

THE TAX EXEMPTIONS GRANTED TO CLERICS BY CONSTANTINE AND CONSTANTIUS II

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IN the *Codex Theodosianus* 16.2.1–16 are to be found laws of the first Christian emperors granting tax exemptions to Christian clerics. Some scholars have thought that the scope of these exemptions was enlarged during the two reigns,¹ some that at various times it was enlarged or contracted,² and some that Constantius began to diminish it towards the end of his reign.³ In his notes on *CTh* 16.2.18 of 364, which reads:

Quam ultimo tempore divi Constanti sententiam fuisse claruerit, valeat, nec ea in adsimulatione aliqua conualescant, quae tunc decreta vel facta sunt, cum paganorum animi contra sanctissimam legem quibusdam sunt depravationibus excitati—

Pharr interpreted Valentinian's law as referring to "the general policy of Constantius as manifested by his legislation towards the end of his life, as distinguished from some of his earlier legislation when his policy wavered; XVI 2, 16; XII 1, 49."⁴ Pharr's view may be compared with that of Cochrane who, writing in more general terms, thought that Constantius began with a marriage of the Empire and the Church, but later decided that a divorce would be necessary.

It is easy to conclude that there was some wavering by both rulers. So many laws in less than fifty years, some sounding more strict than others, may point to that conclusion, as may 16.2.15, which will be discussed below. Moreover, Valentinian's reference to the *sententia* of Constantius at the end of his life may be taken, as Pharr took it, to imply that Valentinian thought that Constantius' opinion had not always been what it was in 361.

There are three considerations which appear to make this conclusion doubtful. First, it is not necessary to conclude that the phrase *ultimo tempore divi Constanti* has any other point than a contrast of the policies

¹J. Declareuil, "Les curies municipales et le clergé au Bas-Empire," *Revue Historique de Droit français et étranger* 14 (1935) 50; C. N. Cochrane, *Christianity and Classical Culture* (Oxford 1944) 256–260; A. Piganiol, *L'empire chrétien* (Paris 1947, reprinted 1972) 75 and 121; J. Gaudemet, *L'Église dans l'Empire romain* (Paris 1958) 145; A. H. M. Jones, *The Later Roman Empire* (Oxford 1964) 1.89 and 118. Works cited in the first four notes here will be cited below by author's name.

²C. Dupont, "Les privilèges des clercs sous Constantin," *Revue d'histoire ecclésiastique* 62 (1967) 743–752.

³So Cochrane; cp. Dupont 745–752; Piganiol (121) qualifies this view with a "perhaps."

⁴Clyde Pharr's translation of the Theodosian Code (Princeton 1952) 443.

of Constantius and Julian.⁵ Second, since the social backgrounds and financial circumstances of clerics were much more varied in 361 than they had been in 313, Constantine and Constantius may have had a consistent policy which they tried to enforce in changing circumstances. Third, W. Goffart has recently argued that the laws of Constantius in 16.2 should be read "as a series of clarifications designed to render more specific the original, simply phrased law of Constantine." This argument depends to some extent on Goffart's view that the term *munus* embraced "taxes as well as liturgies." On this view some of the arguments to the effect that Constantine and Constantius withdrew or enlarged the exemptions from time to time would lose much of their force.⁶

This question about the consistency of the policy might be answered if special attention were paid to the assumptions of the two rulers as they appear in the laws of 16.2, and to their opinions on whether circumstances had changed since earlier laws were made. What follows here is a commentary on these laws with these considerations in mind. Since I am satisfied with the dates given in Seeck's *Regesten*, the order in which the laws will be discussed is 2, 1, 4, 5, 6, 3, 7, 11, 8, 10, 9, 12, 13, 14, 15, 16.

The first seven laws are those of Constantine. Of these the first (2, of 313 Oct. 21)⁷ exempts clerics from all compulsory public services, *ne sacrilego livore quorundam a divinis obsequiis avocentur*. This is in line with Constantine's letter in the spring of 313 to Anullinus, the proconsul of Africa, dispensing the clergy ἀπὸ πάντων ἀπαξ ἀπλῶς τῶν λειτουργιῶν ...⁸ In that letter Constantine specified that his grants should be confined to Catholic churches, as listed by Hosius. In the second law (1, of 313 Oct. 31) which reinforces the first, Constantine refers to a faction of heretics

⁵I am assuming that Valentinian would have had a right understanding of Constantius' opinion or opinions.

⁶W. Goffart, *Caput and Colonate* (Toronto 1974) 22–26 and 123, n. 8. I have left my argument independent of Goffart's so that any support for his views which may be derived from the present discussion should not be the result of a circular argument.

⁷Seeck's date of 313 Oct. 21 for 2 was accepted by Gaudemet, "La législation religieuse de Constantin," *Revue d'histoire de l'Église de France* 33 (1947) 27–28 and Dupont 731, but not by M. Nuyens, *Le statut obligatoire des décurions dans le droit de Constantin* (Louvain 1964) 72–73. Nuyens says that the date at which the initial privilege referred to in 16.2.1 was conferred is not known (46–47). I take it that the initial privilege was conferred by 16.2.2 or a similar law of about the same date as Constantine's letter to Anullinus (cf. note 8 below). I accept Seeck's date for 16.2.2. Perhaps a reason for the two laws in ten days should be suggested. 16.2.2 expresses the emperor's intention without saying whether it is pagans or heretics who are causing the alleged trouble. 16.2.1 is more strenuous against heretics, and may have been prompted by news from North Africa arriving after the issue of 16.2.2. Constantine may have decided that it was prudent to give quarrels between Christians as the reason for granting the exemptions.

⁸The letter is in Eusebius *HE* 10.7. Cf. Dupont 731.

(presumably the Donatists) who are harassing Catholic clerics by burdening them with public services.⁹

The third law (4, of 321 July 3) allows people to bequeath property to the Catholic Church. The fourth (5, of 323 Dec. 25) prohibits anyone from requiring Christians to perform (pagan) lustral sacrifices.

By the fifth (6, of 329 June 1) Constantine restricts the exemption from the public services. It is not to be granted by popular consent, nor to all who claim it as clerics. He even creates a legal qualification for entrance to the ranks of the clergy; the clerical replacement for a dead cleric may not be related to a decurion family, nor may he have enough wealth to be a decurion. *Opulentos enim saeculi subire necessitates oportet, pauperes ecclesiarum divitiis sustentari*. The treasury was not to suffer.¹⁰

The sixth law (3, of 329 July 18) refers to the preceding one. Constantine has quickly learned that *curiales* who had become clerics before the law of June 1, 329 were being disturbed because of that law. In this subsequent enactment he makes it clear that the earlier law is not to be considered retroactive. His last law under this title (7, of 330 Feb. 5), addressed to the governor of Numidia, provides that, as in the Orient, minor clerics shall not be called to service as decurions. The reference to the injustice of heretics indicates that the law did not extend, but merely confirmed the exemptions conferred by the initial legislation.¹¹

16.2.1–6 do not exhaust Constantine's grants of exemptions to the clerics. In 16.2.14 (of 356 Dec. 6) Constantius refers to *statuta multimoda* of his father which conferred tax exemptions on clerics *qui operam in mercimoniis habent*. 16.2.8 (of 343 Aug. 27) is also taken to refer to a law of Constantine on this or a similar point, and the mention in it of exemptions from *novae collationes* draws into the discussion 13.1.1 (of 357 Feb. 6), which deals with *collationes* to be paid by *negotiatores*. These will be considered below, along with Constantius' other laws on the same subject.

Constantius' first law under this title (11, of 342 Feb. 26) begins by referring to an earlier law: *Iam pridem sanximus, ut catholicae legis antistites et clerici, qui in totum nihil possident ac patrimonio inutiles sunt, ad munera curialia minime devocentur*. The rest of the law indicates that the earlier law referred to was not Constantine's or a simple reaffirmation of Constantine's legislation: *Verum conperimus pro nulla utilitate perfectione eos inquietari. Ideoque praecipimus filios eorum, quicumque minus*

⁹For the exclusion of heretics from the exemptions cf. *CTh* 16.5.1.

¹⁰Nuyens (above, note 8) 149–153.

¹¹Cf. Dupont 738–739, and Mommsen's note on this law referring to Constantine's letter (in 7 Optatus, App. 10) written on the same day to the Donatist bishops in Numidia: *lectores etiam ecclesiae catholicae et hypodiacones, reliquos quoque, (qui) instinctu memoratorum quibusdam pro moribus ad munera vel ad decurionatum vocati sunt, iuxta statutum legis meae ad nullum munus statui evocandos*

idonei et intra legitimam aetatem esse repperiuntur, nullam molestiam sustinere. It appears that Constantius does not assume that clerics may not be *curiales*, but does assume that they have no money. He also assumes that their underage sons have enough money to qualify as decurions. The earlier law referred to presumably allowed a *curialis* to become a cleric if he surrendered his property. Some may have surrendered it to young sons, perhaps with themselves as trustees. Whatever the case, they were affected when demands were made of the sons. Constantius here protects them from these demands. The earlier law, deduced by Jones (119), that "men of curial family or equivalent fortune ... could be ordained if they surrendered their property" should therefore be dated prior to 342.

These laws would have an effect on the municipalities because for some years neither the original owner of the property nor his young sons could be required to perform the *munera*. Constantius presumably preferred that consequence to the embarrassment of restricting entry to the ranks of the clergy to poor men.¹²

In 8 (of 343 Aug. 27), addressed to the clergy, Constantius again refers to an earlier law—*Iuxta sanctionem, quam dudum meruisse perhibemini ...* Again the law referred to is not extant: *et vos et mancipia vestra nullus novis collationibus obligabit, sed vacatione gaudebitis. Praeterea neque hospites suscipietis et si qui de vobis alimoniae causa negotiationem exercere volunt, immunitate potentur.* The exemption referred to is from the "superindictions and extraordinary taxes."¹³ The law referred to was presumably by Constantine, since Constantius seems to have no first-hand knowledge of it.¹⁴ Constantius further decrees that clerics shall be free from taxes if they conduct a business *alimoniae causa*, i.e., to earn a living. There was no sense in having someone become a cleric in order to starve while working for people too poor to support him, nor in having him spend time at his business in order to pay the tax collector if the imperial policy was to have the poor supported by the churches. Constantius' later legislation shows that he took the restrictive phrase *alimoniae causa* seriously.¹⁵ In view of the reference to Constantine's exemptions from business taxes in 16.2.14 it is improbable that the last sentence of 16.2.8 did anything more than repeat or clarify Constantine's legislation.¹⁶

By the next law (10, of 346 May 26) Constantius extends the exemptions to a wider circle of beneficiaries. Clerics and their assistants are to

¹²Declareuil 50: "Constance fut moins sévère."

¹³Pharr 442 n. 23.

¹⁴Dupont 740 and 747 n. 2.

¹⁵Cf. 16.2.15: *si exiguis admodum mercimoniis tenuem sibi victum vestitumque conquirent* (discussed below).

¹⁶Cf. the Syro-Roman lawbook 117 (*FIRA*² 2.794): *Constantinus ... liberavit κληρικούς omni tributo ut neque argentum capitis dent neque χρυσάργυρον neque quid eiusmodi*—with Dupont 743–751.

be exempt from *sordida munera*, to have *immunitas*, and to be exempt from the tradesmen's taxes. Those of their men engaged in trade shall also be exempt from taxes. They shall be exempt from the duty to maintain the postal service. The exemptions extend to their wives, children, and servants, male and female. The confidently stated assumption is that their profits will benefit the poor, and the declared purpose is to increase the numbers of people in "organizations in the service of the churches."¹⁷

In 9 (of 349 April 11) Constantius repeats the old exemption of clerics *curialibus muneribus adque omni inquietudine civilium functionum*, and adds that their sons, if not obligated to the *curiae*, are to continue in the Church. He was still trying to increase the numbers of the church workers.

In 12 (of 355 Sept. 23) he orders that accusations against bishops must be given a preliminary hearing by other bishops. The interpretation attached to the law is that cases brought against bishops shall be tried in courts of other bishops.¹⁸

The next law (13, of 356 Nov. 10) confirms the privileges granted (by laws not extant) to the Church of the City of Rome and its clerics.

The fourteenth law (14, of 356 Dec. 6) is more extensive. It begins by repeating earlier exemptions, and goes on to state Constantius' purpose more fully: *si quid enim vel parsimonia vel provisione vel mercatura honestati tamen conscia congeruerint in usum pauperum adque egentium, ministrari oportet, ut, quod ex eorundem ergasteriis vel tabernis conquiri potuerit et colligi, collectum id religionis aestiment lucrum*. Reference is then made to Constantine's legislation on exemptions for clerics engaged in trade, and the exemption granted by 10 to the cleric's whole household is confirmed. What is new in this law is the way in which the emperor's assumptions and intentions are presented. In 10, of 346, he had assumed that the profits of businesses run by clerics would benefit the poor. Here he says that the profits must (*oportet*) benefit the poor, and adds that clerics are to regard their profits as "having been collected for the profit of religion."¹⁹ Perhaps the change in language reflects a more stern attitude, or some disillusionment; perhaps Constantius was just in a more authoritative mood that day. Certainly his professed policy was not one of enriching the clerics. The privilege was that of turning over the proceeds of the tax-free enterprise to the poor and needy.

This is the chronological place for discussion of 13.1.1 (of 357 Feb. 6), which decreed that the business taxes should be paid by all *negotiatores* except those clerics called *copiatae* (gravediggers). These occur here for the first time in the legislation on clerics. Discussion of this law is com-

¹⁷Pharr's translation of *ecclesiarum coetus*. For Constantius' exemptions of clerics from the business taxes, Dupont 740-752, and the discussion below.

¹⁸On the jurisdiction of the bishops under Constantine, Gaudemet 32-38.

¹⁹Pharr's translation.

plicated by the facts that the *copiatae* recur in 16.2.15 and that 16.2.14 also deals with exemptions from business taxes.²⁰ Moreover, the subject of business taxes brings back 16.2.8 on the *novae collationes*. It may be convenient to discuss the difficult matter of exemptions from the *collationes* granted by Constantine and Constantius at this point, rather than to raise it anew when dealing with 14 and 15. As I understand the matter, scholars have been perplexed because although no extant law of Constantine grants specific exemption from business taxes, Constantius appears to have assumed that Constantine had granted such exemptions.

If the term *copiatae* is translated only as "gravediggers" (as by Pharr) or "fossoyeurs" (as by Dupont), the identity of these persons may be somewhat obscured. They were officers of the churches whom we would call sextons. Among their other duties they dug graves, a job which was done outside the Christian community by undertakers or their agents, who were classed as businessmen. If sextons got pay for digging graves (as I suppose they did), undertakers would naturally claim that sextons too should pay the business taxes.

There seems to be no reason not to believe Constantius' statement in 16.2.14 (of 356) that his father had made many laws conferring business-tax exemptions on clerics. In 16.2.8 (of 343), in accordance with a law which must have been Constantine's (above, n. 16), Constantius exempted clerics from *novae collationes*. The easiest way to explain all this is on the assumption that Constantine had already exempted them from *collationes*. 13.1.1 is about *negotiatores* primarily, and exempts from the *collationes* only those (businessmen) who are clerics called *copiatae*. It appears that the *copiatae* were considered by Constantius to be both *clerici* and *negotiatores*. I take it that the reason for singling them out was that since they had no priestly functions it was argued by someone that they were not *clerici*, but *negotiatores*. Constantius' view was that, whatever they were called, they were exempted. They had to be *bona fide* sextons, however, as is shown by 16.2.15.²¹

If it is supposed that Constantine had not conferred the exemptions from *collationes*, a series of difficulties arises. First, there is an argument about *novae collationes* instead of *collationes*. Second, Constantius' behaviour is very curious. In 343 he is willing to grant business-tax exemptions to clerics even though he is somewhat in the dark about his father's laws, but in 356 he invents a story about his father's laws, presumably in order to justify his own law of 343. Third, the sextons, whom one would have expected to be the subject of an argument early on, contrive to remain invisible until 357. I think that this is too much difficulty, and have con-

²⁰For Constantine's exemptions from the business taxes cf. note 16 above.

²¹Constantius there provides that those *negotiatores* who became sextons after his exemption had been granted should pay the taxes.

cluded that business-tax exemptions for clerics and sextons were introduced by Constantine.

The next law (16.2.15 of 360 June 30) must be dealt with in detail, since it provides much of the basis for the view that Constantius' policy changed towards the end of his life. There is some doubt about the meaning of parts of the first sentence. Mommsen's text reads as follows.

In Ariminensi synodo super ecclesiarum et clericorum privilegiis tractatu habito usque eo dispositio progressa est, ut iuga, quae videntur ad ecclesiam pertinere, a publica functione cessarent inquietudine desistente: quod nostra videtur dudum sanctio reppulisse.

Constantius goes on to deal with exemptions from the business taxes (see below), and concludes by requiring the taxation of lands owned by clerics. Pharr's translation of that first sentence is:

In the Synod of Ariminum, when a discussion was held concerning the privileges of churches and clerics, a decree was issued to this effect, namely, that the taxable units of land that appear to belong to the Church should be relieved of any compulsory public service and that all annoyance should cease. Our sanction, formerly issued, seems to have rejected this decree.

This seems to me to be a correct translation. I take it that *dudum*, "formerly issued," refers to the period before the issue of 16.2.15 but after the issue of the *dispositio*. If *dudum* referred to a period before 359, then *reppulisse* would be an odd word to use to describe the effect of the *sanctio*. Having made these preliminary notes, I proceed to discussion of the law.

Constantius begins by referring to the Synod of Ariminum (in 359) at which there was a discussion of the privileges of the churches and clergy. His response, in a *dispositio*, had been to exempt church-owned lands *a publica functione*. Pharr took this to mean that these lands were "relieved of any compulsory public service." Jones took it to mean a "total exemption from the regular land tax."²²

A more serious difficulty arises from *quod nostra videtur dudum sanctio reppulisse*. Tillemont's note on this law is as follows:

La loi porte qu'on avoit parlé dans ce Concile de faire exemter des impôts les terres de l'Eglise; *Quod nostra videtur dudum sanctio repulisse*, dit Constance. (Cela peut signifier que Constance avoit rejeté la demande du Concile, ou au contraire qu'il avoit déjà exempté les terres de l'Eglise par une loi précédente à celle-ci.) Godefroy prend le premier sens; & néanmoins il est obligé d'avouer qu'il paroist par cette loi mesme que les terres de l'Eglise estoient exemptes: ce qui l'oblige de distinguer deux exemptions, dont il veut qu'on ait accordé l'une à l'Eglise, & que Constance ait refusé l'autre, quoique demandée par le Concile de Rimini. (Cependant la loi ne parle point de deux sortes d'immunités, l'une accordée, l'autre refusée. Ainsi il vaut mieux se tenir à l'autre sens, qui est très naturel, étant certain que *repellere* signifie fort bien ôter un poids & une charge qui incommode.)²³

²²Jones 1.118. Cf. also Goffart (above, note 7), esp. 22–26 and 123 n. 8.

²³Louis Sebastian Le Nain de Tillemont *Histoire des empereurs* (Paris 1691–1738) 4.455 and note 48, 689–690.

The order of events according to Godefroy and Tillemont may be indicated thus:

- | Godefroy | Tillemont |
|---|--|
| 1. requests for exemptions for both categories by the synod. | 1. request for exemption of Church lands by the synod. |
| 2. exemption granted for Church lands by Constantius' <i>dispositio</i> . | 2. this request granted by Constantius' <i>sanctio</i> . |
| 3. exemptions refused for clergy-owned lands by Constantius' <i>sanctio</i> . | 3. 16.2.15. |
| 4. 16.2.15. | |

It seems to me that Tillemont's argument against Godefroy—"Cependant la loi ne parle point de deux sortes d'immunités, l'une accordée, l'autre refusée"—is not cogent. The phrase *usque eo dispositio progressa est* and the reference towards the end of the law to *alii episcopi* who were in favour of having clergy-owned lands taxed may be taken to imply that bishops at the synod were in favour of an exemption. In favour of Tillemont's argument against Godefroy it should be noted that if Godefroy were right, this law would probably have discussed exemptions of Church-owned and clergy-owned lands consecutively, instead of having the two subjects separated by the passage about exemptions from business taxes. It appears, however, that most scholars have agreed with Godefroy. Cochrane refers to the supposed request as "a brazen demand" and "this impudent suggestion" which Constantius "had the courage to refuse" (256). Piganiol refers to a request (121), and Jones to a "claim" and "demand" (118, cf. Dupont 749). The trouble with all of this seems to me to be that there is nothing in the law about a request; Constantius' phrase is *tractatu habito*. I think that the order of events was as follows:

1. Privileges of the churches and clergy were discussed at the synod.
2. Constantius' *dispositio* exempted Church-owned lands from taxation.
3. Constantius' later *sanctio* ordered the taxation of clergy-owned lands and was thought by some to invalidate the *dispositio*.
4. 16.2.15 clears the matter up.

This law assumes that clerics may own land. Therefore at some time between 342 and 360 Constantius had, by the law referred to in *CTh* 12.1.49 of Aug. 29, 361, allowed persons being ordained to retain at least some part of their property.²⁴

²⁴Jones (1.119) dates this provision to 361, the date of *CTh* 12.1.49.

The next part of 16.2.15 repeats the business-tax exemptions granted earlier by 10 and 14, but with another difference—*si exiguis admodum mercimoniis tenuem sibi victum vestitumque conquirent*. In the earlier laws Constantius did not restrict a cleric or sexton from making a profit, but assumed that the profit was, or required that it be, turned over to the poor. Here he withdraws the tax exemption for profits above a specified level. Perhaps he felt obliged to create a safeguard against abuse of the exemption even by *bona fide* possessors of it; perhaps he had decided that the poor were doing better than the postal service was. So far as he was concerned, the clerics got nothing more or less by his new law than they had had in the past.

The last part of the law deals with lands owned by clerics. In accordance with the advice of bishops from Italy, Spain, and Africa, Constantius directs both that these lands shall be taxed and that their owners shall perform the required public services. He also prohibits clerics from exempting other men's lands from the payment of taxes. This provision was presumably aimed at an abuse of an earlier law.

By 16 (of 361 Feb. 14) Constantius exempted from public duties anyone who *voto Christianae legis meritum eximiae singularisque virtutis omnibus intimaverit*.²⁵ The reason given for this is the emperor's knowledge *magis religionibus quam officiis et labore vel sudore nostram rem publicam contineri*. Some readers of these laws, which give the impression that what Constantius sought was a cheap welfare agency, may be relieved to discover that he did want prayers as well.

To the laws discussed above should be added 12.1.49 of Aug. 29, 361, by which "those consecrated bishops were allowed to retain all their property" (Jones 119), as they had been allowed by a law made at some time between 342 and 360.²⁶ "Those ordained priests, deacons, or subdeacons were also exempted" from the necessity of surrendering their property "provided they were publicly chosen in the presence of the provincial governor and the *curia* with the approval of the people. Only those who were ordained surreptitiously were obliged to cede their property to their sons, if any, or two-thirds of it to relatives who would take up their curial duties, or in the last resort to the *curia* itself." (Jones 119).

Some general remarks on this legislation may now be made. First of all, there was considerably more of it than appears in the *CTh*, which contains several references to laws not extant. Constantius' reference in 16.2.14 to *statuta multimoda* of Constantine on business-tax exemptions has already been discussed.

I regard the view that Constantius' policy was changing at the end of his life as untenable. The argument for a change must be roughly the fol-

²⁵According to Cochrane (256) this refers to the monks.

²⁶Cf. above 333 and note 24.

lowing: "Constantius rebuffed a request from the Synod of Ariminum and then went on to tax lands owned by clerics, and furthermore to make landowning clerics liable for the public services. This departure from earlier policy indicates an important change of mind on his part." I have argued above that the notion that there was a "request" from the synod puts too much weight on Constantius' phrase *tractatu habito*. Moreover, even if there had been such a request which Constantius refused, it would not follow that his policy had markedly changed. He had begun by assuming that clerics did not own lands, and it was against Constantine's law for a *curialis* to be ordained. Constantius allowed *curiales* to be ordained if they surrendered their property. When this gave rise to difficulties he allowed them, under certain conditions, to keep their property, but required them to pay the taxes and to perform the public services. Now the requirement that they perform the public services may seem to run counter to the intent of Constantine's first law, but it should be remembered that the position of clerics had changed by 360. It was, presumably, no longer easy for pagans to harass them, and *curiales* who were clerics could get the work done through their agents, so as not to be kept away from the *divina obsequia*. It is obvious that Constantine's intent was that the clerics should not be kept away from Church work, and that they should not profit financially from the tax exemptions. Constantius' legislation is faithful to that. The difference is that Constantius, in changed circumstances, would not prohibit *curiales* from becoming clerics. It should be noted that it was at the end of his life that he made the striking declaration: "Our State is sustained more by religion than by official duties and physical toil and sweat."²⁷

Aside from this change, Constantius' policy does not seem to depart from that of his father. The reader of 16.2 gets the impression that the business-tax exemptions were new, but those had been begun by Constantine. Constantius also kept to the spirit of Constantine's legislation in taxing the earnings, beyond what was required for food and clothing, of clerics in business. Since he had begun by assuming that all their profits went to the poor anyway, no change in his policy is indicated. Of course there were abuses of all this legislation. Both rulers seem to have been quite prompt to stop them.

The legislation was not designed to enrich the clergy, and need not be thought to have done so. That the clergy were richer in 361 than they had been in 313 is presumably due to the fact that richer men had become clerics during that period. Some profited by abuses of the legislation, but the loopholes were plugged. That the Church itself was enriched was due to 16.2.4 of 321, which allowed persons to bequeath property to it, to the

²⁷Pharr's translation of 16.2.16.

laws which exempted Church lands from taxation, and, of course, to the emperors' gifts. In return for their benefits to it both rulers supposed that the Church would operate more powerfully as a social welfare agency. They must have foreseen that such an effect of their legislation would make both the Church and the Constantinian dynasty more attractive to the general population of the Empire. Julian the Apostate certainly regarded the policy as a success.²⁸

Constantius' laws of 16.2 were approved by Valentinian, who proclaimed and practised religious toleration. It was not this legislation that discredited Constantius, who seems to have assumed that what was good enough for lay decurions was good enough for clerical ones, and that what was good for the Church was good for the Empire.²⁹

²⁸Cf. Julian's *Letter* to Arsacius, 429c-432a.

²⁹I wish to thank the journal's referees for their help in improving this article.