

## BYZANTINE LAW IN THE DANUBIAN COUNTRIES \*

### I

One of the most brilliant pages in the history of irradiance of the Greek-Byzantine spirit is no doubt the one that deals with the influence exercised by that spirit both in earlier times and especially for over one hundred years, from 1710 to 1821, in the Danubian principalities, Walachia and Moldavia. And this page appears even more brilliant, and interesting too, when one bears in mind that the culmination of that influence of Greek-Byzantine spirit occurred in times of enslavement and persecution for the Greek nation. Greek vitality then proved itself, once again. And such proof concerns what we call learning and culture in general, but also concerns law in particular, of which we will primarily treat in this brief survey.

Walachia and Moldavia, the two Danubian principalities, have a history of their own, a turbulent history, a history of conquests and upheavals, of prosperity and poverty, of elevation and decline, the same as that of practically every country in the Balkan Peninsula. To those who have known them better, however, Walachia and Moldavia seem to have been imbued, perhaps to a greater extent than any of our other northern neighbours, with what we call spiritual civilization or Western culture. And this again is perhaps due to the fact that beneficial influences have intensely interbred in those countries at certain periods of their history.

Getae and Dacians, the original inhabitants of Walachia and Moldavia, emerged into history mainly in Macedonian times. They were shepherds and farmers who after repelling several Roman attacks were finally subdued by Trajan's legions to become inhabitants of a new Roman province in 107 A. D. Ever since, and throughout the period of the great migrations, violent clashes occurred in the Danubian countries and all kinds of barbaric tribes, such as Goths, Huns, Bulgars, Slavs, Hungarians, Patzinaks and Cumans and others, succeeded each other as masters of the land. Raiders reached Dacia from all directions,

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\* The text is the translation of a paper read in Greek at the invitation of the "Institute for Balkan Studies" in Thessaloniki, on March 30, 1966. Some bibliography is added in footnotes.

north and south, west and east. And, as it always happens in the history of civilization, here too each invader left his traces, which though often barbaric, sometimes proved none the less beneficial to further development of the country in the long run. Thus the influence exercised by the Slavs and Cumans showed itself in the political and social fields. But from the standpoint of civilization in general the current that flowed forth from Byzantium proved a more decisive factor when, in the 9th century, Walachia and Moldavia, groaning under Bulgarian yoke, accepted the Christian doctrine from Byzantine clergymen and thereby joined the chorus of peoples that were virtually Byzantium's spiritual children.

It is no concern of ours to follow here the two Danubian countries' political history in greater detail. The important fact is that since the closing years of the 15th century and definitely since the 16th and 17th centuries the two countries came under Turkish domination and paid tribute to the Porte. And this is when a new era opened in the history of the two countries, during which the new elements that were later to make up the peculiar character of their civilization came out boldly.

## II

The Turkish conqueror treated the two Danubian countries with great benevolence. For political rather than sentimental reasons, the Porte was content from the beginning, in the early 16th century, with a more or less elementary supremacy. This supremacy of the Sultan, involving an obligation for payment of tribute, was confirmed by treaties, where under the two countries' ruler would be elected by the local lords, such election being merely subject to ratification by the Sultan. That meant a fairly free regime, which naturally facilitated development of some self-existent, if elementary, civilization under the heel of the great and cruel conqueror. And it is in this period indeed, a period of harsh treatment of the people by its own rulers, that the two countries' spiritual orientation toward the untarnishable luster of the politically extinct, but spiritually all-powerful, Byzantium was definitely established. Religious texts and whatever may be termed as learning — everything was Byzantine. The Greek-Byzantine spirit of the age was diffused in the two countries out of necessity at least, if for no other reason, as it alone was adapted to the state of mind of the Christian Orthodox Walachians and Moldavians, but also because it alone existed as a complete and organized model.

It is a characteristic fact that, during this period, from the 17th to early 18th century, when the Phanariots finally asserted themselves, elective rulers in both Walachia and Moldavia have often been Greeks or of Greek descent,

such as the Kantakouzinios, Doukas the Roumeliote, Anthony Rossetis, Basil Arvanitis, the celebrated Constantine Mavrocordatos, among others. And it is only too natural that their work should be a product of Greek-Byzantine concepts, of which they were the carriers. It is, moreover, natural that the law they were administering should be pure Byzantine law, in which they were versed, as also were the native rulers, whose education, if any, was always Byzantine.

In fact, we may question the extent of Byzantium's cultural irradiancy in the two Danubian countries, but we can by no means ignore it. Byzantine influence established itself in those countries with the expansion of Christianity during the 9th century. The original means of expression of Byzantine civilization was the Slavonic language. Later, however, Greek learning and Greek language became mere synonyms there, as they did elsewhere. Byzantine legends and narratives, memories and romances penetrated the two countries and took root in their peoples' souls and even sailed up the Danube to spread into the distant West. What is true of learning in general, is also true of law in particular.<sup>1</sup>

### III

Thus, with respect to law in particular, it should be noted that in this period, reaching into the Phanariotic times proper, there has been no law collection which, at least in its general form, had different features from those of Byzantine prototypes.

We may indeed find it difficult to accept the view that the ancient Dacians applied Roman law as soon as Trajan's legions brought it in, but it is perhaps certain that, since the 6th century, Walachians and Moldavians had been familiarized with the Byzantine texts through their Slav conquerors. Byzantine prototypes constantly dominate the law field ever since, though in their Slavonic form, even if we were to believe Demetrios Cantemir's recounting according to which Alexander the Good (1401-1433) ruler of Moldavia, had received, along with his princely title, from the Byzantine emperors — the Paleologues — the law provisions contained in the "Basilica," out of which he

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1. On the Byzantine or on the Slavonic influence in general see among others, e.g. Gh. M. Ionescu, *Influența culturii grecesci în Muntenia și Moldova cu privire la biserică, școală și societate* (1359-1873), București, 1900, A. D. Xenopol, *Istoria Românilor*, vol. X (1930), pp. 166 seq., N. Jorga, *Roumains et grecs au cours des siècles* (1921), P. P. Panaitescu, *Inceputurile și biruința scrisului în limbă română*, ed. Academiei R. P. Române, Buc. 1965. In general see the *Istoria României*, ed. by the Rumanian Academy, vol. I-IV, Buc. 1960-1964, with sources and bibliography.

compiled an abbreviated code in Slavonic. This information does not sound reliable. It is none the less a fact that, ever since they made their appearance in history, the rulers of the two countries, the "hospodars" of Moldavia and Walachia, tried to consolidate their governance among other things, with the authority of Byzantine imperial laws, which they used in the Greek original texts, or, failing these, in Slavonic translations. This seems to have been undoubtedly the case with the Slavonic translations of Matthew Vlastaris' Constitution, as well as with other texts, mainly ecclesiastical, which had already been translated into Slavonic before the 15th century and were circulating in manuscripts.<sup>2</sup>

As years passed by, however, Slavonic ceased to be the necessary intermediary and the two Danubian countries' rulers started translating their concise codes directly from Greek into Rumanian, always gleaning their clauses from the established Byzantine prototypes. This is the case, in both Walachia and Moldavia, with the first 17th century codes printed in Rumanian: the *Pravila dela Govora* in Walachia, printed in 1640 and also known as *Pravila cea mica* (Small Code), in contrast with the *Indreptarea legiei*, printed by Matthew Bessaraba, called *Pravila cea mare* (Great Code), by reason of its volume, and Basil Lupu's Code, in Moldavia, printed in Jasi, 1646.<sup>3</sup>

These codes, like all other texts which appeared during this period in manuscripts or in print (e.g. the *Pravila aleasa* of 1632 and the collection *Seapte taine a bisearicii* of 1644, both in Moldavia), had been compiled by men who could use the Greek and Rumanian languages, and possibly Slavonic too. This latter can perhaps be said of the code *Pravila dela Govora* of 1640, most probably compiled by one Michael Moxalie, manifestly influenced by Peter Mogila's Canon Law Code (Nomocanon), published in Kiev, 1629.

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2. See e.g. A. Soloviev, "L'influence du droit byzantin dans les pays orthodoxes", in *Relazioni del X Congresso Intern. di Scienze Storiche*, Roma 1955, vol. VI, pp. 599 seq., pp. 622 seq. ("Der Einfluss des byzant. Rechtes auf die Völker Osteuropas" in *Zeitschrift der Savigny Stiftung*, Rom. Abt. 76, 1959, pp. 432 seq., 452 seq.; in p. 476 other book references). See also S. G. Longinescu, *Istoria dreptului românesc*, Buc. 1908, I. Peretz, *Curs de istoria dreptului român*, vol. I-IV, 2nd ed., 1926-1931, St. Berechet, *Istoria vechiului drept românesc*, Jasi 1934, *Legatura dintre dreptul bizantin și românesc*, 1937, *Intregiri* 1938, "Der Einfluss des byzantinischen auf das alte rumänische Recht" in *Mnemosyna Pappoulas*, Athens, 1934, pp. 29 seq., etc. On D. Cantemir see now P. P. Panaitescu, *Dimitrie Cantemir, Viața și opera*, Buc. 1958.

3. See now the introductions in the new editions of Basil Lupu's Code, *Carte Românească de Invațatura*, 1646, edit. Acad. R. P. Romîne, 1961 and of *Indreptarea Legiei* 1652, edit. Acad. R. P. Romîne, 1962, on which the book reviews of Val. Al. Georgescu, in *Studii și Cercetări Juridice*, 1962, pp. 355 seq., 1963, pp. 116 seq. See also C. A. Spulber, "Indreptarea Legiei, le code valaque de 1652", *Études de droit byzantin*, vol. VI, 1938.

With respect to the other Codes, however, namely the *Indreptarea Legiei* and Basil Lupu's Code, the information we have is clear. The *Indreptarea Legiei* was based on Greek sources, mainly Manuel Malaxos' Canon Law Code, and was composed in Rumanian by Daniel of Pannonia, assisted by two teachers of Greek and monks from Chios, Ignatius Petritsis and Panteleimon Ligaridis. As for Basil Lupu's Code, it was composed as a translation "from many Greek books" by the "logothetes" Eustratius. The ascendancy of Greek-Byzantine learning during this period seems, therefore, unquestionable, as far as the earliest codification activity in the two Danubian principalities is concerned. And this ascendancy grows into real domination in the immediately ensuing period, when, since the beginning of the 18th century, the Phanariots establish themselves as rulers of the two Danubian countries.<sup>4</sup>

#### IV

We are not going to discuss here the overall cultural significance which the Phanariots' rule, lasting over a century, had for Rumania. I personally believe that the Phanariotic period has been a true Enlightenment age for the two Danubian countries and that this age, a brilliant page in the history of Hellenic irradiancy, is at the same time one of the most brilliant pages in the history of the Rumanian nation itself. If this be generally true of the overall history of civilization, I would say it is unquestionably true of the history of law in the two Danubian countries.

The Phanariot period begins in 1710 for Moldavia and 1716 for Walachia and, covering the entire 18th century, ends around the year 1821 — that crucial year in the history of southeastern Europe, when, as a result of the Greek Revolution, the decisive turning point is reached towards the fall of the vast Ottoman Empire and new hopes and new national currents emerge in the Balkans.

Since 1710 in Moldavia and 1716 in Walachia, the Porte, having denounced all previous treaties to the contrary, assumed the right directly to appoint the two countries' rulers, which it selected from the ranks of the Phanariots of Constantinople, the Greek nobles, whose descent could often be traced to the ancient glorious Byzantine times. The Greeks of Phanarion thus found a new excellent outlet for their energies. And, despite earlier unfair criticism, it is now certain that this outlet afforded a brilliant opportunity to Hel-

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4. See the references as in notes 2 and 3 above. On the influence of P. Mogila see already P. P. Panaitescu, *L'influence de Pierre Mogila, archevêque de Kiev dans les principautés roumaines*, Paris, 1926.

lenism, but also proved beneficial to the cultural development of the two Danubian countries' peoples. A raise in living standards, growth of commerce and a throbbing economic activity in general, promotion of education above all and most particularly of justice — this has been the work of Phanariots, even though these achievements were sometimes accompanied by acts of cruelty and oppression, which were, at any rate, inevitable in that era of absolutism and of a predominantly feudal organization of men's social life.

Polyglots, diplomats and statesmen, the Phanariots brought over with them in the two principalities Greek learning, which they had completely mastered. And this Greek learning they imposed, fully conscious of its merits, in an area already predisposed to its total acceptance, as that learning had been looked up to for centuries there as learning "par excellence" and as the foundation of whatever could be called civilization — and this it was indeed.

With respect to law, in particular, the Phanariot rulers' contribution was unique. Unique in the history of Rumanian as well as of Greek-Byzantine law, a real revival of the Greek-Byzantine spirit, and perhaps its last flash too, before tendencies of nationalistic particularism appeared, as happened later in the 19th century, when a new codification activity spread on a world scale and national Codes were published in which Roman-Byzantine law was no longer more than a distant echo.

During the Phanariot period, the Danubian principalities' law was enriched with texts, some of which were printed, while others remained in manuscript form — but all of which, written in Greek, exhale that Greek-Byzantine spirit which permeated their cultured authors.

In Walachia, the "Nomocanon" by George of Trebizond (1730), the "Nomikon Procheiron" by Michael Photeinopoulos of Chios (1765), the "Nomikon Syntagmation" by Alexander Hypsilantis (1780), and lastly the celebrated "Nomothesia" of George Caradjias, with Athanasius Christopoulos as its main author (1818) — all these are Greek texts, whose Byzantine origin is manifest. To these we may add the "Juridical Art" by Demetrius Catartzis and Photiades, composed in Bucharest, 1793, and intended as a practical, scientific manual. In Moldavia, Basil Lupu's code was still in force, but, owing to its lacunas, the courts applied Byzantine law provisions, as found in Armenopoulos' "Hexabible," especially in its translation by Alexios Spanos, or in other Greek texts, possibly the "Pandect" of Thomas Carras (1806) or the "Vactiria Archiereon" written in Ioannina, 1645, by the Archimandrite, later Bishop, Jacobos. This is how things stood until 1814, when Andronachi Donici's Code was brought out, and especially until 1817, when the famous "Political Code" of Prince Scarlatus Callimachis, published in Jassy, with Ananias

Kouzanos of Trebizond, as its main author, and Christian Flechtenmacher, a Transylvanian, as his collaborator.<sup>5</sup>

Rich is then the legislation crop in the two principalities during the Phanariot period. A modern student of good faith cannot fail to discern an evident Byzantine influence in these enactments.

In fact, with the sole exception of Andronachi Donici's Code of 1814, published in Rumanian, all other Codes had been written in Greek, from which some were later translated into Rumanian. Moreover, all these Codes were expressing Greek-Byzantine law, with the sole exception again of the Political Code of the Moldavian principality of 1817, whose authors did not base its clauses on Byzantine models alone, but largely also on the Austrian Code of 1811 and its interpretation — a fact of the greatest importance in itself, for this was the first time when, in the age-old history of Greek-Byzantine law, a Greek text appeared then, in 1817, which, under the guise of Byzantine law also included clauses from a modern Code of Western origin.<sup>6</sup> Considered from this angle, the Moldavian Code of 1817 marks a turning point in the development of Hellenic spirit, which then turns from the East to the West, as it also happened after 1821 in Greece, where, after the free state was established, legislative models were sought for, not only in the glorious Byzantine past, but in modern Western codifications too.

## V

If we, therefore, except the Moldavian Code of 1817, which largely expressed Austrian law and if we also except the incomplete code of Andronachi Donici of 1814, the remaining great Codes, particularly those of Walachia, are the Codes where the Byzantine law is most clearly imprinted. And these Codes are most important: M. Photeinopoulos' "Nomikon Procheiron," A. Hypsilantis' "Nomikon Syntagmation" and G. Caradjas' "Nomothesia," to

5. The relevant bibliography is to be found in P. Zepos, *Syntagmation Nomikon Al. Hypsilantis*, 1780, ed. Athens Academy, 1936, pp. 23 seq., *Nomikon Procheiron M. Photeinopoulos*, 1765, Athens, 1959, pp. 9 seq.; also "L'influence du droit byzantin sur la législation roumaine de la période des princes phanariotes" in *L'Europa e il Diritto Romano, Studi in memoria di P. Koschaker*, vol. I, 1953, pp. 429 seq. Now see R. Agathoklis, "The legislation of the greek princes in Moldavia and Valachia" (in Greek), in *Ephemeris Hellenon Nomikon*, vol. 30 (1963), pp. 465 seq. See also A. Radulescu, "Juristul Andronache Doniei", *Memor. Ruman. Acad.*, sect. hist., III. XI. 8, Bucharest, 1930, "Pravilistul Elechtenmacher", *ibid.* III. I. 4, 1923, Ungureanu, *Jurisconsultul Christian Flechtenmacher*, 1931, etc.

6. On the influence of the Austrian Civil Code on the Code of Moldavia see C. Triantaphyllopoulos, "Sur les sources du Code Callimaque" in *Revista Istorică Română*, vol. I (1931), pp. 32 seq., P. Vallindas, "Ein Beitrag zur Geschichte des intern. Privatrechts: Das

confine myself to those and not include other minor texts cited above, canon law codes and collections.

I had the good fortune of associating myself personally with the publication and elaboration of these three Codes and I can stress once again, and as emphatically as I can, that these three Codes are thoroughly imbued with the Greek-Byzantine heritage, the heritage of Byzantine law, as it finally evolved after Eastern-Greek and Christian concepts penetrated the body of earlier Roman law; with the heritage of Byzantine law as it was actually applied in Asia Minor, in the Balkans and elsewhere, with its equitable and philosophizing thought and humanism, in short, with those traits that imparted to the austere Roman law the form which consecrated it as a model law, often as practically universal law in what is called civilized world.

Of these three Codes, the "Nomikon Procheiron" of Michael Photeinopoulos of Chios, compiled in Bucharest, 1765, comes first in time sequence. This book is a voluminous work, the text of which I published recently from a manuscript of the State Archives of Jassy, with an introduction and abundant annotations. And I believe I have proved in my relevant treatise that this Code is a Byzantine law code and that, even where its author refers to the "custom" of the land as his source, he is actually expressing Byzantine law, written or unwritten, as, for instance, with respect to the "theoretron," impediments to marriage or divorce after absence of five or seven years, according to the Act of the Ecumenical Patriarchate etc.<sup>7</sup>

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Zivilgesetzbuch der Moldau von 1817", in *Festschrift für R. Laun*, Hamburg, 1953, pp. 681 seq. (also in Greek in *Mnemosyna D. Pappoulas*, Athens, 1934, pp. 271 seq.), G. Mantzoufas, "The commentary of Zeiller as model of the Code of Callimach" (in Greek), Athens, 1955, Val. Al. Georgescu, "Trasaturile generale și izvoarele Codului Callimach", in *Studii*, vol. XIII (1960), pp. 73 seq. (with further bibliography). See also introduction to the new edition of this Code by the Rumanian Academy: *Codul Callimach*, 1958 (in pp. 945 seq., bibliography).

7. P. Zepos, *Nomikon Procheiron M. Photeinopoulos*, Athens, 1959, on which see the remarks of the Rumanian writers Gh. Cront, in *Studii*, vol. XIII (1960), pp. 272 seq., Val. Al. Georgescu, *ibid.* XIV (1961), pp. 1507 seq. and in *Studii și materiale de istorie medie*, vol. V (1962), pp. 281 seq. (see also Fr. Dölger, *Byzant. Zeitschrift*, vol. 52 (1959), p. 240, B. Sinogowitz, *Zeits. Savigny Stiftung*, Rom. Abt., 76, 1959, pp. 665 seq., R. Janin, *Revue des Études Byzantines*, vol. 17 (1959), p. 261, J. Irmscher, *Byzantinoslavica*, vol. 21 (1960), p. 178, A. D'Emilia, *Annali di storia del diritto*, 1959-1960, pp. 95 seq., L. Bove, *Labeo*, vol. 5 (1959) pp. 398 seq., H. Isele, *Archiv für die civil. Praxis*, vol. 158 (1960), p. 538, N. Svoronos, *Revue Intern. de droit comparé*, vol. 13 (1961), pp. 890 seq. D. Economides, *Laografia*, vol. 17 (1959) pp. 670 seq., C. Georgoulis, *Platon*, vol. 11 (1959), pp. 250 seq., D. Ghinis, *Epetiris Hetaireias Vizantinon Spoudon*, vol. 29 (1959), pp. 477 seq., M. Economou, *Revue Historique de droit français et étranger*, vol. 39 (1961), pp. 623 seq., C. Triantaphyllopoulos, *Practica Academi*



Alexander Hypsilantis' "Nomikon Syntagmation" of 1780, which I published thirty years ago, with a long introduction and annotations, is similarly an important code in that Byzantine law is formulated in it, developed and alive, frequently influenced by ancient Greek concepts, which were able to survive latently throughout the centuries of Roman power.<sup>8</sup>

Finally, George Caradjas' "Nomothesia" of 1818, reprinted in "Jus Graecoromanum," which I published in 1931 in collaboration with my late father, is likewise a highly important Code, with the same features as those of the "Syntagmation," namely, the imprint of Byzantine law, developed and renewed, that is, Byzantine law as it was actually applied.<sup>9</sup>

I cannot go into further details about these Codes here. I cannot, however, resist the temptation of mentioning, at least in a cursory way, some of their institutions, in which Byzantine origin is clear and typical. The system of serfdom, for example, formulated on the Byzantine models of "enapographoi" and "paroikoi," or the law of things and law of obligations, where Byzantine ideas as well as ever living Greek concepts intermingle in such clauses as the valuating character of the "hypotheca," the significance of preparation of the contract in writing, the maintaining of registers or codes at the cathedrals, the loan contract, the guarantee, the "protimissis" (pre-emption) etc. or, finally, in the family and inheritance laws, where the notion of family community

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*Athenon*, vol. 37 (1962), pp. 216 seq., and in *Ephemeris Hellenon Nomikon*, vol. 29 (1962), pp. 521 seq., G. Nv. d. Trenck, *Balkan Studies*, 4 (1963), pp. 210 seq.

8. P. Zepos, *Syntagmation Nomikon Al. Hypsilantis* etc., 1780 (ed. Athens Academy, 1936), on which, among others, see the Rumanian writers P. P. Panaiteescu, *Revista Istorică Română*, vol. 7 (1937), pp. 185 seq., St. Berechet, *Intregiri*, 1938, pp. 229 seq., N. Banescu, *Revue Historique du Sud-Est Européen*, vol. 19 (1942), pp. 642 seq., Gh. Cront, *Analele Facultății de Drept din București*, 5, 1943 (see also S. Kougeas, *Hellenika*, vol. 9 (1936), pp. 177 seq., A. Baltatzis, *Zeits. für ausl. und intern. Privatrecht*, vol. 10 (1936), pp. 1015 seq., E. Hermann, *Orientalia Christiana Periodica*, vol. 3 (1937), pp. 330 seq., E. Bernecker, *Zeits. Savigny Stiftung*, Rom. Abt., 57, 1937, pp. 527 seq., M. San Nicolo, *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, vol. 29 (1937), pp. 53 seq., Fr. Dölger, *Byzant. Zeits.*, vol. 37 (1937), pp. 273 seq., Gr. Cassimatis, *Epetiris Hetaireias Vizantinon Spoudon*, vol. 13 (1937), pp. 468 seq., J. Sontis, *Archeion Idiotikou Dikaiou*, vol. 5 (1938), pp. 70 seq., V. Capocci, *Studia et Documenta Historiae et Juris*, 4, 1938, pp. 575 seq., G. Beseler, *Byzant.-Neugriechische Jahrbücher*, vol. 16 (1940), pp. 255 seq. etc. Now see the new edition of this code by the Rumanian Academy: *Pravilniceasca Condica*, 1780, ed. Acad. R. P. Romîne, 1957 (on which P. Zepos, *Epetiris Hetaireias Vizantinon Spoudon*, vol. 27 (1957), pp. 396 seq.).

9. J. et P. Zepos, *Jus Graecoromanum*, vol. 8, 1931, with an introduction of C. Triantaphyllopoulos (reprinted in 1962), *Legiuiria Caragea*, ed. Acad. R. P. Romîne, 1955 (on which N. Camariano, *Studii*, X. 1, 1957, pp. 179 seq., A. Radulescu, *ibid.* X. 4, 1957, pp. 135 seq., P. Zepos, *Epetiris Hetairias Vizant. Spoudon*, vol. 27, 1957, pp. 396 seq.).

automatically wells up through many clauses, while the dowry, "patria potestas" and guardianship are formulated on the Byzantine models, and the drawing up of the will, the male's privilege to inheritance of the paternal house, intestate succession, "collatio," the "psihica," "trimoeriae," etc. — all are institutions formed on Byzantine models but also often influenced by ancient Greek concepts.

Photeinopoulos' "Nomikon Procheiron," Hypsilantis' "Syntagmation," and Caradjas' "Nomothesia" are the three great Walachian codes, where Byzantine law found its final formulation and which are monuments in the history of Rumanian law and, at the same time, Greek and Byzantine monuments.

This, we believe, is unquestionable. Or, at least, it should be so, though, on the Rumanian side, even these unquestionable facts have been questioned to some extent in recent times.

## VI

Modern Rumanian science is exceptionally flourishing in historical research in general and in the field of law history in particular. Remarkable scientific work is being carried out at the Bucharest Academy and in specialized Institutes, with modern methods and enviable impetus. The proof of such work can already be seen in the multitude of special treatises and monographs, which recently came out of the press, as well as in beautiful critical editions of the texts of the history of Rumanian, or, to be more exact, Greek-Rumanian law, such as re-editions of Hypsilantis' "Syntagmation," the Walachian Code, the Moldavian Code, the *Indreptarea Legiei*, etc., and even the critical edition of M. Photeinopoulos' "Nomikon Procheiron", now under preparation.<sup>10</sup>

We are hailing this work cordially and with sincere enthusiasm. But, on the other hand, we regret the fact that this work often bears the unmistakable marks of some prejudice, nationalist and class prejudice, which fatally detracts, as every prejudice does, from the indispensable scientific infrastructure.

It is, of course, difficult for me to sum up here the conclusions and line of argument of modern Rumanian authors with respect to the history, the authors and sources of each of the codes I have named. It may be noted very briefly that, apparently motivated by national pride, the Rumanians claim that the "Syntagmation" was first written in Rumanian and later translated into Greek, that G. Caradjas' Walachian Code was only partly written by Athanasius Christopoulos but it is, in the main, the work of three Rumanian

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10. See above notes Nr. 3, 6, 8 and 9.

authors, Constantine and Ionitsa Balaceanu and Nestor, that the Moldavian Code was essentially written by the Transylvanian Flechtenmacher, and lastly that even M. Photeinopoulos' "Nomikon Procheiron," though written by Photinopoulos, contained elements of local Rumanian custom law to a substantial extent.<sup>11</sup>

I sincerely regret that I cannot accept this Rumanian nationalistic — I would say chauvinistic — viewpoint!

In fact: (a) Alexander Hyspilantis' "Syntagmaton" was unquestionably first written in Greek, most probably by a committee or some obscure teacher of Greek, and was later translated into Rumanian. There is an explicit information to this effect in the "Chrysobull" of 1775, where Alexander Hyspilantis announces the publication of the "Systagmaton" and expressly says: "...We have made a legal text, which... after having it translated into Walachian, we shall have printed...." There is no reason why we should ignore this clear information given by the prince and accept the opposite, based on other considerations!

(b) G. Caradjas' "Nomothesia," that is, the Walachian Code of 1818, was undoubtedly originally written in Greek and consequently its chief author was a Greek, Athanasius Christopoulos, a most learned scholar and distinguished poet and writer.

(c) The Moldavian Code of 1817 was also unquestionably written in Greek (it was translated into Rumanian much later, not before 1835) and it is entirely improbable that Flechtenmacher should have been its chief author, where as it stands to reason that its author should be a Greek, Ananias Kouzanos, at least in the main.

On these points I cannot and, as a matter of fact, I need not elaborate, since much has been written in this respect at various times. The Greek contribution to the preparation of those codes, as a principal and decisive contribution, seems unquestionable to me. Also unquestionable is, I believe, the Greek view that the Rumanian custom law, much publicized by the Rumanians, is as a whole a meagre law and that the "usages" often referred to in those codes, as well as in Photeinopoulos' "Nomikon Procheiron," are of Byzantine or, to be more accurate, of Greek-Byzantine origin, as I noted earlier, speaking for instance, about the "theoretron," impediments to marriage, the divorce or other institutions of the family and inheritance, as well as of transactional law.

The authors of these codes were, therefore, Greeks in the main and the law they laid down was Greek-Byzantine, when they did not borrow provi-

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11. See the introductions of the new editions mentioned above in notes Nr. 3, 6, 8 and 9.

sions from the West, as that was largely the case with the Moldavian Code, that is, the part in which Austrian law is expressed.

The Rumanian national pride is touching, but the arguments advanced under its pressure are hardly convincing. What happens with this national pride, also happens with the class, materialistic, explanation which the Rumanians are attempting to give to the phenomenon of codification and to the content of such codification, at the turn of the 18th century, in the Danubian principalities.

Thus a great number of recent treatises by Rumanian authors are devoted to an examination of the problem of "acceptance" of the Greek-Byzantine law in the Rumanian countries and there are also many pertinent comments, made in the introductory notes to the texts of the Greek-Byzantine codes, published by the Academy of Bucharest. The "thesis" supported in these studies and comments is almost invariably that acceptance of the Byzantine law has been imposed on the Rumanian countries as a necessary complement of their feudal organization and for consolidation of this organization in critical times.<sup>12</sup>

Thus, canon law and codes have been, as this class explanation maintains, the means by which the Church and the Prince — both of them genuine expressions of feudal organization — sought to ensure their ascendancy over the needy classes from the beginning, secure the serfs' corvées and increase the imposition of justice, that is, of their own feudal or princely justice. And when, by the end of the 18th century some rudimentary middle class had begun to develop, the interests of that class had to be also secured, which explains, in a dialectical way, the appearance of some progressive provisions (e. g. in the Wallachian Code), such as the woman's ability to contract loans, recognition of the autograph will, the principle of keeping agreements drawn up according to the law and good morals, etc. To modern Rumanian writers, the acceptance of Byzantine law and its preservation during the Phanariot

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12. Apart of the "introductions" mentioned above in note 11 (notes Nr. 3, 6, 8 and 9) see e. g. Gh. Cront, "Byzantine Juridical influences in the Rumanian Feudal Society" in *Revue des Études sud-est européennes*, vol. 2 (1964), pp. 359 seq., "Le développement des recherches concernant l'histoire de l'État et du Droit dans la R. P. Roumaine" in *Revue Roumaine d'Histoire*, vol. 4 (1965), pp. 81 seq., "La réception des Basiliques dans les pays roumains" in *Nouvelles Études d'Histoire* (1965), pp. 171 seq., Tr. Ionascu - V. A. Georgescu, "Unité et diversité des formes de la réception du droit romain en Occident et du droit byzantin en Orient" in *Revue des Études sud-est européennes*, vol. 2 (1964), pp. 153 seq., V. A. Georgescu, *Preemțiunea în istoria dreptului românesc* (1965), J. Constantinescu, "Contribuții la istoria relațiilor oragare în perioada destrămării feudalismului" in *Studii*, vol. 18 (1965), pp. 1039 seq.

period has been the necessary reflection of the class organization of the two Danubian countries, first as a purely feudal system and later as a system which allowed for projection of the new middle class too. In this sense, reflecting a purely materialistic conception of history, Byzantine law had been imposed on these countries as a law that served the rulers, and oppressed the ruled classes.

I respect this explanation but regret that I cannot accept it as it is expressed, in a monolithic and biased way, by modern Rumanian authors. The materialistic explanation of historical phenomena is certainly an explanation, but not indubitably the only one possible. And without discussing the correctness of the monistic concept on which the theory of historical materialism is founded, I dare believe that the main reason for acceptance of the Byzantine law in the Danubian countries, as well as elsewhere, was the perfection of that law and its elaboration and development in the course of many centuries, which made Byzantine law a real model law. Byzantine law was alive at the time when the Rumanian countries were searching for texts and provisions that would help them regulate their social life. And its irradiancy was at its height when these countries were thirsting after some kind of legislative arrangement. And it was the influx of Greek language and of Greek-Byzantine civilization in general which facilitated the acceptance of that law, as a law equipped with the luster and glory of a great historical past.

The attempt to explain the acceptance of Byzantine law as a result of the organization of social life alone in the two Danubian countries is, therefore, unjustifiable. Publication of the Phanario codes was not aimed at the oppression of the ruled classes, but was rather motivated by the desire of popularizing law and the effort to serve the inhabitants, both rulers and ruled. When Alexander Hysilantis emphasizes in the preface to his "Syntagmation" that he had "thought" of publishing his code because this was "the most beneficial, not only for the citizens' good government, but also for their good reputation;" when George Caradjas notes in his "Nomothesia" that he rendered the laws "methodical and most simple for an easy understanding thereof by the utterly unlearned;" when Scarlatos Callimachis too announces in his Moldavian Code that he had it compiled for the sake of the ruled — it would have been unfair to believe that all these statements were mere shams, designed to conceal oppression, which was the allegedly true aim. The objective which the Phanariot rulers had set was certainly, we believe, the enrichment of their country with intelligible codes, accessible to all, for the transactors' security and clarification of the actually effective law. It was, in other words, a cultural objective, in keeping with the spirit of the age of Enlightenment, the spirit which was then pervading even absolutist States. An objective which, through

its accomplishment, gave the Danubian principalities the glory of having pioneered in the codification movement, which was to spread over continental Europe a little later, since the beginning of the 19th century. Thus, in this respect too, the Phanariotic codes are the great glory of the modern history of Greek-Rumanian law. And seeking to lessen that glory is, to say the least, a pity.

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