

Lactantius' *Divinae Institutiones* and the Origins of Earthly Justice

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Writing the *Divinae Institutiones* constituted, in part, Lactantius' response to the tetrarchic persecutions. As its name suggests, the *DI* is a *legal* defense of Christianity. The court of Diocletian engaged in a great deal of legal activity while Lactantius served as imperial rhetor, including the "publication" of the first law codes since the Twelve Tables. Renewed laws against the Christians were designed to affirm the piety the people should exercise before the gods and towards each other. The question for Lactantius was how to refute imperial power and the legislation it promulgated while simultaneously claiming the law for Christianity.

As Cicero did in the *De legibus*, Lactantius set aside the writings of the jurists and turned to a strictly philosophical meditation on the law. Despite several studies to the contrary, Lactantius' rare reference to Ulpian is only disparaging, and the so-called citations of jurists in the *DI* all have their origins in Cicero's writings. Cicero argued that the laws of Jupiter and, by extension, Numa were divine and consequently just. The mind of the god whose *ratio* human beings also enjoyed enabled them to recognize and employ natural law (*ius naturale*) on earth. The need for states and institutions to protect themselves, however, required the development of the *ius civile* where laws were informed by *utilitas*. Pragmatic adaptations of law were necessary in order to be the most helpful to the most people.

The *DI* refutes Cicero, arguing that the *ius civile* was born from the greatest hoax perpetrated in history. Jupiter was a deceitful mortal who replaced the true God with himself. Numa imitated him by hiding near a dark cave and emerging with laws he claimed were of divine origin but in fact were of his own fabrication. The Roman consistory, whence laws now emerged, was thus three steps removed from the true source. *Utilitas*, which was a crucial concept for both Cicero and the jurists and was considered necessary for the functioning of civil society, Lactantius regards as proof positive that humans since the days of Jupiter maintained no viable connection to divine law. People who are truly just have no need for legal pragmatism.

In sum, Christianity for Lactantius constitutes natural law. It is a product of the divine, in harmony with the divine. Lactantius goes to great lengths to demonstrate that Roman society may speak of eternal justice and understand that such a thing exists, but has no access to it. Christianity does. The most interesting aspect of Lactantius' denunciation of the Roman law is that it is accomplished by complete cooptation of traditional definitions, concepts, and texts. The revolutionary solution Lactantius proposes is assembled from components that also comprise a system he clearly rejects. The truth is right in front of Romans, Lactantius implies. They just cannot see it.