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Law and the Fathers of the Church

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The Fathers of the Church are ancient Christian writers whose personal integrity and orthodoxy of teaching were confirmed by their acceptance by the Church. There are at least four spheres in which the law was present in the Church Fathers' life and work. The first is their natural legal environment, that is the legal orders governing their daily affairs and the structures of the societies in which they lived – hence, private law as well as public law. The influence of the Fathers of the Church on the interpretation or modification of this law is the second sphere of mutual; here enters the intriguing question of what law emerged from this formative patristic era in relation to Christianity. Sphere three of the interrelationships concerns questions about the meaning for the Church Fathers of the Mosaic Law. Lastly, the fourth sphere of the relationship is the creation of the law of the Christian communities themselves – a process in which the Fathers must have played a key role.

Key words: Church Fathers, legal interpretation, private law, public law, early canon law, Mosaic law, Roman law, property, slavery, abortion, social changes, Christianity

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1. Introduction: 'Natural' legal environment

"I want this, my testament to be valid and firm before every tribunal and in every way; and if, nevertheless, the testament was not in force, I want that this last will prevail as codicils."[1] This is what Gregory of Nazianzus (ca. 329–390) expressed in his last will, written in Greek in AD 389. What did he mean in this rare lay paper of his in which he decided the matter of his worldly goods? We note that, importantly, the cited passage is a codicillary clause. No specific form was required for such clauses in Roman law: they could appear in the will itself or in codicils attached to it. However, the use of the codicillary clause had a fundamental effect: it changed the entire will into a codicil. The essence of the codicil was that it expressed the testator's wishes, entrusting the implementation of his testamentary dispositions, despite the invalidity or ineffectiveness of the will itself, to the *fides* of his heirs. In this way, the codicillary clause introduced by the

1 F. Longchamps de Bérier, *Law of Succession: Roman Legal Framework and Comparative Law Perspective* (Wolters Kluwer Polska, 2011), 219.

testator contained features that were typical of a 'trust', i.e. a *fideicommissum*, with the result that the appointment of heirs should always be treated as being a universal *fideicommissum*, manumissions treated as the *fideicommissa* of liberty, and legacies treated as singular *fideicommissa*. No particular formal words were required for the clause, rather what was decisive were the testator's intentions. Special emphasis was put on the testator expressing these intentions with the utmost clarity.

The last will of the great Gregory – one of the most eminent Church Fathers, Archbishop of Constantinople, also known as Gregory the Theologian – was not a spiritual message. Rather, it specified decisions as to the fate of his material estate in the event of his death – *mortis causa*. These provisions, made by one of the legendary Cappadocian Fathers, belonged to the realm of private law. Contemplation of his own death and its consequences for the persons around him thus proved, in Gregory's case, to be subordinated to the framework of Roman inheritance law. The unilateral acts in contemplation of death also benefited from the possibilities which Roman law offered. It was otherwise in the case – almost three centuries earlier – of another eminent Church Father, Ignatius, considered by the Christian tradition to be a disciple of John the Apostle. He is known particularly in the eastern churches as John the Theologian.

In AD 107 there was a persecution in Syria during which Ignatius, as bishop of Antioch-on-the-Orontes, was sentenced to death. Rome was chosen as the place of execution, with the object of providing both satisfaction for justice and also entertainment for the populace by his being thrown to hungry beasts in the amphitheater. It therefore took a considerable amount of time for the authorities to bring the condemned man to his place of execution, which gave St. Ignatius the opportunity to visit yet more communities on the way and to send letters which were both a continuation and also a popularization and dissemination of his episcopal teaching.

As many as seven epistles have been preserved from this journey, and they clearly evidence the hope with which he thought of his death. He trusted that with his death he would bear witness to the meaning of the Eucharist and the sacrifice of Jesus Christ. He wrote eloquently, "I am the wheat of God, and let me be ground by the teeth of the wild beasts, that I may be found the pure bread of Christ. Rather entice the wild beasts, that they may become my tomb, and may leave nothing of my body" (Rm. 4). This epistle addressed to the Christian community in Rome contained an emphatic request that under no circumstance should they attempt to use their influence to save him from martyrdom. The request touched upon a certain room for maneuver in this situation which was left by Roman criminal law, that is, the sphere of public law. "His fear that some distinguished Roman Christians might well provide the douceurs needed to secure his release from the beasts in the amphitheater was not utterly unreal, and is illuminated by a law in the Digest (D. 48,19,31 pr.) directing that prisoners condemned to the beasts are not to be released as a special favor to anyone – a provision which shows it had been happening."[2] The stipulated method of execution proved that Ignatius was not in fact a Roman citizen, but nevertheless it was the laws of Rome that determined his death and its manner, and with regard to his approaching death, he made the last decisions possible for him to do in this situation. As well as the manner of his death, the laws of Rome had also, to a lesser extent, determined his previous daily life, as they had in the case of Gregory. The latter, however, lived after AD 212, when the Edict of Emperor Caracalla – the *Constitutio Antoniniana* – changed the personal situation of individuals in the empire significantly, citizenship now being granted to all the empire's free inhabitants.

Whether they lived when Christianity had finally become emancipated – that is, after the Edict of Constantine issued in AD 313 – or earlier, in times of intermittent persecution, the Fathers in their individual lives were the same as the mass of their contemporaries inasmuch as they were immersed in the law that regulated the daily life of the communities (cities or states) in which they lived – Roman law, for example, or perhaps the law of the first Christian state, which is what Armenia became in AD 301. For Gregory of Nazianzus, Roman law was such a natural legal environment. As we have seen, Roman public law entered

2 H. Chadwick, *The Church in Ancient Society: From Galilee to Gregory the Great* (Oxford University Press, 2001), 79.

Ignatius' life, too, and the trial of Jesus of Nazareth before Pilate had, of course, been conducted under Roman criminal law.

In antiquity, the decision as to which law was applicable to a particular person was made on the basis of his origin and his citizenship in a certain community. This is called 'the principle of personality'. We remember that St. Paul was not only aware of this, but knew very well how to make use of it.[3] Though a Jew, Paul was born in Tarsus as a Roman citizen, and there were several occasions during this Jew's apostolic activities and journeys in which he was able to shrewdly invoke his 'noble citizenship', surprising the authorities with it and in particular by making the well-known declaration from Cicero's rhetoric: *civis Romanus sum* – "I am a Roman citizen" (Cicero, *In Verrem* II,5,147). This declaration usually placed Paul in a relatively favorable relationship and perspective vis-à-vis Roman provincial authorities (Acts 16,37; 22,25).

The principle of personality ceased to be of general validity when Rome created a universal empire and, especially, when the imperial constitution was promulgated in AD 212. From this point in time, the 'principle of territoriality' began to be the basis of the decision as to the law applicable to any particular person, as it is nowadays in Europe. Nevertheless, it is possible for that to change or vary at any time. Perhaps the clearest example of this is given by a constitution of Emperor Justinian (482–565), whose Novel 118 of AD 543 gave a clear indication of a move to return to 'the principle of personality': in its final, sixth chapter, it decided that the new order of intestate succession applicable to a person should be determined on the basis of religious affiliation rather than of citizenship or origin. "We desire that everything which We have enacted with reference to intestate succession shall be applicable to those who acknowledge the Catholic faith, for We order that the laws already promulgated by Us with reference to heretics shall continue to be valid, and We make no innovation or change in them by the introduction of the present enactment." This step of Justinian's was, of course, hardly surprising, as he had clearly set out three priorities for his reign: the reform of the law, the consolidation of the state, and the strengthening of religious unity.[4] With regard to this latter concern, his reign is commemorated by the sponsorship of the fifth Ecumenical Council of the Catholic Church, held in Constantinople for the second time in AD 553.

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The Novel 118 cited above touched on a long-standing issue in the teaching and beliefs of the Fathers of the Church: the question of how to evaluate doctrinal legitimacy and orthodoxy. And all of this was taking place amidst the dangers – growing especially at the times when Christianity was recognized as the official religion – of involving secular power in doctrinal disputes. The entanglement of these two areas of life could result in the relativity in a given situation of a decision about a person's hereticalness, as it no longer depended on the judgment of ecclesiastical authority. The secular authority could declare Catholics to be heretics according to its own local law, i.e. on the

3 C.K. Rowe, "St. Paul and the moral law", in *Christianity and Global Law*, R. Domingo, J. Witte eds. (Routledge, 2020), 23–24.

4 Longchamps de Bérier, *Law of Succession*, 108–109.

basis of its own local confession and accepted doctrine, which might, for example, be Arian or Monophysite.

As to Christians' influence on the interpretation of the law which they found in the communities they lived in, one would rather expect it to reflect the Gospel.

2. Law, Christianity, and the Church Fathers

Law ineluctably coexists with human society – that is to say, with man – because it is an inevitable by-product of human existence. This observation is rather obvious but we can use it as the starting point for our reflection on the role of law in the life of the Church Fathers, as well as on how the law changed or developed on account of them, what new challenges the law faced during their time, and what the consequences of all this were for Christianity.

Law is never just an adventitious binding regulation of the day. It is an essential social phenomenon and therefore a product of society's past, that is of the history of human relations, enshrining the experience and wisdom of society in both legal culture and legal tradition. And behind the evolution of societies is the indomitable driving force of religion. Religion determines what humans perceive as transcending them, turning their attention to the divine, but at the same time it interacts with the law both within society and within the individual human person. In contradistinction to religion, however, law would define man by his existence in society, but it is man who creates the law, not the law that creates man.[5] Christianity concerns man not law and has no concern with superficial decisions about a person's appearance or the marks on his body or his clothing or food. Because of this, it would be erroneous to understand the Fathers of the Church simply as participants in the law-making processes of their communities. One would rather expect that Christians, via the Gospel, would have their own particular influence on the interpretation of the law which they found in the communities they lived in, not forgetting that Christianity insists on an inner and intimate attitude in which man is always seen in relation to a God who is his Creator and Redeemer – God who himself became man.

The law is never a simple matter. Since the time of the Roman jurists, we have been fully aware of the ambiguity and polysemy of the word *law* and the complexity of its occurrence in various spheres of human activity (see D. 1,1,11). And so we can be sure that the law must have been present in various ways in the life of the Church Fathers. First, however, we need to establish who we mean by the term 'the Fathers of the Church'. This term refers to certain ancient Christian writers whose personal integrity, holiness of life and orthodoxy of teaching was confirmed by their acceptance by the Church.[6] Dealing with the life achievements and theology of these exceptional Christians, the study of patristics, or patrology, is a specifically theological science. The word comes from the Latin name for the Fathers – *Patres Ecclesiae* (though the origin of the name is from Latin, the name nevertheless applies not only to those who write in Latin or even in Greek, but also to writers in Syrian, Coptic, Armenian and Arabic). It is because of this Latin expression that the time of the Fathers is referred to as the patristic period. This period began around AD 100 and constitutes the era following the death of the Apostles and of the group of 'Apostolic Fathers' who belonged to the first post-apostolic generation of the Apostles' disciples. The patristic era springs directly from this group of disciples, and as a consequence the activities of the Church Fathers themselves must be seen in the perspective offered, firstly, by the findings of the so-called Council of Jerusalem held around AD 50 (Acts 15) and the life and work of Paul of Tarsus; and, secondly, by the tradition of the Apostolic Fathers, which is expressed primarily in writings attesting to the way of life of the early communities (such as the *Didache*, the *Shepherd of Hermas*, the *Martyrdom of Polycarp*, or the *Epistle to Diognetus*), together with letters written by Clement, Ignatius, Polycarp and Barnabas. As to its termination, the patristic period is considered to have lasted up until the middle of the eighth century, that is, in the West, until the death of Bede the Venerable in AD 735, and, in the East, until the death of John of Damascus in AD 749.

5 F. Longchamps de Bérier, "Hermogenianus and the Fundaments of Legal Anthropology", *Studia et Documenta Historiae et Iuris* 87 (2021), 89.

6 M. Seitz Ursino, "Padri della Chiesa", in *Novissimo Digesto Italiano*, vol. 12 (UTET, 1965), 309.

Since law serves the purpose of ordering social reality, and, moreover, the very word *law* proves to have a multitude of (often ambiguous) applications, there are quite naturally numerous spheres of law, legal orders or jurisdictions of which a particular person at any one time will inescapably become a subject and an object. As far as the relationship between law and the Fathers of the Church is concerned, at least four such spheres in mind the significant statement of St. Paul: *ἐγὼ γὰρ διὰ νόμου νόμῳ ἀπέθανον, ἵνα θεῷ ζήσω.* – "through the Law I am dead to the Law so that I can be alive to God" (Ga. 2,19). The fourth sphere of the relationship between the Law and the Fathers of the Church is the creation of the Christian communities' own laws. The formation of such laws must have been a long process and one in which the Fathers played a key role.

First, the natural legal environment of everyone, including the Church Fathers, is the legal order governing his daily affairs.

can be distinguished.[7] The first has already been indicated with specific examples in the introduction. This is the natural legal environment in which everyone, the Church Fathers included, exists – the legal order governing one's daily affairs and the structures of the society in which one lives, that is to say, one's own private law as well as the public law. The influence of the Fathers of the Church on the interpretation or modification of this law is the second sphere of mutual relations. From our perspective, this is the sphere that should be of greatest interest, in particular the question of what law, in relation to Christianity, emerged from such a formative era as the patristic period undoubtedly was. Sphere three of the interrelationships concerns questions about the meaning for the Church Fathers of the Mosaic law. As they had become heralds of the Good News, the Fathers knew they were serving the New Covenant, in which the person of Jesus Christ took the place of the Torah at the center of the community of believers. They necessarily had to ask themselves questions about the Old Covenant, keeping especially In our historical view it is better that we begin with the third and fourth spheres, which will also help us better understand the significance for Christianity of the role of the Church Fathers in the first two spheres of these interrelationships.

3. The Mosaic law and the new Christian law

The question of the possible validity of the Mosaic law concerns, from the Christian viewpoint, the nature of the New Testament law, which is the long-awaited fulfillment of the Old Covenant. Jesus declared that *ἰῶτα ἓν ἢ μία κεραία οὐ μὴ παρέλθῃ ἀπὸ τοῦ νόμου, ἕως ἂν πάντα γένηται* – "not one dot, not one little stroke, is to disappear from the Law until all its purpose is achieved" (Mt. 5,18) – and we must not forget that He came to fulfill all that Moses and the prophets had spoken of. This fact is especially evident in the Gospel of Matthew, whose theology leaves no doubt that this particular Gospel was directed to the Jews and announced to them the fulfillment of the promises of biblical Judaism. In Matthew's Gospel the teaching of the law does not begin with the interpretation of the Decalogue, Commandment after Commandment, as the Jews might have expected, but with the presentation of a new approach, expressed in the Eight Beatitudes (Mt. 5,1–10). Suggestive for the interpretation of the Beatitudes is the synthetic position of Eusebius, a bishop of Caesarea and historian of the early Church,

7 Compare the different approaches of historians: C. Humfress, "Patristic Sources", in *The Cambridge Companion to Roman Law*, D. Johnston ed. (Cambridge University Press, 2015), 97–118; J. Lössl, "Law and the Church Fathers", in *The Oxford Handbook of Christianity and Law*, J. Witte, R. Domingo eds. (Oxford University Press, 2024), 31–44.

who recognizes Jewish tradition as an authority almost equal to the Scriptures themselves (*Ἐκκλησιαστικὴ ἱστορία – Historia Ecclesiastica* 4,22; 6,25; *Εὐαγγελικὴ προπαρασκευή – Praeparatio Evangelica* 11,5). Among the Fathers, it was Jerome who was best acquainted with this tradition, for, though close to the Supreme Pontiff's court in Rome, he spent most of his years in Palestine, dying in Bethlehem; author of the Vulgate, a translation of the Bible into Latin, Jerome clearly had an excellent command of both Greek and Hebrew. We must also mention Sextus Julius Africanus (died ca. AD 240), a disciple of Origen of Alexandria, who was close to the pagan imperial court but was born in Aelia Capitolina, Hadrian's city built to replace Jerusalem, and lived in Emmaus. Sextus was a Christian historian – one who was perhaps an expert in law – and had a particular interest in the Holy Land. And at a very early date, beginning indeed as early as Justin Martyr (ca. 100–ca. 165), the Fathers had engaged in polemics with the followers of rabbinic Judaism, which was, however, of little importance for the norms and regulations concerning Christian communities.

In patristic discussions of biblical Judaism three main issues arose. The first issue was the question of whether the Old Testament was still the sacred Bible for Christians and, if so, then whether Christians should use the original Hebrew version or the Greek Septuagint, i.e. the translation by means of which the Bible was known and used in the Hellenistic-Roman world. The second issue concerned the true canon of the books of the Old Testament and thus the content of this Bible: is the true canon only the one adopted by the Pharisees and rabbis, or should it also include books written in Greek and used in the Jewish Diaspora? At the same time, of course, the question of the canon of the books of the New Testament had to be resolved, a difficult matter which was not accomplished in a single generation. The third issue concerned the morality contained in the Old Testament and the detailed precepts that resulted from this – most prominently, the requirement of circumcision. This third issue, seen from the negative side, might lead to the conclusion that whoever does not keep the Mosaic law thereby forfeits the right to the books of Moses.

These three major issues of legal interest and regulation, though not of a legal nature in themselves, did need to be settled clearly and definitively. The problem of compliance with the requirements of law and tradition – in particular the question of whether Christians should be circumcised – had already been resolved in the negative by the Council of Jerusalem. The determination of biblical questions was debated by Justin Martyr, Irenaeus of Lyon, and Tertullian,[8] that is to say in the second half of the second century. The whole process resulted in the existence of two distinct Bibles, one Christian and one Jewish. Subsequently, however, there arose in each generation groups of *Iudaisantes*, i.e. Judaizers of various shades, who continually forced these issues to be revisited and reassessed. The Judaizers were a doctrinal, pastoral, organizational, and liturgical problem. They were not, however, a legal problem for the Church Fathers, and this for several reasons. Firstly, the Mosaic law was not in fact the Church Fathers' own living environment: it was not their natural habitat because, although religious, its religious force had been replaced by that of the new covenant.[9] The concern of the Fathers was to teach and persuade people – in particular, those from outside Judaism – of the Good News. And, not without significance in this context, the Fathers of the Church themselves were seldom of Jewish descent – as, by contrast, Epiphanius of Salamis (ca. 315–430) was.

Judaism and Rome had a significant history of tensions, but what they had in common was the idea that law was something intrinsic to their identity. That was not the case with Christianity. Of course, in the bosom of the new religion, legal regulations of their own were soon developed, in a specific way and in relation to the two above-mentioned bodies of law, i.e. Roman and Jewish. After all, it is quite obvious to every legal historian that law derives from religion.[10] That was the case in Greece, in the ancient monarchies and in

8 R. Bennett, *Scripture Wars. How Justin Martyr Rescued the Old Testament for Christians* (Sophia Institute Press, 2019).

9 S. Westerholm, "Law and Christian Ethics", in *Law in Religious Communities in the Roman Period. The Debate over Torah and Nomos in Post-Biblical Judaism and Early Christianity*, P. Richardson, S. Westerholm eds. (Canadian Corporation for Studies in Religion, 1991), 89.

10 P. Noailles, *Du Droit sacré au Droit civil. Cours de Droit Romain Approfondi 1941–1942* (Sirey, 1949), 16–20; W. Uruszczak, *Historia państwa i prawa polskiego* (History of the

the Hellenistic countries, and it can be seen later in Islamic law as well. Every socio-religious movement must create its own legal norms in order to regulate the religious life of the community – even if through liturgical regulations alone, which are essential, since only the performance of rites according to the norms universally accepted in the Church constitutes public worship. It is only to be expected, then, that the Christian world would create its own law, something which began with the creation of major theological writings and religious testimonies which appeared along with the emergence of communities of believers.

gical prescriptions, indeed claiming the authority of the Apostles, began to appear from the end of the first century onward. The *Didache* should be mentioned as the earliest of those preserved and endowed with the highest authority.[12] The text, composed as early as around the turn of the first century AD, includes instructions on church leadership, baptism, Eucharist, fasting, and resources to be given to the needy. Dating from the second decade of the second century, the *Apostolic Tradition* is the name scholars give to the no-longer-extant source of a textual tradition reflected in a series of fourth-to-sixth-century

The influence of the Church Fathers on the interpretation of one's own private law and the public law is the second sphere of mutual relations.

Provisions that we would call laws, regulations or precepts were certainly issued as early as in apostolic times. At the time they were not written down, though some very precise papal decisions from this period are well known. It was generally recognized that it was Pope Victor (died ca. AD 195) who determined when Easter should be celebrated, and it was Pope Stephen (died AD 255) who settled the question of the validity of baptism performed by heretics (i.e. by Christians from separated communities). And what began in this latter dispute ended in the formulation – through Cyprian, bishop of Carthage (died AD 258) – of the legal-sounding formula *extra Ecclesiam nulla salus* – "no salvation outside the Church."[11]

Over the time, the regulations in force and the decisions adopted began to be written down, often, for added authority, passed off as coming from the Apostles themselves. The first collections of legal-liturgical documents. The original document appears to have given details on ordination requirements and liturgies, on procedures for admission of new church members, and on community meals and prayers, as well as indications concerning the use of the sign of the cross and of exorcisms. Similarly, the *Didascalia of the Apostles*, written probably by a single Syrian bishop in the third century and belonging to the literary genre of church orders, passes on teaching concerning liturgy, finances, charity and penitential practices of the church, ethics of family life, customs related to fasting, observance of festivals, and Old Testament purity laws. It is clear that, "the major aim of the author is to persuade the Christian communities to organize and conduct their internal and external life according to his prescriptions, which preserve old apostolic traditions."[13] The teaching of the *Didache* is continued by the *Apostolic Church Order* – from

Polish State and Law), 4 ed. (Wolters Kluwer Polska, 2021), 76–77.

11 F. Longchamps de Bérier, *Czy poza Kościołem nie ma zbawienia?* (Is There no Salvation outside the Church?), 2 ed. (Tyniec Wydawnictwo Benedyktynów, 2005), 21–43.

12 See T. O'Loughlin, *The Didache. A Window on the Earliest Christians* (Baker Academic, 2010), 16.

13 D. Benga,"Didascalia Apostolorum", in *Brill Encyclopaedia of Early Christianity Online*, D.G. Hunter, P.J.J. van Geest, B.J. Lietaert Peerbolte eds. (Brill, 2018), http://dx-

the very end of the third century – which served as the source of law for Eastern Churches as it focused on the procedures of appointment and the duties of bishops, priests, deacons and readers, and the role of widows; the document also pays attention to the duties of lay Christians. The *Apostolic Constitutions* come from the end of the next century and is clearly based on the previous works: the first part seems to be an expansion and reworking of the *Didascalia*, then it contains a revised version of the *Didache*, and finally the teaching and regulations are added as *Canons of the Apostles* in 85 sections, each of which is a 'canon'.[14] From the same time as the *Apostolic Constitutions* comes another collection belonging to the literature of church orders – the *Testamentum Domini*, written by a Syrian Monophysite.

Previous collections were continually arranged into successive new collections which already had a clearly legal meaning, such as the *Clementine Octateuch* or the anonymous Coptic collection called the *Synodus Alexandrina*, as well as shorter collections of a strongly canonical character, such as the *Canons of Hyppolytus* composed in the middle of the fourth century. Scholars agree that the original texts of all the pseudo-apostolic collections were written in Greek and then translated into Latin, Syriac, Coptic, Arabic or Armenian, often surviving as complete works only in the translated versions. In some cases when the original was lost, its content was nevertheless preserved in whole or in fragments in other languages, which made it possible to reconstruct the original work. Collections of laws were, in fact, not only translated into other languages but also adapted to local conditions, modified, and excerpted, and often used as the basis from which new works were created.[15]

A separate source of ecclesial regulations is the Greek and Latin collections of conciliar laws. Minutes were taken of the bishops' deliberations at synods and councils, though most of these minutes have, unfortunately, not been preserved. This is not the case, however, when it comes to concrete decisions and acts such as canons, anathemas, symbols, definitions, speeches and letters related to these synods and councils. From the third century onward, laws had begun to be collected, first those issued by local provincial synods, eastern and western, and subsequently those issued by councils. The legal relevance of these collections is made explicit by a decision of the First Canon of the Fourth Ecumenical Council, Chalcedon AD 451: "We have judged it right that the canons of the Holy Fathers made in every synod even until now, should remain in force." In subsequent collections, therefore, an attempt was made to arrange all previous regulations, both systematically, according to the problems concerned, and chronologically, according to the time of issue.

The writings of the Fathers of the Church are generally considered a source of knowledge about canon law in the broadest sense of the term, i.e. as a means by which knowledge of the Church's legal norms can be attained.[16] There was, however, more than just the testimony of their writings, for the Church Fathers themselves played a key role in the formation of regulations concerning the life of the Church. We usually treat the Fathers individually, mentioning them by name and quoting specific passages from their writings. This is similar to the way we once approached jurists from the classical era of Roman law, our attitude towards them being in fact a reflection of that of their own contemporaries.[17] Despite knowing that the work of these jurists was actually collective, we nevertheless recognize their individual personal achievements – which are of special importance to us – as a summation of the experience of ancient Roman jurisprudence. So too should we credit the eminent Church Fathers with the products of their times. The

1doi-1org-11me20vvw0542.hps.bj.uj.edu.pl/10.1163/2589-7993_EECO_SIM_00000927 (access: 28.12.2023).

14 See E.M. Synek, "Die Apostolischen Konstitutionen – ein 'christlicher Talmud' aus dem 4.Jh.", *Biblica* 79 (1998) No. 1, 27–56.

15 M. Starowiejski, J.M. Szymusiak, *Nowy słownik wczesnochrześcijańskiego piśmiennictwa* (A New Dictionary of Early Christian Writings), 2 ed. (Wydawnictwo Święty Wojciech, 2018), 813–814; J.G. Mueller, "Marriage and Family Law in the Ancient Church Order Literature", *The Journal of Legal History* 40 (2019) No. 2, 203–221. See P. Erdö, *Storia delle fonti di diritto canonico* (Marcianum Press, 2008).

16 Seitz Ursino, "Padri della Chiesa", 311.

17 R. Domingo, *Roman Law. An Introduction* (Routledge, 2018), 14–15, 54–55.

outstanding individuals are in fact easy to spot, for they took part in the community of the Church and indeed played a leading role in it, despite, in many cases, playing no role at all in synods or councils, often not even attending them. Nevertheless, these synods and councils revolved around the Fathers' own postulates, proposals and interpretations, which were primarily theological but also had legal implications. Over the centuries, the community of the Church confirmed the work of individual Fathers, and so the definition of who are to be counted as *Patres Ecclesiae* remains valid: those whose correctness of teaching and conendowed with the authority of the highest office but also decisions of individual Fathers had the force of law – especially those of the patriarchs of Constantinople, Alexandria, Antioch and Jerusalem. That was the case, for example, with the rulings of Dionysus, ordained bishop of Alexandria in about AD 247. Questions of law were brought before him by a bishop in the Libyan Pentapolis of Cyrenaica named Basilides and Dionysus' rulings on these questions later became a part of Greek canon law. Another important part of Greek canon law was constituted by three letters by St. Basil (330–379), a bishop of Caesarea in Cappadocia, to Amphilochios

Sphere three of the interrelationships concerns questions about the meaning for the Church Fathers of the Mosaic law.

firmed orthodoxy has received the lasting approval of the Church. Particularly with regard to questions concerning the emerging law of Christian communities, it is not possible to simply pay regard to the woolly and bemuddled area of the early Christian scripture.[18] After all, everyone was free to express their own personal views, but it is only what the Church eventually agreed on, believing it to be in accord with the Bible and its tradition, that in the outcome actually became law. And it was the Fathers who took the lead in the collective voice creating sound solutions that would be passed on to future generations.

It is not to be surprised at, then, that various papal letters came to be legally binding. This was the case with the letters of Pope Leo the Great (ca. 400–460), to be found today in the *Collectio Hispana*, and also a collection of letters of Pope Gregorius the Great (ca. 540–604), concerning Sunday observance as well as divorce, consanguinity and prohibited degrees for marriage. Sometimes, however, not only papal decisions of Iconium. Basil is known for laying down rules for monks and nuns which influenced the entire monastic life of the Church. His writings became authoritative, when inter alia he decided about the lawfulness of the marriages of immigrants or when he rebuked the country bishops under his jurisdiction for departures from canon law by ordaining men for payment or without scrutiny or without consulting the bishop (in this case, Basil himself). Basil made several observations which were of legal importance, such as that canon law gives the metropolitan no autocratic powers.[19]

4. The language of law at the service of Christianity

Some Fathers of the Church, being themselves lawyers, were well acquainted with the legal order governing the Church's daily affairs as well as the organization of the society in which they lived – that is, with both private and public law. Indeed, several of the most eminent Fathers must be regarded professionally as jurists. In addition to the above-mentioned Sextus Julius Africanus, who made his career in law as well

18 Contrary A. Fürst, "Church Fathers", in *Brill's New Pauly Encyclopaedia of the Ancient World*, vol. 3, H. Cancik, H. Schneider eds. (Brill, 2003), 305.

19 Chadwick, *The Church in Ancient Society*, 168, 334–335.

as history, we should mention Tertullian (ca. 155–ca. 220), one generation older than Sextus, whose practice as an advocate made him familiar with points of law on a daily basis. Tertullian's legal proficiency is demonstrated by investigations into a possible identification with a great legal contemporary and namesake mentioned and quoted by Justinian's Digest and Code. Undoubtedly to be seen as jurists are also Ambrose (339–397), born as a son of a praetorian prefect, and Jerome (345–419/420). Interestingly, the researcher of ancient Church history known as Socrates the Historian (ca. 380–ca. 450), who was younger than these two, also became a lawyer.

Jurists typically have a deep respect for the word, as does the law in general because words are its material and the tools for ordering social reality. It is thanks to words that legal structures and institutions can be built. This was especially evident in the Roman Empire, where, from ancient tradition, there was a predilection for the oral nature of all legal acts and *fides Romana* stood guard over each citizen's keeping of their word. This respect for the word connects law with Christianity. Christianity even goes so far as to proclaim the Word made Flesh, the mystical body of this Word being the Church, which is a community of believers. And like any human community, the Church must form its structure and activities by some form of legal order – always alternative to local secular orders, even when Christianity has somewhere become the state religion.

With regard to private law, we know that the Romans invented almost the whole of it, i.e. everything except for intellectual property and a capital company. The Romans also gave special, legally-determined meanings to many words. Various Church Fathers, especially those writing in the Romans' language, Latin, on matters relating to the transmission of faith and reflection on its content, would use not only Latin *words* with a specifically legal meaning but also refer to particular Roman legal *concepts* and *institutions*. In first place we find, without a doubt, the word 'deposit', which, with the idea of the 'deposit of faith', has served to indicate a permanent feature of the Christian theological structure. In this, as in many other cases, a legal construction known from everyday life was translated – mainly by way of analogy – into Christian discourse.

Many Church Fathers borrowed their legal terminology – and sometimes concepts too – only from *Roman* law. This is not surprising, since that was the law with the operation of which they were well acquainted in their daily lives. Under Roman law, the Christians were an association, a *corpus* under the management of a *curia*, and according to Cyprian, bishop of Carthage, all of the bishops formed a *collegium* together and were jointly liable for the decisions of any individual bishop; Cyprian compared the office of bishop to that of a magistrate and in addition discussed the divine *lex*, the *mandata* and *praecepta* of the Lord, the *traditio* of faith, the *crimen* and *delictum* of the sinner, and the rich *possessor.* Legal terms with a non-legal meaning were also often used by Tertullian – *ius*, *persona*, *auctor*, *potestas*, *praescriptio*, *sacramentum*, etc.; he was the first person to compare the relation between a sinner and the Redeemer to that between a debtor and a creditor. When contrasting law and morality, Tertullian dealt with the problem of the separation of spouses and attributed to God the prerogatives of the Roman *pater familias*. Lactantius (ca. 250–ca. 325) similarly stated that God is *pater ac dominus*, and in fact this courtier of Diocletian and Constantine frequently gave new meanings to the many legal terms he used; he cited Ulpian and various constitutions concerning the rights of Christians, and modeled his famous theological and moral work *Institutiones Divinae* on the jurists' institutes. In his ethics, Lactantius emphasized *ius humanitatis* and *aequitas*, and wrote that vis-à-vis God people were equal and free as his *liberi* – children. Many legal terms also feature in the writings of Ambrose, such as when he teaches about obligations and debts towards God; for Ambrose, the ancient Roman *iustitia quae suum cuique tribuit* was an ideal for Christians, too. Again, institutions of civil law were continually referred to by the unknown author of the *Ambrosiaster*, composed in Rome between AD 366 and AD 384, which tried to demonstrate the functioning of the community of Christians and their role in society by means of Roman law; this author was the first to use the term *ius eccelsiasticum* and the first to formulate the *privilegium Paulinum*, the possibility that Christians may divorce a partner who refuses to be baptized. Similarly, an entire series of legal notions – like *auctoritas*, *debitum* and *Christi*

sponsae – were applied to Christian life by the jurist Jerome, and it is no wonder that, when translating the Bible into Latin, Jerome was often guided by his legal thinking. His application of Roman legal notions to Biblical relationships influenced the subsequent understanding of their meaning. For example, in his Vulgate we find the Biblical judicial 'longsuffering' (Greek *ἐπιείκεια – epieikeia*) translated as *aequitas*, a concept which the prefecture of the time used in order to justify the necessity of equal cases receiving equal treatment; and in passages about conjugal relationships between two people, he shows himself to have been a jurist who clearly distinguished the notions *coniugium* (cohabitation), *nuptiae* (wedding), and *matrimonium* (implying a high-quality relationship). Another of the great Church Fathers who expressed the relation between God and his people by means of legal notions was Augustine (354–430), who for this purpose used the terms *chirographum*, pledge, promissory note, will and donation, as well as *pater*, *potestas*, and domestic peace. Augustine continually transplanted to his spiritual exercises not only such notions as *bona fides*, equity, a supplication to God, but also, and quite surprisingly for theological works, salaries, fees and rent money. In fact, according to Augustine, people on earth live merely as God's tenants, not as owners, and therefore have only the use, not the ownership, of things.[20]

Isidore of Seville (ca. 560–636) occupies a special place in this context. Although there is a repeated opinion that he found truth more in words than in things, Isidore was in fact able to use the achievements not only of legal terminology but also of the law itself for the purposes of theology, of the Christian world, and of the simple Christian life. There are two important works of Isidore that consider inter alia law, legal tradition and legal experience as an essential component of the intellectual and cultural heritage of his Hispano-Roman world: his *Sentences*, personal and cogent, and, his later massive work the *Etymologies*. The latter, also known as the *Origins*, is an encyclopedic compilation of the entire knowledge of the ancient Latin world: it served throughout the Middle Ages as a reader's companion and book of reference setting out the vocabulary and basic concepts of each field of knowledge.[21] A notable feature of Isidore's work in the field of law is that he collected all his legal knowledge in parts – each quite compact – of both these diverse works (*Sen.* 3,49–58, *Orig.* 5), which, as a result, allow us to both understand his theory of law and political theology and to become acquainted with his own understanding of the judicial process.

The fourth sphere of the relationship between the Law and the Church Fathers is the creation of Christian communities' own law.

When it comes to judicial process, a case comes to mind that clearly illustrates the fact that the Fathers of the Church took advantage of the principles of Roman law. An account of this case was provided by the pagan historian of the time of Emperor Julian the Apostate, Ammianus Marcellinus (ca. 330–ca. 391/400). The case concerned St. Athanasius of Alexandria (296/298–373), and Ammianus reported that Pope Liberius firmly refused to condemn Athanasius despite Emperor Constantius II's order to do so, on the strong legal ground that it was wrong to condemn someone who had not been in court to defend himself (*Rerum*

20 L. Waelkens, *Amne Adverso. Roman Legal Heritage in European Culture* (Leuven University Press, 2015), 71–72.

21 P.L. Reynolds, "Isidore of Seville", in *Great Christian Jurists in Spanish History*, R. Domingo, J. Martínez-Torrón eds. (Cambridge University Press, 2018), 33.

gestarum libri 15,7,7–10). This is clear testimony of the application of a principle that, as an expression of legal experience, is summarized in the short Latin saying *audiatur et altera pars* – "may the other side also be heard." The principle is, in any case, well known from the New Testament, which certainly provides a more convincing and authoritative source for models of conduct: *πρὸς οὓς ἀπεκρίθην ὅτι οὐκ ἔστιν ἔθος Ῥωμαίοις χαρίζεσθαί τινα ἄνθρωπον πρὶν ἢ ὁ κατηγορούμενος κατὰ πρόσωπον ἔχοι τοὺς κατηγόρους τόπον τε ἀπολογίας λάβοι περὶ τοῦ ἐγκλήματος* – "but I told them that Romans are not in the habit of surrendering any man, until the accused confronts his accusers and is given an opportunity to defend himself against the charge" (Acts 25,16).[22]

5. Changes in the law or changes in the key to the law's interpretation

Comments concerning the manner of keeping the Sabbath belong to the creation of the internal legal regulations of the community of the faithful. In general, the formation of universally binding regulations depended on the public activity of individual Fathers and their personal authority and influence on the rulers. For example, there is no doubt that the influence of John Chrysostom (born before 350–407), famous preacher (*Χρυσόστομος* means golden-mouthed) and Archbishop of Constantinople, lay behind a law of August AD 399 prohibiting shows on Sundays (CTh. 2,8,23 Emperors Arcadius and Honorius), although public amusements were to continue (CTh. 16,10,17 Emperors Arcadius and Honorius).[23]

Ambrose and Augustine are well known for their efforts in arranging Church-state relations – the former through his long-standing political activity,[24] the latter due to his rich deliberations and studies at the time of the fall of the Roman state in the West,[25] and thus, above all, in the era of the loss of the Church's protection by secular power. With *De civitate Dei* (the "City of God", written AD 412–426), Augustine became the founder of the philosophy of history, although his work was apologetically directed towards the defense of Christianity in view of the capture of Rome by the West Goths in AD 410.[26] In this book – socially perhaps the most influential work of Augustine's – we can see that of particular importance is the presence in Augustine's considerations of the idea of justice. Much is made of it in Book 19, but highly significant appears to be an earlier passage, i.e. a remark from Book 4, chapter 4,4: *Remota itaque iustitia quid sunt regna nisi magna latrocinia? Quia et latrocinia quid sunt nisi parva regna? Manus et ipsa hominum est, imperio principis regitur, pacto societatis astringitur, placiti lege praeda dividitur. Hoc malum si in tantum perditorum hominum accessibus crescit, ut et loca teneat sedes constituat, civitates occupet populos subiuget, evidentius regni nomen adsumit, quod ei iam in manifesto confert non dempta cupiditas, sed addita inpunitas.* – "Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity."[27]

Augustine called *regna* but *magna latrocinia* – great robberies – when *iustitia* is lacking. But who would ensure justice and so enforce it? States are independent of one another, competing for dominance and defending their own estates. There is no one to settle

22 See F. Longchamps de Bérier, "*Audiatur et altera pars*. Eine fehlende Säuleninschrift am Warschauer Justizpalast und die Bedeutung der Parömie im polnischen Recht", in *Inter cives necnon peregrinos. Essays in honour of Boudewijn Sirks*, J. Hallebeek et al. eds. (V & R unipress, 2014), 429–442.

23 Chadwick, *The Church in Ancient Society*, 486.

24 J.-R. Palanque, *Saint Ambroise et l'Empire romain. Contribution à l'histoire des rapports de l'Église et de l'État à la fin du quatrième siècle* (E. De Broccard, 1933).

25 V. Giorgianni, *Il concetto del diritto e dello Stato in S. Agostino* (CEDAM, 1951).

26 F. Zaminer, "Augustinus, Aurelius (Augustine)", in *Brill's New Pauly Encyclopaedia of the Ancient World*, vol. 2, H. Cancik, H. Schneider eds. (Brill, 2003), 356.

27 Translation classical by Marcus Dods.

disputes between them, so they do it on their own by fighting each other. Roman jurists knew, as summed up by Diocletian's lawyer Hermogenianus, that as a consequence of *ius gentium* – the law of nations – *introducta bella, discretae gentes, regna condita, dominia distincta, agris termini positi, aedificia collocata*: "wars were introduced, nations differentiated, kingdoms founded, properties individuated, estate boundaries settled, buildings put up", just as, in the field of private law, from *ius gentium* there arose and became commonly enforceable marriage, commerce, sales, and contracts for services (D. 1,1,5). These latter contracts are subject to the authority of the Roman people, that is, to their magistrates or emperors, who will oppose any sort of *latrocinia*, and, specifically, will demand that for any *rapina* (robbery) a penalty of four times the value of the things seized is paid. However, the core issue here is one clearly captured by the ancient, skeptical question: *quis custodiet ipsos custodes*? – "who will guard the guardians?"[28] The Latin version of this saying comes from Juvenal, a Roman poet who lived in the first century AD. He was not a Father of the Church, nor was he even a Christian and he believed there was no authority above Caesar. But Jesus corrected this, adding that above Caesar there is, in fact, God Almighty, as seen in the command: *ἀπόδοτε οὖν τὰ Καίσαρος Καίσαρι καὶ τὰ τοῦ θεοῦ τῷ θεῷ* – "pay to Caesar what belongs to Caesar, but to God what belongs to God" (Mt. 22,21: in this sentence, the Greek conjunction *καὶ* means "but" rather than the usual "and"). After all, Caesar is in the hands of God and under his authority, and therefore belongs to him, and this is so even if the actual emperor was in fact a persecutor of Christianity, and of course not less so if he himself is a Christian. With regard to this question, Ambrose especially was aware of the dangers of hypothesizing that above the secular authority there is no other. He stressed that all authority must ultimately come from God and whatever authorities exist have been appointed by God, as was already emphasized by Paul of Tarsus in his letter to the Church in Rome (Rm. 13,1). However, it needed to be recognized that the world in which the governing authorities – who had to be obeyed – themselves act is a world created by God. Moreover, this creation is not understood as a single past act but as the continuous sustaining of the world in existence by God's creative will. That is why the comparison of the Creator to the Roman *pater familias* was so easily assimilated, for fatherhood was understood in Rome in a legal way and very broadly as the continuing power over and the care for all members of the family under his authority, including the descendants and the wife and the entire family property. He and only he was the subject of property rights and the actual ruler in the family – the owner, manager and administrator of what belonged to it. *Pater familias* has thus become a lasting symbol, a personification of dignified authority, of the power that not only gives life but also sustains life constantly. The ancients understood this especially well.

In addition to the idea of justice, we can recognize in the teaching of the Fathers of the Church the idea of reform. Important as this idea is for the Church, it is no less important for the law. It should be defined, with regard to its understanding in the patristic age, as "the idea of free, intentional and ever perfectible, multiple, prolonged and ever repeated efforts by man to reassert and augment values pre-existent in the spiritual-material compound of the world."[29] This reformist understanding leads to the creation by the Fathers of the Church of new keys of interpretation of the law in force, and of the setting of directions for its future changes and development.

By its very nature, the law, and especially private law, is able to change only to a limited extent[30] under the influence of philosophy or religion and to turn their *praecepta* into legal norms. Nevertheless, the law does serve the implementation of the values which are entrusted to it. Christianity as a religion of orthodoxy and not orthopraxy does not impose specific demands on the behavior of social life, as mentioned above, but insists, rather, on an inner attitude in which *homo* –

28 Juvenal, *Saturae* 6,347–348.

29 G.B. Ladner, *The Idea of Reform, Its Impact on Christian Thought and Action in the Age of the Fathers* (Harvard University Press, 1959), 35.

30 F. Longchamps de Bérier, "Evolution of Roman law", in *Research Handbook on Legal Evolution*, W. Załuski, S. Bourgeois-Gironde, A. Dyrda eds. (Edward Elgar Publishing, 2024), 155–158.

man – always sees himself in relation to God as his Creator and Redeemer. This relation involves a very special concept which Roman law introduced not only to our legal tradition but to our entire culture, i.e. *persona*, the individual person. We see how individualistic the *persona* is when we compare it to the Greek notion of *polis*, which was an urban society to which individuals were definitely subordinated. Augustine famously used the words *persona* and *homo* next to each other in a treatise on the Holy Trinity: *et in una quidem persona quod est homo* (*De Trinitate* 15,25,45) – "and in one person, such as is a man", but the ground for Augustine's deliberations was created by a Christian theologian who had lived much earlier, in the times of the Severan Dynasty. Tertullian, in a debate on the very same subject, used a distinction between 'essence' and 'person' in a purely legal mode. Though it is Gregory of Nazianzus who is remembered as the "Trinitarian Theologian", in fact a long time beforehand Tertullian had used his legal skills to clarify that in Jesus Christ there are two natures in one person, while in the Triune God are three persons of a single nature or essence. Later, at the beginning of the sixth century, the philosopher Boethius, in a work devoted to questions of faith in the face of Christological disputes, defined a person as *naturae rationabilis individua substantia* (*Contra Eutychem et Nestorium* 3,4) – "an individual substance of a rational nature." Boethius was just a little older than Justinian's compilers, close to them historically (though not geographically), and by identifying the Latin *persona* with the Greek *ὑπόστασις* – *hypostasis,*[31] he changed the received definition of the person in Christianity. As regards the person from the legal viewpoint, it was Hermogenianus, a pagan jurist of the age of Emperor Diocletian, who began the understanding of the law as concerning *homines* (D. 1,5,2), i.e. all human beings *qua* people – a concept which since the dawn of Rome had been present only in sacred law. The extension of this concept to all mankind was a proposal which did not go unnoticed by Justinian's compilers. They belonged to the elite of a society in whose local churches Christians included both freemen and slaves. The faithful were well aware of the differences in legal position between them and their co-religionists but were nevertheless to treat each other as brothers and neighbors,[32] seeing themselves and their other socially-different fellow-believers as a single group – the People of God. And they kept in mind what they were used to reading in the Bible – that the deepest identity, beyond any possible social status, of the Hebrew slaves who were brought out of Egypt was established and determined by the religious covenant with God on Mount Sinai. Christianity did not strive for radical changes to the legal order because it meant more to the people of the Covenant of Calvary to change the way they related to one another. They expected everyone, not just their fellow-believers, to see other people as subjects, not objects. Though this was not always the case in law, it was what they actually did aspire to socially.[33]

The Church Fathers, then, did not question the temporal order, which for them was almost exclusively that of the Roman-Hellenic world. Thus, private property was not questioned, although from the religious point of view of these masters of spirituality, long reflections might have been made about how detrimental to salvation the use of property could be, and how material goods, especially luxuries, are an obstacle to ascension to God. But the Fathers of the Church started from the idea of God as the true and absolute owner of all goods and this point of view did not annul the value and function of the right to property. Rather than questioning property itself, the Fathers taught a new approach to it – the important thing is not the very existence of private property but rather the intention behind owning it and hence the use one makes of it. Indeed, one has to have and make use of property

31 D. Deroussin, "Homo / persona. Archéologie antique de la personne", in *De la terre à l'usine: des hommes et du droit. Mélanges offerts à Gérard Aubin*, B. Gallinato-Contino, N. Hakim eds. (Presses Universitaires de Bordeaux, 2014), 460.

32 See F. Longchamps de Bérier, "The Status of a Bearer of Rights within the European Legal Tradition: the Tradition of Rome and Jerusalem – a Case Study", *Fundamina. A Journal of Legal History* 19 (2013), 356–360, 364–366.

33 F. Longchamps de Bérier, "Persona: bearer of rights and anthropology for law", in *Human dignity and law: studies on the dignity of human life*, J.M. Puyol Montero ed. (tirant lo blanch, 2021), 25, 41–42.

because it is created by God and therefore good, and this entails that legitimation of the right to property is based on the administration of goods in a sense of solidarity with others, and for this one must be free from attachment to the material goods one possesses.[34]

There were strong biblical bases for such views. Jesus did not question property *per se*, just as he did not promise, despite his death on the cross, the abolition of the death penalty as such and even though it was unjustly inflicted upon Jesus himself. Rather, with regard to material possessions, he would teach: *πῶς δυσκόλως οἱ τὰ χρήματα ἔχοντες εἰς τὴν βασιλείαν τοῦ θεοῦ εἰσελεύσονται* – "how hard is for those who have riches to enter the kingdom of God" (Mk 10,23). Commenting on this remark, Clement of Alexandria (ca. 150–ca. 215) wrote, around the year AD 203, a separate (and very beautiful) tract entitled "Who is the rich man that shall be saved?" Clement's rhetorical – and moral – point could be expressed in the question (11–16): how would we be able to do good for others if everyone owned nothing? To this question we can find an answer that is simple, eloquent, and summary (indeed in the form of a legal definition) in Isidore of Seville's *Etymologiae* (5,25,4): *bona sunt honestorum seu nobilium, quae proinde bona dicuntur, ut non habeant turpem usum, sed ea homines ad res bonas utantur* – "goods are the possessions of honorable or noble people, and they are called 'goods' (*bona*) for that reason, because they have no bad use, but people make use of them for good purposes (*ad res bonas*)." Isidore's words apply first and foremost to church property and to the duty to care for the poor, as Justin Martyr attested in his first apology (I *Apologia* 67). But they also apply to private property – a question for which a special challenge is offered by the issue of *slavery*.

The Fathers of the Church did not call for the abolition of slavery as such, just as Christianity did not demand the overthrow of an emperor who was persecuting Christians. There were no grounds for radicalism in the vision of the brotherhood of believers – of slaves and free people – that was spread by Paul in the New Testament Epistle to Philemon. In this letter, the Apostle implores Philemon to receive Onesimus, Philemon's fugitive slave, as "a beloved brother" (Phlm. 16; see Eph. 6,9; Col. 4,1). Both Paul and Peter urge slaves to obey their owners (Eph. 6,5–8; Col. 3,22–24; 1 Tim. 6,1; Titus 2,9–10; 1 Pet. 2,18), and to serve masters who were believers especially well (1 Tim. 6,2). Here we must quote Paul's remark: *δοῦλος ἐκλήθης, μή σοι μελέτω· ἀλλ' εἰ καὶ δύνασαι ἐλεύθερος γενέσθαι, μᾶλλον χρῆσαι* – "so, if when you were called, you were a slave, do not think it matters – even if you have a chance of freedom, you should prefer to make full use of your condition as a slave" (1 Cor. 7,21). This remark can be understood in two ways. On the one hand, Paul may be encouraging the use of slavery but it is more likely he is saying that Onesimus should take the opportunity to become free. The fulfillment of the first calling to one's own salvation is paramount and the social

Law is an essential social phenomenon and therefore a product of society's past, that is of the history of human relations, enshrining the experience and wisdom of society in both legal culture and legal tradition.

34 See L. Orabona, *Cristianesimo e proprietà. Saggio sulle fonti antiche* (Studium, 1964); A.M. Baggio, *Lavoro e dottrina sociale cristiana. Dalle origini al Novecento* (Città Nuova Editrice, 2005), 86–93.

status and condition takes a back seat with regard to this, though this does not mean that the status does not count at all. The convictions in this regard of the pastors of the early Christian Church are brilliantly captured in a passage from the letter of Ignatius to Polycarp of Smyrna (73–156): "Do not despise either male or female slaves, yet neither let them be puffed up with conceit, but let them rather endure slavery to the glory of God, that they may obtain from God a better freedom. Let them not long to be set free at the expense of the community, that they be not found slaves to their own desires" (4,3).

We must remember that with the advent of Christianity manual labor ceases to be dishonorable. That is why it was possible for the Christian empire to recognize slaves as people and yet continue with the private ownership of slaves. Not influenced by Christianity, in the early fourth century, the aforementioned pagan jurist Hermogenianus began to propound a different understanding of the position of slaves than that taught previously in Roman jurisprudence. He understood the position of the slave, as indeed that of the freeman, to be merely a *status* and not a *condicio* (as had always been asserted previously).[35] This is evidenced by a fragment of his work known to us from Justinian's Digest: *hominum causa omne ius constitutum sit* – "every law needs to be created for the sake of men" (D. 1,5,2). For Romans, freemen and slaves actually formed together a single group – one set of 'people' – and the lawyers did not expect to treat the world of slaves separately from the world of freemen. Roman citizens had in fact always been aware that transitions between the two groups were possible (though never easy). The text of Hermogenianus testifies to a new vision of man in the compilers working in the sixth century for Justinian I, the Christian Emperor, a vision which seems to have run in parallel with the changes in the perception of the position of men and women in Roman law. In this latter matter, however, there was still no legal equality, and transitions between the two groups were never considered at all possible (D. 1,5,9).

The early Christian Church, so very bound up, as it was, with Roman social structure, did not take up any revolutionary stance aimed at reforming or abolishing slavery. Instead, it worked out a new 'theoretical' attitude, one characterized by humanism. The Fathers whose discourse developed the doctrine regarding the patristic position toward slavery were Isidore of Pelusium (died ca. AD 450) in his letters (*Epistolae* 1,142), Augustine (*En. Ps.* 124, 7–8), and Theodoret of Cyrus (ca. 393–ca. 458) in his famous orations on Divine Providence (*De providentia* 7). Christian writers conform in the first place to the norms and conduct of the first teachers and propagators of their new religion. Consequently, far from preaching revolt or inciting servants against their masters, they seek, in the light of the new principles of Christian morals and with an affection equal to the nobility and holiness of their intentions, to recall both masters and servants to the exact and loving observance of their mutual duties. And they discuss these matters in commenting on those books of the New Testament where such duties are indicated and even commanded; they discuss it also in catechesis, special treatises, and sermons.[36] John Chrysostom in his "Homilies on First Corinthians" convincingly preached: "Are you in bondage to a man? Why, your master also is slave to you, in arranging about your food, in taking care of your health and in looking after your shoes and all the other things. And thou dost not fear so much less you should offend your master, as he fears lest any of those necessaries should fail you. 'But he sits down, while you stand.' And what of that? Since this may be said of you as well as of him. Often, at least, when you are lying down and sleeping sweetly, he is not only standing, but undergoing endless discomforts in the market-place; and he lies awake more painfully than thou" (19,6).[37]

The 'golden-mouthed one' admits that slavery is a binding state that is allowed by God's Providence and he accepts the power of a master over a slave who belongs to a Christian family. A slave should not rebel against his unjust situation but try to serve his master and family. And that is precisely because slaves are in nature free people and, like any other people, are

35 Longchamps de Bérier, "Hermogenianus", 79–80.

36 S. Talamo, "La schiavitù secondo i Padri della Chiesa", *Rivista Internazionale di Scienze Sociali e Discipline Ausiliarie* 37 (1905) No. 145, 3–26.

37 Translation classical by Talbot W. Chambers.

children of the same God. That is why Chrysostom demands that a slave be treated as a human being and his dignity respected. John Chrysostom suggests a new notion of a slave as a person who is good and obedient to his master, since, as Chrysostom believes, a change in the present negative stereotype will contribute to some improvement in the situation of the slave in real life, and over some time may even lead to the reform of the entire socioeconomic state system.[38]

called not for the abolition of the institution of slavery but for extirpation of the mentality which led to it.

Another issue in which a new interpretive key seems to emerge is that of abortion. It is a question of the understanding of the person, the law, and the range of possibilities for reform. Though undertaken mainly for his own rhetorical ends, Tertullian did refer to abortion when he wished to prove that Christian ethics were superior to those of pagans concerning the valuation of

Some of the Fathers of the Church, as lawyers, were well acquainted with the organization of the Roman society in which they lived, that is, with both private and public law.

The Christian understanding of slavery was that in the beginning it originated from the violence of man against man and was subsequently maintained by pride and by greed for profit. Against this, Christianity, by exalting moral freedom, waging war against vice, proclaiming the natural and moral equality of mankind, preaching the duty of fraternal charity, exhorting sacrifice and self-denial, effectively succeeded in honoring and eventually freeing the slave. Another cause of slavery was laziness, which motivated some people to give the most strenuous work to servants while they themselves took up the profession of arms or the exercise of public office; and in this area, too, Christianity, by condemning sloth, vituperating against idleness, ennobling and sanctifying manual labor, succeeded by this means in honoring the slave's work and, in the end, freeing him.[39] Thus, the Fathers of the Church, while demanding a fraternal relationship with every human being, regardless of his legal status or origin,

human life. He was the earliest Christian writer to argue against abortion at length, for up to this point abortion appears to have been a subsidiary issue for early Christian moral teaching. In the first place, there was no doubt that aborting the baby was placing the mother's life in danger. In place of abortion, in antiquity people preferred – and this became a serious social problem – to abandon and expose their unwanted young children. Tertullian's views on this question seem to have corresponded to the achievements of antiquity up to that time: he accepted the demographic reasons which convinced the Romans not to limit the size of their families by means of abortion, the Stoics' opposition to the practice of abortion, and also Musonius Rufus' convictions concerning the chief objects of marriage. Like the *Didache* (2,2) and the *Letter of Barnaba* (19,5), Rufus conceived of the unborn child as a being who was as equally deserving of assistance as an adult in need. Cicero and Tertullian would have agreed with Rufus that ending pregnancy was reproachable. The difference was that Tertullian might have argued that the abortion was indeed murder, while the pagan author Rufus would have considered it only *akin* to murder. The reason Christians rejected abortion, as a form of homicide, was out of respect for Scripture, and this

38 J. Duda, "Miejsce niewolników w rodzinie chrześcijańskiej według Jana Chryzostoma" (The Position of Slaves in the Christian Family according to John Chrysostom), *Vox Patrum* 29 (2009) No. 53–54, 259–270.

39 Talamo, "La schiavitù", 26.

was their sole fundamental difference from pagan anti-abortionists. But Tertullian's reference to the unborn child was simply as one of the many exempla he used in order to make a point in debate: the unborn was only discussed in order to support a broader argument.[40] Nevertheless, Tertullian thus began a line of argumentation which later, during the Christian empire, coincided with the perception of *nasciturus* already present in Roman law, where abortion was considered a breach of the public trust. It was in this way that the typical path of the Christian reform in this matter emerged when Emperor Constantine offered financial help to parents to prevent them from killing or abandoning their children due to poverty.[41]

6. Conclusion

The Church Fathers were not a homogeneous group. Nevertheless, for six centuries they constituted the true community of great Christian intellectuals stretching through time as a collective authorship, one which debated rather than dictated. It was through the works of these individual personages that Christianity matured, by means of their continuous, developing interpretation of the deposit of faith, i.e. by further interpretations of the existing interpretation constantly updated by the new generations of Fathers within the Christian community. One thing they certainly had in common was that they were not concerned with law as such. Though they necessarily had to settle the relations of Christians to the Mosaic law and morality, even then their pastoral activities and theological writings did not have the law at their center but rather the person of Jesus Christ and the faith, which they tried to understand and pass on to others in their own attempt to explain it. However, reflection on the revelation of the new covenant exerted its own influence on the late antique world in which it existed, which in turn introduced new keys for the interpretation both of the faith and of law within the two traditions of eastern and western Christianity.

The Fathers of the Church were concerned about theology and sometimes considered legal terminology and experience as a good background for developing the formulation and understanding of dogmas and of – their favorite – metaphoric interpretation of the Bible. As regards the temporal world, rather than questioning it the Fathers taught a new approach. In doing this, they did not avoid key social and legal issues such as property, slavery, the personal status of human beings, abortion, Church-state relations, and, above all, the understanding and realization of justice. Rather, they provided encouragement and lofty motivation for a Christian approach to living, both constructive and full of promise.

40 J. Barr, *Tertullian and the Unborn Child. Christian and Pagan Attitudes in Historical Perspective* (Routledge, 2017), 58, 150–166, 175.

41 W. Waldstein, "Quelleninterpretation und *status* des *nasciturus*", in *Status familiae. Festschrift für Andreas Wacke zum 65 Geburtstag*, (C.H. Beck, 2001), 513–529; G. Blicharz, "Why Justice Blackmun's Appeal to Roman Law to Justify Roe v. Wade is Wrong," *Harvard Journal of Law and Public Policy: Per Curiam* (2021), https://journals.law.harvard.edu/jlpp//?s=blicharz&x=0&y=0 (access: 28.12.2023).

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