

THE FETHA NAGAST

The Law of the Kings

Translated from the Ge'ez
by
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Edited
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PREFACE TO THE FIRST PRINTING
CONQUERING LION OF THE TRIBE OF JUDAH
HAILE SELASSIE I
ELECT OF GOD, EMPEROR OF ETHIOPIA

The long and great history of Our country demonstrates that Our people have always both administered and lived according to the law. Our people were at first ruled by Mosaic law, but after the advent of Christianity to Ethiopia they came later to be governed by the Fetha Nagast—a work combining both spiritual and secular matters, the former part pertaining to the spiritual, the latter to the temporal affairs of Our people. The Fetha Nagast has been venerated, supported, and applied by both the government of Our Empire and by the Church. The names of scholars learned in this law are famous in the history of Ethiopia, particularly since the reign of Emperor Zar'a Ya'qob when both the study and enforcement of the Fetha Nagast began.

By the Providence of the Almighty this bulwark of the law was preserved for Our people. Venerated for many centuries, it provided for Our people an invaluable source of legal principles.

When we ascended Our Imperial Throne and enacted a Penal Code compiled on the basis of the Fetha Nagast, We made all necessary provision for the printing of the Fetha Nagast, in order that it might be available to Our people. Owing however to the invasion of Our country by the enemy, the copies which had already been printed, but not distributed, were burnt together with the printing press.

When, with the assistance of the Almighty, We returned victorious to Our country and subsequently made provision for the codification of Our laws, realizing that those who had helped us in the process of codification had availed themselves of the provisions of the Fetha Nagast, We ordered that its text be printed together with a commentary thereon, and offered to Our people for their assistance.

We are pleased that this great work, for so many centuries the basis of law and the administration of justice in Our country, has now, under the auspices of the Faculty of Law of the University to which We have given Our name, been translated into English so that it may be known to scholars of other countries.

No modern legislation which does not have its roots in the customs of those whom it governs can have a strong foundation. The effort which has been made by the Faculty of law of Our University to disseminate the knowledge not only of the new codification but also of the historically rooted legal practices of Ethiopia, which by the providence of the Almighty we have preserved, and which are the source of Our new legislation is befitting and deserving of Our warmest approval.

Given at Our Imperial Palace in Addis Ababa this 29th day of August 1968.

Haile Sellassie I
Emperor

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PREFACE TO THE SECOND PRINTING

Forty years ago, a modest Roman Catholic priest and scholar completed work on his English translation of the Fetha Nagast,¹ the traditional source of law for Ethiopia's Coptic Christian community and, thus, for its imperial courts as well. Fluent in most of the languages needed for the task,² Abba Paulos Tzadua had learned English when he was forced to flee his seminary for England (where he was ordained) during the Italian occupation; returning to Asmara to direct the Cathedral school, in the late 1950s he earned degrees in Law and in Political and Social Sciences from the Catholic University of Milan. By 1967 he was in Addis Ababa (where in 1977 he would become Archbishop) and had completed his translation. He asked James CN Paul, the founding Dean of Ethiopia's national law school, for help in finalizing it; and Dean Paul honored me, then a young lecturer at the law school, with the request to be his editor. Abba Paulos and I spent afternoons during the better part of a year discussing this storied document and the best way of rendering it into what remains, to date, its final language. A gentle, unassuming man of remarkable intelligence, Abba Paulos would rise through the Catholic hierarchy to the rank of Cardinal—the first Ethiopian to attain that rank in the history of his church, remembered by Pope John Paul II in his homily as “a zealous priest and Bishop,” a pastor of “outstanding concern for lay people.” This translation is only a part of the rich legacy he left behind when, in 2002, he passed away.

Only in his absence would I dare to write an introduction to this printing of the Fetha Nagast. His scholarship shines through the translation itself, and through the original preface to the translation, faithfully reproduced in the following pages. What appears to have been his last published work was an essay on its history that is attached as an appendix to these paragraphs. Among my colleagues in Addis Ababa at the time, Peter Sand (a young German scholar) was the one who essayed independent scholarship on this remarkable manuscript. Deeply familiar with civil and Roman Law, as I am not, and with easy linguistic access to German and other European scholarship about the Fetha Nagast, he contributed important analyses of its origins that remain among its more important glosses, and that have greatly informed the paragraphs that follow. His short essay on the sources of the Fetha Nagast is also appended here. Finally, the reader interested generally in the history of law in Ethiopia must read Prof. Aberra Jemberra's remarkable book, *An Introduction to the Legal History of Ethiopia, 1434–1974*.³

As sub-Saharan Africa became a destination for European missionaries, merchants, and the colonizing soldiers who followed in their wake, it was surely wonderful to find a part of the continent that was already Christian in substantial part—that had, indeed, survived its own bloody encounters with Muslim antagonists—and that, through Egypt and its churches, enjoyed regular, if somewhat tenuous, contacts with rest of the Christian world. It may even have been some consolation to the European powers that, even during the Nineteenth Century's “scramble for Africa,”⁴ remarkably failed to reduce the Ethiopian empire to colonial status that this part of Africa was Christian Africa on its own account. To have found there, in the Fetha Nagast, a document with an ap-

1. “Fetha Nagast” is the spelling that will be used in this preface, corresponding to that chosen for this translation. The researcher will also find it referred to in the literature as “Fetha Negest” and “Fetha Negast,” and in quotations the spelling used in the material quoted will be repeated.
2. In addition to Ge'ez, the language of the traditional text, and his native Tigrinya, Abba Paulos was fluent in Amharic (the language of a local translation and much commentary), Arabic (the language from which the work had been translated into Ge'ez), Italian (the language of the existing European translation, by Guidi), Latin (Roman law sources) and, of course, English—thus permitting him ready access to most of the source documents of the Fetha Nagast.
3. Published by the African Study Center of Leiden University, The Netherlands (Lit Verlag 2000).
4. The history is well told in Richard Pankhurst, *The Ethiopians* (Blackwell 1998). Battles with English expeditionaries,

parent European heritage, with roots in the same Roman law traditions as underlay the law of all Europe, suggested that Ethiopia might already be civilized, as Europeans understood what that meant. It produced a fascination with the Fetha Nagast, with translations and scholarly analysis quite stressing the northern connection.

There is general agreement that the Fetha Nagast had its immediate source in a compilation made in Arabic from the original Greek for use of the Egyptian Coptic Church, by a thirteenth century Christian Egyptian jurist usually referred to as Ibn Al'-Assal. (Until recent times, the Ethiopian Coptic Church was a dependency of the Egyptian church and, at least in name, its prelates came from there.) Ethiopian tradition traces the Fetha Nagast's origins back as far as the 318 sages of the Council of Nicea, during the reign of the (Christian) Roman Emperor Constantine. Just when it came to Ethiopia and was translated into Ge'ez (the Ethiopian ecclesiastical language equivalent to Latin) is uncertain, but accounts that seem to have a fair grounding in historic fact have it brought up the Nile at the request of the mid-fifteenth century emperor Zara Yacob, seeking a written basis for law by which to govern. What he received was a document at least as concerned with ecclesiastical as secular matters, and it may well have had more use in church than official circles. Indeed, on some accounts it was treated as a document only the elect were privileged to know of and consult.

Little is known about its actual use in connection with Ethiopian law-administration. There are accounts of consulting it in important criminal contexts from the moment of its arrival. Prof. Abera Jembere reports:

When exactly the Fetha Negest became an integral part of the Ethiopian legal system is not yet definitely established. Nor is it known when it started to be cited as an authority in the process of adjudication of cases by courts. . . . Even though the Fetha Negest cannot be said to have been codified on the basis of the objective realities existing in Ethiopia, it was put into practice as well as interpreted in the context of Ethiopian thinking, and all this has given it an Ethiopian flavor. It was, however, formally incorporated into the legal system of Ethiopia only in 1908 by Emperor Menelik II, when he established ministries for the first time in Ethiopia. The law that established ministries and defined their powers and duties laid down the following as one of the functions of the minister of justice: "He shall control whether any decision has been given in accordance with the rules incorporated in the Fetha Negast." . . . The criminal provisions of the Fetha Negest were applied in Ethiopia until they were replaced by the 1930 Penal Code of Ethiopia.⁵

That code, like those produced in mid-century at the behest of Emperor Haile Selassie, took the Fetha Nagast as a starting point.

Perhaps, then, the principal importance of the Fetha Nagast, certainly today, is as a symbolic document—and that, at many levels. It strongly reflects the Christian heritage of the Ethiopian highlands that remains at the core of national character. And when Ethiopia's stature as an inde-

the product of diplomatic "misunderstandings" in the middle of the century, resulted in the suicide of Emperor Tewodros, and the confiscation of many manuscripts of the Fetha Nagast (inter alia) for the British Museum; but the British had no ambitions to remain and leadership of the Ethiopian empire passed first to Yohannes and then to Menelik. When the Italians, who had occupied areas in what is now Eritrea, attempted to push south in 1895 to vindicate a treaty that only in its Italian version appeared to make Ethiopia a protectorate, their forces were routed at Adwa; the resulting peace treaty secured Ethiopia's independence until Italy's avenging invasion of 1935, demonstrating the failure of the League of Nations and preparing the globe for World War II.

5. Op. cit. p. 194.

pendent African monarchy helped to catalyse the emergence of the ras tafari⁶ religion in Jamaica, the Fetha Nagast acquired new status as a revered book outside Ethiopia; in 2002 copies of this translation were printed for distribution within that religious community. For present purposes, the commitment of the Fetha Nagast to law is the more important. For those concerned with rule of law issues in a nation where those values have often enough been challenged, it stands for five and a half centuries of commitment to written law, and to the higher character of that law—reaching ruler and ruled alike. Like Magna Carta, like the highest of the Roman law ideas on which it draws, it may be able to serve as a strong tap root, capable of withstanding the momentary winds of despotism and permitting the tree of freedom under law to re-enfoliate once they have subsided.

6. Ras Tefari is the name by which Emperor Haile Sellassie was known prior to his ascendancy.

FETHA NÄGÄST*

Abba Paulos Tzadua

The F.n. ('The Law of the Kings') is a book of law that has been in use in Christian Ethiopia since at least the 16th. cent. In spite of its being an object of considerable pride and veneration by Ethiopians, it is not an original Ethiopian composition, for it is rather derived from an Arabic work known as *Mağmū al-qawānīn*, ('Collection of Canons'), written in the year 1238 by the Christian Egyptian Jurist Abū l-Faḍā'il Ibn al'Assāl aṣ-Ṣafī, a contemporary of Patriarch Cyril III of Alexandria (1235–43).

Ibn al'Assāl's work was divided into two parts, dealing with religious (22 chs.) and, respectively, secular or civil matters (29 chs.). The sources of the first part were the Old and the New Testaments, writings of alleged Apostolic origin, Canons of the early Councils and writings of Church Fathers. In compiling the secular part, Ibn al'Assāl relied mostly on a four-book collection of laws known as *Canons of the Kings*. The first book of this collection is the *Procheiros nomos*, a handbook of Roman-Byzantine laws collected and edited between 870 and 878 under the Byzantine Emperor Basilus I; the second is an Arabic version of the so-called *Syro-Roman Book of Law*; the third has been recognized as an Arabic version of a handbook of Roman-Byzantine laws, i.e. the *Ecloga* of the Emperors Leo III and Constantine V (with the "Canons of the Nicean Fathers"); the fourth corresponds to the *Precepts of the Old Testament*, a compilation of ritual and moral rules from the Pentateuch with Christian interpolations. Some scholars deem this work to have been compiled for the use of the *Episcopalis audientia*, i.e. the court(s) held in Egypt by Coptic bishops — the author himself stating in his introduction that the *Nomocanon* was meant to guide the judges in their duty.

The date of the Ethiopic translation is still debated. Yet, according to the most authoritative opinion, based on philological evidence, the F.n. is a creation of 16th-cent. Ge'ez literature (Guidi 1901:501f.). According to Ethiopian tradition, the F.n. was introduced into Ethiopia during the reign of *aṣe Zār'a Ya'eqob*: a certain "Peṭros Abdä Säyd ['Abdassayid?]," an Egyptian native, brought the book from Egypt to Ethiopia at the request and at the expense of the Emperor. As to the translator, at the end of the F.n., a note reads: "(the book) was translated by Peṭros, the son of Abdä Sayd" (Guidi 1897: 335; Paulos Tzadua 1968:319). A passage in the Ethiopic *Senodos*, referring to a "Book of the Law of Kings," has prompted the hypothesis that the F.n. was translated before the *Senodos* (Getatchew Haile 1981:94). As a matter of fact, the same reference to a "Book concerning the Sentences of the Kings" is already found in the original section of the Arabic *Sinūdūs*, circulating as early as between 1229 and 1234, i.e. before the composition of Ibn al'Assāl's work (Bausi 1990:36f.).

The difficult style and poor quality of the Ge'ez translation are partly due to the fact that the translator had to deal with legal concepts and terms to which no Ethiopic correspondence existed. Admittedly, the F.n. does not reflect in full the life and customs of the Ethiopians. It is however undeniable that it was held in great esteem by local scholars and judges due to its spiritual character, brought about by continuous references to the Holy Scriptures and Church Canons, all of which constituted the core of traditional learning. The book's prestige was further enhanced by the belief, common among Ethiopians, that it had been written by the 318 Fathers of the Council of Nicaea.

The formal position of the F.n. as the supreme ruling law of Ethiopia is confirmed by many documents. The first one to bear witness to the application of the F.n. as law goes back to the

* This article first appeared in S. Uhlig (ed.), *Encyclopaedia Aethiopica*, vol. 2 (Wiesbaden 2005). Arabic and Ge'ez characters have been omitted, as have internal references.

reign of *aṣe Šāršā Dengel* (CRHist 75f.). The Chronicles of *aṣe Susenyos*, *aṣe Iyasu II*, *aṣe Iyo’as I*, *aṣe Tewodros II* and *aṣe Menilek II* mention the authority of the F.n. in civil and penal matters. More remarkably, in a law issued by Menilek II concerning the powers and duties of the Minister of Justice, it was expressly provided that the F.n. be the law regulating civil and duties of the Minister. Art. 2 of the regulation established that “the Minister of Justice must supervise every judgment diligently and conformably to the expression of F.n.” (MahZekr 68f.).

As a mark of importance of the F.n. in the legal system of Ethiopia, it is worth mentioning some instances related to the modern legislation of the country. In promulgating Ethiopia’s first Penal Code in 1930, the legislator clearly stated that his work was a “revision” of the F.n., “updated” so as to meet the needs of present times. He emphasized his intention not to depart from the law written in the F.n. and he made clear references to the latter in more than 60 Articles. In 1957 a new Penal Code was issued, prefacing to which Ḥaylā Šellase I declared: “We have ensured that their concepts [the concepts elaborated by the Commission of Codification] adopted as a point of departure the venerable and well-established legal traditions of our Empire as revealed in the Fetha Neguest.” In 1960 the Civil Code of Ethiopia was enacted, to which preface it was stated that “the Codification Commission has been inspired in its labours by the genius of Ethiopian legal traditions and institutions as revealed by the ancient and venerable Fetha Neguest.”

The archaic tendency to blend secular with religious matters, common to the F.n., has indeed contributed to a conception of law as something intrinsically sacred in character, though this mental attitude was primarily derived from Christian principles deeply rooted in Ethiopia. A work such as the F.n., full of Biblical and Christian wisdom as well as of juridical principles of eminent pedigree, was to be much revered by people that boast such a longstanding juristic tradition and an almost innate sense of law. At the same time, the function of the book as ruling law should not be overestimated; in fact, the common every day life (including dealing with crimes and judicial procedures) was better regulated by the customary law. Being a very complicated book, the F.n. was heard of by many, but really understood only by a few educated clergymen and traditional scholars. It was studied in the school of exegesis (*Maṣḥaf bet*), i.e. the traditional school of the highest level; along with the computus, being considered the most difficult subject (s. Guidi 1899:xiv).

Src.: IGNAZIO GUIDI (ed., tr.), *Il “Fetha Nagast” o “Legislazione del Re” codice ecclesiastico e civile di Abissinia*, Napoli 1897 (text), 1899 (tr.); PAULOS TZADUA (ed., tr.), *The Fetha Nagast. The Law of the Kings*, Addis Ababa 1968 (Lit.); *Fetha nāgāšt šagawi wāmānfāsawi*, ‘Law of the Kings, Corporeal and Spiritual’, Aśmāra 1956 A.M. [1963/64 A.D.]; *Fetha nāgāšt nebabenna targ’amew*, ‘Law of the Kings, its Reading and Interpretation’, Addis Abāba 1958 A.M. [1965/66 AD.]; SixDeu 296, no. 130 (Lit.); MahZekr 68f.; CRHist 75f.; ZanLitTheod; PerCron; WILHELM RIEDEL (ed., tr.), *Die Kirchenrechtsquellen des Patriarchats Alexandrien zusammengestellt und zum Teil übersetzt*, Leipzig 1900; EDUARD SACHAU – KARL GEORG BRUNS (ed., tr.), *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*, Leipzig 1880.

Lit.: ALESSANDRO BAUSI, “Alcune considerazioni sul ‘Sēnodos’ etiopico”, *RSE* 34, 1990 [1992], 5–73, here 36f.; GIUSEPPE A. COSTANZO, *L’Ecloga araba nel Fetha Nagast e la sua prima versione in italiano*, Roma 1947; GrafLit vol. 1, 618ff.; vol. 2, 400ff. (Lit.); IGNAZIO GUIDI, “Der aethiopische Sēnodos”, *ZDMG* 55, 1901, 495–502; Id., “Contributi alla storia letteraria di Abissinia. Un responso sul diritto d’asilo”, *RRALm* ser. 5^a, 31, 1922, 210–18; GuiLet 78f.; GETACHEW HAILE, “A Study of the Issues Raised in Two Homilies of Emperor Zār’a Ya’eqob of Ethiopia”, *ZDMG* 131, 1981, 85–113, 94; CARLO ALFONSO NALLINO, “Libri giuridici bizantini in versioni arabe cristiane dei sec. XII–XIII”, *RRALm* ser. 6^a, 1, 1925, 101–65 [repr. In: MARIA NALLINO (ed.), *Raccolta di scritti editi e inediti*, vol. 4, Roma 1942, 324–82].

ROMAN ORIGINS OF THE ETHIOPIAN “LAW OF THE KINGS” (*FETHA NAGAST*)

PETER H. SAND*

The affinity between Ethiopian law and European law, especially Roman law, has often been pointed out, particularly by the draftsman of the Ethiopian Civil Code of 1960, Professor René David, who specifically alludes to the Roman origins of the Ethiopian “Law of the Kings”, the ancient *Fetha Nagast*.¹ Yet for all we know, direct contact between the Roman and Ethiopian empires never were very close, notwithstanding certain attempts during the reign of Roman Emperor Constantine.² It should appear surprising, therefore, to see so vague an affiliation relied upon for the drafting of modern legislation in Ethiopia—unless this affiliation can be proved to have existed.

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

I. TEXTS

In the universal field of comparative legal history, Ethiopia still is an unknown country.³ The principal reason is, of course, the linguistic barrier: Scriptures in *Ge'ez* have been as inaccessible for comparative legal analysis as Roman texts would have been without the international academic community's knowledge of Latin.

Speculations. Eighty years ago, *Sherman* and *Wigmore* could thus offer no supporting evidence for their startling statements about “the present legal system of Abyssinia being based on the Roman law of Justinian”, “deteriorated from its original Roman purity”,⁴ yet still belonging under “the Romanesque type”.⁵ The probable basis for this claim were 19th century travel reports about a mystical *Ge'ez* book called *Fetha Nagast* (Law of the Kings) which some foreign trav-

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- 1. R. David, “Les sources du Code civil éthiopien”, 14 *Revue Internationale de Droit Comparé* 497, 498 (1962); and R. David, “A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries”, 37 *Tulane Law Review* 187, 192 (1963). See also P.H. Sand, “Current Trends in African Legal Geography: The Interfusion of Legal Systems”, *African Law Studies* 5 (1971) 1, 5; and H. Scholler, “La réception du droit occidental en Éthiopie”, *Verfassung und Recht in Übersee* 32 (1999) 296.
- 2. See Sergew Hable-Sellassie, *Beziehungen Äthopiens zur Griechisch-Römischen Welt* (doctoral dissertation, University of Bonn 1963) 58–60; and Sergew Hable-Sellassie, *Ancient and Medieval Ethiopian History to 1270* (Addis Ababa 1972).
- 3. For a useful bibliographical survey see J. Vanderlinden, “An Introduction to the Sources of Ethiopian Law from the 13th to the 20th Century”, 3 *Journal of Ethiopian Law* 227 (1966), with a supplementary bibliography in 4 *Journal of Ethiopian Law* 433 (1967); see also J. Vanderlinden, “Ethiopia”, 1 *International Encyclopedia of Comparative Law* 23 (1972), and generally H.J. Liebesny, “Comparative Legal History: Its Role in the Analysis of Muslim and Modern Near Eastern Legal Institutions”, 20 *American Journal of Comparative Law* 38 (1972), regarding the need for further historical comparison, as a prerequisite for the understanding of contemporary law.
- 4. C.P. Sherman, *Roman Law in the Modern World*, vol. 1 (2nd edn. New York 1922) 177–178.
- 5. J.H. Wigmore, *A Panorama of the World's Legal Systems*, vol. 3 (St.Paul/Minnesota 1928) 1125 n., 1141.

ellers described as “an Aethiopic translation of the code of Justinian”.⁶ The rumour may indeed have originated with a dictum by the Anglican missionary *Gobat*, according to whom the Abyssinians attributed the authorship of that book “to Constantine instead of Justinian”.⁷ Subsequent writers added the suggestion that the Fetha Nagast “more or less reproduces the book of Moses and the precepts of the Gospel, with a few laws from the code of Justinian”;⁸ or else “the Mosaic codex, apocryphs and synods of the apostles, and decrees from the Theodosian and Justinian legislation”.⁹

Manuscripts. After *Isenberg* sent a copy of the Fetha Nagast to London in 1837,¹⁰ *Dillmann* discovered that an earlier manuscript already existed in the collection brought to England by *Bruce* in 1774, albeit under an erroneous description.¹¹ *Rocher d’Héricourt* brought a copy of the “venerated book” to Paris, as a gift to the king of France from the king of Shoa.¹² The first summary of contents was published by *Rüppell* in 1840, on the basis of a manuscript and personal information he had obtained from an Ethiopian scholar, *Līq Atqū*;¹³ and in 1843 the orientalist *von Ewald* recorded another manuscript, received through the missionary *Krapf*.¹⁴

A windfall of texts came with Lord *Napier*’s military expedition in 1868, when the British army after its victory over Emperor *Teodros* pillaged the royal treasure-house at Magdala. The loot was auctioned off on the spot, with Richard *Holmes* of the British Museum as one of the chief bidders;¹⁵ so by 1877, *Wright*’s catalogue could list no less than 11 manuscripts of the Fetha Nagast in the museum.¹⁶ In 1899 *Conti Rossini* recorded a total of 20 authentic texts in European libraries,¹⁷ and by 1910 there were at least 24.¹⁸ Their number today is probably closer to 30 (and certainly higher than the figure of five, as given by *Graven*),¹⁹ while the number of unrecorded man-

6. W.C. Harris, *The Highlands of Aethiopia*, vol. 2 (London 1844) 92; T. Waldmeier, *Ten Years in Abyssinia* (London 1886) 16.
7. S. Gobat, *Journal d’un voyage en Abyssinie pendant les années 1830–1832* (Paris & Geneva 1834) 83; English re-edition: *Journal of Three Years’ Residence in Abyssinia* (New York 1969).
8. T. Lefebvre, *Voyage en Abyssinie exécuté pendant les années 1839–1843*, vol. 1 (Paris 1845) xxxv.
9. G. Sapeto, *Etiopia: notizie raccolte* (Rome 1890) 60.
10. C.W. Isenberg, *Abessinien und die Evangelische Mission*, vol. 2 (Bonn 1844) 90.
11. A. Dillmann, *Catalogus codicum manuscriptorum bibliothecae Bodleianae Oxoniensis, pars VII: Codices Aethiopici* (Oxford 1848) 25; cf. J. Bruce, *Travels to Discover the Source of the Nile in the Years 1768–1773*, vol. 1 (Edinburgh 1790) 496, and vol. 2 (3rd edn. Edinburgh 1813) 407.
12. C.E.X. Rocher d’Héricourt, *Voyage dans le royaume de Choa* (Paris 1841) 316; cf. H. Zotenbergh, *Catalogue des manuscrits éthiopiens (gheez et amhariques) de la Bibliothèque Nationale* (Paris 1887) 147.
13. E. Rüppell, *Reise in Abyssinien*, vol. 2 (Frankfurt 1840) 186; cf. R. Mertens, *Eduard Rüppell: Leben und Werk eines Forschungsreisenden* (Frankfurt 1949) 145.
14. See H. von Ewald, “Über die äthiopischen Handschriften zu Tübingen”, 5 *Zeitschrift für die Kunde des Morgenlandes* 197, 198–199 n. 13 (1843); and H. von Ewald, “Über eine zweite Sammlung äthiopischer Handschriften in Tübingen”, 1 *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 1 (1847); cf. Krapf (note 35 below) 478.
15. See A. Moorehead, *The Blue Nile* (London 1964) 241, 276–278, for a detailed description of the auction, which involved some 900 volumes of Ethiopian manuscripts (and netted 5,000 pounds sterling for the soldiers); see also S. Pankhurst, *Ethiopia: A Cultural History* (London 1955) 191.
16. W. Wright, *Catalogue of the Ethiopic Manuscripts in the British Museum acquired since 1847* (London 1877) 219, 280–284.
17. C. Conti Rossini, “Manoscritti ed opere abissini in Europa”, 8 *Rendiconti della Reale Accademia dei Lincei: Classe di Scienze Morali, Storiche et Filologiche* (Ser. 5) 606, 615 (1899).
18. S. Euringer, “Abessinien und der Heilige Stuhl”, 92 *Tübinger Theologische Quartalsschrift* 339, 340 (1910).

uscripts currently kept in Ethiopian churches and monasteries may safely be estimated at well over a hundred.²⁰

Printed editions. The next major advance in textual research was again prompted accidentally by military action. In 1890, as part of preparations for the conquest of Ethiopia, the Italian General Staff commissioned the orientalist Ignazio Guidi to edit and translate the Fetha Nagast, which was to serve as a basis for colonial judicial administration. The Italian army suffered a shattering defeat from Emperor *Menilik II* at Adua in 1896—but the Ge’ez edition of the Fetha Nagast came out almost on schedule in 1897, followed by the Italian translation in 1899.²¹ Apart from a short fragment published in an earlier French library catalogue,²² this was the first printed version, based on seven years’ painstaking comparison of the best available manuscripts, with the assistance of the Ethiopian scholar *Kefla Ghiorgis*. It has remained the most authoritative edition to this date—so authoritative indeed that the first Ethiopian Penal Code in 1930 referred to the Fetha Nagast by the page numbers of Guidi’s text.²³ The printing of an official Amharic edition was begun in Addis Ababa in 1935, interrupted by the Italo-Ethiopian war, and finally completed in 1966.²⁴

Translations. Fragmentary Latin translations of the Fetha Nagast had been published by *Arnold* (1841) and *Bachmann* (1889),²⁵ and an early Italian version by *de Stefano* in 1895–97,²⁶ on which latter text the summary German translation by *Rein* (1918) was based.²⁷ Yet Guidi’s translation remains the most reliable one. It has been followed closely by the subsequent Italian texts of *de Castro* (1912, *Mauro da Leonessa* (1931) and *Rossi Canevari* (1934),²⁸ and served as the principal basis for the English translation by *Paulos Tzadua*, edited by *Strauss* in 1968.²⁹

Contents. The first part of the Fetha Nagast (chapters 1–22) deals with matters of ecclesiastic law, which are only partly of comparative interest (e.g., chapter 18 section 2 on “charitable legacies”).³⁰ The second, secular part (chapters 23–51) and the appendix deal with the following subjects:³¹ 23: Food, clothing, habitations and trades proper for Christians. 24: Betrothal, dowry,

19. J. Graven, “The Penal Code of the Empire of Ethiopia”, 1 *Journal of Ethiopian Law* 267, 269 n. 6 (1964).

20. On the Ethiopian collections in general see Pankhurst (note 15 above) 181.

21. I. Guidi, *Il Fetha Nagast o Legislazione dei Re: Codice Ecclesiastico e Civile di Abissinia* (Rome 1897–99); vol. 1 (Ge’ez text) was reprinted in Asmara in 1964.

22. Zotenbergh (note 12 above) 145–146 (excerpts from chapter 37 of the Fetha Nagast).

23. See E. Cerulli, “Il nuovo codice penale etiopico ed i suoi principii fondamentali”, 12 *Oriente Moderno* 392 (1932); S. Lowenstein, “The Penal System of Ethiopia”, 2 *Journal of Ethiopian Law* 383, 384 n. 8 (1965).

24. Ge’ez text followed by Amharic translation and comments. Fragments of the 1935 edition (chapters 23, 24, 25 and part of 26) are preserved in the National Library of Addis Ababa.

25. F.A. Arnold, *Libri aethiopici Fetha Negest, i.e. canon regum, caput XLIV de regibus* (Halle 1841); and J. Bachmann, *Corpus iuris abessinorum: textum aethiopicum arabicumque ad manuscriptorum fidem cum versione latina et dissertatione iuridico-historica, pars I: Ius connubii* (Berlin 1889) [chapters 24 and 25].

26. G. de Stefano, “Il Fethà Neghest”, *Africa Italiana* Nos. 293–321 (1895–1896); and G. de Stefano, *Il diritto penale nell’Hamasién (Eritrea) ed il Fethà Neghest* (Florence 1897) 73–108.

27. G.K. Rein, *Abessinien: Eine Landeskunde nach Reisen und Studien in den Jahren 1907–1913*, vol. 1 (Berlin 1918) 437–482.

28. L. de Castro, *Compendio delle leggi dei Re “Fetha Nagast”* (Livorno 1912); P. Mauro da Leonessa, *Testi di diritto antichi e moderni riguardanti gli etiopi* (Codificazione canonica orientale: fonti: fasc. 5, Rome 1931); and R. Rossi Canevari, *Fetha Negast: Il libro dei re, codice delle leggi abissine con note e riferimenti al diritto italiano* (Milan 1934).

29. Abba Paulos Tzadua, *The Fetha Nagast: The Law of the Kings* (P.L. Strauss ed., Addis Ababa 1968).

30. See note 78 below.

marriage and dissolution of marriage. 25: Prohibition of concubinage. 26: Donation. 27: Loan, pledge, guaranty, and debt settlement. 28: Loan for use. 29: Deposit. 30: Mandate. 31: Slavery and the manumission of slaves. 32: Guardianship. 33: Sale, purchase, and related matters. 34: Partnership. 35: Coercion and duress. 36: Lease and rent. 37: Buildings, waters, and streets. 38: Commercial ventures. 39: Acknowledgment of debt. 40: Lost and ownerless things. 41: Wills. 42: Successions. 43: Judges and judicial procedure. 44: Rights and duties of the king. 45: Miscellaneous provisions from the Old and New Testament. 46: Penal provisions for blasphemy, apostasy, and sorcery. 47: Penal provisions for homicide. 48: Penal provisions for sexual offences. 49: Penal provisions for theft. 50: Penal provisions for drunkenness, usury, and other offences. 51: Regulations of the church regarding hair, circumcision, confessions, and rule-making power of the clergy. Appendix: Successions.

II. SOURCES

The non-indigenous origin of the Fetha Nagast is well reflected in its popular Amharic designation as *yabāhīrya hegg*; i.e. “the law from overseas”.³² According to a popular myth, the law-book “fell from heaven during the reign of [Roman emperor] *Constantine*”,³³ while others attribute it to “300 holy men”. Both legends are hearsay versions of the Ge’ez preface, where explicit reference is made to the 318 orthodox bishops assembled at the Council of Nicaea (325 A.D.) who allegedly produced the law-book at Emperor Constantine’s request.³⁴ According to a tradition reported in the Amharic edition of 1966, the Ethiopian Emperor *Zar’a Ya’qob* (1434–1468) had the book brought from Egypt and translated into Ge’ez.³⁵ Ethiopian church tradition further has it that the translator used an Arabic text based on a compilation by an Egyptian Christian named *Ibn al-‘Assāl*.³⁶

31. The table of contents given here follows in general the English terminology of Paulos Tzadua (note 29 above), with some modifications to reflect more accurately the subject covered by the chapters. A Latin table of contents may be found in Dillmann (note 11 above), and a German one (correcting the one by Rüppell, note 13 above) in A. Dillmann, *Verzeichnis der abessinischen Handschriften der Königlichen Bibliothek zu Berlin* (Berlin 1878), and in M. Bittner’s review of I. Guidi, 13 *Wiener Zeitschrift für die Kunde des Morgenlandes* 370, 381 (1899).
32. S.D. Messing, *The Highland-Plateau Amhara of Ethiopia* (Diss. Univ. of Pennsylvania, Pittsburg 1957) 309.
33. Rocher d’Héricourt (note 12 above) and Harris (note 6 above); see also E. Haberland, *Untersuchungen zum äthiopischen Königtum* (Wiesbaden 1965) 44.
34. See note 52 below.
35. Amharic edition (note 24 above) 8 col. 1; cf. Paulos Tzadua (note 29 above) xvii; C.W. Isenberg, *Dictionary of the Amharic Language* (London 1841) 212; J.L. Krapf, *Reisen in Ostafrika, ausgeführt in den Jahren 1837–55*, part I (Stuttgart 1858) 478; A. d’Abbadie, *Catalogue raisonné des manuscrits éthiopiens* (Paris 1869) 185. — The reference to *Zar’a Ya’qob* is probably an anachronism, and according to I. Guidi, “Der äthiopische Sēnodos”, 55 *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 495, 501 (1901), the translation most likely dates from the 17th century. In this regard, further research is needed into the role of a German legal scholar known as “*ma’ allem Pētrōs Abbas*” (Peter Heyling or Hölling, 1607–1652, well-documented as a disciple of Hugo Grotius in Paris), who in 1634 came from Egypt to the court of Emperor *Fäsiladas* in Gondar, where he taught in Arabic until about 1650 and translated several Coptic ecclesiastic texts into Ge’ez; see M. Kropp, “Ein äthiopischer Text zu Peter Heyling: Ein bisher unbeachtetes Fragment einer Chronik des Fäsiladas”, in: S. Rubenson (ed.), *Proceedings of the 7th International Conference of Ethiopian Studies* (Lund 1984) 243 [based on the chronicle of Liq Atqū (note 13 above), compiled in Gondar in 1833].
36. Amharic edition (note 24) 519 col. 3; Paulos Tzadua (note 29) xvi. Ibn al-‘Assāl is sometimes referred to as the Arabic translator of a Greek original (Lefebvre, note 8 above, xxxvi n. 1), but more frequently as compiler of the text at the time of the Nicaean Council; on this anachronism see Dillmann (note 11 above) 29 n. k.

Coptic Nomocanon

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

The “Assālides” were an old Coptic family (*Aulād al-'Assāl*), high-ranking in government offices and in scholarship.⁴¹ As there were at least four brothers by the name of Ibn al-'Assāl—three of whom were active as writers—there has been some confusion as to which of them actually wrote the nomocanon: Whilst an earlier, less well-known version is attributed to the youngest brother, *al-Mu'taman (ad-daula) abū Ishaq Ibrāhīm ibn al-'Assāl*,⁴² and whilst the second brother, *al-As'ad abu'l-Faraq Hibatallāh ibn al-'Assāl* is known as the author of a compendium on the law of successions,⁴³ it now seems well established that the authoritative second version of the nomocanon was written by the eldest brother, *as-Sāfī ibn al-'Assāl*.⁴⁴ According to one of the oldest manuscripts, it was completed in September 1238; and despite its purely scholarly authority as a “restatement of the law”, it rapidly became a leading reference book for judicial practice and a *textus receptus* of the Coptic church in Egypt.⁴⁵

37. On the Preface see note 52 below; on the Appendix see notes 73–76 below.

38. The Ge'ez translator did not in any way attempt to change the original text, as implied by E. Hammerschmidt, *Äthiopien: Christliches Reich zwischen Gestern und Morgen* (Wiesbaden 1967) 77. On the contrary, much of the notorious linguistic deficiency and obscurity of the Fetha Nagast is attributable to the very fact that the translation from the Arabic was too literal; see the examples given by Guidi (note 21 above, xii) and by Bittner (note 31 above, 377).

39. Girgis Filūta'ūs 'Awad (ed.), *Al-Mağmū' as-'Safawī* (Cairo 1908), and Murqus Girgis (ed.), *Kitāb al-Qawānīn* [collection of canons] (Cairo 1927); for a list of the manuscripts see G. Graf, *Geschichte der Christlichen Arabischen Literatur*, vol. 2 (Vatican 1947) 401. See also A. Bausi, “The Aksumite Background of the Ethiopic *Corpus Canonum*”, in: S. Uhlig (ed.) *Proceedings of the XVth International Conference of Ethiopian Studies* (Wiesbaden 2006) 532.

40. Biography and bibliography in Graf (note 39 above) 388–398. *As-Sāfī* is short for *sāfī ad-daula*, i.e., “friend of government”; *abu'l-Fadā'il* means “father of virtues”.

41. See G. Graf, “Die koptische Gelehrtenfamilie der Aulād al-'Assāl und ihr Schrifttum”, 1 *Orientalia* (N.S.) 34, 129, 193 (1932).

42. Four of the manuscripts erroneously identify him as the author of the final nomocanon; but see the introduction by Girgis Filūta'ūs 'Awad (note 39 above) 10, and Graf (note 39 above) 398–402, 407–414.

43. Reproduced in the two printed editions of the nomocanon (note 39 above); see Graf (note 39) 403–407. Some of the manuscripts seem to suggest a certain similarity with the successions chapter (No. 42) of the nomocanon.

44. See A. Mallon, “Ibn al-'Assāl: les trois écrivains de ce nom”, 6 *Journal Asiatique* (Sér. 10) 509 (1910); P. Dib, “Lequel des ibn al-'Assāl est l'auteur du nomocanon?”, 20 *Revue de l'Orient Chrétien* 104 (1915–1917); A.J.B. Higgins, “Ibn al-'Assāl”, 44 *Journal of Theological Studies* 73 (1944); and Graf (notes 39 and 41 above).

45. See W. Selb, “Kodifikationen in älteren orientalischen Kirchenrecht: Prolegomena zu einer Rechtsgeschichte des christlichen Orients”, in: *Österreichische Landesreferate zum XIII. Internationalen Kongress für Rechtsvergleichung in Pescara* (Vienna 1970) 22. Ibn al-'Assāl had expressly dedicated his nomocanon to use by lay judges and subsequently condensed it into a “nutshell” law-book, which seems to have been equally popular, though less authoritative; see Graf (note 39 above) 398–403.

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

Most of the resulting translations-compilations⁵⁰ were used and accepted also by the Coptic community, not without some theological polishing; thus, the names of the later Byzantine emperors or “kings” (considered as heretics by the Coptic church) were simply deleted from the headline, and their legislation indiscriminately ascribed to Constantine the Great and the Council of Nicaea. This pious forgery—deliberate, and hardly due to ignorance, as suggested by Riedel⁵¹—accounts for the flourishing anachronism of the first part of the Fetha Nagast preface, which in fact repeats contemporary Coptic dogma,⁵² and for the mutilated title “Law of the Kings”.

46. See A.A. Schiller, “Prolegomena to the Study of Coptic Law”, 2 *Archives d'Histoire du Droit Oriental* 342 (1938); and A.A. Schiller, “Coptic Documents”, 60 *Zeitschrift für Vergleichende Rechtswissenschaft* 192 (1957).
47. A. Baumstark, *Die Christliche Literatur des Orients*, vol. 2 (Leipzig 1911) 27; F. Cöln, “The Nomocanon Literature of the Copto-Arabic Church”, 56 *Ecclesiastical Review* 112 (1917); and G. Graf (note 39 above).
48. See B. Ducati, “Postilla” to L. Agresti, “Sull’antico diritto religioso etiopico”, 1 *Rivista Giuridica del Medio ed Estremo Oriente e Giustizia Coloniale* 66 (1932); N. Edelby, “L’autonomie législative des chrétiens en terre d’Islam”, 5 *Archives d'Histoire du Droit Oriental* 307 (1951); L. Wenger, *Die Quellen des Römischen Rechts* (Vienna 1953) 212, 553; and W. Selb, “*Episcopalis audientiae* von der Zeit Konstantins bis zur Nov. XXIV Valentinians III.”, 84 *Zeitschrift der Savigny-Stiftung: Romanistische Abteilung* 162 (1967).
49. Under Article 34(5) of the 1994 Constitution, and Proclamation No. 188/2000 on *Strengthening the Federal Shari‘a Courts*; cf. the decision of 15 May 2004 (*Kedija Beshir* case) by the House of the Federation.
50. These translations were indeed practice-oriented and not a mere “self-assertion” of Coptic scholars vis-à-vis Islamic jurisprudence, as suggested by P. Koschaker’s review of d’Emilia, 59 *Zeitschrift der Savigny-Stiftung: Romanistische Abteilung* 659 (1939). The Islamic practice of placing local Christian communities under “Greek” (i.e., Byzantine-Roman) law of personal status was continued in the Ottoman Empire, under the *millet* system, until the 20th century; see E.H. Freshfield, “The Official Manuals of Roman Law of the Eighth and Ninth Century”, 4 *Cambridge Law Journal* 34, 49 (1932).
51. W. Riedel, *Die Kirchenrechtsquellen des Patriarchats Alexandrien* (Leipzig 1900) 296, assuming a confusion between Constantine the Great (306–337 A.D.) and some later Byzantine emperors also named Constantine.
52. The legend of the 318 orthodox bishops drafting a law-book for Emperor Constantine at Nicaea can be found at least as early as 1320 in the Coptic encyclopedia of *Sams ar-Ri‘āsa abu’l-Barakāt (ibn Kabar)*, partly translated by W. Riedel, “Der Katalog der christlichen Schriften in arabischer Sprache von Abu’l-Barakāt”, *Nachrichten der Königlichen Gesellschaft der Wissenschaften zu Göttingen: Philologisch-Historische Klasse* (Part 5) 635 (1902); and in the famous “history of the Copts” by the Egyptian *Ahmed ibn ‘Abd as-Samad Taqī eddin al-Maqrīzī* (1365–1442), edited and translated by F. Wüstenfeld, “Maqrīzī’s Geschichte der Copten”, 3 *Abhandlungen der Historisch-Philologischen Klasse der Königlichen Gesellschaft der Wissenschaften zu Göttingen* 11, 32 (1845): “They blessed [Constantine] and drafted for him the book of the laws of the kings and of the church, which contained everything relating to administration and marriage, and they communicated a copy of it to the other realms.”

Byzantine Law-Books

In his introduction, Ibn al-‘Assāl himself identifies the sources on which his nomocanon purports to be based. Besides a list of holy scriptures and canons of the Coptic church, which are relevant mainly for the first (ecclesiastic) part,⁵³ the principal source of the second (secular) part is described as the “canons of the kings”, consisting of four books said to have been “written at the court of the Emperor Constantine”.⁵⁴

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

(a) **Procheiron**. About 1859, *Amari* recognized the first book of the “canons of the kings” as an Arabic translation of the “*procheiron*”, the famous “manual” of Roman law enacted about 879 A.D. by Byzantine Emperor *Basil I the Macedonian*.⁵⁷ This identification, first reported in 1883,⁵⁸ has been confirmed by *Riedel*,⁵⁹ and in article-by-article comparison by *Nallino*,⁶⁰ well over 100 **TS** citations from the Fetha Nagast have been traced back via the Arabic nomocanon to the *procheiron*. The translation from Greek to Arabic appears to have been made by Melchites in the late 12th or early 13th century.⁶¹

53. See the translation by Paulos Tzadua (note 29 above) 5–9; cf. C. de Clercq, “Introduction à l’histoire du droit canonique oriental”, 3 *Archives d’Histoire du Droit Oriental* 309, 347 (1947), and O. Meinardus, “A Study on the Canon Law of the Coptic Church”, 16 *Bulletin de la Société d’Archéologie Copte* (1961).
54. Preface, section XIV; see Paulos Tzadua (note 29 above) 8. These “canons” also appear, albeit in different arrangement, in the later compilations by Abu’l-Barakāt (note 52 above) and by *Makarios* (partly translated in *Riedel*, note 51 above). See also notes 76 and 94 below.
55. A collection of rules extracted from the Old Testament, with a few Christian interpretations and additions; translated by B. Sanguinetti, “Les préceptes de l’Ancien Testament”, 14 *Journal Asiatique* (Sér. 5) 449 (1859), and 15 *Journal Asiatique* (Sér. 5) 5 (1860); cf. *Riedel* (note 51 above) 52, 130.
56. E. Renaudotius, *Historia patriarcharum alexandrinorum iacobitarum A.D. marco usque ad finem saeculi XIII* (Paris 1713) 75.
57. Greek and Latin edition by C.E. Zachariae von Lingenthal, *O procheiros nomos: imperatorum Basilii, Constantini et Leonis prochiron* (Heidelberg 1837); cf. E.H. Freshfield, *A Manual of Roman Law: The Procheiron* (Cambridge 1928).
58. M. Amari, in B. de Slane, *Catalogue des manuscrits arabes de la Bibliothèque Nationale*, part 1 (Paris 1883) 64, describing a Melchite compilation compared with Zachariae’s edition (note 57 above).
59. *Riedel* (note 51 above) 40, 142, 297.
60. C.A. Nallino, “Libri giuridici bizantini in versione arabe cristiane del sec. XII–XIII”, 1 *Rendiconti della Reale Accademia dei Lincei: Classe di Scienze Morali, Storiche e Filologiche* (Ser. 6) 101, 111, 144 (1925); reprinted in M. Nallino (ed.), *Raccolta di scritti editi e inediti*, vol. 4 (Rome 1942) 324.
61. Graf (note 47 above) 617; cf. J.B. Darblade, “La collection canonite melkite d’après les manuscrits arabes des XIIIe–XVIIe siècles”, 4 *Orientalia Christiana Periodica* 85, 114 (1938).

(b) *Syro-Romana*. In 1880, Sachau⁶² recognized the second book of the “canons of the kings” as an Arabic translation of the so-called “Syro-Roman law-book” (also entitled “legislation of the kings Constantine, Theodosius and Leo”), a Greek compilation dating from about 476–480 A.D., translated into Syriac about 750 and into Arabic about 1100.⁶³ A more recent study by Selb⁶⁴ has shown that, contrary to earlier interpretations,⁶⁵ the book contains little “Syrian” or local “oriental” elements and is essentially a restatement of Roman law as then applied in the Eastern provinces of the Empire, probably written for teaching purposes.⁶⁶ This source (**MAK**) is cited 89 times in the Fetha Nagast. In a study of the crucial chapter on sales, d’Emilia has shown the respective influences of *procheiron* and *Syro-Romana*.⁶⁷

(c) *Ecloga*. Most difficult to identify proved the third book of the “canons of the kings”, partly because Ibn al-‘Assāl’s own source references are misleading. Both Riedel and Nallino thus assumed the third book to be an Arabic version of the *Sanctorum Patrum 318 (Nicaenorum) Sanctiones et Decreta*,⁶⁸ which contain only very few secular rules (mainly referring to marriage). In contrast, the 45 **MAG** citations in the Fetha Nagast deal extensively with legal matters such as marriage, successions, criminal law, asylum, and procedure. In 1947, an article-by-article analysis by Costanzo⁶⁹ showed that at least 24 of the **MAG** citations correspond to another famous text of Roman law which Nallino had believed to be unknown to Ibn al-‘Assāl;⁷⁰ viz., the “*ecloga*” [selection] enacted in 740 A.D. by Byzantine Emperor *Leo III the Isaurian* and his son (and co-regent) *Constantine V Copronymos*.⁷¹ It seems that the citations are based on an excerpt made by

62. K.G. Bruns and E. Sachau, *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*, part 2 (Leipzig 1880, reprint Aalen 1963), 75–114 (German translation), 160, 179 (with a reference to the Fetha Nagast in n. 1).
63. Latin translation by I.P.N. Land, *Anecdota Syriaca*, vol. 1 (Leiden 1862) 123, 184; vol. 2 (Leiden 1868) 19; see also E. Sachau, *Syrisch-Römische Rechtsbücher*, vol. 1 (Berlin 1907) xiv, and Wenger (note 48 above) 551.
64. W. Selb, *Zur Bedeutung des Syrisch-Römischen Rechtsbuches* (Munich 1964); cf. E. Volterra, “Il libro siro-romano nelle recenti ricerche”, 62 *Problemi Attuali di Scienza e Cultura* 297 (1964); and the reviews by R. Yaron in 17 *Iura: Rivista Internazionale di Diritto Romano e Antico* 114 (1966), and by D. Nörr and J.P.M. van der Ploeg in 36 *Tijdschrift voor Rechtsgeschiedenis* 563, 570 (1968).
65. E.g., L. Mitteis, *Reichsrecht und Volksrecht in den Östlichen Provinzen des Römischen Kaiserreiches* (Leipzig 1891); E. Carusi, *Diritto e filologia* (Bologna 1925); R. Taubenschlag, *Opera minora*, vol. 1 (Warsaw 1959) 311.
66. E. Volterra, *Diritto romano e diritto orientale* (Bologna 1937) 75, and 8 *Rendiconti della Reale Accademia dei Lincei* (Ser. 8) 31 (1953), submits that the book was actually a textbook for the first year of legal studies at the ancient law school of Beryt [Beirut]; but see Selb (note 64 above) 241, 264, referring to P. Collinet, *Histoire de l’école de droit de Beyrouth* (Paris 1925) 244.
67. A. d’Emilia, *La compravendita nel capitolo XXXIII del nomocanone di Ibn al-‘Assāl: note storico-esegetiche* (Milan 1938); and A. d’Emilia, “Elementi di diritto romano nella struttura della compravendita secondo il capitolo XXXIII del Fetha Nagast”, 5 *Atti del V. Congresso Nazionale di Studi Romani* 45 (1946).
68. Latin edition by A. Pisanus, *Acta et canones sacrosancti primi oecumenici concilii Nicaeni* (Dillingen 1572); rev. edn. by F. Turrianus (Antwerp 1578) reprinted in J.D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, vol. 2 (Florence 1759) col. 947, and by Abraham Ecchellensis, *ibid.* col. 1029.
69. G. A. Costanzo, “L’Ecloga araba nel Fetha Nagast e la sua prima versione in italiano”, 20 *Annuario di Diritto Comparato e di Studi Legislative* (Ser. 3, Part 2) 1 (1947); cf. G.A. Costanzo “Fetha Nagast (Diritto dei Re)”, 7 *Novissimo Digesto Italiano* 253 (Turin 1961).
70. Nallino (note 60 above) 126.
71. Greek edition by C.E. Zachariae von Lingenthal, *Collectio librorum iuris graeco-romani ineditorum* (Leipzig 1852); translations by E.H. Freshfield, *A Manual of Roman Law: The Ecloga* (Cambridge 1926); L. Burgmann, *Ecloga: Das Gesetzbuch Leons III. und Konstantins V.* (Frankfurt 1983); and S. Leder, *Die arabische Ecloga: das vierte Buch der Kanones der Könige aus der Sammlung des Makarios* (Frankfurt 1985).—The Byzantine *ecloga* was also introduced in several Balkan countries, where it survived (e.g., in Bessarabia, now part of the Republic of Moldavia and the Ukraine) until today; see D. Obolensky, “Russia’s Byzantine Heritage”, 1 *Oxford Slavonic Papers* 37 (1950); A.V. Soloviev,

Melchites in the 13th century from a previous Arabic translation of the *ecloga*,⁷² into which the Nicaean canons were incorporated.

(d) Cyrilliana. There remained one last part of the Fetha Nagast, the sources of which were not yet identified: viz., the Appendix entitled “chapter on successions, on which the honourable Abba Querillos, Patriarch of Alexandria, agreed with his bishops, chiefs and magistrates”. This chapter, which reportedly was enacted in 1241 and therefore does not appear in the earlier Arabic nomocanon of Ibn al-‘Assāl, is in fact a verbatim Ge’ez translation of the chapter on inheritance from the canons of *Cyril III ibn Laqlaq*.⁷³ It is likely that these canons, too, were drafted by Ibn al-‘Assāl.⁷⁴ According to an introductory note (repeated in the Fetha Nagast), they are based mainly on the writings of Abba *Cosmas* (probably the patriarch *Quzman III*, who died in 933 A.D.) and on some unidentified law-books, probably identical with the above-mentioned Byzantine sources. An Amharic gloss to the Fetha Nagast Appendix mentions, in addition to Cosmas, one Abba *Gabriel*;⁷⁵ this could be a reference to the inheritance laws of another Coptic patriarch, *Gabriel II ibn Tarīq* (1131–1145 A.D.), which contain detailed classes and orders of succession (attributed to Emperor Constantine) and which specifically acknowledge the “canons of the kings” as a source.⁷⁶

Islamic Influences

Finally, the nomocanon also reflects the political and cultural environment in which its author lived and wrote; viz., the Islamic civilization, under whose domination the Coptic community has existed since the 7th century. Although Ibn al-‘Assāl for obvious dogmatic reasons avoids any reference to Muslim sources,⁷⁷ it has been shown that certain provisions of the nomocanon were

“Der Einfluss des Byzantinischen Rechts auf die Völker Osteuropas”, 76 *Zeitschrift der Savigny-Stiftung: Romanistische Abteilung* 432 (1959); P.J. Zepos, “Byzantine Law in the Danubian Countries”, 7 *Balkan Studies* 343 (1966); and see the modern Russian edition by E.E. Lipshits, *Ekloga: Vizantiiski zakonodatel’nyi svod VIII veka* (Moscow 1965).

72. Graf (note 47 above) 619; according to Nallino (note 60 above) 139, the provisions so excerpted (e.g., on marriage) do not appear in later Coptic versions of the *ecloga*.

73. Arabic text in Girgis Filūta’ūs ‘Awad (note 39 above) 436–451; English translation (based on Arabic manuscript No. 251, Bibliothèque Nationale Paris, fol. 353–361) by O.H.E. Khs-Burmester, “The Canons of Cyril III Ibn Laklak, 75th Patriarch of Alexandria A.D. 1235–1250”, 12 *Bulletin de la Société d’Archéologie Copte* 81, 124–132 (1947).

74. Graf (note 39 above) 362 identified the canons as the outcome of a synod convened at Cairo in September 1238 (i.e., the month when Ibn al-‘Assāl finished his nomocanon, note 44 above); cf. Khs-Burmester (note 73 above) 81. Whilst at the end of the Arabic text it is clearly stated that “the brethren, the bishops, agreed upon [these canons] and accepted them on the 20th of Tut in the year 955 of the Righteous Martyrs” [i.e., 1238 A.D.], the introduction to the Ge’ez text (Fetha Nagast Appendix) claims that “it was enacted on the 17th of Maskaram in the year 958 of the pure Martyrs and the year 1241 from the birth of Our Lord” [curiously enough, the latter date follows the Gregorian rather than the Ethiopian calendar].

75. Named as “bishops” referred to in the title of the Appendix; Paulos Tzadua (note 29 above) 313 n. 1.

76. Arabic text and English translation in O.H.E. Khs-Burmester, “The Laws of Inheritance of Gabriel Ibn Turaik, 70th Patriarch of Alexandria”, 1 *Orientalia Christiana Periodica* 315 (1935); cf. C.D.G. Müller, “Gabriel II. ibn Turaik, 70. Papst und Patriarch des Missionsbereiches des Heiligen Markos”, 74 *Oriens Christianus* 168 (1990).

77. Euringer (note 18 above) 362. The same reluctance to acknowledge “theologically incorrect” sources has been noted in other Ethiopian texts of that period (Kropp, note 35 above, 248), and indeed had its parallels in 20th century Ethiopia; see N. Singer, “Islamic Law and the Development of the Ethiopian Legal System”, *Howard Law Journal* 17 (1972) 130, and “The Status of Islamic Law in Ethiopia”, in: J. Gillissen (ed.), *Études sur le pluralisme juridique* (Brussels 1972).

taken directly from Islamic law (predominantly from the Malikite school),⁷⁸ particularly in the area of sales, charitable legacies, divorce, penal provisions, and procedure.⁷⁹ Sometimes, Islamic and Roman rules stand side-by-side, such as the *portio legitima* of post-classical Roman successions law and the “disposable quarter” of the Muslim law of wills,⁸⁰ and similar attempts at “co-existence” in the law of sales.⁸¹

Further to substantive borrowings, the jurisprudential style of the Fetha Nagast clearly reflects an Arabic literary background. Nallino notes that the arrangement of the subject matters follows the Islamic rather than the Roman system;⁸² the inclusion of such topics as diet and clothing certainly is closer to *fiqh* than to *ius civile*. The very idea—fundamental to Islam—of treating all law as part of one’s religion⁸³ would hardly have occurred to a Roman jurist. In addition, the style of the Fetha Nagast shows characteristic features of Muslim legal scholarship: Ibn al-‘Assāl thus states in his introduction that his personal contributions to the nomocanon were “arrived at by reasoning and through analogy” from the authoritative sources—a formula clearly reminiscent of the *qiyās* of Islamic jurists; and the annex on successions adds rules “on which Abba Querillos, Patriarch of Alexandria, agreed with his bishops, chiefs and magistrates”⁸⁴—apparently deriving legitimacy from such consensus, not unlike the *ijmā’* of Islamic jurisprudence.⁸⁵

The moulding of Roman sources into Islamic forms was facilitated by the ease with which the Arabic language transcribed and accommodated Roman legal terms.⁸⁶ This process is best illustrated by terminology from the law of successions: The Greco-Roman texts used the term *falkidion* (a Greek neologism derived from the Roman *lex falcidia*) to designate the compulsory share reserved for heirs-at-law in a testate succession.⁸⁷ The Arabic translators simply transliter-

78. A. d’Emilia, “Influssi di diritto musulmano nel capitolo XVIII,2 del nomocanone arabo cristiano di Ibn al-‘Assāl”, 19 *Rivista degli Studi Orientali* 1, 15 (1940), pointing to the assimilation of donations (*hibah*) to charitable legacies (*waqf*) as a characteristic dogmatic position of the Malikite school. Whereas Guidi (note 20 above, vii and xi) had attributed the Islamic influence mainly to the Shafiite school, and particularly to the *tanbīh* of Abu Ishāq as-Shirāzī (Latin edition by A.W.T. Juynboll, *Ius shafiiticum: at-tanbīh*, Leiden 1879), the Malikite influence is emphasized in C.A. Nallino’s review of E. Carusi, 9 *Rivista degli Studi Orientali* 135 (1921), and by C. Conti Rossini, “Fetha Nagast”, 5 *Nuovo Digesto Italiano* 1085 (Milan 1938).
79. The influence of “Muslim civil law” on the Fetha Nagast is also mentioned by T. Nöldeke, “Die äthiopische Literatur”, in: *Die Orientalischen Literaturen* (Leipzig 1906, reprinted 1925) 136; Nallino (note 60 above) 154; and Ducati (note 48 above) 67, pointing *inter alia* to the rules relating to warfare.
80. Fetha Nagast, chapter 42 section 4 (Paulos Tzadua, note 29 above, 228 n. 46). Whereas the Ge’ez text of the nomocanon clearly prefers the Roman solution, the Amharic glossators came up with a radically different “compromise”: one half to the heirs-at-law, one quarter to the church, and one quarter freely disposable; see Guidi (note 20 above) 387 n. 1; and Costanzo (note 69 above) 40. See also note 87 below.
81. D’Emilia (note 67 above) *passim*.
82. Nallino (note 60 above) 153; especially Ibn al-‘Assāl’s tripartite division (individual – family – society).
83. See J.N.D. Anderson, *Islamic Law in the Modern World* (New York 1959, reprinted 1999) 2–5.
84. Notes 73–76 above, following Guidi’s translation; the Ge’ez actually uses the term *liqanat*, i.e. (legal) scholars of the church, interpreted by the Amharic glossators as *papasat* (patriarchs).
85. On the role of *qiyās* and *ijmā’* see Anderson (note 83 above); J. Schacht, *An Introduction to Islamic Law* (Oxford 1964) 60, 114; and R. David, *Les grands systèmes de droit contemporains: droit comparé* (Paris 1964, 11th edn. 2002) 456–461.
86. A famous example is the Latin *dolus* [fraud, malice], which survives in modern Arabic as the verb *dalasa* (= to swindle, cheat, counterfeit, forge, falsify, defraud, impose); see H. Wehr, *A Dictionary of Modern Written Arabic* (J.M. Cowan transl. from the 1958 German edn., Wiesbaden 1961) 290.
87. See note 80 above. Whilst classical Roman law merely gave an action to invalidate the will (*querela inofficiosi testamenti*) when descendants had received less than a quarter of their intestate share (*quarta falcidia*), Byzantine law conceived of the *lex falcidia* as automatically giving descendants a compulsory share (*portio legitima*).

ated the term as *falkidon* or *falkid*, with a special explanatory note added at the end of the Arabic version of the *procheiron*.⁸⁸ Ibn al-‘Assāl’s nomocanon does not repeat that explanation, possibly because by then the concept had become sufficiently “Arabized” to be understood by lawyers in Egypt. However, when the Fetha Nagast translator once more transcribed it—without interpretation—into Ge’ez as “*filkidon*”, the term must have ceased to be meaningful for the readers: so the Amharic commentary in the 1966 edition of the Fetha Nagast, in apparent despair, now “explains” the mysterious word as meaning “he who gives the inheritance”—i.e., the testator.⁸⁹

The general interaction of Roman and Islamic law, which has long been noted in the former Eastern Provinces of the Empire, may also have affected the contents and the conceptual framework of the nomocanon.⁹⁰ Yet, *Haberland*’s conclusion to the effect that the Fetha Nagast “is based mainly on law of the Muhammedan realm, which in turn rests on Roman-Hellenistic *ius gentium*”,⁹¹ somewhat misplaces the emphasis. In any event, it may be wise to heed *Wenger*’s famous caveat:⁹²

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

CONCLUSION

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

While this conclusion would in part bear out the speculations of Sherman and Wigmore,⁹³ the Ethiopian “law of the kings” certainly is a far cry—a distant echo indeed—from Justinian’s *corpus iuris civilis*. The combination of three different Greco-Roman law-books into a single nomocanon was bound to create contradictions, and all but destroyed the coherent original sys-

88. Nallino (note 60 above) 120.

89. Amharic edition (note 24 above) 475 col. 2; see Paulos Tzadua (note 29 above) 245 n. 43.

90. Islamic influences on the Syro-Roman Law-book have been suggested by Taubenschlag, though doubted by Nallino; cf. Wenger (note 48 above) 319. Conversely, the Syro-Roman Law-book is said to have influenced Islamic law; see O. Spies and E. Pritsch, “Klassisches Islamisches Recht”, in: B. Spuler (ed.), *Handbuch der Orientalistik*, Part 1, Suppl. 3 (Leiden & Cologne 1964) 224. On the general influence of Roman law on Islamic law see J. Schacht, “Foreign Elements in Ancient Islamic Law”, 32 *Journal of Comparative Legislation and International Law* (3rd Series) 10 (1950); but cf. Abdel-Rahman Hassan, “Le droit musulman et le droit romain”, 4 *Archives d’Histoire du Droit Oriental* 301 (1949), and S.V. Fitzgerald, “The Alleged Debt of Islamic to Roman Law”, 67 *Law Quarterly Review* 81 (1951).

91. *Haberland* (note 33 above) 43–44.

92. Wenger (note 48 above) 318.

93. Notes 4 and 5 above. However, Sherman’s guess regarding the actual *date* of the reception of Roman law in Ethiopia (“6th century A.D.”) is clearly wrong; see note 35 above.

tem.⁹⁴ Its undeniable Roman substance was taken from various layers of successive imperial legislation (such as the “constitutions” identifiable in the Syro-Roman law-book),⁹⁵ reflecting various stages of Christianization (particularly prominent in the *ecloga*, with a reverse trend in the *procheiron*),⁹⁶ and subjected to the erosive forces of vulgarization and didactic simplification for legal practice in the Eastern Empire.⁹⁷ Before even reaching Ethiopia, the original Latin rules had already undergone two successive translations and “acculturations” (Byzantine-Greek and Coptic-Arabic), yet were virtually cut off from the “mother civilization” of Rome—spiritually by Coptic orthodoxy, geopolitically by Islam.⁹⁸

Against such odds, the “reception” and integration of this Roman torso in the radically different social environment of Ethiopia is all the more remarkable. The survival and domestic application of the Fetha Nagast, well-recorded from the 17th to the 20th century,⁹⁹ must be considered one of the most striking historical examples of a “transplant”, illustrating both the resilience and the transcultural migrative-adaptive potential of legal systems.¹⁰⁰

94. Note that the very title, “legislation of the kings” (with the actual names of the “kings” or emperors omitted for dogmatic reasons, see text at note 51 above), was originally derived from the Syro-Roman law-book, which was in itself a rather disjointed “restatement” of Roman law; see Selb (note 64 above) 246. The Egyptian Copts adopted the title for their rearranged compilation with the *procheiron* and the *ecloga* (“canons of the kings”, note 54 above); the Ethiopians then extended it to designate the nomocanon comprising all ecclesiastical and secular law (“law of the kings”), in order to distinguish this book from earlier ecclesiastical translations such as the *sēnodos*, parts of which were identical with a portion of the first part of the Fetha Nagast; see A. Bausi, “Alcune considerazioni sul ‘Sēnodos’ etiopico”, 34 *Rassegna di Studi Etiopici* 5, 36 (1990).
95. See Selb (note 64 above) 209–229.
96. See Freshfield (note 50 above) 35, and Sherman (note 4 above) 160, pointing to contrasts particularly in the law of marriage and divorce; another characteristic area being the law of asylum in the church.
97. On the notorious difficulties with the *corpus iuris* in legal practice, and the resulting trend towards reducing Justinian’s unwieldy volumes to “pocket-size” by way of intermediate manuals, see P. Koschaker, *Europa und das Römische Recht* (Göttingen 1947, 3rd edn. Munich 1966) 65–66.
98. In the classical passage from E. Gibbon, *The History of the Decline and Fall of the Roman Empire*, Chapter XLVII (London 1789): “Encompassed on all sides by the enemies of their religion, the Aethiopians slept near a thousand years, forgetful of the world, by whom they were forgotten.”
99. See Paulos Tzadua (note 29 above) xxvi–xxix; Aberra Jembere, *An Introduction to the Legal History of Ethiopia 1434–1974* (Münster 2000) 194; M. Kropp, “Das gute alte Recht: Schriftlichkeit und Mündlichkeit in der Praxis des äthiopischen Königsrechts”, in: M. Tamcke (ed.), *Blicke gen Osten: Festschrift Friedrich Heyer* (Münster 2004) 293; and Paulos Tzadua, “Fetha Nāgāst”, in: S. Uhlig (ed.), *Encyclopaedia Aethiopica*, vol. 2 (Wiesbaden 2005) 534, reprinted in the present volume at p. xxxvii above.
100. See J. Beckstrom, “Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia”, *American Journal of Comparative Law* 21 (1973) 557; and generally A. Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn. Athens/Georgia 1993); M. Doucet and J. Vanderlinden (eds.), *La réception des systèmes juridiques: implantation et destin* (Brussels 1994); and G.M. Rehm, “Rechtstransplantate als Instrument der Rechtsreform und –Transformation”, 72 *Rabel Journal of Comparative and International Private Law* 1 (2008).

FOOTNOTE CONVENTIONS

Gloss:	Unless otherwise indicated, glosses given in the footnotes appear as footnoted Ge'ez glosses in the Ge'ez text published by Guidi, ፍትሐ ፡ ነገሥት ፡ (Roma, 1888 E.C. (1897)). The glosses given in the text are now considered part of the text, and would be found in any manuscript.
(2/332)	The reference is to footnote 2 on page 332 of Guidi, <i>Il Fetha Nagast</i> ..., (Roma, Casa Editrice Italiana, 1899).
POEFNM 23-1	The reference is to column 1 on page 23 of ፍትሐ ፡ ነገሥት ፡ ንባብ ፡ ትርጓሜው ፡ <i>Photo Offset Edition of a Fetha Nagast Manuscript</i> (Addis Ababa, Berhannena Selam, 1966).
NLM	A manuscript of the Fetha Nagast, with marginal glosses, to be found in the National Library, Addis Ababa.
NLF	Fragments of a printed edition of the Fetha Nagast, to be found in the National Library, Addis Ababa.
Deut. 21, 3	The reference is to the Holy Scriptures, Book of Deuteronomy, Chapter 21, verse 3. (Scriptural references, in general, have been copied from the marginal notes of the Guidi translation, and are reproduced for the reader's convenience.)
Dig. X, 1,1 (Inst.) (Cod.) (Nov.)	In accordance with standard convention, the reference is to Book 10, Title 1, Section 1 of the <i>Digest</i> of the Emperor Justinian. The principal works of Roman Law cited are, in addition to the <i>Digest</i> , the Justinian <i>Institutes</i> (Inst.), <i>Codex</i> (Cod.), and <i>Novellae</i> (Nov.).
MAK 9.	The bold-face abbreviations and numbers which appear in the text of the translation and, less frequently, its footnotes, are taken from the Ge'ez. As the Preface explains at length (pp. 5-9, <i>infra</i>), these abbreviations were used by the compiler of the Fetha Nagast to indicate the sources from which the stated precepts were derived.

