FROM PRIVILEGE TO PROSCRIPTION: THE TRANSFORMATION OF EPISCOPAL CONFLICT ACROSS THE LONG FOURTH CENTURY

A thesis submitted to The University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities

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SCHOOL OF ARTS, LANGUAGES AND CULTURES
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Abbreviations

CCSL  Corpus Christianorum Series Latina (Turnhout: Brepols, 1954--).

CSEL  Corpus Scriptorum Ecclesiasticorum Latinorum (Vienna: Verlag der Österreichischen Akademie der Wissenschaften/De Gruyter, 1866--).

GCS  Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte (Leipzig/Berlin: Hinrichs/Akademie Verlag, 1897--).


SCh  Sources chrétiennes (Paris: Éditions du Cerf, 1942--).


Amb.  Ambrose of Milan


Ep. ex. coll.  Epistulae extra collectionem, ed. Michaela Zelzer (CSEL 82.3, 1982); English: Liebeschuetz (see C. Aux.).

Gesta  Gesta concilii Aquileiensis, ed. Michaela Zelzer (CSEL 82.3, 1982), 325-368.


Athan.  Athanasius of Alexandria


de Synodis  De synodis Arimini in Italia et Seleuciae in Isauria, ed. H.G. Opitz (see Apol. c. Ar.), 231-278


Aug.  Augustine of Hippo

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<td>In Const. In Constantium in Hilaire de Poitiers: Contra Constance, ed. A. Rocher (Sch 334, 1987).</td>
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<td>Jerome</td>
<td>De vir. Ill.</td>
<td>Jerome, De viris illustris, ed. E. Richardson (Texte und Untersuchungen zur Geschichte der Altchristlichen Literatur, 14, 1a; Leipzig: J.C. Hinrichs', 1896), 1-56.</td>
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<td>Socrates</td>
<td>Hist. eccl.</td>
<td>Socrates of Constantinople, Histoire ecclésiastique (Livres I-</td>
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Sulp. Sev. Sulpicius Severus


Dial. Dialogorum libri II, ed. C. Halm (CSEL 1, 1866), 152-216.


All unattributed translations are my own.
Abstract

This thesis extends recent scholarly interest in the practical processes of Late Antique Roman law and on the integration of the episcopate into Roman power structures in the fourth century, the first century of imperial patronage of Christian communities. It confirms the "minimalist" model of Roman governance and provides a non-medieval example of the persecution of minorities as a contingent effect of competing claims to authority.

This thesis argues that fourth-century elite Roman men disputing episcopal status via the Roman courts led to a transformation of episcopal polity, and that this development has been obscured by a subsequent paradigm shift in the norms concerning episcopal use of Roman law towards the end of that century.

This paradigm shift identified by this thesis has three important aspects:
1. With the change in imperial dynasty from the Valentinians to Theodosians, imperial favour moved from non-Nicene to Nicene bishops. Disparity of access to imperial favour during the fourth century required Nicene-identified bishops to invent tools to succeed in spite of their poor position. After the Theodosian-Nicene takeover, the Nicene-identified bishops retained these tools while also inheriting the legal framework that the non-Nicene bishops had crafted during their mid-century period of patronage.
2. The power structures through which imperial favour was granted also changed. The typical fourth-century use of Roman law to resolve inter-episcopal disputes was different from that which would become established as a more enduring precedent in the Theodosian era.
3. The episcopal rhetoric used in claiming imperial favour changed from a focus on affirming one's own privilege to a focus on the proscription of others. The terminology of orthodox versus heretical is significant but must be understood as relational: even once heretics were proscribed by law, orthodoxy remained a status granted by the emperor.

The methodology of this thesis argues for the importance of interpreting the relevant fourth-century sources in the context of their own time and norms, rather than in the light of the significantly different fifth-century practice as previous scholarship has done.

This thesis first discusses two case studies before the paradigm shift: in Chapter One, Athanasius of Alexandria, as an example typical of the fourth century, and in Chapter Two, Priscillian of Avila, as an example at the cusp of the transition in the 380s who still demonstrates conformance with earlier practice. The thesis then describes the transition to the Theodosian-Nicene mode with an extended focus on Ambrose of Milan. Chapter Three shows Ambrose, contemporary with Priscillian, refusing to engage with existing episcopal legal practices and inventing a new strategy to survive the threat of Roman law. Chapter Four shows how Ambrose further refined this strategy in other conflicts and in doing so created a new place for bishops within the power structures of the Roman Empire.
Declaration

No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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For their support over the course of my doctoral studies, I would like to particularly thank: Riccardo Bof, James Corke-Webster, Kimberley Fowler, Maia McWilliams, David Nadal, Aimee Schofield, Michelle Weiner, Jamie Wood, and among the staff at Manchester, especially Paul Fouracre, Andrew Morrison, Tim Parkin, and Joanne Marsh.

This research would not have taken place without John. O. Ward introducing me to (early) medieval heresy studies, R. I. Moore recommending that I continue my graduate studies at Manchester and Kate Cooper opening my eyes to the importance of the fourth century as a crucial period of transition between Antiquity and the Medieval period. To all three, I am profoundly grateful.
The Author

Melissa Markauskas graduated in 2007 from University of Sydney, Australia, with a Bachelor of Arts (Informatics) degree, including an additional one year Honours (Medieval Studies) component, awarded with Distinction and Honours First Class. Her BA Honours dissertation was titled: Ignorance, Anarchy and Reform: The ‘Origins’ of Early Medieval Heresy and the Conversion of Europe. Travelling to the University of Manchester, she graduated in 2010 with a Master of Arts in Religions and Theology, awarded with Distinction. Her MA dissertation was titled: Getting the Law on His Side: Categorisations of Religious Deviance and Conformity in the Early Polemical Works of Augustine of Hippo. Her doctoral studies concerning fourth-century episcopal competition via the Roman courts and the criminalisation of heresy at the Manchester department of Classics and Ancient History mark a third degree in a third subject area as she pursues her ongoing interdisciplinary research interest in heresy accusations as a mechanism of social control in the Later Roman Empire and Medieval World.
From Privilege to Proscription: The Transformation of Episcopal Conflict Across the Long Fourth Century

"The question became more pressing after bishops began accusing criminals before public tribunals, some urging the sword and the death penalty, while others approved accusations of this sort and the bloody triumphs of bishops. What do these say except what the Jews said, namely, that the guilty should be punished by the laws of the state and those should be accused by bishops in state courts whom they say should have punished by law?"

Ambrose of Milan (c. 386)

0.0 Introduction: From Privilege to Proscription

This thesis argues that fourth-century elite Roman men disputing episcopal status via the Roman courts led to a transformation of episcopal polity, and that this development has been obscured by a subsequent paradigm shift in the norms concerning episcopal use of Roman law towards the end of that century.

The relationship between the Roman emperors and bishops in the fourth century was the interaction between several temporary dynasties of lay rulers and factional networks of a still solidifying professional elite. The fourth century marked the beginning of emperors favouring Christians as a class, but it is important to remember that imperial favour was not distributed equally but instead that elite Christians (and in particular, bishops) competed to access it. Imperial favour was also not distributed at random, but typically given to bishops belonging to particular favoured networks, who affiliated under positions of theological consensus which the emperors patronised. For roughly the middle two quarters of the century, following the precedent set by Constantine I in 327, the emperors typically patronised non-Nicene bishops over their Nicene-identified colleagues. However, when

1 "Sed vehementior facta est, posteaquam episcopi reos criminum gravissimorum in publicis iudiciis accusare, alii et urgere usque ad gladium supremam que mortem, alii accusationes huiusmodi et cruentos sacerdotum triumphos probare coeperunt. Quid enim aliiu dicunt quam dicebant iudaesi, reos criminum legibus esse publicis puniendos et ideo accusari eos etiam sacerdotibus in publicis iudiciis oportuisse, quos asserunt secundum leges oportuisse punire?": Amb., ep. IX.68.3 (Ambrose to Irenaeus); trans. Beyenka, Letter 84, 468-469.

2 On the use of "non-Nicene" and "Nicene" as relational rather than theological descriptions in this thesis, see below, p. 25.
Theodosius I came to power (379 in the East, 387/8 in the West), he sided instead with the Nicene bishops above the non-Nicenes.

Having gone without access to imperial favour for a prolonged period, the Nicene-affiliated bishops of the fourth century had different experiences concerning the utility of Roman law than their non-Nicene colleagues. Due to their imperial patronage, the non-Nicene bishops could count on their episcopal status being affirmed through the courts; the Nicenes could not. This disparity of access to imperial favour required Nicene-identified bishops to invent tools to succeed in their claims to episcopal status in spite of their poor position under the law.

One of these was a rhetoric of jurisdictions divided between the City and God where some conflicts remained under the judgement of the emperor and within the purview of the precedents of Roman law and others, cases pertaining to God, in which the legal context was to be held as far less important than the religious context. It was a way to persuasively innovate while arguing that one's solution was traditional; it was also a way to circumvent episcopal reliance on imperial favour as it argued that the religious domain (the bishop's judgement) trumped the legal (the emperor's). After the Theodosian-Nicene takeover, the Nicene-identified bishops retained tools like these in addition to inheriting the legal framework that the non-Nicene bishops had crafted during their mid-century period of patronage.

This thesis has also identified two contingent effects of this fourth-century transformation of episcopal polity and the legal competition for episcopal status that caused it.

The first is the development of a place of authority for bishops to the side of, rather than subject to, the imperial bureaucracy and judiciary. Episcopal status in the fourth century conveyed no particular immunity from prosecution under Roman law.³ Episcopal status was granted and affirmed by imperial orders, which left episcopal claimants at the mercy of Roman judges for their success or failure: execution was a possibility, but exile was a more

³ See also Appendix 1: The Myth of Fourth-Century Clerical Immunity, pp. 241ff.
likely punishment. Fourth-century episcopal claims to an "ecclesiastical-only" jurisdiction or any other distinguishing treatment under the law for bishops have been taken as descriptions of the status quo, but this thesis argues instead that they arose out of the competition for episcopal status, and in particular as a rhetorical strategy deployed by bishops for whom the actual status quo of legally affirmed episcopal statuses did not benefit.

The second is that the entry of the concepts of heresy and orthodoxy into Roman law, and consequently the legal proscription of heretics, was also a contingent result of the fourth-century episcopal competition via the law. Alongside the transformation of episcopal polity, this thesis has identified a change from laws that affirm the privileges of the orthodox to laws that proscribe the heretical. The piecemeal surviving historical record of legal texts concerning bishops from the mid-century non-Nicene period do not allow this change to be tracked with precision, but it appears to be related to the efforts of Nicene-identified bishops seeking ways around the legal dominance of non-Nicene bishops. The rhetoric of divided jurisdictions may have required the creation of new categories of deviance to justify the position of the orthodox bishop as an expert deserving of their status as a (new) authority.

The story of the transformation of episcopal polity in the fourth century is one of bishops learning from the successes -- but more often from the failures -- of the bishops who came before them and taking advantage of new opportunities to solve the problems of the past when new resources (financial, political, legal) became available. Emperors, too, intervened

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4 This point is explored further in: Melissa Markauskas, "Privileging Orthodoxy and Criminalising Heresy: Fourth-century Bishops and Roman Law," in Between Heaven and Earth: Law, Ideology, and the Social Order in Late Antiquity, ed. Kate Cooper (forthcoming).

5 Alison Bonner's very recent presentation on "rule creators" creating categories of deviance to cast objection to their innovations into disrepute in the context of the early fifth-century Pelagian controversy offers an introduction to a useful sociological model for the modern heresiologist taken from the discipline of criminology. Alison Bonner, "The Reception of Pelagius and Interactionist Theory" (presentation, Heresy from Late Antiquity to the Middle Ages Conference, Oxford, 14th March, 2015). I am grateful to her for access to her conference paper draft.
or were petitioned to intervene to solve problems whose solutions caused new problems that needed to be resolved. This thesis focuses on the transition from non-Nicene to Nicene political dominance, but this transition followed on from another in the first decades of the century when the bishops who would later be divided into non-Nicene and Nicene camps had been restricted from access to Roman law under Diocletian.

0.1 Episcopal Conflict in a Period of Transition: Historical Background

0.1.1 Scriptural Solutions for Conflict

Fourth-century Christian bishops inherited a scriptural canon with much to say about how Christians should deal with conflict amongst themselves and about the relationship of Christian communities to the governance of Rome. Scriptural interpretation allowed for a variety of arguments to be supported from the authority of these Biblical texts.

Christians were discouraged from holding ill feelings against fellow Christians in general, and this included slights that the ancient world viewed as legally actionable. In 1 Cor 6.1-8, Paul sees Christians initiating lawsuits against other Christians in the Roman courts as an extreme sign of the charity lacking between some members of the Christian community in Corinth. It is this dissension that Paul primarily condemns rather than the judgement of the Roman courts as such. Paul asks why the community does not turn to those among them who are wise enough to act as arbitrators (1 Cor 6.5), which seems to suggest a tacit acceptance of Christians using their secular education (which would have included forensic oratory) in the service of the community. This was preferable to involving the judgement of unbelievers over fellow Christians. Above all, Christians should avoid conflict with one another, choosing instead to put up with injustice (1 Cor 6.7).

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6 On use of litigation to fan the flames of a conflict, see Benjamin Kelly, Petitions, Litigation and Social Control in Roman Egypt (Oxford: Oxford University Press, 2011), 287-326.


8 Christians were not the only ones to encourage avoiding the courts. John Chrysostom preaching on this passage from Paul in late fourth-century Antioch notes that the idea that it was better to resolve a dispute out of court was also a commonplace among pagan advocates. (Hom. 1 Cor. 16)
Paul's exhortation to the Corinthians can be paralleled with Jesus's discussion with Peter in Mt 18.21-22 on the importance of forgiving slights by "brother" Christians. This follows on from a passage about community discipline (Mt 18.15-20) that proposes a similar escalation of dispute resolution techniques. If a private word with your antagonist does not resolve the situation, Jesus recommends a discussion before two or three witnesses. If this attempt at reconciliation fails, then the dispute can be discussed in front of the local community. These texts also highlight the high premium placed on peace within the community and reconciliation in the event of conflict, rather than redress as might be the case in civil proceedings.

The story of the Pharisees questioning Jesus about the permissibility of paying tax tribute to Rome appears in three of the canonical Gospels. Though narrative and lexical details vary in each version, they each culminate in the following saying of Jesus: "Give to the emperor the things that are the emperor's, and to God the things that are God's." (Mk 12.17, NSRV translation)

Jesus's saying can be interpreted in several ways. It can support a reading where the emperor has no claims compared to the authority of God, and so deserves nothing. It can also support a more moderate reading that suggests that the authority of earthly rulers like the Roman emperor and the authority of God were not always at odds. This second line of interpretation seems to lie behind Paul's exhortation to the Christian community in the city of Rome to pay tribute to Roman officials for their role as ministers of God's plan (Rom 13.1-7). It would be developed further in the Patristic period into what would become known as the "two powers" interpretation.

It should be remembered that scriptural texts are normative texts, in which they argue for a community norm of practice that is only partially or otherwise imperfectly observed. What Paul and the Gospel authors wished to encourage Christians to do is not necessarily what all early Christians did in those circumstances. Fergus Millar notes in his discussion of the

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9 Mk 12.13-17; Mt 22.16-22; Lk 20.20-26.
Antiochian petition to the third-century emperor Aurelian to depose Paul of Samosata: "It is crucial to our understanding of both the Roman Empire, and of the place of the Church within it, to realize that we do not have to find exceptional political circumstances to explain recourse to the Emperor as arbiter," even in a period when the emperor was assuredly "pagan". In a story related by Eusebius of Caesarea, a group of Antioch citizens approached Aurelian about recovering their church house from Paul, whom they classed as a heretic. Aurelian was amenable to their petition, and ordered the property restored. Eusebius's focus on heresy and orthodoxy is a red herring to our understanding of Aurelian's intervention in what could otherwise be classed as a property dispute.

The relationship between Christian communities and the Roman Empire evolved between the period of the New Testament writers and the fourth century. Christians did not live in isolation from their non-Christian neighbours. In the absence of specific restrictions instituted by the emperors on Christians accessing Roman law, as can be seen under Diocletian and will be discussed below, Christians had the same right of access to Roman law as any other citizen. Scriptural injunctions like those in Paul's first letter to the Corinthians exhort Christians to not make use of this available access. That Paul thought it was necessary to comment on this matter suggests that Christians were doing so, even if this sometimes caused their religious leaders to despair.

0.1.2 Before Constantine: Revoking Citizen Rights Under the Law

Across the second half of the third century and into the fourth, the central question for the Christians was whether they enjoyed the civil rights of Roman citizens. From 250 AD, emperors responded to increasing political instability across the Empire by eliciting gestures of imperial solidarity from the Empire's citizens through the widespread religious koine of the emperor cult. At a local level, this resulted in bureaucratic initiatives to document

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compliance\textsuperscript{12} as well as a new fault-line for community tensions in a way that brought focused negative imperial attention to Christians as a group.

In 303, Diocletian issued an edict which proscribed Christians as a class, denying them a number of the privileges otherwise enjoyed by Roman citizens. Roman law was not only the means by which Christians felt they were targeted; the privileges that they were denied specifically restricted their ability to make use of Roman law. Our main witness, Lactantius, makes this specific point in his account:

"An edict was posted in which warning was given that men who adhered to this religion [Christianity] should be deprived of all official position and status, and would be subject to torture whatever order or rank of society they came from, and that any legal action brought against them would be valid in court, while they themselves would be unable to bring actions for wrongs done to them, for adultery, or for theft; they would in fact lose their freedom and right of utterance."\textsuperscript{13}

The ability to bring a prosecution through the Roman courts, whether civil or criminal, was now restricted to those willing to perform acts of pagan sacrifice and devotion to the imperial cult. This meant that non-Christians were able to prosecute Christians without fear of the Christian counter-suing them or appealing whatever judgement the prosecution received. Elite Romans who identified as Christians lost their generally held immunity from judicial torture. The property of Christians was no longer legally protected under Roman law; indeed, explicitly Christian property like churches or houses used for that purpose were to be destroyed, as were Christian texts and any other moveable property that was not worth confiscating to the imperial fisc.

\textsuperscript{12} See e.g. J. B. Rives, "The Decree of Decius and the Religion of Empire," \textit{The Journal of Roman Studies} 89 (1999); R. Selinger, \textit{The Mid-Third Century Persecutions of Decius and Valerian} (Frankfurt am Main: Peter Lang, 2002).

\textsuperscript{13} "Propositum est edi
citum quo cavebatur, ut religionis illius homines carerent omni honore ac dignitate, tormentis subiecti essent, ex quocumque ordine aut gradu venirent, adversus eos omnis actio valeret, ipsi non de i
These were the legal grounds for what Christian sources would term the "Great Persecution," a systematic denial of civil rights and protections to those who identified as Christians across the Empire. This legislation did not institute a deliberate seeking-out of Christians by officials, but made citizens who identified as Christians vulnerable not only to legal proceedings they could not contest, but also to mob violence resulting from local rivalries and religious conflicts from which the law would no longer protect them nor offer opportunity to seek redress.

Some Christians encouraged compliance, whether because the required gestures of sacrifice were seen as genuinely acceptable to participate in or because openly identifying as Christians was not considered worth the cost of losing their citizen privileges. However, a vocal minority of Christians promoted a radically different response. They found these demands for sacrifice incompatible with their Christian identity, calling the state's bluff to the point of their own executions. This second group would be valorised in Christian literature as "martyrs", dying as witnesses to their faith in public spectacle.¹⁴ The public face of Christian communities became one of criminal civil disobedience at exactly the time that imperial administrators were looking for obedience as the mark of a model citizen.

Bishops as a class were disproportionately affected by the measures Diocletian introduced. As community leaders, they were both more highly visible than the average Christian and could be seen as responsible for any would-be martyrs in their community, regardless of their personal views. They were also likely to have been drawn from relatively more elite citizenry, which made them more attractive targets for conflict. Diocletian's law would not have affected Christians of the lower classes, who, like lower class Romans of any religious affiliation, had never enjoyed much in the way of legal privileges to feel their loss nor possessed property worth confiscation.

Diocletian abdicated in 305, but his law remained policy under his imperial colleague Galerius until 311, when Galerius repealed the 303 law through his Edict of Toleration. This was followed in 313 by a similar legal statement in Constantine's so-called Edict of Milan, an agreement between Constantine and his imperial colleague, Licinius, about the treatment of Christians in the Empire. Constantine's Edict was not especially innovative, but due to Constantine surviving all his imperial colleagues and consenting to a death-bed baptism to Christianity, it would be Constantine's Edict that would come to be seen as the legal landmark amongst these early fourth-century grants of imperial support for Christians.

In repealing Diocletian's denial of privileges for Christians, these pro-Christian laws of the 310s instituted legal protections for Christians, their property, and their access to legal remedy via Roman law. Within this context, the men of episcopal status, noted as formerly having suffered as victims of legislation, now received special treatment and privileges. In addition to making restitution, Constantine wanted to make use of this clerical elite along with their proven community support and connections. In 318, Constantine affirmed the right of bishops to act as judges similar to existing lay judges. But even before that, we can see evidence of the bishops acting as litigants. They began to seek and receive judgements through the Roman courts for conflicts among the episcopate. Having been denied their citizen rights under the Diocleatianic legislation, the bishops knew that securing access to the Roman courts was an important part of safeguarding the status and privileges they had recently regained.

15 CTh. I.27.1 (Given at Constantinople). On the Theodosian Code constitutions concerning the development of the episcopal court, see: John E. Lamoreaux, "Episcopal Courts in Late Antiquity," Journal of Early Christian Studies 3, no. 2 (1995). However, his discussion of the fourth century lacks an appreciation of the mid-century legislation that the Code's compilers have not included. Jill Harries, Law and Empire in Late Antiquity (Cambridge: Cambridge University Press, 1999), 191-211., offers a fuller perspective combining legal and extra-legal sources but still assumes "ecclesiastical preference for conducting community relations by its own rules" (210) and substantial continuity in the form and function of the episcopate through the third to fifth centuries. This thesis has focused on bishops as litigants; a full discussion of the relationship between this role and the role of bishops as judges/arbitrators within the Roman legal sphere is beyond the scope of this thesis, but for suggestions for further work in this area, see Conclusion, pp. 225ff.

16 Constantine was approached by African bishops to resolve disputed claims to the see of Carthage in the late 310s. For the sources and discussion, see: Erika T. Hermanowicz, Possidius of Calama: A Study of the North African Episcopate at the Time of Augustine (Oxford: Oxford University Press, 2008), 192-212.
Our sources tend to frame these conflicts as contests between orthodox bishops and heretical pretenders to episcopal status. A better formulation, this thesis will argue, is that episcopal status in the fourth century was seen as a privilege to be granted by the emperors and affirmed by the courts. This legal mode of inter-episcopal conflict through the fourth century led to a transformation of episcopal polity, including the integration of bishops into the relationships of reciprocal obligation that formed Late Roman power structures.

0.1.3 The Fourth Century: Christian Magistracies and non-Nicene Orthodoxy

Constantine's grant of citizen rights to the Christians and additional privileges to men of episcopal rank has been seen as innovative, but the only truly innovative element was that it was the Christians who received such treatment on this occasion instead of some other community. In a practice that extends back even before the imperial period, elite Roman men expanded the ranks of their dependents by arranging for non-citizen communities to be granted citizen rights and for the elites of those communities to be granted particular privileges to further integrate them into the patronage web of power structures that was Rome. What Constantine did in (re-)granting citizen rights to those who identified as Christians, Julius Caesar did for provincial elites in Northern Italy, Gaul and Spain and Caracalla did for free persons within the Empire.

In granting legal privileges and responsibilities to the bishops, Constantine sought to absorb a new professional elite into an older, existing polity of priesthods and magistracies. This was not as incompatible as it might seem to the modern eye. Roman governance and the exercise of Roman law was never "secular" in the modern sense, lacking a post-Enlightenment division of Church and State. The idea that the same man might hold offices that required him to mediate between members of the community in addition to mediating between the authorities of this world and the Divine was also common to pagans and Christians.

17 For more on this point, see the discussion of Symmachus’s rhetoric during the 384 Altar of Victory controversy below, chapter 4.1.1, pp. 185ff.
By treating episcopal status like that of a magistracy, Constantine significantly raised the stakes in episcopal rivalries. Disputed episcopal claims were no longer a local matter, a question of local community leadership, but one that concerned an office that potentially held far wider political horizons. This made episcopal office much more attractive to elite Roman men, who had always competed for honour and prestige among their peers by competing for offices, priesthods and magistracies. And so, we find from this period that emperors preferentially patronise Christian-friendly aristocrats, while similarly bishops as Christian community leaders are drawn from more aristocratic backgrounds.

The idea that the moral character of a man and his piety should determine his suitability for the exercise of authority was also common cultural programming for pagans and Christians alike. Hence, a concern for Constantine to not grant privileges to simply anyone claiming episcopal status, but to only the deservingly pious-- or to "orthodox" bishops, to use the jargon of the Christians. Differentiating the deserving among the bishops was, unfortunately for Constantine, no easy task. As mentioned above, the bishops themselves could not agree about who deserved episcopal status, and had begun to take such disputes through the Roman courts.

Constantine convened a gathering of bishops at Nicaea in 325, ordering them to reach a consensus position and an end to these ongoing episcopal conflicts. The council did produce a consensus document, the Nicene Creed, but the 325 council did not in any way mark an end of conflict among bishops concerning who did and did not deserve the status of episcopus. While some bishops continued to identify orthodoxy with the Nicene Creed, Constantine and his dynasty soon identified an alternate position as the one behind which they would put their support. This imperial patronage for non-Nicene bishops remained the status quo from 327 until Theodosius I's accession in the 380s.
For the sake of clarity, this dominant, imperially-backed, non-Nicene position will be labelled "non-Nicene" in this thesis. The non-Nicene/Nicene distinction described here is relational, not propositional. It is a part of a functional/non-theological approach to the study of heresy/orthodoxy that is focused on mechanisms of group affiliation and boundary policing. The boundaries of Episcopal networks according to propositional content (by which bishops recognised the other as "in communion") may have shifted with each local conflict, but the affiliation of the imperial family with some groups of bishops and not others was more constant. Throughout the middle decades of the fourth century, there was ongoing conflict among bishops with the imperial family supporting the non-Nicene side.

0.1.4 The New Fifth-Century Nicene Status Quo

When Theodosius I put his support behind the Nicene-identified bishops in 380, he did so as part of a legal ruling that affirmed for them the privileges of episcopal status that had been previously preferentially granted to non-Nicene bishops. When his dynasty became the ruling family of the Roman Empire by the end of the decade, all the legal precedents and privileges concerning episcopal status that had accrued under emperors who favoured the non-Nicenes were now available to Nicene-identified bishops, as the new imperially preferred holders of episcopal status. The legal framework did not immediately change, but now identifying as Nicene meant privilege and being identified as non-Nicene could meant proscription.

Paradigm shifts cause us to rewrite history to make sense of the past in light of the new paradigmatic frame we have acquired. The story of one's first heartbreak is different told to a friend immediately post-break-up and on some later occasion retold to a new love. Conversion narratives, too, have been found to involve this sort of re-writing of one's

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19 Non-theological approaches to religious phenomena are not necessarily reductionist. See Kate Cooper, "Ventriloquism and the Miraculous: Conversion, Preaching and the Martyr Exemplum in Late Antiquity," *Studies in Church History* 41 (2005). On the methodological basis for this thesis's relational model of the relationship between heresy and orthodoxy, see below, p. 47.
personal history, where converts describe the attractions of a new religion differently on first contact compared to the stage at which they have become a fervent believer. For the Theodosian dynasty and their Nicene-identified bishops, the fourth-century past would be retold very differently at the court of Theodosius I towards the end of the century compared to later narratives produced at the court of Theodosius II, his grandson, some forty or fifty years later.

For Theodosius I and the bishops he supported, identifying with the Nicene creed promulgated in 325 under Constantine was a claim for legitimacy in the face of the innovation that their regime change introduced. This created a narrative where the intervening decades -- and rulers -- were aberrations from the natural and normal order, while the present rulers and their bishops marked a restoration (instead of the abrupt break with mid-century imperial practice that they in fact were).

But for later generations, including Theodosius II and his bishops, the narrative of Nicene supremacy was no longer a necessary claim for legitimacy, but a description of the status quo. Just as it had become unthinkable for Julian to return the Empire wholly to a non-Christian form of religiosity, too many decades after the Christian conversion of Constantine I, so too, it had become impossible to think of orthodoxy as wholly non-Nicene by the reign of Theodosius II.

It is a truism that history is written by the victors. The myth of Nicene supremacy in our sources, whether as claim or as status quo, has obscured the significant developments concerning episcopal competition and episcopal polity in the intervening non-Nicene period by treating the entire period as an aberration with the Theodosian era portrayed as the "real" next first step since Nicaea in 325.

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0.2 The Myth of Nicene Supremacy: Key Sources

Two types of sources are key to understanding how the prevailing narrative of Nicene supremacy concerning the fourth-century episcopate came into existence.

One type is the evidence of the fifth-century "myth-makers", sources who recount the events of the fourth century in a way that makes sense in their own fifth-century context. This introduction will focus on two key examples from this group: The Theodosian Code and Socrates of Constantinople's Historia Ecclesiastica. Both of these texts were produced in the reign of Theodosius II (408-450), and reflect an interest in valorising the Theodosian dynasty and the Nicene-identified bishops that this dynasty supported. This included an interest in the bishops that the Theodosian era considered as forerunners of their own Nicene identification. The fifth-century historians have provided us with some of the most substantial surviving accounts of the fourth century. Thus, their version of the fourth century has been central to the propagation of the prevailing understanding of this period.

The other type is the evidence of fourth-century "(social) magicians", protagonists who made claims that were experimental and often outrageous in their own context. This introduction will focus on the writings of three fourth-century bishops: Ambrose of Milan (d. 397), Athanasius of Alexandria (d. 373) and Priscillian of Avila (d. 385). Their writings originate in the fourth-century episcopal conflicts themselves, seeking to achieve specific short-term goals.

Our prevailing understanding of this period arose from the use that the fifth-century authors made of fourth-century events and agents. Because the fifth-century authors chose only certain "magicians" as the heroes of their narratives, medieval and modern historians have tended to miss that these Nicene-identified bishops were fighting to promote a minority position in their own day. By positioning non-Nicene-identified bishops as the villains of their narratives, the fifth-century authors also dismissed and denigrated the activities of those bishops, which has led later historians to underappreciate the contributions of these heretical bishops to the evolution of the episcopate through the fourth century.
Common to the *Theodosian Code* and the fifth-century church historians is a story that portrays the governance of the non-Nicene-favouring emperors and oversight of the non-Nicene bishops as a mid-century illegitimate aberration in the natural order of affairs. In terms of legitimacy claims by authority figures, *renovatio* appealed more to the Roman mind than *innovatio*. The Theodosian dynasty anchored their claims to *renovatio* by reworking the memory of Constantine I to emphasise his role in convening the 325 council at Nicaea, whose creed they elevated as a landmark touchstone of orthodoxy. This obscured the fact that from 327 to the 380s, the non-Nicene bishops were in ascendency, and that the mid-century emperors who supported these non-Nicene bishops were not deviating from Constantine’s example, but following in his footsteps.

This narrative in the fifth-century sources has encouraged later scholars to read the fourth-century episcopal writers in a way which minimises the contemporary minority status of the Nicenes and reads back the fifth-century paradigm into the fourth-century sources. This thesis will show that a significant change in episcopal legal culture occurred between the fourth century and the fifth. Therefore, this thesis proposes to give higher precedence to the fourth-century sources and to use them as a key to understanding the fifth-century sources as recording fourth-century events albeit mediated through fifth-century paradigms.

**0.2.1 The Theodosian Code**

This sort of Nicene-favourable reframing of the fourth-century past is particularly evident in the *Theodosian Code*, a project commissioned by Theodosius II. Published in 438, this work collects legal material from Constantine to Theodosius II, spanning 312 to 437. It includes material from both the Nicene emperors of the Theodosian dynasty, as well as their more problematic non-Nicene-favouring predecessors: Constantine and his dynasty as well as the subsequent Valentinian dynasty. It includes laws issued by Julian, Constantine’s half-

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21 *CTh. XI.29.1* is a law of Constantine given at Trier on the 27th of December in 312. It concerns referring law cases to the emperor as the highest court of appeal. *CTh. VI.23.4* is a law of Theodosius II given at Constantinople on 16th of March in 437. It concerns privileges for decurions.
nephew, whose rule supported Platonic philosophy rather than Christianity, and two from Jovian, Julian's successor, whose reign lasted only eight months.  

The Code does not draw from these emperors in identical ways. The material is arranged into sixteen books of broadly topical grouping, with constitutions arranged chronologically within sub-headings. Considering the extant 2500+ constitutions together, the material peaks in 319-326 (the reign of Constantine prior to his non-Nicene affiliation), 364-372 (the reign of Valentinian I and Valens), 380-386 (the beginning of the reign of Theodosius I), 395-400 (the beginning of the reigns of his sons, Arcadius and Honorius), and 408-416 (the sole reign of Theodosius II). This chronological profile can be found generally represented across books VII-XV. However, book XVI, which concerns "religion" looks different.

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22 Simon Corcoran, "Hidden from History: The Legislation of Licinius," in The Theodosian Code: Studies in the Imperial Law of Late Antiquity, ed. Jill Harries and Ian Wood (London: Duckworth, 1993), has re-attributed some extracts in the Code to Licinius, but Constantine I is the earliest named emperor in extant manuscripts. Like the Licinian laws, some laws of Constantius II, branded a heretic by Nicene bishops, and of Julian "the apostate" also travel under the name of Constantine in the Code, but there are also others that do travel under the correct names.


24 And in particular, 364 and 365, which are both represented around 85 times each, more than any other year across the entire corpus of the Theodosian Code.


26 See Chart 2: Constitutions of the Theodosian Code by Year (% of total) - Overall vs. Book XI, p. 31, which compares the chronological profile of Book XI with that of the entire corpus. Book XI was chosen as it contains 305 constitutions (12% of the total corpus), the most numerous of any extant books of the Theodosian Code. Books I-VI only survive incomplete.
Chart 1: Constitutions of the Theodosian Code by Year (Books I-XVI)
Chart 2: Constitutions of the Theodosian Code by Year (% of total) - Overall vs. Book XI
Chart 3: Constitutions of the Theodosian Code by Year (% total) - Overall vs. Book XVI
In book XVI, there are peaks in 326, 331 (the reign of Constantine) but not again until 376 (immediately following after the death of Valentinian I). There are a few peaks early in the reign of Theodosius I (380-383), but the bulk of the material dates from later: particularly 388-400, 404-416 and 423-425. This could suggest that the Theodosian emperors were more concerned about matters of religion than earlier emperors. However, this thesis argues that this impression is Theodosian myth-making at work eliding the fact that the very definition of orthodoxy had dramatically shifted when Theodosius I gave support to Nicene instead of non-Nicene bishops. Section Five of Book XVI, concerning "heresy", offers more evidence that Theodosian era conceptions of orthodoxy affected the collection. Of its sixty-five constitutions, only five were not issued by the Theodosian dynasty and two of these were issued by Constantine in 326, while he was still Nicene.

As the *Theodosian Code* is one of the largest extant sources for legal material from the fourth and early fifth centuries, the Theodosian myth-making involved in its creation has also obscured later scholarly understanding of Roman legal developments in this period. Our extra-legal sources for this period mention the substantial numbers of legal documents issued during the reigns of non-Nicene-supporting emperors that do not survive, either in the *Theodosian Code* or elsewhere. The *Code* remains an important source for this thesis, when properly contextualised as a legitimacy project of the Theodosian dynasty and as a tiny fraction of fourth-century law concerning bishops that can be reconstructed from other sources.

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27 See Chart 3: Constitutions of the Theodosian Code by Year (% total) - Overall vs. Book XVI, p. 32, which compares the chronological profile of Book XVI’s 201 constitutions (8% of the total corpus) with that of the entire *Theodosian Code* corpus. A substantial portion of extracts preserved in Book XVI from 395-411 concerns events in North Africa. On the relevant episcopal conflicts, see Hermanowicz, *Possidius*.

28 The laws preserved as *CTh. XVI.5.1-2* date from 326. *CTh. XVI.5.3* was issued at Trier in 372, *CTh. XVI.5.4* at Trier in 376 and *CTh. XVI.5.5* at Milan in 379.

29 E.g. Timothy D. Barnes, ”Valentinian, Auxentius and Ambrose,” *Historia: Zeitschrift für Alte Geschichte* 51, no. 2 (2002): 237.: explains the absence of legislation in the *Code* known from other sources by noting that “the coverage of the Theodosian Code is somewhat haphazard before 380.”
0.2.2 Fifth-Century Church Historians: Socrates of Constantinople

Our fifth-century church historians saw the Nicene-identified bishops of the past century as their brethren, and the non-Nicene bishops as their enemies, but more than that, they wrote from a perspective steeped in Nicene supremacy. When they wrote about fourth-century bishops and events, they did so from a perspective that saw the political domination of the Nicene position as normal. This group includes Sozomen, Theodoret, Sulpicius Severus, and Rufinus's continuation of Eusebius of Caesarea's history, but a few examples from Socrates of Constantinople will suffice for this introduction.

Socrates's *Historia Ecclesiastica* has a *terminus post quem* of 439 AD, from the last datable event included in the history. Socrates was born in Constantinople around 380, extrapolating from his comment that he was able to speak from his own experience from the accession of Arcadius in 395, and as such, lived his entire life under the new Nicene status quo.

Late in the second book of Socrates's *History*, he describes the case of Cyril of Jerusalem, which was debated as a side issue at Constantius II's 359 council at Seleucia. To a group of other bishops deposing him, Cyril gave written notice that he was seeking mediation via Roman law. This was to Socrates an unthinkable novelty.

"Cyril was thus the first and indeed only clergyman who ventured to break through ecclesiastical usage, by becoming an appellant, in the way commonly done in the secular courts of judicature."

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33 "Τούτο μὲν οὖν μόνος καὶ πρῶτος παρὰ τὸ σύνθετο τῷ ἐκκλησιαστικῷ κανόνι Κύριλλος ἐποίησεν, ἐκκλησίας ὡς ἐν δημοσίῳ δικαστηρίῳ χρησάμενος": Socrates, *Hist. eccl.* II.40, trans. Zenos, 70. See also chapter 1.2.3, p. 76-79, for discussion of Cyril in the context of fourth-century trends.
The body of this thesis will demonstrate that fifth-century church historians including Socrates recorded bishops earlier (and later) than Cyril seeking the legal protection of emperors in conflicts with other bishops and that episcopal dispute resolution procedures in the fourth century commonly included petitions to emperors in addition to seeking the support of their episcopal peers.

The disparity between Socrates's narrative and the fourth-century bishops he describes is more than a pro-Nicene gloss. It is not as simple as Socrates having discounted the petitions of non-Nicene bishops towards non-Nicene-supporting emperors, because he did not consider such bishops worthy of the status of an episcopus. Instead, what Socrates demonstrates is the paradigm shift between fourth- and fifth-century norms about what bishops should and should not do regarding the law.

Athanasius of Alexandria is treated by Socrates's text as a "good" bishop, superlatively Nicene and persecuted by non-Nicene "heretics" and their supporters throughout his long episcopate. While Socrates sought to valorise Athanasius's actions, what Athanasius actually did in the early fourth century presented problems from a fifth-century point-of-view.

For example, Athanasius was deposed at a council convened by Constantine in 335. We know from Athanasius's own account that he then travelled to Constantinople to seek an appeal of this judgement, requesting either a council or to be heard in front of the emperor. Socrates's account of this same anecdote elides Athanasius's agency, describing Athanasius's flight in one chapter and relating only that the emperor convened a further council at Constantinople (Athanasius's first option) to discuss the issue in the next.

34 Athan., Apol. c. Ar. 9. For further discussion of this, see chapter 1.1.1, p. 55.
35 Socrates, Hist. eccl. I.32 (Athanasius flees to Constantine) and Hist. eccl. I.33 (Constantine summons the bishops).
Socrates also had good sources for his account of Athanasius, as he inserts verbatim documents that Athanasius inserted into his own texts. One example is from Constantine II, (re-)affirming Athanasius as bishop of Alexandria, and ending his first exile. Socrates calls this a "letter" [τὰ γράμματα], but we should know it as a document with legal force, as any written text conveying the emperor's judgement was both in Athanasius's day and in Socrates's.

Fifth-century revisions like these were the beginning of an ongoing process by which the texts and actions of fourth-century figures have been re-worked by later centuries in their own images. This also demonstrates the importance of a methodology that uses the fourth-century texts as a key to the fifth-century narratives. The church histories remain valuable historical sources for this thesis, as their breadth includes anecdotes that have no parallel in surviving fourth-century sources, but they must be read with their originating paradigm in mind.

0.2.3 Fourth-Century Bishops: Ambrose, Athanasius and Priscillian

The majority of fourth-century bishops whose writings survive were Nicene-identified. This is not because Nicene-identified bishops wrote from a position of political dominance, but because their successors did. Nicene supremacy encouraged the preservation of the writings of earlier Nicene-identified bishops and discouraged preservation of the writings of anyone associated with a heresy.

The three main figures this thesis investigates are: Ambrose of Milan (d. 397), Athanasius of Alexandria (d.373), and Priscillian of Avila (d. 385/7). Each of these bishops was "Nicene." Priscillian has become associated with a different sort of...
heresy, and accordingly, his writings have survived in least quantity among these three.

0.2.3.1 Ambrose of Milan (bishop: 374-397)

Ambrose was chosen as the primary focus of this study as he was the Nicene-identified bishop in the capital of the last non-Nicene-favouring Roman emperors through the 380s, the crucial decade of change between non-Nicene and Nicene dominance. Thus, his case study has been especially useful in identifying the change in episcopal polity between the earlier and later periods.

Ambrose was also chosen because his example has come to be taken up as an authoritative precedent in later disputes. Ambrose and his actions towards Theodosius after the riots at Thessalonica were taken up as a model in the ninth century for Pope Paschal I and the Carolingian emperor Louis the Pious and again in the eleventh for Pope Gregory VII and the Ottonian emperor Henry IV. Given their significant afterlife, it is important to understand Ambrose's actions in their own fourth-century context and to identify the fourth-century factors that motivated them.

Our main source for studying Ambrose is his own letters. He wrote self-conscious of his own self-presentation. The majority of his letters were published late in his lifetime in an ordered collection of ten books, nine of private correspondence and a tenth collecting political correspondence with emperors, mirroring the

Constantius II. For a contrasting view that argues for a political understanding of the two sides of the Priscillianist controversy (and the subsequent Felician controversy that arose out of the scandal of Priscillian's execution) as competing networks of bishops, see: David Natal and Jamie Wood, "Playing with Fire: Conflicting Bishops in Late Roman Spain and Gaul," in Making Early Medieval Societies: Conflict and Belonging in the Latin West, 400-1200, ed. Conrad Leyser and Kate Cooper (Cambridge: Cambridge University Press, forthcoming). I am grateful to the authors for allowing me to view this prior to publication.
arrangement of the second-century Pliny the Younger.\textsuperscript{38} However, some letters were publicly released only after his death.\textsuperscript{39} These included alternate versions of some of the published letters as well as letters not previously published in any form.

An obvious pitfall in primarily using Ambrose's own texts to study Ambrose is that one needs strategies for reading against his own presentation. Therefore, two other case studies were also chosen to shed light on what is distinctive about Ambrose's approach: Athanasius of Alexandria as a predecessor to Ambrose and Priscillian of Avila as a contemporary. These two case studies precede this thesis's detailed discussion of Ambrose's conflicts and his actions within them in Chapters Three and Four.

\textbf{0.2.3.2 Athanasius of Alexandria (bishop: 328-373)}

Athanasius was chosen for this study for two primary reasons, both related to his status as a Nicene bishop. As the quintessential Nicene bishop against non-Nicene heretics, his use of Roman law in the context of inter-episcopal disputes would be well publicised and well known among later Nicene-identified bishops like Ambrose. Like Ambrose, Athanasius was the bishop of a city that was politically important and a bishop with ambitions to enlarge the political influence of his see to match the status of his city. Athanasius was neither conflict-averse nor shy about intervening in writing, which in combination with his Nicene identification, means that his letters and polemics survive in reasonable numbers and his actions were considered worthy of record to the fifth-century church historians.

Athanasius's status as a Nicene bishop is also important for the main argument of this thesis, as his example proves that commonplace episcopal use of Roman law in


\textsuperscript{39} These are distinguished as \textit{epistulae extra collectionem} (ep. ex. coll.).
inter-episcopal disputes was not restricted to heretical bishops only. Athanasius will be discussed in detail in Chapter One.

0.2.3.3 Priscillian of Avila (bishop: 381-385)

Priscillian is significant for this study because the conflict centring on his disputed episcopal status occurred during the same years as the Basilica Controversy in Ambrose's Milan and yet the two conflicts ended completely differently for the two bishops. Priscillian was executed, and within a year, under similar threat, Ambrose survived. The scandal that erupted among Western bishops after Priscillian's execution was an opportunity for bishops like Ambrose to make demands against the legal status quo.

Priscillian's case will be discussed in detail in Chapter Two. Like Athanasius, Priscillian provides this study another bishop with which to contrast Ambrose. The Nicene/non-Nicene binary is background noise to the Priscillianist controversy. Neither side backed their legitimacy with particular reference to the Nicene creed, nor did they brand their opponents as particularly contravening that creed. Priscillian and his associates were accused of Sabellianism and Manichaeism, and a further heretical label, "Priscillianism", would be coined out of the aftermath of the conflict. The use of Roman law by both sides of this conflict resembles that of Athanasius more than it does that of Ambrose, adding further weight to this thesis's argument that the important distinction between the two modes is of periods of time, not of heresy or orthodoxy.

40 Priscillian's episcopal status has been contested in modern scholarship by scholars wishing to excuse his example from evidence when hypothesising episcopal immunity from civil prosecution. On this point, see below Appendix 1: The Myth of Fourth-Century Clerical Immunity, pp. 241ff. On the objections to Priscillian's episcopal status raised by contemporaries during the Priscillianist conflict, see Chapter Two, in particular section 2.1.2, pp. 104-110.
0.3 Dispute Resolution and the Establishment of a Fourth-Century Pecking Order

0.3.1 Going to Law in the Fourth Century

In its simplest terms, a Roman citizen of the fourth century took his conflict to court by assembling a package of documentation concerning his conflict and taking it before a magistrate. This dossier would contain both the "facts" of the case (e.g. Who? What? Where? etc.) and also relevant legal material (e.g. edicts, contracts, any previously received legal judgements, etc.). How he might take his dossier before a magistrate could involve three main ways: participating in consistory discussion before the emperor, via a petition submitted in writing or via a trial. In addition, he might offer bribes for access or for a favourable ruling, and he might equally draw on the complicated web of patronage networks of which he was part.

If at all possible, he would also hire legal professionals to contribute to the assembly of his dossier, to the drafting of his petition or his legal speeches. Legal knowledge was widespread, at least among the citizen elite whose typical education involved a component of forensic oratory. However, not everyone specialised in this area nor enjoyed equal skill. Legal knowledge was also highly scattered by the fact that the majority of judgements were issued concerning specific cases. The emperors did issue edicts of general application, but that level of publicity concerning the issue of legally applicable judgements was the exception, not the rule. Thus, much "law" was potentially applicable but unknown and hence inaccessible.

Roman legal processes were time-consuming and expensive, primarily because access to magistrates was time-consuming and expensive. They could also be time-

41 See further Harries, Law and Empire: on the consistory, pp. 38-42; on petitions, pp. 47-53; and on judges and trials, pp. 53-55.

42 See further Caroline Humfress, Orthodoxy and the Courts in Late Antiquity (Oxford: Oxford University Press, 2007): on iuresperiti or iuresconsultus in general, pp. 62-92 and on bishops in these roles, pp. 173-179; and on advocates in general, pp. 93-132, and bishops in this role, pp. 179-195.
consuming because they were often iterative. A judgement could prompt an appeal judgement, but lower magistrates often passed cases up when seeking the opinion of higher magistrates and the local receipt of a higher judgement might prompt new legal battles as the recipients sought to "action" the favourable judgement they had received. Litigants might also seek to move the case from one jurisdiction to another, whether to wrest a case from the forum in which their antagonist had lodged it or simply due to their own changing circumstances now favouring some other avenue of justice. In the Roman legal system, the emperor was the highest authority, with his jurisdiction devolving down through ranks of magistracies, provincial and then local. Magistracies were short-term appointments. The imperial office was not term-bound, but many imperial reigns in the fourth century were nonetheless also short. The high turnover in magistracy personnel and the escalation possibilities inherent in this system also encouraged litigation as far as one could afford to pursue it.

Extra-legal dispute resolution strategies offered yet further venues to pursue one's advantage in a conflict. These ranged from informal personal persuasion to arbitration, adjudicated by a person held in high regard by both parties to the dispute. Judgements received in these ways were considered different in legal quality to those issued by magistrates in their official role, but were no less important to the conflict resolution landscape of Late Antiquity.

43 See A. H. M. Jones, The Later Roman Empire: A Social, Economic and Administrative Survey (Oxford: Blackwells, 1964), 484-94, and on a bishop's arbitration acting as one "forum" of several available, see Humfress, Orthodoxy, 156-66.


45 On the difference between judgements given formally by magistrates and those given as part of arbitration, see Jill Harries, "Creating Legal Space: Settling Disputes in the Roman Empire," in Rabbinc Law in its Roman and Near Eastern Context, ed. Catherine Hezner (Tubingen: Mohr Siebeck, 2003).
The line between legal and extra-legal mechanisms of dispute resolution was not clear-cut. In his study of petition culture in Roman Egypt, Kelly has noted that threatening to involve the courts in a dispute could in itself be a powerful strategy, especially when seeking to force a private settlement. His study also found that people did not only seek justice through "proper" legal jurisdictions, or proceeding step by step through the legal hierarchy, but sometimes made bold approaches that must have seemed like they might work. Kelly’s study does not extend down to the fourth century, but in the late 380s, Ambrose of Milan criticised the Jews of Callicinum for seeking redress for the destruction of a synagogue via the comes orientis, a military official. The case eventually came before the emperor Theodosius I who initially decided in favour of the Jews, prompting Ambrose’s intervention.

There were definitely norms concerning how one went to law in the fourth century, but also substantial flexibility and room for a canny (or at least well-advised) citizen to pursue his goals. Wealth, social status and influence (auctoritas) advantaged one’s efforts, but luck, too, often played a deciding role between success and failure in the politically turbulent times of the fourth century.

0.3.2 Privileging Conformity and Penalising Deviance

This thesis argues that a transformation of episcopal polity in the fourth century can be identified and explained by investigating the cumulative effects of bishops typically disputing episcopal status via the dispute mechanism of the Roman courts.

The bishops of this period had two main aims. Firstly, they sought access to resources for themselves and bishops they perceived as allies. Secondly, they sought to prevent those they perceived as their opponents from doing the same.

46 Kelly, Petitions, 276-85.
47 Kelly, Petitions, 82-86.
For the bishops, a successful result involved achieving three elements. Firstly, achieving access to the courts. This otherwise typical right of the Roman citizen had been denied to Christians by Diocletian in 303 and repealed a little less than a decade later by Galerius, and subsequently by Licinius and Constantine. Secondly, by means of bringing prosecutions against their opponents, they achieved the exclusion of their opponents from episcopal status -- and the patronage and privileges the emperors granted those they acknowledged as bishops. Thirdly, it was necessary to achieve a favourable balance of power between lay and episcopal authority. To achieve success via the courts, the bishops had to persuade imperial bureaucrats and the emperor to do what the bishops wanted.

As an iterative process, this episcopal turn to dispute resolution via the courts concentrated access to episcopal status with those bishops who already enjoyed imperial favour as enjoying imperial favour made achieving the exclusion of one's opponents and inclusion of one's allies easier. Entering the system and attempting to succeed without playing by the same rules of patronage as other would-be bishops was made more difficult as a lack of imperial favour diminished your ability to defend against the attempts of others to exclude you or for you and your allies to broker advantages for each other.

Furthermore, this thesis argues that this disparity of privileged access to the dispute resolution mechanisms of Roman law produced two different episcopal modes of engaging with the power structures of the Roman Empire through iterative episcopal conflicts in the fourth century.

This thesis labels bishops of favoured imperial status "non-Nicene" and non-favoured imperial status as "Nicene" because such labels describe the historical reality of the two main episcopal networks of shared affinities: ideological, interpersonal, and geographical, while still retaining sufficient clarity to model the
process this thesis identifies. However, this thesis argues that the crucial factor in the process identified was the cumulative clash of preferential or non-preferential accesses to imperial favour mediated by the process of dispute resolution, not ideological or doctrinal criteria.

The non-Nicene bishops, having favoured imperial status, accrued legal precedents through their successes via the courts. This led to increasingly narrow specifications of who might hold episcopal status (orthodoxy) as iterative inter-episcopal conflict sought to concentrate this status and its attendant access to privileged status/resources/favour among their allies while restricting it from others. They crafted the integration of the episcopate as a magistracy within the existing power structures of the Roman world, adding their existing roles as community mediators and leaders to the hierarchy of diverse forms of dispute resolution and exercise of authority.

The Nicene bishops, lacking imperial patronage, struggled to succeed in a system that only favoured their opponents to a greater and greater degree over time. This significant disadvantage, paradoxically, appears to have fostered great creativity among the Nicene bishops to find solutions to succeed regardless. Those bishops who did survive this systematic disadvantage clung tenaciously to the resources they and their allies managed to acquire, crafting a patrimony that constructed an alternate system by which status and authority might be claimed outside of the direct grant by an emperor.

For much of the fourth century, this Nicene patrimony was a "thought world", rhetorical concepts that had been found to smooth the way. This changed when a key historical event in the 380s reversed the balance of power between the non-Nicene and Nicene bishops. This key event was an alliance between the Nicene bishops and a new dynasty arising from Theodosius I. This Theodosian dynasty

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49 See also further above, pp. 25ff.
replaced the imperial dynasties that had previously preferentially favoured the non-Nicenes and offered imperial favour preferentially to the Nicene bishops instead.

With this, these Nicene bishops enjoyed both the mid-century patrimony of the non-Nicene bishops (which was predicated on agency within the power structures of the Roman Empire and required imperial favour to activate) in addition to the Nicene's own patrimony which offers rhetoric of moral claims to support episcopal authority in competition with imperial authority. They had access to the playbooks for success with or without imperial favour, which consequently gave them a significant advantage over the now out of favour non-Nicene bishops in the next stage of the evolution of the Late Antique episcopate.

The legal strategies of the pre-Theodosian period bishops (non-Nicene or Nicene) and the Theodosian Nicene bishops varied in relation to the following elements, summarised in the table overleaf.
Table 1: From Privilege to Proscription

<table>
<thead>
<tr>
<th>Stage I: Privileging Conformity (313 - 380s)</th>
<th>Stage II: Penalising Deviance (380s - 450)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Pre-Theodosian Bishops (non-Nicene or Nicene)</td>
<td>• Theodosian period Nicene Bishops only</td>
</tr>
<tr>
<td>• legal texts issued focus on affirming the <strong>privileges</strong> of the orthodox</td>
<td>• legal texts sought focus on <strong>penalties</strong> for proscribed opponents</td>
</tr>
<tr>
<td>• achieving access to the courts and achieving their specific goals are treated separately</td>
<td>• achieving access to law courts and achieving exclusion of opponents are treated together</td>
</tr>
<tr>
<td>• exclusion of opponents achieved by criminal prosecution (esp. treason but also <em>maleficium</em>, murder, property crimes, etc.)</td>
<td>• exclusion of opponents achieved through laws that proscribed them as deviant group members (<strong>&quot;heresy&quot;</strong> law)</td>
</tr>
<tr>
<td>• success is reliant on lay authority above episcopal authority</td>
<td>• success is less reliant on lay authority over episcopal authority</td>
</tr>
</tbody>
</table>
0.4 Methodology

The methodology of this thesis is informed by the works of several other scholars.

Firstly, the work of R. I. Moore frames "heresy" as a non-theological subject of study. His *Formation of a Persecuting Society* investigated why the "orthodox" chose to seek out and penalise "heretics", the mechanisms they used or created in order to do so, and the contingent effects this persecuting drive had on Medieval society.\(^{50}\) While this thesis concerns a period of time separated from that of Moore's focus by several centuries, it makes use of his framework of "heresy accusations" and "orthodoxy claims", where the relationship between heresy and orthodoxy is relational and enacted when an accusation is made by a figure making an opposite, implicit claim to orthodoxy.

Jill Harries has drawn attention to the importance of the language of Roman legal texts, and the way that the authority of Late Antique emperors acted through the legal documents issued in their name.\(^{51}\) She has written on the production of Roman law in Late Antiquity and its relationship to constructions of Roman authority.\(^{52}\) She is also the author of one of the few general works that discusses how Roman criminal law progresses from the Republican period through to Late Antiquity.\(^{53}\) Her work has helped the present study in appreciating the context of production of both the legal texts that have survived as texts and those that have only survived as legal documents mentioned in other surviving texts.

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52 Harries, *Law and Empire*, particularly 36-55.

Caroline Humfress's *Orthodoxy and the Courts* examined one contingent result of the Christianisation of the Roman Empire, the increasing numbers of elite Roman men who entered the episcopate in the late fourth and following centuries after a legal career in the imperial bureaucracy. Her study found that, contrary to more modern expectations about "Christians" but quite in line with what one might expect of elite Roman men, Late Antique bishops were quite active in their use of Roman law to achieve their goals-- even when their goal was enforcing orthodoxy. Humfress's study focused on the Theodosian and later periods. This study expands on her research by investigating the legal activities of bishops from the toleration legislation at the beginning of the fourth century through to the Theodosian-Nicene takeover.

Erika Hermanowicz's study of late fourth- and early fifth-century North African bishops and their use of Roman law to enforce their conception of orthodoxy on their colleagues provides several methodological tools for the present study. She contextualised surviving legal texts with extra-legal texts like episcopal letters and the lives of bishops. This methodology resupplies context to legal texts whose preservation in compilations like the *Theodosian Code* and the *Sirmondian Constitutions* involved an editing process that concealed the original context of production. In addition, this form of legal narrative history also provides a way to read against the tendency of documents written either by or about bishops to valorise the activities of those men.

The political biographies of Ambrose of Milan, by Neil McLynn, and Athanasius of Alexandria, by Timothy Barnes, provide models of scholarship that are concerned

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54 Humfress, *Orthodoxy*.

55 Hermanowicz, *Possidius*.


with the activities of Late Antique bishops as political agents rather than theologians. This study both extends and critiques their work by taking advantage of the more recent scholarship of Harries, Humfress and Hermanowicz (above) to provide a new legally focused perspective of episcopal agency and its integration into the power structures of the Later Roman Empire.

Finally, this study is in keeping with the minimalist model of Roman governance. This model argues that what can look like a purposeful progress with the historian's hindsight can also simply be the build-up of several iterations of contingent cause and effect. Fergus Millar's 1977 *The Emperor in the Roman World* is the landmark work that opened this concerning Imperial Roman history. Christopher Kelly's *Ruling the Later Roman Empire* brought this approach to the study of Late Antiquity. Kate Cooper has begun to investigate the relationship between the leaders of the Christian community, the bishops, to the net of patronage and influence linking elite Roman men that this minimalist approach sees as governing the Roman Empire.

**0.5 Thesis Outline**

This thesis comprises four main chapters: two concerning the pre-Theodosian "privileging orthodoxy" strategy (Stage I) and two concerning the beginnings of a Theodosian-Nicene "penalising deviance" strategy (Stage II).

In Chapter One, I will explore the typical use of Roman law in inter-episcopal conflicts in pre-Theodosian period via the case study of Athanasius of Alexandria's

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61 The key differences for the two strategies are summarised in Table 1: From Privilege to Proscription, above, p. 46.
intensely contested episcopate. This chapter will establish that Nicene and non-Nicene bishops made similarly active use of Roman law in these conflicts.

Chapter Two will use the case of Priscillian of Avila as a well-documented but late example of the pattern of episcopal use of Roman law established in Chapter One. Having charted the use of Roman law by both sides of this conflict up to the point of Priscillian’s execution, this chapter will conclude with a discussion of the impact of this legal execution of a bishop on two of Priscillian’s contemporaries: Martin of Tours and Ambrose of Milan.

Chapter Three will provide a legal narrative of the Basilica Controversy centred on Ambrose of Milan. Of the conflicts that Ambrose intervened in, this was the only one that involved the Nicene/non-Nicene binary and the only one to involve a directly disputed episcopal claim. This chapter will distinguish the legal strategy employed by Ambrose’s antagonists and the bishop himself: while the non-Nicene bishops acted according to the norms of episcopal use of Roman law established in Chapters One and Two, Ambrose in the Basilica Controversy refused to play the game according to those rules. This chapter will explain how Ambrose’s survival strategy defused the threat of Roman law in the hands of an emperor.

The final chapter will follow Ambrose’s use of his new survival strategy, a rhetoric of jurisdictions divided between God and the City, through three further conflicts where Ambrose faced off against an emperor instead of a bishop. The chapter will show how Ambrose obscured each conflict’s legal context by foregrounding what Ambrose proposed as the religious context. He heightened the appeal of his presentation in each case by focusing on a particular binary of identity (e.g. Christian-pagan, Christian-Jew, and moral-immoral) while eliding others, demanding his listeners pick a side. In this way, he was able to craft a versatile and powerful rhetorical package that would be available to later ecclesiastics.
This thesis argues that Ambrose's rhetoric of divided jurisdictions, between cases of the City and those of God, was a culmination of the process set out by this introduction.

Ambrose's model of divided jurisdictions was one creative output of the historical process that this thesis has identified. This process spans the fourth century and led to a transformation of episcopal polity through successive conflicts mediated through the law and the cumulative construction of modes for succeeding within the restrictions of these modes. The Nicene mode was more flexible and able to weather changing political circumstances as the experience of Nicene bishops excluded from easy success via legal judgements preferentially granted them prompted the Nicenes to establish a mode of weathering this system despite their legal disadvantage. In the 380s, at the height of Ambrose's episcopate, the fortunes of the Nicenes would change and progressively more and more of the Empire's Nicene bishops belonged to an elite in-group instead of their experience earlier in the century as excluded from access to power. Acting for his own survival and then for his ambition, Ambrose was a bishop at the right place at the right time of the right affiliation and posterity has believed his claims and forgotten about his luck.
1. Imperial Letters, Petitions and Rescripts: Nicene/non-Nicene Conflict through the Roman Courts (313-375)

"[Athanasius] went up to the most religious Emperor [Constantine], where he [...] requested either that a lawful Council of Bishops might be assembled, or that the Emperor would himself receive his defence concerning the charges they brought against him."

Athenianus of Alexandria (c. 340s)

1.0 Introduction

1.0.1 Context

Constantine I convened the 325 Council of Nicaea to resolve conflict among the bishops, which in practice at the council itself focused on the conflict between Arius, a presbyter from Alexandria, and Athanasius, a deacon of that city. While the council's conclusions sanctioned Arius for his views and valorised Athanasius's alternative position, episcopal conflict that was seen as and portrayed as connecting to this initial conflict between Arius and Athanasius continued through the fourth century.

This chapter chronicles the use of Roman law, most frequently the use of petitions to imperial officials up to and including the emperor, in conflicts between non-Nicene and Nicene bishops between the first exile of Athanasius in 335 and the accession of Ambrose as bishop in 374. It is the hypothesis of this chapter that it is Constantius II's attempts to manage bishop Athanasius of Alexandria, and the consequences of his use of the mechanisms of Roman law to do so, that form the main precedents for use of Roman law in subsequent instances of episcopal conflict.

This chapter has two main purposes. To highlight what was significant and innovative about Ambrose's approach to episcopal participation in Roman law, it is necessary to first examine what the status quo concerning this was before Ambrose was ordained bishop. It is equally important that we are able to appreciate the degree to which the legal strategies of Ambrose's opponents conformed or innovated upon established models of episcopal participation in Roman law rather than acting erratically or recklessly in their strategies.

This chapter will follow the developments of recourse to Roman law in inter-episcopal conflict through the term of Athanasius's episcopate, highlighting both the specific circumstances involved in each case and their cumulative effect over this period. As a bridge to following chapters, this chapter will conclude with a discussion of how knowledge of these earlier cases and developments can be demonstrated in the Western Empire in the last quarter of the fourth century, and specifically among the contemporaries of Priscillian of Avila (the focus of Chapter Two) and Ambrose of Milan (Chapters Three and Four).

1.0.2 Contributions

The inter-episcopal conflicts discussed in this chapter have been frequently studied from a number of perspectives, most notably that of their theological and political dimensions, as well as more broadly as evidence for the history of the Church and development of doctrine in this period. However, the use of Roman law by these

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bishops and the impact of their choice to do so in these conflicts has not yet been significantly investigated. This forms the main contribution of this chapter.

The episcopal conflicts over Eastern sees, particularly those of Alexandria and Constantinople, are better attested in our sources but provide useful comparanda for exploring the less detailed record of Western episcopal conflict. With key Eastern bishops like Athanasius of Alexandria in exile in the Western half of the Empire and key Western bishops like Hilary of Poitiers likewise in exile in the East, it is crucial to cover events occurring in the Empire when considering which uses of Roman law would be later taken as established ways of managing this sort of episcopal conflict.

In the West, the see of Milan was contested to a higher degree of legal challenge over the course of these fourth-century conflicts than most other Western sees (excluding the see of Rome). As will be discussed later in this chapter, the two occupants of the see of Milan prior to Ambrose are recorded as experiencing such legal challenges to their authority to retain their see. Thus, even before the shift of political scene that brought the imperial court to the doorstep of the bishop of Milan, we can see bishops making use of Roman law to compel and counteract the compulsions of their opponents.

1.1 Bishops Seeking Privileges: Between Nicaea and Rimini (325-350)

1.1.1 Athanasius’s First Exile (335)

Then only a deacon, Athanasius attended the council of Nicaea in his capacity as personal secretary to Alexander, the then bishop of Alexandria. Three years later, on Alexander’s death, Athanasius became bishop. Possessing little reticence when it came to conflict, his episcopate would not be smooth. Athanasius would be

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65 Discussed above, Introduction 0.4, p. 54, the study of episcopal participation in Roman law is in itself a relatively new area of study. See e.g. Humfress, Orthodoxy.
removed from his see five times during his life, spending over a third of what would have been forty years as bishop in exile.

The first instance occurred under Constantine in 335. After receiving notice that Athanasius had mistreating "Arians" and "Meletians" (who were alleged to follow a similar position) within his diocese, Constantine commanded a synod to be held in Tyre. Socrates relates that Athanasius was compelled to attend by "the menacing letters of the emperor" [τὰ βασιλέως ἀπειλητικά γράμματα], which promised to compel him by force if he did not attend voluntarily. This synod condemned Athanasius, despite a defence that involved disputing both the facts of the charges brought against him and the procedures being followed.

Of further interest is the detail that Athanasius's defence was directed to both the bishops and Dionysius, the governor of the province. Dionysius must have been the lay official charged by Constantine with convening the council and compelling Athanasius's attendance. It is unclear whether this indicates that Dionysius had some authority of judgement at this council in combination with the bishops, or whether Athanasius addressed complaints to Dionysius only on the matter of the council's procedure.

Seeking to counteract this condemnation, Athanasius went to Constantinople, pursued by his opponents. Athanasius was able to gain access to Constantine first, seeking an appeal judgement concerning his deposition at Tyre and demanding the emperor either convene a further council or hear Athanasius's defence himself. Constantine wrote to the opposing bishops who had travelled from Tyre,

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66 Athan., Apol. c. Ar. 82; Apol. ad. Const. 1.
70 Athan., Apol. c. Ar. 9.
demanding their presence to offer their defence.  

Eusebius was able to successfully argue a case against Athanasius, focusing on a charge that had not been raised at Tyre: that Athanasius had threatened to halt the grain supply from Egypt. Constantine exiled Athanasius to Trier.

This first exile of Athanasius highlights many features of episcopal participation in Roman law that will become common in the later examples.

1. Bishops on both sides of the dispute see taking the dispute into the jurisdiction of Roman law by appealing to the emperor to be a suitable measure, albeit after attempting to resolve the issue at a gathering of bishops. Indeed, appealing to Roman law is often the recourse of someone who has been condemned at a council. Rather than being seen as elements in two separate systems, they might be seen as complementary elements of one system.

2. There is visible concern to tailor charges discussed within the Roman justice system to fall within existing categories of prosecution, in this case, by suggesting that Athanasius had interfered with the grain supply. That is to say, at this stage, there are no attempts to have bishops disciplined for simply being heretics qua heretics.

3. Imperial letters play a significant role in the proceedings, acting as instruments of imperial authority. Constantine's letter to the bishops

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71 Athan., Apol. c. Ar. 86.

72 Athan., Apol. c. Ar. 9, notes that this was not a charge raised at Tyre.

73 Athan., Apol. c. Ar. 87. The source for this is the letter of Constantine II that restores Athanasius to his see, discussed shortly below.

74 This thesis focuses on the use of Roman law to maintain or dispute episcopal status, as this trumped acclamation by a city's community or a group of episcopal peers at least as late as the 380s. For a discussion of how the evidence of conciliar material might be used in further complementary research, see Conclusion, pp. 225ff.
opposing Athanasius not only compels them to present themselves to answer Athanasius’s claims of victimhood against them, but also perhaps by implication repeals the conclusions of the council at Tyre by suggesting that the issue remains up for debate. Athanasius’s own account of the affair also highlights this. His *Apology Against the Arians* notably reproduces a number of letters either sent to or from imperial officials, of which Constantine’s letter noted just above is just one.

Upon the death of Constantine, the empire was divided up amongst his successors, with Constantine II responsible for Britannia, Gaul, and Hispania and based in Trier, the city of Athanasius’s exile. Athanasius successfully petitioned him for a letter to the people of Alexandria that would repeal his exile and reaffirmed his status as bishop of Alexandria. The letter characterises Athanasius’s exile as a protective measure imposed by Constantine I, and insists that:

"It was the fixed intention of our master, Constantine Augustus, my Father, to restore the said bishop to his own place... [Constantine II has] thought proper to fulfil that intention of the Emperor of sacred memory which [he has] inherited from him". 75

The letter was important enough to Athanasius that it is the final source included in his *Apology Against the Arians*. 76 It is also included in the fifth-century church history of Socrates of Constantinople, who notes that Athanasius returned to Alexandria "relying on this letter [τούτοις θαρρῶν τοῖς γράμμασιν]." 77

It is important to reiterate at this point that imperial correspondence has a legal dimension and force that is lacking in the personal correspondence of private

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75 ιμαγαροῦν εἰ καὶ τὰ μᾶλλα πρὸς τὴν προσφυλεστάτην ὑμῖν θεοσέβειαν ὁ δεσπότης ήμῶν Κωνσταντῖνος ὁ Σεβαστός, ὁ ἐμὸς πατήρ, τὸν αὐτὸν ἐπίσκοπον τῷ ἰδίῳ τόπῳ παρασχέν ἐπιμέρετο, [...] ἀκόλουθον ἤησσάμεν τὴν προσφέρειν τῷ ἰδίῳ θείῳ μηνής βασιλέως διαδεξάμενος πληρώσαι": Athan., *Apol. c. Ar.* 87, trans. Robertson, 146.

76 This is presumably Athanasius’s translation into Greek of a Latin original.

Within this perspective, it is easily understandable why Athanasius could "rely" on the letter of Constantine II to restore him to his see. It could be argued that Athanasius's use of the letter hinges on using it to claim a relationship with an emperor, and hence trade on the perception of a patronage relationship, but this is not the full picture. The letter is an instrument not only of imperial will but of Roman law, and by successfully petitioning Constantine II to acquire it, Athanasius gained access to all the authority of Roman law in his attempt to regain his see. It is not surprising therefore that he was successful in this instance.

The significance of imperial letters like this as evidence for an actively petitioning fourth-century episcopate has been underappreciated in scholarship concerning Athanasius and his contemporaries, which in turn has led scholars to perceive the bishops as acting far more independently of the structures of Roman law than this thesis demonstrates.

For example, in *Athanasius and Constantius*, Timothy Barnes notes that the letter by which Constantine summoned bishops to re-consider the question of Athanasius's episcopal status in 335 "rendered null and void the condemnation which the Council of Tyre had pronounced against Athanasius." He does not reference the specifically legal nature of imperial letters, but regardless accepts that Constantine's authority was able to repeal the judgement of the bishops who he had previously gathered at Tyre. However, when discussing Athanasius's first exile, Barnes proposes that Constantine exercised only the minimum of authority. He states that Constantine "did not depose him [Athanasius] from his see or formally try him: he merely suspended him from his duties pending further investigation."  

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78 Harries, "Superfluous Verbiage?"
This fine distinction about the ways in which Constantine's legal authority intervened in this affair is necessary to maintain Barnes's "model of the relationship between the emperor and the bishops," in which he argues that Constantine had previously granted the bishops legal authority that superseded that of not only provincial officials but the emperor himself. He further argues that Constantine "felt himself empowered to acquit a bishop of any criminal charges made against him but not to convict him: the conviction and consequent deposition of a bishop were the exclusive right and prerogative of a council of his peers." Barnes supports this with Eusebius's discussion of Constantine's laws relating to the legal force of judgements of church councils in his Life of Constantine and the letter of Constantine II preserved by Athanasius (discussed above).

My disagreement with Barnes on this point comes down to a more general difference in the methodology we have each used, which has led to our two different hypotheses concerning the place of the bishops within the power structures of the Roman Empire. I am in agreement with Harries, who stated when reviewing Barnes's recent biography of Constantine:

"B. assumes the existence of a lost major initiative [of Constantine's pro-Christian legislation], ignoring the implications of a proposal (suggestio) and response system, now recognised as the prevalent method of inducing new legislation. [...] B.'s legislative model

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82 Barnes, Athanasius and Constantius, 24; Barnes, "Constantine, Athanasius," 13.

83 Barnes, Athanasius and Constantius, 24; Barnes, "Constantine, Athanasius," 13.

84 Barnes, Athanasius and Constantius, 248 n. 21: "Eusebius, VC, 4.27.2." For a discussion of this source in the context disputing its evidence for episcopal immunity from Roman law, see Appendix 1: The Myth of Fourth-Century Clerical Immunity, pp. 241ff.

85 Barnes, Athanasius and Constantius, 248 n. 19: "Apol. c. Ar. 87."
assumes an emperor legislating from on high; the responsive model sees Constantine as a man who moved forward by incremental changes, allowing existing institutions and practices to evolve at their own pace and prompted by others, thus creating the illusion that his actions were endorsed by the consent of the governed.\(^{86}\)

It is unstated within *Athanasius and Constantius* but axiomatically implicit throughout the work that Barnes assumed that legal pronouncements by emperors about bishops reflect a consistent imperial policy and established enduring and automatically enforced norms. From the evidence of Eusebius's *Life of Constantine*, in which Constantine is said to have stated that "the priests of God were more trustworthy than any magistrate," Barnes extrapolated that "even the emperor lacked the right to countermand them" and "what was new in the Christian empire of Constantine was the automatic enforcement of the decisions of church councils."\(^{87}\)

Barnes acknowledged that Athanasius's exile in 335 does not fit the pattern he proposes, in that he does not see Constantine exiling Athanasius as a simple enforcement of the ruling from Tyre, but still takes the evidence of the letter of Constantine II to only confirm what Barnes took to be a historical fact: that Constantine I removed Athanasius from Egypt to remove him from danger, not to remove him from the see of Alexandria.\(^{88}\) This fit overall with Barnes's portrayal of Constantine treating the bishops in a hands-off manner and a separation between the judgement of councils and the actions of the emperor, that "in significant ways the Christian bishop was now outside the normal legal system."\(^{89}\)


\(^{87}\) Barnes, *Athanasius and Constantius*, 172-73, with Eusebius, *VC*, cited as above, 72, n. 28, trans. Barnes. See also Barnes, "Constantine, Athanasius," 15: "the normal pattern was that a bishop deposed by a council of bishops was automatically exiled by the emperor or a subordinate official".


\(^{89}\) Barnes, *Athanasius and Constantius*, 174; Barnes, "Constantine, Athanasius," 16.
By contrast, my own methodology assumes that a better model for the production of Late Antique legislation is the responsive petition model that Harries contrasts with Barnes's model in the quote above and that texts produced within conflict situations will make tendentious claims about just which facts are most relevant in a light that best serves the agenda of the author.  

As such, I would argue that Constantine's actions regarding Athanasius are best explained by Constantine acting in his imperial capacity as the legal highest authority according to Roman law, contra Barnes, and reinstating Millar. That in this case, Constantine issuing written orders for the bishops to convene to debate the issue of Athanasius's episcopal status, means that Constantine did in fact see his judgement as appropriate to re-open the case of Athanasius discussed at Tyre, and that he did so in response to Athanasius's petition. In this way, Constantine acted much as the emperor might hear appeals from provincials who wished to contest the judgements of provincial magistrates. And then, having been convinced of the arguments of Athanasius's antagonist, Eusebius of Nicomedia, Constantine also saw his judgement as appropriate to convict and exile Athanasius.

Constantine II's account presents a revisionist account of the legal circumstances of Athanasius's exile to suit the purposes of his letter, which is to legally affirm Athanasius's episcopal status in 337. It also very likely in response to Athanasius's further active use of the petition system to appeal his exile. In this way, Constantine II's letter implies that the terms of Athanasius's exile have been misunderstood and that his letter seeks to clarify them.

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90 See in particular, Chapters Three and Four, below, where I discuss Ambrose's rhetorical strategy of eliding the relevant legal context in his portrayal of conflict situations in which he intervened.

91 Barnes, *Athanasius and Constantius*, 172, suggests that bishops are the sole exemption to the sort of supreme authority that Fergus Millar argues the emperor held in *The Emperor in the Roman World* (1977).
This explanation of Constantine's treatment of Athanasius is also in accordance with the trends observed in the historical examples throughout the rest of this chapter, in which emperors did not hesitate to intervene in the affairs of bishops.

1.1.2 Athanasius's Second Exile (340)

Constantine II was only one of a few emperors active at this time. In 340, Constantius II, his brother, removed Paul from the bishopric of Constantinople, replacing him with Eusebius, previously of Nicomedia. 92 Eusebius was one of Athanasius's primary accusers in the events leading up to Athanasius's first exile, and Constantius II was a known non-Nicene sympathiser, and it was he, not Constantine II, who was responsible for Egypt. Conflict between non-Nicene and Nicene factions within Alexandria soon gave a pretext for a group seeking to remove Athanasius to petition Constantius II.

The group seeking to remove Athanasius seem to have made three charges: that Athanasius had resumed his see in conflict with the judgement of a council of bishops (i.e. that the rulings of Tyre were still valid, despite Constantine II's affirmation of Athanasius), that he was inciting sedition that had resulted in deaths and was using the pretext of this sedition to have people arrested and delivered to tribunals as responsible for the riots, 93 and that he was again abusing the grain supply. 94 They advanced these charges in the winter of 337/8 at a council in

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92 Socrates, Hist. eccl. II.7
93 Athan., Apol. c. Ar. 5 cites a letter from a later council that affirmed Athanasius's innocence on the charges initially brought against him. It does not dispute that the prefect of Egypt had men executed, but insists that Athanasius was not involved. See also: Socrates, Hist. eccl. II.8
94 Athan., Apol. c. Ar. 18, discusses Athanasius’s good management of a grain subsidy for widows as a defence against charges that he had sold the grain and kept the profits. See also: Socrates, Hist. eccl. II.16; Sozom. Hist. eccl III.9, both of which repeat the charges about the grain supply. Socrates, Hist. eccl. II.17 relates that Constantius threatened Athanasius specifically with the death penalty in regards to this.
Antioch.95 Athanasius’s letter from Constantine II carries a date of June 337, only six months previous.

Athanasius records that the council against him formally communicated their rulings to Constantius,96 who wrote to Athanasius to summon him to court to answer the charges made against him. An accusation of embezzlement, which may be related to his alleged misuse of grain subsidies for widows, seems to have been added at this point.97 In addition to this petition regarding Athanasius personally, there was also a request for the prefect of Egypt, Theodorus, who had allegedly executed and exiled people on Athanasius’s request,98 to be replaced by Philagrius, who had been prefect at the time of the 335 enquiry into Athanasius’s behaviour and was sympathetic to his opponents.99

Athanasius travelled to Constantius II’s court in Caesarea to defend himself,100 and on his return, enjoyed the company of the hermit Antony who came down from the mountains for three days of miracles and conversions.101 This attempt at seeking and demonstrating popular support in Alexandria was followed by the arrival of Philagrius to enforce Constantius’s will to exile Athanasius.

This anecdote also has strong legal dimensions. When seeking to remove Athanasius, his opponents chose the mechanisms of Roman law by petitioning the emperor. The successful charges include existing crimes like sedition and embezzlement. They imply that Athanasius is either perjuring himself by falsely accusing people of sedition or at least actively participating in Roman law by

95 Barnes, Athanasius and Constantius, 36.
96 Athan., Hist. Ar. 9.1.
97 Athan., Apol. c. Ar. 18.2.
98 Athan., Apol. c. Ar. 5.4.
99 Athan., Apol. c. Ar. 9.2.
100 Barnes, Athanasius and Constantius, 45.
101 Athan., v. Ant. 69-71.
legitimately accusing selective others of participating in the riots. While it would seem unlikely that anyone would accuse Athanasius of having people arrested if this had not in fact taken place, Athanasius records that he was accused of murder (of a specific person who happened to still be living at the time of the charge) in an earlier conflict.\(^{102}\) The earlier murder charge and the later accusation of complicity in legal processes ending in executions suggests that there was something particular about the idea that the bishop had acted in ways that had led to deaths, rather than merely participating in Roman law, per se, that was at issue.

Whether the exchange replaced an Athanasius-positive or Athanasius-neutral Theodorus, the request to replace him with Philagrius highlights another legal strategy that could be pursued, installing bureaucrats that were sympathetic to the cause of one's own faction, hence smoothing the way for future legal challenges to be successful.

A further council held at Antioch in the winter of 338/9, at which Constantius was present,\(^ {103}\) reiterated Athanasius's condemnation. The charge of embezzlement was not mentioned, but Athanasius's complicity in the riots that attended his return to Alexandria, the deaths that resulted in the violence itself and the legal violence that followed Athanasius handing others over to the prefect remained. "A certain Gregory" was appointed to be bishop instead.\(^ {104}\)

According to the fifth-century church historians, Gregory arrived in Alexandria backed by soldiers.\(^ {105}\) Athanasius himself provides us with a text that functions as a

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\(^ {102}\) Athan., *Apol. c. Ar.* 28, preserves a letter of Julius of Rome which insists upon Athanasius's innocence on this point and all others.

\(^ {103}\) On Constantius's presence: Socrates, *Hist. eccl.* II.8, though the timing of the council in Socrates's narrative (after the death of Constantine II) does not agree with Barnes's reconstruction or the narrative as outlined in Athanasius's own sources.

\(^ {104}\) Athanasius describes him as "Γρηγορίοι τινός" in ep. enc. 2.2. See also Socrates, *Hist. eccl.* II.10; Sozom., *Hist. eccl.* III.5.

\(^ {105}\) Socrates, *Hist. eccl.* II.11; Sozom. *Hist. eccl.* III.6
character assassination for the prefect Philagrius, who hires and outfits gangs of pagans and Jews to attack Christians in Alexandrian churches, and of Gregory, who condones and exacerbates the violence.\textsuperscript{106} The two take the city in what Athanasius describes in gory detail as if it were a sack of the city, with pagans, Jews and heretics alike persecuting the orthodox Christians.\textsuperscript{107} Athanasius had gone into hiding within the city, seeking to evade attempts to arrest him in the midst of this carnage. Though Athanasius's own narrative suppresses it, Nicenes, or whoever within the city considered Athanasius to be their bishop, also committed the violence they were later accused of committing in Athanasius's name.\textsuperscript{108}

The sources more strongly emphasise the legal character of actions undertaken by the heretics. Here, Athanasius explicitly states that Gregory persuaded the prefect to send a decree that purported to be from the people of Alexandria condemning Athanasius.\textsuperscript{109}

Athanasius says that Gregory's appointment was announced by the Prefect of Egypt in "a public letter with the form of an edict [γράμματα προτίθησι δημοσίᾳ διατάγματος ἐχοντα τύπον]" and that Gregory was coming "from the court [ἀπὸ τοῦ κομιτάτου]."\textsuperscript{110} Barnes is surely correct that Athanasius's writing suppresses the fact that he was legitimately deposed and Gregory was appointed by a council that had no glaring irregularities to make it \textit{prima facie} invalid.\textsuperscript{111} However, Barnes's

\textsuperscript{106} Athan., \textit{ep. enc.} 2.2-4.5.

\textsuperscript{107} Late Antique polemical writers did not restrict themselves to rigid Christian-pagan, Christian-Jew and orthodox-heretical binaries. Pagans, Jews and heretics could be grouped together like this as undifferentiated antagonists of the orthodox. For further discussion of the rhetorical fluidity of these binaries, see Chapter Four below.

\textsuperscript{108} Socrates \textit{Hist. eccl.} II.11 speaks positively of this violence, presumably because it was being committed in support of the view he considered orthodoxy. Further on holy violence, see Michael Gaddis, \textit{There is no Crime for Those who Have Christ: Religious Violence in the Christian Roman Empire} (Berkeley: University of California Press, 2005).

\textsuperscript{109} Athan., \textit{ep. enc.} 5.1-6.

\textsuperscript{110} Athan, \textit{ep. enc.} 2.1.

\textsuperscript{111} Barnes, \textit{Athanasius and Constantius}, 50.
argument here assumes too sharp a distinction between the appointment and
deposition of bishops through "church" means such as councils and "court" means
such as imperial letters and rescripts.

We should instead always be suspicious of bishops in vulnerable positions when
they claim that to use Roman law to affirm and dispute episcopal claims was
unheard of. Athanasius's *Encyclical Letter* insists that everyone was amazed by the
unprecedentedly legal enforcement of Gregory's appointment,\(^\text{112}\) but he himself
had made much of the letter he received from Constantine II repealing his exile and
affirming (albeit explicitly not re-granting) his claim on the see of Alexandria only a
few years before. A slightly later example concerning a disputed claim over the see
of Constantinople provides further detail to better explain the legal context of
Gregory's appointment.

1.1.3 Paul and Macedonius contest the See of Constantinople

Constantinople was an equally contested see throughout this period. After the
death of Eusebius of Nicomedia in 341, his Nicene predecessor Paul returned to the
see. A rival faction ordained a non-Nicene, Macedonius in the winter of 341/2.\(^\text{113}\)
Like many contested episcopal elections, these were accompanied by riots and
violence in the city. From Antioch, Constantius sent Hermogenes, a military
commander, to remove Paul.\(^\text{114}\) However, Hermogenes was killed in the continuing
riots in Constantinople, prompting a personal visit from Constantius, substantial
revocation of the city's grain privileges and exile for Paul.

Paul seems to have returned without having his exile repealed in 344. This time,
Constantius empowered Flavius Philippus, his praetorian prefect, to remove Paul.
Socrates notes that Constantius does this in writing, which again implies the

\(^{112}\) Athan, *ep. enc.* 2.1.

\(^{113}\) Socrates, *Hist. eccl.* II.12

\(^{114}\) Socrates, *Hist. eccl.* II.13; Sozom. *Hist. eccl.* III.7
exercise of the written will of the emperor with legal force behind it, specifically to depose a bishop.\textsuperscript{115} Rather than enter the city with an army at his back, Philippus chose to act as if he was attending to other official business, summoning Paul to a baths within the city on another pretext. Faced with the imperial mandate, Paul agreed to go quietly.

Barnes characterises Paul's capitulation as Paul realising "how untenable was his usurped position in face of the armed force of the prefect."\textsuperscript{116} But the church historians do not emphasise any show of force or violence on Philippus's part. Instead, the narrative records that Philippus only had to show Paul his mandate to remove Paul from the city and into exile outside of Constantius's domain to gain Paul's capitulation. Philippus, as an agent of the Empire, could have had soldiers at his disposal, but the stories emphasise covert action, not brute force, in this example of the law in action. Regardless of the reality, the rhetoric conveys a situation where a written instrument of law is effective in itself, even if it implies the potential threat of violence exercised on behalf of the state.

Returning to the see of Alexandria, Gregory's entry to Alexandria accompanied by soldiers might have also been accompanied by an imperial mandate from Constantius such as Philippus received to remove Paul and reinstate Macedonius. It is not contentious to suggest that Constantius wished Athanasius removed and Gregory instated. Athanasius only mentions the decree that Gregory is supposed to have forged with Philagrius, but Athanasius's account of these events in the encyclical letter is so highly pitched to rouse sympathy in his favour that he relates events out of order. Given that Constantius was willing to do so in Paul's case, it is highly possible that he could have elided Constantius providing specific legal force behind deposing Athanasius in the form of a letter because it was far less risky for

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\textsuperscript{115} Socrates, \textit{Hist. eccl.} II.16. See also: Sozom. \textit{Hist. eccl.} III.9 on the same incident.
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\begin{flushright}
\textsuperscript{116} Barnes, \textit{Athanasius and Constantius}, 86.
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Athanasius to blame a heretical bishop and a bloodthirsty official than the emperor himself.

1.1.4 Athanasius Reinstated (346)

Constantius reinstated Athanasius (and Paul) in 346, largely due to their having gained the support of the emperor Constans during their exile. Both men, and in particular Athanasius, had used their exiles to network both in the regions of their exile and to maintain a support base in the sees they wished to regain. The sources characterise the bishops winning over Constans with the justness of their plight. In practical terms, this must have involved audiences with Constans in which the bishops explained their plight and requested support. Any support that the emperor Constans might have offered necessarily carried with it legal force, and the typical method by which this legal force was exercised over the distances of the Empire involved documents written in the emperor's name. "Letters" and "imperial favour" might not sound obviously legal in character, but they could not be otherwise, given the legal function of the emperor's office.

Constantius could not allow the bishops' cause as a pretext for civil war.\textsuperscript{117} This highlights another aspect of bishops making use of Roman law. Ideally, the emperor was at this time the highest authority. But the practical reality was that there was more than one emperor and no accepted legal hierarchy among them. The emperors were also divided rather than united, which allowed the possibility for bishops to approach a different emperor after receiving an unfavourable answer (particularly one of exile to the region controlled by another emperor).

Paul returned to Constantinople with an imperially supplied entourage and letters from Constans.\textsuperscript{118} These are not preserved in the fifth-century histories, likely

\textsuperscript{117} Socrates, \textit{Hist. eccl.} II.22-3, quoting a letter of Constans verbatim at II.22; see also Sozom. \textit{Hist. eccl.} III.20.

\textsuperscript{118} Socrates, \textit{Hist. eccl.} II.23.
because we do not have a documentary dossier for Paul as we do for Athanasius. However, it is likely that such letters were intended to and were capable of functioning as Athanasius’s letters from emperors that we do have preserved. Sozomen refers to bishops like Paul who were reinstated at this time as those "whom the edict of the emperor had returned from exile [τούτοις γράμματα βασιλέως ἐπέτρεπε τὴν ἐπάνοδον]," which suggests a fifth-century perception at the very least, that legal force was involved.\footnote{Sozom. Hist. eccl. III.24, trans. Hartranft, 300.}

Athanasius’s return from exile in 346 is also recorded as being accompanied by imperial letters, but in his case, they are recorded as coming from Constantius rather than Constans. Athanasius reproduces these letters within his corpus, and thus we have them. In Athanasius’s case, Constantius was insistent that the repeal of his exile also meant that all judicial proceedings against Athanasius were dropped.\footnote{Constantius’s letter to the governors of Augustamnica, Thebaïs, and Libya preserved at Socrates, Hist. eccl. II.23 seems to abrogate something other than charges of misusing the grain subsidy, instead repealing some other instruction against those in communion with Athanasius and reinstating some form of immunity they had not been able to enjoy. A likely possibility is that this reinstated their clerical status, and reaffirmed the privileges associated with that status.} Along with retaking his see, Athanasius uses his imperial letters at the synod of Jerusalem to successfully gain communion with the attending bishops.\footnote{Socrates, Hist. eccl. II.24.}

Constans’s death in 350 once more changed the playing field, not only removing the threat of Constans from Constantius’s horizons, but also adding the threat of two usurpers in the West for Constantius to deal with and little time to deal with managing the problems of bishops. He sent back into exile many of the problematic bishops, including Athanasius.
Athanasius claimed to have been once more threatened with death. He fled Alexandria before he could be exiled through formal means, leading to his third exile. Athanasius's account of his flight is full of the language of the use and abuse of the theoretically legitimate violence of Rome: that bishops are led away into exile in chains by soldiers and that the people are beaten by imperial soldiers in an attempt to force them to affirm what he labels the "Arian" faith.

Athanasius's account is too concerned about emphasising the illegitimacy of his exile and other acts perpetrated by his opponents to note the legal niceties in detail. His intensely polemic presentation of events does not provide clear evidence of the persecution of Nicenes as heretics, but instead need imply no more than those not identifying with the particular variety of imperially supported Christianity (including but not targeting Nicenes) were legally disadvantaged.

However, in Constantinople, we have record of Macedonius regaining his see following Paul's exile and successfully acquiring an edict against those who were not "Arian" and the military force to enforce its terms. This would seem to be a clearer example of Roman law used to enforce orthodoxy. The initial provisions appear to have been for exile for non-"Arians", followed some time later by forced entry into the "Arian" communion. Sozomen's account elaborates on this to include the confiscation of property, loss of civil rights and branding those deemed guilty as a mark of their infamia, though he also notes that such action was beyond the scope of the imperial command.

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122 "ζητοῦντες πάλιν ἡμῖν ἀποκτεῖναι": Athan. Apol. de fuga 6; reproduced verbatim in Socrates Hist. eccl. II.28. This appears to indicate the threat of more informal means like mob violence rather than the death penalty.


124 Socrates Hist. eccl. II.27.

125 Sozom. Hist. eccl. IV.2.
Such penalties would become common for those prosecuted as heretics by the late fourth and early fifth century. We have numerous examples like this preserved in the *Theodosian Code*. It is possible this later status quo is colouring Sozomen’s account— the sort of penalties that should be applied to heretics being applied to the orthodox. It is also true that such penalties are extremely common for pre-existing capital crimes, like treason and sedition, and it might only be the fifth-century historians’ gloss on events that make it appear that heresy was the charge rather than another crime.

**1.2 Constantius convenes Councils (351-359)**

A council was held at Sirmium in 351. Socrates notes that the dissemination of the creed signed at Sirmium was enforced by edicts of Constantius.\(^{126}\) He implies that this was not entirely to their wishes, though this may be intended to let those bishops off the hook for signing a creed that will be considered heretical in Socrates’s own time.

With the Sirmium Council, we return to another avenue by which bishops could access Roman law in the course of their disputes with other bishops. Photinus of Sirmium was deposed by this council, and like Athanasius seeking to repeal the conclusions of Tyre, Photinus demanded to take his case before the emperor.\(^{127}\) Constantius appointed Basil of Ancyra in opposition, placing the debate in front a panel of four extremely highly ranked civil officials: Thalassius,\(^{128}\) Datianus,\(^ {129}\) Cerealis\(^ {130}\) and Taurus\(^{131}\) appointed by Constantius as arbitrators.\(^{132}\) Photinus was unsuccessful in arguing his case, and was sent into exile.

\(^{126}\) Socrates, *Hist. eccl.* II.30.


\(^{128}\) Thalassius 1, PLRE 1, 866; Praetorian Prefect in 352, addressee of one of Constantius’s laws: *CTh.* XVI.8.7.

\(^{129}\) Datianus 1, PLRE 1, 243. Comes.

\(^{130}\) Naeratius Cerealis 2, PLRE 1, 197-199; Urban Prefect in 353, addressee of one of Constantius’s laws: *CTh.* XVI.10.5.
Like Athanasius, in Photinus, we have a bishop who thought changing from the jurisdiction of a church council to civil arbitration was acceptable. This example also shows that what are often discussed as two parallel jurisdictions, ecclesiastical and lay, seem to in fact be all part of the same legal system and that fourth-century bishops saw no significant impediment in moving among these options.

Constantius continued to seek expressions of approval of his censure of Athanasius from other bishops. In his chronicle, Sulpicius Severus describes Constantius issuing an edict that punished anyone who refused to exclude Athanasius with exile. Bishops gathered at Constantius's command at Arles and Bitterae, and later in 355, in Milan.

Some bishops were content, whether their own Christology matched better with the doctrinal position Constantius supported or if they wished to comply with the emperor. Some bishops temporised and asked for the definition of the faith to be debated and Athanasius's beliefs to be judged anew, others outright refused. Eusebius of Vercelli was among those immediately exiled. Dionysius of Milan was among those who temporised, but was eventually exiled and replaced by a certain Auxentius, Ambrose's predecessor. Though he did not attend the council at Milan, Hilary of Poitiers's intense stance for the imperially out-of-favour Nicene standard meant that he was also exiled to the East at this time.

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131 Flavius Taurus 3, PLRE 1, 879-880; Praetorian Prefect in 353, addressee of one of Constantius's laws: CTh. XII.1.40. This Taurus played a leading role at the most important of Constantius's councils, Rimini in 359. See below, p. 74.

132 Epiphanius, Panarion, 72, records their names but not their ranks.


135 Sulp. Sev. Chron. II.39; Socrates, Hist. eccl. II.37; Sozom. Hist. eccl. IV.9 lists the same bishops exiled as Socrates, but adds Hilary of Poitiers to his list.

Milan was chosen for the 355 council as Constantius happened to be there at the time. The exile of Dionysius and the appointment of Auxentius marks the first time an emperor employed this sort of legal strategy for dealing with disobedient bishops in Milan itself.

Constantius exiled Liberius of Rome for his refusal to assent either to the creed formulated at Sirmium or Constantius's exile of Athanasius.\footnote{Amm. Marc. XV.7.6-10 notes Constantius removing Liberius from his see, but for Liberius refusing to consent to Athanasius's deposition, not the issue of the creed. Ammianus is more contemporary, but he is also an outsider to the Christian community. Sozom. Hist. eccl. IV.11 narrates that Constantius wanted Liberius to head a council that would anathematise Athanasius and rubber stamp a non-Nicene creed, and that this was Liberius's sticking point.} This anecdote is interesting for our purposes because one version of the story is recorded in Ammianus Marcellinus, an author who is far less interested in the purported rights of bishops than nearly all other historians of this period. In Ammianus's account, Liberius is exiled explicitly for refusing the emperor's command, in essence, for treason, rather than for his doctrinal position or his views of Athanasius. Seeking to avoid the violence and civil unrest that had come with earlier attempts to exile bishops in the East, Liberius was exiled in a method similar to that used by the prefect Philippus when dealing with Paul. This sort of measure highlights what was a complicating factor in the emperor's exercise of theoretically unequalled legal authority. A bishop who could mobilise his community into civic unrest had a bargaining tool that made pursuing legal charges against that bishop no less legitimate from a legal perspective, but from a practical standpoint, very unattractive.

1.2.1 The Council of Rimini (359)

Constantius convened a further council at Sirmium in 358,\footnote{Sozom. Hist. eccl. IV.15.} but it was his council of 359 at Rimini that would prove a turning point for the non-Nicene coalition.\footnote{On the importance of the council for the Western non-Nicene bishops, see also Williams, Ambrose, 11-37.}
The sort of consensus Constantius was after would be enforced by Taurus, his praetorian prefect, who had orders not to let any of the attending bishops leave until they had agreed. Bishops were summoned and escorted by imperial officers and their food, lodging and other expenses were covered by the fisc. This was, indeed, Constantius putting imperial resources behind efforts to enforce a uniformity of doctrine, orthodoxy.

In a format so clearly designed to highlight the exercise of imperial authority, it should not be surprising that Constantius was successful, via his praetorian prefect, in reaching a consensus of bishops who wanted to leave but could not. After some preliminary discussion, two Illyrian bishops, Ursacius of Singidunum and Valens of Mursa produced a written creed to be ratified by the council, which began Constantius's side's strategy to outlast the patience of their opponents. Some bishops attempted to register their dissent in a relatively polite letter to Constantius, which included the request to leave. Phoebadius of Agen, who we will meet again in Chapter Two concerning the Priscillianist controversy, was among the last hold-outs.

Constantius commanded that the creed that had been agreed was to be read in churches throughout Italy, once again enforcing compliance with it on the bishops in those cities. Refusal to comply resulted in exile.

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140 Flavius Taurus 3, PLRE 1, 879-880. Attested as Praetorian Prefect as the addressee of a number of Constantius's laws, including XVI.2.15 (359/360), which mentions the recently held council at Rimini "when a discussion was held concerning of the privileges of churches and clerics [In Ariminensi synodo super ecclesiarum et clericorum privilegiis tractatu habito usque eo dispositio progressa est]."

141 Sulp. Sev., Chron. II.41.

142 Sulp. Sev., Chron. II.43, notes that the number of bishops who continued to refuse the Rimini creed had dwindled to twenty.

143 CSEL 65.78-85, as discussed by Barnes, Athanasius and Constantius, 144.

144 Sulp. Sev. Chron. II.43

145 Socrates, Hist. eccl. II.37; Sozom. Hist. eccl. IV.19.
Athanasius’s comments on the wording of the creed put forward at Rimini focus on the fact of imperial connections, that for example, the text of the creed included the consular date and Constantius’s name.\footnote{Athan., de Synod. 8. He was not an attendee of either of Constantius’s councils of 359.} Athanasius drew no obvious connections between the format of imperial laws and the creed itself, but perhaps he could assume that such connections would be self-evident to his fourth-century audience.

1.2.2 The Council of Seleucia (359)

A council in Seleucia was convened later in the same year to the same end, and Constantius issued similar edicts in the East.\footnote{Socrates, Hist. eccl. II.39, 41; Sozom. Hist. eccl. IV.22; Sulp. Sev. Chron. II.42.} Seleucia was also convened via an edict, with administrative duties split between Leonas, a count, to preside and Lauricius, the local governor, to take care of background administration.\footnote{Socrates, Hist. eccl. II.39; Sozom. Hist. eccl. IV.22; Sulp. Sev. Chron. II.42.} Letters from the emperor that stipulated what should be discussed were produced during proceedings.\footnote{\“The emperor’s orders [τοῦ βασιλέως γνώμη] contributed not a little to augment this dispute, inasmuch as letters of his [γράμματα ... αὐτοῦ] were produced urging now this and now that as necessary to be considered first.\” Socrates, Hist. eccl. II.39, trans. Zenos, 68 (Bolding mine).} When discussion broke down, Acacius of Caesarea produced a written creed to be ratified, which he gave to Leonas and Lauricius.

In contrast to Rimini, Constantius’s officials here do not seem to have been under orders to keep the bishops at the council until consensus was reached. Instead, in both Socrates’s and Sozomen’s account, Leonas dissolves the council while the bishops are still divided, claiming that his orders from the emperor were to attend a council of ultimately unanimous bishops.\footnote{Socrates. Hist. eccl. II.40; Sozom. Hist. eccl. IV.22.}

From this point, Acacius and his associates refused to participate. The remaining bishops gathered to discuss a number of matters, including the contested episcopal...
status of a number of men and anathematised Acacius and his associates in their absence. However, they did so without imperial backing or acknowledgement.

Barnes has considered Constantius's involvement in Rimini and Seleucia to be "extraordinary circumstances" and "an abnormally prominent role in theological debate, a role which had no precedent." I strongly disagree. It is true, as Barnes notes, that not all gatherings of bishops in this period were convened on imperial authority. However, Constantius's efforts throughout the 350s to convene councils in pursuit of some measure of conformity and to exile disobedient bishops who refused the programme of orthodoxy Constantius was sponsoring provide ample precedent for Rimini and Seleucia. These imperially-convened councils stand as a response from the emperor to deal with the significant number of bishops petitioning the emperor to adjudicate on questions of disputed episcopal status.

1.2.3 A Tangent at Seleucia: The Case of Cyril of Jerusalem

Cyril of Jerusalem was one of the bishops whose status was discussed at Seleucia after Leonas closed "official" proceedings and Acacius of Caesarea and his faction ceased to participate in the council. Cyril had been deposed by a gathering of bishops headed by Acacius of Caesarea in 357. In response, he took his case to the emperor.

According to Socrates:

"Nevertheless, when he [Cyril] was deposed, he sent a written notification to those who had condemned him, that he should appeal to a higher jurisdiction: and to this appeal the emperor Constantius gave his sanction. Cyril was thus the first and indeed only clergyman who ventured to break through ecclesiastical usage, by becoming an

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appellant, in the way commonly done in the secular courts of judicature and he was now present at Seleucia, ready to be put upon his trial.”

Socrates’s statement about Cyril as the first and only [μόνος καὶ πρῶτος] bishop to act in this way makes a sharp distinction between ecclesiastical and secular courts of justice that is not reflected in the fourth-century sources and is barely reflected in Socrates’s own text. As we have seen throughout this chapter, bishops taking their disputes via Roman law were not uncommon at all over the period covered by Socrates’s work. The simplest explanation for Socrates’s statement is that his fifth-century sensibility could make sense of bishops he approved of seeking imperial favour in less bald ways, such as Athanasius’s approaches to Constantine and his sons, but that Cyril’s example crossed over some line that Socrates saw as requiring comment. However, what line this was is difficult to suggest from the sparse details that Socrates gives.

His account of Cyril at Seleucia condemns Cyril for approaching the emperor to contest his deposition, as quoted above, but gives no further information about what actually happened when Cyril’s case was discussed at Seleucia.

Socrates does not even note that Cyril’s case in particular was discussed, as his mention of Cyril is quickly subsumed into discussion of several more bishops whose status was currently contested. He then gives an extensive list of bishops condemned but makes no further mention of Cyril. We must skip two chapters

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154 See above, Introduction 0.2.2, p. 34-36, for a comparison of Socrates’s and Athanasius’s accounts of Athanasius seeking to appeal his deposition by the council of Tyre in the lead-up to his first exile.

further in Socrates's History to infer that Cyril must have been reinstated (or had his earlier deposition successfully contested) at Seleucia, as it is only here later in the text that Socrates notes that Cyril was once more deposed.\footnote{Socrates, Hist. eccl. II.42.}

Sozomen's parallel account gives little more information about Cyril at Seleucia, though he gives more detail about Cyril's earlier deposition.\footnote{Sozom. Hist. eccl. IV.22.25 (Seleucia), IV.25.2-4 (Cyril's deposition).} Sozomen makes no mention of either party making use of civil legal proceedings and only makes mention of bishops as actors in this conflict. He names the same officials at the council, Leonas and Lauricius, as are named in Socrates's text, but is similarly vague as to their function at the council.

Theodoret's account of Cyril at Seleucia offers even more sparse information.\footnote{Theodoret. Hist. eccl., II.22.} He notes that Acacius and partisans had previously deposed Cyril, and therefore that Cyril's presence at Seleucia was a cause of dissention among the gathered bishops as some accepted his episcopal status and others like Acacius did not. However, Theodoret's account does not even mention that Cyril's status was discussed, let alone decided upon, at the council.

What we are left with is Socrates's condemnation of a bishop choosing to appeal his deposition by a local council by approaching the emperor. Without further detail in the historical sources, Socrates's account of Cyril at Seleucia offers little for our attempts to reconstruct the practical processes of bishops participating in Roman law through the fourth century. However, his condemnation of Cyril's case as an unparalleled oddity does offer useful evidence of the changing attitudes to episcopal participation in Roman law between the fourth and early fifth century. It is a sign that fifth-century historians sometimes found their fourth-century heroes straying further from fifth-century norms than was comfortable.
1.2.4 Edicts After Seleucia

On the edicts issued after Seleucia, these are recorded as being enforced with much violence by the fifth-century church historians. Non-Nicene bishops continued to take advantage of Constantius's administration's friendliness towards them by seeking favourable edicts to use against those who refused Seleucia. Macedonius had the worst reputation: he "imprisoned some, and dragged others before the tribunals." Socrates makes much of the Eastern non-Nicene bishops making use of torture alongside these edicts, but is vague enough that it is not clear whether his point was that the force of law allowed for judicial torture or whether torture was a sign of abuse, or both.

Following Constantius's return to the Eastern side of the Empire in 360, he convened a council in Constantinople, which reaffirmed the creed promulgated at Rimini and deposed a number of bishops who refused it.

1.3 Episcopal Recourse to Roman Law after Constantius

1.3.1 Athanasius in the Aftermath of the Death of Constantius (361)

The year 361 saw Constantius's death, in the midst of civil conflict following the usurpation of Julian, Constantius's cousin. This left Julian uncontested in the imperial office. Julian also made use of edicts to repeal previous orders of banishment for a number of bishops exiled under Constantius. These included Athanasius, Eusebius of Vercelli and Hilary.

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159 Socrates, Hist. eccl. II.37.
160 Socrates, Hist. eccl. II.38; Sozom. Hist. eccl. IV.19.
162 Socrates, Hist. eccl. II.38.
163 Sulp. Sev. Chron. II.44; Socrates, Hist. eccl. II.41.
164 Sozom. Hist. eccl. V.5 suggests this was so that these bishops could be taxed. See also: Athan. Hist. Ar. 33; Apol. de fuga, 4.
165 Socrates, Hist. eccl. III.4.
Athanasius's time in Alexandria was short. After accusations against Athanasius's rapacity for acquiring wealth, Julian promulgated an edict for his removal.¹⁶⁸ However, Julian's reign was also short, and in 363, the changeover in emperors also led to a shuffling of bishops occupying various sees.¹⁶⁹ Athanasius's approaches to Jovian appear to have been hampered somewhat by additional intrigues, further criminal accusations and remembrance of just how many times Athanasius had been previously accused. However, Athanasius was eventually successful at acquiring a rescript from Jovian as reaffirming his occupation of the see of Alexandria.¹⁷⁰

### 1.3.2 Bishops of the Eastern Empire under Valens (364-378)

In 364, newly elevated emperor Valens in the East deposed a number of sitting bishops, by implication Nicene bishops. Around 366, Valens threatened Eleusius of Cyzicus with exile and the confiscation of his property unless Eleusius conformed with the creed of Rimini.¹⁷¹ He also promulgated directives to his governors that any bishop exiled under Constantius who had retaken his see was to be returned to...

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¹⁶⁶ Socrates, Hist. eccl. III.5; Sozom. Hist. eccl. V.12.
¹⁶⁷ Theodoret, Hist. eccl. III.4.
¹⁶⁸ Socrates, Hist. eccl. III.13; Sozom. Hist. eccl. V.14, on Athanasius's exile, states that Julian was provoked by Athanasius having converting many pagans to Christianity, but agrees that Julian exiled Athanasius by edict.
¹⁶⁹ Socrates, Hist. eccl. III.15.
¹⁷⁰ Sozom. Hist. eccl. VI.5.
¹⁷¹ Socrates, Hist. eccl. IV.6.
exile. Shortly after this, Eudoxius of Constantinople successfully gained an edict from Valens's government to replace Eleusius with a certain Eunomius.

The deposed Macedonius (of Constantinople) sent a party of bishops west to gain support from the Western emperor Valentinian and/or bishop Liberius of Rome. As we have seen again and again, when there were multiple emperors or a change of emperor, bishops who had been deposed or otherwise disadvantaged under one emperor would try their luck with another. In this case, Valentinian was inaccessible at the front, but Liberius was amenable to the pro-Macedonius envoy. This connection would prove little value to Macedonius when Liberius died in the following year, leaving his see to be contested in riots so violent that the city prefect had to intervene.

Returning to Athanasius, Eudoxius arranged for an edict of the praetorian prefect to be sent to the church of Alexandria, removing Athanasius. Athanasius hid for four months in a family tomb until a letter from the emperor repealed the prefect's edict and reaffirmed Athanasius as bishop. Popular opinion seems to have provoked Athanasius's recall, with civil unrest and riots in the city allegedly due to the removal of their bishop.

172 Sozom. Hist. eccl. VI.12. Valens also instituted penalties for civil officials who did not follow his directives, to ensure their compliance. This sort of secondary legislation to force officials to comply with some other legal order has many parallels. Among the examples in the Theodosian Code, such caveats usually appear at the end of constitutions. From book XVI, section 5, alone, see: XVI.5.4 (Gratian, 376/87), 12 (Theodosius I, 383), 24 (Arcadius, 394), 40 (Honorius, 407), 46 (Honorius, 409), 50 (Honorius/Theodosius II, 410), 54 (Honorius, 414), and 65.5 (Theodosius II, 428).

173 Socrates, Hist. eccl. IV.7. He was less successful in leveraging imperial favour under Constantius II. According to Sozomen, Hist. eccl. IV.14, following Eudoxius's transfer to Antioch and consecration as its bishop, Constantius wrote to the church of that city to explicitly note that Eudoxius did not have Constantius's authority in doing so. See further: Neil McLynn, "The Use and Abuse of Eudoxius of Germanicia," Kyoso-Ronso 110 (1999).


175 Amm. Marc. XXVII.3.12-13; Sozom. Hist. eccl. VI.23.

176 Socrates, Hist. eccl. IV.13; Sozom. Hist. eccl. VI.12.

177 Socrates, Hist. eccl. IV.13; Sozom. Hist. eccl. VI.12.
The fifth-century church historians make much of non-Nicenes, usually identified as "Arians", using and abusing Roman law to enforce orthodoxy under Valens. "Arians", we are told by Sozomen, have caused those who adhere to the creed of Nicaea to be beaten and fined:

"These Christians being exposed to bodily injuries, and betrayed to magistrates and prisons, and finding themselves moreover gradually impoverished by the frequent fines, were at length compelled to appeal for redress to the emperor."\(^{178}\)

It is difficult to judge whether such details reflect a fourth-century reality or if this aspect of Sozomen's account has been coloured by his own fifth-century realities. There is an important difference between a law that privileges the adherents of the Rimini Creed, and is hence of no protection to any other variety of Christian including Nicenes, and a law that targets and penalises the Nicenes explicitly—as later laws of the Theodosian era would explicitly target "Arians" among other specific heretical affiliations.\(^{179}\) It is easy to see how a Nicene-identified historian like Sozomen would see laws that offered only vulnerability to Nicenes as explicitly targeting them, even if the wording of the (unfortunately non-surviving) laws themselves did not.

The fifth-century re-telling of these fourth-century events are also complicated by a further historical layer: that of the earlier late third-century and early fourth-century persecution of Christians under pagan emperors.\(^{180}\) Sozomen's comment

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\(^{178}\) "οἱ δὲ ἐπὶ τὸ σῶμα ἐβριζόμενοι, ἄρχοντες καὶ δεσμωτηρίας παραδόμοινοι καὶ τὰς οἴσιας κατ' ολίγον δαπανόμενοι ταῖς ἐκθέντες σεβασμοῖς συμβασιονύσας ζημίαις, ἔγνωσαν δεηθήναι τὸν βασιλέα ὅπως τοὺς δεινοὺς εὑροὺς ἀπαλλαγῆν": Sozom. Hist. eccl. VI.14, trans. Hartranft, 355; See also: Socrates, Hist. eccl. IV.15.

\(^{179}\) The laws preserved in the Theodosian Code typically penalise specific heretical affiliations while not defining a specific orthodoxy. For a discussion of the rare examples where orthodoxy is defined, see below, chapter 3.2.2, p. 151-155.

\(^{180}\) The relationship of fifth-century church histories and the Nicene memory of the non-Nicene period to martyr literature, which flourished through the fourth and fifth centuries, is outside the
about the legal persecution of Nicene Christians comes in his text just before a story in which Valens ordered the execution of -- or martyred, depending on one's perspective -- a significant group of them. The story is more detailed but no less vivid in Socrates. He recorded that some eighty Nicene clerics eventually petitioned Valens for security. Valens then ordered Modestus, his praetorian prefect\(^ {181}\) to discreetly put them to death. Modestus put the men onto a boat under the pretext that it would transport them into exile, while also arranging with the ship's crew to set the boat on fire once it was out of sight of land.\(^ {182}\)

This anecdote associates the abuse of Roman law with an emperor seeking to enforce what he himself must have seen as orthodoxy, in the sense that it was the variety of Christianity he had chosen to publically support, but which Socrates and Sozomen saw as heresy. The martyrdom motif would be an obvious choice as a pre-existing literary trope that transformed the legitimate violence of the emperor into illegitimate violence acting against the pious.

The story of pro-Rimini, anti-Nicene carnage under Valens in the fifth-century church histories did not stop neatly with Athanasius's death. Euzoius of Antioch, the city in which Valens was residing at the time, petitioned the emperor to be allowed to travel to Alexandria to install a non-Nicene bishop in that see following Athanasius's death. He was granted this and a mandate issued to Palladius, then governor of Egypt, who was charged with supporting Euzoius with military force.\(^ {183}\) Quoting Socrates:

“the outrages perpetrated upon the installation of Lucius, and the treatment of those who were ejected, both in the courts and outside"
of the courts [ἐν τῇ δικαστηρίῳ καὶ ἐκτὸς δικαστηρίων], [...] some were subjected to a variety of tortures, and others sent into exile even after this excruciating process.\(^{184}\)

1.3.3 Bishops of the Western Empire under Valentinian I (364-374)

I will conclude by returning to the West, and to the reign of Valentinian I, Valens’s brother and co-emperor in the West. In Ammianus, Valentinian is not much better than other imperial figures in this period when it comes to treason trials and the abuse of legal process and violence, particularly focused on the trials for treason and divination in Rome in 370.\(^{185}\) However, in the church histories, Valentinian had a reputation for staying out of episcopal disputes.\(^{186}\) This has led to Valentinian’s religious policy being characterised in scholarship as one of toleration in contrast to Valens’s of active persecution.

There is, however, one particular incident under Valentinian that requires inclusion. Hilary of Poitiers petitioned the emperor in 364, early in his reign, concerning Auxentius of Milan.\(^{187}\) Valentinian issued an edict [cum edicto] that brought Auxentius and Hilary to debate in front of two senior civil officials, a quaestor\(^{188}\) and a magister,\(^{189}\) and with them about ten bishops in attendance [considentibus una nobiscum episcopis fere decem].\(^{190}\) Auxentius was successful at affirming his faith,


\(^{185}\) Discussed further in Chapter 3.2.3, p. 160.

\(^{186}\) Sozom., Hist. eccl. VI.7.

\(^{187}\) On this conflict, see: e.g. D. H. Williams, "The Anti-Arian Campaigns of Hilary of Poitiers and the "Liber ContraAuxentium"," Church History 61, no. 1 (1992); Barnes, "Valentinian, Auxentius and Ambrose."; Richard Flower, Emperors and Bishops in Late Roman Invective (Cambridge: Cambridge University Press, 2013), 207-17.

\(^{188}\) Viventius, PLRE 1, 972. Valentinian’s urban prefect in 364, CTh. XIV.3.7.

\(^{189}\) Probably Urscaius 3, PLRE 1, 984-5, who was magister officiorum in the West, 364-5. Amm. Marc. XXVI.4.4.

\(^{190}\) Hil. C. Aux. 7. Viventius and Ursacius are not named in Hilary's text, but can be identified by their titles. The identity of these bishops cannot be identified, which adds to strangeness of the pamphlet.
which Valentinian approved by attending his performance of the mass. Unhappily for Hilary, he was sent out from the city of Milan.\footnote{191}

Hilary's pamphlet against Auxentius begins with extensive complaints about the interference of earthly power in the business of the Church. He references Nero, Vespasian and Decius as imperial persecutors of Christianity, as well as the death of the apostle Paul in the Roman circus, and valorises the spread of Christianity "against the senatus consulta and edicts of kings [contra senatusconsulta et regum edicta]."\footnote{192} This Hilary contrasts with the miserable present, when "earthly judgements approve divine faith," insisting in "the difference between the former Church, which was handed down to us and its current corrupted state."\footnote{193}

This is an attempt at rhetorical sleight of hand. As demonstrated throughout this chapter, the interference of imperial power in episcopal conflict was by this time normal. Hilary was also surely the accuser who brought the problem of Auxentius to Valentinian's attention. Had Hilary's accusation been successfully prosecuted, no doubt his account of the trial would not have so condemned the involvement of Roman law.

Hilary's insistence that Auxentius did not confess his heresy at the debate is also very much a matter of Hilary's own opinion.\footnote{194} Hilary admitted that Auxentius stated that he did not know Arius, but insisted that this was a lie.\footnote{195}

\footnote{191} Hil. C. Aux. 9.
\footnote{192} Hil. C. Aux. 3; trans Flower, 254.
\footnote{193} Hil. C. Aux. 4; trans Flower, 254.
\footnote{194} Hil. C. Aux. 10.
\footnote{195} "Negat quoque se scire Arium": Hil. C. Aux. 8.
The reticence of Hilary’s account about his initial accusations about Auxentius to Valentinian leave it unclear what the accusations involved. Auxentius in the postscript to Hilary’s account refers to Hilary calling him an "Arian". As a formal accusation carrying legal weight, this would imply by extension the existence of a law that specifically proscribed members of the "Arians", but it is difficult to imagine what prior context would have provided Hilary with such a legal precedent.

His own conflict with Auxentius cannot have produced it, given Hilary's overall lack of success at deploying the law against the Milanese bishop. Furthermore, as noted throughout this chapter, there is little clear evidence of any laws from this period that proscribe heretical status as opposed to laws whose explicit terms restricted privileges to those of orthodox status, with Constantius’s Rimini 359 Creed becoming the standard by which this status was judged.

It seems more likely that Hilary made accusations against Auxentius as a follower of Arius that carried no legal weight, as part of a broader campaign that impugned Auxentius's orthodoxy, which was a legally dangerous charge. Auxentius's defence in the postscript very explicitly affirmed his conformance with the Creed of Rimini, which remained legally affirmed orthodoxy in the Empire at this time, regardless of Hilary’s personal views to the contrary.

Hilary appealing to the image of the earlier persecutions to describe his own treatment has parallels in his In Constantium, where he constructs the image of himself willing to be martyred by Constantius II in witness to the Nicene faith.\footnote{E.g. "pugnamus contra persecutorem fallentem [...] contra Constantium antichristum": Hil, In Const. 5.1-3.}
Williams notes that as a whole, Hilary's *In Constantium* "seems to offer a justification for Christian civil disobedience; the defence of the true faith (that is, Nicene theology for Hilary) has taken precedence over adherence to an unjust system."\(^{200}\) Both texts offer strong statements against the participation of bishops in civil proceedings. His rhetoric against Constantius damns the emperor as heretical alongside his bishops, while against (implicitly) Valentinian, Hilary was milder. Perhaps he had learnt from the past not to pick living imperial targets. But Hilary's rhetoric overall calls for complete episcopal/ecclesiastical autonomy.

Hilary's legal challenge and its failure survives for us only in Hilary's own account. McLynn has suggested Hilary produced it to salvage his reputation.\(^{201}\) Flower has suggested that, having failed to succeed in deposing Auxentius via Valentinian, Hilary wrote the pamphlet to muster support against Auxentius outside Milan.\(^{202}\) If so, he was unsuccessful. Auxentius would remain bishop of Milan until his death, after which the see would be occupied by Ambrose.

A Nicene bishop like Hilary, Ambrose would also be seeking a strategy for avoiding the threat posed by the emperor's supreme exercise of legal authority. As will be discussed in the next chapter, Ambrose also made use of the martyrdom motif to subvert the legitimacy of Roman law. However, Ambrose's rhetorical package was more versatile because it did not damn the reigning emperor or the entire legal system, merely the poor advice the emperor was receiving from heretical bishops.\(^{203}\)


\(^{201}\) McLynn, *Ambrose of Milan*, 27.

\(^{202}\) Flower, *Emperors and Bishops*, 253.

\(^{203}\) On this point, see especially Chapter 3.4, pp. 163-172.
1.4 Conclusion
This chapter demonstrated the key role the use of Roman law played in the Nicene/non-Nicene conflict of the mid-fourth century by highlighting the frequent mentions made in the narrative sources to bishops seeking and using legal documents (usually in the form of letters to and from the emperor).

This chapter has also demonstrated that the legal authority granted to the bishops by the emperors did not constitute a separate off-shoot but was integrated into the existing legal structures by which the Empire was governed.

Church councils in this period often show significant involvement by both bishops and imperial officials. Bishops used the same petition process as any other Roman citizen to request councils be convened, often to affirm or annul the rulings of a previous council if these were disputed. Emperors convened councils through written orders addressed to imperial officials. Sometimes this was a local governor, but councils where the emperor himself had an interest were usually convened with an order addressed to the relevant praetorian prefect. Constantius's series of councils in the 350s, culminating in Rimini and Seleucia in 359 were the most significant of these, with Rimini's creed becoming a more specific touchstone for orthodoxy under Roman law than had previously existed.

In some instances, councils appear to have involved the combined judgement of bishops and lay officials. Athanasius's defence at Tyre in 335 was directed at both the bishops gathered there and Dionysius, the local governor. The inquest concerning Auxentius of Milan that Hilary of Poitiers petitioned from Valentinian I involved a panel of judges that mixed bishops and quite high ranking imperial officials. This suggests that the sharp distinctions between the judgement at a council resting with the bishops and the enforcement of that judgement on the emperor or other lay officials in existing scholarship requires reconsideration.
Church councils were not the only mechanism by which bishops sought to resolve disputed episcopal statuses. They also used the petition process to directly appeal judgements from councils or from lay judges, particularly when seeking an affirmation of their own episcopal status. Athanasius provides several examples of this. He petitioned Constantine to repeal the judgement from the council at Tyre, through either a further council or Constantine's own judgement. Athanasius also petitioned Constantine II, and on a later occasion, Constans, to appeal his exiles, which had been executed previously under imperial orders. Photinus of Sirmium petitioned Constantius II for the opportunity to affirm his episcopal status; Constantius appointed Basil of Ancyra as opposing counsel and the two bishops debated Photinus's status before a panel of lay judges drawn from Constantius's court. To the examples where the petition process is discussed, we can also add the evidence of stories about bishops making use of "imperial letters," legal documents whose issue must have originated in that way, and stories where emperors order gatherings of bishops or groups of lay officials to judge cases of contested episcopal status. Hilary of Poitiers's account of Valentinian I convening a debate between Hilary and Auxentius of Milan before two of Valentinian's high ranking officials looks similar to the debate concerning Photinus, but there is no explicit mention in the text of Hilary making an initial accusation to Valentinian to spark the process.

Episcopal polemic from this period seeking to dispute the episcopal status of others made use of a rhetorical binary of orthodoxy/heresy. However, in the courts, the bishops most often accused each other not of heretical status, but sought to undermine their episcopal status by accusing them of pre-existing criminal charges. We have evidence of criminal charges brought forward in the context of church councils, but even more prominently in petitions to the emperor or other imperial officials. Accusations of sedition, murder and embezzlement of imperially allocated resources like grain subsidies dogged Athanasius's episcopate. Treason charges specifically also hung over bishops who chose to act contrary to the will of an
emperor-- a will that was formally stated in letters or other written instruments of law.\textsuperscript{204}

Aside from the imperial letters preserved in sources like Athanasius, few legal texts themselves survive from this period.\textsuperscript{205} This leaves historians reliant on the references made to legal texts and legal processes in narrative sources. From what survives, there is no clear evidence that criminal charges of heresy were prosecuted in this period.

Expanding on the research of Humfress and Hermanowicz,\textsuperscript{206} this thesis supports the hypothesis that legal proscriptions against heresy or heretics as such were a later step than the use of pre-existing charges against persons deemed to be heretics or legal challenges that focused on disputing someone's claim to privileged orthodox status. This makes practical sense, as practitioners of Roman law in 313 would not be immediately familiar with the concept of heresy/orthodoxy from Christian discourse. However, this also would mean that most of our extensive narrative sources were written at a time when the treatment of heretics, and indeed, of orthodox bishops, in Roman law was different than it had been during the period about which they wrote, and that we must consider to what extent the

\textsuperscript{204} On treason, see further in Chapter 3.2.3, pp. 157-163.

\textsuperscript{205} One pro-Rimini law of Valentinian II that survives from 386 will be discussed later in contrast with two pro-Nicene laws of Theodosius I; see Chapter 3.2.1-2, pp. 145-157.

\textsuperscript{206} See above, Introduction 0.4, p. 48. See also in particular, Hermanowicz, Possidius, 97-154, who details the decade-long process including multiple legal challenges that were necessary before Possidius of Calama was able to successfully prosecute his Donatist counterpart, Crispinus of Calama, as a heretic. This was at the turn of the fifth century (395-405) and in the midst of the period from which the majority of the "anti-heresy" law preserved in Theodosian Code comes. Hermanowicz makes a persuasive argument that the nature of Possidius's eventual successful prosecution in 405 relied on the African proconsul finally accepting that existing laws that proscribed Manichaeans were to be applied to the broader class of persons identified as "heretics" (including a further argument that "Donatists" as "schismatics" ought to be considered members of the class "heretics"). (Possidius, 120-131.) This has the important implication that while anti-Manichaean proscriptions had existed at least as far back as Diocletian, they were not considered to apply to a broader category of "heretics" before the fifth century.
fifth-century historians' experiences of the legal proscription of heretics in their own day have coloured their imagining of the past.

In his history, the fifth-century historian Sozomen notes that:

"It was accounted no venial crime by the heterodox to receive or to conceal Athanasius, but was, on the contrary, regarded as an act of disobedience against the express commands of the emperor, and as a crime against the empire, and was visited as such by the civil tribunals."\(^{207}\)

However, this chapter has shown that it was not only the heretical who were choosing to make use of Roman law, but also those whom posterity has labelled orthodox. If there is any distinction between whether bishops made use of Roman law or not in their disputes with other bishops, it is that in some cases, a bishop or a group of bishops seem aware that they either do not need to use Roman law or that there will be no benefit to them by doing so. It is these sort of practical criteria that appear to have guided their choices foremost, not ethical concern about whether to make use of the law or not.

This chapter argues that "imperial letters" received by orthodox Nicene bishops and the "rescripts" enforced by soldiers, prefects and governors on behalf of heretical non-Nicene bishops were in fact the same instruments and could potentially activate the same legal force. Thus, the difference was not between orthodox bishops using as little Roman law as possible and heretical bishops revelling in legal bloodshed, but instead in our (largely Nicene) sources portraying Nicene and non-Nicene bishops in relation to their receipt of imperial correspondence. Bishops who were considered orthodox by the sources who record them are typically recorded as receiving letters from emperors that are implied to smooth the way for that

\(^{207}\) "οὕτω γὰρ τὸ τιγὼν ἐποιοῦντο ἐργαλεῖα οἱ τῆς ἐναντίως αἱρέσεως κατὰ τῶν ὑποδεχομένων ἡ κρυπτότων Ἀθανάσιον, ἀλλ᾽ ὡς ἐπειθῆς προστάξει βασιλέως καὶ περὶ πολιτείαν ἀμφιάνως ἐίς δικαστημένων ἐξίκουν": Sozom. Hist. eccl. IV.10, trans. Hartranft, 306. Sozomen dates this occurring out of the sequence in his narrative, but during the lifetime of Constans.
bishop without ever explicitly noting how this functions. By contrast, heretical or otherwise censured bishops portrayed in sources that are hostile to them are typically shown making active and explicit use of Roman law. "Arians" and other non-Nicenes do not passively receive letters or act only in response to existing threats, they actively mobilise to petition officials and often the emperor directly. They retake their sees with rescripts in their hands and with soldiers at their backs and with military or bureaucratic officials abusing their own offices, almost always through the exercise of violence that is vividly portrayed in excess of the legitimate violence of the state.

What we should see instead of descriptions of universally understood legitimate and illegitimate use of Roman law is the process by which some use of Roman law by bishops was coming to be seen as illegitimate. This best explains the gap in our sources between the acts of bishops actively participating in Roman law and the rhetoric with which those actions were recorded when pertaining to "bad" and "good" bishops. Our sources, whether from the fourth century or the fifth, wrote about conflict in which they felt they had an important stake. The polemical agenda of these texts means that we should expect to see them overemphasising how illegitimate the actions of the other side were. The paradigm shift concerning the place of the bishops in the legal and authority structures of the Empire that separates the relevant sources from the fourth and fifth centuries should also be understood to have impacted what the fifth-century writers saw as universally illegitimate actions in the fourth century.

It is important to separate questions of which options were practically successful and which were not from discussions of which options were censured and which were not. Thus, while there were complaints by some bishops in this period about inappropriateness of bishops appointed by imperial rescript, we know that this practice occurred. We must question how different, in practical terms, was Athanasius's use of the "letter" of Constantine II that affirmed his status as bishop
of Alexandria in 337 and the use of an edict read publically by the Prefect of Egypt made by Gregory, who replaced Athanasius a few years later.

It is also important to note that episcopal complaints about the practice of disputing episcopal status through the Roman courts were not general statements, but issued in the service of contesting the status of specific bishops who had been successful at acquiring legal support for their episcopal status. Complaints about the use of Roman law by bishops associated this use with excessive, unjust and hence illegitimate bloodshed. This strongly suggests that bishops who wanted to counter-act the legal support enjoyed by men whose episcopal status they disputed needed to propose as strong and emotionally potent a case as possible to counteract the authority of that legal support. The rhetoric of illegitimate episcopal use of Roman law did not describe the status quo of the fourth century, but was instead part of an effort to undermine it rhetorically by the bishops who did not benefit.

In these first decades of alliance between the Roman state and Christian bishops, emperors typically exercised authority over bishops as they might any other citizens. Both non-Nicene and Nicene bishops attempted to take advantage of their new access to Roman law to seek affirmation of their episcopal status and to dispute the status of others. Because the emperors of the mid-century preferentially supported non-Nicene claimants, non-Nicene and Nicene bishops experienced widely different levels of success when making use of Roman law in this way, and so developed different strategies for engaging with the law.

Constantine's decriminalisation of Christianity occurred roughly sixty years before Ambrose, the main focus of the second half of this thesis, became bishop of Milan. The events of this chapter provides a suggestive outline of the developing use of Roman law by bishops in this period. The following chapters will demonstrate that the bishops of the 380s show awareness of the practices developed by these earlier bishops as well as a continuity of use.
Ambrose's own civil career, about which we know very little, would have taken place during this period, though perhaps only under Valentinian I. However, he would have also interacted with older colleagues familiar with the earlier cases.

The episcopates of his fellow bishops also bridge the two periods. We will meet Phoebadius of Agen, one of the Rimini attendees, in the next chapter at the council of Saragoza as part of the story of Priscillian of Avila. Exiles under Constantius, Hilary of Poitiers and Eusebius of Vercelli continued to be active in the West against what they (and Ambrose) termed "Arians".

We have also seen throughout this chapter that the see of Milan was more involved in these events than many other Western sees, perhaps second only to Rome. The two bishops of Milan immediately preceding Ambrose both were subject to this sort of legal action to determine whether they should remain in office or not.

In subsequent chapters, we will see Ambrose overcome challenges to his own episcopal status and his attempts to dispute the status of others. The use of Roman law in the earlier episcopal conflicts discussed in this chapter will illuminate what is distinctive or innovative about Ambrose's approach, as well as those of his contemporaries and antagonists.

This thesis will first turn to the case of a contemporary of Ambrose -- Priscillian of Avila -- rather than Ambrose himself. Because of the particulars of the evidentiary record, the use of Roman law is easier to reconstruct in some detail for Priscillian than for Ambrose. We will also see in the next chapter how Ambrose must have been aware of the events involving Priscillian, and thus, this case also illuminates crucial background influences on Ambrose's own conflicts. This next chapter bridges the present chapter and Chapters Three and Four which concern Ambrose directly and will show how the developments earlier in the century continued to be relevant during his episcopate.
2. Execution of a Bishop: The Case of Priscillian of Avila (380-385)

"We wanted to implore you [Damasus], asking that there should be a hearing of the priests, because Hydatius opposed it, and not refusing a public trial, if he preferred it. [...] However, without omitting to prefer the judgment of the saints to that of the world in a case concerning the faith, we came to Rome..."

Priscillian of Avila (c. 381)

2.0 Introduction

2.0.1 Context

In 385, at the Trier court of Magnus Maximus, bishop Priscillian of Avila was legally executed after being convicted on criminal charges of maleficium. This was the culmination of five years' episcopal conflict that also spanned church councils, heresy accusations, the acquisition of written legal instruments in response to appeals and counter-appeals from both sides of the conflict, and finally the two trials at Trier where Maximus provided a final judgement to end Priscillian's life.

This pattern of episcopal engagement with Roman law looks very familiar when compared with the pattern observed in the previous chapter. Since Constantine, emperors had allowed bishops access to the Roman courts and the bishops used that access to submit petitions and counter-petitions to lay judges all the way up the Roman legal hierarchy to the emperors themselves.

Priscillian's case is significant for this study in two main respects. The first is that the controversy centring on his disputed episcopal status did not involve rhetoric invoking the Nicene/non-Nicene binary that featured in many of the examples from...
The previous chapter and will recur in the next. In terms of this thesis's use of "non-Nicene" and "Nicene" in relational terms, to denote bishops with privileged and non-privileged access to imperial favour, Priscillian and his antagonists appear to be roughly equal in terms of their access to the law and in their political connections, which is also a contrast to the examples of the previous chapter where one side of the conflict was often significantly disadvantaged by their comparatively poor access to imperial patronage.

The second aspect is that Priscillian's execution, the execution of a bishop, though entirely in keeping with legal precedents for such a situation according to Roman law provoked significant outrage. Instead of the execution definitively ending the conflict, as Magnus Maximus may have wanted, the controversy lasted at least a further fifteen years. This moment of outrage offered an opportunity for other bishops to re-make the system. How bishops like Ambrose of Milan were able to do so will bridge this chapter and the next.

This chapter will contextualise Priscillian's execution and its effects on the imaginations of contemporary bishops about Roman law. His execution has traditionally been taken as a gory, innovative oddity, disconnected from any existing Empire-wide trends and contributing little to future developments in either the episcopate or its relationship to lay authority. It is curious that this image remains, despite Priscillian petitioning two emperors, several more imperial bureaucrats and two of the most influential bishops of the period, Damasus of

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209 On the suggestion that the Priscillianist controversy arose out of the fall-out of earlier "Arian"-Nicene tensions among the Spanish bishops, see: Escribano Paño, "Heresy and Orthodoxy."

210 Sulp. Sev., Chron. II.51, notes that related conflict was ongoing to the time of his writing.

Rome, and Ambrose of Milan. This chapter argues instead that understanding his execution as an extreme but understandable development of the now typical use of Roman law to dispute episcopal status.

We saw in the previous chapter that there is little evidence for a parallel ecclesiastical stream of justice as something separate and distinct from lay justice. Instead, fourth-century bishops made use of Roman law where it seemed useful in combination with other mechanisms of dispute resolution such as church councils and other informal meetings between bishops. The use of Roman law, and in particular, the judgements of emperors, carried more authority and were more enforceable than these other types but both types were available options, though an individual's chance of success might vary depending on the resources available to him.

This chapter's case study will confirm through a step by step analysis of the conflict that Priscillian and his antagonists inherited the same legal strategies for affirming and disputing episcopal status as the bishops of the earlier fourth century discussed in the previous chapter. This, in turn, suggests that such strategies were known to Priscillian and to his contemporaries at the cusp of the Theodosian-Nicene takeover.

The chapter will conclude with a discussion of Ambrose's knowledge of and reactions to the events discussed in this chapter, comparing him with Martin of Tours. While the earlier events may or may not have been within Ambrose's knowledge, we shall see that Ambrose was most certainly aware of Priscillian's execution following a legal trial convened by an emperor. This will bridge to the third chapter, which will consider Ambrose's own use and reaction to episcopal use of Roman law and his own experience of the threat of legal execution.
2.0.2 Contributions

There are three main areas of scholarship to which this chapter will contribute. The first and broadest is that of episcopal participation in Roman law. The recent growing interest in this area more generally has also not tended to incorporate the evidence of Priscillian and his antagonists' legal manoeuvres and counter-manoeuvres. As noted in the introduction, recent scholarship in this area has tended to focus on the activities of bishops of the fifth century and later.\footnote{212} Thus, this chapter's investigation of the legal context of Priscillian's conflicts with his contemporaries usefully extends existing scholarship in this area in earlier periods.

Secondly, this chapter extends our understanding of Priscillian's own context. In 2005, Escribano Paño noted that recent studies of the Priscillianist controversy have focused on answering two questions: whether or not the theology espoused by Priscillian and his associates was Manichaean or Manichean-influenced\footnote{213} and to explain "why Priscillian and his closest followers were condemned to death for sorcery, not for heresy, in a civil verdict in which the principal accuser was a bishop."\footnote{214} This second aspect has been little studied in English-language scholarship, but there is a flourishing of scholarship in Spanish and Portuguese

\footnote{212} Priscillian appears only once in Humfress, Orthodoxy, 243-44, which is not surprising given that her study focuses on bishops for whom we have clear evidence for their knowledge of the law or forensic oratory prior to the episcopate and we do not have evidence of Priscillian having such a background. The evidence of this chapter and this thesis more broadly accords with Humfress's general argument about episcopal conflict increasingly mediated via the courts in this period and perhaps suggests that a certain facility with Roman law could be expected of any elite men who became bishops, with or without a particular legal career prior to the episcopate. For the case of a different fifth-century Spanish bishop choosing to employ Roman law in a heresy dispute as well as taking advantage of family connections, see: Michael E. Kulikowski, "Fronto, the Bishops, and the Crowd: Episcopal Justice and Communal Violence in Fifth-century Tarraconensis," *Early Medieval Europe* 11, no. 4 (2002).


\footnote{214} Escribano Paño, "Heresy and Orthodoxy," 123.
focused specifically on the processes of the trial. There has also been interest in what Priscillian's activities can tell us about the politico-religious policy of Magnus Maximus and the development of the Spanish episcopate, its internal tensions, and its relationship with local landowners.

Comment concerning Priscillian's theology is outside the scope of this thesis, but it has much to offer to explain the legal processes involved in the conflict. This thesis extends existing consideration of the legal processes involved in entire span of the Priscillianist conflict, not simply the final trials, and contextualises the use of Roman law by these bishops in light of episcopal trends observed in the previous chapter.

Finally, this study of the conflict surrounding Priscillian will advance our understanding of the actions and rhetorical choices of Ambrose of Milan. Though their episcopates entirely overlap, Priscillian is not often studied alongside Ambrose or vice versa. It is usual for Ambrose and Priscillian to be acknowledged only as actors on the periphery of each other's lives. This thesis instead argues that the legal context of the Priscillianist controversy should be understood in the context of Empire-wide trends in episcopal use of Roman law and, furthermore, that situating


218 In a rare example that is not concerned with using the chronology of Ambrose or Priscillian to date events concerning the other, McLynn contrasts the polemic of Palladius of Ratiaria, an antagonist of Ambrose, with Priscillian's more successful bribery of Macedonius in: Neil McLynn, “The ‘Apology’ of Palladius: Nature and Purpose,” Journal of Theological Studies n.s.: 42, no. 1 (1991), 73-5.
Priscillian's case within this wider context of episcopal participation in Roman law earlier in the century allows us a much better insight into what was really at stake in the scandalised reaction of bishops like Ambrose to Priscillian's execution.

2.1 Priscillian of Avila vs. Hydatius of Emerita (380-381)
Previous scholarship has focused on Priscillian’s execution, but the lead up to this conflict is important for appreciating the effect of this conflict on the question of episcopal participation in Roman law for Priscillian and his contemporaries. Following the conflict from its earlier stages through several degrees of escalation explains the eventual execution as the development of earlier manoeuvres. Priscillian's case is not only part of a much broader trend, but a case where the narrative evidence is particularly rich in episcopal use of Roman law, and thus incredibly useful to our wider understanding of this trend.

Due to the particular circumstances that produced the evidence we have concerning Priscillian and his antagonists, the legal context of this historical narrative survives in an unusual way. Our main narrative source concerning the conflict, the Chronicle of fifth-century Sulpicius Severus records the Priscillianist controversy not to valorise Priscillian or his antagonists but to disassociate a third party from either side in the wake of the scandal that followed Priscillian's execution. 219 This third party was Martin of Tours, and Sulpicius's motives about Martin's memory caused him to present Priscillian in a certain light. 220 For the purposes of this chapter, it is particularly relevant to note that Sulpicius's interest in Martin has meant that in his text we have a narrative that does not seek to privilege either side of the original dispute. This is a rarity. The previous chapter demonstrated that fifth-century sources writing about these fourth-century bishops typically elide the more active use of Roman law by bishops they considered

219 Sulp. Sev., Chron. II. 46-51. Sulpicius was likely writing in the early years of the fifth century, during the reign of Honorius, the son of Theodosius I, in the Western Empire.
220 Sulpicius is also the author of other works that focus more strongly on Martin, including a hagiography.
orthodox while strongly emphasising the use of Roman law by bishops they considered heretics. With Sulpicius Severus, we have a source interested in valorising neither side of the conflict he preserved for us.

The other main source is from a different category of rare texts when it comes to heresy/orthodoxy conflict: a text written by a party that posterity has labelled a heretic. The *Wurzburg Tractates*, which are generally accepted to have been written by Priscillian and/or associates, have survived in only one copy.\footnote{Wurzburg manuscript shelf mark: Mp. Th. Q. 3 (olim CXXCII). Dated to the fifth century by the hands, this manuscript discovered in the University of Wurzburg library in 1885 and subsequently edited by Georg Schepss for CSEL.} Among more theological material is a letter from Priscillian addressed to Bishop Damasus of Rome.\footnote{See Conti's introductory comments in Priscillian of Avila, *Priscillian of Avila: The Complete Works*, trans. Marco Conti (Oxford: Oxford University Press, 2010), 26.} It dates from around 381, and provides the main "fourth-century" source for understanding the legal context of this conflict.

Despite the victory of Hydatius in the form of Priscillian's eventual execution, we do not have any account extant that can be associated with him.

### 2.1.1 The Council of Zaragoza (380)

The Priscillianist controversy is difficult to trace further back than the 380 council of Zaragoza. Sulpicius gives an account of the run-up to the council, explaining that Hyginus of Cordoba became concerned about Priscillian, then yet a lay person but one with a Christian following due to his charismatic preaching. Hyginus expressed these concerns to Hydatius of Emerita, possibly the metropolitan of the province in which Priscillian was active, and certainly the bishop of the provincial capital. Hydatius took up the concern and made it the impetus behind convening Zaragoza.\footnote{Sulp. Sev., *Chron.* II.47.}
The location of the council is interesting as it shifted the action from Lusitania, where Priscillian appears to have been active and where Hydatius’s own see was certainly located, to the province of Tarraconensis. Shifts of jurisdiction like this one continue to be a theme of later stages of this conflict. This particular shift from Lusitania to Tarraconensis suggests that Hydatius perceived Priscillian to have a power base in their home province. The need to quell conflict in Lusitania after Priscillian’s execution adds weight to this hypothesis.224

The earliest text we have that has come to be associated with the so-called Priscillianist controversy are the acts of the Council of Zaragoza, held on the 9th of October 380.225 The acts themselves do not name Priscillian or any of his known associates, though all three of Priscillian's primary antagonists were present: the two Spanish bishops, Hydatius of Emerita and Ithacius of Ossonuba, and from Aquitaine, Delphinus of Bordeaux. They numbered a quarter of the council's modest attendance.226 Hyginus did not attend, and is attested as receiving Priscillian and his associates in communion both before and after Zaragoza.227 Perhaps more importantly, Priscillian and Sulpicius Severus agree that neither Priscillian nor any of his associates were present at the council.228 In his letter to Damasus of Rome, Priscillian references a letter of guidance that the Roman bishop

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224 Sulp. Sev., Chron. II.52, mentions trouble here and in Gallicia at this time. On the aftermath (known as the Felician controversy), see: Natal and Wood, "Playing with Fire."

225 The canons only are translated into English with discussion in: Burrus, Making of a Heretic, 33-40.

226 In order, the bishops named as attending are: Phoebadius (of Agen), Delphinus (of Bordeaux), Eutycius, Ampelius, Augentius (perhaps of Toledo), Lucius, Ithacius (of Ossonuba), Splendonius, Valerius (perhaps of Zaragoza), Symposius, Carterius and Hydatius (of Emerita). ACZ, II. 18-20. Phoebadius was present at Constantius’s 359 Rimini council and Delphinius will re-appear later in Priscillian’s story at the council of Bordeaux in 384.

227 Sulp. Sev., Chron. II.47. Sulpicius also suggests that the council excommunicated Hyginus. Since Hyginus is also not mentioned by name, I agree with (Burrus, Making of a Heretic, 176, n. 20.) that a likely explanation here is that Sulpicius, writing several decades after the events in question, has compressed the timeframe associating Hyginus's later excommunication with this council.

228 Priscillian, Ad. Dam., l.34-35; trans. Conti, 71; Sulp. Sev., Chron. II.47.
had sent to the convening bishops in advance of Zaragoza, stressing that no one was to be condemned *in absentia*.  

Priscillian states explicitly that neither he nor his associates were condemned at the council by name.  

Sulpicius's text disagrees, claiming that Priscillian was condemned along with two associated bishops and one layman. Writing several decades after the events in contrast to Priscillian's close proximity, Sulpicius seems unaware of or untroubled by his narrative conflicting with Damasus's instructions. Like many of the conflicts discussed in this thesis, the conflict surrounding Priscillian was so quick-moving that a text written only a decade or so after the events responded not only to the original context but also to subsequent contexts in which the original conflict was drawn upon as an authority or a negative example. This emphasises the importance of being aware of such layers in our sources when reconstructing events.

Aside from the mere fact of heretic as a pejorative label, the question of whether Priscillian had been labelled a heretic had implications for the validity of his later episcopal office. Canon 51 of the 306 Council of Elvira prohibited anyone with known heretical background from being ordained as a cleric; if they had been so ordained, their ordination was to be considered void. Though there is some debate concerning how many of this council's canons stem directly from the synod at Elvira and which from slightly later gatherings of Spanish bishops, Priscillian and Sulpicius's texts suggest that a concern with the legitimacy of clerics who had been named as heretics was present in Spain at this time.

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231 Sulp. Sev., *Chron.* II.47.


233 Scholarly consensus is that only some of the canons as they have been transmitted stem from this early fourth-century council with the rest interpolated from slightly later Spanish councils. Laeuchli, *Power and Sexuality*; Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica*.
As noted above, the canons of the council of Zaragoza as they are extant do not mention Priscillian nor any of those associated with him by name. However, a number of the canons could be seen as relating to problems with Priscillian raised in other sources: excessive fasting (canon 2),234 meetings that occur outside of church buildings (canon 4), and perhaps most tellingly, prohibiting bishops from offering communion to anyone excommunicated by another bishop (canon 5) and another restricting the title of "teacher" (canon 7).235 Regardless of whether the council condemned Priscillian and his associates specifically or whether they were simply examples of broader trends made famous by later events, it is clear that the council's judgements were not the end to conflict concerning Priscillian.

2.1.2 Priscillian on the Road (381)

Our knowledge of the next steps in the conflict come from Priscillian's letter to Damasus of Rome. He defended himself to Damasus by describing the difficulties Hydatius experienced after his return from Zaragoza. Hydatius, Priscillian alleged, was "publically indicted with ecclesiastical decrees [actis ecclesiasticis petitur]" by his presbyter, followed by a further document indicting Hydatius that circulated in some churches.236 The picture Priscillian gave was of chaos in Hydatius's Christian

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234 This is the only canon that comes close to evoking Manicheanism, an accusation that will later come to be directed at Priscillian. Manicheanism is also not specifically censured by name at Zaragoza, but it is perhaps worth noting that it was not condemned at other contemporary councils, either. See S.N.C. Lieu, Manichaeism in the Later Roman Empire and Medieval China (Manchester: Manchester University Press, 1985), 127.

235 For further discussion of whether these canons are intended to condemn Priscillian and his associates specifically, see: Burrus, Making of a Heretic, 33-40; Jorge, "Lusitanian Episcopate." On the Zaragoza canons indicating broader trends in the Lusitanian church, see: Manuel C. Diaz y Díaz, "A proposito del concilio de Zaragoza de 380 y su canon VI," in I Concilio Caesaraugustano: MDC aniversario (Zaragoza: Diputación provincial de Zaragoza, 1980).

community, with members of his flock refusing contact with Hydatius and Hydatius refusing to claim communion with them in turn. Priscillian's letter suggests that another council was initially proposed as a solution. This was put forward by Hyginius and Symposius, the attendee of Zaragoza. However what was put into practice was that Bishops Instantius and Salvianus (Priscillian supporters) went in person to mediate with Hydatius. There was violence in Emerita, with the two bishops ejected from Hydatius's city, but no resolution. 237 Around this time, Priscillian was elevated to the episcopate by Instantius and Salvianus, taking on the then vacant see of Avila.

Priscillian and Sulpicius also concur that the next move in this conflict was to involve lay authorities outside of Spain, a strategy pursued by both sides. 238 As we have seen in the previous chapter, bishops through the fourth century had taken advantage of their access to the Roman courts to seek legal judgements with which to affirm or dispute the episcopal status of others. Priscillian's opponent, Hydatius, is recorded as warning the emperor Gratian about Manicheans in Spain. Having obtained a "rescript against pseudo-bishops and Manicheans [rescriptum contra pseudepiscopos et manichaeos]", he then used it to oust Priscillian, Instantius and Salvianus from their sees. 239 Priscillian's letter and Sulpicius's narrative give few details about how this was accomplished in practice, which is perhaps another sign that the procedure required no explanation.

237 Priscillian, Ad. Dam., II. 120-34.
238 Some recent Spanish approaches to the Priscillianist controversy have deployed scale theory, analysing the shifts of scale in this and other contemporary conflicts. See: Julio Escalona, "The Early Middle Ages: A Scale-Based Approach," in Scale and Scale Change in the Early Middle Ages: Exploring Landscape, Local Society, and the World Beyond, ed. Julio Escalona and Andrew Reynolds (Turnhout: Brepols, 2010); and more specifically discussing Priscillian: Julio Escalona, "Conflicto Religioso y Territorialidad en un Mundo en Fragmentación: Un Ensayo Comparativo del Noroeste Hispánico y Britania en los Siglos IV-VI," in De Roma a los bárbaros: Poder central y horizontes locales en la cuenca del Duero, ed. Santiago Castellanos and Iñaki Martín Viso (León: Universidad de León, 2008). See also: Natal and Wood, "Playing with Fire."
239 Priscillian, Ad. Dam., II. 141-145, trans. Conti, 77; see also Sulp. Sev., Chron. II.47.
The examples from the earlier fourth century that were discussed in the first chapter offer some likely suggestions. We have seen previously that bishops could use a legal instrument like a rescript to gain support from local administrative officials, even when the document was issued in some other area of the Empire. Hydatius could presumably produce his rescript in Lusitania and expect its terms enforced by lay officials.

Priscillian and his fellow-bishops corresponded (or much less likely visited) a *quaestor* to appeal the rescript. This would eventually receive a favourable reply, but the threat Hydatius posed was too serious to wait as long as the reply took to reach them. Priscillian and his two fellow bishops received the reply when they were already on route to Italy.²⁴⁰ Travelling through Aquitaine, they were driven out by Delphinus of Bordeaux but supported by the family of Attius Tiro Delphidus,²⁴¹ and more particularly, his wife, Euchrotia, and daughter, Procula, who accompanied Priscillian to Rome.²⁴² They also unsuccessfully sought the support of Ambrose in Milan.

While Sulpicius's account suggests the bishops in Italy purposefully kept a distance from Priscillian, it must also be acknowledged that Priscillian's visit had extremely unfortunate timing. For Milan and its bishop, 381 was a very busy year of upheaval and change. At Easter, he welcomed the Emperor Gratian to Milan, not as a visitor, but as a leader transplanting the imperial capital from Trier to Ambrose's city.²⁴³

²⁴⁰ Priscillian, *Ad. Dam.*, II.155-6. Roman law has harsh penalties for nonsense suits, and Hydatius's allegations of Manicheanism might have been hard for him to prove in a court of law, considering such charges were eventually dropped when Priscillian did finally make it to a civil trial.

²⁴¹ Attius Tiro Delphidius, *PLRE* 1, 246. Delphidus probably died around or just before Priscillian's visit, which was perhaps what allowed Euchrotia and Procula to accompany Priscillian to Rome.


²⁴³ Gratian cannot be located at Trier after February 381, but cannot be located at Milan on concurrent occasions until late autumn of 382. Otto Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr: Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit* (Frankfurt am Main: Minerva GMBH, 1964), 256-60. Matthews puts the move forward to the later extreme. John Matthews, *Western Aristocracies and Imperial Court, A.D. 364-425* (Oxford: Oxford University Press, 1975), 164. Priscillian's visit must postdate the movement of the capital as he interacts with the
Priscillian did not give a location for the *quaestor* he corresponded with in his letter to Damasus, but the tremendous logistical undertaking of shifting the staff and resources of the capital must have to have coincided with Priscillian's petition and his subsequent travels to Italy.\(^{244}\) This could very well explain the lateness of the reply Priscillian and his associates received to their original enquiry.

Aside from the administrative upheaval experienced by the city of Milan, Ambrose was also intensely involved in his own conflict with other bishops. This culminated in the September council of Aquileia at which he attempted to demolish the episcopal status of Palladius of Ratiaria, a move in a conflict between the two that had already spanned more than five years.\(^{245}\) It was also a conflict that had not involved any Spanish bishops. The Rimini council of 359 had involved bishops from all areas of the Western Empire and some from the East. Phoebadus of Agen attended both Rimini and Zaragoza, but there was no overlap between the recorded attendees of Zaragoza and Aquileia. This cannot solely be due to logistical concerns as Priscillian's travels to Italy in that very year attest the possibility of Spanish bishops travelling the necessary distance. Instead, it is more likely that this divide highlights that some episcopal horizons were narrowing and becoming more localised.

It has been assumed that Priscillian's visits to Damasus and Ambrose were prompted by a veneration for the authority of those sees, however Priscillian's choice to visit to visit Rome and Milan also makes sense for those cities' political

\(^{244}\) McLynn comments that the contemporary textual sources give little sense of the scale of this undertaking, best reflected in the continuity of coinage from the Trier and Milan mints, which implies an impressive transfer of staff and equipment. McLynn, *Ambrose of Milan*, 120.

\(^{245}\) For further discussion of the council of Aquileia, see chapter 3.1.3, p. 138.
and bureaucratic capital and for the political connections he might be able to broker via association with either bishop.

In the quotation that began this chapter, Priscillian told Damasus that he would accept either the judgement of a gathering of bishops or a "public trial [iudicium publicum]." This should be another reminder that fourth-century bishops saw these options as equally available in episcopal disputes.

Priscillian did insist that he would prefer a judgement from bishops (phrased contrastingly as "sanctorum iudicium") as this was a "case of faith [causa fidei]." This appears to imply that Priscillian saw a moral difference between the two options, with the Roman courts a second and possibly regretfully necessary choice. Too much stress should not be put on this distinction Priscillian makes. At this point in the conflict, Priscillian and Hydatius had both made use of Roman law to thwart the other. Furthermore, a few short years later, at the council of Bordeaux, Priscillian would demand his case be turned over to the emperor. Priscillian's expressed preference here for a iudicium sanctorum might have also been an attempt to flatter the importance of his recipient in a letter of introduction.

Damasus was an obvious choice for Priscillian to approach. He had already been drawn into the Priscillianist controversy before Zaragoza and shared personal connections Priscillian could attempt to draw upon. The letter from Priscillian to Damasus positions them in the same network, drawing multiple connections through their mutual acquaintances. Priscillian notes his connection to bishops

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246 Priscillian, Ad Dam., ll. 152-156.

247 A connection could be drawn between Priscillian and his fellow bishops' circumstances and the 378/379 rescript granting the bishop of Rome the right to hear the cases of deposed bishops preserved as item 13 in the Collectio Avellana (discussed further below, chapter 3.1.2, pp. 315ff.). Priscillian's iudicium sanctorum appears to refer to something less official than this; his letter gives no indication that the bishop of Rome's judgement was now the court for cases concerning deposed bishops. At any rate, Priscillian's case was never judged by Damasus.

248 See below, chapter 2.2.3, pp. 116ff.
Symposius and Hyginus, who he implies are known also to Damasus himself.\textsuperscript{249} Symposius was at Zaragoza, but Priscillian's letter firmly positions him in connection to Priscillian rather than Hydatius: Priscillian reported to Damasus allegedly verbatim the advice Symposius gave for dealing with Hydatius.\textsuperscript{250} Priscillian also related that he would be sending the "letters of communion" from "our churches" to Damasus, as well as "letters of subscription of the entire clergy and people."\textsuperscript{251} Thus, what Priscillian was writing was a letter of introduction, laying the groundwork for the connection Priscillian hoped to make with Damasus directly.\textsuperscript{252}

Priscillian's references to Ambrose in his letter to Damasus suggest that the closest connection he could claim to Ambrose would be via Damasus himself. Priscillian expressed concern to Damasus that Ambrose, like Damasus, might have been the recipient of anti-Priscillian propaganda from Hydatius. Given the fact that Hydatius and Priscillian had both, even at this early stage, turned to Roman law to resolve this conflict in their own favour, we must surely question whether Priscillian sought Ambrose's good opinion due to the bishop's own authority or because Ambrose had so recently become the bishop of a city in which the imperial capital now resided.

Priscillian and his fellow bishops were more successful in seeking bureaucratic rather than episcopal support in Milan. According to Sulpicius, Priscillian bribed

\begin{footnotesize}
\begin{enumerate}
\item Priscillian, \textit{Ad. Dam.}, ll. 120-21. Priscillian literally says Damasus knows their "life", singular, perhaps better translated as "lifestyle". Priscillian's position in a network with Hyginus and Symposius is also testament to his character and practice as a Christian, something that was particularly at issue in his dispute with Hydatius.
\item Priscillian, \textit{Ad. Dam.}, ll. 124-27.
\item Priscillian, \textit{Ad. Dam.}, ll. 150-51.
\end{enumerate}
\end{footnotesize}
Macedonius, *magister officium*, for a rescript that repealed the ruling that Hydatius had received.\(^{253}\) Priscillian could go home.

### 2.1.3 The Story So Far

In the earlier stages of this conflict surrounding Priscillian of Avila, we have seen that recourse to Roman law continued to be one of the options available to late fourth-century bishops in much the same way that it had been available to their predecessors earlier in the century discussed in the previous chapter. We have seen that both sides of the conflict appear to have made use of Roman law from quite early stages of the conflict, albeit in combination with options outside the scope of the law.

That said, there also appears to be some distinction made between the two types with the implication that Roman law should be more like a last resort. If this was because there was a perception that the law should be avoided because it was the less moral or less suitable for a bishop, it carried only mild censure as both Priscillian and Hydatius successfully made use of Roman law without apparent damage to their reputations. It is also possible that involving the law was seen as an escalation in the conflict above other methods and that that was why it was important to attempt reconciliation through other means first.\(^{254}\)

We have seen that episcopal recourse to Roman law was not restricted to those who could personally travel to the emperor’s court to be heard, or those that the emperor possessed some vested interest in by rights of shared approach to Christianity or personal connections. As mentioned above, neither Priscillian nor his antagonists use rhetoric invoking the Nicene/non-Nicene binary to denigrate the

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\(^{253}\) Macedonius 3 in *PLRE 1*, 526. Ambrose unsuccessfully sought support from this Macedonius in another matter. Paulinus, *v. Amb.* XXXVII.

\(^{254}\) Benjamin Kelly’s study of “petition culture” in Roman Egypt highlights the many ways lodging a petition could be part of a broader group of dispute resolution strategies, including leveraging the mere threat that one might take the issue to court. Kelly, *Petitions*. 

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other. It is difficult to reconstruct any particular connections between Priscillian or Hydatius and Gratian’s court before either bishop reached out to the emperor. Forming connections and being able to draw upon networks of support have been shown to be important both in terms of episcopal networks and in terms of success in employing Roman law to achieve their goals. We will see in the next section that this will only continue to be true as Priscillian and his antagonists move their conflict through ever higher legal appeals.

2.2 Priscillian vs. Ithacius of Ossonuba (381/2-385)

There were a number of changes in Priscillian’s story after his visit to Milan. In terms of conflict resolution strategies, both sides in the conflict now appeared to turn almost entirely to Roman law rather than the combination of legal and extra-legal manoeuvres noted in the earlier stage. The very effectiveness of Roman law for gaining an enforceable resolution to the conflict was a double-edged sword. Legal answers to episcopal conflict could be appealed, but the most effective appeals involved raising the stakes of the conflict by appealing more directly to central imperial authority. Priscillian and his antagonists would by the middle of the decade be appealing directly at an imperial court. On another more simple level, this is also the point at which Priscillian’s main antagonist changed. In Sulpicius’s account, Hydatius of Emerita begins to take a back-seat to Ithacius of Ossonuba, who had left Zaragoza charged with enforcing its denunciation of Priscillian and his associates.

Priscillian and his companions returned to Spain with a rescript that repealed the one received by Hydatius. With the help of Volventius, the Lusitanian proconsul, they not only regained their sees, but arranged to have Ithacius, rather than Hydatius, put on trial as “a disturber of churches.” Instead of appearing to be

255 Sulp. Sev., Chron. II.48. Salvianus died in Italy.

256 “perturbator ecclesiarum,” Sulp. Sev., Chron. II.49; trans. Robertson, 120. This is unfortunately our only record of this Volventius. (PLRE 1, 975).
judged on that charge, Ithacius travelled to Trier, gaining the support of Britannius, the local bishop, and Proculus Gregorius, then Praetorian Prefect. Ithacius allegedly received a rescript against Priscillian and Instantius, demanding that they answer for their beliefs and conduct in Trier. Due to more bribery, according to Sulpicius Severus, Macedonius moved the matter from Gregorius and to the "lieutenant" in Spain (there being no proconsul at the time). Officials were sent by Macedonius to return Ithacius to Spain to stand trial. Ithacius once again did not allow himself to be taken.

At this stage, again, we can see that personal connections played an important role in determining a bishop's options in this conflict. Both Priscillian and Ithacius drew on support from other bishops and from imperial bureaucrats, though it was connections within the imperial administration that were most crucial for a bishop's success. We can also see that merely approaching civil officials was not enough. Just as there were divisions among the Spanish bishops, there were divisions among the imperial bureaucracy and different patronage networks that these bishops could attempt to participate within. While effectively under the emperor Gratian in the West, officials were divided between the old capital at Trier and the new in Milan.

These divisions in the bureaucracy gave the bishops additional flexibility of action when seeking legal instruments to support their cause as it meant that there were multiple fronts by which imperial legal power could be approached. As is clear from Macedonius's moving the conflict away from the pro-Ithacian Gregorius to the apparently pro-Priscillian "lieutenant", the particular network of imperial bureaucratic loyalties that a bishop could tap into was crucial for his choice to

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257 Proculus Gregorius 9 in PLRE 1, 404. He is otherwise attested by Symmachus and Ausonius.

258 Matthews, Western Aristocracies, 164, identifies the unnamed "lieutenant" in Sulpicius's account with Marinianus, another friend of Symmachus. Marinianus is in office by 27 May 383. CTh. IX.1.14; Marinianus 2, PLRE 1, 559.

259 Sulp Sev., Chron. II.49.
resolve the conflict he was involved in through the courts to bear success. This is also further evidence that persons were not usually tried or legally condemned in absentia. Roman law might provide soldiers to violently assist with the enforcement of a particular decision or to force those accused to stand trial, but the law also moved slowly enough that bishops like Ithacius could flee in advance of such measures and regroup in an area where they enjoyed better support.

2.2.1 The Arrival of Magnus Maximus (383)

The conflict between Priscillian and his antagonists shifted upwards in scale once, with both sides now approaching emperors directly instead of via their subordinates. Though backgrounded by Sulpicius's account, the political manoeuvring between the emperors Gratian, Magnus Maximus, Valentinian II and Theodosius I, is crucial context for appreciating the treatment Maximus offers Priscillian but equally to appreciate the moves made by Priscillian and Ithacius. Theodosius proclaimed his son Arcadius co-emperor in the East in January 383. In the summer, Magnus Maximus crossed the British channel with the troops that had acclaimed him emperor. Gratian broke off campaigning in Rhetia against the Alamanni to meet Maximus, at which point his troops deserted him wholesale for the usurper. Gratian was murdered by one of Maximus's supporters, leaving Maximus free to establish himself at Trier, where Ithacius still claimed sanctuary.

This political context of civil war and its devastating impact on networks of patronage surrounding the three imperial claimants has often been overshadowed in scholarship by what is assumed to be the religious context of the Nicene supremacy of Theodosius's dynasty. But the man who was successful in achieving

260 For example, Sulpicius elides Gratian's death from his account of Maximus's arrival in Trier. (Chron. II.49.) See also: Birley, "Magnus Maximus and the Persecution of Heresy."

261 McLynn, Ambrose of Milan, 154-55.

262 For arguments about Maximus seeking to demonstrate his (Nicene) orthodoxy via Priscillian's execution, see Birley, "Magnus Maximus and the Persecution of Heresy.", Timothy D. Barnes, "Ambrose and the Basilicas of Milan in 385 and 386: The Primary Documents and their Implications,"
his goals via the avenues of Roman law in Late Antiquity was not just skilled at argumentation; he had connections within the bureaucracy and, ideally, with the emperor himself. One's chances of success were therefore severely reduced at a time when three dynasties, the established one represented by a teenager, two others by usurping generals, were engaged in civil war.

The assassination of Gratian in 383 dramatically changed the options available to Priscillian and Ithacius. Both bishops had sought support from Gratian's officials in Trier and in Milan, but after the usurpation of Magnus Maximus and Gratian's death, Trier's court was controlled by Maximus instead. This involved a dramatic shift in loyalties and a dramatic effect on the networks of patronage and friendship in which elite Roman men, whether bishops or senators, participated.

2.2.2 The Council of Bordeaux (384)

In Trier, Ithacius approached Maximus about Priscillian. Maximus wrote to the lieutenant in Spain and the prefect in Gaul (i.e. Gregorius) that Priscillian's case should be decided at a council in Bordeaux (i.e. hosted by Bishop Delphinus, who had already indicated that he sided against Priscillian when the bishop had travelled to Italy several years before). This would seem to have stacked the odds in Ithacius's favour.

Zeitschrift für antikes christentum 4, no. 2 (2000): 295-98. I accept their suggestions that Maximus sought to demonstrate legitimacy through his execution of Priscillian. Maximus's letter to Valentinian II concerning Priscillian preserved as Coll. Avel. 39 makes much of this agenda, but this should be interpreted in light of the scandal that that Priscillian's execution had caused for Maximus. The execution did not offer an unambiguous example of Maximus's claim to orthodoxy to allow him to intervene in the Milanese Basilica controversy (on this argument, see Barnes, "Ambrose and the Basilicas," 298) but an occasion for Maximus to write this letter as damage control. McLynn's discussion of Theodosius's lack of opportunity as a general to acquire the appreciation for fine doctrinal distinctions expressed by some bishops in this period are also relevant when making assumptions about how Maximus may have considered an emperor's duty in enforcing orthodoxy. Neil McLynn, "Genere Hispanus': Theodosius, Spain and Nicene Orthodoxy," in Hispania in Late Antiquity: Current Perspectives, ed. Kim Bowes and Michael E. Kulikowski (Leiden: Brill, 2005), 100-08. See also my later discussion of the relative strength of Theodosius's "orthodoxy" legislation in the context of the lost non-Nicene "orthodoxy" privileging legislation of the mid-century, below, chapter 3.2.2, pp. 151-157.
It is not immediately clear whether the impetus to move the conflict back to the ostensibly extra-legal mechanism of a church council came from Maximus or Ithacius. The examples from the previous chapter, particularly concerning Constantius II’s intense involvement in convening councils through the 350s, should caution us from expecting a clearer divide between ecclesiastical and civil modes of dispute resolution in Gaul in the 380s.

The move back to a church council after a series of rescripts and counter-rescripts does seem likely to have been seen as a move back to a more morally superior mechanism for dispute resolution. This could as easily been as desirable to the exiled bishop Ithacius as to the usurping emperor Maximus, as both were seeking to re-establish their legitimacy and authority at this time.

However, the eventual council of Bordeaux was a spectacular non-event.\textsuperscript{263} Ithacius and Hydatius were present as were Priscillian and Instantius; Salvianus having died on the journey back from Milan. Despite accusers and accused all being present, this council resolved nothing. Priscillian asked that the matter be put before the emperor, and this was approved by the gathered bishops.\textsuperscript{264}

Priscillian did not make this demand from a strong position. Sulpicius notes that Priscillian had been forced to attend the council.\textsuperscript{265} The exercise of imperial authority to compel bishops to attend debates concerning their disputed episcopal status has many parallels in the earlier fourth-century examples discussed in the previous chapter. For example, Athanasius’s attendance at the council at Tyre

\textsuperscript{263} There are no extant acta for this council.
\textsuperscript{264} Sulp. Sev., Chron. II.50. This reverses Priscillian’s insistence to Damasus only years before in Ad. Dam. that he would submit to a civil trial if his antagonists insisted but would prefer to be judged by other bishops. See above, section 2.1.2. p. 108.
\textsuperscript{265} Sulp. Sev., Chron. II.49.
before his first exile involved such an order.\textsuperscript{266} By fleeing to Trier, Ithacius had also recently avoided being constrained to defend his orthodoxy by Macedonius.\textsuperscript{267}

Given that Maximus had specifically ordered Priscillian's case to be debated at the council at Bordeaux, forcing Priscillian to attend, it requires explanation why he would then allow Priscillian's demand to stand trial before Maximus himself. Perhaps what we can see here was the need to show that alternative avenues of dispute resolution had been exhausted, much as Priscillian had assured Damasus in his letter to the Roman bishop that he, too, had tried to reconcile with Hydatius at a council before escalating the conflict by turning to the law.\textsuperscript{268} Alternatively, Maximus may have initially hoped that the bishops would resolve their own dispute without requiring his intervention (and resources).\textsuperscript{269} When the council at Bordeaux failed to do this, Maximus then allowed Priscillian's accusers to take their dispute to Trier.

\subsection*{2.2.3 The Trials at Trier (385)}

With the action moved back to Trier, Priscillian as defendant and Ithacius and Hydatius as his accusers, the implicit hero of Sulpicius's narrative finally appears in his history. Martin, then settled at Trier, approached Maximus about Priscillian, entreat ing that the death penalty not be used and for the matter to be returned to ecclesiastical courts.\textsuperscript{270} The council at Bordeaux was surely not Sulpicius's invention,

\begin{itemize}
\item\textsuperscript{266} See above, chapter 1.1.1, p. 55.
\item\textsuperscript{267} See above, p. 112.
\item\textsuperscript{268} See above, section 2.1.2, p. 108.
\item\textsuperscript{269} As the leader of a new imperial regime in Trier, Maximus also spent time and resources sifting through the loyalties of those who remained of Gratian's government prior to the capital moving to Milan in 381. In the same letter in which Ambrose criticises Priscillian's accusers, he also mentions his advocacy for officials in peril under Maximus's new regime. (Amb. Ep. VI.30.11).
\item\textsuperscript{270} Sulpicius's account suggests that Maximus held off trying Priscillian until Martin was at death's door, but this was hagiographical license. Martin is generally held to have died after Maximus. (Chron. II.50). Sulpicius's concern for Martin's memory in his presentation of the Priscillianist controversy and his own hindsight awareness that the application of the death penalty would spark
\end{itemize}
but it does seem worth noting that the council's decision to move the conflict centred on Priscillian back to the imperial courts was particularly useful to Sulpicius's narrative aims. It allowed him to position Martin as someone not at Bordeaux, someone against the death penalty in contrast with the bishops gathered at the council.

The spectre of the potential death penalty hung over the proceedings at Trier. A first trial heard by the prefect Evodius\textsuperscript{271} convicted Priscillian of not generic heresy or specific Manicheanism, but occult or magical practices (\textit{maleficium}), for which the usual punishment was death.\textsuperscript{272} A second trial was arranged to discuss this question. Ithacius and Hydatius stepped back as accusers and were replaced by Patricius, a lay lawyer associated with the imperial treasury.\textsuperscript{273} Around 385,\textsuperscript{274} Priscillian was executed, along with a number of followers, both lay and cleric. Among them, Euchrotia is the only name that Sulpicius had previously mentioned. Several more clerics and lay persons were punished instead with exile, including ongoing scandal is surely sufficient explanation for his insistence that Martin was against the death penalty even before it had been applied.

\textsuperscript{271} Flavius Euodius 2 in \textit{PLRE} 1, 297. Evodius is also mentioned quite positively in Sulpicius's more general account of Martin at Maximus's court at Trier. Sulp. Sev., v. Mart. XX.4.

\textsuperscript{272} Sulpicius's account states that Priscillian confessed. The application of torture during the trial may be a possibility as is Sulpicius massaging the story to suit himself. Paulinus's \textit{Life of Ambrose} records a soothsayer being tortured as part of typical legal proceedings. Paulinus, v. Amb. XX. On laws concerning magic more generally, see: J. B. Rives, "Magic in Roman Law: the Reconstruction of a Crime," \textit{Classical Antiquity} 22, no. 2 (2003). Laws that proscribed Manichaens had existed since Diocletian, but this was not considered to apply to "heretics" more generally until the fifth century. See Introduction, p. 90 n. 206, for discussion of this argument by Hermanowicz, \textit{Possidius}, 120-31.

\textsuperscript{273} Patricius 4 in \textit{PLRE} 1, 673. Sulp. Sev., \textit{Chron.} II.51. This is our only citation for him. His presence may suggest Maximus had financial motivations for pursuing Priscillian, who seems to have been able to draw on substantial wealth. Confiscation of property was a common Roman legal punishment.

\textsuperscript{274} Barnes, "Ambrose and the Basilicas," 294, n. 48, lists recent arguments concerning the date of the execution, with his own argument in favour of 384/85 argued: 293-95. Barnes's early argument here about the date of the execution rests on his argument dating Ambrose's letter concerning his second embassy to Maximus's court to before the Basilica controversy. For my critique of this aspect of Barnes's argument in the context of my discussion of the Milanese conflict, see below chapter 3.4, p. 163 n. 395 and see also immediately below section 2.3 on the scandalised reaction to Priscillian's execution.
Instantius. Ithacius's trouble-making caused him to be removed from his see, while Sulpicius records Hydatius as voluntarily resigning.275

Sulpicius stressed that despite the executions and exiles, the conflict continued for at least fifteen years after Priscillian's death.276 This second stage is known as the Felician controversy, for its later focus on the contested election of Felix of Trier. Felix was the emblem of the bishops' unresolved concern with how to deal with the bishops who had made the legal accusations against Priscillian, resulting in his death.277

Sulpicius's overall treatment of the episode reads like a cautionary tale in the perils of involving the secular arm in conflicts ecclesiastical. However, in line with the overall argument of this chapter, Sulpicius's narrative is overdetermined by his hindsight and the trajectory of episcopal participation in Roman law in the Priscillianist controversy is less exceptional than it has appeared. It was the scandalised reaction to Priscillian's execution that makes this conflict stand apart from the earlier examples.

Priscillian does not seem to have sought death by seeking to be heard at Maximus's court. We have only Sulpicius's narrative, and he does not put any martyr rhetoric in Priscillian's mouth as part of his request for the matter to return to Trier. The council at Bordeaux was clearly hostile to him and he may have assumed that Maximus's court might have offered better opportunities. We have observed in previous stages of this conflict, and in other examples discussed in the first chapter, a tendency for bishops to seek to move the conflict from one jurisdiction to another, whether geographically or by switching from mechanisms like church councils to others like legal petitions.

275 Amb. Ep. VI.30.12, who describes Hyginus being sent into exile.

276 Sulp. Sev., Chron. II.51.

277 For further on the conflict, see: Ralph W. Mathisen, Ecclesiastical Factionalism and Religious Controversy in Fifth-Century Gaul (Catholic University of America Press, 1989), 11-18.
However, in a sharp contrast to the examples discussed in Chapter One, Priscillian and his antagonists were not distinguished from each other by one possessing consistently superior access to imperial favour. Instead, both sides were more relatively equal in their access. This may explain Priscillian's confidence that defending himself at Maximus's court presented an advantage. At the time, Priscillian's request to be heard at Trier must have seemed to be yet another legal manoeuvre similar to those earlier in the conflict.

The next section of this chapter deals with Ambrose's response to Priscillian's execution and proposes that Priscillian's execution, particularly due to its timing, must have had a strong effect on Ambrose's own views about episcopal participation in Roman law.

### 2.3 Priscillian and Ambrose

Ambrose re-enters the events surrounding Priscillian only after the main stage of the conflict, and indeed, Priscillian's life, has ended. In a letter to Valentinian II, from around 387, Ambrose made a passing reference to his refusing communion with bishops at Maximus's court "who were petitioning for certain persons to be put to death because they had deviated from the faith [qui aliquos devios licet a fide ad necem petebant]."  

Ambrose visited Trier twice as an emissary from Valentinian to Maximus. The first was in 383, close after Gratian's death, and he visited again shortly before Maximus invaded Italy in 387. Ithacius at least would have been at Maximus's court in 383 for Ambrose's first visit, but that was before the death penalty was employed.

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278 Amb. Ep. VI.30.12 (Ambrose to Valentinian II, 386/7); my own translation. See also Beyenka, letter 9, p. 62, which translates "devios licet a fide" with the overly specific phrase "heretics" when Ambrose's Latin is far more vague and intentionally so. Labelling any side in the Priscillianist controversy heretical meant claiming the other side for oneself, which Ambrose would surely be hesitant to do while the conflict was ongoing.
Ambrose's use of the imperfect, *petebant*, does not mean that Priscillian himself was necessarily still alive. Sulpicius Severus's account of what happened after the trials points to a drawn out process with much collateral damage beyond Priscillian's own execution. Ambrose's own letter notes that he was upset to see Hyginius exiled as part of the ongoing conflict. This letter does provide evidence Ambrose was still aware of the circumstances of the Spanish bishop who had approached him in Milan only a few years previously and that he was specifically aware of the use or potential use of the death penalty in Priscillian's case.

Ambrose's description of refusing communion with bloodthirsty bishops at Maximus's court is more vividly expressed, but in substance, his objection was the same as Martin of Tours. Neither Martin nor Ambrose had any sympathy or interest in Priscillian's theology, nor did they have the personal or regional connections that seem to have motivated the others in Galicia and Lusitania that Sulpicius notes continued to venerate Priscillian's memory as a martyr.²⁷⁹ Their criticism of Maximus and Priscillian's episcopal accusers focused squarely on the death penalty.

Priscillian's example was only unusual for the extreme end to the series of episcopal manoeuvres that shifted in and out of the mechanisms of Roman law. His execution made his example problematic. In Martin's case, we know from another of Sulpicius's works that he was targeted with heresy accusations from the other bishops, Ithacius, the second of Priscillian's accusers, being specifically named.²⁸⁰ Accusations of Manicheanism were less of a stretch to apply to the ascetic Martin than the urban Ambrose, but as we shall see in the next chapter, there were other existing capital charges such as treason that could more suitably be directed in Ambrose's direction.

²⁷⁹ Sulp. Sev. Chron. II.51
With Maximus having proved his willingness to execute bishops, the threat of execution following episcopal participation in Roman law was no longer merely a hypothetical. Beyond the self-interest that can be demonstrated in Martin and Ambrose's cases, the potential precedent of an emperor executing a bishop was surely sufficiently dangerous to move bishops to intercede. The moment of scandal that followed in the wake of Priscillian's execution provided opportunity to push back against the established episcopal mode of disputing episcopal status via the courts. This is a thread of argument that will be expanded upon further in the next chapter, among broader discussion of imperial willingness to judicially torture or execute clerics under charges of treason.

This thesis argues that Priscillian's execution is significant for proving that episcopal involvement in Roman law could end in the legally ordered death of a bishop. It is therefore also important to prove that Priscillian was considered a bishop by his contemporaries as this is often contested.

2.4 Conclusion
In this case study focused on bishop Priscillian of Avila, bishops can be seen to pursue what might be termed ecclesiastical and civil methods for enforcing their will on other bishops. As noted in the introduction to this chapter, the ecclesiastical methods: mobilising the consensus and support of other bishops through church councils, conciliar documentation and personal petitions to influential clergy were held as the ideal. However, clear signs of episcopal participation in civil mechanisms for dispute resolution have also been identified. Sulpicius Severus mentions three rescripts obtained one each by Hydatius, Priscillian, and Ithacius, to which could be added the reply Priscillian himself notes he received from an unnamed quaestor.

Seeking support from powerful men (and occasionally women) would seem to be in practical terms one tactical option, regardless of whether the powerful individual was the bishop of Rome, or Milan, or whether s/he was the emperor (or the
emperor's mother). This must be even more so when the power enjoyed by such people was to a large degree personal and private rather than institutional.\textsuperscript{281} Connections enjoyed with one civil official did not extend to his successor, and this was nowhere more true than regarding the emperors, with four emperors dying within the first decade of Ambrose's episcopate.\textsuperscript{282} The question of how much in their form or procedure church councils owed to civil proceedings, either senate or other bureaucratic committee meetings, or legal proceedings is a larger question than can be answered here.\textsuperscript{283}

Whatever the similarities, church councils are noticeable in the record of these two conflicts as first options, whereas civil legal proceedings appear as more likely to have followed on from church councils. This could indicate that bishops tried to resolve their disputes amongst themselves in the first instance, or it might equally indicate that formal legal proceedings were seen as an escalation of the conflict beyond the level of the informal persuasion of one's peers. In addition, as Chapter One has shown and this chapter confirms, church councils in the fourth century were often convened by an emperor issuing an explicit order via a legal document, and the official charged with convening the council was often equally present in judgement as the bishops themselves. Priscillian employed a rhetoric that suggests the high moral ground lies with councils when approaching Damasus, but he was equally willing to seek the support of the law and civil proceedings when this appeared to offer him advantage.


\textsuperscript{282} Three if one excludes Magnus Maximus.

\textsuperscript{283} It has been suggested that the canons of Zaragoza and other church councils have been modelled on imperial law statutes in their form, and conciliar letters on the form of imperial rescripts. On Zaragoza specifically, see: Burrus, *Making of a Heretic*, 30-33. On this subject more generally, see: H. Gelzer, "Die Konzilien als Reichsparlamente," in *Ausgewählte kleine Schriften*, ed. H. Gelzer (Leipzig: Teubner, 1907); Frances Dvornik, "Emperors, Popes and General Councils," *Dumbarton Oaks Papers* 6 (1951). On the form of the council of Aquileia (to be discussed in the following chapter) mimicking a legal trial, see: McLynn, *Ambrose of Milan*, 128-37.
The side to the conflict that most consistently demands that the matter be settled at a council and not a law court was neither Priscillian nor his antagonists, but the bishops on the periphery of the controversy. These demands also seem to have coincided with Priscillian's death, rather than earlier stages of the conflict.

Sulpicius’s account censures the bishops at Bordeaux for assenting to Priscillian moving his judgement from their jurisdiction to Maximus's audience chamber. He also puts a similar moral in the mouth of his hero, Martin of Tours. Ambrose apparently refused communion with certain bishops at Maximus's court due to their participation in civil proceedings, or at least, their seeking the death penalty for Priscillian.

In the previous chapter, we have seen how increasingly common it was for bishops to make use of Roman legal processes in their disputes. This trend began to change in the late fourth century, when some bishops like Ambrose and Martin of Tours begin to insist that bishops should never, in any circumstances, be subject to criminal accusations under Roman law. This late fourth-century novelty would become the medieval and modern status quo, which in turn has given the impression that bishops like Ambrose and Martin were the traditionalists. However, in light of the previous chapter, it is easier to appreciate that it was Priscillian and his antagonists whose activities resemble those of their mid-fourth century episcopal colleagues.

Ambrose and Martin, therefore, should be seen as the innovators in their claims for clerical immunity from prosecution at this time. Furthermore, it is clear that a significant impetus for their claims was Priscillian's execution itself. Both bishops repudiated any personal connection with Priscillian but took public stances against his execution. These were not academic interventions taking the execution as a rallying cry for a change in policy; instead each bishop faced similar dangers almost immediately and asserted claims of clerical immunity as self-protection. Resident at Maximus's court at the time, Martin fended off accusations from the very same
accusers who successfully brought Priscillian to trial. At a slight remove in Milan, Ambrose was threatened with the accusation of treason in the following year by the emperor resident in that city, Valentinian II. Martin and Ambrose were more successful in protecting themselves from these legal threats than Priscillian. Both survived, but in successfully surviving these specific threats, they provided new resources for later bishops to push the question of clerical immunity even further.
3. Right Place, Right Time: Ambrose of Milan and the Basilica Controversy (374-386)

"Does he [Auxentius] even have the effrontery to talk to me of debate, when he is covered with blood and gore? He thinks that all those he fails to mislead with words ought to be slain with the sword. With his mouth he dictates, with his hand he writes bloodthirsty laws, thinking that men can be commanded by legislation to adopt a faith."

Ambrose of Milan, c. 386

3.0 Introduction

3.0.1 Context

The previous two chapters have shown that between the repeal of the legal basis for the Great Persecution in the 310s and the rise of Nicene supremacy in the 380s, men wishing to claim contested episcopal sees often sought the authority of the emperors to resolve the disputed claim in their favour. The emperors also preferentially granted legal, military and financial resources to their chosen episcopal claimants-- typically, non-Nicene bishops. This gave rise to two expectations in the mid-fourth century for men who would be bishops: that Roman law was an available avenue to dispute and seek affirmation of episcopal claims, but also that it was an avenue that linked success at securing and retaining an episcopal see to currying and maintaining favour in the eyes of the emperor.

How sharp the consequences of failure could be for the episcopal claimant without imperial support has been illustrated above. Exile was the most common punishment among Chapter One's examples. This left open a loophole for some: they could attempt to regain episcopal status by seeking out political favour and

support, particularly on occasions where their exile brought them into the orbit of a different emperor from the one who had exiled them. Athanasius of Alexandria’s first and second returns from Western exile were brokered in this way in the 340s, despite the acrimony between him and the emperor who controlled Egypt, Constantius II.\textsuperscript{285} Constantius used soldiers to bring the bishops to his council at Rimini in 359 and ordered his praetorian prefect, Taurus, to keep them there until all had signed the council’s creed.\textsuperscript{286} Socrates and Sozomen record the emperor Valens claiming to exile a group of eighty Nicene clerics, while ordering them executed; on the emperor’s orders, his praetorian prefect arranged for the boat transporting the clerics to be set on fire at sea.\textsuperscript{287}

In Chapter Two, we saw that the stakes for would-be bishops continued to escalate. In 381, Priscillian secured legal documents from the emperor Gratian’s Milanese chancery that allowed him to return to his see in Avila— but did not end the conflict. At Bordeaux in 384, Priscillian requested the group of bishops gathered to hear his case that it be turned over to the lay courts. The emperor Magnus Maximus executed Priscillian in 385.\textsuperscript{288}

In January 386, in the city of Milan, Valentinian II promulgated a law that affirmed the right of those who adhered to the creed of Rimini to gather for worship and threatened those who sought to restrict their ability to do so with the strongest of punishments— execution. He (or his court) did this to support the claims of bishop Auxentius of Durostorum, who had accompanied Valentinian and his mother Justina to the Milanese court by 381. Valentinian’s law was intended to resolve the

\textsuperscript{285} See above, chapter 1.1.1, p. 57 and 1.1.4, p. 68.
\textsuperscript{286} See above, chapter 1.2.1, p. 73.
\textsuperscript{287} See above, chapter 1.3.2, p. 83.
\textsuperscript{288} See above, chapter 2.2.3, p. 116.
conflict that had simmered between the two bishops from this time.\textsuperscript{289} Nicene Ambrose not only escaped execution, despite grossly flouting the terms of Valentinian's law, but he escaped any enduring legal sanctions whatsoever.

This chapter will chart how Ambrose of Milan not only escaped Priscillian's fate in a similarly threatening situation, but in doing so, successfully championed a new way for bishops to interact with Roman law and accordingly, with emperors. In trying to survive the immediate threat which he faced during the conflict with Auxentius, Ambrose invented a tool that would put bishops in a far stronger position \textit{vis-à-vis} the emperors than they had previously enjoyed. At the same time, he opened the way for bishops to claim to stand in judgement over emperors instead of submitting meekly to their legal jurisdiction. In the subsequent chapter we will trace Ambrose's use and further refinement of this tool not in inter-episcopal conflicts like this one, but directly challenging the emperor's right to claim final legal judgement.

The present chapter's main purpose is to understand and account for the different strategies employed by Ambrose and his antagonists between 378 and 386. We will argue that Ambrose was pushed into a corner by his antagonists' monopoly on success according to existing ways of bishops interacting with the law, and that his creative response to the crisis would have lasting repercussions. Ambrose chose to refuse to play the game under the terms it had been played -- refusing outright to have any involvement with the lay courts. This turned out to be an unexpectedly powerful and successful strategy.

\textbf{3.0.2 Contributions}

The first main contribution of this chapter will be to explain the creation of Valentinian's January 386 law and its significance as evidence of the class of laws

\textsuperscript{289} Valentinian II was fourteen at the time of this dispute, and his own personal agency in what was enacted in his name may be disputed. However, for the sake of simplicity, I will refer to actions enacted in his name as being "Valentinian's" strategy in this dispute.
that affirmed specific privileges for the "orthodox" from this period. The previous
two chapters have drawn attention to the substantial amount of legal material that
has been lost from the mid-fourth century because its beneficiaries were later
categorised as heretics. Our surviving sources mention the production and use of
legal documents by these heretics, but the survival of such legal texts themselves is
almost vanishingly rare. Ambrose so definitively shutting down the legal strategy
behind Valentinian's law has ironically safeguarded the text's survival. It was
collated twice\textsuperscript{290} into the staunchly pro-Nicene \textit{Theodosian Code}, with this text's
original non-Nicene-favourable provenance obscured over the intervening five
decades.\textsuperscript{291} The context of its preservation has also obscured the significance of
Valentinian's law for scholarship, where it has been overshadowed by Theodosius's
similar privilege-granting laws issued in 380 and 381, which are mistakenly thought
to apply in both halves of the Empire.\textsuperscript{292} This chapter's account re-positions
Valentinian's law as of the same class of law: granting privileges to those the
emperors considered orthodox (albeit different groups in the case of each emperor).

The second contribution of this chapter will be to identify the factors that led to
Ambrose's distinctive and innovative strategy in this conflict and explain its success.

\textsuperscript{290} Duplication like this, with the same text addressed to the same official on the same date, account
for only 1\% of the \textit{Theodosian Code}. Tony Honoré, \textit{Law in the Crisis of Empire: 379-455 AD: The

\textsuperscript{291} The law is preserved at \textit{CTh. XVI.1.4} in full, and with some slight changes of vocabulary and with
the first half (and the mention of the Rimini creed) omitted at \textit{CTh. XVI.4.1}.

\textsuperscript{292} See, for example, the argument of D. H. Williams, "Ambrose, Emperors, and Homoians: The First
Conflict over a Basilica," in \textit{Arianism after Arius: Essays on the Development of the Fourth Century
Trinitarian Conflicts}, ed. M.R. Barnes and D.H. Williams (T&T Clark, 1993), who argues that Gratian
returned a basilica to Ambrose from the Milanese "Arian" congregation in 381 in order to comply
with Theodosius's pro-Nicene laws; Andrew Lenox-Conyngham, "The Topography of the Basilica
assumes that the Milanese "Arians" felt constrained in their choice of basilicas by Theodosius's 381
law preserved as \textit{CTh. XVI.5.6}. Such assumptions do not explain why Ambrose himself would not
mention any laws favourable to his position, were any applicable and known to him. His citation of a
rescript of Valentinian I in his letter to Valentinian (\textit{ep. X.75.2}) suggests that Ambrose was not averse
to supporting his position with reference to the Roman law in addition to scripture.
The memory of Ambrose's actions during the conflict remembered as the Basilica Controversy (April, 386) would have a long afterlife, in part because of Ambrose's own re-use of the strategy that served him so well here in other conflicts. A narrative of a pious bishop standing up to a sinful emperor would prove attractive for deployment again and again; later bishops could draw on the cumulative weight of precedents built upon Ambrose's example. However, this (sometimes in combination with the over-estimation of relevance of Theodosian's "pro-Nicene" laws to the Basilica Controversy) has led medieval and modern scholarship to assume that Ambrose himself enjoyed the same authority as those later bishops who called on his example.

This chapter provides a new legal-historical narrative of the Basilica Controversy, highlighting the bishop's vulnerability to the threat of Roman law and his creativity in response to that threat. This resupplies the fourth-century context that drove and constrained Ambrose and his antagonists, which not only offers a new perspective on this conflict, but will in turn allow research into how the new conceptual tools developed by Ambrose would be used by his successors.

3.1 Palladius of Ratiaria vs. Ambrose of Milan (374-384)

The conflict between Ambrose of Milan and Palladius of Ratiaria, and later, Auxentius of Durostorum, is more difficult to reconstruct than that of Priscillian and his antagonists discussed in the previous chapter. In this instance, we do not have a source like Sulpicius Severus, who wrote about Priscillian and his antagonists with a primary concern to the memory of a third party to Priscillian's conflict, Martin of Tours. Instead, as with most Ambrosian conflicts, Ambrose himself provides the majority of our evidence and does so with rhetorical skill and a particular concern about self-presentation that has come to be appreciated more greatly in recent years.

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293 The most notable of these is surely Ambrose's stand-off with the emperor Theodosius in 390 concerning the emperor's actions in quelling riots in Thessalonica. See below, chapter 4.3, p. 217ff.
years. As with the Priscillianist controversy, we are lucky that two sources from Ambrose's antagonists survived by chance. One of these is Valentinian's January 386 law, preserved in the *Theodosian Code*. The other is a non-Nicene-favourable perspective on this conflict preserved due to the chance survival of the texts as marginal notes on otherwise Ambrosian material in a manuscript that is now Paris BN Lat. 8907. From Palladius, this manuscript preserves fragments of a refutation of the original two book version of Ambrose's *De Fide* and an *Apology*, which offers Palladius's perspective on the council of Aquileia.

A further complication in analysing this conflict between bishops is that both sides characterise themselves as agents in a much wider conflict and one with substantially higher stakes from the outset. The question of who would hold the see of Milan, an imperial capital, was sharper than who would hold provincial sees like Avila or Ossonuba. Priscillian and his antagonists (or their messengers) had to travel long distances to avail themselves of imperial justice. In Milan, after 381, the emperor resided in Ambrose's own city. The Priscillianist controversy is difficult to trace historically further back than the 380 council of Zaragoza. By contrast, Ambrose at least positioned his conflict with Palladius and Auxentius of Durostorum as a continuation of the Nicene/non-Nicene conflict that had begun with the future Athanasius of Alexandria's condemnation of the preacher Arius at the council of Nicaea in 325. The legal challenges to Athanasius's episcopal status have been discussed in detail in Chapter One, as examples of widespread episcopal use of Roman law in this way. With that background as well as the Priscillianist case in mind, we can now turn to the activities of Ambrose and his antagonists in the Milan of the 370s.

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294 McLynn, *Ambrose of Milan*.

3.1.1. Valentinian I Grants Ambrose Episcopal Status (374)

Ambrose was ordained as bishop of Milan in 374. His biographer, Paulinus, writing after Ambrose's death, implies that Ambrose immediately identified with the Nicene position in contrast to his predecessor, Auxentius of Milan.²⁹⁶ Ambrose identifying in this way positioned him in good standing with some of his episcopal colleagues and against others-- most particularly this positioned him as against bishops who were allied with the ruling Valentinian dynasty, who had continued to support the Rimini creed of Constantius II.

It is possible and indeed likely that Ambrose's Nicene identification was a far softer one in 374 than Paulinus's text insists. Ambrose's appointment came after popular acclamation by citizens of Milan, when Ambrose, as the local governor, stepped in to quell riots between rival factions of episcopal supporters following Auxentius's death. According to Paulinus, the Milanese then petitioned [missa relatio est] Valentinian I for Ambrose to act as their bishop.²⁹⁷ Ambrose escaped the city for an estate belonging to a certain Leontius, who in turn handed Ambrose back into Milanese custody when Valentinian gave his legally binding consent to the Milanese petition [ubi relationi responsum est].²⁹⁸ Paulinus further notes that Valentinian ordered his vicarius to see to this, and published an edict [proposito edicto] that specified penalties to life and property for those harbouring Ambrose and preventing his being instated as bishop.²⁹⁹

The details of Paulinus's narrative match up with others we have seen in Chapter One, albeit from the opposite perspective. Athanasius was scathing about the Alexandrian factions that petitioned Constantius II for his replacement Gregory in the late 340s, complaining about Gregory's entry into the city accompanied by

soldiers and much violence. He also insisted that the petition from the people of Alexandria that Gregory and the Alexandrian prefect Philagrius sent to the emperor supporting Gregory/disputing Athanasius's episcopal status was forged. With Ambrose's ordination decades later, the same elements were present. Ambrose was imperially appointed in response to a petition from citizens, and the emperor acted by ordering local but high-ranking officials to see that his episcopal appointee was put in place. Valentinian's order to his vicarius and his edict are also examples of privilege-affirming laws concerning bishops typical of this period.

Ambrose's ordination clearly positioned him as the man of Valentinian I, and this was no more neutral a stance than aligning himself with the Nicenes instead of the non-Nicenes. The personal convictions of Ambrose or Valentinian I are impossible for the historian to access. It should be noted that most emperors appear to have been more concerned about bishops obedient to the emperor in the first instance and only some emperors, Constantius II a notable exception, chose to put substantial imperial resources behind episcopal obedience to any particular creed.

Valentinian controlled the Western Empire at the time of Ambrose's ordination, with his brother Valens in charge of the Eastern half. Unfortunately for Ambrose and others similarly aligned with this dynasty, Valentinian died in his bed in the following year, leaving his sixteen-year-old son Gratian in charge of the West. Valens would die at the disastrous Roman defeat at the hands of the Goths at Adrianople in 378. With Gratian not yet twenty and his half-brother Valentinian II only seven years of age, this necessitated Gratian raising to the purple a general who had in the past supported his family. This general was Theodosius I, who would control the East from 379 and effectively the entire Empire in less than a decade. The question of which emperor to support (and seek the support of) was one felt keenly by Ambrose and his contemporaries, whether episcopal or lay, at this time of rapid political change and instability. The choice to support Theodosius and/or

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300 See above, chapter 1.1.2., p. 65.
the Nicene cause might seem obvious in hindsight, but in the second half of the 370s, elite Roman men could only hope that they happened to choose to back the right emperor.

### 3.1.2. High-Risk, High-Reward Opportunities for Bishops (378 - 381)

The chronology of Ambrose's and Palladius's moves before 381 are difficult to reconstruct with certainty. The most important move against Ambrose was surely whatever prompted Gratian to write to Ambrose demanding that he expound his faith in writing. Ambrose himself would carefully transpose this legally binding demand into one in which the teenage emperor had sought religious instruction from the bishop [*petis a me fidei libellum*].

McLynn has been rightly suspicious of Ambrose's presentation of this request. He has suggested that a bishop like Palladius approached Gratian about Ambrose's suitability as bishop, much as Hilary of Poitiers had approached Valentinian I about Auxentius of Milan in 364. This seems likely, as Gratian does not appear to act here on his own initiative and it is difficult to produce any other convincing episcopal candidate to petition Gratian to do so. Palladius also appears to have later recommended a similar inquest in his response to the council at Aquileia. It is also in keeping with the early stages of the Priscillianist controversy, discussed in the previous chapter, in which Priscillian's antagonists petitioned lay officials (in this case, also Gratian) for legal documents to be used to remove Priscillian and his friends from their sees.

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301 Amb. *De Fide*, 1.3.

302 McLynn, *Ambrose of Milan*, 98. On Hilary's dispute with Auxentius, see above, chapter 1.3.3, p. 84. McLynn has also noted elsewhere in passing that Palladius's strategy looks similar to examples of inter-episcopal conflict under Constantius, but takes from this that Palladius's strategy is out of touch with contemporary trends, rather than that Ambrose's is innovative. See McLynn, "Apology," 75-76.

303 See below, chapter 3.1.3, pp. 141-141.

304 See above, chapter 2.1.1-2, pp. 101-105.
Ambrose might not have been as vulnerable to accusations of Manichaeism or being a pseudo-bishop. Unlike Priscillian, Ambrose could point to legal documents that affirmed his episcopal status from the chancery of Gratian's father. On the basis of further examples from Chapter One, above, it is easy to characterise Valentinian's legal role in Ambrose's election as falling within earlier fourth-century norms about men gaining or maintaining episcopal status.  

Priscillian's example should also remind us that his antagonists not only challenged his episcopal status by petitioning Gratian, but also by suggesting that his election had not met standards set by the canons of church councils. As part of his defence when introducing his case to Damasus of Rome, Priscillian assured Damasus that he had not been personally condemned at the council of Zaragoza. Palladius would criticise Ambrose's election in his *Apology*, written after the council of Aquileia, nearly a decade after Ambrose's ordination. Palladius would turn Ambrose's legal credentials from Valentinian into a negative by suggesting that his elevation from governor instead of a clerical role made Ambrose a poor quality bishop in terms of his understanding of the clerical and theological aspects of the role. Ambrose had not even been a catechumen at the time of his election, let alone a baptised Christian.

This thesis has argued that the authority of Roman law usually trumped that of alternative methods of affirming/disputing episcopal status, but it should be understood that those alternative methods remained accessible throughout this period and that the authority of individual pronouncements under Roman law was only as effective as individual emperors could make them. Valentinian I had

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305 Paulinus’s care in providing such a detailed account of the legalities indicates that Ambrose’s election/ordination was still a point of vulnerability after Ambrose’s death.

306 See above, chapter 2.1.1, p. 103.

307 Palladius, *Apol.*, 120.
supported Ambrose's appointment, but Valentinian was now dead, which opened space for status renegotiation.

The ways in which Ambrose responded to Gratian's request that Ambrose explain his doctrinal position also suggests that this was a point on which Ambrose was vulnerable. Ambrose put off delivery of the initial two books of his *De Fide* for long enough for Gratian to issue a second/reminder request. Gratian requested a second copy of the work, either to send to the bishop(s) who had opened the enquiry into Ambrose or in response to their criticism. Fragments of Palladius's criticisms of the first two books of Ambrose's *De Fide* survive in the so-called "Arian" *scholia* in Paris BN Lat. 8907. Among his comments, Palladius accuses Ambrose of appealing to the emperor to avoid answering the theological criticisms of Palladius and his colleagues. Ambrose bought himself time to write a further three book "expansion" of the work, without attending the sort of formal inquest that Valentinian I convened about Auxentius or that Palladius would recommend as a replacement for the council of Aquileia.

This progression of Ambrose's responses indicate that Gratian's initial request was not friendly and that Ambrose was vulnerable enough to suggestions that he was an unsuitable candidate for episcopal status that significant effort, both literary and political, was necessary to maintain his position. Given the period's political instability, this may say less about Ambrose's individual vulnerability but instead suggest an environment where episcopal sees were in general vulnerable to such challenges.

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308 Amb, *De Fide* 3.1.

309 Gratian to Ambrose, 3, which is preserved as part of Ambrose's treatise *De Spir. Sanc*. Ambrose's reply to this letter including the promise to send "two little volumes" of *De Fide* is Amb. *Ex. coll.* 12.

310 Palladius, *Apol.*, 84.

311 See below, 3.1.3, p. 138.
The late 370s appear to have been a time of high risk, high reward opportunities for bishops on both sides of the Nicene/non-Nicene divide to further their preferred colleagues at the expense of others. Sometime between 376 and 380, Ambrose travelled into Illyricum to be one of the bishops who appointed Anemius to the see of Sirmium. This was a strategic move placing a Nicene-identified bishop in this region, where non-Nicene bishops like Palladius were more common. Ambrose's involvement in this election is unusual, considering the distances involved and relationship between Italian and Illyrican bishops in general. McLynn suggests that Ambrose may have been able to get advance notice of the see's vacancy through imperial civil channels and connections from his past life.

In 378 or 379, Damasus of Rome convened a council at Rome, at which Ambrose may have been present. The council's petition to Gratian survives among Ambrose's unpublished correspondence. They wrote seeking Gratian's support behind a new system of ecclesiastical jurisdiction, which would allow the bishop of Rome to hear cases of deposed bishops from either half of the Empire. We have extant evidence of Gratian granting this right, in a rescript addressed to the vicarius of Rome (i.e. not Damasus or the council as a whole), preserved in the papal Collectio Avellana. This would in principle put whoever controlled the see of Rome in a strong position to influence who was and who was not a bishop, but a lack of examples where this law was employed suggests that more than just the document was needed to claim such authority.

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313 McLynn, Ambrose of Milan, 97.
314 Amb. Ep. Ex. coll. 7. Ambrose may have received a copy of this petition via his friendship with Damasus if he wasn't present at the council itself.
315 Coll. Avell. 13 (rescript to the vicarius in Rome).
316 The law is preserved in the Collectio Avellana to support claims of the fifth-century Papacy of Leo I, c. 450, to such authority. This confirms that even nearly a century later, the papacy did not have full access to the authority this rescript appears to grant them.
This should be read against a law of Gratian’s preserved as XVI.2.23 in the *Theodosian Code*. On the 17th of May, 376, Gratian replied to a rare list of named bishops whose sees appear to be from the Spanish and Gallic provinces. The law states that slight offences [levibus... delictis] concerning religious observances could be heard locally and at synods, except for criminal offences [actio criminalis] which should be heard by the ordinary or extraordinary (lay) judges or the emperors themselves. As we have seen in Chapters One and Two, many legal challenges to episcopal status focused not on theological grounds but established criminal charges: for example, treason, murder, or *maleficium*. Athanasius of Alexandria, for example, might have found Damasus to be similarly in favour of the Nicene creed, but this would have been of little use when seeking to repeal an exile that hinged on Athanasius having been exiled for treason. Whatever practical use the bishop of Rome was able to make with the rescript preserved in the *Collectio Avellana*, it would be in judging cases that the emperors did not wish to claim for their own judgement. Gratian’s own unstable position would have made an appealing case for out-sourcing some though not all dispute resolution concerning bishops to the Roman bishop.

Bishops were not the only men seeking to advance or maintain their position in this precarious political environment. By 381, Milan had become a microcosm of the difficult political position in which Gratian found himself. Because of political instability on the Illyrican front, he moved his half-brother Valentinian and Valentinian’s mother, Justina, from Sirmium to Milan. Because of instability on the Gallic/North Sea front, he moved the capital from Trier to Milan. Ambrose was the bishop Gratian’s father had established in the city, while Auxentius of Durostorum, his half-brother’s bishop, was established in the imperial court of Valentinian II and Justina.

317 (To Artemius, Eurydicus, Appius, Gerasimus and “other bishops”.) Of the more than twenty-five thousand individual constitutions in the *Theodosian Code*, only five are addressed directly to bishops or group of bishops, including one from Valentinian I directly to Damasus (*CTh. XVI.2.20*, read in the church at Rome on 30 July 370).

318 See above, n. 243.
Because of the death of his uncle Valens in the course of a humiliating military defeat, Gratian had elevated Theodosius to the purple to deal with the problems of the Eastern Empire. Gratian was a teenager, while Theodosius was a mature and established general. In February 380, Theodosius issued an edict on the faith. As was customary, this edict was promulgated in the names of all three reigning emperors, but was also a play by Theodosius for an imperial role on his own terms. Gratian needed a stable and secure home base in Milan, and needed to show himself as capable as Theodosius in terms of publicising his own piety.

3.1.3 Ambrose’s Council of Aquileia (381)

In the summer of 380, Gratian announced his plans to convene a general church council in Aquileia in Northern Italy during the following year. Unfortunately for Gratian's plans, Theodosius beat him to it. Theodosius invited more than one hundred and fifty bishops to Constantinople for a council which was held in May, 381.

A letter to his praetorian prefect, Eutropius, issued in January 381, might have been part of the emperor's instructions to officials regarding the council. The extract from this letter preserved at CTh. XVI.5.6 offers no concrete details about the council, but the timing and the content is suggestive.

Theodosius's 380 edict had only vaguely referenced Nicene bishops by highlighting the bishops of Rome and Alexandria, important and historic sees in and of themselves, but whose incumbents identified as Nicene. The 381 letter to Eutropius

\[319\] Preserved as CTh. XVI.1.2. (Given 27th February 380 in Thessalonica as an edict to the people of the city of Constantinople.)

\[320\] Eutropius 2, PLRE 1, 317.
includes a far more explicit Nicene identification, mentioning the Nicene faith twice, while also giving a detailed theological discussion of what this position involved.\footnote{Such theological discussion is rare among the laws preserved in the \textit{Theodosian Code}. For more on this and the 380 Theodosian law (XVI.1.2) in the context of imperial privilege-affirming laws of the fourth-century, see below, 3.2.2, p. 151ff.}

Theodosius holding a general council before Gratian, and without coordination with him, would have already posed problems for Gratian. Theodosius's council usurped the prestige/honour Gratian might have gained from convening the council, as well as usurping the attendance of the majority of bishops Gratian might have summoned. But Theodosius also chose to preferentially support bishops who rallied under a different theological banner than the bishops Gratian's own Valentinian dynasty, and the Constantinian dynasty before them, supported.

All this required Gratian to adjust his plans. Ambrose suggested that a smaller assembly of only Western bishops would be a suitable replacement for Gratian's original plans.\footnote{Amb. \textit{Gesta}, 4.} It is clear from Palladius's protests at the council itself that this new, shorter attendance list was unknown to him and his friends. In his \textit{Apology}, Palladius accused Ambrose of using his political connections to take control of the council. He particularly mentioned Syagrius, Gratian's Praetorian Prefect of Italy, who played the same role as Theodosius's Eutropius in convening the council at Aquileia.\footnote{Palladius, \textit{Apol.}, 121; Flavius Syagrius 3, \textit{PLRE} 1, 862-3.}

Gratian's Aquileia council was held in September of 381.\footnote{Amb., \textit{Gesta} 1.} Valerian of Aquileia was technically the chair, as bishop of the host city, but the \textit{Gesta} that records the proceedings show Ambrose taking the leading role. The \textit{Gesta} is in the form of a dialogue transcript, with Ambrose taking the first line of dialogue after the opening
listing the attendees and more than one hundred lines of dialogue. Valerian does not appear until chapter 46 and only appears two further times.\textsuperscript{325}

Other notable contributions were from Eusebius of Bologna, Sabinus of Placentia (Piacenza), and Anemius of Sirmium. Like Anemius, Sabinus had been consecrated to his see by Ambrose. The attendee list was mostly Northern Italian bishops, though there were some bishops from the Gallic provinces and Africa designated to represent the bishops of those regions. Noticeably absent were any Eastern bishops, which Palladius protested early at the council and in his \textit{Apology}.\textsuperscript{326} He insisted that Gratian had confirmed that the Eastern bishops would be attending when Palladius received his summons to the council.\textsuperscript{327}

Palladius was the main target of the council's discussion, with secondary criticism directed at Secundianus of Singidinum and Attalus, a presbyter from the church of Bishop Julianus Valens of Poetovio, who did not himself attend Aquileia.

Ambrose's criticisms of Palladius are all theological in content. It may seem an obvious point, but as we have seen earlier in this thesis, bishops did not restrict themselves to only accusing each other of false or inappropriate doctrine at councils. A council at Antioch in the winter of 337/338 charged Athanasius with inciting sedition and embezzling the Alexandrian grain supply, in addition to resuming his see on imperial authority but contrary to the ruling of an earlier episcopal council, which started the ball rolling for Athanasius's second exile in 340.\textsuperscript{328}

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\textsuperscript{325} Perhaps in accordance with the council's eventual anathema on Palladius and Secundianus, neither are accorded episcopal titles throughout the \textit{Gesta}, while all approved bishops are always minuted with their titles.

\textsuperscript{326} Amb., \textit{Gesta} 6-11; Palladius, \textit{Apol.} 88, 96, 99.

\textsuperscript{327} Amb., \textit{Gesta} 6.

\textsuperscript{328} See above, chapter 1.1.2, p. 62.
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Palladius also had plenty of criticisms of Ambrose's theological position. He refers to documents he and Secundianus had intended to present against Ambrose at the council.\textsuperscript{329} They never do so, perhaps because having come to debate doctrinal points, they realised that the audience at Aquileia was stacked against them. Their overall strategy was to deny the legitimacy of Aquileia as a council and therefore refuse to participate.\textsuperscript{330} By chapter 41 of the Gesta of the council, Palladius is no longer engaging with Ambrose's bludgeoning interrogation technique but instead refuses to answer while disputing Ambrose's authority: "ego tibi non respondeo auctoritatem non habenti."

Palladius made two proposals for alternative venues, or alternate audiences, for debate. Throughout the Gesta, Palladius demands to be heard in front of a general council including Eastern bishops.\textsuperscript{331} In chapter 51, he proposed arbitrators [auditores] to judge between them, specifying that these arbitrators should come from supporters of both sides to the dispute. Palladius did not need to specify that these arbitrators would be lay men; Ambrose's scathing response to the suggestion made this clear for him. Ambrose insisted that bishops should judge laymen, not laymen the bishops.\textsuperscript{332} It is this in the following chapter that Ambrose uses as his definitive reason to anathematise Palladius, that his willingness to be judged by laymen is further evidence of his unsuitability as a bishop.\textsuperscript{333}

In light of the previous chapters of this thesis, Ambrose's claim -- the idea that lay men should not judge bishops was commonly accepted -- must strike us as extremely aspirational. Chapter One demonstrated that bishops, both non-Nicene

\textsuperscript{329} Amb., Gesta 50: "Ambrosius episcopus dixit: Obiecisti me esse impium, hoc probo. Palladius dixit: Expositionem uestram afferemus."

\textsuperscript{330} For example, at Amb., Gesta 50, Palladius refuses to speak [reticeret Palladius] in answer to Ambrose's question.

\textsuperscript{331} On his requests for a general council, e.g. Amb., Gesta, 11, 52.

\textsuperscript{332} Amb., Gesta, 51: "Ambrosius episcopus dixit: Sacerdotes de laicis iudicare debent, non laici de sacerdotibus."

\textsuperscript{333} Amb., Gesta, 52
and Nicene, brought inter-episcopal disputes to the judgement of lay men and in particular the emperors as soon as this avenue of justice became available in 313 through to Ambrose's own day. Chapter Two demonstrated that a strategy of bishops petitioning imperial officials was employed by both Nicene-identified sides of the conflict centred around Priscillian of Avila.

Furthermore, Ambrose himself appears to have engaged in the petition process as part of his ongoing conflict with Palladius. In the letter that Ambrose replies to Gratian's request for a second copy of the two-volume first version of *De Fide*, Ambrose also thanked Gratian for "stopping the mouths of the faithless ... not less through the influence of your faith as your authority [potestatis]."334 This vague phrasing may refer to the Milanese basilica that Ambrose thanked Gratian for returning to the Nicenes in another work.335 It may also refer to whatever caused Palladius to complain in his *Apology* that Ambrose had sought a ruling from the emperor that would prevent any truly Catholic theologian from debating Ambrose in any way.336 He does appear to have been thanking Gratian for acting in some official, legal context against Ambrose's opponents.337 Given everything else on Gratian's plate during this period, he was far more likely to have acted in response to a request from Ambrose than spontaneously.

3.1.4 After Aquileia (381-385)

The practical results of Aquileia were unimpressive. For Gratian, it did not have the scale or the scope of Theodosius's Constantinopolitan council. For Theodosius, one

334 "Reddidisti enim mihi quietem ecclesiae, perfidorum ora atque utinam et corda clausisti; et hoc non minore fidei quam potestatis auctoritate fecisti": Amb., Ep. ex. coll. 12.2. See also above, chapter 3.1.2 p. 309.

335 "basilicam reddisti": Amb., De Spir. Sanc. XX.

336 Palladius, Apol. 84.

337 Any legal right granted must have been of extremely limited application, given that Ambrose never quoted any legal text to support his position later that can be identified with this complaint of Palladius.
imagines Aquileia was a non-event. Neither Palladius nor Ambrose were successful in silencing or deposing each other. They both returned home to their sees to continue the conflict.

Immediately after the council, Ambrose wrote a number of letters on the council's behalf. The letters to Gratian seek his approval for the council's rulings, and to extend their rulings to condemn Julianus Valens.³³⁸ The letter to Theodosius involves reaching into Eastern church matters that do not appear at any point in the surviving account of the council itself.³³⁹ None appear to have had any practical effect.

Between the date of the council and 384, Palladius composed his "Apology", his own recounting of the council of Aquileia.³⁴⁰ In it, he proposed that a further council be convened as the issue posed by Ambrose remained unresolved. He may have asked that the matter be judged before Roman aristocrats.³⁴¹

In summary to this first section, both Ambrose and his main antagonist, Palladius, appear to act within the patterns of episcopal use of Roman law to dispute episcopal status as outlined in the previous two chapters. We can see both bishops criticising the use the other makes of the effective force of the law courts, while exhibiting a rhetoric of reluctance to use it themselves (while still doing so).

³³⁸ Amb. Ep. ex. coll. 4 and 5.
³⁴⁰ It must have been written after Aquileia (381) but before the death of Pope Damasus (384), who is referred to as alive at the time of writing. McLynn, "Apology," 72, suggests the summer of 382 is most plausible, noting that Gratian was in Illyricum in the summer of 382, with a law in the Theodosian Code (XII.9.89a) that places him roughly halfway between Palladius’s and Secundianus’s sees in early July before returning to Milan by 22 November at the latest.
³⁴¹ Palladius, Apol. 91-92. The text is unfortunately very illegible at this point, but this appears in line with Palladius’s requests for arbitrators at Aquileia itself. McLynn has suggested that Palladius wanted the Roman Senate as a venue. McLynn, "Apology," 74.
Ambrose had the better political connections with Gratian, at least at the time of the council at Aquileia, but these may have been via either the connections Ambrose retains from his lay career or his proximity to Gratian's court in Milan (i.e. very recent at the time of the council). It is also possible that whatever political connections Palladius could call upon, that these were being disrupted by the same military instability that prompted the court of Valentinian II and Justina to move from Sirmium to Milan. And yet, having been disappointed and disgusted by what the council at Aquileia turned out to be, Palladius can still imagine an alternative inquest into Ambrose's suitability convened with imperial support.

Beyond the connections to the imperial court that these two bishops could draw upon, it should also be emphasised that this was a period of intense political instability for all, including the emperors they were seeking to support them. When Ambrose became a bishop, the Valentinian dynasty was represented by two mature men with well-established authority and patronage networks. By 378, it was headed by a teenager and a child, and with Gratian's death in 383, only that child, Valentinian II, remained. Magnus Maximus headed an army to his west, and Theodosius to the east. This was the wider political background to the continuation of non-Nicene legal challenges to Ambrose's episcopate.

As with the Priscillianist controversy discussed in the previous chapter, Gratian's assassination in 383 disrupted Palladius's brewing plans. His proposal for a general council or theological debate with Ambrose did not occur. Palladius was also an old man, and the obvious explanation for his disappearance from the narrative at this point is his death.342 In the next section, Ambrose's antagonists would change to a different bishop, Auxentius of Durostorum, and a different emperor, Gratian's surviving half-brother, Valentinian II.

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342 Heretical bishops dying unpleasantly is the sort of motif one would expect either Ambrose or his biographer to make something of if the story was available to them, so Palladius's death is likely to have been kind. On Palladius's age, see: McLynn, "Apology," 57, n. 14.
3.2 Valentinian II vs. Ambrose of Milan (385-6)

3.2.1 Valentinian's Law

Non-Nicene Auxentius of Durostorum must have entered Milan as part of the entourage of Valentinian II and his mother, Justina, when they moved their court from Sirmium to Milan. The Ambrosian corpus gives elusive hints at earlier legal conflict centring around the non-Nicene use of basilicas in the city of Milan, but these tensions sparked in Easter 385 when Nicene Ambrose refused to allow non-Nicene worship in a Milanese basilica.343

Valentinian II sought to mediate tensions in the city by summoning Ambrose (and presumably other interested parties) to discuss the issue at the imperial consistory.344 This led to a law issued by Valentinian in January of 386, which is our sole direct evidence of the imperial strategy in this conflict. The law’s connection to the Basilica Controversy is undisputed,345 but its wider importance as a surviving example of a class of non-Nicene-supporting legal texts that have almost entirely been lost has been grossly underestimated.

Two elements of this law are most worthy of note. The first is that it offers explicit textual evidence of the non-Nicene-favourable emperors legislating to affirm privileges of the orthodox, specified in this case as the adherents of the creed of

343 A dating of events across both the Easters of 385 and 386 is traditional and remains widely accepted with minor variations of specific events assigned to each year. On arguments for a one-year or a two-year chronology, see the discussion in Lenox-Conyngham, "The Topography of the Basilica Conflict of A.D. 385/6 in Milan," 353-56. My preference for the two-year chronology of 385-6 centres on the issue of Valentinian’s law of January 386. It seems logical that the law both required an event to provoke its issue and an event to demonstrate that it had been issued. The more dramatic final events of the conflict must post-date the law’s issue as Ambrose refers to CTh. XVI.1.4 being in effect and himself in danger of its terms. For discussion of this, see below, section 3.4, pp. 163ff. The law’s issue also implies a pretext for Auxentius to petition Valentinian to issue the law; this pretext is most likely to have been recent, hence 385.

344 Amb., C. Aux. 29.

345 Fifth-century historians were aware of a law favourable to the "Arians" issued during this conflict. Sozomen even records that the death penalty was threatened (Hist. eccl. VII.13.). Ambrose’s own references to his impending execution are several and will be discussed in detail below.
Rimini. This provides an extant textual example, in line with the arguments of the previous two chapters, that granting privileges to those the emperor deemed orthodox was not a Theodosian innovation, but one with precedents under the previous non-Nicene-backed imperial dynasties.

The second is that Valentinian's law offers equally explicit textual evidence of a fourth-century emperor legislating to threaten a bishop with execution for treason. This demonstrates that bishops did not enjoy any kind of special legal immunity under Roman law at this time, but were seen to fall under the judgement of the emperors even to this extreme result.

The work of Jill Harries and Tony Honoré has revealed much of the individual character of the language used by individual quaestors drafting rescripts. With this context in mind, this chapter now turns to a reconsideration of the exact wording of the January 386 law.

The fuller version of the law is extant as XVI.1.4 and is worth providing in full:

"Damus copiam colligendi his (A), qui secundum ea sentiunt, quae temporibus divae memoriae Constanti sacerdotibus convocatis ex omni orbe Romano expositaque fide ab his ipsis, qui dissentire noscuntur, Ariminensi concilio, Constantinopolitano etiam confirmata in aeternum mansura decreta sunt. Conveniendi etiam quibus iussimus patescat arbitrium (B), scituris his, qui sibi tantum existimant colligendi copiam contributam (C), quod, si turbulentum quippiam contra nostrae tranquillitatis praecipitum faciendum esse temptaverint, ut seditiosis auctores pacisque turbatae ecclesiae,

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346 On the work of Harries, see Introduction 0.4, p. 51. Honoré, Law, provides a methodology which assesses the language of the laws by grouping them by the individual quaestors responsible for issuing the constitutions preserved in the Theodosian Code. His study was limited to the Theodosian dynasty, due to the Theodosian bias of the Code itself and so offers no suggestions about the issuer of CTh. XVI.1.4 but confirms the general methodological principle proposed by Harries about the value in investigating the language of legal texts.
etiam maiestatis capite ac sanguine sint supplicia luituri, manente nihilo minus eos supplicio, qui contra hanc dispositionem nostram obreptive aut clanculo supplicare temptaverint.\textsuperscript{347}

The law has been typically taken to indicate a position of weakness on the part of the non-Nicenes after Theodosius's pro-Nicene laws issued at the beginning of the decade, though this involves the mistaken assumption that Theodosius's laws were considered to be in effect in the Western Empire at this time.\textsuperscript{348} Its provision is usually phrased as "granting" the right for non-Nicenes to assemble in Milan, as if they had previously had no right to do so-- or more practically, that they had not been doing so unimpeded in previous years. Neil McLynn has rightly noted that the law is precisely not innovative: it takes away nothing from Ambrose's party apart from their claim to religious monopoly.\textsuperscript{349} It is true that the law concerns the "giving" of the right of assembly to a certain specified group of people: those who follow the paired 359 councils of Rimini and Constantinople, convened under the

\textsuperscript{347} "We bestow the right of assembly upon those persons who believe according to the doctrines which in the times of Constantius of sainted memory were decreed as those that would endure forever, when the priests had been called together from all the Roman world and the faith was set forth at the Council of Ariminum by these very persons who are now known to dissent, a faith which was also confirmed by the Council of Constantinople. The right of voluntary assembly shall also be open to those persons for whom We have so ordered. If those persons who suppose that the right of assembly has been granted to them alone should attempt to provoke any agitation against the regulation of our tranquility, they shall know that, as authors of sedition and as disturbers of the peace of the Church, they shall also pay the penalty of high treason with their lives and blood. Punishment shall no less await those persons who may attempt to supplicate Us surreptitiously and secretly, contrary to this Our regulation," \textit{CTh. XVI.1.4.} (Given in Milan January 23, 386); trans. Pharr, 440.

\textsuperscript{348} E.g. B. Ramsey, \textit{Ambrose} (London: Routledge, 1997), 27. For an intriguing but unconvinving argument that Valentinian's law was intended to re-legalise the Rimini creed following Theodosius's pro-Nicene laws but was only intended to apply to "Arian" Goths (but not "Arian" Romans), see Ralph W. Mathisen, "Barbarian 'Arian' Clergy, Church Organization, and Church Practices," in \textit{Arianism: Roman Heresy and Barbarian Creed}, ed. G.M. Berndt and R. Steinacher (Burlington, VT: Ashgate, 2014), 148. Mathisen's arguments about the status of the Rimini Creed for the Goths after the issue of the \textit{Theodosian Code} and in the post-Roman West are more persuasive.

\textsuperscript{349} McLynn, \textit{Ambrose of Milan}, 181, suggests that the fact such a law was issued must imply that the "pragmatists of the court saw the law as not only reasonable but enforceable," but his discussion of the law focuses on its lack of innovation rather than why it would be seen as enforceable.
auspices of the non-Nicene-supporting Constantius II. However, it is a crucial misunderstanding that this is the only right granted by the law.

There are three phrases in the law that have been translated by Pharr with variations on "right of assembly." In order, these are "copiam colligendi", "conveniendi ... arbitrium", and a further "colligendi copiam".\(^{350}\) Pharr’s translation indicates the difference in terminology by phrasing the second instance as "voluntary right of assembly". However, it would surely be redundant and illogical to grant both non-specific and specifically voluntary right of assembly to the exact same group of people in the same rescript. Furthermore, the second instance is more fully "conveniendi etiam... arbitrium," with the etiam offering additional weight to the hypothesis that this clause in fact offers something additional to the followers of Constantius's Rimini and Constantinople councils than the previous clause's grant of the right of assembly. That the law's drafter used "colligendi copiam" in clauses A and C, but not B, suggests that only in these instances is the same right being discussed. This, too, is a more logical meaning to the phrases as clause C's concern about "those who suppose [this right] has been granted to them alone" connects well with clause A's concern to affirm that [this right] is undoubtedly available to Milan's non-Nicenes, regardless of what those meant in clause C (i.e. Ambrose) would insist.

"Colligendi copiam" has no obvious parallels in the rest of the Code, but the meaning is easy to untangle. The meaning of "to assemble or gather" fits easily within colligere. We have several other examples within the Theodosian Code where it is used in this sense, including a number in Book XVI where the sense is clearly restricted to bringing people together for worship.\(^{351}\) When taking a genitive

\(^{350}\) These have been marked A, B and C in the Latin text above, p. 147.

\(^{351}\) For example, CTh. XVI.5.11 (Constantinople, 383), XVI.5.14 (Thessalonica, 388), XVI.5.21 (Constantinople, 392).
gerundive like this, *copia* often refers to an opportunity or the means for actioning the verb.\textsuperscript{352} This, too, is attested in multiple instances elsewhere in the *Code*.\textsuperscript{353}

The verb *convenire* is associated in negative contexts in other anti-heresy laws with the removal of the right of assembly, or simply prohibiting to "gather" at all. For example, a law of Theodosius II forbids Manicheans the "right to assemble or pray" [*nusquam in Romano solo conveniendi orandique habeant facultatem*].\textsuperscript{354} Most examples post-date Valentinian II's law for the simple reason that anti-heresy legislation only picks up steam under Theodosius I and his successors.\textsuperscript{355} However, two laws of Gratian from the 370s also condemn Manicheans who assemble [*qui convenient*] (XVI.5.3), and Manichean assemblies whether held in town or country [* conventus agerentur*] (XVI.5.4). But while *convenire* can be used to mean "to assemble (for religious activities)" in Roman legal contexts, there is also possibility to suspect that in the case of Valentinian’s law, it does not.

Outside of Book XVI, *convenire* is far more typically associated with assembling for another reason: for the prosecution of legal disputes.\textsuperscript{356} The first title of Book II of the *Theodosian Code* is labelled: "*De iurisdictione, et ubi quis conveniri debeat.*" However, this term did not simply describe all parties gathering in attendance.

\textsuperscript{352} For example, Plaut. *Capt.* 3, 5, 90: *conveniundi copiam*, the opportunity to meet.

\textsuperscript{353} For example, *CTh.* XVI.5.8 (Eunomians shall not have the opportunity to build churches) and XVI.5.12 (A large list of named varieties of heretic shall not presume to have the opportunity to assemble congregations). Both examples date from the early 380s, but were given at Constantinople and the heretics they are concerned with are largely Eastern, so the laws are unlikely to have been drafted by the same hand as XVI.1.4.

\textsuperscript{354} *CTh.* XVI.5.65.2. Given at Constantinople, 30\textsuperscript{th} of May, 428. See also: XVI.5.57 (415). For other uses of *conveniendi facultatem*, see interestingly, XV.13.1 (396) concerning the right of anyone besides actors, other entertainers and tavern-keepers to meet in public and make use of seats at the games.

\textsuperscript{355} Roughly 90% of section 5 of the *Theodosian Code, de Haereticis*, belongs to the Theodosian dynasty. See above, introduction, 0.2.1, p. 28ff.

\textsuperscript{356} I am grateful to Neil McLynn for suggesting that *conveniendi* could refer to bringing prosecution rather than to assembling, and for bringing the *Cl.* IV.52.1 parallel for *conveniendi arbitrium* to my attention when I presented a paper based on an earlier version of this chapter to the Oxford Late Roman Society in February 2012.
More specifically, it referred to the initiator of the case informing his adversary of the dispute. A law of Arcadius and Honorius of 398 makes mention of an earlier law of the late Valentinian II, removing the right of judges ordinary to sue [conveniendi licentia] overseers or lease-holders of imperial land. Even in Book XVI, one can find a rare example of this sense of the word in a law of Constantius II and Julian Caesar granting Christian clerics immunity from unjust suits [conventionis iniuria].

This sense of the verb is also attested throughout the Justinianic Code, the sixth-century legal compilation that expanded upon the chronological limits of the Theodosian Code to include both later and earlier legal material. The Justinianic Code provides the only direct parallel I am aware of for the specific phrasing "conveniendi arbitrium." In the third century, Gordian sent a rescript to a veteran, Apollodorus, who had enquired about rights to property he should have inherited in the absence caused by his military service. The rescript concludes that in the event that a legal suit against the buyer of the property is unsuccessful, the veteran retains the freedom to sue those relatives who sold it [est arbitrium tibi liberum conveniendi eos qui pro portione satis illicitam venditionem celebraverunt].

Thus, in line with Honoré and Harries, a better interpretation of this law would pay close attention to the drafter's choice of words. The two identical colligendi copiam refer to the same right, that of assembly, which is granted here specifically to the adherents of the Rimini creed in Milan and likewise, specifically not granted solely to other parties who may think they alone hold such a right. The change to conveniendi ... arbitrium and the inclusion of etiam in the clause following strongly suggests that it refers to something different and additional that was also granted.

357 For example, CTh. X.10.30.1 (421) and XI.31.9 (423).
358 "Divae memoriae Valentiniano iuniori subreptum est, ut ordinariorum iudicum officis actores seu conductores dominicos conveniendi licentia negaretur." CTh. I.11.2 (398, given in Milan.)
359 CTh. XIV.2.14.
360 Ci. IV.52.1 (bolding mine).
to the followers of Rimini and Constantinople. One possibility for what this additional right was involved some grant of the right to sue if, as might be anticipated, those who supported Rimini instead of Nicaea were prevented from gathering to worship in Easter 386.

3.2.2 Privilege-Affirming Laws for the Adherents of Rimini and for Nicaea(-Constantinople)

Book XVI of the *Theodosian Code* is concerned to a significant extent with the enforcement of orthodoxy and proscription of heretics, but the texts preserved within it extremely seldom detail the presumed theological content that differentiates the orthodox from the heretics. The Nicene creed or faith is only mentioned explicitly in two texts, both from 381: XVI.5.6 and XVI.1.3.

Within an article that persuasively debunks the idea that Theodosius's Spanish birth determined his being rigidly bound to Nicene interests, McLynn briefly discusses Theodosius's early orthodoxy laws from 380 and 381.

"[The laws] seem to break new legislative ground. Although Nicene spokesmen had complained bitterly at the oppressive interference of the "pro-Arian" emperors Constantius II and Valens, neither of these had legislated concerning precisely which doctrines he wanted his subjects to follow, or had threatened them with punishment for non-compliance."

McLynn is correct in so far as no laws of Constantius or Valens of this type have survived to the present. In Chapter One, however, we have seen that our narrative

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361 See above, chapter 3.1.3, p. 138.

362 (To Auxonius, proconsul of Asia. Given 30th of July, 381 at Heraclea.)

363 McLynn, "Genere Hispanus," 79-80. Later in the same article he characterises Theodosius's 380 *cunctos populos* law as "a studiously non-committal assent to a petition from Nicene partisans." (p. 94).
sources record that Constantius and Valens, at least, issued numerous laws that communicated orthodoxy according to their specifications. Constantius issued numerous edicts after his Rimini and Seleucia councils, enforcing their terms by deposing bishops who did not affirm the Rimini creed. According to the fifth-century church historians, Valens issued laws that allowed "Arians" to target non-clerical non-

"Arians" with legal retribution and violence, and possibly forced conversions.

Valentinian's law of 386 clearly describes certain legal privileges that it affirms for the equally clearly identified adherents of Rimini, and in its case alone, we have the legal text in addition to extra-legal texts like Ambrose's letters that describe the process by which the law came to be issued and deployed. The chance survival of a source of this type is an extremely valuable piece of evidence. Its survival confirms the hypothesis that the narrative sources' descriptions of non-Nicene privilege-affirming laws suggest, as well as providing evidence to better evaluate the privilege-affirming laws of Theodosius.

Theodosius's law from 380 is known as the cunctos populos edict, so-called for the first two words of the edict's text. It affirms those it labels Catholic Christians [Christianorum catholicorum nomen iubemus] and penalises heretical dogmas [haeretici dogmatis], but makes no explicit mention of the Nicene creed or faith. This is a weaker, less specific statement than Valentinian's law, which explicitly states that the privileges being granted are for the adherents of the creed of Rimini and Constantinople (the 360 council at which Constantius II promulgated the Rimini creed in the East).

The closest that Theodosius's law comes to identifying whom it privileges is its mention supporting the religion followed by Damasus of Rome and Peter of

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364 See above, chapter 1.2.4, p. 79 and below section 3.4, p. 168, on Ambrose comparing Valentinian's 386 law and Constantius's laws concerning the Rimini creed.

365 See above, chapter 1.3.2, p. 80.
Alexandria, who were Nicene-affiliated. "Catholic" at this time carries no more specific doctrinal meaning or identity than "orthodox" would. Chapter One's discussion of the reign of Constantius II gives several cautionary examples about how fixed an emperor might view the theological position of a given individual bishop, especially one of prestigious sees like Rome or Alexandria. Theodosius would not visit Constantinople itself until nine months after the issue of the law, and no particular effect of the law can be identified in this time. Compared to his non-Nicene-favouring predecessors, Theodosius's efforts to enforce Nicene orthodoxy look thin at this stage.

The omission of almost all the non-Nicene-favouring laws from the *Theodosian Code* gives a misleading precedence to Theodosius's *cunctos populos*, which appears as the second item under the first heading in Book XVI of the *Code*. Without the text of the mid-century emperors to contrast with it, *cunctos populos* looks revolutionary, but with their examples in mind, it looks much more like a standard expression of imperial piety. The emperor mentioned the current incumbents of two important sees, and legislates privileges for his preferred bishops. As this thesis has demonstrated above, this sort of pronouncement had been standard if varying in emphasis since the 310s.

When compared with the clearly described privileges of Valentinian's 386 law, the specific privileges *cunctos populos* affirms for the Nicenes are also vague. Having stated that only those following the same variety of Christianity as Damasus of Rome and Peter of Alexandria are to be accorded the name of Catholic Christians [*christianorum catholicorum nomen*], it denies certain others the right to call their gathering places churches [*nec conciliabula eorum ecclesiarum nomen accipere*].

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366 Items in the *Theodosian Code* are ordered chronologically under topical sub-headings. The first item under this heading is a law of Valentinian I that penalises imperial officials appointing Christians as custodians of (pagan) temples, and makes no mention of heresy or orthodoxy. *CTh.* XVI.1.1 (Given to Symmachus, prefect of the city (of Rome), at Milan on 17th November 365).
slanders their doctrine as insane and promises vague but heavy retribution against them.

A better parallel for *cunctos populos* would be Constantine's 326 law, preserved as XVI.5.1 in the *Theodosian Code*. This text is also of the privilege-affirming type. It includes absolutely no identifiable doctrinal content to differentiate which groups are privileged and which are denied. It states that adherents of the Catholic faith are to enjoy the privileges of religion [*Privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet.*] The Catholics are contrasted with heretics and schismatics [*haereticos atque schismaticos*] who are explicitly denied those same privileges. *Cunctos populos* shares this doctrinal vagueness while still dividing people into groups whose privileges would be affirmed and groups whose privileges would be denied.

Theodosius's later law of January 381 actually mentions the Nicene position three times explicitly and includes a discussion of the theological hallmarks of this position. This sort of detailed theological discussion is unparalleled in the rest of the *Theodosian Code*. XVI.1.3, the only other text to explicitly mention Nicaea, does so only once. Like XVI.1.2, XVI.1.3 contains a list of bishops who are named as examples of orthodoxy, and explicitly Nicene orthodoxy. Neither Damasus nor Peter are repeated, however, between the two lists. Instead, XVI.1.3 lists only Eastern bishops: Nectarius of Constantinople, Timothy of Alexandria, Pelagius of Laodicea, Diodorus of Tarsus, Amphilocius of Iconium, Optimus of Antioch, Helladius of Caesarea, Otreius of Melitene, Gregory of Nyssa, Terennius of Scythia and Marmarius of Martianopolis. Timothy was Peter's successor. Theodosius had also appointed Gregory Nazianzus as bishop of Constantinople after the issue of XVI.1.2, despite Gregory being in communion with neither Damasus nor Peter of Alexandria as XVI.1.2 specifies bishops needed to be. Nectarius was Gregory's replacement.

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367 (To Dracilianus. Posted 1st September 326 at Gerastus.)
It should also be remembered that the fifth-century editors and compilers of the *Code* excerpted the material they wanted from earlier texts. The original context of the extract preserved as *CTh. XVI.5.6* was a letter from Theodosius to Eutropius, his praetorian prefect. It was issued in January 381, five months before Theodosius's planned gathering of bishops that would be held in Constantinople later that year and likely belonged to instructions issued to officials about the logistics of the event. That Theodosius wished to use the council as a venue to support a new Nicene-Constanopolitan creed might suggest why such a full theological discussion was included.  

Valentinian's 386 law does not include a discussion of the hallmarks of the Rimini creed, but the context of his law is not that of an emperor arranging for a council nor was it framed as a definitive statement on orthodoxy. Valentinian's law does include a similar use of a creed as the criteria by which privileges are granted or denied. It is unfortunate that we do not have Constantius II's orders to Taurus, his praetorian prefect, concerning the convening of the council of Rimini in 359, or that of Gratian to Syagrius in 381 as a more contemporary parallel, to judge if the theological content of XVI.5.6 was as unparalleled as it stands among extant texts.  

The curious inclusion of Valentinian's pro-Rimini law in the pro-Nicene *Theodosian Code* can also be explained by the broader picture of privilege-affirming laws discussed in this section.

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369 The creed promulgated at Constantinople in 381 was not verbatim the creed that had been promulgated at Nicaea in 325, but included changes that reflected the ongoing doctrinal competition for the boundaries of orthodoxy that had continued since Nicaea. See J.N.D. Kelly, *Early Christian Creeds*, 3rd ed. (Oxford: Routledge, 2014), 296-331.

370 Jones suggests that Eutropius was likely to have been a pagan in his *Prosopography of the Later Roman Empire*. Eutropius 2, *PLRE* 1, 317. But the very fact of prolonged doctrinal conflict amongst bishops through the fourth century suggests that any official, Christian-identified or otherwise, would be unlikely to know exactly what orthodoxy they were supposed to be claiming adherence to at that moment without such a guide.
McLynn has suggested that the fifth-century compilers must have mistaken the reference to a creed at Constantinople as referring to Theodosius's 381 council rather than Constantius's 360 council. The compilers of the *Theodosian Code* were not bishops. They were lay officials, and it is easy to imagine that their awareness of doctrinal niceties and the conciliar history of the past century was much less than a church historian of the fifth, or indeed, twenty-first century.

This is not to argue that the compilers were completely careless or completely ignorant in their work. The non-Nicene-supporting laws from the late 320s through to the 370s are a glaring omission. The shorter excerpt from Valentinian's law that appears as XVI.4.1 omits mention of the Rimini and Constantinople councils, which proves that the compilers were not forced to include them.

Furthermore, the organisation of the four items under the first sub-heading of Book XVI shows purpose. *CTh*. XVI.1.1 is a law of Valentinian I from 365 that insists that Christians may not be forced to act as the guardians of temples. This law differentiates Christians from pagan worship. XVI.1.2 and XVI.1.3 are pro-Nicene laws from Theodosius I issued in 380 and again in 381, differentiating the "right" sort of Christians from the wrong. What is missing among those three, is a law that issues Theodosius's laws in the West.

As *CTh*. XVI.1.4 itself notes, Constantius's Rimini creed was first promulgated at Rimini in 359, and then again at Constantinople in the following year. This second Eastern council was in addition to the council Constantius convened in Seleucia in 359, and was convened to ratify the specific creed promulgated at Rimini--superseding the Seleucian creed as the creed that Constantius supported. This demonstrates a need to "re-issue" the Rimini Creed in the East, and it is the implication that an imperially-supported creed needed to be re-promulgated in the other half of the Empire that explains the inclusion of XVI.1.4.

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371 McLynn, *Ambrose of Milan*, 181, n. 84.
XVI.1.3 was issued in Constantinople, but mentions no Western sees. Placed immediately following it, XVI.1.4 might plausibly have been seen as "re-issuing" the Nicene-Constantopolitan Creed in the West, if we can assume that a reference to a Constantopolitan council in a law issued in 386 was taken as referring to the council in 381 instead of that in 360.

Valentinian's law in concert with the references to non-surviving non-Nicene-favourable legal documents allows us to qualify that Theodosius's innovation in 381 was not in legislating orthodoxy, but in naming the Nicenes as the group for whom he affirmed the privileges that were now customarily granted to the "orthodox" or "Catholics".

### 3.2.3 Accusations of Treason in the Fourth-Century Western Roman Empire

The second important element in Valentinian's 386 law is its invocation of the death penalty as part of its linkage between someone contravening its explicit terms and treason.

A charge of treason (*crimen maiestatis*) accused someone of crimes against the State. In the Republic, activities that prompted such charges were often military in nature, for example, espionage on behalf of Rome's enemies or desertion. Under the Early Empire, and in particular under Tiberius, treason quickly became assimilated into crimes against the person of the emperor.\(^{372}\) The original military context was expanded to cover any form of conspiracy threatening or perceived to be threatening the emperor.\(^{373}\)

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\(^{372}\) Tac., *Ann.*, II-VI, is the classic source on treason trials under Tiberius.

Treason was one of very few crimes with no restrictions upon who could bring a charge. The simple fact of accusation deprived the accused of a number of rights, such as protection from accusation from infamous persons, from torture or from having their slaves tortured to provide evidence. Conviction usually meant execution or exile. Persons convicted of treason lost their civil rights regarding inheritance, and their property was subject to confiscation. Our sources record treason accusations levelled most often towards members of the senatorial class. As such men were most apt to those writing histories, it becomes a literary commonplace amongst Roman historians to detail the involvement of "bad" emperors in treason trials. Thus, we are remarkably well informed about treason trials in our extant sources.

A few further points about treason charges are relevant to note. Magic, superstition and sorcery were often linked with accusations of treason. Divination to discover the time of an emperor’s death or the identity of his successor could very obviously destabilise a reign even if it did not result in a conspiracy where the recipient of a favourable prophecy sought to fulfil it. Secondly, Christians were another group linked with accusations of treason. Refusing to participate in the imperial cult could be prosecuted as crimen maiestatis and thus, those successfully prosecuted for treason could by their own supporters be portrayed as martyrs.

There is comparatively little literature on treason charges and trials of the fourth century in contrast to those of the Early Empire. Jill Harries, in one of very few works discussing this crime during Late Antiquity, notes that treason is present throughout the Theodosian Code, often under headings besides treason itself. A

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number of other crimes are specified to be treated as though they were treason.\textsuperscript{376} We find Valentinian's January 386 law filed in such a circumstance, not with titles specifically devoted to criminal charges in Book IX, but under ironically, "The Catholic Faith" XVI.1 and "Those who contend about religion" XVI.4.

In the \textit{Res Gestae} of Ammianus Marcellinus, we have a history on the model of the histories of the Early Empire complete with treason charges deployed by emperors of the 350s to 370s. Ammianus's work is our main source for the political and military history of this period of the fourth century covered by the extant final eighteen books of the work.

Ammianus not only discusses who was charged with what, and in particular, who was tortured and how; he also discusses the legalities of the treason trials, offering a picture of \textit{crimen maiestatis} in action in the later Empire that suggests a continuity of practice from the Early Empire. He offers evidence of the focus on affront to imperial dignity rather than any military threat to the Roman state, and also of the severity and rigour to which these affronts were prosecuted as treason. He claimed that under Constantius II, no one condemned on charges of treason was allowed to appeal the charge.\textsuperscript{377}

Ammianus also highlights that the image of abusing the opportunities of treason law was still current as a trope of the "bad" emperor. A list of penalties enjoined by those charged with treason under the jurisdiction of Gallus Caesar shows that the penalties typical for treason in Early Empire, death, exile and the confiscation of property, were also still current.\textsuperscript{378} Not all executions by imperial order conformed to legal niceties. Ammianus's account of Gallus stresses that the emperor paid no attention to the necessity of testimony from the accuser or the accused, as even

\textsuperscript{376} Harries, \textit{Law and Crime in the Roman World}, 81-83.

\textsuperscript{377} Amm. Marc. XIV.5.5

\textsuperscript{378} Amm. Marc. XIV.1.4.
the cruellest of emperors had done to give at least the appearance of adherence to the law.\textsuperscript{379}

Contrasting with Constantius and Gallus, Ammianus characterises Valentinian I, Valentinian II's father, as showing definite care for the legal niceties of treason charges. Concerned that senators were considered exempt from torture at the time, Valentinian issued a law reaffirming that in cases of treason, it was permissible to torture anyone, including senators.\textsuperscript{380} A later passage shows senators sending a group of highly ranking men to ask the emperor to repeal this – specifically asking that no senator be vulnerable to torture.\textsuperscript{381} Historically, Valentinian would have had legal precedents for retaining his law, but he would also have had precedents for the selective mercy the senatorial embassy requested. An emperor had some flexibility in how he employed the law, and this latitude was still available to him in cases of treason. Though Ammianus notes that the senatorial embassy were successful in regaining senatorial immunity from torture, he also details so many instances of torture in Book XXVIII, Chapter 1, that the Penguin translation of his history omits a large number of incidents due to the repetition.\textsuperscript{382}

Ammianus's legally-focused Valentinian is not solely a literary creation. John Matthews has shown that the treason trials in Ammianus, at least those of Valentinian I, concur with the picture we can get from Valentinian's laws about treason as preserved in the \textit{Theodosian Code}.\textsuperscript{383} These laws cluster around the 370s, just like the magic trials at Rome detailed in Ammianus. The details of the

\textsuperscript{379} \textit{Amm. Marc. XIV.1.5}.  
\textsuperscript{380} \textit{Amm. Marc. XXVIII.1.11}. Lactantius's description of Diocletian's edict against the Christians from 303 also notes the removal of this exemption from judicial torture. See above, Introduction 0.1.1, p. 20.  
\textsuperscript{381} \textit{Amm. Marc. XXVIII.1.24}.  
\textsuperscript{383} John Matthews, \textit{The Roman Empire of Ammianus} (Michigan Classical Press, 2008), 212-20.
laws concern senators engaged in divination problematic to the state\textsuperscript{384} and the provision that when it comes to treason "there is only one and the same status for all."\textsuperscript{385} The law preserved in the \textit{Code} that Matthews has identified as the law mentioned by Ammianus is even addressed to the urban prefect, Ampelius, who presides over the treason trial of Hymetius in Ammianus's account.\textsuperscript{386}

Such events would have been recent history for Ambrose, whose career changed from provincial governor to bishop in 374. Furthermore, it is obvious Ammianus was writing after the period he discusses, that is, during Ambrose's episcopate.\textsuperscript{387} This suggests that his image of Valentinian I as someone deeply involved in charges of \textit{crimen maiestatis} would have resonance in the Milanese imperial court of the 380s.

Ammianus also provides evidence that Christian clergy were no less susceptible to treason charges than anyone else. He counts Maras, "a deacon as the Christians call him, among those tortured during the Eastern treason trials under Gallus Caesar."\textsuperscript{388} While Ammianus surely painted Gallus as a bad ruler, he was not a Christian polemicist seeking to evoke a image of martyrdom for Maras. Instead, it was the violence and the abuse of the charge of treason that was his focus, and Maras, just another victim of tyranny who happened to have been a Christian.\textsuperscript{389}

\textsuperscript{384} \textit{CTh.} IX.16.10. (Given December 6, 371.)

\textsuperscript{385} \textit{CTh.} IX.35.1. (Given July 8, 369.)

\textsuperscript{386} Amm. Marc. XXVIII.1.22.

\textsuperscript{387} Though his text was finished perhaps a decade later, Ammianus is attested at Rome in 384, through a passing reference to the expulsion of the philosophers (but not dancing girls) that can only be attributed to that year. Amm. Marc., VI.19. On the date of the expulsion, see: Alan Cameron, "The Roman Friends of Ammianus," \textit{The Journal of Roman Studies} 54, no. 1 (1964): 27-28.

\textsuperscript{388} Amm. Marc. XIV.9.7.

\textsuperscript{389} On judicial torture in Late Antique martyr literature, see: Lucy Grig, "Torture and Truth in Late Antique Martyrology," \textit{Early Medieval Europe} 11, no. 4 (2002).
Furthermore, in his account of Constantius II, Ammianus preserved the story of that emperor ordering Liberius, the bishop of Rome, "to be brought before the council, as one who had resisted the commands of the emperor, and the decrees of many of his own colleagues." The anecdote is short in Ammianus, and again, his focus was on the bad emperor rather than the affairs of the Christians. According to Ammianus, Constantius had condemned bishop Athanasius of Alexandria as guilty of sorcery, albeit in absentia, and deposed him. Though theologically opposed to Athanasius's standpoint, Liberius refused the emperor's command to ratify Athanasius's deposition. Ammianus does not explicitly call Liberius's resistance to Constantius's commands "treason". Regardless, this case does offer a striking parallel to the Basilica conflict between Ambrose and Valentinian, which also hinged less on the substance of the orders themselves and more about the bishop's refusal to obey the emperor. Liberius was too popular a bishop for Constantius to openly rebuke or remove, but he was successful in removing the bishop under cover of darkness.

Discussed in the previous chapter, the case of bishop Priscillian of Avila post-dates the period covered by Ammianus's history, but was chronicled by a number of Western writers. Like that of Liberius, Priscillian's case also originally derives from conflict between groups of bishops, who escalated their conflict to a number of higher civil courts of arbitration until the emperor Magnus Maximus sent Priscillian's case to be tried before the prefect. This led to Priscillian's conviction for maleficium, sorcery, for which a second trial determined the penalty to be death. Sulpicius's narrative does not note treason as an aspect of Priscillian's case. However, as noted in several above examples, sorcery and magic seem to have been associated with treason from the Early Empire through to Late Antiquity.

390 Amm. Marc. XV.7.6.
391 Amm. Marc. XV.7.6-10.
393 Sulp. Sev. Chron. II.L. See above, chapter 2.2.3, on the trial/execution of Priscillian specifically.
Priscillian's execution in 385 shows that sorcery, whether associated with treason or not, could carry capital punishment. It also shows that that in the mid-380s, almost concurrent with the Basilica Controversy, an emperor could execute a bishop. This surely added additional weight to the terms of Valentinian's law when it was issued in January 386.

### 3.4 Auxentius of Durostorum vs. Ambrose of Milan (Easter 386)

Shortly before the Easter season in 386, the non-Nicenes attempted to ascertain whether they would be able to make use of the Portiana. A number of important lay men, including the city prefect, visited Ambrose to settle this dispute. To his sister, Ambrose wrote after the dispute:

"I myself had an interview with the Counts and Tribunes, who urged me to give up the Basilica without delay, declaring that the Emperor was acting on his rights, inasmuch as he had supreme power over all things."

Finally, Valentinian II summoned Ambrose to court to meet with Auxentius of Durostorum, the non-Nicene/Rimini claimant to the see of Milan. Ambrose's account of this summons makes a strong point to recapitulate the legitimacy of

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394 Amb. Ep. X.76.3. Given that any eventual trial would be judged by the city prefect, this throwaway detail might have originally carried a sharper edge.

395 Barnes, "Ambrose and the Basilicas," 290-91, argues that Ambrose's letter to his sister Marcellina about a conflict over a basilica must pre-date the 386 conflict as it makes no mention of Valentinian's law (CTh. XIV.1.4) nor the death penalty. I would argue that such omissions make far more sense in a document written after the conflict had been decisively resolved in Ambrose's favour and Ambrose had defused both the specific threat of Valentinian's law and the general threat of Roman law in the hands of the emperor. As this thesis demonstrates, Valentinian II in 386 was hardly innovative in demanding a bishop's obedience and threatening to remove his episcopal status to achieve this. Ambrose joking to his sister about palaces belonging to emperors, but churches to the bishop (Amb., Ep. X.76.19) is less the martyr's defiance we see in his letter to Valentinian and Contra Auxentium and more a barrister's assurance that his selection of precedents have won the case.

396 "Convenior ipse a comitibus et tribunis, ut basilicae fieret matura traditio, dicentibus imperatorem iure suo uti, eo quod in potestate eius essent omnia." Ibid., ep. X.76.8, trans. Liebeschutz, 163-64. See also: Amb., C. Aux., 1.

397 Amb., C. Aux. 29. See also: Amb., C. Aux. 3.
Ambrose's own election,\(^{398}\) which should be our first hint that more than the events of the upcoming Easter were at stake.

Ambrose's three documents that survive about this conflict all insist that the topic of debate was the use of the basilicas. However, the earlier episcopal disputes covered in the two previous chapters all involved disputes about episcopal status. Questions of episcopal status were at the heart of Palladius of Ratiaria's dispute with Ambrose, with each attempting to remove the other.\(^{399}\) Palladius proposed a debate with lay judges in what survives from him in the "Arian" scholia; Auxentius appears to have similar designs. Ambrose's letter to Valentinian opens with Ambrose's receipt of the demand that he choose judges to match those chosen by Auxentius— and this is the demand to appear at Valentinian's consistory which Ambrose courts the death penalty by disobeying the emperor's direct command.\(^{400}\) Ambrose's reticence about the charges against him can be explained by his status as the eventual victor in this conflict.

The entwined history of disputes about episcopal status and emperors sanctioning disobedient bishops by withdrawing the privileged status of orthodoxy and treating those bishops as though they had been charged with treason also fits well with the context of Valentinian's law.

Scholars considering the legal aspects of the Basilica Controversy have focused on property law, given Ambrose's focus on the basilicas.\(^{401}\) Marsha Colish has argued

\(^{398}\) \textit{Amb., C. Aux. 7.} Ambrose alone preserves an account of this conflict that focuses on the issue of the contested use of the basilicas and places himself and Auxentius as the main adversaries. Later historians are apt to have characterised the conflict as between Ambrose and Justina, with the focus on Justina's thwarted attempts to remove Ambrose from Milan. For example, Rufinus, \textit{Hist. eccl.} XI.15-1.

\(^{399}\) Discussed above, section 3.1.2-4, pp. 133-145.

\(^{400}\) His command to appear at the consistory (Amb. \textit{Ep. X.75.2}), not the threat implied by \textit{CTh. XVI.1.4.}

that the basilicas as buildings were imperial property.\textsuperscript{402} This would mean that the imperial family would have grounds for a property dispute against Ambrose as possession does not convey ownership under Roman law. However, there is little in the sources from the conflict that suggests a legal challenge on those grounds apart from Ambrose’s insistence that the use of a basilica was the only point at stake.\textsuperscript{403}

Laws penalising heresy that are extant in the \textit{Theodosian Code} often invoke the death penalty and could involve the confiscation of property, but these laws post-date this particular conflict and belong to a further legal development of the proscription of heretics.\textsuperscript{404} Valentinian’s legal strategy belongs to the same established mode of disputing episcopal status via the Roman courts that this thesis has tracked through the mid-fourth century. In that story, it is not heresy law or property law, but treason charges that played a significant role. Out of usurpation of property, heresy and treason, treason is also the only charge that Ambrose explicitly refers to as being a threat in \textit{Contra Auxentium}.\textsuperscript{405}

While Valentinian’s strategy belongs to this established tradition, Ambrose’s belongs to a different one: that of Nicene bishops faced with no chance of success under the terms of the law.

\textsuperscript{402} Marsha Colish, ”Why the Portiana? Reflections on the Milanese Basilicia Crisis of 386,” \textit{Journal of Early Christian Studies} 10, no. 3 (2002). See also the briefer Lenox-Conyngham, “Juristic and Religious Aspects of the Basilica Conflict of A. D. 386.”, who also considers and then rejects the hypothesis that Ambrose’s response to the imperial demands for the basilica is based on Roman property law.

\textsuperscript{403} While it may be possible that a law dealing with property rights relating to this situation has simply not survived, Ambrose, and later fifth-century historians, only make reference to the one law Valentinian enacted due to this conflict. The \textit{sequestratio} of a basilica Ambrose refers to in Amb., \textit{De Spir. Sanc}, I.21, is elusive to place chronologically but must have occurred before the 385-6 conflict and could indicate that a legal challenge according to property law was part of this earlier stage of the conflict.

\textsuperscript{404} Discussed above, chapter 1.4, p. 90 n. 206.

\textsuperscript{405} Amb., C. Aux. 26.
Ambrose knew that attending the debate would not serve his cause. He refused the summons, citing a rescript of Valentinian II's father, Valentinian I:

"No one ought to deem me contumacious for asserting what your father of illustrious memory not only declared by word of mouth but sanctioned by his laws; that in a matter of the Faith or of any ecclesiastical ordinance, the judges ought to be qualified for it, both competent by office and qualified by profession: (these are the words of the Rescript), that is to say, he would have Bishops judge Bishops. Moreover if a bishop were accused elsewhere also, and a charge of a moral nature to be examined, this too he willed should be referred to the judgment of Bishops."

Upping the ante, imperial decorations were put up in the Portiana. Ambrose preached a sermon against Auxentius and sent a copy to Valentinian. Imperial troops surrounded Ambrose inside the Basilica Nova, and an imperial secretary brought Ambrose an imperial mandate, presumably reiterating the demand for non-Nicene worship in the Portiana, which Ambrose again refused to comply with. Instead, he urged his congregation to share visibly in his defiance of imperial authority, leading his congregation in all-night hymn-singing.

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406 This law of Valentinian I survives only in Ambrose. See also Appendix 1: The Myth of Fourth-Century Clerical Immunity, pp. 241ff. below.

407 "Nec quisquam contumacem iudicare me debet, cum hoc asseram quod augustae memoriae pater tuus non solum sermone respondit sed etiam legibus suis sanxit: "In causa fidei vel ecclesiastici alicuius ordinis eum iudicare debere qui nec munere impar sit nec iure dissimilis". Haec enim verba rescripti sunt hoc est sacerdotes de sacerdotibus voluit iudicare; quin etiam si alias quoque argueretur episcopus et morum esset examinanda causa, etiam hanc voluit ad episcopale iudicium pertinere." : Amb, Ep. X.75.2; trans. Liebeschuetz, 136-137.

408 Amb. Ep. X.76.4.


410 Amb. Ep. X.76.11.

411 Amb. Ep. X.76.22.

412 See also: Amb., C. Aux. 34.
knowledge of who undertook this vandalism. In the morning, the court gave way, and Valentinian would celebrate Easter in Aquileia. The crisis did not recur the following Easter.  

Ambrose's presentation of this dispute does much to obscure that the legal strategy of Auxentius and Valentinian fits with what had already been established earlier in the century as the normal way for disputes about episcopal status to be judged through the courts. The tension and drama of the narrative of the besieged basilicas draws the reader-listener's attention. As skilled a speaker as Ambrose would of course focus his account of the conflict on the aspects that support his claims, while down-playing others that favoured the claims of his opponents. They portray the strategy of his antagonists as unprecedented and unreasonable, Ambrose's texts do offer us enough evidence of what their strategy was to allow comparison with earlier use of Roman law in inter-episcopal disputes like this.

His account strongly implies that Auxentius forwarded some legal accusation towards Ambrose, and one that was formally given in writing. He states that:

"He [Auxentius] thinks that all those he fails to mislead with words ought to be slain with the sword. With his mouth he dictates, with his hand he writes bloodthirsty laws, thinking that men can be commanded by legislation to adopt a faith."

This has traditionally been understood as hyperbole, as slander against Auxentius who was a far more politically convenient target than Valentinian or Justina, but

\[413\] Amb., Ep. X.76.24.


\[415\] Augustine mentions the Basilica Controversy in his *Confessions* only after the fact, in his discussion of his own baptism at Easter 387. Aug., *Conf.* IX.7.

\[416\] "Qui quos non potuerit sermone decipere, eos gladio putat esse feriendos, cruentas leges ore dictans, manu scribens et putans quod lex fidem possess hominibus imperare": Amb., C. Aux. 24, trans. Liebeschuetz, 154. See also Amb., C. Aux. 16-17, for further examples associating Auxentius with violence and the law.
this may perhaps be one time where we can take Ambrose at face value. Not that Auxentius was the original author of the text of the law preserved at XVI.1.4, but instead that his petition concerning Ambrose was the issue to which Valentinian's law responded.

This language has parallels with Ambrose's comments about the "blood-thirsty" bishops at the Trier court of Magnus Maximus, whose involvement in civil proceedings led to Priscillian of Avila's execution in 385. In the following section of Contra Auxentium, Ambrose mentions the Rimini creed, confirming that the reference above to "imposing a faith" is a reference to Constantius's actions concerning that creed. This language of violence and illegitimate exercise of legal authority should also remind us of the tendency of Nicene sources to associate non-Nicene bishops participating in Roman law with excessive violence, as discussed at length in Chapter One above.

This sort of emotive language was still available to bishops who could not succeed by the law alone, but it could only persuade. The emperor could still execute his will and charge a bishop with disobedience to that will: treason. From Ammianus's accounts of Constantius's treatment of Liberius and of Valentinian I's Roman treason trials, such open disregard for imperial orders only fifteen years earlier would surely have resulted in the execution of a senator or the exile and replacement of a bishop. Just a year earlier, Priscillian, a bishop who had visited Milan to seek Ambrose's support near the beginning of the decade, had been executed by an emperor only so far away as Trier.

Ambrose's account of his own actions detail multiple occasions where the bishop specifically refuses an imperial order delivered in writing, while never bringing the


418 Amb, C. Aux. 25.

419 For example, with reference to accounts concerning the reign of Valens in the fifth-century church histories of Socrates and Sozomen, see above, chapter 1.3.2, pp. 80ff.
emperor or his regent mother into his narrative. In his letter to his sister, Ambrose recounts a threat spoken by Calligonus, praepositus cubiculi or grand chamberlain, which neatly sums up both the impetus for the treason charge and its penalty: "'Do you, while I live, despise Valentinian? I will have your head.'"

The response Ambrose relates giving to this threat highlights the danger of emperors seeking to invoke the death penalty, however strictly legitimate within the law, against Christians.

"[Ambrose] replied, 'May God grant you to fulfil your threat: I shall suffer as becomes a Bishop, you will act as befits an eunuch.' May God indeed turn them aside from the Church; may all their weapons be directed against me, may they satiate their thirst in my blood!"420

The threat of execution, here deftly decoupled from the emperor and instead attached to a specific civil official, allows Ambrose the opportunity to employ the rhetoric of martyrdom. In this way, Ambrose subverts the legitimate disciplinary violence of the state to his own benefit and protection. By offering himself in place of the others physically with him inside the Basilica Nova, Ambrose obscured the fact that only he, as instigator of the public disturbance, would be potentially liable under a charge of treason laid under Valentinian's January 386 law.

Ambrose's response to Valentinian's court summons also shows how Ambrose rhetorically subverted the possibility of charge of treason, while declining to plead his case against potential charges in front of the consistory. Ambrose cited the law of Valentinian I because it was clearly useful to his purpose of successfully pleading his right not to answer Valentinian II's summons.

420 Amb. Ep. X.76.28, trans. Liebeschuetz, 173. See also: Amb., Ep. X.76.9. However, this level of extreme posturing of disobedience must be an indication that Ambrose revised this letter after his success during the Basilica Controversy. Probus's protégé was surely not so poor a politician during the dispute itself.
I would argue that Ambrose's rhetorical use of this law of Valentinian I also serves two less obvious purposes. Valentinian II was still in his minority, and there were senses of filial piety and legitimisation anxiety for Ambrose to tap into by invoking the legislation of Valentinian's father. More to the point, as discussed above, Valentinian I had a reputation for his involvement in treason trials, particularly for insisting that no special status would be accorded to those accused from the senatorial class. Valentinian II could have hoped the memory of his father's severe prosecution of treason would give more force to his own law concerning treason. By invoking Valentinian I as specifically supporting the legal immunity of bishops, Ambrose repurposed the memory of Valentinian I to instead support claims of clerical immunity— that an emperor who did not allow senatorial immunity from torture would allow clerical immunity from all civil jurisdiction.\(^{421}\)

It is very possible that Ambrose's use of this law of Valentinian I involved arguing that this law was applicable well beyond its original context. Regardless, by making successful use of it in this case, Ambrose contributed to a precedent that made treason a charge that could less successfully be deployed by emperors against bishops disobedient to imperial will. In addition, he was adding weight to a precedent for bishops being treated as a special, privileged class under the law more generally.

It is notable that Ambrose invokes the concepts of legitimate and illegitimate authority throughout his accounts of this conflict. He puts accusations of explicit disobedience to the emperor side by side with the concept of the tyrant. In his letter to his sister, Ambrose has an imperial secretary accuse him of disobedience and of being a tyrant in one short exchange:

\(^{421}\) Contrary to Ambrose's claims here, episcopal status did not convey any particular immunity from prosecution under Roman law at this time. See Appendix 1: The Myth of Fourth-Century Clerical Immunity, pp. 241ff.
"What has been your design,' says he, 'in acting against the Emperor's orders?' I replied, 'What has been ordered I know not, nor am I aware what is alleged to have been wrongly done.' He says, 'Why have you sent presbyters to the Basilica? If you are a tyrant [tyrannus] I would fain know it, that I may know how to arm myself against you."422

Ambrose elaborates on this possibility to his advantage as the letter continues: "if Ambrose seems to be acting like a tyrant, his only force of arms is acting in the name of Christ [si haec tyrannis videtur, habeo arma sed in Christi nomine.]"423 In this passage, he also brings in the possibility of martyrdom, a narrative with powerful cultural caché invoking Christians suffering at the hands of pagan emperors of the past. If Ambrose was to be executed, perhaps Valentinian would be giving the other side of the conflict a martyr to rally around. This would be a heavy risk for Valentinian, as is borne out both by the martyr-cult arising from Priscillian's execution at Trier and by the advantage Ambrose accrued from the discovery of martyr relics in the summer of 386.424 The riots in Milan that Ambrose records without acknowledging culpability would have further enhanced the threat of Ambrose's martyrdom.

Constantius and Valens knew to arrange for troublesome bishops to be spirited out of their cities without drawing the attention of their flock; for Valentinian, this does not seem been a practical possibility. Rufinus's and Paulinus's accounts of this conflict allege that Justina arranged for Ambrose to be kidnapped. Ambrose's letter to his sister hints that he avoided something similar some time before the issue of Valentinian's law.

424 Ambrose publicised this discovery in a letter to his sister Marcellina, Ep. X.77.
Martyrdom is not the only theme on which Ambrose takes wing. He returns to the concept of tyranny with a very topical reference to the emperor Maximus, formerly a military leader posted in Britain now elevated to the purple with the support of the army he commanded.\footnote{Amb. Ep. X.76.23.} This also allows Ambrose to allude to his embassy to Maximus on Valentinian's behalf in 383 or 384, when Ambrose was sent to retrieve Gratian's corpse.\footnote{Amb. Ep. VI.30} Here Ambrose offers another argument why he should not be killed: his political usefulness to Valentinian. While Ambrose could have focused entirely on the possibilities offered by a narrative of martyrdom, by bringing in Maximus, he also puts emphasis on the legitimacy and illegitimacy of Valentinian's power. Caught between Maximus at Trier, and Theodosius in Constantinople, Valentinian's position was politically uncertain. For him and his court, more was at stake than control of the single city of Milan.

Having called Valentinian's bluff, Ambrose won. Valentinian's court left the city and celebrated Easter in Aquileia. The law preserved as \textit{CTh. XVI.1.4} would survive, but it would not further endanger Ambrose's episcopate.

\section*{3.5 Conclusion}
This chapter has explained the production and use of Valentinian's 386 law as in keeping with privilege-affirming laws issued by emperors to affirm the privileges of their preferred bishops from Constantine to Valentinian's own day. The law was issued in the context of an inter-episcopal conflict between Nicene Ambrose and successive non-Nicene bishops, Palladius of Ratiaria and Auxentius of Durostorum. Ambrose had been able to broker greater support from the emperor Gratian than Palladius at the time of the 381 council of Aquileia. Mid-decade, Valentinian issuing a law affirming the rights of the adherents of the Rimini creed made it clear that Auxentius held more favour with the court than Ambrose.
Considering the legal framework of possibilities behind the Basilica Controversy allows a critical perspective on events whose record only survives primarily according to one party: Ambrose. Ambrose participated in a number of religious disputes over the course of his career as bishop of Milan. These were high profile, high stake conflicts in their own time, located in part at the imperial court resident in his city. In addition, the results of these conflicts would be taken as precedents for later conflicts -- repurposed, and perhaps with their original context forgotten or elided -- but still carrying tremendous authority and weight in the Medieval and later periods. A legal contextualisation of these late fourth-century disputes offers valuable original insights into Ambrose's historically contingent options, allowing for a richer understanding of Ambrose's choices of both action and rhetoric when participating in these disputes as well as a richer understanding of the strategies chosen by his opponents, whether bishops or emperors.

Valentinian's legal strategy failed. This may have been due to Ambrose's ability to incite enough of the city for his execution or exile to be politically useless as a solution, or because Valentinian could not legally enforce his law from a position of sufficient strength and stability to succeed. The ultimate failure of the strategy should not blind us to how unsettled a situation this conflict really was and how unsure its participants must surely have been while they sought to achieve their desired outcomes. Even Ambrose's account, surely edited after the result was known, shows that his rhetorical choices were constrained by the circumstances in which Valentinian's legal strategy placed him.

In addition, taken in the context of the preceding chapters of this thesis, Valentinian's legal strategy was not innovative, but built on the legal precedents of earlier emperors like Constantine and Constantius II. Though Ambrose's precedent contributed to the side that eventually "won" clerical immunity for the medieval Church, it should be noted that Valentinian contributed to an equally potent

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427 Ambrose's letter to his sister (Ep. X.76) makes much of the rioting in the streets, and notably, near the palace, without associating Ambrose with any specific role in inciting the crowds.
precedent for anyone, including bishops, to be charged with treason. Around 400, John Chrysostom would navigate charges of treason, also related to his perceived role in anti-imperial public disturbances, and unlike Ambrose, would die on the journey into exile.\textsuperscript{428} The sixth-century bishop Caesarius of Arles also suffered three arrests under charges of treason, and two periods of exile, albeit under the authority of Gothic rulers.\textsuperscript{429}

Mathisen has raised the possibility of the Rimini Creed remaining legally in force as a touchstone of orthodoxy in the post-Roman barbarian kingdoms.\textsuperscript{430} His argument is not wholly convincing but does highlight that the Nicene Supremacy of the Theodosian period was not the only inheritor of the legal precedents of the mid-fourth century. The Breviary of Alaric, a Visigothic law code that cherry-picks from the \textit{Theodosian Code}, retains CTh. XVI.1.4. Whether the Breviary compilers recognised the reference to Rimini more accurately than the Theodosian compilers is an interesting question and worthy of further consideration.\textsuperscript{431}

Ambrose's strategy of refusing to participate in the legal challenges of his episcopal opponents, even when commanded to do so by the emperor, was not entirely innovative but his success at employing this strategy has made him a landmark in its development. During the third-century "persecutions", some Christians had complied with imperial mandates and others did not -- this second group included the martyrs that Ambrose invoked in his letters about the Basilica Controversy. Bishops of the earlier fourth century were also divided among those who actively took their inter-episcopal disputes into the Roman courts and those who argued


\textsuperscript{430} Mathisen, "Barbarian 'Arian' Clergy."

against such measures. However, as we have seen, particularly in Chapter One above, individual bishops could be for and against episcopal participation in Roman law, depending on whether it advantaged their cause or not.

Ambrose's strategy was also subtly different than the line taken by earlier Nicene bishops like Athanasius and Hilary of Poitiers when they argued against episcopal participation in Roman law; unlike them, Ambrose did not demonise his reigning emperor, nor argue that Valentinian's authority itself was illegitimate due to his support of "heretical" bishops. Instead, Ambrose carefully maintained that Valentinian's imperial authority was legitimate but that the emperor was currently subject to illegitimate advice from heretics. Calling for a change of the emperor's advisors was less revolutionary than calling for a change in emperor.

Ambrose's strategy was to change the terms of the conflict by reconfiguring the relationships between the parties involved. Instead of either complying with a framework that placed him as equal to his episcopal opponents under the judgement of the emperor or with a framework that eschewed the emperor's judgement entirely, Ambrose proposed a structure where the orthodox bishop (as God's representative) had a moral obligation to prevent the emperor making poor legal judgements based on heretical advice. Ambrose's response acknowledged the emperor's legal authority but gave himself and bishops like him a respectfully moral out from participating in legal proceedings to their disadvantage.

Ambrose was also able to use such a strategy at the right place and right time. His response to Valentinian's threat was canny, but he also faced off against an imperial opponent who was in a much weaker political position when compared to Athanasius or Hilary in their conflicts with Constantius II. Priscillian's extremely recent execution and the scandal that followed in its wake added an immediate disincentive in the late 380s for any emperor to dispose of an established bishop in view of that bishop's city. Valentinian II was also quite simply not in as strong a position politically as the earlier emperors who had successfully removed other
bishops from their cities. Constantius II had enjoyed military success and sole rule of the empire for the latter part of his reign. Valentinian II was a teenager with no military record flanked by two far more established generals, each looking to start their own imperial dynasty. What was politically possible for Constantius was not for Valentinian.

Valentinian's weak political position should be separated from Theodosius's new alliance with the Nicene bishops and his grant of legal privileges to them. The political and military dominance of Theodosius (and Magnus Maximus) did not automatically result in their legal dominance over Valentinian's shrinking domain and Theodosius's early 380s laws about religion did not legally force Valentinian's hand. As this chapter has argued, Theodosius's laws were not considered applicable to the Milanese situation in 385-386. Instead of issuing a general Nicene "conversion" of the entire Empire, Theodosius's laws have been replaced back into the context of the privilege-affirming laws of the mid-century, as has Valentinian's own law (CTh. XVI.1.4) issued during the Basilica Controversy. Valentinian was not legally vulnerable, but politically, and this advantaged Ambrose because Valentinian had problems that required his attention more than one disobedient bishop. Valentinian could afford to allow Ambrose to "win" Milan, as he focused instead on his efforts on keeping his stake of the Empire.

Ambrose was not the first bishop to draw parallels between the persecution of pagan emperors and the actions of "heretical" emperors, or to suggest that God's authority (with the bishop acting as His representative) trumped imperial, earthly power. However, his example also stands out historically because of the success he personally enjoyed and the way he was able to build a further platform of episcopal authority on the fruits of this success. Ambrose had also succeeded in avoiding the threat of civil legal power with a rhetoric that did not completely annihilate the existing legal order, but inserted the (orthodox) bishop in a particularly advantageous position to reconfigure the existing power structures of the Roman Empire. The next chapter will investigate the use and refinement Ambrose made of
this new model of the relationship between bishop and emperor by intervening conflicts with other emperors.
4. Of God or of the City: Ambrose judging Emperors (384-394)

"When there was occasion to perform my duty on behalf of anxious individuals, I both wrote letters and made petition, and in so doing showed that while in issues involving God I am motivated by a fear which is altogether proper [...] yet when it comes to causes on behalf it is right to petition you [Eugenius] I too display the due diligence which we owe to the powers that be."

Ambrose of Milan (c. 394)\(^{432}\)

4.0 Introduction

4.0.1 Context

The previous chapters established that bishops in the fourth century typically made use of Roman law to affirm their own episcopal status or to dispute the status of others. The supreme place of the emperor in the hierarchy of Roman law meant that political connections and imperial favour became a necessary prerequisite for men to gain or maintain episcopal status within this system.

Thus far, this thesis has focused upon inter-episcopal conflict. In these conflicts, rivals to episcopal status petitioned Roman judges to resolve a question of disputed episcopal status in their favour. This placed both would-be bishops under the authority of the lay judge.\(^{433}\) Such an arrangement reflected the normal expectation of Roman citizens making use of Roman law. Indeed, that as citizens, both would-be bishops acknowledged the authority of the lay judge was an attraction to making use of Roman law to resolve disputes concerning status. The claim to episcopal

\(^{432}\) "Ubi causa emersit officii mei, pro his qui sollicitudinem sui gerebant, et scripsi et rogavi, ut ostenderem in causis dei timorem mihi iustum inesse [...], in his vero in quibus vos rogari decet, etiam et me exhibere sedulitatem potestati debitam:" Amb. Ep. ex. coll. 10.12, trans. Liebeschuetz, 261.

\(^{433}\) See diagram 1 below, p. 180.
status was seen as a benefit to be regulated through legal proceedings rather than a status confirming exemption from the jurisdiction of the courts.

Chapter Three argued that during the conflict known as the Basilica Controversy Ambrose of Milan invented a new tool when seeking to survive the threat of treason charges. This tool was a rhetorical package that allowed Ambrose to reconfigure the balance of authority in conflict situations to his own advantage, claiming a position above the emperor's judgement as an advisor to the emperor in matters of the faith [in causa dei/fidei]. In this final chapter, we will see how Ambrose developed this new tool to move beyond the goal of simply securing his own episcopal status against rivals, to directly question the judgement of the emperors.434

In cases where these two contexts conflict, Ambrose argues that the religious context is more important. However, as this chapter will demonstrate, Ambrose always argues that the religious context is more important in the context of conflicts where the obvious legal context would privilege a judgement against the result he sought.

This chapter will argue that Ambrose's rhetoric of dividing conflicts into matters of faith and matters of civic justice developed from the strategy he successfully deployed during the Basilica Controversy into a rhetoric to succeed not only against rival bishops, but against emperors. In the Basilica Controversy, Ambrose succeeded by treating the conflict as one between himself and the emperor rather than one between episcopal peers. This explains why his strategy was so readily adaptable when intervening in the judgement of emperors.

434 See diagram 2, below p. 180.
Diagram 1: Before Ambrose

Diagram 2: Ambrose's new "paradigm": in causis publicae vs. in causa dei
Furthermore, in surviving the Basilica Controversy, Ambrose had proven that his new rhetorical package was capable of subverting the threat of treason charges and execution. Treason was the supreme charge available to the emperor, as it literally made disobedience to his will a criminal offence. As this chapter will demonstrate, Ambrose was careful to continue to toe a plausible line of obedience before emperors, even in letters where he made explicit excuses for avoiding those emperors.

This chapter will trace the development of this rhetoric of divided jurisdictions through several key conflicts during Ambrose's episcopate: the Altar of Victory Controversy (384), the destruction of the synagogue at Callicinum (388/89), the riots at Thessalonica (390), and a second, but more minor iteration of the Altar of Victory Controversy (394). These conflicts do not match Ambrose up with another episcopal antagonist, but do involve a personal stake for Ambrose as in each case he deliberately flouted the authority of the emperor. All but the first of these conflicts post-date the conclusion of the Basilica Controversy in 386. Contrasting Ambrose's strategy in the 384 conflict with the later conflicts allows us to appreciate the significant shift in his strategy from this point onwards.

4.0.2 Contributions
This chapter's first main contribution is to our understanding of Ambrose's part in the developing role of the *episcopus* in structures of authority in Late Antiquity and later. At the cusp of Theodosian Nicene supremacy, Ambrose invented a powerful tool for bishops to hold the upper hand when interacting with emperors. His actions towards the emperor Theodosius I concerning the riots in Thessalonica, in particular, would be invoked in the ninth and eleventh centuries in historical moments of renegotiation of the relative authority of bishops and emperors. His rhetoric of divided jurisdictions, that some conflicts belonged to the judgement of bishops and some to the judgement of lay officials, also sowed the seeds of later medieval clerical immunity from lay judgement while also providing evidence that
this later medieval reality of immunity did not yet exist for Ambrose in the fourth century. In his own day, Ambrose had to construct a role of the bishop at the emperor's court that combined existing tropes of specialist advisor (parrhesia, knowledge of a specialist domain) with the particular legitimacy concerns about piety, and hence orthodoxy, that would allow Ambrose to successfully propose the bishop as necessarily superior in judgement to the emperor— if only in matters of the faith.

This chapter also contributes to our understanding of Ambrose's role in the development of what R I Moore has called "a persecuting society". Ambrose's rhetoric of divided jurisdictions is an early formula of what will eventually become "recourse to the secular arm" in the medieval inquisition. This chapter demonstrates that Ambrose's strategy hinges on positioning himself as the "correct" side of a rhetorical polarity, but that this polarity did not have to be one of orthodoxy-heresy. The case studies of this chapter show that Ambrose was able to position himself on the "correct" side of Christian-pagan, Christian-Jewish and moral-immoral polarities, while eliding other possible and available polarities to narrow focus to the one boundary his rhetoric wished to exploit. Ambrose had created an all-purpose tool for social control that could target anyone else as "Other" and implicitly elevate the authority of the accuser through the acknowledgement of his right to judge them as "Other." This is part of the


437 Augustine's comments on the necessity of disciplining the Donatists is most usual Late Antique precedent for the use of lay authority to enforce orthodoxy. See, e.g. Joseph G. Prud'homme, "Dissent and the Death Penalty: Developing a Comparative Perspective," in *Augustine and History*, ed. Christopher T. Daly, John Doody, and Kim Paffenroth (Lanham, MD: Lexington Books, 2008).
development of the change from laws that focus on "affirming the orthodox" to "penalising the Other" that this thesis has identified.

Finally, this chapter also contributes a new legal perspective on the conflicts discussed and a way of reading against the grain of Ambrose's self-presentation within them. Ambrose's rhetoric of divided jurisdictions involved a down-playing of the elements of those conflicts that would have been understood to fall under the domain of Roman law by Ambrose's contemporaries (including the emperors involved). This chapter explains the perceived benefits of the legal strategies Ambrose worked to subvert, and restores our understanding of the commonplace nature of such legal strategies at the time and the agency of players other than Ambrose in these conflicts.

4.1 Altar of Victory under Valentinian II (384)

In 384, Ambrose wrote two letters to the emperor Valentinian II on the apparent topic of the potential restoration of the altar to the goddess Victory in the senate-house. Ambrose seems to have heard from Damasus, the bishop of Rome, that the newly appointed urban prefect Symmachus had submitted a petition to Valentinian requesting the resumption of a number of privileges previously enjoyed by what we might term "Roman traditional religion" (*relatio* 3).438 Ambrose's first letter (ep. X.72) seems to respond more to hearsay, while the other (ep. X.73) puts forward an argument more closely corresponding to the wording of Symmachus's petition.

This dispute, as encapsulated by these three letters, has often been taken as a key literary moment in the broader conflict of Christians against pagans in the newly pro-Christian Roman Empire of the fourth century.439 More recent scholarship has revised this understanding, noting in particular how heavily the traditional

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438 Preserved with Ambrose's correspondence and designated Ep. X.72a.

understanding relies on Ambrose's own framing of this dispute.\textsuperscript{440} Ambrose included Symmachus's petition in between his two letters on this topic in his tenth book of letters, those dealing with imperial politics.\textsuperscript{441}

My account will consider Symmachus's \textit{relatio} first, as it appears to have been produced without any reference to Ambrose's participation before examining Ambrose's responses. As these documents have been much discussed in previous scholarship, my account here will focus on the legal aspects of the dispute rather than its entire dimensions. By approaching the conflict in this way, I will show that questions of legality are central to the arguments of both Symmachus and Ambrose in this conflict.

Furthermore, I will show that the arguments of each offer competing conceptions of the role of Roman law in the late fourth-century Empire. Symmachus's argument draws an explicit connection between Roman law and Roman religion. Ambrose's argument suppresses such a connection to redress the conflict as one of primarily antagonism between classes of people he labels "Christian" and "pagan". Roman law and legal processes are a subtext rather than an explicit thread in Ambrose's arguments, but a study of the use he makes of them sheds light on both how Ambrose seeks to counteract Symmachus's portrayal of these matters as matters for the law and how uncomfortably a Christian bishop might seek to compromise between making use of the effectiveness of Roman law while avoiding its "pagan" associations.

Thus, this focus on the legal aspects of the conflict illuminates an instance of competition between elite Late Antique men about the role of Roman law in an


\textsuperscript{441} On the ordering of Ambrose's letter collection, see Zelzer, "Komposition."
empire now ruled by Christian emperors. Roman law was never secular, or religiously-neutral before Christianity.

4.1.1 Symmachus's *Relatio 3*

Symmachus's argument in *relatio 3* hinges on the relationship between Roman law and the practice of traditional Roman religion. In his rhetoric, both are traditional Roman practices and should be upheld both for their Romanness and the appeal to past, established traditions more generally. His opening argument connects the two, suggesting that past "laws" like past customs, should be defended. [2]

Symmachus positions himself in his legal role, as prefect, and as an envoy from the senate to the emperor. [1] Speaking on behalf of those he represents, he notes that this petition comes after (some) senators noticed that crimes that had once been subject to laws were now once more being prosecuted, and so, they sought once more to petition on behalf of customs that had once been supported by the state. [1] Furthermore, Valentinian should not follow the example of Constantius II in removing the altar as a precedent so quickly abolished should not be followed. [4] Thus, Symmachus set the question of the removal or replacement of the altar in a legal context. In his account, the altar has remained in the senate house as long it was legal for it to be there, and was removed not because it was religiously inappropriate but when it was deemed illegal, proscribed with legal force via the emperor. [4]

Symmachus moves on to the role of "religion" in law, focusing on oath-taking. In this text, he positions the altar as a necessary location for oath-swearing. "Where shall the senators swear to observe our laws? [Ubi in leges vestras et verba iurabimus?] [5] He suggests that binding oaths cannot be sworn without the altar, and that these oaths are necessary for Roman law to be upheld. Without them, perjury and chaos will result. [5]

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A later example continues this theme more implicitly. As part of a speech that Symmachus put in the mouth of personified Roma is the claim that traditional Roman religion has made the world subject to her laws, Roman law. "Hic cultus in leges meas orbem redegit..." [9] This also suggests a necessary connection between the cults of the Roman Empire and the laws of the Roman Empire, and also evokes their traditional character in support of their future continuance.

This line of argument is also particularly timely, as Valentinian's brother Gratian has only just been murdered by the army of Magnus Maximus in the year before, while the altar of Victory has been absent from the senate house. While not so tactless as to insult the memory of Gratian directly, this line of rhetoric could be expected to appeal to an emperor who needed military victories rather than defeats.

Symmachus's argument stresses the connection of Roman religion with Roman law explicitly. He questions whether Roman religion does not fall within the jurisdiction of Roman law? "Romanae religiones ad Romana iura non pertinent?" [13] Like the removal of the altar, there are other privileges previously enshrined in law that Symmachus's petition requests be restored. His relatio reports that people were being prevented from leaving property to the Vestal Virgins, with the property in question being held by the fisc. [13] He also questions the legality of the forfeitures happening in this instance, that he claims no law or crisis has prompted. "Quod nomen accipiet ablatio facultatum, quas nulla lex, nullus casus fecit caducas?" [13] Drawing further connections between Roman law and Roman religion, he calls the emperors' "priests of justice", iustitiae sacerdotes, and counts the Vestals among "cults of the city" urbis vestrae sacris. [13] In an elaboration of this, he later rebuts the idea, apparently circulating, that both the Vestals and Victory are part of a foreign cult, which by implication could more reasonably be denied financial and legal support by the state. [18]

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[13] The letter is addressed to all three Augusti at the time of its writing, though for practical purposes, its recipient was Valentinian.
His argument concludes by returning to the question of the altar of Victory. He questions the legality of the altar's removal in 382. He claims that this was not Valentinian's brother's policy, or an action implemented by his laws. [20] In fact, Symmachus was prevented by others\footnote{This is usually assumed to be Ambrose and Damasus, among others, but this identification relies heavily on accepting Ambrose's presentation of the conflict in its 384 stage. He tells us in \textit{ep. X.72}, which one reads first as presented in the original ordering of Ambrose's letter collection, that he and Damasus were involved in the previous round. Whether Symmachus himself would have considered the two bishops to be his main antagonists in 382 is impossible to say from the vague references he himself gives.} of informing Gratian that the senate had decided in favour of keeping the altar. "\textit{Siquidem constat ideo exclusam legationem, ne ad eum iudicium publicum perveniret.}" Liebeschuetz translates this as: "For it is agreed that the embassy was denied access precisely so that he should not hear the judgement of the council of state."\footnote{Liebeschuetz, 78.} [20]

Overall, his argument sees participation in or support for traditional Roman religion as being specifically in keeping with Roman law. Both practices are part of the identity "Roman", and thus, interconnected. Pushing this line of reasoning further, there is no reason to see "religious" matters as distinct from legal ones. In Symmachus's rhetorical framework, disputes concerning "religious" matters are expressly among those that an emperor should be petitioned about and his \textit{relatio} 3 is an example of doing so.

Finally, before considering Ambrose's responses, it is important to note that Symmachus does not in this document focus on a conflict between pagans and Christians. It should be noted how carefully he elides any antagonistic party to present his petition as solely about the restoration of rights either illegally or incorrectly abrogated.
4.1.2 Ambrose, Ep. X.72

Ambrose's letters concerned with this conflict also touch on legal matters, but view any connection between Roman law and Roman traditional religion differently, as might be expected. However, they also couch the dispute in terms with a very striking legal aspect.

Ambrose's argument in Ep. X.72 focuses on the primacy of current, and most recent legal precedent, rather than the focus on the "traditions" of the past both religious and legal invoked by Symmachus. Ambrose notes that the legal privileges of Roman traditional religion have been forbidden by several emperors and most recently by Gratian, who abolished them by a formal rescript: "datis antiquata rescriptis". [5] Ambrose calls such action "statutes in accordance with the faith": fideliter statuta. [5]

But, even here, Ambrose makes a distinction between religious and other matters. "In civil matters, if ought is decreed, no man considers that it should be overthrown, and shall a religious precept be trampled on?" De negotiis civilibus si quid statuit, nemo putat esse temerandum, et praeceptum de religione calcatur? [5]

Here Ambrose argues that the emperor may not treat a petition as he would any other when religion is involved.

Ambrose is not simply asking for religious matters to be treated with the same consideration and importance as civil matters. Instead, he is arguing for the primacy of religious concerns even when the case comes to the emperor's attention in a legal context. It is also important to recognise that it is part of Ambrose's argument to cast the legal privileges of Roman traditional religion as a case where the religious context is of primary importance. Symmachus's petition made a case far

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446 For ease of reference, the full Latin text of this letter is reproduced below as Appendix 2a: Ambrose, Ep. X.72, pp. 246ff.

447 Trans. Liebeschuetz, 64.

448 Trans. Liebeschuetz, 64.
more focused on legal grounds, in contrast to Ambrose's impassioned moral pleading.

To a modern eye, Ambrose's separation of religious and civil matters is familiar and commonplace, but we are centuries removed from the fourth century context of this controversy. We should instead appreciate that Ambrose's introduction of a separation between religious and civil matters is tendentious and a crucial part of his argument. In Symmachus's letter, by contrast, there is no such assumed division between religious and civil matters: a religious matter is also a civil one.

Continuing this theme, Ambrose's argument elaborates that while an emperor would consult a general if the question was about war, so when the matter concerns religion, God is to be considered. This is a rhetorical sleight of hand. Ambrose does not parallel the case with the general directly by suggesting that a religious expert (like a bishop, perhaps) should be consulted, but that instead God should be thought of as an appeal to a higher authority than a human expert.

In this document, the crucial community boundary that Ambrose is concerned with is the boundary he draws between "Christians" and "pagans", and as such, for the purposes of this particular piece of rhetoric, Ambrose and Valentinian II are constructed as sharing a faith community. In a document that is concerned with disenfranchising those who identify with the "wrong" religious option, it may seem bizarre that Ambrose's rhetoric then takes a turn to extol the religious freedoms enjoyed under Valentinian. *libere enim debet defendere unusquisque fidele mentis suae et servare propositum.* [7] That he "does not constrain any man to worship against his will, and your Majesty ought to have the same liberty."[450] *Invitum non cogitis colere quod nolit. Hoc idem vobis liceat, imperator.* [7] Given that Ambrose

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[449] *Si de re militari est consulendum, debet exercitati in proeliis viri expectari sententia, consilium comprobari; quando de religione tractatus est, deum cogita.* [7]

and the emperor disagree about which variety of Christianity one should identify with, this is extremely unexpected.\textsuperscript{451}

In the following paragraph, community identity boundaries become even more complicated. Ambrose's letter considers the hypothetical situation of self-identified Christians urging Valentinian to make such a decree (that would restore the altar of Victory): "\textit{Si aliqui nomine Christiani tale aliquid decernendum putant.}" [8] In this case, Ambrose states that such an identification is "bare words" \textit{vocabula nuda} or "idle names" \textit{nomina cassa}. [8] Anyone one who seeks to persuade Valentinian or seeks to decree it is someone sacrificing to the gods. \textit{Quisquis hoc suadet sacrificat, et quisquis hoc statuit}. [8] Thus, Ambrose preserves the boundary lines he wishes to maintain by focusing on the behaviour of the individual rather than their self-identification. Using Roman law to restore the privileges of Roman traditional religion should be counted as if it were a practice of Roman traditional religion, like sacrifice.

While surely not Ambrose's point, this raises the interesting question of whether, indeed, there were self-identified Christians who supported the position outlined by Symmachus's \textit{relatio} 3. This would seem the most likely explanation for Ambrose including this point at all.

Questions of law, Ambrose stresses in this letter, should be subordinate to questions of religion. He moves away from an argument that focused on Gratian's removal of the altar as legally valid because this is the most recent precedent. Ambrose's argument stresses that nothing in favour of Roman traditional religion "can be decreed without sacrilege". [10] Literally, this states that it would be illegal according to law, but by implication, this is the law of Christianity, not that of the

\textsuperscript{451} Even in Ambrose's correspondence concerning the Basilica Controversy, he is careful to distinguish between the heretics leading the emperor astray and the emperor's own faith.
Roman legal system. He appealed to Valentinian's faith "as a minister of Christ."\(^{452}\)

It is very clear by this point in Ambrose's letter that his letter is a counter-petition to another that has been lodged concerning specific action and monies requested of the emperor. Ambrose does not give details of what these actions/monies are for, but does detail aspects of the petition process. Ambrose urges Valentinian "not to decree or order it, nor subscribe to any such decree."\(^{453}\) He claims that all other bishops would have appealed with him if not for the fact that it had become widespread knowledge that this decree was "either propounded in your council or petitioned for by the Senate" so suddenly. \(^{10}\) His rebuttal of this point relies on the point he made above \(^{8}\), that any senator supporting such a petition should be counted among non-Christians, and that "a few heathen have taken the name of all."\(^{454}\) \(^{10}\)

Two years before, Damasus of Rome sent to Ambrose a document where large numbers of Christian senators declared that they "gave no commission of the sort, that they did not agree or consent to such petitions of the heathen, and they threatened that they would not come either publicly or privately to the Senate if such a decree was made."\(^{455}\) \(^{10}\) Continuing to emphasise that Valentinian himself is Christian not "heathen", Ambrose asks why Valentinian would make a law that would advance the "profane wishes of the heathen"?\(^{456}\) \(^{10}\)

Returning to procedure, Ambrose insists that he had in 382 previously forwarded this document to Gratian, and that "it proves that the Senate gave no commission

\(^{452}\) Trans. Liebeschuetz, 74.
\(^{453}\) Trans. Liebeschuetz, 74.
\(^{454}\) Trans. Liebeschuetz, 74.
\(^{455}\) Trans. Liebeschuetz, 74.
\(^{456}\) Trans. Liebeschuetz, 74.
Towards the end of the letter, Ambrose comes around to another purpose of having written it: he is requesting a copy of Symmachus's petition. [13] It is possible that Ambrose revised the form of this letter after having received a copy of the petition, but as we will see below, the second letter Ambrose wrote concerning this conflict has much more direct correspondence to Symmachus's third relatio. Thus, Ambrose's concern about the legalities of Symmachus's petition and the legalities of restoring the altar of Victory cannot be put down to the rhetoric of Symmachus's petition influencing Ambrose in this letter.

Ambrose again makes the distinction between "a civil case" civilis causa and "a religious case" religionis causa. [13] Having been an advocate in his previous career, Ambrose could confidently state that the opposing party must have a right of reply. But he asks for a copy of Symmachus’s petition as a bishop, explicitly, not as a lawyer and in a case that he also explicitly labels religious. [13] His rhetorical positioning demands for him all the advantages of the opposing party in a civil case, but also some more vaguely defined advantages as a bishop in a case concerning religion. There is also the implication that a bishop is the de facto opposing party in a case about religion where the battle lines are drawn between "pagans" and "Christians", which is, precisely, what Ambrose has spent this letter proposing as the context of his petition.

The threats that Ambrose closes with seem robust, but should be seen as evidence of the weakness of his position. He suggests that "your Majesty's father" be consulted [13], which seems by implication to refer to Theodosius in the East rather than to the laws of Valentinian I or to his memory more generally. The current political and military climate with Valentinian trapped by Maximus to his west and Theodosius to his east was a genuine and credible threat. However, Ambrose had

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457 Trans. Liebeschuetz, 74.
no established rapport with Theodosius as yet in 384. Theodosius might be actively anti-non-Christian in the East, but the threat he posed to Valentinian was broader than this one issue.

Ambrose's second threat is even weaker. He suggests that no bishop could quietly permit Valentinian to put into action a decree that advances non-Christian interests. While Valentinian could go to church, he would either not find a priest, or he would find one determined to resist him.

This would pose a stronger threat if Ambrose were bishop of Milan in 384, instead of 384. Refusal of the mass, as well as outright excommunication would have a long history as a mechanism of clerics disciplining the laity, but this had not yet developed by the fourth century. In Ambrose's own time, this was not a particularly strong threat.

The threat is also weakened by Valentinian's support of a different variety of Christianity than that supported by Ambrose. We have seen in the previous chapter that Valentinian had his own bishop in Milan at this time, but Ambrose makes no mention of this in this letter. He has not mentioned that Valentinian follows what Ambrose would term a "heretical" Christianity, or that the emperor prefers a bishop other than Ambrose.458

It is possible that Ambrose included this line of argument less to influence Valentinian himself, but more to influence Christian senators, or indeed, the priests that Ambrose threatens would refuse anyone supporting the various measures Symmachus's petition requests. Ancient letters often served a public function as well as their simple function as communication to their recipient. Ambrose's letter was addressed to Valentinian, but he could expect its contents to reach a far wider

458 The conflict between Ambrose and Auxentius of Durostorum, Valentinian's bishop, is discussed above, chapter 3.2, pp. 145-172.
audience. As indeed, it later would following its inclusion in his ten volume published correspondence.

Ambrose concludes with a speech he puts in the mouth of Valentinian's recently deceased brother. Ambrose suggests that Gratian had been relieved to be succeeded by Valentinian, particularly because he "believed that [his] edicts, especially those concerning religion, would continue forever."\textsuperscript{459} \textit{quia imperia mea praesertim de religione divina omnibus saeculis mansura credebam.} [15] These anti-
non-Christian laws, Ambrose suggests, are Gratian's trophies of victory. [15] Perhaps this links with the earlier differentiation between consulting generals or considering God when making one's decisions. Ambrose is implicitly urging Valentinian not to be swayed by arguments about the altar of Victory that purport to offer victory in this life when he should be focused on what will grant victory in the next.

Ambrose's rhetoric in the mouth of Gratian continues to focus on the question of whether Valentinian will abrogate Gratian's decrees. This is a matter of dishonour, something that even Maximus had not done to Gratian.

"You have abrogated my decrees; an act which even he who took up arms against me has not yet committed. Now am I pierced with a more deadly weapon, in that my brother has annulled my ordinances. Your acts tend to the injury of my better part, for while the one destroys my body the other destroys my good name."\textsuperscript{460} [15]

The focus is on Gratian's "decrees," "ordinances", and "laws". [15] Instead of focusing on the fact that these laws are the most recent statement on these questions, the rhetoric here focuses on the matter of Gratian's potential dishonour

\textsuperscript{459} Trans. Liebeschuetz, 68.

\textsuperscript{460} Trans. Liebeschuetz, 68.
by his still living brother and the question of faith. "If you have willingly acquiesced, you have condemned the Faith which I held, if you have yielded reluctantly, you have betrayed your own. And so, what is a still heavier calamity, I incur danger in your person also."[15]

Gratian and Valentinian shared a father, but not a mother, and it is Valentinian’s mother who is associated with supporting the "Arian"/non-Nicene position. Gratian's faith appears to have been Christian but not overly concerned about Christological niceties.

In a letter composed during the height of Ambrose's conflict with the non-Nicenes, between the council of Aquileia (381) and the Basilica Controversy (385-6), it should also be noteworthy that Ambrose employs no distinctions of heresy/orthodoxy in this letter. The distinction between Gratian's and Valentinian's faith here is not a distinction between orthodoxies, and at no time does Ambrose chastise Valentinian for supporting a non-Nicene position in contrast to Ambrose's own Nicene affiliation. The argument should be understood as implying that Gratian's faith is memorialised in his laws, and thus, it is betrayed by Valentinian if he has willingly repealed those laws.

As he is someone who has yet to be baptised, it is also possible to position Valentinian as "orthodox" for the sake of the argument Ambrose is making. As someone yet unbaptised, Valentinian had not yet chosen a side in the way that being baptised by a particular bishop of a particular theological affiliation would have indicated such a choice.

It is also rhetorically more useful for Ambrose to emphasise a boundary between "pagans" and "Christians" in this case rather than "heretics" and "the orthodox". We will see this sort of strategic use of community boundary definition in later

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461 Trans. Liebeschuetz, 68.
letters. Maintaining a focus on one single binary allowed Ambrose a stronger rhetorical presentation of his position.

It also created a polarising context that demands the reader should choose sides (and accept the boundary between them as specified by Ambrose). In this letter, Ambrose discounted the self-identification of anyone claiming to be Christian if they acted with tolerance of the pagan cults. He insisted that one was either a Christian according to the criteria he proposed, or one was not. It was both a claim for community boundaries and an implicit claim for Ambrose's own authority to determine such boundaries.

4.1.3 Ambrose, Ep. X.73

Ambrose's second letter about the controversy follows the rhetorical argument of Symmachus's petition much more closely, but is also much less concerned about the legal procedures behind such petitions. His overall argument in this letter focuses on the moral right enjoyed by Christians, which is portrayed as superseding any legal right enjoyed by the "pagans" who brought a petition from the senate. Once again, Ambrose's presentation focuses on a single binary of religious identity (Christian-pagan) and presents a strong case that this religious context should be understood as paramount.

From his first paragraph, Ambrose frames the impetus being Symmachus's petition as being "the prayers of the pagans" obsecrata gentilium [1]. The formal document of Symmachus's petition he refers to as a relatio, when summarising the contents of his first letter, where he requested a copy of the document.

Ambrose rebuts the arguments that Symmachus put in the mouth of personified Rome, that "pagan" rites repelled Hannibal and the Senones from the city, by asking how strong these gods are that they did not prevent these threats entirely. [4] He does not directly engage with the claim that the gods ensured Rome's laws were
enforced, as he does not at this point discuss the relationship between the gods and Roman law. He neither denies such a relationship nor agrees with it. What Ambrose does claim at this point is that it was "by other disciplines that Rome subjugated the world." *Aliis ego disciplinis orbem subegi.* [7]

It is important to note at this point, that Ambrose's argument does not counter the arguments of Symmachus's *relatio* on their legal merits. He does not discuss the legalities of the position he proposes, nor does he argue that what Symmachus has claimed needs to be rectified is itself illegal. Instead, Ambrose's argument here focuses on proving the moral deficiency of the pagans and the superior morality of the "Christian" position, one that he claims he and Valentinian share.

The first aspect of this is a discussion about the fact that "pagan" religion is idolatry, and therefore unsuitable to be supported by a Christian emperor.462 Ambrose argues that it must surely be contrary to Valentinian's faith to financially support traditional Roman religion.

This argument does not concern Valentinian's legal status as emperor or the legalities for or against donating property to the Vestals under Roman law. Instead, it focuses on the religious identity of the emperor and what behaviours Ambrose proscribes as criteria for membership within that identity. The sort of Christianity that Ambrose constructs in this passage demands Christians not only do not personally fund traditional Roman religion but also requires Christians to prevent anyone else, Christian or otherwise, from doing so.463

The second aspect of this is a discussion of Christian martyrdom under the pagan emperors of the past. *Numquam nobis amplius contulerunt quam cum verberari*

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462 Amb. Ep. X.73.6-10

463 This is similar to his argument in X.72, discussed above, section 4.1.2, that any senator that supported Symmachus's petition, whether he claimed to be Christian or not, should be taken by Valentinian as "pagan".
Christianos atque proscribi ac necari iuberent. Praemium fecit religio quod perfidia putabat esse supplicium. [11] Ambrose's appeal to Christian triumphalism requires a persecuted past history for Christians. In this way, he makes the narrative trope of "persecuting pagan emperors" useful for the new realities of the late fourth century: the emperors were now nominally Christian, but might still act in ways that could be constructed rhetorically as "persecuting" Christians.

Once again, his presentation elides the differences between Ambrose's Nicene variety of Christianity and Valentinian's non-Nicene bishop in Milan. This rhetorical choice cannot be surprising. A line of argument where Ambrose delegitimised Valentinian as a heretic would not have helped Ambrose achieve his goals, as the final judgement rested with Valentinian himself. Furthermore, delegitimising the emperor as a heretic when one hoped for his legal authority to be exercised in one's favour would also be a nonsensical move. Far better was Ambrose's actual choice. He rhetorically constructed the identity "Christian" in this letter in such a way that it forced Valentinian (or any other reader-listeners) to act within those bounds or risk losing access to that identity.

He argues that it is just that Christian emperors deny support to Roman traditional religion in the same way that "pagan" emperors of the past denied support to "Christian" religious practitioners. Far from commenting on the legality of Roman emperors financially supporting or punishing religious institutions, Ambrose's argument focuses on judging the morality of those "punished" by emperors withdrawing financial support for their religious institution. Christians, Ambrose argues, did not complain about their treatment under pagan emperors, which demonstrated their moral character (and deserving nature).

Conversely, the fact that "pagans" were complaining about their treatment under Christian emperors showed their poor moral character. Thus, in a conveniently circuitous fashion, Ambrose constructed the very fact that Symmachus lodged a
petition in favour of it as a sign of the illegitimacy of Roman traditional religion to receive support.

Further to this line of argument, Ambrose mentions a recent piece of legislation that prevents Christian clergy receiving testate gifts. Again, he notes that Christian clerics have not protested this law, and suggests this indicates their moral superiority compared to pagans who do protest similar strictures. [13]

The law itself is likely to be the one preserved as XVI.2.20 in the *Theodosian Code*. This was written to Damasus of Rome by Valentinian I in July, 370. It is one of very few laws in the *Code* addressed to bishops, even within Book XVI, the book concerned with the Christian Church. The actual wording of the law is more concerned with "clerics, ex-clerics or persons claiming to be continent" ingratiating themselves with women of property and gaining prominent places in their wills, and thus depriving the women's kin of their rightful shares of inheritance. If this is the law to which Ambrose was referring, he places it in a polemical context of a Christian-pagan binary. However, we might equally see it as another in a long line of legal measures designed to protect the kinsfolk of wealthy persons from being disenfranchised by charismatic fortune-hunters.

In a section that may make us question how closely Ambrose feels the need to match his argument to the facts of Symmachus's petition, Ambrose next insists that pagans still enjoy more privileges enshrined in law than Christians do. He states that "pagan" priests are exempt from the decurionate, unlike Christian priests. He also states that persons are permitted to will property to "pagan" priests, but not Christian ones. [14] This statement would seem to directly contradict the details of Symmachus's petition as it specifically protests the confiscation of property intended by its deceased owner to be given to the Vestal Virgins. [464] It would also seem to contradict the point Ambrose has just made about the similarity of the

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positions of "pagans" under Christian emperors and "Christians" under earlier emperors.

Ambrose's relationship with Damasus is an important backdrop to this dispute. The Altar of Victory Controversy in Rome in 384 seems to have been something that Damasus brought to Ambrose's attention. The 370 law suggests that Damasus was involved in efforts to counter appeal petitions seen to be favouring "pagans" even before the conflict concerning the Altar of Victory in 382 and 384.

Returning to Ambrose's argument, he chides Symmachus's side for demanding redress in this situation when their side, as constructed by Ambrose, has treated Christians so badly in the past. [15] As noted above, the withdrawal of state financial support for a religious "minority" was not something that Ambrose saw as immoral in and of itself. Instead, actions in favour of Christians are just, whether they involve the removal of support for "pagans" or not, and actions in favour of "pagans" are immoral.

In a third and final section, Ambrose argues that only the estates of the temples have been confiscated, but not their legal rights. *Praedia igitur intercepta, non iura sunt.* [16] He argues that it was right for these estates to be confiscated as they had been acquired on religious grounds, but were not being employed as Ambrose deems they should. This passage, too, has circuitous logic to it. It is unclear in what way the temples could be considered to retain their legal rights if they were legally liable to having their property confiscated, simply on the grounds of being a temple.

Coming back to the role of oaths in Roman law and the necessity of the altar in the senate house to validate such actions, Ambrose is much more specific on points of law. He argues that Constantius II's removal of the altar was legal, as it was implemented by an emperor. The return of the altar was, however, illegal, as it was

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465 In the sense of a religious group within significant political backing within temporal power structures, regardless of the demographic make-up of a culture.
accomplished after Constantius had left the city and without his knowledge or decree. *Iussit auferri, non iussit reponi. Illud auctoritatem facti habet, hoc praecpti non habet.* [32]

However, here, too, the majority of Ambrose’s argument is taken up with foregrounding a binary context between Christians and pagans. Ambrose argues that he does not dispute the role of oaths in Roman law, but does dispute the role of oaths directed in particular at the gods of traditional Roman religion. [31]

Ambrose concludes with a twist on something Symmachus had said in his opening, using Symmachus’s own words to encourage Valentinian to do what Ambrose suggested. He also returns to the point he made in his first letter on this matter: that Gratian’s laws (including the one that removed the altar) should not be violated. *...pietati ut fratris statuta non violes.... Quanto magis amori debent deferre fraterno, ut qui dissimulare deberes etiamsi quid forsitan non probares, ne fraternis derogares statutis, et nunc teneas quod et fidei tuae et germanitatis necessitudini iudicas convenire.* [39]

In this case, he has no need to argue for why a bishop would be petitioning to create new law because he is arguing for something he portrays as the legal status quo. It is both morally right for Valentinian to keep the altar of Victory out of the senate house and continue not to fund/disallow people to will property to the Vestals, and also legally right. Likewise, it is morally right for Valentinian to uphold his brother's laws because Gratian was his brother-- and because of the content of those laws.

This letter is also interesting to our present purposes for what it omits. Ambrose does not reiterate here the threat of refused communion for any person who supports Roman traditional religion that he made in the first letter. Two possibilities immediately suggest themselves. It is possible that this threat was not an effective one, as outlined in my discussion of the first letter above. Valentinian had his own
bishop, after all. Like the first letter, Ambrose also made not the slightest allusion to divisions among Christians, always maintaining the one binary of this context as between Christians and pagans. Another possibility is that this second letter was composed well after this round of this controversy was decided, and thus, Ambrose was less interested in encouraging specific actions take to take place but more interested in publicising his particular views on the conflict.

That this second letter is far less concerned with the legal situation or the procedures of petitioning the emperor may also suggest to us that it is more a show-piece of Ambrose's rhetoric than a document intended to achieve a more concrete goal. The first letter culminates in Ambrose's request for a copy of the text of Symmachus's *relatio*. This second letter has no such clear goals.

In fact, this second letter seems very like the sort of rhetorical performance Ambrose would go on to employ in a letter to the emperor Theodosius about the destruction of a synagogue at Callicinum, which will be discussed next.

Ambrose positioned what it meant to be a bishop in terms of interaction with Roman law quite differently in these two letters. In the first, he ultimately portrayed himself as the opposing counsel in a legal case. In the context of this first letter, that was a very useful self-representation to achieve his stated goal of acquiring a copy of Symmachus's petition. It was also one that was seemingly successful as his second letter opens with an acknowledgement that Ambrose did now possess a copy.

On the other hand, X.73 is a rhetorical performance likely written after the issue at stake has been decided, rather than a text seeking to actively influence an emperor's actions. In this second letter, Ambrose did not explicitly comment on the
role of the bishop. However, we can see in this letter an implicit construction of the bishop as someone of good judgement whose advice the emperor should accept. This construction will be seen to be explicit in later letters.

4.2 The Destruction of the Synagogue at Callicinum (388/89)

Around the winter of 388/89, Ambrose heard about the destruction of a synagogue in Callicinum in Asia Minor. In this conflict, Ambrose would intervene against the judgement of Theodosius I. The story as we have it from Ambrose's letter can be briefly described as follows.

A Christian mob, likely on the instigation of the local bishop, destroyed a synagogue in the town. The Jews of Callicinum sought legal redress for the destruction, with the matter eventually coming before the emperor Theodosius. In the first instance, Theodosius seems to have judged that the bishop was liable for the reconstruction of the destroyed building.

One wonders why Ambrose chose this incident to take a stand upon. The topic of Roman law being used to legally guarantee "Christian" funds in support of non-Christian religion can be constructed as similar in some ways, but the destruction of the synagogue was an incident occurring in a small, unimportant town on the other side of the Empire rather something occurring in the Western Empire, in the city of Rome, concerning the senate house itself.

We have two letters from Ambrose concerning this incident. The first was addressed to Theodosius, and was placed immediately following the triptych of letters concerning the altar of Victory in Book 10 of Ambrose's letter collection, published towards the end of his life.

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466 Curiously, episcopus only occurs in this letter in the salutation: Ambrosius episcopus, and sacerdotes, Ambrose's other frequent synonym for "bishops", appears in this letter more frequently to refer to the priests of Roman traditional religion than those of the Christian ecclesia.
The second was addressed to Ambrose's sister, Marcellina, an ascetic living in Rome. This second letter is part of Ambrose's extra collectionem letters, discovered shortly after his death, and was accompanied by a version of Ambrose's letter to Theodosius with only a few crucial differences.

4.2.1 Ambrose to Theodosius, Ep. X.74

The letter to Theodosius opens very explicitly with a reiteration of the danger of sacrilege. This we have already seen as a way for Ambrose to counteract the legal legitimacy of a position with which he disagrees. It would be sacrilege in this case to act in ways that are contrary to the Christian faith (as Ambrose saw that faith).

Interestingly, Ambrose constructs this matter as potentially sacrilegious for both Theodosius and Ambrose. In Ambrose's case, this was because he might be silent when he knew he should not be.

Ambrose also opens with an appeal to the idea of bishop as good counsellor. He says that he should be listened to as one the emperor would want acting as a "cleric" for him. (Itaque peto ut patienter sermonem meum audias; nam si indignus sum qui a te audiar, indignus sum qui pro te offeram, cui tua vota, cui tuas committas preces.) [1] 467

The first few paragraphs of Ambrose's letter are taken up establishing this frame for his letter. He touches upon what it is to be a bishop, and to be an emperor, or more specifically, a good emperor. Emperors, Ambrose suggests, should be in favour of frank speech (if they are emperors who love liberty/freedom). While Ambrose complements his discussion with scriptural citations, here he also invokes a pre-existing and long-standing rhetorical tradition concerning how counsellors were to interact with the emperor.

467 For ease of reference, the full Latin text of this letter is reproduced below as Appendix 2b: Ambrose, Ep. X.74, pp. 251ff.
This is exactly the trope of *parrhesia*, complete with complementary roles for Ambrose as the bishop offering good counsel and Theodosius as the emperor who is encouraging of frank and critical speech. *Nec vereris iudicium tuum, ne cum indignum putaris quem audias, indignum feceris qui pro te audiat?* [1] Ambrose continues to explain that a bishop’s silence should be displeasing to an emperor, and his *libertas* should be pleasing. *displicere debet sacerdotis silentium, libertas placere.*[3]

Ambrose next seeks to establish that in writing this letter, he was doing his duty. It is unclear whether we should see this claim of loyalty to the emperor as one intended to counteract the suggestion of treason or in some other way acting contrary to the emperor’s wishes (by questioning Theodosius’s orders regarding the rebuilding of the synagogue). However, Ambrose has a loyalty to someone else that trumps his loyalty to Theodosius. If Theodosius does not believe Ambrose or forbids him to speak, Ambrose will speak regardless, because he fears offending God more than he fears offending the emperor. *Si id mihi vel non creditur vel interdicitur, dico sane divinae offensae metu.* [3]

In the fourth paragraph, Ambrose fine-tunes this trope for bishops, and crucially, for bishops commenting on religious matters. In a statement very similar to that made in Ambrose’s first letter on the altar of Victory, Ambrose contrasts an emperor’s *militiae* offering advice related to their specific offices and bishops doing the same. Indeed, Ambrose suggests here that bishops be treated as a special category with special expectations. Where a general might act out of choice, a bishop must speak due to divine command.

Here, too, Ambrose made an explicit distinction between a bishop commenting on political matters (*in causis rei publicae*) and commenting on religious matters (*in causa vero dei*). [4] A bishop might comment in either situation, but, he suggests, a bishop would feel less pressure to offer comment about a political matter. He
insists that a bishop has a special incentive to speak truthfully in religious matters. This distinction between political and religious matters is something we have already seen in the letters concerning the altar of Victory. This rhetoric of divided jurisdictions is the model by which Ambrose inserted himself (as orthodox bishop) into the mechanisms of Roman governance, and in a privileged position.

It is not until the sixth paragraph that Ambrose reaches the ostensible point of the letter: the destruction of the synagogue at Callicinum and Theodosius's judgement against the local bishop for complicity in the destruction. Ambrose insists that bishops (qua bishops) are lovers of peace and restrainers of crowds, except of course when God or the Christian community are insulted. \[nisi cum et ipsi moventur iniuria dei aut ecclesiae contumelia\]. [6]

Removing the incident from Ambrose's rhetoric, the legal situation would seem to be as follows: the destruction of property belonging to another could be grounds for a legal case in terms of Roman private law. However, beyond that and perhaps explaining why this incident reached the emperor, inciting a crowd to mob violence carried possible criminal charges.

Having established earlier that this matter is a religious one, Ambrose then argues that it does not matter if the bishop had been complicit in the burning or not. What is crucially at stake, Ambrose suggests, is that the bishop may lapse in his faith \[praevavicetur\] in compliance with Theodosius's orders \[sententiae tuae\]. [6] Or, failing that, concern that the bishop will choose martyrdom. [7] Each would amount to persecution, and each would be a moral error of Theodosius if he allowed either to happen. [7] This line of argument significantly reframes the issue, building on Ambrose's earlier framing of the special treatment deserved by religious matters.

His concern that the bishop will lapse or choose martyrdom explicitly invokes the choices available to Christians before pagan magistrates prior to the 313 legalisation of Christianity. Next, Ambrose takes up the persona of the accused
bishop, in a scenario that looks very much like a martyr act is part of his imaginings. He insists that the whole situation is set up so as to "not lose the opportunity for martyrdom" *ne amittat occasionem martyrii*. [8] He demands to be punished by Theodosius. He confesses to having desired to persecute Jews like the (unnamed) bishop of Callicinum. Ambrose may not have caused any synagogues to be destroyed, but he has prevented one being built in Milan. [8]

Returning to the possibility of Theodosius causing others to lapse, Ambrose suggests that, like the bishop, Theodosius's *comes Orientis* might also lapse by following Theodosius's orders and forcing the bishop to pay for the rebuilding of the synagogue. [9] This is something Ambrose will return to towards the end of the letter: the argument that Theodosius should prioritise preventing Christians acting in ways contrary to how Ambrose defines Christian behaviour, rather than the pre-existing legal norms.

We also soon meet Ambrose's language about divided jurisdiction. He chides Theodosius for putting public order before matters of religion. *Quid igitur est amplius, disciplinae species an causa religionis?* [11] This interestingly marks a turn back towards discussing the case on its legal merits. The contrast of public order with matters of religion is a much more specific case than we have seen in previous examples, where Ambrose contrasts matters of religion with matters political or matters legal. The question of public order also raises again the threat of a charge of inciting public disorder, but this is not what Ambrose turns to next. Instead, Ambrose now offers counter-arguments for the potential charge of destruction of property.

His first argument is that this is not just a question of the mere destruction of property, because other buildings have been destroyed in the past without anyone ordered to offer redress as has been suggested in this case. He gives two historical examples. The first is that the mansion of the city prefect in Rome was burnt without any response. The second is that a bishop's palace in Constantinople was
burnt down-- in that more recent case, Ambrose notes, Arcadius, Theodosius's son and co-emperor interceded for those responsible. [13]

The next aspect of Ambrose's argument is that the fact of the building being destroyed is not as important as the fact of its use, that is, that it was a building used by Jews for their religious activities. [14] We might see an echo in this of Ambrose's views during the 386 Basilica Controversy in Milan, when the question of who owned the basilicas was not as important to Ambrose as the fact that "Arians" wished to use them for religious activities. This line of argument is an implicit return to Ambrose's framework of religious matters being treated differently than non-religious matters. And, indeed, here we also get Ambrose reminding Theodosius that God is also a judge, and one with higher authority than the emperor. *Deus se pro illis prohibit rogari quos tu vindicandos putas.* [14] This is a further appeal to the idea that religious matters, or perhaps more literally, matters concerning God, should be judged on a different set of criteria than matters not concerning God.

Thirdly, Ambrose suggests that the Jews are responsible for destroying more Christian owned buildings than the reverse. Preserving the framework of this conflict as one that is "in causa Dei", Ambrose explicitly opens this section of argument by suggesting that he is only hypothetically arguing as one would in a court of law. *[si iure gentium agerem].* [15]

For his rhetoric in this section to work, Ambrose quickly subsumes the categories of "Jew" and "pagan" as a modern audience might understand them. The greater instances of destruction of Christian buildings that Ambrose refers to occurred during the reign of Julian, who gave significant political (and financial) support to Roman traditional religion rather than to Christianity. Julian's reign was a brief four years in the middle of the century, between emperors who did increasingly offer their support to Christianity alone.
In the next paragraph, Ambrose adds "heretics" to the pagans and Jews he claims have destroyed Christian owned buildings far in excess of those that Christians have destroyed. His example concerns the destruction of what he calls a temple of the Valentinians. This also resulted in an order for it to be rebuilt and those responsible punished. [Nam et de ipsis comperi relatum et praecipientum] However, at this first instance, Ambrose calls them pagans [gentiles] rather than heretics. He will not call them heretics explicitly until after another ten paragraphs, none of which deal with the Valentinians.

It is particularly interesting that Ambrose finally calls the Valentinians heretics [Valentinianorum haeresim] in the context of what are explicitly anti-heresy laws. At this point, he wishes to make the point that Valentinians should not have buildings restored to them as there are laws that prohibit the right of assembly for heretics. Ambrose does not make the connection explicit, but it seems likely that the implicit point he was making here is to argue that a group that is prohibited from meeting has no need for buildings in which to meet, and therefore, no grounds for having such a building restored to them. cum eos excludi iusserit nec conveniendi usurpare copiam? [26]

Liebeschuetz notes that Valentinians are not yet specifically prohibited from meeting up to this point in any extant law, but there were laws of 383 (CTh. XVI.5.12) and 388 (CTh. XVI.5.14) that prohibited heretical sects in general from meeting. This, I would suggest, explains why at this point Ambrose introduces the categorisation of Valentinians as heretics after having categorised them very usefully as gentiles earlier in the letter. Ambrose must call the Valentinians heretics.

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468 The Valentinians were a "gnostic" sect, but the particular choice of sect suggests a pun at the expense of Valentinian II.

469 He uses gentiles and Valentiniani interchangeably in this paragraph.

470 Liebeschuetz, Political Letters, 108 n. 5.
here because he wants to argue that they are proscribed under the law as "heretics" rather than as "Valentinians."471

It is an open question whether Ambrose would have necessarily known the above two laws as they were given at Constantinople and Thessalonica respectively rather than closer to Milan. Ambrose's wording is vague in this instance, but he is vague in almost all his references to legal precedents.472 He only mentions that they are laws of Theodosius, which the above two laws are. Theodosius was at this point somewhat established in the West (with Arcadius concerned with the Eastern Empire), but that does not mean Ambrose would have necessarily known the specific laws we happen to have preserved in the *Theodosian Code*.

What is particularly striking about what Ambrose does tell us about the contents of these laws the Valentinians/gnostics are to be proscribed under is the concern with the legal deposition of property and the suggestion that it should be a Christian bishop who had the final say in the religious use of buildings. This is also a concern in the emperor Valentinian's 386 law from the Basilica Controversy, which must have appeared "pro-heresy" from Ambrose's point of view as it gives privileges to those in agreement with the 359 creed of Rimini and Constantinople.

Still thinking about the time of Julian, Ambrose then contrasts the judgements against those who profaned "pagan" altars. [17] This is a type of argument he also used in the second letter concerning the altar of Victory, that the poor treatment of Christians when they lacked political supremacy justifies their poor treatment of those that are now lacking in political supremacy.

471 That types of "heretics" would be liable under laws that penalise the general category "heretic" was not yet an obvious aspect of Roman anti-heresy laws. Discussed above, n. 206.

472 His explicit citation of a law of Valentinian I in his letter of 386 to Valentinian II is a notable exception. Discussed in chapter 3.
The next aspect of Ambrose’s argument is to discount the affair entirely. He states that he has heard that the judge in the Callicinum affair was ordered to hold an inquiry into the events, was chastised for sending a report about it rather than punishing those responsible and returning property. Ambrose makes the argument that this little town in the middle of nowhere should not possess any property to be returned. Later in the letter, he will return to this argument, stating that the emperor should not have investigated or punished a matter that has not before been investigated or punished. *Quantum est, imperator, ut quaerendum aut vindicandum non putes quod in hunc diem nemo quaesivit, nemo umquam vindicavit?* [26]

He also blames the Jews for demanding an inquiry of a military court (i.e. under the *comes orientis*) *ut ... mandetur extra ordinem militaris censura iudicii* [18] and makes much of Jews being generally poor witnesses in a legal sense. His argument on this point is particularly inflammatory. He makes much of Jews allegedly bearing false witness against Christ, mixing this portrayal with the traditional Roman fear of *delatores* perjuring themselves to gain from the suffering of honest (and wealthy) Roman citizens. His discussion of this emphasises the horrific punishments suffered by Christians on the strength of what he alleges at this point to be solely Jewish accusations: Christians going to the mines, buried alive, hacked to pieces or burnt. [19]

Ambrose insists that the Jews refuse to be bound by Roman law except when it suits them. He argues that they have burnt Christian buildings and expected to get away with it and now are hypocritically upset that Christians have burnt one of theirs. *Et cum ipsi Romanis legibus teneri se negent ita ut crimina leges putent, nunc velut Romanis legibus se vindicandos putant.* [21]
On another tangent, Ambrose connects sacrilege of exactly this kind with military disasters.⁴⁷³ Theodosius has the Christian God to thank for his recent victories over Maximus. [22] Maximus sent an edict to Rome to ensure public order after a synagogue had been burnt there [cum audisset Romae synagogam incensam, edictum Romam miserat quasi vindex disciplinae publicae], thus making everyone turn away from him as a Judaizer. [23] The laws of unholy / unpious men should be destroyed as he should be. Abolenda cum impio sunt etiam impietatis exempla. [23]

Ambrose notes that Theodosius has granted his requests in the past (people freed from exile, death penalty, imprisonment). While Ambrose notes this in the context of him owing Theodosius, it also functions as a reminder and a reemphasis in the letter of their relationship existing on the terms Ambrose is painting it. [25]

Ambrose suggests that the emperor call a council of bishops he does believe to be genuine bishops if he doesn't believe in Ambrose. Again, the point is made that in matters of religion, the emperor should consult bishops -- as he would consult his comites on matters of finance. [27]

Ambrose overplays the dangers posed by the enemies of Christians. [28] He emphasises that Theodosius will be personally to blame if Christians are executed or injured following Theodosius's legal judgements in favour of the enemies of Christians. [29] Ambrose in turn will be culpable for not having stopped Theodosius from acting against Christians, such that Ambrose would be unable to face the other bishops in his disgrace. [29]

Moving quickly on, Ambrose discusses the suffering of clergy forced to take up civil council positions. His argument here is that Christian clergy should be enjoying privileges of that status, but that their being forced into undertaking such onerous

⁴⁷³ Coincidentally exactly the argument used by Symmachus in favour of restoring the altar of Victory in relatio 3, though he obviously viewed activities that were to be categorised as "sacrilege" differently from Ambrose.
civic position shows that they are not. [30] Ambrose acknowledges that this is a tangent into a side issue, one that is also currently under Theodosius's consideration for legal judgement. For the present purposes of his letter, Ambrose is more urgently concerned with Theodosius's response to the conflict in Callicinum. [30]

Ambrose returns to the point about acting in ways that the Christian God as Ambrose sees him would approve of, that Theodosius is acting as a good emperor, keeping a good relationship with the god, by pardoning those who burnt the synagogue. [31]

Ambrose begs Theodosius to write a letter repealing the first order. Theodosius has apparently made some oath to punish the guilty re: Callicinum, but Ambrose thinks this should not stop him because he's acting as God would want. [31] Ambrose fears that the result of Theodosius's judgement will rest in the hands of another. <Ti> meo ne causam tuam alieno committas iudicio. [31]

He then compliments Theodosius's mercy, referring to Theodosius pardoning those involved with the "statue riot" in Antioch as well as Theodosius's good treatment of the women in the family of his late imperial rival, Magnus Maximus. [32] In the version of this letter that circulated extra collectionem (ep. ex. coll. 1a) only, Ambrose further begs that Theodosius not enjoy inflicting punishment on Christians. [33] This is another example of Ambrose taking the narrative trope of pagan emperors persecuting Christians and applying it to the actions of a nominally Christian emperor. That this was only included in the non-published version might suggest that this was a rhetorical step too far for Ambrose at the time of the conflict.

In summary, this letter includes many of the rhetorical tropes noted elsewhere in this chapter. Ambrose employs a distinction between religious and political/non-religious matters, which allows him to suggest that religious or moral
considerations should be of utmost priority when the emperor chooses to act, instead of the legal framework of Roman law. He also justifies the poor treatment of non-Christians with reference to the poor treatment of Christians by non-Christians, as a group, in the past, justifying Christian triumphalism in his present with reference to martyr narratives in the past.

4.2.2 Ambrose to Marcellina, Ep. Ex. Coll. 1

Ambrose's letter to his sister about the conflict concerning his intervention with Theodosius about the Callicinum incident is essentially a frame for Ambrose to publicise a sermon he gave to Theodosius concerning these events, and he admits as such. [1] His letter opens with a brief recapitulation of the situation as outlined in the letter to Theodosius, before turning to the text of his sermon.

The sermon covers very similar overall points as his letter to Theodosius, but where the letter to Theodosius discusses the incident's legal context, albeit only to justify setting it aside in favour of what Ambrose asserts is its religious context, the letter to Marcellina and its sermon focus only on the religious context. Because the sermon does not add much detail to our understanding of the legal context, my discussion of it will be shorter.

Like the letter to Theodosius, Ambrose begins the sermon by providing a framework for understanding his sermon as an example of free speech. In his exegesis on Jer. 1.11, he argues that priests (and in this context, we should understand "bishops") should speak freely and that they have a charge from God to begin harsh and end gentle in their corrections of others. [2] This both frames Ambrose's own sermon but also implicitly demands that the actions of the Callicinum bishop be understood in similar terms. Ambrose opens his discussion of Lk.7.36-50 with the assertion that benefits rather than terror should be more of an incentive to correction. [6] This could also be understood in connection with his

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474 ep. ex. coll. 1
assertion in the letter to Theodosius that bishops are lovers of peace-- except in precisely the circumstances under discussion.

Ambrose's extended exegesis of the untrustworthy character of the Jews does not have an explicitly legal context in the sermon. But when placed alongside the letter to Theodosius, as Ambrose does in his letter to Marcellina, suggests that this exegetical passage is an extended version of the argument Ambrose made in X.74.18-19. There Ambrose connected the idea that Jews could not be trusted by Christians in a religious sense, as they did not honour the Christian God, with the Jews not being trustworthy in a legal sense. Therefore, it seems likely that a reader of Ambrose's letters extra collectionem 1 and 1a was intended to understand the exegesis in Ambrose's sermon as further weight against the trustworthiness of Jews in a legal context as well.

Other aspects of Ambrose's sermon also come into sharper focus when set alongside the argument of his letter to Theodosius. His discussion of the proper use of wealth in the sermon is on the face of it just another call for Christian charity towards the poor. [13] However, in the context of the two letters, we can connect this to Ambrose's insistence that non-Christian property not be returned or restored when destroyed or seized by Christians specifically on the grounds that non-Christians do not use their wealth in what Ambrose outlines as the proper way. If the proper use of wealth is Christian charity, this is not something a Jew or a pagan may undertake.

Ambrose's sermon also touches on a number of arguments we have already seen in similar contexts above. He argues that only Christians deserve legal privileges, as the emperor should choose to only grant legal privileges to those who honour Christ. "In these the martyrs, in these the apostles, in these the lord Jesus himself declares that he is honoured." ⁴⁷⁵ [23] Next, Ambrose turns to the story of Exodus.

⁴⁷⁵ Trans. Liebeschuetz, 120.
Placed at this point in his sermon, it connects the martyr narratives of Christian suffering under pagan emperors to a much broader trope of Christian suffering under unjust rulers— and a reminder of the Christian God's punishment of those rulers. In this way, Ambrose reminds Theodosius that he can be a leader who enjoys God's favour, or one who does not. [24]

"From being an exile I made you a conqueror, deposing the previous king of your territory, who was being driven by an evil spirit to persecute the priests of the Lord... And now you are going to deliver my servants into the hands of their enemies, and to take away what belonged to a servant of mine, as a result of which you will brand yourself with sin, and give a triumph to my adversaries?" [476] [25] Ambrose's sermon text within the letter concludes with this reminder that Theodosius must act in accordance with Christian principles (as defined by Ambrose): "protect the whole body of the Lord Jesus, so that he in turn may condescend to guard your kingdom." [477] [26]

Towards the end of the letter Ambrose reverts from what purports to be the text of his sermon to narrative. He relates that he descended from the pulpit, mid-service, to discuss events with Theodosius, who had by this point recognised the implicit context of Ambrose's sermon. In the course of this discussion, Theodosius's master of both branches of the military is antagonistic towards Ambrose, who is antagonistic in return. Ambrose refuses to end the stalemate until Theodosius promises to call the investigation into the Callicinum incident off, specifically lest the comes Orientis act against Christians while following Theodosius's orders. We have seen this, too, to be a concern in the letter to Theodosius.

Theodosius eventually agrees to make this promise, and Ambrose continues with the service. He claims in the close of the letter to Marcellina that he felt the grace

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of God while continuing the service, and felt thus assured of the rightness of his course of action. "So all was done as I wished," Ambrose claimed, in the last line. *Omnia itaque gesta sunt ex sententia.* [28]

This sermon reads very differently without the key of Ambrose's letter to Theodosius. Much of the legal context is elided or referred to only extremely implicitly as Ambrose provided more exegetical discussion of what he alleged was the religious context of the incident rather the legal context that he would dismiss in the letter to Theodosius. This also allows for the sermon to be less inflammatory in its original context.

### 4.3 The Riots at Thessalonica (390)

The next incident to be discussed also concerns the emperor Theodosius and events that occurred in the Eastern Empire. In 390, riots in the city of Thessalonica broke out in response to the treatment of a certain charioteer. One of Theodosius's generals was killed during the riots. With this injury and breakdown in public order, Theodosius ordered severe sanctions on the city, with a large number of civilian casualties.

The only letter we have extant from Ambrose about this incident is also one from outside his published letter collection. Unlike the other incidents discussed in this chapter, this letter does not involve any explicit legal challenges to bishops. However, it does share rhetorical commonalities that make its inclusion relevant. It also includes hints about how Theodosius responded to Ambrose's previous attempts to intervene in legal matters.

The opening of the letter begins with an explanation as to why Ambrose has been avoiding Theodosius. [1] This is very similar to his later letter to Eugenius. Ambrose claims that he has been barred from Theodosius's consistory, from hearing what is discussed there from others and specifically from speaking there. [2] He notes that
this is a result of Theodosius becoming upset at Ambrose intervening in previous cases. *motus enim frequenter es quod ad me pervenissent aliqua quae in consistorio tuo statuta forent.* [2] It has been suggested that Ambrose's rather bold intervention in Theodosius's treatment of the Callicinum incident might lie behind Ambrose's ban from the consistory. It seems also possible that Ambrose's several petitions against Theodosius's planned actions after the Thessalonican riots could be what is meant, or more simply Ambrose's general tendency to get involved in political matters.

Ambrose next makes a somewhat forced argument that, by staying away, he is assisting Theodosius with the implementation of his command (that Ambrose should hear nothing). He also insists that his actions were intended to protect those who might be suspected of informing either on Ambrose himself or on those who had told him of consistory discussion. *ne eos qui in suspicionem proditionis venerint dedam periculo.* [2]

As a further tangent to this, Ambrose argues that he stayed away so that Theodosius could deal with the consequences of his passionate nature (i.e. anger at Ambrose's interventions) on his own. Even if doing so made other people think Ambrose was lacking in authority as a bishop, he preferred Theodosius to think that Ambrose was humble with respect to Theodosius's authority. *Itaque malui officio meo aliquid deesse quam humilitati et requiri in me ab aliis sacerdotii auctoritatem quam a te desiderari in me amantissimi honorificentiam, ut represso impetu integra esset consilii eligendi facultas.* [5]

He also puts forward an argument similar to one he offered in the letter to Theodosius about Callicinum, that Ambrose has some moral culpability when he does not prevent others acting contrary to the faith. He says in this letter about Thessalonica that he is concerned about Theodosius shedding blood or giving orders that cause blood to be shed in cases where Ambrose feels he should have counselled the emperor not to give such orders. [3]
Ambrose does not return to a discussion of the *libertas* of the bishop and frank speech to justify why he is writing this letter now, having avoided doing so until this point. Having already noted that Theodosius has barred Ambrose from offering frank speech, it would perhaps be unwise and unlikely to contribute to Ambrose achieving his goals.

Instead, Ambrose argues that he has grounds for speaking because he is morally culpable as he was not able to prevent the massacre at Thessalonica. We have seen this before as part of a frank speech trope, but here it stands alone. A bishop must speak not because he is a good counsellor and it is part of the criteria of a good emperor that emperors listen to such counsel, but because bishops are commanded to speak by God. He also notes that he did try to prevent the massacre by speaking up previously, offering many petitions against the commands. [6]

Ambrose, however, also states that his letter was written after Theodosius had already revoked his command concerning Thessalonica. Thus, implicitly, he writes at a time at which Theodosius has already shown regret about the order. Ambrose argues that the goal of his letter is to impress upon Theodosius his need to be reconciled to God for his culpability in the massacre at Thessalonica. He also outlines a case for prestigious penance, as undertaken by a number of kings in the Hebrew bible. [7-10].

Returning to Ambrose's original point, he now restates his reason for avoiding Theodosius. Instead of avoiding Theodosius on Theodosius's legal command, Ambrose was now avoiding Theodosius for a moral, and implicitly superior, reason: Theodosius's need for penance. [13]

The letter is on the one hand, concerned with the incident at Thessalonica and Theodosius's response to it, and to questions of whether Theodosius must undertake penance for it. On the other hand, and one that concerns our present
purposes more, the letter chides Theodosius for his treatment of Ambrose when the bishop sought to intervene on previous occasions and reiterates an implicit divide between legal and moral contexts, with priority given to the moral consequences rather than those outlined by Roman law. It would also seem to show an Ambrose who is more confident about insisting upon the priority of moral/religious contexts over legal ones.

4.4 The Altar of Victory, round 2 (394)
The last incident to be discussed is that of a further Christian vs. pagan conflict under the emperor Eugenius in 394, that Ambrose explicitly connects to the 384 controversy about the altar of Victory, as we shall see below. This is the same letter discussed at the opening of the chapter that so perfectly illustrated this divide between matters concerning God and matters in which it is acceptable, from a Christian perspective, to make use of Roman law. This letter, too, is one from Ambrose's extra collectionem letters.

In this letter, Ambrose makes the distinction between letters about what we might call secular matters, and what Ambrose only distinguishes as "issues involving God" [in causis dei]. Ambrose has written and petitioned [scripsi et rogavi] Eugenius concerning "anxious individuals", which he notes as "causes on behalf of which it is right to petition you [i.e. the emperor]" [in his vero in quibus vos rogari decet]. This does not seem to have involved any personal contact with Eugenius, but Ambrose indicates that he wrote other letters on behalf of these causes.

Ambrose's letter to Eugenius also opens with an apology. Ambrose has made himself unavailable to Eugenius for some time, and no longer can continue to do so. Eugenius had been elevated to the purple by the army in 392 following the assassination or suicide of the emperor Valentinian II. His proximity in the Western Empire and particularly his visits to the city of Milan posed a difficulty for Ambrose, with his previous political ties to Theodosius and the possibility of resuming them
later if Theodosius successfully removed Eugenius (as he did do shortly after this letter was written).

Ambrose opens his letter with the argument that he speaks the truth as he prefers God above anyone else. [1] This is not the wise counsellor speaking to the good emperor, but much closer to the idea that God is a higher judge than the emperor.

As we have already seen, Ambrose makes a sharp distinction between matters concerning God and matters over which he might rightly petition the emperor. Later in the letter, Ambrose will reiterate the distinction between these two types of conflicts. Eugenius, Ambrose says, has an obligation to forbid what would injure the "sacred law" sacrae legis. [7] This very explicitly argues for a prioritisation of what is considered morally right according to Ambrose's Christianity, instead of what is legally right according to Roman law. Still further through the letter, Ambrose will insist that this is a matter on which Eugenius should have consulted a bishop. debuisti sacerdotem consulere. [10] In comparison with previous letters discussed in this chapter, this letter involves the least amount of justification that the matter at hand is definitely a religious matter rather than not.

His letter then recapitulates the 384 conflict about the altar of Victory. Symmachus, when prefect, had asked that the resources taken from the temples should be restored. In response, Ambrose had sent two letters, arguing that since Valentinian had not personally ordered the resources removed, it would be a voluntary donation to idolatry, not restitution. [2] This is an argument that might be implicit in Ambrose’s earlier letters but seems equally likely to be a rhetorical slant on the 384 conflict designed to give Ambrose’s arguments about Eugenius's actions in 394 more traction. It aligns well with Ambrose's overall argument to Eugenius that as he personally was not responsible for confiscating property from pagan temples, any "restitution" is a donation not redress.
Ambrose noted his threat that if Valentinian did restore the resources, he would have an opposing bishop to deal with. Ambrose notes that even catechumens like Valentinian should not be subsidising idolatry. [2] Conveniently for Ambrose, Valentinian II was by this point dead, having lost his life by suicide or assassination in the same coup that eventually put forward Eugenius to the purple.

On points of protocol, Ambrose claims that his letters were read in the consistory, in the hearing of Valentinian's two counts and magistri militum (the position involves both titles). Ambrose states that Valentinian did nothing but "what our faith required." fecit aliud nisi quod fidei nostrae ratio poscebat. [3] The counts both agreed with Valentinian, even though one of them Ambrose mentions as explicitly pagan. gentilium nationum cultui inserviens [3]

There was another round later, with some members of the Senate making an in person petition to the emperor [qui intimata senatus legatione huiusmodi] and Ambrose likewise doing so in response. [4] The order of the events is unclear in the text because Ambrose structures his paragraph to emphasise the point that he had a legitimate reason for avoiding the emperor, for the emperor's benefit, and that this did not incur Theodosius's displeasure. This would seem to contradict the picture we have from Ambrose’s letter to Theodosius about Thessalonica discussed just above. But for Ambrose’s purposes in writing to Eugenius, the implicit message of this passage is to lend weight to Ambrose's just avoidance of Eugenius and hope not to incur Eugenius's displeasure. It is perhaps worth noting that Ambrose does not reference his avoidance of Theodosius in 390 around the time of the Thessalonian massacre here, but instead produces a rhetorically smooth narrative where his dealings with other emperors are part of the same ongoing conflict between Christians and pagans that began in 384 with Symmachus.

Put with Ambrose's letter of 390 to Theodosius (ep. ex. coll. 11) where Ambrose opens by noting that he has been prevented from visiting Theodosius's court and hearing about the decisions made there, it seems equally possible that Ambrose is
actually making a virtue of the necessity of having been ejected from court. Ambrose might be suggesting that he gracefully did not visit court to rub Theodosius's agreement in Theodosius's face. But that would not serve his rhetorical purposes with Eugenius as well as the passage Ambrose did write.

According to Ambrose, a second embassy approached Valentinian, now returned to Gaul, and was unable to get anything from him on this issue. Ambrose claims no involvement in this specific exchange. [5]

Ambrose finally turns to Eugenius's own actions. Following from this series of past events, Ambrose portrays Eugenius as yet another emperor approached by "pagans" seeking financial support for Roman traditional religion. However, even the details we can glean from Ambrose's own letter make this seem more rhetorically convenient than historically likely. What Eugenius seems to have actually done was to give something [donata illa] to high-ranking men who happen to also be pagans [praecedentibus in re publica sed gentilis observantiae viris]. [6] Ambrose's order of sentences again makes the order of events difficult to ascertain.

Eugenius does seem to have received at least two petitions on the matter of imperial funding of the traditional temples. [478] Ambrose implies that Eugenius has given honours to the same men who petitioned him on this matter. [6] The problem was not that Eugenius was generous, nor that Ambrose (and Christians in general) were upset not to have received similar honours. The problem is Eugenius will be held responsible for whatever these senators do with the funds he has gifted them - and how terrible if they use these gifts to fund idolatry. [8]

As in the letter to Theodosius about Callicinum, in this letter Ambrose also redefines the category boundaries of "Jew", "pagan" and "Christian. To impress upon Eugenius the possibility of arranging to gift funds and yet being sure of the

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[478] It appears likely that senators approached every emperor about this issue.
ends to which those funds will be put, Ambrose citing an example from 2 Maccabees 4. Using Jewish historical figures but eliding their Jewishness, Ambrose relates "our fathers" insisting that their financial support of the state be explicitly earmarked not for pagan sacrifice but for more neutral endeavours like ship-building. [9]

In conclusion, Ambrose notes that he has been on the record in front of God and men as being against any financial support for any aspect of traditional Roman religion. He cannot continue to remain silent. Though Ambrose has not thus far replied to letters from Eugenius, now he feels he must. [11]

4.5 Conclusion
This chapter has argued that Ambrose uses a rhetoric of divided jurisdictions to establish a place of privilege for the bishop within the power structures of Roman law. This rhetoric was not about asserting a separation of church and state, but of inserting the bishop as an expert advisor between the devolution of authority from God to the emperor -- and only in what Ambrose defines as "matters of faith."

The rhetorical presentation in these letters focuses in each case on maintaining that the religious context Ambrose has argued is paramount is a binary situation. This is strong rhetorically because it forces reader-listeners to choose sides. But the specific identities of the binary are not crucial to the deployment of this tool. So Ambrose can in one text position himself and Valentinian II both as Christians against the pagan Symmachus, while in another, Ambrose conflates heretical Valentinians (no relation) with pagans.
5. Conclusion

"But surely whether we examine the succession of divine writings, or the events of history, who could possibly deny that in a case involving the faith, I repeat, in a case involving the faith, it has been usual for bishops to pass judgement on Christian emperors, not emperors on bishops?"

Ambrose (c. 385)⁴⁷⁹

Ambrose of Milan's rhetoric of divided jurisdictions made moral claims about the right of a bishop like himself to judge whether a given conflict was "a case involving the faith" or not. These have until recently been taken at face value as part of a model that imagined the institution as extensively developed and legally privileged already by this period. This thesis instead argues that such claims are signs of literal vulnerability before Roman law, rather than extensive privilege. The experiences of deprivation of citizen rights, and in particular, those concerning access to the law for affirmation of status and redress of injury, followed by a period of renewed access were crucially formative for Christians as a whole and then for Nicene bishops during the non-Nicene political dominance of the mid-fourth century.

Ambrose's election in 374 was confirmed in a legal document issued by Valentinian I. Paulinius, Ambrose's biographer, tells us that Valentinian included penalties against anyone that assisted Ambrose in avoiding the episcopal role that Valentinian had ordered.⁴⁸⁰ This was no less an emperor insisting upon his authority to intervene in the business of bishops than Constantius II instituting penalties for

⁴⁷⁹ "At certe si vel scripturarum seriem divinarum vel vetera tempora retractemus, quis est qui abnuat in causa fidei, in causa inquam fidei, episcopos solere de imperatoribus Christianis, non imperatores de episcopis iudicare?": Amb., Ep. X.75.4, trans. Liebeschuetz, 137.

⁴⁸⁰ See above, chapter 3.1.1, pp. 131ff.
anyone caught harbouring Athanasius of Alexandria during an occasion when Constantius had ordered that Athanasius be exiled.481

This thesis has argued for the existence of an identifiable historical process, the transformation of episcopal polity in the fourth century through the cumulative conflicts concerning episcopal status prosecuted through the Roman courts and the disparity in preferential access to favourable legal judgements between non-Nicene and Nicene bishops. The non-Nicenes built a place for bishops with the power structures of the Roman Empire; the Nicenes, without preferential access to imperial favour sought to produce tools that would allow them to succeed despite this disadvantage.

When imperial patronage shifted from the non-Nicenes to the Nicenes with the accession of the Theodosian dynasty in the 380s, this led to a paradigm shift concerning the role of the bishop in the Empire between the earlier and later parts of the fourth century. This has obscured that the fourth-century realities were not as their fifth-century Nicene successors have often told us. Because of this, the methodology of this thesis argues for the importance of interpreting the relevant fourth-century sources in the context of their own time and norms, rather than in the light of the significantly different fifth-century practice as previous scholarship has done.

Bishops in the fourth century typically contested episcopal status and sought its affirmation in the exercise of Roman law and in contexts that demanded that bishops be judged by imperial officials. This fourth-century norm did not favour the Nicenes, which explains why the solutions that they implemented as soon as they regained access to power with the Theodosians involved guaranteeing freedom from the problems they had experienced subject to a disadvantaged legal position during the mid-fourth century.

481 See section 1.4, p. 207.
Our sources fixate on distinctions of heresy and orthodoxy because such terms had no pre-existing legal definition in Roman law and hence presented a more even playing field for non-Nicenes and Nicenes to debate legitimacy of status. The legal texts sought by bishops in the fourth century from the toleration grants in the 310s through to the 380s focused on affirmed privileges in ever increasingly narrow specifications of orthodoxy. At this time, orthodoxy itself was a status affirmed via the law. Laws that focus on proscribing heretics are a later development of the Theodosian period.

In Chapter One, this thesis argued that non-Nicene and Nicene bishops differed in their use of Roman law to resolve episcopal disputes only to the extent that non-Nicene bishops had better chances of success via this mechanism of dispute resolution. Many of our sources were produced in a polemic context and make moral claims about the appropriateness of bishops making use of Roman law in contexts where all the advantage under the law lies with one's opponent. The primary distinction is a political and relational one, not one related to doctrinal content. Bishops willing to act in obedience to the emperors were rewarded; bishops who insisted on disobedience were legally removed as problems.

In Chapter Two, this thesis argued for the importance of appreciating the case of Priscillian of Avila as a significant moment in the development of the process that this thesis identifies. Instead of seeing Priscillian's execution as an inexplicable outlier, this thesis has situated the conflict concerning his episcopal status in light of the examples discussed in the first chapter to demonstrate that the bishops involved in both sides of the Priscillianist controversy acted well within the bounds of established practice. Maximus's execution of Priscillian was legal, but the political circumstances of civil war and loyalties of episcopal networks divided among imperial claimants provided a context where Priscillian's execution could be made a scandal beyond the ability of a tendentious usurper to weather.
Chapter Three turned to the activities of Ambrose of Milan during the same years as the Priscillianist controversy to track his vulnerability to the law as a Nicene bishop and his creative response to the threat of treason charges in the context of the Basilica Controversy of 386. Despite direct and explicit disobedience towards the emperor, Ambrose was able to make himself so unattractive a target for the death penalty that he survived the worst legal threat that Valentinian II could muster against him.

Chapter Four considered Ambrose's intervention in "religious matters" beyond the sphere of heresy. Instead of describing the status quo, this chapter has argued that Ambrose's claims for a bishop's right to offer an emperor advice (that he dare not refuse) were tendentious and represent his development of a rhetorical package that could be employed by later bishops, who might take for granted the privileges that Ambrose had to fight so hard to claim.

**Suggestions for Further Case Studies**

This thesis has focused on three case studies: Ambrose of Milan, Athanasius of Alexandria and Priscillian of Avila. They were only three of hundreds of men who took on episcopal status over the fourth century. The most obvious avenue for expanding the present work would be to investigate whether its main hypothesis continues to hold when further case studies are investigated.

Three main areas to seek suitable case studies can be suggested:

1. Athanasius of Alexandria was a particularly contentious bishop, never shying from conflict. He serves well as an appropriate source of potential precedents for later Nicene bishops like Ambrose, but he was but one bishop of many active in inter-episcopal flight in the mid-fourth century. This period is rich enough to furnish material for a study in itself.
2. This thesis has focused on Western bishops of the transitional 380s, to take advantage of the fact that the transition from non-Nicene to Nicene patronage occurred more slowly in the Western Empire. The Eastern Empire possessed more political important and historically established sees than the West: e.g. Alexandria, Constantinople, Jerusalem, Antioch, etc. Aside from proposing a study that considers the experience of the claimants of these sees in the transitional 380s, there is also a particularly interesting source that survives from orthodoxy-heresy conflict in the reign of Theodosius I that is potentially of interest for these questions. A petition from Marcellinus and Faustinus to Theodosius seeking his protection from the sort of legally actioned inter-episcopal conflict that this thesis has focused upon. Theodosius's rescript also survives.\textsuperscript{482}

3. Nicene bishops may have enjoyed political ascendency under the Theodosians, but in the Western Empire, this would soon be replaced by non-Nicene political leadership in the form of post-Roman barbarian kingdoms. This thesis's hypothesis would find rich material for consideration in Vandal North Africa, Visigothic Spain and Ostrogothic Italy. This would involve a second period of Nicene bishops in circumstances that restricted their access to authority as granted by lay rulers, while also involving a period where non-Nicene bishops having done without under the Nicene-Theodosian regime were now experiencing a renewed access to political and legal power, much as the Nicene bishops had experienced in the 380s. These shifts in political authority between different ideological banners suggests that this period should provide similarly rich opportunities for studying the cumulative contingent results of episcopal conflict.

\textsuperscript{482} For a discussion of these sources, see: Escribano Paño, "Heresy and Orthodoxy," 136-142. She notes with interest from Priscillianist studies that Marcellinus and Faustinus mention Hydatius of Baetica in their list of accusers.
Chapter One's discussion of the non-Nicene councils convened by Constantius II demonstrate the potential for conciliar judgements to evidence the intersection of lay and episcopal judgement about restrictions of episcopal status. The "Nicene" conciliar corpus from this period is also very interested in defining the criteria by which a claim to episcopal status is legitimate. Canon 6 from Theodosius's 381 Constanopolitan council specifies that heretics are prohibited from accusing bishops, which suggests the intriguing hypothesis that that conciliar material represents a further path by which Nicene bishops who did not enjoy preferential access to the courts could seek to bolster their authority. Some of the normative claims in the conciliar material are as outrageous as Ambrose's claims about universal grant of episcopal immunity from civil prosecution, but like Ambrose, they would also be re-used in medieval contexts, and this makes untangling their Late Antique context of issue and production crucially important. The corpus of conciliar material from the fourth-sixth centuries also merit a reconsideration from this thesis's argument that bishops acted within the structures of Roman law, not outside of it. This material should be reassessed for its evidence of competition and creative conflict rather than the older top-down, universally enforced model.

Another source of evidence is that of narrative and epistolary sources by bishops describing not their conflicts with other bishops and their interactions with the law as litigants, but their interactions with the law as judges and arbitrators. The development of the audentia episcopalia, or episcopal court, has not featured in this study, as I found no examples of inter-episcopal conflict mediated via this venue. However, this was another aspect of the integration of bishops into the power structures of the Roman Empire, and as such, deserves reconsideration as an aspect of arbitration that remained one that Ambrose agreed was suitable for bishops to engage in. Augustine of Hippo, as with so many topics, also provides particularly rich evidence for a study of this type. The exclusive jurisdiction of the military court, and in Late Antiquity, the related problem of barbarian law, also
provide further avenues of research to extend this thesis's arguments about the institution of new roles (bishop, foedus, etc.) in an Empire whose authority structures would soon fragment into the post-Roman West and the (Eastern) Roman Empire.

The fourth-century literary genre of the martyr acta and martyr romance should also be re-assessed in light of this thesis's findings and its findings about the creative repurposing of the pagan persecution by Nicene bishops to covertly and overtly comment on their non-Nicene politically-dominated present.

Ambrose provides posterity with one of the earliest examples of the *nolo episcopari* motif that would have such enduring life. \(^{483}\) This sort of rhetoric of reluctance to power by bishops in their theological and theoretical writings needs to be reassessed in light of this thesis's model of literal Nicene episcopal vulnerability before the law, and of attempts to craft rhetorical alternate claims for authority beyond the existing power structures to make up for this pragmatic vulnerability.

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Competition for episcopal status in the fourth century became a high-stakes business when Constantine added imperial resources as a potential payout for the ambitious bishop. This system was stacked against the Nicene bishops as soon as imperial favour turned consistently to the non-Nicenes.

Though the cumulative results of successive episcopal conflicts, two paths and two episcopal patrimonies emerged: one of bishops as magistrates enmeshed into the existing power structure and the other imagining alternative power structures that would benefit them more than the reality of their restricted access to the typical

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means by which bishops advantaged their allies and disadvantaged their opponents.

When the Nicenes regained access to power with the Theodosian dynasty, they took hold of both patrimonies, definitively excluding the non-Nicenes (at least within the Empire). But religious conflict did not cease with the Theodosian-Nicene takeover and these mechanisms of iterative creative responses to conflict would continue to drive the transformation of the episcopate from Antiquity into the Medieval World.
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Appendix 1: The Myth of Fourth-Century Clerical Immunity

The evidence discussed in the body of this thesis provides multiple examples from the fourth century in which bishops were treated as subject to Roman law as a matter of course by other bishops and by emperors. This appendix discusses the scant ancient evidence that is sometimes proposed to support the existence of a clerical or episcopal legal immunity from Roman law in the fourth century, primarily in response to the arguments of Barnes.484

1. Eusebius, V. Const. 4.27.2: That Constantine affirmed the rulings of church councils and ordered provincial governors not to annul these rulings; this was because Constantine considered bishops to be better quality judges than lay officials.

This text is the main evidence Barnes has proposed to support the extensive legal authority he asserts Constantine enacted in favour of (Catholic) bishops. Barnes extrapolates from Eusebius's comment in the Life of Constantine that Constantine considered bishops to be more suitable judges than any lay magistrate, including the emperor himself, and thus, Barnes suggests, implies that Constantine considered the emperors subject to the rulings of church councils on this basis.

Constantine undoubtedly affirmed some legal privileges for Christians and some further specifically for bishops, but not to the extent that Barnes has asserted. I have argued throughout the thesis above that the historical examples from the fourth century are better explained by a model that assumed emperors continued

484 Barnes expresses this contention pithily in "Constantine, Athanasius" article but it is argued throughout his earlier Athanasius and Constantius and repeated without significant alteration in his more recent Dynasty, Religion and Power. For an example of the acceptance of Barnes’s model of the relationship between the bishops and the emperor in recent scholarship, see Eric Fournier, “Exiled Bishops in the Christian Empire: Victims of Imperial Violence?,” in Violence in Late Antiquity: Perceptions and Practices, ed. H.A. Drake (Ashgate, 2006), 160.
to view themselves as the supreme legal authority within the system of Roman law, and that bishops and the rulings of gatherings of bishops, were seen to carry legal weight within rather than exclusive of the Roman legal system.

2. *CTh. XVI.2.12:* That bishops were not to be accused in the courts but to be heard in front of other bishops.

Preserved in the *Theodosian Code,* this constitution was taken from an original law issued by Constantius II in 355. The office of its recipient, Severus, has not been identified and the *Theodosian Code* does not preserve any other constitutions that seem to have been issued alongside this one. Thus, it is difficult to suggest an original context for the issue of this judgement.

Regardless, Constantius II as the issuer gives us ample grounds to discount Barnes's contention that XVI.2.12 represents evidence for that (Catholic) bishops enjoyed a universally enforced and exclusive right to be judged by other bishops only. Constantius was the emperor most involved in prosecuting and deposing bishops across the examples discussed in Chapter One, both before and after the date of this law's issue. Numerous narrative examples attest to Constantius's lack of conformity with this law as preserved, particularly in the context of the 350s, when this constitution's original text was issued. Constantius spent the decade convening gatherings of bishops, attempting to gain adscription to a consensus of orthodoxy and prosecuting and then exiling the bishops who did not. His efforts would culminate in the twin councils of 359, at Rimini and Seleucia, for which Constantius had issued orders to the officials he had charged with running the councils that the bishops would not be allowed to leave before consensus was agreed.
Constantius as the issuing emperor also presents a further complication for Barnes’s arguments in favour of episcopal immunity for specifically Catholic bishops. The historical record presents clear evidence that Constantius actively restricted episcopal status to only those bishops who conformed within the bounds of imperially patronised orthodoxy, which was formalised as the Creed of Rimini in 359 and issued in the East in the following year at Constantinople. The preservation context of the pro-Nicene Theodosian Code should not distract us from appreciating that in its original context of issue, during the reign of Constantius II, whichever bishops that this applied to were bishops who professed conformity with the creed of Rimini and not that of Nicaea.

3. Ambrose, Ep. X.75 - That bishops were to be judged only by other bishops. Ambrose claimed to quote the exact wording of a rescript from Valentinian I, the original context of which he did not preserve. In Chapter Three, above, I have argued that this citation of Valentinian's rescript was used by Ambrose as part of his efforts to avoid being charged with treason in the course of the Basilica Controversy.

Ambrose was not asserting his universally acknowledged legal rights as a bishop, but seeking a way out of a vulnerable position in a specific context using what legal precedents he had available to him to make a contentious claim for immunity.

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485 Barnes asserts that the privileges Constantine granted were for "catholic bishops", by which he means bishops who identified theoretically with the Nicene Creed. See Barnes, "Valentinian, Auxentius and Ambrose," 237, quoted below, n. 486.

486 Barnes's argument concerning episcopal immunity is usually expressed in the context of the Constantinian dynasty, but in Barnes, "Valentinian, Auxentius and Ambrose," 237, he has suggested that this law mentioned by Ambrose was issued by Valentinian during the short overlap between his reign and Ambrose's episcopate to "reassert the principle asserted by Constantine, reaffirmed by Constantius and presumably overturned by Julian - that bishops of the catholic church should be judged only by other bishops."

487 See much further discussion above, chapter 3.2.3, pp. 157ff.
Finally, the case of Priscillian of Avila, executed by Magnus Maximus in 385, is mentioned as an exception to the rule. Barnes justifies this by asserting, following Girardet, that Priscillian's election was invalid, and therefore Priscillian's case provides no evidence for how emperors might treat bishops under the law. 488

Girardet's argument hinges on the number of bishops Sulpicius Severus mentioned as having been present at Priscillian's ordination. According to the Council of Nicaea (325), at least three bishops are required to ordain a new bishop. Girardet notes that Sulpicius Severus mentions only two bishops involved in consecrating Priscillian, and so concluded that Priscillian's ordination was invalid. 489

However, this concern with the number of bishops involved in Priscillian's ordination is not one that was raised in our ancient texts concerning the controversy. It is not an accusation Priscillian refuted or denied in his letter to Damasus, which was written shortly following his consecration. If Priscillian's ordination on these grounds was as obviously invalid as Girardet and Barnes following him argue, it is inconceivable that Priscillian would not have included some extenuating explanation of these circumstances.

Perhaps of more relevance, as Priscillian would deny possessing any heretical beliefs or practices on a number of occasions and the council involved being Spanish, the 51st canon of the Council of Elvira (306) prohibited ordination for anyone condemned as a heretic at a council prior to his ordination. 490 Priscillian does take pains to assure Damasus that he was not condemned at Zaragoza. Sulpicius's text is also concerned to stress that Priscillian had been explicitly condemned at the council of Zaragoza before his consecration.

488 Barnes, "Constantine, Athanasius," 20 n. 37.
490 See further discussion above, chapter 2.1.2, p. 232.
It is more likely that Sulpicius recorded Instantius and Salvianus as present at Priscillian's consecration because they were known associates, not because they represented one too few bishops for a canonical ordination.

Far from being universally understood as invalid, Priscillian's episcopal status was a matter of contention during his short episcopate and even during the controversy that followed the scandal of his execution. Therefore, there are no strong grounds for asserting that Priscillian's example must be excluded from discussions of the legal relationship of bishops and emperors in the fourth century.

In summary, Barnes's arguments for clerical or episcopal immunity in the fourth century are supported by extremely rare evidence for something he asserts represented a universally acknowledged legal standard in the fourth century.

This thesis has argued that bishops acting as litigants and petitioning the emperors about the episcopal status of individuals was normal through the fourth century (Priscillian). With their lack of access to imperial favour, Nicene-identified bishops were excluded from the legal privileges of orthodoxy affirmed by the emperors for non-Nicene bishops. This appendix argues that instead of seeing the affirmation of Nicene privileges, we should see the above texts as either evidence for the legal privileges of the non-Nicene "orthodox" (Eusebius, Constantius) or as evidence for Nicene-identified bishops seeking to find solutions for their poor position under the law by attempting to extend their own reduced access to civil law to their non-Nicene opponents (Ambrose).
Appendix 2a: Ambrose, Ep. X.72

*Ambrosius episcopus beatissimo principi et Christianissimo Imperatori Valentiniano.*

1. Cum omnes homines qui sub dicione Romana sunt vobis militent imperatoribus terrarum atque principibus, tum ipsi vos omnipotenti deo et sacrae fidei militatis. Aliter enim salus tuta esse non poterit, nisi unusquisque deum verum hoc est deum Christianorum, a quo cuncta reguntur, veraciter colat. Ipse enim solus verus est deus qui intima mente veneretur; dii enim gentium daemonia sicut scriptura dicit.

2. Huic igitur deo vero quisque militat, et qui intimo colendum recipit affectu, non dissimulationem, non conuentiam, sed fidei studium et devotionis impendit. Postremo si non ista, consensum saltem aliquem non debet colendis idolis et profanis caerimoniarum cultibus exhibere. Nemo enim deum fallit, cui omnia etiam cordis occulta manifesta sunt.

3. Ergo cum a te, imperator Christianissime, fides deo vero sit exhibenda, cum ipsius fidei studium cautio atque devotio, miro quomodo aliquibus in spem venerit, quod debeas aras diis gentium tuo instaurare praecepto, ad usus quoque sacrificiorum profanorum praebere sumptum. Quod enim iam dudum vel fisco vel arcae est vindicatum, de tuo magis conferre videbere quam de suo reddere.

4. Et de dispendiis queruntur qui numquam nostro sanguini pepercerunt, qui ipsa ecclesiaraum aedificia subruerunt. Petunt etiam, ut illis privilegia deferas, qui loquendi et docendi nostris communem usum Iuliani lege proxima denegarunt, et privilegia illa quibus saepe decepi sunt etiam Christiani; nonnullos enim illis privilegiis partim per imprudentiam, partim propter publicarum necessitatum molestias declinandas inretire voluerunt, et quia non omnes fortes inveniuntur, etiam sub principibus Christianis plerique sunt lapsi.

5. Sed haec si iam sublata non essent, auferenda tuo imperio comprobarem. At cum per totum fere orbem a pluribus retro principibus inhibita interdicta que sint,

491 Ed. Michaela Zelzer (CSEL 82.3, 1982), 11-20.
Romae autem a fratre clementiae tuae, augustae memoriae Gratiano, fidei verae ratione sublata sint et datis antiquata rescriptis, ne, quaeso, vel fideliter statuta convellas vel fraterna praecepta rescindas. De negotiis civilibus si quid statuit, nemo putat esse temerandum, et praeceptum de religione calcatur?

6. Nullus obrepat iuniori aetati tuae; sive ille gentilis est qui ista deposcit, non debet mentem tuam vinculis suae superstitionis innectere, sed proprio studio docere et admonere te debet, quemadmodum verae fidei studere debeat, quando ille tanto motu veri vana defendit. Deferendum meritis clarorum virorum et ego suadeo, sed deum certum est omnibus praeferendum.

7. Si de re militari est consulendum, debet exercitati in proeliis viri expectari sententia, consilium comprobari; quando de religione tractatus est, deum cogita. Nullius iniuria est cui deus omnipotens antefertur. Habet ille sententiam suam. Invitum non cogitis colere quod nolit. Hoc idem vobis liceat, imperator, et unusquisque patienter ferat, si non extorqueat imperatori, quod moleste ferret, si ei extorquere cuperet imperator. Ipsis gentilibus disabricere consuevit praevraevaricantis affectus; libere enim debet defendere unusquisque fidele mentis suae et servare propositum.

8. Quod si aliqui nomine Christiani tale aliquid decernendum putant, mentem tuam vocabula nuda non capiant, nomina cassa non fallant. Quisquis hoc suadet sacrificat, et quisquis hoc statuit. Tolerabilius tamen est unius sacrificium quam lapsus omnium. Totus hic Christianorum periclitatur senatus.

9. Si hodie gentilis alius, imperator, quod absit, aram statueret simulacris et eo convenire cogeret Christianos, ut sacrificantibus interessent, ut oppleret anhelitus et ora fidelium cinis ex ara, favilla de sacrilegio, fumus ex busto, et in ea curia sententiam diceret, ubi iurati ad aram simulacri in sententiam cogerentur - propterea enim interpretantur aram locatam, ut eius sacramento, ut ipsi putant, unusquisque conventus consuleret in medium, cum curia maiore iam Christianorum numero sit referta -, persecutionem esse crederet Christianus, qui cogeretur tali optione ad senatum venire, quod fit plerumque; nam etiam iniuriis convenire
coguntur. Te ergo imperatore Christiani in aram iurare cogentur? Quid est iurare nisi eius, quem testere fidei tuae praesulem, divinam potentiam confiteri? Te imperatore hoc petitur et postulatur, ut aram iubeas elevari, sumptum sacrificii profanis dari?

10. Sed hoc non potest sine sacrilegio decerni. Unde rogo te ne id decernas, statuas vel in eiusmodi decreta subscribas. Convenio fidem tuam Christi sacerdos. Omnes conveniremus episcopi, nisi incredibile hoc et repentinum ad aures pervenisset hominum, quod tale aliquid esset vel in consistorio suggestum tuo vel a senatu petitum. Sed absit ut hoc senatus petisse dicatur; pauci gentiles communi utuntur nomine. Nam et ante biennium ferme cum hoc petere temptarent, misit ad me sanctus Damasus, Romanae ecclesiae sacerdos iudicio dei electus, libellum quem Christiani senatores dederunt et quidem innumeris, postulantes nihil se tale mandasse, non congruere gentilium istiusmodi petitionibus, non praebere consensum, questi etiam publice privatim que se non conventuros ad curiam si tale aliquid decerneretur. Dignum ergo est temporibus vestris hoc est Christianis temporibus, ut dignitas Christianis senatoribus abrogetur, quo gentilibus senatoribus profanae deferatur voluntatis effectus? Hunc libellum ego fratri clementiae vestae direxi. Unde constitit non senatum aliquid de superstitionis impensis mandasse legatis.

11. Sed fortasse dicatur, cur dudum non interfuerint senatui cum ista peterentur. Satis loquuntur quid velint qui non interfuerunt; satis locuti sunt qui apud imperatorem locuti sunt. Et miramur tamen si privatis resistendi Romae eripiunt libertatem, qui nolunt esse liberum tibi non iubere quod non probas, servare quod sentis?

12. Et ideo memor legationis proxime mandatae mihi convenio iterum fidem tuam, convenio mentem tuam, ne vel respondendum secundum huiusmodi petitionem gentilium censeas vel in eiusmodi responsa sacrilegium subscriptionis adiungas. Certe refer ad parentem pietatis tuae, principem Theodosium, quem super omnibus
fere maioribus causis consulere consuesti. Nihil maius est religione, nihil sublimius fide.


15. Quid respondebis his verbis? Puerum esse te lapsum? Omnis aetas perfecta Christo est, omnis deo plena. Pueritia fidei non probatur, parvuli etiam Christum intrepido adversus persecutores ore confessi sunt. Quid respondebis germano tuo? Nonne tibi dicet: "Victum me esse non credidi, quia te imperatorem reliqui. Mori non dolui, quia te heredem habebam. Imperio me decedere non ingemui, quia imperia mea praesertim de religione divina omnibus saeculis mansura credebam. Hos ego titulos piae virtutis ereixeram, has de saeculo manubias, haec spolia de diabolo, has ego de adversario omnium exuvias offerebam, in quibus aeterna victoria est. Quid mihi plus potuit meas hostis auferre? Abrogasti decreta mea, quod adhuc ille qui contra me levavit arma non fecit. Nunc gravius telum corpore recipio, quod a fratre mea statuta damnantur. Meliore parte mei apud te periclitor; illa enim mors corporis, ista virtutis est. Nunc mihi abrogatur imperium et quod est gravius abrogatur a tuis, abrogatur a meis et id abrogatur quod in me etiam mei
adversarii praedicarunt. Si volens acquievisti, damnasti fidem meam, si invitus cessisti, prodidisti tuam. Ergo quod gravius est, et in te periclitor".

16. Quid respondebis etiam patri, qui te maiore dolore conveniet dicens: "De me, fili, pessime iudicasti, qui putasti quod ego gentilibus convinentiam praestissem. Nemo ad me detulit aram esse in illa Romana curia. Numquam tantum nefas credidi quod in communi illo Christianorum gentilium que concilio sacrificarent gentiles hoc est insultarent gentiles praesentibus Christianis et inviti Christiani interesse sacrificiis cogerentur. Multa et diversa crimina me imperante commissa sunt, ultus sum quaecumque sunt deprehensa. Si quis tunc latuit, debet ergo dicere me probasse quod ad me nemo detulerat? De me pessime iudicasti, si mihi superstitione aliena, non fides mea servavit imperium".

17. Unde cum advertas, imperator, deo primum, deinde patri et fratri iniurias inrogari, si quid tale decernas, peto ut id facias quod saluti tuae apud deum intellegis profuturum.
Appendix 2b: Ambrose, Ep. X.74

*Clementissimo principi ac beatissimo Imperatori Theodosio Augusto Ambrosius episcopus.*

1. Exercitus semper iugibus fere curis sum, imperator beatissime, sed numquam tanto in aestu fui quanto nunc, cum video cavendum ne quid sit quod ascribatur mihi etiam de sacrilegii periculo. Itaque peto ut patienter sermonem meum audias; nam si indignus sum qui a te audiar, indignus sum qui pro te offeram, cui tua vota, cui tuas committas preces. Ipse ergo non audies eum quem pro te audiri velis, non audies pro se agentem quem pro aliis audisti? Nec vereris iudicium tuum, ne cum indignum putaris quem audias, indignum feceris qui pro te audiatur?

2. Sed neque imperiale est libertatem dicendi negare neque sacerdotale quod sentiat non dicere. Nihil enim in vobis imperatoribus tam populare et tam amabile est quam libertatem etiam in his diligere qui obsequio militiae vobis subditi sunt. Siquidem hoc interest inter bonos et malos principes quod boni libertatem amant, servitutem improbi. Nihil etiam in sacerdote tam periculosum apud deum, tam turpe apud homines quam quod sentiat non libere denuntiare. Siquidem scriptum est: Et loquebar in testimoniis tuis in conspectu regum et non confundeb ar, et alibi: Fili hominis, speculatorem te posui domui Israhel, in eo, inquit, ut si avertatur iustus a iustitiis suis et fecerit delictum, quia non distinxisti ei, hoc est non dixisti quid sit cavendum, non retinebitur memoria iustitiae eius et sanguinem eius de manu tua exquiram. Tu autem si distinxeris iusto ut non peccet et ipse non peccaverit, iustus vita vivet quia distinxisti ei et tu animam tuam liberabis.

3. Malo igitur, imperator, bonorum mihi esse te cum quam malorum consortium et ideo clementiae tuae displicere debet sacerdotis silentium, libertas placere. Nam silentii mei periculo involveris, libertatis bono iuvaris. Non ergo importunus indebitis me intersero, alienis ingero, sed debitis obtempero, mandatis dei nostri oboedio. Quod facio primum tui amore, tui gratia, tuae studio conservandae salutis. Si id mihi vel non creditur vel interdicitur, dico sane divinae offensae metu. Nam si

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492 Ed. Michaela Zelzer (CSEL 82.3, 1982), 54-73.
meum periculum te exueret, patienter me pro te offerrem sed non libenter; malo enim te sine meo acceptum deo esse et gloriolum periculo. Sin autem silentii mei dissimulationis que culpa et me ingravat nec te liberat, malo importuniorem me quam inutiliorem aut turpiorem iudices. Siquidem scriptum est dicente sancto apostolo Paulo, cuius non potes doctrinam refellere: Insta opportune importune, argue obsecura increpa in omni patientia et doctrina.

4. Habemus ergo et nos cui displicere plus perici sit, praesertim cum etiam imperatoribus non displiceat suo quemque fungi munere et patienter audiat is unumquemque pro suo suggentem officio, immo corripiatis si non utatur militiae suae ordine. Quod ergo in his libenter accipitis qui vobis militant, num hoc in sacerdotibus potest molestum videri cum id loquamur non quod volumus sed quod iubemur? Scis enim lectum: Cum stabitis ante reges et praeides nolite cogitare quid loquamini, dabitur enim vobis in illa hora quid loquamini; non enim vos estis qui loquimini sed spiritus patris vestri qui loquitur in vobis. Et tamen si in causis rei publicae loquar quamvis etiam illic iustitia servanda sit, non tanto astringar metu si non audieris; in causa vero dei quem audies, si sacerdotem non audies, cuius maiore peccatur periculo? Quis tibi verum audebit dicere si sacerdos non audeat?

5. Novi te pium clementem mitem atque tranquillum, fidem ac timorem domini cordi habentem; sed plerumque aliqua nos fallunt. Habent aliqui zelum dei sed non secundum scientiam. Ne igitur hoc etiam fidelibus animis obrepat cavendum arbitror. Novi pietatem tuam erga deum, lenitatem in homines; obligatus sum beneficiis tuarum indulgentiarum. Et ideo plus metuo, amplius sollicitur, ne etiam ipse tuo me postea iudicio condemnes, quod mea aut dissimulatione aut adulatione prolapsum non evitaveris. Si in me peccari viderem, non deberem tacere, scriptum est enim: Si frater tuus in te peccaverit, corripe illum primo, deinde increpa duobus et tribus testibus; si te non audierit dic ecclesiae. Causam ergo dei tacebo? Quid igitur sit quod metuam consideremus.

6. Relatum est a comite orientis militarum partium incensam esse synagogam id que auctore factum episcopo. Iussisti vindicari in ceteros, synagogam ab ipso
exaedificari episcopo. Non astruo expectandam fuisse assertionem episcopi; sacerdotes enim turbarum moderatores sunt, studiosi pacis, nisi cum et ipsi moventur iniuria dei aut ecclesiae contumelia. Sit aliqui iste episcopus ferventior in exustione synagogae, timidior in iudicio, non vereris, imperator, ne acquiescat sententiae tuae, ne praevaricetur non times?

7. Non etiam vereris quod futurum est, ne verbis resistat comiti tuo? Necesse erit igitur, ut aut praevaricatorem aut martyrem faciat; utrumque alienum temporibus tuis, utrumque persecutionis instar, si aut praevaricari cogatur aut subire martyrium. Vides quo inclinet causae exitus. Si fortem episcopum putas, caveto martyrium fortioris, si inconstantem, declina lapsum fragilioris; plus enim astringitur qui labi infirmum coegerit.


9. Esto tamen, nemo episcopum ad hoc munus conveniat; rogavi enim clementiam tuam et licet ipse hoc revocatum adhuc non legerim revocatum tamen constituum. Quid si alii timidiiores dum mortem reformidant offerant, ut de suis facultatibus reparetur synagoga, aut comes ubi hoc compererit primo constitutum ipse de Christianorum censu exaedificari iubeat? Habebis, imperator, comitem praevaricatorem et huic vexilla committes victricia, huic labarum hoc est Christi
sacratum nomine, qui synagogam instauret quae Christum nesciat? Iube labarum
synagogae inferri, videamus si non resistunt.

10. Erit igitur locus ludaeorum perfidiae factus de exuviis ecclesiae et patrimonium
quod favore Christi acquisitum est Christianis hoc transferetur ad donaria
perfidorum? Legimus templum idolis antiquitus condita de manubiis Cimbrorum, de
spoliis reliquorum hostium. Hunc titulum ludaei in fronte synagogae suae scribent:
"Templum impietatis factum de manubiis Christianorum".

11. Sed disciplinae te ratio, imperator, movet. Quid igitur est amplius, disciplinae
species an causa religionis? Cedat oportet censura devotioni.

12. Non audisti, imperator, quia cum iussisset Iulianus reparari templum
Hierosolymis, divino qui faciebant repurgium igne flagrarunt? Non caves ne etiam
nunc fiat? Adeo a te non fuit iubendum ut Iulianus hoc iusserit.

13. Quid tamen movet, utrum quia quodcumque aedificium publicum exustum est
an quia synagogae locus? Si aedificio incenso moveris vilissimo - quod enim in tam
ignobili castro esse potuit? - non recordaris, imperator, quantorum Romae domus
praefectorum incensae sint et nemo vindicavit? Immo si quis imperatorum voluit
factum severius reprehendere, eius magis qui tanto est perculsus dispendio causam
gravavit. Quid igitur dignius ut Callinici castri in parte aliqua aedificiorum incendium
an urbis Romae vindicandum aestimaretur, si oporteret tamen? Constantinopoli
dudum domus episcopi incensa est et filius clementiae tuae intercessit apud
patrem, ut et suam hoc est filii imperatoris injuria et domus sacerdotalis
incendium non vindicares. Non consideras, imperator, ne et hoc cum vindicari
iusseres ipse iterum interveniat ne vindicetur? Sed bene illud acquisitum est a patre
filio, dignum erat enim ut suam injuriam prius ipse donaret. Bene illud cum gratiae
distinctione divisum est ut et filius pro sua et pater pro filii injuria rogaretur; hic
nihil est quod filio reserves et vide ne quid deo deroges.

14. Non est ergo causa tanta commotioni idonea, ut propter aedificii exustionem
in populum tam severe vindicetur, multo autem minus quia synagoga incensa est,
perfidiae locus, impietatis domus, amentiae receptaculum, quod deus damnavit ipse; sic enim legitimus per os Ieremiae dicente domino deo nostro: Et faciam domui ubi invocatum est nomen meum super ipsam, in qua confiditis vos, et loco quem dedi vobis et patribus vestris sicut feci Selon; et proiciam vos a facie mea sicut proieci fratres vestros omne semen Effrem. Et tu noli orare pro populo isto et noli postulare illis misericordiam et neque accesseris ad me pro illis, quia non exaudiam te. Aut non vides quid isti faciunt in civitatibus Iuda? Deus se pro illis prohibet rogari quos tu vindicandos putas.

15. At certe si iure gentium agerem, dicerem quantas ecclesiae basilicas Iudaei tempore imperii Iuliani incenderint. Duas Damasci, quorum una vix reparata est sed ecclesiae non synagogae impendiis, altera basilica informibus horret ruinis. Incensae sunt basilicae Gazis, Ascalone, Beryto et illis fere locis omnibus et vindictam nemo quaesivit. Incensa est basilica et Alexandriae a gentilibus et Iudaeis quae sola praestabat ceteris. Ecclesia non vindicata est, vindicabitur synagoga?

16. Vindicabitur etiam Valentinianorum fanum incensum? Quid est enim nisi fanum in quo est conventus gentilium? Licet gentiles duodecim deos appellant, isti triginta et duos Aeonas colant quos appellant deos. Nam et de ipsis comperi relatum et praeceptum, ut in monachos vindicaretur qui prohibentibus iter Valentinianis quo psalmos canentes ex consuetudine usu que veteri pergebant ad celebritatem Machabaeorum martyrum moti insolentia incenderunt fanum eorum in quodam rurali vico tumultuarie conditum.

17. Quanti se offerre habent tali optioni, cum meminerint tempore Iuliani illum qui aram deiecit et turbavit sacrificium damnatum a iudice fecisse martyrium? Itaque numquam alias ille iudex qui audivit eum nisi persecutor habitus est, nemo illum congressu, nemo illum umquam osculo dignum putavit; qui nisi iam esset defunctus, timerem, imperator, ne in eum tu vindicates, quamquam vindictam caelestem non evaserit suo superstes heredi.

18. Sed refertur cognitionem mandatam iudici scriptum que eo quod non referre debuerit sed vindicare, requirenda quoque sublata donaria. Ut omittam alia,
incensae sunt a Iudaeis ecclesiarum basilicae et nihil redditum est, nihil repetitum, nihil quaesitum. Quid autem habere potuit synagoga in castro ultimo, cum totum quicquid illic est non multum sit, nihil pretiosum, nihil copiosum? Quid deinde incendio potuit rapi Iudaeis insiduntibus? Artes istae sunt Iudaeorum volentium calumniari, ut dum ista queruntur mandetur extra ordinem militaris censura iudicii, mittatur miles fortasse dicturus quod hic aliquando ante tuum, imperator, dixit adventum: "Quomodo nos poterit Christus iuvare qui pro Iudaeis adversus Christum militamus, qui mittimur ad vindictam Iudaeorum? Suos perdiderunt exercitus, nostros volunt perdere".

19. In quas praeterea non prosiliant calumnias qui etiam Christo falsis testimoniis calumniati sunt? In quas non prosiliant calumnias homines et circa divina mendaces? Quos non auctores seditionis fuisse dicant? Quos non appetant, etiam quos non recognoscant ut catenatorum ordines innumeris spectent de Christiano populo, ut captiva videant colla plebis fidelis, ut condantur in tenebras dei servuli, ut feriantur securibus, dentur ignibus, tradantur metallis, ne poena cito transeat.


21. Et cum ipsi Romanis legibus teneri se negent ita ut crimina leges putent, nunc velut Romanis legibus se vindicandos putant. Ubi erant istae leges cum incenderent ipsi sacratarum basilicarum culmina? Si Iulianus non est ulitus ecclesiam quia praevaricatmur erat, tu, imperator, ulcisceris synagogae iniuriam quia Christianus es?

22. Et quid te cum posthac Christus loquetur? Non recordaris quid David sancto per Nathan prophetam mandaverit? Ego te de fratribus tuis minorem elegi et de privato imperatorem feci. Ego de fructu seminis tui in sede imperiali locavi. Ego tibi subieci
nationes barbaras, ego tibi pacem dedi, ego tibi inimicum tuum in potestatem tuam captivum deduxi. Frumentum non habebas ad exercitus alimoniam, ipsorum hostium manu patefeci tibi portas, aperui horrea; dederunt tibi hostes tui commen tatius suos quos sibi paraverant. Ego perturbavi hostis tui consilia ut se ipse nudaret. Ego ipsum usurpatorem imperii ita vinxi ac mentem eius ligavi, ut cum haberet adhuc fugiendi copiam tamen cum omnibus suis tamquam metuens ne quis tibi periret ipse se clauderet. Ego comitem eius atque exercitum ex altera parte naturae quos ante disperseram ne ad belli societatem coirent ad supplementum tibi victoriae congregavi. Ego exercitum tuum ex multis indomitis convenam nationibus quasi unius gentis fidem et tranquillitatem et concordiam servare praecepui. Ego cum periculum summum esset ne Alpes infida barbarorum penetrarent consilia, intra ipsum Alpium vallum victoriam tibi contuli, ut sine damno vinceres. Ego ergo te triumphare feci de inimico tuo et tu de plebe mea das meis inimicis triumphum!

23. Nonne propterea Maximus destitutus est, quia ante ipsos expeditionis dies, cum audisset Romae synagogam incensam, edictum Romam miserat quasi vindex disciplinae publicae? Unde populus Christianus ait: "Nihil boni huic imminet, rex iste Iudaicus factus est; defensorem istum disciplinae audivimus quem mox Christus probavit qui pro peccatoribus mortuus est". Si de sermone hoc dictum est, quid de ultione dicetur? Ille igitur statim a Francis, a Saxonum gente, in Sicilia, Sisciae, Petavione, ubique denique terrarum victus est. Quid pio commune cum perfido? Abolenda cum impio sunt etiam impietatis exempla. Quod illi nocuit et quod victus offendit, hoc non sequi debet sed damnare qui vicit.

24. Itaque illa tibi non quasi ingrato recensui sed quasi iure collata enumeravi, ut his admonitus cui plus collatum est plus diligas. Denique hoc respondenti Simoni dixit dominus Iesus: Recte iudicasti. Statim que conversus ad mulierem, quae pedes eius unguento unxit typum ecclesiae gerens, ait Simoni: Propter quod dico tibi: Remissa sunt peccata eius multa, quoniam dilexit multum. Cui autem minus dimittitur minus diligit. Haec est mulier quae in domum Pharisaei intravit et eiecit Iudaem, Christum autem acquisivit. Ecclesia enim synagogam exclusit, cur iterum temptatur,
ut apud Christi famulum hoc est de pectore fidei de domo Christi synagoga excludat ecclesiam?

25. Haec ego, imperator, amore et studio tui in hunc sermonem contuli. Debo enim beneficiis tuis quibus me petente liberasti plurimos de exiliis de carceribus de ultimae necis poenis, ut malle debeam pro salute tua etiam offensionem tui animi non timere, - nemo maiore fidicia utitur quam qui ex affectu diligit, nemo certe debet laedere qui sibi consulit -, ne tot annorum conceptam cuiuscumque sacerdotis gratiam uno momento amittam. Et tamen non damnum gratiae deprecor sed salutis periculum.


27. Certe si mihi parum fidei defurtur, iube adesse quos putaveris episcopos; tractetur, imperator, quid salva fide agi debeat. Si de causis pecuniariis comites tuos consulis, quanto magis in causa religionis sacerdotes domini aequum est consulas?

28. Consideret clementia tua quantos insidiatores habeat ecclesia, quantos exploratores; levem rimam si offenderint figent aculeum. Secundum homines loquor; ceterum plus omnibus deus timetur qui etiam imperatoribus iure praefertur. Si amico suo aliquid, si parenti aut propinquuo deferendum existimat, recte ego et deferendum deo et eum praeferendum omnibus iudicavi. Consule tibi, imperator, aut patere me consulere mihi.
29. Quid respondebo postea, si compartum fuerit data hinc auctoritate aliquos Christianorum aut gladio aut fistibus aut plumbis necatos? Quomodo hoc purgabo factum? Quomodo excusabo apud episcopos qui nunc quia per triginta et innumeros annos presbyterii quidam gradu functi vel ministri ecclesiae retrahuntur a munere sancto et curiae deputantur graviter gemunt? Nam si qui vobis militant, certo militiae tempore serventur, quanto magis etiam eos considerare debetis qui deo militant? Quomodo, inquam, hoc excusabo apud episcopos, qui queruntur de clericis et impressione gravi vastari scribunt ecclesias?

30. Hoc tamen in notitiam clementiae tuae pervenire volui, de hoc ut placet arbitrio tuo consulere et temperare dignaberis; illud autem quod me angit et iure angit exclude atque ute. Ipse facis quicquid fieri iussisti; aut si ille facturus non est, malo te magis esse clementem quam illum non fecisse quod iussus est.


32. Antiochenis tuam donasti iniuriam, inimici tui filias revocasti nutriendas, apud affinem dedisti, matri hostis tui misisti de aerario tuo sumptus. Haec tanta pietas, tanta erga deum fides hoc facto obfuscabitur. Tu igitur qui armatis pepercisti hostibus et servasti inimicos tuos, ne, quaeso, tanto studio putes vindicandum in Christianos.

33. Nunc te, imperator, rogo, ut non aspernanter acceperis me et pro te et pro me timentem; sancti enim vox est: Ut quid factus sum videre contritionem populi mei? Ut offensam incurram dei? Ego certe quod honorificentius fieri potuit feci, ut me magis audires in regia, ne si necesse esset audires in ecclesia.