COLLOQUIA

HUMANISTICA

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Some Observations on the *Nomos Georgikos*¹

Abstract

The subject of this paper is the Byzantine law code, the *Nomos Georgikos* (Νόμος γεωργικός) known as the *Farmer's Code*. This law code has been a subject of research since the 19th century, and many scholars have assumed *nexus causalis* between the *Nomos Georgikos* and the Slavic settlements based mainly on circumstances. My examination was not oriented towards defining the ethnicity of the Byzantine farmers, but towards defining the nature of the law code by analysing its form and its penal system.

The *NG* was aimed at protecting the farmer's property – movable and immovable, by prescribing corresponding punishments. The punishments concerning immovable property are material, while the punishments prescribed for movable property are material and/or corporal, such as beating, lashing, branding and mutilation. Capital punishment is rare, because offences towards property are not considered capital offences.

The punishments in the *NG* are very similar to the *Ekloga*; however, the main difference between the two codes is the absence of a duality of punishment in the

¹ I am immensely grateful to Vanja Nikolovski for his comments on an earlier version of the manuscript.

NG. In the NG corporal punishments are not alternatives to monetary penalties; they are the only punishment prescribed. This is only natural for a law code intended to solve disputes between peasants only, a monolithic group of people who did not belong to the category of *honestiores*.

Keywords: Nomos Georgikos, Farmer's Code, Ekloga, Slavic settlements, casuistic nature, corporal punishment, material punishment, Post-Justinianic legislation.

Introduction

It is commonly known that jurisprudence as well as imperial legislation entered a period of decay after Justinian's reign. The *Corpus Iuris Civilis* (CIC), which was written in Latin except for the *Novels*² and completed during the reign of Justinian, soon after its publication was translated into Greek, interpreted and simplified. The need for translation and simplification resulted in the enactment of new official codes in the so-called "dark ages" (7th–9th centuries) in Byzantium, such as the *Ekloga legum*³ of the *Isaurians*⁴ in the 8th century and three thematic law codes: the Military Code (Νόμος στρατιωτικός), the Rhodian Maritime Code (Νόμος Ροδίων ναυτικός), and the Farmer's Law (Νόμος γεωργικός)⁵. These law codes were enacted for practical purposes in a society which was changing rapidly; they became digests for practical use by non-specialists⁶. One of the reasons for these changes was the Barbarian invasions, which significantly changed the demographics of the empire.

The *Nomos Georgikos* (NG), which is part of the post-Justinianic legislation, addresses only one category of inhabitants: peasants. It is generally

² Most Novels (*Novellae constitutiones*) were written in Greek, and only few in Latin. The prevalence of Greek is natural considering the nature of the Novels and because it was the language of the empire, while Latin remained the language of the higher bureaucracy, law schools, and some parts of the empire. Very few Novels were composed in both languages.

³ The *Ekloga* was reformatory in character, and the reform was referred to the law of civil procedure.

⁴ Leo III the Isaurian (717-741), his son Constantine V (741-775) and a three-member commission prepared the material for the law code.

⁵ In this paper I will use the Greek title of the code in transcription: *Nomos Georgikos*.

⁶ The law schools after Justinian were relics of the past, and the whole legislation and its interpretation was in the hands of advocates and other legal representatives, who were members of professional organizations. The *antecessores* of the previous period were unknown in the 7th century.

held that the *NG* was composed, or at least enacted at the end of the 7th or at the beginning of the 8th century AD. Nevertheless, it was probably in general use in the 9th century AD.⁷ The rules in the code are common, the terminology for the rural classes is almost monolithic, and the code can be related to any period and place, because its terseness doesn't allow definite conclusions about the context. The language, on the other hand, is very similar to the language in the *Ekloga*, which is almost a sure sign of official enactment. However, the language similarity correlates only to the period in which the code was written down, not to the sources and the period of its composition. It is more probable that this compilation was part of the unwritten customary law, adjusted to the current situation. It was not written on stele, so the dating could not be precise; also, the text was not found recently but is part of a manuscript tradition, and as a result many versions of the *NG* are available. Thus, the original is unknown.

The question that arises is: Why the need for new legislation when there was an official and extensive imperial legislation? The *CIC*, for example, covered all aspects of life and all categories of people. The first scholars from the 19th century who investigated this code (Zachariä von Ligenthal and Vasiljevskij) were of the opinion that the *NG* was composed for the new inhabitants in the empire: the Slavs. Slavic invasions are documented since the reign of Justinian, who enacted a number of Novels to reform the administration in the provinces which were under attack from the barbarians. However, Justinian never named the Slavs, as he did name the other barbarian invaders or subjects. These Slavic tribes, or Slavic settlements, were never named in the *NG* or the *Ekloga* either. However, I am not trying to reconstruct whether the *NG* was associated with recently settled Slavic tribes on the Balkan Peninsula, but to explain the nature of the code and the punishments it prescribed. But first of all, I will present a brief overview of the chronology and the possible origin of the code.

An Overview of the Chronology and the Origin of the Code

The first printed version of the *NG* (16th century) was based on a manuscript from the Byzantine jurist Harmenopoulos (14th century). The *NG* was included in Harmenopoulos' law book *Hexabiblos*⁸. Harmenopoulos' version of the *NG* was adapted from other versions of the code, and the chapters are in a different order than the older versions which are available

⁷ Ignatius of Nicaea in his letters mentions *nomos georgikos*, which is usually considered a reference to the *NG*, but it is far from clear to what exactly he refers.

⁸ *Hexabiblos* is a law book by the Byzantine jurist Harmenopoulos, in which he compiled a wide range of Byzantine legal sources.

today.⁹ Since the 19th century the different versions of the law code have been re-examined, the law itself has been interpreted and subjected to various theories. However, the first reliable critical edition of the text belongs to Walter Ashburner in 1910.

The first eminent scholars on the subject: “Karl E. Zachariä von Ligenthal, V.G. Vasiljevskij, F.I. Uspensky, and N. Skabalonovič all saw in the *Farmers’ Law* (*NG) proof of communal ownership,¹⁰ then considered a characteristic of Slavic society” (Graebner, 1975, pp. 167–168). So in this respect the Slavs can be considered a reason for composing the code, and/or even the code can be considered as being Slavic in origin. This was the standpoint of many scholars of the 19th and 20th centuries, but was refuted on many bases. Nevertheless, these theories of Slavic origin, or *nexus causalis* between Slavs and the NG, connects the NG to a particular territory and timeframe, namely the Balkan Peninsula, where the Slavs intruded into Byzantine territory, and the timeframe is the 6th-7th centuries when these intrusions are noticeable in written evidence. Today there is more evidence on the topic compared to the 19th and the beginning of the 20th century, thanks to the progressing publication of the Egyptian papyri, which give some information on the land tenure in Egyptian villages and the position of the peasant-worker in this society. So, connecting the law to one particular ethnic group is unnecessary. Graebner, for example, trying to explain the two hypotheses on this matter, rightly notes that “Slavs were a part of this legal development in the same way as the Arabs, Bulgars, Avars, and Sassanid Iranians. By their continuous inroads against the empire, they compelled Byzantium to develop a social structure capable of resisting further disintegration. Under conditions of demographic decline, it was a necessity for Byzantium to employ its population in the most effective manner. ... Byzantinization of the Slavs and other outside elements was a fortuitous by-product and not a primary goal of this law” (Graebner, 1975, pp. 172–173).

If the Slavic origin of the code is set aside, the chronology of the code can be based on two obvious facts combined with other evidence: (a) the title of the code *Νόμος Γεωργικός ἐκλογὴ ἐκ τοῦ Ἰουστινιανοῦ βιβλίου* (*Farmer’s law selection from the book of Justinian*), and (b) the position of the code in the manuscripts, namely it was added to the *Ekloga* of the Isaurians. The first fact points to Justinian II (668-695, 705-711), so the dating of the code is at the end of the 7th or the beginning of the 8th century. The second

⁹ On the tradition of the manuscripts and the history of scholarship on the NG see Medvedev (Медведев, 1984, pp. 9–26).

¹⁰ The theory of communal ownership, though, was re-examined and criticized argumentatively by Boris Panchenko in 1903 (Панченко, 1903).

fact links the dating of the code with the *Ekloga*, i.e. that it was written during the reign of Leo III (717-741) and his son, Emperor Constantine V (741-775). The first scholars on this subject proposed the second dating. The leading authority on this theory was Zachariä von Ligenthal (1892), followed by V.G. Vasiljevskij (1878)¹¹; Ashburner (1910) also accepted this theory, noting that although this law was part of the legislation of the Iconoclasts, it was a compilation of existing customs. Later in 1912 Ashburner refuted this theory. B. Panchenko (1903) and K.N. Uspenskij (1917) refuted the theory as well, proposing the dating of the NG in the 7th century. George Vernadsky (1925) postulated a date of composition during the first reign of Justinian II (668-695), and his opinion was accepted by many scholars, including G. Ostrogorsky. Some scholars believe that the name Justinian refers to Justinian I, not as the author of the code but as an authority, because he was famous among posterity as a lawgiver. However, it is generally accepted by scholars that the Justinian in the title is not Justinian I, because, as G. Ostrogorsky (Острогорски, 1959, p. 108) points out, it would be written ἐκ τῶν βιβλίων, since Justinian I didn't write a book but an extensive work comprising many books.

Medvedev in his edition of the NG, on the other hand, differs completely from the previous theories on mapping the chronology. He observes that the text of the NG originated in the 6th century (between the publication of the Digest in 533 and 529)¹² and suggests that it probably gained official recognition at the time of the promulgation of the *Ekloga*. He bases his theory on the following facts: the style between the *Ekloga* and the NG is similar; the penal system is very similar; there is congruence in certain phrases and terms; the NG was an addition to the *Ekloga*. Medvedev (Медведев, 1984, p. 137) also proposes that there were probably two types of origin for the NG: the CIC and the western barbarian law codes (based on Roman legislation as well).

It is a fact that during the 7th-9th centuries there was a demographic contraction, as well as an economic contraction, as Alan Harvey (2002, p. 18) describes it. That is why the independent peasantry flourished, which on the other hand slowed down the feudalization of the empire, and the

¹¹ Russian historian V.G. Vasiljevskij supported Ligenthal's theory on dating the code, but noticed some differences in phraseology between the *Ekloga* and the NG (Васильский, 1878, pp. 96-98).

¹² Медведев, 1984, pp. 140-141: „... наиболее вероятным времен создания архетипа Земледельческого закона следует считать период между 533 и 529 гг. Вместе с тем общепризнанно, что каким-то важным поворотным пунктом в истории текста Земледельческого закона (возможно, его официальное признание) было время издания Эклоги императорами Львом III и Константином V (726 г.).

*colonnate*¹³ was no longer an institution in Byzantium. The independent peasant paid his taxes directly to the State, not to the landowner. This is noticeable in Greek papyri from the 6th century. For example, P. Cairo Masp. 67024 (About A.D. 551) explains certain facts about the position of the village with respect to the empire, and hence the position of the peasant in this relation. The document itself is a rescript from Emperor Justinian I addressed to the dux or military commander and governor of Thebaid. It reveals how taxes were paid in the village communities, named κώμη, and what the role of the proprietor (κεκτημένος) was. There was a chief of the proprietors in the village community, who collected the taxes (καταβολή τῶν δημοσίων φόρων) from the villagers in order to make the payment to the local office (ἐπιχώριος τάξις). Some villages in Justinian's time had an appointed *pagarchus* who had the right to collect taxes in his own district, but certain villages, like the one mentioned in the rescript (Aphrodito) were granted the privilege of collecting their own taxes and paying them directly to the local tax office, i.e. directly to the State. This type of regulation is not mentioned at all in the NG, because the NG is not concerned with relations between the State and the peasantry. The NG is concerned only with relations between peasants. However, this fact indicates that independent peasantry was a reality in Byzantium. In many of the Novels of Justinian it is explicitly said that the farmers, whether registered (ἐναπόγραφος = colonus adscripticius = registered, *esp.* of a cultivator or serf)¹⁴ or not, can possess land (γῆδιον LSJ defines it as *little farm, piece of land*), for which they are obliged to pay taxes (see novls. 128, 32, 8). Hence, they did not own large estates but small portions of land, or worked as tied tenants on someone else's property, usually a large estate belonging either to the church or to the empire, but sometimes to private magnates.

The *Nomos Georgikos* was written for this independent peasant, not for the *colonus* in Justinian's Code, who lived in a village community. It is obvious that the social structure was changed in the 8th century. The social changes are partially evident from the (non)employment of slaves. They became a less important factor in this peasant society, and they are mentioned in three chapters only, out of 85. They usually were not employed in the cultivation of the land. This is very similar to Maurice's information on the Slavs and Slavic society (*Strategicon* XII 5, pp. 272–289) as well as their attitude towards slavery; they didn't hold their war prisoners for long, they either took ransom or they adopted the prisoners as their own.

¹³ A *colonus* was a peasant who was obliged contractually to work on land belonging to others. He was also allowed to own small parcels of land on his own. He was obliged to pay taxes only for the land he owned, not for the land he worked on. (See Just. Nov. 128)

¹⁴ Cf. POxy LXX 4799 (AD 586), POxy LXX 4781 (AD 525 Nov. 10) etc.

This is not very different from Procopius' (BQ III 14) information on Slavs. The main productive force in Byzantium, then, weren't slaves but farmers. However, this was a tendency in all provinces, as Egyptian papyri prove. The Balkan Peninsula was not exclusive in this respect. It may be observed that this tendency was due to Christian morals, where slavery was no longer a form of punishment. This coincides with the Slavic invasions and settlements on the Balkan Peninsula, which, on the other hand, enhanced the process of forming a free-peasantry State.

Form and Content of the NG

The NG was not an academic abstraction, but a digest of laws practiced by Byzantine peasants. It is composed of 85 chapters, each dealing with relations between peasants only (γεωργοί, ἀγέλαριοι, ποιμῆνες) and the protection of their property in the village (χωρίον) only. This means that the code does not involve any kind of obligations or disputes between peasants and the State or other external subjects, nor does it cover offences committed outside the village boundaries.

In some of the MSS there is a prooemium (προοίμιον), as is customary in the imperial legislation¹⁵, as well as titles (τίτλοι). As Ashburner (1912, p. 68) and Medvedev (Медведев, 1984, p. 137) observe in their editions of the NG, the original version is without a prooemium and titles. This is why some scholars have assumed this law code to be unofficial. However, many scholars have classified the chapters according to the three subjects up to ch. 66. Ashburner (1912, pp. 69–70) gives this classification: “first, the cultivation of the ground (1-22); secondly, cattle, large and small (23-55); thirdly, the produce of the land, agricultural implements, and farm buildings (56-66). [...] After c. 66, the chapters are put in rather at random”.

Every chapter is constructed as a hypothetical case, with a conditional clause and consequence: “If X does Y, his punishment shall be Z” (Westbrook, 2015, p. 182). In most of the cases they start with the conditional prodosis clause: ἐάν τις, in which τις is the (wrong)doer.¹⁶ The next sentence, the apodosis, regulates the penalty imposed on the wrongdoer, i.e. what will happen if the condition in the prodosis is not accomplished. The casuistic sentence is a predominant form in which the rule is articulated in the NG, but as Westbrook (2015, p. 57) notes: “it is important to note that

¹⁵ The προοίμιον gives information on the author, the date and the place of enactment. Usually the author is the emperor, i.e. the one who issues the law and whose authority is based on the name of God.

¹⁶ The *if* clauses are not unknown from the *Ekloga*, or from the previous legislation. But, the uniqueness of the NG compared to the *Ekloga* is its simplification.

‘casuistic’ is a mode of thinking more than a stylistic feature”. So, there is a certain prescription, articulated in the form of a conditional sentence. The conditional clause is a primary compulsion, and the consequence of it is a secondary compulsion (see Камбовски, 2010, p. 194).

Only in chapter 1¹⁷ is the conditional clause preceded by a prescription. Chapter 10¹⁸ starts with a prescription as well, but the conditional sentence is replaced with a relative sentence, which could easily be formulated as a conditional sentence. Chs. 20, 57-71, 74-75 are constructed as relative sentences. For example: ὁ κόπτων ἀλλοτρίαν ὕλην ἄνευ εἰδήσεως τοῦ κυρίου αὐτῆς καὶ ἐργαζόμενος καὶ σπείρων μηδὲν ἔχέτω ἐκ τῆς ἐπικαρπίας. (ch. 20), the first clause ὁ κόπτων can be replaced with ἐάν τις κόπτων.¹⁹ The wrongdoers in these conditional sentences are: the farmer (γεωργός), the herdsman (ἀγέλαριος), the shepherd (ποιμήν), the slave (δοῦλος), the ox (βοῦς), the ass (ὄνος). Most of the rules in the *NG* are part of an orally transmitted tradition of commonly known and practised rules, which are of a mainly casuistic nature and horizontal progression. This means that the rules in the codes are based on casus (‘case’) rather than on general abstractions. These cases can progress infinitely in a horizontal line, because there is always a possibility for a new variation of the case to be added. The vertical system of composing laws, on the other hand, means forming general abstractions and general categories which can be broken down into smaller categories until the individual case is reached.

The oral nature of the law is proven by the fact that a version of the first chapter from the *NG* is found in Plato’s *Laws*. According to Plato, the regulation of legal relations between farmers is the first thing that legislators should have in mind when composing laws: “First, then, let there be a code of laws termed ‘agricultural’. The first law—that of Zeus the Boundary-god—shall be stated thus: No man shall move boundary-marks of land, whether they be those of a neighbour who is a native citizen or those of

¹⁷ χρῆ τὸν γεωργὸν τὸν ἐργαζόμενον τὸν ἴδιον ἀγρὸν εἶναι δίκαιον καὶ μὴ παρορίζειν αὐλακὰς τοῦ πλησίου. („The farmer who is working his own field must be just and must not encroach on his neighbour’s furrows.”) (trans. Ashburner, 1912)

*The translation of the chapters from the *NG* is taken from Ashburner, 1912, unless otherwise indicated.

¹⁸ Μορτίτου μέρος δεμάτια ἑννέα, τοῦ χωροδότης δὲ μέρος δεμάτιον ἕν. ὁ δὲ ἐκτὸς τούτων μεριούμενος θεοκατάρατος. („A shareholder’s portion is nine bundles, the grantor’s one: he who divides outside these limits is accursed.”)

¹⁹ The translation of Ashburner is made with a conditional sentence: „If a man cuts another’s wood without its owner’s cognizance and works and sows it, let him have nothing from the produce”. Medvedev, though, translates this rule with the active present participle: „Рубящий чужной лес и возделывающий и засевающий замлю без ведома и хозяина, пусть ничего не получает из приплода”.

a foreigner” (trans. R.G. Bury) (πρῶτον δὲ νόμοι ἔστωσαν λεγόμενοι τοῦνομα γεωργικοί. Διὸς ὁρίου μὲν πρῶτος νόμος ὅδε εἰρήσθω: μὴ κινεῖται γῆς ὅρια μηδεὶς μήτε οἰκείου πολίτου γείτονος, μήτε ὁμοτέρμονος ἐπ’ ἐσχατιᾷς κεκτημένος ἄλλω ξένῳ γειτονῶν.) (Plato Lg. 842 E). Medvedev (Медведев, 1984, p. 142) in his edition of the NG enumerates the various law codes which deal with this problem: crossing a neighbour’s boundaries.

‘Crossing a neighbour’s boundaries’ (παρορίζειν αὐλακάς τοῦ πλησίου) was a problem which belonged to a canon of standard problems, such as ‘the goring ox’, ‘the burglar caught at night’, ‘the wife caught in adultery’, and according to Westbrook (2015, p. 158) were used for didactic purposes and transmitted orally from generation to generation, which explains their recurrence in various law codes. These offences are committed towards property (the wife is also the property of the husband), which must be protected. Individuals were allowed to resort to self-help when they were protecting their property. Later, in Greek law (in the archaic and classical period), self-help was marginalised with the employment of private action (dike), because property was something that concerned the individual and his family only. The State was not implicated.

The simplification of the rules, the code’s basic form and content as well its casuistic nature, indicates a break with the imperial law tradition. The abstract nature of the *CIC* was replaced with case-oriented rules of a horizontal nature, which can only point to two factors, not necessarily mutually exclusive: (1) the law code was addressing a different, more simple peasant population; (2) the law givers were not *iurisprudentes*. The absence of ethnic as well as place-related references makes the rules applicable everywhere in the empire, but also difficult to associate with a particular ethnic group. It is, however, certain that the law is Byzantine, composed in a period of the most numerous Slavic invasions and Slavic settlements in Byzantine territory. The empire was adapting to these new settlers in order to integrate them into its highly orderly and hierarchical society.

The Punishment System

In the Ancient Near Eastern legislation model, which was adopted in archaic Greek and Roman legislation,²⁰ the courts dealt with private wrongs and offences only if they were committed against the community. In some cases the culprit was sentenced to death or mutilation, but it is not clear whether the power of coercion was strong enough for the magistrate to bring the culprit to court and to enforce the punishment. From the *Lex Duodecim*

²⁰ On the connection between Ancient Near Eastern legislation and Ancient Greek and Roman legislation, see Westbrook, 2015.

Tabularum (tab. I), it is obvious that the victim/plaintiff themselves was obliged to bring the culprit to court. But there is uncertainty about the enforcement of the punishment. Therefore, if the offence was private, self-help was a way of dealing with offenders for many centuries. It was allowed by the law. Was that the case in the NG?

Only three chapters (7, 37 and 67) mention ἀκροαταί (*arbiters*), who are supposed to be officials with jurisdiction:

1. In chapter 7 ἀκροαταί are like judges who are supposed to judge the trial between two village communities²¹ (ἐὰν δύο χωρία μάχονται = *if two villages are fighting*).

2. Chapter 37 belongs to Ashburner's group *Dealings with cattle...*²² It concerns someone else's ox that died during work in the field. This may mean that not every offence was handled by the judges but self-help was regularly employed.

3. Chapter 67²³ is very different from the chapters that precede and follow, which deal with punishment and private matters. Ch. 67, on the other hand, deals with relations between the State and its subjects, i.e. it is made clear that the State is involved in private matters of its subjects. This is not seen in the other chapters, where private matters are obviously dealt with by (two or three) witnesses and the concerned parties, or the punishment is obviously enforced by the offended, who has the right to do this. Angeliki Laiou (1971, pp. 202, 204) argues that "chapter 67 is new law. It may perhaps be argued that the provision under discussion is within the general spirit of the legislation of the Isaurians. ... the fact that the provision bears resemblance to Deuteronomy XV, 1-2, which remits all

²¹ „If two territories contend about a boundary or a field, let the judges consider it and they shall decide in favour of the territory which had the longer possession; but if there is an ancient landmark, let the ancient determination remain unassailed.” NG ch. 7 (trans. Ashburner, 1912)

²² „If a man takes an ox to work with and it dies, let the judges consider, and if it died in the very work for which he sought it, let him go harmless; but if it died in another work, he shall give the value of the ox”. (trans. Ashburner, 1912)

²³ οἱ τόκου χάριν λάβοντες ἀγρὸν καὶ πλείω τῶν ἑπτὰ χρόνων φανῶσι καρπιζόμενοι, ψηφισάτω ὁ ἀκροατὴς ἀπὸ τῆς ἑπταετίας καὶ τὴν ἄνω πᾶσαν καὶ κάτω κατὰ τὴν ἡμίσειαν εἰσφορὰν στοχησάτω εἰς κεφάλαιον.

„If people take land on account of interest, and are proved to have been in enjoyment of it for more than seven years, let the judge take an account at the expiration of the seven years, and let him set down as principal the whole of the profits before and half the profits after”. NG ch. 67 (trans. Ashburner, 1912)

The translation of Angeliki Laiou (1971) of the same edition is different and more accurate:

„If people have received land on account of interest, and are proved to have been in enjoyment of it for more than seven years, let the judge take an account at the expiration of the seven years, and let him credit against the principal amount of the debt the whole (of the revenues) after (above) the seven years, and half the revenues for the period before (below) the seven years”.

debts after a period of seven years, places it in a period of particular interest in religion, a period when reform was motivated by religion, a period, that is, like that of the first Isaurians". The other rules in the law code are private matters, and prosecution or coercion is never mentioned. The only matter that is regulated, except for obligations made with a stipulation, is the type of punishment. However, this does not mean that every punishment is precisely described. In order to make some general conclusions on the punishment system, I will first offer a classification of the chapters, based on the object of protection:

- I. Immovable property: land and superficies;
- II. Movable property: livestock and utensils.

In respect of the rules from the first group, the punishments are not corporal. The punishments are concerned to protect a farmer's land from another farmer or farmers, who might have different legal status. In general, the culprit loses the unjustly taken land as well as the crops, the trees, the vineyard and the seeds, i.e. he loses the material goods he invested in the property he held illegally.

Considering the second group of rules, the punishments are severe: they vary from material punishment to corporal punishment such as beating, lashing, mutilation as well as capital punishment. The punishment for destroying or stealing utensils is a fine, and the sum of the money doesn't depend on the gravity of the offence but on the price and utility of the tool that was taken or destroyed.

1. Hence we can distinguish two types of punishment:
2. Material punishment

Corporal punishment: death, mutilation, beating, lashing.

These types of punishment do not correspond to the type of property. Material punishment is found in both types of property.

1. Material punishment

The rules from the first major group (immovable property) have been the most examined by scholars in order to shed light on the relation between a farmer and the land he worked on. *Ius in res* is a very important indicator of the affairs of the State. Not every chapter deals with punishment, because many of them deal with some kind of obligation concerning the land. Material punishment is recommended for breaking the rules of the first group. Unfortunately there is no strong evidence that the punishments

were enforced by officials.²⁴ The farmer who does wrong concerning the property of another farmer, will lose his investments (crops, seeds, fruits), i.e. he will lose his right of usufruct of another's property. Punishment of this kind is predicted in chs.: 1, 2, 6, 9, 13, 14, 18, 18, 19, 20, 21. There is an exception in ch. 10 concerning the obligations of the *mortites*:

A shareholder's portion is nine bundles, the grantor's one: he who divides outside these limits is accursed (θεοκατάρατος).

Material punishment is probably predicted in cases concerning damage done to cattle, or by cattle, unintentionally or by neglect. I use the word 'probably' because there is no precise description on how the damage should be paid. The sentence for such a deed is either *ἔστω ἀζημιος* (not to pay for the damage, chs. 23, 24, 26, 27) or *μὴ ἔστω ἀζημιος = ζημιωθήτω* (to pay for the damage, 24, 25, 28, 30). The main culprit is not the farmer but the herdsman. However, nothing more is known about paying for the damage (*ζημία*).

2. Corporal punishment

Corporal punishment is principally prescribed for theft or damage done intentionally. Most such punishments belong to the second group: *movable property*. The following forms of corporal punishment are mentioned:

1. Death: hanging and burning.
2. Mutilation: cutting off a hand(s), cutting out the tongue, blinding, branding.
3. Lesser corporal punishments: beating and lashing.

1. Death

Most of the corporal punishments, except for capital punishment, are followed by paying for the damage done: *τὸ ἀζημιον ποιεῖτω = ζημιούσθω*. Capital punishment by hanging (*φουρκιζέσθω*) is prescribed for slaves only, and it is declared that slaves should be punished as if they were murderers (chs. 46, 47):

If a slave, while trying to steal by night, drives the sheep away from the flock in chasing them out of the fold, and they are lost and eaten by wild beasts, let him be hanged as a murderer (ch. 46²⁵)

But murder is not a subject of the *NG*. Stealing itself is not punishable by death, but the damage done in the process, which is described with the

²⁴ For example, marital law was very strict in the legislation of the Christian emperors, but the papyri evidence suggests a different reality.

²⁵ Ch. 47 is similar.

adjective θηριοβρώτος = (letting the flock be) eaten by wild animals. The other type of capital punishment is burning (πυρκαύστοι ἔστωσαν): “Let those who set fire to a threshing-floor or stacks of corn by way of vengeance on their enemies be burnt”. This is vengeance, which was a greater crime than the fire inflicted.

2. Mutilation

Four types of mutilation are mentioned:

1. Blinding (τυφλούσθω) (chs. 42, 68, 69)
2. Branding (σφραγιζέσθω) (ch. 58)
3. Cutting out the tongue (γλωσσοκοπηθείς) (ch. 28)
4. Cutting off a hand(s) (χειροκοπέσθω) (chs. 44, 59, 65, 66, 80)

Mutilation, on the other hand, may have been transmitted from the East, where this type of punishment was usual. Eastern origin is not as direct as it seems, because mutilation is not unknown in Roman law and in Justinian’s *Novels*. However, the western barbarian laws shouldn’t be excluded either, because they also had an influence on this law code (see Медведев, 1984, p. 137). The system of corporal punishment described in the *Ekloga*, though, offers duality: poor people can pay with their bodies, while the rich with money²⁶. Since peasants did not belong to the rich category, the punishment imposed on them was not dual; peasants were supposed to pay for the deed with their bodies. But, in regard to the *NG*, it is obvious that corporal punishment is meant to humiliate the offending member of the community (ἡ τοῦ χωρίου κοινότης, ch. 81) consisting of commoners (κοινωνοί). Mutilation is a permanent mark for the wrong done.

In the *Ekloga*, penal mutilations were enforced for crimes committed against the State, but in the *NG* the crimes concern only the individual. However, capital punishment was gradually replaced in Byzantine law. This is a process started in Justinian’s *Novels*:

As it is necessary for Us to make allowance for human weakness, We abolish the amputation of both hands, as well as that of both feet, and the imposition of the punishment by which the joints are separated, which is a much more serious penalty than the amputation of the hands. Hence We order that, if anyone commits a crime for which the laws inflict the death penalty, those who are guilty shall undergo it, and if the crime is one for which the culprit does not deserve to be put to death, he shall be scourged, or sent into exile. Where the offence is such as demands the amputation of a limb, one hand only shall be cut off. We forbid the

²⁶ This duality of punishment for the same offence is taken from Roman law. It is also documented in ancient Greek law codes.

amputation of a limb because of an ordinary theft, or the culprit to be put to death for this reason, but we desire him to be punished in some other way. (Nov. 134.13, trans. S.P. Scott, 1932)

Hand mutilation appears five times in the *NG*. It is not specified whether both or only one hand is cut off. Hand mutilation is not inflicted for stealing, but for damaging other people's property: for killing another's ox lost in the woods and claiming the meat (ch. 44); for cutting or rooting another's vines and fruit (ch. 59); for setting fire to a place where hay and chaff is kept (ch. 65); for ruining others' houses and fences and taking the material (ch. 66); for cutting another's vine or trees during a legal suit (ch. 80). In ch. 59 the hand mutilation is accompanied by ζήμιούμενος = paying for the damage done.

Cutting out the tongue is prescribed for false swearing of the herdsman about damage done to an animal (ch. 28). Swearing is a tool for releasing oneself from guilt (cf. chs. 26, 27, 73). So it is understandable why false swearing was punished so severely. This punishment is followed by paying for the damage done to the victim (τὸ ἀζήμιον τῷ κυρίῳ τοῦ βοῦς ποιεῖτω).

Blinding appears thrice. In ch. 42 blinding is a punishment for the thief of an ox. The theft is not the reason for the punishment, but the damage done in the process: θηριοβρώτος = letting the other animals from the herd be eaten by wild animals, which is similar to chs. 46 and 47, where the punishment is hanging. In chs. 68, 69 there is a gradation of punishment, blinding being the final one. The offence is theft. If the thief is caught for the first time, he is to receive a hundred lashes and pay for the damage; the second time he is to pay for the damage twice the value; the third time he is to be blinded.

Branding appears once, in ch. 58: "Let him who burns the fence of a vineyard be beaten and have his hand branded and let him also pay twice the damage done". Ashburner presupposes that branding in the *NG* "means that the hand is to be marked with a cross". Branding fugitive slaves (δραπέται) was a common practice in the Greek and Roman period, but it is not evidenced in Byzantium.

3. Lesser corporal punishments: beating and lashing

Other corporal punishments are less severe; they assume beating and lashing. This punishment is very common in the *Ekloga*, and it is usually imposed on those who commit lesser offences.

1. Beating (τυπτέσθω): in ch. 33 the guardian of fruit steals fruit from the place he guards; in ch. 34 the shepherd milks the herd and sells

the milk without the knowledge of the owner (In both cases these hired workers are abusing their jobs and are deprived of their wages.); in ch. 58 beating precedes branding, not as gradual but as joined punishments; in ch. 61 beating is recommended for those who trespass in another's man vineyard or figyard and steal fruit.

2. Lashing (μαστιγοθήτω): in ch. 30 lashing is prescribed for stealing a bell from an ox or a ship, and the man is recognized as a thief; in ch. 41 it is prescribed for stealing an ox or an ass; in ch. 60 it is prescribed for those who cut another's man bundles or ears of corn or pulse. The lashing should be done without clothes.

Stealing food is more severely punished than stealing tools. The first type of offence is punished by beating and lashing, and the second type by a money penalty. If damage is done during the process of stealing another man's animal, e.g. the herd is unleashed and then eaten by wild animals, the punishment is mutilation. There is no death penalty, except for intentional burning of another man's threshing-floor or stacks of corn by way of vengeance. The other two death penalties are reserved for slaves. Taken as a whole, the penalties are not very severe, except for mutilation. As George Mousourakis (2015, pp. 216–217) says: “In general, Byzantine imperial legislation was ‘humanitarian’ in character, aiming to protect those whom it considered weak against those whom it considered strong, and greatly influenced by Christian ethical principles”. Although it is not certain whether or not the *NG* was imperial legislation, it can be confirmed once again that it is a Byzantine law code in its character. It is restricted, however, because it aims to protect only one group: the peasants from themselves.

Concluding Remarks

The addressee of the *NG* is the peasant worker²⁷ (γεωργός); the term γεωργός doesn't give much information about socioeconomic status, it simply denotes someone tilling and/or fertilizing the ground; it also denotes a master of land who works on the land ὁ δεσπότης τοῦ χωρίου and the ὄχλος, i.e. peasantry. Unlike the γεωργός in Justinian's legislation, where the peasantry was a less stable group, and especially the Egyptian peasantry which is familiar from papyri, the γεωργοί in the *NG* are part of a homogenous group. This doesn't mean that the γεωργοί had different

²⁷ But we also hear about the herdsman (ἀγέλαριος), the hired worker and the shepherd. They all are connected to the village community.

status in the post-Justinianic period, but surely their homogeneity demonstrates that the *NG* is not an extensive law code – it is a code concerned with the interrelations between farmers only. The code itself is an indicator of a growing peasant society, as well as of the changes inside the peasant population. From Justinian's Novels it is obvious that the peasants were a fragile category, subject to official malpractice; this is well shown in Novels 32²⁸-34 (535) which apply to Thrace and Illyria. They describe the practice of lending money at excessive rates of interest by the military to secure land, forcing the majority of the unfortunate farmers who were owners of their land to flee. These farmers were in enormous debts and were complaining "that a horrible contagious disease, no less terrible than the invasion of the barbarians, has been added to their other misfortunes"²⁹ (Just. Nov. 32). The farmer debtors from *Novels* 32-34 were living on the margins even when the season was good. *Novel* 32 explains the demographic contraction that followed in the 7th century. This is a period when Slavic tribes were invading Byzantine territory, especially the Balkans. Many times the Slavs didn't return to the other side of the River Danube but established settlements in Byzantine territory. The Byzantine Empire was not so fragile as to let the new settlers live in its territory just like that. In order to integrate the new inhabitants, the empire adapted their law codes. The *NG* is part of this process, but it was easily applicable due to its lack of ethnic and place-related references as well as relations concerning the State.

Most of the rules of the *NG* are customary, belonging to the customs preserved in village communities, where the main activities were land and cattle cultivation. Their relations with other subjects, like the State or the landlords, which are missing from the code, were more prone to changes and were subject to imperial legislation. Therefore, there are no chapters which regulate the relations between tax collectors or other imperial officials in charge, who can easily perform malpractice towards the subjects: the farmers. This omission makes the law difficult to date, or if we look from another viewpoint, this omission makes the law universal, easily adaptable and applicable.

The *NG* aimed to protect the property (movable and immovable) of the farmer in a simple and terse manner. The rules are formulated as

²⁸ The title of Novel 32 is „No one shall retain the land of a farmer given by way of security for a loan, nor shall creditors receive excessive interest from farmers” (Περὶ τοῦ μηδένα δανείζοντα γεωργοὶ κρατεῖν τὴν ἐκείνου γῆν, καὶ πόσον ὀφείλουσι λαμβάνειν τόκον ἀπὸ τῶν γεωργῶν). It is clear from this Novel that this category of subjects – the farmers – paid their taxes, which means they owned land, otherwise they would have only paid a lease.

²⁹ δεινὴν τε γεγενῆσθαι φθορὰν οὐδὲν τῆς βαρβαρικῆς ἐπιδρομῆς ἐλάττωνα.

a hypothetical case, with a conditional clause and a consequence; the nature of the rules is mainly casuistic, which means they are based on casus ('case') rather than on general abstractions. The absence of duality in the punishment system only supports the homogenous nature of the addressee of the code; namely it was someone who belonged to the lower social stratum. For this reason, corporal punishment is often prescribed, but only for wrongs against movable property. This is a significant fact as well. Land was available in Byzantium, and wrongs done towards land were mild. People as a resource for this land were scarce, as was their livestock. Therefore, punishments for damage done towards the latter are more severe in comparison to the other categories. It also indicates that these people were highly dependent on their livestock for survival, not very different from the description of the Slavic people and their occupation. Punishment for utensils, on the other hand, was considered as rent.

It is unknown how or if the punishments prescribed in the code were enforced, or whether or not self-help was allowed. Only three chapters mention arbiters (ἄκροαταί), who probably played the role of official judges. The punishments for not obeying the rules in the *NG* are the same for every subject; there is no duality in the rules. In Roman law, on the other hand, there is a difference in terms of wealth and privilege between the *honestiores* and *humiliores*. This differentiation is preserved in the *Ekloga* as well. But the *NG*, as mentioned before, deals only with one group of subjects and their internal relationship. Hence, there is no difference in punishments concerning the same offence.

In conclusion, the *NG* was not a code studied in law school, but a law code used by officials to solve disputes between peasants. Due to its simplicity, the code became a practical digest, employable everywhere in the empire and beyond – we know that it was adopted by the South and East Slavs in the Middle Ages. Unfortunately we don't know if this law was preserved in the eastern provinces or Egypt, because of the Arab invasion.

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Неколку согледби во однос на Земјоделскиот Закон

Предмет на истражување во овој текст е еден византиски законик познат како *Земјоделскиот закон* (*Νόμος γεωργικός*). Овој законик бил предмет на научни истражувања од XIX век; многу научници во тој период претпоставуваат дека имало *pexus causalis* меѓу *Земјоделскиот закон* и населувањето на Словените во Византија. Моето истражување нема за цел да го утврдува националниот идентитет на земјоделецот во овој законик, но да ја објасни суштината на законикот преку анализа на системот на казнување.

Земјоделскиот закон е насочен кон заштита на земјоделецот и неговиот имот – подвижен и недвижен, преку пропишување одредени правила и соодветни казни за непочитување на правилата. Казните кои се однесуваат на недвижниот имот се материјални, додека казните кои се однесуваат на подвижниот имот може да бидат материјални и/или телесни како тепање, камшикување, жигосување и осакатување. Капиталната казна ретко се појавува, бидејќи престапите што се направени во однос на имотот не се сметаат за капитални.

Типот на казни во *Земјоделскиот закон* се слични на оние во *Еклогата*. Сепак, главната разлика се состои во тоа што во *Земјоделскиот закон* нема двојност во казнувањето. Во *Земјоделскиот*

закон телесните казни не претставуваат алтернатива на паричната казна, но тие се единствената предложена казна. Ова е очекувано за законик кој се однесува само на една категорија поданици, земјоделците, кои не припаѓаат на високите сталежи т.н. *honestiores*.

Клучни зборови: Земјоделски закон, Еклога, словенски населби, казуистична природа, телесна казна, материјална казна, пост-Јустинијанско законодавство.

Kilka uwag na temat *Nomos Georgikos*

Przedmiotem analizy w niniejszym artykule jest pewien bizantyjski kodeks prawny znany jako *Nomos Georgikos*. Kodeks był przedmiotem badań od XIX wieku. Wielu uczonych uważało, że istnieje związek przyczynowy (*nexus causalis*) pomiędzy kodeksem i osiedleniem się Słowian w Bizancjum. Moja analiza ma na celu potwierdzenie narodowej tożsamości rolnika w tym kodeksie, ale przede wszystkim objaśnienie istoty kodeksu poprzez analizę systemu kar.

Nomos Georgikos koncentruje się na ochronie rolnika i jego własności – ruchomej i nieruchomej, poprzez przypisywanie określonych zasad i odpowiadających im kar za ich przekraczanie. Kary, które odnoszą się do własności nieruchomej mają charakter pieniężny, gdy tymczasem kary odnoszące się do własności ruchomej mogą być pieniężne i / lub cielesne, jak bicie, batożenie, piętnowanie, okaleczanie. Kara śmierci pojawia się rzadko, ponieważ przestępstwa w odniesieniu do własności nie są kwalifikowane jako podlegające karze śmierci.

Rodzaj kar w *Nomos Georgikos* bardzo przypomina te z *Eklogi*. Jakkolwiek główna różnica polega na tym, że w *Nomos Georgikos* nie ma podwójnego karania. W *Nomos Georgikos* kary cielesne nie stanowią alternatywy dla kar pieniężnych, ale są jedyną proponowaną karą. [Kodeks] odnosi się tylko do jednej kategorii poddanych, jakimi są rolnicy, którzy nie należą do wysokiej warstwy społecznej tzw. *honestiores*.

Słowa kluczowe: Kodeks rolniczy - *Nomos Georgikos*, *Ekloga*, osiedla słowiańskie, kazuistyczna natura, kara cielesna, prawo po Justynianie.

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