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THE EARLY DEVELOPMENT OF CANON LAW AND THE COUNCIL OF SERDICA



Hamilton Hess

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To Margaret

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Preface

This book is a second, augmented edition of my book *The Canons of the Council of Sardica A.D. 343: A Landmark in the Early Development of Canon Law*, published by the Clarendon Press in 1958. As the reader will observe, the title of this work is a virtual inversion of that of the first, and this bespeaks an enlargement of purview. The Serdican canons themselves provided the subject-matter of the earlier book, with modest treatment given to the procedures of their enactment and to the import of their form of publication for the beginnings of canon law. An additional three chapters at the beginning of the present work, being Part I, places the development of the conciliar system and the genesis of canon law at the forefront, both as a contribution in itself to the fields of conciliar and canonical studies and as a background for a better understanding of the evidence that the Serdican canons provide for critical phases in the development of the conciliar legislation from which canon law was built. The original work on the Serdican canons has been out of print for a number of years. As it was the only extensive treatment of the canons, frequently used in reference up to the present time, the publication of an updated version is needed. This is provided in Parts II and III.

In Part II, as in the first edition of this work, a careful analysis of the texts supports the author's hypothesis of a double redaction of the canons, Latin and Greek, deriving from the council itself. Part III again provides an exegetical study of the Serdican canons, and demonstrates by their shaping in council that they, as all other legislative acts, both ecclesial and civil, were thoroughly rooted in the events, the problems, the personalities, and the ideologies of the day. Expanded treatment of the canons beyond that of the first edition is provided on several points, and particularly on the matter of episcopal appeals.

The dating of the council of Serdica to AD 343, argued in Appendix III of *The Canons of the Council of Sardica*, is adhered to in the present volume as the more plausible date between the now established choices of 342 and 343. Retreading this ground here does not serve the author's present purpose. Several scholars have treated this question since 1958, when the former work was published, and the results on both sides are more tentative than conclusive. Key evidences remain either contradictory among

themselves or open to different interpretations. Both options continue to be supported by reputable authorities, but a very recent work seems to have tipped the balance again towards 343 (see Ch. 2 n. ¹).

The present work was undertaken at the kind suggestion of Dr Henry Chadwick and was made possible by the positive response from the Oxford University Press to my proposal for a new edition. I am most grateful to the Press for their helpfulness throughout and for their patience regarding delays that I have incurred in the production of the manuscript. I express my gratitude to my colleague Professor Edward Muenk for his expert counsel regarding the Latin of the Theodosian version of the Serdican canons. My wife, Margaret, has been my constant supporter and source of encouragement, and together with our family, has frequently, and at considerable personal sacrifice, bent her own plans in consideration of my work. I express my loving gratitude to her in the dedication of this book.

H.H

¹ As stated in the Preface, I adhere to AD 343 as the date of the council of Serdica. Examples of contemporary scholars in support of 343 or the rival date of 342 are as follows: for 343, see T. D. Barnes, *Athanasius and Constantius: Theology and Politics in the Constantinian Empire* (Cambridge, MA, 1993), 71 n. 2 at p. 259; for 342, see T. G. Elliott, 'The Date of the Council of Serdica', *The Ancient History Bulletin* (Calgary), 2/3 (1988), 65–72. S. Stern has shown in a recent work that the Paschal calendar produced by the separate synod of Eastern bishops at Serdica included the dates of the Jewish Passover at Alexandria from the starting-date of their own calendar (328) up to and including the year of their meeting at Serdica, which, by the data given, was 343 (*Calendar and Community: A History of the Jewish Calendar Second Century BCE – Tenth Century CE* (Oxford, 2001), 75, 79, 124–5).

Contents

<i>Abbreviations</i>	xii
PART I: <i>Councils, Canons, and Canon Law</i>	
<i>Introduction</i>	3
1. The Conciliar Movement	5
(i) The Rise of the Conciliar Movement	5
(ii) Early Eastern Synods	10
(iii) Early Western Councils	15
(iv) North African Councils under Cyprian	17
(v) Conciliar Arrangements and Participants	21
(vi) Conciliar Procedure	24
(vii) The Vocabulary of Conciliar Procedure	28
(viii) The Idea of the Council	29
(ix) Conciliar Styles	33
2. The Emergence of Canonical Legislation	35
(i) The Need for Rule-Making	35
(ii) Collective Rule-Making	37
(iii) Early Fourth-Century Councils	40
(iv) The Council of Nicaea	46
(v) Later Eastern Councils	48
(vi) Councils in Italy, Africa, Gaul, and Spain	50
(vii) The Eastern Canonical Collections	53
(viii) The Western Canonical Collections	55
3. The Development of an Ecclesiastical Rule of Law	60
(i) Conciliar Enactments and the Parliamentary Process	60
(ii) The Serdican Canons and Parliamentary Procedure	65
(iii) The Earliest Forms of Canonical Publication	69
(iv) The Significance of the Forms of Publication	72
(v) Conciliar Theory	75
(vi) Towards the Emergence of Canon Law	82
(vii) The Formation of Canon Law	85

PART II: *Serdica: The Council and its Canons*

Introduction	93
4. The Council at Serdica	95
(i) The Historical Setting	95
(ii) The Preliminary Manoeuvres	100
(iii) The Rival Councils	105
(iv) Ossius of Cordova	111
5. Historical and Textual Problems	114
(i) The Genuineness of the Serdican Canons	114
(ii) The Numbering Systems	116
(iii) The Problem of Textual Priority	117
6. Early Textual Transmission and Development	124
(i) The Transmission of the Latin Text	124
(ii) The Primitive Greek Text and a Resolution of its Differences from the Latin	129
(iii) The Version of Theodosius Diaconus	134
PART III: <i>Studies in Interpretation</i>	
Introduction	143
7. The Appointment of Bishops	146
(i) Canon 5(VIa)	146
(ii) Canon 6(VIb)	154
(iii) Canon 13(X)	157
8. The Translation of Bishops and Other Clergy	162
(i) The Historical and Disciplinary Background	162
(ii) Canon 1(I)	167
(iii) Canon 2(II)	169
(iv) Canon 3a(IIIa) and 3b(IIIb)	170
(v) Canon 14(XI)	172
(vi) Canon 15(XII)	173
(vii) Canon 16(XIII)	174
(viii) Canons 18 and 19(XV)	175
(ix) Canon 20(XVI)	177
(x) Canon 21(XVII)	177
9. The Appeal Canons	179
(i) The Historical and Jurisdictional Contexts	180

(ii) Factors Contributory to the Formula of Appeal	186
(iii) The Interpretation of Canons 3c(IIIc), 4(IV), and 7(V)	190
(iv) Canon 17(XIV)	199
10. Episcopal Visits to the Imperial Court	201
(i) Episcopal Representation and Imperial Favour	201
(ii) Canons 8(VII) and 10b	203
(iii) Canons 9a(VIII), 9b(IXa), and 10a(IXb)	204
(iv) Canons 11(XX) and 12	208
Table 1: The Numbering Systems of the Serdican Canons	210
Appendix: Texts and Translations of the Serdican Canons	211
<i>Bibliography</i>	256
<i>Index of Modern Authors</i>	268
<i>Index of Subjects and Names</i>	272

Abbreviations

<i>ACO</i>	E. Schwartz (ed.), <i>Acta conciliorum oecumenicorum</i>
<i>AHC</i>	<i>Annuario historiae conciliorum</i>
ANF	The Ante-Nicene Fathers, series ed. A. Roberts and J. Donaldson
CCL	Corpus Christianorum, series Latina
CSCO	Corpus scriptorum Christianorum orientalium
CSEL	Corpus scriptorum ecclesiasticorum Latinorum
<i>DACL</i>	<i>Dictionnaire d'archéologie chrétienne et de liturgie</i>
<i>DDC</i>	<i>Dictionnaire de droit canonique</i>
<i>EOMLA</i>	C. H. Turner, <i>Ecclesiae occidentalis monumenta iuris antiquissima</i>
GCS	Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte
<i>HE</i>	<i>Historia ecclesiastica</i>
<i>HTR</i>	<i>Harvard Theological Review</i>
Hefele–Leclercq	C. J. Hefele and H. Leclercq, <i>Histoire des conciles</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
kan. Abt	kanonistische Abteilung
Lauchert	F. Lauchert (ed.), <i>Die Kanones der wichtigsten altkirchlichen Concilien</i>
Mansi	J. D. Mansi (ed.), <i>Sacrorum conciliorum nova et amplissima collectio</i>
NF	neue Folge
NPNF	The Nicene and Post-Nicene Fathers of the Christian Church, 2nd ser. ed. P. Schaff and H. Wace
NS	new series
PG	Patrologia, series Graeca, ed. J.-P. Migne
PL	Patrologia, series Latina, ed. J.-P. Migne
<i>RAC</i>	<i>Reallexikon für Antike und Christentum</i> , ed. Th. Klauser
<i>RHE</i>	<i>Revue d'histoire ecclésiastique</i>
SC	Sources chrétiennes
<i>ZNTW</i>	<i>Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche</i>
<i>ZSSR</i>	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte</i>

Part I Councils, Canons, and Canon Law

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Introduction

The following three chapters provide a study of the development of the conciliar system and the emergence of canon law. Close attention is given in Chapter 1 to the rise and the character of the conciliar movement from its earliest beginnings to the fourth-century establishment of councils as exclusively episcopal legislative assemblies. Chapter 2 provides comments on the numerous series of conciliar agreements, which came to be called 'canons', that were enacted by the fourth- and fifth- century councils, and identifies the early collections into which they were gathered. Chapter 3 explores the developing nature and function of these agreements, showing that the emergence of canon law was a gradual evolutionary process leading towards the sixth-century organization of canonical collections as juridical, ecclesiastical codes parallel with and complementary to the contemporary civil codes of the Empire.

Although a brief treatment of the origins of councils and conciliar legislation was provided by the monumental nineteenth-century *Konziliengeschichte* of C. J. Hefele (followed by an early twentieth-century French translation with additional notes by Henri Leclercq), the major issues treated here have in the past been only partially addressed by historians and canonists. Relatively little has been written in English on early conciliar history since the prodigious work of C. H. Turner on the early canonical collections during the first three decades of the twentieth century (references to Turner's works and to the others mentioned immediately below are given in the chapters to follow and in the bibliography). A number of works relating to early councils and their enactments have been written by German scholars during the past fifty years, most importantly those recently published by the historians J. A. Fischer (together with Adolf Lumpe) and H. J. Sieben. Fischer and Lumpe have provided a detailed history of all recorded synods and councils from their beginnings in the late second century until the eve of Nicaea (325). Sieben, in two books and several articles, has written on the idea of the

council ('die Konzilsidee') as it developed from the latter half of the fourth century onwards, and on various other aspects of conciliar history and theory subsequent to the period of our own concern. Special acknowledgement must also be made of the works of the French scholars Jean Gaudemet and Charles Munier. Gaudemet's many books and articles and his recent work on the canons and their collections in the West, and Munier's critical editions of acts of the African and Gallican councils have, together with the works of Fischer and Sieben, been immensely useful in the preparation of the present study.

1 The Conciliar Movement

Collective decision-making evidently took place during apostolic times, for the discussion and decisions recorded in Acts 13 regarding the sending of Paul and Barnabas and in Acts 15 opening the way for the reception of Gentiles seem to be historically beyond question, but the traditional reference to the gathering described in Acts 15 as ‘the first council’, or as ‘the Council of Jerusalem’ is clearly anachronistic and not accurately descriptive of the actual situation.² Allusion to it as a precedent or as a model for conciliar action first arose in the late fourth century.³ There is, in fact, no evidence of consultation and common action among the Christian communities themselves until late in the second century. *Intra*-congregational deliberative meetings, however, evidently took place in early times and were presumably common. Ignatius, for example, advised Polycarp to call together a congregational assembly (συμβούλιον) at Smyrna to take care of an important matter that had arisen there (*Polycarp* 7. 2).

(i) The Rise of the Conciliar Movement

The grounding element in the synodical or conciliar movement in the early Church was apparently the need for congregational clarifications in matters of teaching and practice, and this was part and parcel with the

² See E. Junod, ‘Naissance de la pratique synodale et unité de l’Église au II^e siècle’, *Revue d’histoire et de philosophie religieuses*, 68 (1988), 164 n. 2; J. A. Fischer and A. Lumpe, *Die Synoden von den Anfängen bis zum Vorabend des Nicaenums* (Paderborn, 1997), 13–15 (hereafter cited by author of the respective chapter); Y.-M. Congar, ‘The Conciliar Structure or Regime of the Church’, *Concilium*, 167 (1983), 3.

³ H. J. Sieben provides a detailed examination of this development in *Die Konzilsidee in der Alten Kirche* (Paderborn, 1979), 415–23, showing that the account in Acts 15 is based on Luke’s understanding of the apostolic gathering as following the precedent of the Jewish Sanhedrin, and demonstrating that this was later regarded as a model for conciliar action, notably by John Chrysostom.

process leading to the emergence of the Catholic mainstream. Since the important study of Walter Bauer, *Rechtgläubigkeit und Ketzerei im ältesten Christentum*, and the protracted discussion following it, the mainstream emergence has come to be recognized as having been a process, at least in some important cases, of the recognition of commonalities in doctrine and practice among specific groups which bore the Christian name, and by their own self-definition or differentiation from other groups which had significantly different orientations or doctrinal stands.⁴ Differentiation from the groups that came to be labelled 'docetist' is an early case in point illustrated in the Ignatian letters.⁵ It seems evident also that the struggles for identity and mutual recognition among the groups were increasingly the occasion of both intra- and inter-congregational discussion and that the discussions and decisions regarding acceptable teachings resulting from these attempts towards the resolution of issues were, in fact, the beginnings of conciliar action.

The earliest known gatherings for this purpose, reported to us by Eusebius, were held during the late second century in consideration of the New Prophecy. The New Prophecy movement associated with Montanus and his associates apparently arose within the emerging mainstream milieu,⁶ and a sorting-out process is seen to be at work in the discussions leading to the rejection of Montanism by the early Catholic communion. This is described by the 'Anonymous' author quoted by Eusebius, as he writes,

But when I recently came to Ancyra in Galatia, and found the local church ringing with the noise of this new (not, as they themselves say, prophecy; but much rather,

⁴ Bauer's work was first published in Tübingen in 1934, with a second edition edited by J. Strecker in 1964. An English translation was published under the editorship of R. A. Kraft and G. Krodel: *Orthodoxy and Heresy in Earliest Christianity* (Philadelphia, 1967). While Bauer's description of the patterns or distributions of 'orthodoxy' and 'heresy' do not seem to have been accurate, his study provided a valuable call for awakening to the variety of 'Christian' positionings and their interaction during the late first and second centuries. Other subsequent studies in the areas of gnosticism and Jewish Christianity have not only vindicated Bauer's basic argument but have sharpened scholarly awareness of kinships and differences among the many groups which claimed the Christian name. Among the numerous commentaries on Bauer's work, see especially the following: R. Williams, 'Pre-Nicene Orthodoxy?', in id. (ed.), *The Making of Orthodoxy: Essays in Honour of Henry Chadwick* (Cambridge 1989), 9–18; R. L. Wilken, 'Diversity and Unity in Early Christianity', *The Second Century*, 1 (1981), 101–10; G. T. Burke, 'Walter Bauer and Celsus: The Shape of Late Second-Century Christianity', *The Second Century*, 4 (1984), 1–7.

⁵ See C. Trevett, *A Study of Ignatius of Antioch in Syria and Asia* (Lampeter, 1992), 155–69.

⁶ Ead., *Montanism, Gender, Authority and the New Prophecy* (Cambridge, 1996), 44, 79, 84, and 86.

as will be shown) false prophecy: with the help of the Lord we discoursed, to the best of our ability, for many days in the church on every one of these same points, as well as on those which they put forward; insomuch that the church rejoiced exceedingly and was confirmed in the truth. . . . So when the local presbyters requested us to leave behind some memorandum of what had been said . . . though we did not do this, we promised to write it here, should the Lord permit us, and send it to them speedily.⁷

The Anonymous further describes the same local filtering process as having been widespread in the East:

For when the faithful throughout Asia had met frequently and at many places in Asia for this purpose, and on examination of the new-fangled teachings had pronounced them profane, and rejected the heresy, these persons were thus expelled from the Church and shut off from its communion.⁸

Eusebius also tells us, with brief quotation, of a letter of Serapion, bishop of Antioch, exposing the New Prophecy and referring to an attached letter of similar nature by Claudius Apollinarius, bishop of Hierapolis in Asia. Serapion was probably a bishop in continuity of succession from Ignatius as *monepiscopus*, and Claudius Apollinarius was presumably a bishop also. Eusebius reports regarding Serapion's letter that 'a large number of other bishops' subscribed in agreement.⁹ Two signatories to the letter are quoted by Eusebius in the same report, one of whom identifies himself as a bishop and the other not. It is probable that some of the signatories were presbyters rather than *monepiscopi*, as seems to have been the case with the participants at Ancyra mentioned above. J. A. Fischer assumes that a synod was held and that Serapion's letter was a synodical letter,¹⁰ but there is no evidence that this was the case. On the contrary, it is improbable that any gathering resembling an episcopal synod or council was held at this time. Eusebius was reporting on the early discussions of Montanism which probably took place between 170 and 180,¹¹ during the period that monepiscopal¹² governance in the

⁷ HE 5. 16. 4–5 (H. J. Lawlor and J. E. L. Oulton, *Eusebius, Bishop of Caesarea: The Ecclesiastical History and the Martyrs of Palestine* (London, 1954), i. 159; E. Schwartz, *Eusebius. Die Kirchengeschichte* (Berlin, 1999), ii = GCS, NF 6/1. 460–2).

⁸ HE 5. 16. 10 (Lawlor–Oulton, i. 160; GCS, NF 6/1. 464).

⁹ HE 5. 19. 3–4 (Lawlor–Oulton, i. 165; GCS, NF 6/1. 48). These episcopal identifications are clouded by Eusebius' supposition that the monarchical episcopate of his own time began in the first century in direct historical succession from the apostolic office. See esp. HE 3. 4.

¹⁰ *Die Synoden*, 39–41.

¹¹ See the discussion of the dating of the early stage of the Montanist movement provided by Trevett, *Montanism*, 26–45.

¹² 'Monepiscopacy' is used in reference to the type of local church leadership evidenced in the epistles of Ignatius of Antioch, in which a single ἐπίσκοπος in each congregation is the pastoral and sacramental leader governing in concert with a college of presbyters. This is to be distinguished from the 'monarchical episcopate' which began to emerge in the late third century, with the bishop as pastor-administrator of a group of congregations in which the presbyters ministered in his stead. See G. Schöllgen, 'Monepiskopat und monarchischer Episkopat: Eine Bemerkung zur Terminologie', *ZNTW* 77 (1986), 146–51.

churches was still in the process of development and solidification.¹³ The testimony provided by Eusebius' sources most likely reveals that while information regarding Montanism was provided to local churches by visiting experts on the matter, and considerable correspondence was exchanged among church leaders regarding it, the discussions took place within the local congregations under the presidency of their own leaders, *monēpiscopi* in some cases and colleges of presbyters in others. It is significant in the history of the concepts of the synod and the council, East and West, that the earliest occurrences of these terms in Christian writings were not until 257/8 in the East and c.213 in the West.¹⁴ The second-century congregational assemblies, were not, however, unrelated to the synods and councils of the third, but, as we shall discuss further below, were the foundation upon which they were built.¹⁵

The next major controversy reported by Eusebius as having led to synodical action concerned the dating of Easter. Some modern scholars—notably Allen Brent—have questioned the historicity of the controversy as having involved the holding of synods and as including an attempt by Victor of Rome to force the Roman dating on the Asian churches.¹⁶ While the question is yet far from settled, and is perhaps

¹³ For a variety of approaches to a description of this process and the period within which it took place, see the following: W. Telfer, *The Office of Bishop* (London, 1962), chs. 4 and 5; P. Nautin, 'L'évolution des ministères au II^e et au III^e siècle', *Revue canonique*, 23 (1973), 47–58; E. Dassmann, 'Zur Entstehung des Monēpiskopats', *Jahrbuch für Antike und Christentum*, 17 (1974), 74–90; E. G. Jay, 'From Presbyter-Bishops to Bishops and Presbyters', *The Second Century*, 1 (1981), 125–62; J. Zizioulas, 'Épiskopē et Épiskopos dans l'Église primitive', *Irénikon*, 56 (1983), 484–502; and H. Kraft, 'Dalla "Chiesa" originaria all'episcopato monarchico', *Rivista di storia e letteratura religiosa*, 22 (1986), 411–38.

¹⁴ See the letter of Dionysius of Alexandria to Xystus of Rome for οὔνοδος, *HE* 7. 7. 5 (GCS, NF 6/2. 644) and Tertullian, *De ieiunio* 13. 6 (CCL 2. 1272) for *concilium*. For treatments of their history (including *synodus* as a Latin loanword from the Greek), see A. Lumpe, 'Zur Geschichte der Wörter *Concilium* und *Synodus* in der antiken christlichen Latinität', *AHC* 2 (1970), 1–21, and id., 'Zur Geschichte des Wortes οὔνοδος in der antiken christlichen Gräzität', *AHC* 6 (1974), 40–53.

¹⁵ This, in substance, is also the conclusion of Junod, 'Naissance de la pratique synodale', 165–76. Fischer takes a more traditional approach, *Die Synoden*, 23–41.

¹⁶ A. Brent, *Hippolytus and the Roman Church in the Third Century: Communities in Tension Before the Emergence of a Monarch-Bishop* (Leiden, 1995), 412–15; and see also the solution to the problem proposed by T. G. Jalland, *The Church and the Papacy* (London, 1944), 115–22. An interpretation of the events closer to the one provided by the present author is found in J. F. McCue, 'Roman Primacy and the Development of Dogma', *Theological Studies*, 25 (1964), 181–4.

incapable of being answered because of the paucity of evidence, it does appear likely that a dispute originally involving Western and Asian congregations in Rome led to exchanges between Victor (perhaps the first monepiscopal bishop of Rome, 189–98)¹⁷ and Polycrates, bishop of Ephesus, over Victor's insistence to the Asians that their celebration of the Pasch on the fourteenth day of Nisan in the Jewish calendar was unacceptable, not only in Rome, but in Asia as well. Eusebius, whose account of the exchange is the only one that has survived, tells us that synods and assemblies (σύνοδοι δὴ καὶ συγκροτήσεις) of bishops came together, and unanimously drew up in letters an ecclesiastical decree (δόγμα) for the faithful everywhere, to the effect that the mystery of the Lord's resurrection from the dead should never be celebrated on any other but the Lord's day.¹⁸

Eusebius continues in paragraphs 3 and 4 in the same chapter with the identification of specific synods held on the matter in a variety of localities East and West, together with the names of the bishops who presided over them. In the next chapter (5. 24. 2–7) he quotes at fair length from Polycrates' letter to Victor, which justifies the Quartodeciman use from immemorial custom and states that the number of bishops who gathered with him to discuss the matter at the request of Victor, and who approved his letter to Victor, was 'very great' (5. 24. 8). Eusebius also later (5. 25) quotes from a letter purportedly distributed by a synod in Palestine (referred to in 5. 23. 3) asking its recipients to send it to 'every community' (παροικίαν). Earlier in his account, Eusebius states that Victor had declared the Asian churches excommunicate (ἄκοινωνήτους), reports that Victor was censured for his action by many bishops, and quotes a letter from Irenaeus to Victor admonishing him to keep peace amidst differences over the question (5. 24. 9–18).

The evidentiary value of Eusebius' report is somewhat clouded by the double agenda which he served by the telling. Consistent with the central theme of his *Historia*, he desired to present the vision of a unified Church marching victoriously through history. This he accomplished in reporting a unanimous rejection by all others of both the Quartodeciman position and the impetuous action of Victor. Furthermore, Quartodecimanism

¹⁷ P. Lampe, *Die stadtrömischen Christen in den ersten beiden Jahrhunderten* (Tübingen, 1987), 333–4. Brent would not see monepiscopacy developing at Rome until 'the time of Novatian': *Hippolytus and the Roman Church*, 412–56. If this is correct, the first 'pope' would have been Fabian (AD 236–50).

¹⁸ *HE* 5. 23. 2 (GCS, NF 6/1. 488).

remained fully alive in Eusebius' own day, and as one of its opponents he was apparently interested in portraying it as a local tradition inherited by Polycrates from his ancestors, and as having been definitively rejected at the end of the second century by fourth-century-style synods held throughout the Christian world. This interpretation of the events is rendered doubtful by the certainty of anachronism on the part of Eusebius regarding the advanced synodical character which he attributes to the assemblies of church leaders, by his probably fallacious assumption that all the presidents were bishops in the monepiscopal sense, and by his again anachronistic reference to a unified 'ecclesiastical decree for all the faithful everywhere'.

It seems certain, however, from the details included in the several sources from which Eusebius assembled evidence for his report on the issue, that deliberative gatherings of representatives from neighbouring or regional churches did take place, and that the conclusions reached at these gatherings were shared with others by letter. If this is true, they were indeed an early and significant landmark in the development of the conciliar system. Eusebius' reporting in *HE* 5. 23 regarding the bishops who led particular gatherings may reflect an early emergence of leading regional sees, and, unless his fourth-century views influenced his appraisal of the situation, Victor's reported role in the controversy seems to indicate a general recognition of Roman prestige, although not an acquiescence in Victor's own view of the authority it bore.¹⁹

(ii) Early Eastern Synods

Further events more clearly reflecting synodical development in the East are reported by a number of sources, those reporting closer in time to the events themselves being generally the more reliable. The African Tertullian, interestingly, is the first. Writing in about 213 in defence of the gatherings of Montanist enthusiasts in Africa, he states that:

throughout the provinces of Greece there are held in definite localities those councils gathered out of the universal churches (*concilia ex universis ecclesiis*), by whose means not only all the deeper questions are handled for the common benefit, but the actual representation of the whole Christian Name (*repraesentatio totius nominis Christiani*) is celebrated with great veneration.²⁰

¹⁹ McCue, 'Roman Primacy', 184.

²⁰ *De ieiunio* 13. 6; translation from ANF 4. 111. It is evident from the reference to 'stations and fastings' further on in this passage that these gatherings included spiritual exercises for the participating communities: see *DACL* xv/2. 1653–4. There is no evidence and little probability that these Greek councils mentioned by Tertullian were 'provincial synods', as assumed by D. Rankin, *Tertullian and the Church* (Cambridge, 1995), 14 n. 27. Regional inter-church organization was only in its beginning stages at this time.

This bespeaks frequency, if not regularity, for the type of deliberative gatherings that we have supposed was the case in the Paschal dating discussions: general meetings of the leaders and the people of several local churches together for the resolution of shared problems by common agreement, and not by edict. Adolf Lumpe further clarifies Tertullian's intended meaning by concluding that *concilia ex universis ecclesiis* refers to district assemblies in which the whole Church is embodied in each of its parts and that *repraesentatio totius nominis Christiani* is a description in spiritual terms of the entire Church that is so represented.²¹

We are told in documents traditionally attributed to Hippolytus that a group of ‘blessed presbyters’ (μακάριοι πρεσβύτεροι) first questioned Noetus, a church official of Smyrnaean origin, and later expelled him from the church for his teaching about the Trinity, but we have inadequate information about the ecclesiastical status of Noetus, and of the presbyters, and of the nature of the assembly.²² The answer to the question regarding the status of the presbyters is central to the solution of the problem. If C. H. Turner was correct in his note identifying the ‘blessed presbyters’ as persons of episcopal rank,²³ and if Noetus himself is positively to be identified as a bishop, because, as Turner and others have noted, he is said to have had a deacon disciple (Epigonus), the event

²¹ A. Lumpe, “‘Concilium’ als ‘repraesentatio totius nominis Christiani’ bei Tertullian”, *AHC* 7 (1975), 79–81.

²² The most reliable sources of information regarding this affair—both traditionally attributed to Hippolytus—have been regarded as being the *Contra Noetum* (1.1–7), ed. R. Butterworth, *Hippolytus of Rome: Contra Noetum* (London, 1977), 42–4, and the *Refutatio omnium haeresium* (9.7.1), ed. M. Marcovich, *Hippolytus' Refutatio omnium haeresium* (Berlin, 1986), 342. However, the *Contra Noetum*—the source that provides us with the closest details—has latterly been reclassified by several authors on grounds of theological content as being either a spurious, late fourth-century writing or a later reworked version of a document originally written by Hippolytus himself: see Fischer, *Die Synoden*, 88 n. 4. As all other witnesses to the matter of Noetus are late and dependent on those attributed to Hippolytus (primarily Epiphanius' *Haereses*, 57. 1), the issues are left even more clouded by the proposed literary reassignment, although the description of Noetus' examination and expulsion must surely have been written no later than the time of Hippolytus, for it is cast in terms and circumstances that a later writer would not have used, and which closely fit the ecclesial environment of the late second century. Specifically, we are told in the *Contra Noetum* that the ‘blessed presbyters’ called him [Noetus] in and questioned him ‘in the presence of the church’ (ἐνώπιον τῆς ἐκκλησίας), and that he was thrown out of ‘holy office’ (ἁγίου ὄφους): Butterworth, *Hippolytus*, 43.

²³ ‘Adversaria’, *JTS* 23 (1922), 28–35.

of his expulsion would indeed seem to have been a gathering of recognizably synodical character, and the first known occasion at which a group of bishops assembled to depose a brother bishop; but the facts of the case remain uncertain. Its developed synodical character is simply a traditional assumption; it may instead have been a disciplinary action internal to a single community with the presbyters expelling a troublesome teacher who had a disciple who was a deacon. Two recent studies have shown that perhaps as late as the mid-third century the teaching role in the churches remained in the hands of the *didaskalos* or *doctor*, who was the recognized authority in matters of doctrine and the exposition of scripture.²⁴

Two other Eastern gatherings, about which we also know little, took place in Asia Minor at Iconium in Lycaonia and Synnada in Phrygia in 230–5.²⁵ The meeting at Iconium is mentioned by Firmilian of Caesarea in his well-known letter to Cyprian in 256,²⁶ and in the letter of Dionysius of Alexandria to the presbyter Philemon of Rome cited by Eusebius.²⁷ Firmilian states that ‘we confirmed’ (*confirmavimus*) the absence of the power of grace for baptism, for the laying-on of hands, and for the appointment of clergy in Montanists and other heretics (*haeretici*) at this meeting (*collecti in unum convenientibus . . .*). Dionysius simply tells us that ‘in the days of the bishops that were before us, in the most populous churches and the synods (συνόδοις) of the brethren, in Iconium and Synnada and in many places, this course [namely the rebaptism of converts from heresy] was adopted’. Iconium and Synnada thus appear to be the earliest known specifically identified synods in the East at which decisions were reached regarding disciplinary and doctrinal problems.

A number of synods or similar gatherings associated with the activities of Origen²⁸ are reported by Eusebius and other early sources. Origen's

²⁴ R. Gryson, ‘The Authority of the Teacher in the Ancient and Medieval Church’, *Journal of Ecumenical Studies*, 19/2 (Spring 1982), 176–87 (simultaneously published in French as ‘L'autorité des docteurs dans l'église ancienne et médiévale’, *Revue théologique de Louvain*, 13 (1982), 63–73); J. K. Coyle, ‘The Exercise of Teaching in the Post-Apostolic Church’, *Église et théologie*, 15 (1984), 23–43.

²⁵ For discussion of these synods see Fischer, *Die Synoden*, 52–9.

²⁶ Extant only in Latin as *Ep.* 75 among the epistles of Cyprian (CCL 3C. 581–604); see §7. 4–5, pp. 588–9.

²⁷ *HE* 7. 7. 5 (GCS, NF 6/2. 644). See Fischer, *Die Synoden*, 52–7.

²⁸ Details are uncertain regarding the Alexandrian synods at which Origen himself was degraded from the presbyterate and banished from the city. The synods probably took place in 231/2. See P. Nautin, *Origène: sa vie et son œuvre* (Paris, 1977), 429–31; and for discussion see Fischer, *Die Synoden*, 117–23.

Dialogue with Heraclides, to be dated perhaps between 224 and 249,²⁹ is of first importance among them. The dialogue took place in the presence of Heraclides' congregation³⁰ with an assembly of bishops who were evidently concerned with the teachings of their colleague, and who had evidently called upon Origen to resolve the issues. The protocol of the dialogue, rediscovered in 1941, is the earliest stenographic record of discussion at an ecclesial assembly that we possess, and it provides valuable evidence for the sophistication of record-keeping at ecclesial gatherings that had been adopted by the earlier part of the third century and as an example of the form of early theological debate. Sieben has made a strong case for this dialogue, together with the others which will be discussed immediately below, as exemplifying ecclesial use of the style employed by the philosophical schools of the time (see the final section of this chapter).

Eusebius tells us that a synod was held (between 238 and 244) for discussions by a large number of bishops and other persons, including Origen, with Beryllus, bishop of Bostra in Arabia, regarding his teachings on the person of Christ. The meeting was held in Beryllus' own community (παροικία), and Eusebius informs us that written records of the discussions were still extant in his day.³¹ Soon after this another gathering followed in Arabia, with Origen again invited, for public discussion of teachings by certain persons regarding the human soul.³² Dionysius of Alexandria is reported by Eusebius to have led a similar discussion lasting several days with a bishop Nepos at Arsinoe in lower Egypt (between 253 and 257), and again in the presence of the people.³³ Apparently none of these were synods in the subsequently developed sense, with agendas for collective action, but were discussions or dialogues of the type exemplified above in Origen's exchanges with Heraclides. Sieben's analysis is supported by Brent's examination of the use of the philosophical school model in the organization and conduct of the affairs of early Christian congregations. Brent specifically alludes to Origen's dialogue

²⁹ The Greek text with an introduction and a French translation is provided in *Entretien d'Origène avec Héraclide*, ed. J. Scherer (SC 67; Paris, 1960). For further valuable comments and an English translation of the text see H. Chadwick in J. E. L. Oulton and H. Chadwick, *Alexandrian Christianity* (London, 1954), 430–55. For a thorough discussion of the several questions surrounding the dialogue see Fischer, *Die Synoden*, 141–50, who declines to propose a date because of conflicting evidence, but cites a number of authorities who choose a time between 244 and 250.

³⁰ SC 67. 54, 63.

³¹ HE 6. 33. 1–3 (GCS, NF 6/2. 588).

³² HE 6. 37 (GCS, NF 6/2. 592).

³³ HE 7. 24. 6–9 (GCS, NF 6/2. 688–90); Lumpe, *Die Synoden*, 338.

with Beryllus in this context, contrasting it with the discussions later held regarding the teachings of Paul of Samosata.³⁴

The discussions with Paul are reported by Eusebius and are known to have taken place in synods at Antioch in 264, and perhaps 265, and in 268 by a large number of bishops accompanied by presbyters and deacons.³⁵ At the synod in 268 the major disputant was the learned presbyter Malchion of Antioch, who arranged for stenographers (ταχυγράφοι) to take notes of the debates.³⁶ The synod concluded with the excommunication of Paul and a letter addressed to Dionysius of Rome and Maximus of Alexandria and all other bishops, presbyters, deacons, and churches informing them of their action and of the appointment of Domnus as bishop of Antioch in Paul's stead, so that they might 'write to him and receive letters of communion'³⁷ from him. Malchion and other presbyters and deacons signed the letter together with the bishops. Here, as well as being informed of a theological debate of the type discussed above, we observe a synod which was convened, at work, and producing results in the later conventional manner; that is, a deliberative assembly of bishops accompanied by members of their clergy addressing a common problem, hearing evidence presented, discussing the issues, with the discussion recorded, reaching an agreed solution, and publishing the results by synodical letter. This is the earliest firm evidence of fully developed synodical procedures in the East of the type that we shall describe below as having been observed some fifteen years earlier in the West in Africa and at Rome. Returning to the matter of procedures, while Brent acknowledges the parallels in method between these discussions and the earlier Eastern ones mentioned above, he sees the interrogation of Paul by Malchion as directed simply to conviction and therefore not as an instructional dialogue of the philosophical school-type. Strictly speaking this may be true, but the more important point would seem to be that the

³⁴ *Hippolytus and the Roman Church*, 440–4.

³⁵ *HE* 7. 27. 1 to 30. 17 (GCS, NF 6/2. 702–12).

³⁶ The extant fragments of the *acta* were published in 1952 by Henri de Riedmatten, *Les Actes du procès de Paul de Samosate: étude sur la christologie du III^e au IV^e siècle* (Fribourg, 1952), 135–58. See the resolution of questions raised by Marcel Richard, 'Malchion et Paul de Samosate. Le témoignage d'Eusèbe de Césarée', *Ephemerides Theologicae Lovanienses* 35 (1959), 325–30 regarding the accuracy of information relating to stenographers and other matters given by Eusebius and in the *Acta* of Paul's trial in Christopher Stead, 'Marcel Richard on Malchion and Paul of Samosata', in H. C. Brennecke (ed.), *Logos: Festschrift für Luise Abramowski zum 8. Juli 1993* (Berlin, 1993), 140–50.

³⁷ The custom of the exchange of letters of communion among bishops was established at about this time. See Cyprian, *Epp.* 45. 1. 2–3; 48. 3. 2; 55. 1. 2 (CCL 3B. 216–17, 229, 256). For discussion see P. Nautin, *Lettres et écrivains chrétiens des II^e et III^e siècles* (Paris, 1961), 116.

traditional use of dialogic discussion was adapted and turned in this case to a largely one-sided debate in a condemnation proceeding. This is the view taken by Sieben.³⁸

(iii) Early Western Councils

Apart from the reported gatherings in Rome and in Gaul at the end of the second century regarding the dating of Easter, the earliest known councils in the West are mentioned by Tertullian in reference to an alleged rejection of the *Shepherd* of Hermas from the canon of scripture ‘by every council of churches, even of your own [churches]’ (*ab omni concilio ecclesiarum etiam vestrarum*).³⁹ The personal reference is commonly understood to have been to Agrippinus, the first known bishop of Carthage, and his associates. The date of composition of the reference was probably 210/11,⁴⁰ and the councils to which he refers must have been held at about the turn of the century. Perhaps significantly for appraising the state of conciliar development in Africa at that time, Tertullian’s phraseology leaves the distinction between intra- and inter-ecclesial gatherings in ambiguity.

The first Western council of which we have clear knowledge was assembled at Carthage between 220 and 230⁴¹ under the leadership of Agrippinus, together with ‘a great many bishops’ who ‘governed’ (*gubernabant*) the church in the provinces of Roman North Africa and Numidia.⁴² In its apparently major action, the council addressed the growing question of the validity of baptism in groups outside the communion of the mainstream, and ‘determined and established by balanced examination of common consultation’ (*statuit et librata consilii communis examinatione*

³⁸ *Die Konzilsidee*, 468–9.

³⁹ *De pudicitia* 10. 12 (CCL 2. 1301).

⁴⁰ T. D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford, 1971), 55.

⁴¹ Opinions as to its date vary. Hefele (Hefele–Leclercq, i/1. 155–6) proposed 218–22. Rankin, *Tertullian and the Church*, 14 n. 27 opts for the widely accepted date of 217; Fischer, *Die Synoden*, 51 proposes ‘about 220’; *The Letters of Cyprian of Carthage*, trans. and comm. G. W. Clarke, 4 vols. (New York, 1984–9), iv. 197–8 gives credible reasons for a date ‘in the vicinity of 230’, based on the arguably greater likelihood of the issue of rebaptism being debated in Africa at that time rather than a decade earlier. (All English translations of quotations from Cyprian’s letters are taken from Clarke.) Our major sources of knowledge for this council are in Cyprian, *Epp.* 71. 4. 1, 73. 3. 1 (CCL 3C. 521, 532). Augustine, *De unico baptismo* 13. 22 (CSEL 53. 21), gives the number of assembled bishops as seventy, but the specificity of this seems doubtful. See *Letters*, ed. Clarke, iv. 196.

⁴² CCL 3C. 521.

firmiter) that grace is not operative outside the Church. While the language comes from Cyprian (*Ep.* 71. 4. 1)⁴³ some twenty-five to thirty-five years later, it is consistent with the understanding of the method and outcome of conciliar action that we have already seen above in connection with Eastern synods. Cyprian mentions another African council prior to his own time which condemned Privatus, bishop of Lambaesis, either on moral charges or for heresy. It was probably held at Carthage between 236 and 240 under the presidency of Cyprian's predecessor, Donatus, with ninety bishops present.⁴⁴ No record of minutes or procedures remains. Although no positive information is available for the occurrence of African councils other than those held under Agrippinus and Donatus before Cyprian's time, Clarke's conclusion that 'they were clearly an established feature of Church life in North Africa by the time of Cyprian's episcopate'⁴⁵ is undoubtedly correct.

A number of factors evidently led to a rapid and universal spread of collective episcopal deliberation after the general establishment of moniscopacy, which provided a single authoritative figure at the head of each local congregation. These included the shared needs of the churches in face of increasing regional doctrinal crises, the need to maintain unity against the pressures of schism, and the need to deal with the grave disciplinary problems which arose as a consequence of persecution of Christians by the state. The letters of Cyprian have fortunately preserved for us an immense store of information regarding numerous aspects of church life in mid-third-century Africa, inclusive of the organization, procedures, models, terminologies, and self-understanding of a recently developed system of ecclesial problem-solving. While the developing Western and African system was not identical with the Eastern, the fundamental principles were the same, and we can usefully employ a study of the African to provide a framework for understanding the mechanisms that produced the canonical legislation of the fourth century in both the West and the East.

Carthage was the civil capital of Proconsular Africa, and stood also as an administrative centre for Numidia and Mauretania. It is well recognized that the development of the echelons of provincial and metro-political leadership among the Christian churches generally followed the

⁴³ CCL 3C. 521.

⁴⁴ See Cyprian, *Epp.* 59. 10. 1, 36. 4. 1 (CCL 3C. 353, 3B. 176), with Clarke's comments in *Letters*, ii. 169, iii. 251–2. Fischer, *Die Synoden*, 162–4 proposes a closer range of possible dates between 236 and 240, which fits well with Clarke's conclusion that the council probably occurred early in the period between 236 and 248.

⁴⁵ *Letters*, i. 154 n. 8, and see *ibid.* iii. 17–28.

civil geographical political divisions, and the bishop of Carthage quite naturally assumed leadership for the churches of the whole of Roman North Africa,⁴⁶ not yet in the third century in any jurisdictional sense, but as *primus inter pares*, to use a later term. As primatial leader, Cyprian used the conciliar system regularly and well. During his episcopate (251–7) seven known councils were held at Carthage, some of them pan-African, drawing bishops from Numidia as well as Proconsular North Africa, and occasionally from the more distant Byzacena, Tripolitana, and Mauretania. The custom seems to have been established by Cyprian, if not before him, for councils composed of Proconsular bishops to be held at Carthage at least annually after Easter,⁴⁷ with occasional special councils in addition drawing from the wider area. The information regarding conciliar procedures and theory contained in Cyprian's reports of these councils—for which we rely on his epistles—is considerable. In order to examine the procedures, theory, and vocabulary, we need first briefly to identify the councils and their role in resolving the commonly experienced ecclesial problems of the time.

(iv) North African Councils Under Cyprian

(a) The first known council under Cyprian's presidency was held after Easter in the spring of 251, following his return from self-imposed exile during the preceding persecution.⁴⁸ The exact number of bishops attending is not known, but we are told of *copiosus episcoporum numerus*⁴⁹ being present, together with presbyters, deacons, and laity. The agenda mainly concerned conditions imposed for the reconciliation of those who had lapsed under persecution, and also dealt with disciplinary matters relating

⁴⁶ During the third century the bishop of Carthage was effectively primate over the whole of Roman North Africa: Proconsular Africa, Numidia, Byzacena, Mauretania, and Tripolitana. See J.-L. Maier, *L'Épiscopat de l'Afrique romaine, vandale et byzantine* (Rome, 1973), 246; and P. Monceaux, *Histoire littéraire de l'Afrique chrétienne*, 7 vols. (Paris, 1901–23), i. 13.

⁴⁷ V. Saxer, *Vie liturgique et quotidienne à Carthage vers le milieu du III^e siècle* (Vatican City, 1969), 16.

⁴⁸ M. M. Sage suggested that Cyprian may have presided over a council in the spring of 249, for which he calls upon Epp. 1–4 as evidence: *Cyprian* (Cambridge, MA, 1975), 147–53. The suggestion is implicitly rejected in Clarke's later dating of these epistles (*Letters*, i. 148–9, 161, 164, 170).

⁴⁹ *Ep.* 55. 6. 1 (CCL 3B. 261), and *coepiscoporum nostrorum multorum* in *Ep.* 59. 9. 1 (CCL 3C. 350), with other less superlative accountings of the attendance in other letters. Clarke notes that these terms may indicate a sensitivity on Cyprian's part that a number of bishops failed to attend (*Letters*, iii. 170 n. 20).

to a schism at Carthage perpetrated by a rebellious confessor deacon, Felicissimus, and to a schismatic Numidian bishop Privatus and his followers.⁵⁰

(b) The council at Carthage in the spring of 252 began on 15 May and was attended by sixty-seven bishops including Cyprian. Cyprian's *Epistle* 64 reports the actions of the council on behalf of the participating bishops to Fidus (presumably a bishop who was unable to attend) on questions that he had raised regarding infant baptism and the reconciliation of a particular lapsed presbyter by another bishop.⁵¹ This is, as Fischer points out, the oldest conciliar letter that we possess, although it may not be comprehensive, for the assembly probably dealt with other issues beyond those raised by Fidus.

It is noteworthy that by this time councils, as occasions of collective action, were beginning to concern themselves with the actions of individual bishops within their own churches in the interest of developing uniform procedures and policies. The often repeated adage of Cyprian that a bishop is free to act as he judges best and is answerable only to God for the administration of the affairs of his own church⁵²—an opinion probably widely if not universally shared at the time—was held by Cyprian throughout his career, but we observe that it is clearly in tension with the development of collegial determination of policy and doctrine in council as a corrective to its own disruptive tendency. Cyprian himself speaks to this matter in the context of his emphasis on individual episcopal freedom on the one hand and the necessity of preserving peace and harmony within the episcopate and unity in the Church on the other,⁵³ but his own extensive use of the conciliar system demonstrates

⁵⁰ No documentation remains from this council and information regarding it must be pieced together from Cyprian's letters, especially *Epp.* 55 and 59. Clarke provides a good summary description of its decisions in *Letters*, iii. 19–21. For more extensive discussion of the council see Fischer, *Die Synoden*, 165–82.

⁵¹ For the text of the epistle see *Letters*, iii. 109–12 and CCL 3C. 418–25. For a discussion of the council see Fischer, *Die Synoden*, 190–200.

⁵² See *Epp.* 55. 21. 2; 57. 5. 2; 69. 17; 72. 3. 2; 73. 26. 1. One of Cyprian's most forceful statements is found in *Ep.* 73. 26. 1 to Bishop Iubaianus: 'We have written this brief reply to You . . . without, however, laying down prescriptions to anyone nor condemning anyone beforehand; we do not wish to prevent any bishop from doing what he thinks right, for he is free to exercise his own discretion' (*Letters*, iv. 69; CCL 3C. 561). Significantly, these attestations of the individual bishop's freedom and responsibility were made before the outbreak of Cyprian's controversy with Stephen of Rome and his negative reaction to what he regarded as interference in African episcopal decisions. See the now classic article by Maurice Bévenot, 'A Bishop is Responsible to God Alone (St. Cyprian)', *Recherches de science religieuse*, 39 (1951–2), 397–415.

⁵³ 'Manente concordiae vinculo et perseverante catholicae ecclesiae individuo sacramento, actum suum disponit et dirigit unusquisque episcopus rationem propositi sui domino redditurus' (*Ep.* 55. 21. 2 = CCL 3B. 280).

his conviction as to the need for regulated collective action and collective responsibility.

(c) The spring council in 253, comprising forty-two bishops mainly from Proconsular Africa, treated the question of the reconciliation of the lapsed once more, but now in the face of anticipated further persecution. A blanket amnesty was granted to penitent *lapsi* so that they might be strengthened for the expected trials to come. The council is reported in Cyprian's *Epistles* 56 and 57. *Epistle* 57, addressed to Cornelius of Rome, in a conciliar letter, the earliest known of the later conventional type, with the names of the participants given in the heading.⁵⁴

(d) Thirty-two bishops assembled in Carthage for what was probably the post-Easter council of 254 or 255.⁵⁵ The main topic for discussion was the validity of heretical baptism, which had arisen with regard to the reception of converts from Novatianism who had been baptized within that schismatic group. The major documentary witness for the council is Cyprian's *Epistle* 70, a conciliar letter from the assembly to a group of eighteen Numidian bishops. The unanimous decision of the council to require the rebaptism of such converts formally introduced the issue over which Cyprian would be embroiled in controversy with Stephen of Rome and which would provide the agenda for further African and Roman councils.⁵⁶

(e) Seventy-two African bishops met at Carthage in council during the late spring of 256.⁵⁷ Cyprian's *Epistle* 72, a conciliar letter to Stephen of Rome, is the major source of information regarding the work of the council, which is described by the phrase 'many matters of business were raised and transacted'.⁵⁸ The major action reported by Cyprian was the council's confirmation of the previous assembly's decision that converts from heresy and schism (*haereticos et schismaticos*) must receive the baptism of the Church. This formal notice to Stephen of the solidification of the African position marks the inception of the controversy between the two

⁵⁴ For further discussion of this council see *Letters*, iii. 212–16 and Fischer, *Die Synoden*, 201–15.

⁵⁵ Fischer, *ibid.* 237 maintains that the council must have been held in the spring or late summer of 255; Clarke (*Letters*, iv. 192) proposes spring 255 as a first option and spring 254 as a second.

⁵⁶ For discussion of the council see *Die Synoden*, 234–48.

⁵⁷ Clarke and Fischer agree on the dating of this council. For Clarke's comments on its date and circumstances see *Letters*, iv. 211–15; for Fischer's treatment see *Die Synoden*, 249–63.

⁵⁸ *Ep.* 72. 1. 1: 'multa quidem prolata atque transacta sunt' (CCL 3C. 523).

leaders. *Epistle 73*, written by Cyprian to Bishop Iubaianus after this same council, was considered by Cyprian to be his own most developed statement of the African position.⁵⁹

(f) The climax of Cyprian's career as leader of the churches in Roman North Africa and of his campaign to establish the requirement, and indeed the theology, of the rebaptism of converts who had been baptized in communities separated from the communion of the mainstream, occurred at the council that convened at Carthage on 1 September 256.⁶⁰ With eighty-seven bishops in attendance, this was the largest council assembled in Africa during the years of Cyprian's episcopate. It was also the earliest council or synod, East or West, for which a verbatim record of the debate and vote has survived. The document of record is preserved under the title *Sententiae episcoporum numero LXXXVII de haereticis baptizandis*. In his opening statement, Cyprian alludes to the presence of bishops from Africa, Numidia, and Mauretania; that is to say a large portion of Roman North Africa. None of the bishop participants identified by their recorded *sententiae* were from Mauretania, but Cyprian's allusion may have been to Iubaianus, who probably held a Mauretanian see;⁶¹ his letter of inquiry to Cyprian (not now extant), Cyprian's response (*Ep. 73*), and Iubaianus' letter of agreement were informational centrepieces to the conciliar debate.

(g) *Epistle 67* is a conciliar letter of a gathering of thirty-seven bishops assembled at Carthage addressed to two Spanish congregations regarding their bishops, Basilides and Martial, who had lapsed in persecution and who wished to be restored to their sees. The date of the council is uncertain. Fischer would place it in the autumn of 254, but Clarke, while allowing for a variety of possible dates between autumn 254 and spring 257, prefers autumn 256 with a smaller group of bishops who he suggests remained in Carthage after the council of 1 September 256.⁶² Clarke's proposed dating seems the more plausible.

⁵⁹ Cyprian read this letter in his opening statement at the subsequent council of 1 September 256, and also later in the session gave his own opinion as a member of the council with the words 'meam sententiam plenissime exprimit epistula quae ad Iubaianum collegam nostrum scripta est': *Sent. LXXXVII episc.*, praef. and *sent.* 87 (CSEL 3/1. 435, 461).

⁶⁰ Fischer is of the opinion that 1 September may instead have been the date on which the votes were taken (*Die Synoden*, 265; for his discussion of the council see *ibid.*). The proceedings are edited in CSEL 3/1. 435–61.

⁶¹ Maier, *L'Épiscopat*, 243.

⁶² Fischer, *Die Synoden*, 216 and n. 3, and *Letters*, iv. 139–40, 142–4. R. Seagraves, *Pascentes cum disciplina* (Fribourg, 1993), 315 dates *Ep. 67* to spring 256, but does not provide supporting discussion. For a review of the council itself, see Fischer, *op. cit.* 216–33.

(v) Conciliar Arrangements and Participants

Without giving exhaustive citations of the evidence contained in Cyprian's epistles and in the *Sent. LXXXVII episc.*, a clear understanding of the arrangements, participants, procedure, and vocabulary of the mid-third-century African councils can be presented from a selection of texts drawn from these materials. First, we shall consider the arrangements and participants. For special councils, apart from the normally annual post-Easter council at Carthage, the decision to hold one was evidently made by the primatial bishop of Carthage, either alone or with a small advisory council of bishops,⁶³ and frequently in consultation with his presbyters, deacons, and the laity (the *plebs*). The first person plural in the statement 'we considered it necessary . . . to summon and convene a council' (*Ep.* 72. 1. 1. 1) is probably collective and not editorial. Bishops frequently came to councils in the company of several presbyters or deacons,⁶⁴ and numbers of the laity of the community in which the council was held (Carthage in the cases here considered) were normally present.⁶⁵

In council the bishops were seated together near the altar (*considentibus dei sacerdotibus et altari posito*; *Ep.* 45. 2. 2) and the presbyters sat with them (*Epp.* 1. 1. 1; 39. 3. 2), while the *plebs* and lower clergy stood.⁶⁶ As this describes the arrangement for a liturgical setting, we may reasonably conclude that the council sessions were associated with a community celebration of the Eucharist. While it is evident that normally only bishops were allowed to vote in the councils of Cyprian's time,⁶⁷ there are indications in his letters that the situation may have been more fluid and the role of the clergy and people may have been somewhat stronger than has been commonly judged. Advice (*consilium*) from the presbyters and deacons and the *consensus* of the people were indeed stated by Cyprian to be cardinal principles in the conduct of his office.⁶⁸ As we shall see

⁶³ Small advisory councils, or *consilia*, are mentioned in *Epp.* 34. 1. 1, 59. 10. 2 (CCL 3B. 167, 3C. 353–4), and also in *Ep.* 3. 1. 1 (CCL 3B. 9), not by name but in fact. For the same practice at Rome see *Ep.* 49. 2. 1 and 3 (CCL 3B. 233–5). The use of *consilia* by officials of all ranks was common in Roman society: W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, trans. J. M. Kelly (Oxford, 1966), 93.

⁶⁴ *Ep.* 59. 15. 1 (CCL 3C. 363); *Sent. LXXXVII episc.*, praef. (CSEL 3/1. 435); and see *Letters*, iii. 259–60 for n. 76 appertaining to p. 83.

⁶⁵ *Ep.* 19. 2. 2 (CCL 3B. 104); *Sent. LXXXVII episc.*, praef.: 'praesentibus etiam plebis maxima parte' (CSEL 3/1. 435).

⁶⁶ *Letters*, i. 150, n. 3; ii. 194 n. 26.

⁶⁷ See the voting record (*sententiae*) in the *Sent. LXXXVII episc.*

⁶⁸ *Ep.* 14. 4: 'quando a primordio episcopatus mei statuerim nihil sine consilio vestro [the presbyters and deacons of Carthage] et sine consensu plebis meae privatim sententia gerere' (CCL 3B. 83).

below, *consensus* for Cyprian is agreement achieved through critical examination and discussion, and is certainly not to be understood as simple acquiescence. There is ample evidence that the principles stated placed both clergy and laity in a frequently forceful role in guiding the directions and conclusions of conciliar debate and in influencing Cyprian's personal thinking.

In *Ep.* 59. 15. 1 to Cornelius of Rome, Cyprian advised him that the schismatics Fortunatus and Felicissimus had been condemned in council (spring 251) by a large number which included presbyters and deacons,⁶⁹ indicating that on this occasion the higher clergy were allowed to vote. At the Carthaginian council of spring 254(?), the bishops were apparently joined by the presbyters in decreeing the necessity of the rebaptism of heretics returning to the Church.⁷⁰ The continuing role of presbyters and deacons in mid-third-century conciliar proceedings is also attested by Eusebius, who tells us that the Roman council of 251 was attended by sixty bishops and an even greater number of presbyters and deacons.⁷¹ It is not stated whether these voted or not, but their numbers indicate the importance of their presence. Firmilian tells of an annual assembly of *seniores et praepositi* held in Cappadocia so that matters of importance could be resolved (*ad disponenda*) by common counsel (*communi consilio*).⁷² While the question has been debated, Clarke is supported by others in his opinion that *seniores* refers to presbyters and *praepositi* to bishops.⁷³ The proceedings itself was clearly similar to the contemporary African councils.

Several passages attest to the active participation by the *plebs* in preconiliar and also in conciliar discussions. The passages and their evidence are as follows.

- (a) *Ep.* 17. 1. 2 and 3. 2 (May 250) to the laity at Carthage who faithfully withstood the persecution: when Cyprian has returned from exile and both before and after the bishops have been called together in council,

⁶⁹ CCL 3C 363: 'eorum qui priore anno iudicaverunt numerus cum presbyteris et diaconis'.

⁷⁰ *Ep.* 71. 1. 1: 'De qua re quid nuper in concilio plurimi coepiscopi cum compresbyteris qui aderant censuerimus ut scires, eiusdem epistulae exemplum tibi misi' (CCL 3C. 516).

⁷¹ *HE* 6. 43. 2 (GCS, NF 6/2. 612).

⁷² Firmilian's letter to Cyprian: *Ep.* 75. 4. 3 of the Cyprianic collection (CCL 3C. 585).

⁷³ *Letters*, iv. 254–5. Although they recognize that *seniores* could also be construed to mean 'bishops', A. Vilela, *La Condition collégiale des prêtres au III^e siècle* (Paris, 1971), 221–4 and C. H. Turner, *Studies in Early Church History: Collected Papers* (Oxford, 1912), 29 regard the primary meaning of the term in this context as presbyters.

the requests of the martyrs on behalf of the lapsed will be considered in the presence of the laity and with the help of their judgement (*sententia*).⁷⁴

- (b) *Ep.* 19. 2. 2 from Cyprian to the presbyters and deacons at Carthage on the same subject: that the bishops should assemble with the clergy in the presence of the laity 'jointly to settle all matters by taking sacred counsel together (*consilii communis religione*)'.⁷⁵
- (c) *Ep.* 30. 5. 3 from the presbyters and deacons at Rome to Cyprian (summer/autumn 250): 'we must wait first, until the Church has peace, and then, after bishops, presbyters, deacons, confessors, and the laity who have remained steadfast (*stantibus laicis*) have exchanged views in consultation together (*conlatione consiliorum*), we can deal with the question of the lapsed'.⁷⁶
- (d) In *Ep.* 43. 7. 2 written to his entire congregation at Carthage just before his return from exile for Easter 251, Cyprian states: 'In the presence of these colleagues [the bishops who would assemble in council] we shall be able to arrange and determine whatever needs to be done, acting in accordance with your views as well as with the common counsel of all (*secundum arbitrium quoque vestrum et omnium nostrum commune consilium*)'.⁷⁷

These statements bespeak anticipated community dialogue involving the laity and clergy together with their own bishop and the other bishops who were to be present at the forthcoming council. It is likely that this resembled, in modified form, the type of community dialogue in which we have seen the laity previously engaged in the assemblies in Asia Minor that were concerned with the question of the New Prophecy. We know nothing of the form of the discussions regarding the dating of the Pasch, but as we have seen, Origen's mid-third-century dialogue with Beryllus, his subsequent Arabian discussion, his dialogue with Heraclides, and Dionysius' dialogue at Arsinoe all took place in the presence of the people of the respective communities and with the refutation of the false teachings that had stirred up dissensions within them as their goals. In the *Dialogue with Heraclides* Origen asked the permission of the people as well as of the bishops and presbyters before giving his own opinion on the matter under discussion, and subsequently stated that by the solemn agreement of the people his points of teaching would be 'legally binding and established' (ὡς νομοθετημένα καὶ πεπηγμένα).⁷⁸ At Arsinoe, the

⁷⁴ CCL 3B. 97, 98.

⁷⁵ *Letters*, i. 100; CCL 3B. 104.

⁷⁶ *Letters*, ii. 30; CCL 3B. 145.

⁷⁷ *Letters*, ii. 67; CCL 3B. 209.

⁷⁸ *SC* 67. 68, line 6, and see p. 62, ll. 18–23; Oulton–Chadwick, *Alexandrian Christianity*, 441 and 440. It would be anachronistic to understand the Oulton–Chadwick translation of ὡς νομοθετημένα ('legally binding') in a juridical sense. A preferable translation would be 'strictly observed'.

peoples' participation in the discussion is described in Dionysius' account.⁷⁹

By Cyprian's time the situation had changed. The late second and early third century was a period of transition, and the nature and structure of the council had progressed well beyond the earlier stage. By the early third century monepiscopacy was almost universally in place and the bishops were becoming aware of their collective identity and their collective authority and responsibility to resolve the ecclesiastical issues of the day. Although the evidence is meagre, what we seem to see is the development of the inter-ecclesial synod or council from the intra-ecclesial assembly through the solidification of monepiscopal government and a resulting diminution of the role of presbyters, deacons, and laity.⁸⁰ As Cyprian's letters attest, the clergy and laity could still exercise a forceful role, and Cyprian himself supported this by his own stated policy, but the council was largely an episcopal forum. The development of the council in its final form as an exclusively episcopal assembly would reach its completion in the fourth century.

(vi) Conciliar Procedure

A general recognition has emerged in recent decades that conciliar procedures in the early Church were largely established by adaptation from Roman governmental models. The same was true over a longer period for the development of ecclesial administration and law. The matter of ecclesial law will be treated below in Chapter 3. With regard to councils, Heinrich Gelzer proposed in 1907 that the close similarities between the procedures employed by the Roman senate and those of the ecumenical councils following the Peace of the Church derived from the Emperors'

⁷⁹ HE 7. 24. 8 (GCS, NF 6/2. 688–90; Lawlor–Oulton, *Eusebius*, i. 236).

⁸⁰ This general view is held by Junod, 'Naissance de la pratique synodale,' 163–72, by Zizioulas, 'Épiscopè et Épiscopos', 494, and by E. Lanne, 'L'origine des synodes', *Theologische Zeitschrift*, 27 (1971), 201–22 (esp. 211–18). See also James Alexander, 'Church Councils and Synods', in I. Hazlett (ed.), *Early Christianity: Origins and Evolution to A.D. 600* (London, 1991), 124–6. For discussion of the lay presence at early councils and its disappearance during the fourth and fifth centuries, see J. Speigl, 'Zum Problem der Teilnahme von Laien an den Konzilien im kirchlichen Altertum', *AHC* 10 (1978), 241–8. For the second and third centuries see C. Guarnieri, 'Note sulla presenza dei laici ai concili fino al VI secolo', *Vetere christianorum*, 20 (1983), 77–91. For an examination of the changing role of the laity generally from the second to fourth centuries see A. Faivre, *Les Laïcs aux origines de l'Église* (Paris, 1984), 61–163.

intent that councils should function in parallel fashion to the Roman senate for the regulation of ecclesiastical affairs.⁸¹ Pierre Batiffol subsequently claimed that the procedures of earlier councils as well, including the third-century African councils, were modelled by churchmen themselves on the procedures employed by the senate.⁸² The two major modern contributors to the early history of councils, J. A. Fischer (in the articles collected in *Die Synoden*) and H.-J. Sieben (*Die Konzilsidee*) have followed mainly in line with Batiffol's conclusions, Fischer relying somewhat on Sieben, and Sieben working out his own exposition from evidences provided by Mommsen's monumental *Römisches Staatsrecht*.⁸³ Elisabeth Herrmann has also concluded in an extensive study of what she views as the development of the Church into a state-like institution within the state that the example of the senate was predominant in the development of the council and its procedures.⁸⁴ Jean Gaudemet, while emphasizing that church councils are not simply copies of the Roman senate, agrees that they followed its procedural example.⁸⁵

Other suggestions for the development of the council and the shaping of its procedures have been advanced as well. Subsequent to the publication of the works of Herrmann, Sieben, and Fischer, P. R. Amidon presented a well-argued observation that the form of action adopted by church leaders in the development of the conciliar system of church government in third-century Africa were parliamentary procedures that were by that time employed by a variety of organizations, public and private—provincial assemblies, municipal councils, and *collegia* or guilds, as well as the senate—and that it is impossible to attribute with certainty the influence leading to their ecclesiastical use to the example provided by any one of these bodies in particular.⁸⁶ This point was not, in fact, unobserved by Batiffol himself, who nevertheless regarded the senate as the basic source of parliamentary procedure. Amidon argued that the Roman senate no longer exercised a significant role in public affairs at the time of the mid-third-century African councils and dismissed it as a likely

⁸¹ *Ausgewählte kleine Schriften* (Leipzig, 1907), 144.

⁸² 'Le règlement des premiers conciles africains', *Bulletin d'ancienne littérature et d'archéologie chrétiennes*, 3 (1913), 3–19; id., *Études de liturgie et d'archéologie chrétienne* (Paris, 1919), 84–153.

⁸³ Mommsen, *Römisches Staatsrecht*, 3rd edn. (Leipzig, 1887–8), iii/2. 951–1003.

⁸⁴ *Ecclesia in re publica: Die Entwicklung der Kirche von pseudostaatlicher zu staatlich inkorporierter Existenz* (Frankfurt am Main, 1980), 61–70.

⁸⁵ *La Formation du droit séculier et du droit de l'Église aux IV^e et V^e siècles*, 2nd edn. (Paris, 1979), 145–6. For further treatment of this topic by Gaudemet in a broader context see his essay 'Elementi giuridici romani nella formazione del diritto ecclesiastico dei primi secoli', in the multi-author volume *Mondo classico e cristianesimo* (Rome, 1982), 171–82.

⁸⁶ 'The Procedures of Cyprian's Synods', *Vigiliae Christianae*, 37 (1983), 328–39.

model, opting instead in favour of the 'municipal councils', by which we are to understand municipal senates or popular assemblies. Shortly before Amidon's article appeared, a case for the structuring of councils on the model of the Roman provincial assembly was presented by Cyrille Vogel.⁸⁷

The focus of Amidon's article is the origin of the procedures of the councils held under Cyprian in mid-third-century Africa, and he adduces evidence in support of his suggestion that a knowledge of the municipal council would have been likely among the bishops of North Africa where municipal government was particularly strong. Vogel presents several similarities between provincial assemblies and church councils. Most importantly he notes the essentially religious character of both, presidency by the leading members of the cultic priesthood in the one case and the Christian priesthood in the other, requirements for regular meetings, and the establishment of a hierarchy of jurisdictions for both in meetings on the provincial and regional levels.

It is not unlikely that both the municipal council and the provincial assembly had some influence on the shaping of Christian conciliar procedures, the municipal council perhaps particularly in Africa, and the provincial assembly in the East where the roots of that institution were older and stronger, but it does not seem plausible to focus exclusively on the one or on the other of these, and it must be recognized that each has its weaknesses as a proposed conciliar model. Amidon's study is directed specifically towards conciliar development in Africa, but the same conciliar form was also employed at Rome in Cyprian's time, where the 'town council' was, in fact, the senate, and it seems likely that the same conciliar form was also known in Gaul and Spain (see Ch. 2, introduction). But in not being simply the Roman town council, the senate possessed a universality of function and purview which would have far more likely fitted the needs of the episcopal assemblies than would those of the local deliberative bodies. Furthermore, by the third century the municipal senate, as well as the Roman senate, had been largely deprived of its legislative power through encroachment by the imperial government, and the local popular assembly had also gradually declined.⁸⁸ The force of Vogel's proposal is similarly weakened by the fact that the provincial assembly was by its very functions inherently lacking in legislative, administrative,

⁸⁷ 'Primatiale et synodalité dans l'Église locale durant la période anténicéenne', in *Aspects de l'orthodoxie: Colloque de Strasbourg, novembre 1978* (Paris, 1981), 61–3.

⁸⁸ F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton, 1926), 58, 68.

and judicial power.⁸⁹ Herrmann explored the *κοινὸν* as a federation of community assemblies in the East standing in an evolutionary relationship behind the Eastern provincial assemblies, but she dismissed it as a possible model for the Eastern Christian councils because of fundamental differences between it and the council regarding membership, meeting places and rituals.⁹⁰

The probability that a predominant role was played by the Roman senate in providing a model for the council remains. A study of the senate during the period 30 BC–AD 238 by R. J. A. Talbert has shown that it continued to be a respected institution contributing to imperial government, albeit in diminished fashion, well into the third century.⁹¹ It is indeed noteworthy that decrees of the senate played a noticeable role in society in Tertullian's time, for he specifically refers to *senatus consulta* that apparently forbade certain types of meetings.⁹² The activity of the senate is obscured in the political turmoil affecting the empire during the latter half of the third century, but its continuing importance as a venerable if largely pro-forma body is evident again under Constantine and his successors in the fourth and fifth centuries both at Rome and at Constantinople.⁹³

The use of the common parliamentary procedure by episcopal assemblies is, however, not at question. The procedure consisted of four stages. The stages and the terms used in reference to their implementation are as follows. First, the *relatio*, or presentation of the issue for consideration was made by the president of the session. Second, a roll-call was taken in which each member of the assembly was asked to state his opinion (*sententia*) in response to the question *quid fieri placet* or the instruction *verba facere, sententiam dicere*, or similar phrases. Third, a vote expressed by *placet* or *non placet* was taken on a resolution prepared from the *sententiae*, with the act of voting denoted by the verb *censere*. Joining in support of the *sententia* of another was referred to as *adsentiri*. The second and third stages could be combined, and frequently were so in ecclesiastical use. Fourth, a letter was prepared to be sent to interested parties conveying the assembly's decisions.⁹⁴

⁸⁹ Ibid. 174.

⁹⁰ *Ecclesia in re publica*, 61–5; for background see Abbott and Johnson, *Municipal Administration*, 21–30, 163–4.

⁹¹ *The Senate of Imperial Rome* (Princeton, 1984), 302, 407.

⁹² *De ieiunio* 13. 6 (CCL 2. 1272).

⁹³ Ch. Lécirvain, *Le Sénat romain depuis Diocétien à Rome et à Constantinople* (Paris, 1888), 75–7.

⁹⁴ The procedure and the terms employed in parliamentary use are well described at greater length by Sieben, *Die Konzilsidee*, 478–81; by Talbert, *The Senate*, 221–302; and most completely by Mommsen, *Römisches Staatsrecht*, iii. 951–1003. For the recorded minutes of a meeting of the Roman senate held in AD 438 for the formal reception of the Theodosian Code, see *Theodosiani Libri XVI cum constitutionibus Sirmondianis* (Berlin, 1905), ed. Th. Mommsen and P. M. Meyer, i/2. 4–7; or in English translation in *The Theodosian Code and Novels and the Sirmondian Constitutions*, trans. C. Pharr et al. (Princeton, 1952), 3–7. It must be borne in mind that the Roman senate was not at this time a truly deliberative or legislative body, but a prestigious affirmatory assembly under the control of the emperor.

(vii) The Vocabulary of Conciliar Procedure

The record of the proceedings at the Carthaginian council of 1 September 256 provides a clear example of the procedure just described. The record itself—the *Sent. LXXXVII episc.*—is the statement prepared to convey the council's decision to others, and it begins with information as to date, place, and the names of participants, all of which were standard to a civil document of this type. We are told that letters were read providing background information for the ensuing discussion, which was then introduced with Cyprian's *relatio*, concluding with a request for each bishop to express his view of the matter (*singuli quid sentiamus*). The recorded responses of the other eighty-six bishops are followed by Cyprian's *sententia* in conclusion.⁹⁵ The variety of technical parliamentary terms employed by the bishops in their responses (as numbered in the CSEL text) indicates that most of them intended their response to be understood not only as an opinion but as a vote for the unanimous opinion which was apparently anticipated. Response 9 and 87 used *sententia*, 8 and 69 used the cognates *consentire* and *sensi*; 2, 8, 11, 22, 31, 32, 33, 41, 43, 72, and 74 employed *censeo* in expression of their vote, which was similarly expressed by 16 and 83 as *censemus* and by 86 as *censuimus*; 6 as *decerno*, 38 and 59 as *decrevimus*, and 4 as *decretum* in the sense of formal determination;⁹⁶ 21, 23, and 36 as *vindicare*, expressing the Church's legal claim upon baptism to the exclusion of heretical or schismatic groups.

Cyprian's letters also provide evidence for the accustomed use of parliamentary procedure at the earlier councils held during his episcopate. Cyprian makes frequent use of the forms of *placere* (most frequently *placuit*), which was a technical term of agreement or the resolution of an

⁹⁵ *Sent. LXXXVII episc., sent. 87* (CSEL 3/1. 435–61, at 436).

⁹⁶ *Decretum* was a term adopted from Roman law by Tertullian and applied to divine law. See *De carnis resurrectione* 14, 21 and *De pudicitia* 19 as listed by A. Beck, *Römisches Recht bei Tertullian und Cyprian: Eine Studie zur frühen Kirchenrechtsgeschichte* (Schriften der Königsberger gelehrten Gesellschaft, Geisteswissenschaftliche Klasse, 7/2; Halle, 1930; repr. Aalen, 1967), 129 [103] (repr. 103). See also Mommsen, *Römisches Staatsrecht*, iii. 988; and Sieben, *Die Konzilsidee*, 98 and n. 159.

issue by the senate and other assemblies.⁹⁷ In *Ep.* 59. 9. 3 Cyprian writes *omnium nostrorum concilio placuit* in relation to a decision of the council of May 252; in *Ep.* 55. 17. 3 we find *et ideo placuit* relating to a decision of the council of spring 251; and *placuit nobis sancto spiritu suggerente* in *Ep.* 57. 5. 1, relating to the council held in May 253. *Statuere* (*statueramus*) is used in *Ep.* 57. 1. 1 as a close synonym to *placuit* to denote a collective agreement or determination. *Decreti* is a yet stronger term connoting an authoritative decision, as in the conciliar letter *Ep.* 64. 1. 1: *decreti nostri auctoritate*. *Censuimus* is used to refer to the voting process at the councils of spring 251 and 253 in *Epp.* 44. 1. 1 and 57. 1. 1. *Epistle* 59. 10. 1 refers to the *sententiae* of ninety bishops who condemned Privatus of Lambaesis at a council prior to Cyprian's episcopate, and Cyprian in *Ep.* 64. 6. 1 describes the decision regarding infant baptism at the council of spring 252 with the phrase *haec fuit in concilio nostra sententia*, where *sententia* is used to express collective judgement.

These are only a few examples of the occurrence of Roman governmental or civil parliamentary terms and accompanying concepts in Cyprian's writings in reflection of North African church use during the period of his episcopate. It is noteworthy that there is no discernible development of this use within the time period of Cyprian's epistles. Indeed, the development must have taken place between the time of Tertullian, who pioneered the adaptation of legal models to ecclesiastical use, and the very early years of Cyprian's episcopate. Before the end of Cyprian's time conciliar action had become an established means of African church government, and, as we have observed, it was also employed at Rome and was undoubtedly paralleled elsewhere in the West during the third century, although no specific information is available for the period prior to the council of Elvira in Spain early in the fourth.

(viii) The Idea of the Council

Historically, the theory of councils is rooted in ecclesiology. In the earliest deliberative assemblies that we have identified we have seen them to have been communities of the local churches, singly or together, in search of solutions for their internal problems and clearer articulation of their faith.⁹⁸ In its early ecclesiological setting, a council was the Church in

⁹⁷ Fischer, *Die Synoden*, 199 and n. 65; 212 and n. 121.

⁹⁸ It must be observed that the most fundamental function of the congregational assembly in the early church was the election of the bishop by the people. All else in their relationship with him and his with them was grounded on that act. At the beginning of the third century, Hippolytus states that a bishop is to be chosen by all the people (ἅπὸ παντὸς τοῦ λαοῦ) and that the choice shall be approved by the assembled bishops and presbyters (*The Treatise on the Apostolic Tradition of St. Hippolytus of Rome*, ed. G. Dix, rev. H. Chadwick (London, 1968), 2–3). While attributing a more passive but no less determinative function to popular suffrage, Origen tells us: 'Requiritur enim in ordinando sacerdote et praesentia populi, ut sciant omnes et certi sint quia qui praestantior est ex omni populo . . .': *In Leviticum homilia*, 6. 3, ed. W. A. Baehrens, *Homiliae in Leviticum* (GCS 29 Origenes 6; Leipzig, 1920), 362–3. For Cyprian's views in this matter see *Epp.* 55. 8. 4: 'Cornelius was made (*factus est*) bishop by the choice of God and of his Christ, by the favourable witness (*testimonio*) of almost all of the clergy, by the votes (*suffragio*) of the laity then present, and by the assembly of bishops' (*Letters*, iii. 37–8; CCL 3B. 265). In *Ep.* 67. 3. 2 Cyprian states that as the *plebs* have the power to elect bishops who are worthy they also have the power to reject unworthy ones (*quando ipsa maxime habeat potestatem vel eligendi dignos sacerdotes vel indignos recusandi*, CCL 3C. 452), for in his view they are obliged to separate themselves from a 'sinful priest'. For brief discussion see A. Vilela, *La Condition collégiale*, 64–5, 165–6, 306–10. For further treatment see R. Gryson, 'Les élections ecclésiastiques au III^e siècle', *RHE* 68 (1973), 353–404.

action for the advancement of its own well-being as the community of the Holy Spirit⁹⁹ and as the one house of God, where salvation can be found.¹⁰⁰ This is the first element of the theory. We have seen that in the second century the centre of ecclesiological focus was the congregational community, and this, still in the time of Cyprian, is where synods and councils had their base. The work of the council was dialogue and decision: dialogue and decision enriched by the attributed influence of the Holy Spirit,¹⁰¹ and guided, if not managed, by ministries which were in process of development and trending towards centralization. The desired outcome was *consensus* among all participants, which for Cyprian and his colleagues was the necessary and ultimate means for ecclesial decision-making and for the resolution of disputed issues.¹⁰² This is the second element of the theory. The theory itself was in process of development as

⁹⁹ Irenaeus, *Adversus haereses* 3. 24. 1 (SC 110. 474–5; ANF 1. 458).

¹⁰⁰ Cyprian, *Ep.* 4. 4. 3 (CCL 3B. 24).

¹⁰¹ Cyprian, *Ep.* 57. 5. 1 (CCL 3B. 308): 'placuit nobis sancto spiritu suggerente et domino per visiones multas et manifestas monente'. Clarke (*Letters*, iii. 224 n. 31) points out that this attribution of divine influence appears to refer only to the decision to grant reconciliation to the fallen on a case-by-case basis, and cautions against understanding Cyprian as asserting that the Spirit 'brooded over' the council as a whole.

¹⁰² The *consensus* principle is illustrated in the following (Clarke's translation of *consensus* is usually 'agreement'): *Ep.* 25. 2 (CCL 3B. 124; given in *Letters*, i. 110 as *Ep.* 25. 1. 2); *Ep.* 32. 2 (CCL 3B. 163; given in *Letters*, ii. 39 as *Ep.* 32. 1. 2); *Ep.* 48. 2. 2 (CCL 3B. 229; given as a misprint of 48. 1. 2 for 2. 2 in *Letters*, ii. 75); *Ep.* 55. 8. 1, proclaiming a *consensus* among the bishops of the entire world (*numerus universus per totum mundum concordī unanimitate consensit*) in recognition of Cornelius as the rightfully appointed bishop of Rome (CCL 3B. 264); *Ep.* 70. 1. 2, a statement of *consensus* in council from 32 bishops to 18 colleagues regarding the necessity of rebaptizing those who come to the Church from heresy (CCL 3C. 503); *Ep.* 72. 2. 1 (CCL 3C. 525).

the weight of effective opinion shifted from the local communitarian base of the council to the visiting participating bishops who were gradually appropriating the conciliar base to their own collegial body. This process can be seen in the material which we have examined, and its end-point would seem to be theologically driven by the high view of episcopacy expressed by Cyprian¹⁰³ and widely promoted by him, as well as having been stimulated by the practical need of the churches and the Church for an efficient mechanism of collective decision-making.

Several matters are to be noted. First, *consensus* was a principle that was deeply ingrained in Roman culture. Klaus Oehler has shown in a valuable study that consensus was a principle espoused by Plato, Aristotle, and other early Greek philosophers as a basis for the discovery of truth and ethical values and that the principle later became applied to Roman and Christian institutional life.¹⁰⁴ In Cicero's interpretation of the Greek ὁμολογία (or κοινωνία) τῶν ἄνθρώπων, translated as *consensus (omnium)*, the principle was moved into the realms of the social and political good. Under Augustus and his successors during the period of the Principate and beyond, the head of state, in fictionalized theory, was called to sovereignty by the *consensus* of gods and men (*deorum hominumque consensu ad imperium vocatus*), and the senate and other deliberative bodies sought decisions by *consensus*. The Christian Church, growing to maturity in this society quite naturally (and certainly in a congenial relation with its own practice as a self-governing community) applied the *consensus* principle and adapted Roman governmental practice to its own institutional life. The appointment of bishops by God and men¹⁰⁵ and the conciliar system with its consensual protocol are major applications.¹⁰⁶

¹⁰³ 'There is one episcopate, a part of which is held by each individual for the whole' ('Episcopatus unus est, cuius a singulis in solidum pars tenetur': *De catholicae ecclesiae unitate*, 5; CSEL 3/1. 214); 'that the bishop is in the Church and the Church is in the bishop' ('episcopum in ecclesia esse et ecclesiam in episcopo': *Ep.* 66. 8. 3; CCL 3C. 443). For a concise analysis of Cyprian's view of the unity of the episcopate and the essential mutual inherence of bishop and church see U. Wickert, *Sacramentum unitatis: Ein Beitrag zum Verständnis der Kirche bei Cyprian* (Berlin, 1971), 63–86.

¹⁰⁴ 'Der Consensus Omnium als Kriterium der Wahrheit in der antiken Philosophie und der Patristik', *Antike Philosophie und byzantinisches Mittelalter: Aufsätze zur Geschichte des griechischen Denkens* (Munich, 1969), 234–63.

¹⁰⁵ For discussion of the parallels between the appointment of emperor and bishop in the writings of Cyprian, see T. Osawa, *Das Bischofseinsetzungsverfahren bei Cyprian: Historische Untersuchungen zu den Begriffen iudicium, suffragium, testimonium, consensus* (Frankfurt, 1983), 50–4, 60–3, 93–9, 171–205.

¹⁰⁶ See H. J. Sieben, 'Consensus, unanimitas und maior pars auf Konzilien, von der Alten Kirche bis zum Ersten Vatikanum', *Philosophie und Theologie*, 67 (1992), 192–6.

Second, in practice, the principle of *consensus* under the strong personal leadership of Cyprian led to unanimity of opinion expressed by his colleagues in council, not only routinely reported in the conciliar and other letters in Cyprian's correspondence, but also strikingly illustrated by the unanimous expression of opinion and vote by the eighty-seven bishops at the 1 September council of 256 (the *Sent. LXXXVII episc.*). In practice, the desired strength of position achieved by unanimity, itself reached at least partially by the personally suasive *auctoritas*¹⁰⁷ of Cyprian and other conciliar presiders of similar stature, must have tended to shape *consensus*. If, however, Cyprian's description of the proceedings of the council of 251 is true to fact, the debates were truly open and the conclusions were uncoerced. Cyprian writes, 'Scriptural passages were produced, in a lengthy debate, on both sides of the issue and eventually we arrived at a balanced and moderate decision, striking a healthy mean.'¹⁰⁸ Lengthy debate leading to a balanced and moderate decision implies that differences of opinion were resolved, but not necessarily with unanimity. Regarding the spring council of 252, he states: 'after weighing the issue in a lengthy debate, we concluded that it sufficed to reprimand our colleague Therapius'.¹⁰⁹ *Consensus* itself was the goal; not necessarily unanimity.¹¹⁰

Third, in mid-third century Africa, and quite universally for at least another two and one-half centuries, as we shall later observe, the power of conciliar *consensus* was a moral one and not in any absolute or juridical sense binding on any bishop. It is in this way that Cyprian's reference to 'the authority of our decree' (*decreti nostri auctoritate*),¹¹¹ or other seemingly absolute claims should be understood. As Cyprian wrote to Stephen of Rome after the spring council of 256 regarding its decision against the

¹⁰⁷ Personal authority (*auctoritas*), closely connected with position, education, prestige, personal integrity, public presence, and public service was a virtually institutionalized force in Roman society: see J. Lendon, *Empire of Honour: The Art of Government in the Roman World* (Oxford, 1997, 55–72, 275). Furthermore *auctoritas* was a controlling factor within the network of social influences and relationships, which included patronage and deference. Strongly illustrative of this point is Cyprian's urging Stephen of Rome to lead his episcopal colleagues in action against Marcianus, the Novatianist bishop of Arles, in memory of the Roman martyrs Cornelius and Lucius, for 'you', he writes, 'far more than anyone else, are in duty bound to bring honour upon that memory and to uphold it, by exerting the full weight of your personal *auctoritas* (*gravitate et auctoritate tua*); after all, you are the one who has been appointed to replace and succeed them' (*Ep.* 68. 5. 1 = *Letters*, iv. 31; CCL 3C. 468). Cyprian's influence among his peers by virtue of his own *auctoritas* was markedly powerful.

¹⁰⁸ *Ep.* 55. 6. 1 (*Letters*, iii. 36; CCL 3B. 261–2).

¹⁰⁹ *Ep.* 64. 1. 2 (*Letters*, iii. 109–10; CCL 3C. 418–19).

¹¹⁰ Sieben, 'Consensus, unanimitas und maior pars', 193.

¹¹¹ *Ep.* 64. 1. 1 (*Letters*, iii. 109; CCL 3C. 418).

acceptance of heretical baptism, 'We are not forcing anyone in this matter; we are laying down no law (*legem*). For every appointed leader has in his government of the Church the freedom to exercise his own will and judgement, while having one day to render an account of his conduct to the Lord.'¹¹²

The conciliar arrangements, procedures, and theory which we have discerned in the mid-third-century African church were evidently paralleled elsewhere. We have little evidence for the East until the fourth century, but the same picture presents itself at Rome as in Africa. We have noted Eusebius' report of the council at Rome attended by sixty bishops and a greater number of presbyters and deacons (*HE* 6. 43. 2). Eusebius then proceeds in the next paragraph with further information, describing a letter from Cornelius to Fabius of Antioch giving a description of the council and attaching another letter concerning the resolutions that were passed. This was the Roman council of 251, held after the council at Carthage in the same year. Both councils were concerned with the reconciliation of the lapsed. Cyprian states that the Roman council reached a *consensus* with the same judgement that the Africans had made, 'after debating with equal seriousness and striking the same healthy balance.'¹¹³ With regard to another occasion, Cornelius reported to Cyprian that he had called a meeting of the Roman presbyters, which was joined by five bishops who were in Rome on that day.¹¹⁴ The purpose of the gathering was to define the procedures for treating the cases of certain schismatics who wished to return to communion with Cornelius and to ratify that decision by *consensus*. A copy of the minutes (*notitia*) was sent to Cyprian.

(ix) Conciliar Styles

Sieben maintains that three styles for the conduct of synods and councils emerged during the third and fourth centuries. The first is exemplified by Origen's *Dialogue with Heraclides* and his instructional debates with Beryllus at Bostra, together with Dionysius of Alexandria's dialogue at Arsinoe regarding the teachings of Nepos, and the trial of Paul of Samosata led by the erudite presbyter Malchion at Antioch.¹¹⁵ These debates and dialogues were conducted as occasions of inquiry leading to

¹¹² *Ep.* 72. 3. 2 (*Letters*, iv. 54; CCL iii C. 528).

¹¹³ *Ep.* 55. 6. 2 (*Letters*, iii. 36; CCL 3B. 262–3).

¹¹⁴ Cyprian, *Ep.* 49. 2. 1–3 (CCL 3B. 233–4). It is likely that this meeting followed the Roman council of 251. See *Letters*, ii. 263–4.

¹¹⁵ *Die Konzilsidee*, 466–76.

the determination of error, the demonstration of corresponding truth, its acceptance by the perpetrators of error, and its endorsement by the Christian congregation within which the dialogue took place. Sieben concludes that they were conducted in the style of the critical analysis of specific issues in the form of question and answer common to the philosophical schools of the time. He sees this method of teaching as common to the office of teacher (*didaskalos*) in the Christian communities during the second and third centuries in the East, and, as we have noted earlier in this chapter, he suggests that it provided the customary conciliar format for the examination of purveyors of suspected teachings at gatherings of a synodical type.

The second conciliar style described by Sieben is that which employed the parliamentary procedures discussed above. The third is the *kaiserlicher Kognitionsprozess*, a Roman trial procedure of judicial investigation employed at the emperor's will. Sieben sees this procedure employed at the council of Aquileia in 381, at which Ambrose of Milan sat as 'public prosecutor and principal judge' by commission of the Emperor Gratian in the heresy trial of the Illyrian bishops Palladius and Secundianus.¹¹⁶ While our major interest here is in the ecclesiastical adaptation of the parliamentary style, which clearly dominated the procedural pattern of the synods and councils both regional and ecumenical during the fourth and fifth centuries and beyond, Sieben's demonstration of the adaptation of the other two modes further illustrates the willingness of, and indeed necessity for, the churchmen of our period to adapt the modes and procedures of civil society to ecclesial use.

¹¹⁶ *Die Konzilsidee*, 482–92.

2 The Emergence of Canonical Legislation

(i) The Need for Rule-Making

The need for the regulation of behaviour of church leaders and of other members alike appears early in the life of the Christian communities. This is expressed frequently in the letters of Paul in the injunctions which he gives to the members of the churches for which he claims responsibility. A notable example is found in 1 Cor. 11: 17–34 in instructions for appropriate behaviour at the Eucharistic meal as a corrective for the factionalism and gluttony that had been reported. In 1 Pet. 5:1–5 admonitions regarding their duties are given both to the leaders of the congregations addressed and to their members. In 1 Tim. 2: 11–5: 22 direction is given specifically affecting the conduct of ministry and the life of the community. Indeed, exegetes not uncommonly conclude that particular elements in the gospels are addressed to specific problems of behaviour or relationships experienced in the communities in which they were written. A prime example is found in Matt. 18: 15–18 regarding the settlement of disputes.¹¹⁷ In such texts as these we can see that regulation in the lives of communities in the New Testament period provided a precedent and a prelude to the development of regulatory practice to come.

As far as our meagre sources reveal, the regulatory practice of the second century was fundamentally congregational in focus, each local church attending to its own disciplinary and organizational problems, with little collective determination of church order or disciplinary standards or of intervention by one church in the affairs of another. There were, however, exceptions, and these demonstrate that together with pervasive congregational self-sufficiency a network of care existed among an emerging communion of churches. This is exemplified by the so-called *First Epistle of Clement to the Corinthians* (late first century) regarding serious

¹¹⁷ J. A. Overman, *Church and Community in Crisis: The Gospel According to St. Matthew* (Valley Forge, PA, 1996), 262–76; S. H. Brooks, *Matthew's Community* (Sheffield, 1987), 99–105.

questions of order in the Corinthian community, and by the *Epistle of Polycarp to the Philippians* (mid-second century) addressing principles of religious living and standards of behaviour. While both these admonitory communications were requested by their recipients, the seven letters of Ignatius of Antioch to churches which he visited on his way to martyrdom in Rome were unsolicited and were undoubtedly of considerable influence in spreading or strengthening the role of *monepiscopus*, which Ignatius urgently promoted for the development of a centralized local church order the better to ensure congregational unity and discipline.

The pseudo-Apostolic literature, also known as the ‘church orders’, of the second and third centuries and beyond, provides us with further evidence of rule-making within the communities, beginning with the presumably early *Didache* and ending with the *Apostolic Constitutions* at the end of the fourth century. These several documents are collections of moral standards, liturgical regulations, and organizational directions regarding ministries and their exercise, which apparently originated in particular communities and spread to others, where in most cases they underwent revision, with borrowings from each other in adaptation to local customs and needs, all under authorship attributed to the apostles or to the Lord himself.¹¹⁸ As a consequence they became for the most part a network of interrelated documents. While the earlier church orders were predominantly concerned with Christian living and the moral standards to be followed by members of the community, the *Apostolic Tradition*, attributed to Hippolytus of Rome and to be dated to the third century, demonstrates a growing interest in the appointment of church leaders and liturgical practice in the local churches. While the gradual growth and modification of the documents in this genre constituted a collective enterprise through time, the church orders were in no sense claimed as universal standards, but they do stand as a background to the early fourth-century conciliar legislation, for their aims were clearly regulatory. Although there is little evidence for the circulation of these materials from church to church, they clearly represent a growing trend toward standardization and regulation in church structure and behavioural norms.

¹¹⁸ For a fine review of this genre of literature and the presumable relationships of its extant representatives, see P. F. Bradshaw, *The Search for the Origins and Christian Worship: Sources and Methods for the Study of Early Liturgy* (New York, 1992), 80–110.

(ii) Collective Rule-Making

As contrasted with the earlier rule books or church orders, ecclesial legislation arose as a feature of the collective deliberation and collegial action of the conciliar movement. Its development, however, was slow. Conciliar activity in mid-third-century Africa was clearly moving in this direction, but no canonical materials of the kind that appear in abundance in the fourth century are found in the literature which remains from the third. The earliest known conciliar prohibition of a practice commonly regarded as a problem by the participating bishops is reported in Cyprian's *Epistle* 1. 1. 1, regarding clergy being made executors for the deceased.¹¹⁹ The prohibition was evidently effected in Africa before Cyprian's time. In *Ep.* 55. 6. 1, Cyprian wrote to a colleague regarding the decisions of the Carthaginian council of 251: 'All this is contained in the documents which I am sure must have reached you; in it there are listed, in summary form, the various resolutions we passed.'¹²⁰ Cyprian's description of the document suggests that it may have approximated a set of canons, but neither this nor any other similar record from that era has survived. Some third-century legislation may have been enacted for which all record, or at least all means of identification, has been lost,¹²¹ but regular, collective disciplinary enactment was delayed until the early fourth century for two apparent reasons. The first was the relative independence and self-sufficiency of the local churches, the governance of which was based on a locally focused ecclesiology. The second, which perpetuated the first, was the very limited possibility in the era of intermittent persecution for the development of supra-congregational organization by which ecclesial affairs could be regulated from outside the congregation and from a higher level.

By the beginning of the fourth century, the growth of a system of diocesan organization in which the bishop-pastors of the local churches were becoming the bishop-administrators of a number of parish congregations, now served by presbyter-pastor delegates,¹²² stimulated the development of a more expansive ecclesiology. This was further enhanced by the bishops' growing awareness of their collegial responsibility for regional and universal Church affairs. A rapid shaping of

¹¹⁹ CCL 3B. 1–2.

¹²⁰ Ibid. 262.

¹²¹ For further allusion to this possibility, see the end of §iii and the beginning of §v.

¹²² G. H. Luttonberger, 'The Decline of Presbyteral Collegiality and the Growth of the Individualization of the Priesthood', *Recherches de théologie ancienne et médiévale*, 48 (1981), 14–58.

provincial organization ensued in the East. In Africa the already established pan-African conciliar system was strengthened, together with the gradual growth of provincial organization. In the West we observe the increasing strength of Roman leadership and the growing regional dominance of greater sees such as Arles, Milan, Aquileia, and Toledo. Furthermore, the legalization of Christianity introduced a number of factors which stimulated collective action. Prominent among these were the promotion of Christianity and the manipulation of the Church by the imperial government, the changed circumstances of Christian life in secular society, the newly acquired social mobility of bishops and other clergy, the rapid increase in membership of the churches, and the changing tasks and relationships of ministerial offices. These brought a host of problems that demanded common solutions.

By the early fourth century the episcopal conciliar system had become consolidated and universally employed. Throughout the fourth and fifth centuries a large number of provincial and regional assemblies were held in all quarters of Christendom, from Spain to Persia and from Africa to northern Gaul. Councils were held for a variety of purposes: the settlement of doctrinal questions with the issuance of creeds or definitions, judicial proceedings resulting in the deposition or restoration of bishops, the development of organizational structures suitable to the Church's needs in an era of freedom and unprecedented growth, and the resolution of disciplinary problems both old and new among its members. Organizational and disciplinary issues were resolved by conciliar enactments that over the course of a century and more came to be entitled 'canons'.¹²³

This chapter is given to a review of the canonical legislation of the fourth and fifth centuries and of the councils that produced it.¹²⁴ The

¹²³ The term κανών (*canon* as a loanword in Latin) has a long history in Greek, from meaning a straight rod to a standard or a rule. For an introduction to its Christian use see H. Ohme, *Kanon ekklesiastikos: Die Bedeutung des altkirchlichen Kanonbegriffs* (Berlin, 1998), 1–15. For the development of its application as a term descriptive of conciliar legislation see below, Ch. 3, §v. For historical background see the classic treatments of the term by H. Oppel, Κανών—Zur Bedeutungsgeschichte des Wortes und seiner lateinischen Entsprechungen (*Regula* —*Norma*) (*Philologus*, Supplement 30/4; Leipzig, 1937), 68–71; and L. Wenger, *Canon in den römischen Rechtsquellen und in den Papyri: Eine Wortstudie* (Sitzungsberichte der Akademie der Wissenschaften in Wien, philos.-hist. Klasse, 220/2 (Vienna, 1942).

¹²⁴ For the textual materials of conciliar legislation the reader is referred to the classical edition of J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, 70 vols. (Florence, 1759–1870), hereafter *Mansi*; H. Th. Bruns, *Canones Apostolorum et conciliorum saec. IV–VII*, 2 vols. (Berlin, 1839; repr. in 1 vol., Turin, 1958); F. Lauchert, *Die Kanones der wichtigsten altkirchlichen Concilien nebst den Apostolischen Kanones* (Freiburg im Breisgau, 1896; repr., Frankfurt am Main, 1961); P. P. Joannou, *Discipline générale antique*, tom. I in 2 vols. (Grottaferrata, 1962), with texts in Greek, Latin, and French. English translations of the canons of the Eastern councils down to Nicaea II (787) and of the canons in the collection known as the 'African Code' are given in H. R. Percival, *The Seven Ecumenical Councils of the Undivided Church* (NPNF, 2nd ser. 14; Oxford, 1900). Critical editions of canonical materials are as follows: E. Schwartz, *Acta conciliorum oecumenicorum 431–879*, 4 tomes in 14 vols. (Berlin, 1914–74), hereafter *ACO*, encompassing the canons, acts, and other documentary materials relating to the Councils of Ephesus (431), Chalcedon (451), and Constantinople (553); the Canons of the Apostles (= *Apostolic Constitutions* 8.47) in M. Metzger, *Les Constitutions apostoliques*, iii (SC 336; Paris, 1987), 274–308; the African canons in C. Munier, *Concilia Africae a. 345–a. 525* (CCL 149; Turnhout, 1974); the Gallican canons in id., *Concilia Galliae a. 314–a. 506* (CCL 148; Turnhout, 1963), and in C. De Clercq, *Concilia Galliae a. 511–a. 695* (CCL 148A; Turnhout, 1963); the Latin versions of the canons of fourth-century Eastern councils as represented in important Western canonical collections, together with some Western canonical and related material, and the Greek version of the canons of the council of Sardica, are given in C. H. Turner, *Ecclesiae occidentalis monumenta iuris antiquissima*, 2 vols. in 9 (Oxford, 1899–1939), hereafter *EOMLA*. The canons of the Spanish councils are given in a non-critical edition by J. Vives, T. Marín Martínez, and G. Martínez Díez, *Concilios visigóticos e hispano-romanos* (Barcelona, 1963). For bibliographical reference to issues relating to conciliar and other Latin literature, see R. Herzog (ed.), *Nouvelle histoire de la littérature latine*, v: *Restauration et Renouveau: La littérature latine de 284 à 374 après J.-C.* (Turnhout, 1993), and also vols. iv and vi in the same series.

canons were normally drafted in response to needs for regional norms in a variety of circumstances. These included the regulation of marriage and the relations of men and women in general, the reconciliation of heretics and of the lapsed, liturgical matters, issues relating to ordination, the conduct of the clergy and particularly of bishops, the competence and conduct of provincial synods, and jurisdictional issues regarding the relationships of metropolitan bishops to their suffragans and of the emerging patriarchates. The greater part of legislation from the council of Nicaea onwards was concerned with matters of church organization and the responsibilities of bishops.

Canons were frequently repetitive in content in relation to canons of other councils concerned with the same problems, and were occasionally inspired by knowledge of a similar enactment elsewhere. An interesting example of multiple treatments of a general problem is found with regard to the cardinal principle that no bishop shall intrude into the affairs of the diocese of another. This issue evidently provoked attention in a variety of circumstances, for we find it addressed in canons 15 of Nicaea (325), 16 of Antioch (c.330), 1 and 3 of Serdica (343),¹²⁵ 42 of the Laodicea collection,

¹²⁵ As stated in the Preface, I adhere to AD 343 as the date of the council of Serdica. Examples of contemporary scholars in support of 343 or the rival date of 342 are as follows: for 343, see T. D. Barnes, *Athanasius and Constantius: Theology and Politics in the Constantinian Empire* (Cambridge, MA, 1993), 71 n. 2 at p. 259; for 342, see T. G. Elliott, 'The Date of the Council of Serdica', *The Ancient History Bulletin* (Calgary), 2/3 (1988), 65–72. S. Stern has shown in a recent work that the Paschal calendar produced by the separate synod of Eastern bishops at Serdica included the dates of the Jewish Passover at Alexandria from the starting-date of their own calendar (328) up to and including the year of their meeting at Serdica, which, by the data given, was 343 (*Calendar and Community: A History of the Jewish Calendar Second Century BCE – Tenth Century CE* (Oxford, 2001), 75, 79, 124–5).

2 of Constantinople (381), 11 of Carthage (390), 27 of Hippo (393), 15 of Rome (402), and 9 of Tours (461). Other canons concerned with this same issue could be cited.

(iii) Early Fourth-Century Councils

Through Cyprian and other sources we can draw the conclusion that a number of councils were held in the West during the latter half of the third century. Cyprian expresses knowledge of a gathering of bishops together with a congregation for the ordination of a bishop in Spain before 256/7,¹²⁶ and he seems to assume the observance of the same practice in Gaul in about 254/5.¹²⁷ We have seen that gatherings for this purpose played an important role in the development of conciliar activity, and they must have continued whenever episcopal ordinations took place. A mid-third century council was allegedly held at Narbonne in Gaul during the episcopate of Paul in that city¹²⁸ but the obviously legendary character of the agenda attributed to it makes its existence doubtful.¹²⁹ It is also certain on the basis of the above that synods were held in the East during the latter half of the third century, although direct evidence is lacking between the synods held in the late 250s regarding Paul of Samosata and a synod held at Alexandria about 306 under Peter of Alexandria.

The council of Elvira was the first episcopal gathering, East or West, that is known to have enacted and published canonical legislation. The eighty-seven canons produced are of great interest in revealing both the disciplinary issues and the organizational problems which faced the Church in the critical period of the early fourth century. Not only was the Church at that time undergoing rapid growth and organizational development, having already become an important religious and social force within the Roman world, but it was still in circumstances of periodic persecution until the very eve of permanent peace with the state. Samuel

¹²⁶ *Ep.* 67. 5. 1–2 (CCL 3C. 454–5).

¹²⁷ *Ep.* 68. 3. 1. (CCL 3C. 465).

¹²⁸ Mansi, i. 1001.

¹²⁹ See Lumpe, *Die Synoden*, 379–81; Hefele–Leclercq, i/1. 192–3. Lumpe has also explored the possibility that a council was held at Rome in about 260 in connection with the controversy between Dionysius of Rome and Dionysius of Alexandria (op. cit. 345–7).

Laeuchli's analytical study of the canons of the council of Elvira¹³⁰ is an important work, both for the light that he casts upon their content in the context of this period of tumultuous change and for his contribution to exegetical methodology for materials of this kind. He presents a lively and generally convincing account of an assembly of bishops and presbyters struggling with the problems encountered by Christians still exposed to the demands of the traditional ways of Roman society on the one hand, and subject to the standards of Christianity on the other. The agenda of the council was dominated by issues of sexuality which plagued the Christian population in face of the stronger demands of Christian teachings over those of conventional Roman morality, and by problems and opportunities experienced by bishops and clergy under their growing status in a hierarchical society which was increasingly open to Christian faith. The acts of the council give the names of the nineteen bishops attending, who were broadly representative of the church in Spain, together with twenty-four presbyters who sat in deliberation with the bishops, with mention given of the presence of deacons and laity who, as usual, stood.¹³¹

A question arises, however, with regard to the origins of the long series of canons attributed to the bishops at Elvira—nearly four times the length of any other series enacted by a fourth-century council. Maurice Meigne¹³² has presented an analysis concluding that only the first twenty-one canons are authentic to the council, and that the additional sixty were added to the original series from other sources later in the century, all under the name of Elvira, by an early Spanish collector. Preliminary indications of the heterogeneous nature of the series are given in the flat contradiction between canons 1 and 59, and the nearly complete topical disorder among canons 22 to 81 as contrasted with the pattern of topical sequencing among the first twenty-one. By an experimental but logical grouping of the Elviran canons in three sets, Meigne conducts a

¹³⁰ *Sexuality and Power: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia, 1972). Laeuchli's somewhat controversial conclusions regarding the situational context of many of the canons in the sexual mores of the times are supported by P. Badot and D. De Decker, whose exegetical findings generally parallel his own: 'Historicité et actualité des canons disciplinaires du concile d'Elvire', *Augustinianum*, 37 (1997), 315–25.

¹³¹ This we are told in the brief preface to the canons as printed in Mansi, ii. 5, and in J. Vives, *Concilios*, 1 ('Residentibus etiam viginti et sex presbyteris, adstantibus diaconis, et omni plebe'). The canons are given in Laeuchli's own English translation, on pp. 126–35 of his study. A non-critical edition of the Latin text is readily found in Mansi, in Vives, *Concilios*, or in Lauchert, 13–26.

¹³² 'Concile ou collection d'Elvire', *RHE* 70 (1975), 361–87.

comparative analysis of the likely influence, the one way or the other, between the canons in the Elviran groups and canons similar in content in other fourth-century series. From this he concludes that canons 1 to 21 were indeed original to Elvira, but that the canons in the other two groups derive from periods later in the first half of the fourth century up to the council of Serdica (343) and beyond. Although his conclusions have not been widely accepted or discussed,¹³³ Meigne's case is well made and raises credible doubt about the Elviran origin of the bulk of the canons. If canons 22 to 81 are later enactments from elsewhere, this raises the intriguing question as to where and when the councils (presumably Spanish) that enacted them were held. The spurious canons 24 to 29 of Arles (314), which are erroneously credited to Arles in several manuscripts, provide a similar case,¹³⁴ and others will be mentioned below. Meigne's dating of Elvira follows that of Duchesne and others, 'autour de 300', but whether he is correct or not in his attribution of origins, the 'moment of transition' of 309 between Christian repression and opportunity suggested by Laeuchli is an attractive proposal compatible with the content of the first twenty-one canons.¹³⁵

A gathering of African bishops held at Cirta in Numidia in about 305 calls for our notice; not for canons, which it did not produce, but for the procedures which were employed. The bishops, assembled for the ordination of a colleague, entered into discussion, duly recorded in the minutes,¹³⁶ as to which of them had handed over holy objects or had

¹³³ Meigne's method and conclusions were strongly criticized by D. Ramos Lissón in defence of the authenticity of the series, 'En torno a la autenticidad de algunos cánones del Concilio de Elvira', *Scripta theologica*, 11 (1979), 181–6, but considered more positively by R. Gryson, 'Dix ans de recherches sur les origines du célibat ecclésiastique', *Revue théologique de Louvain*, 11 (1980), 162–4. Meigne's thesis has been looked upon favourably, but not discussed, by H. C. Brennecke, 'Bischofsversammlung und Reichssynode: Das Synodalwesen im Umbruch der konstantinischen Zeit', in F. von Lilienfeld and A. M. Ritter (eds.), *Einheit der Kirche in vorkonstantinischer Zeit* (Oikonomia, 25; Erlangen, 1989), 42–3. E. Reichert, *Die canones der Synode von Elvira: Einleitung und Kommentar* (Hamburg, 1990), 49 regards the collection hypothesis as having become generally accepted ('Gemeingut geworden'), but this conclusion is perhaps premature.

¹³⁴ CCL 148. 25. As Turner pointed out, the last five of these canons seem to be derived from a corresponding group in the letter of Pope Siricius to the Africans contained in the acts of the council of Thelense (Thelepte), 24 Feb. 418 (*EOMLA* i/2, suppl., 416).

¹³⁵ *Sexuality and Power*, 86–7. This suggested dating is not new, but it is freshly argued. For a discussion of other dating proposals, inclusive of the widely accepted date of 306, see V. C. De Clercq, *Ossius of Cordova: A Contribution to the History of the Constantinian Period* (Washington, DC, 1954), 87–103.

¹³⁶ Augustine, *Contra Cresconium* 3. 27 (CSEL 52. 435–8). For discussion of the council see Fischer, *Die Synoden*, 385–400.

sacrificed during persecution and were therefore spiritually deprived of the power to ordain. It emerged that there were indeed few clean hands, but under the Cyprianic rubric, unspoken, they agreed not to judge each other but to answer to God alone. Two gatherings held at the outset of the Donatist controversy are important for notice here because they bring to completion the list of known councils in the West prior to the council of Arles. The first was a council held at Carthage in discussion of the issues raised by Donatus in 309/10 or 312,¹³⁷ and this was followed by the tribunal of arbitration ordered by Constantine and led by Pope Miltiades at Rome in 313.¹³⁸ No records remain from either gathering, although we might expect that minutes would have been taken at the latter.

The council of Arles was called in 314, again by Constantine, as a means of resolving the Donatist dispute. In this instance the assembly was not a commission with limited focus and restricted participation but an intended general council of Western bishops. There were thirty-three in attendance, together with more than a dozen presbyters, who either accompanied or represented their bishops, and numerous deacons and lower clergy.¹³⁹ No mention is made of the laity. This does not mean that the *plebs* of Arles were absent from the proceedings, but the failure to report them seemingly reflects a step toward the final clericalization of conciliar theory and practice. Elvira was the last Western council for which the presence of the laity was reported. Arles was the first Western council for which their presence was not reported,¹⁴⁰ and Arles was also the first of a long series of councils—as distinguished from special commissions—extending far beyond the period of our present study, that was called by the emperors as a means of ecclesial management. The

¹³⁷ Lumpe, *ibid.* 415–24.

¹³⁸ *Ibid.* 433–45. Our information regarding the actions of the tribunal comes from Optatus and Augustine.

¹³⁹ The names of these are given in the variant subscription lists (CCL 148. 14–22). I. Mazzini, ‘Lettera del concilio di Arles (314) a Papa Silvestro tradita dal Codex Parisinus Latinus 1711’, *Vigiliae Christianae*, 27 (1973), 282–300 has raised serious doubts regarding the authenticity of the accepted longer reading of the introductory note to Sylvester of Rome (*ibid.* 4–5), and has demonstrated that it is probably the shortest of the three extant readings carried in the manuscript traditions that is the original (*ibid.* 9): ‘Domino sanctissimo fratri Silvestro coetus episcoporum qui adunati fuerunt in oppid(o) arelatensi quid decreverimus communi consilio caritati tuae significamus ut omnes sciant quid in futuro observare debeant.’

¹⁴⁰ Guarnieri notes the occasionally reported presence of laity at fifth- and sixth-century councils, most particularly as persons of special competence to the proceedings: ‘Note sulla presenza dei laici’, 85–9.

trend that we noted in Chapter 1 in connection with the mid-third-century councils, both Western and Eastern, as becoming increasingly occasions for action by the collegial episcopate and decreasingly finding their identities as local assemblies at which visiting bishops took part, is presumably seen at the end-point of its development at Arles.¹⁴¹ Through the adjustment of the episcopal office to the new circumstances of the rapid growth of the Church during the early fourth century, bishops were becoming partially detached from their original ecclesial base in a single, specific community, serving instead as pastor-administrators of groups of congregations (later called dioceses), and councils were becoming simply collegial meetings of bishops; that is, episcopal legislatures with no specific ties or immediate relevance to the communities in which the councils were held.

The council of Arles resolved the issues that had been raised by Donatus and his followers in opposition to Caecilian, bishop of Carthage, and against the main body of African opinion, and, as a consequence, inevitably solidified the Donatist schism which was to torture Christianity in Africa for well over a century to follow. The council also published twenty-two canons,¹⁴² addressed for the most part to a variety of disciplinary problems relating to laity and to clergy, but with two important canons devoted to other major issues. Specifically, canon 1 dealt with the continuing problem of the dating of Easter, ruling that the date observed by the Roman church should be followed, and canon 8 rejected the position taken by the African church at the time of Cyprian regarding the rebaptism of heretics, directing that all baptisms in the name of the Trinity should be considered valid.

In the East, a council was apparently held at Alexandria in about 306 during the episcopate of Peter, which resulted in the deposition of Melitius,¹⁴³ who subsequently instigated the schism which bears his name, but nothing more is known of this council. Eusebius tells us that after the cessation of the last persecution numerous gatherings of bishops and Christian people were held in the East, both for worship and the dedication of churches.¹⁴⁴ Some of them may have included deliberative synods,

¹⁴¹ Vogel asserts that clergy and laity were excluded from participation at councils after Nicaea ('Primatialité et synodalité', 64). Leclercq observes that the presence of presbyters and deacons is attested for a number of later councils, but that their signatures, when taken, did not represent votes except when a presbyter or deacon participated in place of his bishop (Hefele-Leclercq, i/1. 29–30).

¹⁴² CCL 148. 9–13.

¹⁴³ Athanasius, *Apologia contra Arianos*, 59. 1, ed. H. G. Opitz, *Athanasius Werke*, 3 vols. (Berlin, 1935–41), ii/1. 139; and see Fischer, *Die Synoden*, 401–9.

¹⁴⁴ *HE* 10. 3. 1 (GCS, NF 6/2, 860).

but the only two of which we know are the council of Ancyra in Galatia in 314 and the council of Neocaesarea in Pontus, possibly close in time to Ancyra, but more likely later on in the period before the council of Nicaea.¹⁴⁵ Apart from the canons they enacted—twenty-five by Ancyra and fifteen by Neocaesarea—little is known about either council. Nine of the Ancyran canons are concerned with Christians who lapsed under persecution, eleven with problems of moral discipline among the laity, three with moral discipline among the clergy, one with the organization of ministries, and one with church properties. For Neocaesarea the pattern is significantly different. No concern is expressed regarding the lapsed, five canons treat discipline among the laity, seven among the clergy, and three the organization of ministries. These differences in matters of concern indicate, as Hefele and others have observed, that while Ancyra was held soon after the cessation of persecution, a period of several years must have elapsed before Neocaesarea was held. From the lists of bishops attending Ancyra (between twelve and eighteen, depending on the recensions) it would appear that it drew widely from Asia Minor and Syria, but even the two most seemingly reliable of the three lists of attendees which have come down to us show considerable variation in the names given. The lists of bishops present at Neocaesarea (17, 19, or 20) is also questionable in accuracy, appearing, as with Ancyra, only in early Latin collections. The names of a number of the bishops at Neocaesarea also appear in the Ancyran lists, including Vitalis of Antioch, who is credited as having presided over both councils.¹⁴⁶ An Armenian collection includes a series of ten canons enacted by an alleged council at Caesarea in Cappadocia in 315, but nothing else is known of the council, nor of its canons. It is probable that the council is spurious, for six of the canons are clearly based on canons of the Ancyran series, and the other four seem to be of later derivation.¹⁴⁷ Canons 21 and 23 of Ancyra provide evidence for the likelihood of conciliar legislation having been enacted in the third century, for both refer to a ‘former rule’ regarding the issues under consideration. The term used (Ὅρος, as also in canon 19) is the same as that applied by the council of Nicaea and other fourth-century

¹⁴⁵ Fischer suggests a probable date of 317 (*Die Synoden*, 489–90).

¹⁴⁶ For further discussion of Ancyra see Lumpe, *ibid.* 453–88. For Neocaesarea, see *ibid.* 489–504. Although superseded on many points by later authorities, the older work of Hefele–Leclercq, *Histoire des conciles*, is a basic source of information for all councils in our period. For Ancyra, see Hefele–Leclercq, i/1. 298–326; for Neocaesarea, *ibid.* 326–34.

¹⁴⁷ Lumpe, *Die Synoden*, 509–12, who in the same chapter briefly treats two doubtful early fourth-century African councils: Sinuessa (303) and a reported council of martyrs in prison at Carthage (304).

councils to conciliar enactments. The term $\kappa\alpha\tau\acute{\alpha}\nu\omega\upsilon$ is used in canons 14 and 24 in reference to traditional prescriptions rather than in the later sense of a statutory canon.¹⁴⁸

(iv) The Council of Nicaea

The council of Nicaea convoked in 325 by the Emperor Constantine, with over three hundred bishops attending,¹⁴⁹ is in two important respects the centrepiece in the final development of the conciliar system established in the early centuries. First, it introduced by precedent the concept and the practice of a deliberative and legislative gathering of the *oecumene*.¹⁵⁰ Second, some fifty years after it met, Nicaea came to be regarded as the divinely inspired touchstone of orthodoxy consequent to the acceptance of Nicaea's terminological solution to the Arian problem by the council of Constantinople in 381. At Ephesus in 431, Juvenal of Jerusalem called for the creed of Nicaea to be read out, and proposed that for all points to be examined by the council those that were in accord with this creed should be accepted and all that were not should be rejected.¹⁵¹ At Chalcedon in 451 Nicaea was again regarded as the doctrinal measuring-rod, the 'symbol of the 318' being declared to be 'the unerring faith of the fathers'.¹⁵² Additionally we may note that Nestorius, as well as the bishops at Ephesus, called on Nicaea for authoritative support.¹⁵³ By extension, everything that the fathers at Nicaea accomplished was regarded as authoritative, and this applied to the twenty canons enacted by the council as well. As we shall observe below, following the vindication of Nicaea at Constantinople the canons of Nicaea were frequently placed at the head of the developing early canonical collections. In 419, as we shall also later observe, both Pope Zosimus and the African bishops rested their cases in their dispute over the appeal to Rome by the deposed

¹⁴⁸ For $\delta\theta\omicron\varsigma$ and $\kappa\alpha\tau\acute{\alpha}\nu\omega\upsilon$ generally see Ch. 3, §v, and for their Ancyran use see Ohme, *Kanon ekklesiastikos*, 331–4.

¹⁴⁹ The question of the exact number of bishops present at Nicaea has not been resolved. See H. Mordek, 'Eine ungedruckte Bischofsliste des 1. ökumenischen Konzils von Nicäa (325) (Cod. Stuttgart HB VI 113 der Collectio Weingartensis)', *Zeitschrift für katholische Theologie*, 118 (1996), 138–50; E. Lucchesi, '318 ou 319 Pères de Nicée?', *Analecta Bollandiana*, 102 (1984), 394–6; H. Chadwick, 'Les 319 Pères de Nicée?', *RHE* 61 (1966), 808–11; M. Aubineau, 'Les 318 serviteurs d'Abraham', *RHE* 61 (1966), 5–43.

¹⁵⁰ See Ch. 3 n. 83.

¹⁵¹ *ACO* I i/2. 12.

¹⁵² *Ibid.* II i/2. 118–19.

¹⁵³ *Ibid.* I i/1. 29, I. i/2. 13–35.

African presbyter Apiarius of Sicca¹⁵⁴ on what they believed to be the canons of Nicaea.

Regrettably, no stenographic record of the proceedings at Nicaea has survived. It would be of great interest to be able to examine the procedures followed during the council's deliberations, but we are confined to a partially educated guess. The question of interest here is whether or not there was at Nicaea and other fourth-century Eastern councils a continuation of the practice of debate which we have observed at earlier Eastern synods in the third century, and which Sieben has identified as a distinct conciliar 'style'. Richard Lim has provided a valuable analysis of the intersection of the Eastern dialectical tradition with the more structured parliamentary procedures of the West and the implicit bearing that this has upon Nicaea and other Eastern councils.¹⁵⁵ He concludes first of all that the dialectical style was precluded at Nicaea by order of Constantine to avoid its potentially destructive effect on the harmony that he hoped to achieve by the council.¹⁵⁶ Consistent with this, Lim shows that as a means of controlling factional disputes, the objective of the imperial government as the fourth and fifth centuries progressed was to control the proceedings at councils by parliamentary procedures and the principle of *consensus* rather than by resolution through open debate.¹⁵⁷ Lim also demonstrates a concomitant trend in opinion among educated churchmen—at least among historians—against the ecclesiastical use of dialectic revealed in their repetitive telling of a legend regarding the defeat of a philosopher by an unlearned confessor during or before (depending on the teller of the story) the council sessions at Nicaea.¹⁵⁸ A somewhat different approach is taken by R. P. Morozziuk,¹⁵⁹ who sees the story as

¹⁵⁴ This case and also the rising regard for Nicaea will be discussed in several contexts. See especially Ch. 6, §i.

¹⁵⁵ *Public Disputation, Power, and Social Order in Late Antiquity* (Berkeley, 1995), chs. 6–7.

¹⁵⁶ Ibid. 184.

¹⁵⁷ Ibid. 217–29.

¹⁵⁸ Ibid. 182–216. For the tale in its variants (which Lim gives in translation), see Rufinus, *HE* 10. 3, ed. Th. Mommsen, *Die lateinische Übersetzung des Rufinus* (GCS, NF vi/2, 961–3); Socrates, *HE* 1. 8. 14–16, ed. G. C. Hansen, *Sokrates: Kirchengeschichte*, rev. M. Sirinjan (GCS, NF i. 19; Berlin, 1995); Sozomen, *HE* 1. 18. 1–4, ed. J. Bidez and G. C. Hansen, *Sozomenus: Kirchengeschichte* (GCS, NF iv. 38–9; Berlin, 1995); Gelasius of Cyzicus, *Syntagma*, 2. 13. 1–2, ed. G. Loeschke and M. Heinemann, *Gelasius Kirchengeschichte* (GCS 28; Leipzig, 1918), 61. While acknowledging the latter work as being doubtful for its historical content, and even for its authenticity as a composition by Gelasius, Lim sees it as a trustworthy witness to fifth-century opinion.

¹⁵⁹ 'Heathen Philosophers and Christian Theologians: Apophaticism and Nicene Orthodoxy at Nicaea', *Patristic and Byzantine Review* 12 (1993), 55–63.

reflecting a deliberate staging by Constantine of debate in the council between Hellenism represented by philosophers and dialecticians and Christianity represented by theologians in a quest ‘to gather what is sound in what all nations think of God’.¹⁶⁰ Given the personal theological *naïveté* of Constantine, this analysis is not implausible. What Lim and Moroziuk agree on, however, is that the story, wholly apocryphal or not, reflects negative reactions among Christians regarding the use of philosophical dialectic. Whatever the full range of its causes may have been, it seems that the dialectical conciliar style came fairly quickly to an end with the establishment of the imperial church.

(v) Later Eastern Councils

Of the numerous fourth-century Eastern councils held subsequent to Nicaea and prior to Constantinople in 381, many were convoked by imperial command to deal with the unresolved issues of the Arian controversy and the personal situation of one or another of the major figures engaged in that struggle. Most of them confined their efforts to these tasks, and only two, as far as we know, enacted canons addressing problems of discipline and, particularly, issues regarding bishops, clergy, and church organization. These are the councils of Antioch (c.328)¹⁶¹ and Serdica (343). Three other series of canons from this period remain to be mentioned. The first are the canons of the council of Gangra in Paphlagonia in 343 or 355,¹⁶² anathematizing the teachings and practices of the followers of Eustathius, bishop of Sebaste. The second are the canons of the so-called ‘council of Laodicea’. This is thought likely not to have been a council at all, or if it was, the eighty canons attributed to it are considered largely a collection of uncertain origin appended to its own canons during the latter part of the fourth century.¹⁶³ The third are the ‘Canons of the Apostles’, or the ‘Apostolic Canons’, or the *Canones*

¹⁶⁰ Eusebius, *De vita Constantini* 2. 65, ed. F. Winkelmann, *Eusebius Werke*, 2 Aufl., i/1 (Berlin, 1991), 74.

¹⁶¹ It is now commonly held that the twenty-five canons bearing the name of Antioch were enacted at a council in that city in about 328 and not, as formerly thought, at the council assembled for the consecration of Constantine's basilica in 341.

¹⁶² T. D. Barnes has argued against the commonly accepted date of 343 and has proposed c. 355: ‘The Date of the Council of Gangra’, *JTS*, NS 40 (1989), 121–5.

¹⁶³ See J. Gaudemet, *Les Sources du droit de l'Église en Occident du II^e au VII^e siècle* (Paris, 1985), 75 n. 1; A. Faivre, *Naissance d'une hiérarchie: les premières étapes du cursus clérical* (Paris, 1977), 228–9. As the first nineteen canons have a different *incipit* than the rest, it is thought that it was perhaps these that were original to a possible council of Laodicea.

LXXXV Apostolici: a series of eighty-four or eighty-five canons (the numbering depending on the manuscript source) occurring in book 8, ch. 47, of the *Apostolic Constitutions*¹⁶⁴ and generally thought to be a collection compiled or composed by the same late fourth-century author(s)/ editor(s) that edited the *Apostolic Constitutions* itself. As numerous commentators have pointed out, many of the Apostolic canons are close in content to the canons of Nicaea, Antioch, Laodicea, and others and seem to be partly based on them. There is no solid evidence to back the older claim that some of the Apostolic canons, as conciliar enactments in the fourth-century sense, came from second- and third-century councils, but as we have noted above it is not unlikely that some such canons did exist. It is even more likely that the content or inspiration of a number of the Apostolic canons came from 'the canon', in the older sense of customary rules that were carried in tradition from the previous century.¹⁶⁵ As we shall observe in section 5 of the next chapter, connective allusions to this older source of ecclesial discipline, particularly at Nicaea (325) and Antioch (c.328), seem to provide a specific background for particular decrees enacted at those councils. It seems certain that the sudden wave of conciliar legislation in the fourth century stands against the background of a body of church custom, which is at least partially visible in the pseudo-apostolic church orders of the third century. It is also highly probable that this body of traditioned church discipline provided ready material suitable to the needs of the author(s)-editor(s) of the Apostolic canons as well as contributing to the shaping and the content of the enactments of fourth-century episcopal conciliar legislators. In such circumstances, inherited parallels as well as direct influences between the legislated canons and the so-called Apostolic canons would be expected.

Of the seven canons traditionally attributed to the council of Constantinople in 381, canons 5 and 6 probably come from another council in the same city in 382, and canon 7 is thought to be from a mid-fifth-century letter.¹⁶⁶ Only canons 2 and 3 are relevant to our interests, legislating in matters of jurisdiction among the churches. The six canons enacted at the council of Ephesus in 431 concern only doctrinally driven issues of church politics and discipline relating to the Nestorian

¹⁶⁴ Metzger, *Les Constitutions apostoliques*, iii. 275–309.

¹⁶⁵ For a variety of opinions regarding the origins of the canons, see *ibid.* i (SC 320; Paris, 1985), paras. 9–10, 40–8 (pp. 22–3, 55–60); iii. 9–12; Joannou, *Discipline générale antique*, 1–3; C. H. Turner, 'Notes on the *Apostolic Constitutions*: The Apostolic Canons', *JTS* 16 (1915), 523–38. It may be that a few of the canons came from unknown councils in the very early fourth or late third centuries: see remarks at the end of §1 above.

¹⁶⁶ Hefele–Leclercq, ii/1. 19–20, 38–40.

controversy. The council of Chalcedon in 451 enacted twenty-eight canons, all but three of which concern issues relating to church order, bishops, clergy, monks and monasteries, deaconesses, and dedicated virgins. Canon 28 is a historically controversial attribution of honours and privileges to the See of Constantinople, the new Rome, equal to those of the See of the old Rome, while recognizing that, of the two, Constantinople should rank second. Canon 1 decrees that the canons enacted by all councils up to the time of Chalcedon should remain in force. These councils are not named, but it is generally held that reference is being made to the 'Antiochene Collection', to be discussed below.¹⁶⁷

In the Syriac-speaking church to the East, numerous councils were held during the fifth and sixth centuries and beyond under the leadership of the primatial see of Seleucia-Ctesiphon. The earliest of which we know was a council under Mar Isaac in 410 which received the canons of Nicaea.

(vi) Councils in Italy, Africa, Gaul, and Spain

To turn again to the West, the council at Rome under Julius in 341 confined itself to clearing Athanasius, Marcellus of Ancyra, and Asclepas of the charges for which they had been deposed at Tyre in 355 and admitting them to communion. The Roman councils of 377/8 and 382 under Damasus dealt with doctrinal matters and the promotion of the authority of the Roman See. A council at Rome held under Siricius in 386 enacted nine canons. These are contained in Siricius' letter *Ad episcopos Africae* preserved in the minutes of the African council of Thelepte (or 'concilium Thelense') in 418 as 'Tractoria Sancti Sirici Episcopi Urbis Romae per Africam'.¹⁶⁸ The *Canones ad Gallos episcopos* by Damasus or Siricius and Siricius' letter of 385 to Himerius of Tarragona (*Ep.* 5), both on disciplinary and liturgical matters, are the two earliest examples of the papal decretals that would later become an important source for canon law.¹⁶⁹ The agenda of the council of Capua in 391/2 turned mainly on the

¹⁶⁷ See §v; also Gaudemet, *Les Sources*, 76; and P. L'Huillier, 'Origines et développement de l'ancienne collection canonique grecque', *Messenger de l'Exarchat du Patriarche russe en Europe occidentale*, Nos. 93–6 (1976), 53–4.

¹⁶⁸ CCL 149. 54–5, 59–63 (= PL 13. 1155–62).

¹⁶⁹ PL 13. 1181–94, 1131–47 respectively. Regarding the controverted authorship of the *Canones ad Gallos episcopos*, see D. Jasper, who has concluded that it was not written by Damasus: 'Die Canones synodi Romanorum ad Gallos episcopos — die älteste Dekretale?', *Zeitschrift für Kirchengeschichte*, 107 (1996), 319–26. If Jasper is correct, the *Canones ad Gallos* must have been written by Siricius after his letter to Himerius of Tarragona in 385.

resolution of the Melitian schism at Antioch and the errors of Bosonius, bishop of Serdica, but apparently it additionally enacted several disciplinary canons, one of which is mentioned in canon 48 of the 'African code'.

By far the largest body of canons from the Western church comes from North Africa. The first recorded African council after the smaller gathering following the plenary council under Cyprian in 256 was not held until 345/8 during the episcopate of Gratus at Carthage. This was followed in 390 by a council led by Genethlius of Carthage, which was a prelude to a period of intense conciliar activity in Africa under the leadership of his successor, Aurelius, whose extraordinarily long episcopate extended from about 391 to 430. In his extensive effort towards unified organization and regulation in the African churches, Aurelius enjoyed the constant support and frequent initiative of Augustine, bishop of Hippo and metropolitan of the Numidian province. During this period of some thirty-eight years, twenty-nine known councils were held at Carthage, many of them plenary, or pan-African, two at Hippo Regius (Numidia), two at Mileve (Numidia), and several at various localities in Byzacena. Attendance ranged from a few dozen to two-hundred and seventeen bishops at Carthage on 25 May 419. Over twenty councils are known to have enacted canons, and others may have done so as well, of which the canons were lost or reshaped at subsequent councils. African conciliar activity came to a virtual end with the death of Aurelius and the repressive Arian Vandal occupation beginning in 428. Although normal Catholic ecclesial life resumed after the Vandal defeat by Justinian in 534, the African church never regained its former vigour before the Arab conquest in 698, which resulted in the virtual destruction of Christian life and civilization in North Africa.

The African canons are preserved in several of the canonical collections that were assembled during the late fourth to early sixth centuries.¹⁷⁰ In some cases, the sources of the canons by council were not retained by the early collectors, and this has created a complex problem for later canonists and historians.¹⁷¹ Modern scholarship has re-established the identifications, beginning with important manuscript work and early

¹⁷⁰ These collections are discussed below in §viii of the present chapter and are printed in CCL 149.

¹⁷¹ For analysis and clarification of this problem, see F. L. Cross, 'History and Fiction in the African Canons', *JTS*, NS 12 (1961), 227–47; and C. Munier, 'La tradition littéraire des canons africains (245–525)', *Recherches augustinienes*, 10 (1975), 3–22. For further, detailed treatment of the African and other Western collections see F. Maassen, *Geschichte der Quellen und der Literatur des Canonischen Rechts im Abendlande*, i [no more published] (Graz, 1870; repr. 1956); and Hefele-Leclercq, ii/1–2.

printed editions in the sixteenth and seventeenth centuries and continuing in the eighteenth with the Veronese scholars Pietro and Girolamo Ballerini, in connection with their edition of the writings of Leo I based on the prior work of Pasquier Quesnel.¹⁷² Further work in more recent times has culminated in the critical edition of Charles Munier in his *Concilia Africae a. 345–a. 525*.¹⁷³ While many of the enacted canons survived, others undoubtedly have been missed by the early collectors or for some reason were discarded or overlooked during the long history of their transmission. However, the survival of a large number of canons enacted in the period extending from the time of the council of Carthage in 345/8 under Gratus to the early sixth century would lead us to believe that for the most part conciliar records were carefully preserved and probably kept in the archives of at least the provincial sees,¹⁷⁴ although occasional omissions, duplications, and misidentifications of materials by earlier scribal editors caused several types of problems for subsequent editors and collectors as well as for modern scholars. One such problem was caused by the occasional assimilation of the canons of a previous council, or councils, into the records of a later one. A particularly confusing case is found in the manifestly deliberate modification and assimilation of several canons from the Carthaginian councils of 345/8 and 390 into the ‘Apiarian Codex’ of 419. This is marked by a change in the names of the proponents of the canons at the earlier council to those of bishops attending the later one. In so doing, the scribal editor neglected in one canon to change the intervener’s name, leaving a tell-tale clue to his work.¹⁷⁵

The pace of conciliar activity in Gaul was brisk and seemingly moderate in Spain. Following the gathering at Arles in 314, councils were held at Cologne for Gallic and Germanic bishops on 12 May 346, at Arles again in 353, Béziers in 356, Paris in 360/1, Valence in 374, Bordeaux in

¹⁷² *Sancti Leonis Magni Romani Pontificis Opera*, ed. P. and G. Ballerini, 3 vols. (Venice, 1755–7; repr. PL 54–6). The canonical materials are found in vols ii and iii = PL 55–6. Among other documents, disquisitions on numerous questions connected with the African canons are given in vol. iii, pp. lxxiv–cvi = PL 56. 88–124 as pars II, cap. iii of ‘De antiquis collectionibus et collectoribus canonum’. The Ballerini edition of the *Breviarium Hipponense* appears in cols. 86–104 of the same volume = PL 56. 418–33 as cap. ii of ‘Codex canonum ecclesiasticorum et constitutorum sanctae sedis apostolicae’.

¹⁷³ CCL 49 (Turnhout, 1974).

¹⁷⁴ The presence of canonical archives at the provincial seat at Cirta (Constantina) in Numidia is attested in canon 28 of the *Registri ecclesiae Carthaginensis excerpta* (CCL 149. 207).

¹⁷⁵ ‘Numidicus episcopus Maxulitanus’, the proponent of canon 6 of Carthage 390, is named as the proponent of the same canon as it appears as number 8 of the *Canones in causa Apiarii* (ibid. 14, 103).

384/5, Trier in 386, Nîmes in 396, and Turin in 398. Of these, 14 canons were enacted at Cologne, 4 at Valence, 7 at Nîmes, and 8 at Turin.¹⁷⁶ In Spain, important series were enacted at the councils of Saragossa in 380 and Toledo in 397/400, and Tarragona in 516.¹⁷⁷

We conclude this chapter with a brief account of the early literary history of the fourth- to sixth-century canons that we have discussed. This will provide a background for consideration in the next chapter of the development in the understanding of canons from the original notion of their being consensual agreements to their being regarded as binding laws. Their literary history is a large field of study in itself, and we can here indicate only its major avenues and turning-points in detail sufficient for our own limited purpose. We shall deal first with the East and follow with the West.¹⁷⁸ No attention will be given to the papal decretals, so important for the later shaping of canon law in the West, for their influence upon the notion of a rule of conciliar law was negligible.¹⁷⁹

(vii) The Eastern Canonical Collections

As far as is known, the first collection of Greek canons, comprising the canons of Ancyra and Neocaesarea, was made in the region of Antioch in the mid-fourth century, possibly compiled at the direction of Euzoius, the Homoean bishop of Antioch (361–76), and was soon augmented by the canons of Antioch (c.328) and Gangra (343), and by the Laodicea collection. After his restoration to the see of Antioch in 379, Melitius, of Nicene conviction, added the canons of Nicaea at the head of the collection, and it was again later enlarged to include the canons of Constantinople (381) and Chalcedon (451).¹⁸⁰ It was apparently from the time of Melitius that the canons in this growing collection—the ‘Corpus Antiochenum’—were numbered continuously.¹⁸¹ In its latter two stages

¹⁷⁶ CCL 148.

¹⁷⁷ Vives, *Concilios*, 16–18, 19–33, 34–8 respectively.

¹⁷⁸ For a general review of the history of the transmission and collection of canons in the West (with some attention also given to the East), see Gaudemet, *Les Sources*, chs. 5 and 9.

¹⁷⁹ See *ibid.* 58–9. Gaudemet here points to the model of the imperial rescript, which underlies the shaping of the papal decretal.

¹⁸⁰ The formation of this foundational collection is discussed by E. Schwartz, ‘Die Kanonensammlungen der alten Reichskirche’, *ZSSR* 56 = kan. Abt. 25 (1936), 1–114 = *Gesammelte Schriften* (Berlin, 1960), iv, 177–205. For Schwartz’s opinions regarding the roles played by Euzoius and Melitius, see his article ‘Über die Sammlung des Cod. Veronensis LX’, *ZNTW* 35 (1936), 13–14. See also L’Huillier, ‘Origines et développement’, 53–65.

¹⁸¹ L’Huillier, ‘Origines et développement’, 60.

the collection was translated into Syriac and was received and used by most of the Oriental churches. The study of Oriental canon law is also a field in itself, requiring consideration of the East Syrian and West Syrian collections and codes, including the Assyrian (Nestorian), Jacobite, and Melchite traditions, together, ultimately, with the Coptic tradition in Egypt.¹⁸²

During the sixth century the 'Antiochene Collection' was superseded by others, but it was fortuitously translated into Latin for the West by Dionysius Exiguus (early sixth century), as well as into Syriac,¹⁸³ before disappearing entirely from the Greek East. The collection which immediately displaced it was the collection of *Sixty Titles* of unknown authorship and subsequently lost, appearing shortly after the second edition of Justinian's Code in 534. In about 550, John Scholasticus, a lawyer from Antioch who later became Patriarch of Constantinople, published the *Synagoge* (also called the *Collection of the Fifty Titles*).¹⁸⁴ The work was apparently a reordering and expansion of the collection of the *Sixty Titles* under fifty headings, comprised of the eighty-five Apostolic canons, the canons of Nicaea, Constantinople (with two canons from the council of 382 at Constantinople added), Ephesus (with canons 7 and 8 formed from materials taken from other sources in that council), the first twenty-seven of Chalcedon, Ancyra, Neocaesarea, Serdica, Antioch, Gangra, and Laodicea. All these series had apparently been included in the *Sixty Titles*.¹⁸⁵ To these materials Scholasticus added over sixty extracts

¹⁸² A considerable body of literature is devoted to the beginnings of canon law in the oriental churches. For an introduction see W. Selb, 'Die Kanonensammlungen der orientalischen Kirchen und das griechische Corpus Canonum der Reichskirche', in H. Lentze and I. Gampl (eds.), *Speculum Iuris et Ecclesiarum: Festschrift für Willibald M. Plöchl zum 60. Geburtstag* (Vienna, 1967), 371–83; J. Deslandes, 'Sources canoniques de droit oriental', *Échos d'Orient*, 32 (1933), 476–87, 33 (1934), 443–64; F. Schulthess, *Die syrischen Kanones der Synoden von Nicaea bis Chalcedon* (Abhandlungen der königlichen Gesellschaft der Wissenschaften zu Göttingen, philol.-hist. Klasse, NF 10/2 (Berlin, 1908); J. B. Chabot, *Synodicon Orientale* (Paris, 1902); A. Vööbus (ed. and trans.), *The Synodicon in the West Syrian Tradition*, 2 vols. (CSCO vols. 367–8, 375–6; Louvain, 1975).

¹⁸³ W. Selb states that the Greek canons received by the Persian council of Seleucia-Ctesiphon in 419 under Yahballaha I were of the version of the 'Antiochene Collection': *Orientalisches Kirchenrecht*, i: *Die Geschichte des Kirchenrechts der Nestorianer* (Sitzungsberichte der Österreichischen Akademie der Wissenschaften, phil.-hist. Klasse, 388; Vienna, 1981), 102–3. They were widely used by most of the Oriental churches.

¹⁸⁴ V. N. Benešević, *Ioannis Scholastici Synagoga L. titulorum ceteraque eiusdem opera iuridica* (Abhandlungen der bayerischen Akademie der Wissenschaften, philos.-hist. Abteilung, NF 14; Munich, 1937).

¹⁸⁵ For both these collections see the articles by C. De Clercq, 'Byzantin (droit canonique)', *DDC* ii (1937), 1170–1, and É. Herman, 'Jean III le Scholastique', *DDC* vi (1957), 119–20.

from Basil's 'canonical epistles' (188, 199, and 217) to Amphilochius.¹⁸⁶ As the names of the collections indicate, beginning with the *Sixty Titles* and continuing as standard practice, the material was now arranged topically rather than sequentially, undoubtedly following the method adopted in Justinian's Code. The author of the *Sixty Titles* is also credited with the innovation of having added to his own work a collection of texts relating to ecclesiastical matters from the recently published Code. After becoming Patriarch, Scholasticus similarly added a section containing eighty-seven ecclesiastical rulings from Justinian's *Novellae*.¹⁸⁷ These innovations initiated a trend in the combination of ecclesiastical and civil regulatory materials appertaining to ecclesiastical affairs in collections that would bear the name of 'nomocanons'.

After the death of John Scholasticus in 577 a collection entitled the *Syntagma of the Fourteen Titles* added to the work of Scholasticus and in the early sixth century was combined with more ecclesiastical materials and civil laws to become the first part of a nomocanon, apparently bearing the name of the *Nomocanon in Fourteen Titles*.¹⁸⁸ This collection was evidently received by the council in Trullo in 692, for its canonical materials are described in canon 2 of that council. By the material which it received and authorized, together with its own canons, this council provided the foundation for Byzantine church law for future centuries.¹⁸⁹

(viii) The Western Canonical Collections

At least from the standpoint of known surviving documents, the canonical collections in the West were more numerous and are more complicated in themselves and in their relationships than those of the East.¹⁹⁰ The early history of the Western collections was largely written in

¹⁸⁶ P. Rousseau, *Basil of Caesarea* (Berkeley, 1994), 260 n. 136 points out that the division of the material in these letters into 'canons' occurred after Basil's time during the history of their transmission.

¹⁸⁷ Herman, 'Jean III le Scholastique', 119.

¹⁸⁸ Printed in a seventh-century recension in V. N. Benešević, *Syntagma XIV Titulorum* (St. Petersburg, 1906). See L'Huillier, 'The Making of Written Law in the Church', *Studia canonica*, 31 (1997), 142; also E. Honigmann, 'Le Syntagma XIV titulorum' in *Trois mémoires posthumes d'histoire et de géographie de l'Orient chrétien* (Brussels, 1961), 49–71.

¹⁸⁹ L'Huillier, 'The Making of Written Law', 145–6.

¹⁹⁰ The most comprehensive informational source in this field is Maassen's *Geschichte der Quellen*. The reader is again referred to the excellent shorter review of the major collections and their manuscript sources given by Gaudemet, *Les Sources*, chs. 5 and 9.

Africa, followed by important work in Gaul. Although it was in Rome that the earliest surviving collection was made, it was in Africa that the greater and most influential body of Western conciliar legislation was enacted and collected. As we shall observe more fully below in Chapter 6, the earliest Roman collection, if it can be called that, was apparently a document containing the canons of Nicaea and the canons of Serdica as a single combined series under the name of Nicaea. The circumstances of the arrival of these two sets of canons in Rome, as well as of their combination, while generally thought to have been in the mid-fourth century, is unknown, but canon 19 of Serdica was cited by Pope Innocent in 404.¹⁹¹ In 418, canons 7 and 17 of Serdica were quoted by Pope Zosimus as Nicene in justification of his restoration of the deposed African presbyter, Apiarius of Sicca. These citations confirm the arrival of the Nicene–Serdican series in Rome by the turn of the century at the latest.

It is certain that the African request to Alexandria, Antioch, and Constantinople for copies of the authentic Nicene series resulting from the mistaken identity of the Serdican canons on the part of Rome brought responses which included the ‘Antiochene Collection’. The Western manuscript traditions provide evidence that the reception of this collection led to the formation of the first Latin translation of the early Eastern canonical corpus either in Africa or in Italy, and that it was the initial form of a Western collection called the *Isidoriana*, which came to be of considerable later influence.¹⁹² The source of an unusual version of canon 6 of Nicaea¹⁹³ quoted by Paschasius, the papal delegate at Chalcedon, is unknown; if Turner is correct in dating it in the fourth century, it would antedate this fifth-century translation of the Eastern material and could presumably have come from the earlier composite Nicaea–Serdica collection.¹⁹⁴ A subsequent Eastern collection received in the West in the fifth century, referred to by Dionysius Exiguus as ‘prisca’ and hence later named as such, comprised the canons of Nicaea–Serdica in continuous series with Ancyra, Neocaesarea, Gangra, Constantinople, Chalcedon, and a number of African canons. This has been dated by Schwartz as

¹⁹¹ See Ch. 6, §i.

¹⁹² Gaudemet, *Les Sources*, 77–8.

¹⁹³ The version begins: ‘Ecclesia Romana semper habuit primatum.’ Turner regards this as a very early Roman, or at least Italian, reading; it is witnessed in the ‘Codex Ingilrami episcopi Teatini’ (*EOMLA* i. 103, 121, and 148). See also Hefele–Leclercq, i/2. 1157.

¹⁹⁴ This was suggested by Schwartz, *Kanonesammlungen*, 211, and supported by H. Chadwick, ‘Faith and Order at the Council of Nicaea: A Note on the Background of the Sixth Canon’, *HTR* 53 (1960), 187–9.

having been first assembled before 498, and by Turner to shortly after 451.¹⁹⁵

Four major collections were made in Africa during the late fourth to mid-sixth centuries. The earliest was the *Breviarium Hipponense* formed by abbreviations of the canons enacted at the council of Hippo in 373. The redaction took place at a small council at Carthage on 13 August 397 and was slightly modified and confirmed at a larger council at Carthage two weeks later on 28 August.¹⁹⁶ Both redactions still exist. The *Breviarium* apparently received widespread use in the African church, and was assimilated into the second edition of the collection of Dionysius Exiguus.

The *Gesta de nomine Apiarii*, or *Codex Apiarii causae*, contains a large amount of material including the minutes of discussion regarding the matter of the appeal of the deposed presbyter Apiarius of Sicca to Pope Zosimus, the canons of the council sessions at Carthage on 25 and 30 May 419, copies of the documentation received from Alexandria and Constantinople in response to the African requests for copies of the authentic canons of Nicaea, and the letter from the Carthaginian council of 424 to Pope Celestine, bringing to a close the matter of transmarine appeals by African clergy.¹⁹⁷ As Cross has pointed out, the purpose of the collection was to substantiate the claim of the African churches to jurisdictional independence from Rome. The contents of the *Gesta* have been preserved in a variety of manuscripts representing the several later collections into which they have been assimilated.

The third African collection of note is the *Registri ecclesiae Carthaginensis excerpta* (occasionally named the *Codex canonum ecclesiae Africanae*, or 'African Code') containing canonical material in continuous numeration from African councils held between those of Hippo on 8 October 393 and Carthage on 1 May 418, beginning with the *Breviarium Hipponense*. The sizeable portion of the original 'Carthage Register' that has survived is that which Dionysius Exiguus assimilated into the second redaction of his collection,¹⁹⁸ which will be discussed below.

¹⁹⁵ *Kanonensammlungen*, 270–1; C. H. Turner, 'Chapters in the History of Latin MSS of Canons V. The Version Called Prisca: (a) The Justel MS (J) now Bodl. E. Mus. 100-102, and the *editio princeps* (Paris, 1661)', *JTS* 30 (1928–9), 340.

¹⁹⁶ CCL 149. 28–44. Munier here prints the redaction of the 13 August gathering. See Cross's commentary in 'History and Fiction', 229–33.

¹⁹⁷ CCL 149. 89–172. See Cross's commentary in 'History and Fiction', 240–7, and Gaudemet, *Les Sources*, 81–2.

¹⁹⁸ CCL 149. 182–247. See the commentary on the *Registrum* by Cross, 'History and Fiction', 233–9.

Fourth, the *Breviatio canonum* of Fulgentius Ferrandus, deacon of Carthage, composed in about 546, adopted the style we have seen in the East in the same period, arranging the material topically rather than chronologically. Ferrandus included canons from the Eastern councils of Ancyra, Neocaesarea, Nicaea, Antioch, Serdica, Gangra, Laodicea, and Constantinople, and African canons taken from councils from Carthage 348 to Iuncense in 523, for a total of two-hundred and thirty-two. As the title of the collection indicates, the canons are given in abbreviated form.¹⁹⁹

The most important contribution to the Western canonical tradition is the collection of Dionysius Exiguus, reputedly a Scythian monk who settled in Rome towards the end of the fifth century and produced his collection in two known editions and possibly also a third. Their dates are unknown, but they were undoubtedly published during the first three decades of the sixth century. The first contained a Latin translation of the first fifty of the canons of the Apostles and the canons of Nicaea, Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, and Constantinople, followed by the canons of Serdica, the canons of the council of Carthage held in 419 and other materials concerning the affair of Apiarius, and finally the first twenty-seven of the canons of Chalcedon. The second redaction began with the canons of the Apostles followed by the canons from Nicaea to Constantinople in continuous numeration from 1 to 165, and the canons of Chalcedon and Serdica together with a larger body of African material from the *Registri ecclesiae Carthaginensis excerpta*, with each of the three latter groups numbered separately.²⁰⁰ Of the third edition, if it was in fact produced, all that remains is the preface, in which we are told that the Greek texts of each of the Eastern councils were given together with a Latin translation. The canons of the Apostles and the Serdican and African canons were omitted for the reason that they had not been universally accepted.²⁰¹ In connection with his collection of canons, Dionysius published a collection of forty-one decretals deriving from Popes Siricius (384–99) to Anastasius II (496–8).

¹⁹⁹ CCL 149. 287–306. See Gaudemet, *Les Sources*, 137–8.

²⁰⁰ For fuller descriptions of Dionysius' work, see L'Huillier, 'The Making of Written Law', 134–7; G. Limouris, 'L'œuvre canonique de Denys le Petit (vi^e s.)', *Revue de droit canonique*, 37 (1987), 127–35; and Maassen, *Geschichte der Quellen*, i. 425–31. For discussion of the several unresolved questions regarding Dionysius' work see the article by J. Rambaud-Buhot, 'Denys le Petit: le canoniste', *DDC* iv (1949), 1138–52; and C. Munier, 'L'œuvre de Denys le Petit, d'après les travaux du R.P. Wilhelm Peitz, S.J.', *Sacris erudiri*, 16 (1963), 236–50.

²⁰¹ This information is given in the brief preface to the third edition addressed to Pope Hormisdas. See Maassen, *Geschichte der Quellen*, i. 964–5.

An article by C. H. Turner in 1916 pointed the way to modern scholars for the recognition of southern Gaul as an important region for canonical collection during the fifth and sixth centuries.²⁰² Two of these collections must be mentioned here. First, the canons identified with the so-called second council of Arles have latterly been regarded simply as a re-edited collection of fifty-six canons deriving from the councils of Nicaea (325), Arles (314), Orange (411), and Vaison (442), which was made in the vicinity of Arles between 442 and 506.²⁰³ A recent study by Ralph Mathisen,²⁰⁴ however, makes a strong case for a council to have indeed been held at Arles between 490 and 502 (perhaps to be dated as closely as 501), the aim of which was the promotion of Gallic authority, and the authority of the see of Arles in particular (canon 18), by assembling the collection that has gone under its name. Through the canons the council proclaims both the first council of Arles (in canon 24) and itself (in canon 56) to bear the title ‘magna synodus’, together with Nicaea (in canon 6), and orders in the final canon (56) that metropolitans are not to assert anything contrary to ‘[this] great synod’ (*nihil contra magnam synodum metropolitani sibi aestiment vindicandum*).²⁰⁵ Second, the *Statuta ecclesiae antiqua* were formerly identified as a series of 102 canons enacted at an otherwise unknown council of Carthage in 498, but they are now recognized as a collection compiled in southern France in the mid-fifth century from a variety of sources, Eastern, African, and Gallican. The canons are roughly classified according to content and deal with the ordination of bishops and their duties, and more extensively with disciplinary matters for clergy and laity.²⁰⁶

²⁰² ‘Arles and Rome: The First Developments of Canon Law in Gaul’, *JTS* 17 (1916), 236–47.

²⁰³ So Turner, op. cit. 239–40. The text of the collection is found in CCL 148. 114–30.

²⁰⁴ ‘The “Second Council of Arles” and the Spirit of Compilation and Codification in Late Roman Gaul’, *Journal of Early Christian Studies*, 5 (1997), 511–54.

²⁰⁵ CCL 148. 125.

²⁰⁶ The *statuta* as edited by Munier are found ibid. 164–88, and Munier’s comments regarding them are found on p.163. See also Turner, ‘Arles and Rome’, 240–5, and Gaudemet, *Les Sources*, 75.

3 The Development of an Ecclesiastical Rule of Law

In consideration of the intent of its authors and collectors and of its ultimate significance, the history of early conciliar legislation is to be understood as the development of universally binding church law from originally consensual agreements among bishops. The period during which this evolution of the concept of 'canon law' took place is approximately defined by the limits of the fourth and fifth centuries, with the council of Elvira at its beginning and the era of Justinian's refinement of the Roman civil code in the sixth century at its end. While that latter limit lies far before the work of the medieval canonists, it marks the establishment of a concept that was to bear much fruit in subsequent centuries.

(i) Conciliar Enactments and the Parliamentary Process

The differing forms of publication of the canons of the fourth- and fifth-century councils presents a question that has received surprisingly little attention from historians and canonists, but they would seem to provide important clues to the significance of conciliar legislation itself in the minds of those who first enacted, collected, and transmitted it.

We noted in Chapter 1 that procedural minutes or stenographic records of the discussions were taken at synods and councils in the third century, and the practice seems to have been universally employed in the fourth and fifth. A considerable quantity of evidence for this is available from a variety of sources during this period. Of first importance, verbatim records have been preserved from the discussions which took place at several ecclesiastical hearings, trials, and conferences in which imperial officers participated. Prime examples are the discussions of the trial of the Donatist bishop Silvanus of Cirta by Zenophilus, governor of

Numidia in 320;²⁰⁷ the record of a dialogue between Pope Liberius and the Emperor Constantius at Milan in 355;²⁰⁸ the acts of the council of Aquileia in 381;²⁰⁹ and the record of a discussion between the Catholics and Donatists at Carthage in 411.²¹⁰ While no longer extant, the minutes taken at various other gatherings are directly referred to by early writers. Socrates makes specific mention of the employment of stenographers (ὀξυγράφοι) at Seleucia in 359.²¹¹ The detail which is found in Sozomen's account of the trial of Athanasius strongly suggests that he had access to a transcript of the record of the council of Tyre,²¹² and Athanasius mentions the 'minutes (ὑπομνήματα) of their proceedings'²¹³ with reference to the records of the commission of inquiry sent to Alexandria by the same council. The Western Serdican encyclical refers to a record of the proceedings against Asclepas of Gaza in connection with its use in the review of his case at Serdica.²¹⁴ Sozomen informs us that shorthand stenographers (ταχυγράφοι) were employed at Sirmium in 351,²¹⁵ and a quotation from their transcript is given by Epiphanius.²¹⁶ An excerpt from the acts of Rimini, the rival council to Seleucia in 359, is quoted by Jerome with the concluding invitation for anyone who thinks he has made it up to consult the public records: 'si quis a nobis fictum putat, scrinia publica scrutetur'.²¹⁷ Sozomen's detailed account of the proceedings at Constantinople in 360, which includes paraphrase notes pertaining to the public debate, is apparently based upon the acts of the council itself.²¹⁸ Theodoret tells us that minutes were taken by notaries at the council that chose Melitius as bishop of Antioch in 360.²¹⁹ Studies of the sources used

²⁰⁷ The *Gesta apud Zenophilum* : M. J. Routh, *Reliquiae Sacrae*, 2nd edn. (Oxford, 1846), iv. 320–35.

²⁰⁸ Theodoret, *HE* 2. 16, ed. L. Parmentier, *Theodoret: Kirchengeschichte*, 3rd edn. rev. G. C. Hansen (GCS, NF 5; Berlin, 1998), 131–6.

²⁰⁹ Mansi, iii. 599–620.

²¹⁰ *Gesta Conlationis Carthaginensis anno 411*, ed. S. Lancel (CCL 149A; Turnhout, 1974), 53–257; see too Lancel's Latin–French edition of the first session, SC 195 (Paris, 1972), 558–910; SC 224 (Paris, 1975), 922–1241 (with SC vols. 194 and 373 as introductory and supplementary respectively).

²¹¹ *HE* 2. 39. 8 (GCS, NF 1. 169).

²¹² *HE* 2. 25. 1–15 (GCS, NF 4. 84–6).

²¹³ *Apol. contra Arianos* 83. 4 (*Werke*, ii/1. 162).

²¹⁴ CSEL 65. 118.

²¹⁵ *HE* 4. 6. 15 (GCS, NF 4. 145–6).

²¹⁶ *Adversus haereses* 71. 2–5, ed. K. Holl, *Epiphanius: Ancoratus und Panarion*, iii (GCS 37; Leipzig, 1933), 251–4.

²¹⁷ *Dialogus adversus Luciferianos* 18 (PL 23. 172).

²¹⁸ *HE* 4. 24 (GCS, NF 4. 178–81).

²¹⁹ *HE* 2. 31. 4 (GCS, NF 5. 172).

by the fifth-century historians Socrates and Sozomen have established that at least one large collection of material from a wide range of councils from Nicaea onward was available to them, and that in addition to a quantity of letters it contained procedural records of the type that we have been considering.²²⁰ Finally, we should note that parliamentary procedures were observed and minutes were taken at Ephesus (341)²²¹ and Chalcedon (451).²²² As Turner and others have pointed out, procedural minutes were customarily taken at civil hearings, and a large part of the councils in the fourth century were convened and supervised by the emperor and civil officials, but there is ample evidence that church officials regularly employed the services of secretaries and stenographers themselves.

When the canons of the council of Serdica and others of the same form of publication are compared with the procedural minutes recorded during the same period, the forms are seen to be identical. The conclusion must be drawn that these series of canons were taken verbatim from stenographic records of the sessions during which they were enacted in the same fashion as we observed in Chapter 1 regarding Cyprian's baptismal council of 1 September 256. In each of these series the issues were introduced for discussion by a formal proposal, the *relatio*, and their suggested resolutions were provided by members of the assembly in their expressed opinions, the *sententiae*. In the form that we have received the records of conciliar discussion from the fourth century, the name of the proponent is usually given (' . . . episcopus dixit'), but not, with rare exception, the names of those offering *sententiae*. Either immediately, or following one or more *sententiae*, or a summary of the issue with further comment by the presiding bishop, the matter was brought to a vote. The

²²⁰ This is the *Συναγωγή τῶν συνόδων* of Sabinus. There may also have existed a *Synodicon*, which Socrates attributes to Athanasius (*HE* 1. 13). For a discussion of both collections see P. Batiffol, 'Sozomène et Sabinos', *Byzantinische Zeitschrift*, 7 (1898), 266, 271–80; id., 'Le Synodikon de S. Athanase', *Byzantinische Zeitschrift*, 10 (1901), 128–43; also G. Schoo, *Die Quellen des Kirchenhistorikers Sozomenos* (Berlin, 1911), 95–109.

²²¹ The *sententiae* of the bishops were elicited, for example, on the question of Cyril's adherence to the Nicene faith in his letters to Nestorius. Thus we read: 'Cyrillus . . . episcopus dixit, . . . peto vestram sanctitatem dicere utrum recte et irreprehensibiliter et consonanter sanctae illi synodo talia scripserim an non.' This was followed by the *sententiae* (§§8–19; *ACO* I ii. 39–40). This is succeeded by a reading of Nestorius' letter to Cyril, the *relatio*, individual opinions as to its orthodoxy, and finally a resolution condemning Nestorius which is prefaced by 'Omnes episcopi simul clamaverunt' (§§10–21; *ibid.* 43–5).

²²² An example of the use of the parliamentary process is found in the review of a jurisdictional question involving the sees of Antioch and Jerusalem. The sequence of phases is again *relatio*, *sententiae*, and resolution (§§3–17; *ACO* II iii. [442]–[444]).

vote was solicited by the presiding bishop with ‘Si hoc omnibus placet?’, and the pleasure of the assembly was expressed and recorded with ‘Placet’, ‘Ab universis episcopis dictum est: placet’, ‘Placet et constitutum’, or other similar phrases. These standardized expressions of agreement to each proposal are typical of the vote by acclamation in the senate, which Mommsen describes as having replaced the older manner of voting by *discessio*, or the silent transfer of position by the members to the side of the speaker whose *sententia* they supported.²²³

Detailed procedural evidence is provided for us from surviving records of the council of Serdica, the council at Carthage under Gratus in 345/8,²²⁴ and the council at Carthage under Genethlius in 390.²²⁵ Three procedural patterns emerge. In the first, the proponent of a topic for consideration included his *sententia* in the *relatio*, and this was acclaimed by the assembly. This procedure was followed extensively at Serdica, being found in canons 1, 2, 3, 5–6, 8, 9, 11, 13, 14, 15, 16, 17, 18, and 20 of the Latin version, with close conformity in the Greek. The same procedure characterizes canons 1–4 and 14a at Carthage in 345/8, with Gratus as proponent, and canons 1, 4, and 13 at Carthage in 390, with Genethlius as proponent. This same manner of *relatio-sententia* presentation by the speaker introducing the subject for consideration is found in the minutes of the council held at Rome in November 502,²²⁶ and in those of a sitting of the Roman senate in 438.²²⁷ It is important to observe, and particularly from the evidence provided by this latter document which pertains to the senate itself, that the structured process of parliamentary debate was frequently abandoned in this period and that the proposal of the original speaker, as both *relatio* and *sententia*, was often ratified by acclamation without other *sententiae* being given.²²⁸ The second procedural pattern that our documents reveal also involves an abbreviation of the process. The *relatio* of a member of the council was followed by the *sententia* of the president, to which universal acclamation was given. This is found in canons 5–13 at Carthage in 345/8. The third pattern is a modification of the second, with the president soliciting the council's response to the *relatio* of the proponent, or to his own *sententia*. This is found in canons 2, 3, and

²²³ *Römisches Staatsrecht*, iii. 1019 n. 3.

²²⁴ CCL 149. 3–10.

²²⁵ *Ibid.* 12–19.

²²⁶ ‘Acta Synodorum habitum Romae a. CCCXCIII. DI. DII’, ed. Th. Mommsen, *Monumenta Germaniae Historica: Auctores Antiquissimi*, xii (Berlin, 1894), 393–455 at 444–51.

²²⁷ ‘Gesta senatus Romani de Theodosiano publicando, a. 438’, § §3, 4, 6, 7, *Theodosiani Libri XVI*, ed. Mommsen and Meyer, i/2. 1–4; *The Theodosian Code*, trans Pharr, 3–7.

²²⁸ See Batiffol, ‘Le règlement des premiers conciles africains’, 18.

5–12 of the council under Genethlius in 390. We have no knowledge of the number of *sententiae* normally given or allowed, but there is no reason to believe that the number was restricted in principle. In canon 7 one other *sententia* is given before Genethlius'; this may be seen as an indication that more than one *sententia* was frequently given under fourth-century conciliar procedures but that only the one finally accepted was normally recorded.²²⁹

The significance of these patterns is in the evidence they provide for the operation of the conciliar forum, which, while allowing some flexibility, was tightly controlled by the president under conventional protocol. The choice of topics for discussion depended on the president's openness to the initiative of others. At Serdica, the three proponents in addition to Ossius (named below) were all leading figures at the council. At the African councils it is evident that Gratus and Genethlius exercised strong influence over the determination of collective opinion through their interventions by question or *sententia*. On the other hand, flexibility is found in the system of voting, for while the responses of the assembly are portrayed as acclamatory ('Ab universis episcopis dictum est: . . .') and were frequently formulaic, many are of varied length, with that of canon 8 of the council of 390 extending to about twelve lines. It is apparent in these cases that the response of one bishop is given as reflecting the *consensus* of the assembly. In canon 9 of this council, for example, regarding episcopal control over presbyters, Genethlius exhorted: 'Brothers and fellow-bishops, do not delay to respond to this worthy proposal.' The response of the assembly was: 'Whatever presbyter seeks to celebrate [the Eucharist] in any place without consultation with the bishop acts contrary to his office.' It seems likely that this and the other longer collective responses recorded in this and other sets of minutes were the acclaimed *sententiae* either in abbreviation or in full. Canon XIV of Serdica provides an outstanding example of a lengthy and purportedly collective response (so identified in the Greek version only) that is evidently the *sententia* given by Ossius in continuation from his *relatio* and accepted in acclamation by all.

²²⁹ A similar analysis of the protocol of the fourth- and fifth-century Gallican councils is given by G. Gottlieb, 'Die formalen Bestandteile in der Überlieferung der gallischen Konzilien des 4. und 5. Jahrhunderts', *AHC* 16 (1984), 254–63.

(ii) The Serdican Canons and Parliamentary Procedure

The Serdican canons bear the same characteristics as the other documents which have just been discussed, and their structure reflects the character of the proceedings in greater detail. In general, the statements of the bishops are discursive and unrehearsed. A continuity in the treatment of topics and the development of subjects from one to another is evident, and frequent connective allusion is made to previous considerations. The pairs and groups composed of canons 1 and 2; 3, 4, and 7; 8–12; 14 and 15; 16 and 17; 18 and 19; and XVIII and XIX (occurring only in the Greek text) are unmistakably taken from single, unbroken discussions. Canon 3a and 3b together are of particular interest as a connective section belonging both in the context of the preceding ‘translation canons’ (1 and 2) and of the following discussion of episcopal appeal in canon 3c.

For a better understanding of both the conciliar legislative process and the Serdican canons, it is necessary first to identify several of the conventionally numbered canons which are not enactments in themselves and to discern their role as elements within the process by which the series was produced. To facilitate this analysis, the reader is referred to the introduction to the numbering systems of the Serdican canons provided in Chapter 5, §ii, to the Table of the numbering systems before the Appendix, and to the Appendix itself for the texts of the canons. It should be noted that while lettered subdivisions are attributed to canons 3, 9 and 10 in the Latin text and to canons III, VI, and IX in the Greek, these are arbitrarily introduced to assist in analysis. The elements to be identified are as follows:

- (a) As clearly shown by the Latin text with its concluding acclamation clause, canons 3a, 3b, and 3c are sequential parts of single proposal.
- (b) As revealed by its opening phrase, ‘Let it be added’, canon 4 is an amendment to canon 3.
- (c) Canon 6 is a clause appertaining to canon 5. The two are correctly joined together as canon VI in the Greek text, and they were presumably presented by Ossius as a single proposal.
- (d) Canon VIII of the Greek text shows that its Latin equivalent canon 9a is a discrete canon in itself.
- (e) Canon IX of the Greek shows that its equivalent, 9b and 10a of the Latin, are together a single piece of legislation that should be identified as canon 10.

- (f) Canon 10b is evidently a simple comment appertaining to canon 8. This probably explains its absence from the Greek text.
- (g) Canon 12 of the Latin is a suggestion of policy relating to canon 11 and would seem to have no legislative function or status. This is also absent from the Greek, and probably for the same reason as the above.
- (h) Three canons of the series are redacted decrees prepared at the time of the council in the form of publication which we shall refer to below as the *placuit*. These are canons 7(V), 19(XV) and 21(XVII), each of which, being neither in the form of a proposal nor a *sententia*, is evidently a final report of what has been decreed. Canon 7, which pertains to the matter in canon 3 with amplification, opens with 'Moreover, it was pleasing (*placuit*)'; canon 19, relating to the matter in canon 18, opens with 'And this we have all determined (*constituimus*)'; and canon 21 opens with 'Moreover, at the suggestion of . . . Olympius, this has been [found] pleasing (*placuit*)'. With regard to the latter, the phrase 'At the suggestion of . . . Olympius' seems to refer to the *sententia* of which this resolution is a redaction.
- (i) It is likely that the absence of Canon 18 from the Greek, which is both restated and amplified in final redaction in canon 19(XV), is due to the same trend toward an elimination of the non-essential that we suggested in points (f) and (g) above.
- (j) Canon XVIII is a *relatio* of Gaudentius introducing a topic for which Ossius' *sententia* (canon XIX) was apparently accepted as the resolution to the issue. They are to be regarded as a single canon together. Their absence from the Latin is most likely due to the fact that the canon concerns only a local problem at Thessalonica which would be of no interest in the West.²³⁰

Assuming that these analyses are correct, out of a total of the twenty-seven separately classified legislative pieces in the Latin and Greek texts together,²³¹ only fourteen discrete legislative acts are to be identified; the other thirteen are dependent elements or finally redacted canons.

It is to be noted in the Serdican series that frequent use is made of expressions characteristic of the parliamentary idiom. The parliamentary question of interrogation, *quid fieri placeat*, for the solicitation of individual opinion, is paraphrased in canons 1, 2, 3, 6, 8, and 11 with *si omnibus (hoc) placet* or *si vobis placet*. The expression *placere sibi*, denoting concurrence with the *sententia*, is found in the acclamation clauses of canons 9b–10a,

²³⁰ See Hefele–Leclercq, ii/2. 801–2 for a brief discussion of this issue.

²³¹ See Table 1, below, p. 210.

11, 13, 14, and 15, and *placet*, as a shorter variation, is found in the acclamation clauses of canons 1, 2, 3, 6, and 8. The most striking use of the word *sententia* in reference to an individual opinion is found in canon XIX of the Greek text with ‘my moderate opinion (ἁπόφασις)’. Also in the Greek text, the interrogation following canon II(2) reads: ‘If, then, this opinion (γνώμη) pleases you, respond’; the acclamation clause of canon XI(14) refers back to the canon itself as ‘this opinion (γνώμη)’; and the acclamation clause following the first half of canon XX(11) reads: ‘Such an opinion (γνώμη) is fitting and pleases us’. Canons 11 and 18 allude to the judgement of the council as the *sententia omnium*, and in canons 4 and 11 similar reference is made to the canon preceding as *huic sententiae*. This use of the word *sententia*, as signifying a conciliar judgement, was common to the period. The expression was parallel in use to the term *senatus sententia* (= *senatus consultum*).²³² In canons 8 and 9a the verb *decernere* is employed in its parliamentary sense in reference to the complete process of *sententiae*, vote, and resolution.

Canons 1, 2, 3, 5–6, 8, 9a(VIII), 9b–10a(IX), 11 (as two separate proposals in Greek canon XX), 13, 14, 15, 16, 17, 18, and 20 are initial propositions which bear the characteristics of the *relatio* and, with the exception of canon 20, also express the *sententia* of the proponent. Canon 20 provides an example of the *relatio* in its purest form: the problem for consideration is simply placed before the assembly with no suggested solution. The *relatio*, as was the custom, was accompanied by background information relating to the question. This is particularly noticeable in canons 8, 13, and 14. The inclusion of different related issues within the one proposition, as in canons 3, 5–6, 9, and 11, was also characteristic of parliamentary custom. The nature of the *relatio* as a statement inviting expression of opinion is particularly evident in canon 9a with ‘This also your providence ought to treat’; in canon 11 with ‘if this pleases you it ought to be confirmed by the judgement of all’; in canon 13 with ‘I think it necessary that you treat this most carefully’; in canon 14 with ‘Define, therefore, the time’; in canon XII(15) with ‘let this also be determined’; in canon 17 with ‘provision must be made lest the innocent be condemned’; and in canon XVI(20) with ‘a determination should be made with regard to this’.

It remains that with respect to canons 1, 2, 5–6, 9a(VIII), 9b–10a(IX), 13, 14, and 15, the parliamentary process may have given way to immediate assent by acclamation of the *sententia* of the proponent with no

²³² Mommsen, *Römisches Staatsrecht*, iii. 996.

further opinions given, and that the initial propositions thus approved became also the resolutions intended for publication. We have noticed, however, that of these, canons 9a, 13, and 14 are phrased in such a way as to invite comment rather than direct approval. Also, the final paragraph of canon 14 (beginning 'I remember') is clearly Ossius' *sententia* relating to the question that he had just raised. Whether or not this immediately followed the *relatio* in the original presentation cannot be determined, but it is possible that other unreported *sententiae* were introduced.

The remaining canons, and some of the closing sections that stand as acclamation clauses, are extracts from other phases of the full parliamentary process. Canon XIX of the Greek text, as shown by its opening phrase quoted above, is the *sententia* of Ossius on a question concerning a local schism at Thessalonica. The acclamation clause of canon 20 ('That time which was established . . .') is an answer to the problem posed by Aetius in the body of the canon, and it may be presumed that this clause is the *sententia* which was accepted by the council. In the Latin text this clause is introduced by 'All said', but in the Greek it is ascribed to Ossius and therefore appears to be his response to the question. That which stands as the acclamation clause of canon 18 ('Since from these disputes . . .') seems similarly to be an approved *sententia* in abbreviated form,²³³ and the same may be the case with the acclamation clause of canon 16 ('This decree will serve both peace and unity'). Also, as noted above, according to the Greek text the first section only of canon XIV(17), down to 'deprived of communion', stands as the initial proposal, while the remainder, beginning 'He who is cast out', is recorded as an extensive acclamation clause which appears to be the *sententia* that won the approval of the council.

A final aspect of the use of the parliamentary process at Serdica is found in the authorship of the various phases of the conciliar debate. As previously noted, the great majority of initial propositions were introduced by Ossius, as would be expected by virtue of his position as president of the council. Out of fourteen subject-introductions (*relationes*), eleven were made by Ossius and one each by Gaudentius of Naissus, Januarius of Benevento, and Aetius of Thessalonica. The three finally redacted resolutions, noted above, were again presented by Ossius. The one amendment (canon 12) and the one *sententia* (canon XIX) attributed

²³³ A fuller reading is provided by the Theodosian version: 'Especially from this kind of disputes it is common that discords and evil desires are born, and because of this clerics do not go to the churches assigned to them. The judgement of all forbids this to be done.' This is undoubtedly close to the original reading of the Greek, now entirely lacking in that text.

to Osius were each given in response to a proposal presented by another member of the council.

(iii) The Earliest Forms of Canonical Publication

From the foregoing discussions it is apparent that the Serdican canons and those of the other series which occur in the same form are representative of a rudimentary stage of canonical preservation. But while they appear simply to be extracts from the stenographic record of the essential phases of the parliamentary process, they are evidently somewhat more than that. We may perhaps regard them as an intermediate stage in the development of editorial style, or as records readied for final editing prior to publication. This conclusion is suggested by the seemingly edited style of canons 7, 19, and 21 of Serdica, and on the finished style of the reported collective *sententiae* (in place of formulaic acclamation clauses) in canons 2, 3, 8, 9, and 12 of the Carthaginian council under Genethlius in 390.²³⁴

The next step in tracing the development of conciliar legislation is to compare this style of canonical preservation, which we shall call the *dixit-placet*, with the standardized form represented by nearly all other series of legislative acts from this early period. Series of canons typifying this second style are accompanied by a brief and usually introductory statement (the *praefatio*) that identifies the place and circumstances of the meeting, and also by a list of subscriptions, both which features were common to records of various kinds of meetings, including the senate, in government and in society. A good illustration of the form of the canons and the nature and sequence of this related matter is provided by the acts of the council of Arles (314).²³⁵ Canons representative of this form may be described as informative, and in many cases discursive, accounts of the agreements reached with respect to particular problems at particular councils. They are frequently characterized by words and phrases referring back to the authority of the assembly specified in the heading and also by expressions that personalize the canons in such a way as to indicate that they were recorded primarily for the information of

²³⁴ CCL 149. 13–14, 16–18.

²³⁵ CCL 148. 4–22. In this case the place, the name of the bishop presiding, and the consulships during which the meeting was held were entered at the head of the subscriptions. The short form of the preface, which we have seen in Ch. 2, and which is probably the authentic version, is given by Munier on p. 9. The more frequently cited of the two longer versions is given on pp. 4–5.

contemporaries rather than as rules laid down for posterity. The form might be more broadly described not so much as a listing of regulations enacted by a council as a report of the decisions reached. The most frequently occurring term of reference to the conciliar assembly which enacted the canons is *placuit (nobis)* ('it pleased (us)'), or the Greek equivalent, ἔδοξε. Other typical expressions are *constitutum est* ('it was established') and *decrevit sancta synodus* ('the synod determined'), or their Greek equivalents, and the occasional use of the first person plural, as for example, *decrevimus* ('we decided', 'determined'), *censuimus* ('we were of the opinion' or 'we judged'), or ὠρίσαμεν ('we determined').

This form of publication, which for convenience we shall call the *placuit*, was employed for the canons of the following councils, East and West: Elvira (305/9), Ancyra (312), Arles (314), Nicaea (325), Antioch (c.328), Valence (374), Constantinople (381 and 382), Nîmes (394/6), Turin (398), Toledo (400), Carthage (September 401), Ephesus (431), and Chalcedon (451). Although not all the above-mentioned characteristics are found in all of the canons of any of these series, and while they occur in some series in greater frequency than in others, each series taken as a whole is generally representative of the one form of publication.

In canons 7, 19, and 21 of the Serdican series we have found examples of the editorial process which resulted in the *placuit* form. In view of the close correspondence in both content and form between Greek and Latin versions of the Serdican series, we may conclude that this mixture of forms between the *dixit-placet* and *placuit* resulted from editorial refinement at the council itself. Although the only available evidence is circumstantial, it is probable that the same process was employed with similar results at the councils named above which display mixtures of the *placuit* and its developmental successor, the statute form, which we have yet to discuss. This conclusion is strengthened by the fact that the Antiochene canonist-collectors apparently left the canons of the series which they included in their collection—assembled in the order:²³⁶ Ancyra (*placuit*), Neocaesarea (mixed),²³⁷ Gangra (anathematisms),²³⁸ Antioch

²³⁶ Ch. 2, §vii.

²³⁷ The Neocaesarean series remains an anomaly, but there are perhaps clues to its formational history. Canons 1, 2, 5, 8, 10, 11, 12, and 13 are statutory in form. Canons 3, 4, 7, 9, 14 and 15 are briefly discursive observations, canon 9 also bearing a stipulation. Canon 6 is a briefly discursive report of a conciliar decision in the *placuit* form. It seems likely that an original *placuit* series comparable to its sister series from Ancyra underwent editing and abbreviation some years after the council before reaching its received form.

²³⁸ While cast in a brief statutory form, the canons of the council of Gangra (343/355) are a series of anathematisms (Ἐἰ τις . . . ἀνάθεμα ἔστω) and cannot properly be considered in the developmental history of the disciplinary canon.

(*placuit*), Laodicea (*statutum*; to be discussed below), Nicaea (*placuit*)—in the varied forms that they found them in, without editorial modification. As we shall see below, this practice was consistent with the editorial conventions in the codification of civil law.

It is important to note that the *placuit* form of publication was employed for the canons of Eastern councils as well as of Western. This provides evidence that the conciliar procedures and protocol of Eastern councils from Ancyra onward were similar to the Western and must have been grounded in parliamentary debate and consensual resolution. Whether this marks a transition from the dialogic style previously noted as a procedural form employed in the East or an alternate style employed for deliberative sessions we cannot determine, but we recall from Chapter 1 that collective decision-making took place in the East both within and among congregations with regard to Montanism, the dating of Easter, and very specifically on a regional basis at the synods of Iconium and Synnada (c.230–5) regarding the rebaptism of heretics. Even at the notorious early third-century dialogues, the congregational approbation of which we are told regarding the vindicated teachings must have had a means of formal expression which contributed to the background of the later collective episcopal *placuit*.

Recognizing that the parliamentary process underlay the framing of the legislative acts of these councils, it is not difficult to establish the relationship of canons of the *placuit* type to the *dixit–placet* found in the Serdican and other series. The *placuit* form is simply an informational redaction of the resolutions recorded in the minutes of the legislative session which enacted them. This is illustrated within the Serdican series itself. Canons 7 and 19, and 21, conditioned by the past tense of *placere*, are evidently Ossius' summaries of approved *sententiae* and already stand as intended final conciliar statements on the topics that they treat: that is, canons in the *placuit* form. Further examples of the editorial process leading from minutes to canons are found in an analysis of canons 28 to 30 of Chalcedon. These were not included in the series as originally published but were added as extracts subsequently taken from the minutes of the Sixteenth, Nineteenth, and Fourth Sessions respectively. Canon 28 is a descriptive account taken from the minutes of a discussion concerning the authority of the see of Constantinople, and is essentially in the form of a canon of the *placuit* type, consistent with the form of the

Chalcedonian series in general.²³⁹ The text of canon 29 was formed from elements, extracted from the minutes, of the *sententiae* of the Roman delegation and of Anatolius of Constantinople concerning the question of the degradation of bishops, together with the phrases of acclamation by the body of bishops present and the judges, in response to the *sententiae*.²⁴⁰ Canon 30 has been formed by the combination of the *relatio* of the imperial judges and the senate of Constantinople regarding the subscription of the Egyptian bishops to the letter of Pope Leo, together with the affirming *sententia* of the Roman delegate, Bishop Paschasius.²⁴¹ The disclosure of the editorial work underlying these three canons is illuminating, for we have here been given a telling glimpse at the formation of the *placuit* type from a single descriptive statement in the one case and the conflation of different elements of the conciliar record in that which would have previously been the *dixit-placet* style in the others.

(iv) The Significance of the Forms of Publication

In continuation from the third century, the operating principle of councils in the fourth century and well into the fifth was *consensus*.²⁴² As we have seen in Chapter 1, *consensus* was a means of social and governmental problem-solving deeply ingrained in Roman culture. Even in the more autocratic periods of Roman history the heads of state and other officials recognized the need of seeking working agreement with contrary forces in society. The preservation of the Roman senate and its procedures throughout the history of the empire, West and East, even when deprived of effective power, bears witness to the survival of the principle. *Consensus* also eminently suited the Christian churches, both in an earlier era in which a plurality of leaders, if not all members of the congregational community, had a role in congregational government, and in the later era in which the bishops were the decision-makers and all bishops were at least theoretically equal as collegial pastors, each in his own congregational incarnation of the Church in microcosm. Notoriously strong leaders and conciliar enthusiasts such as Cyprian, Ossius, Athanasius, Aurelius, and

²³⁹ Actio xvi. 8 (*ACO* II i. [447]–[448]).

²⁴⁰ Actio xix. 49 and 50 (*ACO* II i. [467], ll. 33–6–[468], ll. 1–6).

²⁴¹ Actio iv. 60 and 62 (*ACO* II i [310], ll. 2–9, 14–17).

²⁴² For a discussion of *consensus* in Roman culture and government see Ch. 1, §viii. A few representative fourth- and fifth-century expressions of *consensus* from among many are found in canons 19 of Antioch (ψῆφος = a vote), 14 of Carthage (345/8), 1 of Carthage (390), 4 of Hippo 393, 28 of Orange (441), and 13 of Tours (461).

Augustine, and indeed Constantine, were promoters of the system. The system worked, and often exceedingly well.

The *dixit-placet* form and its edited replacement in the *placuit* style together bespeak the intentionality of conciliar legislative acts during the fourth and fifth centuries: that is, they are statements of *consensus* expressing solidarity in agreement by the bishops present regarding the resolution of the matters that they have treated and their commitment to observe these agreements. The matter of *consensus* is emphasized in the concluding exchange in canon 14 of the council of Carthage under Gratus in 345/8: ‘Bishop Gratus said, “It remains now that you confirm by subscription the *placita* of all of us which are written as your *consensus*.” All [the bishops] said, “Our having reached *consensus* is witnessed by the documents of this council, and our *consensus* will be declared by our signatures.” And they subscribed.’²⁴³

The commitment to observe the *consensus* is demonstrated in canon 13 of the council of Carthage under Genethlius in 390. Both this and the previous council of 345/8 were pan-African councils of bishops *provinciarum diversarum*. The canon reads as follows:

Bishop Geneclius [*sic*] said, ‘Is everyone pleased to observe all that has been decreed by this most glorious assembly?’ All the bishops said, ‘*Placet, placet*, they will be observed by all.’ Bishop Geneclius said, ‘If, which we do not imagine, anyone shall violate them, what do you decree?’ It was said by all the bishops, ‘Whoever shall act against his declaration or subscription will separate himself from this assembly.’ Bishop Geneclius said, ‘I give thanks that, with our God as guarantor, we have by wholesome counsel decreed all the things to be maintained for the state of the Catholic church, and therefore we ought by our own signature to confirm the things that have been said by all.’ the bishops responded, ‘*Fiat, fiat!*’ And they subscribed.’²⁴⁴

These are remarkably clear statements of the mid- to late fourth-century African understanding of conciliar procedures and their intent. The observance of the regulations enacted by the councils is incumbent on the assembled bishops, whose unanimous agreement by acclamation is guaranteed by their signatures. If any of the bishops should violate the agreement, his separation from the rest (separation from communion is to be understood) will be self-inflicted. The obligation to observe and to enforce the regulations is moral, not juridical, and there is no suggestion that the canons should apply outside the African provinces represented.²⁴⁵

²⁴³ CCL 149. 10.

²⁴⁴ Ibid. 18–19.

²⁴⁵ This seems to have been the intent at African councils at least until the publication of the *Breviarium Hipponense* at Carthage in 397, and it was probably also the understanding of the areas of application of the decisions of other regional councils in the West until the time of the second council of Arles (c. 500). The first council of Arles (314), however, as a general council of the West, apparently intended its decisions to have universal application in the West (see the council's letter to Pope Sylvester, Ch. 2 n. 23).

The principle of moral force is also clearly expressed in canon 11(XX) of Serdica and in canon 16(XIII), where the ‘fear’ of collective action by their episcopal peers is seen to supply the necessary motivation for potential offenders to heed the conciliar decisions. While less detailed, the Serdican statement is the more important because of its witness to the understanding held by bishops of both East and West.

As the *dixit–placet* form is the record of the parliamentary process in its major phases, the *placuit* form is the ecclesiastical counterpart of the documentary form customarily used in the publication of the resolutions of the senate (*senatus consulta*) and other parliamentary bodies. For the senate, the resolutions which were passed at each sitting were combined to form a series known as the *liber sententiarum in senatu dictarum*. This was addressed to interested persons in the form of a letter.²⁴⁶ Within the text of the resolutions the authority of the particular sitting was frequently referred to with use of words or phrases such as *placere*, *placere senatui*, or *arbitrari senatum*.²⁴⁷ In addition to the resolutions, the *liber sententiarum* contained information as to the place and date of the sitting and the subscriptions of the senators or magistrates who were present.²⁴⁸ The similarities between this type of document and the form of canonical publication found in the *placuit* series leads to the conclusion that the one provided the pattern for the other, and that the canons published in this form are simply the conciliar *sententiae* and the *placuit* series itself the *liber sententiarum* as adapted to ecclesiastical use.

The likelihood that this conclusion drawn from procedural similarities is correct is further strengthened by the similarity in functional position between the *senatus consultum* in government and the conciliar canon in ecclesial regulation. Neither the senate nor the church council exercised a juridically legislative role during the third to fifth centuries, and in practical terms the council gained in power while the senate languished, but the decisions of both possessed a morally suasive force based on the principle of *auctoritas* borne by the august members of the bodies that enacted them and were fashioned under the principle of *consensus* by

²⁴⁶ Mommsen, *Römisches Staatsrecht*, iii. 1010.

²⁴⁷ See C. G. Bruns, *Fontes Iuris Romani Antiqui*, 7th edn. (Tübingen, 1909), 164–211, and specifically the examples in nos. 46, 47, 48, 50, 54, 55, 57, 59, 60.

²⁴⁸ Mommsen, *Römisches Staatsrecht*, iii. 1008.

which both bodies operated. While the senate had its stronger and weaker periods during its long history, it was in theory an advisory body throughout rather than a law-making organ of government.²⁴⁹ In this position it survived throughout the life of the empire, sometimes with a high degree of influence and sometimes as a convenient tool of the emperor, but always retaining prestige and moral *auctoritas* in a society grounded in concepts of honour and prestige.²⁵⁰ The *auctoritas* of the episcopate both individually and collectively flourished within this cultural atmosphere, and its conciliar decisions bore weight of varying degrees, depending on the personal *auctoritas* of the participants and the breadth of *consensus* determined by their number. In about 400 Augustine credited plenary councils (*plenaria concilia*) representing the whole of Africa as having 'very sound authority' (*saluberrima auctoritas*), and indeed more authority than a local or provincial council.²⁵¹

(v) Conciliar Theory

It is important to recognize that an explicit theological understanding of the nature and authority of councils was only in its beginnings during our period of interest. Conciliar theory had scarcely advanced beyond the thought of Cyprian and his contemporaries a century before. Sieben's study in *Die Konzilsidee* probes deeply into the thought of Athanasius and Augustine as the two fourth- to fifth-century authors who provide significant but yet only partially formulated approaches to the question. Athanasius' thought was developed in relation to Nicaea as the great conciliar event with which he was in personal lifelong engagement, and he viewed the council as an expression of tradition, both active and passive. As active the council is tradition at work differentiating truth from error; as passive it is a participation in the Word of the Father.²⁵² The experiential backdrop for Augustine was the Donatist controversy. For him the council is the Church's collective declaration of truth; the more representative the council, the greater the degree of its authority and certitude, a plenary or universal council possessing the highest authority. Also for Augustine, authority and reason are in close conjunction (underlying

²⁴⁹ Kunkel, *Introduction*, 125–6.

²⁵⁰ See Ch. 1 n. 106.

²⁵¹ *Ep.* 54. 1. 1; *De bapt. contra Donat.* 2. 3. 4, 2. 4. 5, 6. 2. 3 (CSEL 51. 178, 179, 300). See the similar appraisal of Augustine's position by J. Gaudemet, *L'Église dans l'empire romain: IV^e et V^e siècles* (Histoire du droit et des institutions de l'Église dans l'Empire romain, 3; Paris, 1958), 215–16.

²⁵² *Die Konzilsidee*, 25–67.

the progression from *credere* to *intelligere*), and the council is authoritative as a mediator of saving truth, somewhat analogously to Scripture, but not as conclusively as Scripture.²⁵³ Sieben works forward from these positions finding a range of factors contributing to an understanding of the nature and authority of Nicaea in the thought of a number of late fourth- and early fifth-century writers, both East and West. These are: the affirmation of the active presence of God at Nicaea manifested as a *sententia divina*, or expressed in terms of inspiration by the Holy Spirit or by the presence of Jesus; the mystical number of the alleged 318 episcopal participants; the martyr quality of many of their number who had known persecution; the instrumentality of divine truth or tradition; the *consensus omnium*; and—from the standpoint of a rapidly strengthening papacy—confirmation by Rome.²⁵⁴ This ensemble of aspects gradually took shape through the further experience of Ephesus and Chalcedon in a generally accepted theological recognition of Nicaea and of councils generally as characterized by the dimensions of divine guidance, the witness of Scripture, the voice of tradition as it speaks and as it achieves renewed formulation in each council, and the consensus of the participants.²⁵⁵ The attribution of conciliar agreement to the action of the Holy Spirit was an evident factor in conciliar understanding. Sieben places emphasis upon it, but he does not advert to the fact that allusion to it in documents of the period is far less frequent than might be expected.²⁵⁶ While the activity of

²⁵³ *Die Konzilsidee*, 68–102. See *De bapt. contra Donat.* 2. 3. 4 (CSEL 51. 178). In *Ep.* 54. 1. 1 Augustine cites the authority of plenary councils (which he states to be ‘well founded in the Church’) together with that of the apostles (CSEL 24/2. 159). R. B. Eno points out that Augustine’s terminology regarding the ranking of councils was not clear or consistent, and that he did not adequately distinguish between ‘plenary’ African councils and worldwide councils: ‘Doctrinal Authority in Saint Augustine’, *Augustinian Studies*, 12 (1981), 163.

²⁵⁴ Sieben, *Die Konzilsidee*, 198–230.

²⁵⁵ Ibid. 231–69. Sieben has developed his well-known analytical schema of horizontal and vertical *consensus* from evidence provided in the third to fifth centuries (emphasizing Augustine and Vincent of Lérins) and from sixth- to ninth-century developments of conciliar theory in the West and in the East. For this see *Konzilsidee*, Parts I and II; H. J. Sieben, *Die Partikularsynode: Studien zur Geschichte der Konzilsidee* (Frankfurt am Main, 1990), 22–9; id., ‘Consensus, unanimitas und maior pars’, 192–6. For further treatment of the conciliar idea during the fourth and fifth centuries, see R. E. Person, *The Mode of Theological Decision Making at the Early Ecumenical Councils: An Inquiry into the Function of Scripture and Tradition at the Councils of Nicaea and Ephesus* (Basel, 1978). Among his major conclusions, Person finds ‘that there was no clear agreement [in the fourth- and fifth-century Church] concerning the inherent authority of church councils’ (p. 226). This is in general agreement with Sieben’s findings.

²⁵⁶ The major references are confined to the following: Cyprian, *Ep.* 57. 5. 1 (CCL 3 B. 308); Constantine’s letter to Alexander of Alexandria, 1 (Athanasius, *Werke*, iii/1. 66); Constantine’s letter to the church of Alexandria, 8 (ibid. 54); also Socrates, *HE* 1. 9; Leo I, *Ep.* 103 and *Ep.* 147. 2 (*inspirazione divina*) (PL 54. 989, 1116); and the second council of Arles in 490/ 502 (CCL 148. 133). See J. H. Crehan, ‘Patristic Evidence for the Inspiration of Councils’, *Studia Patristica*, 9 (1966), 210–15. The frequently cited reference to the guiding presence of the Holy Spirit at Arles I (314) is not found in the presumably authentic, shorter version of the conciliar note to Pope Sylvester (see Ch. 2 n. 23).

the Spirit may have been simply presupposed, it may more likely have drifted from a more central focus as the Church's institutional and organizational self-awareness became more dominant.

The undeveloped state of conciliar theory in the fourth century is reflected in the imprecise vocabulary describing conciliar enactments. The Nicene canons provide the best example. While directives and prohibitions enacted at Nicaea included such phrases as 'the holy synod has strictly forbidden' (Canon 3) and 'the great and holy synod decrees' (canons 8 and 14),—both of which phrases are familiar to us from the time of Cyprian—the council largely, and conservatively, based its decisions on authoritative voices from the past: specifically, the authority of custom (ἔθνη, canon 6; συνήθεια, canons 7 and 18);²⁵⁷ the 'canon' (κανὼν: canons 1, 5, 9, 10, 15, and 18), judged to be essentially synonymous with 'the ecclesiastical canon' (κανὼν ἐκκλησιαστικός, canons 2, 10, and 16) and with 'canonical law' (κανονικὸς νόμος, canon 13);²⁵⁸ 'holy scripture' (ἱερὰ γραφή, canon 17); and 'tradition' (παράδοσις, canon 7). At Nicaea, the term κανὼν was applied not to conciliar enactments but to universally observed ecclesiastical standards that were of weightier import than simple custom.²⁵⁹ It was so applied both alone and in its more extended forms of expression ('the ecclesiastical canon' and 'canonical law'). In this way it was somewhat parallel in meaning to its use from the late second century onwards with respect to the 'canon of truth'²⁶⁰ and the 'canon' of scripture, in the manner that each of these uses bespeak an accepted standard.

The first applications of κανὼν to conciliar enactments are found

²⁵⁷ J. Gaudemet briefly traces the development of the respect for custom in the early Church, including the differentiation between good and bad custom and the general agreement that for custom to be of value it must pass the test of reason: 'La coutume en droit canonique', *Revue de droit canonique*, 38 (1998), 225–32.

²⁵⁸ Ohme, *Kanon ekklesiastikos*, 363–6. It is to be noted that κανὼν was also used in reference to the ranks of the clergy (Nicaea, canon 17, and Antioch, canons 1, 2, 6, and 11): see Ohme, 368, 397.

²⁵⁹ Ibid. 359–63.

²⁶⁰ As examples, see Irenaeus, *AH* 1. 9. 4 (SC 264. 150) and Tertullian's use of the equivalent *regula veritatis* at *De praescriptionibus* 13 (CCL 1. 197–8). See J. N. D. Kelly, *Early Christian Creeds*, 3rd edn. (London, 1972), 76–82; Ohme, *Kanon ekklesiastikos*, 61–102. For continuing examples of the use of κανὼν in reference to the rule of faith (or belief) see Eusebius, *HE* 5. 24. 6; and Socrates, *HE* 2. 27.

towards the end of the fourth century in the second canon of Constantinople (381) and in the *Apostolic Constitutions*.²⁶¹ While the first of the two occurrences of *κανὼν* in the Constantinopolitan canon may possibly reflect the older use, the second occurrence quite clearly refers to canons 5 and 6 of Nicaea. In view of the canonical work which we know to have been in progress at Antioch, Ohme plausibly suggests that the Antiochene author of *Apostolic Constitutions* may have been led to the use of the term in a statutory sense under the influence of the nearby law school at Berytus.²⁶² *Κανὼν* was used by Socrates in the mid-fifth century in reference to the canons of Nicaea,²⁶³ and sparingly, as we shall see below, at Chalcedon, but its use was not normative until at least the sixth century.²⁶⁴ Ohme shows that *ῥογος* (as decree or rule, against the background of its softer meaning as ‘determination’) was widely used in the East in reference to conciliar enactments beginning with the canons of Nicaea (15, 17, and 18) and until the universal establishment of *κανὼν* as the standard term of reference.²⁶⁵ The Antiochene canons (c.328) provide similar examples in the use of *ῥογος* both for canons formerly enacted (canon 21) and for their own legislation (canons 6 and 19).²⁶⁶ The Greek text of the Serdican canons makes frequent use of *ῥογος* and forms of *ῥογίζειν* as ‘decree’ or ‘determination’;²⁶⁷ the Serdican Latin text uses the terms familiar to Cyprian.

A significant dimension of the participating bishops' understanding of their legislative action at Antioch and Nicaea is in two ways revealed by the terms employed. First the allusion of the term *ῥογος* to both former and present rulings in the Antiochene canons indicates both that former rulings existed and that they were considered by the bishops in council to be of equal authority to the rules then being enacted. The rules of the past were understood to underlie the rules of the present. Second, past and present authority are further linked in canons 1, 2, 5, 9, 10, 13, 15, 16, and 18 of Nicaea and canons 9 and 19 of Antioch by the citations in these enactments of the existing *κανόνες* from the past (‘universally observed

²⁶¹ 8. 28. 1, 8. 32. 1 (*SC* 336. 228, 234).

²⁶² *Kanon ekklesiastikos*, 497–8. It is not unlikely, in fact, that the Antiochene project was inspired by the pioneering codification of civil law which had taken place under Diocletian in the *Codex Gregorianus* and the *Codex Hermogenianus* (for these see Kunkel, *Introduction*, 158).

²⁶³ *HE* 1. 13. 11 (*GC*, NF i. 46). Socrates (d. after 439) refers to the Nicene enactments as ‘regulations which they [presumably his contemporaries] are accustomed to term canons (*κανόνες*)’: *HE* 2. 19.

²⁶⁴ *Kanon ekklesiastikos*, 10.

²⁶⁵ *Ibid.* 399–521, *et passim*; see also Joannou, *Discipline générale*, 499–502.

²⁶⁶ See canons 6, 19, and 21 and Ohme, *Kanon ekklesiastikos*, 395–9.

²⁶⁷ *Ibid.* 418–19.

ecclesiastical standards') as the basis, or perhaps as the authority, for the present decrees.

At the end of the fourth century the Church in Africa was discernibly moving ahead in its recognition of conciliar authority and the regulating force of conciliar enactments, but the authority, as understood, was still moral and not juridical. We have seen that in about 400 Augustine emphasized the authority of councils and ranked their relative strength by the extent of representation which they claimed: essentially an argument from breadth of *consensus*. It was also on the basis of *consensus*, we recall, that the council of Carthage in 390 affirmed the binding nature of the canons it enacted. The same force was clearly in the minds of the authors and also exhibited in the terminology of canon 2 of the *Breviarium Hipponense* of 393/7. There it is directed that the African heritage of *placita/statuta concilii* is to be enjoined for the observance of all who are ordained, both bishops and clergy.²⁶⁸ This terminology is consistent with that which we find used by Augustine,²⁶⁹ in continuity, again, with Cyprian and the consensual conciliar theory of his time. Also in correspondence with Eastern usage we find Augustine using the expression *canon ecclesiasticus* in reference not to conciliar legislation but to traditional practice.²⁷⁰

Terminological development took place in Africa shortly thereafter, however, preparing the way for developments in theory which we shall see reaching completion a century later. The first unquestionable use of *canon* as a loanword from the Greek appears in a document addressed by Pope Siricius to the African bishops informing them of canons enacted by the Roman council of 386.²⁷¹ The Africans first used the term themselves in their letter of response to the papal *commonitorium* which was read at the 25 May session of the council of Carthage in 419 relating to the supposedly Nicene Serdican canon invoked by Rome in the case of Apiarius' appeal,²⁷² and it was apparently routinely used a century later at the Carthaginian council of 5–6 February 525.²⁷³ The single known use of the term *canon* by Augustine in the sense of conciliar legislation is found subsequent to the 419 council in his letter to Fabiola in 422.²⁷⁴

²⁶⁸ CCL 149. 33.

²⁶⁹ For example: 'placita vel decreta' (*Contra partem Donati*, 28. 50 = CSEL 53.151, l. 16); 'plenarii concilii sententia' (*De bapt.* 1. 18. 28 = CSEL 51. 171); 'quo in concilio constitutum est' (*Ep.* 65. 2 = CSEL 34/2. 234).

²⁷⁰ CSEL 34/2. 231.

²⁷¹ CCL 149. 63, l. 106; cf. Ch. 2 at n. 52.

²⁷² Ibid. 160, l. 100.

²⁷³ Ibid. 255, l. 38.

²⁷⁴ *Ep.* 20*. 8. 1, written in 422, in the group of Augustine's letters published by J. Divjak (CSEL 88; Vienna, 1981), 98.

In final consideration of the significance of conciliar legislation during its earlier formative period—that is, to the end of the fourth century in the West and at least until late in that century in the East—we need to summarize what we have observed regarding its character and the extent of its intended application. The Serdican canons provide a clear illustration of the collegial, consensual nature of the conciliar enactments of the period. In this respect they stand between and demonstrate the commonality of East and West in the contemporary understanding of the nature of conciliar legislation, for on the whole the Greek and Latin texts of the Serdican canons are equivalent in their witness to a transition from the *dixit–placet* to the *placuit* forms, neither of which, as we have noted, are expressive of juridical intent. The canons were not thought of as ‘legally’ binding by the bishops who enacted them, but as involving a moral obligation for observance by their authors and by those whom they represented in council. This, at least, is the conclusion that the available evidence allows us to draw. It may be fairly concluded further that the East was at least moderately in advance of the West in the gradual, universal movement toward a juridical framework of understanding. This is suggested by the work of the Antiochene collectors, by the emerging use of the statute form of canonical publication, and the apparently juridical use of the term *καὶ ὅν* in the late fourth century. On the other hand, the use of the statutory form in the *Breviarium Hipponense* at the very end of the fourth century indicates that the same ideas were becoming current at Carthage.

Regarding the extent of intended application, there would seem, perhaps, to have been some discrepancy in expectation between those who enacted canons in council and those to whom they were communicated, and it also appears that different groups of episcopal legislators had different expectations in accordance with their circumstances. We have seen that the bishops at Carthage in 390 seem to have regarded the canons of that council, and presumably of other pan-African councils, to bind to observance only the African bishops themselves. We have also seen that the bishops at Arles in 314 expected (or hoped for) their canons to be observed throughout the West. Internal evidence in the Nicene canons themselves—the applicability of canons 6 and 7 throughout the emerging patriarchates, East and West, and the conditions stipulated for universal application in the reconciliation of Novatianists (canon 8) and Paulinists (canon 19)—lead us to conclude that the bishops at Nicaea expected the canons which they enacted to be universally observed. The bishops at Antioch (328) apparently anticipated the general application in the East

of their canons regarding the duties of the metropolitan bishop and synod, although, as we have suggested above, they may instead have considered themselves to have been simply formalizing recently established practice. By virtue of the fact that regional councils and synods throughout the fourth century, both East and West, continued repetitively to enact canons regarding the same issues,²⁷⁵ we may conclude that the notion of universal applicability through reception grew slowly. As we observed in Chapter 2, it was only by the end of the fourth century, both East and West, that the canons of Nicaea, and those alone, became universally recognized.

The expectations of the bishops at Serdica and the reception of the canons which they enacted are of particular interest to us. At the council itself, the proposals and accepted *sententiae* were evidently intended for universal application, East and West, not in a legalistic sense, as we have noted, but as a morally binding *consensus* reached on behalf of the churches in the regions represented. With regard to reception, the knowledge of canons 18 and 19 of Serdica by Gratus at the council of Carthage in 345/8 did not lead to a proposal for their acceptance but for their repetition by the African assembly.²⁷⁶ Several Serdican canons are reflected in the letters of late fourth- and early fifth-century popes under the understanding that they were Nicene.²⁷⁷ Canons 1 and 2 underlie the *Canones ad Gallos episcopos* by Damasus (366–84) or Siricius (384–99), and the appeal canons (3, 4, and 7) and canon 19 were an evident influence in the forming of the letter of Innocent (402–17) to Victricius of Rouen. One can only guess what their effect on the Roman assertions in this correspondence would have been if they had been known to be Serdican at that time, for lacking the lustre of Nicaea the influence of the Serdican acts would certainly have been less. Although universally accepted as Serdican in the West from the early fifth century, it was not until the sixth that the canons were integrated into major collections, both Roman and African,²⁷⁸ and, as we have observed, it was not until the same century that they were included in the growing Eastern corpus.²⁷⁹

²⁷⁵ Ch. 2, §ii, end.

²⁷⁶ Canon 5 of the Carthaginian council as proposed by Gratus (CCL 149. 6) draws on both canons 18 and 19 of Serdica (Ch. 8, §viii).

²⁷⁷ For these and the following examples see Ch. 6, §i.

²⁷⁸ For the collections of Dionysius Exiguus and Fulgentius Ferrandus see Ch. 2, §viii.

²⁷⁹ First included in the *Collection of Sixty Titles* (above, Ch. 2, §ii).

(vi) Towards the Emergence of Canon Law

During the period following Nicaea a growing edifice of conciliar regulations was being constructed by the Antiochene collectors, although as far as is known this did not come to significant use for another century. These collectors, as we have seen in Chapter 2, apparently began their work in Eastern ecclesiastical circles in the mid-fourth century, establishing a code progressively comprising the canons of Ancyra, Neocaesarea, Antioch, Gangra, and the Laodicea collection, with the canons of Nicaea at its head. In terms of cause and effect, the growth and dissemination of the 'Antiochene Collection' apparently led the way towards the gradual acceptance of the concept of an ecclesiastical code rather than having been a response to a conscious need, for the meagre evidence that exists from the late fourth century points away from a regard for conciliar decrees as more authoritative than custom or, indeed, than the traditional *κανὼν* as understood at Nicaea. Basil of Caesarea (bishop 370–9) is a case in point. Ohme believes that he knew nothing of the Antiochene collection, but assumes, as L'Huillier does, that he was familiar with the Nicene canons,²⁸⁰ pointing out, indeed, that Basil referred to canon 3 of Nicaea as a *κανὼν* of that council. L'Huillier maintains that as a convinced Nicene Basil might be expected to have followed the council's directives, but observes that he ignored its stipulation in canon 7 that Novatianists should be received into the Catholic Church without rebaptism, and that he acted contrary to canon 15 of Nicaea, which forbade the translation of bishops, by supporting an episcopal translation in his own region.²⁸¹ This appraisal of Basil's views on the matter is supported by the emphasis that he placed on the traditional disciplinary material which he enjoined upon the new bishop Amphilochius in his three 'canonical letters' (*Epp.* 188, 199, and 217). These materials are described as an 'ancient canon' (188. 3); as 'the canon' (188. 12); and as disciplines which were 'regulated (*ξεκανονίσται*) by our fathers' (217. 77).²⁸²

The council of Chalcedon provides evidence in the mid-fifth century both for the occasional use of the term *κανὼν* and for the increasing regard in which conciliar legislation was coming to be held. Although their own enacted canons are designated as *ὄροι* in the minutes, in canon 1 the bishops proclaimed, 'We have judged it right that the canons

²⁸⁰ Ohme, *Kanon ekklesiastikos*, 558–9; L'Huillier, 'The Making of Written Law', 125.

²⁸¹ 'The Making of Written Law', 126–7.

²⁸² *Saint Basile: Lettres*, ed. Y. Courtonne, ii (Paris, 1961), 124, 130, 214.

(κανόνες) of the holy fathers made in every synod even until now should remain in force’;²⁸³ a seemingly broad statement of recognition of the weight of canonical legislation in principle, although widely considered by modern authorities to have been specifically directed to the ‘Antiochene Collection’.²⁸⁴ In accordance with this recognition, the bishops at Chalcedon sought solutions to two specific problems by invoking the canons of Antioch—clearly as part of the ‘Antiochene Collection’, as revealed by the system of numeration—and an attempt was made with the support of canon 3 of Constantinople (by that date also in the ‘Antiochene Collection’) to clarify canon 6 of Nicaea.²⁸⁵

In our account of the development of conciliar legislation into ecclesiastical law, it is important to note the forces that were at work in this process and the context in which they interacted. First, in the early fourth century the very concept of the Church and its corporate life was nearing the completion of a change in emphasis that began in the middle of the second century. This was the movement from a more charismatic to a more institutional framework of understanding. The shift was a subtle one, difficult to trace because it was presuppositional rather than frequently stated, but pervasive nevertheless. The two perspectives are epitomized, perhaps, in the contrasting adages of Irenaeus and Cyprian previously quoted in Chapter 1: ‘where the Church is, there is the Spirit of God; and where the Spirit of God is, there is the Church, and every kind of grace’ (Irenaeus, *AH* 3. 24. 1), and ‘the bishop is in the Church and the Church is in the bishop’ (Cyprian, *Ep.* 66. 8. 3). Recognitions of institution and of charism are present in both, but the balance had changed.²⁸⁶ The fourth-century integration of the Church into the social and political fabric of the empire completed the process, with the Church then seeing

²⁸³ *ACO* II i/2. [354], l. 10.

²⁸⁴ Gaudemet, *Les Sources*, 76; L’Huillier, ‘Origines et développement’, 53.

²⁸⁵ One of the problems, by way of example, the case of the monks Dorotheus and Carosus, was addressed in Actio 18. 9–10 with the citation of canons 4 and 5 of Antioch (*ACO* II i/3. 100 [459] and 101 [460]). For further detail regarding these cases see L’Huillier, ‘The Making of Written Law’, 129–30. Acknowledgement must here be made of the value of Archbishop L’Huillier’s article, which from this point onward in the present chapter parallels and supplements our own discussion in certain basic matters.

²⁸⁶ A full study of this question is still to be made, but one may refer with profit to the classic work of H. von Campenhausen, *Kirchliches Amt und geistliche Vollmacht in den ersten drei Jahrhunderten* (Tübingen, 1953), trans. J. H. Baker as *Ecclesiastical Authority and Spiritual Power in the Church of the First Three Centuries* (Stanford, 1969), chs. 8–11. See also E. Dassmann, ‘Amt und Autorität in frühchristlicher Zeit’, *Internationale katholische Zeitschrift*, 9 (1980), 399–411; and the insightful study by Gregory Dix, *Jurisdiction in the Early Church: Episcopal and Papal* (London, 1975), 17–19 and 47–63.

itself—as well as in terms of more traditional models—as a state-like institution within the state.²⁸⁷ The concept of ecclesial management by consensual agreement in council was then gradually modified into a system of rule-making in council, with the rules to be enforced within a juridical system.

Second, the purview and intended sphere of influence of conciliar action was a factor of ecclesiological focus. During the fourth and fifth centuries, the focus expanded from the provincial to the universal, just as it had expanded from the congregational to the regional and provincial during the third century and the fourth. Trends toward the centralization of leadership and the strengthening of conciliar authority were growing, and particularly so in the East. The concept clearly expressed by Cyprian of equality and autonomous authority among bishops was giving way to structured, hierarchical, inter-episcopal relationships. The hierarchical structure of Roman government, and indeed of Roman society, was rapidly assimilated to ecclesial use with vertical relationships expressed in a jurisdictional idiom quickly developing among bishops and metropolitans and patriarchs.

Third, the earlier common style of leadership among bishops by virtue of strength of character, personal prestige, or the importance of a bishop's see, was being largely replaced in the early fourth century in the East—although considerably later in the West—by the powers of the provincial synod under the direction of the bishop of the metropolis.²⁸⁸ In this way the affairs of the local church were becoming regulated by the synod, and the metropolitan was attributed specific powers over his comprovincials. It is probable that at least partially in recognition of existing Eastern practice canon 9 of Antioch (c.328) states that the metropolitan bishop has care for the whole province, that he leads in dignity (τιμῇ), and that his comprovincials are to do nothing without him apart from exercising their own ministries in the communities and regions over which they have authority (ἐξουσία). Canon 19 of the same council directs that a bishop shall not be ordained apart from a synod and the

²⁸⁷ This is the central thesis developed by Herrmann, *Ecclesia in re publica*.

²⁸⁸ Strong regional leadership continued to be maintained by the major sees in the West, above all by Rome, by Milan in northern Italy, by Carthage and later also by Hippo in Africa, and in Gaul particularly by Arles and Vienne. In Africa and Spain the leading bishops of the geographical provinces long continued to be those who were senior in date of ordination. See C. Vogel, 'Circonscriptions ecclésiastiques et ressorts administratifs civils durant la première moitié du IV^e siècle [du concile de Nicée (325) au concile d'Antioche (341)]', in *La Géographie administrative et politique d'Alexandre à Mahomet: Actes du Colloque de Strasbourg 14–16 juin 1979* (Leiden, 1981), 373–80.

presence of the metropolitan of the province. Canons 4 and 6 of Nicaea direct that episcopal appointments shall have the consent of the metropolitan, and canon 20 of Antioch decrees that provincial synods are to be held twice a year, and not without the metropolitan. In the Serdican canons the province is mentioned in canons 3 (a, b, and c), 5, 7, and 14 in both the Latin and the Greek versions, but reference is made to the metropolitan only once, and only in the Greek (canon VIa). On a more elevated hierarchical level, precedent was evoked by canon 6 of Nicaea and progressively emphasized—amidst a tug-of-war of claims and counter-claims—by canons 2 and 3 of Constantinople and canon 28 of Chalcedon regarding the broader regional authority of the emerging patriarchates of Rome, Constantinople, Antioch, and Alexandria. With the general acceptance of the universal authority of Nicaea at the end of the fourth century and with the notion of the oecumenical council taking root under its auspicious memory,²⁸⁹ the general councils that followed were increasingly conscious of the universal import of their decisions.

(vii) The Formation of Canon Law

It was in the atmosphere of these shifts of emphasis from collegial mutuality in ecclesial regulation to the flow of authority from above and from leadership by moral force to jurisdictional power that the third form of canonical publication arose. This is the *statutum*: terse, polished, usually brief, phrased in the imperative mood, with no internal or external reference to the council which enacted it. As well as reflecting the shift of thought to a more vertical mode of ecclesial governance, the adoption of the statute form reveals an increasingly legalistic mentality among the early collectors.

This is evidenced from the late fourth century onwards in certain specific collections. The earliest of these, as we observed in Chapter 2, were the Eastern Laodicean series, of which canons 1–59 are briefly stated injunctions applying to clergy and laity regarding liturgical, pastoral, and disciplinary matters, and the eighty-five ‘Canons of the Apostles’, both in the late fourth century and presumably of Antiochene provenance. The third is the *Breviarium Hipponense* composed of carefully edited summaries in the imperative mood of thirty-six canons received and approved by the council of Hippo on 28 August 397. As Cross has

²⁸⁹ P. L'Huilier, ‘The Development of the Concept of an Ecumenical Council’, *Greek Orthodox Theological Review*, 36 (1991), 243–62; H. Chadwick, ‘The Origin of the Title “Oecumenical Council”’, *JTS*, NS 23 (1972), 132–5.

suggested,²⁹⁰ the *Breviarium* was the first attempt for the creation of a code of ecclesial law for the whole of the African church. The degree to which the African bishops who participated in the framing of the *Breviarium* regarded its canons as juridically binding is unknown, but a trend in that direction is implied. The fourth is found in the work of Fulgentius Ferrandus between 523 and 546, who, as we have seen, compiled and edited an Eastern and Western collection in abbreviated statute form for the African church, combining the 'Antiochene collection' in Latin translation together with the African canons, all arranged topically by subject matter, as was done in the East by his contemporaries, the author of the *Sixty Titles* and John Scholasticus.

The collection of Dionysius Exiguus in the early decades of the sixth century (the better part of a century following the publication of the Theodosian Code²⁹¹) together with those of Ferrandus and John Scholasticus a few decades later (published shortly after Justinian's *Institutes*²⁹² and *Digest*) demonstrate the common aims and parallel quests of the publishers of civil laws and those of ecclesiastical. From both sides the same concern is manifested for maintaining the order of civil society and of the Church in a new era in which each was increasingly becoming part of the other. The politics of the era in which bishops and emperors sought mutual support, as well as the self-assignment by the emperors themselves as protectors of the true religion, brought numerous civil laws in religious matters ranging from privileges and immunities for the clergy to the enforcement of defined doctrine.²⁹³ The regulation of ecclesial affairs by public law both in the Theodosian Code and in the *Novellae* of Justinian, and the regard of the emperors towards ecclesial enactments as laws of the empire, clearly enhanced a juridical understanding of canonical legislation.²⁹⁴ The same parallel and interface between the

²⁹⁰ 'History and Fiction', 231.

²⁹¹ For basic information regarding the Code, see J. Harries, 'Introduction: The Background to the Code', in J. Harries and I. Wood (eds.), *The Theodosian Code* (London, 1993), 1–16.

²⁹² Justinian's legal corpus was published in three parts: the *Digest*, the *Institutes*, and the *Novellae*. These are found in a modern three-volume edition, the *Corpus Iuris Civilis*, published by Weidmann in Berlin: i, *Institutiones*, ed. P. Krüger, and *Digesta*, ed. Th. Mommsen, rev. P. Krüger (1928); ii, *Codex Iustinianus*, ed. P. Krüger (1915); iii, *Novellae*, ed. R. Schoell and W. Kroll (1928); all three volumes were reissued in 1954 with prefaces by Wolfgang Kunkel.

²⁹³ See D. Hunt, 'Christianizing the Roman Empire', in Harries and Wood, *The Theodosian Code*, 143–58.

²⁹⁴ This is shown in the *Theodosiani Libri XVI*, 833–906, in which the practice of Christianity is enjoined upon the peoples of the empire, clerics are exempted from public service, the repetition of baptism is forbidden, freedom of movement of monks is ensured, and various other religious and ecclesiastical issues are treated as matters of imperial law (Book XVI). Civil laws dealing with ecclesiastical matters are also found in Justinian, *Codex* 1, titles 1–4 and *Novellae* 5 and 6. For descriptions of the interpenetration of ecclesial and civil law during this period, see L'Huillier, 'The Making of Written Law', 139–44, and Gaudemet, *Les Sources*, 70–2; E. J. Jonkers, 'Pope Gelasius and Civil Law', *Revue d'histoire du droit*, 20 (1952), 335–9, and id., 'Application of Roman Law by Councils in the Sixth Century', *ibid.* 340–3. Also see J. Gaudemet, 'L'apport du droit romain à la patristique latine du IV^e siècle', *Miscellanea historiae ecclesiasticae*, 6/1 (Brussels, 1983), 165–81 for background in the relationship between Roman law and ecclesial discipline and doctrine.

collection and codification of civil and ecclesiastical legal materials is also seen in the early sixth century in the Visigothic kingdom under Alaric in Gaul.²⁹⁵ The nomocansons of the sixth and later centuries were not so much an influence leading to the integration of civil and ecclesiastical law as they were an institutionalized expression of it.²⁹⁶

The commonality of purpose between the developing ecclesiastical codes and the civil make it apparent that the ecclesiastical was inspired by the civil. This is also shown both by the character of the materials that were used and the way in which the materials were handled. The civil codes were assembled from constitutions, edicts, and other proclamations of general application issued by the emperors. The Second Code of Justinian (the *Codex repetitae praelectionis*), published in 529, replaced all others as the general corpus of Roman law. The *Digest*, compiled by order of Justinian and published in 529 as a collection of authentic interpretations of classical Roman law and given statutory force, was composed of legal opinions and interpretations. With regard to ecclesiastical law, as the process of its formation progressed, the canonical collections that provided its content were increasingly augmented by papal decretals, evidently based in form on imperial proclamations²⁹⁷ and by quotations from church fathers whose opinions were considered authoritative. The similarities in type to the civil materials are clear. The first to introduce papal decretals, we recall, was Dionysius Exiguus, and the first to include authorities from the fathers was John Scholasticus in his inclusion of the ‘canonical letters’ of Basil. Much later in the developmental history of ecclesiastical law, this same pattern is fully illustrated by the influential medieval collector, Gratian (c.1140), who included in his *Decretum* papal decrees and quotations from the fathers, as well as conciliar canons.²⁹⁸

²⁹⁵ Mathisen, ‘The “Second Council of Arles” ’, 533–5, 544.

²⁹⁶ See Ch. 2, §vii.

²⁹⁷ Gaudemet, *Les Sources*, 59.

²⁹⁸ The title that Gratian gave to his work was the *Concordia discordantium canonum* ; it is also known as the *Treatise on the Laws*. For the reference purposes stated here see Gratian: *The Treatise on Laws with the Ordinary Gloss*, trans. A. Thompson, *Studies in Medieval and Early Modern Canon Law*, ii (Washington, DC, 1993), *passim*. (This edition covers only the first section of the *Decretum*.)

As a final point relevant to the case that we have been making, we need briefly to compare the collectors' treatment of the varied forms of canonical material which they assembled with the practices of the collector-editors of the civil codes. The collection of African canons, the *Registri ecclesiae Carthaginensis excerpta*, taken from the African records by Dionysius Exiguus during the first half of the sixth century, contains several sections that are of interest because of the varied forms in which the canons appear. Canons 35–46, apparently enacted by the Carthaginian council of 28 August 397 after its approval of the *Breviarium Hipponense*, are in statute form, as is the *Breviarium* itself; canon 47a is composed of a brief note from the council of 13 August; canon 47b is a note from the council of 28 August, and is followed by canons 48–56 of this same council in the *dixit–placet* form, in contrast to the canons in the statute form from the same council as noted above. The items listed as canons 58–63 are not of legislative character at all but are proposals to seek the assistance and cooperation of the emperors in several matters. Canons 66–84, which are from the council of Carthage on 13 September 401, are in the *placuit* form, as are canons 117–26 from the council also of Carthage on 1 May 418. Canons 109–16 are doctrinal anathemas from the latter council. Canon 100 is simply a brief report regarding an unsuccessful hearing, and canon 101 is a proposal that a letter be written to Pope Innocent.

This mixture of the three forms of publication together with non-canonical materials as well within the *Registrum* shows that Dionysius made no distinctions at all among the canonical forms but simply strung together in chronological order the materials available to him from the archives of Carthage. Whatever their understanding may have been of the varied forms of their material, neither Dionysius nor the unknown archivists at Carthage showed a discernible sense of the significance of the forms themselves in the contexts of their historical development. This is also true of the handling of the Eastern materials which Dionysius added to his collection, including the still Nicene-headed 'Antiochene collection' which was marked by the more common *placuit* and the Neocaesarean and Laodicean statute forms, to which he joined the Serdican canons in their *dixit–placet* form. Somewhat later, in the East, John Scholasticus was also content to leave canonical materials as he found them, and the same can be said of later codifiers, including Gratian. This is consistent with the universally observed practice of the codifiers

of the civil codes in the verbatim transcription of materials from their varied sources from numerous and different imperial secretarial authors in diverse styles of original composition.²⁹⁹ An even casual comparative perusal of the Theodosian Code and the *Institutes* of Justinian with the work of the ecclesiastical codifiers reveals these parallels and similarities.

The work of the collectors whom we have discussed progressively provided the foundation for a conventionally organized and universally binding ecclesiastical code of law. The transition to rule by law from the earlier regulation by *consensus* in the conduct of ecclesial affairs was a process of development driven by the interior needs of the Church, by ecclesiological shift, and by the new circumstances of the Church in relation to society and to the state. The framing of the conciliar agreements from which the ecclesial law was built is another process, and it is to this that we now turn in a study of the canons of the council of Serdica.

²⁹⁹ Tony Honoré, 'Imperial Rescripts A.D. 193–305', *Journal of Roman Studies*, 69 (1979), 63; and see John Matthews, 'The Making of the Text', in Harries and Wood, *The Theodosian Code*, 26–9, who notes the greater editorial latitude given to the editors of the Theodosian Code in 435, but also the hazards which faced an editor who exercised such privilege. Fidelity to the original wording and style may be inferred from an even casual perusal of the Theodosian Code and Justinian's *Codex*. In the second edition of his work *Emperors and Lawyers* (Oxford, 1994), Honoré provides copious evidence for variations in style in the composition of rescripts by different imperial secretaries (pp. 146–81).

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Part II Serdica: The Council and Its Canons

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Introduction

The contentious decades following the council of Nicaea provided the setting for and shaped the dynamics of the council of Serdica. The council was to have been an attempt, with approval of the two emperors, Constans and Constantius, to resolve the cases of Athanasius and others who had been dispossessed of their sees by the sympathizers with Arius. The leaders of the Western bishops hoped for more: a doctrinal settlement that should exclude the teachings of Arius once and for all. In the event, neither of these goals was achieved, for the Eastern group refused to meet with the Western, and the council became but one more in the series of indeterminate episodes in the complex East–West struggle between the adherents of the Eastern party led by Eusebius of Nicomedia and the at least nominal supporters of Nicaea. This failure and its implications are reviewed in Chapter 4, for they provide an important background for the subsequent and substantial task accomplished by the Western party before their departure from Serdica.

This was the enactment of a series of approximately twenty canons (varying in number between the Greek and the Latin texts) which present a number of problems to students of conciliar legislation. First of all, the Greek and Latin versions are mildly different in their organization of material and in mainly small divergences in meaning between them in numerous readings in the texts. This has led to questions and different scholarly conclusions regarding the relationship between the texts. Was one a translation from the other at the council or very soon afterwards? Were both generated simultaneously at the council by interpreters and bilingual stenographers? Has later editorial work taken place in one or both texts? What is the relation of both to the Latin translation of the Greek text known as the version of Theodosius Diaconus? These questions are pursued in Chapter 5, together with the problem of the Greek and Latin numbering systems and the interesting earlier debate on the authenticity of the canons themselves.

Chapter 6 traces the transmission history of the Latin text up to its final establishment in the sixth-century collection of Dionysius Exiguus, and proposes from much more meagre evidence a hypothesis for the transmission of the Greek. In the same chapter a resolution is sought for the differences in readings between the Latin and the Greek texts by reference to the exegetical conclusions regarding individual canons which are reached in Part III, and with the use of the version of Theodosius Diaconus as an instrument of comparison.

4 The Council at Serdica

(i) The Historical Setting

The repeated efforts made during the fourth century towards the restoration of peace and unity to a Church harassed and divided by controversy both before and after the council of Nicaea were largely a series of failures. To this the council of Serdica provides no exception. The unique contribution of Serdica, in a general view of the six decades of conflict between the excommunication of Arius by his bishop, Alexander, and the council of Constantinople, was the thoroughgoing attempt by its Western contingent to remedy the causes of failure. The theological issues raised by the presbyter Arius of Alexandria were, in retrospect, settled at Nicaea with a judgement that was ultimately to endure, but, as recent studies have shown, the doctrinal issues and the creed itself were variously perceived by churchmen both East and West until well after the time of Serdica.³⁰⁰ As the bishops returned to their sees after the Nicaea, its outcome was as much doubted by a sincere majority of the Eastern bishops, who were genuinely disturbed by its unscriptural terminology and the menacing implications that they perceived in the Nicene formula both in itself and in the interpretations placed upon it by two of its champions in particular, namely Eustathius of Antioch and Marcellus of Ancyra. During the years of recrimination that followed Nicaea, these doctrinal issues were often overshadowed by personal animosities, shifting imperial policies in a divided empire, and the manipulation of imperial power by churchmen themselves.

In the opening decades of the fourth century the Church found itself in an unaccustomed position. The cessation of persecution and the new religious policy of Constantine quickly changed the position of the Church with respect to the State. From a persecuted cultus Christianity

³⁰⁰ D. H. Williams, *Ambrose of Milan and the End of the Arian–Nicene Conflicts* (Oxford, 1995), 11–18.

became a legal religion, and from a society without rights in the world about it the Christian Church became the protégé of the emperor, having not only rights but also responsibilities. From an organization hitherto somewhat cell-like in structure, it became immediately and awkwardly conscious of its corporate nature in a manner not before experienced. The absorption of the Church into society, the accumulation of power by the sees of Rome, Antioch, Alexandria, and Constantinople, and the political division of the empire were rapidly creating loyalties that gravely threatened the unity all believed to be of the very nature of the Church. Through a century and a half of persecution the Church had flourished despite the hostility of state authority, but now confronted with state protection it had to learn to deal with the secular power anew. The emperor's interest in its affairs soon proved detrimental as well as helpful with respect to the problem of Donatus in Africa, and these effects were to be magnified concerning the affair of Arius in the East.

The developments that took place between the beginnings of the Arian controversy and the council of Serdica are well known and historical detail is readily accessible, but a brief résumé of the major events with an eye to the causes of strife is a necessary preparation for consideration of the problems besetting the Church as the bishops assembled at Serdica. Varying interpretations have been placed upon the history of this critical twenty to twenty-five years regarding both the underlying doctrinal questions and the dynamics of the contest, and a number of issues remain unsettled.³⁰¹ Determination inspired by sincere conviction on the one hand, and duplicity induced by ambition on the other, may be found in the leading personalities of both factions. A degree of justification is rightly discerned in the Eusebian condemnation of the doctrines held by Nicene extremists such as Marcellus of Ancyra, and the jurisdictional claims of the pro-Arian party in this and in other cases were undoubtedly stronger than was admitted by Athanasius and the Westerns.

About 318/323,³⁰² the presbyter Arius of Alexandria was condemned for certain teachings by his bishop, Alexander, and was deposed by a

³⁰¹ Several substantial studies and important shorter contributions regarding the period have been made in recent decades. These are well represented by Barnes, *Athanasius and Constantius*; R. Williams, *Arius: Heresy and Tradition* (London, 1987); and Ch. Kannengiesser's review article regarding the state of modern Arian studies, 'Arius and the Arians', *Theological Studies*, 44 (1983), 456–75. A short bibliography of major studies on Arius' own teaching is given in Barnes, *Athanasius and Constantine*, 244 n. 50.

³⁰² R. Williams, *Arius*, 50 supports the traditional date of c. 318. For an analysis of the events up to the death of Arius in 336 see *ibid.*, part I, 1–81.

council of Egyptian bishops. Arius quickly found support in Eusebius of Nicomedia and Eusebius of Caesarea, under whose influence a campaign of justification and defence was organized on his behalf, and at least one Palestinian council composed of sympathetic bishops admitted Arius and his companions to communion. In reply, a similar campaign was initiated by Alexander to solicit support for his deposition of Arius. After this beginning, the controversy spread rapidly: within a year the Christian East was divided into two opposing camps. The attention of Constantine was first drawn to the dispute after his victory over Licinius in 324. In order to settle what appeared to him to be a trivial matter between Arius and Alexander, the emperor sent Ossius, bishop of Cordova, to Alexandria as an arbitrator. But with the failure of Ossius' mission and a fuller personal acquaintance with the extent of the controversy he was soon led to make arrangements for a common discussion and settlement of differences through a general council of bishops at Nicaea in 325.

From the council emerged several strong personalities, each destined to play an important role in the contentious decades to follow. Athanasius, deacon of Alexandria and personal aide and adviser to Alexander at Nicaea, rose to prominence as an outspoken antagonist of Arius, and after the death of Alexander in 328 was elected to succeed him. Other prominent supporters of the Nicene definition were Eustathius of Antioch, Marcellus of Ancyra, and Asclepas of Gaza. Eusebius of Nicomedia, Theognis of Nicaea, and Maris of Chalcedon, three influential supporters of Arius, withdrew their assent to the formula of faith soon after the council had dispersed. As a result they were removed from their sees and sent into exile, but in 327 or 328 their sentences were repealed and they returned to active opposition against the victors at Nicaea.

During the same period, Eustathius was deposed by a gathering of bishops that met at Antioch³⁰³ under the leadership of Eusebius of Caesarea. While the early authorities differ as to the actual charges which were brought against him, it is certain that the attack was provoked by Eustathius' uncompromising stand on the Arian question. Asclepas of Gaza was deposed at about the same time, and during the several years following the same fate befell Marcellus of Ancyra and other bishops of strongly anti-Arian conviction. Repeated criminal accusations against Athanasius—most of which were never proved—at length aroused the

³⁰³ Barnes gives 327 for the date of Eustathius' deposition: *Athanasius and Constantine*, 170; H. Chadwick argued for 326: 'The Fall of Eustathius of Antioch', *JTS* 49 (1948), 27–35; R. P. C. Hanson proposes 328/9: 'The Fate of Eustathius of Antioch', *Zeitschrift für Kirchengeschichte*, 95 (1984), 171–9.

suspicion of the emperor. In 335 the bishops of the Eastern provinces were ordered to assemble at Tyre for consideration of the varied charges and Athanasius was deposed. The following year witnessed the fall of Paul of Constantinople.

The death of Arius in 335 and his previous recantation at Jerusalem did little to improve this situation, and with the death of Constantine in 337 conditions were immeasurably worsened. While the emperor had gradually withdrawn his support from Athanasius and his colleagues, he had by no means given the partisans of Arius full rein. However, the division of the empire among his sons—Constantine II in the West, Constantius in the East, and Constans ruling Illyricum and Africa—brought official support to both the Nicene and Eusebian parties³⁰⁴ and thus served to strengthen the position of each. In 337, by decision of Constantine II, Athanasius returned to Alexandria, where he was welcomed by clergy and people. Similarly, Marcellus was allowed to return to Ancyra and Paul to Constantinople, but not long afterwards both were again expelled. The Eusebian bishops who had deposed Athanasius at Tyre refused to recognize his restoration and urged the recognition of Pistus, the Arian bishop whom they had placed there in his stead. An Egyptian council held at Alexandria in 338 issued an encyclical letter which denied the legality of the action taken at Tyre and repudiated the claims of Pistus. Following closely upon this, the Eusebians wrote to Pope Julius asking him to call a general council for a settlement of Athanasius' status and at almost the same time consecrated another candidate, a Cappadocian named Gregory, as bishop of Alexandria. This move was supported by the Eastern Emperor, Constantius, who provided a military escort for the safe arrival of Gregory in Alexandria. Athanasius withdrew and proceeded to Rome, where early in 341,³⁰⁵ a council of fifty bishops cleared him of the charges made at the council of Tyre, admitted him to communion, and recognized him as the lawful bishop of Alexandria. The restoration of Marcellus of Ancyra and Asclepas of Gaza was similarly proclaimed by the same council.

³⁰⁴ References to the 'Nicene' and 'Eusebian' parties are half-accurate at best, but they are used in the present work as a means of identifying the increasingly polarized groups encompassing the colleagues and supporters of Athanasius on the one hand and the partisans—for whatever their varied reasons—of the virulently anti-Athanasian Eusebius of Nicomedia on the other. Occasionally, 'Western' and 'Eastern' will be used of the same orientations in emphasis of their regional alignments. In view of the personal, doctrinal, regional, and political dimensions of the complicated dynamics of the period, no single set of distinctions is entirely satisfactory. Even for many of the 'Nicenes', Nicaea was scarcely a watchword.

³⁰⁵ Barnes, *Athanasius and Constantine*, 59.

At this time Constans gained complete mastery of the West, with the result that the political factor assumed even greater importance in the controversy, for with the exception of Egypt the areas over which the two parties were dominant corresponded closely with the two halves of the empire. Soon afterwards, in 342, at the request of the Emperor Constans, a delegation of Eastern bishops was sent to the imperial court at Trier to clarify the Eusebian position. Eusebius, who had been opposed to a council, was now dead; the atmosphere being favourable, Pope Julius and other Western bishops³⁰⁶ petitioned that Constans might make arrangements with his brother for a general council towards a final settlement in matters of faith and a resolution of the disagreement over Athanasius. Arrangements were made by both emperors together and the bishops of both factions were invited to convene at Serdica, in Illyricum, just within the domain of Constans. There they assembled in the autumn of 343.³⁰⁷

On the eve of the council there were four factors contributory to the existent tensions within the Church—doctrinal, personal, political, and regional. The doctrinal issues, although still important and inscribed on the party banners, had faded into the background during the course of the contentious period following Nicaea. At Nicaea it had been evident that few of the bishops were willing to stand with Arius, but few also were fully reconciled to the terminology of the credal definition to which all but two at length had subscribed. Expressions of Trinitarian doctrine were still in their formative stage and the teachings of Arius provided a palliative for many by whom the fear of Sabellianism had not been forgotten. This, in the main, was where the doctrinal issue rested. Personal animosities springing from the doctrinal stalemate to a large extent governed the ensuing contest between the Nicene and pro-Arian parties. In the centre stood the great majority of bishops, most of whom through persuasion or violence ultimately became allied with one side or the other. The Eusebian campaign against Athanasius, Eustathius, Marcellus, and others in an attempt to deprive the Nicenes of leadership, and to gain dominance by the occupation of strategic sees, provoked indignation and made these persons symbols of orthodoxy to be defended, if for no other reason, for the sake of the cause with which they were identified. This personal battle was waged with the weapon of deposition and in most cases with imperial support. Against this weapon there was no defence and no appeal with the possible exception of another council, and frequently not that without imperial approval. The political factor thus

³⁰⁶ L. W. Barnard, *The Council of Serdica 343 A.D.* (Sofia, 1983), 39.

³⁰⁷ For a discussion of the date of the council of Serdica see the Preface and Ch. 2 n. 9.

entered in with the frequent interference of the State in the affairs of the Church. Aggravated by the foregoing, but also standing as an influence in its own right, was the factor of regional loyalty so soon to manifest itself in bitter rivalries among the patriarchal sees. In this context, the ascendancy of the powerful see of Alexandria must be reckoned with as one of the reasons for the ready espousal of the so-called Arian cause on the part of many of those bishops whose interests were centred in the greater sees of Syria and Asia Minor. When the churches of the West under the leadership of the Roman see became directly involved in the controversy a few years before the council of Serdica, the same factor, extended and intensified, became manifest in the growing tensions between East and West. Clear expression is given to this rising sentiment in the letter the Eusebians sent to Pope Julius,³⁰⁸ and by the Eusebian encyclical at Serdica.³⁰⁹ By reason of these diverse factors, the problems that brought the bishops to Serdica were not straightforward, but were attended by complications that would only be resolved through the passage of time and personalities and changing perspectives. It was towards these same complicating factors that the Western bishops turned their attention when all attempts at conciliation had failed.

(ii) The Preliminary Manoeuvres

There can be little doubt that the council of Serdica was called on the initiative of the Nicenes. The results they had hoped to obtain from a general council are outlined in the conciliar letter addressed to Pope Julius³¹⁰ and in the Western Serdican encyclical.³¹¹ Their aims are stated to have been the renewal of right faith and sound doctrine, justice for those who claimed to have been wrongly deposed, and recourse for the evil treatment suffered by bishops, presbyters, and other clerics who had been sent into exile. There was no previous agreement with the Eusebian leaders as to agenda, nor could there have been. The encyclical letter of the Eusebian assembly professes a desire for unity within the Church,³¹² but the Eusebian terms for unity were the rejection of Athanasius and the

³⁰⁸ Sozomen, *HE* 3. 8. 4 (GCS, NF 4. 111).

³⁰⁹ 'They have thought to introduce a new law; that Eastern bishops should be judged by Western' (CSEL 65. 57).

³¹⁰ Ibid. 128–9. This is the Latin version of the letter to Julius, preserved by Hilary of Poitiers (full text pp. 126–39).

³¹¹ Ibid. 104.

³¹² Ibid. 65.

other bishops whom they had deposed. Also, as the Nicenes had much to gain from a general council at this time, the Eusebians had much to lose. The latter had acquired their strength through the deposition of their enemies by weighted councils, and by the subsequent banishment of the victims at the command of an emperor who was favourably disposed. They knew that in a general council the weight of opinion would be against them. At best they could hope only to maintain the situation as it stood, not by agreement or compromise, but by dividing the forces of the Nicenes and discrediting the person of Athanasius in order to discredit his doctrine. For both parties Athanasius was more than a bishop accused of crimes or one whose sentence must be reviewed. For his partisans he was a symbol of their victory at Nicaea, and for both he was the linchpin of the balance of power.

As the leaders of the Nicenes realized that the doctrinal settlement depended upon the fate of Athanasius, so too they realized that the Eusebian weapon of arbitrary deposition which had created the problem of the status of Athanasius and others into being must be permanently controlled. The bishops at Nicaea had agreed that the affairs of each province should be settled by its own synod (canon 5), but no provision had been made for appeal to a higher authority if an unjust sentence was imposed. The situation as it existed made it clear to the Nicenes that a degree of control over the actions of regional councils by a right of appeal to a higher court, and a restriction of episcopal access to imperial favour, were necessary. These measures, which were proposed and ratified in canons subsequently enacted by the Western council at Serdica, were not casually conceived nor of purely regional interest. They arose from a realistic facing of the basic problems of ecclesial abuse of political power and the destructive effects of factional intrigue. These issues and their possible solutions must have been present in the minds of the Western leaders as they assembled at Serdica and have profoundly affected their aims, for they are plainly written in the acts which they produced.

The number of bishops assembling at Serdica was probably seventy-six in the Eusebian company and about ninety-four in the Nicene. Owing to variations in the surviving versions of the signature-lists³¹³ and the

³¹³ Four episcopal lists from the Western council are extant. These are found among the historical fragments of Hilary of Poitiers (ibid. 13); in the *Apol. contra Arianos* (48) of Athanasius (*Werke*, ii/1. 123–32); and in the letters of the council and of Athanasius to the church of the Mareotis (*EOMLA* i/2. 658, 660). The only existing list of signatories at the Eastern council is found with the Eusebian encyclical also preserved by Hilary (CSEL 65. 74–8).

otherwise known presence of bishops not named in them,³¹⁴ it is doubtful whether an exact figure can be reached. Socrates³¹⁵ and Sozomen³¹⁶ agree that there were seventy-six in the Eastern party, and this is close to the round figure of eighty which the Eusebians claimed for themselves in their encyclical letter.³¹⁷ In giving the number of the Westerns as 'about three hundred', Socrates evidently relies upon the authority of Athanasius.³¹⁸ This estimate probably includes those bishops who later added their signatures to the conciliar acts, but who were not present at the council,³¹⁹ and the number may also be inflated. Athanasius states in another context that there were about 170 from the East and West together.³²⁰ The most exhaustive modern study is that made by Feder. His total count for the Nicenes is ninety-seven (excluding Pope Julius, who was represented but not present), but he cautiously gives his final estimate as 'something more than ninety'.³²¹ Feder's count for the Easterns coincides with the generally accepted seventy-six.³²² It is to be observed that Socrates is apparently correct in this figure, and, that subtracted from Athanasius' total of 170, the number for the Nicenes remains at ninety-four. The provinces represented by the Nicenes may have been as many as forty-three³²³ and in distribution about half of the bishops came from the provinces of Illyricum and the Balkan peninsula. Barnard is in general agreement with the numbers given by Feder.³²⁴

The leadership of the Western party was assumed by Ossius of Cordova, who had been a leader of the opponents of Arius at Nicaea in 325.³²⁵ It was Ossius who presided at the Western Serdican council, his name appearing first in the lists of the signatories, and it was he who proposed the majority of the canons. Next in rank among those present was

³¹⁴ A. L. Feder adds the names of Gratus of Carthage, Euphrates of Cologne, and Rheginus of Scopelus to the Western lists, and Macedonius of Mopsuestia, Ursacius of Singidunum, and Maris of Chalcedon to the Eastern: *Studien zu Hilarius von Poitiers II* (Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philos.-hist. Klasse, 166/5; Vienna, 1910), 49, 49, 50, 72, 92, 93.

³¹⁵ *HE* 2. 20. 5 (GCS, NF 1. 118).

³¹⁶ *HE* 3. 12. 7 (GCS, NF 4. 117).

³¹⁷ CSEL 65. 58.

³¹⁸ *Apol. contra Arianos* 1. 2 (*Werke*, ii/1. 87).

³¹⁹ *Ibid.* 50. 4 (ii/1. 132).

³²⁰ *Hist. Arian.* 15. 3 (ii/1. 190).

³²¹ Feder, *Studien II*, 62.

³²² *Ibid.* 93.

³²³ *Ibid.* 63–70.

³²⁴ *The Council of Serdica*, 56–8.

³²⁵ For further information regarding Ossius' background and his role at Nicaea, see below, §iv.

Protopogenes, bishop of Serdica, whose name appears in the lists following those of Ossius and the Roman delegates. Other prominent Westerns were Protasius of Milan, Maximin of Trier, Fortunatian of Aquileia, and Vincent of Capua. Pope Julius was represented by the presbyters Archidamus and Philoxenus. The leaders of the Eastern party were Theodore of Heraclea, Narcissus of Neronias (Cilicia), Stephen of Antioch, Acacius of Caesarea (Palestine), Ursacius of Singidunum (Moesia), and Valens of Mursa (Pannonia).³²⁶ With them came Musonianus and Hesychius, imperial officers representing the authority of Constantius.

The Western bishops arrived at Serdica first and promptly admitted Athanasius and his fellow accused to communion in accordance with the decrees of the council held at Rome two years before.³²⁷ This was of course unacceptable to the Eusebians, who determined upon hearing of it to have no relations with the Nicenes, and upon arrival at Serdica isolated themselves in the imperial palace.³²⁸ Apparently threats were made to prevent defections to the Nicene camp, but nevertheless two bishops, Asterius from Arabia and Arius from Palestine, joined the Western body.³²⁹

The propriety and wisdom of receiving the accused bishops into communion at Serdica may well be questioned. Hefele defends the action, maintaining that the Roman council that had cleared them must necessarily have borne as much weight as the councils that had deposed them. The emperors had given permission for Serdica to investigate the whole matter and this was actually the primary object of the assembly. This implied, Hefele argues, that all former judgements concerning the accused should have been suspended and that they should have been treated as if no sentences had been pronounced. If Athanasius and his fellows were to be regarded as a party at Serdica, Hefele argues, so should their Eusebian accusers, and the exclusion of one group from

³²⁶ For an example of the controlling hand of imperial politics in a comparison of the later careers of Ursacius and Valens—the two Westerners with the Eusebian group at Serdica—with the immediate post-Serdican punishment of Arius from Palestine (not the renowned heresiarch, who died in 336) and Asterius from Arabia, who had defected from the Eastern assembly to the Western, see I. Opelt, 'Die westliche Partei auf dem Konzil von Serdika', in R. Pillinger (ed.), *Spätantike und frühbyzantinische Kultur Bulgariens zwischen Orient und Okzident* (Schriften der Balkankommission, Antiquarische Abteilung, 16; Vienna, 1986), 90–2.

³²⁷ Sozomen, *HE* 3. 11. 5 (GCS, NF 4. 114).

³²⁸ L. W. Barnard has provided an informative description of the sites in the city of Serdica that were occupied by the two parties: 'The Site of the Council of Serdica', *Studia Patristica*, 17/1 (1993), 9–12. Maps, photographs, and diagrams of the sites are given at the end of his book *The Council of Serdica*.

³²⁹ Athanasius, *Hist. Arian.* 15. 4 (*Athanasius Werke*, ii/1. 190).

membership in the council should demand the exclusion of the other.³³⁰ Although this argument well expresses the view held by the Nicenes themselves, it does not fit the facts of the case. First, it must be asked which council, Serdica or that of Rome in 341, was the court of appeal. Secondly, turning Hefele's supposition around, the councils of Tyre and Antioch must have had as much jurisdiction in the cases under consideration as the council of Rome. The Easterns demanded that Athanasius and the others whose cases were to be reviewed should be treated as excommunicate from the outset on the grounds that their reception to communion would be a violation of the councils that had deposed them and contrary to the tradition of the Church.³³¹ While their treatment of these bishops had been unjust, and although they were making use of the present situation to avoid a fair review of the cases in question, the Eusebians did have reasonable cause to object to the actions of the Roman council and to the premature acceptance of its decisions by the Westerns at Serdica. As they themselves pointed out, the gathering at Antioch which had deposed Paul of Samosata in 268 had been recognized in the West and was at least in kind a precedent for the councils which deposed Athanasius and his fellow Nicenes.³³² Serdica by its expressed purpose was the court of appeal for these cases. The status of the bishops in question should, on grounds of fairness to all concerned, have remained indeterminate for the judges at Serdica until the council had rendered its decision. Understandably, the Eusebians would not enter into communion with those whom they had deposed, nor could they on quite reasonable grounds enter into communion with those who thus identified themselves with the deposed.

After repeated efforts to persuade the Eastern bishops to join the Western body, Ossius invited them to bring their proofs against the accused to him personally if they would not appear in an open council. This they also refused to do, apparently realizing that the majority opinion in any consideration of their charges would turn against them. There was little more that could be done under the circumstances and the Easterns soon made their departure. As an excuse they sent word to the Westerns that the Emperor Constantius had informed them of his victory over the Persians, presumably implying that they felt their congratulations to be in order. Ossius replied:

If you do not appear and clear yourselves as regards the slanders which you have spread, and the accusations which have been brought against you, be assured

³³⁰ Hefele-Leclercq, i/2. 750–1.

³³¹ CSEL 65. 58–9.

³³² Ibid. 65.

that the council will condemn you as guilty, but will declare Athanasius and his associates to be innocent.³³³

(iii) The Rival Councils

With the failure of negotiations, the Nicenes turned their attention to the matters for which they had come.³³⁴ In order to ensure justice and block all further objection of the Eusebians to their action, the council investigated the charges against Athanasius, Marcellus, and Asclepas. These bishops were formally declared innocent and restored to their former offices and dignities, while the appointments of their successors, Gregory at Alexandria, Basil at Ancyra, and Quintian at Gaza, were declared invalid. Sentences of excommunication were pronounced against the leaders of the Eusebians for their commission of slander and violence.

The first stated purpose of the council—the preservation of Nicene doctrine—found at least attempted fulfilment in a creed presented to the assembled bishops for consideration.³³⁵ Its proponents were apparently Ossius and Protogenes. These, we are told by Sozomen, fearing they might be suspected of innovation, wrote to Pope Julius that, while adhering to the doctrine of Nicaea, they favoured the publication of a more detailed statement of faith in order that the Arians might not take advantage of the brevity of the earlier formula.³³⁶ It seems probable that Sozomen's knowledge of the creed and of its treatment by the council was derived solely from the covering letter sent by Ossius and Protogenes to Pope Julius, for he gives no further information than is provided by the letter itself.³³⁷

³³³ Athanasius, *Hist. Arian.* 16. 3 (*Athanasius Werke*, ii/1. 191).

³³⁴ A recent brief review of the Eastern and Western gatherings at Serdica is given by T. D. Barnes, *Athanasius and Constantius*, 71–81; and see Barnard, *The Council of Serdica*, 71–96 on the Western council and 82–4 on the Eastern.

³³⁵ S. G. Hall has provided a careful analysis of the creed and its history: 'The Creed of Sardica', *Studia Patristica*, 19 (1989), 173–84. See also Barnard, *The Council of Serdica*, 85–90, for a perceptive analysis of the creed's political history. This creed is not to be confused with the 'Synbolus [*sic*] sanctae synodi Sardici [*sic*]' (*EOMLA* ii. 468), which does not rightly belong among the Serdican documents. Its place of origin may have been Antioch. See W. Telfer, 'The Codex Verona LX (58)', *HTR* 36 (1943), 195–7.

³³⁶ *HE* 3. 12. 6 (GCS, NF 4. 116).

³³⁷ The letter is contained among the Serdican documents preserved in the Collection of Theodosius Diaconus. The relevant passage is: 'Meminimus et tenemus et habemus illam scripturam quae continet catholicam fidem factam apud Niceam: et consenserunt omnes qui aderant episcopi . . . ne quis ex illis tribus argumentis [of the Arians] circumventus rennuerit fidem et excludatur eorum spoliū et ne fiat, latiore et longiore exponere priori consentientem ut igitur nulla reprehensio fiat' (*EOMLA* i/2. 644; as critical editor, Turner himself had doubts about the exact construction of the original passage).

A somewhat different view is provided by Athanasius in the *Tomus ad Antiochenos* of the Alexandrian council held in 362. He acknowledges that although a certain credal statement was ascribed to Serdica, no definition of faith was made, and that although 'certain ones' (Ossius and Protogenes?), maintaining that the Nicene formula was defective, attempted to draft a new one, the council rejected the proposal, declaring that all should be content with the faith confessed by the Fathers at Nicaea.³³⁸ It may be inferred from this warning against its acceptance, twenty years after Serdica, that a creed was produced by the council and that it did undergo at least limited circulation. It is probable that reference was made to the Serdican definition at Chalcedon in 451,³³⁹ and the circumstances of its transmission also indicate that at least in some quarters it was regarded as official. It was preserved by Theodoret as a continuation of the Serdican encyclical letter,³⁴⁰ and is so found also in the Theodosian Collection³⁴¹ in translation from a different but allied Greek version. Indeed, the creed may have been originally circulated with the encyclical. Thus Athanasius' account does not seem to be wholly accurate, for it seems nearly certain from the other evidence considered that the creed received some degree of approval by the council as a common declaration of faith.³⁴² His comments may reflect an understandable resentment that a new formula should have been proposed to supplement that which he had fought so hard to have accepted and had suffered so much to defend. It has also been observed, however, that the dismissal of the Serdican formula in the letter to the Antiochenes was at that time a necessity if they were to be persuaded that Athanasius stood only for the Nicene definition.³⁴³

In addition to the encyclical,³⁴⁴ letters were sent by the council to Pope

³³⁸ Athanasius, *Tom. ad Antiochenos* 5 (PG 26. 800–1).

³³⁹ *ACO* II i. 113.

³⁴⁰ *HE* 2. 8. 37–52 (GCS, NF 5. 112–18). A critical edition of the Greek text is given by F. Loofs, 'Das Glaubensbekenntnis der Homousianer von Serdica', *Abhandlungen der königlich preussischen Akademie der Wissenschaften*, philos.-hist. Klasse, 1909, 1. Abhandlung, 7–11.

³⁴¹ *EOMLA* i/2. 651–3.

³⁴² See Barnard, *The Council of Serdica*, 85–90.

³⁴³ See Kelly, *Early Christian Creeds*, 278–9.

³⁴⁴ The encyclical letter of the Westerns is preserved in somewhat different Greek versions by Athanasius, *Apol. contra Arianos* 44–7 (*Werke*, ii/1. 121–3) and Theodoret, *HE* 2. 8. 1–36 (GCS, NF 5. 101–12). An incomplete Latin translation from a third Greek version is found in the Collection of Theodosius Diaconus (*EOMLA* i/2. 645–53), and a possibly original Latin version is found among the historical fragments of Hilary of Poitiers. These four sources are printed concurrently in Feder's critical edition of the latter (CSEL 65. 103–26). Additional emendatory notes may be found in a critical study by I. Gelzer, 'Das Rundschreiben der Synode von Serdika', *ZNTW* 40 (1941), 1–24. Barnard provides a review of the encyclicals and other letters written by the Western council with citations of their sources (*The Council of Serdica*, 78–81).

Julius, to the church of Alexandria, and to the churches of Egypt and Libya proclaiming the restoration of Athanasius to his see. A similar letter to the church of the Mareotis (an outlying district of Alexandria) is included in the Theodosian Collection in company with letters of Athanasius written from Serdica to the same church and to the presbyters and deacons of Alexandria and Parembula.³⁴⁵ A letter of particular significance was sent to the Emperor Constantius³⁴⁶ requesting a defined limit to state interference in the affairs of the Church as a necessary condition for the restoration of peace. It also asked that exiled bishops be restored to their sees, and it was presumably in support of this request that Constans caused Vincentius of Capua and Euphrates of Cologne to be sent from Serdica to Antioch to obtain Constantius' consent for the return of the deposed to their churches.³⁴⁷ Finally, during the course of the council an agreement was reached between Alexandria and Rome—formally, but not in practice—in the long-standing dispute over the dating of Easter.³⁴⁸

Before their departure the Eastern bishops held a rival council of their own. Other than the publication of their encyclical letter, the only act of this gathering seems to have been the drafting of a paschal cycle covering the years 328–67.³⁴⁹ The encyclical reviews the whole Athanasian question in conjunction with the events leading up to Serdica. In addition to Athanasius, Marcellus, and Asclepas it condemns all who had received them into communion—Ossius, Protogenes, Pope Julius, and other leaders of the Nicenes. As a profession of faith, the Eusebians

³⁴⁵ *EOMLA* i/2. 654–62. Hefele has questioned the authenticity of these latter two (Hefele–Leclercq i/2. 811–12), but they have been accepted as genuine by Turner, Schwartz, and Telfer. A good vindication of their authenticity was given by F. Loofs, 'Zur Synode von Serdica', *Theologische Studien und Kritiken*, 82 (1909), 289.

³⁴⁶ A. Wilmart demonstrated that this letter is the primary component of the *Ad Constantium I* (CSEL 65. 181–7) attributed to Hilary of Poitiers ('L'*ad Constantium liber primus* de saint Hilaire de Poitiers et les *Fragments historiques*', *Revue bénédictine*, 24 (1907), 161–78; so too A. L. Feder, *Studien zu Hilarius von Poitiers I* (Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philos.-hist. Klasse, 162/4; Vienna, 1909), 146–51.

³⁴⁷ Athanasius, *Hist. Arian.* 20. 2 (*Werke*, ii/1. 193).

³⁴⁸ Barnard, *The Council of Serdica*, 93–6.

³⁴⁹ This is found in the Collection of Theodosius Diaconus (*EOMLA* i/2. 641–3). See Stern, *Calendar and Community*, 74, 78–9, 124–32. For treatment of the Eastern encyclical and paschal cycle see Barnard, *The Council of Serdica*, 82–4, 94–6.

reapproved the Fourth Creed of Antioch with the addition of a final anathema.³⁵⁰

Particular attention is given in the Eastern encyclical to Paul of Constantinople. Communion with him is cited as a major reason for the condemnation of the Western leaders and also of the three controversial figures, Athanasius, Marcellus, and Asclepas.³⁵¹ Contrary to this stands the fact that the Nicene party had apparently disassociated itself from his cause before 343, or even before the Roman council in 341.³⁵² No mention is made of Paul in the letters of the Western Serdican council, and his case was presumably not dealt with by the Roman council of 341. If considered, it was not thought to be of sufficient importance for mention in the reports of the proceedings issued by either council. The reasons for the Eusebian preoccupation with Paul are evident. The growing importance of Constantinople made it, next to Alexandria, the most strategic see of the East. Paul had originally become bishop of the city against the will of the Eusebians and in opposition to their own candidate, Macedonius. His second deposition in 338 was an important victory for the party of Eusebius, but after the latter's death, late in 341 or early in 342, Paul, with popular support, temporarily re-established himself in Constantinople and it was with difficulty that the original Eusebian candidate was installed. The Eusebians consequently had every reason at Serdica to prejudice the minds of all who would listen, but their accusation that the Nicene leaders had had communion with Paul, while probably in itself true, implies that he played a leading part in the controversy at the time, which he did not in fact do. The reasons for Paul's abandonment by his own party are nowhere stated, but it seems probable that his cause was simply too far removed from the basic issues of the conflict. Although the injustice of his deposition and the subsequent transfer of Eusebius from Nicomedia to Constantinople was undoubtedly one of the cases held in mind by those who formulated the canons of the Western Serdican council, Paul's personal misfortunes were overshadowed by the symbolic causes of Athanasius, Marcellus, and Asclepas. As Paul was not consecrated until 335, his defence could contribute little to the defence of Nicaea. It may also have been felt by the Nicenes that an involvement in the civil strife of Constantinople, which their support of Paul would have brought, would have been to their

³⁵⁰ The letter and creed are preserved together by Hilary at *De synodis*, 34 and in the *Historia fragmenticia* (CSEL 65. 48–67, 69–73), the creed alone in the Collection of Theodosius Diaconus (*EOMLA* i/2. 638–40).

³⁵¹ CSEL 65. 61, 65–7.

³⁵² Barnard, *The Council of Serdica*, 53.

disadvantage in reaching a possible agreement with Constantius over more important issues.

The anti-Pauline propaganda of the Eusebian encyclical had a decided influence upon the subsequent interpretation of Serdican history. Whereas the first-hand reports of Pope Julius, the Western Serdican encyclical, and Athanasius say nothing of Paul's case having been considered at Rome or Serdica, it is cited by Socrates as having held a prominent place on the agenda at Rome,³⁵³ and to have been a determining cause in the calling of Serdica.³⁵⁴ The source of Socrates' information seems to have been the Eusebian encyclical, and the report he gives appears to have been an inference from the attention paid to Paul in this document.

It was held by Hefele and other earlier authors that the Eusebian council was held at Philippopolis in Thrace after the departure of the Eastern bishops from Serdica.³⁵⁵ This has been questioned by later scholars, who have argued alternatively that their council was held at Serdica before the Easterns withdrew.³⁵⁶ The only substantial evidence supporting the former view is provided by the testimony of Socrates, who states that the Easterns convened at Serdica and upon the failure of negotiations with the Nicenes withdrew to Philippopolis and held their synod there.³⁵⁷ Sozomen, on the other hand, tells us that they first gathered at Philippopolis and then proceeded to Serdica where they held their separate council.³⁵⁸ That a preliminary gathering took place at Philippopolis is not unlikely, for it is almost certain that the Eastern bishops arrived at Serdica in a body. Their accompaniment by civil officers and their enclosure in the imperial palace in Serdica to prevent defections to the Nicene camp point strongly towards this. Athanasius relates that Arius and Asterius, who had come with the Easterns, managed to withdraw from their company after arrival.³⁵⁹ The geographical location of Philippopolis, some 150 km to the southeast of Serdica and its importance as the capital city of Thrace, would have made it a probable assembly point. A strong indication that Sozomen's account is correct is also found in the Western encyclical. It relates concerning the Eusebians that, 'holding synods in separate places on the way to Serdica, they made endless agreements among themselves that coming to Serdica they would absolutely not assent to being judged nor to meet together in one holy synod.'³⁶⁰

³⁵³ *HE* 2. 15. 1–3 (GCS, NF 1. 105–6).

³⁵⁴ *Ibid.* 2. 20. 1–3 (1. 117).

³⁵⁵ See e.g. Hefele–Leclercq, i/2. 813–19.

³⁵⁶ See F. Loofs, 'Zur Synode von Serdica', 283–4.

³⁵⁷ *HE* 2. 20. 8–9 (GCS, NF 1. 118).

³⁵⁸ *HE* 3. 11. 4 (GCS, NF 4. 114).

³⁵⁹ *Hist. Arian.* 15. 4 (*Werke*, ii/1. 190).

³⁶⁰ CSEL 65. 120.

Eutychius, bishop of Philippopolis, was among the Eusebians at Serdica, and, as this city was the probable point of assembly for the Eastern party, it seems reasonable to assume that the last of their councils along the route took place there.

The one other reference given to the Eusebian movements might, because of ambiguity, be interpreted as giving support to Socrates' account. This is found in section 15 of the Index to the *Festal Letters* of Athanasius. Robertson translated from the Syriac as follows: 'In this year the synod of Sardica was held; and when the Arians had arrived, they returned to Philippopolis, for Philagrius gave them this advice there.'³⁶¹ Cureton earlier had translated the same passage as: ' . . . when the Arians were arrived at Philippopolis they returned, for Philagrius gave then this counsel there.'³⁶² A more recent Syriac edition of the Index to the *Festal Letters*, with a French translation,³⁶³ agrees closely with the Robertson version. But all that the Index actually tells us is that while the Eusebians came to Serdica, they subsequently left there for Philippopolis. It cannot be regarded as evidence that they held their council there instead of at Serdica, but it seems to point to yet another gathering at Philippopolis as the Eusebians began their journey to the East. If that happened, the conflicting reports of Sozomen and Socrates can be at least somewhat reconciled. The Eusebians themselves clearly state that their council was held at Serdica and make no mention of Philippopolis. In the opening section of their encyclical they announce: 'ad civitatem Serdicam congregati concilium celebravimus',³⁶⁴ and later state, 'placuitque nobis de Serdica scribere'.³⁶⁵ The duration of the Eastern bishops' stay at Serdica was presumably sufficient for their brief deliberations, for the fruitless attempts at negotiations between the Eastern and Western groups, and for the formulation of the Eastern encyclical. If they had withdrawn to

³⁶¹ A. Robertson, *Select Writings and Letters of Athanasius, Bishop of Alexandria* (NPNF, 2nd ser. 4; Oxford, 1891), 504.

³⁶² W. Cureton, *The Festal Letters of Athanasius* (London, 1848), p. lii. This Philagrius is probably the pro-Arian prefect of Egypt mentioned in Athanasius, *Hist. Arian.* 9. 3, 10. 1.

³⁶³ A. Martin and M. Albert, *Histoire 'acéphale' et Index syriaque des Lettres festales d'Athanase d'Alexandrie* (SC 317; Paris, 1985), 241–3. The pertinent passage in translation is, 'Cette (année)-là il y eut un synode à Sardique. Quand les Ariens furent arrivés, ils changèrent pour P(h)ilippopolis, car là-bas, P(h)ilagrius le leur avait conseillé . . .'. A Latin version prepared by Angelo Mai from an Italian translation from the Syriac was republished by Migne in PG 26 (col. 1354). This firmly locates the Eastern synod in Philippopolis ('Ariani Philippopolim se contulerunt. Cumque Philagrius eis auctor esset ut in hac urbe synodum cogerent . . .'), but its history clouds its credibility, as Mai implicitly admits.

³⁶⁴ CSEL 65. 49.

³⁶⁵ Ibid. 63.

Philippopolis for their synod, it is difficult to believe that Athanasius and the Western gathering would not have cited the action to their further condemnation.³⁶⁶

The principal result of the Serdican gatherings was the temporary severance of communion between East and West. The line of division between the communions was virtually the boundary between the two halves of the empire. It cannot be doubted that this first clear-cut division made its own unfortunate contribution, through suspicion and misunderstanding, to the conditions that centuries later would result in permanent schism. The hopes and aims of the Western bishops remained unfulfilled. Athanasius was restored to his see not by the force of Serdica, but by a change in the policy of the Emperor Constantius. The disciplinary canons enacted by the Western council had no immediate effect upon the problems they were intended to solve, but their influence was to be felt permanently, and especially among the churches of the West.

(iv) Ossius of Cordova

The leadership exercised at Serdica by Ossius of Cordova cannot be appreciated fully without an acquaintance with the man himself.³⁶⁷ While it is evident that the influence of Pope Julius, Athanasius, and other Nicene leaders was felt at Serdica, the one personality which stands out above all others is that of the venerable bishop of Cordova. Despite his eighty-seven years, it is clear that his presidency was not merely honorary, for we find him at the forefront during the preliminary negotiations with the Eastern party, as one of the two responsible for the drafting of the Serdican formula of faith, and as the one whose opinion was most highly respected with regard to the questions of order and discipline discussed during the legislative sessions. While several important details regarding Ossius' activities and his theology remain in question,³⁶⁸ the following sketch of his life is reasonably accurate.

Ossius' life extended over a period of a little more than one hundred years; he was born in 256, shortly before the death of Cyprian, and died after the birth of Augustine. His episcopate, which began in about 295, covered some sixty-three years and witnessed the transition from

³⁶⁶ Barnard (*The Council of Serdica*, 64–70) provides a similar analysis regarding the Easterns' movements and meeting-place.

³⁶⁷ For a comprehensive study of Ossius the reader is directed to V. C. De Clercq's *Ossius of Cordova*.

³⁶⁸ See Herzog, *Restauration et renouveau*, 539, for a bibliographical review of these issues.

persecution to peace, the rise and vicissitudes of Donatism and Arianism, and an age of extensive organizational development within the Church. His subscription to the acts of the council of Elvira (c.305/9) shows that he was present at this important gathering of Spanish bishops, and it is supposed that he played an active part in the formulation of its canons. In about 313 Constantine appointed him as his 'ecclesiastical adviser', and he apparently served continuously in this capacity until after the council of Nicaea. It is known that while thus engaged Ossius was sent to Africa to mediate in the Donatist controversy, and to Alexandria for an attempted early settlement of the bitter differences between Alexander and Arius. It seems probable that he presided over a council at Antioch early in 325,³⁶⁹ and while the exact part played by Ossius at Nicaea is not known, the occurrence of his name as the first in the list of subscriptions makes it evident that he held a prominent position. It is largely from this fact that De Clercq and others have forcefully argued that Ossius presided.³⁷⁰ It is supposed that after the council Ossius returned to Spain and, with the exception of his attendance at Serdica, enjoyed an uninterrupted leadership of his flock for another thirty years. During this time, however, Ossius did not lose contact with the cause of Nicene orthodoxy in the East, nor did he fade from the memory of its opponents as one of the strongest supporters of the Nicene formula. Following the capitulation of Pope Liberius to Arian pressure in 356 or 357, Ossius himself came increasingly under attack. He was summoned to Sirmium by the Emperor Constantius and ultimately yielded to the emperor's demands that he subscribe to the Anomoean creed of 357. Ossius' fall has been explained in various ways, but it seems certain that his fateful subscription was not a responsible act. He was at this time over one hundred years of age, and had been subjected to continuous pressure while being held in a position of virtual imprisonment at Sirmium for at least twelve months. Under these circumstances it should not surprise us if his wits were no longer a match for those of his enemies. Although no more is heard of Ossius after this unfortunate event, it is supposed that he was allowed to return to Spain and that he died within a short time.

Ossius' career is remarkable not only for its length, but for his own outstanding abilities. His service at the imperial court gave him an

³⁶⁹ H. Chadwick, 'Ossius of Cordova and the Presidency of the Council of Antioch, 325', *JTS*, NS 9 (1958), 295–304.

³⁷⁰ De Clercq, *Ossius of Cordova*, 228–38. K. Girardet makes a strong case for Constantine himself as having presided: 'Der Vorsitzende des Konzils von Nicaea (325)—Kaiser Konstantin d. Gr.', in K. Dietz (et al., eds.), *Klassisches Altertum, Spätantike und frühes Christentum: Adolph Lippold zum 65. Geburtstag gewidmet* (Würzburg, 1993), 331–60.

unparalleled acquaintance with the Church at large, and provided him with a first-hand knowledge of its varied problems. While the acquisition of this experience would have placed any bishop so favoured in a position of prominence, Ossius' initial selection for the post, being the bishop of an obscure provincial see, and the subsequent influence which he enjoyed after the severance of his connection with Constantine, can only be explained in terms of his own character and ability. The tribute paid to Ossius by the bishops at Serdica clearly illustrates the esteem in which he was held by his contemporaries. They speak of him as a man 'of venerable old age, who because of his time of life, his confession, and long-tested faith, and who for the great labour he has undergone on behalf of the Church is most worthy of all reverence'.³⁷¹

Apart from his contribution to the documents of the Serdican council, the known writings of Ossius are surprisingly few in number. The only one that remains is a letter written to Constantius in about 356.³⁷² Isidore of Seville mentions a letter, *De laude virginitatis*, which Ossius had written to his sister, and a longer work, *De interpretatione vestium sacerdotalium*,³⁷³ but these are no longer extant. While his lack of literary activity has led some writers to suppose that Ossius possessed but little learning, De Clercq has adequately shown that he was both a man of culture and a competent theologian.³⁷⁴

³⁷¹ The Western Encyclical (CSEL 65. 108).

³⁷² Preserved by Athanasius, *Hist. Arian.* 44, but considered of doubtful authenticity by Herzog, *Restauration et renouveau*, 541.

³⁷³ *De viris illustribus* 5 (PL 83. 1086).

³⁷⁴ *Ossius of Cordova*, 61–75.

5 Historical and Textual Problems

(i) The Genuineness of the Serdican Canons

The genuineness of the Serdican canons was first seriously questioned in 1846 in an article entitled 'Papal Supremacy', which was published in the *British Magazine*.³⁷⁵ The arguments outlined by this initial attack were taken up by Johann Friedrich in 1901 and strengthened by the addition of further evidence.³⁷⁶ His article was received with enthusiasm by Bishop John Wordsworth,³⁷⁷ but at the same time evoked serious criticism from a number of other scholars, among whom were Turner,³⁷⁸ Funk,³⁷⁹ and Duchesne.³⁸⁰ Although Friedrich was led to meet the arguments of his critics in two further articles,³⁸¹ the replies of these and other scholars have confirmed the genuineness of the canons beyond all possibility of doubt. The raising of the issue, however, is an interesting sequel to the questioning of their authenticity as Nicene by Aurelius of Carthage 1,500 years previously; the palpable motive behind both inquiries has been a rejection of the prerogatives granted to the bishop of Rome by the appeal canons, nos.3, 4, and 7.

Friedrich proposed that the canons are a forgery based upon various earlier documents. The most outstanding of these is a rescript sent to the

³⁷⁵ Vol. 29, pp. 251–68. The author is identified only by the initials 'E. J. S.'. Bishop Wordsworth suggested that the writer was E. J. Shepherd (see below, n. 3).

³⁷⁶ J. Friedrich, 'Die Unechtheit der Canones von Sardica', *Sitzungsberichte der bayerischen Akademie der Wissenschaften*, philos.-philol.-hist. Klasse, 1901, 417–76.

³⁷⁷ J. Wordsworth, 'Are the Canons of Sardica Genuine?', *Guardian*, 26 Feb. 1902, 315–16.

³⁷⁸ C. H. Turner, 'The Genuineness of the Sardican Canons', *JTS* 3 (1902), 370–97.

³⁷⁹ F. X. Funk, 'Die Echtheit der Kanones von Sardika', *Historisches Jahrbuch der Görres-Gesellschaft*, 23 (1902), 497–516, and *ibid.* 26 (1905), 1–18, 255–74.

³⁸⁰ L. Duchesne, 'Les Canons de Sardique', *Bessarione*, 68 (Sept.–Oct. 1902), 129–44.

³⁸¹ 'Zur Kritik meiner Abhandlung: Die Unechtheit der Canones von Sardica', *Revue internationale de théologie*, 11 (1903), 427–54; *id.*, 'Die sardicensischen Aktenstücke der Sammlung des Theodosius Diaconus', *Sitzungsberichte der bayerischen Akademie der Wissenschaften*, philos.philol.-hist. Klasse, 1903, 321–43.

Roman vicar Aquilinus by the Emperor Gratian,³⁸² from which Friedrich suggested that the appeal canons were derived.³⁸³ Others, he maintained, had their origin in the *Canones ad Gallos episcopos*, in the letter of Pope Innocent to Victricius of Rouen, and in canon 8 of the council held at Carthage under Genethlius in 390.³⁸⁴ He argued that the canons were first published in 416 or 417, in relation to the affair of the African presbyter Apiarius of Sicca, with the claim to be Nicene, and that in a later redaction, with the addition of historical colour, they were put forth as Serdican. It has been shown by the critics of Friedrich's theory that such a forgery would have demanded an impossible degree of knowledge of the history and problems of the first half of the fourth century by both the author and the later editor, and that the latter would also have had to have been responsible for the insertion of Serdican details into widely scattered manuscripts already extant. The direct reference to canons 18 and 19 of Serdica by Gratus of Carthage in 345³⁸⁵ is of itself fatal to Friedrich's thesis. He himself met this objection by claiming that the reference is spurious, but this argument is without foundation. The textual objections have been proven to be equally insurmountable. Turner showed that eleven separate Latin collections containing the Serdican canons are to be dated before 600. Taking the textual divergence of the manuscript sources of these collections into account, he demonstrated that their common prototype must be dated before the supposed forgery of the 'Nicene edition' would have taken place, to say nothing of the 'Serdican revision'.³⁸⁶

E. Ch. Babut, while accepting the authenticity of the Serdican canons in general, denied the genuineness of the appeal canons and of canon 10a, considering them to be subsequent interpolations with the purpose of bolstering papal claims.³⁸⁷ His thesis was based upon what he considered to be contradictions between the appeal canons and the rest of the material, and upon the supposition that these canons interrupt the sequence of thought in the genuine series. Babut was answered by

³⁸² This is the letter *Ordinariam sententias : Epistulae imperatorum pontificum aliorum inde ab a. CCCLXVI usque ad a. DLIII datae, Avellana quae dicitur collectio*, ed. O. Guenther (CSEL 35; Vienna, 1895), Epistle 13. The passages relevant to canons 3 and 7 are found in §§12 and 13 (CSEL 35. 58).

³⁸³ 'Die Unechtheit der Canones von Sardica', 424–32, 452–60.

³⁸⁴ Ibid. 460–72.

³⁸⁵ Canon 5 of the Carthaginian council held in that year (CCL 149. 6).

³⁸⁶ 'The Genuineness of the Sardican Canons', 382–4.

³⁸⁷ 'L'authenticité des canons de Sardique', *Transactions of the Third International Congress for the History of Religions* (Oxford, 1908), ii. 345–52.

Batiffol,³⁸⁸ and the authenticity of these particular canons was further vindicated by Zeiller.³⁸⁹ The genuineness of the Serdican series in its entirety no longer remains at issue.

(ii) The Numbering Systems

The number of the Serdican canons is usually given as twenty-one in the Latin text and twenty in the Greek, although considerable variation is found among the manuscript traditions. Differences are also found between the Latin and the Greek regarding the division and arrangement of the material. The Greek lacks two canons and part of another which are present in the Latin, and the Latin lacks two which are present in the Greek. The order of occurrence of the canons differs between the two versions, each having one canon seemingly misplaced from its context. These facts obviously complicate the relationship of their respective numbering systems. There seems clearly to have been no original numbering of the canons, which were simply recorded in sequence as extracts from the minutes of the council. Any system of numbering that is adopted must necessarily be arbitrary. In the present study the system of numbering found in the 'Dionysius' and 'Prisca'³⁹⁰ recensions will be used for the Latin text. This has the advantage of being generally accepted and also provides a more detailed breakdown of the material than the system Turner provides in his critical edition,³⁹¹ although his more clearly preserves the coherence of related sections. To facilitate reference to specific sections, canons 3, 9, 10, III, VI, and IX are here subdivided 'a', 'b'. . . . For the sake of greater clarity the canons are denoted by arabic numerals in the Latin text, by roman numerals in the Greek, and by arabic preceded by "T" in the Theodosian text. The reader is directed to the Table following Chapter 10 for cross-reference between the three systems of numbering. The texts of the three versions are printed in the Appendix, each with its own numbering system.

³⁸⁸ 'M. Babut sur l'authenticité des canons de Sardique', *Bulletin d'ancienne littérature et d'archéologie chrétiennes*, 4 (1914), 202–8.

³⁸⁹ *Les Origines chrétiennes dans les provinces danubiennes de l'empire romain* (Paris, 1918), 254–6.

³⁹⁰ For a discussion of the various recensions of the Latin text referred to in this study see Hess, *The Canons of the Council of Sardica*, Appendix III.

³⁹¹ *EOMLA* i. 452–86.

(iii) The Problem of Textual Priority

Unlike all other series of early canons, no direct evidence exists for either the Latin or the Greek texts of the Serdican canons to have been the original. Both are of great antiquity and the question of their relative priority has long been a matter for debate. While the two versions are in substantial agreement concerning the content of the enactments at Serdica, they are at variance with regard to several significant details. Not only is the order and arrangement of material somewhat different between them, but each version contains material omitted by the other and in certain cases there is considerable divergence in meaning between corresponding canons. All the extant Latin recensions agree in their basic differences from the Greek and must therefore owe their origin to a common prototype; the Greek recensions, fewer in number, agree in like manner against the Latin. The priority arguments on behalf of each have been based on both textual and historical evidence, and, as the former may admittedly be interpreted in different ways, fairly strong cases have been advanced on both sides.

At the beginning of the present century, in his celebrated article on the genuineness of the Serdican canons, Turner cited certain evidence in favour of Latin priority³⁹² which has gained widespread acceptance as being at least indicative of the solution to the problem. He asserted that the phrase ἄπὸ τοῦ ἰδίου πλεuroῦ in canon V of the Greek text can only be a literal translation of the Latin idiom *e latere suo* (canon 7), as it would not be found in original Greek composition. In canon 8(VII) three classes of unfortunates—the needy, widows, and orphans—are named as being worthy of succour. This series occurs twice within the canon, being expressed in the Latin by ‘pauperibus ac viduis aut pupillis’ and ‘qui aliqua iniqua vi opprimuntur, aut si vidua affligitur aut pupillus expoliatur’. In the second occurrence of the series ὀρφανός of the Greek corresponds to *pupillus* of the Latin, but in the first occurrence *pupillis* is paralleled by λαῖκός. It seems certain from the context that the Latin is correct, and Turner's suggestion that the Greek variant resulted from a mistaken reading of *populis* for *pupillis* is a convincing argument for the dependence of the Greek upon the Latin. Similar points have been raised by Schwartz, two of which deserve particular attention.³⁹³ The use of the Greek adverb ἄντικρυς (canon IIIb) as equivalent to the Latin preposition *contra* is

³⁹² ‘The Genuineness of the Sardican Canons’, 376 n. 2.

³⁹³ ‘Der griechische Text der Kanones von Serdika’, *ZNTW* 30 (1931), 7–35.

grammatically incorrect, and appears to be the result of an imitation of the Latin phraseology. In canon 15(XII) the corresponding Latin and Greek phrases ‘idonea praedia habere noscuntur et adfec[ta]tiones quibus indulgeant’ and κτήσεις μεγάλας ἐξ ὧν καὶ ἐπικουρῆιν δυνατοὶ εἶσιν τοῖς πένησιν have a curious relationship. While the Greek is precise in meaning the Latin is vague and ambiguous. It is difficult to see how the Latin could have been derived from the Greek, but the Greek may well be an attempted interpretation of the Latin.

In an article partially devoted to the relationship between the two Serdican texts, von Hankiewicz developed a lengthy argument for the originality of the Greek based upon the contention that the Greek provides a more harmonious and coherent presentation of the material than does the Latin. He has, however, neither successfully dismissed the evidence cited by Turner nor established a convincing case for Greek priority, for he has failed to show that the Latin is in any way dependent upon the Greek. One of von Hankiewicz's major points is grounded upon the supposition that the Greek text conveys the intended meaning of the appeal legislation and that in the Latin it has been misinterpreted. He maintains that the confusion in the Latin is illustrated by the position of the acclamation clause in the appeal series. In the Greek, he contends, the clause is correctly placed at the conclusion of the series—after canon V(7)—but that in the Latin it is wrongly placed at the end of canon 3(III).³⁹⁴ It is to be observed against this argument that von Hankiewicz's own interpretation of the appeal legislation is open to serious criticism,³⁹⁵ and also that, according to the analysis given in Chapter 3, the position of the acclamation clause is in fact correct in the Latin and not in the Greek. He also makes use of the divergence in meaning between canon VIa of the Greek and its Latin counterpart (canon 5),³⁹⁶ but it is to be noted that Schwartz has quite easily reversed the argument and used the same evidence in favour of Latin priority.³⁹⁷

While von Hankiewicz successfully shows that the Greek text possesses a consistent internal independence from the Latin, this independence is primarily manifested in external characteristics rather than in essential differences of meaning. A comparison of the external characteristics of the two texts reveals that in certain respects the Greek provides the more faithful record of the underlying debate. The personalized

³⁹⁴ G. R. von Hankiewicz, ‘Die Kanones von Sardika’, *ZSSR* 33 = kan. Abt. 2 (1912), 63–76.

³⁹⁵ See below, Ch. 9, §iii, for analysis of the von Hankiewicz–Caspar argument.

³⁹⁶ ‘Die Kanones von Sardika’, 87–95.

³⁹⁷ ‘Der griechische Text der Kanones von Sardika’, 20–1.

phraseology of the canons, for instance, is more marked in the Greek than in the Latin. In the Latin text the use of the first person singular—in such expressions as ‘I think’, ‘I judge’, etc.—occurs only three times (in canon 13 with *arbitror*, in canon 14 with *Memini*, and in canon 17 with *debeo*), but in the Greek there are thirteen instances of its use. These are: ‘I think’ (ἡγοῦμαι), canons I and VIa; ‘I think’ (νομίζω), II, IXa, and X; ‘I mean’ (λέγω), VIa; ‘I have said before’ (προεῖπον), VIb; ‘I believe’ (ἐνόμισα), VII; ‘I have said before’ (προεῖρηκα), IXb; ‘I think’ (κρίνω), XII; and ‘I am not obliged’ (οὐκ ὀφείλω), XIV; ‘It seems to me’ (ἔδοξε), XVIII; and ‘My . . . opinion’ (Τῆς ἐμῆς . . . ἀπόφασις), XIX.

A similar independence may be seen in connection with the acclamation clauses. Whereas the Latin text contains thirteen of these, seventeen are found in the Greek. Out of sixteen acclamations of approval pertaining to material preserved by both the Latin and the Greek, in only eleven cases are the clauses parallel in position in the two texts, and in only four cases, canons VIb, IX(9b-10a), XIII, and XVI, does the phrasing or meaning of the Greek clause correspond to that of the Latin. Schwartz, supposing that the Greek text is a later translation from the Latin, has suggested that the acclamation clauses were revised by the translator to make them conform to the Greek idiom, but this explanation does not give an adequate accounting for the differences. In the majority of cases it is impossible that the Greek acclamation clauses are simply rephrased, for they express an entirely different idea from the corresponding clauses in the Latin, and those of canons V, VIII, XIV, XV, XVII, and XXa have no counterpart in the Latin at all.

The most significant factor to be noticed in connection with the acclamation clauses is the retention in both texts of those clauses which are not simple acclamations, but are accepted *sententiae*. These, we recall from Chapter 3, are the clauses of canons 16(XIII), 18, and 20(XVI). Also, in canon 11(XX), which appears as a single proposal in the Latin, the latter half of the canon is presented in the Greek as an acclamation clause, which is undoubtedly the accepted *sententia*. Similarly, in canon XIV(17) a large section of the body of the text as it stands in the Latin is given as an acclamation clause in the Greek. It would indeed be curious for a Greek translator or later editor to have shown this degree of interest in creatively augmenting the acclamation clauses, which are one of the distinguishing characteristics of a form of canonical publication we have seen to have been an intermediate stage in the development of editorial style. We may in this respect usefully compare the occurrence of acclamation clauses in the early fifth-century Latin translation from the Greek

text which is found in the Collection of Theodosius Diaconus. Of the seventeen acclamation clauses in the Greek prototype all but eight have been entirely omitted from the Theodosian. Should we not expect to find a similar lack of concern for the preservation of these clauses in the Greek text, rather than what would need to have been a heightened interest in this feature, if the Greek text was itself a translation from the Latin?

In the light of the foregoing discussion it is suggested that the heightening of the personalized character of the phraseology of the canons themselves and the considerable differences in the number, position, and meaning of the acclamation clauses preclude the possibility that the Greek is a translation from the Latin. The evidence provided by the acclamation clauses points also, however, towards a similar independence for the Latin, and this in conjunction with the points raised by Turner and Schwartz makes it highly improbable that the Latin is a translation from the Greek. Indeed, there is no evidence that the early collectors of canons considered the Latin to have been so derived, for, unlike the Nicene series, the Latin textual tradition of the Serdican canons remained relatively uninfluenced by that of the Greek as this became available in the West.³⁹⁸

A resolution of these seemingly contradictory conclusions is provided by a modified reassertion of the hypothesis of a double redaction which was first proposed in the eighteenth century by the brothers Ballerini. Their hypothesis rests upon two primary considerations: the nearly equal Latin- and Greek-speaking representation at Serdica, and the significant differences in meaning existing between the two texts. They argued that the first factor would have made a double redaction a necessity, and that the second could adequately be accounted for only by supposing that the texts were each original and independent.³⁹⁹ While a majority of modern authors have followed Turner and Schwartz in the acceptance of Latin priority, it is my conviction that the originality and independence of the two versions is confirmed by the observations made above and also demonstrated through the textual analyses provided in Chapters 7 to 10 below.

From an examination of the sees represented at Serdica⁴⁰⁰ Barnard has determined the following language representation: approximately thirty-eight Greek-speaking bishops were present, and thirty-three Latin.⁴⁰¹ The

³⁹⁸ See Hess, loc. cit.

³⁹⁹ 'De ant. coll. et coll. canonum: de graecis canonum collectoribus', *Leonis Magni Opera*, iii, pars. I, cap. v, pp. xxx–xxxiv (= PL 56. 41–4).

⁴⁰⁰ See Ch. 4, §ii (with nn. 21–4).

⁴⁰¹ Barnard, *The Council of Serdica*, 58–9.

number for the Latin includes two from Pannonia, three from Moesia, and five from Dacia;⁴⁰² the number for the Greek includes one each from Alexandria, Palestine, and Arabia, where Greek but not Latin would be known. The sees of eighteen of the bishops present are unknown, and eight are indeterminable because of a corruption of the texts. This approximately equal Latin- and Greek-speaking representation is unique among the fourth-century councils. The number of Westerns at Nicaea was small, and at no other Eastern council do we find the number of Latin-speakers nearly equal to that of the Greek, as indeed it would not have been at Serdica if the council had met as planned. Evidence for Greek-speakers at Western councils is virtually non-existent. Under these circumstances both a Latin and a Greek record of the essential phases of the discussions may well have been considered a necessity. The very fact of the existence of two texts in the same form of publication is a strong indication that this was the case, for it seems doubtful that a full translation of the minutes, let alone an extract translation from them, would have been made from one language to the other when the publication of legislative acts in the set canonical *placuit* form was commonly observed in both East and West at that time. If a translation of such records had been made, certainly a more polished redaction would be expected.

It is quite certain that Ossius spoke in the Latin tongue during the public debate at Serdica. Latin was his native language and although it may be supposed that he had acquired a fair command of Greek while in the service of Constantine,⁴⁰³ except for occasional letters his contact with the Greek-speaking world had terminated at Nicaea eighteen years before. Furthermore, from the language of publication of the synodical letters, it seems probable that Latin was used in preference to Greek as the language of business at Serdica. It is especially significant that the original Latinity of the letter to the Eastern emperor, Constantius, has never been questioned. While apparently both a Latin and a Greek version of the encyclical were published by the council, the originality of the Latin is favoured by Schwartz and Opitz.⁴⁰⁴ Thus, under the assumption that at least the majority of the proposals were made in the Latin tongue, the process of translation from the Latin to the Greek must have taken place

⁴⁰² The Latinity of the Church in these provinces is attested by early inscriptions. See Zeiller, *Les Origines chrétiennes*, 40.

⁴⁰³ See De Clercq, *Ossius of Cordova*, 65–9.

⁴⁰⁴ See E. Schwartz, 'Der griechische Text der Kanones von Serdika', 5–7; and Athanasius, *Werke*, ii/1. 119 n. 4. I. Gelzer, however, has questioned this: 'Das Rundschreiben', 1–17.

at one point or another. Herein lies the inescapable dependence of the Greek upon the Latin with respect to the points raised by Turner and Schwartz; but this would pertain equally well if the Greek text is a set of minutes taken from the Latin debate by a bilingual scribe or, as is more likely, a verbatim record of the proposals as they were repeated by an interpreter. It is quite possible, for example, that an interpreter so employed might have understood *populis* when Ossius said *pupillis*. Schwartz, speaking in terms of Latin priority, points out that the translator knew both languages well and rendered the Latin into smooth-flowing Greek, retaining the sense of the Latin without slavish dependence,⁴⁰⁵ but this description could as well fit the oral translation of someone employed as the interpreter for the legislative sessions.

In conclusion it is necessary to consider whether the relatively close agreement between the texts with respect to the type of material preserved allows the hypothesis of two independent transcriptions. Would two stenographers have agreed so closely upon the phases of the conciliar debate process which they recorded? It may be seen in connection with the two African series and the minutes of the sitting of the senate in the year 438, which were discussed in the first section of Chapter 3, that a common principle of selection from the phases of the parliamentary debate was observed. In each the overall pattern is the same: the initial proposals and the related approved *sententiae* have been preserved from each debate. It is evident that the same principle of selection was followed at Serdica, and consequently the complete agreement between the Greek and Latin texts upon the preservation of the initial propositions and the approved *sententiae* can be expected. The majority of the initial propositions presented at Serdica were accompanied by the *sententia* of the proponent, and most of these were approved by acclamation. In a few cases this did not happen, either because the speaker introducing a question did not suggest a solution or because his solution was not accepted. We have noted several cases of this sort. The fact that the texts again agree in preserving the approved *sententiae* relating to these proposals, whether they are in the form of *sententiae* or of acclamation clauses, lends further support to our double-redaction thesis. While the Greek text has omitted canon 12, which was Ossius' moderating comment on canon 11, the amendment to canon 3 submitted by Gaudentius is of considerable importance to the appeal legislation and might be expected to be preserved as an integral part of it in any record

⁴⁰⁵ 'Der griechische Text der Kanones von Serdika', 31.

that was kept. Where the two texts do not agree is in the preservation of non-essential matter. As we have seen, this is shown by the omission of canons 10b and 12 from the Greek and canons XVIII and XIX from the Latin, none of which have more than temporary or local interest.

6 Early Textual Transmission and Development

(i) The Transmission of the Latin Text

The circumstances of transmission of the Serdican canons in the Latin text is uncertain before their emergence in the first systematic Western collections of canon law, but a few indications of their preservation are found in this early period which allow certain conclusions to be drawn. Two facts are brought to light by a jurisdictional dispute that arose between the African and Roman churches in 418. Citing the authority of the council of Nicaea, Pope Zosimus quoted canons 7 and 17 of Serdica to justify his restoration of a deposed African presbyter, Apiarius of Sicca, who had appealed to the Roman see against the action of his bishop. The claim that these canons were Nicene was rejected by a council assembled at Carthage, but no suggestion was made as to their origin. From this incident it appears that the Serdican canons were known at Rome but not at Carthage, and that they were believed at Rome to be Nicene. The earliest systematic Western collection of canons (the 'Prisca') was made within a few decades of this first quotation from the Latin text, and from then onwards the history of the Latin textual tradition of the Serdican canons may be traced with reasonable certainty. The identifiable references to the canons before 418 are few, but those which exist indicate that they were preserved at Rome from an early date.

In 404 Pope Innocent cited the appeal canons in a letter to Victricius of Rouen, stating that if matters of greater importance remain unresolved following episcopal investigation, 'they are to be referred to the apostolic see, as the council directed, and as abundant custom demands.'⁴⁰⁶ Friedrich maintained that this was not a reference to the Serdican ruling but a repetition of the interpretation of canon 6 of Nicaea to be found in Pope

⁴⁰⁶ §6 (PL xx. 473).

Julius' letter to the Eusebians.⁴⁰⁷ In the letter to the Eusebians it is claimed that it is the custom to refer important matters to the Roman see that just judgement may be given from there.⁴⁰⁸ Julius' statement may well be reflected by the phrase 'the Roman church which in all matters ought to be held in reverence' (*Romanae ecclesiae, cui in omnibus causis debet reverentia custodiri*), found in the preceding paragraph of Innocent's letter; but the passage under consideration is notably more specific with regard to papal prerogatives in the judgement of bishops than this statement. There can be little doubt that it is an intended summary of the Serdican appeal legislation. In section 10 of the same letter Innocent ascribed Nicene authority to a ruling that a cleric from one church should not be ordained to a higher function in another.⁴⁰⁹ The fact that his reference was to canon 19 of Serdica and not to canon 16 of Nicaea, as Friedrich claims, may be shown by a comparison of the three texts.

Letter to Victricius, 10 Ut de aliena Ecclesia clericum ordinare nullus usurpet, nisi eius episcopus precibus exoratus concedere voluerit.

Canon 19 of Serdica. . . ut quicumque ex alia parrochia voluerit alienum ministrum sine consensu episcopi ipsius et sine voluntate ordinare, non sit rata ordinatio. Quicumque autem hoc usurpaverit, a fratribus et coepiscopis nostris et admoneri debet et corrigi.

Canon 16 of Nicaea (Old Latin Version) Si quis autem ausus fuerit per subreptionem aut contumaciam hoc agere [cf. canon 15 preceding] ut qui ad alium pertinet sibi vindicando eum constituerit episcopum vel presbyterum, inrita fiat eius ordinatio.⁴¹⁰

Innocent's paraphrase not only appears to be verbally dependent upon the Serdican canon through its use of the verb *usurpare*,⁴¹¹ but is also closer to it in meaning than to the Nicene canon. This is made particularly

⁴⁰⁷ 'Die Unechtheit der Canones von Sardica', 437–8. According to the Latin version preserved from an early date at Rome the canon begins 'Ecclesia Romana semper abuit primatus' (*EOMLA* i. 121).

⁴⁰⁸ Athanasius, *Apol. contra Arianos* 35. 4 (*Werke*, ii/1. 113).

⁴⁰⁹ *PL* xx. 475.

⁴¹⁰ *EOMLA* i. 137.

⁴¹¹ See below, Ch. 8, §viii, and note the employment of the same verb in the citation to follow.

evident by the inclusion of the qualifying phrase that the ordination may take place if the permission of the cleric's own bishop has been obtained. The same Serdican canon is even more closely paraphrased by a ruling that is ascribed by its manuscript sources to the council of Arles (314), but in Turner's opinion owes its origin to Pope Siricius' letter *Ad episcopos Africae* 6 (AD 386). It reads: 'No bishop shall take (*usurpet*) a cleric from another church to ordain him elsewhere.'⁴¹²

Two citations of the Serdican canons are found in the *Canones ad Gallos episcopos*. Canon 2 of Serdica seems to underlie the admonition in chapter 5 of the *Canones* against the acquisition of the episcopal office by the payment of money or by courting the favour of the people. The punishment of episcopal translation by deposition, which is ordered in the same chapter, appears to be based on canon 1.⁴¹³ As neither of these rulings has a Nicene equivalent, their Serdican origin seems certain.

Friedrich was probably correct, however, in denying a commonly attributed Serdican source to several other references from the late fourth century. Two specific examples are the supposed citations of canon 1 by Jerome⁴¹⁴ and of the appeal canons by Pope Siricius.⁴¹⁵ In both cases the statements are so general that their sources cannot be identified; they may well have been references to canons 15 and 6 of Nicaea respectively.

The almost certain citations of the Serdican canons identified above show that they were probably known at Rome from the late fourth century onwards, and it is likely that the document containing them arrived in Rome shortly after the council itself. In the Serdican letter to Pope Julius we find the following passage in reference to the actions of the council: 'all things that [were] . . . established are contained in *chartae* (writings) and . . . can be stated by the spoken word'.⁴¹⁶ The word *chartae* can be synonymous with *acta* or *gesta*, meaning an account of public proceedings.⁴¹⁷ A copy of the canons is the only known Serdican document that this description would fit. We may therefore accept the passage as strong evidence that the papal delegates at Serdica, who were undoubtedly the bearers of the viva voce report referred to in the same phrase,

⁴¹² *EOMLA* i. 416. Compare canons 24–7, mistakenly attributed to Arles I, with canons 4–8 in Siricius' letter (CSL 149. 60–2).

⁴¹³ PL 13. 1191 A, 1192 B. Regarding the authorship of the *Canones ad Gallos*, see Ch. 2 n. 53.

⁴¹⁴ *Ep.* 69. 5 (CSEL 54. 687).

⁴¹⁵ *Ep.* 1. 20 (PL 3. 1146).

⁴¹⁶ CSEL 65. 127: 'uniuersa quae gesta sunt, quae acta, quae constituta, et chartae continent et uiuae uoces . . . uerissime et fideliter exponere potuerunt'.

⁴¹⁷ See the *Tesaurus Linguae Latinae*, iii (1906), col. 998, l. 70, where specific reference is made to the present context.

took a copy of the canons with them when they returned to Rome. It is noteworthy, however, that none of the early references to the canons made by the Roman church ascribe them to the council of Serdica. Their attributed source, when given, is invariably the council of Nicaea. The attributed Nicene origin and the long-persisting continuous numeration of the Serdican canons with those of Nicaea has, as we have seen in Chapter 2, led to the conclusion that subsequent to their arrival in Rome they were bound together with the Nicene series either for convenience or because Serdica was considered to be a vindication or completion of the work of the former council. It is quite possible that if this had not happened the Latin text of the Serdican series would not have survived. Fortunately the canons which were cited by Pope Zosimus were quoted verbatim in the commonitorium read at Carthage in 419.⁴¹⁸ Upon comparison it may be seen that the textual tradition known to Zosimus is almost identical with that called the 'Chieti', preserved in the ninth-century 'Codex Ingilrami episcopi Teatini'. From this it appears that the Chieti tradition is closely representative of the text preserved at Rome from the mid-fourth century.⁴¹⁹

Although we shall pursue below the likelihood that the Latin text of the Serdican canons became known in Africa after 418, there is no evidence that it was preserved elsewhere in the West, other than Rome and then Carthage, before its inclusion in the sixth-century collections of Dionysius Exiguus and Fulgentius Ferrandus.⁴²⁰ In Africa one direct reference to the canons was made soon after Serdica. This is a paraphrase quotation of canons 18 and 19 by Gratus of Carthage at the council assembled in that city in 345: 'Nam et memini, in sanctissimo concilio Sardicensi similiter statutum, ut nemo alterius plebis hominem usurpet . . .'.⁴²¹ The citation was evidently made from memory, indicating the probability of Gratus' attendance at Serdica, but it provides no evidence for the early preservation of a copy of the canons at Carthage. At beginning of the fifth century Augustine demonstrated his ignorance of the Western Serdican gathering by his assumption that Serdica was an Arian council.⁴²² It seems probable that an acquaintance with the canons would have corrected this false impression.

⁴¹⁸ *EOMLA* i. 571–3, 578.

⁴¹⁹ The version represented by this manuscript is the basic source for Turner's critical edition of the Latin text. The Chieti readings he does not accept as original are indicated by 'P' in the critical apparatus. For canon 7 see *EOMLA* i. 160–2; for canon 17 see 480–2.

⁴²⁰ See Ch. 2, §viii.

⁴²¹ Canon 5 (CCL 149. 6).

⁴²² *Contra Cresconium*, 4. 44 (CSEL 52. 550), and *Ep.* 44. 6 (CSEL 34. 114).

Turner suggested that the search for the authentic text of the Nicene canons initiated by the controversy over Apiarius resulted in the reception of the Serdican canons in translation from the Greek at both Carthage and Rome. If the conclusions set forth below concerning the history of the Theodosian version are correct, the knowledge of the true origin of the Serdican canons was not received at Rome in this way or at this time. In Africa the canons were ignored even after their identity had become known, and at Rome they were still officially quoted as Nicene until the end of the fifth century. The Roman council of 485, for example, in a letter to the presbyters and archimandrites of Constantinople, stated that the council of Nicaea had conferred upon the Roman church the right to confirm judgements;⁴²³ in the mid-fifth century Pope Leo attributed Nicene authority to canon 4.⁴²⁴ Evidence for the continued identification of the Serdican canons as acts of the council of Nicaea in circumstances unconnected with papal claims is abundant in the early collections of canons. For instance, in the late-sixth-century Verona Fragment and in the ninth-century Chieti manuscript the Serdican canons are found in continuous numeration with the Nicene and also bear the title of the latter. It is probable, however, that the identity of the canons became known at Rome by the end of the sixth century, for during the first half of the sixth they were published in the collection of Dionysius Exiguus under their own name. An intermediate stage in this recognition of their origin may be found in the fifth-century collection falsely ascribed to Isidore of Seville. In this we find the following heading given to the canons of Serdica: 'Incipit concilium Nicaenum XX episcoporum [regularum] quae in graeco non habentur sed in latino inveniuntur ita.'⁴²⁵

It has frequently been asserted that the faulty memory of the Roman church concerning the identity of the canons was by design rather than by accident. It is evident, however, that little was known or cared about canonical legislation during this early period, for, as we have seen in Chapter 3, 'canon law' was in its infancy in the West until the sixth century. Except for regional legislation, particularly in Africa and Gaul, the canons of Nicaea alone seem to have grown in esteem in the West, depending for their authority upon the venerated memory of the council from whence they came. In the absence of an acknowledged corpus of

⁴²³ *Collectio Avellana*, Ep. 70. 10 (CSEL 35. 159).

⁴²⁴ Ep. 44. 3 (PL 54. 832 A).

⁴²⁵ Maassen, *Geschichte der Quellen*, 59 (and ibid. 13 for identification of the Freising MS as a leading representative of 'Isidore').

canon law the degree of authority attributed to the canons of Nicaea was unique. From the standpoint of the church of Rome, this situation is well illustrated early in the fifth century by Pope Innocent's request to Theophilus of Alexandria that he should plead his case only from the canons of Nicaea; for he added, 'the Roman church accepts no other'.⁴²⁶ Under these circumstances it is not surprising that the canons of Serdica were closely identified both in tradition and in their means of preservation with the canons of the former council which, from the Western point of view, Serdica had been called to reaffirm.

An additional indication of the simply circumstantial nature of this identification is found in the fact that the name and authority of Nicaea were also frequently ascribed to the canons of other Eastern councils. Ambrose tells us that a ruling of the council of Nicaea excluded digamists from the ministry,⁴²⁷ but the canon actually referred to is probably the 7th of Neocaesarea.⁴²⁸ Gregory of Tours, in the late sixth century, could still cite canon 14 of Gangra as Nicene,⁴²⁹ and even in the East Theophilus of Alexandria (d. 412) ascribed the second canon of Constantinople to Nicaea.⁴³⁰

(ii) The Primitive Greek Text and a Resolution of Its Differences from the Latin

Whereas light has been thrown on the early history of the Latin text of the Serdican canons and its reconstruction has been aided by quite substantial evidence from a number of early sources, the history of the primitive Greek remains almost totally obscure. The use made of the Latin during the course of the fifth century is unparalleled with respect to the Greek and, while the employment of the latter by Dionysius Exiguus in the preparation of the Latin recensions bearing his name shows that it became known to some collector who brought it to the West by the early sixth century, it did not appear in any known Eastern canonical collection before the middle of that century. In about 550 it was published for the

⁴²⁶ *Ep.* 5 (PL 20. 496 A).

⁴²⁷ *Ep.* 63. 64 [= *Ep.* 15, 'apud epistulas extra collectionem'] (CSEL 82/3. 269).

⁴²⁸ Neither canon deals with the issue of digamists in the ministry, but the Neocaesarean canon is more general in application than the Nicene, and it also forbids clergy to appear to favour second marriages by laity.

⁴²⁹ *Historia Francorum* 9. 33, ed. B. Krusch and W. Levison, *Gregorii episcopi Turonensis libri historiarum X* (Monumenta Germaniae Historica, Scriptores rerum Merovingicarum, 1/1, 2nd edn.; Hanover, 1951), 452.

⁴³⁰ Palladius, *Dialogus de vita S. Joannis Chrysostomi*, 7 (SC 341. 154–5).

first time in the collection of the *Sixty Titles*, and subsequently in the *Fifty Titles* of John Scholasticus.⁴³¹ A few years later the canons again appeared in a closely related version known as the collection of the *Fourteen Titles*.⁴³² It is from these collections that all later recensions of the Greek Serdican text have been derived.⁴³³

No direct evidence exists as to the place of preservation of the primitive Greek text. Schwartz suggested that the differences between the Latin and the Greek were too great for the latter to have existed in its present form at Serdica. He was therefore led to suppose that it was a translation from the Latin made soon after the synod, and by a translator who, although competent in both languages, had no personal knowledge either of the synod or of the compelling circumstances behind its acts. From the presence of canons XVIII and XIX in the Greek text, and the near-certainty that they were never present in the Latin, Schwartz concluded that the place of translation was Thessalonica. As we have observed, these canons are counsels of advice made in response to a problem laid before the council by Aetius, bishop of Thessalonica, and, in that they are concerned only with a schism in the church of that city, Schwartz suggested that they were added to the main body of material at the time of translation.⁴³⁴ Although it must be left to stand simply as conjecture, Schwartz's suggestion that the early history of the Greek text may be traced to this city is as well suited to our theory of its origin as to his own. It need hardly be argued that the prototype of the present Greek text was filed in the archives of an important Eastern centre of Nicene sympathy soon after the council: this could well have been Thessalonica. Also, it is quite likely that Aetius was anxious to return home from Serdica with a written record of synodical judgement upon an aggravating local schism.

While the differences in meaning between corresponding canons in the Greek and Latin texts are not extensive, their resolution provides an absorbing and difficult problem. The causes of certain divergent meanings are evident and those of others are patient of probable explanation, but the reasons for the existence of a number may only be given by

⁴³¹ See Ch. 2, §vii.

⁴³² Ibid. The Syriac text of the Serdican canons is a translation from an early recension of the *Fourteen Titles*. It has been edited by Schulthess, *Die syrischen Kanones der Synoden von Nicaea bis Chalcedon*, 167–74.

⁴³³ The citations of the Greek text in the present study are taken from Turner's critical edition, *EOMLA* i. 490–530 (reproduced in the Appendix to the present work). The reader's attention is also directed to Schwartz's supplementary notes in 'Der griechische Text der Kanones von Serdika', 12–19.

⁴³⁴ Ibid. 19.

conjecture. Until such time as further facts relating to the early Greek textual history may become known, the circumstances of its early transmission and development must remain largely within the realm of speculation. In the following discussion certain apparent causes are suggested for the divergences between the Greek text and Turner's reconstruction of the primitive Latin. This analysis, which is based on the conclusions reached in the discussion of the canons in the third part of this work, presents a suggested original wording in each divergent reading, and provides an outline of the changes which were apparently made in both the Greek and the Latin texts subsequent to their departure from Serdica.

It has been proposed in the preceding chapter that the major differences between the Greek and Latin texts indicate that they originated as two separate sets of minutes. The application of this conclusion to their existing internal differences allows in most cases an explanation of their causes consistent with the evidence provided by the textual and historical analyses given in the chapters to follow of the differences between the readings in the contexts in which they occur. The importance of this fact should not be overlooked; for, while any inference from the differences in meaning between the texts has been carefully avoided during the foregoing discussion of the priority problem, the more satisfactory resolution of differences which is made possible by the hypothesis of a dual redaction gives considerable support to that hypothesis. It is to be observed in this connection that the acceptance of either Latin or Greek priority has inevitably led the advocates of each to an unsatisfactory explanation of at least some of the differences; for where a divergent reading occurs, preference is naturally given to the reading found in that text which is considered to be the original. The evidence that may be assembled from an analysis of each difference in its context, together with that provided by the corresponding readings found in the fifth-century Latin translation from the Greek, known as the Theodosian version (see §iii below), strongly indicates that both the Latin and the Greek texts were modified after their departure from Serdica. As we shall specifically note below, several changes were effected in the Latin soon after its arrival in Rome, and two successive revisions were effected in the Greek.

The differences in meaning conveyed by the divergent readings between the Greek and Latin texts divide themselves into two classes: accidental and designed. The majority of the former may be attributed to the initial processes of translation and transcription, and the remainder to subsequent scribal errors. The differences classed as designed, however,

were caused by deliberate alterations effected in one text or the other. The following presentations of both classifications are based on the conclusions reached in the chapters to follow, as noted. Other minor divergences may of course be found, but they are not of such magnitude as to create disharmony between the texts or to be worthy of special note. By arbitrary choice, the variant readings are given as they occur in the Greek text in divergence from the Latin.

The differences classed as designed are:

1. Canon I: the occurrence of ἀπὸ πόλεως μικρᾶς in place of *de civitate sua* (Ch. 8 n. 24).
2. Canon IIIc: the occurrence of μὴ σαθρὸν ἀλλὰ between *putat* and *bonam causam habere* (Ch. 9 n. 31).
3. Canon IIIc: the occurrence of the name 'Julius' (Ch. 9, §iii, para. 4).
4. Canon VIa: the essentially different meaning of the canon (Ch. 7, §i).
5. Canon VIa: the occurrence of the phrase τοῦ ἐξάρχου τῆς ἐπαρχίας λέγω δὴ τοῦ ἐπισκόπου τῆς μητροπόλεως (Ch. 7, §i, following the point above).
6. Canon VIa: the divergent phrase directing that the neighbouring bishops should be invited to the installation of a metropolitan (Ch. 7, §i, para. 2 and last).
7. Canon VIb: the substitution of οἱ τῆς ἐπαρχίας ἐπίσκοποι in place of *illi ex alia provincia invitati* (Ch. 7, §ii, end).
8. Canon IXa: the occurrence of ἐν in place of *de* (Ch. 10, §iii).
9. Canon IXa: the occurrence of δὶ ἄκρον αὐτοῦ (Ch. 10, §iii).
10. Canon IXb: the occurrence of the name 'Julius' (Ch. 9, §iii, para. 4; Ch. 10, §iii end).
11. Canon XIV: the reference to the provincial metropolitan (Ch. 9, §iv, para. 2).
12. Canon XIV: four instances of the substitution of the word ἐπίσκοπος in place of a pronoun (point 18 of agreement between the Theodosian and the Latin, Ch. 6, §iii).

With respect to their apparent causes, as concluded in the passages noted, these points may be categorized as follows: post-conciliar alterations in the Latin, nos. 3, 5, 8, 10, and 11; a post-conciliar alteration in the Greek before the departure of the Theodosian prototype, no. 4; alterations in the Greek after the departure of the Theodosian prototype, nos. 1, 2, 6, 7, 9, and 12.

If these conclusions are substantially correct, it appears that the Greek text underwent two revisions: one before the departure of the

Theodosian prototype and one after. In the synodical letter of the council held at Constantinople in 382 we find a citation of ‘the enactment of the holy fathers at Nicaea, that in every province the bishops of the province, and with their consent, the neighbouring bishops with them, should perform ordinations as expediency may require’.⁴³⁵ The only Nicene enactment to which this ruling bears any similarity is canon 4; but this canon is concerned with the provincial bishops as the electing rather than as the ordaining body, and no mention is made of participation by bishops from neighbouring regions. The enactment referred to is, however, an accurate summary of the reading of canon VIa of Serdica which apparently appeared in the first Greek revision and is closely paralleled by the reading found in the Theodosian (these readings are compared and discussed in full in Ch. 7, §i below). It is therefore suggested that the first revision of the Greek is represented by the Theodosian and took place between 344 and 382, and that the second revision, represented by the present Greek, took place between 382 and the middle of the sixth century, when the latter version appeared in the two collections mentioned above. Furthermore, from the conclusions which are reached in the following section of the present chapter regarding the departure of the Theodosian prototype from the main stream of the Greek textual tradition, it may be suggested, we shall see below, that the first revision took place not long after 357.

The accidental differences are subject to a similar analysis; they are as follows:

1. Canon II: the omission of *qui sinceram fidem non habent* from the Greek (Ch. 8 n. 31).
2. Canon II: the occurrence of ἐν τῷ τέλει (Ch. 8, §iii).
3. Canon IIIc: a divergence in meaning from the phrase *quae decreverit confirmata erunt* (Ch. 9 n. 33).
4. Canon IIIc: the different position of the phrase *ab episcopis qui in proxima provincia morantur* (Ch. 9, §iii).
5. Canon IV: the occurrence of πάλιν in place of the phrase *in urbe Roma* (Ch. 9 n. 39).
6. Canon V: the divergent καίβουληθείη αὐτοῦ διακοῦσαι (Ch. 9 n. 40).
7. Canon V: the occurrence of the plural πρεσβυτέρους (Ch. 9 n. 41).
8. Canon V: the occurrence of the singular ἐπισκόπου (Ch. 9 n. 42).
9. Canon VII: the occurrence of παρὰ . . . Γράτου (Ch. 10 §i).
10. Canon VII: the occurrence of λαῖκοις (Ch. 5, §iii, 2nd par.; Ch. 10 n. 5).

⁴³⁵ Theodoret, *HE* 5. 9. 14 (GCS, NF 5. 293).

11. Canon IXa: the use of the adjective εὐσεβέστατος with reference to the emperor (Ch. 10 n. 9).
12. Canon X: the omission of *ex administratore* (Ch. 7 n. 40).
13. Canon XII: The divergent ἔξ ἑξ ὧν καὶ ἐπικουρεῖν δυνατοί εἰσιν τοῖς πένησιν (Ch. 5, §iii, para. 2; Ch. 8 n. 40).
14. Canon XIII: The occurrence of μὴ χρῆναι τῷ ἀδελφῷ αὐτοῦ ὕβριν ποιοῦντα between *fuisse abiectum* and *non oportet* (Ch. 8, §vii, para. 1, and n. 44).
15. Canon XV: The use of the verb ἐπιτρέπειν (Ch. 8, §viii, paras. 2 and 3).
16. Canon XVII: The occurrence of τὴν ὁμολογίαν τῆς καθολικῆς ἐκκλησίας (Ch. 8 n. 59).

With respect to these differences, the Latin readings under points 1, 5, 8, 9, 10, 11, 12, 13, 15, and 16, and the Greek readings under points 2, 3, 4, 6, 7, and 14 are preferred as original to the Serdican debate. In that the Theodosian version agrees with the Latin concerning points 1 and 12, it appears that these were caused by omissions from the Greek text after the departure of the Theodosian prototype. From the conclusions reached below, the causes of the remaining points may be ascribed as follows.

<i>Variants caused by</i>	<i>in the Latin</i>	<i>in the Greek</i>
secretarial carelessness at Serdica	3	9, 10, 16
free interpretation of the Latin debate	—	5, 11, 13, 15
by subsequent scribal error	2, 4, 6, 7, 14	8

(iii) The Version of Theodosius Diaconus

As we have observed, the independent Latin version of the Serdican canons contained in the Collection of Theodosius Diaconus⁴³⁶ provides a valuable source of contact and comparison between the Latin and early Greek versions. It seems to represent, in translation, the stage of development which the Greek text had reached in the latter half of the fourth century before the final formation of the present textual tradition.

A degree of caution must be used, however, in accepting the Theodosian version simply as a replica in translation of the contemporary Greek. In several cases the translator condensed what he probably considered to be unnecessary verbiage. Hence the absence of particular words or phrases from the Theodosian cannot be used as certain evidence for their not having been present in the primitive Greek. This

⁴³⁶ See Appendix.

condensing process is especially noticeable towards the end of canons T7, T10, and T19, and manifests itself through the omission of the acclamation clauses from canons T7, T9, T10, T11, T20, T21, T22, and T25. Also, in a number of instances the Theodosian reading differs from both the Greek and Latin. The most notable occurrences of this (variant readings italicized) are found in canon T1 with ‘ad aliam civitatem *transferrī*’ (see below, Chapter 8 n. 28); in canon T3 with the substitution of *interpellante episcopo* for ‘in qua sunt episcopi’; in canon T6 with the absence of either the Greek *πάλιν* or the Latin ‘in urbe Roma’; in canon T7 with the addition ‘si quis episcopus *adpetitus vel* accusatus fuerit’ and the variant ‘scribere episcopis dignabitur *providentibus*⁴³⁷ provinciae’; in canon T8 with the occurrence of ‘plures sunt episcopi *ordinandi*’ and other minor variants (see Chapter 7, §i below); in canon T10 with the addition of ‘videlicet his causis exceptis’; in canon T12 with the variants ‘ad fratr*es* et coepiscop*os* suos’ and ‘amicos in *aula regia*’; in canon T16 with the variant ‘procursores ecclesiae reditus adhibere’; and in canon T21 with the addition of ‘de aliis provinciis *et parrochiis*’. The problem of evaluating the Theodosian’s fidelity to the Greek text from which it originated is complicated still further by the fact that it is a free translation in which the exact sense is frequently dependent upon the translator’s own interpretation of the Greek and his understanding of the situation that the text describes. Finally, several specific points of coincidence with the Latin text, in variance from the Greek, strongly suggest that the Latin was consulted in the production of the Theodosian.

The points of agreement between the Theodosian and Latin against the Greek are as follows:

1. The absence of the Greek *μικρῶς* from canon T1 (Ch. 8 n. 24).
2. The presence of the phrase *non habentes fidem sinceram* in canon T2 (Ch. 8 n. 31).
3. The absence of the Greek *μὴ σαθρὸν ἀλλὰ* from canon T5 (Ch. 9 n. 31).
4. The presence of the phrase *vocandi sunt de vicina provincia episcopi ad ordinatione episcoporum* in canon T8 (Ch. 7, §i last para.).
5. The reading *episcopi vicinae provinciae* in canon T9 (Ch. 7, §ii, last para.).
6. The substantial agreement in canon T10 with the parenthetical *et maxime Afri . . . adque contemnunt* of Latin canon 8 (Ch. 10, §1).
7. The reading *ipse* [the metropolitan] *et diaconum et preces eius destinet* in canon T12 (Ch. 10, §iii).

⁴³⁷ This reading may on the other hand be a corruption from *propinqua*, as found in the Latin, which is paralleled by an equivalent to the Latin in the Greek (ἀγχιστεύουσι).

8. The addition of the honorific adjective *felicissimus* in reference to the emperor in canon T12 (Ch. 10, §iii, para. 1, and n. 9).
9. The occurrence of canon T25 as a continuous whole, not being broken by a question and vote as it is in the Greek.
10. The occurrence of *sive de publico* in canon T13 (Ch. 7 n. 40).
11. The omission of *ταρχαχους* and the use of *commendare* in canon T14 (Ch. 8 n. 38).
12. A conformity to the Latin construction rather than the Greek from *hoc enim pacto* to the end in canon T16.
13. The omission of the clauses *καὶ τοῦτο ὁρισθήτω* and *περὶ τούτων οὖν ὁριστείον* from canons T16 and T21 respectively.
14. The omission of *ἐπὶ τὸν ἐπίσκοπον τῆς μητροπόλεως, . . . μητροπόλεως ἄπεστιν* from canon T18 (Ch. 9, §iv).
15. The presence of canon 18 (T19) in the Theodosian (Ch. 8, §viii, paras. 2 and 3).
16. The use of the verb *usurpare* in canon T20 (Ch. 8, §viii, para. 3).
17. The apparent influence of the Latin construction in the final clause of canon T22.
18. Four cases in which the Theodosian follows the Latin text with the use of a pronoun where the Greek substitutes the word *ἐπίσκοπος*. These are found in canon T14 with ‘studens confundere et vilem *eius* demonstrare personam; in canon T20 with ‘si voluerit ex aliena parrochia *quis* alienum ministrum’; in canon T22 with ‘ut *qui* vim sustinuit’; and in canon T25 with ‘si *quisque* nostrum in transitu vel canali possitus’.

As has been noted in the previous section, the development of the Greek text subsequent to the stage from which the Theodosian version is derived would seem to consist of changes which are concerned with points 1, 2, 3, 4, 5, 7, 10, and 18 above. With regard to point 18, it is difficult to see why the Theodosian translator should have followed the more indefinite Latin construction in these cases if the specific *ἐπίσκοπος* readings were present in the Greek text from which his translation was made. We may only reasonably suppose that the readings were changed in the Greek at a later date for the sake of clarity. For the reason already given, only slight evidence for influence from the Latin text can be drawn from textual agreement caused by omissions, as in points 6, 9, and 13. Point 15 concerns the preservation of the original Greek version of Latin canon 18 (T19) by the Theodosian. Points 8, 11, 12, 14, 16, and 17, however, remain as fairly strong proof of direct influence from the Latin text in the

preparation of the Theodosian. These may be thought to be remarkably few in number if such a comparison of texts was in fact possible, but if the circumstances of translation suggested below are correct, the Latin text would scarcely have commanded confidence.

It is generally agreed that Codex Veronensis Bibliothecae Capitularis LX (58), in which the Theodosian version is found, dates from no later than the end of the seventh century, and that all but a small portion of its contents is representative of a fifth- or sixth-century African collection.⁴³⁸ This collection, bearing the name of Theodosius Diaconus, consists of a quantity of material pertaining to Eastern councils, other documents translated from Greek originals, and also a number of African documents. Especially prominent among the latter are those relating to the jurisdictional dispute between Carthage and Rome which arose in 418 over the appeal to Pope Zosimus by the deposed African presbyter Apiarius. A considerable proportion of the Eastern material pertains to the councils of Nicaea and Serdica and to the personal history of Athanasius.

By reason of the presence of the latter in the same collection with the Apiarian documents, Turner suggested that they are the combined answer of the Eastern churches to the request from Carthage for the authentication of the Nicene canons at the time of the Apiarian controversy.⁴³⁹ He suggested at the same time that the greater part of this Serdican, Nicene, and Athanasian material was derived from Greek texts preserved at Alexandria.⁴⁴⁰ Schwartz agreed to the Alexandrian origin of many of these documents, including that which contained the prototype of the unique Latin version of the Serdican canons, but he did not accept Turner's suggestion as to the circumstances or approximate date of their arrival in Africa. His primary objection arises from the fact that the textual versions represented by the Nicene material present in the collection do not correspond to the versions which were in current use.⁴⁴¹ It is Schwartz's own opinion that the documents of Western Serdica, Nicaea, and the Athanasian *Historia acephala* were combined at an early date in Alexandria and taken to Africa before the time of the Apiarian dispute.⁴⁴²

⁴³⁸ For a complete description of the contents of the manuscript see Telfer, 'The Codex Verona LX (58)', 179–84.

⁴³⁹ This search was in accordance with the decision made at Carthage in May 419 (*EOMLA* i. 574).

⁴⁴⁰ C. H. Turner, 'The Verona Manuscripts of Canons LX (58) and LIX (57)', *Guardian*, 11 Dec. 1895, 1921–2.

⁴⁴¹ Schwartz, 'Über die Sammlung des Cod. Veronensis LX', 11–13.

⁴⁴² Ibid. 9–11. Turner himself seems to have questioned his own hypothesis in a later article: 'Eduard Schwartz and the "Acta Conciliorum Oecumenicorum"', *JTS* 30 (1929), 116.

Another serious objection to Turner's hypothesis rests in the fact that in the final correspondence between Africa and Rome, after the answers from the East had been received, the Serdican identity of the canons in question was still not revealed. It was not only affirmed that they were not Nicene, but also claimed that they could not be found at all: 'in nullo invenimus patrum synodo constitutum.'⁴⁴³ Schwartz supposed that the Africans were familiar with the canons and knew them to be Serdican, but, pretending ignorance, kept this knowledge to themselves.⁴⁴⁴ This, if correct, contributes to the defence of Turner's hypothesis as well as his own, but under the circumstances it does not seem to be a justified assumption.

It must be observed that the canons quoted by Pope Zosimus actually gave more support to the claims of Carthage than to those of Rome. As Apiarius was not a bishop, but a presbyter, canon 7 would clearly have had no application to his case. Canon 17 directs that clerical appeals should be made to neighbouring bishops (*finitimos*), into which category the Roman bishop would hardly have fallen. The excitement which the citation of these canons caused in Africa was therefore not warranted by the case in question, but must be seen in the context of the broader efforts of Carthage to curb transmarine interference in African affairs. This indeed is where the strength of Schwartz's supposition of deceptive silence lies; but under this consideration the staging of an elaborate deception by the dispatch of a threefold mission to Alexandria, Constantinople, and Antioch would not have been a likely course of action if the Africans had known from the outset that the disputed canons were Serdican and not Nicene. The chance to dismiss them as Serdican, and furthermore as irrelevant to the case in question, would have done the African cause far more good than to let the issue finally rest with the negative report sent to Pope Celestine. If, as Turner has suggested, the Theodosian version arrived in Africa at the time of the controversy, it could scarcely have escaped citation; for the Theodosian reading of canon 17 directs that deposed presbyters should appeal to the provincial metropolitan.⁴⁴⁵ With regard to the case in question, the Theodosian text, as an authentic version from the East, would have played directly into the hands of the Africans.

As a final objection to the hypotheses of both Turner and Schwartz we

⁴⁴³ The Carthaginian Letter to Pope Celestine, sent between 424 and 426 (*EOMLA* i. 620).

⁴⁴⁴ 'Die Kanonensammlungen der alten Reichskirche', 80.

⁴⁴⁵ While not found in the present Theodosian text, this is apparently the original reading. See below, Ch. 9, §iv.

may observe that the Alexandrian origin of the most important Theodosian documents pertaining to the Western Serdican synod may well be questioned. These, in addition to the canons, are the encyclical letter with the proposed Serdican Creed appended, and the covering letter for the creed sent to Julius by Ossius and Protogenes. Schwartz suggested that these were preserved in the archives at Alexandria, where, perhaps by Athanasius, they were joined to other material before being taken to Africa. Serdican documents that we know to have been kept at Alexandria are those incorporated into the *Apologia contra Arianos* of Athanasius. They consist of the encyclical letter and the synodical letters to the church of Alexandria and to the churches of Egypt and Libya. The latter two are not present in the Theodosian Collection, and the encyclical letter as found in this collection is of a distinctly different version from that preserved in the *Apologia*.⁴⁴⁶ Furthermore, the likelihood of the creed and covering letter having been kept at Alexandria as authoritative Serdican documents is slight, for the reason that Athanasius was apparently one of the outstanding critics of the creed at Serdica, and was later opposed to its circulation and acceptance as genuine.⁴⁴⁷ For these reasons the Alexandrian origin of the Serdican documents in the Theodosian collection seems improbable.

Telfer has connected the appearance of the Serdican material in Africa with questions that arose during the controversy with the Donatists. Thus, he thinks, it came not as an answer to the request for authentication of the Nicene text, but to a later question posed to the Eastern churches on the nature of Serdica.⁴⁴⁸ The quantity and diversity of Serdican material present gives support to such an explanation, for most of the known documents of both Serdican synods are found in the collection. Telfer convincingly assigns the documents proceeding from the Eusebian secession synod at Serdica to Antioch, and the above-mentioned 'trilogy' of Western material—canons, encyclical, and creed—to the church of Thessalonica, where, he suggests, Serdica was erected as 'the bulwark of orthodoxy' after the defection of Pope Liberius in 356 or 357. From there or from another Eastern church of Nicene sympathy in which it came to be preserved, this trilogy found its way to Africa in the fifth century. Telfer would thus date the arrival of the canons in Africa between 424, the date of termination of the controversy over Apiarius with the African

⁴⁴⁶ See I. Gelzer, 'Das Rundschreiben', 1; and L. Parmentier, *Theodoret Kirchengeschichte* (GCS, NF 5, p. lxxvii). The versions may be compared in CSEL 65. 103–26.

⁴⁴⁷ See above, Ch. 4, §iii.

⁴⁴⁸ 'The Codex Verona LX (58)', 198.

letter to Celestine,⁴⁴⁹ and the Vandal invasion in 429. His assignment of the Serdican trilogy to Thessalonica is apparently based upon Schwartz's hypothesis as to the origin of the Greek text, which Telfer accepts; in addition to the reasons given above this makes Thessalonica the most probable location for its initial preservation of any that may be suggested.

Where the document containing the Greek text of the canons was obtained at the time of its transportation to Africa must remain an open question, for, if Telfer's suggestion is correct, the Serdican trilogy may have become widely distributed during the period before the settlement of the Arian controversy at Constantinople. Indeed, the various readings in the Theodosian text that differ from both the Latin and the Greek suggest textual corruption at the hands of a number of copyists⁴⁵⁰ and make the existence of one or more intermediate Greek redactions probable between the departure of the Theodosian prototype from the main stream of the Greek textual tradition and the preparation of the final copy that was sent to Carthage. The persisting African ignorance of Serdica until at least 424 and the difficult times after 430 would indicate that between these years the Serdican material in the Theodosian collection arrived at Carthage from the East. From the probable influence of the Latin text of the canons upon the Theodosian it appears that the translation was made in Africa. It is not unlikely that a copy of the Latin text of the canons of Nicaea, with the Serdican series appended, was obtained from Rome at the time of the jurisdictional controversy. With the arrival of the Greek text, the disputed canons would have been recognized as Serdican and used for comparison with the transported Greek document in the process of translation.

⁴⁴⁹ Turner dates this letter to 425 or 426 (*EOMLA* i. 561).

⁴⁵⁰ The most notable case of textual corruption in the Theodosian text is the change in meaning from the Greek in canon T8 (see below, Ch. 7, §i, end). Other instances have been cited above.

Part III Studies in Interpretation

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Introduction

The series of disciplinary canons enacted by the Western Serdican synod reflects almost in its entirety the preoccupation and anxiety of the Western bishops with one of the stated purposes of the synod: the correction of episcopal abuses and the prevention of partisan action against individual bishops and other clergy. For this reason we find that the canons, with the exception of 16, 17, and 20, deal solely with problems pertaining to the office of the episcopate. By way of illustration the canons may be profitably classified in nine groups according to content. These are as follows:

1. The translation of bishops and other clergy: 1, 2, 3a, 14, 15, (20).
2. The reception of excommunicate clergy: 16, (17).
3. The solicitation of clergy from another diocese: 18, 19.
4. Refuge for bishops and clergy persecuted for their theology: 21.
5. The filling of vacant sees: 5, 6.
6. The proving of candidates for the episcopate: 13.
7. The right of appeal: 3b and c, 4, 7, 17.
8. Episcopal journeys to the imperial court: 8, 9, 10, 11, 12.
9. Matters pertaining to the church of Thessalonica: 20, XVIII, XIX.

The single-mindedness of the bishops at Serdica is manifest from this table of contents, so to speak, of their legislation. Each subject group with the exception of the ninth has direct bearing upon the third stated purpose of the council. Groups 1, 2, 3, 5, and 6 are designed to ensure the integrity of the episcopate and to halt Eusebian encroachment, groups 4 and 7 to protect bishops and clergy from persecution and unjust deposition, and group 8 to prevent the courting of imperial favour. As we have observed, the protection of the Nicene churches from Eusebian encroachment and the inherent difficulties in the new relationship between Church and State were interrelated factors, and were among the foremost problems of the Church in the mid-fourth century. A solution

to both was sought by means of common agreement at Serdica. Although historical circumstance was to veil the canons in relative obscurity during the course of the ensuing century, there exists in these enactments a degree of cohesion and a transcendence of temporary applicability that is reached by no other series of canons from the same period. It is in these characteristics that their uniqueness and importance consists. But this legislation did not emerge from Serdica as a novelty. It is in a real sense a continuation of that which was begun at Nicaea, for the most universal of the Nicene problems find further treatment at Serdica. Canon 13 gives further development to the second and ninth of Nicaea, the appeal canons to the fifth, and the translation canons to the fifteenth and sixteenth. Other points of continuity are evident. Furthermore, the canons of Serdica have a close relationship to those of Antioch. Regardless of the differing party alignments of the participants in the two councils, both were essentially concerned with the preservation of order, and the problems considered by each arose from contemporary circumstance. For introductory consideration it is well to outline these parallels. In relation to the Serdican groupings given above, the corresponding Antiochene and Nicene canons are shown by the following scheme:

<i>Serdican Grouping</i>	<i>Antiochene Canon</i>	<i>Nicene Canon</i>
1	3, 16, 21	15, 16
2	(2), 6	(5)
3	13, 22	—
4	—	—
5	10, 19	4, 6
6	—	2, 9, 10
7	4, 12, 14, 15, 20	5
8	11, 12	—

While the Serdican Canons reveal a predominantly Western outlook on the part of their authors, they are essentially concerned with Eastern problems. Hence we find that they reflect a mixture of the organizational and administrative conventions that by this time were in common use on the provincial level in the East in comparison with the less centralized administrative methods of the West. Expression is given to the primacy of Rome in the West in canons 3, 4, and 7; in the same canons, as also in 16 and 17, the provincial synod, so prominent in the canons of Nicaea and Antioch, appears only in its primitive, contemporary Western form as a gathering of neighbouring bishops. In canons 5 and 6 the increasing control of the Eastern metropolitan and provincial bishops over

episcopal elections does not appear, but lay suffrage, long to remain effective in the West, is presupposed. Other accepted prerogatives of the metropolitan, which were quite unknown in the West, are, however, clearly reflected in canons 5, 9, and 17.

7 The Appointment of Bishops

(i) Canon 5(VIa)

The Latin and Greek readings of canon 5 are strikingly different in meaning. The Latin envisages a situation in which there is but one bishop left in a province and he, through heedlessness, is unwilling to ordain a bishop so that a vacancy may be filled.⁴⁵¹ If the people of the church in question for this reason call upon the bishops of a neighbouring province, these should write to the one remaining bishop informing him of the people's desire and state that they should join with them in the consecration. If, however, he ignores the summons, the people's need should be met and the ordination should take place. In the Greek version the situation represented concerns a province in which there are a number of bishops, one of whom, through indifference, will not attend or assent to the institution of a candidate for a vacant see. The canon directs that the absent bishop should be sent for by the metropolitan of the province, but that if he does not heed the summons the ordination should take place without him.

The difference between the versions is remarkable. Both state their respective propositions clearly and without internal contradiction. The final clause, which in the Latin directs that the bishops from the neighbouring province shall perform the ordination, is presented in the Greek as a separate section, which provides that the bishops from a neighbouring province shall be invited to attend the appointment of a metropolitan.

It is not possible to determine the relationship of these variants on grounds of internal evidence alone, and, although serious arguments have been advanced from both sides, no clear case can be put forward by this means for the corruption of one reading having resulted in the other. The

⁴⁵¹ The phrase 'ille vero per negligentiam noluerit ordinare episcopum' is omitted by four early Latin recensions, including the Chieti version. Turner considers the longer reading to be correct, supposing that the shorter was caused by a scribal error (*EOMLA* i. 458, l. 4 n.).

possibility of the separate existence of two original versions of the canon seems slight because of the close agreement in meaning between the two texts with regard to all other enactments of the series. Assuming that one version more closely represents the original reading and that the other is either a misinterpretation or a corruption of it, there are certain historical considerations, to be discussed below, that provide a strong indication of the solution to the problem.

But first, with regard to internal analysis, two issues need to be explored: the election of bishops and the formalities observed for their ordination. Up to the early fourth century the prerogative of suffrage in episcopal elections was customarily attributed to the people.⁴⁵² While the neighbouring bishops gained an increasingly dominant voice in these elections, the exercise of popular suffrage seems to have continued in practice, although modified in theory, until the fifth century in the East⁴⁵³ and until a considerably later date in the West.⁴⁵⁴ The bishops at Nicaea wrote as follows to the church of Alexandria and the churches of Egypt concerning the admission of the partisans of Melitius to ecclesiastical office:

When it may happen that any of those holding preferments in the Church die, then let these [the Melitians] who have been thus recently admitted be advanced to the dignity of the deceased, provided that they should appear worthy, and that the people should elect them, the bishop of Alexandria also ratifying their choice.⁴⁵⁵

Here we find that in 325 a directive issued by an assembly at which the bishops of the Eastern provinces predominated laid traditional stress on the exercise of lay suffrage. In contrast to this, the encyclical letter of the council held at Alexandria in 338 states with regard to the appointment of Athanasius that 'he was elected by a majority of our body [the assembled bishops of Egypt, Libya, Thebes, and Pentapolis] in the sight and with the acclamations of all the people.'⁴⁵⁶ While it is readily acknowledged that electoral practice varied considerably from place to place, and while the contrast between these two statements does not represent a development in any true sense of the term, it does at least serve to illustrate the shift in emphasis regarding the electoral rights of the episcopal body and of the

⁴⁵² See Ch. 1 n. 97.

⁴⁵³ R. Gryson, 'Les élections épiscopales en Orient au IV^e siècle', *RHE* 74 (1979), 301–45.

⁴⁵⁴ Id., 'Les élections en Occident au IV^e siècle', *RHE* 75 (1980), 257–83; J. Gaudemet, *Les Élections dans l'Église latine* (Paris, 1979), ch. 1, 'L'époque ancienne'.

⁴⁵⁵ Socrates, *HE* 1. 9, trans. A. C. Zenos and C. D. Hartranft, *Socrates, Sozomenus: Church Histories*, 2nd ser. 2; Oxford, 1891), 13.

⁴⁵⁶ Athanasius, *Apol. contra Arianos* 6. 5 (*Werke*, ii/1. 92).

people of the local church which was taking place at this time in the East through a systematic restriction of popular suffrage in favour of a more rigidly controlled system of appointment.

The rapid development of provincial organization in the East and the acquisition of jurisdictional rights by the provincial synod and the metropolitan bishop resulted in the early attribution of effective suffrage to the body of provincial bishops. This development is clearly reflected in the legislation of several Eastern councils, including Nicaea. Canon 18 of Ancyra is concerned with the case of a bishop who has been refused by the church to which he has been appointed: this implies that the wishes of the community in question were not considered when the appointment was made. At curious variance from the council's letter to the Egyptians, canon 4 of Nicaea grants suffrage only to the provincial bishops, giving the metropolitan the decisive vote. Canons 19 and 23 of Antioch (328) carry this development a step farther by introducing the provincial synod as the effective appointing body. Canon 13 of Laodicea (late fourth century) states: 'The election of those who are to be appointed to the priesthood [episcopate] is not to be committed to the multitude.' In the West, on the other hand, the limitation of popular suffrage, even in theory, did not take place until much later. Evidence for the continued use and acceptance of the older system of episcopal appointment during the fourth and fifth centuries is provided by Pope Siricius,⁴⁵⁷ Jerome,⁴⁵⁸ Rufinus' account of the election of Ambrose,⁴⁵⁹ Pope Celestine,⁴⁶⁰ and Pope Leo.⁴⁶¹ As in most other matters pertaining to provincial organization, the Western canons of the period make no mention of the procedures to be followed for episcopal appointments.

While at variance with the Eastern trend, the received Greek version of the Serdican canon agrees with the Latin in presuming the observance of popular election, but it also reflects the already developed practice in the East which required the presence of the body of provincial bishops under the presidency of the metropolitan at all episcopal ordinations. The promotion of this observance is, in fact, the central thrust of the Greek

⁴⁵⁷ *Ep* 1. 10: 'Exinde iam accessu temporum, presbyterium vel episcopatum, si eum cleri ac plebis edecumarit electio, non immerito sortietur' (PL 13. 1143).

⁴⁵⁸ *Commentary on Ezekiel*, 10. 33: 'Speculator autem Ecclesiae, vel episcopus, vel presbyter, quia a populo electus est . . . ' (PL 25. 319 A).

⁴⁵⁹ *HE* 11. 11 (GCS, NF 6/2. 1018–19).

⁴⁶⁰ *Ep* 4. 5: 'Nullus invitis detur episcopus. Cleri, plebis et ordinis, consensus ac desiderium requiratur' (PL 50. 434).

⁴⁶¹ *Ep* 14. 5: 'Cum ergo de summi sacerdotis electione tractabitur, ille omnibus praeponatur quem cleri plebisque consensus concorditer postularit' (PL 54. 673).

version of the canon. The received Latin version stands completely outside this context and it might consequently be argued that there is more likelihood of the Greek being the original. This was the opinion of Tillemont, who considered the situation described in the Latin to be so improbable as to point towards textual corruption.⁴⁶² From other sources of evidence, however, it seems more likely that the Greek has undergone corruption and the Latin moderate alteration by omission.

The historical evidence points towards a solution to the problem. At the time of Serdica, in the view of the Nicenes, an intensely destructive abuse demanded just such a remedy as the Latin version of the canon provides. This arose from the Eusebian efforts to gain control of Nicene-controlled sees through the deposition and banishment of their bishops; as a general policy, this was nowhere more thoroughly carried out than in Egypt and Libya, if we may believe Athanasius. He states in chapter 7 of his *Apologia de fuga* that more than thirty Egyptian bishops had fled from the persecutions of Gregory of Cappadocia, his Eusebian replacement at Alexandria. The Serdican letter to the churches of Egypt and Libya allude to the same situation and it is probable that the Eusebian campaign brought nearly as disastrous results in other provinces as well. Athanasius mentions the depositions of the four Syrian bishops, Euphratius of Balanea, Kymatius of Paltos, Carterius of Antaradus, and Cyrus of Beroea, and also of Eutropius of Adrianople, Domnion of Sirmium, Hellanicus of Tripolis, and a certain Diodorus from an unnamed see in Asia.⁴⁶³ Pope Julius relates that many bishops and presbyters from Thrace, Coele Syria, Phoenicia, and Palestine, and from elsewhere, sought redress at the Roman council of 341 for the wrongs that they had suffered.⁴⁶⁴ Through systematic persecution of its bishops the Nicene party had been forced out of large areas of the East, and it is evident from their encyclical letter that the bishops at Serdica, as those assembled at Rome before them, recognized the exiled Nicenes as the true bishops of the affected sees and regarded their Eusebian successors as usurpers.⁴⁶⁵

The Latin version of canon 5 seems to be directed towards the maintenance of the pro-Nicene episcopate in provinces harassed by persecution and from whence the majority of the bishops were in exile. The situation described in canon 5 is a plausible reality of the times: 'If it

⁴⁶² L.-S. Le Nain de Tillemont, *Mémoires pour servir à l'histoire ecclésiastique des six premiers siècles*, 2nd edn., 16 vols. (1701–12), viii. 48.

⁴⁶³ *Hist. Arian* 5. 2 (*Werke*, ii/1. 185). For other depositions see *Apologia de fuga* 3. 3 (*ibid.* 70).

⁴⁶⁴ Letter to the Eusebians, *Apol. contra Arianos* 33. 1 (*ibid.* 111).

⁴⁶⁵ See §8 (CSEL 65. 122–3).

happens that in a province in which there were many bishops [only] one bishop remains . . .'. Viewed in this way, the canon constitutes an agreement on the course of action to be followed in the event that an episcopal election should take place and no bishop should be available within the province to effect the consecration. It is deemed justifiable that in such an emergency the local church should call upon bishops from outside the province.⁴⁶⁶ Schwartz gave a similar interpretation to the Latin reading of the canon, but suggested that it was intended to apply to the maintenance of the Catholic episcopate against Donatist encroachments in Africa.⁴⁶⁷ However applicable the canon may have been to the African situation, the problems arising from Arianism in the East were unquestionably the foremost concern of the council, and it is from this consideration that the canon seems to proceed. This interpretation of canon 5 also brings it into greater harmony with the Serdican legislation as a whole, framed as it is in the historical context of the Nicene–Eusebian contest. Additional support for this understanding of the situation addressed by canon 5 is provided by the absence from the Latin version of the concept of episcopal appointment by the provincial synod, as expressed in the Greek. The prerogative of popular suffrage reflected in the Latin—and perhaps also residually, but ambiguously, in the Greek by the mention of the people calling for the ordination of the bishop desired by them (τὴν κατὰστασιν τοῦ παρ' αὐτῶν ἐπιζήτουμένου ἐπισκόπου)—is consistent with the clear implication of this practice in canon 2(II).⁴⁶⁸

In view of the conditions the canon was designed to remedy, we may well wonder why it was drafted with specific reference to a situation in which a single bishop remained rather than to one in which no bishops remained at all. It is apparently to resolve this difficulty that Hefele supposed that Ossius was concerned with providing a minimum participation of three bishops in the consecration of the desired bishop, in accordance with canon 4 of Nicaea. It was for this reason that he interpreted the canon to mean that if the one remaining bishop neglects to invite bishops from outside the province to join in the consecration, the people themselves must invite them.⁴⁶⁹ The custom of a minimum

⁴⁶⁶ An interesting parallel to this ruling is provided by the early fourth-century Apostolic Church Order. It is stated in §16 that if there are too few in a place to elect a bishop (12 people) they should write to nearby churches in order that others may join them in the election: see J. P. Arendzen, 'An Entire Syriac Text of the "Apostolic Church Order"', *JTS* 3 (1901), 67–9.

⁴⁶⁷ 'Der griechische Text der Kanones von Serdika', 20.

⁴⁶⁸ See Ch. 8, §iii.

⁴⁶⁹ Hefele–Leclercq, i/2. 778 n. 3.

participation by three bishops at episcopal consecrations seems to have been widely observed during the fourth century,⁴⁷⁰ but it may be questioned whether in extreme cases, such as that envisioned by the Serdican canon, this rule was always observed. For ordinations in circumstances of similar difficulty a century and a half later, Pope Gregory I differentiated between the desirability of three or four participants and the validity of consecrations performed by one bishop only.⁴⁷¹ In any case, Hefele's interpretation cannot be drawn by direct inference from the text of the canon; indeed, a serious objection to it arises from the wording of the canon itself. If, as Hefele supposed, the remaining bishop's negligence concerns the invitation of foreign bishops to the consecration rather than his assistance at the consecration itself, we should expect to read 'he by heedlessness has been unwilling to assemble the bishops of the neighbouring province' instead of the received 'he by heedlessness has been unwilling to ordain a bishop'. Some specific instance that was brought to the attention of the council undoubtedly underlies the formulation of this canon, and the reason for its particular concern over the one remaining bishop becomes apparent if we consider the jurisdictional problem which would arise in such a situation, a situation which itself could only conceivably arise when but one apathetic bishop—or a bishop fearful of retribution by the Eusebian party—remained. In Chapter 8 we shall observe in connection with canons 3a, 3b, and 14 that the bishops at Serdica were mindful of the necessity of preserving the integrity of provincial as well as diocesan order, and canon 3a specifically forbids bishops to enter another province without invitation from their brethren in that province. Canon 13 of Antioch makes the same ruling with regard to ordinations, and this seems to have been a universally accepted principle of order. In the event, then, that a single remaining bishop, who would be the sole representative of the provincial body, refused to consecrate others, his brethren in the next province could hardly be expected to assemble in his province for a consecration without a general agreement that they might do this upon invitation by the local church. This general agreement is provided by canon 5 of Serdica.

If, as has been proposed, the Latin reading retains the original meaning of canon 5, the history of its Greek counterpart is yet to be explained. It was suggested in Chapter 6 that the primitive Greek text, corresponding

⁴⁷⁰ See canon 20 of Arles, canon 2 of the synod held at Carthage in 397, canon 1 of the Apostles, and *Apostolic Constitutions*, 8. 47. 1 (SC 336), 247

⁴⁷¹ M. Colgrave and R. A. B. Mynors, *Bede's Ecclesiastical History of the English People* (Oxford, 1969), 1. 27. 6, p. 86.

in meaning to the Latin, was changed by the two successive later editors whose work we have outlined. The canon as it originally stood would at a later date have had little meaning to one unacquainted with the problem with which it dealt. May we not then suppose that its concern with the negligent bishop suggested a situation similar to that envisaged by canon 4 of Nicaea, and that the first Greek editor revised the canon accordingly?

One passage, however, which is found in the Greek and not in the Latin, demands special consideration. This is: τοῦ ἐξάρχου τῆς ἐπαρχίας, λέγω δὴ τοῦ ἐπισκόπου τῆς μητροπόλεως ('the exarch of the province, I mean the bishop of the metropolis'). Our attention is immediately drawn to the word λέγω and to the parenthetical explanation it introduces. The common occurrence in the Greek text of personalized parenthetical remarks of this type, and the spontaneous nature of the phrase under consideration, leave little doubt that the entire passage is original to the spoken proposal. It does not seem probable that a later editor would have inserted an explanatory phrase of this kind, and it is even less likely that if such a phrase had been inserted, it would have been introduced in this way. This being the case, it would appear that the passage should also be inserted into the original reading of the canon as represented by the Latin. A comparison of the corresponding elements in the Greek and Latin readings does in fact reveal that a passage—rendered perhaps as *primum episcopum provinciae, episcopum dico metropolis*—should be placed between *debere* and *illum prius convenire episcopum*. This insertion brings the two received texts into a more satisfactory relationship and also clarifies an otherwise indefinite statement in the Latin. Ossius proposes that if the people who desire a bishop invite the bishops of the neighbouring province to perform the consecration, the one remaining bishop in the first province shall be given notice to this effect. But the Latin reading as it stands does not indicate who is to give this notice, and it simply leaves us to assume that the communication is to be sent by 'the bishops of the neighbouring province'. In canon 3c Ossius is explicit in naming those who shall inform the Roman bishop of the desire for a retrial of one who has been deposed,⁴⁷² and in canon 9b he is equally careful to designate both those through whom and those by whom petitions should be forwarded to the imperial court.⁴⁷³ It therefore seems probable that in the present case he named the 'first bishop of the [neighbouring] province, that is to say the bishop of the metropolis' in this capacity. We may suppose that the absence of this passage from the received Latin text was

⁴⁷² See Ch. 9, §iii.

⁴⁷³ See Ch. 10, §iii.

caused either by secretarial carelessness at Serdica or, as is more likely, by editorial omission at Rome.⁴⁷⁴

The version of canon 5 preserved by the Theodosian text (canon T8) stands somewhat between the Latin and Greek and seems to provide an indication of the stages by which the overall development from the original reading to the present Greek version took place. Schwartz, in arguing for the priority of the Latin text, supposed that the divergence between the Latin and the Greek is found in the translator's interpretation of the verb *remanere*. Its original meaning in the sense of 'survive' was missed, Schwartz suggested, and it was understood instead as 'stay away (ἀπομείναι)'.⁴⁷⁵ If our proposal of a double redaction at Serdica itself is correct, Schwartz's solution to the problem is improbable, for ἀπομείναι would have been incompatible with the sense of the canon as originally proposed. The Theodosian version, as a translation of the canon revised by the first Greek editor, uses *remanere* in agreement with the Latin and shows that the Greek editor's mystification was not this but the tense of the verb in the original Greek counterpart to the Latin phrase, 'una provincia in qua plurimi fuerint episcopi'. A province in which there *were* many bishops, with only one surviving, would make little sense to a late-fourth-century editor, and it is likely that he rewrote the canon to describe a more plausible situation for the times in which one bishop out of many⁴⁷⁶ failed to attend the ordination. The first editor then proceeded to bring the remainder of the canon into harmony with the newly constructed introductory phrase. Consequently, the phrase *noluerit ordinare episcopum*, as found in the Latin, was altered to μὴ βουληθῇ συνελθεῖν καὶ συναινέσαι τῇ καταστάσει τῶν ἐπισκόπων ('does not wish to assemble and to consent'⁴⁷⁷ to the appointment of bishops'). This, it is to be observed, brings the electoral principle expressed by the Greek version into conformity with that of the canons of Nicaea and Antioch. As 'the bishops of the neighbouring province' had no place in the situation now envisaged, their first mention was omitted and the second was retained, stating at the end of the canon as it originally did (as shown by the Theodosian) that the bishops of the neighbouring province should be invited to the ordination of the bishops. In the second editing of the Greek this was altered to provide for the invitation of the bishops

⁴⁷⁴ See Ch. 10, §iii.

⁴⁷⁵ 'Der griechische Text der Kanones von Serdika', 20–1.

⁴⁷⁶ μία ἐπαρχία ἐν ᾗ πλείστοι ἐπίσκοποι τυγχάνουσιν ἕνα ἐπίσκοπον ἀπομείναι.

⁴⁷⁷ The Theodosian employs *adesse* instead of *consentire* ('to consent'), but, as Turner has suggested (*EOMLA* i. 499, l. 6 n.), this seems to be due to a misreading of συναινέσαι as συνείναι.

of the neighbouring province to the installation of a metropolitan bishop. The Theodosian translator, while using the Latin *remanere*, not only followed the first Greek editor but further altered the meaning of the phrase *plures sunt episcopi* by adding *ordinandi*,⁴⁷⁸ envisaging a yet different situation for the canon to address: a province in which there are many bishops to be ordained. His solution may be reviewed in the Appendix.

(ii) Canon 6(VIb)

This short proposal, which is presented in the Greek as section VIb, is a restrictive clause affecting consecrations made possible under the provisions of the preceding canon. It forbids the bishops from the neighbouring province (the bishops of the first province according to the Greek text) to consecrate bishops for towns in which presbyters would suffice, unless these are places where bishops have previously been established or are communities which have become sufficiently populous to be worthy of them. It is stated that the reason for this restriction is to prevent the cheapening of the name and authority of the episcopate.

It has frequently been suggested that this ruling is concerned with the *chorepiscopus*, or country bishop, dealt with by a number of canons enacted by Eastern councils in the early fourth century.⁴⁷⁹ It is doubtful, however, that this identification can be made. Canon 14 of Neocaesarea likens the *chorepiscopi* to the Seventy Disciples, implying that a difference exists between this office and that of the apostolic episcopate, and canon 8 of Nicaea presupposes their subjection to the episcopate itself. Canons 13 of Ancyra and 10 of Antioch allow the *chorepiscopi* to ordain presbyters and deacons only with the consent of the city bishops to whom they are subject. The latter canon restricts the right of appointment of *chorepiscopi* to city bishops under whose jurisdiction they will remain, and also implies that these country pastors were often presbyters and simply held the title of *chorepiscopi*. Although local variations in this office undoubtedly existed,

⁴⁷⁸ The addition of *ordinandi* is unique to the Theodosian and of course entirely changes the meaning of the phrase in which it is found. As this word is not present in the Greek, and as the only effect of its deletion is to bring the Theodosian reading into closer harmony with the Greek, it is presumed that it was added after the Theodosian text left the main stream of Greek development.

⁴⁷⁹ See F. Gillmann, *Das Institut der Chorbischöfe im Orient* (Munich, 1903), 40–1; and T. Gottlob, 'Der abendländische Chorepiscopat', in A. Koeniger (ed.), *Kanonistische Studien und Texte*, i (Bonn, 1928), 9. On the chorepiscopate generally, see J. Leclef, 'Chorévêque', *DDC* iii (1942), 686–95.

that which is consistently represented is a stationary suffragan with limited episcopal powers in charge of a rural Christian community which was dependent upon a nearby city church.

It seems probable that in the East during the fourth century there were two distinct types of country bishops resident in small towns.⁴⁸⁰ Turner has argued that the chorepiscopate, as dealt with by the above mentioned canons, was a local institution confined to the inland provinces of Asia Minor. The *chorepiscopi* of this area were, in Turner's opinion, appointed by city bishops and given limited and dependent jurisdiction in order to provide episcopal ministration in thinly populated regions.⁴⁸¹ Gillmann, on the other hand, has classified the eastern country bishop as a remnant representative of an older, independent, village episcopate which by the fourth century had come under the domination of the city bishops, and was in the process of being suppressed.⁴⁸² Turner does not deny the existence of specific cases of this kind, but depreciates their numerical significance and would distinguish between this office and that of the local institution in Asia Minor. But in both cases the position of the country bishop in the East was the same: by the second or third decade of the fourth century the office had lost whatever independent jurisdiction it might have enjoyed and was rapidly being deprived of the episcopal character it had possessed; during the fifth century it would virtually disappear.⁴⁸³

The country episcopate found in the West, however, is indistinguishable from the city episcopate in that it maintained an independent authority within the boundaries of its own limited jurisdiction.⁴⁸⁴ During the fourth century there were apparently many rural bishops in the Western provinces, particularly in Africa and peninsular Italy,⁴⁸⁵ and although attempts were made to reduce their numbers it seems that no

⁴⁸⁰ See E. Kirsten, 'Chorbischof', in *RAC* ii (1954), cols. 1105–10.

⁴⁸¹ *Studies in Early Church History*, 63–6. In support of this view see K. Müller, *Kirchengeschichte*, i, 3rd edn. (Tübingen, 1941), 324; and J. Parisot, 'Les Chorévêques', *Revue de l'Orient chrétien*, 6 (1901), 157–60. Considerable light may also be thrown on this problem by the conclusions of A. H. M. Jones concerning the Cappadocian chorepiscopate of the later fourth century. Numerous village episcopates were apparently created at this time by Basil of Caesarea in his jurisdictional struggle with Anthimus of Tyana: *The Cities of the Eastern Roman Provinces* (Oxford, 1937), 184–6.

⁴⁸² *Das Institut der Chorbischofe*, 12–49.

⁴⁸³ Hefele observes that chorepiscopi were present at the councils of Neocaesarea, Nicaea, and Ephesus, but were not at Chalcedon (Hefele–Leclercq, i/1. 25–6).

⁴⁸⁴ See G. Bardy, *La Théologie de l'église de saint Irénée au concile de Nicée* (Paris, 1947), 262.

⁴⁸⁵ See J. Lebreton and J. Zeiller, *The History of the Primitive Church*, iv, trans. E. C. Messenger (London, 1948), 982.

limitation of their authority or restriction of their independence took place.⁴⁸⁶

The office described in Serdican canon 6 shares the characteristics of this Western country episcopate rather than those of the Eastern, for ordination to it is prohibited or allowed as a particular case concerning ordinations as treated in canon 5(VIa). It is essentially an independent episcopate enjoying full jurisdiction in its own right, to which office the bishop is elected by the local church, and not a restricted office subject to a local higher authority with regard to both its function and appointment. It is significant that the canon does allow the consecration of such bishops if the communities desiring them are sufficiently populous to warrant their appointment. A canon designed to eliminate or restrict the office would hardly allow this possibility. It is furthermore unlikely from the standpoint of geographical representation that the question of the Eastern chorepiscopate would have been raised at Serdica. Turner convincingly shows this office to have been a predominantly local institution, and the geographical location of the councils treating it gives evidence that the concern with its limitation was confined to the same area.⁴⁸⁷ At Serdica, the two bishops from Palestine and Arabia were the only members of the council who could have had even an indirect interest in the eastern chorepiscopate. The general movement towards a restriction of the number of sees, however, was common to East and West and it is in this larger context that the Serdican canon finds its place. Canon 5 of the Carthaginian council of 390 similarly directs:

those dioceses which have never had bishops shall not have them, but that diocese which at one time had one shall have its own. 'And if in course of time with the spread of the Faith the people of God, having increased, shall desire to have its own *rector*, let it have a bishop, naturally with the consent of him in whose power the diocese lies' ('cum eius uidelicet uoluntate in cuius potestate diocesis constituta est, habeat episcopum').⁴⁸⁸

In the context of the Nicene-Eusebian struggle, however, the Serdican canon may well have been more pointed in purpose and have been occasioned by the Eusebian appointment of Ischyrras as bishop of the Alexandrian suburb Mareotis, which previously had been directly under the jurisdiction of the see of Alexandria. According to Athanasius this

⁴⁸⁶ See e.g. canon 5 of the synod at Carthage under Genethlius in 390 (CCL 149. 14); canon 5 of the council of Carthage in 397 (CCL 149. 189–90); and Pope Leo, *Ep.* 12. 10 (PL 54. 654).

⁴⁸⁷ Ancyra in Galatia; Neocaesarea in Pontus; Antioch in Coele-Syria; and Nicaea in Bithynia (*Studies in Early Church History*, 54–5).

⁴⁸⁸ CCL 149. 14.

was ‘a country district . . . in which there had never been either a bishop or a *chorepiscopus*’. It was the custom, he tells us, to place even the larger outlying villages in the region of Alexandria under the care of presbyters, but this community was so small that a church had never been built there. However, he complains, ‘they [the Eusebians] determined, contrary to ancient usage, to nominate a bishop for this place’.⁴⁸⁹

Apparently no alteration was made in this canon (VIb) by the first Greek editor, as the Theodosian reading agrees with the Latin text; but in the second revision it was brought into agreement with section VIa through the substitution of οἱ τῆς ἐπαρχίας . . . ἐπίσκοποι (as the body of ordaining bishops) for *episcopi vicinae provinciae*.

(iii) Canon 13(X)

The canon rules that if a wealthy man, a public advocate, or a civil official⁴⁹⁰ be desired as bishop he shall not be ordained to that high office until he has passed through three successive grades of the ministry—reader, deacon, and presbyter—and has been found worthy. In this way his faith, restraint, gravity, and modesty may be tested and his merit proved; for, Ossius states, it is not fitting, reason does not allow, and it is forbidden by the Apostle,⁴⁹¹ that a novice should be rashly ordained bishop, priest, or deacon.

There is indeed evidence for precedent in this matter, for from the time of the establishment of monepiscopacy bishops were normally selected from among the higher clergy, but there is no indication that previous to the fourth century any prescribed order of ascent to the highest office was observed or even expressed as being desirable. Numerous examples of differing routes to the episcopate may be cited. At Alexandria the bishop was usually chosen from among the presbyters,⁴⁹² but at Rome it was common to select him from among the deacons.⁴⁹³ Cyprian was apparently ordained presbyter and then bishop without having been a deacon or having passed through any of the lower orders.⁴⁹⁴ Deviating

⁴⁸⁹ *Apol. contra Arianos* 85. 4 (*Werke*, ii/1. 163).

⁴⁹⁰ *ex administratore* : this is paralleled by *de publico* in the Theodosian text and therefore appears to have been present in the original Greek, from which it is now lacking.

⁴⁹¹ I Tim. 3: 6.

⁴⁹² Jerome, *Ep.* 46. 1 (CSEL 56. 310).

⁴⁹³ Ch. Pietri, *Roma Christiana: Recherches sur l'Église de Rome, son organisation, sa politique, son idéologie de Miltiade à Sixte III (311–440)*, 2 vols. (Rome 1976), i. 54.

⁴⁹⁴ See Pontius, *Vita S. Cypriani* 3 (CSEL 3/3. p. xciii).

from local custom, Athanasius was only a deacon at the time of his election. More exceptional, but still in evidence, are cases in which laymen or those in minor orders were elevated directly to the episcopate. Fabian was a layman when elected bishop of the Roman church;⁴⁹⁵ Ambrose was a catechumen at the time of his election as bishop of Milan;⁴⁹⁶ Basil of Caesarea passed directly from the readership to the presbyterate;⁴⁹⁷ and Augustine was apparently a layman at the time of his elevation to the presbyterate.⁴⁹⁸ Local customs for the selection of candidates seem simply to have reflected a general concern for the worthiness and ability of those chosen for higher orders.

Canon 2 of Nicaea directs that a period of trial after baptism be given to recent converts from paganism before their ordination to the presbyterate or episcopate and, as the Serdican canon, bases this ruling upon Apostolic precept. No recommendation is made, however, that such candidates should pass through the successive grades of the ministry. Later in the fourth century no. 5 of the *Canones ad Gallos episcopos* 5 specified only that hasty appointments should not be made, and canons 3 of Laodicea and 80 of the Apostles made no further ruling than that those recently baptized should not be ordained to the episcopate. It is apparent that the period of probation before elevation to a higher office was frequently thought of in terms of the age of the candidate. The *Didascalia* (2. 1) directs that a candidate for the episcopate must be fifty years old (unless the congregation be small and not have a suitable older candidate, and a younger one who is worthy can be found),⁴⁹⁹ and canon 11 of Neocaesarea stipulates that a presbyter should be not less than thirty years of age at the time of ordination. In the late fourth century Pope Siricius wrote that those chosen of the Lord should, after being readers until puberty, remain acolytes or subdeacons until their thirtieth year, and be deacons and presbyters for five years each before being allowed to advance to the episcopate.⁵⁰⁰

The Serdican decree appears as the earliest enactment of its kind:

⁴⁹⁵ Eusebius, *HE* 6. 29 (GCS, NF 6/2. 582–4).

⁴⁹⁶ Paulinus, *Vita Sancti Ambrosii* 5–7 (PL 14. 30–1). It is to be noted, however, that after baptism Ambrose was rapidly promoted through *omnia ecclesiastica officia* before his episcopal *ordinatio* on the eighth day (ibid. 9).

⁴⁹⁷ Gregory Nazianzen, *Oratio* 43. 27 (PG 36. 533). See Faivre, *Naissance d'une hierarchie*, 313–18, with attention to n. 26.

⁴⁹⁸ Possidius, *Vita Sancti Aurelii Augustini*, Praefatio, 4 (PL 32. 37).

⁴⁹⁹ *Didascalia et constitutiones apostolorum*, ed. F. X. Funk (Paderborn, 1905), 30–2.

⁵⁰⁰ *Ep.* 1. 10 (PL 13. 1143). The same stipulation is made by Pope Zosimus, *Ep.* 9. 3 (PL 20. 672–3).

indeed, as we have seen, the earlier, unregulated system of advancement was to continue in many quarters until much later.⁵⁰¹ As an ideal, however, the intent of the canon does find expression nearly a century earlier in Cyprian who spoke of the progress of Cornelius of Rome ‘through all the successive clerical offices and having served the Lord honourably in these services of religious administration, he reached the lofty pinnacle of the episcopacy’.⁵⁰² It is plain from the wording of the canon that the fulfilment of each successive office was thought by Ossius, as by Cyprian, to be an assured means of probation rather than a stepping-stone to the next rank: ‘that he may ascend [by these] grades one by one (if he is suitable) to the summit of the episcopate’. Although the development of the ‘stepping-stone’ concept is ultimately connected with the shift from a functional view of orders to a hierarchical view, the contribution which this Serdican enactment made towards an increasing strictness in this regard in the West may have been considerable. The statement of Pope Siricius cited above, for instance, echoes the principle underlying the Serdican regulation, as does his subsequent charge concerning those who enter the ministry of the Church in later years. He states that such persons are to be lectors or exorcists for two years, acolytes and subdeacons for five years each, and then deacons for such time as shall be judged proper before appointment as presbyters or bishops.⁵⁰³

The Serdican agreement regarding the probation of candidates for higher grades of the ministry proceeds directly from the evident concern of the council over those who by virtue of worldly success and notoriety had been elected to the highest office of the Church. The necessity for purity of life in candidates for the episcopate and other grades of the ministry finds frequent emphasis in the early fourth century,⁵⁰⁴ and the Serdican enactment coincides with this general tightening of discipline. The canon seems, however, to be specifically directed against the appointment of various questionable candidates by the Eusebians. Athanasius tells us that after the deposition of Eustathius those who had previously not been admitted to orders at Antioch because of their

⁵⁰¹ In the mid-fifth century Pope Leo wrote concerning the election of metropolitan bishops: ‘ex presbyteris eiusdem ecclesiae vel ex diaconis optimus eligatur’ (*Ep.* 14. 6 = PL 54. 673).

⁵⁰² CCL 3B. 264. See Clarke’s comments on this passage, *Letters*, iii. 173–4.

⁵⁰³ *Ep.* 1. 9 (PL 13. 1142–3).

⁵⁰⁴ See canons 30 of Elvira; 3 and 12 of Ancyra; 8–10 and 12 of Neocaesarea; and 2, 9, and 10 of Nicaea. In a parallel period of the Church’s life, following a cessation of persecution, Cyprian had complained of a moral relaxation similar to that reflected by these canons (*De lapsis* 6 = CSEL 3. 240–1).

impiety were ordained, and many made bishops.⁵⁰⁵ Of these he names Leontius and Stephen of Antioch, George of Laodicea, and Eudoxius of Germanicia. Athanasius' bias is not to be denied, but it was a bias shared by the bishops at Serdica. The consecration of Athanasius' accuser Ischyrras to the episcopate may again have been of influence in the formulation of this canon, for one of Pope Julius' objections to his appointment was the fact that he had not been a presbyter as he had falsely claimed to be,⁵⁰⁶ and this fact is also mentioned in the Serdican encyclical.⁵⁰⁷ It is probable that the canon also has direct bearing upon the ordination of Gregory of Cappadocia, who, from lay status, was hastily consecrated and intruded into the see of Alexandria in 339.⁵⁰⁸ Gregory's background before his appointment is obscure, but it is likely that he was an educated layman who had won the favour of Constantius. Athanasius refers to him as 'my successor from the court'.⁵⁰⁹

The naming of the readership in canon 13, as the initial probationary order, is of particular interest. This office, mentioned by both Justin⁵¹⁰ and Tertullian,⁵¹¹ was the first of the minor orders to come into being and was of great importance in the early Church, for it was the reader who read the lections during the liturgy of the Word. During the course of the third century the subdiaconate first emerged in a position inferior to that of the readership, but by the beginning of the fourth it had gained a superior place in a crystallizing hierarchy.⁵¹² This may be demonstrated from a number of sources. In the *Apostolic Tradition* of Hippolytus the reader is mentioned before the subdeacon,⁵¹³ in a descending scale of offices, and in the *Didascalia* the reader is given a place with the presbyters and the deacons at the Agape, whereas no mention is made of the subdeacon.⁵¹⁴ In the mid-third century, Pope Cornelius, in listing the numbers of Roman clergy in a letter to Fabius of Antioch, placed the readers in the position in

⁵⁰⁵ *Hist. Arian.* 4. 2 (*Werke*, ii/1. 185).

⁵⁰⁶ Letter to the Easterns, *Apol. contra Arianos* 28. 2 (*Werke*, ii/1. 107–8).

⁵⁰⁷ §5 (CSEL 65. 116).

⁵⁰⁸ The case of Gregory is specifically mentioned in §8 of the Serdican encyclical and in the letter to the church of Alexandria.

⁵⁰⁹ *Epistula encyclica* 2. 2 (*Werke*, ii/1. 170).

⁵¹⁰ *I Apol.* 67. 4, ed. M. Marcovich, *Iustini Martyris apologiae pro Christianis* (Berlin, 1994), 129. The term used by Justin is ἀναγνώσκωντος.

⁵¹¹ *De praescriptionibus* 41.8 (CCL 1. 222).

⁵¹² See A. Harnack, *Die Quellen der sogenannten apostolischen Kirchenordnung: nebst einer Untersuchung über den Ursprung des Lectorats und der anderen niederen Weihen* (Leipzig, 1886), 57–89.

⁵¹³ Chs. 12 and 14 (ed. Dix/Chadwick, 21, 22).

⁵¹⁴ 2. 28. 5, ed. F. X. Funk, 108. See also *Didascalia Apostolorum*, ed. and trans. R. H. Connolly (Oxford, 1929), pp. xli f.

which they would remain in the West: beneath the subdeacons, acolytes, and exorcists and only above the porters.⁵¹⁵ The displacement of the reader is shown clearly by the fourth-century *Apostolic Constitutions*. His ordination is treated after that of the subdeacon,⁵¹⁶ and his assigned place at the Agape is now no longer with the presbyters and deacons but with the singers and doorkeepers.⁵¹⁷

The hierarchical displacement of the reader, however, was accompanied by a development which was important for the later history of the office in the West. Cyprian makes mention of those whom he had appointed to the readership with the view of their advancement to the presbyterate,⁵¹⁸ and by the fourth century in the West, as also in the East, very young aspirants to higher orders were regularly admitted to this office.⁵¹⁹ At the same time, the readership at Rome was developing towards what would later be known as the *schola lectorum*, or 'junior seminary'.⁵²⁰ While at the time of Serdica the position of the reader varied considerably from place to place, this general development of the office as the first serious step towards higher orders undoubtedly provides the reason for its mention in the present canon.

⁵¹⁵ Eusebius, *HE* 6. 43. 11 (GCS, NF vi/2. 618).

⁵¹⁶ 8. 22 (SC 336. 225).

⁵¹⁷ 2. 28. 5 (SC 320. 244). This is of particular significance, as the first six chapters of this work are patterned closely upon the *Didascalia* and it is evident that the passage in question was purposefully reworded.

⁵¹⁸ *Ep.* 38. 2. 1 (CCL 3A. 184). See Clarke's comments in *Letters*, i. 343–4.

⁵¹⁹ In the fourth century, Popes Liberius, Damasus, and Siricius (*DACL* viii. 2249), the Emperor Julian, and Basil the Great (Gregory Nazianzen, *Oratio*, 4. 33, 43. 27), were all readers as young boys.

⁵²⁰ See Faivre, *Naissance d'une hiérarchie*, 374–6; L. Duchesne, *Christian Worship*, trans. M. L. McClure, 5th edn. (London, 1919), 346–9; Erik Peterson, 'Das jugendliche Alter der Lectoren', *Ephemerides Liturgicae*, 48 (1934), 437–42; and Balthasar Fischer, 'Der niedere Klerus bei Gregor dem Großen', *Zeitschrift für katholische Theologie*, 62 (1938), 64–5.

8 The Translation of Bishops and Other Clergy

(i) The Historical and Disciplinary Background

Although the practice of episcopal and clerical translation does not seem to have become a disciplinary problem until the early fourth century, the movement of bishops and clergy from one church to another was not unknown during the third. Cyprian, for instance, in a letter to the people and clergy of Carthage, tells us of his decision to join the presbyter Numidicus to the ranks of the Carthaginian clergy,⁵²¹ justifying this action by twice stating that its fitness was divinely revealed. It is clear that this move was regarded as unusual, but it is also evident that there was no conceived hindrance to the exercise at Carthage of a ministry received elsewhere. Eusebius describes the circumstances at Jerusalem early in the third century in which Alexander, a bishop from Cappadocia, was retained when on pilgrimage to that city to share the episcopate of Narcissus, because of the great age of the latter.⁵²² It is stated that this was done by divine direction and with the unanimous consent both of the people and of the neighbouring bishops.

While apparently regarded as valid in principle, two objections to translation were recognized, one theological and the other moral, and these made its practice unusual and caused it to be viewed with suspicion. The theological objection seems to be derived from the early view of the relationship between the bishop and his church.⁵²³ His election by an almost independent Christian community, and an attribution of essential fatherhood among his people, as standing in place of God or of Christ,

⁵²¹ *Ep.* 40 (CCL 3B. 193–5).

⁵²² *HE* 6. 11. 1–2 (GCS, NF 6/2. 540–2).

⁵²³ By way of illustration see Ignatius, *Smyrn.* 8; Cyprian, *Ep.* 33. 1. 1, and *Ep.* 66. 8. 3; the ordination prayers in the *Apostolic Tradition* 1. 3 (ed. Dix–Chadwick, 4–6); and *Didascalia* 26 (ed. Funk, 102–4).

appear to have given rise to the concept of a mystical union existing between the bishop and his see, which was expressed as being akin to the marriage bond. And, by analogy, the bond seems to have been applied to presbyters, deacons, and the lesser clergy as well. In the encyclical letter of the council of Alexandria in 338 it is stated in reference to 1 Cor. 7: 27: 'For if this expression applies to a wife, how much more does it apply to a church, and to the episcopate itself, to which whosoever is bound ought not to seek another, lest he prove an adulterer according to Holy Scripture.'⁵²⁴

The same concept is evidenced in the latter half of the fourth century by the phrase 'as if leaving a wife they came to another' in the *Canones ad Gallos episcopos*,⁵²⁵ and by the expression 'churches are said to be wives of bishops' in Jerome.⁵²⁶ A canon originating at Capua in 391, which was adopted as the first listed canon of the Carthaginian council held in 397, classifies the translation of bishops with the forbidden practices of rebaptism and reordination.⁵²⁷ An awareness of the need to justify the rupture of such a union undoubtedly underlies the apologetic accounts of the translations of Alexander to Jerusalem, and may perhaps be seen in the later refusal of Eusebius of Caesarea to accede to the request for his acceptance of the episcopate at Antioch.⁵²⁸ The stress laid upon divine direction in these accounts, and in that of the fourth-century translation of Poemenius to Nicopolis,⁵²⁹ is significant, as it seems to bespeak divine dispensation from a union which the Church itself has no authority to dissolve.

It would be a mistake, however, to attribute a clear-cut doctrinal position in this matter to the Church of the third and fourth centuries, in whole or in part, for the theological objection to translation was not rigid nor defined. While the scarcity of evidence for translations having been effected in the West does indicate a strict observance in that quarter of the principle outlined above, in the East it was flexible and capable of being outweighed by circumstances in which the Church as a whole would benefit by the transfer of a bishop or cleric from one church to another. Socrates, in justification of the proposed translation of Proclus from Cyzicus to Constantinople shortly after 431, lists thirteen regular translations, most of which had taken place in the fourth century, and states

⁵²⁴ Athanasius, *Apol. contra Arianos* 6. 7 (*Werke*, ii/1. 93).

⁵²⁵ §16 (PL 13. 1192). For the question of authorship, see p. 50 n. 53.

⁵²⁶ *Ep.* 69. 5 (CSEL 54. 687).

⁵²⁷ Canon 48 of the *Registri ecclesiae Carthaginensis excerpta* (CCL 149. 187).

⁵²⁸ Eusebius, *De vita Constantini*, 3. 61 (*Werke*, i/1. 115–16).

⁵²⁹ Basil, *Ep.* 229. 1 (PG 32. 857).

that in times past the translation of bishops had been regarded with 'indifference' and had been performed as circumstances demanded.⁵³⁰ His expressed opinion is undeniably tendentious and the indifference of which he speaks was probably untrue,⁵³¹ but the instances which he cites do show us that in the East the practice of translation was not uncommon.

The moral objection, on the other hand, finds expression in the protest against the removal of bishops, or other clergy, to wealthier and more influential sees for personal or party gain. In this regard we must draw an essential distinction between regular translations and unauthorized moves. While by reason of the 'theological objection' the practice of the former might be viewed with disfavour, the practice of the latter was universally regarded as a grave abuse of the episcopal office itself. However, it was clearly impossible even for contemporary witnesses to classify the various translations that took place in the fourth century according to their underlying motives, and we find that nearly all proposed and effected translations were regarded with a degree of suspicion. This is particularly evident in the full context of Jerome's statement, cited above, and in Pope Damasus' expressed attitude towards the translation of Gregory Nazianzen to the see of Constantinople.⁵³² The practice of ambitious moves does not appear to have become a specific problem before the beginning of the fourth century; indeed, a self-seeking bishop would have had little to gain from obtaining a more prominent position in the earlier times of intermittent persecution. The existence of the problem is made evident, however, by its early treatment at councils held both in the East and in the West soon after the Peace of the Church.

Of this legislation, canons 2 and 21 of Arles (314) are the earliest. Canon 21 orders deposition for presbyters or deacons who leave the church in which they were ordained and transfer themselves (*se transferunt*) to another. Similarly canon 2 states concerning the lower clergy: 'Regarding those who were ordained ministers in whatever places (*locis*), let them continue in those places.'⁵³³ A question has been raised with respect to the breadth of the term *locus* in this canon,⁵³⁴ but it is apparently

⁵³⁰ *HE* 7. 36. 4 (GCS, NF 1. 384–5).

⁵³¹ A similar argument to be viewed with caution is that of Gregory Nazianzen—who was himself translated from Sasima to Nazianzus and from there to Constantinople—in which he speaks of the early canons concerned with translation as having been nullified through disuse: *Poemata de Seipso*, ll. 1810–15 (PG 36. 1156).

⁵³² *Ep* 5 (PL xiii. 368–9).

⁵³³ Lauchert, 26.

⁵³⁴ See Hefele–Leclercq, i/1. 281.

used in reference to the local Christian community and not to a larger unit of organization, for it is in the former sense that the term is used in canons 7 and 16 of the same series.

Canon 15 of Nicaea treats the translation of bishops, presbyters, and deacons together. It is stated that the practice of translation 'found in certain regions' is contrary to discipline (παρὰ τὸν κανόνα), and that because it has caused much discord it should be abolished. Clergy are forbidden to move (μεταβαίνειν) from city to city, and the canon orders that if any should do so after the present ruling the translation shall be nullified and the offender shall be returned to the church in which he was ordained.⁵³⁵ The κανὼν to which reference is made is a precept of tradition in the sense of a universally accepted discipline.⁵³⁶ Again in this Nicene enactment we find no categorical condemnation of translation; the matter under consideration is simply the discord that was caused by unauthorized changes. Furthermore, it does not seem likely that the bishops at Nicaea intended to forbid translations in circumstances favourable to the welfare of the Church. The translation of Eustathius from Beroea to Antioch was effected, or approved, by a council at Antioch in 324/5 composed of many of those who were shortly afterwards in attendance at Nicaea.⁵³⁷ An outstanding incident that seems to underlie the formulation of the Nicene canon is the move of Eusebius from Beryte to Nicomedia several years before (c.320).⁵³⁸ The favour this influential supporter of Arius enjoyed at the imperial court was made possible largely by his proximity, and the canon may well reflect a resentment of this fact on the part of his opponents.

Three of the canons of Antioch are devoted to the present question. Canon 3 stipulates that a presbyter, deacon, or one of the lesser clergy who removes himself to another church with the intention of remaining there, especially if he does not heed the summons of his bishop to return, shall be deposed from his ministry with no possibility of reinstatement. Canon 21 orders that a bishop shall not move (μεθίστασθαι) from one church to another, seizing it of his own accord, being forced by the

⁵³⁵ See also canon 16 of Nicaea.

⁵³⁶ See Ch. 3, §v.

⁵³⁷ Sozomen, *HE* 1. 2, tells us that Eustathius' translation was effected by the council of Nicaea itself, but Ed. Schwartz, 'Zur Geschichte des Athanasius VI', *Nachrichten von der königlichen Gesellschaft der Wissenschaften zu Göttingen*, phil.-hist Klasse, 1905, 282 has shown that Sozomen is in error and that the translation took place at Antioch in 324 or 325. This has also been forcefully argued by Chadwick, 'Ossius of Cordova and the Presidency of the Council of Antioch', 301.

⁵³⁸ See the encyclical letter of Alexander of Alexandria in Socrates' *HE* 1. 6.

people, or compelled by other bishops (ὑπὸ ἐπισκόπων), but shall remain in the church for which he was first chosen by God.⁵³⁹ This, the canon concludes, is ‘according to the rule (ῥῆρον) formerly proclaimed’: probably canon 15 of Nicaea. It is unlikely ὑπὸ ἐπισκόπων is intended to mean conciliar action, for in canons 3, 4, 12, and 22 of the Antiochene series this is signified by ὑπὸ συνόδου, and in other cases it is clearly identified by some reference to the provincial body. The canon seems instead to be directed against irregular translations effected by invasion, subversion, or party politics; but its meaning is largely determined by the interpretation which is given to the infinitive μεθίστασθαι. If this is rendered in the passive voice, following Hefele,⁵⁴⁰ translation seems to be prohibited in principle, affecting translations by conciliar enactment as well as by personal desire or factional intrigue. As expressive of the middle voice of the present infinitive this form of the verb may, on the other hand, be interpreted as meaning that it is the bishop in question who is himself the agent of the action.⁵⁴¹ This interpretation is supported by the use of the active voice (*transeat, transire, and migret*) in the fifth- and sixth-century Latin translations of the canon, the *Prisca*, ‘Isidore’, and the *Dionysian*,⁵⁴² and the recognized possibility of a bishop being regularly translated to a vacant see by the judgement and consent of a council is implied by canon 16 of Antioch. This decrees that a bishop who takes possession of a vacant see without the consent of a council shall be deprived, even though he may have been elected by the church into which he has intruded.

Apostolic Canon 14(13) forbids a bishop to leave his diocese and go to another unless there be good reason, such as making way for a successor who will do more profitable work for the better service of religion. It concludes with the admonition that a bishop should not undertake to do this himself, but should let it be decided by other bishops.⁵⁴³ The publication of this canon in its present form must be dated in the latter half of the fourth century, and it well summarizes the judgement of the fourth-century Church upon the practice under consideration. That is, that an essential distinction is to be drawn between unauthorized moves for personal or party gain and the authorized translations of bishops by conciliar action. The same view is reflected by canon 20 of Chalcedon. It is in

⁵³⁹ Lauchert, 48–9.

⁵⁴⁰ *Conciliengeschichte*, 2nd edn., 6 vols. (Freiburg im Breisgau, 1873–91), i. 519. ‘Ein Bischof darf von einer Paroikie nicht in eine andere versetzt werden.’

⁵⁴¹ See E. Heckrodt, *Die Kanones von Sardika aus der Kirchengeschichte erläutert* (Jena, 1917), 16–17.

⁵⁴² *EOMLA* ii. 294–5.

⁵⁴³ Lauchert, 2.

the context of this distinction that the Serdican enactments concerning the removal of bishops and other clergy from one church to another must be viewed.

(ii) Canon 1(I)

The greater part of canon 1 is devoted to a pointed analysis of the motives underlying episcopal migration to larger sees. ‘There is almost no bishop to be found’, it is somewhat sarcastically stated, ‘who would move from a larger city to a smaller one. Hence it is plain that they are inflamed by the fire of greediness to serve ambition’. The legislative statement itself is short and precise: ‘ne cui liceat episcopo de civitate sua⁵⁴⁴ ad aliam civitatem transire’ (‘let no bishop be allowed to transfer from his city to another’); and the penalty enjoined for bishops who attempt to move from their own church to another is exceptionally severe:⁵⁴⁵ ‘ut nec laicam habet communionem’ (‘that he shall not have even lay communion’). The purpose of the canon is manifest as an agreement to cut off from communion those bishops of the Eusebian party who endeavoured, as a facet of the greater contest, to further themselves and their cause by securing influential positions. A similar condemnation of translations to larger cities (*de ecclesia (minori) ad maiores*) is found in the Serdican encyclical.⁵⁴⁶ Two particular incidents that seem to have contributed to the formulation of the canon are the attempt of Valens of Mursa to gain possession of the see of Aquileia,⁵⁴⁷ and the translation of Eusebius of Nicomedia to Constantinople in 338. It is made evident by the Serdican Epistle to Pope Julius and by Julius’ own letter to the Eusebians that canon 1 was occasioned by incidents of this sort. In condemning the frequent changes of the Arians, Julius appeals directly to the authority of canon 15 of Nicaea: ‘they [the Arians] have set aside the decrees of the three hundred in every way . . . bishops also have made a practice of

⁵⁴⁴ The Greek text reads ἅπὸ πόλεως μικρᾶς εἰς ἑτέραν πόλιν. But μικρᾶς is not found in the Theodosian version, which reads simply *de civitate ad aliam civitatem*, and the word seems to be out of place in the present context. It is likely that it is a later addition influenced by the related passage in the Serdican encyclical. The Greek reading of this is ἅπὸ μικρῶν πόλεων εἰς μεγάλους παροῦσας, whereas the Latin is *de ecclesia ad maiores* (CSEL 65. 122).

⁵⁴⁵ Canon 16 of Nicaea orders the excommunication of presbyters and deacons who move from one church to another, but in canon 15 of the same series no punishment is prescribed for bishops other than the return of offenders to their original sees. Canon 21 of Antioch prescribes no penalty at all. For further discussion of the Serdican penalty see below.

⁵⁴⁶ §8 (CSEL 65. 122).

⁵⁴⁷ See the Serdican Epistle to Pope Julius, 4 (CSEL 65. 129).

moving from one place to another'.⁵⁴⁸ The reason for these changes, Julius notes, is a desire for the prestige of greater sees. In this regard he continued,

If, therefore, you truly consider the honour due to all bishops to be the same and equal, and, as you write, do not measure the dignity of a bishop by the greatness of his city; it is fitting that he who has been established in a small city should remain there . . . and not move to another not entrusted to him, that by despising that which he was given by God he should foolishly hope for the approbation of men.

These words, as we have seen, are echoed by Osius in canon 1.

It can hardly be inferred that either Julius' statement or the Serdican canon, which he may have at least partly inspired, is an objection to translation in principle. Both Osius and Julius had the strongest reasons for appealing to tradition and to the 'theological objection', but the practice came under consideration for both not in abstraction but as a disciplinary abuse in need of immediate correction. In the canon there is reference only to the moral objection, and Julius does no more than mention in conventional terms the relationship of the bishop to his see: 'given [to the bishop] by God'. The key verb in the Latin version of the canon is *transire*, which by its employment in the active voice makes the moving bishop himself the agent of the action. The corresponding verb in the Greek text is μεθίστασθαι, as in canon 21 of Antioch. These are the only two instances of the use of μεθίστημι in the translation canons of the fourth century, and its unequivocal meaning from context in the Serdican canon, as the middle voice of the present infinitive, adds confirmatory evidence to a parallel interpretation in the former.⁵⁴⁹ The Serdican canon makes no mention of translation by conciliar action, but from its historical background and from its relationship to other similar legislation it may be assumed with certainty that the bishops at Serdica were not concerned with that aspect of the practice. Canon 2, to be considered below, provides evidence that the council would have admitted the regularity of translation under certain conditions, for the phrase 'one who perhaps gives an excuse such as declaring that he had received letters from the people', implies that letters of invitation from the people following a valid election might be taken into consideration in judging a worthy case.

⁵⁴⁸ *Apol. contra Arianos* 25. 2 (Werke, ii/1. 106). Canon 15 of Nicaea reads: ἀπὸ πόλεως εἰς πόλιν μὴ μεταβαίνειν.

⁵⁴⁹ The passive *transferrī* is used in the Theodosian version of the Serdican canon, but it seems to have been so derived from the Greek by a translator-editor who placed a strict interpretation upon the canon.

(iii) Canon 2(II)

Canon 2 is closely related to canon 1, and is specifically concerned with the unlawful occupation of desirable sees by means of fraudulent elections. Its immediate historical background is undoubtedly found in the affair of Valens of Mursa alluded to above. In the Serdican Epistle to Pope Julius, Valens is described as having incited a seditious faction in the church at Aquileia to demonstrate on his behalf.⁵⁵⁰ The canon condemns as transparently false the excuse that one designing to move to another see should claim to have received letters of invitation from the people. It continues with the explanation that his only claim to election is that a vociferous minority, corrupted and influenced by bribes and rewards, has proclaimed him bishop in the name of the church.⁵⁵¹ The punishment which the canon prescribes for a bishop who is found guilty of the simoniacal practice considered is given in the Greek text ὁτι οὐδεὶς μηδὲν τοιοῦτον μηδὲ ἐν τῷ τέλει λαϊκῆς γοῦν ἄξιουσθαι κοινωνίας ('that not even at the end [the point of death] shall such a one be deemed worthy even of lay communion').

In a study of the deposition of bishops, Vacanard showed that in the early centuries this punitive discipline may be identified with degradation.⁵⁵² The deposed bishop was in this way deprived of his place of honour or presidency at the Eucharist, but in most cases was allowed to communicate with the laity (*ut laicus communicet*).⁵⁵³ It is therefore evident that the penalty enjoined by the first Serdican canon is a straightforward formula of excommunication as well as of deposition. With regard to the penalty imposed by canon 2, the manuscripts that represent the Latin text omit the qualifying words ἐν τῷ τέλει (*in fine*); their presence in the readings given by various later recensions is undoubtedly due to influence from the Greek. Turner's judgement that the Greek reading is due to a spurious insertion is apparently based not only upon his assumption that the Latin text is prior, but also upon the supposition that the longer reading is devoid of significant meaning, for he asks, 'Sed quid esse possit *in fine laica communio*? Viaticum enim et plebis et cleri commune est.'⁵⁵⁴ Surely

⁵⁵⁰ §4 (CSEL 65. 129).

⁵⁵¹ The phrase *qui sinceram fidem non habent* in description of the agitators is not found in the Greek text, but it is present in all early Latin recensions and in the Theodosian version. It therefore appears to have been present in the canon as initially proposed, and to have been omitted from the Greek at a later date.

⁵⁵² E. Vacanard, 'La déposition des évêques', *Revue du clergé français*, 35 (1908), 388.

⁵⁵³ Ibid. 394–5.

⁵⁵⁴ *EOMLA* i. 454, l. 13 n.

this question has been answered by Vacanard with the demonstrated identity of status in most cases between deposed clergy and the laity. The longer reading clearly means that not only are offenders to be perpetually excluded from their former dignity and of lay communion with no possibility of final restoration, but final communion, or the viaticum. The relationship between canons 1 and 2 favours the acceptance of the longer reading of canon 2 as the original, for the abuse considered in canon 2 was condemned as a particularly pernicious manifestation of the practice dealt with in canon 1. For this reason, it is suggested that canon 2 is intended to exclude offenders from final reconciliation whereas canon 1 is not. There are only two other fourth-century enactments concerned with the practice of simony,⁵⁵⁵ and these also impose the extreme penalty. Canon 30(29) of the Apostolic canons rules that a bishop, presbyter, or deacon who has bought his office shall, together with the bishop by whom he was ordained, be perpetually excommunicate, and canon 31(30) exacts the same sentence for a bishop who has brought about the intervention of the civil authorities in order to obtain the government of a church. This latter canon is similar to the second of Serdica in that it is not the episcopal office itself that is solicited, but rather an appointment through which the office already possessed might be exercised.

(iv) Canon 3A(IIIa) and 3B(IIIb)

The first section of canon 3 is not wholly clear in meaning, and for this reason has been subject to several interpretations. Illustrative of its ambiguity is the fact that in the Dionysian and Prisca Latin recensions, and in the Greek, it appears as the first section of the third canon, but in the recension of Isidore it alone is given as the second canon. The judgement of the Isidorian redactor is probably justified, for this section is only related to the remainder of canon 3 through its service as a transitional clause leading from the previous subject under consideration to the following. In reality section 3a is more closely related to canon 2, from which it proceeds as a supplementary statement. The section is, as we have seen, of unique interest for its exemplification of the flow and development of the verbal process.

⁵⁵⁵ One background reference is provided in the third century by Tertullian, *De idololatria*, 9. 6 (CCL 2. 1108): 'Simon Magus . . . quondam Spiritum Sanctum per manuum impositionem enundinaret, maledictus ab apostolis de fide eiectus est.' Early references to simony are few. More frequent allusion to it is made by the councils of the fifth to seventh centuries. For background see J. T. Noonan, *Bribes* (New York, 1984), 68–82.

It is stated that a bishop shall not pass from his own province to another in which there are bishops resident; and to this is added the phrase, 'unless perhaps he has been invited by his brethren, lest we seem to have closed the door to [brotherly] affection' ('Illud quoque, ut episcopus de provincia ad aliam provinciam in qua sunt episcopi non transeat; nisi forte a fratribus suis invitatus, ne videamur ianuam caritatis clausisse'). The most obvious interpretation of the first clause places it in the context of canon 1 and prohibits ambitious roaming from province to province in search of a better position. There are several factors which make this fairly simple reading probable. The first is the meaning of the verb used in the Greek text to express the main idea. Although the meaning of διαβαίνω is perhaps too fluid to determine exactly what is meant, it does indicate a distinction from μεθίστημι in canon 1 in that it bears a connotation of movement through and not of translocation for the occupation of a see. The second factor arises from the fact that the phrase 'nisi forte a fratribus suis invitatus' directly excludes the ambitious episcopal migrations dealt with by the previous canons. The final factor is the relationship between this section and canon 3b following.

Hefele sees the primary affinity of the section to be with canon 3b, and interprets it as forbidding a bishop to perform the essential acts of his office in another province without invitation.⁵⁵⁶ He therefore equates this section with canon 13 of Antioch, which rules that a bishop shall not pass from one province to another to ordain persons to the ministry unless he does so at the invitation of the metropolitan and provincial bishops. The parallel between these two canons is real to the extent that they both forbid entrance into another province without invitation, but it is questionable how much further the parallel can be carried. Hefele undeniably distorts the meaning of the received text of 3a(IIIa) in order to carry his point, for he translates the final phrase as, 'that it may not appear as if the synod wished to cut off from the bishops the opportunity of rendering each other the service of love'. This surely is an unwarranted expansion of both the Greek and Latin readings. Nor is the problem simplified by his interpretation, for its very specific thrust necessitates a loosening of the section from both the preceding and succeeding contexts.

Canon 3a seems instead to follow in development from canon 2 as its opening words 'illud quoque' suggest. As the previous canon stands as a condemnation of those who are minded to incite agitation in other churches in order that they may be demanded as bishops by the people,

⁵⁵⁶ Hefele–Leclercq, i/2. 763.

this canon restricts the possibility of future incidents of the sort by forbidding bishops to enter other provinces, either for official acts or for unofficial visits, without a specific invitation. Then, by way of development and qualification, section 3b stipulates that bishops may not be invited into other provinces to act as arbitrators in episcopal disagreements. The words ‘in which there are bishops’ in 3a do not necessarily imply that a bishop is free to move as he pleases in a province in which there are no bishops resident, but should rather be viewed in the light of canons 14 and 15 of Serdica as emphasizing the necessity for the protection of incumbents against ambitious displays of superiority on the part of visiting colleagues.

(v) Canon 14(XI)

Canon 14 returns to the subject of canons 1, 2, and 3a and establishes further safeguards against the possibility of a bishop gaining control of an occupied see by subversion. It is agreed that a limit of three weeks should be imposed upon episcopal visits in other cities, whether in the same or in another province, unless there be serious reason for a longer stay. The stated purpose of this is to prevent situations in which a visiting bishop, who is more inspired by ambition than by devotion, may win popularity among the people to the discredit of a less gifted incumbent,⁵⁵⁷ and, ‘commending himself, he afterwards desires and takes possession of another's see’.⁵⁵⁸ A bishop motivated by ambition, it is stated, would not hesitate to leave his appointed church and pass over to another.

The canon falls naturally into two sections. In the first, Osius presents the problem and asks that a time-limit be established for episcopal visits in foreign churches. The last section (beginning *Memini autem*) is apparently Osius' own *sententia*, which was accepted by the council. The limit of three weeks suggested was based upon a similar rule for the laity which he recalled as having been previously established. This was undoubtedly canon 21 of Elvira,⁵⁵⁹ which council Osius had attended. The application of the Elviran canon to the present situation is, however,

⁵⁵⁷ See canon 18 of Ancyra and canon 17 of Arles: ‘Ut nullus episcopus alium episcopum inculcet’ (Lauchert, 28).

⁵⁵⁸ ‘quia haec occasio facit ut commendans se postea et alienam sedem concupiscat et invadat.’ The Greek reads: ‘(for that pretext is wont to cause disorder [ταρᾶχος]), and by this villainy gain the other man's see for himself’. The omission of ταρᾶχος and the use of *commendare* in the Theodosian reading indicate that its rendering was influenced by the Latin.

⁵⁵⁹ ‘Si quis in civitate positus tres dominicas ad ecclesiam non accesserit, pauco tempore absteineat, ut correptus esse videatur’ (Lauchert, 17).

only by analogy as Osius makes clear, for the previous ruling concerns the layman's absence from the Sunday Eucharist wherever he might be, but the latter relates to the bishop's absence from his own congregation: 'it is neither permitted nor proper that a bishop, if he has not great necessity nor pressing reason, should absent himself longer [from his church] and sadden his people'.

Canon 21 of Serdica, while primarily concerned with the question of refuge for clergy persecuted for their doctrine, has relevance to the present ruling in that visits under these conditions are not subject to limitation. In such a case a bishop is to be allowed to remain in the city in which he has taken refuge until justice may be obtained: 'he shall not be forbidden to remain there until either he can return [to his church] or has received remedy for his injury'.

(vi) Canon 15(XII)

'And because it is right that nothing be neglected . . .': as this introductory phrase suggests, canon 15 is closely related to the ruling that precedes it. The canon begins with the observation that there are certain bishops who have little property in the cities in which they are established, and are known to be concerned with farms and other interests⁵⁶⁰ elsewhere. In order that they should not suffer loss, it is proposed that they may attend to their affairs for three weeks of each year, preferably remaining on their estates during this period. It is implied that it was not uncommon for business expeditions to afford occasions for the abusive practice dealt with in the previous canon. The present agreement was intended to ensure that in the future such trips should not only be short, but also that the bishops should remain engaged in their own affairs and not in ambitious meddling in foreign churches, so that, as the final phrase states, 'if he does not frequently come to a city in which there is a bishop he may be free of suspicion of ambition and ostentation'.

The canon seems also to have been designed to restrict the business activities of bishops. Although the increase of Church properties during

⁵⁶⁰ 'adfectiones quibus indulgeant' with 'disponant' following may possibly be understood in terms of the Greek reading: 'possess much more from which they are able to relieve the poor'; or at least it may have been considered to mean this by the Greek interpreter. Preference is given to the Latin reading, 'elsewhere they are known to have suitable estates and interests which they support' (see Ch. 5, §iii). The Theodosian (T16), 'aliis vero in locis magnas ex quibus possunt procuriores ecclesiae redditus adhibere' ('in other places large ones from which the administrators of a church are able to use for proceeds'), follows the Greek.

the fourth century reduced the necessity for the higher clergy to depend upon secular incomes, the practice is represented here as being not uncommon. Disapproval of excessive business activity among the higher clergy had been expressed earlier by Cyprian,⁵⁶¹ and the fourth century brought considerable restriction in this regard. Canon 19 of Elvira forbids bishops, presbyters, and deacons to trade in markets outside the province (unconnected with but reflecting a concern similar to that of canon 3a of Serdica), canon 6 of the Apostles orders deposition for clergy of the higher grades who undertake secular employment, and canons 17 of Nicaea and 20 of Elvira forbid the clergy to practice usury.

The present canon further directs that if there is a city nearby in which a presbyter is located, a bishop tending his estate should go there lest he seem to pass Sunday without the Church (*ne sine ecclesia facere videatur Dominicum*), and so that he will not frequent cities in which there are bishops. Turner is of the opinion that *facere Dominicum* is a term denoting the celebration of the Eucharist.⁵⁶² It is undoubtedly to be understood in the Latin that, as the Greek text explicitly directs, the bishop is to preside (ἀειτουργεῖν) at the liturgy in a church which is under the supervision of a presbyter. This honour, in any case, would be consistent with the usual hospitality offered to travelling bishops and other clergy.⁵⁶³

(vii) Canon 16(XIII)

The canon rules that if a deacon, presbyter, or cleric, having been excommunicated by his own bishop, seeks to be received by another, and the other knows him to have been cast out, he must not be admitted to communion; but, the canon continues, if he is so admitted, the bishop receiving him should know that the matter will be dealt with by his assembled brethren (*convocatis episcopis*). The Greek text alone includes the observation, probably original to the proposal as stated, that it is not fitting for a bishop to do his fellow bishop injury.⁵⁶⁴ The exclusion from communion of those who were not in good standing in their own churches was customary from the earliest times,⁵⁶⁵ and in this, as in other

⁵⁶¹ *De lapsis* 6 (CCL 3. 224).

⁵⁶² *EOMLA* i. 488.

⁵⁶³ Canon 19 of Arles directs: 'Regarding travelling bishops who are accustomed to stay in cities, it was pleasing to give them an opportunity to offer [the Eucharist]'. (Lauchert, 29). See also *Didascalia* 2. 58. 2 (ed. Funk, 168).

⁵⁶⁴ μὴ χρεῖναι τῷ ἀδελφῷ αὐτοῦ ὕβριν ποιῶτα.

⁵⁶⁵ 2 John 10; *Didache*, 11. 1–2, 5–6; *Didascalia*, xxvi.

matters of discipline, the older, uncoded observance of mutual respect of bishop for bishop, and church for church, became defined in a jurisdictional idiom during the fourth century. Rulings similar to that of the Serdican canon are found among the enactments of several other fourth-century councils.⁵⁶⁶ The reason for the repetition of this particular ruling at Serdica is well illustrated by the other documents of the council. In describing the activities of the Eusebians, the encyclical letter states: 'In addition to all these things, they also not only received those who had formerly been deposed and banished from the Church because of the heresy of Arius, but also advanced them to higher grade';⁵⁶⁷ the same charge is repeated in the synodical letter to Pope Julius.⁵⁶⁸ Also, the concern of the council in this matter may well echo Julius' own reproof of the Eusebians for having readmitted to communion those whose sentences of excommunication under Alexander had been universally ratified at Nicaea.⁵⁶⁹ Canon 17, which provides an opportunity for excommunicated clergy to appeal for the revision of their sentences, follows in development from the present ruling. This will be treated in Chapter 9 below.

(viii) Canons 18 and 19(XV)

Canon 18 rules that no bishop shall solicit a man (*ecclesiasticum*)⁵⁷⁰ from another church and ordain him in his own, and canon 19 states that if a bishop ordains a foreign cleric (*ministrum*) without the consent of his own bishop the ordination shall be invalid. To facilitate comparison the reader is referred to the texts of the canons in the Appendix.

Both Batiffol⁵⁷¹ and Turner⁵⁷² were of the opinion that the two canons are essentially equivalent in meaning, but Bardy classified these sections of material as being two different enactments. He argued that while in the first it is implicit that the ordinand is to be retained for service under the ordaining bishop, in the second it is presupposed that he is ordained for service in his native diocese.⁵⁷³ If, as has been suggested, canon 18 is the

⁵⁶⁶ 53 of Elvira, 5 of Nicaea, 2 and 6 of Antioch, and 13 of the Apostles.

⁵⁶⁷ §7 (CSEL 65. 119).

⁵⁶⁸ §3 (ibid. 129).

⁵⁶⁹ Athanasius, *Apol. contra Arianos* 23.1 (*Werke*, ii/1. 104).

⁵⁷⁰ Turner is of the opinion that *ecclesiasticum* means simply a churchman, lay or clerical: *EOMIA* i. 488.

⁵⁷¹ *La Paix constantinienne et le catholicisme*, 5th edn. (Paris, 1929), 435.

⁵⁷² *EOMIA* i. 483, ll. 10–18 n.

⁵⁷³ Bardy, *La Théologie de l'église*, 292.

initial proposal and canon 19 is the final redaction, Bardy's supposition is textually impossible. Further evidence for an equivalence in meaning between the two canons is provided by a citation made by Gratus at the Carthaginian council held in 345. He recalled that it was forbidden by the council of Serdica for a bishop to solicit a man for ordination from another diocese without the consent of his own bishop:

For instance, I remember a similar decree at the holy council of Serdica, that no one [a bishop] shall take a man [from another congregation]. If perchance the ordination become needful, let him ask his colleague and obtain [the man] by agreement.⁵⁷⁴

The meaning of Gratus' statement is unequivocal, and his use of *usurpet*, as well as his phraseology, suggest that he drew upon both Serdican sections in his citation. It also seems probable that the second Greek redactor understood the two canons to convey the same meaning and that he deleted canon 18 as the less explicit of the two. It is certain that this canon was present in the primitive Greek text and also in the Greek of the first revision, for it is found in the Theodosian version with a decidedly different structure from its Latin counterpart. Not only is the phraseology at variance between the two, but the acclamation clause in the Theodosian (T20) is considerably longer.

The canons under discussion repeat the injunction contained in the final clause of canon 16 of Nicaea, which proceeds from a consideration of clerical translations. The general protest in this period against unauthorized translations provides strong reason for the disapproval of such ordinations, in that the soliciting bishop would effect the translation of the cleric concerned, but another objection arises from the fact that the jurisdiction of the cleric's own bishop would be infringed. A similar concern for the integrity of local jurisdiction is evidenced by other fourth-century councils. Canon 24 of Elvira forbids the ordination of a candidate baptized in another diocese, and, as we have observed in another context, canon 17 of Arles decrees, 'That no bishop shall force his will on another bishop'. Although the envisaged circumstances were different, the same principle appertains in canons 13 and 22 of Antioch and 36(35) of the Apostles, which forbid episcopal acts within the territorial boundaries of another church.⁵⁷⁵ At the beginning of the fourth century four Egyptian bishops wrote to Melitius of Lycopolis as follows: 'The rule of our fathers and forefathers is . . . it is not allowed for any bishops to conduct ordinations in other parishes'.⁵⁷⁶

⁵⁷⁴ Canon 5 (CCL 149. 6).

⁵⁷⁵ See also Ch. 2, §ii, end.

⁵⁷⁶ *Epistola ad Meletium Lycopolitanum Episcopum* (PG 10. 1565 c.).

(ix) Canon 20(XVI)

A special problem affecting the church of Thessalonica is dealt with by canon 20. Aetius, its bishop, complained to the council that this large and important city attracted numbers of presbyters and deacons from other communities, who either made Thessalonica their place of permanent residence or at best were only with great difficulty compelled to return to their own churches. The situation described seems to be comparable to that envisaged in canon 14. Because of the greater opportunities offered there, the clergy in question desired to become permanently attached to the church of that city. Unauthorized translations by presbyters and deacons had previously been forbidden by the canons of a number of councils,⁵⁷⁷ but there seems to have been no thought at Serdica that these protracted sojourns in Thessalonica were translations as an accomplished fact. They were apparently regarded simply as ambitious visits, and the limitation agreed upon in canon 14 appertaining to a bishop's absence from his see was ordered to be observed.

(x) Canon 21(XVII)

Canon 21 provides that if anyone⁵⁷⁸ suffers violence and is unjustly cast out because of his doctrine, his confession of the Catholic faith (*catholicam confessionem*),⁵⁷⁹ or defence of truth, and flees to another city, he shall be received with kindness and be allowed to remain there until he is able to return or until the injustice has been corrected. Either the initial proposal or the ratified *sententia* had apparently been presented by Olympius of Aenus (Thrace), and what has been preserved is the final resolution as stated by Ossius. In effect, it is a supplementary amendment to canon 14 insuring hospitality of unlimited duration to those who suffered persecution for their doctrine at the hands of the Eusebians. The canon may be viewed at least in part as a justification of the asylum which had been granted to Athanasius, Marcellus, and others at Rome. The provision was of course not new, but a reassertion of the custom which had been observed in the earlier days of persecution under the pagan oppressors.

⁵⁷⁷ Arles 21, Nicaea 16 (and 15), Antioch 3, and Apostles 15.

⁵⁷⁸ The earliest Latin recension (the Chieti) specifies bishops, presbyters, or deacons (*EOMLA* i. 485).

⁵⁷⁹ The Greek reads καθολικῆς ἐκκλησίας. It is the Latin reading, however, that seems to convey the intended meaning.

The *Didascalia*⁵⁸⁰ had urged that hospitality should be given to those under persecution who fled from city to city, and there are numerous instances of hospitality having been given in such circumstances. More closely parallel to the Serdican ruling is an injunction contained in the fourth-century *Apostolic Constitutions*,⁵⁸¹ according to which those persecuted for their doctrine are to be received and their needs supplied.

⁵⁸⁰ 5.3 (ed. Funk, 240).

⁵⁸¹ 8. 45 (SC 336. 262–4).

9 The Appeal Canons

Apart from its effect upon future relations between the two halves of Christendom, the historical importance of the council of Serdica for the churches of the West is pre-eminently centred in its appeal canons. These provided recourse to assistance by the bishop of Rome for bishops who claimed unfair treatment from judgement by their peers. In this way, the canons exerted an undeniable influence upon the subsequent jurisdictional enhancement of the institutional papacy, as may be seen, for example, from their contribution to the ninth-century false decretals of Popes Clement I to Miltiades. Much has been written regarding them, and the prerogative they accord to the papal office have been a frequent source of controversy, beginning with the affair of Apollinaris and continuing in the discussions of Hincmar of Rheims in the ninth century, in the Gallican and Ultramontane controversies of the seventeenth and eighteenth, in the debates regarding the papal prerogatives defined by the First Vatican Council in 1870, and also into the twentieth.⁵⁸² For the purpose of discrediting or vindicating the support the canons may provide for papal claims, the arguments in the past have been carried from questions of interpretation to those of their oecumenical authority and also to questions of their genuineness. The question of oecumenical authority does not concern us here, and as the genuineness of the canons is now universally accepted we need only to consider the problem of interpretation. Unfortunately the interpretational treatment of the canons has frequently been tendentious, with inadequate attention given to their historical setting, to the conciliar procedures that produced them, or to the contemporary concepts of authority and jurisdiction that underlie them.

Considerable difficulty has arisen from the natural division of the

⁵⁸² Sieben provides a good historical review of the treatment and application of the Serdican appeal canons in the Western Church, with allusion to their reception in the East: *Die Partikularsynode*, ch. 6: 'Die sardicensischen Appellationskanones im Wandel der Geschichte'.

appeal material into three proposals, or canons. If each canon is thought of as a separate, formal decree of the council it is reasonable to search for specific differences between them. This approach has been a recurrent mistake of many commentators and canonists, and a truer picture of the appeal material appears if it is viewed rather as representing three phases of the verbal process. This is not to disavow the existence of problems of interpretation, but it does to a large extent undercut the basis of many arguments that have been put forward.

(i) The Historical and Jurisdictional Contexts

While the motivating factors behind the formulation of the appeal canons are rightly to be found in the historical situation, the depths of this context cannot be reached solely by an analysis of contemporary events. Underlying concepts of ecclesiastical authority and the way in which it should be exercised played an important role in determining the pattern of circumstance. The historical situation, with all its confusion and conflict, was an unavoidable product of unprecedented internal strife occurring in an age of constitutional transition. The Church was at the same time attempting to re-establish peace within itself by older regulatory methods now rendered ineffective by forces too powerful to be controlled, and by new methods adapted to present needs but which had not yet been fully accepted. As we have seen in Chapter 3, the older methods operated through the medium of mutual agreement among bishops directed towards a commonly desired end. These builders of consensus were cognizant of binding ecclesiastical law only as expressed in terms of what they believed to be universal tradition. The new methods towards which the Church was groping its way operated on the other hand through the medium of conciliar legislation, the emerging notion of ecclesial jurisdiction, and the establishment of a rule by law.⁵⁸³ The conflict between the Nicene and Eusebian parties may be profitably viewed in terms of an extravagant interplay between these methods, each faction reaching out in turn for assistance from the new, but falling back in turn in reliance upon the old. In the final analysis, the acts of a fourth-century council were only as binding as they were representative of the *consensus* of those concerned, while in a newly emerging idiom, as a standard of

⁵⁸³ For further discussion of the ecclesial and political issues involved in this transition see B. Dupuy, 'Les appels de l'Orient à Rome du concile de Nicée au concile de Chalcedoine', *Istina*, 32 (1987), 361–71; K. Girardet, *Kaisergericht und Bischofsgericht: Studien zu den Anfängen des Donatistenstreits (313–315) und zum Prozeß des Athanasius von Alexandrien (328–346)* (Bonn, 1975).

juridical authority, they laid claim to observance by all. In this way the older covenant of excommunication sought recognition as a universally binding judgement, yet the Eusebians demanded acquiescence in the depositions at Tyre while not acknowledging those at Nicaea. Rule by mutual agreement was developing towards a rule by law, yet at Serdica Ossius founded his *tour de force* upon the moral *auctoritas* of honoured memory: ‘si vobis placet, sanctissimi Petri apostoli memoriam honoremus’.

Canon 5 of Nicaea had directed that the provincial synod should act as a court of appeal from a disputed sentence pronounced against a cleric or layperson by an individual bishop. It is thus implied that the provincial bishops as a body had an acknowledged authority to sit in judgement upon the acts of individual bishops who were resident within the province. The Canons of Antioch further reveal that the authority of the provincial synod, under the presidency of the metropolitan,⁵⁸⁴ was becoming well established in the East several years before the time of Serdica. Canons 14 and 15 of Antioch were designed both to augment the authority of the provincial synod as a trial court and to ensure the integrity of its operation. Canon 3 of Serdica shows that also in the West a bishop was customarily tried by his comprovincials, or regional neighbours. The more developed organizational concepts of the East were only partially expressed at Serdica, but the protection of the provincial body from outside interference was of specific concern: ‘if perhaps in any province some bishop shall have had a matter in dispute against his brother bishop, neither of these shall call [in] bishops from another province’ (canon 3b(IIIb)). In both the East and the West, however, the ever-pressing question was still to be answered, to what recognized authority a petition for the review of a judgement against a bishop once pronounced might be addressed.

The Church in the East, with the rapid development of a defined system of provincial administration operating through the medium of the synod, found itself not unsuited to a further extension of this same principle. In this way we find that the Eastern answer to the problem of disputed episcopal sentences was, at least in theory, expressed in terms of collective judicature. Canon 14 of Antioch directs that in the event of disagreement among the members of the provincial synod over the case

⁵⁸⁴ There can be no provincial council without the metropolitan, and it is he who assembles the council (canon 20) and is its presiding officer (canon 16). All provincial affairs are submitted to his supervision, and the bishops are to take no collective action without him (canon 9).

of an accused bishop, the metropolitan shall call in bishops from a neighbouring province, who shall add their judgement and resolve the dispute. Canon 15 adds that if the judgement of the provincial bishops is unanimous their decision shall be final, and the accused shall not be judged again by others (τοῦτον μηκέτι παρ' ἑτέροις δικάζεσθαι). This closing phrase has led a number of authors to interpret canon 15 as forbidding any appeal against sentence, but the objections which may be raised against this interpretation make it improbable.

First, it is clear that canons 14 and 15 are not concerned with the matter of appeal. They are directed towards the effective operation of the provincial trial court by granting that certain extraordinary measures may be taken in that forum at the discretion of the metropolitan. The foreign bishops called in under the provisions of canon 14 are not to form a new council but are to assist in the judgement in the event of a divided provincial synod. The exclusion of foreign bishops, or 'the judgement of others', by canon 15 in the case of a unanimous decision, does not in itself deny the possibility of appeal, but is simply a guarantee of integrity of decisions by the provincial body itself apart from the special circumstance envisioned in canon 14.

Second, canon 12 makes broad provision for presbyters or deacons deposed by their own bishops or a bishop deposed by a synod (implicitly *any* synod) to submit their cases to a 'larger synod of bishops (μείζονα ἐπισκόπων σύνοδον), and to refer to more bishops the things that he thinks right, and to abide by the examination and decision made by them.' The same principle is presupposed by canon 4 of Antioch, which states that one who has been deposed and who thereafter performs any function of his office may no longer hope for reinstatement (ἀποκαταστάσεως by another synod nor for permission to defend himself. Accepting the argument that no appeal was allowed from a decision by a provincial council, Barnard maintains that canon 15 prohibits appeal but admits that this interpretation 'cannot be easily reconciled' with canons 4 and 12.⁵⁸⁵ He argues that 'once the metropolitan is involved then a decision can be given which excludes a further appeal', but this is nowhere stated nor implied, apart from the fact that a provincial council cannot even be held in the absence of the metropolitan. Girardet proposes that canons 4 and 12 describe conditions in which an only partially attended council has taken action against a bishop, presbyter, or deacon and that the canons provide only an opportunity for a further hearing before a larger number of bishops from the same provincial body and do

⁵⁸⁵ *The Council of Serdica*, 116.

not provide an opportunity for an appeal hearing.⁵⁸⁶ These conditions are, however, not stated nor implied in the canons themselves, but it is in this restricted sense that he understands ἐτέρεᾷ συνόδῳ in the case of canon 4 and μείζονα ἐπισκοπῶν σύνοδον in canon 12. This interpretation is strained and is unconvincing. Girardet himself regards it as ‘difficult and roundabout’.⁵⁸⁷ He and others who support his interpretation generally attribute a supposedly ‘altkirchliche Idee’ to the bishops who framed the canons at Antioch in 328 by which each synod was held to speak for the whole Church in the name of the Holy Spirit (‘jede Synode im Namen des heiligen Geistes für die Gesamtkirche spricht’), its decisions being thereby irreversible. Vincent Twomey has demonstrated this thesis to be groundless in face of the varied testimony and still unformed positions of the third-century witnesses invoked by Girardet.⁵⁸⁸ While a politically crafted principle of this general tenor was cited a decade later by the Eusebians in their letter to Julius,⁵⁸⁹ it seems highly unlikely that the bishops at Antioch, although largely Eusebian in sympathy, held it in mind as a prohibition against the opportunities for appeal which they provided by the plain wording of canons 4 and 12.

Third, with the exception of this later claim by the Eusebians that each council is irreversible, no statement of principle or custom that the acts of one council could not supersede those of a previous one is in evidence from any source, Eastern or Western, during this period. On the contrary, there are numerous examples of councils of various status which countermanded the decisions of previous ones—also of various status—during the chaotic years between Nicaea and Constantinople I.

Fourth, whatever their motives may have been at that time, we see a concrete application of the principle of appeal from council to council shortly after Athanasius' second expulsion from Alexandria in 339 in the

⁵⁸⁶ ‘Appellatio: Ein Kapitel kirchlicher Rechtsgeschichte in den Kanones des vierten Jahrhunderts’, *Historia*, 23 (1974), 113–16; id., *Kaisergericht*, 123–4.

⁵⁸⁷ ‘mühsam und auf Umwegen’: ‘Appellatio’, 116. Among the older authorities supporting the position taken by the present author, see Hefele–Leclercq, i/2. 719 n. 1; Turner, *Studies in Early Church History*, 84; and Ballerini and Ballerini, *Sancti Leonis Magni Opera*, ii. 944–5 (‘Dissertatione V Quesnellī’, pars 1, ‘Editorum observationes’, cap. vi = PL 55. 558). For an author in agreement with the position taken here, see M. Wojtowysch, *Papsttum und Konzile von den Anfängen bis zu Leo I. (440–461): Studien zur Entstehung der Überordnung des Papstes über Konzile* (Stuttgart, 1981), 110–11, 427 (‘Anhang’ to pp. 110–11). Sieben, *Die Partikularsynode*, 13–14 follows Girardet.

⁵⁸⁸ *Apostolikos Thronos* (Münster, 1982), 395 n. 208. Regardless of this discerning analysis, Twomey accepts without explanation the interpretation of the Antiochene canons advanced by Girardet.

⁵⁸⁹ Julius' letter to the Eusebians, in Athanasius, *Apol. contra Arianos* 22. 6 (*Werke*, ii/1. 104).

representations made to Pope Julius by the Eusebians for the convocation of a new general council in the interest of a final settlement of the Athanasian affair. We are told of this by Athanasius, Julius, and Socrates.⁵⁹⁰ If a limiting principle regarding appeal is to be attributed to the East, it is apparently that implied by canon 12 of Antioch to the effect that the authority of one council to overrule the decisions of another rests upon the number of bishops that compose it; a principle often and heedlessly violated by the Easterns themselves in the aftermath of Nicaea.

Fifth, canon 6 of Constantinople (382)⁵⁹¹ provides for an instance of appeal above the level of the provincial synod in a council of the bishops of the civil diocese,⁵⁹² and canons 9 and 17 of Chalcedon also provide aggrieved bishops recourse above the provincial level. While these might be dismissed as later developments in simple disregard of an earlier prohibition against appealing from provincial judgements, it seems more likely that they are specifically developed applications of the 'greater synod' principle expressed at Antioch. The principle of appeal from council to council was also cited in substance, although mistakenly, by Pope Julius, as having been agreed upon by the bishops at Nicaea:

The bishops who assembled at the great council of Nicaea agreed, not without the will of God, that the decisions of one council should be examined in another, to the end that the judges, having before their eyes that other trial which was to follow, might be led to investigate matters with the utmost caution.⁵⁹³

The years intervening between the request by the Easterns for another council and the deliberations of the bishops at Serdica are a critical period, for the events that took place created the conditions that evoked

⁵⁹⁰ According to Julius, Eusebius and his supporters requested him to call a council in order that a just judgement might be given in the presence of all parties (Epistle to the Eusebians, Athanasius, *Apol. contra Arianos* 22. 3). Socrates tells us that they begged Julius to take cognizance of the charges against Athanasius and to order a judicial investigation to be made in his own presence (*HE* 2. 11). Athanasius claims that the Eusebians wished to frighten him and requested Julius to call a council, Julius himself being the judge if he so wished (*Apol. contra Arianos* 20. 1). In view of these reports and the fact that the encyclical letter in defence of Athanasius by the Alexandrian council of 338 had been issued a short time before, the representation appears to have been primarily a bid for Julius' support, while at the same time an acknowledgement of the legitimacy of a reconsideration of previous conciliar decisions.

⁵⁹¹ The canon is listed as the sixth of the Council of 381, but it is considered to have been enacted at Constantinople in 382 (see Hefele-Leclercq, ii/1. 19–26).

⁵⁹² Lauchert, 85–6. This development is acknowledged by both Girardet ('Appellatio', 123) and Sieben (*Die Partikularsynode*, 16).

⁵⁹³ Epistle to the Eusebians, Athanasius, *Apol. contra Arianos* 22. 2 (*Werke*, ii/1. 103; English trans. from Robertson, *Select Writings*, 111). This is generally recognized as having been an unwarranted interpretation of canon 5 of Nicaea.

the Serdican answer to the appeal question. The impelling factor in these developments is seen to be the ultimate refusal of the Eusebians to allow the principle of appeal from council to council to be put to practical use.

Not long after their request for a general council, the Eusebians ordained Gregory of Cappadocia as bishop of Alexandria. With Gregory's entrance into Alexandria at Easter 339, Athanasius was forced to withdraw and fled to Rome upon the invitation of Julius. Julius made arrangements for the requested council, but it soon became evident that the Eusebians had changed their minds. The next move was made at Antioch in January 341, where some ninety Eastern bishops gathered for the dedication of a church built by Constantine.⁵⁹⁴ The opportunity for deliberation was not overlooked, and, in addition to the publication of three conciliatory statements of faith, the assembled bishops confirmed the previous condemnation of Athanasius at Tyre. In a letter addressed to Julius they declined his invitation for a council and stated that it was against ecclesiastical law that he should interfere in a purely Eastern affair. By receiving Athanasius, they claimed, he had insulted their council (Tyre) and violated its decrees.⁵⁹⁵ The true reason for the reversal of their request for a general council in Rome is nowhere stated, but undoubtedly it was the same as that underlying the subsequent refusal of the Eusebians to meet with the Nicenes at Serdica: the realization that they had no chance of gaining Julius' support, and that the decision of a general assembly would most certainly go against them now that their charges at Tyre and also Athanasius' denial of them were generally known.⁵⁹⁶ The reversal was explained by its authors in terms flatly contradictory to the principle of appeal they had previously acknowledged in calling for a council themselves. In the same letter to Julius, the Eusebians claimed that the acts of every council were irreversible and that the first judges would be dishonoured if their sentence should be examined by others,⁵⁹⁷ and they wrote in similar terms in the encyclical letter published at Serdica.⁵⁹⁸ This denial of the right of the condemned to appeal to a larger council was a development of extreme importance, for as subsequent

⁵⁹⁴ For the chronology of the period under discussion see Barnes, *Athanasius and Constantius*, 47–62.

⁵⁹⁵ The letter is not extant, but its contents are summarized by Sozomen, *HE* 3. 8. 5–8 (GCS, NF 4. 111) and it may be pieced together from Julius' reply.

⁵⁹⁶ These had been made public through the encyclical of the council of Alexandria in 338 (Athanasius, *Apol. contra Arianos* 3–19) and through Athanasius' own encyclical letter in 339 (7. 2 = *Werke*, ii/1. 176).

⁵⁹⁷ Julius' Epistle to the Eusebians (*Apol. contra Arianos* 22. 6).

⁵⁹⁸ §1 (CSEL 65. 49). See also §6 (ibid. 65).

events show it drove a decisive wedge between East and West, put a temporary end to the developing authority of collective judgement and higher courts of appeal, and led Julius into more dominant participation in the controversy.

The council met at Rome as planned, presumably in the summer after the Eastern Dedication Council at Antioch, which was held early in January of 341.⁵⁹⁹ The Roman council was composed of about fifty Western bishops who, under the leadership of Julius, cleared Athanasius, Marcellus, and others of the charges which had been made against them. After the council, Julius replied to the Eusebians informing them of what had been done at Rome, and justified the proceedings with the contention not only that the council of Tyre had no real authority and that the charges made there were false, but also that the Eusebians had disregarded certain prerogatives of his own office: 'Do you not know that it is customary first to write to Us that just judgement may be given from here? . . . For what we have received from the blessed Apostle Peter, that I signify to you.'⁶⁰⁰ Julius did not rest his case on this note, however, for he also reminded the Easterns that if the offences with which the deposed had been charged were real ones, 'against the canon of the Church [clearly meaning traditional practice in this context], word should have been written of it to us all, for the sufferers were bishops and the churches of no ordinary note, but those which the apostles themselves had governed'. This admonition evoked no response from the East.

(ii) Factors Contributory to the Formula of Appeal

The Western answer to the question regarding the possibility of appeal from a judgement by a previous council departed radically from the one now represented by the Eastern leaders. We have seen that the answer proposed at Serdica was to a large degree determined by former events, but, as we have also observed, the loose organizational structure and geographical distribution of the Western churches did not easily lend itself to a multi-layered conciliar system. The frequency with which councils were held in the East was at this time unparalleled in the West, and if greater councils were not held in the West for matters of prime importance it

⁵⁹⁹ Barnes, *Athanasius and Constantius*, 61.

⁶⁰⁰ Athanasius, *Apol. contra Arianos* 35. 4–5 (*Werke*, ii/1. 113). It is the first of these phrases which Socrates inaccurately paraphrased as 'ecclesiastical law required that the churches should pass no decisions contrary to the views of the bishop of Rome' (*HE* 2. 17. 8 = GCS, NF 1. 110).

cannot have been seriously considered that they should be held to review contested provincial or regional decisions. Under these circumstances the attention of the Serdican bishops was not unnaturally focused upon the bishop of Rome. Turner writes:

The thoughts of Ossius and of other Western churchmen could not fail to be drawn to the Roman See, with its large body of clergy, its central position, its immemorial antiquity, its acknowledged primacy, and to find in the Roman bishop a natural arbiter in the thorny question of episcopal appeals.⁶⁰¹

In an attempt to analyse the importance of papal leadership as a factor contributory to the Serdican appeal formula, it is difficult to determine how much weight should be assigned to the personal influence of Julius in the historical situation on the one hand and to the recognized primacy of the Roman see on the other. It is not within the scope of the present study to attempt to resolve the primacy question, but at least in its broad outlines it is necessarily relevant to the interpretation of the canons. It is clear that from a much earlier period a certain undefined primacy of leadership was attributed to the church of Rome,⁶⁰² but a fallacy perpetuated by many of those on both sides of the question has lain in the assumption that the early Roman leadership in general, and the Serdican recognition of it in particular, involved an attribution of jurisdiction. As our foregoing discussions have shown, formalized concepts of ecclesiastical administration were at this time only beginning to be expressed. In this context, the Serdican appeal canons represent a step backwards in this development in as real a sense as they represent a step forwards, for their emphasis lies not in a concept of jurisdiction but in one of moral *auctoritas* associated with honour. The canons constitute an agreement that the recognized leadership of the Roman bishop should have particular application under certain conditions. Both the application and the conditions later came to be viewed in exclusively juridical terms, but what was done with the Serdican Canons in the fifth and sixth centuries and beyond bears little relation to their meaning in the minds of those who framed them. Girardet views the canons as the first clear instance of the acknowledgement by others of the occupant of the See of Peter as the head (*Haupt*) of the Church not only in the spiritual (*geistlich*), but in

⁶⁰¹ 'The Genuineness of the Sardican Canons', p. 387.

⁶⁰² For recent even-handed treatments of this question see R. B. Eno, *The Rise of the Papacy* (Wilmington, DE, 1990), 11–65; and J. F. McCue, 'The Roman Primacy in the Patristic Era I: The Beginnings Through Nicaea', in P. C. Empie and T. A. Murphy (eds.), *Papal Primacy and the Universal Church* (Lutherans and Catholics in Dialogue, 5; Minneapolis, 1974), 44–72.

the legal (*rechtlich*) sense.⁶⁰³ While the Roman doctrine of papal authority and jurisdiction in the legal sense grew rapidly in the late fourth and early fifth centuries, there is little evidence for its articulation even at that time by representatives of other churches West or East. The Serdican formula represents a stage of development towards the notion of papal jurisdiction, but is not an attribution of it.

Precedent was not entirely lacking when Athanasius and other bishops deprived of their sees by the Eusebians sought support and assistance from Julius. We may, for example, cite the mid-third century cases of the two deposed Spanish bishops, Basilides and Martial, who invoked the aid of Pope Stephen; moreover, Fortunatus the Novatian sought recognition by the Roman church as the rightful bishop of Carthage, for among the churches of the West communion with Rome brought recognition by all others. Socrates tells us that at the council of Rome Athanasius and the others 'laid their cases individually before Julius, and he by virtue of the privileges enjoyed by the Roman church, . . . restored them each to their own see'.⁶⁰⁴ This is of course from a later perspective, and also an oversimplification of the case, but it does describe in exaggerated terms the role that Julius assumed and the prerogatives that were accorded to him.

The acknowledged leadership of the Roman see was the essential ingredient of the Serdican appeal formula. The Western-oriented Serdican documents themselves exhibit a deference to the Roman see specifically in terms of its primacy of honour. The suggested appeal procedure is introduced in canon 3 with 'sanctissimi Petri apostoli memoriam honoremus', and the Serdican Epistle to Pope Julius includes the following passage: 'This seems to be best and most suitable, if from the individual provinces the bishops (*sacerdotes*) of the Lord report to the head (*caput*), that is the see of Peter.'⁶⁰⁵ Two points for background

⁶⁰³ *Kaisergericht und Bischofsgericht*, 128–30. Girardet himself identifies the routing of the transition from moral to juridical *auctoritas*, pointing out that in canon 9 of Antioch ἔξουσία proceeds from τιμή (honour: 129 n. 96a), but we must also note that a non-juridical understanding of ἔξουσία at Antioch is confirmed by the final clause of the canon, in which it is said, 'neither let the latter (the metropolitan bishop) [do anything] without the consent of the others' (Lauchert, 45).

⁶⁰⁴ *HE* 2. 15. 3–4 (GCS, NF 1. 105–6).

⁶⁰⁵ §1 (CSEL 65. 127). While Caspar and others have considered this passage to have been a later interpolation, the evidence favouring its authenticity appears to outweigh that against it. Caspar argued that the passage is irrelevant to the context and that the expression *referre ad sedem Petri* was first used in the decretals of Innocent I: E. Caspar, *Geschichte des Papsttums*, i (Tübingen, 1930), 587 = 159 add. n. It is to be noticed, however, that this 'reporting' is not cited as an established custom, but as a fitting practice and that the idea is remarkably similar to that set forth by Julius himself in his letter to the Eusebians (see above). Jalland was of the opinion that the passage is probably authentic, and observed that *referre* was commonly used simply in the sense of 'to report' (*The Church and the Papacy*, 222 n. 4).

consideration should be noted. The first is found in the obligations to memory and honour and the *auctoritas* they confer on episcopal leadership. We have already seen this expressed in similar language in a letter from Cyprian to Stephen of Rome regarding two martyr predecessors of Stephen other than Peter,⁶⁰⁶ and it becomes clear here from that previous example that the capacity of Julius to undertake the role of arbiter is conceived of in terms other than those of authority of jurisdiction. The second is the apparently common practice in the West of reporting to the church of Rome as the recognized communications centre from which information is distributed to other churches. This is illustrated by the letter addressed to Dionysius of Rome and Maximus of Alexandria from the council at Antioch which deposed Paul of Samosata, both for conveying a report of Paul's deposition to the churches of the West and of Egypt and so that letters of communion could be sent to Paul's appointed successor.⁶⁰⁷ It is also shown by the letters of Cyprian to the Roman presbyters and deacons, *sede vacante*, and to the succeeding Roman bishops, Cornelius and Victor, reporting the decisions of African councils,⁶⁰⁸ and by the covering note sent to Pope Sylvester with a copy of the conciliar decisions at Arles.⁶⁰⁹ It is presumably in this context that it is considered *congruentissimum* if bishops report (*referent*) to the see of Peter.

It is quite apparent, however, that the immediately determining factor that led to the utilization of papal leadership in the appeal formula was the precedent that had been set at Rome regarding the case of Athanasius and the other episcopal exiles. In this respect the personal influence of Julius was considerable, for his action through the Roman council of 341 provided a precedent for the formula that followed.

But it is important to observe that this influence was only indirect and that the similarity between the action at Rome and the Serdican formula is only partial. This is made evident by the first two sections of canon 3. Section (a) has been considered previously in connection with canons 1 and 2, and we have seen that its relevance to the subject of appeal is limited to its expression of a transitional idea leading from the consideration of episcopal translations to that of episcopal interference in the affairs of a foreign province. By way of clarification we may recall that it forbids a bishop to enter another province unless invited to do so by his

⁶⁰⁶ Ch. 1 n. 106.

⁶⁰⁷ Eusebius, *HE* 7. 30. 1–3, 17.

⁶⁰⁸ *Epp.* 20, 27, 57, 68, 72.

⁶⁰⁹ CCL 148. 9.

brethren in that province. Section (b) of canon 3 is at the same time a clause of modification with respect to the foregoing and an entirely new proposal in its own right. It states that if in any province two bishops should have a matter in dispute, neither of them shall summon bishops from another province to arbitrate. Like canons 14 and 15 of Antioch, section 3b does not bear reference to the principle of appeal but to maintaining the rights of the provincial synod over its own affairs. It is evident that the appeal formula outlined in section 3c is a development from the thought here expressed, and it therefore seems probable that section 3b was framed with reference to the beginnings of the Athanasian affair rather than its end. We may recall that the most notable charges brought against Athanasius by the Eusebians at Tyre were those first raised by the Melitian schismatics in Egypt in a purely local dispute. Thus the Eusebian alliance with the Melitians may be viewed jurisdictionally as foreign interference in a provincial matter. It was apparently this factor that the bishops at Serdica singled out as the primary cause of the difficulties endured by Athanasius and many others, for the Serdican appeal legislation is essentially concerned with preserving the integrity of the provincial trial court and with providing an avenue of appeal from its judgement. While Athanasius' deposition at Tyre, his later appeal to Julius, and his restoration by the Roman council are undoubtedly reflected in the Serdican appeal procedure, none of these later events are subject to analysis in terms of provincial jurisdiction. For this reason the Serdican formula has no real application to these events and cannot be regarded simply as a ratification of the action which Julius had previously taken. Indeed, it is more than that; it is a measure designed to prevent matters of dispute from reaching the proportions that the Athanasian affair had assumed.

(iii) The Interpretation of Canons 3C(IIIc), 4(IV), and 7(V)

Like those of the past, recent commentators are divided regarding the intended meaning of the Serdican appeal canons. The fundamental difference in positions taken rests in the question whether one or two instances of appeal were provided for a bishop adversely judged by his comprovincial peers. The greater number of scholars currently support the view taken in the present study; that is, that only one instance of appeal was provided.⁶¹⁰ Those favouring two instances hold that a second

⁶¹⁰ Sieben, *Die Partikularsynode*, 194–7; Barnard, *The Council of Serdica*, 111–13; H. C. Brennecke, 'Rom und der dritte Kanon von Serdika (342)', *ZSSR* 100 = kan. Abt. 69 (1983), 23; Twomey, *Apotolikos Thronos*, 456–8; Wojtowytch, *Papsttum und Konzile*, 111–16; Pietri, *Roma Christiana* (Rome, 1976), i. 220–7; Girardet, *Kaisergegericht*, 120–3; id., 'Appellatio', 116–17.

and final appeal was allowed whereby the Roman bishop himself would decide the case.⁶¹¹ The language of the canons is admitted by most commentators on both sides of the question to be vague.

Section (c) of canon 3 provides that:

if some bishop shall have been judged in some matter (*in aliqua causa*), and thinks that he has a good case⁶¹² and that the judgement should be reconsidered, if it pleases you, let us honour the memory of blessed Peter the apostle, and let [a letter] be written to the Roman bishop either by those who heard the case or by bishops who reside in a neighbouring province. If he [the Roman bishop] shall decide that the trial is to be held again,⁶¹³ let it be repeated and let him appoint judges [from among the bishops of the neighbouring province, according to the Greek text]. But if he determines that the case is such that what has been enacted should not be reopened, what he has decreed shall be confirmed [Greek: ‘the judgement once pronounced shall not be changed’ (τὰ ἅπαξ κεκριμένα μὴ ἀναλύεσθαι τὰ δὲ ὄντα βέβαια τυγχάνειν)].⁶¹⁴

According to the Latin text the sentenced bishop may appeal either through the provincial judges or through the bishops of a neighbouring province, but in the Greek text the original judges only are named in this capacity. The Greek, however, stipulates that in the case of a new trial the Roman bishop is to select judges from among the bishops of the neighbouring province, while the Latin does not specify from whence they are to be chosen. It is important to note that the different readings in each of these contexts are caused by the presence or absence from the Latin of the phrase ‘ab episcopis qui in proxima provincia morantur’. It seems probable, therefore, that this phrase has been misplaced in the one text or

⁶¹¹ S. N. Troianos, ‘Der apostolische Stuhl im früh- und mittelbyzantinischen kanonischen Recht’, in M. Maccarrone (ed.), *Il primato del vescovo di Roma nel primo millennio* (Rome, 1989), 249–51; P. P. Joannou, *Die Ostkirche und die Cathedra Petri im 4. Jahrhundert* (Stuttgart, 1972), 86; W. Marschall, *Karthago und Rom: Die Stellung der nordafrikanischen Kirche zum apostolischen Stuhl in Rom* (Stuttgart, 1971), 111–12. None of these three authors provide textual analysis supporting their assertions. An argument against this position will be advanced below in relation to its earlier modern development by E. Caspar.

⁶¹² The Greek adds μὴ σαρξὸν ἀλλ’αἵ; the resultant reading is ‘not a bad cause, but a good one’. This insertion is not found in the Theodosian version (canon T5), and by reason of its superfluous nature it is suggested that it is a later addition to the Greek text.

⁶¹³ The Latin is specific, but the Greek text only implies that it is the Roman bishop who is to decide as to the necessity of a fresh investigation.

⁶¹⁴ The corresponding phrase in the Latin, ‘quae decreverit confirmata erunt’, is somewhat ambiguous, but its intended meaning is evidently the same as that of the Greek.

the other. Hefele has suggested that the phrase in question was written as a marginal note in an early Latin manuscript and that it was inserted one line too soon in subsequent transcription.⁶¹⁵ From evidence provided both by the Latin text of canon 7,⁶¹⁶ and by an analysis of canon 3 itself, it appears that Hefele's supposition is correct and that the Greek text preserves the original reading.⁶¹⁷ This explanation resolves both of the noted differences between the Latin and Greek texts, and brings canon 3c, which was the initial proposal regarding appeal, into closer harmony with the appeal material as a whole. We should expect that the judges would be chosen from a neighbouring region, for the sake of convenience if for no other reason, and that in accordance with section 3b bishops from another province would be jealously excluded from what would remain a provincial affair until such time as the case might be extended by the Roman bishop.

While the Roman bishop to whom appeal is to be made is referred to in the Latin simply as *Romano episcopo*, the Greek text specifically names Pope Julius in this connection. A similar difference between the texts is found in canon 10a(IXb). This second occurrence of the alternative reading leaves little doubt that the difference in both contexts has been caused by a deliberate alteration in the one text or in the other. Schwartz proposed that the Latin readings are original, and that Julius' name was added to the Greek text by the strongly Nicene bishop, Acholius of Thessalonica, soon after Pope Liberius' desertion of the Nicene party, and that this was done in order to exclude Liberius from the honour and privileges accorded to the Roman see by the canons in question.⁶¹⁸ It is difficult, however, to see why such an insertion should have been made in canon 3c alone and not also in the other appeal canons (4 and 7), or why, if only one insertion was intended, it was not made instead in canon 7, which would have been known to be the redacted resolution for the series. The historical circumstances from which the canon proceeds and the personalized character of the Serdican debate make it quite possible that the 'Julius' reading is original to canon 3c as initially proposed. It is clear from canons 4 and 7 that the prerogative was not intended to be limited

⁶¹⁵ Hefele–Leclercq, i/2. 765 n. 2.

⁶¹⁶ 'scribere [the Roman bishop] his episcopis dignetur qui in finitima et propinqua provincia sunt, ut ipsi . . . iuxta fidem veritatis definiant.'

⁶¹⁷ The reading found in the Theodosian version (T5) is evidently derived from the Greek: 'et scribatur ab his qui iudicaverunt causam damnati episcopi Iulio episcopo Romae per vicinos episcopos provinciae, et si oportet innovari iudicium, renovetur et iudicem ipse praebebit.'

⁶¹⁸ 'Der griechische Text der Kanones von Serdika', 27.

to Julius alone, and Ossius may well have included his name by way of illustration and of respect, as he did with regard to Gratus in canon 8. It is therefore suggested that the 'Julius' reading is original both in canon 3c and in canon 10a, and that it was deleted from the Latin text at Rome after the death of Pope Julius himself. This was apparently the opinion of the sixth-century canonist, Dionysius, for the insertion of the name 'Julius' in canon 3c was one of the few alterations which he made in the Latin Serdican text by way of influence from the Greek.

Canon 4, being a protective amendment to canon 3c, proposed by Gaudentius of Naissus, provides that if a bishop has been deposed by judgement of his comprovincials, and shall appeal to the Roman bishop for a revision of his case, another bishop shall not be appointed to the see until the worthiness of the condemned bishop's cause has been determined. The Latin text reads as follows:

Let it be added, if it pleases you . . . When any bishop has been deposed by the judgement of those bishops who dwell in neighbouring places, and has announced his intention to pursue the matter in the city of Rome, another bishop shall absolutely not be ordained in his place in the same see after the appeal of him who seems to have been deposed, unless the case shall have been determined by the judgement of the Roman bishop.

By reason of its somewhat ambiguous wording in both the Latin and Greek texts, this proposal has been interpreted independently from canon 3 by some commentators as providing for a second court of appeal wherein the pope himself may give final judgement.⁶¹⁹ The critical phrase, 'proclamaverit agendum sibi esse negotium in urbe Roma' ('has announced his intention to pursue the matter in the city of Rome')—and also its Greek counterpart, καὶ φάσκει πάλιν⁶²⁰ ἑαυτῷ ἀπολογίας πρᾶγμα ἐπιβαλεῖν ('and claims that he has a matter to add in his defence')—has been construed to mean that the case itself is to be retried in Rome, and the final phrase, 'nisi causa fuerit iudicio Romani episcopi determinata' ('unless the case shall have been determined by the judgement of the Roman bishop'), to mean that final judgement on the case itself is to be given by the Roman bishop. In accordance with this exposition of the

⁶¹⁹ Twentieth-century exponents of this view are von Hankiewicz ('Die Kanones von Sardika', 63–7), Joannou, who follows the Byzantine commentators Zonaras and Balsamon (*Die Ostkirche*, 86), and Caspar, whose position is discussed below.

⁶²⁰ It is to be noted that the Greek, 'claims that he has a matter in defence', corresponds to the Latin reading, 'has announced his intention to pursue the matter in the city of Rome'. This divergence between the texts is attributed to liberty of interpretation on the part of the Greek translator at Serdica.

canon the phrase ‘*episcoporum iudicio qui in vicinis commorantur locis*’ (‘by judgement of those bishops who dwell in neighbouring places’) has been viewed as a reference not to the original trial of the bishop by his comprovincials, but to the court of appeal provided for by canon 3c. Against this interpretation, however, we note that the nature of canon 4 as simply a protective amendment to canon 3c is made evident by its place in the verbal process, by its introductory clause, and by the fact that the consideration expressed by the main clause—that the vacant see may not be filled while the appeal is pending—proceeds directly from the circumstances envisaged by the previous canon. As the two clauses in canon 4 that bear reference to the process of appeal are grammatically dependent upon this main clause, it would seem that they must be interpreted within the frame of reference provided by the initial proposal in canon 3c. It is probable that canon 4 was formulated in reference to the appointment of Gregory of Cappadocia to the see of Alexandria in 339.

The Latin version of canon 7(V) states that:

if a bishop has been accused and the assembled bishops of his region have judged him and removed him from his office and he seems to have appealed and has fled to the most blessed bishop of the Roman church, and wishes to be given a hearing⁶²¹ and [the Roman bishop] thinks it just [that] his trial be repeated, let him [the Roman bishop] deign to write to those bishops who are in a bordering and neighbouring province that they may diligently inquire into the entire matter and honourably reach a conclusion as to the truth. But if he who asks that his case be heard again moves the Roman bishop by his supplication to send presbyters⁶²² *a latere*, let it be in the power of the [Roman] bishop [to do] what he wishes or what he thinks. And if he decides to send those who will judge with the bishops having the authority of him by whom they were sent, let that be his choice. If, however, he shall believe the bishops⁶²³ [themselves] to suffice for bringing the matter to conclusion, let it be as he decides by his most wise judgement.

While reiterating much of canon 3c, this final resolution supplements the initial proposal and more fully outlines the procedure for setting up the court of appeal. Canon 3c is intended to provide the right of appeal to

⁶²¹ Turner's reconstruction of the Latin text, following the majority of the Latin variants, reads: ‘et appellasse videatur et confugerit ad beatissimum ecclesiae Romanae episcopum, et voluerit audiri’ This may be interpreted only to mean that the appellant himself wishes to be given a hearing; but the important Chieti version reads: ‘... Romanae episcopum, eum voluerit audiri[e?]’ This is patient of the meaning conveyed by the Greek, as given in the text above; and from its meaning in context it would appear to be closer to an original *et eum voluerit audire*. Cf. Turner, *EOMLA* i. 460, l. 8 n..

⁶²² The Latin text gives the singular, *praesbyterum*, in this instance and the plural later in the canon. The Greek uses the plural in both cases.

⁶²³ The Greek gives the singular ἐπισκόπου.

the Roman bishop through the judges of the first court in all cases in which a sentenced bishop so desires; canon 7 additionally directs that the condemned himself may present his case before the Roman bishop. The reason for this alteration seems to arise from the circumstances in which such appeal would be made. Athanasius and others similarly sentenced had been given no consideration by their judges and it must have been evident to the bishops at Serdica that if the right of appeal was to have any real application to the furtherance of justice, provision must be made for its exercise by the appellant himself. This is the course which had in fact been already followed by the refugees at Rome in 339/41. The provision for the personal representation of the Roman bishop by presbyter delegates invested with his own authority has little effect upon the nature of the court of revision; they are simply to add the weight of their judgement to that of the appointed judges. Troianos has proposed that they were to preside at yet a second review of the case, and that the pope himself might personally make the judgement,⁶²⁴ but regardless of the ambiguities of language this interpretation clearly goes beyond the intent of the canon. It was Hefele's opinion that the papal delegates would normally preside in the court,⁶²⁵ but there is no indication of this in the text of the canon and it does not seem likely that they would have done so. By its stated purpose the provision for their presence guarantees a fair appraisal of all the facts of the case in the event that the appointed judges alone are not considered capable for the task. A precedent for the presence of two papal presbyter representatives at regional or general councils had apparently first been set at Arles, and we find such delegates again at Nicaea and at Serdica,⁶²⁶ not as presiding officials but as representatives of the person and interests of the Roman bishop.

Girardet,⁶²⁷ following Ernst Stein,⁶²⁸ has continued a discussion of the possible influence which civil procedures may have had on the framing of the Serdican appeal procedure. A ruling by Constantine in 331 (Theodosian Code 11. 30. 16)⁶²⁹ provided for appeals of decisions by judges below the judicial rank of praetorian prefect. On notification by the aggrieved, the trial judge was obliged to submit an appeal with the

⁶²⁴ 'Der apostolische Stuhl', 250.

⁶²⁵ Hefele-Leclercq, i/2. 770.

⁶²⁶ The names of these appear in the subscriptions to the acts of each of the three councils. See Mansi, ii. 476 (Arles), 692 (Nicaea); iii. 42 (Serdica).

⁶²⁷ Girardet, 'Appellatio', 117–20, *Kaisergericht*, 127–8; and see Brennecke, 'Rom und der dritte Kanon von Serdika', 23–4.

⁶²⁸ Review of E. Caspar, *Geschichte des Papsttums*, i, in *Byzantinische Zeitschrift*, 32 (1932), 120.

⁶²⁹ *Theodosiani Libri XVI*, 628; Pharr, *Theodosian Code*, 324–5.

requisite testimonies and evidences, and, the emperor, if he deemed the appeal to be worthy, would have judges appointed (*det iudices*)⁶³⁰ for a *renovatio iudicii*. In similar fashion, canon 3c (both Latin and Greek) directs the submission of an appeal to the Roman bishop through the original provincial episcopal judges and specifies that, if he agrees that the case has merit, he may appoint judges (*det iudices*) from among the bishops of the neighbouring province (see above for the proposed correction of the Latin version for conformity to the meaning of the Greek) so that it may be retried. Let it be noted that in canon 4 (Latin: *appellationem*) and canon 7 (both Latin and Greek: *appellasse videatur* and ὕψις τοῦ πρὸς ἐκκαλεσάμενος) the petitionary action is called an appeal and that the action sought is twice referred to in canon 3c and once in canon 7 with the use of the verb *renovare*. Also, additionally in canon 7 the procedure is open to initiation by the appellant himself, judges again are appointed from among the bishops of the neighbouring province, and presbyters may be sent *a latere* by the Roman bishop, bearing his authority to judge together with the bishops appointed. The notable parallels between the civil and ecclesial procedures make it probable that the civil were used as a model at Serdica.

On the basis of his previously considered argument that depositions by provincial synods are not open to appeal, Girardet, again following Stein, further proposes that the Serdican procedure is parallel not to the situation in which the civil judges were of lower judicial rank, from whose judgement appeals were allowed, but to one in which the judges were praetorian prefects, who were themselves representatives of the emperor and whose judgements were thereby inappellable. The Serdican retrial, with a new set of neighbouring provincial episcopal judges, would, in Girardet's view, be analogous to the *retractatio*—the retrial of a case previously decided by a praetorian prefect, which could be gained not by *appellatio* but by *supplicatio*.⁶³¹ This hypothesis seems dubious. First, the vocabulary of the Serdican legislation in its own modest way is a witness against it (*renovatio*, *appellatio*). Secondly, Girardet's case for the inappellability of decisions at provincial level (as discussed in §i above) has been here rejected, which removes the necessity—if one is convinced that some civil model must have been employed—of seeking another procedural mechanism beyond that of simple appeal for the reconsideration of provincial decisions.

There is no need to discuss the various interpretations given to the

⁶³⁰ M. Kaser, *Das römische Zivilprozessrecht* (Handbuch der Altertumswissenschaft, 10. Abt. 3/4; Munich, 1966), 289 *et passim*.

⁶³¹ Ibid. 623.

Serdican appeal canons during the extensive controversies in the seventeenth and eighteenth centuries between the Gallican and Ultramontane canonists. The main topics of debate are treated by Hefele and also latterly and more fully by Sieben.⁶³² The one point that calls for further consideration has been presented by several authors in the present century as well as previously. This is the contention, mentioned above, that either canon 4 or canon 7 establishes the right of a second supplication in a case of episcopal deposition whereby the Roman bishop may render a final decision. An examination of this claim both reveals its weakness and demonstrates the coherence and the single purpose of the three appeal canons as envisioned by their authors.

An ingenious presentation of the case for a second supplication was made by Caspar, who, accepting the principal conclusions of von Hankiewicz, based his argument upon the supposed priority of the Greek text. The main outlines of his exposition are as follows.⁶³³ Canon IIIc stands in isolation from canons IV and V and is concerned not with appeal, but with a process of revision, because in the case of true appeal the person addressed renders the judgement. In canon IIIc this condition is not fulfilled. IIIc, he maintains, provides for the revision of all cases of litigation and was proposed for the purpose of vindicating the restoration of Athanasius by the council of Rome. In support of this contention, Caspar argues that the phrase 'let those who judged the case write to Julius, the bishop of Rome' has been patterned after the similar phrase in Julius' letter to the Eusebians, 'it is customary first to write to us that just judgement may be given from here.' Caspar maintains that canons IV and V are concerned only with the special case of deposition, and make provision for a true appeal to the pope alone, who may pass final judgement on a contested sentence either through his presbyters or in person. Thus he argues that, as canon IIIc supports the action taken by the council of Rome, canon V is a vindication of the action at Serdica, for there the personal judgement of Julius was ratified, having been made known through the two Roman presbyters Archidamus and Philoxenus, who represented his full authority. The decision at Serdica to restore Athanasius to his see was therefore a conscious assent to the 'just judgement of Julius', referred to in the conciliar letter to the churches of Egypt and Libya,⁶³⁴ and the canon itself was similarly a seal of approval upon

⁶³² Hefele–Leclercq, i/2. 771–6; Sieben, *Die Partikularsynode*, 215–26.

⁶³³ 'Kleine Beiträge zur älteren Papstgeschichte: IV. Zur Interpretation der Kanones III–V von Sardica', *Zeitschrift für Kirchengeschichte*, 47 (1928), 164–77.

⁶³⁴ Athanasius, *Apol. contra Arianos* 41 = PG 25. 320 A .

Julius' decision and a recognition of the prerogatives of universal jurisdiction inherent in his office.

A preliminary objection to Caspar's exposition arises from his failure to deal with the fact that the canons are, as we have seen, explicitly concerned with a process of appeal from a judgement of the provincial trial court, while the action taken at Rome and Serdica regarding Athanasius and others lies completely outside this context. Equally fundamental, however, is the fact that there is no previous or contemporary evidence that such extraordinary authority as complete jurisdiction over all cases of deposition was anywhere at that time conceded to the Roman bishop. Even the prerogative claimed by Julius himself, quoted by Caspar in connection with canon IIIc, is not this extensive. Certainly the African rejection of Roman jurisdiction in the early fifth century regarding the case of Apiarius of Sicca shows that the acceptance of the then explicit claims of jurisdiction by Rome was slow in coming. Caspar's contention that canons IV and V are a recognition of Julius' right to act as sole judge is not only lacking in historical evidence, but is in fact vitiated by the phrase called upon to support it. Rather than acclaiming the 'just judgement' of Julius, the Serdican bishops write: 'it became evident that the decision of our brother and fellow bishop Julius [concerning communion with Athanasius] was a just one.'⁶³⁵ Nothing is here implied about either the ability or the right of Julius to judge in any capacity other than that of their fellow bishop.

The evidence provided by the canons themselves also leaves Caspar's interpretation without support. We may admit that the final clause of canon V is ambiguous with respect to the nature of the decision that the Roman bishop is to render, although to interpret it outside the context of the preceding canon upon which it depends means reading a great deal into the text as it stands. It is difficult to see, however, where in canon V Caspar, like others before and after him, can find a clause implying sole judgement by the Roman bishop, which is not followed by a clause excluding it. Although the Greek reading of canon V—καὶ βουληθεῖη αὐτοῦ διακοῦσαι δίκαιον ('and he wishes to hear him') = canon 7, *et voluerit audiri* (*audire?*)—is undoubtedly correct, the nature of the hearing that the appellant is to receive is clearly shown in connection with further passages in the same canon, and by comparison with canon IIIc, to provide information to aid in a papal decision as to whether his case is worthy of reconsideration. Furthermore, the canon explicitly associates the Roman presbyters with the appointed court of bishops, in the case

⁶³⁵ See previous n.

that presbyters are sent, and does not leave an open possibility that the presbyters may judge without them.

For these reasons the distinction between appellate jurisdiction and the process of revision does not seem applicable to the present problem of interpretation, nor can an essential difference in this respect between canon IIIc and canon V be forced from the evidence. The similar claims more recently advanced by Troianos and Marschall for a second instance of appeal⁶³⁶ whereby the Roman bishop may resolve the cases by himself meet with the same difficulties as those that defeat Caspar's thesis.

(iv) Canon 17(XIV)

Canon 17 assures the right of appeal to any presbyter or deacon who has been hastily cast out or condemned by his bishop. The appeal is to be made to the neighbouring bishops, who are to give him a hearing and diligently examine his case, and if they find that the cleric has been unjustly condemned, his own bishop must abide by their decision. It is added that until the matter has been concluded no one shall admit the appellant to communion.⁶³⁷

In place of the Latin 'habeat potestatem eictus ut finitimos interpellet [*episcopos*]' ('let the one cast out have the power to appeal to the neighbouring [bishops]') the Greek directs that the deprived cleric shall take refuge with the metropolitan of the province, but that if he is away then he shall seek the aid of the nearest bishop.⁶³⁸ In view of the apparent deletion of an original reference to the office of the provincial metropolitan from the Latin version of canon V (canon 7), and also of the mention made of this office by both texts in canon 9b(IXa), it is suggested that the Greek reading in the present context is the original and that a parallel passage has been omitted from the Latin.⁶³⁹ Although the longer reading of the Greek is not found in the Theodosian, it is probable that it was originally present in that version and later deleted, perhaps by influence from the Latin text at the time of translation. The Theodosian (T18) reads: 'Let the one cast out have permission to take refuge with the

⁶³⁶ See above, n. 30 for references to these authors' specific statements. Joannou bases his argument on an interpretation of canon 4 that we have rejected above.

⁶³⁷ See canon 16 (above, Ch. 8, §vii).

⁶³⁸ Εἰ δὲ ὁ τῆς μητροπόλεως ἄπεστιν ἐπὶ τὸν πλησιόχωρον κατὰ τὸ ἔχειν might be interpreted to mean the metropolitan of a neighbouring province, but this does not seem likely either from the context or in consideration of the jurisdictional problem to which such action would give rise.

⁶³⁹ See below, Ch. 10, §iii.

neighbouring metropolitan bishop of the same province' (*Eiectus habeat licentiam apud metropolitanum episcopum eiusdem provinciae vicinum refugere*). The brothers Ballerini first noticed the difficulty caused in this phrase by the presence of *vicinum*, and made the plausible suggestion that *vel si metropolitanus abest, ad* should be inserted after *provinciae*.⁶⁴⁰ This would bring the Theodosian into agreement with the Greek from which it was presumably translated.

The canon is an expanded repetition of canon 5 of Nicaea. The difference between the two consists only in the greater degree of provincial organization presupposed by the Nicene ruling, whereby a twice-yearly provincial synod for the examination of such cases is directed. The same right of appeal for clerics is assured by canon 6 of Antioch,⁶⁴¹ which similarly forbids the reception of the excommunicate until he has been restored by his own bishop or by the provincial synod. This function of the provincial synod shows a development of the judicial process within the framework of Eastern provincial organization that was in no way equalled in the West at this time. Canon 11 of the Carthaginian council of 345, for example, stipulates that deacons under accusation are to be heard by three neighbouring bishops, presbyters by six, and bishops by twelve fellow bishops. This panel of trial judges is not the developed provincial body, nor is the unspecified panel of neighbouring bishops provided by canon 17 of Serdica.

⁶⁴⁰ *S. Leonis Magni opera*, 'Vetus interpretatio latina canonum nicaenorum, sardicensium et chalcedonensium', iii. 595 n. 14 (= PL 56. 837 n. c).

⁶⁴¹ See also canons 4, 12, and 20 of Antioch.

10 Episcopal Visits to the Imperial Court

(i) Episcopal Representation and Imperial Favour

Considerable discussion took place at Serdica over the question of episcopal visits to the imperial court. Canons 8(VII) to 12 (lacking in the Greek) are a record of the agreements made in this regard, and impose definite limitations on the practice. It was the concern of the council to prohibit ambitious or questionable representations by individual bishops, to define causes of petition that should be considered legitimate, and to regulate the way in which admissible representations might be made. In canon 8 we are told that excessively frequent solicitation and unjust petitions on the part of certain ones who had made repeated visits to court had resulted in a general lack of esteem and confidence in the episcopate. Especially to blame, Ossius relates, were the Africans, who, as the council had apparently learned, scorned and disparaged the 'wholesome advice of . . . Gratus'. It is evident, however, that this and the four subsequent proposals were not made in reference to the ambitious Africans alone. Inasmuch as the problem outlined by Ossius was common to the Church as a whole, this allusion was probably made by way of illustration as well as of rebuke. The kind of petition condemned throughout the discussion is that of the designing favour-seeker, who 'against the judgement of all, wishes to climb with ambition more than to please God' (canon 11), and has sought 'to ask for both secular honours and services for certain persons' (canon 8). It is acknowledged that such requests cannot be made 'without the ill will of all and without censure' (canon 10b), and that 'because of the shamelessness of a few . . . the holy and venerated sacerdotal name has become blameworthy' (canon 11).

The underlying cause of the situation dealt with by these canons is found in the new and yet largely unregulated relationship between Church and State. The emperor, who had until recently been the persecutor of the Church and was now its protector, was also found, to

the detriment of ecclesiastical discipline and order, to be a patron of the causes of those bishops who gained his favour. The imperial court quickly became an arena of competing episcopal interests, and this in turn provided the emperor with a ready opportunity not only to seek counsel in church affairs as needed but to intervene in those affairs as he saw fit.

The abuse condemned by the canons is but one of the several problems arising from a Church–State relationship that threatened to undermine the authority of the Church in the management of its own affairs. The intervention of Constantine in the Donatist controversy made its settlement impossible through the normal operation of collective judgement within the Church. The doctrinal formula of Nicaea, however truly representative of the mind of the majority, owed a large measure of credit for its initial success to the concurrence of the emperor. The long period of doctrinal uncertainty that ensued, dominated as it was by personal issues, owed its intensity to an ecclesiastical authority rendered ineffective by the fact that its operation was limited, and also determined, in the larger issues by the particular policy that commended itself to the secular power. In these circumstances he who gained the favour of the emperor was in a position of decided advantage. In this way, Eusebius of Nicomedia and Theognis of Nicaea, both of whom were exiled shortly after the council owing to the recantation of their subscription to its decisions, were restored to their sees a few years later by Constantine, and their appointed successors, Amphion and Chrestus, were dispossessed. The same emperor was turned against Athanasius, Eustathius of Antioch, and others through the influence of Eusebius and his followers. The rise of the Eusebian party and the continuance of controversy can to a great extent be attributed to the relationship of Eusebius of Nicomedia to the imperial family and to his friendship with Constantine's mother and sister. The problem became even more acute with the death of Constantine and the subsequent division of the empire among his heirs, for the sympathies of Constantius in the East lay with the Eusebians, and those of Constans and Constantine II in the West with the Nicenes. While Athanasius returned to Alexandria in 338 with the support of the Western authorities, his successor Gregory was ushered into the city soon afterwards by the troops of Constantius. Eusebius of Nicomedia was translated to the important see of Constantinople with the backing of this patron of the Arian cause, and Athanasius was reinstated at Alexandria in 346, not by the force of the decisions at Serdica, nor of those at the Roman council of 341, but by a reversal of policy on the part of Constantius.

Irrespective of their intended applications, the canons of both Serdica and Antioch demonstrate an awareness on their authors' part that this confusion of the powers of Church and State was in need of clarification, and that the ultimate re-establishment of ecclesiastical authority, no less than the settlement of the personal issues, depended upon the limitation of secular intervention, whether solicited or spontaneous. Canon 11 of Antioch declares that any bishop, presbyter, or other cleric who shall go to the emperor without the consent and letters of the provincial bishops and metropolitan shall be deposed. Canon 12 deprives the right of a further hearing to one deposed by a council who shall have appealed to the emperor. While the bishops at Serdica declined to lay claim to total independence from imperial supervision, the conciliar letter to the Emperor Constantius⁶⁴² manifests their desire for jurisdictional clarification. In this letter a request is made for the non-interference by civil officials in ecclesiastical affairs, and also for the return of exiled bishops to their sees. Continuing, the letter points to the injustice of spreading falsehood by force and the appeal to imperial authority by the Eusebian party to achieve its ends.⁶⁴³

From these statements we see that the bishops at Serdica were deeply concerned with the underlying causes of the disciplinary problem dealt with by canons 8–12, and it is certain that the canons themselves, while dealing specifically with personal petitions, have an intended application to the larger problem. This was the opinion of Schwartz, who suggested that they were directed against the African petitions for imperial aid in the suppression of the Donatists.⁶⁴⁴ We may also observe that the encyclical letter of the Alexandrian council of 338 alludes to an incessant petitioning at the court on the part of the Eusebians against Athanasius and other notables of the Nicene party.⁶⁴⁵

(ii) Canons 8(VII) and 10B

Although the presentation of frequent and ambitious petitions is condemned, a clear distinction is drawn between the evil of this and the propriety of intercession for the poor and the oppressed and for widows and orphans.⁶⁴⁶ It is also provided in canon 8 that petitions for pardon should

⁶⁴² See above, Ch. 4, §iii.

⁶⁴³ CSEL 65. 182, 185–6.

⁶⁴⁴ 'Der griechische Text der Kanones von Serdika', 4.

⁶⁴⁵ Athanasius, *Apol. contra Arianos* 3. 7 (*Werke*, ii/1. 90).

⁶⁴⁶ 'People' (λαῖνός) in the first instance in the Greek text, owing to a mistaken reading of *populis* for *pupillis* in the Latin (see Ch. 5, §iii).

be presented on behalf of those who suffer injustice and flee to the mercy of the Church, and for those who are exiled or receive any kind of sentence. In addition to the restrictions imposed upon the kinds of petitions which may be made, it is agreed that no bishop may go to the court unless he is invited or summoned by letters from the emperor. Canon 10b, which is omitted from the Greek, is the *sententia* of Alypius of Megara on the subject of canon 8 and contains nothing which had not already been expressed.

It is probable that the phrase ‘ad misericordiam ecclesiae confugiant’ in canon 8 is a reference to the privilege of sanctuary in Christian church buildings which was granted to those charged with civil crimes. The earlier recognized right to asylum in pagan temples was first given legal application to Christian churches late in the fourth century under Theodosius. It is the opinion of several authorities, however, that this privilege became unofficially recognized by the middle of the fourth century, and that the Serdican canon is the earliest known reference to its practice.⁶⁴⁷ An interesting parallel passage that gives considerable support to this opinion is found in the acts of the council held at Carthage on 27 April 399. It was decided that two bishops should be sent to the emperor to request ‘that for those taking refuge in a church, in whatever crime they are involved, they might obtain a law from the most glorious princes that no one should presume to force them away’.⁶⁴⁸

(iii) Canons 9A(VIII), 9B(IXa), and 10A(IXb)

In canon 9a—paralleled by VIII—it is stated:

Whoever has or has received requests such as we have mentioned before, let him send [them] by his deacon, for the person of an agent will not be envied, and he will be able to report more quickly what he has accomplished.

The Latin text continues in 9b (paralleled by IXa):

And this seems to follow: that from whatever province (*de qualibet provincia*) bishops should send their requests to their brother and fellow-bishop who is established in the major city, that is the metropolis (*ad eum fratrem et coepiscopum nostrum . . . qui in maxima civitate, id est metropoli, consistit*, in close agreement with the Greek of IXa: ἐν

⁶⁴⁷ F. Martroye, ‘L’asile et la législation impériale du IV^e au VI^e siècle’, *Mémoires de la Société nationale des antiquaires de France*, 8th ser. 5 (1918), 160, 168–9; H. Leclercq, ‘Droit d’asile’, *DACL* iv (1921), 1551; and the section entitled ‘L’asile’ in Gaudemet, *L’Église dans l’empire romain*, 282–87.

⁶⁴⁸ See the *Reg. eccl. Carthag. excerpta* 55 (CCL 149. 194, ll. 393–6).

οἱ ἄδηποτοῦν ἐπαρχίᾳ ἐπίσκοποι πρὸς ἀδελφὸν καὶ συνεπίσκοπον ἑαυτῶν . . . ὁ ἐν τῇ μείζονι τυγχάνων πόλει, τοῦτ' ἔστι τῇ μητροπόλει), that he should send his deacon and the petitions,⁶⁴⁹ providing commendatory letters of like intent to our brothers and fellow bishops who at that time are staying in those regions and cities in which the auspicious and blessed⁶⁵⁰ Augustus governs the state.⁶⁵¹ If any [bishop] has friends in the palace [of whom] he wishes to request something (if it is honourable), let it not be prohibited to ask and indicate it through his deacon to those who he know can present [his requests] by kindly intercession in his absence.

The canonical ruling itself is straightforward and needs no comment except for the identity of the deacon sent to the court, which will be treated below, but the agreement between the Latin and the Greek texts in the phrase '[our] brother and fellow-bishop who is established in the major city, that is the metropolis' holds considerable significance as an explanatory reference to the office of the provincial metropolitan. This is the only shared reference to the metropolitan in the Serdican series as we have received it, although we have suggested that the similar passage *primus episcopus provinciae, hoc est episcopus metropolis* ('the first bishop of the province, that is the bishop of the metropolis') was probably present in the original wording of Latin canon 5, paralleling the phrase in Greek VIa.⁶⁵² The only other reference to the metropolitan in the Serdican series is in canon XIV of the Greek with its direct reference to 'the metropolitan of the same province' (τῆς μητροπόλεως τῆς αὐτῆς ἐπαρχίας). This is absent from the Latin text, which refers instead to 'the neighbouring [bishops]'. The Latin reading would seem to be the original and the Greek to be an emendation by the first Greek editor. From the tenor of the Serdican series as a whole regarding church organization, we may presume that the indirect, explanatory references to the metropolitan, as in the presumably original reading of canon 5(VIa) and in canon 9b(IXa), were the habitual fashion of reference to the Eastern office of metropolitan employed by Ossius when speaking to fellow Westerners. The same manner of reference is found in the Latin translation of the canons

⁶⁴⁹ 'ille et diaconum eius et supplicationes destinet.'

⁶⁵⁰ The Greek reading here is ὁ εὐσεβέστατος βασιλεύς. The difference from the Latin is likely due to simple omission by a Greek scribe.

⁶⁵¹ It is possible that some of the bishops that Ossius had in mind would have belonged to the court retinue, perhaps as ecclesiastical advisers to the emperor, but the majority seem to have been considered temporary residents, as is shown by the use of *illo tempore*. See E. D. Hunt, 'Did Constantius II have "Court Bishops?"', *Studia Patristica*, 19 (1989), 86–90; Hefele–Leclercq, i/2. 788 n. 3. A. H. M. Jones concluded that the general success of churchmen lobbying at the court was meagre: *The Later Roman Empire* (284–602), 2 vols. (Oxford, 1964), i. 361.

⁶⁵² See Ch. 7, §i.

of Nicaea that was preserved at Rome from an early date and is thought to have originated not long after the council itself.⁶⁵³ In canon 4 of this version of the Nicene series the phrase *qui in ampliori civitate provinciae videtur esse constitutus, id est in metropolim* ('who is seen to be established in the greater city of the province, that is in the metropolis') occurs in place of τῷ μητροπολίτῃ in the original Greek text and in canon 6 of the Latin version the words 'Si quis sine arbitrio eius qui est in metropolim constituerit episcopum' ('If anyone shall have appointed a bishop without the consent of him who is in the metropolis'), in place of 'the consent of the metropolitan' in the Greek, are used in reference to the same office.⁶⁵⁴

It is generally agreed that the office of the provincial metropolitan did not develop in the Latin Church until the late fourth and early fifth centuries, and that in the absence of this office the bishop of Rome exercised an effective primacy over Italy, Gaul, and Spain, and the bishop of Carthage over all of Africa.⁶⁵⁵ Although in both Africa and Spain a prerogative of leadership was enjoyed by the senior bishop in each province, his primacy was honorific rather than hierarchical.

This brings us to the first of two notable differences between canon IXa of Serdica and its Latin counterpart 9b in the phrases ἐν οἱᾷδηποτοῦν ἐπαρχία ('in whatever province') and 'de qualibet provincia' ('from whatever province'). In view of the fact that the 'bishop who is established in the major city, that is the metropolis' is clearly the provincial metropolitan, Ossius would hardly have proposed that petitions should be sent to him *from* every province, but would instead have directed that they should be sent to the metropolitan *in* every province. It is quite possible that a Roman or Italian scribe, ignorant of the metropolitan system, changed *in* to *de* on the supposition that the 'bishop of the major city' could only be the bishop of Rome.

If this was the case, it may be suggested that the omissions of reference to the metropolitan in canons 5 and 17 and the interpretational alteration just discussed in canon 9b were made by the same scribal editor. The three cases appear to fall into a purposeful pattern which has the deletion of references to the metropolitan as its object. Considering that all the Latin recensions agree upon these points of difference from the Greek,⁶⁵⁶

⁶⁵³ In the 'Chieti' version preserved in Codex Ingilrami (*EOMLA* i. 117, 121). For discussion of this version see Ch. 2, §viii and nn. 77–8.

⁶⁵⁴ Lauchert, 38, 39.

⁶⁵⁵ The same situation prevailed in the provinces of Egypt and Libya, over which the bishop of Alexandria enjoyed a similar administrative primacy. On the development of metropolitan jurisdiction, again see Vogel, 'Circonscriptions ecclésiastiques', 273–82.

⁶⁵⁶ *EOMLA* i. 458, 466, and 480.

this editor must have done his work at an early date and may well have been the scribe who, as has been suggested, joined the canons of Serdica to the canons of Nicaea at Rome.⁶⁵⁷

Secondly, although ambiguity exists in both texts of canon 9b(IXa), the Latin seems to direct that the deacon of the petitioning bishop should be sent to the court (*ut ille et diaconum eius et supplicationes destinet*), while the Greek more clearly directs that the metropolitan should send his own deacon (αὐτὸς καὶ τὸν διάκονον αὐτοῦ καὶ τὰς δεήσεις ἀποστέλλοι). Schwartz, supposing the priority of the Latin text, was of the opinion that the alteration of the identity of the deacon took place during translation of the Latin into the Greek.⁶⁵⁸ The identity of the person of the deacon in the Greek text, however, seems to have been established by the second Greek editor, for the reading found in the Theodosian version (*ipse* [the metropolitan] *et diaconum et preces eius destinet*) clearly identifies the deacon as that of the petitioner, and reinforces our interpretation of the Latin. That the identity of the deacon is correctly given by the Latin text is also shown by the unmistakable references made in both the Latin and Greek further on in the same section of the canon to the presence of the petitioner's deacon at the court ('if any [bishop] has friends among the bishops in the palace . . . let it not be prohibited to ask and indicate it through his deacon'), and in the directive given in the previous section of the canon (9a (VIII)) that the petitioner's deacon is to be sent. Furthermore, Ossius later spoke of the petitioner's deacon in this respect in canon 12.

The reading in the older printed editions of the Greek text weakens the strong recommendation in the Latin for the presentation of petitions through the metropolitan by the inclusion of 'if' (εἰ or εἴαν) at the beginning of the opening clause.⁶⁵⁹ Hefele, working from these editions, inferred that the presentation of petitions through the metropolitan is offered by the Greek as an optional course of action.⁶⁶⁰ Turner, however, omitted the conjunction 'if' in his critical edition of the Greek,⁶⁶¹ and we may observe that it is not found in the Theodosian version, which reads: 'Et hoc consequenter esse puto, ut in quacumque provincia . . .'. It therefore appears that Hefele is incorrect and that the proposal is to be interpreted in both texts as a positive requirement.

In view of the fact that the provincial metropolitan was at this time an Eastern institution, the stipulation that petitions are to be sent first to the

⁶⁵⁷ See Ch. 2, §viii; Ch. 6, §i.

⁶⁵⁸ 'Der griechische Text der Kanones von Serdika', 8.

⁶⁵⁹ e.g. Mansi, iii, 12 E .

⁶⁶⁰ Hefele-Leclercq, i/2. 788.

⁶⁶¹ *EOMLA* i. 506; cf. Appendix below.

metropolitan of each province for approval and commendation provides a strong indication that the ‘court canons’ were primarily directed against the practices of the bishops in the Eastern provinces rather than those of the Africans as Schwartz has suggested. It also shows, as does canon VIa, that Ossius and other Western leaders at Serdica were not unfamiliar with the office and prerogatives of the metropolitan bishops. It can hardly be coincidental that the procedure which the Serdican ruling prescribes is the same as that ordered by canon 1 of Antioch, by which no bishop or cleric is allowed to make representation to the emperor without the permission of and letters from the metropolitan and other bishops of the province.

Canon 10a reads:

As for [those bishops] who come to Rome, as has been said previously, let them deliver to our most holy brother and fellow bishop [Ιουλίῳ]⁶⁶² of the Roman church, the petitions that they have, so that he too may both first examine whether they are honest and just, and exercise attentiveness and care that they may be taken to the court.

The interpretation of this section seems to depend largely upon the import of ‘as has been said’ (*sicut dictum est*), for this referential phrase is evidently intended to relate the provision to a proposal that had been made previously by Ossius himself. It is likely that it refers us back to the phrase ‘and has fled to the most blessed bishop of the Roman church’ in canon 7. If this is the correct interpretation, the clause provides that those bishops who have been deprived of their sees and who flee to Rome to appeal their cases may present petitions for clemency or justice to the emperor, subject to the approval of the Roman bishop.

(iv) Canons 11(XX) and 12

Canon 11 is a proposal offered by Gaudentius of Naissus to the effect that the restrictions placed upon the presentation of petitions can only be enforced if those who are tempted to ignore them are deterred by fear of punishment. Gaudentius suggests accordingly that if anyone should be moved to serve ambition by petitioning for an unworthy cause he should know that he must declare his purpose and be deprived of his office. It is added that this can only be put into effect if those bishops who are

⁶⁶² The Greek reading ‘Julius’ in place of the Latin ‘of the Roman Church’ is preferred. See above, Ch. 9, §iii.

resident on the 'highway'⁶⁶³ ascertain the purpose and destination of the bishops who pass. Those who are going to the court by invitation may be allowed to proceed, but if a bishop's journey is found to be motivated by ambition, his letters must not be signed nor may he be admitted to communion.

Canon 12, which owes its authorship to Ossius, is a suggestion of policy relating to the previous canon. It provides that if a bishop should come to a city on the highway while travelling to the court and should be found ignorant of the decrees of the council, he ought to be advised as to their nature that he may send his deacon on to the court and return to his own diocese. The temporary character of this provision probably explains its omission from the Greek.

⁶⁶³ 'in canali' = ἐν . . . καὶνάλῳ. The same expression is used prefacing the signatures to the Serdican encyclical of those bishops living 'on the highway of Italy' (Athanasius, *Apol. contra Arianos* 50. 1 = *Werke*, ii/1. 130). See Turner, *EOMLA* i. 488.

Table 1. The Numbering Systems of the Serdican Canons

Turner	Latin incipit	Latin	Greek	Theodosian	Turner Greek	Turner Theodosian
[i]	Non magis mala	1	I	T1	α'	i
[ii]	Etiam si talis	2	II	T2	β'	ii
[iii]	Illum quoque, ut	3a	IIIa	T3	γ'	iii
	—Illud quoque providendum	3b	IIIb	T4	—	iv
	—Quod si aliquis	3c	IIIc	T5	—	v
	—Addendum, si placet	4	IV	T6	δ'	vi
[iv]	Si contigerit	5	VIa	T8	ς'	viii
—	Sed licentia	6	VIb	T9	—	ix
[iii b]	Placuit autem	7	V	T7	ε'	vii
[v]	Inportunitas nimia	8	VII	T10	ζ'	x
[vi]	Hoc quoque Providentia	9a	VIII	T11	η'	xi
—	Et hoc consequens	9b	IXa	T12	θ'	xii
—	Qui vero Romam	10a	IXb	—	—	—
—	Si enim propter	10b	*	*	*	*
[vii]	Ea quae salubriter	11	XX	T25	κα'	xxv
—	Sed et moderatio	12	*	*	*	*
[viii]	Et hoc necessarium	13	X	T13	ι'	xiii
[ix]	Et hoc quoque	14	XI	T14	α'	xiv
—	Memini autem	—	—	T15	—	xv
[x]	Et quia nihil	15	XII	T16	ιβ'	xvi
[xi]	Hoc quoque omnibus	16	XIII	T17	ιγ'	xvii
—	Quid me adhuc	17	XIV	T18	ιδ'	xviii
[xii]	Illud praeterea	18	*	T19	*	xix
—	Et hoc universi	19	XV	T20	ιε'	xx
xiii	Non ignoratis	20	XVI	T21	ις'	xxi
		—	—	*	ις'	*
	Suggestente autem	21	XVII	T22	ιη'	xxii
	οἷδας, ἀδελφε	*	XVIII	T23	ιθ'	xxiii
	τῆς ἐμῆς	*	XIX	T24	κ'	xxiv

—Included in previously numbered canon.

* Omitted.

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Appendix: Texts and Translations of the Serdican Canons

The texts of the Latin, Greek, and Theodosian versions of the Serdican canons are presented here from the critical editions prepared and published by C. H. Turner in his *Ecclesiae Occidentalis Monumenta Iuris Antiquissima*, pp. 490–531 (with critical apparatus of the Latin version on pp. 452–87). The accompanying translations are my own. My aim is to render a flowing but fairly literal translation in order to provide the reader with an awareness of the distinctions in expression and differences in meaning between the Latin, Greek, and Theodosian texts. Turner placed square brackets [] in the texts to indicate uncertain but probable readings. A refinement is added here for those same readings with < > used to indicate uncertain words or phrases that in Turner's judgement are probably original to the text, and { } to signify those that should perhaps be omitted. No alterations have been made in the textual readings of Turner's editions, even when the result of the critical editing was incoherent or ungrammatical. External changes have been made in the systems of paragraphing and numbering the canons, in the introduction of initial capital letters for the first words of all Latin sentences, and in the reordering of canon 7 (Latin), XX (Greek), and T25 (Theodosian) in sequence by number in their series. For all questions of numbering, the reader is referred to the table provided on the previous page.

Canons of Serdica: Latin Text

Canon 1

OSSIVS EPISCOVS DIXIT:

Non magis mala consuetudo quam perniciosa corruptela funditus eradicanda est, ne cui liceat episcopo de ciuitate sua ad aliam ciuitatem transire. Manifesta {est} enim causa quam hoc facere temptet: nullus fere inuentus est episcopus qui de maiore ciuitate ad minorem transiret. Unde apparet auaritiae ardore illos inflammari et ambitioni seruire et ut dominationem habeant.

Si omnibus hoc placet, ut huiusmodi perniciēs saeuissime et austerius uindicetur, ut nec laicam habeat communionem?

RESPONDERVNT VNIVERSI:

Placet.

Canon 2

OSSIVS EPISCOPVS DIXIT:

Etiam si talis aliquis extiterit furiosus temerarius, et fortasse talem excusationem adtulerit, adseuerans quod populi litteras acciperit: manifestum est autem illum potuisse praemia, paucos et mercedem corrumpere, et clamare in ecclesiam qui sinceram fidem non habent tamquam ipsum petere uideantur episcopum. Omnino has fraudes remouendas esse, et damnum ut nec fidelem laicam communionem accipiat.

Si omnibus placet?

SYNODVS RESPONDIT:

Placet.

Canon 3a

OSSIVS EPISCOPVS DIXIT:

Illud quoque, ut episcopus de prouincia ad aliam prouinciam in qua sunt episcopi non transeat; nisi forte a fratribus suis inuitatus, ne uideamur ianuam caritatis clausisse.

3b

Illud quoque prouidendum est: si in aliqua prouincia forte aliquis episcopus contra fratrem suum episcopum litem habuerit, non ex his unus ex alia prouincia aduocet episcopos.

3c

Quod si aliquis episcopus iudicatus fuerit in aliqua causa et putat bonam causam habere ut iterum iudicium renouetur, si uobis placet, sanctissimi Petri apostoli memoriam honoremus: scribatur uel ab his qui examinerunt uel ab episcopis qui in proxima prouincia morantur Romano episcopo; si iudicauerit renouandum esse iudicium, renouetur et det iudices, si autem probauerit talem causam esse ut ea non refricentur quae acta sunt, quae decreuerit confirmata erunt.

English Translation of Latin Text

Canon 1

BISHOP OSSIUS SAID:

There is no practice more evil than [this] destructive corruption [that] must be eradicated from its foundations: let it not be allowed that any bishop transfer from his city to another, for the cause is evident that induces [one] to do this. There is almost no bishop to be found who would move from a larger city to a smaller one. Hence it is plain that they are inflamed by the fire of greediness to serve ambition that they shall have ascendancy.

Does it please all that this kind of destructiveness should be most harshly and severely punished, that [he who does such] may not have even lay communion?

ALL ANSWERED:

It is pleasing.

Canon 2

BISHOP OSSIUS SAID:

Also, if there be such a mad and heedless one who perhaps gives an excuse such as declaring that he had received letters from the people, it is clear that he has been able to corrupt a few by rewards and payment, and [that] those who did not have sincere faith would proclaim in the church seeming to ask for him to be bishop. These fraudulent persons are to be entirely removed and condemned not to receive lay communion. Is this pleasing to all?

THE COUNCIL ANSWERED:

It is pleasing.

Canon 3a

BISHOP OSSIUS SAID:

And this also, that a bishop shall not pass from [his own] province into another province in which there are bishops, unless perhaps he has been invited by his brethren, lest we seem to have closed the door of [brotherly] affection.

3b

This also is to be provided: if perhaps in any province some bishop shall have had a matter in dispute against his brother bishop, neither of these shall call [in] bishops from another province [to arbitrate].

3c

But if some bishop shall have been judged in some matter and thinks that he has a good case and that the judgement should be reconsidered, if it please you, let us honour the memory of blessed Peter the apostle, and let [a letter] be written to the Roman bishop, either by those who heard the case or by bishops who reside in a neighbouring province. If he [the Roman bishop] shall decide that the trial is to be held again, let it be repeated and let him appoint judges. But if he determines that

Si hoc omnibus placet?

SYNODVS RESPONDIT:

Placet.

Canon 4

GAVDENTIVS EPISCOPVS DIXIT:

Addendum, si placet, huic sententiae quam plenam sanctitatis protulistis; cum aliqui episcopus depositus fuerit eorum episcoporum iudicio qui in uicinis commorantur locis et proclamauerit agendum sibi esse negotium in urbe Roma, alter episcopus in eadem cathedra post appellationem eius qui uidetur esse depositus omnino non ordinetur loco ipsius, nisi causa fuerit iudicio Romani episcopi determinata.

Canon 5

OSSIVS EPISCOPVS DIXIT:

Si contigerit in una prouincia in qua plurimi fuerint episcopi unum forte remanere episcopum, ille uero, per negligentiam noluerit ordinare episcopum, et populi conuenerint episcopos uicinae prouinciae; debere illum prius conuenire episcopum qui in eadem prouincia moratur et ostendere quod populi petant sibi rectorem, et hoc iustum esse ut ipsi ueniant et cum ipso ordinent episcopum. Quod si conuentus litteris tacuerit dissimulauerit nihil rescriberit, satisfaciendum esse populis: conueniant ex uicina prouincia et ordinent episcopum.

Canon 6

Sed licentia danda passim non est: si enim subito aut uicus aliqui aut modica ciuitas, cui satis est unus praesbyter, uoluerit petere episcopum sibi ordinari, ut uilescat nomen episcopi et auctoritas, non debent illi ex alia prouincia inuitati facere episcopum, nisi aut in his ciuitatibus quae episcopos habuerint aut si qua talis et tam populosa est quae mereatur habere episcopum.

Si hoc omnibus placet?

SYNODVS RESPONDIT:

Placet.

Canon 7

OSSIVS EPISCOPVS DIXIT:

Placuit autem ut si episcopus accusatus fuerit et iudicauerint congregati episcopi regionis ipsius et de gradu suo deiecerint eum, et appellasse uideatur et confugerit ad beatissimum ecclesiae Romanae episcopum, et uoluerit audiri et iustum putauerit {ut} renouetur examen; scribere his episcopis dignetur qui in finitima et

the case is such that what has been enacted should not be reopened, what he has decreed shall be confirmed.
Is this pleasing to all?

THE COUNCIL RESPONDED:

It is pleasing.

Canon 4

BISHOP GAUDENTIUS SAID:

Let it be added, if it pleases you, to this judgement which you have set forth full of holiness. When any bishop has been deposed by judgement of those bishops who dwell in neighbouring places, and has announced his intention to pursue the matter in the city of Rome, another bishop shall absolutely not be ordained in his place in the same see, after the appeal of him who seems to have been deposed, unless the case shall have been determined by the judgement of the Roman bishop.

Canon 5

BISHOP OSSIUS SAID:

If it happens that in a province in which there were many bishops [only] one bishop remains and he by heedlessness has been unwilling to ordain a bishop, and the people have assembled bishops of a neighbouring province, [these] ought first to summon that bishop who remains in the same province and to show that the people have asked for a ruler (*rector*) to be ordained for them, and that it is right that they should come and with him ordain a bishop. But if he is silent and ignores the letter of summons and does not answer in writing, the people are to be satisfied. Let [the bishops] gather from the neighbouring province and ordain the bishop.

Canon 6

But permission is not to be given indiscriminately. If, indeed, suddenly either a village or small city, for which one presbyter is sufficient, wishes to ask for a bishop to be ordained for that place, in order that the name and authority of bishop not be debased, those [bishops] invited from another province ought not to make a bishop, except in those cities which have had bishops, or if they are sufficiently populous to merit having a bishop.

Is this pleasing to all?

THE COUNCIL RESPONDED:

It is pleasing.

Canon 7

BISHOP OSSIUS SAID:

Moreover, it was pleasing that if a bishop has been accused and the assembled bishops of his region have judged him and removed him from his office and he seems to have appealed and has fled to the most blessed bishop of the Roman church, and wishes to be given a hearing and [the Roman bishop] thinks it just [that]

propinqua prouincia sunt, {ut} ipsi diligenter omnia requirant et iuxta fidem ueritatis definiant. Quod si qui rogat causam suam iterum audiri et depraecatione sua mouerit episcopum Romanum ut e latere suo praesbyterum mittat, erit in potestate episcopi quid uelit aut quid aestimet: {et} si decreuerit mittendos esse qui praesentes cum episcopis iudicent habentes {eius} auctoritatem a quo destinati sunt, erit in suo arbitrio; si uero crediderit sufficere episcopos ut negotio terminum inponant, faciet quod sapientissimo consilio suo iudicauerit.

Canon 8

OSSIVS EPISCOPVS DIXIT:

Inportunitas, nimia frequentia, iniustae petitiones, fecerunt nos non tantam habere nec gratiam nec fiduciam, dum quidam non cessant ad comitatum ire episcopi (et maxime Afri qui, sicuti cognouimus, sanctissimi fratris et coepiscopi nostri Grati salutaria consilia spernunt adque contemnunt), ut unus homo ad comitatum multas et diuersas ecclesiae non profuturas perferat causas, nec, ut fieri solet aut oportet, ut pauperibus ac uiduis aut pupillis subueniatur; sed et dignitates saeculares et administrationes quibusdam postulant. Haec itaque prauitas olim murmurationem non sine scandalo excitat. Honestum est autem ut episcopus intercessionem suam his praestet qui aliqua iniqua ui opprimuntur aut si uidua affligitur aut pupillus expoliatur—tamen et ista nomina si iustam habent causam et petitionem. Si uobis ergo, fratres karissimi, placet, decernite ne episcopi ad comitatum accedant, nisi forte hii qui religiosissimi imperatoris litteris uel inuitati uel euocati fuerint. Sed quoniam saepe contigit ut ad misericordiam ecclesiae confugiant qui iniuriam patiuntur et qui peccantes in exilium uel insulam damnantur aut certe quamcumque sententiam excipiunt; subueniendum est et sine dubitatione petendum indulgentiam.

Si ergo et hoc uobis placet?

VNIVERSI DIXERVNT:

Placet [et] constituatur.

Canon 9a

OSSIVS EPISCOPVS DIXIT:

Hoc quoque prouidentia uestra tractare debet ut—quia decreuistis ut episcopi, ne improbitas notetur, ad comitatum non pergant—quicumque quales superius commemorauimus praeces habuerit uel acceperit, per diaconum suum mittat; quia persona ministri non erit inuidiosa, et quae inpetrauerit celerius poterit referre.

9b

Et hoc consequens esse uidetur, ut de qualibet prouincia episcopi ad eum fratrem et coepiscopum nostrum praeces mittant qui in maxima ciuitate, id est metropoli, consistit; ut ille et diaconum eius et supplicationes destinet, tribuens commendaticias epistulas, pari ratione ad fratres et coepiscopos nostros qui illo tempore in his

his trial be repeated, let him deign to write to those bishops who are in a bordering and neighbouring province that they may diligently inquire into the entire matter and honourably reach a conclusion according to their true belief. But if he who asks that his case be heard again moves the Roman bishop by his supplication to send presbyters *a latere*, let it be in the power of the [Roman] bishop [to do] what he wishes or what he thinks. And if he decides to send those who will judge with the bishops having the authority of him by whom they were sent, let that be his choice. If, however, he shall believe the bishops [themselves] to suffice for bringing the matter to conclusion, let it be as he decides by his most wise judgement.

Canon 8

BISHOP OSSIUS SAID:

The annoyance of very frequent unjust petitions cause us to be neither favoured nor trusted as long as certain bishops do not cease to go to the court (and especially the Africans, who as we have learnt scorn and disparage the wholesome advice of our most holy brother and fellow bishop Gratus), [so] that one man brings to court many and divers causes, not for the benefit of the Church, nor, as is accustomed and fitting, that the poor and widows or orphans should be assisted; but they ask for both secular honours and services for certain persons, and therefore this evil raises murmuring not without scandal. Moreover it is honourable that a bishop should make his intercession [for those] who are oppressed by disadvantages in life or the afflicted widow or exploited orphan—if, however, these persons have just cause and claim. If this therefore is pleasing to you, dearly beloved brethren, decree that bishops shall not go to the court except perhaps for those who are invited or called there by letters from the most religious emperor. But since it often happens that those who suffer a wrong or who as offenders are condemned to exile or an island or at any rate receive some sentence flee to the mercy of the Church, they are to be given relief, and forgiveness is to be asked for them without hesitation.

Is this, therefore, pleasing to you?

ALL SAID:

It is pleasing and let it be established.

Canon 9a

BISHOP OSSIUS SAID:

This also your providence ought to treat, that since you have decreed that lest they be branded as depraved, bishops should not proceed to the court. Whoever has or has received requests such as we have mentioned before, let him send [them] by his deacon, for the person of an agent will not cause ill will, and he will be able to report more quickly what he has accomplished.

9b

And this seems to follow: that from whatever province bishops should send their requests to his [their] brother and fellow bishop who is established in the major city, that is the metropolis, that he should send his deacon and the petitions, providing

regionibus et urbibus morantur in quibus felix et beatus Augustus rempublicam gubernat. Si uero habet quis episcoporum amicos in palatio, qui cupit aliquid (quod tamen honestum est) inpetrare, non prohiberi per diaconum suum rogare et significare eis quos scit benigna intercessione sibi absenti posse praestare.

Canon 10a

Qui uero Romam uenerint, sicut dictum est, sanctissimo fratri et coepiscopo nostro Romanae ecclesiae praeces quas habent tradant, ut et ipse prius examinet si honestae et iustae sunt et praestet diligentiam adque sollicitudinem ut ad comitatum perferantur.

VNIVERSI RESPONDERVNT

Placere sibi, et honestum esse consilium.

10b

ALYPIVS EPISCOPVS DIXIT:

Si enim propter pupillos et uiduas uel laborantes qui causas non iniquas habent susceperint peregrinationis incommoda, habeant quasi rationem. Nunc uero, cum ea postulant quae sine inuidia omnium et sine repraehensione esse non possunt, non necesse est ire illos ad comitatum.

Canon 11

GAVDENTIVS EPISCOPVS DIXIT:

Ea quae salubriter prouidisti{s} conuenientia et extimatione omnium sacerdotum et Deo placitura {et} probabilia hominibus, tenere actenus firmitudinem possunt si metus huic sententiae coniungatur: scimus enim etiam ipsi saepissimae propter paucorum inpudentiam sacrum ac religiosum sacerdotale nomen fuisse repraehensum. Si igitur aliqui contra omnium sententia{m} nisus uoluerit ambitioni magis placere quam Deo, debet etiam scire se causas esse dicturum, honorem adque dignitatem amissurum. Hoc autem tunc sciri et conpleri poterit, si unusquisque nostrum qui in canali constitutus est, cum progredientem episcopum uiderit, inquirat transitum eius, causas uideat, quo tendat, et, si quidem eum inuenerit ire ad comitatum, requisiturus illud quod conditione superius conpraehensum est; si inuitatus est, ut ei facultas eundi permittatur, si uero (ut superius meminit sanctitas uestra) propter desideria et ambitiones ire ad comitatum temptauerit, neque litteris eius suscribi neque in communione recipiendum.

Si uobis placet, debet omnium sententia confirmari.

VNIVERSI DIXERVNT

{Hoc} honestum {esse}} et placere sibi constitutionem.

letters of introduction, on the same basis to our brother and fellow bishops who at that time are staying in those regions and cities in which the auspicious and blessed Augustus governs the state. If any [bishop] has friends among the bishops in the palace [of whom] he wishes to request something (if it is honourable), let it not be prohibited to ask and indicate it through his deacon to those who he knows can present [his requests] by kindly intercession in his absence.

Canon 10a

As for [those bishops] who come to Rome, as has been said previously, let them deliver to our brother and fellow bishop of the Roman church, the petitions that they have, so that he too may both first examine whether they are honest and just, and exercise attentiveness and care that they may be taken to the court.

ALL RESPONDED:

This is pleasing, and [it] is a worthy resolution.

10b

BISHOP ALYPIUS SAID:

For indeed, if because of orphans and widows or those who are in hardship who do not have unjust causes, [bishops] who have undertaken inconvenient travel will have, as it were, reason [for their journey]. But now since they are demanding those things which they cannot [do] without the ill will of all and without censure, it is not necessary for them to go to the court.

Canon 11

BISHOP GAUDENTIUS SAID:

These things which you have beneficially provided by the agreement and esteem of all priests and pleasing to God and commendable to men can maintain force only if fear [of punishment] is joined to this judgement. For we know also most frequently it is because of the shamelessness of a few that the holy and venerated sacerdotal name has become blameworthy. If therefore anyone, against the judgement of all, wishes to climb with ambition more than to please God, he ought also to know that he will have to declare himself and lose his office and position. This, then, can be known and implemented if every one of us who is established on the highway, when he sees a travelling bishop passing, shall inquire about his trip, discern its cause, and where he is going, and, if any find [that] he intends to go to the court, he is to be asked whether he understands the aforesaid conditions. If he has been invited, opportunity for going must be given; but if (as your sanctity mentioned before), because he has been tempted by desire and ambitions to go to the court, neither may his letters be signed nor shall he be received into communion.

If this pleases you, it ought to be confirmed by the judgement of all.

ALL SAID:

This is honourable and the regulation is pleasing to us.

Canon 12

OSSIVS EPISCOPVS DIXIT:

Sed et moderatio necessaria est, dilectissimi fratres, ne subito adhuc quidam, non scientes quid decretum sit in synodo, uenerint subito ad ciuitates eas quae in canali sunt: episcopus ciuitatis ipsius admonere et instruere illum debet, ut ex eo loco ille mittat diaconum {suum}, admonitus tamen ipse redeat ad parrociā suam.

Canon 13

OSSIVS EPISCOPVS DIXIT:

Et hoc necessarium arbitror ut diligentissime tractetis: si forte aut diues, aut scolasticus de foro, aut ex administratore, episcopus postulatus fuerit, non prius ordinetur nisi ante et lectoris munere et officio diaconii et ministerio praesbyterii fuerit perfunctus; ut per singulos gradus (si dignus fuerit) ascendat ad culmen episcopatus. Potest enim per has promotiones, quae habebunt utique prolixum tempus, probari qua fide sit, qua modestia, qua grauitate et uerecundia: et si dignus fuerit probatus, diuino sacerdotio inlustretur. Nec conueniens est nec rationis disciplina patitur, ut temere aut leuiter ordinetur aut episcopus aut praesbyter aut diaconus—maxime qui sit neofitus, cum beatissimus apostolus magister gentium ne hoc fieret denuntiasset et prohibuisse uideatur; quia longi temporis examinatio merita eius probabit.

VNIVERSI DIXERVNT

Placere sibi haec.

Canon 14

OSSIVS EPISCOPVS DIXIT:

Et hoc quoque statuere debetis, ut episcopus ex alia ciuitate cum uenerit ad aliam ciuitatem uel ex prouincia sua ad aliam prouinciam, ambitioni magis seruiens quam deuotioni, et uoluerit in alienam ciuitatem multo tempore residere, et contingit ut episcopus ciuitatis ipsius non tam instructus sit nec tam doctus—incipiat contemnere eum et frequenter facere sermonem ut dehonestet et infirmet illius personam: quia haec occasio facit ut commendans se postea et alienam sedem concupiscat et inuadat, et non dubitet relinquere suam sibi adsignatam ecclesiam et ad alteram alienam transire. Define ergo tempus, quia et non recipere episcopum coepiscopum suum inhumanum est, et perniciosum si diutius resideat; ne fiat prouidendum est.

Memini autem superiore tempore fratres nostros constituisse ut, si qui laicus in ea commorans ciuitate tres dominicas dies per tres septimanas non celebrasset {conuentum}, communione priuaretur. Si ergo haec circa laicos constituta sunt, nec licet nec decet ut episcopus, si nullam tam grauem habet necessitatem nec tam difficilem rationem, diutius absit et populum contristet.

Canon 12

BISHOP OSSIUS SAID:

But moderation is also necessary, beloved brothers, lest someone not knowing what has been decreed in the synod come suddenly to these cities which are on the highway: the bishop of the city himself ought to advise and instruct him that he should send his deacon from that place and return after warning to his own parish.

Canon 13

BISHOP OSSIUS SAID:

And I think it necessary that you treat this most carefully: if it happens that either a rich man or a jurist from the forum, or an administrator, shall have been asked for as bishop, he shall not be ordained before he has discharged the function of lector and the office of deacon and the ministry of presbyter, that he may ascend [by these] grades one by one (if he is suitable) to the summit of the episcopate. For by these promotions, which in any case have extended time, his faith, his modesty, his dignity, and reverence can be proved. And if he is proved suitable, let him be distinguished by the divine priesthood. It is not appropriate, nor does the rule of reason allow, that a bishop or presbyter or deacon be ordained thoughtlessly or casually—especially [one] who is a neophyte, since the most blessed apostle, the teacher of the Gentiles, is seen to have denounced and prohibited this, for it is a prolonged examination that will prove his merits.

ALL SAID:

This is pleasing.

Canon 14

BISHOP OSSIUS SAID:

And this also you ought to decree: that when a bishop comes from one city to another city, or from his own province to another province, serving ambition more than devotion, and wishes to live in the other city for a long time, and it happens that the bishop of the city is not so experienced or learned—he may begin to disparage him and frequently make speeches that dishonour or depreciate his character; because this turn of events brings it about that, commending himself, he afterwards desires and takes possession of another's see and does not hesitate to forsake his appointed church and to move to another that belongs to someone else. Define, therefore, the time [that he may stay in the city], since for a bishop not to receive his fellow bishop is discourteous and [it is] destructive should he remain for too long a time. It must be provided that this shall not happen. I remember that at a previous time our brothers established that if a lay person stays in a city three Sundays through three weeks, [and] shall not have participated [in the Eucharist], he should be deprived of communion. If then, this was established regarding the laity, it is neither permitted nor proper that a bishop, if he has no great necessity nor

VNIVERSI DIXERVNT

Placere sibi.

Canon 15

OSSIVS EPISCOPVS DIXIT:

Et quia nihil praetermitti oportet—quia sunt quidam fratres et coepiscopi nostri qui non in ea ciuitate possident in qua constituti episcopi esse uidentur, uel certe paruam rem illic habent, alibi autem idonea praedia habere noscuntur et adfec[ta]tiones quibus indulgeant—actenus permitti eis oportet ut accedant ad possessiones suas, disponant ordinent fructum laboris sui, ita tamen ut per tres dominicas et {per} tres septimanas in suis potius fundis morentur: et si est proxima ciuitas in qua praesbyter colligit, ne sine ecclesia facere uideatur Dominicum, accedat; ut nec res eius domesticae per absentiam eius detrimentum sustineant, et si non frequenter uenerit ad ciuitatem in qua est episcopus careat suspicionem ambitionis adque iactantiae.

VNIVERSI DIXERVNT

Placere sibi.

Canon 16

OSSIVS EPISCOPVS DIXIT:

Hoc quoque omnibus placebit, ut siue diaconus siue praesbyter siue quis clericorum ab episcopo suo communionem fuerit priuatus, {et} ad alterum perrexerit episcopum, et scierit ille ad quem confugerit eum ab episcopo suo fuisse abiectum, non oportet ut ei communionem indulgeat? Quod si fecerit, sciat se conuocatis episcopis causas esse dicturum.

VNIVERSI DIXERVNT:

Hoc statutum et pacem seruabitis et concordiam custodiet.

Canon 17

OSSIVS EPISCOPVS DIXIT:

Quid me adhuc moueat reticere non debeo: si episcopus quis forte iracundus (quod esse non debet) cito aspere commoueatur aduersus praesbyterum siue diaconum suum et exterminare eum de ecclesia uoluerit, prouidendum est ne innocens damnetur aut perdat communionem; habeat potestatem eiectus ut finitimos interpellat ut causa eius audiat et diligentius tractetur, quia non oportet ei negari audientiam roganti; et ille episcopus qui aut iuste aut iniuste reiecit patienter accipiat ut negotium discutiatur, ut aut probetur eius aut emendetur sententia. Prius tamen quam omnia diligenter {et} fideliter fuerint examinata, qui communionem non habet ante cognitionem nullus debet praesumere ut eum recipiat et communioni societ. Qui autem conuenerint, si peruiderint clericorum esse fastidium et superbiam (quia

pressing reason, should absent himself longer [from his church] and distress his people.

ALL SAID:

This is pleasing.

Canon 15

BISHOP OSSIUS SAID:

And because it is right that nothing be neglected—since there are some of our brothers and fellow bishops who have no possessions in that city in which they are supposed to have been established as bishops, or at most only a small property there, but elsewhere they are known to have suitable estates and interests which they support, this much ought to be permitted to them, that they may go their properties to distribute [and] regulate the fruit of their labours, provided that they stay on their estates for three Sundays and through three weeks. And if there is a city nearby in which a presbyter is in charge, let the bishop attend lest he seem to spend Sunday without the Church, so that his domestic business may not sustain loss by his absence, and if he does not frequently come to a city in which there is a bishop, he may be free of suspicion of ambition and ostentation.

ALL SAID:

It is pleasing.

Canon 16

BISHOP OSSIUS SAID:

And will this also please all, that whether a deacon, whether a presbyter, or one of the clerics, is deprived of communion by his bishop and goes to another bishop, and the other knows that the one who has taken refuge with him had been cast out by his bishop, it is not right that he grant him communion? But if he does so, let him know that he must declare his case to an assembly of bishops.

ALL SAID:

This decree will serve both peace and unity.

Canon 17

BISHOP OSSIUS SAID:

I ought not to keep silent about that which now moves me. If any bishop happens to be angry (which he should not be) [and] is quickly and harshly aroused against his presbyter or deacon and wishes to expel him from the Church, provision must be made lest an innocent man be condemned or lose communion [with the Church]; let the one cast out have the power to appeal to the neighbouring [bishops] that his case may be heard and carefully treated, for it is not right to deny a hearing to him who asks. And let that bishop who either justly or unjustly rejected [him] patiently accept that the matter be discussed, that his judgement may either be approved or corrected. Nevertheless, before all is examined diligently and faithfully, no one shall presume before the inquiry to receive and join in communion with him who has

non decet ut episcopus aut iniuriam aut contumeliam patiat), seuerioribus uerbis eos castigent ut oboediant honesta praecipienti; quia sicut ille ministris sincerem amorem debet caritatis, ita quoque {uicissim} ministri infucata debent episcopo suo exhibere obsequia.

Canon 18

IANVARIVS EPISCOPVS DIXIT:

Illud praeterea statuatur sanctitas uestra, ut nulli episcopo liceat alterius ciuitatis ecclesiasticum sollicitare et in suis parrociis ordinare.

VNIVERSI DIXERVNT:

Quia ex his contentionibus solet discordia nasci, probibet omnium sententia ne quis hoc facere audeat.

Canon 19

OSSIVS EPISCOPVS DIXIT:

Et hoc uniuersi constituimus, ut quicumque ex alia parrocia uoluerit alienum ministrum sine consensu episcopi ipsius et sine uoluntate ordinare, non sit rata ordinatio. Quicumque autem hoc usurpauerit, a fratribus et coepiscopis nostris {et} admoneri debet et corrigi.

Canon 20

AETIVS EPISCOPVS DIXIT:

Non ignoratis quanta et qualis sit Thessallonicensium ciuitas: saepe ad eam ueniunt ex aliis regionibus praesbyteri et diacones, et non sunt contenti ut breui tempore morentur; aut resident ibi aut certe uix post longa spatia ad sua redire coguntur.

VNIVERSI DIXERVNT:

Ea tempora quae constituta sunt circa episcopos, et ad horum personas pertinere debent.

Canon 21

OSSIVS EPISCOPVS DIXIT:

Suggerente autem fratre et coepiscopo nostro Olympio, hoc placuit, ut si aliquis uim perpessus et inique expulsus, propter disciplinam uel catholicam confessionem uel defensionem ueritatis, fugiens pericula innocens et deuotus ad aliam uenerit ciuitatem {siue episcopus seu praesbyter aut diaconus}, non prohibeatur inmorari quamdiu aut redire potuerit aut iniuria eius remedium acceperit: quia durum est {eum} qui persecutionem patitur non recipi; etiam et larga beniuolentia et humanitas est exhibenda.

been deprived of communion. Moreover, those who assemble, if they find the cleric to be scornful and arrogant (since it is not appropriate that a bishop should suffer injustice or insult) they should be chastised with very severe words that they may obey him [the bishop] when he issues proper admonition, since just as he ought to [show] the sincere love of charity to his ministers, so should his ministers show respect to their bishop.

Canon 18

BISHOP JANUARIUS SAID:

Beyond this your sanctity should decree that no bishop may recruit an ecclesiastic of another city to ordain him in his own parishes.

ALL SAID:

Since from these disputes discord is accustomed to be born, let it be prohibited by the judgement of all that anyone should dare to do this.

Canon 19

BISHOP OSSIUS SAID:

And this we have all determined, that whoever shall wish to ordain a cleric belonging to someone else from another parish without the consent and will of his bishop, the ordination shall not be approved. Moreover, whoever shall take possession in this way, ought to be admonished and corrected by our brothers and fellow bishops.

Canon 20

BISHOP AETIUS SAID:

You are not ignorant of how great and of what kind is the city of Thessalonica. Presbyters and deacons often come to it from other regions, and are not content to stay there for a short time, [but] either they take up their residence there or at any rate it is with difficulty that after a long time they are compelled to return to their own [city].

ALL SAID:

That time which was established for bishops ought also to appertain to these persons.

Canon 21

BISHOP OSSIUS SAID:

Moreover, at the suggestion of [our] brother and fellow-bishop Olympius, this has been [found] pleasing, that if anyone is forcefully and unjustly expelled [from his church] because of [his] doctrine or catholic confession or defence of the truth, fleeing peril, guiltless and devout, comes to another city, whether bishop or presbyter or deacon, he shall not be forbidden to remain there until he can either return [to his church] or has received remedy for his injury; for it is hard for him who has suffered persecution not to be received. For this reason both great kindness and courtesy must be shown.

Canons of Serdica: Greek Text

Canon I

Ὁσιος ἐπίσκοπος πόλεως Κορδούβης εἶπεν·

Οὐ τοσοῦτον ἡ φαύλη συνήθεια ὅσον ἡ βλαβερωτάτη τῶν πραγμάτων διαφθορά ἐξ αὐτῶν τῶν θεμελίων ἐστὶν ἐκριζωτέα, ἵνα μηδενὶ ἐπισκόπων ἐξῇ ἀπὸ πόλεως μικρᾶς εἰς ἑτέραν πόλιν μεθίστασθαι. ἡ γὰρ τῆς αἰτίας ταύτης πρόφασις φανερά δι' ἣν τὰ τοιαῦτα ἐπιχειρεῖται· οὐδεὶς γὰρ πώποτε εὑρεθῆναι ἐπισκόπων δεδυνῆται ὅς ἀπὸ μείζονος πόλεως εἰς ἐλαχιστοτέραν πόλιν ἐσπούδασεν μεταστήναι. ὅθεν συνέστηκεν διαπύρῳ, πλεονεξίας τρόπῳ, ὑπεκκαίεσθαι τοὺς τοιούτους καὶ μᾶλλον τῇ ἀλαζονείᾳ, δουλεύειν, ὅπως ἐξουσίαν δοκοῖεν μείζονα κεκτηῖσθαι.

Εἰ πᾶσιν τοίνυν τοῦτο ἀρέσκει, ὥστε τὴν τοιαύτην σκαιότητα αὐστηρότερον ἐκδικηθῆναι· ἡγοῦμαι γὰρ μηδὲ λαϊκῶν ἔχειν τοὺς τοιούτους χρῆναι κοινωνίαν.

Ἄπαντες οἱ ἐπίσκοποι εἶπαν·

Τοῦτο ἀρέσκει ἅπασιν.

Canon II

Ὁσιος ἐπίσκοπος εἶπεν·

Εἰ δέ τις τοιοῦτος εὐρίσκειτο μανιώδης ἢ τολμηρός, ὡς περὶ τῶν τοιούτων δόξαι τινὰ φέρειν παραίτησιν διαβεβαιούμενον ἀπὸ τοῦ πλήθους ἑαυτὸν κεκομίσθαι γράμματα· δηλὸν ἐστὶν ὀλίγους τινὰς δεδυνῆσθαι μισθῷ, καὶ τιμῇματι διαφθαρέντας ἐν τῇ ἐκκλησίᾳ, στασιάζειν, ὡς δὴθεν ἀξιούντας τὸν αὐτὸν ἔχειν ἐπίσκοπον. καθάπαξ οὖν τὰς ῥαδιουργίας τὰς τοιαύτας καὶ τέχνας κολαστέας εἶναι νομίζω, ὥστε μηδένα τοιοῦτον μηδὲ ἐν τῷ, τέλει λαϊκῆς γοῦν ἀξιούσθαι κοινωνίας.

Εἰ τοίνυν ἀρέσκει ἡ γνώμη αὕτη, ἀποκρίνασθε.

Ἀπεκρίναντο·

Τὰ λεχθέντα ἤρεσεν.

Canon IIIa

Ὁσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο προστεθῆναι ἀναγκαῖον, ἵνα μηδεὶς ἐπισκόπων ἀπὸ τῆς ἑαυτοῦ ἐπαρχίας εἰς ἑτέραν ἐπαρχίαν ἐν ᾗ, τυγχάνουσιν ὄντες ἐπίσκοποι διαβαίνοι· εἰ μήτι παρὰ τῶν ἀδελφῶν τῶν ἑαυτοῦ κληθείη, διὰ τὸ μὴ δοκεῖν ἡμᾶς τὰς τῆς ἀγάπης ἀποκλείειν πύλας.

IIIb

Καὶ τοῦτο δὲ ὡσαύτως προνοητέον, ὥστε ἐὰν ἐν τινὶ ἐπαρχίᾳ, ἐπισκόπων τις ἄντικρυς ἀδελφοῦ ἑαυτοῦ καὶ συνεπισκόπου πρᾶγμα σχοίη, μηδέτερον ἐκ τούτων ἀπὸ ἑτέρας ἐπαρχίας ἐπισκόπους ἐπιγνώμονας ἐπικαλεῖσθαι.

IIIc

Εἰ δὲ ἄρα τις ἐπισκόπων ἐν τινὶ πράγματι δόξῃ, κατακρίνεσθαι καὶ ὑπολαμβάνει ἑαυτὸν μὴ σαθρὸν ἀλλὰ καλὸν ἔχειν τὸ πρᾶγμα, ἵνα καὶ αὐθις ἡ κρίσις ἀνανεωθῇ·

English Translation of Greek Text

Canon I

OSSIUS, BISHOP OF CORDOVA, SAID:

There is no more evil and injurious custom than the corrupt practice to be rooted up from its foundation, so that no bishop may be allowed to move from a small city to another. The reason for the pretext to attempt this is evident, for no one has ever yet been found who tried to move from a large city to a less important one. Whence it follows that these persons burn with eager covetousness and are slaves to ostentation that they may appear to gain greater authority.

If this is pleasing to all, let this abuse be punished severely. I think that such ones should not be admitted even to lay communion.

ALL ANSWERED:

This is pleasing to all.

Canon II

BISHOP OSSIUS SAID:

If some insane and rash person is found who thinks to present an excuse in such a case, asserting that he has received a letter from the people [when it is] clear that a certain small group in the church has been able, corrupted by payment and rewards, to form a faction in the church purporting to demand to have him as bishop. I think, therefore, that wickedness of this sort must be absolutely punished so that not even at the end shall such a one be deemed worthy even of lay communion.

If, then, this opinion pleases you, respond.

THEY RESPONDED:

What has been said is pleasing.

Canon IIIa

BISHOP OSSIUS SAID:

And it is necessary to add this: that no bishop shall cross from his own province into another province in which there are bishops unless he is invited by his brethren, lest we be thought to have closed the doors of [brotherly] love.

IIIb

And this must likewise be provided, that if in any province a bishop has some matter against his brother and fellow bishop, neither of the two should call bishops from another province as judges.

IIIc

If then, any bishop is thought to have been condemned in any matter, and he believes himself to have not a bad cause but a good one, so that the case should be renewed, if it pleases your charity, let us honour the memory of Peter the apostle

εἰ δοκεῖ ὑμῶν τῇ ἀγάπῃ, Πέτρου τοῦ ἀποστόλου τὴν μνήμην τιμήσωμεν, καὶ γραφῆναι παρὰ τούτων τῶν κρινάντων Ιουλίῳ, τῷ, ἐπισκόπῳ, ῥώμης, ὥστε διὰ τῶν γειτνιώντων τῇ ἐπαρχίᾳ, ἐπισκόπων, εἰ δέοι, ἀνανεωθῆναι τὸ δικαστήριον, καὶ ἐπιγνώμονας αὐτὸς παράσχοι· εἰ δὲ μὴ συστήναι δύναται τοιοῦτον αὐτοῦ εἶναι τὸ πρᾶγμα ὡς παλινδικίας χρήζειν, τὰ ἅπαξ κεκριμένα μὴ ἀναλύεσθαι τὰ δὲ ὄντα βέβαια τυγχάνειν.

Canon IV

Γαυδέντιος ἐπίσκοπος εἶπεν·

Εἰ δοκεῖ, ἀναγκαῖον προστεθῆναι ταύτῃ τῇ ἀποφάσει ἥντινα ἀγάπης εἰλικρινοῦς πλήρῃ ἐξενήνοχας· ὥστε ἐάν τις ἐπίσκοπος καθαιρεθῇ τῇ κρίσει τούτων τῶν ἐπισκόπων τῶν ἐν γειτνία τυγχανόντων καὶ φάσκη πάλιν ἐαυτῷ ἀπολογίας πρᾶγμα ἐπιβαλεῖν, μὴ πρότερον εἰς τὴν καθέδραν αὐτοῦ ἕτερον ὑποκαταστήναι, ἐὰν μὴ ὁ τῆς Ῥωμαίων ἐπίσκοπος ἐπιγνοὺς περὶ τούτου ὅρον ἐξενέγκῃ.

Canon V

Ὅσιος ἐπίσκοπος εἶπεν·

Ἦρεσεν ἵνα εἴ τις ἐπίσκοπος καταγγελθείη καὶ συναθροισθέντες οἱ ἐπίσκοποι τῆς ἐνορίας τῆς αὐτῆς τοῦ βαθμοῦ αὐτὸν ἀποκινήσωσιν, καὶ ὥσπερ ἐκκαλεσάμενος καταφύγῃ ἐπὶ μακαριώτατον τῆς Ῥωμαίων ἐκκλησίας ἐπίσκοπον, καὶ βουλευθείη αὐτοῦ διακοῦσαι δίκαιόν τε εἶναι νομίση ἀνανεώσασθαι αὐτοῦ τὴν ἐξέτασιν τοῦ πράγματος· γράφειν τούτοις τοῖς ἐπισκόποις καταξιώσει τοῖς ἀγχιστεύουσι τῇ ἐπαρχίᾳ, ἵνα αὐτοὶ ἐπιμελῶς καὶ μετὰ ἀκριβείας ἕκαστα διερευνήσωσιν καὶ κατὰ τὴν τῆς ἀληθείας πίστιν ψήφον περὶ τοῦ πράγματος ἐξενέγκωσιν. εἰ δέ τις ἀξιοὶ καὶ πάλιν αὐτοῦ τὸ πρᾶγμα ἀκουσθῆναι καὶ τῇ δεήσει τῇ ἐαυτοῦ τὸν Ῥωμαίων ἐπίσκοπον κινεῖν δόξῃ, ἀπὸ τοῦ ἰδίου πλευροῦ πρεσβυτέρους ἀποστείλοι· εἶναι ἐν τῇ ἐξουσίᾳ, αὐτοῦ τοῦ ἐπισκόπου ὅπερ ἂν καλῶς ἔχειν δοκιμάσῃ· καὶ (ἐὰν) ὀρίσῃ δεῖν ἀποσταλῆναι τοὺς μετὰ τῶν ἐπισκόπων κρινοῦντας ἔχοντάς τε τὴν αὐθεντίαν τούτου παρ' οὗ ἀπεστάλησαν, καὶ τοῦτο θετέον· εἰ δὲ ἐξαρκεῖν νομίζοι πρὸς τὴν τοῦ πράγματος ἐπίγνωσιν καὶ ἀπόφασιν τοῦ ἐπισκόπου, ποιήσει ὅπερ ἂν τῇ ἐμφρονεστάτῃ αὐτοῦ βουλῇ καλῶς ἔχειν δόξῃ.

Ἀπεκρίναντο οἱ ἐπίσκοποι·

Τὰ λεχθέντα ἤρεσεν.

Canon VIa

Ὅσιος ἐπίσκοπος εἶπεν·

Ἐὰν συμβῇ ἐν μιᾷ ἐπαρχίᾳ ἐν ᾗ πλείστοι ἐπίσκοποι τυγχάνουσιν ἓνα ἐπίσκοπον ἀπομείναι, κακεῖνος κατὰ τινὰ ἀμέλειαν μὴ βουλευθῇ συνελθεῖν καὶ συναίνεσαι τῇ καταστάσει τῶν ἐπισκόπων, τὰ δὲ πλήθῃ συναθροισθέντα παρακαλοῖεν γίνεσθαι τὴν κατάστασιν τοῦ παρ' αὐτῶν ἐπιζητουμένου ἐπισκόπου· χρὴ πρότερον ἐκεῖνον τὸν ἐναπομείναντα ἐπίσκοπον ὑπομνησκεισθαι διὰ γραμμάτων τοῦ ἐξάρχου τῆς ἐπαρχίας, λέγων δὴ τοῦ ἐπισκόπου τῆς μητροπόλεως, ὅτι ἀξιοὶ τὰ πλήθῃ ποιμένα αὐτοῖς δοθῆναι· ἡγούμαι καλῶς ἔχειν

and let those who judged the case write to Julius, the bishop of Rome, so that if necessary the tribunal may be renewed by bishops of the neighbouring province, and let him appoint judges. But if it cannot be shown that the matter needs to be judged again, the former judgement shall not be undone, but confirmed.

Canon IV

BISHOP GAUDENTIUS SAID:

If it seems good, it is necessary to add to this decision which you have pronounced full of charity, so that if any bishop is deposed by the judgement of the neighbouring bishops and claims that he has a matter to add to his defence, another shall not be appointed to his see unless the bishop of Rome has rendered a judgement and a decision on it.

Canon V

BISHOP OSSIUS SAID:

It was found pleasing that if any bishop is denounced and the assembled bishops of the same region remove him from his office, and as if appealing he takes refuge with the most blessed bishop of the Roman church, and he wishes to hear him, and he thinks it just to renew the examination of his case, let him be pleased to write to the bishops of the nearby province that they may examine everything carefully and with exactness and give their votes on the matter according to their true belief. And if anyone thinks that his case should be heard again and the bishop of Rome being moved by his request sees fit to send presbyters from his side, let it be in the power of that bishop, if he thinks it good and decides that it is right to send them to judge with the bishops, having the power of him by whom they were sent, Let this too be determined. But if he thinks that the bishop[s] are sufficient to know and decide the affair, let him do as seems good in his wise judgement.

THE BISHOPS ANSWERED:

That which has been said pleases us.

Canon VIa

BISHOP OSSIUS SAID:

If it happens in a province in which there are many bishops that one bishop stays away and because of some negligence does not wish to assemble and to consent to the appointment of bishops, and the gathering of the people call for the appointment of him whom they desire as bishop, it is necessary first that the single bishop who defaulted be summoned by letter from the exarch of the province, I mean the bishop of the metropolis, that the people ask that a shepherd be given them. I think that it is good to wait until he comes. But if after the summons by letter he does not

καὶ τοῦτον ἐκδέχεσθαι ἵνα παραγένηται. εἰ δὲ μὴ διὰ γραμμάτων ἀξιωθείς παραγένηται μήτε μὴν ἀντιγράφοι, τὸ ἱκανὸν τῇ βουλήσει τοῦ πλήθους χρή γενέσθαι· χρή δὲ καὶ μετακαλεῖσθαι καὶ τοὺς ἀπὸ τῆς πλησιοχώρου ἐπαρχίας ἐπισκόπους πρὸς τὴν κατάστασιν τοῦ τῆς μητροπόλεως ἐπισκόπου.

VIb

Μὴ ἐξεῖναι δὲ ἀπλῶς καθιστὰν ἐπίσκοπον κώμη τινὶ ἢ βραχεία, πόλει, ἥτινι καὶ εἰς μόνος πρεσβύτερος ἐπαρκεῖ· οὐκ ἀναγκαῖον γὰρ ἐπισκόπους ἐκείσε καθίστασθαι, ἵνα μὴ κατευτελίζεται τὸ τοῦ ἐπισκόπου ὄνομα καὶ ἡ αὐθεντία. ἀλλ' οἱ τῆς ἐπαρχίας, ὡς προείπον, ἐπίσκοποι ἐν ταύταις ταῖς πόλεσιν καθιστὰν ἐπισκόπους ὀφείλουσιν ἔνθα καὶ πρότερον ἐτύγχανον γεγονότες ἐπίσκοποι· εἰ δὲ εὐρίσκοιτο οὕτως πληθύνουσά τις ἐν πολλῷ, ἀριθμῷ, λαοῦ πόλις ὡς ἀξίαν αὐτὴν καὶ ἐπισκοπῆς νομίζεσθαι, λαμβανέτω.

Εἰ πᾶσιν ἀρέσκει τοῦτο;

Ἀπεκρίναντο πάντες·

Ἀρέσκει.

Canon VII

Ὁσῖος ἐπίσκοπος εἶπεν·

Ἡ ἀκαιρία ἡμῶν καὶ ἡ πολλὴ συνέχεια καὶ αἱ ἄδικοι ἀξιώσεις πεποιθήκασιν ἡμᾶς μὴ τοσαύτην ἔχειν χάριν καὶ παρρησίαν ὅσην ὀφείλομεν κεκτηθῆσθαι· πολλὴ γὰρ τῶν ἐπισκόπων οὐ διαλείπουσιν εἰς τὸ στρατόπεδον παραγινόμενοι (καὶ μάλιστα οἱ Ἀφροί, οἵτινες καθὼς ἔγνωμεν {παρὰ} τοῦ ἀγαπητοῦ ἀδελφοῦ ἡμῶν καὶ συνεπισκόπου Γράτου τὰς σωτηριώδεις συμβουλὰς οὐ παραδέχονται ἀλλὰ καταφρονοῦσιν), οὕτως ὡς ἓνα ἄνθρωπον εἰς τὸ στρατόπεδον πλείστας καὶ διαφόρους καὶ μὴ δυναμένας ὠφελεῖσθαι τὰς ἐκκλησίας δεήσεις διακομίζειν· καὶ μὴ, ὡς ὀφείλει γίνεσθαι καὶ ὡς προσήκόν ἐστι, τοῖς πένησι καὶ τοῖς λαϊκοῖς ἢ ταῖς χήραις συναίρεσθαι καὶ ἐπικουρεῖν, ἀλλὰ κοσμικὰ ἀξιώματα καὶ πράξεις περινοεῖν τισιν. αὕτη τοίνυν ἡ σκαιότης τὸν θρασυμὸν οὐκ ἄνευ σκανδάλου τινὸς ἡμῖν καὶ καταγνώσεως προξενεῖ. πρεπωδέστερον δὲ εἶναι ἐνόμισα ἐπίσκοπον τὴν ἑαυτοῦ βοήθειαν παρέχειν ἐκείνῳ ὅστις ἂν ὑπὸ τινος βιάζεται, ἢ εἴ τις τῶν χηρῶν ἀδικοῖτο, ἢ αὐτὸς πάλιν ὀρφανὸς τις ἀποστεροῖτο τῶν αὐτῷ προσηγόντων, εἴπερ ἄρα καὶ ταῦτα τὰ ὀνόματα δικαίαν ἔχει τὴν ἀξίωσιν. εἰ τοίνυν, ἀγαπητοὶ ἀδελφοί, πᾶσι τοῦτο δοκεῖ, ἐπικρίνατε μηδένα ἐπίσκοπον χρῆναι εἰς τὸ στρατόπεδον παραγίνεσθαι, παρεκτὸς τούτων οὓς ἂν ὁ εὐσεβέστατος βασιλεὺς ἡμῶν τοῖς ἑαυτοῦ γράμμασι μετακαλοῖτο. ἀλλὰ ἐπειδὴ πολλάκις συμβαίνει τινὰς οἴκτου δεομένους καταφυγεῖν ἐπὶ τὴν ἐκκλησίαν, διὰ τὰ ἑαυτῶν ἁμαρτήματα εἰς περιορισμὸν ἢ νῆσον καταδικασθέντας ἢ δ' αὐτὸς πάλιν οἰαδηποτοῦν ἀποφάσει ἐκδεδομένους· τοῖς τοιούτοις μὴ ἀρνητέαν εἶναι τὴν βοήθειαν, ἀλλὰ χωρὶς μελλησμοῦ καὶ ἄνευ τοῦ διστάσαι τοῖς τοιούτοις αἰτεῖσθαι συγχώρησιν.

Εἰ τοίνυν καὶ τοῦτο ἀρέσκει, σύμφηφοι γένησθε ἅπαντες·

Ἀπεκρίναντο ἅπαντες·

Ὅριζέσθω καὶ ταῦτο.

arrive nor answers in writing, the people's wish should be satisfied. And it is fitting that the bishops from the neighbouring province be summoned to the installation of the metropolitan bishop.

VIIb

It is not permitted to appoint a bishop in a village or small city where one presbyter suffices. It is necessary that a bishop not be appointed there lest the name and power of bishop be degraded. But the [bishops] of the province ought, as I have said before, to appoint bishops in the cities in which bishops have formerly been. And if there be found a city abounding in great numbers of people so as to be thought worthy of an episcopal [see], let it receive [one].

Does this please all?

ALL RESPONDED:

It is pleasing.

Canon VII

BISHOP OSSIUS SAID:

The inopportuneness, the great frequency, and the bad foundation of our petitions have resulted in our no longer having favour and the freedom to speak that we ought to have, for many bishops do not cease to go to court, above all those of Africa, who as we learn from our beloved brother and fellow bishop Gratus, do not accept his salutary counsels but, on the contrary, scorn them to the point that one person takes to the court a large number of varied petitions that can bring no benefit to the Church. Rather than come to the aid of the poor and of laity and widows, as they should and as is suitable, they devise worldly honour and activities for certain persons. Such depravity causes us distress, not without scandal and adverse opinions. I believe that it is more fitting that a bishop give his aid to him who suffers violence, or to the widow unjustly treated, or again the orphan deprived of his property, if, to be sure, these persons have just reason for complaint. Thus, my dear brothers, if all agree, determine that no bishop should present himself at court, unless our very pious emperor summons him by letter. Also, since frequently persons worthy of pity seek asylum in a church, after having been condemned for their faults to prison or exile to an island, or condemned in justice for any reason, we should not refuse our aid to such persons, but without delay and without hesitation ask for their pardon. If this pleases you, all vote your assent.

ALL RESPONDED:

Let this also be determined.

Canon VIII

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο ἡ ἀγχίνουσα ὑμῶν κρινάτω, ἵνα—ἐπειδὴ ἔδοξεν διὰ τὸ μὴ πίπτειν ὑπὸ κατάγνωσιν τινα τῶν ἐπισκόπων ἀφικνούμενον εἰς τὸ στρατόπεδον—εἴ τινες αὐτῶν τοιαύτας ἔχοιεν δεήσεις οἷων ἐπάνω ἐπεμνήσθημεν, διὰ ἰδίου διακόνου ἀποστέλλοιεν· τοῦ γὰρ ὑπηρέτου τὸ πρόσωπον οὐκ ἐπίφθονον τυγχάνει, καὶ τὰ παρασχεθησόμενα θάττον διακομισθῆναι δυνήσεται.

Ἀπεκρίναντο πάντες·

Καὶ ταῦτα ὀρίζεσθω.

Canon IXa

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο ἀκόλουθον νομίζω εἶναι, ἵνα ἐν οἰαδηποτοῦν ἐπαρχίᾳ, ἐπίσκοποι πρὸς ἀδελφὸν καὶ συνεπίσκοπον ἑαυτῶν ἀποστέλλοιεν δεήσεις, ὃ ἐν τῇ μείζονι τυγχάνων πόλει, τοῦτ' ἔστι τῇ μητροπόλει, αὐτὸς καὶ τὸν διάκονον αὐτοῦ καὶ τὰς δεήσεις ἀποστέλλοι, παρέχων αὐτῷ, καὶ συστατικὰς ἐπιστολάς, γράφων δηλονότι κατὰ ἀκολουθίαν καὶ πρὸς τοὺς ἀδελφούς καὶ συνεπισκόπους ἡμῶν οὔτινες ἐν ἐκείνῳ τῷ καιρῷ, ἐν τοῖς τόποις ἢ ἐν ταῖς πόλεσιν διάγοιεν ἐν αἷς ὁ εὐσεβέστατος βασιλεὺς τὰ δημόσια διακυβερνᾷ, πράγματα. εἰ δὲ ἔχει τις τῶν ἐπισκόπων φίλους ἐν τῇ αὐτῇ τοῦ παλατίου καὶ βούλοιτο περὶ τινος ὅπερ πρεπωδέστατον εἶη ἀξιῶσαι, μὴ κωλύοιτο διὰ τοῦ ἑαυτοῦ διακόνου καὶ ἀξιῶσαι καὶ ἐντείλασθαι τούτοις ὥστε τὴν αὐτῶν ἀγαθὴν βοήθειαν ἀξιούντι αὐτῷ, παρέχειν ἡγοίτο.

IXb

Οἱ δὲ εἰς Ρώμην παραγινόμενοι, καθὼς προεῖρηκα, τῷ, ἀγαπητῷ, ἀδελφῷ, ἡμῶν καὶ συνεπισκόπῳ Ἰουλίῳ τὰς δεήσεις ὥς ἔχοιεν διδόναι ὀφείλουσιν {παρέχειν}, ἵνα πρότερος αὐτὸς δοκιμάζοι εἰ μὴ τινες ἐξ αὐτῶν ἀναισχυντοῖεν, καὶ οὕτως τὴν ἑαυτοῦ προστασίαν καὶ φροντίδα παρέχων εἰς τὸ στρατόπεδον αὐτοὺς ἀποστέλλοι.

Ἄπαντες οἱ ἐπίσκοποι ἀπεκρίναντο

ἀρέσκειν αὐτοῖς, καὶ πρεπωδεστάτην εἶναι τὴν συμβουλίαν ταύτην.

Canon X

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο ἀναγκαῖον εἶναι νομίζω ἵνα μετὰ πάσης ἀκριβείας καὶ ἐπιμελείας ἐξετάζοιτο, ὥστε, ἐάν τις πλούσιος ἢ σχολαστικὸς ἀπὸ τῆς ἀγορᾶς ἀξιούτο ἐπίσκοπος γίνεσθαι, μὴ πρότερον καθίστασθαι ἐὰν μὴ καὶ ἀναγνώστον καὶ διάκονον καὶ πρεσβυτέρου ὑπηρεσίαν ἐκτελέσῃ· ἵνα καθ' ἕκαστον βαθμὸν (ἐάνπερ ἄξιος νομισθῇ) εἰς τὴν ἀψίδα τῆς ἐπισκοπῆς κατὰ προκοπὴν διαβῇ δυνηθείη. ἔξει δὲ ἐκάστου τάγματος ὁ βαθμὸς οὐκ ἐλαχίστου δηλονότι χρόνου μῆκος, δι' οὗ ἡ πίστις αὐτοῦ καὶ ἡ τῶν τρόπων καλοκάγαθία καὶ ἡ στερρότης καὶ ἡ ἐπιείκεια γνώριμος γενέσθαι δυνήσεται, καὶ αὐτὸς ἄξιος τῆς θείας ἱερωσύνης νομισθεὶς τῆς μεγίστης ἀπολαύσει τιμῆς. οὔτε γὰρ προσήκόν ἐστιν οὔτε ἡ

Canon VIII

BISHOP OSSIUS SAID:

Your sagacity should decide this also—since you have resolved that bishops should not fall into contempt by going to the court, if any of them have petitions of the kind mentioned above, let them send them by their deacon, for the person of an agent will not be regarded with jealousy, and he will be able to bring back more quickly that which may be granted.

ALL ANSWERED:

Let this also be determined.

Canon IXa

BISHOP OSSIUS SAID:

And I think that this also is in conformity, that in whatever province bishops should send petitions to their brother and fellow bishop who is in the greater city, that is the metropolis, he should send his deacon and the petitions and provide him with letters of introduction, writing accordingly to our brothers and fellow bishops who at that time are staying in the cities in which the most pious emperor administers public affairs. And if any of the bishops has friends in the court of the palace and wishes to make requests of them as to some proper matter, let him not be hindered from doing this through his deacon and moving them to give their kind support to his request.

IXb

Regarding those who go to Rome, as I have said, [they] ought to give the petitions that they have to our brother and fellow bishop Julius that he may first examine them lest certain ones of them be shameful, and then providing them with his own patronage and care may send them to the court.

ALL THE BISHOPS RESPONDED:

These [things] are pleasing and the proposals are appropriate.

Canon X

BISHOP OSSIUS SAID:

I think this also to need scrutiny with all precision and care: if it is desired that a rich man or a jurist of the forum become a bishop, he shall not be ordained before having fulfilled the functions of reader, deacon, and presbyter, that in accord with each step (if he is deemed worthy) he may proceed to the height of the episcopate. And each step will clearly not be of the shortest length of time, through which his faith and his good character and his strength may be made well known, and, deemed worthy of the priesthood, he can enjoy this great honour. For it is not fitting nor does discipline or good sense allow proceeding to this act rashly or casually so as to ordain a bishop or presbyter or deacon hastily, for such a one can fairly be called a

ἐπιστήμη οὔτε ἡ ἀγαθὴ ἀναστροφή ἐπιδέχεται τολμηρῶς καὶ κούφως ἐπὶ τοῦτο ἵεναι, ὥστε ἡ ἐπίσκοπον ἢ πρεσβύτερον ἢ διάκονον προχείρως καθίστασθαι, οὕτως γὰρ ἂν εἰκότως νεόφυτος νομισθεῖη· ἐπειδὴ μάλιστα καὶ ὁ μακαριώτατος ἀπόστολος, ὃς καὶ τῶν ἐθνῶν γεγένηται διδάσκαλος, φαίνεται κωλύσας ταχεῖας γίνεσθαι τὰς καταστάσεις· τοῦ γὰρ μηκίστου χρόνου ἡ δοκιμασία τὴν ἀναστροφήν καὶ τὸν ἐκάστου τρόπον οὐκ ἀπεικότως ἐκτυποῦν δυνήσεται.

Ἄπαντες εἶπαν

ἀρέσκειν αὐτοῖς καὶ καθάπαξ μὴ δεῖν ἀνατρέπειν ταῦτα.

Canon XI

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο δὲ ὀρίσαι ὀφείλομεν, ἵνα ἐπίσκοπος, ὅταν ἐξ ἐτέρας πόλεως παραγένηται εἰς ἐτέραν πόλιν ἢ ἀπὸ ἐτέρας ἐπαρχίας εἰς ἐτέραν ἐπαρχίαν, κόμπου χάριν οἰκείοις ἐγκωμίοις ὑπηρετούμενος ἢ θρησκείας καθοσιώσει, καὶ πλείονα βούλοιο χρόνον διάγειν, καὶ μὴ ὁ τῆς πόλεως ἐκείνης ἐπίσκοπος ἔμπειρος ἢ, διδασκαλίας—μὴ καταφρονῇ ἐκείνου καὶ συνεχέστερον ὁμιλῇ, καταισχύνειν καὶ κατευτελίζειν τὸ πρόσωπον τοῦ αὐτόθι ἐποσκόπου σπουδάζων (αὕτη γὰρ ἡ πρόφασις εἴωθε ταραχὸς παρέχειν), καὶ ἐκ τῆς τοιαύτης πανουργίας τὴν ἀλλοτρίαν καθέδραν ἐαυτῷ προμνηστεύεσθαι καὶ παρασπᾶσθαι σπουδάζῃ, μὴ διστάζων τὴν παραδοθεῖσαν αὐτῷ ἐκκλησίαν καταλιμπάνειν καὶ εἰς ἐτέραν μεθίστασθαι. ὀριστέον τοίνυν ἐπὶ τούτῳ χρόνον, ἐπειδὴ καὶ τὸ μὴ ὑποδέχεσθαι ἐπίσκοπον τῶν ἀπανθρώπων καὶ σκαιῶν εἶναι νενόμισται. μέμνησθε δὲ ἐν τῷ, προάγοντι χρόνῳ τοὺς πατέρας ἡμῶν κεκρικέναι ἵνα, εἴ τις λαϊκὸς ἐν πόλει διάγων τρεῖς κυριακὰς ἡμέρας ἐν τρισὶν ἑβδομάσι μὴ συνέρχοιτο, ἀποκινοῖτο τῆς κοινωνίας· εἰ τοίνυν περὶ τῶν λαϊκῶν τοῦτο τεθέσπισται, οὐ χρὴ οὐδὲ πρέπει ἀλλ' οὐδὲ συμφέρει ἐπίσκοπον, εἰ μηδεμίαν βαρυτέραν ἀνάγκην ἔχη ἢ πρᾶγμα δυσχερές, ἐπὶ πλείστον ἀπολείπεσθαι τῆς ἐαυτοῦ ἐκκλησίας καὶ λυπεῖν τὸν ἐνπεπιστευμένον αὐτῷ, λαόν.

Ἄπαντες {οἱ ἐπίσκοποι} εἰρήκασιν

Καὶ ταύτην τὴν γνώμων σφόδρα εἶναι πρεπωδεστάτην ὀρίζομεθα.

Canon XII

Ὅσιος ἐπίσκοπος εἶπεν·

Ἐπειδὴ οὐδέν ἐστι παραλειπτέον, καὶ τοῦτο ὀρισθήτω· τινὲς τῶν ἀδελφῶν καὶ συνεπισκόπων ἐν ταῖς πόλεσιν ἐν αἷς ἐπίσκοποι καθίστανται δοκοῦσι κεκτῆσθαι σφόδρα ὀλίγα ὑπάρχοντα ἴδια, ἐν ἐτέροις δὲ τόποις κτήσεις μεγάλας ἐξ ὧν καὶ ἐπικουρεῖν δυνατοὶ εἰσιν τοῖς πένησιν· οὕτως αὐτοῖς συγχωρητέον εἶναι κρίνω, ἵνα, εἰ μέλλοιεν εἰς τὰς ἐαυτῶν παραγίνεσθαι κτήσεις καὶ τὴν συγκομιδὴν τῶν καρπῶν ποιεῖσθαι, τρεῖς κυριακὰς ἡμέρας τοῦτ' ἔστι τρεῖς ἑβδομάδας ἐν τοῖς ἐαυτῶν κτήμασιν αὐτοὺς διάγειν, καὶ ἐν τῇ ἀγχιστενούσῃ ἐκκλησίᾳ, ἐν ἣ, πρεσβύτερος συναγάγοι, ὑπὲρ τοῦ μὴ χωρὶς συνελεύσεως αὐτὸν δοκεῖν εἶναι, συνέρχεσθαι καὶ λειτουργεῖν, καὶ μὴ συνεχέστερον εἰς τὴν πόλιν ἐν ἣ, ἐστὶν ἐπίσκοπος παραγίνοιτο. τοῦτον γὰρ τὸν τρόπον καὶ τὰ οἰκεία αὐτοῦ πράγματα

neophyte. Most certainly the most blessed apostle—he who became the teacher of the Gentiles—is seen to have forbidden hasty ordinations; for scrutiny of even the longest time will not unreasonably be required to reveal the mode of life and character of each.

ALL SAID:

These [things] are pleasing and absolutely must not be overturned.

Canon XI

BISHOP OSSIUS SAID:

This also we ought to decree, that whenever a bishop goes from one city to another, or from one province to another, boasting to receive praise more than for religious worship, and wishes to remain for a long time, and the bishop of that city is not experienced or educated—he shall not look down upon him nor by frequent sermons disgrace and cheapen the person of the local bishop (for that pretext is wont to cause disorder), and by this villainy gain the other man's see for himself, taking it hastily, not hesitating to give over and abandon his own church and move to another. A [limit of] time should therefore be established in such [cases], since it is thought to be inhuman and mischievous not to receive a bishop. You remember that in times past our fathers decided that if a lay person spent three Sundays in three weeks without attending service, he should be removed from communion. If this has been decreed for laity, it is not needful nor fitting nor advantageous that a bishop, unless he has grievous necessity or difficult business, should leave his church for a long period and grieve the people entrusted to him.

ALL THE BISHOPS SAID:

This opinion we also determine to be very suitable.

Canon XII

BISHOP OSSIUS SAID:

Since it is necessary that nothing should be omitted, let this also be determined. Certain of our brothers and fellow bishops have very few possession of their own in the cities in which they are established [as bishops], but in other places have large possessions from which they are able to relieve the poor. In these circumstances I believe they must be allowed, if, to spend three Sundays, that is three weeks, on their properties, and attend the nearest church in which there is a presbyter [in charge], so that he may not be thought to be absent from the [Eucharistic] gathering to join [the prayers] and to celebrate, and not frequently come to a city in which there is a bishop. In this way his personal affairs will sustain no damage and the accusation of pretension and vanity will be avoided.

παρὰ τὴν αὐτοῦ ἀπουσίαν οὐδεμίαν ὑπομενεῖ ζημίαν, καὶ τὸ τῆς ἀλαζονείας καὶ τοῦ τύφου ἐκκλίνειν δόξει ἔγκλημα.

Ἄπαντες οἱ ἐπίσκοποι εἶπαν·

Ἀρέσκει καὶ αὕτη ἡ διατύπωσις.

Canon XIII

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο πᾶσιν ἀρεσάτω, ἵνα ἤτοι διάκονος ἤτοι πρεσβύτερος ἢ καὶ τις τῶν κληρικῶν ἀκοινώνητος γένηται καὶ πρὸς ἕτερον ἐπίσκοπον τὸν εἰδότα αὐτὸν καταφύγῃ γινώσκοντα αὐτὸν ἀποκεκινήσθαι τῆς κοινωνίας παρὰ τοῦ ἰδίου ἐπισκόπου, μὴ χρῆναι τῷ ἀδελφῷ αὐτοῦ ὕβριν ποιῶντα παρέχειν αὐτῷ, κοινωνίαν. εἰ δὲ τολμήσῃ τοῦτο ποιῆσαι, γινωσκέτω συνελθόντων ἐπισκόπων ἀπολογία, ἑαυτὸν ὑπεύθυνον καθεστάναι.

Ἄπαντες οἱ ἐπίσκοποι εἶπαν·

Αὕτη ἡ κρίσις καὶ τὴν εἰρήνην πάντοτε διαφυλάξει καὶ διατηρήσει τὴν πάντων ὁμόνοιαν.

Canon XIV

Ὅσιος ἐπίσκοπος εἶπεν·

Τὸ δὲ πάντοτέ με κινεῖν ἀποσιωπῆσαι οὐκ ὀφείλω· εἴ τις ἐπίσκοπος δξύχολος εὐρίσκειτο (ὅπερ οὐκ ὀφείλει ἐν τοιούτῳ ἀνδρὶ) πολιτεύεσθαι καὶ ταχέως ἄντικρυς πρεσβύτερου ἢ διακόνου κινηθεὶς ἐκβαλεῖν τῆς ἐκκλησίας τινὰ ἐθελήσοι, προνοητέον ἐστὶ μὴ ἀθῶον τὸν τοιοῦτον κατακρίνεσθαι καὶ τῆς κοινωνίας ἀποστερεῖσθαι.

Πάντες εἰρήκασιν·

Ὁ ἐκβαλλόμενος ἐχέτω ἐξουσίαν ἐπὶ τὸν ἐπίσκοπον τῆς μητροπόλεως τῆς αὐτῆς ἐπαρχίας καταφυγεῖν, εἰ δὲ ὁ τῆς μητροπόλεως ἄπεισιν ἐπὶ τὸν πλησιόχωρον κατατρέχειν, καὶ ἀξιοῦν ἵνα μετὰ ἀκριβείας αὐτοῦ ἐξετάζηται τὸ πρᾶγμα· οὐ χρὴ γὰρ μὴ ὑπέχειν τὰς ἀκοὰς τοῖς ἀξιούσι· κακεῖνος δὲ ὁ ἐπίσκοπος ὁ δικαίως ἢ ἀδίκως ἐκβαλὼν τὸν τοιοῦτον γενναίως φέρειν ὀφείλει ἵνα ἡ ἐξέτασις τοῦ πράγματος γένηται, καὶ ἡ κυρωθῇ αὐτοῦ ἡ ἀπόφασις ἢ διορθώσεως τύχη. πρὶν δὲ ἐπιμελῶς καὶ μετὰ πίστεως ἕκαστα ἐξετασθῇ, ὁ μὴ ἔχων τὴν κοινωνίαν πρὸ τῆς διαγνώσεως τοῦ πράγματος ἑαυτῷ, οὐκ ὀφείλει ἐκδικεῖν τὴν κοινωνίαν. εἰ δὲ συνελθούσιν τῶν κληρικῶν τινες κατίδωσιν τὴν ὑπεροψίαν καὶ τὴν ἀλαζονείαν αὐτοῦ, ἐπειδὴ οὐ προσήκόν ἐστιν ὕβριν ἢ μέμψιν ἄδικον ὑπομένειν, πικροτέροις καὶ βαρυτέροις ῥήμασιν ἐπιστρέφειν τοῦτον ὀφείλουσιν, ἵνα τῷ, τὰ πρέποντα κελεύοντι ὑπηρετῶνται καὶ ὑπακούωσιν· ὥσπερ γὰρ ὁ ἐπίσκοπος τοῖς ὑπηρεταῖς εἰλικρινῇ ὀφείλει τὴν ἀγάπην καὶ τὴν διάθεσιν παρέχειν, τὸν αὐτὸν τρόπον οἱ ὑποταγμένοι ἅδολα τοῖς ἐπισκόποις τὰ τῆς ὑπηρεσίας ἐκτελεῖν ὀφείλουσιν.

ALL THE BISHOPS SAID:

This arrangement is also pleasing.

Canon XIII

BISHOP OSSIUS SAID:

Let this also be pleasing to all. If any deacon or presbyter or also one of the clerics is excommunicated and seeks refuge with another bishop who knows him, and who knows that he has been removed from communion by his own bishop, he must not affront his brother bishop by offering him communion. If he dares to do this, let him know that he must present himself and give an account before the assembled bishops.

ALL THE BISHOPS SAID:

This decision will always preserve peace and will maintain concord among all.

Canon XIV

BISHOP OSSIUS SAID:

I ought not to be silent about that which always arouses me. If any bishop is found quick to anger (to which such a man should not be liable) and is suddenly aroused against a presbyter or deacon to expel him from the church, precaution must be taken lest he be sentenced without fault and deprived of communion.

ALL THE BISHOPS SAID:

He who is cast out shall have [the] right to take refuge with the bishop of the metropolis of the same province, and if he is away take refuge with the neighbouring [bishop], and ask that his case be painstakingly examined. For a hearing must not be denied to those who request [it]. And that bishop who justly or unjustly cast him out should bear it nobly that the examination of the case is made and his decision is ratified or denied. Before all things are carefully examined with fidelity, he who has been excluded from communion may not lay claim to receive communion before the decision of his case. And if any clergy who have come together [for the hearing] have seen arrogance and boastfulness in him, since it is not fitting to withstand insolence or unjust censure, they should correct him with strong and forceful words that he may submit to and obey commands that are fitting. For as the bishop ought to show sincere affection and kindness to those placed under him, so in the same manner the subordinates ought sincerely to perform their services to the bishops.

Canon XV

Ὅσιος ἐπίσκοπος εἶπεν·

Καὶ τοῦτο δὲ ἅπαντες ὀρίσωμεν, ἵνα εἴ τις ἐπίσκοπος ἐξ ἐτέρας παροικίας βουληθῇ ἀλλότριον ὑπηρετήν χωρὶς τῆς συγκαταθέσεως τοῦ ἰδίου ἐπισκόπου εἰς τινα βαθμὸν καταστήσαι, ἄκυρος καὶ ἀβέβαιος ἡ κατάστασις ἢ τοιαύτη νομίζοιτο. εἴ τινες δὲ ἂν τοῦτο ἑαυτοῖς ἐπιτρέψαιαν, παρὰ τῶν ἀδελφῶν καὶ συνεπισκόπων ἡμῶν καὶ ὑπομιμνήσκεσθαι καὶ διορθοῦσθαι ὀφείλουσιν.

Ἄπαντες εἰρήκασιν·

Καὶ οὗτος ὁ ὅρος στήτω ἀσάλευτος .

Canon XVI

Ἀέτιος ἐπίσκοπος εἶπεν·

Οὐκ ἀγνοεῖτε ὅποια καὶ πηλίκη τυγχάνει ἢ τῶς Θεσσαλονικέων μητρόπολις· πολλάκις τοιγαροῦν εἰς αὐτὴν ἀπὸ ἐτέρων ἐπαρχιῶν πρεσβύτεροι καὶ διάκονοι παραγίνονται, καὶ οὐκ ἀρκούμενοι βραχεῖα, διαγωγῇ χρόνου ἐναπομένονσι καὶ ἅπαντα τὸν χρόνον αὐτόθι ποιοῦντες διατελοῦσιν, ἢ μόλις μετὰ πλείστον χρόνον εἰς τὰς ἑαυτῶν ἐπανιέναι ἐκκλησίας ἀναγκάζονται· περὶ τούτων οὖν ὀριστέον.

Ὅσιος ἐπίσκοπος εἶπεν·

Οὗτοι οἱ ὅροι, οἱ καὶ ἐπὶ τῶν ἐπισκόπων ὠρισμένοι, φυλαττέσθωσαν καὶ ἐπὶ τούτων τῶν προσώπων.

Canon XVII

Ὅσιος ἐπίσκοπος εἶπεν·

Ὑποβάλλοντος καὶ τοῦ ἀδελφοῦ ἡμῶν Ὀλυμπίου καὶ τοῦτο ἤρεσεν, ἵνα εἴ τις ἐπίσκοπος βίαν ὑπομείνας ἀδίκως ἐκβληθείη, ἢ διὰ τὴν ἐπιστήμην ἢ διὰ τὴν ὁμολογίαν τῆς καθολικῆς ἐκκλησίας ἢ διὰ τὴν τῆς ἀληθείας ἐκδικίαν, καὶ φεύγων τὸν κίνδυνον ἀθῶς καὶ καθωσιωμένος ὢν εἰς ἐτέραν ἔλθοι πόλιν, μὴ κωλυέσθω ἐκεῖ ἐπὶ τοσοῦτον διάγειν ἕως ἂν ἐπανεέλθῃ ἢ τῆς ὑβρεως τῆς γεναμένης αὐτῷ ἀπαλλαγὴν εὐράσθαι δυνηθείη. σκληρὸν γὰρ καὶ βαρύτατον ἔλασίαν ἄδικον ὑπομεμενηκότα μὴ ὑποδέχεσθαι ὑφ' ἡμῶν, πλείστη γὰρ καλοκάγαθία, καὶ φιλοφρονήσει ὀφείλει παραδέχεσθαι ὁ τοιοῦτος .

Πάντες εἰρήκασιν·

Ἦρεσεν καὶ τοῦτο.

Canon XVIII

Γαυδέντιος ἐπίσκοπος εἶπεν·

Οἶδας, ἀδελφεῖ Ἀέτιε, ὡς τὸ τηνικαῦτά ποτε κατασταθέντος σου ἐπισκόπου ἡ εἰρήνῃ λοιπὸν ἐβράβευσεν· ἵνα μὴ τινα λείψανα διχονοίας περὶ τῶν ἐκκλησιαστικῶν ἐναπομείνῃ, ἔδοξε καὶ τοὺς παρὰ Μουσαίου κατασταθέντας καὶ τοὺς παρὰ Εὐτυχianoῦ, ἐπειδὴ αὐτῶν οὐδεμία αἰτία εὐρίσκειτο, πάντας ὑποδεχθῆναι.

Canon XV

BISHOP OSSIUS SAID:

Let us also all decide this: that if any bishop wishes to ordain a cleric from another parish to any rank without the agreement of his own bishop, the ordination shall be of no force and invalid. If anyone permits himself to do this, let him both be reminded [of this] by our brothers and fellow bishops, and be liable to correction.

ALL ANSWERED:

Let this decree also stand unshakeable.

Canon XVI

BISHOP AETIUS SAID:

You are not unaware of what sort and how great is the city of Thessalonica. Frequently, therefore, presbyters and deacons come from other provinces and, not content to spend a short time, stay and spend all their time there, or it is not until after a long period that they are with difficulty compelled to return to their own churches. A determination should be made with regard to this.

BISHOP OSSIUS SAID:

Let those rules that have been made with regard to bishops be observed also with respect to these persons.

Canon XVII

BISHOP OSSIUS SAID:

At the suggestion of our brother Olympius we have determined this also: that if any bishop sustains violence and is unjustly expelled [from his church], either for his discipline, for his knowledge, for his confession of the catholic church, or for the defence of truth, and fleeing from danger—although he is innocent and pure—comes to another city, let him not be hindered from living there until he can return [home] or has been delivered from the injustice that has been done to him. For it is harsh and disagreeable that one exiled unjustly should not be received by us, and it is with good will and friendliness that such a one ought to be received.

ALL SAID:

All are pleased.

Canon XVIII

BISHOP GAUDENTIUS SAID:

You know, brother Aetius, how since the time of your appointment as bishop peace has prevailed [in your diocese]. In order that no remnants of discord regarding clergy remain, it seems to me that those ordained by Musaeus and those by Eutychianus, provided that no fault is found in them, should all be received [to communion].

Canon XIX

Ὅσιος ἐπίσκοπος εἶπεν·

Τῆς ἐμῆς μετριότητος ἡ ἀπόφασίς ἐστιν αὕτη· ἐπειδὴ ἡσυχοὶ καὶ ὑπομονητικοὶ ὀφείλομεν εἶναι καὶ διαρκῆ τὸν πρὸς πάντας οἶκτον ἔχειν, ἅπαξ τούτους τοὺς εἰς κλῆρον ἐκκλησιαστικὸν προαχθέντας ὑπὸ τινων ἀδελφῶν ἡμῶν, ἐὰν μὴ βούλονται ἐπανέρχεσθαι εἰς ἃς κατωνομάσθησαν ἐκκλησίας, τοῦ λοιποῦ μὴ ὑποδέχεσθαι, Εὐτυχιανὸν δὲ μήτε ἐπισκόπου ἐαυτῷ διεκδικεῖν ὄνομα, ἀλλ' οὐδὲ Μουσαῖον ὡς ἐπίσκοπον νομίζεσθαι· εἰ δὲ λαϊκὴν κοινωνίαν ἀπαιτοῖεν, μὴ χρῆναι αὐτοὺς ἀρνεῖσθαι.

Canon XX

Γαυδέντιος ἐπίσκοπος εἶπεν·

Ταῦτα σωτηριωδῶς καὶ ἀκολουθῶς ὀρισθέντα καὶ πρεπόντως τῇ ἐπιτιμίᾳ, ὑμῶν τῶν ἱερέων, καὶ Θεῷ, ἀρέσαντα καὶ ἀνθρώποις, τὴν δύναμιν καὶ τὴν ἰσχὺν ἐαυτῶν κατασχεῖν οὐ δυνήσονται, ἐὰν μὴ καὶ φόβος ταῖς ἐξενεχθείσαις ἀποφάσεσιν ἀκολουθήσῃ· ἴσμεν γὰρ καὶ αὐτοὶ πλεονάκεις διὰ τὴν ὀλίγων ἀναισχυντίαν τὸ θεῖον καὶ σεβασμιώτατον ὄνομα τῆς ἱερωσύνης εἰς κατάγνωσιν ἐληλυθέναι. εἰ τοίνυν τις παρὰ τὰ πᾶσι δόξαντα τολμήσῃ, σπουδάζων τύφῳ μᾶλλον καὶ ἀλαζονείᾳ, ἢ τῷ, Θεῷ, ἀρέσαι, ἑτερόν τι διαπράξασθαι, ἤδη γνωσκέτω ἐγκλήματι ἀπολογίας ἐαυτὸν ὑπεύθυνον καθίστασθαι καὶ τὴν τιμὴν καὶ τὸ ἀξίωμα τῆς ἐπισκοπῆς ἀποβάλλειν.

Ἄπαντες ἀπεκρίναντο·

Πρέπει καὶ ἀρέσκει ἡμῖν ἡ τοιαύτη γνώμη.

Καὶ τοῦτο δὲ ἐκείθεν μάλιστα γνώριμον γενήσεται καὶ πληρωθήσεται, ἐὰν ἕκαστος ἡμῶν τῶν ἐν ταῖς παρόδοις ἦτοι καναλίῳ καθεστώτων ἐπισκόπων θεασάμενος ἐπίσκοπον ἐπιζητοίῃ τὴν αἰτίαν τῆς παρόδου καὶ ποῦ τὴν πορείαν ποιεῖται· καὶ ἐὰν μὲν εὖρῃ αὐτὸν ἐπὶ τὸ στρατόπεδον ἀπιόντα, ἐπιζητήσει τὰς αἱρέσεις τὰς ἐπάνω προκειμένας, καὶ κεκλημένος ἀφικνήται, ἀπιόντι αὐτῷ, μηδὲν ἐμπόδιον γίνοιτο· εἰ δὲ ἐπιδείξῃ χάριν (καθὼς προεῖρηται τῇ ὑμετέρᾳ, ἀγάπῃ) ἢ διὰ τινων ἀξιώσεις σπουδάζει ἐπὶ τὸ στρατόπεδον, μήτε τοῖς γράμμασιν αὐτοῦ ὑπογράφειν μήτε κοινωνεῖν τῷ, τοιούτῳ.

Ἄπαντες εἶπαν·

Καὶ τοῦτο ὀριζέσθω.

Canons of Serdica: Theodosian Text

Canon T1

OSIVS EPISCOPVS DIXIT:

Quanto magis mala consuetudo nocentissima est rerum corruptione, ab ipsis fundamentis eradicanda est; ut nulli episcopo liceat de ciuitate ad aliam ciuitatem transferri. Huius enim causae occassio manifesta est per quam tales temtantur;

Canon XIX

BISHOP OSSIIUS SAID:

My moderate opinion is this: although we ought to be gentle and patient with lasting compassion towards all, those who were once promoted to clerical status in the Church under certain of our brethren, if they do not wish to return to the churches to which they were appointed, for the future, should not be received. Eutychianus should not claim for himself the name of bishop, nor Musaeus be named as bishop, but if they demand lay communion it should not be denied to them.

Canon XX

BISHOP GAUDENTIUS SAID:

[With regard to] all of these salutary and consistent decisions befitting the honour of our priesthood and pleasing to God and men, the power and force of them will not be able to restrain [misdeeds] unless fear accompanies the decisions proclaimed. We know that frequently by the shamelessness of a few the divine and reverend name of the priesthood has come into contempt. If, therefore, anyone dares to act against the decisions of all, seeking to please pride and pretension more than God, let him know from now on that he must defend himself from this accusation and that he will lose the honour and dignity of the episcopate.

ALL ANSWERED:

Such an opinion is fitting and pleasing to us.

And this decree will be most well known and effective if each of us who are bishops stationed on the highway, seeing a bishop, seek out the occasion of his passage and his destination. And if it is found that he is going to the court he will inquire regarding the conditions prescribed above, and if he is going by invitation let there be no impediment, but if for ostentation (as has been said before by your charity) or to pursue petitions at court for certain persons, he shall neither sign his letters nor admit such a one to communion.

ALL SAID:

Let this also be determined.

English Translation of Theodosian Text

Canon T1

BISHOP OSSIIUS SAID:

How much more evil is the practice, and most injurious by reason of its corruption of affairs, to be eradicated from its very foundations: that no bishop be allowed to move from one city to another. Indeed, this is the manifest reason why such

numquam enim potest episcopus reperiri qui de maiore ciuitate ad minorem transferri studeat. Unde apparet appetitionis flagrante modo peruri huiusmodi et superbiae potius seruire, ut uideantur maiorem possidere potestatem.

Si igitur omnibus hoc placet, de tali sceuitate seuerius uindicari? Existimo nec laicorum oportere tales habere communionem.

OMNES EPISCOPI DIXERVNT:

Placet.

Canon T2

OSIVS EPISCOPVS DIXIT:

Si autem quis repertus fuerit uesanus uel temerarius, qui pro talibus adferat excusationem perseuerans ab eius populo litteras adportando; certum enim est potuisse eum paucos quosdam mercede et pretio corruptos in aecclesiis seditiones mouisse, non habentes fidem sinceram, tamquam rogantes eumdem habere episcopum. Pariter igitur uersutias et artes huiusmodi amputandas puto, et tales ne in finem quidem laicam merere communionem.

Si igitur placet hacc sententia, respondete.

ET DIXERVNT:

Recte dicta placent.

Canon T3

OSIVS EPISCOPVS DIXIT:

Et hoc addi necessarium est, ne quis episcopus de prouincia sua interpellante episcopo ad aliam transeat prouinciam; nisi forte a fratribus suis uocatus, ne uideamur portas dilectionis clausisse.

Canon T4

Et huic similiter est prouidendum, ut si in aliqua prouincia episcopus quis aduersus suum fratrem et coepiscopum habeat causam, nullus de alia prouincia arbiter requiratur.

Canon T5

Si autem quis episcopus in aliquo damnatur negotio et estimat se firmam causam habere ut iudicium renouetur; si placet uestrae dilectioni, apostoli Petri honorate memoriam, et scribatur ab his qui iudicauerunt causam damnati episcopi Iulio episcopo Romae per uicinos episcopos prouinciae, et si oportet innouari iudicium, renouetur et iudicem ipse praebebit. Et si non potuerit ibi adesse, et tale fuerit eius negotium ut iterum renouetur iudicium, semel iudicata non dissolui, quae autem sunt maneant firma.

[moves] are attempted. For never can a bishop be found who is eager to move from a larger city to a smaller one. Whence it appears [that such men] are inflamed by a flagrant kind of greed and are slaves to pride so that they may be seen to possess greater power.

If, therefore, this pleases all, how can such treachery be most severely punished? I think that it is right that such [persons] not have [even] lay communion.

ALL THE BISHOPS SAID:

It is pleasing.

Canon T2

BISHOP OSSIUS SAID:

If, moreover, some insane or heedless one shall have been discovered who for such [behaviour] perseveres in bringing forth the excuse that letters had been brought from its people, indeed it is certain that he had been able by reward and payment to a few who did not have sincere faith to stir up insurrections in the churches as though they were asking to have him as bishop. Similarly, therefore, I think that craftiness and devices of this sort are to be eliminated, and that such persons are not worthy of lay communion [even] at the end.

If, therefore, this judgement pleases you, respond.

AND THEY ALL SAID:

Rightly said. It pleases us.

Canon T3

BISHOP OSSIUS SAID:

And it is necessary to add this: no bishop shall enter another province interfering with a bishop, unless it happens that he is summoned by his brothers, lest we seem to have closed the doors of love.

Canon T4

And similarly it is to be provided that if in any province a bishop has a case against his brother and fellow bishop, no one from another province shall be sought [as] judge.

Canon T5

But if a bishop is condemned in some matter and thinks that he has a strong case that the judgement be reconsidered, if it is pleasing to your charity, honour the memory of the apostle Peter, and let those who judged the case of the condemned write to Julius the bishop of Rome through the bishops of the neighbouring provinces, and if [he decides that] it is right that the investigation should be reconsidered, let him appoint judge[s]. And if he shall be unable to be present there and such shall have been his case that the judgement should be reconsidered, what has once been judged must not be dissolved, but what those judgements are should remain in force.

Canon T6

GAVDENTIVS EPISCOPVS DIXIT:

Si placet, necessarium esse huic addi sententiae quam ueram et caritate plenam tulisti; ut si quis episcopus fuerit depossitus per sententiam episcoporum qui uicini sunt et dixerit se negotium excussationis habere, non prius in eius cathedra alium ordinari, nisi Romae episcopus de hoc cognoscens terminum inpossuerit.

Canon T7

OSIVS EPISCOPVS DIXIT:

Placet ut si quis episcopus adpetitus uel accusatus fuerit et collecti episcopi finium suorum eum gradu deiecerint, et confugerit ad prouocationem beati episcopi Romanae ecclesiae, et adqueuerit eum audiri et iustum putauerit renouari iudicium rei; scribere episcopis dignabitur prouidentibus prouinciae, quo ipsi diligentius cum scrupulositate singula scrutentur et secundum ueritatis fidem de negotio proferant sententiam. Si uero quis iterum petierit denuo suum audiri negotium et per hanc petitionem Romanum episcopum mouerit, de latere suo presbyteros destinabit, ut sit potestatis eiusdem episcopi quod estimauerit esse. Et si statuerit oportere mitti qui destinati cum episcopis iudicaturi sunt, habeant auctoritatem eius a quo destinati sunt, sane et hoc ponatur in episcopi potestate; et si putauerit sufficere ad causae cognitionem et sententiam proferendam episcopo, faciat quod eius sederit prudentiae.

Canon T8

OSIVS EPISCOPVS DIXIT:

Si uenerit in una prouincia in qua plures sunt episcopi ordinandi, unum episcopum remanere, et hic ob quandam negligentiam noluerit conuenire et ordinationi adesse episcoporum, plebs autem conueniens rogat fieri ordinationem episcopi; primum oportet eum qui remansit per literas primatis episcopi prouinciae, hoc est metropolitani, conmoneri quoniam populus petit sibi pastorem dari; estimo oportere hunc expectare ut ueniat et cum eo fiat ordinatione. Si autem neque per literas rogatus aduenerit nec scripserit, satisfieri populi uoluntati debet, et uocandi sunt de uicina prouincia episcopi ad ordinationem episcoporum.

Canon T9

Non licere autem episcopum simpliciter ordinari in uico uel quadam exigua ciuitate, cui sufficit etiam unus solus presbyter: nec enim necesse est ibi episcopum ordinare,

Canon T6

BISHOP GAUDENTIUS SAID:

If it please you, it is necessary to add this to the judgement which you have declared true and full of love: that if any bishop has been deposed by the judgement of neighbouring bishops and shall say that he has a matter of appeal, another shall not be ordained in his see unless the bishop of Rome knowing of this shall impose an end [to it].

Canon T7

BISHOP OSSIUS SAID:

Let it be pleasing that if any bishop shall have been assailed or accused and a gathering of bishops of his region has cast him out of office [and he] shall have fled to the appeal of the blessed bishop of the Roman church and he shall have agreed to hear him and have thought it right to renew the investigation of the matter, let him deign to write to prudent bishops of the province, so that they themselves may more diligently [and] with precision examine each [charge] and according to a pledge of truth pronounce a judgement regarding the matter. If anyone again shall have asked afresh for his case to be heard and through this petition moves the Roman bishop, he shall send presbyters *de latere suo* that they may have this same power as [that] which he considers the bishops to have. And if he shall have decided that it is right to send those whom he shall have appointed to judge with the bishops, let them have the authority of him by whom they were appointed, and let this be placed in the power of the bishop. And if he shall have considered the bishop to suffice for inquiry into the case and reach a decision, let him do what suits his prudent judgement.

Canon T8

BISHOP OSSIUS SAID:

If it happens in a province in which several bishops are to be ordained [only] one bishop remains [in addition to the metropolitan] and he because of some heedlessness has been unwilling to assemble and be present for the ordination of the bishops, but the people coming together ask that the ordination of the bishops take place, it is right that first he who held back be invited by letter of the leading bishop of the province, that is, the metropolitan, that the people ask for a [pastor] to be given to them. I think that it is right to expect that he should come and with him [the metropolitan] perform the ordination. If, however, he does not come by letter when asked, nor write [in answer], the will of the people ought to be satisfied, and bishops from the neighbouring province shall be called to the ordination of the bishops.

Canon T9

It is, however, plainly not allowed for a bishop to be ordained in a village or some small city for which one single presbyter suffices. It is indeed not necessary to

ne contemptibilis fiat episcopi nomen et auctoritas. Sed, sicut predixi, episcopi uicinae prouinciae in iis ciuitatibus ordinare debent episcopos in quibus prius constituti uidebantur: si autem repperiatur quedam ciuitas abundans populo, ut digna uideatur habere episcopum, accipiat.

Si hoc omnibus placet?

Canon T10

OSIUS EPISCOPVS DIXIT:

Inpurtunitas nostra et frequentatio, etiam iniusti, fecerunt nos merito non tantam habere gratiam et confidentiam quantam debueramus habere. Plures enim episcoporum non intermittunt ad comitatum uenientes (ac precipue Afri, qui, ut cognouimus, fratris dilectissimi et conministri nostri Grati suasiones salubres non suscipiunt sed contemnunt), ita ut unus homo in comitatu plurimas ac diuersas, et nihil ad utilitatem proficientes ecclesiarum, preces adportet, per quas et (quemadmodum debet fieri et conuenit) pauperibus uel laicis uel uiduis subueniat et succurrat, sed seculares dignitates et administrationes prouideat quibusdam. Haec igitur spurcitia molestiam non sine scandalo quodam nobis et reprehensione adportat. Decere autem puto episcopos suum prestare debere auxilium illis qui ab aliquo patiuntur uiolentiam, uel si qua leditur uiduarum siue pupillorum quis fraudatur—si haec quoque personae iustam habent petitionem. Igitur, dilectissimi fratres, si omnibus hoc placet, statuite nullum episcoporum debere ad comitatum proficisci; uidelicet his causis exceptis. Quod uero oportet adesse quos piissimus imperator noster suis litteris conuocauerit, nullam habet dubietatem. Et quoniam frequenter uenit misericordia dignos confugere ad ecclesiam, ob sua delicta exilio uel insulis damnatos siue quacumque obligatos sententia; talibus non est denegandum presidium, sed sine mora uel cunctatione his profectionem esse concedendam.

Si igitur placet, statuatur et hoc.

Canon T11

OSIUS EPISCOPVS DIXIT:

Et hoc uestra probet solertia—quoniam placuit episcopos non ire ad comitatum ne reprehensionem incurrant—si quis eorum tales habuerit preces quales memorauimus, per suum transmittat diaconum: ministri enim persona non habet inuidiam, et quae prestantur uelocius perferentur.

Canon T12

OSIUS EPISCOPVS DIXIT:

Et hoc consequenter esse, puto, ut in quacumque prouincia episcopus ad fratres et coepiscopos suos transmisserit preces, qui in maiore ciuitate est siue metropoli ipse et diaconum et preces eius destinet, dans ei commendatitias litteras et scribens scilicet consequenter ad fratres et coepiscopos nostros qui in illo tempore in locis

ordain a bishop there lest the episcopal name and authority be degraded. As I stated before, the bishops of the neighbouring province ought to ordain bishops in those cities [of the first province] in which they were seen to have been previously established. But if some city is found abounding with population that seems worthy to have a bishop let that be approved.

Does this please all?

Canon T10

BISHOP OSSIUS SAID:

Our frequent and also unjust solicitation deservedly have made us have not as much esteem and trust as we ought to have. For many of the bishops do not cease going to court (and especially Africans, who, as we know, do not receive the wholesome advice of our beloved brother and fellow minister Gratus, but disparage it), so that one man brings to the court many and diverse petitions and nothing of use to the Church, through which (as ought to happen and is right) he may relieve and succour the poor or lay people or widows; but arranges secular dignities and appointments for certain persons. Therefore this filthiness brings us trouble not without some scandal and blame. However, I think that it is fitting that bishops should provide help to those who suffer from any violence, or any widow who is harmed, or orphans who are defrauded—if these persons do indeed have honourable petitions. Therefore dear brothers, if this pleases everyone, decree that no bishops ought to go to the court, these cases obviously excepted. But no one doubts that it is proper for those to be present whom our most pious emperor shall have called by letter to come together. And since worthy persons frequently come fleeing to the mercy of the Church, whether exiled for their offences or condemned to islands, or subject to any punishment. Such [persons] are not to be denied protection, but without hindrance or delay this protection is to be granted. If this therefore is pleasing, let this also be decreed.

Canon T11

BISHOP OSSIUS SAID:

And let your shrewdness approve this—since it has been approved [for] bishops not to go to court lest they incur censure—if any of them shall have petitions such as we have mentioned, let him send them by his deacon, for the person of a minister is not envied and [petitions] which are presented [by him] will be more speedily be brought to a successful conclusion.

Canon T12

BISHOP OSSIUS SAID:

And I believe that this follows, that in whatever province a bishop sends petitions to his brothers and fellow bishops, he who is in the major city, or metropolis, should himself send his deacon and the petitions, giving him letters of introduction, and writing (that is, in accordance) to our brothers and fellow bishops who are at that

uel ciuitatibus morantur in quibus felicissimus ac beatus pius imperator rempublicam gubernat. Si uero quis episcoporum habet amicos in aula regia, et uult de aliqua re (quae tamen decet) eos rogare, non proibetur per suum diaconum et rogare et mandare, quod suum adiutorium benignum roganti sibi prebere dignetur. Qui autem Romam perueniunt, sicut predixi, dilectissimo fratri nostro et coepiscopo Iulio preces quas habent dare debebunt, ut prius ipse examinet si nullae sunt ex his inpudentes, et ita suum patrocinium et curam prestans ad comitatum destinabit.

OMNES EPISCOPI RESPONDERVNT

Placere sibi, ac decentissimam esse dispositionem.

Canon T13

OSIUS EPISCOPVS DIXIT:

Et hoc necessarium esse puto ut cum omni scrupulositate ac diligentia examinetis, ut, si quis diues uel scolasticus siue de publico dignus episcopatu uideatur, hunc non ante ordinari quam lectoris diaconis et presbyteri conpleuerit ministerium; quo per singulos gradus (si dignus fuerit uisus) ad fastigium episcopatus gradatim ascendat. Erit autem gradus uniuscuiusque dignitatis non exigui temporis spatium, per quod fides eius et morum bonitas, grauitas ac diligentia, cognoscatur et dignus diuino sacerdotii ministerio habitus maxima potiatur dignitate. Nec enim conuenit nec disciplina uel bona patitur conuersatio audaciter uel leuiter ad hoc prosilire, ut episcopus et presbyter uel diaconus procaciter ordinetur; nam sic merito nouella planta putabitur, quod et beatus apostolus gentium magister uidetur prohibuisse citius fieri ordinationes: longioris enim temporis conprobatio conuersationem et uniuscuiusque mores manifestabit.

OMNES EPISCOPI DIXERVNT

Placere sibi, et non oportere hoc refutari.

Canon T14

OSIUS EPISCOPVS DIXIT:

Et hoc statuere debetis, ut, si quando episcopus ex alia ad aliam uenerit ciuitatem uel de prouincia ad prouinciam, elationis causa suis plausibus uacans uel ob religionis deuotionem, et multo tempore uoluerit ibidem commorari, eius uero ciuitatis episcopus minus gnarus repperiatur uel minus docibilis—ne contemnat eum et frequenter adloquatur, studens confundere et uilem eius demonstrare personam: haec enim occassio consueuit efficere ut his qui ex huiusmodi sese commendat astutia alienam abstrahat sedem ac sibi uindicet eam, non dubitans traditam sibi ecclesiam derelinquere et ad alienam migrare. Statuendum est igitur tempus, quoniam non suscipere episcopum crudele et inhumanum uidetur.

time staying in the regions and cities in which the auspicious and blessed emperor governs the state. If, indeed, any of the bishops has friends in the royal palace, and wishes to request anything (but [only if] it is fitting) it is not prohibited [for him] to ask and to enjoin through his deacon that [by] their kind assistance [they] may deign to represent his petitions. Moreover, those who come to Rome, as I have said before, should give the petitions which they have to our beloved brother and fellow bishop Julius, that he first may examine whether none among them are without shame, and then, conferring his advocacy and watchfulness on them, may send [them] to the court.

ALL THE BISHOPS RESPONDED:

This is pleasing and a most proper arrangement.

Canon T13

BISHOP OSSIUS SAID:

And I think this to be necessary, that with all carefulness and diligence, if any rich man or jurist or [a man] of a high public position is considered for the episcopate, this [person] shall not be ordained until he has fulfilled the ministries of lector, deacon, and presbyter, whereby through successive grades (if he is seen to be worthy) he may gradually ascend to the height of the episcopate. Moreover, he shall be in each single grade of dignity not for a short period of time, whereby his faith, goodness of behaviour, seriousness, and conscientiousness may be known, and if he is worthy in character for the divine ministry of priesthood he may acquire [this] greatest dignity. Nor is it fitting, nor does discipline or good conduct permit, that [someone] so recklessly or lightly should leap forward to this [honour], that a bishop or presbyter or deacon who is a novice may be precipitately ordained; for by good reason he may be thought [of] as a new shoot. The blessed apostle, the master of the Gentiles, seems to have forbidden that ordinations be hasty, for it is testing over a longer time that will manifest the conduct and character of each individual.

ALL THE BISHOPS SAID:

It is pleasing, and it is not right for this to be rejected.

Canon T14

BISHOP OSSIUS SAID:

And this you should decree: that whenever a bishop from one city comes to another, or from province to province, paying attention to his [self-]exaltation by approbation or because of religious devotion, and wishes to stay there for a long time, but the bishop of the city [is] less practised or less learned—let him not disparage him and frequently give sermons, being eager to bewilder [the people] and to show off his worthless character. For this opportunity commonly enables [him] who commends himself in this way to steal the other [bishop's] see and claim it for himself, not hesitating to leave his own see and move to the other. A [limit] of time, therefore is to be decreed so that a bishop may not be seen to undertake cruel and discourteous behaviour.

Canon T15

Memento tamen antiquis temporibus patres nostros statuisse ut, si quis laicus in eadem degens ciuitate tribus dominicis diebus per tres non conuenerit ebdomadas, amoueri a communione. Si igitur hoc de laicis decretum est, non conuenit nec decet uel prode est episcopum, si nullam grauem necessitate uel negotium difficilem uidetur habere, ulterius abesse ecclesia et contristare populum sibi commissum.

OMNES EPISCOPI DIXERVNT:

Et haec sententia uidetur esse decentissima.

Canon T16

OSIUS EPISCOPVS DIXIT:

Quia nihil est pretermittendum: fratres et coepiscopi in ciuitatibus quibus sunt ordinati interdum possessiunculas minimas uidentur habere, aliis uero in locis magnas ex quibus possunt procursiores ecclesiae redditus adhibere—hoc estimo illis concedendum, ut ad agros suos uenientes fructos suos colligant per trium dominicarum dies, hoc est, tribus ebdomadibus in possessionibus suis degere, et in proxima ciuitate in qua colligit presbyter conuenire (ut ne uideantur sine conuentu colligere) et ministrare. Hoc enim pacto ob eius absentiam ad eum pertinentes possessiunculae nullum damnum sustinebunt, et ne frequenter ad aliam ciuitatem adueniat in qua est alter episcopus constitutus: sic enim effugere poterit iactantiae uel superbiae crimen.

OMNES EPISCOPI DIXERVNT:

Placet dispositio haec.

Canon T17

OSIUS EPISCOPVS DIXIT:

Et hoc omnibus placuit, ut siue diaconus siue presbyter uel quis clericorum fuerit excommunicatus et ad alterum sibi notum confugerit episcopum, scientem quod amotus est a communione episcopo suo, non debere eum ad communionem suscipere, ne fratri iniuriam faciat, prestare communionem. Si uero ausus fuerit hoc committere, sciat quod nec, conuenientibus episcopis, locum excussationis habebit.

OMNES EPISCOPI DIXERVNT:

Hoc statutum pacem semper custodiet et concordiam conseruabit.

Canon T18

OSIUS EPISCOPVS DIXIT:

Quod me senper mouet tacere non debeo: si quis episcopus oxycholus reperiatur (licet in tale uiro hoc uitium non debeat reperiri) et citius contra presbyterum uel

Canon T15

Remember, nevertheless, that in former times our fathers decreed that if a lay person spends three Sundays through three weeks in a city and does not attend [the Eucharist] he should be removed from communion. If, therefore, this has been decreed for laity is it not fitting and proper or beneficial for a bishop, if he seems to have no grave necessity nor difficult business, to be away longer from [his] church and sadden the people committed to him

ALL THE BISHOPS SAID:

And this judgement seems to be most proper.

Canon T16

BISHOP OSSIUS SAID:

Since nothing is to be neglected, it is sometimes seen that our brother and fellow bishops have [only] small estates in the cities in which they were ordained, but in other places large ones. which the administrators of a church are able to use for proceeds. This, I think, must be conceded to them, that they may go to their fields to collect their produce through three Sundays, that is to spend three weeks on their estates, and to gather with a congregation in a neighbouring city in which a presbyter gathers [the congregation] (that it does not appear that [they passed the Sunday] without attending church). For in this way he will defer condemnation and will not suffer any loss through his absence, and he should not frequently come to a city in which another bishop is established; for thus he will be able to escape accusation of ostentation and overbearingness.

ALL THE BISHOPS SAID:

This arrangement is pleasing.

Canon T17

BISHOP OSSIUS SAID:

And this was pleasing to all: that whether deacon or presbyter or some one of the clerics is excommunicated and shall flee for refuge to another bishop known to him, [who himself] knows that he had been removed from communion by his bishop, he ought not to receive him into communion lest he act unjustly towards his brother by offering him communion. If he ventures to do this, let him know that he will not have grounds for excuse by the assembled bishops.

ALL THE BISHOPS SAID:

This decree will always keep peace and will preserve unity.

Canon T18

BISHOP OSSIUS SAID:

I ought not to keep silent [about] that which always stirs me. If some bishop is found to be angry (although in such a man this fault should not be found) and is

diaconum motus deiecerit de ecclesia, prouidendum est ne innocens condemnetur uel communionem fraudetur.

OMNES DIXERVNT:

Eiectus habeat licentiam apud metropolitanum episcopum eiusdem prouinciae uicinum confugere, et rogare ut scrupulosius interrogetur negotium; nec enim rogantibus est audientia deneganda: et ille episcopus qui merito uel indigne talem deiecerit uiriliter ferre debet ut examen rei procedat, quo eius sententia uel confirmetur uel emendetur. (Qui excommunicatur quolibet modo non sibi debet communionem uindicare:) antequam diligenter cum omni ueritate cuncta examinentur, qui non habet communionem ante causae cognitionem non sibi debet uindicare communionem. Clerici uero, qui conueniunt, si peruiderint superbiam uel iniquas subire querellas, amarioribus et grauioribus uerbis talem emendare debebunt, ut honesta iubenti obsequantur et obaudiant: sicut enim episcopus ministris sinceram debet caritatem et affectum prestare, eodem modo subiecti episcopis merita debent prestare ministeria.

Canon T19

IANVARIVS EPISCOPVS DIXIT:

Et hoc dilecto uestra constituat, ne cui liceat episcopo alterius ecclesiae ecclesiasticum sollicitare uel in parroechia sua ordinare.

OMNES DIXERVNT:

Maxime ex huiusmodi contentionibus consueuerunt nasci discordiae et concupiscentiae, et ob hanc rem ad destinatas sibi clerici non pergunt ecclesias: omnium sententia hoc proibet fieri.

Canon T20

OSIVS EPISCOPVS DIXIT:

Et hoc statuamus, ut si uoluerit ex aliena parrochia quis alienum ministrum sine consensu episcopi eius ad aliquem gradum prouehere, inrita et infirma huiusmodi habeatur ordinatio. Si quis uero hoc usurpare uoluerit, a fratribus nostris et coepiscopis commoneri debet.

Canon T21

AETIVS EPISCOPVS DIXIT:

Non ignoratis quae et quanta sit metropolitana ciuitas Thessallonica: ei sepius de aliis prouinciis et parrochiis adueniunt presbyteri et diacones ac, non contenti exiguo tempore commorari, resident et omne tempus eodem facient, vel vix tandem post multum tempus ad suas redire cogentur ecclesias.

Canon T22

OSIVS EPISCOPVS DIXIT:

Suggerente etiam fratre nostro Olympio et hoc placuit, ut qui uim sustinuit et

suddenly moved to cast a presbyter or deacon out of the church, it must be provided that an innocent man shall not be condemned nor be deprived of communion.

ALL SAID:

Let the one cast out have permission to take refuge with the neighbouring metropolitan bishop of the same province, and ask that [his] case be most scrupulously examined. Nor indeed can a hearing for the petitioner be denied; and that bishop who worthily or unworthily ejected such a one ought to endure [it] like a man that an investigation of the matter proceeds that will either confirm or correct his judgement. Before all things are examined with all truth, he who has been deprived of communion shall not lay claim to communion before the investigation of [his] case. If clerics who assemble for the hearing discern arrogance or the submission of unjust complaints [by the one under investigation, they ought] by words of some harshness and weight to correct such [ones] that they may submit to and obey honourable commands. For as bishops ought to offer genuine love and devotion to ministers, in the same way ought subjects offer to bishops the services they deserve.

Canon T19

BISHOP JANUARIUS SAID:

And let your charity decree this, that it shall not be allowed for any bishop to recruit an ecclesiastic of another church or ordain him in his [own] parish.

ALL SAID:

Especially from this kind of disputes it is common that discords and evil desires are born, and because of this clerics do not go to the churches assigned to them. The judgement of all forbids this to be done.

Canon T20

BISHOP OSSIUS SAID:

And this we decree: that if [anyone] shall have wished to promote to some other rank a foreign cleric from another parish without the consent of his bishop, such ordination will be held invalid and worthless. Whoever indeed, shall have wished to take possession in this way will have to be warned by our brothers and fellow bishops.

Canon T21

BISHOP AETIUS SAID:

You are not ignorant of what sort and how large the city of Thessalonica is. Presbyters and deacons often go to it from other provinces and parishes and, not content to stay for a short time, live and spend all their time there, or only with difficulty, after a long time, will finally be compelled to return to their churches.

Canon T22

BISHOP OSSIUS SAID:

Suggested also by our brother Olympius, this too was pleasing: that whoever has

uiolenter expulsus est, siue propter disciplinam siue propter confessionem catholicae ecclesiae uel ueritatis adsertionem, fugiens periculum innocens ac deuotus ad aliam peruenerit ciuitatem, non proibeatur in ea degere tamdiu, donec reuertatur uel facta sibi liberetur iniuria. Durum etenim est iniuste passum persecutionem iniquam a nobis non suscipi, multamque beneuolentiae humanitatem non prestare.

Canon T23

GAVDENTIVS EPISCOPVS DIXIT:

Scis, Aeti, quod episcopo aliquando ordinato pax indebatur, ita ut nullae reliquiae discordiarum in ecclesia remanerent: et placuit ordinatos a Museo et Eutychiano, quoniam eorum nulla repperiebatur culpa, suscipi.

Canon T24

OSIVS EPISCOPVS DIXIT:

Mediocrитatis meae haec est sententia: quoniam quieti et patientes debemus esse et sufficienter apud omnes habere misericordiam, semel ad ecclesiasticum clerum prouectos a quibusdam fratribus nostris, si noluerint reuerti ad quas nominati sunt ecclesias, in posterum non suscipi: Eutychianus autem episcopatus sibi uindicare nomen non debet, nec Museus episcopus aestimabitur; ceterum si laicam communionem exposcunt, his negari non debet.

Canon T25

GAVDENTIVS EPISCOPVS DIXIT:

Haec salubriter et consequenter statuta et ut decuit uestrae honestati sacerdotali, Deo placita et hominibus, non poterunt suam uim et potentiam optinere, nisi timor sententiam prolatam subsequatur: nouimus namque et ipsi sepius propter paucorum inpudentiam diuinum et honorabile nomen sacerdotii reprehensum fuisse. Si quis uero fuerit ausus preter omnibus placita, cupiens contumaciam magis et superbiam quam Deo placare, aliquid actitare, iam hinc cognoscat maximo se crimine obligasse et honorem ac dignitatem episcopatus amittere. Hoc autem ex eo innotescet et cognoscetur, si quisque nostrum in transitu uel canali possitus uidens episcopum requirat causam transitus et quo suum dirigat iter, et si illum inuenerit ad comitatum pergentem, expiscetur condiciones supra possitas; et si ire uocatum peruiderit, eunti nullum impedimentum adportet, si uero ostentationis gratia (sicut predictum est uestrae caritati) si autem ob quorundam preces festinat ad comitatum, nec litteris eius quis subscribet nec ei communicet.

OMNES RESPONDERVNT:

Decet, et placet nobis haec sententia.

suffered force and has been violently thrust out [of his church] either because of doctrine or because of confession of the catholic church or declaration of truth, [though] innocent and devout, fleeing danger, comes to another city, he shall not be forbidden to stay in it until he returns or is delivered from the wrong done to him. For it is hard if he who unjustly suffers persecution should not be received by us and that we should not provide much kindness and good will.

Canon T23

BISHOP GAUDENTIUS SAID:

You know, Aetius, that since [your] ordination peace has been introduced, such that no remnants of discord remain [in your church], and it was acceptable that those ordained by Musaeus and Eutychianus be received, since no fault was found in them.

Canon T24

BISHOP OSSIUS SAID:

This opinion is from my moderation: since we ought to be quiet and patient, and to have sufficient mercy to all, once they have been advanced to clerical [rank] in the Church by any of our brothers, if they do not wish to return to the churches in which they were appointed, they will not be accepted in the future. Eutychianus, moreover, ought not to lay claim for himself the name of the episcopate, nor will Musaeus be thought to be a bishop. However, if they ask for lay communion they ought not to be denied.

Canon T25

BISHOP GAUDENTIUS SAID:

These things [which have been] beneficially decreed in orderly fashion and [as] seemed fitting to your priestly sense of propriety, and pleasing to God and to man, will not obtain their force and power unless fear follows upon the judgement pronounced. For we know that through the shamelessness of a few the divine and honourable name of the priesthood has quite often become blameworthy. If anyone shall presume, contrary to the pleasure of all, desiring wilfulness and arrogance more than to please God, to stir up some [mischievous] activity, let him know henceforth that he has rendered himself guilty of the greatest crime and that he will lose the honour and dignity of the episcopate. Moreover, this will become known and understood if one of us travelling or having his see on the highway, seeing a bishop, inquires [as to] the cause of his journey and where it is that his route is directed, and if he is found to be proceeding to the court he extracts [from him] the circumstances established before. And if he shall have seen that he is going because summoned, he shall make no hindrance to his going. If, however, [the bishop is going] for the sake of ostentation (as was said before by your charity) [or] is hastening to the court on account of certain persons' petitions, let no one either sign his letters or communicate with him.

ALL RESPONDED:

This judgement is fitting and pleasing to us.

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Index of Modern Authors

- Abbot, F. F. 26., 27n.
Albert, M. 110n.
Alexander, J. 24n.
Amidon, P. R. 25, 26
Arendzen, J. P. 150n.
Aubineau, M. 46n.
Babut, E. Ch. 115, 116n.
Badot, P. 41n.
Ballerini, P. and G. 52, 120, 183n., 200
Bardy, G. 155n., 175, 176
Barnard, L. W. 99, 102, 103n., 105n., 106n., 107n., 108, 111n.,
120, 182, 190n.
Barnes, T. D. 15n., 39n., 48n., 96n., 97n., 98n., 105n., 185n.,
186n.
Batiffol, P. 25, 62n., 63n., 116, 175
Bauer, W. 6
Beck, A. 28n.
Benesevic, V. N. 54n., 55n.
Bevenot, M. 18n.
Bradshaw, P. F. 36n.
Brennecke, H. C. 14n., 42n., 191n., 195n.
Brent, A. 8, 9n., 13, 14
Brooks, S. H. 35n.
Bruns, C. G. 38n., 74n.
Bruns, H. Th., 38n.
Burke, G. T. 6n.
Butterworth, R. 11n.
Campenhausen, H. von 83n.
Caspar, E. 188n., 191n., 197, 198–9
Chabot, J. B. 54n.
Chadwick, H. 13n. 23, 56n., 85n., 97n., 112n., 160n., 162n.,
165n.
Clarke, G. W. 15n., 16, 18n., 19n., 22, 30n., 159n.
Colgrave, M. 151n., 161n.
Congar, Y.-M. 5n.
Connolly, R. H. 160n.
Courtonne, Y. 82n.
Coyle, J. K. 12n.
Crehan, J. H. 77n.
Cross, F. L. 51n., 57, 85
Cureton, W. 110
Dassmann, E. 8n., 83n.
De Clerq, C. 39n., 54n.
De Clercq, V. C. 42, 111, 112n., 121n.
De Decker, D. 41n.
Deslandes, J. 54n.
Divjak, J. 79n.
Dix, G. 83n., 160n., 162n.
Duchesne, L. 42, 114, 161n.
Dupuy, B. 180n.
Elliott, G. 39n.
Eno, R. B. 76n., 187n.
Faivre, A. 24n., 48n., 158n., 161n.
Feder, A. L. 102, 102n., 107n.
Fischer, B. 161n.
Fischer, J. A. 3, 5n., 7, 11n., 12n., 13n., 15n., 16n., 18n., 19n.,
20n., 25, 29, 42n., 44n., 45n.
Friedrich, J. 114, 115, 124, 125, 126
Funk, F. X. 114, 160n., 162n., 174n., 178n.
Gaudemet, J. 4, 25, 48n., 50n., 53n., 55n., 56n., 57n., 58n., 59n.,
75n., 77n., 83n., 87n., 147n., 204

- Gelzer, H. 24
 Gelzer, I. 107, 121n.
 Gillmann, F. 154n., 155
 Girardet, K. 112n., 180n., 182–3, 184n., 187, 188n., 191n., 195, 196
 Gottlieb, G. 64n.
 Gottlob, T. 154n.
 Gryson, R. 12n., 42n., 147n.
 Guarnieri, C. 24n., 43n.
 Hall, S. G. 105n.
 Hankiewicz, G. R. von 118, 197
 Hanson, R. P. C. 97n.
 Harnack, A. von 160n.
 Harries, J. 86n.
 Heckrodt, E. 166n.
 Hefele, C. J.–Leclercq, H. 3, 15n., 45n., 49n., 51n., 56n., 66n., 103, 104, 109, 109n., 150, 151, 155n., 164n., 166, 171, 171n., 192, 195, 197, 207
 Herman, É. 54n., 55n.
 Herrmann, E. 25, 27
 Herzog, R. 39n., 111n., 113n.
 Hess, H. 116n., 120
 Holl, K. 61n.
 Honigmann, E. 55n.
 Honoré, Tony (A. M.) 89n.
 Hunt, D. 86n., 205n.
 Hunt, E. D. 205n.
 Jalland, T. G. 8n., 189n.
 Jasper, D. 50n.
 Jay, E. G. 8n.
 Joannou, P. P. 39n., 49n., 78n., 191n., 199n.
 Johnson, A. C. 26n., 27n.
 Jones, A. H. M. 155n., 205n.
 Jonkers, E. J. 87n.
 Junod, E. 5n., 8n., 24n.
 Kannengiesser, Ch. 96n.
 Kaser, M. 196n.
 Kelly, J. N. D. 77n., 106n.
 Kirsten, E. 155n.
 Kraft, H. 8n.
 Kraft, R. A. 6n.
 Krodel, G. 6n.
 Kunkel, W. 21n., 75n., 86n.
 Krusch, B. 129n.
 L'Huillier, P. 50n., 53n., 55n., 58n., 82, 83n., 85n., 87n.
 Leuchli, S. 41, 42
 Lampe, P. 9n.
 Lancel, S. 61n.
 Lanne, E. 24n.
 Lauchert, F. 38n.
 Lawlor, H. J. 7n.
 Lebreton, J. 155n.
 Leclef, J. 154n.
 Leclercq, H. 44n., 204
 Lecrivain, Ch. 27n.
 Lendon, J. 32n.
 Levison, W. 129n.
 Lim, R. 47
 Limouris, G. 58n.
 Loofs, F. 106n., 107n., 109n.
 Lucchesi, E. 46n.
 Lumpe, A. 3, 5n., 8n., 11n., 13n., 40n., 43n., 45n.
 Luttenberger, G. H. 37n.
 Maassen, F. 51n., 55n., 58n., 128n.
 McCue, J. F. 9n., 10n., 187n.
 Maier, J.-L. 17n., 20n.
 Mansi, J. D. 41n.
 Marcovich, M. 11, 160n.
 Marschall, W. 191n., 199
 Martin, A. 110n.
 Martroye, F. 204
 Mathisen, R. 59, 87n.
 Matthews, J. 89
 Mazzini, I. 43n.
 Meigne, M. 41–2
 Metzger, M. 39 n., 40 n.

- Mommsen, Th. 25, 28n., 67n., 74n.
 Monceaux, P. 17n.
 Mordek, H. 46n.
 Moroziuk, R. P. 47
 Müller, K. 155n.
 Munier, C. 4, 39n., 51n., 52, 57n., 58n., 59n., 69n.
 Mynors, A. B. 151n.
 Nautin, P. 8n., 12n., 14n.
 Noonan, J. T. 170n.
 Oehler, K. 31
 Ohme, H. 38n., 77n., 78, 82
 Opelt, I. 103n.
 Opitz, H. G. 44n., 121
 Oppel, H. 38n.
 Osawa, T. 31n.
 Oulton, J. E. L. 7n., 23n.
 Overman, J. A. 35n.
 Parisot, J. 155n.
 Parmentier, L. 61n.
 Percival, H. R. 39n.
 Person, R. E. 76n.
 Peterson, E. 161n.
 Pharr, C. 28n.
 Pietri, Ch. 157n., 191n.
 Quesnel, P. 52
 Rambaud-Buhot, J. 58n.
 Ramos Lisson, D. 42n.
 Rankin, D. 11n., 15n.
 Reichert, E. 42n.
 Richard, M. 14n.
 Riedmatten, H. de 14n.
 Robertson, A. 110, 184n.
 Rousseau, P. 55n.
 Routh, M. J. 61n.
 Sage, M. M. 17n.
 Saxer, V. 17n.
 Scherer, J. 13n.
 Schoell, R. 86n.
 Schöllgen, G. 8n.
 Schoo, G. 62n.
 Schulthess, F. 54n. 130n.
 Schwartz, E. 53n., 56n., 107n., 117, 118, 119, 120, 122, 130,
 130n., 137, 138, 139, 140, 150, 153, 165n., 192, 208
 Seagraves, R. 20n.
 Selb, W. 54n.
 Shepherd, E. J. 114n.
 Sieben, H. J. 3, 5n., 13, 25, 27n., 28n., 31n., 33, 34, 47, 75n., 76,
 179n., 184n., 190n., 197
 Sirinjan, M. 47n.
 Speigl, J. 24n.
 Stead, C. 14n.
 Stein, E. 195, 196
 Stern, S. 39n., 107
 Talbert, R. J. A. 27
 Telfer, W. 8n., 105n., 139, 140
 Thompson, A. 87n.
 Tillemont, L.-S. Le Nain de 149n.
 Trevett, C. 6n., 7n.
 Troianos, S. N. 191n., 195, 199
 Turner, C. H. 3, 22n., 39n., 42n., 49n., 56, 56n., 57, 59, 59n.,
 107n., 114, 117, 120, 122, 127, 128, 130n., 131, 137, 138,
 140n., 146n., 153n., 156, 174, 175, 175n., 183n., 187, 194n.,
 207, 209
 Twomey, V. 183, 183n., 191n.
 Vacanard, E. 169–70
 Vilela, A. 22n.
 Vives, J. 39n., 41n., 53n.
 Vogel, C. 26, 44n., 206
 Vööbus, A. 54n.
 Wenger, L. 38n.
 Wickert, U. 31n.

- Wilken, R. 6n.
Williams, D. H. 95
Williams, R. 6n., 96n.
Wilmart, A. 107n.
Winkelmann, F. 48n.
Wojtowysch, M. 183n.
Wordsworth, J. 114
Zeiller, J. 116, 121n., 155n.
Zizioulas, J. 8n., 24n.

Index of Subjects and Names

70, 126, 195; for reference to individual canons, *see* canons;
 spurious canons of 42; versions of letter to Sylvester 43n.
 Arles, so-called second council of 59
 Asclepas, bp. of Gaza 50, 61, 97, 105, 107, 108
 Asterius, bp. of Petra (Arabia) 103, 109
 asylum (sanctuary) 204

Acacius, bp. of Caesarea (Palestine) 103
 Acholius, bp. of Thessalonica 192
 acolytes 159, 161
 Aetius, bp. of Thessalonica 130
 Africa, Roman north 15, 16, 20, 51; church life in 16–17
 African Code, *see Registri ecclesiae Cathaginensis excerpta*
 Agrippinus, bp. of Carthage 15, 16
 Alaric, Visigothic king 87
 Alexander, bp. of Alexandria 95, 97, 112, 165n.
 Alexander, bp. of Jerusalem 162, 163
 Alexandria, *see* of 57, 61, 85, 100, 108, 121, 137, 156, 157, 183,
 202; bishop of 206; councils of (c.306) 40, 44; (338) 147,
 163, 184n., 185n., 203
 Alypius, bp. of Megara 204
 Ambrose, bp. of Milan 34, 158
 Amphilochius, bp. of Iconium 55, 82
 Amphion, bp. of Nicomedia 202
 Anastasius II, pope 58
 Anatolius, bp. of Constantinople 72
 Ancyra, council of 45; canons of 45, 53, 54, 58, 70; for
 reference to individual canons, *see* canons
 Anomoean creed 112
 ‘Anonymous’ (author) 6, 7
 Antioch, *see* of 85; canons of 53, 54, 58, 70, 144; for
 references to individual canons, *see* canons; councils of
 (324/5) 165; (c.328) 48; (341) 185
 ‘Antiochene Collection’ or *corpus* (of canons) 50, 54, 54n., 56,
 82, 83, 86
 ‘Apiarian Codex’ 52
 Apiarius of Sicca and controversy relating to 47, 56, 57, 58,
 115, 124, 128, 137, 179, 198
 Apostolic canons 48, 54, 58, 85; for references to individual
 canons, *see* canons
Apostolic Constitutions 36, 49, 78, 161, 178
Apostolic Tradition 36, 162n.
 Aquileia, *see* of 167, 169; council of (381) 34, 61
 Arab conquest 51
 Arabia 121
 Archidamus, Roman presbyter delegate at Serdica 103, 197
 Arian controversy 48
 Arianism 46, 112, 150
 Aristotle 150
 Arius, Palestinian bishop 103, 109, 112
 Arius, presbyter of Alexandria 95, 96, 97, 98, 99
 Arles, council of (314) 43–4, 52, 74n., 189; canons of 59, 69,

XIII 148; XLII 39n.; LIII

Athanasius, bp. of Alexandria 50, 61, 62n., 72, 75, 97–100, Ch. 4 *passim*, 137, 147, 149, 156, 158, 159, 160, 183, 184n., 185, 186, 188, 189, 190, 195, 197–8, 202, 203; encyclical letter (339) 185; Festal Letters 110; *Tom ad Antiochenos* 106
auctoritas 32, 74, 75
 Augustine, bp. of Hippo 15n., 43n., 51, 73, 75, 76n., 79, 127, 158
 Augustus, Roman Emperor 31
 Aurelius, bp. of Carthage 51, 72, 114
 Balsamon (canonist, c.1200) 193n.
 Basil, Arian bp. of Ancyra 105
 Basil, bp. of Caesarea 55, 82, 87, 158, 161n.; canonical epistles of 82
 Basilides and Martial Spanish bps. (2nd cent.) 20, 188
 Beryllus, bp. of Bostra 13, 14, 23, 33
 Berytus, law school of 78
 Béziers, council of (356) 52
 bishops, qualifications for 157–61
 Bordeaux, council of (384/5) 52
 Bosonius, bp. of Serdica 51
Breviatio canonum (of Fulgentius Ferrandus) 58
Breviarium Hipponense 57, 74n., 79, 85, 86, 88
 Byzacena 17, 51
 Caecilian, bp. of Carthage 44
 Caesarea, (Cappadocia) alleged council of 45
 canon law, beginnings of 82–9
Canones ad Gallos episcopos 50, 81, 115, 126, 158, 163; authorship of 50n.
 canonical redactions, and manuscript versions (Latin); Chieti (Cod. Ingilrami ep. Teatini) 127, 128, 177n., 206n.; Codex Veronensis Bib. Cap. LX (58) 137; Dionysian 116, 166, 170; Isidoriana 56, 128, 166, 170; Prisca 116, 124, 166, 170; Verona Fragment 128
 canons, forms of publication 69–74, 85
 canons (individual references); Ancyra (314) III 159n.; XII 159n.; XIV 46; XVIII 148, 172n.; XXI 45; XXIII 45; XXIV 46; Antioch (c.328): I 208; II 175n.; III 165, 166; IV 166, 182–3; VI 175n., 200; IX 181n.; X 154; XI 135, 200; XII 166, 182–3, 184, 203; XIII 151, 171, 176; XIV 181, 182, 190; XV 181, 182, 190; XVI 39n., 181n.; XIX 148; XX 148, 181n.; XXI 165, 167, 167n., 176; XXII 166; Apostles (4th cent.) XIII 175n.; XIV 166; XXX 170; XXXI 170; XXXVI 176; LXXX 158; Arles (314) II 164; VII 165; XVI 165; XVII 172n., 176; XIX 174; XXI 164; Carthage (345): V 176; XI 200; XIV 73; Carthage (390): V 156; XI 40; XIII 73; Carthage (401): V 156; Chalcedon (451): IX 184; XVII 184; XX 166; XXVIII 85; XXVIII–XXX 71; Constantinople (381) II 85, 129; III 85; VI 184; Elvira (c.309): XIX 174; XX 174; XXI 172; XXIV 176; XXX 159n.; Gangra (343/55): XIV 129; Hippo (393) XXVII 40; Laodicea (uncertain) III 158;

- 175n.; Neocaesarea (c.317) XI 158; XII 159n.; XIV 154; Nicaea (325) II 158, 159n.; IV 85, 148, 150; V 175, 181, 184n., 200; VI 85; VIII 154; IX 159n.; X 159n.; XV 39, 126, 165, 166, 167; XVI 125, 126, 165n., 167n., 176; Rome (402): XV 40; Serdica (343) (Latin numbering): I 39, 126, 169, 170, 172; II 168, 172; IIIa 39, 65, 85, 151, 171, 172, 174, 189; IIIb 65, 85, 151, 171, 181, 190; IIIc 65, 66, 85, 152, 188, 190–9; IV 65, 151, 190–9; V 65, 146–54, 156, 205; VI 65, 154–7; VII 56, 66, 69, 70, 71, 190–9, 208; VIII 193, 201; IXb 65, 152, 199; Xa 65, 192; Xb 66; XI 66, 74, 201; XII 66; XIII 157–61; XIV 85, 177; XV 172, 173–4; XVI 74; XVII 56, 175; XVIII 66, 175–6; XIX 56, 66, 69, 70, 71, 125; XX 177; XXI 66, 69, 70, 79, 173, 177–8; (Greek numbering): V 199; VI 65, 88; VIa 205, 208; IX 65; XIV 64, 205; XVIII and XIX 66, 123, 143; Tours (461): IX 40
- Capua, council of (391–2) 50, 163
- Cappadocia 22
- Carterius, bp. of Antaradus 149
- Carthage, bishop of 17, 206; councils of (220/30) 15; (236/40) 16n.; (251) 29, 37; (252) 29, 32; (253) 29; (spring 256) 32; (1 Sept. 256) 28, 32; (254/7) 20; (304, of martyrs in prison?) 45n.; (309/10 or 312) 43; (345/8) 51, 52, 63; (390) 51, 52, 63, 115; (13 Aug. 395) 51, 88, 163; (28 Aug. 397) 88; (Apr. 399) 204; (Sept. 401) 88; (1 May 418) 51, 57, 58, 127; (424) 57; for references to canons, *see* canons
- Celestine I, pope 57, 138, 148
- Chalcedon, council of (451) 46, 50, 54, 58, 62, 76, 82, 106; canons of 53, 70, 72; for references to individual canons, *see* canons
- chorepiscopus 154–7
- church structure and organization 7n., 11n., 12, 24, 37–8, 180, 187
- Church and State, relationship between 95–6, 201–3
- Cirta (Numidia) 52n.; council of (c.305) 42
- Cicero 31
- Claudius Apollinarius, bp. of Hierapolis 7
- Clement of Rome 179
- Codex Apiarii causae* 57
- Codex Gregorianus* 78n.
- Codex Hermogenianus* 78n.
- Cologne, council (346) and canons of 52, 53
- conciliar legislation (development of) 49
- conciliar minutes and stenographic records 13, 14, 20, 28, 29, 33, 42, 48, 52, 57, 63, 64, 69, 71, 72, 82
- conciliar styles 33–4
- conciliar system (development of) Ch. 1 *passim*, 43–4, 46
- Concordia discordantium canonum* 87n.
- consensus* 21, 30–3, 72, 73, 75, 76, 79, 81, 89
- consilia 21n.
- Constans, Roman Emperor 98, 99, 107, 202
- Constantine I, Roman Emperor 27, 43, 46, 47, 73, 95, 97, 98, 103, 112, 113, 121, 185, 202
- Constantine II, Roman Emperor 98, 202
- Constantinople, *see* of 50, 57, 85,

- 128; councils of (360) 61; (381) 46, 48, 58; (382) 54, 70; canons of (381) 49, 53, 54; (382) 54, 70; for references to individual canons, *see* canons
- Constantius, Roman Emperor 61, 98, 104, 109, 111, 112, 113, 121, 160, 202
- Cornelius, pope 19, 22, 30, 33, 159, 160, 189
- Cornelius and Lucius, martyrs 32n.
- ‘Corpus Antiochenum’, *see* ‘Antiochene Collection’
- councils (3rd cent.): Africa 15–20; Gaul and Spain 40; Eastern 10–15
- councils, participation by clergy and laity 11, 13, 17, 21, 22–4, 41, 43
- Crestus, bp. of Nicaea 202
- Cyprian, bp. of Carthage 12, 16, 17–33 *passim*, 40, 62, 72, 75, 78, 83, 84, 157, 159, 159n., 161, 162, 162n., 174, 189
- Cyprian, letters: I 37; IV 30n.; XIV 21n.; XVII 22n.; XIX 21n.; XXV 30n.; XXXII 30n.; XXXIV 21n.; XXXVI 16n.; XLV 14n.; XLVIII 14n., 30n.; XLIX 21n., 33n.; LV 17n., 18n., 19n.; LVI 19; LVII 18n., 19; LIX 16n., 17n., 18n., 21n.; LXIV 18; LXVI 31n.; LXVII 20n., 30; LXIX 18n., 32n.; LXX 19; LXXI 15n., 16, 22n.; LXXII 19; LXXIII 15n., 18n., 20n.; LXXV 12n.
- Cyrus, bp. of Beroea 149
- Damasus I, pope 50, 161n., 164
- decretals, papal 50, 58, 87
- Didache* 36, 174n.
- Didascalia* 158, 160, 161n., 162n., 174n., 178
- didaskalos* (teacher) 34
- Diodorus, Asian bishop 149
- Dionysius, bp. of Alexandria 8n., 12, 13, 23, 24, 33, 40n.
- Dionysius Exiguus 54, 56, 57; collection of 57, 81n., 86, 87, 88, 127, 128, 129, 193
- Domnion, bp. of Sirmium 149
- Domnus, bp. of Antioch 14
- Donatism 43, 44, 75, 112, 149, 202, 203
- Donatus, bp. of Carthage (predecessor to Cyprian) 16, 44
- Easter, dating of 8, 15, 44, 107
- election of bps. 29n., 145, 147–8, 153
- Elvira, council of (c.309) 29, 40–2; canons of, authenticity 41–2; for references to specific canons, *see* canons
- Ephesus, council of (431) 46, 62, 76; canons of 49–50, 54, 70
- Epigonius, disciple of Noëtus 11
- Eudoxius, bp. of Germanicia 160
- Euphrates, bp. of Cologne 107
- Euphraton, bp. of Balanea 149
- Eusebius, bp. of Caesarea 6, 7, 8, 9, 10, 12, 13, 14, 22, 33, 44, 162, 163
- Eusebius, bp. of Nicomedia 165, 202; as bp. of Constantinople 108, 167
- Eustathius, bp. of Antioch 95, 97, 99, 165, 202
- Eusebius, bp. of Sebaste 48
- Euticius, bp. of Philippopolis, 110
- Eutropius, bp. of Adrianople 149
- Euzoius, Homoean bp. of Antioch 53
- exorcists 159, 161
- Fabian, pope 9, 158
- Fabius, bp. of Antioch 33, 160
- Felicissimus, Novatianist deacon of Carthage 18, 22
- Fidus, African bishop 18
- Fifty Titles*, collection of 130
- Firmilian, bp. of Caesarea 12, 22

- Fortunatus, schismatic at Carthage 22, 188
Fourteen Titles, collection of 130
 Fulgentius Ferrandus 58, 81n., 86, 127
 Gangra, council of (343 or 355) 48, 58; canons of 53, 54, 70;
 for references to individual canons, *see* canons
 Gaudentius, bp. of Naissus 122, 208
 Gaul, councils in 15, 26, 40, 52, 59
 Genethlius, bp. of Carthage 51, 64, 73
 George, bp. of Laodicea 160
Gesta apud Zenophilum 61n.
Gesta Conlationis Carthaginensis anno 411 61n.
 gnosticism 6
 Gratian, canonist (c.1150) 87, 87n., 88
 Gratian, Roman Emperor 34, 115
 Gratus, bp. of Carthage 51, 73, 115, 127, 176, 201
 Gregory of Cappadocia, bp. of Alexandria 98, 105, 149, 160,
 185, 194, 202
 Gregory, bp. of Nazianzus 164n.
 Gregory I, pope 151
 Gregory, bp. of Tours 129
 Hellanicus, bp. of Tripolis (Phoenicia) 149
 Hermas, *Shepherd* 15
 Hesychius, imperial officer 103
 Hincmar of Rheims 179
 Hippo, councils of (373) 51, 57; (393) 51; (397) 85
 Hippolytus of Rome 11, 30, 36, 160
 Holy Spirit 30, 76–7, 85
 Hormisdas, pope 58n.
 Iconium, early Eastern synod 12, 71
 Ignatius, bp. of Antioch 5, 6, 7, 36, 162n.
 Illyricum 102
 Innocent I, pope 56, 81, 88, 115, 124, 125, 129, 188n.
 Irenaeus, bp. of Lyon 30n., 83
 Isaac, Mar, bp. of Seleucia-Ctesiphon 50
 Ischyrras of Alexandria 156
 Isidore, bp. of Seville 113
 Iubaianus, African bishop 18n., 20
 Jerome 61, 126, 148, 164
 Jerusalem 162; alleged council of 5
 Jewish Christianity 6
 John Chrysostom 5
 John Scholasticus 54, 55, 86, 87, 88, 130
 Julian, Roman Emperor 161n.
 Julius I, pope 98, 99, 100, 102, 105, 107, 109, 111, 125, 126,
 149, 160, 168, 175; letter to the Eusebians 167, 183, 184n.,
 185, 186, 187, 188, 189, 190, 192–3, 197–8
 Justin Martyr 160
 Justinian, Roman Emperor 51, 60, 87; Code of 54, 55; *Digest*
 86, 87; *Institutes* 86, 88; *Novellae* 55, 86; Second Code 87
 Juvenal, bp. of Jerusalem 46
 κανών 38n., 77–9, 82–3
 κοινόν 27
 Kymatius, bp. of Paltos 149
 Laodicea, alleged council of 48; canons (collection) of 49, 53,
 54, 58, 71, 85; for references to individual canons, *see*
 canons
 lectors 159, 160–1
 Leo I, pope 72, 128, 148, 156n., 159n.
 Leontius, bp. of Antioch 160
 Liberius, pope 61, 112, 161n., 192
 Licinius, Roman Emperor 97
 Luke (evangelist) 5n.

- Macedonius, Arian bp. of Constantinople 108
 Macedonius, bp. of Mopsuestia 102n.
 Malchion, presbyter of Antioch 14, 33
 Marcellus, bp. of Ancyra 50, 95, 96, 97, 98, 99, 105, 107, 186
 Marcianus, Novationist bp. of Arles 32n.
 Maris, bp. of Chalcedon 97
 Mauretania 17, 20
 Maximus, bp. of Alexandria 14, 189
 Meletian schism 44, 51, 147, 190
 Meletius, bp. of Antioch 53, 61
 Melitius, bp. of Lycopolis 176
 metropolitan bishop 144, 181, 182, 199–200, 205–6, 207–8
 Mileve, councils of 51
 Miltiades, pope 43, 179
 Moesia 121
 monarchical episcopate 7n.
 monepiscopacy 7, 9, 36
 Montanism (the New Prophecy) 6, 7, 8, 10, 12, 23
 municipal council 25, 26
 Musonianus, imperial officer 103
 Narbonne 40
 Narcissus, bp. of Jerusalem 162
 Narcissus, bp. of Neronias 103
 Neocaesarea, council of (between 314 and 325) 45; canons of 45, 53, 54, 58, 70; for references to individual canons, *see* canons
 Nepos, bp. of Arsinoe (Lower Egypt) 13, 33
 Nestorius, bp. of Constantinople 46
 Nicaea, council of 45, 46–8, 62, 75, 76, 95, 97, 99, 101, 112, 128, 147, 148, 165, 175, 181, 184; canons of 49, 50, 53, 54, 56, 57, 58, 59, 70, 71, 82, 144, 195; early Latin version 56, 206; for references to individual canons, *see* canons; creed of 106, 112, 202; unique regard for 46, 129
 Nîmes, council and canons of (394/6) 53, 70
 Noëtus of Smyrna 11
Nomocanon in Fourteen Titles 45
 nomocanons 87
 Novatianism 19
 Numidia 20
 Optatus 43n.
 Orange, council of (411) 59
 Origen 12, 13, 23, 30, 33
 ὁσ 45, 78, 82
 Ossius, bp. of Cordova 72, 97, 102, 104, 105, 107, 111–13 *passim*, 121, 122, 152, 157, 159, 168, 172, 173, 181, 201, 205, 207, 208
 Palestine 9, 21
 Palladius, Illyrian bishop 34
 Pannonia 121
 Paris, council of (360/1) 52
 parliamentary procedure 27, 28–9; at councils generally 62–4, 74–5; at Serdica 66–9
 paschal cycle drafted by Eastern Serdican synod 107
 Paschasius, papal delegate at Chalcedon 56–72
 Paul, bp. of Constantinople 98, 108, 109
 Paul of Samosata 14, 33, 40, 104, 189
 Peter, apostle 186, 189
 Philagrius, prefect of Egypt 110
 Philemon, Roman presbyter 12
 Philippopolis (Thrace) 109, 110, 111
 Philoxenus, Roman presbyter delegate at Sardica 103, 197
 Pistus, Arian bp. of Alexandria 98
 Plato 31
 Poemenius, bp. of Nicopolis 163

- Polycarp 5; *Epistle to the Philipians* 36
 Polycrates, bp. of Ephesus 9, 10
 Pontius, deacon of Carthage 157n.
 poor, orphans, oppressed 203–4
 porters 161
 ‘Prisca’ (canonical collection) 56
 Privatus, bp. of Lambaesis (Africa) 16, 18
 Proclus, bp. of Cyzicus 163
 Protogenes, bp. of Sardica 103, 105, 107
 provincial assembly, Roman 25, 26
 provincial organization, ecclesiastical 144, 181, 182, 184, 190, 200
 pseudo-Apostolic literature 36
 Quartodecimanism 9
 Quintian, Arian bp. of Gaza 105
Registri ecclesiae Carthaginensis excerpta (or *Codex canonum ecclesiae Africanae*) 51, 52n., 57, 58, 163n., 204n.
 Rimini, council of (359) 61
 Rome; bishop of 187, 191, 192, 195, 196, 206; councils of (251) 22, 33; (341) 104, 108, 109, 149, 186, 189, 190, 197, 202; (377–8) 50; (382) 50; (485) 128; (502) 63; leadership of 10, 187–8, 197–9; see of 50, 85, 100, 103, 128, 157, 187–9, 192; tribunal of (313) 43
 Rufinus of Aquileia 148
 Sabellianism 99
 Sabinus, bp. of Heraclea 62
 Sanhedrin 5n.
 Saragossa, council of (380) 53
schola lectorum 161
scolasticus/σχολαστικὸς 220–1, 232–3
 Secundianus, Illyrian bishop 34
 Seleucia, council of (359) 61
 Seleucia-Ctesiphon, see of 50; council of (419) 54n.
 senate, Roman 25, 27, 74; sitting of 438AD 63, 122
senatus consultum 27, 74
Sent. LXXXVII episc. 20, 21, 28, 32n.
 Serapion, bp. of Antioch 7
 Serdica, Council of (343); Eastern assembly, encyclical, and paschal cycle 107–11; number of bishops present 101; Western assembly, its actions, creed, encyclical, and other letters 102–7
 simony 170
 Sinuessa, doubtful council of (303) 45n.
 Siricius, pope 42n., 50, 58, 148, 158, 161n.; *Epistula ad episcopos Africae* 50, 126, 159
 Sirmium, council of (351) 61
Sixty Titles, collection of 54, 55, 81n., 86, 130
 Socrates 61, 62, 102, 109, 110, 163, 184n., 186n., 188
 Sozomen 61, 62, 102, 105, 109, 110, 185n.
 Spain, councils in 26, 40, 41, 52, 112
Statuta ecclesiae antiqua 59
 Stephen, bp. of Antioch 103, 160, 188
 Stephen, bp. of Rome 18n., 19, 32, 32n.
 subdeacon 159, 160, 161
 Sylvanus, bp. of Cirta 60
 Sylvester I, pope 43n., 184
 Synagogè, see *Fifty Titles*, collection of
 Συναγωγῇ τῶν συναόδων of Sabinus 62n.
 Synnada (early Eastern synod) 12, 71
Syntagma of the Fourteen Titles 55
 Syriac-speaking church 50

- Tarragona, council of (516) 53
 Telepte (Thelense), council of (418) 42n., 50
 Tertullian 8n., 10, 11, 15, 27, 28n., 29, 160, 170n.
 Theodoret, bp. of Cyrrhus 61, 106
 Theodosian version of the Serdican canons 128, 131, 133,
 134–40, 153–4, 157, 157n., 168n., 169n., 172, 173n. 176,
 191n., 192n., 199, 200, 207
Theodosiani Libri XVI (Theodosian Code) 86, 86n., 89, 195
 Theodosius, Roman Emperor 204
 Theognis, bp. of Nicaea 97, 202
 Theophilus, bp. of Alexandria 129
 Thessalonica, church of 130, 139, 177
 Toledo, council of (400) 53; canons of 70
 Trier, council of (386) 53
 Tripolitana 17
 Trullo, council in (692) 55
 Turin, council of (398) 53, 70
 Tyre, council of (335) 50, 61, 98, 181, 185, 186, 190
 Ultramontanism 179, 197
 Ursacius, bp. of Singidunum 103
 Vaison, council of (442) 59
 Valence, council and canons of (374) 52, 70
 Valens, bp. of Mursa 167, 169
 Vandals, invasion of Africa 51
 Vatican Council, First 179
 Victor, bp. of Rome 8, 9, 10, 189
 Victricius, bp. of Rouen 81, 115, 124
 Vincent, bp. of Capua 103, 107
 Vitalis, bp. of Antioch 45
 Xystus, bp. of Rome 8n.
 Yaballaha 54n.
 Zenophilus, governor of Numidia 60
 Zonaras (12th-cent. canonist) 193n.
 Zosimus, pope 46, 56, 57, 124, 127, 158n.