CHAPTER ONE

THE LEGAL STATUS OF SACRIFICE TO 529 A.D.

The compilation and promulgation of the Theodosian Code, which was formally effected in 438, put the Hellenic cults of the Eastern Roman Empire on a new footing.\(^1\) Previous imperial edicts and rescripts on that subject had until that date been directed to the officium of a single Praetorian Prefect.\(^2\) On other occasions such local officials received them as the Prefect of the City (Rome), the Dux of Osroene, the Augustal Prefect and Count of Egypt, the Vicar of the Five Provinces of Spain, and the Proconsul of Africa.\(^3\) The inclusion of the rescripts on pagans and Hellenic cult practices within the codification is emphatic proof that the rescript of 9 April 423, which made reference to the “pagans who have survived, although we believe that there be none left,” had been formulated on the basis of inadequate data.\(^4\) The earliest law against the pagan sacrifice dated from the reign of Constantine the Great (17 December 321).\(^5\) This law, with all subsequent enactments, had the force of edicts or an imperial law of general force (edictorum vires aut sacra generalitas), as the prolegomenon to the Theodosian Code states.\(^6\) It adds that all new laws should be valid in both halves of the empire after the transmission of suitable imperial letters and their publication by the bureaus.\(^7\)

The incorporation of anti-pagan legislation into the new code indicated the intention of the imperial government to systematize a struggle which many urban bishops and rural monks had waged

----


\(^2\) Cod. Theod. 16.10 passim.

\(^3\) Cod. Theod. 16.10.3, 8, 11, and 15.

\(^4\) Paganos qui supersunt, quamquam iam nullos esse credamus. Cod. Theod. 16.10.22.

\(^5\) Cod. Theod. 16.10.1.

\(^6\) Cod. Theod., Gesta Senatus Romani de Theodosiano Publicando (Mommsen-Krueger, 2, lines 4-7).

\(^7\) Ibid., lines 33–39.
against the pagans of their communities for many decades. The life of Porphyrius of Gaza, written by Mark the Deacon, most fully documents the dynamics of this conflict, which often found bishops deadlocked with wealthy urban dynasts who adhered to the old religion.  

8 These latter used their control of the magistracies and large funds of manpower in town and countryside to resist the efforts of the local churches to catechize the urban artisans and poor, as well as the villages of agriculturalists inside the city's territorium or rural administrative zone. Where opposition was strong, a bishop like Porphyrius had to procure a special rescript to pursue his program, which in this case included the destruction of the Marneion, the great temple of the Cretan-born Zeus Marnas. This occurred, it should be added, well before two early edicts of Arcadius and Theodosius II (15 November 408 and 30 August 415) had come out.  

9 The Theodosian codification left little doubt about the legal remedies available to bishops who had the ambition to Christianize their towns by force. It must be borne in mind, however, that this power accrued to the churches gradually and only through the dispensation of the secular arm. The fate of Marcellus, metropolitan of Apamea in Second Syria, demonstrates what was in store for those who overlooked this reality.  

10 The laws against paganism collected in the sixteenth book of the Theodosian Code extend from 8 March 321 to 14 November 435. They contain accurate if brief statements about all the proscribed social conditions by reason of legal necessity, for a magistrate cannot rule against a practice which is not described in typologically accurate terms in his law book under the code (as opposed to the common law) system. Hence the need of the Theodosian Code for precision and comprehensive coverage of all possible cases. There is a second consideration brought forward by A.H.M. Jones, namely that the existence of a law does not presuppose widespread public obedience to it, but rather often reflects simply the "pious aspiration" of the magistrate.  

11 It will be seen in due course that Jones' dictum that the "laws were intermittently and sporadically enforced" applies accurately to the repression of Hellenic religion. The stiff penalties attached to certain offenses suggest, if anything, rather frequent violations.

8 Infra, Ch. III, Sect. 2 and 4.
9 Cod. Theod. 16.10.19 and 20.
10 Infra, Ch. II, Sect. 3.