

Donations to the Church and the State in the Byzantine Empire —Legislation in the 5th and 6th centuries—

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This article attempts to investigate the imperial legislation regarding donations to the Church in the Byzantine Empire in order to reconsider the social character of relationship between the Church and the State in the Byzantine Empire.

The relationship between the imperial power and the Christian Church is one of the most important issues for Byzantinists who want to comprehend the Empire's character, especially that of its State structure. It was the existence of the institutionalized Christian Church that distinguished this medieval Empire from the ancient Roman principate. Moreover, the Christian Fathers were the ones who offered the new frame of reference of the political thought by proposing their political theology.

As is well known, Byzantine Church got the exclusive status of State Church by 391. And thereafter, its property was accumulated by the laity's offering, and its network became increasingly denser. Of course, this process had to be realised under the State organisation. This made the constitutional environment of the Byzantine Church remarkably different from that of the Western European Church in the early Middle Ages, where no constitutional apparatus of "State" ever existed. According to H.G. Beck, Byzantine clergy were excluded from all of the *staatlichen Verwaltung*, and thus couldn't hold any governmental power¹. In fact, from its very beginning, this Empire did not need any help from the Church in all phases of its State affairs such as jurisdiction, administration, tax collection and military service². However, it is also true that many leading laities, including Emperors and Empress, were more or less eager to make donations to the Church, and thus the Byzantine Church finally got a close network and much more properties³. This made the Byzantine Church a big land owner

¹ H.G. Beck, *Kirche und Klerus im staatlichen Leben von Byzanz. Revue des Études Byzantines* 24 (1966) pp. 1-24.

² To the best of our knowledge, there is no monograph which tries to survey the political role of the Byzantine clergy. But some studies on the Byzantine administrative system show that the Byzantine clergy could not take charge of any part of State affairs. ex. L. Bréhier, *Les institutions de l'empire byzantin*. Paris, 1949. As an exception, however, we know that, in the early byzantine period, some bishops sometimes took charge of some part of judicature. cf. Beck, *op. cit.*, p. 4. G. Pfannmüller, *Die kirchliche Gesetzgebung Justinians, hauptsächlich auf Grund der Novellen*, Berlin, 1902. pp. 74-88. C.T.1.27.1.(318?), C.T.1.4.7.(398), C.T.1.4.8.(408), C.J.1.4.

³ As is well known, Byzantine Church was a big land owner which enjoyed tax exemptions. And most of its landed property was formed through laity's donations. cf. J.Ph. Thomas, *Private religious foundations in the Byzantine Empire*. Washington, D.C., 1987. pp. 5-58. E. Patlagean, *Pauvreté économique et pauvreté sociale à Byzance, 4^e-7^e*

and it became very influential in the society⁴. How did the Byzantine State treat this Church organisation which had assumed great control over the imperial subjects?

This paper attempts to survey the legislative system of imperial control over the formation of ecclesiastical property and network in the 5th and 6th centuries. We would therefore analyse donations to the church and also reconsider the character of the Church and clergy in the political and social system of the Byzantine Empire.

1. Legislation on Private Plans of Church Foundation

In the Byzantine Empire, new ecclesiastical institutions (sanctuaries, monasteries etc.) were all founded by private initiatives of the laity including Imperial Family⁵. Christian Fathers such as Patriarch John Chrysostom encouraged such donations to the Church. By these donations, ecclesiastical properties increased remarkably during the 5th and 6th centuries. Establishing religious foundations, among others, was especially important because it helped to enlarge the ecclesiastical network. Legislation on the ecclesiastical properties was, in the beginning, enacted to control such private plans of foundations (donations).

Until the mid-fifth century, however, private benefactors enjoyed considerable freedom in the construction, endowment, and management of their foundations. The problem of regulating the act of those private donations was first recognized as an Imperial Matter when it was proposed by the Council of Chalcedon (451). It was after this Council that the Imperial Government started to issue the edicts regulating such acts of the laity⁶.

The guiding principles of the council's decisions on this problem were clearer than those of the others. Their main aim seems only to point out the benefactors' arbitrary behavior. No one was hereafter to found an oratory or a monastery without the prior approval of the local bishop (canon 4). And all foundations and their estates, including private ones, were to be under the bishop's supervision (canon 8 & 17). Benefactor's foundation or bequest were, once made, irrevocable (canon 24)⁷. According to the legislation, all private institutions, whether they existed within the grand proprietor's estates or not, were to be subjected to the bishop's

siècles. Paris, 1977. pp. 181-196. The case of the Constantinople Church is a well known example. See G. Dagron, *Naissance d'une Capitale: Constantinople et ses institutions de 330 à 451*. Paris, 1974. pp. 501-506.

4 It is well known that, in the controversy on "Byzantine Feudalism", the Church was perceived as a "feudalistic master" similar to the church of medieval West. ex. G. Ostrogorskij, *Pour l'histoire de la féodalité byzantine*. (Corpus Bruxellense Historiae Byzantinae, Subsidia I. trad. par H.Grégoire) Bruxelles, 1954. id., *Pour l'histoire de l'immunité à Byzance*. *Byzantion* 27 (1958). This recognition of Marxist has also never been doubted by his opponents. ex. P.Lemerle, *Esquisse pour une histoire agraire de Byzance*. *Revue Historique* 219/220 (1958).

5 Thomas, *op. cit.* J.v. Zhishman, *Das Stifterrecht in der morgenländischen Kirche*. Wien, 1888.

6 As for the character of canonical legislation of Chalcedon, see Leo Ueding, *Die Kanones von Chalkedon in ihrer Bedeutung für Mönchtum und Klerus*. in A.Grillmeier/H.Bacht(ed.), *Das Konzil von Chalkedon: Geschichte und Gegenwart*, v.2. Würzburg, 1953. pp. 569-676. On this problem, classical Roman Law traditionally had taken a more radical position. Thomas, *op. cit.*, p. 38. The jurist Papinian emphasised that no individual could ever own consecrated property. (Dig.18.1.73.) The jurist Marcian also declared that consecrated property was incapable of belonging to any individual, and remained sacred even if the temple on it got ruined.(Dig.1.8.6.3.) Justinian approved these principles by incorporating them in the Institutes. These principles, however, did not reflect actual conditions nor legal practice, as shown by the legislation of Justinian.

7 G.A. Rhalles/M. Potles, *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων...v.2*. Athen, 1852. canon 4: p. 226, canon 8: p. 234, canon 17: p. 258, canon 24: p. 271.

supervision. In addition monks were also to be under the spiritual authority of bishops.

It is obvious that these principles were promoted with the political objective of reorganizing all the Empire under the Orthodox faith. As is well known, Byzantine Church system was set parallel with the secular governmental system. In this historical course, these principles were proclaimed as the first fruit of the Byzantine Theocracy system. It also served as the starting point of the development of this system.

Emperor Marcian (450-457), who summoned the Council of Chalcedon, tried to ban all heretical sects. After the Council he issued a law, which aimed to prohibit the construction of heretical oratories or monasteries, as well as converting any facilities to their use. This disposition was certainly focusing on the biggest opposing sect, Monophysite of archimandrite Eutyches⁸. Although this edict may be in the series of traditional imperial policy which started in the 380s, it intended to strictly prevent the heretical abuse of buildings and grant bishops the right of intervention and responsibility of supervision. Leo I (457-474) succeeded this Marcian's policy, which was, after all, to ban the conversion of any property including land (*praedia*) to the heretical sects. In C.J.1.5.10.(466-472?), this principle was consolidated by a penal regulation, that is, confiscation of property by the State⁹.

C.J.1.2.15.(474-477?) issued by Zeno (474-475/476-491) was the first law which regulated the plans of private religious foundations themselves. It prescribed that the benefactor or his heir must perform his testamentary plans of construction under the supervision of the local bishop. The bishop and his dispensator (*oikonomos*) were supposed to see to it that constructions were completed and they were also given power to take charge of the plan. This law declared that this supervisory right of bishops should be superior to the founder's right to his "property". This disposition, accordingly, was an important step of depriving the benefactor and his family of their traditional rights to their foundation.

It was Justinian who first established the comprehensive legislation on completion of testamentary plans for the construction of religious foundations. He reaffirmed Zeno's principle in a law of his own issued in 530¹⁰. In this law the emperor established, for the first time, a frame of reference for the completion of construction by setting time limits. Chapter 1 of this law says as follows:

"If anyone ordered, as his last will, the construction of an oratory, it must be completed within three years. If the construction of a *xenon*, within one year. In these enough terms, heirs must carry out what the deceased had attempted."¹¹

Although in 545 Justinian extended the limit for oratories to five years¹², on the basis of these time limits he first established the systematic regulation on the construction of religious foundations. According to this law, the local bishop has the responsibility for those plans from

⁸ C.J.1.5.8 (455): *Corpus Juris Civilis. T.2: Codex Justinianus.* (ed. P. Krüger, Berlin, 1877) p. 52.

⁹ Transfers between laymen of orthodox faith were not banned. Laws by Leo and Justinian rather sanctioned those transactions of private religious foundations. As to the penalty, confiscator of properties of foundation was later changed from the Treasury to the local cathedral church. Nov. 131.14.1-2.

¹⁰ C.J.1.3.45.

¹¹ Krüger, p. 31.

¹² Nov. 131.10.1.(545)

the beginning, and, if these limits were not adhered to, the bishop would be entrusted to take charge of the construction. Chapter 1 of this law continues as follows:

“If, even after the prescribed time limits, the construction of foundation such as oratory, *xenon* and *xenodochion* is not accomplished, then the local bishop himself would be responsible for taking over the plan and completing it. Thus the bishop is required to accomplish the construction of holy oratories, *xenones*, *gerocomeia*, orphanages and hospitals (*nosokomeia*), or the purchase of certain building for prison, or similar acts which seemed pious to the deceased. Moreover, the bishop must designate the chiefs of the foundations. If the prescribed disposition is neglected even after the time limit, the neglecter cannot become a conductor and cannot exclude the bishop from the position of manager.”¹³

Justinian also prescribed the responsibilities of metropolitan bishops and archbishops as overseers of the ecclesiastical administration. Chapter 6 of this law says as follows:

“If, gained over by the heir or legacy or bequest, the local bishop is inefficient in carrying out the task, We order that the metropolitan bishops and archbishops perceiving that must examine the case and ensure that the holy business or holy donation will be completed.”¹⁴

Moreover, secular governors were also responsible for the fulfillment of these testaments. Zeno had already entrusted, in C.J.1.2.15., the supervisory care of this task to provincial governors (*archontes tōn eparchiōn*). Now C.J.1.3.45. declares explicitly that they must by all means assist the bishop and his dispensator (*oikonomos*) (Chapter 2). And, according to Chapter 7, if the project could not be completed on schedule, they were to file a lawsuit against the benefactor or his heir and force them to contribute twice the amount of money proposed¹⁵. In case this penalty was imposed, the heir of the benefactor was to be deprived of his proper rights to the foundation. However, this doesn't mean that the imperial government preferred the execution of this penalty. This is because there is another prescription in Nov. 131.(545) which advises the heirs to purchase or rent any suitable facility, if they are unable to complete the testimonial plan within the time limit mentioned above. Although this provision was limited to the case of charitable institutions, the emperor and the government adopted a practical and flexible measure.

2. *Benefactor's Rights and Imperial Legislation*

Benefactors' rights were also confirmed in the reign of Justinian. In the early 5th century they had already been recognized by Jean Chrysostom, patriarch of Constantinople¹⁶. It was, however, in the early 6th century that they were authorized by the State.

13 Krüger, p. 31.

14 *Ibid.*, p. 32.

15 *Ibid.*, p. 32.

16 Johannes Chrysostomus, Homilium XVIII. (PG. 60, col. 147, lines 17-24)

Among the benefactor's traditional rights, what was regarded most important in the imperial Law was his right to designate clerics who were to be supported by him. It is because the increase of clerics thus designated may become a cause of financial problem for the Church. This issue will be later discussed in detail.

In Nov. 57(535) and Nov. 123(546), Justinian sanctioned the benefactor to designate (*pro-ágein, onomázein, probálllesthai, designare*) clerics of their foundations¹⁷. And he also conferred the same right to heirs of benefactors in Chapter 18 of Nov.123. However, the benefactors' right of designation was not absolute. Chapter 2 of Nov. 57 says that candidates for clerics thus designated can not automatically be accepted as ordinands by neither the local bishop nor the provincial governor. On the contrary, if the candidate was judged unsuitable, the local bishop could designate somebody else. Moreover, in these two laws, Justinian conferred this right of designation on condition that the benefactor or his heir had already prepared some financial support for the clerics¹⁸. This disposition did not aim to establish a new policy on selection of clerics. It was only a governmental sanction of a common practice, with the intention of putting this practice under the control of the official church organisation.

As for the founders of charitable institutions, Justinian didn't restrict their rights of designation so rigidly. In a law issued in 530, emperor sanctioned them to appoint (*epistánai*) chiefs of their institutions¹⁹. It is characteristic that, compared to the case of oratory, supervisory leadership of local bishop was not so strong for charitable institutions. Bishops could reject the candidate only when the plan could not be completed within the time limit, or when the candidate was suspected of heretic. So far as charitable institutions were concerned, the layman's right of designation of clerics was almost identical to their appointment. Even though there is no explicit legal explanation, the reason seems to be in their social importance; that is, they exclusively carried on the social welfare function. As Patlagean says, this was a traditionally important public performance, and they were now the only social institution which took charge of this²⁰. They were therefore always under the supervision of the bishop and the secular governors²¹.

This right of designation was also conferred in case of selection of abbots (*ηγούμενος*). But in this case this benefactor's right was usually valid during the selection of the first abbot. Imperial laws prescribed that the incumbent abbot would nominate his successor, or, this right would be entrusted to members of the monastery. The patron family could intervene only when there was suspicion that the nominee was a heretic²².

17 Nov. 57: *Corpus Juris Civilis. T.3: Novellae.* (ed. R. Schöll et W. Kroll, Berlin, 1895.) p. 313. line 30 -p. 314. line 8. Nov. 123: *ibid.*, p. 608. lines 6-20. See Zhisman, *op. cit.*, pp. 50-54.

18 Thomas says that this was part of the emperor's program of involving the ecclesiastical hierarchy in the selection of the clergy for churches in the estate. Thomas, *op. cit.*, pp. 53-54.

19 C.J.1.3.45. chap. 3. = Krüger, p. 31.

20 Patlagean has attempted to describe the historical transference of the performer of social welfare activities. According to her, this change "de la générosité à la charité chrétienne" proceeded gradually from the 4th to the beginning of the 7th century. *op. cit.*, pp. 181-235. As for the social welfare in the Byzantine Empire, see D. Constantelos, *Byzantine Philanthropy and Social Welfare.* Rutgers U.P. 1968. T.S. Miller, *The Birth of the Hospital in the Byzantine Empire.* The Johns Hopkins U.P. 1985.

21 According to Beck, the function of chiefs of charitable institutions was rather secular administrative, therefore, they were in conflict (*konkurieren*) with the bishops. cf. Beck, *Kirche und theologische Literatur im byzantinischen Reich.* 2. unveränd. Aufl. München, 1977. p. 104.

The ordinand thus designated by the benefactor was ordained by the local bishop. And the candidate for chief of charitable institution, that is, “*nosomomos*”, “*orphanotrophos*” and so on, must accept the trust of government of foundation (*empistheisa tēs dioikeseōs*) from the benefactor²³. In the latter case, the emperor prohibited the benefactor from giving any sort of offering to the chief on the occasion of trust of government (subsection 2). However, the nominee is encouraged to make donation from his own property to the institution of which he was made a staff. As to this point, the principle shown by Justinian was the prohibition of donation to the cleric himself, not the ecclesiastical foundations²⁴.

3. Legal Concern for the Maintenance of Foundation's Administration

The most important matter after the benefactor had carried out the construction of his foundation was for the foundation to perform its intended function. Justinian's legislation also showed much concern for the maintenance of the foundation's administration and therefore the security of its property. Relating Novels, which were issued from the year 535 to 538, all declared that prescription would be set to reflect the former conditions. According to these statements, the benefactor was supposed to voluntarily provide some sort of financial support²⁵. But in Nov. 67(538) the emperor complained that a lot of benefactors had been constructing their foundations without adequate financial support for operating them. It is needless to say that such deficiency would result in the ruin of the foundation. These statements complained that benefactors did not always make adequate provision for financing the foundations.

The emperor who made those declarations adopted some positive measures by especially making financial donations. First of all, in a law issued in 535, Justinian obliged the local bishops to provide aid (*sitesis*) for the clergy in private foundations whose benefactors had defaulted²⁶. The bishop's responsibility of supervision had to be looked after by the archbishop and patriarch. In 538, the problem of the provision of some financial support for private foundations came to be treated with seriousness. Justinian issued a law which required that each founder made sure of providing in advance “for the costs of lighting, for conducting services, for the support of the attending clergy, and for the maintenance of the building itself.”²⁷

In these laws, the emperor didn't specify the sort of support the benefactor should prepare for his foundation. The most important thing was that some provision was to be made for the four necessities mentioned above. The form of the provision, be it in kind or in monetary terms, was not a major concern. Thomas says that the uniformity on this matter can scarcely

22 C.J.1.3.46.(530), Nov. 5.(535), Nov. 123.(546)

23 Nov. 123.16.1.(546) = Schöll/Kroll, p. 607. lines 9-20.

24 This law (Nov. 123.16.), however, promoted donation by the nominee to the cathedral church where he was to be ordained. As to the prohibition of donations to foundation, see *infra* pp. 18-19.

25 Schöll/Kroll, p. 18. and p. 19. lines 11-19.

26 Nov. 6. = *ibid.*, p. 46. lines 4-13.

27 Nov. 67. chap. 2.

be found in sources²⁸. In fact, the laws only mentioned immovables, movables and livestock (*pragmata akineta, kineta, autokineta*). But from other related sources, it could be assumed that the emperor preferred landed property. Among other evidences²⁹, C.J.1.3.45.(530), for instance, seems an explicit testimony. Chapters 9 to 15 of this law, which dealt with the financial problem of private religious foundations, requested the benefactor to provide the annual revenue, called *annalia presbeia*. This revenue was not to be changed into a lump sum payment, but to be provided on a regular basis³⁰. On the contrary, the law prescribed that this annual revenue must be maintained even if it meant hypothecating a certain part of landed property. Although the revenue derived from hypothecation was called *prosodon* and distinguished from the regular *annalia presbeia*, it is evident that the emperor preferred the annually constant revenue from the landed property as the main source of finance for the private religious foundations.³¹

Aside from the provision of financial support for the foundation, the benefactor was requested to prepare a supporting fund for payment to the clergy. As is well known, the byzantine clergy was generally paid by salary (*choregia*), not from the benefice such as in West Europe³². Though the clergy of the official churches were paid by the revenue from the church's estate, the clergy of private foundations were to be paid from the benefactor's property. On this matter, Nov. 57(537) ordained this patron family's obligation, and ensured the clergy's right of acceptance of his salary:

"We declare that, in order that the daily sacrament would not be suspended, the local bishop, who administered the sacrament at the time of establishment of it (= the private church), should ordain the other clerics immediately. Then the clerics thus filled up should carry on the sacrament. We never wish anyone to make gain from what has been supplied to the sacred church from his own property.... What has been supplied from the beginning should always continue, and the holy sacrament must not be spoiled. After someone was put in before superior members of clergy or by nomination of patriarch or neighbor bishops, the retirees can not wish to come back again and remove the new clerics thus put in. The benefactor would not be compelled to pay double. Payment should be done to the newcomer."³³

According to this law, when the cleric of a private religious foundation resigned his post, the patron was to fill up the vacancy, but not to unjustly save the cost of a necessary expense. This law prescribed that, in such a case, the local bishop and the archbishop could intervene

28 Thomas, p. 47.

29 C.J.1.2.17.2.(491-518), C.J.1.2.22.(530), Nov. 7.1.(535), Nov. 40. (535), Nov. 42.3.2.(536) etc.

30 Krüger, pp. 32-33. cf. also C.J.1.2.25.(530)= Krüger, p. 18.

31 Justinian, however, endowed *prosodon* to his own foundations, instead of landed property. In C.J.7.37.3.(531), he ordered both the chief, "*comes rerum privatarum*" and "*curator dominicae domus serenissimae Augustae*", to furnish the foundations with the revenue from "*res privatae*". For example, it is well known that Sabas's hospital (*nosokomeion*) in Jerusalem was supported by an annual *prosodon* of 1850 *nomismata*. cf. Cyril of Scythopolis, *Vita Sabae*. chap. 73. ed. by Schwartz, Leipzig, 1939. p. 117.

32 However, the way of distribution of *Choregia* is not known. Nov. 57, which was issued by Justinian, only prescribed that the benefactor should ensure the provision for support of the clergy in kind or by money.

33 Schöll/Kroll, p. 313.

to appoint the successor, and the patron must pay the established salary for this newcomer.

The emperor enforced this obligation by means of the imperial Treasury's intervention. In Nov. 57, he prescribed that in case the patron did not fill up the vacancy, the imperial Treasury (*domus divina*) would take charge of paying the appointed successor instead of the benefactor by seizing a portion of the latter's property³⁴.

As to the security for the finance of private foundations, Justinian did not prefer any short term measure, that is, for example, hypothecation or disposition of their properties. Instead, in 535, he issued Nov.3 which established the maximum number of clerics for the Constantinople Cathedral Church. It dealt with the financial problem of this Metropolitan Church, and proposed the maximum limit of the clergy as follows; presbyters (*πρεσβυτέροι, presbyteri*): 60, male deacons (*διακόννοι ἄρρενες, diaconi masculi*): 100, female deacons (*διακόννοι θηλείαι, diaconae feminae*): 40, subdeacons (*ὑποδιακόννοι, subdiaconi*): 90, lectors (*ἀναγνώσται, lectores*): 110, (*ψάλται, cantores*): 25, porter (*πυλωροί, ostiarii*): 100, in total 525. This limit was thought to be optimistic even by the emperor himself. The preface of this law predicted that the prescribed limit would be easily surpassed if account was taken of the actual increase in the number of clerics. However, it is worth noting that the maximum number of clerics was established by no other thing than the imperial law³⁵.

4. Benefit of Patron and the Imperial System of Taxation

In the Byzantine Empire, which inherited the private law of the Roman Principate, it was very important for the State to clarify the authority to the properties of the foundation. This was because the exhaustive imposition of taxes was principal among the administrative and financial reforms by Diocretian and Constantine. The legislation on disposal of these properties distinguished two cases according to whether they were attached to the official church or remained as private property.

Properties of foundation which was donated entirely to the official church organisation were, of course, ensured exemption from almost all taxes, including the ordinary land tax³⁶. In fact, the prescriptions on this matter were for those whose possessive rights were reserved for the patron family³⁷.

In a law issued in 537, Justinian prescribed that the patron must prepare sufficient money

³⁴ *Ibid.*, p. 313.

³⁵ From the end of the 5th to the 6th century, charitable institutions appeared in the imperial laws as a landed proprietor, an inheritor, a legatee, a donee, a transferer, a mortgagor and a holder of financial privileges. cf. Hagemann, *op. cit.*, p. 272. Anm. 20. Hagemann emphasised that this shows that these institutions were treated by the State as a legally independent existence. In fact, the intention of the State can be found in those documents. However, it must be noticed that the final right of disposal of its property was reserved for the local bishop. The Imperial Laws, on the other hand, prescribed that the chiefs of these institutions assumed responsibility, with the dispensator of the bishop, for the annual report on disposal of its property and revenues. ex. Nov. 123.23.(546). We must confirm that the property of these institutions remained under the control of the local bishops.

³⁶ J. Karayannopoulos, *Das Finanzwesen des frühbyzantinischen Staates*. (Südosteuropäische Arbeiten 52.) München, 1958. pp. 196-206. A. Knecht, *System des Justinianischen Kirchenvermögensrechtes*. Stuttgart, 1905. pp. 121ff.

³⁷ It is not clearly mentioned which category of tax the imperial government would exempt them from. It seems that the emperor compelled the land tax, whether ordinary or extraordinary.

for tax payment and, if he could not pay, his religious foundation should be sold to ensure that the tax obligation was met. Chapter 1 of this law declared as follows:

“If a church or any other religious foundation is in tax arrears but has no means of settling it, We order that all believers and the bishop of the city as well as the Metropolitan bishop meet together and examine the situation by consulting the holy writings. If there appears to be no means of paying off its debt to the fisc without alienation, We permit the alienation of the foundation itself. This should be put to the vote and be decided in the presence of the provincial governor. Its immovables would be seized and then alienated in order to ensure the tax payment. The purchaser must pay the tax to the fisc and then accept a receipt. He should also guarantee to make subsequent tax payments and provide a security.”³⁸

In such a case, the provincial governor (*proconsules*) could intervene in the case, and the Imperial Treasury would distraint the foundation. Then the foundation and its estates should be sold to another layman, who would be expected to pay the tax levy³⁹. Here, this obligation of tax payment was regarded as one of the legally right justifications of the alienation of foundations⁴⁰. This shows how important the State regarded this obligation⁴¹.

Thus private religious foundations were under strict control of the imperial government through the official church organisation. However, there were some incitements which induced the laymen's benefactions; that is, firstly, they could enjoy some tax exemptions, secondly, they could expect certain benefits from the foundation's property itself.

On the first point, some financial privileges were endowed to the benefactor and his heir. In 529, Justinian declared that anyone of *curiales* who donated to the ecclesiastical foundation would enjoy tax exemption from commercial profits from the property donated⁴². And, in 528, he permitted benefactors who made donations under 500 *solidi* to be exempted from drafting the official document, that is, the official registration⁴³. In any way, the benefactor and his family could avoid some amount of tax payment through changing the proprietor of their own property to their religious foundation.

Regarding the benefits of the patron family, Thomas points out some examples. We can find the first example in the work of John Lydus⁴⁴. According to the Lydus' report, a certain

38 Nov. 46. = Schöll/Kroll, p. 281.

39 *Ibid.*, p. 281.

40 Ecclesiastical properties must not be alienated. cf. CJ.1.2.21. (529) This principle also applied to private religious foundations. In this Nov. 46, Justinian prohibited severely any alienation of church and its properties. As for the other exceptional justifications of the alienation, we can find the following cases; repairing and maintenance of foundation's building (ex. CJ.1.2.17.1.(491-518)), social welfare purpose (ex. Nov. 40.(536)). cf. E. Patlagean, *La pauvreté à Byzance au temps de Justinian: les origines d'un modèle politique*. in: *Etudes sur l'histoire de la pauvreté (Moyen Age-XVIème siècle)*, I. (Paris, 1974) pp. 74-75.

41 If the alienation of foundation could not be realized, the emperor ordered in this Nov.46. that the Treasury itself confiscate it. The confiscator, however, was later changed to the local church. cf. Nov. 131.14.1-2.(545)

42 CJ.1.2.22. = Krüger, p. 16.

43 CJ.1.2.19. = Krüger, p. 16. This limit of permission, 500 *solidi*, replaced the former 200 *solidi*. As to the latter, see Institute 2.7.2. The first edict that ordered the duty of declaration of donation was CT.8.12.1.(316?), which first prescribed the registration of donations. cf. *Codex Theodosianus cum perpetuis commentariis Jacobi Gothofredi*. Leipzig/Mantova, 1730-50.

44 Thomas, p. 58. Johannes Lydos, *De magistratibus*. (= *Περὶ ἀρχῶν τῆς Ῥωμαίων πολιτείας*) 3.74. ed. R.

benefactor named Eliamus donated 20 *pondi* (1440 *solidi*) of gold to a church in Garatia as a fund for payment to the clergy. By hypothecating this gold, Lydus reported, this church gained 80 *solidi* per year. The profit rate was about 5.5 percent. The second example can be found in Nov. 40(535) by Justinian. According to this law, the church of Jerusalem located its estate by the advice of Eusebius who had been treasurer (*keimeliarches*) of the Constantinople Church and skilled in financial affairs. Then this church gained a profit of 30 *pondi* (2160 *solidi*) per year on the principal of 380 *pondi* (27360 *solidi*). The profit rate was about 8 per-cent. The emperor regarded this rate as extraordinarily high and thus specially permitted this location by this law (Nov. 40).

In the Byzantine Empire, private religious foundations were put under such a strict control of the State that they could hardly remain under the complete control of the benefactor. They were placed in the financial system of the State and were to pay certain taxes. This is one of the major differences between the Byzantine Church and the private church system in the Medieval West.

5. *The Clerics and Foundation's Property*

The foundation's properties were accumulated under such favorable dispositions of the State. How was the relation between them and the clerics of the foundation? This relationship is very important since it concerns the social character of the private foundation and its clerics.

The edicts on this relation dealt exclusively with the cases of bishops (*ἐπισκόποι, episcopi*), the chiefs of charitable institutions (*νοσοκόμοι, ξενοδόχοι, nosocomii, xenodochii*, etc.) and abbots or abbess (*ἡγουμένος, ἡγουμένης*). As a matter of course, the edicts focused on the clergy of higher ordo, because they administered the foundation's estate practically. But it is needless to say that they were valid for all clergy.

In a law issued in 357, the State had already prescribed that profits derived from the clergy's productive and commercial activities were to be used for the sake of the church, especially for the social welfare activities⁴⁵. This disposition was accompanied by the endowment of financial privilege, that is, tax exemption. This policy was not a mere theoretical principle. It represented the governmental intention to compel the ecclesiastical organisation to take charge of this function. The state was also concerned about the preservation of the foundation's property.

Firstly, any property which was obtained during his tenure of office was to be regarded, from the point of view of property rights, as rigidly belonging to the foundation. And the clergy was requested to administer it for the prescribed purpose. Chapter 11 of C.J.1.3.41.(528) states as follows:

“The chiefs of charitable institutions (*xenodochion, nosokomeion*, etc.) are prohibited from transferring whatever they receive during their tenure of office through some-

Wünsch. Leipzig, 1989.

45 CT.16.2.14. = C.J.1.3.2.

one's will or any other means, except those from their relatives. All donations to these institutions belong to them and must be used for the poor by certain pious measures."⁴⁶

The principle of Justinian was to keep this traditional policy. He prohibited all clergy from gaining any profit from the foundation's property and estate. And this policy meant that the clergy was also prohibited from increasing his own private property. Chapter 5 of C.J.1.3.41.(528) sanctioned that bishops keep private property, so far as they received it before assuming office, or, while in office, if it is a legacy from their relatives. The emperor, however, feared lest the clergy should act for the benefit of their relatives⁴⁷. In the following chapters of this law, Justinian ordered that the clergy should not be in constant touch with their families, in order that they might not be tempted into usurpation of any bequest. As mentioned above, the clergy enjoyed the privilege of tax exemption. Justinian prohibited clerics from engaging in any businesses with their relatives in the ecclesiastical foundations⁴⁸.

In 545, the emperor developed this policy. Chapter 13 of Nov. 131 ordered that any bishop's private properties must be confiscated to the church to which he belonged after his death⁴⁹. This prescription was also applied to the chiefs of charitable institutions in the subsequent chapter, and then most probably, to all clergy. This imperial statement meant that even the clergy's private properties were to be, after all, assigned to their churches and foundations. Thus the clergy's right of management of foundation's properties was restricted within his tenure of office and for charitable purpose.

It is evident that the emperor's aim in such prescriptions consisted in preventing deviation from official activities (sacrament, charitable activities). Byzantine State assured the security of the religious foundation's property and its proprietary rights. However, the State rigidly excluded the clergy's claim to the foundation's property.

Conclusion

The imperial legislation on control of private donations to the church had a variety of prescriptions ranging from the control of donation itself to the control of the daily dispositions of foundation's properties. This legislation was formed systematically by the contemporaneous imperial policy of codification of Roman Law, and also promoted by the reformation of the financial system.

This administrative and financial intervention by the State proceeded in parallel with the trust of social welfare activity to the Church. After the council of Chalkedon, the imperial government issued many edicts in order to put the charitable institutions under its control. As pointed out by Patlagean, during the early byzantine period, christian charitable activity replaced the old generosity⁵⁰. And the State supported this historical process, by ensuring the

46 Krüger, p. 27.

47 *Ibid.*, p. 26.

48 Nov. 120.5. (544)= Schöll/Kroll, p. 581. line 30.- p. 582. line 6.

49 *Ibid.*, p. 662. lines 4-8.

church's financial foundation through tax exemptions. The State regulated rigidly the legal status of those institutions and their relation with the church, that is, the whole ecclesiastical organisation. By this policy, the State aimed to incorporate the Church in the imperial establishment.

Although the churches and foundations proprietary rights were ensured, the imperial government prohibited all clergy from gaining any profit from its property. The clergy was also prohibited from increasing his own private properties. All clergy were supported by salary, and the maximum number of clergy was set by the imperial law. Moreover, even clergy's own private properties were to be bequeathed to their churches and foundations after their death. The clergy's right of management of the foundation's properties was thus so restricted that the clergy could hardly wield political power like the feudal lords in the Western Church. From the economic and social point of view, the Byzantine Clergy of high rank was only a manager of his church or foundation, not a ruler of it.

We investigated the imperial legislation on donations to the church, focusing on the relation between the State and ecclesiastical property. Our analysis pointed to the fact that this relation is not analogous with the "private church system" of the Medieval West, and can also not be explained by the problematic structure of "Byzantine feudalism" as well. This is all the more important because these arguments, especially the latter, were based on matters concerning the Church. We must, therefore, reconsider the validity of these arguments, and propose some other realistic models to comprehend the social character of the Byzantine Empire.

50 Patlagean, *op. cit.*, pp. 186ff. This historical process was radical in every meaning of the word. Because it resulted in the dispersion of social and economic localism and the centralization of this redistributive function. This also meant that original forms of generosity by *curiales* were wholly replaced by charitable activities of christian Church. This needs further investigation.