

shall be annulled, and there shall remain only those enactments pertaining to Catholic doctrine which were decreed by Our father of eternal memory and which We ourselves commanded by an equally manifold order, which will survive forever.

Given on the third day before the nones of August at Milan.—August 3. Received on the thirteenth day before the kalends of September in the year of the consulship of Auxonius and Olybrius.—August 20, 376.

6.¹⁸ The same Augustuses to Eutropius, Praetorian Prefect.

No place for celebrating their mysteries, no opportunity for exercising the madness of their excessively obstinate minds shall be available to the heretics. All men shall know also that even if some concession has been insinuated by that kind of men through any special rescript whatever, if it has been fraudulently elicited, it shall not be valid.

1. Crowds shall be kept away from the unlawful congregations of all the heretics.¹⁹ The name of the One and Supreme God shall be celebrated everywhere; the observance, destined to remain forever, of the Nicene faith, as transmitted long ago²⁰ by Our ancestors and confirmed by the declaration and testimony of divine religion, shall be maintained. The contamination of the Photinian pestilence, the poison of the Arian sacrilege, the crime of the Eunomian perfidy, and the sectarian monstrosities, abominable because of the ill-omened names of their authors,²¹ shall be abolished even from the hearing of men.

2. On the other hand, that man shall be accepted as a defender of the Nicene faith and as a true adherent of the Catholic religion who confesses that Almighty God and Christ the Son of God are One in name, God of God, Light of Light, who does not violate by denial the Holy Spirit which we hope for and receive from the Supreme Author of things; that man who esteems, with the perception of inviolate faith, the undivided substance of the incorrupt Trinity, that substance which those of the orthodox faith call, employing a Greek word, *ousia*. The latter beliefs are surely more acceptable to Us and must be venerated.

3. Those persons, however, who are not devoted to the aforesaid doctrines shall cease to assume, with studied deceit, the alien name of true religion,²² and they shall be branded upon the disclosure of their crimes. They shall be removed and completely barred from the threshold of all churches, since We forbid all heretics to hold unlawful assemblies within the towns. If factions should attempt to do anything, We order that their madness shall be banished and that they shall be driven away from the very walls of the cities, in order that Catholic churches throughout the whole world may be restored to all orthodox bishops who hold the Nicene faith.

Given on the fourth day before the ides of January at Constantinople in the year of the consulship of Eucherius and Syagrius.—January 10, 381.

¹⁸ CJ 1, 1, 2.

¹⁹ Or: The throngs of all heretics must be restrained from unlawful congregations.

²⁰ In 325.

²¹ The sectarian monstrosities that have been increased and are abominable because of their ill-omened names, M.

²² Or: a name that is alien to true religion.

7. The same Augustuses to Eutropius, Praetorian Prefect.

If any Manichaean man or woman, from the date of the law²³ as previously and originally issued by Our Fathers, has transmitted his own property to any person whatsoever, by the execution of a testament or under any title of liberality whatever or any kind of gift, or if any one of the aforesaid persons has become enriched by the bestowal, through any form whatever, of an inheritance upon which he has entered,²⁴ inasmuch as We forthwith deprive the aforesaid persons under the perpetual brand of just infamy of all right to make a will and to live under the Roman law, and since We do not permit them to have the right to bequeath or to take any inheritance, the whole of such property, after due investigation conducted by Our fisc, shall be appropriated to its resources. If by unlawful liberality such property should accrue to a husband, to a near kinsman, to any person who has well deserved it, or even to children, provided that they are connected by participation in the misdeeds of the aforesaid criminal life, or even if through any intermediary the property will profit any of the aforesaid persons who is found to be of such a class and company of men, the aforesaid property shall be vindicated under the title of caducity.

1. The general rule of this law issued by Our Clemency, shall be valid not only for the future but also for the past,²⁵ and if any property has been bequeathed by such persons as owners or has been held by them as heirs, such property shall be confiscated to the advantage of the fisc. For although the order of the celestial imperial statutes indicates to those who must observe them the subsequent observance of the sacred imperial constitutions and is not customarily prejudicial to previous acts, nevertheless, in this sanction only, since it is Our will that it shall be especially forceful, We recognize by Our sense of just inspiration²⁶ what an inveterate obstinacy and a pertinacious nature deserve. We hold as guilty of sacrilege those persons also who, since the issuance of the original law, have not been able to be restrained at least by divine imperial admonitions from unlawful and profane assemblies, in violation of the aforesaid law as written. We sanction the severity of the present statute not so much as an example of a law that should be established but as one that should be avenged, so that the defense of time²⁷ also shall not be of advantage to them.

2. The inheritance of paternal or maternal goods shall be bestowed only upon those children who, although born of Manichaeans, nevertheless are immune from such a crime, since they have been admonished by a sense and desire of their own salvation, have removed themselves from the association of the aforesaid life and profession, and have dedicated themselves to the pure religion.

3. We further add to this sanction that the Manichaeans shall not establish in the conventicles of the small towns²⁸ or in renowned cities their accustomed tombs of feral mys-

²³ 16, 1, 2, G., who considers that 16, 2, 25, is part of the same law.

²⁴ Or: by the bestowal of an inheritance upon which he has entered through any form whatever.

²⁵ A retroactive law, contrary to 1, 1, 3 and the general spirit of Roman jurisprudence. Such retroactive laws are not uncommon in the Theodosian Code. Cf. 1, 1, 3, n. 16.

²⁶ indignation, M.

²⁷ An exception adducing a long period of time that would bar legal action; a prescription of time, a demurrer.

²⁸ *conventicula oppidorum*, an unusual phrase. In the small town settlements?

laties; they shall be kept completely from sight of the things in the municipalities. Nor shall they defend themselves with dishonest fraud under the pretense of those heretical names by which many, as we have learned, wish to be called and signified as of approved faith and chaste character; especially since some of the aforesaid persons wish to be called the Encratites, the Apotactites, the Hydroparastatae, or the Saccophori, and by a variety of dishonest names falsely,²⁶ as it were, the ceremonies of their religious professions. For none of the aforesaid persons shall be protected by a profession of names but shall be held infamous andExecutable because of the crimes of their acts.

Given on the eighth day before the ides of May at Constantinople in the year of the consulship of Eucherius and Syagrius.—May 8, 382.

8. The same Augustuses to Cicerius,²⁷ Count of the (state).

We direct that none of the Eunomians and the Arians or the adherents of the dogma of Euzimus²⁸ shall have the right to hold churches in the municipalities or in the country. But if this right should be rashly presumed by any person, the aforesaid houses, whenever such forbidden constructions have been made, and also the estate or private habitation shall immediately be vindicated to the revenues of the fisc. All places also which have received under the shade of the ministers of this sacrilegious doctrine shall immediately become fiscal property.

Given on the fourteenth day before the kalends of August at Constantinople in the year of the consulship of Eucherius and Syagrius.—July 19, 382.

9. The same Augustuses to Florus, Praetorian Prefect.

If any Manichean should flee the company of the good under the false pretense of the solitary life and should create the worse gatherings of persons of the lowest class, he shall be subjected to the law as a profaner and contempt of the Catholic discipline, which we all severe. Thus he shall be interdicted during his lifetime, while living he shall expel and refuse to such outlawed persons, at his death he shall leave nothing to such unworthy persons, and he shall restore all his possessions to those persons who are shown²⁹ to him, not by character but by nature. If statutory successors should be lacking, he shall leave his property to his next of kin to be better managed; or, in the absence of agnate successors, he shall understand that his property will be subject to the ownership of the fisc, without any fraudulent understanding. So much for the hermits.

1. But those persons who are entitled Encratites, with a monastic appellation, together with the Saccophori, and the Hydroparastatae, when they have been convicted in crime, betrayed by crime, or discovered in a slight trace of this wickedness, we order to be afflicted with the supreme penalty and with irreparable punishment. With respect to their grade, the condition which we imposed on all this wickedness,³⁰ from the inception of the law³¹ formerly issued, shall remain.

Venerable Sublimity, therefore, shall appoint investigators, shall open courts, and shall receive informers and de-

nouncers, without the odium attached to informants.³² No person shall destroy the establishment of this accusation by means of the usual defense of prescription.³³ No person shall convoke such secret and hidden assemblies; they shall be forbidden in the country, they shall be prohibited within the walls, they shall be condemned in public and private habitations. 2. Furthermore, investigation shall be made with the greatest care, so that if any persons should not convene on the same day for Easter,³⁴ in obedience to religion, they shall undoubtedly be considered as persons whom we have condemned by this law.

Given on the day before the kalends of April at Constantinople in the year of the consulship of Antonius and Syagrius.—March 31, 382.

10.³⁵ The same Augustuses to Constantianus, Vicar of the Diocese of Pontus.

The Tascodrogitae, indeed, shall by no means be evicted from their own habitations. However, this crowd of heretical superstition shall not convene at any church; or, if perchance, such a crowd should convene, it shall be driven out of its conventicles without any delay.

Given on the twelfth day before the kalends of July at Constantinople in the year of the second consulship of Merobaudes and the consulship of Saturninus.—June 20, 383.

11. The same Augustuses to Postumianus, Praetorian Prefect.

All persons whatsoever who are tossed about by the false doctrine of diverse heresies, namely, the Eunomians, the Arians, the Macedonians, the Pneumatomachi, the Manichaeans, the Encratites, the Apotactites, the Saccophori, and the Hydroparastatae,³⁶ shall not assemble in any groups, shall not collect any multitude, shall not attract any people to themselves, shall not show any walls of private houses after the likeness of churches, and shall practice nothing publicly or privately which may be detrimental to the Catholic sanctity. Furthermore, if there should exist any person who transgresses what has been so evidently forbidden, he shall be expelled by the common agreement of all good men, and the opportunity to expel³⁷ him shall be granted to all who delight in the cult and the beauty of the correct observance of religion.

Given on the eighth day before the kalends of August at Constantinople in the year of the second consulship of Merobaudes and the consulship of Saturninus.—July 25, 383.

12. The same Augustuses to Postumianus, Praetorian Prefect.

The vicious doctrines hateful to God and man, namely, the Eunomian, the Arian, the Macedonian, the Apollinarian, and all other sects which are condemned by the sincere faith of the true religion, according to the venerable cult of the Catholic discipline, shall not arrogate to themselves the right to assemble congregations or to establish churches, either by public or private undertakings, within the localities of the cities and of the fields and of the villas. They shall not practice the ritual performance of their own perfidy or the ceremonies of their dire communion; they shall not usurp and have any ordinances for creating

²⁶ mendaci, ficti, falsi.

²⁷ Cicerius, M.

²⁸ Euzimus.

²⁹ sui sui heredes, his own, family heirs.

³⁰ officio, ministerio, factory, in production of heresies and false doctrines.

³¹ The penalty for informers (delatores) was severe. 10, 10.

³² convene in the same group on the day of Easter, M.

³³ 16, 5, 65. Constantianus in ms. E but Constantianus in the other constitutions that were issued to him. Cf. 7, 18, 7, et al.

³⁴ to accuse, M.

priests.³⁸ The aforesaid houses, moreover, shall be made subject to the ownership and rights of Our fisc, whether in cities or in any places whatsoever where crowds of such teachers and ministers are collected at the time of Easter. Thus those persons who are accustomed to practice either the doctrines or the mysteries of such assemblages shall be diligently sought out from all cities and places. They shall be constrained by the vigor of the published law, expelled from their assemblies, and ordered to return to the countries of their origin, in order that none of them may have the power to go to any other place whatsoever or to wander away to any cities. But if these regulations which have been established by Our Serenity should be very negligently executed, the office staffs of the provincial judges³⁹ and the chief decurions of the cities in which an assembly of a forbidden congregation should be proved to have been discovered shall be subject to a sentence of condemnation.

Given on the third day before the nones of December³⁹ at Constantinople in the year of the second consulship of Merobaudes and the consulship of Saturninus.—December 3, 383.

13.⁴⁰ The same Augustuses to Cynegius, Praetorian Prefect.

The Eunomians, the Macedonians, the Arians, and likewise the Apollinarians are names infamous for their false doctrines among the offices of the holy religion. All men, therefore, who vindicate for themselves the pontificate or the ministry of such professions, who assert that they are priests⁴¹ of a name that has been outlawed, and who confer upon themselves the name of ministers of a criminal religion, who say that they teach those doctrines which it would be seemly either not to know or to unlearn, shall be driven from all the hiding places of this City without the intervention of any favoritism, and the hiding places shall be spied out with a diligent search. They shall live in other places and shall be completely separated from the congregations of the good.

Given on the twelfth day before the kalends of February at Constantinople in the year of the consulship of the Most Noble Richomer and Clearchus.—January 21, 384.

14. The same Augustuses to Cynegius, Praetorian Prefect.

We command that the Apollinarians and all other followers of diverse heresies shall be prohibited from all places, from the walls of the cities, from the congregation of honorable men, from the communion of the saints. They shall not have the right to ordain clerics, they shall forfeit the privilege of assembling congregations either in public or private churches. No authority shall be granted to them for creating bishops; moreover, persons so appointed shall be deprived of the name of bishop and shall forfeit the appellation of this dignity. They shall go to places which will seclude them most effectively, as though by a wall, from human association. Moreover, We subjoin to the foregoing provisions that to all the aforesaid persons the opportunity to approach and address Our Serenity shall be denied.

Given on the sixth day before the ides of March at Thessalonica in the year of the second consulship of Theodosius Augustus and the consulship of Cynegius.—March 10, 388.

³⁸ sacerdotes.

³⁹ September, Cujacius.

⁴⁰ Sozom., Hist. Eccl. 8, 4.

15. The same Augustuses to Trifolius, Praetorian Prefect.

All members of diverse and perfidious sects, who are driven by the insanity of a miserable conspiracy against God, shall not be allowed to have an assembly anywhere, to participate in discussions, to hold secret meetings, to erect impudently the altars of a nefarious treachery⁴¹ by the offices of an impious hand, and to present the false appearance of mysteries, to the outrage of true religion. In order that this regulation may obtain its appropriate effectiveness, Your Sublimity shall appoint as watchmen certain very faithful persons who shall be able both to restrain the aforesaid persons and to arrest them and bring them before the courts. The offenders, according to the previous sanctions, shall pay the severest penalty both to God and to the laws.

Given on the eighteenth day before the kalends of July at Stobi in the year of the second consulship of Our Lord Theodosius Augustus and the consulship of the Most Noble Cynegius.—June 14, 388.

16. The same Augustuses to Cynegius,⁴² Praetorian Prefect.

We have learned that some of the Arians cite as their defense a general rule of Our regulations⁹ to the effect that they are permitted to usurp those practices which appear to them to suit their advantage. That rule shall be abrogated, and they shall know that no such order has emanated from Our imperial sanctuary. If anything, therefore, should be so cited by them for their own advantage, and if anyone should henceforth circulate such pseudo regulations, he shall be held guilty of forgery.

Given on the fifth day before the ides of August at Constantinople in the year of the second consulship of Theodosius Augustus and the consulship of the Most Noble Cynegius.—August 9, 388;⁴³ 387.

17. Emperors Valentinian, Theodosius, and Arcadius Augustuses to Tatianus, Praetorian Prefect.

The Eunomian eunuchs shall not have the liberty either to make a testament or to take under a testament. It is Our will that this regulation shall be observed with respect to all whom the law may find still living and that no person shall be protected by the privilege of any past will, since, whether testaments are shown to have been previously made or left incomplete, after this sanction of Our sacred imperial response the aforesaid persons shall not have the liberty to possess property or to petition for the possession of such property,⁴⁴ or even to leave any heir, either directly or as beneficiary of a trust, as a legatee, as beneficiary of a secret trust fund, or under any name which the order of the law has established in such matters. But all property which may appear to belong or to be about to belong to such persons⁴⁴ shall be vindicated as caducous to the resources of Our fisc. In short, the aforesaid persons shall have nothing in common with the rest of mankind.

Given on the third day before the nones of May at Milan in the year of the consulship of Timasius and Promotus.—May 4 (5), 389.

18. The same Augustuses to Albinus, Prefect of the City.

If any persons whatever should disturb the world⁴⁵ un-

⁴¹ praevaticatio, falsehood, treachery, apostasy.

⁴² Tatianus: Cynegius died during his consulship and was buried March 19, 388. Cf. 8, 4, 17, n. 61. The imperial sanctuary, *sacrarium*, was the consistory of the Emperor, 6, 9, 1, n. 2.

⁴³ Theodosius was not in Constantinople this year but marched from Thessalonica into Italy against the usurper Maximus.

⁴⁴ As heirs.

⁴⁵ *mundus*, the world, the universe, as distinguished from *orbis*

der the name of Manichaeans, they shall indeed be expelled from the whole world,⁴⁶ but especially from this City, under threat of judgment. Moreover, the wills of the aforesaid persons shall not have the force of testaments; further, the property itself shall be confiscated to the people, nor shall it be lawful that any property be left through them or to them. In short, they shall have nothing in common with the world.⁴⁸

Given on the fifteenth day before the kalends of July at Rome in the year of the consulship of Timasius and Promotus.—June 17, 389.

19. The same Augustuses to Tatianus, Praetorian Prefect.

If any persons retain the leadership of perverse dogma, that is, bishops, priests,⁴⁹ deacons, and lectors, and if any under the pretense of the clergy attempt to impose a blot upon religion, or if any are established under the name of any heresy or false doctrine whatsoever, they shall by all means be driven from their funereal meeting places, whether they appear to be within the City or in suburban districts.

Given on the sixth day before the kalends of December at Milan in the year of the consulship of Timasius and Promotus.—November 26, 389.

20. Copy of a Sacred Imperial Letter.

We order that the polluted contagions of the heretics shall be expelled from the cities and driven forth from the villages. No opportunity shall be available to them for any gatherings, so that in no place may a sacrilegious cohort of such men be collected. No conventicles, either public or hidden shall be granted to the perversity of such persons as retreats for their false doctrines.

Given⁵¹ on the fourteenth day before the kalends of June at Rome in the year of the consulship of the Most Noble Tatianus and Symmachus.—May 19, 391.

21. The same Augustuses to Tatianus, Praetorian Prefect.

In the case of heretical false doctrines, We decree that if it should appear that any persons have ordained clerics or have accepted the office of cleric, they shall be fined ten pounds of gold each. The place in which forbidden practices are attempted shall by all means be added to the resources of Our fisc, if it should become clear that the offense was committed with the connivance of the owner. But if it should appear that the landholder was unaware of such misdeed, inasmuch as it was done secretly, We direct that the chief tenant of such estate, if he should be freeborn, shall pay ten pounds⁵² to Our fisc, if he should be descended from servile dregs⁵³ and should despise the penalty of monetary loss because of his poverty and low degree, he shall be beaten with clubs and condemned to deportation. Furthermore, We especially provide that if such place should be an imperial villa or a villa subject to any public right, and if the chief tenant and⁵⁴ the procurator should give permission for the assembly, each of them shall be fined ten pounds of gold in accordance with the penalty as herein set forth. But if those persons who have been found to perform such mysteries should at the same time

be revealed to usurp for themselves the title of cleric, We command that each of them shall be fined ten pounds of gold and such fine shall be paid.

Given on the seventeenth day before the kalends of July at Constantinople in the year of the second consulship of Arcadius Augustus and the consulship of Rufinus.—June 15, 392.

22. Emperors Theodosius, Arcadius, and Honorius Augustuses to Victorius, Proconsul of Asia.

Heretics shall have authority neither to create nor legally to confirm bishops.

Given on the seventeenth day before the kalends of May at Constantinople in the year of the third consulship of Arcadius Augustus and the second consulship of Honorius Augustus.—April 15, 394.

23. The same Augustuses to Rufinus, Praetorian Prefect.

We formerly believed that a law⁵⁵ ought to be promulgated with reference to the Eunomians, to the effect that they should neither take nor leave anything by testament; on fuller deliberation, indeed, We now revoke the aforesaid law. They shall live under the common law; they may appoint and likewise be appointed as heirs in written wills.

Given on the twelfth day before the kalends of July at Adrianople in the year of the third consulship of Arcadius Augustus and the second consulship of Honorius Augustus.—June 20, 394.

24.⁵⁶ The same Augustuses to Rufinus, Praetorian Prefect.

The madness of heretics shall not attempt further to perpetrate the criminality which they have devised nor to hold unlawful councils. Nowhere shall they attempt to teach or learn their profane doctrine; their bishops⁵⁷ shall not dare to teach a faith which they do not have and to create ministers who are not ministers. Such audacity shall not be neglected nor increase through the connivance of judges⁵⁸ or of any person to whom the care of this matter was entrusted through the constitutions⁵⁹ of Our father.

Given on the seventh day before the ides of July at Constantinople in the year of the third consulship of Arcadius Augustus and the second consulship of Honorius Augustus.—July 9, 394.

25. Emperors Arcadius and Honorius Augustuses to Rufinus, Praetorian Prefect.

We renew by Our decree all penalties and all punishments that were established by the sanctions⁶⁰ of Our father of sainted memory against the obstinate spirit of the heretics, and We decree to be invalid whatever privilege has been conceded to them by any special sanction,⁶¹ contrary to the merit of the delinquents, in the hope of their correction. 1. We condemn with special mention the perfidious mind and the most vicious sect of the Eunomians, and We hereby establish that all decrees⁶² which have been issued against their insanity shall be preserved inviolate. We add thereto that no person of the aforementioned sect shall have the right to enter the imperial service or to make a will or to take property under a will, so that all who have a common religious insanity may suffer a common penalty. If anything pertaining to the right of making a will was conceded as a special benefit to any of the aforesaid persons by Our father,⁶³ it shall, of course, become void.

Given on the third day before the ides of March at Constantinople in the year of the consulship of Olybrius and Probinus.—March 13, 395.

⁵¹ 16, 5, 17.

⁵² 16, 5, 5; CJ 1, 5, 2.

⁵³ antistes.

⁵⁴ 16, 5, 12.

⁵⁵ 16, 5, 5-24.

⁵⁶ 16, 5, 14 and 16.

⁵⁷ 16, 5: 6, 8, 11, 12, 13, 17.

⁵⁸ 16, 5, 23.

terrarium, the Roman world, the Roman Empire, the civilized world, n. 46. For the disturbance of the world, see 9, 16, 5; 16, 5, 40; 16, 5, 65, 2; Nov. Th. 3, 1, 8.

⁴⁹ *orbis terrarum*, n. 45.

⁵⁰ Posted: Theodosius and Valentinian were not at Rome on this date.

⁵¹ Apparently of gold, an enormous fine.

⁵² 6, 27, 18.

⁵³ or the procurator, Seeck.

26. The same Augustuses to Rufinus, Praetorian Prefect.

None of the heretics, who are now restrained by innumerable laws⁵⁰ of Our sainted father, shall dare to assemble unlawful gatherings and to contaminate with profane mind the mystery of Almighty God, either publicly or privately, secretly or openly. None shall dare to appropriate the title of bishop or, with polluted mind, to arrogate to himself the ecclesiastical order and their most sacred titles.

Given on the third day before the kalends of April at Constantinople in the year of the consulship of Olybrius and Probinus.—March 30, 395.

27. The same Augustuses to Caesarius, Praetorian Prefect.

We direct that the power to execute testaments shall be granted to the Eunomians and that whatever the recent regulation⁵¹ of Our sainted father contained shall be conceded to them.

Given on the eighth day before the kalends of July⁵² at Constantinople in the year of the consulship of Olybrius and Probinus.—June 24 (December 25), 395.

28.⁵³ The same Augustuses to Aurelianus, Proconsul of Asia.

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 designation of heretics and must be subject to the sanctions⁵⁴ which have been issued against them. Your Experience, therefore, shall recognize that Heuresius⁵⁵ shall be considered a heretic and not among the number of most holy bishops.

Given on the third day before the nones of September at Constantinople in the year of the consulship of Olybrius and Probinus.—September 3, 395.

29. The same Augustuses to Marcellus,⁵⁶ Master of Offices.

We direct Your Sublimity to investigate whether any of the heretics dare to have membership in the imperial service, in violation of Our laws, either in the bureaus or among the members of the secret service or among the palatines. According to the example⁵⁷ of Our sainted father, We also deny the aforesaid persons all right of membership in the imperial service. Moreover, if you should apprehend any persons as accessories of this crime, you shall order that they, together with the very persons with whom they have connived, to the ruin of Our law and of religion, shall not only be removed from the imperial service but even be kept outside the walls of this City.

Given on the eighth day before the kalends of December at Constantinople in the year of the consulship of Olybrius and Probinus.—November 24, 395.

30.⁵⁸ Emperors Arcadius and Honorius Augustuses to Clearchus, Prefect of the City.

All heretics shall know without doubt that they shall be deprived of all places in this City, whether such places are held under the name of churches or are called deaconries or even deaneries, or whether they appear to furnish an opportunity for such meetings in private homes or places;

such private houses and places shall be incorporated into Our fisc.

1. Moreover, all clerics of the heretics shall be expelled from the most sacred City, nor shall they be permitted to convene within these limits. 2. Furthermore, all the aforesaid persons shall be forbidden to come together in profane assemblies for performing a litany within the City by night or day. If anything of this kind is permitted to take place either in public or in private houses, a fine of a hundred pounds of gold shall certainly be imposed on the office staff of Your Sublimity.

Given on the fifth day before the nones of March at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—March 3, 396,⁵⁹ 402.

31.⁶⁰ The same Augustuses to Caesarius, Praetorian Prefect.

Authors and teachers of the crime of the Eunomians, and especially their clerics, whose madness induced them to such false doctrine, shall be tracked down and expelled as exiles from the municipalities.

Given on the eleventh day before the kalends of May at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—April 21 or 22, 396.

32.⁶¹ The same Augustuses to Caesarius, Praetorian Prefect.

In order that such great madness of the Eunomians may not persist, Your Sublime Magnificence shall hasten to track down with all zeal the authors and teachers of the Eunomians. Especially their clerics, whose madness has induced them to such false doctrine, shall be expelled as exiles from the municipalities and shall be segregated from all human gatherings.

Given on the tenth day before the kalends of May at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—April 21 or 22, 396.

33. The same Augustuses to Eutychianus, Praetorian Prefect.

We command the teachers of the Apollinarians to withdraw with all haste from the habitations of Our dear City, and if they should neglect to depart and should remain concealed in their hideouts, with the intention of holding secret assemblies, as they suppose, those places or houses in which they have congregated the aforesaid persons shall be annexed to the account of the fisc.

Given on the kalends of April⁶² at Constantinople in the year of the consulship of Caesarius and Atticus.—April 1, 397.

34. The same Augustuses to Eutychianus, Praetorian Prefect.

The clerics of the Eunomian and the Montanist superstitions shall be expelled from the association and intercourse of all municipalities and cities. If perchance they should dwell in the country and should be proved either to assemble the people or to participate in any assemblies, they shall be deported for life. Further, the procurator of the landholding shall suffer the supreme penalty, and the owner shall be deprived of the landholding, if with their

⁵⁰ January, since Caesarius succeeded Rufinus as Praetorian Prefect when Rufinus was executed on November 27, 395. G.

⁵¹ CJ 1, 5, 2.

⁵² 16, 5, 1-27.

⁵³ Euresius in mss. VE, a bishop in the Diocese of Asia who was associated with the Luciferian heresy or schism. See G.

⁵⁴ 6, 29, 8, n. 27.

⁵⁵ 16, 5, 25.

⁵⁶ CJ 1, 5, 3.

⁵⁹ In the year of the fifth consulship of Arcadius and Honorius, M.; 14, 7, 14.

⁶⁰ 16, 5, 32.

⁶¹ 16, 5, 31.

⁶² The month does not agree with the dates of Eutychianus as Praetorian Prefect, 3, 12, 3, n. 8.

knowledge and connivance these unholy and condemned meetings are proved to have been conducted on such landholding. If, indeed, after the formal publication of this order, these heretics should be apprehended in any city whatsoever or should be proved to have entered any house for the purpose of performing their superstitious rites, their goods shall be confiscated and they themselves shall suffer the supreme penalty. The house which they have entered in the aforesaid manner shall be attached to the fisc without delay, unless such heretics should be immediately ejected by the master or the mistress of the house and reported to the authorities.

1. We command that the books⁷⁰ containing the doctrine and matter of all their crimes shall immediately be sought out and produced, with the greatest astuteness and with the exercise of due authority, and they shall be consumed with fire immediately under the supervision of the judges.⁷¹ If perchance any person should be convicted of having hidden any of these books under any pretext or fraud whatever and of having failed to deliver them, he shall know that he himself shall suffer capital punishment, as a retainer of noxious books⁷² and writings and as guilty of the crime of magic.⁷³

Given on the fourth day before the nones of March at Constantinople in the year of the fourth consulship of Honorius Augustus and the consulship of Eutychianus.—March 4, 398.

35.⁷⁴ The same Augustuses to Dominator, Vicar of Africa. We decree that the pernicious Manichaeans and their accursed meetings, which have already been condemned⁷⁵ to just punishment, shall also be restrained by this special regulation. Therefore, they shall be sought out, they shall be brought before the public authorities, and such detestable criminals shall be restrained⁷⁶ by the proper and most severe correction. The stings of authority shall also be directed against those persons who protect the aforesaid heretics in their own homes with damnable provision.

Given on the sixteenth day before the kalends of June at Milan in the year of the consulship of the Most Noble Theodorus.—May 17, 399.

36. The same Augustuses to Eutychianus, Praetorian Prefect.

For the Eunomians We remit the penalty⁷⁷ of being deprived of testamentary capacity and of having their status changed to that of foreigners. We permit them to have the unrestricted power to make gifts from their own property, as they wish, and to receive property in turn as a gift from others.

1. However, they shall abstain from their councils, they shall abandon unlawful assemblies, and they shall know that gatherings have been interdicted to them or else punishment has been prepared for them. Wherefore, the procurator of a landed estate or the steward of an urban

⁷⁰ *codices.*

⁷¹ *maleficium.* Or: as a retainer of books that are noxious and that were written by the crime of magic. That is, the composition of the books constituted the crime of magic.

⁷² *CJ* I, 5, 4.

⁷³ Even by the pagan Emperors, as Diocletian, *Collat.* 15, 3; but the reference here is to the legislation of the Christian Emperors, as 16, 5: 3, 7, 9, 18, 20.

⁷⁴ *resicare.* cut back, cut off, eradicate, restrain.

⁷⁵ 16, 5, 25. Foreigners did not have testamentary capacity in Roman law.

house in which profane mysteries have been celebrated shall suffer the supreme penalty. The landholding itself and the house shall be vindicated to the fisc, if Our injunction is contravened with the knowledge and without the prohibition of the owner.

2. Moreover, if the ministers of such criminality, whom they call by their false name of bishops,⁷⁸ should be apprehended in any gathering at all, they shall be deported and their goods confiscated.

Given on the day before the nones of July at Constantinople in the year of the consulship of the Most Noble Theodorus.—July 6, 399.

37. The same Augustuses to Hadrianus, Praetorian Prefect.

It is Our will that the rescript⁷⁹ which the Donatists are said to have impetrated from Julian, at that time Emperor, shall be prefixed to the edict⁸⁰ that shall be posted in the most frequented places, and that the records in which such an allegation was inserted shall be subjoined, whereby the steadfast constancy of the Catholic belief and the desperation of the Donatists, that is falsified by perfidy,⁸¹ may become known to all.

Given on the fifth day before the kalends of March at Ravenna in the year of the consulship of Stilicho and Aurelianus.—February 26, 400; February 25, 405.⁸²

38. The same Augustuses and Theodosius Augustus: An Edict.

No one shall recall to memory⁸³ a Manichaean, no one a Donatist, who especially, as We have learned, do not cease their madness. There shall be one Catholic worship, one salvation; equal sanctity within the Trinity, harmonious within itself, shall be sought. But if any person should dare to participate in practices that are interdicted and unlawful, he shall not escape the toils of innumerable previous constitutions and of the law⁸⁴ that was recently issued by Our Clemency. If perchance seditious mobs should assemble, he shall not doubt that the sharp goads of a more severe punishment will be applied to him.

Given on the day before the ides of February at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—February 12, 405.

39. The same Augustuses to their Dear Friend, Diotimus,⁸⁵ Greetings.

We decree that heretics of the Donatist superstition, in any place whatever,⁸⁶ shall pay to the full the due penalty without delay, if they should either confess their crime or should be convicted with due observance of the provisions of the law.

Given on the sixth day before the ides of December at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—December 8, 405.

⁷⁸ N. 53. call their bishops, by a false name, M.

⁷⁹ *programma.* The imperial constitution was regularly placed before the edict of the official who formally published it. Most of the anti-Christian legislation of Julian has been lost, since it was repealed by the later, Christian Emperors and was not included in the Theodosian Code, contrary to the instructions to the Codification Commission, I, 1, 5.

⁸⁰ the Catholic belief and the falsified perfidy of the reckless and lawless Donatists, M.

⁸¹ 2, 8, 24, n. 18.

⁸² *in memoriam revocare*, refer to, discuss. Cf. 16, 5, 66, 2.

⁸³ Proconsul of Africa; 11, 30, 62; 16, 11, 2.

⁸⁴ Or: of whatsoever station.

40.⁷² The same Augustuses to Senator, Prefect of the City.⁸²

We have recently published Our opinion⁸⁴ in regard to the Donatists. Especially, however, do We prosecute with the most deserved severity the Manichaeans and the Phrygians and Priscillianists. Therefore, this class of men shall have no customs and no laws in common with the rest of mankind.

1. In the first place, indeed, it is Our will that such heresy shall be considered a public crime, since whatever is committed against divine religion redounds to the detriment of all.⁸⁵ 2. We also pursue the aforesaid persons by the confiscation of their goods, which, however, We order to accrue to each of their next of kin, in such a way that the order of ascendants and descendants and collateral cognates, even to the second degree, shall be observed, just as in hereditary successions. Thus, finally We permit such kinsmen to have the right to take such property, unless they themselves are polluted with an equal guilt. 3. It is also Our will that the heretics themselves shall be made ineligible to accept⁸⁶ any gift or inheritance coming under any title whatsoever. 4. Furthermore, We do not leave to any person so convicted the power to make gifts, to buy, to sell, or finally to make contracts.

5. Moreover, the inquisition shall extend beyond death. For, if in crimes of high treason it is permitted that the memory of the deceased may be charged with crime, not undeservedly must the deceased undergo judgment in this case also. Wherefore, if any person is convicted of having been a Manichaean or a Phrygian or Priscillianist, the document of his last will shall be void, whether he has left it in the form of a testament, a codicil, a letter, or any kind of will whatsoever. In this case also the foregoing conditions shall be observed concerning those degrees of kinship that are enumerated above. Moreover, We do not permit children to become heirs or to enter upon an inheritance unless they have abandoned the depravity of their fathers; for We extend pardon to those persons who repent of their transgression. 6. It is Our will also that slaves shall be without guilt if, with due reverence⁸⁷ for their sacrilegious masters, they should pass over with more faithful service to the Catholic Church.

7. If there should be a landed estate on which a congregation of such men has assembled, when the owner, although not implicated as a participant in the crime, had knowledge thereof and did not forbid it, such estate shall be added to Our patrimony. If the owner was ignorant thereof, his overseer or the procurator of the landholding shall be beaten with lashes tipped with lead and shall be consigned to perpetual labor in the mines; the chief tenant, if he is sufficiently responsible,⁸⁸ shall be deported.

8. If the governor⁸⁹ of the province by connivance or favoritism should defer the trial of such crimes when they have been reported to him or should neglect the punish-

ment of those persons who are convicted, he shall know that he will be punished with a fine of twenty pounds of gold. The defenders also and the chief decurions of each city and likewise the provincial office staffs shall be constrained by a penalty of ten pounds of gold, unless, in executing those matters which have been prescribed by the judges⁹⁰ in this connection, they should lend their most sagacious care and skilled assistance.

Given on the eighth day before the kalends of March at Rome in the year of the seventh consulship of Honorius Augustus and the second consulship of Theodosius Augustus.—February 22, 407.

41. The same Augustuses to Porphyrius, Proconsul of Africa.

Although it is customary for crimes to be expiated by punishment, it is Our will, nevertheless, to correct the depraved desires of men by an admonition to repentance. Therefore, if any heretics, whether they are Donatists or Manichaeans or of any other depraved belief and sect who have congregated for profane rites, should embrace, by a simple confession, the Catholic faith and rites, which We wish to be observed by all men, even though such heretics have nourished a deep-rooted evil by long and continued meditation, to such an extent that they also seem to be subject to the laws⁹⁰ formerly issued, nevertheless, as soon as they have confessed God by a simple expression of belief, We decree that they shall be absolved from all guilt. Thus for every criminal offense, whether it was committed before or should be committed afterward, a thing which We regret, although punishment seems to be especially urgent for the guilty, it shall suffice for annulment⁹¹ that they should condemn their false doctrine by their own judgment and should embrace the name of Almighty God, which they may call upon even in the midst of their perils;⁹² for when the succor of religion has been invoked, it must nowhere be absent in afflictions. Therefore, just as We order that the previous laws which We have issued for the destruction of sacrilegious minds shall be forcefully pressed to the full effect of their execution, in like manner We decree that those persons who have preferred the faith of pure religion, even though by late confession, shall not be bound by the laws which have been issued. We sanction the foregoing regulations in order that all persons may know that the infliction of punishment on the profane desires of men shall not be lacking, and that it redounds to the advantage of true worship that the support of the laws should also be present.

Given on the seventeenth day before the kalends of December at Rome in the year of the seventh consulship of Honorius Augustus and the second consulship of Theodosius Augustus.—November 13, 407.

42.⁹³ Emperors Honorius and Theodosius Augustuses to Olympius, Master of the Offices, and Valens, Count of the Household Troops.

We prohibit those persons who are hostile to the Catholic sect to perform imperial service within the palace, so that no person who disagrees with Us in faith and in religion shall be associated with Us in any way.

Given on the eighteenth day before the kalends of December at Ravenna in the year of the consulship of Bassus and Philippus.—November 14, 408.

⁹⁰ 16, 5, 1-40.

⁹¹ *abolitio*, annulment of an accusation or of a suit, 9, 37.

⁹² The tortures and imminent dangers of death at the trial.

⁹³ 16, 5, 25 and 29.

⁸² Praetorian prefect in some mss.

⁸⁴ 16, 6, 3-5; 16, 5, 38-39.

⁸⁵ Nov. Th. 3; Horace Odes, 3, 6, 7-8. This is the fundamental principle on which was based the persecution of Christianity by the pagan Emperors and the persecution of heresy and paganism by the orthodox Christian Emperors. The Emperors were also influenced by their desire to promote the unity of the Empire, n. 1.

⁸⁶ Or: shall be deprived of.

⁸⁷ Reading *reverentes*. Or, reading *relinquentes*: forsaking their.

⁸⁸ *idoneus*.

⁸⁹ *rector*.

43.⁹⁴ The same Augustuses to Curtius, Praetorian Prefect.

All decrees which We have issued by the authority of general laws against the Donatists, who are also called Montenses, against the Manichaeans or the Priscillianists, or against the pagans.⁹⁵ We decree shall not only remain in force but shall be put into the fullest execution and effect. Thus the buildings of the aforesaid persons and those of the Caelicolists also, who hold assemblies of some unknown new dogma, shall be vindicated to the churches. The punishment established by law must surely consider as convicted those persons who confess that they are Donatists or shun the communion of the Catholics under the pretext of a perverse religion, although they pretend that they are Christians. (Etc.)

Given⁹⁶ on the seventeenth day before the kalends of December at Rome in the year of the consulship of Bassus and Philippus.—November 15, 408; 407.

44. The same Augustuses to Our Dear Friend, Donatus,⁹⁷ Greetings.

The new and unaccustomed audacity of the Donatists, heretics, and Jews has disclosed that⁹⁸ they wish to throw into confusion the sacraments of the Catholic faith. Such audacity is a pestilence and a contagion if it should spring forth and spread abroad more widely.⁹⁹ We command, therefore, that the penalty of a just chastisement shall be inflicted upon those persons who attempt anything that is contrary and opposed to the Catholic sect.

Given on the eighth day before the kalends of December at Ravenna in the year of the consulship of Bassus and Philippus.—November 24, 408.

45. The same Augustuses to Theodorus, Praetorian Prefect for the second time.

The vigilance of the defenders,¹⁰⁰ of the decurions, and of all members of the office staffs shall be on guard that no person who dissents¹⁰¹ from the priesthood⁹⁷ of the Catholic Church shall have an opportunity for unlawful assembly within any municipality or any secluded part of the territory thereof. We decree also that the places themselves of such assembly shall be appropriated to public ownership and that every defense shall be barred. Those persons who dare to dispute and to assert what is condemned by divine teaching shall be proscribed and dispatched into exile.

Given on the fifth day before the kalends of December at Ravenna in the year of the consulship of Bassus and Philippus.—November 27, 408.

46.¹⁰² The same Augustuses to Theodorus, Praetorian Prefect for the second time.

(After other matters.) The Donatists and the rest of the vain heretics and the others in error who cannot be converted to the worship of the Catholic communion, that

⁹⁴ 16, 10, 19; CJ 1, 9, 12; Sirm. 12.

⁹⁵ The full subscriptions of this law and of 16, 10, 19 are probably the same as that of Sirm. 12. See also 1, 20, 1; 14, 1, 5. Honorius was at Rome at the end of 407 and the beginning of 408 and was absent from Rome at the end of 408.

⁹⁶ Proconsul of Africa; 9, 40, 19.

⁹⁷ Or: The audacity . . . has disclosed new and unaccustomed practices, whereby, M.

⁹⁸ See to it that this pestilence does not spring forth and spread more widely with its contagion, M.

¹⁰⁰ Of the municipalities.

¹⁰¹ Or: who separates from his bishop (*sacerdos*), G.

¹⁰² Sirm. 14.

is, the Jews and the gentiles, who are commonly called pagans, shall not suppose that the provisions of the laws previously issued against them have diminished in force. All judges¹⁰³ shall know that the precepts thereof must be obeyed with loyal devotion, and among matters of special concern, they shall not hesitate to execute whatever We have decreed against such persons. But if any of the judges¹⁰⁴ through the sin of connivance should fail to execute the present law, he shall realize that he will forfeit his official rank and that he will suffer a more severe action of Our Clemency. His office staff also, if it should jeopardize its own safety by contemptuously refusing to give official recommendations,¹⁰⁵ shall be fined twenty pounds of gold, in addition to the punishment of its three primates. Moreover, if the members of a municipal senate out of favoritism to the criminals should keep silent about the commission of such an offense in their own municipalities or the territories thereof, they shall know that they will suffer the penalty of deportation and the forfeiture of their own property.

Given on the eighteenth day before the kalends of February at Ravenna in the year of the eighth consulship of Honorius Augustus and the third consulship of Theodosius Augustus.—January 15, 409.¹⁰⁶

47. The same Augustuses to Jovius, Praetorian Prefect.

If any person should attempt to contravene those provisions which have been enacted many times for the common salvation, that is, for the interests of the sacrosanct Catholic Church, against the heretics and the adherents of a different dogma, he shall be deprived of what he has impetrated, even though he should attempt to come with the benefit of Our annotation. (Etc.)

Given on the sixth day before the kalends of July at Ravenna in the year of the eighth consulship of Honorius Augustus and the third consulship of Theodosius Augustus.—June 26, 409.

48. The same Augustuses to Anthemius, Praetorian Prefect.

We decree that the Montanists, the Priscillianists, and other breeds of such nefarious superstition, who scorn the avenging punishments as expressed throughout¹⁰⁸ numerous sacred imperial edicts, shall by no means be admitted to the enlistment oaths of the imperial service, which obeys Our imperial commands. But if any of the aforesaid persons, by birth status as a decurion, by obligation of membership in a municipal senate or of imperial service as a member of a gubernatorial office staff,¹⁰⁹ should be subject to such duties and services, We command that they shall continue to be bound to such services, in order that they may not elicit for themselves the support of a desired exemption therefrom, under the color of a condemned religion. For it is Our pleasure that they shall not be released from the compulsory services of imperial service on the gubernatorial office staffs or of the municipal councils, in accordance with the law¹⁰⁷ which was promul-

¹⁰⁸ It was the function of the office staff to inform the judge of the provisions of the law and to urge that he execute the law.

¹⁰⁹ The date varies in the manuscripts. Sirm. 14 indicates 412, but this date must be rejected since the constitutions issued to Theodorus do not extend to that time.

¹⁰⁶ punishments, after the issuance of numerous, M.

¹⁰⁷ by birth status should be subject either to the bond of membership as a decurion in a municipal senate or, M. Such services were onerous and disagreeable in many ways, Glossary.

¹⁰⁸ 16, 5, 40; 16, 6, 4. This diversity of legislation is one of the

gated in the western part of the Empire, and which so condemned the aforesaid cults that it forbade their adherents to enter into any contracts and almost removed them from association with the Roman world.

Given on the ninth day before the kalends of March at Constantinople in the year of the consulship of the Most Noble Varanes.—February 21, 410.

49. The same Augustuses to Anthemius, Praetorian Prefect.

We decree that those provisions which were formerly established by the law¹⁰⁸ of the sainted father of Our Clemency against the Eunomians shall remain in force and that hereafter they shall not give anything to each other or obtain anything from each other by gift; likewise, they shall neither bequeath nor take anything by testament. They shall forfeit the emoluments which they customarily obtained from gifts or from the wills of decedents by mutual allurements through fraud and circumvention. Thus they shall be totally deprived of participation in both such rights,¹⁰⁹ and in case of intestacy, only those persons shall succeed them who were prescribed by the order transmitted in the ancient laws for the right of succession. Thus, if none of those persons should survive who might be legally called to an inheritance on intestacy, then the goods of the decedent who died in the aforesaid superstition shall belong to Our fisc. Moreover, prohibited gifts made in the aforesaid manner shall be added to the increments of Our sacred imperial treasury,¹¹⁰ provided, however, that none of the aforesaid heretics shall be permitted to request anything and none to receive anything from Our munificence, even if We should perchance be willing voluntarily to bestow anything therefrom on any person. Rather, such property shall remain in the power of the fisc forever, unless reasons of the public interest should subject it to sale.

Given on the kalends of March in the year of the consulship of the Most Noble Varanes.—March 1, 410.

50. The same Augustuses to Strategius, Count of the Privy Purse.

(To be added on the foregoing subject.) Thus, the office staff of the privy purse shall clearly understand that it will redound to their own peril if at any time, through their own connivance, they should permit any of the aforesaid goods to be delivered to any person, since the authority of this law must not be circumvented in any manner or for any reason.

Given on the kalends of March in the year of the consulship of the Most Noble Varanes.—March 1, 410.

51.¹¹¹ The same Augustuses to Heraclianus, Count of Africa.

The divine imperial response¹¹² in accordance with which those persons of heretical superstition secretly resorted to their own rites shall be entirely annulled, and all enemies of Our holy faith⁴ shall know that if they should attempt

many evidences of the increasing divergence between the eastern and the western parts of the Empire.

¹⁰⁸ 16, 5, 25. This reading is contradicted by the fact that the law was issued in the Eastern part of the Empire.

¹⁰⁹ Of obtaining property by gift or by testament.

¹¹⁰ *sacrarium, sacrarium aerarium, G.*

¹¹¹ 16, 5, 56.

¹¹² The reference is uncertain. G. compares Cod. Eccles. Afric. C. 107 (Hardouin, I, p. 926). The divine imperial response, *oraculum*, was an imperial rescript, I, 15, 8, nn. 24, 25. Cf. 16, 5, 17.

further to convene publicly, in the accursed temerity of their crime, they will suffer the penalty both of proscription and of blood.¹¹³

Given on the eighth day before the kalends of September in the year of the consulship of the Most Noble Varanes.—August 25, 410.

52. The same Augustuses to Seleucus, Praetorian Prefect.

Those provisions¹¹⁴ which were able to be impetrated by a pragmatic sanction or by an annotation of Our hand shall be annulled. Those limitations which were formerly defined on this subject shall remain in force, and the sanction of the former Emperors shall be observed. Moreover, unless from the date of the issuance of this law, all Donatist priests¹¹⁵ as well as clerics and laymen should return to the Catholic sect from which they have sacrilegiously withdrawn, then, as a punishment, all such persons of illustrious rank shall be compelled to pay to Our fisc a fine of fifty pounds of gold each; persons of Respectable rank, forty pounds of gold; Senators thirty pounds of gold; persons of Most Noble¹¹⁶ rank, twenty pounds of gold; men of the rank of civil priest, thirty pounds of gold; chief decurions, twenty pounds of gold; decurions, five pounds of gold; tradesmen, five pounds of gold; plebeians, five pounds of gold; Circumcellions,¹¹⁷ ten pounds of silver each.

1. Unless the aforesaid heretics are delivered by the chief tenants under whom they live or by the procurators, to the enforcement officer on demand, the chief tenants and procurators shall themselves be held subject to punishment. Thus the men of the estates of Our household shall not be considered immune from such punishment. 2. The wives also shall be separately bound by the same fine as their husbands. 3. If any person should not be corrected by the imposition of such penalties, he shall surely be pursued by the confiscation of all his property. 4. Slaves also shall be recalled from the depraved religion by the admonition of their masters, and coloni by frequent flogging, unless the masters themselves, although they are Catholics, should prefer to be held liable to the aforesaid fines.

5. The clerics and ministers of such heretics and their most pernicious priests¹¹⁸ shall surely be removed from the African soil which they have polluted by sacrilegious rites and shall be separately sent into exile, under suitable escort, into various regions. If the depraved bounty of such heretics has bestowed any landed estates on their churches,¹¹⁹ such churches or conventicles and landed estates shall be vindicated to the ownership and control of the Catholic Church, just as We formerly decreed.¹²⁰

Given on the third day before the kalends of February at Ravenna in the year of the ninth consulship of Honorius Augustus and the fifth consulship of Theodosius Augustus.—January 30, 412.

53. The same Augustuses to Felix, Prefect of the City.¹²¹

The complaint of the bishops deplores the fact that

¹¹³ Add: so that the true and divine worship may in no way be desecrated by such contagion, 16, 5, 56, M.

¹¹⁴ The reference is obscure.

¹¹⁵ *Clarissimi* were usually classed as Senators.

¹¹⁶ *circumcelliones*, itinerant monks.

¹¹⁷ The Emperors usually avoided the word church for a meeting place of heretics.

¹¹⁸ 16, 5, 43.

¹¹⁹ Praetorian prefect, mss. VE; but cf. 6, 2, 21 where mention is made of the global tax.

Jovinianus¹²⁰ holds sacrilegious meetings outside the walls of the most sacred City. Therefore, We command that the aforesaid person shall be arrested and beaten with leaden whips and that he shall be forced into exile along with the remaining adherents and ministers. He himself, as the instigator, shall be transported with all haste to the island of Boa;¹²¹ the rest, as seems best, provided only that the band of superstitious conspirators shall be dissolved by the separation of exile, shall be deported for life to solitary islands¹²¹ situated at a great distance from each other. Moreover, if any person with obstinate depravity should repeat such forbidden and condemned acts, he shall know that he will incur a more severe sentence.

Given on the day before the nones of March at Milan in the year of the ninth consulship of Honorius Augustus and the fifth consulship of Theodosius Augustus.—March 6, 412; 398.¹²²

54. The same Augustuses to Julianus, Proconsul of Africa.

We decree that the Donatists and the heretics, who until now have been spared by the patience of Our Clemency, shall be severely punished by legal authority, so that by this Our manifest order, they shall recognize that they are intenable and have no power of entering into contracts of any kind, but they shall be branded with perpetual infamy and separated from honorable gatherings and from public assemblies.

1. Those places in which the dire superstition has been preserved until now shall surely be joined to the venerable Catholic Church, and thus their bishops¹²³ and priests,¹²⁴ that is, all their prelates¹²⁵ and ministers shall likewise be despoiled of all their property and shall be sent into exile to separate islands¹²¹ and provinces.

2. Moreover, if any person should receive the aforesaid persons for the sake of harboring them as they flee from the proposed punishment, he shall know that his patrimony will be added to the resources of Our fisc and that he will incur the penalty which has been proposed for the fugitives.

3. Furthermore, We manifestly impose the loss of their patrimony and pecuniary penalties on each such man and woman, whether a private person or a dignitary, and the penalty must be assessed in accordance with their status.¹²⁶ Therefore, if any person should be invested with the rank of proconsul, vicar, or count of the first order, unless he should turn his mind and purpose to the observance of the Catholic religion, he shall be compelled to pay two hundred pounds of silver which shall be added to the resources of Our fisc. No person shall suppose that the foregoing penalty alone can suffice for checking their design, but as often as any person shall be convicted of having joined such a communion, so often shall the fine be exacted of him, and if it should be proved five times that he is not recalled from his false doctrine by such fines, then he shall be referred to Our Clemency so that We may judge more rigorously concerning his entire property and his status.

4. We bind the remaining dignitaries, moreover, with conditions of this kind, namely, that if a Senator who is fortified by no additional privilege of rank should be found

in the herd of Donatists, he shall pay one hundred pounds of silver; those of the rank of civil priest¹²⁴ shall be forced to pay the same sum; the ten chief decurions shall be assessed fifty pounds of silver; the remaining decurions shall pay ten pounds of silver if they should prefer to continue in the heresy.

5. Moreover, if the chief tenants of the estates of Our household should permit the aforesaid practices on the landed estates of Our venerable substance, they shall be forced to pay by way of fine whatever amount they have been accustomed to pay as rental. Emphyteuticaries shall also be bound by the same authority of Our sacred imperial decree.

6. If, indeed, chief tenants of private persons should permit conventicles to be held on their landed estates, or if through their lenience, the sacred mystery should be desecrated, the judges¹²⁷ shall refer the matter to the knowledge of the owners, whom it shall behoove, if they wish to avoid the penalty of Our sacred imperial mandate, to reform those who err or to replace those who persist and to provide for their landed estates directors who will obey Our imperial commands. But if the owners should neglect to make this provision, they shall be fined, by the authority of Our order as issued, the amount of the rentals which they have been accustomed to receive, so that what could have accrued to their profit shall be added to Our sacred imperial treasury.

7. Moreover, if the apparitors of the various judges¹²⁸ should be apprehended in such false doctrine, they shall be held to the payment of thirty pounds of silver by way of fine; and if, after five condemnations, they should be unwilling to abstain therefrom, they shall be chastised with blows and sent into exile. 8. Slaves and coloni shall indeed be restrained by the severest punishment from such daring acts, and if coloni should be constrained by flogging but should still persist in their course, then they shall be fined a third part of their peculium. 9. Moreover, everything which can be collected from such classes of men and from such places shall be dispatched forthwith to the sacred imperial largesses.

Given on the fifteenth day before the kalends of July at Ravenna in the year of the consulship of Constantius and Constans.—June 17, 414.

55.¹²⁹ The same Augustuses to Julianus, Proconsul of Africa.

It is Our will that the proceedings as held against the Donatists through the judicial investigation and supervision of Marcellinus,¹²⁹ a man of Respectable memory, and as transferred to the public records, shall have permanent validity. For the trustworthiness of the State must not perish on account of the death of the trial judge.¹²⁷

Given on the third day before the kalends of September at Rome¹²⁸ in the consulship of Constantius and Constans.—August 30, 414.

¹²⁴ sacerdotes.

¹²⁵ CJ 7, 52, 6.

¹²⁶ A tribune and imperial secretary who was sent to Carthage in 411 to settle disputes between the Catholics and Donatists, 16, 11, 3; Gest. Collat. Carth. a. 411, coll. 1c. 4 and 3c. 29 (Mansi vol. 4, pp. 53, 186); Ambrose, Epist. 64 (46, Ed. Paris), G.

¹²⁷ cognitor.

¹²⁸ Probably at Ravenna, as were the other laws issued in this consulship.

¹²⁰ A heretic who was condemned first at Rome and then at Milan; Ambrose Epist. 81. See G.

¹²¹ Cf. the exile of the Apostle John to Patmos.

¹²² Both the content of the law and the place of issue oppose 412; cf. 6, 2, 21.

¹²³ and We decree the penalties that must be assessed in accordance with their status, M.

56.¹²⁰ The same Augustuses to Heraclianus, Count of Africa.

All men who stealthily resort to their own rites of heretical superstition shall know that, if they should attempt further to assemble in public, as enemies of the sacrosanct rule of faith,⁴ they will incur the penalty both of proscription¹²⁰ and of their life, on account of their rash lawlessness in practicing their crime, so that the true and divine worship may in no way be desecrated by such contagion.

Given on the eighth day before the kalends of September in the year of the tenth consulship of Honorius Augustus and the sixth consulship of Theodosius Augustus.—August 25, 415; 410.

57. The same Augustuses to Aurelianus, Praetorian Prefect for the second time.

The Montanists shall understand that they are deprived of all right to assemble, to hold meetings, and to create clerics. Moreover, if they should hold unlawful assemblies, their clerics, bishops,¹²¹ priests,¹²² or deacons who have attempted to hold such nefarious conventicles or have dared to create clerics or have acquiesced in being created clerics shall receive the sentence of deportation.

1. If, indeed, any person should receive the aforesaid persons for the purpose of holding the forbidden meetings, he shall undoubtedly understand that he will be deprived of the property in which he allowed such meetings to be held and the accursed mysteries to be performed, whether such property was a house or a landholding. But if procurators should receive such persons without the knowledge of their masters, they shall not doubt that they will be severely punished and sent into exile. 2. Moreover, if any of their buildings should now exist, which ought not to be called churches but feral grottoes, such property with its offertories shall be adjudged to the venerable churches of the orthodox sect. This must be accomplished in such a way that the property of private persons shall not be molested, so that under the pretext of property belonging to the churches¹²³ of the Montanists, despoliation and plunder may not be perpetrated against private persons.

Given on the day before the kalends of November at Constantinople in the year of the tenth consulship of Honorius Augustus and the sixth consulship of Theodosius Augustus.—October 31, 415.

58. The same Augustuses to Aurelianus, Praetorian Prefect for the second time.

The houses belonging to the Eunomian clerics, which they have in Our renowned City, shall be assigned to the resources of the fisc, if it is proved that nefarious assemblies have been held or baptism has been repeated in such houses; for baptism is conceded only once by God, after the analogy of the birth of man, which occurs only once. 1. In order that this crime may not be perpetrated by other heretics also, We give warning that a similar punishment may be expected by other heretical clergy, if they should nefariously suppose that divine baptism should be repeated. 2. Moreover, if any person by his own will should voluntarily allow himself rashly to be tainted with or wrongfully called away to a second baptism and repetition of the mysteries of a faith granted only once, he shall not escape the penalty of exile by relegation. 3. A like penalty of deportation, without the intercession of any persons, shall be visited upon the Eunomian clerics if they should

¹²⁰ 16, 5, 51.

¹²⁰ Of their property.

dare to hold assemblies either in this renowned City or in the provinces or municipalities and their territories, or if they should dare to create or to be created clerics of the accursed dogma.

4. We therefore confirm previous laws¹²¹ which have been promulgated not only about the prohibition of assemblies of the Eunomians, but also about their forbidden last wills and gifts. We also add that if any of the Eunomians by special grant of imperial favor had obtained the right to make a testament or should be granted¹²² the right to give property or to receive it as a gift, they shall be deprived of this benefit and shall be on an equality with all the others to whom they are equal in the depravity of their dogma. No Eunomian shall be permitted to make a testament in favor of a Eunomian; no person of the aforesaid perversity shall receive anything under the testament of a Eunomian; no person¹²³ shall give to a Eunomian nor any Eunomian receive from a Eunomian the gift of a landed estate or house, even if, through an interposed person¹²⁴ of another sect or under title of a fictitious sale, some fraudulent scheme to circumvent the law should be devised. Only those persons who are eligible to become heirs on intestacy, in accordance with the law, shall succeed to the inheritance of such persons, and the right of succession shall be available only to those on whom the rights of blood kinship bestow the statutory inheritances of intestate persons.

5. If there should be any conventicles in their houses or on their landholdings, according to the rule of the general sanctions, such property shall undoubtedly be confiscated to Our treasury, and the owner shall blame this on himself if he has knowingly allowed forbidden assemblies to be held under his own roof or on his rural estate.

6. The regulation shall unhesitatingly be executed that wherever Eunomian clerics are found who have been authors of repeated baptism, they shall be arrested and immediately sent into perpetual exile under the penalty of deportation.

7. This also shall be added, that no Eunomian shall be a member of the imperial service or shall undertake to govern a province by the administration of any office whatever. (Etc.)

Given on the eighth day before the ides of November at Constantinople in the year of the tenth consulship of Our Lord Honorius Augustus and the sixth consulship of Our Lord Theodosius Augustus.—November 6, 415.

59.¹²⁵ The same Augustuses to Asclepiodotus, Praetorian Prefect.

(After other matters.) The Manichaeans and the Phrygians, who are called Pepyzites, or Priscillianists, or by some other more secret name, and likewise, the Arians, Macedonians, and Eunomians, the Novatians, the Sabatians, and all other heretics shall know that all privileges which are forbidden them by the authority of the general sanctions shall be denied them by this constitution also. If any persons should attempt to contravene the interdicts of the general constitutions, they shall be punished.

Given on the fifth day before the ides of April at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—April 9, 423.

¹²¹ 16, 5, 49-50.

¹²² Delete: should be granted, M.

¹²³ no Eunomian shall give to a Eunomian, M.

¹²⁴ As an intermediary.

¹²⁵ C] 1, 5, 5.

60. The same Augustuses to Asclepiodotus, Praetorian Prefect.

We command to be enforced the provisions which were established by the sainted grandfather and father¹⁸⁶ of Our Clemency concerning all heretics whose name and false doctrine We execrate, namely, the Eunomians, the Arians, the Macedonians, and all the others whose sects it disgusts/Us to insert in Our most pious sanction, all of whom have different names but the same perfidy. All of them shall know that if they persist in the aforesaid madness, they shall be subject to the penalty which has been threatened. (Etc.)

Given on the sixth day before the ides of June¹⁸⁷ at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—June 8, 423.

61. The same Augustuses to Asclepiodotus, Praetorian Prefect.

By this decree We remove every ambiguity of uncertain interpretation, and We command to be published the fact that the law¹⁸⁸ that is known to have been recently promulgated about the prohibition of Eunomians from membership in the imperial service and about all other rites of execrable¹⁸⁹ religions and professions does not apply to such persons who are members of gubernatorial office staffs.¹⁹⁰ For they are bound to these apparitorships in which veterans, after completion of their terms of imperial service, are compelled to sustain compulsory service as commissary officers.¹⁹¹

Given on the sixth¹⁹² day before the ides of August at Eudoxipolis in the year of the consulship of Asclepiodotus and Marinianus.—August 8, 423.

62.¹⁹³ Emperor Theodosius Augustus and Valentinian Caesar to Faustus, Prefect of the City.

We command that the Manichaeans, heretics, schismatics, astrologers,¹⁹⁴ and every sect inimical to the Catholics shall be banished from the very sight of the City of Rome, in order that it may not be contaminated by the contagious presence of the criminals. An admonition, moreover, must be especially issued concerning those persons, who by perverse persuasion withdraw from the communion of the venerable Pope,¹⁹⁵ and by whose schism the rest of the common people also are corrupted. By the issuance of this notification We grant to them a truce of twenty days. Unless they return within that time to the unity of communion, they shall be expelled from the City as far as the hundredth milestone and shall be tormented by the solitude of their own choice.

Given on the sixteenth day before the kalends of August at Aquileia in the year of the eleventh consulship of Theodosius Augustus and the consulship of Valentinian Caesar.—July 17 (August 6), 425.¹⁹⁶

63. The same Augustus and Caesar to Georgius, Proconsul of Africa.

We prosecute all heresies and all perfidies, all schisms and superstitions of the pagans⁹⁸ and all false doctrines

inimical to the Catholic faith.⁴ If indeed any persons . . . this statutory punishment also of Our Clemency shall attend them, and they shall know that, as authors of sacrilegious superstition and as participants and accomplices, they will be punished with proscription, so that if they cannot be recalled by reason from their perfidious false doctrine, at least they may be restrained by terror. They shall be punished with the severity due to their crimes, and all recourse to supplication to the Emperor shall be forever denied them. (Etc.)

Given on the day before the nones of August¹⁹⁷ at Aquileia in the year of the eleventh consulship of Our Lord Theodosius Augustus and the consulship of Valentinian Caesar.—August 4 (July 6), 425.

64.¹⁹⁷ The same Augustus and Caesar to Bassus, Count of the Privy Purse.

(After other matters.) We command that Manichaeans, heretics, schismatics, and every sect inimical to the Catholics shall be banished from the very sight of the various cities, in order that such cities may not be contaminated by the contagious presence of the criminals. We therefore order that all adherents of this unholy false doctrine shall be excluded unless a speedy reform should come to their aid. (Etc.)

Given on the eighth day before the ides of August at Aquileia in the year of the eleventh consulship of Our Lord Theodosius Augustus and the consulship of Valentinian Caesar.—August 6, 425.¹⁹⁸

65.¹⁹⁸ Emperors Theodosius and Valentinian Augustuses to Florentius, Praetorian Prefect.

The madness of the heretics must be so suppressed that they shall know beyond doubt, before all else, that the churches which they have taken from the orthodox, wherever they are held, shall immediately be surrendered to the Catholic Church, since it cannot be tolerated that those who ought not to have churches¹⁹⁹ of their own should continue to detain those possessed or founded by the orthodox and invaded by such rash lawlessness.

1. Next, if they should join to themselves other clerics or priests,²⁰⁰ as they consider them, a fine of ten pounds of gold for each person shall be paid into Our treasury, both by him who created such cleric and by him who allowed himself to be so created, or if they should pretend poverty,²⁰¹ such fine shall be exacted from the common body of clerics of the aforesaid superstition or even from their offertories.

2. Furthermore, since not all should be punished with the same severity, the Arians, indeed, the Macedonians, and the Apollinarians, whose crime it is to be deceived by harmful meditation and to believe lies about the Fountain of Truth,²⁰² shall not be permitted to have a church²⁰³ within any municipality. Moreover, the Novatians and Sabbatians shall be deprived of the privilege of any innovation,²⁰⁴ if perchance they should so attempt. The Eunomians, indeed, the Valentinians, the Montanists or Priscillianists, the Phrygians, the Marcianists, the Borborians, the Messalians, the Euchites or Enthusiasts, the Donatists, the Audians, the Hydroparastatae, the Tascodrogitae, the Photinians,

¹⁸⁶ Theodosius I and Arcadius.

¹⁸⁷ July, ms. V.

¹⁸⁸ 16, 5, 58.

¹⁸⁹ Or: prohibiting Eunomians from membership in the imperial service and forbidding all other rites of execrable.

¹⁹⁰ From these burdensome services not even heretics were exempt. 16, 5, 65, 3.

¹⁹¹ The fifth according to 12, 3, 2.

¹⁹² 16, 5, 64; Sirm. 6.

¹⁹³ mathematici, "numerologists," 9, 16.

¹⁹⁴ Papa. Pope Celestine I.

¹⁹⁵ 16, 2, n. 136.

¹⁹⁶ July, 16, 2, 46.

¹⁹⁷ 16, 5, 62; Sirm. 6.

¹⁹⁸ CJ 1, 5, 5; 1, 6, 3.

¹⁹⁹ *paupertatem praetendere*, allege poverty as their defense, pretend poverty.

²⁰⁰ Christ.

²⁰¹ Such as the construction of new churches.

the Paulians, the Marcellians, and those who have arrived at the lowest depth of wickedness, namely, the Manichaeans, shall nowhere on Roman soil have the right to assemble and pray. The Manichaeans, moreover, shall be expelled from the municipalities, since no opportunity must be left to any of them whereby an injury may be wrought upon the elements themselves.¹⁵² 3. No employment at all in the imperial service shall be permitted them except on gubernatorial office staffs in the provinces and as soldiers in the camp. They shall be conceded no right at all to make reciprocal gifts, no right to make a testament or last will. All the laws which were formerly issued and promulgated at various times against such persons and against all others who oppose our faith, shall remain in force forever, by vigorous observance, whether concerning gifts made to the churches¹⁵⁷ of the heretics or property left in any manner by last will, whether concerning private buildings in which they have assembled with the permission or connivance of the owner and which shall be vindicated to the Catholic Church which must be venerated by us, or concerning a procurator who has permitted such assembly without the knowledge of the owner and who shall be subject to a fine of ten pounds of gold, or to exile if he is freeborn, or, if he is of servile condition, he shall be flogged and sent to the mines. Moreover, such heretics shall not be able to assemble in any public place or to build churches¹⁵⁷ for themselves or to devise any scheme for the circumvention of the laws. They shall be prevented therefrom by all civil and military power, and also by the power of the municipal councils and defenders¹⁶⁰ and the judges,¹⁶ under threat of a fine of twenty pounds of gold. Furthermore, all those laws which were promulgated concerning the imperial service and concerning the right to make gifts or with reference to testamentary capacity,¹⁵³ a capacity which must either be denied altogether or one that was barely conceded to certain persons, and those laws concerning various penalties against the different heretics, shall remain in full force, and not even a special grant of imperial favor impetrated contrary to the laws shall avail.

4. None of the heretics shall be given permission to lead again to their own baptism either freeborn persons or their own slaves who have been initiated into the mysteries of the orthodox Church, nor indeed shall they be allowed to prevent from following the religion of the Catholic Church those persons whom they have bought or have possessed in any way and who are not yet adherents of their superstition. If any person should administer such baptism, or should permit it to be administered to him, and should not report the fact, if he is freeborn, he shall be condemned to exile and a fine of ten pounds of gold, and to both offenders shall be denied the right to make a testament or a gift.

5. We decree that all the foregoing provisions shall be so enforced that no judge¹⁶ may order a minor punishment or no punishment at all for such a crime when it is reported to him, unless he himself is willing to suffer the penalty which through connivance he has remitted for others.

Given on the third day before the kalends of June at Constantinople in the year of the consulship of Felix and Taurus.—May 30, 428.

¹⁵² 16, 5, 40; 9, 16, 5; Nov. Th. 3, 8.

¹⁵³ *testamenti factio*, the right: (1) to make a testament; (2) to take under a testament.

66.¹⁵⁴ The same Augustuses to Leontius, Prefect of the City.

Nestorius, the author of a monstrous superstition, shall be condemned, and his followers¹⁵⁵ shall be branded with the mark of an appropriate name, so that they may not misuse the name of Christians. But just as the Arians, by a law¹⁵⁶ of Constantine of sainted memory, are called Porphyrians, from Porphyrius, on account of the similarity of their impiety, so adherents of the nefarious sect of Nestorius shall everywhere be called Simonians,¹⁵⁷ in order that they may appear rightly to have received the name of him whose crime they have imitated in deserting God.

1. Nor indeed shall any person dare to have or to read or to copy the impious books of the nefarious and sacrilegious Nestorius, written against the venerable sect of the orthodox and against the decrees of the most holy synod of bishops held at Ephesus.¹⁵⁸ We decree that the aforesaid books shall be diligently and zealously sought out and publicly burned. 2. Moreover, no person shall make mention¹⁶ of such heretics by any other than the aforesaid name in religious disputation; nor shall any person, either secretly or openly, furnish a conventicle for the sake of holding a council, in any building or villa or suburban place or in any other place whatsoever. We decree that the aforesaid persons shall be deprived of all privilege of holding assemblies; and all men shall know that a violator of this law will be punished by the confiscation of his goods.

Given on the third day before the nones of August at Constantinople in the year of the fifteenth consulship of Our Lord Theodosius Augustus and the consulship of the one who is to be announced.—August 3, 435.

TITLE 6: HOLY BAPTISM SHALL NOT BE REPEATED¹ (NE SANCTUM BAPTISMA ITER-ETUR)

1.² Emperors Valentinian and Valens³ Augustuses to Julianus, Proconsul of Africa.

We judge to be unworthy of the priesthood that bishop⁴ who repeats the sanctity of baptism by unlawful usurpation and, against the teachings of all, contaminates this act of grace by repetition.

Given on the tenth day before the kalends of March at Trier in the year of the consulship of Valentinian Augustus and the fourth consulship of Valens Augustus.—February 20, 373.

2.⁵ Emperors Valens, Gratian, and Valentinian Augustuses to Florianus,⁶ Vicar of Asia.

¹⁵⁴ CJ 1, 5, 6; Mansi 5, 413; 9, 249. Nestorius was Bishop of Constantinople from 428 until he was condemned by the Council of Ephesus in 431. His name was taken by the Nestorian heretics.

¹⁵⁵ *gregales*, members of a herd.

¹⁵⁶ Socrates, 1, 9; Nicephorus 8, 25; Sozomenus 1, 20.

¹⁵⁷ From Simon Magus, Acts 8, 9-24.

¹⁵⁸ In 431, Mansi 5, 413.

¹ CJ 1, 6, Cf. 16, 5, n. 85.

² CJ 1, 6, 1.

³ and Gratian.

⁴ *antistes*, leader, prelate, bishop.

⁵ CJ 1, 6, 1. Issued to Flavianus, Vicar of Africa, mss. of CTh.; to Florianus, Vicar of Asia, mss. of CJ.

⁶ According to M., this is a constitution of Valens and could not have been issued to Nicomachus Flavianus, Vicar of Africa (CIL 6, 1783); the place of issue and the date do not agree, since Valens did not come to Constantinople until May 30, 378. According to G., the constitution was issued by Gratian to Flavianus, Vicar of Africa, but not at Constantinople (CP in the ms.); perhaps in the year after the consulship (PC)?

We condemn the false doctrine of those persons who trample under foot the precepts of the Apostles and who do not purify, but defile by a second baptism, those persons who have received the sacraments of the Christian name, and thus pollute them in the name of the baptismal font.

Your Authority shall therefore order them to desist from their miserable false doctrines, and the churches which they retain contrary to good faith shall be restored to the Catholic Church. The teachings, indeed, of those persons who have approved the Apostolic faith without any change⁷ of baptism shall be followed. For it is Our will that nothing shall be taught except what the uncorrupted faith and tradition of the Evangelists and Apostles have preserved, just as the imperial law⁸ of Our Fathers, Constantine, Constantius, and Valentinian, have decreed.

1. But very many persons who have been expelled from the churches go about, nevertheless, with secret madness, frequenting unlawfully the places of great houses or estates. Such estates shall be included in the fiscal confiscation if they should provide secret places for the sinful doctrine. Moreover, Our sanction shall not derogate anything from the law⁹ which was previously established in a regulation that was given to Nitentius.¹⁰ But if they love their false doctrine, they shall cherish the poison of their impious doctrine to their own hurt, in domestic secrecy and alone.

Given on the sixteenth day before the kalends of November at Constantinople in the year of the fourth consulship of Gratian Augustus and the consulship of Merobaudes.—October 17, 377.¹¹

3. Emperors Arcadius, Honorius, and Theodosius Augustuses: An Edict.

We do not tolerate the devious false doctrines of rebaptism. (Etc.)

Given on the day before the ides of February at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—February 12, 405.

4. The same Augustuses to Hadrianus, Praetorian Prefect.

We provide, by the authority of this decree, that adversaries of the Catholic faith shall be extirpated. By this new constitution, therefore, We especially decree the destruction of that sect which, in order not to be called a heresy, prefers the appellation of schism. For those who are called Donatists are said to have progressed so far in wickedness that with criminal lawlessness they repeat the sacrosanct baptism, thus trampling under foot the mysteries, and they have infected with the contagion of a profane repetition men who have been cleansed once for all by the gift of divinity, in accordance with religious tradition. Thus it happened that a heresy was born from a schism. Thence, a seductive false doctrine entices overcredulous minds to the hope of a second forgiveness, for it is easy to persuade sinners that remission once granted can be granted again. But if such remission can be granted a second time in the same way, We do not understand why it should be denied a third time.¹² The aforesaid persons, indeed, pollute with the sacrilege of a second baptism slaves and men subject to their power. Wherefore, We sanction by this law that if any person should hereafter

be discovered to rebaptize, he shall be brought before the judge¹³ who presides over the province. Thus, the offenders shall be punished by the confiscation of all their property, and they shall suffer the penalty of poverty, with which they shall be afflicted forever. But if their children dissent from the depravity of the paternal association, they shall not forfeit the paternal inheritance. Likewise, if perchance they have been involved in the perversity of the paternal depravity and prefer to return to the Catholic religion, the right to acquire possession of such property shall not be denied them.

1. Furthermore, those places or landed estates which may appear henceforth to have furnished concealment to such feral sacrilege shall be added to the resources of the fisc, provided that it is disclosed that the master or mistress was perchance present or granted consent; the master or mistress, indeed, shall also be branded with a just sentence of infamy. If, however, without the knowledge of the owners, such a crime is proved to have been committed in their home, through the instrumentality of the chief tenant or the procurator, the prejudice¹⁴ of confiscation of the landed estate shall be suspended, and the authors of the crime in which they have been implicated shall be flogged with leaden whips and shall receive a sentence of exile with which they shall be punished all the rest of their lives.

2. Moreover, in order that no person may be permitted to conceal with secrecy and silence the guilty knowledge of a sinful shame perpetrated within domestic walls, if perchance any slaves should be forced to rebaptism, they shall have the right to take refuge in a Catholic church, so that they shall be defended by its protection against the authors of this crime and association, by the protection of a grant of freedom. Under this condition, they shall be permitted to defend the faith which the masters have attempted to wrest from them against their will. Defenders of the Catholic dogma must not be constrained to the commission of crime by the law with which all other men are bound who are placed under the power of another, and it is especially fitting that all men, without any distinction of condition or status, shall be custodians of a celestially imparted sanctity.

3. If, indeed, any persons of the above mentioned sects have not feared to administer baptism the second time or if any persons by consenting and mingling in this association have not condemned the crime,¹⁵ they shall know that they are forever denied not only the right to make a testament,¹⁶ but also to acquire anything under title of gift or to enter into contracts, unless they should emend their conceptions and should correct the false doctrine of a perverse mind by returning to the true faith.

4. The same punishment shall no less restrain those persons also who have connived at the forbidden assemblies or ministries of the aforementioned persons. Thus, if the governors¹⁷ of the provinces, in contempt of this sanction, should suppose that their consent ought to be given, they shall know that they will be punished with a fine of twenty pounds of gold, and their office staffs shall be subject to a like condemnation. The chief decurions and defenders of

⁷ *intermutatio*, change, interchange, substitution.

⁸ Not extant.

⁹ 16, 5, n. 126, G.

¹⁰ A *reductio ad absurdum*.

¹¹ *iudex*, the judge ordinary, the governor of the province, 16, 1, n. 2.

¹² *praejudicium*.

¹³ this peculiar crime, M.

¹⁴ *testari*, with the meaning of *testamenti factio*; 16, 5, n. 153.

¹⁵ *moderatores*, the judges ordinary, n. 11.

the municipalities shall know that they will be held subject to the same fine unless they execute what We command, or if in their presence violence should be done to the Catholic Church.

Given on the day before the ides of February at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—February 12, 403.

5. The same Augustuses to Hadrianus, Praetorian Prefect.

In order that the polluted sects of the Donatists and the Montanists may not violate the divine grace by repetition of baptism, We remove by the severity of this regulation the opportunity for deception, and We decree that certain punishment shall follow such men and that if any person should commit a crime against the Catholic religion by a perverse dogma, he shall experience the avenging judgment of the law. We command, therefore, that if any person hereafter should be found to rebaptize, he shall be brought before the judge¹¹ who administers the province, so that he shall be punished by the confiscation of all his property and shall pay the penalty of poverty. (Etc.)

Given on the day before the ides of February at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—February 12, 403.

6.¹² Emperors Honorius and Theodosius Augustuses to Anthemius, Praetorian Prefect.

No person shall resort to the crime of rebaptizing, nor shall he endeavor to pollute with the filth of profaned religions and the sordidness of heretics those persons who have been initiated in the rites of the orthodox. Although We trust that from fear of a most severe threat no person whatever has committed such a crime from the time that it was interdicted,¹³ nevertheless, in order that men of depraved minds may abstain from unlawful acts even under duress, it is Our will that the regulation shall be renewed that if after the time that the law was issued any person should be discovered to have rebaptized anyone who had been initiated into the mysteries of the Catholic sect, he shall suffer the penalty of the former statute,¹⁴ along with the person rebaptized, because he has committed a crime that must be expiated,¹⁵ provided, however, that the person so persuaded is capable of crime by reason of his age.

1. Furthermore, We do not permit to go unavenged that transgression which was disregarded by the Emperors in former times and is practiced by accursed men in violation of the sacred law, and especially by those deserters and fugitives from the company of the Novatians who strive to be considered the authors rather than the more powerful persons of the aforesaid sect,¹⁶ whose name is derived from the crime, inasmuch as they wish to be called Protopaschites. But if the Novatians should suppose that the day of Easter, noteworthy and commemorated through the ages, ought to be celebrated on another day than that observed by the bishops⁴ of the orthodox, deportation as well as proscription shall pursue the authors of such assemblies. Against such persons an even more severe punishment ought to have been promulgated, since in this crime they even surpass the insanity of the heretics by observing the festival of Easter at another time than that of the orthodox,

¹¹ CJ 1, 6, 2.

¹² The reference is uncertain.

¹³ *piaculare crimen*, a piaculare crime. Delete: because . . . crime, M.

¹⁴ Or: considered the authors of the aforesaid sect rather than as more powerful persons. The translation and meaning are conjectural.

and thus they venerate almost another Son of God than the one whom We worship.

Given on the twelfth day before the kalends of April at Constantinople in the year of the consulship of the Most Noble Lucius.—March 21, 413.

7. The same Augustuses to Anthemius, Praetorian Prefect.

We order that the nefarious assemblies and the funereal conventicles of the Eunomians shall be entirely prevented. If any persons have usurped the title of bishops or clerics or ministers and preside over such assemblies, or if there should be any persons in whose homes or fields the unlawful conventicles of the Eunomians are held, unless the owners are defended in the aforesaid crime by ignorance, when they have been apprehended in such wickedness, they shall incur the sentence of proscription and shall be punished with the forfeiture of their goods. Those persons, indeed, who are discovered in their monstrous madness to rebaptize those who have been imbued with the faith, as has been said, together with those who are rebaptized, if the latter are of that age at which they can be held accountable for criminal acts. . . .

Given on the fourth day before the kalends of April in the year of the consulship of the Most Noble Lucius.—March 20, 413.

TITLE 7: APOSTATES¹ (DE APOSTATIS)

1. Emperors Gratian, Valentinian, and Theodosius Augustuses to Eutropius, Praetorian Prefect.

Those Christians who have become pagans shall be deprived of the power and right to make testaments,² and every testament of such decedent, if there is a testament, shall be rescinded by the annulment of its foundation.³

Given on the sixth day before the nones of May at Constantinople in the year of the consulship of Syagrius and Eucherius.—May 2, 381.

2. The same Augustuses to Postumianus, Praetorian Prefect.

If Christians and those confirmed in the faith⁴ have turned to pagan rites and cults, We deny them all power to make a testament in favor of any person whatsoever, so that they shall be outside the Roman law. 1. But if any persons are Christians and catechumens only and should neglect the venerable religion and go over to altars and temples, and if they have children or brothers german, that is, their own heirs⁵ or statutory ones, such Christians shall be deprived of the right to make a testament according to their own discretion in favor of any other persons whatsoever. 2. The same general rule shall be observed with respect to their persons in taking property under a will, so that they may not vindicate for themselves any rights at all in taking inheritances under testaments, except for their own⁶ successions and statutory ones which could come to them from the goods of their parents or brothers german, even by the disposition of a last will duly executed, if the occasion should arise. They must unquestionably be excluded from all power not only to make testaments but also to enjoy them under any right of acquiring an inheritance.

Given on the thirteenth day before the kalends of June at Constantinople in the year of the second consulship of Merobaudes and the consulship of Saturninus.—May 20, 383.

¹ Brev. 16, 2; CJ 1, 7. Cf. 16, 5, n. 85.

² 16, 6, n. 14.

³ *submota conditione*.

⁴ *Christiani ac fideles*.

⁵ *suae successiones*; inheritances that come to *sui heredes*, *sui heredes*.

3.^a The same Augustuses to Hypatius, Praetorian Prefect.

By denying them the liberty to make testaments,² We avenge the criminal act of Christians who turn to altars and temples.⁷ The disgraceful acts of those persons who have disdained the dignity of the Christian religion and name and have polluted themselves with Jewish contagions shall be punished also. But those who at any time prefer to frequent the nefarious retreats and the wicked seclusion of the Manichaeans shall be pursued constantly and perpetually by that penalty which even Our progenitor Valentinian, of sainted authority, has prescribed⁸ and which Our decrees have no less frequently commanded. The authors, moreover, of this persuasion, who have deflected unstable minds to their own society, shall incur the same penalty as those guilty of such a false doctrine.⁹ Furthermore, We decree that even heavier penalties, according to the discretion of the judges¹⁰ and the nature of the crime committed, shall in general be extraordinarily imposed upon the nefarious artificers of this crime.

1. But in order that the dead may not be harassed by the perpetual outrage of criminal accusation or that questions of inheritance which have been extinguished through various lapses of many years may not be continually agitated into revived conflicts, We prescribe a time limitation for such inquisitions. Thus if any person¹¹ should accuse the decedent of having violated and deserted the Christian religion and should contend that the decedent went over to the sacrileges of temples, to the Jewish rites, or to the infamy of the Manichaeans, and for this reason should affirm that the decedent was disqualified for making a testament, the accuser shall bring the suit to which he is entitled, and he shall obtain the institution of a future trial of this kind within an uninterrupted period of five years, as has been legally established for actions in cases of inofficiousity,¹² provided that he shall show that he testified under public attestation and shall prove his charge, that during the lifetime of the person who is to be accused of apostasy, the accuser reprehended such disgrace and wickedness. For if any person through his silence is proved to have given his assent to the person who violated the Supernal Name, and thus to have acquiesced in such crimes through perfidy, he shall not thereafter bring an accusation of apostasy as though he were ignorant of the crimes.¹³

Given on the twelfth day before the kalends of June at Padua in the year of the second consulship of Merobaudes and the consulship of Saturninus.—May 21, 383.

4.¹⁴ Emperors Valentinian, Theodosius, and Arcadius Augustuses to Flavianus, Praetorian Prefect.

If any persons should betray the holy faith and should profane holy baptism, they shall be segregated from the community of all men, shall be disqualified from giving

testimony,¹⁵ and, as We have previously ordained, they shall not have testamentary capacity;¹⁶ they shall inherit from no person, and by no person shall they be designated as heirs. We should also have ordered them to be expelled and removed to a distance if it had not appeared to be a greater punishment to dwell among men and to lack the approval of men. 1. But never shall they return to their former status; the disgracefulness of their conduct shall not be expiated by penitence nor concealed by the shadow of any carefully devised defense or protection, since fiction and fabrication cannot protect those persons who have polluted the faith which they had vowed to God, who have betrayed the divine mystery and have gone over to profane doctrines. Help is extended to those persons who have slipped and to those who go astray, but those who are lost, that is, those who profane holy baptism, shall not be aided by any expiation through penitence, which customarily avails in other crimes.

Given on the fifth day before the ides of May at Concordia in the year of the consulship of Tatianus and Symmachus.—May 11 (June 9), 391.

5. The same Augustuses to Flavianus, Praetorian Prefect.

If any splendor of rank has been conferred upon or is inborn in those persons who have departed from the faith and are blinded in mind, who have deserted the cult and worship of the sacrosanct religion and have given themselves over to sacrifices, they shall forfeit such rank, so that, removed from their position and status, they shall be branded with perpetual infamy and shall not be numbered even among the lowest dregs of the ignoble crowd. For what can they have in common with men if with nefarious and feral minds they scorn the grace of communion and withdraw from mankind?

Given on the fifth day before the ides of May at Concordia in the year of the consulship of Tatianus and Symmachus.—May 11 (June 9), 391.

6. Emperors Arcadius and Honorius Augustuses to Caesarius, Praetorian Prefect.

If any persons have defiled themselves with the impious superstition of idolatry when they were Christians, they shall incur the penalty of not having the power to make a testament for the benefit of extraneous persons, but the aforesaid offenders shall have as heirs a specific succession of their family, namely, father and mother, brother and sister, son and daughter, grandson and granddaughter; and no such person shall vindicate to himself the power to proceed farther.

Given on the tenth day before the kalends of April at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—March 23, 396.

7.¹⁷ Emperors Theodosius and Valentinian Augustuses to Bassus, Praetorian Prefect.

(After other matters.) The voice of unremitting accusation shall assail the sacrilegious name of each and every apostate, and the investigation of such a crime shall not be prevented by any time limitations. 1. Although previous interdicts suffice for such persons, We repeat, nevertheless, the well known provision that after they have deviated from the faith, they shall have no power to make a testa-

⁶ Brev. 16, 2, 1; CJ 1, 7, 2.

⁷ Of the pagans.

⁸ 16, 5, 3.

⁹ *rei erroris huiuscemodi*, those guilty of believing such a false doctrine.

¹⁰ *judices*, judges ordinary, governors of provinces, 16, 1, n. 2.

¹¹ An heir who would obtain all or part of the estate.

¹² The plaintiff attacks the will on the ground that it is inofficious. 2, 19, 5.

¹³ The text is corrupt. The translation follows M.'s reconstruction. G. suggests: provided that unless he should prove that the person who is to be accused of apostasy was a participant in such disgrace and wickedness during his lifetime, unless the accuser should so testify under public attestation and should prove his charge, he shall not.

¹⁴ 11, 39, 11; CJ 1, 7, 3.

¹⁵ *alieni testimoniiis*.

¹⁶ *testamenti factio*, the right to make wills or to receive inheritances under wills, 16, 6, n. 14.

¹⁷ CJ 1, 7, 4.

ment or gift, nor shall they be permitted to defraud the law by the pretense of a sale, and on intestacy all their property shall be bestowed on near kinsmen, preferably on those who are adherents of Christianity. 2. It is Our will, moreover, that the right of action against such sacrilege shall be perpetuated to such an extent that to all persons who come to an inheritance on intestacy We shall not deny the unrestricted right of due accusation, even after the death of the sinner, nor shall We allow the action to be obstructed if it is said that nothing was adduced in attestation¹⁸ during the lifetime of the profane person.

3. But in order that the aforesaid crime may not be interpreted too broadly through the error of uncertainty, by Our present divine response¹⁹ We pursue those persons who have made sacrifices or who have commanded them to be made, after they had assumed the name of Christianity. The proved perfidy of such persons, even after death, shall be punished as follows: their gifts and testaments shall be rescinded, and their inheritances shall be obtained by those heirs upon whom this right is conferred by statutory succession.

Given on the seventh day before the ides of April at Ravenna in the year of the twelfth consulship of Theodosius Augustus and the second consulship of Valentinian Augustus.—April 7, 426.

TITLE 8: JEWS, CAELICOLISTS, AND SAMARITANS¹ (DE JUDAEIS, CAELICOLIS, ET SAMARITANIS)

1.² Emperor Constantine Augustus to Evagrius.³

It is Our will that Jews and their elders and patriarchs shall be informed that if, after the issuance of this law, any of them should dare to attempt to assail with stones or with any other kind of madness—a thing which We have learned is now being done—any person who has fled their feral sect and has resorted to the worship of God,⁴ such assailant shall be immediately delivered to the flames and burned, with all his accomplices.

1. Moreover, if any person from the people should betake himself to their nefarious sect and should join their assemblies, he shall sustain with them the deserved punishments.

Given on the fifteenth day before the kalends of November at Murgillum⁵ in the year of the fourth consulship of Constantine Augustus and Licinius.—October 18 (19), 315; August 13, 339.

2. The same Augustus to Ablavius, Praetorian Prefect.

If any persons with complete devotion should dedicate themselves to the synagogues of the Jews⁶ as patriarchs and priests⁷ and should live in the aforementioned sect and preside over the administration of their law, they shall continue to be exempt from all compulsory public services that are incumbent on persons, as well as those that are due to the municipalities.⁸ Likewise, such persons who are now perchance decurions shall not be assigned to any duties as official escorts, since such men shall not be compelled for any reason to depart from those places in which they

are. Moreover, such persons who are not decurions shall enjoy perpetual exemption from the decurionate.

Given on the third day before the kalends of December at Constantinople in the year of the consulship of Gallicanus and Symmachus.⁹—November 29, 330.

3. The same Augustus to the Decurions of Köln.

By a general law We permit all municipal senates to nominate Jews to the municipal council. But in order that something of the former rule may be left them as a solace, We extend to two or three persons from each group the perpetual privilege of not being disturbed by any nominations.

Given on the third day before the ides of December in the year of the second consulship of Crispus and Constantine Caesars.—December 11, 321.

4. The same Augustus to the Priests,¹⁰ Rulers of the Synagogues, Fathers of the Synagogues, and all others who serve in the said place.

We command that priests,¹⁰ rulers of the synagogues, fathers of the synagogues, and all others who serve the synagogues shall be free from every compulsory public service of a corporal nature.

Given on the kalends of December at Constantinople in the year of the consulship of Bassus and Ablavius.—December 1, 331; 330.

5.¹¹ The same Augustus to Felix, Praetorian Prefect.

(After other matters.) Jews shall not be permitted to disturb any man who has been converted from Judaism to Christianity or to assail him with any outrage. Such contumely shall be punished according to the nature of the act which has been committed. (Etc.)

Given on the eleventh day before the kalends of November at Constantinople.—October 22 (21), (335). Posted on the eighth day before the ides of May at Carthage in the year of the consulship of Nepotianus and Facundus.—May 8, 336.¹²

[INTERPRETATION:] This law does not need any interpretation.

6. Emperor Constantius Augustus to Evagrius.

(After other matters.) In so far as pertains to the women who were formerly employed in Our imperial weaving establishment and who have been led by the Jews into the association of their turpitude, it is Our pleasure that they shall be restored to the weaving establishment. It shall be observed that Jews shall not hereafter unite Christian women to their villainy; if they should do so, however, they shall be subject to the peril of capital punishment.

Given on the ides of August in the year of the second consulship of Constantius Augustus.¹³—August 13, 339.

7.¹⁴ The same Augustus and Julian Caesar to Thalassius, Praetorian Prefect.

In accordance with the venerable law which has been established, We command that if any person should¹⁵ be

⁹ Bassus, ms. E, making the date 317, since this constitution comes between two others, in 315 and 321.

¹⁰ *Hieris*, a Greek word. ¹¹ 16, 9, 1; Brev. 16, 3, 1; Sirm. 4.

¹² It is uncertain whether the year of the consulship (335) should be referred to the date of the issuance of this law or to the date when it was posted.

¹³ and the consulship of Constans, 16, 9, 2.

¹⁴ Brev. 16, 3, 2; CJ 1, 7, 1; Amm. Marc. 14, 7, 9; 14, 1, 10; 22, 9, 16.

¹⁵ If any person should spit upon the venerable law, should be converted . . . and should join their sacrilegious gatherings, We command when, M.

¹⁸ No charges were formally brought in court.

¹⁹ *oraculum*, 1, 15, 8, nn. 24-25.

¹ Brev. 16, 3; CJ 1, 9, Cf. 16, 5, n. 85, and see the Glossary for technical terms.

² CJ 1, 9, 3.

³ Praetorian Prefect in CJ and in 14, 8, 1.

⁴ Christianity.

⁵ The fourteenth day before the kalends at Milan in Vatic. 273.

⁶ 16, 8, 13. ⁷ *presbyteri*. ⁸ *personalia quam civilia munera*.

converted from Christianity to Judaism and should join their sacrilegious gatherings, when the accusation has been proved, his property shall be vindicated to the ownership of the fisc.

Given on the fifth day before the nones of July at Milan in the year of the ninth consulship of Constantius Augustus and the second consulship of Julian Caesar.—July 3, 357; 352; 353.¹⁶

[INTERPRETATION:] This law does not need any interpretation.

8. Emperors Theodosius, Arcadius, and Honorius Augustuses to Tatianus, Praetorian Prefect.

The complaints of the Jews allege that certain persons whom they themselves, by their own decision and will, have cast out have been restored to their sect by the authority of the judges,¹⁷ although the primates of their law protested. We order the aforesaid outrage to be abolished altogether. Nor shall a zealous group of persons in the aforesaid superstition¹⁸ obtain the power of undesired¹⁹ reconciliation, either through the power of the judges¹⁷ or by surreptitiously obtaining a rescript against the wishes of their primates who, by the decision of their Most Noble and Illustrious patriarchs, manifestly have the right to pronounce sentence concerning their own religion.

Given on the fifteenth day before the kalends of May at Constantinople in the year of the second consulship of Arcadius Augustus and the consulship of Rufinus.—April 17, 392.

9. The same Augustuses to Addeus, Count and Master of both branches of the Military Service in the Orient.

It is sufficiently established that the sect of the Jews is forbidden by no law. Hence We are gravely disturbed that their assemblies have been forbidden in certain places. Your Sublime Magnitude will, therefore, after receiving this order, restrain with proper severity the excesses of those persons who, in the name of the Christian religion, presume to commit certain unlawful acts and attempt to destroy and to despoil the synagogues.

Given on the third day before the kalends of October at Constantinople in the year of the third consulship of Theodosius Augustus and the consulship of Abundantius.—September 29, 393.

10.²⁰ Emperors Arcadius and Honorius Augustuses to the Jews.

No person outside the religion of the Jews shall establish prices for the Jews when they offer their wares for sale. For it is just to entrust to each man his own. Therefore, the governors²¹ of the provinces shall allow no person to be an investigator or a regulator²² for you. But if any person except yourselves and your leaders should dare to assume for himself the aforesaid responsibility, the governors shall hasten to restrain him by punishment as one seeking alien rights.

Given on the third day before the kalends of March at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—February 28, 396.

¹⁶ Musonianus was Praetorian Prefect in 357. Thalassius died while Praetorian Prefect in 353; Amm. Marcell. 14, 7, 9; 14, 1, 10. Perhaps this law should be dated in 352, in the year of the fifth consulship of Constantius Augustus and the consulship of Constantius Caesar. Milan as the place of issue can be reconciled with 352 but not with 357, M.

¹⁷ *judices*, judges ordinary, governors of provinces, 16, 1, n. 2.

¹⁸ Nor shall a group of persons, when excluded from the aforesaid superstition, M.

¹⁹ undesired, M.

²¹ *rectores*.

²⁰ CJ 1, 9, 9.

²² Of the prices of your wares.

11. The same Augustuses to Claudianus, Count of the Orient.

If any person should dare in public to make an insulting mention of the Illustrious patriarchs, he shall be subject to a sentence of punishment.

Given on the eighth day before the kalends of May at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—April 24, 396.

12. The same Augustuses to Anatolius, Praetorian Prefect of Illyricum.

Your Exalted Authority shall direct that the governors²³ shall be notified, so that they shall know on receipt of this notice that all insults of persons attacking the Jews shall be averted and that their synagogues shall remain in their accustomed quietude.

Given on the fifteenth day before the kalends of July at Constantinople in the year of the consulship of Caesarius and Atticus.—June 17, 397.

13. The same Augustuses to Caesarius, Praetorian Prefect.

Jews shall be bound by their own ritual. Meanwhile, in preserving their privileges, We shall imitate the ancients by whose sanctions it was determined that those privileges which are conferred upon the first clerics of the venerable Christian religion shall continue, by the consent of Our Imperial Divinity, for those persons who are subject to the power of the Illustrious Patriarchs, for the rulers of the synagogues, the patriarchs,²⁴ and the priests, and for all the rest who are occupied in the ceremonial of that religion. The foregoing, indeed, was decreed by the divine imperial authority of the sainted Emperors Constantine²⁵ and Constantius,²⁶ Valentinian and Valens.²⁷ Such Jews shall therefore be exempt from the compulsory public services of decurions and shall obey their own laws.

Given on the kalends of July in the year of the consulship of Caesarius and Atticus.—July 1, 397.

14. The same Augustuses to Messala, Praetorian Prefect.

It is characteristic of an unworthy superstition that the rulers of the synagogues or the priests of the Jews or those whom they themselves call apostles, who are dispatched by the patriarch at a certain time to collect gold and silver, should bring back to the patriarch the sum which has been exacted and collected from each of the synagogues. Wherefore, everything that We are confident has been collected, taking into consideration the period of time, shall be faithfully dispatched to Our treasury. For the future, moreover, We decree that nothing shall be sent to the aforesaid patriarch. The people of the Jews shall know, therefore, that We have abolished the practice of such depredation. But if any persons should be sent on such a mission of collection by that despoiler of the Jews, they shall be brought before the judges,¹⁷ in order that a sentence may be pronounced against them as violators of Our laws.

Given on the third day before the ides of April at Milan in the year of the consulship of the Most Noble Theodorus.—April 11, 399.

15. The same Augustuses²⁸ to Eutychianus, Praetorian Prefect.

We decree that all the privileges which Our father of sainted memory and previous Emperors have conferred

²³ Either delete patriarchs or substitute fathers therefor, M.

²⁴ 16, 8, 2 and 4.

²⁵ Not extant.

²⁶ And Theodosius Augustus.

upon the Respectable patriarchs or upon those persons whom the patriarchs have placed in authority over others shall retain their full force.

Given on the third day before the nones of February at Constantinople in the year of the sixth consulship of Honorius Augustus and the consulship of Aristaeus.—February 3, 404.

16. The same Augustuses to Romulianus, Praetorian Prefect.²⁷

We decree that the Jews and Samaritans who flatter themselves with the privilege of members of the secret service shall be deprived of all employment in the imperial service.

Given on the tenth day before the kalends of May at Rome in the year of the sixth consulship of Honorius Augustus and the consulship of Aristaeus.—April 22, 404.

17. The same Augustuses to Hadrianus, Praetorian Prefect.

We had formerly ordered²⁸ that what was customarily contributed by the Jews of these regions²⁹ to the patriarchs should not be contributed. Now We revoke the first order in accordance with the statutory privileges granted by the early Emperors, and it is Our will that all men shall know that the privilege of sending this contribution is hereby conceded to the Jews by Our Clemency.

Given on the eighth day before the kalends of August at Rome in the year of the sixth consulship of Honorius Augustus and the consulship of Aristaeus.—July 25, 404.

18.³⁰ Emperors Honorius and Theodosius Augustuses to Anthemius, Praetorian Prefect.

The governors³¹ of the provinces shall prohibit the Jews, in a certain ceremony of their festival Haman in commemoration of some former punishment, from setting fire to and burning a simulated appearance of the holy cross,³² in contempt of the Christian faith and with sacrilegious mind, lest they associate the sign of Our faith with their places.³³ They shall maintain their own rites without contempt of the Christian law, and they shall unquestionably lose all privileges that have been permitted them heretofore unless they refrain from unlawful acts.

Given on the fourth day before the kalends of June at Constantinople in the year of the consulship of Bassus and Philippus.—May 29, 408.

19.³⁴ The same Augustuses to Jovius, Praetorian Prefect.

A new crime of superstition in some way shall vindicate to itself the name of Caelicolists,³⁴ hitherto unheard of. Unless such persons return to the worship of God and the veneration of Christianity within the limits of one year, they shall know that they also will be held subject to those laws by which We have commanded heretics to be restrained. For it is certain that if any doctrine differs from the faith of the Christians, it is contrary to Christian law. Certain persons, indeed, unmindful of their own lives³⁵

and of Our law, dare to misuse this faith to such an extent that they compel certain Christians to assume the detestable and offensive name of Jews. Although those persons who have committed this crime have rightly been condemned by the laws³⁶ of previous Emperors, nevertheless, We are not displeased to admonish them frequently, in order that those persons who have been instructed in the Christian mysteries may not be forced to adopt a perversity that is Jewish and alien to the Roman Empire, after they have adopted Christianity. If any persons should suppose that they should attempt such a course, We direct that the authors of the deed, with their accomplices, shall be subject to the penalty provided by previous laws,³⁷ since indeed it is more grievous than death and more cruel than murder³⁸ if any person of the Christian faith should be polluted by Jewish disbelief. We order, therefore, that no person who is harmful to the churches . . . or to lead away the . . . of anyone,³⁹ with Our regulation that is faithful and devoted to God. We sanction, under this limitation, of course, that if any person should attempt to contravene this law, he shall know that he will be held guilty of the crime of high treason.

Given on the kalends of April at Ravenna in the year of the eighth consulship of Honorius Augustus and the third consulship of Theodosius Augustus.—April 1, 409.

20. The same Augustuses to Johannes, Praetorian Prefect.

If it should appear that any places are frequented by conventicles of the Jews and are called by the name of synagogues, no one shall dare to violate or to occupy and retain such places, since all persons must retain their own property in undisturbed right, without any claim⁴⁰ of religion or worship.

1. Moreover, since indeed ancient custom and practice have preserved for the aforesaid Jewish people the consecrated day of the Sabbath, We also decree that it shall be forbidden that any man of the aforesaid faith should be constrained by any summons on that day, under the pretext of public or private business, since all the remaining time appears sufficient to satisfy the public laws, and since it is most worthy of the moderation of Our time that the privileges granted should not be violated, although sufficient provision appears to have been made with reference to the aforesaid matter by general constitutions⁴¹ of earlier Emperors.

Given on the seventh day before the kalends of August at Ravenna in the year of the ninth consulship of Honorius Augustus and the fifth consulship of Theodosius Augustus.—July 26, 412.

21.⁴² The same Augustuses to Philippus, Praetorian Prefect of Illyricum.

No person shall be trampled upon when he is innocent, on the ground that he is a Jew, nor shall any religion cause any person to be exposed to contumely. Their synagogues and habitations shall not be burned indiscriminately, nor shall they be injured wrongfully without any reason, since, moreover, even if any person should be implicated in

²⁷ 9, 38, 10.

²⁹ In the western part of the Roman Empire. The law was issued at Rome.

³⁰ CJ 1, 9, 11.

³¹ The gallows of Haman, at the feast of Purim; compare the Book of Esther.

³² *jocis*, their jokes, pranks. M.

³³ 16, 5, 43; CJ 1, 9, 12; I. 12, 2.

³⁴ Or: The name of Caelicolists . . . shall vindicate to itself a new crime; that is, the name itself shall be a crime.

³⁵ persons of worthless lives and unmindful of Our law, M.

³⁶ 16, 8, 1; 16, 7, 2-3.

³⁷ Vigorous rhetoric; compare Eccl. 7, 26.

³⁸ No person, either guilty or innocent, who flees to a church for sanctuary, shall be dragged therefrom and absolutely no Jew shall be allowed to lead away the slave of any person therefrom, M.

³⁹ *intentio*, claim, charge, accusation, striving, argument, reference.

⁴⁰ CJ 1, 9, 14.

crimes, nevertheless, the vigor of Our courts and the protection of public law appear to have been established in Our midst for the purpose that no person should have the power to seek his own revenge.

But just as it is Our will that the foregoing provision shall be made for the persons of the Jews, so We decree that the Jews also shall be admonished that they perchance shall not become insolent and, elated by their own security, commit any rash act in disrespect of the Christian religion.

Given on the eighth day before the ides of August at Constantinople in the year of the ninth consulship of Honorius Augustus and the fifth consulship of Theodosius Augustus.—August 6, 412; 418.⁴¹ 420.

22.⁴² The same Augustuses to Aurelianus, Praetorian Prefect for the second time.

Since Gamaliel⁴³ has supposed that he could do wrong with impunity, all the more because he has been elevated to the pinnacle of honors, Your Illustrious Authority shall know that Our Serenity has dispatched instructions to the Illustrious master of offices that Gamaliel shall be deprived of the imperial letters patent conferring on him the rank of honorary prefect, so that he shall remain with that honor which he had before he was appointed to the prefecture. Hereafter he shall cause no synagogues to be founded, and if there are any synagogues in desert places which can be destroyed without sedition, he shall have it done. He shall have no power to judge between Christians; and if a dispute should arise between them and the Jews, it shall be decided by the governor²¹ of the province. If he himself or any other of the Jews should attempt to pollute a Christian or a man of any sect, freeborn or slave, with the Jewish stigma,⁴⁴ he shall be subjected to the severity of the laws. Moreover, if he retains in his power any slaves of the Christian faith, according to the law²⁵ of Constantine, they shall be delivered to the Church.

Given on the thirteenth day before the kalends of November at Constantinople in the year of the tenth consulship of Honorius Augustus and the sixth consulship of Theodosius Augustus.—October 20, 415.

23. The same Augustuses to Annas, Didascalus,⁴⁵ and the Elders of the Jews.

It has been established both by ancient sanctions⁴⁶ and by Our own²⁵ that when We learn that men bound to the Jewish religion wish to become associated in the fellowship of the Church⁴⁷ for the purpose of evading prosecution for crimes or on account of different necessities,⁴⁸ such acts are practiced not through devotion to the faith, but by the deception of hypocrites. Hence, judges¹⁷ of the provinces in which such crimes are said to have been committed shall know that obedient service must be granted to Our statutes in such a way that they shall allow such persons⁴⁹ to return to their own law, if they should perceive that any of them

⁴¹ In the year of the twelfth consulship of Honorius Augustus and the eighth consulship of Theodosius Augustus (418), 6, 23, 1; 16, 2, 45, M.

⁴² CJ 1, 9, 15.

⁴³ Jewish patriarch who became honorary praetorian prefect.

⁴⁴ *Judaica nota*, the Jewish stigma: circumcision.

⁴⁵ Or: *Annas didascalus*, Annas, the teacher, the rabbi, 16, 9, n. 7.

⁴⁶ 9, 45, 2.

⁴⁷ Or: men of the Jewish religion who are involved in obligations. men bound to the fellowship of the Jewish religion have wished to become associated with the Church, M.

⁴⁸ *necessitates*, necessities, compulsory public services.

⁴⁹ only such persons, M.

do not persist in the constancy of religious confession in the aforesaid worship or have not been imbued with the faith and the mystery of venerable baptism; because more suitable provision is thus made for Christianity.

Given on the eighth day before the kalends of October at Ravenna in the year of the seventh consulship of Theodosius Augustus and the consulship of Palladius.—September 24, 416.

24. The same Augustuses to Palladius, Praetorian Prefect.

Those persons who live in the Jewish superstition shall hereafter be barred from seeking entrance to the imperial service. To those persons who have undertaken the oaths of enlistment in the imperial service as members of the secret service or as palatines We grant the right to complete such service and to end it within the statutory periods, ignoring the fact rather than favoring it. But the regulation which We wish to be relaxed for a few at present shall not be permitted in the future.

We decree, however, that those persons who are bound to the perversity of this race and who are proved to have sought armed imperial service shall unquestionably be released from their cincture of office, and they shall not be protected by the patronage of their earlier merits.

Indeed, We do not prohibit Jews instructed in liberal studies from acting as advocates, and We permit them to enjoy the honor of the compulsory public services of decurions, which they obtain through the prerogative of birth and splendor of family.

Since the aforesaid privileges ought to suffice them, they must not consider the prohibition of imperial service as a mark of infamy.

Given on the sixth day before the ides of March at Ravenna in the year of the twelfth consulship of Honorius Augustus and the eighth consulship of Theodosius Augustus.—March 10, 418.

25. The same Augustuses to Asclepiodotus, Praetorian Prefect.

It is Our pleasure that in the future no synagogue at all of the Jews shall be indiscriminately taken away from them or consumed by fire, and that if, after the issuance of this law,⁵⁰ there are any synagogues which by recent attempt have been thus seized, vindicated to the churches, or at any rate consecrated to the venerable mysteries, the Jews shall be granted as compensation therefor, places in which they can construct synagogues commensurate, of course, with those that were taken away. 1. If any offertories have been removed, they shall be restored to the aforesaid Jews if they have not yet been dedicated to the sacred mysteries, but if venerable consecration does not permit their return, a price equal to the value thereof shall be paid as compensation for them. 2. In the future no synagogues shall be constructed, and the old ones shall remain in their present condition.

Given on the fifteenth day before the kalends of March at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—February 15, 423.

26.⁵¹ The same Augustuses to Asclepiodotus, Praetorian Prefect.

Known and published to all men are Our decrees and those of Our ancestors, by means of which We have suppressed the spirit and audacity of the abominable pagans, of the Jews also, and of the heretics. Nevertheless, We gladly embrace the opportunity to repeat the law, and it is

⁵⁰ the law of Our grandfather, 16, 8, 9, M.

⁵¹ CJ 1, 9, 16.

No Jew Shall Have a Christian Slave

Our will that the Jews shall know that, in response to their pitiable supplications, We sanction only that those persons who commit many rash acts under the pretext of venerable Christianity shall refrain from injuring and persecuting them, and that now and henceforth no person shall seize or burn their synagogues. Nevertheless, the Jews themselves shall be punished by proscription of their goods and by exile for life if it should be established that they have circumcised a man of Our faith or have ordered him to be circumcised. (Etc.)

Given on the fifth day before the ides of April at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—April 9, 423.

27. The same Augustuses to Asclepiodotus, Praetorian Prefect.

Our recent decrees²² about Jews and their synagogues shall remain in full force, namely, that they shall not be permitted to construct new synagogues and that they shall not fear that the old ones will be taken from them. But they shall know²³ that all other prohibitions must be observed in the future, as the general rule of the constitution²⁴ recently issued declares. (Etc.)

Given on the sixth day before the ides of June at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—June 5, 423.

28. Emperors Theodosius and Valentinian Augustuses to Bassus, Praetorian Prefect.

If a son, daughter, or grandchild, one or more, of a Jew or of a Samaritan, with better counsel should turn to the light of the Christian religion from the darkness of his own superstition, their parents, that is, father, mother, grandfather, or grandmother, shall not be permitted to disinherit them or to pass over them in silence in their testaments or to leave them less than they could obtain if they were called to the inheritance on intestacy. But if such a contingency should occur, We order that the will shall be rescinded and that the aforesaid persons shall succeed as though on intestacy. The grants of freedom made in the said testament, however, if within the statutory number,²⁵ shall retain their validity. If it can be clearly proved that such children or grandchildren have committed a very grave crime against their mother, father, grandfather, or grandmother, the statutory punishment against the offenders shall remain valid if accusation has been legally made in the meantime. Nevertheless, under such a statement, which shall be supported by provable and manifest documents, parents shall leave them only the Falcidian fourth of the due inheritance, so that they may appear to have gained this at least in honor of the chosen religion. As We have said, the punishment for any crimes shall remain if they should be proved. (Etc.)

Given on the sixth day before the ides of April at Ravenna in the year of the twelfth consulship of Theodosius Augustus and the second consulship of Valentinian Augustus.—April 8 (7), 426.

29.²⁶ The same Augustuses to Johannes, Count of the Sacred Imperial Largesses.

The primates of the Jews, who are appointed in the sanhedrins of the two Palestines or who live in other prov-

inces, shall be compelled to pay what they have received as tribute after the extinction of the patriarchate. But in the future, annual tribute shall be collected at the peril of the primates from all synagogues, under compulsion of the palatines and in the amount that the patriarchs formerly demanded in the name of crown gold. By skillful inquiry you shall ascertain what that amount is, and whatever was accustomed to be contributed to the patriarchs in the western part of the Empire shall now be paid to Our largesses.²⁷

Given on the third day before the kalends of June at Constantinople in the year of the consulship of Florentius and Dionysius.—May 30, 429.

TITLE 9: NO JEW SHALL HAVE A CHRISTIAN SLAVE¹ (NE CHRISTIANUM MANCIPIUM JUDAEUS HABEAT)

1.² Emperor Constantine Augustus to Felix, Praetorian Prefect.

If any Jew should purchase and circumcise a Christian slave or a slave of any other sect whatever, he shall not retain in slavery such circumcised person. But the person who endured such treatment shall obtain the privilege of freedom. (Etc.)

Given on the twelfth day before the kalends of November at Constantinople.—October 21, (335). Posted on the eighth day before the ides of May at Carthage in the year of the consulship of Nepotianus and Facundus.—May 8, 336.³

INTERPRETATION: If any Jew should purchase and circumcise a Christian slave or a slave of any other sect whatever, such slave shall be taken from the power of the Jew and remain free.

2.⁴ Emperor Constantius⁵ Augustus to Evagrius.⁶

If any Jew should suppose that he should purchase the slave of another sect or people, such slave shall be immediately vindicated to the fisc. If the Jew should purchase a slave and circumcise him, he shall be penalized not only with the loss of the slave, but he shall also be visited with capital punishment. But if a Jew should not hesitate to purchase slaves who are adherents of the venerable faith, he shall immediately be deprived of all such slaves found in his possession, nor shall any delay be interposed in depriving him of the possession of those men who are Christians. (Etc.)

Given on the ides of August in the year of the second consulship of Constantius Augustus and the consulship of Constans Augustus.—August 13, 339.

3. Emperors Honorius and Theodosius Augustuses to Annas, Didascalus,⁷ and the Elders of the Jews.

We direct that Jewish masters without any fear of chicanery may have Christian slaves, on the sole condition that they permit such slaves to retain their own religion.⁸ Therefore, judges⁹ of the provinces shall carefully inspect the trustworthiness of the information that is lodged before

²⁷ 16, 8, 14 and 17.

¹ Brev. 16, 4; CJ 1, 10. Cf. 16, 5, n. 85.

² Brev. 16, 4, 1; CJ 1, 10, 1; Sirm. 4.

³ 16, 8, 5, n. 12.

⁴ CJ 1, 10, 1.

⁵ Constantine in the manuscripts and in CJ.

⁶ His official position is unknown.

⁷ Or: *Annas didascalus*, Annas, the teacher, the rabbi, 16, 8, n. 45.

⁸ M. suggests a lacuna.

⁹ *Judices*, judges ordinary, governors of provinces, 16, 1, n. 2.

²² 16, 8, 25.

²³ Or: They shall also know, M.

²⁴ 16, 8, 26.

²⁵ Apparently a reference to the Caninian Law which limited the number of slaves who could be manumitted by a testament.

²⁶ CJ 1, 9, 17.

them and shall know that they must repress the insolence of those persons who suppose that by means of timely supplications¹⁰ they may accuse the Jews. We decree that all rescripts that have been surreptitiously and fraudulently elicited or those so elicited hereafter shall be annulled. If any person should violate these regulations, he shall be punished as though guilty of sacrilege.

Given on the eighth day before the ides of November at Ravenna in the year of the tenth consulship of Honorius Augustus and the sixth consulship of Theodosius Augustus.—November 6, 415.

4.⁴ The same Augustuses to Monaxius, Praetorian Prefect.

A Jew must not purchase a Christian slave or acquire one by title of gift. If anyone should fail to observe this regulation, he shall forfeit the ownership that he wantonly obtained, and the slave himself shall be given freedom as his reward if he should suppose that he should voluntarily give information of what was done. But a Jew may possess in his own property all other slaves who are established as adherents of the true religion, even though he is himself an adherent of a nefarious superstition, if he appears to have already obtained them, or if he should hereafter acquire them under title of an inheritance or a trust fund, provided that he observes the condition that he does not unite them, either unwilling or willing, with the pollution of his own sect. Thus, if this general rule should be violated, the authors of such crime shall suffer capital punishment, as well as proscription of their property.

Given on the fourth day before the ides of April at Constantinople in the year of the eleventh consulship of Honorius Augustus and the second consulship of the Most Noble Constantius.—April 10, 417.

5. The same Augustuses to Asclepiodotus, Praetorian Prefect.

(After other matters.) No Jew shall dare to purchase Christian slaves. For We consider it abominable that very religious slaves should be defiled by the ownership of very impious purchasers. If any person should commit this offense, he shall be subject to the statutory punishment without any delay. (Etc.)

Given on the fifth day before the ides of April at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—April 9, 423.

TITLE 10: PAGANS, SACRIFICES, AND TEMPLES¹ (DE PAGANIS, SACRIFICIIS, ET TEMPLIS)

1. Emperor Constantine Augustus to Maximus.²

If it should appear that any part of Our palace or any other public work has been struck by lightning, the observance of the ancient custom shall be retained, and inquiry shall be made of the soothsayers as to the portent thereof. Written records thereof shall be very carefully collected and referred to Our Wisdom. Permission shall be granted to all other persons also to appropriate this custom to themselves, provided only that they abstain from domestic sacrifices,³ which are specifically prohibited.

1. You shall know, furthermore, that We have received

¹⁰ *tempestivae preces*, timely, well timed supplications. G. conjectures: *intempestivae preces*, untimely supplications.

¹ CJ I, II. Cf. 16. 5. n. 85.

² Prefect of the City.

³ Secret and antisocial; they might be used against the Emperor.

the official report and the interpretation thereof which was written about the striking of the amphitheater by lightning, about which you had written to Heraclianus, Tribune and Master of Offices.

Given on the sixteenth day before the kalends of January at Sofia (Serдика).—December 17, (320). Received on the eighth day before the ides of March in the year of the second consulship of Crispus and Constantine Caesars.—March 8, 321.

2. Emperor Constantius Augustus to Madalianus,⁴ Vice Praetorian Prefect.⁵

Superstition shall cease; the madness of sacrifices shall be abolished. For if any man in violation of the law⁶ of the sainted Emperor, Our father, and in violation of this command of Our Clemency, should dare to perform sacrifices, he shall suffer the infliction of a suitable punishment and the effect of an immediate sentence.

Received in the year of the consulship of Marcellinus and Probinus.—341.

3. The same⁷ Augustuses to Catullinus, Prefect of the City.

Although all superstitions must be completely eradicated, nevertheless, it is Our will that the buildings of the temples situated outside the walls shall remain untouched and uninjured. For since certain plays or spectacles of the circus or contests derive their origin from some of these temples, such structures shall not be torn down, since from them is provided the regular performance of long established amusements for the Roman people.

Given on the kalends of November in the year of the fourth consulship of Constantius Augustus and the third consulship of Constans Augustus.—November 1, 346; 342.⁸

4.⁹ The same Augustuses to Taurus, Praetorian Prefect.

It is Our pleasure that the temples shall be immediately closed in all places and in all cities, and access to them forbidden, so as to deny to all abandoned men the opportunity to commit sin. It is also Our will that all men shall abstain from sacrifices. But if perchance any man should perpetrate any such criminality, he shall be struck down with the avenging sword. We also decree that the property of a man thus executed shall be vindicated to the fisc. The governors¹⁰ of the provinces shall be similarly punished if they should neglect to avenge such crimes.

Given on the kalends of December in the year of the fourth consulship of Constantius Augustus and the third consulship of Constans Augustus.—December 1, 346; 354; 356.¹¹

5. The same Augustus¹² to Cerealis, Prefect of the City.

Nocturnal sacrifices¹³ which were permitted by the authority of Magnentius¹⁴ shall be abolished, and henceforth such nefarious license shall be destroyed. (Etc.)

Given on the ninth day before the kalends of December in the year of the sixth consulship of Constantius Augustus and the second consulship of the Caesar.—November 23, 353.

6.¹⁴ The same Augustus and Julian Caesar.

If any persons should be proved to devote their atten-

⁴ CIL 6, 1151; 8, 5348.

⁵ *agens vicem praefectorum praetorio*; usually termed vicar.

⁶ Not extant.

⁷ Emperors Constantius and Constans.

⁸ In the year of the third consulship of Constantius Augustus and the second consulship of Constans Augustus (342), since Catullinus was Prefect of the City from July 6, 342 until April 10, 344.

⁹ 11, 30, 25; CJ I, II, I.

¹⁰ *rectores*.

¹¹ See M.'s note on the date.

¹² Constantius.

¹³ Usurper in 352.

¹⁴ Edict Theod. 123.

tion to sacrifices or to worship images, We command that they shall be subjected to capital punishment.

Given on the eleventh day before the kalends of March at Milan in the year of the eighth consulship of Constantius Augustus and the consulship of Julian Caesar.—February 20, 350.

7. Emperors Gratian, Valentinian, and Theodosius Augustuses to Florus, Praetorian Prefect.

If any madman or sacrilegious person, so to speak, should immerse himself in forbidden sacrifices, by day or by night, as a consulter of uncertain events, and if he should suppose that he should employ, or should think that he should approach, a shrine or a temple for the commission of such a crime, he shall know that he will be subjected to proscription, since We give warning by Our just provision that God must be worshipped by chaste prayers and not be profaned by dire incantations.

Given on the twelfth day before the kalends of January at Constantinople in the year of the consulship of Eucherius and Syagrius.—December 21, 381.

8.¹⁸ The same Augustuses to Palladius, Duke of Osrhoene.

By the authority of the public council¹⁹ We decree that the temple¹⁷ shall continually be open that was formerly dedicated to the assemblage of throngs of people and now also is for the common use of the people, and in which images are reported to have been placed which must be measured by the value of their art rather than by their divinity; We do not permit any divine imperial response that was surreptitiously obtained to prejudice this situation. In order that this temple may be seen by the assemblages of the city and by frequent crowds, Your Experience shall preserve all celebrations of festivities, and by the authority of Our divine imperial response,¹⁸ you shall permit the temple to be open, but in such a way that the performance of sacrifices forbidden therein may not be supposed to be permitted under the pretext of such access to the temple.

Given on the day before the kalends of December at Constantinople in the year of the consulship of Antonius and Syagrius.—November 30, 382.

9.¹⁸ The same Augustuses to Cynegius, Praetorian Prefect.

No mortal shall assume the audacity of performing sacrifices, so that by the inspection of the liver and the presage of the entrails of the sacrificial victims, he may obtain the hope of a vain promise, or, what is worse, he may learn the future by an accursed consultation. The torture of a very bitter punishment shall threaten those persons who, in violation of Our prohibition, attempt to explore the truth of present or future events.

Given on the eighth day before the kalends of June at Constantinople in the year of the first consulship of Arcadius Augustus and the consulship of the Most Noble Bauto.—May 25, 385.

10. The same Augustuses¹⁹ to Albinus, Praetorian Prefect.²⁰

No person shall pollute himself with sacrificial animals;

¹⁸ Amm. Marcell. 14. 3. 3.

¹⁹ *publicum consilium*, the imperial consistory from which was issued the divine imperial response, *oraculum*, of the Emperor, 1, 15, 8, nn. 24-25.

¹⁷ Probably at Edessa, a city of Osrhoene, G.

¹⁸ CJ 1, 11, 2. Cf. n. 3.

¹⁹ Emperors Valentinian, Theodosius, and Arcadius Augustuses; CIG 4350.

²⁰ Prefect of the City, M.

no person shall slaughter an innocent victim; no person shall approach the shrines, shall wander through the temples, or revere the images formed by mortal labor, lest he become guilty by divine and human laws. Judges²¹ also shall be bound by the general rule that if any of them should be devoted to profane rites and should enter a temple for the purpose of worship anywhere, either on a journey or in the city, he shall immediately be compelled to pay fifteen pounds of gold, and his office staff shall pay a like sum with similar haste, unless they resist the judge²² and immediately report him by a public attestation. Governors with the rank of consular shall pay six pounds of gold each, their office staffs a like amount; those with the rank of corrector or of praeses shall pay four pounds each, and their apparitors, by equal lot, a like amount.

Given on the sixth day before the kalends of March at Milan in the year of the consulship of Tatianus and Symmachus.—February 24, 391.

11. The same Augustuses to Evagrius, Augustal Prefect, and Romanus, Count of Egypt.

No person shall be granted the right to perform sacrifices; no person shall go around the temples; no person shall revere the shrines. All persons shall recognize that they are excluded from profane entrance into temples by the opposition of Our law, so that if any person²³ should attempt to do anything with reference to the gods or the sacred rites, contrary to Our prohibition, he shall learn that he will not be exempted from punishment by any special grants of imperial favor. If any judge²⁴ also, during the time of his administration, should rely on the privilege of his power, and as a sacrilegious violator of the law, should enter polluted places, he shall be forced to pay into Our treasury fifteen pounds of gold, and his office staff a like sum, unless they opposed him with their combined strength.

Given on the sixteenth day before the kalends of July at Aquileia in the year of the consulship of Tatianus and Symmachus.—June 16, 391.

12. Emperors Theodosius, Arcadius, and Honorius Augustuses to Rufinus, Praetorian Prefect.

No person at all, of any class or order whatsoever of men or of dignities,²⁵ whether he occupies a position of power or has completed such honors, whether he is powerful by the lot of birth or is humble in lineage, legal status and fortune, shall sacrifice an innocent victim to senseless images in any place at all or in any city. He shall not, by more secret wickedness, venerate his lar with fire, his genius with wine, his penates with fragrant odors; he shall not burn lights to them, place incense before them, or suspend wreaths for them.

1. But if any man should dare to immolate a victim for the purpose of sacrifice, or to consult the quivering entrails, according to the example of a person guilty of high treason he shall be reported by an accusation which is permitted to all persons, and he shall receive the appropriate sentence, even though he has inquired nothing contrary to, or with reference to, the welfare of the Emperors. For it is sufficient to constitute an enormous crime that any person should wish to break down the very laws of nature,²⁶

²¹ *judices*, judges ordinary, governors of provinces, 16, 1, n. 2.

²² Seeck suspects a lacuna.

²³ class of men or order of dignities, M.

²⁴ 16, 5, n. 152. Cf. n. 3.

to investigate forbidden matters, to disclose hidden secrets, to attempt interdicted practices, to seek to know the end of another's life, to promise the hope of another person's death.

2. But if any person should venerate, by placing incense before them, images made by the work of mortals and destined to suffer the ravages of time, and if, in a ridiculous manner, he should suddenly fear the effigies which he himself has formed, or should bind a tree with fillets, or should erect an altar of turf that he has dug up, or should attempt to honor vain images with the offering of a gift, which even though it is humble, still is a complete outrage against religion, such person, as one guilty of the violation of religion, shall be punished by the forfeiture of that house or landholding in which it is proved that he served a pagan superstition. For We decree that all places shall be annexed to Our fisc, if it is proved that they have reeked with the vapor of incense, provided, however, that such places are proved to have belonged to such incense burners.

3. But if any person should attempt to perform any such kind of sacrifice in public temples or shrines, or in the buildings or fields of others, and if it is proved that such places were usurped without the knowledge of the owner, the offender shall be compelled to pay twenty-five pounds of gold as a fine. If any person should connive at such a crime, he shall be held subject to the same penalty as that of the person who performed the sacrifice.

4. It is Our will that this regulation shall be so enforced by the judges,²¹ as well as by the defenders and decurions of the several cities, that the information learned by the defenders and decurions shall be immediately reported to the courts, and the crimes so reported shall be punished by the judges.²¹ Moreover, if the defenders and decurions should suppose that any such crime should be concealed through favoritism or overlooked through carelessness, they shall be subjected to judicial indignation. If the judges should be advised of such crimes and should defer punishment through connivance, they shall be fined thirty pounds of gold; their office staffs also shall be subjected to an equal penalty.

Given on the sixth day before the ides of November at Constantinople in the year of the second consulship of Arcadius Augustus and the consulship of Rufinus.—November 8, 392.

13. Emperors Arcadius and Honorius Augustuses to Rufinus, Praetorian Prefect.

We decree that no person shall have the right to approach any shrine or temple whatever, or to perform abominable sacrifices at any place or time whatever. All persons, therefore, who strive to deviate from the dogma of the Catholic religion shall hasten to observe those regulations which We have recently decreed,²² and they shall not dare to disregard former decrees with reference either to heretics or to pagans. They shall know that whatever was decreed against them by the laws²³ of Our sainted father, by way of punishment or fine, shall now be executed more vigorously. Moreover, the governors²⁷ of Our provinces and the apparitors who serve them, the chief decurions also and the defenders of the municipalities, as well as the decurions, and the procurators of Our possessions, in which We learn that illicit heretical assemblies come together without fear of loss, because these possessions cannot be annexed to the fisc, since they already belong to its dominion: all

the foregoing persons shall know that if any such offense has been attempted contrary to Our statutes, and if it has not been avenged immediately and punished in its very inception, they shall be subjected to all the losses and punishments that were established by the ancient decrees.

1. But specifically, by this law, We sanction and decree more severe penalties against the governors.²⁷ For if the aforesaid provisions are not enforced with all diligence and precaution, the governors shall be subject²⁸ not only to that fine which was decreed against them, but also to the fine which was established against those persons who appear to be the authors of the crime. However, such fines shall not be remitted in the case of those persons on whom, because of their contumacy, they were justly inflicted.

2. In addition, We judge that the office staffs shall suffer capital punishment if they disregard Our statutes.

Given on the seventh day before the ides of August at Constantinople in the year of the consulship of Olybrius and Probinus.—August 7, 395.

14. The same Augustuses to Caesarius, Praetorian Prefect.

If any privileges have been granted by ancient law to civil priests,²⁹ ministers, prefects, or hierophants of the sacred mysteries,²⁹ whether known by these names or called by any other, such privileges shall be completely abolished. Such persons shall not congratulate themselves that they are protected by any privilege, since their profession is known to be condemned by law.

Given on the seventh day before the ides of December at Constantinople in the year of the fourth consulship of Arcadius Augustus and the third consulship of Honorius Augustus.—December 7, 396.

15.³⁰ The same Augustuses to Macrobius, Vicar of Spain, and Proclianus, Vicar of the Five Provinces.³¹

Just as We forbid sacrifices, so it is Our will that the ornaments of public works³² shall be preserved. If any person should attempt to destroy such works, he shall not have the right to flatter himself as relying on any authority, if perchance he should produce any rescript or any law as his defense. Such documents shall be torn from his hands and referred to Our Wisdom.

If any person should be able to show illicit post warrants,³³ either in his own name or that of another, We decree that such post warrants shall be delivered and sent to Us. Those persons who have granted the right to the public post to such persons shall be forced to pay two pounds of gold each.

Given on the fourth day before the kalends of February at Ravenna in the year of the consulship of the Most Noble Theodorus.—January (August) 29, 399.

16. The same Augustuses to Eutychianus, Praetorian Prefect.

If there should be any temples in the country districts, they shall be torn down without disturbance or tumult. For when they are torn down and removed, the material basis for all superstition will be destroyed.

²⁸ shall know that they shall be subject, M.

²⁹ *sacerdotes*, pagan priests, possibly of the Eleusinian mysteries.

³⁰ CJ I, 11, 3.

³¹ The reference is uncertain. According to G., the five provinces of southern Gaul, three of Aquitania and two of Lugdunensis (Lyons).

³² Especially temples and other pagan buildings.

³³ *evectioes*, permits for travel on the public post. If any person can be shown to have issued illicit post warrants, M.

²² 16, 5, 24-26.

²³ 16, 10, 11-12.

²⁷ *moderatores*.

Given on the sixth day before the ides of July.—July 20. Posted at Damascus in the year of the consulship of the Most Noble Theodorus.—399.

17.³⁴ The same Augustuses to Apollodorus, Proconsul of Africa.

Just as We have already abolished profane rites by a salutary law,³⁵ so We do not allow the festal assemblies of citizens and the common pleasure of all to be abolished. Hence We decree that, according to ancient custom, amusements shall be furnished to the people, but without any sacrifice or any accursed superstition, and they shall be allowed to attend festal banquets, whenever public desires³⁶ so demand.

Given on the thirteenth day before the kalends of September at Padua in the year of the consulship of the Most Noble Theodorus.—August 20, 399.

18. The same Augustuses to Apollodorus, Proconsul of Africa.

No man by the benefit of Our sanctions shall attempt to destroy temples which are empty of illicit things.³⁷ For We decree that the condition of the buildings shall remain unimpaired; but if any person should be apprehended while performing a sacrifice, he shall be punished according to the laws. Idols shall be taken down under the direction of the office staff after an investigation has been held, since it is evident that even now the worship of a vain superstition is being paid to idols.

Given on the thirteenth day before the kalends of September at Padua in the year of the consulship of the Most Noble Theodorus.—August 20, 399.³⁷

19.³⁸ Emperors Arcadius,³⁹ Honorius, and Theodosius Augustuses to Curtius, Praetorian Prefect.

(After other matters.) Their income from taxes in kind shall be taken away from the temples and shall assist the annonarian account for the benefit of the expenses of Our most devoted soldiers.

1. If any images stand even now in the temples and shrines, and if they have received, or do now receive, the worship of the pagans anywhere, they shall be torn from their foundations, since We recognize that this regulation has been very often decreed by repeated sanctions.

2. The buildings themselves of the temples which are situated in cities or towns or outside the towns shall be vindicated to public use. Altars shall be destroyed in all places, and all temples situated on Our landholdings shall be transferred to suitable uses. The proprietors⁴⁰ shall be compelled to destroy them.

3. It shall not be permitted at all to hold convivial banquets in honor of sacrilegious rites in such funereal places or to celebrate any solemn ceremony. We grant to bishops also of such places the right to use ecclesiastical power⁴¹ to prohibit such practices. Moreover, We constrain the judges⁴² by a penalty of twenty pounds of gold, and their office staffs by an equal sum, if they should neglect the enforcement of these regulations by their connivance.

³⁴ CJ 1, 11, 4.

³⁵ vota, vows, prayers, desires.

³⁶ Such as statues and altars.

³⁷ 16, 10, 17; 16, 11, 1.

³⁸ Sirm. 12.

³⁹ Delete: Arcadius, since he died May 1, 408, M.

⁴⁰ domini, owners of certain rights but not owners in fee simple.

⁴¹ ecclesiastica manus seems to mean men subject to the orders of the Church.

Given on the seventeenth day before the kalends of December at Rome in the year of the consulship of Bassus and Philippus.—November 15, 408; 407.⁴³

20.⁴⁴ Emperors Honorius and Theodosius Augustuses.⁴⁴

We command that priests⁴⁵ of the pagan superstition shall be subject to the proper punishment, unless before the kalends of November, they depart from Carthage and return to their ancestral municipalities. Thus such priests throughout all Africa shall be held liable to a similar punishment unless they depart from the metropolitan cities and return to their own municipalities.

1. Also, in accordance with the constitution⁴⁶ of the sainted Gratian, We command that all places that were assigned by the false doctrine of the ancients to their sacred rituals shall be joined to the property of Our privy purse. Thus, from the time when public expenditure was prohibited to be furnished to the worst superstition, the fruits from such places shall be exacted from the unlawful possessors thereof. But if the bounty of previous Emperors or if Our Majesty wished any of the aforesaid property anywhere to be granted to any persons, such property shall remain in their patrimony with eternal validity. We decree that this regulation shall be observed not only throughout Africa, but throughout all regions situated in Our world.⁴⁶

2. Moreover, if it was Our will, as expressed in repeated constitutions, that any such property should belong to the venerable Church, this property shall rightfully be vindicated by the Christian religion to itself. Thus all outlay belonging at that time to the superstition that has been rightfully condemned, and all places that were possessed by the Frediani,⁴⁷ by the Dendrophori,⁴⁷ or by various names and pagan professions, and that were assigned to their feasts and expenditures, shall be able to assist the income of Our household, after the aforesaid false doctrine has been abolished.

3. Of course, if anything⁴⁸ has ever been consecrated to sacrifices and thus served as a means of deception for men, it shall be removed from use in the baths and from the favorite haunts⁴⁹ of the public, in order that it may not furnish allurements to the erring.

4. In addition, We order the removal of Chiliarchs⁴⁷ and the Centenarii⁴⁷ or any other persons who are said to appropriate to themselves the distribution⁵⁰ of the common people. Thus, no man shall evade capital punishment if he should willingly assume such title, or if even against his will he should permit himself to be assigned to such presumption and odium.

Given on the third day before the kalends of September at Ravenna in the year of the tenth consulship of Honorius Augustus and the sixth consulship of Theodosius Augustus.—August 30, 415.

21. The same Augustuses to Aurelianus, Praetorian Prefect for the second time.

(After other matters.) Those persons who are polluted

⁴³ 16, 5, 43, n. 96.

⁴⁴ 12, 1, 176; CJ 1, 11, 5.

⁴⁵ to the People of Carthage, CJ; but M. rejects this addition as an interpolation, since no other constitution is addressed to the people of a municipality or colony.

⁴⁶ sacerdotes, members of the priestly class.

⁴⁷ Noster orbis, the western part of the Empire, since this constitution was issued by Honorius from Ravenna.

⁴⁸ Officials in pagan celebrations and ritual.

⁴⁹ According to M.'s text. M. also suggests: If any temple has ever.

⁵⁰ affectus.

⁵¹ distributio; the meaning is uncertain.

by the profane false doctrine or crime of pagan rites, that is, the pagans,²¹ shall not be admitted to the imperial service, and they shall not be honored with the rank of administrator or judge.²¹

Given on the seventh day before the ides of December in the year of the seventh consulship of Our Lord Theodosius Augustus and the consulship of Palladius.—December 7, 416; 415.

22. The same Augustuses to Asclepiodotus, Praetorian Prefect.

(After other matters.) The regulations of constitutions formerly promulgated shall suppress any pagans who survive, although We now believe that there are none. (Etc.)

Given on the fifth day before the ides of April at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—April 9, 423.

23.¹⁴ The same Augustuses to Asclepiodotus, Praetorian Prefect.

(After other matters.) Proscription of their goods and exile shall restrain the pagans who survive, if ever they should be apprehended in the performance of accursed sacrifices to demons,²² although they ought to be subjected to capital punishment.

Given on the sixth day before the ides of June at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—June 8, 423.

24.²³ The same Augustuses to Asclepiodotus, Praetorian Prefect.

(After other matters.) We punish with proscription of their goods and exile, Manichaeans and those persons who are called Pepyzites. Likewise, those persons²⁴ who are worse than all other heretics in this one belief, namely, that they disagree with all others as to the venerable day of Easter, shall be punished with the same penalty if they persist in the aforesaid madness.

1. But We especially command those persons who are truly Christians or who are said to be, that they shall not abuse the authority of religion and dare to lay violent hands on Jews and pagans who are living quietly and attempting nothing disorderly or contrary to law. For if such Christians should be violent against persons living in security or should plunder their goods, they shall be compelled to restore not only that property which they took away, but after suit they shall also be compelled to restore triple or quadruple that amount which they robbed. Also the governors²⁵ of the provinces and their office staffs and the provincials shall know that if they permit such a crime to be committed, they too will be punished in the same way as the perpetrators of the crime.

Given on the sixth day before the ides of June at Constantinople in the year of the consulship of Asclepiodotus and Marinianus.—June 8, 423.

25. Emperors Theodosius and Valentinian Augustuses to Isidorus, Praetorian Prefect.

We interdict all persons of criminal pagan mind from

the accursed immolation of victims, from damnable sacrifices, and from all other such practices that are prohibited by the authority of the more ancient sanctions. We command that all their fanes, temples, and shrines, if even now any remain entire, shall be destroyed by the command of the magistrates,²⁶ and shall be purified by the erection of the sign of the venerable Christian religion.²⁶ All men shall know that if it should appear, by suitable proof before a competent judge, that any person has mocked this law, he shall be punished with death.

Given on the eighteenth day before the kalends of December at Constantinople in the year of the fifteenth consulship of Theodosius Augustus and the fourth consulship of Valentinian Augustus.—November 14, 435.

TITLE 11: RELIGION¹ (DE RELIGIONE)

1.² Emperors Arcadius and Honorius Augustuses to Apollodorus, Proconsul of Africa.

Whenever there is an action involving matters of religion, the bishops must conduct such action. But all other cases which belong to the judges ordinary³ and to the usage of the secular law must be heard in accordance with the laws.

Given on the thirteenth day before the kalends of September at Padua in the year of the consulship of the Most Noble Theodorus.—August 20, 399.

[Interpretation:] This law does not need any interpretation.

2. Emperors Arcadius, Honorius, and Theodosius Augustuses to Diotimus, Proconsul of Africa.

It is Our will that the edict⁴ regarding unity which Our Clemency dispatched throughout the districts of Africa shall be posted throughout various regions, in order that all men may know that the one and true Catholic faith in Almighty God, as confessed by right belief, shall be preserved.

Given on the third day before the nones of March at Ravenna in the year of the second consulship of Stilicho and the consulship of Anthemius.—March 5, 405.

3. Emperors Honorius and Theodosius Augustuses to Their dear friend, Marcellinus,⁵ Greetings.

We abolish the new superstition,⁶ and We command that those regulations in regard to the Catholic law shall be preserved unimpaired and inviolate, as they were formerly ordained by antiquity or established by the religious authority of Our Fathers⁷ or confirmed by Our Serenity.

Given on the day before the ides of October at Ravenna in the year of the consulship of the Most Noble Varanes.—October 14, 410.

²¹ Of the municipalities.

²² The cross.

¹ Brev. 11, 5. Cf. 16, 5, n. 85.

² Brev. 11, 5, 1; Nov. Val. 34.

³ *cognitores ordinarii*, the governors of the province.

⁴ A Henoticon. Cf. 16, 5, 38; 16, 6, 4; Canon 99 of the Council of Carthage in 407.

⁵ 16, 5, n. 126.

⁶ Donatism; 16, 5, 55.

⁷ Const., n. 5.

²³ *gentiles*.

²⁴ The gods of the heathen; cf. I Corinthians 10, 20-21.

²⁵ CJ 1, 11, 6.

²⁶ The Novatians, Protopaschites, and Sabbatians, Glossary.

Collection of sources of lecture “The Concept of ‘Dat’: From Law to Religion”

1. *Esther* 9: 14: [...] and a decree (*dat*) was given out in Shusan.
2. *Esther* 3: 8: [...] and their [=the Jews] laws (*datoteihem*) are diverse from those of every people.
3. Joseph Albo (early 15th century), *Book of Roots* 1:7: The term *dat* denotes every governance or management which includes a great number of people. [...] and *dat* has three sub-classifications: natural (*dat tiv'it*), human (*dat nimusit*) or divine (*dat elohit*). Natural law is equal to every person in every time and place. Human law is a law which is set by a wise man or wise men, in accordance with the place, the time and the needs of those governed. [...] Divine Law is a law which is set by God through a prophet [...] like the Mosaic *Torah*.
4. The entry "dat" in the Hebrew Wikipedia: *dat* is the organization of a system of beliefs, symbols, worships and rules whose main meaning is: a belief in a supreme power (or powers) which is responsible for the universe [...] Following this, a person who believes in that particular *dat* is required to act in accordance with the commandments of the power or powers in which he believes.
5. *Ben Yehudah Hebrew Dictionary* (early 20th century): *Dat*: 1. A command and order of the government [...] a law (*hok*) (gezet, loi, law). 2. Laws and customs defined by divine commandment (*mizvah*). 3. All the beliefs (*emunot*) and opinions considering divine matters [...] Religion.
6. *Even Shoshan Hebrew Dictionary* (late 20th century): *Dat*: 1. Belief (*emunah*), religion (*religia*), the laws of (divine) belief and its commandments (*mizvot*). 2. Law (*hok*), judgment (*mishpat*).
7. *Sapir Hebrew Dictionary* (1998): *Dat*: A system in Divine belief (*emunah*) and the commandments (*mizvot*) associated with it.
8. *Hebrew-English Dictionary*: *Dat*: Religion, faith.

9. Isaac Abravanel (late 15th century), *Commentary on Numbers* 19: It is not appropriate to use the term *torah* [divine law] for anything but the divine Mosaic *Torah*. The laws (*nimus*) and arrangements of other people are called *dat* but not *torah*; the term *torah* is particular to beliefs (*emunot*), since it directs (*tore*) to what is appropriate for a person to believe in order to achieve perfection. The term *dat* is particular to the arrangement of material matters. [...] This is the difference between the divine *Torah* from all laws (*datot*) which are human.

10. Richard Baxter, *The Reasons of the Christian Religion* (London, 1667): Four sorts of Religions I find only considerable upon earth: The Meer Naturalist, called commonly Heathens and idolaters; the Jews, the Mahometans; and the Christians.

11. Simone Luzzatto, *Discorso circa il stato degli Ebrei in Venezia* (Venice, 1638) ch. 15: Although the Jews were different in their religion (*religione*) from any other people, they were not allowed to declare war on a neighboring people for religious purposes. [...] Religion is the strongest partnership which binds human society together [...]. This is why the Jews consider all those foreign to their religion to share in a common humanity, as long as they follow the rules of natural morality and have a certain understanding of the cause of all causes.

12. Guthold Salomon (A German-Jew with Reform tendencies, 1801): Religion to us means owe of the divine and fear of the supreme by which the eternal fills us [...]. It means for us the firm belief and way of thinking in which a person expresses his relation [...] to the fullness of creation.

13. *Sulamith* (A Jewish-German periodical), Opening statement, 1806: Religion is the most essential intellectual and moral need of the cultured person. The purpose of *Sulamith* is to describe this religion in the most exalted manner. *Sulamith* strives to rouse the nation (*nazion*) to respect religion. This means those truths which alone are worthy to be called religion. It aspires to revive the urgent need for the religious feelings and concepts, but, at the very same time, it strives to pay attention to the truth – that the concepts and commandments which are included in the Jewish religion are not harmful in any way to the individual or to society at large.

14. Yehudah Leib ben Ze'ev, *Yesoday ha-Dat* (Vienna, 1811): What is divine religion (The German *religion* in Hebrew transliteration)? It is the teaching of beliefs (*gloibens*, transliterated)

and the practical laws (*mishpat*) (*gezetzen*, transliterated) which God gave humans, according to which they should act during their lifetime in order to achieve eternal bliss.

15. Joshua van Oven, *A Manuel of Judaism* (London, 1835): Religion is an inward feeling of awe and veneration, induced by the knowledge of the existence of an omnipotent and eternal God, the creator, preserver, and regulator of the universal, whom we strongly feel bound to worship and adore.

16. Samson Rafael Hirsh (Frankfurt, mid-late 19th century) *Selected Writings*: Judaism is not a "religion" [...] whoever diminishes Judaism to the level of "belief" disconnected from knowledge, and also emphasizes the "Jewish belief" a nebulous subjectivism, [...] cannot be one of God's priests; he is practically one of the priests of paganism. [...] Parallels [with Christianity] are useless. Judaism is not a religion; the synagogue is not a church, and the rabbi is not a priest. Judaism is not some addition to life, it contains life.

17. Moses Hess, *Rome and Jerusalem* (1862): Surely, if Judaism was only a religion (*religiose confession*), like all other religions, it would be strange that now, after this religion adopted the European Enlightenment, no less than any other religion, and especially in Germany, where the Jews fully participate in cultural life, the people of Israel would still be subjected in Europe to so much sorrow, insults and tears. The solution to this riddle is based on the fact that the Jews were never only members of a particular religion; they are something else: they have a common origin, one people, one nation (*volk*).

18. Martin Buber, *Jewish Religiosity* (1913): Religiosity (*religiosität*) is a human emotion, which is forever renewed. [...] The feeling of amazement and admiration in a person which beyond his ever-changing mode and dependence, there is something absolute [...]. Religion is the culmination of all customs and rules by which the religiosity of a specific period in the life of a people is expressed. It regulates the halachic rules and commandments given to all subsequent generations, as an ever binding law, without any regard to religiosity, which is perpetually renewed. [...] Religiosity is the creative force; Religion is the organizing principle.

19. The actress Robin Wright (*New York Times*, February 5, 2014): I don't get the award theory, rather I don't understand the religion of it [...] It's not my religion.

20. The *Ha'aretz* newspaper, November 14, 2013: Modern science replaced the traditional religion as a source of authority for every type of knowledge. The priests of the new religion are, among others, multifaceted brain researchers [...] Humanist and liberal secularism is ready to adopt the religion of science (*dat ha-madah*).

21. The *Ha'aretz* newspaper, March 23, 2013: We are currently witnessing the rise of a new religion, the religion of information (*dat ha-meidah*). This religion promises to improve our lives [...] but only if we sanctify the supreme value of the flow of information.

22. The *Ha'aretz* newspaper, January 25, 2014: Indeed, we are speaking of a religion, the religion of the Holocaust (*dat ha-shoah*). We face, therefore, is a symbolic, metaphysical act, as part of which a nation comes together with the object of its belief.

Part IV: Early Modern and Modern Perspectives

Leora Batnitzky – Hans Kelsen and Herman Cohen: From Theology to Law and Back

HANS KELSEN AND HERMANN COHEN: FROM THEOLOGY TO LAW AND BACK

Leora Batnitzky
Princeton University

1. INTRODUCTION: Schmitt's Challenge

2. FROM THEOLOGY TO LAW (Religion as Law)

a. The Basic Norm and the Problem of Sovereignty

“Law and state are usually held to be two distinct entities. But if it be recognized that the state is by its very nature an ordering of human behavior, that the essential characteristic of this order, coercion, is at the same time the essential element of the law, this traditional dualism can no longer be maintained. By subsuming the concept of the state under the concept of a coercive order which can only be the legal order, by giving up a concept of the state distinct in principle from the concept of law, the pure theory of law realizes a tendency inherent in the doctrine of Austin.”¹

“The reason for the validity—that is, the answer to the question why the norms of this legal order ought to be obeyed and applied—is the presupposed basic norm, according to which one ought to comply with an actually established, by and large effective, constitution.”²

“the basic norm as represented by the science of law may be characterized as the transcendental-logical condition of this interpretation, if it is permissible to use by analogy a concept of Kant's epistemology. Kant asks: ‘How is it possible to interpret without a metaphysical hypothesis, the facts perceived by our senses, in the laws formulated by natural science?’ In the same way, the Pure Theory of Law asks: ‘How is it possible to interpret without recourse to meta-legal authorities, like God nor nature, the subjective meaning of certain facts as a system of objectively valid legal norms describable in rules of law?’ The epistemological answer of the Pure Theory of Law is: ‘By presupposing the basic norm that one ought to behave as the constitution-creating act of

¹ Hans Kelsen, “The Pure Theory of Law and Analytical Jurisprudence,” 55:1 *Harvard*

² Hans Kelsen, *Pure Theory of Law*, trans. M. Knight (Berkeley: University of California Press, 1967), p. 212.

will—according to the prescription of the authority creating the constitution.”³

“What is essential is that the theory of the basic norm arises completely from the Method of Hypothesis developed by Cohen. The basic norm is the answer to the question: What is the presupposition underlying the very possibility of interpreting material facts that are qualified as legal acts, that is, those acts by means of which norms are issued or applied? This is the question posed in the truest spirit of transcendental logic.”⁴

“The science of law remains a merely cognitive discipline.... By offering this theory of the basic norm, the Pure Theory of Law does not inaugurate a new method of legal cognition. It merely makes conscious what most legal scientists do, at least unconsciously...”⁵

b. The Basic Norm and God

“Since the basic norm qua norm cannot be existent and hidden somewhere in nature, and cannot have fallen from the heavens in some mysterious way either, it must be laid down as the ultimate basis of validity underlying legal norms. Thus it is not a foundation (Grundlage) given in and of itself in nature or by God, but the laying of a foundation (Grundlegung), that is, a Hypothesis. Not, however, an empirical hypothesis, which could be verified or falsified through experience, for norms do not describe what is, and thus they cannot be true or false; rather, they prescribe behavior (what ought to be), and thus they are either valid or invalid. The basic norm is, in a Platonic and Cohenian sense, Hypothesis through and through.”⁶

“What actually distinguishes the Pure Theory of Law from the Cohenian legal philosophy is that Cohen, in this field, was not in a position to overcome the natural law theory.... With reference to those positive norms determining social life, he [Cohen] could not rest content with purely formal categories of a priori validity.”⁷

³ *Ibid.*, p. 202.

⁴ Hans Kelsen, “The Pure Theory of Law, ‘Labandism’ and Neo-Kantianism A Letter to Renato Treves,” in *Normativity and Norms: Critical Perspectives on Kelsenian Themes*, ed. Stanley L. Paulson and Bonnie Litschewski Paulson (Oxford: Clarendon Press, 1988), p. 174.

⁵ Kelsen, *Pure Theory of Law*, pp. 204-205.

⁶ Geert Edel, “The Hypothesis of the Basic Norm: Hans Kelsen and Hermann Cohen,” in *Normativity and Norms: Critical Perspectives on Kelsenian Themes*, p. 217.

⁷ Kelsen, “The Pure Theory of Law, ‘Labandism’ and Neo-Kantianism. A Letter to Renato Treves,” p. 173.

“God guarantees complete harmony between being and what ought to be, but it and can be so for reason, only as idea...”⁸

c. God’s Sovereignty and Creation

i. Cohen’s Reading of Maimonides:

Maimonides’ innovation, according to Cohen, was to “detach the concept of God from the concept of life”⁹

“Creation is God’s primary attribute; it is not only the consequence of the uniqueness of God’s being; creation is simply identical with it. If the unique God were not creator, being and becoming would be the same; nature itself would be God. This, however, would mean: God is not. For nature is the becoming that needs being as its foundation.”¹⁰

“This is the ultimate sense of the teaching of the attributes: that God is not a God of metaphysics... God is the model and ideal for the human race and for the human self. Only inasmuch as he is this ideal of human morality does he take on a relation with the world and human beings. The creation of the world, then, as a metaphysical problem in Maimonides’ ethics is of secondary importance.”¹¹

“the rational definition of God as the unique being must be considered an immanent condition of its relationship with the existence of the world.”¹²

ii. Maimonides:

“As for that which has no cause for its existence, there is only God, may He be magnified and glorified, who is like that. For this is the meaning of our saying about Him, may He be exalted, that His existence is necessary. Accordingly, His existence is identical with His essence and His true reality, and His essence is His existence. Thus His essence does not have an accident attaching to it when it exists, in which case its existence would be a notion that is

⁸ Hermann Cohen, *Ethik des reinen Willens*, 2nd rev. ed. (1907; repr., Hildesheim: Georg Olms Verlag, 1981), p. 466.

⁹ *Ibid.*, p. 453.

¹⁰ Hermann Cohen, *Religion of Reason Out of the Sources of Judaism*, trans. Simon Kaplan (New York: Frederick Ungar, 1972), p. 67.

¹¹ Hermann Cohen, *Charakteristik der Ethik Maimunis*, in *Jüdische Schriften*, vol. 3, ed. B. Strauss (Berlin: C.A. Schwetschke & Sohn Verlagsbuchhandlung, 1924), p. 289.

¹² Cohen, *Religion of Reason*, p. 60.

superadded to it... Consequently He exists, but not through an existence other than His essence... ”¹³

“Know that when you make an affirmation ascribing another thing to Him, you become more remote from Him in two respects: one of them is that everything you affirm is a perfection only with reference to us, and the other is that He does not possess a thing other than His essence...”¹⁴

3. FROM LAW TO THEOLOGY (Law as Religion)

i. Maimonides:

“The Law as a whole aims at two things: the welfare of the soul and the welfare of the body. As for the welfare of the soul, it consists in the multitude’s acquiring correct opinions... As for the welfare of the body, it comes about by the improvement of their ways of living with one another... This cannot be achieved in any way by one isolated individual. For an individual can only attain all this through a political association, it being already known that man is political by nature.”¹⁵

“although it [the divine law] is not natural, [it] enters into what is natural.”¹⁶

“When a man whom the law requires to be compelled to divorce his wife does not desire to divorce her, the court should have him beaten until he consents, at which time they should have a get [Jewish divorce decree] written. The get is acceptable. ... Therefore, when he is beaten until his [evil] inclination has been weakened, and he consents, he is considered to have performed the divorce willfully.”¹⁷

“Complex, isolated, in a sense of foreign, it [the Jewish community] was left more severely alone by the State than most other corporations. Thus the Jewish community of pre-Revolutionary days had more competence over its members than the modern Federal, State, and Municipal governments combined. Education, administration of justice between Jew and Jew, taxation for communal and State purposes, health, markets, public order,

¹³ Moses Maimonides, *Guide of the Perplexed*, trans. Shlomo Pines (Chicago: University of Chicago Press, 1974), vol. 1, p. 132.

¹⁴ *Ibid.*, p. 139.

¹⁵ Maimonides, *Guide of the Perplexed*, vol. 2, p. 381.

¹⁶ *Ibid.*

¹⁷ Moses Maimonides, *Mishneh Torah*, trans. Eliyahu Touger (New York: Moznaim, 1987), 2:20.

were all within the jurisdiction of the community-corporation.... Statute was reinforced by religious, supernatural sanctions as well as by coercive public opinions within the group. For example, a Jew put in Cherem [excommunication] by a Jewish court was practically a lost man, and the Cherem was a fairly common means of imposing the will of the community on the individual. All this self-governing apparatus disappeared, of course, when the Revolution brought 'equal rights' to European Jewry."¹⁸

ii. **Cohen's Reading of Kant:**

"Ethics can confidently allow the concept of coercion to fall away for right, as...the concept of law steps forward: in the norms of right [*Rechtsnormen*]. ...[these] are the mathematically original shape [*Urform*] of a law, in so far as they form the measure of an angle of the regulations and the guiding principles. In the norms [of right], right is legitimated for the concept of law."¹⁹

iii. **Law as Religion:**

"In our *Ethics of Pure Will* we have given the following account of the foundation of the criminal law: the judge is authorized to inquire into the crime only according to the definition of the law and to punish the criminal accordingly. However, the judge, in proclaiming someone guilty, must be prevented from also pronouncing judgment on the man's guilt.... If man is not permitted to lay aside the consciousness of his guilt then it is ethics which refers man to religion, to the correlation with God."²⁰

"*Cast away from you all your transgressions, wherein ye have transgressed, and make you a new heart and spirit*" (Ezek. 18:31). With this passage Ezekiel excelled all his predecessors. For they have only prophesized of the new heart and the new spirit, which, according to Jeremiah, God will give when he will make a new covenant with Israel; but Ezekiel says: make yourselves a new heart and a new spirit. *Now the individual comes to full fruition in the I.* In the recognition of his own sin, man became an individual.

⁸ Salo Baron, "Ghetto and Emancipation," *The Menorah Journal* 14 (1928), p. 519.

⁹ Cohen, *Ethik des reinen Willen*, p. 270

⁰ Cohen, *Religion of Reason*, pp. 167-168.

Through the power to create for himself a new heart and a new spirit, however, he becomes the I.”²¹

“If the individual must have the knowledge of himself as the originator of his guilt, he also must acknowledge and confess himself to be such...[But] Legal procedure cannot be extended to the embarrassing conflicts of the human heart. Where is there an analogy to legal procedure? Repentance would remain merely a word of admonition, and the confession of guilt, too, would not become an actuality were it not joined to a public institution... the confession of sin belongs to public worship alone.”²²

iv. From the Kahal to the Kehillah:

“the congregation originated as the unity exclusively suited to the unique task of religion.... it is understandable that the public institution suitable to the individual’s need for a completion of confession by punishment could in no way be the state, and so also not the Church, as analogous to the state, but only the new institution of the congregation... The Hebrew root for the word congregation [kahal] already shows it is based on unification and not lordship and dominion, as the state is.”²³

4. IMPLICATIONS FOR MODERN JEWISH THOUGHT AND LEGAL THEORY

²¹*Ibid.*, p. 194

²²*Ibid.*, pp. 195-218

²³*Ibid.*, p. 197

8

The Pure Theory of Law, ‘Labandism’, and
Neo-Kantianism. A Letter to Renato Treves*

HANS KELSEN

Professor Dr. Hans Kelsen
Strobl, near Ischl
Villa Lechner
[Austria]
3 August 1933

Dear Dr. Treves,

I thank you very much indeed for your kind letter of 25 July. I am delighted that the translation of my manuscript on the methods and basic concepts of the Pure Theory of Law¹ is complete, and in particular that you are the one who did the translating. For I know how thoroughly you have grasped the spirit of my theory.

This is confirmed by the remarks you intend to make in your own manuscript on the Pure Theory.² The comments you convey to me are

* *Editors' note:* Kelsen's 1933 letter to Renato Treves was first published in French, translated by Michel Troper, in *Droit et Société*, 7 (1987), 333–5. The German original and an Italian translation by Agostino Carrino appeared, thanks to Carrino's initiative, in Hans Kelsen and Renato Treves, *Formalismo giuridico e realtà sociale*, ed. Stanley L. Paulson (Naples: Edizioni Scientifiche Italiane, 1992), 55–8, 51–4 respectively. The present translation is by the editors. The numbering of paragraphs is Kelsen's, the notes (which fill in Kelsen's references) are the editors'.

¹ *La dottrina pura del diritto. Metodo e concetti fondamentali*, trans. Renato Treves (Modena: Società Tipografica Modenese, 1933). Kelsen's German original, 'Grundriß einer allgemeinen Theorie des Staates' (Brno: Rudolf M. Rohrer, 1926), a printed manuscript as distinct from a published work, is a summary statement of doctrines in *ASL*.

² The manuscript in question is Renato Treves, 'Il fondamento filosofico della dottrina pura del diritto di Hans Kelsen', *Atti della Reale Accademia delle Scienze di Torino*, 69 (1933–4), 52–90, repr. in Hans Kelsen and Renato Treves, *Formalismo giuridico e realtà sociale*, ed. Stanley L. Paulson (Naples: Edizioni Scientifiche Italiane, 1992), 59–87. See also Treves, *Il diritto come relazione. Saggio critico sul neo-kantismo contemporaneo* (Turin: Presso l'Istituto Giuridico della R. Università, 1934), repr. in Treves, *Il diritto come relazione. Saggi di filosofia della cultura*, ed. Agostino Carrino, with a preface by Norberto Bobbio (Naples: Edizioni Scientifiche Italiane, 1993), where Treves takes up this and related themes at greater length.

Renato Treves (1907–92) was an influential figure in Italian legal philosophy and legal

fully correct in every respect. Permit me, however, to give voice to a few additional thoughts.

(1) The claim of some that the Pure Theory of Law amounts to nothing other than 'Labandism' is especially absurd because of Laband's utter failure in his effort to separate the depiction of the positive law from politics.³ In reality, Laband's theory of public law is an ideology of the monarchical principle, which Laband, entirely without warrant, considered contradictory to the positive law. As to the requirement, acknowledged by Laband, that the positivist theory of public law be separated from politics, the Pure Theory of Law is of course a continuation of the tradition that begins in Germany with Gerber, who simply extends to public law a fundamental principle that was self-evident in the field of private law for a long time.⁴ The main distinction, however, between the Pure Theory of Law and Laband's position is that Laband did not establish a legal theory based on principle at all. Strictly speaking, he confined himself instead to an interpretation of the Constitution and, in the absence of a theoretical foundation, asserted the difference that exists in principle between public and private law. Similarly, Laband's position holds fast to the dualism of international law and state law, a dualism defended even today by Triepel⁵ and, with him, by a great number of

sociology, and along with Norberto Bobbio (see this volume, ch. 23), he introduced Kelsen to an Italian audience. On Treves's life and work, see Vincenzo Ferrari and Nella Gridelli Velicogna, 'Philosophy and Sociology of Law in the Work of Renato Treves', *Ratio Juris*, 6 (1993), 202-15; bibliography, *ibid.* 216-25; see also *Diritto, cultura e libertà. Atti del convegno in memoria di Renato Treves*, ed. Vincenzo Ferrari et al. (Milan: A. Giuffrè Editore, 1997).

³ Paul Laband (1838-1918), the leading German public law theorist of his day. See generally Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, 3 vols. projected (Munich: C.H. Beck, 1988-), vol. II (1992), at 341-50 *et passim*; Walter Pauly, *Der Methodenwandel im deutschen Spätkonstitutionalismus* (Tübingen: J.C.B. Mohr, 1993), at 177-208 *et passim*. The expression 'Labandism' stems from Hermann Heller (1891-1933), a gifted public law theorist in Weimar Germany. In the course of a scathing critique of the German theory of public law, he writes: 'The Pure Theory of Law is the heir, born too late, of a logicistic legal positivism, the logically inevitable fulfillment of the programme of Labandism, which was alien both to sociology and to questions of value.' Hermann Heller, 'Die Krisis der Staatslehre', *AöR*, 55, N.F.16 (1926), 289-316, at 300 (note omitted), repr. in Heller, *Gesammelte Schriften*, 2nd edn., ed. Christoph Müller, 3 vols. (Tübingen: J.C.B. Mohr, 1992), vol. II, 3-30, at 15-16.

⁴ Carl Friedrich von Gerber (1823-91), leading German public law theorist. As Kelsen points out, Gerber adopted the conceptual method of private law (the method of Pandectism, as reflected in the work of Puchta and the early Jhering) and then transferred it to public law, thereby ushering in what became known as the modern German *Staatsrechtslehre*, the 'Gerber-Laband-Jellinek Theory of Public Law'. See generally Stolleis (n.3 above), at 330-58 *et passim*, and Pauly (n.3 above), at 92-167, 177-245, *et passim*.

⁵ Heinrich Triepel (1868-1946), theorist in the fields of public law and international law. His treatise *Völkerrecht und Landesrecht* (Leipzig: C.L. Hirschfeld, 1899, repr. Aalen: Scientia, 1958) was for many decades the standard work on dualism. A guide to Triepel's work is Ulrich M. Gassner, 'Heinrich Triepel. Leben und Werk', which has not yet been published.

Germany's current theorists of public and international law—but also, regrettably, by Anzilotti,⁶ whose theoretical work certainly ranks far above Triepel's. I should also like to mention, in passing, that even my early treatise, *Main Problems in the Theory of Public Law*,⁷ was most emphatically directed against the political tendencies—albeit cleverly concealed—of Laband's theory of public law, and, therefore, that my Pure Theory of Law actually originated in the struggle against 'Labandism'. Furthermore, it is curious that the charge of 'Labandism' is levelled against me by the very people who never tire of warning that my theory is dangerous to the state. Laband himself, the decidedly conservative crown jurist of the Prussian dynasty, would no doubt spin in his grave if he were to learn that he is being held accountable for the Pure Theory of Law.

(2) It is altogether correct that the philosophical foundation of the Pure Theory of Law is the Kantian philosophy, in particular the Kantian philosophy in the interpretation that it has undergone through Cohen.⁸ A point of special significance is that just as Cohen understood Kant's *Critique of Pure Reason* as a theory of experience, so likewise I seek to apply the transcendental method to a theory of positive law. If one understands the 'positive' law as 'empirical' law, law in experience, or 'legal experience', as Sander⁹ has termed it, then the Pure Theory of Law is indeed empiricistic—but empiricism in the same sense as Kant's

⁶ Dionisio Anzilotti (1867–1950), leading Italian proponent of a dualistic approach to the relation between international law and state law. See his treatise *Corso di diritto internazionale*, 3rd edn. (Rome: Athenaeum, 1928), 4th edn. (Padua: CEDAM, 1964) (first published in 1912).

⁷ See bibliographical entry, at *HP*, in the Table of Abbreviations.

⁸ Hermann Cohen (1842–1918), the leading figure in the Marburg School of Neo-Kantianism. See generally Geert Edel, *Von der Vernunftkritik zur Erkenntnislogik. Die Entwicklung der theoretischen Philosophie Hermann Cohens* (Freiburg and Munich: Karl Alber, 1988); Ulrich Sieg, *Aufstieg und Niedergang des Marburger Neukantianismus* (Würzburg: Königshausen & Neumann, 1994); Jürgen Stolzenberg, *Ursprung und System* (Göttingen: Vandenhoeck & Ruprecht, 1995); Andrea Poma, *The Critical Philosophy of Hermann Cohen*, trans. John Denton (Albany: State University of New York Press, 1997) (Italian original first published in 1988). The question of Cohen's influence on Kelsen remains controversial. In addition to Kelsen's own statements, both here and in his 'Foreword' to *HP*, in this volume, ch. 1, at § VI, see Geert Edel, 'The Hypothesis of the Basic Norm: Hans Kelsen and Hermann Cohen', in this volume, ch. 10; Stanley L. Paulson, 'Kelsen and the Marburg School: Reconstructive and Historical Approaches', in *Prescriptive Formality and Normative Rationality in Modern Legal Systems. Festschrift for Robert S. Summers*, ed. Werner Krawietz et al. (Berlin: Duncker & Humblot, 1994), 481–94.

⁹ Fritz Sander (1889–1939), the *enfant terrible* of the Vienna School of Legal Theory in the early 1920s. Sander wrote initially as a neo-Kantian (see the first three of his papers collected in *RNK*), then became an acerbic critic of Kelsen (see the article cited in this note, below) and commenced work on a version of legal realism. In the present text, Kelsen takes the expression 'legal experience' from Sander's article 'Rechtsdogmatik oder Theorie der Rechtserfahrung?', *ZöR*, 2 (1921), 511–670, also published as a monograph (Vienna and Leipzig: Franz Deuticke, 1921), repr. *RNK* 115–278. In 'RWR', Kelsen replies at length to Sander.

transcendental philosophy. And just as Kant's transcendental philosophy energetically opposes all metaphysics, so the Pure Theory of Law takes aim at the natural law, which, in the field of social reality generally and the field of positive law in particular, corresponds exactly to metaphysics. I have elaborated on this in my monograph, *Philosophical Foundations of Natural Law Theory and Legal Positivism*, Lecture 31 of the Kant Society.¹⁰ Precisely because the Pure Theory of Law was the first to try to develop Kant's philosophy into a theory of positive law (and did not get bogged down in a theory of natural law, as Stammler¹¹ does), it marks in a certain sense a step beyond Kant, whose own legal theory rejected the transcendental method.¹² Nevertheless, the Pure Theory of Law has been a more faithful custodian of Kant's intellectual legacy than any of the other legal philosophies that draw on Kant. The Pure Theory of Law first made the Kantian philosophy really fruitful for the law by developing it further rather than clinging to the letter of Kant's own legal philosophy. If one recognizes in Kant's work a truly German philosophy, then the Pure Theory of Law is the most German of all the legal philosophies developed in Germany since Kant. I address this to those who do not understand the Pure Theory of Law and therefore believe that they can successfully combat it in the politically polluted atmosphere of our time by describing it as 'un-German'. I should like to invite attention here, *en passant*, to the radically universalistic character of the Pure Theory of Law, which—the first theory to do so—takes as its point of departure the whole of the law, the legal system, in order to comprehend from this standpoint all other phenomena as parts of the whole. Thus, the doctrine of the reconstructed legal norm (*Rechtssatz*)¹³ is at the core of the Pure Theory of Law. Even Hegel's legal philosophy—biased toward the natural law theory of its time—failed, notwithstanding its notion of

¹⁰ For the full bibliographical reference, see the Table of Abbreviations.

¹¹ Rudolf Stammler (1856–1938), legal theorist and philosopher, with ties to Paul Natorp of the Marburg School of Neo-Kantianism. Many in legal science, philosophy, and sociology—e.g. Max Adler, Julius Binder, Hermann Cohen, Georg Jellinek, Hermann Kantorowicz, Siegfried Marck, Adolf Julius Merkl, Georg Simmel, Max Weber, and Franz Weyr—found a good bit to criticize in Stammler's work, and Kelsen was no exception; along with the present text, see *HP*, at 58–62, and *SJSB*, at § 25 (pp. 143–9). In one respect, however, Kelsen praises Stammler, writing that it was Stammler who brought 'Kant's transcendental philosophy to bear on legal science', *PS*, p. viii; see also 'RWR', at 104, repr. *RNK*, at 280, where Kelsen mentions both Stammler and Hermann Cohen in this connection. Stammler was prolific, and one of his treatises, *Die Lehre vom richtigen Recht* (Berlin: J. Guttentag, 1902), is available in English: *The Theory of Justice*, trans. Isaac Husik (New York: Macmillan, 1925, repr. New York: Kelley, 1969).

¹² Kelsen's expression 'transcendental method' ('*transzendente Methode*') is not an expression that Kant himself used; see Edel, 'Hypothesis of the Basic Norm' (n.8 above), § I, at n.3.

¹³ See 'Foreword' to *HP* (n.8 above), § I, at n.5; *LT*, Appendix I, at Supplementary Note 5 (pp. 132–4).

objective thought, to approach the level of objectivity attained by the Pure Theory of Law. For the Pure Theory liberated from absolutism not only the opposition between public and private law, but also the opposition between objective and subjective law, thereby throwing over a host of completely indefensible positions in legal theory.

(3) What actually distinguishes the Pure Theory of Law from the Cohennian legal philosophy is that Cohen, in this field, was not in a position to overcome the natural law theory, primarily because he was simply unfamiliar with the positive law and with what he correctly invoked as 'the fact of legal science'. The deciding factor here was that Cohen lacked the courage to draw from the Kantian transcendental philosophy ultimate conclusions in the field of social reality, that is, with reference to existing social systems: the existing state, the positive law, the prevailing morality. He was unable to forgo the assumption of a contentually constituted, materially determined *a priori*. With reference to those positive norms determining social life, he could not rest content with purely formal categories of *a priori* validity. For that would inevitably have led to ethical relativism, something that Cohen—exactly like Kant on this point—was not prepared to accept, if only because of his religious convictions. Thus, the Cohennian legal philosophy, like Stammler's, is a theory of natural law, not a theory of positive law, which alone is, in the ideal system of the Kantian philosophy, the proper counterpart to the theory of nature qua experience. It is true that Kant himself was not sufficiently consistent to extend the splendid idea of his transcendental philosophy also to cognition of the state, the law, and morality—that is, to social theory—and that here metaphysics survives, which he had completely surmounted in the field of cognition of nature. The appeal to Kant made by the Pure Theory of Law, then, can of course be contradicted by those who look upon his ethics as the true Kantian philosophy. It is easily shown that the ethics is utterly worthless, a claim that can be made even by those who look upon the Kantian transcendental philosophy as the greatest philosophical achievement of all.

(4) Although it is altogether correct that the theory of the basic norm finds a certain support in Mach's principle of economy of thought¹⁴ and

¹⁴ Ernst Mach (1838–1916), physicist and philosopher, known, *inter alia*, for his principle of economy of thought (*Denkökonomie*): 'the greatest possible part of . . . truth with the least possible labour, in the shortest possible time, and even with the least possible thought', *Populär-wissenschaftliche Vorlesungen*, 4th edn. (Leipzig: Johann Ambrosius Barth, 1910), 16, and Eng. edn., *Popular Scientific Lectures*, trans. Thomas J. McCormack (La Salle, Ill.: Open Court, 1943), 16. 'Economy of thought' served Mach as a rationale for simplicity in science and the philosophy of science; an example is his idea that '[a]ll physical knowledge can only mentally represent and anticipate compounds of those elements we call sensations'; Mach, *Die Mechanik in ihrer Entwicklung*, 6th edn. (Leipzig: F.A. Brockhaus, 1908), at 554, and Eng. edn., *The Science of Mechanics*, trans. Thomas J. McCormack (La Salle, Ill.: Open Court, 1960), at 611–12. Kelsen takes up Mach's principle

in Vaihinger's theory of fictions,¹⁵ nevertheless, owing to various misunderstandings that have arisen from these references, I no longer wish to appeal to Mach and Vaihinger. What is essential is that the theory of the basic norm arises completely from the Method of *Hypothesis*¹⁶ developed by Cohen. The basic norm is the answer to the question: What is the presupposition underlying the very possibility of interpreting material facts that are qualified as legal acts, that is, those acts by means of which norms are issued or applied? This is a question posed in the truest spirit of transcendental logic.

In the resolution of the concept of person, the Pure Theory of Law also distinguishes itself from Cohen's legal philosophy, which retains the concept because there are concealed behind it those very ethico-metaphysical postulates that Cohen is unwilling to forgo. The Pure Theory of Law, recognizing the concept of person as a substantive concept, as the hypostatization of ethico-political postulates (freedom and property, for example), resolved this concept in the spirit of Kantian philosophy, where all substance is to be reduced to function. Cassirer, one of the best of the Kantians—while he was a Kantian—has shown this in his fine book.¹⁷

With these remarks, my dear Dr. Treves, I have scarcely said anything new to you. Perhaps, however, they will serve to reinforce your own views on the essence of the Pure Theory of Law.

of economy of thought in *PS*, § 24 (at pp. 98–101). See also Leonidas Pitamic, 'Denk-ökonomische Voraussetzungen der Rechtswissenschaft', *ÖZöR*, 3 (1917–18), 339–67, repr. 33 *Beiträge*, 297–322; on Pitamic, see Marijan Pavčnik, 'An den Grenzen der Reinen Rechtslehre', *ARSP*, 81 (1995), 26–40. Of course Kelsen is not suggesting that 'economy of thought' could serve as the 'only determining principle' of the law; such a principle, qua basic norm, would undermine the normative character of the law; *PS* § 24 (p. 100) (Kelsen's emphasis). See also Alfred Verdross, *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung* (Tübingen: J.C.B. Mohr, 1923), at 79.

¹⁵ Hans Vaihinger (1852–1933), Kant scholar and philosopher. Vaihinger's interpretation of Kant came to be known as the 'patchwork theory'. His best-known work in systematic philosophy, *Die Philosophie des Als-Ob* (Berlin: Reuther & Reichard, 1911), is available in English: *The Philosophy of 'As If'* (London: Kegan Paul, Trench, Trubner & Co., 1924), a translation, by C.K. Ogden, of Vaihinger's '5th and 6th edition'. Kelsen's paper 'Zur Theorie der juristischen Fiktionen', *Annalen der Philosophie*, 1 (1919), 630–58, repr. *WS II* 1215–41, is a lengthy review article on Vaihinger's treatise. In his late, sceptical phase (after 1960), Kelsen returns to Vaihinger; see, above all, *GTN*, ch. 59.i.D. (at p. 256), on the basic norm qua fiction.

¹⁶ On the Method of *Hypothesis*, see Edel, 'Hypothesis of the Basic Norm' (n.8 above), at §§ II–III.

¹⁷ Ernst Cassirer (1874–1945), in his earlier years the leading second-generation figure in the Marburg School of Neo-Kantianism. Kelsen's reference to Cassirer's 'fine book' is to *Substanzbegriff und Funktionsbegriff* (Berlin: B. Cassirer, 1910, repr. Darmstadt: Wissenschaftliche Buchgesellschaft, 1990), discussed by Kelsen in 'Staat und Recht im Lichte der Erkenntniskritik', *ZöR*, 2 (1921), 453–510, at 464–7, repr. *SJSB* §§ 33–45, § 35 (at pp. 212–14), and repr. *WS I* 95–148, at 105–8. Cassirer's book is also available in English: *Substance and Function*, trans. William Curtis Swabey and Marie Collins Swabey (Chicago: Open Court, 1923, repr. New York: Dover, 1953).

As you may already have learned, I was ousted from my position at the University.¹⁸ In the fall, I am going to the University Institute for International Studies in Geneva, where I have made a three-year commitment and will be lecturing mainly on the theory of international law. If you ever happen to be in Geneva, I should be very pleased indeed to be able to welcome you there.

With warmest good wishes, I remain,

Yours sincerely,
Hans Kelsen [signature]

¹⁸ On the authority of the notorious 'Law for the Restoration of the Professional Civil Service', Kelsen was dismissed in April 1933 from his university post in Cologne; for details see Frank Golczewski, *Kölner Universitätslehrer und der Nationalsozialismus* (Cologne and Vienna: Böhlau, 1988), at 114–23.

Bediüzzaman Said Nursi - THE DAMASCUS SERMON

PREFACE

While visiting Damascus in early 1911, Bediuzzaman Said Nursi was invited by the religious scholars there to give a sermon in the historic Umayyad Mosque. On their insistence he agreed, and delivered a sermon to a gathering of close on ten thousand, including one hundred scholars. It met with such a response that the text was afterwards printed twice in one week.

In this sermon, Bediuzzaman gave certain news that in the future Islam and the truths of the Qur'an would prevail, and he provided clear proofs that this would occur. Not only did he demonstrate how the Islamic world could heal itself through taking the medicines of the Qur'an, but he also pointed out a number of developments in the West, among them the stirrings of a genuine search for the truth, that indicated to a forthcoming acceptance of Islam. With extraordinary foresight, Bediuzzaman predicted that, as all the evidence suggested, Islam would in the near future gain ascendancy. However, the two World Wars and a period of despotism both in Turkey and elsewhere in the Islamic world, which he had not foreseen, delayed matters. That is to say, as the developments of which he gave news in 1911 slowly unfold, this sermon, together with its diagnosis of some of the fundamental ills afflicting the Islamic world and the remedies from the Holy Qur'an that it points out, continues to be of the greatest relevance for Muslims of the present day.

As Bediuzzaman Said Nursi demonstrates, since Islam relies on reason and reasoned proof, it is the religion of the present and the future, for this is the age of science, technology and reason. This fact is being understood now by many who realize that they cannot live without a true and complete religion. The causes for the decline of the Islamic world and its material backwardness in comparison to the West should be sought in the failure of Muslims to adhere to the teachings and truths of the Holy Qur'an and Islam. Just as Islam provides for the material progress of man, and indeed urges him towards it, so too does it provide for man's true progress and development in moral and spiritual matters. This combination forms the basis of true civilization.

Since Western civilization is not based on truth and justice, but on the principles of force, conflict, and aggression, the evils of civilization predominate over its virtues. If man is to survive he will embrace Islam, for he understands now his need for true civilization, founded on the positive truths of Revelation, the Holy Qur'an and the Shari'a of the Prophet Muhammad (PBUH), in which the virtues of progress predominate, and the benefits of civilization may be profited from.

In the form of "Six Words", Bediuzzaman describes a number of those positive truths of Islam, which form the cure for the grievous sicknesses besetting the Muslim community. Hope, courage, honesty, love and brotherhood, self-sacrifice, awareness of the luminous bonds uniting the believers, mutual consultation. These are not qualities that are unimportant or may be dispensed with in the face of difficulties or threats; on the contrary, they form the very foundations of Muslim society.

As the truths of the Qur'an and Islam become increasingly apparent in this age of scientific discovery and technological advance, the lessons of Bediuzzaman Said Nursi's prophetic sermon of 1911 increase in significance. The civilization of the future is true civilization; the civilization of Islam. It will be achieved through Muslims heeding these lessons, and rebuilding their society on the foundations of belief, and on the morality of Islam.

Note: Besides the two original printings of the Sermon, a further edition of the Arabic text was published in Istanbul in 1922. In the 1950's it was translated into Turkish by the author, and then published as part of the Risale-i Nur Collection. Bediuzzaman expanded to some degree this Turkish edition, which is the source of the present translation, in order to address directly contemporary Muslims also. For this reason there are references to dates subsequent to 1911, and to other parts of the Risale-i Nur.

* * * *

THE DAMASCUS SERMON

In the name of God, the Merciful, the Compassionate.

We, too, offer the immaterial gifts, and praise and tanks that all animate creatures offer through the tongues of their beings and lives to the Creator, the Necessarily Existent One, Who said:

Do not despair of Got's Mercy. [Qur'an 39:53]

And never-ending blessing and peace be upon our Prophet, Muhammad the Elect of God (upon Whom be blessing and peace), who said:

"I came to perfect good moral qualities."

That is, "I was sent to mankind by Almighty God in order to complete an important instance of wisdom, to perfect good conduct, morals and virtues, and to deliver mankind from immorality and vice".

So, having offered praise to God and sought His blessings for His Messenger, we say this: Oh my Arab brothers who are listening to this lesson here in the Umayyad Mosque! I have not mounted this pulpit to this position, which is far above my station, in order to guide you, because it is beyond my authority to teach you. Rather, in the face of this gathering among which are close on a hundred religious scholars I am like a child who goes to school in the morning and learns his lesson. In the evening he returns and repeats it to his father who then sees whether or not what the child has learnt is correct. The child awaits either approval or guidance from his father. Indeed, we are like children in relation to you, and we are your students. You are our masters, and the masters of the other Muslim nations. And so, I shall repeat to you, our masters, part of the lesson I have learnt. It is as follows.

In the conditions of the present time in these lands, I have learnt a lesson in the school of mankind's social life and I have realized that what has allowed foreigners, Europeans, to fly towards the future on progress while it arrested us and kept us, in respect of material development, in the Middle Ages are six dire sicknesses. The sicknesses are these:

FIRSTLY: The coming to life and rise of despair and hopelessness in social life.

SECONDLY: The death of truthfulness in social and political life.

THIRDLY: Love of enmity.

FOURTHLY: Not knowing the luminous bonds that bind the believers to one another.

FIFTHLY: Despotism, which spreads like various contagious diseases.

SIXTHLY: Restricting endeavor to what is personally beneficial. I shall explain, by means of six 'Words', the lesson I have learnt from the pharmacy of the Qur'an, which is like a faculty of medicine. This lesson constitutes the medicine to cure our social life of those six dire sicknesses.

* * * *

First Word

The first word is 'hope'; that is, to nurture a T strong hope of God's mercy. Indeed, as a consequence of the lesson I learnt on my own account, I say: Oh congregation of Muslims! I give you this good news: the first signs of the true dawn of Arab happiness are now starting to unfold. This happiness will occur through the kindling of the worldly happiness of all Muslims, in particular that of the Ottomans; and especially through the progress of Islam. The emergence of the sun of happiness has drawn close. In order to rub despair's nose in the dust*, I say what is my firm conviction so that the world will hear:

[*The Old Said gave news forty-five years ago of what occurred in 1371/1951, namely that the Islamic world, and foremost the Arab states would be delivered from subjection to foreign powers and their despotism and would form Islamic states. He did not think of the two World Wars and thirty to forty years of absolute despotism. He gave the good news of what actually occurred in 1371/1951 as though it would occur in 1327/1909. He didn't take into account the reason for the delay.]

The future shall be Islam's and Islam's alone. And its ruler shall be the truths of the Qur'an and belief. Therefore, we must submit to divine determining and our fate of the present, which is that ours is

a brilliant future, while the Europeans' is a dubious past. I shall now mention one and a half preliminary arguments. I start with the premises of those arguments:

The truths of Islam are able to progress both materially, and in moral and non-material matters, and possess a perfect capacity to do so.

PROGRESS IN MORAL AND NON-MATERIAL MATTERS, WHICH IS THE FIRST ASPECT

You should know that history, which records actual events, is the most faithful witness to the truth. See! History is showing us. The testimony of the Japanese Commander-in-Chief who defeated Russia to the validity and justice of Islam is this:

"History shows that the Muslims increased in civilization and progressed in relation to the power of the truths of Islam; that is, to the degree that they acted in accordance with that power. And history also shows that they fell into savagery and decline, and disaster and defeat amidst utter confusion to the degree of their weakness in adhering to the truths of Islam." As for other religions, it is quite to the contrary. That is to say, history shows that just as they increased in civilization and progressed in relation to their weakness in adhering to their religions and bigotry, so were they also subject to decline and revolution to the degree of their strength in adhering to them. Up to the present, time has passed thus.

Furthermore, from the blessed time of the Prophet (PBUH) up to the present, not a single event in history has shown us a Muslim who has embraced another religion, whether old or new, in preference to Islam, as a result of reasoned argument and conclusive evidence. If the uneducated embrace another religion without evidence in blind imitation, it has no bearing on this matter. And to be without religion is yet another question. However, history shows us that followers of other religions, and even the English and pre-Revolution Russians, who displayed the greatest bigotry in religion, are gradually approaching and entering Islam on the strength of reasoned argument and cogent proofs, sometimes in groups.*

[*Proofs of this claim and powerful witnesses to it, are the following facts; that forty-five years after this claim was made, in spite of two appalling World Wars and the emergence of an extreme and absolute despotism small northern states like Sweden, Norway and Finland accepted and started to teach the Qur'an in their schools as a barrier to communism and irreligion. And certain important English orators are seen to be in favour of encouraging the English to accept the Qur'an. And America, which is now the most powerful state on earth, is seen to support the truths of religion with all its strength, and has decided that Asia and Africa shall find happiness, peace and reconciliation through Islam, and it patronizes and encourages the newly born Muslim states and tries to enter into alliance with them.]

If we were to display through our actions the perfections of the moral qualities of Islam and the truths of belief, without doubt, the followers of other religions would enter Islam in whole communities; rather, some entire regions and states, even, on the globe of the earth would take refuge in Islam.

Moreover, mankind has been awakened and aroused by the sciences of civilization, in particular; they have understood the true nature of humanity. Without any shadow of a doubt, they are not able to live without religion, aimlessly. They cannot. Even the most irreligious of them is compelled to take refuge in religion. For the only point of support for impotent mankind in the face of the innumerable disasters and the external and internal enemies that plague them, and the only point from which they may seek help and assistance in the face of the innumerable needs with which they are afflicted, and their desires that stretch to eternity, despite their utter want and poverty, is in recognizing the Maker of the world, in faith, and in believing and affirming the hereafter. There is no help for awakened mankind apart from this.

If the jewel of true religion is not present in the shell of the heart, material, moral, and spiritual calamities of untold magnitude will break loose over mankind and they will become the most unhappy, the most wretched of animals.

IN SHORT:

This century, man has been awakened by the warnings of war, science, and awesome events, and he has perceived the true nature of humanity and his own comprehensive disposition. Man has begun to understand that with his wonderful comprehensive abilities and disposition, he was not created only for this brief and troublesome worldly life; rather, that he is a candidate for eternity, for there are within him desires that extend that far. Everybody has begun to realize that this narrow and transient world is not sufficient and cannot meet man's boundless hopes and desires.

If it is said to the imagination, which is one of the faculties and servants of humanity, "You will rule the world and live for a million years but in the end you will be dispatched to non-existence with no possibility of a return to life", for sure, the imagination of one who has not lost his true humanity and who has been awakened, rather than being joyful and pleased, would weep longingly and with sighs and regrets at there being no eternal happiness. Thus, included in this point is the fact that in everyone's heart an inclination has sprung up to search earnestly for a true religion. In the face of the sentence of death, before anything else man is searching for a truth, contained only in true religion, so that he may save himself. The present state of the world testifies to this fact.

After forty-five years and the appearance of irreligion, regions and states on the globe of the earth have each begun to perceive, like a human being, this intense need of mankind. Furthermore, at their beginning and end, the verses of the Qur'an refer man to his reason, saying, "Use your intelligence! Think! Consult your mind and your heart! Confer with them so that you might know this fact!"

For example, look at the beginning and end of verses such as those, they say, "Why do you not look? Why do you not take warnings? Look so that you may know the truth". Take note of the way "Know!" is used. Many verses contain sentences that have the meaning of, "Why does mankind not know, why do

they fall into compounded ignorance? Why do they not understand, and then sink into lunacy? Why do they not look, have they become blind so that they cannot see the Truth? Why does man not call to mind and ponder over his own life and the events in the world so that he might find the straight path? Why do they not think, deliberate and reason with the mind and so fall into misguidance? Oh men! Take a lesson! Take a warning from past ages and try to be saved from the moral and spiritual calamities of the future!" .These verses refer man to his intellect, they enjoin him to consult with his reason.

Oh my brothers in this Umayyad Mosque as well as those in the vast mosque of the world of Islam! You, too, take warning. Take warning from the dreadful events of the last forty-five years. Come right to your senses! Oh you who are wise and thoughtful and consider yourselves to be enlightened!

Conclusion

We Muslims, who are students of the Qur'an, follow proof; we approach the truths of belief through reason, though, and our hearts. We do not abandon proof in favour of blind obedience and imitation of the clergy like some adherents of other religions. Therefore, in the future, when the intellect, science and technology prevail, of a certainty, that will be the time the Qur'an will gain ascendancy, which relies on rational proofs and invites the intellect to confirm its pronouncement

Moreover, the veils that eclipse the sun of Islam, hinder its emergence and prevent it illuminating mankind have begun to disperse. Those things that were hindering it have begun to fall back. The signs of the dawn appeared forty-five years ago.* The true dawn broke in 1371 /1951, or it will break. Even if that was the false dawn, in thirty or forty years time the true dawn will break.

[*This statement was made in 1951.]

Indeed, eight serious obstacles prevented of Islam completely overwhelming the past.

THE FIRST, SECOND AND THIRD OBSTACLES

The Europeans' ignorance, their barbarity at that time, and their bigotry in their religion. These three obstacles have been destroyed by the virtues of knowledge and civilization, and they have begun to disperse.

THE FOURTH AND FIFTH OBSTACLES

The domination and arbitrary power of the clergy and religious leaders, and the fact that the Europeans obeyed and followed them blindly. These two obstacles have also started to disappear with the rise among mankind of the idea of freedom, and the desire to search for the truth.

THE SIXTH AND SEVENTH OBSTACLES

The despotism that was with us, and our immorality and degeneracy that arose from opposing the Shari'a were obstacles. The fact that the separate despotic power residing in a single individual is now declining indicates that the fearful despotism of larger groups in society and of committees will also decline in thirty to forty years time. And the great upsurge in Islamic zeal, together with the fact that the ugly results of immorality are becoming apparent show that these two obstacles are about to decline; rather, that they have begun to do so. Insha'llah, they will completely disappear in the future.

THE EIGHTH OBSTACLE

Since certain positive matters of modern science were imagined to oppose and be contrary to the outer meanings of the truths of Islam, it prevented, to some extent, their prevailing in the past. Scientists and philosophers opposed Islam because they did not know the truth and, for example, imagined the two angels composed of spirit called Sevr and Hut, who are charged through a divine command to oversee the globe of the earth, to be a great corporeal ox and fish.

There are hundreds of examples like this one. After learning the truth, even the most opinionated philosopher is compelled to submit to it. In the 'Treatise on the Miracles of the Qur'an, the Risale-i Nur points out flashes of the Qur'an's miraculousness that lie beneath each of all the verses that science attacks, and it sets forth clearly the elevated truths, which the hand of science cannot reach, in those sentences and phrases of the Holy Qur'an that the scientists suppose to be points of criticism; it compels even the most obstinate philosopher to submit. It is clear and self-evident, anyone who wishes may look; so let them look and see how this obstacle is being destroyed, as these words forecasted forty-five years ago.

Indeed, some perspicacious Muslim scholars have written on this subject. Signs that this eighth serious obstacle will be overturned are to be seen.

For sure; even if not now then in thirty to forty years time, in order to fyt out and equip to perfection the three forces of science, true knowledge and the virtues of civilization, and to rout and put to flight those eight obstacles, the desire to search for the truth, equity, and love of humanity will be dispatched to the eight fronts of those eight enemy squadrons. They have already started to drive them back. Inshâllah, in half a century they will scatter them completely.

Indeed, it is well-known that the most indisputable virtue is that which even its enemies testify to and affirm.

And so, the following are two examples out of hundreds.

The First. The most famous philosopher of the 19th century and the European continent, Mr. Carlyle (Trans. Note. Thomas Carlyle 1795-1880), did not hold back from proclaiming in the loudest voice to philosophers and Christian scholars the following, which he also wrote in his works: "Islam was born like a brilliant flame, it devoured other religions like the branches of a dry tree. And it was Islam's right so to do, for the other religions -those that were not affirmed by the Qur'an- were as nothing."

And Mr. Carlyle also said:

"The words most worthy of being heeded first are Muhammad (upon whom be blessings and peace)'s words, because the true word is his."

And he also said:

"If you doubt the truth of Islam, you should doubt matters that are self-evident and of necessity true, because the most self-evident and necessary truth is Islam."

This famous philosopher wrote testifying to Islam thus in various places throughout his works.

Second Example. A famous European philosopher of the last century, Prince Bismarck, said:

"I have studied all the Revealed Books. Since they are corrupted, I have been unable to find the true wisdom that I was searching for, for the happiness of mankind. But I saw that the Qur'an of Muhammad (upon whom be blessings and peace) was far superior to all the other Books. I found instances of wisdom in each : of its words. There is no other work that will serve man's happiness like this. A work such as this cannot be the word of man. Those who say it is Muhammad (upon whom be blessing and peace)'s work are denying the imperatives of knowledge. That is to say, it is self-evident that the Qur'an is the word of God".

So, supported by the fact that the clever fields of America and Europe have produced crops of such brilliant and exacting scholars as Carlyle and Bismarck, I too say with all assurance:

Europe and America are pregnant with Islam. One day, they will give birth to an Islamic state. Just as the Ottomans were pregnant with Europe and gave birth to a European state.

Oh my brothers who are here in the Umayyad Mosque and those who are in the mosque of the world of Islam half a century later! Do the introductory remarks, that is, those made up to here, not point to the conclusion that it is only Islam that will provide true, and moral and spiritual rule in the future, and will urge mankind to happiness in this world and the hereafter? And that true Christianity, stripping off superstition and corrupted belief, will be transformed into Islam; following the Qur'an, it will unite with Islam?

SECOND ASPECT

That is, the powerful reasons for Islam's material progress show that Islam will also be dominant materially in the future. The First Aspect demonstrated its progress in moral and spiritual matters and this Second Aspect offers strong proofs for its material progress and supremacy in the future. For established in the heart of the Islamic world's collective personality are five extremely powerful, unbreakable 'Strengths', which have blended and coalesced.*

[*Indeed we understand from the indications of the Qur'an's teaching and instruction that through mentioning the prophets' miracles, the Qur'an is informing mankind that events similar to those

miracles will come into existence in the future through progress, and is urging them to achieve them, saying:

"Come on, work! Show examples of these miracles! Like the prophet Solomon (UWP) cover a journey of two months in a day! Like the Prophet Jesus (UWP) work to discover the cure of the most frightful diseases! Like the Prophet Moses (UWP), extract the water of life from a stone and deliver mankind from thirst. Like the Prophet Abraham (UWP) find materials and dress in them so that fire will not burn you,! Like some of the prophets, listen to the most distant voices and see the most distant forms in East and West! Like the Prophet David (UWP), soften iron like dough and make it like wax to meet the needs of mankind How greatly you benefit from the clock and the ship each the miracles of the Prophet Joseph (UWP) and the Prophet Noah (UWP) respectively. And so benefit in the same way from the miracles that the other prophets have taught you and imitate them."

Thus, by analogy with the above, the Qur'an instructs mankind in every respect, urges them to material moral and spiritual progress, and proves that it is the universal teacher and master.]

First Strength. This is the reality of Islam, which is the master of all perfections, can make three hundred and seventy million souls as a single soul, has been furnished with a real civilization and positive, true sciences, and whose essence cannot be destroyed by any power.

Second Strength. An intense need, which is the real master of civilization and industry, and is the source and means of achieving perfection, together with complete, back-breaking poverty are such strengths that they may be neither silent nor crushed.

Third Strength. This Strength, which teaches mankind exalted aims in the form of competition for exalted, things, and causes them to strive on that way; which shatters despotism; which excites exalted emotions, and destroys jealousy, envy, malice and rivalry; and which is furnished with true awakening, the eagerness of competition, the tendency towards renewal and predisposition for civilization, consists of the freedom born of the Shari'a. That is to say, it has been fitted out with the inclination and desire for the highest perfections worthy for humanity.

Fourth Strength. This is the fearlessness arising from belief, which is decked out with compassion. That is, neither to demean oneself, nor to be servile to oppressors and despots, nor to oppress and be arrogant towards the unfortunate, which form the foundations of the freedom born of the Shari'a.

Fifth Strength. This is the glory of Islam which proclaims and upholds the Word of God. And in this age; proclaiming the Word of God is contingent on material progress; it may be proclaimed only through achieving real civilization. It cannot be doubted that in the future the world of Islam's collective personality will carry out to the letter that definite command given by the glory of Islam through belief.

Indeed, in the past Islam's progress occurred through smashing the enemy's bigotry and obstinacy, and through defense against their aggression, through weapons and the sword. Whereas, in the future, in

place of weapons, the immaterial, moral swords of real civilization, material progress, truth and justice will defeat and scatter the enemies.

You should understand that what I mean is the good things that are civilization's virtues and its benefits for mankind. Not its iniquities and evils that idiots have imagined to be its virtues, and imitating them devastated our possessions. And selling religion down the river they have not even gained the world. Through civilization's iniquities prevailing over its benefits and its evils being preferred to its virtues, mankind has suffered two calamitous blows in the form of two world wars, and overturning that sinful civilization have been so utterly disgusted that they have smeared the face of the earth with blood.

Insha'llah, through the strength of Islam in the future, the virtues of civilization will predominate, the face of the earth cleansed of filth, and universal peace be secured.

Indeed, the facts that European civilization is not founded on virtue and guidance but rather on lust and passion, rivalry and oppression, and that up to the present the evils of civilization have predominated over its virtues, and that it has been infiltrated by revolutionary societies like a wormeaten tree are each like powerful indications and means for the supremacy of Asian civilization. And in a short period of time it will prevail.

How is it that while there are such powerful and unshakable ways and means for the material and moral progress of the believers and people of Islam, and although the road to future happiness has been opened up like a railway, you despair and fall into hopelessness in face of the future, and destroy the morale of the Islamic world? And in despair and hopelessness you suppose that "the world is the world of progress for Europeans and everyone else." But, "it is the world of decline only for the unfortunate people of Islam!" By saying that you are making a grievous mistake.

Since the inclination to seek perfection has been included in man's essential nature, for sure, if doomsday does not soon engulf man as a result of his errors and tyranny, in the future truth and justice will show the way to a worldly happiness in the world of Islam, insha'llah, in which there will be atonement for the former errors of mankind.

Indeed, consider this: time does not run in a straight line so that its beginning and end draw apart from one another. Rather, it moves in a circle, like the motion of the globe of the earth. Sometimes it displays the seasons of spring and summer as progress. And sometimes the seasons of storms and winter as decline. Just as every winter is followed by spring and every night by morning, mankind, also, shall have a morning and a spring, insha'llah. You may expect from Divine Mercy to see real civilization within universal peace brought about through the sun of the truth of Islam.

At the start of the lesson, I said I would demonstrate one and a half arguments to support my claim. Now, one argument, in concise form, is finished and the remaining half argument for that claim is as follows:

As has been established by the prying investigations and innumerable experiments of the sciences, the fundamental and absolutely overriding aim and the true purpose of the All-Glorious Maker in the order

of the universe are good, beauty, excellence and perfection. For each of the sciences concerned with the universe demonstrates such an order and perfection in the field and area that it studies in accordance with its comprehensive laws that the intellect could find nothing more perfect.

For example, the field studied each according to its own comprehensive laws by all the sciences, like anatomy in medicine, the science of the solar system in astronomy, and botany and biology, demonstrates the miracles of power and the wisdom of the All-Glorious Maker in the order in that field, and the truth of the verse,

Who makes most excellent everything that He creates. [Qur'an 32:7]

Also, inductive reasoning and general experience show and conclude that evil, ugliness, defect, badness and futility are minor in the creation of the universe. They are not the aim; they are dependent and secondary. That is to say, for example, ugliness has not entered the universe for the sake of ugliness, but as a unit of measurement in order to transform a single truth of beauty into many truths. Evil, and Satan even, have been set to pester man in order to be the means of man's limitless progress through competition. Minor evils and ugliness like these have been created in the universe in order to be the means of instances of universal beauty and good. Thus, according to inductive reasoning, the true aim and result of creation in the universe proves that good, beauty and being perfected are fundamental and that they are the true aim. For sure, since mankind has filthied and disordered the face of the earth to this degree. with their tyrannical godlessness and depart this world without receiving their deserts, and without reflecting the true aim present in the universe, they cannot escape to nonexistence. Rather, they shall enter the dungeons of Hell.

Also, it is established by inductive reasoning and the investigations of the sciences that man is the most exalted among animals and the most important. For man discovers with his intellect the steps between the apparent causes and effects existent in the universe, and the relationships of causes, which follow on after each other in succession. And, in order to imitate divine art and orderly and wise dominical creation with his own insignificant art, and in order to understand divine actions and divine art through his partial knowledge and his own arts, he has been given partial will as a scale and measure. Thus, the fact that man knows the universal, all-embracing actions and attributes of the All-Glorious Creator through the materials he works by means of that partial will proves that he is the most honoured and exalted creature in the universe.

Also, according to the testimony of the truths of Islam concerning man and the universe, the most noble and exalted, who are the most excellent and the highest, are the people of Islam, who are the people of truth and reality. And, according to inductive reasoning and the testimony of history, among the people of truth, who are the most exalted among the most revered of mankind, the most excellent and superior was the Prophet Muhammad (upon whom be blessings and peace); and this is testified to by his thousand miracles, his elevated morals, and the truths of Islam and the Qur'an.

Since the three truths of this half argument give such news, is it at all possible that mankind should refute the testimony of so many sciences and deny this reasoning with their depravity, and, being perversely obstinate in the face of divine will and pre-eternal wisdom, which comprehends the universe,

continue in their tyrannical savagery, willful godlessness and fearful destruction? And is it at all possible that they should continue in this way against Islam?

I swear with all my strength and, if I possessed them, with innumerable tongues by the All-Wise and Glorious One, the All-Beauteous Maker, Who creates the world with this perfect order, and the universe, from particles to the planets, from a fly's wing to the lamps in the heavens, with an unbounded wisdom of regularity, that it is in no way possible for mankind, contrary to every other sort of being and opposed to the other, species, which are their small brothers, to stand in opposition to the order in the universe through their universal acts of evil and to eat and digest its bitter fruits which, for thousands of years, have been the cause of evil predominating over good in mankind.

This possibility could only occur by supposing the impossible that, although man, is at the degree of having been charged with the 'Greatest Trust' over the universe, is at the rank of being deputy of the face of the earth, and is an elevated elder brother to the other beings in the universe, he was the lowest, most base, most wretched, most harmful and most insignificant, and as a consequence had stealthily entered the universe and caused chaos in it. This impossibility can in no way be accepted.

This half argument of mine for this fact leads to this conclusion that just as the existence of Heaven and Hell in the hereafter is a necessary fact, so too shall the religion of good and truth prevail absolutely in the future so that, as is the case with all other beings, good and virtue will also be absolutely predominant in mankind. And so that mankind may be equal with the rest of their brothers in the universe, and it may be said that the mystery of pre-eternal wisdom is 'established' in mankind also.

IN SHORT: As the definite facts mentioned above demonstrate, the choicest result in the universe and the most important creature in the view of the Creator is man. And just as man's tyrannical conduct up to this time necessitates the existence of Hell, so too do his comprehensive and perfect abilities and the truths of his belief concerning the universe included in his nature self-evidently necessitate Paradise. And so, since he cannot endure the crimes, and two world wars, which have made the cosmos weep, and cannot digest the bitter evils he has swallowed; and because of his conduct at which he is sick and through which he has filthied the whole face of the earth; and since he has caused humanity to fall to the most abject level and cannot endure the crime of having overturned a thousand years of progress, most certainly and without any doubt, if some ghastly catastrophe does not soon break loose over his head, the truths of Islam will be the means of delivering man from the low and debased degree to which he has fallen, of cleansing the face of the earth, and securing universal peace. We beseech this from the mercy of the All-Merciful and Compassionate One, and we await it with hope.

* * * *

Second Word

The Second Word has been born in my thought T as a result of my experiences in the course of life It is as follows.

Despair is a most grievous sickness and it has entered the heart of the world of Islam. It is despair that has as though killed us so that a small state of one or two million in the West has made twenty million Muslims in the East like its servants and their country like its colony. And it is despair that has killed our high m orals, and causing us to abandon the public good, has restricted our sight to personal benefits.

And it is despair that has destroyed our morale. Although with little power we were victorious from east to west through the moral strength that arose from belief, because it was destroyed through despair, tyrannical foreigners have made three hundred million Muslims their captives for the last four hundred years.

And because of this despair, Muslims even suppose the indifference and despondence of others to be an excuse for their own laziness and say, "What is it to me?" And saying, "Everybody is contemptible, like me", they abandon the courageousness of belief and fail to perform their Islamic duties.

Since this sickness has inflicted so much tyranny on us and is killing us, we shall totally shatter despair with the verse,

Do not despair of God's Mercy. [Qur'an 39:53]

Insha'llah, we shall destroy it with the truth of the Hadith,

Even if a thing is not wholly obtained, it should not be wholly left.

Despair is a most grievous sickness of communities and nations, a cancer. It is an obstacle to perfections and is opposed to the truth of, "I am with my bondsman who thinks favourably of Me". It is the quality and pretext of cowards, the base and the impotent. It does not tell of Islamic courage. It cannot be the quality of a people like the Arabs in particular, who among mankind have been privileged with a fine character that is the cause of pride. The nations of the Islamic world have taken lessons from the Arabs' tenacity. Insha'llah, once more the Arabs will give up despair and will stand together in true solidarity and concord with the Turks, who are the heroic army of Islam, and will unfurl the banner of the Qur'an in every part of the world.

* * * *

Third Word

The summary and essence of this Third Word has T been made known to me through the studies and researches I have carried out throughout my life and my experience of the ups and downs of social life; it is thus: Truthfulness is the basis and foundation of Islam, and the bond of fine character, and the

disposition of elevated emotions. Since this is the case, we must bring to life within us truthfulness and honesty, which form the foundation of our social life, and cure our moral and spiritual sicknesses with them.

Indeed, truthfulness and honesty are the vital principles in the social life of Islam. Hypocrisy is a sort of actualized lying. Flattery and artifice are cowardly lying. Duplicity and double-dealing are harmful lying. And as for lying, it is to slander the All-Glorious Maker's power.

Unbelief in all its varieties is falsehood and lying. Belief is truthfulness and honesty. As a consequence of this, there is a limitless distance between truth and falsehood; it is necessary that they are as distant from one another as the East is from the West: Like fire and light, they should not enter one another. However, cruel politics and tyrannical propaganda have mixed and confused them, and have also confused man's perfections.*

[*Oh my brothers! it may be understood from this lesson of the Old Said that he was excessively concerned with politics and the social matters of Islam. But be careful, do not suppose he had gone down the way of making religion a tool or means of politics. God forbid! Rather, with all his strength, he was politics the tool of religion. And he used to say, "I prefer one truth of religion to a thousand matters of politics." Indeed, he perceived at that time forty to fifty years ago that certain two-faced atheists were attempting to make politics the tool of irreligion, and in response to these aims and ideas of theirs, he tried to make politics a servant and tool of the truths of Islam.

However, twenty years later he saw that, in response to those clandestine double-dealing atheists' efforts to make politics the tool of irreligion, which they were doing under the pretext of westernization, a number of religious politicians were trying to make religion the tool of Islamic politics. The sun of Islam cannot follow and be the tool of lights on the ground. And to make Islam a tool is to reduce its value and is a great crime. And, as a result of that sort of partisan politics, the Old Said even saw a pious scholar enthusiastically praise a dissembler who agreed with his own political ideas while criticizing and declaring to be deviant an upright teacher who opposed them. The Old Said said to him, "Should a devil support your ideas, you would interpret it as mercy, and if an angel were to oppose your political thought, you would curse him." As a result of this, the Old Said said, "I seek refuge with God from Satan and politics." And for thirty-five years has given up politics. Said Nursi Since the New Said gave up politics altogether and did not follow them at all, the Turkish translations of the Damascus Sermon, a lesson of the Old Said which touches on politics, has been printed and made available

Furthermore, although the twenty-seven years of the New Said's life together with the hundred and thirty sections of his writings and letters have been minutely examined by three courts (now one thousand courts) and by government officials, and although he was compelled to oppose the evil-doing apostates and double-dealers who were working against him, and although the order had even been given secretly for this execution, the fact that they were unable to find even the slightest indication suggesting that he had made religion the tool of politics proves decisively that he had not done so. And

we Students of the Risale-i Nur are in wonder at this extraordinary situation and consider it to be a sign of the true sincerity that exists within the sphere of the Risale-i Nur.

Students of the Risale-i Nur]

This truthfulness and lying are as distant from one another as belief and unbelief. With Muhammad's rising to the highest of the high by means of truthfulness in the Era of Bliss, and with the treasury of the truths of belief and the truths of the universe being unlocked with the key of truthfulness, truthfulness became like the most valuable merchandise and the goods most in demand in the market of human society.

And because of lying, the likes of Musaylima the Liar have fallen to the lowest of the low. Since that mighty revolution showed that at that time lying and falsehood were the key to blasphemies and superstition, they became one of the worst and filthiest goods on the market of the universe, and it was not as though everyone wanted to buy them, rather, everyone detested them. And for sure the Companions, who were in the first line of that mighty revolution and in whose nature it was to buy things that were the cause of pride and to be customers for the most valuable goods and those most in demand, would never knowingly have advocated any falsehood. They would not have soiled themselves with lying. They would not have made themselves resemble Musaylima the Liar.

Indeed, since with all their strength and through innate disposition they were customers for truthfulness and honesty, which formed the steps whereby Muhammad (upon whom be blessings and peace) rose to the highest of the high, and were the most sought-after merchandise and the most valuable commodity and the key to realities, and since as far as was possible they tried not to depart from truthfulness, it became an established principle in the science of Hadith and among scholars of the Shari'a that, "The Companions always spoke the truth. Their narrations do not require to be investigated in the same way as other narrations. The Hadiths they related from the Prophet (PBUH) are all sound." A decisive argument for the consensus of the scholars of Hadith and the Shari'a is this fact. Thus, while at the time of the mighty revolution in the Era of Bliss truthfulness and lying were as far from one another as belief and unbelief, with the passing of time they have gradually drawn closer to each other. Political propaganda has sometimes given greater currency to lies, and evil and lying have to some degree taken the stage. It is because of this fact that no-one could attain to the level of the Companions. Since this has been discussed in the Addendum to the Twenty-Seventh Word, which is about the Companions, we refer you to that and cut short the matter here.

Oh my brothers here in this Umayyad Mosque! And Oh my brothers who, forty to fifty years later, form the four hundred million believers in the vast mosque of the world of Islam! Salvation is only to be found through truthfulness and honesty. The "support most unfailing" [Qur'an 2:256] is honesty. That is to say, the strongest chain with which to be bound to salvation is honesty.

However, sometimes in the past lying abrogated this if there were advantages to be gained. Some scholars issued 'temporary' fatwas in case of necessity or for benefit. But in this age, such fatwas may

not be given. For it has been abused so much that there may be only one benefit among a hundred harmful things. Therefore, the judgement cannot be based on benefit.

For example, the cause for shortening the ritual prayers while on a journey is hardship. But it cannot be the reason. For it has no determined limit and may be abused. Rather, the reason may only be the journey. And in the same way, benefit may not be the reason for telling a lie. Because, it has no specified limit and is a swamp that breeds abuse. The judgement for a fatwa may not be based on it. In which case, "Either truthfulness or silence". That is, there are two ways, not three. That is, not either the truth, or lies, or silence.

Thus, since public order and security have been overturned though mankind's evident and ghastly lying and wilful misrepresentations, and through their abuse of benefits, mankind is clearly commanded and compelled to close the third way. Otherwise, the world wars, hideous revolutions, decline and destruction that they have seen in the past half-century will bring down some overwhelming disaster on their heads.

Indeed, everything you say must be true, but it is not right to say everything that is true. If on occasion it is damaging, then be silent. But there is no fatwa for lying. Everything you say must be the truth, but you do not have the right to say everything that is true. Because if it is not sincere, it will have a detrimental effect, truth will be spent on wrong.

* * * *

Forth Word

What I am certain of from my experience of human social life and have learnt from my life-time of study is the following: The thing most worthy of love is love, and the quality most deserving of enmity is enmity. That is, the quality of love and loving, which renders man's social life secure and impels to happiness is the most worthy of love and being loved. And enmity and hostility are ugly and damaging qualities, which have overturned man's social life and more than anything deserve loathing and enmity and to be shunned. Since this truth has been clearly explained in the Twenty-Second Letter of the Risale-i Nur, here we shall only briefly point it out. It is as follows:

The time for enmity and hostility has finished. Two world wars have shown how evil, destructive, and what an awesome wrong is enmity. It has become clear that there is no benefit in it at all. In which case, on condition they are not aggressive, do not let the evils of our enemies attract your enmity. Hell and divine punishment are enough for them.

Sometimes, man's arrogance and self-worship cause him to be unjustly hostile towards believers without his being aware of it; he supposes himself to be right. But this hostility and enmity is to slight powerful causes of love towards the believers, like belief, Islam, and nationality; it is to reduce their

value. It is a lunacy like preferring the insignificant causes of enmity to the causes of love, which are as extensive as a mountain.

Since love and enmity are contrary to one another, like light and darkness, they cannot truly combine. The causes of whichever are in truth predominant in the heart, its opposite cannot be truly present. For example, if love is truly present, then enmity will be transformed into pity and compassion. This is the position towards the believers. Or, if enmity is truly present in the heart, then love takes on the form of feigned approval, not interfering, and being apparently friendly. This may be the position towards unaggressive people of misguidance.

Indeed, the causes of love, like belief, Islam, nationality, and humanity, are strong and luminous chains and immaterial fortresses. One sort of the causes of enmity towards the believers are private matters, which are like small stones. In which case, to nourish true enmity towards a Muslim is a great error; it is like scorning the causes of love, which are as immense as a mountain,

IN SHORT: Love, brotherhood, and affection are the temperament of Islam, they bond it. The people of enmity resemble a spoilt child who wants to cry, and so looks for an excuse to do so, and something as insignificant as a fly's wing becomes the pretext. And they resemble an unfair, pessimistic person who so long as it is 'possible to distrust, never thinks favourably. He covers ten good deeds with one bad deed. Fairness and favourable thinking, which mark the Islamic character, reject this.

* * * *

Fifth Word

The lesson I have learnt from the mutual consultation enjoined by the Shari'a is this: in this age, a single sin that a person commits may not remain as one; it sometimes swells, spreads and becomes a hundred sins. And sometimes a single good deed does not remain as one, but progresses to the order of thousands of good deeds. The reason in the wisdom of this is as follows:

Lawful freedom and lawful consultation have demonstrated the sovereignty of our true nationhood. And the foundation and spirit of our true nationhood is Islam. And in so far as they have carried the standard of the Ottoman caliphate and Turkish army in the name of that nationhood, the two true brothers of Arab and Turk, who are like the shell and citadel of the nationhood of Islam, are the sentries of that sacred citadel.

Thus, through the bond of this sacred nationhood, all the people of Islam are like a single tribe. Like the members of a tribe, the groups of Islam are bound and connected to one another through Islamic brotherhood. They assist one another morally and, if necessary, materially. It is as if all the groups of Islam are bound to each other with a luminous chain.

If a member of one tribe commits a crime, all the members of the tribe are guilty in the eyes of another, enemy tribe. It is as though each member of the tribe had committed the crime so that the enemy tribe becomes the enemy of all of them. That single crime becomes like thousands of crimes. And if a member of the tribe performs a good act that is the cause of pride affecting the heart of the tribe, all its members take pride in it. It is as if each person in the tribe feels proud at having done that good deed.

Thus, it is because of this fact that at this time, and particularly in forty to fifty years' time, evil and bad deeds will not remain with the perpetrator, rather, they will transgress the rights of millions of Muslims. Numerous examples of this shall be seen in forty to fifty years' time.

Oh brothers who are listening to these words of mine here in the Umayyad Mosque! And Oh Muslim brothers in the mosque of the world of Islam forty to fifty years later! Do not make apologies, saying, "We do not do any harm, but also we do not have the power to do anything beneficial; therefore we are excused." Such an apology is not acceptable. Your laziness, and saying, "What is it to me?", and your displaying no effort and not getting into the working spirit through Islamic unity and true Islamic nationhood have done much damage and injustice to yourselves.

So, just as bad deeds thus mount to thousands, so also at this time good deeds, that is, good deeds that affect the sacredness of Islam, do not remain restricted to the one who performs them. Indeed, such good deeds may in truth be beneficial for millions of believers. They may strengthen the bonds of moral, spiritual, and material life. Therefore, this is not the time to cast oneself on the bed of idleness, saying, "What is it to me?"

Oh my brothers here in this mosque and my brothers forty to fifty years later in the mighty mosque of the world of Islam! Do not suppose I have mounted this place of delivering lessons in order to give you advice. Rather, I have done so to claim my rights from you. That is to say, the interests and happiness in this world and the world of the hereafter of small groups is bound to masterly teachers like you, the Arabs and Turks, who are a vast and esteemed body. We, the Muslim groups who are your unhappy small brothers suffer harm through your idleness and laxity.

And especially, Oh Arabs who are esteemed, numerous, and either have been awakened or will be! First and foremost, I address you with these words. For you are our teachers and leaders, and the teachers and leaders of all the groups of Islam, and you are the fighters of Islam. It was later that the mighty Turkish nation assisted you in that sacred duty.

Therefore, due to laziness your sin is great. And your good acts and deeds are also great and exalted. And in particular we await with great expectation from Divine Mercy the different Arab groups entering upon most exalted circumstances in forty to fifty years' time, like those of the United States of America, and your being successful like in former times in establishing Islamic rule in half the globe, or rather in most of it, which now remains in captivity. If some fearful calamity does not soon erupt, the coming generation shall see it, insha'llah.

Beware, my brothers! Do not fancy or imagine that I am urging you with these words to busy yourselves with politics. God forbid! The truth of Islam is above all politics. Ail politics may serve it, but no politics can make Islam a tool for itself.

With my faulty understanding, I imagine Islamic society at this time in the form of a factory containing many wheels and machines. Should one wheel fall behind or encroach on another wheel, which is its fellow, the machine's mechanism ceases to function. Thus, the exact time for Islamic unity is beginning. It necessitates not paying attention to one another's personal faults.

I say this to you with regret and sadness that certain foreigners have taken our most valuable possessions and country from us and have given us a rotten price in return.

And in the same way, they have taken from us our elevated morals and a part of our fine character that touches on social life. They have made them the means of their progress. And it is their dissipated morals and dissipated character that they have given us as their price.

For example, because of the fine national feeling they have taken from us, one of them says, "Should I die, let my nation live, for I have an everlasting life in my nation." They have taken these words from us and it is the firmest foundation in their progress. These words proceed from the religion of truth and the truths of belief. They are our property, the property of the believers.

However, because of the obscene and bad character that infiltrated us from foreigners, a selfish man from among us says, "If I die of thirst, do not let rain fall again in the world. And if I do not experience happiness, let the world go to rack and ruin as it wishes." These ridiculous words arise from lack of religion and from not recognizing the hereafter. They have entered among us from outside and are poisoning us.

Also, because of the idea of nationhood which those foreigners obtained from us, an individual becomes as valuable as a nation. For a person's value is relative to his endeavour. If a person's endeavour is his nation, that person forms a miniature nation on his own.

Because of the heedlessness of some of us and the foreigners' damaging characteristics that we have acquired, and, despite our strong and sacred Islamic nationhood, through everyone saying, "Me! Me!, and considering personal benefits and not the nation's benefits, a thousand men have fallen to become like one man.

If a man's endeavour is limited to himself, he is not human being, for human beings are by nature civilized. Man is compelled to consider his fellow humans. His personal life continues through social life. For example, how many hands is he in need of to eat one loaf of bread, and in return for it how many hands does he in effect kiss? And how many factories is he connected to through the clothes that he wears? You make the comparison! Since he cannot survive with only skin like an animal, and is by nature connected to his fellow humans, and is compelled to pay them an immaterial price, by his nature, he maintains civilization. One who confines his view to his personal benefits abandons his humanity, and

becomes an iniquitous animal lacking all innocence. If nothing happens as a consequence and he has an authentic excuse, that is an exception !

* * * *

Sixth Word

THE key to Muslims' happiness in Islamic social life is the mutual consultation enjoined by the Shari'a. The verse,

Whose rule is consultation among themselves. [Qur'an 42:38]

Orders consultation as a fundamental principle. Just as the consultation of the ages and centuries that mankind has practised by means of history, a conjunction of ideas, formed the basis of the progress and sciences of all mankind, so too one reason for the backwardness of Asia, the largest continent, was the failure to practise that true consultation.

The key and discloser of the continent of Asia and its future is mutual consultation. That is to say, just as individuals should consult one another, so must nations and continents also practise consultation. For it is the freedom resulting from the Shari'a, which is born of the consultation enjoined by the Shari'a, and the noble-mindedness and compassion of belief that will loosen and remove the fetters and chains of the various forms of tyranny fastened to the feet of three hundred, rather, four hundred million strong Islam. It is that lawful freedom which, adorned with the customs and observances of the Shari'a, will cast out the evils of dissolute Western civilization. The freedom born of the Shari'a, which arises from belief, enjoins two principles:

That is to say, belief necessitates not humiliating others through oppression and despotism and not degrading them, and, secondly, not abasing oneself before tyrants. Someone who is a true slave of God cannot be a slave to others. Do not make anyone other than God lord over yourselves. That is to say, someone who does not recognize God ascribes relative degrees of mastery to everything and everyone, and piles worries on his own head. For sure, the freedom born of the Shari'a is a bounty of Almighty God through the manifestation of His Names All-Merciful and All Compassionate; it is a characteristic of belief.

Long live truthfulness! Death to despair! Let love endure! Let mutual consultation find strength! Let those who follow their own whims and desires be the objects of blame, reproach and detestation! And on those who follow Guidance be peace and well being! AMEN.

If it is asked: Why do you attach this much importance to mutual consultation? And how may the life and progress of mankind, in particular Asia, and particularly Islam, come about through mutual consultation?

We would answer: As is explained in the Twenty-First Flash of the Risale-i Nur, the Treatise on Sincerity, because just consultation results in sincerity and solidarity, three 'elifs' become one hundred and eleven. Thus, three men between whom there is true solidarity may benefit the nation as much as a hundred men. Many historical events inform us that as a result of true sincerity, solidarity, and consultation, ten men may perform the work of a thousand men. Man's needs are endless and his enemies innumerable, and his strength and capital insignificant, and the number of destructive, harmful humans who have become like monsters through lack of religion is increasing. Just as, in the face of those endless enemies and innumerable needs, man's personal life can continue only through the point of support and point of assistance that proceed from belief, so, too, can his social life endure only through the mutual consultation enjoined by the Shari'a, that again proceeds from the truths of belief. It is only thus can he halt those enemies and open up a way to secure those needs.

* * * *

Reflections on Unity

A SHORT EXPLANATION OF THE ADDENDUM TO THE ARABIC TEXT OF THE DAMASCUS SERMON

In the Arabic addendum to the Damascus Sermon, the unassailable moral heroism born of belief in God was described by means of a truly subtle comparison. Here we shall set forth a summary of it and explain it.

Close to the beginning of the Second Constitutional Period, (1908-1918), I joined Sultan Reshad's tour of Rumelia on behalf of the Eastern Provinces [June, 1911]. In our train a discussion started with two friends who taught in the new secular schools and were well-versed in science. They asked me, "Which is more necessary and should be stronger, religious zeal or national zeal?" To which I replied:

"With us Muslims, religion and nationhood are united, although there is a theoretical, apparent and incidental difference between them. Indeed, religion is the life and spirit of the nation. When they are seen as different and separate from each other, religious zeal includes both the common people and upper classes. Whereas national zeal is peculiar to one person out of a hundred, that is, to a person who is ready to sacrifice his personal benefits for the nation. Since this is the case, religious zeal must be the basis with regard to the rights of all the people, while national zeal must serve it and be its fortress.

This is especially so since we people of the East are not like those of the West. Our hearts are governed by the sense of religion. The fact that it was in the East that Pre-Eternal Divine Determining sent most of the prophets indicates that only the sense of religion will awaken the East and impel it to progress. A convincing argument for this is the era of Prophet Muhammad (upon whom be blessings and peace) and those who followed after him."

Oh my friends who are studying with me in this travelling school called a train! You asked me which it is necessary to give more importance to, religious zeal or. national zeal? And now, all you who received secular education and are travelling with me towards the future in the train of time! I say the following to you as well:

"Religious zeal and Islamic nationhood have completely fused in the Turks and Arabs, and may not now be separated. Islamic zeal is a luminous chain which is most strong and secure and is not born of this world. It is a support that is most firm and certain, and will not fail. It is an unassailable fortress that cannot be razed."

When I said this to those two enlightened school teachers, they said to me, "What evidence is there for this? For a claim as great as this an equally great proof and powerful evidence are necessary. What is the evidence?"

Suddenly the train emerged from a tunnel. We put our heads out of the window and looked. We saw that a child not yet six years of age was standing right next to the railway line where the train was about to pass. I said to my two teacher friends: .

"Look, this child is answering our question just by the way he is acting. Let that innocent child be the teacher in our travelling school instead of me. See, his behaviour is stating the following truth:

"You can see that the child is standing only a metre's distance from where this hideous monster will pass the minute it roars shrieking out of its hole, the tunnel, with its fearful onslaught. Although it is roaring and threatening with the tyranny of its attack saying, 'Anything that gets in my way better watch out!' the innocent child is standing right there. With perfect courage, heroism and freedom of spirit he gives no importance at all to its threats. He has contempt for monster's onslaught, and says with his childish heroism, 'Hey, railway train, you can't frighten me with your thunderous roars!'

"It is as if he is saying through his resolution and tenacity, 'Hey, railway train, you're the prisoner of a system! Your bit and bridle are in the hands of the one who's driving you. It's beyond your power to attack me. You can't seize me and hold me under your despotism. Off with you! Get on your way! Carry on down the track at the command of your driver! '"

And so, oh friends in this train, and brothers who are studying. science fifty years later! Traversing time, suppose that Rustam of Iran and Hercules of Greece with their proverbial heroism are there in place of the innocent child. Since at their time there were no trains, of course, there was not the belief that trains move regularly, according to a system. When the train suddenly roars out its hole, the tunnel, snorting thunder and fire, with lightening in its eyes, how Rustam and Hercules rush to one side at its threatening onslaught! How those two heroes are terrified and flee! For all their proverbial courage they run more than a thousand metres.

So look, see how their freedom and courage dissolve in the face of the monster's threat. There is nothing they can do but flee. They do not realize that it is an obedient steed, because they do not

believe in its driver and orderly system. Rather, they imagine it to be a sort of lion with twenty terrifying and rapacious lions the size of waggons attached to its rear.

Oh my brothers and my friends who are listening to these words after fifty years! What gives the five year old child greater freedom and courage than those two heroes, and a fearlessness and confidence far exceeding theirs, is faith, trust and belief. Belief in the order and system of the railway, which is a seed of truth in that innocent child's heart. Belief that the reins of the train are in the hands of a driver, that its movement is regulated, that someone is driving it on his own account.

And what terrifies those two heroes and makes their consciences prisoners to delusion is their ignorant lack of faith; it is the fact that they do not know the driver and do not believe in the order and system.

The heroism which arose from the innocent child's belief in the comparison is like the heroism of a number of tribes -in particular Turkish and Turkified tribes- from among the Islamic peoples who, by reason of the faith and belief that was rooted in their hearts, for a thousand years raised the banner of Islam and all its perfections in the face of more than a hundred nations and states in Asia, Africa and half Europe; who went to meet death laughing and saying, "If I die, I shall be a martyr; if I kill, I shall be a champion of Islam."

Indeed, foremost the Turks and Arabs, and all the Muslim peoples, never fearing, confronted with the heroism of belief the unending succession of hostile events in this world, and the threats of that fearsome railway train which is inimical to man's comprehensive disposition, from microbes, even, to comets. Through the submission to Divine Determining and Decree that arises from belief, they took lessons, and gained wisdom and a sort of worldly happiness in place of terror and fright. That, like the innocent child, they displayed this extraordinary heroism demonstrates that in this world as in the Hereafter the absolute ruler of the future will be the nation of Islam.

The cause of the truly strange fear, alarm and anxiety of those two strange heroes in the two comparisons was their lack of belief, their ignorance, and their misguidance; a truth which the Risale-i Nur demonstrates with hundreds of proofs. It is as follows:

Unbelief and misguidance show to the people of misguidance a universe consisting wholly of series of terrible enemies. Thousands of different enemies from the solar system to tubercular bacteria are attacking unfortunate humanity with the hands of blind force, aimless chance, and deaf nature.

By presenting to man's comprehensive disposition, and his endless needs and infinite desires continuous fear, pain and anxiety, unbelief and misguidance is a form of Hell; it puts those who follow it into a sort of Hell while still in this world.

All science and human progress outside religion and belief is worth nothing, like the heroism of Rostam and Hercules. All it does is to administer injections to deaden the senses so that through drunkenness and dissipation those grievous fears may be temporarily forgotten.

Thus, just as the comparison of belief and unbelief yields fruits and results in the hereafter like Paradise and Hell, so too, in this world belief ensures a sort of Paradise, and transforms death into a release from

duty, while unbelief makes this world a sort of Hell, destroys true human happiness and reduces death to eternal nothingness. The Risale-i Nur, relying on definite insight and direct cognition, has demonstrated this truth with hundreds of proofs. Therefore, we refer you to those and cut short the discussion here.

If you wish to see the truth that lies in this comparison, raise your head and look at the universe. Look and see how many vehicles there are like the railway train: balloons, cars, aeroplanes, ships of the land and the sea... the globes of the stars, the heavenly bodies, the chains of events and successive occurrences that Pre-Eternal Power creates with order, regularity, wisdom and purpose on land and sea and in space.

Anyone who has intelligence and sight is able to see most of these chains of events in the manifest world and corporeal universe and to confirm their existence. So too, may they confirm that there are even more wonderful successive events created by Pre-Eternal Power in the spirit and incorporeal worlds.

Thus, all these material and immaterial chains of events in the universe attack, threaten and frighten the unbelieving people of misguidance; they destroy their moral and spiritual strength. Whereas, for the people of belief, rather than threatening and frightening them, they bring them joy and comfort, and give them hope and strength.

This is because the believers understand through their belief that an All-Wise Maker is impelling each of those innumerable chains of events, corporeal and incorporeal railway trains, travelling universes to perform their duties within the sphere of perfect orderliness, regularity, wisdom and purpose; that He is causing them to work. Not one jot are they confused in their duties, nor can they transgress against one another.

The believers see through their belief that these events are displaying the perfections of His art and the manifestations of His beauty in the universe. Thus belief gives all moral strength to them and demonstrates a sample of eternal happiness.

And so, nothing, no science, no human progress can ensure moral strength in the face of the ghastly pains and fears that arise from the people of misguidance's unbelief, nor give them any comfort. They destroy their courage, but temporarily draw a veil of neglect over them, deceiving them.

The believers, by reason of their belief, look on these events, not with fear and crumbled moral strength but with an extraordinary strength and fortitude, and with the truth that is in belief, like the innocent child in the comparison. They observe the planning and will of an All-Wise Maker within the sphere of His wisdom and are saved from delusions and fears.

They understand and say, "If it were not for the command and permission of the All-Wise Maker, these travelling universes could not be in motion, they could do nothing". With perfect confidence, they manifest happiness in the life of this world, each according to his degree.

When the seed of truth born of belief and true religion is not present in a person's heart or conscience, and is not his point of support, in the same way that Rustam and Hercules' courage and heroism crumbled in the comparison, such a person's courage and moral strength, too, will be annihilated and his conscience will decay: He will become prisoner to all the events in the universe. He will sink to being a trembling beggar before everything. Since the Risale-i Nur has demonstrated this truth concerning belief and also the fearsome wretchedness that misguidance brings in this world with hundreds of decisive proofs, we shall cut short this long and extensive truth here.

Mankind in this century has perceived that their greatest need is for moral and spiritual strength, comfort, and resolution. Therefore, for them to abandon Islam and truths of belief at this time, which are a point of support and secure such moral strength, comfort and happiness, and, instead of benefiting from Islamic nationhood, under the pretext of becoming westernised, for them to rely on misguidance, dissipation, and lying politics and diplomacy, which completely destroy and annihilate all moral strength, comfort, and resolution, is an act far from all benefit and profit for mankind. Just how far it is from benefiting mankind, mankind, and first and foremost, Islam will realize. They will be awakened to this truth, and, if time has not run out for this world, they will adhere to the truths of the Qur'an.

* * * * *

*The Thirteenth and Sixteenth Letters*²⁴


Indifference to politics and other personal matters

In His Name.

There is nothing that does not glorify Him with His praise.

Peace be upon those who follow true guidance, and reproach and disgrace upon those who follow their own whims and fancies!

My dear brother,

OU ASK ABOUT MY HEALTH AND CONDITION, WANT TO KNOW WHY I do not apply to the government for the certificate (I once was given to preach in mosques), and wonder why I am so indifferent to politics. Since I am frequently bothered with such questions, I feel I must explain myself. In doing so, I allow myself some harsh language to defend my friends and *The Words* from the groundless anxieties and troublesome treatment of worldly people.

YOUR FIRST QUESTION: How are you? How are things going?

ANSWER: Infinite thanks to God, Most Merciful of the Merciful, Who has changed all the injustice directed toward me by misguided, worldly peo-

²⁴ Rather than dealing with the main topics that Said Nursi discusses in his works, these two letters concern his answers to questions asked to him about the persecution he had to endure and certain political issues that he ignored. Thus, we have chosen to summarize them in a single letter. (Tr.)

ple into a mercy for me. When they unjustly exiled me to Barla, I had abandoned politics and secluded myself in a cave on Mt. Arak in Van. Yet the Wise, Compassionate Creator made this exile a mercy. My retreat in the mountain, in which I was not so secure, might not have been undertaken only for God's good pleasure, whereas here nothing diverts me from sincere devotion to Him only.

When I was a prisoner of war in Russia, I intended to spend the rest of my life in a cave. Praise and thanks be to God, the Most Merciful of the Merciful, for He has made Barla a cave for me—but with the additional grace that my frail body does not suffer the hardships of cave life. Even so, suspicious officials who fear that I might engage in anti-regime activities harm my service of the Qur'an.

Second, these people have not restored my certificate to preach, although they provided certificates to all other exiled preachers and amnestied all imprisoned criminals. But my All-Compassionate Lord has transformed this injustice into a mercy by causing me to live in this silent place of isolation so that I can dedicate my life and efforts to serving the Qur'an and spreading its light.

Third, these people exiled me to a village even though they allow powerful, influential chieftains who can interfere with their worldly affairs to live in towns and cities and meet their relatives. Except for a very small number, my relatives and fellow citizens are not allowed to visit. My All-Compassionate Creator changed this isolation into another great mercy by freeing my mind from any malicious intention and worry, thereby leaving it open to enlightenment by the Qur'anic truths.

These people even begrudged my writing a couple of letters during my first 2 years of exile. Worse, they still do not accept my having two or three visitors a month, even for the sake of religious worship. But my Compassionate Lord and Wise Creator changed this injustice into mercy by causing me to enter into a welcome retreat in these "3 months of additional prayer," during which one can harvest the reward of 90 years of prayer and devotion.

That must suffice as my answer.

YOUR SECOND QUESTION: Why do I not apply for the certificate?

ANSWER: I am bound by Destiny in this matter, not by misguided, worldly people. My application is to Destiny, and I will ask the government

to restore my certificate only when Destiny permits me to do so and stops providing for me here. In other words, everything happens for a reason: one apparent and one real. Various misguided, worldly people are the apparent cause for my exile, whereas the real cause is Divine Destiny.

People who feared that I might serve Islam greatly and interfere in their worldly affairs committed a great injustice by exiling me. But this is only an apparent cause. The real cause is that Divine Destiny saw I could not serve Islam and (religious) knowledge sincerely, and therefore had those people exile me so that I could render such service and changed my exile into a mercy. As I am bound by Divine Destiny, and that Destiny is purely just, I should and do apply only to it. The apparent cause has almost nothing to do with the effects, so why should I apply to it?

The reasons why Destiny does not permit me to apply for the certificate to preach in my hometown are as follows:

ONE: I do not meddle in the affairs of these misguided, worldly people and so feel no obligation apply to them. All I can do is carry out the dictates of Divine Destiny that bind me. This is how my application should be, and so it is.

TWO: As this temporary guest-house of a world is subject to alteration and destruction, it is not the real, permanent home. Seeing that I am not permanently in this world even if I live in my hometown, it is useless to try to live in a particular place. If the Owner of that house is merciful to you, then each inhabitant is a friend and every place a home. But if one cannot receive His Grace and Mercy, then its inhabitants are enemies and every place is one of exile and isolation.

THREE: One should apply according to the law. However, they have treated me arbitrarily and illegally for the last 6 years. I have not been treated as a mere exile, but as one banned from enjoying almost any legal and civil rights. Why should I apply in the name of the law to those who do not follow it?

FOUR: When the district governor asked them, on my behalf, if I could stay at Badra village for a few days, they refused. If such an insignificant application was refused, why should I apply for something significant, which would mean humbling myself before them?

FIVE: It is an injustice and a disrespect to justice to demand one's right from and apply to those who take wrong for right. I do not wish to commit such a wrong or show such disrespect to justice.

SIX: These people do not treat me justly because they think I am engaged in politics. Rather, they do so on behalf of the committee of irreligious people, whether consciously or not, because I am devoted to Islam. So applying to them means to repent of my belief in Islam and to sympathize with their way. If I applied to them and expected their aid, Divine Destiny, which is entirely just, would punish me through them. They give me trouble because I am devoted to Islam. But because my devotion and sincerity contain some shortcomings, Divine Destiny sometimes punishes me. If this is so, it seems impossible that I will be relieved of these troubles.

SEVEN: Officials are responsible for helping those who benefit the community and for hindering those who harm it. But the official who put me under surveillance came to me in order to catch me red-handed while I was explaining a pleasure of experiencing belief in God's Oneness to an old visitor. He deprived my guest of this pleasure and angered me. And yet this same official flatters those who show their bad manners and harm the village's social life.

Prisoners, no matter how many crimes they have committed, have the right to meet the official in charge of surveillance, regardless of his or her rank. But I have not met with the superior official here, nor with the two persons in charge of surveillance and who hold significant local government positions, for the last year. They do not ask after my health, although they have passed my room several times. I thought that they kept away out of hostility, but later it became clear that they did so out of fear that I might swallow them (brainwash them).

Therefore it would be a useless humiliation and indeed unreasonable to accept a government with such officials as a reliable, serious authority to which I could apply. If the Old Said were living now, that is, if I were to behave as I did when engaged in politics and worldly affairs, I would say as Antara²⁵ did:

²⁵ Antara: A sixth-century Arab warrior and poet, celebrated in his own day [around 600] as a hero because he rose from slave birth to be a tribal chief. His poetry is represented by one poem in the *Mu'allaqat*. His greatness gave rise to many legends, and he became the hero of the popular Arabic epic *Sirat Antar*. In it he represents the ideal of a Bedouin chief, rich, generous, brave, and kind. His name also appears as Antar. *The Columbia Encyclopedia*, 6th ed. (2001). (Ed.)

The water of life drunk in humiliation
is like the torments of Hell,
While Hell would be a place of pride,
if I could live therein with honor and dignity.

But the Old Said is not living now, and the New Said considers it useless and meaningless to speak to such people. May their world cause them to perish! Although I have long been through with their world and withdrawn from their politics, may it rebound on them, they continue to heap unbearable trouble upon me due to groundless suspicions and pretexts. Thus I will not provide any basis for their suspicions by applying to them.

EIGHT: Divine Destiny punishes me through the unpitying hands of those misguided, worldly people to whom I sometimes feel inclined, even though they are unworthy of it, for the reward of loving such unworthy ones is pitiless enmity. I keep silent, since I regard myself as deserving this punishment.

I fought the Russians for 2 years during World War I, commanding a volunteer regiment and sacrificing my worthy friends and disciples. The army commander and Anwar Pasha, then military staff chief, appreciated my services. I was wounded and taken prisoner. On return from captivity, I courted danger by writing books like *Six Steps* and thereby humiliating the British invaders in Istanbul. I did this to help those who are now keeping me, without reason, under such pitiless surveillance. They repay my help with cruelty. In 3 months, they have caused me as much suffering as I experienced during my 3 years of captivity in Russia.

The Russians let me teach, although they considered me a cruel commander of volunteer Kurds. I taught most of the 90 officers who were my friends in captivity. Once the Russian camp commander came and listened. At first he thought the lessons were political and wanted to ban them, but afterwards permitted me to continue. Later we adapted a room in the barracks as a mosque in which I led the prayers. They never interfered with our prayers or prohibited me from communicating.

But my fellow countrymen, whose belief I try to secure and strengthen, keep me under strict surveillance for no reason and forbid me to meet and communicate with others, although they know I have withdrawn completely from politics. They even forbid me to teach in my private room, although I have the necessary certificate, and to lead or even attend prayers

in the mosque that I repaired and led the prayers in for 4 years. They still do not allow me to lead the prayers, even for the three people who are my regular congregation and intimate friends, in order to deprive me of the congregational prayer's reward.

In addition to all these injustices, whenever someone praises me—although I do not like or desire praise—the officer in charge of my surveillance becomes angry and jealous. He then resorts to some cruel devices to break my influence and troubles me in order to be appreciated by his superiors.

Living under such conditions, who else should I apply to but God Almighty? If the judge assumes the attorney's authority, there is no reason to apply to him or her. Whatever your opinion about this, I believe that there are many hypocrites among those friends. Hypocrites are worse than unbelievers and, therefore, make me suffer more than the unbelieving Russians did.

O you who are unfortunate because of your cruelty and hypocrisy! What harm did I do or am I doing to you that causes you to afflict me so? On the contrary, I am trying to secure your belief and help you attain eternal bliss. Are you crushing me with so much suffering because my service is not purely for God's sake? We will settle accounts in the greatest court of the Hereafter. My last words on this matter are: God is sufficient for us, and most excellent is He in Whom we trust. How good He is as the Guardian, and how good He is as the Helper.

YOUR THIRD QUESTION: Why are you so indifferent to Turkey's political situation (in particular) and that of the world (in general)? Why don't you change your attitude in the face of all these events? Are you keeping silent because you fear the misguided, worldly people, or because you approve of what is going on?

ANSWER: Serving the Qur'an caused me to abandon politics, even to forget to think of it. My whole life shows that fear cannot prevent me from following what I believe to be right. What and why should I fear? My only relationship with this world is death. I have no children, no wealth, and no dynasty. May God bless those who try to break my false worldly fame and glory, not those who preserve it. I now have only my life and, as you know, am firmly convinced that my life and death are in God's Hands only. Besides,

I prefer an honorable death to a humiliating life. Like Old Said, somebody is reported to have said:

We are such people that do not agree
to be of mediocre degree;
We either enjoy preeminence with
no one else in the world or enter the grave.

Serving the Qur'an prohibits me from considering humanity's political and social conditions for, among other things, we are travelers in this world. Basing myself on the Qur'an's light, I say that humanity has reached a marsh in this century. Whole caravans of humanity are trying, with great difficulty, to advance in this putrid marsh. A small minority follow a safe way and some have extricated themselves, but the majority continues to flail around in the dark. Although 20 percent of this majority seems quite happy with this struggle, mistaking its dirt and filth for musk and ambergris, whereas the other 80 percent knows that it is in a filthy marsh but cannot see the safe path (leading them out).

We must bring that majority out of the marsh. To do so, we must use a mace to knock the 20 percent back to its senses or provide the 80 percent with a light to see a way to safety. I see that most people hold maces, but almost no one gives light to the helpless 80 percent. If some still have light, they are not trusted because they also carry maces. People are afraid of being beaten after being drawn to the light. Besides, the light may be extinguished if the mace is broken.

This marsh represents the modern corrupted social life of misguided people. The intoxicated 20 percent are those who willingly indulge in life's material pleasures and stubbornly resist the light. The great majority, who are bewildered in the marsh, dislike deviation but cannot get out of it. The maces represent political trends and movements, while the light is the Qur'an's truths. No one should oppose and feel hostile toward the light, for only Satan hates it. Thus I took refuge in God from Satan and politics, threw the mace of politics away, and held tightly to the light. Many of those involved in political trends love the light. No one should turn away from or accuse the Qur'anic lights and truths, which are offered sincerely and without ulterior political motives and aspirations, unless they are human devils who favor atheism and irreligion in the name of politics.

I thank God that abandoning politics prevented me from reducing the Qur'an's diamond-like truths to pieces of glass under the accusation of exploiting them for political ends. On the contrary, these diamonds continue to grow in value in the eyes of more and more people from every social strata.

In addition, believers cannot serve their cause through politics in such stormy circumstances. Whatever service is rendered for Islam through politics eventually benefits the dominant anti-Islamic system, because foreign powers control the reins of political life. Engaging in politics also divides Muslims into opposing political factions that have a negative impact upon individual hearts and collective life—some people are so obstinate that even Muslims may label angelic brothers or sisters as satans, or a satanic party member as an angel, depending upon whether or not they support a certain political party. When I saw a learned man severely reproach a good, virtuous man who did not share his political views and then praise a corrupt member of his political faction, I became dismayed by the evils of politics and completely withdrew, saying: “I take refuge in God from Satan and politics.”

Another important reason for my indifference to politics is that eternal happiness can be attained only through belief. One without belief is unhappy in both worlds and is doomed to suffer the greatest suffering. Therefore, regardless of their personal belief or unbelief, piety or impiety, sincerity or insincerity, no one but Satan has the right to oppose serving belief.

Furthermore, belief is Islam's very foundation or spirit, and manifests itself in each particle of Islam. The more established people are in belief, the more successful they can be in other areas of religion. Depending on politics usually leads to two perilous consequences: Believers either despair of God's Mercy, due to successive disappointments, and are condemned to punishment by: *Do not despair of God's Mercy* (39:53) or feel forced to support every party decision or activity in some way, whether it conforms to Islam or not, and thus face the threat of: *And lean not on the evildoers, so that the fire touches you* (11:113).

These misguided, worldly people are afraid of a service dedicated to securing and strengthening people's belief. I sometimes hear them say: “Said is as powerful as 50,000 men, so we do not release him.” My reply is:

O you misguided, worldly people, unfortunate because of your hypocrisy! Why are you so incompetent at your own business, though your only concern is with this world? If you are afraid of me, anyone can perform 50 times as much as I do. If you are afraid of my mission to announce the Qur'anic truths and of my belief's spiritual force, know that I am as powerful as 50 million, not 50,000 people. I challenge all European atheists, including those among you. I destroy their castles of positivism and naturalism with the Qur'anic lights that I spread. If all of Europe's atheist philosophers, including yours, cooperate against me, by the will of God they will never move me even one inch from my way.

This being the truth, stop impeding me in my duty. Your efforts are in vain, for God's decree cannot be resisted by brute force or material power, and because once God lights a light it cannot be extinguished by blowing.

Praise belongs to God, Who guided us unto this. If He had not guided us, we would not have been guided. Indeed, our Lord's Messenger came with the truth.

The Everlasting: He is the Everlasting.

Said Nursi

The Fourteenth Letter

This Letter was not written, or was not included in *The Letters*, by Said Nursi.

The Fourth Flash

The title, **The Highway of the Practices of the Prophet** was considered appropriate for this treatise.

[The Imamate question is a matter of secondary importance, but because of the excessive attention paid it, it was as though included among the matters of belief and dealt with by the sciences of kalām and the principles of religion.¹ Here, it is discussed partly in this respect and partly in respect of its relevance to our basic duties towards the Qur'an and belief.]

*In the Name of God, the Merciful, the Compassionate.
Now has come a prophet from among yourselves; it heavily weighs upon him that you might suffer; full of concern is he for you, and full of compassion and mercy towards the believers. * But if they turn away, say: God is enough for me, there is no god but He. In Him have I placed my trust, for He is the Lord and Sustainer of the Mighty Throne.(9:128-9) * Say: I ask no recompense of you save love of close kin.(42:23)*

We shall point out in two stations two of the many vast truths contained in these glorious verses.

First Station

The first station consists of four points.

FIRST POINT

This describes the perfect compassion and mercy of God's Noble Messenger (Upon whom be blessings and peace) towards his community.

¹ al-Ijī, *Kitab al-Mawaqif*, iii, 331; Ahmad b. Muhammad, *Kitab Usul al-Din*, 269, 279

According to sound narrations, when at the terror of the resurrection everyone including the prophets will cry out for themselves, God's Messenger (UWBP) will demonstrate his pity and compassion² by calling out: "My community! My community!"³ As is affirmed by those who disclose the realities, when he was born, his mother heard the same words among his supplications.⁴ Then the whole history of his life, as well as the benevolence he taught demonstrate his perfect compassion and clemency. Also, by evincing an infinite need for his community's innumerable prayers,⁵ he showed a boundless compassion, for he showed that because of it he was concerned with the happiness of all of them. You can understand, therefore, how lacking in gratitude and conscience it is not to observe the practices of so kind and compassionate a leader.

SECOND POINT

Among the universal, general duties of his prophethood, God's Noble Messenger (Upon whom be blessings and peace) displayed great compassion in certain particular, minor matters. Superficially, his behaving so kindly in such matters seems unfitting for the supreme importance of the prophetic mission. But in reality, such minor matters were the tips or samples of a chain that would be the means whereby a universal, general function of prophethood would be fulfilled. The greatest importance was therefore given to the sample for the sake of the mighty chain.

For example, the extraordinary gentleness God's Messenger (UWBP) showed towards Hasan and Husayn in their childhood and the great importance he gave them⁶ was not only out of love and natural kindness and family feeling, it was rather because they were each the tip of a luminous thread of the office of prophethood, and the source, sample, and index of a community of great consequence which would receive the legacy of prophethood.

Indeed, the Messenger (UWBP) used to take Hasan (May God be pleased with him) tenderly into his arms and kiss his head⁷ for the sake of the luminous, blessed, Mahdi-like descendants who would spring from him, such as Shah Geylani, the Ghawth al-A'zam,⁸ who would be the inheritors of pro

² See, *Bukhari*, Tawhid, 32; *Muslim*, Iman, 326.

³ *Bukhari*, Tawhid, 36; Tafsir Sura 17:5; Fitan, 1; *Muslim*, Iman, 326, 327; *Tirmidhi*, Qiyama, 10; *Darimi*, Muqaddima, 8.

⁴ See, Suyuti, *al-Khasa'is al-Kubra*, i, 80, 85, 91; al-Nabhani, Hujjat Allah 'ala'l-'Alamin, 224, 227, 228.

⁵ See, *Tirmidhi*, Qiyama, 24.

⁶ See, *Bukhari*, Fada'il al-Ashab, 22; *Muslim*, Fada'il al-S'ahaba, 56, 60.

⁷ See, *Musnad*, v, 47; al-Tabarani, *al-Mu'jam al-Kabir*, iii, 32; xx, 274.

⁸ Shaykh 'Abd al-Qadir Gilani, d. 561/1165-6. The anonymous founder of the Qadiri Order. (Tr.)

phethood and would uphold the sacred Shari'a of Muhammad. He saw with the eye of prophethood the sacred services they would perform in the future, and applauded them.⁹ He kissed Hasan's head as a sign of approval and encouragement.

Also, he embraced Husayn (May God be pleased with him) and showed him importance and tenderness on account of the illustrious Imams like Zayn al-'Abidin and Ja'far al-Sadiq, and the numerous Mahdi-like luminous persons, the true inheritors of prophethood, who would spring from his effulgent line, and for the sake of the religion of Islam and office of prophethood.

Since with his heart with its knowledge of the Unseen, the Prophet Muhammad's (UWBP) luminous vision and future-penetrating eye observed from the Era of Bliss in this world the Assembly of the Resurrection on the side of post-eternity, and from the earth saw Paradise, and watched events which had occurred since the time of Adam and were concealed in the dark veils of the past, and even beheld the vision of the All-Glorious One, he surely saw the spiritual poles and the Imams who were to be the inheritors of prophethood, and the Mahdis, who would follow on in the lines of Hasan and Husayn. And for sure he would kiss their heads in the name of all of them. Yes, Shah Geylani has a large part in his kissing Hasan's head.

THIRD POINT

According to one interpretation, the verse:

Say: I ask of you no recompense save love of close kin(42:23)

has the meaning: "God's Noble Messenger (UWBP) wants no reward for fulfilling the duties of messengership; he wants only love for his family."

If it is asked: According to this, it seems there is an advantage to be gained from a family relationship. Whereas, according to the meaning of:

The most honoured of you in the sight of God is the most righteous of you,(49:13)

prophethood functions in respect of closeness to God, not of family relationships?

The Answer: With his vision that penetrated the Unseen, God's Most Noble Messenger (UWBP) saw that his family would become a light-giving tree in the world of Islam. It would be from his family that the overwhelming majority of those persons who would act as guides and preceptors instructing every level of the world of Islam in human attainment and per

⁹ See, *Ibn Maja*, Muqaddima, 11; *Musnad*, iv, 172.

fection would emerge. He divined that his community's prayer for his family in the final section of the prescribed prayers: "O God, grant blessings to our master Muhammad and to the family of our master Muhammad, as You granted blessings to Abraham and to the family of Abraham; indeed, You are Worthy of Praise, Most Exalted"¹⁰ would be accepted. That is to say, just as the vast majority of the luminous guides among the people of Abraham were prophets of Abraham's family and line,¹¹ so he saw in his community the spiritual poles of his family performing the momentous duties of Islam, and in most of the paths and Sufi orders, like the prophets of Israel.¹² Therefore, being commanded to say: "Say: I ask of you no recompense save love of close kin," he wanted his community to love his family.

There are numerous narrations corroborating this fact. He repeatedly decreed: "I leave you two things. If you adhere to them, you will find salvation: one is God's Book, the other is my Family."¹³ For members of his family were the source and guardians of his practices (Sunna) and were charged with complying with them in every respect. This is why what was intended by this Hadith was adherence to the Book and the Prophet's practices. That is to say, in respect of the office of messengership it was the Prophet's (UWBP) practices that were sought from his family. So no one who abandoned his practices could truly be a member of his family, nor could such a person not be a true friend to them.¹⁴

Also, the reason he desired his community to gather round his family¹⁵ was that, with God's permission, he knew it was going to become very numerous in the course of time, and that Islam was going to become weak. An extremely strong and large mutually supportive group of people was therefore necessary to be the instrument through which the Islamic world would progress spiritually and morally, with divine permission. He thought of this and desired that his community should gather round his family.

Indeed, even if the members of the Prophet's (UWBP) family were not greatly in advance of others in matters of belief and faith, they were still far ahead of them in regard to submission, partiality, and partisanship. For they were followers of Islam by nature, birth, and temperament. Even if natural partiality is weak and unworthy, or unjustifiable even, it cannot be given

¹⁰ *Bukhari*, *Anbiya'*, 10; *Muslim*, *Salat*, 65-6.

¹¹ See, Ibn al-Hajar, *Fath al-Bari*, xi, 162.

¹² See, al-Munawi, *Fayd al-Qadir*, iv, 384; al-'Ajluni, *Kashf al-Khafa'*, ii, 83.

¹³ *Tirmidhi*, *Manaqib*, 31; *Musnad*, iii, 14, 17, 26.

¹⁴ See, al-Tabarani, *Mu'jam al-Awsad*, iii, 338; *Abu Da'ud*, *Fitan*, 2; *Musnad*, ii, 133.

¹⁵ See, al-Bazzar, *al-Musnad*, ix, 343; al-Tabarani, *al-Mu'jam al-Kabir*, iii, 45-6; xii, 34.

up. So would it be possible for a person to give up his support for a truth to which all his forefathers – who were most strong, most constant and true, and most illustrious – had been bound, and through which they had won glory, and for which they had sacrificed their lives, a truth the person clearly felt to be so fundamental and natural? Thus, due to this intense partiality and natural submission, the Prophet's (UWBP) family accepted the least hint in favour of the religion of Islam as though it were a powerful proof. For they were partial by nature. Others become partial only after some powerful proof.

FOURTH POINT

In connection with the Third Point, we shall indicate briefly a matter that has been disputed by the Shi'ites and the Sunnis and has been magnified to such an extent that it has been included in the books on doctrine, among the fundamentals of belief.¹⁶

The Sunnis say: "Ali (May God be pleased with him) was the fourth of the Rightly-Guided Caliphs. Abu Bakr the Veracious (May God be pleased with him) was superior to him and was more deserving of the Caliphate, therefore it passed to him first."¹⁷ While the Shi'ites say: "It was 'Ali's right. An injustice was done to him. 'Ali was the most worthy of them all." A summary of the arguments for their claims is this. They say: "The Hadiths of the Prophet (UWBP) about 'Ali,¹⁸ and with his title of King of Sainthood his being the recognized authority of the vast majority of the saints and spiritual paths, and his extraordinary knowledge, courage, and worship, and the Prophet's (Upon whom be blessings and peace) intense concern for him and towards his descendants all show that he was the most worthy. The Caliphate was always his right; it was seized from him."

The Answer: The fact that 'Ali (May God be pleased with him) followed the first three Caliphs, whom he repeatedly acknowledged,¹⁹ and held the position of their Shaikh al-Islam, refutes these claims of the Shi'ites. Furthermore, the victories of Islam and the struggles against its enemies in the time of the first three Caliphs and the events in 'Ali's time, refute the Shi'ites' claims, again from the point of view of the Islamic Caliphate. That is to say the Sunnis' claim is rightful.

If it is said, there are two sorts of Shi'ites, the Sainthood Shi'a and the

¹⁶ See, al-Taftazani, *Sharh al-'Aqa'id* (Turk. tr. Süleyman Uludağ), 321.

¹⁷ See, Ahmad b. Hanbal, *al-'Aqida*, i, 123; Ibn Abi 'Izz, *Sharh 'Aqida al-Tahawiyya*, i, 545, 548.

¹⁸ *Tirmidhi*, Manaqib, 19; *Ibn Maja*, Muqaddima, 11; *Musnad*, i, 84, 118; iv, 281.

¹⁹ See, *Bukhari*, Fada'il Ashab, 5; *Abu Da'ud*, Sunna, 7; *Musnad*, i, 106.

Caliphate Shi'a. Because they mixed hatred and politics the second group may have been unjust, but the first group were not concerned with partisan politics. However, the Sainthood Shi'a joined the Caliphate Shi'a. That is, some of the saints of the Sufi orders looked on 'Ali as superior and they endorsed the claims of the Caliphate Shi'a.

The Answer: 'Ali (May God be pleased with him) has to be considered in two respects. One is from the point of view of his personal perfections and rank, and the other is from the point of view of his representing the collective personality of the Prophet's (UWBP) family. As for this collective personality, it displays an aspect of the Most Noble Messenger's (UWBP) essential nature.

Thus, in regard to the first point, foremost 'Ali himself and all the people of truth gave precedence to Abu Bakr and 'Umar.²⁰ They saw their ranks as higher in the service of Islam and closeness to God. As for the second point, as the representative of the collective personality of the Prophet's (UWBP) family, which represents an aspect of the Muhammadan Truth, 'Ali has no equal. The highly laudatory Hadiths about 'Ali²¹ look to this second point. There is a sound narration that corroborates this: the Noble Messenger (UWBP) decreed: "The descendants of each prophet are from himself. My descendants are those of 'Ali."²²

The reason the Hadiths praising 'Ali more than the other three Caliphs have become so widespread is that the people of truth, that is, the Sunnis, spread many narrations about him in response to the Umayyads and Kharijites attacking and disparaging him unjustly. The other Rightly-Guided Caliphs were not subject to such criticism and detraction, so no need was felt to spread Hadiths about them.

Furthermore, the Prophet (UWBP) saw with the eye of prophethood the grievous events and internal strife to which 'Ali would be exposed in the future, and in order to save him from despair and his community from thinking unfavourably of him, he consoled him and guided his community with significant Hadiths like "Whosoever master I am, 'Ali too is his master."²³

²⁰ See, al-Ghazali, *Qawa'id al-'Aqa'id*, i, 228; al-Kalabazi, *al-Ta'arruf li-Madhab Ahl Tasawwuf*, i, 57.

²¹ *Tirmidhi*, *Manaqib*, 19; *Ibn Maja*, *Muqaddima*, 11; *Musnad*, i, 84, 118; iv, 281.

²² Tabarani, *al-Majma' al-Kabir*, no: 2630; al-Haythami, *Majma' al-Zawa'id*, x, 333; al-Munawi, *Fayd al-Qadir*, 223, no: 1717.

²³ *Tirmidhi*, *Manaqib*, 19; *Ibn Maja*, *Muqaddima*, 11; *Musnad*, i, 84, 118, 119, 152, 331; iv, 281, 368, 370, 383; v, 347, 366, 419; al-Kattani, *Nazm al-Mutanathir fi'l-Ahadith al-Mutawatir*, 24; al-Munawi, *Fayd al-Qadir*, vi, 218; Ibn Hibban, *Sahih*, ix, 42; al-Hakim, *al-Mustadrak*, ii, 130; iii, 134.

The excessive love of the Sainthood Shi'a towards 'Ali (May God be pleased with him) and – influenced by the Sufi Orders – their deeming him superior, does not make them answerable to the degree of the Caliphate Shi'a. For those who follow the path of sainthood look towards their spiritual guides with love, and the mark of love is excess;²⁴ it wants to see the beloved as greater than his rank. And that is how it sees him. Ecstasies may be forgiven excesses of love. So their deeming 'Ali more worthy because of their love may be excused on condition it does not turn into disparagement of the other Rightly-Guided Caliphs and enmity towards them, and does not go beyond the fundamental teachings of Islam.

As for the Caliphate Shi'a, since political prejudice took a hold of them they could not rid themselves of hatred and aggression, so forfeited their right to be excused. Even, confirming the saying, "Not for love of 'Ali, but out of hatred of 'Umar," since Persian national pride was wounded at 'Umar's hand,²⁵ they showed their revenge in the form of love of 'Ali. So also 'Amr ibn al-'As's rebellion against 'Ali and 'Umar ibn al-Sa'd's tragic war against Husayn²⁶ aroused in the Shi'a an intense anger and enmity towards the name of 'Umar.

The Sainthood Shi'a have no right to criticize the Sunnis, for the Sunnis have not decried 'Ali, indeed, they love him sincerely. But they avoid the excessive love which is described as dangerous in Hadiths.²⁷ The Prophet's (UWBP) praise of 'Ali's followers in the Hadiths²⁸ refers to the Sunnis. For it is the Sunnis among 'Ali's followers who love him in a moderate fashion and are the people of truth. Just as excessive love of Jesus (Upon whom be peace) is dangerous for Christians, so it has been made clear in sound Hadiths that that sort of excessive love for 'Ali is dangerous.²⁹

If the Sainthood Shi'a say: "Once 'Ali's consummate spiritual attainments are accepted, it is impossible to give precedence to Abu Bakr the Truthful."

The reply: It was as though the personal perfections of Abu Bakr, the

²⁴ *Abu Da'ud*, Adab, 113; *Musnad*, v, 194; vi, 450.

²⁵ See, Ibn Sa'd, *al-Tabaqat al-Kubra*, vi, 12, 21; al-Tabari, *Tarikh al-'Umayyad wa'l-Muluk*, iii, 283, 289.

²⁶ See, al-Tabari, *Tarikh al-'Umayyad wa'l-Muluk*, iii, 298; Ibn Kathir, *al-Bidaya wa'l-Nihaya*, viii, 193.

²⁷ *Musnad*, i, 160; Nasa'i, *al-Sunan al-Kubra*, v, 137; al-Hakim, *al-Mustadrak*, iii, 132.

²⁸ al-Tabarani, *al-Mu'jam al-Awsad*, vi, 354; vii, 343.

²⁹ Bukhari, *Ta'rikh al-Kabir*, ii, 257; Ahmad ibn Hanbal, *Fada'il al-Sahaba*: 1087, 1221, 1222; al-Haythami, *Majma' al-Zawa'id*, ix, 133; Ibn al-Jawzi, *al-'Ilal il-Mutanahiya*, i, 223.

Supremely Veracious, and ‘Umar, the Supreme Distinguisher between True and False (May God be pleased with them), had been placed in the pan of some scales together with their achievements during their Caliphates, realized through their performance of the duties inherited from the Prophet (UWBP), and in the other pan had been placed ‘Ali’s (May God be pleased with him) extraordinary personal perfections together with the internal Caliphate struggles, which resulted from the tragic events he was compelled to enter upon and were the object of suspicion and distrust, and the Sunnis saw that Abu Bakr’s or ‘Umar’s or ‘Uthman’s (Dhī’l-Nurayn) pan weighed heavier, and so they gave them precedence.

Moreover, as is proved in the Twelfth and Twenty-Fourth Words, prophethood is so elevated in comparison to sainthood that a tiny manifestation of it is superior to a large manifestation of sainthood. In regard to this, the successes of the Supremely Veracious and the Supreme Distinguisher between True and False during their Caliphates was an indication for the Sunnis that their share in the legacy of prophethood³⁰ and the establishment of its laws had been divinely bestowed. Since ‘Ali’s personal perfections did not dismiss that greater share, which had been inherited from the Prophet (UWBP), he acted as Shaikh al-Islam for Abu Bakr and ‘Umar, the two Illustrious Elders, in the time of their Caliphates, and esteemed them. How should the Sunnis, who love and revere ‘Ali, not love and revere the two Elders, whom ‘Ali loved and revered sincerely? Let us make this truth clear by means of an example:

One of the sons of a very rich man is given twenty *batmans*³¹ of silver and four *batmans* of gold from his father’s legacy, and another is given five of silver and five of gold. So if the third is given three of silver and five of gold, of course the last two will receive less in quantity, but more in quality. Like this example, the lesser amount of the two elders’ share of the gold of the truth of divine immediacy, which was manifested in the legacy of prophethood and the establishment of its laws, would weigh heavier than the great amount of divine proximity and the perfections of sainthood which sprang from the jewel of sainthood. These points should also be taken into account when weighing them up.³² But if they are compared with one another from the point of view of personal courage, knowledge, and sainthood, the matter takes on a different complexion.

³⁰ See, *Bukhari*, Fada’il Ashab, 6; *Muslim*, Fada’il al-Sahaba, 15-16; *Tirmidhi*, Ruya, 9.

³¹ *Batman*: a weight varying from 5-30 lbs. [Tr.]

³² See, *Tirmidhi*, Ruya, 10; *Abu Da’ud*, Sunna, 8; *Musnad*, v, 44, 50.

Also, there can be no comparison in respect of the collective personality of the Prophet's (UWBP) family, which was represented in the person of 'Ali (May God be pleased with him), and of the Muhammadan Truth, which was manifested as a total inheritance in that collective personality. For contained in it was the mighty mystery of the Prophet Muhammad himself (Upon whom be blessings and peace).

As for the Caliphate Shi'a, they can claim no rights before the Sunnis other than shame. For although they say they have tremendous love for 'Ali (May God be pleased with him), they disparage him, and their creed necessitates accusing him of immorality. For they say that although Abu Bakr the Veracious and 'Umar were acting unjustly, 'Ali feigned approval for them; according to Shi'i terminology, he dissimulated. That is, he was frightened of them and behaved hypocritically.³³ But it is not love to hold that someone who was such a hero of Islam, won the title Lion of Allah,³⁴ and was the commander and guide of the faithful, was simulating love for people he did not love out of fear and deception, and was feigning approval for them in fear for more than twenty years, and was following wrongdoers. 'Ali (May God be pleased with him) would disclaim love that sort.

Thus, the people of truth's creed in no way disparages 'Ali, nor levels accusations of immorality at him. It does not attribute cowardice where there was such remarkable courage, but says that if 'Ali had not considered the Rightly-Guided Caliphs to be right, he would not have recognized them for a minute, nor obeyed them. It means that since he thought them right and preferable, he made over his courage and striving to the way of justice.³⁵

In Short: Too much or too little of anything is not good. Moderation is the middle way³⁶ and has been chosen by the Sunnis. But, alas, Kharijite ideas have infiltrated the Sunnis to an extent; so too addicts of politics and some atheists criticize 'Ali. They say, God forbid, that he did not understand politics so was not entirely worthy of the Caliphate and could not govern, and because of these unjust accusations, 'Alawis feel affronted at the Sunnis. Whereas Sunnis hold no principles or basic beliefs that necessitate such ideas. Indeed, they prove the opposite. The Sunnis cannot

³³ See, al-Razi, *I'tiqad Firqah al-Muslimin wa'l-Mushrikin*, i, 60, 61; Ibn Taymiyya, *Minhaj al-Sunna*, vi, 320.

³⁴ See, Ahmad b. 'Abdullah al-Tabari, *al-Riyad al-Nadira*, i, 245; *Zaha'ir al-'Uqba*, i, 92.

³⁵ Ibn Abi al-Hadid, *Sharh Nahj al-Balagha*, i, 130-2.

³⁶ See, al-Bayhaqi, *Shu'ab al-Iman*, iii, 402; v, 261; al-'Ajluni, *Kashf al-Khafa'*, i, 470.

be condemned because of ideas that come from Kharijites and atheists. Indeed, the Sunnis are firmer followers of 'Ali than the 'Alawis. They mention 'Ali in the laudatory fashion he deserves in all their khutbas and prayers. And the saints and purified scholars, the vast majority of whom belonged to the Sunni school, recognized him as a spiritual guide and the king of sainthood.³⁷ The 'Alawis should ignore the Kharijites and atheists who have deservedly earned the enmity of both the 'Alawis and the Sunnis, and not take sides against the people of truth. Some 'Alawis even abandon the Prophet's (UWBP) Sunna out of spite for the Sunnis. Anyway, we have said too much on this matter, for it has been discussed inordinately by the religious scholars.

O Sunnis, who are the people of truth, and 'Alawis, whose way is love of the Prophet's (UWBP) family! Quickly put an end to this meaningless, disloyal, unjust, and harmful dispute between you. Otherwise the atheistic current which is now so influential will make one of you a tool against the other, and use the one to crush the other. And after defeating the one it will destroy the tool. As believers in divine unity, it is essential that you leave aside unimportant matters that cause division, for there are a hundred fundamental sacred bonds between you that enjoin brotherhood and unity.

Second Station

The Second Station will be about the second truth of the verse,

But if they turn away, say: "God suffices me, there is no god but He; in Him do I place my trust – He the Sustainer of the Throne [of Glory] Supreme!" (9:129)³⁸

³⁷ See, Imam Rabbani, *al-Maktubat*, i, 134 (No: 251).

³⁸ The Second Station was designated the Eleventh Flash.

*Note: Our Master, Hazret-i Ustad, said in explanation of these two phrases in the footnote of the Sixth Chapter of the Twenty-Ninth Flash, which is in Arabic: "The degrees of these two phrases were written in Arabic because they are reflection and remembrance of God rather than intellectual knowledge....." The Fourth Ray, called *Hasbiye Risalesi*, about the verse "For us God suffices, and he is the Best Disposer of Affairs," was written subsequently in Turkish.

HUMAN DIGNITY

The Constitutional Value and the Constitutional Right

AHARON BARAK

Translated from the Hebrew by

DANIEL KAYROS



CAMBRIDGE
UNIVERSITY PRESS

Three types of model for determining the content of the constitutional value of human dignity

1. Theological models, philosophical models and constitutional models

The key question before us is: what is the content of human dignity as a constitutional value? What is the normative message that emanates from this constitutional value? The long intellectual history of the social value of human dignity¹ serves as a rich source from which we can draw the important models for understanding the constitutional value of human dignity. One model is the theological model. The other model is the philosophical model. In my opinion, these two models cannot provide a satisfactory basis for human dignity as a modern constitutional value. I would like to propose a third, distinct model, based upon a constitutional approach to human dignity.

The approach of each of the three models is different from that of the others.² However, at times there is no great difference in the results which each of the three models leads. We have before us a Rawlsian phenomenon of “overlapping consensus.”³

2. Theological models

The theological models incorporate various – and at times opposing – views of theologians dealing with human dignity. Common to all of them is the desire to grant the constitutional value of human dignity.

¹ See Chapter 2, section 1A.

² Sensen distinguishes between a traditional paradigm, which includes the theological and philosophical models, in our terms, and a contemporary paradigm – see Oli Sensen, ‘Human Dignity in Historical Perspective: The Contemporary and Traditional Paradigms’ (2011) 10 *European Journal of Political Theory* 71.

³ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005) 1. See also Laurie Ackermann, *Human Dignity: Lodestar for Equality in South Africa* (Cambridge: Juta, 2012) 31.

the meaning assigned to human dignity in the framework of religion.⁴ Every religion has its own way of viewing human dignity.⁵ Our focus here is upon Judaism and Christianity.⁶ These two religions are based upon the view that man was created “in the image of God” (*imago dei*). Theologians dealing with each of these religions reach different – and at times opposing – conclusions regarding human dignity. I am not a theologian, and I am not able to contribute to this examination. This is a shame, because a great wealth of values and principles is inaccessible to me. However, I do not believe that as an interpreter of a constitutional text I must interpret it according to the views of any particular religion. I certainly am not of the opinion that I must study human dignity in the various religions in the way a theologian does. We are dealing with the understanding of a modern, constitutional text. The purposive interpretation of such a text focuses upon modern people’s understanding of the constitutional value of human dignity. Indeed, a modern person is not necessarily a person whose worldview is religious. We therefore cannot assert the religious view as the basis for our understanding of the constitutional value of human dignity.

Of course, rejecting the theological models does not diminish their conclusions, to the extent that they comport with the constitutional model I support. The theological approach and the constitutional approach, despite their different points of origin – one rooted in God and the other in man – often lead to similar results. Furthermore, the constitutional model draws its lifeblood from the essence of modern man. This essence is rooted in human history, and also reflects – to some extent or another – the religious beliefs of man, the preservation and development of which are also required by the constitutional value of human dignity.

⁴ See Göran Collste, *Is Human Life Special? Religious and Philosophical Perspectives on the Principle of Human Dignity* (Berlin: Peter Lang, 2002). On the necessity of religion as a basis for human rights, see Michael J. Perry, *Toward a Theory of Human Rights: Religion, Law, Courts* (Cambridge University Press, 2007).

⁵ See Joseph Runzo, Nancy Martin and Arvind Sharma (eds.), *Human Rights and Responsibilities in the World Religions* (Oxford: Oneworld, 2003); R. Kendall Soulen and Linda Woodhead (eds.), *God and Human Dignity* (Michigan: Wm. B. Eerdmans Publishing, 2006).

⁶ See Chapter 2, section 1C.

3. Philosophical models

A. *Assessment of the philosophical models*

The philosophical models bring together comprehensive and important writing on human dignity by various, and conflicting, philosophers. Common to all these philosophers is the important place human dignity holds in their philosophical view.⁷ The views of human dignity of Kant and Dworkin can be considered as belonging to these models. In my opinion, no one of these models can be decisive. The Israeli Supreme Court discussed this in one case, noting:

Human dignity is a complex principle. In formulating it, one should distance oneself from the attempt to adopt one person's moral views or another person's philosophical views. Human dignity should not be turned into a Kantian concept, and it should not be seen as a manifestation of particular views of natural law.⁸

I cannot assess the philosophical basis of the philosophers mentioned above.⁹ I am no philosopher. I assume that the approach of each of them regarding human dignity is well based and suitable according to its own assumptions, and that it can contribute to the modern constitutional value of human dignity. However, the underlying purposes of a constitutional text, constitutional architecture and the role of human dignity in the framework of a constitutional bill of rights, were not considerations in the formulation of the philosophical view, and they are foreign to it.

How is it possible to base a constitutional understanding of the value of human dignity upon a philosophical view that has nothing to do with the constitutional character of that value? In my opinion, the correct approach must focus upon the purpose underlying the value of human dignity in a constitution. Such a purpose should be based upon the understanding of modern society and its needs. Of course, I would be proud if it were possible to characterize my view – which is anchored in the view of a modern constitution – as a philosophical view as well; however, its relevance to

⁷ See Collste, *Is Human Life Special?*

⁸ HCJ 5688/92 *Wekselbaum v. Minister of Defense*, IsrSC 47(2) 812, 827 (1993) (Barak D. (Heb.)).

⁹ See Herbert Spiegelberg, 'Human Dignity: A Challenge To Contemporary Philosophy', in Rubin Gotesky and Ervin Laszlo (eds.), *Human Dignity: This Century and the Next* (New York: Gordon and Breach, 1970) 39; William T. Blackstone, 'Human Rights and Human Dignity' (1971) 9 *Philosophy Forum* 3; Ralf F. Munster, 'A Critique of Blackstone's Human Rights and Human Dignity' (1971) 9 *Philosophy Forum* 65.

understanding human dignity as a constitutional value is derived from its fundamental assumptions regarding the purpose underlying a constitutional text, not from its philosophical character.

Much like the theological models, negating any particular philosophical model cannot negate its outcomes. To the extent that these outcomes are shared by the modern constitutional model, they should be accepted. Furthermore, the contemplations of philosophers through the ages has influenced the formulation of the modern view of human dignity. Human dignity after Kant cannot be understood without relating to Kant's view. Therefore, it is appropriate to discuss their ideas. However, it should always be remembered that we must understand human dignity against the backdrop of the existing social reality and on the basis of it being a fundamental value within a modern constitution.

B. *Human dignity and Kant*

Human dignity plays an important role in the philosophy of Kant. Human dignity is based on a person's reason and ability to autonomously self-legislate moral rules by which she will abide. Human dignity, however, must comport with others' freedom of choice. This is every person's right to be her own master, free from the choices of other people. Human dignity means rejecting the possibility that a person will be merely a means for realizing another person's freedom of choice. This Kantian view of human dignity was placed at the foundations of the case law of the German Constitutional Court in interpreting human dignity according to the *Objektformel* (object formula).¹⁰ Kant himself refrained from making extensive use of human dignity in his legal doctrine, where instead he focused on the just social conditions under which people can live freely and equally side by side – as derived from their humanity and morality. However, the *Objektformel* was adopted by the German Constitutional Court. Thus, for example, in the Aviation Security Case¹¹ it was held that a German statute that under certain conditions allowed shooting down a plane hijacked by terrorists with its passengers on board is unconstitutional. The reason for this is that the statute violated the dignity of the innocent hostages. They became merely a means for saving the lives of others.

Kant dealt with metaphysics, whereas we are dealing with the interpretation of human dignity within a modern constitutional bill of rights.

¹⁰ See Chapter 13, section 3A. ¹¹ BVerfGE 115, 118 (2006).

Regardless of how great Kant's contribution to human thought is, his contribution to the interpretation of a modern constitutional text is only minor. The *Objektformel* is important, and – as we shall see¹² – constitutes one of the aspects of a constitutional model of human dignity. However, it would be a mistake to limit this model to the *Objektformel* alone.

One might argue: if the Kantian *Objektformel* is enlightening and appropriate for interpreting the right to human dignity in the German Constitution, it must be enlightening and appropriate for interpreting human dignity as a value in any constitution. This argument is mistaken. Each constitution is interpreted independently; each has the purpose that lies at the foundations of its provisions; each is characterized by its own constitutional structure; each independently attributes the appropriate role to human dignity. In the German Constitution, human dignity is an absolute right. Any limitation of human dignity is unconstitutional, irrespective of its proportionality. In such a state of affairs, the constitutional right to human dignity should be given a narrow interpretation. The *Objektformel* fills this role. What about human dignity as a value in the German Constitution? This value is not interpreted solely according to the *Objektformel*. Its scope is broader, and it is in line with the constitutional model. Indeed, when the German court interprets the constitutional rights entrenched in the constitution – beyond the right to human dignity – it does so using the value of human dignity, which is broader and more comprehensive than the *Objektformel*. In legal systems in which human dignity is a relative right, there is no need to narrow the value of human dignity that lies at the foundations of that right to merely the *Objektformel*. This formula must constitute only one aspect of an entire array that reflects the constitutional value of human dignity.

C. Human dignity and Dworkin

Human dignity is an important concept in Dworkin's theory.¹³ It appears as such in many of his writings, especially so in his book *Justice for Hedgehogs* (2011).¹⁴ According to Dworkin, human dignity is an organizing idea, as it brings ethical principles together under the one roof of human dignity. This principle requires self-respect (which requires each person to take his own life, and the lives of others, seriously) and

¹² See Chapter 13, section 3A. ¹³ See Chapter 2, section 2C.

¹⁴ Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011).

authenticity (according to which, when relating to others, every person must express himself in his life, while finding a way of life which is good in his circumstances).

I do not have sufficient philosophical tools to assess Dworkin's view of human dignity. Intuitively, I am of the opinion that the law cannot be based upon a single principle. In my opinion, the law is based upon a number of principles, which are in a state of constant conflict and must be balanced. This conflict does not have a solution at the constitutional level, where conflict is the natural and desirable state. Conflict between the opposing principles is manifest at the sub-constitutional level (statute or common law), and is based upon the principle of proportionality. Within the framework of proportionality, balancing must be carried out.

Be that as it may, Dworkin was not interpreting the American, or any other, constitution. He did not attempt to understand human dignity as a constitutional value. His philosophical view, according to which human dignity internally unites the principles of self-respect and authenticity, cannot serve as a standard by which the constitutional value of human dignity can be understood in differently structured constitutions.

D. Human dignity: Margalit and Statman

Avishai Margalit examines the decent society.¹⁵ In his view, a decent society is one whose institutions do not humiliate people.¹⁶ It is a society that grants people self-respect. The right to human dignity is an external expression of self-respect.¹⁷ Limiting the dignity of a person thus leads to his humiliation. I agree that humiliating a person limits his human dignity, but human dignity should not be limited merely to humiliation.

Daniel Statman takes this one step further.¹⁸ In his opinion there are two basic approaches to understanding the value of human dignity. He calls the first approach "dignity as moral treatment." The other is "dignity as non-humiliating treatment." The first approach is that of Kant. Statman analyzes it extensively, and reaches the conclusion that "as a practical standard, the concept of dignity as moral treatment is an

¹⁵ Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1996).

¹⁶ *Ibid.*, 10. ¹⁷ *Ibid.*, 51.

¹⁸ See Daniel Statman, 'Two Concepts of Dignity' (2001) 24 *Tel Aviv University Law Review* 541 (Heb.); Daniel Statman, 'Humiliation, Dignity, and Self Respect', in David Kretzmer and Eckart Klein (eds.), *The Concept of Human Dignity in Human Rights Discourse* (The Hague: Kluwer Law International, 2002) 209.

empty concept. – Statman notes: “Thus, Kant expressly recommends not using the concept of dignity in practical moral thinking.”²⁰ In contrast, Statman’s approach is “dignity as non-humiliating treatment.”²¹

As noted above, human dignity in modern constitutions should not be seen as possessing the Kantian meaning. Of course, Statman’s reasons are different from mine, but our conclusions are similar. In addition, I agree that dignity as non-humiliating treatment constitutes an aspect of human dignity. The difference between Statman’s approach and mine is as follows: first, according to Statman, the constitutional value of human dignity as non-humiliating treatment expresses the constitutional concept of human dignity in its entirety, whereas in my opinion it is only one, very partial, aspect of human dignity.²² Second, Statman presents only two possibilities: understanding human dignity as moral treatment (the Kantian sense) or as non-humiliating treatment (the sense defined by him). There is no third possibility. Statman writes:

The regular sense of limitation of dignity – humiliation – provides us with a more or less clear standard for examining whether certain behavior of an individual or of the government constitutes a violation of dignity. From the moment we try to use the concept “dignity” as a normative-practical concept beyond this sense, we are left with no standard for determining whether or not behavior constitutes a limitation of dignity.²³

I cannot agree with this approach. The constitutional model presented in this book – a model accepted in a considerable number of constitutional democracies that recognize human dignity either solely as a constitutional value or as both a constitutional value and a constitutional right – serves as a third possibility.

4. Constitutional models

A. *The characteristics of the constitutional models*

(1) An interpretational approach with a spacious view

Constitutional models are interpretational models. They interpret the structure and the architecture of the constitution as a whole. On the

¹⁹ Statman, ‘Two Concepts of Dignity’, at 547. ²⁰ *Ibid.*

²¹ See also Christian Neuhäuser, ‘Humiliation: The Collective Dimension’, in Paulus Kaufmann, Hannes Kuch, Christian Neuhäuser and Elaine Webster (eds.), *Humiliation, Degradation, Dehumanization: Human Dignity Violated* (Dordrecht: Springer, 2010).

²² See section 4B below. See also Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press, 2004) 230.

²³ Statman, ‘Two Concepts of Dignity’, at 552.

basis of this interpretation they determine – even without an express provision – that human dignity is a constitutional value.²⁴ On the basis of this very same interpretation they also determine the content of the constitutional value of human dignity. Naturally, every constitution has its own interpretation. The constitutional value of human dignity, as we have seen,²⁵ is not universal. It is not given the same meaning by all. Modern constitutional democracies use purposive constitutional interpretation.²⁶ The purposive system of interpretation on the one hand and interpretative architecture on the other determine the content of the constitutional value of human dignity within a given democracy. Indeed, the democratic nature of the constitution affects the understanding of human dignity within it.²⁷

The point of departure for the constitutional models is the constitution itself. The modern constitution, which reflects the democratic nature of the regime and the society, and which has a bill of human rights at its core, recognizes human dignity as a constitutional value. It is usually one of the most important constitutional values.²⁸ Indeed, human dignity – alongside equality and liberty – is the basis for constitutionality itself.²⁹ When this is the case, there is no justification for viewing the constitutional value of human dignity with a narrow view. There is no reason to restrict the value of human dignity to “taboo cases” or to protecting people from humiliation and degradation. The constitutional value of human dignity protects all aspects of the individual and all of his aspirations. Thus, the constitutional value of human dignity should be approached with a spacious view,³⁰ expressing the full complexity of the human being.³¹

The German Constitution presents a unique case. In the German Constitution the right to human dignity has a unique constitutional

²⁴ See Chapter 6, section 1. ²⁵ See Chapter 1, section 1A.

²⁶ See Chapter 5, section 1A.

²⁷ See Catherine Dupré, ‘Dignity, Democracy, Civilisation’ (2012) 33 *Liverpool Law Review* 263. See also Andrew Clapham, *Human Rights Obligations of Non-state Actors* (Oxford University Press, 2006) 535; Christoph Möllers, ‘Democracy and Human Dignity: Limits of a Moralized Conception of Rights in German Constitutional Law’ (2009) 42 *Israel Law Review* 416.

²⁸ See Chapter 12, section 2A (Canada); Chapter 14, section 1D (South Africa); Chapter 15, section 1D (Israel).

²⁹ See Susanne Baer, ‘Dignity, Liberty, Equality: A Fundamental Rights Triangle of Constitutionalism’ (2009) 59 *University of Toronto Law Journal* 417.

³⁰ On interpretation with a spacious view, see Chapter 5, section 4C(5) and Chapter 13, section 1F. See also *S v. Makwanyane*, 1995 (3) SA 391 (CC), para. 9; *Case v. Minister of Safety and Security*, 1996 (3) SA 617 (CC), para. 21.

³¹ See Dupré, ‘Dignity, Democracy, Civilisation’.

structure. It is an absolute right. It is only natural that its interpretation requires a narrow view regarding the content of the right. In order to reach this necessary conclusion, it is possible to do one of the following: give the constitutional value of human dignity a narrow meaning that fits the character of the constitutional right to human dignity; or give it a broad meaning that applies to all of the constitutional rights, except for the constitutional right to human dignity. Only a narrow aspect of the broad value will apply to the constitutional right to human dignity. It appears that the German Constitutional Court chose the second option.³²

(2) Interpretation of the constitutional value of human dignity and the constitutional rights with a spacious view

The approach that looks upon the constitutional value of human dignity with a spacious view gives it a broad scope.³³ Every independent constitutional right has its own particular purpose that reflects its uniqueness: the particular purpose of the right to privacy is not the same as the particular purpose of the right to property. Alongside these particular purposes, there are general purposes behind all of the independent constitutional rights, including the general purpose regarding the value of human dignity. Indeed, the interpretational view derived from purposive interpretation is that human dignity is a general constitutional value at the root of all of the constitutional rights. The result is that the purposes of all of the constitutional rights partially overlap each other, as the general purpose of human dignity is common to them all.

For the most part, this overlap is of a complementary character (“complementary overlap”), as the constitutional value of human dignity common to all of the independent rights reinforces the particular purpose characterizing each separate right. At times this overlap has a conflicting character (“conflicting overlap”). The general purpose of human dignity in a particular right (e.g. the right to free speech), might oppose the particular purpose in another right (e.g. the right to privacy). Thus, when two independent constitutional rights conflict, the constitutional value of human dignity might find itself on both sides of the scales. Furthermore, at times there might be an internal conflict between different aspects of the value of human dignity within a given

³² See Chapter 13.

³³ See Kai Möller, *The Global Model of Constitutional Rights* (Oxford University Press, 2012).

right. Thus, for example, fulfillment of one individual's free will might limit the autonomy of his will or turn him into a mere means for the satisfaction of the will of others.³⁴

How should these cases of conflict be solved? Should we balance between the conflicting values at the constitutional level? Such interpretational balancing will influence the scope of the various constitutional rights. In my opinion, this approach is not correct. Conflicting overlap is a natural phenomenon in the world of constitutional values; it does not indicate a mistake in the constitution. It is a physiological phenomenon, not a pathology. It expresses the richness of the humanity of man, with all of its duplications and contradictions. Thus, the complementary or conflicting overlap should be left without a constitutional level solution: let the thousand flowers of complementary and conflicting constitutional values bloom at the constitutional level. The solution will be found at the sub-constitutional level, by the rules of proportionality.³⁵

(3) The multiplicity of constitutional models

Within the constitutional interpretational approach there are a number of constitutional models. Constitutional interpretation – even within purposive constitutional interpretation – is home to different constitutional approaches regarding the content of human dignity as a constitutional value. Thus, for example, both Mahlmann³⁶ and Ackermann³⁷ support a spacious view of the constitutional value of human dignity through purposive interpretation, as I do. However, their approach is that the content of human dignity reflects the *Objektformel*, according to which the meaning of human dignity never considers a person solely as a means, and always also considers him as an end in and of himself. This formula,

³⁴ See the "Peepshow" case (BVerfGE 64, 274 (1981)), in which it was held by the Supreme Administrative Court of Germany that the petitioner was lawfully denied a license to run a business in which nude women dance before paying peeping spectators, despite the consent of the dancing women and the limitation of their right to freedom of occupation. It was held that dancing in those circumstances violates their human dignity. See also the "Dwarf Tossing" Case (CE, October 27, 1995, Rec. Lebon 372, Conseil d'État statuant au contentieux, n. 143578, n. 136727), in which the Conseil d'État held that a competition in which a dwarf was shot as an arrow from a bow toward a target was legally prohibited, despite the dwarf's consent and the limitation of his freedom of occupation.

³⁵ See Chapter 6, section 4. See also Möller, *The Global Model of Constitutional Rights*. For a different approach see Lorenzo Zucca, *Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA* (Oxford University Press, 2007).

³⁶ See Matthias Mahlmann, *Elemente einer ethischen Grundrechtstheorie* (Berlin: Nomos, 2008).

³⁷ See Ackermann, *Human Dignity*, at 86.