

APIARIUS¹

The *Gesta de nomine Apiarii*² are a part of a collection of texts concerning ecclesiastical law and administration traditionally known as the *materies Africana*. For the most part, this collection contains records of the proceedings and texts of the canons decided by several synods held by the Christian churches of North Africa, but the text about Apiarius is of a slightly different type: it describes in detail a conflict between the episcopal sees of Rome and Carthage fought out in a synod held in Carthage in the year 419 under the presidency of Aurelius, archbishop of the lastnamed city. In fact, this text is a file that contains not only the proceedings of the synod, but also other documents bearing on the case, such as letters sent by it to other churches.

The question on which the African bishops gathered in Carthage had to decide concerned a man named Apiarius, who had been a priest in the church of Sicca. In this function, he had behaved in such a way (the texts do not explain what exactly he did do wrong) that the bishop of Sicca had fired him. Apiarius did not accept his defrocking; he travelled to Rome and appealed to the pope. Pope Zosimus accepted his appeal and reinstated him as a priest; Apiarius went back to Carthage, accompanied by three delegates of the pope (a bishop and two priests), who appeared before the synod to explain that Zosimus had reinstated Apiarius on the basis of the authority, given him by two canons of the council of Nicaea, to revoke a decision of an other bishop. At that time, the phrase *Roma locuta, causa finita* had not yet been invented; nevertheless, the three delegates insisted that the synod should immediately accept the decision of the bishop of Rome.

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- 1 Some twenty years ago, I treated this same subject in my valedictory lecture as a professor of the University of Groningen, pronounced (and printed) in Dutch [viz. as N. van der Wal, *Lees maar, er staat niet wat er staat. Gebruik en misbruik van vertalingen in het kerkelijk recht van het laat-Romeinse rijk*. Afscheidscollege gegeven op 26 juni 1990 ter gelegenheid van de beëindiging van zijn ambt van gewoon hoogleraar in het Romeinse recht aan de Rijksuniversiteit Groningen, Groningen 1990], but it seems to me important enough to repeat it in a generally accessible language.
 - 2 Printed in C.H. Turner, (ed.), *Ecclesiae occidentalis monumenta iuris antiquissima. Canonum et conciliorum graecorum interpretationes latinae*, Vol. I, Oxford 1899, 561-624.

However, the African bishops assembled at Carthage did not obey the pope's injunction. They consulted the text of the canons of Nicaea and found (the usual) twenty canons, numbered from one to twenty; but none of these twenty corresponded to the two Latin texts quoted by the pope.

To explain this fact, we have to go back in the history of early canon law. Three of the four great oecumenical synods held in Nicaea (325), Constantinople (381), Ephesus (431) and Chalcedon (451) respectively – that all of them took place in the East – published canons (the council of Ephesus did not). But a number of early local synods had also formulated rules of canon law that were generally accepted in the Eastern part of the Empire. These canons were put together and numbered through from beginning to end in the order Nicaea, Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, Constantinople, Chalcedon. This collection served as a general code of law for the Greek church. In the sixth century, it was replaced by collections that combined secular and ecclesiastical rules arranged systematically, which were easier to consult: the *Nomocanon 50 titulorum* and the *Nomocanon 14 titulorum*. Probably, that is why no copy of the original Greek text has survived. Nevertheless, its existence can be proved³ in a number of ways. For example, one of the bishops present at the synod of Chalcedon required the canons “number 95 and 96”, both prescribing that a bishop should not be transferred from one city to another, to be read. As this prohibition is found in canons 16 and 17 of the synod of Antioch, the text to be used must have been a collection of canons with a continuous numbering. Moreover, the complete collection still exists in the form of a Syrian translation of the lost Greek text.

The two canons quoted by pope Zosimus reappear in a Latin collection of texts known as the “Prisca”.⁴ This collection is a translation of the same lost Greek text that was translated by the Syrians. Of course, Zosimus cannot have consulted this identical text ending with the canons of Chalcedon: he wrote his letter in 419 and the synod of Chalcedon took place in 451, so he must have used an earlier version. Anyway, the Latin translation of the canons of Nicaea occurring in the Prisca and containing these two canons is not only of a rather poor quality; the translator has also falsified his text in several places in order to increase the power of Rome in relation to the other episcopal sees. In most cases, he did this by

3 For more details, see E. Schwartz, ‘Die Kanonensammlungen der alten Reichskirche’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 25 (1936), 1-114 (2-7) (repr. in: E. Schwartz, *Gesammelte Schriften*, Band 4, Berlin 1960, 159-275 (161-164)).

4 The name is derived from the title of its first edition in Western Europe: *Prisca canonum editio latina*, in: G. Voelli / H. Justelli, *Bibliotheca iuris canonici veteris in duos tomos distributa, quorum unus canonum ecclesiasticorum codices antiquos, tum Graecos, tum Latinos complectitur, subiunctis vetustissimis eorundem Canonum Collectoribus Latinis; alter vero insigniores iuris canonici veteris Collectores Graecos exhibet*, Paris 1661, Vol. I, 275-304.

changing the order of the words of the original text or by similar small changes, but the two canons quoted by pope Zosimus are part of a much more drastic intervention on his part. His version of the canons of Nicaea starts with a translation of the twenty genuine canons of the synod; after these, he adds a Latin translation of the canons (numbered by him as twenty-one and following) of a synod held in Sardica⁵ (nowadays Sofia, the capital of Bulgaria) in 343, eighteen years after the synod of Nicaea.

One of these last canons prescribes that, when a conflict between two bishops cannot be settled amicably, the bishop of Rome is competent to give a final decision. Another one can be interpreted as saying that the pope can revoke the decision of another bishop, when the damaged party asks for it. These two canons were quoted in the letter from pope Zosimus that his three delegates brought to Carthage.

The reason why the forger attributed these canons to the synod of Nicaea is easy to understand. This synod was the first of the four great general councils of the church; its decisions had a far greater authority than those of the less important synod of Sardica. Besides, the proceedings of this council have a rather curious history. It had been convoked to put an end to a conflict between bishops of the Eastern and the Western part of the Empire, but the opposing parties could not be reconciled. When two bishops who had been deposed – wrongfully, according to the Western bishops – were nevertheless admitted to the gathering and given the right to participate in the discussion about the validity of their own expulsion, the Eastern bishops left the gathering. They retired to their own part of the Empire – Sardica was situated in the *pars Occidentis*, but quite near the border between the two *partes* – and started a synod of their own. The Western bishops remaining in Sardica considered themselves to be the genuine synod of Sardica and formulated a number of canons. It is hardly surprising that these canons were not generally accepted as valid in the Eastern part of the Empire.

As for the African bishops assembled in Carthage, they refused to obey the order of the pope, but they did not simply conclude that the two disputed canons must be fakes. Instead of that, the synod decided to leave the pope's decision standing for the present and to wait for the results of an examination of the authenticity of the two canons. A letter explaining this decision was sent to pope Zosimus. When it arrived in Rome, Zosimus had died; his successor Bonifatius wrote to the three delegates (who had stayed in Carthage) ordering them to continue the negotiations. On 25 May 419, the synod decided that its president, archbishop Aurelius of Carthage, should write letters to his three colleagues, the

5 The original Greek text of these canons can be found in Turner, *Ecclesiae occidentalis monumenta* (note 2 above), 488-531. Turner still adhered to the traditional belief that this text was a translation of the supposed Latin original; in 1931, Schwartz proved that the Greek text is the original one and the Latin version its translation; see E. Schwartz, 'Der griechische Text der Kanones von Serdica', *Zeitschrift für die neutestamentliche Wissenschaft* 30/1 (1931), 1-35.

patriarchs of Constantinople, Antioch and Alexandria, and ask them to send copies of the text of the canons of Nicaea in use in their churches. The delegates of the pope protested vehemently against this decision, but their protests went unheeded.

The *Gesta de nomine Apiarii* show that copies of the current text of the canons of Nicaea arrived indeed from Constantinople and Alexandria in Carthage. There is no word about the bishop of Antioch, but I think we may assume he also sent a copy: the file on Apiarius' case transmitted to us is very extensive, but it is certainly⁶ not complete. Anyway, the bishops could conclude that the canons quoted by the pope in support of his decision were not canons of Nicaea: the versions sent by Constantinople and Alexandria contained the same twenty canons as the text used in Carthage.

As for Apiarius, he was reinstated, with the consent of his former bishop, as a priest in another African city. However, in this new function he misbehaved again in such a way that his new bishop defrocked him again. Apiarius must have been a very stubborn – and a relatively rich – man, for he travelled again to Rome, where he succeeded in persuading pope Caelestinus – Bonifatius had also died in the meantime – to reinstate him yet again as a priest. At his return in Carthage, he was summoned before the synod and interrogated. At first, he denied all accusations and protested that he had never done anything wrong; but at last, after a prolonged interrogation, he burst into tears and confessed all his crimes.

After this, the last item in the file about Apiarius is the text of a letter⁷ addressed by archbishop Aurelius to pope Caelestinus. In this letter, Aurelius gives a short description of the course of events concerning Apiarius and concludes with an urgent request to the see of Rome not to meddle again in the internal affairs of the African church.

In this battle between two important prelates of the Church, several things may surprise a modern reader used to the situation in the Roman Catholic church of our days. First of all, the manner in which the matter was treated by the synod shows that the African bishops clearly did not see the pope as a superior of the archbishop of Carthage. The same spirit is shown in the letter at the end of the file, where Aurelius shows no trace of subservience, but gives a sharp rebuke talking like one bishop to another. Twice (in this letter and in an earlier letter⁸ sent to pope Bonifatius) he even uses the very strong term *tyfus*⁹ to describe the steps

6 The text transmitted to us is probably the shortened file of the case sent to pope Bonifatius; see Schwartz, 'Die Kanonensammlungen' (note 3 above), 58 note 1 (= 218 note 1).

7 Turner, *Ecclesiae occidentalis monumenta* (note 2 above), 614-622.

8 Turner, *Ecclesiae occidentalis monumenta* (note 2 above), 596-608.

9 Turner, *Ecclesiae occidentalis monumenta* (note 2 above), 605 l. 161: (... *credimus ... quod ...*) *non sumus iam istum tyfum passuri* and 621 l. 147: *ne fumosum tyfum saeculi in ecclesiae Christi lucem (...*

taken by Rome in the affair. This way of seeing things appears even more clearly in the style in which the protagonists are mentioned in the description of the discussions of the synod. The title of “pope” is reserved for the president, who is constantly referred to as *papa Aurelius*: he is never called *Aurelius episcopus Carthaginiis*. On the other hand, the three successive popes never get the title *papa*: they are called *Zosimus episcopus Romae*, *Bonifatius episcopus Romae* and *Caelestinus episcopus Romae*. Apparently, the North African Christians reserved the form of address “father” for their own archbishop. The phenomenon is not unique: in this time, the patriarch of Alexandria was also addressed in this way by the people of Egypt.

In fact, the pope was already accepted as the highest authority in the church by most people of the Latin speaking West, where Rome was still considered as the capital of the civilized world. In the East, however, and certainly after the Empire had been divided and Constantinople had become a capital city as important as Rome, most people adhered to the idea of the five “patriarchates”. In this view, the bishops of the capitals of the provinces (μητροπόλεις), the μητροπολίται, were higher in rank than those of the other cities;¹⁰ in their turn, ranking above the μητροπολίται were the five so-called “patriarchs”, i.e. the bishops of Rome, Constantinople, Alexandria, Antioch and Jerusalem. This meant, in the eyes of most people, that the pope was the first and the most prominent of all bishops (and the patriarch of Constantinople the second in rank), but that was only a matter of protocol; it did not mean, in their view, that he had any authority over or above the other bishops.

The way in which the conflict about Apiarius is treated by the Carthaginian synod shows another difference, not between East and West, but between Italy and North Africa, a difference that a modern observer – or rather that I – would not have expected. The reaction of the two parties to the appearance of two dubious canons is completely different. The Italians simply conclude that the highest authority in the church, the bishop of Rome, has pronounced his final decision and that’s an end to the matter. But the North Africans consider the question in the same way as modern scholars would have done: here we have two canons of Nicaea from the text used in Rome that cannot be found in the copy of the text used in Carthage, so let us examine the problem and find out how this can be. Consequently, messengers were dispatched to the other three great centres of the church to fetch

videamur inducere). This Greek term is very rare in Latin (but quite usual in patristic Greek); clearly it is meant in the same metaphorical sense as the original τῦφος: arrogance. In the letter addressed to Caelestinus, Aurelius even strengthens his disapproval by writing *fumosum tyfum* (allusion to the literal sense of τῦφος: smoke).

10 In the Eastern part of the Empire, the episcopal organisation coincided nearly completely with the administrative organisation of the State: every city had its own bishop and every province its own metropolitan bishop residing in the capital.

copies of the text of the Nicaean canons and to see if they were the same as the version present in the archives of the church of Carthage.

One gets the impression that the church of Carthage disposed of well-ordered archives, where the text of the canons was easy to find. Besides, comparing original Greek texts with Latin translations of Greek originals seems to have been no problem: there must have been a sufficient number of clerics who could read Greek as easily as Latin. In Rome, on the other hand, three successive popes accepted unhesitatingly two Latin texts presented as translations of canons of the synod of Nicaea. I take it – though I cannot prove it – that they did this in good faith and with no suspicion that the texts were faked. If that is the case, their legal advisers must have presented them with those two separate texts, for a reader seeing the complete text of the translation of the canons of Nicaea used in Rome would have noticed that there was something wrong. As a matter of fact, the first twenty genuine canons of Nicaea simply state the rules that should be observed in a relatively short form, much like the paragraphs of a modern legal code, but the canons of Sardica attached after them as numbers twentyone and following are written in a completely different style. Each canon gives a detailed report of the proceedings: first, one bishop proposes a new rule, then others comment on it or propose changes of details and at the end the definitive form of the rule is accepted by acclamation. Of course, this difference in style was just as visible in the Latin translation as in the original Greek texts. One would think that everyone reading these so-called canons of Nicaea as a whole must have seen that they consist of two different types of text put together. One can hardly believe that the legal advisers who presented these two canons to Zosimus were too obtuse to recognise the fake, but anyway it seems that they could use those texts without any risk that the deception would be discovered. So one may conclude that, whereas in North Africa, or at least in the province *Africa proconsularis* with its capital Carthage, there were quite a lot of people capable of understanding Greek as well as Latin, in Italy the number of those who could read or speak Greek must have been very small.

However that may be, the bad quality and the unreliability of the translations contained in the *Prisca* (and the resounding defeat in the conflict about Apiarius) did not stop its use by the episcopal see of Rome. In 451, Paschasinus, the legate of the pope present at the synod of Chalcedon, quoted the falsified version of the sixth canon of Nicaea¹¹ from this

11 This canon mentions the privileges (πρεσβεΐα) of the church of Alexandria and adds “the church of Rome also has its privileges”. The Latin text puts Rome in the first place and Alexandria in the second and it starts with the words *Ecclesia Romana semper habuit primatus* that do not occur at this place in the original Greek text. Moreover, the text quoted by Paschasinus has the singular *primatum* instead of the original plural form *primatus* (= τὰ πρεσβεΐα), which suggests a completely different meaning (as

translation. At about the same time pope Leo quoted, in a letter¹² to the emperor, a canon of Nicaea that was in reality a canon of Sardica. Some forty years later, pope Gelasius¹³ did exactly the same in one of his letters. At last, around the year 500, the bilingual monk Dionysius Exiguus came from the East to Rome and produced a much better translation of the Greek canons. Twenty years later, in the preface¹⁴ to a new translation of those texts ordered by pope Hormisdas, Dionysius tells us that there were still people quoting so-called canons of Nicaea that were texts of some other synod. So the situation had changed: the false canons of the synod of Nicaea were still used by some people, but now the pope and his legal advisers were aware of the fact that they were fakes.

This improvement of the situation had probably something to do with the end of the so-called Acacian¹⁵ schism: since 482, Rome and Constantinople had not been on speaking terms, which meant, among other things, that the see of Rome had no need of experts capable of explaining Greek documents. After the reconciliation, which took place after prolonged negotiations at the accession of the emperor Justinus, the papal court could use, instead of the Prisca, the new and far better translations of the Greek canons made by Dionysius Exiguus. However, when after the end of the Ostrogoth rule Justinian's army had reconquered Italy, conditions cannot have been very favourable for a high level of culture.

In North Africa, favourable conditions had an even shorter life: in 429, the Vandals crossed the strait of Gibraltar and in 439 they conquered Carthage. Like the Ostrogoths who had conquered Italy under their king Theodoric, the Vandals were Arians and the orthodox Christians considered them as heretics. But their way of treating the conquered Roman territory was totally different. King Theodoric and his subjects left the orthodox Christian Italians in possession of their churches; the king even encouraged his German subjects to

far as I can see, this was the first time the word was used in the modern sense of "primacy" – if that was its meaning; it may still have been used in the sense of "privileges"). For more details, see E. Schwartz, 'Der sechste nicaenische Kanon auf der Synode von Chalcedon', *Sitzungsberichte der Preussischen Akademie der Wissenschaften zu Berlin, Philosophisch-historische Klasse* 27 (1930), 611-640 (614-627).

- 12 See E. Schwartz, (ed.), *Acta Conciliorum Oecumenicorum*. Tomus II: Concilium Universale Chalcedonense. Volumen IV: Leonis papae I. epistolarum collectiones, Berolini / Lipsiae 1932 (repr. Berlin 2011), 19-21.
- 13 See E. Schwartz, *Publizistische Sammlungen zum acacianischen Schisma*, (Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-Historische Abteilung. Neue Folge, 10), München 1934, 225.
- 14 This preface has the form of a letter to Hormisdas; it is printed in F. Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*, I, Graz 1870, pp. 964-965.
- 15 The schism was named after Acacius, patriarch of Constantinople from 472 till 489; for theological and political details of the schism itself, see E. Stein, *Histoire du Bas-Empire*. II: De la disparition de l'empire d'occident à la mort de Justinien (476-565), Paris-Bruxelles-Amsterdam 1949, 24-27, and about the reconciliation *ibid.*, 224-228.

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assume Roman habits and strongly rejected the habit of some Romans to imitate the way of living of the Germans. In North Africa, the Vandals behaved quite differently: they simply took over the churches for their own use. When subsequently Justinian's armies reconquered North Africa and the churches were given back to the orthodox inhabitants, a century of Vandal rule must have left its traces: anyway, the Greek translations of African texts of canon law used in later Byzantine collections were not based on texts of African origin, but on the collection of canons written in Rome by Dionysius Exiguus, which suggests that the archives used by archbishop Aurelius during the synod of 419 did no longer exist.

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