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The Manichaeans of the Roman East: Manichaeism in Greek anti-Manichaica & Roman Imperial legislation

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Chapter 3: The Manichaeans in Roman Imperial Legislation

... and the Manichaeans, who have attained to the lowest villainy of crimes, nowhere on Roman soil should have the right of assembly and of prayer. (*Codex Theodosianus*)¹

We ordain that persons who prefer the Manichaeans' deadly error should have no freedom or leave to dwell in any place whatever of our State; but that, if ever they should have appeared or should have been found, they should be subject to capital punishment. (*Codex Justinianus*)²

3.1 Introduction

The previous chapter investigated the ways in which Greek anti-Manichaica (both pagan and Christian) outlined and reproduced the first encounter with Manichaeism and the first Manichaean missions in the Roman Empire. This chapter will survey the representation of Manichaeism and Manichaeans in Roman imperial legislation. The aim of the first two sections of the chapter (3.2 and 3.3) is to outline the profile of the Manichaeans as depicted in the laws and in how this compares with the corresponding profile of other religious groups. As far as I know, there has not been any other research examining all anti-Manichaean laws of the period (fourth to sixth centuries) using a comparative approach. The comparison will reveal the gravity that the Manichaean question had for the state, as well as attempt to shed light on the reasons why Manichaeism was the most persecuted heresy. Questions that will be examined through the comparative perspective are: What was the spatio-temporal geography of the sect? With which other religious groups does the law classify the Manichaeans? Were all Manichaeans persecuted (Elect, catechumens, men and women)? Why were Manichaeans persecuted that much? Was the 'topos' of the persecution their beliefs and teachings or their practices? What was the nature of the Manichaean crime as revealed through the prosecuting process, the inquisitional mechanism and the penalties imposed? A core question that runs through section 3.3 is whether the state considered Manichaeans as Christian heretics or as a religious group outside of Christianity. A further goal of this section is to point out the changes in the religious policy of the state during the period under investigation.

Section 3.4 attempts a reconstruction of aspects of the Manichaean daily life as these were captured through the provisions of the laws (prohibition of certain practices, restriction of rights and privileges, etc). Based on the dialectical relationship between law and social reality, the central question of this section is twofold. What does the law reveal and how does it affect the following aspects of Manichaean everyday life: (1) the existence of Manichaean communities, (2) the existence and ownership status of Manichaean assembly places, (3) the social networks supporting or denouncing Manichaeans, (4) the family relationships and Manichaean social profile.

¹ *CTh* 16.5.65, 428 CE (Coleman-Norton, 643).

² *CJ* 1.5.11, 487 or 510 CE (Coleman-Norton, 940). For the *CJ* see also the new edition of Frier et al. 2016, based on a translation by Blume (Fifth Title: Heretics, Manichaeans, and Samaritans, pp. 189-221).

The sources and their limitation

The main sources of this chapter are the anti-Manichaean laws recorded in the following statutory legislation:

Laws compiled under the reign of Theodosius II (408–450): (1) The *Theodosian Code* (hereafter *CTh*), in specific book sixteen, which refers to religion and especially chapter five (16.5), which is entitled *De Haereticis*. (2) The relevant *Sirmondian Constitutions* (against heretics) which are preparatory texts of the laws and for this reason more extensive, preserving a great deal of valuable information. (3) The relevant *Novels* (against heretics), which are laws issued after the compilation of the code (i.e. from 438 to 450).

Laws compiled under the reign of Justinian I (527–565): (1) The *Justinian Code* (hereinafter *CJ*), in specific, chapter five from the first book, entitled, *De haereticis et Manichaeis et Samaritis*. (2) Justinian's *Novels*.

There is an ongoing academic debate concerning the reliability of the legal codes and their use as historical sources. Basic questions that have been raised by scholars are: (1) questions of authenticity, (2) questions of representativeness, and (3) the problem of mindless reiteration of laws, which calls into question the dialectic relationship between law and social reality.

Questions of authenticity (CTh and CJ)

Are the laws that were included in the codes (*CTh* and *CJ*) the authentic texts (i.e. transcribed exactly as they had been issued in the first place), or were they paraphrased versions? In other words, did the compilers of the codes have access to the original laws, or did they use other paraphrased versions? In case they had access, did they alter the original text paraphrasing its content?

On this specific point, Honoré argues, “from Theodosius I (379) onwards, the compilers of the code (*CTh*) were able to draw increasingly on the authentic archives of the prefectures and imperial bureaux”.³ Moreover, it is generally accepted, that, although almost all the constitutions in the *CTh* are abbreviations of those originally issued, they generally remain “faithful to the original versions of the laws in terms of their content although not in terms of language”.⁴ The language of the law especially in the religion chapters has a different style from the rest of the legislation, a theological nuance, which denotes the Church's influence.⁵ Indeed, as Linder points out, “Book 16 of the Code enjoyed the unique status of having been accepted by the Church as an authoritative source of canon law”.⁶ In this sense book sixteen (as probably other similar ones) could have been ‘edited’ by churchmen.

In the case of the *CJ*, comparing the laws which exist in both codes (*CTh* and *CJ*, i.e. the laws issued by Arcadius and Theodosius II), we can note that some modifications and alterations (additions, omissions or interpolations) were made, in order to adapt them to the contemporary social context.⁷

³ Honoré 1986, 159.

⁴ Linder 1987, 42. According to Honoré (1986, 161–62), the essential content of the original text, the core of the laws, is not paraphrased but is preserved intact: “the editorial policy was that of fidelity to the texts” (161). Corcoran 1996, 19: “In conclusion, the transmitted texts are seldom identical with what the imperial chancery originally issued, yet the extent of alteration, although sometimes drastic, is not usually so. Abbreviation is the most common fate of constitutions in the legal sources”.

⁵ Cf. Coyle 2004, 223.

⁶ Linder 1987, 55.

⁷ See Corcoran 1996, 10: “Thus, interpolations may simply repeat or clarify the original text, perhaps explaining or eliminating anachronistic terms. [...] the level of alteration in *CJ* material can be assessed by comparison with

Questions of representativeness (CTh and CJ)

How representative are the constitutions included in the codes? Did the compilers include all the issued laws in the codes? This question, in turn, raises two further issues: a) whether they were able to detect all the laws, and b) whether they made a selection, having deliberately omitted some laws.

In both codes there are long periods during which there are no laws against heretics, or against Manichaeans. Both codes lack laws by certain emperors. How could this be explained? Did these emperors not issue laws against heretics whereas all other emperors did? Or, were their laws not included in the codes? In any case, what does not seem to be a coincidence and raises many questions is that some of these emperors were themselves regarded by the ruling emperors and compilers of the codes, as 'heretics' (i.e. not maintaining the Catholic faith). In this section, I will attempt to answer these very crucial questions.

The codification of the *CTh* took place from 429 to 438, under the reign of Theodosius II. We do not know if all of the older laws, namely those issued from Constantine up to Arcadius, were included. Although chapter 16.5 starts with the laws of Constantine (as the whole code does), it does not include laws against heretics, or against Manichaeans, issued by the emperors Constantius II (337–361), Julian (361–363) and Jovian (363–364). Thus, the laws included in chapter 16.5 (*De Haereticis*) of the *CTh* are not representative of the state's religious policy throughout the fourth and first half of fifth centuries. To be specific, in chapter 16.5 there are in total 66 laws against heretics, 64 of which were issued in the 63 years between 372 and 435. The chapter starts with two laws issued by Constantine in 326,⁸ and after these, the next law recorded is the one issued by Valentinian and Valens in 372 (against Manichaeans). Linder points out a relevant omission of the laws concerning the privileges granted to the Jews, issued by Constantius II and Julian the Apostate.⁹ For Julian it is self-evident that even in case he had issued edicts concerning religion, these would not have been included in the code. Thus, I will focus on Constantius II, supporter of the Arian party, since his reign was the longest-lasting (25 years). Two alternative suppositions could be made: (1) during the reign of the first Christian emperors there was no criminalization of heresy and therefore they did not decree laws against heretics, (2) Constantius II issued laws against heretics and Manichaeans, but Theodosius II did not include these laws (as well as those from other emperors) in the code.¹⁰ Presumably, the material selected by the editorial committee reflects the image that Theodosius II wanted to project, that of a Catholic-Christian empire, inaugurated by Constantine; for this reason he chose to begin his code with Constantine's laws.¹¹ Given such a background, it would be very likely that he did not include laws that spoiled this picture, especially laws issued by 'heretical' (not Catholic) or pagan emperors (Julian), as well as laws that followed a more moderate and tolerant policy toward some

other versions of the same texts [...] since *CJ* incorporates so much of the independently surviving *CTh*". Linder (1987, 48) on the content of *CJ*: "The complete dependence of Justinian's editors on the *Theodosian Code* as a source for the laws of the fourth and early fifth centuries, through 438, enables us to determine the degree to which the text was edited by them and to what extent they used the considerable latitude granted them by Justinian". The same applies to *Basilica*, which repeats, Hellenized, the Justinian provisions. The deviations observed between the two texts are due to the adaptation to the new social conditions, Cf. Troianos 1997.

⁸ The first is about the privileges of the adherents of the Catholic faith and the second about the right of Novatians to possess their own church buildings.

⁹ Linder (1987, 34) remarks: "Thus, whether deliberately or not, the Theodosian Code reflected a choice among existing laws, rather than a comprehensive collection".

¹⁰ For the chaotic religious policy of Constantius II, see Beck 1978, 135.

¹¹ Turpin 1985, 339–353, 344, 353.

heretics, giving them privileges. One such example could be a law issued by Gratian, which is recorded in the Ecclesiastical histories of Socrates and Sozomenus, and which granted to all heretics—except Manichaeans, Photinians, Eunomians—the right to congregate and practice their religion.¹² Thus, since Constantius II supported the Arian party and to him the Catholics were the heretics, it would be understandable that his laws (on religion) were not included in the code.

Consequently, since there are not any laws against Manichaeans included in the code before 372 (deliberately or not), the picture of the state's policy and of the effect it had upon Manichaeans cannot be reconstructed before that period.¹³ Although restricted in time (372–445), the rest of the source material of the *CTh* has the advantage that this period witnessed a great number of laws concerning Manichaeans. These enable us to investigate the questions at stake in this study. In the words of Linder, who studied the same material of *Roman Imperial Legislation on the Jews*, “This corpus is of prime importance for [my] research. The large concentration of material from a period measured in decades makes it particularly useful for the study of developments within a short or medium period of time”.¹⁴

The next law gap appears from 445 up to 527 (82 years). The *CJ* records only four laws against heretics during this period. The first was decreed by Marcian (450–457) against Eutychians and Apollinarians in 455. Another two laws against heretics in general were issued by Leo I (457–474) in 457 and 466–472. Finally, for the period from 474 up to 527, there is just one law, and this is against Manichaeans, issued either in 487 or in 510, and thus attributed either to Zeno (474–491), or to Anastasius I (491–518). In any case, the anti-heretical legislation of the Leonid dynasty was poor. Alternatively, the absence of laws was the result of a conscious decision of the editorial team of the code. In any case, as Corcoran points out, when the “amount of missing legislation” is considerable, it is “extremely difficult to be certain that any text (of whatever nature) is introducing a change in the law”.¹⁵

It is clear that the reconstruction of the state's policy towards heretics, and in particular towards Manichaeans, is influenced by the image that the compilers of the two codes intended to present. The selection of the specific laws that were included in the codes by the compilers reflects the priorities of the editing committees and aimed to serve the religious policies of the ruling emperors. So, the picture cannot be complete; some pieces of the puzzle are still missing.

Reiteration of laws: mindless procedure?

Another ‘problem’ pointed out by many researchers is whether the reiteration of edicts was just a mindless process of recirculation, a mere repetition of what the previous laws had decreed. Thus, they question whether the laws actually reflect social reality.¹⁶

¹² Socrates *HE*: 5.2.1-8; Sozomenus *HE*: 7.1.3.

¹³ As Turpin (1985, 351, 347, 350-353) highlights, “Finally, it is important to remember that although Theodosius’ interest in general legislation resulted in an impressive collection of edicts and epistles, even this collection is not complete”, “the *Theodosian Code* was, in one important way, organized according to religious rather than legal criteria”. The fact that Theodosius II, firstly, chose to begin his code with Constantine, and secondly, made a choice among existing laws means that he was motivated by religious rather than legal considerations. Thus, as Corcoran (1996, 12) concludes, what is included in the codes is “neither full nor necessarily representative”. Cf. Tolan 2016, 229-31.

¹⁴ Linder 1987, 55.

¹⁵ Corcoran 1996, 12.

¹⁶ On the question whether Roman law reflects aspects of the ‘real world’, see, e.g., Johnston 1999; Aubert and Sirks 2002. Cf. Gaudement 1972, on legislative reiteration. Regarding “The Reflection of Reality in Conciliar

However, recirculation of a law could also mean that its subject was of paramount importance, or that it was repeated because it was not being upheld. Both apply in our case. As Corcoran points out commenting on the former possibility, “many legal points need constant reiteration, no matter how often they have been stated before [...] It is likely therefore that rescripts continued to be more important than is often assumed”.¹⁷ Regarding the latter, the laws themselves firmly reiterate that they were repeated because the previous laws were not implemented. As we will see in the course of this chapter (especially in section 3.4), each law against Manichaeans re-enforced the validity of the previous ones and supplemented them with additional measures. Thus, it remains to study the sources themselves to reveal whether the above reservation applies to the laws under investigation.

3.2. Time-Space Mapping of the Manichaean ‘Sect’ in Roman Territory

Studying the laws of the Theodosian and Justinian code, one quickly realizes that the Manichaeans were the most persecuted heresy, more than any other religious group. The presence of Manichaeans in both codes is constant, in contrast to the presence of other heretics/religious groups for which there is a periodicity, indicative of temporal or regional tensions and a de-escalation of their persecutions.

3.2.1 Quantitative Dimensions of the ‘Problem’

In the *CTh*, there are eighteen laws against the Manichaeans. The Eunomians, who are the next most persecuted religious group in the code, follow with seventeen¹⁸ laws against them, while eleven laws are against the Donatists, who are the next in the list. Against the Arians and Montanists (or Phrygians or Tascodrogitae) there are nine laws, against the Macedonians six laws, and five each against Priscillianists, Apollinarians and Hydroparastates. The references for all the other religious groups/heresies in the laws, such as the ascetics (Apotactites, Encratites, Saccophori, Messalians, Euchites), the adoptionists (Photinians, Paulianists, Marcellians), the Nestorians, the Marcionites and the Gnostics (Valentinians), vary from one to three. In the above classification, I have included the religious groups that the code itself classified as heretics in chapter 16.5 of the code. The pagans and the Jews are treated as distinct religious groups, and the laws relating to them—some in their favour and some against them—constitute separate chapters, specifically ch. 16.7 and 16.8 for the Jews and ch. 16.10 for the pagans.

In the *CJ*, and in particular in chapter five (first book), entitled *Concerning Heretics, and Manichaeans and Samaritans*, of a total number of twenty-two laws, seven are repetitions of the *CTh*’s laws. In the remaining fifteen laws, dating from 455 (Marcian) to 531 (Justinian), there are: seven laws against the Manichaeans, four laws against the Montanists (and three against the Tascodrogitae), four against the Samaritans, three against the pagans and the Ophites, respectively, and one each against the Jews, the Monophysites (adherents of Eutyches), and the Apollinarians. Finally, there are five laws which are not addressed against particular heretics, but against heretics in general.

Legislation” see Halfond 2010, 99-130. Generally, on Roman Public Law, see the standard works of Kaser 1971; Mitteis 1891; Mommsen 1899.

¹⁷ Corcoran 1996, 294.

¹⁸ Mainly sixteen since one of them is twice mentioned (it is addressed to the same prefect at the same date). There are another three laws in ‘favour’ of Eunomians, cancelling previous laws and penalties against them.

As one can notice, the Manichaeans in both codes head the list, followed by (or together with) the religious group that constituted a major problem for the state at the time each code was composed.

3.2.2 Time-Mapping

Studying the temporal distribution of persecutions per sect, the Manichaeans seems to be a constant target, unlike other sects, for which a periodicity is observed.

Starting from the *CTh* which covers the period 372–445, the so called *noble*¹⁹ heresies (Arians, Macedonians or Pneumatomachi, Apollinarians) are the target of the laws during the first decades (380's–390's) and reappear later during the 420's. The Donatists, Montanists and Priscillianists appeared as a problem at the turn of the fourth to fifth century (Montanists and Priscillianists remaining as a target, up to the 430's). As far as the Manichaeans are concerned, they are steadily and continuously the focus of the laws from the 370's up to the 440's. The only heresy that seems to rival them are the Eunomians, who appear constantly in the laws from the 380's up to the 430's. I consider that this is due to the fact that at the time the *CTh* was composed, the Eunomians (neo-Arians) were the heresy of the day. Relevant remarks for the next period (445–531) which is covered by the *CJ*, cannot be made because, as mentioned in the introduction, there is a law-gap of 82 years, while the majority of laws (eleven out of fifteen) are Justinian's laws issued between 527–531.²⁰

3.2.3 Space-Mapping

Theodosian laws are general laws in the form of edicts that had *empire-wide* or *province-wide* applicability. The most common type of law was the “imperial epistle, addressed usually to a government official”.²¹ The latter, who is called upon to implement the law, was usually the highest in the hierarchy of the administrative structure, namely one of the four Praetorian Prefects (*Praefectus Praetorio*), or one of the two Prefects of the City (*Praefectus Urbi*), i.e. Rome and Constantinople. In the case of the laws against heretics, it is reasonable to assume that the geographical area administered by the particular Prefect (and recipient of the law), is in principle, the one confronted with the problem of the specific heretics. This does not exclude the possibility that a similar problem was faced in other geographical areas.²²

The *province-wide* applicability, which is the norm for the majority of laws against Manichaeans (and not only them), is a valuable tool for developing a chrono-geography of the sect, and a credible indicator that enables us to compare the mobility of the 'Manichaean

¹⁹ See Introduction, 5.3 (Defining Terms).

²⁰ However, in the *CJ*, which covers the next period (455–531), the Eunomians disappeared; while the Manichaeans are not merely persecuted constantly, but seem to be the main target of the laws, followed by the Montanists who reappeared in the code.

²¹ Turpin 1985, 342–43.

²² Salzman 1993. Corcoran (1996, 201, 203) remarks: “we can see clearly how this system of promulgation developed. [...] one single act of legislation generated both edicts and letters to officials, with versions edited to include only appropriate matters for particular recipients or areas. [...] Thus, a single act of the emperor might [...] generate multiple copies of documents with different formats and/or content”; 201-02: “Letters to praetorian prefects are very common in *CTh* after 324, while instructions ordering them to disseminate the imperial will by letter or edict to governors and the population at large are preserved in many of the fuller versions of laws among the Sirmondian constitutions and the Novels”.

problem' between East and West.²³ Thus, while initially (372–383), the Manichaeans equally troubled both the eastern (two laws) and western (three laws) part of the Empire, it seems that later (384–422), the 'problem' lay only in the western part (five laws).²⁴ Lastly, for the period (423–445), the Manichaeans again 'annoyed' similarly the eastern (four Laws) and western (three laws) parts.

How to explain the absence of persecutions of Manichaeans in the eastern part of the empire for 40 years? How could one interpret this silence, from the edict of Theodosius in 383 until the two edicts addressed to Asclepiodotus, the Praetorian Prefect of the East, in 423? Were there no Manichaeans in the East, or were they there but did they not create any problems? Were the officers of the East more operative and effective in their job in restraining them? Or were the bishops efficiently filling the legislative gap or supplementing the officials' work? Or further, was there cooperation in the East between bishops and government officials in the fight against the crime of the Manichean heresy?

I consider it most likely that the authorities had their attention focused on other heretics during this period of time. The conflicts with the *noble* heresies (Arian, Eunomians, Macedonians, Apollinarians) and especially with the Eunomians, almost fully occupied the state and Church of the Eastern Empire at the time. Eighteen out of a total of twenty laws relating to the Eunomians were issued during this period (381–423). The problem had a local dimension: seventeen out of these laws were addressed to Praetorian Prefects of the East. In addition, the fact that the question of Manichaeans returned more aggressively in the East after 423, suggests that the Manichaean 'threat' never ceased to exist.

Therefore, it seems more reasonable to assume that the Manichaeans of the East at the time were not the state's priority, than to assume that they did not bother the state with their activities, or that they had migrated westwards. Regarding the western part, it is evident that the works and polemics of Augustine played a significant role in the intensification of the persecutions of western Manichaeans between 389 and 408.²⁵ Finally, for the *CJ* laws, one cannot make similar observations, since the western part of the empire did not exist anymore, and all laws concerned the eastern part.

3.3 The Profile (Crime) of Manichaeans in the Eyes of the Law

The aim of the present section is to determine the gravity that the Manichaean question occupies in the laws. What did Manichaeism and Manichaeans mean to the emperor, the authorities, and the state? Why were Manichaeans persecuted more than other heretics? What was their 'crime'? What was the nature of the threat that the state and the authorities considered it so important to confront?

In order to answer these questions, I will examine: (1) How the laws themselves classify the Manichaeans; with which other religious groups are they categorized, (2) the rationale behind the persecution of the Manichaean heresy, as developed by the laws; what exactly was persecuted (dogma, cult, gatherings), (3) the human subjects of the persecution, i.e. were all

²³ For a 'geography' of heresy traced in Epiphanius' *Panarion*, see Young 2006, 235–251, 242: "Beginning at Constantinople, one can draw an arc that swept easterly, passing through Asia, then south down through Antioch and Palestine, and finally ending at Alexandria. This arc was a "heresy-belt" [...]. Once one entered beyond the arc of these cities, one entered into the wilderness of heresy".

²⁴ There is also one additional law (*CTh* 16.5.38) issued in Ravenna in 405 by Arcadius, Theodosius and Onorio, with empire-wide applicability.

²⁵ Augustine wrote his main anti-Manichaean works between 388 and 404.

Manichaeans persecuted or only the Elect? (4) the mechanisms employed (inquisitors) to detect and suppress the heresy, and (5) the nature of the threat as it is revealed through the procedure of the prosecution and the penalties imposed.

In this analysis, I will also take into account the way the other religious groups were treated by the law. The comparison between the attitude of the law towards Manichaeans and its attitude towards other religious groups will highlight the differences to better understand the rationale of the law in persecuting Manichaeans.

3.3.1 Grouping Heretics²⁶

Were all heretics the same in the eyes of the law? Did they receive the same treatment? Can we discern in the laws the difference in meaning that the terms ‘heretic’ and ‘infidel’ (follower of another religion) has today? And how were Manichaeans considered? Were they thought of as heretics or as infidels?

In book sixteen of the *CTh*, which concerns religion, all heretics, among them the Manichaeans, appear in the same chapter entitled *De Haereticis* (16.5). Pagans and Jews, as said before, are dealt with in a separate chapter.²⁷ One could say that the Roman state did not distinguish the Manichaeans from other heretics, as it did with pagans and Jews, who existed prior to the Christians as religious groups. But it did regard them as heretics in the same way it considered the Arians, or other *noble* heretics. Was that so?

In order to answer this question, I will examine whether there are patterns in the way heretics are grouped together in the individual laws of the chapter, which would reflect a different position and treatment of the Manichaeans in relation to other heretics. This is because each separate law reflects the specific rationale of the persecution at a theoretical, procedural, and penal level. In chapter 16.5 of the *CTh* there are six laws that exclusively concern the Manichaeans and another twelve where Manichaeans are classified along with other heretics. In that latter group, the Manichaeans were persecuted together with: Priscillianists (6), Montanists (5), Donatists (4), ascetic movements (4), Gnostic sects (1), pagans (2), and Jews (1). The only instance where they are mentioned together with the *noble* heretics is a single umbrella-law, which indiscriminately covers *noble* heresies, ascetic groups, and Manichaeans.²⁸

Thus, there definitely is a distinction in the way the Manichaeans were classified. They are mainly categorized with Priscillianists, Montanists, and Donatists. Concerning the Priscillianists, this seems reasonable, since they were accused of Manichaeism. As for the other two, Donatism and Montanism, both were anti-clerically oriented, threatening the authority of the bishop in two distinct ways. Montanism in addition shared many similarities with Manichaeism, such as extreme asceticism, participation of women in the class of clergy. I shall return to this issue in chapter four. Lastly, all three of these groups constituted a major problem for the Church during the first quarter of the fifth century, when the *CTh* was edited.

The fact that there was discrimination and a different treatment of the several sects is reflected most clearly in a law (16.5.65, 428) addressed against all heretics (twenty-three in number). Although this law is very reminiscent of the umbrella-law of Theodosius I in 383,

²⁶ Regarding the use of the terms ‘heresy’ and ‘heretics’ in both *emic* and *etic* discourse, see Introduction, section 5.3, as well as ch.[4], Introduction.

²⁷ Pagans: *CTh* 16.10 and Jews: *CTh* 16.8 and 16.9. Yet they also appear in *CTh* 16.5.43, 46 and *NVal.* 18 (438).

²⁸ *CTh* 16.5.11 (383). *CTh* 16.5.59 (423) which also mentions together Manichaean and noble heretics just renews the validity of previous laws and penalties.

there is a noteworthy difference: it does not put all heretics in the same basket. Instead, it ranks them according to the threat they pose. Thus, we have a ranking within the same law, which as stated by the law itself, serves to distinguish the severity of the crime, as well as to differentiate the treatment of each heresy with regard to the penalties. The Manichaeans are not simply placed in the third and more 'threatening' group, but are the last in this list as the worst of the worst: those "who have attained to the lowest villainy of crimes", in the words of the law. For this reason, the Manichaeans received extra penalties over and above those decreed for the rest of the heretics in the third group. The Manichaeans constituted themselves a separate (fourth) category of heretics.²⁹

The *sui generis* status of Manichaeans is also apparent in the chapter *De Apostatis* (16.7), where only pagans, Jews and Manichaeans are considered as apostates.³⁰ Neither *noble* heretics nor schismatics are anywhere characterized as apostates. This is an indication that, at least for the law, Manichaeans were rather closer to the meaning that the word 'infidel' (ἀλλόθρησκος) has today, than the word 'heretic'.³¹

The *CJ* clarifies this section's focus on identifying whether Manichaeans were considered as 'heretics or infidels' from the outset. Manichaeans comprise a separate group alongside pagans and Samaritans which is distinguished from the rest of heretics. The title of the chapter is *De haereticis et Manichaeis et Samaritis*. Out of the seven laws of the *CJ* against Manichaeans, three exclusively concern the Manichaeans. In the other four, they are persecuted together with pagans (4), Jews/Samaritans (3), Montanists/Tascodrogitae (3), and Ophites (3).³²

3.3.2 The 'Topos' of the Crime: Doctrine or Gatherings?

Why were Manichaeans seen as the worst of worst? What was their crime? For what were they persecuted? Was it for their doctrines or for their gatherings? What was the nature of the threat they posed?

According to Barnard, "the criminalization of heresy was a novel development in post-classical Roman law".³³ In earlier times, religious behaviour was prosecuted in case it promoted teachings or practices that were framed as being socially dangerous and undermining social stability. Thus, the rationale of the prosecution was the disturbance of social order. Yet, also those whose religious practices could be associated with other crimes, like magic, "were criminally prosecuted on that account".³⁴ In any case, there was not a law persecuting "religious beliefs or practices *per se* on a principal basis and through judicial

²⁹ *CTh* 16.5.65.2 (428) (Coleman-Norton, 642-645, 643): "since not all must be punished with the same severity [...] and Manichaeans, who have attained to the lowest villainy of crimes, nowhere on Roman soil should have the right of assembly and of prayer - the Manichaeans also being deserving of expulsion from municipalities". On classification and cataloguing of heresies in *CTh*, in particular 16.5.65, see R. Flower (2013), "The Insanity of Heretics must be restrained": heresiology in the *Theodosian Code*". As Flower remarks, "all the heretical groups named in the first sixty-four laws in this chapter of the Code also appear in the sixty-fifth".

³⁰ *CTh* 16.7.3 (383). Cf. Linder 1987, 168.

³¹ See also Lieu 1992, 146: "The Roman state, in meting out the same penalties to those who became Manichaeans as to those who apostasised to Judaism and paganism, placed Manichaeism in a different category from heresies within the main body of the church like Donatism and Arianism".

³² We note that in *CJ* the Manichaeans are categorized with religious groups which are either outside Christianity (pagans, Jews) or in the fringes of Christianity (Gnostic sects) or in any case with pre-Nicene groups.

³³ Barnard 1995, 125.

³⁴ Barnard 1995, 125.

proceedings".³⁵ Being an adherent of a sect, or professing heterodox doctrines did not constitute a crime, and this "position did not change under the earlier Christian emperors".³⁶

The laws of Constantius against the Jews and the pagans, for example, could be placed in such a context. The same applies to the two laws against heretics of the *CTh* 16.5 issued by Valentinian and Valens. The former was against Manichaeans (372) and the latter against heretics in general (376). Both of them were targeting the gatherings of the heretics.³⁷ Thus, what was condemned as a crime in the legislation until then were the gatherings of a sect rather than adherence to the sect or its beliefs. This situation changed radically with the famous *Cunctos Populos* of Theodosius in 380 (*CTh* 16.1.2). What *Cunctos Populos* made clear was that all those who deviate from the correct doctrine as precisely established at the Council of Nicaea were to be seen by the state as 'heretics'. Criminalization of the 'false' doctrine began; henceforth, religious beliefs and practices would be prosecuted *per se*.³⁸

The Manichaeans

Did this ruling apply to the Manichaeans? Was the problem with Manichaeans, according to the decrees against them after *Cunctos Populos* (380), the correct doctrine, their teachings and beliefs?

An examination of the *CTh* and *CJ* laws against the Manichaeans suggest instead that the concerns they raised were of a socio-political and moral nature, and that the sense of threat that they instilled was associated with their congregations. To be specific, the laws against the Manichaeans targeted: (1) their congregations and buildings of assemblies,³⁹ (2) activities that were associated with these congregational activities,⁴⁰ such as occult rituals, social unrest and proselytizing, and (3) the Manichaeans themselves, all of them: their presence in the cities,⁴¹ their misleading activities,⁴² their name,⁴³ their life.⁴⁴ What is not explicitly targeted in these laws is their doctrines.

Thus, the declared aim of the law was to suppress the Manichaean gatherings which were associated not only with religious purposes but also with sedition. This exclusive emphasis on their gatherings is observed *only* for the Manichaeans, while, as I will examine below, the problem with the *noble* heresies was due mainly to their doctrine.⁴⁵ By contrast, the problem with the Manichaeans was not deviation from the correct doctrine. The most likely explanation for this is that their doctrines were not considered comparable to those of the Catholic Church. There was no common ground for the comparison; thus, a relevant discourse was apparently considered meaningless. This may also explain why Manichaean doctrines never were addressed in ecclesiastical synods.⁴⁶ The declared problem with them was not theological or ecclesiastical. It was their gatherings, because these were associated

³⁵ Barnard 1995, 125.

³⁶ Barnard 1995, 125.

³⁷ *CTh* 16.5.3 (372), 16.5.4 (376).

³⁸ On the "imposition of doctrinal uniformity" by Theodosius I, see Hunt 2007, 57-68.

³⁹ *CTh* 16.5.3 (372), 16.5.7 (381), 16.5.9 (382), 16.5.11 (383), 16.5.35 (399), 16.5.38 (405), 16.5.43 (407), 16.5.65 (428).

⁴⁰ *CTh* 16.5.18 (389), 16.5.38 (405), *NVal.* 18 (445).

⁴¹ *CTh* 16.5.7 (381), 16.5.62 (425), 16.5.64 (425).

⁴² *CTh* 16.5.7 (381) (crypto-Manichaeism), *CJ* 1.5.16 (527) (pseudo-conversions).

⁴³ *CTh* 16.5.38 (405), *CJ* 1.5.12 (527).

⁴⁴ *CJ* 1.5.11 (487 or 510), 1.5.12 (527), 1.5.16 (527).

⁴⁵ *CTh* 16.5.12, 16.5.13.

⁴⁶ Cf. Lieu 1992, 127.

with occult rituals, magic, and socially and politically subversive activities. That is to say, they were associated with different crimes; they posed a qualitatively different threat.

The noble heretics

In contrast, as the relevant argumentation of the *CTh* shows, the problem with the *noble* heretics was their false doctrine. The gist of the relevant laws was the following: all those who do not agree with the Nicene Creed (Arians, Macedonians, Eunomians, Apollinarians), believe in wrong doctrines. For this reason, they are prohibited from teaching their doctrines, ordaining, worshipping and assembling.⁴⁷ The same rationale is repeated in the *CJ*, this time for Eutychians (Monophysites) and Apollinarians. For those whose doctrines disagree with the teachings of the (by then) four Ecumenical Councils of the Church, it was forbidden to assemble, to teach, to write, to publish texts against Chalcedon, to possess books containing these arguments, and to ordain clerics.⁴⁸ The only difference in the argumentation from the *CTh* are the additional Ecumenical Councils as guarantors that the law represents the correct faith.

Presumably, the problem in the case of *noble* heresies was their false doctrine (teaching and writings) and their 'invalid' ordinations. Their gatherings are prohibited, because the false doctrine is taught there, and the worship is performed by irregularly/non-canonically (from a Catholic point of view) ordained clergy. Therefore, whenever, the target of the laws against *noble* heretics is their congregations, this is linked either with their wrong dogma and teaching, or with the illegitimate ordinations, baptisms, etc. The same is true for schismatics, whose illegal ordinations and anabaptisms/rebaptisms (i.e. questions of ecclesiastical organization) were the target of the law.⁴⁹

In sum, while *noble* heretics were persecuted for erring in doctrine, on the basis of the rationale inaugurated by Theodosius, the Manichaeans were persecuted for reasons that existed in the pre-Theodosius era. A comparison with the underlying rationale for persecutions of pagans and Jews will allow us to add some flesh to the bones of this argument.

⁴⁷ I indicatively quote some excerpts of these laws. *CTh* 16.5.6, 16.5.12 (383) (Coleman-Norton, 389): "should not usurp and have any regulations for creating priests", 16.5.13 (384) (Coleman-Norton, 392-93): "The Eunomians, the Macedonians, the Arians, and the Apollinarians [...] who say that they teach what is proper either not to know or to unlearn, should be expelled [...]", 16.5.14 (388) (Coleman-Norton, 415): "They should not have the ability of ordaining clergymen", 16.5.31, 16.5.32 (396) (Coleman-Norton, 467): "Eunomians' authors and teachers; and particularly their clergymen, whose frenzy has prompted so great error, should be expelled", 16.5.33 (397) (Coleman-Norton, 469): "We order teachers of Apollinarians to depart with all promptitude from the dwellings of the city", 16.5.34, 16.5.36, 16.5.58, 16.5.60 (423) (Pharr, 462): "heretics whose name and false doctrine We execrate, namely, the Eunomians, the Arians, the Macedonians [...] if they persist in the aforesaid madness, they shall be subject to the penalty which has been threatened", 16.5.65 (428) (Coleman-Norton, 643): "Arians, indeed, Macedonians, and Apollinarians, whose villainy is this, that [...] they believe falsehoods", 16.5.66.

⁴⁸ *CJ* 1.5.8 (455) (Coleman-Norton, 854-55): "Also it may not be lawful for them to create and to have bishops or priests and other clergymen [...] Moreover on no Eutychian or Apollinarian should be bestowed the ability of publicly or privately summoning gatherings and of assembling meetings and of arguing about heretical error and of asserting a villainous dogma's perversity. Also none it should be permitted either to declare or to write or to proclaim or to emit anything contrary to the venerable Chalcedonian Synod or to publish others' writings on the said subject; none should dare to have books of this character and to keep writers' sacrilegious documents. [...] Moreover we order those persons who through zeal of learning shall have heard disputes about unpropitious heresy to undergo the loss of ten pounds of gold, which must be paid into our fisc. Moreover all papers and books of this kind, which shall have contained the deadly dogma of Eutyches, that is, of Apollinaris should be burned by fire [...]"

⁴⁹ *CTh* 16.5.54, 16.5.57, 16.6.4, 16.6.5, *CJ* 1.5.20.

The Jews

Many of the laws concerning the Jews in the *CTh* are more beneficial than condemnatory. Their aim is: (1) the protection of the synagogues and of Jews from attacks,⁵⁰ and (2) ensuring privileges and rights (e.g. trade rights in determining the prices of their products).⁵¹ Yet, there are also other laws that targeted the Jews for punishment.

Jews were persecuted mainly when their activities were framed as threatening Christians. One such case concerns conversion: when Jews who had converted to Christianity were attacked, abused or disinherited by their fellow Jews.⁵² But above all, they were persecuted when they were believed to have compelled Christians to convert to Judaism using coercion and violence. This chiefly applied to slaves and to the context of mixed marriages. In such cases, the penalty for the Jew was death, while the penalty for the apostate was confiscation of property.⁵³

In this very specific context, the legal problem with the Jews was, on the one hand, that they (were said to) attempt to convert Christians to Judaism (in this connection they were accused of circumcising slaves and other Christians), whereas on the other hand, they hampered Jewish conversions to Christianity.

The pagans

Pagans were not persecuted for their doctrines and teachings either, but for their practices. This involved: (1) their sacrifices,⁵⁴ associated with divination, prediction of the future (using animal entrails),⁵⁵ and magic (incantations, conspiring against the life and future of other persons), and (2) the worship of idols and icons.⁵⁶ Otherwise, at least initially (that is, before 435),⁵⁷ neither their festal gatherings in the temples (without sacrifices), nor the temples as such were targeted by the laws.⁵⁸ Instead, as was true in the case of the Jews, there are laws that actively aimed to protect the buildings of the temples from Christians fanatic. The laws of Arcadius and Honorius of 399 may have had such a background.⁵⁹ Could these laws be a delayed reply to Libanius' plea for the protection of Greek temples which were vandalized by the Christian monks?⁶⁰ In addition, another law from 423 threatened Christians who assaulted

⁵⁰ Protection of synagogues seven out of 29 laws totally: *CTh* 16.8.9 (393), 16.8.12 (397), 16.8.17 (404), 16.8.20(412), 16.8.21(412), 16.8.25(423). Protection of Jews and their patriarchs: 16.8.11 (396), 16.8.12(397), 16.8.21(412).

⁵¹ Privileges: *CTh* 16.8.2, 4 (330/31) 16.8.10 (396), 16.8.13 (397).

⁵² *CTh* 16.8.1 (315) (Coleman-Norton, 66): "We will that it should be made known to Jews and their elders and patriarchs that if after this law anyone shall have dared to assail with rocks or with another kind of madness-which we have learned is being done now-anyone who has fled their deadly sect and has turned his attention to God's cult, he must be delivered immediately to the flames and with all his accomplices must be burned", 16.8.5 (336), 16.8.28 (426).

⁵³ *CTh* 16.8.6 (339); 16.9.2 (339); 16.8.7 (357); 16.8.19 (409); 16.8.26 (423). It is noteworthy that the strictest laws against Jews were issued by Constantius, who did not issue any laws against heretics.

⁵⁴ *CTh* 16.10.1 (321), 16.10.2 (341), 16.10.4 (346), 16.10.5 (353), 16.10.6 (356), 16.10.7 (381), 16.10.8 (382), 16.10.9 (385), 16.10.10 (391), 16.10.11 (391), 16.10.12 (392), 16.10.13 (395), 16.10.15 (399), 16.10.16 (399), 16.10.17 (399), etc.

⁵⁵ *CTh* 16.10.9 (385), 16.10.12 (392), etc.

⁵⁶ *CTh* 16.10.6 (356), 16.10.10 (391), 16.10.12 (392), 16.10.19 (408), 16.10.23 (423).

⁵⁷ *CTh* 16.10.25 (435) (with the exemption of 16.10.16 in 399, which however contradicts the laws 16.10.17 and 16.10.18 of the same year).

⁵⁸ *CTh* 16.10.8 (382); 16.10.17 (399).

⁵⁹ *CTh* 16.10.15, 16.10.18 (both in 399).

⁶⁰ Libanius' famous open letter *Pro templis* (Oration 30), to the Emperor Theodosius I, is dated ca 388 CE (384-391).

and robbed pagan and Jews with huge fines.⁶¹ Thus, pagans too, were not persecuted for their doctrine, but for practices characterized in the words of the law as “a pagan superstition”.⁶²

Recapitulating what has been discussed above: *noble* heresies were persecuted for the deviation from the correct dogma and irregular priesthood. The latter was also the problem with the schismatics. The Manichaeans were persecuted for socially dangerous practices performed in their gatherings, and certainly not for their doctrine. The assemblies of pagans were not just allowed, but were protected, at least until the first decades of the fifth century, provided they did not make sacrifices. Finally, the synagogues were protected, while Jews were persecuted only when they were considered to exercise subversive tactics against Christians or Christian communities.⁶³

We note that the theoretical framework for the persecution of Manichaeans, pagans and Jews is the same (bad practices, not dogma), and continues in the same spirit of the law as it was in the pre-Theodosian era. However, there is an important difference: pagans and Jews were not persecuted, either themselves, or their congregations, unless they violated the law. For Manichaeans, this alternative did not exist, unless they ceased being Manichaeans. Manichaeans were thus framed as constituting a problem in every respect. For the moment, the above observation suffices. Only in the case of Manichaeans and similar sects was there criminalization of their gatherings *per se* in advance, because they were considered beforehand as socially dangerous and subversive. All of this is clearly reflected also in the persecuted persons, the prosecution processes, and the *poenae* imposed. It is to all of these that we turn now.

3.3.3. Persecuted Persons

Were all the Manichaeans persecuted, or only the Elect? In light of the general framing of Manichaeism as a problem, it should not be surprising that the answer to this question seems to be both. In the first decrees, the distinction between the two classes is noticeable. Elect and hearers are distinguished from each other, as they had to face different penalties. Diocletian's rescript (302) decreed: burning in the flames for “the authors and leaders” of the sect, and “capital punishment” for the “followers” (hearers/catechumens), “if they continued recalcitrant”. Better was the treatment of those hearers/catechumens who were governmental officials or members of the upper social classes, who were sentenced to forced labour in the mines (*metalla*, *μεταλλισθῆναι*). The confiscation of property applied to all.⁶⁴

⁶¹ *CTh* 16.10.24 (423).

⁶² *CTh* 16.10.12.2 (392), 16.10.16 (399), 16.10.17 (399): “amusements shall be furnished to the people, but without any sacrifice or any accursed superstition”, 16.10.20.pr,1,2 (415).

⁶³ This is what the laws *tell us*. In all cases, there is, of course, an enormous amount of negotiating power that would allow many people to persecute others under a veneer of legality.

⁶⁴ Edict of Diocletian cited in Gardner and Lieu 2004, 116-118: “We order that the authors and leaders of these sects be subjected to severe punishment, and, together with their abominable writings, burnt in the flames. We direct that their followers, if they continue recalcitrant, shall suffer capital punishment, and their goods be forfeited to the imperial treasury. (7) And if those who have gone over to that hitherto unheard-of, scandalous and wholly infamous creed, or to that of the Persians, are persons who hold public office, or are of any rank or of superior social status, you will see to it that their estates are confiscated and the offenders sent to the (quarry) at Phaeno or the mines at Proconnesus”. As Lieu (2015, 124) states: “the famous rescript of Diocletian and Galerius of 302 [...] consigned the Elect of the sect to the flames along with their books, and the followers (i.e. Hearers) to hard labour in mines and quarries”. Nevertheless, it is possible that Diocletian's distinctions between “the authors and leaders” on the one hand, and the “followers” on the other, is a reference rooted in ‘foreignness’ and ‘Romanness’ rather than a reference to the ‘Elect’ and ‘hearer’ distinction.

According to the edict of Valentinian II and Valens (372), the teachers (Elect) of the sect were punished with severe penalties (not specified) and the followers ("those persons who assemble") were socially isolated, as "infamous and ignominious".⁶⁵ The last time the distinction between the two classes is discernible, though not clearly enough, is the law on apostates of Theodosius (and Valentinian II, 383), according to which heavier penalties were imposed upon the "artificers" (Elect?) of the sect, varying at "the discretion of the judges and the nature of the crime committed".⁶⁶

Any possible distinction between the two classes is lost in the later laws. In all following decrees, the relevant references are addressed to Manichaeans as a whole. So, ten years after the law of Valentinian II and Valens (372), when a burst of laws against Manichaeans began, all were equally targeted: Elect, catechumens, *Manichaeos* and *Manichaeas*. The first law of Theodosius in 381 contains this innovation of making this clarification: Manichaean men and Manichaean women. The goal of the law was essentially to eliminate the *loci cultus* of the Manichaeans, depriving Manichaean men and women from the right "of leaving or of taking any inheritance".⁶⁷ At first sight, it seems that by mentioning the two sexes separately, the purpose of the law was to prevent the possibility that any property could be transferred in the community by the women of the sect, as they also had hereditary rights.⁶⁸ So, apart from the fact that there were women in the sect, one could say that the law does not reveal much about the activities of Manichaean women. However, the reference to both *Manichaeos* and *Manichaeas* is repeated again in a later law, and this, in combination with the fact that the Manichaeans were the only sect in both the *CTh* and *CJ* for which there is separate mention of the two sexes, is an indication that the Manichaean women were active members.⁶⁹

On the contrary, the decrees concerning *noble* heretics only persecute the clergy and their teachers, and not the ordinary believers. Priests and bishops were persecuted especially when they ordained and baptized.⁷⁰ Later, Justinian persecuted also the 'heretical' laymen who held imperial (public) positions.⁷¹

3.3.4 Inquisitional Mechanisms for the Prosecution of Manichaeans

What was the procedure for the prosecution of the Manichaeans when they were persecuted? How was the research aiming to detect and repress Manichaeans conducted? The laws against heretics of the *CTh* and *CJ* show that two basic models for prosecuting mechanisms existed. In the first model, a body of specialized investigators was formed for this particular purpose. In the second model, the already existing civil and military state structure (later also that of the church), was enlisted in order to enforce the laws. The degree to which officials (higher or low-ranking), other administrative staff, and ecclesiastical authorities were engaged in the second

⁶⁵ *CTh* 16.5.3 (Coleman-Norton, 333). See also Lieu's comments (1992, 143f).

⁶⁶ *CTh* 16.7.3 (383) (Coleman-Norton, 386); Linder, 1987 169-171, 172 fn. 3; Pharr 1952, 466.

⁶⁷ *CTh* 16.5.7.pr (381) (Coleman-Norton, 367).

⁶⁸ From Adrianus onwards, hereditary rights were also extended to female Roman citizens who could bequeath or take any inheritance with the consent of their guardian/spouse, etc. Cf. Lieu 1992 145. From Kellis' documentary material it seems that the women of the village owned a big share of the village's property. See Franzmann's "The Manichaean Women in the Greek and Coptic Letters from Kellis" (forthcoming).

⁶⁹ *CTh* 16.5.40 (407) in the version of *CJ* 1.5.4: *Manichaeos seu manichaeas vel donatistas meritissima severitate persequimur*. A third reference to Manichaean women is found in Justinian's *Nov.* 109 (541), which, however, is directed against all heretic women (among them Manichaeas) by depriving them of the right of dowry.

⁷⁰ *CTh* 16.5.12, 16.5.13, 16.5.14, 16.5.21, 16.5.31, 16.5.32, 16.5.33, 16.5.34, 16.5.36, 16.5.58, 16.5.65, *CJ* 1.5.8 (455).

⁷¹ *CJ* 1.5.8; 1.5.12; 1.5.18.

model, varies and depends on the case and on the time period. The first model is found only in the *CTh*, while the second is found in both codes. In both cases, the instructions on how the investigation will be conducted were given by the emperor to the praetorian prefect of the respective prefecture.⁷²

Codex Theodosianus

In the *CTh* there are three cases of laws that belong to the first model. The first concerns Manichaeans and some extreme ascetics, behind which, according to a previous law, Manichaeans were hiding.⁷³ The second concerns an investigation of heretics in general.⁷⁴ Targets of the third law were the Manichaeans, the Priscillianists, the Donatists, and the pagans.⁷⁵ In all the above three cases, the emperor decreed the praetorian prefect (and recipient of the law), who also had the criminal jurisdiction, to form a body of inquisitors for the detection and the repression of the aforementioned heretics.

In detail, in the first case, emperor Theodosius I ordered (on March 31, 382) Florus, the praetorian prefect of the East, to appoint *inquisitores* who would conduct searches aimed at detecting and bringing to trial the Manichaeans and some extreme ascetics of his prefecture.⁷⁶ Moreover, he was prompted to encourage Roman citizens to denounce Manichaeans, "without the odium of delation".⁷⁷ It is true that Roman law, as well as society regarded informants (*delatores*) with suspicion. In legislation, informers are discouraged even with the threat of the death penalty if proven as slanderers. Constantine, in two decrees addressed to Roman citizens, prescribed a death sentence for malicious accusers who groundlessly accused someone, because they coveted his property or his life.⁷⁸ However, in a subsequent decree, Constantine made an exception to his own rule, encouraging the accusers of magicians, of astrologers and of other such criminals. In these cases, informers were not treated with any suspicion, but instead received a reward.⁷⁹ Theodosius followed the same tactic in the above decree, adding the Manichaeans to the list of those whom it was permitted to accuse, as they also had the stigma of magicians.⁸⁰ Citizens could fearlessly denounce Manichaeans within the confines of the law. We do not know whether a reward was also offered. The issue of informers returns in 445, in a law (the last of the *CTh* against Manichaeans), which is exclusively dedicated to the Manichaeans. This law highlights that everyone could accuse Manichaeans safely since the sect was a public crime: "This heresy shall be a public crime, and every person who wishes shall have the right to accuse such persons [Manichaeans] without the risk attendant upon an accusation".⁸¹

⁷² The same applies to *CJ*. Although the name of the recipient has not been preserved in the two laws that will be discussed, later laws from *CJ* confirm the above practice.

⁷³ *CTh* 16.5.9 (382) and 16.5.7 (381).

⁷⁴ *CTh* 16.5.15 (388).

⁷⁵ *Sirm.* 12 (407/408).

⁷⁶ *CTh* 16.5.9 (382). The persecuted ascetics were: Encratites, Saccophori, and Hydroparastates. As Beskow (1988, 5) states: "This is probably the first time we encounter this term [inquisitors], later to be so ominous in Church history, and its use here ought not to be over-interpreted."

⁷⁷ *CTh* 16.5.9.1 (382) (Pharr, 452). The law combines two methods: denunciation by investigators appointed by judge and denunciation by private informer. Cf. Barnard 1995, 128.

⁷⁸ *CTh* 10.10.1 (313), 10.10.2 (319) (*De delatores*).

⁷⁹ *CTh* 9.16.1 (319/20). Cf. Lieu 1992, 147.

⁸⁰ *CTh* 16.5.9 (382). Cf. Lieu 1992, 142-150. On the question "Did the Manichaeans practice magic?", see BeDuhn 1995a, 419-34.

⁸¹ *NVal* 18.2(445). Manichaeism was defined as a public crime, i.e. "a crime that could be prosecuted by any person", see Pharr 1952, 531, fn. 4.

A similar procedure (appointment of investigators) was followed again by Theodosius I in June 14, 388, this time for the heretics of the West. The praetorian prefect of Italy, Trifolius, was asked to appoint “as observers certain very faithful persons, that they can both restrain them and bring them, when arrested, to the courts”.⁸² It is worth noting the instruction of Theodosius that the body of investigators should consist of “very faithful persons”. It is also interesting that the stages of the prosecution process are recorded in detail: (1) assemblies, discussions, secret meetings shall be restrained; (2) heretics shall be arrested, and (3) brought before the courts. Although the decree did not concern specific sects but was addressed against “all persons of diverse and perfidious sects”, the whole context is reminiscent of the Manichaeans. Its target was the gatherings of the heretics, which are associated with something occult and conspiratorial: “should not be allowed to have anywhere an assembly, to enter into discussions, to conduct secret meetings, to build impudently by the offices of an impious hand altars of nefarious transgression and to apply the simulation of mysteries, to the true religion’s injury”.⁸³ Even the derogatory expressions ‘miserable conspiracy’ and ‘madness’ are some of those attributed to Manichaeans. The above assumption is supported by the following factors: (1) the fact that the decree concerned heretics of Italy, where the problem at that time were the Manichaeans, as shown by the laws that follow during the following years,⁸⁴ (2) the fact that the very same year the edict was issued (388), Augustine’s first work against the Manichaeans, *De Moribus Manichaeorum*, was published. Probably Augustine’s publication could have incited (to a certain extent) the persecution of the western Manichaeans.

The third case took place again in the Prefecture of Italy twenty years later. The decree, issued in the name of the emperors Honorius and Theodosius II, was directed to the praetorian prefect Curtius, and concerned the persecution of Manichaeans, Priscillianists, Donatists and pagans.⁸⁵ The specific copy of the law was the one posted in the *agora* (forum) of Carthage in June 5, 408. The novelty of the decree was the proposed collaboration between bishops and secret agents, officials of the state’s secret services. The body of prosecution this time was comprised of the local bishops and three *agentes in rebus* (agents of the secret services), namely, Maximus, Julianus, and Eutychus. The bishops were entitled to use their ecclesiastical power and were granted the power of execution so that by collaborating with the secret agents they could track down the heretics, suppress their activities and report them to the governors who acted as judges of the provinces. However, the latter step did not always happen, and the report did not always reach the judges. And as it seems, the blame was put on the agents: “These men, [*agentes in rebus*] however, shall know that the measure of the statutes must be observed in all respects”, so that heretical deeds shall immediately be reported “to the judges to be punished according to the force of the laws”.⁸⁶ Apparently, the emperors trusted the bishops more than their own civil servants. The reason for recruiting the Church in the prosecutorial procedure was the inefficiency and negligence of the state structure in implementing the law. The current edict inaugurated the creation of local networks of cooperation between the regional bishops and provincial governors.

⁸² CTh 16.5.15 (Coleman-Norton, 418).

⁸³ CTh 16.5.15 (Coleman-Norton, 418).

⁸⁴ CTh 16.5.18 (389) 16.5.35 (399), 16.5.40 (407), 16.5.41 (407), 16.5.43 (408).

⁸⁵ Sirm. 12 (408). It is the pre-law/bill developed form of the law 16.5.43 (407), from which such useful information is missing.

⁸⁶ Sirm. 12 (408) (Pharr, 438; Coleman-Norton, 507).

The fourth case of the *CTh* belongs to the second model of prosecution, that of the mobilization of civil and military state officials. This concerns the law that the emperor Theodosius II addressed on May 30, 428, to Florentius, the praetorian prefect of the East.⁸⁷ As discussed above, this was the law that persecuted three categories of heretics, classified them according to the severity of their crime and by the corresponding penalties. The first group (*noble* heretics) was not allowed to have churches in the cities. The second group (Judaizers) were prohibited from building new churches. For the third group (among which we find the Manichaeans), their gatherings and prayers throughout the Roman territory were banned. Moreover, the Manichaeans had to be expelled from all municipalities.⁸⁸ Thus, the target of the inquisition was mainly the third group, and in particular the Manichaeans who had to be banished from all cities. For the enforcement of the law, “all civil and military power [...], the power of the municipal councils and defenders and the judges” was mobilized.⁸⁹ The accusations were reported to the governors of the provinces who also had jurisdiction over criminal matters at first instance. In case of negligence by the officials or by the administrative staff, a fine was prescribed. In case the governors/judges imposed lighter penalties than the law stated (or none at all) they were subjected to the penalties imposed on the heretics they had favoured. One can realize that the prosecutorial procedure could also be interrupted at the stage of litigation.

Judging, however, by the edict that was sent to the same prefect ten years later (in 438), the administrative dysfunction still continued. Theodosius II ordered the prefect Florentius that he had to follow the bureaucratic process step by step:

Therefore your [...] Authority, [...] by your Excellency's duly posted edicts should cause to come to all persons' notice and should order to be announced also to the provinces' governors what we have decreed [...] that also by their like care they may notify to all communities and provinces what we necessarily have ordained.⁹⁰

Codex Justinianus

In the *CJ*, as said, only the second model is found, in which the practice of cooperation between state and Church dominates, yet with an upgraded role of the Church. The responsibility for the enforcement of the law was the duty of all officials of the state, “as it pertains to each”.⁹¹ The clergy played the role of inspector, and had to check whether the provisions were observed and to report offenders to the emperor.⁹² In other words, the bishops became the supreme inquisitorial body for the prosecution of heretics in the service of the emperor.

The main target of the two laws that I will examine were the Manichaeans. The first was issued by Justin and Justinian (in 527) and persecuted Manichaeans, heretics, pagans,

⁸⁷ *CTh* 16.5.65 (428).

⁸⁸ *CTh* 16.5.65.2 (428).

⁸⁹ *CTh* 16.5.65.3,5 (428) (Pharr, 463).

⁹⁰ *NTH* 3.1.10 (438) (Coleman-Norton, 713). The decree is addressed against the third group of the previous law. This time, the Manichaeans (“ever odious to God”) head the list, followed by “Eunomians (authors of heretical fatuity) [...], Montanists, Phrygians, Photinians, Priscillians, Ascodrogitans, Hydroparastatans, Borborians, Ophitans”. It is for this reason more probable that the inquisitional mechanisms of the previous law targeted the third group and primarily the Manichaeans.

⁹¹ *CJ* 1.5.12.21 (Coleman-Norton, 998). Specifically, in Constantinople, in charge were those who had glorious magistracies, and in the provinces, the governors (whether greater or lesser).

⁹² *CJ* 1.5.12.22. In Constantinople, in charge were the archbishop and the patriarch. In the other cities were the bishops and also those who occupied “patriarchal, metropolitan and minor positions”.

Jews, and Samaritans.⁹³ The second was issued by Justinian (between 527 and 529) and persecuted only the Manichaeans.⁹⁴ Apart from the general objective, which was to identify Manichaeans “wherever on earth [Roman territory] appearing” and put them to death,⁹⁵ the two laws were focused on two specific target groups. The first group consisted of the Manichaeans who had infiltrated the imperial or other public or military services. Officials in the administration and in the army were asked to detect, after a diligent search, their Manichaean colleagues and deliver them to the authorities. Anyone who demonstrably knew any Manichaeans and did not turn them in would be punished as a Manichaean, even though he might not be one himself.⁹⁶

The second target group comprised the apostates and the crypto-Manichaeans. Manichaeans’ fake conversion and crypto-Manichaeism, it seems, were believed to have taken on large dimensions. For this reason, there was a great reservation about the sincerity of Manichaean conversions. According to the law, the ex-Manichaean, in order to prove to all that he converted “not in pretence, but in earnest”, should immediately report and deliver, “to a lawful judge”, his ex-comrades with whom he “appeared to have communed”.⁹⁷ Thus, converted Manichaeans became part of the persecutory mechanism.

3.3.5 The Dilemma between Tolerance and Repression

The main purpose of prosecuting and imposing penalties on heretics, as is reflected in Roman legislation, was both the prevention of the crime through the ‘terror of the punishment’ and the ‘correction’ of the heretics, namely by their conversion to the ‘correct’ faith.⁹⁸ That the same objective was also the aim in the case of Manichaeans is clearly illustrated in the *Sirm.* 12 (408). The constitution explains in a most enlightening manner that the aim of the law was their correction, and not their prosecution. This allows us to understand why the laws against Manichaeans, as well as against other heretics, were usually not enforced. At the same time, it explains why there was such room for tolerance by the authorities in implementing the laws, which in turn resulted in their continuous repetition.

The heretics [Donatists, Manichaeans, Priscillianists] and the superstition of the pagans ought to have been corrected by the solicitude alone of those religious men, the priests of God [...] by their sedulous admonition and by their authoritative teaching. Nevertheless the regulations of Our laws have not become ineffective, which also by the terror of punishment that has been proposed shall lead back [...] those persons who go astray.⁹⁹

The rationale and the practice of three more laws testifies to the fact that the ideal for the state was for the Manichaeans to convert and no longer comprise a threat.¹⁰⁰ These laws annul the punishments (*abolitio*) and absolve all repenting Manichaeans from the prosecution of all previous laws. The three following edicts are the exception to the rule of the state’s policy of

⁹³ *CJ* 1.5.12.

⁹⁴ *CJ* 1.5.16.

⁹⁵ *CJ* 1.5.12.3 (Coleman-Norton, 996).

⁹⁶ *CJ* 1.5.16.5. Cf. Lieu 1994, 117.

⁹⁷ *CJ* 1.5.16 (Coleman-Norton, 1007). Cf. Lieu 1994, 117.

⁹⁸ As Troianos (1997, 16-17) observes, Basil of Caesarea in his letter to Andronicus (epist. 122) sets out the purpose of Church’s and state’s penal system, rejecting a retributive character and emphasizing its value as a means of prevention. Later on, in the Isaurian *Eclogae* the purpose of punishment is clearly stated: prevention and correction. In all Byzantine legislation prevention stands out as the most basic purpose of a penalty.

⁹⁹ *Sirm.* 12, 407/08 (Pharr, 482-83; Coleman-Norton, 506).

¹⁰⁰ *CTh* 16.5.41, 16.5.62, 16.5.64. 16.5.40.

‘terror’ and marked the adoption of an alternative religious policy, that of *philanthropy*. Hereafter, I will refer to them as the *decrees of philanthropy*.

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 laws formerly issued [16.5.1-40], nevertheless, as soon as they have confessed God by a simple expression of belief, We decree that they shall be absolved from all guilt.¹⁰¹

We command that the Manichaeans, heretics, schismatics, astrologers and every sect inimical to the Catholics [...]. 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.¹⁰²

We command that Manichaeans, heretics, schismatics, and every sect inimical to the Catholics shall be banished from the very sight of the various cities, [...] unless a speedy reform should come to their aid.¹⁰³

However, in practice, as is reflected in the rest of the legislation, this remained only wishful thinking. In the case of Manichaeans, this tactic of philanthropy did not work. On the contrary, as we shall see below, it opened the door to the phenomenon of false-conversions.¹⁰⁴ The authorities realized this fact, and returned to the policy of ‘tolerance through terror’, issuing a series of decrees expelling Manichaeans from the cities and the empire.¹⁰⁵ The only option left was the physical eradication of the Manichaeans.

In their debut on the political scene, the emperors Justin and Justinian made it clear that their patience with heretics was exhausted, thus confirming that the policy of tolerance until then was applied:

Therefore we have permitted heretics to assemble and to have their own denomination, so that, having felt shame for our patience, willingly may come to their senses and may turn to the better. But a certain intolerable recklessness has entered into them [...] and having disregarded the law’s command [...].¹⁰⁶

The two emperors renewed and confirmed the validity of all previous laws against heretics and assured that in the future they would not let the law again become a dead letter, as had happened before.

¹⁰¹ *CTh* 16.5.41 (407) (Pharr, 457; Coleman-Norton, 504).

¹⁰² *CTh* 16.5.62 (425) (Pharr, 462; Coleman-Norton, 635).

¹⁰³ *CTh* 16.5.64 (425) (Pharr, 462; Coleman-Norton, 633-34).

¹⁰⁴ See ch.[8], 8.4.

¹⁰⁵ As a result, a series of edicts expelling Manichaeans from cities and empire, were issued: *CTh* 16.5.7 (381), 16.5.11 (383), 16.5.18 (389), 16.10.24 (423), 16.5.62 (425), 16.5.64 (425), *Sirm.* 6 (425) (the latter three are probably excerpts of a longer law), 16.5.65 (428), *NVal.* 18 (445).

¹⁰⁶ *CJ* 1.5.12.pr (527) (Coleman-Norton 995-996 slightly modified).

3.3.6 Crime and Punishment: The Nature of the Crime/‘Threat’ as it is Revealed through the Prosecuting Process and the Penalties Imposed

Characterization of the crime (Classification)

But which were the penalties that the Manichaeans would be discharged of if they did repent? And what do these penalties reveal about the nature of their crime? In criminal law, the penalties reflect the seriousness of each crime, and on this basis the characterization of the crime takes place.

Studying the laws against Manichaeans, one observes that they emphasize two determinants of the identity of the sect and its adherents, aiming to underline the severity of the crime. In terms of the law of the era, the sect was characterized as *publicum crimen*¹⁰⁷ and the Manichaeans themselves as *infames*, a brand inducing the forfeiture of their status of Roman citizens (*cives Romani*). Starting already from the first laws, it became gradually embedded that Roman civil law did not apply to the Manichaeans: Manichaeans were deprived of the right to live “under [the] Roman law” (*vivere/vivendi iure Romano*):¹⁰⁸ “they should have nothing in common with all other persons”,¹⁰⁹ “this class of men [...] have no customs and no laws in common with the rest of mankind”.¹¹⁰

One of the consequences of the loss of Roman citizenship was the retroactive effect of the law in terms of prosecutions and penalties. The concept of retroactivity was twofold. In his first edict in 381, Theodosius I decreed the following, which was unprecedented in Roman jurisprudence: the Manichaeans will be prosecuted not only for acts that they will do in the future, but also for acts that were done in the past, before the issuance of the law. And he justified his decision by invoking the severity of the crime:

The general rule of this law issued [...] shall be valid not only for the future but also for the past [...] For although the order of [...] imperial statutes indicates to those who must observe them the subsequent observance [...] 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 inspiration what an inveterate obstinacy and a pertinacious nature deserve. [...] 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 [...].¹¹¹

In particular, the above law stated that since the sect and its gatherings were outlawed, i.e. after Valentinian’s decree in 372, any testament, conveyance, donation, etc., that was made or accepted by a Manichaean, after that day, would be rendered invalid.

The other dimension of retroactivity was the *post mortem* accusability and prosecution. In the law of 407, the emperors Arcadius, Honorius, and Theodosius II made it clear from the outset that the Manichaean heresy had to be considered as a *public crime* and on this ground they legitimized *post mortem* prosecution.¹¹² Later, in 445, the same argument was used, as

¹⁰⁷ CTh 16.5.40 (407): Ac primum quidem volumus esse publicum crimen, quia quod in religionem divinam committitur, in omnium fertur iniuriam. NVal 18 (445): Sitque publicum crimen et omni volenti sine accusationis periculo tales arguere sit facultas.

¹⁰⁸ CTh 16.5.7.pr (381) (Coleman-Norton, 367) (due to the crime of sacrilege).

¹⁰⁹ CTh 16.5.18.1 (389) (Coleman-Norton, 421): Nihil ad summum his sit commune cum mundo (because they disturb the world).

¹¹⁰ CTh 16.5.40.pr (407) (Pharr 457) = CJ 1.5.4. Huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris, because they committed a public crime, parallelized to that of high treason.

¹¹¹ CTh 16.5.7.1 (381) (Pharr 451).

¹¹² CTh 16.5.40 (407) = CJ 1.5.4.

we have seen, to grant the right that “every person who wishes” could “accuse such persons without hazard of an accusation”.¹¹³

But what exactly was the content of the concept of public crime in the case of Manichaeans? In the next sections examining the rationale of the law and the penalties imposed, I will attempt to discern the dimensions of this ‘threat’ (national, political, social, religious and moral).

The national dimension of the ‘threat’

The only decree explicitly stating the link between Manichaeans and Persia, which expressed fears of a national threat due to the activities of the Manichaeans, was Diocletian's rescript. In 445, Valentinian III, in his novella against the Manichaeans, refers implicitly to Diocletian's decree, in fact to indicate the seriousness of the threat: “A superstition condemned also in pagan times, inimical to public discipline [...] We speak of the Manichaeans [...]”; yet, without making any allusion to the Persian threat.¹¹⁴

So, in the wording of the law there is no explicit link between Manichaeans and Persians. Nevertheless, the fact that the prosecution procedure and the penalties imposed on Manichaeans were similar to those of traitors indicates that there was a latent national threat to the authorities.¹¹⁵ As stated above, the characterization of the sect as public crime in 407 made the *post mortem* prosecution legal, something which otherwise applied only in the case of traitors. In the words of the law: “Also the legal inquisition extends beyond death. For, if in crimes of treason it is allowed to accuse a deceased person's memory, not undeservedly the said person also ought to undergo judgment in this case”.¹¹⁶ The term public crime here is identical to that of high treason. The above heretics (Manichaeans and Donatists), in addition to not being considered Roman citizens, also were treated as traitors. In practice, *post mortem* prosecution in this case meant that if someone was found out after death to have been a Manichaean, his will became void, as did a number of other legal titles.¹¹⁷ Furthermore, the Manichaeans as traitors were never granted amnesty, as was an option for other crimes and other heretics.¹¹⁸ At times and in various occasions—usually on account of the Easter celebration—prisoners were pardoned for a specified period. Amnesty was given to all who had not committed any of the capital crimes (*capitalia crimina*), namely: treason, murder, witchcraft (including poisoning/*φαρμακεία*), sacrilege, moral crimes (adultery, seduction, rape) kidnapping, and counterfeiting (imperial documents or currencies).¹¹⁹

As far as the penalties are concerned, apart from the socio-economic measures against the descendants of the deceased Manichaeans entailed by the *post mortem* prosecution, from some point onwards (485 or 510) the death penalty (re)appeared in Roman anti-Manichaean

¹¹³ NVal 18.2 (445) (Pharr 531; Coleman-Norton, 730).

¹¹⁴ NVal 18.pr (445) (Coleman-Norton, 730). Cf. Barnard 1995, 135.

¹¹⁵ Barnard (1995, 134-36) examining the similarities of the procedures of prosecution between heretics and traitors, argues that “there was [...] some indirect historical connexion between heresy and *maiestas* through Manichaeism”; however as she notes “it would be unwarranted to translate this historical link into a contemporary conceptual connexion”.

¹¹⁶ CTh 16.5.40.5 (407)= CJ 1.5.4 (Coleman-Norton, 502). In mortem quoque inquisitio tendatur. nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium.

¹¹⁷ CTh 16.5.40.5 (407).

¹¹⁸ Edict of Gratian (378/9) in Socrates HE: 5.2.1-8; Sozomenus HE: 7.1.3.

¹¹⁹ CTh 9.38.1-12 and Sirm. 7 and 8. The Manichaeans were associated with the crimes of treason, of witchcraft, of sacrilege, and of sex-crimes.

legislation, commonly used for traitors.¹²⁰ As highlighted by Barnard, the death penalty was “an inappropriate penalty for heresy” and was imposed only in some isolated cases of sects linked to other offenses (rebellion, witchcraft, violence), when other non-theological factors were involved.¹²¹

Of course, as mentioned above, there were the *decrees of philanthropy*, which annulled all guilt and prosecution if Manichaeans repented. Moreover, several edicts against Manichaeans stressed that in case of conversion the former Manichaean was exempted from accusations, penalties, and prosecution. Doing something similar in the case of traitors was inconceivable. High treason was punished irrevocably. It therefore seems that there was a considerable reservation: hence the ambiguous attitude of the law towards Manichaeans. Probably the tactic of philanthropy was a result of necessity, when and where the situation was out of control. In addition, even in this case, we do not know for how long these laws were applied, because they were followed by others that did not provide this opportunity, and seemed contradictory to the former. In any case, the above discourse applies to the pre-Justinian era. Under Justinian, tolerance and patience were exhausted. Repentance was not always a safe alternative option.

The socio-political dimension of the threat

The dimension of subversion of the public order is a permanent concern in legislation linked with the congregations of the Manichaeans.

Right from the introductory part of his novel, Valentinian underlines that the Manichaean heresy “is inimical to the public discipline”. The second article of the novel decrees: “let” Manichaeism “be a public crime”.¹²² The conviction that the Manichaeans upset urban communities and corrupted peaceful citizens runs throughout all anti-Manichaean laws. The Manichaeans are described as corrupters of the public discipline, who attract people and collect a multitude of followers;¹²³ they form secret groups in hidden gatherings in the towns, in the countryside, in private homes, and in public spaces;¹²⁴ they instigate seditious mobs¹²⁵ and disturb the world.¹²⁶ For these reasons, citizens are forbidden to talk to or about a Manichaean.¹²⁷ Here, the term public crime acquires the meaning of subversive socio-political action.

The first measure to face the above ‘threat’ was that the Manichaean community should not be allowed to own meeting places, in other words, real estate. Initially, the detected places were confiscated.¹²⁸ But then, in order to exclude any possibility of acquiring such premises in the future (by the members of the Manichaean community), a series of financial measures and penalties were introduced.¹²⁹ The forfeiture of Roman citizenship from

¹²⁰ Manichaeism is the first and perhaps the only ‘heresy’ for which the death penalty was prescribed.

¹²¹ Barnard 1995, 140, 146 fn. 95: “The death penalty was applicable to e.g. *maiestas*, counterfeiting, magic, arson, adultery, abduction of a woman for sexual purposes, sodomy, certain instances of violation of tombs and (for the lower orders) murder and grave forms of violence”.

¹²² *NVal* 18pr, 2 (Coleman-Norton, 730).

¹²³ *CTh* 16.5.9, 16.5.11.

¹²⁴ *CTh* 16.5.9.

¹²⁵ *CTh* 16.5.38.

¹²⁶ *CTh* 16.5.18.

¹²⁷ *CTh* 16.5.38.

¹²⁸ *CTh* 16.5.3 (372).

¹²⁹ *CTh* 16.5.7 (381), 16.5.9 (382), 16.5.18 (389), 16.5.38 (405), 16.5.40 (407), 16.5.43 (407), 16.5.59 (423), 16.10.24 (423), 16.5.65 (428), *NVal* 18 (445), *CJ* 1.5.15 (527).

Manichaeans also served this purpose.¹³⁰ Since the Manichaeans were deprived of the right *vivere iure Romano* (to live under the Roman law), they were forbidden to inherit, bequeath, transfer, or donate their property to other Manichaeans, but above all to their community for the purpose of the assemblies of the sect.¹³¹ Consequently, the only solution left for them was to use places that belonged to non-Manichaeans; this was done, as evidenced in the law by the appearance of penalties for those in whose properties the Manichaean congregations took place.¹³²

However, it was not only the Manichaean gatherings which caused disturbance in civic communities, but the very presence of Manichaeans themselves. The ultimate goal of the law was to deactivate the Manichaeans socially, and the best solution for that purpose seemed to be their physical isolation. Thus, from 389 onwards, a series of edicts decreeing the penalty of exile for Manichaeans began.¹³³ The Manichaeans were deprived of the right “of dwelling in cities”.¹³⁴ They were forbidden to live, especially, in metropolises and populous cities, in order not to infect the citizens through social intercourse.¹³⁵ Step by step, the Manichaeans were expelled initially from the major cities, followed by exile from all cities, and at the end from all over the Roman world.¹³⁶ This escalation of the measures indicates, firstly, that the Manichaean ‘danger’ was gradually dispersed throughout the empire and, secondly, that even a single Manichaean, found anywhere in the empire, was considered a threat.¹³⁷ The fact that the ‘corruption’ of the citizens, according to the law, was spread is reflected in: (1) the determent and intimidation of citizens who harboured or abetted Manichaeans,¹³⁸ (2) the penalties imposed on administrative officials who did not enforce the law.¹³⁹

The religious dimension of the threat: sacrilege

According to the rationale of the law issued in 407, the Manichaean “heresy shall be considered a public crime”, “because what is committed against divine religion is effected to the injury of all persons”.¹⁴⁰ One further capital crime of which Manichaeans were accused was that of sacrilege.¹⁴¹ This was the offense that forced Theodosius I to deprive Manichaeans of the status of Roman citizenship in 381, and to innovate with the retroactivity of his law:

¹³⁰ *CTh* 16.5.7 (381).

¹³¹ *CTh* 16.5.9 (382) urged Manichaeans to return the estates that had been given to the community to their legal (non-Manichaeans) heirs.

¹³² *CTh* 16.5.40 (407).

¹³³ *CTh* 16.5.18 (389).

¹³⁴ *NVal*.18.3 (445) (Coleman-Norton, 730).

¹³⁵ *CTh* 16.5.3 (372), 16.5.7 (381), 16.5.18 (389), 16.10.24 (423), 16.5.62 (425), 16.5.64 (425), *Sirm.* 6, 16.6.65 (428), *NVal*.18 (445), *CJ* 1.5.12 (527).

¹³⁶ *CTh* 16.5.18 (389), 16.5.62, 16.5.64, *Sirm.* 6, *NVal*.18.pr (445) (Coleman-Norton, 730): “We speak of the Manichaeans, whom the statutes of all previous emperors have judged execrable and worthy to be expelled from the whole world”. *CJ* 1.5.12.3, p. 53. As Pharr (1952, 453) and Coleman-Norton (1966, 422) note, the Latin word *mundus* has a broader meaning than “*orbis terrarum*, the Roman world, the Roman Empire, the civilized world” and means “the ‘universe’, ‘mankind’”.

¹³⁷ *CJ* 1.5.12.3.

¹³⁸ *CTh* 16.5.35 (399), 16.5.40 (407), 16.5.65 (428), *NVal*.18 (445).

¹³⁹ *CTh* 16.5.40.8 (407), 16.5.43 (408), 16.5.65.5 (428), *NTh.* 3.9-10 (438), *NVal*.18 (445), *CJ* 1.5.16.1, 1.5.18.11.

¹⁴⁰ *CTh* 16.5.40.1 (407) (Coleman-Norton, 502; Pharr, 457). Here lies the cornerstone of the political theology of Christian Roman Empire: Undermining the ‘correct’/official religion is equivalent to undermining the state and its citizens. As Pharr (1952, 457, fn. 85) notes, “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”.

¹⁴¹ In *CTh* 9.38.7 (384) and 9.38.8 (385) sacrilege is classified among capital punishments.

We regard as guilty of sacrilege on the ground of violation of this described law [Valentinian's in 372] those persons who, even after the law originally had been issued, have not at all been able to be restrained at least by divine admonishment from illicit and profane assemblies.¹⁴²

What was the content of the crime of sacrilege in the case of the Manichaeans? In the above law there are hints that something 'occult' was happening in their congregations. Expressions like, 'profane assemblies' (*profanis coitionibus*) for their gatherings, 'funereal mysteries' (*feralium mysteriorum*) for their cult and 'sepulchres' (*sepulcra*) for their meeting places, imply that something occult was occurring during the Manichaean mysteries.¹⁴³ In addition to the above law, such references or allusions to sacrilegious rituals exist in a series of laws,¹⁴⁴ with expressions such as 'profane rites', 'depraved desires',¹⁴⁵ 'obnoxious Manichaeans and their detestable assemblies',¹⁴⁶ 'sacrilegious rite in these rather deadly places',¹⁴⁷ 'crimes [...] obscene to tell and to hear [...] so detestable an outrage to the Divinity',¹⁴⁸ and 'Manichaeans' loathsome blasphemies'.¹⁴⁹ Characteristic is also the concern of the law, to protect citizens from being contaminated from touching the sacrilegious Manichaeans!

We call heretics other persons, just as the accursed Manichaeans and those about like these; indeed it is unnecessary that they even should be named or should appear anywhere at all or should defile what they have touched. But the Manichaeans -as we have said- thus ought to be expelled and none ought either to tolerate or to overlook their denomination, if indeed a person diseased with this atheism should dwell in the same place with others.¹⁵⁰

Tangled up with occult rituals was also the dimension of moral corruption:¹⁵¹

[It is] a crime by which not only the bodies but also the souls of deceived persons are polluted inexpiably. [...] For nothing seems too much to be able to be decreed against those persons whose unholy perversity in the name of religion commits deeds unknown or shameful even to brothels.¹⁵²

Sacrilege in turn, was interconnected with another capital crime, magic; this formed an extra link between Manichaeans and Persians. The occult, profane, sacrilegious scenery referenced above, that the law reiterates took place during Manichaean rituals, was associated with magical practices. According to the edict directed to Florentius, the praetorian prefect of the East, in 428, it was imperative that Manichaeans should be expelled from "municipalities, since to all these must be left no place wherein even on the very elements may be made an injury".¹⁵³ In the version of the same law in the *CJ*, apart from exile, they should be "delivered

¹⁴² *CTh* 16.5.7.1 (381) (Coleman-Norton, 368).

¹⁴³ *CTh* 16.5.7.3 (381) (Coleman-Norton, 368).

¹⁴⁴ *CTh* 16.5.9 (382), 16.5.11 (383), 16.5.38 (405), 16.5.43 (408), 16.5.65 (428), *NVal.* 18 (445).

¹⁴⁵ *CTh* 16.5.41 (407).

¹⁴⁶ *CTh* 16.5.35 (399) (Coleman-Norton, 480).

¹⁴⁷ *Sirm.* 12, (407/08) (Coleman-Norton, 507): sacrilegi ritus funestioribus locis.

¹⁴⁸ *NVal.* 18.pr (445) (Coleman-Norton, 730).

¹⁴⁹ *CJ* 1.5.16.2 (Coleman-Norton, 1006).

¹⁵⁰ *CJ* 1.5.12.2-3 (527) (Coleman-Norton, 996).

¹⁵¹ *CTh* 16.7.3.pr (Manichaeans' "nefarious retreats" and "wicked recesses/seclusion") (Coleman-Norton, 385), 16.5.41 (depraved desires).

¹⁵² *NVal.* 18.pr, 4 (Coleman-Norton, 730-31).

¹⁵³ *CTh* 16.5.65.2 (428) (Coleman-Norton, 643): Manichaeis etiam de civitatibus expellendis, quoniam nihil his omnibus relinquendum loci est, in quo ipsis etiam elementis fiat iniuria.

over to capital punishment, since there must be left to them no place in which an outrage may even be committed against the elements (by magic)".¹⁵⁴

The treatment of Manichaeans and magicians by the law, as far as the prosecution and the sentences are concerned, had much in common. As mentioned above, while informers generally were deterred and were risking their lives in case their accusations proved slanderous, the informers for magicians and Manichaeans were encouraged without fear of punishment.¹⁵⁵ In addition, the magicians, as with the Manichaeans and traitors, were never granted pardon, since magic was one of the capital crimes. As far as the penalties are concerned, not only were magicians and Manichaeans both subjected to capital punishment, but they faced the same method of execution, which was to be burned at the pyre, or decapitation. Thus, in these cases, the content of the term public crime meant insulting religion by sacrilege and magic.

To sum up, according to what was presented above, the crimes that constituted the content of the term *public crime* in the case of Manichaeans were: high treason, subversion of public order, sacrilege, magic and moral corruption. However, I consider that apart from the above 'threats' there was an underlying fear of another one that is not explicitly stated in the legislation of the Christian emperors, while it is highlighted in Diocletian's rescript: "there is danger that, in process of time, they will endeavour, as is their usual practice, to infect the innocent, orderly and tranquil Roman people, as well as the whole of our empire".¹⁵⁶

Which usual practice is Diocletian talking about? The sense given through the anti-Manichaean law is for something driven underground, slowly, steadily, methodically; for something that was 'poisoning' citizens silently, through their daily social life and intercourse. As is highlighted in a line of the law, such heretics "have nourished by long and long-lasting meditation a deep-seated evil, to such an extent that they also appear subject to previously issued laws [16.5.1-40]".¹⁵⁷

The Manichaeans 'contaminate' people even just by their sight or their touch, without doing something dramatic.¹⁵⁸ Through everyday social contact they somehow draw upon themselves the sympathy of people who protect them and hide them in their homes, even risking their safety.¹⁵⁹ I consider that the 'threat' was intensified by a series of interrelated characteristics of the idiosyncrasy of Manichaeism. First in this regard is the exclusivity required by Manichaeism, as in Christianity, which was an outcome of Manichaean eschatology. As underlined by Honoré, who comments on the desire of the law for the Manichaean 'expulsion from the world', "the author of the text understands the doctrine he is attacking. For the Manichees believe that the whole cosmos must be enlisted in order to release the sparks of light imprisoned".¹⁶⁰ I should note, here, that the idea of the conversion of the whole cosmos at the end of history is no stranger to Christianity (i.e. restoration of

¹⁵⁴ *CJ* 1.5.5 (428): Manichaeis etiam de civitatibus expellendis et ultimo supplicio tradendis, quoniam nihil his relinquendum loci est, in quo ipsis etiam elementis fiat iniuria". For the disturbance of the elements by magic arts, see also *CTh* 9.16, especially 9.16.5 (Pharr, 237-38): "Many persons who dare to disturb the elements by magic arts do not hesitate to jeopardize [...]".

¹⁵⁵ *CTh* 9.16; *CTh* 16.5.9 (382), *NVal.* (445).

¹⁵⁶ Rescript of Diocletian.

¹⁵⁷ *CTh* 16.5.41 (Coleman-Norton, 504).

¹⁵⁸ *CTh* 16.5.7.3 (381), 16.5.62 (425), 16.5.64 (425), *Sirm.* 6 (425) (Coleman-Norton, 633): "Manichaeans [...] ought to be barred from the very sight of the various cities, in order that these may not be befouled by the contagion of even the presence of criminals", *CJ* 1.5.12 (527).

¹⁵⁹ *CTh* 16.5.35; *NVal.* 18; *CJ* 1.5.4.7.

¹⁶⁰ Honoré 1986, 214. Cf. *CTh* 16.5.18.

everything).¹⁶¹ The common denominator of exclusivity and of the specific eschatological perspective was the necessity of mission. It can be noted that the three above characteristics were common to Manichaeism and Christianity. Taking into account that Manichaeism also was presented as an alternative Christianity and the Manichaeans as the true Christians and exemplary ascetics, one realizes why for both the state and the Church, the Manichaeans were the ‘worst of the worst’.¹⁶² Therein lies the difference with the Jews and the pagans. All three were persecuted for practices that threatened public order, morality, yet not for their doctrine. But while the Jews and pagans were religious groups with distinct and entrenched boundaries around their collective identity, the corresponding limits of the identity of Manichaeans were blurred.¹⁶³ Moreover, this ambiguity of the boundaries of the sect was magnified by crypto-Manichaeans and false conversions, since perjury and renunciation of faith for the sake of safety was believed to be acceptable in Manichaeism.¹⁶⁴ Unlike the Jews and pagans, who were persecuted only when infringing the law, the Manichaeans, as the Christians earlier, were persecuted for anything they did. This means they were persecuted for their own existence, for their name: “But the Manichaeans -as we have said- thus ought to be expelled and none ought either to tolerate or to overlook their denomination”.¹⁶⁵

In conclusion, I would like to make the following remarks. According to Roman imperial law the Manichaeans were traitors, magicians, and sacrilegious. This could obviously have been the biased opinion of those who persecuted them; hence it runs a high risk of being subjective. On the other hand, it is an objective fact that the state considered them as traitors, magicians, and sacrilegious, and imposed upon them penalties of property measures, exile and capital punishment.

In the next section, I will investigate the effects of the implementation—or not—of such penalties on the everyday life of the Manichaeans.

3.4. Effects of the Implementation—or not—of the Law on the Everyday Life of the Manichaeans

The relationship between law and social reality is dialectical. Law to some extent ‘anticipates’ social reality, attempting to transform it. At the same time, it follows social reality, responding to its demands.

On the one hand, the Roman anti-heretical laws, with the privileges provided and the punishments imposed, sought to transform the identities of the citizens subjected to it, affecting their social and economic status; they shaped the profile of law-abiding, loyal and faithful Roman citizens, as opposed to that of the heretic, who was a threat to public order

¹⁶¹ The concept of rehabilitation was developed by great theologians, such as Origen and Gregory of Nyssa.

¹⁶² *CTh* 16.5.65.2 (Manichaeans, who have attained to the lowest villainy of crimes).

¹⁶³ Lim 2001, 198: “Judaism was regarded by the Romans as a *Volksreligion* that had its own recognized hierarchy, distinctive laws, rituals, and institutions. Thus for a nonconforming minority religion the secret to survival rested on being set apart and hedged by clear group boundaries. Whenever purveyors of religious ideas aggressively sought converts across established social and ethnic lines, their success met with stiffer opposition. Though universalistic in aspiration, the so-called mystery religions did not seek to monopolize religious devotion but offered added options under the rubric of polytheism. But the missionary efforts of Christians and later of Manichaeans, neither of whom could boast unambiguous ethnic identities, posed a more threatening challenge to the existing order; their brand of transgressive proselytism alarmed local opponents and caused them to be intermittently persecuted by the state”.

¹⁶⁴ See for instance: *CTh* 16.5.7, *CTh* 16.5.9, *CJ* 1.5.16. I will return to this issue in ch.[8].

¹⁶⁵ *CJ* 1.5.12.3 (Coleman-Norton, 996).

and faith. On the other hand, the law reflects the social attitudes and practices that come either to correct or to reward.

The goal of this section is to explore this twofold question, namely, the relationship between the Roman anti-Manichaean laws and social reality of the Roman Manichaeans. What does the law reveal for the everyday life of the Manichaeans? And how did it affect and remodel this social reality? How in turn does this daily reality come to reshape the content of the law? The laws themselves with the prohibitions on the one hand reveal aspects of daily life of Manichaeans and on the other transform their daily routine. Each law is a witness of practices that were believed actually to take place, but also creates the need for the adoption of new practices that are reflected in subsequent laws, etc. Thus, my aim is to examine the effect that the persecution and the penalties imposed (exile, property penalties, capital punishment) had diachronically upon specific sectors of the everyday life of Manichaeans, namely, Manichaean communities, religious life, social relations, family life, and social profile.

The first general observation is that, compared to Diocletian, Christian emperors were much more lenient and tolerant with the Manichaeans. Although Diocletian's rescript (302) did offer the alternative that Manichaeans would be exempted from prosecution (capital punishment) if they did not "continue recalcitrant", this applied only for their followers (catechumens). For the leaders and the authors of the sect and their books, burning in the fire was inescapable.¹⁶⁶ Thus, provided that Diocletian's rescript was enforced, it seems that the daily life of Manichaeans became much easier under the Christian emperors. Initially, and for a long period of time, probably there were no laws that specifically targeted Manichaeans. The first anti-Manichaean law was issued by Valentinian I and Valens in 372. Before that, there is no known law recorded either in imperial legislation or in other sources. It is thus reasonable to assume that from the so-called edicts of toleration in 311 and 313 until 372, the Manichaeans enjoyed some kind of religious freedom, as other religious groups did, living either in urban communities or in rural areas and gathering freely, either publicly or privately.¹⁶⁷

However, from 372 onwards the situation would change. Before proceeding to the investigation of the impact that the imposed penalties had on the daily life of the Manichaeans, I will examine the question of the non-implementation of laws.

3.4.1 The Question of the non-Implementation of the Law

As pointed out above, the laws were not always enforced. Apart from those cases where this was the result of an intentional religious policy, as in the case of the *decrees of philanthropy*, the laws were not always implemented either for the unrepentant Manichaeans, or because there was significant room for silent tolerance. The laws themselves firmly reiterate that they are repeated because the previous laws were not applied. There are several examples of laws which renew earlier ones and make it clear that unlike the previous laws, they will be enforced vigorously and effectively.¹⁶⁸ Frequent also are the references to the penalties faced by

¹⁶⁶ See section 3.3.3.

¹⁶⁷ Galerius' Edict (311) and the Edict of Milan (313), in Eusebius *HE* 8.17 and 10.5, respectively. Cf. Corcoran 2015, 77. According to Eusebius (*Vit. Const.* 3.63-66), later, Constantine, as monarch, changed his religious policy of tolerance and issued a decree against all heretics, naming five specific heresies (Novatians, Valentinians, Marcionites, Paulians and those called Cataphrygians). Even if it were meant, Constantine's edict did not explicitly mention the Manichaeans. Cf. Matsangou 2017a, 401.

¹⁶⁸ *CTh* 16.5.40 (407), 16.5.43 (407), *Sirm.* 12 (408) (Pharr, 483): "All statutes [...] not only are to continue but are to be brought to fullest execution and effect"; 16.5.65.3,5 (428) (Pharr, 463): "All the laws formerly issued and

officials responsible for the non-execution of the law. This description of inertia is highlighted and is constantly repeated.¹⁶⁹ Justin and Justinian's statement (in 527) confirms that the law was a "dead letter" and declares that a new stance on religious policy is going to be applied: "Unless that, too, seems to be a law of our enactment, which though (merely) confirmed by us, is not neglected as before, when it was a dead letter".¹⁷⁰

So, why were the laws not applied? Did social networks play a protective role? Did Manichaeans have sound popular support? Or was it just tolerance? Was it negligence or inefficiency of the state apparatus? Or was corruption involved? Did Manichaeans have access to powerful persons of authority and shared interests with them? It seems that all these options played a role to a certain extent.¹⁷¹

Firstly, the entire process for implementing the laws could face obstacles in both stages of the prosecution process, namely at the stage of accusation, and at the stage of judgment. The reasons for which the accusation did not reach the officer who had the criminal jurisdiction¹⁷² over the case varied:

(1) Cover-up by citizens: Citizens who offered Manichaeans asylum rather than denouncing them; landlords who remained silent even when they were aware that Manichaean gatherings were taking place in their houses; caretakers of landed estates who hosted Manichaean gatherings in the houses of their employers, without the permission of the owners.

(2) Cover-up by officials who were responsible for detecting and identifying Manichaeans. This was possibly due to a benign tolerance, because of negligence, or even because of self-serving purposes. Typical of the latter is the case of the secret agents (*agentes in rebus*) who, as stated above,¹⁷³ were slow to report the identified heretics (Manichaeans, Donatists, Priscillianists, pagan) to the governors of the provinces. Probably the delay was related to the negotiation for the amount of the bribe. "Avarice and corruption" of *agentes in rebus* "were notorious".¹⁷⁴ But also in the case of the decentralized inquisitorial model, which involved all the state officials in the uncovering of Manichaeans, several officials in charge did not report them to the judge, as revealed by the relevant penalties. For example, Valentinian in his Novel of 445, decreed that the punishment of "the chief men of every government service or of every office staff" who permitted Manichaeans "to be in governmental service" would be "a fine of ten pounds of gold".¹⁷⁵ Whereas, under Justinian's governance, officers who failed to denounce their Manichaean colleagues were equally guilty, even though not adherents of the sect.¹⁷⁶

promulgated at various times against such persons [...] shall remain in force forever, by vigorous observance", "the foregoing provisions shall be so enforced" ; *CJ* 1.5.5; *NTh*. 3.1.9 (438) (Coleman-Norton, 713): "what rules have been enacted in countless constitutions against Manichaeans (ever odious to God), [...] with cessation of inactivity should be entrusted to speedy execution."; *CJ* 1.5.19.

¹⁶⁹ *CTh* 16.5.40.8 (407), *Sirm.* 12 (408), 16.5.65.5 (428), *NVal.* 18.4, *CJ* 1.5.16.1, 1.5.18.11, 1.5.20.8.

¹⁷⁰ *CJ* 1.5.12.12(527) (Kruger 1967, 2:54): Πλήν ἄλλ' ἡμέτερον ἂν εἶναι καὶ τοῦτο δοκοίη τῶν ἀνακτησαμένων αὐτὸ καὶ μὴ περιδόντων, καθάπερ ἔμπροσθεν, ἀμελούμενον τε παρ' ἐνίων καὶ μέχρι μόνων γραμμάτων κείμενον. Cf. Lieu 1998b, 207.

¹⁷¹ Besides, the same happened with the treatment of other heretics. For noble heresies: *CTh* 16.5.12 (383); 16.5.24 (394); 16.5.58 (415); 16.5.65 (428); *CJ* 1.5.8 (455). For Donatists: *CTh* 16.5.46 (409); 16.11.3 (412); 16.5.54 (414); 16.5.55 (414); 16.5.65 (428); *CJ* 1.5.20 (530). Already since 376 there are hints of negligence or complicity of governors (*CTh* 16.5.4). However, from 407 onwards there is a steady reference to officials of all levels who do not apply the law and whose penalties vary according to their position.

¹⁷² The governor of the province at first instance, or the praetorian prefect in the court of highest appeal.

¹⁷³ See section 3.3.4.

¹⁷⁴ Pharr 1952, 594.

¹⁷⁵ *NVal.* 18.4 (445) (Coleman-Norton, 731). On *NVal.* 18, see Enßlin 1937, 373-78.

¹⁷⁶ *CJ* 1.5.16.1 (527).

(3) Manichaeans' camouflage. The Manichaeans concealed their identity behind other movements (e.g. ascetic) in order not to be accused. As the law of 381 denounces: "Nor with malignant fraud they should defend themselves under pretence of those fallacious names, by which many, as we have discovered, desire to be called [...] Encratites, Apotactites, Hydroparastates, or Saccophori".¹⁷⁷

As to the stage of judgment, the prosecuting procedure could be obstructed or cancelled for the following reasons: (1) The accusation was cancelled by means of the defence of prescription, common practice according to the testimony of the law.¹⁷⁸ (2) The accused person devised ways to circumvent the law by tricks.¹⁷⁹ Perhaps some defendants found ways to elicit specific decrees that excluded certain persons or groups of heretics from penalties. A known case is that of Priscillian who, although condemned as a Manichaean, bribed Macedonius, the master of the offices, and managed to have an imperial rescript issued, restoring him to his church.¹⁸⁰ (3) Deferral of the trial, or annulment of the punishment inflicted by the Governor of the province due to connivance or favouritism, although the crimes had been reported to him.¹⁸¹ (4) Judges ordered minor punishments or no punishments at all.¹⁸² (5) Sloth, negligence, or corruption of officers of all ranks, of the whole administrative structure, civil and military.¹⁸³ (6) Contemporary bureaucratic problems.¹⁸⁴ (7) Grace awarded by the Emperor.¹⁸⁵

To sum up, the non-implementation of the laws could be attributed to both the interlocking relationships or interests between Manichaeans and officials, and to the fact that the Manichaeans had popular support. The latter probably constituted an important social force, a factor which the officials, governors, judges in charge on matters of criminal prosecution of Manichaeans, should take into consideration for any decisions they had to make.¹⁸⁶

Something similar may have underlain the change of religious policy in the case of the *decrees of philanthropy*. In November 15, 407 the setting of persecutions in Africa unexpectedly changed. By a new law, the Manichaeans and the Donatists (and heretics more generally), were exempted from all charges, prosecutions and penalties of previous laws if they would convert, even at the last minute (in the midst of their trial). A simple condemnation of error and confession of the Name of the Almighty (*omnipotentis nomen*) could suffice for the absolution from all guilt and the annulment of the punishments, even in the midst of their

¹⁷⁷ CTh 16.5.7.3(381) (Coleman-Norton, 368, slightly altered).

¹⁷⁸ CTh 16.5.9 (382). About the defence of prescription, see below, section 3.4.2.

¹⁷⁹ CTh 16.5.65 (428). NVal. 18.3 (445): Manichaeans "by any fraud should not be sought what we openly prohibit"; CJ 1.5.16 (52[7;]): For the Manichaean apostate: "he shall be liable to extreme punishments, not retreating to any excuse nor being able to postpone by any subterfuges the punishments imposed on him".

¹⁸⁰ Chadwick 1976, 40-41.

¹⁸¹ CTh 16.5.40.8.

¹⁸² CTh 16.5.65.5.

¹⁸³ Sirm. 12 (408): "the governors' mischievous sloth, their office staffs' connivance, the municipal senates' contempt". CTh 16.5.40.8 (407): "The governor of the province, if by dissimulation or by partiality he shall have deferred these crimes when reported or shall have neglected...". 16.5.65.3 (428). NTh. 3.1.9 (438); NVal. 18 (445); CJ 1.5.12 (527); CJ 1.5.18 (527-29): "but persons who have not denounced these things whether they should be in office staffs or should serve in other magistracies, to which these matters refer-shall deposit a penalty of twenty pounds of gold for each person and similarly a fine of thirty pounds of gold pursues every magistracy (both military and civil) both here and in the several countries".

¹⁸⁴ NTh 3.9 (438); NVal. 18.1,4 (445).

¹⁸⁵ CTh 16.5.65.3 (428).

¹⁸⁶ Chadwick 1976, 40-41.

afflictions.¹⁸⁷ What dictated this change in tactics? Just eight years before, the then vicarius of Africa “sought out” the Manichaeans of his diocese, brought them “before the public authorities”, and punished them with the “most severe correction”.¹⁸⁸

Perhaps the change in tactics was born from necessity, in light of the large number of Manichaeans in Africa at the turn of the fourth to the fifth century (known from other sources) and who may have been unmanageable by other means, including the usual policy of ‘tolerance through terrorism’. It is not improbable that such a law could stimulate mass conversions or fake conversions, which in turn caused the need for set abjuration formulas, since the process of conversion and acceptance by the Catholic Church had to be carried out by less time-consuming procedures.¹⁸⁹ We can imagine a complete reversal of the previous scene of persecution. Instead of Manichaeans who were brought by force before the vicar, now a throng of former Manichaeans or pseudo-converts willingly turned up before Porphyrius, the new proconsul of Africa, making repentance statements in order to take advantage of the sudden change of the law.

If this is plausible, however, it is equally certain that this opportunity did not last for long. A few months later, in June 5, 408 a new law, this time persecuting the Manichaeans, was “posted at Carthage” in the agora.¹⁹⁰ As it seems, the practice of benevolence did not yield the expected results.¹⁹¹ The persecuted Manichaeans now probably fled from Africa to Rome and to other cities of the West. This possibly explains why the tactic of *philanthropy* was adopted anew in August 425 for the Manichaeans, heretics, schismatics and astrologers of Rome¹⁹² and then for those of the other cities of Italy and Gaul.¹⁹³

Subsequently, I will examine in what way the punishments inflicted upon Manichaeans (i.e. exile and property penalties), affected the religious, social, and personal lives of Manichaeans.

3.4.2 Impacts of the Exile and Property Penalties on the Everyday Life of Manichaeans

Manichaean communities (exile penalty)

What does the law reveal about the Manichaean communities? Did they exist at all, and if so, where?

The evidence presented above suggests that despite persecutions Manichaeans persisted throughout the period examined (fourth to sixth centuries) in both the Western and Eastern parts of the empire. And as it seems, they were very active. It is more likely that they preferred to live in the cities, but this does not mean that there were no Manichaeans in the countryside. However, it is reasonable to assume that they preferred the cities, actually the large ones, since missionary activities were a key component of Manichaeism, and the cities would provide better opportunities for their missionary operations. This is also shown by the persistence of the law to take them out of the cities, although, to judge by the constant repetition of the measure until Justinian’s laws, these attempts were not wholly effective.

¹⁸⁷ *CTh* 16.5.41.

¹⁸⁸ *CTh* 16.5.35 (399) (Pharr, 456).

¹⁸⁹ Lieu 1994, 208.

¹⁹⁰ *Sirm.* 12 (408) (Coleman-Norton, 507).

¹⁹¹ Maybe there were side effects (false conversions) with the mass repentance statements which the new law was invited to correct, returning back again to the classic tactics of intimidation.

¹⁹² *CTh* 16.5.62 (425).

¹⁹³ *CTh* 16.5.64 (425) = *Sirm.* 6.

Laws of exile appeared already from the first anti-Manichaean laws and (under the reign of Theodosius I and II) followed an escalated trajectory. Initially, according to the law of Valentinian I and Valens in 372, the Manichaeans had to be socially isolated: “segregated from the company of men as infamous and ignominious”.¹⁹⁴ During the next decade, the measure was intensified by a series of Theodosius I’s laws (381, 382, 383, and 389). With the first one in 381, Theodosius forbade Manichaeans to appear and be seen in municipalities.¹⁹⁵ In 383 he decreed that the transgressor of the previous laws (i.e. anyone who appeared in municipalities and participated in prohibited gatherings),¹⁹⁶ “should be expelled”, “by all good persons’ common agreement”.¹⁹⁷ The culmination of his exile policy was his law of 389, by which the Manichaeans “should be expelled [...] indeed from the whole world, but especially from this city [Rome]”.¹⁹⁸ The laws of Arcadius and Honorius (399–408) that followed made no reference to exile. The measure reappears with intensity in the laws of Theodosius II and Valentinian III, from 423 onwards. Following in the footsteps of Theodosius I, these emperors exiled Manichaeans firstly from the metropolises,¹⁹⁹ then from all the cities either big or small,²⁰⁰ and finally “from the whole world”.²⁰¹

The years that followed until Justinian, as noted in the introduction, witnessed another legislative gap of 82 years (445–527). An exception to this is the law attributed either to Leo or to Anastasius (in 487 or 510 respectively), the first to decree capital punishment for any Manichaean who would appear or be found anywhere. According to the law the Manichaeans “have no freedom or leave to dwell in any place whatever” in the Roman Empire.²⁰² However, as can be inferred by the Justinian laws to come, this law was not successful in its goal to eradicate Manichaeans from the Roman Empire, or alternatively it was never enforced. If indeed there was no other law during these 82 years, it is reasonable to assume that any possible outcome which had been brought about by the religious policy of the Theodosian dynasty (379–457) was annulled. As reflected in the laws issued by Justinian just after he assumed the governance of the empire, the Manichaeans not only had not disappeared, but one could find them even within the state structure itself, holding public offices (both civil and military), in the capital and the provinces.²⁰³

Making a final assessment of the measure, one could say that it did not yield much. Furthermore, it is not impossible, that it caused the opposite results, and led to the dispersal of the Manichaeans throughout the empire.

¹⁹⁴ *CTh* 16.5.3 (372) (Coleman-Norton, 333).

¹⁹⁵ *CTh* 16.5.7.3 (381) (Coleman-Norton, 368): “they should be restrained completely from sight in a crowded community”.

¹⁹⁶ *CTh* 16.5.7.3 (381); 16.5.7 (381); 16.5.9 (382).

¹⁹⁷ *CTh* 16.5.11 (383) (Coleman-Norton, 388).

¹⁹⁸ *CTh* 16.5.18 (389) (Coleman-Norton, 422). The Latin word for ‘world’ “is *mundus*, which means “the universe”, “mankind” –a concept larger than” Roman Empire, cf. fn. 132.

¹⁹⁹ *CTh* 16.10.24 (423), 16.5.62 (425).

²⁰⁰ *CTh* 16.5.64 (425); *Sirm.* 6 (425); 16.5.65.2 (428).

²⁰¹ *NVal.* 18 (445) (Coleman-Norton, 730): “We speak of the Manichaeans, whom the statutes of all previous emperors have judged execrable and worthy to be expelled from the whole world”.

²⁰² *CJ* 1.5.11 (Coleman-Norton, 940): Θεσπίζομεν τοὺς τὴν ὀλεθρίαν τῶν Μανιχαίων αἰρουμένους πλάνην μηδεμίαν ἔχειν παρρησίαν ἢ ἄδειαν καθ’ οἷονδὴποτε τῆς καθ’ ἡμᾶς πολιτείας διάγειν τόπον· εἰ δέ ποτε φανεῖται ἥτοι εὐρεθεῖεν, ὑπάγεσθαι κεφαλικῇ τιμωρίᾳ (Kruger 1967, 2:53).

²⁰³ *CJ* 1.5.12.1 (527), 1.5.16.1 (527), 1.5.18.5-6 (527).

*Manichaean assembly places and their ownership status (property penalties)*²⁰⁴

That there were Manichaean communities in both large and small cities, even when Manichaeans were persecuted, is evidenced by the ongoing penalties of exile from these cities. That these communities had places of gathering (churches), either in 'small towns' or in 'famous cities'²⁰⁵ is supported by the property penalties. As emphasized above, the main target of the law was the congregations of the Manichaeans and the most effective measure for their suppression was the deprivation of such places. They should not be allowed to own buildings for their gatherings. The property measures were taken for this purpose. Once these measures were legislated, they became part not only of all subsequent laws but, as we will see, a quasi-part of precedent legislation, since they had retroactive applicability.²⁰⁶

By the law of Valentinian I and Valens in 372, the Manichaean gatherings were banned. The "houses and habitations" in which such assemblies of Manichaeans were found, were confiscated and appropriated "to the fisc's resources".²⁰⁷ It is important to note that this was the first law of the *CTh* against heretics. Manichaeans were also the first target of Theodosius' religious policy. During his reign, although things became worse for all heretics, judging from his first three decrees issued in 381, 382, and 383, his main target initially seemed to be only the Manichaeans, especially their gatherings.²⁰⁸ The last edict in 383, in addition to the Manichaeans, condemned also Arians, Semi-Arians and other ascetical groups. The decree prohibited such heretics: a) to congregate, b) to build private churches or use private homes as churches, c) to conduct any proselytizing activity, and d) to practice their religion publicly or privately.²⁰⁹ Theodosius, with three laws issued in 381, 382 and 389, introduced and established the property restrictions for Manichaeans. From then onwards, the Manichaeans were deprived of the right that all Roman citizens had, to handle their property as they wished.

It is interesting to see in detail what is revealed about the Manichaean congregations according to the legislation. Firstly, from the testimony of the law issued in 381, it seems that some Manichaeans were still illegally assembling during the period 372–381, in clear violation of the law of 372.²¹⁰ Moreover, it seems that apart from the meeting places that had escaped the confiscation, new premises were transferred or donated to the community by Manichaean men and women;²¹¹ perhaps by *Electi* and *Electae* who according to the Manichaean rules should not own property. In order to stop this practice and punish those who did not restrain "from illicit and profane assemblies" after the law of 372, Theodosius' law of 381 forbade Manichaeans to inherit, bequeath, transfer or donate their property, except when it would pass into non-Manichaean hands. All prohibitions would apply, retroactively.²¹² The latter meant that the community could not acquire any new assembly places in the future, but in

²⁰⁴ Parts of this section comprise the basis of Matsangou (forthcoming).

²⁰⁵ *CTh* 16.5.7.3 (381).

²⁰⁶ *CTh* 16.5.7 (381), 16.5.9 (382), 16.5.18 (389), 16.5.38 (405), 16.5.40 (407), 16.5.43 (407), 16.5.59 (423), 16.10.24 (423), 16.5.65 (428), *NVal.* 18 (445), *CJ* 1.5.15 (527).

²⁰⁷ *CTh* 16.5.3 (Coleman-Norton, 333) addressed to the Prefect of Rome.

²⁰⁸ *CTh* 16.5.7 (381), 16.5.9 (382), 16.5.11 (383). Cf. Beskow 1988, esp.2-5.

²⁰⁹ *CTh* 16.5.11 (383).

²¹⁰ *CTh.* 16.5.7.1 (Coleman-Norton, 368), addressed to the Prefect of Illyricum: "we regard as guilty [...] those persons who, even after the law originally had been issued, have not at all been able to be restrained [...] from illicit and profane assemblies".

²¹¹ *CTh.* 16.5.7.pr. (Coleman-Norton, 367): "If any Manichaean -man or woman- from the day of the law enacted long ago and originally by our parents has transmitted his own property to any person whatsoever, by having made a will ...".

²¹² *CTh.* 16.5.7.1 (Coleman-Norton, 368): "The rule of this law [...] should prevail not only for the future but also for the past".

addition would lose the edifices that were transferred to it between 372 and 381 illegally, since the law was retroactive. The confiscation would take place after “an immediate investigation”.²¹³ If the property was given to a legal heir, such as a husband, children, or any relative who was Manichaean, the aforesaid property “should be claimed [by the fisc] under the title of vacancy”.²¹⁴ The reason that brought Theodosius to this highly unusual step in Roman legal practice, as he confessed, was that he did not want the time that had passed in the interim to benefit the Manichaeans who had previously broken the law. In other words, the Manichaeans who participated in illegal assemblies after 372 should not be able to use the defence of prescription in order to claim ownership of the aforementioned property.²¹⁵ According to the new law, paternal and maternal property could only be inherited by children who were not Manichaeans.²¹⁶

Despite these prohibitions, it seems that conveyances and donations to Manichaean communities by Manichaean individuals continued. Presumably, it was common practice for Manichaeans to leave their property to the community rather than to their children.²¹⁷ This practice was the target of the law of 382 which decreed that the Manichaeans “should leave nothing” to “the secret and hidden assemblies” of such “outlawed persons”, and had to “restore all his [their] property to persons who are his [their] own folk, not by character, but by nature”.²¹⁸ However, two subsequent laws, of 383 and 389, indicate that the community continued to acquire congregation premises in the following years.²¹⁹

With the passage of time, however, the persistence of the law to some extent seems to have achieved its purpose. Gradually, Manichaean real estate had begun to leave Manichaean hands. The older generations were dying and according to the provisions of the new laws, their descendants could not obtain the paternal or maternal property unless they were Catholic. Thus, the buildings to which the sect had access were reduced in number. Hence, as depicted in the edict of Arcadius and Honorius in 407, the Manichaeans were forced to rent or to use places of non-Manichaeans for their gatherings.²²⁰

Arcadius and Honorius had already issued two decrees that targeted Manichaean gatherings, renewing the penalties of the previous laws.²²¹ However, their law of 407 attempted to deliver the final blow to Manichaean real estate. In addition to the hitherto

²¹³ *CTh* 16.5.7.pr. (Coleman-Norton, 367-68).

²¹⁴ *CTh* 16.5.7.pr-1 (Coleman-Norton, 368).

²¹⁵ *CTh* 16.5.7.1 (Coleman-Norton, 368): “For, although the orderly arrangement of celestial statutes indicates observance of a sacred constitution in respect to matters about to follow afterward and has not been wont to be prejudicial to completed matters, nevertheless in this ordinance only, which we wish to be specially vigorous, by a sense of just instigation we recognize what a habit of obstinacy and a persistent nature deserve [...] We sanction the present statutes’ severity not so much as an example of a law to be established but as of a law to be vindicated, so that a defence of time cannot also profit them”. See also *CTh* 16.5.9.1 (Coleman-Norton, 379): “None should make void the establishment of this accusation by the usual prescription”. Cf. Lieu 1992, 146.

²¹⁶ *CTh* 16.5.7.2.

²¹⁷ According to *1Keph.* 80, 192.3–193.22 (Gardner 1995, 202) the Manichaean catechumens apart from fasting, prayer and almsgiving had to donate to their religious community some edifice for religious purposes. The above is also recorded in Augustine’s *Faust.* 5.10.

²¹⁸ *CTh* 16.5.9.pr-1. (Coleman-Norton, 378-79), addressed to the Prefect of the East.

²¹⁹ *CTh* 16.5.11 (383), addressed to the Prefect of the East; 16.5.18 (389), addressed to the Prefect of Rome. In his last edict of 389, Theodosius renewed the enforcement of confiscations and of *intestability* and emphasised, once more, that the Manichaeans being *infamous* “should have nothing in common with the world” (Coleman-Norton, 422).

²²⁰ *CTh* 16.5.40, addressed to the Prefect of Rome. The law prosecuted Manichaeans, Phrygians and Priscillians. The same law is reproduced in *CJ* 1.5.4.

²²¹ *CTh* 16.5.35 (399); 16.5.38 (405).

forbidden acts (i.e. the act to inherit, to bequeath, to transfer or to donate property), the current law made it illegal for Manichaeans “to buy, to sell, or finally to make contracts”. As decreed in the previous laws too, their property could be given to relatives only if they were Catholic: “We permit such kinsmen to have the right to take such property, unless polluted with an equal guilt”. In addition, a system of monitoring of all heirs-relatives up to the second degree was established, in order to verify whether they could be entitled to the property. Despite the prohibition of the previous laws, this suggests that some properties had been bequeathed, transferred, or donated to Manichaeans. Moreover, by the same law, any property found in the hands of Manichaeans had to be confiscated. An extra measure in order to further safeguard that no property would remain in Manichaean hands was the *post mortem* persecution. Finally, a new category of prosecuted persons appeared in the laws, against whom ‘the stings of authority’ were also directed: the owners and the caretakers of the landed estates or houses on which Manichaean congregation assembled.²²²

Indeed, the last law did not leave a lot of room which would allow any legal ploy and as is apparent, it had some effect. This is also demonstrated by the fact that the references of the laws to property measures noticeably declined in number in the coming years.

However, “devices for the circumvention” of the law were always found, or alternatively for not enforcing it.²²³ This explains how in the law that the emperor Theodosius II sent in 428 to the praetorian prefect of the East, Florentius, several heretics, among them Manichaeans, are reported as assembling again in public places; they had once more their own places of assemblies which they “try boldly to call churches”, indeed, of building themselves these so-called churches.²²⁴ These churches were either (1) gifts or property left to the community, or (2) private houses which belonged to non-Manichaeans, since the law prosecuted the owners and the procurators of those estates.²²⁵ In brief, it seems that everything forbidden by all the previous laws had in effect taken place. Was this law a mere repetition of what the previous laws had banned? Or were they the result of the forty years (383–423) that the attention in the eastern part of the empire was drawn to Eunomians? In any case, because this law covered the entire range of heretics, especially in the version of the *CTh*, it is not clear whether the above practices, and particularly the “building of new churches” concerned the Manichaeans. As Linder points out, the usefulness of laws that deal

²²² *CTh* 16.5.40.3–4 (Coleman-Norton, 502; Pharr, 457): “We also wish the heretics themselves to be withdrawn from every gift and inheritance coming under any title whatsoever. Furthermore we do not leave to anyone so convicted the capacity of donating, of buying, of selling, finally of contracting”. *CTh* 16.5.40.2. For that purpose, the aforesaid property should have been ceded “to all nearest kinfolk, in such a way that the order, just as in successions, of ascendants and of descendants and of collateral blood-relatives-even to the second degree-may be maintained. And so, finally, we allow these relatives to have the right to take the property, if they themselves are not polluted also by an equally guilty conscience”. *CTh* 16.5.40.5: “Also the legal inquisition extends beyond death. For, if in crimes of treason it is allowed to accuse a deceased person's memory, not undeservedly the said person also ought to undergo judgment in this case”. *CTh* 16.5.40.7: The owner who, “although not implicated by participation in the crime, nevertheless knows of it and does not forbid it”, would lose his estate. In case he was not aware, it was prescribed that “the overseer or the manager of the estate” would be punished.

²²³ Cf. *CTh* 16.5.65.3,5 (428) (Coleman-Norton, 643): such heretics shall not “plan anything for circumvention of the laws”. See also: *CTh*. 16.5.9.1 (382); 16.5.40.8 (407); 16.5.43 (407); *Sirm.* 12 (408); *NVal.* 18.3-4 (445); *CJ* 1.5.16.1,5 (527–29); 1.5.18.10-13 (527–29); 1.5.19 (529). Reported reasons for the non-implementation of the laws are administrative inefficiency, tolerance, sloth, negligence and corruption (on the part of the state); Manichaean social networks, popular support (on the part of the Manichaeans).

²²⁴ *CTh* 16.5.65 (Coleman-Norton, 645). The law is reproduced in *CJ* 1.5.5.

²²⁵ *CTh* 16.5.65.3 and *CJ* 1.5.5.1-2. Cf. Lieu 1992, 202.

with several heretics in common is somewhat problematical.²²⁶ The fact that in the version of the same law in the *CJ* the same practices are repeated this time only for the Manichaeans cannot be proof that they concerned Manichaeans in the original law as well.²²⁷ What can be argued is that this modification reflects the new circumstances (of the Justinian era) and is indicative of the situation that Justinian had found; that is the situation which dominated the previous years, before his accession to the throne. The latter is also echoed in the statement that Justin and Justinian made in their edict in 527: "We have permitted [they meant previous emperors] heretics to assemble and to have their own denomination" and they subsequently clarified: "we call heretics other persons, just as the accursed Manichaeans and those about like these".²²⁸ It is also important to note that the exile penalty inflicted solely on Manichaeans (according to the version of the law in the *CTh*), in the version of the *CJ* is altered to capital punishment.²²⁹

In light of all this, we cannot exclude the probability that tightening reforms of the original versions of other older laws (predating Justinian) included in the *CJ* took place as well. An example of this would be the law attributed to Anastasius or Zeno (510 or 487 respectively), which is considered to be the first law that imposed the death penalty on Manichaeans.²³⁰ In any case, for Justin and Justinian, as is stated in their edict of 527, both the latter and former laws were a 'dead letter' (*μέχρι μόνον γραμμάτων κείμενον*).²³¹

For the laws of Justinian that follow in the *CJ*, the death penalty for the Manichaean "wherever on earth appearing" (*τὸν ὅπουδὴ γῆς φαινόμενον Μανιχαῖον*) was an undisputable option.²³² The Manichaeans were now prosecuted because they were Manichaeans: not for their congregations, but for their 'name'.²³³ The Manichaean gatherings and estates did not concern laws promulgated by Justinian. Since the Manichaeans themselves did not have the option to live in Roman territory, it was obvious that they ought not dare to assemble. Consequently, because Manichaeans should not exist at all, the relevant property penalties concerned the investigation of the religious beliefs of the persons who held the property of the deceased Manichaeans.²³⁴

Social relationships

As is natural, and as always happens in societies where some groups of citizens are persecuted by authorities, there are some fellow citizens who either because of personal relationships, or because of ideological kinship, or simply for humanitarian reasons, stand by or conceal the persecuted, defying the risks and the penalties of the law that they would probably face. In our case, the corresponding class of citizens against which the law is directed, because of

²²⁶ Linder 1987, 60.

²²⁷ *CJ* 1.5.5.1-2.

²²⁸ *CJ* 1.5.12: Τούς αἰρετικούς ἡμεῖς μὲν διὰ τοῦτο καὶ συνιέναι καὶ προσηγορίαν ἔχειν ἰδίαν συνεχωρήσαμεν [...] Αἰρετικούς δὲ καλοῦμεν τοὺς ἄλλους, ὡς τοὺς γε καταράτους Μανιχαίους καὶ τοὺς τούτοις παραπλησίους.

²²⁹ *CTh* 16.5.65; *CJ* 1.5.5.1, Cf. Coleman-Norton 1966, 2:644, fn. 10.

²³⁰ *CJ* 1.5.11.

²³¹ *CJ* 1.5.12.12.

²³² *CJ* 1.5.12.3 (Coleman-Norton, 996): καὶ ταῖς εἰς ἔσχατον τιμωρίαις ὑπάγεσθαι τὸν ὅπουδὴ γῆς φαινόμενον Μανιχαῖον; *CJ* 1.5.15; 1.5.16; 1.5.18; 1.5.19.

²³³ *CJ* 1.5.12.2-3 (Coleman-Norton, 996): "Manichaeans [...] indeed it is unnecessary that they even should be named [...] and none ought either to tolerate or to overlook their denomination". As Perczel (2004, 59) remarks "It is also the innovation of Justin's and Justinian's decree that it differentiates between "heretics" who have the right to be named in their own name and thus, to exist, and the "Manichees" who even cannot be named and thus, have no right to exist within the boundaries of the Roman Empire".

²³⁴ *CJ* 1.5.15 (527-29).

protecting Manichaeans, consists of: (1) the owners of the private houses in which the Manichaeans assembled, (2) the caretakers of such estates, and (3) the citizens that hid Manichaeans in their homes. When did the above persons appear in the laws and what did they risk by breaking the law?

As mentioned above, the reason that made the appearance of owners and caretakers necessary in the life of Manichaeans was that the community did not possess enough real estate for conducting its congregations. The penalties the above persons had to face, according to law of 407, were: The owner who, “although not implicated by participation in the crime, nevertheless knows of it and does not forbid it”, would lose his estate. In case he was not aware, it was specified as “the overseer or the manager of the estate” who would be subject to a particularly harsh sentence: “after he has been chastised with a lead-tipped scourge, should be consigned to the perpetual labour of the mines”. If the inquisition proved that the leaseholder was also involved, the punishment would be deportation (*deportatio*).²³⁵ In the next relevant law (in 428), the treatment of the procurators depended on their civil status. Those of servile condition were subjected to the same penalty as indicated previously, whereas the free-born were subjected to “a fine of ten pounds of gold or exile”.²³⁶

On the contrary, for the citizens who hid Manichaeans in their homes, the laws did not mention any specific penalties, apart from warnings stressing that it was an illicit and risky practice.²³⁷ The phenomenon normally would take on larger dimensions during the persecutions. So, the first time the ‘protectors’ appeared in the law was during the persecution of 399, when the vicarius of Africa was ordered to conduct an inquisition in order to identify the Manichaeans of his diocese. The wanted Manichaeans had to be “sought, they should be brought to a magistrate and should be checked by appropriate and very severe correction”. “The stings of authority” would also be directed “against those persons” who would protect the aforesaid heretics “in their own houses”.²³⁸ The fact that the issue reappeared in subsequent laws (in 407, 445, and 527) may be an indication that this practice was continuing.²³⁹ When those Manichaeans who had infiltrated the imperial service later were targeted by the law, they enjoyed similar protection from some of their colleagues.²⁴⁰

On the other end of the spectrum of citizens, we find the informers (*delatores*), who for their own reasons (e.g. personal antipathy, hostility, loathing, ideological or selfish reasons), denounced the Manichaeans to the authorities. As we mentioned above, although the informers were in great disrepute and subjected to severe penalties if proven malicious, those who were informers of Manichaeans, like the informers of magicians and traitors, were encouraged to denounce such persons without risking being accused of slanderous defamation.²⁴¹ However, it seems that some side effects arose from this encouragement of informers from the very beginning. As is reflected in the law for apostates of 383,²⁴² some, combining the above exhortation of the law for accusations (382)²⁴³ with the provisions of the

²³⁵ *CTh* 16.5.40.7 = *CJ* 1.5.4 (Coleman-Norton, 502).

²³⁶ *CTh* 16.5.65.3 (428) = *CJ* 1.5.5.1.

²³⁷ *CTh* 16.5.35 (399), *CJ* 1.5.4.7 (407), *NVal.*18.3 (445).

²³⁸ *CTh* 16.5.35 (399) (Coleman-Norton, 480).

²³⁹ *CJ* 1.5.4 (407), *NVal.*18 (445): Nec cuiquam licitum tutumque sit aut celare tales aut talibus conivere, cum omnia de his a nobis confirmata sint retro principum constituta. *CJ* 1.5.12.

²⁴⁰ *CJ* 1.5.16 (527), 1.5.18.

²⁴¹ *CTh* 16.5.9 (382), *NVal.* 18 (445).

²⁴² *CTh* 16.7.3 (383).

²⁴³ *CTh* 16.5.9 (382).

law that enabled the retroactive accusation (381),²⁴⁴ falsely denounced their dead fellow-citizens as apostates to Manichaeism (probably for selfish reasons) disqualifying them from “making a testament”.²⁴⁵ The law of 383, against apostates, addressed these side effects by setting the following prerequisites: firstly, a time limitation of five years was prescribed for a future opening of the trial, starting from the date of death of the accused, and secondly, the informer ought to be able to demonstrate that he had denounced the accused person of apostasy during his lifetime. Otherwise, he would be considered as complicit.²⁴⁶

Both the protectors and *delatores* testify to the intensification of inquisitorial procedures and persecutions of Manichaeans.

Family relationships and social profile

Apart from the *decrees of philanthropy*, the option of repentance with the resulting exemption from prosecution always seemed to be an alternative option and was highlighted in several laws. One can imagine that this option would have given rise to important intra-family dilemmas.

All had started with the law of Theodosius I in 381, which under the perpetual stigma of *infamia*, deprived Manichaeans of the right to live under the Roman law. This produced many legal disabilities, among which was the withdrawal of the right to make a testament and to inherit. “The inheritance of paternal or maternal property should be conferred only on those children who, though born from Manichaeans”, never were Manichaeans, or in case they had once been Manichean, “have departed from the paternal depravity”.²⁴⁷ The only option which the children of Manichaeans had in order to inherit the property of their parents, apart from finding a way to circumvent the law, was to renounce the Manichaean religion and to profess the Catholic faith. It is probable that this was most often the case. But how many of these confessions of faith were sincere, and to what extent was that just a solution to save the family assets? Since a simple confession would suffice for the annulment of the penalties, why could they not make a statement of repentance, and become crypto-Manichaeans? Perhaps Theodosius’ law of 383 for the apostates, for “those who have preferred at any time to attend the Manichaeans’ nefarious retreats”,²⁴⁸ pertained to such cases. That is, some of those accused as apostates could have been children of Manichaean parents, who, for the aforementioned reasons, professed their Catholic faith, but had found it difficult to withdraw themselves from the association of their family and previous life.²⁴⁹

A similar dilemma could have been encountered by all the other relatives who were the legal heirs or beneficiaries. As indicated above, in order to ensure that the Manichaean property was transferred to Catholic hands, the authorities investigated the religious beliefs of all relatives up to the second degree of kinship. For that purpose, the property should have accrued “to their next of kin, in such a way that the order of ascendants and descendants and collateral cognates, even to the second degree, [...] be observed, as in hereditary successions”.²⁵⁰ Apparently, all these questions of inheritance strained family relationships and created intra-family conflicts among the legal heirs and beneficiaries, as is also reflected

²⁴⁴ CTh 16.5.7 (381).

²⁴⁵ CTh. 16.7.3.1. See also, about this law, Linder (1987, 168-174).

²⁴⁶ CTh. 16.7.3.1.

²⁴⁷ CTh 16.5.7.2 (381), 16.5.40.5 (407) (Coleman-Norton, 502).

²⁴⁸ CTh 16.7.3 (383) (Coleman-Norton, 385).

²⁴⁹ CTh 16.5.7 (381).

²⁵⁰ CTh 16.5.40.2 (407) (Pharr, 457).

in the law for the apostates.²⁵¹ Such claims may have been common in the everyday life of Manichaeans. This is also revealed by the *sanctio pragmatica* issued by Justinian in response to a question concerning matters relevant to Manichaean property.²⁵²

Professions

What is interesting is the transformation of the social profile of the Manichaeans, as reflected in the legislation which seems to have taken place between the fourth and sixth century (372–531 CE). At the beginning, as we can read through the first laws of Theodosius I, the social profile that the Manichaeans themselves wished to project was that of solitaries, ascetics, monks, who were following a solitary life. They were self-proclaimed as ascetics “of approved faith and chaste character”, and desired to be called Encratites, Apotactites, Hydroparastates, or Saccophori.²⁵³ Thus, the Manichaeans initially are presented (in the legislation) as figures on the fringes of society, as non-conformists. In the laws that follow, those of Arcadius and Honorius, this picture is lost. In the laws of these emperors there are no references that could help us form a picture about the Manichaean social profile and status, apart from a brief notice regarding the slaves of the persecuted Manichaeans. However, this only serves to show that there were Manichaeans, and indeed persecuted Manichaeans, in the upper classes of society. According to the law, their slaves shall “be without guilt, if abandoning their masters’ sacrilege, they shall have crossed with more faithful service to the Catholic Church”.²⁵⁴ It is worth noting that according to the law, those accused of a public crime lost the right to protect their slaves, who could be tortured in order to turn in their masters.

In contrast, in the *CJ*, after the legislative gap of 82 years, the image of the social profile of Manichaeans is totally changed. The Manichaeans now seem to be fully integrated in society, holding public offices in the state’s civil and military structure. This should not be surprising, since the last law of the *CTh* hints at this forthcoming evolution.²⁵⁵ This suggests that there were Manichaeans who performed imperial service at least since 445. However, the penalties inflicted upon the responsible officers did not stop them from permitting Manichaeans to perform imperial service. Justinian’s laws create the impression that there were many of them in such offices in the early sixth century in both Constantinople and the provinces.²⁵⁶ From the very first words of their edict in 527, Justin and Justinian denounced that the Manichaeans and those like them with “intolerable audacity/recklessness” had “infiltrated themselves, having disregarded the laws’ command [Valentinian’s Novel?], into governmental services”.²⁵⁷ And this was happening, although “in the certificates of appointment [of] many officials concerning their office, it is added that the person who obtains it must be orthodox”.²⁵⁸ The question is whether this intrusion was accidental and

²⁵¹ *CTh* 16.7.3 (383).

²⁵² *CJ* 1.5.15 (527–29).

²⁵³ *CTh* 16.5.7.3 (381) (Coleman-Norton, 368), 16.5.9 (382).

²⁵⁴ *CTh* 16.6.40.6 (407) (Coleman-Norton, 502).

²⁵⁵ *NVal.* 18 (445) (Coleman-Norton, 731): Imperial officers shall be punished with a fine “if they allow anyone polluted by this [the Manichaean] superstition to be in governmental service”.

²⁵⁶ *NVal.* 18 (445), *CJ* 1.5.12 (527), 1.5.16 (527), 1.5.18 (527–29).

²⁵⁷ *CJ* 1.5.12.1–2 (527) (Kruger, 2:53; Coleman-Norton, 996): 1. Τοὺς δὲ εἰσῆλθέ τις οὐκ ἀνεκτὴ τόλμα, καὶ τῆς τῶν νόμων ἀμελήσαντας παραγγελίας στρατείαις, ὧν οὐκ ἔξ μετεῖναι τοῖς τοιοῦτοις αὐτὰ τὰ τῶν βασιλικῶν συμβόλων δηλοῖ γράμματα, παρενέβαλον αὐτούς. 2. Αἰρετικούς δὲ καλοῦμεν τοὺς ἄλλους, ὡς τοὺς γε καταράτους Μανιχαίους καὶ τοὺς τούτοις παραπλησίους.

²⁵⁸ *CJ* 1.5.12.11 (527) (Kruger, 2:54; Coleman-Norton, 997): 11. Ὅπερ ἐστὶν οὐ καθάπαξ καινόν· τὰ γοῦν ταῖς πλείσταις τῶν στρατειῶν θεῖα διδόμενα τῆς ζώνης σύμβολα προσκείμενον ἔχει τὸ δεῖν ὀρθόδοξον εἶναι τὸν ταύτης μεταλαμβάνοντα.

due to the dynamics of the spread of Manichaeism, or if it was the result of a tactical method and strategy.

3.4.3 The Death Penalty

What has been exposed above concerns the effect that the property penalties and the penalty of exile could have on the ordinary life of Manichaeans. Here, I will examine what the threat of the death penalty meant for their daily life. The first thing to note is that nowhere in the *CTh* is the death penalty recorded as a punishment inflicted on Manichaeans. The first time that the death penalty appears is in the *CJ* where, as it seems, it is the only option. The terms that are used are *ultimate sentence* and *capital punishment*. In the *CTh*, the punishment to which the Manichaeans were subjected, as said, were exile and property penalties. It is further remarkable that in the Roman legislation (of the period) the combination of exile, property penalties, and the parallel deprivation of Roman citizenship all coexist in the severe form of exile which is called *deportatio*. Usually, mere exile was not accompanied by property penalties and the loss of Roman citizenship.²⁵⁹ *Deportatio* was considered equivalent in severity to the ultimate sentence or capital punishment. Indeed, the last two terms, in early Byzantine legislation, did not always signify the death penalty, but also meant other penalties which by their severity resembled death.²⁶⁰ Thus, the terms *ultimate sentence* and *capital punishment*, apart from the death penalty (hanging, decapitation and burning at the stake), could also mean forced labour in the mines, or deportation, or loss of Roman citizenship. Yet a contradictory definition is recorded elsewhere.²⁶¹

After what was presented above, one naturally wonders whether the terms *ultimate sentence* and *capital punishment*, used by the *CJ* as penalties for the Manichaeans, signified exclusively the death penalty, or whether it was left to the discretion of the judges to decide on a case-by-case basis.

The first law in which the term capital punishment is recorded is the one attributed to Zeno or Anastasius (487 or 510):

We ordain that those who prefer the Manichaeans' deadly error should have no freedom or leave to dwell in any place whatever of our State; and if they ever shall appear or be found, they should be subject to capital punishment.²⁶²

The version of the same law in *Basilica*, determines also the way of execution, which was decapitation: "the Manichaean who lives in Roman territory once appeared/perceived should be decapitated".²⁶³

²⁵⁹ B 60.54.6 = D 48.22.7.

²⁶⁰ B 60.51.26 = D 48.19.28 pr. §§ 1—15; (title 51) Ἐσχάτη τιμωρία ἐστὶ τὸ φουρκισθῆναι καὶ καυθῆναι καὶ ἀποκεφαλισθῆναι καὶ μεταλλισθῆναι καὶ περιορισθῆναι· ταῦτα γὰρ πλησιάζει καὶ μιμεῖται θάνατον. Τὸ δὲ προσκαίρως ἢ διηλεκτῶς ἐξορισθῆναι ἢ εἰς δημόσιον ἔργον δοθῆναι ἢ ροπαλισθῆναι ἢ ἄλλως ὑποστῆναι ποινὴν οὐκ ἐστὶ κεφαλικόν. B 60.51.2 = D 48.19.2: Κεφαλικὴ καταδίκη ἐστὶν ἡ θάνατον ἢ ὑπεύθυνον ποινῆς ἢ πολιτείας ἔκπτωσιν ἐπάγουσα.

²⁶¹ B 60.51.20 = D 48.19.21. Celsu. Μόνος ὁ θάνατός ἐστιν ἐσχάτη τιμωρία.

²⁶² CJ 1.5.11 (Coleman-Norton, 940, altered): Θεσπίζομεν τοὺς τὴν ὀλεθρίαν τῶν Μανιχαίων αἰρουμένους πλάνην μηδεμίαν ἔχειν παρρησίαν ἢ ἀδειαν καθ' οἷονδὴποτε τῆς καθ' ἡμᾶς πολιτείας διάγειν τόπον· εἰ δέ ποτε φανεῖται ἥτοι εὐρεθεῖται, ὑπάγεσθαι κεφαλικῇ τιμωρίᾳ.

²⁶³ B 1.1.25 (= CJ 1.5.11): Ὁ Μανιχαῖος ἐν Ῥωμαϊκῷ τόπῳ διάγων ὀφθεῖς ἀποτεμνέσθω. *Basilica*, which means the royal/imperial [laws], is an extensive collection of laws compiled during the Macedonian dynasty (begun under Basil I and was completed during the reign of Leo VI), and constitutes a revised and updated version of Justinian's legislation.

Justinian, as mentioned, did not leave the opportunity to Manichaeans to exist anywhere in Roman territory. The ultimate sentence for the Manichaean “wherever on earth appearing” was the only option.²⁶⁴ As mentioned above in section 3.4, apart from the general objective, which was to identify and put to death the Manichaeans who were found in Roman territory, Justinian’s laws focused in particular on the following groups: (1) the Manichaeans that had intruded into the imperial service, (2) the apostates, and (3) the crypto-Manichaeans. The Manichaeans were now prosecuted because they were Manichaeans: Not for their congregations, but for their ‘name’.²⁶⁵ What seems now to have troubled the authorities were the issues of apostasy and false conversion.

By his law (*CJ* 1.5.16) Justinian targeted the converted Manichaeans because they were suspected of both apostasy and crypto-Manichaeism.²⁶⁶ This does not mean that there were no more Manichaeans, but certainly it was a transitional era, a turning point, during which massive conversions must have occurred due to the intensification of the persecutions. For the law, the apostate (a person who returned to Manichaeism after having been converted) “shall be subject to the ultimate sentence” (*ταῖς ἐσχάταις ἔσται τιμωρίαις ὑπεύθυνος*).²⁶⁷ The apostates “will receive no clemency” (*οὐδεμιᾶς τεύξονται φιλανθρωπίας*). The problem was that the converted Manichaeans could be blamed for apostasy very easily. For example, if they happened to speak to an old friend on the road instead of denouncing him to the authorities. To the ‘proper penalty’ was also subjected all those who had Manichaean books and did not deliver them to the authorities in order to be burnt.²⁶⁸

But those whom the law deemed as “most worthy of the ultimate penalty” (*ἐσχάτων τιμωριῶν ἀξίους*) were those who pretended to have been converted (i.e. the crypto-Manichaeans), who:

having pretended to abandon this impious error [...] later are seen to delight in rascally men’s association and to cherish those persons’ interests and in every way to conceal with them their impieties.²⁶⁹

Thus, apart from being accused of apostasy, the converted Manichaean was at risk of being accused as a crypto-Manichaean. According to this law, in order to demonstrate the sincerity of their reform and persuade the authorities that they had converted in earnest (not in pretence), the ex-Manichaeans had to denounce their former comrades.²⁷⁰ This was the only way to “be secure” after their conversion. Under Justinian, the alternative options for Manichaeans became dramatically limited. They either had to die as Manichaeans, or they had to live as *delatores*.

In the middle of the sixth century, during the reign of Justinian, 230 years after the persecutions of the Manichaeans by Diocletian, it seems that a circle of tolerance was shrinking, and the daily life of Manichaeans had to confront once again the pre-Christian reality. But for the state and the authorities now, it was much more difficult and complicated

²⁶⁴ *CJ* 1.5.12.3, 1.5.15, 1.5.16, 1.5.18, 1.5.19.

²⁶⁵ *CJ* 1.5.12.

²⁶⁶ *CJ* 1.5.16.

²⁶⁷ *CJ* 1.5.16.pr. (Coleman-Norton, 1006): “after our so great benevolence” (*τὴν τοσαύτην ἡμῶν φιλανθρωπίαν*), “and many admonitions” (*τὰς πολλὰς προαγορεύσεις*) and “time given for repentance” (*τοὺς ἐνδεομένους ἐπὶ τῇ μεταμελείᾳ καιροῦς*).

²⁶⁸ *CJ* 1.5.16.pr,2,3.

²⁶⁹ *CJ* 1.5.16.4 (Coleman-Norton, 1006): ὅσοι προσποιησάμενοι τὸ ἀπολιμπάνειν τὴν ἀσεβῆ ταύτην πλάνην [...] μετὰ ταῦτα χαίροντες φαίνονται τῇ τῶν ὀλεθρίων ἀνθρώπων συνδιαγωγῇ καὶ τὰ ἐκείνων θάλποντες καὶ πάντα τρόπον αὐτοῖς τὰ ἀσεβήματα συγκρύπτοντες.

²⁷⁰ *CJ* 1.5.16.5.

to identify them. This is because in the years that had passed a transformation of the Manichaean identity had taken place. Justinian's inquisitors did not search out Manichaean churches and congregations but Manichaeans who had infiltrated state structures or in other social structures (e.g. guilds).²⁷¹ The limits of the sect had become even more blurred.

3.5 Conclusions

Despite the reservations raised by scholars regarding the use of legal codes as historical sources, this chapter argued that under certain preconditions, the Roman legal sources are valuable to shed light on many aspects of the history of Manichaeism in the late Roman Empire. Although the gaps in the law that exist do not allow us to fully reconstruct the entire period under investigation (fourth to sixth centuries), our source material, especially the *CTh*, is extremely important because it contains a large number of anti-Manichaean laws issued in a short period of time. This brief window enables us to capture historical changes, both at the level of the formation of imperial religious policy and at the level of the everyday life of the persecuted. As the analysis showed, the laws are not necessarily mindless reiterations of previous ones. In our case, every subsequent law, apart from reinforcing the validity of the previous ones, is a clarification, supplement, or correction of past laws, in order to make them more effective. Our source material gives the impression that legal institutions and social reality are in a continuous dialogue.

By examining the available data, it becomes immediately apparent that Manichaeism was the most persecuted heresy. Both codes have more numerous laws against Manichaeans than against other heretics. From the time that laws against heresies appeared in the codes, Manichaeans, in contrast to other religious groups, are steadily their target. Furthermore, in contrast to the *noble* heretics, of whom only the clergy and their teachers were persecuted, the Manichaeans were persecuted as an entire community (both Elect and catechumen). In addition, the Manichaeans were the only sect some laws (both codes) separately mention female and male members. However, employing the tool of *province-wide applicability* of the laws, which enables a diachronic geography of the sect to emerge, there is a notable absence of laws against the Manichaeans of the eastern part of the empire for a period of 40 years. The most likely explanation for this is that the Eunomians monopolized the interest of both religious and state authorities in the East during this period (383–423).

A core question of this chapter was the Manichaeans' religious profile from a legal perspective. In the eyes of the law were the Manichaeans Christian heretics or not Christian at all? Although the *CTh* classified Manichaeans in the chapter of heretics, after examining: (1) with which groups they were co-classified, (2) the rationale of the persecution, (3) the prosecution procedure and, (4) the imposed penalties, it becomes clear that the Manichaeans were considered as a *sui-generis* class of heretics.²⁷² This is also reflected in the rationale of the law regarding the nature of the crime of Manichaeans. Unlike *noble* heretics, who were persecuted for their doctrine, Manichaeans were persecuted for socially dangerous and subversive practices. Unlike Jews and pagans, whose religious identity was distinct, the boundaries of the Manichaean identity were blurred: a factor that made them more threatening. For this reason, Manichaeans, as Christians earlier, were persecuted just for being Manichaeans and not when they broke the law, as was the case with Jews and pagans.

²⁷¹ *CJ* 1.5.16.1.

²⁷² In *CJ* the Manichaeans are clearly distinguished from heretics.

The policy of repression that Christian emperors initially opted for was that of ‘tolerance through terror’. In this context, the tools employed were *infamia* and the characterization of the sect as a *public crime*. The crimes that constituted the content of the term *public crime* in the case of the Manichaeans were: high treason, sedition, sacrilege, magic, and moral corruption. Concerning the former, in contrast to the representation of Manichaeism by the sources examined in ch.[2], Roman imperial legislation defines no explicit link between Manichaeans and Persians; yet, the penalties of Manichaeans and traitors have much in common. The above policy legitimized: (1) the deprivation of the right of the Manichaeans to own property (depriving them likewise of their assembly places), and (2) the exile penalty. *Infamia* was proven to have been effective over a specific period of time. However, during Justinian’s time, the measure had lost its focus and was no longer an effective tool.²⁷³ As for the exile penalty, it probably led to the dispersal of the Manichaeans throughout the empire. The change in policy with the *decrees of philanthropy* could be seen as an attempt to manage the large number of Manichaeans in North Africa. It is notable that the promulgation of the *decrees of philanthropy* in the early fifth century coincides with the dating of the earlier set abjuration formulas. This reinforces the view that the latter were established in times of massive conversions. The fact that soon the policy of ‘tolerance through terror’ was adopted anew, probably implies the large dimension of false conversions. Likely connected to the latter is a transformation of the Manichaean social profile that took place between the fourth and sixth century. While the laws of Theodosius I present the Manichaeans as ascetics following a solitary life, in the laws of Justinian they appear to be fully integrated into society and the state’s apparatus. With Justinian the ‘end of tolerance’ policy was inaugurated. Thenceforth, the real persecution began; the only option left was the physical eradication of the Manichaeans.

Regarding the question of the impact of laws on the everyday life of Manichaeans, as we have seen, the stigma of *infamia* (and the consequent deprivation of property rights) brought about a series of unbearable effects such as: social marginalisation, many legal disabilities, family disputes, real estate loss, and the removal of community assembly places. Yet, certain legal loopholes and imperial policies of tolerance, at least until Justinian’s time, left space for some action.

Finally, in contrast to ecclesiastical literature, which quite commonly uses the term ‘Manichaean’ to refer to other heretics, an issue discussed in the next chapter, the legal usage of the term Manichaean is literal and refers to the actual Manichaean community. This is because the laws contain references to the whole range of heretics and there is a clear distinction in the way that the Manichaeans were classified and treated in relation to other heretics. In practice, however, it is quite possible that, apart from Manichaeans, other ‘heretics’ were labelled as Manichaeans and were persecuted.²⁷⁴

²⁷³ On the application of *infamia* and its various uses over time (Diocletian-Justinian), see Bond 2014.

²⁷⁴ Cf. Minale 2011.