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## NOTES AND STUDIES

### CHAPTERS IN THE HISTORY OF LATIN MSS OF CANONS

#### V. THE VERSION CALLED PRISCA : (a) THE JUSTEL MS (J) NOW BODL. E MUS. 100-102, AND THE *editio princeps* (PARIS, 1661).

THE earliest collection of conciliar decisions that can be called a code of canon law is the collection from which canons of the council of Antioch were cited at the council of Chalcedon. That collection consisted exclusively of the canons of six or seven councils held in the Greek East during the fourth century ; and it may have been put together as early as about A. D. 400.

The beginnings of the codification of canon law in the Latin West lagged, though not by very many years, behind its beginnings in the East. Always and everywhere its nucleus was something Eastern and Greek. Originally this nucleus was only the canons of Nicaea ; for the Nicene council was regarded in the orthodox West as something quite unique, and even its canons had a privileged position which they perhaps never acquired, and certainly did not acquire so early, in the East. This prerogative was no doubt in the main due to the dogmatic value set on the Nicene Creed, though something may also be attributed to the presence and participation of some few Western representatives in the Council. And when the *corpus* of Western canon law first extended itself beyond the narrow limits of the twenty canons of Nicaea, the additions sheltered themselves in one way or another under the same august title. In particular all the earliest evidence we have suggests that in Rome and Italy the council of Sardica was regarded as a sort of continuation of the council of Nicaea, and its canons as a series continuous with the Nicene.

It was exactly this unconscious developement in Italy and Rome of the primitive Nicene code which first stirred historical enquiry, and so led to a more legitimate and systematic extension of Western canon law. The conciliar movement when it first spread to the West, early in

the third century, found the soil most congenial to its growth in Africa. St Cyprian, with his clear-cut views about the episcopate and his genius for organization, gave it a powerful impetus: the votes of eighty-seven African bishops in his Re-baptism council of A.D. 256 are the earliest piece of conciliar acts, Greek or Latin, that we possess. A century and a half after Cyprian the Africans were not only holding regular councils at Carthage, but were preserving the record of their decisions. The Nicene canons were acknowledged, in common with universal Western custom, as primary: but they were reinforced for practical purposes with a growing body of local material.

Therefore when controversy broke out between the Roman Church under Zosimus and the African Church under Aurelius of Carthage as to what was or was not valid canon law, the only code universally recognized on both sides was that contained in the twenty canons of Nicaea. Beyond these the Africans acknowledged nothing binding but their own native legislation; the Roman Church gave the same binding force, within the limits set by the Nicene canons, to the *dicta* of its own authority, that is, the letters of the popes, but they propounded as Nicene a larger body of canons than that known at Carthage. The Africans did not of course claim that their local code had any authority across the seas: the Roman Church did not in terms assert that papal decisions had valid currency in Africa. But the question what was the true extent of the code of Nicaea, to which both Rome and Africa acknowledged allegiance, was a question of historical fact to be determined by evidence and enquiry.

The historian has good reason to be grateful for the moral delinquencies and legalistic subterfuges of one Apiarius, a priest of the church of Sicca in the proconsular province of Africa, since his deposition at home and his appeal or appeals to the pope were the immediate cause of a controversy of which the documents throw the first real light we have on the *origines* of Western canon law. And not only so, but in both Rome and Carthage the result of the controversy was the acquisition from the East of new material. To Carthage there came, in answer to the mission sent from thence to Atticus of Constantinople and Cyril of Alexandria, certainly from Atticus a new Latin version of the canons of Nicaea, and possibly from Cyril a heterogeneous collection of documents from the archives of the Alexandrian Church bearing on the councils of Nicaea and Sardica, and on the personal history of St Athanasius who was present at both those two councils—a collection which has come down to us through the medium of a Verona MS written three centuries later. But it concerns our immediate purpose much more nearly that in Rome there now appeared the first version of the Greek code of canon law, a version strictly Roman in its origin,

though in the course of time and in a developed recension it became widely known and popular as the version of St Isidore. It consisted of (1) a large amount of Nicene and quasi-Nicene matter, prefaces, creed, canons 'quae sancta Romana recipit ecclesia', 'quas memorata suscipiens confirmavit ecclesia': (2) the series of the canons of Ancyra, Neocaesarea, Gangra, Antioch, and Laodicea, numbered continuously after those of Nicaea, from xxi to clx: (3) the canons of Constantinople, numbered independently: (4) the canons of Sardica under the title 'Incipit concilium Nicaenum xx episcoporum quae in graeco non habentur sed in latino inueniuntur ita'.

I hope some day to justify by critical analysis of the MSS my conclusions as to place and date of the collection. Meanwhile I must assume that it took shape in Rome and somewhere about A.D. 425, since it contains also the series of African documents bearing on the controversy over Apiarius, namely, the Acts of the Carthaginian council of 419, the answers of Atticus and Cyril, and the letters sent from Carthage to Popes Boniface and Celestine respectively, extracted doubtless from the archives of the Roman see.<sup>1</sup>

Here then we have the first known Western translation of the Greek code, and it is, I am quite sure, Roman. We cannot tell how far it was recognized as authoritative: but at least it was preserved in the Roman archives, and was accessible to canonists and collectors, whether Roman or foreign, for a recension of this Isidorian version appears in Gaul hardly later than the end of the fifth century, while at the beginning of the sixth the famous Roman collection of Dionysius Exiguus is, so far as its material is common with that of the earlier collection, nothing else than a revision of this latter by the help of the Greek.

Thus both the 'Isidorian' collection, in its original form, and the collection of Dionysius—the two collections most widely spread, whether in their original forms or in later recensions, throughout Western Europe—are wholly and simply Roman. The Roman Church was, to a larger extent than has hitherto been recognized, the source from which Greek canon law penetrated the Latin West.

Hitherto everything has been fairly clear. But a much more puzzling problem remains: and it is to the elucidation of that further problem that the present paper is devoted. A third collection of canon law, of which the common nucleus, in all its extant representatives, is an independent version of Greek councils together with the documents of the

<sup>1</sup> It is possible that an earlier stage of the collection, put together between June and December A.D. 419, lies before us in the MS Vindob. 2141 saec. ix (my T): on this problem see the forthcoming part of my *Monumenta* i pp. 623, 624.

controversy about Apiarius, emerges in Italy between the date of the original 'Isidore' and the date of the official Roman collection of Dionysius. It is certainly later than the council of Chalcedon in 451, since it includes a version of the Chalcedonian canons. It is almost certainly earlier than Dionysius, since there would have been no place for any such collection after that of Dionysius had got into circulation, and the common ancestor of the four groups of Italian MSS in which this third collection has come down to us can hardly be later and is probably earlier than the opening years of the sixth century. If its wide circulation points to Rome as the centre from which it would most easily be diffused, the extraordinary low level alike of its historical knowledge, of its rendering of the Greek, and of its Latin style, forbids us to suppose that it can have had any official character or *imprimatur*. By a mistake of its first editor it was labelled the *Prisca*, and it is too late in the day to attempt to alter the label which has now attached to it for more than two and a half centuries. Our further examination of it must take its start from the work of this first editor, Christopher Justel.

Christopher Justel was a French Protestant, whose labours in printing and publishing the early codes of canon law, both Greek and Latin, can never be forgotten, and may truly be said to be beyond praise, for as regards the texts he was a pioneer in an almost untrodden field. But he only concerns us here for one section of a posthumous work: his earlier editions are summarily enumerated below.<sup>1</sup> He died in 1649: but it was not till 1661 that his son Henry with the help of G. Voel and doubtless under the patronage of Archbishop Pierre de Marca, published the two stately folios of which it is the first object of every student of early Canon Law to possess a copy, for still, after so long an interval has elapsed, they put into his hands a larger number of original texts than are contained in any subsequent publication: *Bibliotheca Iuris Canonici Veteris in duos tomos distributa. quorum unus canonum ecclesiasticorum codices antiquos tum Graecos tum Latinos complectitur, subiunctis vetustissimis eorumdem Canonum Collectoribus Latinis: alter vero insigniores Iuris Canonici Veteris Collectores Graecos exhibet: ex antiquis Codicibus MSS. Bibliothecae Christophori Iustelli.* The

<sup>1</sup> 1610. Βίβλος κανόνων τῆς καθολικῆς ἐκκλησίας . . . *Codex Canonum Ecclesiae Universae*: the Greek code with Latin rendering on the opposite page. 1614. *Codex Canonum Ecclesiae Africanae*: the Carthaginian council of 419 with the Greek version of it. 1615. Another edition, at the same publisher's, of the same book: if my copies are complete, the only difference is that the later edition adds two indices. 1628. *Codex Canonum Ecclesiasticorum Dionysii Exigui: item Epistolica Synodica S. Cyrilli et Concilii Alexandrini contra Nestorium*: the main part of the book is the *editio princeps* of Dionysius. 1643. Another edition, at the same publisher's, of the same book: with a small amount of new matter (pp. vi + 18) added at the end.

second volume, with the Greek collectors and commentators from John Scholasticus onwards, must perforce be neglected here. The first volume must be briefly described :

(i) pp. 29-96. The *Codex Canonum Ecclesiae Vniuersae* of A.D. 1610 'emendatior quam in prima editione'.

(ii) pp. 97-180. *Codex Canonum Ecclesiasticorum Dionysii Exigui . . . ex antiquissimo codice MS. bibliothecae Christoph. Iustelli*. The texts already printed by Justel in 1628 and 1643.

(iii) pp. 181-248. *Collectio Decretorum Pontificum Romanorum auctore Dionysio Exiguo*. The preface of Dionysius and the chapter-headings of the Decretals from Siricius to Anastasius (pp. 183-189) are repeated from Justel's edition of 1643 : the body of the Decretals is no doubt borrowed from the Mainz edition of 1525 or (more probably) the Paris edition of 1609.

(iv) pp. 249-274. *Alter Collectio Decretorum Pontificum Rom. Collectioni Dionysiana addita*. These are the additional Decretals found in the expanded Dionysius as sent by Pope Hadrian to Charles the Great.

(v) pp. 275-304. The *Prisca*, which is the subject of this paper, and to which I shall return in a moment.

(vi) pp. 305-444. *Codex Canonum Ecclesiae Africanae, Graece & Latine ex editione Christoph. Justelli an. 1615 in multis emendata* : the texts followed by lists of various readings, Latin and Greek, and by some five and twenty folio pages of notes.

(vii) pp. 445-466. *Fulgentii Ferrandi Ecclesiae Carthaginiensis Diaconi Breviatio Canonum, and Cresconii Episcopi Africani Breviarium Canonicum*. Apparently reprinted from the *editio princeps* of 1588.

(viii) Appendix pp. iii-xxxii. *Martini Bracarenensis Episcopi Collectio Orientalium Canonum . . . curâ et studio Ioan. Doujatii [Doujat] . . . nunc primum edita*. But in the Appendix itself this claim to be the first edition finds no place.

(ix) Appendix pp. xxxiii-cxii. *Crisconii Episcopi Africani alterum opus antehac non editum quod Canones Conciliorum et decreta Pontificum expandit*. That is to say, it is a complete edition of the work included under no. vii *supra*, the canons referred to being printed in full.

Let us now return to the thirty pages, more or less, which are the most distinctive contribution of the whole volume to the history of Latin Canon Law—the edition on pp. 275-304 of the so-called *Prisca*.

*Prisca Canonum editio Latina, complectens Canones Conciliorum Ancyran, Neocaesariensis, Nicaeni, Sardicensis, Gangrensis, Antiocheni, Laodicensis, Constantinopolitan, & Chalcedonensis, nunc primum edita ex vetustissimo Codice MS. Christoph. Iustelli*.

Fortunately this 'most ancient MS' is still extant, and we can therefore control the proceedings of the editor—or editors, since we cannot

tell, except in certain cases, whether the responsibility attaches to Christopher Justel or to his literary executors, Henry Justel and Voel. Difficulties begin already when we compare the title as given above with the texts actually printed. In the first place there is no sign of the canons of Laodicea which should have been found after the canons of Antioch on p. 296. In the second place the canons of Constantinople do not precede, as the title leads us to expect, the canons of Chalcedon, but follow them on p. 302. In both cases the title is wrong, and the text is right. The additional evidence now at our disposal for the reconstitution of the *Prisca* shews us that the council of Laodicea never formed part of it, and that Chalcedon and Constantinople were always intermingled with one another, exactly as in Justel's MS.

But there is another more curious and more complicated feature of the edition. On pp. 286, 287 we are surprised to find that, while the rest of the printed text appears in the usual type, large and regular and consistently maintained throughout the volume, the list of the bishops at Nicaea is set in a smaller and certainly less pleasing fount. What is the reason of this? It is simply that space had to be saved, between the council of Nicaea and the council of Gangra, for the insertion of the matter that begins a third of the way down p. 287 and ends near the top of p. 288 under the title *SARDICENSIS CONCILII FRAGMENTA*. One copy at least survives of the sheet as originally printed, with no change of type and no Sardican material at all, under the press-mark H 1 2 Iur. in the Bodleian. That unique copy survives to testify to the form in which the editors intended to issue their work.

So far so good: but we have still to find out why a change was made. And fortunately Baluze in the preface to his posthumous edition of Archbishop de Marca's *opuscula* has given us an explanation. Justel as a Protestant disapproved of the appeals to Rome authorized by the canons of Sardica and cut out, though he did not destroy, the leaves containing the canons of the offending council.<sup>1</sup> He could with reason have entirely omitted Sardica, just as he omitted Carthage, from his printed text, on the ground that, like Carthage, it was Latin material not Greek. But he had been dead ten years when the edition was being prepared for press: and at some time before his death he had confessed to de Marca how he had tampered with the MS. Therefore when de Marca heard that publication of Justel's material was imminent, he took steps to hold it up until the Sardican canons had had assigned to them the same place in the printed volume that they originally occupied in the manuscript. That is the secret of the small type that

<sup>1</sup> As it is certain in my opinion that Justel rearranged the contents of the MS (see below, p. 345), I think it not improbable that this dissection of Sardican leaves was simply part of the rearrangement, and had no fraudulent meaning.

marks pp. 286, 287 in ordinary copies of the *Bibliotheca Iuris Canonici Veteris*: it is to provide room for the printing of canons 14-18 of Sardica.

But the tale of confusion does not end there. De Marca had secured the incorporation of two leaves of Sardinian canons into the printed text: but Justel had cut out four leaves (at least) and four leaves cut away from their surroundings are now bound up again at the place from which they were taken, and while canons 15-17 and parts of canons 14 and 18 are printed by Voel and H. Justel, they could have printed also the concluding canons and the names of the bishops. For these pieces the forthcoming part of my *Ecclesiae Occidentalis Monumenta Iuris Antiquissima* will for the first time cite the MS.

Henry Justel presented his father's MSS of canons to the Bodleian Library in 1675. Our MS, rearranged (presumably by Christopher) in three volumes, has since that time borne the alternative press-marks 3686, 3687, 3688 and e Musaeo 100, 101, 102.

At this point it will be convenient to proceed to a detailed examination and description of the MS—according to my nomenclature J. In strong contrast to the MS I shall describe in section (*b*) of this paper, everything about J is complicated, its composition and its history alike.

There is no doubt that the MS is of Italian origin: the internal evidence of its contents, the external evidence of its script, tell the same tale. The hand is a beautiful uncial of about A. D. 600, too beautiful to have been that of any but an Italian scribe. But its earliest traceable home is the Benedictine abbey of Fleury on the Loire near Orleans: for round the margin of the last page of each gathering and the first page of the next a ninth-century hand has scrawled the inscription HIC EST LIBER SANCTI BENEDICTI ABBATI DE FLORIANO MONASTERII.<sup>1</sup> As the monastery of Fleury was not founded (by Bathildis, wife of Chlodovech II) till A. D. 667 and the MS was written half a century or more earlier, there is no difficulty at all in supposing that just as the Corbie MS was brought from Southern Gaul to Bathildis' new foundation of Corbie, so the Fleury MS was brought from Italy to her new foundation of Fleury.

For some nine hundred years there is nothing to be said about the fortunes of the MS: doubtless it reposed peacefully upon the shelves

<sup>1</sup> On each occasion the inscription has been carefully erased: but enough is decipherable, on one occasion or another, to guarantee an accurate restoration. But so far as I know, the late E. W. B. Nicholson, Bodley's Librarian, and myself, examining the MS now many years ago, were the first to detect the presence and the recurrence of the inscription. Obviously the sheets of the MS were unbound at the date of the inscription, and the object was to insure the MS, by a sort of repeated press-mark, against loss or dismemberment.

of the monastic library. But soon after the time when the monastic libraries of England suffered dispersion, a similar fate befell some (though fortunately only a minority) of the monastic libraries of France through the destructive activities of the Huguenots in the Civil Wars. Fleury suffered among others. Fortunately there were not wanting scholars on the Protestant side to do what they could to save books and MSS. The largest number of the Fleury MSS that survive found their way into the possession of Paul Bongars and so to the library of the town of Berne. By what means our MS came into the hands of another Protestant, Christopher Justel of Sedan, we do not know, nor how long he had had it before his death in 1649. But it passed to his son Henry, and, as I have said, by gift from Henry to the Bodleian Library in 1675.

So much for the history of the MS. Examination of its contents and their proper and original sequence is hampered in the first place by the rearrangement (by Christopher Justel, it would seem) in three volumes, and further, when we have put aside that trifurcation, by an original bipartite division into sheets signed by letters of the alphabet A-F, and sheets signed by numerals I-XIII. Which group comes first? and are the two groups divided by any corresponding grouping of contents?

(a) *Thirteen quaternions signed I-XIII*

MS e Mus. 101 fol 8b q i	contents: fol 1a	ANCYRA (capitula, canons, subscriptions)
	fol 8a	NEOCAESAREA (do. do. do.)
fol 16b q II	fol 11b	NICAEA (capitula, preface, creed, canons, subscriptions as far as no. 200 at the end of fol 24b)
fol 24b [q III erased]		the lost leaf contained the remaining signatures of Nicaea, and the title of Carthage
MS e Mus. 100 one leaf lost		
fol 7b [q IIII erased]	fol 1a	CARTHAGE (capitula, acta, canons, subscriptions)
	fol 19b	(letter to Boniface)
fol 15b q v	fol 24a	(letter to Atticus)
fol 23b vi	fol 25b	(letter to Celestine)
MS e Mus. 102 fol 3b vii <sup>1</sup>	fol 1a	EPHESUS
fol 11b [viii erased]		
fol 19b [viii half erased]	fol 49b	(subscriptions)
fol 27b x		
fol 35b q xi		
fol 43b xii		
fol 51b q xiii		

<sup>1</sup> Of sheet vii the first 5 leaves are bound up as the close of e Mus. 100, the last 3 as the beginning of e Mus. 102.

*(b) Six quaternions signed A to F*

MS e Mus. 101 (one whole gathering lost, signed A)	contents [SARDICA (capitula, canons I-XIII)]
fol 32 <i>b</i> [q B erased]	fol 25 <i>a</i> SARDICA (canons XIII-XX, subscriptions)
fol 40 <i>b</i> q C	fol 29 <i>a</i> GANGRA (capitula, epistle, canons)
fol 48 <i>b</i> q D	fol 35 <i>a</i> ANTIOCH (capitula, epistle, canons, subscriptions)
fol 56 <i>b</i> [q E half erased]	fol 45 <i>b</i> CHALCEDON (capitula, canons, subscriptions)
fol 62 <i>b</i> q F 2 folios lost between 60 and 61	fol 58 <i>a</i> CONSTANTINOPLE (capitula, canons, subscriptions, but 88 names lost between fol 60 and fol 61)
	fol 62 <i>b</i> RIMINI (the beginning of the orthodox letter : one page)

Which of these two main divisions of the MS had precedence in the original arrangement? That question would not be easy to answer on the argument of their contents, since these appear to be rather parallel than successive the one to the other : but the evidence of the set-off of the script from the beginning of one gathering to the end of its predecessor appears to be decisive in favour of the conclusion that the gatherings signed by letters of the alphabet were placed first, and that the gatherings signed by numerals followed. (i) On the last page, fol 62 *b*, of the set A to F in e Mus. 101 is the take-off *INCIPIVNT CONSTITVTA CANONVM ANCYRENSIVM* from the first page, fol 1 *a* of e Mus. 101, of the set I-XIII. (ii) On the last page, fol 51 *b* of e Mus. 102, of the same set I-XIII is the take-off *INCĪP CAPITVLA LIBRI EPIGRAMMATVM SCĪ PROSPERI*, with the numbers of capitula I-XXV down the page. That is from the first page of a MS now numbered lat. 11326 in the Bibliothèque Nationale at Paris, which bears on its fly-leaf the inscription 'Bibliothecae Sedanensis ex dono Christophori Justelli' : and as the handwriting appears contemporary if not identical with that of the canonical collection, we are safe in concluding that the Fleury MS had contained within one cover three parts, (*a*) sheets A to F Councils, (*b*) sheets I-XIII, a second part of Councils, (*c*) the poems of Prosper. This composite MS was presumably dismembered by Christopher Justel ; the two sections of Councils were rearranged by him in three small volumes of which one contained Carthage, one Ephesus, and the third the remaining conciliar matter ; these were retained in his own hands, while the Prosper portion, as of less interest to him than the Councils, was presented to the library of Sedan.

That is about as far as we can get on the evidence of the Justel MS alone. The problem of the origin and proper contents of the collection discovered by Justel and by him labelled *Prisca* remains unsolved. But the Justel MS is not the only witness now known to the existence and contents of the *Prisca*. The *Ballerini* had at their disposal two MSS in the Vatican, *Mansi* called attention to one in the Chapter Library of Lucca, which ran parallel—but each of the three independently of one another—to parts of the matter of the Justel MS. *Maassen* was able to describe a much larger mass of MSS, grouping them into four families under the common heading ‘*Vier verwandte italische Sammlungen des 6. Jahrhunderts*’ (pp. 500–536). Two of these families consisted of only a single MS apiece: Justel’s MS, and the Vatican MS *Reginensis* 1997 from Chieti, of the early ninth century, the singular value of which was patent to the critical acumen of the *Ballerini*. The two other groups he named from individual representatives ‘*Die Sammlung der Handschrift von Sanct Blasien*’, ‘*Die Sammlung der vaticanischen Handschrift*’: and to these two groups he (quite erroneously) gave the place of honour. *Maassen*’s book is absolutely indispensable to the student: as an industrious and indefatigable collector of material he is beyond praise: but as an interpreter of the facts he is immeasurably below the level of the *Ballerini*, and the *Ballerini*, with far fewer facts at their command, divined what *Maassen* with his greater knowledge missed, the central position of the Chieti MS in the process of investigation into the problem of the *Prisca*.

In the next number of the *JOURNAL* I hope to proceed to the examination of the contents of the Chieti MS (which I call I), and the demonstration of its superior originality and unique value.

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