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About “Justitia” (Righteousness) and “Aequitas” (Equity). The contribution of Lactantius († 325) in the specifying of the content of the two constituent elements of the “Jus”

Lactantius, a Roman North-African citizen,¹ made a career as a rhetor in Numidia (Algeria), and as a Christian writer in Nicomidia (Bitinia), which was then the capital of that “Pars Orientis” of the Roman State.

By his apologetic work, written in Latin, Lactantius – who has been considered a “Christian Cicero” – contributed not just “to the structuring of the Christian Latin language,” but also “to the development of the Christian poetry of Latin language...,”² and to the affirmation of a new conception, of Christian origin, regarding the fundamental elements of the Jus, which he perceived according to the spirit of the Roman Law, yet always seeing and evaluating them through the prism of the Christian Teaching about God and man³ and about Moral Law.

About Lactantius († 325), it is known that he was one of the first pagan jurists, who, converted to Christianity, became not only a Christian Apologist, but also

1 Regarding the life and the work of Lactantius († 325), “the rhetorical apologist of Christianity”, see S. G. Papadopoulos, *Patrologie* (Patrology), vol. 2/1, translated by A. Marinescu, Bucharest 2009, p. 97-101.

2 S. G. Papadopoulos, *Patrologie*, vol. 2/1, op. cit., p. 98.

3 See, N. V. Dură, *Despre “Jus naturale”. Contribuții filosofico-juridice* (About “Jus naturale”. Philosophical-juridical contributions), “Revista de Teologie Sfântul Apostol Andrei” (Theological Journal Saint Andrew the Apostle) 18 (2014) no. 1, p. 39-52.

a remarkable Roman Law theorist. Thus, in the pages of this study, we shall present – albeit briefly – the manner in which this Roman jurist of Proconsular Africa perceived not only the origin and the nature of “Jus,” as well as its goal, contents and representative values, but also the constitutive values of Moral Law, among which, “Justitia” and “Aequitas” are – according to Lactantius – the mains ones.

In the European juridical literature, the juridical-philosophical contribution of the formerly pagan magistrate, Lactantius, who became one of the first Christian jurists, is not yet fully known, and even less profitably used, although – among others things – we can attribute to him the syntagma “dignitas humana,”⁴ which has been put again into circulation not only by the humanists of the Renaissance, as Francesco Petrarch⁵ († 1374) and Giovanni Pico della Mirandolle⁶ († 1494), but also by the text of the first Constitution of the EU, namely the Treaty instituting a Constitution for Europe,⁷ published – in its first version – in Rome in the year 2004, and then in Lisbon in the year 2007.

“Justitia” and “Aequitas” according to the perception of Lactantius

Becoming a Christian, Lactantius turned into one of the remarkable Apologists of the Church, by means of which he answered – in an informed manner and using a language adequate for the respective epoch – to the furious attacks of the pagan world of its time, waged by outstanding intellectuals in the philosophical, literary and juridical field. It was precisely due to his artistry in the domains of classical

4 See, N. V. Dură, *Dreptul la demnitate umană (dignitas humana) și la libertate religioasă. De la “Jus naturale” la “Jus cogens”* (The Right to Human Dignity (Dignitas Humana) and to Religious Freedom. From “Jus naturale” to “Jus cogens”), “Analele Universității Ovidius. Seria: Drept și Științe Administrative” (Ovidius University Annals. Law and Administrative Sciences Series) 2006 no. 1, p. 86–128.

5 See, R. C. Morris, *Petrarch, the first humanist*, at: http://www.nytimes.com/2004/05/29/style/29ihtconway_ed3_o.html (25.03.2017).

6 See, Giovanni Pico Della Mirandola, in: Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/pico-della-mirandola> (12.11.2016).

7 See, C. Mititelu, *Europe and the Constitutionalization Process of EU Member States*, “Ovidius University Annals, Economic Sciences Series” 13 (2013) no. 2, p. 122–127; N. V. Dură, *Principii și norme generale ale Dreptului Uniunii Europene privind protecția juridică a drepturilor omului* (Principles and General Norms of the EU Law regarding the Juridical Defense of Human Rights), in: *RO-RUS-NIPPONICA*, vol. 1, Craiova 2010, p. 32–36.

(Greek and Latin) literature, philosophy and Roman law that the author of "De Justitia" excelled and played an important role in the debates of his time.

A prolific writer, skilled in literature, law and philosophy, Lactantius wrote numerous works which "have not all been preserved. We know a part of them only from the titles enumerated by Saint Jerome."⁸

One of these works was "Divinae Institutiones" (Divine Institutions), in 7 books, written between the years 304 and 313. The Book IV, suggestively entitled "De Justitia," was probably elaborated for the Emperor Constantine by the time when Lactantius arrived at his Court, namely between "the years 313–315....,"⁹ when "Constantine's Chancery was endeavoring to put into operation the new juridical system."¹⁰

If this was indeed the reality, then it is not impossible that precisely Lactantius, by means of some of his works, such as "De mortibus persecutorum" and "De Justitia" (About Justice), may have determined – directly or indirectly – the Emperor Constantine the Great to proclaim along with Licinius the Edict of Milan,¹¹ by which the Christian Religion received the juridical status of "Religio licita" (permitted Religion) within the Roman Empire, and at the same time the Right to Religion¹² was acknowledged for all the subjects of the Roman Empire.

⁸ S. G. Papadopoulos, *Patrologie*, vol. 2/1, op. cit., p. 98.

⁹ P. Monat, *Introduction*, in: Lactance, *Institutions Divines*, v, I, introduction, texte critique, traduction par P. Monat, Paris 1973, p. 15 (Sources Chrétiennes [=sc], 204).

¹⁰ P. Monat, *Introduction*, op. cit., p. 31.

¹¹ See, N. V. Dură, *Edictul de la Milan și impactul lui asupra relațiilor dintre Stat și Biserică. Câteva considerații istorice, juridice și ecleziologice* (The Edict of Milan and its Impact on the Relations between State and Church. Some Historical, Juridical and Ecclesiological Considerations), "Mitropolia Olteniei" (The Metropolitan Bishopric of Oltenia) 64 (2012) nr. 5–8, p. 28–43; N. V. Dură, C. Mititelu, *The Freedom of Religion and the Right to Religious Freedom*, in: *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism*, vol. 1, Albena (Bulgaria) 2014, p. 831–838.

¹² About this right, see N. V. Dură, *Relațiile Stat-Culte religioase în U.E. "Privilegiu" și "discriminări" în politica "religioasă" a unor State membre ale Uniunii Europene* (The Relations State-Religious Cults in the EU. "Privileges" and "Discriminations" in the "Religious" Policy of Certain Member States of the European Union), "Analele Universității Ovidius. Seria: Drept și Științe Administrative" (Ovidius University Annals. Law and Administrative Sciences Series) 2007 no. 1, p. 20–34; N. V. Dură, *Les droits fondamentaux de l'homme et leur protection juridique*, "Analele Universității Dunărea de Jos Galați" (Danube University Annals, Galați), Fascicle 22, Drept și Administrație publică (Law and Public Administration) 2008 no. 2, p. 19–23; N. V. Dură, *The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania*, "Dionysiana" 2 (2008) no.1, p. 37–54; N. V. Dură, *Statele Uniunii Europene și cultele religioase* (The States of the European Union and Religious Cults), "Ortodoxia" (The Orthodoxy) 1 (2009) no. 2, p. 49–72; N. V. Dură, *Despre libertatea religioasă și regimul general al Cultelor religioase din România* (About Religious Freedom and the General Regime

Until now, this aspect has not been noticed or retained in the specialized literature, including in the works of the theologians, historians and jurists of the Church, which obviously makes it necessary to research and to profitably use any piece of documentary information on the life, work and activity of this illustrious Christian jurist, from Proconsular Africa, id est Lactantius, to whom we owe – among others – also the summoning of the juridical principle of the Right to Religious Freedom, which – due to its influence on the Emperor Constantine the Great – was to be stated explicitly in the text of the Edict of Milan. Then, under the impact of this Edict, this principle was to be affirmed along the centuries in the text of numerous national, European and international legislations.

About Lactantius – who took over the fight, “already traditional during his epoch” against paganism, more precisely against its intellectual elite, – it has been stated that it “has the merit of having organized his battlefield better. Less tenacious than Tertullian, he proposes in exchange a much clearer and better ordered exposition.”¹³

This reality is especially clear in his work entitled “De justitia,” in which the argumentation is clear and penetrating, being supported both on the sources of the classical philosophy and literature (Greek and Latin), and also on those of the great Roman jurists and orators (Cicero, Lucretius, Virgilius, Seneca etc.).

Regarding the sources used in his work “De Justitia,” one can notice the fact that Cicero († 43 B.C.) and Saint Cyprian († 258) were his constant landmarks and references. Yet, he found inspiration as well in some jurists of Carthage who had preceded him, and who had been both theorists and practitioners of Roman Law, as, for example, the two christian jurists of the pagan world, namely, Tertullian

of the Religious Cults in Romania), “Analele Universității Ovidius Constanța / Seria Teologie” (Ovidiu University Annals, Constanța, Theological Series) 7 (2009) no.1, p. 20–45; N. V. Dură, *Legea no. 489/2006 privind libertatea religioasă și regimul general al Cultelor religioase din România* (Law no. 489/2006 on Religious Freedom and the General Regime of the Religious Cults of Romania), in: *Biserica Ortodoxă și Drepturile omului: Paradigme, fundamente, implicații* (The Orthodox Church and Human Rights. Paradigms, Fundaments, Implications), Bucharest 2010, p. 290–311; N. V. Dură, *Proselytism and the Right to Change Religion: The Romanian Debate*, in: *Law and Religion in the 21st Century. Relations between States and Religious Communities*, eds. S. Ferrari, R. Cristofori, London 2010, p. 279–290; N. V. Dură, *Religious Freedom in Romania*, “Theologia Pontica” 5 (2012) no. 3–4, p. 9–24.

¹³ P. Monat, *Introduction*, op. cit., p. 15.

(† 240) and Minucius Felix († 250),¹⁴ both of Proconsular Africa, which was also the motherland of Lactantius.

The fact that Tertullian was a first hand source of documentary information for Lactantius is confirmed precisely by the latter's affirmations about Rule of law and about Justice. For example, in his work, "De Justitia," Lactantius affirms – among others – that "... justitiae vim in aequitate consistere"¹⁵ (the power of virtue resides in equity). But, more than half a century earlier, his predecessor, Tertullian († 240), had already stated that Rule of law and Justice reside in Equity (Aequitas),¹⁶ as Plato said already before him.

About Minucius Felix, Lactantius wrote that he was a "lawyer,"¹⁷ and about the lawyer Tertullian he wrote that the latter was also "... a master in all the literary genres."¹⁸ But, in reality, Lactantius himself was also a lawyer, by education and profession, and also a master of the literary genres of Latin and Greek expression, just like Tertullian.

A master of the verb of Latin expression and skilled in juridical logic, Lactantius proved as well familiar with the juridical-philosophical thinking, defined and expressed "ab antiquitatem" by the School of Roman Law by those brief "maxims" or "sentences" on "Jus" and its nature, known by the Roman jurists under the name of "Jurisprudentiae," and which have remained veritable "summae" of juridical doctrine to this day.¹⁹

¹⁴ It is not known precisely when he died, yet it is estimated that the dialogue "Octavius," written by Minucius Felix, was used both by Tertullian († 240), and by Saint Cyprian of Carthage († 258). (See Minucius Felix, *Dialogul Octavius* (The Dialogue Octavius), in: *Apologeti de limbă latină* (Apologetists of Latin Language), vol. 3, Bucharest 1981, p. 344–347).

¹⁵ Lactance (Lactantius), *Institutions Divines* (*Divinae Institutiones*) III, 21: Choix de Monuments primitifs de l'Église Chrétienne: avec notices littéraires, Paris 1843 (Oeuvre numérisée par Marc Szwajcer: <http://remacle.org/bloodwolf/eglise/lactance/instit3.htm>).

¹⁶ Tertullian, *Apogeticum ad Gentes*, IV, in: *Tertuliani opera omnia*, accurate J.-P. Migne, Paris 1844, p. 338 (Patrologiae Cursus Completus. Series Latina [= PL], 1).

¹⁷ Lactance, *Institutions Divines* V, I, 22, p. 132–133 (SC 204).

¹⁸ Lactance, *Institutions Divines* V, I, 23, op. cit., p. 132 (SC 204).

¹⁹ N. V. Dură, C. Mititelu, *The right to Freedom of Religion in the Jurisprudence of the European Court*, *Journal of Danubius Studies and Reseach* 4 (2014) no.1, p. 141–152; N. V. Dură, C. Mititelu, *Human Rights and their Universality. From the Rights of the "Individual" and of the "Citizen" to "Human" Rights*, in: *International Conference "Exploration, Education and Progress in the Third Millennium."* Proceedings, vol. 1, no. 4, Galați 2012, p. 103–127; N. V. Dură, C. Mititelu, *Principii și norme ale Dreptului Uniunii Europene privind drepturile omului și protecția lor juridică / Principles and rules of EU law on human rights and their legal protection*, Constanța 2014.

About “Justitia” (Justice), Lactantius wrote that “aut ipsa est summa virtus aut fons est ipse virtutis”²⁰ (it is either the supreme virtue or the very source of virtue). Therefore, according to Lactantius, Justice – as a Virtue – contains all the other, being at the same time their source.

The same Christian apologist and jurist mentioned however the fact that although “Justitia” (Justice) includes all the others, yet only two are its main constitutive virtues, namely, Piety (Pietas) and Equity (Aequitas). Actually, we can say that for Lactantius these two virtues were “... like two arteries of justice. In these two consists the whole Justice.”²¹

According to Lactantius, “Justitia” (Justice) “... was the object of research not only for philosophers (non modo philosophi), but also for poets (sed poetae quoque) who preceded them long before (qui priores multo fuerunt), and who were given the title of wisemen before the term of philosophy appeared (et ante natum philosophiae nomen pro sapientibus habebantur).”²²

Indeed, regarding this supreme virtue, “Justitia” (Justice), – which for Lactantius was precisely “Fons virtutis” (the spring of virtue) – the first who talked about it were the poets, then the philosophers and the jurists of the Antiquity.

For Socrates, for example, – who affirmed that Law is the conformity with Goodness – “... law itself, unwritten law, comes from the Gods... For this reason, with all men, the first rule of law is to honor the Gods.”²³ Consequently, according to the perception of Socrates, natural laws, namely unwritten Law, are in conformity with the will of the Gods. This conformity with the divine will did not exclude, however, the existence of the “rational Law,” elaborated, naturally, by the human spirit, identified by Plato with “Νομον” (Law) and with “Αληθην” (Truth),²⁴ which is the supreme virtue.

According to some philosophers, Socrates turned “virtue into a science,” and identified “the practice of good with the knowledge we have about good, preparing in this way the doctrine that will absorb moral life in the rational exercise of thinking. Never was a higher rank attributed to reason.”²⁵ But, even though Socrates, like

²⁰ Lactance, *Institutions Divines* V, 5, 1, op. cit., p. 150 (SC 204).

²¹ L. Stan, *Ontologia Juris*, Sibiu 1943, p. 117.

²² Lactance, *Institutions Divines* V, 5, 1, op. cit., p. 150 (SC 204).

²³ Xenofon, *Memorabilia*, IV, 4 § 19, apud L. Stan, *Ontologia Juris*, op. cit., p. 71.

²⁴ Platon, *Minos*, IV, 314, 315, 317; IX, 317, apud L. Stan, *Ontologia Juris*, op. cit., p. 72, n. 2.

²⁵ H. Bergson, *Cele două surse ale Moralei și Religiei* (The Two Sources of Morals and Religion), translated by D. Morărașu, Iași 1998, p. 84.

other poets and philosophers who preceded him, situated “virtues” in the noetic or in the cognitive sphere, however, he did not “absorb” moral life in the rational exercise of thinking. On the contrary, he related it to its original source, namely to the will of Divinity.

This reality is explained as well by the conception of Socrates according to which the philosopher’s mission is one “of a religious and mystical order, in the sense that we give to these words today. His teaching, so perfectly rational, is related to something that seems to go beyond pure reason...”²⁶ But, it is precisely due to this religious and mystical character of these values that Socrates went beyond the rational thinking, the thinking of the philosophical systems, a thinking “... that seems to have never succeeded in explaining – as Henri Bergson admitted – how Morals can draw to it so many souls.”²⁷

As we have already mentioned, according to Lactantius, “Justitia” (Justice) is made up of “pietas” and “aequitas.”²⁸ And, according to the opinion of some exegetes of his work, Lactantius must have taken the notion of “pietas” from Hermes Trismeghistos,²⁹ for whom “pietas nihil aliud quam Dei notio” (piety is but knowledge of God), putting an equal sign between, “εὐσέβεια” and “γνώσις τοῦ Θεοῦ,” namely between “piety” and the act of “knowledge of God.”

In our opinion, Lactantius could take over the notion of “pietas” rather from Cicero (106 B.C. – 43 B.C.), who talked about “pietas adversus Deos,” namely about piety or respect for the Gods. But, both for Vergilius (70 B.C. – 19 B.C.) and for Cicero, the notion of “pietas/tis” has however as well the sense of “justice” (justitiam) of divine origin.³⁰ In fact, both Vergilius and Cicero were as well largely tributary – in matters of philosophical knowledge – to Plato, for whom “piety” (εὐσεβεία) and “holiness” (ὁσιον) were constitutive elements “τοῦ δίκαιον” (of Law) (Euthyphon, 12). In other words, Plato related Law to moral values, because – for him – the very nature of Law was dependent on “moral order,” and, consequently, “Dikeon” (Jus) appeared first of all as a moral normative value, related to “piety” – perceived especially in the sense of justice – and to holiness.

²⁶ H. Bergson, *Cele două surse*, op. cit., p. 84.

²⁷ H. Bergson, *Cele două surse*, op. cit., p. 87.

²⁸ Lactance, *Institutions Divines* v, 14, 9, op. cit., p. 202–204 (SC 204).

²⁹ P. Monat, *Introduction*, op. cit., p. 60.

³⁰ See G. Guțu, *Dicționar latin-român* (Latin-Romanian Dictionary), Bucharest 1983, p. 914–915.

According to the conception of the Greek philosophers of the Antiquity, justice was considered to be “δικαιοσύνη νομοθετικῆ”³¹ (legislative justice), namely “in the sense of legislator or source of law, wherefrom it results that positive Law actually derives from Justice,” which is “realization of νόμος, the one revealed by τὸ Ὄν...”³²

Regarding “Aequitas,” it has been said that it precedes positive Law (Jus positivum), namely written Law, because the profound sense of this notion is that of a Justice involving both the equality of all people in front of God, and the relation between Law and Justice, a concern both for the philosophers of the Antiquity (the Stoics, above all Cicero) and for the Roman jurists.

Among others, in their Edict of Milan, of the year 313, the Emperors Constantine and Licinius also highlighted the fact that the preoccupation for “justice” and “equity” must pass before the interest for respecting Law, that is the laws. “Placuit in omnibus rebus praecipuam esse justitiae aequitatisque quam stricti iuris rationem” (Codex Justinianus 3, 1, 8). Therefore, for the two Roman Emperors, “justitia” and “aequitas” prevailed in front of “Jus,” namely in front of Law. But, it is not impossible that this conception of the two Roman Emperors, concerning the relation between “jus,” “justitia” and “aequitas,” may come from Lactantius himself, whom the Emperor Constantine the Great actually called to the Imperial Palace of Treveri (Trier) to be teacher for his son Krispos³³.

We also need to emphasize and keep in mind the fact that the notion of “humanitas/tis” was perceived and defined by the Romans also as a “(moral) duty, an obligation”³⁴ of the moral Law. But, it is precisely in this sense, of moral duty, that we find this notion also in the work of Lactantius, who actually affirmed that “the roles of justice (officia justitiae)” are “moral duty, equity and charity (humanitas, aequitas, misericordia).”

For Lactantius, “equity” is therefore one of the “roles” or “functions” of Justice, being preceded by “humanitas” and followed by “misericordia.” All these three “roles” or “functions” of “justice” (justitiae) were however perceived by Lactantius as three representative virtues of the christian moral Law,³⁵ whose principles were actually fully highlighted by him in his work “De Justitia.”

³¹ Platon, *Gorgias*, p. 464, apud L. Stan, *Ontologia Juris*, op. cit., p. 74.

³² L. Stan, *Ontologia Juris*, op. cit., p. 74.

³³ See S. G. Papadopoulos, *Patrologie*, vol. 2/1, op. cit., p. 98.

³⁴ G. Guțu, *Dicționar*, op. cit., p. 829.

³⁵ About this Christian moral Law and its sources, see also H. Bergson, *Cele două surse*, op. cit., p. 84.

Initially, by the notion of "Justitia/ae," the Romans expressed the idea of "correct accomplishment of the duties to the gods (erga deos)," and then the idea of "justice" in the sense of "correctness" and of "court."³⁶ But, quite often, "Justice" was applied only in its most rigorous sense possible, that is with "Acrivia," consequently becoming "summa iniuria" (the greatest injustice) even in the See of the Confession.³⁷

According to the definition left by Aristotle, "... ἡ δικαιοσύνη" (justice) is "... ἀρετὴ δι' ἣν τὰ αὐτῶν ἕκαστοι ἔχουσι, καὶ ὡς ὁ νόμος"³⁸ (the virtue by which everyone receives what is his, as the law requires). So, pursuant to the conception of Aristotle, the act of justice is subordinated to the virtue of justice, which as a sum of all virtues also represents "summum bonum," and consequently, "... serves as a norm and supreme censor of juridical justice," which the respective philosopher actually defines as being an application of the law by which everyone is given what is his (τὰ αὐτῶν ἕκαστοι ἔχουσι). Or, according to the terms of Ulpianus (170 – 223), the famous Roman jurist, "suum cuique tribuere" (Digestae I, 1, 10; Institutiones I, 1 § 3), id est to give everyone what is his.

From Cicero, Lactantius retained that a philosopher of Greek language, namely Carneades († 128 BC), would have written that "men (homines) gave themselves laws (iura) according to their interest (pro sibi utilitate); these laws differ, however, apparently, due to customs (pro moribus), and, within the same people, they change according to the epoch (pro temporibus)..." The same Carneades would have stated – according to Cicero – that "there is no natural law (ius autem naturale esse nullum); all men and all living beings are determined naturally to look for what is useful (omnes et homines et alias animantes ad utilitates suas natura ducente ferri); this is why, – Carneades apodictically concluded – there is no justice (nullam esse justitiam), or, if there is any, it is overwhelmed by stupidity (stultitiam), because it would hurt itself protecting the interests of another."³⁹

According to the conception of Carneades, natural Justice (iustitia naturale) was therefore accused of "stupidity," wherefrom his exclusive praise of "civil justice"

³⁶ G. Guțu, *Dicționar*, op. cit., p. 671.

³⁷ C. Mititelu, *The application of Epitimias in the See of Confession according to the "Canonical Custom" and the "Penitential Canons"*, "Teologia Młodych" 2015 nr 4, p. 10–18.

³⁸ Aristotel, *Rhetorica*, I, 9, apud L. Stan, *Ontologia Juris*, op. cit., p. 77–78.

³⁹ Apud Lactance, *Divinae Institutiones* V, XVII, B, in: *Lactantii opera omnia*, accurante J.-P. Migne, Parisiis 1844, p. 602 [PL 6]; Cicero, *De Republica*, III, XV, p. 24, 11, in: *Opera quae supersunt omnia ac deperditorum fragmenta*, ed. I. C. Orellius, vol. 4, issue 1, Turici 1828, p. 465.

(*iustitiae civilis*), actually identified with the virtue of “*sapientiae*”⁴⁰ (wisdom). But, for Lactantius, “*justitia civilis*” (the justice of civil Law) was in fact nothing but a “*justitiam*,” namely a juridical justice, because it did not originate “in Religione” (in Religion), and, consequently, did not have the quality of moral virtue.

Lactantius actually remarked the fact that both “Plato et Aristoteles” (Plato and Aristotle) “... wanted to offer justice (*iustitiam*), and that they could have even obtained some good results if their general efforts, their eloquence (*eloquentiam*) and their praise-worthy talent would have been reinforced by the learning of the divine things (*divinarum quoque rerum doctrina*)”⁴¹ that Theology talks about. Consequently, by “*opus illorum*” (their work) – as Lactantius wrote – “*nec cuiquam hominum persuadere potuerent ut euorum praescripto vivere*” (they did not manage to convince any man to live according to their precepts), because “*quia fundamentum a coelo disciplina illa non habuit*” (their philosophical system was not founded in heaven).⁴² In fact, only “the Science” having its “*fundamentum a celo*” is the Christian Theology, namely “the Science about God and about the divine things,”⁴³ which Lactantius found in the sacred pages of the Word of God, namely in the Bible.

The same writer of Latin language from Proconsular Africa, Lactantius, – rhetor and jurist by training – wrote that “justice” (*justitia*) did not take refuge “*ad Iouis regnum*” (in the kingdom of Jupiter), but “was chased away from earth (in terra) by Jupiter (a Ioue), he who – the Christian apologist concluded – bewildered the golden age (*aureum seculum*),”⁴⁴ namely that up to Saturn.

According to the words of the same christian jurist, this “golden age was corrupt even since the beginning of Jupiter’s reign (Ioue primum regnante corruptum), and disappeared as soon as he himself and all his descendants were consecrated as gods (*omni eius progenie consecrata deorumque*) and the cult of a multitude of gods was set up.”⁴⁵

40 Apud Lactance, *Institutions Divines* v, 16, 12, op. cit., p. 212–213 (SC 204).

41 Lactance, *Institutions Divines* v, 17, 4, op. cit., p. 214–215 (SC 204).

42 Lactance, *Institutions Divines* v, 17, 4–5, op. cit., p. 214–215 (SC 204).

43 See N. V. Dură, *Teologie și teologii. Teologia ortodoxă și noile curente teologice* (Theology and Theologies. The Orthodox Theology and the New Theological Trends), “Ortodoxia” (The Orthodoxy) 38 (1986) no. 4, p. 46–78; N. V. Dură, *The Theology of Conscience and the Philosophy of Conscience*, „Philosophical-Theological Reviewer” 2011 no. 1, p. 20–29.

44 Lactance, *Institutions Divines* v, 6, 11, op. cit., p. 158–159 (SC 204).

45 Lactance, *Institutions Divines* v, 6, 13, op. cit., p. 160–161 (SC 204).

Moreover, in the perception of Lactantius, “the chasing away of justice” – from earth – must be seen as an “abandonment of the divine Religion (desertio divinae religiones), the only one that – he mentioned – makes man love man (ut homo hominem carum habeat) and feel closely united to his fellow by a fraternal bond (fraternitate vincolo).”⁴⁶

This “divine Religion” is the Christian Religion,⁴⁷ which made out of the “love” of God an act of knowledge of God (cf. John 17:3), or – according to Lactantius – a “Dei notio” (a knowledge of God). Actually, this “Religion of love” – called in this way because “God is love” (1 John 4:8) – made out of the love for our fellows an act of acknowledge of “the other” (alterum) – and, ipso facto, – a “sine qua non” condition of our redemption.

For Lactantius, “Justitia” (Justice) is the “highest virtue (summae virtus),” having its “origin in Religion (origo in Religie) and its reason to be in equity (ratio in aequitate est).”⁴⁸ However, “although justice simultaneously encompasses all the other virtues (omnes virtutes), only two are principal (principales), which can be neither cut off nor separated: piety (pietas) and equity (aequitas),”⁴⁹ considered by Lactantius “two sources (fontes) from which the whole justice (tota iustitia) springs: yet the principle (caput) and the origin (origo) reside in the first,” namely in “pietas,” which, in his terms, – taken over from Plato and from Trismegistus – “nihil aliud est quam Dei notio,...” (is nothing else but the knowledge of God).⁵⁰

Therefore, according to Lactantius, “Justice” has two springs, namely, “pietas” and “aequitas,” and it is from them that “tota Justitia,” namely the whole act of doing Justice, ought to spring.

As far as the “second” virtue is concerned, namely “equity,” Lactantius tells us that it is “the power (vis) and the rational ground (ratio)”⁵¹ of any virtue. Consequently, this “pietas” – understood first of all as respect to the Divinity – consists – according to Lactantius – “cognoscere Deum” (in learning to know God), and knowledge (cognitio) involves a cult (ut colas) of adoring God, wherefrom his apodictic conclusion: “... he who does not practice God’s Religion (Religionem Dei

⁴⁶ Lactance, *Institutions Divines* v, 6, 12, op. cit., p. 158–159 (SC 204).

⁴⁷ See N. V. Dură, *Love in the Christian Religion. Testimonies of the Theology of the Eastern Orthodox Church*, “Dionysiana” 2 (2008) no. 1, p. 420–433.

⁴⁸ Lactance, *Institutions Divines* v, 14, 7, op. cit., p. 200–201 (SC 204).

⁴⁹ Lactance, *Institutions Divines* v, 14, 9, op. cit., p. 202–203 (SC 204).

⁵⁰ Lactance, *Institutions Divines* v, 14, 11, op. cit., p. 202–203 (SC 204).

⁵¹ Lactance, *Institutions Divines* v, 14, 11, op. cit., p. 202–203 (SC 204).

non tenet) certainly ignores justice (ignorat utique iustitiam).⁵² He was certainly referring to the “Religion” of the True God, of “the Living God,” – in whose name the Prophet Elijah spoke as well (cf. III Kings, chap. 17–19) – and not about the “Religion of the gods” (deorum religiones), or the “cult of the gods,” which – according to the affirmation of Lactantius – are contrary to devotion (quia contrariae sunt pietati).⁵³

Among others, Lactantius also highlighted the fact that “... Plato talked a lot about a unique God (de uno Deo), by Whom, according to him, the world was created, yet he does not speak at all about Religion (sed nihil de Religione).” But, “if he himself or anyone else would have wanted to speak in defense of justice (iustitiae defensionem), they should have started by totally getting rid of the cult of the gods, as they are contrary to piety (contrariae pietati).⁵⁴ And, according to the testimony of Lactantius, this thing – namely to get rid of the faith in gods – “was attempted (tentavit) by Socrates (Socrates), and, for this reason, he was put in prison (in carcerem coniectus est). And, since then, – Lactantius concluded – appeared as well the unhappy sort in store for the people who put themselves in the service of the defense of true justice (iustitiam veram defendere) and in the service of the unique God (Deoque singulari servire).⁵⁵

According to the affirmation of Lactantius, Socrates would be, therefore, the first of the Greek philosophers who would have tried to get rid of the worship given to the gods, yet, both he and Plato, his disciple, did not manage to discover the Unique and True God of Moses and Elijah.

The philosophy of Law tells us that, “... the subjective rights of only one person concern all the people, all the subjects of law possible, and each of them equally,” and, by this, it is actually highlighted “the moral equality of all men,” because, if they “... did not feel equal, they would not be able to affirm their equality in rights.”⁵⁶

Therefore, “Moral equality” is perceived as “equality” of all the subjects of law. But, for Lactantius, “aequitas” (equity) is only the other side of justice (altera iustitiae pars)⁵⁷, and not “moral equality.” Consequently, he did not define it as the power of judging well (bene iudicandi), but, taking over the definition of Cicero, – who called it “aequabilitatem” (disposition to equity) – considered it a virtue,

52 Lactance, *Institutions Divines* v, 14, 12, op. cit., p. 202–203 (SC 204).

53 Lactance, *Institutions Divines* v, 14, 13, op. cit., p. 202–203 (SC 204).

54 Lactance, *Institutions Divines* v, 14, 13, op. cit., p. 202–203 (SC 204).

55 Lactance, *Institutions Divines* v, 14, 14, op. cit., p. 202–203 (SC 204).

56 L. Stan, *Ontologia Juris*, op. cit., p. 37.

57 Lactance, *Institutions Divines* v, 14, 15, op. cit., p. 202–203 (SC 204).

based on which we are “called to be equal to the others (cum ceteris coequandi),”⁵⁸ namely to our fellow-men.

In the register of the Christian doctrine, the syntagm of Cicero, and its content, acquired other meanings, that Lactantius had in view as well when he stated that “God, who created people and breathed life in them, wanted them all to live in equity, namely to be equal (omnes aequos, id est pares);” for this reason, He “... promised them all immortality (immortalitatem); none was excluded from his celestial benefactions (a beneficiis eius caelestibus segregatur).”⁵⁹

Among others, Lactantius wrote also that “by his very nature, man is sociable and meant to do what is good (socialis est hominis ac benefica natura), and that this nature is the one that makes him akin to God (cum Deo).”⁶⁰ Man is therefore by his nature sociable and meant to do only what is good and these features truly highlight the fact that by grace (κατα χάριν), man acquires something from the divine nature and consequently becomes “οικονα τοῦ Χριστοῦ” (image of Christ).

Consequently, it is not wondering the fact that “for God ... no one is slave, no one is master: since He is – mentioned Lactantius – for all a Parent, and we are all His children, enjoying equal rights (aequo iure).”⁶¹ Then, Lactantius adds the mention that, “where (people) do not have the same rights (universi pares), indeed, there is no equality (aequalitas), and this inequality (inaequalitas) itself excludes justice (iustitiam), whose force resides in the fact of making equal (pares) those who, coming in this life (ad huius vitae), were established in the same condition (condicionem pari sorte).”⁶²

This “aequalitas” was therefore understood by Lactantius as a natural state, which imposed, based on “jus naturale” – perceived and defined by the Roman jurisconsults of the 11th century as “jus quod natura omnia animalia docuit ...”⁶³ (the law that all the beings learnt from nature) – equality among men.

This conception of humanist-christian origin, about equality among all men, regardless of their ethnic origin, of their social status, of their religion etc., was expressed by Lactantius convincingly throughout his whole work “De Justitia,”

⁵⁸ Lactance, *Institutions Divines* v, 14, 15, op. cit., p. 204–205 (SC 204).

⁵⁹ Lactance, *Institutions Divines* v, 14, 16, op. cit., p. 204–205 (SC 204).

⁶⁰ Lactance, *Institutions Divines* v, 17, 34, op. cit., p. 222–223 (SC 204).

⁶¹ Lactance, *Institutions Divines* v, 14, 17, op. cit., p. 204–205 (SC 204).

⁶² Lactance, *Institutions Divines* v, 14, 20, op. cit., p. 204–205 (SC 204).

⁶³ Apud *Justiniani Institutiones*, lb. I, 11.

where the Right to “*dignitas humana*”⁶⁴ (human dignity) is a natural right of every human being, namely a “natural Law” (*Jus naturale*), “... manifested and affirmed by means of human reason.”⁶⁵ Thus, the natural Law was situated at “the basis of the whole edifice of Roman Law, and has found its continual application along the centuries, maintaining untarnished the effigy of its divine principle, which finally summarizes it.”⁶⁶

The compassion of Lactantius to the disinherited of fate, of his time, was certainly due to the fact that he had become a Christian. In this quality, in Nicomidia, the capital of the Eastern Roman Empire, – where he had been called by the Emperor Diocletianus, “shortly after 290,..., to teach Latin rhetoric,”⁶⁷ – he was able to notice not so much the social gap between slave masters and their slaves, but, first of all, their lack of freedom and justice, wherefrom his natural reaction, motivated as well by the Word of Christ’s Evangel.

These realities, namely “freedom” and “justice,” have been perceived and respected diversely and differently since “*illo tempore*” (that time) to our days, when man’s fundamental rights and freedoms⁶⁸ have become a major and primordial concern both for the European and international legislator, and for the national one.

Lactantius was leaving Nicomidia “... at the beginning of the persecution (303), ..., after having accepted to be Christian.”⁶⁹ And, as it is known, the Christian Religion was – even since its foundation – the only Religion that spread the message of the common origin of mankind, of universal fraternity, and, *ipso facto*, of equality

64 Regarding this right, see N. V. Dură, *Dreptul la demnitate umană (dignitas humana)* (The Right to Human Dignity (*Dignitas Humana*)), op. cit., p. 86–128.

65 L. Stan, *Ontologia Juris*, op. cit., p. 99.

66 L. Stan, *Ontologia Juris*, op. cit., p. 99.

67 S. G. Papadopoulos, *Patrologie*, vol. 2/1, op. cit., p. 98.

68 On the history of their perception, and on their juridical nature, see N. V. Dură, *Drepturile și libertățile omului în gândirea juridică europeană. De la “Justiniani Institutiones” la “Tratatul instituind o Constituție pentru Europa”* (Man’s Rights and Freedoms in the European Juridical Thinking. From “*Justiniani Institutiones*” to the “Treaty instituting a Constitution for Europe”), “*Ovidius University Annals. Law and Administrative Sciences Series*” 2006 no. 1, p. 129–151; N. V. Dură, *The European Juridical Thinking, concerning the Human Rights, Expressed along the Centuries*, “*Acta Universitatis Danubius. Juridica*” 2010 no. 2, p. 153–192; N. V. Dură, *The Fundamental Rights and Liberties of Man in the E.U. Law, “Dionysiana”* 4 (2010) no. 1, p. 431–464; C. Mititelu, *The Right to Life. From the Prevention of Torture and Inhuman Punishment to the Abolition of the Death Penalty*, “*Ovidius University Annals, Economic Sciences Series*” 13 (2013) no. 2, p. 128–133; C. Mititelu, *The Human Rights and the Social Protection of Vulnerable Individuals*, “*Journal of Danubius Studies and Research*” 2 (2012) no. 1, p. 70–77.

69 S. G. Papadopoulos, *Patrologie*, vol. 2/1, op. cit., p. 98.

between races, nations and peoples (cf. Gal. 3:28). As the philosopher Henri Bergson also noticed, “not even one of the stoics, not even the one who was emperor, ever thought that it would be possible to remove the barriers between free men and slaves, between barbarians and Roman citizens. Christianity had to come up for the idea of universal brotherhood, involving equality in rights and inviolability of the person, to become truly active.”⁷⁰

The Apostles were indeed sent by our Savior Jesus Christ to preach the Gospel to all the nations (cf. Mt. 28: 19), because the Lord became man for all the people, regardless of their nationality, gender, social status etc., to make them one in Him by faith. This is why, “... here is no longer Jew or Greek, circumcision or uncircumcision, Scythian, bond or free, but Christ is all and in all” (Col. 3: 11; cf. Gal. 3: 28).

In his “Georgica,” Virgilius († 19 B.C.) wrote that, once, “it was considered a sacrilege to put landmarks or draw boundaries: they (people, our note) put everything in common” (I, 126–127).

Commenting on Virgilius, Lactantius also confirms that in the times of yore, people did not need boundaries and setting of boundaries, because “... Deus communem omnibus terram dedisset” (God had given the land to be used by all men in common), to live the same life in common (communem degerent vitam) and they did not need a raging and crazy avidity (greed) either to claim everything for itself (non ut rabida et furens avaritia sibi omnis vindicaret), or to deprive everyone of what was produced for all (nec ulli deesset quod omnibus nasceretur).⁷¹

This is therefore the reason why, in the times of yore, neither norms of law were needed to regulate people’s rights and obligations, nor criminal laws were necessary, this is why people “in illo tempore” (in those times) – Lactantius wrote – believed that “Justitia” (Justice) was not from “this world,” and that because of “vitiis hominum” (people’s vices) it “in caelumque migrasse” (migrated in heaven).⁷²

The same Christian jurist, Lactantius, wrote – around the beginning of the second decennium of the IVth century – that, in those times, when “justice was present and ruled (praesente ac vigente iustitia) in the City, it was not preoccupied “by its own defense (de tutela sui), because “nobody was setting traps to it, or plotting

⁷⁰ H. Bergson, *Cele două surse*, op. cit., p. 99.

⁷¹ Lactance, *Institutions Divines* v, 5, 6, op. cit., p. 152–153 (sc 204).

⁷² Lactance, *Institutions Divines* v, 5, 2, op. cit., p. 150–151 (sc 204).

the fall of the other (de pernicie alterius cogitaret) or showing concupiscence (quicum concupisceret).⁷³

Regarding the affirmation of the poet Virgilius, Lactantius wanted to underline that it must not be understood in the sense that, “in those times,” there would have been no “private goods” (privati), and that “... people were so “generous” (liberales) that they neither “... locked the products that the field produced for them, nor hid them only for themselves (... fruges non includerent nec soli absconditis incubarent), but shared with those in need (the poor) the product of their work (sed pauperes ad communionem laboris admitterent).”⁷⁴

Therefore, in the beginning, the “liberals,” that is the generous people, shared their private goods with those in need, since, in those times, there were no people greedy. So, “no wonder that, since the fortune “of the just” (iustorum) was generously made available “ omnibus” (for all), – underlined Lactantius – there were no people greedy to make theirs “beneficia divina” (the divine benefactions) and “cause famine and thirst among the people (famen sitique vulgo faceret), but they were all equal in abundance (sed omnes aequaliter abundarent), and those who had, donated abundantly and generously to those who had nothing (cum habentes non habentibus large copioseque donarent).”⁷⁵

Both the confessions of Vergilius and of Lactantius – two tutelar spirits of the culture of mankind – confirm therefore the fact that, in the beginning, people were equal because they did not have the sense of possession, bringing with it injustice and social inequality, but were indeed “liberales,” namely generous, as those who claim to be “liberal” these days ought really to be.

According to the *Aeneid* of Vergilius, King Saturn would have been dethroned by his son, and so he ended up “in Latium (in Latiumque)” (8, 320). And, according to the testimony of Lactantius, “... since then, the people (populus), either fearing the new king, or spontaneously corrupted, would have stopped honoring God (Deum colere disisset),...,” being practically also “exemplo ceteris esset ad violandam pietatem” (for the others an example of violation of devotion).⁷⁶ But, “... as the worship of God disappeared (Dei religione),” they (people) also lost “the science of what is good and what is wrong” (Gen. 2, 17). And so both the communion of life

73 Lactance, *Institutions Divines* v, 5, 5, op. cit., p. 152-153 (sc 204).

74 Lactance, *Institutions Divines* v, 5, 7, op. cit., p. 152-153 (sc 204).

75 Lactance, *Institutions Divines* v, 5, 8, op. cit., p. 152-155 (sc 204).

76 Lactance, *Institutions Divines* v, 5, 9, op. cit., p. 154-155 (sc 204).

(*communitas vitae*) among men and the pact (covenant) of the human society (*et diremptum est foedus societatis humanae*) were put to an end. Then they (people) began... to set up traps and build their own glory (*gloriam sibi*) by shedding human blood (*ex humano sanguine comparare*).⁷⁷

Since in some works of "dogmatic Theology" (Textbooks, Treaties, Manuals, Studies etc.) we can still find some awkward explanations of the text from Genesis, chapter II, verse 17, and sometimes even totally alien to the authentic spirit of the Teaching of faith, we need to explicitly refer to the comment that Lactantius made around the beginning of the IVth century in his work "De Justitia."

Among others, in his comment, Lactantius wrote that people lost the possibility of "knowing" what is good and what is evil the moment when their communion with God stopped. This communion had been expressed since the beginning by the worship offered to God by the forefathers of the human nation, Adam and Eve.

According to the statement of Lactantius, it is precisely the absence of this communion that brought with it the disappearance of "God's Religion," and, consequently, their spiritual death.

The fact that this death was not a physical one is actually attested as well by Philo of Alexandria (20 B.C. – 50 A.D.) based on the testimonies of the Old-Testament Tradition. He convincingly stated that "this refers to the death of the soul (Leg. I, 105–107; also Origen, Hom. Gen. xv, 2). Others (Justin, *Dialogue with cu Trypho*, 81), who interpret a "day" of God as having 1000 years, say that Adam did not reach the end of the first millennial "day" (dying at the age of 930)."⁷⁸

The dogmatist theologians of the Orthodox Church usually say that the sin of disobedience to God triggered the death of our forefathers, and, by them, of the whole human nation. At the same time, they state that "death and corruption are, on the one hand, part of the human nature, when they remain in relation to God, natural to nature, whereas, on the other hand, they are contrary to the aspiration of the human nature made out of nothing, when nature remains in itself"⁷⁹ (sic).

According to the conception of the respective theologians, man was therefore destined to death and corruption "ab initio." This is why we consider that the

⁷⁷ Lactance, *Institutions Divines* V, 5, 13–14, op. cit., p. 154–155 (SC 204).

⁷⁸ Apud *Septuaginta. Geneza* II, 17, coord. by C. Bădiliță et. al., Iași 2004, p. 58.

⁷⁹ D. Stăniloae, *Teologia dogmatică ortodoxă* (Orthodox Dogmatic Theology), 1, 2nd ed., Bucharest 1996, p. 284.

exegesis of the text from Genesis 2: 17 – left by Lactantius – is much clearer and in agreement with the biblical exegesis of Jewish and proto-Christian origin, according to which the text does not refer to a physical death, but to a spiritual one, as the saint Justin the Martyr and Philosopher († 165), Origen († 254) and other writers and theologians of the pre-Nicean Church confess.

The same Christian jurist of North Africa, Lactantius, insisted on the fact that “the source of all evils was cupidity (omnium malorum fons cupiditas erat), “born from the contempt for the true divine Glory (ex contemptu verae Maiestatis erupit),”⁸⁰ and that people, striving “to reduce the others to the bond of slavery (servitio ceteris subiugarent), decided first of all to detour and then to gather the goods necessary for life and keep them carefully (in a closed place)...”⁸¹

According to the affirmation of Lactantius, people established laws “for their profit, in the name of injustice (iustitiae) and of inequitable and unjust laws (leges iniquissimas iniustissimasque) to protect their robberies and their greed against the acts of violence of the multitudes (rapinas et avaritiam suam contra vim multitudinis tuerentur),”⁸² and this type of men “.. placed themselves on top of the others due to their bodyguards, their arms and the brilliance of their apparel (altioresque se ceteris hominibus satellitum comitatu et ferro et insigni veste).”⁸³

Certainly, we could say that, from the epoch of Lactantius to ours days, “nihil novum sub sole.”

Lactantius also mentioned the fact that, “for their profit,” the emperor’s subjects who had dethroned Saturn, “invented magistrate’s offices, purple apparels and fascias to base their power on the fear created by axes and swords, and ordered as if they had had sovereign rights (iure dominorum) over the spirits struck by terror.”⁸⁴ Thus, the members of the Magistrates’ Body – dressed in purple habits just like the priests serving in the temples dedicated to the god Jupiter, the god of Justice, – based their power on those “fasces,”⁸⁵ namely on the use of those bundles of birch rods, bound together using a belt, in which a hatchet was stuck, and which were

80 Lactance, *Institutions Divines* v, 6, 1, op. cit., p. 156–157 (SC 204).

81 Lactance, *Institutions Divines* v, 6, 2, op. cit., p. 156–157 (SC 204).

82 Lactance, *Institutions Divines* v, 6, 3, op. cit., p. 156 (SC 204).

83 Lactance, *Institutions Divines* v, 6, 4, op. cit., p. 156 (SC 204).

84 Lactance, *Institutions Divines* v, 6, 5, op. cit., p. 156 (SC 204).

85 See G. Guțu, *Dicționar*, op. cit., p. 463.

carried by lictors⁸⁶ walking in front of the praetors and the magistrates invested with “imperium,” as a sign of their right to punish.

In his Book, “De justitia,” Lactantius also tells us that, beginning with the epoch of that tyrant, – who deprived his father of his royal throne – “... no remainder of the devotion and the honesty established during the previous centuries (antecedentis saeculi)” remained, and, consequently, “the justice chased away triggered with it the fall of the truth (explosa iustitia et veritatem secum trahens), leaving to people error, ignorance and blindness (hominibus errorem, ignoratiam, caecitatem).”⁸⁷

Lactantius assures us that “Justitia” (Justice) cannot be looked for and found except by those with a spirit “of equity and goodness (aequi ac boni), which supposes removing from our hearts “any bad thought” (malam cogitationem) and honoring “the true God (Deum Verum).”⁸⁸ Actually, Lactantius insisted on telling us that even for Cicero,⁸⁹ “any evil by means of which mankind (humanum genus) could disappear comes only from the unjust and disrespectful worship of the gods (iniustus atque impius deorum cultus).”⁹⁰

According to Lactantius, the divine law is enough to govern mankind. “... To govern people – he wrote – one does not need so many (tam multis) and so various laws (et tam variis legibus), because, it alone, the law of God (Dei lex), would be enough to attain perfect innocence; no prisons (carceribus), no arms (gladiis), no governors (praesidium) and no terror of punishment would be needed if the celestial commandments of God spread in the heart of men developing works of justice (iustitiae opera).”⁹¹

The same Christian jurist of Latin language said that “the conscience of sin (peccate conscientia) and the fear of punishment (metus poenae) make you even more religious (religiosorem facit), and faith (fides) is always much stronger (semper multo firmior) when it is restored by penitence (poenitentia).”⁹²

86 The lictor (lictor/ris) was not only the company of a magistrate vested with “imperium”, namely with jurisdictional power, but also the defender and executor of his orders (cf. G. Guțu, *Dictionar*, op. cit., p. 702).

87 Lactance, *Institutions Divines* v, 6, 10, op. cit., p. 158–159 (SC 204).

88 Lactance, *Institutions Divines* v, 8, 3, op. cit., p. 164–165 (SC 204).

89 Lactantius quoted from “*De Legibus*”, frg. 1. See M. T. Ciceronis, *De Legibus libri. Fragmenta*, 1, ed. I. Vahleni, Berolini 1871, p. 167.

90 Lactance, *Institutions Divines* v, 8, 11, op. cit., p. 166–167 (SC 204).

91 Lactance, *Institutions Divines* v, 8, 9, op. cit., p. 166–167 (SC 204).

92 Lactance, *Institutions Divines* v, 13, 7, op. cit., p. 194–195 (SC 204).

The conception of Lactantius, according to which “*Dei Lex*” is enough to govern mankind, has been and certainly has remained alien to the spirit of the European post-Byzantine jurists. For example, with us, with the Romanians, this process of estrangement from the “*Divine Law*” grew larger during the reign of Cuza Vodă (1859–1866), and then amplified during the period of the communist regime (1947–1989). Actually, not even to this day do we have magistrates or jurists to apodictically state that we do not need punishments, prisons and “*iustitiae opera*,” as Lactantius wrote at the beginning of the IVth century in his Book entitled “*De Justitia*.”

Consequently, we can justly ask ourselves if, despite the tomes of laws published since then, mankind has progressed or not regarding the perception on the nature of Law (*Jus/ris*) and on the procedure of application of the law, which still lacks the grain of humanism with which it had once been endowed by this Christian writer, apologist, rhetor and lawyer, Lactantius.

About the two notions, “*justitia*” (justice) and “*aequitas*” (equity), – to which both the poets and the philosophers of the Antiquity and the Roman jurists explicitly referred, and which Lactantius perceived first of all as virtues, always relating them to the Christian moral Law, – it must be said that they hold a foremost position in the text of the main juridical instruments of the European Union as well, but with a different connotation and a different aim.

One of the principal activity domains of the European Council is the “harmonization of the juridical systems” of the EU States, which supposes the construction in common of a Europe founded on the principles of the “Rule of law,” in which the aims pursued are: to promote law, “as a instrument of democracy,” to defend “human rights” and improve the efficiency “of justice by proposing more flexible juridical procedures,” meant to help find “common solutions to the new juridical and ethical problems...”⁹³

That one cannot reach a “harmonization of the juridical systems” of the States of the European Union unless there is an efficient justice in this States, at the same time making use of flexible judicial procedures, this is, doubtlessly, a peremptory reality. Yet, how do today’s theorists of Law perceive the notion of Justice? In what terms do they define it?!

⁹³ *Consiliul European. Structură și funcționare* (The European Council. Structure and Operation), in: *Manualul Consiliului European* (The European Council Textbook), edited by the Information Office of the European Council from Bucharest, Bucharest 2006, p. 218–219.

Usually, today’s theorists do not refer to the classical definition, inherited from the Roman jurisprudence (Celsus, Gaius, Ulpianus etc.), but content themselves with simply stating that Justice “supposes options and solutions based on the demands of justice, morality and correctness both in the process of elaboration of law, and in the process of application of the juridical norms.”⁹⁴ At the same time, they insist that, viewed as a principle of law, “the idea of justice dominates the positive norms of law,” and “embodies the ideal in the social order...”⁹⁵

Article 6 from the Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁶ – which is actually truly a European constitutional text, with the force of *Jus cogens*, concerning the protection of human rights and fundamental freedoms, – explicitly foresees the right of every person “to a fair and public hearing...” (Art. 6 al. 1). Actually, the European Court of Human Rights also mentioned that “by protecting the right to a fair trial, Article 6 of the European Convention of Human Rights aims to protect the principle of preeminence of law, indissolubly related to the notions of democratic society and rule of law.”⁹⁷

Regarding equity, as a general principle of Law, the respective theorists say that it supposes “the legislator’s moderation in prescribing rights and obligations in the process of elaboration of the juridical norms,” and “impartiality in the distribution of advantages and disadvantages in the activity of the organs applying the law.”⁹⁸

Certainly, in the Rule of Law, the principle of equity must be affirmed “both in the legislative process and in the daily activity related to the application of the law.” Consequently, based on this principle, one has to eliminate the situations of favoritisms triggered by some regulations of different individuals and of disadvantages

94 G. Costachi, P. Hlipcă, *Organizarea și funcționarea puterii în Statul de drept* (The Organization and the Functioning of Power in the Rule of Law), 2nd ed., Chișinău 2011, p. 62–63.

95 G. Costachi, P. Hlipcă, *Organizarea*, op. cit., p. 63.

96 This Convention was adopted in Rome, on 4 November 1950, and entered into force on September 3, 1953. However, Romania ratified it only in the year 1994 (cf. “Monitorul Oficial” (Official Journal) 1994, no. 135 / May 31). The Convention was amended by numerous Protocols, out of which we shall remind of the Protocol no. 11, entered into force on November 1, 1998. Finally, we shall mention that a “Convention” is an obligatory juridical instrument for the Member States of the European Council, but also for the Member States ratifying it.

97 R. Chiriță, *Convenția europeană a drepturilor omului. Comentarii și explicații* (The European Convention on Human Rights. Comments and Explanations), 2nd ed., Bucharest 2008, p. 194.

98 G. Costachi, P. Hlipcă, *Organizarea*, op. cit., p. 61.

for others. Impartiality and fairness must represent the guiding ideas both for the legislator and for the judge.⁹⁹

But, all these statements and observations of the theorists of Law, of our times, can be found in fact – at least in their embryonic state – in those maxims of the Roman jurists about Law, about its nature and its goal etc., namely in those “jurisprudentiae” also known and explained by the rhetor and lawyer Lactantius, and which, after he became a Christian, he expressed and applied in the new spirit of Jesus Christ’s Evangel.

In the perception of the Christian jurist Lactantius, “Lex Dei” (the Law of God) is enough to govern mankind, and the two fundamental values of the Roman Law, namely “justitia” and “aequitas,” are first of all two virtues that the theorists and the practitioners of Law of our times should take into account, if they really want to prove that they, too, know the history and the philosophy of man’s fundamental rights and freedoms, as the Christian writer and lawyer of Latin language, Lactantius, did.

Among others, in his work, entitled “De Justitia” (On Justice), from “Divinae Institutiones” (Divine Institutions), Lactantius wrote also that “... those who ignore the sacred mystery of man (sacramentum hominis), and by this rely in their judgement only on the acts of this temporal life (hanc temporalem vitam), cannot know the force of justice (vis justitiae).”¹⁰⁰

According to the statement of Lactantius, those who ignore the Mystery of Creation – culminating in the act of man’s creation¹⁰¹ – cannot therefore know the force of Divine justice either. Indeed, the “judex” who ignores its sacredness and its mystery is meant to oscillate throughout his life only within the register of the temporal life, and make use only of the justice of men.

Instead of Conclusions

Our highlighting and delineation of the content of the two virtues, “Justitia” and “Aequitas,” have certainly been due to the pioneering contribution of the Christian

⁹⁹ G. Costachi, P. Hlipcă, *Organizarea*, op. cit., p. 62.

¹⁰⁰ Lactance, *Institutions Divines* V, 17, 15, op. cit., p. 216–217 (SC 204).

¹⁰¹ About this sacred character of man’s creation, see for more details N. V. Dură, *Man in the View of some Christian Theologians with Philosophical Background*, “Annals of the Academy of Romanian Scientists, Series on Philosophy, Psychology, Theology and Journalism” 5 (2013) no. 1–2, p. 75–97.

North-African writer, Lactantius, who, due to his juridical, rhetorical and philosophical training, managed to bring to light the message of the Evangel of Christ, and to elucidate their implications in the juridical area, namely in the domain of Law, as well.

The work of Lactantius "De Justitia" remains one of reference not just for theologians, but also for jurists, philosophers, politologists etc., especially regarding the way in which the two values – with a religious-moral content, namely "Justitia" (Justice) and "Aequitas" (Equity), – were perceived and defined by a remarkable Christian writer, jurist and philosopher, of Latin expression, towards the beginning of the IVth century.

Among others, from the hermeneutical analysis of the text of the work "De Justitia" (On Justice) – although brief – it has been possible to notice and keep in mind the fact that for Lactantius "Justitia" (Justice) is "the supreme virtue," whose origin and reason lie in its main constitutive virtues – namely in "Pietas" and in "Aequitas" – which he called "fontes" (sources), because in these ones reside "tota justitia"¹⁰² (the whole justice). But, "caput" (the beginning) and "origo" (the origin) of Justice (Justitiae) – Lactantius mentioned – is nevertheless "Pietas," while "Aequitas" is "vis omnis ac ratio"¹⁰³ (the power and the reason of all).

The text of the same work allows one to also note that for Lactantius "Pietas" (Piety) "... nihil aliud quam Dei notio" (is nothing else but the (latreutic) worship of God), "sicut et Trismeghistus verissime definit"¹⁰⁴ (as Trismeghistos defined it as well).

Regarding "Aequitas," it has to be noticed the fact that, according to the perception of Lactantius, it consists in "... se cum caeteris coaequandi"¹⁰⁵ (making oneself equal to the others), namely situating oneself on the same social level, that is, on a level of equality, "... quam Cicero aequabilitatem vocat"¹⁰⁶ (which Cicero calls equitability).

In his work, "De Justitia," Lactantius also underlined the fact that "... Deus homines generat" (God created men), and made them "omnes aequos"¹⁰⁷ (all equal),

¹⁰² Lactance, *Divinae Institutiones* v, xv B, op. cit., p. 597 (PL 6).

¹⁰³ Lactance, *Institutiones Divines* v, 14, 11, op. cit., p. 202 (SC 204).

¹⁰⁴ Lactance, *Institutiones Divines* v, 14, 11, op. cit., p. 202 (SC 204).

¹⁰⁵ Lactance, *Institutiones Divines* v, 14, 15, op. cit., p. 204 (SC 204).

¹⁰⁶ Lactance, *Institutiones Divines* v, 14, 15, op. cit., p. 204 (SC 204).

¹⁰⁷ Lactance, *Institutiones Divines* v, 14, 16, op. cit., p. 204 (SC 204).

“id est pares esse voluit”¹⁰⁸ (namely he wanted them to be all equal). So, according to the perception of Lactantius, this equality among men is therefore a natural result of the divine Creation, and not of the human society, wherefrom the moral character of this kind of “equality” of “jure divino.”

Concerning this social status of equality, with which all men are born, Lactantius insisted that, “ubi non sunt universi pares, aequitas non est; et excludit inequalitas ipsa justitiam, cujus vis omnis in eo est, ut pares faciat eos qui ad hujus vitae conditionem pari sorte venerunt”¹⁰⁹ (where they are not equal, there is no equality, and inequality excludes justice, whose sense is precisely to make equal those who have come in the same way, with the same fate /destiny, in this life).

We also need to emphasize and remember that for the African jurist and apologist, “inequality” among men is exactly what “excludes justice” (excludit justitiam), which he derives “... from the knowledge of God, from piety and from the moral equality among men...”¹¹⁰

Quoting of Lactantius’ work, one of the exceptional canonists of the last century, Professor Liviu Stan,¹¹¹ wrote that, “... springing from Piety,” namely from the act of honoring God, “Law is conditioned in its existence and in its function by Religion.”¹¹² Indeed, for Lactantius the Law has the objective ground of its existence and its supreme ontic principle in “Jus divinum.” Moreover, its reason to be is none other than “to preserve equality among people”¹¹³, the equality ordained by the Creator and assumed by those who were made “in His image and likeness,” wherefrom also the conclusion that the “power” of Jus (of Law) resides precisely “in this equality”¹¹⁴ (among men), which is part of the Creed of the Christian Religion.

The fact that Lactantius conditioned the preservation of the spirit of justice on the accomplishment of good deeds is abundantly attested by the statement he makes in the same work, namely, “Servire antem Deo nihil aliud est, quam

¹⁰⁸ Lactance, *Institutions Divines* v, 14, 16, op. cit., p. 204 (sc 204).

¹⁰⁹ Lactance, *Institutions Divines* v, 14, 20, op. cit., p. 204 (sc 204).

¹¹⁰ L. Stan, *Ontologia Juris*, op. cit., p. 118.

¹¹¹ Our regrettable departed professor excelled in the domains of Canon Law, both Orthodox and Roman-Catholic, History of the Juridical-Canonical Institutions of Europe, Compared Law, Philosophy of Law etc.

¹¹² L. Stan, *Ontologia Juris*, op. cit., p. 118.

¹¹³ L. Stan, *Ontologia Juris*, op. cit., p. 118.

¹¹⁴ L. Stan, *Ontologia Juris*, op. cit., p. 118.

bonis operibus tueri et conservare justitiam”¹¹⁵ (Serving God is nothing else but to contemplate His good deeds and to maintain justice). Actually, taking over a quotation from Cicero (*De Republica* III, 22), Lactantius wrote that “God is the spring of Law,” and that the latter is conditioned by the “moral Law”.¹¹⁶

Certainly, only a jurist as impressive, as competent and with an attitude like the one of Lactantius could have awakened the conscience of the Emperor Constantine – at least indirectly through his mother Helen, or through his son Krispos, whom he was teaching at the Imperial Court, – on the fact that “the peace of the Empire” depended on the “peace with God,” wherefrom the affirmation of this principle even in the text of the Edict of Milan. But, unfortunately, this sui-generis contribution of Lactantius – which also had a decisive role in the process of genesis of the Edict of Milan – has not yet been emphasized by the specialized literature, wherefrom our obligation to read – with interest and competence – the text of the works of this jurist and rhetor of Proconsular Africa, and, certainly, particularly the one suggestively entitled, “*De Justitia*,” whose content questions at the same time the theologians, the jurists, the philosophers, the historians, the politologists, the sociologists of our times etc..

From the brief hermeneutical analysis of the text of Lactantius’s work “*De Justitia*” (On Justice), – whose references we have corroborated both with the Roman and the European juridical doctrine of our times, and with the basic principles of the Christian Orthodox teaching, – it has been possible to notice that in the conception of this prodigious Christian writer of Latin language – a rhetor and a lawyer by training and by profession – “Justitia” (Justice) and “Aequitas” (Equity) are above all two moral virtues, with certain implications and juridical consequences, wherefrom the moral obligation of any legislator – wherever and whoever he may be – to also take them into account in the application of the act of justice.

Anyhow, it is not doubt that this moral obligation is a categorical imperative of our times, confirmed actually even by the text of the main juridical

¹¹⁵ Lactance (Lactantius), *Institutiones Divines (Divinae Institutiones)* III, 9, 15, <http://remacle.org/bloodwolf/eglise/lactance/instit3.htm>; see also Lactance, *Divinae Institutiones*, trad. in romanian P. Pistol, Timișoara 2004, p. 127.

¹¹⁶ Lactantius, *Divinae Institutiones et epitome divinarum institutionum*, VI, 8, in: *L. Caeli Firmiani Lactanti opera omnia*, pars 1, ed. S. Brandt, Pragae-Vindobonae-Lipsiae 1890, p. 660–661 (*Corpus Scriptorum Ecclesiasticorum Latinorum*, 19). Concerning the text from Cicero, see M. T. Ciceronis, *De Republica*, ed. A. Maio, editio prima Americana, Bostonae 1823, p. 99.

instruments of the European Union,¹¹⁷ with an obligatory juridical force, such as, for example, the European Convention for the Protection of Human Rights (Rome 1950), The Charter of Fundamental Rights (Nice, 2001) and the Treaty of Lisbon (2007).

SUMMARY

O „Justitia” (sprawiedliwości) i „Aequitas” (słuszności). Wkład Laktancjusza († 325) w określenie treści dwóch elementów składowych „Jus” (prawa) – streszczenie

Po krótkiej analizie tekstu pracy Laktancjusza zatytułowanego „Justitia” można powiedzieć, że terminy „Justitia” (sprawiedliwość) i „Aequitas” (słuszności) są przede wszystkim dwiema cnotami moralnymi, o teologiczno-filozoficznych i prawnych implikacjach i konsekwencjach, stąd też istnieje moralny obowiązek, aby każdy prawodawca – gdziekolwiek i kimkolwiek by nie był – ma brać je pod uwagę przy wymierzaniu sprawiedliwości.

Słowa kluczowe: cnoty, sprawiedliwość, myślenie prawno-filozoficzne, implikacje moralne, konsekwencje prawne

About “Justitia” (Righteousness) and “Aequitas” (Equity). The contribution of Lactantius († 325) in the specifying of the content of the two constituent elements of the “Jus” – summary

By a brief analysis of the text of Lactantius’s work, entitled „Justitia,” one can say that for Lactantius, „Justitia” (Justice) and „Aequitas” (Equity) were primarily two moral virtues, with theological-philosophical and juridical implications and consequences, hence the moral obligation that any legislator – wherever and whoever he may be – ought to take them into account in the application of Justice.

¹¹⁷ See C. Mititelu, *The European Convention on Human Rights*, in: *10th Edition of International Conference The European Integration – Realities and Perspectives*, Galati 2015, p. 243–252; N. V. Dură, C. Mititelu, *The Treaty of Nice, European Union Charter of Fundamental Rights*, in: *8th Edition of International Conference The European Integration – Realities and Perspectives Proceedings*, Galati 2013, p. 123–129; N. V. Dură, C. Mititelu, *The Human Fundamental Rights and Liberties in the Text of some Declarations of the Council of Europe*, in: *International Conference “Exploration, Education and Progress in the Third Millennium.” Proceedings*, vol. 1, no. 5, Bucharest 2015, p. 7–22.

Keywords: virtues, justice, juridical-philosophical thinking, moral implications, juridical consequences

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