrocity, was done against the faithful in Spain and among the Triveri and in Rome and in various regions of Italy.’ At Ep. 2. 92 it is specified that Luciferians were persecuted *per iudices* and *per manum militarem* (CSEL 35. 33, ll. 1–4).

⁸⁹ King, *What is Gnosticism?*, 24. For wide-ranging discussion see J. Neusner and E. S. Frerichs (eds.), *To See Ourselves as Others See Us: Christians, Jews and ‘Others’ in Late Antiquity* (Chico, Calif.: Scholars Press, 1985).

⁹⁰ A. McHoul and W. Grace, *A Foucault Primer: Discourse, Power and the Subject* (Melbourne, Australia: Melbourne University Publishing, 1997), 10.

Heresiological categories and classifications were thus part of late Roman lived experience. What was to be defined as 'right' and 'wrong' belief, was constructed through argument; moreover, the very processes of theological and legal definition threw up new matters to be defined and categorized. Individuals, however, are not passive subjects of a given structure (such as 'law' or 'orthodoxy', for example), but rather active participants—constituting and reconstituting the structure itself by their constant negotiation of its rules and expectations.⁹¹ In Chapter 9 I shall apply this perspective to analysing concrete legal processes involving accusations of heresy in late antiquity.

⁹¹ For a rather different, thought-provoking, theory (perhaps with limited application to late Roman law as opposed to developed modern legal systems), see G. Teubner, 'How the Law Thinks: Toward a Constructivist Epistemology of Law', *Law and Society Review*, 23 (1989), 727–57.

9

Heresy and the Courts

HERETICS BEFORE THE COURTS

And the definition of a crime and delict is what? The proof of it in a court of law.¹

The introduction of the Christian concepts of 'heresy' and 'orthodoxy' into the Roman legislative sphere necessitated the categorization and systematization of religious belief in legal contexts. As we saw in Chapter 8, imperial constitutions grouped and named 'heretics', opening the way for legal processes to take place against them. But did these legal processes actually occur? Was there, in fact, a 'persistent short-fall in the application of intolerant laws' in the later Roman Empire? A short-fall that may have been caused, as Peter Brown memorably phrases it, by an 'unavoidable hiatus between theory and practice, brought about by the merciful, systemic incompetence of the imperial administration in enforcing its own laws'.² Whilst not wishing to argue for the smooth efficiency of the imperial bureaucracy(!), there is, nonetheless, an alternative to this 'intolerant yet ineffective laws' scenario (as suggested in Chapter 8). If we view the imperial constitutions as, for the most part, responsive texts that reacted to concrete situations and to cases thrown up by the functioning of the bureaucratic courts, alongside other venues, then the question of 'application' versus 'non-application' necessarily has to be rethought.³

As Brown himself has argued, there is firm evidence outside the legal Codes for the prosecution of late Roman Manichees (evidence that we shall return to below).⁴ There is also the celebrated case of the execution

¹ Libanius, *Oration* 45. 2 (composed c.386) tr. Norman, Loeb II, 163.

² Brown, *Authority and the Sacred*, 38–9. ³ See Ch. 8 above.

⁴ P. Brown, 'The Diffusion of Manichaeism in the Roman Empire', *JRS* 59 (1969), 92–103, esp. 97–8.