

JUSTINIAN AND THE OBLIGATION OF AN ANNUAL SYNOD

A Concrete Case of the Influence of Roman Law on Oriental Canon Law Today

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The institution of the annual synod is very ancient in the Oriental Churches. Ancient canons of the Councils held during the First Millennium, have prescribed the necessity to convoke and to hold annual synods. Two Novels (123 and 137) enacted by Emperor Justinian the Great (527-565) are also very important because he has provided norms about the synod. Hence, in the current article, the author offers some hints about the relationships between the Novels of Justinian and canons of the First Millennium and thus indicating the ancient roots of the present code. It also shows how even today Roman law strongly influences Eastern canon law.

Introduction

Today the Code of Canons of the Eastern (Catholic) Churches [CCEO] – promulgated by St. John Paul II with the apostolic constitution *Sacri Canones* on October 18, 1990 – prescribes with canon 106 §2¹ that the synod of the patriarchal church should be convoked every year. This statement regards the patriarchal Churches and also the major

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¹CCEO, c. 106 §2: “Moreover the synod of bishops of the patriarchal Church must be convoked at the established times, even annually, if particular law determines it.”

archiepiscopal Churches (c. 152).² The norm is quite clear: “while the frequency is left to particular law, the Synod of Bishops is ordinarily to be convoked annually.”³ CCEO has thus established the celebration of an annual synod as a general rule. For further specifications, the code, which is common law, defers to particular law as it does in many other cases.

The roots of canon 106 §2 are very ancient. The purpose of this short paper is to give some hints about these ancient roots. It makes special reference to the *Novels*, enacted by Emperor Justinian (527–565), in order to show how even today Roman law strongly influences Eastern canon law (i.e. CCEO).

1. The Annual Synod and the Canonical Sources of the First Millennium: Before Justinian

By looking at the edition of CCEO with sources,⁴ it is possible to understand the canonical lineage of canon 106 §2.

Of course, the most recent source is the previous legislation for the Oriental Churches: the m.p. *Cleri Sanctitati*, enacted by Pope Pius XII on June 2, 1957, where canon 344 concerned this topic. Also mentioned are the following canons from the First Millennium: canon 5 of First Council of Nicaea (325); canon 19 of the Council of Chalcedon (451); canon 8 of the Trullan Council (692); canon 6 of the Second Council of Nicaea (787); canon 17 of the Fourth Council of Constantinople (869–870). The edition of CCEO with sources also includes canons from the ancient synods of the First Millennium: canon 20 of the Synod of Antioch (341), canons 18 and 20 of the Synod of Carthage (419) and – last but not least – canon 37 of the famous canonical collection called “The 85 Canons of the Apostles” (end of the 4th century). The last sources listed in the annotated CCEO are the following modern

²CCEO, c. 152: “What is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter.”

³John D. Faris, “Patriarchal Churches (cc. 55-150),” in George Nedungatt, ed., *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika 10 (Rome 2002), 174.

⁴Pontificium Consilium De Legum Textibus Interpretandis, *Codex Canonum Ecclesiarum Orientalium, auctoritate Ioannis Ioannis Pauli PP. II promulgatus. Fontium Annotatione auctus*, (Città del Vaticano 1995), 41.

oriental synods: the Maronite Synod of Lebanon (1736; pars III, chap. IV, 29; chap. VI, 2, 12); the Syrian Synod of Sciarfe (1888; chap. IV, 4, 6); the Coptic Synod of Alexandria (1898, sec. III, chap. V, XIV); and the 1911 Armenian Synod at Rome (1911; 200, 5, 224).⁵

Of course, limitations of space and time preclude an investigation of all these sources. Nevertheless, I think it is necessary to note that the institution of the annual synod has a long history.

The "starting point" is surely canon 5 of the First Council of Nicaea, which asserted:

[... *omissis* ...] it is agreed that it would be well for synods to be held each year in each province twice a year, so that these inquiries may be conducted by all the bishops of the province assembled together, and in this way by general consent those who have offended against their own bishop may be recognised by all to be reasonably excommunicated, until all the bishops in common may decide to pronounce a more lenient sentence on these persons. The synods shall be held at the following times: one before Lent, so that, all pettiness being set aside, the gift offered to God may be unblemished; the second after the season of autumn. [... *omissis* ...]

Canon 19 of the Council of Chalcedon added further specifications to the practice of the annual synod:

We have heard that in the provinces the synods of bishops prescribed by canon law are not taking place, and that as a result many ecclesiastical matters that need putting right are being neglected. So the sacred synod decrees that in accordance with the canons of the fathers, the bishops in each province are to foregather twice a year at a place approved by the bishop of the metropolis and put any matters arising to rights. Bishops failing to attend who enjoy good health and are free from all unavoidable and necessary engagements, but stay at home in their own cities, are to be fraternally rebuked.⁶

The above-mentioned canon of the Apostles (c. 37 of this ancient collection) asserted:

Let take place twice a year a synod of bishops, so that between them examine the dogmas of the faith and resolve differences

⁵*Ibid.*, 41-42.

⁶Norman P. Tanner, *Decrees of the Ecumenical Councils, vol. I. Nicaea I to Lateran IV*, Washington D.C. 1990, 96. [Hereafter "Tanner"].

emerging in the church. The first time during the fourth week of Pentecost and the second time on the ninth day of Hyperberetaion, i.e. according to the Egyptians the twelfth day of Phaophi month, according to the Romans on October 9.⁷

Canon 20 of the Synod of Antioch (341) established:

With a view to the good of the Church and the settlement of disputes, it is decreed to be well that synods of the bishops, (of which the metropolitan shall give notice to the provincials), should be held in every province twice a year, one after the third week of the feast of Easter, so that the synod may be ended in the fourth week of the Pentecost; and the second on the ides of October which is the tenth [or fifteenth] day of the month Hyperberetæus; so that presbyters and deacons, and all who think themselves unjustly dealt with, may resort to these synods and obtain the judgment of the synod. But it shall be unlawful for any to hold synods by themselves without those who are entrusted with the Metropolitan Sees.⁸

And canon 18 of the Synod of Carthage (419) established:

[... *omissis* ...] And therefore in this holy synod should be confirmed in accordance with the Nicene decrees, on account of Ecclesiastical causes, which often are delayed to the injury of the people, that every year there should be a synod, to which all, who are primates of the provinces, should send bishops as legates, from their own synods, two or as many as they choose; so that when the synod meets it may have full power to act [... *omissis* ...].⁹

Lastly – it deserves a mention – canon 76 of the Synod of Carthage, clearly prescribed that the bishop must respond to the convocation of the synod.

⁷For the “The 85 Canons of the Apostles” see, Danilo Ceccarelli Morolli, “Alcune riflessioni intorno ad una importante collezione canonica delle origini: ‘Gli 85 Canonici degli Apostoli’,” in Gaetano Passarelli, ed., *Miscellanea Carmelo Capizzi*, in *Studi sull’Oriente Cristiano* 6 (2002 monographic issue), 151-175; in this study I have translated into Italian the Latin and Greek canons, so in this paper I give my translation of canon 37 into English.

⁸<http://www.ccel.org/ccel/schaff/npnf214.viii.vi.iv.xx.html>, last accessed in December, 2014.

⁹<http://www.ccel.org/ccel/schaff/npnf214.xv.iv.iv.xix.html>, accessed in December, 2014.

In light of the above-mentioned sources, it is clear that the Church of the First Millennium had a strong will to convoke a yearly synod in order to discuss and resolve several aspects of ecclesial life.

The canons of the First Millennium returned again to the necessity of convoking the synod. After the above-mentioned canons, there are three other important conciliar sources: the canons of Trullo, of the Second Council of Nicaea, and of the Fourth Council of Constantinople. All of these sources came into being after the time of Justinian.

Before analysing the canonical sources and ecclesiastical legislation, I will briefly pause to show the influence and the impact of Justinian on this topic.

2. Justinian and the Obligation of an Annual Synod: A "Forgotten" Source for CCEO?

As is well-known, Emperor Justinian codified Roman law with his eponymous *Code*, *Institutes*, and *Digest* (or *Pandects*). He also updated his legislation by his *Novels*. His work could be considered as a stone launched through time and space that reaches the present.¹⁰ Volumes and studies have been written about this most important emperor,¹¹ his fundamental contributions to the *Western Legal Tradition*, his attitude towards Church affairs, and about imperial legislation on ecclesiastical matters in general.¹²

¹⁰Among several books see, Gábor Hamza, *Origine e sviluppo degli ordinamenti giusprivatistici in base alla tradizione del diritto romano*, Santiago de Compostela 2013, *passim*; Danilo Ceccarelli Morolli, *A Brief Outline of Roman Law*, (Rome 2012), 46-48.

¹¹Among several books and studies see, James A. S. Evans, *The Emperor Justinian and the Byzantine Empire*, Westport, Conn., 2005; Carmelo Capizzi, s.v. *Giustiniano I*, in Edward G. Farrugia, ed., *Dizionario Enciclopedico dell'Oriente Cristiano* (Roma 2000), 354-356.

¹²About the topic, just some bibliographical hints: Jean Gaudemet, Paolo Siniscalco, Gian Luigi Falchi, eds., *Legislazione imperiale e religione nel IV secolo*, *Sussidi Patristici* 11, (Roma 2000), *passim*; Elisabeth Herrmann, *Ecclesia in re publica*, Frankfurt a. Main 1980; Lucio De Giovanni, *Chiesa e Stato nel Codice Teodosiano. Saggio sul libro XVI*, (Napoli 1980); Jean Gaudemet J., *La formation du droit séculier et du droit de l'Eglise aux IV^e et V^e siècles*, (Paris 1979²); Périclès-Pierre Joannou, *La législation impériale et la christianisation de l'Empire Romain*, *Orientalia Christiana Analecta* 192, (Roma 1972, repr. 1979).

In my opinion, one must remember that Justinian was the emperor who definitively provided for the relationship between Church and Empire. On this question, Nov. 131 (March 545) formed a sort of “imperial programme” about the relationship between canons of the Church (*kanones*) and civil – imperial – laws (*nomoi*). In fact, the 1st chapter of Novel 131 gave the force of law to all conciliar legislation and canons:

Therefore *We order that the sacred, ecclesiastical rules which were adopted and confirmed by the four Holy Councils, that is to say, that of the three hundred and eighteen bishops held at Nicea, that of the one hundred and fifty bishops held at Constantinople, the first one of Ephesus, where Nestorius was condemned, and the one assembled at Chalcedon, where Eutyches and Nestorius were anathematized, shall be considered as laws. We accept the dogmas of these four Councils as sacred writings, and observe their rules as legally effective.*¹³

Therefore the canons, or better the *sacri canones*, gained the same legal value as their imperial laws. It is clear, as has been remarked recently, that this legislation provided a foundation for an undoubtedly ingenious system¹⁴ from the “nomotechnic” point of view, and has had an impact on the general theory of law and law enforcement.

The Novels enacted by Justinian precisely demonstrate his ability to regulate various aspects of the Church and religious life.

¹³Samuel P. Scott, *The Civil Law*, XVII, Cincinnati, 1932; now available at: http://droitromain.upmf-grenoble.fr/Anglica/N131_Scott.htm, accessed June 2015. The topic is also recalled inside the code; e.g. c. I, 2: “We decree that the privileges conceded by former Emperors under the general terms of constitutions, to all the Holy Churches of the orthodox religion, shall be observed, and remain firm and unimpaired for all time. We command that all pragmatic sanctions which are contrary to ecclesiastical canons and have been obtained through favor or political intrigue, shall be deprived of all their force and authority.” So, everything against the Church is condemned and all previous privileges – including juridical aspects – are confirmed.

¹⁴About this topic there are several studies, but I prefer to mention only one study, written by a brilliant scholar who has recently passed away: Constantin G. Pitzsakis, *Les nouvelles dans le droit canonique oriental*, in Luca Loshavio L., Giovanna Mancini, Cristina Vano, eds., *Novellae Constitutiones: l'ultima legislazione di Giustiniano tra Oriente e Occidente da Triboniano a Savigny*, *Collana della Facoltà di Giurisprudenza di Teramo* 20, (Napoli 2011), 91-109, *praesertim* 95.

Consequently, later emperors considered all of Justinian's legislation as a landmark. Using Justinian's work as a legislative foundation, they were thus able to "build" the complex juridical system in the Eastern Roman Empire called, *sic et simpliciter*, "Byzantine law."

But, coming back to our topic, two *Novels* enacted by Justinian are quite interesting: Nov. 123 (May 546) and Novel 137 (April 565). Novel 123, chapter 10, established as follows:

In order that ecclesiastical discipline may be strictly maintained, and the sacred canons be complied with, We order that every blessed archbishop, patriarch, and metropolitan shall call together the very reverend bishops subject to his authority in the same province once or twice every year, in order, with their assistance, carefully to investigate all controversies which have arisen between bishops, clerks, or monks, decide these controversies, and remedy everything which has been done contrary to the canons by anyone whomsoever. [... *omissis* ...].¹⁵

The above-mentioned passage shows clearly that the emperor intended for a provincial synod to be convoked once or twice per year. Therefore, Novel 123 reflects what has been enacted by the canons of the previous ecumenical Councils (Nicea I, c. 5; Chalcedon, c. 19; Canons of the Apostles, c. 37). The fact that the emperor wanted to confirm the annual synod by his Novel suggests that this prescription was not completely observed in the 6th century. Otherwise, the Novel would have been superfluous. Perhaps the norms given by the ecumenical councils were not well taken into consideration or were even "forgotten." With his Novel, Justinian entered into the ecclesiastical realm to remind patriarchs and bishops of their duties, especially the obligation of celebrating the provincial synod. Justinian also had in mind the previous Theodosian Code (CTh), which established that public authorities had to collaborate with the organization of the synod, and that the postal service would be put at the service of the fathers. In a word, the cooperation between imperial and ecclesiastical authorities had already started.¹⁶

¹⁵http://droitromain.upmf-grenoble.fr/Anglica/N123_Scott.htm, accessed, in December 2014.

¹⁶Cfr. CTh. XII, 12, 9 quoting an imperial constitution of May 10, 382. The penalty for those who failed to observe this rule would have been the death penalty and confiscation of their properties.

The other Novel – 137 of year 565 – was made 19 years after the previous one. In chapter IV, Novel 137, it is prescribed:

As what is laid down in the canons relating to the episcopal synods, which should be held in every province, is not observed, this is the first thing that should be remedied. For the Holy Apostles and the Fathers have decreed that meetings of three holy prelates should be held every year in each province, and that ecclesiastical controversies should be brought before them, and decided in a proper manner. They fix the meeting of the first synod during the fourth week after Pentecost, and that of the second in the month of October; but as the neglect to comply with these provisions of the Holy Fathers has afforded an opportunity to many persons to commit sin, We order that one synod shall assemble in each province in the month of June or September. All those who, without having the right of consecrating other bishops, receive ordination from the most holy patriarchs, shall meet in the houses of the latter; just as the three holy metropolitans of each province shall summon to their houses the bishops upon whom they confer consecration. We desire that ecclesiastical questions having reference to the Faith, to canonical points, and such as relate to the administration of church property; to demands made upon bishops, priests, deacons, other members of the clergy, abbots and monks, and to accusations relating to their conduct; and, finally, to all matters which have need of correction, shall be debated and examined in each synod, and We desire that abuses shall be disposed of in accordance with Our laws and the sacred canons.¹⁷

In this passage, the emperor directly recalled the ancient canonical sources and reiterated the purpose of the synod itself. The norm considered the synod as a fundamental and regular means of discussing the major themes and topics of ecclesial life. But it also described the synod as a place of judgement for all the members of the clergy. This last Novel establishes a canonical innovation, obliging not only metropolitans but also patriarchs to hold the synod.¹⁸

¹⁷http://droitromain.upmf-grenoble.fr/Anglica/N137_Scott.htm, accessed in December 2014

¹⁸Spyros Troianos, *Byzantine Canon Law to 1100*, in Wilfred Hartmann & Kenneth Pennington, eds., *The History of Byzantine and Eastern Canon Law to 1500*, Washington D.C. 2012, 164.

Again a question arises: why did Justinian so emphasize the role and the importance of the synod? Perhaps it was because the previous norms (canonical councils and Nov. 123, IV) were not held in due consideration. Secondly, the emperor probably wanted to reemphasize the synod's role as an ecclesiastical tribunal and a place of discussion for doctrinal questions.

Therefore, Novels 123 and 137 can be considered as sources for canon 106 §2 of today's CCEO. The first edition of CCEO with sources contains no trace of these novels, apparently neglecting this important aspect even while referring several times to sources in Roman and Byzantine law.¹⁹

3. The Annual Synod and the Canonical Sources of the First Millennium: An Example of the Influence of Justinian's Legislation?

The Council of Trullo (692) was one of the most important councils of the first millennium for several reasons. Firstly, it promulgated the greatest number of canons (102) of any first millennium ecumenical council. Secondly, until today the Orthodox Byzantine Churches consider its legislation as a sort of code of canon law. And lastly, the Trullan Council is today a source beyond the canons of the CCEO itself.²⁰

Canon 8 of the Trullan Council prescribed:

That a synod of the bishops of a province is to be held each year, wherever the metropolitan decides. In our desire to observe all the decrees of our holy Fathers, we renew the canon which declares that "Synods of the bishops of each province are to be held each year, wherever the metropolitan should decide." Whereas, because of barbarian incursions and other intervening causes, the bishops of the

¹⁹Danilo Ceccarelli Morolli, "Cenni circa l'influsso dei "Basiliká" nel diritto processuale canonico orientale vigente," in Janusz Kowal & Joaquín Llobell, eds., *Iustitia et Iudicium. Studi di diritto matrimoniale processuale canonico in onore di Antoni Stankiewicz*, vol. III (Città del Vaticano 2010), 1477-1484; Idem, "'Fragmenta Iuris Romani-Byzantini' nel Codex Canonum Ecclesiarum Orientalium: note per un primo studio," in *Iura Orientalia* e.vol. I (Roma 2005), 77-87 [www.iuraorientalia.net].

²⁰Cf. Danilo Ceccarelli Morolli "Sources," in George Nedungatt (ed.), *A Guide to the Eastern Code*, 897-903; Idem, "I canoni del Concilio Quinisesto o Trullano ed il Codex Canonum Ecclesiarum Orientalium," in *Oriente Cristiano* 46/4 (1996), 29-39.

Churches find it impossible to hold synods twice a year, it is resolved, on account of the ecclesiastical matters likely to come up, that a synod of the aforesaid bishops should be all means be held in each province once a year, between the holy feast of Easter and the end of October, in a place to be decided, as has been said, by the metropolitan bishops. "Those bishops who do not come together, but remain in their own cities though they be in good health and have no indispensable and necessary business, are to be reprimanded in brotherly fashion."²¹

Canon 8 of the Trullan Council synthesized previous canonical legislation while also introducing an exception, i.e. external causes like "barbarians" preventing bishops from holding a synod. Clearly, the situation in the Eastern Roman Empire changed in the time between the first Novel of Justinian and the Council of Trullo. The empire had come to know other problems, like the loss of territory in the Middle East to the Islamic conquest. It is interesting that the council does not mention the Novels of Justinian, which were well-known in Byzantium by the 7th century. The Council of Trullo seems to have preferred to quote only the ancient canonical legislation.

After the Trullan Council, canon 6 of the Second Council of Nicaea (787), established:

Although there is indeed a canon which says, "In each province the canonical investigations should take place twice yearly by means of a gathering of bishops," because of the trouble and because those attending the meetings lack the resources for such journeys, the holy fathers of the sixth synod decreed, "they should be held in any case and despite all excuses, once a year, and all that is incorrect should be put right. We also renew this canon, and should a ruler be found who prevents its observance, let him be excommunicated; however if one of the metropolitan bishops neglects its fulfilment, let him be subject to canonical penalties, unless it is a case of necessity, constraint or some other reasonable cause."²²

Canon 6 of Nicaea II seems to have conformed to the legislation given by the Trullan Council while also introducing a new case: a civil ruler who tries to prevent the holding of a council. The fathers, fearful of civil intervention in ecclesiastical affairs, decreed that such rulers were

²¹George Nedungatt & Michael Featherstone eds., *The Council in Trullo Revisited*, Kanonika 6 (Rome 1995), 79-80.

²²Tanner, 143-144.

to be excommunicated. Of course, "civil intervention" did not refer to the emperor, but rather civil political, local, authorities or the aristocracy.

In the Eastern Roman Empire, during the age of the Macedonian dynasty, the Fourth Council of Constantinople (869-870) approved the last norm of the first millennium on our topic. Canon 17, a lengthy norm, asserts:

[... *omissis*...] Metropolitans have had the custom of holding synods twice a year and therefore, they say, they cannot possibly come to the chief one, that of the patriarch. But this holy and universal synod, without forbidding the meetings held by the metropolitans, is conscious that the synods summoned by the patriarchal see are more necessary and profitable than the metropolitan ones, and so demands that they take place. A metropolitan synod affects the good order of only one province; a patriarchal synod often affects the good order of a whole civil diocese, and in this way the common good is provided for. So it is fitting that the common good take priority over a particular one, especially when the summons to meet has been issued by those of greater authority. Therefore the laws of the church demand, with severe penalties and leaving no loop-hole, that they comply with the summons of their patriarchs whether they are summoned as a body or individually. We refuse to listen to the offensive claim made by some ignorant people that a synod cannot be held in the absence of the civil authorities. [...*omissis*...].²³

The canon required metropolitans to attend patriarchal synods when summoned to them. It does not at all excuse the uncooperativeness of civil authorities, whose role it clarifies. In doing the latter, the canon seems to have echoed the Theodosian Code (CTh.) and especially Justinian's legislation. Lastly, the canon definitively distinguished between "patriarchal" and "metropolitan" synods, a distinction still found in oriental canon law today.

Conclusion

The origin of the institution of the annual synod in the Church is clear. The council fathers of the first millennium established the procedure for convoking an annual synod, and Justinian incorporated this mandate into imperial (civil) law. As a consequence of this imperial

²³*Ibidem*, 179.

intervention, imperial laws also came to prescribe that provincial or patriarchal synods be held.

The canons of the post-Justinian age clearly exhibit the influence of his *Novels*, but the canonical sources themselves do not seem to acknowledge it “officially.” It is impossible to determine the extent of Justinian’s influence on the subsequent canons of Nicaea II and Constantinople IV. But one aspect is clear: Justinian was “afraid” to legislate about provincial and patriarchal synods as well, prescribing the necessity of convoking them yearly. The emperor recalled the previous canonical legislation while also providing an imperial norm for the future. Therefore, the passages of the above-mentioned *Novels* of Justinian about the annual synod are a clear example of the incorporation of canon law into imperial (civil) law. But perhaps it also evinces the *symphonia* realized by Justinian by his famous Novel 6 (April 15, 535),²⁴ which provided a legislative model for later emperors of the Eastern Roman Empire and for the Byzantine Church.²⁵

Therefore, the above mentioned *Novels* of Justinian are true sources of CCEO canon 106 §2, and I think that Shakespeare’s words could be a most appropriate conclusion: “*What’s past is prologue!*”

²⁴Maria Pia Baccari, “All’origine della sinfonia di *Sacerdotium e Imperium*: da Costantino a Giustiniano,” in *Diritto@Storia* 10 (2011-2012), [www.dirittoestoria.it/10/memorie/Baccari-Sinfonia-Sacerdotium-Imperium.htm].

²⁵Among several other studies, see: Constantin G. Pitsakis, “*Ius graeco-romanum*” and normes canoniques dans les eglises de tradition orthodoxe,” in Raffaele Coppola ed., *Incontro fra i canoni d’Oriente e d’Occidente*, vol. I (Bari 1994) 99 ff.