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Christianity and the Discovery of Religious Freedom

Abstract

With its broad spectrum of cults and coexisting religions Graeco-Roman antiquity seems, at first glance, to be the embodiment of religious freedom. Yet, a closer analysis shows that a concept of tolerance or the idea of religious freedom did not exist. Political institutions could easily suppress religious practices that were regarded as offensive. Fighting against the oppression of Christians appears to have increased under the influence of oecumenical paganism during the reign of the Severans. In this time, the Christian thinker Tertullian discovered and articulated the concept of religious freedom. However, he did not do so emphatically and the concept was not very successful in antiquity. With the Christianization of the Roman Empire it disappeared soon, although its rediscovery in later epochs contributed heavily to the formation of the European norm of religious freedom.

Hartmut Leppin

Christianity and the Discovery of Religious Freedom*

Introduction

Religious tolerance is a normative concept of seminal importance for the self-perception of modern societies; freedom of religion features among the human rights stipulated in the Universal Declaration of Human Rights. Thus, both appear to be accepted as concepts of global importance based on a European tradition. Nevertheless, it is very difficult to define what the normative consequences of this concept are. In a minimalistic interpretation tolerance means that members, namely powerful members of a given society, agree to renounce on violence or suppression despite fundamental differences. Some modern philosophers would add that tolerance can or should also be based on mutual respect or even esteem.[1] Tolerance as a way of dealing with people that are disliked is deeply connected with the idea of freedom of religion, which, however, is an individual right. Their complicated, twisted history is a central narrative of progress in modern western historiography. As we shall see Graeco-Roman antiquity was formative for this concept, but in an intricate way.

Let me sum up the master narrative very briefly: The medieval ›Dark Ages‹, so we are told, were shaped by Christians suppressing whatever they perceived as heresy, sometimes by brutal force. With the protestant reformation freedom of confession was claimed, but also fought. Confessional wars broke out, which were often characterized by outbursts of cruel violence. After centuries of struggle and suppression and many failed attempts to find a solution, the idea of tolerance and the concept of individual religious liberty asserted themselves as a result of the Enlightenment and developed into a basic concept of European identity still held today.[2] Thus, religious liberty of the individual as well as governmental tolerance in regard to individuals and religious communities are among the achievements of European history that have been acquired during a long process of learning and every state that wants to join the European community is expected to ensure them.

The master narrative also makes passing reference to other societies who are attested to have »already« been tolerant, such as India under Ashoka in the third century BC; it also mentions the Moghul Empire under Akhbar in the 16th century, a time in which European states were divided by confessional wars. Another case in point seems to be pre-Christian Graeco-Roman antiquity, interpreted as the first step of European history. Classical antiquity was celebrated in various European societies when tolerance came to the fore; the freedom, the plurality, and the colorfulness of antiquity seemed to constitute a glittering contrast to gloomy Christian ages and the tolerance of polytheism shone magnificently against the backdrop of intolerant monotheism.

The pagan world indeed appears to be the embodiment of religious freedom. Every modern visitor to an ancient town will be overwhelmed by the variety of cult places for Jupiter, Juno, Serapis, the Great Mother, and other gods. They seem to coexist in complete peacefulness. It is still more impressive to see that Romans accepted and integrated cults of former enemies such as Isis, the Egyptian goddess who had been revered by the odious Cleopatra. The Romans did not even ban

* I am very grateful to Kai Preuß, Sophie Röder and especially to Egon Flaig for comments, Lisa Marie Wichern and Chris Rance for debarbarizing my English. This text is intended for a non-specialist readership and does not strive for completeness.

1 Garnsey (1984) 1. In contrast to Garnsey, Forst (2003) (= Forst [2013]), who pursues the theme from antiquity until modernity, underlines the importance of respect or estimation in concepts of tolerance; for the history of the concept cf. Besier / Schreiner (1990); Schlüter / Grötker (1999).

2 Csáky (1992); Heinig (2008); Tyrell (2010).

the cult of Mithras, a god of Persian background, although the Persian Empire was the prime enemy of Rome for centuries. [3]

Against this background, the Christianization of the Roman Empire seems to be a turning point: the plurality of ancient cults disappears; sanctuaries are destroyed or supplanted by churches, a Christian monoculture spreads over the Mediterranean world. Instead of ancient plurality prevailing, one religion that claims to possess the universal truth holds sway. [4] The Medieval Period, which, according to the traditional narrative, we understand to be the beginning of intolerance, commences.

It is therefore tempting to view tolerance [5] – or at least forbearance – as a hallmark of Graeco-Roman paganism, which seems to have conceded religious freedom to everybody; but this interpretation, which extols antiquity as a paradigm of a free society, is more problematic than it might seem at first glance. The practice of tolerance went as far as letting various cults coexist as long as there was no reason to suppress them, but there was no explicit concept of tolerance. Only with the spread of Christianity, which for various reasons could not simply coexist with other cults, the problem was conceptualized with two consequences: On the one hand freedom of religion was postulated as a fundamental right of humans. On the other hand the Roman state occasionally granted tolerance. This was only a short, but powerful moment in history that created concepts that would enrich European debates centuries later. [6]

The suppression of the Bacchanalia

There is no doubt that there were limits to religious freedom in Rome. Let me give just two examples that may illustrate the problem of so-called pagan tolerance. Our first example comes from the year 186 BC. It was an epoch when Rome had asserted itself as the predominant power in the Mediterranean world: the whole of Italy was under Roman control. Greece had been conquered and granted liberty by the successful Roman general Quinctius Flamininus. In reality this meant Roman control since under the label of liberty every Greek town was independent and hence forbidden to form alliances that might challenge Rome. Moreover, in 188 the great king of the Seleucid Empire, Antioch III, had been defeated. No rival power remained in the Euromediterraneum.

The honorable members of the Roman senate could be proud and feel safe, one might think, but they became nervous when they got notice of strange things taking place in Campania. This was a region where several prosperous towns existed, which were formally allied with Rome, but *de facto* depended on her. The strange incidents that worried the Roman senators were called *Bacchanalia*, the cult of Bacchus. Bacchus corresponded with Dionysus, the Greek god of wine who could also be identified with the traditional Roman god of Liber. In Campania something went wrong that forced the senate to intervene and issue new regulations in regard to this cult. They were engraved in a bronze tablet that has been preserved by chance: It was found in Tiriolo, a small Campanian town, where somebody decided to save this senatorial decree in an enduring form. [7]

From a modern point of view, it might come as a surprise that the Roman senate intervened at all. This, however, is characteristic of Roman society since it did not presuppose the idea that religion had to be protected against political intervention.

3 There is a vast amount of literature on ancient religion(s), see for example Ogden (ed.) (2007); Rives (2007); Rüpke (ed.) (2007); Linke (2014).

4 On the concept of Christianization(s) Leppin (2012).

5 Kahlos (2009) gives a rich overview about the discourses on tolerance in late antiquity. The book is fundamental for any further research on this topic, including this article. Kahlos distinguishes between forbearance as »an attitude of patience towards ideas, practices and persons of whom one disapproves« whereas toleration presupposes the incessant continuation of disagreement (8). Kötting (1977)

6 The word *tolerare* and its derivatives were not used in antiquity in the sense of tolerance; *tolerantia* means the ability to suffer steadfastly; cf. Cancik (2009) 335. Interestingly, the German *Grundgesetz* which underlines the importance of human rights and religious liberty (esp. GG Art. 4, Abs. 1 f.) does not use the word *Toleranz*.

7 Sources: Corpus Inscriptionum Latinarum I^2 581 (Inscriptiones Latinae Selectae 18); cf. Cicero, De legibus 2,37; the episode is also described by Livius 39.8–19, who, however, gives an account in the spirit of the time of Augustus and should not be trusted too much. Again, there is a lot of literature: Pailler (1988); Beard / North / Price (1998) 91–96; Takács (2000), underlining the political context; for the religious context Cazanove (2000a); Krauter (2004) 297–304, who rightly underlines that polytheistic societies are capable of religious persecution.

The citizens of a town were also a religious community and the religious organization depended on the political one. Public cults, *sacra publica*, were entertained by the state, the center of which was formed by the senate. Public institutions nominated the priests responsible for the cults. Major priests were at the same time high magistrates for whom the investment with the dignity of a priesthood formed an important step in their career. There existed no professional clergy; religious and political elites coincided to a high degree. [8]

Consequently, it was the duty of the political elites to preserve the *pax Deorum*, the peace with the gods, which was fundamental for the *salus rei publicae*, the welfare of the state. [9] The peace with the gods was first of all guaranteed by the correct performance of the *sacra publica*, ensured by the senate. It could be endangered by malpractices of groups and individuals. The *Bacchanalia* of Campania seem to have been regarded as a danger of this kind. Thus, there could be no doubt that the senate *had* to be involved.

In regard to religious tolerance, this means that with the exception of the *sacra publica* every cult was in a precarious situation since the Senate could feel obliged to intervene. The adherents of the *Bacchanalia* could not claim to have been allowed to practice their cult or to possess the fundamental right to do so. Their practices had been forborn, but now they were subject to regulations of the Senate in a way that is characteristic of civic religion in the Graeco-Roman world.

What did the senate decree? The central proposition is the following: *None of them shall seek to have a Bacchic shrine. But if there are some who say that it is essential for them to have a Bacchic shrine, they should appear before the urban praetor* (who was a high magistrate responsible for the inner peace) *in Rome, and our senate, when it has heard their case, should pass a decree on this matter, so long as no less than one hundred senators are present when the matter is considered.* [10] The first sentence seems to express a general prohibition that is cut back in the next. By defining a procedure, the senate admits a possibility to secure a place for the *Bacchanalia*. It is no coincidence that the decree begins with the organization of space. Locality was a central principle of most ancient religions. Certain gods could only be venerated at certain places.

Equally characteristic is the group of the people named in the next paragraph *not* quoted here: Roman citizens and people who held the Latin citizenship, which was a lesser form of Roman citizenship, or allies – various groups belonging in different ways to the complex political organization of Rome. The senate did not intend to pass a regulation that affected all human beings. Religious practices were indissolubly connected with the idea of citizenship in its highly differentiated expressions.

The next passage reveals what the decree is all about: *No man shall be a priest; no man or woman shall be a master. None of them shall seek to have money in common. No one shall seek to appoint either man or woman as master or acting master, or seek henceforth to exchange mutual oaths, vows, pledges or promises, nor shall anyone seek to create mutual guarantees. No one shall seek to perform rites in secret, nor shall anyone seek to perform rites in public or private or outside the city, unless he has approached the urban praetor and is given permission with a senatorial decree, so long as no less than one hundred senators are present when the matter is considered.* [11]

This paragraph exhibits the same structure as the first: A general prohibition is attenuated by the ensuing remarks that show the senators would not accept the emergence of a new religious associa-

8 The importance of public cults does not exclude processes of individualisation that are for example visible in mystery cults.

9 For this concept Noethlichs (2006) 116.

10 l. 3–9: *Neiquis eorum [B]acanal habuise velet. seiques esent, quei sibei deicerent necesus ese Bacanal habere, eeis utei ad pr(aitorem) urbanum Romam venirent, deque eeis rebus, ubei eorum v[e]r[b]a audita esent, utei senatus noster decerneret, dum ne minus senator[i]bus C adesent, [quom e]a res cosoleretur. Bacas vir nequis adiese velet ceivis Romanus neve nominus Latini neve socium quisquam, nisei pr(aitorem) urbanum adiesent, isque [d]e senatuos sententiad, dum ne minus senatoribus C adesent, quom ea res cosoleretur, iousisent* Translations by Beard / North / Price (1998).

11 L. 10–18: *sacerdos nequis uir eset. Magister neque uir neque mulier quisquam eset. neve pecuniam quisquam eorum comoine[m h]abuise velet. Neve magistratum, neve pro magistratu[d], neque virum [neque mul]ierem qui[s]quam fecise velet. Neve post hac inter sed conioura[se nev]e comvovise neve conspondise neve conpromesise velet, neve quisquam fidem inter sed dedise velet. Sacra in [o]quoltod ne quisquam fecise velet. Neve in poplicod neve in preivatod neve exstrad urbem sacra quisquam fecise velet, nisei pr(aitorem) urbanum adieset, isque de senatuos sententiad, dum ne minus senatoribus C adesent, quom ea res cosoleretur, iousisent.*

tion. The traditional order has to be preserved, in regard to gender as well as to political organization. Secret rites are generally forbidden and other practices are subject to approval by the senate.

There was a name for religious deviance, *superstitio*, which lives on in the English word superstition. The meaning of the Latin term that indicates excessive fear of the gods includes foreign cults in a derogatory sense. They could be suppressed since they were regarded as dangerous for the whole society. [12] The decree, however, does not use this word to disparage the *Bacchanalia*. The regulations for the *Bacchanalia* decreed by the senate were not based on the idea that the cult was false; the notion of true religion did not come in. The senate envisaged only those effects of a certain cult that might be dangerous to society. Consequently, there is no hint that its members intended to eliminate the *Bacchanalia*; the whole set of measures is only about restrictions. [13]

This is again characteristic of the religious situation in Rome. We know of a number of prohibitions of religious practices. Acts like these are not denounced as scandalous by our sources, but mentioned as something that occurs and has to occur under certain circumstances. [14] Yet, these measures never aim at the complete elimination of deviant religious groups as they enacted only constraints. One famous exception might be adduced: the destruction of the temple of Jerusalem in 70 AD under Vespasian: But there is no indication that the emperor planned to eradicate Jewish cult practices, which he supported otherwise. He probably only wanted to destroy this sanctuary in order to leave no doubt over his smashing victory and to demolish a building that had also served as a military bulwark. [15]

There are more details in the senatorial verdict against the *Bacchanalia* that I will pass over since the picture is clear: the honorable members of the Roman senate had issued a decree that took into account what was important for Roman religion. Moreover, they had successfully asserted their right to intervene in the affairs of this kind in Italy, which was of the highest importance in terms of politics. [16] They could be proud of themselves – as they liked to be.

The decree on the *Bacchanalia* allows practicing a certain religious cult. This was, however, not perceived as an individual right, but as a political concession. Nevertheless, it proved difficult for the senate to couch this adequately. They begin with a general prohibition, only to cut it back in the next sentence: on the basis of a petition to the *praetor urbanus* the senate can allow exceptions. These circumstantial handlings were probably necessary: obviously, complete liberty to organize religious practices existed in principle. But this was not said explicitly nor defined as an entitlement guaranteed by any law or institution and could be abolished by the senate, which was then also entitled to make exceptions.

Ironically, the position of the adherents of Bacchus had seemingly improved: if the senate agreed, they could now claim that they had the right to conduct their rituals. As a philosopher in the tradition of the Frankfurt School of Critical Theory Rainer Forst distinguishes four conceptions of tolerance. [17] The weakest (and perhaps historically most important one) is tolerance of permission. This is the case when an authority or a majority permit a minority to live according to their convictions as long as they do not question the political order. The most famous case is that of the Edict of Nantes of 1598 that allowed the Huguenots freedom of worship until it was revoked by the Edict of Fontainebleau in 1685. This weak form of tolerance was what had been achieved in 186 BC,

12 Cicero, De natura Deorum 1.117; Nagy (2002) (in regard to Christians); Rüpke (2011a) 9–14 and 49–76; for the treatment in law s. for example Digesta 48.19.30 (Marc Aurel). The suppression of the Celtic Druids (Plinius, Naturalis historia 30,15; Suetonius, Vita Claudii 255) should be interpreted in this context. The destruction of sanctuaries as narrated in Tacitus, Annales 14,30 is the reaction to military resistance supported by Druids.

13 It is difficult to say whether the regulation of the cult of Dionysus (Corpus des ordonnances des Ptolémées 29 = Berliner Griechische Urkunden VI 1211 = Sammelbuch III 7266) by Ptolemy IV (222/1 – 204 BC) should be connected with this event; cf. Huss (2001) 454–456.

14 See for example Takács (1995) 56–70; Donaldson (2003) 120 f. and 131 f. Other restrictions of cults are discussed in Robinson (1995) 357–358. Rüpke (2013) discusses *meta-religious* concepts in order to deal with religious plurality in the Roman Republic.

15 Rives (2005).

16 Takács (2000); Cazanove (2000b) (for the meaning of *foederati* in this context).

17 Forst (2003) 42–48.

but interestingly only on the basis of a prohibition that had to precede the permission. This is quite a different concept of tolerance than in early modern Europe. On the other hand, there was no general ban on foreign or on new cults in Rome explicitly, be they introduced by the state or by private agents.[18] With the growing complexity of society the Romans had a choice beyond and in addition to the civic cults, a situation that has been compared to a market.[19] Individuals could combine various cults; they could feel attached to several gods and practices without being forced to give a preference to one of them. What might be called tolerance went so far. But they had no right to religious freedom and there was no law guaranteeing the toleration of cults.

The persecution of Christians

As it is impossible to trace the whole range of ramifications of the problem here,[20] we have to move on in time rapidly, to the year 250 AD, more than 400 years after the regulation of the *Bacchanalia*. The Roman Empire had grown; the Republic had turned into a stable monarchy that seemingly retained most of the Republican traditions in regard to religion. But now, in the mid third century, Rome was under attack on various borders and the state reacted in an imposing way. In 250, during the first year of the reign of Emperor Decius, a certain Aurelia Bellias, daughter of Peteres, and her daughter, Kapinis, appeared before the commission in charge of the sacred victims and sacrifices in the Egyptian village of Theadelphia. They assured the jury that they had constantly sacrificed; now they poured a libation, sacrificed and ate from the victim before the eyes of the commission; finally, they asked for the certificate that documented this. The commission, consisting of Aurelius Serenus and Aurelius Hermas, did its duty and released the certificate on a papyrus. A certain Hermas signed it in person, as one may decipher on the papyrus that has survived in the dry conditions of the Egyptian desert, an inconspicuous testimony of a dramatic period.[21]

Certificates of this kind are only known from the reign of Decius (249–251), who had, it appears, ordered all Roman citizens to conduct sacrifices to pagan gods. They bear testimony to a highly unusual measure that nevertheless is the consequence of significant developments in Roman religious history. We do not know exactly what the Edict of Decius entailed, but there can be no doubt that the sacrifices were supposed to placate the gods, to restore *pax Deorum*.[22] Since those living in the 3rd century experienced a military crisis and were used to interpreting crises as expressions of divine wrath, an answer in terms of religion suggested itself.

It is unclear whether Decius intended to persecute Christians; perhaps he only wanted to stage an impressive manifestation. But the Christians could not help but interpret this as a persecution: it was widely known that Christians declined to offer sacrifices because of their religious convictions. They believed only in one true God, who forbade the cult of any other divine being, and they claimed the right to decide themselves which belief was true instead of relying on tradition and political authorities. Some Christians had been punished for their defiance of traditional practices, but there had never been a systematic persecution before, except for certain local events such as the persecution in Lyon under Marcus Aurelius (161–180).[23] Under Decius, many Christians – but not all of them – refused to sacrifice and were duly punished, often executed. This was a short thunderstorm and with the death of Decius in 251, the obligatory sacrifices seem to have come to an end.

The interpretation of the episode is controversial: even if the persecution of Christians that resulted from Decius' edict was intentional, one thing is clear: Decius did not take measures to eliminate Christianity. He only wanted the Chris-

18 Cf. Digesta 47.22.1.1 (Marcianus).
19 For the market place model and its limitations see e. g. North (1992).
20 Arena (2011) 149–159 gives a useful sketch of the history of the problem of religious restrictions during the late Republic against the background of the Roman idea of *libertas*.
21 Papyrus Oxyrhynchus IV 658.
22 Rives (1999); Bleckmann (2006), who underlines the act of loyalty to the emperor which was also connected to this sacrifice.
23 Eusebius, Historia ecclesiastica 5.1.

tians to offer sacrifices. He did not destroy Christian buildings, he did not imprison clerics systematically, and he did not burn their scriptures – provisions that would be taken later by other rulers. Perhaps he did not even sense that numerous Christians felt they were being hit hard by his edict since there had been Christian participation in public festivals in the past, which by necessity also had pagan implications. [24]

Decius' edict on the sacrifices was outrageous not only for Christians of antiquity, but also from a modern point of view. People were forced to conduct a religious ceremony. But the obligation to participate in civic cults had always been customary in classical societies because the *pax Deorum* had to be maintained. We know of several laws from various towns from Hellenistic times that ordered all citizens to join in certain processions or festivals. Some even regulated the attire to be worn by the participants. [25] But these phenomena must again be interpreted against the background of civic religion. The participation was the consequence of holding the status of citizen. As long as this was perceived as an honor, the problem of constrain did not come in. Perhaps some people were negligent and preferred to stay at home, which necessitated the ruling of those laws, but there could be no doubt that citizens as a religious community had to take part in those festivals; the laws were an appeal to civic responsibility. For non-citizens, they were of no relevance.

Under the principate, Roman religion was confronted with new challenges. With the expansion of the Roman Empire now spanning over hundreds of cities, things changed gradually. In principle, all the inhabitants of the empire were expected to take part in sacrifices although there was no imperial organization of sacrifices. Christians notoriously refused to do so, even under the pressure of capital punishment. An anxious letter to the emperor Trajan (98–117) written by the unnerved governor of Bithynia and Pontus, Pliny, illustrates how difficult it was to deal with those recalcitrant people who declined any sacrifice. The emperor enjoined capital punishment for those who continued in their attitude, but ordered not to search for them systematically. [26] Although the emperor disapproved of organized enforcement, the obligation remained with everybody.

The principate brought a new religious phenomenon: The cult of the emperor that grew from several roots had begun under Augustus and steadily gained in importance. It was an oecumenical cult since it comprised every inhabitant of the empire; even slaves were expected to take part. [27] Furthermore, various practices and cults grew more similar. The result has been called *Reichsreligion* (imperial religion). [28] The emergence of this should be seen within the context of Romanization, the expansion of Roman urban statutes and the growing diffusion of cults in the peaceful empire with its excellent means of communication. This resulted in a certain degree of religious homogenization. *Reichsreligion* did not, however, constitute a compact system of doctrines; there was no imperial priesthood spanning the whole empire. The emperor was *pontifex maximus*, but this role affected only Roman cults. *Reichsreligion* was not an imperial organisation, but the result of a process of assimilation that originated in various parts of the empire, not only in Rome.

When Caracalla (211–217) bequeathed citizenship on almost all inhabitants of the Roman Empire with the *Constitutio Antoniniana*, the empire was transformed into a kind of *polis*. Consequently, he requested all the new citizens to cele-

24 This seems to be implied in Tertullian, De idololatria 13. But he does not decry Christian participation in sacrifices.

25 See e. g. Inscriptiones Graecae XII 9.192 = Sylloge Inscriptionum Graecarum^3 323,5–6 = Sokolowski, Supplément 46,6–8 = Supplementum Epigraphicum Graecum 40,75810–13 (Eretria, 3./2. c. BCE); Orientis Graeci Inscriptiones Selectae 219,20 f.= Inschriften von Ilion 32,30–32 (Ilion, 3./2. C. BCE; cf. Supplementum Epigraphicum Graecum 41,1053); Inschriften von Priene 507 = Orientis Graeci Inscriptiones Selectae 222 = Inschriften von Erythrai 504,34–36 = Supplementum Epigraphicum Graecum 41,988 (Clazomenae; 268–262 BCE); Inschriften von Priene 11,21 f. (about 297 BCE). The same holds true for the *supplicationes* in Rome, cf. Hahn (2007) 238. See in general for the problem of compulsivity in Greek and Roman religions before the principate Krauter (2004) 230–325 with the important review by Stavrianopoulou (2007).

26 Plinius minor, Epistulae 10.96–7. Still fundamental Robinson (1995).

27 Fishwick (1987–2004); Gradel (2002); Cancik / Hitzl (eds.) (2003); the perception of the emperor as god has been underlined by Clauss (1999).

28 Rüpke (2011b).

brate with him.[29] The Roman Empire had turned into a gigantic cultic community – with the exception of some stubborn Christians and Jews who nevertheless enjoyed the interest of the imperial family.[30] This form of paganism, which affected the whole *oikoumene* and the civilized world of that time, might be called oecumenical paganism.[31]

Speaking about freedom of religion

Oecumenical paganism, if understood in this sense, did not suspend the principle of religious locality, but it went beyond the borders of locality and of specific cults. The concept of religion had thus broadened and gained a more generalized character. It was in this historical context that the discourse on religious freedom came to the fore and the phrase *libertas religionis*, freedom of religion, was used or better: is attested for the first time in history. This Latin phrase had, as far as I can see, no precedence in Greek; in fact, it seems to have been the invention of the Latin-speaking culture.

The first author we know of to use this phrase was Tertullian, a Christian from Carthage who had received an excellent education in law and who was a prolific writer. He did not occupy an office in the church. Instead, his authority was based on several rhetorically brilliant texts that discuss the relationship between Christians and their social environment with the intention to strengthen the barrier between Christians and pagans. In 197, several years before the *Constitutio Antoniniana*, he composed an apology formally addressed to the Roman governor that laments attacks on Christians. Having shown that the pagan gods are only demons he goes on in a seemingly generous way: *Let one man worship God, another Jove; let this man raise suppliant hands to heaven, that man to the altar of Fides; let one (if you so suppose) count the clouds as he prays, another the panels of the ceiling; let one dedicate his own soul to his god, another a goat's. Look to it, whether this also may form part of the accusation of irreligion – to do away with freedom of religion, to forbid a man choice of deity, so that I may not worship whom I would, but am forced to worship whom I would not. No one, not even a man, will wish to receive reluctant worship*.[32]

Tertullian speaks about freedom of religion that expresses itself in multifarious religious practices and which one could also translate as ›freedom of worship‹. It is not a right conceded by the state, but a consequence of the will of the gods to be worshipped properly.[33] The question of doctrine, so typical for Christians, is not addressed by Tertullian here, which does not mean that he was unaware of the problem. But in this passage he is discussing what used to be done in his environment and these were mostly traditional rituals. Tertullian observes the variety of rituals that in part seem odd, and claims for the Christians the same freedom to worship their god that the others possessed.

The concept of religious freedom cannot have been completely new. Tertullian expects his audience to understand what he means. It was widely held that worship is only acceptable if performed willingly. This goes back to Stoic conceptions of ethical actions that are expected to be autono-

29 Papyrus Gissensis 40 I, 3–8. The Severan author Cassius Dio puts a speech in Maecenas' mouth that is in fact a theory of monarchy. According to him, the emperor should force his subjects to practice religion in a traditional way and ban foreign cults (52,36,1f); for the Severan background s. Manuwald (1979) 21–25.

30 See Roberto (2011).

31 I take this word (*oikoumenikós* in Greek) from the organization of the participants in Greek competitions (agônes), see Millar (2001) 456–463; Schwertheim / Petzl (2006); but see also Aelius Aristides, In Rome 10 f.

32 Tertullian, Apologeticum 24.5 *[5] Colat alius deum, alius Iovem; alius ad caelum manus supplices tendat, alius ad aram Fidei manus; alius (si hoc putatis) nubes numeret orans, alius lacunaria; alius suam animam deo suo voveat, alius hirci. [6] Videte enim, ne et hoc ad irreligiositatis elogium concurrat, adimere libertatem religionis et interdicere optionem divinitatis, ut non liceat mihi colere quem velim, sed cogar colere quem nolim. Nemo se ab invito coli volet, ne homo quidem*. Transl. by T. R. Glover; see now the extensive commentary by Georges (2011) 409–411; see also Bélanger (1985) (for the context in Tertullian's œuvre), and Arena (2011) 160–163 for the implications of *libertas*. For the comparison with Jewish ideas cf. Stroumsa (1998).

33 Tyrell (2010) 212, underlines that the problem is defined by the *Nachfrageseite*. This essay is also an impressive introduction into the question of the renaissance of religious liberty in the early modern history of the occident (esp. 242–248).

mous;[34] but Tertullian is the first thinker we know of to interpret this as an argument for freedom of religion in a general sense. He wants the Christians to be allowed to do whatever they deemed right in religion. In a treatise composed 15 years later, in 212, while not picking up the phrase *libertas religionis*, he repeats the argument that religion should be practiced willingly and defines this even as *ius humanum*. The translation of this phrase as human right is suggestive (and by no means false), but it gives the wrong impression that Tertullian bases his reasoning on a consistent concept of human rights that developed much later. Nevertheless, the idea that this right should be regarded as something that was beyond political control had been articulated.[35]

The other claim in Tertullian's text, not to differentiate between Christians and others in religious questions, was by no means new. A generation earlier, under Marcus Aurelius, the Christian apologist Athenagoras of Athens had already underlined that all the various peoples of the empire were allowed to follow their traditions, except for the Christians.[36] This was a plea of tolerance in the traditional sense: Christians were to be regarded as an ethnos, a nation, as others were, namely the Jews.[37] One could term this attitude ethnic tolerance. The necessity to act in this sense must have seemed self-evident for many people in ancient society. Already Herodotus had reflected the diversity and the similarity of the cults in various ancient groups. Most of them could be interpreted as mutually inclusive against the backdrop of the idea of *interpretatio Graeca sive Romana*. Jews were different. Even if they were justified by the age of their tradition, Christians could feel entitled to claim a similar position.

With oecumenical paganism, which was beyond ethnic concepts, the terms of trade had changed. Consequently, Tertullian had to articulate a plea that was more general in character, *libertas religionis*. There is one thing in this episode that harks back to the *Bacchanalia* affair: Religious freedom is something that seems to simply exist. It can be taken away (*adimere*), but this is against the will of the gods. Tertullian's argument is not based on the idea of the protection of the individual from religious coercion. Rather, he asks the rhetorical question whether the being adored will like to be worshipped unwillingly. This means that the rituals will not work. Therefore, taking away religious freedom is a kind of sacrilege or irreligion. He called it *irreligiositas*, a word that he might have invented himself. Tertullian focuses on the success of religious practices, not on personal freedom. Moreover, the concept is not central to Tertullian's argument; it is not even the climax since he afterwards highlights that the absurdities of Egyptian and other foreign cults are allowed, but not the cult of his only true god.

One could even make a more radical proposition, which might sound cynical at first: religious freedom was not interesting for Christians since persecutions offered an exciting alternative, martyrdom. Christians who were killed because of their belief were regarded as holy. In a strictly Christian sense this was better than simply continuing to live. Tertullian's request is therefore not a wholehearted plea for intellectual freedom in the sense of Marquis Posa in Schiller's *Don Karlos*, it is rather a rhetorical device to show the inconsistency of pagan religious politics in his times. But the fact that the idea had been articulated is important in itself because the idea was in the world and could be used in a more general sense.

Considering these points, it comes as no surprise that *libertas religionis*, which was to have a great history in later epochs, was not a groundbreaking concept in antiquity. Tertullian's phrase remains isolated. Other writers did not return to it for a long time. Only decades later, at the beginning of the 4th century, another Christian thinker, Lactantius, discussed the question of religious freedom. Although he does not use the phrase of *libertas religionis*, he speaks about *libertas* several times in the context of religion, underlining that

34 Cancik (2005) 98 f.
35 Tertullianus, Ad Scapualm 2.2; cf. Cancik (2009).
36 Rives (2009); Kahlos (2009) 21 f.
37 Cf. the successful speech of Nicolaus of Damascus before Agrippa in defense of the religious rights of Jews, Flavius Iosephus, Antiquitates Iudaicae 16.31–57, esp. 35 f. and 41 f.; for forbearance towards Jews Kahlos (2009) 14–19.

true religion is only possible if it is voluntary and not enforced. Lactantius is more elaborate than Tertullian, but again religious freedom is not defined as a value in itself, but as an argument to highlight the futility of violence in the field of religion.[38] Passages such as those might work as a justification of religious plurality, even if Lactantius is convinced that there was only one true religion. His plea, however, is primarily an argument against religious persecution as suffered by the Christians in those days and not the master plan for establishing a tolerant society. He did not find an intellectual successor in antiquity.

A window of opportunity?

Nevertheless, by the time Lactantius was writing Christians had experienced decades of peace that had put an end to the persecution of Christians initiated by Valerianus in 257. Whereas the anti-Christian intention of Decius' measures had remained unclear, this persecution turned against Christians deliberately, focusing on meeting places, Christian functionaries and members of the upper orders who had converted to Christianity.[39] Only three years later Valerian was captured by the Persians – the ultimate humiliation for a Roman leader – and his son and successor Gallienus stopped the persecution, apparently allowing everybody to do what suited their tradition (*tà ex ethous epiteleîn*). Since tradition was fundamental for ethnic identity, the emperor seems to subscribe to the concept of ethnic tolerance. The church historian Eusebius calls the result freedom (*eleuthería*), but restricts his comments to the restitution of Christian property.[40]

Some forty years later Diocletian launched a systematic persecution of Christians that was to last several years. This is the time when Lactantius pinned down his ideas about religious freedom. At the end of this persecution in 311 a formal edict was issued by the tetrarchs, among them Galerius whom Christians, most polemically Lactantius, regarded as the key figure in the persecution. Diocletian himself had abdicated before. Let us take a closer look at it: *Among other arrangements which we are always accustomed to make for the prosperity and welfare of the republic, we had desired formerly to bring all things into harmony with the ancient laws and public order of the Romans, and to provide that even the Christians who had left the religion of their fathers should come back to reason; since, indeed, the Christians themselves, for some reason, had followed such a caprice and had fallen into such a folly that they would not obey the institutes of antiquity, which perchance their own ancestors had first established; but at their own will and pleasure, they would thus make laws unto themselves which they should observe and would collect various peoples in diverse places in congregations.* We are still in the middle of a long Latin sentence, nevertheless, I will allow myself an interjection, as Galerius is describing exactly what was specific about Christianity: Christians claimed to make their own decisions even if those choices went against tradition.[41] In contrast to the suggestion in Gallienus' order Christians are not interpreted as representatives of a tradition. Galerius pursues his lament forcefully:

Finally when our law had been promulgated to the effect that they should conform to the institutes of antiquity, many were subdued by the fear of danger, many even suffered death. And yet since most of them persevered in their determination, and we saw that they neither paid the reverence and awe due to the gods nor worshipped the God of the Christians, in view of our most mild clemency and the constant habit by which we are accustomed to grant indulgence to all, we thought that we ought to grant our most prompt indulgence also to these, so that they may again be Christians and may hold their conventicles, provided they do nothing contrary to good order. But we shall tell the magistrates in another letter what they ought to do. Wherefore, for this our indulgence, they (sc. the Christians) ought to pray to their God for our safety, for

38 Lactantius, Institutiones divinae 5.19–21, esp. 19.11 (cf. 5.13 on the boost of the Christian religion thanks to persecution); Epitome 49; Depalma Digeser (1998) esp. 142 f.; Walter (2006) 306–319. There is a similar argument in the contemporary author Arnobius, Adversus nations 2.65, cf. Kahlos (2009) 48 f., who, however, does not use the phrase *libertas religionis*.

39 Schwarte (1989); Glas (2014).

40 Eusebius, Historia ecclesiastica 7.13.

41 But Manicheans, who are unfortunately neglected in this article, posed a similar problem, see the wording *pro arbitrio suo* in an anti-manichean law by Diocletian (Mosaicarum et Romanarum legum collatio 15.3.3 = Fontes Iuris Romani Anteiustiniani II^2 580).

that of the republic, and for their own, that the republic may continue uninjured on every side, and that they may be able to live securely in their homes. [42]

This edict does not proclaim toleration in general, but grants it to the Christians solely as an act of indulgence. It is not about individual religious freedom as a personal right even if Christians now enjoyed the freedom to pray to their God. The emperor's reasoning is remarkable: it would have been a better result of the persecutions if all Christians had returned to the old customs. Since this was not possible, they should at least revere their own god – this thought is obviously based on the concept of *pax Deorum*. And Galerius saves face by enjoining *something* to the Christians, to pray for the emperor and the state (which they claimed to do anyway). But as the senate had done 500 years before Galerius feels entitled to set rules that affect what we would regard as the inner affairs of a religious community. Consequently, Galerius did not extol the worth of religious freedom, but accepted what was unavoidable, perhaps he even felt obliged to justify his measures before the traditionalists.

Two years later, in 313, when Galerius was dead and Constantine the Great and Licinius had become rulers of the whole empire, they met at Milan to discuss the consequences of the end of the persecution. Their agreement, which is here addressed to a governor, begins in a high tone: *When I, Constantine Augustus, as well as I, Licinius Augustus, fortunately met in Milan, and were considering everything that pertained to the public welfare and security, we thought –, among other things which we saw would be for the good of many, those regulations pertaining to the reverence of the Divinity ought certainly to be made first, so that we might grant to the Christians and others full authority to observe that religion which each preferred; whence any Divinity whatsoever in the seat of the heavens may be propitious and kindly disposed to us and all who are placed under our rule. And thus by this wholesome counsel and most upright provision we thought to arrange that no one whatsoever should be denied the opportunity to give his heart to the observance of the Christian religion, of that religion which he should think best for himself, so that the Supreme Deity, to whose worship we freely yield our hearts may show in all things His usual favor and benevolence. Therefore, your Worship should know that it has pleased us to remove all conditions whatsoever, which were in the rescripts formerly given to you officially, concerning the Christians and now any one of these who wishes to observe Christian religion may do so freely and openly, without molestation. We thought it fit to commend these things most fully to your care that you may know that we have given to those Christians free and unrestricted opportunity of religious worship. When you see that this has been granted to them by us, your Worship will know that we have also conceded to other religions the right of open and free observance of their worship for the sake of the peace of our times, that each one may have the free opportunity to worship as he pleases; this regulation is made we that we may not seem to detract from any*

42 *Lactantius, De mortibus persecutorum 34: Inter cetera quae pro rei publicae semper commodis atque utilitate disponimus, nos quidem volueramus antehac iuxta leges veteres et publicam disciplinam Romanorum cuncta corrigere atque id providere, ut etiam Christiani, qui parentum suorum reliquerant sectam, ad bonas mentes redirent, 2 siquidem quadam ratione tanta eosdem Christianos voluntas invasisset et tanta stultitia occupasset, ut non illa veterum instituta sequerentur, quae forsitan primum parentas eorundem constituerant, sed pro arbitrio suo atque ut isdem erat libitum, ita sibimet leges facerent quas observarent, et per diversa varios populos congregarent. 3 Denique cum eiusmodi nostra iussio extitisset, ut ad veterum se instituta conferrent, multi periculo subiugati, multi etiam deturbati sunt. 4 Atque cum plurimi in proposito perseverarent ac videremus nec diis eosdem cultum ac religionem debitam exhibere nec Christianorum deum observare, contemplatione mitissimae nostrae clementiae intuentes et consuetudinem sempiternam, qua solemus cunctis hominibus veniam indulgere, promptissimam in his quoque indulgentiam nostram credidimus porrigendam. Ut denuo sint Chrsitiani et conventicula sua componant, ita ut ne quid contra disciplinam agant. 5 <Per> aliam autem epistolam iudicibus significaturi sumus quid debeant observare. Unde iuxta hanc indulgentiam nostram debebunt deum suum orare pro salute nostra et rei publicae ac sua, ut undique versum res publica praestetur incolumis et securi vivere in sedibus suis possint.* Translation according to http://www.fordham.edu/halsall/source/edict-milan.asp; for the Greek version cf. Eusebius, Historia ecclesiastica 8.17.6–10.

dignity or any religion.[43] It is the first time in history that rulers expressly concede general and unqualified religious freedom[44] – although Gallienus' edict might have sounded similar. The text is imbued by the rhetoric of liberty and decision. But it is quite different from what modernity considers as freedom of religion: The main reason for the rulers to grant freedom is peace, not the idea of an entitlement of individuals to religious freedom. And it is peace of our times, as they say; this is not a law that is based on fundamental norms, but an agreement that answers to current problems. The ensuing paragraphs of the text are dedicated to regulations about Christian property that had been seized during the persecutions.

On a practical level the agreement of Milan offered solutions for disputes about property rights that had emerged from the persecutions. Nevertheless, the edict stands out as a sign of how far Romans could go politically in regard to religious freedom. But it did not develop into a fundamental principle of the late antique state. It is an isolated example more cherished by later generations than by contemporaries.

In the eastern part of the empire Maximinus Daia, a tetrarch who seems to have lent his support to a renaissance of pagan cult,[45] granted tolerance to Christians after the issue of the Galerius edict, but with restraints. Among them the following stands out: Reacting to complaints about Chris-

43 *Lactantius, De mortibus persecutorum 48: Cum feliciter tam ego [quam] Constantinus Augustus quam etiam ego Licinius Augustus apud Mediolanum convenissemus atque universa quae ad commoda et securitatem publicam pertinerent, in tractatu haberemus, haec inter cetera quae videbamus pluribus hominibus profutura, vel in primis ordinanda esse credidimus, quibus divinitatis reverentia continebatur, ut daremus et Christianis et omnibus liberam potestatem sequendi religionem quam quisque voluisset, quod quicquid <est> divinitatis in sede caelesti nobis atque omnibus qui sub potestate nostra sunt constituti, placatum ac propitium possit existere. 3 Itaque hoc consilium salubri ac recticissima ratione ineundum esse credidimus, ut nulli omnino facultatem abnegendam putaremus, qui vel observationi Christianorum vel ei religioni mentem suam dederet quam ipse sibi aptissimam esse sentiret, ut possit nobis summa divinitas, cuius religioni liberis mentibus obsequimur, in omnibus solitum favorem suum benivolentiamque praestare. 4 Quare scire dicationem tuam convenit placuisse nobis, ut amotis omnibus omnino condicionibus quae prius scriptis ad officium tuum datis super Christianorum nomine <continebantur, et quae prorsus sinistra et a nostra clementia aliena esse> videbantur, <ea removeantur. Et> nunc libere ac simpliciter unus quisque eorum, qui eandem observandae religionis Christianorum gerunt voluntatem citram ullam inquietudinem ac molestiam sui id ipsum observare contendant. 5 Quae sollicitudini tuae plenissime significanda esse credidimus, quo scires nos liberam atque absolutam colendae religionis suae facultatem isdem Christianis dedisse. 6 Quod cum isdem a nobis indultum esse pervideas, intellegit dicatio tua etiam aliis religionis suae vel observantiae potestatem similiter apertam et liberam pro quiete temporis nostri <esse> concessam, ut in colendo quod quisque delegerit, habeat liberam facultatem. <Quod a nobis factum est ut neque cuiquam> honori neque cuiquam religioni <detractum> aliquid a nobis <videatur>. 7 Atque hoc insuper in persona Christianorum statuendum esse censuimus, quod, si eadem loca, ad quae antea convenire consuerant, de quibus etiam datis ad officium tuum litteris certa antehac forma fuerat comprehensa, priore tempore aliqui vel a fisco nostro vel ab alio quocumque videntur esse mercati, eadem Christianis sine pecunia et sine ulla pretii petitione, postposita omni frustratione atque ambiguitate restituant; qui etiam dono fuerunt consecuti, eadem similiter isdem Christianis quantocius reddant; etiam vel hi qui emerunt vel qui dono fuerunt consecuti, si petiverint de nostra benivolentia aliquid, vicarium postulent, quo et ipsis per nostram clementiam consulatur. Quae omnia corpori Christianorum protinus per intercessionem tuam ac sine mora tradi oportebit. 9 Et quoniam idem Christiani non [in] ea loca tantum ad quae convenire consuerunt, sed alia etiam habuisse noscuntur ad ius corporis eorum id est ecclesiarum, non hominum singulorum, pertinentia, ea omnia lege quam superius comprehendimus, citra ullam prorsus ambiguitatem vel controversiam isdem Christianis id est corpori et conventiculis eorum reddi iubebis, supra dicta scilicet ratione servata, ut ii qui eadem sine pretio sicut diximus restituant, indemnitatem de nostra benivolentia sperent. 10 In quibus omnibus supra dicto corpori Christianorum intercessionem tuam efficacissimam exhibere debebis, ut praeceptum nostrum quantocius compleatur, quo etiam in hoc per clementiam nostram quieti publicae consulatur. 11 Hactenus fiet, ut, sicut superius comprehensum est, divinus iuxta nos favor, quem in tantis sumus rebus experti, per omne tempus prospere successibus nostris cum beatitudine publica perseveret. 12 Ut autem huius sanctionis <et> benivolentiae nostrae forma ad omnium possit pervenire notitiam, prolata programmate tuo haec scripta et ubique proponere et ad omnium scientiam te perferre conveniet, ut huius nostrae benivolentiae [nostrae] sanctio latere non possit.* Translation according to http://www.fordham.edu/halsall/source/edict-milan.asp; for the Greek version cf. Eusebius, Historia ecclesiastica 10.5.1–14 (with minor differences).

44 Eusebius, Historia ecclesiastica 10.5.2 (*eleuthería tês threskeías*); Lactantius, De mortibus persecutorum 48.2 (*liberam potestatem sequendi religionem quam quisque voluisset, quod quicquid <est> divinitatis in sede caelesti*).

45 Kuhoff / Ehling (2011) esp. 501–504; Belayche (2011).

tians that allegedly he himself had solicited he ruled that in relevant places Christians had to be separated from city and territory.[46] In those cases, toleration might have meant segregation. But where could Christians retreat if the measures affected the countryside, too? No wonder that Christians interpreted his comportment as persecution. On the other hand, their situation appears to have depended on local circumstances: Even if towns seem to have been encouraged to protest against the polluting presence of Christianity, they were not forced to do so.[47] If this policy had prevailed, the ancient principle of locality of religion might have been reestablished in a curious way. After the battle of the Milvian Bridge, Maximinus appears to have been forced to grant Christians more rights. In the end, he issued an edict that allowed Christians (and others) to join whatever religious observance they chose and even granted the Christians the restitution of their rightful possessions following the example of the agreement of Milan.[48]

From persecuted to persecutors

Tolerance or even forbearance and religious freedom were, to put it mildly, not to become hallmarks of the Christian empire. On the contrary, pagans and heretics were soon to suffer persecution: Christians claimed to possess a truth that was relevant for every human being and had to be handed over to every single man or woman. Everybody had to be converted to the truth – otherwise he would lose the prospect of eternal life. From a pastoral point of view, it was difficult to accept that people did not embrace what God had given them. In consequence, people who did not accept the truth had to be persuaded and some thought: by whatever means.[49] And a Christian emperor had a major responsibility for converting his subjects, which by necessity resulted in a policy that was extremely intolerant not only by modern standards.

I am not able to pursue in this context all the ramifications of anti-heretic or anti-pagan measures and the occasional acts of toleration in late antiquity.[50] Instead, I will only hint at two basic developments: In the debates with the heretics a new issue came to the fore: doctrine, since Christian groups quarreled about the exact verbalization of Christian truth. Church councils and the corresponding imperial laws reinforced certain confessions. Unlike with pagan religion, the rulers were not able to decide on those issues independently. The basis had to be laid by ecclesiastical institutions, be they councils or authoritative Christian figures such as bishops.[51]

Heretics were persecuted with significantly more perseverance than pagans whereas Jews enjoyed forbearance. Laws against heretics preceded those against pagans. There is, however, one law that pronounced a kind of tolerance towards heretics. It is a letter sent by Constantine to the bishops and the parishioners of Africa. This text sets an end to the repeated attempts of the emperor to suppress the Donatists, a Christian group that claimed to have stayed intact during the persecution of Diocletian in contrast to the other Christians.[52] In this text Constantine grudgingly accepts

46 Cf. Lactantius, De mortibus persecutorum 36.3; Eusebius, Historia ecclesiastica 9.2–4 and 7; Inschriften von Kleinasien 48.12 (Année Épigraphique [1988] no. 1046 f.; Tituli Asiae Minoris II 3,785; Corpus Inscriptionum Latinarum III 12132) from Arycanda and Colbasa) with Mitchell (1988), also for a thorough reconstruction of the series of edicts regarding religious freedom of the Christians.

47 The importance of towns has been underlined by Arena (2008).

48 Eusebius, Historia ecclesiastica 9.9a, esp. 4–9, and again, a more generous regulation, Eusebius, Historia ecclesiastica 9.10.7–11.

49 For Christian *Heilssorge* (care for salvation) as a potential root of Christian intolerance Schmidt-Leukel (2000) (who highlights alternative interpretations of Christianity); from a historical perspective in various contributions Strousma (1993); Strousma (2011); Angenendt (2008) discusses the problem in a trans-epochal perspective. The same problem is debated in Speyer (1996), for a personal survey.

50 There are several useful studies, for example Noethlichs (1971); Noethlichs (1986); Kahlos (2009) 56–233. Athanassiadi (2010) 71–212 offers an interpretation of this time within a far-reaching model that describes the development from an anthropocentric to a theocentric mentality.

51 I have dealt with the problem more extensively in Leppin (2013).

52 Optatus of Mileve, De schismate Donatistarum adversus Parmeniarum, Appendix 9. In this text the meaning of *toleremus* comes close to the concept of tolerance.

reality. His main argument consists of the observation that tolerance is less dangerous than suppression; in this regard, the text is reminiscent of Galerius' so-called edict of toleration. In contrast to Galerius, however, Constantine appeals to Christian virtues such as peacefulness and trust in the final judgment of god, which embeds forbearance in a new context. When he wrote to the inhabitants of the eastern provinces after his victory over Licinius (324), he praised in generous and general words tolerance even towards people that erred. [53] But he did not prove to be a trendsetter. Anti-pagan and anti-heretic legislation grew in importance and in harshness during the next centuries.

There was another radical innovation in Christian religious policy: Deviant Christians and pagans were not only punished and corrected, but their practices were menaced with elimination. The anti-pagan laws of Theodosius the Great, which, however, were published only at the end of the century, make this quite clear as a short passage from a law of 392 may illustrate: *No person at all, of any class or order whatsoever of men or of dignities, whether he occupies a position of power or has completed such honors, whether he is powerful by the lot of birth or is humble in lineage, legal status and fortune, shall sacrifice an innocent victim to senseless images in any place at all or in any city. He shall not, by more secret wickedness, venerate his lar with fire, his genius with wine, his penates with fragrant odors; he shall not burn lights to them, place incense before them, or suspend wreaths for them*. [54] The whole set of practices defined as pagan by Christians was at stake.

For obvious reasons, it was the pagans' turn to plead for religious liberty now. [55] In 384 the urban prefect of Rome Symmachus, addressing an elaborate speech to the emperor, asked for the restoration of certain pagan cults in Rome. Unlike his Christian predecessors, he based his argument not on a concept of religious freedom, but on the power of tradition and on the idea that the superior being could be contacted over various ways since there were different traditions. [56]

Furthermore, the argument that religion cannot be enforced, but has to be voluntary was well established among pagans who turned it against Christians. Let me only give one example: Libanius, a famous orator from Antioch in the east, criticized magistrates and monks who destroyed temples underlining that the destruction of sanctuaries would not convert anybody. [57] The same line of reasoning can also be found in a speech of the official orator from the capital of Constantinople, Themistius. This is the most circumstantial plead for tolerance in antiquity. The argument is based on political considerations (the weakness of the emperor who can act as a balance), anthropology (belief cannot be enforced), and ethics (tolerance is against violence). [58] All those remarks were nothing more than reminders of the futility of religious force, not energetic pleas for individual rights. But they document the survival of the idea that religion must not be imposed on people.

From a Christian perspective, however, this was not so clear, even if influential bishops such as Athanasius of Alexandria or Ambrose of Milan underlined that truth could not be established by force, but only by arguments. [59] As I stressed above, Christians might feel (and many did feel) bound for charity's sake to convert as many people as possible in order to save their souls and they had now gained the power to do so. The ambivalence of Christianity in regard to religious freedom becomes clear in the work of Augustine of Hippo. He feels responsible for those who do not follow the true faith and he dearly wishes to contribute to their salvation, which is possible only within his church. On the other hand, he is in principle against coercion of belief for the reasons that were well known. Thus, in his early years, he pleads for tolerance, but against the background of his conviction that true Christianity will be successful in

53 Eusebius, Vita Constantini 2.56 f. with Kahlos (2009) 59–62.

54 Codex Theodosianus 16.10.12pr: nullus omnino ex quolibet genere ordine hominum dignitatum vel in potestate positus vel honore perfunctus, sive potens sorte nascendi seu humilis genere condicione ortuna in nullo penitus loco, in nulla urbe sensu carentibus simulacris vel insontem victimam caedat vel secretiore piaculo larem igne, mero genium, penates odore veneratus accendat lumina, imponat tura, serta suspendat (transl. Pharr).

55 Correspondingly, Julian, in Epistula 61c Bidez-Comont = 36 Wright (423 C) declares that the gods have presented liberty to the pagans with his rule.

56 Symmachus, Relatio 3.8; for the intellectual background of Symmachus and Themistius see e. g. Ando (1996); Kahlos (2011).

57 Libanius, Oratio 30.26 (transl. A. F. Norman).

58 Libanius, Oratio 18122; Themistius, Oratio 5.67b–68c.

59 See e. g. Athanasius, Historia Arianorum 33.2–3; Ambrosius, Epistula 5.17.

the end; his tolerance derives from his pastoral attitude, not from respect for diverging convictions.

Thus, he could change his attitude quite easily when necessary: Later on, being not only a theologian, but also a bishop who had to assert himself against heretics, he accepted the necessity to force heretics into his church since in contrast to pagans they were in a position to know the truth. Thus, the pastoral attitude of Christianity, the Christian love for the sinner, could turn into constraint when the sinner declined to open his heart. In his best interest he had to be included into Augustine's community, even unwillingly. [60]

Conclusions

The problem of freedom of religion in Rome must be seen in the context of the tension between oecumenical paganism and universal Christianity. It is not enough to construct an opposition between tolerant polytheism and intolerant monotheism. A practice of tolerance existed in pagan Rome, but tolerance was rarely reflected and never conceived as a guiding political principle. [61]

The monotheistic religion of Christianity was universal from the very beginning and exclusive at the same time. Christians had begun arguing that they should be treated like other religions or other nations for that matter. Yet, under the impression of oecumenical paganism some Christians articulated a universal idea of freedom of religion, even in the emphatic sense as the fundamental right of every human being. Thus, this concept appears to have emerged in the Roman world with the connection between empire and empire-wide cult that had begun with the emperor's cult and was intensified under the Severans, who interpreted the empire as a *polis*. This made it impossible to simply define the Christians, who could not claim the traditional privileges of the Jews, as an *ethnos*. Under Decius, the deadly consequences of oecumenical paganism had been revealed, although Decius probably did not intend to open war against Christendom as such. [62] Above all, Tertullian, who articulated the idea of freedom of religion, wanted to expose the contradictory character of oecumenical paganism; but in doing so he articulated a thought that was more far-reaching than he could expect.

The term and the concept of religious freedom were bequeathed to later generations. In antiquity, however, freedom of religion was never enshrined in a law and not conceived as a fundamental entitlement of the individual. By contrast it was a mere consequence of the idea and the experience that religious belief could not be enforced. The exclusive attitude of Christians even led to an eliminatory approach to other religions that governed state politics to a rising degree after Christianity had developed into the religion of the Roman elites. [63]

Christianity engendered the idea of freedom of religion in a general sense on the one hand and the idea of religious elimination on the other. The dialectics of early Christianity gave birth to the idea of religious freedom as well as to systematic religious repression. This was to be a precious and at the same time toxic normative legacy for Europe.

The ambivalence was to endure for centuries causing bloody wars as well as poignant pleas for freedom. As modern research has underlined the Christian and late antique heritage in early Islam, it would be very important to trace the translation of the idea of freedom of religion in this cultural world. It is not only a problem of European, but also of Mediterranean history.

The contestable impression that paganism stood for tolerance has had its own historical impact. In

60 The complexity of Augustine's argument can only be synthesized here, cf. Besier / Schreiner (1990) 452–454; Forst (2003) 58–73; Bright (2007); Kahlos (2011) 111–133; Six-Means (2011) 177–190.

61 Assmann (2003) famously interpreted religious intolerance and violence as a consequence of the monotheistic claim to possess universal truth; but see for instance Stroumsa (2011), 197–203.

62 In a pointed argument Athanassiadi (2010) 56–60 interprets Decius as a predecessor of Constantine.

63 Cf. for the problem of Christian violence e. g. Hahn (2004); Gaddis (2005); Drake (2011).

a classicizing discourse, it seemed to confirm that plurality was possible. The reflections about tolerance quoted in this article were well known in early modern Europe. They certainly helped to establish and, most of all, to legitimize the idea of tolerance and of religious freedom as a personal right in Europe, even if that was not their original intention. As so often, the translation of a tradition which was regarded as classical, allowed the Europeans to perceive alternatives in antiquity which could turn into alternatives in reality.

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Bibliography

- Ando, Clifford (1996), Pagan Apologetics and Christian Intolerance in the Ages of Themistius and Augustine, in: Journal of Early Christian Studies 4,2, 171–207 http://dx.doi.org/10.1353/earl.1996.0021
- Angenendt, Arnold (2008), Toleranz und Gewalt. Das Christentum zwischen Bibel und Schwert, Münster
- Arena, Gaetano (2008), Città ›premiate‹ e città ›punite‹ nell'Asia minore tardo-antica. Pagani e cristiani tra promesse e minacce imperiali, in: Mediterraneo Antico 11, 229–250
- Arena, Valentina (2011), Tolerance, Intolerance, Religious Liberty at Rome: an Investigation in the History of Ideas, in: Ceconni / Gabrielli (eds.) (2011) 147–164
- Assmann, Jan (2003), Die Mosaische Unterscheidung oder der Preis des Monotheismus, München
- Athanassiadi, Polymnia (2010), Vers la pensée unique. La montée de l'intolérance dans l'Antiquité tardive, Paris
- Beard, Mary, John North, Simon Price (1998), Religions of Rome, Vol. 1: A History, Cambridge
- Belayche, Nicole (2011), La politique religieuse ›païenne‹ de Maximin Daia. De l'historiographie à l'histoire, in: Cecconi / Gabrielli (eds.) (2011) 235–259
- Bélanger, Rodrigue (1985), Le plaidoyer de Tertullien pour la liberté religieuse, in: Studies in Religion 14,3, 281–291
- Besier, Gerhard, Klaus Schreiner (1990), Geschichtliche Grundbegriffe 6, 445–605, s. v. Toleranz
- Bleckmann, Bruno (2006), Zu den Motiven der Christenverfolgung des Decius, in: Johne, Klaus Peter et al. (eds.), Deleto paene imperio Romano. Transformationsprozesse des Römischen Reiches im 3. Jahrhundert und ihre Rezeption in der Neuzeit, Stuttgart, 57–72
- Bright, Pamela (2007), Augustin im donatistischen Streit, in: Drecoll, Volker Henning (ed.), Augustin Handbuch, Tübingen, 171–178
- Cancik, Hubert (2005), Die frühesten antiken Texte zu den Begriffen ›Menschenrecht‹, ›Religionsfreiheit‹, ›Toleranz‹, in: Giradet, Klaus M., Ulrich Nortmann (eds.), Menschenrechte und europäische Identität. Die antiken Grundlagen, Stuttgart, 94–104
- Cancik, Hubert (2009), Religionsfreiheit und Toleranz in der späteren römischen Religionsgeschichte (2. bis 4. Jahrhundert n. Chr.), in: Cancik, Hubert, Jörg Rüpke (eds.), Die Religion des Imperium Romanum. Koine und Konfrontation, Tübingen, 335–379
- Cancik, Hubert, Konrad Hitzl (eds.) (2003), Die Praxis der Herrscherverehrung in Rom und seinen Provinzen, Tübingen
- Cazanove, Oliver de (2000a), Some thoughts on the ›religious Romanization‹ of Italy before the Social War, in: Bispham, Edward, Christopher J. Smith (eds.), Religion in Archaic and Republican Rome and Italy. Evidence and Experience (New perspectives on the ancient world 2), Edinburgh, 71–76
- Cazanove, Oliver de (2000b), I destinatari dell'iscrizione di Tiriolo e la questione del campo di applicazione del senatusconsulto de Bacchanalibus, in: Athenaeum 88, 59–69
- Cecconi, Giovanni A., Chantal Gabrielli (eds.) (2011), Politiche religiose nel mondo antico e tardoantico: orientamenti di governo, forme del controllo, idee e prassi di tolleranza (Munera 33), Florence
- Clauss, Manfred (1999), Kaiser und Gott. Herrscherkult im römischen Reich, Stuttgart
- Csáky, Moritz (1992), Historisches Wörterbuch der Philosophie 8, 727–731, s. v. Religionsfreiheit
- Depalma Digeser, Elisabeth (1998), Lactantius, Porphyry, and the Debate over Religious Toleration, in: Journal of Roman Studies 88, 129–146 http://dx.doi.org/10.1017/S0075435800044142
- Donaldson, Malcom Drew (2003), The Cult of Isis in the Roman Empire. Isis invicta (Studies in Classics 22), Lewiston
- Drake, Harold A. (2011), Intolerance, Religious Violence, and Political Legitimacy in Late Antiquity, in: Journal of the American Academy of Religion 79, 193–235 http://dx.doi.org/10.1093/jaarel/lfq064
- Felber, Anneliese et al. (eds.) (2012), Toleranz und Religionsfreiheit 311–2011, Internationales Symposium an der Katholisch-Theologischen Fakultät der Karl-Franzens-Universität Graz, 14.–15. April 2011 (Spudasmata 144), Hildesheim
- Fishwick, Duncan (1987–2004), The Imperial Cult in the Latin West. Studies in the Ruler Cult of the Western Provinces of the Roman Empire. 3 Vol. (in 7 books) (Études préliminaires aux religions orientales dans l'Empire Romain 108), Leiden
- Forst, Rainer (2003), Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs, Frankfurt a. M.
- Forst, Rainer (2013), Toleration in Conflict, New York
- Gaddis, Michael (2005), There is no Crime for those who have Christ. Religious Violence in the Christian Roman Empire, Berkeley

- Garnsey, Peter (1984), Religious Toleration in Classical Antiquity, in: Sheils, William J. (ed.), Persecution and Toleration (Studies in Church History 21), Oxford, 1–27
- Georges, Tobias (2011), Tertullian ›Apologeticum‹ (Kommentar zu frühchristlichen Apologeten 11), Freiburg
- Glas, Toni (2014), Kaisertum und Reformansätze in der Krisenphase des Römischen Reiches, Paderborn
- Gradel, Ittai (2002), Emperor Worship and Roman Religion, Oxford
- Hahn, Frances Hickson (2007), Performing the Sacred. Prayers and Hymns, in: Rüpke, Jörg (ed.), A Companion to Roman Religion, Malden, Mass., 235–248
- Hahn, Johannes (2004), Gewalt und religiöser Konflikt. Studien zu den Auseinandersetzungen zwischen Christen, Heiden und Juden im Osten des Römischen Reiches (von Konstantin bis Theodosius II.) (Klio Beihefte, N. F. 8), Berlin
- Heinig, Hans-Michael (2008), Handbuch der politischen Philosophie und Sozialphilosophie, 1109–1113, s. v. Religionsfreiheit
- Huss, Werner (2001), Ägypten in hellenistischer Zeit 332–30 v. Chr., München
- Kahlos, Maijastina (2009), Forbearance and Compulsion. The Rhetoric of Religious Tolerance and Intolerance in Late Antiquity, London
- Kahlos, Maijastina (2011), Rhetoric and Realities. Themistius and the Changing Tides in Imperial Religious Policies in the Fourth Century, in: Cecconi / Gabrielli (eds.) (2011), 287–304
- Kötting, Bernhardt (1977), Religionsfreiheit und Toleranz im Altertum, Opladen http://dx.doi.org/10.1007/978-3-322-88518-0
- Krauter, Stefan (2004), Bürgerrecht und Kultteilnahme. Politische und kultische Rechte und Pflichten in griechischen Poleis, Rom und antikem Judentum (Beihefte zur Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche 127), Berlin
- Kuhoff, Wolfgang, Kay Ehling (2011), Reallexikon für Antike und Christentum 24, 495–504, s. v. Maximinus Daia (Daza)
- Leppin, Hartmut (2012), Christianisierungen im Römischen Reich. Überlegungen zum Begriff und zur Phasenbildung, in: Zeitschrift für Antikes Christentum 16, 247–278
- Leppin, Hartmut (2013), Kaisertum und Christentum in der Spätantike. Überlegungen zu einer unwahrscheinlichen Synthese, in: Fahrmeir, Andreas, Annette Imhausen (eds.), Die Vielfalt normativer Ordnungen. Konflikte und Dynamik in historischer und ethnologischer Perspektive (Normative Orders 8), Frankfurt a. M., 197–224
- Linke, Bernhard (2014), Antike Religion (Enzyklopädie der griechisch-römischen Antike 13), München
- Manuwald, Bernd (1979), Cassius Dio und Augustus. Philologische Untersuchungen zu den Büchern 45–56 des Dionischen Geschichtswerkes (Palingenesia 14), Wiesbaden
- Millar, Ferguis (2001), The Emperor in the Roman World. 33 BC – 337 AD, London
- Mitchell, Stephan (1988), Maximinus and the Christians in A. D. 312. A New Latin Inscription, in: Journal of Roman Studies 78, 105–124 http://dx.doi.org/10.2307/301453
- Nagy, Àgnes A. (2002), Superstitio et coniuratio, in: Numen 49, 178–192
- Noethlichs, Karl Leo (1971), Die gesetzgeberischen Maßnahmen der christlichen Kaiser des vierten Jahrhunderts gegen Häretiker, Heiden und Juden, Diss. Cologne
- Noethlichs, Karl Leo (1986), Reallexikon für Antike und Christentum 13, 1149–1190, s. v. Heidenverfolgung
- Noethlichs, Karl Leo (2006), Revolution from the top? ›Orthodoxy‹ and the Persecution of Heretics in Imperial Legislation from Constantine to Justinian, in: Ando, Clifford, Jörg Rüpke (eds.), Religion and Law in Classical and Christian Rome (Potsdamer Altertumswissenschaftliche Beiträge 15), Stuttgart, 115–125
- North, John (1992), The Development of Religious Pluralism, in: Lieu, Judith et al. (eds.), The Jews among Pagans and Christians in the Roman Empire, London, 174–193
- Ogden, Daniel (ed.) (2007), A Companion to Greek Religion, Oxford http://dx.doi.org/10.1002/9780470996911
- Pailler, Jean-Marie (1988), Bacchanalia. La répression de 186 av. J.-C. à Rome et en Italie. Vestiges, images, tradition (Bibliothèque des Ecoles Françaises d'Athènes et de Rome 270), Rome
- Riedl, Matthias (2012), The Containment of Dionysos. Religion and Politics in the Bacchanalia Affair of 186 BCE., in: International Political Anthropology 5,2, 113–133
- Rives, James (1999), The Decree of Decius and the Religion of Empire, in: Journal of Roman Studies 89, 135–154 http://dx.doi.org/10.1017/S0075435800060068
- Rives, James (2005), Flavian Religious Policy and the Destruction of the Jerusalem Temple, in: Edmondson, Jonathan et al. (eds.), Flavius Josephus & Flavian, Rome, Oxford, 145–166
- Rives, James (2007), Religion in the Roman Empire, Malden, Mass.
- Rives, James (2009), Diplomacy and Identity among Jews and Christians, in: Eilers, Claude (ed.), Diplomats and Diplomacy in the Roman World (Mnemosyne Suppl. 304), Leiden, 99–126
- Roberto, Umberto (2011), Le Chronographiae di Sesto Giulio Africano. Storiografia, politica e cristianesimo nell'età dei Severi, Soveria Mannelli
- Robinson, Olivia F. (1995), Repressionen gegen Christen in der Zeit vor Decius – noch immer ein Rechtsproblem, in: Zeitschrift für Rechtsgeschichte: Romanistische Abteilung 112, 352–369
- Rüpke, Jörg (ed.) (2007), A Companion to Roman Religion, Malden, Mass. http://dx.doi.org/10.1002/9780470690970
- Rüpke, Jörg (2011a), Aberglauben oder Individualität? Religiöse Abweichung im römischen Reich, Tübingen
- Rüpke, Jörg (2011b), Reichsreligion? Überlegungen zur Religionsgeschichte des antiken Mittelmeerraums in der römischen Zeit, in: Historische Zeitschrift 292, 297–322 http://dx.doi.org/10.1524/hzhz.2011.0012
- Rüpke, Jörg (2013), Regulating and Conceptualizing Religious Plurality. Italian Experiences and Roman Solutions, in: Jehne, Martin et al. (eds.), Religiöse Vielfalt und soziale Integration. Die Bedeutung der Religion für die kulturelle Identität und politische Stabilität im republikanischen Italien (Studien zur Alten Geschichte 17), Heidelberg, 275–295
- Schlüter, Gisela, Ralf Grötker (1999), Historisches Wörterbuch der Philosophie 10, 1251–1262, s. v. Toleranz

- Schmidt-Leukel, Perry (2000), Ist das Christentum notwendig intolerant?, in: Forst, Rainer (ed.), Toleranz. Philosophische Grundlagen und gesellschaftliche Praxis einer umstrittenen Tugend (Theorie und Gesellschaft 48), Frankfurt a. M., 177–213
- Schwarte, Karl-Heinz (1989), Die Christengesetze Valerians, in: Eck, Werner (ed.), Religion und Gesellschaft in der römischen Kaiserzeit. Kolloquium zu Ehren von Friedrich Vittinghoff (Kölner historische Abhandlungen 35), Köln, 103–164
- Schwertheim, Elmar, Georg Petzl (2006), Hadrian und die Dionysischen Künstler. Drei in Alexandria Troas neugefundene Briefe des Kaisers an die Künstler-Vereinigung (Asia Minor Studies 58), Bonn
- Simón, Marco F. (2011), Roman Policy Regarding Native and Provincial Cults in the West (2nd C. BC – 2nd C. AD), in: Cecconi / Gabrielli (eds.) (2011) 135–146
- Six-Means, Horace E. (2011), Augustine and Catholic Christianization. The Catholicization of Roman Africa, 391–408 (Patristic Studies 10), New York
- Speyer, Wolfgang (1996), Toleranz und Intoleranz in der Alten Kirche, in: Broer, Ingo, Richard Schlüter (eds.), Christentum und Toleranz, Darmstadt, 83–106
- Stavrianopoulou, Eftychia (2007), Rezension zu Stefan Krauter: Bürgerrecht und Kultteilnahme, in: Sehepunkte 7,9 (http://www.sehepunkte.de/2007/09/12038.html)
- Stroumsa, Guy G. (1993), Interiorization and Intolerance in Early Christianity, in: Assmann, Jan (ed.), Die Erfindung des inneren Menschen. Studien zur religiösen Anthropologie (Studien zum Verstehen fremder Religionen 6), Gütersloh, 168–182
- Stroumsa, Guy G. (1998), Tertullian on Idolatry and the Limits of Tolerance, in: Stroumsa, Guy G., Grahan N. Stanton (eds.), Tolerance and Intolerance in Early Judaism and Christianity, Cambridge, 173–184
- Stroumsa, Guy G. (2011), On the Roots of Christian Intolerance, in: Prescendi, Francesca, Youri Volokhine (eds.), Dans le laboratoire de l'historien des religions (Religions en perspective 24), Geneva, 193–210
- Takács, Sarolta A. (1995), Isis and Sarapis in the Roman World (Religions in the Graeco-Roman World 124), Leiden
- Takács, Sarolta A. (2000), Politics and Religion in the Bacchanalian Affair of 186 B. C. E., in: Harvard Studies in Classical Philology 100, 301–310
- Tyrell, Tartmann (2010), Katholische Kirche und Religionsfreiheit. Christentumsgeschichtliche und differenztheoretische Überlegungen, in: Gabriel, Karl et al. (eds.), Religionsfreiheit und Pluralismus. Entwicklungslinien eines katholischen Lernprozesses (Katholizismus zwischen Religionsfreiheit und Gewalt 1), Paderborn, 197–260
- Walter, Jochen (2006), Pagane Texte und Wertvorstellungen bei Lactanz (Hypomnemata 165), Göttingen