

ROMAN ORIGINS OF THE ETHIOPIAN "LAW OF THE KINGS" (FETHA NAGAST)

Peter H. Sand*

The affinity between Ethiopian law and European law, especially Roman law, has often been pointed out, particularly by the draftsman of the Ethiopian Civil Code of 1960, Professor René DAVID, who specifically alludes to the Roman origins of the Ethiopian "Law of the Kings", the ancient *Fetha Nagast*.¹ Yet for all we know, direct contact between the Roman and Ethiopian empires never were very close, not withstanding certain attempts during the reign of Roman Emperor Constantine.² It should appear surprising, therefore, to see so vague an affiliation relied upon for the drafting of modern legislation in Ethiopia unless this affiliation can be proved to have existed.

The present essay is an attempt to identify the genuine link between the ancient laws of Ethiopia and the ancient laws of Rome.

I. TEXTS

In the universal field of comparative legal history, Ethiopia still is an unknown country.³ The principal reason is, of course, the linguistic barrier: Scriptures in *Ge'ez* have been

as inaccessible for comparative legal analysis as Roman texts would have been without the international academic community's knowledge of Latin.

Speculations. Fifty years ago, *Sherman* and *Wigmore* could thus offer no supporting evidence for their starting statements about "the present legal system of Abyssinia being based on the Roman law of Justinian", "deteriorated from its original Roman purity"⁴ yet still belonging under "the Romanesque type".⁵ The probable basis for this claim were 19th century travel reports on a mysterious *Ge'ez* book called *Fetha Nagast* (Law of the Kings) which some foreign travellers described as "an Aethiopic translation of the code of Justinian".⁶ The rumor may indeed have originated with a dictum by the Anglican missionary *Gobat*, according to whom the Abyssinians attributed the authorship of that book "to Constantine instead of Justinian".⁷ Subsequent writers added the suggestion that the *Fetha Nagast* "more or less reproduces the book of Moses and the precepts of the Gospel, with a few laws from the code

* Former instructor at the Faculty of Law Haile Selassie I University now working with F.A.O. in Rome

1. R. David, *A Civil Code for Ethiopia: Considerations on the codification of the Civil Law in Africa Countries* 37 TULANE LAW REVIEW 187, 192 (1962-63); see also R. David, *Les sources du code éthiopien*, 14 REVEUE INTERNATIONALE DE DROIT COMPARE 497, 498 (1962).
2. See SERGEW HABLE-SELLASSIE, BEZIEHUNGEN ATHIOPISIENS ZUR GRIECHISCH-ROMISCHEN WELT (doctoral dissertation, University of Bonn 1963) 58-60; and cf. Z. Yabetz, 9 ETHIOPIAN OBSERVER (No. 2) 86-89 (1965).
3. For a useful bibliographical survey see J. Vanderlinden, *An Introduction to the Sources of Ethiopian Law from the 13th to the 20th Century*, 3 JOURNAL OF ETHIOPIAN LAW 227 (1966); and cf. generally H.J. Liebesny, *Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions*, 20 AMERICAN JOURNAL OF COMPARATIVE LAW 38 (1972), as regards the need for further historical comparison, as a prerequisite for the understanding of contemporary law.
4. C.P. SHERMAN, ROMAN LAW IN THE MODERN WORLD, vol. 1 (2nd ed. New York 1922) 177-178.
5. J.H. WIGMORE, A PANORAMA OF THE WORLD'S LEGAL SYSTEMS, vol. 3 (St. Paul/Minn. 1928) 1125 n., 1141.
6. W.C. HARRIS, THE HIGHLANDS OF AETHIOPIA, vol. 2 (London 1844) 92; T. WALDMEIER, TEN YEARS IN ABYSSINIA (London 1886) 16.
7. S. GOBAT, JOURNAL D'UN VOYAGE EN ABYSSINIE PENDANT LES ANNEES 1830, 1831 et 1832 (Paris & Geneva 1834) 83.

of Justinian”;⁸ or else “the Mosaic codex, apocryphs and synods of the apostles, and decrees from the Theodosian and Justinian legislation”.⁹

Manuscripts. After *Isenberg* sent a copy of the Fetha Nagast to London in 1837¹⁰, *Dillman* discovered that an earlier manuscript already existed in the collection brought to England by *Bruce* in 1774, albeit under an erroneous description.¹¹ *Rocher d’Héricourt* brought a copy of the “venerated book” to Paris, as a gift to the king of France from the king of Shoa.¹² The first summary of contents was published by *Ruppell* in 1840, on the basis of a manuscript and personal information he had obtained from an Ethiopian scholar, *Liq Atkum*;¹³ and in 1843 the orientalist *Von Ewald* recorded another manuscript, received through the missionary *Krrapf*¹⁴.

A windfall of texts came with Lord *Napier’s* military expedition in 1868, when the British army after its victory over Emperor *Theodros* stormed the royal treasure-house at Magdala. The loot was auctioned off on the spot, with

Richard Holmes of the British Museum as one of the biggest bidders;¹⁵ and by 1877 *Wright’s* catalogue could list no less than 11 manuscripts of the Fetha Nagast in the museum¹⁶. In 1899 *Conti Rossini* recorded a total of 20 authentic texts in European libraries,¹⁷ and in 1910 there were at least 24.¹⁸ Their number today is probably closer to 30 (and certainly higher than the figure of 5, as given by *Graven*.¹⁹) while the number of unrecorded manuscripts currently kept in Ethiopian churches and monasteries may safely be estimated at well over a hundred.²⁰

Printed editions. The next major advance in textual research was again prompted accidentally by military action. In 1890, as part of preparations for the conquest of Ethiopia, the Italian General Staff commissioned the orientalist *Ignazio Guidi* to edit and translate the Fetha Nagast, which was to serve as a basis for colonial judicial administration. The Italian army suffered a shattering defeat from Emperor *Menelik* at Adua in 1896 - but the Ge’ez edition of the Fetha Nagast came out almost on schedule in 1897, followed by the Italian translation

8. T. LEFEBVRE, VOYAGE EN ABYSSINIE EXECUTE PENDANT LES ANNEES 1839, 1840, 1841, 1842, 1843, vol. 1 (Paris 1845) XXXV.
9. G. SAPETO, ETHIOPIA: NOTIZIE RACCOLTE (Rome 1890) 60.
10. C.W. ISENBERG, ABESSINIEN UND DIE EVANGELISCHE MISSION, vol 2 (Bonn 1844) 90.
11. A. DILLMANN, CATALOGUS CODICUM MANUSCRIPTORUM BIBLIOTHECAE BODLEIANAE OXONIENSIS: PARIS VII: CODICES AETHIOPICI (Oxford 1848) 25.; cf. J. BRUCE, TRAVELS TO DISCOVER THE SOURCE OF THE NILE, IN THE YEARS 1768, 1769, 1770, 1771, 1772 and 1773, vol. 1 (Edinburgh £ 1790) 496, vol. 2 (3rd ed. Edinburgh 1813) 407.
12. C.E.X. ROCHER D’HERICOURT, VOYAGE DANS LE ROYAUME DE CHOA (Paris 1841) 316; cf. H. ZOTENBERGH, CATALOGUE DES MANUSCRITS ETHIOPIENS (GHEEZ ET AMAHRIQUE) DE LA BIBLIOTHEQUE NATIONALE (Paris 1887) 147.
13. E. RUEPPELL, REISE IN ABYSSINIEN, vol. 2 (Frankfurt 1840) 186; cf. R. MERTENS, EDUARD RUEPPELLE: LEBEN UND WERK EINES FORSCHUNGS REISENDEN (Frankfurt 1949) 145.
14. H.v. Ewald, *Über die athiopischen Handschriften zu Tübingen*, ZEITSCHRIFT FUER DIE KUNDE DES MORGENLANDES 197, 198-199 n. 13(1843); see also v. Ewald, *Über eine zweit Sammlung Aethiopischer Handschriften in Tübingen*, 1 ZEITSCHRIFT DER DEUTSCHEN MORGENLAENDISCHEN GESELLSCHAFT 1 (1847), and cf. Krapf (*infra* note 35) 478.
15. A. MOOREHEAD, THE BLUE NILE (London 1962, paper back ed. 1964) 241, 276-278; cf. H.N. STANLEY, COOMASSIE AND MAGDALA (London 1874) for a detailed description of the auction, which involved some 900 volumes of Ethiopian manuscripts (and netted £ 5,000 for the soldiers).
16. W. WRIGHT, CATALOGUE OF THE ETHIOPIC MANUSCRIPTS IN THE BRITISH MUSEUM (London 1877) 219, 280-284.
17. C. Conti Rossini, *Manoscritti ed opere abissine in Europa*, 8 RENDICONTI DELLA REALE ACCADEMIA DEI LINCEI: CLASSE DI SCIENZE MORALI, STORICHE E FILOGOGICHE (ser. 5) 606, 615(1899).
18. S. Euringer, *Abessinien und der heilige Stuhl*, 92 TUEBINGER THEOLOGISCHE QUARTALISCHRIFT 339, 340 (1910).
19. J. Graven, *The Penal Code of the Empire of Ethiopia*, 1 JOURNAL OF ETHIOPIAN LAW 267, 269 n. 6 (1964).
20. On the Ethiopian collections in general see S. PANKHURST, ETHIOPIA: A CULTURAL HISTORY (London 1955) 181.

in 1899.²¹ Apart from a short fragment published in an earlier French library catalogue,²² this was the first printed version, based on seven years' painstaking comparison of the best available manuscripts, with the assistance of the Ethiopian scholar *Kefla Ghiroghis*. It has remained the most authoritative edition to this date so authoritative indeed that the first Ethiopian Penal Code in 1930 referred to the Fetha Nagast by the page numbers of Guidi's text.²³ The printing of an "official" Amharic edition was begun in Addis Ababa in 1935, interrupted by the Italo-Ethiopian war, and finally completed in 1966.²⁴

Translations. Fragmentary Latin translations of the Fetha Nagast had been published by *Arnold* (1841) and *Bechmann* (1889),²⁵ and an early Italian version by *de Stefano* in 1895-97,²⁶ on which latter text the summary German translation by *Rein* (1918) is based.²⁷ Yet Guidi's translation remains the most reliable one. It has been followed closely by the subsequent Italian texts of *de Castro* (1912), *Mauro da Leonessa* (1931) and *Rossi*

Canevari (1934),²⁸ and served as the principal basis for the recent English translation by *Paulos Tzadua*, edited by *Strauss* in 1968.²⁹

Contents. The first part of the Fetha Nagast (chapters 1-22) deals with matters of ecclesiastic law, which are only partly of comparative interest (e.g., chapter 18 section 2 on "charitable legacies"³⁰). The second, secular part (chapters 23-51) and the appendix deal with the following subjects:³¹

23. Food, clothing, habitations and trades proper for Christians. 24. Betrothal, dowry, marriage and dissolution of marriage. 25. Prohibition of concubinage. 26. Donation. 27. Loan, pledge and guaranty. 28. Loan for use. 29. Deposit. 30. Mandate. 31. Slavery and the manumission of slaves. 32. Guardianship. 33. Sale, purchase and related matters. 34. Partnership. 35. Coersion and duress. 36. Lease and rent. 37. Buildings, waters and streets. 38. Commercial ventures. 39. Acknowledgment of debt. 40. Lost and ownerless things. 41. Wills. 42. Successions. 43. Judges and judicial procedure. 44. Rights and duties of the king. 45. Miscellaneous

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21. I. GUIDI, *IL FETHA NAGAST O LEGISLAZIONE DEI RE: CODICE ECCLESIASTICO E CIVILE DI ABISSINIA* (Rome 1897-99); vol. 1 (Ge'ez text) was reprinted in 1936 and (in Asmara) 1964.
22. Zotenbergh (*supra* note 12) 145-146 (excerpts from chapter 37 of the Fetha Nagast).
23. See E. Cerulli, *Il nuovo codice penale etiopico ed i suoi principii fondamentali*, 12 *ORIENTE MODERNO* 392 (1932); S. Lowenstein, *The Penal System of Ethiopia*, 2 *JOURNAL OF ETHIOPIAN LAW* 384 n. 8 (1965).
24. Ge'ez text followed by Amharic translation and comments. Fragments of the 1935 edition (chapters 23, 24, 25 and part of 26) are preserved in the National Library at Addis Ababa.
25. F.A. ARNOLD, *LIBRI AETHIOPICI FETHA NAGAST, I.E. CANON REGUM CAPUT XLIV DE REGIBUS* (Halle 1841); J. BACHMANN, *CORPUS IURIS ABESSINORUM: TEXTUM AETHIOPICUM ARABICUMQUE AD MANUSCRIPTIUM FIDEM CUM VERSIONE LATINA ET DISSERTATIONE IURIDICO-HISTORICA: PARS I: IUS CONNUBII* (Berlin 1889).
26. G. de Stefano, *Il Fetha Nagast, AFRICA ITALIANA* Nos. 293-321 (1895-1896); G. DE STEFANO *IL DIRITTO PENALE NELL'HAMASEN (ERITREA) ED IL FETHA' NAGHEST* (Florence 1897) 73-108.
27. G.K. HEIN, *ABESSINIEN: EINE LANDESKUNDE NACH REISEN UND STUDIEM IN DEN JAHREN 1907-1913*, vol. 1 (Berlin 1918) 437-482.
28. L. DE CASTRO, *COMPENDIO DELLE LEGGI DEI RE "FETHA-NAGAST"* (Livorno 1912); P. MAURO DA LEONESSA, *TESTI DI DIRITTO ANTICHI E MODERNI RIGUARDANTI GLI ETIOPI* (Codificazione canonica orientale: Fonti: Fasc. 5, Rome 1931); R. ROSSI CANEVARI, *FETHA NAGAST: IL LIBRO DEI RE: CODICE DELLE LEGGI ABISSINE COM NOTE E RIFERIMENTI AL DIRITTO ITALIANO* (Milan 1934).
29. Abba PAULOS TZADUA, *THE FETHA NAGAST: THE LAW OF THE KINGS* (P.L. Strauss ed., Addis Ababa 1968).
30. See *infra* note 78.
31. The table of contents given here follows in general the English terminology of PAULOS TZADUA (*Supra* note 29), with some modifications to reflect more accurately the subject covered by the chapters. A Latin table of contents may be found in Dillmann (*supra* note 11) and a German one (Correcting the one by Ruppell, *supra* note 13) in A. DILLMAN, *VERZEICHNIS DER ABESSINISCHEN HANDSCHRIFTEN DER KOENIGLICHEN BIBLIOTHEK ZU BERLIN* (Berlin 1878), and in M. Bittner, *Review of I. Guidi*, 13 *WIENER ZEITSCHRIFT FUER DIE KUNDE DES MORGENLANDES* 370-381-385 (1899).

provisions from the Old and New Testament. 46. Penal provisions for blasphemy, apostasy and sorcery. 47. Penal provisions for homicide. 48. Penal provisions for sexual offences. 49. Penal provisions for theft. 50. Penal provisions for drunkenness, usury, and miscellaneous offences. 51. Regulations of the church regarding heir, circumcision, confessions and rule-making powers of the clergy. Appendix: Successions.

II. SOURCES

The non-indigenous origin of the Fetha Nagast is well reflected in its popular Amharic designation as *yabaherya heg*; i.e., "the law from overseas"³² According to a popular myth, the law-book "fell from heaven during the reign of (Roman emperor) *Constantine*",³³ while others attribute it to "300 holy men". Both legends are hear-say versions of the Ge'ez preface, where explicit reference is made to the 318 orthodox bishops assembled at the Council of Nicaea (in 325 A.D.) who allegedly produced the law-book at Emperor Constantine's request.³⁴ According to a tradition reported in the Amharic edition of 1966, the Ethiopian Emperor *Zar'a Ya'qob* (1434-1468) had the book brought from Egypt and translated into Ge'ez.³⁵ Ethiopian

church tradition further has it that the translator used an Arabic text based on a compilation by an Egyptian christian named *Ibn Al-'Assal*.³⁶

Coptic Nomocanon

When some of the obvious anachronisms are eliminated, the immediate source of the Fetha Nagast can thus be identified with sufficient historical accuracy. Except for the first part of the preface and for the appendix,³⁷ it is a literal translation³⁸ of a well-known Coptic "nomocanon" originally written in Arabic, of which some 30 authentic manuscripts are known in European and Egyptian libraries, with two printed editions published in 1908 and 1927.³⁹ The author of the nomocanon is the Coptic Christian scholar, *as-Saff abu'l ibn al-'Assal* who lived during the first half of the 13th century, the "golden age" of Coptic literature (and not, as the preface of the Fetha Nagast suggests, during the reign of Constantine). Besides serving as legal advisor to the 75th Patriarch of Alexandria, *Cyril III Ibn Laqlaq* (1235-1243), he produced a number of literary works, mainly on theological subjects.⁴⁰

The "Assalides" were an old Coptic family (*Aulad al-Assal*), high-ranking in government offices and in scholarship.⁴¹ Since there

32. S.D. MESSING, THE HIGHLAND-PLATEAU AMHARA OF ETHIOPIA (Diss. Univ. of Pennsylvania, Pittsburg 1957) 309.

33. Rocher d'Héricourt (*supra* note 12) and Harris (*supra* 6); cf. E. HABERLAND, UNTERSUCHUNGEN SUM AETHIOPISCHEN KOENIGTUM (Wiesbaden 1965)44.

34. See *infra* note 52.

35. Amharic edition (*supra* note 24) 8 col. 1; cf. Paulos Tzadua (*supra* note 29) XVII; C.W. ISENBERG, DICTIONARY OF THE AMHARIC LANGUAGE (London 1841) 212; J.L. KRAPP, REISEN IN OSTAFRIKA AUSGEFUEHRT IN DEN JAHREN 1837-55, part I (Stuttgart 1858) 478; A. D'ABBADIE, CATALOGUE RAISONNE DE MANUSCRITS ETHIOPIENS (Paris 1869) 185. The reference to Zar'a Ya'qob is probably an anachronism, and the translation is more likely to have been made in the 16th or 17th century (the historical background of this "reception" will be the subject of a forthcoming monograph).

36. Amharic edition 519 col. 3; cf. Paulos Tzadua XVII n. 18. Ibn al'Assal is sometimes referred to as the Arabic translator of a Greek original (Lefb'vre, *supra* note 8, XXXVI n. 1), but more frequently as the compiler of the text at the time of the Nicaean Council; on this anachronism see Dillmann (*supra* note 11) 29 n.K.

37. On the Preface see *infra* note 52; on the Appendix, *infra* notes 73-76.

38. The Ge'ez translator did not in any way attempt to change the origin text, as suggested by E. HA MERSCHMIDT, AETHIOPIEN: CHRISTLICHES REICH ZWISCHEN GESTERN UND MORGEN (Wiesbaden 1967) 77. On the contrary, much of the notorious linguistic defectiveness and obscurity of the Fetha Nagast is attributable to the very fact that the translation from the Arabic was too literal; see the examples given by Guidi (*supra* note 21) XII, and by Bittner (*supra* note 31) 377.

39. GIRGIS FILUTA'US 'AWAD (ed.), AL-MAGMU'AS-SAFAWI (Cairo 1908); and MURQUS GIRGIS (ed.), KITAB AL-QAWANIN etc. (Cairo 1927); for a list of the manuscripts see G. GRAF, GESCHICHTE DER CHRISTLICHEN ARABISCHEN LITERATUR, vol. 2 (Vatican 1947) 401.

40. Biography and bibliography in Graf (*supra* note 39) 388-398. *As-Saff* is short for *saff-ad-daula*, i.e. "friend of government"; *abu'l-Fada'il* means "father of virtues"

were at least four brothers by the name of Ibn al-'Assal, three of whom were active as writers, there has been some confusion as to which of them actually wrote the nomocanon: While an earlier, less well-known version is attributed to the younger brother, *al-Mu'taman (ad-daula) abu Ishaq Ibrahim ibn al-'Assal*,⁴² and while the second brother, *al-As'ad abu'l-Farag Hibatallah ibn al-'Assal* is known as the author of a compendium on the law of successions,⁴³ it now seems well established that the authoritative second version of the nomocanon was written by the eldest brother, *as-Saff ibn al-'Assal*.⁴⁴ According to one of the oldest manuscripts, it was completed in September 1238; and despite its purely scholarly authority as a "restatement of the law", it rapidly became a leading reference book for judicial practice and a "textus receptus" of the Coptic church in Egypt.⁴⁵

Coptic legal texts of this period were written in Arabic, the Coptic language having been abandoned as a vehicle for legal writ-

ing by the 11th century. Unlike the ancient Coptic papyri of the Greco-Roman period,⁴⁶ they are thus part of what is generally grouped as "Christian Arabic literature".⁴⁷ The Copts, as other Christian communities living under Islamic rule in Egypt, enjoyed a certain degree of autonomy in civil matters, with the church authorities exercising jurisdiction (*episcopales audientiae*) mainly in matters of family law and successions⁴⁸ not unlike the tolerated partial autonomy of Muslim courts in present-day Ethiopia.⁴⁹ In contrast, however, to the comprehensive *Shari'at* law of Islam, Christianity did not provide its followers with an elaborate legal system. In search of a Christian "personal law", beyond the elementary rules of conduct that could be derived from the holy scriptures and from various ecclesiastical sources, the Egyptian Melchites about 1100 A.D. first turned to Greek-Byzantine texts on civil law, and began to translate them into Arabic.

Most of the resulting translations-compi-

41. G. Graf, *Die koptische Gelehrtenfamilie der Aulad al-'Assal und ihr Schrifttum*, 1 ORIENTALIA (N.S.) 34, 129. 193 (1932).
42. Four of the manuscripts erroneously identify him as the author of the final nomocanon; but see the introduction by Girgis Filuta'us 'Awad (*supra* note 39) 10, and Graf (*supra* note 39) 398-402, 407-414.
43. Reproduced in the two printed editions of the monocanon (*supra* note 39); see Graf (*supra* 39) 403-407. Some of the manuscripts of this work seem to suggest a certain similarity with the successions chapter (42) of the nomocanon.
44. See A. Mallon, *Ibn al-'Assal; Les trois écrivains de ce nom*, 6 JOURNAL ASIATIQUE (Ser. 10) 509 (1905); P. Düb. *Lequel des ibn al-'Assal est l'auteur du Nomocanon* 20 REVUE DE L'ORIENT CHRETIEN 104 (1915-1917); A.J.B. Higgins, *Ibn al-'Assal*, 44 JOURNALE OF THEOLOGICAL STUDIES 73 (1943); Graf (*supra* notes 39 and 41).
45. See. W. Selb, *Kodifikationen im alteren orientalischen Kirchenrecht: Prolegomena zu einer Rechtsgeschichte christlichen Orients*, OESTERREICHISCHE LANDESREFERATE ZUM VIII. INTERNATIONALEN KONGRESS FUER RECHTSVERGLEICHUNG IN PESCARA (Vienna 1970) 22; Ibn al-'Assal (who expressly dedicated his nomocanon to use by lay judges) subsequently condensed it into a "nutshell" lawbook, which seems to have been equally popular, though less authoritative; see Graf (*supra* note 39) 398, 403.
46. See A.A. Schiller, *Prolegomena to the Study of Coptic Law*, 2 ARCHIVES D'HISTOIRE DU DROIT ORIENTAL 342 (1938); A.A. Schiller, *Coptic Documents*, 60 ZEITSCHRIFT FUER VERGLEICHENDE RECHTSWISSENSCHAFT 192 (1957).
47. A. BAUMSTARK, *DIE CHRISTLICHE LITERATUR DES ORIENTS*, vol. 2 (Leipzig 1911) 27; F. Coïn, *The Nomocanonical Literature of the Copto-Arabic Church*, 56 ECCLESIASTICAL REVIEW 112 (1917); G. GRAF, *GESCHICHTE DER CHRISTLICHEN ARABISCHEN LITERATURE: vol. I: UEBERSETZUNGEN* (Vatcan 1944) 556.
48. See N. Edelby, *L'autonomie législative des chrétiens en terre d'Islam*, 5 ARCHIVES D'HISTOIRE DU DROIT ORIENTAL 307 (1951); L. WENGER, *DIE QUELLEN DES ROEMISCHEN RECHTS* (Vienna 1953) 212, 553; B. Ducati, in 1 RIVISTA GIURIDICA DEL MEDIO ED ESTREMO ORIENTE E GIUSTIZIA COLONIALE 66 (1932); and W. Selb, *Episcopalis audientia von der Zeit Konstantins bis zur Nov. XXXV Valentiniens III.*, 84 ZEITSCHRIFT DER SAVIGNY-STIFTUNG: ROMANISTISCHE ABTELLUNG 162 (1967).
49. Imperial Proclamations 12/1942 and 62/1944 on the jurisdiction of *Kadi* and *Naiba* courts.

lations⁵⁰ were used and accepted also by the Coptic community, not without some theological polishing: thus, the names of the later Byzantine emperors of "kings" (considered as heretics by the Coptic church) were simply deleted from the headline, and their legislation indiscriminately ascribed to Constantine the Great and the Council of Nicaea. This pious forgery deliberate, and hardly due to ignorance as suggested by *Riedel*⁵¹ - accounts for the flourishing anachronism of the first part of the Fetha Nagast preface, which in fact repeats contemporary Coptic dogma,⁵² and for the mutilated title "Law of the Kings"

Byzantine Lawbooks

In his introduction, Ibn Al-'Assal himself identifies the sources on which his nomocanon purports to be based. Besides a list of holy scriptures and canons of the Coptic church, which are relevant mainly for the first (ecclesiastic) part,⁵³ the principal source of the *second* (secular) part is described as

the "Canon of the Kings", consisting of four books said to have been "written at the Court of the Emperor Constantine"⁵⁴.

Among these four books, only three are of interest to comparative law, the fourth being the so-called "Precepts of the Old Testament"⁵⁵. Books, I, II and III of the "Canons of the Kings" (cited in abbreviation as TS, MAK and MAG throughout the text of the nomocanon and its Ethiopian translation) thus remain as the truly *secular* sources of the Fetha Nagast. A considerable amount of research and polemics, by legal historians and philologists, has gone into the task of tracing and identifying these three books. *Renaudot*, writing in 1713,⁵⁶ first suggested a connexion between them and Byzantine-Roman law: "Illi vero Canones nihil aliud sunt quam excerpta ex Nomocanonibus Graecis, Digestis, Codice Theodosiano et Justiniano, Novellis Constitutionibus et Basilicis, eo ordine disposita, ut Corpus quoddam Juris constituent, unde lites inter

50. These translations were indeed practice-oriented and not a mere "self-assertion" of Coptic scholars vis-à-vis Islamic jurisprudence, as suggested by P. Koschaker, *Review of d'Emilia*, 59 ZEITSCHRIFT DER SAVIGNY-STIFTUNG: ROMANISTISCHE ABTEILUNG 659 (1939). The Islamic practice of placing local Christian communities under "Griek" (i.e., Byzantine-Roman) law of personal status was actually continued in the Ottoman Empire, under the *millet system*, until the 20th century; see E.H. Freshfield, *The Official Manuals of Roman Law of the Eighth and Ninth Century*, 4 CAMBRIDGE LAW JOURNAL 34, 49 (1932).

51. W. RIEDEL, DIE KIRCHENRECHTSQUELLEN DES PATRIARCHATS ALEXANDRIN (Leipzig 1900) 296, assuming a confusion between Constantine the Great (306-337) and some of the later Byzantine emperors also named Constantine.

52. The legend of the 318 orthodox bishops drafting a law-book for the Emperor Constantine at Nicaea can be found at least as early as 1320 in the Coptic encyclopedia of *Sams ar-Ri'asa abu'l-Barakat* (ibn *Kabar*), partly translated by W. Riedel, *Der Katalog der christlichen Schrifften in arabischer Sprache von Abu'l-Barakat*, NACHRICHTEN DER KOENIGLICHEN GESELLSCHAFT DER WISSENSCHAFTEN ZU GOETTINGEN: PHILOLOGISCH-HISTORISCHE LASSE (Part 5) 635 (1902); and in the famous "History of the Copts" by the Egyptian *Ahmed ibn 'Abd as-Samad Taqi eddin al-Maqrizi* (1365-1442), edited and translated by F. Wustefeld, *Nacrizi's Geschichte der Copten*, 3 ABHANDLUNGEN DER HISTORISCH-PHILOLOGISCHEN KLASSE DER KOENIGLICHEN GESELLSCHAFT DER WISSENSCHAFTEN ZU GOETTINGEN 11, 32 (1845): "They blessed (Constantine) and drafted for him the book of the laws of the kings and of the church, which contained everything relating to administration and marriage, and they communicated a copy of it to the other realms"

53. See the translation by Paulos Tzadua (*supra* note 29) 5-9; cf. O. Meinardus, *A Study on the Canon Law of the Coptic Church*, 16 BULLETIN DE LA SOCIÉTÉ D'ARCHEOLOGIE COPTE (1961); and C. de Clercq, *Introduction à l'histoire du droit canonique oriental*, 3 ARCHIVES D'HISTOIRE DU DROIT ORIENTAL 309, 347 (1947).

54. Preface, part 2; see Paulos Tzadua (*supra* note 29) 8. These "canon" also appear, though in different arrangement, in the later compilations by Abu'l-Barakat (*supra* note 52) and by Makarios (partly translated in Riedel, *supra* note 51). See also *infra* notes 76 and 94.

55. A collection of rules extracted from the Old Testament, with a few Christian interpretations and additions translated by B. Sanguinetti, *Les préceptes de l'Ancien Testament*, 14 JOURNAL ASIATIQUE (Ser. 5) 449 (1859) and 15 JOURNAL ASIATIQUE (Ser. 5) 5 (1860); cf. Riedel (*supra* note 51) 52, 130.

56. E. RENAUDOTIUS, HISTORIA PATRIARCHARUM ALEXANDRINORUM JACOBITARUM A.D. MARCO USQUE AD FINEM SAECULI XIII (Paris 1713) 75.

Christianos possint judicari," Subsequent systematic studies of the texts yields the following results:

(a) *Procheiron*. About 1859, Amari recognized the first book of the "Canons of the Kings" as an Arabic translation of the "Procheiron", the famous "Manual" of Roman law enacted about 879 A.D. by Byzantine Emperor Basil I the Macedonian⁵⁷. This identification, first reported in 1883⁵⁸, has been confirmed by Riedel;⁵⁹ and in an Article-by-article comparison, Nallino traced well over 100 TS citations from the Fetha Nagast via the Arabic nomocanon back to the Procheiron.⁶⁰ The translation from Greek to Arabic appears to have been made by Melchites in the late 12th or early 13th century.⁶¹

(b) *Syro-Roman Lawbook*. In 1880, Sachau⁶² recognized the second book of the

"Canon of the Kings" as an Arabic translation of the so-called "Syro-Roman Lawbook" (also entitled "Legislation of the Kings Constantine, Theodosius and Leo"), a Greek compilation dating from about 476-480 A.D., translated into Syriac about 750 and into Arabic about 1100.⁶³ A recent study by Selb⁶⁴ has shown that the book contains little "Syrian" or local "oriental" elements (contrary to earlier interpretations⁶⁵) and that it is essentially a statement of Roman law as then applied in the Eastern provinces of the empire, probably written for teaching purposes.⁶⁶ This source is cited 89 times (MAK) in the Fetha Nagast. In a study of the crucial chapter on sales, *d'Emilia* has shown the respective influence of Procheiron and Syro-Romana.⁶⁷

(c) *Ecloga*. Most difficult to identify proved the third book of the "Canons of the Kings", partly because Ibn al-'Assal's own source

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57. Greek and Latin edition by C.E. ZACHARIAE VON LINGENTHAL, O PROCHEIORS NOMOS: IMPERATORUM BASILII, CONSTANTINI ET LEONIS PROCHIRON (Heidelberg 1837); cf. E.H. FRESHFIELD, A MANUAL OF ROMAN LAW: THE PROCHEIROS NOMOS (Cambridge 1928).
58. M. Amari, in B. DE SLANE, CATALOGUE DES MANUSCRITS ARABES DE LA BIBLIOTHEQUE NATIONALE, part 1 (Paris 1883) 64, describing a Melchite compilation compared with Zachariae's edition (*supra* note 57).
59. Riedel (*supra* note 51) 40, 142, 297.
60. C.A. Nallino, *Libri giuridici bizantini in versioni arabe cristiane del sec. XII-XIII*, I RENDICONTI DELLA REALE ACCADEMIA DEI LINCEI: CLASSE DI SCIENZE MORALI, STORICHE E FILOGOLOGICHE (Ser. 6) 101, 111-117, 144-153 (1925); C.A. NALLINO, 4 RACCOLTA DI SCRITTI E INEDITI (Rome 1942) 371.
61. Graf (*supra* note 47) 617; cf. J.B. Darblade, *La collection canonique melkite d'après les manuscrits arabes des XIIIe-XVIIe siècles*, 4 ORIENTALIA CHRISTIANA PERIDOCIA 85, 114 (1938).
62. K.G. BRUNS & E. SACHAU, SYRISCH-ROEMISSCHENS RECHTSBUCH AUS DEM FUENFTEN JAHRHUNDERT, (Leipzig 1880, reprint Aalen 1963), part 2 (German translation) 75-114 and 160, 179: identification and comments, with a brief reference to the Fetha Nagast in footnote 1.
63. Latin translation by I.P.N. LAND, ANECDOTA SYRIACA, vol. 1 (Leyden 1862) 123-155, 184-198, vol. 2 (Leyden 1868) 19; see also E. SACHAU, SYRISCH-ROEMISCHE RECHTSBUECHER, vol. 1 (Berlin 1907) XVI-XIX, and Wenger (*supra* note 48) 551, for further reference.
64. W. SELB, ZUR BEDEUTUNG DES SYRISCH-ROEMISCHEN RECHTSBUCHES (Munich 1964); cf. E. Volterra, *Il libro stro-romano nelle recenti ricerche*, 62 PROBLEMI ATTUALI DI SCIENZA E CULTURA 297 (1964); and the review by R. Yaron in 17 IURA: RIVISTA INTERNAZIONALE DI DIRITTO ROMANO E ANTICO 114 (1966), and by D. Norr and J.P.M. van der Ploeg in 36 TIJDSCHRIFT VOOR RECHTSGESCHIEDENIS 563, 570 (1968).
65. Particularly L. MITTEIS, REICHSRECHT UND VOLKSRECHT IN DEN OESTLICHEN PROVINZEN DES ROEMISCHEN KAISERREICHES (Leipzig 1891); E. CARUSI, DIRITTO E FILOGOLOGIA (Bologna 1925); R. TAUBENSCHLAG, OPERA MINORA, vol. 1 (Warsaw 1959) 311.
66. E. VOLTERRA, DIRITTO ROMANO E DIRITTO ORIENTALE (Bologna 1937) 75, and in 8 RENDICONTI DELLA REALE ACCADEMIA DEI LINCEI (Ser. 8) 31 (1953), submits that the book was actually a text-book for the first year of legal studies at the ancient law school of Beryt (Beirut); but see Selb (*supra* note 64) 241, 264, referring to P. COLLINET, HISTOIRE DE L'ECOLE DE DROIT DE BEYROUTH (Paris 1925) 244.
67. A. D'EMILIA, LA COMPRABENDITA NEL CAPITULO XXXIII DEL NOMOGAMONE DI IBN AL-'ASSAL: NOTE STORICO-ESEGETICHE (Milan 1938); A. D'Emilia, *Elementi di diritto romano nella struttura della comprabendita secondo il capitolo XXXIII del Fetha Nagast*, 5 ATTI DEL V CONGRESSO NAZIONALE DI STUDI ROMANI 45-61 (1946).

references are misleading. Both Riedel and Nallino thus assumed the third book to be an Arabic version of the "Sanctorum Patrum 318 (Nicaenorum) Sanctiones et Decreta",⁶⁸ which contain only very few secular rules (mainly references to marriage). In contrast, the 45 MAG citations in the Fetha Nagast extensively deal with legal matters including marriage, successions, criminal law, asylum and procedure. In 1947, an article-by-article analysis by Costanzo⁶⁹ showed that at least 24 of the MAG citations correspond to another famous text of Roman law which Nallino had believed to have been unknown to Ibn al-'Assal⁷⁰; viz., the "Ecloga" (Selection) enacted in 740 by Byzantine Emperor *Leo III the Isaurian* and his son (and co-regent) *Constantine V Copronymos*.⁷¹ It seems that the citations are based on an excerpt made by Melchites in the 13th century⁷² from a previous Arabic translation of the Ecloga, into which the Nicaean canons were incorporated.

There remains one last part of the Fetha Nagast, the sources of which have not yet been identified: viz., the Appendix, entitled "chapter on successions, on which the honorable Abba Querillos, Patriarch of Alexandria, agreed with bishops, chiefs and magistrates" This chapter, which reportedly was enacted in 1241 and therefore does not appear in the earlier Arabic nomocanon of Ibn al-'Assal, is in fact a verbatim Ge'ez translation of the chapter on inheritance from the canons of Cyril III. Ibn *Laqlaq*.⁷³ It is likely that these canons, too, were drafted by Ibn al-'Assal.⁷⁴ According to an introductory note (repeated in the Fetha Nagast), they are based mainly on the writings of Abba *Cosmas* (probably the patriarch *Quzman III*, who died in 933) and on some unidentified lawbooks, probably identical with the above-mentioned Byzantine sources. An Amharic gloss to the Fetha Nagast Appendix⁷⁵ mentions, in addition to Cosmas, one Abba

68. Latin edition by A. PSSANUS, ACTA ET CANONES SACROSANCTI PRIMI OECUMENICI CONCILII NICAENI (Dillingen 1572); rev. ed. by F. Turrianus (Antwerp 1578) reprinted in J.D. MANSI, SACRORUM CONCILIORUM NOVA ET AMPLISSIMA COLLECTIO, vol. 2 (Florence 1759) col. 947; and by Abraham Echellensie *ibid.* col. 1029.

69. G.A. Costanzo, *L'Ecloga araba nel Fetha Nagast e la sua prima versione in italiano*, 20 ANNUARIO DI DIRITTO COMPARATO E DI STUDI LEGISLATIVI (Ser. 3), part 2, 1 (1947); cf. G.A. Costanzo, "Fetha Nagast" (*Diritto dei Re*), 7 NOVISSIMO DIGESTO ITALIANO 253. (1961).

70. Nallino (*supra* note 60) 126.

71. Greek edition by C.E. ZACHARIAE VON LINGENTHAL, COLLECTIO LIBRORUM IURIS GRAECO-ROMANI INEDITORUM (Leipzig 1852); and cf. E.H. FRESHFIELD, A MANUAL OF ROAMM LAW: THE ELOGA (Cambridge 1926); C.A. SPUBLER, L'ELOGE DES ISAURIENS: TEXTE, TRADUCTION, HISTOIRE (Czernowitz 1929). The Byzantine Ecloga was also introduced in several Balkanic countries, where it survived (e.g. in Bessarabia, now part of the Soviet Union) until the 20th century; see D. Obolensky, *Russia's Byzantine Heritage*, 1 OXFORD SLAVONIC PAPERS 37 (1950); A.V. Soloviev, *Der Einfluss des byzantinischen Rechts auf die Volker Osteuropas*, 76 ZEITSCHRIFT DER SAVIGNY-STIFFUNG: ROMANISTISCHE ABTEILUNG 432 (1959); P.J. Zepos, *Byzantine Law in the Danubian countries*, 7 BALKAN STUDIES 343 (1966); and see the modern Russian edition by E.E. LIPSHITZ, EKLOGA: VIZANTIJSKI ZAKONODATEL'NYI SVOD VIII VEKA (Moskow 1965).

72. Graf (*supra* note 47) 619. It seems that the provisions so extracted (e.g., on marriage) are omitted from later Coptic versions of the Ecloga; see Nallino (*supra* note 60) 139.

73. Arabic text in Girgis Filuta'us 'Awad (*supra* note 39) 436-451; English translation (based on Arabic manuscript No. 251, Bibliothèque Nationale Paris, foll. 353-361) by O.H.E. Khs-Burmester, *The Canons of Cyril III Ibn-Laklak, 75th Patriarch of Alexandria A.D. 1235-1250*, 12 BULLETIN DE LA SOCIETE D'ARCHEOLOGIE COPTE 81, 124-132 (1947). Textual comparison proves perfect identity with the Appendix of the Fetha Nagast (including some parts of the Cairo edition which are missing in the Paris manuscript used by Burmester). The only difference is the date, which was added by the Ge'ez translator (and which is probably wrong - see *infra* note 74).

74. Graf (*supra* note 39) 362, who identified the canons as the outcome of a synod convened at Cairo in September 1238 (the month when Ib al-'Assal finished his nomocanon); cf. Burmester (*supra* note 73) 81. While at the end of the Arabic text it is clearly stated that "the brethren, the bishops, agreed upon (these canons) and accepted them on the 20th of Tut in the year 955 of the Righteous Martyrs" (i.e., 1238 A.D.), the introduction to the Ge'ez text (Fetha Nagast Appendix) claims that "it was enacted on the 17th of Maskaram in the year 958 of the Righteous Martyrs and the year 1241 from the birth of Our Lord" (curiously enough, the latter date follows the Gregorian and not the Ethiopian calendar.)

75. Paulos Tzadua (*supra* note 29) 313 n. 1; cf. *infra* note 84.

Gabriel; this could be a reference to the inheritance laws of another Coptic patriarch, *Gabriel II Ibn Tariq* (1131-1145), which contain detailed classes and orders of succession (attributed to Emperor Constantine), and which specifically acknowledge the "Canons of the Kings" as a source.⁷⁶

Islamic Influences

Finally, the nomocanon also reflects the political and cultural environment in which its author lived and wrote: viz., the Islamic civilization, under whose domination the Coptic community has existed since the 7th century. Although Ibn al-'Assal for obvious dogmatic reasons avoids any reference to Muslim sources⁷⁷, it has been shown that certain provisions of the nomocanon were taken directly from Islamic law (more specifically, from the Malikite school⁷⁸), particularly in the area of sales, charitable legacies, divorce, penal provisions, procedure.⁷⁹ Sometimes, Islamic and Roman rules stand side-by-side, such as the *portio legitima* of post-classical Roman successions and the "disposable quarter" of the Muslim law of wills,⁸⁰

and similar examples of "co-existence" in the law of sales⁸¹.

Further to substantive borrowings, the jurisprudential approach of the Fetha Nagast clearly reflects an Arabic literary background. Nallino notes⁸² that the arrangement of the subject matters follows the Islamic rather than the Roman system; the inclusion of such topics as diet and clothing certainly is closer to *fiqh* than to *ius civile*. The very idea, fundamental to Islam, of treating all law as part of one's religion,⁸³ would hardly have occurred to a Roman jurist. In addition, the style of the Fetha Nagast shows characteristic features of Muslim legal scholarship: Ibn al-'Assal states in his introduction that his personal contributions to the nomocanon are "arrived at by reasoning and through analogy" from the authoritative sources a formula clearly reminiscent of the *qiuas* of Islamic jurists; and the annex on successions adds rules "on which Abba *Querillos*, Patriarch of Alexandria, agreed with bishops, chiefs and magistrates"⁸⁴ - apparently deriving legal authority from such consensus, not

76. For an Arabic text and English translation see O.H.E. Khs-Burmester, *The Laws of Inheritance of Gabriel Ibn Turaik, 70th Patriarch of Alexandria*, 1 ORIENTALIA CHRISTIANA PERIODICA 315 (1935); cf. O.H.E. Khs-Burmester, *The canons of Gabriel Ibn Turaik, 70th Patriarch of Alexandria*, 46 MUSEON 43 (1933)

77. See Euringer (*Supra* nota 18) 362, d'Emilia (*Supra* note 67).

78. While Guidi (*supra* note 20) VII and XI attributed the Islamic influence mainly to the Shaff'ite school and particularly to the *tanbih* of *Abu-Ishaq-as-Sirazi* (about 1060-1061 A.D.; cf. the Latin edition by A.W.T. JUYNBOLL, *IUS SHAFIITICUM - AT TANBIH AUCTORE ABU ISHAK AS-SHIRAZI*, Leyden 1879), the predominant Malikite influence is emphasized by C.A. Nallino, *Review of E. Carusi*, 9 RIVISTA DEGLI STUDI ORIENTALI 135 (1921); cf. d'Emilia (*supra* note 67) 47 and C. Conti Rossini- *Fetha Nagast*, 5 NUOVO DIGESTO ITALIANO (Milan 1938) 1085; and d'Emilia, *Influssi di diritto musulmano nel capitolo XVIII, 2 del nomocanone arabo cristiano di Ibn al-'Assal*, 19 RIVISTA DEGLI STUDI ORIENTALI 1, 15 (1940), pointing to the assimilation of donations (*hibah*) to charitable legacies (*waqf*) as a characteristic dogmatic position of the Malikite school.

79. The influence of "Muslim civil law" on the Fetha Nagast is mentioned by T. Noldeke, *Die athiopische Literatur*, in DIE ORIENTALISCHEN LITERATUREN (Leipzig 1906, reprinted 1925) 136; Nallino (*supra* note 60) 154 and *supra* note 78; d'Emilia (*supra* notes 67 and 78); B. Ducati (*supra* note 48) 67, pointing also to the rules relating to warfare.

80. Fetha Nagast, chapter 42 section 4. While the Ge'ez text of the nomocanon clearly prefer the Roman solution, the Amharic glossators came up with a radically different "compromise": one quarter to the church, two quarters to the heirs-at-law, and one quarter freely disposable; see Guidi (*supra* note 20) 387 n. 1 cf. Paulos O Tzadua (*supra* note 29) 228 n. 46; Costanza (*supra* note 69) 40; and see *infra* note 87.

81. D'Emilia (*supra* note 67) *passim*.

82. Nallino (*supra* note 60) 153; note the tri-partite division made by Ibn al-'Assal in his "Index" (individual-family-society).

83. See J.N.D. ANDERSON, *ISLAMIC LAW IN THE MODERN WORLD* (New York 1959) 2-5.

84. *Supra* notes 73-76, following Guidi's translation; the Ge'ez actually uses the term *liqanat*, i.e. (legal) scholars of the church, interpreted by the Amharic glossators as *papasat* (patriarchs).

unlike the *ijma'* of Islamic jurisprudence.⁸⁵

The moulding of Roman sources into Islamic forms was facilitated by the ease with which the Arabic language transcribed and accommodated Roman legal terms.⁸⁶ This process is best illustrated by terminology from the law of succession: The Greco-Roman texts use the term *falkidion* (a Greek neologism derived from the Roman "Lex Falcidia") to designate the compulsory share in a testate succession.⁸⁷ The Arabic translators simply transliterated the term as *falkidion* or *falkid*, with a special explanatory note added at the end of the Arabic version of the Procheiron.⁸⁸ Ibn al-'Assal's nomocanon does not repeat that explanation, possible because by then the concept had become sufficiently "arabized" to be understood by lawyers in Egypt. When, however, the Ge'ez translator once more transcribed it (without interpretation) into "*filkidon*", the term must have ceased to be meaningful: The Amharic commentary in the 1966 edition of the Fetha Nagast now "explains" the mysterious word as meaning "he who gives the inheritance", i.e., the testator.⁸⁹

The general interaction of Roman and Islamic law, which has been noted in the former Eastern provinces of the empire, may also have had some effect on the contents and conceptual framework of the nomoca-

non.⁹⁰ However, *Haberland's* conclusion to the effect that the Fetha Nagast "is based mainly on law of the Muhammedan realm, which in turn rests on Roman-Hellenistic *ius gentium*",⁹¹ somewhat misplaces the emphasis. In any event, it may be wise to heed Wenger's famous caveat:⁹²

"He who wishes to show Roman-Byzantine legal heritage in Arabic documents, or to disclose Arabic influences on Roman-Byzantine heritage, must be qualified as a romanist, a byzantinist, an arabist, a jurist and a philologist all in one - or at any rate must be capable of an independent judgment in these frequently overlapping scientific disciplines. To the rest of us here, there remains but an open mind for the neighbouring field of research; i.e., nothing but a few literary references".

CONCLUSIONS

Summing up all the available literary information on the sources that appear to have influenced the second (secular) part of the Fetha Nagast, Roman civil law and the Procheiron in particular emerges as the predominant element.

While this conclusion would in part bear out the speculations of Sherman and Wig-

85. On the role of *qiyas* nad *ijma'* see Anderson (*supra* note 83); J. SCHACHT, AN INTERODUCTION TO ISLAMIC-LAW (Oxford 1964) 60, 114; R. DAVID, LES GRANDS SYSTEMES DE DROIT CONTEMPORAINS: DROIT COMPARE (Paris 1964) 465-461.

86. A famous example is the Latin *dolus*, which survives in modern Arabic as the verb *dalasa* (=to swindle, cheat, counterfeit, forge, falsify, defraud, impose); see H. WEHR, A DICTIONARY OF MODERN WRITTEN ARABIC (J.M. Cowan transl. Wiesbaden 1961) 290.

87. *Supra* note 80. While classical Roman law merely gave an action to invalidate the will (*querella in- oQciosi testamenti*) where descendants had received less than a quarter of their intestate share (*Quarta Falcidia*), Byzantine law conceived of the *Lex Falcidia* as automatically giving descendants a compulsory share (*opratio legitima*).

88. Nallino (*supra* note 60) 120.

89. Amharic edition (*supra* note 24) 475 col. 2; cf. Paulos Tzadua (*supra* note 29) 245 n. 43.

90. Islamic influences on the Syro-Roman lawbook have been suggested by Taubenschlag, doubted by Nallino, cf. Wenger (*supra* note 48) 319. Conversely, the Syro-Roman lawbook is said to have influenced Islamic law: see O. Spes & E. Pritsch, *Klassisches islamisches Recht*, I (Supple. 3) HANDBUCH DER ORIENTALISTIK (Leyden & Cologne 1964) 224. On the general influence of Roman law on Islamic law, Schacht (*supra* note 85) 20-21; J. Schacht, *Foreign Elements in Ancient Islamic law*, 32 JOURNAL OF COMPARATIVE LEGISLATION AND (3rd Series, Parts III-IV) 10-17 (1950); but cf. S.V. Fitz-Gerald, *The Alleged Debt of Islamic to Roman Law*, 67 LAW QUARTERLY REVIEW 81 (1951), and Abdel-Rahman Hassan, *Le droit musulman et le droit romain*, 4 ARCHIVES D'HISTOIRE DU DROIT ORIENTAL 301 (1949).

91. *Haberland* (*supra* note 33) 43-44.

92. Wenger (*supra* note 48) 318.

more,⁹³ it is clear that the Ethiopian "Law of the Kings" is a far cry from Justinian's *Corpus Iuris Civilis*. The combination of three different Greco-Roman lawbooks into a single nomocanon was bound to create contradictions, and all but destroyed the coherent original system.⁹⁴ Its Roman substance was taken from various layers of successive imperial legislation (i.e., the "constitutions" identifiable in the Syro-Roman lawbook⁹⁵), reflecting various stages of christianization (particularly prominent in the *Ecloga*, with a reverse trend in the *Procheiron*⁹⁶), subjected to the erosive forces of vulgarization and didactic simplification in the Eastern Empire.⁹⁷ Before even reaching Ethiopia, the original Latin rules had already undergone two successive translations

and "acculturation" (Byzantine-Greek and Coptic-Arabic), and were virtually cut off from the "mother civilization" of Rome, spiritually by Coptic orthodoxy and geopolitically by Islam.

Against these odds, the successful "reception" and adaptation of this Roman torso in the radically different social environment of Ethiopia is all the more remarkable. The survival and continuous evolution of the *Fetha Nagast*—which is sufficiently documented from the 17th century onwards to the present date, and which will form the subject of a separate study currently in progress—must be considered as one of the most striking examples illustrating the trans-cultural migrative and adaptive potential of legal systems.

93. *Supra* notes 4 and 5. However, Sherman's guess regarding the actual *date* of the reception of Roman law in Ethiopia (6th century) is clearly wrong, in view of the historical role of Ibn-al-'Assal's nomocanon discussed *supra* (notes 38 et s.)

94. Note that the title "Legislation of the Kings" (with the actual names of the "Kings" or emperors omitted, see text *supra* at note 51) was originally taken from the Syro-Roman Lawbook, which was in itself a very unsystematic "restatement" of Roman law (see Selb, *supra* note 64, 246). The Copts extended the title to their re-arranged compilations with the *Procheiron* and the *Ecloga* ("Canons of the Kings", *supra* note 54); the Ethiopians eventually extended it to designate the nomocanon comprising all ecclesiastical and secular law ("Law of the Kings"), in order to distinguish this book from earlier ecclesiastical translations such as the "Senodos" (parts of which were identical with parts of the first part of the *Fetha Nagast*; cf. the confusion by Bruce, *supra* note 11).

95. Selb (*supra* note 64) 209-229.

96. See Freshfield (*supra* note 50) 35; Sherman (*supra* note 4) 160, pointing to contrasts particularly in the law of marriage and divorce (another characteristic area being the law of asylum in the church).

97. On the notorious difficulties with the *Corpus Iuris* in legal practice, and the resulting trend to reduce Justinian's unwieldy volumes to "pocket-size" by way of intermediary manuals, see P. KOSCHAKER, *EUROPA UND DAS ROEMISCHE RECHT* (3rd ed. 1947, reprint Munich 1966) 65-66.

