

DE FERIIIS IN ROMAN-CANONICAL LEGAL TRADITION

Assist. Vid Žepič*

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Throughout history, the legal regulation of holidays has been the product of human needs for rest and entertainment, religious beliefs, and pragmatic economic imperatives dictating the optimal use of time to produce goods. The first part of the article examines the significance of the division between dies fasti and dies nefasti and explores the categorisation of holidays in the Roman pagan era and their legal implications. The author then looks at the origins of Sunday as a day of rest and considers Theodosius' reform of the Roman calendar. This reform established the liturgical year in the emerging Christian state, and enduringly shaped the calendar of most European countries. The third part considers the attitude of the late Roman state towards Jewish and pagan festivals, and the innovations in medieval ecclesiastical legislation concerning holidays. The final section of the paper reflects on the role of tradition in the state's recognition of religious festivals as public holidays.

Key words: holidays; dies fasti; day of rest; Sunday; Roman and canon Law; Christianity; tradition

* Vid Žepič, Master of Laws, Teaching and Research Assistant, Faculty of Law, University of Ljubljana, Poljanski nasip 2, 1000 Ljubljana, Slovenia; vid.zepic@pf.uni-lj.si; ORCID ID: orcid.org/0000-0001-7526-1545

1. INTRODUCTION¹

*Pei vigilantanti il dritto.
Non pei dormenti è scritto:
E chi de 'Santi celebra
Le feste nuove e antiche,
Addio digesti e codice!
Ei vi farà le fiche!²*

Holidays are a constant feature of all societies. The human need for commemoration serves to strengthen, reaffirm and renew the individual's sense of belonging to a group, to preserve religious beliefs, values, moral and social order or, in short, cultural identity.³ Celebrations play an important role in perception of time, as they introduce recurring milestones into everyday life, thereby creating a kind of rhythm of life.⁴ Holidays provide physical and mental relaxation, leisurely pursuits, cherished moments with loved ones, self-discovery and spiritual enrichment. In the past, holidays have been closely associated with religious observances. Nowadays, while maintaining strong ties to their religious foundations, many holidays have seamlessly incorporated secular objectives.

In ancient Greek and Roman culture, holidays were associated with the concepts of *σχολή* and *otium*, representing periods when individuals were exempt from labour or civic responsibilities.⁵ Unlike the Greeks, the Romans did not regard this period as purposeless *dolce far niente*, but rather as a contrast to *negotium* (*nec-otium*).⁶ Impacted by their commitment to service-oriented leadership,

¹ This article was written as part of the research programme *Incorporation of EU Legal Terminology into the Slovenian Legal System (P5-0217)*, funded by the Slovenian Research Agency and the University of Ljubljana.

² Lozzi, C., *Dell'ozio in Italia Libri quattro*, Unione Tipografico-editrice, Torino, Napoli, 1871, p. 354.

³ Émile Durkheim argued that holidays (or what he refers to as *collective effervescence*) are central to the formation and maintenance of social cohesion. See Durkheim, E., *The Elementary Forms of the Religious Life*, George Allen & Unwin Ltd, London, 1915, p. 214 ss.

⁴ Heutger, V., *Das Recht auf Sonn- und Feiertage*, Geyer-Edition, Vienna and Salzburg, 1999, p. 25.

⁵ On Roman *otium* see Dosi, A., *Otium. Il tempo libero dei Romani*, Edizioni Quasar, Roma, 2006.

⁶ In a legal context, *negotium* denoted any kind of legal transaction or agreement. Less commonly, it encompassed civil or criminal trials, as well as any economic activities

the Romans believed that active participation in the affairs of state, including areas such as the military and legal activities, was not only a duty but also a powerful means of gaining social prestige and influence.⁷ In the Christian era, holidays underwent a significant transformation: since they became predominantly centred on the religious celebration of the life of Christ and the veneration of martyrs, leading to the gradual disappearance of secular festivals.

In this article, the legal consequences of holidays within the ancient Roman and medieval Roman-canonical legal traditions are examined. In particular, the focus is on the introduction of the most important holidays, especially within the framework of Roman imperial constitutions and papal decretals. Finally, the complex interplay between the argument of cultural tradition and the concern for religious discrimination in justifying the state's involvement in recognizing religious holidays as public holidays is discussed.

2. *FERIAE ROMANAE*

The *feriae*⁸, commonly referred to as *festi dies*, stands for periods in which diverse types of labour – encompassing agricultural, industrial, and even slave duties to a certain extent – came to a standstill in the Roman society.⁹ During these intervals, the *ius agendi cum populo* and civil jurisdiction¹⁰, as well as offensive warfare, were principally suspended.¹¹

including commercial, banking, or industrial businesses. Berger, A., *Encyclopedic Dictionary of Roman Law*, The American Philosophical Society, Philadelphia, 1953, p. 594, s. v. *negotium (negotia)*.

⁷ Cic. Att. 1,17,5; Cic. Sest. 139; Cic. De Off. 3,1; Sall. Iug. 4,4; Sall. Catil. 52,5. *Amplius* Gehrke, H. J.; Heimgartner, M., *Leisure*, in: Cancik, H. et al. (ed.), *Brill's New Pauly*, Brill Reference Online, August 17, 2023.

⁸ The term *feriae* traces its etymological origins back to the verb *ferire*, which, among its various connotations, can be interpreted as “to sacrifice” or “to slaughter.” The word's etymology is evidence of its connection to ancient Roman festivals, where sacrificial tributes were presented to venerate the deities during celebratory occasions. Sacrifices were not limited to offering material possessions, but also include the dedication of time that would otherwise be devoted to one's daily activities. *Macrob. Sat.* 1,15,21. *Amplius* Wissowa, G., *Religion und Kultus der Römer*, C. H. Beck, München, 1912, p. 432; Heutger, V., *op. cit.* (fn. 4), p. 15.

⁹ Cic. De leg. 2,29: *Cum est feriarum festorumque dierum ratio, in liberis quietem habet litium et iurgiorum, in seruis operum et laborum [...]*.

¹⁰ Ulp. D. 2,12,9; Cic. De leg. 2,8,12; De div. 1,45. See also Berger, A., *op. cit.* (fn. 6), p. 470, s. v. *feriae (dies fasti)*.

¹¹ *Fest.* 226: *Proclaires dies appellantur, quibus fas est hostem bello lacessere. Erant enim quaedam feriae publicae, quibus nefas fuit id facere.* On the contrary, see Ulp. D. 2,12,9:

According to sacral law, Roman public holidays (*feriae publicae*) fell into three distinct categories: *feriae stativae* (established by the calendar), *feriae conceptivae* (annually determined by magistrates), and *feriae imperativae* (instituted in response to exceptional circumstances, e.g. to atone after natural disasters, or to commemorate triumphs).¹² All *feriae publicae* in the ancient Roman calendar¹³ coincided with the designated *dies nefasti*, a crucial element of the Roman calendar that could be traced back to the legendary second king of Rome Numa Pompilius.¹⁴ In order to reconcile celestial reverence with the practicalities of daily existence, he divided the Roman year into two categories, days which are religiously legitimate or fitting (*fas*) for engaging in civic and state matters and days which are characterised as unfitting (*nefas*).¹⁵ In archaic Roman law, the task of regulating the calendar was entrusted to the pontifical college.

This authority held the exclusive privilege of proclaiming holidays based on the careful observation of celestial phenomena. The configuration of the calendar and the calculation of mobile holidays were under the exclusive jurisdiction of the pontifical college.¹⁶ However, conducting the court proceedings did not fall within the competences of the priests, who contributed solely to the phrasing of *legis actiones*. The role of *dominus litis* was initially held by the consul

Divus Traianus Minicio Natali rescripsit ferias a forensibus tantum negotiis dare vacationem, ea autem, quae ad disciplinam militarem pertinent, etiam feriatis diebus peragenda: inter quae custodiarum quoque cognitionem esse.

¹² *Macrob. Sat.* 1,16,5; *Varr. De lingua latina* 6,25.

¹³ The name of the Roman calendar was *fasti*, meaning the list of court sessions. The Latin word *calendarium* means “debt register” and refers to the first day of the month when loans were granted, and interest was to be paid. It was Isidore of Seville who first employed the term *calendarium* to signify what we now recognize as a calendar (*Isid. Etym.* 1,44,2: *Kalendaria appellantur, quae in menses singulos digeruntur.*) On this see Rüpke, J., *The Roman Calendar from Numa to Constantine. Time, History and the Fasti*, Wiley-Blackwell, Chichester, 2011, p. 1.

¹⁴ Wissowa, G., *Fasti*, in: Wissowa, G. (ed.), *Paulys Realencyclopädie der classischen Altertumswissenschaft*, vol. VI, part 2, Alfred Druckenmüller, Stuttgart, 1909, pp. 2015. In the lists preserved by the Roman pontiffs, the legal nature of each day was indicated by the letters *F* or *N*, which stood for *f(as)* and *n(efas)*. The designation *C* (*dies comitalis*) indicated that the marked day was suitable for gatherings of *comitia* and for conducting legal matters. *Amplius* Warde Fowler, W., *The Roman Festivals of the Period of the Republic*, Macmillan and Co., London, 1899, p. 9; Wissowa, G., *op. cit.* (fn. 8), p. 435.

¹⁵ *Liv. Ab urbe condita* 1,19,7: [...] *idem nefastos dies fastosque fecit, quia aliquando nihil cum populo agi utile futurum erat.*

¹⁶ Wieacker, F., *Römische Rechtsgeschichte. Quellenkunde, Rechtsbildung, Jurisprudenz und Rechtsliteratur. Abschnitt I: Einleitung, Quellenkunde, Frühzeit und Republik*, C. H. Beck, München, 1988, p. 312.

and, since 367 BC, by the praetor. The question of when the praetor could effectively act as a magistrate was dependent upon the calendar.¹⁷ According to sacral law (*fas*), praetor could employ the *tria verba sollemnia* (*do, dico, addico*)¹⁸, which formed an integral part of the *legis actiones* procedure, exclusively on days designated as *dies fasti*: only the latter were deemed appropriate to carry out judicial actions.¹⁹ Both *dies fasti* and the wording of *legis actiones* were, according to a tale recounted by Cicero, disclosed by the famous *scriba* Gnaeus Flavius in the year 394 BC, who thereby transformed the fabric of Roman jurisprudence by bestowing upon it a distinctively secular character.²⁰

Nonetheless, not all holidays were of a public nature. Many celebrations were confined to individual families or gentile communities (*feriae privatae*).²¹ Romans marked significant milestones in their lives, such as birthdays (*dies natalis*), the rite of passage when boys donned the *toga virilis* (*liberalia*), engagements (*sponsalia*), weddings (*nuptiae*), and remarriages (*reputia*), with intimate family celebrations. Following a death of a member of household, families conducted *feriae denicales* to purify their homes and inhabitants from the lingering presence of demise.²² These anniversaries and commemorative occasions considerably expanded the number of days during which labour was suspended.

In the era of the Roman Republic, around 235 days were set aside for working days, while 109 were reserved for religious observances. These comprised all the ides, half of the calends, a third of the nones, and roughly forty-five specific days recognized as *feriae publicae* according to the ancient calendar.²³ The number of holidays experienced a significant surge during the reign of Caesar and Augustus, who in total added another 30 festive days to the calendar.²⁴ This increase was only temporary: the number of festive days was reverted du-

¹⁷ Fögen, M. T., *Römische Rechtsgeschichten: über Ursprung und Evolution eines sozialen Systems*, Vandenhoeck & Ruprecht, Göttingen, 2002, p. 128.

¹⁸ *Macrob. Sat.* 1,16,14. On these solemn verbs, see Kaser, M.; Hackl, K., *Das römische Zivilprozessrecht*, C. H. Beck, München, 1996, p. 41 s.

¹⁹ *Gai.* 4,29: [...] *nefasto quoque die, id est quo non licebat lege agree* [...]; *Varr. De lingua latina* 6,29; *Liv. Ab urbe condita* 1, 19, 7; *Macrob. Sat.* 1,16,27.

²⁰ *Cic. Ad Att.* 6,1,8; *Cic. Pro Mur.* 25; *Liv. Ab urbe condita* 9,46,5; *Val. Max.* 2,5,2; *Plin. Nat. hist.* 33,17. *Amplius* Wieacker, F., *op. cit.* (fn. 16), pp. 524 ss.

²¹ *Fest.* 242: *privatae feriae vocantur sacrorum propriorum, velut dies natales, operations, denicales. Macrob. Sat.* 1,16,7: *Sunt praeterea feriae propriae familiarum, ut familiae Claudiae vel Aemiliae seu Iuliae sive Corneliae, et si quas ferias proprias quaeque familia ex usu domesticae celebritatis observat.*

²² *Fest.* 70: [...] *denicales feriae colebantur, cum hominis mortui causa familia purgabatur.*

²³ *Wissowa, G., op. cit.* (fn. 8), p. 435 and pp. 567 ss, where all Roman holidays are listed.

²⁴ *Suet. De vita caes.* (Augustus) 32.

ring the rule of Marcus Aurelius.²⁵

The allocation of *dies nefasti* throughout the civil year was rather unregular. While in certain months, like November and September, solely one or two festive days appear, the number surged to ten in December, eleven in June, fifteen in July, and twenty each in February and April. In these months, the opportunities for legal proceedings and assemblies were minimized: in February, for instance, just six days were available for such activities due to dedication of this month to purification.²⁶

3. LEGAL EFFECTS OF HOLIDAYS IN PAGAN ROME

Among the legal facts independent of party's will (thus considered legally relevant events), time is surely the most significant one. Its passage had effects at the level of both substantive and procedural law.

Cicero noted that legal proceedings came to a halt during holidays.²⁷ No defendant could be compelled to appear for a hearing during the harvest and grape-picking season.²⁸ Even a pronouncement of judgment on a festive day was deemed void.²⁹ Despite that if the parties had reached an agreement with the *iudex* or the *recuperatores*, the magistrate was obligated to assign the mutually agreed-upon date for the hearing even if it coincided with festive days.³⁰ This exception did not apply to holidays *propter venerationem domus Augustae*. In cases where one party was absent due to valid reasons, and the praetor proceeded with a judgment, it was deemed ineffective.³¹

During holidays, certain urgent matters (*causae exceptae*) remained subject to judicial intervention. There was a number of cases which required application to the praetor on holidays: the appointment of guardians and curators, admonishing individuals about their responsibilities, hearing excuses, arranging for

²⁵ Hist. Aug. (Marcus Antonius) 10,10: [...] *fastis dies iudicarios addidit, ita ut ducentos triginta dies annuos rebus agendis litibusque disceptandis constitueret* [...].

²⁶ Wissowa, G., *op. cit.* (fn. 8), p. 436.

²⁷ Cic. De leg. 2,8,19: *Feriis iurgia amovento*. ("On holidays they shall refrain from lawsuits.")

²⁸ Ulp. D. 2,12,1: *Ne quis messium vindemiarumque tempore adversarium cogat ad iudicium venire, oratione divi Marci exprimitur, quia occupati circa rem rusticam in forum compellendi non sunt*.

²⁹ Ulp. D. 2,12,6.

³⁰ Lex Irnitana, cap. 92 (*Quibus diebus res ne iudicentur et in quos intertium ne detur*). *Amplius* Kaser, M.; Hackl, K., *op. cit.* (fn. 18), p. 356.

³¹ Ulp. D. 2,12,1,1.

support, verifying age, establishing provisions for the possession of property for unborn children, preserving property for the benefit of legatees, ensuring security against unlawful damage, facilitating the production of wills, appointing a curator for the property of someone uncertain about their heirship, providing support for children, parents, or patrons, initiating procedures for estates suspected of insolvency, examining severe injuries, and granting freedom under a trust.³²

In certain matters, *dies nefasti* influenced legal computation of time. As a rule, deadlines were calculated continuously according to the calendar without the omission of any days (*tempus continuum*). At times (particularly under praetorian law) they were computed as “equitable time” (*tempus utile*), indicating an interval of time in which certain days were not computed.³³ Equitable time, interestingly, usually ran “equitable from the beginning, but continuously in terms of progress” (*tempus utile ratione initii, continuum ratione cursus*). This meant that the deadline did not begin to run until the party could first assert their rights (*potestas experiundi*).³⁴ The inability to initiate legal proceedings stemmed from either personal reasons (captivity of the person who had to perform the action, his absence in the interest of the state, sickness) or official reasons (i.e. when judicial activity was suspended due to the holidays).³⁵ Once the deadline began, it continued to run regardless of any obstacles that may have occurred during its span.³⁶ Sometimes the praetor considered only the days in which the party could assert their rights (“equitable time from the beginning and progress” – *tempus utile ratione initii et cursus*).³⁷

³² *Ulp. D. 2, 12, 2: [...] de aliis speciebus praetorem adiri etiam diebus feriaticis: ut puta ut tutores aut curatores dentur: ut officii admoneantur cessantes: excusationes allegentur: alimenta constituentur: aetates probentur: ventris nomine in possessionem mittatur, vel rei servandae causa, vel legatorum fidei commissorum, vel damni infecti: item de testamentis exhibendis: ut curator detur bonorum eius, cui an heres exstaturus sit incertum est: aut de alendis liberis parentibus patronis: aut de adeunda suspecta hereditate: aut ut aspectu atrox iniuria aestimetur: vel fideicommissaria libertas praestanda.*

³³ Berger, A., *op. cit.* (fn. 6), p. 731, s. v. *tempus utile*.

³⁴ *Ulp. D. 44,3,1: Quia tractatus de utilibus diebus frequens est, videamus, quid sit experiundi potestatem habere. Et quidem in primis exigendum est, ut sit facultas agendi.* On this, see Piekenbrock, A., *Befristung, Verjährung, Verschweigung und Verwirkung. Eine rechtsvergleichende Grundlagenstudie zu Rechtsänderungen durch Zeitablauf*, Mohr Siebeck, Tübingen, 2006, pp. 102 ss.

³⁵ *Ibid.*

³⁶ *Constantius, Maxim. C. 3,12,1; Valentin. Valens Grat. C. 3,12,4.*

³⁷ *Ulp. D. 38,15,2 pr.*

4. THE ORIGINS OF SUNDAY AS A DAY OF REST

Due to the abundance of holidays dedicated to various deities within the Greek and Roman pantheons, there was no need for a recurring day of rest neither in ancient Greek nor in Roman societies.³⁸ Every eighth day (*nundinae*) Roman farmers embarked on journey to urban centres to engage in commercial transactions, mercantile activities, and other business-related pursuits. Whether *nundinae* were feast days (*feriae*), was a disputed question even in antiquity.³⁹ Factual cessation from labour took place exclusively during festive days, most notably during sowing holidays (*feriae sementivae*).

Jewish-Christian tradition played a pivotal role in the process of establishing a uniform and periodic rest day. In the early Christian communities, there was not a designated day in week entirely reserved for religious worship. It is believed that the earliest Christians initially maintained the observance of the Jewish Sabbath and congregated spontaneously for liturgy on the subsequent day.⁴⁰ This led to the development of a distinct Christian holiday which was closely linked to the Sabbath but did not supplant it.⁴¹ Although it remains contested whether the Christian Sunday originated as a deliberate opposition to the Sabbath, the derivation of the Jewish Sabbath and the Christian Sunday differs: the Jewish Sabbath dates to the Old Testament and is linked to the Creation narrative, while the Christian Sunday has been celebrated with worship and communion to commemorate of the Resurrection of Jesus Christ.⁴²

³⁸ Braun, P. E., *Die Geschichtliche Entwicklung der Sonntagsruhe. (Ein Beitrag zur Soziologie des Arbeiterschutzes)*, Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte, vol. 16, no. 3 and 4, 1922, p. 328.

³⁹ Warde Fowler, *op. cit.* (fn. 14), p. 8. On *nundinae*, see Huschke, Ph. E., *Das alte römische Jahr und seine Tage*, Ferdinand Hirt, Breslau, 1869, pp. 288 ss.

⁴⁰ Ac 20,7: "On Saturday evening we gathered together for the fellowship meal." *Plin. Epist.* 10,96: "They affirmed, however, the whole of their guilt, or their error, was, that they [Christians] were in the habit of meeting on a certain fixed day before it was light, when they sang in alternate verses a hymn to Christ, as to a god, and bound themselves by a solemn oath, not to any wicked deeds, but never to commit any fraud, theft or adultery, never to falsify their word, nor deny a trust when they should be called upon to deliver it up; after which it was their custom to separate, and then reassemble to partake of food of an ordinary and innocent kind." *Didache* 14,1: "And on the Lord's Day of the Lord come together, and break bread, and give thanks, having before confessed your transgressions, that your sacrifice may be pure."

⁴¹ Westphal, K., *Die Garantie der Sonn- und Feiertage als Grundlage subjektiver Rechte*, Inaugural-Dissertation, Tübingen, 2003, p. 23.

⁴² Schiepek, H., *Der Sonntag und kirchlich gebotene Feiertage nach kirchlichem und weltlichem*

In 321, Emperor Constantine issued an edict regarding the observance of the day of the Sun (*dies solis*, "Ἡλίου ημέρα) and ordered that judges and ordinary people (*plebs*) in the city should cease working on that day.⁴³ People living in the country were free to cultivate their fields even on Sunday to ensure that the "benefits of celestial's providence were not lost".⁴⁴ In another constitution, the same emperor stated that it was deemed unsuitable for the esteemed day of the Sun (*dies solis*) to be affected by "legal quarrels and poisonous controversies" of the litigation. Nevertheless, everyone was granted the right to emancipate, manumit, and vow⁴⁵ on this festive day.⁴⁶ These exceptions were probably motivated by the fact that emancipations and manumissions were possible solely by voluntary decision of the *pater familias* without adversarial proceedings. Manumission was not only perceived as a virtuous act within the realm of Christian beliefs; it also carried ethical weight within the context of Stoic teachings, which aimed to enhance the lives of slaves.

In Constantine's edict, Sunday was not yet designated as a specifically Christian holiday; rather, it was regarded as a day dedicated to the Sun. The "Unconquered Sun" (*Sol Invictus*) held significant prominence in pagan tradition from the era of Aurelian to Constantine. Initially unsuccessful under emperor Elagabalus (218–222), the cult of the Sun god eventually ascended to official religion during emperor Aurelian's reign (270–275). Christians attempted to build on the already established cult by interpreting the words of prophet Malachi, shaping the understanding of Christ as the Sun of Justice (*Sol iustitiae*).⁴⁷ With the determination of the Sunday as a rest day, Constantine not

Recht, Peter Lang, Frankfurt am Main, 2009, p. 153.

⁴³ *Const. C. 3,12,2: Omnes iudices urbanaeque plebes et artium officia cunctarum venerabili die solis quiescent ... Cf. Sozom. Hist. Eccl. 1,8.*

⁴⁴ *Const. C. 3,12,2: ... ruri tamen positi agrorum culturae libere licenterque inserviant, quoniam frequenter evenit, ut non alio aptius die frumenta sulcis aut vineae scrobibus commendentur, ne occasione momenti pereat commoditas caelesti provisione concessa.*

⁴⁵ On *vota publica* in general, see Žepič, V., *Ius publicum in iure privato. Javnopravne prvine v rimskem zasebnem pravu*, *Zgodovinski časopis*, vol. 14, no. 3–4, 2023, pp. 278 s; for specific votive offerings held to seek protection from pandemic diseases, see Žepič, V., 'Pandemic Criminal Law' in *Continental European Legal History*, *Journal on European History of Law*, vol. 13, no. 2, 2022, p. 52.

⁴⁶ *Const. CTh. 2,8,1: Sicut indignissimum videbatur, diem solis, veneratione sui celebrem, altercantibus iurgiis et noxiis partium contentionibus occupari, ita gratum ac iucundum est, eo die, quae sunt maxime votiva, compleri. Atque ideo emancipandi et manumittendi die Festo cuncti licentiam habeant, et super his rebus acta non prohibeantur.*

⁴⁷ Malachi 3,2. It was with this understanding that early Christians oriented their prayers in the direction of the rising sun (*ad orientem*). *Amplius Bianchini, M., Cadenze liturgiche e calendario civile fra IV e V secolo. Alcune considerazioni*, in: *Atti dell'Ac-*

only gained trust among Christians, but also among the pagans.⁴⁸ It remains controversial question whether Emperor Constantine the Great was a devout Christian⁴⁹ or a skilled monotheistic politician who utilized both *Sol Invictus* and Christ to legitimize his political ambitions.⁵⁰ In contrast to the Emperor Theodosius I, Constantine did not force Romans to celebrate Sunday in a Christian way. The coexistence of pagan festivals and the ancient cult endured for an extended period, as demonstrated by the famous chronograph of *Philocalus* (354)⁵¹, which documented Sundays, antiquated *nundinae* and many ancient pagan festivities.⁵² In 386, Gratian, Valentinian, and Theodosius, undoubtedly influenced by Christian principles, openly designated Sunday as the “Lord’s Day” (*Dominicus*)⁵³ and dictated the suspension of all legal activities, including litigation and court proceedings. Individuals were prohibited from pursuing the payment of public or private debts, and any engagement in disputes before arbitrators, whether through court request or voluntary choice, was expressly forbidden. Those who strayed from the religious rituals were not only labelled as infamous but also branded as sacrilegious.⁵⁴

cademia Romanistica Costantiniana. Atti del VI Convegno internazionale, Università di Perugia, Perugia, 1986, p. 236.

⁴⁸ Schiavo, S., *Christian Feasts and Administration of Roman Justice in Late Antiquity*, in: Flatto, D.; Porat, B. (eds.), *Law as Religion, Religion as Law*, Cambridge University Press, Cambridge, 2022, p. 319.

⁴⁹ According to Eusebius (*Vita Constantini* 6,18,1–2), Constantine attended worship services every Sunday and even prepared a monotheistic prayer for the army; however, he always omitted the name of Christ. Eusebius also recorded that Constantine mandated all his subjects to participate in the sacred service (*Vita Constantini* 4,18). See Dörries, H., *Konstantin der Große*, Kohlhammer, Stuttgart, 1958, p. 170, and Schiepek, H., *op. cit.* (fn. 42), pp. 218 s.

⁵⁰ Buckhardt, J., *Die Zeit Constantin des Grossen*, Stuttgart, Schwabe & Co., Basel, 1970, p. 272.

⁵¹ On this important historical source, see Salzman, M. R., *On Roman Time. The Codex-Calendar of 354 and the Rhythms of Urban Life in Late Antiquity*, University of California Press, Berkeley, Los Angeles, Oxford, 1990.

⁵² Bethmann-Hollweg, M. A., *Der Civilprozeß des gemeinen Rechts in geschichtlicher Entwicklung, Der römische Civilprozeß, 3. Cognitiones*, Adolph Marcus, Bonn, 1868, p. 191.

⁵³ This terminology has since become ingrained in modern languages. In Italian, Sunday is called *domenica*, in French *dimanche*, in Spanish and Portuguese *domingo*; but German *Sonntag*, Dutch *zondag*, Swedish *söndag*, Danish *søndag* and Finnish *sunnuntai*.

⁵⁴ *Grat. Valentin. Theodos.* CTh. 2,8,18: *Solis die, quem dominicum rite dixere maiores, omnium omnino litium, negotiorum, conventionum quiescat intentio; debitum publicum privatumque nullus efflagitet; nec apud ipsos quidem arbitros vel iudiciis flagitatos vel sponte delectos ulla sit agnitio iurgiorum. Et non modo notabilis, verum etiam sacrilegus iudicetur, qui a sanctae religionis instinctu rituve deflexerit.* See also CTh. 2,8,23 pr.: *Die dominico, cui*

5. CALENDAR REFORM OF CHRISTIAN EMPERORS

Having secured victory over his rival Maximus, Theodosius I undertook a campaign to secure the primacy of the Christian religion. The rescript of Valentinian and Arcadius decreed that all days not specifically designated as official holidays would henceforth be classified as “court days” (*dies iuridici*).⁵⁵ This enactment was probably adopted out of need to address the proliferation of holidays and consequent disruptions in legal proceedings. It may also be seen as a response to the sporadic declarations of holidays by provincial governors who thereby attempted to alleviate administrative burdens or curry favours with the emperors.⁵⁶

Apart from Sunday, which Christians commemorated as a weekly celebration of the Risen Lord – a kind of weekly Easter – various other days and periods were officially recognised as holidays. These included the kalends of January, the anniversaries of the founding of Rome and Constantinople, seven days before and after Easter, the grain and grape harvest holidays, emperor’s birthday, and the day on which the reigning emperor came to power.

5.1. *Kalendae Ianuariae*

The Kalends⁵⁷ of January signified the commencement of the Roman administrative and judicial year (*annus litium*).⁵⁸ This period extended from the first to the third or sometimes fifth of January and was dedicated to the Roman god

nomen ex ipsa reverentia inditum est ...

⁵⁵ Valentin. Theodos. Arcad. CTh. 2,8,19: *Omnes dies iubemus esse iuridicos.*

⁵⁶ Const. C. 3,12,3. On this, see Graf, F., *Roman Festivals in the Greek East*, Cambridge University Press, Cambridge, 2015, p. 115; Biondi, B., *Diritto romano cristiano III*, Giuffrè, Milano, 1954, p. 379.

⁵⁷ In the Roman calendar, dates were counted forward to one of three primary days within each month, i. e. *kalendae* (the first day of each month, dedicated to Juno), *nonae* (the seventh day of “full months” and the fifth day of “hollow months”, which were sacred to no deity), and *idus* (the fifteenth day of “full months” and the thirteenth day of “hollow months”, dedicated to Jupiter). “Full months” consisted of 31 days, which applied to the months of March, May, July, and October. On the other hand, “hollow months” had either 29 or 28 days. On this, see Rüpke, J., *op. cit.* (fn. 13), p. 8.

⁵⁸ Ovid. Fasti 1, 165 ss. The Kalends of March had conventionally marked the inauguration of new consuls until Rome’s legendary second king, Numa Pompilius, introduced January and February. By positioning these two months prior to March, he shifted the beginning of the Roman year to the first day of January. On order of months in the year, see Warde Fowler, W., *op. cit.* (fn. 14), pp. 5 ss.

Jupiter Optimus Maximus. During its course, private festivities and the customary exchange of gifts (notably money) would take place in addition to a rich array of public events such as religious ceremonies at the Capitol, sacrificial rituals, public games (*ludi*), and the adornment of homes with laurel wreaths.⁵⁹ In the imperial era, celebrations took place from the first to the third of January, culminating in public vows (*votorum nuncupatio*) in honour of the reigning emperor on the third day.⁶⁰ During the 4th and 5th centuries, the festivities on the Kalends of January continued to attract large numbers of people; but their religious connotations gradually waned. Due to the criticism of church fathers condemning persistent pagan rituals that aligned with the feast of the baptism of the Lord on January 5th (Epiphany), praetors were obligated to commence their official duties on the January 1st.⁶¹ Nonetheless, emperors kept rewarding public officials, craftsmen, and other professionals as a part of the Kalends festivities⁶², dedicated to repose (*otium*).⁶³

5.2. *Natalitios dies urbium maximarum*

According to a widespread belief in ancient Rome, an individual received a protective deity at birth. Similarly, at its founding, a city was believed to have acquired its *genius loci*.⁶⁴ In the Republican era, the day of the founding of Rome

⁵⁹ Nilsson, M. P., *Kalendae Ianuariae, Kalendenfest*, in: Wissowa, G. (ed.), *Paulys Realencyclopädie der classischen Altertumswissenschaft*, vol. XX, Alfred Druckenmüller, Stuttgart, 1919, pp. 1562 ss; Bethmann-Hollweg, M. A., *Der Civilprozeß des gemeinen Rechts in geschichtlicher Entwicklung, Der römische Civilprozeß, 2. Formulae*, Adolph Marcus, Bonn, 1865, p. 174.

⁶⁰ Ulpian (D. 2,12,5) acknowledged that magistrates refrained from judicial duties on the final day of the old year. See Meslin, M., *La fête des calendes de janvier sous l'Empire romain*, Collection Latomus 115, Brussels, 1970; Graf, F., *Laying Down the Law in Ferragosto: The Roman Visit of Theodosius in Summer 389*, *Journal of Early Christian Studies*, vol. 22, no. 2, 2014, p. 232.

⁶¹ Graf, F., *op. cit.* (fn. 56), p. 115; Connelly, C., *Continued Celebration of the Kalends of January in the Medieval Islamic East*, *Dumbarton Oaks Papers*, vol. 74, 2020, p. 45. On the restitution of pagan Kalends of January by the Christian Emperors see Latham, J. A., *The Re-invention of the Kalends of January in Late Antiquity: A Public Festival Between "Pagans" and Christians*, *Journal of Late Antiquity*, vol. 15, no. 1, 2022, pp. 69 ss.

⁶² *Anast. C. 2,7,23; Iustinus C. 12,19,14,1.*

⁶³ *Valentin., Theodos., Arcad. C. 3, 12, 6, 2: ... kalendarum quoque Ianuariarum consuetos dies otio mancipamus.*

⁶⁴ *Symm. Ep. 10,61: Ut animae nascuntur, ita populis natales genii dividuntur.* Amplius Schmidt, W., *Geburtstag im Altertum*, Alfred Töpelmann, Gießen, 1908, p. 79.

(April 21st, 753 BC)⁶⁵, was referred to as *Parilia*; under Hadrian it was called Ῥωμαῖα; and eventually, it became known as *dies natalis urbis Romae*.⁶⁶ It was not initially the birthday celebration of the city god, but rather an atonement festival for shepherds that worshipped their deity Pales (hence *Palilia*) on this day.⁶⁷ Ovid recounts that Romulus arrived in Rome on the day of the *Parilia*, drew a line in the soil that delineated the boundaries of the new city (*pomerium*), and then prayed to Jupiter, Mars, and Vesta to protect that place.⁶⁸

Emperor Constantine relocated the Roman Empire's capital to Byzantium and officially named new capital *Nova Roma* (Νέα Ῥώμη). The solemn dedication of Constantinople, dedicated it to the Virgin and Mother of God, took place on May 11, 330⁶⁹, on the feast of Saint Mocius, a revered Byzantine martyr.⁷⁰ The city's dedication day was designated as an annual celebration.⁷¹ During the commemorations of the anniversaries of founding of both "old" and "new" Rome, the legal proceedings came to a halt, "as the very essence of the law originated in these two cities".⁷²

5.3. *Paschae dies, qui septeno vel praecedunt numero vel sequuntur*

As decreed by the Council of Nicaea, Easter, recognised as the oldest Christian holiday with Jewish roots, was to be celebrated on the Sunday following the first full moon after the vernal equinox.⁷³ During the fifteen Paschal days, i.e. seven days before and seven days after Easter (*paschae dies*), all legal proceedings, whether public or private in nature, were suspended⁷⁴ and collection of all taxes and debts, public or private, was deferred.⁷⁵ In the course of the forty days preceding the Paschal season (*Quadragesima*), which commemorates Jesus Christ's fasting in the desert and his temptation by Satan, corporal punish-

⁶⁵ *Plut.* Βίοι Παράλληλοι (Ῥωμύλος) 12,1.

⁶⁶ *Athen. Deipn.* 8,63,361.

⁶⁷ Schmidt, W., *op. cit.* (fn. 64), 79.

⁶⁸ *Ovid.* *Fasti* 4,810 ss. See also *Cic.* *Div.* 2,98; *Varr.* *Rust.* 2,1,9.

⁶⁹ *Hesychius Millesius*, *Origines Constantinopolis* 4, in: *Fragmenta historicorum Graecorum*, vol. 4, Ambrosius Firmin Didot, Paris, p. 154.

⁷⁰ Balzer, M., *Constantine's Constantinople: A Christian Emperor, A Pagan City*, *Ezra's Archives*, vol. 3, no. 1, 2013, p. 58.

⁷¹ *Hesychius Millesius*, *op. cit.* (fn. 69), p. 154.

⁷² *Valentin. Theodos. Arcad.* CTh. 2,8,19,2: *His adiucimus natalitios dies urbium maximarum, Romae atque Constantinopolis, quibus debent iura deferre, quia et ab ipsis nata sunt.*

⁷³ Schiepek, H., *op. cit.* (fn. 42), p. 155.

⁷⁴ *Valentin. Theodos. Arcad.* CTh. 2,8,21.

⁷⁵ *Valentin. Theodos. Arcad.* C. 3,12,6,6.

ment⁷⁶ and the practice of conducting criminal interrogations through torture⁷⁷ was strictly prohibited. On Easter, Emperors granted amnesty for minor offenses such as theft, fraud, or robbery. It is plausible to assume that debtors who were confined in private detention were released as well.⁷⁸ *Indulgentia criminum* never extended to those, who were incarcerated for high treason, sacrilege, adultery, incest, rape, murder, poisoning and sorcery, counterfeiting, and grave desecration.⁷⁹

5.4. *Feriae messivae et vindemiales*

Marcus Aurelius introduced grain and grape harvest holidays, but without a fixed date.⁸⁰ The governors of the provinces determined the precise timing of these holidays considering the customs and the climate differences that existed across the empire.⁸¹ Theodosius designated two ferial months, aligning with the harvest and summer heat, precisely from June 25th to August 1st (*feriae messivae*) and from August 23rd to October 15th (*feriae vindemiales*).

5.5. *Dies imperii et natalis*

The day on which ruling emperor assumed power, typically marked by official acclamation from the Senate or the army, was known as *dies imperii* (*natalis purpurae*, διαδήματος γενέθλιος). The practice of commemorating the *natalis imperii* originated in Persia and marked the anniversary of the deceased ruler's passing as well as his subsequent deification.⁸² The annual public celebration of this event was of great importance, second only to the emperor's birthday

⁷⁶ Valentin. Theodos. Arcad. CTh. 9,35,5.

⁷⁷ Grat. Valentin. Theodos. CTh. 9,35,4.

⁷⁸ Grat. Valentin. Theodos. CTh. 9,38,8: ... *ubi primum dies paschalis exstiterit, nullum teneat carcer inclusum, omnium vincula solvantur.*

⁷⁹ Valentin. Valens. Grat. CTh. 9,38,3; Grat. Valentin. Theodos. CTh. 9, 38, 6; Grat. Valentin. Theodos. CTh. 9,38,8; Const. Sirm. 7. On the so-called Easter indulgences, see Mitthof, F., *Spätantike Osterindulgenzen*, in: Harter-Uibopuu, K.; Mitthof, F., *Vergeben und vergessen? Amnestie in der Antike*, Wiener Kolloquien zur Antiken Rechtsgeschichte, Bd. 1, Österreichische Akademie der Wissenschaften, Institut für Alte Geschichte und Altertumskunde Papyrologie und Epigraphik, Universität Wien, Holzhausen, Wien, 2013, pp. 359 ss.

⁸⁰ Ulp. D. 2,12,1: *Ne quis messium vindemiarumque tempore adversarium cogat ad iudicium venire, oratione divi Marci exprimitur, quia occupati circa rem rusticam in forum compellendi non sunt.*

⁸¹ Paul. D. 2,12,4, Int. CTh. 2,8,19,4. *Amplius* Graf, F., *op. cit.* (fn. 56), p. 116.

⁸² Schmidt, W., *op. cit.* (fn. 64), pp. 75 s.

(*dies natalis*, γενέθλια).⁸³ Octavian Augustus turned his private *dies natalis* into a public celebration which included *ludi* and gladiatorial performances (*munera*) in 30 BC.⁸⁴ *Dies natalis* and *dies imperii* included several festive elements such as renewal of oaths of loyalty, vows for the well-being of the emperor (*vota pro salute imperatoris* or *principis*), offerings and sacrifices, circus and gladiatorial games, and panegyrics.⁸⁵

5.6. *Dies natalis domini nostri*

In his efforts to simplify the calendar, Theodosius took a cautious approach, designating only Easter and Sundays as non-working days. Other notable Christian festivals, such as Pentecost, Christmas, and Epiphany, were omitted because they were considered less traditional than Easter, especially in the eastern regions.⁸⁶ In Justinian's Code, four other religious festivals are found that played a key role in creating the Christian liturgical calendar of the early Church – Christmas, Epiphany, the days of the Apostles' Passion, and Pentecost.

In Rome, Christmas was first celebrated in the year 336. Its origins can be traced back to the feast of Unconquered Sun (*dies natalis Solis Invicti*) that coincided with the winter solstice. When the Church of Rome chose the same date to commemorate the birth of Christ, recognized as *Sol iustitiae*, this represented a clear triumph over pagan traditions.⁸⁷ The earliest recorded instance of associating December 25th with the birthdate of Jesus of Nazareth can be traced back to the Commentary on Daniel, written around 205 by Saint Hippolytus of Rome.⁸⁸ Next recognition of December 25th appears in the Philocalus' Chro-

⁸³ During the period of diadochs, the annual celebration of the reigning monarch's birthday became customary. This practice extended to Rome under Augustus. Schmidt, W., *op. cit.* (fn. 64), pp. 54 in 58; Herz, P., *Kaiserfeste der Prinzipatszeit*, in: *Aufstieg und Niedergang der römischen Welt, Band 16/2, Teilband Religion Heidentum: Römische Religion, Allgemeines*, De Gruyter, Berlin, Boston, 1978, p. 1140 ss.

⁸⁴ *Cass. Dio*, Hist. Rom. 54,30,5.

⁸⁵ Kantirea, M., *Imperial Birthday Rituals in Late Antiquity*, in: Beihammer, A. *et al.* (eds.), *Court Ceremonies and Rituals of Power in Byzantium and the Medieval Mediterranean Comparative Perspectives*, Brill, Leiden, Boston, 2013, p. 42.

⁸⁶ Graf, F., *op. cit.* (fn. 56), p. 121.

⁸⁷ Lietzmann, H., *A History of the Early Church. From Constantine to Julian*, Part III, Lutterworth Press, London, 1961, p. 321 s.

⁸⁸ Dan. Comm. ad Hypp. 4,23,3: ἡ γὰρ πρώτη παρουσία τοῦ κυρίου ἡμῶν ἡ ἐνσαρκος, ἐν ἣ γεγέννηται ἐν Βηθλεέμ, πρὸ τεσσάρων ἀπριλίων ἐγένετο πρὸ ὀκτῶ καλανδῶν ἰανουαρίων, ἡμέρα τετράδι, βασιλεύοντος Αὐγούστου τεσσαρακοστὸν καὶ δευτερον ἔτος, ἀπὸ δὲ Ἀδάμ πεντακισχίλιοστῶ καὶ πεντακοσιοστῶ ἔτει. ("The first arrival of our Lord in the flesh, in which He was born in Bethlehem, occurred four days before the ... of April, eight

nography of 354.⁸⁹ The interpretation of *Lex Romana Visigothorum* (506) mentions Christmas and Epiphany as public holidays⁹⁰, whereas Justinian solidified their status by interpolation of Theodosius' constitution.⁹¹

5.7. *Dies epiphaniarum Christi*

In third-century Egypt, Christ's birth and baptism were celebrated on January 6th. After Christmas was designated for Christ's birth, Epiphany became associated with Christ's baptism, the Magi's arrival, and the Cana wedding miracle.⁹² Even after being officially recognized as a holiday by Emperors Theodosius and Valentinian in 392, the meaning of Epiphany continued to remain vague. In 450 pope Leo the Great determined Epiphany (ἐπιφάνεια) for the veneration of the wise men from the east, who, according to tradition, visited Mary and Joseph eight days after the birth of Christ.⁹³

5.8. *Commemoratio apostolicae passionis*

In 425, a joint decree by Valentinian III and Theodosius II established June 29th as the designated day for commemorating apostolic suffering. The commemoration likely alluded to the collective martyrdom of highly revered apostles Peter and Paul, recognized as the preeminent teachers of all Christianity (*totius*

days before the Kalends of January, on a Wednesday. It was the forty-second year of the reign of Augustus, from Adam, it was the year 5500.") On this text, see Förster, H., *Die Feier der Geburt Christi in der Alten Kirche. Beiträge zur Erforschung der Anfänge des Epiphanie- und des Weihnachtsfests*, Mohr Siebeck, Tübingen, 2000, pp. 45 ss.

⁸⁹ *Hoc cons. dominus Iesus Christus natus est VIII Kai. Ian. d. Ven. luna XV* ("When these [Caesar and Paul] were consuls, Lord Jesus Christ was born eight days before the kalends of January [December 25] on the day of Venus Moon 15") On this text, see Förster, H., *op. cit.* (fn. 88), pp. 101 ss. The birth date of Jesus of Nazareth is not specified in the gospels or secular texts. However, it is widely believed that he was born between 6 and 4 BC. Dionysius Exiguus introduced the modern "*anno Domini*" system of numbering years in 525.

⁹⁰ Inter. Brev. Alar. 2,8,2,4.

⁹¹ *Valentin. Theodos. Arcad. C. 3,12,6,3*. See also Theodos. CTh. 15,5,5.

⁹² Kinzig, W., *The Creed and the Development of the Liturgical Year in the Early Church*, in: *Neue Texte und Studien zu den antiken und frühmittelalterlichen Glaubensbekenntnissen*, De Gruyter, Berlin, Boston, 2017, p. 335.

⁹³ *Valentin. Theodos. Arcad. C. 3,12,6,3; C. Th. 15, 5, 5 pr.* See also *Leo*, Sermones 31–38. *Amplius* Kinzig, W., *op. cit.* (fn. 92), p. 336; Lietzmann, H., *op. cit.* (fn. 87), pp. 315 ss.

Christianitatis magistrae).⁹⁴ Their memorial day was celebrated throughout the empire, while the commemoration of other martyrs was limited to local church communities.⁹⁵ The cult of Apostle Peter is evident in the Edict of Thessalonica of 380 (*Cunctos populos*), where Emperor Theodosius officially proclaimed Christianity as the state religion.⁹⁶ Emperor recognized Peter's authoritative teachings on the Trinitarian doctrine embraced by the patriarchs of Rome and Alexandria.

5.9. *Quinquagesimae*

According to Acts of Apostles, the apostles had congregated during the Jewish festival of wheat harvest (*Shavuot*) with their disciples when they heard a sound akin to a rushing wind and saw flames resembling tongues above their head. They were infused with the Holy Spirit and started to speak in a multitude of languages. Regarded as the Birth of the Christian Church, the 50th day after Easter Sunday, known as Pentecost (*quinquagesimae*, Πεντηκοστή) symbolizes the endowment of the Apostles with the capability to disseminate Jesus' teachings to various peoples.⁹⁷ The emperors Theodosius and Valentinian officially acknowledged Pentecost in 425.

6. LEGAL EFFECTS OF HOLIDAYS IN CHRISTIAN ROME

In the Theodosian calendar reforms, the fundamental principle of the earliest Roman system, which designated specific days exclusively for legal proceedings, lost its dominance. Now, every day could serve as a court day.⁹⁸ On public holidays all judicial proceedings were forbidden, particularly executions.⁹⁹ Theatrical and circus spectacles, which were common during pagan eras and commonly scheduled on days of communal celebrations, were initially restricted on Sundays (except the situation when the emperor's birthday coincided

⁹⁴ Dal Santo, G. L., *Bishop and Believers. The Rise of the Cult of the 'Romanised' Apostles Peter and Paul in Late fourth-century Constantinople*, in: Birk, S.; Poulsen, B. (eds.), *Patrons and Viewers in Late Antiquity*, Aarhus University Press, Aarhus, 2012, p. 245.

⁹⁵ Schiepek, H., *op. cit.* (fn. 42), pp. 159 ss.

⁹⁶ *Grat. Valentin. Theodos. C. 1,1,1: Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari, quam divinum Petrum apostolum tradidisse Romanis religio...*

⁹⁷ Acts 2:1–31.

⁹⁸ Bethmann-Hollweg, M. A., *op. cit.* (fn. 52), p. 192.

⁹⁹ *Valentin. Valens. CTh. 8,8,1.*

with a Sunday).¹⁰⁰ Later, this prohibition was extended to all religious holidays.¹⁰¹ The prohibition was justified by the concern that circus entertainment might divert worshippers from their religious observances.¹⁰²

In 469, Emperors Leo and Anthemius expressed their desire that the days dedicated to the Highest Majesty should be respected and not desecrated by frivolous activities or vexatious demands. To this end, they repeated that the Lord's Day (*dies dominicus*) must be honoured, and no judgments should be executed on this day. Summonses and exactions were prohibited, clerks of courts were to remain silent, and advocates were to retire from court. Trials and auctions were not to be performed and litigants were given a chance to forget about their controversies and have respite from their obligations. Adversaries were encouraged to come together without fear, to consider penitence and make pacts and settlements. Despite allowing leisure on a day dedicated to God, the Emperors forbade the pursuit of unseemly pleasures, such as attending the theatre, circus competitions, or spectacles involving wild beasts.¹⁰³ In case their birthday or the day of their ascension to the throne fell on Sunday, celebrations were to be postponed. Anyone found attending forbidden events on the Lord's Day, or any clerk of a judge who recklessly violated the provisions of this law under the pretext of public or private business, lost their office and have their property confiscated.¹⁰⁴

In general, late-ancient emperors stood for the unity, serenity, and well-being of all citizens within the realm which included Christians, pagans, and Jews in equal measure. Attempts at destroying pagan monuments were perceived as attacks against the empire's legacy.¹⁰⁵ Although rituals and invocations to ancient deities were officially eliminated, there remained no obstacle to their observance if they did not engender conflict among the various religious gro-

¹⁰⁰ *Arcad. Honor.* CTh. 2,8,23; *Honor. Theodos.* CTh. 2,8,25.

¹⁰¹ *Theodos. Valentin.* CTh. 15,5,5.

¹⁰² *Valentin. Theodos. Arcad.* CTh. 2,8,20; *Arcad. Honor* CTh. 2,8,24; *Theodos. Valentin.* CTh. 15,5,5. The prohibition may have been influenced by the complaints of John Chrysostom, who claimed that churches in Constantinople were empty during the circus performances. *Ioan. Chrys.* De Anna, sermo 4,1.

¹⁰³ The imperial approval came in line with the resolutions of the Council of Carthage from 419, which called for the removal of spectacles from theatres on Sundays and other major Christian religious days. Canon 61: ... *et illud petendum ut spectacula theatrorum ceterorumque ludorum die dominica vel ceteris religionis christianae diebus celeberrimis amoveantur.* Mansi, G. D., *Sacrorum conciliorum nova et amplissima collectio*, tomus tertius, Antonius Zatta Veneti, Florentiae, 1759, p. 767.

¹⁰⁴ *Leo, Anthem.* C. 3,12,9.

¹⁰⁵ Cf. Graf, F., *op. cit.* (fn. 56), p. 159.

ups.¹⁰⁶ Christian emperors refrained from eradicating pagan holidays due to the partial overlap with new Christian festivities. Over time, the Roman regime grew increasingly hostile towards remnants of pagan religion. This led to the declaration by emperors Arcadius and Honorius in 395 that pagan holidays would no longer be recognized as public holidays.¹⁰⁷

In 412, Honorius and Theodosius issued a decree which recognized Jewish religious holidays. This act reflected the privileged status of Jewish religion within the Christian state.¹⁰⁸ Roman authorities were prohibited from compelling Jews to perform public tasks on the Sabbath.¹⁰⁹ During this time, neither the household head nor any family member, servant, foreigner, or even animals were to engage in work.¹¹⁰ Since Saturdays and other Jewish holidays were intended for celebration and not for legal transactions, Jews could not be summoned to court or to an office on these days.¹¹¹

¹⁰⁶ In 408, Theodosius II permitted Jewish festivals, like *Purim*, on condition that the custom of burning a Haman effigy on the cross was abolished, as it was perceived as a mockery of Jesus' death. See *Honor. Theodos.* CTh 16,8,18.

¹⁰⁷ *Arcad. Honor.* CTh. 2,8,22: *Sollemnes paganorum superstitionis dies inter feriatos non haberi olim lege reminiscimur imperasse.*

¹⁰⁸ The recognition of Judaism as a legitimate faith is clear from Theodosius II's acknowledgement (CTh. 16,8,9: *Iudaeorum sectam nulla lege prohibitam satis constat.*). Christian rulers granted Jewish communities' significant autonomy and safeguarded the synagogues against destruction and military takeover. Jewish courts were allowed to exercise authority not only in cases concerning religious issues but also (if both parties consented) in civil cases. Their judgments were to be enforced by the imperial government (CTh 2,1,10). *Amplius* Fredriksen, P.; Irshai, O., *Christian anti-Judaism: Polemics and Policies*, in: Katz, S. (ed.), *The Cambridge History of Judaism*, vol. IV, Cambridge University Press, Cambridge, 2008, pp. 1001 ss.

¹⁰⁹ *Honor. Theodos.* CTh. 16,8,20,1: *At cum vero Iudaeorum memorato populo sacratum diem sabbati vetus mos et consuetudo servaverit, id quoque inhibendum esse censemus, ne sub obtentu negotii publici vel privati memoratae observationis hominem adstringat ulla conventio, cum reliquum omne tempus satis publicis legibus sufficere videatur sitque saeculi moderatione dignissimum, ne delata privilegia violentur: quamvis retro principum generalibus constitutis satis de hac parte statutum esse videatur.*

¹¹⁰ Ex 20,8–11: "Observe the Sabbath and keep it holy. You have six days in which to do your work, but the seventh day is a day of rest dedicated to me. On that day no one is to work – neither you, your children, your slaves, your animals, nor the foreigners who live in your country. In six days I, the Lord, made the earth, the sky, the seas, and everything in them, but on the seventh day I rested. That is why I, the Lord, blessed the Sabbath and made it holy."

¹¹¹ *Honor. Theodos.* CTh. 2,8,26: *Die sabbato ac reliquis, sub tempore, quo Iudaei cultus sui reverentiam servant, neminem aut facere aliquid aut ulla ex parte conveniri debere praecipimus: cum fiscalibus commodis et litigiis privatorum constat reliquos dies posse sufficere et cetera.*

7. MEDIEVAL ECCLESIASTICAL LEGISLATION ON HOLIDAYS

In the Middle Ages and the Early Modern period, the legal framework regulating holidays was predominantly dictated by the Pope, with customs diminishing in significance. Secular rulers only lent their support to these regulations by enforcing them through sanctions. Charlemagne, for instance, issued prohibitions against engaging in agricultural tasks, forestry, quarrying, house construction, hunting, and military undertakings. Women were directed not to partake in spinning, weaving, sewing, or washing on these special days.¹¹² Jews were prohibited from employing Christians for work on Sundays and if they breached this prohibition, they would have to forfeit the wages they had already paid.¹¹³

The important medieval source on church holidays was the letter of the Bishop of Basel, Ahyto, later summarized by Burchard of Worms¹¹⁴ and finally Gratian.¹¹⁵ The latter specified approximately forty-one holidays:

The same pope on the Council of Lyons. It is to be proclaimed, so that they know the times of festive days throughout the year, which is every Sunday from evening to evening, lest they be taken by Judaism. The festive days throughout the year are as follows: the Nativity of the Lord, St. Stephen, St. John the Evangelist, the Holy Innocents, St. Sylvester, the Octave of the Theophany of the Lord, the Purification of St. Mary, Holy Easter with the entire week, the Rogations for three days, the Ascension of the Lord, the holy day of Pentecost, St. John the Baptist, the Twelve Apostles, and especially the holy Peter and Paul, who enlightened the world with their preaching, St. Lawrence, the Assumption of St. Mary¹¹⁶, the Nativity of St. Mary, the Dedication, St. Michael the Arc-

¹¹² *Concilium Vernense*, in: Boretius, A. (Ed.), *Monumenta Germaniae historica, Legum section II., Capitularia regum Francorum*, Hannover, 1883, p. 36 (cap. 14).

¹¹³ *Capitulare missorum Aquisgranense alterum*, in: Boretius, A. (Ed.), *op. cit* (fn. 112), p. 152.

¹¹⁴ Burchard, *Decretorum liber 2. c. 77*, in: Migne, J.-P., *Burchardi Vormatiensis Episcopi opera omnia*, Patrologiae tomus CXL, Paris, 1853, p. 640.

¹¹⁵ Fessler, J., *Ueber die abgeschafften Feiertage und die Mess-Application an denselben*, Innsbruck, 1860, pp. 24 s.

¹¹⁶ Emperor Justinian instituted the first celebration dedicated to Mary, known as Candlemas, forty days after Christmas, in the year 542, extending it across the entire empire. At the close of the 6th century, Emperor Maurice introduced the feast for the Byzantine Empire on 15th August honoring the Assumption of Mary. Xanthopuli, N. C., *Scriptoris vere catholici, ecclesiasticae historiae libri decem et octo*, Francofurti, 1588,

hangel, the Dedication of any Church, All Saints' Day, St. Martin, and those festivities which each bishop, has approved for the people dwelling around should be observed in his diocese, but they are not binding for all. The remaining festivities throughout the year are not to be enforced for feasting, nor prohibited. A declared fast is to be observed by everyone when it is proclaimed.¹¹⁷

The medieval codification of ecclesiastical law, *Liber Extra* (1234), in the chapter *De feriis*, further stipulated that devotions could only take place on Sundays. On holy days, Christians were supposed to attend their parish church.¹¹⁸ Believers had to abstain from trading, assembling, and judging. Even performing unnecessary sacraments was forbidden on Sundays.¹¹⁹ Certain legal acts, for example manumissions or reconciliations, remained permitted.¹²⁰ Under specific conditions, the principles of necessity and piety could override holy day restrictions. Fishing on holy days, for instance, was permitted for survival in communities whose survival depended on fishing; but a share of the catch had to be given to the church as alms.¹²¹

Pope Gregory IX enumerated forty-six celebratory days, a compilation that largely echoed the already established list in the *Decretum Gratiani*.¹²² Given that the *Liber Extra* marked the earliest comprehensive compendium applicable

lib. XVII, c. XXVIII, p. 1092.

¹¹⁷ D.3,1 *De cons. (Tempora feriandi in missa sunt laicis annuncianda): Item ex Concilio Lugdunensi. Pronunciandum est, ut sciant tempora feriandi per annum, id est: omnem dominicam a uespera usque ad uesperam, ne a Iudaismo capiantur. Feriandi uero per annum isti sunt dies: Natalis Domini, S. Stephani, S. Iohannis Euangelistae, Innocentium, S. Siluestri, Octauae Domini Theophaniae, Purificatio S. Mariae, sanctum Pasca cum tota hebdomada, Rogationes tribus diebus, Ascensio Domini, sancti dies Pentecostes, S. Iohannis Baptistae, duodecim Apostolorum, et maxime sanctorum Petri et Pauli, qui mundum sua predicatione illuminauerunt, S. Laurentii, Assumptio S. Mariae, Natiuitas S. Mariae, Dedicatio, S. Michaelis Archangeli, Dedicatio cuiuscumque oratorii, et omnium sanctorum, et S. Martini, et illae festiuitates, quas singuli episcopi in suis episcopiis cum populo collaudauerint, que uicinis tantum circummorantibus indicendae sunt, non generaliter omnibus. Reliquae uero festiuitates per annum non sunt cogendae ad feriandum, nec prohibendae. Indictum uero ieiunium quando fuerit denunciatum, ab omnibus obseruetur.* (Translated by the author.).

¹¹⁸ X. 3,29,2.

¹¹⁹ X. 2,9,1.

¹²⁰ X. 2,9,5.

¹²¹ X. 2,9,3. On this, see Pettirsch, F., *Das Verbot der opera servilla in der Heiligen Schrift und in der altkirchlichen Exegese*, Zeitschrift für katholische Theologie, vol. 69, no. 3, 1947, pp. 257–327.

¹²² X. 2,9,5.

to the entire Latin Church, Pope Gregory IX's compilation is sometimes regarded as the pioneering universal legislation governing celebratory practices.¹²³ Pope possessed the sole privilege of introducing novel holidays for the entire Church. Until 1642, bishops retained the authority to introduce new holidays specifically for particular churches (*ecclesiae particulares*), as an expression of their episcopal rights.¹²⁴ Beyond the economic advantages derived from liturgical ceremonies, the surge of religious holidays was also influenced by increasingly widespread veneration of Virgin Mary, recognition of new saints, the impact of crusades, and the flourishing growth of various monastic orders.¹²⁵ Numbers of holidays have increased considerably over time. Since the 12th century one hundred twenty days off were observed annually, indicating that a four-day workweek was not only achieved but possibly exceeded.¹²⁶ Due to the occurrence of ecclesiastical holidays, workers who were paid on a daily or hourly basis experienced a reduction in potential income. Employers who hired workers on a weekly, monthly, or quarterly basis often had to pay full wages despite receiving less than a full period's worth of labour.¹²⁷ Holidays affected the religious obligations of believers and exerted influence over their intimate lives, as it was considered sinful to fulfil marital obligations on days, marked by liturgy.¹²⁸ Interestingly, ecclesiastical regulations governing the festive calendar ignited lively discussions among learned jurists regarding the appropriateness of pursuing legal studies on Sundays and holidays. The predominant viewpoint held that Sunday study of legal texts was not only an academic privilege but, given the vast knowledge the jurists had to absorb *par cœur*¹²⁹, even a necessity.¹³⁰

¹²³ Cf. Žepič, V., *Corpus iuris canonici – nastanek in pomen srednjeveške zbirke cerkvenega prava v klasični dobi kanonistike*, Pravniki, vol. 76 (138), 2021, p. 288.

¹²⁴ Heutger, V., *op. cit.* (fn. 4), p. 22.

¹²⁵ Schiepek, H., *op. cit.* (fn. 42), p. 233.

¹²⁶ *Ibid.*, 234.

¹²⁷ Brundage, J. A., *Medieval Canon Law*, Longman, London, New York, 1995, p. 83.

¹²⁸ Brundage, J. A., *Law, Sex, and Christian Society in Medieval Europe*. The University of Chicago Press, Chicago, London, 1987, pp. 155 ss and 162.

¹²⁹ Stolleis, M., *Margarethe und der Mönch. Rechtsgeschichte in Geschichten*, C. H. Beck, München, 2015, pp. 111 ss.

¹³⁰ *Qui vult Sanctorum celebrare singula festa, non poterit clare cum Codice scire Digesta* ("One desiring to honour all saints' feasts will not be able to clearly understand the Digest alongside the Code.") See Stoekken, J. G., *De officio legislatoris humani circa legem divinam de sabbato. Dissertatio inauguralis juridica*, Johannes Patorius, Strassbourg, 1730 p. 28; on the context of the adage, see also Žepič, V., *Iudex sceptro acquitatis armandus est. Richterliche Insignien in der europäischen Rechtstradition bis zum 18. Jahrhundert*, Journal on European History of Law, vol. 14, no. 1, 2023, p. 34, fn. 34.

Under the influence of the Reformation movement, Pope Urban VIII reduced the number of holidays in 1642.¹³¹ Out of over one hundred twenty days, only Sundays, two local patron saints' days, and thirty-three holidays not necessarily falling on Sundays were retained.¹³² The Pope advocated for a reduction in holidays due to public uncertainties about which holidays to observe, complaints regarding the challenges of balancing work amidst a vast number of non-working days, and an overall concern about the diminished solemnity and insufficient time for thorough preparation for the devout celebration of festivals. A further reduction based on economic grounds was achieved in the 18th century with the introduction of semi-holidays: the celebration of these included compulsory religious services, but no rest.¹³³ In 1911, Pope Pius X mandated Sundays and additionally eight holidays for the entire Church.¹³⁴ The reason for the new arrangement was the desire of the Church authorities to adapt the liturgical year to the new economic and social conditions, thereby preventing conflicts of conscience for workers who were unwilling to work on church holidays that were not also days of rest.¹³⁵ *Codex Iuris Canonici* (1917) further designated two additional prescribed holidays (*dies festi sub praecepto*), namely the Feast of *Corpus Christi* and the Feast of St. Joseph¹³⁶, and commanded all believers to attend Holy Mass on these days as well as to refrain from servile work and legal proceedings.¹³⁷

¹³¹ Apostolic constitution *Universa per orbem* of September 13th, 1642. See the text in: *Bullarum diplomatum et privilegiorum sanctorum romanorum pontificum taurinensis editio*, tom. XV, Augusta Taurinorum, 1868, p. 206 s.

¹³² Schiepek, H., *op. cit.* (fn. 42), 288.

¹³³ Westphal, K., *op. cit.* (fn. 41), 25; Neusser, G., *Feiertage*, in: *Handwörterbuch zur deutschen Rechtsgeschichte I*, Erich Schmidt Verlag, Berlin, 1971, p. 1095.

¹³⁴ *Motu proprio Supremi disciplinae* from July 2nd 1911: *Ecclesiastico praecepto audiendi Sacri et abstinendi ab operibus servilibus hi tantum, qui sequuntur, dies subiecti manebunt: Omnes et singuli dies dominici, festa Nativitatis, Circumcisionis, Epiphaniae et Ascensionis Domini Nostri Iesu Christi, Immaculatae Conceptionis et Assumptionis Almae Genitricis Dei Mariae, Beatorum Petri et Pauli Apostolorum, Omnium denique Sanctorum*.

¹³⁵ Schiepek, H., *op. cit.* (fn. 42), p. 385.

¹³⁶ Can. 1247 §1 of *Codex iuris canonici* (1917) = Can. 1246 §1 of *Codex iuris canonici* (1983).

¹³⁷ Can. 1248 of *Codex iuris canonici* (1917) = Can. 1247 of *Codex iuris canonici* (1983).

8. THE RECOGNITION OF RELIGIOUS HOLIDAYS AND THE ARGUMENT OF LEGAL TRADITION

The calendar, with its Christian-based religious holidays, not only gives a certain rhythm to the social, economic, and religious aspects of citizens' lives but also serves as a crucial element in the formation and preservation of the cultural identity embedded in the European legal heritage.¹³⁸ This was shaped by the three vertices of *cultural triangle* from which the modern West has emerged: Golgotha, representing the Judeo-Christian heritage; the Acropolis in Athens, manifesting the classical Greek philosophy, and the Capitol in Rome, symbolizing the legacy of the Roman-canonical legal tradition.¹³⁹

In recent decades, there has been a trend in Western countries to challenge the constitutionality of laws that designate days of rest as well as certain holidays with religious significance, particularly those with a Christian background, as days off work.¹⁴⁰ This trend reflects the ongoing individualisation and secularisation of the state and society, whereby the political order is gradually becoming detached from its spiritual-religious determination and shaping.¹⁴¹ The legal protection of Sundays and, at least in the European context, still predomi-

¹³⁸ Žepič, V., *Pope Benedict XVI's Critique of Legal Positivism with Special Regards to the Role of Tradition in Contemporary Legal Systems*, *Bogoslovni vestnik*, vol. 83, no. 3, 2023. For the connection between a liberal constitutional state and cultural identity regarding the protection of celebrations and Sundays, see Uhle, A., *Freiheitlicher Verfassungsstaat und kulturelle Identität*, Mohr Siebeck, Tübingen, 2004, pp. 292 and 302: "Sonn- und Feiertage stellen, so betrachtet, kulturelle Identitätselemente der Verfassungsstaates dar."

¹³⁹ Heuss, T., *Reden an die Jugend*, Wunderlich, Tübingen, 1956.

¹⁴⁰ Legal restrictions on working hours pose challenges for minority groups as they seek to reconcile their private religious obligations with their work responsibilities. For example, individuals who observe a day of rest other than Sunday, such as Jews who celebrate it on Saturday and Muslims who celebrate it on Friday, have to take leave on their holy days. As a result, the majority often imposes significant economic burdens on members of minority groups who observe different religious practices. On this problem, see *McGowan v. Maryland*, 366 U.S. 420 (1961), BVerfG - I BvR 2857/07 (Germany), C-193/17 *Cresco Investigation GmbH v. Markus Achatzi* (European Union) and Order No. U-I-67/14 (Constitutional Court of Slovenia). On this, see Kästner, K. H., *Der Schutz des Sonntags und der religiösen Feiertage*, in: Pirson, D. et al. (ed.), *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, Dritte Auflage, Band 2, Duncker-Humblot, Berlin, 2020, p. 1603; Czigle, J. T., *Religious Holidays at the Workplace in the European Union – Issues, Questions and a Note on the Achatzi-case*, *Iustum Aequum Salutare*, vol. 19, 2023, p. 113.

¹⁴¹ Böckenförde, E.-W., *Die Entstehung des Staates als Vorgang der Säkularisation*, in: *Staat, Gesellschaft, Freiheit*. Studien zur Staatstheorie und zum Verfassungsrecht, Suhrkamp, Frankfurt am Main, 1976, p. 42.

nantly Christian holidays, underlines the still enduring historical link between Christianity and the great majority of Western states. This connection, which is sometimes perceived by many secular members of the majority culture as a form of religious coercion, poses challenges for the integration of minorities in the context of a supposedly religiously neutral state. Additionally, conflicts over holiday arrangements are compounded by the continuing demands of a liberal economic and consumer culture for maximum flexibility in defining the balance between work and leisure. The key question is how to manage the recognition of religious holidays while respecting the principles of religious freedom and equality.

Firstly, it is imperative to distinguish between the *origin* and *validity* of the legal norm. Discovering the how and why of something's origin (*genesis*) does not provide a sufficient explanation of why it is right or why one should treat it as binding or true today (*validity*).¹⁴² A separate consideration and justification is required to determine the current validity of norms in a democratic constitutional state.¹⁴³ The actual origin of norms, in this case their Christian genesis, is one aspect, their justification, validity and applicability in a democratic constitutional state is another. The contemporary significance of Sunday protection in a functionally differentiated society is not based on the truth claims of a dominant religion or the sacredness of institutions.¹⁴⁴ Its importance lies in its functionality and adaptability within the framework of a democratic constitutional state. The presumed Christian influence¹⁴⁵ on the determination of holidays and rest days does not maintain an ongoing interpretive authority over the forces and motives that played a noteworthy role in establishing these regulations. In determination of Sunday as a day of rest, the contemporary legislator seeks to protect the dignity of the individual while preserving traditional values embedded in the collective national identity. The observance of Sunday has an important social significance, providing a rhythmic structure to the social life of all members of society. This is a situation in which the argument for

¹⁴² Gutmann, T., *Säkularisierung und Normenbegründung*, in: Jansen, N.; Oestmann, P. (eds.), *Gewohnheit, Gebot, Gesetz. Normativität in Geschichte und Gegenwart*, Mohr Siebeck, Tübingen, 2011, pp. 235 ss.

¹⁴³ Dreier, H., *Säkularisierung und Sakralität. Zum Selbstverständnis des modernen Verfassungsstaates*, Mohr Siebeck, Tübingen, 2013, p. 50.

¹⁴⁴ Gutmann, T., *op. cit.* (fn. 142), p. 226.

¹⁴⁵ As mentioned above, Constantine's constitution in C. 3,12,2 did not explicitly designate Sunday as a Christian holiday, but rather as a day dedicated to the sun (*dies solis*). The emperor recognised the importance of establishing a weekly rest period that accommodated different religious groups and sought to bring unity and synchronisation to society.

the impossibility of achieving a strictly neutral regime is proved correct. Given the reasonable premise that a day of rest should occur at regular intervals, it becomes impossible to reconcile this temporal pattern with the beliefs of all major religious and philosophical orientations.¹⁴⁶ Consequently, adherence to the majority view becomes a practical necessity, unless one opts for a neutral solution that is contrary to the cultural tradition of all the groups involved.

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¹⁴⁶ Huster, S., *Die ethische Neutralität des Staates. Eine liberale Interpretation der Verfassung*, Mohr Siebeck, Tübingen, 2002, p. 245.

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Sažetak

Vid Žepič*

***DE FERIIS* U RIMSKO-KANONSKOJ PRAVNOJ TRADICIJI**

Tijekom povijesti pravna regulacija praznika proizlazila je iz ljudske potrebe za odmorom i zabavom, religijskih uvjerenja te pragmatičnih ekonomskih imperativa koji diktiraju optimalnu uporabu vremena za proizvodnju dobara. Prvi dio članka istražuje značaj podjele između dies fasti i dies nefasti te kategorizaciju praznika u rimsko pogansko doba i njihove pravne implikacije. Autor potom analizira podrijetlo nedjelje kao dana odmora i razmatra reformu rimskoga kalendara koju je proveo Teodozije. Ta reforma uspostavila je liturgijsku godinu u nastajućem kršćanskom društvu i trajno oblikovala kalendar većine europskih zemalja. Treći dio razmatra stav kasnorimskoga državnog aparata prema židovskim i poganskim festivalima, te inovacije u srednjovjekovnoj crkvenoj zakonodavnoj praksi u vezi s praznicima. Posljednji dio rada promišlja o ulozi tradicije u priznavanju vjerskih festivala kao javnih praznika od strane države.

Ključne riječi: praznici, dies fasti, dan odmora, nedjelja, rimsko i kanonsko pravo, kršćanstvo, tradicija

* Vid Žepič, mag. iur., asistent Pravnog fakulteta Sveučilišta u Ljubljani, Poljanski nasip 2, 1000 Ljubljana, Slovenija; vid.zepic@pf.uni-lj.si;
ORCID ID: orcid.org/0000-0001-7526-1545