

Robert W. Thomson

Mxit'ar Goš and Canon-law

When Mxit'ar Goš began work on his Lawcode [Datastanagirk'] in 1184, he was addressing a problem faced by several minority peoples of the Near East -- namely the ability of communities to control their own internal destinies once political independence had been lost and they were under Muslim authority.¹ Mxit'ar emphasizes several times that the Armenians needed a written code of their own so that they could avoid having recourse to the courts of "outsiders" [aylaseṛk', aylazgik'].² His work is therefore primarily directed to issues that he thought practical in the circumstances -- that is, matters of communal life rather than political organisation. He had a double task: the descriptive aspect, or the codification of traditional Armenian practices; and the prescriptive aspect, or the formation of rules where no written Armenian authorities existed to offer guidance.

A more theoretical question also arose for Mxit'ar -- the relationship between secular and ecclesiastical law. For more than seven hundred years before his own day Armenians had been concerned with the governance of their church. Among the very first texts translated into Armenian in the early fifth century had been the canons of great councils, such as Nicaea held in 325.³ The records of local Armenian synods were added to the corpus of translated texts, and by the eighth century an organised collection of canon-law existed in Armenian. Known as the Kanonagirk', it was expanded in later centuries.⁴

In addition to collections of conciliar decisions a significant literature had also developed in Armenian dealing with matters of ecclesiastical discipline. The Penitentials were guides for those in

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charge of dealing with infringements of church practice.⁵ Mxit'ar concentrated on problems of this nature. He was concerned with life at the community level: criminal acts such as murder, theft, or abduction; disputes involving land and property; questions of inheritance and the division of family property; or impediments to the marriage of closely related couples.

Mxit'ar was thus familiar with a written canon-law and the roles of church authorities. His knowledge of traditional patterns of legal practice administered by Armenian princes on their large autonomous estates is less easy to assess. But by the end of the twelfth century in Greater Armenia traditional society was no more. Not only was there no monarchy to provide a source of legal authority for the whole system, few Armenian communities lived under the political control of Armenian lords who could establish secular lawcourts to pass sentence on criminals or adjudicate disputes. The situation in Cilician Armenia was different. But Mxit'ar was writing for the Armenians in the homeland. He recognised that the only accepted authorities there were the bishops and their auxiliaries, the vardapets. So he frequently finds himself wrestling with the relationship between ecclesiastical law and secular law, between the sanctions that the church could impose on its members -- such as excommunication, penance for a certain number of years, and similar penalties -- and the punishments of a different nature that secular judges traditionally employed -- i.e. fines, imprisonment, mutilation, or even death. This dilemma was not unique to the Armenian situation, so Mxit'ar's attempts to resolve it may be of wider interest.

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After explaining his reasons for embarking on this Lawcode, Mxit'ar sets out the sources from which he will derive his material.⁶ He begins with natural law. Although he omits any reference to specific books or traditions, Mxit'ar does note that the pagans had learned to condemn thieves and murderers and all evil-doers. In second place come the Muslims. They have accepted what pertains to the natural laws, and that Christians accept as well, sometimes recognising what is in their law as the fulfilment of the Gospel. [Mxit'ar refers to Muslims quite frequently; his main concern is to avoid contacts between them and Armenians as much as possible.] Third, he collects from all nations which believe in Christ whatever may be appropriate. But Mxit'ar does not specify particular points of law, even if on occasion he later refers to Greeks and Georgians. There are two written sources which form the backbone of his own work: the bible, especially the Mosaic law of the Pentateuch, and the canons of the church. From all the books of the Old and New Testaments, says Mxit'ar, we have not only commandments from God, but also advice for the making of judgments.

On the other hand, Mxit'ar emphasizes that the church's canon-law is a continuously developing corpus. The canons were not laid down at once, at one time, by one author; but gradually, over time, and by many fathers. Thus canon law has "potentiality"⁷ for future development. In like fashion his own work is not a final document. It is the beginning of a longer process; it can be made appropriate to different circumstances, and material from many other sources can be added to it.

Canon law and secular law are complimentary aspects of a larger whole. Man is composed of a soul and a body. Canon law is

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the director of the soul, and secular law the director of the body.⁸ They can be logically distinguished, but in many respects they are united. They act with a single intention. The first -- i.e. canon-law -- aims at diminishing sin; the second at curtailing evil. Their common purpose is to make men compassionate and to confirm mutual love. In both, the decision of the matter at hand is to be made by experts. And both have their own sanctions; excommunication in canon law is the equivalent of imprisonment or corporal punishment for secular offences. In contrast, the just and the honest have no need of either kind of law.

A lawcode as such will not prescribe penance for crimes involving the body. Indeed penance would be too light a punishment where a severe fine might be necessary -- as, for example, if a husband kills his wife because of her adultery. The Lord commanded divorce in such circumstances, says Mxit'ar, not killing.⁹ The guilty party in a divorce is subject to penance; but the guilty party in a case of homicide has to pay the fine of blood money. Conversely, although statutes impose fines for transgressions, penance is not thereby abolished.¹⁰ However, sometimes penance is the only sanction that can be applied. If an offence is committed in secret, or if the guilty party cannot be identified but the offender admits his guilt in confession, then the priest can only impose penance, not a fine or imprisonment.¹¹

It is hardly surprising, in view of Mxit'ar's own training as a vardapet -- and thus in the study and interpretation of scripture -- that he should devote a great deal of attention to the scriptural basis for the statutes in his code. He frequently turns to the problem of understanding the Old Law in terms of the New. Are individual Mosaic commandments to be accepted literally, or are

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they merely a guide to judgment -- to use a phrase applied by Mxit'ar to the bible as a whole?¹² He offers no discussion of the question in abstract terms, though naturally his general attitude is that the new dispensation of Christ has fulfilled the old. But on several occasions he does make specific comments about individual Old Testament regulations, sometimes accepting them as valid for the present, sometimes contrasting them with what Christians should do, and sometimes adapting them. A few illustrations may be useful here, even if Mxit'ar did not develop any general theory.

When discussing the theft of deposits, based on Exodus ch. 22, he notes: "This statute is to be observed unchanged."¹³ He makes similar comments about other rules based on passages from Exodus and Deuteronomy -- not excluding the question of fees payable to priests!¹⁴ On the other hand, if the Old Law indicates the death penalty, then this should be commuted; for there may a chance of saving the offender's soul through penance.¹⁵ In the case of rape, where the Old Law decreed marriage without the possibility of divorce, Mxit'ar proposes a fine when the man and girl do not desire marriage.¹⁶ And where Deuteronomy demanded the cutting off of a hand, here too he indicates that a fine should be imposed.¹⁷

This commutation of penalties -- not only in the context of Christian attitudes to Mosaic legislation, but even in personal terms with regard to canon law -- is often specifically called nerumn, "concession." This is equivalent to the concept of oikonomia found in Greek patristic writers -- namely, the consideration of special circumstances, accommodation to the situation, or a prudent discretion.¹⁸ The Armenian term is found

in I Cor. 7.6, where the apostle Paul is discussing marriage and offers advice, not giving a command but condescending to human weakness. Mxit'ar frequently echoes this attitude, offering advice not inflexible commands. Concession is thus a feature of penance, where mercy is shown for transgressions deserving a fine.¹⁹ And the term can also be applied to the revision of an Old Testament precept in a Christian sense; for instance, if a Christian marries a foreign captive he must first baptise her.²⁰ Nerumn can also be translated as "clemency," as in cases of involuntary homicide.²¹ Or if there are differing canonical rules for the same problem, then either may be applied "as a concession."²²

The main part of the Code, after the general Introduction, is divided into 251 chapters of varying length. But the topics discussed are not arranged in any apparent order, and the same topic may appear more than once. Mxit'ar's method of using his sources is rather curious and deserves attention. He begins in a logical enough fashion, with a discussion of the roles of judges, secular leaders, and ecclesiastical leaders. He then plunges straight into marriage and divorce, followed by questions involving children. Mxit'ar's usual approach is to quote a written source and then offer his own comments. But in these first 27 chapters he draws on a range of traditions and does not follow any one source directly. From chapter 28 to chapter 228 statutes follow in seemingly confused sequence, sometimes in blocks dealing with related topics, sometimes apparently at random. The final 23 chapters recapitulate many of the points already discussed and have no common thread.

Yet there is a pattern to that main block of 200 chapters, for Mxit'ar used his sources *seriatim*, and did not pick and choose

among his written sources to support a structure carefully thought-out in advance. The identifiable texts, quoted more or less verbatim with a following discussion by Mxit'ar himself, come from only three sources: the Old Testament, the Kanonagirk', and the early twelfth century Pentitential by Dawit', son of Alawik. For the most part, Mxit'ar takes blocks of material at a time from various chapters of the Pentateuch or from the canons of different councils and authors. So the confused order of his presentation is doubly compounded: first he offers only a selection of topics from his source; and then he groups his sources seriatim and not by subject. It is as if he took up one by one his Old Testament, his Kanonagirk', and finally his copy of Dawit's Pentitential, and copied out a selection from each. A brief summary of the sources will thus give a clearer impression of his procedure than a summary of the contents of the Code.

In the main block, chapters 28 to 288, the first three, on marriage, come from Deuteronomy. The next five, concerning villages and peasants, are by Mxit'ar and not from an identifiable written source. Chapters 36-53, on church matters, are taken from the Kanonagirk'. What is important here, as with all Mxit'ar's quotations from the Armenian book of canon-law, is that he makes his selection from the canons in the order in which they appear in that book. That is, he chooses a few canons in sequence -- though not necessarily ones immediately following each other; and he also follows the order of the collections of canons as found in the Kanonagirk'.

Chapters 54-104, dealing with secular matters, primarily of agricultural concern, and ending with inheritance, are based on Exodus, Leviticus, and Numbers. Here Mxit'ar does add a few

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chapters of his own. Nos. 68-72 on farm animals are a development of what had preceded. No. 75 on robbers of churches follows a chapter on thieves derived from Exodus. Nos. 84-85, on fire-setters and those who cut down plants, are not in their logical place. Whereas nos. 93-100, which deal with mills and the sale of animals, and nos. 103 and 104 on inheritance, develop what had preceded.

Chapters 105-131 deal with a variety of topics, reflecting the varied subjects of Deuteronomy, chs. 7 and 18-25. The basis for Mxit'ar's selection is unclear.

From here onwards Mxit'ar turns to canon-law, though many of the topics had been addressed earlier. For chapters 132 to 211 he follows in order a selection of canons from: the Post-Apostolic Fathers, then the councils of Nicaea, Ancyra, Neocaesarea, Gangra, Antioch, and Laodicaea; then canons attributed to Clement, Athanasius, Basil, and Thaddaeus; then he turns to specifically Armenian councils: [✓]Šahapivan, Partaw and Dvin. There are occasional additions. No 161, on indicted bishops, comes from the Second Set of Nicene Canons [on which more later] and is out of order so far as the source is concerned; however, it follows three canons from Antioch which deal with the role of bishops and is thus in a logical position. Nos 180-184, dealing with inheritance, wills, and funerals, have no clear source and are quite out of place between statutes dealing with artisans who embezzle and merchants who deceive.

Finally, chapters 219-228 are taken from Dawit's Penitential, though here Mxit'ar does not quote his source quite so carefully as he does the bible or the canons. In the middle of this block is found a long chapter entitled "On the orders of the church and of

the court of the king.” This bears no relevance to anything in Dawit', being an attempt to correlate the orders of angels as expounded by Pseudo-Dionysius with the ranks of clergy in the church and the ranks of officials at the Byzantine court.²³ A similar passage -- though without the ranks at court -- appears in the Commentary on the Liturgy by Nersēs of Lambron, written in 1178, thus predating Mxit'ar's Code, and there are also echoes in some later Armenian sources. The source of this chapter seems to be based on a commentary on Pseudo-Dionysius, whose corpus of mystic theology was translated into Armenian in the eighth century. The main part of this section is not by Mxit'ar himself; his contribution is a presentation of nine ranks at the Byzantine court as a further parallel to the angelic orders. This chapter is not totally irrelevant to his Code, which does concern itself with ranks in the church and their respective roles. But it was inserted at a quite inappropriate point.

Although Mxit'ar bases his code on the three main groups of sources just discussed, he rarely identifies a specific borrowing. Dawit', son of Alawik, he does not name at all, the Pentateuch is simply called the work of Moses or “the Law,” while references to individual canons are sparse. Naturally, as a learned vardapet, he is familiar with the whole range of biblical books, and in his own comments he frequently identifies a gospel, a prophet, or an apostle. But since he is so dependent on canon-law it is rather surprising that he identifies councils or authors of canons so rarely. His specific references are worth noting in brief. He refers by name to the Apostolic canons, those of Nicaea, Gangra, and the “despicable” Chalcedon.²⁴ Nicaea is for him, as for most Armenian theologians, the “great council;” for the personal friendship of

Constantine with king Trdat and Saint Gregory, and the attendance of Gregory's son at Nicaea, are major features of Armenian tradition. However, when quoting a Nicene canon by number, Mxit'ar is in fact referring to the "Second Nicaean" canons -- Kanonk' erkrord Nikiakank'.²⁵ These are not the canons of the council of Second Nicaea, held in 787, which ended the first stage of the Iconoclastic controversy. They are a collection of fourth century canons, brought together at a later date and included in a post-eighth century Armenian compilation. Mxit'ar also quotes by name canons attributed to Gregory the Illuminator and the patriarch Sahak, and he refers several times to canons by saint Basil of Caesarea -- both in general terms and individually. He even doubts the authenticity of one canon attributed to Basil, a canon found in the second part of the Kanonagirk' [which was compiled after the eighth century].²⁶

Mxit'ar was not dependent on written sources alone. As a vardapet he was not only involved in the study of scripture and the church fathers, he had pastoral duties to perform -- not as a parish priest, but as an important figure in the spiritual and social life of Armenians around him. Confession was an important aspect of medieval Armenian religious life. As already noted, he refers to criminals who are not caught by the authorities but who confess their crimes to a priest.²⁷ On a more personal level he states that it was through confession he learned of physical problems which would impede the marriage of an adult male and a girl who was still immature.²⁸ And he inserts several references to information he received orally -- with regard to divorce, to the question of justifiable homicide if one is attacked by brigands, and to marriage between related parties.²⁹

This brings us back to Mxit'ar's personal attitude towards the statutes and their application adumbrated in the earlier discussion concerning "concession, nerumn." Mxit'ar was a man of the church faced with practical problems which ran the gamut from what we might call "pastoral concerns" to matters of state. His emphasis is on the Christian community and the rules for adjudicating disputes or punishing offenders. His prime concern is for the salvation of souls, which outweighs any rigorously exact retribution for specific crimes. His Code is certainly invaluable as a historical source for many aspects of Armenian life -- despite some uncertainty regarding specific details for which no corroborative evidence is available. But it is a very personal compilation. Mxit'ar is not just an editor or arranger of a corpus of statutes, but rather an author with his own points to make.³⁰

He frequently raises the religious and spiritual implications of the legal texts he quotes. Just as he emphasizes the importance of "concession," so also he emphasizes that he is not so much composing legislation, as offering guidance and advice. Not that he is worried about criticism, but rather he accepts the imperfections of his own work, just as all earthly enterprises are flawed. His Code is a beginning, not a finished monument; additions and corrections will be made in times to come.³¹ Mxit'ar does not claim the authority of a legislator. But he is aware that laws made in earlier times are not always adequate for today's circumstances, and that conditions vary from place to place. So when he does add rules of his own, he emphasizes that they are consonant with the intention of the original legislation. Thus, in one of his rare acknowledgements of specific sources, when discussing discipline in monasteries he says: "Of necessity we are adding in moderation

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indications of the code of corporeal regulations, because not all are now living according to Saint Basil's rule. We are not authorised to consider anything far from the intention of the saint's rule, but we travel in paths that are consonant with it."³² But he can go further and propose rules actually in conflict with the canons. Thus, when discussing the age of responsibility for murder committed by children, he notes that the canons bid that below the age of fifteen the sins of childhood are not to be remembered. However, Mxit'ar rules that if the murderer is older than twelve he has to pay the full blood money; if under twelve a sliding scale applies. He goes on: "Although this is reckoned to be outside the canons and opposed to them, yet we have made bold to state the above, having as record the scrutiny of vardapets."³³

To this general principle he often returns, namely the role of vardapets, who deal with the majority of local cases where an episcopal court is not involved. Theirs is the authority to investigate and set the appropriate penances. The Code is meant to guide them in their decisions, but not to bind them into giving inflexible rulings. Spiritual concerns always take precedence over written codes. As Mxit'ar says, vardapets are to be given prime honour because they are healers of souls.³⁴

Canon-law must be interpreted in ways that stress moral responsibility. In any event, the canons do not cover all contingencies. For example, when discussing wives who abandon cruel and abusive husbands, Mxit'ar notes that the sixth canon of Sahapivan ruled that the couple is to be kept together, even if the husband is to be reprimanded. Fearful of the harm which might befall the abused wife, he changes the rule to allow the wife to leave the husband. He adds: "Let us make it clear that our wishes

are not opposed to the will of the canons. If other judges should wish to take something from our code, let them take; otherwise, let the canons remain firm.”³⁵ Or when discussing the permitted degrees of affinity in marriage, he states: “So if this statute seems pleasing to the churches, since as much as was possible we have set it down after verifying it from scripture, let them act in accordance with it. But if it is unpleasing, let no one reprove us as presumptuous, but let him grant us forgiveness as ignorant.”³⁶

Such disclaimers should not be taken as purely literary affectations or as indications of the author's humility. Mxit'ar was in his late forties, or perhaps even fifty, when he put together his Lawcode. He was a man of deep scriptural learning and wide teaching experience. Faced with a pressing need he responded in the way he knew best. He was not trained as a lawyer, and did not bring a passion for legal niceties to his task. Not long after his death, an attempt was made to separate the statutes into two sections, secular and religious.³⁷ But such a division is ultimately unsuccessful because, as Mxit'ar himself explained, the secular and spiritual aspects of human life are indissolubly intertwined. Despite the inclusion of much material that bears on affairs of state, as well as details of daily physical life -- agriculture or trade, for example -- this is not a legal code in the modern sense. Its author was concerned with the community in northeastern Armenia that had no secular leaders and whose affairs were ultimately in the hands of the church. For Mxit'ar spiritual and social concerns were dominant, and these he treated in the fashion one might expect of a medieval vardapet rather than a modern lawyer.

NOTES

¹ All references to the text of the Lawcode are to the edition by X. T'orosyan, Mxit'ar Goš: Girk' Datastani, Erevan 1975.

² Chs. 1, 2, 9 of Mxit'ar's Introduction.

³ The Armenian version of Agat'angelos, par. 885, claims that St. Gregory made appropriate additions to these "illuminating" canons when Aristakēs brought them back from Nicaea. The earlier recensions known via Greek and Arabic texts know nothing of this. See G. Garitte, Documents pour l'étude du livre d'Agathange [Studi e Testi 127], Vatican City 1946, p. 331.

⁴ V. Hagobyan, Kanonagirk' Hayoc', 2 vols., Erevan 1964, 1971.

⁵ The most noteworthy, and the only one quoted directly by Mxit'ar, is that by Dawit' son of Alawik. See C.J.F. Dowsett, The Penitential of David of Ganjak [CSCO, Scriptorum Armeniaci 3, 4], Louvain 1961; cf. also C.J.F. Dowsett, "Movses Erzingac'i's 'Advice on Confession'," Le Muséon 73 [1960], 135-149.

⁶ Ch. 10 of his Introduction.

⁷ Potentiality: zawrut'iwn, ch. 10 of his Introduction.

⁸ Ch. 3 of his Introduction.

⁹ Ch. 19 of the Code.

¹⁰ Ch. 86 of the Code.

¹¹ Truth comes out through confession: chs. 233, 235, 243.

¹² Ch. 10 of his Introduction.

¹³ Ch. 78 of the Code.

¹⁴ Ch. 106.

¹⁵ Ch. 27. For Mxit'ar the salvation of an offender's soul outweighs any mechanical retribution for the offense.

¹⁶ Ch. 29.

¹⁷ Ch. 131.

¹⁸ See the definitions in G.W.H. Lampe, A Patristic Greek Lexicon, Oxford 1961, s.v. oikonomia, 940-943.

¹⁹ Ch. 86.

²⁰ Ch. 110.

²¹ Ch. 233.

²² Ch. 167. See also ch. 8 of Mxit'ar's Introduction and chs. 82, 168, 187, 213 of the Code.

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²³ Ch. 225; the parallels are set by T'orosyan, 587-599. See also R.M. Bartikyan, "O vizantijskom klitorologii v Sudebnike Mxitara Gosha i ego armjanskom perevodchike," Patmabanasirakan Handes 126 [1989, pt. 3], 197-204.

²⁴ Ch. 156. Since the canons of this stumbling-block were not included in the Armenian Kanonagirk', Mxit'ar does not quote them.

²⁵ Chs. 143, 156.

²⁶ Ch. 187.

²⁷ See note 11 above.

²⁸ Ch. 249.

²⁹ Chs. 146, 170, 213.

³⁰ Throughout the Code there are some seventy interjections in the first person, though many of these are purely literary artifices and do not bespeak a personal opinion on a matter of law.

³¹ Ch. 10 of his Introduction.

³² Ch. 3 of the Code.

³³ Ch. 22. ³⁵ Ch. 197.

³⁴ Ch. 2, 27. ³⁶ Ch. 213.

³⁷ This is the recension published by V. Bastameanc', Mxit'ar Goši Datastanagirk' Hayoc', Ejmiacin 1880. T'orosyan, 611-12, gives a table comparing the numbers of the three recensions: A, the earliest; B, the one in two sections; G, a revised version of A.



Երկու դասընկեր ուսանողներ յԱնգլիա, 1928 Դեկտեմբեր 28 ի Մանչեստր: Զախեն Աջ՝ Նորայր Վրդ. Պողարեան, Դեորգ Մեհրեան (նդեռնի որբերէն եւ իր դասընկեր Պերն Սանտրունիին հետ երկու տարի յետոյ Երուսաղէմի Ժառանգաւորաց եւ Թարգմանչաց Վարժարաններու մէջ ուսուցիչ), Աետնդ Եպս. Դուրեան, Առաջնորդ, Տիրան Վրդ. Ներսայեան: