Legal Sources and Juridical Literature in Byzantium: A Survey and Commentary

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Abstract

The sixth century codification of Emperor Justinian marks the end of the history of Roman law in antiquity; at the same time, it heralds the beginning of a phase occasionally labelled the 'second life' of Roman law, i.e. its history from the early Middle Ages to modern times. In the Eastern Empire of Byzantium, the legislation of Justinian remained in force and applied until the fall of Constantinople to the Ottomans in 1453. However, the social conditions and intellectual climate of the Greek-speaking Byzantine world required the simplification and popularization of the intricate Roman legal heritage. This inspired the development of a new genre of juridical literature that included a large number of translations, summaries, paraphrases, and commentaries on Justinian's legal works as well as several important legislative enactments designed to adapt the Roman law of Justinian to the prevailing conditions and address new social and economic challenges. The post-Justinianic legal development in the Byzantine East is tremendously significant to the modern jurist as it forms an important part of the intellectual background of contemporary legal culture, especially in countries formerly within the orbit of the Byzantine civilization. The purpose of the present paper is to review the principal legal sources of the Byzantine era in their historical context and provide information

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on their content and impact. It is hoped that the paper will be of interest to scholars and students of legal history, particularly those with an interest in the legacy of the Roman-Byzantine legal tradition.

Keywords: Byzantine Empire, Roman law, sources of law, legislation, law codes, nomocanons, juridical literature

Introduction: Sources of Byzantine Law

It is important to note at the outset that the Byzantines did not recognize a separation between Church and state and, consequently, there was no strict distinction between secular and ecclesiastical legislative authority and jurisdiction. According to Byzantine legal theory, secular and canon law constituted in essence a single legal order: the canons of the Church were received and incorporated into the law of the state; at the same time, the church gave imperial legislation a ‘canonical character’ not only by adjusting its own law to the law of the state but also by receiving ecclesiastical law created by imperial authority as its own or by resorting to such law in order to regulate its own affairs. After all, the emperor was the only officially recognized ‘universal’ legislative authority, even for matters of the Church, after the end of the period of the Ecumenical Councils in the East.

The nucleus of Church law was formed by the decisions (*kanones*) promulgated at Church councils, which have been preserved in a great variety of collections.[1] A special type of work are the so-called nomocanons (*nomokanones*), a term alluding to the fact that Church and state were inextricably bound up with one another. The emperor could intervene in the affairs of the Church and vice versa, with

(1) It should be noted here that the Church never enacted a comprehensive and authoritative *corpus iuris canonici*.

the result that both Church and state might have issued legislation on a particular problem, so that both *kanones* and statutes were relevant. From the end of the seventh century the role of the *kanon* in the development of canon law was taken over by the decisions of the patriarch of Constantinople and the authoritative commentary on the existing body of canon law. Although canon legislation did not restrict itself to purely ecclesiastical matters, and the Church courts increasingly concerned themselves with issues of civil law, civil legislation covered a much broader field. In the following paragraphs the emphasis will therefore be on the sources of civil law and in particular the enactments of the emperors, the chief source of law during the Byzantine era.

Until the twelfth century Byzantine imperial legislation was similar in form to the imperial legislation of the Justinianic period(2) and enactments of a general character (*leges generales*) in the form of Novels (*novellae constitutiones* or *nearai diataxeis*) continued to be issued after the manner of the edicts of the Roman emperors.(3) A general law was preceded by a preamble (*praefatio*), in which reference was made to the position of the emperor as God's representative on earth, supreme lawgiver and protector of his people; this was followed by the description of the situation which the law aimed to rectify (*narratio*), the main text of the law (*dispositio*), and the conclusion; the latter contained the penalties (*sanctiones*) which the violation of the law entailed and prescribed the scope of the law and the manner of its publication. Similar to the earlier *mandata* were the *diatyposes*, internal directions given by the emperor to officials in his service (especially to provincial authorities). The earlier *rescripta* were replaced by the *lyses*, answers given by the

（2） From the early sixth century, imperial laws were no longer issued in Latin but in Greek. However, Latin continued to play a part in public administration as well as in the teaching of law until the twelfth century.

（3） One of the last imperial edicts expressly referred to as a *neara* was issued by Emperor Manuel I Comnenus in 1166.

emperors to inquiries of officials on matters of administrative law, and the *semeioses*, responses of the emperors to petitions concerning matters of civil or ecclesiastical law. From the twelfth century the term *chrysovoullos logos* was used to denote an imperial enactment of a general character, whilst the *lyses* and the *semeioses* were superseded by the *prostagmata* or *horismoi*.[4] The majority of the imperial laws were concerned with public administration and matters of socio-economic policy. Moreover, a number of laws were enacted which introduced innovations in the fields of criminal and family law. In general, Byzantine imperial legislation was 'humanitarian' in character, aiming to protect those whom it considered weak against those whom it considered strong,[5] and greatly influenced by Christian ethical principles. At the same time, it continued the move away from formalism, although this move was accompanied by a decline in technique.

During the Byzantine era custom continued to play a part as a secondary source of law. Despite the general reluctance of Justinian and subsequent emperors to recognise the validity of customary law, numerous customary norms found their way into various imperial enactments and official compilations of the law. Some of these norms had their origin in Greek and Hellenistic institutions of much earlier ages; others were formed in later years, especially after the twelfth century, and reflect the influence of trade practices introduced into Byzantium by the Venetians and other western powers.

（4） It should be noted here that there is a wide variety in the ways in which imperial laws are described in the sources and so it is only after a careful study of Byzantine history, including diplomatic history, that it would be possible for one to come up with a definite list.

（5） 'Humanity', as conceived by Greek philosophers and construed in the light of Christian religious ethics, was traditionally regarded as a fundamental principle from which all the duties of the imperial office were derived. It furnished an important basis of the legislative activity of the emperor, whose chief aims were supposed to be the accomplishment of justice and the protection of his subjects. It also served as a restraining force, in the sense that the emperor's actions were always kept within certain limits by public opinion.

Legal Development from the End of Justinian's Reign to the Accession of Basil I the Macedonian

In the years following the publication of Justinian's law books, Byzantine legal science flourished. This notably occurred at the two outstanding places of legal learning, the law schools of Constantinople and Beirut (Justinian allowed only these two schools and the law school of Rome to resume under his new program of legal education). Justinian proclaimed that the right to interpret the law pertained only to the emperor and thus he forbade all commentary on his legislation under the threat of punishment. He only endorsed the composition of summaries of contents (*indices*) and literal (*kata podas*) translations of the Latin texts into Greek. As the Emperor declared, the purpose of this prohibition was to protect his legislation from the uncertainty that could arise from disputes as to the meaning of the legal norms it contained.[6] But this prohibition soon fell into abeyance and manuscripts began to

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（6） As was stated in the relevant enactment: "No one, of those who are skilled in the law at the present day or shall be hereafter, may dare to append any commentary to these laws, save only insofar as he may wish to translate them into the Greek language in the same order and sequence as those in which the Roman words are written (kata poda, as the Greeks call it); and if perhaps he prefers to make notes on difficulties in certain passages, he may also compose what are called paratitla. But we do not permit them to put forward other interpretations – or rather, perversions – of the laws, for fear lest their verbosity may cause such confusion in our legislation as to bring some discredit upon it. This happened also in the case of the commentators on the Perpetual Edict, who, although the compass of that work was moderate, extended it this way and that to diverse conclusions and drew it out to an inordinate length, in such a way as to bring almost the whole Roman legal system into confusion. If we have not put up with them, how far can vain disputes be allowed in the future? If any should presume to do such a thing, they themselves are to be made subject to a charge of fraud, and moreover their books are to be destroyed. But if, as we said before, anything should appear doubtful, this is to be referred by judges to the very summit of the empire and made clear by the imperial authority, to which alone it is granted both to create laws and to interpret them." See *Const. Tanta* or *Dedoken* 21.

circulate containing summaries, commentaries and interpretations of Justinian's texts as well as treatises on individual topics. Most of these works were composed by jurists who taught at the law schools in the East. The most distinguished of these law professors (*antecessores*) embraced Theophilus[7] from the law school of Constantinople, and Dorotheus and Anatolius from the law school of Beirut. Other notable jurists of the same period were Thalelaeus, Cobidas, Stephanus and Julian.

Theophilus produced a Greek paraphrase of Justinian's Institutes based on an earlier version of Gaius's Institutes that differed to some extent from that used by Justinian's drafters. Theophilus's paraphrase played an important part in the development of Byzantine law and was the first work on Roman law in Greek that was published in Western Europe (1533). We have obtained this work through various manuscripts accompanied by the comments of other contemporary jurists.[8] Fragments of other juristic works of the same period have survived in the form of commentaries incorporated in later Byzantine compilations. These include a commentary on the Digest by Stephanus, a professor from the law school of Beirut; an extensive interpretation of the Code by Thaleleaus, who also taught at the Beirut school; a translation of the Code and accompanying commentary by Anatolius; and an abridgment of the same work by Stephanus. Abridgments of Justinian's Novels were produced by Julian, a professor at the law school of Constantinople, and other jurists. In the course of time, the works of the Byzantine scholars largely replaced the original texts of Justinian's codification (whose Latin language made their use very difficult in the Greek-speaking East). Byzantine compilers and commentators in later eras relied upon these works as the chief sources of legal materials.

（7） Theophilus was appointed by Emperor Justinian to the commissions charged with the compilation of the Codex and the Digest. Moreover, together with Dorotheus, he was charged with the task of compiling the Institutes.

（8） See Ferrini (1967). And see Lokin (1976 & 1984).

In the early post-Justinianic period, Byzantine jurisprudence entered a period of decay accompanied by a sharp fall in the standards of legal education. The precise length of time the law schools of Constantinople and Beirut remained open is not known, but it appears that they had probably closed by the end of the sixth century. As the law schools fell into decline, the teaching of law was assumed by teachers of a new kind who were members of professional associations of advocates. Unlike the earlier *antecessores* dedicated to the theoretical study of the Justinianic codification, these new teachers (known as scholastics) were primarily concerned with the legal practice of their own day and its needs. Their teaching was based chiefly on Greek translations of the Institutes and on summaries of the Novels (the part of Justinian's legislative work most relevant to current legal practice), whilst very little attention was paid to the Code and the Digest. A tendency towards simplification and the clarification of all legal subtleties is visible in the surviving works of this period. These include two abridgments of the Novels by Athanasius and Theodorus of Hermopolis, a summary of the Digest by an unknown author designated in later Byzantine sources as Enantiophanes,(9) and three monographs on special subjects. Theodorus of Hermopolis also produced a summary of Justinian's Code that is revealed from several quotations included in later compilations of law (esp. the *Basilica*). Another work of this period was the *Rhopai*, a collection of excerpts of all passages of Justinian's legislation in Greek referring to the consequences that the passage of prescribed periods of time had on the substance of law.(10)

Of the imperial legislation enacted in the period under consideration only a very small number of novels promulgated by Justin II (565-578), Tiberius II (578-

（9） The name is derived from the title of the relevant work: *Peri enantiophanon* – a Greek phrase meaning ‘about what seems to be contradictory’. In this work the author sought to demonstrate that seemingly contradictory passages in Justinian’s Digest can be reconciled with each other.

（10） See Sitzia (1984).

582) and Heraclius (610-641) have been preserved. They were concerned, for the most part, with matters of public, ecclesiastical and private law (especially the law of marriage). The legislation of Tiberius reflects an attempt on the part of the imperial government to curb the excesses of the powerful landowners and improve the economic situation of the small landholders and free labourers. The four novels that have come down to us from Heraclius's reign (dated from the years 612, 617, 619 and 629) deal with matters relating to the organization of the Eastern Church, including the *privilegium fori*.(11) These enactments are the last manifestations of lawgiving in the Justinianic tradition, but, in comparison with Justinian's work, can hardly be regarded as being of far-reaching significance; rather, they represent an interference on the part of the emperor in matters that had been brought to his attention. This is unsurprising in light of the situation the empire found itself in during this period: the wars against the Avars, Persians and Arabs all took a heavy toll and, by the end of Heraclius's reign, many eastern provinces had been lost. But as the imperial boundaries receded, retrenchment produced a comparative strengthening of the state and the empire acquired the homogeneity that the policies of Justinian had failed to produce. This occurred due to the new borders corresponding more closely with ethnic and religious lines, as the inhabitants of the empire were now largely Greek-speaking and Orthodox Christian. During these years, the empire fully entered its Byzantine period embracing the Greek language and displaying a deep orientalisation with Christianity engrained in its thought and ethos.

By the middle of the seventh century, the production of legal works had

(11) The concept of *privilegium fori* (choice between different courts) was introduced during the Roman imperial age. From the fourth century, an increasingly complex list of jurisdictional rules evolved whereby certain categories of individuals, including members of the senatorial order and Christian bishops and some clerics could appeal to specific 'privileged' jurisdictions under certain circumstances as prescribed by imperial legislation.

ceased. Furthermore, the disruption of official communications between the capital and the provinces by war undermined the government's ability to ensure the uniform application of the law throughout the realm. As a result, local custom began to play a vital role as a source of social regulation. The situation was exacerbated further by the fact that Justinian's legislation was written in a language that was foreign in the empire and embodied concepts that both the people and those involved in the administration of justice found difficult to comprehend. Under these conditions, lawyers and imperial officials found it increasingly difficult to discover the exact state of the law. This prompted the urgent need to introduce a new legislative work that would adapt the Roman law of Justinian to usages actually observed by the inhabitants of the empire and clarify the applicable law in a simple and systematic way. These were the objectives of the compilers of the *Ecloga Legum*, the new legal code enacted in the first half of the eighth century. The enactment of this code attests to the fact that, despite the decline of legal education and scarcity of legal literature, the ideological force of Roman law as a symbol of the state remained strong.[(12)]

The *Ecloga Legum* (Selection of the Laws) was published in 741 under the authority of Emperor Leo III the Isaurian (717-741) and his son and co-Emperor Constantine V (741-775).[(13)] A three-member commission headed by the quaestor Nicetas prepared the relevant material. Written in Greek, the work consists of a

(12) See on this Haldon (1990: 279). It should be noted that with the exception of the *Ecloga* and two Novels of Empress Irene promulgated in the 790s, there is virtually no surviving imperial legislation between the closing years of Heraklius' reign and the early years of the Macedonian Dynasty. This does not mean, however, that the emperors of this period did not promulgate any laws. Rather, the legislative forms they employed were different and had a specific and limited purpose (for instance, imperial orders or *prostagmata* were issued instead of *novellae*). Moreover, the scarcity of legislation probably also suggests that there was little or no need for the emperors to enact new laws; they only needed to ensure compliance with the inherited legislation of Justinian.

preface and eighteen titles that address the law of marriage, succession, tutelage, contracts and crimes.[14] The preamble declares that the purpose of law, as a device given by God himself, is to enable men to live by God's word and commandments. God created man and gave him the freedom to determine his own fate. But since man is not always able to exercise that freedom responsibly, God vested in the emperor the authority to follow in the footsteps of the apostle Peter and shepherd the human flock. God gave the law to the emperor for this purpose. As this implies, the ultimate purpose of the law is to serve as a tool for creating the ideal Christian state. The law derives its force from the authority of the emperor, and that authority is based directly on God's will. It is stated, further, that the work is based on a selection of laws derived from the Institutes, the Digest, the Code and the Novels of Justinian that were modified, in accordance with Christian ideas, in the direction of greater humanity. As this suggests, the purpose of the *Ecloga* was not to replace the codification of Justinian but to render the embodied law more comprehensible in terms of language and spirit for those involved in the administration of justice (especially in the provinces where the texts of Justinian were hard to find).[15] However, its drafters apparently did not rely on the original texts of the Justinianic codification but on the Greek translations, abridgments and commentaries that had meanwhile replaced

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(13) Leo strengthened imperial authority, reorganized the machinery of government, and introduced measures aimed at stimulating commerce and industry. However, the considerable benefits the empire derived from his rule were to some extent negated by the great iconoclastic controversy – the quarrel over the admissibility of images in religious art – that he initiated and consumed Byzantine society for more than a century.

(14) For a closer look at the Isaurian law book see Burgmann (1983 & 1991).

(15) As stated in the *Ecloga* (proem. Lines 36-40): "[The emperors were aware] that the matters legislated by previous emperors are written in many books and that knowing their intent is difficult to understand, and for some quite indiscernible, especially for those outside of the divinely-protected and queenly city [of Constantinople]."

Justinian's texts. Moreover, the *Ecloga* incorporated several legislative enactments issued by emperors of the post-Justinianic era and introduced important innovations reflecting Greek and other Eastern influences. These influences are reflected in, among other things, the exercise of *partial potestas* by the father and mother conjointly; the requirement that both parents consent to the marriage of their children; the right of the surviving party in a marriage to the property of the deceased spouse, their two estates being considered to have become one by the marriage; the absence of the distinction between *tutela* and *cura*; and the rules regulating disinheritance. In general, the work is characterized by its simplicity and by the special emphasis it attaches to Christian and humanitarian principles. In the domain of criminal law the influence of these principles is reflected in the restrictions imposed on the application of the death penalty.(16) Furthermore, the new code introduced more precision and a degree of individualization in the application of punishment, and put some limits to the inequality before the law.(17) It appears that the *Ecloga* was significantly influenced by the canons of the Council in Trullo or Quinisext Council of 691,(18) especially in the area of the law of marriage.(19) However, as the work fell short of addressing all the practical needs of legal life, attempts were made to fill the gaps in the legislation primarily through resort to Justinian’s *corpus*. In this way, a private manual closely connected with the *Ecloga* was produced, which is now known as *appendix Eclogae*, since it is usually found in the same manuscripts with the *Ecloga*. The *appendix* comprises a large number of legal rules derived from various sources based (directly or indirectly) on the legislation of Justinian. The rules are divided into small groups and, for the most part, are concerned with church matters, but with a clear orientation towards criminal law.(20)

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(16) At the same time, the recognition of the penalty of mutilation, which was introduced as a form of punishment for crimes that in the past entailed the death penalty, reflects the strong influence of oriental practices on Byzantine criminal law.

During the age of the Isaurian emperors, there also emerged three unofficial compilations dealing with special branches of the law: The Military Code, the Rural

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(17) Some of the principles of the Byzantine theory of criminal law may be gleaned from various juridical and literary sources, in particular legislative enactments penalizing criminal behaviour. The starting-point was personal guilt, which presupposed the offender to have been capable of understanding what he did. Thus, in principle, young children and the mentally ill could not be held criminally liable. Guilt and the form of punishment were determined by the judge, but the privileged (*honestiores*) and common people (*humiliores*) were not punished in the same way. Even after the enactment of the *Ecloga*, judges in practice had considerable freedom in prescribing the form and amount of punishment. The list of punishments included the death penalty, loss of freedom, corporal punishments (such as mutilation, beating and flogging), exile, the confiscation of property, infamy and various civil disabilities (such as loss of eligibility for public service). In some cases, retaliation in kind was prescribed. Imprisonment was not regarded as a form of criminal punishment, although this does not mean that it was never used. It should be noted that, in addition to the public criminal law of the Byzantine state, the Church had its own criminal law, although the boundaries between the two were not always clear. The penalties used by the Church included excommunication and, for clerics, deposition from and suspension of office.

(18) So-called because it was held in a chamber (in *trullo*), or because it completed the work of the fifth and sixth Councils of 554 and 681. This Council produced the last extensive conciliar legislation of the Orthodox Church, including a large number of canons addressing practical problems caused by the seventh century crisis. However, it was some time before its canons were received into the standard collections, such as the *Nomocanon of the Fourteen Titles* (*c.* 620).

(19) Canon 54 of the Quinisext Council expanded the impediments to marriage that were provided for in the legislation of Justinian with respect to both blood relations and relations through marriage. The *Ecloga* recognized these impediments and expanded them further, introducing grave penalties against transgressors (besides the dissolution of the illegal marriage). Furthermore, the *Ecloga* repeated the impediment due to a spiritual relationship (through baptism), which the Quinisext Council introduced in canon 53. The influence of the Council is also evident in the penal regulation of prostitution, bigamy and the abduction and seduction of nuns and other women dedicated to God.

(20) Consider Burgmann & Troianos (1979).

or Farmers' Code and the Rhodian Maritime Code. The Military Code consists largely of penal provisions aimed at securing discipline in the army.(21) The Rural Code is believed to have originated in the provinces and was probably based on the legislation of Justinian and other early sources. It contains provisions of a punitive character intended to protect small farmers and tenants against exploitation.(22) In the seventh century, the concentration of land in the hands of a few feudal lords entailed the gradual disintegration of small-scale land ownership and deterioration in the living conditions of the rural population. One of the objectives of the Isaurian emperors was to curb the power of the great landlords and to reorganize the rural economy to the advantage of peasant communities. The Rhodian Maritime Code embodies the rules of the customary law of the sea that prevailed in the East between the sixth and eighth centuries. It was widely used throughout the Mediterranean during the Middle Ages and furnished the basis for the further development of the law governing maritime trade. The Code provided practical, time-tested regulations for the handling of collision cases between ships and for addressing problems pertaining, among other things, to the relation of the owner of the ship to the cargo owner in the event the cargo was lost. In the course of time, provisions of the code were transmitted, by custom, to the early Italian maritime city-states that were closely related to the Byzantines. It is thus unsurprising that one of the earliest Italian sea codes, that of Amalfi (*c.* 1000), was based on it. As Byzantine maritime trade declined, however, from the twelfth century onwards and the Italian maritime powers dominated the sea routes of the Mediterranean, the Rhodian sea law per se gradually fell into disuse. Nevertheless, some of its more important norms survived and inspired the development of commercial and maritime practices of Venice, Genoa and Pisa, and even of the famous *Consolato del Mare*, a Catalan legal code published in Barcelona

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(21)　Ashburner (1926).

(22)　Ashburner (1910 & 1912).

in the early 14th century.[23]

The seventh century is marked by an important development: the growth of canon law and ecclesiastical jurisdiction at the expense of their secular counterparts. This appears to have been a natural outcome of the conditions of the times. The crisis of the empire hindered the regular activity of the secular judicial authorities especially in the provinces, where the pressure of external enemies was most felt. Bishops and other ecclesiastical authorities must have been under pressure too, but their activities were less directly connected with Byzantine political and military administration. Under these circumstances, it is unsurprising that formal and informal ecclesiastical jurisdiction increasingly took over the role of the secular courts – a development that enhanced the prestige of the Church and its formal or informal law-making functions. One might say that canon law to some extent filled the void left by secular law. At the same time, it formed an integral element of the normative basis of Byzantine society and important point of orientation for its future development.

Legal Development in the Macedonian and Post-Macedonian Periods

The accession to the throne of Basil I the Macedonian (867-886) marks the beginning of the most creative period in the history of Byzantine law since Justinian's reign.[24] The legislation of this period is characterized by a renewed emphasis on the

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(23) For a closer look at the Rhodian Maritime Code see Ashburner (1909 & 1976); Atkinson (1974); Zeno (1946). On the *Consolato del Mare* consider Maccioni (2019).

(24) During the Macedonian period (867-1056), often described as the ‘golden age’ of Byzantium, the internal organization of the Byzantine state was strong enough for the emperors to embark upon a program of territorial expansion. By the early eleventh century, the empire had been cleared of foreign enemies and its boundaries stretched from the Danube to Crete and from Southern Italy to Syria. The peace and prosperity that followed served as a powerful stimulus to art, literature and educational activity in the capital and the provinces.

Justinianic codification as the basis of the Byzantine legal system. The return to the Roman law of Justinian was connected with the general revival of interest in the classical tradition. It also reflects the imperial desire to strengthen the image of the Byzantine state as a direct heir of the ancient *imperium Romanum* (now in the form of *imperium Christianum*). A chief objective of the legislative program initiated by the Macedonian emperors was to restore the substance of Justinianic Roman law. To this end, many of the changes to the law initiated by the Isaurian legislation were removed and the precedence of written law over custom was re-established.(25) At the same time, plans to update the legal system were executed by eliminating matters that had become obsolete.

The first in a series of legislative works aimed at the general revision of the law was the *Eisagoge* ('introduction to the law'), previously known as *Epanagoge* ('return [to the law]'), prepared under the authority of Basil I and his sons Leo and Alexander around 885.(26) It contained a selection of laws drawn from the Greek translations of Justinian's codification and consisted of forty titles and a preamble. In the preamble, the *Ecloga* of the Isaurians was contemptuously discredited and abrogated as far as necessary (although the criminal law of the *Ecloga* was generally retained). The preamble also contains information about the procedure that was followed by the drafters of the *Eisagoge*: first the relevant legislative material was

(25)　Although the *Ecloga* was abrogated by the Macedonian emperors, some of its provisions continued to apply in practice, especially in the provinces and among neighbouring peoples in the Balkans and Asia Minor (translations of the *Ecloga* have survived in Slavic, Armenian and Arabic).

(26)　Scholars now recognize that Patriarch Photios played a part in the production of this work. The extent of his participation is not known, but certain sections of the work relating to the Church were surely composed by him. His influence is also felt in the criminal law of the *Eisagoge*, which includes several provisions dealing with religious offences, such as apostasy and heresy.

gathered together; then the elements considered obsolete or useless were removed; and finally, the remaining material was divided into forty titles.(27) Titles 14-21 deal with the law of marriage; titles 22-28 relate to the law of obligations; titles 29-36 are concerned with the law of succession; and title 40 addresses issues of criminal law. Only a few fragments of this work have come down to us.

An interesting feature of the *Eisagoge* is that it introduced a system of norms governing relations between Church and state that was markedly different from the one that had existed earlier. According to the approach that had prevailed since the time of Constantine the Great, Church and state were not two separate authorities but rather two aspects of the one and indivisible concept of Christendom. The *Eisagoge* departed from this approach by lending support to the theory of the ‘two authorities’, which regarded the emperor and the patriarch as equally powerful bearers of the two highest positions within the state. This new approach is reflected in titles 2 and 3 of the work, the first of which titled ‘about the king’ and the second ‘about the patriarch’. The scope of authority of the two parties is defined in chapter 8 of the third title. According to this, the state is made up of different parts, just like the human body. Among these parts, the most important are the emperor and the patriarch. Concord and unanimity between these two are therefore necessary for the spiritual peace and material prosperity of the state. In this respect, it appears that the task of the emperor was to secure the material well-being of his subjects, while that of the patriarch was to care for their spiritual interests. The authors of the *Eisagoge* proceeded to set out the general principles governing the structure and function of the united Church-state organization, dedicating titles 4-7 to secular authorities (political

(27) As stated in the preamble (lines 31-33): the authors “recleansed everything remaining in the breadth of the ancient laws and mixed the mass of the law crearly and purely into forty books like a divine draught.”

and military) and titles 8-10 to the Church. Finally, title 11 deals with issues pertaining to the jurisdiction of the secular and the ecclesiastical courts.[28]

A revised edition of the *Eisagoge*, known as *Procheiros Nomos* or *Procheiron*, was published in the early tenth century by Emperor Leo VI the Wise (886-912). In the preamble it is stated that justice is the best means by which a ruler can promote the wellbeing of his subjects and that law has been given by God to humankind as an aid to achieve this goal.[29] The emperors undertook the task of composing the present work as a means of implementing the divine injunctions for justice (even though it is admitted that an all-embracing law-book would be almost endless).[30] The educational purpose of the work is also emphasized.[31] The *Procheiron* comprises extracts from Greek translations and abridgments of Justinian's legislation, fragments from the *Ecloga* and enactments of the Macedonian emperors amending and complementing the law. As in the *Eisagoge*, the materials are divided into forty titles preceded by a preamble. However, the drafters of the *Procheiron* omitted all the titles of the *Eisagoge* containing provisions on the foundation of the political-ecclesiastical organization, possibly with the purpose of striking out the above-mentioned theory of the ‘two authorities.’[32] The *Procheiron* was transmitted through a large number of manuscripts and served as the basis of several later law books, including the

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(28) For the text see Zepos & Zepos (1962: II, 229-368). And see Schminck (1986: 4 ff); Troianos (1986: 100-105).

(29) Procheiron, proemium, lines 9-10, 26-27.

(30) Procheiron, proemium, lines 33-41.

(31) Procheiron, proemium, lines 45-51: “Since instruction [in matters of law] is necessary for all, what should we have intended in order to remove men’s hesitation and to make legal instruction easy to comprehend? Nothing other than to closely examine the mass of legal texts, select together those elements that are most necessary and important and write them up by chapter in this ready-to-hand law, without omitting almost anything, which most ought to have knowledge of.”

influential *Hexabiblos* of Harmenopoulos.[33]

As announced in its preamble, the *Eisagoge* was designed to serve as an introduction to a new, all-embracing code of law that was originally referred to as 'Revision of the Ancient Laws' (*Repurgatio veterum legum*). Work on this project commenced under Emperor Basil I and completed in the late ninth or early tenth century during the reign of his son Leo VI the Wise. The original title of the new law book appears to have been *Basilica nomima* (Imperial law), but in later years (from the eleventh century) it was designated *Basilica*. As stated in the preamble, the aim of this work was to collect, update and harmonize the laws contained in the codification of Justinian. It combines into one body of work materials from the Code, Digest, Institutes and Novels. Although the sequence of the titles is a little different from that in Justinian's law books, the contents are largely the same. The account offered of Justinian's legal reforms in the preamble reflects the desire to connect Leo's codification effort with that of Justinian. It is recognized, however, that Justinian's work was not without its shortcomings.[34] It should be noted, further, that the majority of the extracts were not drawn from the original Latin text of Justinian's codification but from Greek translations and abridgments of jurists from later eras. Among the chief works utilized by the compilers of the *Basilica* was an abridgment of the Digest

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(32) As a result, only three titles of the *Procheiron* deal directly with Church matters: Title 15 on *emphyteusis* (ecclesiastical long-term lease); title 24 on the wills of bishops and monks; and title 28, on the issue of ordination of bishops and presbyters. However, there was no reduction in the number of provisions that indirectly addressed matters of Church interest, such as the prerequisites of marriage or certain issues of a criminal nature.

(33) The *Procheiron* was translated into Slavic in the eleventh century and was particularly influential in the Balkans. For a closer look at the *Procheiron* see Zepos & Zepos (1962: II, 107-228, 395-410).

(34) As stated in the preamble, “our Majesty thought that the state of the laws as it has been apportioned to be lacking with respect to both the removal of the difficulty in studying the laws as well as to the clarification of their order.” (proemium, lines 15-17)

by an unknown author, referred to as Enantiophanes; a commentary on the Code by Thalelaeus; and Theophilus's paraphrase of the Institutes. The *Basilica* also incorporated the Rhodian Maritime Code mentioned earlier. The materials are arranged into sixty books divided into titles, paragraphs and themes. The whole work is comprised of six volumes. The text of the *Basilica* is accompanied by a large number of annotations (*scholia*) that include interpretations, examples, explanations and references of various kinds. Some of these comments are extracted from the works of sixth century jurists (old *scholia*), whilst others are derived from juristic works of the post-Macedonian period (new *scholia*). Many of these *scholia* are preceded by the author's name, but otherwise their attribution and dating is a difficult matter. According to some modern scholars, most of both the old and new comments were added to the *Basilica* in the eleventh century at the law school of Constantinople.

The *Basilica* was not intended to replace the codification of Justinian, which retained an unquestioned validity as the ultimate source of law. It aspired to only adapt Justinian's codification to contemporary conditions and needs.[35] However, despite the claim of *repurgatio* (or *anakatharsis*), which suggests an overhaul in order to bring the law up to date, many of the provisions included in the work had hardly any practical importance, and insofar as a certain amount of Justinianic material was 'purged', this was mainly done by omitting rather than replacing the earlier provisions with more recent legislation.[36] Indeed, imperial legislation after the time

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(35)　As Leo proudly declared, "we have offered through our diligence regarding the law an easy study and a final answer for any sort of pressing issue, with not a signle piece of legislation which bears a correct judgment from the earliest times until the legislation of our Majesty omitted." (See proemium, lines 28-31.)

(36)　The parts of Justinian's corpus which were not included in the new compilation were divided into two categories: those which were demed contradictory and those which appeared superfluous. (See proemium, lines 19-20.)

of Justinian was not included. The number of instances in which we find a contemporary interpolation after the fashion of Justinian’s interventions in earlier material is negligible as compared to what might reasonably have been expected if a true ‘modernization’ of the law had been intended. Only about two-thirds of the *Basilica* has survived throughout the eras in various manuscripts. Our knowledge on the contents of the missing parts derives from later works, such as the *Tipoukeitos* published in the late eleventh century as a legal repertory.(37)

In the years preceding the publication of the *Basilica*, Leo VI issued a number of new laws (*novellae constitutiones*) from which 113 were collected and preserved together with four individual enactments. About one-third of these novels are concerned with ecclesiastical matters, modifying provisions of the civil legislation (for the most part that of Justinian) with a view to adapting them to requirements of canon law. This adaptation was accomplished through an alteration of old laws as well as through the introduction of entirely new rules. Some of Leo's novels were aimed at removing apparent contradictions between the written law and established customary norms.(38) Also originating from the closing years of Leo's reign is the *Eparchikon Biblion*, an official compilation of rules governing the operation of the various associations of businessmen, tradesmen and craftsmen of Constantinople (*corpora*).(39) One of the most interesting documents that has come down to us from Leo’s reign is the *Kletorologion* of Philotheos (*c.* 899), a list of the senior military and civil offices of the state, which attests to the growing sophistication of the central and provincial administration during this period.(40)

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(37) For the standard modern edition of the *Basilica* see Heimbach & Heimbach (1833-1870); and see Scheltema, Holwerda & van der Wal (1953-1988). Consider also Zepos (1958); Scheltema (1955); Lawson (1930-1931).

(38) For a closer look at Leo’s novels see Noailles & Dain (1944); Monnier (1923).

(39) See Koder (1991).

Leo VI is rightly regarded as the greatest legislator of the Byzantine era, second only to Justinian in terms of legislative output. Leo viewed Justinian as his role model and attempted to imitate and even surpassed him as a legislator. But whereas Justinian gathered together and compiled ancient laws, Leo's aim was the purification and amendment of Justinian's legislation. By enacting his own novels and the *Basilika* in close association with each other so that they formed a coherent entity, the emperor hoped to complete the work of Justinian. However, whilst Justinian's authority was vested primarily in imperial dignity, with God as the fount of that dignity, the authority of Leo's laws was thought of as deriving directly from God. Leo held two views of the law: the noble vision of the law as God's instrument, personified in the emperor, for the purpose of imposing order on creation; and the down-to-earth vision that the law must constantly provide practical solutions to concrete problems of everyday life, given the 'variety of human affairs', as Leo states at the beginning of the preface to his collection of novels.

Among the imperial laws enacted in the period following the death of Leo VI, reference may be made to two novels issued by Emperor Constantine VII (913-959) dealing with murderers. The first of these novels provided asylum even to persons who committed murder if they came forth for confession before their crime was discovered. The second novel compelled the same offenders to become monks. Two other novels by the same emperor dealt with matters of intestate succession, providing that one third of the property left behind should be surrendered to the Church for the salvation of the deceased's soul. A number of laws issued during the reigns of Romanos I Lekapenos, Constantine VII, Nikephoros II Phokas, Basil II and Isaac I Comnenus reflect an attempt on the part of the government to protect small-land ownership from the abuses of the powerful landowners. Some of the novels

(40) The *Kletorologion* comprises lists establishing the hierarchy of Byzantine state offices and titles, referred to as *Taktika* in Greek and *notitiae* in Latin. See Bury (1911).

enacted in the second half of the eleventh century by Isaac I, Constantine X Doukas and Nikephoros III Botaneiates were concerned with marriage law, while others aimed at regulating internal matters of the Church, mainly of an administrative nature. Several of the laws enacted by emperors of the Comnenoi dynasty (1081-1185) dealt with the administration of the Church, financial and taxation matters, the settlement of disputes and issues concerning marriage.(41)

Besides the official collections of law, there existed several private works composed by jurists (generally legal abridgments or epitomes) for practical use or instructional purposes. Probably the most notable amongst these are two works known as *Epitome Legum* (created in 913 during the reign of Constantine VII Porphyrogenitus) and *Synopsis Basilicorum Maior* (late tenth century). The *Epitome* contains materials drawn from the codification of Justinian, the *Basilica* and the *Procheiron*, as well as several constitutions of Leo VI. Its aim appears to have been the improvement and expansion of the above-mentioned *Procheiron*.(42) The *Synopsis Basilicorum Maior* is a collection of brief abstracts from the *Basilica* arranged in alphabetical order (most of the manuscript copies of this work are accompanied by an appendix containing materials from imperial laws of the tenth and later centuries and other sources). Designed to facilitate the application of the *Basilica*, this work

(41) Reference may be made in this connection to two novels of Alexios I Comnenus (1081-1118), one dealing with the contracting and dissolution of betrothals and the other with the marriage of slaves.

(42) In the preamble (lines 8-10) of the *Epitome* its author, a state official called Symbatios, makes the following statement: “I shall present a history of the ancient origins of [the law], whence it received its beginning and a selection of the laws put into effect by the Romans during particular times.” This statement reflects a trend characteristic of law books of the Macedonian and post-Macedonian periods, which often include a brief outline of Roman legal history and portray contemporary legal works as a continuation of the Roman legal tradition. For the text of the *Epitome* see Zepos & Zepos (1962: IV, 261-585, 596-619). And see Moulakis (1963).

circulated in numerous manuscripts and was widely used by legal practitioners and commentators.[43] Based on the *Synopsis Maior* and another work written by Michael Attaleiates, an eminent historian and jurist, known as *Opusculum de iure* or *Ponima Nomikon* (*c*. 1073), a smaller abridgment of the *Basilica* was composed about the middle of the thirteenth century referred to as *Synopsis Basilicorum Minor*.[44] Three other works should also be mentioned in this connection: the *Experientia Romani* or *Peira* (*c*. 1050), a collection arranged into 75 titles containing juristic decisions drawn largely from the writings of Eustathius Romanus (or Rhomaios), a distinguished judge at Constantinople and one of the most prominent middle Byzantine jurists;[45] the *Tipoukeitos*, a repertory on the *Basilica* composed by a judge named Patzes in the late eleventh century;[46] and the *Synopsis Legum* (*c*. 1070), a collection of laws from the codification of Justinian and the *Basilica* prepared by the jurist and philosopher Michael Psellus and dedicated to his pupil, the Emperor Michael VII Ducas.[47]

The revival of literary activity in the post-Macedonian period was facilitated by the establishment of a new law school at Constantinople around 1045 by Emperor Constantine IX Monomachus (1042-1055).[48] The bureaucratization of the imperial administration in the eleventh century increased the government's need for well-educated officials. Partly in response to this need and partly due to the inadequacy of the current system of legal education (advocates had to teach themselves or learn from private tutors), Constantine founded a school of law and stipulated the

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(43) For the text see Zepos & Zepos (1962: V). And see Svoronos (1964).

(44) For the text see Zepos & Zepos (1962: VI, 319-547). Consider also Perentidis (1984).

(45) Based on a large number of Romanus's own judicial decisions, the *Peira* provides a useful insight into the way in which Byzantine normative sources were applied in actual cases. For the text see Zepos & Zepos (1962: IV, 11-260). And see Simon (1987); Vryonis (1974).

(46) See Ferrini, Mercati, Doelger, & Hoermann (1914-1959).

(47) Consider Weiss (1977).

conditions governing the work of the professors and students.(49) The constitution of the school (known as *Novella Constitutio*), composed by the learned bishop John Mauropous, declared that no person could practice law until he had finished the prescribed courses and received testimony from the professors as to his competence.(50) Admission to the school was open to capacity and students did not have to pay fees. The emperor appointed and paid the professors (*magistri*) as well as the head of the school. The latter held the office of *nomophylax* (lit. 'guardian of the law') that was regarded as one of the highest offices of the state and its holders were admitted to the senate.(51) Until the end of the eleventh century, the teaching of law was based directly on the texts of the Justinianic codification with a step-by-step study and clarification of the contents. In the twelfth century, however, the Justinianic codification appears to have been superseded in the study of law by various abridgments and commentaries. The law school of Constantinople probably remained open until the capture of the city by the Latins in 1204.

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(48) As previously noted, in the years following the death of Justinian legal learning took a sharp downward trend. How long the old law-schools of Constantinople and Beirut remained open we do not know for sure, but it appears that they had fallen into decline and probably closed by the end of the sixth century. About the middle of the ninth century Caesar Bardas, uncle of Emperor Michael III, established a university in the capital in which law was taught, but we know little about the quality of the legal instruction offered. Whatever its contribution to legal learning, Bardas's university was dissolved in the tenth century and legal instruction continued be given by private teachers, usually members of professional bodies of advocates or notaries.

(49) On Constantinus' enactment by which the school was founded see Follieri (1971); Speck (1974).

(50) Lawyers were divided into categories: *synegoroi* (advocates, barristers) and *taboullarioi* (notaries).

(51) The first *nomophylax* of the law-school was John Xiphilinus, a distinguished judge who later became patriarch of Constantinople. In later years the character of the office changed and it became a position between the state and Chruch administration.

Legal Development in the Late Byzantine Era

In the years following the death of Basil II (976-1025), the last great Macedonian emperor, the empire entered a period of political and economic decline. This decline was precipitated by a remarkable confluence of internal ills that exhausted the body of the empire as it endured external attacks from powerful new foes (such as the Seljuk Turks and the Normans). Probably the most virulent of these illnesses was the strife between the military establishment and the imperial bureaucracy, which undermined the empire's strength at a critical period. In spite of a limited recovery during the Comnenoi dynasty (1081-1185), the ills of Byzantium so weakened the empire that its disintegration was virtually inevitable at the end of the twelfth century and thereupon Constantinople fell to the forces of the Fourth Crusade in 1204. Although the capital was recaptured by the Byzantines and the empire was restored about half a century later (1261), the political splintering of the Byzantine world prompted by the Latin conquest hastened the final collapse. The late thirteenth, fourteenth and fifteenth centuries featured the reign of the Palaeologan emperors and an empire ravaged by dynastic competition, social struggles and religious strife. In spite of the civil wars and military disasters, the Palaeologan age witnessed a last great flowering of literary and artistic activity accompanied by a revival of interest in classical studies. The end of this phase transpired in the spring of 1453, when Constantinople was conquered by the Ottoman Turks. During the late Palaeologan period and in the years the followed the empire’s collapse, a large number of Byzantine scholars migrated to Western Europe (especially to Italy) conveying important records of the Greco-Roman inheritance in art, philosophy, literature and law. A great deal of the classical knowledge preserved by Byzantium was thus transmitted to the West and it imparted a fresh impetus to the progress of the so-called Italian Renaissance.

In the thirteenth century, legal culture in the East encountered a sharp downward trend precipitated by the confusion ensuing from the political disintegration of the Byzantine world after the Latin conquest of Constantinople. After the recapture of Constantinople by the Byzantines in 1261, the emperors of the Palaeologan dynasty set themselves the task of reorganizing the administration of justice with an emphasis on reforming the court system. The reform of the court system was the subject of a series of laws issued by Emperors Andronicus II (1282-1328) and Andronicus III (1328-1341). The earliest of these laws provided for the establishment of a High Court consisting of twelve judges in Constantinople.(52) Although the reform programme of the Palaeologi was met with a measure of success, no serious effort was directed towards improving the quality of legal education that existed at a low ebb after the dissolution of the law school of Constantinople – legal instruction was now presented mainly by practitioners in private and was haphazard, unsystematic and based on fragmentary legal sources. The lawyers of this period paid little attention to the codification of Justinian (whose texts were extremely difficult to locate) and instead utilized contemporary Greek summaries and adaptations.(53) The most notable amongst these materials was the *Hexabiblos*, a manual of the entire law in six books that was compiled around 1345 by Constantine Harmenopoulos, a judge at Thessalonica, and designed for the use of judges and court officials. It contains materials drawn from the *Procheiron*, the *Synopsis Basilicorum Maior,* the *Synopsis Basilicorum Minor*, the *Peira* and other

(52) On the organization of the Byzantine state during this period consider Raybaud (1968).

(53) The preponderance of privately held documents proving endowments (e.g. exemptions from taxation) granted by the emperor to local entities (especially monasteries) over general legislative instruments in the last centuries of the empire attests to a ‘privatization’ of rights and privileges and a change in the relationship between the government, in the form of a ruling dynasty, and the taxpayer and landowner.

sources that are all arranged into titles and paragraphs. Private law is addressed in Books 1-5 and divided into five parts: general principles, law of property, law of obligations, family law and law of succession whilst Book 6 is concerned with criminal law. The text is accompanied by a large number of annotations that were mainly created by Harmenopoulos.[54] After the fall of Byzantium, the *Hexabiblos* was still utilized throughout the Ottoman period (with prominence in the ecclesiastical courts) and it contributed significantly to the preservation of the Roman law tradition in the Balkans. The *Hexabiblos* was also widely known and used in the West, where it underwent several editions during the sixteenth and seventeenth centuries. The existence of a German translation testifies to the fact that the work was used in German court practice throughout the Reception period. The court use of the work in France seems to have been equivalent to that in Germany. Furthermore, the *Hexabiblos* was extensively used by sixteenth century humanist jurists as an important basis for the critical reconstruction of the *Corpus iuris civilis* and the restoration of the text of the *Basilica*.[55]

During the later Byzantine epoch, the Church played an increasingly important part in the administration of justice. We observed earlier that since the fourth century the ecclesiastical courts had rights of jurisdiction in cases involving clerics and in

(54) For the text see Heimbach (1969). And see Fögen (1986).

(55) See Fögen (1985). The chief aim of the Humanist jurists was the rediscovery of the true character of Roman law by applying the historical method instead of the scholastic method of the medieval Commentators (referred to as *mos Italicus*). Among the most important representatives of this school, which included not only jurists but also historians and philologists, were Jacques Cujas (Cuiacius, 1522-1590), Hugues Doneau (Donellus, 1527-1591), Guillaume Bude (Budaeus, 1467-1540), Ulrich Zasius (1461-1535), Antoine Favre (Faber, 1557-1624), Charles Annibal Fabrot (Fabrotus, 1580-1659) and Jacques Godefroy (Godofredus, 1587-1652). For a closer look at the Humanist movement see Stein (1999: 75 ff); Robinson, Fergus & Gordon (1994: ch. 10); Gilmore (1963); Wieacker (1995: 120 ff).

civil disputes submitted by the relevant parties. By the end of the twelfth century, the competence of these courts had been extended to a variety of civil cases so that it encompassed all matrimonial cases and cases concerning charitable bequests. The tendency towards widening the jurisdiction of the Church courts accelerated considerably after the interlude of the Latin conquest (1204-1261).(56) As the ecclesiastical law became closely allied with the civil law, the distinction between civil and ecclesiastical jurisdictions was evermore blurred. This development is related to the general weakening of the Byzantine state prompted by the political disintegration of the empire in the thirteenth century, and the parallel enlargement of Church's role in civil administration (the emperors now increasingly relied upon the Church organization in their effort to maintain imperial unity). As the importance of canon law increased during this period, there appeared alongside the various condensations of Roman law several compilations that combined both canon and civil law, known as nomocanons (or *Syntagmata*).(57) Works of this kind were produced by Theodore Balsamon (12th century); John Zonaras (12th century); Alexios Aristenos (12th century); Mathaeus Blastares (14th century); Constantine Harmenopoulos (14th century) and other jurists. Throughout the Ottoman period, these materials were still produced and utilized by the ecclesiastical courts. They also significantly contributed to the preservation of the Greco-Roman legal tradition in countries formerly within

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(56) It is thus unsurprising that, after 1204, our knowledge of legal practice becomes increasingly dependent on evidence from various ecclesiastical sources. For the thirteenth century, the works of Demetrius Chomatenos, Archbishop of Ohrid, and John Apoukaukos, Metropolitan of Naupaktos, have preserved cases and decisions from their own courts. Moreover, the archives of the monasteries on Mount Athos in northern Greece contain many documents that provide an insight into the way in which the norms of canon and secular law were applied in practice during the later Byzantine age.

(57) Among the earliest work of this kind was the *Nomocanon* produced about the middle of the sixth century by John of Antioch, who later became Patriarch of Constantinople.

the orbit of the Byzantine civilization.

The work of Balsamon includes *responsa*, short treatises on various aspects of canon law and other theological and philological texts. His commentary on the *Nomocanon of Fourteen Titles*, an important collection of canon law originally compiled in the 7th century,(58) was widely used by lawyers. Apart from the canons proper, this work included imperial legislation, court cases, synodal decrees and other relevant materials. Balsamon's influence can be observed in canonical literature during both the late Byzantine and post-Byzantine periods.(59) Among Zonaras' works, of special importance is his commentary on the canons of the apostles, Church fathers and ecumenical and local Councils. Although ecclesiastical sources take precedence over secular ones in his work, it is certain that Zonaras had been educated in law, as it is evidenced by the hermeneutical methodology he followed.(60) Aristenos, an influential canonist and jurist, wrote *scholia* on the canons of the apostles and of ecumenical and local Councils. Mathaeus Blastares' *Syntagma kata stoicheion* (also known as *Alphabetical Syntagma*), a comprehensive summary of canon law compiled in 1335, draws on a variety of canonical and secular sources including the *Nomokanon of Fourteen Titles*, the commentaries of John Zonaras and Theodorus

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(58) The *Nomocanon of Fourteen Titles* embodied several major texts including the Apostolic Constitutions, the decisions of ecumenical and local councils, the rules of Basil the Great and other Fathers of the Church, as well as imperial legislation on ecclesiastical affairs. Besides the texts themselves, the work includes a detailed thematic index arranged under fourteen headings or 'titles', which gave it its name. The *Nomocanon of Fourteen Titles* was revised in the eleventh century by Theodore Bestes, who added secular law texts derived from the *Basilika* and other sources. A version of this compilation was translated into Slavic and formed the core of the *Kormčaja kniga*, a law code which became the principal source of law in Russia throughout the middle ages.

(59) See Gallagher (1996).

(60) Zonaras also composed a history of the world (*Epitome historion*) from the creation of the world to 1118. On Zonaras's work consider Stavrakos (2010). And see Magdalino (1983: 329).

Balsamon, the *Ecloga*, the *Eisagoge*, the *Procheiron* and the *Basilica*. The work also contains materials from many private collections produced between the ninth and fourteenth centuries. It is divided into twenty-four sections subdivided into chapters, with each chapter dealing with a particular legal topic and containing first the rules of canon law followed by those of civil law. The *Syntagma* gained wide circulation among both canon and secular lawyers, as its rich manuscript tradition indicates. It was also the object of further reworking as well as a direct source of later compilations in the post-Byzantine era.[61] Harmenopoulos, the author of the above-mentioned *Hexabiblos*, also composed a work on canon law, titled *Epitome of the Holy and Divine Canons*, containing a selection of canons with commentaries, a confession of faith and a treatise on heresies. The work is divided into six sections (corresponding to the six books of the *Hexabiblos*) and is accompanied by *scholia* that were most probably composed (at least in the greater part) by Harmenopoulos himself.[62]

The Influence of Byzantine Law

Byzantine law, whether transplanted in its original form or adjusted to local conditions, exercised a strong influence in the Christian East, especially on those peoples who had inherited from Byzantium their political, ecclesiastical and social structure. Byzantine law, derived largely from the *Ecloga*, was introduced in the Slavic world through the legislative work of the missionaries Methodius and Cyril and through the ninth century *Zakon Sudnyj Ljudem* ('Law for Judging the People'), a

(61) The *Syntagma* was widely used in Serbia, Bulgaria and Russia, where it became an integral part of the basic sources of canon law. For the text see Rhalles & Poties (1852-1859).

(62) For a closer look at this work see Perentidis (2002).

Bulgarian law book corresponding closely to the above-mentioned Byzantine code.[63] In Serbia the reception of Byzantine law commenced with the so-called ‘Nomocanon of St. Sava’ (early thirteenth century), a compilation of ecclesiastical law containing the entire *Procheiron*.[64] The reception culminated with the codification of Tsar Stefan Dusan (*Dušanov zakonik*) in 1349, the greatest achievement of the Serbian legal tradition.[65] This work, which came close to being an all-embracing constitution, was largely an abridgment of the above-mentioned *Syntagma* of Mathaeus Blastares and was widely used in the Serbian Empire (1346-1371) and the succeeding Despotate of Serbia (1402-1459). The Russian *Kormčaja kniga* (Book of the Helmsman), a collection of ecclesiastical canons and civil law dating from the thirteenth century, contains materials from a variety of Byzantine sources, including the *Nomocanon of Fourteen Titles*, the *Ecloga*, the *Procheiron* and the above-mentioned *Zakon Sudnyj Ljudem*. This work provided the constitutional basis for the relationship between the ecclesiastical and secular spheres of authority based on the Byzantine model and served as a primary source of civil law in Russia.[66] Reference may also be made here to the island of Cyprus where Byzantine law remained in force both during the period of the Latin kingdom (1192-1489) and during the rule of Venice (1489-1571). Although the *Constitutio Cypria* or *Bulla Cypria*, a papal bull promulgated by Pope

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(63)　The original version of the *Zakon Sudnyj Ljudem* comprises about thirty chapters dealing primarily with matters of criminal law. All of the existing manuscripts come from Russia, where the work was introduced in the late tenth century and was widely used as part of larger legal collections. See Dewey & Kleimola (1977).

(64)　St. Sava’s law book proved influential far beyond Serbia, becoming the basic constitution of both the Bulgarian and the Russian Church. Furthermore, the rules it contained were applied also to laymen under Church jurisdiction. For a closer view at this work consider Koprivica (2020).

(65)　Consider Angelini (2012).

(66)　For a closer look at the *Kormčaja kniga* see Zuzek (1964).

Alexander IV in 1260, declared the Latin Church to be the official church of Cyprus,[(67)] the ecclesiastical courts of the Greek Orthodox Church continued to apply in disputes between Greeks the so-called Hellenic law, which was essentially a compilation of Byzantine law.

After the fall of the Byzantine Empire in the fifteenth century, Byzantine law remained the law of the orthodox Christians within the Ottoman Empire, who were under the spiritual and political leadership of the patriarchate of Constantinople. In exercising their administrative and judicial functions, the patriarchate and the ecclesiastic authorities under it applied Byzantine law derived from various manuscript sources in their original form or in the form of abridgments and collections composed by the patriarchate for official or unofficial use or, in later times, from printed works produced in the West, such as the *Ius Graeco-romanum* of Johannes Leunclavius (1596) and the *Synodikon* of Guilielmus Beveregius (1672).[(68)] Of much wider use were the various nomocanons of the Ottoman period, which mostly drew, directly or indirectly, on the last two systematic manuals of Byzantine law: the *Hexabiblos* of Harmenopoulos and the *Syntagma* of Blastares.[(69)] Even outside the Ottoman Empire, in countries tracing their cultural origins to Byzantium, the *Hexabiblos* was often used to address gaps in the law, being regarded as the law that was ‘naturally’ in force when no other rule could be found. In Russian Bessarabia

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(67) See Ioannides (2000).

(68) The ecclesiastical jurisdiction of the patriarchate of Constantinople, both in the late Byzantine and Ottoman periods, and its regulatory function in matters of Church interest extended far beyond the boundaries of the Byzantine and Ottoman Empires, to the territories of the East ruled by Venice, to the orthodox Christians of Poland and Ukraine and to the orthodox Christians of the diaspora in the West.

(69) The most widely used work of this kind during the Ottoman age was the *Nomocanon* of Manuel Malaxos (late sixteenth century). Reference may also be made here to the *Staff of the Bishops* of archimandrite James of Ioannina (1645).

this work was officially recognized as the local civil code in the early half of the nineteenth century and would remain in force even after the annexation of Bessarabia to Romania (1918) until Romanian legislation was extended to this region. A Serbian translation of the *Hexabiblos* was also produced for use by the Serb population of the archdiocese of Karlowitz under Austrian rule, as their own native law. In Greece, the *Hexabiblos* was recognized as an official source of law after its liberation in the early nineteenth century and remained in force until a modern civil code was enacted in 1946.

Byzantine legal science and its products in the fields of both secular and canon law were regarded by humanist jurists in the West as integral parts of the Roman legal inheritance and as important sources for its reconstruction. It is thus unsurprising that the editions of the *Corpus Iuris Civilis* from the sixteenth to the nineteenth century included Novels of Byzantine emperors (especially those of Leo VI). It was only with the fragmentation of historical studies and the subsequent adjustment of the Roman law to local legal traditions, especially in Germany after the period of the Reception, that Byzantine law would be marginalized and confined to the fringes of Roman legal history. The general disregard for Byzantium in the Age of the Enlightenment precipitated this outcome. However, since the mid-nineteenth century there has been a renewed interest in the study of Byzantine law as a distinct branch of legal history, even though still outside the general history of Roman law.

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