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## Byzantine Law and Manichaean Heresy: Some Considerations about Ekl. 17.52\*



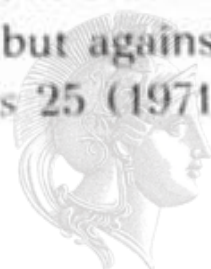
In the byzantine law system, a structure heavily influenced by the religious elements of the orthodox Christianity<sup>1</sup>, the fight against the heresy, in its many aspects, represented a point of great importance<sup>2</sup>. More precisely,

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1. See Sp. Troianos, *Kirche und Staat. Die Berührungspunkte der beiden Rechtsordnungen in Byzanz*, in *Ostkirchliche Studien* 37 (1988) 291-296, but also *Nomos und Kanon in Byzanz*, in *Kanon* 10 (1991) 37-51, in addition to R. Guiland, *Le droit divin à Byzance*, in *Études byzantines*, Paris 1959 and J. Scharf, *Ius Divinum. Aspekte und Perspektiven einer byzantinischen Zweigewaltentheorie*, in *Polychronion. Festschrift Franz Dölger zum 75. Geburtstag*, hrsg. P. Wirth, Heidelberg 1966, 462-479. For other remarks we refer to A. Pertusi, *Il pensiero politico bizantino*, cur. A. Carile, Bologna 1990; see moreover P. Piccinini, *L'ideologia politica bizantina*, in *Rivista di Bizantinistica* 1 (1991) 163-180.

2. See J. Gouillard, *L'hérésie dans l'Empire byzantin des origines au XIIe siècle*, in *Travaux et Mémoires* 1 (1965) 299-324 (= *La Vie religieuse à Byzance*, London 1981), but against N. G. Garsoïan, *Byzantine Heresy: A Reinterpretation*, in *Dumbarton Oaks Papers* 25 (1971)

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when someone would have assumed a position against the official doctrine of the Constantinopolitan church, he showed a subversive behaviour<sup>3</sup>, forcing the state and the emperor, who was celebrated as *imago Christi*, to arise without hesitation<sup>4</sup> through a well-tested mechanism which provided, usually, the application of the punishment expected for the crime of *lèse-majesté*<sup>5</sup>.

85-113; see moreover, in addition to J. Walter, *Heretics in Byzantine Art*, in *Eastern Church Review* 3 (1970) 40-49, J. Jarry, *Hérésies et factions à Constantinople du Ve au VIIe siècle*, in *Syria* 37 (1960) 364-371 and in particular *Les hérésies dualistes dans l'empire byzantin du Ve au VIIe siècle*, in *Bulletin de l'Institut Français d'Archeologie Orientale* 63 (1965) 89-119. About the significance of the heresiological literature, without pretension of completeness, we refer to A. Cameron, *How to read Heresiology?*, in *The Cultural Turn in Late Ancient Studies: Gender, Ascetism, and Historiography*, ed. D. Martin – P. Cox Miller, Durham 2005, 193-212 and *Enforcing Orthodoxy in Byzantium*, in *Discipline and Diversity in the Church: papers read at the 2005 Summer Meeting and the 2006 Winter Meeting of the Ecclesiastical History Society*, ed. K. Cooper – J. Gregory, Woodbridge (Ontario) 2007 (= *Studies in Church History* 43, 2007, 1-24) and finally H. Inglebert, *L'histoire des hérésies chez les hérésiologues*, in *L'historiographie de l'Eglise des premiers siècles*, éd. B. Poudéron – Y. M. Duval, Paris 2001, 105-125.

3. About these themes, well known already during late antiquity, we indicate, in addition to L. Bernard, *The Criminalisation of Heresy in the Later Roman Empire: A Sociopolitical Device?*, in *Legal History* 16 (1995) 121-146, P. Zambini di Castiglione, *Sulla repressione dell'eresia in età tardo antica*, in *Cultura e Società nel Tardo Antico. Atti del seminario di Studi*, Teramo, 19-20 gennaio 2001, cur. F. Lucrèzi – G. Mancini, Milano 2003, 255-267 and K. L. Noethlichs, *Revolution from the Top? Orthodoxy and the Persecution of Heretics in Imperial Legislation from Constantine to Justinian*, in *Religion and Law in Classical and Christian Rome*, ed. C. Ando – J. Rüpke, Stuttgart 2006, 115-125. See instead about the problem of the connection between heretical behaviours and national requests, in addition to E. L. Woodward, *Christianity and Nationalism in the Later Roman Empire*, London 1916, A. H. M. Jones, *Were Ancient Heresies National or Social Movements in Disguise?*, in *Journal of Theological Studies* 10 (1959) 280-298 (= *Orthodoxy, Heresy, and Schism in Early Christianity: A Collection of Scholarly Essays*, New York 1983) and W. H. C. Frend, *Heresy and Schism as Social and National Movements*, in *Studies in Church History* 8 (1971) 19-29 and 9 (1972) 37-56, this also in *Religion Popular and Unpopular in the Early Christian Centuries*, London 1976, XXIV; see finally H. O. Maier, *The Topography of Heresy and Dissent in Late Fourth-Century*, in *Historia* 44 (1995) 231-249. In relation to the byzantine history see G. Seidler, *Soziale Ideen in Byzanz*, Berlin 1960, with E. E. Litšic, *Očerki istorii vizantijskogo obščestva i kul'tury VIII-pervaja polovina IX veka*, Moskva-Leningrad 1961.

4. It was common to think that the heresy provoked the divine fury and therefore it was the origin of natural catastrophes and military defeats: in fact it was a sort of betrayal of God, with the emperor and the empire; see about these themes, for example, I. Medvedev, *Le pouvoir, la loi et le jus resistendi à Byzance. Quelques considérations*, in *Byzantinoslavica* 56 (1995) 75-81, in addition to I. Dujčev, *Il diritto di resistenza a Bisanzio*, in *Byzantinische Zeitschrift* 41 (1941) 481-487 (= *Medioevo bizantino-slavo II*, Roma 1968, 491-501), but mainly K. A. Bourdara, *Καθοσώσεις καὶ τυραννίς κατὰ τοὺς βουζαντινοὺς χρόνους*, Athina 1981-1982, 3 voll.

5. The ambivalence of the crime of *lèse-majesté* is well known – we just remember Ul-

In this extensive context the legislation which during the centuries of the Christian roman empire had piled up to hinder the phenomenon of Manichaeism<sup>6</sup> and which was preserved into the byzantine

pian's words (7 *De officio proconsulis*) in D. 48.4.pr. and 48.4.1; see J. D. Cloud, *The Text of Digest XLVIII, 4: Ad Legem Juliam Maiestatis*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilungen* 80 (1963) 206-232 – at the same time as impious act and political offence: *proximum sacrilegio crimen est, quod maiestatis dicitur* and *maiestatis autem crimen illud est, quod adversus populum Romanum vel ad versus securitatem eius committitur*. See about the *crimen laesae maiestatis* mainly R. A. Bauman, *Impietas in principem. A study of treason against the Roman emperor with special reference to the first century A.D.*, München 1974, but also L. Solidoro, *La disciplina del crimen maiestatis tra tardo antico e medioevo*, in *Crimina e delicta nel Tardo Antico. Atti del Seminario di Studi. Teramo, 19-20 gennaio 2001*, cur. F. Lucrezi – G. Mancini, Milano 2003, 123-201 and *Profili storici del delitto politico*, Napoli 2002; let us indicate G. Crifo, *Profili del diritto criminale tardo antico*, in *Diritto romano e identità cristiana. Definizioni storico religiose e confronti interdisciplinari*, cur. A. Saggioro, Roma 2005, 81-94, in particular the pages remembering Theodor Mommsen's way of thinking about the coincidence between *lèse-majesté* and heresy (Jahrbuch für das römische Strafrecht, Leipzig 1899, p. 599 n. 1; see E. Meents, *Die Majestätsbeleidigung in geschichtlicher und dogmatischer Beziehung*, Berlin 1894). See instead about the byzantine period C. A. Bourdara, *Les crimes contre l'état selon le droit byzantin*, in *Byzantine Law. Proceedings of the International Symposium of Jurists (Thessaloniki, 10-13 December 1998)* (Thessaloniki 2001, 219-227; among the law sources interesting also Sch. ad Bas. LX, 36, 1 (*De monitione libri LX*, ed. H. J. Scheltema – D. Holwerda – N. van der Wal, ser. B vol. IX, Groningen 1985, 3670-3671), Constantine VIII's constitution *de seditionibus* (y. 1026 / coll. III nov. XXXI, in Zepos JGR I 273-274) and before Ecl. 17.3, Proch. 39.10 and Eis. 40.12. See finally about the ideological significance in the modern law history M. Sbriccoli, *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*, Milano 1974.

6. See for alls H.-C. Puech, *Le manichéisme, son fondateur, sa doctrine*, Paris 1949, but also *Il manicheismo*, in *Storia delle religioni* II.2, cur. H.-C. Puech, Roma 1976, 621-739 (orig. *Histoire de Religions*, éd. H.-C. Puech, Paris 1970-1976), where an useful essential bibliography; see moreover G. Gnoli, *Introduzione generale*, in AA.VV., *Il manicheismo. I. Mani e il manicheismo*, Milano 2003, xi-lxxxix. See about the expansion of the new faith into the roman empire P. Brown, *The Diffusion of Manichaeism in the Roman Empire*, in *Journal of Roman Studies* 59 (1969) 92-103 (= *Religion and Society in the Age of Saint Augustine*, London 1972, 94-118); for other remarks we refer to S. N. C. Lieu, *Manichaeism in Later Roman Empire and Medieval China*, Tübingen 1992 (revised and expanded edition / 1988), 86-218 and *From Mesopotamia to the Roman East. The Diffusion of Manichaeism in the Eastern Roman Empire*, in *Manichaeism in Mesopotamia and the Roman East*, Leiden-New York-Köln 1994 (1999), 22-131, in addition to I. Gardner – S. N. C. Lieu, *Manichaen Texts from the Roman Empire*, Cambridge 2004 and before again *From Narmouthis (Medinet Madi) to Kellis (Ismant El-Kharab): Manichaean Documents from Roman Egypt*, in *Journal of Roman Studies* 86 (1996) 146-169 and *Sources on the diffusion of Manichaeism in the Roman Empire (from Diocletian to Justinian)*, in *Acta Iranica* 28 (1988) 383-399. The classical works of G. de Stoop, *Essai sur la diffusion du manichéisme dans l'Empire romain*, Gand 1909 and F. Cumont, *La propagation du manichéisme dans l'Empire romain*, in *Revue d'histoire et de la littérature religieuse* 1 (1910) 31-43 are quite outdated, because tied Manichaeism with the mithraic cult; see R. L. Gor-

era<sup>7</sup>, started to take a central position, because the heresy which it embodied, for different reasons, had acquired the features of a real negative model<sup>8</sup>. Manichaeism has then developed into a kind of universal evil, like an enormous container where every sort of religious deviance<sup>9</sup> could be thrown.

The time of the Isaurian dynasty did not seem to depart from the trajectory marked out by the Justinianic compilation<sup>10</sup>, which reclaimed the

don. *Franz Cumont and the doctrines of Mithraism*, in *Mithraic Studies I*, ed. J. R. Hinnels, Manchester 1975, 215-158.

7. See about the theme of the relationships between byzantine law and Manichaeism our articles, in Italian: *Diritto bizantino ed eresia manichea: storia di un'ossessione*, in *Introduzione al diritto bizantino. Da Giustiniano ai Basilici – Atti del Cedant 2009*, ed. J. H. A. Lokin – B. H. Stolte, Pavia 2011, 351-378 and *Alcune riflessioni sulla recezione della legislazione antimanichea in epoca bizantina e sulla sua applicazione*, in *Revue Internationale des droits de l'Antiquité* 57 (2010) 193-231.

8. Concerning this point is useful S. W. C. Lieu, *Manichaeism in the Later Roman Empire and Medieval China*, Tübingen 1992 (1988), 207-218, especially 216 sqq., but also *From Mesopotamia to the Roman East. The Diffusion of Manichaeism in the Eastern Roman Empire*, in *Manichaeism in Mesopotamia and the Roman East*, Leiden-New York-Köln 1994, 22-131, 105 sqq.; see again S. N. C. Lieu, *Manichaeism in Early Byzantium: Some Observations*, in *Manichaeismo e Oriente cristiano antico. Atti del III Congresso Internazionale, Arcavata di Rende e Amantea 31 agosto-5 settembre 1993*, cur. L. Cirillo – A. von Tangerloo, Turnhout 1997, 217-234; see finally R. Lim, *The Nomos Manicheorum and Its Uses in Late Antiquity*, 143-167, in *Heresy and Identity in Late Antiquity*, ed. E. Iricinschi – H. M. Zellentin, Tübingen 2008 and C. Humfress, *Orthodoxy and the Courts in Late Antiquity*, Oxford 2009, mainly 243-268, where there is a similar thought.

9. See I. Rochow, *Zum Fortleben des Manichäismus im Byzantinischen Reich nach Justinian I.*, in *Byzantinoslavica* 40 (1979) 13-21.

10. See E.-H. Kaden, *Die Edikte gegen die Manichäer von Diokletian bis Justinian*, in *Festschrift H. Lewald*, Basel 1953, 55-68. In addition to C. 1.5.4 (y. 407) and C. 1.5.5 (y. 428), which recovered CTh. 16.5.40 and CTh. 16.5.65 and C. 1.5.11, included between the reigns of Zeno (y. 487) and Anastasius (y. 510), the Justinianic constitutions more or less directly against Manichaeism are on the one hand C. 1.5.15 and C. 1.5.16, about the prohibition to leave goods in inheritance and about the prescription of the death penalty for who persisted in the mistake, with the fire of the books, on the other hand C. 1.5.18 and C. 1.5.19 (y. 529), about again the typology of the persecution and about the *status* of the children, both not quoted in the *Basilica*, finally C. 1.5.21 (y. 531), really important because concerning the impossibility to bear witness into the courts: to these we have also to add C. 1.5.12, long and exhaustive edict issued in the 527 just against Manichaeans; in C. 1.7.6, regarding the apostates, the whole discipline is recovered, as in C. 1.11.10 (Nom. 1.10; C. 1.5.18), probably interpolated in its final section. Among the general laws against all the heretics, we have to consider with attention especially C. 1.5.1 (denial of every privilege), C. 1.5.2 (meaning of heresy, also *laevi argumento*), C. 1.5.3 (prohibition to own and use houses as meeting places), C. 1.5.7 (imposition of burdens), C. 1.5.9 (burial, granted only for religious piety), C. 1.5.10 (prohibition to transfer the property, never and without every

Theodosian codification<sup>11</sup> on the argument of heresy and Manichaeism. Actually the new family, which had reached the throne through a military putsch<sup>12</sup>, turned the theological and ecclesiastical affairs into an extraordinary instrument of government, a lever for its power. As a consequence the iconoclastic movement<sup>13</sup>, without creating an instinctive liking for

procedure) and C. 1.5.13 (faculty to inherit *ab intestato* only in presence of orthodox successors), C. 1.5.14 (total restriction to create a community and to receive the sacraments).

11. See P. Beskow, *The Theodosian Laws Against Manichaeism*, in *Manichaean Studies. Proceedings of the First International Conference on Manichaeism, August 5-9 1987*, ed. P. Bryder, Lund 1988, 1-11; see more recently M. V. Escribano Paño, *From Norm to Identity. Christians and Manichaeans in Codex Theodosianus XVI: Separated by the Law*, in *Figures d'empire. fragments de mémoire. Pouvoir et identités dans le monde romain impérial*, éd. S. Benoist – A. Daguet-Gagey – C. Hoët-van Cauwenberghe, Villeneuve-d'Ascq 2011, 503-529. The constitutions where the problem of Manichaeism is approached are the followings: 16.5.3 (Trier - 2<sup>nd</sup> March, 372), 16.5.7 (Constantinople - 8<sup>th</sup> May, 381), 16.5.9 (Constantinople - 31<sup>st</sup> March, 382), 16.5.11 (Constantinople - 25<sup>th</sup> July, 383), 16.5.18 (Rome - 17<sup>th</sup> June, 389), 16.5.35 (Milan - 17<sup>th</sup> May, 399), 16.5.38 (Ravenna - 12<sup>th</sup> February, 405), 16.5.40 (Rome - 22<sup>nd</sup> February, 407), 16.5.41 (Rome - 15<sup>th</sup> November, 407), 16.5.43 (Rome - 407 or 5<sup>th</sup> November, 408; but see *Const. Sirm.* 12 – Rome - 25<sup>th</sup> November, 407 – about the role of the *agentes in rebus* concerning the repression of the heresy), 16.5.59 (Constantinople - 9<sup>th</sup> April, 423), 16.5.62 (Aquileia - 15<sup>th</sup> July, 424), 16.5.64 (Aquileia - 6<sup>th</sup> August, 425; see moreover *Const. Sirm.* 6 connected to 16.2.45), 16.5.67 (Constantinople - 30<sup>th</sup> May, 428); we have to add more 16.7.3 (Padua - 21<sup>st</sup> May, 383) e 16.10.24 (Constantinople - 8<sup>th</sup> June, 423). See finally *Liber legum novellarum Divi Theodosii* III.9 (Constantinople - 31<sup>st</sup> January, 438), in *Theodosiani libri XVI cum Constitutionibus Synodicalibus et Legese Novellae ad Theodosianum pertinentes* II, rec. T. Mommsen – P. M. Meyer – K. Krueger, Berolini 1905, 7-11.

12. Leo III, a year after his incoronation on the 25<sup>th</sup> of March 717, was able to remove the Arabian siege to the capital, moving away the nightmare of the sack (15<sup>th</sup> August, 718); see H. Ahrweiler, *L'Asie Mineure et les invasions arabes*, in *Revue Historique* 227 (1962) 1-32, with A. Vasiliev, *The Struggle with the Saracens (717-867)*, in *The Cambridge Medieval History* IV, Cambridge 1923, 119-138, but especially R. Guiland, *L'expédition de Maslama contre Constantinople (717/718)*, in *Al-Machriq* 49 (1955) 89-112 (= *Études byzantines*, Paris 1959, 109-133) and F. Gabrieli, *L'eroe ommayade Maslama ibn Abd al-Malik*, in *Atti dell'Accademia Nazionale dei Lincei* 347 (1950) (Ser. VIII, Rendiconti, Classe di scienze, morali e politiche, Vol. V) 22-39, in addition to M. Canard, *Les expédition des Arabes contre Constantinople dans l'histoire et dans la légende*, in *Journal Asiatique* 208 (1926) 61-121; see finally A. R. Santoro, *Byzantium and the Arabs during the Isaurian Period (717-802)*, New Brunswick (New Jersey) 1978. In 740 also Constantine V had a great victory at Akroinos, near Amorius; he occupied Germanicea in 746 and managed after sometime to take from the Arabs, even if only for few months, the Mesopotamic fortress of Teodosiopolis e Melitene.

13. The literature about this thema is enormous. We indicate first of all some classical works, like G. Ostrogorsky, *Studien zur Geschichte des byzantinischen Bilderstreites*, Breslau 1929 (Amsterdam 1964) with *Les débuts de la querelle des images*, in *Mélanges Charles Diehl* I, Paris 1930, 235-255 and E. J. Martin, *A History of the Iconoclastic Controversy*, London 1930, in addition to F. Dölger, *Zur Geschichte des Bilderstreits*, in *Göttingische Gelehrte Anzeigen* 8 (1929) 353-372 and V. Grumel, *Recherches récentes sur l'iconoclasme*, in *Échos*

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the heretics<sup>14</sup>, did not prevent, instead, a hard repression of the heterodoxy<sup>15</sup>.

The *Ekloge*, the most important result of the Isaurian legal ideology<sup>16</sup>, contains, among the others, some interesting norms devoted to criminal law<sup>17</sup>, mainly in the XVIIth book. Here there is a rule expressly

d'Orient 33 (1930) 92-100; see moreover *Der byzantinische Bilderstreit*, hrsg. H.-J. Geischer, Gütersloh 1968, *Iconoclasm. Papers given at the 9th Spring Symposium of Byzantine Studies, March 1975*, ed. A. Bryer – J. Herrin, Birmingham 1977 and *Der byzantinische Bilderstreit. Sozialökonomische Voraussetzungen, ideologische Grundlagen, geschichtliche Wirkungen*, hrsg. J. Irmscher, Leipzig 1980; see finally *Culto delle immagini e crisi iconoclasta. Atti del Convegno di Studi di Catania, 16-17 maggio 1984*, Palermo 1986. For other bibliographical remarks we refer anyway to M. Gallina, *La lotta per le immagini e il trionfo dell'ortodossia*, in *Storia del cristianesimo. III. Il medioevo*, cur. G. Filoramo – D. Menozzi, Bari 2005, 152-179 and 210 sqq., in addition to H.-G. Beck, *Die griechische Kirche im Zeitalter des Ikonoklasmus*, in *Handbuch d. Kirchengeschichte III.1*, Freiburg im Breisgau 1966, 31-38. About the specific problem of the iconoclasm under the Isaurian dynasty see mainly S. Gero, *Byzantine Iconoclasm during the Reign of Leo III, with Particular Attention to the Oriental Sources*, Lovanio 1973 and *Byzantine Iconoclasm during the Reign of Constantine V, with Particular Attention to the Oriental Sources*, Lovanio 1977, but also L. Brubaker – J. Haldon, *Byzantium in the Iconoclast Era (ca. 680-850). The Sources*, Aldershot 2001; see in general H. G. Thümmel, *Bilderlehre und Bilderstreit. Arbeiten zur Auseinandersetzung über die Ikone und ihre Begründung vornehmlich im 8. und 9. Jahrhundert*, Würzburg 1991, with *Die Frühgeschichte der ostkirchlichen Bilderlehre. Texte und Untersuchungen zur Zeit vor dem Bilderstreit*, Berlin 1992.

14. For an opposite opinion, not shareable if not with some appropriate precautions, see an important work, which we will quote also afterwards: M. Loss, *Le mouvement Paulicien a Byzance*, in *Byzantinoslavica* 24 (1963) 258-286, in particular 267.

15. See M. V. Anastos, *Church and State during the first iconoclastic controversy (726-787)*, in *Rivista di studi storico-religiosi* 1 (1957) 279-280 and D. Savramis, *Die Kirchenpolitik Kaiser Leons III.*, in *Südostforschungen* 20 (1961) 1-22, but we would like to remember also G. Ostrogorsky, *Über die vermeintliche Reformtätigkeit der Isaurier*, in *Byzantinische Zeitschrift* 30 (1929) 394-399; very interesting finally W. E. Kaegi, *The Byzantine armies and iconoclasm*, in *Byzantinoslavica* 27 (1966) 48-70.

16. See W. Bernard, *Emperor Cult and the Origins of the iconoclastic Controversy*, in *Byzantion* 43 (1973) 13-29 and especially P. Brown, *A Dark Age Crisis: Aspects of the Iconoclastic Controversy*, in *English Historical Review* 88 (1973) 1-34, in addition to G. B. Ladner, *Origin and Significance of the Byzantine Iconoclastic Controversy*, in *Mediaeval Studies* 2 (1940) 127-149; in the second letter of Leo III to Gregory II he called himself as βασιλεὺς καὶ ἱερεὺς (*Regesta Pontificorum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, ed. P. Jaffé, Berolini 1851, n. 2182; see at least L. Bréhier, *Ἱερεὺς καὶ βασιλεὺς*, in *Mémorial Louÿs Petit. Mélanges d'Histoire et d'Archéologie Byzantines*, Bucharest 1948, 41-45). See for other remarks A. Pertusi, *cit.*, 71-81 e *passim*.

17. In the byzantine era the fight against the heresies and the heretics became a problem of criminal law. See about the matter in the *Ekloge* B. Sinogowitz, *Studien zum Strafrecht der Ekloge* Athens 1956 (also Jurist. Diss. München von 3. Juli 1952; rec. G. Vismara, in *Byzantinische Zeitschrift* 52, 1959, 132-135) and Sp. Troianos, *Bemerkungen zur Strafrecht der Ecloga*, in *Αφιέρωμα στὸν Ν. Σβορώνο I*, Rethymno 1986, 97-112, but also, in general about the punishment in byzantine law, again Sp. Troianos, *Die Strafen im byzantinischen*

written against Manichaeans, whom are accosted, in this occasion, to Montanists<sup>18</sup>.

Οἱ μανιχαῖοι καὶ οἱ μοντανοὶ ξίφει τιμωρεῖσθωσαν<sup>19</sup>

The vivid prescription, which in its hardness has various points of obscurity and the peculiarity to be the only article of the collection regarding the problem of heresy<sup>20</sup>, will be the aim of our concise analysis<sup>21</sup>.

*Recht. Eine Übersicht*, in *Jahrbuch der österreichischen Byzantinistik* 42 (1992) 55-74 and M. Seriski, *Poenae in iure byzantino ecclesiastico ab initiis ad saeculum XI (1054)*, Romae 1941, on the canonical law. See moreover T. E. Gregory, *The Ecloga of Leo III and the Concept of Philanthropia*, in *Byzantina* 7 (1975), about the "humanization" of the legislation of the Isaurian dynasty, represented by the escape from the death penalty and the control on the discretion during decisions.

18. Montanus was the founder of a mass movement, millenaristic and prophetic, characterized by an apocalyptic way of thinking: born in Phrygia around the half of the second century, he started to preach and pray in community, followed by the disciples Massimilla e Priscilla, to be condemned only by Pope Zelinus, because of the great number of the followers; he had some schools in Rome, the most famous those of Eschine and Proclo, while also Tertullian, who wrote the work with the title *De pallio*, was among his supporters. See C. Frevert, *Montanism: Gender, Authority and the New Prophecy*, Cambridge 1996 and W. Tabbernee, *Fake Prophecy and Polluted Sacraments. Ecclesiastical and Imperial Reactions to Montanism*, Leiden 2007, but also J. A. Mohler, *The Heresy of Montanism. An Historical Survey*, Staten Island (New York) 1971 and B. W. Greece, *The Cultural Bases of Montanism*, Waco (Texas) 1980, in addition to a classic book, W. Schepelern, *Der Montanismus und die phrygische Kulte*, Tübingen 1929; see moreover S. P. Freeman-Grenville, *The Date of the Outbreak of Montanismus*, in *Journal of Ecclesiastical History* 5 (1954) 7-15 and T. D. Barnes, *The Cronology of Montanism*, in *Journal of Theological Studies* 21 (1970) 403-408; see finally W. H. C. Frend, *Montanism, Research and Problems*, in *Rivista di storia e letteratura religiosa* 20 (1984) 521-537 and *Montanism. A movement of prophecy and regional identity in the early Church*, in *Sects and new religious movements*, ed. A. Dyson – E. Barker, Manchester 1988, 25-34.

19. 17.52, in *Ecloga, Das Gesetzbuch Leons III. und Konstantinos' V.*, hrsg. L. Burgmann, Frankfurt am Main 1983, 242.

20. The same norm expressed in the same way is preserved in Ekl. 17.43, 44, e 45 for the crime of magic and in Ekl. 17.53 against deserters and public enemies; in the *Ecloga privata aucta* reappeared the prescription of the death penalty also against the apostates, identical: Οἱ ἐκ τῆς ἀμωνήτου τῶν χριστιανῶν πίστεως ἀποστάντες ξίφει τιμωρεῖσθωσαν (17.35).

21. The norm was recovered into the manuscript tradition of the text, always in the section devoted to criminal law: we can read it without any change in the *Ecloga privata* (17.42) – the source is still not published: see A. Christophilopoulos, *Τὸ πρόβλημα τῆς Ecloga Privata*, in *Ἀρχεῖον Ἰδιωτικοῦ Δικαίου* 4 (1937) 97-105 (= *Δίκαιον καὶ ἱστορία*, Athina 1973, 111-118), in addition to the note in C. E. Zachariae von Linghental, *Collectio librorum juris graeco-romani ineditorum*, Lipsiae 1852, 5 – and in the *Eklogadion* (420) – a parallel compilation preserved in *Vindob. Iur. gr.* 2, foll. 6r-20v (in H. Hunger – O.

We know that the *Ekloge* did not intend to reform the previous system held in the *Corpus Iuris*, but simply to summarize it through an anthology, occasionally inserting norms of customary law<sup>22</sup>. It is significant, however, that the necessity to intervene has been felt exclusively in the case of Manichaeans, while the law structure on the matter received from the past was

Kresten, *Katalog der griechischen Handschriften der österreichischen Nationalbibliothek*, Wien 1969, 3-6); see about the so called δεύτερον ἐκλογάδιον D. Simon – S. Troianos, *Eklogadion und Ecloga privata aucta*, in *Fontes Minores II*, Frankfurt am Main 1977, 45-86; see about the problem of the sanctions Sp. Troianos, 'Ο «Ποινάλιος» τοῦ Ἐκλογάδιου. Συμβολὴ εἰς ἱστορίαν τῆς ἐξελίξεως τοῦ ποινικοῦ δικαίου ἀπὸ τοῦ *Corpus Iuris Civilis* μέχρι τῶν βασιλικῶν, Frankfurt am Main 1980 – and finally in the *Ecloga privata aucta* (17.52) – the collection was published by Zachariae von Lingenthal (Leipzig 1865; JGR IV 1-48) and then by the Zepos (Athens 1931; JGR VI 7-47) on the base of *Cod. Parisinus gr.* 1384: see D. Simon – Sp. Troianos, *EPA Sinaitica*, in *Fontes Minores II*, Frankfurt am Main 1977, 45-86; see moreover E. E. Lipšic, *Vizantijskoe pravo v period meždu Eklogoj i Prochironom. Častnaja Rasprostrannaja Ekloga*, in *Vizantijskij Vremennik* 36 (1974) 42-72 and N. P. Matsis, *Διορθώσεις εἰς τὴν Ὑψημένην Ἰδιωτικὴν Ἐκλογὴν*, in *Ἐπετηρὶς Ἑταιρείας Βυζαντινῶν Σπουδῶν* 33 (1964) 154-159, in addition to F. Gorla, *Sulla data e sull'origine dell'Ecloga Privata Aucta*, in *Studi Parmensi* 20 (1979) 305-323 and especially *Tradizione romana e innovazioni bizantine nel diritto privato dell'Ecloga privata aucta*, Frankfurt am Main 1980. In the *Appendix Eclogae* (see L. Burgmann – S. Troianos, *Appendix Eclogae*, in *Fontes Minores III*, Frankfurt am Main 1979, 21-125) instead there are some paragraphs devoted to different subjects, which derived directly from the Justinianic compilation and which were preserved in an old anthology of ecclesiastical law, the *Collectio Tripartita* (see *Collectio tripartita. Justinian on Religious and Ecclesiastical Affairs. An anonymous collection of Greek summaries of fragments from corpus iuris civilis*, ed. N. van der Wal – B. H. Stolte, Groningen 1994): *pars* 3 of *Appendix Eclogae* (Ποινάλιος κατὰ αἵρετικῶν μανιχαίων καὶ τῶν λοιπῶν αἱρέσεων καὶ κατὰ ἐπαιδῶν καὶ φαρμακῶν), divided in twenty chapters, is devoted to the enemies of the catholic faith and has many connections mainly with the *pars* 1.5 of *Collectio Tripartita*: 3 (Coll. Trip. 1.5.4 / C. 1.5.4), 7 (Coll. Trip. 1.5.16 / C. 1.5.16; Ecl. ad Proch. mutata 36.4; Eis. aucta 53.9; Epit. 45.61), 11 (Coll. Trip. 1.5.5 / C. 1.5.5; Ecl. ad Proch. mutata 36.5; Eis. aucta 53.12), 13 (Coll. Trip. 1.7.6 / C. 1.7.6; Ecl. ad Proch. mutata 36.10), 17 (Coll. Trip. 1.11.10 / C. 1.11.10; Ecl. ad Proch. mutata 36.1; Eis. aucta 53.16), 20 (Ecl. ad Proch. mutata 36.12 and Eis. aucta 53.19; the paragraph, which is not contained in the *Collectio Tripartita* and which is indicated as originary from can. 7 of the Council of Nicaea, must be ascribed to can. 95 of the Quinisext, where the matter of the baptism of the heretics is faced; see P. G. Caron, "Ne sanctum baptismum iteretur" - C.Th. 16.6: C.I. 1.6, in *Atti dell'Accademia Romanistica Costantiniana*, 6, 1986, 167-178 and moreover L. Burgmann – S. Troianos, *cit.*, 46-47; see finally Gero, *Leo III*, p. 49 n. 3).

22. The relationship between criminal law and customary law is hard to understand: it is obvious that the order to punish must be the result of a legislative decision and therefore the sign of a centralized power. The doctrine has exercised itself especially about the debate on the origin of the *Nomos Gheorghikos*; see P. Pieler, *Byzantinische Rechtsliteratur*, in *Die hochsprachliche profane Literatur der Byzantiner II*, hrsg. H. Hunger, München 1978, 440-442; see moreover D. Simon, *Provinzialrecht und Volksrecht*, in *Fontes Minores I*, Frankfurt am Main 1976, 102-126.

extended and complete. Perhaps this could be motivated by the precise circumstance which could justify also the presence of Montanists into the lawmaker's mind.

Different hypothesis about the topic have been formulated. The most plausible is the one according to which Montanists were, in some ways, identified with Hebrews, whom have been actually persecuted by the Isaurian emperors<sup>23</sup>; it was an old conviction<sup>24</sup>. Very meaningful, in this respect, is an evidence from Teophanes Confessor<sup>25</sup>, who, in his *Chrono-*

23. See J. Scharf, *The Jews, the Montanist and the Emperor Leo III*, in *Byzantinische Zeitschrift* 59, 1966, 37-46, mainly 44-45 e *Byzantine Jewry from Justinian to the Fourth Crusade*, New York 1971, 61-81, but also *Byzantine Jewry in the Seventh Century*, in *Byzantinische Zeitschrift* 48 (1955) 103-115, 111-112; see moreover J. Starr, *The Jews in the Byzantine Empire, 641-1204*, Athens 1939, 91-95 (and *An Eastern Christian Sect: The Athinganoi*, in *Harvard Theological Review* 29, 1936, 93-106). Useful K. E. Zachariae von Lingenthal, *Geschichte des griechisch-römischen Rechts*, Berlin 1892 (3. Aufl.) / Aalen 1955, 337-339 and V. N. Benesevič, *Istorii Evreev v Vizantii VI-X vekov*, in *Evrejskaja Mysl'* 2 (1926) 197-224 e 305-318, *passim*. Finally, we read in Gero, *Leo III*, p. 53 n. 19: "The harsh punishment that the Ecloga metes out to the Manichaeans is of course quite consonant with earlier Justinianic legislation, as is that which is directed against magicians of various stripes (Title 17, no. 43, ed. Zachariae, p. 50). But, this provision about Manichaeans and Montanists is the only mention of heretical groups in the Ecloga, which is otherwise concerned with purely secular matters. This passage could well be an interpolation: if Leo intended this code to deal with the punishment of heresy, surely a more extended discussion could be expected than the bald statement: οἱ μανιχαῖοι καὶ οἱ προβανοὶ ξίφει τιμορεῖσθωσαν (...)". About the fact that during the Isaurian time Hebrews were discriminated a passage exists which concerns the taxation system against them (see A. Andreades, *Les Juifs et le fisc dans l'Empire byzantin*, in *Mélanges Diehl* I, Paris 1930, 7-29 e F. Dölger, *Die Frage der Judensteuer in Byzanz*, in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 26, 1933, 1-24), reported on the occasion of the attempt to recover the control on the Italian peninsula (see M. V. Anastos, *Leo III's Edict Against the Images in the Year 726-7 and the Italo-Byzantine Relations Between 726 and 730*, in *Byzantinische Forschungen* 3, 1968, 5-41); Theophanes Confessor (hrsg. C. de Boor, Leipzig 1883 I 410), George Kedrenus (hrsg. I. Bekker, Bonn 1839, II 877 e 880), John Zonaras (hrsg. T. Büttner-Wobst, Bonn 1897, III 263) and also F. Dölger, *Regesten*, I.1, 36, n. 300.

24. Eusebius of Ceasarea, in *Hist. Eccl.* V.16, 12, writes that Apollinaris of Gerapolis in the second book of his work against Montanists said that Jews never have done something to contrast their heresy, while Procopius of Caesarea, in his *Anekdotai*, speaking about the heretics and in particular Montanists, reports that some Samaritans persecuted have become even Manichaeans (XI).

25. Theophanes Confessor, who continued George Sinkellos' chronicle, was *spatarios* under Constantine V, who has bred him at the court, so became monk: he was exiled by Leo V to the island of Samotraccia, where died in 818. See G. Marasco, *Teofane e le origini dell'iconoclastia*, in *Categorie linguistiche e concettuali della storiografia bizantina*, Napoli 2000, 105-123; see anyway G. Ostrogorsky, *Die Chronologie des Theophanes im 7. und 8. Jahrhundert*, in *Byzantinische-Neugriechische Jahrbücher* 7 (1930) 1-56; for other remarks we refer to C. Mango

*graphia*<sup>26</sup>, says that between the years 720 and 721 Leon III begun an heavy baptisms campaign precisely against Hebrews and Montanists in Frigia, traditionally their own region<sup>27</sup>.

The motherland of Montanists was on the border with the native territory of Isaurians, who came from a city situated in the northern edge of the Syrian province<sup>28</sup> and called Germanicea. Isaurians – although the nickname of the king appeared probably in a following time<sup>29</sup> – belonged to a not greek-

– R. Scott, *The Chronicle of Theophanes Confessor: Byzantine and New Eastern History AD 284-813*, Oxford 1977, *passim*, together with I. Rochow, *Byzanz im 8. Jahrhundert in der Sicht des Theophanes. Quellenkritisch-historischer Kommentar zu den Jahren 715-813*, Berlin 1991.

26. *Chronographia sub anno 6214* (hrsg. C. de Boor, Leipzig 1883, I 401 21-27 and hrsg. J. Classen, Bonn 1839, I 617 8-14 / PG 108, col. 809): τούτω τῷ ἔτει ἡνάγκασεν ὁ βασιλεὺς τοὺς Ἑβραίους καὶ τοὺς Μοντανοὺς βαπτίζεσθαι. οἱ δὲ Ἰουδαῖοι ἀπροαιρέτως βαπτιζόμενοι ἀπελούοντο τὸ βάπτισμα καὶ ἐσθίοντες μετελάμβανον τὴν ἀγίαν δωρεάν καὶ ἔχραινον τὴν πίστιν. οἱ δὲ Μοντανοὶ διαμαντεύσαντες ἑαυτοῖς καὶ ὀρίσαντες ἡμέραν εἰσῆλθον εἰς τοὺς ὠρισμένους οἴκους τῆς πόλεως αὐτῶν καὶ κατέκαυσαν ἑαυτούς (...); the piece of information is reported also by other writers: Michael the Syriac, ed. Chabot, IV 456 and II 490; Agapius, ed. Vasiliev, 304; Elias of Nisibi, ed. Brooks, 162, 17-19 (in Syriac) e 21-22 (in Arabic). Nothing appears instead into Nikephoros' *Breviarium* (hrsg. C. de Boor, Leipzig 1880; see A. E. Visser, *Nikephoros and der Bilderstreit*, The Hague 1952). Very interesting is also the account of Leo Grammaticus, who wrote during the tenth century, where Hebrews forcefully converted are confused with the members of the sect of Montanists; this is a sign that a relationship between what is said by Theophanes Confessor and the content of the article coming from the *Ekloge* could be really existed: (...) Λέων (...) ἐβάπτισε δὲ ἀναγκασῶς καὶ τοὺς Ἑβραίους ὥστε λέγεσθαι ἔκτοτε τοὺς Ἑβραίους καὶ Μοντάνους. (*Chronographia*, hrsg. I. Bekker, Bonn 1842, 179); see also a passage in the Concilium of 814 (J. D. Mansi, *Sacrorum Conciliorum Nova Amplissima Collectio* XIV, Venetiis 1769, 120).

27. Also the Amorian dynasty was originary from Phrygia; see about the results of the second iconoclasm, strongly wished by Leo V "the Armenian", P. J. Alexander, *The Iconoclastic Council of St. Sophia (815) and Its Definition (Horos)*, in *Dumbarton Oaks Papers* 7 (1953) 37-66 and M. V. Anastos, *The Ethical Theory of Images Formulated by the Iconoclasts in 754 and 815*, in *Dumbarton Oaks Papers* 8 (1954) 153-160 (= *Studies in Byzantine Intellectual History*, London 1979, n. XI).

28. The city of Mar'aš (see G. Tchalenko, *Villages antiques de la Syrie du Nord*, Paris-Beyrouth 1953) was connected to the tradition of the Monophysite church (see W. H. C. Frend, *The Rise of the Monophysite Movement*, Cambridge 1972); were Phrigians moreover the metropolitan Thomas of Claudiopolis and the bishop Constantine of Nacoleia, both anathemized as iconoclasts during the Council of Nicaea in 787 (Mansi XIII, 416c; see J. Mendham, *The Seventh Ecumenical Council*, London 1849).

29. Leon III, who has started his brilliant career as *strategos* of the Anatolian *thema*, had the first name of Canon; see C. Head, *Who was the real Leo the Isaurian?*, in *Byzantion* 41 (1971) 105-108, in addition to K. Schenk, *Kaisers Leons III Walten im Innern*, in *Byzantinische Zeitschrift* 5 (1896) 257-301, 296-298; see moreover K. Schenk, *Kaiser Leo III.*, Halle 1880.



peaking, rather poor<sup>30</sup>, ethnic group, who used to live in a mountainous and wild<sup>31</sup> land of frontier<sup>32</sup>, where the contacts before with the Jewish world and afterwards with the Arabian one were important<sup>33</sup>. Isaurians, perhaps there is no need to remind it, struggled heavily against the representation of the divinity into holy images, according to a typical aniconic view<sup>34</sup>.

30. See C. E. Minor, *The robber tribes of Isauria*, in *The Ancient World* 2 (1979) 117-127 and R. Syme, *Isaura and Isauria. Some problems*, in *Sociétés urbaines, sociétés rurales dans l'Asie Mineure et la Syrie hellénistiques et romaines. Actes du colloque organisé à Strasbourg (novembre 1985)*, éd. E. Frézouls, Strasbourg 1987, 131-147, but also W. D. Burgess, *Isaurian names and the ethnic identity of the Isaurians in late antiquity*, in *The Ancient World* 21 (1990) 109-121 and K. Hopwood, *Bandits, elites and rural order*, in *Patronage in ancient society*, ed. A. Wallace-Hadrill, London 1989, 170-187; see moreover D. B. Shaw, *Bandit highlands and lowland peace: the mountains of Isauria-Cilicia*, in *Journal of the economic and social history of the Orient* 33 (1990) 199-233 and 237-270, with N. E. Lenski, *Assimilation and revolt in the territory of Isauria, from the 1<sup>st</sup> century BC to the 6<sup>th</sup> century A.D.*, in *Journal of the economic and social history of the Orient* 42 (1999) 411-465.

31. See G. Varinlioglu, *Living in a marginal environment: rural habitat and landscape in southeastern Isauria*, in *Dumbarton Oaks Papers* 61 (2007) 287-317.

32. See H. Hunger, 'Ο ὀρθαλμὸς τῆς οἰκουμένης. Das Auge der Welt, in *Neuen Forschungen und Restaurierungen in byzantinischen Kaiserpalast von Istanbul. Achten der Internationalen Fachtagung vom 6.-8. November 1991 in Istanbul*, Wien 1999, 21-28. The words "centre" and "periphery" represented an important couple of concepts in the structure of the imperial power; see about this theme *Zwischen Polis, Provinz und Peripherie. Beiträge zur byzantinischen Geschichte und Kultur*, hrsg. L. M. Hoffmann, Wiesbaden 2005, but especially E. Pitz, *Die griechisch-römische Ökumene und die drei Kulturen des Mittelalters: Geschichte des mediterranen Weltteils zwischen Atlantik und Indischem Ozean*, 270-812, Berlin 2001; see moreover M. Gallina, *Centre et Périphérie: identité et différences (XIe-XIIIe siècles)* and G. Cavallo, *Εν βαρβάρους χωρίοις. Riflessioni su cultura del centro e cultura delle periferie a Bisanzio*, both in *Byzantina-Metabyzantina. La périphérie dans le temps et l'espace. Actes de la 6e Séance plénière du XXe Congrès international des Études byzantines – Paris 2001*, Paris 2003, 57-76 and 77-106; we remember finally *Bisanzio fuori di Bisanzio*, cur. G. Cavallo, Palermo 1991.

33. See H. Breyer, *Bilderstreit und Arabertum in Byzanz. Das 8. Jahrhundert (717-813) aus der Weltchronik des Theophanes*, Wien 1957, in addition to A. A. Vasiliev, *Byzance et les Arabes*, Bruxelles 1935, *passim* and E. Honigmann, *Die Ostgrenze des byzantinischen Reiches von 363 bis 1071 nach griechischen, syrischen und armenischen Quellen*, Bruxelles 1935, *passim*; for every other remarks we refer anyway to I. Shahīd, *Byzantium and the Arabs*, printed in several volumes in Washington (I.1 e I.2, 1995 / II.1, 2002 e II.2, 2009).

34. The influence of the islamic culture to avoid the representation of the image of the divinity is often shown as one of the most important causes of the iconoclastic swing of the Isaurian dynasty: in Theophanes Confessor's *Chronographia* the epithet *sarakenophron* is used against Constantine V (hrsg. C. de Boor, Leipzig 1883, I 402); see, for example, G. E. V. Grunebaum, *Byzantine iconoclasm and the influence of the Islamic environment*, in *History of Religions* 2 (1962/1963) 1-10 and W. Beltz, *Die Bedeutung des Islam für den byzantinischen Bilderstreit*, in *Zeitschrift für Religions- und Geistesgeschichte* 37 (1985) 256-257, with I. W. Barnard, *The Graeco-Roman and Oriental background of the iconoclastic controversy*, Leiden 1974, for other remarks; useful finally B. Farès, *Philoso-*

On this respect, a reference to the religious tendencies of the Isaurian dynasty could be also useful<sup>35</sup>. Certainly, the iconoclasm had a prevailing political character<sup>36</sup>. The destruction of icons and relics of saints<sup>37</sup>, objects of an idolatrous worship, incarnated the refusal of a Christian faith dispersed into a kind of multiplicity. On the contrary, the cross, raised as a symbol, became the new factor of unity<sup>38</sup>, like the “eternal” against the “ephemeral”. Together with the disappearance of holy images, indeed, the number of portraits of the emperors, living evidence of a power in search of the way to survive forever, increased. After all, it was the same idea, marvellously described by Lactance<sup>39</sup> and Eusebe of Caesarea<sup>40</sup>, which expressed Constantine the Great<sup>41</sup>, gigantic

*phie et jurisprudence illustrées par les Arabes. La querelle des images en Islam*, in *Mélanges Louis Massignon II*, Damascus 1957, 77-109. About the Jewish aniconism instead we refer to T. N. D. Mettinger, *No graven images? Israelite aniconism and its ancient Near East*, Stockholm 1995; see also F. Calabi, *Simbolo dell'assenza: le immagini nel Giudaismo*, in *Quaderni di storia* 21 (1995) 5-32.

35. The connection between the date of the promulgation of the text (741; see L. Burgmann, *cit.*, 10-12) and the public rise of the iconoclastic controversy (754, Horos of Hiereia; see M. V. Anastos, *The Argument for Iconoclasm as Presented by the Iconoclastic Council of 754*, in *Late Classical and Medieval Studies in Honor Albert M. Friend Jr.*, ed. K. Weitzmann, Princeton 1955, 177-188), which started with the destruction of the image of Jesus Christ at the Chalké in 726 and continued with the famous *stenton* on 17 January 730 and the removal of Patriarch Germanus, are really disputed. In fact nothing authorize us to read into the *proemion* an iconoclastic spirit, neither in the will to restore the ancient *δίκαιοδοσία*, apart the term *χριστοσχηματισμός* (Proem. 92, ed. Burgmann, p. 166), which could remember maybe the symbol of the cross.

36. See S. Gero, *Notes on byzantine iconoclasm in the eight century*, in *Byzantion* 44 (1974) 23-42, but also *Icon and Logos. Sources in Eighth-Century Iconoclasm*, transl. with comm. by J. Sahas Daniel, Toronto 1986; see moreover again W. E. Kaegi, *The Byzantine armies and iconoclasm*, in *Byzantinoslavica* 27 (1966) 48-70.

37. See J. Wortley, *Iconoclas and Leipsanoclasm. Leo III, Constantin V and the Relics*, in *Byzantinische Forschungen* 8 (1982) 253-279.

38. See J. Moorhead, *Iconoclasm, the Cross and the imperial image*, in *Byzantion* 55 (1985) 165-179 and moreover J. R. Martin, *The Dead Christ on the Cross in Byzantine Art*, in *Late Classical and Medieval Studies in Honour Albert M. Friend Jr.*, ed. K. Weitzmann, Princeton 1955, 189-196.

39. *De mortibus persecutorum* 44, 5.

40. *Vita Constantini* I, 28-30.

41. See *Vita Constantini* IV.15-16, about the prohibition to paint the holy images into churches; see R. Grigg, *Constantine the Great and the cult without images*, in *Viator* 8 (1977) 1-32. Very interesting moreover P. C. Finney, *Antecedents of Byzantine Iconoclasm. Christian Evidence before Constantine*, in *The image and the World. Confrontations in Judaism, Christianity and Islam*, ed. J. Cutmann, Missoula (Montana) 1977, 27-47. See, about the quite iconoclastic way of thinking in Eusebius of Caesarea, G. Florovsky, *Origen, Eusebius and the Iconoclastic Controversy*, in *Church History* 19 (1950) 77-96, but also A. von Stockhausen, *Einige Anmerkungen zur Epistula ad Constantiam des Euseb von Caesarea*, in T. Krannich – C.

figure of Christian emperor who has given, not by chance<sup>42</sup>, the name to Constantine V<sup>43</sup>.

Therefore, in our opinion, we should try to avoid the temptation to draw near iconoclasts and heretics, an argument which has often been used by the defenders of the images in their public debates<sup>44</sup>. The new theological movement was considered by its supporters as a restoration of an original,

Schubert – C. Sode, *Die ikonoklastische Synode von Hiereia 754*, Tübingen 2002, 92-112: the work is preserved in *Patrologia Graeca* 20, coll. 1535 sqq.

42. In the acclamations of the *horos* of 754 is written: "Long life to the new Constantine, the pious emperor!".

43. See about the enigmatic figure of this emperor I. Rochow, *Kaiser Konstantin V. (741-775). Materialien zu seinem Leben und Nachleben*, Bern-Frankfurt am Main 1994, in addition to A. Lombard, *Études d'histoire byzantin. Constantin V, empereur des Romains*, Paris 1902. His religious way of thinking is not simple to reconstruct; in the *Anthirretica* of Patriarch Nicephorus there are some fragments of his christological positions (IX century; PG 100, coll. 206-373, first and second); see P. J. Alexander, *The patriarch Nicephorus of Constantinople. Ecclesiastical Policy and the Image*, Washington the Byzantine Empire, Oxford 1958 (1983) and R. P. Blake, *Note sur l'activité littéraire de Nicéphore Ier patriarche de Constantinople*, in *Byzantion* 14 (1939) 1-15 and V. Grumel, *Les "dix-neuf" chapitres contre les iconomaques" de Saint Nicéphore de Constantinople*, in *Revue des Études Byzantines* 17 (1959) 127-135. In the Council of Constantinople of 754 (10<sup>th</sup> February, Hiereia – 8<sup>th</sup> August, Blachernae) the emperor supported a complicated theology, saying that who worshipped the icons dropped into nestorianism and in the meantime into monophysism (Mansi XIII 257E-260AB).

44. We would like to remember mainly Germanus of Constantinople (715-730) and John of Damaskus from the family of Al-Mansur, which has left us the most important sources against the iconoclasm: the letters of the patriarch (in PG 98, coll. 156 sqq. / *De Haeresibus et Synodis*, PG 98, 39-88) and the three orations on holy images (in PG 94 coll. 1232-1420). Another source, before the *horos* of 754, is the *Νουθεσία γέροντος περὶ τῶν ἁγίων εἰκόνων*, assigned to Georgos Kuprios, which contained some lessons and a dialogue with an iconoclastic bishop (see B. M. Melioranskij, *Georgij Kiprjanin i Ioann Ierusalimijanin*, Sankt Peterburg 1901; rec. E. Kurtz, in *Byzantinische Zeitschrift* 11, 1902, 538 -543); from him, together with John of Damaskus' works, came John of Jerusalem (στηλευτικὸς λόγος in PG 96, coll. 1348-1362), who in turn originated the composition which had the title *Adversus Constantinum Caballinum* (late VIII century / PG 95 coll. 309-344 / J. M. Hoeck, *Stand und Aufgabe der Damaskenus-Forschung*, in *Orientalia Christiana Periodica* 17, 1951, p. 26 nt. 2). About the figure of the patriarch we refer to L. Lamza, *Patriarch Germanos I. von Konstantinopel (715-730)*, Würzburg 1975; see moreover V. Fazzo, *Agli inizi dell'iconoclasm. Argomentazione scritturistica e difesa delle icone presso il patriarca Germano di Costantinopoli*, in *Parola e spirito. Studi in onore di Settimio Cipriani*, cur. C. Casale Marcheselli, Brescia 1982, 809-832. See finally about the reasoning who justified the worship of the icons A. Avenarius, *Der Geist der byzantinischen Ikonodulie und seine Tradition*, in *Jahrbuch der österreichisches Byzantinistik* 42 (1992) 41-54; see besides V. Fazzo, *La giustificazione delle immagini religiose dalla tarda antichità al cristianesimo. I. La tarda antichità, con un appendice sull'iconclasm bizantino*, Napoli 1977.



pure, Christendom: it was not meant to be a revolution<sup>45</sup>. This aspect took the Isaurian emperors to look at the heretical sects with extreme suspicion, frightened that the opposition –somewhere very strong, for example in Cappadocia<sup>46</sup>– would have instrumentally showed them as enemies of the orthodoxy<sup>47</sup>.

Anyhow, the battle fought against the party of the monks does not seem to have had a concrete importance. Indeed, it is difficult to think that the article contained in Ekl. XVII.52 derived in some way from the propaganda which only later was orchestrated against the monks<sup>48</sup>: they were in reality, although painted as unlearned beggars<sup>49</sup>, members of a rich and powerful rank, owner of large landed estates<sup>50</sup>.

From the moment that one of the main characteristics was to oppose every organized body, the heresies of Manichaeans and Montanists, raised in a terrible manner to the eyes of the central power. On one side Manichaeism

45. In the *horos* issued at the end of the Council of Hihereia in 754 by Constantine of Sileos – Anastasius, who had replaced German – died shortly before – there were many references to the anathemas of the other councils, to create a sense of continuity. See again M. V. Anastos, *The Argument for Iconoclasm as Presented by the Iconoclastic Council of 754*, in *Late Classical and Medieval Studies in Honor of Albert Mathias Friend Jr.*, ed. K. Weitzmann, Princeton (New Jersey 1955) 177-188 (= *Studies in Byzantine Intellectual History*, London 1979, n. X).

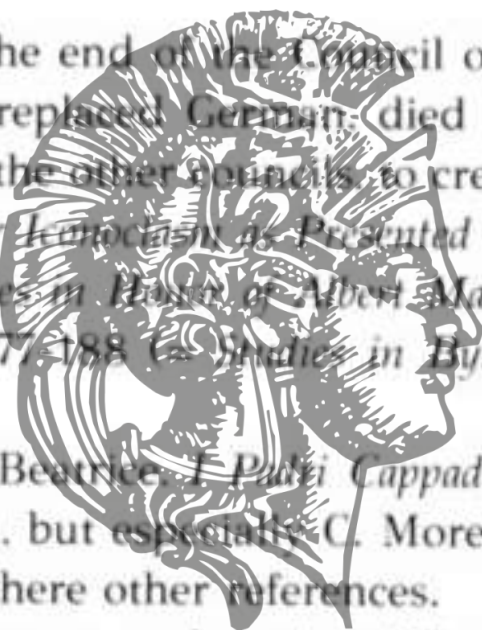
46. See, for example, P. F. Beatrice, *I Padri Cappadoci*, in *Lo spazio letterario dell'antica Grecia* I.3, Roma 1994, 699-321, but especially C. Moreschini, *I padri cappadoci: storia, letteratura, teologia*, Roma 2008, where other references.

47. The argument of the “return to the origins” had a strong charge of ambiguity; in fact, the refuse of the ecclesiastical structures and therefore of the principle of the apostolic succession, which guaranteed a valid administration of the sacraments, was one of the cornerstone of every Christian radical movement.

48. Stephan the Younger, according to his biography (*Vita Stephani Junioris*, in PG 100, coll. 1069-1186; beginning of the IX century), was martyred in 765; the violent measures taken by Michele Lacanodracone, who had received the order to transform the monasteries into barracks and to confiscate all their properties, were more next. See S. Gero, *Byzantine Iconoclasm and Monomachy*, in *Journal of Ecclesiastical History* 28 (1977) 241-248.

49. Manichaeans in the Theodosian codification were sometimes identified with other groups, in particular, apart Encratites, ascetics, these which were called “hydroparastatae” and “sacchofori”: these last remembered, concerning the nickname, the sect of “borboriti” (from βόρβορος, mud), who in the Justinianic period were included sure among Manichaeans; after other time, Manichaeans were assimilated instead to Messalians or Euchits (from ἐχέται, to pray); in the same way Paulicians were often identified as “phundagiagites” (lit. vagabonds; see about these G. Ficker, *Die Phundagiagiten: ein Beitrag zur Ketzergeschichte des byzantinischen Mittelalters*, Leipzig 1908).

50. See P. Charanis, *The Monastic Properties and the State in the Byzantine Empire*, in *Dumbarton Oaks Papers* 4 (1948) 51-118 and moreover *The Monks as an Element of Byzantine Society*, in *Dumbarton Oaks Papers* 25 (1971) 61-84.



evoked the evil will to suggest two different entities, denying at the root the unity of the Christian creed<sup>51</sup>. On the other hand, Montanism, called forth the temptation of the single man, in isolated groups, to avoid the normal life of the subjects of the empire<sup>52</sup>. Moreover, the two heresies, as we know, did not show feelings against images. On the contrary, Manichaeans loved the pictorial representations<sup>53</sup>, while Montanists left a good number of grave inscriptions, also figurative<sup>54</sup>.

Another element could help us to put together the pieces of the picture. Under the Isaurian dynasty, in particular with Constantine V, the Paulician heresy started to spread from the Armenian province<sup>55</sup>. Its followers suf-

51. See note 8.

52. Montanists refused every ecclesiastical structure, basing their creed on personal charismas: in this way every kind of integration would be simply impossible, also into the state organization (see W. Tabbernee, «*Keeping the faith*»: Montanism and military service, in *Antioche de Pisidie, Actes du Ier Congrès International sur Antioche de Pisidie*, éd. T. Drew-Bear – M. Taslihan – C. M. Thomas, Paris 2002, 123-136); see, for example, F. E. Vokes, *Montanism and the Ministry*, in *Studia Patristica* IX, 3, ed. F. E. Cross, Berlin 1966, 306-315 and M. J. Kreidler, *Montanism and monasticism: charism and authority in the Early Church*, in *Studia Patristica* XVIII, 2, ed. E. A. Livingstone, Kalamazoo (Michigan)-Leuven 1989, 229-234; read moreover A. Stewart-Sykes, *The original condemnation of Asian Montanism*, in *Journal of Ecclesiastical History* 50 (1999) 1-22, with *The Asian context of the new prophecy and of «Epistula Apostolorum»*, in *Vigiliae Christianae* 51 (1997) 416-438.

53. In the museum of Berlin-Dahlem (Museum für Asiatische Kunst) there are some beautiful Manichaean text pictures: see Z. Gulácsi, *Medieval Manichaean Book Art. A Codicological Study of Iranian and Turkic Illuminated Book Fragments from 8th-11th Century East Central Asia*, Leiden 2005 with *Mediaeval Manichaean Art in Berlin Collections*, Turnhout 2001; see moreover H.-J. Klimkeit, *Manichaen Art and Calligraphy*, Leiden 1982 and *Vom Wesen manichäischer Kunst*, in *Zeitschrift für Religion- und Geistesgeschichte* 34 (1982) 195-219, also as *On the Nature of Manichaean Art*, in *Studies in Manichaean Literature and Art*, in ed. M. Heuser – H.-J. Klimkeit, Leiden 1998, 270-290.

54. See W. Tabbernee, *Montanist Inscriptions and Testimonia. Epigraphic Sources*, Macon (Georgia) 1997, but also E. P. Gibson, *Montanism and Its Monuments*, Cambridge (Massachusetts) 1974.

55. See M. Loss, *Le mouvement Paulicien à Byzance*, in *Byzantinoslavica* 24 (1963) 258-286 and 25 (1964) 52-68 with *À propos des sources grecques reflétant des Pauliciens*, in *Byzantinoslavica* 17 (1956) 19-57 and *Origine du nom des Pauliciens*, in *Byzantinoslavica* 18 (1957) 202-217 and N. G. Garsoïan, *The Paulician Heresy. A study of the origin and development of Paulicianism in Armenia and the Eastern provinces of the Byzantine empire*, The Hague 1967, but also R. M. Bartikjan, *Istočniki dlja isučenija istorii pavlikianskogo dviženija*, Erevan 1961; see moreover *Les sources grecques pour l'histoire des Pauliciens d'Asie Mineure*, éd. C. Astruc – W. Conus-Wolska – J. Grouillard – P. Lemerle – D. Papachrysanthou – J. Paramelle, in *Travaux et Mémoires* 4 (1970) 1-227 and P. Lemerle, *L'histoire des Pauliciens d'Asie Mineure après les sources grecques*, in *Travaux et Mémoires* 5 (1973) 39-47, in addition to K. Mutafova, *The Pauliciens, different for all*, in *Étude Balkaniques* 4 (1993) 29-37; we would remember H. Grégoire, *Les sources de l'Histoire des Pauliciens. Pierre de Sicile est authentique et «Photius»*

ferred at the time the first massive deportations<sup>56</sup>. It is therefore possible that the norm in Ekl. XVII.52 could be connected with these events, perhaps as a kind of forecast<sup>57</sup>, through the confusion between the Paulician dualism and the Manichaeism one<sup>58</sup>.

Anyway, we have to admit that Manichaeism has started to be accosted to Montanism since long time before. Curiously, Justinian's last constitutions against the movement, C. 1.5.18.19 e 21, always reminded, besides Samaritans<sup>59</sup>, who were close to the religion of Hebrews, also Montanists<sup>60</sup>

*un faux*, in *Bulletin de l'Académie Royale de Belgique. Bulletin de la Classe des lettres et des sciences morales et politiques* 22 (1936) 95-114 and *Précisions géographiques et chronologiques sur les Pauliciens*, in *Bulletin de l'Académie Royale de Belgique. Bulletin de la Classe des lettres et des sciences morales et politiques. Ser. 5* 33 (1947) 289-324, with *Pour l'histoire des églises pauliciennes*, in *Orientalia Christiana Periodica* 13 (1947) 509-514. Very interesting finally V. Nersessian, *The Tondrakian Movement: Religious Movements in the Armenian Church from the 4<sup>th</sup> to the 10<sup>th</sup> Centuries*, London 1987.

56. Armenians came into the empire to avoid the Arabic domination, during the reign of Constantine V: he ordered to deport a great number of them in Thrace, with other populations belonging to the monophysite creed from Syria. See P. Charanis, *The Transfer of Population as a Policy in the Byzantine Empire*, in *Comparative Studies in Society and History* 3 (1961) 140-154 and *Ethnic Change in the Byzantine Empire in the Seventh Century*, in *Dumbarton Oaks Papers* 13 (1959) 25-44; useful moreover *The Armenians in the Byzantine Empire*, in *Byzantinoslavica* 22 (1961) 196-240, but also G. Dedeyan, *L'immigration arménienne en Cappadoce au XI<sup>e</sup> siècle*, in *Byzantion* 45 (1975) 65-70 e 99-100; see for other remarks N. G. Garsoïan, *Armenia between Byzantium and the Sasanides*, London 1985 and finally *East of Byzantium: Syria and Armenia in the Formative Period*, Symposium Dumbarton Oaks 1980, New York 1982.

57. Constantine V was obliged to become enemy to Armenians. When the father died, Artavasde, the Armenian *strategos* of the *thema* of Opsikion, who had helped him to conquer the throne, moved against the legitimate successor: the emperor managed to enter the capital of Constantinople in 743, but the affront was too difficult to forget.

58. Although Paulicians became Manichaeism officially in the Council of Constantinople (VII; 787), which was promoted by the empress Irene at the end of the second iconoclasm, it is possible that the assimilation was already spread; Paulicians were eliminated by military force in 872, when the stronghold Tefrice was destroyed and their leader, Crisocheiro, was executed.

59. See D. Jacoby – Y. Tsafir, *Jews, Samaritans and Christians in Byzantine Palestine*, Jerusalem 1988; see about Samaritans in particular S. Winkler, *Die Samariter in den Jahren 529/530*, in *Klio* 43-45 (1965) 435-457 and especially A. M. Rabello, *The Samaritans in Justinian's Corpus iuris civilis*, in *Israel Law Review* 31 (1997) 724-743 (= *The Jews in the Roman Empire: Legal Problems, from Herod to Justinian*, Aldershot 2000, n. XI); very interesting also K. L. Noethlichs, *Jews, heretics or useful farm workers? Samaritans in late antique imperial legislation*, in *Wolf Lieberschuetz reflected. Essays presented by colleagues, friends and pupils*, ed. J. Drinkwater – B. Salway, London 2007, 57-65. See, finally, for other remarks A. D. Crown, *The Samaritans*, Tübingen 1989.

60. See C. 1.5.18.3, 1.5.19.4, 1.5.20.3-8 e 1.5.21.2.



(together with the sects of Tascodrugites<sup>61</sup> and Ophites)<sup>62</sup>. Montanists were persecuted by Septimius Severus, who considered them radical Christians<sup>63</sup>, but especially by Justinian. The emperor, who was also the great persecutor of Manichaeans, ordered to burn Montanus' mortal remains, with those of his disciples<sup>64</sup>, Priscilla and Massimilla. An interesting additional source is Sokrates Scholasticus' *Historia Ecclesiastica*, where there is a passage where Manichaeans and Montanists are accosted<sup>65</sup>.

So, let us try to draw some conclusions. The decision to punish with death penalty both Manichaeans and Montanists seems to be motivated by specific circumstances, which have pushed the Isaurian lawmakers, who were called to rule in a dramatic period, to approach the two heresies in a single article of law. This was added to the prescriptions of the Justinianic system, but emphasized the importance of the two heresies into a view of repression.

Nevertheless, a deeper analysis makes a more important element arise.

Montanism, for the reasons we have tried to explain above, represented perhaps a serious danger. Manichaeism, instead, has already disappeared at the time of the promulgation of the *Edicts* in March 741<sup>66</sup>. However, the

61. The name became from the curious way of praying of these heretics, who used lean the forefinger on the tip of their nose. See F. Trivet, *Fingers up noses and pricking with needles: possible reminiscences of revelation in later Montanism*, in *Vigiliae Christianae* 49 (1995) 258-269.

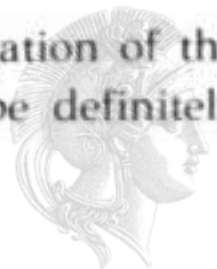
62. According to a legend, Ophites loved to raise snakes; we know that their belief was connected with the simbology of the snake, chronic and prophetic animal, which had disclosed the knowledge to Adam and Eve and which was chosen by Moises as personal symbol, the bronze snake of Num. 21, 4-9 and then John. 3, 14-15: so their name came from *ophis*, which means "snake" in Greek, term found moreover in the ethimology of the "Sermon to the Nassens", an ophit text, from *nâhâsh*, again "snake", but in Hebrew; see M. G. Lancellotti, *The Naassens. A Gnostic identity among Judaism, Christianity, Classical and Ancient Near Eastern Tradition*, Münster 2000.

63. See F. E. Vokes, *The opposition to Montanism from Church and State in the Christian Empire*, in *Studia Patristica* IV, hrsg. K. Aland – F. L. Cross, Berlin 1961, 518-526, K. H. Schwarte, *Das angebliche Christengesetz des Septimius Severus*, in *Historia* 12 (1963) 185-208, A. Alcock, *Persecutions under Septimius Severus*, in *Enchoria. Zeitschrift für Demotistik und Koptologie* 11 (1982) 1-5 and A. Wypustek, *Magic, Montanism, Perpetua, and the Severan Persecution*, in *Vigiliae Christianae* 51 (1997) 276-297.

64. Theophanes Confessor, about the mass suicide into the fire of Montanists, tells the persecution of Leo the Isaurian remembering that one of Justinian the Great, contained in a passage of Procopius of Caesarea where we found also together Samaritans and Manichaeans (*Procopii Historia Arcana*, ed. Niebuhr, Bonn 1838, vol. 3, pp. 74 sqq.). See W. Tabbernee, *Early Montanism and Voluntary Martyrdom*, in *Colloquium* 17 (1985) 33-44.

65. VII.32, 20; see Socrate de Constantinople, *Histoire Ecclésiastique. Livre VII*, éd. P. Maraval, Paris 2007, 120-121.

66. Leo III died in that year, on the 17<sup>th</sup> of June, less after the promulgation of the collection together with his son. The matter of the dating seems now to be definitely



connection which probably existed with Paulicianism could prove that the standing element was actually the name to be given to the heresy and not to its nature. The substance of Manichaeism, an heretical dualism *par excellence*<sup>67</sup>, started to appear less essential than its form: the *nomen manichaeorum* was to include also other heterodox beliefs, without limitation of time and space, replacing the “part” with the “whole” and meaning the phenomenon of heresy in its entirety.

All this appears even clearer if we think that the Isaurian emperors themselves, Leo III and Constantine V, were to be accused, by the simplification typical of the heresiological polemic<sup>68</sup>, to belong the first to Manichaeism<sup>69</sup> and the second to Paulicianism<sup>70</sup>. When we add that both were made closer, even if in a different way<sup>71</sup>, to Hebrews, the circle could be closed.

closed; see D. Ginis, *Das Promulgationsjahr der Isaurischen Ecloga*, in *Byzantinische Zeitschrift* 24 (1923) 345-58 and V. Grumel, *La date de la promulgation de l'“Eclogue” de Léon III*, in *Echos d'Orient* 34 (1935) 327-31, but also *La date de la promulgation de l'Ekloge des Isauriens: l'année et le jour*, in *Revue des études byzantines* 21 (1963) 272-274, and especially L. Burgmann, *cit.*, 10-12.

67. See, for example, U. Bianchi, *Umanesimo religioso. Saggio storico e etnologico*, Roma 1958, but also J. Riles, *Concezione manichea dell'uomo e della società: rottura religiosa e progetto di una religione universale*, in *Trattato di antropologia del sacro*, IV, Crisi, rotture e cambiamenti, Milano 1995, 163-184.

68. See about the force of words in the fight against the heresy A. Cameron, *Texts as Weapons: Polemic in the Byzantine Dark Ages*, in *Literacy and Power in the Ancient World*, ed. A. K. Bowman – G. Wolf, Cambridge 1993, 198-215, but also R. Lim, *Public Disputation, Power, and Social Order in Late Antiquity*, Berkeley 1995.

69. John of Damaskus, *First Oration on the holy images*: Κακίζεις τὴν ὕλην, καὶ ἄτιμον ἀποκαλεῖς; καὶ οἱ Μανιχαῖοι (...) (PG 94, 1297C) e Μὴ κάκιζε τὴν ὕλην· οὐ γὰρ ἄτιμος (...) Τῶν Μανιχαίων τοῦτο τὸ φρόνημα. (PG 94, 1245C) – Anonymous, *Vita Stephani*: (...) ὁ νέος οὗτος Βαλτάζαρ αἵρεσιν ἐμπνεῖ τῇ Ἐκκλησίᾳ Μανικαϊκὴν, τάχα, ἵν' εἴπω τι, καὶ τῶν Ἀφθαρτοδοκητῶν ἐφάμιλλον. (PG 100, 104B; see Gero, *Leo III*, p. 109 n. 72).

70. Giorgio Monaco accuses Constantine V even to be Paulician: οὐ γὰρ ἦν Χριστιανός, μὴ γένοιτο, ἀλλὰ Παυλικιάνος ἢ, τό γε ἀληθέστερον εἶπειν καὶ οἰκειότερον, εἰδωλολάτρης καὶ καὶ δαιμόνων ὑπηρέτης καὶ ἀνθρωποθύτης (hrsg. C. de Boor, Leipzig 1904, II, 751, 18-20) (see Gero, *Constantine V*, p. 151 n. 34 and *Notes on Byzantine Iconoclasm in the eight century*, in *Byzantion* 44, 1974, 23-42, 34-36, about radical iconoclasm and Paulicianism).

71. Leo III and Constantine V were both connected, for different reasons, with the matter of Hebrews. About Leo III circulated a legend, differently quoted, according which the emperor decided to impose the iconoclasm through the magic of an Hebrew, who promised to him a long and peaceful kingdom: *Adversus Constantinum Caballinum*, which has its long recension after the year 787 (PG 95, 336C-337A; see J. Starr, *An Iconodulic Legend and Its Historical Basis*, in *Speculum* 8 (1933) 500-503); *Narratio* by John of Jerusalem, where the story of the Caliph Yazid II and the Hebrew Tessaracontapechys (787, in Mansi XIII, 197-200; see A. A. Vasiliev, *The iconoclastic edict of the caliph yazid II, A.D. 721*, in *Dumbarton Oaks Papers* 9/10, 1956, 23-47, together with O. Grabar, *Islamic Art and Byzantium*, in

Finally, to finish with a provocation, it is likely that if the *Ekloge* would have been written some years after the article we have considered would loose the echo of the prescription against Montanists, caused by a specific circumstance, to preserve only the expectation of the death prescribed for Manichaeans, that is to say, for all the heretics.

*Key-words:* Byzantine Law, Manichaeon Heresy, Isaurian Ekloge.

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*Dumbarton Oaks Papers* 18, 1964, 69-88); Theophanes Confessor, *Chronographia*, with the account of Baser, a Syrian counsellor of the emperor (hrsg. C. de Boor I 401, 29-402, 4). Instead, about Constantine V we have two facts. On one side, the marriage in 732 with a princess of the Khazars, who belonged to Hebraism, called Irene and mother of the successor, Leo IV "the Khazar"; actually, on the basis of an anonymous source, the diffusion of Jewish religion in the Khazar territory started just during the reign of the Isaurian dynasty (see S. Schechter, *An Unknown Khazar Document*, in *The Jewish Quarterly Review* 3, 1912, 181-219, but now C. Zuckerman, *On the Date of the Khazars' Conversion to Judaism and the Chronology of the Kings of the Rus Oleg and Igor. A Study of the Anonymous Khazar Letter from the Genizah of Cairo*, in *Revue des Études Byzantines* 53, 1995, 237-270). On the other the tale, maybe apocriphal (see J. Starr, *The Jews in the Byzantine Empire, 641-1204*, Athens 1939, 95, where the authenticity is denied; see also Gero, *Leo III*, p. 119, nt. 28), of an embassy to Charles the Great composed by two Hebrews, as we read in G. Rauschen, *Die Legende Karls des Grossen im 11. und 12. Jahrhundert*, Leipzig 1890, 48, 9-15: Duo (...) hebrei sacram epistolam Constantini imperatoris manu scriptam ad prefatum imperatorem cum precipuis donis apportaverunt. Nomina autem eorum hec sunt: Ysaac et Samuel; Ysaac vero homo magna prudentie et simplicitatis in sua lege fuisse assertus est, Samuel etenim secundum ipsorum legem pontifex erat in eis, homo religiosus et in utraque lingua eruditus.

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ΑΘΗΝΑΝ

## ΠΕΡΙΛΗΨΗ

V. M. MINALE: *Βυζαντινό δίκαιο και μανιχαϊστική αίρεση. Παρατηρήσεις επί της διατάξεως της E.XVII.52*

Η διάταξη της Εκλογής XVII.52, με την οποία ο αυτοκρατορικός νομοθέτης επιβάλλει την θανατική ποινή στους οπαδούς της Μανιχαϊστικής αιρέσεως, θέτει το ζήτημα της αντιμετώπισης των ακραίων εκείνων αιρέσεων οι οποίες, κατά τη διάρκεια αυτής της ιστορικής αυτής περιόδου, ταυτίζονται με τον Μανιχαϊσμό. Με δεδομένο ότι κατά την Ισαυρική περίοδο ο Μοντανισμός, ο οποίος απαντά-κατεξοχήν στην περιοχή της Φρυγίας, ταυτίζεται ενίοτε με μία ορισμένη «σέκτα» του Ιουδαϊσμού, ενώ αναμφισβήτητα δεν υπάρχουν οπαδοί της αίρεσης του μανιχαϊσμού, κύριο αντικείμενο διερεύνησης της μελέτης αυτής αποτελεί η εξομοίωση της ποινικής μεταχείρισης των μανιχαίων και των μοντανιστών. Μια πιθανή εξήγηση θα μπορούσε να δοθεί με βάση τη βαθύτερη έννοια της μανιχαϊστικής αιρέσεως, η οποία, για ποικίλους ιστορικούς και θρησκευτικούς λόγους, περιέλαβε αδιακρίτως παντός είδους θρησκευτικές αποκλίσεις από το δόγμα.

Λέξεις-κλειδιά: Βυζαντινό δίκαιο. Μανιχαϊστική αίρεση. Εκλογή των Ισαύρων.

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