

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, 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) *Ecloga* (726 or 741) issued by Emperor Leo III and his son Constantine V; 3) Legislation of Macedonian dynasty or the so-called 'Recleansing of the Ancient Laws', including *Epanagoge*, *Procheiron*, *Basilika*, and the *Novels* of Leo VI; 4) *Hexabiblos* (Six Books), which is a private codification, compiled by Constantine Harmenopoulos, judge of Thessalonica; 5) *Peira*, a collection of excerpts from the statements of verdicts and special treaties of Eustathios Rhomaïos, judge at the imperial court. 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) 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 (short compilation of 33 articles regulating agrarian relations), and Dušan's Law Code in the narrow sense.

Third part of the chapter refers to the reception of Byzantine law in 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 concept of law; 2) the idea of Rome and a hierachical world order; 3) the Emperor's task; 4) concordance or 'symphonia' between the church and the state; and 5) the concept of 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

Because Byzantium inherited its main political, cultural, and social institutions from Rome, the Byzantines called themselves ‘Romans’ (οἱ Ῥωμαῖοι), their Empire Βασιλεία Ῥωμαίων (*Imperium Romanorum*), and their princes ‘emperors of the Romans’ (Βασιλεὺς 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 Justinianic 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 as follows: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 8th century, probably during the reign of Emperor Justinian II (685–695 and 705–711), but preserved in dozens of manuscripts from the end of the 10th century. The *Farmer’s Law* focused largely on matters concerning the peasantry and the villages in which they lived. Its origin has been placed in Italy and in Constantinople, but the absence of any reference to olive groves and horses suggests, an origin in hilly, inland terrain. It has been variously viewed as a record of Slavic customary law (even though not a single Slavic term is to be found), as a selection of Justinianic norms (the name of Justinian I or II is included in some manuscripts), as pre-Justinianic rules, as biblical, eastern, or Hellenic precepts, as imperial legislation, and as a private collection. Whatever its provenance, the *Farmer’s Law* protected the farmer’s property and established penalties for misdemeanors committed by the villagers. It was designed for a growing class of free peasantry, supplemented by the influx of Slavic peoples into the Empire, which 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 a communal tax was required of all members of the community. The 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

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.

Somewhere around that time two other laws were promulgated: a) *Soldier's Law* (Greek Νόμος Στρατιωτικός, Latin *Leges militares*), a collection of approximately 55 regulations, mainly penal and disciplinary, for soldiers,³ and b) *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'), compilation of Byzantine law in 18 chapters, issued in 726, or more probably 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 it could be understood by more people and utilized by judges 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 towards greater humanity' (ἐπιδιόρθωσις εἰς τὸ φιλανθρωπότερον) and because of Christian principles. The *Ecloga* appears to have been quickly supplemented by the *Appendix Eclogae*, a heterogeneous collection of mainly penal law regulations.

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, desertion 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 a work of an iconoclast Emperor, the *Ecloga* had a strong influence on later Byzantine legislation. The continuing popularity of the *Ecloga* is attested by the existence of numerous copies and compilations (some of southern Italian origin), the *Zakon Sudnyj Ljudem* and other Slavonic translations, an Arabic adaptation, and an Armenian translation.⁵

There are two adaptations of *Ecloga*: 1) *Ecloga Aucta*, designated in one manuscript as the 'second *Eklogadion*', it which probably antedates the Macedonian period. The author borrowed the structure and style of the *Ecloga* and copied some of its chapters verbatim, but revised, replaced, or expended the rest. The changes are characterized by a renewed rapprochement with Justinianic law; the mutilation punishments of the *Ecloga* are eliminated, with the exception of castration for sodomy. 2) *Ecloga Privata Aucta*, a compilation of the *Ecloga* and *Ecloga Aucta*.⁶

3) The '*Recleansing of the Ancient Laws*' (Ἀνακάθαρσις τῶν παλαιῶν νόμων) under Basil I and Leo VI. The first two Emperors of the Macedonian dynasty, Basil I (867–886)

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

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

5 Best edition: Burgmann, 1983.

6 Edition: Simon and Troianos, 1977, pp. 45–86.

and his son Leo VI (886–912) chose to present legal reform called the ‘Recleansing of Ancient Laws’. During their reign, great codification of 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 only 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*, published later during Leo’s reign.

Organized in 40 volumes, the work 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*. The main source, however, is the *Corpus Iuris Civilis* of Justinian I, albeit often heavily altered. Patriarch Photius (Φώτιος) of Constantinople (858–867 and 877–886), worked on its compilation, and wrote the preface and two sections dealing with 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 regards to the Emperor and towards the other Patriarchates of the Pentarchy (Πενταρχία).⁷

The *Epanagoge* was withdrawn from official use soon after its publication, replaced by the *Procheiron* (which was earlier considered an antecessor of the *Epanagoge*) 20 years later, but served as the basis for several private law books, such as the *Epanagoge Aucta*, *Epanagoge cum Prochiro composita*, or the *Syntagma Canonum*. Through its translation into Slavonic, the *Epanagoge* found its way into Russian canon law, including the 13th-century *Kormchaya Kniga*. Its provisions on the Patriarch’s and Church’s position vis-à-vis the temporal ruler played a major role in the controversy around Patriarch Nikon in the 17th century.⁸

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 907.⁹ Divided into 40 titles, *Procheiron* was 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 not original Latin text, rather than Greek translations and comments. The compiler of the *Procheiron* is unknown, although a

7 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.

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

9 Schminck, 1986, pp. 55–107.

Symbatios who is named in the preface to the *Epitome Legum*¹⁰ may have participated in its composition.

The intention of *Procheiron* was the same as the purpose of *Ecloga*: to create a compulsory guide for judges. The work mainly comprises private and penal law. However, the *Procheiron* presents itself as a connection back to earlier times before the period of Iconoclasm, lending the Macedonian dynasty a sense of religious legitimacy. Although *Procheiron* invalidates parts of *Ecloga*, and restores Justinian's laws, many provisions from *Ecloga* were taken directly.

As well as the *Farmer's Law* and *Ecloga*, the *Procheiron* had a strong influence on law in the Slavic countries, particularly in Serbia.¹¹

Procheiron Auctum (Expanded Handbook) is an extensive collection of mostly secular laws, divided into 40 titles and 32 (or 33) supplementary titles (*paratitla*), from the first half of the 14th century and based on the *Procheiron*. The text was expanded through borrowings from the *Ecloga*, the *Epanagoge*, and the *Basilika*.

Procheiron Legum (Handbook of the Laws) or *Procheiron Calabriae* is a law book in 40 titles, the work of an unknown compiler. It must have been produced in Norman Italy in the 12th century and its sources are a version of the *Ecloga* closely related to the *Ecloga Privata Aucta* and a version of *Epitomae Legum*, which was enriched by passages of the *Epanagoge*. Its models are not reproduced word-for-word but in a simplified style and vocabulary.

c) *Basilika* (Greek τὰ Βασιλικά, 'the Imperial Laws') was the term used from the 11th century onwards to designate an extensive collection of laws, begun under Emperor Basil I and completed in 888 or 892 AD 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 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)¹² Symbatios (Συμβάτιος).

The 60 books of the *Basilika*, which is divided into six volumes, have had a profound impact on the scholarship of the Byzantine Empire because they preserved many legal documents. In addition to the preservation of *Justinian's Codex*, new legal customs that had evolved over the centuries were included within these books. It also included works of law initiated by Basil I, including the *Procheiron* and the *Epanagoge*.

10 *Epitome Legum* ('Extract from the Laws'), the conventional term for a law book that has been transmitted in various versions. The oldest version must have been related to the *Epitome Laurentiana*, which contains 50 titles, follows the title sequence of the *Procheiron* and dates to 'the first year of Constantine, the son of Leo' (913–914). An extensive revision of the text was made 921, which altered also the sequence of titles. The author of both these versions must have been Symbatios. The aim of the law book was presumably an improvement and expansion of the *Procheiron*. The additions, most of them dealing with private and penal law, were based on the *Corpus Iuris Civilis*.

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

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

However, the *Basilika* still followed the tradition of the *Corpus Iuris Civilis*, beginning with ecclesiastical law, sources of law, procedure, and private, administrative, and criminal law.

The *Basilika* is based on all four parts of the Justinianic corpus, although there is little from the *Institutes*. The books are subdivided into titles, which are arranged according to subjects and are always structured so that pertinent chapters from the *Digest* precede those from the *Codex*, which in turn precede those from the *Novels*.

It differed considerably 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.

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 (came into force on February 23, 1946).¹³

Synopsis Basilicorum is an abridged version of the *Basilika*. According to its title the *Synopsis Basilicorum* was an "alphabetically arranged selection and abbreviated version of the 60 imperial books, with references", probably produced in the 10th century and it contains approximately one-tenth of the text of the *Basilika*.

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 probably on Christmas Day 888 AD. Addressed for the most part to Leo's trusted advisor and father-in-law Stylianos Zaoutzes (Στυλιανὸς Ζαούτζης), *Novels of Leo VI* are in fact a heterogeneous collection of his legislation that was composed at different points of his reign. Since Zaoutzes died in 899, the novels must have been issued before this date. Some scholars suggest that they were published after the *Basilika*, although they contain no direct references to it.¹⁴

The first novels are devoted to ecclesiastic affairs, then follow the laws involving individuals (marriage, dowry, manumission, adoption). After novel 66, no system can be ascertained. It is unclear whether they were published as an entire corpus or one after another.

The 'New Laws' were codes that dealt with current problems and issues, such as prohibition on fourth marriages. *Novels* were concerned with canon law 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 (*Novels* 47 and 78 officially abrogated the Senate's rights to appoint praetors and pass laws), even

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

14 Van der Wal and Lokin, 1985, p. 86.

the Consulate, were finally removed from a legal perspective, even though they still continued in a lesser, decorative form.¹⁵

4) *Hexabiblos* (Πρόχειρος Νόμος or Ἐξάβιβλος, ‘Handbook’ or ‘Six Books’) a private codification of Byzantine law, compiled by Constantine Harmenopoulos (Κωνσταντῖνος Ἀρμενόπουλος, 1320–ca. 1385) in 1345, a Byzantine jurist from Greece who held the post of ‘universal judge’¹⁶ of Thessalonica. The *Hexabiblos* was the last important monument of Byzantine law, and 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 marriage, and criminal law.

The *Hexabiblos* of Harmenopoulos was widely used in Greece during the period of Turkish supremacy (since Greeks retained special jurisdiction) and after the liberation of the country. The codification was also widely used in Bessarabia.¹⁷

5) *Peira* (Πεῖρα, lit. ‘experience’), a mid-11th century collection of excerpts from the statements of verdicts (ὑπομνημάτα) and special treaties (μελέται) of Eustathios Rhomaios (Εὐστάθιος Ῥωμαῖος), judge at the Imperial Court (ca. 975–1034). The compendium was created by an unknown colleague of Eustathios. The author cut the texts of Eustathios that were at his disposal into small fragments that he divided into 75 titles. The titles contain precepts, definitions, and solutions to problems from all spheres of civil and criminal law. *Peira* was greatly valued in the following period, as one can see from the citation in the *scholia* to the *Basilika* and in the work of Harmenopoulos.¹⁸

1.2. Ecclesiastical (canon) law collections

The canonical material of Byzantine canon law is usually organized 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 been generally followed in the Orthodox Church. There are three types of collections exposing material of Byzantine canon law,¹⁹ the most important of which are as follows:

1) *Synopsis canonum* (Greek Σύνοψις κανόνων) was a brief summary of the major points of a subject, that is, 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 exposed canons of Saint Apostles, canons of the first three Ecumenical Councils, and from the first five local

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

16 ‘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.

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

18 Edition: Zepos and Zepos, 1931 (1962), vol. IV, pp. 11–260.

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

synods, in chronological order.²⁰ As *Synopsis* was not always clear and understandable, Alexios Aristenos (Ἀλέξιος Ἀριστηνός), a canonist of the 12th century, who held senior ecclesiastical and secular position during the reign of John II Komnenos (Ἰωάννης Κομνηνός, 1118–1143) and Manuel I Komnenos (Μανουήλ Κομνηνός, 1143–1180), wrote interpretations and additions to the canonical collection of Stephen of Ephesus.²¹

A later revision of *Synopsis* is attributed to the 10th century scholar Symeon (Συμεών), who held the high official posts of *magister* (μάγιστρος) and *logothetes* (λογοθέτης), usually identified with Symeon the Metaphrast (Μεταφραστής, ‘Compiler’), author of *Menologion* (Μηνολόγιον), or collection of saint’s lives, and *Chronicle* (Χρονογραφία). In this form, the *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, Chalcedon), those of the local councils in chronological order (Ankyra, Neokesareia, Serdica, Gangra, Antioch, Laodikeia, Carthage) and of Church Fathers (Basil the Great). The reason that the canons of the Quinisext Synod are found at the end is that 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.²²

2) ‘Systematic collections’: *Synagoge* (Greek Συναγωγή) and *Syntagma canonum* (Greek Σύνταγμα κανόνων).²³ The *corpus canonum* was not systematic and arranged according to topics. In all of its versions, the canons were arranged according to councils, and with the exception of the Council of Nicaea, these in turn had a chronological order. The first attempt at preparing a systematic collection (i.e., one organized according to the topics with corresponding canons), was made in the 6th century. The need for a collection of this form was dictated by the increase in the number of canons, which made the general monitoring of this material as a whole extremely difficult.

The product of this attempt, the so-called *The Collection of Sixty Titles*, has not survived. The only mention of its existence is contained in a prologue of a similar, later work that was based on the first collection. The later work is *The Compilation (Synagoge) of Ecclesiastical Canons Divided into 50 Titles* (Συναγωγή κανόνων ἐκκλησιαστικῶν εἰς ν’ τίτλους διηρημένῃ), a ‘systematic’ collection of canons organized according to content. The author

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

21 Latest edition: Papagianni et al., 2019.

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

23 *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 collection of canon law.



2. The Byzantine Empire in SE-Europe (565); Serbia and the Danubian Principalities (1355)

The Syntagma differed substantially from the *Synagoge* of John Scholasticus. First, it was much richer in content. Second, *The Syntagma* was organized in a different way. It was divided into 14 titles, and every title was subdivided into chapters. In every chapter, related canons are mentioned by their number according to synod, without the inclusion of their text. The texts, listed according to their source (Apostolic canons, canons of synods, canons of 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 *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 (Ιουστίνος, 565–578) or Maurice (Μαυρίκιος, 582–602).²⁶ *The Synagoge of 50 Titles* of John Scholasticus constituted a basis for this work. Justinianic provisions (mostly from *Novels*), coming primarily from the

was John Scholasticus (Ἰωάννης Σχολαστικός), attorney-at-law (*scholasticus*) and presbyter (πρεσβύτερος, ‘elder’) of Antioch and later Patriarch of Constantinople (565–577). The collection reproduces the Apostolic canons and the canons of Nicaea, Ankyra, Neokeseareia, Serdica, Gangra, Antioch, Laodikeia of Phrygia, Constantinople, Ephesus, and Chalcedone, as well as the canonical letters of Basil the Great.²⁴

Probably ca. 580 AD a new systematic collection was formed, called *The Syntagma of Canons of 14 Titles* (Σύνταγμα κανόνων εἰς 14 τίτλους). According to one unconfirmed hypothesis, this collection was created by the Patriarchs of Constantinople Eutychios (Εὐτύχιος, ‘Fortunate’, 552–565 and 577–582) and John IV Nesteutes (Νηστευτής, ‘Faster’, 582–595). Although it does not survive complete, its text has been handed down to us indirectly through *The Nomokanon of 14 Titles* (Νομοκάνονος εἰς 14 τίτλους), which was based on it.²⁵

24 Critical edition: Benešević, 1937.

25 Because of this relationship the editions of *The Nomokanon of 14 Titles* also covers *The Syntagma*. See next title.

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

Collectio LXXXVII capitulorum, were added to this (after every title under the heading τὰ συνάδοντα νόμιμα, ‘The Legal Precepts’). This collection is also attributed to John Scholasticus and it is one of the collections of ecclesiastical law of civil origin.²⁷

The original form of *The Nomokanon of 14 Titles*, composed between the years 612 and 629, which is among the most important sources of the law of the Eastern Church, was the result of the incorporation of the provisions from the legislation of Justinian that dealt with a Church into *The Syntagma of Canons of 14 Titles*.²⁸ These provisions were basically drawn from *The Collectio tripartita* or *Collectio constitutionum ecclesiasticarum*. It was a supplement, in the form of appendix, to *The Syntagma of Canons of 14 Titles*, containing texts that were originally civil laws dealing with the Church. The name, *Collectio tripartita* (‘Tripartite Collection’), reflects the fact it is comprised of three parts. The first part includes provisions from Book I of the *Codex* of Justinian (titles 1–13), which came from an interpretive revision also containing subtitles (παράτιτλα). The second part contained provisions relating to the *ius sacrum* from the *Digest* and the *Institutes*. The third part contains all the *Novellae* of Justinian and Justin II, that had an ecclesiastical content.²⁹

For centuries it was believed that this *Nomokanon* was the work of Patriarch Photios, who died in 893. When it was realized that its original composition belongs to the 7th century, this opinion collapsed. This is why the characterization *Nomokanon of Pseudo-Photios* is sometimes used in the bibliography.

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, each title has a sign of one of Greek alphabet letter) of Matheas Blastares (Ματθαῖος Βλάσταρις), a monk from Thessalonica, and *The Epitome of Canons* (Επιτομή κανόνων) of judge Constantine Harmenopoulos.

The collection of Matheas Blastares was created in 1335. From the ecclesiastical side, he used *The Nomokanon of 14 Titles* and the commentaries of John Zonaras and Theodore Balsamon. From the civil side he used the *Ecloga*, *Epanagoge/Eisagoge*, *Procheiron*, *The Novels of Leo VI*, and *Basilika*.³⁰ Thanks to its rich content as well as to the practical, useful arrangement of its material, the *Syntagma* was widely circulated, as its rich manuscripts tradition indicates. Shortly after its composition it was translated into Old-Serbian. It was also translated into Bulgarian and Russian in the 16th and 17th centuries, respectively.

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

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

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

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

Alongside the *Hexabiblos*, which contained only civil law, Constantine Harmenopoulos created a second collection, *The Epitome of the Holy and Divine Canons* (Επιτομή τῶν ἱερῶν καὶ θείων κανόνων), in 1346. The *Epitome* is divided into six sections: 1) concerning bishops, 2) presbyters, deacons and subdeacons, 3) the clergy; 4) monks and monasteries; 5) the laity, and 6) women.³¹ These sections are further defined by inscriptions instead of titles.

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 the *Ecloga*, had already been introduced by the legislative work of the mission of Cyril (Κύριλλος) and Methodius (Μεθόδιος) and by the *Zakon Sudnyj Ljudem*.

The Slavonic translation of the *Ecloga* was preserved in a Russian manuscript from 14th century. The translation was not particularly good, making it impossible to understand a number of its provisions. However, the place of origin and the date of this translation are still unknown.³²

The oldest preserved Slavonic legal text is the *Zakon Sudnyj Ljudem* (ЗАКОНЪ СОУДАБНИИ ЛЮДЕМЪ, ‘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 of 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 articles) are word-for-word translation of the source and the remaining chapters are adaptations with some changes.

In later Russian annals and in the legal collection of the end of 13th or the beginning of the 14th century, called *Merilo Pravednoye* (Church Slavonic Мѣрило праведноу, ‘Just Measure’ or ‘Measure of Righteousness’),³³ there is a widespread edition of the *Zakon Sudnyj Ljudem*, consisting of 77 or 83 articles (depending on the way of numeration), under the name *Sudebnik cara Konstantina* (Судебник царя Константина, ‘Code of Laws of Tsar Constantine’, that is the Great). The text is of Russian origin.

The place of origin of the *Zakon Sudnyj Ljudem* is a topic of controversy. The oldest theory posits Great Moravian provenance of the Law and a date around 870–880, as

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

32 Edition: Šćapov and Burgmann, 2011.

33 The name is given in modern literature, it was taken from the first words of this text: “this book is just measure, true weighing...” (“сия книги мѣрило праведноу, извѣсѣ истиньны...”). *Merilo pravednoye* was to serve both as a moral precept and a legal guidebook for the judges and as a transmission of several old texts. Edition: Tichomirov, 1961.

well as its authorship by Slavonic Apostle Methodius. The ‘Bulgarian’ theory places the origin of the text in 866–868 and relates it to Prince’s Boris’ (Βώγωρις, Борис, 852–889) need for Christian legislation. However, some Bulgarian scholars think that the Law was promulgated immediately after the Council of Preslav (893), when Bulgarian Prince Vladimir (Βλαδιμηρός, Владимир, 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 (Συμεών, Симеон, 893–927). On the basis of Frankish and Bavarian legal patterns in the text, some Slovenian scholars suggested the late 9th century Principality of Lower Pannonia (the Balaton Principality) as a likely place of origin, as part of the state-building process initiated by Prince Kocelj (861–876). Finally, the ‘Macedonian’ theory considers the Byzantine region of Strymon (Στρυμών, Струма), in actual North Macedonia and Bulgaria, as a 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.³⁴

2.2. Slavonic nomokanons or ‘Kormchaia Kniga’

The first Slavonic *Nomokanon* was written by Methodius (ca. 868), upon the initiative of Moravian Prince Rastislav (846–870), in the era of the conversions of Slavs to Christianity. Methodius translated *Synagoge into 50 Titles* of John Scholasticus from Greek into Old Church Slavonic, and he added some provisions of secular law to it, mostly taken from the *Ecloga*. The so-called *Nomokanon of Methodius* was preserved in the Russian manuscripts from 13th–17th centuries.³⁵ Slavonic Nomokanons in Russian processing were called *Kormchaia Kniga* (Russian Кормчая книга, lit. *The Pilot’s Book*, from Church Slavonic **Крѣмьчїи** and Greek κυβερνήτης = helmsman, pilot of ship) or *Pidalion* (Russian Пидалион, from Greek Πηδάλιον = stern, oar, helm, handle of helm, rudder), which constituted guidebooks for the management of the Church and for the Church court of Orthodox Slavic countries and are transmission of several old texts.

The *Nomokanon* or *Zakonopravilo* (Old Serbian **ЗАКОНОПРАВИЛО**, from **ЗАКОНЪ** = law, statute, and *pravilo* = canon, rule) of *Saint Sabba* (Serbian *Sava*, **САВА**), later called *Krmčija*, was the first Byzantine legal collection that penetrated in Serbia, around 1219. On his way back from Nicaea, where the Serbian Church obtained its autocephalous, Sabba stopped in Thessalonica where he probably composed the famous *Nomokanon*.

The ecclesiastical rules of the *Zakonopravilo* were taken from two Byzantine canonical collections, with canonist’s glosses: *Synopsis* of Stephen from Ephesus with the interpretations of Alexios Aristenos, and the *Syntagma of XIV Titles*, with the interpretations of John Zonaras. Among the Roman (Byzantine) laws (νόμοι), St Sabba’s *Nomokanon* contains the whole *Procheiron*, in a Serbian translation called *Zakon gradskii* (**ЗАКОНА ГРАДСКАГО ГЛАВЫ**), and a translation of *Collectio octoginta septem capitulorum*.

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

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

The *Nomokanon* of St Sabba has no prototype in any Byzantine or Slavonic codex and it retained its place within the Serbian legal system, being neither challenged nor abrogated.³⁶ Already in 1226, one of its copies was sent to Bulgaria, where it was accepted as the official collection. From Bulgaria St Sabba's *Nomokanon* arrived in Russia. The Russian Metropolitan of Kiev Kirill II proposed it as guideline for the management of the Russian Church in 1274 at the Church Council in Vladimir.

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

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

The second part contains 41 chapters from which 36 represents translation of the *Synopsis* of Stephen from Ephesus with the interpretations of Alexios Aristenos.

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

The fourth part contains the so-called *Donation of Constantine* (*Donatio Constantini*), a forged imperial decree (diplom), composed probably 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 Sylvester I (314–335).

2.3. Codification of Stefan Dušan

The reception of Byzantine law in any Slavonic country culminated with the greatest work of Serbian legal tradition, codification of the Emperor (Tsar) Stefan Dušan (Стефан Душан, 1331–1355). This was realized in 1346, when King Dušan proclaimed himself *the true-believing Tsar and Autocrat of the Serbs and the Greeks* (Стефанъ въ Христа Бога благовѣрнъ царь и самодръжць Сръблякъ и Грькомъ). Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become 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, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346, when he announced his legislative program, he stated that the Emperor's task was to *make the laws that one should have* (ЗАКОНИ ПОСТАВИТИ ПАКОЖЕ ПОДОВАЕТЬ ИМЕТИ). These laws are, without a doubt, of the type which Byzantine

36 Petrović, 1991. It is really strange that till nowadays there is no critical edition of *Zakonopravilo*.

Emperors had, namely, general legislation for the whole of the State's territory. In the social and political circumstances, the Serbian Tsar had to accept existing Byzantine law, although modified in accordance with Serbian custom. A completely independent codification of Serbian law, without any Byzantine law, could not be produced and the Serbian lawyers therefore 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: the abbreviated (*Epitome*, Ἐπιτομή) *Syntagma* of Matheas Blastares and so-called 'Justinian's Law'. Dušan's Law Code, in the narrow sense, is the third part of a larger Serbo-Byzantine codification.

The *Syntagma* of Matheas Blastares came to be known in Serbia in two translations, a full and an abridged one.³⁷ The compilers of Dušan's codification radically abridged the earlier translation of the whole *Syntagma* from an original 303 chapters to 94. They had two reasons for doing so. The first was of a completely ideological nature, as Matheas Blastares' *Syntagma* expresses the political hegemony of the Byzantine Empire in ecclesiastical as well as constitutional terms. Accepting the commentaries of Theodore Balsamon, Matheas Blastares reflects the omnipotence of the Byzantine Emperor, his *dominium* both spiritual and political. He actually restricts the independence of the autocephalous Churches whilst emphasizing Byzantine hegemony over the Slavic States, which were threatening Byzantine interests in the Balkans at this time. The independence of the Bulgarian and Serbian Churches was denied (although both were autocephalous), as was the right of other nations to proclaim themselves Empires. Following the appearance of the full translation in 1347–1348, work began on the abbreviation of the *Syntagma*. It should be noted that there is no Greek original of the abbreviated version in which all the chapters referring to the hegemony of Byzantium are omitted.

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

The so-called 'Justinian's Law' (БЛАГОВѢРНАГО И ХРИСТОЛЮБИВАГО ЦАРА ІΟΥСТИНИЈАНА ЗАКОН) was the second part of this *Codex Tripartitus*. 'Justinian's Law' was a short compilation of 33 articles regulating agrarian relations. The majority of these articles were taken over from the famous *Farmer's Law*. This law had been completely translated into the Old Serbian language. Further articles were culled from the *Ecloga*, the *Procheiron*, and the *Basilika*. This collection also does not exist in a Greek version and so represents original work by Serbian lawyers.³⁸

At the end of the 16th or beginning of the 17th century, a widespread edition of the 'Justinian's Law', consisting of 87 articles, was composed (probably in Bulgaria), and it is known under the name *Sudatz* (Судѣцъ, 'Court Law').³⁹

37 Edition: Novaković, 1907.

38 Edition: Marković, 2007.

39 Edition: Andreev and Cront, 1971.

The third and the most important part of the codification, *Dušan's Law Code* (ЗАКОНЪ БЛАГОВѢРНАГО ЦАРА СТЕФАНА) in the narrow sense, was issued at Councils (събори) held in Skopje (Скопје) on 21st May 1349 (first 135 articles) and in Serres (Σέρρες) five years later (articles 136–201). Although *Dušan's Law Code* represents an original work of Serbian legislation, many of its provisions were undertaken from the Byzantine law, especially from the *Basilika* (around 60 articles).⁴⁰

Dušan's Law Code treats the law of persons, the constitutional law, the penal law and the legal proceedings. The rules concerning the law of property, of wills and successions, and of obligations are very rare in the Code. Those provisions were mostly regulated by the *Syntagma* of Matheas Blastares and so-called 'Justinian's Law'. The system of *Dušan's Law Code* does not correspond to modern codifications. A certain harmony can be noticed only for the first 83 articles. Articles 1–38 concern the Church and clerics;⁴¹ the privileges of the noblemen are regulated in articles 39–63, while the social position of the villeins (*sebri*) in articles 64–83. From article 84 of the Code onwards (article 84–201), there is no recognizable regularity or system.

The first group of articles regulates the legal position of the Church, with the intention of ensuring the purity of the faith and securing political power of the Church. Clergymen were exempted from secular jurisdiction, only religious marriage was to be allowed, and the punishment against heresies and for being contrary to the influence of the Roman Catholic Church were prescribed.

The second group treats the rights and obligations of noblemen and villeins. The Code unifies the legal status of all social classes and guarantees the privileges of noblemen. However, through article 139, Tsar Dušan wanted to protect the villagers from the abuses of the Church and noblemen. The main reason was, probably, a deficit of manpower.

In the matter of criminal law, *Dušan's Law Code* accepted the Byzantine concept of a crime. Serbian 13th-century law treated a crime as a private blood feud, in which a family seeks to avenge one of their members on the offender or his family. *Dušan's Law Code* changes this and treats a crime or public offense as an act committed or omitted in violation of a law. However, a crime is not only the trespass of secular law but is also a sin, that is, violation of divine law. The Code established a rigorous Byzantine system of punishment that was attenuated by the existence of the right of asylum.

According to the feudal system of the society, *Dušan's Law Code* provides different courts for all social classes. However, the Tsar retained a judge attached to his Imperial Court of Justice to try cases actually arising there. The Imperial Court had to judge noblemen, the inhabitants of the Tsar's manors and towns, and all commoners for so-called 'Imperial cases' (*carski dugovi*), such as *nevera* (high treason), *provod* or

40 Editions: Novaković, 1898 (repr. 2004); Radojčić, 1960; Bubalo, 2010. 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.

41 It may be the influence of Byzantine law since the first book of the *Justinian's Code* begins with 13 titles concerning ecclesiastical law, under the title *De summa trinitate et de fide catholica et ut nemo de ea publice contendere audeat*.

prejem ljudski (helping a serf to flee anywhere from his lord), *vražda* (murder, homicide), *krv* (lit. ‘blood’, i.e., wounding), *konj* or *svod konjski* (stealing of a horse), *zemlja* (lit. ‘land’, i.e., disputes arising over land), *tat* (thief), and *gusar* (brigand).

The fundamental intention of *Dušan’s Law Code* was that all social relations must be regulated by law. Law is above the Emperor. Articles 171 and 172 provide that judges have to judge according to the Code, and not through fear of the Tsar. The original text of the Code has not survived, but we have 26 transcripts.

3. Reception of Byzantine law in the Danubian principalities

The Byzantine influence on the institutions and the law of the Danubian Principalities (Wallachia and Moldavia) was very strong and 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*) had been imported into the country in the mid-14th century. This text had spread widely in Wallachia and Moldavia until the end of the 16th century. The same occurred with the Serbian compilation of the so-called ‘Justinian’s Law’. Romanian translation of the text, entitled *Cartea judecății împăratului Constantin Justinian* (‘Law Court of Emperors Constantine and Justinian’) was preserved in a manuscript from the 15th century. Although certain clauses of the *Farmer’s Law* were used in Wallachia since the beginning of the 15th century, the full text in a Romanian translation was published in 1646 as a part of the *Moldavian Law Book*, compiled with the order of *Voevod* (‘Duke’) Vasile Lupu (*Pravilele lui Vasile Lupul voevod*). The *Syntagma* of Matheas Blastares was already known in the Danubian principalities since the 15th century, either in its original form in Greek or through Slavic translations and in the Serbian *Epitome*. In 1461 and 1495, two copies of Serbian *Syntagma* were prepared for the Wallachian Princes Ioann Vladislav and Ioann Stefan, respectively. In Moldavia, with the command and support of the Prince Stefan the Great, the *Syntagma* was also published three consecutive times in 20 years – in 1472, 1474, and 1495 – which indicates its persistent use and broad acceptance.

Except these collections, the influence of Byzantine law, adjusted to the administrative and social needs, is generally apparent in the Romanian rulers’ political practice, state ideology, the institutions, and mostly in the structure of the Church. In the legal collections, written in Romanian language and composed in the epoch from the 17th to 19th centuries, the expression ‘Imperial Laws’ denoted extracts from Byzantine legal miscellanies, in the first place the *Basilica* and *Hexabiblos*. The influence of Byzantine law was maintained until the 19th century. In Moldavia, for example, *Hexabiblos* in its original Greek form was the official law code until 1817. Some writers claim that the *Basilika*, promulgated by Prince Scarlat Callimachi in 1817 was the

main source for the *Moldavian Civil Code* (so-called ‘Codex Callimachus’). However, it is more probably that the Code was composed according to the model of Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*).⁴²

4. Byzantine public law ideas in East Central Europe

The Byzantine law and the Empire’s concept on law had a considerable effect on the formation of law and the ideology of medieval Balkan States and Russia, and at the same time constituted a basic foundation of their political organization. We reveal some of the most important and common ideas, that were undertaken from Byzantine public law.

4.1. Concept of law

1) *Roman and Byzantine Concept*. 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. To be sure, the Justinianic professors translated the term *ius* into the Greek *δικαίον (dikaion)*, but this translation has no practical significance. When a Byzantine lawyer refers to *νόμος και δίκαιον (nomos kai dikaion)*, they mean 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.

From the way in which they translate their predecessors’ texts, it is obvious that the Byzantine lawyers were not acquainted with the general ideas of law. 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 definit, ius est ars boni et aequi*).⁴³ The editors of *Basilika* translated this as follows: *ὁ νόμος ἀπὸ τῆς δικαιοσύνης ὠνόμασται; ἔστι γὰρ νόμος τέχνη τοῦ καλοῦ καὶ ἴσου*.⁴⁴ Thus, *ius* is replaced by *nomos (lex)* with a result that Ulpian’s play on *ius – iustitia* is lost (*Basilika* text says *nomos – dikaiosenes*). In Byzantium, the principle of *nomos*, which denotes both Roman terms *ius* and *lex*, always took precedence over other legal rules. Until the fall of the Byzantine Empire, Byzantine lawyers would make reference to ‘the law’ (*nomos*), even when a specific statutory provision did not exist. There are also numerous 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

42 On the reception of Byzantine law in 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.

43 D. 1,1,1.

44 Bas. 2,1,1.

which statutes were being referred to. However, in all these instances, Byzantine lawyers and notaries had what would be called ‘legality’ or ‘the rule of law’ in mind and not any particular legal provision.

2) *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* (ЗАКОНЪ), a term which in modern Slavonic languages indicates the ultimate act of State power; it can be translated as νόμος in Greek, and *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, whilst it is virtually the same word in Slavonic languages. The term is of ancient derivation, first mentioned in documents dating 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: first as a legal rule in general (*regula iuris*) and second as the translation of the Greek *nomos*, a law-making act of the Byzantine Emperor, meaning either *ius* or *lex*. In its first meaning it occurs in legal documents of Slavonic origin. In its second, it can be found in Byzantine legal compilations translated and adapted for mediaeval Slavonic States. For example, Serbian translation of the *Syntagma* of Matheas Blastares contains the chapter H, under the title *On the Law* (О ЗАКОНЕ), with a Roman lawyer’s definitions of law, translated from Byzantine legal compilations and not from the original Latin.

4.2. *The idea of Rome and hierarchical world order*

During the Middle Ages, the idea of Rome as the center of a universal and ecumenical Empire and the whole Christian Church was present with all European nations. Naturally, the Eastern Roman Empire (Byzantium) considered itself as the only successor of the Roman Empire and, according to such ideology, only their monarchs could carry the title *Emperor of the Romans*, and a new imperial capital of the European coast of the Bosphorus strait was called the ‘New Rome’ (Νέα Ῥώμη). However, the idea of Rome as a universal and eternal 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 the Emperors. The Byzantines protested, trying to find the political and legal arguments that would contest the existence of other ‘Empires’, but they finally had to accept the reality. In this way, the number of Emperors increased, and this meant a decay of the one and only universal Christian Empire; however, this multiplication did not lead to negation or oblivion of the century-long 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 Universal Empire; only its monarchs could bear the title of Emperor. All other medieval States had a higher or lower rank, depending upon their political importance, which may vary.⁴⁵ Pursuing this construct, the heads

45 Ostrogorski, 1956, pp. 1-14.

of these States formed the so-called ‘family of monarchs’, associated in a fictive parentage. At the head of the family, as a *pater familias*, stood the Emperor of Byzantium, whilst different degrees of relationship were conferred on other monarchs depending upon their political importance. For example, Charlemagne became 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). At the bottom of the scale were those insignificant monarchs Byzantium considered to be part of the household property rather than a part of a family.⁴⁶

The influence of the Byzantine ideology of the hierarchical world order within Serbia is obvious from the text of a charter presented to the monastery of Hilandar (on 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, others princes, others lords (Юи постави уви царе, другие кнезе, ини владыки), 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 (Темже братие Богъ прѣмилостивы оутвърди Грьке царьми а Оугре кральми, и кожде езика раздѣливъ и законъ давъ)... 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 (и постави ме велиега жоупана, нареченаго въ свѣтѣмъ крщени Стѣфана Неманю).⁴⁷

For Stefan Nemanja, only the Greeks (the Byzantines) could be Emperors, the Hungarians could only be Kings. 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.

In Serbia, the triumph of the idea of Rome came after King Dušan’s proclamation of Empire and it was expressed in the charter from around 1346, announcing his legislation. *Inter alia*, Serbian rulers declares:

And [God] appointed me to be lord and ruler of all of my fatherland and I ruled 16 years and then I was strengthened with greater honor by the right hand of the 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 (Тѣмже уобразомъ по того милости и мене прѣложи ут

46 Dölger, 1964, pp. 43 ff. and 38, n. 8.

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

кРАЛКѢСТВА НА ПРАВОСЛАВНОЕ ЦАРСТВО). *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 (и възсехъ дастъ ми въз рѣцѣ такоже великомѣ Константинѣ царѣ, земліи и възсехъ страны и поморіа и велике градове царства грѣчскаго...).*⁴⁸

The charter clearly shows the Byzantine constitutional ideology, adopted in Serbia: by proclaiming his State to Empire, Dušan achieved his supreme goal. Serbia reached the highest rank in 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. To emphasize the difference between his status and that of the Ecumenical Emperor in Constantinople, Dušan signs his charters written in Greek by formula ΣΤΕΦΑΝΟΣ ΕΝ ΧΡΙΣΤΩ ΤΟ ΘΕΟ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΣΕΡΒΙΑΣ ΚΑΙ ΡΩΜΑΝΙΑΣ (“Stefan in Christ the God, the True-believing Emperor, and Autocrat of Serbia and Romania”). As we can see, the expression ‘Emperor of the Romans’ (βασιλεὺς τῶν Ῥωμαίων) was replaced by the terms ‘Emperor of Serbia and Romania’. Although this difference seems to be insignificant, no Byzantine Emperor ever used the title ‘Emperor of Romania’ (βασιλεὺς Ῥωμανίας). Although Dušan desired it, he could not pretend to be ‘Emperor of the Romans’ because the legitimate Emperor John V was still alive, holding the power in Constantinople, and Dušan never contested his Imperial rights. This is the reason he replaced the ethnic elements in the charters written in Greek (one of the most major world languages of the epoch) with the geographical ones. By doing so, he limited his power on the part of the ‘Roman territories’ and by a tacit agreement, he recognized the Byzantine hierarchical world order in which only one sovereign had right to the supreme title.

Within decades after the capture of Constantinople by Mehmed II of the Ottoman Empire on May 29, 1453, some Eastern Orthodox people were nominating 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 as Tsar (Царь ‘Caesar’) or Emperor. In 1547, Ivan IV the Terrible (Грозный) cemented the title as ‘Tsar of All Rus’ (Царь Всея Руси). In 1589, the Metropolitane of Moscow was granted autocephaly by the Patriarch of Constantinople and thus became the Patriarchate of Moscow, thanks to the efforts of Boris Godunov (Борис Годунов). This sequence of events supported the narrative, encouraged by successive rulers, that Muscovy was the rightful successor of Byzantium as the ‘Third Rome’, based on a mix of religious (Orthodox), ethno-linguistic (East Slavic), and political ideas (the autocracy of the Tsar). Supporters of this view also asserted that the topography of the seven hills of Moscow offered parallels to the seven hills of Rome and Constantinople.

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

In 1492 Zosimus the Bearded (Russian Зосима Брадатый), Metropolitan of Moscow, in a 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 Grand Prince Vasili (Василий) III composed between 1514 and 1521, Russian monk Philotheus (Филофей) from 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 the Byzantine legal sources, which were part of Byzantine constitutional ideology. Among others, Byzantine teaching on the Emperor’s task was translated from the *Epanagoge/Eisagoge* and *Syntagma* of Matheas Blastares, who incorporated the whole text from *Epanagoge* in his nomokanon miscellany:

The Tsar is a lawful ruler, the common good of all subjects (Βασιλεύς ἐστὶν ἔννομος ἐπιστασία, κοινὸν ἀγαθὸν πᾶσι τοῖς ὑπηκόοις; Царь есть законник прѣдстательство, обще благо всѣмъ послѣдующимъ); 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 piety and be renowned in his favor before God (Τέλος τῷ βασιλεῖ τὸ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται, καὶ ἡνίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κινδυνεύειν κατὰ τοὺς παλαιοὺς τὸν βασιλικὸν χαρακτήρα. Ἐπισημότατος ἐν ὀρθοδοξίᾳ καὶ εὐσεβείᾳ ὀφείλει εἶναι ὁ βασιλεύς, καὶ ἐν ζήλῳ θεῷ διαβόητος; Конецъ царю еже благодѣяти; тѣмъ же и благодѣтель глаголетъ се; и югда отъ благодѣанія изнеможесть, мнить се погорѣвши по древныхъ царскою начертанію. Нарочитъ въ православныи и благочестіи длѣжнъ есть быти царь, и въ рвеніи вожіи прослужитъ). 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.⁴⁹

Such solemn ideas about the Emperor’s rule can be found in some Dušan’s charters written in Greek. For example, the idea of *benefaction* (εὐεργεσία) is present in the first

49 *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.

chrysobull to the Iberian (Georgian) monastery of Iviron (Ιβήρον) on Holy Mountain (January 1346), which begins as follows: “Like it is normal to breath, 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 from June 1352, expresses the idea of Emperor who is 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 δυνατόν ἐξομοιοῦσθαι Θεῷ, καὶ φιλανθρωπῶς ἄγαν τοὺς ὑπὸ χεῖρα αὐτῆς οἰκονομεῖν).⁵⁰

4.4. Concordance or ‘*symphonia*’ (συμφωνία) between the Church and the State

The regulation of the relations between the Church and the State stems from the biblical and Byzantine idea regarding the origin of authority. From Constantine to Justinian, there had been little difference between *imperium* (imperial authority) and *sacerdotium* (Christian priesthood): the Emperor had been regarded as a bishop and saluted as *sacerdos* and *archiereus*. It was Justinian who accepted the Christian teaching, according to which the source of the Emperor’s and spiritual authorities is God. His will must be obeyed in the serving of people by both the Emperor and the Patriarch. The system of *symphonia* (συμφωνία), that is of concord, harmony and mutuality, formulated in the introduction of Emperor Justinian’s *Novella VI* in 535 was established and evolved on these foundations. From here, John Scholasticus took over the teaching about *symphonia* and introduced it into his *Collectio octoginta septem capitulorum*, which was subsequently used by Saint Sabba in his work on the Serbian Nomokanon – *Zakonopravilo*. Thanks to this, the Serbs, and later Bulgarians and Russians, had a literal translation of the text dealing with the theory of *symphonia* between the State and 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 (ἱερωσύνη καὶ βασιλεία, sacerdotium et imperium, СВЕЩЕНИЧЬСТВО ЖЕ И ЦРЬСТВО). First, to serve 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 honor 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 those who are under them, regularly and fittingly, it will become the pleasant concordance (συμφωνία, consonantia, СЪГЛАСИ) that gives everything good to human life. And it will happen, we believe, if the supervising of ecclesiastical rules (τῶν ἱερῶν κανονῶν, sacrarum regularum, СВЕЩЕННЫХЪ ПРАВИЛЪ) would be kept, which the Apostles –, righteously praised and glorified as the eyewitnesses of the Word of

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

*God (θεοῦ λόγου, dei verbi, БОЖИЮ СЛОВОУ) – have conferred and the Saint Fathers have kept and told.*⁵¹

The essence of this theory consists of the idea that both institutions respect the Divine Law equally. Such a solution makes it theoretically impossible to establish supremacy of one over the other, that is, 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 but, on the contrary, they support one another in their common interest, which brings the people both material and spiritual progress.

However, when the *Syntagma* of Matheas Blastares was translated in Serbia, the Serbs discovered the interpretations of the distinguished canonists Theodore Balsamon and Demetrios Chomatianos (Δημήτριος Χωματηνός or Χοματηνός), which were not in harmony with a teaching about *symphonia* from 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 (Ἰπόκειτε ἐκδικεῖν καὶ διατηρεῖν ὁ βασιλεὺς πρῶτον μὲν πάντα τὰ ἐν τῇ θείᾳ γραφῇ γεγραμμένα, ἔπειτα δὲ καὶ τὰ παρὰ τῶν ἑπτὰ ἁγίων συνόδων δογματισθέντα, ἔτι δὲ καὶ τοὺς ἐγκεκριμένους ῥωμαϊκοὺς νόμους).⁵²

This fact raised the possibility for the Emperor to interfere in some ecclesiastical matters, such as the election of the bishops, changing of the Patriarch, determination of Church district's rank, and so on.

4.5. Concept of the State

The Byzantine concept of the State considered that the Empire exists independently of monarch and dynasty and is not a hereditary estate. Emperors and dynasties changed, but the Empire always remained.

Such a concept came into Serbia under Byzantine influence. Serbian sources clearly show that at the end of the 12th century, the idea of the State was well-established. Legal documents call the Serbian State **ДРЪЖАВА** (*država*, State), but more often **СРЪВСКА ЗЕМЛЈА** (*Srpska Zemlja*, Serbian Land) and sometimes **ОТАЧСТВО** (*otačstvo*,

51 Nov. 6 praef.

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

patria, fatherland). Although Stefan Nemanja has highlighted that the ruler's monarchical power comes from God, he and his successors were conscious that Serbia is not their estate and that the Serbian Land, by the same grace of God could be governed by someone else.

Several examples taken from the legal documents can illustrate these conclusions very well. In the charter presented to the monastery of Hilandar-Χελανδάριον (1198),⁵³ the founder of the Serbian dynasty, Stefan Nemanja, says: “According to all his infinite grace and philanthropy He [God] endowed our ancestors and our forefathers to rule this Serbian Land... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan” (Тѣмъже по мнозиѣ его и неизмѣрнѣи милости и чловѣколювию, дарова нашимъ праѣдомъ и нашимъ дѣдомъ владати сиювъ Землювъ Сръбсковь... и постави ме велиега жоупана, нареченаго въ свѣтѣмъ кръщени Стѣфана Неманю).⁵⁴ However, in a charter issued between 1217 and 1227 giving the island of Mljet (today in Croatia) to the monastery of Saint Mary (on the same island), his son and successor, Stefan the First-Crowned (*Stefan Prvovenčani*, Стефан Првовенчани)⁵⁵ says: “Or if someone will be the lord after me, either my child, or someone who is close to me, or somebody else” (Или кто и боуде владыка по мнѣ, или моѣ дѣте или присни мои, или ины кто).⁵⁶ In a charter presented to the monastery of Saint Nicholas on the Montenegrin island of Vranjina (September 1, 1241–August 31, 1242), Stefan's son, King Vladislav (Владислав), states somewhat differently that: “Everything that was in favor of this temple has not to be abused by Me, the sinful King Vladislav, neither by my brother, nor by my son, nor by my grandson, nor by My Royal relative, nor by someone whom God chooses to be the sovereign” (Да не потворите сего оутверженаго семоу храмоу мною грѣшнымъ кралемъ Владиславомъ ни братъ мои, ни синь мои, ни оуноукъ мои, ни соуродникъ королевства ми, или кога изволи Богъ выти господствоующа).⁵⁷ The charter presented to the monastery of Hilandar (around 1299), by King Stefan Uroš II Milutin (Стефан Урош Милутин, 1282–1321) states: “And whoever it pleases God to be the lord of the Serbian Land, either the son of Me the King, or grandson, or grand-grandson, or from others” (аще кога Богъ изволи выти господина Сръбскои Земли или сына королевства мы, или вноука, или правноука, или шт прочиухъ).⁵⁸ Confirming the gift of *protosebastos*⁵⁹ Hrelja (Хреља) to the monastery of Hilandar (May 6, 1328), King Stefan Uroš III Dečanski (Дечански, 1321–1331) says:

53 Serbian monastery on Mount Athos (so-called ‘Holy Mountain’).

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

55 Stefan the First-Crowned, the middle son of Stefan Nemanja, Grand Župan of Serbia (1196–1217) and the first King (1217–1227). In 1217 Pope Honorius III sent a special delegation with royal insignia and crown and conferred the title of King upon Stefan.

56 Mošin, Ćirković and Sindik, 2011, p. 109.

57 Ibid., p. 163.

58 Ibid., p. 269.

59 *Protosebastos* (πρωτοσέβαστος), a high title in Byzantium designating the first (*protos*) of the *sebastoi*. The title was created by Emperor Alexios I (Αλέξιος, 1081–1118). *Sebastos* (σεβαστός, lit. ‘venerable’) was a term that in the works of Greek authors of the 1st–2nd c. served to render the Latin *augustus*. The term became the foundation of Alexios I’s reform of titles: it served as the root for the highest titles, *sebastokrator*, *panypersebastos*, and *protosebastos*.

“And after the death of Me the King, whoever God wishes to rule, either the son of Me the King, or My Royal relative, or anyone else to whom God gives [power]” (Обаче и по смърти краљевства ми коже Богъ изволи господствоујуща, или сынъ краљевства ми, или соудникъ краљевства ми, или кто люво комуже дасть Богъ).⁶⁰ In the charter giving privileges to the monastery of Hilandar (May 17, 1355), Tsar Stefan Dušan very briefly says: *“Whoever God likes to be the lord in the fatherland of Me the Tsar, either the son or the relative of Me the Tsar, or by God’s judgment from other parentage”* (коже изволи Богъ господствовати въ земли отьчества царства ми, или сынъ или соудникъ царства ми, или Божиимъ соудомъ одъ инога рода).⁶¹

60 Novaković, 1912, p. 401.

61 Solovjev, 1927, p. 29.

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