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New Laws on Marriage Issued during the Reign of Emperor Leo VI the Philosopher (886-912)

Abstract

Emperor Leo VI the Philosopher was one of the Byzantine sovereigns who found himself in an ungrateful and contradictory situation with the position of the Orthodox Church. Despite his laws and speeches, he remarried several times, thus placing the Eastern Church in a delicate context it had never faced before. This situation involved the precise establishment of a limit that allowed for the remarriage of an Orthodox and the search for some theological and canonical arguments to support the disposition taken.

Ever since his first divorce, his actions and thoughts have placed him in a controversial situation and contrary to the tradition and teaching of the



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Byzantine Church. For the recognition of the legality of his fourth marriage with Zoe Carbonopsina, Leon did not hesitate to turn to the papacy, which offered him the much-desired dispensation. The tetragamic dispute generated an open conflict between the Byzantine emperor, the ecumenical patriarch and the pope, with severe consequences for that era.

Keywords

New laws, Marriage, Leo VI, tetragamic dispute, Orthodox Church, Byzantine Empire

1 Introduction

During the nearly twenty-year reign of Emperor Basil I the Macedonian (867-886), the founder of the dynasty with the same name, he strove, first of all, to organise the economic life of the Empire but also to ensure the rise of his family. His son and successor, Leo VI (886-912), whose reign was of essential importance for the administrative history of the Empire, followed with particular tenacity the consolidation of the dynasty. However, what best characterised the reign of Leo VI was the almost total discord between the extent of his political and cultural work at home and the complete failure of his foreign policy. Unable to lead the defence action of the Empire, Leo VI was more concerned with his private interests, and in order to ensure a successor to the throne, he did not hesitate to scandalise his contemporaries through his four successive marriages. Through this, he came into conflict with the Church, especially with the ecumenical patriarch Nicholas I the Mystic (901-907; 912-925).

2 The crisis in the heart of the Byzantine Church caused by the marriages of Leo VI

In his *New Laws*, Leo VI condemned second and third marriage, consecrating an older tradition from church practice. Even Empress Irina prohibited third and fourth marriages at the beginning of the 9-th century. Nevertheless, soon Leo VI himself fell into this mistake. He had been married by Basil I the Macedonian, in 881 or 882, to Teophano, a beautiful and pious girl, full of qualities whom Leon never loved. She died in 897, but during her lifetime, the emperor had fallen in love with Zoe, the daughter of a great dignitary Stylianos Zautzes. Leo VI sought to marry her out of his desire to have an heir to ensure the dynasty. Stylianos Zautzes was then raised to the rank of “basileopator” (father of the emperor).

However, Leo VI could not achieve his wish to crown Zoe while Teophano was alive. Also, Zoe was married to a certain Theodor Gutzuniates. The death of Empress Teophano almost coincided with that of Zoe’s husband, so Leo VI and Zoe formalised their relationship in late 898. A year later, Zoe died without having given her husband the much-desired heir. Breaking all canons, Leo VI married a third time in the summer of 900 to a beautiful girl from the Asiatic theme of Opsikion named Eudokia Baianè. This marriage was not happier than the others because after only one year, the basilissa died giving birth to a child, who died shortly after, and the throne remained without an heir. The problem became, from this moment, of exceptional gravity because the fourth marriage was considered an iniquity. The emperor nevertheless found a future wife in the person of Zoe Carbonopsina (“the one with the black eyes”), originating from a great Byzantine aristocratic family. This gave birth in 905 to Constantine VII Porphyrogenetus, who then became the heir to the throne.

On January 6, 906, the patriarch Nicholas I the Mystic baptised the child on the condition that the emperor divorce Zoe.

Moreover, the patriarch vigorously opposed this marriage, which was utterly prohibited by church canons. Leo VI refused to keep his promise not to marry Zoe and decided to take her as his wife. The patriarch protested the emperor's decision, and nevertheless, a priest from the imperial palace, Thomas, officiated the emperor's fourth marriage. Next, Nicolae I the Mystic deposed the priest Toma and forbade the emperor twice to enter the Saint Sophia cathedral. Then, the emperor addressed Pope Sergius III (904-911), from whom he succeeded, through skilful negotiations, in recognition of the marriage. After this, in February 907, the patriarch Nicholas I the Mystic was deposed, replaced by Euthymius, a pious monk, the priest and adviser of Leon. He tacitly accepted the validity of the emperor's fourth marriage, accepted him at Communion and consented to crown Constantine on June 9, 911, but refused to proclaim Zoe as "Augusta"¹.

Well known for his legislative activity, Leo VI issued 113 new laws during his reign², in which different problems are examined, and the solutions are given with their entire motivation. Among these, *New Law 89* establishes that the priest's blessing is the only way to achieve a legitimate marriage³. From the point of view of written history, this statement represents a turning point in a prolonged evolution of the problem. From now on,

¹ Nicolae Bănescu, *Istoria Imperiului Bizantin*, vol. II: *Imperiul Bizantin clasic, 610-1081 d. Hr.*, (Bucharest: Anastasia Publishing House), 2003, pp. 318-320.

² The new laws of Leo VI were studied and edited by Henri Monnier in *Les Nouvelles de Leon le Sage*, Paris, 1923.

³ Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, Paris, 1944, pp. 294-297.

canon law and civil legislation took for granted the motivation of this mention.

New Law 89 provides an excellent example of a phenomenon that affected the entire Roman legal system in the Byzantine East. Gradually, customs were introduced into written law. Thus, this novel gave a legal sanction to an already widespread practice. From this moment, however, some fundamental principles that highlighted the classic jurisprudence regarding marriage needed to be adequately understood. Thus, about the realisation of the matrimonial bond, Leo VI considers that the lack of mandatory formalities in the past was a sign of negligence⁴.

For various reasons, the early Church did not try to develop its teaching about the realisation of the matrimonial bond. It is enough to remember that this attitude has theoretical and practical causes. Church authority never questioned whether a marriage was concluded according to civil laws and local customs. The pagan rites sometimes associated with the wedding were not accepted by the Church. However, some customs, initially perceived as inadmissible, were reinterpreted from a Christian perspective. This happens, for example, with the use of crowns that are placed on the heads of the bride and groom⁵.

The establishment of Christianity as the official religion of the Byzantine Empire did not produce changes in the civil legislation regarding the realisation of the matrimonial bond. Concerning this issue, the “*Corpus Juris Civilis*” of Emperor Justinian I (527-565) presents minor adaptations of the points of view of classical Roman jurisprudence. However, it is worth noting that during late antiquity as well as in the early Middle Ages, the concepts of marriage did not easily reach the domain of independent laws.

⁴ *Ibidem*, p. 295.

⁵ Sfântul Ioan Gură de Aur, *Omilia la Epistola I către Timotei*, 9. 9, PG 62, 64 B.

Classical Roman law conceived marriage as a fact supported by the two parties' will to unite ("maritalis affectio"). The parties, of course, must agree to the specific conditions of this state in order to be legally able to marry. Matrimonial law ("matrimonium iustum") assumed that the partners had the right to marry ("jus conubii"). This right belonged exclusively to Roman citizens. The "Constitutio Antoniniana" issued around AD 212 granted Roman citizenship to the majority of free inhabitants of the Empire⁶. From the perspective of Roman law, social ceremonies and "deductio uxoris in domum mariti" ("bringing the wife into the conjugal home") did not produce legal effects. At best, they constitute presumptive evidence about the intention of the partners. In the East, the concepts about the realisation of the matrimonial bond transmitted by Roman law had a limited impact. According to the concepts that were widespread among the Easterners, marriage is carried out through the following steps⁷. Rites of passage accompany each of these. In this process, the consensus of the partners does not acquire importance. In a Christian context, this conception gave a new meaning to the priest's blessing: a legitimate marriage involves a religious ceremony. However, this point of view took a long time to gain official recognition. On the other hand, and for good reasons, the ecclesiastical authorities were hesitant to adopt this popular theory mentioned above unconditionally. The Church considered marriage as an institution relevant to the natural law and which falls under the category of the realities of "this world"⁸. This does not mean that the Church regards the marriage of its believers with indifference. It urges us to focus more on ethical issues. In addition, some forms of the

⁶ Bernard S. Jackson, *Jewish and Christian Self-Definition*, t. II, Philadelphia, 1981, p. 165.

⁷ Barry Nicholas, *An Introduction to Roman Law*, Oxford, 1969, pp. 80-90.

⁸ Jean Dauvillier, *Les temps apostolique*, Paris, 1970, pp. 373-381.

matrimonial union were considered by the Church as inadmissible. Violation of church law attracted penance - a treatment whose severity was closely related to the degree of departure from church law⁹.

Until the second half of the 4-th century, the presence of bishops or priests at the marriage celebration was an exceptional favour. Since then, in some places, the involvement of the clergy has become an everyday fact¹⁰. Of course, initially, such involvement could only be conceived for the marriage corresponding to the ecclesiastical requirements. In any case, the blessing given to the bride and groom was not intended to achieve a condition of validity. Thus, for a long time, the ecclesiastical authority did not give priority to its teaching related to the validity of the Sacrament before the blessing of the priest for fear of affecting the distinction between the two forms of marriage: the one fully approved by the Church and the one considered only as permitted. The Trullan Council (691/692) gave some canons regulating matrimonial matters without making any allusion to the religious ceremony of marriage¹¹.

Civil law took a step forward in the first half of the 8-th century. The "Eclogue", probably published in 741, recognising the validity of the marriage, concluded "ἐν ἐκκλησίᾳ ... δι' εὐλογίας" ("in

⁹ See Canons 35 (*Leaving the husband*) and 75 (*Condemnation of incest*) of Saint Basil the Great, in Ioan N. Floca, *Canoanele Bisericii Ortodoxe. Note și comentarii*, Sibiu, 1993, pp. 368-383.

¹⁰ Korbinian Ritzer, *Formen Riten und religiöses Brauchtum der Eheschließung in den christlichen Kirchen der ersten Jahrtausends*, Münster, Westfalen, 1962, pp. 76-77.

¹¹ Peter l'Huillier, Novella 89 of Leo the Wise on Marriage An Insight into its Theological and Practical Impact, *Greek Orthodox Theological Review*, Vol. 32, No. 2 (1987), p. 155.

the Church... with blessing")¹². However, this is only an alternative for members of the lower class, unable to comply with legal procedures. Despite its limited purpose, this provision must be highlighted because the legislator sought to adapt the law given by Justinian I to the customs already practised by the inhabitants of the Empire¹³. Considering this fact, it could be deduced that in the first half of the 8-th century, a unanimous consensus was not reached regarding the Church's blessing on matrimonial unions. However, the idea is gaining ground. Otherwise, one cannot understand why Emperor Constantine VI (780-797) was so eager to obtain such a blessing for his scandalous remarriage in 795¹⁴. During the sixties of the 9-th century, Byzantine missionaries active in Bulgaria insisted on the priest's blessing as essential to the legitimacy of the marriage. Nevertheless, the Roman Curia criticised this principle in unambiguous terms. Interestingly, however, in his encyclical denunciation of the errors of the Latin missionaries in Bulgaria, Patriarch Photius (810-895) does not mention this point. In his "Encyclical", issued in 867, the patriarch was probably unwilling to argue a teaching not officially approved by civil legislation or the canons of the Church at the time. A later scientific investigation led to reconsidering of various issues related to the legislation published by the emperors Basil I the Macedonian (867-886) and Leo VI the Philosopher (886-912)¹⁵. Towards the end of the 9-th century, Emperor Basil I the Macedonian published the "Epanagoga", a code of laws, which was to remain, until the end of the Empire, the fundamental law

¹² J. Zepos, P. Zepos, *Jus Graecoromanum*, 1, paragr. 8, Athens, 1931, p. 23.

¹³ Hans Julius Wolff, *Roman Law, An Historical Introduction*, Norman, 1951, pp. 181-182.

¹⁴ Korbinian Ritzer, *Formen Riten und religiöses Brauchtum der Eheschließung in den christlichen Kirchen der ersten Jahrtausends*, p. 102.

¹⁵ Spyridon Troyanos, *Οί πηγες του βυζαντινου δικαίου*, Athens, 1986, pp. 93-124.

for the relations between the Church and the State. Regarding matrimonial law, the “Epanagogue” is based on the “Eclogue” of the Isaurians. However, a significant change is occurring: religious marriage now becomes the first option. Although it is mentioned, marriage based on a written contract (διά σμόλεραίον) is probably considered an alternative for those who cannot marry canonically according to the church ritual¹⁶.

3 The consequences of the Leontine new laws on the legislation of the Orthodox Church

Considering the evolution of Byzantine laws, establishing the religious form of marriage as a binding rule can hardly be labelled as an incredible innovation. The legislator considers this clause as an end to an abnormal situation. By this, he intends to emphasise the distinction between legal marriage and other types of cohabitation that are devoid of legal effects¹⁷.

On the other hand, Byzantine jurists and canonists repeatedly emphasised the importance of consensus and argued that its absence makes the marriage null and void. Also, in medieval Byzantine legislation and jurisprudence, the consensus is considered more a necessary condition than a primary factor in achieving the matrimonial bond. This point of view supports Teodor Balsamon’s comments on canons 26 and 38 of Saint Basil the Great. It can be observed that Teodor Balsamon does not commit an anachronism. He is aware that this situation results from the

¹⁶ J. Zepos, P. Zepos, *Jus Graecoromanum*, 16, paragr. 1, p. 274.

¹⁷ Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, p. 297, cf. *Novela 91*, pp. 298-301. The wording of this new law suggests that the legislator was not familiar with the Roman concept of “concubinage” The “Nomocanon in 14 titles” establishes that: “A concubine is a woman who legally cohabits (νομίμως) with a man, without being married”.

law issued by Emperor Leo VI. In any case, the Byzantine canonists do not perceive this as a dilemma, namely the consensus against the blessing of the priest¹⁸. In fact, during the late Middle Ages, Byzantine jurisprudence regarding the realisation of the matrimonial bond brought together the concepts taken from Roman law and Eastern points of view. Indeed, these essential elements were partly reinterpreted under the influence of Christian ideas. In this framework, the mutual consensus is expressed by the engagement rituals. The minimum age for engagement was 14 for boys and 12 for girls¹⁹. The engagement was considered an essential part of the realisation of the matrimonial bond. That is why it has canonical and legal consequences²⁰.

In contrast to the prolixity of the preamble and the conclusions of *New Law 89*, the rule itself is succinctly formulated: "... the marriage must be confirmed by the proof of the holy blessing (τή μαρτυρία τής ιεράς εὐλογίας ἐρρώσθαι). Therefore, if those who want to marry do not comply with the procedure, from the beginning, this union will not be considered as a marriage and such cohabitation will not produce legal effects"²¹. This text must be interpreted in the context in which Emperor Leo VI did not intend to change the matrimonial law profoundly. This provision does not apply to those prevented from contacting a legal marriage because of their social status. *New Laws 100* and *101* prove

¹⁸ According to some opinions, in his work "De Matrimonio", PG 155, p. 509 D, Saint Simeon of Thessaloniki does not attribute constitutive effects to the priest's blessing in the accomplishment of the matrimonial bond. However, this interpretation fits differently from the general conception of Saint Simeon.

¹⁹ *New laws 74* and *109* of Leo VI, in Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, pp. 262-265 and pp. 354-357.

²⁰ *New law 109*, in Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, p. 356.

²¹ Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, p. 297.

this fact²². However, by establishing the priest's blessing as the only way to achieve marriage, the two above-mentioned new laws show the abnormal situation of believers who were not allowed a legitimate marriage just because of their social status. Sooner or later, this question had to be asked, although it was only resolved at the end of the 11-th century. Thus, in 1095, the emperor Alexios I Comnenus (1081-1118) gave slaves the right to marry legally. The imperial decree (δικταγμα) was based on theological considerations: for all, "there is one Lord, one faith, one baptism" (Eph. 4:5)²³. It is worth remembering that after that, the official documents issued by the ecclesiastical authority equated matrimonial unions without the priest's blessing to adultery (πορνεία)²⁴.

It cannot be deduced from *New Law 89* that marital issues fell exclusively within the competence of the Church. In fact, during the following period, both emperors and patriarchs contributed to the development of matrimonial law. However, starting from the 10-th century, imperial laws regarding marriage were either made at the request of church authority or merely confirmed patriarchal or synodal decisions. Moreover, since the holy blessing became necessary for the betrothal²⁵ and marriage, the involvement of the Church is a decisive factor.

Without a doubt, *New Law 89* provided a legal basis for effectively implementing church canons on marriage. As for how *New Law 89* affects liturgical practice, no clear answer can be given. In any case, the promulgation of this law does not constitute a

²² *Ibidem*, pp. 328-335.

²³ *New laws 35 and 35 B*, in J. Zepos, P. Zepos, *Jus Graecoromanum*, pp. 341-344 and pp. 344-346.

²⁴ Martin Jugie, *Theologia Dogmatica Christiana Orientalis*, Paris, 1930, p. 456, note 2.

²⁵ *New law of Leo VI*, in Pierre Noailles, Alphonse Dain, *Les Nouvelles de Léon le Sage*, pp. 262-265.

demarcation line. First, this *Novella* does not address the “technical” aspects of church rituals. The legislator refers only to “τή μαρτυρία τής ιεράς εϋλογίας”. This provision is even less explicit than the other assertion in the “Epanagogue” of Basil I, which mentions two alternatives for religious marriage, by blessing or placing crowns on the heads of the bride and groom (“είτε δι εϋλογίας είτε διά στεφανωμαί”)²⁶. However, given the specific purpose of *New Law 89*, this difference should be seen as insignificant. Before the promulgation of this Law, nor after placing crowns on the heads of the bride and groom, was it considered a necessary condition for the validity of the marriage. Indeed, in the popular conception of that time, placing crowns on the heads of the bride and groom was closely related to legitimate marriage. Thus, despite the intransigent opposition of the rigorists, the custom tended to spread. In the collection of laws “Procheiros Nomos” published shortly after *New Law 89*, the legislator specifies that the placing of crowns must not be carried out clandestinely²⁷. This expression shows that placing wreaths is a standard part of the marriage ceremony, but it has yet to attain a canonical status. It is an indirect effect of the provisions of *New Law 89*. Although the ecclesiastical authority did not succeed in its attempt to impose the full canonical severity (ἀκρίβεια), at least it was able to eliminate the excess of permissiveness²⁸. The application of *New Law 89* encountered no obstacles in the Byzantine Empire. This can be inferred from the fact that later laws did not need to be enacted to reaffirm their validity. In “Procheiros Nomos”, the provision about the holy blessing is not

²⁶ *Epanagoga* 16. 1, in J. Zepos, P. Zepos, *Jus Graecoromanum*, p. 274.

²⁷ Cf. 4, 27, in J. Zepos, P. Zepos, *Jus Graecoromanum*, p. 128.

²⁸ After the promulgation of the famous decree “Tomus Unionis” in 920, the position of the Church did not change at all.

restated. This easy acceptance of the religious reform of marriage can be understood in the light of two factors: 1) at that time, the overwhelming majority of the inhabitants of the Empire were Orthodox Christians and therefore by the canonical rules in force, and 2) the church authorities were strong enough to enforce those rules. This is best seen from the final solution given in the case of the tetragamic dispute of Emperor Leo VI²⁹.

Conclusions

Emperor Leo VI was driven by ambition and the desire to have a male-line successor to the imperial throne during his reign. However, the situation within his family was unfavourable for this aspirant. Since his older brothers Constantine and Stephen died early, and the other brother, Alexander, could not have children, Leo was responsible for ensuring the continuity of the Macedonian dynasty. Although he had three wives, none gave him the much-desired son. Finally, the emperor's relationship with his concubine Zoe Carbonopsina resulted in a male child, Constantine Porphyrogenetus. This situation was the reason why Leon decided to put pressure on the Orthodox Church in order to receive a dispensation with the help of which he could marry the fourth time, despite his religious education and the promulgated marital laws, which condemned divorce and remarriage³⁰. Leo initially triumphed in the so-called tetragamic dispute, thanks to imperial authority. Nevertheless, he divided the

²⁹ Peter l'Huillier, *Novella 89 of Leo the Wise on Marriage An Insight into its Theological and Practical Impact*, p. 160.

³⁰ Claudiu Țârulescu, *Disputa tetragamică și consecințele acesteia în istoria Bisericii bizantine*, (Cluj-Napoca: Mega Publishing House), 2021, pp. 227-228.

Church in two by this victory and, with it, the state. On his side remained those who gave particular importance to the authority of the head of the state, seeing the emperor as a supreme person. The emperor's spiritual advisers probably protested unofficially, but the sovereign's decisions were fundamental law. In opposition were those allied with Leon's political enemies, precisely patriarch Nicholas I the Mystic and his supporters, who considered divine laws above those of the emperor, the Church and the patriarch being exponential factors in preserving the imperial conscience. It may have been a victory in the end, the enthronement of Constantine Porphyrogenetus, but his authority was open to doubt. He was young, and Leon's brother Alexandru did not like him. Therefore, the victory achieved in this sense by Leo VI was a doubtful one, that too if we consider the hardships to which his son and his wife were subjected in order to preserve the government of the state³¹.

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³¹ *Ibidem*, p. 230.

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