

OF NOMOI AND KANONES

Notes on Codex Vaticanus Graecus 2645

In 1987 S. Lilla, scriptor of the Vatican Library, published the contents of ms. Vat. gr. 2645, a composite volume of 41 manuscripts, among which also a bifolium from a Basilica manuscript had been bound.¹ In 1996 he described the same manuscript in the 'official' catalogue of the *Vaticani graeci*,² from which I have started the present notes and to which I refer with Lilla and page number.

The codex contains three legal texts, which are entirely unconnected. It is the purpose of this paper to add some information to Lilla's description of the first and in particular the third of these texts.

I

The first text, pos. xxii with fol. 88-89, contains a table of contents of a *corpus canonum*: Πίναξ σὺν Θεῷ τῆς ἱερᾶς τῆσδε βίβλου. The canons are listed in the following order:³ Canons of the Apostles, Councils of Nicaea, Ankara, Neoceasarea, Sardica, Gangra, Antioch, Laodicea, Constantinople, Ephese with the letter to the bishops of Pamphylia, Chalcedon; then follow:

Τῆς ἐν Κωνσταντινουπόλει ε' καὶ ς' συνόδου αἱ ὑποθ().
Τῆς ἐν Καρθαγένῃ τοπικῆς συνόδου πρώτης καὶ δευτέρας καὶ τρίτης καὶ τῶν
λοιπῶν κεφά(λαια) ξα'.

Τῆς ἐν Κωνσταντινουπόλει ἐν τῷ τρούλλῳ τοῦ παλατίου ργ'.

Τῆς ζ' οἰκουμενικῆς ἀγίας καὶ μεγάλης συνόδου καν. κβ'.

Τῆς ἐν Κωνσταντινουπόλει πρώτης καὶ δευτέρας συνόδου καν. ιζ'.

Next come the fathers: Dionysios of Alexandria, Peter of Alexandria, Gregory of Neocaesarea Thaumaturgos, Athanasius of Alexandria, Basil of Caesarea, Gregory of Nazianzen the Theologian, Gregory of Nyssa, Timotheos of Alexandria, Theophilos of Alexandria, Cyril of Alexandria, Gennadios of Constantinople. Two further pieces have been added:

- 1 S. Lilla, *Miscellanea Bibliothecae Apostolicae Vaticanae I* [Studi e Testi 329], Vatican City 1987, 76 ff.
- 2 *Codices Vaticani graeci. Codices 2644-2663*, Vatican City 1996, 17-47, esp. no. xxiv at p. 36.
- 3 For a survey of the various types of these *Corpora canonum* the reader is referred to V.N. Benesevic, *Kanoniceskij sbornik XIV titulov so vtoroj cetverti VII veka do 883 G.*, St Petersburg 1905.

Ἐκθεσις ἦτοι ἀνάμνησις τῆς γεγον(υ)ίας τῆς ἐκκλησίας ἐνώσεως ἐπὶ Κωνσταντίνου καὶ Ῥωμανοῦ τοῦ μὲν βασιλεύοντος, τοῦ δὲ τὸ τηνικαῦτα τῷ τοῦ βασιλεοπάτορος ἀξιώματι διαπρέποντος [=Tomus unionis, Grumel/Darrouzès 715]. Νόμος ἐκτεθεὶς παρὰ Σισιννίου πατριάρχου Κωνσταντινουπόλεως περὶ τῶν τὰς ἐξαδέλφας λαμβανόντων [probably identical with Grumel/Darrouzès 804, though the title given there differs from the present one].

The book which led to this pinax apparently contained a traditional *corpus canonum*. The councils appear in the order of the τάξις τῶν συνόδων after the prologus of the Collection of the Fifty Titles of Johannes Scholastikos with Sardica between Ankara and Gangra rather than after Chalcedon. After Chalcedon follows a number of items not represented in that Collection: First, and not at the right place if one considers the next item, the list of the bishops who attended the Council in Trullo. The next item is somewhat puzzling: it may have been the *materies Africana*, although the number of 61 chapters calls for an explanation. The next three are the usual series of the canons of the Trullanum (though with 103 instead of 102 canons)⁴, Nicaea II and the Primosecunda. In the list of the fathers one may note the position of Gregory the Theologian before Gregory of Nyssa.⁵

Assuming that the table of contents is accurate, someone might be able to recognize the corresponding manuscript if it is still extant.

II

The second text, pos. xxiii with fol. 90, stems from a Synopsis Basilicorum, as identified by Lilla (pp. 35-36) and covers A xxxix-xlii. It is much damaged and does not contain scholia.

III

The third text, part of a Basilica manuscript, has been identified by Lilla as containing Bas. III,1,8-9 (BT 83,22-84,22). Part of the text has been lost due to damage to the leaves. The provenance of the bifolium itself is unknown. It is dated to the first half or the middle of the 14th century. In its present state it occurs as pos. xxiv at fol. 91-92 of the codex.

The interest of this manuscript does not lie in the text itself, although any witness is more than welcome, of course. The theoretical possibility that we are dealing with a manuscript of the Novels instead of the Basilica is ruled out by the fact that we have here a combination of Novels 137 and 123 which is not found outside the Basilica tradition: after Bas. III,1,1-7 with excerpts from the Code, c. 8 contains N. 137,2.3 and c. 9 has Nov. 123,2,1.⁶

4 Cf. Joannou I,1 p. 98 n. 4 and Benesevic, Sbornik p. 314.

5 Cf., e.g., Florence 9.8 (RHBR I, 61)

6 Cf. Schöll-Kroll at p. 594 in the app. testim. and Scheltema-Van der Wal ad BT 83,9.

A collation has not yielded much of importance. Apart from two omissions through homoioteleuton we may note: BT 83,28 κοινωνία: λειτουργία and 84,21 θεσπίζομεν: κελεύομεν. Neither variant was documented until now, in the tradition of the Basilica or of the Novels.

The real interest, as so often, lies in the scholia on the text. Lilla restricts himself to noting that they did not occur in the editions of Heimbach and Scheltema. In fact the two manuscripts with this part of the third book of the Basilica which had survived to our days were both without scholia, and here we have a fragment of a manuscript to change the picture. It proved to be possible to identify the scholia on this bifolium, of which Lilla had noted the incipit and explicit. Their content is slightly out of the ordinary, though not entirely unexpectedly so.

Bas. III,1 concerns 'Bishops and clerics and their ordination and privileges' (rubric BT 82, 4-5). After a few passages from the Code it consists of passages from Novels 6,123 and 137, among which the greater part is taken up by 123. It goes without saying that the subject of this title is also covered by canon law, and apparently it has been the scholiast's aim to bring together the civil and canon law on these pages. The canons which were in his view relevant form almost all of the scholia; the rest are references to related passages of the civil law. We are thus dealing with a kind of nomocanon. I shall return to this point below with a comparison with a 'real' nomocanon.

Insofar as the text of the scholia has not been lost through damage to the leaves they are fairly readable, though with many abbreviations. They are referred to from the text by signs in red ink, consisting of letters and symbols, and they, too, begin with a few words in red. In order to supplement the Basilica edition on this point I shall present the scholia as much as possible according to the same system:

Sigla:

Vat	Vat. gr. 2645
[....]	Word(s) lost due to damaged leaf
.....	Word(s) I have been unable to read
()	Unsolved compendium
κτλ.	(Direct quotation for which one is referred to the edition of that source)

B. III,1,8

BT 83,22 ff.: Three scholia on fol. 91r, but it is not clear to me to which words they belong exactly, nor have I been able to read them completely during a brief inspection of the manuscript: Vat 1,2,3 / 25 χειροτονηθῆναι: Vat 8 / 29 ὄρκον: Vat 9 / BT 84,6 εἰ: Vat 4, 10 / τις: Vat 5 / κατηγορίαν: Vat 6 / ποιήσεται: Vat 7 / 18 ὑπομένετω: Vat 11

1. [...] ψηφίσματι γινέσθω εἰς ἐξ αὐτῶν ἐπίσκοπος, ὃν ἂν ἐπιλέξηται ὁ χειροτονῶν [...] γ' διατ. μὰ καὶ μζ' (C. 1,3,41 and 47) ἤγουν βιβ. τιτ. κεφ. .⁸ μέμνησο δὲ

7 Almost certainly ὡς βιβ' α' τοῦ Κωδ. τιτ.

8 Presumably the scribe wanted to leave space for the corresponding numbers of the Basilica.

καὶ τῆς ζ' καὶ [...] ... δὲ τῆς ρκγ' (Nov. 6 and 123). ἐκεῖ γὰρ περὶ τούτου κεῖται, εἰ καὶ ἐν τοῖς βασιλικοῖς οὐκ ἐτέθη ἐκείνη.

2. [...] γίνεσθαι χειροτονίαν τοῦ θεοῦ ἀποστόλου Πέτρου πρῶτον ἀπαγορεύσαντος ἐπὶ [...] ..αχ() μεμισημένον εὐρίσκεται τὸ ἀπαγόρευμα καὶ τοῖς ἱεροῖς κανόσι [κανόνι Vat.] καὶ τοῖς [...] ..ν διατάξεων.⁹

3. 'Εν τῷ α' κεφ. τῆς ρκγ' νεαρᾶς κεῖται ἐν τῷ χύματι¹⁰, ἀλλὰ κτλ. (=Nov. 123,1,2 [NT 595,24-30]).

4. Καν. κα' τῆς ἐν Κωνσταντινουπόλει ἁγίας συνόδου. Κληρικούς ἢ λαικούς κτλ. (=Chalcedon c. 21, incorrectly attributed here to Constantinople).

5. [...] καν. οδ'. Ἐπίσκοπον κατηγορηθέντα κτλ. (=Ap. c. 74).

6. Περὶ τοῦ τίνας δεῖ εἰς μαρτυρίαν προσδέχεσθαι καν. ρλα' τῆς ἐν Καρθαγένῃ συνόδου. Μάρτυρας δὲ πρὸς μαρτυρίαν κτλ. (=Carth. 131).

7. Περὶ τῆς γινομένης ἀντιλογίας ἐπὶ τῇ χειροτονίᾳ τοῦ ἐπισκόπου ἀνάγνωθι τιτ. α' τοῦ Νομοκανόνος κεφ. η' (Nomoc. I,8).

8. §. Ζῆτει τοῦ Νομοκανόνος τιτ. α' κεφ. ε' (Nomoc. I,5) καὶ

9. [in red] Περὶ ὄρκου.

10. §. Ζῆτει τοῦ Νομοκανόνος τιτ. θ' κεφ. α' (Nomoc. I,9). Ζῆτει τούτου τοῦ τιτ. κεφ. λ' (Bas. III,1,37 ff.)¹¹.

11. §. ..ξορίζεσθω ἐκβαλέσθω φησὶν κεφ. τῆς ρκγ' νεαρᾶς τῆς ... παρ.... μέμνησο καὶ τῆς ζ' (Nov. 123 and 6).

B. III,1,9

BT 84,20 πρὸς: Vat 1, 8 / πάντων: Vat 2 / 21 ἵνα: Vat 3 / μηδεὶς: Vat 4 / δόσεως: Vat 5 / ἄλλων: Vat 6 / πραγμάτων: Vat 7, 9⁹ / ἐπίσκοπος: Vat 10

1. [...] ἐὰν γὰρ δοθῇ τι διὰ τὴν χειροτονίαν, καὶ ὁ δεδωκώς καὶ ὁ λαβὼν καὶ ὁ μεσιτεύσας [...] τὸ δοθὲν τῇ ἐκκλησίᾳ ἀρμόζει, ἐὰν μέντοιγε ὑπὸ χειροτονίαν ἦν εἰ δὲ [...] τῇ τοιαύτῃ αἰτίᾳ διπλᾶ διδόντω πάσης ἀσφαλείας ἀργούσης προφάσει [...] ἐτέρουτου τῇ ἐκκλησίᾳ παρεχομένου ὅσον ἡ ὁμολογία περιέχει τοῦ εἰλη[....] φησὶν ἢ ζ' νεαρά. ἀνάγνωθι βιβ. α' τοῦ Κώδικος τιτ. γ' διατ. λ' καὶ μα'. (Nov. 123,2,1; 6,1,9; C. 1,3,30.41)

2. 'Αποστόλων καν. να'. Εἴ τις ἐπίσκοπος κτλ. (=Ap. c. 29 [not 51!]).

'Ετερος καν. λ' τῆς αὐτῆς. Εἴ τις ἐπίσκοπος κοσμικοῖς ἄρχουσι κτλ. (=Ap. c. 30).

Καν. β' τῆς ἐν Χαλκίδονι ἁγίας συνόδου. Εἴ τις ἐπίσκοπος ἐπὶ χρήμασι κτλ. (=Chalc. c. 2).

3. Καν. κβ' τῆς ἐν τῷ τρούλλῳ ἁγίας συνόδου. Τοὺς ἐπὶ χρήμασι κτλ. (=Trull. c. 22).

4. Καν. κγ' τῆς αὐτῆς ἁγίας συνόδου. Περὶ τοῦ [μηδένα] κτλ. (=Trull. 23).

5. [Its beginning has been lost due to damage to the leaf (there is just the word συνόδου and at the next line μάλλον δὲ καὶ), but the text runs through onto the next page, fol. 92v, with the words:] ἐπεθύμησα πάν[τα] κτλ. (=Nic. II c. 4).

6. Καν. τῆς αὐτῆς συνόδου ε'. Ἀμαρτία πρὸς θάνατόν ἐστιν κτλ. (see also Lilla, p. 36; =Nic. II c. 5).

9 The first part refers to St. Peter, who had dealt with Simon the Magician when the latter offered money for a position (Acta App. viii,18 ff.). The same episode is referred to in Ap. c. 29; Trull. c. 23; Nic. II,4 (cf. 5); letters of Tarasios and Gennadios.

10 Cf. Eisagoge, prooimion I. 33 (Schminck); Psellos, Syntomos diairesis (Heimbach, Anecd. II p. 36 at n. 21).

11 Note the difference in the numbers of the chapters of this title between this manuscript (below, p. 124 with n. 15) and the edition.

7. [Begins at the last line of the page, but again almost entirely lost because of damage to the leaf:] [...] κεφ. θ'. θε() [end of fol. 92v].
 8. §. Ζήτει τούτου τοῦ τιτ. κεφ. λ' λς' (Bas. 3,1,29-31 [=Nov. 123,16 pr.-2]) καὶ τοῦ Νομοκανόνος τιτ. α' κεφ. κδ' (Nomoc. I,24).
 9. §. Ζήτει τούτου τοῦ τιτ. κεφ. λ' λς' (Bas. 3,1,29-31 [=Nov. 123,16 pr.-2]).
 10. §. Ζήτει τοῦ Νομοκανόνος τιτ. α' κεφ. κδ' (Nomoc. I,24).

The scholia refer to three different sources: first and foremost, the canons; second, related passages from the secular legislation; third, the Nomocanon of the Fourteen Titles. The fullest completeness must have been intended, as the references overlap each other occasionally.¹² Probably we are not dealing with the original compiler of these scholia; rather he may have been the last in a process of accumulating these quotations. It is difficult, e.g., to imagine a scribe who in the fourteenth century would still go back to the Code instead of to the Basilica. On the other hand such a scribe may have wished to supply the corresponding reference to the Basilica — which he or his predecessor apparently had been unable to find, as they are still lacking.¹³

The subject-matter of Bas. III,1,8-9 roughly corresponds with Nom. I, 6, 8 and 24, and IX,1. Bas. III,1,8 has been taken from Nov. 137,2-3 and deals with the election of a bishop. The passage which concerns us here begins in ch. 2 (NT 697,9 sqq.) and sets out the conditions under which such an election is made, in particular requiring a signed declaration about his orthodoxy and an oath that the election has not been 'bought'. The rest of Bas. III,1,8 is chapter 3 of Nov. 137 (NT 697,20-698,2) and regulates the procedure if an accusation has been brought against the man who is going to be ordained. Bas. III,1,9, which is represented by just two lines, has been taken from Nov. 123,2,1 (NT 596,17-19) and returns to the prohibition of simony. The relevant canons could be found easily through the corresponding chapters of the Nomocanon and have been written out in full in the margin. I have collated their text with the editions of Benesevic and Joannou, but have found only insignificant variants. Nevertheless one is surprised to find Constantinople instead of Chalcedon (Vat 4 ad Bas. III,1,8), and the wrong number with Ap. c. 29 (Vat 2 ad Bas. III,1,9).

In addition to the canons, the scholia also refer to the secular law. Apparently their author wished to present as complete a survey of the civil law as possible, also drawing on passages which had not been incorporated into the Basilica. In one case he says so explicitly (Vat 1 ad III,1,8), in another he does not mention it (Vat 1 ad III,1,9).¹⁴ There are also references to the Basilica themselves: Vat 8 and 9 ad Bas. III,1,9 both refer to 'ch. 35 and 36 of this title', which are the present Bas. III,1,29-31.¹⁵ Finally, there are explicit

12 See, e.g., the interlinear scholia 8-10 ad Bas. III,1,9.

13 See scholion Vat 1 ad III,1,8.

14 See Balsamon ad Nomoc. I,24 (RP I,61).

15 Balsamon ad Nomoc. I,24 also knew them as ch. 35-36 and quotes them in full (RP I,62-63).

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references to the Nomocanon of the Fourteen Titles (Vat 7, 8 and 9 ad Bas. III,1,8; Vat 8 and 10 ad Bas. III,1,9).

We may conclude that this bifolium stems from a Basilica manuscript, or at least contains a part of the Basilica, which has been commented upon from the point of view of the 'church'. No account has been taken of the status of the Basilica as an exhaustive legislation, abrogating those parts of the Justinianic legislation which had not been included. Rather the view seems to have been taken that any utterance of the competent legislator, preserved through any channel whatsoever, may serve to illuminate the rights and duties of the clergyman. A curious opinion in the eyes of the modern beholder, but one not unfamiliar to the student of Byzantium.

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