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*SEXUAL TRANSGRESSIONS IN EARLY BYZANTINE LAW***

The article examines the sexual offences enumerated in title 17 of the early Byzantine legal code Ecloga (726 or 741). While several offences, such as adultery, rape, abduction, incest, and homosexual intercourse, were already addressed in the codification of Justinian and in the Novels, the Ecloga introduced additional crimes, including fornication, incest involving spiritual kins, and bestiality. These innovations are attributed to the incorporation of Old Testament precepts and the conclusions of the Synod of Trullo, reflecting Christian ideals of sexual abstinence outside marriage and the elimination of sexual pollution. Although the Ecloga generally aimed to provide fair treatment for offenders of both sexes and all socio-economic classes, its legal framework largely aligns with post-classical Roman law. A notable reform was the replacement of capital punishment with mutilating corporal penalties, demonstrating a vision of justice that emphasized prevention and rehabilitation over extermination of the offender.

Key words: *Byzantine law. – Christianity. – Ecloga. – Roman law. – Sexual criminal law.*

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1. INTRODUCTION

The first comprehensive attempt to deal with sexual offences in Byzantine law was the 17th title of the Isaurian legal code, known as the Ecloga (Ἐκλογὴ τῶν νόμων),[1] promulgated by emperors Leo III (717–741) and his son Constantine V (741–775), probably in March 741.[2] In contrast to Justinian's codification, where sexual transgressions were dispersed in Institutions, Digests, Codex (and Novels), the Ecloga consolidated sexual offences into a monolithic 17th section. In this section, commonly referred to as *Poinalios* (Ποινάλιος),[3] crimes against sexual morality alone represent about one third of all incriminations (Lingenthal 1892, 341–345). The catalogue of sexual offences in the Ecloga marks an evolution of the late Roman constitutions regarding sexual offences. It reflects the adoption of Christian-inspired ideals of sexual abstinence, efforts to eradicate debauchery,[4] and the pursuit of equitable punishment for sex offenders, regardless of gender and economic background. While several offences, such as adultery, rape, abduction, incest, and homosexual intercourse, had been addressed in the constitutions of the late Roman emperors, the Ecloga added a new assortment of crimes: fornication, incest involving spiritual kins (as well as in-laws), and bestiality. Although the Ecloga essentially listed all the major sexual offences punishable under Roman law, it was not intended as a comprehensive codification of positive law. Rather, it functioned as a selection (ἑκλογή) of Roman legal provisions. Although the Ecloga, promulgated by an iconoclastic emperor, did

[1] For the critical edition of Ecloga in Greek original and German translation, see Burgmann 1983; for an introduction to the source and English translation, see Humphreys 2017, and Penna, Meijering 2022, 99 ff. Legal texts are abbreviated as follows: Ecloga (Ἐκλογὴ τῶν νόμων) as E., Epanagoge (Εἰσαγωγὴ τοῦ νόμου) as Epan., Basilica (τὰ βασιλικὰ) as Bas., and Procheiros Nomos (Πρόχειρος νόμος) as Pr.

[2] For a general overview of Ecloga, 'a selection of the laws compiled [...] from the Institutes, Digest, Code and Novels of Justinian the Great, and corrected to be more humane', see Troianos 2017, 118 ss, and Sinogowitz 1956, 1 ff. All English translations of provisions from the Ecloga are based on Humphreys's edition (2017).

[3] According to Sinogowitz (1956, 16 n. 1), this term denotes the compilation of criminal laws, which first appeared in the works of Johannes Kobidios in the 6th century.

[4] In many instances, the Hebrew Bible reflects the belief that semen, and therefore sexual intercourse in general, is ritually impure (Ezra 9; Lev. 18; 21:7–15; Ezek. 18:23; 44:22). The Bible sees Israel as a community of men who are required to be holy. According to this narrative, the Canaanites were expelled because of sexual impurity, and the Israelites will face a similar fate in the event they fail to maintain their sexual purity. This narrative was also employed in Byzantine ideology. On this, see Feinstein 2014, 125.

not enjoy a favourable reputation in later periods,[5] its list of sexual delicts remained largely unchanged in subsequent Byzantine legal codes, including the *Procheiros Nomos*, *Epanagoge*, *Basilica*, and the later compilations of Harmenopoulos and Vlastares (Lingenthal 1892, 341; Laiou 1993, 117 ff).

This article analyses the regulation of sexual offences in the Ecloga and to compare them with the legal framework of classical and late Roman law. It seeks to highlight possible shifts in legal dogmatics and penal policy, and to identify the underlying principles of sexual morality that shaped the development of Byzantine criminal law in this field.

2. FORNICATION

2.1. From *stuprum* to *πορνεία*

Matrimonial law was one of the few areas in which the Isaurian emperors, who perceived themselves as the successors to the laws of Moses and Solomon, introduced entirely new legislation as part of their moral and religious mission to govern the Christian empire as the epicentre of God's providential plans.[6] They criminalized consensual heterosexual practices outside of marriage, which at the time was regarded as an indissoluble union imbued with a sacred character.[7]

E. 17.19. *A married man who fornicates shall be beaten with twelve blows as a chastisement, whether he is rich or poor*.

E. 17.20. *An unmarried man who fornicates shall be beaten with six blows.*[8]

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[5] The *prooimion* of the *Procheiros nomos* states that 'the book which they called a manual was not a selection but rather the author's perversion of good laws, harmful to the State and fit only to perpetuate foolishness'. However, Basil I stated he did not want to reject the ancient manual entirely, only the parts that 'justly merit repudiation' (translated by Freshfield 1928, 51. See also Ostrogorsky 1963, 133).

[6] The prologue to the Ecloga gives a vision of the regime's self-perception and ideology, which was deeply influenced by the Holy Bible, especially the Old Testament. The Isaurians are portrayed as divine stewards and heads of the Christian community, akin to the ancient chosen people governed by divine law (Humphreys 2017, 16).

[7] E. 2.9.1 states that the wisdom of God, the maker and creator of all things, teaches that marriage is an indissoluble union of those who live together in the Lord.

[8] Cf. Pr. 39.59; Epan. 40.57.

The term used to describe fornication is πορνεία. It is not an equivalent of the Latin word *stuprum*, which would be φθορά (Laiou 1992, 120, 127). Ecloga differed from Augustus' law on the punishment of adultery (*Lex Iulia de adulteriis coercendis*), where the central sexual offence was *stuprum*, i.e. consensual sexual intercourse between a (married or unmarried) man and an unmarried (or no longer married) free-born honourable woman (*femina honesta*) or a boy.[9] According to *Lex Iulia de adulteriis coercendis*, extramarital sex with women in certain professions, such as prostitutes, actresses or innkeepers, as well as with slaves, was not regarded as *stuprum* or *adulterium*. By the Roman definition, a prostitute was considered to have no honour to defile, and therefore, adultery could not be committed with her (Laiou 1993, 115). The Christian ambition articulated in the Ecloga goes beyond merely criminalising extramarital relations with honourable women; it also extended to disciplining relations with prostitutes and other 'shameful' women (*feminae probrosae*) (Suet. Dom. 8).

The divergence in criminal sanctions for fornication is based on the marital status of men, regardless of the marital status of the woman involved. This was a significant step forward in challenging the double gender standards in classical Roman law.[10] In the Roman legal system, wives were not allowed to file criminal charges against their unfaithful husbands in cases of fornication or adultery.[11] While women faced severe consequences, such as

[9] Mod. D. 48.5.35.1. Modestinus (D. 50.16.101. pr) noted that the term *stuprum* originally referred to sexual intercourse with a widow, while the term *adulterium* referred to sexual intercourse with a married woman. In the legal literature, the terms *stuprum* and *adulterium* were frequently used interchangeably, as stated by Papinian in D. 48.5.6.1: *Lex stuprum et adulterium promiscui et* καταχρηστικώτερον *appellat. sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur, quod Graeci* φθορὰν *appellant.*

[10] See for instance Ulp. D. 48.5.14.5: [*P*]*eriniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibeat*, and in general, Pap. D. 1.5.9: *In multis iuris nostri articulis deterior est condicio feminarum quam masculorum.*

[11] Sev. Ant. C. 9.9.1: *Publico iudicio non habere mulieres adulterii accusationem, quamvis de matrimonio suo violato queri velint, lex Iulia declarat, quae, cum masculis iure mariti facultatem accusandi detulisset, non idem feminis privilegium detulit.*

divorce[12] and the loss of their dowry, men enjoyed impunity for engaging in extramarital relations, provided their liaisons did not involve 'honourable' women (*feminae honestae*).[13]

2.2. Concubinage

As per Gregory of Nyssa, a prominent Church father, the only legitimate form of sexual union was holy matrimony (Silvas 2007, 219). Any other sexual union was therefore considered a sin of the flesh and classified as fornication (πορνεία).[14] The prosecution of concubines and prostitutes for fornication remains uncertain, given the silence of early Byzantine sources. Concubinage, understood as a stable cohabitation between socially unequal partners, provided it did not coincide with marriage, was legally tolerated in classical Roman law and explicitly acknowledged in Justinian's legislation.[15]

Emperor Basil I decreed that no one should keep a concubine (παλλακή) in his house but should either marry her or send her away. Later, Leo VI stated that there was no permissible middle way between celibacy and strictly monogamous marriage (Pr. 4.25; see also Oikonomides 1976, 187). While the legislator could not eliminate extramarital relationships, the legislative efforts in the mid-9th century aimed to express disapproval of legally recognising extramarital unions.

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12 E. 2.9.2. This aligns with Jesus' teaching in Matthew 19:3–9, where he responds to a question from the Pharisees about the right to divorce. Jesus explains that while Moses allowed divorce due to the hardness of people's hearts, this was not the original intention from the beginning of creation. The marriage was intended to be a lifelong, unbreakable union. Jesus then asserts that anyone who divorces his wife, except for sexual immorality, and marries another woman commits adultery.

13 Indications of disapproval toward extramarital relations among men are evident in Ulp. D. 48.5.14.5: *Iudex adulterii ante oculos habere debet in inquirere, an maritus pudice vivens mulieri quoque bonos mores colendi auctor fuerit: periniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibeat* [...]

14 For instance, see Matt. 15:19; 5:32, 21:31, 19:9 and Luke 15:30, where the term πορνεία includes extramarital sexual intercourse, and especially prostitution. On this see Harper 2012, 363–383; Laiou 1993, 128 ff.

15 Justinian's intention was to elevate concubinage closer to the status of marriage by declaring it a form of marriage of lesser standing (*inaequale coniugium*), provided it maintained a monogamous and avoided incestuous character. See Szczygielski 2009, 438.

As noted, according to the Ecloga, a man who committed fornication was to be punished with six lashes, while his concubine remained exempt from punishment. It is likely, however, that these prescribed secular penalties for sexual transgressions were not consistently enforced. The Peira, a collection of case law from the 11th century, contains a documented case of a woman who cohabited with a man, bore him a child, and was subsequently abandoned. The woman insisted on marriage, yet the judge was reluctant to punish the disobedient man, citing a lack of precedent. The judge claimed that he had never encountered a situation where a man was obliged to marry a woman with whom he had lived in concubinage. At the same time, he expressed uncertainty about the appropriate punishment for the man. The Peira then suggests that if the judge wanted to punish the man, he could have invoke the law, which stated: 'Whoever takes an honourable and freeborn woman as his concubine and does not declare it in writing must either take her as his wife or, if he refuses, is guilty of adultery' (Peira 49.24, translated by author).

2.3. Prostitution

In Roman antiquity, the state taxed female[16] prostitution rather than prosecuting it (Suet. Cal. 40; Nov. Theodos. 18.1). A clear commitment to curbing prostitution in Constantinople is evident in Novel 14 of 535, which outlawed panders and procurers who exploited women for prostitution. This legislation, explicitly aimed at purifying the city, reflected Justinian's desire to promote a chaste population. Justinian wanted to protect young girls from being forced into a life of unchastity, especially those under the age of ten who were lured away from their families under false pretences of receiving clothing or food. Justinian sought to ensure that girls were not misled into believing that their contracts or promises to pimps held any legal validity (Garland 1999, 16 ff). Justinian's wife, Theodora, a former actress and likely a prostitute who had been exploited by pimps, may have played a significant role regarding this legislation. She, and later Emperor Michael IV, sought to relocate prostitutes to convents specifically established for this purpose (Procopius, Buildings 1.9.4). These efforts, however, often failed to address the problem of the abuse of prostitution effectively and instead contributed to its ghettoization (Beck 1984, 99). The Appendix to the Eclogue clarifies that a

[16] Male prostitutes were not punished for having sex with women, while homosexual encounters were subject to the capital sentence from the 4th century onwards.

man who engaged in promiscuous sexual intercourse with a person employed in a brothel could not be condemned for adultery. It remained silent on the fate of the prostitute (AE 5.5, according to Humphreys 2017, 98).[17]

2.4. Sexual Intercourse Between Free Persons and Slaves

The Ecloga introduced novelties regarding sexual interactions between free (married) men and slaves, marking a notable departure from the prevailing customs of classical Romaan antiquity when it was common for masters to demand sexual services from slaves (and even freedmen)[18], regardless of their sex (Bradley 1987, 116 ff). Unions between free men and slave women referred to as *contubernia*, were not punishable by law despite the absence of legal recognition (Diocl. Max. C. 9.9.24). A man desiring to wed his slave woman could choose to emancipate her and take on the roles of both husband and patron to her (Grubbs 1993, 127). Contrary to the categorisation of the sexual seduction of a foreign slave as *stuprum*, it was considered a violation of the master's property and dignity. Legal recourse for such acts included actions such as *actio iniuriarum* (Ulp. D. 47.10.9.4 and 47.10.25), *actio de servo corrupto*, and *actio legis Aquiliae* (Paul. D. 1.18.21; Pap. D. 48.5.6 pr).

According to the Ecloga, however, heterosexual unions between slaves and (married) masters were no longer tolerated:

E. 17.21. *If a married man has sex with his slave, then after the matter has been determined, the girl shall be seized by the local magistrate and sold by him beyond the province, the proceeds of which sale shall go to the Treasury*.

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17 Cf. with Const. CTh. 9.7.1: *Quae adulterium commisit, utrum domina cauponae an ministra fuerit, requiri debebit,* [...] *pro vilitate eius, quae in reatum deducitur, accusatione exclusa, liberi, qui accusantur, abscedant, cum ab his feminis pudicitiae ratio requiratur, quae iuris nexibus detinentur, hae autem immunes a iudiciaria severitate praestentur, quas vilitas vitae dignas legum observatione non credidit.* ('If any woman should commit adultery, it must be inquired whether she was the mistress of a tavern or a servant girl [...] in consideration of the mean status of the woman who is brought to trial, the accusation shall be excluded and the men who are accused shall go free, since chastity is required only of those women who are held by the bonds of law, but those who because of their mean status in life are not deemed worthy of the consideration of the laws shall be immune from judicial severity.') (Translation according to Pharr 1952, 231).

18 Cf. Sen. Controv. 4.10: *Impudicitia in ingenuo crimen est, in servo necessitas, in liberto officium.*

If an honourable man (ἔντιμος) committed fornication with the female slave of another person, he was obliged to compensate the slave's master with thirty-six *nomismata*, the equivalent of half a pound of gold (Humphreys 2017, 72, n. 154). Sinogowitz (1956, 70) suggested that this sum exceeded the value of a typical slave, approximately twenty *nomismata*. This implies that the sanction aimed to provide more than just compensation. If, on the other hand, the offender was impoverished (εὐτελής), he would be subject to corporal punishment and required to pay a portion of the thirty-six νομίσματα according to his means (cf. Pr. 39.61).

A free woman living in *contubernium* with someone else's slave was subject to the *senatus consultum Claudianum* of 52, which made the woman who lived with a slave a slave herself, but only if the owner had formally warned her. The children of their union also became slaves (Paul. 2.21a). The *Senatus Consultum Claudianum* remained in force until it was abolished by Justinian (C. 7.24.1). This legislation was specifically aimed at free women who cohabited with another person's slave. There appears to have been no general law prohibiting a free woman from entering into *contubernium* with her own slave until 326, when Constantine decreed that a woman found to be engaging in secret relations with her slave should be punished by death, while the slave was to be burned (Const. CTh. 9.9.1). Constantine's constitution, which attempted to address the blurring of social boundaries and restore traditional status distinctions and social roles, was included as an appendix to the Ecloga:

AE 4.4: *If a woman through lust has intercourse with her own slave, she shall be decapitated, and the slave burnt; let such goings-on and arrangements be denounced, and the slave* [who denounces it] *shall be honoured with freedom* ...

2.5. Defloration

Within the hierarchy of Byzantine ethical values, virginity was regarded as superior to legitimate marriage and was understood as a form of spiritual union in which the virgin or nun was symbolically the bride of Christ (Kazhdan 1990, 132). Daughters were permitted to marry only while dutifully observing and honouring their parents' wishes. In cases of consensual sexual intercourse (φθορά) with a virgin without her parents' knowledge, the lover was required to marry her with the consent of both the girl and her parents; otherwise, he had to compensate her directly, paying a pound of gold if he was wealthy (εύπορος) or half of his property if less affluent (ενδεέστερος). The poor and needy man (πένης καί άνεύπορος) was

beaten (without defined limits on the number of lashes), shorn, and exiled.[19] The penalties draw heavily from the provisions of Justinian's Institutes, where the seducer of a virgin or widow faced fines amounting to half of his property, if he belonged to the *honestiores*, or, corporal punishment and exile were prescribed if he belonged to the *humiliores* (I. 4.18.4). A notable innovation in these penalties was the encouragement of marriage between the seducer and the victim of seduction – a trend appearing mainly in medieval canon law (cf. e.g. X. 5.17.6). If the virgin was already betrothed to another man, consensual sexual intercourse was considered adultery according to the Trullan Council (c. 98). The man was rhinotomised, while the deflowered fiancée was not punished, as a married woman would have been (E. 17.32; Pr. 39.65; Epan. 40.55; Bas. 60.37.82).

Consensual sexual intercourse with a nun, the bride of Christ (ἡ νύμφη Χριστοῦ), rendered both participants liable as adulterers and subjected them to the prescribed punishment of rhinotomy (E. 17.23; Pr. 39.62; Epan. 40.59; Bas. 60.37.77).[20] This punishment was considerably more merciful than those decreed by Justinian. Under his laws, the deflowerer of a nun would be sentenced to death and the man's property would be confiscated (Nov. 6.6 and 123.43).

The Ecloga also handled the undesirable consequence of extramarital sexual relations:

E. 17.36. *If a woman has had illicit sex, become pregnant and contrived against her own womb to produce an abortion, she shall be beaten and exiled*.

While the punishment for abortion generally aligns with the principles of classical law,[21] the rationale for self-inflicted abortion in this context is explicitly tied to the condemnation of extramarital relations and the aim of eliminating the consequences of sexual pollution.

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[19] E. 17.29 (= Pr. 39.65; Epan. 40.56; Bas. 60.37.79; Peira 49.4; Harm. 6.3.5). The *Procheiros Nomos* (and later the *Basilica*) required not only the consent of the woman, but also the approval of the parents of the man involved.

[20] Cf. the rule of Roman sacral law, which prescribed burial alive for a Vestal who violated her duty of sexual chastity, while her male partner was subjected to flogging (Liv. Ab urb. cond. 8.15.7–8). On this, see Schultz 2012, 122–136.

[21] Cf. Ulp. D. 48.8.8: *Si mulierem visceribus suis vim intulisse, quo partum abigeret, constiterit, eam in exilium praeses provinciae exiget* ('If it is proved that a woman has done violence to her womb to bring about an abortion, the provincial governor shall send her into exile.') Translated by Watson 1985, 334. In classical law, abortion was punishable if the woman performed it without the husband's consent. It was considered that the woman had deprived the husband of his offspring (Marcian. D.

3. ADULTERY

The *lex Iulia de adulteriis* of 18 BC classified adultery as a *crimen publicum*, defining it as an act committed by an honourable married woman engaging in extramarital heterosexual relations, with the marital status of the man being immaterial (Paul. Coll. 4.3.2; Marcian. D. 48.5.34. pr; Diocl. Max. C. 9.9.25).[22] The prescribed punishment for adultery was *relegatio in insulam*, accompanied by a monetary fine (I. 4.18.4).[23]

In the Ecloga, the punishment for adultery (μοιχεία) is grounded in the protection of marriage as a sacred union, conceived as the fusion of two individuals into a single moral and social entity:[24]

E. 17.27. *Any man who commits adultery with a married woman shall have his nose cut off; and likewise the adulteress, who henceforth is divorced and lost to her children, since she has not kept the words of our Lord, who teaches that God had joined them together as 'one flesh'. And after their noses have been cut off, the adulteress shall receive her own property, which she had brought to her husband, and nothing else. But the adulterer shall not be separated from his wife, even though his nose is cut* ...

In cases where both participants in extramarital intercourse were married, the Ecloga prescribed rhinotomy for both adulterers. While the nose mutilation may seem like a draconian sanction, it is worth noting that in 339, emperors Constantius and Constans addressed 'sacrilegious violators of marriage as though they were manifest parricides' and imposed the penalty of the sack (*poena cullei*) which was perhaps the cruellest Roman punishment.[25]

47.11.4: [...] *indignum enim videri potest impune eam maritum liberis fraudasse*) and she was sentenced to exile (Tryph. D. 48.19.39; Ulp. D. 48.8.8). On the legal history of abortion, see Jerouschek 1997, 248–264.

[22] See also CTh. 3.7.2, where marriage between a Christian and a Jew was punishable as adultery.

[23] On adultery in Roman and Byzantine Law, see Youni 2001, 279 ff.

[24] Cf. Gen. 2:24; Matt. 19:5–6; Mark 10:8; 1 Cor. 6:16; Eph. 5:31.

[25] Constantius, Constans CTh. 11.36.4: *[I]n huiusmodi criminibus convenit observari, ut manifestis probationibus adulterio probato frustratoria provocatio minime admittatur, cum pari similique ratione sacrilegos nuptiarum tamquam manifestos parricidas insuere culleo vivos vel exurere iudicantem oporteat*. The person condemned for adultery was stuffed into a leather sack with a snake, a rooster, a dog and a monkey and thrown into the sea. Justinian later altered the punishment to beheading (Const. C. 9.9.29.4). On the punishment with the sack, see Kranjc 2021, 5–40. On CTh. 11.36.4, see Reskušić 2006, 1039 ff.

Under the Ecloga, the punishment for an adulteress was harsher than for the adulterer. Failing to uphold the sacredness of marriage as prescribed by the Lord's teachings, she faced the forcible dissolution of her marriage[26] and the complete loss of her parental rights over her children (E. 2.9). She, however, retained her dowry (E. 17.27).[27] If a husband chose to forgive his adulterous wife, he would be considered as her pimp and would face the punishment of being beaten and exiled (E. 17.28; Pr. 39.64; cf. Sev. Ant. C. 9.9.2).[28]

The Ecloga also dealt with the procedural aspects of adultery cases. Judges were instructed to interrogate the accuser carefully, giving greater weight to accusations brought by close relatives, such as the adulteress' husband, father, brother, or uncles (cf. Const. C. 9.9.29). False charges, when proven to have been made maliciously, exposed the accusers to the same punishment as the accused (E. 17.27; Pr. 39.45). According to Humphreys (2015, 121), this practice served as a robust preventive measure, underlining the Isaurian commitment to due process and correct judgement, as well as tacitly excluding the right of a father or husband to kill his wife or her lover if they were caught *in flagrante delicto* (cf. D. 48.5.21–23; Nov. 117.15).[29]

As we have already seen in the case of fornication, the punishment is, for the first time, based primarily on the marital status of the man and not on the social position or honour of the woman (Laiou 1992, 119). A married man who had extramarital sexual conduct with an unmarried woman (who was not a prostitute) was not considered to have committed adultery (μοιχεία), but fornication (πορνεία), and he was – irrespective of his wealth – punished by twelve lashes. The uniform and equal treatment of rich and poor alike reflected a commitment to moral chastisement (σωφρονισμός) focused on correcting, moderating and instilling self-discipline.

[26] According to Rordorf (1969, 204–205), the Byzantine Church viewed adultery not only as a serious transgression but as morally equivalent to the death of the guilty party. As a result, it saw no obstacle to the remarriage of the innocent spouse following a divorce. However, an adulterer was not permitted to divorce a faithful wife.

[27] According to Justinian, the adulteress lost her dowry. The *Epanagoge* returns to Justinian's law in this respect, as do the *Procheiros Nomos* and the *Basilica* (Pr. 39.68; Epan. 40.55; Bas. 60.37.83).

[28] For more on the so-called *lenocinium mariti,* see in: Sinogowitz 1956, 90 ff.

[29] Sinogowitz (1956, 83 n. 3) argued that the Ecloga did not explicitly outlaw this provision. It may have endured as a customary practice, which could explain its inclusion in the Procheiron (Pr. 39.42).

4. INCEST

Among the earliest and most enduring taboos in Roman society were sexual relations between close blood relatives or those related by affinity. This prohibition, known as *incestus*, applied consistently to relations between descendants and ascendants, siblings, and uncles or aunts with their nieces or nephews (Mommsen 1899, 682 ff). The punishment for incest was death by being thrown from the Tarpeian Rock (Quint. Inst. 7.8.3); later, deportation, degradation and confiscation of property were used as punishments (Coll. 6.1–3; Pomp. D. 23.2.8). Constantius and Constans decreed that marriages in the direct line of descent and between brothers and sisters were forbidden and in cases where an uncle married his niece, the prescribed punishment was death (CTh. 3.12.1). In precise alignment with both post-classical and biblical tradition, the Ecloga prescribed severe penalties for incestuous relationships (αἰμομιξία), particularly those between parents and children or between siblings:

E. 17.33: *Those who commit incest, whether parents with children, children with parents, or brothers with sisters, shall be punished with the sword. Those who corrupt themselves with other kin, that is to say a father with his son's wife or a son with his father's wife* (i.e. their stepmother), *or a stepfather with his stepdaughter, or a brother with his brother's wife, or an uncle with his niece or a nephew with his aunt, shall have their noses cut off, as shall someone who knowingly has intercourse with two sisters*.

In cases of incest between other relatives (e.g. uncle and niece) and relatives by marriage (e.g. brother-in-law and sister-in-law), the prescribed penalty was rhinotomy.[30] The same fate befell the man who engaged in sexual relations with a woman and her mother if he was aware of their familial relationship. In such cases, both women were punished as the offenders, if they knowingly engaged in sexual acts with him (E. 17.34; Pr. 39.69; Epan. 40.61; Bas. 60.37.75; Harm. 6.4.1).

Theodosius I banned marriages between first cousins (CTh. 12.3–4). This prohibition was soon lifted and did not find its way into Justinian's legislation (I. 1.10.4). The Ecloga reinstated this prohibition and even extended it to include the children of cousins:

[30] Despite the existence of criminal prohibitions, incestuous relationships did occur at the Byzantine court, where the personal desires of rulers often superseded both legal and ecclesiastical codes. The most notorious example is Emperor Heraclius (610–641), whose second marriage effectively legitimized his longstanding incestuous relationship with his niece Martina. This union produced nine children, many of whom were afflicted with various physical disabilities.

E. 17.37. *From this time onwards, cousins who enter into marriage, and also their children, and a father and son with a mother and daughter, or two brothers with two sisters, shall be separated and beaten*.

The cited provision reflects a clear anti-Jewish sentiment: levirate marriage – one of the most significant Old Testament institutions, in which a man married his brother's widow – was now prohibited (see also Pr. 39.72; Epan. 40.62; Bas. 60.37.76).

New impediments to marriage and corresponding criminal sanctions were primarily based on the resolutions of the Trullan Council (c. 54), which explicitly forbade unions of a father and son with a mother and daughter, or a father and son with two sisters, or a mother and daughter with two brothers, and two brothers with two sisters.

In 530, Justinian forbade marriages between godfathers and goddaughters, which was the first instance of prohibiting marriage due to spiritual relationship.[31] According to the Ecloga, anyone who had baptised a woman was then forbidden to marry her, as she was now considered his daughter. This restriction extended to the woman's mother and daughter, and the same restrictions applied to the godfather's son:

E. 17.25. *Anyone who intends to take in marriage their godparent in holy and salvation-bringing baptism, or has carnal intercourse with them without marrying, the perpetrators shall be separated from each other and suffer the penalty for adultery, namely both shall have their noses cut off.*

E. 17.26. *If anyone should be found in such a way to have married their godparent, both shall be severely beaten besides having their noses cut off.*

These prohibitions were based on the belief that conjugal relations should not be intertwined with paternal ties (E. 17.25; Pr. 39.73; Epan. 40.66). Although the Ecloga explicitly prohibited marriage between spiritual kin, it implicitly banned any form of sexual contact between them.[32]

[31] Iust. C. 5.4.26.2: *[C]um nihil aliud sic inducere potest paternam adfectionem et iustam nuptiarum prohibitionem, quam huiusmodi nexus, per quem deo mediante animae eorum copulatae sunt* [...]

[32] On godparenthood (συντεκνιά) in Byzantium, see Lynch 1986, 230–234.

5. RAPE

In classical Roman law, coercive sexual acts, whether between individuals of the same or different genders, were governed by the law on public or private violence (*Lex Iulia de vi publica seu privata*), enacted during the reign of Augustus (D. 48.6). This law addressed all forms of violent behaviour, whether with or without the use of weaponry. Perpetrators of armed violence faced perpetual exile, while those involved in unarmed aggression risked the confiscation of one-third of their assets (I. 4.18.8). Marcianus noted that the same law punished those who committed sexual violence against women and boys (*stuprum per vim*).[33] This offence carried the ultimate penalty of death, as its severity was considered greater than that of adultery.[34] In reference to this offence, the jurist employed the term *raptus*.

From the time of Constantine, the term *raptus* denoted the abduction of a woman against the will of her parents or husband (see CTh. 9.24). The abductor (*raptor*) was punished with death; until the reign of Justinian the woman was likewise liable if she had consented. If the victim failed to cry out during the act,[35] she was presumed to have tacitly accepted the abduction and could be disinherited by her parents. This constitution represents the earliest articulation of the concept of *vis grata* (*puellae*), which required a woman to offer firm and continuous resistance to a man's sexual advances, while mere dissent was considered insufficient (Const. CTh. 9.24.1).

Equivalents of both offences, *stuprum per vim* and *raptus*, can be found in the Ecloga. Byzantine law did not consistently classify violent sexual crimes as particularly qualified sexual offences. For example, the rape of a mature woman was punished with the same consequences as adultery:

E. 17.30. *Anyone who overpowers a girl and corrupts her shall have his nose cut off*.

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[33] Marcian. D. 48.6.3.4: *Praeterea punitur huius legis poena, qui puerum vel feminam vel quemquam per vim stupraverit*.

[34] Marcian. D. 48.6.5.2: *Qui vacantem mulierem rapuit vel nuptam, ultimo supplicio punitur* [...] *cum raptus crimen legis Iuliae de adulteris potestatem excedit*. The crime of *raptus* was addressed as a distinct category in imperial constitutions (C. 9.13).

[35] CTh. 9.24.1.2: *Et si voluntatis assensio detegitur in virgine, eadem, qua raptor, severitate plectatur, cum neque his impunitas praestanda sit, quae rapiuntur invitae, cum et domi se usque ad coniunctionis diem servare potuerint et, si fores raptoris frangerentur audacia, vicinorum opem clamoribus quaerere seque omnibus tueri conatibus. Sed his poenam leviorem imponimus solamque eis parentum negari successionem praecipimus.*

According to the norm, the perpetrator of the cited offence could be anyone. The use of sexual violence by a husband, however, was not considered rape in Roman or Byzantine law. The prevailing Christian perception was that coercing an unwilling partner into sexual activity was seen to ensure the fulfilment of the marital debt (*debitum carnis, debitum coniugale*), i.e. the mutual obligation of both spouses to engage in sexual relations with each other upon demand (1 Cor. 7: 3–5).[36]

The Ecloga addressed the abduction (*raptus*) of nuns and secular virgins in a single article:

E. 17.24: *Anyone who carries off a nun or any secular virgin from whatever place, if he corrupts her, shall have his nose cut off; those who aid in this rape shall be exiled*.

For the offender to be condemned, not only abduction but also sexual intercourse had to occur. The abductor was rhinotomised, while abettors were exiled (cf. Iust. C.9.13.1 and Pr. 39.40). The subsequent consent of the abducted woman, who was not a nun, to the intercourse might have carried moral stigma yet had no legal consequences for her (Laiou 1993, 12).

Among the notable innovations of the Ecloga in the realm of sexual criminal law is its explicit concern with the sexual inviolability of young girls. For the sexual assault of a child, the prescribed penalty was rhinotomy, coupled with the confiscation of half of the perpetrator's property:

E. 17.31. *Anyone who corrupts a girl before puberty, that is before she is thirteen, shall have his nose cut off, and half of his property shall be given to the seduced girl.*[37]

This offence, with its punishment tailored to secure the social wellbeing of the victim by augmenting her dowry for prospective marriage, represented a deviation from Roman law, wherein the age of the implicated woman did not play a significant role in determining the severity of the offence.[38] Since the question of the girl's consent to intercourse does not arise in E. 17.31, Laiou (1993, 123) argues that consent is legally irrelevant, as the girl is deemed incapable of providing it. This interpretation is in line with the modern concept of 'statutory rape', where age is the primary factor, with impuberty

[36] On the marital debt in Byzantium, see Perisandi 2017, 510–528.

[37] Cf. Pr. 39.66; Epan. 40.53; Bas. 60.37.80. In the *Procheiros Nomos*, the penalty is elevated, as the man must provide the girl with one-third of his property.

[38] In Greek and Roman antiquity, sexual assault against a child was not considered a qualified criminal offence. The punishment for someone who seduced a girl who had not yet reached sexual maturity was relatively low. *Humiliores* were typically sentenced to labour in the mines, while *honestiores* faced exile. See Paul. 5.22.5; Paul. D. 48.19.38.3.

creating a conclusive presumption of force. It is plausible that this provision was not enforced in cases of marriage between mature men and girls who had not yet reached the age of fourteen, as evidenced by the extensive documentation of child marriages within the Byzantine court (Lascaratos, Poulakou-Rebelakou 2000, 1087; cf. Beck 1984, 99–102).

6. HOMOSEXUAL INTERCOURSE

By referring to 'lasciviousness' (ἀσέλγεια),[39] the Ecloga prohibited all forms of male[40] homosexual intercourse and prescribed a penalty of beheading for both the dominant (immissive, ποιων) and submissive (receptive, ὑπομένων) partners (ἀσέλγεις) (E. 17.38; see also Masterson 2022, 11–12). Acquittal might have been granted if the submissive partner was under twelve years of age:[41]

E. 17.38. *The wanton, whether they are active or submissive, shall be punished with the sword. But if the submissive partner is found to be under the age of twelve, he shall be forgiven as due to his age he did not know what he was doing*.

Later legislation (Pr. 39.73; Epan. 40.66; Harm. 6.4.3.4) repeated the rule, save for the Eclogion's provision that the submitting boy could avoid the death penalty if he was under fifteen. Under this law, he was subjected to corporal punishment and consigned to a monastery, serving as both prison and place of rehabilitation, where he was likely raised as a monk (Ecloga aucta 17.6; see also Troianos 1989, 36).

The language in the Ecloga, addressing both dominant and submissive partners, aligns with the policy of post-classical constitutions. Eva Cantarella posits that until the 4th century, republican laws on homosexual conduct were still in effect, primarily addressing homosexual anal intercourse.[42]

[39] In Byzantium, the term ἀσέλγεια corresponded to the Latin term *impudicitia*, both meaning lewdness or debauchery. In non-legal writings, male homosexuality is frequently referred to as male madness (ἀρρενομανία) (Smythe 1999, 144).

[40] References to female homosexuality are predominantly addressed in church literature, particularly in the *Kanonarion*. On this, see Troianos 1989, 46.

[41] Secular and ecclesiastical laws provided specific provisions for underage children. Boys under fourteen and girls under twelve were criminally non-liable (Ariantzi 2012, 47).

[42] Dating back to the Republican period, *Lex Sca(n)tinia* probably prohibited anal same-sex practices by free male citizens under the threat of a fine (Cic. Fam. 8; Iuv. Sat. 2, 43–44; Auson. Epigr. 91 and 92, 3). Cantarella (1992, 143) suggests that the

Like the Greeks, the Romans regarded the role of the receptive partner in sexual activity as a humiliation of masculinity, tolerated only among slaves, freedmen, male prostitutes, and women (Brundage 1987, 49). Roman hostility to anal intercourse between men was rooted in the perceived disruption of the gendered hierarchy (Smythe 1999, 14).[43] In 342, emperors Constantius and Constantius, apparently influenced by Christian teachings (Gen. 19:4–11; Lev. 18:22), prohibited all non-coital sexual practices which were considered 'unnatural' (C. 9.9.30). In 390, Theodosius I commanded that passive homosexuals who prostituted themselves in brothels should be burned alive (Coll. 5.3.1). The Theodosian Code of 438 changed the wording of the constitution by extending the prosecution to all men who engaged in the submissive sexual position (Valentin. Theodos. Arcad. CTh. 9.7.6).

Amid frequent outbreaks of plague and the earthquake of 557 that shook Constantinople and caused the collapse of the great dome of Hagia Sophia a year later, the quest for scapegoats for these calamities led Justinian to blame homosexuals for natural disasters (Žepič 2022, 50). Citing divine wrath against Sodom, Justinian ordered homosexuals to renounce 'impious and unholy practices which even men of ill understanding do not sanctify' (Nov. 141, translated by author). He instructed them to confess to the patriarch,[44] who would guide them toward appropriate treatment and impose penance; failure to comply would result in severe punishments. These measures included, as Procopius hints, the public humiliation of castrated homosexuals, who were paraded naked through the streets of Constantinople (Procop. Hist. Arc. 11.34–6).[45] Justinian's criminalisation of all forms of male homosexual intercourse, which the Ecloga adopted, was

broad criminalisation of same-sex behaviour in Justinian's codification (e.g. I. 4. 18.4; Paul. D. 47.11.1.2; PS 2.26.13) is the result of extensive post-classical interpolations that brought the classical casuistry into line with the post-Constantinian imperial constitutions.

43 Roman law adhered to a strict gender binary, classifying individuals considered androgynous or hermaphroditic according to the sex indicated by their secondary sexual characteristics. Ulp. D. 1.5.10: *Quaeritur: hermaphroditum cui comparamus? et magis puto eius sexus aestimandum, qui in eo praevalet*.

44 Justinian sought to deter homosexual behaviour within ecclesiastical communities, particularly in monasteries. He issued a mandate demanding that monks should cohabit and sleep separately within the same residence, enabling them to bear witness to each other's commitment to chaste conduct. It was also applicable to nuns. See Nov. 123.36.

45 The only individuals with recorded names subjected to punishment were prominent bishops whose unmarried status left them susceptible to accusations of engaging in homosexual acts. For political motivations underlying this persecution, see Sarris 2006, 217–18.

based on the belief that such acts were diabolically unnatural, constituting offences against conventional gender roles as well as against the divine order of creation (Cantarella 1992, 183).

It is interesting to note that the Basilica omits the above-mentioned provision on lasciviousness and a significant part of Justinian's expressly homophobic legislation. The absence of case law on homosexual offences (e.g. in Peira) has led Laiou (1992, 78) to suggest that, despite the normative zeal to prohibit homosexual acts, in practice Byzantine society tolerated them, provided they did not provoke public outrage. According to this narrative, Byzantium became one of the first 'closet society', partially grounded in the (highly controversial) institution of 'ritual kinship' (ἀδελφοποίησις, ἀδελφοποιία).[46]

As is often the case, literary works frequently offer deeper insights into the intricacies of real-life situations compared to legal sources. The latter, characterised by potential capriciousness, obsolescence, or inherent unenforceability, may be less dependable when comprehending the practical applications of the law. An exploration of the biographies of the Byzantine emperors serves as a valuable lens through which the contextual and relative nature of the legal framework becomes evident. In the mid-9th century, the biographers of Basil I described the extravagant court of his predecessor, Michael III ('the Drunkard'), where the 'imperial treasury was plundered profligately and with abandon to support these wanton revelries and acts of love forbidden by law' (Vita Basilii 21, according to Ševčenko 2011, 83, translated by author). It was a part of delight to be unrestrained and to indulge in drinking, whereby ἀσέλγεια was an essential part of this voluptuous atmosphere. Symeon the Logothete reported that the emperors Leo V in the 800s and Alexander in the 900s had taken part in licentious same-sex practices (Wahlgreen 2019, 161, 219).

[46] Adelphopoiia (ἀδελφοποιία), from ἀδελφός, meaning 'brother', and ποιέω, meaning 'I make', was a highly ritualised liturgical practice in the Orthodox Christian Church uniting two men in a church-recognised sibling-like union. Although it could have been used by people having an illicit sexual relationship to hide their affair under the guise of friendship, it was probably intended to be a non-erotic 'chaste' friendship or fraternisation. For a highly controversial institution labelled by John Boswell as 'basically a gay marriage ceremony for the Greek Church', see Boswell 1995. For the latest prominent study on this issue, see Rapp 2016.

In Church penitentials, i.e. compilations outlining behaviours of the faithful deemed offensive and warranting ecclesiastical penalties (penances),[47] discernible trends lean towards sexual liberalisation. In the fourth century, the penitentials condemned any same-sex sexual conduct. Basil of Caesarea, for instance, recommended a minimum of fifteen years of excommunication for such behaviour.[48] Theodoros the Studite later proposed a more lenient penalty of two years' excommunication. Despite these shifts, the perceived gravity of the actions did not necessarily decrease in the eyes of the Church. There was a prevailing concern that excommunicating the penitent for too long might lead them to further distance themselves from the church community (Beck 1984, 99).

7. BESTIALITY

The Greek-Roman tradition lacked explicit criminal prosecution of bestiality. This concept entered the Roman world through the Old Testament (e.g. Lev. 18:22–23) and the decrees of early ecclesiastical councils.

The Synod of Ancyra in 314 delineated comprehensive ecclesiastical penalties for bestiality offenders in can. 16. Bestialists under the age of twenty were subject to a fifteen-year period of 'prostration', a penitential posture involving making the sign of the cross, kneeling, and touching the forehead to the ground (Hefele 1907, 308). During this time, they were permitted to attend the liturgy passively, i.e. without receiving the Eucharist. After five years, they were allowed to receive communion, provided they demonstrated sustained repentance. Persistent engagement in such behaviour extended the duration of the imposed penance. For married men over the age of twenty, the period of prostration was twenty-five years, and for those over fifty, access to communion was restricted solely at the brink of death. Despite the gravity of their sin, prostrators were permitted to remain

[47] The ecclesiastical penal system evolved in tandem with the civil one. The two systems did not align perfectly, as civil offences overlapped with ecclesiastical offences, but the opposite did not apply. Numerous ecclesiastical offences, particularly those related to sexual behaviour, were not considered civil offences. On this, see Troianos 2012, 158 ff.

[48] The earliest known penitential, the Kanonarion, was composed by a disciple of Basil of Caesarea. It was crafted between the late 8th and mid-10th century, likely around the mid-9th century. In its initial section, the penitential outlines seven or eight serious carnal sins, encompassing acts such as masturbation, fornication, adultery, homosexuality, defilement of a virgin under twelve years old, bestiality, and incest. On this, see Troianos 2012, 159 ff.

inside the church building. This provision did not extend to those who incited others to sin in the same way. Can. 17, which characterized such individuals as spiritual 'lepers', attempting to spread their affliction, prescribed their exclusion from the church and required them to prostrate themselves outside its doors (Bingham 1834, 256). Johann Caspar Suicer believed that the term τοὺς χειμαζομένους, or *hiemantes*, refers to the lowest rank of penitents, who were barred from entering the church and were required to remain exposed to the elements in the outer porch (χειμών, meaning 'winter storm'), symbolising their social exclusion and spiritual desolation (Suicer 1746, 226).

There appears to have been no formal prosecution of bestiality even under late Roman law; such acts, however, might have been subsumed under the broader category of 'sexual offenses contrary to nature'. As early as Justinian's Novel 77, the death penalty was prescribed for individuals 'under the influence of the devil' who had given themselves over to 'acts of the most extreme licentiousness and behaviour contrary to nature'. Such conduct, the Emperor warned, provoked divine wrath, and asserted that entire cities with their inhabitants had been destroyed as a consequence of these impious practices.[49] While scholars interpret this constitution as primarily targeting homosexual acts, bestiality, by an *a minori ad maius* argument, would possibly have been construed as an even more egregious offense against nature, and thus subject to equivalent or potentially harsher penalties.

The most original contribution of the Ecloga to the development of sexual criminal law is its explicit incrimination of bestiality (ζωοφθορία or κτηνοβασία) in article 39 of Title 17:

E. 17.39. *Those who become irrational, that is those who commit bestiality, shall have their penis cut off* (cf. Pr. 39.74; Epan. 40.67; Bas. 60.37.85).

The perpetrator of this criminal act is presumed to be male, in accordance with the nature of the prescribed sanction, while the object of the act is designated as κτῆνος, a term that typically refers to a domesticated animal or beast of burden (e.g. a horse, ox, or sheep). Placed at the end of Title 17, this position may reflect the legislator's perception of bestiality as exceptionally rare and profoundly taboo. It was not regarded merely as a sexual offence, but as an act that degraded the offender to the level of animals and desecrated the sacred nature of humanity.

[49] Nov. Iust. 77. 1: *Igitur quoniam quidam diabolica instigatione comprehensi et gravissimis luxuriis semetipsos inseruerunt et ipsi naturae contraria agunt [...] ex huiusmodi impiis actibus et civitates cum hominibus pariter perierunt.*

The penalty for bestiality, which was castration (καυλόκοπία), indicates the focus of the legislator on only male offenders.[50] The notion of bestiality probably referred to sexual conduct involving a male sexual organ, focusing on emissive sexual practices. The absence of an explicit prohibition against a woman engaging in receptive sexual acts with an animal remains legally ambiguous (cf. Sinogowitz 1956, 106). It is conceivable that such behaviour was not officially encountered. Nevertheless, it is addressed in the Old Testament,[51] which is generally considered to have served as a guiding reference of the incrimination.

8. CONCLUSION

The examination of Byzantine sexual offences reveals that the Byzantine legislators aimed to maintain the Roman legal heritage while simultaneously adapting it to the evolving ideological and religious context. A compilation of amending laws should be approached with caution when compared to Justinian's codification norms, as some innovations may have been inadvertently incorporated, and the legislator may not have been aware of them (Sinogowitz 1956, 6; Nörr 1959, 629). At least seven provisions of the Ecloga, namely E. 17.19, 20, 25, 26, 34, 37, and 39, had no direct equivalent in Justinian's codification (Humphreys 2015, 120). These laws were influenced by Eastern customary law and the canons of the Council of Trullo. The novelties comprised sins and their respective punishments, modelled on Leviticus. Emperors Leo III and Constantine V asserted that Roman law emanated from God. Byzantine emperors, seen as heirs to the apostles and prophets, endeavoured to align the new legal framework with the old, explicitly drawing inspiration from the teachings of Moses (Humphreys 2015, 128, 178; Sinogowitz 1956, 3).

Byzantine criminal provisions were primarily directed at male offenders, as evidenced by the treatment of fornication, homosexuality, and bestiality. This suggests that unmarried women engaging in extramarital intercourse largely escaped punishment. Ancient legal sources are silent on female

[50] On using castration as a punitive measure and a gruesome method for eliminating political opponents in Byzantium, see Tugher 2008, 28.

[51] Lev. 18:23 (NASB 1995): 'Also you shall not have intercourse with any animal to be defiled with it, nor shall any woman stand before an animal to mate with it; it is a perversion.' Lev. 20:16 (NASB 1995): 'If there is a woman who approaches any animal to mate with it, you shall kill the woman and the animal; they shall surely be put to death. Their bloodguiltiness is upon them.'

homosexuality, although literary sources from the classical era indicate it was not tolerated to the same degree as male homosexuality. While bestiality was first mentioned as a crime of women in the Old Testament, the Ecloga restricted this offence to men. Collectively, these examples reveal a pattern of overlooking and marginalizing the social role of women, reinforcing a view in which men are the central actors of social life and their actions alone shape social relations.

Although not absent from Justinian's law,[52] the rise of exemplary punishments underlines the Byzantine lawgiver's objective to bring criminal justice into proportion. The replacement of the death penalty with corporal punishment reflects the desire of the 'wise and piety-loving emperors' Leo and Constantine to 'correct the law and make it more humane', as explicitly stated in the title of the Ecloga.[53]

The nature of the punishments in *Poinalios* reflects the Byzantine legislator's perception of the gravity of the crimes. The most serious offences – homosexual intercourse and incest with parents or siblings – were punished by beheading, rather than by being burned alive, as prescribed by the late Roman emperors. Bestiality followed closely. Violent sexual offences and adultery came next, while fornication was considered the least serious offence. Probably inspired by the biblical passage, 'If your right hand makes you stumble, cut it off and throw it from you; for it is better for you to lose one of the parts of your body, than for your whole body to go into hell' (Mt. 5:30, NASB 1995), the Ecloga prescribed mutilation as a 'healing' method, opting for the removal of the offending limb rather than physical elimination of the perpetrator. Mutilatory punishments were also intended as a deterrent to restrict or eliminate the perpetrator's ability to repeat their offence. The mutilation of the nose, associated with sexual offences, aspired to make the offender less attractive and publicly reveal the nature of their crime. For the individual, this visible injury represented prolonged physical and arguably psychological torment (Paradiso 2005). Its symbolic

[52] See Nov. 13.6; 7.8; 42.1.2; 128.20; 134.13; and 154.1. On this, see Troianos 2017, 124 n. 59.

[53] For insights into the concept of φιλανθρωπία in the ideology of Isaurian Emperors, see Humphreys 2015, 93 ff. On the 'charitable' nature of the mutilation penalty, see Lascarotos, Dalla-Vorgia 1997, 51–56.

significance is particularly striking: in Greek and Roman culture, the nose was culturally associated with the penis, so nasal mutilation functioned as a symbol of castration.[54]

As the *prooimion* of Ecloga announced, the law sought 'to give judgements of true Justice, neither disdaining a poor man nor letting a powerful man who has done wrong go unpunished'. The antiquated dual penalty system, based on the social class of the offender (*honestiores* and *humiliores*), was gradually relativised, and the only distinction in punishment was based on the practical ability of the offender to pay fines. This approach, while not entirely consistent (e.g. E. 17.22), sought to satisfy God's demand for equal purification and the general prevention of sexual deviance across all social strata.

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[54] For example, in Virgil's work, Menelaus, Helen's husband, takes revenge on Deiphobus, her third husband, by mutilating his nose (Aeneid 6.497). The only recorded case of rhinotomy used to punish a sexual offence comes from Martial, who said that rhinotomy was used to punish an adulterer. Mart. Epig. 2.83 and 3.85. On this, see Troianos 2005, 574 ff. The use of nose amputation as a punishment for sexual offenses may have originated not just from Oriental civilisations but also from classical Rome. On the punishment of nose mutilation in Oriental law, see Jelitto 1913, 50 ff.

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