

The Prooimion of the Eisagoge

Translation and Commentary by

W.J. Aerts

Th.E. van Bochove

M.A. Harder

A. Hilhorst

J.H.A. Lokin

R. Meijering

S.L. Radt

J. Roldanus

B.H. Stolte

N. van der Wal

Edited by B.H. Stolte and R. Meijering

Preface

The established view about the legal history of the middle byzantine period had gone unchallenged for a long time when Andreas Schminck published his *Studien zu mittelbyzantinischen Rechtsbüchern* (1986). Most revolutionary in his book was and is the revision of the chronology of the Prochiron and the Eisagoge, the latter until that moment known as Epanagoge. Schminck proposed a rather late date for the Prochiron, thus making it a revision of the Eisagoge, whereas the Eisagoge had always been considered a revision of the Prochiron. Many of the arguments pro and contra are closely connected with the contents of the two prooimia, of which Schminck had provided a new edition with German translation.

Whether one has been convinced by Schminck or no, his book has rekindled interest in the problems it dealt with. The present commentary on the prooimion of the Eisagoge is one of its results. Reading this prooimion in a small circle of people, all of whom had an affinity with the study of Greek and Roman Antiquity, has given rise to an informal working party of philologists, theologians and legal historians, collectively known as the 'prooimiasts'. Each of them has contributed from his or her particular expertise. It should be acknowledged at once that the prooimiasts have not covered every aspect of the text, but they hope to have made a significant contribution.

We started by making an English translation, not because we thought Schminck's German translation deficient, but simply in order to achieve a proper understanding of the Greek original. (In the end our translation differs on one or two points from Schminck's). A Dutch translation would have been easier, of course, but would hardly be of interest outside our own country. As the prooimion had not, as far as we know, been translated into English, ours might be useful in that respect, although we are aware that it can hardly be read for pleasure. It has to be emphasized that we have not even attempted to progress beyond a literal rendering of the Greek text. Our English version is strictly meant to provide a help for reading the Greek original; the rather weak joke that in case of difficulty one can always turn to the Greek text happens to state the truth. We are grateful to Andreas Schminck for his willingness to permit us to print his Greek text. From our translation the reader will be able to infer that in some places we followed a different punctuation. In our commentary we discuss two possible conjectures in lines 17 and 71.

Difficulties experienced during the process of translating soon made clear where a commentary would be most needed. Drafts of individual passages were produced by one or two prooimiasts, discussed in *pleno* and then left to the unfortunate editors to be translated and hammered into some sort of a final product. Some of the major questions seemed to call for more extensive treatment and have been dealt with in appendices. They do not claim to be the fruits of original research; rather they have been written with the purpose of

offering useful summaries of the wider context of these questions. We have tried to avoid a duplication of existing literature as much as possible and to point to relevant publications instead. Access to material we have used is facilitated by a bibliography and an index of primary sources.

This small work is by no means intended as an answer to Schminck. That has been attempted elsewhere.¹ It is only fair, however, to say that his *Studien* have stimulated the Groningen proimiasts to contribute to the discussion of a number of very interesting questions, some of which may in the end prove to be insoluble.

Groningen, 2001

B.H. Stolte

R. Meijering

¹ Van Bochove, To Date and Not to Date; cf. also the review by Schminck in JÖB 48 (1998), 350-354.

Contents

Text and Translation	96
Commentary	102
Appendices	
I The Eisagoge and the Legislation of the Macedonian Emperors	135
II Photius and the Eisagoge	138
III The Law in Early Christian Thought	141
IV Law and Legislation in Byzantine Political Thought in the Times of Photius	144
Bibliography	146
Index of Primary Sources	152

Προοίμιον τῆς εἰσαγωγῆς τοῦ νόμου
τοῦ σὺν Θεῷ ἐμφανιζομένου
ὑπὸ Βασιλείου καὶ Λέοντος καὶ Ἀλεξάνδρου
τῶν παναγᾶθων καὶ εἰρηνοποιῶν βασιλέων

5 Τὸ ἀξίωμα καὶ τὸ μέγεθος τῆς προκειμένης πραγματείας δηλώσει μὲν ἔπειτα ὁ τε σκοπὸς καὶ τὸ τέλος, τεκμηριοῖ δὲ μάλιστα περιφανέστατα καὶ ἡ ἀρχῆθεν ἀπλῶς ἐν αἰτίαις ἐνδόξοις τοῦ νόμου εὐγένεια. Δόγμα γὰρ πρῶτιστον καὶ ἀληθέστατον εἰσηγήσασθαι μυστικῶς ἐν τοῖς αὐτοῦ ἔργοις ὁ τῶν ἀγαθῶν πάντων πρύτανις καὶ ταμιοῦχος Θεὸς βουλευθεῖς, μετὰ τὴν τῶν νοητῶν καὶ αἰσθητῶν 10 ποίησιν μικτόν τι ζῶον, σύνδεσμον καὶ τύπον κοινὸν τῶν ἀντικειμένων τούτων καὶ ἀντιθέτων φύσεων προάγει τὸν ἄνθρωπον, νόμον αὐτῷ ἀγαθὸν δοῦς ὡς ἀρμογὴν τινα καὶ κρᾶσιν καὶ διαμονὴν τῆς τοιαύτης συνθέσεως, τοῦτο μὲν, ἵνα μὴ τις τὰς ἐκατέρωθεν τοῦ ζῶου τούτου κεχωρισμένας φύσεις καὶ ἐν οἰκείοις ὅροις ἰσταμένας ἄλλης καὶ ἄλλης ἀρχῆς ὑπολάβοι, τοῦτο δέ, ἵνα καί, 15 ὅταν μιᾶς ἀρχῆς ταῦτα γνωρίσῃ, μὴ πονηρᾶς τινος, ἀλλ' ἀγαθοῦ Θεοῦ πιστεῦσῃ καὶ κατανοήσῃ.

Τὸ μὲν γὰρ ἐκ δύο ἑτεροουσίων ἐν σύνθετον δημιουργῆσαι τὸν ἄνθρωπον διδάσκει αὐτὸν τοῦτον εἶναι καὶ τῶν ὀλοτήτων ἐκείνων ποιητὴν, ἐξ ὧν αἰμοῖραι αὐταὶ κατὰ συγγένειαν ἐλογίσθησαν· τὸ δὲ καὶ νόμον ἀγαθὸν δοῦναι 20 πρὸς φυλακὴν καὶ σωτηρίαν καὶ διαμονὴν ἐπ' ἀγαθῷ τῆς τοιαύτης συνθέσεως διδάσκει, ὅτι καὶ ἀγαθὸς ὁ ποιήσας πάντα Θεὸς καὶ Κύριος, ἐξορίζων τὴν τῶν ἐναντιοθεϊτῶν καὶ ἀθέων Μανιχαίων δυσσέβειαν, εἰσάγων δὲ τὴν τῆς μιᾶς δεσποτείας καὶ ἐνιαίας μοναρχίας κυριότητά τε καὶ ἐξουσίαν. Οὐ προσωπικὴν δὲ μοναρχίαν ἠνίξατο, ἀλλὰ τὴν τρισυπόστατον δεσποτείαν ἐμήνυσε· τρία γὰρ 25 δείκνυται εὐθὺς ὁ Θεὸς δημιουργῶν καὶ κτίζων, νοητὰ καὶ αἰσθητὰ καὶ συνέχοντα καὶ συγκρατοῦντα νόμον, ὡς ὑπὸ ἐνὸς καὶ τοῦ αὐτοῦ ζῶου ἐν μιᾷ οὐσίᾳ καὶ τρισὶ προσώποις προσκυνεῖσθαι οἰκονομῶν ὁμοῦ καὶ προοιμιαζόμενος.

Καὶ τοῦτο ἐκ τῆς φυσικῆς μοναρχίας καὶ τριαδικῆς δεσποτείας ἡ ἡμετέρα βασιλεία θείως πως καὶ ἀπορρήτως μυηθεῖσα, ἐπὶ τὴν τοῦ ἀγαθοῦ καὶ σωσι- 30 κόσμου νόμου ἀνάληψιν καὶ ἀναγόρευσιν μετὰ πολλῆς σπουδῆς καὶ ἐπιμελείας διηγέρθη καὶ διανέστη. Καὶ πρῶτον μὲν τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα πάντα ἀνακαθάρασα, ἐν τεσσαράκοντα βίβλοις ἀδόλωτον καὶ ἀνόθευτον τὸ πᾶν χύμα τοῦ νόμου ὡς πόμα θείου ὑμῖν ἐκέρασεν· νῦν δὲ τὰς ἐπὶ ἐναντιώσει τοῦ εἰρημένου θείου δόγματος καὶ ἐπὶ καταλύσει τῶν σωστικῶν 35 νόμων παρὰ τῶν Ἰσαύρων φληναφίας ἐκτεθείσας πάντῃ ἀποβαλομένη καὶ ἀπορρίψασα, ἐκ τῶν εἰρημένων τεσσαράκοντα βιβλίων τῶν προκεκριμένων ὡς θεοδιδάκτων νόμων ἐκλεξαμένη ἐν τεσσαράκοντα τίτλοις ἰσαριθμῶς ταῖς

**PROLOGUE OF THE INTRODUCTION TO THE LAW WHICH IS
PUBLISHED WITH GOD'S HELP BY BASIL, LEO AND ALEXANDER,
THE ALL-GOOD AND PEACE-MAKING EMPERORS**

The value and magnitude of the present undertaking will subsequently become clear from its intent and ultimate purpose, but above all the clearest testimony is already provided by the law's nobility, which from the very beginning has consisted in glorious principles. For, with the intention mystically to give instructions through his works about a fundamental and most true doctrine, God, the lord and steward of all that is good, after the creation of the objects perceptible by the mind and those perceptible by the senses, produced a kind of mixed being, a combination and a single form of those two opposite and contrasting natures, namely man. To him He gave a good law in order to bring about a coherent and stable mixture in this composition. On the one hand He desired to prevent that anybody would conceive of the natures of this being, mutually separate and circumscribed by their own boundaries, as springing from different principles. On the other hand, once man acknowledged that these components spring from a single principle, He intended him to believe and to know that this is not some evil principle, but the good God.

For the creation of man as one composition from two different substances indicates that He is Himself also the creator of those two entities, to which these parts are considered to be related. But also the beneficial gift of a good law for the protection, preservation and permanence of this composition is a sign of the goodness of the creator of all things, God our Lord, who thus banished the impiety of the godless opponents of God, the Manichaeans, and introduced the power and authority of rule by one master and one monarch. It is not a personal monarchy that He intimated, but the rule of three persons that He revealed: for God, it is at once manifest, created and brought into being three things, the world of the mind, that of the senses and the law which binds and holds these worlds together, thus arranging as well as announcing that man, being one and the same, should venerate Him in one substance and three persons.

Having been initiated into this secret by the monarchy which belongs to His nature and by His threefold rule in some divine and ineffable way, our majesty was roused and moved to pursue with great energy and diligence the restoration and proclamation of the good and world-saving law. First our majesty purged all the extensive texts of the old laws and poured the entire mass of the law, unsullied and unadulterated, into forty books, offering it to you as a divine drink. And now, having entirely removed and disposed of the nonsense promulgated by the Isaurians in contradiction to the said divine doctrine and to the detriment of the laws which bring salvation, our majesty has made a selection from the said forty books, which had been accepted on the grounds that they consisted of the laws taught by God, and set it down in forty titles, equalling the number of books,

βίβλοις, ἐν χερσὶ φέρειν σωτήριον καὶ ψυχωφελῆ νόμον καὶ σύντομον καὶ σαφῆ καὶ εἰσαγωγικὸν ἐκείνων τῶν ἐν ταῖς τεσσαράκοντα βίβλοις κειμένων
40 ὑμῖν ἐφιλοτιμήσατο.

Καὶ τοῦτον τὸν νόμον αὐτοκρατορικῶς τε καὶ παντοκρατορικῶς πάντων τῶν ὑπὸ τὴν ἐξουσίαν ἡμῶν πιστῶν ἀνδρῶν κρατεῖν κελεύομεν. Καὶ γὰρ ὁ νόμος παρὰ Θεοῦ κατάρχειν τῶν ἐν τῷ σταδίῳ τῆς προαιρέσεως ἀποδυσωμένων ἀνθρώπων καὶ μόνον οὐχὶ βασιλεύειν τῆς δεξιᾶς φάλαγγος ἐχειροτονήθη, ὡς μεμαθήκαμεν·
45 διὸ βασιλεὺς καὶ βασιλέων ἐστὶν ἀνεκαθεν, καὶ βασιλέων οὐ τῶν τυχόντων, ἀλλὰ τῶν ἐν ὀρθοδοξίᾳ καὶ δικαιοσύνῃ πάνυ μνημονευομένων καὶ ἀδομένων. Καὶ ὡς ἐκ τῶν φθασάντων κατείδομεν, μόνος τῶν λοιπῶν ἀγαθῶν καθαυτὸ ὁ νόμος ἡμῖν ἐκ Θεοῦ δέδοται, καὶ αὐτὴν τὴν φύσιν ἡμῶν ῥώννυσι καὶ τὸ σεβάσιμον κέκτηται.

50 Ὅθεν εἰδότες, ὅτι, πολλῶν μὲν ἄλλων χρησίμων τε καὶ ὠφελίμων ἐν ἀνθρώποις ὄντων, ὁ νόμος καθαυτὸ μαρτυρεῖται κατὰ τὴν προειρημένην ἱερολογίαν ἐκ Θεοῦ διδόμενος καὶ ἀναγορευόμενος, πρὸς πάντα τὰ λοιπὰ χαίρειν εἰπόντες ἐπὶ τὴν τοῦτου ἰσχὺν καὶ αὐτοκρατορίαν συνδράμωμεν· πάλιν δὲ εἰδότες, ὅτι, καὶ πολλῶν τεχνῶν καὶ ἐπιτηδευμάτων περὶ τὴν οὐσίαν τῶν ἀνθρώπων ὑπαρχόντων καὶ
55 συμβαλλομένων, μόνος ὁ νόμος κατ' αὐτὴν ἡμῶν τὴν οὐσίαν ὀνήνησιν καὶ χρησιμεύει, ἀπασῶν τῶν τεχνῶν καὶ ἐπιστημῶν προύργιαίτερον τὴν εἰς αὐτὸν ἐμμελῆ μάθησιν ποιησώμεθα. Ἐπεὶ καὶ πάντων τῶν μαθημάτων κρείττων καὶ ἀνωτέρα ἢ τοῦ νόμου ἐπιστήμη· ὡς ἐκείνων μὲν πρὸς τὸ τέλος τῆς εὐζωίας ἀφορώντων, τὸν νόμον δὲ καὶ τὴν δικαιοσύνην αὐτὸ τὸ τέλος τῆς εὐδαιμονίας εἰπὼν τις καὶ
60 τῆς ἄνω μακαριότητος οὐχ ἁμαρτήσῃ. Καὶ ὡς οὐκ ἐστὶν ἡμῖν ζῆν ἄνευ τοῦ ἀναπνεῖν, οὕτως οὐκ ἐστὶν σφῆζεσθαι καὶ εὖ εἶναι ἄνευ τοῦ συμμαχοῦντος καὶ στρατηγούντος νόμου.

Καὶ τὸν Θεὸν πολλοῖς τε καὶ ἐκλελεγμένοις καὶ ἀγαθοῖς ὀνόμασι γεραίρειν ἐπιγόμενοι, ἡνίκα «δίκαιον» εἶπωμεν, πιστεύομεν τῷ καλλίστῳ τῶν ὀνομάτων
65 τοῦ οἰκείου τέλους αὐτὸν κατευφραίνειν μέλλοντες. Δίκαιον δὲ ὄντα τὸν Θεὸν αἰεὶ ὑστέρως ἡμεῖς ὀνομάσαι ὑπειλήφαμεν, ὅτι πάντα τὰ ἔργα αὐτοῦ ἐν δικαιοσύνῃ εἶτ' οὖν ἰσότητι νόμου τῆ ἐκάστῳ πρεπούση ἐωράκαμεν· πάντα γὰρ ἀρχῆθεν πραγματικῶς ὑπὸ τοῦ νόμου περαίνεται καὶ μορφοῦται καί, τῆς προσηκούσης εὐταξίας εὐμοιρήσαντα, ὥσπερ ὑπὸ διαβήτου τινὸς ἢ κανονίου σφραγιζόμενα
70 καὶ προτυπούμενα, εἰς ἑνὸς κόσμου σύστασιν ἀρμονικῶς συνάγεται καὶ συναθροίζεται. Οὐδὲν γὰρ κωλύει μᾶλλον ἡμᾶς φάναι ὡς προκεντήματι τῷ τῆς ἰσότητος νόμῳ βλέποντα τὸν Θεὸν τὸν κόσμον συστήσασθαι ἢ εἰδέας ἀπείρους τῶν καθέκαστα ἀναπλάττεσθαι.

Οὕτω γὰρ καὶ τὴν ψυχὴν ὀρώμεν ἐν διαγράμμασι νομικοῖς τὸ ἀγαθὸν κατὰ
75 λόγον διοπτρεύουσαν, τὸ φαῦλον καὶ ἄλογον ἀποσειομένην. Ὁ τε γὰρ θυμὸς καὶ ἡ ἐπιθυμία, καίπερ ἐν τοῖς τῆς ἀνισότητος δυσὶν εἰδεσι καταβληθέντα, ὑπὸ τοῦ νόμου κοσμεῖται ὡς ὑπὸ τινος ἀληθῶς ἰσότητος ἢ ταυτότητος, καὶ ἐκ τῆς

TRANSLATION

wishing to put into your hands out of the contents of those forty books a concise, clear and introductory law, which preserves and brings profit to the soul.

And we ordain that this law shall govern sovereignly and omnipotently all the faithful men under our rule. For the law has been appointed by God to reign over the people who strip for the stadium of moral disposition and, one might say, to command the chosen host as an emperor, as we have been taught. Therefore the law is an emperor and springs from emperors, and not from just any emperors, but from emperors who are especially remembered and celebrated for their orthodoxy and justice. And, as we have learnt from what has been said above, of all good things it is only the law that has been given us by God for its innate quality and that strengthens our very nature and possesses the quality that makes it worthy of veneration.

In the knowledge, therefore, that, although there are many other useful and beneficial things among men, it is the law which, according to the testimony of the aforesaid holy teaching, God has given and proclaimed for its innate quality, let us bid farewell to everything else and let us all flock to the force and sovereignty of that law. Furthermore, in the knowledge that, although there are many crafts and vocations concerned with and of benefit to men's existence, the law is unique in being of profit and benefit in accordance with the very essence of our existence, let us give precedence to the study which is attuned to the law above all other crafts and sciences. For knowledge of the law is more important and of a higher order than all other studies, because, whereas the latter aim at achieving well-being, one would not be wide of the mark in saying that law and justice constitute the very achievement of true happiness and heavenly bliss. Just as it is impossible for us to live without breathing, so a good life and true happiness are impossible without the law as one's ally and commander-in-chief.

Further, when we strive to honour God through many special and good names, whenever we call Him 'just', we feel confident to please Him by celebrating Him with the most beautiful of names which expresses His own perfection. While God has always been just, it has taken us some time to give Him that epithet, learning to do so from seeing that all His works have been done in justice, i.e equality before the law, which gives everyone his due. For from the beginning all things are systematically brought about and shaped by the law and, once they have been given their fitting proportions, having been marked and modelled, as it were, with dividers or ruler, they are collected and assembled harmoniously into one coherent, orderly world. Nothing indeed prevents us from saying that God has created the world using the law of equality as the design, rather than that we should conceive of an infinite number of models of all individual objects. For we see that in this way the soul, too, spots the good and reasonable in the design of the law and shakes off that which is inferior and contrary to reason. For passion and desire, although sunk into the two species of inequality, are ruled by the law as by a genuine equality or identity, and from

ἀπισώσεως ταύτης θάττον ἐν ἡμῖν ὡσπερ αἰθριάζουσαι καὶ πανηγυρίζουσαι αἰ λεγόμεναι «τέτταρες συνεκτικώτεραι ἀρεταὶ» κατ' ἐνέργειαν ἀνασκιρτῶσι καὶ ἀναλάμπουσι. Τέλος γὰρ Θεοῦ, ἀποτέλεσμα δὲ νόμου ἐν ἡμῖν ἢ ὄντως δικαιοσύνη· αὐτῷ δὲ τούτῳ τῷ ἀγαθῷ νόμῳ ὡσπερ δὴ καὶ Θεῷ σκοπὸς ἡ δικαιοπραγία καὶ διὰ ταύτης ἢ παρόντα ἀγαθὰ φυλάξαι ἢ ἀπόντα ἀνακαλέσασθαι, τέλος δὲ τὸ τὴν δικαιοπραγίαν διὰ πάντων ἐνεργεῖσθαι καὶ τὴν ἀγαθότητα τελειοῦσθαι.

Δέξασθε οὖν τοῦτον τὸν νόμον ὀρθοφρόνως καὶ θεοπρεπῶς ὡς παρὰ Θεοῦ
 85 γεγονότα, ὡς ἄνωθεν ὑπαγορευθέντα, ὡς δακτύλῳ Θεοῦ οὐ πλαξί λιθίναις γραφόμενον, ἀλλ' ἐν ταῖς ὑμετέραις ψυχαῖς πυρίναις γλώτταις ἐντυπούμενον. Προτάττομεν δὲ ἐν τοῖς τίτλοις τὰ περὶ τῆς συστάσεως καὶ εἰσφορᾶς αὐτοῦ τοῦ νόμου καὶ τῆς δικαιοσύνης ἐγκείμενα, ὡς δι' αὐτοῦ τὸν νομοθέτην καὶ δικαιοδότην Χριστόν, τὸν ἀληθινὸν Θεὸν ἡμῶν, προβασιλεύειν καὶ προκαθεζεσθαι
 90 πάντων τῶν Χριστιανῶν καὶ ἡμῶν εὐχόμενοι καὶ πιστεύοντες· ἐπὶ τούτοις δὲ τὰ περὶ βασιλέων καὶ πατριαρχῶν καὶ τῶν ἐξῆς ἀρχοντικῶν προσώπων, τὴν τάξιν καὶ τὸν κόσμον τῆς ἐνθέου πολιτείας – ὡσπερ δι' αὐτῶν τῶν ἐπισήμων καὶ περιφανῶν προσώπων – ταῖς ἀναλόγοις ἀξίαις τῶν προομιολογηθειῶν αὐτοῖς ἀρετῶν ἀνασκηνοῦντες καὶ ὅλην τὴν πολιτείαν ἀναζωγραφοῦντες.

Καὶ ἐπειδὴ πᾶσα ψυχὴ πρὸς τὸ πολιτεῦσθαι κατανεύσασα ταύτην τὴν ἡμετέραν καὶ χριστιανικὴν πολιτείαν εὐθὺς μνεῖσθαι τὰ τῆς εὐσεβείας ἐπιποθεῖ, σὺν τῇ τάξει τῆ πολιτικῆ καὶ τὰ τῆς σωτηρίας καὶ τελειώσεως καὶ πρὸς Θεὸν ἀναβάσεως ὀφείλοντα ἦτοι τὰ περὶ τῶν ἐν τῇ ἐκκλησίᾳ ἱερατικῶν καὶ ἀρχιερατικῶν τελετῶν καὶ ἀποκληρώσεων εἰκονικῶς τεθήκαμεν, μετὰ τὴν σωματοποίησιν οἰοεὶ τῆς
 100 πολιτείας ὡσπερ καὶ τὴν ψυχογονίαν συντάξαντες ἢ καθάπερ ὕλη τῇ πολιτεία τὸ εἶδος ἤγουν τὴν ἐκκλησίαν συντεθηκότας.

Καὶ ἐπειδὴν εἴτε δὴ ἡ τελεία φύσις ἐξ ἀμφοτέρων ἀπετελέσθη εἴτε δὴ ὁ τέλειος εἰπεῖν ἄνθρωπος, τὸν διὰ κινήσεως καὶ ὀργάνων τινῶν τελοῦμενον καὶ ἐνεργούμενον βίον, τουτέστιν μνηστειάν, γάμον καὶ τὰ ἐπισυμβαίνοντα τῷ βίῳ δωρεᾶς καὶ προικὸς καὶ παντοῖα συναλλάγματα κατόπιν τῆς περὶ μαρτύρων καὶ συμβολαίων διδασκαλίας ἐξεθέμεθα· ὀργάνων γὰρ λόγον ἔχειν τοὺς μάρτυρας καὶ τὰ συμβόλαια ἐν ταῖς ἐπερωτήσεσιν καὶ τοῖς συμφώνοις καὶ τοῖς συναλλάγμασιν ἐγνώκαμεν.

Τελευταῖον δὲ τὰ ἐν τέλει τοῦ βίου συμβαίνοντα, οἷον τὰ περὶ διαθηκῶν δηλαδὴ
 110 καὶ ὅσα τούτοις ἔπεται· ἐξώθεν δὲ πάντων τούτων τῶν εἰρημένων, ὡς ἀλλότρια τῆς εἰρηνικῆς ζωῆς καὶ ἐλευθερίας καὶ διὰ τὴν ἀμαρτίαν παρακολουθήσαντα, τὰς καινοτομίας καὶ τὰ καλούμενα «ποινάγια», καίπερ λυπούμενοι καὶ δυσχεραίνοντες, κατετάξαμεν· καὶ ἀπλῶς ἔχει τὰ εἰρημένα, ὡς ὑποτέτακται.

TRANSLATION

this equalisation soon the so-called “four cardinal virtues”, as if rejoicing under a clear sky, actually spring up and shine in us. For God’s ultimate aim and the law’s effect in us is true justice. And this particular good law intends, just as God, to bring about righteous conduct and thereby either to preserve the good which is present, or to bring back the good which is absent, but its ultimate aim is to realize righteous conduct in everything and to bring goodness to perfection. Accept this law, therefore, in orthodox and God-befitting belief, as stemming from God, as dictated from above, and as written by God’s finger not on stone tablets, but inscribed in your souls by fiery tongues.

In the titles of this work we put in the first position the texts which deal with the composition and introduction of the law itself, and with justice, since we pray and believe that it is by means of the law that the giver of law and dispenser of justice, Christ, our true God, rules supremely and presides over all Christians and over us. Then we add the rules concerning emperors and patriarchs and the successive ranks of magistrates. Thus we erect, as it were, a monument of the orderly disposition of the God-inspired state by picturing, in the form of the eminent and distinguished persons themselves, the honours which correspond with their presupposed qualities: a fresco of the entire state.

And since everyone who, in order to live as a citizen, has accepted this our Christian state also longs for initiation in its religion, we have set out in an image, together with the disposition of the state, that which is necessary for salvation and perfection and ascent to God, i.e. the rules concerning priestly and archpriestly rites and appointments in the church: after the creation, as it were, of the body of the state, we have placed also the birth, so to speak, of its soul, or rather, we have joined the state, as matter, with its form, namely the church.

And since nature, or, if you like, man, in order to be complete, has to consist of both these components, we have set forth the perfection and realization of human life through action and certain tools, i.e. betrothal, marriage and the contracts which accompany life, namely donation and dowry and the like. These are preceded by the doctrine relating to witnesses and instruments, for in our view witnesses and instruments play the role of tools in stipulations and pacts and contracts. Finally we have the events at the end of the life, such, of course, as wills and everything that accompanies them.

Separately from all that has been set out before, as alien to the peaceful life and freedom, and a result of sin, we have, albeit with regret and displeasure, placed the law relating to ‘new buildings’ and the so-called ‘poinalia’ [i.e. the criminal law].

The contents, in short, are as follows:

Commentary

1 Προοίμιον: The use of the word προοίμιον (cf. also 27 προοιμιαζόμενος) raises the question whether this heading is genuine, as imperial constitutions usually begin in a different way; see also below, ad 3. It should be noted, however, that προοίμιον also occurs in the heading of the preface to the Basilica (ed. Schminck, Studien, 22/4). In addition to having an unusual opening, the προοίμιον does not end with the typical formula of a constitution, either: it lacks a proper dating.

The problem of the status of the heading is bound up with the question whether this preface to the Eisagoge is an imperial constitution at all, as in that case we may expect to find the characteristics of an imperial constitution as described in Dölger-Karayannopoulos; if not, their absence would, of course, be of no significance. In the latter case, our prooimion would just be part of the Eisagoge itself, namely the passage preceding the substantive part of this law. Prooimia of laws in that sense are dealt with by Ries (Prolog und Epilog) and Hunger (Prooimion), but the prooimia of Prochiron and Eisagoge remain outside the scope of their books. If, however, we were to consider the prooimion to the Eisagoge as a separate constitution, it would have parallels in some of the introductory constitutions to the various parts of Justinian's codification, namely those constitutions in which the Digest and Institutes (c. Tanta/Δέδωκεν) and the Code (c. Summa and c. Cordi) were promulgated. These were themselves imperial constitutions in the technical sense and, unlike the present text, exhibit the formal characteristics one may expect, such as a protocol, a text with a prooimion, a narratio, a dispositio and an epilogue, and an eschatocol (cf. Dölger-Karayannopoulos, Urkundenlehre). It should be remembered that in these introductory constitutions, as well as in our prooimion, we are not dealing with the original constitution, but with its text as transmitted with the compilation it introduces; we should therefore take into account the possibility, indeed the probability, of certain editorial changes, in particular the omission of superfluous detail. Thus the heading of this prooimion could be secondary, while the text we now read could still be an imperial constitution. It has been remarked that it is the presence of a *dispositio*, a substantive part, what makes an imperial constitution an imperial constitution (Van Bochove, 'Ὁ κελούμεν'). Seen in that light our prooimion, though lacking most of the other formal characteristics and in particular lacking protocol and eschatocol, nevertheless is a constitution. This is already suggested by the fact that the emperors mentioned in the heading are speaking in the first person plural, which is the style one expects in a law. In particular it is shown by lines 41-42 (see also below), where the term κελούμεν is used. One could further argue that the emperors address their subjects directly at line 84: δέξασθε οὖν τοῦτον τὸν νόμον develops the binding force of the law as promulgated at lines 41-42.

COMMENTARY

Meanwhile, seen from the perspective of Greek philosophical, literary and historical sources, with which the presumed author of this text, Photios, was better acquainted than with Greco-Roman law, *προοίμιον*, rather than *πρόλογος*, is exactly the term to be expected. The ancient legislators Zaleukos and Charondas are both reported to have written *προοίμια νόμων* (Stobaeus IV,2,19 and 24). Plato recommends the use of *προοίμια* as a means to add persuasiveness to the threatening message of laws (Leges 718a – 723d; cf. below, commentary ad 33); he clearly distinguishes the law and its preface as two separate entities: *δύο μὲν τινε, νόμος τε καὶ προοίμιον τοῦ νόμου* (722c 7). Among Plato's followers is Philo of Alexandria (Vita Mosis 2,51). See further Ries, Prolog und Epilog, 104-126; Schminck, 'Από τον νόμο στον νόμο', 64-67.

Another problem is the question to what precisely our text is the prooimion. On the one hand, the heading proclaims it to be the preface to 'the introduction to the law' (see below, ad 2), in other words, the law itself is to be found not in the Eisagoge, but elsewhere; on the other hand, the Eisagoge itself is called 'nomos' as well (below, 38, 41).

εἰσαγωγῆς: 'introduction' (see above). For the name Eisagoge as opposed to the traditional one of Epanagoge (cf. also below, 39), see the argument of Schminck, Studien, 12-14, which may be summarized as follows: (1) with one exception the manuscripts all have *εἰσαγωγή*; (2) the phrase *εἰσαγωγικὸν (νόμον)* in line 39 refers to the heading; the work is presented in the same relation to the so-called 'forty books' as the one that existed between the Justinianic Institutes (indicated as *εἰσαγωγή* and such-like) and the Digest and Code; (3) the word *ἐπαναγωγή* cannot be given a sensible meaning in the present context. Although Schminck's second and third points to a certain extent depend on his own theory about the present law book's place in the legal history of the Macedonian period, we consider the case for *εἰσαγωγή* convincing.

2 *ἐμφανιζόμενου*: The term is somewhat unusual. A parallel may be found in the Greek constitution in C. 12,60,7=B. 56,17,61, § 8 of which begins as follows: *Πᾶς δὲ νόμος ἐμφανιζόμενος ὀφείλει πρότερον γίνεσθαι τοῖς ἐπάρχοις καταφανῆς ...*, where *ἐμφανίζειν* means 'to publish'. Similarly Nov. 8 Ed. c. 1 (NT 80,7): *μετὰ τὴν ἐμφάνισιν τοῦδε τοῦ νόμου*. It is also used of manifestations of the divine presence: see Lampe s.v. Accordingly, Schminck actually speaks of the prooimion as an 'apotheosis' of the law ('Από τον νόμο στον νόμο', 68).

In legal Greek *ἐμφανίζω* is the normal translation of the Latin technical term *insinuare* (see Vocabularium Novellarum s.v.), which denotes the registration of binding deeds in the official records, the *acta* (hence *insinuatio apud acta*); cf. Berger, EDRL s.v. *acta*. See e.g. B. 47,1,64 (C. 8,53,30.32). If this were the meaning in which *ἐμφανίζειν* is used here, and if there were in fact a connection with the *insinuatio apud acta*, this might shed light on the use of the word *prooimion* as well: might one then suppose that this

heading was what the prooimion was copied with in the acta, in other words, that the transmitted heading did not belong to the original text and therefore is not authentic? Grammaticale it is the *nomos* which is being published, not the *prooimion* or the Eisagoge, but the Eisagoge itself is also called ‘nomos’ (cf. above, ad 1, and below, ad 38).

3 The names of emperors in the opening of a law usually appear in a different and more prominent way, often being the first words and followed by the addressee. The names of the emperors suggest a dating to the period between 879 (Alexander co-emperor) and 886 (death of Basil), which then is narrowed down by Schminck to 885/6. Schminck agreed with Zachariä von Lingenthal in that the Eisagoge had to be of later date than the Nomocanon of the Fourteen Titles as revised by Photius in 882/3. In addition to this, the preface to the Eisagoge (31-40), through the use of the aorists ἀνακάθαρσα (32), ἐκέρασεν (33) and the perfect προεκκεκριμένων (36), presents the work of the ἀνακάθαρσις τῶν παλαιῶν νόμων by Basil, resulting in forty books, as completed. Of these forty books, according to Schminck, hardly any evidence has been left because Leo VI the Wise - probably immediately after the death of his father Basil in 886 - ordered the operation of the ἀνακάθαρσις τῶν νόμων to be resumed, the only explanation of which in Schminck’s view is the very completion of both the forty books and the Eisagoge itself shortly before the beginning of Leo’s reign. See Schminck, Studien 14-15, with literature.

There are, however, strong indications that the Eisagoge cannot be dated to 885/6; according to Van Bochove it must have been published between 880 and 883, probably in 880 (Van Bochove, To Date and Not to Date, ch. 1: Dating the Eisagoge); cf. also below, Appendix I.

4 παναγάθων καὶ εἰρηνοποιῶν: This combination of epitheta is not found in Justinian’s legislation, nor in the Novels from the sixth century onwards. Πανάγαθος is not unusual in itself, but εἰρηνοποιός in connection with an emperor is rare. The word occurs as a noun from Xenophon onwards: cf. LSJ s.v. As an adjective it is found in patristic Greek: cf. Lampe s.v. One may note its occurrence in Matthew 5,9: μακάριοι οἱ εἰρηνοποιοί, ὅτι αὐτοὶ υἱοὶ θεοῦ κληθήσονται. Its use as an epithet of the emperors, however, as here in the inscriptio of the Eisagoge, is hardly ever found outside this law book and its derivatives; the normal Greek equivalent of *pacificus* in this kind of context is not its literal translation εἰρηνοποιός, but εἰρηνικός: cf. Rösch, Ὀνομα βασιλείας, pp. 49, 104, 108, 114, 156, 169f. On the one hand, the fact that εἰρηνοποιός hardly ever occurs as an imperial epithet would seem to question the authenticity of the inscriptio once more (cf. above, ad 1). On the other hand, however, it is precisely Basil the Macedonian who is called εἰρηνοποιός in two sources. One of them is an anonymous laudatory poem in honour of Basil, which has recently been ascribed to Photius. At ll. 131/132 (ed. Markopoulos, 231) it reads: εἰρηνοποιός ἐστὶν ὡς ὁ δεσπότης / Χριστός. The poem is generally held to have been written circa 877: cf. Schminck, Studien 92 n. 232; Markopoulos, ‘An Anonymous

COMMENTARY

Laudatory Poem'. The other source is the acts of the council held in Constantinople in 879/880. This council confirmed Photius in the patriarchate, thus putting an end to the conflict between the supporters of Ignace and Photius; moreover it proclaimed the council of 787 of Nicaea, which marked the end of the first period of iconoclasm, the seventh oecumenical council. The most striking passage in which *εἰρηνοποιός* is used in connection with the emperor's name is to be found in the acts of the sixth session. During this session, held on 3 March 880 in the imperial palace in the presence of Basil and his sons Leo, Alexander and Stephen, and also of Photius, the papal envoys and the representatives of the patriarchs of Antioch, Alexandria and Jerusalem, and a deputation of the council, its decisions were signed by Basil (cf. Mansi XVII, 512C-517D). After the ceremony of signing, those present applauded Basil for having thus restored the unity of the church and thereby also the peace: 'Ἀποδῶν κύριος ὁ Θεὸς ἡμῶν τὰ ἀρχαῖα ὄρια τῆς ῥωμαϊκῆς ἐξουσίας τῇ σῆ κραταίᾳ καὶ εἰρηνοποιῶ βασιλείᾳ (Mansi XVII, 520A). Two more instances of *εἰρηνοποιός* as an epithet applied to Basil may be found in the acts of the second (Mansi XVII, 440D) and fourth (477E) sessions, on which passages see Schminck, "Rota tu volubilis", p. 223 n. 87. The use in these two sources of *εἰρηνοποιός* in relation with Basil's emperorship provides a close parallel to the inscriptio of the Eisagoge. On *εἰρηνοποιός*, cf. Troianos, 'La paix comme bien légal'.

An inscription from Thessaloniki, ed. Speiser, TM 5 (1973) no. 8 (pp. 156-159 with pl. VIII,2), datable to 688/9, has *εἰρηνοποιός* (l. 1) as well as *εἰρηγνικός* (l. 2) for the same emperor, namely Justinian II. This should perhaps warn us against attaching too much importance to the use of *εἰρηνοποιός* in the heading of our text.

5 ff. The opinion that all law originates from God is typical of the Byzantines, not of the Romans. In the Later Roman Empire up to Justinian, the emperor was considered the ultimate source of all law; imperial authority did not need any further legitimization. Of course God is indispensable for the success of the legislation and is constantly being called upon *manibus erectis*, but He is never mentioned as the ultimate authority. In the Byzantine period, from the Ecloga (741) onward, this secular idea of the emperor as the sole source of all law is abandoned. The emperor is no longer the lawgiver assisted by God, but God has become the creator of justice assisted by the emperor. See, e.g., the prefaces to the Ecloga ed. Burgmann 161,10-12 and 21-27; to the Procheiron ed. Schminck 56, 9 and 26-27; and to the Epitome ed. Schminck 112. The Eisagoge expresses this idea most clearly, in calling Christ not only the creator of justice, *δικαιοδότης*, but even the lawgiver, *νομοθέτης* (88-89). Cf. Simon, 'Legislation'; Lokin, 'Law and Legislation'.

5-16 The first sentence (5-7) expresses the great value of the present enterprise, concentrating on the *τοῦ νόμου εὐγένεια*. Its first half, up to *τέλος*, prepares for the second one: it describes the logical subject, which grammatically is the object, but leaves the

agent as yet unidentified by referring to what will follow ‘below’ (ἐπειτα). This allows the second half of the sentence, from τεκμηριοῖ δὲ up to εὐγένεια, fully to concentrate on describing the agent. Stylistically, the tension is increased admirably: after τεκμηριοῖ great expectations are raised by μάλιστα and περιφανέστατα, but nothing is given away as yet. The article ἡ gives a hint of a feminine noun, probably an abstract one, but it is not until after a further three determinators (ἀρχῆθεν, ἀπλῶς and ἐν αἰτίαις ἐνδόξοις) that the outcome is revealed: τοῦ νόμου εὐγένεια. The superabundance of determinators, which at first seems a stylistic flaw, especially the use of μάλιστα in addition to περιφανέστατα, turns out to be a piece of subtlety, for it leads all attention to ἡ τοῦ νόμου εὐγένεια. After all this, logic would require an explanation of the reason why this law is εὐγενής, an explanation expected to be contained in the sentence governed by γάρ. It is remarkable, however, that the main verb of the second sentence (7-17 Δόγμα ... κατανόηση) does not contain the essence of what is to be communicated. The εὐγένεια of the law is not elucidated by the statement that man is a combination of two contradictory natures, the νοητά and the αἰσθητά. Rather the essence is to be found in the participle δούς (11), which here fulfills the role of a main verb, while the grammatical main verb is logically subordinated to the participle. This stylistic feature occurs in classical Greek: examples in Kühner-Gerth II, 98-99; Smyth-Messing § 2147a; Schwyzer-Debrunner II, 389. The essence here is: God has given man a much-needed law that enables him to keep together his two contrasting natures. The ἵνα-sentences explain the importance of that law and of its being a good one. Without that law an observer would reach the conclusion that the two natures of man spring from two different principles. If there were a law but it was not a good one, he would be in a position rightly to infer that there is only one principle, but might mistakenly believe that that principle was a bad one and not God. All this is borne out by the wider context, which naturally requires a concentration on the majesty of the law and not on the composition of man.

5 Τὸ ἀξιωμα καὶ τὸ μέγεθος: According to the precepts of rhetoric, the preface of a text serves to secure the interest of the reader c.q. audience. For this reason a preface is supposed to inform us of the purpose of the text, which enables us to follow it and should impress us with the fact that it is worthwhile to follow (Anaximenes *Ars Rhet.* 29,1; Arist. *Rhet.* 3,14,1415a 11-23; see also ad 50-62). The importance of persuasive prefaces to law books was already stressed by Plato, *Leges* 722c - 723b. In the present text, full emphasis is laid on the supreme importance of the Eisagoge (τῆς προκειμένης πραγματείας) in the very first words of its preface, whereas the definition of its aim and purpose, which will confirm this importance, is postponed till ‘later on’ (ἐπειτα). This postponement is due to the fact that the significance of the Eisagoge as it will be defined there (at 38-40 and 80-83) is closely bound up with the theological framework within which it is placed. The ἀξιωμα and μέγεθος of the Eisagoge lie not so much in its being a handy, concise and clear introduction (38-39 ἐν χειρὶ φέρειν ... νόμον καὶ σύντομον καὶ σαφή καὶ εἰσαγωγικόν), but

COMMENTARY

rather in that it preserves and brings profit to the soul (σωτήριον καὶ ψυχωφελή). The latter qualifications of the Eisagoge depend on the fact that the law to which it is an introduction (the forty books) has the same characteristics, which in their turn are the consequences of its divine origin as explained at ll. 7 ff. In fact, not only have the forty books been dictated by God to the emperor (37 θεοδιδάκτων), but the same is said of the Eisagoge (84-86).

5-7 ἔπειτα, here employed in a meaning not documented elsewhere, presumably refers to the passage further below (namely 80 ff.) and is not meant as the opposite of ἀρχῆθεν (6). Ἀρχῆθεν, emphasized by ἀπλῶς (7; see below), and slightly pleonastic with εὐγένεια (7), draws the reader's attention to the origin and hence to the 'nobility' of the law. Cf. 67 πάντα γὰρ ἀρχῆθεν πραγματικῶς ὑπὸ τοῦ νόμου περαινεται. In patristic literature ἀρχῆθεν often means 'since the Creation': e.g. Origen, in Joann. 2,31 (ed. Preuschen, GCS 10, p. 88, l. 20; PG 14,168C). Although God is not mentioned in the first sentence, the present legislation is at once put into the grand and fundamental framework of protology and eschatology.

6 ὅ τε σκοπὸς καὶ τὸ τέλος: Having been dictated by God to the emperors, the Eisagoge corresponds with the good law which God has given to man (11 νόμον αὐτῷ (sc. ἀνθρώπῳ) ἀγαθὸν δούς; cf. 19 τὸ ... νόμον ἀγαθὸν δοῦναι); at 81 it is also indicated as 'this good law', and its σκοπὸς and τέλος turn out to be in agreement with those of God (αὐτῷ δὲ τούτῳ τῷ ἀγαθῷ νόμῳ ὡσπερ δὴ καὶ Θεῷ σκοπὸς ... τέλος δὲ ...). On the theological content of σκοπὸς and τέλος, see also below, commentary ad 80-83.

Generally speaking, σκοπὸς is the mark on which one fixes the eye (LSJ s.v., II) and therefore the more immediate aim, whereas τέλος denotes the ultimate achievement, the full realization (LSJ s.v., II). In this preface, however, the two words are distinguished in a more specific way. This distinction is especially interesting because it is paralleled in the second and third titles, which deal with the emperor and the patriarch respectively. According to Eis. 2,2 the σκοπὸς of the emperor, his task and mark of orientation, is to offer protection to his subjects through his goodness, through incessant care to regain what has been lost, and through freedom, just victories and efforts to acquire what is lacking. In other words, his σκοπὸς is formulated in terms of responsibilities and activities. Eis. 3,2 defines the σκοπὸς of the patriarch in a similar way. The τέλος, however, of the emperor and that of the patriarch are laid down in different terms. Eis. 3,3 formulates the τέλος of the patriarch: the preservation of the souls that have been entrusted to him, to live for Christ (cf. Paul, 2 Cor. 5,15), to be crucified to the world (cf. Paul, Gal. 6,14) (ed. Zepos, JGR II, 242). Particularly illuminating is Eis. 2,3, which explains the ultimate aim and full realization of an emperor as being a benefactor and adds that an emperor is therefore called a benefactor: Τέλος τῷ βασιλεῖ τὸ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται· καὶ ἡνίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κιβδηλεύειν κατὰ τοὺς παλαιοὺς τὸν βασιλικὸν χαρακτῆρα. In other words, his τέλος is expressed as a qualification. This is closely

EISAGOGÉ PROOIMION

paralleled by ll. 63-65 of the Eisagoge's preface, which speaks of God's τέλος: τὸν Θεὸν ... ἡνίκα δίκαιον εἶπωμεν, πιστεύομεν τῷ καλλίστῳ τῶν ὀνομάτων τοῦ οἰκείου τέλους αὐτὸν κατευφραίνειν μέλλοντες; by assigning to God the predicate 'just', we express His very τέλος.

This way of distinguishing σκοπός and τέλος is of Stoic origin (Alpers-Gözl, 'Der Begriff ΣΚΟΠΟΣ in der Stoa', 62 ff.; Tsekourakis, 'Terminology of Early Stoic Ethics', 107-108.) E.g., according to Stobaeus (II p. 77, 21 ff. W = SVF I 554, III 16): κέχρηται δὲ καὶ Κλεάνθης τῷ ὄρω τούτῳ ἐν τοῖς συγγράμμασι καὶ ὁ Χρυσίππος καὶ οἱ ἀπὸ τούτων πάντες, τὴν εὐδαιμονίαν εἶναι λέγοντες οὐχ ἑτέραν τοῦ εὐδαιμονος βίου, καίτοι γε λέγοντες τὴν μὲν εὐδαιμονίαν σκοπὸν ἐκκεῖσθαι, τέλος δ' εἶναι τὸ τυχεῖν τῆς εὐδαιμονίας, ὅπερ ταύτῳ εἶναι τῷ εὐδαιμονεῖν. And according to Euagrius ('Origenes') Selecta in Psalmos (PG 12,1053A): ἐκ δὲ τῶν Ἡροφίλου περὶ Στωϊκῆς ὀνομάτων χρήσεως οὕτως τέλος δ' εἶναι λέγουσι κατηγορημα οὐ ἔνεκεν τὰ λοιπὰ πράττομεν, αὐτὸ δὲ οὐδένοσ ἐνεκεν τὸ δὲ συζυγοῦν τούτῳ, καθάπερ ἡ εὐδαιμονία τῷ εὐδαιμονεῖν, σκοπὸν δὲ δὴ ἔσχατόν ἐστι τῶν αἰρετῶν. In the Stoa, then, σκοπός is the point of orientation, the standard of all actions, namely 'happiness'; τέλος is the realization of that aim. Consequently the τέλος is not expressed by a noun but by a verb: it is a κατηγορημα, 'predicate'. According to these philosophers, the σκοπός of life is happiness and its τέλος 'to be happy'. Likewise the σκοπός of God and the law, according to the preface of the Eisagoge, is just dealing (81), but their τέλος is the realization of justice (80) or 'to be just' (64-65), just as we saw that, according to Eis. 2,3 and 3,3, the τέλος of the emperor is 'to be a benefactor' and that of the patriarch comprises 'to be crucified to the world'.

The parallelism of the notions σκοπός and τέλος as used in the second and third titles of the Eisagoge on the one hand and in the prooimion on the other would seem a further indication of the involvement, if not the authorship, of Photius. It may also be noted that the chapters quoted from these titles have not been taken from the Justinianic legislation but are entirely original; in fact, only Eis. 2,6-12 go back to the Corpus iuris. Moreover, Eis. 2,1 and 2,3 are attributed explicitly to Photius in one of the manuscripts of the Epitome legum: the two chapters occur in ms Bodl. Barocci 173 (12th C.) on fol. 302^v as scholia on Epit. 1,28 and carry the heading Φωτ(του) and Ἄλλο Φωτ(του) respectively. For an interpretation of titles 2 and 3 of the Eisagoge see Scharf, 'Ius divinum'; Pieler, 'Rechtsliteratur', 454-455; Schminck, "Rota tu volubilis", 211-214; Fögen, 'Das politische Denken', 73-75. See also Appendix II.

6-7 ἡ ἀρχῆθεν ἀπλῶς ἐν αἰτίαις ἐνδόξοις τοῦ νόμου εὐγένεια: Here the reader's attention is drawn to the pure origin of the law: from the very beginning its excellence has consisted in glorious principles. The relation with man's original composition is explicitly dealt with in the following lines.

COMMENTARY

7 ἀπλῶς: Here ἀπλῶς predominantly belongs to ἀρχῆθεν: ‘from the very beginning’. Similarly, ἀπλῶς also belongs to the preceding word in Max. Conf. cap. theol. 1,12 (PG 90, 1088B): ὁ Θεὸς ἡλίος ἐστὶ δικαιοσύνης, ὡς γέγραπται, πᾶσιν ἀπλῶς τὰς ἀκτῖνας ἐπιλάμπων τῆς ἀγαθότητος; Phot. Bibl. 230, 268b38: ἡ ... τοῦ Λόγου φύσις σεσαρκωμένη τὴν καθ’ ὑπόστασιν ἀπλῶς ἔνωσιν εἰσάγει, as opposed to the heretical notion that the unity was brought about because (268a39) ὁ Λόγος ... ἄνθρωπον προϋποστάντα προσέλαβεν.

αἵτιαι ἔνδοξοι: The nobility (εὐγένεια) of the law is apparent from the considerations which led God to create man and to give him a law. What He wished (βουληθεὶς [9]) was to weave into the texture of Creation <indications for the discovery of> the dogma purporting that what is perceptible through the senses and what is not, share the same provenance from the good God; see commentary ad 27 οἰκονομῶν. The law is important because its τέλος is the ultimate realization of complete goodness and justice, but its importance is also to be measured by the role it plays from the start as an index of sound theological judgement.

εὐγένεια: The conception of ‘excellence of origin’ is used in patristic literature (see Lampe s.v.) for the excellence of the Scriptures (Theodoret), for the originally pure state of man or its restoration (Theodoret; see also Athanasius, Vita Antonii 5 [PG 26,848B] ἡ δι’ αὐτὸν [sc. Χριστὸν] εὐγένεια), and for Christ’s divine nature (Origen, Alexander Alex., Athanasius and again Theodoret). Photius (Ep. 174,188 [PG 102,752C]) connects εὐγένεια with man’s state in heaven and calls someone τῆς ἄνωθεν εὐγενείας καὶ ἐλευθερίας γυμνόν. A parallel with Christ’s sublime origin lies in the equation of the pre-existing Logos with a universal law (cf. Justinus: see Appendix III).

Δόγμα: δόγμα here means divine teaching and does not refer to any specific doctrine established by the church. Origen (Contra Cels. VIII,68) sets an ‘homeric dogma’, an imperial monarchy established by Zeus, against the δόγμα ...θεῖον περὶ βασιλείως, of which he says that this is, or is part of, the teaching on providence that is not rejected by christians (Οὐ λύομεν δὲ τὸ δόγμα τὸ περὶ προνοίας, which comprises both preceding causes and consequences deduced from them). It is divine, Origen continues, because 1 Petr. 27 (τὸν βασιλέα τιμᾶτε) instructs us to honour the emperor. The emperorship belongs to God’s providence and does not affect what is due to God, namely the preceding τὸν Θεὸν φοβεῖσθε.

πρῶτιστον: Primary, i.e. not derived from anything else and underlying everything else; it is the equivalent of πρῶτον in ancient philosophy. The superlative of πρῶτος is not found in prose until post-classical times. Alternating with πρῶτος: Procl. Inst. 11-12 πάντα τὰ ὄντα πρόειεν ἀπὸ μιᾶς αἰτίας, τῆς πρώτης ... (12) Πάντων τῶν ὄντων ἀρχὴ καὶ αἰτία πρῶτιστη τὸ ἀγαθὸν ἐστίν. Cf. Max. Conf. schol. d. n. 2,9 (PG 4, 225). Just as in the

EISAGOGÉ PROOIMION

prooimion of the Eisagoge πρώτιστον is linked with another superlative (ἀληθέστατον), so we find Hieroc. in CA ... πρώτιστος και ἄριστος ὁ δημιουργὸς Θεός; Iambl. Comm. Matth. 4 δύο τὰς πρώτιστας και ἀνωτάτω ὑποθετέον ἀρχάς.

9 τὴν τῶν νοητῶν και αἰσθητῶν ποιήσιν: Νοητά και αἰσθητά is a philosophical description of the two spheres of reality: that which can be perceived through intelligence and that which can be perceived through the senses. The νοητά are mentioned first, because they are of higher rank. They are the original models or principles, whose existence can be perceived by the mind if it starts from the αἰσθητά and transcends them. See also below, ad 72-73.

The classification has been adopted by many Fathers. Under the influence especially of Platonic thought, Alexandrian theologians still use the term νοητά to refer to divine reality. The human mind, which is dependent on and participates in the one Νοῦς or Λόγος, should strive to reach this sphere by transcending the world of the senses. This thought is put forward by Origen and by Athanasius in *Contra Gentes*. But it is also in Athanasius that we may observe a shifting status of the αἰσθητά. Athanasius' consistent emphasis on the incarnation confers greater dignity on the corporeal and visible reality than it had possessed before. Instead of being a mere illustration of God's creative and sustaining power, it now becomes the ontological basis which elevates the human being in its entirety above its inherent weaknesses and makes it participate in divine life and powers. This reevaluation of the αἰσθητά, which was further accentuated in monophysitism, reduces the human νοῦς to an object of God's creative and re-creative activity. Thus deprived of its intermediate, semi-divine character, however, it nevertheless retains its superior position within the human composite. In this way the philosophical appeal to a fine balance between man's interior and exterior faculties has been maintained in the Byzantine conception of man.

L. Jalabert and R. Mouterde, *Inscriptions grecques et latines de la Syrie*, II (Paris 1939), nr 298 publish an inscription of AD 606, in which God is addressed as ὁ τοῦς αἰσθητοῦς και νοητοῦς ἡμῶν οἰκείος, a qualification which expresses the same idea of God's connection with both worlds.

10 τύπον κοινόν: 'single form', indicating that two things have become one, concrete entity, in contrast with the abstract σύνδεσμον: κοινόν repeats, as it were, συν- in σύνδεσμον. For the idea of bonding two different elements by means of a third, cf. also Plato *Tim.* 31b 8-9 δύο δὲ μόνω καλῶς ξυνίστασθαι τρίτου χωρὶς οὐ δυνατόν· δεσμὸν γὰρ ἐν μέσῳ δεῖ τινὰ ἀμφοῖν ξυναγωγὸν γίνεσθαι.

11 The opposite and contrasting φύσεις are part of the created φύσις, which is distinct from the divine, uncreated οὐσία or φύσις. The two natures mentioned here have nothing to do with the doctrine of the two natures in respect of Christ, for here it is not a matter of

COMMENTARY

opposition between divine and human nature, but merely of contrast within the one created reality: hence below, at 19, μοῖρα, 'parts'. For the same reason the μία ἀρχή (15) and the rejection of ἄλλη καὶ ἄλλη ἀρχή (14) eventually refer to a point of view which exceeds that of the distinction of both human φύσεις. Ὅροις (14), too, suggests that their distinction is the result of limits that have been put to these natures, namely by the Creator. The phrasing of this passage anticipates the rejection of the Manichaean-dualistic view of the next paragraph: with the unity of God as Creator and therefore with the fundamental harmony of the created contrasts corresponds the law as an ἀρμογή, a κρᾶσις and a διαμονή συνθέσεως (12). In this way the divine origin and intention of the law are indicated (see Appendix III). 'Law' belongs to the Creation, to God's good world, for the sake of harmony, of the balance of the created, contrasting spheres of reality. It is not connected with sin as a means of restraining evil that, unfortunately, has arisen.

14 ἄλλης καὶ ἄλλης: 'diverse, different' (LSJ s.v. ἄλλος II 3; LSJ Suppl. *ibid.*). Cf., e.g., Euclid. El. 1,7 πρὸς ἄλλῃ καὶ ἄλλῃ σημείῳ '(terminating) at different points' (Heath); Arist. Meteor. 376a3; Himer. Or. 12,2 Colonna αἱ ... πολλαὶ νῆσοι αἱ κατ' ἄλλο καὶ ἄλλο μέρος τῆς θαλάσσης σχιζόμεναι; Hermas 78,4.10; 94,1.2; 105,1; especially Photius, Bibl. cod. 229 (253 a 23 ff.) εἷς μὲν λέγεται καὶ ἔστι Χριστός ... οὐκ ἄλλος καὶ ἄλλος ... ἄλλ' εἷς καὶ ὁ αὐτός.

15-16 Note the order of πιστεύση and κατανοήση: first comes belief, and only then follows understanding.

17 ff. τὸ μὲν ... τὸ δὲ: it may be preferable to read τῷ μὲν ... τῷ δὲ, which would have the advantage of making the Creator the subject of διδάσκει, which logically fits in with the preceding sentence and avoids the abstractions τὸ ... δημιουργῆσαι τὸν ἄνθρωπον and τὸ ... νόμον ... δοῦναι having to play that role. The mss. often confuse τό and τῷ, as e.g. in Ps.-Psellos, Sunt. Ist. 14.48 ἐν Ἰσφ πᾶσιν ἐδόκει τὸ ὑπισχνεῖσθαι καὶ τὸ ἀπαρνεῖσθαι (ms. τῷ); 26,51 τὸν υἱὸν ὡσπερ τινὰ πῶλον ἐπὶ τὸ βασιλεύειν ὀρμῶντα ἐδάμαζε (ms. τῷ); the reverse, namely τό instead of τῷ, is perhaps even more common.

17 ἐκ δύο ἑτεροουσίῳν ἐν σύνθετον: In other contexts the two facets of the composition of man have been interpreted with just as much conviction as the sign of man's twofold origin. Here, however, the emphasis lies on the fact that they have been combined so as to form one being. The word συγγένεια is used to express the two affinities of man: of the body with earthly things and of the soul with higher things, as in Origen. If one considers both parts of man from the point of view of a two-sided relationship, the law exists to keep them together, as a means of custody, preservation (from moral imbalance) and permanence (20). The reasoning moves on the level of Creation and σωτηρία is not connected with Christ, nor is there any allusion to corruption by sin.

18-19 ἐξ ὧν ... ἐλογίσθησαν properly means ‘from which ... have been deduced through reason’, a construction for which we have been unable to find a parallel. As for the δόλότητες, the μοῖραι and their relation κατὰ συγγένειαν, could this passage be an allusion to the myth in Plato’s Phaedrus, which describes how the soul has been combined with a body and ζῶον τὸ σύμπαν ἐκλήθη, ψυχὴ καὶ σῶμα παγέν, θνητόν τ’ ἔσχεν ἐπωνυμίαν· ἀθάνατον δὲ [sc. ζῶον ἔσχεν ἐπωνυμίαν] οὐδ’ ἐξ ἑνὸς λόγου λελογισμένου, ἀλλὰ πλάττομεν οὔτε ἰδόντες οὔτε ἱκανῶς νοήσαντες θεόν, ἀθάνατόν τι ζῶον (246 c 5 ff.)?

23-24 μοναρχία: Peterson (‘Der Monotheismus als politisches Problem’) gives a survey of the hellenistic and christian concept of *monarchia*. Peterson sets out to show that a christian concept of monarchia, which developed under Constantine, is more compatible with a hierarchical conception of the Trinity, in which the Λόγος is subordinated to Him who, alone, is God and Monarch in the full sense of the word, as it was held in Eusebian and Arian thought. A veritably trinitarian theology, by contrast, opposes any theological differentiation of political authority and power. For a discussion of Peterson’s thesis see Ruhbach, ‘Die politische Theologie Eusebs von Caesarea’, and Schindler, ‘Monotheismus als politisches Problem?’. In early trinitarian debates of ca. 200, monarchia is used of God’s unity and uniqueness, hence Monarchianism. Tertullian, in his treatise against the monarchianist Praxeas, refers to the example of the one imperial power — *imperium* — shared by the emperor and his (adoptive) son; therefore, according to Tertullian, there is nothing against the view that divine monarchy may also be vested in and exercised by more than one person (*atquin nullam dico dominationem ita unius sui esse, ita singularem, ita monarchiam, ut non etiam per alias proximas personas administratur quas ipsa prospexerit officiales sibi* (Adv. Prax. 3,2 [CCSL 2,1162,21-24]). Since Celsus/Origen, monarchia is gradually becoming connected with political reality (see above, at 7 δόγμα; Origen refers to divine teaching — δόγμα — concerning the [position of the] βασιλεύς). In Eusebius the monarchia of the christian emperor serves the victorious spread of monotheistic faith and reflects in several respects the universal role of Christ-Λόγος.

The development of trinitarian doctrine in the fourth century leads to a clearer distinction between οὐσία and πρόσωπα or ὑποστάσεις: the one divine essence, which possesses unity in all its external works, knows three distinct identities, each of which has its proper part in the common works. Thus the μοναρχία or δεσποτεία may be divided over three hypostases. The particle δέ after προσωπικήν suggests a contrast, or at least a further specification. Having secured cosmic monarchia in opposition to manichaeism, the author now defines this one sovereignty as being able to contain three facets or realities: in addition to the two created dimensions of the νοητὰ καὶ αἰσθητὰ, the law now comes to the fore as a third dimension, as a principle of union. This ‘trinity’ has its example in God’s Trinity: νοητὰ καὶ αἰσθητὰ καὶ συνέχοντα ... νόμον may be compared

COMMENTARY

with the three *πρόσωπα*, which belong to one being. The unity will be traced in the ‘one and same living being’ that venerates this threefold God, something it is able to do by balancing and coordinating its two facets thanks to the law.

The analogy of three-and-one should not induce one to stretch the comparison and to associate the *νοητά* with the Father, the *αἰσθητά* with the Son and the *νόμος* with the Spirit, for God is mentioned as the creator of all three (25). Moreover, in the history of theology Christ, as the Logos, is primarily identified with the *νοητά* insofar as He is Logos and Image, and man is His image, being *λογικός*. Nor is there an exclusive connection of the Spirit with the law. The comparison with and the primeval image of the Trinity lies in the fact that three activities perfectly go together with one origin and coordination.

25-26 *συνέχοντα* and *συγκρατοῦντα* are synonyms: ‘holding together what is about to fall apart’. The same idea is expressed by Photius, in Rom. 1,19-26 (478,2 Staab) *τί τὸ συνέχον· τί τὸ συγκρατοῦν*; Cf. also commentary ad 17. We may note that Athanasius (*Contra Gentes* 3-4), though without referring to the law, points out that man, by yielding to the body and its desires and then abusing the capacity of the soul to choose its direction, transgresses the bounds that have been set to him. Sin is essentially the disturbance of balance in the composition of man as it was at the Creation, with the senses prevailing over man’s capacity to think in the right way, viz. in the direction which would lead him towards God. The thought of a cosmic and anthropological order which has to be preserved almost entirely overshadows the conception of the law as an emergency-measure: see also Appendix III.

27 *προσκυνεῖσθαι*: This is probably an allusion to the Nicaeno-Constantinopolitanum, in which the Holy Spirit is *τὸ σὺν πατρὶ καὶ υἱῷ συμπροσκυνούμενον*. For the full text of this creed see, e.g., N.P. Tanner (ed.), *Decrees of the Ecumenical Councils*, I (Washington 1990), p. 24; for its background see ODCC s.v. Nicene creed. At the same time *προσκυνεῖσθαι* refers to Byzantine court ceremonial: see below, ad 28-29.

οἰκονομῶν ὁμοῦ καὶ προοιμαζόμενος: The combination of these two verbs shows that the author was well aware of the use of *οἰκονομία* as a rhetorical term. In rhetoric, the *οἰκονομία* of a text is determined by its specific purposes, the author arranging and organizing the elements of what he has to say in a way that suits his intentions. That purpose is normally announced in the text’s preface (Meijering, *Literary Theories*, 134-135 and 107-109). In the same way, God is here presented as purposefully planning the creation, carefully and from the very beginning inserting hints (24 *ἤνιξατο, ἐμήνυσεν*, cf. 8 *εἰσηγήσασθαι μυστικῶς ἐν τοῖς αὐτοῦ ἔργοις*) to enable certain especially privileged spectators — viz. the emperors — to unravel the underlying plot, viz. the *δόγμα* set out in ll. 7-27. This general ‘plan’ is summed up in God’s wish that ‘man, being one and the same, should venerate Him in one person and three substances’ (26-27).

EISAGOGE PROOIMION

At the same time, but at another level, the emperors have their own purpose in issuing the Eisagoge. This purpose of the law book, which is directly connected with the emperors having been 'initiated' into God's plan (28-29), and indeed consists in serving that plan, is duly set out in a preface. Thus the verb προοιμιαζόμενος in l. 27 may echo προοίμιον in l. 1.

The all-pervading image of God creating on the basis of clearly identified 'wishes' and 'purposes' has a long history. It is very prominent in Plato's *Timaeus* and Philo's *De opificio mundi*, among other texts.

28-29 Καὶ τοῦτο κτλ.: The words ἡ ἡμετέρα βασιλεία refer to the three emperors mentioned in the heading of the prooimion and in whose name the Eisagoge was promulgated, namely Basil the Macedonian, Leo the Wise and Alexander (see above, ad 3). In the passage καὶ τοῦτο ἐκ τῆς φυσικῆς μοναρχίας καὶ τριαδικῆς δεσποτείας ἡ ἡμετέρα βασιλεία θεῶς πως καὶ ἀπορρητῶς μυηθεῖσα, it is stated in as many words that our majesty has been initiated 'in this' (τοῦτο) in a divine and ineffable manner by a natural monarchy and threefold rule. The choice of words suggests a theological or even mystical foundation of the imperial majesty; it may well be that it reflects Photius' own ideas of emperorship (see also Appendix II). At ll. 21-24 it has been stated that God introduces the power and authority of one master and one monarch: Θεὸς καὶ Κύριος ... εἰσάγων δὲ (namely as an answer to the impiety of the godless Manichaeans) τὴν τῆς μιᾶς δεσποτείας καὶ ἐνιαίας μοναρχίας κυριότητά τε καὶ ἐξουσίαν. God was not alluding to the monarchy of one person, but He revealed the rule of three persons (οὐ προσωπικὴν δὲ μοναρχίαν ἠνίκατο, ἀλλὰ τὴν τρισυπόστατον δεσποτείαν ἐμήνυσεν), a reference to the Trinity of Father, Son and the Holy Spirit, but in one substance (cf. 25-27). This may be taken to refer to the three emperors who promulgated the Eisagoge, but who between them represented one indivisible emperorship; in Byzantium the actual imperial power was always being exercised by one person, the 'main' emperor. On the indivisibility of imperial power, even if exercised by more than one emperor, see Treitinger, 'Vom oströmischen Staats- und Reichsgedanken'; cf. also Ostrogorsky, 'Mitkaisertum im mittelalterlichen Byzanz', 168; Dölger, 'Das byzantinische Mitkaisertum in den Urkunden', esp. 114, 120, 129. This idea of one single and indivisible imperial power, at the moment of promulgation of the Eisagoge exercised by one main and two co-emperors, would then seem to be given its theological legitimation in and to be bound up with Trinity. This theological foundation appears to be what is referred to by τοῦτο. Its corollary is found in Eis. 2,5, where it is stated that the emperor must be an example in orthodoxy and subscribe to the dogma of Trinity (Zepos, JGR II,241).

In the same light, the term προσκυνεῖσθαι (27) may be understood to refer to the προσκύνησις, a fixed part of Byzantine court ceremonial, while προοιμιαζόμενος (27) is reflected in the next paragraph by μυηθεῖσα (29). In the προσκύνησις of the one imperial power exercised by three persons, Trinity is also worshipped. On the προσκύνησις see

Guiland, 'La cérémonie de la προσκύνησις'; Treitinger, 'Die oströmische Kaiser- und Reichsidee'; McCormick, ODB, s.v. *proskynesis*.

It should be noted that this reading of the preface of the Eisagoge as a representation of Photius' view of the indivisibility of emperors and its connection with Trinitarian doctrine does not shed new light on the discussion as to the titles carried by main and co-emperors, since they figure in the heading of the Eisagoge simply as βασιλείς, without further specification. For the discussion between Stein, Ostrogorsky and Dölger, see Dölger, 'Das byzantinische Mitkaisertum in den Urkunden'; cf. also Schreiner, Byzanz, 142 (154-5).

28 ἐκ indicates the acting person in a passive construction in poetry and early prose, e.g. Hdt. III 62 προδέδοσθαι ἐκ Πιρξάσπεος and VII 175 τὰ λεχθέντα ἐξ Ἀλεξάνδρου; it may also indicate the cause, e.g. Eur. Andr. 548 ἐκ τίνος λόγου. Cf. below, 51-52: ὁ νόμος ... ἐκ Θεοῦ διδόμενος καὶ ἀναγορεύμενος.

φυσικῆς: God's monarchy and threefold rule belong to His nature. It may be disputed whether φυσικῆς belongs to μοναρχίας only or to both μοναρχίας and τριαδικῆς δεσποτείας. The omission of the article suggests the latter possibility. However, one may note also the earlier explanation in II. 24-25 (οὐ προσωπικὴν δὲ μοναρχίαν ... ἀλλὰ τὴν τρισυπόστατον δεσποτείαν ...), which rather points to the former possibility, as φυσικός is sometimes contrasted with προσωπικός and ὑπόστατικός: see Leont. Hier. adv. Nest. 4,37 and 2,18. Elsewhere Photius speaks of one ὑπόστασις and two natures (e.g., Ep. 1,261; 34,8), and of a τριαδικὴ μοναρχία (Ep. 1,118 and Amph. 181,101), but he also uses the adjective τρισυπόστατος (Amph. 182,36; 315,68.80).

From the permanent example of His nature, the imperial efforts to reorganize the law are deduced; hence the pretension that the law will 'bring salvation' (34) / 'profit to the soul' (38).

31 τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα: ἐν πλάτει is standing usage expressing 'generally', 'far and wide', e.g. Etym. M. 673,24 μὴ εἰρησθαι (sc. τὸν 'πίσω' μέλλοντα) εἶπεν (sc. Herodianus [2,748,1 ff. Lentz]) ἐν πλάτει; Choerob. 241,9 Gaisford=1,237,38 Hilgard [Gramm. graeci IV,1]; cf. Photius Amphil. 149,733 ἐν τοσοῦτῳ πλάτει τῆς οἰκουμένης. Τὰ ἐν πλάτει τῶν νόμων would then mean: 'the generally used texts of the old laws'. Ἐν πλάτει may also mean 'in the wide sense' as opposed to ἀκριβῶς or κυρίως, and 'generally' as opposed to σπανιότερα. Its most interesting meaning, however, is 'ample', 'detailed', i.e. πλατικῶς as opposed to κεφαλαιωδῶς or ἐν συνόψει. In this sense it is used by, e.g., Psellos, Syn. leg. 1-2: πολὺ καὶ δυσθεώρητον τὸ μάθημα τοῦ νόμου / ἐν πλάτει δυσπερίληπτον, ἀσαφὲς ἐν συνόψει; cf. also Steph. Atheniensis in the preface to his commentary on Hippocrates (2,240,6-10 Dietz) and especially Epiphanius, Panarion 66,14,2 (ed. Holl GCS 3; PG 42,49A3) καὶ ἡ μὲν βίβλος ἐν πλάτει κεῖται, τοιαῦτά τινα

EISAGOGÉ PROOIMION

φαῦλα ἅττα περιέχουσα. For an example in legal literature see Nomoc. XII,2,5: ἐν πλάτει δὲ [‘in detail’] τὰ περὶ τῶν αἰρετικῶν ἀνήνεκται ἐν τῷ ε΄ τιτ. τοῦ α΄ βιβ. τοῦ Κώδικος. Thus τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα would mean ‘the comprehensive texts of the old laws’, referring to the Justinianic Corpus iuris or rather to their translations. According to the author, these were ‘purified’ (ἀνακαθάρασα, see below, ad 32) and reorganized in forty books. From the ninth century onwards we find references to τὸ πλάτος (with the article), which are all associated with the result of this process of purification and reorganization, namely a version of the Basilica, whether in forty or in sixty books. Apparently τὸ πλάτος (τῶν νόμων) has become a standing expression, which could well originate from τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα. The fact that our text speaks of ἐν πλάτει rather than of ἐν τῷ πλάτει would be an argument in favour of the view that the texts of the time before the Basilica, in other words the Justinianic texts, are meant. This is not to say that the presence of the article always indicates the Basilica. On the contrary, a distinction between the Basilica and τὸ πλάτος is made explicitly in the longer preface to the revision of the Nomocanon by Theodore Bestes of 1089/90: here τὸ πλάτος seems to mean the Justinianic texts. (For this revision and its two prefaces see Van der Wal-Lokin, *Delineatio*, 106-106 and 136-137; for edition and discussion see now Schminck, ‘Das Prooimion der Bearbeitung des Nomokanons’). A similar distinction is also made a century later by Balsamon (cf. Stolte, ‘Balsamon and the Basilica’, 118-122). Interestingly, in a number of scholia to the Eisagoge τὸ πλάτος means the Basilica: cf. Van Bochove, *To Date and Not to Date*, 146-148.

32 ἀνακαθάρασα: apparently this reference to the ἀνακάθαρσις is not considered to be in need of an explanation. Cf. the prooimion of the Prochiron, where the operation is set out in some detail (ed. Schminck, *Studien*, 58, 59 ff and 60, 77 ff.). See also Pieler, ‘Anakatharsis’, and Van Bochove, *To Date and Not to Date*, ch. 11.

32 τεσσαράκοντα: if the Basilica are meant, these are stated to be in forty books. The Basilica as they have been transmitted consist of sixty books; the prooimion of the Prochiron similarly speaks of sixty (Schminck 60, 80). The traditional dating therefore has to account for three versions of the Basilica, in 60, 40 and again 60 books respectively, a problem which does not arise if one accepts Schminck’s thesis of the priority of the Eisagoge as opposed to the Prochiron. On the number forty, here and below, see also Schminck, “Frömmigkeit ziere das Werk”, 79-114.

33 τὸ πᾶν χύμα: ‘the entire mass’. Χύμα properly means ‘that which is poured out or flows’, ‘fluid’, ‘liquid’. For other instances see LSJ s.v. and Du Cange s.v. Here τὸ πᾶν χύμα is used as a metaphor for τὰ ἐν πλάτει κείμενα. A precise parallel of this usage may be found in the Σύντομος διαίρεσις τῶν νεαρῶν τοῦ Ἰουστινιανοῦ by Michael Psellos, a treatise dealing with the question which of Justinian’s Novels have found a place in the

Basilica. The *Σύντομος διαίρεσις* tells us about Nov. 165 that it κατεστρώθη μὲν ἐν βιβλίῳ νη΄ τῶν βασιλικῶν, ἐν δὲ τῷ χύματι οὐ κεῖται, οὐδὲ εὐρέθη, τίνος ἐστίν (Heimbach, *Anekdotia* II, p. 236): Nov. 165 has been incorporated in the Basilica, but does not belong to the χύμα (τῶν νεαρῶν); it is not clear by which emperor the Novel has been promulgated. That τὸ χύμα in this passage of the *Σύντομος διαίρεσις* is the equivalent of τὸ πλάτος is proved by the note on Nov. 140 in the same treatise: οὐδὲ ἡ ρν΄ (leg. ρμ΄) νεαρά, ἥτις ἐπιγράφεται κατὰ συναίνεσιν λύειν τὸν γάμον (αὐτὴ δὲ οὐδὲ εἰς τὸ πλάτος ἐγράφη τῶν νεαρῶν, ὡς οὕσα Ἰουστίνου τοῦ μετὰ τὸν Ἰουστινιανὸν βασιλεύσαντος (ed. Heimbach, *ibid.*, 235/6). From this passage we may infer that, in Psellos' view, only those Novels belong to τὸ πλάτος τῶν νεαρῶν that explicitly have been issued by Justinian himself; Novels of Justin (or Tiberius, cf. at Nov. 161 [*ibid.*]: οὐδὲ ἡ ρξα΄ κατεστρώθη ἐν τοῖς βασιλικαῖς [ἐστὶ δὲ γ' διάταξις τῶν νεαρῶν τοῦ Τιβερίου, οὐ κατεστρώθη δέ.]) did not belong to it. On this question see Heimbach, *Anekdotia* I, Proleg. p. xxxi; *Anecd.* II, Proleg. p. lxvi. Psellos' authorship of the *Σύντομος διαίρεσις* has been disputed: it was denied by Heimbach, who dated the treatise to the tenth century (*Anecd.* II, Proleg. lxxv-lxxvi and cf. Zachariä's review of Heimbach's *Anekdotia* II, p. 536, but defended on solid grounds by Weiss, *Oströmische Beamte*, 256-257. For further literature see Schminck, *Studien* 29 n. 38.

33 ἐκέρασεν: the operation is presented as completed: the mixture is now presented. Several instances of κεράννυμι in the sense of 'to pour out, to fill a cup with wine and present it to a person to drink' are found in *Soph. Lex.* s.v. κεράννυμι. A similar semasiological development may be observed in late Latin *pincernari*, cf. A. Blaise, *Dictionnaire latin-français des auteurs chrétiens*, Turnhout s.a., s.v. It seems too far-fetched to assume, with Schminck ('*Ἀπό τον νόμο στον νόμο*', 68 n. 30), a reminiscence of Plato criticizing the 'unmixed law' (*ἄκρατος νόμος*). Plato's advice of 'mixing' (*κεραννύντες*) the ingredients persuasion and compulsion (*Leges* 722c 1-2; see also above, commentary ad 1) is his argument in favour of adding prefaces to laws, whereas the present context merely is about the purified laws themselves.

33-36 νῦν δὲ τὰς ... ἀπορρίψασα: According to Schminck (*Studien*, 63) this passage would contain a reference to the *Ecloga*, albeit a vague one. It can hardly be called vague, for it is difficult to see what 'the nonsense promulgated by the Isaurians' could mean other than the *Ecloga* of 741, issued by Leo III and Constantine V (cf. Burgmann, *Ecloga*, 10-12 and 100ff.). From *πάντη ἀποβαλομένη καὶ ἀπορρίψασα* we may infer that the *Ecloga* was formally abrogated by Basil, Leo and Alexander. For the 'rejection' of the *Ecloga* in this passage see Zachariä in Zepos, *JGR* II, 237 n. 16; Zachariä, '*Ὁ Πρόχειρος νόμος*, LXX n. 20; Burgmann, *Ecloga*, 20; Schminck, *Studien*, 67 with n. 43.

Why, then, was the *Ecloga* abrogated? Burgmann has pointed out that the polemic against the *Ecloga* was ideological in character. The *Eisagoge* contained rules that had

been adopted from the Ecloga, pertaining to criminal law, division of war-booty and the law of matrimonial property; cf. Burgmann, 20 and 121-122; Schminck, Studien, 67 with n. 44; 72 with nn. 85-87, and 80 with n. 136. It was not so much the substantive law that was under attack as the ideology which had produced the Ecloga, namely iconoclasm. A further indication for this view is Photius' generally accepted involvement in the compilation of the Eisagoge, as Photius had repeatedly taken a stand against iconoclasm. For Photius' involvement, see above, commentary ad 6, and Schminck, Studien, 14, 65, 84-85, 101-102, 132; Troianos, 'Nomos und Kanon'; id., 'Megas Photios'; see also Appendix II. On Photius' stand against iconoclasm, see, e.g., Dvornik, 'The Patriarch Photius and Iconoclasm'; Mango, 'The Liquidation of Iconoclasm'. On the theology of iconoclasm, see, e.g., Beck, Kirche, 296-306 and 473-519; Anastos, 'Argument for Iconoclasm'; Meyendorff, Byzantine Theology, 42-53.

Yet it seems that its association with iconoclasm through Leo III and Constantine V cannot have been the most important reason for rejection of the Ecloga. Ll. 33-35 state that the Ecloga has been promulgated 'in contradiction to the said divine doctrine and to the detriment of the laws which bring salvation'. 'The said divine doctrine' is not a reference to the theology of iconoclasm, but to ll. 7 ff. of the prooimion of the Eisagoge about the special role of the law in keeping together the two spheres of reality (see commentary ad 5-17, 11, 17 ἐκ δύο ἐτεροουσίων ἐν σύνθετον, 23-24 μοναρχία and 25-26 συνέχοντα, συγκρατοῦντα. Criticism of the Ecloga, then, is that the Ecloga had been unable to fulfill this role and to preserve the harmony of the two spheres; what is worse, the Ecloga had damaged the laws which did possess that ability. For this reason it had to be abrogated.

It remains to explain why the Eisagoge contained rules that had been taken over from the Ecloga. Apparently these provisions did not share in the general *damnatio* of the Ecloga, but if the Ecloga had been abrogated, they had been abrogated together with it and therefore had to be promulgated again, henceforth drawing their binding force from Basil and his co-emperors. The binding force of the Eisagoge may be inferred from its status as an imperial law: see above, commentary ad 1 προοίμιον, and below, ad 42 κελεύομεν.

34 τοῦ εἰρημένου θείου δόγματος: see ad 7.

35 τὰς ... παρὰ τῶν Ἰσαύρων φληναφίας ἐκτεθείσας: namely the lawbook issued by the Isaurian emperors, the Ecloga of 741.

36 προκεκριμένων: the use of the perfect tense is another indication of the completion of the forty books.

38 νόμον: the Eisagoge is called a νόμος (cf. also l. 41); see above, commentary ad 2.

COMMENTARY

39 εἰσαγωγικόν: the use of this word is one of the arguments advanced by Schminck (Studien, 12-13) in favour of the title Eisagoge rather than Epanagoge (see above, ad 1).

41 τοῦτον τὸν νόμον: namely the Eisagoge.

αὐτοκρατορικῶς τε καὶ παντοκρατορικῶς: The two qualifications refer to the imperial and divine authority respectively, but together they also express the notion of absolute and universal sovereignty. The combination of the notions αὐτοκρατορικῶς and παντοκρατορικῶς is further developed in the rest of this paragraph, in which the law is presented as an emperor and springing from emperors, more specifically orthodox emperors (42-46), i.e., those who are not iconoclastic emperors: see below, at 45 and 45-46.

41-42 πάντων ... κελεύομεν: Is this an echo of the beginning of the Justinianic Code? C. 1,1,1: *Cunctos populos, quos clementiae nostrae regit temperamentum, in tali volumus religione versari* etc.

42 κελεύομεν: We may infer from the use of this term that the present prooimion is an introductory constitution to the Eisagoge, just as the various parts of the Justinianic codification have their own introductory constitutions, e.g., const. Δέδωκεν of the Digest, at § 19: ταῦτα δὲ δὴ καὶ μόνᾳ πολιτεύεσθαι τε καὶ κρατεῖν συγχωροῦμεν τε καὶ θεσπίζομεν. See above, ad 1 προοίμιον.

42-44 Καὶ γὰρ ... ἐχειροτονήθη: We have not found an exact parallel to this image, but Clem. Alex. Protr. 10,96,3 (PG 8,209B) comes very close: ἀποδυσάμενοι δ' οὖν περιφανῶς ἐν τῷ τῆς ἀληθείας σταδίῳ γνησίως ἀγωνιζώμεθα, βραβεύοντος μὲν Λόγου τοῦ ἁγίου, ἀγωνοθετοῦντος δὲ τοῦ Δεσπότου τῶν ὅλων. οὐ γὰρ σμικρὸν ὑμῖν (or: ἡμῖν) τὸ ἄθλον ἀθανασία πρόκειται. For the image of the race-course, see Paul, 1 Cor. 9,24: οὐκ οἶδατε ὅτι οἱ ἐν τῷ σταδίῳ τρέχοντες πάντες μὲν τρέχουσιν, εἷς δὲ λαμβάνει τὸ βραβεῖον; οὕτως τρέχετε ἵνα καταλάβητε κτλ. See also Pfitzner, Paul and the agon motif.

Τῷ σταδίῳ τῆς προαιρέσεως is short for the arena where participants show their προαίρεσις, their intentions, the spirit in which they act. Cf. Philo Jud. Praem. 4 παρελθόντες ὡσπερ εἰς ἱερὸν ἀγῶνα γυμνὴν τὴν ἑαυτῶν προαίρεσιν ἀνέφηναν εἰς ἐναργέστατον ἔλεγχον τῆς ἀληθείας (transl. Colson: 'They [i.e. the Jewish people] advanced as it were into the sacred arena and showed the spirit in which they would act bared ready for the contest, to the end that its sincerity might be tested beyond doubt').

Life is also presented as a race-course in the *sermo allocutorius* of the Council in Trullo: ἐν τῷ τοῦ βίου τούτου σταδίῳ (Joannou I,1, p. 104, 7-10).

44 δεξιὰ φάλαγγ: As far as we know, the expression is a hapax. For the image of the chosen host, i.e. those who have been gathered on the right hand side, see Matthew 25:32-34 (cf. also 13:49).

ὡς μεμαθήκαμεν: The expression is common in late-Greek prose, in Christian authors as well as in commentaries. It is found with a reference to the source of the knowledge acquired, e.g. to another work of the author commented upon (Asclepius, In Arist. Met. libros A-Z Commentaria [ed. M. Hayduck, CAG 6.2, Berlin 1888], 208,31: ὡς μεμαθήκαμεν ἐν Κατηγορίαις), or to a book of the Bible (Basilius, Epistulae [ed. Y. Courtonne, Paris 1957-66], 6,2,1: ὡς μεμαθήκαμεν ἐν τῷ Εὐαγγελίῳ). Without an explicit reference to another work it occurs, e.g., in Elias, In Porphyrii Isagogen (ed. A. Busse, Berlin 1900), 44,19; 99,12; Joannes Philoponus, In Aristotelis Analytica priora commentaria (ed. M. Wallies, CAG 13.2, Berlin 1905) 322,13; Michael, In EN ix-x commentaria (ed. G. Heylbut, CAG 20, Berlin 1982), 529,13; 593,6; Olympiodorus, In Platonis Alcibiadem commentarii (ed. L.G. Westerink, Amsterdam 1965 [repr. 1982]), 46,20; 67,26. In all these passages there is an implicit reference to knowledge acquired earlier in the same commentary or in the text commented upon.

45 βασιλεύς: Cf. Νόμος ὁ πάντων βασιλεύς θνατῶν τε καὶ ἀθανάτων ἄγει δικαίων τὸ βιαιότατον ὑπερτάτα χειρὶ: 'Law the king of all, of mortals and immortals, leads them, making just what is most violent with arms supreme' (transl. Lloyd-Jones), as Pindar (fr. 169a Snell-Maehler) begins an ode which was much quoted in antiquity, also by Christian authors. Indeed, via the Stoic philosopher Chrysippus and the Roman jurist Marcianus the νόμος - βασιλεύς theme also found its way to the Digest (D. 1.3.2), hence to a Basilica scholion (BS 4/19-27); see also Schminck, 'Ἀπὸ τον νόμο στον νόμο', 61-64. It has, however, been a matter of dispute what Pindar meant by νόμος: according to some it meant custom, usage, according to others it indicated the law of the universe. See Lloyd-Jones, 'Pindar Fr. 169'.

45-46 οὐ τῶν τυχόντων ... ἀδομένων: After the reference to the Isaurian Ecloga, which will be abrogated and supplanted by the present legislation (33-40), there can be little doubt that the βασιλεῖς οἱ τυχόντες are in fact the iconoclastic emperors, here marked out as not being considered orthodox. The position of the emperor *in* the church made his orthodoxy a prerequisite. Cf. several papers collected by Hunger (ed.), Das byzantinische Herrscherbild; Fögen, 'Das politische Denken', 59-67; Dagron, Empereur et prêtre.

47 μόνος τῶν λοιπῶν ἀγαθῶν is an example of a frequent illogical expression: cf. Epict. Diss. 2,19,32 μόνον ... τῶν ἄλλων πάντων, Hippocr. Morb. S. 13,2 (p. 80,6 Grensemann) ταῦτα ... τῶν λοιπῶν πνευμάτων ἰσχυρότατά ἐστι; cf. also μάλιστα τῶν ἄλλων Arist. Met. 980 a 23, Strab. 8,6,22 p. 380 C etc., etc.; in Latin: Tac. Agr. 34,1 *hi ceterorum*

COMMENTARY

Britannorum fugacissimi and the like. See Radt, 'Zu Aristophanes Plutos', 258-259; Schmid, *Der Atticismus in seinen Hauptvertretern II*, 45 f.

48 αὐτὴν τὴν φύσιν ἡμῶν ῥώνουσι: The Greek Fathers regularly emphasize that human nature is subject to weaknesses by reason of the fact that it has been created. Most prominent among these weaknesses are physical transience and moral changeability, instability of will. Christ's work of salvation is therefore seen as the elevation of man beyond the weaknesses of his creation: either — in the more hellenistic, Alexandrian tradition — through occupation of human flesh by the Divine Logos, with the result that that part shares in divine powers, including an ethical sanctification, or — in the more Semitic, Antiochean tradition — through a re-creation of the will to the effect of everlastingness.

In theological terms it is unusual that the law should have an effect of consolidation of the instable human nature, for normally the emphasis is on the insufficiency of the law of creation and Mosaic law as compared to Christ's work. Yet the qualification fits into the above-mentioned tradition, to the extent that this function of the law is also connected with the instability of the human composite (the two μοῖραι, l. 19) and has nothing to do with an increase of sin (knowledge). Perhaps all this is in accordance with our author's wish to keep Christ out of the picture as long as possible: it is not until line 88 that He appears, and there primarily as lawgiver and dispenser of justice.

50-62 Studying the law is presented here as the most valuable of human pursuits, in a somewhat startling emphasis on the role of the law in the achievement of 'a good life and true happiness' (61). See also Appendix IV. Just like the theme or aim of a text (σκοπός; see ad 5) and its arrangement (see ad 87), the utility (55 συμβαλλομένων, δίνησι καὶ χρησιμεύει, 56 προὐργιαιτέραν) of its subject belongs to the traditional items also indicated in the prooemia of philosophical, rhetorical and mathematical treatises. The importance of a non-fictional text may well be defined in terms of the discipline it belongs to, often, as here, in contrast with rival disciplines. For examples, see e.g. Mansfeld, *Prolegomena mathematica*, p. 21 with note 71 and pp. 122-123.

51 προειρημένην ἱερολογίαν: The holy teaching of 17 ff.

53 αὐτοκρατορίαν: This would seem a reference to αὐτοκρατορικῶς (41).

56 εἰς αὐτὸν ἑμμελῆ: For the construction of ἑμμελής with a preposition, 'in harmony with, suitable for', cf. Plut., *Luc.* 1,5 ἦν γὰρ οὐκ ἐπὶ τὴν χρείαν μόνην ἑμμελής αὐτοῦ ... ὁ λόγος; Aristophanes Byz., *Historiae Animalium Epitome* (ed. Lambros), 2,472,2: λόγος δὲ κεκράτηκεν εἰς ἀκοὴν ἑμμελής.

58-60 Contamination of two constructions, namely *ὡς ἐκείνοι μὲν πρὸς ... ἀφορῶσι, τὸν νόμον δὲ καὶ τὴν δικαιοσύνην ... οὐχ ἁμαρτήσῃ* and *ὡς ἐκείνων πρὸς ... ἀφορώντων τὸν νόμον καὶ τὴν δικαιοσύνην ... οὐχ ἁμαρτήσῃ*. Cf. Arist., EN 1152 a 4 f. ὅμοιοι δὲ καὶ ὁ ἀκρατὴς καὶ ὁ ἀκόλαστος, ἕτερον μὲν ὄντες, ἀμφοτέροι δὲ τὰ σωματικά ἡδέα διψοῦσιν.

58 *εὐζωΐας*: *εὐζωΐα* here probably means ‘living well, i.e. comfortably’, without a suggestion of frivolity or dissipation; cf., e.g., Athanas. Quæst. ad Antiochum ducem, PG 28,669D πολλοῖς δὲ ἀσέβησι καὶ ἁμαρτώλοις εὐζωΐαν καὶ εὐτεκνίαν καὶ εὐπραγίαν δωρησάμενος (sc. ὁ Θεός); Greg. Naz. Liturgia graeca, PG 36,713C τοῖς ἐν σεμνῷ γαμῶ τὴν εὐζωΐαν (in a wish). It should be distinguished sharply from the notion of ‘la dolce vita’ which it has in Eustratius, In Arist. EN (ed. Heylbut [CAG 20]), 79,18. Elsewhere in late-Greek prose it means ‘a good, i.e. virtuous, life’, on a par or connected with *ἀρετή* and *εὐπραξία* and sometimes identical with *εὐδαιμονία*; e.g., Joh. Chrys., De Babyla (ed. Schatkin-Blanc-Grillet [SChr 362]), 74 τῆς ἀρετῆς ... καὶ τῆς εὐζωΐας; Proclus, In Pl. Rep. (ed. Kroll), 1,26,13 (identification of *εὐζωΐα* and *εὐδαιμονία*, both the result of *δικαιοσύνη*); in Christian authors also ‘living well, i.e. as a pious Christian’, e.g. Eusebius, Comm. in Psalm. PG 23,1292B.

64-71 *ἡνίκα δίκαιον ... τῷ καλλίστῳ τῶν ὀνομάτων*: ‘Just’, used as the most beautiful of God’s names, does not seem to go back to a fixed tradition; for quotations, see the lexica s.vv. *δίκαιος* and *δικαιοσύνη*. ‘Καλός’ is used in patristic literature both of God Himself and of His law and precepts. But dominating among the many definitions of God are the *negativa*, such as ‘unbegotten’, ‘indivisible’, ‘incomprehensible’ etc., which, according to Prestige, God in Patristic Thought, 4 ff., intend to express His absolute independence and liberty: in contrast with all other beings God is free to be entirely His own and to act without restrictions in accordance with His own being and His own will. ‘His will is determined from within ...’ (7). According to Prestige ‘... a most important set of *positive* associations attaches to the word “holy”’ (21), which includes, inter alia, ‘morally pure’ (23). For several centuries the Fathers, contrary to natural-philosophical systems, were mindful of defining God as not forming part of one cosmic whole in some way together with nature, but as standing above it in absolute independence. Therefore His instructions are always related to His will (to create). In the Apologists, God’s goodness and justice must be understood in a metaphysical sense, namely as His qualities through which He has created and preserves the world. Where apophatic theology effects the impression of unlimited omnipotence, ‘justice’ as a quality of God serves to counter the idea of arbitrariness: God, in His boundlessness, is bound to His being and will (e.g., Origen, c. Cels. III 70).

It is quite conceivable that the idea of God’s consistency could find more acceptance in proportion with a decrease of the necessity to emphasize His transcendence and freedom, through absence of opposition. Thus it was perhaps possible to apply the notion

COMMENTARY

of ‘one coherent, orderly world’, originally an argument for the existence of one God and one Logos, to a corresponding ordering of society.

66 For the juxtaposition of the contrasting words *αεί* and *υπέτως*, cf., e.g., Soph. Ant. 55-56 *ἀδελφῶ δύο μίαν καθ’ ἡμέραν αὐτοκτονοῦντε*, Eur. Phoen. 103 *ἔρεγε γεραιῶν νέα χεῖρ’*, Thuc. 3,59,2 *τοῖς ἐχθίστοις φίλτατοι ὄντες παραδοθῆναι*, Catull. 76,13 *difficile est longum subito deponere amorem*, Hor. Sat. 2,6,80 *rusticus urbanum murem mus paupere fertur accepisse cavo*. See also Fehling, *Die Wiederholungsfiguren*, 280 ff.; Gygli-Wyss, *Das nominale Polyptoton*, 143 ff.

66-67 *δικαιοσύνη εἴτ’ οὖν ἰσότητι νόμου τῇ ἐκάστω πρεπούση*: The periphrastic expression *ἰσότης νόμου* (also in l. 72) instead of *ἰσονομία* obviously serves to retain the emphasis on God’s law. A more natural phrasing would have been *ἰσότητι τῇ ἐκάστω τὸ πρέπον ἀπονεμούση*, a specific kind of equality which would remind the educated reader all the more readily of Plato *Leges* 757 b-c: the ‘truest and best’ *ἰσότης* is that which (c 5) *τὸ πρέπον ἐκατέροις ἀπονέμει*. Cf. *ibid.* d 4-5 *τὸ δίκαιον ... τοῦτο δ’ ἐστὶ ... τὸ κατὰ φύσιν ἴσον ἀνίσοις ἐκάστοτε δοθέν*. The distinction between numerical and proportional equality, the latter’s identification with justice, and the terminology found here have been elaborated by Aristotle, e.g. *EN* 5,3 (1131 a 10 ff.), *Pol.* 5,1,7 (1301 b 30 ff.); see, e.g., Von Leyden, *Aristotle on Equality and Justice*; Miller, *Nature, Justice and Rights* 68-74. Through Roman philosophy (cf. Cic. *De leg.* 1,6,19) this definition of justice has found its way into Graeco-Roman law, but without the term ‘equality’: e.g. *D.* 1,1,10 pr. and *I.* 1,1 pr. *iustitia est ... voluntas ius suum cuique tribuendi*; *Eis.* 1,4 *δικαιοσύνη ἐστὶ ... βούλησις ἐκάστω τὸ ἴδιον ἀπονέμουσα δίκαιον*. For *ius suum* instead of *τὸ πρέπον*, cf. *Arist.* *EN* 5,4,8 (1132 a 28-29) *τότε φασὶν ἔχειν τὸ αὐτοῦ, ὅταν λάβωσι τὸ ἴσον*. So the author of the *Eisagoge* prooimion is clearly playing with the words *νόμος* and the popular definition of justice as distributing (*ἀπονέμουσα*) fair and equal rations. As said before, *ἰσότης νόμου* is periphrastic for *ἰσονομία*, which has associations with *ἴσα νέμειν* as well as with *ἰσότης* before the *νόμου* (Ehrenberg, *RE Suppl.* VII 293-300 s.v. *Isonomia*). Thus the author can speak of justice (66, 80), equality (77), law (68, 77), equality of law (67) or law of equality (72) without any clear difference of meaning, but with the evident purpose of linking his concrete, written law with the cosmic *isonomia*. Equality is often mentioned as a prominent, harmonizing factor in the cosmos, e.g. *Ps. Arist.* *De mundo* 400b 27-30; *Nicomachus of Gerasa* *Introd. arithm.* 2,4,2; *Plut. Mor.* 719b, and esp. *Philo Jud. Spec. leg.* 4, 230-238 and *Opif.* 23 (*διεμετρήσατο [sc. ὁ θεός] σταθμησάμενος ἐκάστω τὸ ἐπιβάλλον*).

Our present author’s device, however, of making not equality or *isonomia* but the law itself the central element in the formation of ‘all things’ is, as far as we know, unique to the *Eisagoge*. Nowhere have we found a similarly majestic presentation of the law as here, nor is there anything of the kind in the prooimia examined by Hunger, *Prooimion*.

67-80 πάντα ...ἀναλάμπουσι: This whole passage is evidently inspired by Nicomachus of Gerasa, *Introd. arithm.* 1,23,4-5 (65, 3-16 Hoche), which is sufficiently important to be cited in its entirety:

καὶ τὰ τοῦ ἀπειροῦ καὶ ἀορίστου μέρη καὶ εἶδη ὑπ' ἐκείνου (i.e. τοῦ καλοῦ καὶ ὠρισμένου καὶ ὑπὸ ἐπιστήμην πίπτοντος) μορφοῦται καὶ περαίνεται καὶ τοῦ προσήκοντος κόσμου καὶ εὐταξίας τυγχάνει καὶ ὥσπερ ὑπὸ σφραγιστῆρός τινος ἢ μέτρου πάντα τὰ ἐμπίπτοντα μεταλαμβάνει τῆς ὁμοιότητος καὶ ὁμωνυμίας· οὕτω γὰρ εὐλόγως καὶ τὸ τῆς ψυχῆς λογικὸν τοῦ ἀλόγου κοσμητικὸν ἔσται καὶ ὁ θυμὸς καὶ ἡ ἐπιθυμία ἐν τοῖς τῆς ἀνισότητος δυσὶν εἶδεσι τεταγμένα ὑπὸ τοῦ διανοητικοῦ εὐτακθῆσονται ὡς ὑπὸ τινος ἰσότητος καὶ ταυτότητος. ἐκ δὲ τῆς ἀπισώσεως ταύτης ὀρθῶς ἡμῖν ἀποβήσονται αἱ λεγόμεναι ἡθικαὶ ἀρεταί, σωφροσύνη, ἀνδρεία, πραότης, ἐγκράτεια, καρτερία καὶ αἱ ὅμοιοι.

On certain points the author of the prooimion deviates from this source, for his own particular purposes. The main point of difference is, of course, that Nicomachus does not speak of νόμος at all. In his view 'the parts and varieties of the infinite and unlimited' (τὰ τοῦ ἀπειροῦ καὶ ἀορίστου μέρη καὶ εἶδη: the counterpart of πάντα at l. 67) owe their shapes and fitting order from 'that which is fair and limited and which subjects itself to knowledge', thus receiving the form and likeness of their model as if stamped by a seal. This is the theory rejected by the author of the *Eisagoge prooimion* at ll. 72-73 as presupposing an infinite number of 'ideas' (see below, commentary ad 72-73).

67 ἀρχῆθεν: cf. commentary ad 5-7.

68 περαίνεται: this verb is more suitable in Nicomachus' context, where the ἀπειρον or ἀόριστον is given a πέρας. These are important Pythagorean terms: cf. D'Ooge, *Nicomachus*, p. 100 n. 1.

68 προσηκούσης echoes *πρεπούση* of l. 67. The adjective is somewhat pleonastic with *εὐταξίας*. It stresses the fact that the 'good order' is good precisely because each thing has received its fitting proportions or τὸ προσήκον, thanks to the law of equality.

69 εὐμοιρῆσαντα: In the light of the discussion about the authorship of this text, it may be worth mentioning that Photius duly constructs εὐμοιρέω with an accusative in *Amphil.* 77,18. The corresponding genitives τοῦ προσήκοντος κόσμου and εὐταξίας in the Nicomachus passage quoted above (ad 67-80) depend on τυγχάνει.

διαβήτου τινός ἢ κανονίου: These measuring instruments are also mentioned as characteristic of meticulous ἀκριβεία in Plato *Phlb.* 56 b 7-c 1 (about carpentry) and Plut.

COMMENTARY

Mor. 802 f (about the style of Demosthenes: *περιόδοις πρὸς κανόνα καὶ διαβήτην ἀπηκριβωμέναις*).

69-70 *σφραγιζόμενα καὶ προτυπούμενα*: For parallel usage of these two terms and of related words such as *χαράκτηρ* and *ἐκμαγεῖον* in the cosmogonies of Philo and middle-Platonists, see Runia, Philo of Alexandria, 163-165. The image of seal and imprint ultimately goes back to Plato *Tht.* 191 c-192 a and is not entirely appropriate here. Apart from being incongruous with such tools as dividers and ruler, it presupposes the existence of archetypal ‘seals’ or models, which is precisely what the author will dispute below (71-73). He has failed here to adapt the wording of Nicomachus, who, incidentally, also combines the image of metrology with that of imprint (cf. *ὥσπερ ὑπὸ σφραγιστήρὸς τινὸς ἢ μέτρου*).

The word *σφραγιζόμενα* properly means ‘(being) sealed’, whence specific legal and theological meanings have developed. In legal usage ‘to seal’ means to authenticate a document or to certify an object by attaching a seal. Especially the sealing of documents has remained common practice in Byzantium (see, generally, Dölger-Karayannopoulos, *Urkundenlehre*, 40-45). In patristic writings *σφραγίζω* may mean ‘to sign with the cross, make the sign of the cross’ (see Lampe, s.v., B); it may also refer to baptism (Lampe, s.v., C). Neither connotation seems to be present here.

70 *εἰς ἑνὸς κόσμου σύστασιν ἄρμονικῶς συνάγεται καὶ συναθροίζεται*: The author of the proimion distinguishes two stages in the creative process. When all separate things (67 *πάντα*) have been measured and moulded properly, they are combined to form one harmonious cosmos. This distinction is to be found already in Plato’s *Timaeus* (69 b 2-c 2) and, more prominently, in Philo’s *De opificio mundi*. See Runia, Philo of Alexandria, 140-148 and our commentary ad 72-73. Yet the author seems to feel that it is incompatible with the Platonic ‘ideas’ or forms, for he goes on to explain his own view as no less plausible than the assumption of such ideas. In fact the emphasis he lays on the assemblage (*σύστασιν, συνάγεται, συναθροίζεται, 72 συστήσασθαι*) of many components to form one single whole, as well as the teleological design (71 *προκεντήματι*) underlying this process, are reminiscent of Aristotle’s analysis of the creative process: cf. *Arist. Metaphys.* 11,10 (1075 a 18-19) *πρὸς ... ἐν ἅπαντα συντέτακται*; see Guthrie, *History VI*, 107 and 266; Meijering, *Literary Theories* 100-102. The author is here deviating from Nicomachus, but part of the terminology seems to have been taken from another portion of the *Introd. arithm.*; see below, ad 71-72. About the fusion of (Neo-)platonism, Peripatetic, Pythagorean and Christian elements in post-classical philosophy see e.g. Sorabji, *Ancient commentators*.

71-73 In this passage the author takes issue with the heritage of Plato. In doing so he stands in a tradition which began with the early fathers: already the Apologists have been

looking for similarities of the Platonic and christian doctrines of creation. The last products of this genre stem from the early fourth century, with Eusebius' *Praeparatio Evangelica* and Athanasius' *Contra Gentes*. In this context the more interesting of the two is Athanasius; though less explicitly referring to Plato than Eusebius does, he makes use of Plato's doctrine. In *Contra Gentes* 35-42 he wishes to demonstrate that a contemplation of the cosmos should lead to the postulation of one, single God. His existence is proved by the harmony of opposite elements (36-37) and represented in the harmonious and peaceful structure of society in a city (38). Significant is Athanasius' repeated use of ἵσος and its derivatives. The visible harmony proves the existence of an invisible guiding hand, the one Creator. From this he jumps to the one Logos, later explained by the fact that the cosmos has evidently been organized in accordance with reason, wisdom and knowledge; therefore God's Logos must have been at work, not the Logos Spermatikos, but the transcendent, one Logos, postulated by Eusebius at the top of the hierarchy of Creation (*Praep. Evang.* XI,23-24 [ed. Mras VIII,2=GCS, 43,2, p. 48 ff.]). See also E.P. Meijering, *Athanasius Contra Gentes*, 115 ff.

71-72 προκεντήματι τῷ τῆς ἰσότητος νόμῳ βλέποντα: Here the author has been inspired by Nicomachus *Introd. arithm.* 1,4,2 (cf. also 1,6,1):

ἐφαμεν αὐτὴν [sc. τὴν ἀριθμητικὴν] ἐν τῇ τοῦ τεχνίτου θεοῦ διανοίᾳ προὑποστῆναι τῶν ἄλλων ὡσανεὶ λόγον τινὰ κοσμικόν καὶ παραδειγματικόν, πρὸς δὲν ἀπερειδόμενος ὁ τῶν ὄλων δημιουργὸς ὡς πρὸς προκέντημά τι καὶ ἀρχέτυπον παράδειγμα τὰ ἐκ τῆς ὕλης ἀποτελέσματα κοσμεῖ καὶ τοῦ οἰκείου τέλους τυγχάνειν ποιεῖ.

This parallel makes it probable that in the *Eisagoge prooimion*, too, we should read πρὸς προκέντημά τι τὸν τῆς ἰσότητος νόμον βλέποντα κτλ.

72-73 εἰδέας ἀπείρους τῶν καθέκαστα: Witte is certainly right in reading ἰδέας instead of εἰδέας (see ed. Schminck, app. ad loc.).

Scharf ('*Photios und die Epanagoge*', 393 f.) connects this passage with Photius, *Amph.* 77, where he refers to his previous discussion of the Platonic forms. This earlier discussion has not been preserved. Judging from its recapitulation in *Amph.* 77, Photius rejected the theory of the forms (which he calls both εἶδη and ἰδέαι) as an intermediate state in the cosmogony, on the basis of two arguments. First, it would be unworthy of God to assume that He needed to make preliminary models and likenesses of what He was about to create (7-8 προὑφιστάνειν τύπους τῶν παραχθησομένων καὶ ὁμοιώματα), which is how human artisans proceed. As this view does not in itself seem to preclude the existence of one general plan, whether or not based on the law of equality, this first argument cannot be used to prove or disprove Photius' authorship of the *prooimion*. Second, Photius complains in *Amph.* 77 that the assumption of preliminary models would compell us to assume that the generation of created things never reached its end (10-11 ἐπ' ἄπειρον ἐξ ἀνάγκης διαβιβάζει τῶν πλαττομένων τὴν πρόσοδον). This argument and its wording

COMMENTARY

(cf. also *ibid.* 13-14 τούς τύπους ἐκάστης ιδιότητος ... ἀπομάττεσθαι τὰ καθ' ἕκαστα) may indeed underly the passage under discussion, but the resemblance should not be overstressed. Cf. also commentary ad 73 ἀναπλάττεσθαι.

In fact it may not be Plato himself whom our author takes issue with, but Philo's view of the creation of the world, which of course heavily relies on the *Timaeus* for its phrasing. Philo is very explicit about the fact that every species of material objects was created after the image of a corresponding incorporeal model, for (*Opif.* 16): ὁ θεός ... βουλευθεὶς τὸν ὄρατὸν κόσμον τουτονὶ δημιουργῆσαι, προεξετύπου τὸν νοητὸν, ἴνα, χρώμενος ἀσωμάτῳ καὶ θεοειδεστάτῳ παραδείγματι, τὸν σωματικὸν ἀπεργάσῃται ... τοσαῦτα περιέξοντα αἰσθητὰ γένη ὅσαπερ ἐν ἐκείνῳ νοητά. These incorporeal models constitute the κόσμος νοητός, which is also referred to as the ἐκ τῶν ἰδεῶν (συνεστῶς) κόσμος (*ibid.* 17 and 20). The assumption of many, or even an 'endless number' of such 'ideas' (cf. the prooimion's [72] ἰδέας ἀπειρους) evidently does not rule out the possibility of one overall plan: collectively they serve as the Creator's blueprint (παραδείγμα). Their function in the creational process is well illustrated by Philo's image of a town planner (*ibid.* 18-19). On all this, see Runia, *Philo of Alexandria*, 158-169.

73 ἀναπλάττεσθαι: The present tense shows that ἀναπλάττεσθαι corresponds with 71 φάναι, not with 72 συστήσασθαι. Hence it must be a middle form, unlike the participle πλαττομένων in the Photian passage quoted above, ad 72-73 (cf. also *Amph.* 77,12 τῶν ταῖς διανοαῖς ἀναπλασθέντων).

The use of this verb may already imply a rejection of its object. In ecclesiastical literature ἀναπλάττεσθαι often has a connotation of erroneous conception or fiction: see, e.g., Eusebius, *Hist. Eccl.* IV 22,9, where the speaker is presented as saying that the Apocrypha are a fabrication by heretics, and Athanasius, *De Incarn.* 2,5, where heretics are stated to imagine a demiurg beside the God and Father of Christ. A very clear example of the same connotation in Photius, *Ep.* 2,138: ἄπερ οὐδ' οἱ τῶν Ἑλλήνων μῦθοι ἀνεπλάσαντο; cf. *id.*, *Ep.* 174,123.

74-75 Just as we perceive in God's creation its design and its justice and reach a deeper understanding that God is just and good, in the same way the soul discerns what is good in the law and behaves accordingly. The parallelism between order in the universe and within the human soul is also taken from Nicomachus, but developed to suit the author's own purpose. Nicomachus simply makes the rational part of the soul responsible for ordering the irrational part (τὸ τῆς ψυχῆς λογικὸν τοῦ ἀλόγου κοσμητικὸν ἔσται). He then goes on to distinguish θυμός and ἐπιθυμία as the two irrational parts (for the tendency to reduce the Platonic tripartition of the soul to a bipartition, see, e.g., Runia, *Philo of Alexandria*, 305). Our author, by contrast, does not mention τὸ λογικὸν as a part of the soul, but does hint at the famous doctrine by ascribing to 'the soul' the faculty of recognizing the 'rationally' (κατὰ λόγον) good, the good and reasonable, which helps man

EISAGOGE PROOIMION

to shake off what is bad and irrational (*ἄλογον*). Since the law is based on the principles of equality and fairness, it is obviously rational. Hence it is where the soul discovers what is just; in other words, the law teaches man what is just. This allows the author in 77 to ascribe to ‘the law’ the function of what is normally called *τὸ λογικόν, τὸ λογιστικόν* or *τὸ διανοητικόν*.

74 *ἐν διαγράμμασι νομικοῖς*: The word *διάγραμμα* is well chosen to express the parallelism between equality in the universe and equality as the leading principle in the imperial law issued here. On the one hand its meaning of ‘ordinance, regulation’ suits *νομικοῖς*, on the other hand its meaning of ‘geometrical figure’ retains the image of measuring and dividing. Thus it echoes the *προκέντημα* of line 71. The implication is that the emperors have based their law on ‘measurable’, hence rational and equitable principles.

75 *διοπτέουσιν*: *διοπτέω* is to look through a *διόπτρα*, which is an optical instrument for measuring angles, altitudes etc. (cf. Hero Alexandrinus *Dioptr.*). In antiquity it served the purpose of our theodolite. In other words, the dioptra enables the observer to discover equality in the legal ‘figures’.

The optimistic notion that man is morally instructed by perceiving the good is often found in Plato (e.g. *Phdr.* 248 a, b 4, 249 b 6).

ἀποσειομένην: namely the bad and irrational as a load weighing down the soul; cf. also 76 *καταβληθέντα*, in contrast with 79-80 *ἀνασκιρτῶσι καὶ ἀναλάμπουσι*. Passion and desire drag the soul down into injustice, unless it shakes off the irrational because it perceives the good. The image and terminology, whether consciously used by the author or not, are reminiscent of Plato’s famous image of the winged charioteer driving a team of horses, *Phdr.* 146 a-249 d, esp. 248 a. Ideally the soul’s wings would carry it sufficiently high to allow a vision (cf. 247 d *ἰδοῦσα, θεωροῦσα, καθορᾶ*) of the forms, but usually it falls down with an incomplete vision of them (248b), due to the unruly horses, which of course stand for *τὸ θυμοειδές* and *τὸ ἐπιθυμητικόν* (247b *βρίθει ... ὁ τῆς κἀκῆς ἵππος μετέχων, ἐπὶ τὴν γῆν ῥέπων τε καὶ βαρύνων*).

76 *ἐν τοῖς τῆς ἀνισότητος δυσὶν εἶδεσι*: The definite article suggests that the author considers ‘the two kinds of inequality’ as universally known concepts. It is rather doubtful whether his readers understood him immediately; they may have imagined one kind associated with passion and the other bound up with desire. Nicomachus however does distinguish two kinds of inequality elsewhere in his Introduction: they are the greater and the less (1,17,6 *τὸ δὲ ἄνισον καὶ αὐτὸ καθ’ ὑποδιαίρεσιν διχῆ σχίζεται καὶ ἔστιν αὐτοῦ τὸ μὲν μείζον, τὸ δὲ ἔλαττον* and 2,20,1 *τοῦ ἀνίσου τὰ δύο εἶδη, τὸ τε μείζον καὶ τὸ ἔλαττον*. Cf. also 1,14,2). These two kinds of what is primarily arithmetical inequality had already

COMMENTARY

been transferred to the ethical realm by Aristotle. As equality is a mean between ‘more’ and ‘less’, thus justice, defined as proportionate equality, can be seen as the mean between too much and too little (EN 5,3 [1131a 10-1131b 24]; cf. 5,1,10 [1129b 6-8]: ὁ δ’ ἄδικος οὐκ αἰεὶ τὸ πλεόν αἰρεῖται, ἀλλὰ καὶ τὸ ἔλαττον ἐπὶ τῶν ἀπλῶς κακῶν).

καταβληθέντα: About καταβληθέντα instead of Nicomachus’ colourless τεταγμένα, see commentary ad 75 ἀποσειομένην. Passion and desire lead man to the pitfall of taking either too much of agreeable things or too small a share of unpleasant ones.

77 ταυτότητος: For Nicomachus, ‘sameness’ is a principle that represents and strives to bring about order. It is connected with the Pythagorean and Platonic notion of the Limit (τὸ πέρας, cf. commentary ad 68 περαίνεται) as the cosmic power that imposes structure on the Unlimited or Indefinite (ἄπειρον). On this theory, see e.g. Guthrie, History V, 428-432; D’Ooge, Nicomachus 99-102.

78 ἀπισώσεως: cf. Arist. EN 5,4,8 (1132a 25) ὁ δὲ δικαστῆς ἐπανισοῖ, ‘restores equality’.

θᾶττον: This comparativus pro positivo is mainly found in imperative sentences, where it expresses impatience (Kühner-Gerth II,306): see, e.g., Ar. Av. 1317.1324, Nub. 505 f., Pax 1110, Plut. 604; Men. Dysc. 454; but cf. also Men. Epitr. 370 f. (Sandb.) τοιοῦτους ἔδει θᾶττον δικάζειν πάντας, Heliod. 1,18,3 τῆς περὶ τὸ κινεῖσθαι καὶ σιτεῖσθαι θᾶττον ἐπιθυμίας; and cf. Schwyzer-Debrunner II, 184c.

79 αἱ λεγόμεναι τέτταρες συνεκτικώτεραι ἀρεταί: Since Plato (Politeia 427e: Δῆλον δὴ ὅτι σοφὴ τ’ ἐστὶ καὶ ἀνδρεία καὶ σώφρων καὶ δίκαια), four virtues have been distinguished, which are also found in the Old Testament and have been received into judaeo-christian thought. On these so-called cardinal virtues, see Préaux, ‘Les quatre vertus’; Classen, ‘Der platonisch-stoische Kanon der Kardinaltugenden’.

In the passage corresponding with this part of the prooimion, Nicomachus of Gerasa (I,23,5) does not speak of the cardinal, but of ‘moral virtues’, which is Aristotelian terminology (e.g., EN 1,13,20 [1103a 6]). The Aristotelian moral (ἠθικαί) virtues, as opposed to the intellectual (διανοητικαί) ones, are a much larger group. The five mentioned as examples by Nicomachus of Gerasa are indeed found as moral virtues in the Ethica Nicomacheia, along with many others as implied by καὶ αἱ ὅμοιαι. Moral virtues are defined by Aristotle as means between excess and deficiency (e.g., EN 2,6,15 [1106 b 36-1107 a 6]) and such a mean can be described in terms of ἰσότης (EN 2,6,4 [1106 a 28-29] τὸ δ’ ἴσον μέσον τι ὑπερβολῆς καὶ ἐλλείψεως). Therefore they would have suited the present context admirably, better in fact than the cardinal virtues referred to in the prooimion’s version, which include the intellectual virtue of φρόνησις.

79-80 κατ' ἐνέργειαν ἀνασκιρτῶσι καὶ ἀναλάμπουσι: for a similar image cf. Phot. Amph. 182,15-16 τῆ ζωογόνῳ καὶ συνεκτικῆ τοῦ πάντος συνεκλάμπει καὶ συναναφαίνεται ἐνεργείᾳ. Cf. Hermas 88,5.

80-83 For a discussion of σκοπός and τέλος see above, commentary ad 6. It is here, at 80-83, that σκοπός and τέλος, in this order, are given their theological content in the most emphatic manner. The sentence significantly begins with the word τέλος and ends with τελειοῦσθαι, moving from God's primary intentions to the complete realization of goodness. Two effects are intended. The immediate aim, referred to as the σκοπός, is δικαιοπραγία: just, honest dealing (81). This aim is fulfilled by legislation. The more distant, wider purpose or τέλος is the complete victory of justice and goodness. Both are closely related to God's intention.

81 αὐτῷ δὲ τούτῳ τῷ ἀγαθῷ νόμῳ: namely the Eisagoge.

84-86 Δέξασθε κτλ.: The giving of the law is connected with Whitsun/Pentecost as well as with the giving of the Law on Mt Sinai by the combination of πύρινα: γλῶσσαι with πλάκες λιθίνα. For the former see Ac. 2,3 (... καὶ ὤφθησαν αὐτοῖς διαμεριζόμενα γλῶσσαι ὡσεὶ πύρος ...; see also below, ad 86), for the latter Ex. 31 f., esp. 32,15-16: καὶ ἀποστρέψας Μωυσῆς κατέβη ἀπὸ τοῦ ὄρους, καὶ αἱ δύο πλάκες τοῦ μαρτυρίου ἐν ταῖς χερσὶν αὐτοῦ, πλάκες λιθίνα καταγεγραμμέναι ἐξ ἀμφοτέρων τῶν μερῶν αὐτῶν, ἔνθεν ἦσαν γεγραμμένα. καὶ αἱ πλάκες ἔργον Θεοῦ ἦσαν, καὶ ἡ γραφὴ γραφὴ Θεοῦ ἐστὶ κεκολαμμένη ἐν ταῖς πλαξίν. The tables are written upon with the finger of God: see Ex. 31,18: ... πλάκας λιθίνας γεγραμμένας τῷ δακτύλῳ τοῦ Θεοῦ. God's finger represents His creative power; see Clem. Alex. Str. 6,16 (p. 499,14; PG 9,357C): εἰ δὲ αἱ πλάκες αἱ γεγραμμένα ἔργον Θεοῦ, φυσικὴν ἐμφαίνουσαι δημιουργίαν εὐρεθήσονται: δάκτυλος γὰρ Θεοῦ δύναμις νοεῖται Θεοῦ δι' ἧς ἡ κτίσις τελειοῦται οὐρανοῦ καὶ γῆς ὧν ἀμφοῖν αἱ πλάκες νοηθήσονται σύμβολα. The writing of the Law on tables of stone, the symbols of heaven and earth, is contrasted with the writing of the Law in the heart in 2 Cor. 3,3, an image also used by Clem. Alex. Paed. 3,12. Cf. also Deut. 32,46, where Moses exhorts all Israel 'to take heed with your heart to all these words ... to observe and do all the words of this law'.

Justinian, too, commands the addressees of his words to accept the law: const. Imperatoriam 7: ... *has leges nostras accipite* ... and cf. const. Tanta/Δέδωκεν 24: *suscipiant/δεχόμενοι*. Since acceptance of the law is the natural consequence (84 οὖν, cf. *itaque/τοίνυν* in the Justinian parallels) of its excellent credentials, this command comes as the conclusion of the account of its importance and respectability. The new paragraph starts at 87 Προτάττομεν.

COMMENTARY

85-86 οὐ πλαξί λιθίνας γραφόμενον, ἀλλ' ἐν ταῖς ὑμετέραις ψυχαῖς ... ἐντυπούμενον: The wording and image are reminiscent of Philo Jud. Spec. leg. 4,149 ἔσθι γὰρ ἀγραφα νόμοι, δόγματα ἀνδρῶν οὐ στήλαις ἐγκεχαράγμενα καὶ χαρτιδίοις ... ἀλλὰ ψυχαῖς τῶν μετελειφῶτων τῆς αὐτῆς πολιτείας. For the image of engraving cf. also πλαξίν ἐντυπούμενου νόμου Gr. Naz. Carm. 1,2,6,45 (PG 37,646A); Gr. Nyss. hom. 14 in Cant. (PG 44,1073A).

86 The combination *πυρίνη γλῶσσα* is only found in Orig. contra Celsum 8,22 (p. 240,2; PG 11,1552B); otherwise one finds *πυρὸς γλῶσσα*, e.g. Joh. Dam. Εἰς τὴν πεντηκοστὴν W. Christ and M. Paranakis, *Anthologia graeca carminum christianorum*, Leipzig 1871, p. 213 acrostichon and cf. 14 *πυρὸς γλωττήμασι* and 55 *γλωσσοπυρσόμορφος* (PG 96, 836A).

87 *προτάττομεν*: The remaining part of the preface gives a reasoned account of the systematic arrangement of the Eisagoge. The orderly division (*διαίρεσις*) of a text into into chapters or parts - in this case, of course, into titles - is another topic to be discussed in its preface (Mansfeld, *Prolegomena*; id., *Prolegomena mathematica*; see also ad 50-62).

91 τῶν ἐξῆς ἀρχοντικῶν προσώπων: The various officers of the state are discussed in logical sequence, sc. top-down. The word ἐξῆς probably refers to the way they succeed each other. Another possibility would be to translate ‘the following, lower magistrates’, i.e. those under the emperor and patriarch. Strictly speaking, however, this would imply that the emperor and patriarch are themselves ἀρχοντικὰ πρόσωπα, *quod non*.

In any case ἐξῆς suggests that the Eisagoge titles under discussion are in agreement with the hierarchical organization of the state, and in fact they list the magistrates from high to low, from the *praefectus urbi* downwards (Eis. 4 ff.). The magistrates as a group naturally follow the emperor and patriarch, who have been dealt with in the preceding titles (Eis. 2 and 3). This hierarchy is also expressed in Eis. 4,11: ‘Ὁ τῆς πόλεως ἑπαρχος ... μείζων πάντων ἐστὶ μετὰ τὸν βασιλέα.

92 ἐνθέου: The image of the Byzantine state found in Eis. 2-7, in particular its hierarchical structure as suggested by ἐξῆς, reflects the heavenly hierarchy of God, archangels, angels etc.

92-93 δι’ αὐτῶν τῶν προσώπων ... ἀναζωγραφοῦντες: In a legal text one might perhaps have expected titles about abstracta such as emperorship, patriarchate, prefecture etc. The Eisagoge, however, deals with concrete persons: ‘the’ emperor, ‘the’ patriarch, ‘the’ prefect etc. (cf. 91 ἀρχοντικῶν προσώπων). Unlike abstract concepts, such persons lend themselves to pictorial representation: see below, 99. The interrelated portraits of the magistrates serve as a ‘medium’ (δι’) to picture, so to speak (ὥσπερ), the state in its

entirety. This verbal image of the state may be compared with pictorial representations of heaven, such as are to be found in the decoration of many churches, where the pictures culminate in an image of the Pantocrator.

93-94 ταῖς ἀναλόγοις ἀξίαις τῶν ἀρετῶν: The concrete officers portrayed in the titles stand for their abstract ‘honours’ or honorary offices (ἀξίαις), offices which require, or ‘correspond with’, certain qualities (ἀρετῶν; for the genitive with ἀνάλογος, cf. Isid. Pel. epp. 1,287 [PG 78, 352B]; Theoph. Cont. p. 283,23 and 318,20 Bonn). In fact descriptions of these ἀρεταί are mainly found in the titles about the emperor and the patriarch: see Eis. 2,5 and 3,4 respectively, but cf. also 5,8 and 6,11. But the pictorial effect of the individual officers of the state and, through them, of the entire state, could not be achieved by simply listing the corresponding qualities. Instead the πρόσωπα are portrayed as possessing the qualities required for their functions. In this way we ‘grant them in advance’ that they do possess them. In rhetorical terms, the author of the prooimion is here explaining that the Eisagoge titles will use the technique of *χαρακτηρισμός*, as defined by Rutilius Lupus 2,7: *χαρακτηρισμός. quem ad modum pictor coloribus figuras describit, sic orator hoc schemate aut vitia aut virtutes eorum, de quibus loquitur, deformat*. See, e.g., Lausberg, *Rhetorik*, 406. Linguistically this ‘granting in advance’ (προομιολογεῖν) is expressed by the frequent use of indicative forms in this part of the Eisagoge text instead of, e.g., imperatives, which might seem more appropriate in a legal text.

99 εἰκονικῶς: Not necessarily ‘by way of an icon’, but rather the general meaning of the word: ‘in an image’, referring to l. 94 ἀναζωγραφοῦντες. The comparison between writing and painting has a tradition that goes back at least as far as Simonides; see, e.g., Lausberg, *Rhetorik I*, 400 ff.; Meijering, *Literary Theories*, 37.

99-101 The relation between state and church is paralleled with that between body and soul, and, in more abstract, philosophical terms, between matter and form. On the soul as ‘the form of a natural, organic body which potentially has life’, see Aristotle, *De anima* 2,1 (412a 3-b 4).

102-104 ἡ τελεία φύσις ... ἐνεργούμενον βίον: This passage has a distinctly Peripatetic ring, though it becomes increasingly difficult to avoid the suspicion that the author is secretly making fun of us. From the very beginning of the preface he has displayed his vast learning and literacy - which we regret we do not equal -, freely borrowing philosophical terms and ideas from a variety of sources and adapting them with great ability to his own, or his emperors’, ends. Here, too, we find a concentration of words that have been laden with meaning ever since Aristotle. In addition to the matter and form (ὕλη and εἶδος) of ll. 100-101, referred to by 102 ἀμφοτέρων, we are now once more reminded of the ‘end’ or τέλος (cf. 102 τελεία, τέλειος, ἀπετελέσθη, 103 τελούμενον) as another factor which

determines every object and phenomenon in this world. Thus ‘perfect nature or (...) perfect man’ seems to be a somewhat imprecise periphrasis for a human being fulfilling what is by nature his end, for ‘everything has its own *telos*, to realize in itself the form which nature intended it to embody’ (Guthrie, *History VI*, p. 118). In this view, life is an activity, a process of motion (cf. 103 κινήσεως) towards actuality (103 τελούμενον και ενεργούμενον). The specific τέλος of man consists in a human life, exercising his own ‘function’ (ἔργον) as a human being by actively employing his distinctly human talents, in particular his rational mind and moral perception (EN 1,7,9-15 [1097b 22-1098a 18]; Pol. 1,2,12 [1253a 15-18]). However, ‘owing to the duality of human nature, animal and spiritual, no one can pursue these activities solely and continuously (...). Food, shelter and society are necessities for everyone’ (Guthrie, *History VI*, p. 332). In order to realize his full potential as a human being, man needs the context of family, friends and a well-organized community of which he is an active member. In short, he is by nature a social (‘political’) animal (EN 1,7,6 [1097b 8-13]; Pol. 1,2,9 [1253a 2-3]; Miller, *Nature, Justice and Rights*, pp. 14-20 and 50). Such a community obviously requires rules about ‘betrothal, marriage (...) and all sorts of other contracts of daily life’ (104-105). In other words, it requires civil law – which brings us beautifully back to the *Eisagoge*. On marriage law as the natural beginning of civil legislation, cf. Plato *Leges* 720e-721a and *Procheiron Prooimion* ed. Schminck 60, 82-83.

Finally, the reference to the ὄργανά τινα, ‘certain tools’, is reminiscent of Aristotle’s definition of the soul as belonging to an ‘organic’ body, i.e. a body equipped with the necessary parts or ‘tools’ (see ad 99-101). According to *Politica* 1,4,4 (1254a 1-7), every practical activity (πράξις) needs its own tools. If Aristotle, in this context, considers chattel, property and slaves the tools of household management (Pol.1,4,2 [1253b 30-32]), it is not unreasonable to call ‘witnesses and instruments’ the tools of civil law, as, indeed, is confirmed by the technical term instrument.

105 συμβολαίων: in Byzantine legal usage συμβόλαιον means ‘deed’, ‘instrument’, in contrast with the usual classical Attic meaning of ‘contract’, for which the Byzantines used σύμφωνον and συνάλλαγμα. As *Eis.* 13,1 explains: Συμβολαίον ἐστὶν ὑπόμνημα ἥτοι καταγραφή τῶν συμφωνηθέντων καὶ στοιχηθέντων μεταξύ ἐκατέρων τῶν συμφωνούντων καὶ συμβαλλόντων· τὸ γὰρ μίγμα τῶν βουλευμάτων τῶν ἐκ τῶν συμβαλλόντων προσώπων συμβολή καὶ τὸ ἀπὸ ταύτης ἔγγραφον σύνταγμα συμβόλαιον καλεῖται. This fragment does not stem from the Justinianic legislation, nor does it occur in the *Prochiron*; it probably is a revision of the text we know as a scholion ad B. 22,2,1 (BS 1393,16). Whether there is a real difference between συμβολή and συμβόλαιον, as this author has it, is another matter: see LSJ ad voc., and Van der Wal, ‘Termes techniques’, 130-133.

EISAGOGE PROOIMION

110 ἔξωθεν δὲ πάντων τούτων: This would be a more logical point to start a new paragraph than at τελευταῖον, where Schminck puts it. At the very least we need a full stop after (110) ἔπεται.

110 ff. ὡς ἀλλότρια τῆς εἰρηνικῆς ζωῆς καὶ ἐλευθερίας κτλ.: It is curious to see the *opera nova* (καινοτομίαι) and criminal offences (ποινάλια) thrown together as being alien to the peaceful life and freedom.

112 καινοτομίας: Apart from the fact that one is surprised to see these put into one group with criminal offences, the term itself is unusual in two respects. First, in the sixth century it is the translation of the Latin concept of *opus novum* in *operis novi nuntiatio*, even of *operis novi nuntiatio* itself (D. 39,1: B. 58,10), and of *opus facere* under the terms of the *interdictum quod vi aut clam* (D. 43,24: B. 58,23). Second, Eis. 39 (περὶ καινοτομιῶν καὶ ὄρων) starts (just as Proch. 38) with a definition of *operis novi nuntiatio*, but none of the next 63 chapters are dealing with it; most of them are concerned with servitudes, especially the ‘right of view’, and therefore with a possible change of the πρότερον ὄψις. It seems that any change of an existing property is covered by καινοτομία. Perhaps we should not attach too much significance to the term: one may compare some of the names of the *partes* of the Digest, e.g., *de iudiciis* and *de rebus*, which derive from the first words of the first title of their respective beginnings, but do not cover the contents of the entire *pars*. Nor should we stress the juxtaposition of καινοτομία and criminal offences: they are simply the last two titles of the Eisagoge, although it is true that Bas. 58,23,14 (D. 43,24,14) treats an action arising from καινοτομία (Latin: *opus facere*) as an *actio noxalis* and therefore *poenalis*.

ποινάλια: Cf. the title of Ecl. 17: Ποινάλιος τῶν ἐγκληματικῶν κεφαλαίων. Although ποινάλιος as an adjective is attested elsewhere, its use in τὰ ποινάλια may be unique.

113 ὑποτέακται: Zachariä thought this to refer to a *tulorum index*, which is however lacking in all three manuscripts ABC, as he noted (see Zepos, JGR II p. 239 n. 35); it does occur in Patm. 207, a manuscript of the Eisagoge which has been discovered more recently, but which does not contain the prooimion!

Appendix I

The Eisagoge and the Legislation of the Macedonian Emperors

What is the place of the Eisagoge in the extensive legislative programme of the Macedonian emperors? The answer to that question ultimately depends on one's view of its date and status, precisely the sort of questions dealt with by Schminck (*Studien*) and Van Bochove (*To Date and Not to Date*), to which books we refer for full discussions and literature.

1. Introduction

In 867 Basil the Macedonian ascended the imperial throne. With him commenced a dynasty which drew its name from a family from Macedonia.¹ During Basil's reign (867-886) and that of his son Leo VI the Wise (886-912) secular law flourished:² two compendia, the *Prochiron* and the *Eisagoge*; an extensive compilation in sixty books, the *Basilica*; more than a hundred of 'new laws', the *Novels*; a collection with rules concerning the various guilds of Constantinople, the *Book of the Eparch*: all these saw the light within less than half a century.

The *Eisagoge* is an 'introduction' to the law, an abstract of the law. It has been transmitted in only a handful of manuscripts; the *editio princeps* was produced in 1852 by Zachariä von Lingenthal. Since then one new manuscript has been found, the *Patmiacus* 207, and a new edition is to be expected from Frankfurt, of which Schminck's edition of the *prooimion* is an advance.

2. Date

On the evidence of its rubric the *Eisagoge* was promulgated by the emperor Basil and his sons and co-emperors Leo and Alexander. This would point to a date between 879 (death of Constantine, eldest son of Basil and heir to the throne, which would explain his absence from the rubric) and 886 (death of Basil himself). Schminck and Van Bochove variously place the date of promulgation towards the end of Basil's reign (Schminck) or to a moment soon after 879 (Van Bochove).

¹ See Ostrogorsky, *History*, 232 with n. 2.

² See, e.g., Van der Wal/Lokin, *Delineatio*, 78-87; Pieler, 'Anakatharsis'.

EISAGOGE PROOIMION

3. Status

The prooimion makes it clear that Basil intended the Eisagoge to have force of law, although it was itself an abridgement in forty titles of a compilation of laws in forty books (ll. 36-40). It replaced the Ecloga of 741, which was formally abrogated by the Eisagoge (ll. 33-36).

4. Authorship

Insofar as one may speak of an author of a law other than the promulgating emperor, Photius is the obvious candidate. In favour of this attribution speak both the style of the prooimion and the contents of the compendium itself: the second and third titles expound a 'Photian' view of the relations of church and state, and at various points the rendering of the substantive law is such that one cannot avoid the thought of Photius, if not as the author, then as the inspiring force (see also below, section 7, and appendix II).

5. Eisagoge and Procheiron

The position of the Eisagoge within the entire Macedonian legislation has to depend on the dating of another summary of the law, the Procheiron. The traditional view has always been that the Procheiron should be dated between 870 and 879, on the basis of its rubric, which mentions Basil, Constantine and Leo. Schminck has argued in favour of a much later date, namely 907, while Van Bochove has again advocated the earlier, traditional dating. Both chronologies pose their own problems and help to solve some; on the whole, it would seem preferable to stick to the evidence of the rubric of the Procheiron and accept that the persons mentioned there have to be alive at the moment of its promulgation. Apparently during the reign of Basil two compendia of the law saw the light: first the Procheiron and then the Eisagoge.

As the contents of the two are very similar, the Eisagoge has been considered to be a second, amended version of the Procheiron. Support for this view was also derived from the name under which the Eisagoge used to be known, Epanagoge. Schminck, however, has demonstrated convincingly that its name is Eisagoge; furthermore, he has pointed out that the prooimion lacks a reference to the Procheiron.

Yet it is possible that Photius was inspired by the Procheiron to compile an abridgement of the law himself and thus, as it were, to produce a second edition of the Procheiron. In that case he has omitted to say so in the Eisagoge's prooimion. If we may judge by the number of manuscripts in which both compendia have been transmitted, the Procheiron's success has been greater: against the Eisagoge's four manuscripts stand over 50 of the Procheiron.

6. *Scholia on the Eisagoge*

The similarity of Procheiron and Eisagoge has been noticed by their contemporaries, too, and has led to amalgams of the two compendia. It has also given rise to a number of scholia in the manuscripts of the Eisagoge — not in those of the Procheiron —, in which the Eisagoge was compared with the Procheiron and commented upon, sometimes with references to and literal quotations from the Procheiron, including new, i.e., non-Justinianic, constitutions. In the past these scholia have always been dated to the reign of Basil himself; some of them carry the heading τοῦ ἡμετέρου (εὐσεβοῦς) βασιλέως, who in that view would be Basil.

The dates assigned to the Procheiron and the Eisagoge by Schminck also affect the scholia on the Eisagoge, which in that view would have been written during the reign of Leo VI or even soon after his decease in 912. In other words, the expression τοῦ ἡμετέρου (εὐσεβοῦς) βασιλέως would apply to Leo. The scholia would have been a preparation to the Procheiron, which should be considered a revision of the Eisagoge.

The arguments of Schminck have been examined by Van Bochove, who has upheld the traditional chronology and strengthened it with fresh arguments.

7. *The Uniqueness of the Eisagoge*

The Eisagoge deserves our special attention for the contents of its second and third titles, *περὶ βασιλέως* and *περὶ πατριάρχου* respectively, which are without parallel in other legal compilations, including the Procheiron. It is these two titles that are closely associated with Photius; in one manuscript some chapters from the second title are even explicitly attributed to him.

The two titles have been interpreted differently in modern scholarship. Beck saw the Eisagoge as an attempt of the Byzantines to reach ‘eine Art Zweischwertertheorie mit sehr selbständiger Auffassung von der Gewalt des Patriarchen’; he assumed that the Eisagoge never had force of law.³ Precisely the fact that the Eisagoge contains regulations concerning the relation between emperor and patriarch, in which the position of the patriarch is emphasized, has been seen as the reason why the Eisagoge would never have been promulgated officially. There is, however, no reason to doubt the official status of the Eisagoge; as has been said above, it was promulgated by the emperors Basil, Leo and Alexander.

Another point of difference in modern scholarship concerns the contents of this ‘Zweischwertertheorie’. Schminck has interpreted the two titles of the Eisagoge as an attempt to subordinate the emperor to the patriarch.⁴ Troianos has repeatedly contested this opinion. According to Troianos, Photius did not aim at more than the introduction of a

³ Beck, *Kirche* 525 with n. 2; see, however, also his *Geschichte*, 117.

⁴ Schminck, “*Rota tu volubilis*”, 211-214.

EISAGOGE PROOIMION

system in which church and state were on an absolutely equal footing within the larger framework of the constitution.⁵

Whatever its status and precise political views, the Eisagoge was destined to remain unique. As Fögen has pointed out, 'der Entwurf des Photios, hat, so scheint es, die Konstruktion von politischer Macht in Byzanz nicht verändert'.⁶

(ThEvB)

Appendix II

Photius and the Eisagoge

According to current opinion⁷ the Eisagoge may be attributed to Photius. The key arguments are the style of the prooimion and the contents of certain chapters of the substantive part. Even those who do not want to go so far as ascribing to him the Eisagoge in its entirety, seem to hold him responsible for its prooimion and some of the chapters. Our study of the prooimion has not induced us to deviate from that current opinion. Therefore a few words about Photius as the probable author seem to be in order.

The basic facts from Photius's biography have been assembled by Kazhdan in the ODB s.v. Photios. He must have been born ca. 810 from a prosperous family. A layman, for his first elevation to the patriarchate he had to be hurried through the ecclesiastical orders, which made it possible for his adversaries to attack his position from that point of view. He became patriarch of Constantinople on 25 December 858, was forced to abdicate in 867, once again ascended the patriarchal throne in 877, until he had to abdicate for the second time in 886; he seems to have died soon after, possibly after 893.

It is no coincidence that in 867 Byzantium also got a new emperor, Basil I, just as Photius' second abdication did not accidentally fall in the same year as Leo the Sixth's accession to the emperorship. Indeed, Photius' first appointment to the patriarchate was connected with a change of politics at the imperial court. Not only did the Byzantine state thus dictate the rhythm of Photius' career, the Byzantine church also went through a turbulent phase, especially as far as its relations with Rome were concerned. Two church councils have dealt with his position. The first one, in 869-870, condemned him, while

⁵ Troianos, 'Megas Photios', 497-498; id., 'Nomos und Kanon', 40-41; id., 'Kirche und Staat', 292-293.

⁶ Fögen, *Das politische Denken*, 75.

⁷ See, e.g., Troianos, 'Megas Photios', and Schminck, 'Από τον «νόμο» στον «νόμο»'.

APPENDICES

from the second, in 879-880, he emerged triumphant. At both occasions more than just his position was at stake.

On his role in the relations between East and West, between the orthodox world and the papacy, historians have disagreed. The villain of the piece for some, he has been put in a much more favourable light by others; current opinion seems to incline to the latter view. In his own time he could not help to be at the centre of disagreement, too: his involvement in secular and ecclesiastical political events must have made that inevitable.

Every attempt at writing the history of this time must include Photius' name. His life and career form a kaleidoscope of the secular and ecclesiastical vicissitudes of his time. It cannot be the purpose of this short digression on Photius to sketch a full picture, which is readily available elsewhere. It goes without saying, however, that the very probability of his authorship of the *Eisagoge* means that this law book has to fit into the political and ecclesiastical history in which Photius was so important a figure.⁸

Photius was not only a church leader and a politician and diplomat, he was also a scholar and has left an extensive corpus of writings. Some of his letters and homilies were caused by his duties, but that cannot be said of his *Library* and his *Lexicon*. His *Library*, which is of great literary interest and in some cases our only source for works of ancient Greek authors, vividly testifies to his extensive reading, as do his other works. Photius was one of the greatest intellectuals of his time. The concept of 'Macedonian Renaissance', however, indicates that he cannot have been an isolated figure.⁹

Most of his works are now accessible in modern critical editions, several of them accompanied by a translation. Latin translations may of course also be found in Migne, PG 101-104.

This, then, is the backcloth to the prooimion of the *Eisagoge*. If Photius really is its author, we may infer that the political, theological and philosophical ideas expressed in it are his and form a personal comment on his times.

As we are concerned with the *Eisagoge* as a law book, we should also pay some attention to that other legal collection with which Photius' name has been associated by some, the *Nomocanon of the Fourteen Titles*. Whether this association is correct or no, it certainly is worth noting that the revision of the *Nomocanon* can be dated exactly to 882-3, and therefore to the middle of Photius' second patriarchate. The contents of the *Nomocanon* are difficult to reconcile with the ideas attributed to Photius, and it is often stated that only the prooimion of this revision is by his hand. It is true that some stylistic features may also be found in Photius' other writings, but if we uphold Photius' authorship of the

⁸ From the vast literature we only mention Dvornik, *The Photian Schism*. See also ODB, s.v. Photios, with additional literature. A recent reprint of PG vol. 101 (Athens 1991) includes an introduction on life and works of Photius, followed by a bibliography by G.D. Dragas (pp. 121-237).

⁹ See generally Lemerle, *Byzantine Humanism*, especially 205-235: 'Photios and Classicism', and Wilson, *Scholars of Byzantium*.

EISAGOGE PROOIMION

Nomocanon's prooimion, we must assume that he wrote it without bothering to inform himself about the contents of the collection with which he thus allowed himself to be associated. This seems rather much to believe, as he may have been acquainted with the original version of the Nomocanon, which contained some passages that must have been offensive to him.

The association of Photius with the Nomocanon becomes the more questionable if we take into account the fact that some passages of the Eisagoge actually go against the Nomocanon. On balance, the attribution of the Nomocanon or its prooimion to the patriarch must be relegated to the realm of historical fiction. That it may have suited certain circles in the Orthodox Church is another matter.

His authorship of the prooimion of the Eisagoge seems much more credible, and the more we believe in it, the less can we accept his association with the Nomocanon.¹⁰

If we accept the authorship of Photius of the prooimion of, and his close involvement in, the Eisagoge, we must accept that this law book is a clear expression of his political ideas. Enough has been said about them by others: suffice it to refer to the papers of Scharf, especially his 'Ius divinum', and in particular the paragraphs by Marie Theres Fögen in her 'Das politische Denken der Byzantiner' (73-75), and recently the contribution of Andreas Schminck, 'Από τον νόμο στον νόμο'. In the Eisagoge Photius attempted to claim for the patriarch an exclusive sphere, not only of influence, but of political power, protected by the law. At the same time he wished to establish a hierarchy in which God would of course be the head, but, contrary to Byzantine political theory before and after him, the emperor and patriarch would exercise divided powers at the same level. One is reminded of the theory of the two swords in medieval western political thought, the difference being of course that the position of the emperor in Byzantium was so much stronger than in the West, to the result that the patriarch could never hope to acquire a position similar to that of the great reforming popes.

Photius' claims failed, but that does not mean that the expression of these claims and their foundation in a theological tradition going back to the early fathers is without interest. On the contrary, not only does it show Photius well versed in the theological tradition, which does not come as a surprise, but it also proves him to be capable of innovation within that tradition, such as the role he assigns to the law in the doctrine of creation.

Of great legal interest is the fact that he clothes these claims in a law book, and not, as we would perhaps expect, in a political treatise or pamphlet. If he really managed to have the Eisagoge proclaimed as a *constitutio* by the emperor, as we believe he did, one has to admit that this is the nearest failed claims can come to success: a political triumph, albeit a short-lived triumph.

(BHS)

¹⁰ See also Stolte, 'Un-Photian Revision'.

Appendix III

The Law in Early Christian Thought¹¹

The first form of law with which the early christian communities were confronted and towards which they had to determine their position, was the Mosaic Law. Dualistic schools of thought among them regarded the Old Testament prescriptions and prohibitions, at least partly, as the work of an inferior god. Those, however, that prevailed and were to develop to the Catholic Church, insisted on the unity of God as the Creator and the Revealer of the way to salvation. Thus they held on to the divine revelational character of the entire Mosaic Law.

Yet it was debatable to what extent the various parts of this Mosaic Law, in particular the ritual precepts, remained valid for those who lived after Christ. The next, equally important question was, whether the ethical values of the remaining part could be shown to apply to the entire world. Both aspects were essential for the pretension to universal truth with which the Christians encountered the Hellenistic world.

Prior to the earliest phase of christian conceptualization of the law, which was dominated by Justin the Martyr (c. 100-c. 165), the Alexandrian Jew Philo (died c. 50) had postulated a correspondance between the revealed law and the arrangement of nature. Since God is both the creator of the world and the supreme lawgiver, the laws of Moses must reflect the τοῦ κόσμου πολιτεία (Vit. Mos. 2,48.51). Therefore, even people not (yet) acquainted with the revealed laws could live in accordance with them, on the very strength of their nature.

This notion of a fundamental and necessary harmony between the order of creation and the revealed will of God is adopted by Justin too, but he sets out also to connect it with Christ and his appearance in history. Christ is the most direct and definitive manifestation of the Logos. As an emanation of God, he is the principle of all life and regulation (ποιητική και βασιλική δύναμις), the highest and universal expression of God's truth and will. Thus Logos and Nomos are to Justin 'christological synonyms'.¹² Although the logos inseminated in man already allowed him to live in accordance with this truth and will, it was not until the incarnation of the Logos that they were made superbly manifest to both Jews and pagans. In this way the prophecy was fulfilled of Isa. 2,3: ἐκ γὰρ Σιών ἐξελεύσεται νόμος καὶ λόγος κυρίου ἐξ Ἱερουσαλήμ (LXX) (Justin. Apol. 1,39,1 and Dial.

¹¹ For a different perspective, namely the question of the status of secular legislation according to the Greek fathers, see Troianos, 'Das Gesetz in der griechischen Patristik'.

¹² Andresen, Logos und Nomos, 327.

109,2). Jesus Christ was now proclaimed to the entire kosmos as ‘both the eternal law and the new covenant’: *καὶ αἰώνιος νόμος καὶ καινὴ διαθήκη* (Apol. I,43,1). Those parts of the Mosaic Law that were ‘naturally good and pious and just’ (*τὰ φύσει καλὰ καὶ εὐσεβῆ καὶ δίκαια*) were now elevated to the status of Nomos (Apol. I,45,3). In this way, Justin identified, as Philo had done before him, the permanent demands of the Law with the natural moral law. These demands have the same universal validity as the moral laws taught by the Logos during his historical Incarnation.

In this view, Christ brings to greater fulfilment and culmination what various law-givers and philosophers had taught in accordance with the correct application of reason. At the same time, his Nomos is also the standard by which to assess pagan laws. These are often unequal, due to the demons, who always try to suppress truth and who oppose the divine Nomos. It were these demons who inspired the development of local, national νόμοι, which caused division and hatred among mankind. Arriving in this world of confusion, the Logos then reformed the human laws in such a way that they could realize the aim which God intended them for. Thus Christ has brought about a turn and a stabilization in the intercourse between peoples.

Criminal legislation and jurisdiction, too, are given supreme theological legitimatization by Justin (Apol. 2,9).

The fathers after Justin, until the end of the third century, continue to emphasize that Christ’s legislation does not substantively differ from the Old Testament Law, which focuses on the same dual command of love, and whose universal validity has now become manifest. Moreover, adhering to Christ grants an inner freedom and familiarity with God. This causes us to follow and even surpass the precepts of God’s law, and also those of the Roman legislator, not merely for fear of criminal prosecution, but for the sake of the good inherent in them. These views are found in various Apologists, Irenaeus, Clement and Origen. These last three also increasingly emphasize the work of salvation as an act of divine *paideia*, thus reinforcing the importance of a spiritually mature attitude towards the laws, but also of spiritually comprehending them.

Christian emperorship heralds a new phase. Eusebius greets in Constantine the monarch who stands in an ‘analogous relationship’¹³ to the Logos. Part of this analogy is that the emperor, as the proclaimer of God’s will, summons mankind to recognize what is highest and best, by means of laws inspired by the true religion. One monarch has been given to the human nature of all inhabitants of the earth, and his reign ‘transcends every other constitution and form of government’ (*ὑπέρχεται συστάσεώς τε καὶ διοικήσεως*; Laus Constant. III,6). The emperor reflects and participates in the world-educating function of the Logos. As a teacher and legislator of the peoples, he is given a central role in the plan of salvation which is taking place in the history of the world and which will culminate in the

¹³ Ruhbach, ‘Die politische Theologie Eusebs von Caesarea’, 249.

APPENDICES

complete domination of God. In the concrete, historical sense, it is he, the highest authority in the christian empire, who is entrusted with the paedagogical work of Christ, as both Logos and Nomos. He supports and stimulates the true veneration of God. His personal piety and also — since Theodosius I — his doctrinal orthodoxy are prerequisite for this end.

Athanasius and Gregory of Nyssa, who were of crucial importance for the subsequent development of orthodoxy, likewise emphasize the universal significance of the law revealed by God. For Athanasius, νόμος has a dual meaning. On the one hand he regards it as the so-called command of paradise. In this sense it is the touchstone of the observance to God, a duty demanded of the first men and applying to entire mankind. The extent of this observance is also (or rather, precisely for that reason) decisive for either eternal community with Him or relapse into not-being. On the other hand Athanasius regards νόμος as the Mosaic Law. This law, he assures us, just like the message of the prophets, was intended as a holy institution to acquaint the entire οἰκουμένη with the true knowledge of God and spiritual life (De incarn. 3,4 and 12,5). According to Gregory, man originally carried the Law in his heart, but this state was corrupted by sin. Correct conceptions of divine nature, which we receive by the medium of revelation, also intimate ethical instructions, which lead us back to God.

At the same time, however, both fathers show a shift of focus. The emphasis is now not so much on the paedagogical approach of following the commands in order to penetrate God's wisdom, but on the — ontically conceived — similarity to the human nature of Christ, who, in the oneness of his person, was the first apotheosized representative of the human race. This shift of focus is connected with dogmatic formulations concerning Trinity and Christology. The debate is about the conditions for a complete renewal of man and about the way to effect this renewal. The Logos (and the Spirit too) must be fully divine in order to endow human nature with divine forces, thus allowing it to overcome its physical and moral weaknesses. All ethical renewal rests in the ontology of the incarnation and, depending on this, the purification and elevation of the human aspect. The doctrine of salvation of the Greek fathers emphatically speaks of 'an impact of the incarnated Logos on entire mankind, which is prerequisite for all teaching, all imitation and free decision.'¹⁴ The person and victory of Christ have also provided an effective foundation for the stabilization and harmonization of the antithetical elements of spirit/soul and body.

Thus the connection with Christology, as laid down by the fathers with varying accents, reinforced the Greek perception of a 'natural', universally binding moral law in three ways. First, its universal character was stressed by the concept of the Logos as directing the history of mankind. Second, its authority was strengthened by its being embedded in

¹⁴ Schwager, *Der wunderbare Tausch*, 111.

the divine will of salvation. Third, its connection with man's inner nature was confirmed by the active, personal ministry of the Logos-Christ and, even more, by his transforming indwelling. This offered christian emperors ample opportunity to legitimize their codification on a metaphysical level.

(JR)

Appendix IV

Law and Legislation in Byzantine Political Thought

The prooimia of the Eisagoge and other law books convey an idea of the intentions of their legislators. In many cases they are our best, and in some cases in fact our only, source about those intentions and the circumstances which gave rise to that legislation.

Marie Theres Fögen has studied in several papers the changing role of legislation in Byzantine society over the centuries. A convenient summary may be found in her survey of 'Das politische Denken der Byzantiner', especially chapter 5 on 'Politische Herrschaft und Recht' (67 ff., with literature at 84-85). Little needs to be said here. Three aspects, however, deserve some special attention.

First, as Fögen has pointed out, the early Byzantine period from Constantine until the end of the sixth century has produced an enormous mass of legislation, dealing with all and every aspect of life. Not only does this suggest a conviction that legislation is the most suitable way to steer society, the many preambles of the laws that have been preserved confirm this impression. Conversely, the slackening pace of legislation after Justinian's reign and its almost complete cessation after c. 600 is an indication that this belief in legislation as a political instrument had been abandoned. The Ecloga of 741 stands in isolation. The renewed activity in the so-called Macedonian Renaissance, an activity of which the Eisagoge is a part, would therefore make us believe that the old conviction had returned. There is, however, a difference, in that the legal renaissance is not one of a general revival of legislative activity, but one of a literal renaissance of 'old', Justinianic law. That is not to say that there is nothing original in the collections of the ninth century, but it is a fact that we see mainly a reassertion of old norms, some of which had by then become demonstrably irrelevant.

Second, the predominance of the Justinianic legacy has continued until the end of the Byzantine empire. Of course it is possible to live by 'antiquated' laws if the courts are able to adapt them to current needs in a continuous process of interpretation, as is also shown in the legal history of Western Europe until the French Revolution, but there is an element lacking in Byzantium that has been of the greatest importance in the western development, namely a comparable academic study of the law. True, we hear of some legal teaching and

APPENDICES

of what may be called a university, but its most tangible results, legal writings, are not of the same level, nor do they testify to a similar interest in the law.

Third, with the exception of the prooimia, there is no Byzantine reflection on law as a social and political phenomenon. In fact, it has proved to be difficult to know to what extent Photius' statement about the role of the law in the prooimion of the Eisagoge was original. It is very hard to ascertain what the Byzantines thought about their legal system. To sum up, law and legislation were central to political thought until the end of Justinian's reign, but after that they seem to have played a very different and on the whole not very important role. Law and society did change, of course, but legislation has not been the instrument to bring about that change, nor do we see such change reflected in formal laws. The overall impression of immutability of Byzantine law is misleading. Its correctness is dependent on one's definition of 'law'; rather it stands for the secondary importance of legislation in Byzantine political thought for the greater part of the empire's existence.

(BHS)

Bibliography

- R. Alpers-Gözl, *Der Begriff ΣΚΟΠΟΣ in der Stoa und seine Vorgeschichte*, Hildesheim 1976.
- M.V. Anastos, 'The Argument for Iconoclasm as Presented by the Iconoclastic Council of 754', in: K. Weitzmann (ed.), *Late Classical and Medieval Studies in Honor of Albert Mathias Friend Jr.*, Princeton N.J. 1955, 177-188 (repr. in M.V. Anastos, *Studies in Byzantine Intellectual History* [=Collected Studies 88], London 1979, nr. X).
- C. Andresen, *Logos und Nomos. Die Polemik des Kelsos wider das Christentum* [=Arbeiten zur Kirchengeschichte 30], Berlin 1955.
- H.-G. Beck, *Kirche und theologische Literatur im byzantinischen Reich* [=Handbuch der Altertumswissenschaft XII,2,1], Munich 1959.
- H.-G. Beck, *Geschichte der orthodoxen Kirche im byzantinischen Reich* [Die Kirche in ihrer Geschichte ... 1, D 1], Göttingen 1980
- Th.E. van Bochove, *To date and Not to Date. On the Date and Status of Byzantine Law Books*, Groningen 1996.
- Th.E. van Bochove, 'Οὐ κελεύομεν συνεκεφαλαιώσαμεν καὶ ῥαδίαν ἔντευξιν παρέσχομεν. Some remarks with respect to the nature of the preface to the Basilica', in: *Analecta Atheniensia ad ius byzantinum spectantia I* [=Forschungen zur byzantinischen Rechtsgeschichte, Athener Reihe 10], Athens-Komotini 1997, 155-168.
- L. Burgmann, 'Eine Novelle zum Scheidungsrecht', *FM IV* (1981), 107-118.
- L. Burgmann (ed.), *Ecloga. Das Gesetzbuch Leons III. und Konstantinos' V.* [=Forschungen zur byzantinischen Rechtsgeschichte 10], Frankfurt/M. 1983.
- L. Burgmann, M.Th. Fögen, A. Schminck, D. Simon (eds.), *Repertorium der Handschriften des byzantinischen Rechts. Teil I. Die Handschriften des weltlichen Rechts (Nr. 1-327)* [Forschungen zur byzantinischen Rechtsgeschichte 20], Frankfurt a. M. 1995.
- L. Burgmann, 'Zur Organisation der Rechtsprechung in Byzanz (mittelbyzantinische Epoche)', *La giustizia nell' alto medioevo (secoli IX-XI)* [Settimane di studio del centro italiano di studi sull' alto medioevo XLIV], Spoleto 1997, 905-930.
- C.J. Classen, 'Der platonisch-stoische Kanon der Kardinaltugenden bei Philon, Clemens Alexandrinus und Origenes', in: A.M. Ritter (ed.), *Kerygma und Logos. Beiträge zu den geisteswissenschaftlichen Beziehungen zwischen Antike und Christentum. Festschrift für Carl Andresen zum 70. Geburtstag*, Göttingen 1979.
- G. Dagron, *Empereur et prêtre*, Paris 1996.

BIBLIOGRAPHY

- F. Dölger, 'Das byzantinische Mitkaisertum in den Urkunden', BZ 36 (1936), 123-145 = Id., *Byzantinische Diplomatik. 20 Aufsätze zum Urkundenwesen der Byzantiner*, Ettal 1956, 102-129.
- F. Dölger-J. Karayannopulos, *Byzantinische Urkundenlehre* [HAW XII.3.1.1], München 1968.
- M.L. D'Ooge (ed.), *Nicomachus of Gerasa, Introduction to Arithmetic*. Transl. into English by M.L. D'Ooge, with *Studies in Greek Arithmetic* by F.E. Robbins and L.C. Karpinski [University of Michigan Studies, Humanistic Series XVI], New York 1926.
- F. Dvornik, *The Photian Schism*, Cambridge 1948, repr. 1970.
- F. Dvornik, 'The Patriarch Photius and Iconoclasm', in: *Dumbarton Oak Papers* 7 (1953), 69-97.
- F. Dvornik, *Early Christian and Byzantine Political Philosophy. Origins and Background* [Dumbarton Oaks Studies 9], 2 vols, Washington 1966.
- D. Fehling, *Die Wiederholungsfiguren und ihr Gebrauch bei den Griechen vor Gorgias*, Berlin 1969.
- M.Th. Fögen, 'Legislation und Kodifikation des Kaisers Leon VI.', SG III (1989), 23-35.
- M.Th. Fögen, 'Das politische Denken der Byzantiner', in: *Pipers Handbuch der politischen Ideen* hrsg. v. I. Fetscher und H. Münkler, II (München-Zürich 1993), 41-85.
- M.Th. Fögen, 'Legislation in Byzantium: A Political and a Bureaucratic Technique', in: A.E. Laiou-D. Simon (eds), *Law and Society in Byzantium: Ninth-Twelfth Centuries*, Washington D.C., 1994, 53-70 (esp. 63-64).
- R. Guillard, 'La cérémonie de la *προσκύνησις*', REG 59/60 (1946-1947), 251-259 = Id., *Recherches sur les institutions byzantines I* [Berliner Byzantinistische Arbeiten 35], Berlin-Amsterdam 1967, 144-150.
- W.K.C. Guthrie, *A History of Greek Philosophy V*, Cambridge 1978; VI, Cambridge 1981.
- B. Gygli-Wyss, *Das nominale Polyptoton im älteren Griechisch*, Göttingen 1966.
- C.W.E. Heimbach, 'Griechisch-römisches Recht im Mittelalter und in der Neuzeit. I. und II. Periode', in: J.S. Ersch-J.G. Gruber, *Allgemeine Enzyklopädie der Wissenschaften und Künste*, 86: Griechenland. B. Griechenland im Mittelalter und in der Neuzeit. Erste Sektion: A-G, Leipzig 1868 (repr. Graz 1976), 191-471.
- H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden* [Wiener Byzantinistische Studien 1], Vienna 1964.
- H. Hunger, *Das Reich der neuen Mitte. Der christliche Geist der byzantinischen Kultur*, Graz etc., Köln 1965
- H. Hunger (ed.), *Das byzantinische Herrscherbild* [Wege der Forschung 341], Darmstadt 1975.
- J.M. Hussey, *The Orthodox Church in the Byzantine Empire* [Oxford History of the Christian Church], Oxford 1986.
- J. Koder, *Das Eparchenbuch des Leon des Weisen* [CFHB XXXIII], Wien 1991.
- H. Lausberg, *Handbuch der literarischen Rhetorik*, 2nd ed, 2 vols, Munich 1973.

EISAGOGE PROOIMION

- P. Lemerle, *Byzantine Humanism* [Byzantina Australiensia 3], Canberra 1986.
- H. Lloyd-Jones, 'Pindar Fr. 169', *Harvard Studies in Classical Philology* 76 (1972) 45-56
= Id., *Greek Epic, Lyric and Tragedy*, Oxford 1990, 154-165.
- J.H.A. Lokin, 'The Significance of Law and Legislation in the Law Books of the Ninth to Eleventh Centuries', in: A.E. Laiou-D. Simon (eds), *Law and Society in Byzantium: Ninth-Twelfth Centuries*, Washington D.C., 1994, 71-91.
- J.H.A. Lokin, 'The Novels of Leo and the Decisions of Justinian', in: *Analecta Atheniensia ad ius byzantinum spectantia I* [=Forschungen zur byzantinischen Rechtsgeschichte, Athener Reihe 10], Athens-Komotini 1997, 131-140.
- C. Mango, 'The Liquidation of Iconoclasm and the Patriarch Photios', in: A. Bryer and J. Herrin (eds), *Iconoclasm*, Birmingham 1977, 113-140.
- J. Mansfeld, *Prolegomena: questions to be settled before the study of an author, or a text*, Leiden 1994 [= *Philosophia antiqua* 61].
- J. Mansfeld, *Prolegomena mathematica: from Apollonius of Perga to late Neoplatonism; with an appendix on Pappus and the history of Platonism*, Leiden 1998 [= *Philosophia antiqua* 80].
- A. Markopoulos, 'An Anonymous Laudatory Poem in Honor of Basil I', *DOP* 46 (1992) 225-232.
- E.P. Meijering, *Athanasius: Contra Gentes. Introduction, Translation and Commentary*, Leiden 1984 [= *Philosophia patrum*, 7].
- R. Meijering, *Literary and Rhetorical Theories in Greek Scholia*, Groningen 1987.
- J. Meyendorff, *Byzantine Theology. Historical Trends and Doctrinal Themes*, New York 1983.
- F.D. Miller jr., *Nature, Justice, and Rights in Aristotle's Politics*, Oxford 1995.
- J.A.B. Mortreuil, *Histoire du droit byzantin ou du droit romain dans l'empire d'orient depuis la mort de Justinien jusqu'à la prise de Constantinople, II*, Paris 1844, repr. Osnabrück 1966.
- G. Ostrogorsky, 'Das Mitkaisertum im mittelalterlichen Byzanz', in: E. Kornemann, *Doppelprinzipat und Reichsteilung im Imperium Romanum*, Leipzig-Berlin 1930, 166-178.
- G. Ostrogorsky, *Geschichte des byzantinischen Staates* [HAW XII.1.2], 3rd. ed., München 1963 (trans. *History of the Byzantine State*, Oxford 1968)
- E. Peterson, 'Der Monotheismus als politisches Problem', *Theologische Traktate*, Munich 1951.
- The *Oxford Dictionary of Byzantium*, ed. A. Kazhdan et al., Oxford 1991.
- V.C. Pfitzner, *Paul and the agon motif: traditional athletic imagery in the Pauline literature* [Supplements to *Vetus Testamentum* 16], Leiden 1967.
- P.E. Pieler, 'Byzantinische Rechtsliteratur', in: H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner, II*, [HAW XII,5,2], München 1978, 341-480.
- P.E. Pieler, 'Ἀνακάρσιος τῶν παλαιῶν νόμων und makedonische Renaissance', *SG III* (1989), 61-77.

BIBLIOGRAPHY

- J. Préaux, 'Les quatre vertus païennes et chrétiennes. Apothéose et Ascension', *Hommages à Marcel Renard I* [= *Collectio Latomus 101*], Brussels 1969.
- G.L. Prestige, *God in Patristic Thought*, London 1952.
- S. Radt, 'Zu Aristophanes Plutos', *Mnemosyne* 4a S. 29 (1976) 254-267.
- G. Ries, Prolog und Epilog in Gesetzen des Altertums [Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 76], München 1983.
- G. Rösch, 'Ὀνομα βασιλείας. Studien zum offiziellen Gebrauch der Kaisertitel in spätantiker und frühbyzantinischer Zeit [Byzantina Vindobonensia 10], Vienna 1978.
- G. Ruhbach, 'Die politische Theologie Eusebs von Caesarea', in: Id. (ed.), *Die Kirche angesichts der Konstantinischen Wende*, Darmstadt 1976, 236-258.
- D.T. Runia, *Philo of Alexandria and the Timaeus of Plato*, Leiden 1986.
- J. Scharf, 'Photios und die Epanagoge', *BZ* 49 (1956), 385-400.
- J. Scharf, 'Quellenstudien zum Prooimion der Epanagoge', *BZ* 52 (1959) 68-81.
- J. Scharf, 'Ius divinum. Aspekte und Perspektiven einer byzantinischen Zweigewalttheorie', in: P. Wirth (ed.), *Polychronion. Festschrift Franz Dölger zum 75. Geburtstag*, Heidelberg 1966, 462-479.
- A. Schindler (ed.), *Monotheismus als politisches Problem?: Erik Peterson und die Kritik der politischen Theologie* [Studien zur evangelischen Ethik 14], Gütersloh, 1978.
- W. Schmid, *Der Atticismus in seinen Hauptvertretern, II*, Stuttgart 1889.
- A. Schminck, "'Rota tu volubilis". Kaisermacht und Patriarchenmacht in Mosaiken', in: L. Burgmann, M.Th. Fögen, A. Schminck (eds.), *Cupido legum*, Frankfurt a.M. 1985, 211-234.
- A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern* [=Forschungen zur byzantinischen Rechtsgeschichte 13], Frankfurt/M. 1986.
- A. Schminck, "'Frömmigkeit ziere das Werk". Zur Datierung der 60 Bücher Leons VI.', *SG III* (1989) 79-114.
- A. Schminck, "'Novellae extravagantes" Leons VI.', *SG IV* (1990), 195-209.
- A. Schminck, 'Zum 19. Titel der Eisagoge ("Über die Eheschenkung")', in: D. Simon (ed.), *Eherecht und Familiengut in Antike und Mittelalter* [Schriften des Historischen Kollegs. Kolloquien 22], München 1992, 43-59.
- A. Schminck, 'Das Prooimion der Bearbeitung des Nomokanons in 14 Titeln durch Michael und Theodoros', *FM X* (1998), 357-386.
- A. Schminck, 'Από τον «νόμο» στον «νόμο». Ο Φώτιος και η έννοια του νόμου στην αρχαιότητα', in: *Συμβολές στην έρευνα του αρχαίου ελληνικού και ελληνιστικού δικαίου* [ΚΕΝΤΡΟΝ ΜΕΛΕΤΗΣ ΑΡΧΑΙΟΥ ΕΛΛΗΝΙΚΟΥ ΚΑΙ ΕΛΛΗΝΙΣΤΙΚΟΥ ΔΙΚΑΙΟΥ 2], Athens 1994, 61-72.
- P. Schreiner, *Byzanz* [Oldenbourg Grundriss der Geschichte 22], München. 1st ed. 1986, 2nd ed. 1994.
- B. Schultze, 'Byzantinisch-patristische ostchristliche Anthropologie (Photius und Johannes von Damaskus)', *OCP* 38 (1972) 172-194.

EISAGOGÉ PROOIMION

- R. Schwager, *Der wunderbare Tausch. Zur Geschichte und Deutung der Erlösungslehre*, München 1986.
- D. Simon, 'Handschriftenstudien zur byzantinischen Rechtsgeschichte', *BZ* 71 (1978), 332-348.
- D. Simon, 'Legislation as both a World Order and a Legal Order', in: A. Laiou and D. Simon (eds), *Law and Society in Byzantium, Ninth-Twelfth Centuries*, Washington D.C. 1994, 1-25.
- R. Sorabji, 'The ancient commentators on Aristotle', in: id. (ed.), *Aristotle Transformed, the ancient commentators and their influence*, London 1990, 1-30.
- B.H. Stolte, 'Balsamon and the Basilica', *SG* III (1989) 115-125.
- B.H. Stolte, 'A Note on the Un-Photian Revision of the Nomocanon XIV Titulorum', in: *Analecta Atheniensi ad ius byzantinum spectantia I* [=Forschungen zur byzantinischen Rechtsgeschichte, Athener Reihe 10], Athens-Komotini 1997, 115-130.
- O. Treitinger, *Die oströmische Kaiser- und Reichsidee nach ihrer Gestaltung im höfischen Zeremoniell*, Jena 1938, repr. Darmstadt 1969, 84-94.
- O. Treitinger, 'Vom oströmischen Staats- und Reichsgedanken', *Leipziger Vierteljahrsschrift für Südosteuropa* 4 (1940), 1-26, repr. in id., *Oströmische Kaiser- und Reichsidee*, Darmstadt 1969 (1957), 247-274.
- Sp. Troianos, *Οί πηγές του Βυζαντινού δικαίου*, Athens-Komotini 1986 (2nd augm. ed. 1999).
- Sp. Troianos, 'Kirche und Staat. Die Berührungspunkte der beiden Rechtsordnungen in Byzanz', *Ostkirchliche Studien* 37 (1988), 291-296.
- Sp. Troianos, 'Ο Μέγας Φώτιος και οι διατάξεις της Εισαγωγής. Μερικές παρατηρήσεις ως προς τις σχέσεις Έκκλησίας και Πολιτείας', *Έκκλησία και Θεολογία* 10 (1989-1991), 489-504.
- Sp. Troianos, 'Nomos und Kanon in Byzanz', *Kanon* 10 (1991), 37-51.
- Sp. Troianos, 'Das Gesetz in der griechischen Patristik', in: W. Sellert (ed.), *Das Gesetz in Spätantike und frühem Mittelalter. 4. Symposium der Kommission "Die Funktion des Gesetzes in Geschichte und Gegenwart"* [=Abh. Akad. Wiss. Göttingen, Philolog.-Hist. Kl., 3. Folge 196], Göttingen 1992, 47-62 [and 'Diskussion' 65-66].
- Sp. Troianos, 'La paix comme bien légal protégé à Byzance', in: *Προσφορά στον Ηλία Κρίσπη*, Athens-Komotini 603-609.
- D. Tsekourakis, *Studies in the Terminology of Early Stoic Ethics*, Wiesbaden 1974.
- N. van der Wal, 'Les termes techniques grecs dans la langue des juristes Byzantins', *SG* VI (1999), 127-141.
- N. van der Wal - J.H.A. Lokin, *Historiae iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453*, Groningen 1985.
- W. von Leyden, *Aristotle on Equality and Justice. His Political Argument*, Basingstoke etc. 1985.
- G. Weiss, *Oströmische Beamte im Spiegel der Schriften des Michael Psellos* [Miscellanea Byzantina Monacensia 16], Munich 1973.

BIBLIOGRAPHY

N.G. Wilson, *Scholars of Byzantium*, London 1983.

K.E. Zachariä, review of Heimbach's *Anecdota II*, in: *Heidelberger Jahrbücher der Literatur* 34-35 (1841) 529-555.

Index

Arabic numerals in bold type refer to lines of Schminck's edition of the prooimion of the Eisagoge, also reproduced on the pages opposite our translation. Roman numerals refer to the appendices of the present work. Internal references to the prooimion have been omitted.

ANAXIMENES	
<i>Rhetorica</i> 29,1	5
ARISTOPHANES	
<i>Aves</i> 1317	78
1324	78
<i>Nubes</i> 505	78
<i>Plutus</i> 604	78
ARISTOPHANES BYZANTINUS	
<i>Historiae Animalium Epitome</i> 2,472,2	56
ARISTOTELES	
<i>De anima</i> 2,1 (412a 3-b 4)	99-101
<i>Ethica Nicomachea</i>	
1,7,6 (1097b 8-13)	102-104
1,7,9-15 (1097b 22-1098a 18)	102-104
1,13,20 (1103a 6)	79
2,6,4 (1106a 28-29)	79
2,6,15 (1106b 36-1107a 6)	79
5,1,10 (1129b 6-8)	76
5,3 (1131 a 10)	66-67, 76
5,4,8 (1132a 24-25)	78
5,4,8 (1132a 29-29)	66-67
7,9 (1152a 4)	58-60
<i>Metaphysica</i> 11,10 (1075d 18-19)	70
<i>Meteorologica</i> 376a 3	14
980a 23	47
<i>Politica</i> 1,2,9 (1253a 2-3)	102-104
1,2,12 (1253a 15-18)	102-104
1,4,2 (1253b 30-32)	102-104
1,4,4 (1254a 1-7)	102-104
5,1,7 (1301 b 30)	66-67
<i>Rhetorica</i> 3,14,1415a 11-23	5
Ps.-ARISTOTELES	
<i>De mundo</i> 400b 27-30	66-67
ASCLEPIUS <i>In Aristotelis Metaphysicorum</i>	
<i>libros A-Z comm.</i> 208,31	44
ATHANASIUS ALEXANDRINUS	
<i>Contra gentes</i> 3-4	25-26
35-42	71-73
<i>De incarnatione</i> 2,5	73
3,4	III
12,5	III
<i>Quaestiones ad Antiochum</i> PG 28,669D	58
<i>Vita Antonii</i> 5	7
BASILICA	
47,1,64	2
56,17,61,8	2
58,10	112
58,23	112
58,23,14	112
scholion ad 2,1,14 (BS 4/19-27)	45
scholion ad 22,2,1 (BS 1393,16)	105
BASILIIUS CAESARIENSIS CAPPADOCIAE	
<i>Epistulae</i> 6,2,1	44
BIBLIA	
Vetus Testamentum (LXX)	
<i>Exodus</i> 31 sq.	84-86
31,18	84-86
32,15-16	84-86
<i>Deuteronomium</i> 32,46	84-86
<i>Isaia</i> 2,3	III
Novum Testamentum	
<i>Evangelium Matthaei</i> 5,9	4
13,49	44
25,32-34	44
<i>Acta Apostolorum</i> 2,3	84-86
1 <i>Epistula ad Corinthios</i> 9,24	42-44
2 <i>Epistula ad Corinthios</i> 3,3	84-86
5,15	6
<i>Epistula ad Galatas</i> 6,14	6
CATULLUS	
76,13	66
CHOEROBOSCUS	
<i>Scholia in Theodosii canones nominales</i>	
241,9 Gaisford	31
CICERO	
<i>De legibus</i> 1,6,19	66-67
CLEMENS ALEXANDRINUS	
<i>Paedagogus</i> 3,12	84-86
<i>Protrepticus</i> 10,96,3	42-44
<i>Stromateis</i> 6,16	84-86
CONCILIA	
Constantinopolis I, <i>Symbolum</i>	27

INDEX

Trullanum <i>Sermo allocutorius</i>	42-44	EPICLETUS	
Nicea II Mansi XVII,440D.....	4	<i>Dissertationes</i> 2,19,32.....	47
Mansi XVII,4477E.....	4	EPIPHANIUS CONSTANTIENSIS	
Mansi XVII,512C-517D.....	4	<i>Panarion</i> 66.....	31
Mansi XVII, 520A.....	4	EPITOME	
CORPUS IURIS CIVILIS		Prooim. ed. Schminck 112.....	5
<i>Institutiones</i>		1,28.....	6
<i>constitutio Imperatoriam</i> 7.....	84-86	ETYMOLOGICUM MAGNUM	
1,1 pr.	66-67	673,24.....	31
<i>Digesta</i>		EUAGRIUS	
<i>const. Tanta /Δέδωκεν</i>	1	<i>Selecta in Psalmos.</i> : v. ORIGENES	
19.....	42	EUCLIDES	
24.....	84-86	<i>Elementa</i> 1,7.....	14
1,1,10 pr.	66-67	EURIPIDES	
1,3,2.....	45	<i>Andromache</i> 548.....	28
39,1.....	112	<i>Phoenissae</i> 103.....	66
43,24.....	112	EUSEBIUS CAESARIENSIS	
43,24,14.....	112	<i>Commentarius in Psalmos</i> PG 23,1292B.....	58
<i>Codex</i>		<i>Historia ecclesiastica</i> 4,22,9.....	73
<i>const. Summa</i>	1	<i>Laus Constantini</i> 3,6.....	III
<i>const. Cordi</i>	1	<i>Praeparatio Evangelica</i> 11,23-24.....	71-73
1,1,1.....	41-42	EUSTRATIUS	
8,53,30.32.....	2	<i>In Ethica Nicomachea comm.</i> 79,18.....	58
12,60,7.....	2	GREGORIUS NAZIANZENSIS	
<i>ECLOGA</i> ed. Burgmann		<i>Carmina</i> 1,2,6,45.....	85-86
Prooimion 10-12.....	5	<i>Liturgia Graeca</i> PG 36,713C.....	58
21-27.....	5	GREGORIUS NYSSENUS	
17.....	112	<i>In Canticum canticorum homiliae</i> 14.....	85-86
<i>EISAGOGE</i> ed. Zachariä		HELIODORUS EMESEUS	
1,4.....	66-67	<i>Aethiopica</i> 1,18,3.....	78
2-7.....	92	HERMAS	
2.....	6	<i>Mandata pastoris</i> 78,4.....	14
2,1.....	6	78,10.....	14
2,2.....	6	88,5.....	79-80
2,3.....	6	94,1.....	14
2,5.....	28-29;	94,2.....	14
93-94		105,1.....	14
2,6-12.....	6	HERO ALEXANDRINUS	
3.....	6	<i>Dioptra</i>	75
3,2.....	6	HERODOTUS	
3,3.....	6	<i>Historiae</i> 3,62.....	28
3,4.....	93-94	7,175.....	28
4 sqq.	91	HIEROCLES PLATONICUS	
4,11.....	91	<i>In Carmen Aureum</i>	7
5,8.....	93-94	HIMERIUS	
6,11.....	93-94	<i>Orationes</i> 12,2.....	14
13,1.....	105	HIPPOCRATES	
39.....	112	<i>De morbo sacro</i> 13,2.....	47
ELIAS		HORATIUS	
<i>In Porphyrii Isagogen comm.</i> 44,19.....	44	<i>Satirae</i> 2,6,80.....	66
99,12.....	44	IAMBlichus PHILOSOPHUS	
		<i>De communi mathematica scientia</i> 4.....	7
		INSCRIPTIONES	
		IGLS nr 298 (edd. Jalabert-Mouterde).....	9
		Spieser, TM 5 (1973) 145-180 no. 8.....	4

EISAGOGE PROOIMION

ISIDORUS PELUSIOTA	2, 51	1
<i>Epistulae</i> 1,287		93-94
IOANNES CHRYSOSTOMUS		
<i>De Babyla</i> 74		58
IOANNES DAMASCENUS		
<i>In Pentecosten</i>		86
JUSTINIANUS: v. Corpus iuris		
JUSTINUS MARTYR		
<i>Apologiae</i> 1,39,1		III
1,43,1		III
1,45,3		III
2,9		III
<i>Dialogus</i> 109,2		III
LEONTIUS HIEROSOLYMITANUS		
<i>Adversus Nestorianos</i> 2,18		28
4,37		28
MAXIMUS CONFESSOR		
<i>Capitulum theologicorum et oeconomicorum</i>		
<i>duae centuriae</i> 1,12		7
<i>Scholia in Dionysii Areopagitae librum de</i>		
<i>divinis nominibus</i> 2,9		7
MENANDER		
<i>Dyscolus</i> 454		78
<i>Epitrepontes</i> 370		78
MICHAEL EPHESIUS		
<i>In Ethica Nicomachea comment.</i> 529,13		44
593,6		44
NICOMACHUS GERASENUS		
<i>Introductio arithmetica</i> 1,4,2		71-72
1,6,1		71-72
1,14,2		76
1,17,6		76
1,23,4-5		67-80; 74-75
2,4,2		66-67
2,20,1		76
NOMOCANON XIV TITULORUM		
12,2,5		31
OLYMPIODORUS PHILOSOPHUS		
<i>In Platonis Alcibiadem comment.</i> 46,20		44
67,26		44
ORIGENES		
<i>Contra Celsum</i> 3,70		63-71
8,22		86
8,68		7
<i>Commentarii in Joannum</i> 2,31		5-7
<i>Selecta in Psalmos</i> PG 12,1053A		6
PHILO JUDAEUS		
<i>De officio mundi</i> 16-20		72-73
23		66-67
<i>De praemiis et poenis</i> 4		42-44
<i>De specialibus legibus</i> 4,149		85-86
4,230-238		66-67
<i>De vita Mosis</i> 2,48,51		III
PHILOPONUS, IOANNES		
<i>In Aristotelis Analytica Priora</i>		
<i>comm.</i> 322,13		44
PHOTIUS		
<i>Amphilochia</i> 77,7-8		72-73
77,10-11		72-73
77,13-14		72-73
77,12		73
77,18		71
149,733		31
181,101		28
182,15-16		79-80
182,36		28
315,68.80		28
<i>Bibliotheca</i> 229		14
230		7
<i>Epistulae</i> 1,118		28
1,261		28
2,138		73
34,8		28
174,123		73
174,188		7
<i>In Epistulam ad Romanos</i> 1,19-26		25-26
Markopoulos, DOP 46 (1992) 225-232		
II. 131/2		4
PINDARUS		
fr. 169a Snell-Maehler		45
PLATO		
<i>Leges</i> 720e-721a		102-104
722c - 723b		5
722c 1-2		33
757b-c		66-67
757d 4-5		66-67
<i>Phaedrus</i> 146a-249d		75
246 c sqq.		18-19
247b		75
247d		75
248a		75
248b 4		75
249b 6		75
<i>Philebus</i> 56b 7-c 1		69
<i>Theaetetus</i> 191c-192a		69
<i>Timaeus</i> 31b 8-9		10
69b 2-c 2		70
PLUTARCHUS		
<i>Lucullus</i> 1,5		56
<i>Moralia</i> 719b		66-67
<i>Moralia</i> 802f		69
PROCLUS		
<i>In Platonis Rempublicam comm.</i> 1,26,13		58
<i>Institutio theologica</i> 11-12		7

INDEX

PROCHEIRON	
<i>Prooim.</i> ed. Schminck 9.....	5
26-27	5
82-83	102-104
38.....	112
PSELLUS	
<i>Synopsis legum</i> 1-2.....	31
<i>Syntomos diairesis</i> ed. Heimbach	
140 p. 235-6	33
161 p. 236.....	33
165 p. 236.....	33
PS.-PSELLUS	
<i>Suntomos Istoria</i> 14,48.....	17
26,51.....	17
RUTILIUS LUPUS	
<i>Schemata</i> 2,7	93-94
SOPHOCLES	
<i>Antigone</i> 55-56	66
STEPHANUS ATHENIENSIS	
<i>Scholia in Hippocratem</i> 2,240,6-10.....	31
STOBAEUS ed. Wachsmuth-Hense	
II,77,21 sqq.....	6
IV, 2, 19-24	1
STRABO	
8,6,22.....	47
TACITUS	
<i>Agricola</i> 34,1	47
TERTULLIANUS	
<i>Adversus Praxean</i> 3,2.....	23-24
THEOPHANES CONTINUATUS	
p. 283,23 Bonn	93-94
p. 318,20 Bonn	93-94
THUCYDIDES	
3,59,2.....	66