

Constantine and the Problem of Anti-Pagan Legislation in the Fourth Century



Scott Bradbury

Classical Philology, Vol. 89, No. 2. (Apr., 1994), pp. 120-139.

Stable URL:

<http://links.jstor.org/sici?sici=0009-837X%28199404%2989%3A2%3C120%3ACATPOA%3E2.0.CO%3B2-P>

Classical Philology is currently published by The University of Chicago Press.

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/about/terms.html>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/journals/ucpress.html>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is an independent not-for-profit organization dedicated to creating and preserving a digital archive of scholarly journals. For more information regarding JSTOR, please contact support@jstor.org.

CONSTANTINE AND THE PROBLEM OF ANTI-PAGAN LEGISLATION IN THE FOURTH CENTURY

SCOTT BRADBURY

ALTHOUGH CONSTANTINE'S ATTITUDES and policies toward his fellow Christians emerge clearly enough from his correspondence, speeches, and legislation, his policies toward the pagan majority remain ambiguous and elusive. No aspect of Constantine's attitude toward pagans has proven more controversial than the claim that he legally banned blood sacrifices in the empire. The issue is of obvious importance to the religious history of the fourth century, since sacrifices were the central ritual act of so many traditional Greco-Roman cults and had long been emblematic of the whole complex of pagan belief and practice. Our conclusions condition not only our assessment of Constantine's personal religious convictions and his sense of divine mission, but also the broader question of the Christianization of the empire and the strength and character of paganism in the early fourth century. Historians confronting the controversial claim that Constantine issued a law against blood sacrifice have been forced to decide among a handful of tendentious, contradictory sources. In the *Vita Constantini*, Eusebius of Caesarea states emphatically that Constantine banned sacrifice when he became sole Roman emperor after the victory over Licinius in A.D. 324, and this claim is supported by the evidence of the first extant law against sacrifice (*CTh* 16.10.2), issued by Constantians and Constantius in 341, which alludes to a law against sacrifice issued in the past by Constantine. In the *Pro Templis*, however, Libanius states bluntly that Constantius II and not his father, Constantine, was responsible for the ban on sacrifice. Scholars have been unduly hesitant to accept the idea of a Constantinian ban on sacrifice for two reasons. First, the debate has focused too much on the evidence of Eusebius' *Vita Constantini* and has become a referendum on Eusebius' reliability. In the process other important evidence has not been given the prominence it deserves. Second, many skeptics have doubted the general ban on sacrifices because it would have been, in their view, provocative and politically unfeasible. In any event, it does not appear to have had much effect. Why assume that it even happened? I will argue that Constantine made no secret of his loathing for blood sacrifices, that he consistently denounced them in his speeches and correspondence, and that he would not permit them in his presence. Furthermore, he did, probably in 324, issue a law (or series of laws) against sacrifices, but his law and subsequent anti-pagan laws were

issued in a spirit quite alien to modern law and to classical Roman law. A discussion of some of the misconceptions about the anti-pagan legislation issued by Christian emperors will help to resolve some of the peculiarities and ambiguities concerning Constantine's law.

Previous scholarly discussion of a Constantinian ban on sacrifice has focused largely on Eusebius of Caesarea, and for good reason, since he is a contemporary witness and our most important source for the life and reign of Constantine. Whatever we may decide about the alleged ban on sacrifice, we must confront the very real source problem posed by the *Vita Constantini*. Eusebius states emphatically and repeatedly in the *Vita Constantini* that Constantine himself issued a law forbidding pagan sacrifices.¹ The claim first appears in the description of Constantine's conduct in the aftermath of the victory over Licinius in 324. At *Vita Constantini* 2.23–42, Eusebius reproduces verbatim Constantine's *Letter to the Inhabitants of the Province of Palestine*, in which the emperor details the restoration of rights to all those who had suffered in the Great Persecution. Chapter 44 reports that the victorious emperor continued to address himself to important matters: first, he appointed to the various provinces new governors, the majority of whom were Christian. If any governors "seemed to be Hellenizers," he specifically forbade them to sacrifice.² Furthermore, this ruling or law (νόμος) applied not only to provincial governors, but to the highest officials, including praetorian prefects. For, according to Eusebius' vague language, the law "granted to those who were Christian to pursue their calling, or, if people were of another disposition, the law forbade them to engage in idol-worship."³ At *Vita Constantini* 2.45 Eusebius speaks of "two laws sent out at about the same time," and he actually produces a copy of the second law, that is, a letter sent to him by the Emperor Constantine about the restoration of church buildings; the first, namely the anti-pagan law, is almost always discussed as a "prohibition of sacrifice," but according to Eusebius, it was much more sweeping:

ὁ μὲν [νόμος] εἶργων τὰ μυσάρᾳ τῆς κατὰ πόλεις καὶ χώρας τὸ παλαιὸν συντελουμένης εἰδωλολατρίας, ὡς μήτ' ἐγέρσεις ζοάνων ποιῆσθαι τολμᾶν, μήτε μαντείας καὶ ταῖς ἄλλαις περιεργίαις ἐπιχειρεῖν, μήτε μὴν θύειν καθόλου μηδένα.

The law prevented the abominations of idol-worship that had previously been practiced both in cities and in the countryside, to the effect that absolutely no one should dare to have cult statues erected or engage in divination or other false practices and that absolutely no one should offer sacrifice.

1. References are to the following editions of Eusebius' works: *De Vita Constantini*, ed. F. Winkelmann, Eusebius Werke, vol. 1.1 (Berlin, 1975); *De Laudibus Constantini*, ed. I. A. Heikel, Eusebius Werke, vol. 1, GCS 7 (Leipzig, 1902). I have adopted H. A. Drake's division of the *De Laudibus Constantini* into two works, the *De Laudibus Constantini* (LC) and the *De Sepulchro Christi* (SC), in H. A. Drake, *In Praise of Constantine: A Historical Study and New Translation of Eusebius' Tricennial Orations* (Berkeley and Los Angeles, 1976).

2. VC 2.44 . . . ὅσοι δ' ἐλληνίζειν ἐδόκουν, τούτοις θύειν ἀπέριητο.

3. VC 2.44 . . . ἢ γὰρ χριστιανοὺς οὐσὶν ἐμπρέπειν ἐδίδου τῇ προσηγορίᾳ, ἢ διακεμένους ἐτέρως τὸ μὴ εἰδωλολατρεῖν παρήγγελλεν.

Eusebius' chronological specificity about this law is striking, but what sort of document had he actually seen? He claims that Constantine's law concerned the erection of cult statues, divination, magical practices, and sacrifices. A total ban on sacrifices *and* all forms of divination is not only unprecedented, it is also unparalleled before the Theodosian edicts of the late fourth century.⁴ Even if the anti-pagan law is genuine, it is very unlikely that Eusebius reports its contents accurately.

In the miscellany of Constantinian anecdotes included in Book 4, Eusebius reasserts his bold claims about the "war" on pagan cult, particularly sacrifice. At 4.23 he maintains that the inhabitants of the empire, both private citizens and those in the service of the emperor, found the "gates of every kind of idol-worship closed to them and every kind of sacrifice denied them."⁵ Two chapters later he claims that in accordance with Constantine's pious zeal "it was forbidden to everyone by successive laws and ordinances (νόμοι and διατάξεις) to sacrifice to idols, to dabble in divination, to have cult statues erected, to conduct secret rites, or to pollute the cities with gladiatorial combats."⁶ Like much of the information in Book 4, these details are timeless and otherwise unverifiable, with the exception of the ban on gladiatorial combats, an example of which survives in the Theodosian Code.⁷

Historians have understandably regarded Eusebius' assertions with skepticism. Indeed, few ancient sources have provoked as much distrust, even hostility, as the *Vita Constantini*.⁸ Scholars have generally opted for one of two positions on the problem. Some have tentatively accepted the substance of Eusebius' claim, while nonetheless declining to accept his complete portrayal of Constantine as a crusader against paganism. The majority have tended to dismiss the claim, concluding that Eusebius must be generalizing on the basis of isolated attacks on pagan cult.⁹ This second group has good reason to suspect Eusebius of distorting the truth. It is instructive, for

4. VC 2.45. Soz. HE 3.17.2, apparently deriving from Eusebius, claims that Constantine's sons confirmed their father's laws and enacted new ones against sacrifice, the worship of idols and other pagan observances. Soc. HE 1.18 cites Constantine's specific anti-pagan initiatives mentioned by Eusebius, but no general ban. Theod. HE 5.21.1–2 claims that Constantine forbade sacrifice as well as entrance to pagan sanctuaries. The prohibition on the erection of cult statues is unusual, but cf. VC 4.16 for the claim that Constantine forbade by law that statues of himself be set up in pagan temples.

5. VC 4.23 καθόλου δὲ τοῖς ὑπὸ τῇ Ῥωμαίων ἀρχῇ δῆμοις τε καὶ στρατιωτικοῖς πύλαι πάσης ἀπεκλείοντο εἰδωλολατρίας, θυσίας τε τρόπος ἀπηγορεύετο πᾶς.

6. VC 4.25 "Ἐνθεν εἰκότως ἐπαλλήλοισι νόμοις τε καὶ διατάξεσι τοῖς πᾶσι διεκελεύετο μὴ θύειν εἰδώλοις, μὴ μαντεῖα περιεργάζεσθαι, μὴ ῥοάνων ἐγέρσεις ποιεῖσθαι, μὴ τελετὰς κρυφίους ἐκτελεῖν, μὴ μονομάχων μαϊφονίας μολύνειν τὰς πόλεις.

7. CTh 15.12.1. On this law, see L. de Giovanni, *Costantino e il mondo pagano: studi di politica e legislazione*³ (Naples, 1983), pp. 84–94.

8. E.g., J. Burckhardt's caustic observation in *The Age of Constantine the Great*, trans. M. Hadas (Berkeley and Los Angeles, 1949), p. 293: "Eusebius, though all historians have followed him, has been proven guilty of so many distortions, dissimulations and inventions that he has forfeited all claim to figure as a decisive source." Gibbon had long before pointed out concerning the ban on sacrifice that "this imaginary law . . . would have blazed in the front of the Imperial codes," in *The Decline and Fall of the Roman Empire*, vol. I (New York, 1932), p. 723.

9. A. Alföldi, *The Conversion of Constantine and Pagan Rome* (Oxford, 1948), p. 109, nn. 5 and 7, for numerous references to older scholarly opinion on the problem. Alföldi himself (p. 109) accepted the possibility of a ban on sacrifices, but assumed it came late in Constantine's reign, as did A. H. M. Jones, *The Later Roman Empire, 284–602* (Oxford, 1964), p. 92. Most scholars have rejected the idea of a general ban

example, to compare Eusebius' claims about the prohibition of sacrifices with his evidence for Constantine's attacks on pagan temples. We must bear in mind here the *VC*'s avowedly apologetic and partisan character, its relentless focus on Constantine's religious character (cf. *VC* 1.11). Eusebius offers his readers repeated examples and proofs in order to demonstrate the deep piety of his emperor. Throughout the *VC* and the surviving orations of Eusebius' later life, certain themes recur: persecution and the destruction of the persecutors, the election of Constantine as part of God's plan, church building, and the war against paganism.¹⁰ The campaign against pagan temples and cults is central to Eusebius' view of the movement of history, the corollary to the erection of churches. To witness the whole rotten edifice of paganism literally crashing down before your eyes was to witness one of the most dramatic proofs imaginable of God's plan in action. Consequently, it is very likely that Eusebius reports everything he knows of temple destruction.¹¹ It is revealing in this regard to compare his generalizing remarks in the opening of Book 3 with his accounts of individual actions against pagan cult sites. The claim at *VC* 3.1 is bold and sweeping: the persecutors had sumptuously adorned the temples, but Constantine "razed to their foundations those [temples] which had been the chief objects of superstitious reverence."¹² Eusebius actually cites, however, only four examples, three of which involve temples of Aphrodite. One of these temples stood on the site of the Lord's resurrection—it polluted a Christian holy site. At the other two temples of Aphrodite, ritual prostitution was practiced.¹³ Only the attack on the Temple of Asclepius at Aegae eludes easy explanation.¹⁴ Thus, all but one of the known attacks on temples appear to have been motivated by a desire to recover a Christian site or to suppress indecent sexuality.¹⁵ The bold claim of a campaign against the temples is not borne out by the evidence, and it is understandable that scholars have suspected the same thing to be true of the claim about the total prohibition on sacrifices.

However, in his vigorous and challenging reinterpretation of Constantine's reign published in 1981, T. D. Barnes accepted Eusebius' depiction of

or stressed its ineffectiveness: A. Piganiol, *L'Empire chrétien* (Paris, 1947), p. 58, n. 5; J.-R. Palanque, *De la paix constantinienne à la mort de Théodose* (Paris, 1950), p. 63, n. 8; R. Lane Fox, *Pagans and Christians* (New York, 1987), p. 667; P. Chuvin, *A Chronicle of the Last Pagans* (Cambridge, Mass., 1990), pp. 30–32; J. Gaudemet, "La législation anti-païenne de Constantin à Justinien," *CrSt* 11 (1990): 449–68, esp. 454–55.

10. A. Cameron, "Eusebius of Caesarea and the Rethinking of History," in *Tria Corda: Scritti in onore di Arnaldo Momigliano* (Como, 1983), pp. 71–88.

11. Note that the account of the temple at Aphaca (*VC* 3.55) has been reused with only slight changes from *LC* 8.5–7. This suggests that Eusebius had a limited number of examples from which to draw. That is not to imply that attacks against pagan cult sites did not take place in other regions. Undoubtedly they did, but Eusebius' geographical horizons are not broad and he mentions only actions in or close to Palestine.

12. *VC* 3.1.5 (trans. NPNF): οἱ μὲν τοὺς νεῶς φιλοτίμως κοσμεῖν ἐκέλευον, ὁ δὲ ἐκ βάρων καθήρει τούτων αὐτῶν τὰ μάλιστα παρὰ τοῖς δεισιδαίμοσι πολλοῦ ἄξια.

13. *VC* 3.26–27 (Temple of Aphrodite shrine over the Holy Sepulchre); 3.55 (Temple of Aphrodite at Aphaca); 3.56 (Temple of Aphrodite at Heliopolis); 3.56 (Temple of Asclepius at Aegae).

14. For interesting speculation on the reasons for the destruction of Asclepius' temple, see Lane Fox, *Pagans and Christians*, pp. 671–72.

15. Cf. *VC* 4.25.2 for Constantine's abolition of a eunuch priesthood presiding over rites for the River Nile.

Constantine as aggressively anti-pagan, the head of a victorious religious faction aiming to suppress the cults of traditional religion. In developing this interpretation, he accepted and attached considerable importance to Eusebius' repeated claim that Constantine issued a wide-ranging prohibition on pagan cult, including a total ban on sacrifice in 324 after the victory over Licinius.¹⁶ Barnes assumed further that the issue of the law provoked a sharp pagan reaction: "a change so sudden, so fundamental, so total shocked pagans. There were probably complaints and protests to the emperor." There is, however, an obstacle to this interpretation. Almost immediately after the alleged prohibition on pagan cult at 2.45, Eusebius reproduces verbatim Constantine's long *Letter to the Eastern Provincials* (2.47–60) written in 324. In the *Letter* Constantine inveighs against the errors of polytheism and exhorts pagans to convert, while repudiating attacks on pagan cult and forced conversions. The final chapter appears to bear on the alleged ban on sacrifice:

Some people, so I hear, say that the rites of the temples and the power of darkness have been utterly removed. I should have earnestly recommended such removal to all men, were it not that the rebellious spirit of those wicked errors still continues obstinately fixed in the minds of some, so as to discourage the hope of any general restoration of mankind to the ways of truth.¹⁷

The interpretation of the passage is more complicated than it appears initially, since the reference to the "rites of the temples" (τῶν ναῶν . . . τὰ ἔθνη) is figurative, just as earlier in the letter Constantine had contemptuously dismissed the pagans to their "sanctuaries of falsehood," which he contrasted with God's "most brilliant house of truth." He is not referring to specific sanctuaries of pagan gods, just as his reference to ἔθνη does not refer to specific pagan rites. Phrases like the "rites of the temples and the power of darkness" allude figuratively to the whole complex of pagan belief and cult, which is contrasted with the most brilliant house of God's truth, that is, with Christian belief and cult. The emperor concludes that unfortunately paganism must be allowed to exist because pagans are so obstinately resistant to change. To what precise social conditions does the letter respond? Constantine has apparently been informed of sporadic attacks on pagans or pagan cult sites. In his letter he attempts (albeit grudgingly) to dampen the eagerness of some Christians for vengeance. Christians should not seek religious reprisals, and pagan cults must unfortunately be tolerated.¹⁸ Scholars have naturally interpreted the *Letter to the Eastern Provincials* as an "edict of toleration." Barnes, however, chose to focus not on the last paragraph, but on the denunciations of pa-

16. T. D. Barnes, *Constantine and Eusebius* (Cambridge, Mass., 1981), p. 210.

17. VC 2.60 (trans. NPNF altered): τινὲς ὡς ἀκούω φασὶ τῶν ναῶν περιρῆσθαι τὰ ἔθνη καὶ τοῦ σκότους τὴν ἐξουσίαν· ὅπερ συνεβούλευσα ἂν πᾶσιν ἀνθρώποις, εἰ μὴ τῆς μοχθηρᾶς πλάνης ἢ βίαιος ἐπανάστασις ἐπὶ βλάβῃ τῆς κοινῆς σωτηρίας ἀμέτρως ταῖς ἐνίων ψυχαῖς ἐμπεπῆγαι.

18. Barnes, *Constantine and Eusebius*, p. 210, argued that in this letter Constantine "pointedly refrains from mentioning sacrifices. Against the background of the earlier law, Constantine's silence ineluctably implies that sacrifice remains totally prohibited." This position is rejected by R. M. Errington, "Constantine and the Pagans," *GRBS* 29 (1988): 309–18, esp. 311–12, who points out the figurative character of Constantine's language.

ganism earlier in the letter. Far from being an edict of toleration as all previous scholars had assumed, the letter was, in Barnes' view, the emperor's "justification" for his aggressively anti-pagan actions.¹⁹

Barnes' interpretation did not go unchallenged. In a useful review, H. A. Drake expressed reservations about Barnes' "Eusebian" Constantine and singled out the alleged ban on sacrifice as a glaring example of Eusebius' unreliability, to which Barnes responded with a short article reasserting the genuineness of a Constantinian law against sacrifice issued in 324.²⁰ In 1988, R. M. Errington proposed an alternative theory of events surrounding the alleged ban on sacrifice. Errington argued that Constantine did issue a law against sacrifice, but soon rescinded the law because he recognized that the suppression of pagan cult would provoke social upheaval.²¹ Errington rejected Barnes' reinterpretation of the *Letter to the Eastern Provincials*. He argued that the *Letter* is in effect an "edict of toleration," but he followed Barnes in accepting both the existence of the ban on sacrifice and the chronological accuracy of Eusebius' narrative. He hypothesized that the "hawks" in Constantine's entourage, ascendant after the victory over Licinius, had persuaded the emperor to take harsh measures against pagan cult, including a total ban on sacrifice. The *Letter to the Eastern Provincials* was in effect a retreat from this initial hardline position, a recognition that the suppression of pagan cults would provoke shock and upheaval. The *Letter* "quietly suppressed" the law against pagan cult and restored a spirit of toleration.²²

The interpretation of the *Letter to the Eastern Provincials* is important, since this document is a stumbling block to acceptance of the ban on sacrifice. This *Letter*, which has long been viewed as an "edict of toleration," follows almost immediately after Eusebius' claim about the ban on sacrifice. How, one might reasonably ask, could Constantine prohibit sacrifice and within a couple of months issue a conciliatory "edict of toleration" like the *Letter to the Eastern Provincials*? That is the contradiction Errington has attempted to resolve. But Errington's hypothesis would be more compelling if there were some positive evidence to support the idea of a split within the emperor's entourage and some hint in our sources of the alleged pagan "shock" and "protest." More importantly, evidence to be presented below from the Theodosian Code and Libanius suggests that a law was actually *in force* during Constantine's reign. Furthermore, it is doubtful

19. Barnes, *Constantine and Eusebius*, p. 210.

20. H. A. Drake, "Review of T. D. Barnes, *Constantine and Eusebius*," *AJP* 103 (1982): 462–66. Concerning the total ban on sacrifice, Drake observed that Eusebius' "tendency to see everything through a pro-Christian filter is too well known for a statement this broad and general to be taken at face value" (p. 465). Barnes responded in "Constantine's Prohibition of Pagan Sacrifice," *AJP* 105 (1984): 69–72. His views remained unchanged in "Panegyric, History and Hagiography in Eusebius' *Life of Constantine*," in *The Making of Orthodoxy: Essays in Honour of Henry Chadwick*, ed. R. Williams (Cambridge, 1989), pp. 94–123, esp. p. 115.

21. Errington, "Constantine and the Pagans," pp. 309–18. Errington offers a useful review and convincing critique of the relative merits of Barnes' and Drake's positions (pp. 309–15).

22. Errington, "Constantine and the Pagans," p. 317. For a variant of this theory, see A. H. M. Jones, "The Development of Constantine's Attitude Toward Paganism," in *Relazioni del X Congresso internazionale di scienze storiche* (1955), pp. 267–71.

that the *Letter to the Eastern Provincials* is an adequate legal instrument to perform the task Errington allots it, namely to suppress "quietly" a legal prohibition against sacrifice. The habit of referring to the *Letter* as an "edict of toleration" is somewhat misleading in this respect, since the edicts of toleration issued by previous emperors made perfectly clear the wishes and intentions of the central government. In contrast, the *Letter to the Eastern Provincials* makes no allusion to anti-pagan legislation or to subsequent shock and upheaval, nor does it contain any specific guidance for imperial officials. Although an imperial epistle has the force of law, the *Letter* is certainly not a law in the modern sense: it denounces pagan folly, urges pagans to convert, praises the Christian faithful, and exhorts Christians not to indulge in reprisals on their pagan neighbors. As B. H. Warmington has remarked, it "reads like a sort of imperial sermon."²³ The *Letter* should be read with its immediate purpose in mind, namely to prevent further civil unrest and to restore calm. The Christian populace, the emperor implies, must not use the opportunity of victory to foment civic violence by taking revenge on pagans and their cult sites. Constantine's language ("some people, so I hear, say that the rites . . . have been . . . removed. I should have earnestly recommended such removal, were it not that . . .") is certainly disingenuous if he has recently issued a prohibition on sacrifice, since that law may have incited some Christians to violent acts, but we should not take these words as indications of genuine religious toleration. Constantine's subsequent speeches and actions reveal that he remained resolutely intolerant of pagan belief and cult, particularly sacrifice. Consequently, the *Letter to the Eastern Provincials*, although troubling, should not be regarded as an obstacle to acceptance of the law against sacrifice if there exists external evidence to corroborate Eusebius' claim.

In fact, other evidence does exist to support the claim that Constantine issued some kind of law against sacrifice during his reign. The first is well known, but deserves to be given more prominence. The first extant law against sacrifice, sent by Constans and Constantius to the Vicar of Italy in 341, alludes to a previous law issued by Constantine:

Cesset superstitio, sacrificiorum aboleatur insania. Nam quicumque contra legem divi principis parentis nostri et hanc nostrae mansuetudinis iussionem ausus fuerit sacrificia celebrare, competens in eum vindicta et praesens sententia exeratur.²⁴

Superstition shall cease; the madness of sacrifices shall be abolished. For if any man in violation of the law of the sainted Emperor, Our father, and in violation of this command of Our Clemency, shall dare to perform sacrifices, he shall suffer the infliction of a suitable punishment and the effect of an immediate sentence.²⁵

23. B. H. Warmington, "The Sources of Some Constantinian Documents in Eusebius' *Ecclesiastical History and Life of Constantine*," in *Papers of the Ninth International Conference on Patristic Studies*, *Studia Patristica* 18 (Kalamazoo, Mich., 1985), pp. 93–98, esp. p. 97, n. 15.

24. *CTh* 16.10.2. The heading of the law reads IMP. CONSTANTIUS A. AD MADALIANUM. . . . Although Constans had authority over Italy, his name has dropped out. *CTh* 16.10.3 contains the heading IDEM AA. and the subscription DAT. KAL. DEC. CONSTANTIO IIII ET CONSTATE III AA. CONSS., thus confirming that Constans should be restored in 16.10.2.

25. All translations of the Theodosian Code are from C. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions* (Princeton, 1952).

Although Constans' law has been so heavily excerpted that it now consists of a mere two sentences, the allusion to a Constantinian law banning sacrifice is sufficiently clear. What remains unclear are the precise character of that law and its date of issue. We cannot know, for example, whether the drafters of Constans and Constantius' law had before them an imperial constitution that was meant to have a wide application or a letter composed for a specific situation.

Libanius of Antioch offers conflicting evidence about the ban on sacrifice. In his *Autobiography*, he describes his departure from Athens in 339 or 340 when he was about 26 years old. He agreed to journey to Asia Minor with his good friend, Crispinus of Heraclea, who had been summoned home to take up curial duties (*Or.* 1.27):

οὗτος οἴκαδε καλούμενος ὑπὸ τοῦ θείου,—θείου τινὸς ὡς ἀληθῶς ἀνθρώπου καὶ πλείω γε θεοῖς ἢ ἀνθρώποις ὁμιλήσαντος ἐν γῇ, καίτοι νόμος γε εἶργε καὶ ἦν ἡ δίκη τῷ τολμῶντι θάνατος, ἀλλ' ὅμως σὺν αὐτοῖς ἐκείνοις πορευόμενος τὸν βίον νόμου τε πονηροῦ καὶ νομοθέτου δυσσεβοῦς κατεγέλα— . . .

He was summoned home by his revered uncle—revered indeed, for he consorted more with gods than with men on earth; despite the law which banned it and the death penalty inflicted on any who dared to do so, he yet went his way through life in the company of the gods, and he laughed to scorn that evil law and its sacrilegious enactor. [Trans. by A. F. Norman, *Libanius' Autobiography* (Oxford, 1965)]

Libanius alludes here to a law against blood sacrifice containing a death penalty for offenders. But to whose law does Libanius allude, a law of Constantine or to the law of Constans and Constantius issued in 341? The chronology of the passage is important. Crispinus was the same age (ἡλικιώτης) as Libanius, thus about 26 years old in 339 or 340. The uncle who summoned him home was presumably a mature man at that time. Libanius' language implies that this uncle was a committed pagan who performed sacrifices throughout his life, even after they were declared illegal. The most natural reading of the passage implies that the uncle, when he summoned Crispinus home in 339 or 340, had *already* been passing through life consorting more with gods than men; that is, he had been sacrificing for many years already. That "evil law and its sacrilegious enactor" cannot refer then to the law of Constans and Constantius, since that law was not issued until 341. The allusion appears to be to a law that had been in force for some years, that is, to a law issued sometime in the past by Constantine.

The comment in the *Autobiography* is particularly interesting, since it is a mere aside in the narrative and is not overtly polemical. When Libanius is overtly polemical, or at least deeply partisan, he offers an account that cannot be reconciled with his remark in the *Autobiography*. In the *Pro Templis*, he states flatly that Constantine "made absolutely no changes in the traditional forms of worship, but, though poverty reigned in the temples, one could see that all the rest of the ritual was fulfilled."²⁶ In a later

26. Lib. *Or.* 30.6 τῆς κατὰ νόμους δὲ θεραπείας ἐκίνησεν οὐδὲ ἓν, ἀλλ' ἦν μὲν ἐν τοῖς ἱεροῖς πενία, παρῇν δὲ ὁρᾶν ἅπαντα τᾶλλα πληρούμενα.

passage, he claims explicitly that Constantine “did not proceed against the sacrifices.”²⁷ That dubious distinction, he claims, was left to Constantius, who governed under the excessive influence of eunuchs and courtiers: “ruling under orders from them, [he] was induced to adopt several misguided policies, in particular, the banning of sacrifices.”²⁸ The evidence of the *Pro Templis* has naturally been marshalled to refute the claim that Constantine banned sacrifice. Libanius was after all in a position to know about these matters both from personal experience and family history. What has not been conceded, however, is the tendentiousness of the *Pro Templis* as an historical source. Libanius’ evidence about contemporary social and religious issues must always be handled with caution, for he is powerfully persuasive and capable of considerable distortion.²⁹ In the *Pro Templis*, Libanius employs two rhetorical techniques also used in more oblique fashion by Symmachus in the *Third Relatio*. They were probably routinely used by pagans trying to persuade Christian emperors to adopt more tolerant policies toward non-Christians. The first technique is to blame intolerant policies on disreputable advisers who mislead the emperor and subvert the public good. The second is to argue that religious toleration was always the policy of the best emperors of the past, whether pagan or Christian.³⁰

In the *Pro Templis*, written ca. 386 in response to Maternus Cynegius’ temple-wrecking campaign in the East, Libanius paints Cynegius as a renegade engaged in a campaign of lawlessness that does not reflect the will of the emperor (chaps. 8–14, 19–20, 24–25, 48–51). Unlike Cynegius and the violent monks who serve as his henchmen, Theodosius, claims Libanius, is tolerant and non-interventionist in religious matters (chaps. 2, 46–47). But no historian could accept at face value this view of Theodosius. Libanius’ unambiguous claims about Theodosius’ tolerance are, in rhetorical terms, protreptic. In real political terms, they are wishful thinking.³¹ But Libanius engages in a further, more subtle form of distortion. His account of blood sacrifice under the House of Constantine is a variant of the argument that the best of past emperors were religiously tolerant. Libanius suppresses his hostility in order to present Constantine as a model of religious tolerance, even making the disingenuous claim that Constantine “made absolutely no changes in the traditional forms of worship . . .” (chap. 6). The blame for the suppression of sacrifices, a disastrous policy decision, is pinned squarely on his son Constantius, acting on bad advice from eunuchs and courtiers. The inference to be drawn is clear.

27. *Or.* 30.37 . . . οὐκ ἐπὶ τὰς θυσίας προήλθε . . .

28. *Or.* 30.7 οὗτος οὖν ἐν τῷ κελεύεσθαι παρ’ αὐτῶν βασιλεύων ἄλλα τε οὐ κατὰ πείθεται καὶ μηκέτ’ εἶναι θυσίας.

29. On the problems of Libanius’ speeches as historical sources, see J.-M. Carrié, “Patronage et propriété militaires au IV s.: Objet rhétorique et objet réel du discours *Sur les Patronages* de Libanius,” *BCH* 100 (1976): 158–76.

30. Gratian’s policies were the result of bad advice, cf. *Rel.* 3.1–2, 15, and esp. 20. Toleration of past emperors, cf. *Rel.* 3.3, 7, 8–10, 15–17, and esp. 20, with F. Paschoud, “L’intolérance chrétienne vue et jugée par les païens,” *CrSt* 11 (1990): 545–77, esp. 558–66.

31. On the *Pro Templis*, see P. Petit, “Sur la date du *Pro Templis* de Libanius,” *Byzantion* 21 (1951): 285–309; Paschoud, “L’intolérance chrétienne,” pp. 558–62.

Theodosius should repudiate eunuchs, monks, and disreputable courtiers like Cynegius and he should embrace the (alleged) tolerance of the greatest Christian prince. In sum, there are good reasons to suspect that the narrative of the *Pro Templis* has been distorted for rhetorical purposes. The evidence of the *Autobiography*, although ambiguous, is likely to be a better guide to the truth of the matter.

To sum up the argument thus far: the law of Constans and Constantius (*CTh* 16.10.2) and Libanius' remark in his *Autobiography* suggest that Constantine had issued a law banning sacrifice at some time during his reign, and these sources corroborate the admittedly tendentious claim of Eusebius that Constantine issued a prohibition on sacrifice in the autumn of 324. As I noted above, many scholars remain skeptical about a Constantinian ban on sacrifice, not only because of long-standing distrust of Eusebius but also because of a tacit assumption that the ban on sacrifice was too confrontational and therefore politically unfeasible. On this last point, I think that scholars underestimate the depth of Christian conviction about blood sacrifices. It is to that issue that I now turn.

Blood sacrifice was the element of pagan cult most repugnant to Christians. Not only did they hold uniformly that the gore and vapors of slaughtered animals attracted evil daemons, but more importantly, sacrifice remained in the Christian imagination a constant reminder of the horrible tortures inflicted on them by the persecutors.³² During the Great Persecution, for example, Maximin Daia ordered provincial and civic officials to insure that all citizens sacrifice and pour libations, that they "taste the polluted sacrifices," and that "everything set out for sale in the market be polluted with libations from the sacrifices." Guards were to be set at the entrances to public baths in order to "pollute with abominable sacrifices those who were washing there."³³ Even in the absence of physical coercion, sacrifice could be used to alienate and discomfort Christians. Lactantius claims that Maximin was the first to "devise the scheme whereby all the animals on which he fed were slaughtered not by cooks, but by priests before their altars, and nothing at all was laid on his table unless an offering had been made from it or it had itself been offered in sacrifice or drenched in pure wine; thus anyone who had been invited to dinner would depart sullied and impure."³⁴ These events of the recent past as well as the constant production of martyr accounts kept such horrors fresh in the Christian imagination.

Constantine shared the universal Christian loathing for blood sacrifices, as he informs Shapur of Persia: "I . . . recoil with horror from the blood of sacrifices, from their foul and detestable odors . . ." (*VC* 4.10). Moreover,

32. The theory that daemons fed on the blood and vapors of sacrifices was a Christian commonplace, cf. Athen. *Leg.* 26, Orig. *C. Cels.* 8.60, *Sent. Sext.* n. 564, Eus. *PE* 5.2, Firm. Mat. *De Err. Prof. Rel.* 13.4, Arnob. *Adv. nat.* 7.23; Lact. *Div. Inst.* 2.16 claims that the daemons hide themselves in temples and attend sacrifices in order to attach themselves to people: "ut alliciant facile in templis se occultant et sacrificiis omnibus praesto adsunt." At *De Abst.* 2.43.2 Porphyry concedes that blood sacrifice to propitiate the daemons may be necessary for cities.

33. Eus. *De Martyr. Palaest.* 9.2.

34. *De Mort. Persec.* 37.2.

he clearly would not allow sacrifices to be performed in his own presence, even on state occasions.³⁵ Eusebius rejoices openly before the emperor that the *tricennalia* at Constantinople in 336 were being celebrated without blood sacrifices (*LC* 2.5). When some Umbrian towns requested that they be permitted to build a new temple for the practice of the imperial cult, Constantine granted them permission, but ordered that the imperial cult not be “polluted by the snares of any contagious superstition,” that is, he would not allow blood sacrifices.³⁶ Just before his report of the ban of 324, Eusebius claims that Constantine forbade imperial officials to sacrifice. Eusebius’ language is characteristically vague, but some form of prohibition on sacrifice directed at imperial officials is plausible: it is limited in scope and addresses a well-recognized problem.³⁷ Sacrificial ceremonies were a routine part of the duties of Roman magistrates. For Christian officials, this meant pollution, consorting with foul and detestable daemons. The Council of Elvira (ca. 305) had imposed harsh penalties on Christians who had sacrificed as part of their official duties. Any baptised Christian, for example, who had entered a temple to worship an idol was never again to be admitted to communion.³⁸ The harsh restrictions imposed at Elvira naturally had to be softened as more Christians became officials.³⁹ Nonetheless, Christian officials must have had moments of unpleasantness, whether they themselves were called upon to sacrifice or merely to attend sacrificial ceremonies. It is perfectly plausible that Constantine, given his own revulsion at sacrifice, should attempt to free Christian officials from the pollution of sacrifices by prohibiting them to senior magistrates.

According to Eusebius, Constantine composed his own orations and routinely discoursed on the folly of paganism.⁴⁰ We saw above that his *Letter*

35. Zos. 2.29.5 reports that Constantine excited ill-will in Rome for refusing to take part in a “sacred ceremony” that formed part of a festival on the Capitoline hill. It appears that Constantine did not wish to participate in the sacrifices, but both the date and the sequence of events in this episode are muddled by Zosimus. See F. Paschoud’s note in *Zosime: Histoire Nouvelle* (Paris, 1971), ad loc. Malalas *Chron.* 13.7 (ed. Dindorf, p. 320) reports that Constantine offered a “bloodless sacrifice to God” at the dedication of Constantinople in 330. Cf. *Chron. Pasch.* anno 330, but note the claim here that Constantine’s statue was venerated with sacrifices, lighted lamps, and incense (Philost. *HE* 2.17, Theod. *HE* 1.17). On the ceremonies of consecration and dedication at Constantinople, see G. Dagron, *Naissance d’une capitale: Constantinople et ses institutions de 330 à 451* (Paris, 1974), pp. 29–42.

36. Cf. *ILS* 705 (333/7) “aedem quoque Flaviae, hoc est nostrae gentis, ut desideratis, magnifico opere perfici volumus, ea observatione perscripta, ne aedis nostro nomini dedicata cuiusquam contagiose superstitionis fraudibus polluat.”

37. Cf. *CTh* 16.2.5 (323) for legislation against those who would compel Christian clergy to perform lustral sacrifices.

38. C. Hefele and H. Leclercq, *Histoire des conciles*, vol. 1.1 (Paris, 1907): Christian officials who had worshipped in temples (Canon 1, p. 221); *flamines* who had both sacrificed and given gladiatorial games could never again receive communion (Canon 2, p. 222); cf. Canons 3 and 4 (pp. 222–23) also on *flamines*; any Christian who had served as a pagan priest (*sacerdos*), even if he had neither sacrificed nor contributed any of his own wealth toward idol worship, incurred two years of penance before communion (Canon 55, p. 215); also Canon 56 (p. 252) prohibiting Christian duumvirs from setting foot in a church during their year in office.

39. Note the vaguer and perhaps more tolerant position adopted by the Council of Arles (314), which stipulates that a Christian governor shall put himself under the spiritual care of the local bishop. If he acts *contra disciplinam*, then he shall be excluded from communion (Hefele-Leclercq, Canon 7, p. 284).

40. *VC* 4.29, 32, 55. Eusebius’ copy of the *Letter to the Eastern Provincials* was allegedly an autograph copy, cf. *VC* 2.47.

to the *Eastern Provincials* pilloried pagan foolishness and exhorted pagans to convert. In the *Speech to the Assembly of the Saints*, probably delivered at Antioch in April 325 (some months after the alleged law of autumn 324), Constantine berates the pagans: “begone to your sacrifices, your feasts, your scenes of revelry and drunkenness, wherein, under the semblance of religion, your hearts are devoted to profligate enjoyment, and pretending to perform sacrifices, yourselves are the willing slaves of your own pleasures.”⁴¹ Eusebius himself had in his possession many Constantinian documents, which he contemplated collecting and publishing separately from the *Vita Constantini*.⁴² He appears to have had a copy of the imperial epistle, which he calls a law (νόμος), suppressing the cult of Aphrodite at Heliopolis with its ritual prostitution.⁴³ To that letter, claims Eusebius, Constantine attached written instructions in which he expounded to the pagans of Heliopolis the principles of chastity (another imperial sermon!). Constantine’s own compositions clearly offered many denunciations of the folly of paganism, and we should assume that an anti-pagan document, whether an epistle or a general edict, lies behind the claim at VC 2.45 that Constantine issued a law banning sacrifices in autumn 324.⁴⁴

Eusebius in fact preserves for us a verbatim example of a Constantinian epistle prohibiting blood sacrifice. At VC 3.52–53 Eusebius includes a copy of a letter of Constantine rebuking Bishop Macarius of Jerusalem and the other bishops of Palestine because they have allowed sacrifices to pollute the holy site of Mamre where the Lord had first appeared to Abraham. We know from a passage in Sozomen (*HE* 2.4) that popular tradition in the region held that harmony had prevailed at Mamre among pagans, Jews, and Christians, all of whom worshiped in peace at this holy place. As Constantine’s letter informs us, however, when his mother-in-law, Eutropia, arrived to attend the annual summer festival, saw the pagan statues and altar, and learned that “impure sacrifices were continually performed,” she indignantly reported the matter to her son-in-law.⁴⁵ Constantine expresses outrage at the thought of this sacred spot being defiled by the impurities of pagan cult. That Mamre should be polluted in this way, he asserts, is “contrary to the character of our times and unworthy of the holiness of the place.”⁴⁶ He orders the pagan statues to be burned, the altar to be demolished, and a church to be built on the spot. Further, he threatens

41. *Orat. ad Sanc.* 11.7 (trans. NPNF). Various dates have been suggested for the *Oratio* from 313 to post-325. I have accepted the arguments of Lane Fox, *Pagans and Christians*, pp. 635–62, pp. 777–78 for bibliography.

42. VC 3.24. John Lydus (*De Magistr.* 3.33) in the mid-sixth century also refers to a corpus of Constantinian orations.

43. VC 3.58.2.

44. In the later empire, many imperial letters come to be virtually indistinguishable from edicts: both can lay down general principles, be addressed to a wide audience, and be posted up in public. Cf. F. Millar, *The Emperor in the Roman World (31 BC–AD 337)* (Ithaca, 1977), pp. 222, 253, 319–21. Eusebius is himself not overly scrupulous about what he is willing to call a law. He refers interchangeably, for example, to Constantine’s long *Letter to the Inhabitants of the Province of Palestine* as a γράμμα, γραφή, and νόμος (VC 2.23).

45. The quotation is from Constantine’s letter at VC 3.53.

46. VC 3.53 . . . καὶ τῶν καιρῶν τῶν ἡμετέρων ἀλλότριον καὶ τῆς τοῦ τόπου ἀγιότητος ἀνάξιον καταφαίνεται.

punishment to any “abominable men” who “dare” to sacrifice there again and orders the bishops to inform him if anyone dares to commit such impieties “after this our command” (μετὰ τὴν ἡμετέραν κέλειςιν).⁴⁷

This letter has never been given the attention it deserves in the debate over Constantine and sacrifice. It may be a useful guide to the rhetorical character of the general prohibition against sacrifice that has not survived. It was probably sent in 325 or 326, not long after the alleged prohibition of autumn 324, since Constantine has been informed of the “abominations” at Mamre by his mother-in-law, Eutropia, mother of the empress Fausta, who was herself put to death soon after the murder of Crispus in 326. Constantine’s revulsion at sacrifices is patent; like his bishop friends, he denounces them as “impieties,” “impurities,” and “abominations.” But are they illegal? Although he does not refer to a specific anti-pagan law, Constantine brands sacrifices “contrary to the character of our times,” and in the rhetorical language of late Roman legislation, to call something “contrary to the character of our times” is in effect to call it *contra legem*.⁴⁸ From the pagan point of view, the phrase is ominous for it implies that traditional sacrifices are not to be tolerated under a Christian emperor. What remains unclear is how often and how vigorously Constantine will act on this conviction. It is also noteworthy that Constantine entrusts the “purification” of Mamre to a special imperial commissioner, not to the local authorities. Local governors are instructed to expedite the building of a church at the site and local bishops are ordered to supervise the site in future. It appears that Constantine’s initiative at Mamre fits the pattern we noted earlier concerning pagan temples. The emperor moved vigorously to purify Christian holy places “polluted” by pagan cults when these issues were brought to his attention. If the imperial family had not by chance visited the site, it is likely that Jews, Christians, and pagans would have continued to worship side by side at this place that they all considered to be holy.

Constantine’s epistle brings us finally to the problem of the enforcement of anti-pagan laws. Sacrifices were, in Constantine’s phrase, “contrary to the character of our times,” and the local bishops (and secular officials) were clearly supposed to know that. Yet pagans continued to sacrifice

47. VC 3.53.2.

48. Occasionally in their correspondence and legislation, emperors refer to the “spirit of the times” as a general principal in light of which specific rulings are adopted, and we should not doubt that a strong-willed emperor, relying on his own interpretation of the “character of the times,” could carve out a wide field of action for himself. Cf. Pliny *Ep.* 10.97, where Trajan counsels Pliny not to accept anonymous accusations against Christians “for they create a very bad precedent and they are out of keeping with the spirit of our times” (*Nam et pessimi exempli nec nostri saeculi est*); CJ 5.4.3 (196): Septimius Severus, denouncing marriages between freedmen and a former patron or her daughter, states, “you will be able to accuse him before an appropriate judge who will render a verdict befitting the character of my times” (*apud competentem iudicem accusare poteris moribus temporum meorum congruentem sententiam daturum*); CTh 11.20.1 (363): Julian considers it “absurd and far removed from the tranquility of Our times” (*Admodum nobis videtur absurdum et a nostrorum temporum tranquillitate submotum ut. . .*) that the recipients of imperial largesse and formerly proscribed persons who had recovered confiscated property should be equally liable to certain taxes; CTh 16.8.20 (412): Honorius and Theodosius consider it “most worthy of the moderation of Our time that privileges granted [previously to Jews] should not be violated” (*saeculi moderatione dignissimum, ne delata privilegia violentur . . .*).

unhindered at Mamre. If sacrifices were illegal, why was the law against them not enforced? Historians routinely cite the laws at *CTh* 16.10 (*De paganis, sacrificiis et templis*), but it must be confessed that the precise intention and effect of these laws often escape us. There are peculiarities about these laws that are never addressed. It has often been pointed out, and rightly so, that the very repetition of the laws in the Theodosian Code suggests that they were in many instances unenforced. A number of factors made strict enforcement difficult. As Fergus Millar has argued, emperors were not generally interventionist and they rarely initiated new policies in their own right. They tended to react to problems presented to them by imperial officials or deputations from cities or provinces.⁴⁹ Moreover, there was a wide gap between the emperor's will as expressed in imperial constitutions and the actual implementation of his will by provincial officials and local ruling elites.⁵⁰ Angry denunciations from fourth-century emperors make clear that unpopular or "inconvenient" legislation might be ignored or subverted at the local level. Six of twenty-five of the extant anti-pagan laws contain penalties against officials who fail to implement the law.⁵¹ An example from a later period reveals how a self-confident official might react to an imperial order that, in his view, would produce religious or social upheaval. When the Praetorian Prefect, Flavius Taurus, received an imperial command that the bishops of Cilicia should recognize John of Antioch, he simply refused to publish the letter. He then argued to the emperor that if the order were put into effect, the resulting disturbances would seriously disrupt the collection of taxes in the province.⁵² Not only could Christian emperors not rely on local officials to suppress paganism, but they complained that officials openly flouted the emperors' designs to promote Christianity. As one imperial letter puts it, "Provincial governors set aside imperial commands for the sake of private favors, and they allow the religion which we [emperors] properly venerate to be openly disturbed, perhaps because they themselves are negligent."⁵³

Anti-pagan laws were clearly unpopular and in many instances unenforced at the local level. But to focus exclusively on the failure of these laws to be enforced may be misleading, for it implies that emperors issued the laws fully intending and expecting that they would be enforced. The problem, from this perspective, lay exclusively with imperial officials, who would not apply them and apparently could not be coerced into doing so. But that explanation is implausible, or at least inadequate. During the Great Persecution, pagan officials had subjected Christians to abominable punishments, and Eusebius claims, plausibly enough, that the ferocity of the persecution was intensified by officials who were currying favor with the

49. Millar, *Emperor in the Roman World*, pp. 266, 271.

50. On the ability of local communities to resist the will of the imperial court, see R. Van Dam, "From Paganism to Christianity at Late Antique Gaza," *Viator* 16 (1985): 1–20, esp. 13–17.

51. *CTh* 16.10.4, 10–13, 19.

52. *Collectio Casinensis* 212, in *Acta conciliorum oecumenicorum* 1.4, ed. E. Schwartz (Leipzig, 1932–33), p. 155.

53. *Collectio Avellana* 13.7, in *Corpus Scriptorum Ecclesiasticorum Latinorum* 35.1, ed. O. Günther (Prague, 1895), p. 56.

emperors.⁵⁴ Under Christian emperors, there were surely many officials, both Christian and pagan, who would gladly have hunted down and harassed sacrificing pagans, if they had thought it would win them imperial favor. But we have no evidence that this ever happened in the fourth century, apart from the anecdotes about the career of the Praetorian Prefect, Maternus Cynegius, whose monks destroyed some prominent temples and harried sacrificing peasants around Antioch in the mid-380's.⁵⁵ It is remarkable that these anti-pagan laws, which were potentially explosive, did not produce more incidents among the religiously mixed populations of the empire. One would expect to find occasional examples of pious officials bringing unwelcome pressure to bear on local pagans. And yet, there is no record of anyone in the fourth century having been prosecuted for offering conventional blood sacrifice and no evidence for the infliction of the horrendous punishments envisioned by these laws. Even when the emperor's attention was focused on the problem of sacrifice, the laws were not necessarily enforced. Consider, for example, the remarkable case of the philosopher Demetrius Cythras, accused at the Scythopolis treason trials in 359 of sacrificing to the god Besa at his oracle at Abydos. Demetrius protested that he had sacrificed from earliest youth in order to propitiate the deity, not to seek higher station by prying into secret matters. In the end, despite the tense atmosphere created by a treason trial, he was dismissed and the law against sacrifice unenforced. The inquisitors were interested in illegal uses of divination, not in conventional sacrifice.⁵⁶

These observations suggest that imperial officials were not alone in their unwillingness to enforce the laws against sacrifice. It appears that the emperors themselves were of two minds about this issue and we must consider the possibility that Christian emperors never *expected or intended* that their anti-pagan legislation be vigorously enforced. That seems at first paradoxical, but it will become less so when we consider in more detail the nature of the laws against sacrifice. Many late Roman laws are unproblematical in the sense that they resemble modern laws: they lay down unambiguous rules and procedures designed to guide officials in the regulation of political and social affairs. Other laws, however, were issued in a spirit alien both to modern law and to Classical Roman law. As Paul Veyne has written of the Theodosian Code:

Il existe beaucoup de législations qui légifèrent, non pour indiquer et imposer des conduites ou des procédures, mais pour proclamer à la face du ciel quelle est la bonne conduite, ou un idéal moral. . . . Or, la législation du Code Théodosien est un mélange de prescriptions juridiques, au sens moderne du mot, mais aussi de proclamations disciplinaires de ce genre, et également de proclamations éthiques comparables aux bulles pontificales et dont la seule portée est 'idéologique'.⁵⁷

54. *HE* 8.12.7; 9.11.3.

55. *Lib. Or.* 30.15–19.

56. *Amm.* 19.12.12.

57. P. Veyne, "Clientèle et corruption au service de l'état: La vénalité des offices dans le bas-empire romain," *Annales* 36 (1981): 339–60 at 355, n. 26.

Veyne's analysis points to the moralizing, disciplinary quality that characterizes much late Roman legislation.⁵⁸ Theodosius instructed the compilers of his Code to excise all empty verbiage, with the result that the ideological component to which Veyne alludes has often been excised. But even when laws survive only in two or three sentence excerpts, this tendency may be conspicuous, as in *CTh* 16.10.2: "Superstition shall cease; the madness of sacrifices shall be abolished!"⁵⁹ Longer and better examples of this moralizing tendency survive in the angry fulminations of repeated emperors at the "desertion" of the decurions or Diocletian's violent denunciation of Manichaeans.⁶⁰ Thus, late Roman legislation is often characterized by an admixture of moralizing ideology and operative clauses indicating what was actually to be done. In some cases, the moralizing component so far overshadows the operative clauses that a law may appear to be a kind of "imperial sermon," as Warmington observed of Constantine's *Letter to the Eastern Provincials*. Such laws are in effect a kind of moral legislation.

In reviewing and posting the laws they received, imperial officials will have had to decide how precisely a law was to be put into practice.⁶¹ Their task was complicated by a number of factors. There were frequent discrepancies between different laws on the same subject, particularly between general constitutions and the exceptions to them found in rescripts addressed to specific situations. Symmachus' *Relationes* reveal that as Urban Prefect in 384–85, he was constantly baffled by the contradictions in imperial constitutions and felt compelled to refer cases repeatedly to the emperor for adjudication.⁶² In many instances, the moral ideals proposed for society in a general moralizing proclamation would have to be balanced against a specific ruling that ran counter to the moral ideals proclaimed in the first law. We have seen above, for example, that Constantine banned gladiatorial combats (*CTh* 15.12.1 [325]: "We wholly forbid the existence of gladiators . . ."), but when some Umbrian towns late in Constantine's life petitioned to celebrate the imperial cult with festivities that included gladiatorial combats, the emperor consented.⁶³ Two laws of Constantius II perhaps issued within a month of one another offer an even better example of the phenomenon I am describing. The first is a letter sent to the City Prefect of Rome on 1 November 346:

Although all superstitions must be eradicated, nevertheless, it is Our will that the buildings of the temples situated outside the walls shall remain untouched and uninjured. For

58. Indeed, Theodosius II ordered the production of the Code with the idea that the final projected volume would provide a "reasonable plan for living" (*magisterium vitae*: *CTh* 1.1.5.4), a treasure house of moral legislation.

59. For Theodosius' instructions, see *CTh* 1.1.5. The Sirmondian Constitutions, printed after Book 16 of the Code, illustrate the process of excerption and compression. Ten of the sixteen *Constitutiones Sirmondianae*, all of which are unabridged versions of imperial laws, have abridged counterparts in the Code. The unabridged versions tend to be four to six times longer than the abridged versions.

60. On decurions, *CTh* 12.1; Diocletian's law, *Mosaicarum et Romanarum Legum Collatio* 15.3, ed. H. Hyamson (Oxford, 1913) (= *FIRA*, vol. 2, pp. 580–81).

61. Cf. Eus. *HE* 9.1. Despite the perfect clarity of Maximin's order to halt the persecution, governors first hesitate, then decide the edict is genuine, then communicate its contents to local officials.

62. T. Honoré, "The Making of the Theodosian Code," *ZRG* 103 (1986): 133–222, at 168–69.

63. *ILS* 705.

since certain plays or spectacles of the circus or contests derive their origin from some of these temples, such structures shall not be torn down, since from them is provided the regular performance of long established amusements for the Roman people.⁶⁴

One month later on 1 December 346 (if the date is correct) Constantius sent an epistle to the Praetorian Prefect of Italy and Africa that begins:

It is Our pleasure that the temples shall be immediately closed in all places and all cities, and access to them forbidden, so as to deny to all abandoned men the opportunity to commit sin. It is also Our will that all men shall abstain from sacrifices. But if perchance any man should perpetrate any such criminality, he shall be struck down by the avenging sword. . . .⁶⁵

The dates of these two laws are not secure, but I do not believe the argument is seriously weakened even if they were issued some years apart.⁶⁶ The second law does not imply that there has been a change in imperial policy. The discrepancy between the laws arises from the fact that the letter to the City Prefect is a specific, legal directive that runs counter to the generalized moral ideal proclaimed for society in the second law ("temples shall be *immediately* closed in *all* places and *all* cities . . . deny to *all* abandoned men the opportunity to commit sin . . . *all* men shall abstain from sacrifices"). Access to the temples was to be forbidden, of course, because the empire should be Christian and pagans must abandon their folly. But that moral ideal had been equally true back in November 346, as the first letter implicitly acknowledges with its words, "Although all superstitions must be eradicated, nevertheless . . ." ⁶⁷ No historian, however, would assume that Constantius expected his officials to close all temples. When Constantius himself visited Rome in 357, he toured the city's monuments and expressed his admiration for its magnificent temples.⁶⁸ As *pontifex maximus* he filled vacancies in the pagan priesthoods and provided funds for the state cults. It would be naive to conclude from *CTh* 16.10.4 that Constantius cared equally about entrance to the temples and blood sacrifices. The sticking point for Constantius was clearly sacrifice,

64. *CTh* 16.10.3 (1 November 346).

65. *CTh* 16.10.4 (1 December 346 [354?]).

66. The subscription to *CTh* 16.10.3 dates it to 346, but the addressee Catullinus served as *Praefectus Urbi* from July 342 to April 344. If *Constantio IIII et Constante IIII* is emended to *Constantio III et Constante II*, then 342 may be the correct date. The subscription of *CTh* 16.10.4 also reads *Constantio IIII et Constante IIII* (= 346) but the same law at *CJ* 1.11.1 reads *Constantio VII et Constante* [i.e., Gallus] *III* (= 354). The addressee Taurus was Praetorian Prefect from 355 to 361. Mommsen retained 346, but suggested that 354 might be correct. O. Seeck, *Regesten der Kaiser und Päpste* (Stuttgart, 1919), p. 41, proposed 356 and was followed by A. Piganiol, *L'Empire chrétien*² (Paris, 1972), p. 88, n. 3 and p. 103, n. 3, and A. Chastagnol, *La préfecture urbaine à Rome sous le Bas-Empire* (Paris, 1960), p. 148, n. 2. The later date may be correct, but it rests on "l'ambiance générale de l'année 356" (Chastagnol, p. 148, n. 2), a rather shaky foundation. Constans was emperor in the West until his death in 350. Hence, both of these laws were issued from his consistory (if the date 346 is retained). If 354 is the correct date of *CTh* 16.10.4, then it was issued from the consistory of Constantius, which might explain the discrepancy. On *CTh* 16.10.2 and 4, see also L. de Giovanni, *Costantino e il mondo pagano* (Naples, 1977), pp. 137–41.

67. The same discrepancy can be observed in *CTh* 16.10.8 (382) to the Duke of Osroene about keeping open a temple necessary for a major festival and *CTh* 16.10.10 (391), in which Valentinian II and Theodosius order that "no person shall approach the shrines, shall wander through the temples. . . ."

68. *Amm.* 16.10.14, *Symm. Rel.* 3.7.

even of incense, and although he wished to be on good terms with Roman senators, he ordered the altar of Victory removed from the senate house.⁶⁹

The second law of Constantius discussed above is typical of the laws against sacrifices. These laws are best regarded as moral proclamations designed to instruct and discipline society through a combination of exhortation and threat. Their goal was to create an atmosphere or climate of opinion in which people would consider it "imprudent" to conduct sacrifices in public. In describing these laws as moral proclamations, I am not implying that they are any less valid from a legal point of view, but I am arguing that their implementation and enforcement are more complicated matters than is generally conceded. It is doubtful, in my view, that Constantius expected or intended his officials to take any vigorous action based on a proclamation of so general a character, certainly not if the official's action would be likely to provoke civic upheaval. What little we know about the process by which pagan cults were suppressed suggests that one ran a significant risk if one didn't secure imperial approval before launching an offensive against pagan rites. This process is best documented in instances when temples were attacked and destroyed, a riskier business than the suppression of sacrifices, of course, since these attacks often provoked violent reaction. Nonetheless, the more detailed accounts of attacks on temples suggest the process by which sacrifices may have been suppressed. Despite the existence of general constitutions aimed at pagan cult and pagan sanctuaries, civil officials almost never initiated the coercion of pagans. Aggressive bishops usually instigated these attacks, but normally only after they had secured imperial approval, usually in the form of a rescript addressing a specific situation.⁷⁰ When Bishop Porphyry of Gaza, for example, wanted to close Gaza's temples in 398, he did not entreat the local governor to enforce one of the laws ordering the closing of temples, laws that had been in existence for nearly half a century. He worked the patronage network in the time-honored fashion and acquired an imperial rescript.⁷¹ A few years later Porphyry travelled to Constantinople with Bishop John of Caesarea and solicited through the empress, Eudoxia, another rescript ordering the destruction of Gaza's pagan shrines.⁷² Although Porphyry's case is the best

69. Symm. *Rel.* 3.4 informs us that the altar was restored after a short interval; 3.7 on Constantius in Rome in 357.

70. Olympiodorus of Thebes preserves a pagan legend of three silver statues buried on the border of Thrace and Illyricum to ward off barbarian invasion. In the reign of Constantius, the governor of Thrace, Valerius, was told that buried treasure had been found. He learned from the locals that the site was holy and that statues had been consecrated there with an ancient rite. Valerius reported the matter to Constantius and obtained a rescript (γράμμα) permitting him to unearth the statues and take them away. Cf. Olympiod. frag. 27, in *The Fragmentary Classicising Historians of the Later Roman Empire*, ed. R. C. Blockley (Liverpool, 1981).

71. *Vita Porph.* 26, in *Marc le Diacre, Vie de Porphyre*, ed. H. Grégoire and M.-A. Kugener (Paris, 1930), pp. 22–23. An imperial official was dispatched to insure that the rescript was actually implemented, but, in characteristic fashion, the official was bribed so that he closed all the temples except the Marneion, the chief temple of the city.

72. *Vita Porph.* 41. It was to his wife's insistent requests for this rescript that Arcadius is alleged to have replied, "I know that the city is full of idols, but it is prompt in its payment of taxes and contributes much revenue. If we suddenly terrify these men, they will flee and we will lose revenue." See the comments of Grégoire-Kugener, *Marc le Diacre*, pp. xliii–xliv, on the authenticity of the remark.

documented, the coercive activities of Marcellus of Apamea, Theophilus of Alexandria, and John Chrysostom also illustrate that bishops were largely responsible for the suppression of pagan cults and shrines. Normally, however, they did not feel confident enough to take the offensive without imperial authorization.⁷³

Laws against sacrifice were deterrents designed principally to clear public spaces of that aspect of pagan cult considered most unacceptable in the eyes of Christians. Emperors did not wish their officials actively to root out sacrificing pagans and strike them down with the "avenging sword," because they had no desire to create shock and upheaval. By issuing such laws, they placated certain pressure groups and proclaimed the Christian "character of our times." By failing to demand enforcement of the laws, they demonstrated the depth of their clemency. Emphasis on law as moral proclamation and lack of vigorous enforcement does not mean, however, that these laws had no practical effect on society. In highly emotive language, emperors, starting with Constantine, denounced the "impieties" and "abominations" of anyone who engaged in blood sacrifice. The avoidance of technical legal vocabulary and the rhetorical conventions of the period contributed to the production of moralizing laws filled with fierce denunciations and savage penalties. Julian, Libanius, and Eunapius all echo this language and make clear that to sacrifice in the public eye under Christian emperors was to exercise "boldness" and "daring."⁷⁴ Their evidence suggests that by the 350's public blood sacrifices had been discontinued in many towns and cities of the Greek East. In the later fourth and early fifth centuries, the practical effect of such laws increased dramatically as orthodox Christians became increasingly willing to coerce their opponents. In the early fifth century, in particular, the fierce language that had been standard in legislation against pagans, heretics, and Jews since the reign of Constantine, exacerbated local tensions and fueled the questionable designs of coercive bishops.⁷⁵ Peter Brown has written of religious coercion in this period:

A policy of religious discrimination, pursued for many generations, cannot be summed up in a code of rules; it can best be understood by the historian as an "atmosphere." Thus, this "atmosphere" caused long-established Roman laws—such as those against magic—to cast a considerably longer shadow under a Christian government.⁷⁶

Therein lies part of our problem in interpreting the goal and effect of anti-pagan laws in the fourth century. The Theodosian Code offers us a truncated "code of rules" on the coercion of pagans, but it cannot clarify for us the "atmosphere" of the successive reigns in which these laws were issued or the manner in which they were received by the emperor's officials and subjects. The last decade of Constantine's reign is poorly documented,

73. On the anti-pagan initiatives of fourth-century bishops, see G. Fowden, "Bishops and Temples in the Eastern Roman Empire A.D. 320–435," *JThS* 29 (1978): 53–78.

74. Cf. Lib. *Orr.* 1.27; 30 *passim*, esp. 17–19, *Ep.* 1351.3, *Jul. Ep.* 79, *Eun. VS* 10.6.6, 23.4.2–3.

75. P. R. L. Brown, "Religious Coercion in the Later Roman Empire: The Case of North Africa," in *Religion and Society in the Age of St. Augustine* (New York, 1972), pp. 301–31, at 321–23.

76. Brown, "Religious Coercion," p. 307.

but the “atmosphere” does not appear to have favored the coercion of pagans and Constantine, despite his tough talk against paganism, does not appear to have encouraged or permitted vigorous action to suppress pagan rites. Consequently, the pagan historical tradition hostile to the House of Constantine preserved almost no memory of the law against sacrifice, directing its anger instead against the emperor’s spoliation of temple treasures and the consequent impoverishment of the sanctuaries.

In conclusion, we should accept the claim of Eusebius that Constantine issued a prohibition on sacrifice in autumn 324, a claim supported by the evidence of the Theodosian Code, Libanius’ *Autobiography*, and Constantine’s own correspondence. Although it is unlikely that Eusebius (VC 2.45) preserves accurately the law’s actual contents, we may feel more confident that he has preserved the “spirit” of the law. Constantine’s own intolerance of blood sacrifices is obvious from his refusal to allow them in his presence and from his repeated condemnations of them in the surviving epistles and orations. He, and not his sons, clearly initiated the use of the fierce denunciations of blood sacrifice that would routinely be used by his Christian successors, and we should not doubt his willingness to act on his convictions by prohibiting blood sacrifices. Moreover, the fact that we hear so little about enforcement of the law is hardly good evidence that the law never happened. As we have seen, the laws against sacrifice were generally cast as moralizing proclamations intended to create an atmosphere in which the risk of coercion was never far away. They “dared” pagans to conduct the traditional rites, and pagan sources confirm that the conduct of sacrifices under Christian emperors required “boldness” and “daring.” But emperors and their officials alike appear to have been wary of enforcing such controversial legislation, particularly if it might provoke shock and upheaval. Constantine’s law was largely forgotten by the historical tradition, probably because the harrassment of pagans and the spoliation of their shrines did not begin in earnest until the reign of Constantius, but we should not doubt that the first of the laws against sacrifice was issued by the Emperor Constantine.

Smith College