

The Influence of Byzantine Law in East Central Europe

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ABSTRACT

The first part of the chapter is dedicated to the sources of Byzantine law, that is, secular and ecclesiastical. The most important secular laws are: 1) the Farmer's Law from the 7th or 8th century, concerning the peasantry and the villages; 2) the *Ecloga* (726 or 741) issued by Emperor Leo III and his son Constantine V; 3) *Legislation of the Macedonian dynasty* or the so-called 'Re-cleansing of the Ancient Laws,' including *Epanagoge*, *Procheiron*, *Basilika*, and the *Novels* of Leo VI; and 4) *Hexabiblos* (*Six Books*), which is a private codification compiled by Constantine Harmenopoulos, judge of Thessalonica. The most important ecclesiastical laws are: 1) *Synopsis Canonum*, a summary of abridged canons arranged in alphabetical or chronological order; 2) 'Systematic collections', *Synagoge*, and *Syntagma Canonum*, organized by topic; 3) *Nomokanons*, compilations of secular laws and canons; and 4) Matheas Blastares' *Syntagma* and Constantine Harmenopoulos' *The Epitome of the Holy and Divine Canons*.

The second part of the text treats the reception of Byzantine law in Slavonic countries: 1) the Slavonic *Ecloga* and the oldest preserved Slavonic legal text *Zakon Sudnyj Ljudem* (*Law for Judging the People* or *Court Law for the People*); 2) the Slavonic *Nomokanons* or *Kormchaia kniga*; and 3) the Stefan Dušan's codification, consisting of the Serbian translation of Matheas Blastares' *Syntagma*, Justinian's Law (a short compilation of 33 articles regulating agrarian relations), and Dušan's law code in the narrow sense.

The third part of the chapter refers to the reception of Byzantine law in the Danubian principalities (Wallachia and Moldavia) transmitted through the Serbs and the Bulgars and their processed Slavic legal works received through Byzantine officials and through the church.

The last part of the text is dedicated to the Byzantine public law's ideas in East Central Europe. The most important and common ideas espoused in the work are: 1) the Roman, Byzantine, and Slavonic concepts of law, 2) the idea of Rome and a hierarchical world order, 3) the emperor's task, and 4) concordance or 'symphonia' between the church and the state.

KEYWORDS

Farmer's Law, *Ecloga*, *Epanagoge*, *Procheiron*, *Basilika*, *Novels* of Leo VI, *Hexabiblos*, 'Systematic collections', *Nomokanons*, *Syntagma*, *Zakon Sudnyj Ljudem*, *Kormchaia kniga*, Stefan Dušan's codification, Danubian principalities, concept of law, hierarchical world order, the emperor's task, symphonia.

1. Sources of Byzantine law

Byzantium inherited its main political, cultural, and social institutions from Rome. Hence, the Byzantines called themselves 'Romans' (οι Ῥωμαῖοι), their empire Βασιλεία Ῥωμαίων (*Imperium Romanorum*), and their princes 'emperors of the Romans' (Βασιλεὺς

ŠarkiĆ, S. (2022) 'The Influence of Byzantine Law in East Central Europe', in SÁRY, P. (ed.) *Lectures on East Central European Legal History*. Miskolc: Central European Academic Publishing. pp. 41–63. https://doi.org/10.54171/2022.ps.loecelh_3

τῶν Ῥωμαίων) until the fall of their empire in 1453. Similarly, Roman law constituted the basis for the Byzantine legal system. For many centuries, the great Justinian codification was the cornerstone of Byzantine legislation. Of course, over the years, these Roman codes were adjusted to suit the current circumstances and then replaced by new codifications written in Greek. However, the influence of Roman law persisted, and it is obvious in post-Justinian laws. The most important Byzantine laws, secular and ecclesiastical, are:¹

1.1. Secular laws

1) The Farmer's Law (Greek Νόμος Γεωργικός, Latin *Leges Rusticae*) legal code promulgated either at the end of the 7th or at the beginning of the 8th century, probably during the reign of Emperor Justinian II (685–695 and 705–711), focused largely on matters concerning the peasantry and the villages in which they lived. It protected farmers' property and established penalties for villagers' misdemeanors. It was designed for a growing class of free peasantry, supplemented by the influx of Slavic peoples into the empire, that became a dominant social class in later centuries. Its provisions concerned property damage, various kinds of theft, and taxation. The village was regarded as a fiscal unit, and payment of communal tax was required of all members of the community. Delinquent farmers' land and crops could be appropriated by anyone willing to pay the tax.

The significance of the Farmer's Law lay in its axiom that the landowner was also a taxpayer. Its influence was widespread, having an impact on legal development among the south and east Slavs, particularly in Serbia.²

Around that time, two other laws were promulgated: a) the Soldier's Law (Greek Νόμος Στρατιωτικός, Latin *Leges militares*), a collection of approximately 55 regulations, mainly penal and disciplinary, for soldiers,³ and b) the Rhodian Sea Law (Νόμος Ῥοδίων ναυτικός), a three-part collection of regulations involving maritime law.⁴

2) *Ecloga* (from Greek Ἐκλογή τῶν νόμων, literally 'Selection of the Laws'), an 18-chapter compilation of Byzantine law, issued in 726, or more likely 741, by Emperor Leo III Isaurian in his name and that of his son Constantine V. Leo issued the law code in Greek instead of the traditional Latin so that more people could understand it and judges could use it as a practical legal manual. Though the *Ecloga* continued to be based on Roman law (editors took the provisions from Justinian's *Institutions*, *Digest*, *Codex*, and *Novels*), Leo revised it with a 'correction toward greater humanity' (ἐπιδιόρθωσις εἰς τὸ φιλανθρωπότερον) and on the basis of Christian principles.

1 On the sources of Byzantine law see Pieler, 1978, pp. 341–480; Van der Wal and Lokin, 1985; Troianos, 2011; id., 2015; id., 2017.

2 Best edition of the text with English translation: Ashburner, 1910, pp. 85–108; id., 1912, pp. 68–95.

3 Editions: Ashburner, 1926, pp. 80–109; Korzenszky, 1931, pp. 155–163.

4 Editions: Ashburner, 1909 (repr. 1976); Letsioos, 1996.

In civil law, the rights of women and children were enhanced at the expense of those of the father, whose power was sharply curtailed. In criminal law, the application of capital punishment was restricted to cases involving treason, desertation from the military, and certain types of homicide, heresy, and slander. The code eliminated the death penalty for many crimes previously considered capital offenses, often substituting mutilation. Equal punishment was prescribed for individuals of all social classes. In an attempt to eliminate bribery and favoritism, the code provided salaries for officials and judicial service and forbade the acceptance of gifts.

Although the work of an iconoclast emperor, the *Ecloga* had a strong influence on later Byzantine legislation as well as on the development of law in the Slavic countries beyond the Byzantine frontiers.⁵

3) The 'Recleansing of the Ancient Laws' (*Ανακάθαρσις τῶν παλαιῶν νόμων*) under Basil I and Leo VI. The first two emperors of the Macedonian dynasty, Basil I (867–886) and his son Leo VI (886–912), chose to undertake a legal reform called the 'Recleansing of Ancient Laws.' During their reign, much codified law was issued, and this flurry of legislative activity was the most extensive of any emperor after Justinian. The most important codes were:

a) *Epanagoge* (Greek Ἐπαναγωγή, 'Return to the Point'), more correctly *Eisagoge* (Greek Ἐισαγωγή τοῦ νόμου, 'Introduction to the Law'), a law book promulgated in 886. Begun under Basil I, it was completed under his son and successor, Leo VI the Wise. As its name suggests, it was meant to be an introduction to the legislation of the *Basilika*, which was published later during Leo's reign.

The work, organized in 40 volumes, covers almost all spheres of law, and was explicitly meant to replace the earlier *Ecloga*, dating to the iconoclast Isaurian dynasty. Nevertheless, it draws some inspiration from the *Ecloga*. Its main source, however, is Justinian I's *Corpus Iuris Civilis*, albeit often heavily altered. Patriarch Photius (Φώτιος) of Constantinople worked on its compilation and wrote the preface as well as two sections addressing the position and power of the Byzantine emperor and patriarch; notably, the powers of the patriarch appear broader than in Justinian's legislation, both with regard to the emperor and toward the other patriarchates of the pentarchy (Πενταρχία).⁶

The *Epanagoge* was withdrawn from official use soon after its publication and replaced by the *Procheiron* (which was previously considered to be an antecessor of the *Epanagoge*) 20 years later, but it served as the basis for several private law books, such as the *Epanagoge Aucta* and the *Syntagma Canonum*. Through its translation into Slavonic, the *Epanagoge* found its way into Russian canon law, including the 13th-century

5 Best edition: Burgmann, 1983.

6 From Greek πέντε = five, and ἄρχειν = to rule. Pentarchy is a model of Church organization, formulated in the laws of Emperor Justinian I. In this model, the Christian Church is governed by Patriarchs of the five major episcopal sees of the Roman Empire: Rome, Constantinople, Alexandria, Antioch and Jerusalem.

Kormchaya Kniga. Its provisions on the patriarch's and church's positions vis-a-vis the temporal ruler played a great role in the controversy around Patriarch Nikon in the 17th century.⁷

b) *Procheiron* (Greek Πρόχειρος Νόμος, 'Handbook', or 'The Law Ready at Hand'). According to the traditional dating schema, the first text published as part of the Macedonian codification efforts was the *Procheiron*, which used to be dated to 870–879 (more precisely, 872) but must be regarded as a revision of the *Epanagoge* ordered by Leo VI in 907. Divided into 40 titles, *Procheiron* was the codification of certain fundamental statutes of Byzantine civil, criminal, and partly judicial and church law. As its main source, *Procheiron* uses Justinian's *Institutions*, but the Greek translations and comments rather than the original Latin text.

Regarding *Procheiron*, the intention was the same as the purpose of *Ecloga*: to create a compulsory guide for judges. However, the *Procheiron* presents itself as a connection to earlier times, before the iconoclastic period, lending the Macedonian dynasty a sense of religious legitimacy. Although the *Procheiron* invalidates parts of *Ecloga* and restores Justinian's Law, many provisions were taken directly from *Ecloga*.

In addition to the Farmer's Law and *Ecloga*, *Procheiron* had a strong influence on law in the Slavic countries, particularly in Serbia.⁸

c) *Basilika* (Greek τὰ Βασιλικά, 'Imperial Laws') was a collection of laws completed c. 892 in Constantinople by order of Emperor Leo VI. This was a continuation of the efforts of his father, Basil I, to simplify and adapt (chiefly regarding the change in language from Latin to Greek) Emperor Justinian's *Corpus Iuris Civilis*. The commission in charge of the compilation was headed by *protospatharios* (πρωτοσπαθάριος)⁹ Symbarios (Συμβάτιος).

The 60 books comprising the *Basilika* have had a profound impact on the Byzantine empire's scholarship because they preserved many legal documents. Within the 60 books, in addition to the preservation of Justinian's *Codex*, new legal customs that evolved over the centuries were also included. It also included legal works initiated by Basil I, including *Procheiron* and *Epanagoge*. However, the *Basilika* still followed the tradition of the *Corpus Iuris Civilis*, beginning with ecclesiastical law, sources of law, procedure, private law, administrative law, and criminal law.

It greatly differed in its use of commentaries (*scholia*, σχόλια, singular σχόλιον), which were pieces of juristic works from the 6th and 7th centuries as well as the 12th and 13th centuries. Previously, Justinian I had outlawed commentary on his set of laws, making the *scholia* on the *Basilika* unique.

7 Edition: Zepos and Zepos, 1931 (repr. 1962), vol. II, pp. 229–368.

8 Edition: Zepos and Zepos, 1931 (1962), vol. II, pp. 107–227.

9 Protospatharios was one of the highest court dignities in the middle Byzantine period (8th–12th century). The designation was awarded to senior generals and provincial governors, as well as to foreign princes.

The *Basilika*'s influence was limited to the eastern empire. This included having a lasting impact on Greece's modern law code. Following the Greek War of Independence against Turkey in 1821, the *Basilika* was adopted until the introduction of the present Civil Code of Greece (which came into a force on February 23, 1946).¹⁰

d) *Novels* of Leo VI (Greek *νεαρά*, Latin *novella*, literally a 'new [laws]', the term for an imperial edict) promulgated in a collection (113 novels) most likely on Christmas Day 888 AD. Addressed for the most part to Leo's trusted advisor and father-in-law Stylianos Zaoutzes (Στυλιανὸς Ζαούτζης), Leo VI's *Novels* are, in fact, a heterogeneous collection of his legislation composed at different points during his reign.

The 'new laws' were codes that dealt with current problems and issues, such as the prohibition of fourth marriages. Novels addressed canon as well as secular law. Most importantly, from a historical perspective, they finally did away with much of the remaining legal and constitutional architecture that the Byzantine empire had inherited from the Roman empire, and even from the days of the Roman Republic. Obsolete institutions such as the Curiae, the Roman Senate, and even the Consulate, were finally removed, from a legal perspective, even though they still continued in a lesser, decorative form.¹¹

4) *Hexabiblos* (Πρόχειρος Νόμος or Ἐξάβιβλος, 'Handbook' or 'Six Books'), a private codification of Byzantine law compiled in 1345 by Constantine Harmenopoulos (Κωνσταντῖνος Ἀρμενόπουλος, 1320–c. 1385), a Byzantine jurist from Greece who held the post of 'universal judge'¹² of Thessalonica. The *Hexabiblos* was the last important monument of Byzantine law. It drew on previous codifications, such as the *Digest* and *Nomokanons*. It was divided into six books, each of which dealt with a given topic: legal procedure, real law, liability, inheritance, laws relating to marriage, and criminal law.

Harmenopoulos' *Hexabiblos* was widely used in Greece during the period of Turkish supremacy (since Greeks retained special jurisdiction) and after the country's liberation. The codification was also widely used in Bessarabia.¹³

1.2. Ecclesiastical (canon) law collections

It is typical to organize the canonical material underlying Byzantine canon law into four groups: 1) canons of the apostles; 2) canons of ecumenical synods; 3) canons of local synods; and 4) canons of the fathers. This organization was first found in Canon 1 of the Seventh Ecumenical Council (787), and it has generally been followed in the

10 Modern edition: Scheltema, Van der Wal and Holwerda, 1953–1988.

11 Editions: Noailles and Dain, 1944; Troianos, 2007.

12 The 'universal judges of the Romans' (οἱ κριταὶ καθολικοὶ τῶν Ῥωμαίων) were a supreme court in Constantinople, Thessalonica, Serres, and some other parts of the state during the late Byzantine Empire.

13 Edition: Heimbach, 1851 (repr. 1969).

Orthodox Church. There are three types of collections revealing the material upon which Byzantine canon law was founded.¹⁴ The most important are:

1) *Synopsis Canonum* (Greek Σύνοψις κανόνων) was a brief summary of the major points pertaining to a subject, i.e., abridged canons arranged in alphabetical or chronological order. The first synopsis was composed at the beginning of the 6th century by Stephen, Bishop of Ephesus (Στέφανος ο Εφέσιος). The collection contains, in chronological order, exposed canons of Saint Apostles, canons of the first three ecumenical councils, and those from the first five local synods.¹⁵ As *Synopsis* was not always clear and understandable, Alexios Aristenos (Ἀλέξιος Ἀριστηνός), a 12th-century canonist who held a senior ecclesiastical and secular position during the reigns of John II Comnenus (118–1143) and Manuel I Comnenus (1143–1180), wrote interpretations and additions to Stephen of Ephesus' canonical collection.¹⁶

A later revision of *Synopsis* is attributed to 10th-century scholar Symeon (Συμεών), who held the high official posts of *magister* (μάγιστρος) and *logothetes* (λογοθέτης) and is usually identified with Symeon the Metaphrast (Μεταφραστής, 'Compiler'), author of *Menologion* (Μηνολόγιον), a collection of saints' lives, and *Chronicle* (Χρονογραφία). In this form, *Synopsis* contains epitomes of the following canons in the following order: of the Apostles, Nicaea (Iznik), Constantinople (381), Ephesus, Chalcedon (modern Kadiköy, a district of Istanbul in Asia Minor), Ankyra (Ankara), Neokesareia (Niksar in Turkey), Serdica (Sofia), Gangra (Çankiri in Turkey), Antioch, Laodikeia, Carthage, Saint Basil, and the Quinisext Synod. It is obvious that the above arrangement was based on criteria of importance: the canons of the Apostles come first, followed by those of the ecumenical councils (Nicaea, Constantinople, Ephesus, and Chalcedon), those of the local councils in chronological order (Ankyra, Neokesareia, Serdica, Gangra, Antioch, Laodikeia, and Carthage), and then those of the Church Fathers (Basil the Great). The canons of the Quinisext Synod are found at the end because they were appended after the material had already been arranged. Such an order was accepted by the famous 12th-century canonists John Zonaras (Ἰωάννης Ζωναράς) and Theodore Balsamom (Θεόδωρος Βαλσαμῶν), and it is applicable even today.¹⁷

2) 'Systematic collections': *Synagoge* (Greek Συναγωγή) and *Syntagma Canonum* (Greek Σύνταγμα κανόνων).¹⁸ *Corpus Canonum* was not systematic and was not arranged by topic. In all of its versions, the canons were arranged according to councils, and these, in turn, had a chronological order, with the exception of the Council of Nicaea. The

14 On Byzantine canon law, see Troianos, 2012, pp. 115–169, 170–214.

15 Editions: Krasnožen, 1894, pp. 207–221; id., 1910, pp. 225–246; id., 1911, pp. III–XVIII.

16 Latest edition: Papagianni et al., 2019.

17 Editions of the text: Voel and Justel, 1661, vol. II, pp. 710–714; Migne, 1857–1866, vol. 114, col. 236–292.

18 *Syntagma* is a term used in patristic literature to designate any treatise or book, especially those that were scriptural, exegetic, or polemical in content. The term was extended to characterize some collections of canon law.

fathers) were gathered in a special collection. Constantinople must be regarded as the place where the *Syntagma* was edited.

3) *Nomokanons* (Greek νομοκανόνες) are compilations of secular laws (νόμοι, singular = νόμος) and ecclesiastical regulations (κανόνες, canons). The most important Byzantine nomokanons are *The Nomokanon of 50 Titles* and *The Nomokanon of 14 Titles*.

The Nomokanon of 50 Titles was put together by an unknown compiler, probably in Antioch, during the reign of Justin II (565–578) or Maurice (582–602).²¹ John Scholasticus' *The Synagoge of 50 Titles* constituted a basis for this work. After every title under the heading τὰ συνάδοντα νόμιμα, 'The Legal Precepts,' Justinian provisions (mostly from *Novels*) were added to this work, taken primarily from *Collectio LXXXVII Capitulorum*. This collection is also attributed to John Scholasticus, and it is one of the collections of ecclesiastical law of civil origin.²²

The original *Nomokanon of 14 Titles*, which was composed between the years 612 and 629 and is among the most important sources of the law of the Eastern Church, was the result of the incorporation into *The Syntagma of Canons of 14 Titles* of the provisions from Justinian legislation that dealt with the church.²³ These provisions were essentially drawn from *Collectio tripartita* or *Collectio constitutionum ecclesiasticarum*. It was a supplement, in the form of an appendix, to *The Syntagma of Canons of 14 Titles*, containing texts that were originally civil laws pertaining to the church. The name, *Collectio tripartita* ('Tripartite Collection'), reflects the fact it is made up of three parts. The first part includes provisions from Book I of Justinian's *Codex* (Titles 1-13), which came from an interpretive revision also containing subtitles (παράτιτλα). The second part contains provisions relating to *ius sacrum* from the *Digest* and *Institutes*. The third part contains all Justinian's and Justin II's novellas with ecclesiastical content.²⁴

For centuries, it was believed that this nomokanon was the work of Patriarch Photios, who died in 893. When it was realized that it was originally composed in the 7th century, this opinion collapsed. This is why the characterization 'Nomokanon of Pseudo-Photios' is sometimes used in bibliographies.

4) 14th-century collections. The most important of the collections from the late Byzantine period are the *Syntagma kata Stoicheion* (Σύνταγμα κατὰ στοιχείον) or *Alphabetical Syntagma* (nomokanonic miscellany put together in 24 titles, where each title has a sign of one of the letters from the Greek alphabet) by Matheas Blastares, a monk from Thessalonica, and Judge Constantine Harmenopoulos' *The Epitome of Canons* (Επιτομή κανόνων).

Matheas Blastares' collection was created in 1335. From the ecclesiastical side, he used *The Nomokanon of 14 Titles* and the commentaries of John Zonaras and Theodore

21 Edition: Voel and Justel, 1611, vol. II, pp. 603–660.

22 Editions: Heimbach, 1838–1840 (repr. 1969), vol. II, pp. 202–237; Pitra, 1864–1868 (repr. 1963), vol. II, pp. 385–405.

23 Best edition: Pitra, 1864–1868 (repr. 1963), vol. II, pp. 445–640.

24 Modern critical edition: Van der Wal and Stolte, 1994.

Balsamon. From the civil side, he used *Ecloga*, *Epanagoge/Eisagoge*, *Procheiron*, The *Novels* of Leo VI, and *Basilika*.²⁵ Thanks to its rich content, coupled with the practical, useful manner in which its material is arranged, the *Syntagma* enjoyed wide circulation, as its rich manuscript tradition indicates. Shortly after its composition, it was translated into Old Serbian. It was also translated into Bulgarian in the 16th century and into Russian in the 17th century.

Alongside the *Hexabiblos*, which contained only civil law, Constantine Harmenopoulos created a second collection titled *The Epitome of the Holy and Divine Canons* (Επιτομή τῶν ιερῶν καὶ θείων κανόνων) in 1346. *Epitome* is divided into six sections, which are further defined by inscriptions instead of titles. The six sections are: 1) Concerning bishops; 2) Concerning presbyters, deacons, and subdeacons; 3) Concerning the clergy; 4) Concerning monks and monasteries; 5) Concerning the laity, and 6) Concerning women.²⁶

2. Reception of Byzantine law in Slavonic countries

2.1. Slavonic *Ecloga* and *Zakon Sudnyj Ljudem*

In the Slavonic world, law of Byzantine origin, mostly from *Ecloga*, had already been introduced through legislative work associated with Cyril and Methodius' mission and by the *Zakon Sudnyj Ljudem*.

A Slavonic translation of *Ecloga* was preserved in a Russian manuscript from the 14th century. The translation was not particularly good, and it is impossible to understand a number of its provisions. The translation's place of origin and date are still unknown.²⁷

The oldest preserved Slavonic legal text is the *Zakon Sudnyj Ljudem* ('Law for Judging the People' or 'Court Law for the People'). Its source was the *Ecloga*, and it was written in Old Church Slavonic in the late 9th or early 10th century. The oldest (short) version contains 33 articles primarily on penal law adapted from the *Ecloga* (Chapter XVIII, entitled Ποινάλιος τῶν ἐγκληματικῶν κεφαλαίων, 'Penalties and Crimes'). Other provisions were taken from Chapters VIII (Περὶ ἐλευθεριῶν καὶ ἀναδουλώσεων, 'On Manumission and Enslavement'), XIV (Περὶ μαρτύρων πιστῶν καὶ ἀπροσδέκτων, 'On Believable and Unreliable Witnesses'), and XVIII (Περὶ διαμερισμοῦ σκύλων, 'On Distribution of Booty'). Parts of this version (24 arts.) are verbatim translations of the source, while the remaining chapters are adaptations with some changes.

Later Russian annals and the legal collection compiled at the end of 13th or the beginning of the 14th century called *Merilo Pravednoye* ('Just Measure' or 'Measure of

25 Edition: Ralles and Potles, 1859 (repr. 1966), vols. I–VI. Matheas Blastares' *Syntagma* (Σύνταγμα τῶν θείων καὶ ιερῶν κανόνων) is Volume VI of this edition of all sources of the canon law of the Eastern Church.

26 Editions: Leunclavius, 1596, vol. I, pp. 1–71; Perentidis 1980–1981.

27 Edition: Šćapov and Burgmann, 2011.

Righteousness')²⁸ contain a widespread edition of the *Zakon Sudnyj Ljudem*, consisting of 77 or 83 articles (depending on the numeration) under the name *Sudebnik cara Konstantina* (Судебник царя Константина, 'Code of Laws of Tsar Constantine,' that is, Constantine the Great). The text is of Russian origin.

The place of origin of the *Zakon Sudnyj Ljudem* is a controversial topic. The oldest theory is Great Moravian provenance and a date around 870–880, with authorship by the Slavonic apostle Methodius. The 'Bulgarian' theory places the origin of the text in 866–868 and relates it to Prince Boris' (852–889) need for Christian legislation. However, some Bulgarian scholars believe that the law was promulgated immediately after the Council of Preslav (893), when Bulgarian Prince Vladimir (889–893), mainly remembered for his attempt to eliminate Christianity in Bulgaria and the re-institution of paganism, was dethroned and replaced by his younger brother Simeon (893–927). On the basis of Frankish and Bavarian legal patterns in the text, some Slovenian scholars have suggested the late 9th century principality of Lower Pannonia (the Balaton principality) as a likely place of origin, as it was part of the state-building process initiated by Prince Kocelj (861–876). Finally, the 'Macedonian' theory considers the Byzantine region of Strymon (Στρυμών), in actual North Macedonia and Bulgaria, to be the place of origin, dating it around 830. Despite its origins, all surviving manuscripts come from Russia. The text itself seems to have reached Russia before the end of the 10th century.²⁹

2.2. Slavonic nomokanon or Kormchaia Kniga

The first Slavonic nomokanon was written by Methodius (c. 868), upon the initiative of Moravian Prince Rastislav (846–870), in the era of the Slavs' conversion to Christianity. Methodius translated John Scholasticus' *Synagoge of 50 Titles* from Greek into Old Church Slavonic and added some secular law provisions, mostly taken from the *Ecloga*. Methodius' so-called nomokanon was preserved in Russian manuscripts from the 13th to the 17th century.³⁰ Slavonic nomokanons in Russian were known as *Kormchaia Kniga* (Russian Кормчая книга, lit. The Pilot's Book from Church Slavonic and Greek κυβερνήτης = helmsman, pilot of ship) or *Pidalion* (Russian Пидалион, from Greek Πιδάλιον = stern, oar, helm, handle of helm, rudder), which were guidebooks for the management of the church and for the church court in Orthodox Slavic countries and are a transmission of several old texts.

The first Byzantine legal collection that penetrated Serbia, around 1219, was the *Nomokanon* or *Zakonopravilo* of Saint Sabba (Serbian Sava), later called *Krmčija*. On his way back from Nicaea, where the Serbian Church got its autocephalous, Sabba stopped in Thessalonica, where he probably composed the famous nomokanon.

28 The name is given in modern literature. It was taken from the first words of this text: "This book is just measure, true weighing..." *Merilo pravednoye* was to serve both as a moral precept and a legal guidebook for judges and as a transmission of several old texts. Edition: Tichomirov, 1961.

29 Editions: Tichomirov and Milov, 1961; Vašica, 1971, vol. IV, pp. 178–198; Dewey and Kleimola, 1977 (contains an English translation).

30 Edition: Vašica, vol. IV, pp. 205–263.

The ecclesiastical rules of the *Zakonopravilo* were taken from two Byzantine canonical collections, with canonists' glosses: Stephen of Ephesos' *Synopsis*, with interpretations from Alexios Aristenos, and the *Syntagma of XIV Titles*, with interpretations from John Zonaras. Among the Roman (Byzantine) laws (*νόμοι*), Saint Sabba's nomokanon contains the whole *Procheiron*, the *Zakon gradskii* in Serbian translation, and a translation of *Collectio octoginta septem capitulorum*.

Saint Sabba's nomokanon has no prototype in any Byzantine or Slavonic codex, and it retained its place within the Serbian legal system, having been neither challenged nor abrogated.³¹ As early as 1226, a copy was sent to Bulgaria, where it was accepted as the official collection. From Bulgaria, Saint Sabba's nomokanon arrived in Russia. The Russian Metropolitan of Kiev Kirill II proposed it as a guideline for the management of the Russian Church in 1274 at the Church Council in Vladimir.

In the late 15th and early 16th centuries, the *Kormchiye Books* were revised due to the large number of variant readings. In 1650, the *Joseph Kormchaia* (Иосифовская Кормчая by Patriarch Joseph), which was based on Saint Sabba's *Zakonopravilo*, was prepared for printing. After some amendments in 1653, the *Nikon Kormchaia* (Никоновская Кормчая by Patriarch Nikon) became the first printed version of any Slavonic nomokanon. It was disseminated in all Orthodox Slavonic countries, where it became an official source of canon law and displaced all other *Kormchaia* manuscripts.

The impressed *Kormchaia* is divided into four parts: the first part contains an article about church schism as well as on the autocephalous Russian, Bulgarian, and Serbian church, an article on the conversion of Russians to Christianity and on the foundation of the Moscovite Patriarchate, a part concerning the importance of Matheas Blastares' *Syntagma*, a description of Ecumenical and local synods, and two prefaces to the *Nomokanon of 14 Titles*.

The second part contains 41 chapters from which 36 chapters are a translation of Stephen of Ephesos' *Synopsis*, with Alexios Aristenos' interpretations.

The most important sources for the third part are *Collectio octoginta septem capitulorum*, part of the *Nomokanon of 14 Titles*, and *Ecloga* and *Procheiron* in their entirety.

The fourth part contains the *Donation of Constantine* (*Donatio Constantini*), a forged imperial decree (diplom), probably composed in the 8th century, by which Roman Emperor Constantine the Great supposedly transferred authority over Rome and the western part of the Roman empire to Pope Silvester.

2.3. Stefan Dušan's codification

The reception of Byzantine law in any Slavonic country culminated with the greatest work in the Serbian legal tradition, Emperor (Tsar) Stefan Dušan's (1331–1355) codification. This was realized in 1346, when King Dušan proclaimed himself to be the true-believing tsar and autocrat of the Serbs and the Greeks. Educated as a young man

31 Petrović, 1991. It is really strange that up to the present, there is no critical edition of *Zakonopravilo*.

in Constantinople, Dušan understood very well that if his state proclaimed itself to be an empire, it should have, inter alia, its own independent legislation. Accordingly, he began preparations for his own law code immediately after the establishment of the empire, following the examples of his models, the great Byzantine emperors and legislators Justinian I, Basil I, and Leo VI. In a 1346 charter, in which he announced his legislative program, he said that the emperor's task was to make the laws that one should have. These laws are undoubtedly similar to those of the Byzantine emperors, that is, general legislation for the entire state territory. Under the social and political circumstances, the Serbian tsar had to accept existing Byzantine law, though it was modified in accordance with Serbian custom. A completely independent codification of Serbian law, without any Byzantine law, could not be produced, and therefore, Serbian lawyers created a special *Codex Tripartitus*, codifying both Serbian and Byzantine law. In the old manuscripts, Dušan's Code is always accompanied by two compilations of Byzantine law: Matheas Blastares' abbreviated (*Epitome*, Ἐπιτομή) *Syntagma* and Justinian's Law. Dušan's law code, in the narrow sense, is the third part in a larger Serbo-Byzantine codification.

Matheas Blastares' *Syntagma* came to be known in Serbia in two translations, a full and an abridged one.³² The compilers of Dušan's codification radically abridged the earlier translation of the entire *Syntagma* from the original 303 chapters to 94. They had two reasons for abbreviating the earlier text. The first was entirely ideological, as Matheas Blastares' *Syntagma* expresses the Byzantine empire's political hegemony on ecclesiastical as well as constitutional terms. Accepting Theodore Balsamon's commentaries, Matheas Blastares reflects the Byzantine emperor's omnipotence through his spiritual and political *dominium*. He actually restricts the independence of the autocephalous churches, whilst emphasizing Byzantine hegemony over the Slavic states that were, at the time, threatening Byzantine interests in the Balkans. The independence of the Bulgarian and Serbian churches was denied (although both were autocephalous), as was other nations' right to proclaim themselves empires. Following the appearance of the full translation in 1347–1348, work on the abbreviated *Syntagma* began. It should be noted that there is no Greek original of the abbreviated version, in which all the chapters referring to Byzantium's hegemony are omitted.

The second reason for undertaking the abbreviation was more practical. The abridged *Syntagma*, as a part of Dušan's Code, was designed for use in ordinary courts. For this reason, most of the ecclesiastical rules were omitted, and only those with secular application were retained.

Justinian's Law, a short compilation of 33 articles regulating agrarian relations, formed the second part of this *Codex Tripartitus*. The majority of these articles were taken from the famous Farmer's Law, which had been completely translated into the Old Serbian language. Further articles were culled from *Ecloga*, *Procheiron*, and

32 Novaković, 1907.

Basilika. This collection also does not exist in a Greek version and so represents an original work produced by Serbian lawyers.³³

At the end of the 16th or at the beginning of the 17th century, a widespread edition of Justinian's Law, consisting of 87 articles, was composed (probably in Bulgaria), and it is known under the name Sudatz ('Court Law').³⁴

Dušan's law code, in the narrow sense, which is the third and the most important part of the codification, was issued at councils held in Skoplje (Ckonje) on 21 May 1349 (the first 135 arts.) and in Serres (Σέρρες) 5 years later (Arts. 136–201). Although Dušan's law code represents an original work produced by Serbian legislation, many of its provisions were undertaken based on Byzantine law, especially the *Basilika* (around 60 arts.).³⁵

3. Reception of Byzantine law in the Danubian principalities

The Byzantine influence on the institutions and law of the Danubian principalities (Wallachia and Moldavia) was very strong, and it was initially transmitted, along with other elements of Byzantine culture, through three channels of communication: through the Serbs and the Bulgars and their processed Slavic legal works, through Byzantine officials and economic factors, and through the church.

Byzantine legal texts were in use in the Danubian principalities as early as the foundation of their states. In particular, extracts from the Serbian version of the *Procheiros Nomos* (*Zakon gradski*) were imported into the country in the mid-14th century. This text spread widely in Wallachia and Moldavia until the end of the 16th century. The same occurred with the Serbian compilation of Justinian's Law. The Romanian translation of the text, entitled *Cartea judecătii împăratului Constantin Justinian* ('Law Court of Emperors Constantine and Justinian') was preserved in a manuscript from the 15th century. Though certain clauses of the Farmer's Law were used in Wallachia since the beginning of the 15th century, the full text in Romanian translation was published in 1646 as a part of the Moldavian law book, compiled upon the order of Voevod ('Duke') Vasile Lupu (*Pravilele lui Vasile Lupul voevod*). Matheas Blastares' *Syntagma* was known in the Danubian principalities as early as the 15th century, either in its original form in Greek or through Slavic translations and in the Serbian *Epitome*. Two copies of the Serbian *Syntagma* were prepared in 1461 and 1495 for the Wallachian Princes Ioann Vladislav and Ioann Stefan. In addition, in Moldavia, upon the command and with the support of Prince Stefan the Great, the *Syntagma* was published three consecutive times in 20 years – in 1472, 1474, and 1495 – which indicates its persistent use and broad acceptance.

33 Marković, 2007.

34 Edition: Andreev and Cront, 1971.

35 Editions: Novaković, 1898 (repr. 2004); Radojčić, 1960; Bubalo, 2010. The Serbian Academy for Science and Art has edited all manuscripts of *Dušan's Law Code* in four volumes: Begović, 1975; id., 1981; Pešikan, Grickat-Radulović and Jovičić, 1997, Čavoški and Bubalo, 2015.

Apart from these collections, the influence of Byzantine law, adjusted to suit local administrative and social needs, is generally apparent in Romanian rulers' political practice, in state ideology, in the institutions, and mostly in the structure of the church. In the legal collections written in the Romanian language and composed in the epoch spanning the 17th to 19th centuries, the expression 'imperial laws' denoted extracts from Byzantine legal miscellanies, such as the *Basilika* and *Hexabiblos*. The influence of Byzantine law was maintained until the 19th century. In Moldavia, for example, until 1817, *Hexabiblos*, in its original Greek form, was the official law code. Some writers have claimed that the *Basilika* was the main source for the Moldavian Civil Code (*Codex Callimachus*), promulgated in 1817 by Prince Scarlat Callimachi. However, it is more probable that the code was composed according to the model of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*).³⁶

4. Byzantine public law ideas in East Central Europe

Byzantine law and the Byzantine empire's concept of law had a great effect on the formation of law in and the ideology of the mediaeval Balkan states and Russia, and at the same time, it constituted the basic foundation of their political organization. We shall expose some of the most important and common ideas that were undertaken from Byzantine public law.

4.1. Concept of law

1) *Roman and Byzantine concepts.* Although the Byzantines based their entire legal and political tradition on Roman law, their concept of law (in the sense of *ius*) was essentially different from that held by the Romans. In fact, the Byzantines had no general concept of law. The conception of *ius* as a body of legal rules forming the law (*droit, diritto, derecho, Recht*), inherited from the classical Roman tradition, had already been rejected in Justinian's time. Justinianic professors translate the term *ius* into the Greek *δικαιον (dikaion)*, but this translation has no practical significance. When a Byzantine lawyer says or writes *νόμος και δικαιον (nomos kai dikaion)*, he means law (*lex*) and justice, not statute (*lex*) and law (*ius*). The most important and central legal concept is that of *nomos*, which means law in the sense of *lex*, behind which the imperial legislator (*νομοθέτης*) is always present.

It is obvious from the way in which they translate their predecessors' texts that Byzantine lawyers were not acquainted with the general ideas of law. Take for example, Ulpian's thought that law (*ius*) was derived from justice, since law (*ius*) is the art of good and equality (*ius est autem a iustitia appellatum; nam ut eleganter Celsus*

36 On the reception of Byzantine law in the Danubian principalities, see Georgesco, 1959, pp. 373–391. On the influence of Byzantine law on the East European nations, see Solovjev, 1955, pp. 599–650; German version: id., 1959, pp. 432–479.

definit, ius est ars boni et aequi).³⁷ The editors of *Basilika* translated this as follows: ὁ νόμος ἀπὸ τῆς δικαιοσύνης ὠνόμασται; ἔστι γὰρ νόμος τέχνη τοῦ καλοῦ καὶ ἴσου.³⁸ Thus, *ius* is replaced by *nomos* (*lex*), with the result that Ulpian's play on *ius* – *iustitia* is lost (The text of *Basilika* says *nomos* – *dikaiozenes*). In Byzantium, the principle of *nomos*, which denotes both the Roman terms *ius* and *lex*, always took precedence over other legal rules. Until the fall of the Byzantine empire, Byzantine lawyers referenced 'the law' (*nomos*), even in the absence of a specific statutory provision. There are also many provisions in legal documents indicating that everything should be done in accordance with statute (*κατὰ νόμον*). These formulations have led modern scholars to try to identify the statutes to which reference is being made, but in all these instances, Byzantine lawyers and notaries had in mind what would be called 'legality' or 'the rule of law' rather than any particular legal provision.

2) *The Slavonic concept.* As in Byzantium, the general concept of law in Slavonic countries was not taken to be the Roman *ius*. Rather, the general legal concept was *zakon*, a term that in modern Slavonic languages indicates the ultimate act of state power; it can be translated as νόμος in Greek, *lex* in Latin, 'act' or 'statute' in English, *la loi* in French, *la legge* in Italian, *la ley* in Spanish, *das Gesetz* in German, *törvény* in Hungarian, and so on in other languages, whilst in the Slavonic languages, it is virtually the same word. The term is of ancient derivation, having first been mentioned in documents from the end of the 9th century. During the following centuries, it can be found in numerous legal sources with one of two basic meanings, firstly as a legal rule in general (*regula iuris*) and secondly as the translation of the Greek *nomos*, a law-making act performed by the Byzantine emperor, meaning either *ius* or *lex*. In its first meaning, it occurs in legal documents of Slavonic origin, whereas in its second, it can be found in Byzantine legal compilations translated and adapted for mediaeval Slavonic states. For example, the Serbian translation of Matheas Blastares' *Syntagma* contains Chapter H under the title 'On the Law,' with a Roman lawyer's definitions of 'law' translated from Byzantine legal compilations rather than from the Latin original.

4.2. The idea of Rome and a hierarchical world order

During the Middle Ages, the idea of Rome as the center of a universal and ecumenical empire as well as the whole Christian Church was present in all European nations. Naturally, the eastern Roman empire (Byzantium) considered itself to be the Roman empire's only successor and, according to that ideology, only their monarchs could carry the title 'emperor of the Romans,' hence the new imperial capital on the European coast of the Bosphorus strait was called the 'New Rome' (Νέα Ρώμη). However, the idea of Rome as an eternal, universal empire became attractive to the German and Slavonic rulers. Charlemagne in the west (800) and Simon of Bulgaria in the east (913) started to call themselves 'emperors.' The Byzantines protested and sought political

37 D. 1,1,1.

38 Bas. 2,1,1.

and legal arguments that would contest the existence of other ‘empires,’ but they eventually had to accept the reality. Hence, the number of emperors increased, and this meant the decay of the one and only universal Christian empire. Nevertheless, this did not lead to the negation or obliteration of the century-old idea.

Byzantine constitutional ideology was expressed as a hierarchical world order. According to this model, not all states were equal; rather, a strict order existed among them, reflecting the importance of each. At the head of this hierarchy was Byzantium, the legitimate holder of the idea of the universal empire; only its monarchs could bear the title of ‘emperor.’ All other mediaeval states had a higher or lower rank, depending upon their political importance, which might vary.³⁹ The heads of these states, pursuing this construct, formed a so-called ‘family of monarchs’ associated in a fictive parentage. At the head of the family, as the *pater familias*, stood the emperor of Byzantium, whilst different degrees of relationships were conferred on other monarchs depending upon their political importance. Charlemagne, for example, became the emperor’s brother (ἀδελφός) and his German, French, and Italian successors were proud of this *adelphos* distinction. English kings were merely the emperor’s ‘friends’ (φίλοι), whilst at the bottom of the scale came those insignificant monarchs who Byzantium considered to be part of the household property rather than a part of the family.⁴⁰

The influence within Serbia of the Byzantine ideology of the hierarchical world order is obvious in the text of a charter presented to the monastery of Hilandar (on the Holy Mountain) in 1198 by the founder of the Serbian dynasty, Stefan Nemanja (1166–1196). It begins as follows:

*In the beginning God created the heavens and the earth and human beings on it, he blessed them and gave them a power over the whole of his creation. And some of them he made emperors, other princes, other lords and provided all of them with herds to be grazed and protected from every harm. So, brothers, the merciful Lord established the Greeks as emperors and the Hungarians as kings and he classed all men and gave the law... According to all his infinite grace and mercy He endowed our ancestors and our forefathers to rule this Serbian land... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan.*⁴¹

Hence, for Stefan Nemanja, only the Greeks (the Byzantines) could be emperors, while the Hungarians could only be kings, but by emphasizing the fact that his monarchical power was derived from God, he indicated his independence from the Byzantine emperor. Consequently, by the end of the 12th century, Serbia had become an independent state within the Byzantine system of the hierarchical world order.

39 Ostrogorski, 1956, pp. 1–14.

40 Dölger, 1964, pp. 43 ff. and p. 38, n. 8.

41 Mošin, Ćirković and Sindik, 2011, p. 68.

The triumph of the idea of Rome came in Serbia after King Dušan's proclamation of the empire, and it was expressed in the charter from about 1346, announcing his legislation. Inter alia, Serbian rulers declared:

And [God] appointed me to be lord and ruler of all of my fatherland and I ruled sixteen years and then I was strengthened with greater honour by the right hand of Almighty Lord as the most magnificent Joseph was strengthened with wisdom and appointed to be ruler of many peoples and of all of the Pharaoh's land and the whole Egypt. In the same manner by His grace I was translated from the Kingdom to the Orthodox Empire. And he gave me in my hands as to the Great Emperor Constantine lands and countries and coasts and large towns of the Greek Empire.⁴²

The charter clearly shows the Byzantine constitutional ideology that was adopted in Serbia: By proclaiming his state as an empire, Dušan achieved his supreme goal. Serbia reached the highest rank in the hierarchical world order, and the whole procedure was done according to the Byzantine model. However, Dušan was conscious that he could not consider himself absolutely equal to the emperor of Constantinople. In order to emphasize the difference between his status and that of the ecumenical emperor in Constantinople, Dušan signed his charters written in Greek as follows: ΣΤΕΦΑΝΟΣ ΕΝ ΗΡΙΣΤΩ ΤΟ ΘΕΟ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΣΕΡΒΙΑΣ ΚΑΙ ΡΩΜΑΝΙΑΣ ('Stefan in Christ the God the True-believing Emperor and Autokrat of Serbia and Romania'). As we can see, the expression 'emperor of the Romans' (βασιλεὺς τῶν Ῥωμαίων) was replaced by 'emperor of Serbia and Romania.' Although this difference seems to be insignificant, the fact is that no one Byzantine emperor ever used the title 'emperor of Romania' (βασιλεὺς Ῥωμανίας). Although Dušan desired it, he could not pretend to be the 'emperor of the Romans' because the legitimate Emperor John V was still alive and holding power in Constantinople, and Dušan never contested his imperial rights. For this reason, in the charters written in Greek (one of the major world languages of the epoch), he replaced the ethnic elements with geographical ones. In so doing, he limited his power to the 'Roman territories,' and via a tacit agreement, he recognized the Byzantine hierarchical world order in which only one sovereign had the right to the supreme title.

Within decades of the capture of Constantinople by Mehmed II of the Ottoman empire on 29 May 1453, some Eastern Orthodox people nominated Moscow as the 'Third Rome' (Russian 'Третий Рим'). In 1472, Ivan (Иван) III, the Grand Prince of Moscow, married Zoe Palaiologina (Ζωή Παλαιολογίνα), who later changed her name to Sophia (София), a niece of the last Byzantine Emperor Constantine XI, and styled himself tsar (Царь, 'Caesar') or emperor. In 1547, Ivan IV the Terrible (Грозный) cemented the title 'tsar of all Rus' ('Царь Всея Руси'). In 1589, the patriarch of Constantinople granted autocephaly to the metropolitanate of Moscow, which thus

42 Pešikan, Grickat-Radulović and Jovičić, 1997, p. 428. The charter was preserved only in a late Rakovac manuscript from the year 1700.

became the patriarchate of Moscow, thanks to Boris Godunov (Борис Годунов). This sequence of events supported the narrative, encouraged by successive rulers, that Muscovy was Byzantium's rightful successor as the 'Third Rome' based on a mix of religious (Orthodox), ethno-linguistic (East Slavic), and political ideas (the tsar's autocracy). Supporters of that view also asserted that the topography of the seven hills of Moscow offered parallels to the seven hills of Rome and the seven hills of Constantinople.

In 1492, Zosimus the Bearded (Russian Зосима Брадатый), metropolitan of Moscow, in the foreword to his *Paschalion* (Изложение пасхалии), referred to Ivan III as 'the New Tsar Constantine of the New City of Constantine – Moscow.' In a panegyric to the Grand Prince Vasili (Василий) III, composed between 1514 and 1521, Russian monk Philotheus (Филофей) from the Yelizarov monastery (Елеасаров монастырь) near Pskov proclaimed: "Two Romes have fallen. The Third stands, and there will be no fourth. No one shall replace your Christian Tsardom!"

4.3. *The emperor's task*

Slavonic legal documents took several texts from Byzantine legal sources, which were part of the Byzantine constitutional ideology. Among others, the Byzantine teaching on the emperor's task was translated from Matheas Blastares' *Epanagoge/Eisagoge* and *Syntagma*, and Blastares incorporated the entire text of *Epanagoge* in his nomokanonic miscellany:

The Tsar is a lawful ruler, the common good of all subjects (Βασιλεὺς ἐστὶν ἔννομος ἐπιστασία, κοινὸν ἀγαθὸν πᾶσι τοῖς ὑπηκόοις); he does not do good out of partiality, nor does he punish out of antipathy, but according to the virtues of the subjects, and like a judge at the trial, gives the awards equally, and does not give the benefit to any one to the detriment of others. The Tsar's goal is to preserve and foster existing values, and to re-establish with care those lost, and to acquire by wisdom and righteous means and enterprises those which are missing. The task of the Tsar is to do good, for which he is called benefactor; when he stops doing good, then, according to the opinion of the ancients, it is considered that he has perverted the Tsar's mission. The Tsar must distinguish himself in Orthodoxy and pioussness and be renowned in his favour before the God (Τέλος τῷ βασιλεῖ τὸ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται, καὶ ἡνίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κιβδηλεύειν κατὰ τοὺς παλαιὸς τὸν βασιλικὸν χαρακτήρα. Ἐπισημότατος ἐν ὀρθοδοξίᾳ καὶ εὐσεβείᾳ ὀφείλει εἶναι ὁ βασιλεὺς, καὶ ἐν ζήλῳ θεῷ διαβόητος). The Emperor must interpret the laws, laid down by the men of old; and must in like manner decide the issues on which there is no law. In his interpretation of the laws he must pay attention to the custom of the State. What is proposed contrary to the canons is not admitted as a pattern.

*The Emperor must interpret the laws benevolently. For in case of double we allow a generous interpretation.*⁴³

Such solemn ideas about the emperor's rule could be found in some of Dušan's charters written in Greek. The idea of benefaction (εὐεργεσία), for example, is present in the first chrysobull to the Iberian (Georgian) monastery of Ivron (Ιβήρον) on the Holy Mountain (January 1346), which begins as follows: "Like it is normal to breathe, the same way it is normal for the Emperor to do good" ("Ὡσπερ τὸ ἀναπνεῖν οἰκεῖον καὶ κατὰ φύσιν, οὕτω καὶ τὸ εὐεργετεῖν τοῖς βασιλεῦσιν ἐστίν). Dušan's chrysobull to the monastery Xenophontos (Ξενοφώντος) on the Holy Mountain in June 1352 expresses the idea of the emperor imitating God (μίμησις Θεοῦ): "It is necessary to me the Emperor, if it is possible, to become similar to God, and the most philanthropic to take care of those who are under His power" (Καὶ τῇ βασιλείᾳ μου δέον κατὰ τὸ δυνατὸν ἐξομοιοῦσθαι Θεῷ, καὶ φιλανθρώπως ἄγαν τοὺς ὑπὸ χεῖρα αὐτῆς οἰκονομεῖν).⁴⁴

4.4. Concordance or symphonia (Συμφωνία) between the church and the state

Regulation of church–state relations stems from biblical and Byzantine ideas about the origin of authority. From Constantine to Justinian, there was little difference between *imperium* (imperial authority) and *sacerdotium* (Christian priesthood): The emperor was regarded as a bishop and saluted as *sacerdos* and *archiereus*. It was Justinian who accepted the Christian teaching, according to which God is the source of the emperor's spiritual authority; both the emperor and the patriarch must obey His will when serving the people. The *symphonia* system was established and evolved (*συμφωνία*) on these foundations, emphasizing concord, harmony, and mutuality, as formulated in the introduction to Emperor Justinian's *Novella VI* in 535. From there, John Scholasticus took over, teaching about *symphonia*, which he introduced in his *Collectio octoginta septem capitulorum* and which Saint Sabba subsequently used in his work on the Serbian *nomokanon – Zakonopravilo*. By virtue of this, the Serbs, and later the Bulgarians and Russians, had a literal translation of the text dealing with the theory of *symphonia* between the state and the church.

The text of Justinian's *Novella VI* begins as follows:

The greatest gifts of God among men, bestowed by philanthropy from above, are clergy and empire (ιερωσύνη καὶ βασιλεία, sacerdotium et imperium). First to serve to what is divine, and second, to govern and take care of what is human. Both, coming from the same principle – adorn the human life; because, nothing can be so important to the Emperors like the honour of clergy who always pray the God even to themselves. If the first ones are irreproachable in every matter and if they would have courage in front of God, and the second ones start decorating the cities and

43 Epanagoge 2,1–3.5–8; see Zepos and Zepos, 1931 (repr. 1962), vol. II, pp. 240–241; Syntagma B, 5; see Novaković, 1907, pp. 127–128.

44 Solovjev and Mošin, 1936 (repr. 1978), pp. 141, 186.

*those who are under them, regularly and fittingly, it will become the pleasant concordance (συμφωνία, consonantia) which gives everything good to human life. And it will happen, we believe, if the supervising of ecclesiastical rules (τῶν ἱερῶν κανονῶν, sacrarum regularum) would be kept, which the Apostles – righteously praised and glorified as the eye-witnesses of the Word of God (θεοῦ λόγου, dei verbi) – have conferred and the Saint Fathers have kept and told.*⁴⁵

As we can see, the essence of this theory lies in the idea that both institutions equally respect divine law. Such a solution makes it theoretically impossible to establish the supremacy of one over the other; that is, it excludes the possibility of the appearance of *caesaropapism* or *papocaesarism*.

This teaching about *symphonia* was completely acceptable to the Orthodox Slavs of the Middle Ages. The church and the state help each other in that the representatives of the spiritual and secular authorities do not transgress their own limits; they do not interfere in each other's spheres. On the contrary, they support one another in their common interest, which brings the people both material and spiritual progress.

However, when Matheas Blastares' *Syntagma* was translated into Serbian, distinguished canonists Theodore Balsamon's and Demetrios Chomatianos' (Δημήτριος Χωματηγανός or Χοματηγός) interpretations were revealed to the Serbs, and they were not in harmony with the teaching about *symphonia* as espoused in Justinian's *Novella VI*. Under their influence, Matheas Blastares omitted the following chapter from the *Epanagoge* (which contains two sections dealing with the position and power of the Byzantine emperor and patriarch): "*The Emperor is presumed to enforce and maintain, first and foremost all that is set out in the divine scriptures; then the doctrines laid down by the seven Ecumenical Councils; and further, and in addition, the received Romaic laws.*"⁴⁶

That fact created the opportunity for the emperor to interfere in some ecclesiastical matters, such as the election of bishops, the changing of the patriarch, the determination of a church district's rank, etc.

45 Iust. Nov. 6, praefatio.

46 Epanagoge 2,4; see Zepos and Zepos, 1931 (repr. 1962), vol. II, p. 240.

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