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CHRISTIAN INFLUENCE ON THE ROMAN CALENDAR COMMENTS IN THE MARGINS OF C. TH. 9,35,4 = C. 3,12,5 (A. 380)¹

Despite the fact that the understanding of time in physics is complex, we, as human beings, usually perceive time as an indefinite and continuous duration, regarded as that in which events succeed one another.² It is close to the perception of time in “naive physics/folk physics,” the untrained

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¹ Abbreviations: C. – *Codex Iustinianus* (ed. *Corpus iuris civilis*, vol. 2. *Codex Iustinianus*, ed. P. Krueger, Berolini 1954); C. Th. – *Codex Theodosianus* (ed. *Theodosiani libri XVI cum Constitutionibus Sirmondianis et leges novellae ad Theodosianum pertinentes*, ed. T. Mommsen, P.M. Meyer, vol. 1–2, Berolini 1954); PLRE I – *The Prosopography of the Later Roman Empire*, vol. 1. A.D. 260–395, ed. A.H.M. Jones, J. Martindale, J.R. Martindale, J. Morris, Cambridge 1971. Imperial constitutions are cited following translations by C. Pharr are followed (*The Theodosian Code and Novels and the Sirmondian Constitutions. A Translation with Commentary, Glossary, and Bibliography by Clyde Pharr in Collaboration with Theresa Sherrer Davidson and Mary Brown Pharr, with an Introduction by C. Dickerman Williams*, Princeton 1952). Journals were quoted according to *L'Année Philologique*. Last access: 30.09.2019.

² The idea is expressed by Izaak Newton: *Tempus absolutum verum et mathematicum, in se et natura sua ad externum quodvis, aequalibiter fluit, alioque nomine dicitur duratio...* (in: idem, *Philosophiae naturalis principia mathematica*, Londini 1687¹, Def. VIII, scholium). Newton's thoughts on the nature of time were nevertheless more subtle. Cf. *A Companion to the Philosophy of Time*, ed. H. Dyke, A. Bardon, Chichester 2013 (esp. E. Schliesser, *Newton's Philosophy of Time*, in: ibidem, pp. 87–101). A more accurate meaning of time is conveyed in the theory of relativity, in which Albert Einstein showed that time (and duration too) was not as absolute as everyday experience would suggest. Cf. the summary of his ideas in: N.D. Mermin, *It's about Time: Understanding Einstein's Relativity*, Princeton 2005. The nature of time is still disputed by physics while Carlo Rovelli, one of the founders of the Loop Quantum Gravity theory, even suggests that time is only an illusion. Cf. C. Rovelli, *L'ordine del tempo*, Milano 2017.

human perception of basic physical phenomena,³ which is not that remote from the apperception of time in other animals.⁴ Belief in the supernatural/religion and rituals also seem to belong to human universals, the roots of which are to be sought in the evolutionary past of the genus *Homo*.⁵ Human group leaders had always maintained order during disputes and had solved controversies among the members of the band – as it happens also among the Chimps, our closest living relative⁶ – and which was replaced gradually by more organised forms of arbitration and then by the judiciary.⁷

³ Cf. e.g. B. Smith, R. Casati, *Naïve Physics: An Essay in Ontology*, Philosophical Psychology 1994, vol. 7, no. 2, pp. 225–244; S. Vosniadou, *On the Nature of Naïve Physics*, in: *Reconsidering Conceptual Change: Issues in Theory and Practice*, ed. M. Limón, L. Mason, Dordrecht 2002, pp. 61–76; Ch. von der Malsburg, *Physics and Our Intuitive Outlook on Time*, in: *Direction of Time. Proceedings of the Conference “Direction of Time...”*, Bielefeld University, Germany, January 14–19, 2002, ed. S. Albeverio, Ph. Blanchard, [Heidelberg–New York–London] 2014, pp. 35–48. See also briefly: D. Proffitt, *Naïve Physics*, in: *The MIT Encyclopedia of the Cognitive Sciences*, ed. F.C. Keil, R.A. Wilson, Cambridge–London 1999, pp. 577–579.

⁴ Some animals are able to plan and forecast. Cf. e.g. C.D.L. Wynne, *Animal Cognition. The Mental Lives of Animals*, Basingstoke–New York 2001, pp. 96–100; P. Skrupski, L. Chittka, *Animal Cognition: An Insect’s Sense of Time?*, *Current Biology* 2006, vol. 16, no. 19, pp. 851–853; R.J. Gennaro, *Animals, Consciousness, and I-Thoughts*, in: *The Philosophy of Animal Minds*, ed. R.W. Lurz, Cambridge 2009, pp. 184–200; W.A. Roberts, *Evidence for Future Cognition in Animals*, *Learning and Motivation* 2012, vol. 43, no. 4, pp. 169–180. See also in popular form F.B.M. de Waal, *Are We Smart Enough to Know How Smart Animals Are?*, New York–London 2016.

⁵ Cf. D.E. Brown, *Human Universals*, New York 1991, with revisions by S. Pinker in *The Blank Slate. The Modern Denial of Human Nature*, New York 2002, pp. 371–379. Cf. also A.W. Geertz, *Whence Religion? How the Brain Constructs the World and What This Might Tell Us about the Origins of Religion, Cognition and Culture*, in: *Origins of Religion, Cognition and Culture*, ed. idem, London–New York 2014, pp. 17–70.

⁶ Francis Fukuyama writes: “Once male or female chimps have achieved dominance within their respective hierarchies, they exercise what can only be described as power – the ability to settle conflict and set rules based on their status within the hierarchy.” F. Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution*, New York 2012, p. 49, quoting the data given by F.B.M. de Waal, *Chimpanzee Politics: Power and Sex Among Apes*, Baltimore 1989. It means that the mechanisms were at least shared by the last common evolutionary ancestor of both species, *Pan troglodytes* and *Homo sapiens*, who lived 5–7 million years B.C. See about modern discussions concerning the evolution of the human and chimpanzees summarized in: *Chimpanzees and Human Evolution*, ed. M.N. Muller, R.W. Wrangham, D.R. Pilbeam, Cambridge, MA–London 2017, passim.

⁷ Cf. K. Sójka-Zielińska, *Historia prawa*, Warszawa 1993⁴, p. 11. See the examples presented by the scholars who focused on the issue of ancient and primitive law or legal

Having taken the above into consideration, it would seem warranted to claim that the difference between humans and other animals is one of degree rather than of kind.⁸ On the other hand, no living being apart from the human recognises time cycles other than day and night or moments of day and night, while only humans recognise religious feasts, the days devoted mainly or exclusively to religious rituals and periods within which legal actions are limited or prohibited.⁹

Regarding the Roman calendar, it is well known that the distinction between *dies fasti* ("allowed days", days on which court sessions could be held and magistrates and jurors could exercise their judicial activity) and *dies nefasti* ("non-allowed days", when *legis actiones* and jurisdiction were forbidden; popular assemblies did not meet on those holidays which were devoted to religious ceremonies and public festivals, either), was one of its main characteristics.¹⁰ Christianisation of the Roman Empire in the course of the 4th century caused changes in the Roman calendar and its gradual adaptation to the Church's liturgical calendar.

anthropology. See e.g. H.S. Maine, *Ancient Law Its Connection with the Early History of Society, and Its Relation to Modern Ideas*, London 1861, esp. pp. 113–170 (see also <https://oll.libertyfund.org/titles/maine-ancient-law>); E. Sidney Hartland, *Primitive Law*, London 1924, esp. pp. 167–199; B. Malinowski, *Crime and Custom in Savage Society*, Oxford 1926 and other studies gathered by E. Adamson Hoebel, *The Law of Primitive Man. A Study in Comparative Legal Dynamics*, Cambridge MA 1954, esp. pp. 29–45 (together with his own remarks); R.A. Posner, *The Economics of Justice*, Cambridge MA–London 1983, esp. pp. 174–206.

⁸ Expressed also by Charles Darwin, e.g. in: idem, *The Descent of Man, and Selection in Relation to Sex*, vol. 1–2, London 1871, esp. p. 106 (see also <http://darwin-online.org.uk/content/frameset?pageseq=1&itemID=F937.1&viewtype=text>).

⁹ However, wild chimpanzees plan their breakfast time, type, and location, presenting "future-oriented cognitive mechanism." Cf. K.R.L. Janmaat et al., *Wild Chimpanzees Plan Their Breakfast Time, Type, and Location*, Proceedings of the National Academy of Sciences (of the United States of America) 2014, vol. 111, no. 46, pp. 16343–16348. About the cognition of time among primates see also: M.J. Beran et al., *Primate Cognition: Attention, Episodic Memory, Prospective Memory, Self-Control, and Metacognition as Examples of Cognitive Control in Nonhuman Primates*, Wiley Interdisciplinary Reviews: Cognitive Science 2016, vol. 7, no. 5, pp. 294–316.

¹⁰ Cf. e.g. M.R. Salzman, *On Roman Time. The Codex-Calendar of 354 and the Rhythms of Urban Life in Late Antiquity*, Berkeley–Los Angeles–Oxford 1991, passim; M. Kaser, K. Hackl, *Das römische Zivilprozessrecht*, München 1996, pp. 555–556. Definitions were based on A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, pp. 435–436 (s.v. *Dies fasti*, *Dies nefasti*).

One of the most important amendments in this regard was the imperial constitution issued on 27 March A.D. 380 in the name of Gratian (367–383), Valentinian II (379–392) and Theodosius I (379–395) in Thessaloniki (and therefore the latter was the real legislator of the law).¹¹ Its addressee was Albucianus, *vicarius Macedoniae*, while a piece of the constitution is known from title 35. *De quaestionibus* (Judicial examinations under torture) of the 9th Book of the *Theodosian Code* from 438, following its promulgation in the Eastern Roman Empire and then in the Western Roman Empire the constitution applied as *lex generalis*.¹² The text was also repeated in *Justinian Code* from 534 in title 12. *De feriis* (About Feasts) of the 12th Book.¹³

¹¹ Cf. O. Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr. Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit*, Stuttgart 1919 (reed. Frankfurt am Main 1984), p. 255. See the still relevant in part J. Gothofredus, *Codex Theodosianus cum perpetuis commentariis* [...], vol. 3, Lipsiae 1738, pp. 275–277. From moder authors see esp. M. Bianchini, *Cadenze liturgiche e calendario civile fra IV e V secolo. Alcune considerazioni*, in: *Atti dell'Accademia Romanistica Costantiniana*, vol. 6. *Convegno internazionale*, ed. G. Crifò, Perugia 1986, pp. 241–263; A. Di Berardino, *Christian Liturgical Time and Torture (Cod. Theod. 9,35,4 and 5)*, *Augustinianum* 2011, vol. 51, no. 1, pp. 191–220, with previous studies.

¹² See the definition provided in *Digesta Iustiniani* 47,10,15,41: “*Quaestionem*” *intellegere debemus tormenta et corporis dolorem ad eruendam veritatem. Nuda ergo interrogatio vel levis territio non pertinet ad hoc edictum. Quaestionis verbo etiam ea, quam malam mansionem dicunt, continebitur. Cum igitur per vim et tormenta habita quaestio est, tunc quaestio intellegitur.* (ed. *Corpus iuris civilis*, vol. 1. *Institutiones. Digesta Iustiniani*, ed. T. Mommsen, P. Krueger, Berolini 1954). About tortures in late Roman law cf. e.g. P. Garnsey, *Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Century Empire*; Note [online], *Natural Law Forum* 1968, paper 143, http://scholarship.law.nd.edu/nd_naturallaw_forum/143; J. Harries, *Law and Empire in Late Antiquity*, Cambridge 1999, pp. 122–134; W. Riess, *Die historische Entwicklung der römischen Folter- und Hinrichtungspraxis in kulturvergleichender Perspektive*, *Historia. Zeitschrift für Alte Geschichte* 2002, vol. 51, no. 2, pp. 206–226.

¹³ There are still disputes concerning the moment when the *Theodosian Code* came into effect in the West. Cf. L. Atzeri, *Gesta senatus Romani de Theodosiani publicando. Il Codice Teodosiano e la sua diffusione ufficiale in Occidente*, Berlin 2008, *passim*; R.W.B. Salway, *The Publication of the Theodosian Code and Transmission of Its Texts, Some Observations*, in: *Société, économie, administration dans le Code Théodosien*, ed. S. Crogiez-Pétrequin, P. Jaillette, Lille 2012, pp. 21–61; *idem*, *The Publication and Application of the Theodosian Code* [online], *Mélanges de l'École Française de Rome. Antiquité* 2013, vol. 125, no. 2, <http://mefra.revues.org/1754>. About the place of the enactment in the *Codex Iustinianus* cf. A.M. Giomaro, *Il Codex repetitae praelectionis. Contributi allo studio dello schema delle raccolte normative da Teodosio a Giustiniano*, Roma 2001, p. 131. About the vicar cf. PLRE I, p. 38 (s.v. *Albucianus*).

C. Th. 9,35,4 (= C. 3,12,5): *Imppp. Gr(ati)anus, Val(entini)anus et Theod(osius) AAA. Albuciano vic(ario) Maced(oniae). Quadraginta diebus, qui auspicio ceremoniarum paschale tempus anticipant, omnis cognitio inhibeat criminalium quaestionum. Dat. VI kal. April. Thessal(onicae), Gr(ati)ano A. V et Theod(osio) A. I cons.*

("Emperor Gratian, Valentinian, and Theodosius Augustus to Albucianus, Vicar of Macedonia. During the forty days which anticipate the Paschal season by the auspicious beginning of ceremonies, all investigation of criminal cases through torture shall be prohibited. Given the sixth day before the kalends of April at Thessalinica in the year of the fifth consulship of Gratian Augustus and the first consulship of Theodosius Augustus.")

Interpretatio ad C. Th. 9,35,4, written in late fifth-century Gaul and included along with C. Th. 9,35,4 in the Breviary of Alaric from 506 (*Breviarium Alaricianum* 9,25,1), expanded the application of the enactment and associated it directly with *religio*, which appears to exemplify the role of the *interpretationes* in general:¹⁴

Interpretatio ad C. Th. 9,35,4: Diebus quadragesimae pro reverentia religionis omnis criminalis actio conquiescat.

("During the days of Quadragesima, in reverence for religion, all criminal actions shall be in abeyance.")

¹⁴ Ed. *Breviarium Alarici (Lex Romana Visigothorum)*, ed. G.F. Hänel, Lipsiae 1849 (reed. Aalen 1962, Milano 2004). See about *interpretationes*: F. Wieacker, *Lateinische Kommentare zum Codex Theodosianus*, in: *Symbolae Friburgensis in honorem Ottonis Lenel*, Leipzig 1931, pp. 259–356; J.F. Matthews, *Interpreting the Interpretationes of the Breviarium*, in: *Law, Society, and Authority in Late Antiquity*, ed. R.W. Mathisen, Oxford 2001, pp. 11–32 and the detailed studies by L. Di Cintio: idem, *Ancora sulla "Interpretationes"*, *Rivista di Diritto Romano* 2010, no. 10, pp. 1–16; idem, *Riflessioni sul libro IX della "Interpretatio" alaricana*, *Rivista di Diritto Romano* 2012, no. 12, pp. 1–68 (esp. p. 34); idem, *L'"Interpretatio Visigothorum" al "Codex Theodosianus". Il libro IX*, Milano 2013, <http://www.ledonline.it/rivistadirittoromano/allegati/dicintio-interpretatio.pdf>, esp. pp. 223–228; idem, *Fonti normativi nella "Lex Romana Visigothorum". Leges et Iura*, *Studia et Documenta Historiae et Iuris* 2016, vol. 82, pp. 291–326. On the meaning of "religio" see: C. Ando, *The Matter of the Gods: Religion and the Roman Empire*, Berkeley–Los Angeles–London 2008, esp. p. 126. Also, on the work of Alaric's commission see: J.D. Rodríguez Martín, *A Handbook for Alaric's Codification*, *Revue Internationale des Droits de l'Antiquité* 1999, vol. 46, pp. 451–463; C. Nemo-Pekelman, *How Did the Prudentes Work on the "Breviarium Alaricanum"? The Example of the Laws on Jews*, *Historical Research* 2013, vol. 86, no. 233, pp. 408–415. Cf. about *Breviarium Alaricianum* data gathered in *Bibliotheca legum. A Database on Carolingian Secular Law Texts*, <http://www.leges.uni-koeln.de/en/lex/codex-theodosianus/>.

Before focusing on those texts, it is worth mentioning that the influence of Christianity on the Roman calendar had frequently manifested itself much earlier. Courts had not been allowed to work through *dies solis* in the city of Rome since Constantine the Great (306–337), who in 321 issued two constitutions addressed to vicar Helpidus, both of which became *leges generales* – at least after their respective incorporation into *Codex Theodosianus* and *Codex Iustinianus*:¹⁵

- C. Th. 2,8,1, which provided that the only permitted act during *dies solis* was emancipation of persons *alieni iuris* and slaves;¹⁶
- C. 3,12,2, which obliged judges to celebrate *dies solis* and forbade any work to be undertaken by the people of Rome and craftsmen, though making an exception for farming on those days.¹⁷

Interpretatio ad C. Th. 2,8,1 states that:

Quamvis sancto die dominico omnes lites ac repetitiones quiescere iusserimus, emancipare tamen ac manumittere minime prohibemus, et de his rebus gesta confici pari ordinatione permittimus.

(“Although We had ordered that on the holy Day of the Lord all litigations and suits must cease, nevertheless We by no means prohibit emancipation and manumission, and by corresponding regulation We permit the legal formalities thereof to be performed.”)

Does it mean that *dies solis* were regarded as *dies dominicus* (Christian Sunday) already under Constantine in 321? The issue is a complex one. First of all, it has already been noted that *interpretationes* were written in late fifth-century Gaul and frequently amended the laws preserved in

¹⁵ See concerning *Helpidius* and his post J. Wiewiorowski, *The Judiciary of Diocesan Vicars in the Later Roman Empire*, transl. S. Nowak, Poznań 2015, pp. 83–85, 119, footnote 45, 220, footnote 400, with previous studies.

¹⁶ C. Th. 2,8,1 (a. 321): *Imp. Constantinus A. Elpidio. Sicut indignissimum videbatur, diem solis, veneratione sui celebrem, altercantibus iurgiis et noxiis partium contentionibus occupari, ita gratum ac iucundum est, eo die, quae sunt maxime votiva, compleri. Atque ideo emancipandi et manumittendi die festo cuncti licentiam habeant, et super his rebus acta non prohibeantur. P(ro)p(osita). v. non. iul. Caralis, Crispo II. et Constantino II. caess. cons.*

¹⁷ C. 3,12,2 (a. 321): *Imperator Constantinus A. Helpidio. Omnes iudices urbanaeque plebes et artium officia cunctarum venerabili die solis quiescant. Ruri tamen positi agrorum culturae libere licenterque inserviant, quoniam frequenter evenit, ut non alio aptius die frumenta sulcis aut vineae scrobibus commendentur, ne occasione momenti pereat commoditas caelesti provisione concessa. PP. V non. mart. Crispo II et Constantino II cons.*

Codex Theodosianus. Secondly, the concept of the week, rooted in the Jewish or rather Babylonian astrology, had already been well known in Hellenistic times and adopted together with *dies solis* by the Romans during the late Republic.¹⁸ Last but not least, the city of Rome, the customs in which were governed by C. Th. 2,8,1 and C. 3,12,2 only in 321, had been a flourishing centre of pagan cults under Constantine, and continued to be such until the late 4th century.¹⁹

There is nothing strange about the numerous disputes concerning the issue whether *dies solis* had already been identical with *dies dominicus* under Constantine in 321, given that such a view was expressed for the first time and documented more or less rigorously by Jacques Godefroy (1587–1652).²⁰ However, recent arguments to the contrary seem more convincing. For example, Jörg Rüpke pointed out that Constantine's *dies solis* echoed the old Roman free days (*feriae*) and deduced “[d]ie funktionale Äquivalenz von Sonntag und *nundinae* [...]”, i.e. old Roman trading days.²¹ Esteban Moreno Rosano argued in a similar vein, writing that, “Constantino se presentaba como un defensor de las tradiciones religiosas romanas. Entre esas medidas, se encuentra la ley del Dies Solis.”²²

At any rate, the establishment of the *dies solis* as a regular day of rest by Constantine might be treated as an early step towards Christianisation of

¹⁸ Cf. e.g. J. Rüpke, *Kalender und Öffentlichkeit. Die Geschichte der Repräsentation und religiösen Qualifikation von Zeit in Rom*, Berlin–New York 1995, pp. 456–470; M.R. Salzman, *Pagan and Christian Notions of the Week in the 4th Century CE Western Roman Empire*, in: *Time and Temporality in the Ancient World*, ed. R.M. Rosen, Philadelphia 2004, pp. 185–212. See also S.E. Hijmans, *Sol. The Sun in the Art and Religions of Rome*, Groningen 2009 (Ph.D. Dissertation), esp. pp. 583–620.

¹⁹ Cf. e.g. A. Cameron, *The Last Pagans of Rome*, Oxford 2011, *passim*, with previous studies.

²⁰ J. Gothofredus, *Codex Theodosianus cum perpetuis commentariis [...]*, vol. 1, Lipsiae 1736, pp. 136–139. The discussion is a part of the never-ending dispute concerning the influence of Christianity on Constantine's legislation. In this regard, it is worth remembering that even criminal law of Constantine's was affected by the Christian ideas only in few cases. Cf. Y. Rivière, *Constantin, le crime et le christianisme: contribution à l'étude des lois et des mœurs de l'Antiquité tardive*, *Antiquité Tardive* 2003, no. 10, pp. 327–361.

²¹ J. Rüpke, *Kalender und Öffentlichkeit*, pp. 464 and 469. See concerning *nundinae* e.g. J. Ker, “*Nundinae*”: *The Culture of the Roman Week*, Phoenix 2010, vol. 64, no. 3/4, pp. 360–385.

²² E. Moreno Rosano, *La ley constantiniana del “Dies Solis” en su contexto político y legislativo*, *Studia Historica. Historia Antigua* 2009, no. 27, pp. 187–206, with other studies (quotation from p. 206). Similarly M. Bianchini, *Cadenze...*, pp. 242–244, 254.

the Roman Empire.²³ The term *dies solis* may surely be considered identical with the Christian *dies dominicus* only in the imperial constitution of Gratian's issued in Aquileia in 386, which in view of its addressee and the place of *acceptio* (Rome) was subsequently applied then to the prefecture of Italy, Africa and Illyricum exclusively (after promulgation of the *Theodosian Code* from 438 the constitution became *lex generalis*).²⁴ It forbade any legal acts on *solis die, quem dominicum rite dixere maiores* ("On the Day of the Sun,

²³ K.M. Girardet, *Vom Sonnen-Tag zum Sonntag: der "dies solis" in Gesetzgebung und Politik Konstantin d. Gr.*, *Zeitschrift für Antikes Christentum* 2007, no. 11, pp. 279–310. See only from recent studies too e.g.: A. Di Berardino, *La cristianizzazione del tempo nei secoli IV-V: la domenica*, *Augustinianum* 2002, vol. 42, no. 1, pp. 97–125; R. Soraci, *Dies solis e dies Domini. Dai riti mistagogici al culto cristiano*, in: Salvatore Calderone (1915–2000). *La personalità scientifica*, Messina 2010, pp. 223–247, esp. pp. 238–239, 242–244; J. Naumowicz, *Rok liturgiczny po przełomie konstantyńskim. Traktat Euzebiusza z Cezarei "O Święcie Wielkanocy"*, *Warszawskie Studia Teologiczne* 2011, vol. 24, no. 2, pp. 281–298; J.N. Dillon, *The Justice of Constantine: Law, Communication, and Control*, *Ann Arbor* 2012, esp. pp. 202–204; F. Graf, *Lying Down the Law in Ferragosto. The Roman Visit of Theodosius in Summer 389*, *Journal of Early Christian Studies* 2014, vol. 22, no. 2, pp. 219–242, esp. p. 234; U. Agnati, *Constantine's Statutes on Sunday Rest Social and Juridical Remarks* [online], *CALUMET. Intercultural Law and Humanities Review* 2015, http://www.windogem.it/calumet/archivio_single.asp?id_art=20&lang=eng. See also the hesitation in the studies of M.R. Salzman, *idem, On Roman Time...*, p. 236, *contra idem, Pagan and Christian...*

²⁴ C. Th. 2,8,18 = C. Th. 8,8,3 = C. Th. 11,7,13 (a. 386): *Imppp. Gratianus, Valentinianus et Theodosius AAA. ad Principium praefectum praetorio. Solis die, quem dominicum rite dixere maiores, omnium omnino litium, negotiorum, conventionum quiescat intentio; debitum publicum privatumque nullus efflagitet; nec apud ipsos quidem arbitros vel iudiciis flagitatos vel sponte delectos ulla sit agnitio iurgiorum. Et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instinctu rituve deflexerit. P(ro)p(osita) III non. nov. Aquil(eiae), acc(epta) VIII k. dec. Rom(ae) Hon(orio) n. p. et Evodio cons. Cf. O. Seeck, *Regesten...*, p. 270; PLRE I, p. 726 (s.v. *Principius*). About the prefecture of Italy cf. S. Olszaniec, *Prefektura "praetorio" Italii, Illyrikum i Afryki (312–425 n.e.)*, Toruń 2014, esp. pp. 59–82. Important seems also in this regard C. Th. 8,8,1 = C. Th. 11,7,10 (a. 368 or 370 or 373): *Impp. Valentinianus et Valens AA. ad Florianum consularem Venetiae. Die solis, qui dudum faustus habetur, neminem christianum ab exactoribus volumus conveniri, contra eos, qui id facere ausi sint, hoc nostri statuti interdicto periculum sancientes. Dat. XI kal. mai. Treviris Valentiniano et Valente AA. cons.* About the date S. Schmidt-Hofner, *Die Regesten der Kaiser Valentinian und Valens in den Jahren 364 bis 375 n. Chr.*, *Savigny-Zeitschrift für Rechtsgeschichte, Romanistische Abteilung* 2008, vol. 125, p. 534, following O. Seeck, *Regesten...*, pp. 31, 232. See also R. Soraci, *Dies solis e dies Domini...*, pp. 244–245, with previous studies, who correctly writes however that, "Il mondo romano però non era 'ormai esclusivamente cristiano,' né il culto del Sole era del tutto scomparso."*

which our ancestors rightly called the Lord's Day"). Pious Emperor Gratian understood *dies solis* in the Christian way but it does not mean that the very same idea was embraced by Constantine already in 321.²⁵ Without any doubt, *Dies solis* features as the Christian Sunday in the rescript of Theodosius I from 389, which reformed the court calendar in Rome²⁶ whereas *dies dominicus* is construed as such only in C. Th. 9,3,7, issued in 409 in the name of Honorius and Theodosius II and concerning the inspection of prisons *dominicus diebus*.²⁷

²⁵ See especially the last sentence of C. Th. 2,8,18: *Et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instinctu rituve deflexerit* ("That person shall be adjudged not only infamous but also sacrilegious, who turns aside from the inspiration and ritual of holy religion."). Cf. A. Dębiński, *Sacrilegium w prawie rzymskim*, Lublin 1995, pp. 186–187 (who nonetheless subscribes to the opinion that *dies solis* was *dies dominicus* already under Constantine in 321). About Gratian's religious policy cf. M. Fortina, *L'imperatore Graziano*, Torino–Milano–Genova–Parma–Roma–Catania 1953, esp. pp. 183–222; A. Watson, *Religious and Gender Discrimination: St. Ambrose and the Valentiniani*, *Studia et Documenta Historiae et Iuris* 1995, vol. 61, pp. 313–326 (esp. p. 314).

²⁶ C. Th. 2,8,19 (a. 389): *(I)mppp. Val(entini)anus, Theod(osius) et Arcad(ius) AAA. Albino p(raefecto) U(rbi). pr. Omnes dies iubemus esse (i)uridicos. Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus accepit, aestivis fervoribus mitigandis et autumnis foetibus decerpendis. 1. Kalendarum quoque ianuariarum consuetos dies otio mancipamus. 2. His adiicimus natalitios dies urbium maximarum, Romae atque Constantinopolis, quibus debent iura deferre, quia et ab (i)psis nata sunt. 3. Sacros quoque paschae dies, qui septeno vel praecedunt numero vel sequuntur, in eadem observatione numeramus, nec non et dies solis, qui repetito in se calculo revolvuntur. 4. Parem necesse est haberi reverentiam nostris etiam diebus, qui vel lucis auspicia vel ortus imperii (p)rotulerunt. Dat. VII. id. aug. Rom(ae), Timasio et Promoto cons. Cf. F. Graf, *Lying Down...*, esp. pp. 229–236.*

²⁷ C. Th. 9,3,7 = C. 1,4,9 (a. 409): *Impp. Honorius et Theod(osius) AA. Caeciliano p(raefecto) p(raetori)o. Post alia: iudices omnibus dominicis diebus productos reos e custodia carcerali videant et interrogent, ne his humanitas clausis per corruptos carcerum custodes negetur. Victualem substantiam non habentibus faciant ministrari, libellis duabus aut tribus diurnis vel quot existimaverint, commentariensi decretis, quorum sumptibus proficiant alimoniae pauperum quos ad lavacrum sub fida custodia duci oportet, mulcta iudicibus viginti librarum auri et officiis eorum eiusdem ponderis constituta, ordinibus quoque trium librarum auri mulcta proposita, si saluberrime statuta contempserint. Nec deerit antistitum christianae religionis cura laudabilis, quae ad observationem constituti iudicis hanc ingerat monitionem. Dat. XII. kal. febr. Rav(ennae), Honor(io) VIII. et Theod(osio) III. AA. cons. Cf. M. Bianchini, *Cadenze...*, pp. 256–262; J.U. Krause, *Gefängnisse im Römischen Reich*, Stuttgart 1996, pp. 307, 342; A. Świętoń, *Humanitaryzm w rzymskim późnoantycznym ustawodawstwie cesarskim na przykładzie konstytucji zamieszczonych w CTh 9.3. "De custodia reorum"*, *Studia Prawnoustrojowe* 2009, no. 9, pp. 43–54, esp. pp. 51–52.*

C. Th. 9,35,4 is therefore correctly recognised as the first direct example of Christian influence on the Roman court calendar.²⁸ The enactment followed one month after the edict *Cunctos populos* had been issued (C. Th. 16,1,2 = C. 1,1,1). This took place on 27 February 380 in Thessaloniki as well and, as Mariagrazia Bianchini rightly observed, “[e] non si tratta certo di mera coincidenza!”.²⁹ Formally addressed to the people of Constantinople, the constitution initially sought to resolve the disputes among the local Christians concerning the Nicene Creed alone, but already in late antiquity it became acknowledged as the official recognition of Catholicism as the state religion.³⁰ The issue of C. Th. 16,1,2 and C. Th. 9,35,4 might have been associated with the personal influence of Acholius, the bishop of Thessaloniki, who then baptised seriously ill Theodosius I in autumn 380. The emperor was of Spanish origin and promoted the Nicene Creed, which had even earlier been generally accepted among Christians

²⁸ M. Bianchini, *Cadenze...*, esp. p. 247.

²⁹ C. Th. 16,1,2 = C. 1,1,1 (a. 380): *Imppp. Gratianus, Valentinianus et Theodosius AAA. edictum ad populum urbis Constantinopolitanae. pr. Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum petrum apostolum tradidisse Romanis religio usque ad nunc ab ipso insinuata declarat quamque pontificem Damasum sequi claret et Petrum Alexandriae episcopum virum apostolicae sanctitatis, hoc est, ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub parili maiestate et sub pia trinitate credamus. 1. Hanc legem sequentes christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere nec conciliabula eorum ecclesiarum nomen accipere, divina primum vindicta, post etiam motus nostri, quem ex caelesti arbitrio sumpserimus, ultione plectendos. Dat. III kal. mar. Thessalonicae Gratiano a. V et Theodosio a. I cons.* Quote from M. Bianchini, *Cadenze...*, p. 262.

³⁰ On imperial constitutions addressed “ad populum” cf.: C. Dupont, *Les constitutions “ad populum”*, *Revue Historique de Droit Français et Étranger* 1971, vol. 49, no. 4, pp. 586–600; J.L. Cañizar Palacios, *Propaganda y Codex Theodosianus*, Madrid 2005, pp. 60–61; F. Pergami, *Amministrazione della giustizia e interventi imperiali nel sistema processuale della tarda antichità*, Milano 2007, p. 72, footnote 150. On C. Th. 16,1,2 only in Polish authors cf. e.g. K. Ilski, *Religijna przestanka jedności państwa w “De fide catholica” (CTh XVI,1,2) i jej kontekst historyczny*, in: *Aetas imperatoria*, ed. L. Mrozewicz, K. Ilski, *Scripta Minora* 3, Poznań 1999, pp. 463–479; idem, *Idea jedności politycznej, społecznej i religijnej w świetle pism Ambrożego z Mediolanu*, Poznań 2001, pp. 267–276; B. Sitek, *Sull’editto Teodosiano “De fide catholica”. Riflessioni su tolleranza e intolleranza religiosa tra IV e V secolo d.C.* [online], *Diritto@Storia. Rivista Internazionale di Scienze Giuridiche e Tradizione Romana* 2005, no. 4, <http://www.dirittoestoria.it/4/Contributi/Sitek-Editto-Teodosiano-de-fide-catholica.htm> = *O edykcje Teodozjusza “De Fide Catholica”. Krótkie uwagi o tolerancji i nietolerancji religijnej na przełomie IV i V w. po Chr.*, in: *“Cuius regio, eius religio?” Zjazd historyków prawa, Lublin: 20–23 września 2006*, ed. G. Górski, L. Ćwikła, M. Lipska, Lublin 2006, pp. 11–23.

who lived in the western part of the Roman empire.³¹ Even so, it would be legitimate to claim that although C. Th. 9,35,4 may have affected a larger number of people, it demonstrates a very limited degree of the Christian influence even on Theodosius' religious legislation thus far because it merely suspended torture. On the other hand, it must be emphasised that Theodosius issued sixty-five laws on religious affairs throughout his reign, far more than any of his predecessors.³² And, since 392 – initially in the prefecture of the East – public and private legal acts performed during Easter were illegal.³³ However, assuming that C. Th. 9,35,4 was the copy of the *mandatum* addressed to many imperial officers, torture in the course of interrogation (*quaestiones*) could be suspended universally during the period of 40 days preceding Easter (or at least in part of the empire ruled at the time by Theodosius I) already since 380.³⁴

³¹ Cf. R.M. Errington, *Church and State in the First Years of Theodosius I*, Chiron 1997, vol. 27, pp. 21–72, esp. pp. 36–37; H. Leppin, *Theodosius der Grosse. Auf dem Weg zum christlichen Imperium*, Darmstadt 2003, esp. pp. 68–69.

³² Ph. Tilden, *Religious Intolerance in the Later Roman Empire: The Evidence of the Theodosian Code*, Exeter 2006 (Ph.D. Dissertation), pp. 163–164, 171.

³³ C. Th. 2,8,21 = C. 3,12,7 (a. 392): (*Idem* [Imppp. Valentinianus, Theodosius et Arcadius] AAA. T)atiano p(raefecto) p(raetori)o. Actus omnes seu publici seu privati diebus quindecim paschalibus sequestrentur. Dat. VI k. Iun. Const(antino)p(oli) Arcad(io) A. II et Ruf(ino) cons. The importance of Easter and the times of celebrations in the 4th–5th centuries are discussed in detail by A. Di Berardino, *Christian Liturgical Time...*, esp. pp. 191–199, 211–220, who on p. 198 aptly draws on C. Th. 9,38,3: Imppp. Val(entini)anus, Valens et Gr(ati)anus AAA. ad Viventium p(raefectum) U(rbi). Ob diem paschae, quem intimo corde celebramus, omnibus, quos reatus adstringit, carcer inclusit, claustra dissolvimus. Adtamen sacrilegus in maiestate, reus in mortuos, veneficus sive maleficus, adulter raptor homicida communione istius muneris separentur. Dat. III non. mai. Rom(ae) Lupicino et Iovino cons. – a. 367 (about the date cf. S. Schmidt-Hofner, *Die kaiserlichen Regesten...*, p. 538, following O. Seeck, *Regesten...*, p. 230). Cf. also Ph. Tilden, *Religious Intolerance...*, esp. pp. 101–106, 205. About the prefecture of the East in the 4th century cf. A. Gutsfeld, *Die Macht des Prätorianerpräfekten. Untersuchungen zum praefectus praetorio Orientis von 313 bis 395 n. Chr.*, Berlin 1996 (Habilitationsschrift).

³⁴ Cf. J. Wiewiorowski, *The Judiciary...*, pp. 163–164. The law is regarded also as *mandatum* by P.R. Coleman-Norton, *Roman State & Christian Church. A Collection of Legal Documents to A.D. 535*, vol. 1, London 1966, pp. 359–360. The issue is discussed by A. Di Berardino, *Christian Liturgical Time...*, esp. pp. 201–203. However, C. Th. 9,35,4 might be a *rescriptum*, as the majority of legal enactments preserved in *Codex Theodosianus*. See also M. Bianchini, *Cadenze...*, pp. 244–247.

As a final remark of my introductory draft,³⁵ it is important to emphasise that the disputes concerning the Christian influence on the Roman calendar should be known to all those who engage in politics of memory, i.e. political agents seeking to organise collective memory, making them aware that using historical facts in the contemporary legal discussion and public discussion in general is a complex matter.³⁶ An example of how not to do it may be seen in the Polish debate concerning the limitation of legal trade during Sundays, when Constantinian roots of *dies dominicus* were

³⁵ For example, the complex issue which is not going to be discussed here in detail is whether C. Th. 9,35,4 demonstrates the differences of Christian traditions between the Latin West and the Greek East. C. Th. 9,35,5 (a. 389), applying initially only to the prefecture of the East and preserved in the same title of *Codex Theodosianus*, stated that all penalties should be suspended forty days before Easter, “during which time the absolution of souls is awaited” (C. Th. 9,35,5 (a. 389): *Imppp. Val(entinianus), Theod(osius) et Arcad(ius) AAA. Tattiano p(raefecto) p(raetori)o. Sacratissimas quadragessimae diebus nulla supplicia sint corporis, quibus absolutio expectatur animarum. Dat. VIII id. septemb. foro Flamini Timasio et Promoto cons.*). On the other hand, an enactment of Theodosius II which remained in force only in the East, ordered torture of *latrones Isauri* exactly during *quadragessimae diebus* and Easter (C. Th. 9,35,7 = C. 3,12,8 (a. 408): *Impp. Honor(ius) et Theod(osius) AA. ad Anthemium p(raefectum) p(raetori)o. Provinciarum iudices moneantur, ut in isaurorum latronum quaestionibus nullum quadragessimae nec venerabilem pascharum diem existiment excipiendum, ne differatur sceleratorum proditionis consiliorum, quae per latronum tormenta quaerenda est, cum facillime in hoc summi numinis speretur venia, per quod multorum salus et incolumitas procuratur. Dat. V kal. mai. Constantinopoli Basso et Philippo cons.*). Cf. M. Bianchini, *Cadenze...*, esp. pp. 246–253; A. Di Berardino, *Christian Liturgical Time...*, esp. pp. 199–210; Ph. Tilden, *Religious Intolerance...*, esp. pp. 190, 210; J. Wiewiorowski, *The Judiciary...*, pp. 163–164 (wrongly assuming that the diocese of Macedonia was a part of the Praefecture of Illyricum [sic]). Concerning political context of C. Th. 9,35,7 see also: E.A. Thompson, *The Isaurians under Theodosius II*, *Hermathena* 1946, no. 68, pp. 18–31; W.D. Burgess jr., *The Isaurians in the Fifth Century A.D.*, Madison 1985 (Ph.D. Dissertation), esp. p. 54; K. Feld, *Barbarische Bürger. Die Isaurier und das Römische Reich*, Berlin–New York 2005, p. 173 (and general remarks of K. Hopwood, *Bandits, Elites and Rural Order*, in: *Patronage in Ancient Society*, ed. A. Wallace-Hadrill, London–New York 1989, pp. 171–187; B.D. Shaw, *Bandit Highlands and Lowland Peace: The Mountains of Isauria-Cilicia*, *Journal of the Economic and Social History of the Orient* 1990, vol. 33, no. 2, pp. 199–233 and 237–270; N. Lenski, *Assimilation and Revolt in the Territory of Isauria. From the 1st Century BC to the 6th Century AD*, *Journal of the Economic and Social History of the Orient* 1999, vol. 42, no. 4, pp. 413–465).

³⁶ Cf. e.g. N. Maurantonio, *The Politics of Memory*, in: *The Oxford Handbook of Political Communication*, ed. K. Kenski, K.H. Jamieson, Oxford 2014, pp. 219–232, with bibliographical references.

quoted frequently and with great conviction.³⁷ The first direct Christian influence on the Roman official calendar was probably a little later occurrence, to which C. Th. 9,35,4 = C. 3,12,5 (A.D. 380) surely attests.

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³⁷ Cf. the entry “niedziela, Konstantyn Wielki” (Sunday, Constantine the Great), Google search 30.09.2019. However, *Uzasadnienie obywatelskiego projektu Ustawy o ograniczeniu handlu w niedziele* [The Rationale for the Civic Legal Bill Concerning the Limitation of the Trade during Sundays] [online] quotes only the Apostle Letter of John Paul II *Dies Domini* 31 May 1998: the text mentions only the introduction of the Christian Sunday in the 4th century (but C. Th. 2,8,1, a 321 is quoted in note 107). Cf. http://www.solidarnosckatowice.pl/files/baza_plikow/wolna%20niedziela/wn_uzasadnienie.pdf; https://w2.vatican.va/content/john-paul-ii/pl/apost_letters/1998/documents/hf_jp-ii_apl_05071998_dies-domini.html.

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Summary

The text analyses Christianisation of the Roman calendar in the light of the Roman imperial constitutions in the 4th century. The author first of all underlines that only humans recognise religious feasts despite that human perception of time is not that remote from the apperception of time in the case of other animals and that the belief in the supernatural/religion and rituals belong to human universals, the roots of which, together with the judiciary, are to be sought in

the evolutionary past of the genus *Homo*. Furthermore, the author deduces that the first direct Christian influence on the Roman official calendar was probably C. Th. 9,35,4 = C. 3,12,5 (a. 380), prohibiting all investigation of criminal cases by means of torture during the forty days which anticipate the Paschal season, contesting the opinion that *dies solis* were regarded as *dies dominicus* (Christian Sunday) already in C. Th. 2,8,1 and C. 3,12,2 (a. 321). Finally, on the margin of the Polish debate concerning the limitation of legal trade during Sundays, when Constantinian roots of *dies dominicus* were quoted frequently and with great conviction, the limitations of politics of memory are underlined.

Key words: Christianity, Roman calendar, Roman law, imperial constitutions, Sunday, C. Th. 9,35,4 = C. 3,12,5 (a. 380), politics of memory

WPŁYW CHRZEŚCIJAŃSTWA NA KALENDARZ RZYMSKI UWAGI NA MARGINESIE C. TH. 9,35,4 = C. 3,12,5 (A. 380)

Streszczenie

Tekst analizuje zagadnienie wpływu chrześcijaństwa na rzymski kalendarz sądowy w IV w. w świetle późnorzymskich konstytucji cesarskich. Autor wskazuje na wstępie, że pomimo wspólnego z innymi zwierzętami poczucia czasu, głębokich ewolucyjnych korzeni religijności oraz wymiaru sprawiedliwości, człowiek jest jedyną istotą, która wyróżnia dni świąteczne. Następnie podziela i uzasadnia pogląd, że pierwszym pewnym przykładem wpływu chrystianizmu na rzymski kalendarz urzędowy jest konstytucja C. Th. 9,35,4 = C. 3,12,5 (a. 380), która zakazywała prowadzenia postępowań karnych z użyciem tortur w okresie czterdziestu dni poprzedzających Wielkanoc, kwestionując opinie o utożsamieniu *dies solis* z *dies dominicus* (chrześcijańską niedzielą) już w momencie wydania C. Th. 2,8,1 i C. 3,12,2 w 321 r. Na marginesie polskiej dyskusji o ustawowym ograniczeniu handlu w niedziele, w której teza ta prezentowana jest bezkrytycznie, wskazuje na koniec na ograniczenia tzw. polityki historycznej.

Słowa kluczowe: chrześcijaństwo, kalendarz, prawo rzymskie, konstytucje cesarskie, niedziela, C. Th. 9,35,4 = C. 3,12,5 (a. 380), polityka historyczna

**ВЛИЯНИЕ ХРИСТИАНСТВА НА РИМСКИЙ КАЛЕНДАРЬ.
ЗАМЕТКИ ПО ПОВОДУ С. ТН. 9,35,4 = С. 3,12,5 (А. 380)**

Резюме

В тексте рассматривается вопрос о влиянии христианства на римский судебный календарь в 4 веке в свете позднеримских императорских конституций. Автор во введении указывает на то, что, несмотря на разделяемое с другими животными чувство времени, глубокие эволюционные корни религиозности и систему правосудия, человек является единственным существом, которое отличает праздничные дни. Затем он разделяет и обосновывает мнение о том, что первым верным примером влияния христианства на римский официальный календарь является конституция С. Тн. 9,35,4 = С. 3,12,5 (а. 380), которая запрещала уголовное преследование, связанное с применением пыток, в течение сорока дней, предшествующих Пасхе, ставя под сомнение мнения об отождествлении *dies solis c dies dominicus* (христианским воскресеньем) уже во время издания С. Тн. 2,8,1 и С. 3,12,2 в 321 г. По поводу польской дискуссии о законодательных ограничениях на торговлю в воскресенье, в которой этот тезис представляется не критически, указывает на ограничения так называемой исторической политики.

Ключевые слова: Христианство, Календарь, Римское право, Императорские конституции, Воскресенье, С. Тн. 9,35,4 = С. 3,12,5 (а. 380), историческая политика

