Εκ γαρ τοΰ καρποΰ τό δένδρον γινώσκεται.
(Mt. 12.33)

THE POST-BYZANTINE LEGAL TRADITION: IN THEORY AND IN PRACTICE

The Institute of Economics and Social Sciences
of
Bilkent University

by

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In Partial Fulfillment of the Requirements for the Degree
of
MASTER OF ARTS

in

THE DEPARTMENT OF HISTORY
BILKENT UNIVERSITY
ANKARA

June 2004

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ABSTRACT

The Byzantine Legal Tradition after Byzantium:
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This thesis outlines the main characteristics and components of the Byzantine legal tradition, as it evolved in time, and how this legal tradition changed once there was no longer a Byzantine Empire, particularly in terms of family law. This thesis will analyze in detail the family law section of one 17th century post-Byzantine law code, the *Nomokritirion,* and compare this law code to other legal sources from the period, in order to see how the content of the *Nomokritirion* differed from post-Byzantine law in practice.

The main argument of the thesis is that post-Byzantine law codes in the Ottoman Empire, such as the *Nomokritirion,* were simplified modifications of earlier Byzantine law codes. Post-Byzantine law codes only addressed matters in which the church had legal jurisdiction and they do not entirely reflect the, then, contemporary legal realities, as they both contained archaisms and generally did not address issues related to the Islamization of society.

Keywords: Post-Byzantine Law**,** Byzantine Law, Nomokritirion

ÖZET

Bizans Sonrası Kanun Yapma ve
Uygulamada Bizans Hukuk Geleneği
Merlino, Mark
M.A., Tarih Bölümü
Tez Yöneticisi: Prof. Dr. Eugenia Kermeli

Haziran 2004

Bu tez zaman içindeki gelişimiyle Bizans hukuk geleneğinin ana özellik ve öğelerinin taslağını çizer ve bu hukuk geleneğinin artık Bizans İmparatorluğu yokken özellikle aile hukuku konusunda nasıl değiştiğini anlatır. Bu tez bir 17. yüzyıl Bizans sonrası kanun koleksiyonu olan *Nomokritirion*'u detaylı olarak tahlil eder ve *Nomokritirion*'un içeriğinin diğer Bizans sonrası kanun koleksiyonlarından uygulamada nasıl farklı olduğunu anlamak için bu koleksiyonu dönemin diğer hukuk kaynakları ile karşılaştırır.

Bu tezin asıl savı Osmanlı'daki *Nomokritirion* gibi Bizans sonrası kanun koleksiyonların eski Bizans koleksiyonlarının basitleştirilmiş modifikasyonları olduğudur. Bizans sonrası kanun koleksiyonları sadece kilisenin yasal yargılama yetkisinin bulunduğu alana dair içeriği kapsıyordu ve arkaizmleri içerip genellikle toplumun İslamlaşmasına dair konuları işlemezken o döneme ait yasal gerçeklikleri de tümüyle yansıtmıyordu.

Anahtar Kelimeler: Bizans Sonrası Hukuk, Bizans Hukuku, Nomokritirion

Acknowledgements

I am especially grateful to my supervisor, Eugenia Kermeli, for all of the extra help and advice that she has given me over the past three years, especially the many hours that we spent together practicing Byzantine Greek and reading documents and texts related to my thesis. I am truly blessed to have had such a generous and kind supervisor.

As well, I would like to give special thanks to professor Cadoc Leighton. *Go raibh mile maith agat*.

I would also like to thank a few others whose help and support has been crucial for me. First of all, I would like to thank my mother for her constant support and assistance. I am also indebted to Dimitris Loupis, Krzysztof Wawrzyniak, Charles Gates, Emrah Zarifoğlu, Necip Yıldız, and Vjeran Kursar for their help and advice.

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INTRODUCTION

(A) - INTENT

This thesis is a study intending to explore and explain the characteristics of Byzantine law and how the Byzantine legal tradition changed once there was no longer a Byzantine state, during the early period of Ottoman rule, from the fifteenth until the seventeenth centuries. The study will begin by identifying the main elements in Byzantine law, the main themes in the evolution of its legal tradition and the main problems that are encountered when one wishes to discuss post-Byzantine law. The remainder of the thesis will focus on analyzing elements of what can be considered as post-Byzantine law in the Ottoman context, including a close study of one post-Byzantine law code, the *Nomokritirion,* and analyses of other legal sources that discuss post-Byzantine legal matters. The aim of the thesis is to ascertain in what ways post-Byzantine law differed from Byzantine law both in terms of codification and in legal practice.

Was there ever really such as thing as Byzantine law if so, what was it? This is in fact a very crucial question, as the notion of Byzantium is artificial and the decision when Byzantium began and Rome no longer existed is arbitrary. Perhaps either the term Greco-Roman or Roman would be a better label for this legal tradition, but regardless of what scholars choose to call it, a sophisticated and in many ways distinct legal tradition existed in what is now commonly

accreted as the Byzantine Empire. The most notable difference between what can be called Roman and what can be called Byzantine law is that Byzantine law was to some extent Christianized. Of course, there was a great amount of continuity from pre-Christian Roman law but this tradition began to evolve under the influence of Christian ecclesiastical law. There, however, was never an all-encompassing code of Christian canon law that set definitive barriers for Byzantine law on all common legal matters. Church law was the product of the declarations of church councils, and the writings and understanding of the church fathers. In general, church law was intended to address concrete situations, and such declarations were only absolute in as much as the problems that they addressed were permanent matters of Christian doctrine. A good example of how an issue in Greco-Roman law was changed with the Christianization of the Roman Empire can be found with laws regarding abortion. In pre-Christian Greco-Roman law, the practice of abortion was frowned upon but laws on this topic were not very clearly defined. In the Byzantine period, under the influence of Christian principles and declarations that had become an authoritative part of church law, both civil and canon law viewed abortion as a crime, equating it with murder.[1] Another important example can be found in laws related to wedding ceremonies. Until the fourth century, Christian clerics rarely presided over weddings, though in the following centuries clerical

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[1]Lokin, J.H.A. "The Study if Byzantine Law in the Netherlands." *Revue du droit.* 61 (3) (Antwerp, 1993)
325, 327.
Meyendorf, J. The Byzantine Legacy in the Orthodox Church. (New York, 1982) 34.
Scarborough J. & Talbot, A. "Abortion." *Oxford Dictionary of Byzantium.* (Oxford, 1991) 5.
Troianos, S. "The Embryo in Byzantine Canon Law." (Athens).

participation in wedding ceremonies became a custom, eventually leading to the legal recognition of the practice in the eighth century. By the ninth century, clerically administered weddings had become the legal norm.[2] On matters, such as abortion and clerical participation in wedding ceremonies, Christian teachings were able to influence law, creating thus a discontinuity from older regulations. The point here is simply that the Roman legal tradition continued into both the Byzantine and post-Byzantine legal traditions, with the most important changes being the result of Christian influence.

Another very important point to make is that the Byzantine legal tradition was never restricted to the law of the Byzantine Empire. Christian canon law that had developed in Byzantium from the outset had an equal degree of impact on the church laws for Christians living both to the East and to the West of the empire. Likewise, Byzantine legal compilations that included civil law had a significant influence on the law codes of neighbouring Christian states. The dissemination of Byzantine law continued to the end of the empire's existence and even beyond. Both Latin and Slavic Christians in the late Byzantine period copied and modified Byzantine legal texts for their own local use. In what can be called post-Byzantine times, until even the contemporary period, Byzantine law was in use as the basis of law in many Orthodox Christian lands.[3] The

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[2] L'Huilier, P. "Novella 89 of Leo the Wise on Marriage: An Insight into its Theoretical and Practical
Impact." *Greek Orthodox Theological Review.* 32(2) (1987) 155-156.

[3]Kolbaba, T.M. "Conversion from Greek Orthodoxy to Roman Catholicism in the Fourteenth Century."
Byzantine and Modern Greek Studies. 19, (Birmingham, 1995) 132-134.
Meyendorf, J. *Byzantium and the Rise of Russia.* (New York, 1989) 18.
Zepos, P.J. "Byzantine Law in the Danubian Countries." *Balkan Studies.* 7, (Thessalonica, 1966) 346,

concept of “Byzantium after Byzantium” or “post-Byzantine” and the associated ideas will be discussed in detail later in the thesis. Still, any study of the Byzantine legal tradition must take into account the fact that this tradition was involved with and related to neighbouring legal traditions.

An important question for legal history in general is what forces cause laws to change and this question has its own nuances for Byzantine law. Since Byzantine law was based on Roman law, which consisted of an enormous and well-developed body of law, change often was more reformist than innovative. Byzantine jurists had to modify Roman law so that it would be relevant for their own society, drawing only what they needed from the huge reservoir of Roman law. In fact, this trend was not unique to Byzantium other societies that adopted Roman law similarly reformed the law in accordance with their needs. A difficult question that may not be possible to answer is to what extent were legal codes merely the product of the personal opinions of the jurists or compilers who wrote the codes. In other words, to what extent do changes in legal codes reflect widespread changes in the society as a whole? Certainly in the Byzantine case, many obsolete or otherwise practically irrelevant laws were kept in the law codes, being preserved solely by their perceived authority. In practice, law is really the domain of an elite of lawyers, trained in their own legal cultural heritage, certainly influencing any apparent changes that such men would make. An interesting topic along these lines from Byzantine law was the complex legal relationship between the emperor and the patriarch, between the state and the church. When there was no longer a Byzantine emperor, a serious problem

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emerged that challenged the basis of this legal tradition.[4] This thesis will look to see how post-Byzantine Christian leaders handled this problem, and how these dramatic political changes influenced and altered the Byzantine legal tradition itself.

A central and distinctive issue in Byzantine law, which demonstrates how this tradition modified itself after 1453, was the relationship between the church and the head of state.[5] A fascinating question is how did lawyers utilizing Orthodox canon law in the Ottoman Empire adapt the law in order to allow for subjugation to a Muslim sovereign. In a 17th century post-Byzantine legal codification, the Ottoman Sultan assumed the role that the Byzantine *Basileus* had previously played in Orthodox canon law. This example of post-Byzantine law shows that just as in Byzantine times, the patriarch was subject to the head of state, meaning the sultan in the Ottoman Empire, for political matters. However, the sultan, just like a Byzantine emperor, was unable to change ancient traditions held by the church.[6] The only noteworthy difference between this post-Byzantine view of the head of state and the Byzantine view of the head of state was that Christian epitaphs once used in addressing Byzantine

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[4] Meyendorf. *Legacy*, 246, 248, 251.
Watson, A. "The Evolution of Law: Continued." *Law and History Review.* (Cornell, 1987) 537, 548, 549,
550, 561, 568, 569.

[5]For a study on this subject see: Beck, H. 1981. *Nomos, kanon und staatsraison in Byzanz.* (Vienna,
1981).

[6] Apostolopoulos, D. *To Mega Nomimon.* (Athens, 1978) 31.

emperors, such as the most high, or holy, were not used to describe the sultan.[7] It is also worth mentioning that by the last centuries of Ottoman rule, Orthodox canon law tended to enhance the power of the patriarch, at the expense of the sultan, reflecting the changes that had taken place within the Ottoman Empire at the time.[8]

For reason of clarity, this thesis will for its case study focus on legal issues related to family law. Law does have an important symbolic value for a society, and law can play an important role in communicating ideas and shaping a society. Therefore, since the family and legal matters related to the family, such as marriage, are so central to life it is hoped that through the case study it will become apparent to what extent at least the law code studied reflected the mentality and society from which it arose. As well, issues related to family law were among the few aspects of law for which Orthodox Christians in the Ottoman Empire were subject to ecclesiastical law.[9] For example, this study will attempt to ascertain to what extent the main legal issues addressed by this law code were relevant to the society that it was intended to govern. Or contrarily, if the laws contained within this law code were obsolete or archaic, vestiges of a long gone past that no longer had any relevance. A crucial issue in legal history is ascertaining to what extent changes in law codes were simply the product of

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[7] Apostolopoulos. *To Mega Nomimon.* 74, 84.

[8] Apostolopoulos. *To Mega Nomimon.* 30-32.

[9] Brotherson, S. E. & Teichert, J. B. "Value of the law in Shaping Social Perspectives on Marriage."
Journal of Law and Family Studies. 3(1) (Salt Lake City, 2001) 24, 28-30, 55.

the compiler or author or if these changes reflected a real need for legal change brought about by change in the society.

Much work has already been done on the history of family law for the Byzantine period, less so for the post-Byzantine period. Generally speaking, historians of this tradition regard family law as the branch of law that changed most with the Christianisation of the Roman Empire. Interestingly, most individual laws relating to family law were written in the early and middle Byzantine period, especially by the church fathers and the early church councils. In some respects, Christianisation led to legislation becoming stricter on certain issues related to the family, such as fornication and divorce, while at the same time the law continued to uphold the same understanding of the structure of the family. Other issues that played a prominent role in Byzantine family law were matters related to marriage, betrothal, dowries, remarriage, and sexual crimes. An important point that should also be pointed out is that in the study of family law, different approaches can be utilized by the historian, such as historical, legal, ethnographic, literary and demographic methods.[10] Since family law was the most noteworthy issue for legal change in late antiquity, the time of considerable change in the Roman Empire, was this also true for legal change at the beginning of the post-Byzantine era?

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[10] Buckler, G. "Women in Byzantine Law about 1100 AD." *Byzantion.* 11 (Bruxelles, 1936) 392, 394, 400-
401, 404-405.
Grubbs, J.E. *Law and Family in Late Antiquity.* (Oxford, 1995) 54, 64-65, 73-74.
Ivanova, S. "Marriage and Divorce in the Bulgarian Lands (XV-XIX)." *Bulgarian Historical Review.* 21
(2-3), (1993) 49.

This study aims then to demonstrate in what ways the Byzantine legal tradition was distinctive and how this tradition changed and evolved in time, well into what can be called post-Byzantine times. In doing this, it is hoped that it will be shown how being subject to Christian rule or Islamic rule influenced the way in which the legal tradition developed, changed and evolved. To better understand how being subject to Islamic Ottoman rule affected post-Byzantine law, a detailed study of one 17th century post-Byzantine law code will be undertaken. To complement this, a study will also be made to show how the law worked in practice, in an attempt to answer the question, of whether this example of post-Byzantine law really and accurately reflected the reality of the time.

This thesis is divided into four chapters, in addition to the introduction, conclusion, bibliography and index. Following this introduction is a short methodological introduction, explaining the main problems encountered by historians working on legal sources. After this, the first chapter will outline the main themes in Byzantine law and the most notable Byzantine legal codes. The second chapter explains the historical background to post-Byzantine history and outlines the main themes in post-Byzantine legal history, as well as identifying the most notable post-Byzantine law codes. The third chapter will analyze one post-Byzantine law code, the *Nomokritirion*, in terms of content and method within the realm of family law. The last chapter consists of two sections. The first will explain how punishment was exercised by ecclesiastical courts in post-Byzantine times. The second section will use other post-Byzantine legal sources, taken from martyrologies, Islamic legal records and other post-

Byzantine Orthodox Christian legal documents, to show how the law codes compared to the law in actual practice.

(B) - METHODOLOGY

Before embarking on the explanation of the aforementioned questions, a general discussion on the methodological problems emanating from legal documents should be put forward. In contrast to title deeds, official orders, and taxation registers, legal documents can provide us with a definite time frame when we have a promulgation date. However, when legal historians approach Byzantine and post-Byzantine legal texts, what sorts of problems are important in dealing with these sources? First of all, as I hope the following two chapters will make apparent, legal codes from this tradition often borrowed concepts and ideas from different ages, removing these ideas from the original context in which they were formulated. Such borrowed ideas may not tell much about the society governed by these laws, making these aspects of the law codes only useful for the study of the evolution and change of laws and law codes. When a contemporary interpolation can be identified, there is a different problem in that the historian cannot be sure that the law code necessarily reflected a social or legal problem. It may just be a hypothetical case invented by a jurist. Also, the presence of a law in a law book does not tell how this law on concept influenced the society for this reason when a new law originating from a period is discovered, the historian should compare this law to information about the same topic found in other sources. Thus, legal history can be a tool for understanding societies when both the theory and the practice are researched. In doing so, the

legal case can be one aspect of a larger picture and can therefore help in reconstructing a certain element of Byzantine or post-Byzantine society.[11]

Another general methodological question for legal history is does a law shape society or is the law shaped by society. Since the answer to this question can vary considerably from place to place and from time to time, the historian should first try to answer this question, before interpreting legal material as material for societal studies. The final methodological problem related to legal sources has to do with authorship. Is the opinion ascribed to an author, whether a judge or jurist, authentic, or is it falsely ascribed to this person? Why did the lawyer, jurist or judge decide to record this legal opinion of the law code?[12] Therefore, although in interpreting laws, as historical sources may seem a thorough tool for the historian, without a cautious approach to such sources, historians can easily develop false views about both the legal text and the society in question.

One of the ways to circumvent such problems is to compare earlier legal texts to later ones on a given subject. In the Roman-Byzantine tradition, legal sources should never be interpreted in isolation. It is best if historians find parallel texts about the same subject from other legal texts written in earlier times, and then compare the texts. Differences that appear to be innovations

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[11] Laiou, A.E. & Simon, D. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* (Washington, 1994)
14.
Johnston, D. *Roman Law in Context.* (Cambridge, 1999) 16, 19, 24-26.
Macrides, R.J. *Kinship and Justice in Byzantium, 11th-15th Centuries.* (Aldershot, 1999) viii.

[12] Johnston. *Roman.* 24-28.
Robinson, O.F. *The Sources of Roman Law.* (London, 1997) 102.

may tell the historian something about social or legal problems at the time that the new law was developed. Such information can be seen as indirect evidence for the history of the period and when the conclusion drawn from the legal material can be confirmed by complementary historical information, a probable conclusion can be drawn about the topic in question. Aside from this, legal texts are obviously essential and reliable, if a researcher would like to analyze a history of laws or legal codes, or even as pieces of literature when looking at different manuscripts and writing styles. In addition, Byzantine legal texts can be extremely fruitful for the study of ecclesiastical history, partly to do with the nature of the church and partly to do with the prescriptive nature of church law. Also, for late and post Byzantine law books, frequency of manuscript existence can suggest the authority, popularity and impact of the text in question.[13] Considering the possibilities, a careful use of legal sources can make these particular sources quite valuable to historians interested in various aspects of history.

Much has been written about late and post Byzantine law, though only a fraction of it is in English and many of the most authoritative works were produced during the nineteenth century. Most of the works about Byzantine law in English, focus on earlier periods, especially Justinian's time. Outside of the English-speaking world, the most important scholarly language for late and post Byzantine law is Modern Greek with many articles and books having been written about the subject. Other works of note have appeared in such

[13] Johnston. *Roman.* 19-20, 27.
Robinson. *Sources.* 117-118, 120.

languages as Latin, German, French, Italian, Romanian, Russian and Bulgarian.[14] Also many of the original texts were translated into Latin during the early modern period. Since so many languages have been used by modern scholars interested in this subject, a scholar would have to be a very prolific polyglot in order to grasp the totality of all that has been written on the subject. However, given that the interest in this topic outside of the Greek-speaking world has not been extensive, the actual number of books and articles on any particular topic is not innumerable.[15] For this thesis, texts written in English, French, Italian, German, Turkish, Latin, Byzantine and Modern Greek have been consulted. Therefore, there still remains much room for original scholarly input within this field of Byzantine legal history.

Therefore, legal sources can be productive and worthwhile sources for Byzantine historians. Although there are serious language problems for both primary and secondary sources in this field, there remains much room for scholarly input, especially in the late and post Byzantine periods in the English-speaking academic world. Since Roman/Byzantine and post-Byzantine legal sources contain contributions from different times, places and therefore contexts, serious use of these sources by historians must pay close attention to the developments contained within the legal codes from the previous time periods. Therefore, for post-Byzantine law codes, historians should inquire into how those issues studied were dealt with, in all periods of Byzantine history,

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[14] Harmenopoulos, Konstantinos. *Procheiron nomon, e Hexabiblos.* (Athens, 1971) lxviii-ilxxx.

[15] Arnaoutoglou, I.N. *Post Byzantine Law on the Web.* (2003).
Macrides, R.J. *Kinship and Justice in Byzantium, 11th-15th Centuries.* (Aldershot, 1999).

from the *Corpus Iuris Civilis* (528-534), to the *Epanagoge* (c. 880), the *Procheiron* (c. 870), and the *Basilica* (c. 890), all the way to the *Hexabiblos* (1345) and the *Syntagma* (1335).[16] Also where necessary, for the periods after 1204, reasonable comparisons should also be made to relevant Turkish, Islamic, Ottoman and Latin law codes. Once the time, purpose and setting of the authorship of the particular piece of law studied can be determined, apparent innovations contained within the code can then be placed within the context of the time the innovation was made. In cases where law codes contain few innovative points, valuable insight on understanding the development of legal history, or changes in literary style can be drawn from the law code.

[16] For a description of these law codes see the see chapter 1.

CHAPTER 1

THE BYZANTINE LEGAL TRADITION

As mentioned before, what can be called Byzantine law essentially fused elements of two extensive and originally distinct legal traditions, imperial Roman law and Christian ecclesiastical law. Considering that both the Roman and the Christian legal traditions also existed outside of the Byzantine Empire during medieval times, to what extent can Byzantine law be considered distinctive; in the course of Byzantine history, was there an increasing divergence in terms of method and content between the Byzantine tradition and similar traditions west and east of the empire; in these differing traditions, did legal scholars view the relationship between church law and state law in significantly different ways; finally, were there many noteworthy innovations in Byzantine law or did jurists and law code compilers remain faithful to concepts from earlier times? I hope by exploring these questions a general understanding of the character of Byzantine law and its place in the histories of Christian canon law and Roman law will become apparent.

Strictly speaking, the English word "law," equivalent to the Greek word $\nu o \mu o \varsigma$ and to the Latin words *lex* and *ius*, refers to any rule or system of rules that is formally recognized as being binding by the members of a state or community. Laws then, at least in theory, reflect the identity of the community. The English word canon, coming from the Greek $\kappa \alpha \nu \omega \nu$ simply means an

ecclesiastical rule or decree, based on understandings of religious truth. The nature of law inevitably differs depending on the nature of the state or community in which the law is recognized. In the Christian parts of Medieval Europe and the Near East, there was a coexistence of ecclesiastical, imperial, local and customary forms of law. These different types of law were associated with the various and dissimilar polities, religious and secular communities that existed in these lands at that time. Legal historians are only able to perceive these differing laws from written records of legal cases, compilations of legal texts and other literary or archaeological remains. It is always necessary to try to first ascertain the intent and the sources used by the compiler of any law code, before inferring anything from the text.[17] Therefore, before the historian can begin to understand how a particular piece of law reflects or does not reflect the identity and organization of the community or state associated with the law, a thorough analysis of the related legal tradition is needed.

The term "nomokanon," also rendered nomocanon in English, is a particular Byzantinism that needs some explanation. The term itself originates from a middle Byzantine word νομοκανων, which simply combines the already defined words νομος and κανων. The term refers to any law code that contains

[17] Bellomo, M. *The Common Legal Past of Europe 1000-1800* (Washington, 1995), xi.
Gallagher, C. *Church Law and Church Order in Rome and Byzantium* Volume 8, (Aldershot, 2002), 1.
Kuttner, S. "Vers une nouvelle histoire du droit canon," *Studies in the History of Medieval Canon Law*
In Kuttner, S. *Studies in the History of Medieval Canon Law.* (Aldershot, 1990), 79.
"Canon," & "Law," *Oxford English Dictionary.* Online: www.ode.com, (Oxford, 2003).
Tellegen-Couperus, O. *A Short History of Roman Law.* (London, 1993), 65-66.

laws derived from both Christian canon law and civil law.[18] Of course, this term, which has been in use in the English language since the eighteenth century, has almost exclusively been applied to law codes from the Byzantine legal tradition or other legal traditions closely associated with Byzantine law, most notably Slavic Orthodox and Oriental Christian codifications.[19] For the purpose of this thesis, the term nomokanon will refer to legal codifications combining individual ecclesiastical canons and civilly legislated laws, being distinguished from more general terms such as law code or legal compilation, which may or may not include any particular form of law.

Late Antiquity, the starting point for the codification of Christian canon law and imperial Roman law, was a time of considerable political, social and religious change in the lands that were once the Roman Empire. Unlike classical Roman jurists, who devoted their time to giving their own opinions about legal matters, legal scholars of the period compiled summaries and anthologies of laws. The later versions of Roman law fused Christian, Greek, and vulgar influences into the already established Roman legal tradition. In the fifth century, the Christian Roman emperors, Theodosius II and Valentinian III, decided to issue a compilation of all laws enacted by Christian emperors from Constantine until their time. The idea of a law code was not new and the *Codex Theodosianus* was meant to supplement two late third century law codes, the

[18]Boudinhon, A. "Nomocanon." *Catholic Encyclopeida.* (New York, 2003).
"Nomocanon." *Oxford English Dictionary*. (2003).

[19]Boudinhon. "Nomocanon."
"Nomocanon." *Oxford English Dictionary*.

Codex Gregorianus and the *Codex Hermogenianus*.[20] The originality of the code was that the *Codex Theodosianus* was issued by emperors and it had a decidedly Christian content. In the following decades there were a series of new codices issued by Germanic kings in the areas once part of the Western Roman Empire. These texts, including the *Lex Romana Visigothorum* among a number of others, were based on several collections of imperial Roman law, as well as some pieces of customary Germanic law.[21] The compilers of these texts though were simply copyists, not bothered by editing or interpreting the texts in question. A similar law code, the *Syro-Roman Law Book*, was made in Roman Syria. These compilations were the product of a desire to preserve something of the highly revered Roman law. In contrast to the developments in imperial law, ecclesiastical law was in its infancy. In the fourth century, the now state favoured Christian church began defining its beliefs and rules at ecumenical councils and local synods. Church leaders debated and pronounced what Christians ought to believe and how they ought to behave. The corpus of the writing of the church fathers, and the canons of these church councils were to become the basis of all church law.[22]

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[20]Stein, P. *Roman Law in European History.* (Cambridge, 1999), 28.
Tellegen-Couperus. *Short.* 65-66.

[21]Bellomo. *Common.* 35-36.

[22]Burgmann, L. "Law in the East, Byzantine," Kazhdan, A. and Talbot, A. eds. *Oxford Dictionary of Byzantium* (Vol. 2) (Oxford, 1991), 1195.
Erickson, J.H. *The Challenge of Our Past Studies in Orthodox Canon Law and Church History* (Crestwood NY, 1991), 17-18.
Stein. *European.* 28-29.

Starting in the fourth century, Christian bishops began to gather together occasionally in different cities for meetings where they would discuss and resolve controversies or debates of a doctrinal nature. The bishops would decree then what the Christian position on given issues were. The decrees issued by the bishops would be canonical only if the church as a whole accepted them. This is not to say that there is a Christian consensus for what constitutes legitimate and canonical decrees issued by church councils. As will be briefly described later, the understanding of what constitutes canon law does vary to some extent from Christian denomination to Christian denomination. Church councils, however, were not the only source of canonical decrees. The writings of the saintly leaders of the early church on doctrinal matters were accepted by the church as a whole as being authoritative. They also wrote decrees on legal matters that were accepted as being canonical. The first of these were attributed to the Apostles, and to them were later added writings by men such as St. Athanasius, St. Basil and St. Gregory of Nyssa. A relatively high proportion of canons issued by the early church dealt with matters of family law and they prescribed guidance for how best to address matters of church discipline. In essence then, just as was defined to a Muslim emir by a seventh century Jacobite patriarch of Antioch, the law of the Christian church consisted of the teaching contained within scripture, the canons of church councils and the canons of the fathers of the church.[23]

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[23]Browne, L.E. *The Eclipse of Christianity in Asia.* (Cambridge, 1933) 115.
Grubbs. *Family.* 74, 188-190.
Percival, H. *The Seven Ecumenical Councils of the Undivided Church.* (Grand Rapids Mich, 1899) xi, xv, 591.

Another important type of law that existed in Byzantium was the so-called novel, *novella* in Latin or νεαρα in Greek. This name refers to imperial edicts of decrees that were issued by emperors at various times in the empire's history. Most novels date from either the early Byzantine period, as there was even a collection of the novels of the emperor Justinian, or by various emperors in the middle Byzantine period. Perhaps the most important single collection of novels consisted of decrees made in the late 9th and early 10th century by the emperor Leo VI, the Wise.[24] He issued a total of 113 undated imperial decrees that cover a range of topics on both church and individual matters. There include many topics related to family law, such as decrees on marriage, dowries, and adoption. Novels were not so commonly issued in the late empire, and the last known novel was issued in the year 1306 by the emperor Andronikos II.[25] Novels are important for Byzantine law, as they constitute the purely Byzantine elements of civil law.

Some of the most influential collections of Roman law and canon law were compiled in the first half of the sixth century. The best known of these collections is the famous *Corpus Juris Civilis,* commissioned by the emperor Justinian who desired both to update the Theodosian law code and to revise and organize classical Roman law. This enormous legal project was part of his aim

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[24]Kazhdan, A. "Novel." In Kazhdan A. & Talbot, A. *Oxford Dictionary of Byzantium* (Vol. 3) (Oxford, 1991)
1497.
Kazhdan, A. "Novel of Leo VI." In Kazhdan A. & Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 3)
(Oxford, 1991) 1498.

[25]Kazhdan. "Leo VI." 1498.

to renew the ancient glory of Rome. It does demonstrate a belief held at the time that the emperor was the sole legal authority and law was universal and eternal. The *Corpus Juris Civilis*, written in law and later paraphrased into Greek, did in fact become the principal source for Roman law in both the East and the West.[26] It has served as a source and template for innumerable law codes and remains the largest single source for Roman legal texts.

In Rome, years before the compilation of the Justinianic legal corpus, a monk from modern day Romania named Dionysius Exiguus put together the first canon law code, the *Dionysiana*.[27] Dionysius has been considered the father of canon law, as a result. His most important contribution to the history of canon law was his decision to translate the Greek texts of the early ecumenical councils and church synods into Latin. As well, he compiled a collection of Papal decretals, answers written by popes to questions posed by other bishops. This decision had the effect of giving papal decretals the authority of conciliar canons, something that had not been done earlier. Dionysius lived at the time of the first important dispute between the Latin and Greek churches and by his translations of Greek texts, he helped to improve understanding between Rome and Constantinople. Soon after the completion of the *Corpus Juris Civilis*, another groundbreaking canon law code, the *Synagoge*, was composed, this

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[26]Zepos, P.J. 1958. *Die Byzantinishe Jurisprudenz zwisden Justinian und den Basiliken Berichte zum XI.*
(Munchen, 1968).

[27]Gallagher. *Church.* (Aldershot, 2002), 1-4.
Kazhdan, A. "Law, Civil," (Oxford, 1991), 1191-1192.
Simon, D. "Legislation as Both a World Order and a Legal Order," In Laiou, E. and Simon, D. *Law and*
Society in Byzantium: Ninth-Twelfth Centuries. (Washington, 1994) 6-7.
Stein. *European.* 33, 35.

time in Constantinople.[28] Its compiler, John Scholastikos, like Dionysius Exiguus, added canons from the early ecumenical councils and local synods, as well as from the so-called *Apostolic Canons*. A novel idea introduced by John was to add some canons from the writings of St. Basil, one of the most important of the church fathers. Another early Byzantine canonist of note was Alexios Aristinos, who wrote a commentary on canon law in the seventh century.[29] The *Corpus Iuris Civilis*, the *Dionysiana*, and the *Synagoge* all by introducing new ideas and new methods into their compilations imperial law and ecclesiastical law, directed the future development of these legal traditions.

The legal developments that took place during the middle Byzantine period led to the formulation of what became standard imperial law and orthodox canon law. The local church council of Trullo and the Seventh Ecumenical Council both affirmed that canons from the early local church synods were binding on the entire church, affirming the method of John Scholastikos. Later canonists, though, expanded the corpus of Scholastikos' canon law by adding canons from many other church fathers. One such *nomokanon*, written in the ninth century and attributed to the patriarch Photius, acquired semi-official status for Byzantine canon law.[30] Developments in Byzantine imperial law mirrored the political development from the period. The *Ecloga* of the iconoclastic emperor

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[28]Gallagher. *Church.* 5-12.

[29]Gallagher. *Church.* 20-25.
Pheida, V.I. "Droit canon – une perspective Orthodoxe." (1998).

[30]Treadgold, W. *The nature of the Biblioteca of Photius.* (Washington, 1980).
Wilson, N.G. *Photius : The Biblioteca.* (London, 1994).

Leo III abandoned much of the content of Justinianic law, replacing it with Christian conceptions of law. Leo III made a conscious attempt to update and de-paganize imperial law. The *Ecloga* through its later versions and copies was widely disseminated and later translated in languages such as Bulgarian and Serbian.[31] The failure of iconoclasm led to several re-codifications of Byzantine law, by emperors Basil I and Leo VI. These law codes, the *Eisagoge*, the *Basilika*, and the *Procheiron*,[32] restored many elements of Justinianic law removed by Leo III, including even some outdated laws, and they described *νομος* in a personified manner, bearing resemblance to ancient Greek conceptions of law.[33] The *Eisagoge*, for the first time in Byzantine law, sought to find a balance between the emperor, the patriarch and the law, though this formulation did not last. The *Basilika* remained in theory the official law of the Byzantine Empire until the fifteenth century and the *Procheiron* heavily

[31]Readily available English editions of the *Ecloga* and the modified *Ecloga Privata Aucta* are the following:
Freshfield, E.H. *A Manuel of Roman Law: The Ecloga Published by the Emperors Leo III and Constantine V of Isauria at Constantinople AD 726.* Cambridge: Cambridge University Press, 1926.
Freshfield, E.H. *A Manual of Roman Law: Founded upon the Ecloga of Leo III and Constantine V of Isauria – Ecloga Privata Aucta.* Cambridge: Cambridge University Press, 1927.

Gallagher. *Church.* 37-41.
Kazhdan. "Civil," 1192.
Macrides, R. "Nomos and Kanon on Paper and in Court," In R. Macrides, *Kinship and Justice in Byzantium, 11th-15th Centuries.* (Aldershot, 1999), 62-63, 66.
Simon. "Legislation," 12-14.

[32] The Procheiros Nomos has been published in the following readily available edition:
Freshfield, E.H. *A Manuel of East Roman Law: The Procheiros Nomos Published by the Emperor Basil I at Constantinople between 867 and 879.* Cambridge: Cambridge university Press, 1928.

[33] Simon, "Legislation," 18-21.

influenced late Byzantine law.[34] In practice, middle Byzantine imperial and canon law did not make a significant break from the traditions initiated by Justinian and John Scholastikos. The imperial law codes of Basil and Leo VI followed Justinianic law, but hellenized it and somewhat adapted it to contemporary society.

In the centuries after the codifications of Basil I and Leo VI, imperial Roman law found its way into lands outside of the Empire, and important developments in canon law were taking shape in both the Latin West and the Greek East. Due to the missionary activity to Slavic lands in the ninth century, jurists in many of the Slavic lands had known Byzantine law. After the eleventh century, when Slavic monasteries appeared on Mount Athos, a steady flow of translations of legal codes, such as the *Procheiron*, reached Orthodox Slavic countries, from Serbia to Russia. Justinianic law was rediscovered in the West during the eleventh century in Italy, the same time as the very significant Gregorian reform movement within the western church was taking place. Both the re-discovery of Roman law and the Gregorian Reforms helped to renew an interest in legal studies in the West. One of the greatest legal minds in the period was the Italian canonist Gratian, who wrote the *Decretum* in c. 1140-1142.[35] Although Gratian was very reluctant to use Roman law, Justinianic

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[34]Macrides. "Nomos," 62-63.
Meyendorf. *Russia,* 18.
Schminck, A. "Basilika," In Kazhdan, A. and Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 1),
(Oxford, 1991), 265.

[35]Thompson, A. *Gratian: The Treatise on Law Decretum DD. 1-20.* (Washington, 1993).

passages were added to the *Decretum* about a decade after its composition. Gratian, though, did follow the standard early medieval method for what ought to be included within a canon law collection, including canons from ecumenical councils, local synods, the *Apostolic Canons*, which were incidentally regarded as apocryphal in the West, patristic writings, and Papal decretals. Novel innovations made by Gratian were his application of a scholastic method to canon law, his desire to create a work that dealt with the entire corpus of canon law, and his aim to reconcile apparent contradictions that he found. [36]

In Byzantium, the important canonists Theodore Bestes and Theodore Balsamon both like Gratian tried to compile up to date and complete works of canon law. The Byzantine canonists were comfortable using imperial laws as sources in their canon law codes. They addressed canon law thematically, comparing what canons from church sources and laws from imperial sources had to say on each topic. Byzantine canonists, though, believed that the church κανων had more authority than the imperial νομος.[37] The acceptance of Byzantine imperial law and often commonality of canon law demonstrate that at least after the re-introduction of Roman law into the Latin West and the reception of various Byzantine law codes in Slavic lands, the Byzantine legal

[36]Bellomo. *Common.* 1, 51, 66-67.
Burgmann, L.. "Law in Slavic Countries, Byzantine," Kazhdan, A. and Talbot, A. eds. *Oxford Dictionary of Byzantium* (Vol. 2) (Oxford, 1991), 1195.
Gallagher. *Church.* 109, 116-123, 146-149.
Macrides. "Nomos," 67, 74, 79.
Stein. *European.* 43-46.

[37]Macrides. "Nomos," 67.
Stolte, B.H. "Balsamon and the Basilica," Lokin, J.H.A., Stolte, B.H. and *Van der Wal, N. Subseciva Groningana Studies in Roman and Byzantine Law III.* (Groningen, 1989), 118, 122-125.

tradition was hardly confined to what remained of the Byzantine Empire, as both imperial and ecclesiastical decrees made in Byzantium were accepted as integral parts of the legal traditions of Latin, Slavic and as will be seen, Oriental Christendom.

The necessity of considering the legal traditions of Christian people outside the empire in the study of Byzantine law becomes even more evident when the legal traditions of the eastern Christian churches are considered. First of all, collections of imperial law were copied and used by eastern Christians, for example Byzantine *nomokanons* were used in Georgia, the *Ecloga* was translated and known by Armenians and Copts, and the *Procheiron* was also translated and known by Copts.[38] What is more, all of the eastern churches applied the standard Christian understanding of what constituted the basis for canon law, canons from the first four ecumenical councils, including the disputed third and fourth ecumenical councils, the local synods, the *Apostolic Canons*, and at least some of the church fathers. Many canon law collections were compiled in the different eastern churches during the thirteenth century, including the Arabic language Coptic *Nomokanon* of Ibn al'Assal, the Armenian *Judicial Book* of Mkhithar Goš, the Assyrian *Collection of the Synodical Canons* by Ebedjesus, and the Jacobite *Nomokanon* by Bar Hebraeus.[39] A distinctive source for law utilized in the east was the already mentioned pre-Justinianic

[38] Burgmann. "East," 1195-1196.

[39] Gallagher. *Church.* 187-188.
Kouymjian, D. "Revue of Robert W. Thompson, *The Lawcode of Mxit'ar Goss." Speculum.* 77(3), 1026-1027.

Syro-Roman Law Book.[40] As well, where relevant, the eastern churches used canons that were promulgated by their own local synods or decretals from their own patriarchs.

An interesting comparison with Byzantine law is made with the legal views of the eastern Christian churches that were not subject to Christian polities. The Assyrian church was never subject to Assyrian Christian political rule. Throughout its long history, the Assyrian church has accumulated a vast tradition of Canon law, and once they had formed their owned Millet under Islamic Arab rule, the Assyrian population was essentially wholly subject to their church for law. Although there are some similarities in laws on secular matters between Assyrian canon law of Ebedjesus, the only Assyrian canon law collection, and Islamic law, these similarities can be explained by cultural likeness rather than extensive borrowing of Islamic law by Assyrian jurists. In fact, Assyrian canon law forbade the faithful from participating in tribunals held by infidel states, making church judges the only true judges.[41] The Assyrian view is quite different from the Jacobite approach, as there is not an extensive tradition of Jacobite canon law. This may be because of their being part of Christian states during the early Byzantine and the crusader periods. The great Jacobite law code compiler was Bar Hebraeus, one of the greatest and most prolific minds from the period writing in the fields of history, Syriac grammar, biblical commentary, poetry, philosophy, medicine, astronomy, and astrology, as

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[40]Burgmann. "East," 1195.
Gallagher. *Church.* 187, 197, 210.

[41] Gallagher. *Church.* 187, 207-212, 223.
Le Coz, R. *Histoire de l'eglise d'orient* (Paris, 1995), 191, 201, 284-286.

well as canon law. Since their legal tradition is so sparse, Bar Hebraeus extensively relied on Islamic law, from the Muslim jurist al-Ghazali, as a source for the civil law portions of his *Nomokanon*, addressing issues of family law, patrimony, procedural law and penal law.[42] The histories of the eastern churches demonstrate how canon law can develop when the church is not subject to Christian rule, either becoming a community based sub-government, as in the Assyrian case, or allowing church law to be heavily influenced by non-Christian state law, as in the Jacobite case. Eastern Christian canon law also shows that the legal developments in the Byzantine Empire influenced the Christian populations living outside of the empire's borders.

The early fourteenth century witnessed the last great developments in the history of the Byzantine legal tradition. Three legal codes, Constantine Harmenopoulos' *Hexabiblos* (1345), Matthew Blastares' *Syntagma* (1335), and a law code issued by Serbian king Stephen Dushan (1349).[43] The compilations

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[42] Gallagher. *Church.* 187-188, 191-199.
Nöldeke, T. *Sketches from Eastern History.* (London, 1985) 237-255.
Vernadsky, G. "The Scope and Contents of Chingis Khan's Yasa." *Harvard Journal of Asiatic Studies,* 3
(3-4), (1938) 341.

[43]These codes can all easily be found in publication. Some of the more easily accessible versions are the
following: The *Hexabiblos* can be found in Greek and a partial English translation in:
Harmenopoulos, Konstantinos. *Procheiron nomon, e Hexabiblos.* Athens: Dodone, 1971;
Freshfield, E.H. *A manual of Byzantine law, compiled in the fourteenth century by George*
Harmenopoulos. Vol. VI. On torts and crimes. Cambridge: Cambridge University Press, 1930;
The *Syntagma* can be found in Greek and Latin in volumes 144/145 of the PG; The Code of
Stephan Dushan is available in English translation in: Krstic, D. *The Code of Tsar Stephan*
Dushan. Belgrade: Serbian Academy of Sciences and Arts, 1981, available online at:

of Harmenopoulos and Blastares were not intended to serve as official law codes. The *Hexabiblos* was a supplementary legal manual to the *Procheiron*. It updated imperial law and also dealt to a considerable extent with church law. The *Syntagma* like the *Hexabiblos* was a legal textbook or source book for canon law. The *Syntagma* was organized alphabetically, making it easier to use than earlier *nomokanons*. However, the headings were arranged according to topic and all legal references on a given topic were divided according to those that came from ecclesiastical or imperial sources. Stephen Dushan's law code was written several years after the *Syntagma* and it incorporated the contents of the *Syntagma*, as well as civil law from an abbreviated form of Justinianic law.[44] The almost immediate incorporation of the most influential late Byzantine work of canon law into the Serbian legal tradition demonstrates how closely the Byzantine legal tradition influenced the legal traditions of certain neighbouring civilizations. The last significant collections of Byzantine law followed the well-established Byzantine legal method and content.

Of all the codes that have been mentioned above, the most important for this study of post-Byzantine law that will be undertaken in this thesis is the

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http://www.oldserbia.plus.co.yu/e_index.htm;

[44]Erickson. *Challenge.* 19.
Freshfield, E.H. *A Manual of Byzantine Law: Compiled by George Harmenopoulos Volume VI On Torts and Crimes* (Cambridge, 1930), 1.
Meehan, A. "Matthew Blastares, *The Catholic Encyclopedia XIV* (New York, 2003).
Pitsakis, C. "Les Études de croit romain en Grèce du XIXe au XXIe siecle: un cas particulier," *Diritto romano, cultura giuridica, insegnamento.* (2002).
Harmenopoulos. *Hexabiblos.* xi-xiii.
Potter, D. "Syntagma Canonum," *The Catholic Encyclopedia XIV* Online: www.newadvent .org, (New York, 2003).

Syntagma of Matthew Blastares. The *Syntagma* was a true nomokanon, as it divided its source on each topic according to whether they were ecclesiastical or civil laws. For this reason, *Nomokanon* appears in some manuscripts as an alternative title for the *Syntagma*. This law code was not simply a random collection of laws, or even a loosely organized collection of law, Blastares had the intention of paraphrasing and interpreting the law, not only bringing it together in an organized manner, complete with strong theological arguments. Like all nomokanons, the *Syntagma* was a legal and theological handbook. There are in fact three hundred and three different title headings used by him in his division of Byzantine law. Examination of this law code reveal that Blastares has an argument for what is essential for law, which words are essential, which sources carry primary authority. Another name given to this law code is the *Pedalion* or the rudder, which goes to show how others viewed his work as guiding and redirecting this legal tradition. Considering the enormity of Blastares's undertaking, it is not very surprising that this code was copied, paraphrased, translated, and used as the basis of law for Christians in various lands for centuries, after it was written.[45] This study will come back later to look in detail at one example of how this particular law code was copied, changed and utilized by Orthodox Christians in the post-Byzantine period.

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[45]Boudinhon. "Nomocanon."
Constantinescu, R. "La digamie dans le droit canon du sud-est européen et les pénitentiels Roumains
XIVe – XVIIe siècles." *Revues des études Sud-Est Européennes.* (1981), 677-679.
Delaunay J. "Syntagma Canonum" *The Catholic Encyclopedia.* (New York, 2003).
Viscuso, P. "A Late Byzantine Theology of Canon Law." (1989) 204, 208-213, 218-219.
Kazhdan, A. "Blastares, Matthew." (Oxford, 1991) 295.

A pressing question that needs to be addressed is how did the various forms of state law relate to canon law in the Byzantine legal tradition and legal traditions that were influenced by Byzantine law? For Byzantium this question is part of the wider question of how the church related to the state. The simple answer is that the legal distinction between church rules and secular law was fluid and unclear. Since the time of Justinian, *κανονες* were officially recognized as *νομοι.*[46] *Νομοι* were incorporated into canon law collections for most of the Byzantine canonical tradition. The reason why the two were not rigidly separated was that Byzantine conceived of law as being, single, universal and divine. Canon law and imperial law were both law, but just intended for separate courts and addressing slightly different issues. Canon law had absolute authority but relative power, whilst imperial law possessed neither absolute authority nor power, from the ecclesiastical point of view. Canon law was after all the practical application of Christian revelation in certain legal aspects of human life, making it much more authoritative for Christian Byzantines than imperial laws, which were derived from secular tradition.[47] Likewise, in the Latin

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[46]Halsall, P. "Caesaropapism? Theodore Balsamon on the Powers of the Patriarch of Constantinople."
(1996).
Macrides. "Nomos," 64-65.

[47] Kazhdan, A. "Some Observations on the Byzantine Concept of Law: Three Authors from the Ninth
through the Twelfth Centuries," In Laiou E. and Simon, D. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* (Washington, 1994), 200-203.
Konidaris, I. "The Ubiquity of Canon Law," In Laiou, E.& Simon, D. *Law and Society in Byzantium: Ninth-*
Twelfth Centuries. (Washington, 1994)134.
Macrides. "Nomos," 61.
Schminck, A. "Canon Law," In Kazhdan, A. and Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 1),
(Oxford, 1991), 372-373.

West, there was a constant fusion of spiritual and material matters in both civil and ecclesiastical law. The real western distinction was that church law was the authority in matters related to salvation, while civil law was the authority in matters related to the secular world. In Christian states, the distinction between church law and state law was a matter of practice and function.[48] This relationship was more complicated, as has been already seen, in the cases of the eastern churches, which were not subject to Christian rule. In these cases, law from foreign Christian states continued to have much influence, while canonists were either hostile to non-Christian state law or willing to accept this law in cases where known Christian law could provide no answers. In these cases, church law was certainly the only 'true' form of law.

Byzantine law was the central element in a very large fluid legal tradition that lay at the base of all forms of medieval Christian law. Byzantine, Latin, Slavic and Eastern Christians accepted the decrees of fourth and fifth century church councils and church fathers as the basis of canon law. The same traditions also were deeply influenced by imperial Roman law, most of which was composed during early Byzantine times. The evident differences between these different traditions are the product of legal developments that took place in

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[48]Bellomo. *Common.* 74-76.
Blumenthal, U. "Conciliar Canons and Manuscripts: The Implications of Their Transmission in the Eleventh Century," *Papal Reform and Canon Law in the 11th and 12th Centuries* (Aldershot, 1998), 378.
Kuttner, S. "Some Considerations on the Role of Secular Law and Institutions in the History of Canon Law," In Kuttner, S. *Studies in the History of Medieval Canon Law.* (Aldershot, 1990), 351-352, 356.

isolation, the result of, often, very divergent histories. For example, papal decretals in the West and patriarchal decretals in the East shaped law in ways that were not known in Byzantium. The absence of a strong and Christian imperial authority outside of Byzantium meant that church / state relations in these countries contributed to occasional clashes of authority between church and secular leaders. Christians in the East continued to incorporate legal developments from their western neighbours in Byzantium whom they considered schismatic and heretical, and Jacobites even borrowed from the writings of the Muslim jurist al-Ghazali. As a rule of thumb, legal innovations both within and outside of the Byzantine Empire were the product of necessity, and legal scholars preferred not to reject older laws as long as they were comprehensible and possibly applicable. Byzantine law then can provide historians with hints of how the state functioned and how the church related to society outside but this history must not be studied in isolation from earlier legal developments or from developments in neighbouring civilizations with related traditions of Roman or canon law. A comparative approach taken by scholars in studying Roman and Christian legal traditions will certainly help to reveal the distinctive elements in each branch of these traditions.

CHAPTER 2

POST BYZANTINE LAW

After 1453, there was no longer an Orthodox Christian Byzantine Emperor. Byzantine conceptions of the legal order and the world were based on the idea that there would be a Christian Byzantine state. Many questions therefore should be asked about how the Ottoman conquest of Byzantium affected the Byzantine legal tradition. Without a state, with an exodus of Byzantine intellectuals, and with subjugation to the rule of Muslim leaders, did Byzantine law survive in the lands that were once central to the Empire; how did the church, in adapting itself to Islamic rule, modify its own law to meet the demands of being subject to Ottoman rule; was there a revival or reception of Byzantine legal ideas in Christian lands to the West and North of the Ottoman Empire, and would it be fair to say that in such lands, in terms of law, Byzantium lived on? By exploring these questions, it will be shown to what extent Byzantine law survived the fall of Byzantium, and where and in what form Byzantine law survived.

The post-Byzantine theory, imaginatively described as Byzantium after Byzantium, has helped historians to define a period of history spanning several centuries, for lands once influenced by Byzantine civilization. The theory itself grew out of nineteenth century southeastern European nationalist historiography, and was first articulated by the early twentieth century Romanian

historian Nicolae Iorga. The main idea of the post-Byzantine theory was that elements of Byzantine civilization, such as Byzantine religion, art, and law, survived the destruction of the Byzantine state. For many Romanian historians, the focal point of the remnants of Byzantine civilization could be found in the Romanian principalities that were tributary to the Ottoman Empire. For many other nationalist histories, however, the post-Byzantine period was not seen in a positive light. For example, many Greek, Albanian and Georgian historians have depicted Ottoman rule over their respective nations during this period as a disastrous dark age. What is more, one of the most important themes in Greek historiography of the *Τουρκοκρατια*, the term used to describe Ottoman rule, has been finding the origins of the Modern Greek state and identity.[49]

A significant problem in defining Byzantium after Byzantium is when did Byzantium cease to exist. The answer really depends on which region you are

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[49] Allen, W.E.D. *A History of the Georgian People.* (London, 1971) 347.
Alexiou, M. "Modern Greek Studies in the West: Between the Classics and the Orient." *Journal of Modern Greek Studies.* 4(1) (Salem, 1986) 4, 10-11.
Candea, V. "Introduction." In Iorga, N. *Byzantium after Byzantium.* (Iaşi, 2000) 7-8, 18.
Christopoulos, G. & Bastias, I. *Istoria tou ellenismos upo xeni kiriachia Tourkokratia-Latinokratia. The History of the Greek Nation – Hellenism under Foreign Rule Turkokratia-Latinokratia). (*Athens, 1980) 3.
Iorga, N. *Byzantium after Byzantium.* (Iaşi, 2000) 25.
Kozyris, P.J. "Reflections on the Impact of Membership in the European Communities on Greek Legal Culture." *Journal of Modern Greek Studies.* 11 (1), (Salem, 1993) 32.
Pantazopoulos, N.J. *Church and Law in the Balkan Peninsula During the Ottoman Rule.* (Amsterdam, 1984) 113.
Papadopoullos, T.H. *Studies and Documents Relating to the History of the Greek Church and People Under Turkish Domination.* (Aldershot, 1990) 122-123.
Poll, S. & Puto, A. *The History of Albania from its Origins to the Present Day.* (London, 1981) 88.
Treptow, K. (ed) *A History of Romania.* (Iaşi, 1996) 141.
Winnifrith, T. "Albania and the Ottoman Empire." In Winnifrith, T. *Perspectives on Albania.* (New York, 1992) 74, 76.

referring to and 1204 and 1453, the dates of the conquests of Constantinople, really do not suffice. The post-Byzantine theory effectively demonstrates that many aspects of Byzantine civilization survived the Ottoman conquest. This does not mean, however, that all lands that were once part of the Byzantine Empire should be included in the term "Byzantium after Byzantium." Nor necessarily should the history of lands never subject to Byzantine or Ottoman rule be excluded from Byzantium after Byzantium. The term post-Byzantine justifiably ought to include the historical developments in the many once Byzantine territories such as Southern Italy, the Crimea, and Northern Syria, as well as ex-Byzantine lands in the Balkans and Anatolia ruled by Latins and the Ottomans and even Russia and Romania, lands that were never part of the Byzantine Empire. The post-Byzantine theory really describes the survival of the Byzantine mindset, traditions and way of life, not merely a phase in several distinct national histories.

Administrators of the Orthodox millet within the Ottoman Empire used several of the main Byzantine legal compilations as the basis of their law. More than that though, the post-Byzantine legal tradition inherited what the legal historian Pan J. Zepos calls the Byzantine pandectistic mentality, a typically Byzantine tendency to compile complete systematized bodies of law. Like the Byzantines, the Orthodox administrators continued to hold to the idea that there was only a single true legal order. The fact that there was continuity in the understanding of what made up law does, neither mean that the law was, either static, nor that all aspects of the tradition lived on. The Byzantine legal tradition was most preserved in the realm of private law, as this was where the Orthodox

millet had its authority to legislate. As well, Orthodox law codes in use in the Ottoman Empire tended to simplify more extensive Byzantine law codes, preserving only those aspects that were relevant to the contemporary situation, while at the same time modifying the language so that it became closer to the contemporary vernacular Greek. Post-Byzantine law codes were influenced by patriarchal law, customary law and sultanic law, none of which necessarily fit within the Byzantine legal tradition. As well, like all aspects of continuity in post-Byzantine times, post-Byzantine law differed greatly from place to place.[50] As will also be seen, what can be described as post-Byzantine law was fluid, combining direct quotations from early church canons and Byzantine imperial laws as well as the addition of new laws not derived from a Byzantine precedent. There was certainly enough continuity within the law codes and legal institutions used by the Orthodox Church in the Ottoman Empire to justifiably call them post-Byzantine, based on a Byzantine understanding of law, however modified to meet contemporary needs.

Orthodox Christians in lands that were conquered by the Ottoman Empire were forced to adapt to new forms of administration, based on Islamic principles

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[50] Apostolopoulos. *To Mega Nomimon.* 10.
Gkines, D. *Perigramma tou metabyzantinou dikaiou.* (*A Historical Outline of post-Byzantine Law).* (Athens, 1966) 8, 12, ,13.
Kozyris. "Reflections." 32-33.
Krstic, D. "Customary and Written Laws in the Serbian and Greek Legal Systems." *Legal History.* 2(4),
(Calcutta, 1976) 89.
Pantazopoulos. *Church.* 107.
Pitsakis. "Les études."
Runciman, S. *The Great Church in Captivity.* (Cambridge, 1968) 172.
Zepos, P.J. "Twenty Years of the Greek Civil Code: Achievements and Objectives." *Balkan Studies.* 8,
(Thessalonica, 1967) 401.

of governance, though many other aspects of life like taxation were left undisturbed. The Orthodox communities, along with other non-Muslims, being collectively described by the Ottoman officials as *taife* and *cemaat*, were tolerated to some extent, as long as they accepted certain legal restrictions and burdens. In practice, they were allowed to have their own internal clerically run administrative system, under the authority of the ecumenical patriarch of Constantinople, the grand rabbi of Constantinople, and the Armenian patriarch of Constantinople. According to Stanford Shaw, as the Ottoman Empire grew, other Christian groups, including Jacobites, Copts, Assyrians, Ethiopian Christians, and Roman Catholics, lacking a recognized leader within the empire, were also placed at least theoretically under the control of the increasingly influential Armenian patriarch of Constantinople. The leaders of the minority religious communities only had authority to judge non-criminal legal matters.[51] Despite what has been said, the method of administering religious minorities, known as the millet system, was neither a consistent nor clearly defined policy during the fifteenth, sixteenth and seventeenth centuries. As well, the exact form of administration, and degree of discrimination against non-Muslims depended primarily on local religious factors. For example, in some localities,

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[51]Bardakijan, K.B. "The Rise of the Armenian Patriarchate of Constantinople." In Braude, B. & Lewis, B.
Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands. (Vol. 2) (New York, 1982) 93-95.
Braude, B. "Foundation Myths of the Millet System." In Braude, B. and Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2) (New York, 1982) 69-72, 83.
Ercan, Y. *Küdüs Ermeni Patrikhanesi*. (Ankara, 1988) 16, 25.
Shaw, S. *History of the Ottoman Empire and Modern Turkey Volume 1: Empire* of the Gazis: The Rise and Decline of the Ottoman Empire 1280-1808. (Cambridge, 1976) 152-153.

such as Albania and Bosnia, local divisions within the Christian church, emigration and the disruption of clerical activities facilitated de-Christianization and Islamization.[52] In addition, many parts of the empire, such as remote mountainous regions of Georgia, Albania and Greece were never fully integrated into the Ottoman administrative system during the Classical Period. The systemic changes forced non-Muslims whose lands were recently governed by Christian states to adapt their practices to meet the demands of their newfound situation. In many respects, there was continuity, with for example the Ottoman authorities tolerating the continuation of the non-Islamic practice of grape cultivation for wine production. It should be noted, though, that for the many Christians who had long been living under Islamic rule in northern Africa and the Levant, incorporation into the Ottoman Empire changed little.[53]

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[52] Ergo, D. *Islam in Albanian Lands during the first two Centuries of the Ottoman Rule.* (Ankara, 2003)
232, 251, 313.
Fine, J.V.A. *The Late Medieval Balkans.* (Ann Arbor, 1987) 602.
Malcolm, N. *Bosnia a Short History.* (London, 1994) 55-58.
Poll & Puto. *Albania.* 89.
Winnifrith. "Albania." 77, 79.

[53] Allen. *Georgian.* 275.
Bakhit, M.A. "The Christian Population of the Province of Damascus in the Sixteenth Century." In Braude,
B. & Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2) (New York, 1982) 50, 55.
Cohen, A. "On the Realities of the Millet System: Jerusalem in the Sixteenth Century." In Braude, B. &
Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2)
(New York, 1982) 8, ,10, 15.
Inalcik, H. The Ottoman Empire: The Classical Age 1300-1600. (London, 1973) 71, 107.
Jennings, R.C. "The Society and Economy of Maçuka in the Ottoman Judicial Registers of Trabzon 1560
1640." in Bryer, A. and Lowry, H. *Continuity and Change in Late Byzantine and Early Ottoman*
Society. (Washington, 1986), 152.
Jones, A.H.M. *A History of Ethiopia.* (Oxford, 1974) 70.

One of the most important effects of the Ottoman conquests for the Orthodox Christendom was that Orthodox populations that had been politically divided for centuries came under the rule of a single state, with the ecumenical patriarch of Constantinople as their head, or *millet-bashı*.[54] An important point is that according to Islamic legal principles, the maintenance of an organized Christian community in Constantinople should have been forbidden, since the city resisted Islamic conquest. This fact demonstrates how at least in the fifteenth century, Ottoman policy towards the Orthodox population was more pragmatic than strictly Islamic.[55] Orthodox Greeks, Albanians, Serbs, Bulgarians, Romanians, Bosnians, Arabs and Georgians were all united in a single millet. This was a substantial change in that the Bulgarian church, the Serbian church and the patriarchs of Alexandria, Antioch and Jerusalem all lost autonomy or to a degree, independence by the character of the new administrative system. The ecumenical patriarch was not just a religious leader but he was also the temporal leader of the empire's Orthodox population, being guaranteed his personal security and initially exempt from taxation, though gifts from the patriarch to the treasury in time developed into taxes. The other patriarchs, including the Serbian patriarch of Peć restored after 1557, were only the leaders within their own ecclesiastical provinces, though still subservient to

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Winnifrith. "Albania." 79.

[54]Inalcik, H. "The Status of the Greek Orthodox Patriarch Under the Ottomans." *Turcica Revue d'études turques.* 21-23 (1991) 420-421.
Papadopoullos. *Studies*. 8-9.
Ergo. *Islam.* 234.

[55] Inalcik. "Patriarch." 408-409, 416.

the ecumenical patriarch. The dominance of Constantinople had the effect of Hellenizing the empire's Orthodox ecclesiastical hierarchy in terms of culture and education, most notably in Bulgaria. In practice however, religious life for the various Orthodox populations continued with local variations, as for example the Slavonic liturgy remained the liturgy of Slavic speakers and non-Greek language Orthodox intellectual activity survived.[56] The practical implications of the millet system for the Orthodox Church was that Orthodox bishops became legally responsible for their flock, serving as judges for non-criminal matters, and for parts of the empire where there was no kadı, or Muslim judge, such as on the Aegean Island of Limnos during the early 16th century, the bishop assumed responsibility for judging all legal cases.[57] The Orthodox faithful though had a choice of whether to take a civil case to the ecclesiastical court or to the kadı court.

Since the bishops had the authority to excommunicate Christians, a severe form of punishment for the devout, and since the church courts were known to be less corrupt, Orthodox Christians infrequently brought their cases to the kadı court. The Orthodox Church was often, though, in a precarious position, powerless to stop very frequent seizure of Orthodox churches, and in some localities, such as Asia Minor, facing less sympathetic Ottoman

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[56] Hadrovics, L. *Le peuple serbe et son église sous la domination turque.* (Paris, 1947) 25, , 51, 66, ,83.
Hupchick D. *The Bulgarians in the Seventeenth Century.* (London, 1993) 51, 66-67, 77.
Inalcik. "Patriarch." 422-423.
Runciman. *Great Church.* 204.

[57] Lowry, H. *Fifteenth Century Ottoman Realities Christian Peasant Life on the Aegean Island of Limnos.* (Istanbul, 2002) 40.

authorities.[58] On the other hand, Ottoman power allowed many Greek Orthodox Christians to grow wealthy through lives in trade. In the seventeenth century, the ecumenical patriarchate fell under the influence of such wealthy Greek Phanariots from Constantinople, leading to occasional instances of bribery and corruption.[59] At the same time, the Catholic Church became active setting up missions in the Empire spreading pro-Catholic unionist ideas, while at the same time Protestant ideas began to influence the church.[60] Ottoman rule brought both unity and oppression to Orthodox Christians, both expanding the power of the church and subjecting it to occasionally hostile Muslim leadership. The church, having been granted much legal freedom within the Ottoman Empire, was the sole institution to endure the difficulties of the post-Byzantine world, and as a result it preserved something of Byzantium.

Of course, post-Byzantine history is not confined to Ottoman history, as first of all a great number of Greek speakers lived under what Greek historians call the *Λατινοκρατια*, the term used to describe the period of Latin rule. Indeed, in 1453, most Aegean Islands, Crete, Cyprus, the Ionian Islands and bits of mainland Greece were all ruled by Latins. The Greek diaspora in Latin Christendom grew substantially after 1453, with many of Byzantium's best minds

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[58] Runciman. *Great Church.* 188-191, 217.

[59] Kortepeter, C.M. *Ottoman Imperialism During the Age of the Reformation: Europe and the Caucasus.* (New York, 1972) 6.
Runciman. *Great Church.* 200-204.

[60] Cohen. "Jerusalem." 12.
Ercan. *Küdüs*. 25.
Pantazopoulos. *Church.* 28.
Papadopoullos. *Studies.* 8-11, 78-79, 86, 202-205, 217.
Runciman. *Great Church.* 171-172, 177-178, 189-190, 200-204, 231-234, ,276-277.

seeking refuge in the West, many Byzantines sought refuge in the mainly Greek inhabited Latin dominions. For their part, Latin rulers in mainly Greek lands were willing to receive the refugees and ruled these lands, even treating the Orthodox population in a restricted and precarious but still relatively tolerant manner, as there was for example widespread flight of Orthodox peasants from Byzantine Peloponnese to Latin territory in the fifteenth century. There was some intent on the part of Latin rulers to maintain peace and the loyalty of the Orthodox population, which inhabited these lands.[61] In fact, Venice itself had a thriving Greek community, as well as growing Armenian and Jewish communities. An Orthodox Church was built in Venice and in the late fifteenth century, the first Greek language printing press was set up by Cretans in the city in 1499-1500. Many of the Greek refugees who settled in Crete took up jobs as copyists and teachers. This helped to encourage a manuscript trade with Italy, leading to the introduction of many unknown classical and patristic Greek texts, and more reliable versions of known texts. In fact émigré scholars who settled in Italy did much to help to introduce unknown classical Greek ideas, knowledge of the Greek language in Western Universities during the fifteenth and sixteenth centuries, most notably the University of Padua. Such scholars also made a notable contribution in the establishment of the textual criticism for classical and patristic Greek texts. As time went on, many Greeks who lived in the Latin possessions in the Aegean or within the Ottoman Empire chose to send their

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[61] Balard, M. "The Genoese in the Aegean 1204-1566." *Latins and Greeks in the Eastern Mediterranean after 1204.* (Totowa, 1989) 171.
Fine. *Balkans.* 542.
Runciman. *Great Church.* 211-215, 219.

children to Italy to receive an education.[62] An irony of the decline and destruction of the Byzantine Empire was that these events forced many of the best minds of Byzantium to move to the West, where they helped preserve much of classical and patristic Greek heritage. It was also in the West where Greek books were being published and many prominent Greeks from the Ottoman Empire were being educated.

Western Europe during the Renaissance era was a time of deep interest in and attempted revivals of Roman-Byzantine law. It was an unprecedented era, with universities deciding to teach Roman law, humanist scholars compiling critical editions of Byzantine legal texts, and states all over Western Europe, from Germany and Holland to Scotland and Sweden, creating national law codifications heavily influenced by Roman, especially Justinianic, law. The interest though was not confined to Imperial Roman law. Motivated by the sixteenth century religious disputes, new canon law codifications were published. The compilations were often critical editions, trying to ascertain the original wording of the canons published in the early Church councils with precision. Such compilations were published in England, France, Belgium, Germany and Italy. For Byzantine law, the most important law codes published were Johannes Leunclavius's *Jus graecoromanorum* published in Frankfurt in 1596 and the *Ius orientale* published in 1573. These collections include all major compilations of Byzantine law. In fact, Leunclavius conceived the idea of

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[62] Christopoulos. & Bastias. *Ιστορια.* 364-365.
Geanakoplos, D. *Byzantium and the Renaissance.* (Hamden, 1973) 43, 48-50, 57, 60-61, 70.
Geanakoplos, D. *Constantinople and the West.* (Madison, 1989) 40-42, 59, 61.
Runciman. *Great Church.* 165-166, 261.

Greco-Roman law, a view that would be adopted by later generations of legal historians. An important note for the history of the development of post-Byzantine law is that since the Christians within the Ottoman Empire were in contact with western scholars, the flow of knowledge of Byzantine law was not one way. It is quite possible that Western critical editions of Byzantine imperial or canonical legal texts made their way into the Ottoman Empire.[63] The spread of Roman/Byzantine law throughout the land of Western Europe during the early modern period goes to show that post-Byzantine law was really not something confined to the Orthodox Christian world. In deed, the most important scholarly developments in the textual criticism of Byzantine legal texts during the fifteenth, sixteenth and seventeenth centuries took place in Western Europe.[64]

Orthodox Christians living within the Ottoman Empire like Latin Christians living in the West continued to revise, and recompile codifications of Byzantine law. Of the codifications written during Byzantine times, the ones most utilized

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[63] Bray, G. "The Strange Afterlife of the *Reformatio Legum Ecclesiasticarum*." In Doe, N., Hill, M. and Ombers R. eds. *English Canon Law.* (Cardiff, 1998) 37.
Cront, G. "Byzantine Juridical Influences in the Rumanian Feudal Society." *Revue des etudes sud-est europeenes.* 2 (3-4) (Bucharest, 1964) 375.
Ibbetson, D. & Lewis, A. "The Roman Law Tradition." In Lewis, A. and Ibbetson (eds.) *The Roman Law Tradition.* (Cambridge, 1994) 5-6, 8.
Papadopoullos. *Studies*. 102-103, 205.
Percival. *Seven Ecumenical Councils.* xvii-xix.
Pitsakis. "Les études."
Stein. *European.* 75-77, 87, 89-90, 97-99, 104-106.
Treptow. *Romania.* 135-136, 201.

[64] For example, Leunclavius' works brought together, in single printed editions, the major compilations of Byzantine canon law, in both Greek and Latin translation. Leunclavius, Johannes. *Iuris graeco romani tam canonici quam civilis tomi duo.* Frankfurt, 1596. Hussey, J.M. Farnborough : Gregg International, 1971.

by post-Byzantine Orthodox Christians were the fourteenth century *Hexabiblos*, and the *Syntagma*. The *Hexabiblos* was used as a legal textbook and many manuscripts of the text were copied during the 15th to 17th centuries. Both of these texts influenced post-Byzantine nomokanons. Since the language of the *Hexabiblos* and *Syntagma* were closer to classical Greek, paraphrases in the vernacular as well as many translations, into languages such as Bulgarian, Serbian, Romanian and Russian, were made. One such nomokanon was composed in 1498 by Kounales Kritopoules, drawing heavily from the *Syntagma*. Kritopoulos wrote what is in fact the oldest of all the post-Byzantine nomokanons since this law code is important for this thesis, it will be later described in detail. This paraphrase, however, is far from being unique other similar translations and paraphrases were made from the fourteenth all the way to the nineteenth century. Soon after, in the early 16th century, a nomokanon applying Byzantine canonical views of the emperor to the Ottoman Sultan was written in the vernacular Greek by a skilled rhetorician and educator name Theodosios Zygomalas.[65] The most influential and widely used nomokanon was written in 1562/1563 by a leading Constantinopolitan scholar and educator, Manouel Malaxos. This nomokanon was written in a mixture of Byzantine Greek and the vernacular, remaining the most influential law code until the eighteenth century, being also translated into Romanian. Several different versions of this

[65] Apostolopoulos. Το μεγα νομιμον. 13-14.
Freshfield. *Harmenopoulos. Vol. VI.* 2-3.
Iorga. *Byzantium.* 106-107, 196.
Pantazopoulos. *Church.* 45-46.
Pitsakis. "Les études."
Viscuso. "Theology." 204.

nomokanon exist.[66] Three noteworthy nomokanons were composed in the seventeenth century, the *Bakteria Archeireon*, written in 1645 by Iacovos of Ioannina at the request of the patriarch, the officially sanctioned *Mega Nomimon*, written in the 1660s, and the *Nomokritirion*. All three of these nomokanons were written in a literary form of the spoken Greek and each shows both a strong Byzantine influence and legislation that addressed post-Byzantine issues, such as changes in bishoprics, the rivalry between the patriarchs of Constantinople and Moscow, and the need to adapt law to life in the Ottoman Empire.[67] An important side note is that modern scholarship has tended to focus mainly on the *Nomokanon* of Malaxos and on the *Bakteria Archeireon*, leaving many questions about other post-Byzantine nomokanons unanswered.[68] Post-Byzantine nomokanons adapted Byzantine canon and imperial law to the

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[66] The Nomokanon of Manouel Malaxos has been published in Greek, see: Malaxos, Manouel. *Manouel Malaxou vomokanon. (Nomokanon of Maouel Malaxos).* Siphonios, A., Tourtoglos, M.A., & Troianos, S. p.1-39 in *Epetiris tou kentrou ereunis tis istorias tou Ellinikou dikaiou. (The Year-Book of the Historical Research Center of Greek Law).* 16-17. Athens: Akademia Athenon, 1969-1970.
Cront. "Byzantine." 366, 369-370.
Matses, N.P. *"Peri tin paraphrasin tou Syntagmatos tou Mathaoiou Blastari tou Kounali Kritopoulou."*
(On the Paraphrase of the Syntagma of Mathew Blastares by Kounale Kritopoulos)." *ΕΕΒΣ* 34. (1965) 176.
Pantazopoulos. *Church.* 45-46, 54.
Pitsakis. "Les études."
Runciman. *Great Church.* 210.
Vacalopoulos, A. *Istoria tou neou ellinismos tourkokratia 1453-1669. (The History of Modern Hellenism the Tourkokratia 1453-1669).* Vol.2 (Thessalonica, 1976) 355.

[67] Apostolopoulos. *To Mega Nomimon.* 18, 23-24.
Delaunay. "Syntagma."
Gkines. *Perigramma.* 10, 65.
Pantazopoulos. *Church.* 46.
Pitsakis. "Les études."
Vacalopoulos, A. Origins of the Greek Nation. (NJ, 1970) 53.

[68] Matses. "*Syntagmatos*." 175.

needs of a church that was subject to the rule of a Muslim sovereign. Comparison between post-Byzantine and earlier law codes shows that the post-Byzantine compilers were not for the most part very good in classical Greek or knowledgeable about Roman law.

How then were the laws contained within these codifications put into practice by the leaders of the Orthodox community? For legal matters related to ecclesiastical or family matters, the only areas that church courts had the authority to deal with, the church hierarchy would serve as judges. In Constantinople, there were two courts, a small patriarchal court and a larger court of the Great Synod, composed of metropolitans and presided over by the patriarch, which also served as a court of appeals. In other cities, there were provincial courts of the local metropolitans and their suffragans.[69] For rural areas, bishops would regularly judge legal matters on certain days of the week. Depending on the locality, the bishop either judged the case alone or with the assistance of clerics and/or laymen. The judges had the power to excommunicate, imprison or refuse burial to those found guilty of crimes.[70] The patriarchate preserved the church officials that had existed in Byzantine times, such as the Protecdikos, Chartophylax, and others who had judicial responsibilities. The Protecdikos was the office in charge of administering philanthropic services and looking into cases of lesser criminal law.[71] The

[69] Papadopoullos. *Studies.* 3.

[70] Pantazopoulos. *Church.* 53-55.
Papadopoullos. *Studies.* 34.
Vacalopoulos. *Istoria.* 186-187.

[71] Papadopoullos. *Studies.* 67-68.

Chartophylax was responsible for keeping registers of ecclesiastical and judicial matters and he would serve as a judge for legal cases either related to marriage or those involving the clergy.[72] He would also notify the relevant churchmen of verdicts for cases involving people associated with their parish. There were also lawyers, and other officials, such as those who register petitions and worked for the Great Church.[73]

A serious problem for the church in its administration of justice was that there was a shortage of schools within the empire. There were numerous Islamic primary schools (*mekteb*) and Islamic theology schools (*medresse*), where Muslim judges, teacher and preachers were taught. But for Orthodox Christians, the best school was the patriarchal academy but there were few other schools, especially in provincial cities and rural areas. For this reason, most Christian clerics received only a basic education for their liturgical duties from a monastic or parish school. The real Orthodox intelligentsia from the Ottoman period consisted of monks, who wrote and copied various types of books. The best educated churchmen were those who were taught in the West.[74] In terms of access to well staffed and run church courts, for much of the

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[72] Papadopoullos. *Studies.* 65.

[73]Papadopoullos. *Studies.* 73-76.

[74] Pitsakis. "Les études."
Papadopoullos. *Studies.* 29, 33.
Runciman. *Great Church.* 208-209, ,216-217, 219-220, 225.
Sabec, O. *Ottoman Schools in Bulgarian Lands 15th-18th Centuries.* (Sofia, 2001) 301-303.
Stefanov, S. "Everyday Life in the Balkan Provinces of the Ottoman Empire During the 17 and 18
Centuries." *Bulgarian Historical Review.* 30 (3-4), (2002) 63.
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Ottoman Empire, the situation was not markedly different than that of the late Byzantine period. Orthodox law suffered in similar ways as those of other intellectual pursuits. Still, in Constantinople or in a city with an Episcopal court, Orthodox Christians had the possibility of receiving a reasonable, effective and Christian form of justice.

Alongside Orthodox Christians in the Ottoman Empire were other Christian groups, most notably the Armenians, who had their own distinct and what can rightfully be called post-Byzantine legal traditions. Considering that the Orthodox millet and the Armenian millet were subject to similar legal positions, and both had sources for their law, did Armenian law differ greatly from Orthodox law? In practice, Armenian bishops had the same authority over non-criminal matters as those enjoyed by Orthodox bishops, judging cases related to marriage, inheritance and church matters. A notable difference, though, was that the Armenian legal tradition was far less well developed than that of the Orthodox Christians. For this reason, Armenian law lacked clarity and definition for many legal matters. Armenian canon law from the outset was based on the presupposition that the state was not led by Gregorian Christians, and the law was therefore intended for a minority community. Until the nineteenth century, Armenian law was based on the early codification of Mxit'ar Gosš, or law codes that were derived from his law code.[75] Like Orthodox

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[75] Khosdegian, H.M. "The Armenian Catholics." *Window Quarterly 2/3.* (1991). Kouymjian. "Revue." 1026-1027.

Christians, Christians in the Armenian millet were liable to Islamic law for many issues, for example, having to wear distinctive clothing, paying special taxes to the Ottoman authorities, having to pay special honor to Muslims, and having the testimony of an Armenian having less authority than that of a Muslim in the Kadı court. Just like the situation for members of other non-Muslim communities, there are records of Armenians being executed for doing things that were deemed criminal according to Islamic law but not according to Christian law, such as Armenian converts to Islam being executed for later returning to the Christian faith.[76] In the seventeenth century, Armenian and Assyrian Christians, like Orthodox Christians, had to cope with Catholic attempts to unite their churches with the Church of Rome. One affect of this was that many Armenians were educated in Catholic understanding of canon law. By the early eighteenth century, a large segment of the population of the Armenian millet accepted the Roman code of canon law, which was based on the legal developments in the Latin West. In addition, Armenian intellectual activity was centered in areas outside of the Ottoman Empire, with, for example, Armenian language printing presses being established in the sixteenth century in the Latin West; in Venice and Amsterdam and in Persia; in Echmiadzin, and Isphahan. Since Armenians had long been living under Islamic rule, the transition for them to life under Ottoman rule was less drastic than that endured by Orthodox Christians living in coastal Anatolia and the Balkans. Armenian law, based on the codification of

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[76] Ghazarian, V. (ed) Armenians in the Ottoman Empire: an Anthology of *Transformation 13th-19th Centuries.* (Waltham Mass, 1997) 47, 78, 79, 81, 89, 103.

Mxit'ar Gosš, unlike Byzantine law, was designed for a Christian population living in a state governed by non-Christians.[77] This in itself can explain why Armenian law was not radically altered after Armenian lands were conquered by the Ottomans.

For the same time period that Steven Runciman described as the Great Church's captivity, Orthodox Christian sovereigns in Russia and the Romanian principalities continued to govern their states according to law codes derived from Byzantine law. How did the evolution of the Byzantine legal tradition in post-Byzantine Muscovite Russia and the Romanian principalities, the places that could most justifiably be called Byzantium after Byzantium, compare with that in the Ottoman Empire? In Russia, the *Kormachaia Kniga*, based on Byzantine imperial and canon law, remained the primary source of law. In fact, a revised version of the *Kormachaia Kniga* was printed in Moscow in 1649-1650.[78] Byzantine influences were apparent through Slavonic translations of Byzantine law codes, the *Ecloga*, *Procheiros Nomos, Epanagoge,* the *Nomokanon* of Zonaras and the *Nomokanon* of Balsamon. Aside from these influences, the main sources of innovation in Russian law were either based on

[77] Bakhit. "Damascus." 27.
Ercan. *Küdüs.* 15-16, 26-27.
Khosdegian. "Armenian."
Le Coz. *Histoire.* 316-317. 328-329.
Papazian, D.R. "Armenia and the Armenians." (Dearborn, 1987).
Shaw. *Ottoman Empire 1280-1808.* 152-153.

[78] Butler, W.E. *Russian Law.* (Oxford, 1999) 18.
Percival. *Seven Ecumenical Councils.* xxv.

local developments or were the product of influence from Polish-Lithuanian law.[79]

Unlike the Russian lands, law in the Romanian principalities was closely linked to the post-Byzantine legal developments of the Greek-speaking world. In both Wallachia and Moldavia, a large and noteworthy Greek speaking community grew up in Ottoman times. Many of the Greeks who chose to move to Romanian lands were learned and helped to transmit Byzantine culture. There was what has and can be described as a "national" cultural revival developed in the Romanian lands in the post-Byzantine period as a result of the influence of the Greek diaspora.[80] Greek residents in these lands built many notable libraries and schools and brought with them much of the learning of the Greek-speaking world. For this reason, influential post-Byzantine nomokanons, such as the *Nomokanon* of Manouel Malaxos and the *Bakteria Archieron* were in force in Moldavia during the 17th century.[81] Local legal compilations, such as the 17th century *Intreptarea Legei* was influenced by the *Ecloga,* as well as the nomokanons of Malaxos and Alexios Aristinos.[82] By the early 16th century, printing presses were set up in Romanian lands, serving as an important source for legal publications in Slavonic and Romanian. The fact that Romanian

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[79]Butler. *Russian.* 21.
Kaiser, D.H. *The Growth of the Law in Medieval Russia.* (Princeton, 1980) 173-174.
Pantazopoulos. *Church.* 9.
Percival. *Seven Ecumenical Councils.* xxvi.

[80] Cront. "Byzantine." 360, 362-365.
Iorga. *Byzantium.* 133.

[81] Cront. "Byzantine." 366, 368-370, 374.

[82] Pantazopoulos. *Church.* 51.

principalities, which were legally autonomous Orthodox vassal states of the Ottoman Empire, and that Czarist Russia was a politically and legally sovereign Orthodox state, meant in practice that in both places Byzantine law continued to influence all aspects of law, not just non-criminal law as was the case for the Ottoman Orthodox millet.[83] But, legal developments in Romanian lands continued to follow developments in the post-Byzantine law in Greek, whilst this was not the case for Russian law. In a sense, the influx of Greeks, who introduced Byzantine legal texts and who used Byzantine law in practice, a consequence of the end of the Byzantine state, was crucial in helping to make Romanian lands into a center for developments of the Byzantine legal tradition.

In conclusion, there was considerable continuity of the Byzantine legal tradition during the first two and a half centuries after the fall of Constantinople. As will be examined later on in the case study, within the Ottoman Empire, the Orthodox millet, headed by the ecumenical patriarch, not only preserved but in some ways expanded Byzantine law, within the fields of ecclesiastical and family law. Although, post-Byzantine Greek nomokanons were simplified forms of especially late-Byzantine law, they preserved the basic Byzantine understanding of what was law. Interestingly, Armenian law, which was already well suited to

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[83] Butler. *Russian.* 22-23.
Candea. "Introduction." 8.
Cront. "Byzantine." 360, 362-366, 368-370, 374.
Iorga. *Byzantium.* 128, 133-134.
Tambaki, T.M. "La diaspore greque en Roumanie. État actuel de la recherché et ses perspectives."
Revue Roumane d'histoire. 34 (1-2), (Bucharest, 1995) 3, 5.
Treptow. *Romania.* 127, 136, 138-139, 141, 167, 201.
Zepos. "Danubian." 344-346.

Islamic rule, changed little after the Ottoman conquest, as it did not need simplification. Ottoman rule also allowed the church to expand its influence in the field of law, while making the church the administrator of Orthodox populations that had not been under the control of Constantinople for ages. The large-scale migration of Greeks and Armenians helped to introduce and preserve Byzantine ideas in the Latin West. In many ways, the center for scholarship on Byzantine was found outside of the Ottoman Empire. There was considerable influence of Roman or Byzantine law in the Latin West in their newly written national legal codes. Latin scholars also did considerable work in establishing critical studies of the Byzantine legal tradition. In the Orthodox Romanian principalities and Czarist Russia, Byzantine law truly continued and developed in distinctive ways. Byzantine law survived the death of Byzantium, but the form and character of Byzantine law after Byzantium depended on the conditions of the locality where it was utilized, with states led by Orthodox leaders most closely following their Byzantine legal heritage.

CHAPTER 3

A POST BYZANTINE LAW CODE – *THE NOMOKRITIRION*

In order to understand the already mentioned general trends in post-Byzantine law, a more detailed analysis of the *Nomokritirion* will now be made. Knowing that the N*omokritirion* is a seventeenth century legal codification, whose text that now survives was last modified in the early 19th century, this study will attempt to determine the elements added to the code in the course of time and analyze its sources. Thus, attempts will be made to follow changes in terms of style, content, and language. In particular, we will analyze the *Nomokritirion*'s approach in dealing with family law, paying close attention to the topics that the law codes addresses, how they are addressed and whether or not there is noteworthy change from the way the Byzantine law codes addressed the same topics. It is hoped that this analysis will both help to demonstrate how this law code fits into the already mentioned themes for the history of post-Byzantine law.

The *Nomokritirion* is an example of a truly post-Byzantine law code, as it was a modified legal compilation based on an earlier Byzantine law code. The text that has been used in this thesis is taken from Demetrios Gkines' 1966 publication of a manuscript of the *Nomokritirion* that is found in the Greek National Library. This particular manuscript is known to have been redacted in 1801 by a Synkellos or church administrator named Parthenios who added a

total of 60 folios into the manuscript, which had been incomplete in his time. In his analyses of the text, the legal historian Nikolaos Matses has argued that Parthenios composed the last section of the Nomokritirion, addressing issues related to the clergy, himself at that time. The original text of the *Nomokritirion* itself has been dated by both Gkines and Matses to sometime in the 17th century, though according to Matses, the language seems to be earlier than 17th century Greek. The language can be described as simple, early modern vernacular Greek, quite distinct from the language of the original Byzantine Greek of the canons. The extent of the circulation of the Nomokritirion must have been restricted, as at present there are four manuscripts in existence that appear to be versions of the *Nomokritirion*, the already mentioned version in the Greek National Library, one manuscript in the private Dionisiou Loverdos collection, one manuscript in a monastery on Andros Island and another manuscript in a monastery on Mount Athos.[84]

In essence, the *Nomokritirion* is the recodification of a paraphrase of a late Byzantine legal codification. As Matses has argued in his analysis of the nomokanon, the *Nomokritirion* is entirely dependant on the late 15th or early 16th century *Nomokanon* of Kounale Kritopoulos. That is not to say that the *Nomokritirion* is merely a copy of Kritopoulos' work. There are differences in language and there are occasional omissions and additions in the *Nomokritirion*

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[84] Gkines. *Perigramma.* 65.
Matses, Nikolaos P., "To "Nomokritirion" epi tou up'arith. 2764 kodikos tis ethnikis bibliothikis ellados." (The "Nomokritirion" on Number 2764 of the code in the Greek National Library."
ΕΕΒΣ 35. (1966) 202-203, 206-207.

that are not consistent with later versions of Kritopoulos' nomokanon. It would be more accurate to say that Kritopoulos wrote a paraphrase of the *Syntagma* of Matthew Blastares rather than an original nomokanon. His paraphrase, however, was highly selective, omitting many sections of the *Syntagma*, which did not fit his purpose. For this reason, the *Nomokritirion* has essentially adopted the style, and scope of analysis that had been determined by Kritopoulos. The three main sections that are addressed by the Nomokritirion then are laws on marriage, buying and selling and ecclesiastical matters.[85] The choice of which canons were added or removed from earlier canons and how the canons were reworded helps to give historians valuable insight into the changing mindset and legal necessities from the time periods in question.

A basic understanding of the *Nomokanon* of Kounale Kritopoulos is essential for any study of the *Nomokritirion.* There are several versions of Kritopoulos' *Nomokanon*, the earliest of which dates to 1495, while other versions date to different times in the sixteenth century. The paraphrase itself, as has already been mentioned, follows the *Syntagma*, in terms of content and style, though there are occasional borrowings made from the *Hexabiblos*.[86] It seems that when Blastares gave a reference in the *Syntagma*, Kritopoulos, when possible, went to the original text and used the original as the basis for his paraphrase.[87] As well, as argued by Matses, it seems likely that Kritopoulos

[85] Matses. "To "Nomokritirion"." 205-208.

[86] Matses. "Syntagmatos." 176-177, 184.

[87] Matses. "Syntagmatos." 187.

occasionally used the commentaries of Zonaras and Balsamon as the basis for his own commentary. Matses also argues that Kritopoulos used the *Bakteria ton Archieon* as a source. However, with all things considered, since there are some confusion and misunderstanding about the legal content of the *Nomokanon* of Kritopoulos, Kritopoulos was not very knowledgeable about Roman law and his *Nomokanon* is not a very profound work. In spite of this, this law code was widely disseminated and in use in the Ottoman Empire throughout the sixteenth and seventeenth centuries.[88]

As has already been mentioned, the *Nomokritirion* is divided into three main sections: family law, property law and ecclesiastical law. Some of the main issues that are addressed in family law are marriage, guardianship, adultery, family relations and widows. Property law addresses matters such as loans, buying and selling, dowries, inheritance, and property borders. Ecclesiastical law addresses matters such as the property of clerics, church officials, church administration, and ecclesiastical court procedure. The *Nomokritirion* is not divided by section heading, and is not in alphabetical order nor does it contain an index. There are 121 canon headings that give a general idea of the information contained under each canon heading. Each canon heading contains somewhere between one and ten individual laws or canons. The canon headings are in fact not very helpful for determining the content of all of the canons contained under it, as for example the tenth canon heading, discussing widows' mourning their deceased husbands, covers three distinct canons. The

[88] Matses. "Syntagmatos." 178-180, 189, 190, 198.

first canon talks at length about mourning, while the second addresses cases when the widow gives birth after her husband's death and the third talks about cases when the man had two wives.[89] Scholars must then take care when working with this legal code, as the canon headings are not accurate representations of the canons that are contained within the law code.

For this study, I have chosen to work on 21 different headings that address family law issues. Under these headings, there are 51 individual canons. The main themes covered by the canon headings are guardianship, engagement, fornication, marriage, digamy, selling one's children, mourning, deposits, alimony and caring for one's parents. It is hoped that these 21 different canon headings and 51 different canons will provide a nice cross section of the canons that address issues of family law. By having such a variety of topics, it will help to understand the methodology employed by the author of the *Nomokritirion* and by addressing such different issues, it is hoped that we will gain some insight into how law affected people at different stages in their lives. The above canons address laws for children when they live under guardians, when their parents remarry, when their parents die, when their parents are forced to sell them, how parents contracted betrothals for their children and children's responsibilities to care for their elderly parents. Several canons address issues on betrothal, arranged marriages, adultery, and forced marriage. As can be seen above, the issue of digamy was central to family law and polygamy and alimony are also addressed. Finally, there are also canons

[89]Gkines. *Perigramma.* 68-69, 10.1-2.

that address laws regarding mourning for a deceased spouse and to a limited extent we will also look at issues of inheritance, something which also may well fall under property law.

Of the 51 canons on which this study will focus, a sizable number explicitly state their original source of origin. Of such canons, three are based on canons from the early church synods and councils, two are derived from the Apostolic canons, four come from the canons of St. Basil the Great, and one is based on a *Novella* of Emperor Leo the Wise.[90] Three other canons mention that they are based on legal sources but they do not name the source.[91] One of these is taken from the *Ecloga Privata Aucta*.[92] This aspect of the *Nomokritirion* is actually simply a continuation of the source identification employed by Blastares in his composition of the *Syntagma* and was transmitted to the author of the *Nomokritirion* by the paraphrase of Kritopoulos. Still, as will be seen later, textual changes constitute one of the most distinctive features of the *Nomokritirion*. Some of the most noteworthy changes are the author's occasional usage of Turkish terms, such as *lala* and *emanet*.[93] The addition of Turkish terms gives rise to the pressing question of to what extent were post-Byzantine law codes Turkified linguistically. This question must by analyzed along side with questions related to changes in the Greek language spoken within the Ottoman Empire and the ability or inability of Greek speakers living

[90] Gkines. *Perigramma.* 67, 5.1, 5.2; 68, 9.1, 9.2 ; 69, 11.1, 11.2, 12.1; 71, 18.1 ; 73, 26.1.

[91] Gkines. *Perigramma.* 68, 9.3; 73, 26.2; 75, 29.2.

[92] Gkines. *Perigramma.* 73, 26.2.

[93] Gkines. *Perigramma.* 72, 23.3 ; 77, 35.1 ; 87, 63.1-2.

then to understand the more classical language of Byzantine legal texts, a phenomenon that is also apparent in other Greek language writings from the period. Certainly, though, paraphrases of the *Syntagma* were made at the time illustrates a desire on the part of Kritopoulos and the author of the *Nomokritirion* to create a law code that people living at the time could easily understand.

On numerous occasions, the *Nomokritirion* contains laws and canons that outline the legal rights and privileges of children. Of all issues, the most contentious appears to have been how children should inherit in the event that one or both of their parents had died while they were still children.[94] In the case that only one parent died, the law simply states that the other parent is responsible for holding the inheritance for the children, while they remain under his or her authority.[95] In the case that such a child would die before reaching maturity, the child's portion would be inherited by his brothers.[96] It should be noted that widows, in general, were responsible for guaranteeing that prospective second husbands would be willing to become the guardian for her children before entering into a second marriage.[97] Guardians were supposed to keep the inheritance for the children, and in cases where the guardian spent part of the inheritance, the guardian would be responsible to compensate the child for the loss once the child reached the age of maturity.[98] It is also evident that

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[94] Gkines. *Perigramma.* 75, 29.2, 30.1, 30.2.

[95] Gkines. *Perigramma.* 75, 29.2, 30.1, 30.2.

[96] Gkines. *Perigramma.* 75, 30.1.

[97] Gkines. *Perigramma.* 75, 30.2.

[98] Gkines. *Perigramma.* 77, 35.1, 35.2.

for children, the ultimate authority in the household was that father, as it was not possible for underage girls to be betrothed without the father's consent. Interestingly, the *Nomokritirion* also at one point states that a man in financial difficulty could sell his children in order to pay his debts.[99] Other laws related to children focus on when one is responsible to feed children. One canon explicitly states that it is commendable for one to feed one's nephew for the love of God, so that he does not have to beg for food.[100] Likewise, another canon describes in which cases a man is liable to feed the children of the slaves in his household.[101] The above passages in general can be considered to be modifications of the paraphrase of the *Syntagma*. Some interesting points in the modifications are in the first canon of chapter 35, the author makes reference to the Turkish word *lala*, which he describes as used by the Turks for a pedagogue: "The Procurator is said to be the man who teaches and the Turks call this position *lala*."[102] In fact the term *lala* entered the Greek language in the post-Byzantine period and there are other post-Byzantine references to this word.[103] In terms of legal codes relating to children, the *Nomokritirion* does a good job at demonstrating that issues of inheritance, guardianship, and charity

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[99] Gkines. *Perigramma.* 72, 22.1 ; 81, 50.1.
Tukiko Archeio Irakleio:: VIII, 15, 23, 151. (Abbreviated hereafter T.A.H.)

[100] Gkines. *Perigramma.* 87, 64.2.

[101] Gkines. *Perigramma.* 87, 64.6.
Imber, C. *Ebu's-su'ud. The Islamic legal tradition.* (Edinburgh, 1997) 87.

[102] Gkines. *Perigramma.* 77, 35.1.

[103] Kriaras, E. *Lexikotis mesaionikis ellinis dimodous gramateios 1100-1669. (The Lexicon of the Common Writing of Medieval Greek: 1100-1669.)* (Thessalonica, 1969) 83.

for children were the main legal issues of the day. Implicit within these legal codes is a rather patriarchal understanding of the family and sign of some Turkification of the Greek spoken at the time.

One striking apparent addition to the *Nomokritirion* is the above-mentioned canon that allows for a father in financial trouble to sell his own children to pay off his debts. This canon, the first canon of chapter 50, explains in detail the conditions by which such a transaction could take place, noting that only the amount of money needed to pay off the debt can be given in exchange for the children, no more.[104] This law appears to be in opposition to the Byzantine canonical tradition, which has definite pronouncements on the matter. For example, the *Hexabiblos* says that it is a punishable offence to sell a free man into slavery.[105] It likewise, states that parents who abandon their children commit murder.[106] However, adoption was also a relatively common practice in Byzantium, with two different types of adoption. A wealthy Byzantine may adopt an heir or Byzantines could genuinely adopt children and raise them in the same manner that they would raise their own children. The difference between the Byzantine tradition of adoption and the canon mentioned by the *Nomokritirion* is that substitute parents did not buy children from indebted families. [107]

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[104]Gkines. *Perigramma.* 81, 50.1.

[105]Freshfield. *Harmenopoulos. Vol. VI.* 38, 6.8.7.

[106] Freshfield. *Harmenopoulos. Vol. VI.* 33, 6.615-15a.

[107] Macrides, R.J. "Substitute Parents and their Children in Byzantium." In R. Macrides, *Kinship and Justice in Byzantium, 11th-15th Centuries.* (Aldershot, 1999) 3, 8.

In the *Nomokritirion* laws related to the youth exclusively address issues related to engagement or other sexual matters. The *Nomokritirion*, following the *Syntagma*, clearly outlines how and when betrothals can take place. Until the age of twenty-five, the children need consent from their fathers or guardians for the engagement.[108] It is stated that consenting to an engagement is the same as consenting to the marriage itself.[109] Interestingly, one canon explicitly states that the local lord did not have the actual authority to engage women in his lands: "It is not just for archons (lords) from the land where they rule to engage and accept women. If this is done, she is in the hands of her family but also his (the fiancé's) guardian, his *koratoros* (female servant) or his *lala* (pedagogue). If the girl wants, she can take him."[110]

The importance of the family in this legal tradition is further emphasized by the fact that in a case of pre-marital sex, the girl's parents were responsible for determining the fate of the youngsters. They could allow the boy to marry their daughter, or otherwise demand financial compensation from the boy. The patriarchal character of this law code is also further expressed by the fact that in the case when the father and mother disagree about whom they want their child to marry, the father's will would take precedence.[111] The law also outlines what to do in a case where the engagement itself is not pleasing to the children. The

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[108] Gkines. *Perigramma.* 71, 20.1.
Syntagma. PG 144.G.7, p.1163-1164.

[109] Gkines. *Perigramma.* 72, 20.2.

[110] Gkines. *Perigramma.* 72, 23.3.

[111] Gkines. *Perigramma.* 71, 72, 73, 20.1, 20.2, 21.1, 23.3, 26.3.

engagement could be dissolved, after a specified period of time without a marriage.

Another notable point is that the law makes a clear distinction between premarital sex and rape, with much heftier punishments and possibilities of bringing a case of rape to court.[112] This portion of the law code, like the other portions, is ultimately drawn from the *Syntagma* and for most canons represents little more than a modified paraphrase.[113] Though, the term *lala* is again used in another canon, the third canon of chapter 23, this time replacing another Byzantine Greek word used by Blastares. The use of a Turkish word in place of a Byzantine Greek word shows the practical need for the compiler to update the language of the law code. Other canons occasionally provide details demonstrating an occasional interpretive character of this law code, such as the

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[112] Gkines. *Perigramma.* 72, 73, 74, 21.2, 23.2, 26.1, 26.2, 26.3, 26.4.

[113]As can be seen from the first canon of chapter 26, the two texts say the same basic points in very distinctive language.

The Nomokritirion on fornication and rape:

Ο εξηκοστος εβδομος των αγιων Αποστολων κανων λεγει, οτι αποις δυναστευση κοριτζι και πορ νευση το, αν δεν ειναι αρραβωνιασμενη με αλλον, αφοιρσε τον, προς καιρου και ορισε τον να τ ο ευλογηθη, αν
ειναι και χωπις ποκαμισον ατο την πτωχειαν της. Ει δε ειναι αρραβωνιασμενη με αλλον ανδρα , ως
μοιχον τον τιμωρησε.
Gkines. *Περιγραμμα.* 73, 26.1.

The Syntagma on fornication and rape:

Ο των αγιων αποστολων εζ' κανων τον βιασαμενον παρθενον αμνηστευτον αφοριζεσθαι αξιοι (τον γαρ τοι μεμνηστευμενην τις αντερει μη ουξι και ως μοιχον τιμωρεισθαι δειν;) εχειν δε ταυτ ην και
μη εξβαλλειν, ει και των πενεστατων ουσα τυγχανει, και τω εκεινου μη προσηκουσα γενει.
Syntagma. PG 144, G.30, p. 1211-1212.

addition of post-Byzantine monetary and technical terms[114] and on one occasion the creation of an interpretive canon, fusing elements taken from different references in the *Syntagma.*[115] Like with laws addressing children, the canons addressing youth demonstrate the centrality of the family led by the father to this post-Byzantine understanding law. The lack of very distinctive change from late Byzantine law reinforces to what extent post-Byzantine law in the Ottoman Empire remained firmly within this tradition.

The issue of betrothal, like guardianship, was a central issue in post-Byzantine law, with its own unique post-Byzantine innovations. The third canon of chapter 26, itself based on a canon from the *Syntagma*, contains some interesting interpretive detail. For example, in the case of premarital sex, if the girl's parents wanted compensation from the boy, the value of compensation given was set a either 150 or 500 flouri: "If the parents do not wish to bless their child with the man who spoiled her, if he has a living and savings he should give the spoiled girl's parents 150 or 500 flouri."[116] If the boy were too poor to pay, he would be humiliated and exiled from his homeland: "But if he is poor and does not have (the money) put him on a donkey, (humiliate him) and send him through the whole land, then exile him."[117] Both of the above points contain post-Byzantine innovations. On the other hand, canon two of chapter 26, based

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[114] Gkines. *Perigramma.* 72, 23.3 ; 73, 26.3.

[115] Gkines. *Perigramma.* 72, 21.2.

Syntagma PG G.15, 30

[116] Gkines. *Perigramma.* 73, 26.3.

[117] Gkines. *Perigramma.* 73, 26.3.

on the *Syntagma* states that a man who rapes a virgin should be excommunicated for some time and have his nose cut off, and he should give one third of his possessions to the girl that he raped.[118] The practice of cutting off noses of criminals was a fairly old Byzantine custom dating back to the *Ecloga* and the presence of this canon in post-Byzantine times demonstrated how little the legal tradition changed on many issues. The following quotes are from the *Ecloga Privata Aucta*, then from the *Nomokritirion*, based on the *Syntagma*: "Anyone who forcibly seizes a girl and corrupts her shall have his nose slit."[119] "Anyone who corrupts a girl who is betrothed to someone else, even though it be with her consent, shall have his nose slit."[120] "If a man rapes a virgin, excommunicate him for a time, cut off his nose and give a third of his wealth to the girl that he raped."[121] Considering what has just been said, in terms of content, there is very little in the section of law related to youth that is distinctively post-Byzantine in inspiration. This fact should be taken into consideration when attempting to use this or other similar sources as evidence for the social history of the period in question.

The *Nomokritirion*'s canons on family law of mature adults address the topics of marriage, charity and debts. Interestingly, the section on marriage is

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[118]Heyd, C. *Studies in Old Ottoman Criminal Law.* (Oxford, 1973) 98.
Kermeli, E. 2002. "Sin and the sinner: *folles femmes* in Ottoman Crete." *Eurasian Studies.* (Vol. 1),
Eurasian Studies, 33.

[119]Freshfield. *Ecloga Privata Aucta.* 84, 17.57.

[120]Freshfield. *Ecloga Privata Aucta.* 84, 17.58.

[121] Gkines. *Perigramma.* 73, 26.2.
Syntagma PG G.30.

quite dissimilar in style from the sections that address the other matters, as the section on marriage more closely follows the *Syntagma*.[122] A topic that is examined in detail is what exactly a woman should do in the case that her husband is absent for an extended period of time. Naturally, the canons differ in answering the question depending on the cause for the husband's absence. For example, the law is more lenient with wives of soldiers who do not return, but otherwise frown on the woman remarrying without reliable evidence that her husband is dead.[123] Other topics addressed include how Christians should behave at weddings, and how a man living with two wives should be punished.[124] This section is all more or less a fairly close paraphrase of the *Syntagma*: The *Nomokritirion* says the following: "He having two wives together, the (second) women is beaten and dismissed both the woman that he took later and her children, as long as they are from her." The *Syntagma* says the following: "He having two wives at the same time, the (second) woman is beaten and is sent away with her own children." In several cases in this section, the sources of the canons, taken from St. Basil the Great and Leo the Wise, are explicitly mentioned. These trends demonstrate that there is very little post-Byzantine material contained within these canons.[125]

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[122] Gkines. *Perigramma.* 69, 71, 10.3, 11.1, 11.2, 11.3, 11.4, 12.1, 18.2.
Syntagma. PG G.4, p.1155-1156, G.5 p.1161-1164

[123] Gkines. *Perigramma.* 69, 11.1-4, 12-1.

[124] Gkines. *Perigramma.* 69, 10.3 ; 71, 18.1.

[125] Gkines. *Perigramma.* 69, 71, 10.3, 11.1, 11.2, 11.3, 11.4, 12.1, 18.2.
Syntagma PG G.4,5,7

The canons addressing issues of charity and debt related to family law are generally less detailed, and shorter in style. At one point, Gkines points out that in the manuscript some canon headings is written by another hand. Interestingly, these canons are among those that contain some peculiar features, including reference to the word αμανετι and the passages about helping and feeding family members in need.[126] As will be seen, some of these canons are more akin to moral instruction rather than prescriptive law. Matters that appear to be more specific include questions like, when people are liable to pay the debts of their deceased parents, what ought to happen if a wife pays off her husband's debt and what a woman should do, if her slave is taken hostage.[127] This portion of the Nomokanon helps to show to what extend it merely followed the *Syntagma* in terms of content and how the Orthodox principle of *oikonomia* was present in post-Byzantine thought.

Chapter 64 of the *Nomokritirion* is quite distinctive in terms of style and two of the canons within this chapter address matters of family law in a rather vague moralizing way. The first canon in this chapter states that as long as Christians give charity for the love of God, there should be no compensation. The brief, very religious and not very specific manner in which this canon was written suggests that these canons were written in a different manner with a different intent than the other portions addressing family law. The eighth canon in this section, likewise, briefly explains that illegal arranged marriages and

[126] Gkines. *Perigramma.* 87, 63, 1-2, 64, 1-8.

[127] Gkines. *Perigramma.* 99, 64.1, 64.7, 64.8, 97.2, 97.3, 97.4.

indecent deeds should be avoided.[128] This canon seems out of place, as it does little to add to the loose theme of this section and offers no explanation for what is meant by either the illegality in the arranging of the marriage or which sort of indecent deeds.[129]

These canons demonstrate clearly that the *Nomokritirion* is a composite work, with some portions written in a very different style, and with a slightly different purpose than the bulk of the canons contained within the law code. The character of the law code, with its methodical preservation of classical Byzantine laws, including some laws that seem to be out of place or no longer of use, shows that the compiler of this law code had a poor knowledge of both law and this legal tradition. Unlike the late Byzantine law codes, which included arguments, this example of post-Byzantine law demonstrates quite well the post-Byzantine trend of paraphrasing and copying rather than re-codifying the law

One topic that the *Nomokritirion*, following the *Syntagma*, addresses in detail are issues related to remarriage and digamy. The law is clearly stated, outlining when, to whom a woman or man could remarry and what sort of penance will be incurred for remarrying. It would seem that widows who were under the age of 25 could not remarry without parental consent, similar to the already mentioned laws saying that children could not marry without parental consent until they reached the age of twenty-five.[130] Widows, unlike widowers,

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[128] Gkines. *Perigramma.* 87, 64.8.

[129] Gkines. *Perigramma.* 87, 64.1.

[130] Gkines. *Perigramma.* 67, 9.1; 68, 9.3.

were bound to mourn their husbands for one year, before being able to remarry: "A man does not mourn his wife nor does the betrothed mourn his fiancée. But a woman mourns her husband for one year, unless he should be found being held captive."[131] It would seem then, that the *Nomokritirion* would allow men and women over the age of twenty-five and women who had finished the one year of mourning to remarry.[132] Still, remarriage was regarded as something not so dignified, as digamists, those having entered into a second marriage, would be liable to penance and at the wedding, priests were not supposed to participate in the feast celebrating the marriage.[133] In terms of content, the sections of the *Nomokritirion* that address digamy are all paraphrases taken from the Syntagma, following even the occasional citations that Blastares made when he named his source, but there are some noteworthy alterations that will be discussed later.[134] The choice to include this section of the *Syntagma* into the *Nomokritirion* does demonstrate that in Ottoman times, as during Byzantine times, remarriage was an important legal issue. This trend is further emphasized, if one recalls that another significant issue addressed in this law code is what women should do when their husbands go missing.

Several canons from the portions of the *Nomokritirion* that address digamy are good examples of the methodology employed by the composer of this particular law code. For example, chapter nine states: "Basil the Great says

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[131]Gkines. *Perigramma.* 75, 29.1.

[132] Gkines. *Perigramma.* 68, 9.3; 72, 23.1; 75, 29.1.

[133] Gkines. *Perigramma.* 67, 68, 69, 71, 76 5.1, 5.2, 9.2, 10.1, 10.2, 18.1, 31.1.

[134] Gkines. *Perigramma.* 76, 31.1.

in his 41st canon that…" and then going on summarizes what St. Basil said on that matter.[135] The author fuses this canon with another canon but does not explain that the source is different. In between, the canonist then adds one sentence not found in the *Syntagma*, saying that the widow should only marry a Christian of her own honour: "If her father and mother should die, she has the power to marry the man she wants. Only a Christian man of her honour, not an upstart or a young man."[136] This is a post-Byzantine addition; it bears resemblance to a reference in canon one of chapter 31, which also argues that widows should only marry men of the same ethnicity and manners.[137] This is perhaps an indirect reference to the many cases of Christian women marrying Muslims, as can be seen in almost all judicial court records of the Ottoman Empire. Against this practice, Church leaders consistently stressed the uncanonical character of such marriages.[138] The idea that people ought to marry others from the same social background is hardly a post-Byzantine innovation, as this notion was always part of the Byzantine legal tradition. This same canon also has an interesting reference to archons as the supreme judges in cases where the validity of a marriage is uncertain.[139] Canon one of chapter

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[135] Gkines. *Perigramma.* 68, 9.2.

[136] Gkines. *Perigramma.* 68, 9.2.

[137] Gkines. *Perigramma.* 68, 9.2 ; 76, 31.1.

[138] Vryonis, S. 1971. *The Decline of Medieval Hellenism in Asia Minor and the Process of Islamization from the Eleventh through the Fifteenth Century.* (Berkeley, 1971) 378.

[139] Buckler. "Women." 399.
Gkines. *Perigramma.* 68, 71, 76, 9.2, 18.1, 31.1.

18 follows the original source, in this case a canon from the 4th century Synod of Neocaesarea. There are slight changes in wording but in practice the text follows the *Syntagma*, as does most of the Nomokanon.[140] The above analyses demonstrate that there are occasional subtle changes, additions, and omissions, made from the *Syntagma* present in the *Nomokritirion*. In the case of emphasizing remarriage only to Christians of the same background, it is an important insight into both the social pressures and mindset from the period.

There are several canons in the *Nomokritirion* that address issues related to how elderly parents should deal with their children. Chapter 64 has three such canons, all written in a brief and direct style that is uncharacteristic of the *Nomokritirion*. As has already been mentioned, Gkines notes that in the manuscript, the heading of this chapter is written in a different hand. These canons say that a mother can go to her children and ask for help and receive help.[141] One canon further specifies that a mother need not beg her children for food.[142] The first canon of chapter 97 likewise says that children are obliged to feed their parents, if they go bankrupt.[143] All of these canons contain the same basic concept that adult children are obliged to help their parents in material terms, when they are in need. This is regarded as the duty of children, who themselves were cared for by their parents, when they were young. The fifth

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[140] Gkines. *Perigramma.* 68, 71, 76, 9.2, 18.1, 31.1.
Syntagma PG G.4, 6.

[141] Gkines. *Perigramma.* 87, 64.3, 64.4.

[142] Gkines. *Perigramma.* 87, 64.4.

[143] Gkines. *Perigramma.* 87, 99, 64.3, 64.4, 97.1.

canon of chapter 64 says that a son-in-law can ask his own in laws for help, without needing to beg. However, unlike in the parent child relationship, the boy is liable to compensate his father-in-law by returning the dowry: "And a man who is going out to his wife when he becomes ill, he does not have to beg from his father-in-law because he will return the dowry to his father-in-law."[144] This canon shows that marriage was both an extension of the family but still restricted by the contractual character of Orthodox marriage practice.

One more noteworthy feature of the *Nomokritirion* can be found in the title heading of chapter 63. This canon, found in the section on buying and selling, is entitled αμανετι, which translates into English as deposits. What is interesting is the word αμανετι is borrowed from the Turkish word emanet, and is the equivalent of the Modern Greek αμανατι. In the *Syntagma*, Blastares used the word παρακαταθηκης to mean deposit. The occasional adoption of Turkish words by the *Nomokritirion* demonstrates that there was some Turkification of the language and that the author felt that it was necessary to replace the Byzantine Greek term with one that would be better understood. It should also be pointed out that, as Gkines says, the title of this chapter in the manuscript is written by another hand.[145]

The *Nomokritirion* then is an excellent example of what post-Byzantine law codes really were, paraphrases and copies of late Byzantine law codes. In terms of content, most of the canons of the *Nomokritirion* more or less follow the

[144] Gkines. *Perigramma.* 87, 64.5.

[145] Gkines. *Perigramma.* 87, 63 (title).

original canons as they are found in the *Syntagma*. In essence, this law code is a modified copy of Kritopoulos' paraphrase of the *Syntagma*, making the law code in many ways quite Byzantine. There are noteworthy changes, changes of the names and values of currency to contemporary information, but this feature of the nomocanon was added for practical reasons, to aid people who were using the law code in the seventeenth century. In fact, the paraphrasing or translating of the language of the law code into contemporary Greek is the most noteworthy innovation in the text. The alteration in language also includes the addition of a few Turkish words, though this does not mean that the law code was heavily turkified. Perhaps the only other very significant aspect of this law code is the choice of content, not only what was included but also what was excluded. As has been mentioned, there are three sections, one on marriage, one on property and one on church law. The sections of the code that can be characterized as family law address issues such as orphans, widows, betrothals, and digamy. These are the sorts of family related issues that had always drawn the greatest degree of attention in the Byzantine legal tradition.[146] One thing that can be gauged from these canons is that in this legal tradition, there was much importance placed on the family, which was understood as being patriarchal. Though, since this law code follows the late 15th century work of Kritopoulos, this choice in content is more useful for just understanding the general legal needs of the Orthodox populations in the Ottoman Empire.

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[146] Goria, F. *Tradizione romana e innovazioni bizantine nel diritto privato dell'Ecloga privata aucta.*
(Frankfurt, 1980) 17-30, 73-77, 109-110.
Troianos, S.N. *O "Poinalios" tou Eklogadiou. (The Ecloga on Punishment).* (Frankfurt, 1980) 38-39.

Besides, we should also keep in mind that, since penal law came under direct control of the sultan, after the modifications of Ebussuud in the 16th century, only family matters could jurisdictionally be treated by nomokanons.[147]

[147] Imber. *Ebu's-su'ud.* 27-29, 186-203.

CHAPTER 4

POST BYZANTINE LAW IN PRACTICE

4.1 PUNISHMENT

So far, this study has focused on the history of the Byzantine and post-Byzantine legal codes. In this last chapter, I will attempt to discuss two issues; punishment, as prescribed by the nomokanons, and post-Byzantine law in practice. The issue of punishment is particularly effective at demonstrating how law related to popular belief. Since punishment can only be successful when the form of punishment used is generally believed to be undesirable but still a just manner for treating criminal behavior, it reveals something about the mindset, values and fears of the time. As will be seen, for the Orthodox Church in the Ottoman Empire, excommunication was the standard for of punishment employed.

The ecumenical councils and synods referred to punishment frequently, using the Greek title "*επιτιμιο*" meaning a reprimand or punishment. The council of Carthage (418/419) explicitly mentions that it is within the jurisdiction of the bishop to examine the nature of since and decide about the time of punishment.[148] When the church was asked to act independently as a judicial body during the *Tourkokratia*, *epitimia* were included in the nomokanons.

[148] Michaelares, P.D. *Aphorismos : he prosarmoge mias poines stis* anankaiotetes tes Tourkokratia.
(Athens, 1997) 64.

Exclusion from Holy Communion, fasting, prayer, almsgiving, anathemas and aphorisms, a word synonymous with excommunications, were used by the church to a great degree in reprimanding and correcting ill doings. The admission of guilt by the accused was not required for imposing *epitimio.* Evidence and witnesses, however, were required to convict someone and could also be produced by the defendants. On the other hand, one's own repentance was in itself sufficient to lift the punishment.[149]

As mentioned above, the most severe of the *epitimia* was aphorism. The term derives from $\alpha\pi\omega\kappa\sigma\pi\tau\omega$ meaning the cutting off from the body of the church. It was mainly designed for laymen and it was considered the strictest of punishment, if we exclude anathema, which was used rarely and mainly for heretics.[150] According to Zonaras, aphorism was the exclusion from the communion with the Church and could last from a few days to years. During the Ottoman period, though, the use of aphorism by the church extended to all levels of social and political life. The appearance of popular beliefs in vampires, people remaining intact after death and curses, which were all associate with people who had been excommunicated, demonstrate the extent of the use of and belief in aphorism during Ottoman period. At this time, bishops not only applied the punishment of aphorism themselves but even requested the Ecumenical Patriarch to intervene and excommunicate on their behalf. In one such case between 1572/1579 the metropolitan of Trikkes and Stagou

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[149] Michaelares. *Aphorismos*. 71.

[150] Michaelares. *Aphorismos*. 74.

requested the help of the patriarch. Four inhabitants of Trikala borrowed 50,000 akces at an interest rate of 12% from a Turk. After the intervention of the kadi only two of those who had borrowed the money paid it back. The metropolitan requested that the patriarch excommunicate the other two who in the meantime had fled from the metropolitan's jurisdiction.[151] On another occasion in the 1570s, the Patriarch wrote to the metropolitan of Heraclea in favour of a certain man named Monomach, whose property had been appropriated by a relative of his called Demos Vlachos. The patriarch asked the metropolitan to investigate and in the end, Demos was found guilty and excommunicated.[152] In terms of procedure, the actual proclamation of an aphorism took place in church, on a religious holiday.[153]

For aphorisms, the clergy collected a fee for the cost of carrying out the aphorism. The earliest mention of such a cost dates from 1675 and amounts to 2.20 flouri.[154] This was to be paid by the petitioner but rather some time also anonymously by parishioners and the metropolitan when the sum was considered to be very high.[155] The *Nomokanon* of Malaxos, the *Bakteria*, the *Syntagma*, as well as the Tomos of the four patriarchs of the east produce a number of rules to ensure that unfair cases of aphorism did not occur.[156] As for

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[151] Gkines. *Perigramma.* 59.
[152] Gkines. *Perigramma.* 58-59.

[153] Gkines. *Perigramma.* 321.

[154] Michaelares. *Aphorismos*. 121.

[155] Michaelares. *Aphorismos*. 125.

[156] Michaelares. *Aphorismos*. 136-139.

lifting the punishment of aphorism, it lay entirely with the clergymen who imposed it in the first place. If the bishop died, another metropolitan or the patriarch could lift the punishment. However, if a metropolitan or bishop had been defrocked, then all cases of aphorism were suspended, as such an action had been done unlawfully anyway.[157] In such a case, if the person who had been excommunicated were still alive, he could request the removal of the punishment in person. Though, if the excommunicated had already died, his relatives were responsible to seek the forgiveness. In one such case, a man who had stolen some property was exhumed and his body was found to be intact and this was believed to be the result of the aphorism. According to Malaxos, as long as the stolen goods are returned, then the family of a deceased thief could ask for the lifting of the aphorism.[158]

The use of aphorism was quite widespread in post-Byzantine times. In 1612, a woman appeared to the bishop of Metron and requested permission to marry the second time because her first husband had died. The case was examined and the bishop threatened witnesses with aphorism in case they were lying.[159] The threat of aphorism was in fact a conditional excommunication. The same metropolitan in 1632, while, judging a divorce case, placed the plaintiff under the threat of aphorism.[160] Finally, there were the cases of self-aphorism used to support an argument in the court or strengthen the power of a

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[157] Michaelares. *Aphorismos*. 150.
[158] Michaelares. *Aphorismos*. 158.

[159] Michaelares. *Aphorismos*. 177.

[160] Michaelares. *Aphorismos*. 178.

statement, akin to an oath. In 1652 a provincial bishop confessed in front of the Synod that he owed 30,000 akces to an archon and that if he did not return the money he should be excommunicated.[161]

Interestingly, the use of aphorism was not restricted to Christians, as even Muslims and Jews resorted to this measure in order to resolve disputes in their favour. The berats of metropolitans (appointment documents) explicitly state that the metropolitans have the right to exercise aphorism and demand the acceptance of such a punishment by anyone, regardless of their religious denomination.[162] In 1784, a Muslim tax collector, Yusuf Ağa, who had been sent to the Island of Andros demanded that the local archbishop threaten the populace with aphorism if they were not fair and honest in making their tax declarations.[163] In 1788, an Ottoman high official asked the patriarch to excommunicate the widow of a deceased Phanariot so that she would reveal what she knew about the hidden goods of her murdered husband.[164] Since the high officials' intervention had left the deceased man without an heir, according to Islamic law, his property reverted to the treasury. Finally, in 1691, three Jews asked an archon named Thomas to return a loan that they gave to him after an earthquake. He denied owing money, but the Jews petitioned for his excommunication, forcing him to pay less but honor his debt.[165]

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[161] Michaelares. *Aphorismos*. 190.

[162] Michaelares. *Aphorismos*. 424.

[163] Michaelares. *Aphorismos*. 427.

[164] Michaelares. *Aphorismos*. 428

The most common and effective form of punishment exercised by the Church during Ottoman times was aphorism. The threat of aphorism caused genuine fear and was often used to persuade people to change their behavior. It was commonly believed by Orthodox Christians in post-Byzantine times that aphorism had the power of a horrible curse, which would last beyond one's own death. This trend demonstrates the character of the religiosity of the time, showing that Church courts could exercise real authority in the minds of Orthodox Christians.

[165] Michaelares. *Aphorismos*. 429.

4.2 LAW AND SOCIAL LIFE

There are numerous references to the practical aspects of the legal and social history of the Orthodox population of the Ottoman Empire from the time of the *Nomokritirion's* composition and period during which it was in use. To demonstrate some aspects of this, relevant portions of Orthodox martyrologies, cases recorded in Muslim courts of law and other writings about specific legal cases will be employed. Since stylistically martyrologies are quite distinct from historical narratives, historians need to read and employ these sources in the appropriate manner. Martyrologies, like all genres of historical writing, must be interpreted with care, so as to best understand the historical content contained within the source. Even martyrologies that appear not to be very reliable sources may contain details that will prove truthful and invaluable to historians. The best approach taken when reading martyrologies is to attempt to place the text comfortably within the religious setting from which it came. When this is done, background details from the stories, which add little or nothing to the religious messages that are central in this genre, can be identified and can help in the reconstruction of the social history from the period.[166] It is hoped that a glimpse at the law in practice and a view of problems from the time, as portrayed by other sources, will help to shed light on how the law both reflected and influenced life at the time.

[166] Aigran, R. *L'hagiographie.* (Bruxelles, 2000) 273-274, 277-278.
Dubois, D.J. *Les Martyrologie du moyen âge latin.* (Turnhout, 1978) 20-21, 23-27, 80.

Of the Orthodox neo-Martyrs, many were people who were orphaned as children and the stories of their lives help to shed some light on the life conditions and problems faced by orphans living at this time. One such boy was an orphan from 16th century Thessalonica who, after his parents died, came under the care of his mother's brothers, one of whom was a Muslim and one was a Christian. He took the trade of a tanner and was the apprentice of his guardian who happened to be his Muslim uncle.[167] Another such orphan, the son of a priest living in 17th century Philadelphia, was left to be raised by his single mother after his father's death. At the age of 13, he was persuaded to convert to Islam.[168] A different orphan living in 17th century Constantinople, being left alone, took to a life of petty crime.[169] Still, another such orphan from a village 17th century in central Greece was forced to migrate to Constantinople, where he lived in a community of his villagers and found a job in a tavern.[170] An eighteenth century orphaned brother and sister from rural Albania took up their father's fields together and continued in the farmer's life.[171] These divergent stories of how orphaned children lived show how insecure life could be at the time for orphans. If a child was fortunate enough to have an uncle, kinsmen, or siblings to serve as guardians, life could continue with little serious disruption.

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[167] Vaporis, N.M. *Witnesses for Christ: Orthodox Christian Neomartyrs of the Ottoman Period, 1437-1860.* (Crestwood, NY, 2000) 79.

[168] Vaporis. *Neomartyrs.* 115-116.

[169] Vaporis. *Neomartyrs.* 133.

[170] Vaporis. *Neomartyrs.* 141-142.

[171] Vaporis. *Neomartyrs.* 174.

But for the children under the care of widows, or left alone, the difficulty of life could lead to criminal behavior, conversion to Islam or emigration. These cases demonstrate that the *Nomokritirion*, which, for laws that deal with orphans, confines itself almost exclusively to issues related to inheritance, does not really identify many of the main problems that orphaned Orthodox Christians living in the early post-Byzantine period would have faced.

When the law is seen in practice, it is much easier to understand how central the choice of whom to marry was to the society. There are several cases of future martyrs who had, for one reason or another, their engagements broken off. For example, one girl born into a wealthy 16th century Athenian family was betrothed at the age of twelve to a wealthy Athenian man whom she did not like. Although, she did not want to marry, her parents persuaded her and she did marry. However, three years after her marriage her husband died and again her parents were pressuring her to remarry, so that she could produce an heir. She refused this time and after the death of her parents, she became a nun.[172] Another sixteenth century boy, this time from Constantinople, was engaged to his sixteen-year-old fiancée, and then chose to go off on a trip to Crete. While he was in Crete, his fiancée was forced to marry a Muslim high official and convert to Islam. The boy's parents were powerless to stop the marriage.[173] It should be pointed out that the practice of forcing a woman into marriage existed in the Ottoman Empire and similar cases where women took complaints to court

[172] Vaporis. *Neomartyrs.* 83-84.

[173] Vaporis. *Neomartyrs.* 90.

that they had been forced into marriage can be found in Kadi court records.[174] Likewise, another engagement, this time involving a young couple from the 17th century Peloponnese, was broken off after the boy learned of rumors that were circulating about his fiancée. In this case, the girl's relatives became very upset and the boy later suffered grief and became mentally imbalanced.[175] There are also records of Christians entering into marriages in unorthodox ways, by either marrying in the Kadi court, as in the case of a 17th century couple from Macedonia,[176] or by bringing a priest from another province to come and marry them, without the permission of the local Metropolitan.[177] In fact, there are several references in a letter written in 1701 by the patriarch of Constantinople Kallinikos II to a Metropolitan bishop Christianopolis to common legal problems related to marriage. These included one case in which two brothers from one family committed fornication with two sisters from anther family, certain young boys kidnapped and had sex with young girls, and kidnapped and forced the girls marry them.[178] These different cases demonstrate that engagement and contracting a marriage was not always a simple thing, parents could force their children to marry people that they disliked, engagements could be broken

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[174] Jennings, R.C. "Women in Early 17th Century Ottoman Juridical Records – the Sharia Court of Anatolian Kayseri." ." In Jennings, R.C. *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries.* (Istanbul, 1999) 126-127.

[175] Vaporis. *Neomartyrs.* 112.

[176] Gkines. *Perigramma.* 140, #188.

[177] Gkines. *Perigramma.* 154, #239.

[178] Gkines. *Perigramma.* 154, #239.

without the consent of those betrothed, and rumors could ruin the reputations of those engaged. Although there appears to have been means of avoiding legal trouble with church officials, either by contracting a civil marriage in the Kadi court or by being married away from one's own hometown.

There are many other passages that explain how the law affected people's actions and how the Ottoman system influenced people's actions. For example, one future martyr, an Orthodox Christian from 18th century Albania, was a widower with many children and he wanted to contract a fourth marriage, something forbidden by the Orthodox ecclesiastical hierarchy at the time. Since, the Orthodox authorities would not grant him his fourth marriage, he converted to Islam and then married again, also forcing his younger children to convert to Islam.[179] This case demonstrates how, since the Ottoman Empire had two different legal traditions, Orthodox Christians dissatisfied with how Orthodox canon law addressed an issue, could convert to Islam to obtain a favorable legal decision. It also emphasizes how important re-marriage was in the society, and it is no coincidence that many re-marriages were conducted by the Kadi courts. Another interesting case was one where an Orthodox tailor living in 16th century Bursa and working in the houses of Muslim officials was seduced by the wife of a Muslim soldier. The tailor rejected her advances and was then accused by her of acting indecently towards her. This tailor then was tried in an Islamic court for the accused offence.[180] What is interesting in this case is how legal disputes

[179] Vaporis. *Neomartyrs.* 162-163.

[180] Jennings. "Women." 132.
Vaporis. *Neomartyrs.* 78.

related to family law when involving both Muslims and Christians would be addressed by Islamic law. In fact this was part of a general trend from the period and there are many cases recorded in the Kadi court records of Christians bringing cases of adultery against their own Christian spouses or family members.[181] This in fact is not so surprising as being part of a state with a Muslim government, Sharia courts had a great degree of authority. In early seventeenth century one case brought to a Kadi court in Kayseri a man was appealing the fact that the father of his former fiancé would not allow the girl to marry, but the case was rejected as the father had a fetva declaring that the engagement was invalid.[182] Another frequently mentioned problem were dispensations issued for otherwise forbidden marriages. One common type of dispensation was given so that two cousins could marry two sisters from a different family.[183] There were also dispensations issued so that relatives could marry relatives.[184] One case however that seems to have been frowned upon at the time was inter-religious marriage. For example, in 1671, the Orthodox patriarch got a Sultanic order that outlawed marriage between Muslim men and Orthodox women.[185] This of course does suggest that such marriages were

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[181] Jennings, R.C. "Zimmis (non-Muslims) in early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri." In Jennings, R.C. *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries.* (Istanbul, 1999) 392.

[182] Jennings. "Zimmis." 382.

[183] Gkines. *Perigramma.* 157, #247.

[184] Gkines. *Perigramma.* 157, #253.

[185] Gkines. *Perigramma.* 140, #186.

common and a look at Kadi court records shows that for instance, in Pontus Muslim men were frequently marrying Orthodox women.[186] The cases show that Byzantine law was not absolute and dispensations were always possible, but when in a case, such as inter-religious marriage, where there was a perceived threat to the community, the law would be attempted to be applied more strictly. Cases from Ottoman Crete provide information for women who converted to Islam in order to get a divorce. They were automatically divorced since Muslim women could not marry an infidel.[187]

Some other legal sources that survive help us to understand what ideas lay behind the conception of law from the Byzantine tradition. One letter on engagement written in 1701 by the Patriarch of Constantinople Kallinikos describes in detail how engagements worked in practice. Engagements would be officially registered in the Metropolitan codex, and the engagement would not be dissolved without good cause, and if one side was responsible, that side would lose its share of the dowry and there would be such a fine.[188] Interestingly, a first class dowry was valued at the enormous sum of 2000 gurus.[189] In the seventeenth century, when the couple would actually contract a

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[186] Jennings. "Maçuka." 147.

[187] T.A.H.: III, 361.

[188] Gkines. *Perigramma.* 164, #266.

[189] Considering the fact that the weekly was for a labourer in Mosul in the 1630s was one gurus per week,

> the sum of 2000 gurus is extremely high. In fact, this sum equals the amount of money paid in tax-farming in the province of Karaman in 1691.

Demirci, S. "*Iltizam* (tax-farming) in the *Avâriz*-tax system: A Case Study of the Ottoman Province of

> Karaman c. 1650s-1700." *Sosyal Bilimler Enstitüsü Dergisi Sayi.* 12 (2002) 163.

Gkines. *Περιγραμμα*. 154, #242.

marriage, they would pay the more modest sum of 80 akca to the metropolitan. However, the price doubled to 160 akca for a second marriage and tripled to 240 akca for a third marriage.[190] One interesting thing is that in the Byzantine legal tradition, there was a detailed systematization of the proximity in marriage, from close to distant family members.[191] This goes to show how important family relations were to the Byzantines and how concerned they were about the possibility of incestuous relationships. Likewise, there were also very detailed rules about what sorts of past events could bar a man from ordination. A man who accidentally suffocated his child in bed by rolling over on top of the child could not be ordained.[192] Similarly, a man who was married to a woman who had once committed infanticide could not be ordained.[193] In both of these cases, there is a lack of sanctity, and involuntary killing necessarily excludes a man from becoming a priest. The occasional references that one finds in orthodox legal writings from the post-Byzantine period address practical matters in detailed terms that one cannot find in a law code such as the *Nomokritirion*, reinforcing the idea that legal codes may not very accurately depiction the society in which they were written.

Murphy, R. "The Construction of a Fortress at Mosul in 1631: A case study of an Important Facet of Ottoman Military Expenditure." *Turkye'nin Sosyal ve Ekonomik Tarihi(1071-1920)/Social and economic History of Turkey(1071-1920)*, (1980).

[190] Inalcik. "Patriarch." 425.

[191] Gkines. *Perigramma.* #266.

[192] Gkines. *Perigramma.* 154, #239.

[193] Gkines. *Perigramma.* 154, #239.

In the pursuit of understanding the social history of the post-Byzantine orthodox population in the Ottoman Empire, Kadi court records also offer an important supplement in the study of Orthodox canon law, and from such sources it is evident that conversion to Islam or to different Christian denominations was prevalent in the early post-Byzantine period.[194] There are many references in Islamic court records of ex-Christians of various ages choosing to convert to Islam. The consequence of this fact complicated family relations and therefore family law. It was quite common for the Christian family members of Muslim converts to exclude the person, whom they viewed as an apostate, from their own family.[195] However, at the same time, when matters important to family law arose, such as marriage or inheritance, family members did often do their best to work together. An interesting case of this sort took place in early seventeenth century Trebizond. An older Orthodox Christian man decided to convert to Islam but his daughter, who was already twenty-five years old and therefore an adult, decided to remain a Christian. When she wanted to get married to her own Orthodox Christian fiancé, the local Metropolitan refused to allow the marriage, on the grounds that her father had converted to Islam. The family took the case to the kadi court and the Metropolitan was eventually forced to sanction the marriage.[196] Another interesting fact is that for Orthodox Christians conversion did not only mean conversion to Islam. In early

[194] Jennings. "Maçuka." 146.
Jennings. "Zimmis." 361-365.

[195] Jennings. "Zimmis." (Istanbul, 1999) 362.

[196] Jennings. "Zimmis." 363, 365.

seventeenth century Kayseri there is a case of an Orthodox woman who converted to Gregorian Armenian Christianity, the religion of her future husband, as well as a different case of an Armenian woman deciding to join the Orthodox church, both cases being documented in the Kadi court records.[197] Islamic court records fill in the gaps of the legal history of the Orthodox population, as has already been mentioned, Sharia courts had the jurisdiction for Christians in certain legal matters and Christians in the Ottoman Empire also always had the option to bring their case to either a Christian or a Muslim court of other matters.[198]

This brief look at post-Byzantine family law in practice has shown both that many problems from the period were not well defined by the post-Byzantine law codes, and Islamic rule complicated life for Orthodox Christians in various ways. Conversion from Orthodox Christianity to Islam, for example, was relatively common in the Ottoman Empire but this trend created division and tension within families. It is not surprising then that the Orthodox Church hierarchy was opposed in principal to inter-religious marriage. Of course, conversion was not simply one way from Orthodoxy to Islam, as there are cases of both Christians converting to different Christian denominations and Muslim converts apostatizing and returning to the Christian faith. Some interesting common problems from the period would not be known from only a study of a code of law. Orphans for example had many more problems in their lives than

[197] Jennings. "Zimmis." 361-365.

[198] Jennings. "Maçuka." 148, 153.

just securing their inheritance, explaining why orphaned Orthodox children often emigrated to big cities, turned to lives of crime or converted to Islam. Similarly, it is a surprising to note the extent to which people complained that they were being forced into a marriage. This trend is not so dissimilar from what is written in the *Nomokritirion* but the diversity and commonality of such claims is more than what would be expected. The *Nomokritirion* does rightfully go at length to describe how remarriages, a very common practice from the period, should be conducted. What however is not clear is the extent to which cases of remarriage and adultery were taken to Kadi courts. In fact, one of the most significant trends shown by a look at post-Byzantine law in the Ottoman Empire in practice is that Orthodox Christians had the ability in many instances to take court cases to either the ecclesiastical court or the Kadi court, meaning that Orthodox Christians were subject to two distinct legal systems for many legal issues.

CONCLUSION

The Byzantine legal tradition had its roots in the legal writings originating in late antique Rome/Byzantium. Nearly the entire corpus of Byzantine canons and laws was first written and codified at this time, in the ecumenical synods and councils, in the writings of the church fathers and the enormous legal project undertaken during the reign of the emperor Justinian. From this time on, lawyers and jurists in Byzantium or civilizations influenced by Byzantium followed the Byzantine tendency to compile systematized bodies of law. Except for the additions of novellas and new legal interpretations, the content and method of Byzantine law was set in late antiquity. The many legal codifications from Middle and Late Byzantine periods more than anything aimed to reorganize existing laws so that they would be more applicable to the contemporary society. Likewise, the canon law of Eastern Christians subject to Islamic rule mainly based itself on both ecclesiastical and civil laws originating in late antique Byzantium and local sources of church and civil law, which in some cases meant incorporating Islamic law into Christian canon law. In the Late Byzantine Empire, the two most important law codes, the *Hexabiblos* and the *Syntagma* were both very well organized and condensed examples of Byzantine law, perfect for the use as a textbook or a legal handbook. These forms of Byzantine law became the principal source of this legal tradition for Orthodox Christians living within the Ottoman Empire.

A problem when one discusses the history of a legal tradition as enormous as that of Byzantium is that the borders for this tradition are not clear. This problem becomes painfully clear for the period after 1453. When there was no longer a Byzantine state, a revival of both Roman and Byzantine law took place in Western Europe. In the same period of time, new legal codifications drawing heavily from Byzantine sources were compiled in Czarist Russia and the Romanian principalities. Within the Ottoman Empire, the Orthodox Christian Church and the Eastern Christian Church assumed the responsibility for addressing non-criminal legal matters involving its members. All of the above mentioned legal traditions can and were essentially post-Byzantine, though in each case the term post-Byzantine is as distinct as the above-mentioned legal histories are distinct. This thesis has focused on the most obvious heir to the Byzantine legal tradition, that being the ecclesiastical courts of the Orthodox Church, under the leadership of the ecumenical patriarch of Constantinople, within the Ottoman Empire. Orthodox law code compilers, lawyers and judges in the Ottoman Empire had to adapt their incredibly rich and very Christian law designed for a Christian state for the limited legal needs of religious minority in a non-Christian state. However, it should be emphasized that for the Orthodox Christian population, the ecclesiastical courts, which were able to call for aphorisms, wielded an indisputable source of power and authority.

The character or post-Byzantine law codes from within the Ottoman Empire shows how the legal elite modified the law to meet the needs of their community. As an example of this, the *Nomokritirion* effectively demonstrates the post-Byzantine mindset. There was no desire to create something new or

even extensively modify the content of Byzantine law. Rather, the compilers preferred to choose the elements of Byzantine law that seemed most applicable to their times. Most of the actual laws and canons found in post-Byzantine law codes can also be found in Byzantine law codes from Late Antiquity. Post-Byzantine legal scholars did also continue in the Byzantine tradition of creating reasonably well-organized and complete legal compilations. One disappointing aspect of post-Byzantine law codes from the Ottoman Empire is that in many cases there are inconstancies and errors that suggest that the compilers were not very well informed about Byzantine law.

The *Nomokritirion* is a good example of post-Byzantine law, as it gives insight into both the method of the compiler and the content of post-Byzantine law codes. The *Nomokritirion* is a seventeenth century modified paraphrase of a later fifteenth or early sixteenth century paraphrase of the *Syntagma*, written by Kounale Kritopoulos. This in itself shows that altering the language of Byzantine law codes into something more like the contemporary Greek was probably one of the main motivations in making post-Byzantine law codes. In terms of content, the *Nomokritirion* is restricted to family law, property law and ecclesiastical law, something distinctive from Byzantine law codes but understandable considering the limitations imposed upon Orthodox Christian law within the Ottoman Empire. The main themes in the section on family law relate to orphans, engagement, marriage, digamy, and mourning, all common themes from Byzantine law. In fact, most of the *Nomokritirion* is little more than a slightly modified paraphrase of the *Syntagma*. For this reason, many archaic laws that related to family law, property law and church law were kept in the law

code. The most notably changes in content, the occasional use of Turkish terms and the addition of contemporary names and values for currencies, were added to make the law code more up to date and understandable. In this study of the *Nomokritirion*, the only non-Byzantine element that is apparent was the canon stating that parents in financial trouble could sell their children if they needed to do so. On the whole, the *Nomokritirion* is a simplified and very restricted version of Byzantine law written in a language that would have been easily understood by Greeks in the seventeenth century Ottoman Empire.

The relevance and usefulness of post-Byzantine codifications from the Ottoman Empire can only really be grasped when compared to other legal sources. The *Nomokritirion* addresses many issues that were common problems in the classical period of the Ottoman Empire, especially problems related to orphans, widows, engagement, marriage, and digamy. However, there are also several very important issues that are missing from the *Nomokritirion*, including Orthodox Christian use of Islamic courts, and various issues related to conversion to Islam or other Christian denominations. Most interesting of all is the absence of laws in the *Nomokritirion* that address inter-religious marriage. The issue of conversion to Islam also has important implications for many other legal matters, ranging from guardianship to inheritance. The *Nomokritirion* was based on a Byzantine law code means that it does not adequately address legal problems that are post-Byzantine in nature, especially problems that arise for Orthodox Christians who live in a Muslim led society.

The Byzantine legal tradition was a very rich legal tradition and has exercised a great degree of influence civilizations bordering Byzantium. The destruction of the Byzantine state ended the Byzantine polity but the absence of the state did not terminate either the Byzantine legal mindset or the use of Byzantine law by Christians. If anything, the Ottoman period increased the religiosity of the law for Orthodox Christians, exemplified by the use of aphorism as the standard form of punishment by ecclesiastical courts. Within the Ottoman Empire, Orthodox Christians were forced to modify their legal tradition to meet the needs of the new situation in which they found themselves. The law codes they compiled contain great continuity and development in the sphere of family law and ecclesiastical law, the two realms that the leaders of the Orthodox millet were responsible for. In practice however, post-Byzantine law was not terribly innovative and, when using the *Nomokritirion* as an example, not very good at representing post-Byzantine realities. The biggest hole in the *Nomokritirion*, in terms of family law at least, is that it does not describe in legal terms how Orthodox Christians were supposed to relate to Muslims. The fact that this is omitted in itself is probably simply due to the legal role of Christians in the Ottoman Empire had already been determined by Islamic law and there was only a need to have a law code that could work within the already established confines. Byzantine law did indeed long survive the empire's death, but in forms that hardly did credit to the richness of the law of the Byzantine Empire.

BIBLIOGRAPHY

A – PRIMARY SOURCES AND COLLECTIONS OF PRIMARY SOURCES

Apostolopoulos, D. 1978. *To Mega Nomimon.* Athens: D. Apotolopoulos.

Blastares, Matthew. 1865. *Syntagma Canonum.* Migne, J.P. *Patrologiae cursus completus : omnium SS. patrum, doctorum scriptorum 144/145.*

Freshfield, E.H. 1930. *A manual of Byzantine Law, Compiled in the Fourteenth Century by George Harmenopoulos. Vol. VI. On torts and crimes.* Cambridge: Cambridge University Press.

Freshfield, E.H. 1928. *A Manuel of East Roman Law: The Procheiros Nomos Published by the Emperor Basil I at Constantinople between 867 and 879.* Cambridge: Cambridge University Press.

Freshfield, E.H. 1926. *A Manuel of Roman Law: The Ecloga Published by the Emperors Leo III and Constantine V of Isauria at Constantinople AD 726.* Cambridge: Cambridge University Press.

Freshfield, E.H. 1927. *A Manual of Roman Law: Founded upon the Ecloga of Leo III and Constantine V of Isauria – Ecloga Privata Aucta.* Cambridge: Cambridge University Press.

Ghazarian, V. ed. 1997. *Armenians in the Ottoman Empire: an Anthology of Transformation 13th-19th Centuries.* Waltham Mass: Mayreni Publishing.

Gkines, D. 1966. *Perigramma tou metabyzantinou dikaiou. (A Historical Outline of post-Byzantine Law).* Athens: Grapheion Dimosieumaton tis Akadimias.

Harmenopoulos, Konstantinos. 1971. *Procheiron nomon, e Hexabiblos.* Athens: Dodone.

Krstic, D. 1981. *The Code of Tsar Stephan Dushan.* Belgrade: Serbian Academy of Sciences and Arts. http://www.oldserbia.plus.co.yu/e_index.htm

Leunclavius, Johannes. 1596. *Iuris graeco romani tam canonici quam civilis tomi duo.* Hussey, J.M. Farnborough : Gregg International, 1971.

Malaxos, Manouel. 1969-1970. *Manouel Malaxou vomokanon. (Nomokanon of Manouel Malaxos).* Siphonios, A., Tourtoglos, M.A., and Troianos, S. In *Epetiris tou kentrou ereunis tis istorias tou Ellinikou dikaiou.*

(The Year-Book of the Historical Research Center of Greek Law). 16-17. Athens: Akademia Athenon, 1-39.

Percival, H. 1899. The Seven Ecumenical Councils of the Undivided Church. Vol. 14 Schaff, P. (ed) *Nicene and Post-Nicene Fathers.* Grand Rapids Mich: W.B. Eerdmans.

Thompson, A. 1993. *Gratian: The Treatise on Law Decretum DD. 1-20.* (Vol. 2) Washington: Catholic University of America Press, Studies in Medieval and Early Modern Canon Law.

Tourkiko Archeio Irakleiou. (The Turkish Archives of Herakleion).

Wilson, N.G. 1994. *Photius : The Biblioteca.* London: Duckworth.

Bibliography

B - Secondary Sources

Aigran, R. 2000. *L'hagiographie.* Bruxelles: Société de Bollandistes.

Allen, W.E.D. 1971. *A History of the Georgian People.* London: Routledge.

Alexiou, M. 1986. "Modern Greek Studies in the West: Between the Classics and the Orient." *Journal of Modern Greek Studies.* 4(1): 3-15.

Arnaoutoglou, I.N. April, 2003. "Post Byzantine Law on the Web." Online: http://www.geocities.com/ekeied/.

Balard, M. 1989. "The Genoese in the Aegean 1204-1566." *Latins and Greeks in the Eastern Mediterranean after 1204.* Totowa NJ: Frank Cass.

Bakhit, M.A. 1982. "The Christian Population of the Province of Damascus in the Sixteenth Century." In Braude, B. & Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2) New York: Homes & Meirer, 19-66.

Bardakijan, K.B. 1982. "The Rise of the Armenian Patriarchate of Constantinople." In Braude, B. & Lewis, B. *Christians and Jews in the Ottoman Empire the Central Lands.* (Vol. 1) New York: Homes & Meirer, 89-100.

Beck, H. 1981. *Nomos, kanon und staatsraison in Byzanz.* Vienna: Österreichischen Akademie der Wissenschaften.

Bellomo, M. 1995. *The Common Legal Past of Europe 1000-1800.* Washington: The Catholic University of America Press.

Blumenthal, U. 1998. "Conciliar Canons and Manuscripts: The Implications of Their Transmission in the Eleventh Century," In *Papal Reform and Canon Law in the 11th and 12th Centuries.* Aldershot Hants: Variorum.

Boudinhon, A. December 2003. "Nomocanon." *Catholic Encyclopedia.* New York: Kevin Knight. www.newadvent.org/cathen.

Braude, B. 1982 "Foundation Myths of the Millet System." In Braude, B. and Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2) New York: Homes & Meirer, 69-88.

Bray, G. 1998. "The Strange Afterlife of the *Reformatio Legum Ecclesiasticarum*." In Doe, N., Hill, M. and Ombers R. eds. *English Canon*

Law. Cardiff: University of Wales Press, 36-47.

Brotherson, S. E. and Teichert, J. B. 2001. "Value of the law in Shaping Social Perspectives on Marriage." *Journal of Law and Family Studies.* 3(1), 23-56.

Browne, L.E. 1933. *The Eclipse of Christianity in Asia.* Cambridge: Cambridge University Press.

Buckler, G. 1936 "Women in Byzantine Law about 1100 AD." *Byzantion.* 11, 391-416.

Burgmann, L. 1991. "Law in Slavic Countries, Byzantine," Kazhdan, A. and Talbot, A. eds. *Oxford Dictionary of Byzantium* (Vol. 2) Oxford: Oxford University Press.

Burgmann, L. 1991. "Law in the East, Byzantine," Kazhdan, A. and Talbot, A. eds. *Oxford Dictionary of Byzantium* (Vol. 2) Oxford: Oxford University Press.

Butler, W.E. 1999. *Russian Law*. Oxford: Oxford University Press.

Candea, V. 2000. "Introduction." In Iorga, N. *Byzantium after Byzantium.* Iaşi: The Center for Romanian Studies.

2003. "Canon." *Oxford English Dictionary.* Oxford: Oxford University Press. www.oed.com.

Christopoulos, G. and Bastias, I. 1980. *Istoria tou ellenismos upo xeni kiriachia Tourkokratia-Latinokratia. (The History of the Greek Nation – Hellenism under Foreign Rule Turkokratia-Latinokratia).* ((Vol. 10) Athens: Brabeio Akademias.

Cohen, A. 1982. "On the Realities of the Millet System: Jerusalem in the Sixteenth Century." In Braude, B. & Lewis, B. *Christians and Jews in the Ottoman Empire the Arabic-Speaking Lands.* (Vol. 2) New York: Homes & Meirer, 7-18.

Constantinescu, R. 1981. "La digamie dans le droit canon du sud-est européen et les pénitentiels Roumains XIVe – XVIIe siècles." *Revues des études Sud-Est Européennes.* 19 (4), 673-680.

Cront, G. 1964. "Byzantine Juridical Influences in the Rumanian Feudal Society." *Revue des etudes sud-est europeenes.* 2 (3-4) 359-383.

Delaunay J. December 2003. "Syntagma Canonum." *The Catholic*

Encyclopedia. (Vol. 14) New York: Kevin Knight http://www.newadvent.org/cathen/14394a.htm.

Dubois, D.J. 1978. *Les Martyrologe du moyen âge latin. Typologies des sources du moyen âge occidental*. (Fasc. 26). Turnhout: Brepols.

Demirci, S. 2002. "*Iltizam* (tax-farming) in the *Avâriz*-tax system: A Case Study of the Ottoman Province of Karaman c. 1650s-1700." *Sosyal Bilimler Enstitüsü Dergisi Sayi.* 12, 59-172.

Ercan, Y. 1988. *Küdüs Ermeni Patrikhanesi*. Ankara: Türk Tarih Kurumu Basımevi.

Erickson, J.H. 1991. *The Challenge of Our Past Studies in Orthodox Canon Law and Church History.* Crestwood NY: St. Vladimir's Seminary Press.

Ergo, D. 2003. *Islam in Albanian Lands during the first two Centuries of the Ottoman Rule.* Unpublished Phd Dissertation, Ankara: Bilkent University.

Fine, J.V.A. 1987. *The Late Medieval Balkans.* Ann Arbor: The University of Michigan Press.

Gallagher, C. 2002. *Church Law and Church Order in Rome and Byzantium.* Aldershot, Hants: Variorum.

Geanakoplos, D. 1973. *Byzantium and the Renaissance.* Hamden Conn: Archon Books.

Geanakoplos, D. 1989. *Constantinople and the West.* Madison: University of Wisconsin Press.

Goria, F. 1980. *Tradizione romana e innovazioni bizantine nel diritto privato dell'Ecloga privata aucta.* Frankfurt: Vittorio Klostermann.

Grubbs, J.E. 1995. *Law and Family in Late Antiquity.* Oxford: Clarendon Press.

Hadrovics, L. 1947. *Le peuple serbe et son église sous la domination turque.* Paris : Les Presses Universitaires de France.

Halsall, P. 1996. "Caesaropapism? Theodore Balsamon on the Powers of the Patriarch of Constantinople." Paul Halsall. *www.fordham.edu/halsall/source/balsamon-cpl.html.*

Heyd, C. 1973. *Studies in Old Ottoman Criminal Law.* Oxford: Clarendon Press.

Hupchick D. 1993. *The Bulgarians in the Seventeenth Century.* London: McFarland.

Ibbetson, D. and Lewis, A. 1994. "The Roman Law Tradition." In Lewis, A. and Ibbetson (eds.) *The Roman Law Tradition.* Cambridge: Cambridge University Press, 1-14.

Imber, C. 1997. *Ebu's-su'ud. The Islamic legal tradition.* Edinburgh: Edinburgh University Press.

Inalcik, H. 1973. *The Ottoman Empire: The Classical Age 1300-1600.* London: Phoenix.

Inalcik, H. 1991. "The Status of the Greek Orthodox Patriarch Under the Ottomans." *Turcica Revue d'études turques.* 21-23, 407-436.

Iorga, N. 2000. *Byzantium after Byzantium.* Iaşi: The Center for Romanian Studies.

Ivanova, S. 1993. "Marriage and Divorce in the Bulgarian Lands (XV-XIX)." *Bulgarian Historical Review.* 21 (2-3), 49-83.

Jennings, R.C. 1986. "The Society and Economy of Maçuka in the Ottoman Judicial Registers of Trabzon 1560-1640." P. 129-155 in Bryer, A. and Lowry, H. *Continuity and Change in Late Byzantine and Early Ottoman Society.* Washington: Dumbarton Oaks.

Jennings, R.C. 1999. "Women in Early 17th Century Ottoman Juridical Records: the Sharia Court of Anatolian Kayseri." In Jennings, R.C. *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries.* Istanbul: Isis Press, 115-142.

Jennings, R.C. 1999. "Zimmis (non-Muslims) in early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri." In Jennings, R.C. *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries.* Istanbul: Isis Press, 327-346.

Johnston, D. 1999. *Roman Law in Context.* Cambridge: Cambridge University Press.

Jones, A.H.M. 1974. *A History of Ethiopia.* Oxford: Oxford University Press.

Kaiser, D.H. 1980. *The Growth of the Law in Medieval Russia.* Princeton NJ: Princeton University Press.

Kazhdan, A. 1991. "Blastares, Matthew." In Kazhdan, A. and Talbot, A. *Oxford*

Dictionary of Byzantium. (Vol. 1) Oxford: Oxford University Press , 295.

Kazhdan, A. 1991. "Law, Civil," Kazhdan A. & Talbot, A. *Oxford Dictionary of Byzantium* (Vol. 2) Oxford: Oxford University Press, 1191-1193.

Kazhdan, A. "Novel." Kazhdan A. & Talbot, A. *Oxford Dictionary of Byzantium* (Vol. 3) Oxford: Oxford University Press, 1497.

Kazhdan, A. "Novel of Leo VI." Kazhdan A. & Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 3) Oxford: Oxford University Press, 1498.

Kazhdan, A. 1994. "Some Observations on the Byzantine Concept of Law: Three Authors from the Ninth through the Twelfth Centuries," In Laiou E. and Simon, D. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* Washington: Dumbarton Oaks Research Library & Collection.

Kermeli, E. 2002. "Sin and the sinner: *folles femmes* in Ottoman Crete." *Eurasian Studies.* (Vol. 1), 29-43.

Khosdegian, H.M. 1991. "The Armenian Catholics." *Window Quarterly 2/3.* ACRAG.

Kolbaba, T.M. 1995. "Conversion from Greek Orthodoxy to Roman Catholicism in the Fourteenth Century." *Byzantine and Modern Greek Studies.* 19, 120-134.

Konidaris, I. 1994. "The Ubiquity of Canon Law," In Laiou, E.& Simon, D. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* Washington: Dumbarton Oaks Research Library & Collection.

Kortepeter, C.M. 1972. *Ottoman Imperialism During the Age of the Reformation: Europe and the Caucasus.* New York: New York University Press.

Kouymjian, D. 2002. "Revue of Robert W. Thompson, *The Lawcode of Mxit'ar Goss." Speculum.* 77(3), 1026-1027.

Kozyris, P.J. 1993. "Reflections on the Impact of membership in the European Communities on Greek Legal Culture." *Journal of Modern Greek Studies.* 11 (1), 29-49.

Kriaras, E. 1969. *Lexikotis mesaionikis ellinis dimodous gramateios 1100-1669. (The Lexicon of the Common Writing of Medieval Greek: 1100-1669.)* (Vol. 9) Thessalonica: Emmanouel Kriasras.

Krstic, D. 1976. "Customary and Written Laws in the Serbian and Greek Legal Systems." *Legal History.* 2(4), 85-89.

Kuttner, S. 1990. “Some Considerations on the Role of Secular Law and Institutions in the History of Canon Law,” In Kutter, S. *Studies in the History of Medieval Canon Law* Aldershot, Hants: Variorum.

Kuttner, S. 1990. “Vers une nouvelle histoire du droit canon,” In Kutter, S. *Studies in the History of Medieval Canon Law.* Aldershot, Hants: Variourm.

Laiou, A.E. and Simon, D. 1994. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* Washington: Dumbarton Oaks.

2003. “Law,” *Oxford English Dictionary.* Oxford: Oxford University Press. www.oed.com.

Le Coz, R. 1995. *Histoire de l’eglise d’orient.* Paris : Les Editions du Cerf.

L’Huilier, P. 1987. “Novella 89 of Leo the Wise on Marriage: An Insight into its Theoretical and Practical Impact.” *Greek Orthodox Theological Review.* 32(2) Brookline, Mass: Holy Cross Press, 153-162.

Lokin, J.H.A. 1993. “The Study in Byzantine Law in the Netherlands.” *Revue du droit.* 61 (3), Antwerp: Kluwer Rechtswetenshappen.

Lowry, H. 2002. *Fifteenth Century Ottoman Realities Christian Peasant Life on the Aegean Island of Limnos.* Istanbul: Eren.

Macrides, R.J. 1999. *Kinship and Justice in Byzantium, 11th-15th Centuries.* Aldershot: Variorum.

Macrides, R.J. “Nomos and Kanon on Paper and in Court,” In R. Macrides, *Kinship and Justice in Byzantium, 11th-15th Centuries.* Aldershot Hants: Variorum.

Macrides, R.J. 1999. “Substitute Parents and their Children in Byzantium.” In Macrides, R.J. *Kinship and Justice in Byzantium, 11th-15th Centuries.* Aldershot: Variorum, 1-11.

Malcom, N. *Bosnia a Short History.* London: MacMillan, 1994.

Matses, Nikolaos P. 1966. “To “Nomokritirion” epi tou up’arith. 2764 kodikos tis ethnikis bibliothikis ellados.” (The “Nomokritirion” on Number 2764 of the code in the Greek National Library.” *ΕΕΒΣ* 35. Athens, 203-209.

Matses, N.P. 1965. *“Peri tin paraphrasin tou Syntagmatos tou Mathaoiou Blastari tou Kounali Kritopoulou.”* (On the Paraphrase of the

Syntagma of Mathew Blastares by Kounale Kritopoulos).” *ΕΕΒΣ* 34. Athens, 175-201.

Meehan, A. “Matthew Blastares.” *The Catholic Encyclopaedia.* (Vol. 14) New York: Kevin Knight. *www.newadvent .org*.

Meyendorf, J. 1989. *Byzantium and the Rise of Russia.* New York: St. Vladimir’s Seminary Press.

Meyendorf, J. 1982. *The Byzantine Legacy in the Orthodox Church.* New York: St. Vladimir’s Seminary Press.

Michaelares, P.D. 1997. *Aphorismos : he prosarmoge mias poines stis anankaiotetes tes Tourkokratia.* Athens: Kentro Neoellenikon Ereunon.

Murphy, R. 1980. “The Construction of a Fortress at Mosul in 1631: A case study of an Important Facet of Ottoman Military Expenditure.” *Turkye'nin Sosyal ve Ekonomik Tarihi(1071-1920)/Social and economic History of Turkey(1071-1920)*, *1*63-178. *http://www.history.hacettepe.edu.tr/archive/musul.html*

Nöldeke, T. 1986. *Sketches from Eastern History.* London: Darf Publishers.

2003. “Nomocanon.” *Oxford English Dictionary. www.oed.com.*

O’Riordan, G.M. 1996. “Elementi di diritto Bizantino nella consuetudine Veneziana dei secoli XI e XII.” *Byzantinishe Forchungen.* 22, 111-117.

Pamuk, Ş. 1999. *Paranın Tarihi.* Istanbul: Tarih Vakfı Yurt Yaylınları.

Pantazopoulos, N.J. 1984. *Church and Law in the Balkan Peninsula During the Ottoman Rule.* Amsterdam: Adolf M. Hakkert.

Papadopoullos, T.H. 1990. *Studies and Documents Relating to the History of the Greek Church and People Under Turkish Domination.* Aldershot: Variorum.

Papazian, D.R. 1987. “Armenia and the Armenians.” Dearborn Mich: Dennis R. Papazian, *http://www.umd.umich.edu/dept/armenian/papazian/armenia.html*.

Pheida, V.I. “Droit canon – une perspective Orthodoxe.” www.myriobiblos.gr/texts/french/pheidas_droit.html Gevena: Institut de Theologie Orthodox d’Etudes Superieures.1998.

Pitsakis, C.G. 2002 "Les études de droit romain en grèce du xix^{e} au xxi^{e} siecle: un cas particulier." Sini F. *Diritto romano, cultura giuridica, insegnamento. http://www.dirittoestoria.it/memorie/quarta.htm*.

Poll, S. and Puto, A. 1981. *The History of Albania from its Origins to the Present Day.* London: Routledge.

Potter, D. 2003. "Syntagma Canonum." *The Catholic Encyclopedia.* (Vol. 14) New York: Kevin Knight. *www.newadvent .org*.

Robinson, O.F. 1997. *The Sources of Roman Law.* London: Routledge.

Runciman, S. 1968. *The Great Church in Captivity.* Cambridge: Cambridge University Press.

Sabec, O. 2001/ *Ottoman Schools in Bulgarian Lands 15th-18th Centuries.* Sofia: Ljubomadrie-Chronia.

Scarborough J. and Talbot, A. "Abortion." *Oxford Dictionary of Byzantium.* (Vol. 1), Oxford: Oxford University Press.

Schminck, A. 1991. "Basilika," In Kazhdan, A. and Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 1), Oxford: Oxford University Press, 265.

Schminck, A. "Canon Law," In Kazhdan, A. and Talbot, A. *Oxford Dictionary of Byzantium.* (Vol. 1), Oxford: Oxford University Press, 372-374.

Shaw, S. 1976. *History of the Ottoman Empire and Modern Turkey Volume 1: Empire of the Gazis: The Rise and Decline of the Ottoman Empire 1280-1808.* Cambridge: Cambridge University Press.

Simon, D. "Legislation as Both a World Order and a Legal Order," In Laiou, E. and Simon, D. *Law and Society in Byzantium: Ninth-Twelfth Centuries.* Washington: Dumbarton Oaks Research Library & Collection.

Stefanov, S. 2002. "Everyday Life in the Balkan Provinces of the Ottoman Empire During the 17 and 18 Centuries." *Bulgarian Historical Review.* 30 (3-4), 50-86.

Stein, P. 1999. *Roman Law in European History.* Cambridge: Cambridge University Press.

Stolte, B.H. 1989. "Balsamon and the Basilica." Lokin, J.H.A., Stolte, B.H. and *Van der Wal, N. Subseciva Groningana Studies in Roman and Byzantine Law III.* Groningen: Egbert Forsten.

Tambaki, T.M. 1995. "La diaspore greque en Roumanie. État actuel de la

recherche et ses perspectives." *Revue Roumane D'histoire.* 34 (1-2), 3-10.

Tellegen-Couperus, O. 1993. *A Short History of Roman Law* London: Routledge.

Treptow, K. (ed.) 1996. *A History of Romania.* Iaşi: The Center for Romanian Studies.

Troianos, S. January, 2004. "The Embryo in Byzantine Canon Law." Athens: University of Athens. http://www.biopolitics.gr/HTML/PUBS/VOL3/ha-trx.htm.

Troianos, S.N. 1980. *O "Poinalios" tou Eklogadiou. (The Ecloga on Punishment).* Frankfurt: Vittorio Klostermann.

Treadgold, W. 1980. *The Nature of the Biblioteca of Photius.* (Vol. 18) Washington: Dumbarton Oaks.

Vacalopoulos, A. 1976. *Istoria tou neou ellinismos tourkokratia 1453-1669. (The History of Modern Hellenism the Tourkokratia 1453-1669).* (Vol.2) Thessalonica: Erodots.

Vacalopoulos, A. 1970. *Origins of the Greek Nation.* New Brunswick NJ: Rutgers University Press.

Vaporis, N.M. 2000. *Witnesses for Christ: Orthodox Christian Neomartyrs of the Ottoman Period, 1437-1860.* Crestwood, NY: St. Vladimir's Seminary Press.

Vernadsky, G. 1938. "The Scope and Contents of Chingis Khan's Yasa." *Harvard Journal of Asiatic Studies,* 3 (3-4), 337-360.

Viscuso, P. 1989. "A Late Byzantine Theology of Canon Law." *Greek Orthodox Theological Review.* 34 (3), Brookline Mass: Holy Cross Press, 203-219.

Vryonis, S. 1971. *The Decline of Medieval Hellenism in Asia Minor and the Process of Islamization from the Eleventh through the Fifteenth Century.* Berkeley: University of California Press.

Watson, A. 1987. "The Evolution of Law: Continued." *Law and History Review.* 5 (2), 537-570.

Winnifrith, T. 1992. "Albania and the Ottoman Empire." In Winnifrith, T. *Perspectives on Albania.* New York: St. Martin's Press, 74-88.

Zepos, P.J. 1966. “Byzantine Law in the Danubian Countries.” *Balkan Studies.* 7, 343-356.

Zepos, P.J. 1958. *Die Byzantinishe Jurisprudenz zwisden Justinian und den Basiliken Berichte zum XI.* Munchen: Internationalen Byzantinisten Kongress.

Zepos, P.J. 1967. “Twenty Years of the Greek Civil Code: Achievements and Objectives.” *Balkan Studies.* 8, 395-406.