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. It is only fair, however, to say that his Studien have stimulated the Groningen prooimists to contribute to the discussion of a number of very interesting questions, some of which may in the end prove to be insoluble.

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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.
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Προοίμιον τῆς εἰσαγωγῆς τοῦ νόμου
τοῦ σὺν Θεῷ ἐμφανιζόμενου
ὑπὸ Βασιλείου καὶ Δέοντος καὶ Ἀλεξάνδρου
τῶν παναγάδων καὶ εἰρηνοποιοῦν βασιλέων

5 Τὸ ἀξίωμα καὶ τὸ μέγεθος τῆς προκεχειμένης πραγματείας δηλώσει μὲν ἐπείτα
ὁ τε σοκόπος καὶ τὸ τέλος, τεκμηριοῦ δὲ μάλιστα περιφανέστατα καὶ ἡ ἄρχηθεν ἄπλως ἐν αἰτίας ἐνδύσεως τοῦ νόμου εὐγένεια. Δόγμα γάρ πρῶτιστον καὶ ἀληθεῦσταν εἰσηγήσασθαι μυστικῶς ἐν τοῖς αὐτῶι ἐργοὶς ὁ τῶν ἄγαδῶν πάντων πρῶτας καὶ ταμουχός Θεός βουληθεῖς, μετὰ τήν τῶν νοητῶν καὶ αἰσθητῶν
ποίησιν μικτὸν τι ζῶον, σύνδεσμον καὶ τύπον κοινὸν τῶν ἰδιούχων τοῦτῶν καὶ ἀντιδέτων φύσεων προσάγει τὸν ἄνθρωπον, νόμον αὐτῷ ἄγαδόν δοὺς ὡς ἄρμογην τινα καὶ κράσιν καὶ διαμονὴν τῆς τοιαύτης συνθέσεως, τούτο μὲν, ἵνα μὴ τις τὰς εὐκάρυς καὶ τοὺς κοινοὺς πρὸς τοὺς τοῦτον ἐκτέτρωσεν τοῦ ζῶου τούτου κεχωρισμένα φύσεις καὶ ἐν οἰκείαις ὀροΐς ἰσταμένας ἄλλης καὶ ἄλλης ἄρχης υπολάβοι, τούτο δὲ, ἵνα καὶ,
ὅταν μιᾶς ἄρχης ταῦτα γνωρίσῃ, μὴ πονηρᾶς τινος, ἀλλ' ἄγαδόν Θεοῦ πιστεύσῃ καὶ κατανοήσῃ.

Τὸ μὲν γάρ ἐκ δύο ἐπερουσίων ἐν σύνθετον δημιουργήσα τὸν ἄνθρωπον
διδάσκει αὐτὸν τοῦτον εἶναι καὶ τῶν ὀλοτήτων ἐκείνων ποιητής, ἐξ ὅν αἱ μοῖραι αὐτὰ κατὰ συγγένειαν ἐλογισθησαν· τὸ δὲ καὶ νόμον ἄγαδόν δοῦναι
πρὸς φυλακὴν καὶ σωτηρίαν καὶ διαμονήν ἐπ' ἄγαδόν τῆς τοιαύτης συνθέσεως
dιδάσκει, ὃτι καὶ ἄγαδός ὁ ποιήσας πάντα Θεός καὶ Κύριος, ἐξορίζων τὴν τῶν ἐναντιοθείτων καὶ ἄθεων Μανιχαίων δυσσέβειαν, εἰσαγόν δὲ τὴν τῆς μιᾶς
dεσποτείας καὶ ἐνιαίας μοναρχίας χυριστητὰ τε καὶ ἤξυσθαι. Οὐ προσωπικὴν
dὲ μοναρχιὰν Ἴνα ἐξάσθω, ἀλλὰ τὴν τρισυπόστασαν δεσποτεῖαν ἐμηνύσαν· τρία γάρ
dεῖκνυται εὕθως ὁ Θεὸς δημιουργῶν καὶ κτίζων, νοητᾶ καὶ αἰσθητὰ καὶ συν-
χθονα καὶ συγκρατοῦντα νόμον, ὡς ὑπὸ ἐνός καὶ τοῦ αὐτοῦ ζῶου ὡς μὲν οὔσια καὶ τρισι προσώποις προσκυνεῖσαν σικονομόν ὁμοῦ καὶ προοιμιώμενος.

Καὶ τούτο ἐκ τῆς φυσικῆς μοναρχίας καὶ τριαδικῆς δεσποτείας ἦ ἡμετέρα
βασιλεία θείως πως καὶ ἀπορρητῆς μυηθείας, ἐπὶ τὴν τοῦ ἄγαδος καὶ σωζι-
κόσμου νόμου ἀνάληψης καὶ ἀναγρέσεως μετὰ πολλῆς σπουδῆς καὶ ἐπιμελείας
dιηγέρθη καὶ διανέστη. Καὶ πρῶτον μὲν τὰ ἐν πλάτει τῶν παλαιῶν νόμων
κείμενα πάντα ἀνακαθάρασα, ἐν τεσσαράκοντα βιβλίους ἀδόλωτοι καὶ ἀνέθευ-
tον τὸ πάν χύμα τοῦ νόμου ὡς πόμα θείων ὡμοί ἐκέρασεν· νῦν δὲ τὰς ἐπὶ
ἐναντιώσει τοῦ εἰρημένου θείου δόγματος καὶ ἐπὶ καταλύσει τῶν σωστικῶν
νόμων παρὰ τῶν Τασάρων φιλημαφίας ἐκτεθείας πάντη ἀποβαλομένη καὶ
ἀπορρίψα, ἐκ τῶν εἰρημένων τεσσαράκοντα βιβλίων τῶν προκεχειμένων
ὡς θεοδιδάκτων νόμων ἐκλεξαμένη ἐν τεσσαράκοντα τίτλους ἵσαρθμος ταῖς

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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,
βιβλίος, ἐν χερσὶ φέρειν σωτήριον καὶ ψυχωφελὴ νόμον καὶ σωφὴ καὶ εἰσαγωγικὸν ἐκείνων τῶν ἐν τὰς τεσσαράκοντα βιβλίος κειμένων ὑμῖν ἐφιλοτιμησάτο.

Καὶ τούτου τὸν νόμον αὐτοκρατορικὸς τε καὶ παντοκρατορικὸς πάντων τῶν ὑπὸ τὴν ἐξουσίαν ἡμῶν πιστῶν ἀνδρῶν κρατεῖν καὶ μόνον οὐκ ἐφιλοτιμήσατο.

Καὶ τὸ τοῦτον τὸν νόμον αὐτοκρατορικῶς τε καὶ παντοκρατορικῶς πάντων τῶν ὑπὸ τὴν ἐξουσίαν ἡμῶν πιστῶν κρατεῖν καὶ μόνον τοὺς λοιποὺς ἀγαθοὺς καθαυτὸ ὁ νόμος ἡμῖν ἐκ Θεοῦ δέδοται, καὶ αὐτὴν τὴν φύσιν ἡμῶν ῥώμνυσι καὶ τὸ σεβάσμιον κέκτηται.

"Ὅθεν εἰδότες, ὅτι, πολλῶν μὲν ἄλλων χρήσιμων τε καὶ υφιλίμων ἐν ἄνθρώπων διόν, ὁ νόμος καθαυτὸ μαρτυρεῖ ταυτός ἐν τῇ προειρημένῃ ἱερολογίᾳ, καὶ πολλῶν τεχνῶν καὶ ἔπιτηδευμάτων περὶ τὴν ούσίαν τῶν ἄνθρωπων ύπάρχοντων καὶ συμβαλλομένων, μόνος ὁ νόμος κατ' αὐτὴν ἡμῖν τὴν φύσιν ὑπὼν καὶ τὸ σεβάσμιον κέκτηται.

Καὶ ὡς ἐκ τῶν φθασάντων κατείδομεν, μόνος τῶν λοιπῶν καὶ αὐτὸν ὁ νόμος ἡμῖν δεδοται, καὶ αὐτὴν τὴν φύσιν ἡμῶν ῥώμνυσι καὶ τὸ σεβάσμιον κέκτηται.

"Ὅθεν εἰδότες, ὅτι, πολλῶν μὲν ἄλλων χρήσιμων τε καὶ υφιλίμων ἐν ἄνθρώπων διόν, ὁ νόμος καθαυτὸ μαρτυρεῖ ταυτός ἐν τῇ προειρημένῃ ἱερολογίᾳ, καὶ πολλῶν τεχνῶν καὶ ἔπιτηδευμάτων περὶ τὴν ούσίαν τῶν ἄνθρωπων ύπάρχοντων καὶ συμβαλλομένων, μόνος ὁ νόμος κατ' αὐτὴν ἡμῖν τὴν φύσιν ὑπών καὶ τὸ σεβάσμιον κέκτηται.
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
απισώπεσις ταύτης διάτον ἐν ἡμῖν ὡσπερ αἰθριάζουσι καὶ πανηγυρίζουσι αἱ λεγόμεναι «τέτταρες συνεκτικότεραι ἀρεται» κατ‘ ἐνέργειαν ἀνάσκειρῶσι καὶ ἀναλάμπουσι. Τέλος γὰρ Θεοῦ, ἀποτέλεσμα δὲ νόμου ἐν ἡμῖν ἡ ὄντως δικαίο-

καὶ διά ταύτης ἡ παρόντα ἀγαθὰ φυλάζει ἡ ἀπόντα ἀνακλάσονται, τέλος δὲ τὸ τὴν δικαιοπραγιάν διὰ πάντων ἐνεργεύονται καὶ τὴν ἀγαθότητα τελειούονται.

Δέξασθε οὖν τοῦτον τὸν νόμον ὀρθοφρόνως καὶ θεοπρεπῶς ώς παρὰ Θεοῦ γεγονότα, ώς ἀνώδεν ὑπαγορευόντα, ώς δικτύλῳ Θεοῦ οὐ πλαξί λιθύνας γραφόμενον, ἀλλὰ ἐν ταῖς ψυχαῖς πυρίναις γλώτταις ἐντυπωμένον.

Προτάττομεν δὲ ἐν τοῖς τίτλοις τὰ περὶ τῆς συστάσεως καὶ εἰσφορᾶς αὐτοῦ τοῦ νόμου καὶ τῆς δικαιοσύνης ἐγκείμενα, ὡς δι’ αὐτοῦ τὸν νομοθέτην καὶ δικαιο-

δότην Χριστοῦ, τὸν ἀληθινὸν Θεόν ἡμῶν, προβασιλεύειν καὶ προκαθέξεσθαι πάντων τῶν Χριστιανῶν καὶ ἡμῶν εὐχόμενοι καὶ πιστεύοντες ἐπὶ τοῦτος δὲ τὰ περὶ βασιλέων καὶ πατριαρχῶν καὶ τῶν ἔξως ἁρχιτεκτόνων προσώπων, τὴν τάξιν καὶ τὸν κόσμον τῆς ἐνθεοποίησε πολιτείας – ὡσπερ δι’ αὐτῶν τῶν ἐπισήμων καὶ περιφερείας προσώπων – ταῖς ἀναλάμπουσι ἀξίαις τῶν προσμολογηθεσίαις αὐτοῖς ἀρετῶν ἀναστηλούντες καὶ ὅλη τὴν πολιτείαν ἀναζωγραφούντες.

Καὶ τὴν παρακολούθησιν πάσης ψυχῆς πρὸς τὸ πολιτεύομαι κατανεώσασα ταύτην τὴν ἡμετέραν καὶ χριστιανικὴν πολιτείαν εὐθύς μετέχει πάντων τῶν εὐσεβείας ἐπισκοπῆς, σὺν τῇ τάξῃ τῆς πολιτικῆς καὶ τῶν τῆς σωτηρίας καὶ τελειώσεως καὶ πρὸς Θεόν ἀναβάσεως ὀφειλόντα ἔτους τὰ περὶ τῶν ἐν τῇ ἐκκλησίᾳ ἱερατικῶν καὶ ἀρχιερατικῶν τελετῶν καὶ ἀποκληρώσεων εἰκονικῶς, μετὰ τὴν σωματοποίησιν οἰονεῖ τῆς πολιτείας ὡσπερ καὶ τὴν ψυχογονίαν συντάξαντες ή καθάπερ ὅλη τῇ πολιτείᾳ τὸ εἶδος ἱγον τὴν ἐκκλησίαν συντεθράκτης.

Καὶ ἐπειδὴ ἐτεὶ τῇ τελείᾳ φύσις εἰς ἀμφοτέρων ἅπαξ ἐπιθέσθη ἐτεὶ δὴ οἱ τέλειοι εἰπένε ἐνθρωπος, τῶν διὰ κινήσεως καὶ ὁράγος τινῶν τελεύομεν καὶ ἐνεργοῦ-

μενον διὰ τουτοστὶς, μαρτυρών, καὶ τὰ ἐκπεμβαίνοντα τῷ βίῳ δορεάς καὶ προϊστός καὶ παντοτές συναλλάγματα κατόπιν τῆς περὶ μαρτύρων καὶ συμ-

βολαίον διδασκαλίας εξεδήμεθα· ὁράγον γὰρ λόγον ἔχειν τοὺς μάρτυρας καὶ τὰ συμβόλαια ἐν τᾶς ἐπερωτήθεσιν καὶ τοῖς συμφόροις καὶ τοῖς συναλλάξασιν ἐγνώθηνεν.

Τελευταῖον δὲ τὰ ἐν τέλει τοῦ βίου συμβαινοντα, οἷον τὰ περὶ διαθηκῆς δηλαδή καὶ δόμα τούτῳ ἐπεταί· ἐξωθήνε δὲ πάντων τουτῶν τῶν εἰρημένων, ὡς ἀλλότρια τῆς εἰρημοκης τοῖς καὶ ἐλευθερίας καὶ διὰ τῆς ἀμαρτίας παραχωροῦσαν, τὰς καινοτομίας καὶ τὰ καλοῦμενα «ποινάλα», κατέστησαν καὶ ἀπλώς ἔχει τὰ εἰρημένα, ὡς ὑποτέταχται.
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/Δέδωκαν) 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, Ὑatégwv kēleůμεν). 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 kēleůμεν is used. One could further argue that the emperors address their subjects directly at line 84: δέξασθε οὖν τούτον τόν νόμον develops the binding force of the law as promulgated at lines 41-42.
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: διὸ 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).

εἰσαγωγή: ‘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 εἰσαγωγικον (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 εἰσαγωγή 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 ἐμφανίζομένου: 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: Πάς δὲ νόμος ἐμφανίζομενος ἀφεῖλε πρότερον γίνεσθα τοῖς ἐπάρχοις καταφανῆς ..., where ἐμφανίζειν means ‘to publish’. Similarly Nov. 8 Ed. c. 1 (NT 80,7): μετὰ τὴν ἐμφάνισιν τούτη 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? Grammatically 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 I, 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 Zachariai 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 ἀνακαθάρσας (32), ἔκρασεν (33) and the perfect προκειμένων (36), presents the work of the ἀνακαθάρσις 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 ἀνακαθάρσις 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 εἰργασιών: This combination of epitheta is not found in Justinian’s legislation, nor in the Novels from the sixth century onwards. Παναγάθως is not unusual in itself, but εἰργασιών 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 εἰργασιών, ὥστε αὕτοι ὑπὸ θεοῦ κληθῆσοντα. 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 εἰργασιών, but εἰργαικός: cf. Rösch, "Ονομα βασιλείας, pp. 49, 104, 108, 114, 156, 169f. On the one hand, the fact that εἰργαικός 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 εἰργαικός 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: εἰργαικός ἦστιν ὃς ὁ διεσπούτης / Χριστός. The poem is generally held to have been written circa 877: cf. Schminck, Studien 92 n. 232; Markopoulos, ‘An Anonymous
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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 ἐρημοσοσθὸς 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: Ἀποδώσαντος δὲ Θεὸς ἡμᾶς τὰ ἄρχαια δόμα τῆς ἡμείων ἐξουσίας τῇ σῇ κρατιᾷ καὶ ἐρημοσοσθῷ βασιλεῖα (Mansi XVII, 520A). Two more instances of ἐρημοσοσθὸς 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 ἐρημοσοσθὸς in relation with Basil’s emperorship provides a close parallel to the inscription of the Eisagoge. On ἐρημοσοσθὸς, 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 ἐρημοσοσθὸς (l. 1) as well as ἐρηµοσοσθὸς (l. 2) for the same emperor, namely Justinian II. This should perhaps warn us against attaching too much importance to the use of ἐρηµοσοσθὸς 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 legitimation. 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’; Lakin, ‘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 τέλεις, 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’ (ἐπείτα). This allows the second half of the sentence, from τεκμηριοῦ δὲ up to ἕγένεια, fully to concentrate on describing the agent. Stylistically, the tension is increased admirably: after τεκμηριοῦ great expectations are raised by μάλιστα and περιφρανέστατα, but nothing is given away as yet. The article ἥ gives a hint of a feminine noun, probably an abstract one, but it is not until after a further three determinators (ἀρχὴθεν, ἀπλῶς and ἐν αἰτίαις ἐνδόξοις) that the outcome is revealed: τοῦ νόμου ἕγένεια. The superabundance of determinators, which at first seems a stylistic flaw, especially the use of μάλιστα in addition to περιφρανέστατα, turns out to be a piece of subtlety, for it leads all attention to ἥ τοῦ νόμου ἕγένεια. After all this, logic would require an explanation of the reason why this law is ἕγενεια, 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 ... κατανοήσῃ) does not contain the essence of what is to be communicated. The ἕγενεια 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 δοῦς (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; Schwezyer-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 ἐνα-σentences 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 ἄξιωμα 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, Ἐργα 722c - 723b. In the present text, full emphasis is laid on the supreme importance of the Eisagoge (τῆς προκειμένης προαγατείας) 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’ (ἐπείτα). 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 ἄξιωμα and μέγεθος of the Eisagoge lie not so much in its being a handy, concise and clear introduction (38-39 ἐν χειρὶ ψέφειν ... νόμον καὶ σύντομον καὶ σαφῆ καὶ εἰσαγωγικόν), but
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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 ἄρχηθεν (6). ἄρχηθεν, 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 γάρ ἄρχηθεν πραγματικῶς ὑπὸ τοῦ νόμου περαινεῖται. In patristic literature ἄρχηθεν often means ‘since the Creation’: e.g. Origen, in Joann. 2,31 (ed. Preuschen, GCS 10, p. 88, I. 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 ὀ τε σκοπός 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) ἁγαθόν δοῦς; cf. 19 τὸ ... νόμον ἁγαθὸν δοῦναι); at 81 it is also indicated as ‘this good law’, and its σκοπός and τέλος turn out to be in agreement with those of God (αὐτῷ δὲ τότε τῷ ἁγαθῷ νόμῳ ἑπερ δὴ καὶ Θεῷ σκοπός ... τέλος δὲ ...). On the theological content of σκοπός and τέλος, see also below, commentary ad 80-83.

Generally speaking, σκοπός 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 σκοπός 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 σκοπός is formulated in terms of responsibilities and activities. Eis. 3,2 defines the σκοπός 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 βασιλεί τοῦ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται καὶ ἤνωκα τῆς εὐεργεσίας εξάτοκη, δοξά κυριεῖσθαι κατὰ τούς παλαιοὺς τὸν βασιλεῦν χαρακτῆρα. In other words, his τέλος is expressed as a qualification. This is closely
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paralleled by II. 63-65 of the Eisagoge’s preface, which speaks of God’s téλος: τὸν Θεόν ...
... ἢν καὶ δίκαιον εἶπαμεν, πιστεύομεν τῷ καλλίστῳ τῶν ὑομάτων τοῦ οἰκείου téλους
αὐτῶν κατευρράξειν μέλποντες: by assigning to God the predicate ‘just’, we express His
very téλος.

This way of distinguishing σκοπός and téλος is of Stoic origin (Alpers-Gölz, ‘Der
107-108.) E.g., according to Stobaeus (II p. 77, 21 ff. W = SVF I 554, III 16): κέχρηται δὲ
καὶ Κλεάνθης τῷ ὄρῳ τοῦτῳ ἐν τοῖς συγγράμμασι καὶ ὁ Χρύσιππος καὶ οἱ ἀπὸ τούτων
πάντες, τὴν εὐδαιμονίαν εἶναι λέγοντες οὐχ ἔτερον τοῦ εὐδαιμονος βίου, κατόπιν γε λέγοντες
τὴν μὲν εὐδαιμονίαν σκοπόν ἑσείσθαι, téλος δ’ εἶναι τὸ τυχεῖν τῆς εὐδαιμονίας, ὧπερ
tοῦτον εἶναι τῷ εὐδαιμονεῖν. And according to Euagrius (‘Origenes’) Selecta in Psalmos
(PG 12,1053A): ἐκ δὲ τῶν Ἑροφύλου περὶ Στωικῆς ὑομάτων χρήσεως οὐτῶς téλος δ’
eἶναι λέγουσι κατηγόρημα οὐ ένεκεν τὰ λοιπὰ πράττομεν, αὐτὸ δὲ οὐδένος ένεκεν τὸ δὲ
συζύγου τούτῳ, καθάπερ ἡ εὐδαιμονία τῷ εὐδαιμονεῖν, σκοπόν δὲ ἡ ἐσχατόν ἐστὶ τῶν
ἀρετῶν. In the Stoa, then, σκοπός is the point of orientation, the standard of all actions,
namely ‘happiness’; téλος is the realization of that aim. Consequently the téλος is not
expressed by a noun but by a verb: it is a κατηγόρημα, ‘predicate’. According to these
philosophers, the σκοπός of life is happiness and its téλος ‘to be happy’. Likewise the
σκοπός of God and the law, according to the preface of the Eisagoge, is just dealing (81),
but their téλος 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 téλος 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 téλος 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 the 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. 302v
as scholia on Epit. 1,28 and carry the heading Φωτ(ίου) and Ἄλλο Φωτ(ίου) respectively.
For an interpretation of titles 2 and 3 of the Eisagoge see Scharf, ‘Ius divinum’; Pieler,
‘Rechtsliteratur’, 454-455; Schmincke, ‘Rota tu volubilis’, 211-214; Fögen, ‘Das
politische Denken’, 73-75. See also Appendix II.

6-7 ἢ ἀρχὴν ἀπλῶς ἐν αἰτίαις ἐνδοξίας 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.
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7 ἀπλῶς: Here ἀπλῶς predominantly belongs to ἀφεθέν: ‘from the very beginning’. Similarly, ἀπλῶς also belongs to the preceding word in Max. Conf. cap. theol. 1, 12 (PG 90, 1088B): ὁ Θεὸς ἦλιος ἐστὶ δικαιοσύνης, ὡς γέραται, πάον ἀπλῶς τὰς ἀκτίνας ἐπιλάμψει τῆς ἀναήθητος; Phot. Bibl. 230, 268b38: ἢ ... τοῦ Δόγμου φύσις σεσαρκωμένη τὴν καθ’ ὑπόστασιν ἀπλῶς ἐνσωσι εἰςάγει, as opposed to the heretical notion that the unity was brought about because (268a39) ὁ Δόγμος ... ἔνθρωπον προϋποστάντα προσέλαβεν.

αἵτια ἐνδοξοί: 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 (βουληθέν [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 ὄλκονομῶν. 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] ὁ δι’ αὐτὸν ἐκ τούτου [sc. Χριστοῦ] 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 γγυμ. 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 ‘homeritic dogma’, an imperial monarchy established by Zeus, against the δόγμα ... θείον περὶ βασιλέως, of which he says that this is, or is part of, the teaching on providence that is not rejected by christians (Οὐ λύμεν δέ τὸ δόγμα τὸ περὶ προνοιας, which comprises both preceding causes and consequences deducted from them). It is divine, Origen continues, because 1 Petr. 27 (τὸν βασιλέα τιμάε) 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.

πρώτοτον: 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 ἄντα προϊόν ἀπὸ μίας αἰτίας, τῆς πρώτης ... (12) Πάντων τῶν ἄντων ἄχρη καὶ αἰτία πρωτίστη τὸ ἀγαθὸν ἐστιν. Cf. Max. Conf. schol. d. n. 2,9 (PG 4, 225). Just as in the
prooimion of the Eisagoge πρώτιστον is linked with another superlative (ἀληθέστατον), so we find Hieroc. in CA ... πρώτιστος καὶ ἄριστος δ ἀληθευρόγος Θεός; Iambl. Comm. Matth. 4 δύο τάς πρωτίστας καὶ ἀνωτάτω ὑποθετέων ἀρχάς.

9 τήν τῶν νοητῶν καὶ αἰσθητῶν ποιήσαν: Νοητά καὶ 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 his 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 revaluation 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 δ τοῖς αἰσθητοῖς καὶ νοητοῖς ἡμῶν οἰκείος, a qualification which expresses the same idea of God’s connection with both worlds.

10 τὸπον κοινῶν: ‘single form’, indicating that two things have become one, concrete entity, in contrast with the abstract σύνδεσμον: κοινῶν 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 δοῦ δὲ μόνω καλῶς ἐνιστασθαι τρίτου χωρίς οὐ δυνατόν δεσμὸν γάρ ἐν μέσῳ δὲ τινὰ ἄμφοτα ἐνιστασθαι.

11 The opposite and contrasting φύσεις are part of the created φύσες, which is distinct from the divine, uncreated σύναξια or φύσες. 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
opposition between divine and human nature, but merely of contrast within the one created reality: hence below, at 19, μοιρασαι, 'parts'. For the same reason the μία ἀρχή (15) and the rejection of έλλην καὶ ἄλλη ἀρχή (14) eventually refer to a point of view which exceeds that of the distinction of both human φύσεις. "Οροίς (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 ἄρμονή, a κράσις 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 έλλην καὶ ἄλλης: 'diverse, different' (LSJ s.v. ἄλλος II 3; LSJ Suppl. ibid.). Cf., e.g., Euclid. El. 1,7 πρὸς ἄλλω καὶ ἄλλω σημεῖῳ 'terminating' at different points' (Heath); Arist. Meteor. 376a3; Himer. Or. 12,2 Colonna αἵ ... πολλαί νήσων αἵ 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.) εἰς μὲν λέγεται καὶ ἔστι Χριστός ... σύν ἄλλος καὶ ἄλλος ... ἄλλη εἰς καὶ ο ἀντός.

15-16 Note the order of πιστεύσῃ and κατανοήσῃ: 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 ... δημιουργήσας τὸν ἄνθρωπον and τὸ ... νόμον ... διώκων having to play that role. The mss. often confuse τό and τῷ, as e.g. in Ps.-Pselloς, Sunt. Ist. 14.48 ἐν ὅπως πᾶσιν ἐδόθη τὸ ὑπογνωσθήσαται καὶ τό ἀπαγρεῖσθαι (ms. τῷ); 26,51 τὸν ὅτι πᾶσιν πᾶσιν ἐπὶ τὸ βασιλεύειν ὅμωντα ἐδάμαζε (ms. τῷ); the reverse, namely τό instead of τῷ, is perhaps even more common.

17 ἐκ δύο ἐπεροσοουσιῶν 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 συνθέσεια 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 ... ἔλογισθέναι properly means ‘from which ... have been deducted through reason’, a construction for which we have been unable to find a parallel. As for the ὀλόττητις, the μοῦροι 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 ζῷον τὸ σῦμπαν ἐκλήθη, ψυχή καὶ σῶμα παγένεν, θηντόν τ’ ἔσχεν ἐπωνυμίαν ἀθάνατον δὲ [sc. ζῷον ἔσχεν ἐπωνυμίαν] οὔδ’ ἐξ ἐνὸς λόγου λειτουργίανον, ἄλλα πλάττωμεν οὔτε ἱδόντες οὔτε ἱκανῶς νοησάντες θεόν, ἀθάνατον τι ζῷον (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 monarchia may also be vested in and exercised by more than one person (atquin nullam dicere dominationem ita unius sui esse, ita singularem, ita monarchiam, ut non etiam per alias proximas personas administraret quas ipsas 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] θεοσιλεῖος. 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 διαρκεία may be divided over three hypostases. The particle δὲ after προσωπικὴν suggests a contrast, or at least a further specification. Having secured cosmic monarchia in opposition to manichaean dualism, 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 νοητά καὶ αἰσθητά, 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: νοητά καὶ αἰσθητά καὶ συνέχοντα ... νόμον may be compared
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 συμπράγματοντα 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 το συνέχον τί το συμπράγμαν; 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 τό σών πατρί καί υἱῶ συμπροσκυνοῦμενον. 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.

οἰκονομών ὅμοί καί προσομιαζόμενος: 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 ἡνίκατο, ἐξήγησαν, cf. 8 εὐθυγράμματα μυστικῶς ἐν τοῖς αὐτοῦ ἕργοις) to enable certain especially privileged spectators — viz. the emperors — to unravel the underlying plot, viz. the δογματικά 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).
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 προοιμιάζομενος in l. 27 may echo προοιμίσθαν 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 καλ.: 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 φύσεως μοναρχίας καὶ τριαδικῆς διασπορᾶς ἡ ἡμετέρα βασιλεία θείως ποικὶ καὶ ἀπροσφέρτως μυστήρια, 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 ... εἰσαγὼν δὲ (namely as an answer to the impiety of the godless Manichaeans) τὴν τῆς μιᾶς διασπορᾶς καὶ ἕνας μοναρχίας κυριότητα τῇ καὶ ἐξουσίᾳ. God was not alluding to the monarchy of one person, but He revealed the rule of three persons (οὐ προσωπικὴν δὲ μοναρχίαν ἡμετέρα, ἀλλὰ τὴν τρισυπόστατον διασπορᾶν ἐμὴν), 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 προοιμιαζόμενος (27) may be understood to refer to the προσκύνησια, a fixed part of Byzantine court ceremonial, while προοιμιαζόμενος (27) is reflected in the next paragraph by μυστήρια (29). In the προσκύνησις of the one imperial power exercised by three persons, Trinity is also worshipped. On the προσκύνησις see

It should be noted that this reading of the preface of the Eisagoge as a representation of Photius’ view of the indivisibility of emperorship 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 βασιλεῖς, 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 Πρηξάπτεος and VII 175 τὰ λεγόμενα ἐκ 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 ἀναγορευόμενος.

ϕυσικής: God’s monarchy and threefold rule belong to His nature. It may be disputed whether ψυσικής belongs to μοναρχίας only or to both μοναρχίας and τριαδικής δισποτείας. The omission of the article suggests the latter possibility. However, one may note also the earlier explanation in I. 24-25 (οὗ προσωπικῆν δὲ μοναρχίαν ... ἄλλα τὴν τρισυπόστατον δισποτείαν ...), which rather points to the former possibility, as ψυσικός is sometimes contrasted with προσωπικός and ὑποστατικός; 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 εἰρήσθαι (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 τοσούτῳ 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. πλατικός as opposed to κεφαλαιωδός or ἐν συνόψεi. In this sense it is used by, e.g., Psellus, Syn. leg. 1-2: πολὺ καὶ δυσθεώρητον τὸ μάθημα τοῦ νόμου / ἐν πλάτει δυσπεριληθητον, ἀσαφεῖς ἐν συνόψεi; 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) and ἦ μὲν βίβλος ἐν πλάτει κείται, τοιαύτα τινα

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For an example in legal literature see Nomoc. XII,2,5: ἐν πλάτει δὲ ['in detail'] τὰ περὶ τῶν ἀρετῶν ἀνήγερται ἐν τῷ εἴ τιτ. τοῦ Χάββα. 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’ (ἀνακαθάρσας, 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 ἀνακαθάρσας: apparently this reference to the ἀνακαθάρσας 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 χῶμα: ‘the entire mass’. Χῶμα 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 χῶμα is used as a metaphor for τὰ ἐν πλάτει κείμενα. A precise parallel of this usage may found in the Σύντομος διάλεξις τῶν νεαρῶν τοῦ Ἰουστινιανοῦ by Michael Psellus, a treatise dealing with the question which of Justinian’s Novels have found a place in the
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Basilica. The Σύντομος διαίρεσις tells us about Nov. 165 that it κατεστρώθη μὲν ἐν βιβλίῳ νη' τῶν βασιλικών, ἐν δὲ τῷ χόματι οὐ κεῖται, οὐδὲ εὑρέθη, τίνος ἔστιν (Heimbach, Anekdota II, p. 236): Nov. 165 has been incorporated in the Basilica, but does not belong to the χόμα (tῶν νεαρῶν); it is not clear by which emperor the Novel has been promulgated. That τὸ χόμα 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 ἢ ὁν' (leg. ὁν') νεαρά, ἒτερον ἐπιγέγραπται κατὰ συναίνειν λύειν τὸν γάμον (αὐτὴ δὲ οὐδὲ εἰς τὸ πλάτος ἐγγάρη τῶν νεαρῶν, ὡς οὖσα 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 ἢ ὁν’ κατεστρώθη ἐν τοῖς βασιλικοῖς [ὃστι δὲ γ’ διάταξις τῶν νεαρῶν τοῦ Τίβεριου, οὐ κατεστρώθη δέ],) did not belong to it. On this question see Heimbach, Anecdota 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. lxvi-lxvi and cf. Zacharia’s review of Heimbach’s Anecdota II, p. 536, but defended on solid grounds by Weiss, Oströmische Beambte, 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 κεράνωμι 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. κεράνωμι. 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 (‘Ἀπὸ τὸν νόμο στὸν νόμο’, 68 n. 30), a reminiscence of Plato criticizing the ‘unmixed law’ (ἀπορρίφατος νόμος). Plato’s advice of ‘mixing’ (κερανώμενος) 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 τῶν 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, ‘Ο 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. LI. 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 LI. 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 ἐπεροουσίων ἐν σύνθετον, 23-24 μοναχία 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 εἰσημένου θείου δόγματος: see ad 7.
35 τὰς ..., παρὰ τῶν Ἰσαύρων φιληνικίας ἐκτεθέισας: namely the lawbook issued by the Isaurian emperors, the Ecloga of 741.
36 προεικρημένων: 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.
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39 έλσαιγώγικον: 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.

αὐτοκρατικορικὸς τὸ καὶ παντοκρατικορικὸς: 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 αὐτοκρατικορικὸς and παντοκρατικορικὸς 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 nostre 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. Δέθωκεν of the Digest, at § 19: τοιαία δὲ δὴ καὶ μόνα πολυτελεσθαι τε καὶ κρατεῖν συγχωρούμεν τε καὶ θεσπίζομεν. See above, ad 1 prooimion.

42-44 Καὶ γάρ ... ἐξειριστονήθη: We have not found an exact parallel to this image, but Clem. Alex. Protr. 10,96,3 (PG 8,209B) comes very close: ἀποδιδόμενοι δὲ οὖν περιφρασάν όν τῷ τῆς ἀληθείας σταδίῳ γνησίως ἀγωνιζόμεθα, βραβεύοντος μὲν Δόγχο τοῦ ἄγιου, ἀγωνιζομένοις δὲ τοῦ Δεσπότου τῶν ὄλων. οὐ γάρ σιμιρον ὑμῖν (or: ἡμῖν) τὸ ἄθλον ἀθανασία πρόκειται. For the image of the race-course, see Paul, 1 Cor. 9,24: οὐχ οἶδατε οἷς ἐν τῷ σταδίῳ τρέχοντες πάντες μὲν τρέχουσιν, εἰς δὲ λαμβάνει τὸ βραβείον. οὕτως τρέχει ἵνα καταλάβητε κτλ. See also Pfitzner, Paul and the agon motif.

Τῷ σταδίῳ τῆς προσώπου τινων is short for the arena where participants show their proskynéseis, their intentions, the spirit in which they act. Cf. Philo Jud. Praem. 4 παρελθόντες ἔστερ εἷς ἑαυτὸν ἀγώνα γνωμὴν τὴν ἐαυτῶν προσκύνησιν ἀνέφηλαν εἰς ἐναρχεστάτων ἑλεγχὸν 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 τοῦτον σταδίῳ (Joannou I,1, p. 104, 7-10).
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).

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 Κατηγορίας), or to a book of the Bible (Basilius, Epistulae [ed. Y. Courtonne, Paris 1957-66], 6,2,1: ὡς μεμαθήκαμεν ἐν τῷ Εὐαγγέλῳ). 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.

Cf. Nόμος ὁ πάντων βασιλεὺς θνατῶν τε καὶ θανατῶν ἔχει δικαίων τῷ βασιλέατον 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 Chrysippos and the Roman jurist Marcianus the νόμος - βασιλεὺς 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’.

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 βασιλεὶς τῶν τυχόντων 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.

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 Grenseemann) ταῦτα ... τῶν λοιπῶν πνευμάτων ἵσχυστα ἐστὶ; 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
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48 ἀότητι τὴν φύσιν ημᾶς ρώμυσι: 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, Antiochene 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 μοῖρας, I. 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, δύνησι καὶ χρησιμεύει, 56 προδοχιακότέραν) 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 προεισημένην ἱερολογίαν: The holy teaching of 17 ff.

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

Contamination of two constructions, namely ἠγοράσα, τὸν νόμον δὲ καὶ τὴν δικαιοσύνην ... ὑπὸ ἀμαρτηθεὶς and ἠγοράσα τὸν νόμον καὶ τὴν δικαιοσύνην ... ὑπὸ ἀμαρτηθεὶς. Cf. Arist., EN 1152 a 4 f. ὅμοιον δὲ καὶ ὁ ἀμαρτήτης καὶ ὁ ἀκόλαστος, ἔτερον μὲν ὄντες, ἀμφότεροι δὲ τὰ σωματικὰ ἴδεα διώκουσιν.

εὖξωιας; εὖξωια here probably means 'living well, i.e. comfortably', without a suggestion of frivolity or dissipation; cf., e.g., Athanas. Quaest. ad Antiochum ducem, PG 28,669D πολλοῖς δὲ ἀσέβεσι καὶ ἀμαρτῶλοις εὖξωιαν καὶ εὐτεκίαν καὶ εὔπραξίαν δωρησάμενος (sc. ὁ Θεός); Greg. Naz. Liturgia graeca, PG 36,713C τοῖς ἐν σεμνῷ γαμῷ τὴν εὖξωιαν (in a wish). It should be distinguished sharply from the notion of 'la dolce vita' which it has in Eustatius, 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 εὖξωιας; Proclus, In Pl. Rep. (ed. Kroll), 1,26,13 (identification of εὖξωια 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.

ἡνία δικαιον ... τῷ καλλίστῳ τῶν δονομάτων: '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 transcendency and freedom, through absence of opposition. Thus it was perhaps possible to apply the notion

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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 ἅπει and ὀστέρως, cf., e.g., Soph. Ant. 55-56 ἄδελφω δύο μᾶν καθ' ἡμέραν ἀυτοκτονοῦντε, Eur. Phoen. 103 οὔτε γεραίν vicx χεῖρ', Thuc. 3,59,2 τοῖς ἐξήλθοντος φιλανθοῖνες παραδοθῇναι, 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 Polypoton, 143 ff.

66-67 διακοσμῶν ἐξ' οὖν ἱσότητι νόμου τῇ ἕκάστῃ προσποίησι: The periphrastic expression ἱσότης νόμου (also in i. 72) instead of ἱσονομία obviously serves to retain the emphasis on God's law. A more natural phrasing would have been ἱσότητι τῇ ἕκάστῳ τὸ πρέπον ἀπονεμούμην, 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' ἱσότης is that which (c 5) τὸ πρέπον ἐκάστῳ ἄπονεμει. Cf. ibid. d 4-5 τὸ δίκαιον . . . . τοῦτο δ' ἐστι . . . τὸ κατὰ φύσιν ἱσόν ἡνίους ἕκάστοτε 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. iusititia est . . . voluntas ius suum cuique tribuendi; Eis. 1,4 διακοσμῶν ἐστι . . . βούλησις ἕκάστῃ τὸ ἵδιον ἀπονεμοῦσα δίκαιον. For ius suum instead of τὸ πρέπον, cf. Arist. EN 5,4,8 (1132 a 28-29) τότε φασίν ἔχειν τὸ αὐτότι, ῥητο λάβωσι τὸ ἱσόν. So the author of the Eisagoge prooimion is clearly playing with the words νόμος and the popular definition of justice as distributing (ἀπονεμούσα) fair and equal rations. As said before, ἱσότης νόμου is periphrastic for ἱσονομία, which has associations with ἵσω νέμειν as well as with ἱσότης 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 (διεματηρήσατο [sc. ὁ θεός] σταθμησάμενος ἕκάστω τὸ ἐπιβάλλειν).

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.
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 ἀπείρου καὶ ἀφόριστου μέρη καὶ εἴδη ὑπ’ ἑκαίνου (i.e. τοῦ καλοῦ καὶ ὠρισμένου καὶ ὑπὸ ἑπιστήμην πίπτοντος) μορφοῦται καὶ περαίνεται καὶ τοῦ προσήκοντος κόσμου καὶ εὐταξίας τυγχάνει καὶ δισεκ. ὑπὸ σφυραγιστήριος τίνος ἢ μέτρου πάντα τὰ ἐμπίπτοντα μεταλαμβάνει τῆς ομοίωτητος καὶ ὁμονομίας· οὕτω γὰρ εὐδόλως καὶ τὸ τῆς ψυχῆς λογικὸν τοῦ ἄλογου κοσμητικὸν ἔσται καὶ ὁ θυμὸς καὶ ἡ ἐπίθυμια ἐν τοῖς τῆς ἀνισότητος δυσάνει εἰθεὶς τεταγμένα ὑπὸ τοῦ διανοητικοῦ εὐταξθῆσαιται ὡς ὑπὸ τοὺς ἱσότητος καὶ ταυτότητος. ἐκ δὲ τῆς ἀπισώπωσις ταύτης ὑμῖν ἀποβῆσονται αἱ λεγόμεναι ἥτινα μεταίρει, σωφροσύνη, ἀνδρεία, προφορής, ἐγκράτεια, κατεργαζόμεναι καὶ ὁ ὀμοιό.

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 ἀπείρου καὶ ἀφόριστου μέρη καὶ εἴδη: the counterpart of πάντα at I. 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 II. 72-73 as presupposing an infinite number of ‘ideas’ (see below, commentary ad 72-73).

67 ἀρχήθεν: cf. commentary ad 5-7.

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

68 προσηκούσης echoes πρεπούση of I. 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 εὐμορφήσαντα: In the light of the discussion about the authorship of this text, it may be worth mentioning that Photius duly constructs εὐμορφήσω 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.

ὅπως ἢ κανόνιον: These measuring instruments are also mentioned as characteristic of meticulous ἀμφίβαια in Plato Phlb. 56 b 7-c 1 (about carpentry) and Plut.
Mor. 802 f (about the style of Demosthenes: περιόδοκς πρός κανόνα καὶ διαβήτην ἀπηχομενήν).

69-70 σφραγιζόμενα καὶ προτυπούμενα: For parallel usage of these two terms and of related words such as χαράκτηρ and ἐκμαχεῖον 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 Th. 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. διοςπο ὑπὸ σφραγιστήρος τινος 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-Karayannopulos, 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 ἀρμονικῶς συνάγεται καὶ συναθροίζεται: The author of the prooimion 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 προκειμένη) underlying this process, are reminiscent of Aristotle’s analysis of the creative process: cf. Arist. Metaphys. 11,10 (1075 a 18-19) πρός ... ἐν διπλα ἀντικτάται; 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-)platonic, 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 ἐσος 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 Ἀθανασίου βλέποντα: Here the author has been inspired by Nicomachus Introd. arithm. 1,4,2 (cf. also 1,6,1):

ἐφαμεν αὐτὴν [sc. τὴν διαθηματικὴν] ἐν τῇ των τεχνίτων θεοῦ διανοίᾳ προϋποστήκαι τῶν ἀλλών ὀφανελ λόγον τινὰ κοσμικὸν καὶ παράδειγματικὸν, πρὸς ἐν ἀπερειδήμονος ὁ τῶν ἠλών δημιουργός ὡς πρὸς προκεντημάτι καὶ ἀκέταστο παράδειγμα τὰ ἐκ τῆς ὦλης ἀποτελέσματα κοσμήται καὶ τοῦ οὐατού τέλους τυγχάνειν ποιεῖ.

This parallel makes it probable that in the Eisagoge prooimion, too, we should read πρὸς προκεντημάτι τι τῶν τῆς Ἀθανασίου βλέποντα κτλ.

72-73 ἐδέξας ἀπείρους τῶν καθέκαστα: Witte is certainly right in reading ἐδέξας instead of ἐδέξας (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 ἐξ θείας and ἐδέξας) 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 προουφραστάνειν τόπους τῶν παραχθησαμένων καὶ ὀμοιώματα), 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 compel us to assume that the generation of created things never reached its end (10-11 ἐπ’ ἀπείρου ἐξ ἀνάγνωσις διαβιβάζει τῶν πλατημένων τῶν πρόσωδον). This argument and its wording
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(cf. also ibid. 13-14 τούς τύπους ἐκάστης ἱδιότητος ... ἀπομάκρυνακα τὰ καθ’ ἐκαστα) 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 θεὸς ... βουλήθηκε τὸν ὄρατον κόσμον τούτοις δημιουργήσαι, προεξετύπου τὸν νοητὸν, ἕνα, χρώμενος ἀσωμάτω καὶ θεοειδεστάτω παραδείγματα, τὸν σωματικὸν ἀπεργάσθη τά τοισατά περιέξοντα αἰσθήμα γένη διὰ κατά ἐκείνῳ νοητά. These incorporeal models constitute the κόσμος νοητός, which is also referred to as the ἐκ τῶν ἠδῶν (συνετῶς) κόσμος (ibid. 17 and 20). The assumption of many, or even an ‘endless number’ of such ‘ideas’ (cf. the prooimion’s [72] ἴδεας ἀπείρους) evidently does not rule out the possibility of one overall plan: collectively they serve as the Creator’s blueprint (παράδειγμα). 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 μετήσασθαι. Hence it must be a middle form, unlike the participle πλατητομένων in the Photian passage quoted above, ad 72-73 (cf. also Amph. 77,12 τῶν ταῖς διανοικαίς 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’ οὐ τῶν Ἑλλήνων μύθοι ἄναπλάσαντο; 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 φυχῆς λογικὸν τοῦ ἀλόγου κοσμημένου 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
to shake off what is bad and irrational (διαγράμμα). 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 διοπτέωσιν: 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 καταβάλλειτα, in contrast with 79-80 ἀνασκιρτωσί 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, καθορίζ) 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 κάκης ἵππος μετέχων, ἐπὶ τὴν γῆν ὡς τε καὶ βαρύνων).

76 ἐν τοῖς τῆς ἀνισότητος δυοῖν εἴδεσι: 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 ἄντι καθ’ ὑποδιαίρεσιν διχῇ σχίζεται καὶ ἑπτὰ ἀρτοῦ τὸ μὲν μείζον, τὸ δὲ ἐλάττων and 2,20,1 τοῦ ἄνισου τὰ δύο εἶδη, τὸ τε μεῖζον καὶ τὸ ἐλάττων. Cf. also 1,14,2). These two kinds of what is primarily arithmetical inequality had already
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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]: ὀ δ’ ἀδικος οὐκ ἀεὶ τὸ πλέον αἰρεῖται, ἀλλὰ καὶ τὸ ἐλαττων ἐπὶ τῶν ἀπλῶς κακῶν).

καταβληθέντα: About καταβληθέντα instead of Nicomachus’ colourless τεταγμένα, see commentary ad 75 ἄποσειομένην. 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 περαινεῖαι) as the cosmic power that imposes structure on the Unlimited or Indefinite (ἀπειρὸν). On this theory, see e.g. Guthrie, History V, 428-432; D’Ooge, Nicomachus 99-102.


θάττων: 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.) ταὐτότως ἔδει θάττων δικάζειν πάντας, Heliod. 1,18,3 τῆς περὶ τὸ κυνείσθαι καὶ στείλεισθαι θάττων ἐπιθυμίας; and cf. Schwzyzer-Debrunner II, 184c.

79 ai λεγόμεναι τέταρτες συνεκτικωτέραι ἄρεται: Since Plato (Politiea 427e: Δήλον δὴ ὅτι σοφή τ’ ἐστὶ καὶ ἀνθρεία καὶ ἀφόροι καὶ δύσκοια), 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 (1,23,5) 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 (ἐθικαί) 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 Nicomachia, along with many others as implied by καὶ ἐὰν δοσιμαί. 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 ἴσοτης (EN 2,6,4 [1106 a 28-29] τὸ δ’ ἴσον μέσον τι ὑπερβολῆς καὶ ἠλλικής). 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.
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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 τελειοώσθηκε, 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 δικαιοποιήθη: 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 τοῦτῳ τῷ ἅγιῳ 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 πόριναι γλώσσαι with πλάκας λυθήσεται. For the former see Ac. 2,3 (... καὶ ὤφθησαν αὐτοῖς διαμεριζόμεναι γλώσσαι ὡσεὶ πῦρος ...; see also below, ad 86), for the latter Ex. 31 f., esp. 32,15-16: καὶ ἀποστρέφοντας Μωυσῆς κατέβη ἀπὶ τοῦ ὄρους, καὶ αὐτὸς πλάκας ποιήσατο καὶ μαρτυρίον ἐν ταῖς χερσίν αὐτοῦ, πλάκας λυθήσεται καταγεγραμμέναι εἰς ἀμφιτέρων τῶν μερῶν αὐτῶν, ἐνθὲν ἦσαν γεγραμμέναι. καὶ αἱ πλάκας ἔρχον Θεοῦ ἦσαν, καὶ ἡ γραφή γραφὴ Θεοῦ ἐστὶ νεκρολυμμένη ἐν ταῖς πλακέσι. The tables are written upon with the finger of God: see Ex. 31,18: ... πλάκας λυθήσεται γεγραμμέναις 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 πλάκας αἱ γεγραμμέναι ἔρχον Θεοῦ, φωσικὴν ἐμφάνισαν δημιουργίαν εὐθεῖᾳ νοεῖται δάκτυλος γὰρ Θεοῦ δύναμις νοεῖται Ἐνθὲν δὲ ἡ κτίσις τελειώτατον ὁδοῖς καὶ γῆς δὲ ἀμφοῦτέρων αἱ πλάκας νοηθήσονται σώματος. 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/dεχόμενοι. Since acceptance of the law is the natural consequence (84 οὖν, cf. itaque/τοῖνυν 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 Προστάττωμεν.
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85-86 οἱ πλαξί λείηναις γραφόμενον, ἀλλ᾽ ἐν ταῖς ὁμετέραις ψυχαῖς ... ἐνυπούμενον: The wording and image are reminiscent of Philo Jud. Spec. leg. 4,149 ξῆθη γὰρ ἄγαφα νόμοι, δόγματα ἀνδρῶν οὐ στῆλαι ἐγκαθαραγμένα καὶ χαρτίδοις ... ἀλλὰ ψυχαῖς τῶν μετελευθῶν τῆς αὐτῆς πολιτείας. For the image of engraving cf. also πλαξίν ἐνυπομένου νόμῳ 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 γλωσσοπυραδόμορφος (PG 96, 836A).

87 προτάττομεν: The remaining part of the preface gives a reasoned account of the systematic arrangement of the Eiasagoge. The orderly division (Διάλογος) 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 Eiasagoge 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: Ὑπὸ τῆς πόλεως ἐπαρχοῖς ... καὶ πάντων ἐστὶ μετὰ τῶν βασιλέων.

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 Eiasagoge, 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 (Διάλογος), the state in its
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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 ἀνάλογοις 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 ἀρεται 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. quern ad modum pictor coloribus figuras descript, sic orator hoc schemate aut vitia aut virtutes eorum, de quibus loquitur, deformat. See, e.g., Lausberg, Rhetorik, 406. Linguistically this 'granting in advance' (προσμολογεῖν) 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 ἐἰκονικῶς: Not necessarily 'by way of an icon', but rather the general meaning of the word: 'in an image', referring to l. 94 ἀνάλωμαχαραῶν. 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 ... ἑνεχωρῆμενον 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 σῶς) of II. 100-101, referred to by 102 ἀμφοτέρων, we are now once more reminded of the 'end' or τέλος (cf. 102 τελεία, τέλειος, ἀπετελέσθη, 103 τελοῦμενον) 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 καὶ ἕνεγκολομένου). 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 ἔργα των, ‘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 συμβολαίον 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 ἐστιν ὑπόμνημα ὑπο καταγραφή τῶν συμφωνηθέντων καὶ στοιχηθέντων μεταξύ ἕκαστῶν τῶν συμφωνούντων καὶ συμβαλλόντων τὸ γὰρ μίμη τῶν ὑπολευκάτων ἐκ τῶν συμβαλλόντων προσώπων συμβόλη καὶ τὸ ἀπὸ ταύτης ἔγγραφον σύνταγμα συμβολαίου 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 συμβολαίον, as this author has it, is another matter: see LSJ ad voc., and Van der Wal, ‘Termes techniques’, 130-133.
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110 ἐξωθεν δὲ πάντων τούτων: This would be a more logical point to start a new paragraph than at τέλευταίον, where Schminck puts it. At the very least we need a full stop after (110) ἐπεται.

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

112 καινοτομία: 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 καινοτομίων καὶ ὅρων) 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 πρότερα δῆς. 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 Eiasoghe, 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 ἑγκληματικῶν κεφαλαίων. Although ποινάλιος as an adjective is attested elsewhere, its use in τὰ ποινάλια may be unique.

113 ὑποτέτακται: Zacharias thought this to refer to a titulorum 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 Eiasoghe 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. During Basil’s reign (867-886) and that of his son Leo VI the Wise (886-912) secular law flourished: 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).

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1 See Ostrogorsky, History, 232 with n. 2.
2 See, e.g., Van der Wal/Lokin, Delineatio, 78-87; Pieler, ‘Anakatharsis’.
3. Status
The prooimion makes it clear that Basil intended the Eisagoge to have force of law, al­
though it was itself an abridgement in forty titles of a compilation of laws in forty books
(II. 36-40). It replaced the Ecloga of 741, which was formally abrogated by the Eisagoge
(II. 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. Ap­
parently during the reign of Basil two compendia of the law saw the light: first the Pro­
cheiron 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 abridg­
ment of the law himself and thus, as it were, to produce a second edition of the Prochei­
ron. 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 Prochei­
ron’s success has been greater: against the Eisagoge’s four manuscripts stand over 50 of
the Procheiron.
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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 (ἄρσεβοῦς) 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 (ἄρσεβοῦς) 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

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3 Beck, Kirche 525 with n. 2; see, however, also his Geschichte, 117.
4 Schminck, "Rota tu volubilis", 211-214.
system in which church and state were on an absolutely equal footing within the larger framework of the constitution.\footnote{\textit{Troianos, ‘Megas Photios’,} 497-498; \textit{id., ‘Nomos und Kanon’}, 40-41; \textit{id., ‘Kirche und Staat’}, 292-293.}

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’.\footnote{\textit{Fögen, Das politische Denken}, 75.}

\((\text{ThEvB})\)

Appendix II

Photius and the Eisagoge

According to current opinion\footnote{See, e.g., \textit{Troianos, ‘Megas Photios’,} and Schminck, ‘\textit{Από τον νόμον στον νόμον’}.} 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
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 caleidoscope 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.

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.

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

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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.
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.

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

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Appendix III

The Law in Early Christian Thought

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 correspondence 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 (πνευματική καὶ βασιλική δύναμις), the highest and universal expression of God’s truth and will. Thus Logos and Nomos are to Justin ‘christological synonyms’. 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: ἐν γὰρ Σιῶν ἐξελεύσεται νόμος καὶ λόγος κυρίου ἐξ Ἰερουσαλήμ (LXX) (Justin. Apol. 1,39,1 and Dial.

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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.
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. 1,43,1). 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. 1,45,3). 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’ 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’ (ὑπὲρχειται συστάσεως 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

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complete domination of God. In the concrete, historical sense, it is he, the highest author-
ity 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 re-
vealed 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 οίκουμένη with the true knowl-
dge of God and spiritual life (De incarn. 3,4 and 12,5). According to Gregory, man origin-
ally 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 in-
structions, 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 pene-
trate 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 Trin-
ity 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.’

The person and victory of Christ have also provided an effective foundation for the stabili-
zation 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

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14 Schwaiger, 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 codifica­
tion on a metaphysical level.

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 Therèse 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 leg­
islation as a political instrument had been abandoned. The Ecloga of 741 stands in isola­
tion. 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 re­
turned. 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
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.

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EISAGOGE
PROOIMION


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