

A C T A S. M A X I M I

B Y

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PROLOGUE

The aim of this paper is to reconstruct the biographical data and information scattered in the various sources and editions of the *V i t a* and the *A c t a* of St. Maximus the Confessor, and to study them comparatively and critically, so that a comprehensive understanding of the historical, cultural, legal and linguistic background of the text, especially that of the *A c t a*, will be possible.

In the treatment of the subject, the division into two general parts appears necessary, that is to say, a historical introduction to the *V i t a* and *A c t a* (Part I), and their critical analysis and study (Part II).

PART I

HISTORICAL INTRODUCTION

A. V I T A

The author of the *V i t a* is anonymous. Devreesse thinks that Anastasius, the disciple of Maximus, is its author¹. He does not give, however, any reference nor any proof. Perhaps he had in mind the § XXVII where «ὁ καλὸς Ἀναστάσιος» is mentioned as the author of a previous report (ὑπόμνημα). But even this reference is not clear because Anastasius the apocrisiarius could also be meant². The first edition of the *V i t a* can be contemporaneous with the Sixth Ecumenical Council (680-81), which took revenge upon the memory of Constans' victims³.

The *V i t a* in the edition of Combefis⁴ includes forty-two paragraphs which can be divided into four periods of Maximus' life: 1) Maximus until his arrival at Rome (§ I-XVI); 2) The first process of Maximus' trial at Constantinople and his banishment into exile (§ XVII-XXVI); 3) The interrogation and conference at Vizii and Rhegium (§ XXVI-XXXIII); 4) The second exile, martyrdom and death (§ XXXIV-XLI), and finally paragraph XLII which is a dedication to S. Nicholas.

There is in the text of the *V i t a*, between §XVI and XVII, a lacuna where the events which took place between 646 (the Synod of Pope Theodore) and the imperial decrees against Maximus and Pope Martin are omitted, that is to say, the death of Pope Theodore, the election of Martin, the activity of Maximus, the Council of Lateran and the decision of Constans. These events are related, however, in the *Acta Sanctorum*⁵.

The *V i t a* begins with a general appraisal and evaluation, in the form of a prologue or prooimion, of the moral, educational and psycho-

1. *Ana l. Boll*, 46 (1928) 5.

2. *P.G.* 90, 96 D 9.

3. So says Devreesse in *Ana l. Boll*. 46 (1928) 44.

4. *P.G.* 90, 67-100.

5. *August*, III (37) 123-124.

logical influence of biographies of celebrated men and saints upon the reader. Its author claims that it is a detailed report of Maximus' life and actions, as detailed as the biographer's ability and the originality of such a biography allows, since this biography is the very first attempt and account of Maximus' career. He then states that he will include in his account, events and facts indirectly related to Maximus' life, yet of importance, because they facilitate our understanding and evaluation of contemporary intellectual history⁶, e.g. the origins and causes of the Monothelitic heresy⁷. The biographer's claim for completion is, however, quite modest. He characterizes and qualifies his *Vita* as «the smallest account... being considerably unrealistic» (ἐλάχιστον λόγον... παρά πολὺ τῶν πραγμάτων λειπόμενον)⁸. Moreover, his account of Maximus' trial is not a detailed narration but a resume — οὐ κατὰ διήγησιν, ἀλλὰ κατ' ἐπιδρομήν⁹. This statement of the author is absolutely truthful, as it will be proven later in the critical analysis of the *Vita* and the *Acta*.

B. A C T A

I. FIRST EXILE — THE CONFERENCE AT VIZII AND RHEGIUM

One of the most important historical documents on Maximus' life and theological doctrine is his conference at the castle of Vizii and Rhegium with the Bishop of Caesaria of Bythinia, Theodosius, who is the envoy of the Patriarch of Constantinople, Peter, and the consuls Paul and Theodosius, who are the representatives of the Emperor. The date of this conference is August 24 of the 14 indiction - epinémisis (656)¹⁰.

There are two versions of this conference, short and long. The short version is that of the *Vita* (§XXVII-XXXI) and the long, that of the *Acta*¹¹.

The author of this report is the same person who has already written the *Relatio Motionis*, and as he himself states¹², he also fol-

6. P.G. 90, 68-69A.

7. P.G. 90, 76C-81Cf.

8. P.G. 90, 68Cf.

9. § XVIII; P.G. 90, 89A.

10. *Tomus A1*. P.G. 90, 137A-4-6.

11. *Tomus Alter*. P.G. 90, 136-160 CD, § I-XXIII. Cp. Mansi. XI, 46; P.L. 129, 626.

12. P.G. 90, 96D9-12.

lows here the same method of summarizing and giving the main points of the conference.

The version of the *Acta* is a complete and detailed report and an interesting theological argumentation which precisely determines and clarifies Maximus' dogmatic position and beliefs, as well as provides some information about the conditions of Maximus and his followers, the two Anastasii, his pupil and the apocrisiarius, in their first exile. Thus it tells us that Anastasius the pupil was at Pervera at that time and Anastasius the apocrisiarius at Mesimvria¹³. Elsewhere it gives us the information that Anastasius the pupil was «notarius» of the grandmother of the consul Thodosius (§XXX). In another place when Maximus recommends Anastasius the apocrisiarius to Bishop Theodosius in the case that he would adopt Maximus' suggestion to go to Rome for reconcilliation, he speaks of Anastasius as the most efficient envoy to Rome, since he knows the language (Latin) and is deservedly respected for his long sufferings for, and fidelity to, the correct dogma and faith¹⁴. Theodosius rejected Maximus' suggestion with the excuse that he (Theodosius) and Anastasius do not get along well and he adds that he would prefer Maximus rather as his companion. Maximus consents and both Theodosius and Maximus are happy and take an oath on the Gospel, the Holy Cross, the icons of the Saviour and of the Mother of God as an affirmation of the words they exchanged¹⁵.

On the 8th of September of the 15 indiction (656) the Emperor orders Paul, the consul of Vizii, to move Maximus with honor and pomp to the monastery of St. Theodore close to Rhegium (Küçük-Çekmece, close to St. Stefanos). To Maximus now at the monastery of St. Theodore, the Emperor sends on the 9th of September 656, two patricians, Epiphanius and Troilus, accompanied by bishop Theodosius. They try to convert Maximus with great promises and to persuade him to submit to the will of the Emperor.

Troilus initiates the conversation, saying that he and his company represent the Emperor and are willing to discuss reconciliation with Maximus' if he *a priori* states that he will accent the Emperor's order. After Maximus consents, Epiphanius states the Emperor's wish and order to Maximus that he must accept the *T y p o s* and then Maximus will be greatly honored and the Emperor himself will welcome

13. P.G. 90, 144B6.

14. P.G. 90, 156A-3-8.

15. End of § XXIII of the *T o m u s*, 160C. Cp. *V i t a*, end of § XXIII of 100-101.

him back to Constantinople and lead him personally to the Great Church and will declare him as the Father of the Empire since, according to the Emperor, he is the main reason for the division and discord in the Empire¹⁶. Maximus then reproaches the infidelity of Theodosius, who took the oath of agreement with Maximus. Theodosius argues it is not his fault if something has changed the Emperor in the meanwhile.

Furthermore, Maximus courageously declares that no earthly power and ruler will change his faith. He calls into witness the holy icons of Christ and His Mother (a passage read at the Seventh Council). All this scene is described, with some words changed, in the second part of §XXXII of the *Vita*¹⁷.

When Maximus rejected the proposals of Epiphanius, he was beaten and spit upon, and only at the intervention of Theodosius the bishop did they stop. Theodosius remarks that this was not the proper way to solve canonical questions (*κανονικὰ πράγματα*)¹⁸.

After the Consuls were pacified by the Bishop, Epiphanius defends his orthodoxy and pronounces his *credo*, which Maximus finds very close to the correct faith and therefore asks Epiphanius why then does he insist so much that he (Maximus) must accept the *Typos* which is against this *credo*. Epiphanius argues that the *Typos* is a mere formula¹⁹ intended to restore peace by keeping silence on controversial dogmatic issues. Maximus answering, condemns such a silence because it promotes heresy and it overthrows truth which must be declared by voice and words according to the Gospel²⁰. Thus, Maximus again remains unyielding²¹. As a result, Theodosius the consul, accompanied by Troilus and Epiphanius, takes away from Maximus everything he has, he reads to him the imperial decree of Maximus' and his disciples' condemnation to imperial trial, and delivers him to soldiers who lead him to Salemvria (§XXX). In Salemvria Maximus stays for two days and then is brought into the castle of the army where he is questioned by an old respectful man, in the presence of the general and a few other officers, as to whether he believes in the Holy Virgin as the truly natural (*φυσικῆν*) Mother of God. After Maximus' positive confession he is led by guards to Pérvera (§XXXI).

16. § XXIV-XXV; resume in the first part of § XXXII of *Vita*, 90, 101B9.

17. P.G. 90, 101B9-C7.

18. § XXVII; P.G. 90, 164 CD; Cp. *Vita*. § XXXIII.

19. cp. *Relatio*, P.G. 90, 121D-10-124A1.

20. Matth. 10,32; Rom. 10, 10.

21. § XXVII, XXIX.

In the *Codex Vaticanus Graecus* 453 (fol. 167V) and 511 (fol. 19V). *Mosq.* 391 (fol. 133), after the last words of §XXXI, *συνεχούση αὐτὸν φρουρᾶ*, follow some words which may be the most ancient link between the events that preceded and those that followed. These words are: Ἰκανοῦ δὲ χρόνου διαδραμόντος καὶ τοῦ ἁγίου ἐν τῇ εἰρημένῃ ἐξορία ὄντος, πάλιν ἀποστείλας ὁ βασιλεὺς μετεκαλέσατο αὐτὸν καὶ [Τῆς ἡμέρας ἧ προσωρμίσθησαν... = the beginning of the *Relatio*]. The phrase ἰκανοῦ δὲ χρόνου... (cp. the phrase of the *Vita*, §XXXIV: «Μετὰ δέ τινα χρόνου παραδρομῆν») signifies the lapse of time from Maximus' arrival at Pérvera until his call for final trial at Constantinople (656-662).

Finally Maximus as well as the two Anastasii are brought back to Constantinople (662) where they are condemned by the senate to be flogged, and their tongues and right hands to be cut. The execution of such a condemnation was the job of the prefect who also toured them throughout the city and exiled them to Laziki²². These two last paragraphs in the Combefis edition belong to another context.

II. SECOND EXILE — DEATH

The most important documents for Maximus' life and activity from 655 to his death (662) are: the *Relatio Motionis*, the letter of Anastasius the apocrisiarius to Theodosius of Gangre, and the *Hypomnesticon* of Theodore Spoudaeus.

The *Relatio Motionis* (Ἐξήγησις τῆς κινήσεως, μεταξὺ τοῦ κυροῦ ἀββᾶ Μαξίμου καὶ τῶν σὺν αὐτῷ καὶ τῶν ἀρχῶν ἐπὶ σεκρέτου) is a detailed verbal account of Maximus' final trial before the imperial tribunal at the palace and his very last banishment. It could be inserted, therefore, after the §XVII of the *Vita*²³. The *Relatio Motionis* is the long version of Maximus' final trial including fifteen more or less long paragraphs²⁴. Its short version is that of the *Vita*. §XIX-XXVI²⁵. It was written after Maximus' death. Its author is anonymous.

The *Relatio Motionis* beginning with Maximus' and his disciples' arrival at Constantinople around sunset, when two commanders

22. § XXXII, XXXIII, P.G. 90, 172AB.

23. P.G. 90, 89AB.

24. P.G. 90, 109C-130.

25. P.G. 90, 89-105.

come with ten soldiers as guards and take him and his company, naked and without shoes, and keep them in different cells. After a few days they present them in the palace, and introduce first Maximus before the senate. We learn from the *Vita*, §XVII, that Maximus was arrested at the same time with Pope Martin (June 17, 653)²⁶. (The *Hypomnesticon* dates the troubles of Maximus from September 652 to August 653 - *Anal. Boll.* 53 (1935) 75 n. 17). The §VII of the *Relatio* (121B) is of special importance in dating Maximus' trial. There is the mention of the arrival at Constantinople of the «apocrisarii» of Rome, who were those of Pope Eugene and who came in order to announce to the Emperor the election of Pope Eugene (August 10, 654). But the alleged communion of these «apocrisarii» with the Patriarch (Peter) took place on Sunday the 18th, Pentecost, that is May 18, 655. The whole process therefore took place in May 655. Peter ascended the patriarchal throne in May-June 654²⁷.

It is interesting to note that the Roman apocrisarii did not have an encyclical letter from the Pope to the Patriarch. Maximus himself says so in response to the information that they are going to come in contact with the Patriarch²⁸. On the other hand we learn from a fragment of *Codex Vat. gr.* 511 (V), 453 (B), published by Devreesse²⁹ that it was in the ninth year of Constans' rule, 650 that is, that Maximus and his pupil Anastasius were ordered to be brought to Constantinople. Furthermore, according to §XVII of the *Vita*, Maximus and his pupil are arrested and lead to the imperial tribunal at the same time in which Martin and other western bishops are also arrested and presented to the same court, We must choose, therefore, one of the two views, that is to say, either the date given by the mentioned fragment is wrong or the one supported by the *Vita* as well as by the *Relatio* (654) is correct.

Concerning the legal procedure of Maximus' trial, the presence of the *sacellarius*, to whom the disciplinary jurisdiction of the Patriarch was committed, is noteworthy. In other words, the crime in question was merely political, the ecclesiastical tribunal being necessitated by the clerical character of the accused. The *sacellarius* was the

26. The *Hypomnesticon* dates the troubles of Maximus from September 652 to August 653 - *Anal. Boll.* 53 (1935) 75 n. 17.

27. So says Devreesse in *Anal. Boll.* 49 (1928) 48f against Brooks, May-June 655 in *Byz. Zeitschr.* 6 (1897) 53f.

28. *Relatio*, § VII.

29. *Anal. Boll.* 46 (1928) 18-23.

«steward of the Privy Purse». As this Privy Purse had again and again to cover the deficit of the *Comes Sacrarum Largitionum* inevitably it also became a State Treasury, and the *sacellarius* finally replaced the *comes*³⁰. The *sacellarius* as such, therefore, would not have been competent in a doctrinal case. For this reason in Maximus' trial, every effort was made to fix political crimes upon him: personal offense against the Emperor, high treason or *lèse-majesté*. Cases of high treason were to be referred to the Emperor personally, who for that purpose is treated as chief magistrate of the Empire³¹. We know that in the earlier Empire the Emperors frequently sat on the judicial bench. Justinian probably did so. But as a rule, the later Roman Emperors were professional soldiers, who were either not qualified or too busy, to sit as judges in person. But to prevent judges who had a grudge against anyone putting the accused to death, and then excusing themselves by alleging that the accused defamed the Sovereign, the Emperor demanded that the accused be brought into safe custody, and that the charge against him be brought before him to be tried, and that he himself (the Emperor) shall decide what is to be done with him³². The legal procedure, except where the *Akroatai* are directed to investigate, is hardly referred to in the Isaurian *Ecloga* — the earliest extant Byzantine law book on criminal law — except in the sections dealing with testimony (Cd. XIV). Five witnesses had to be brought in for criminal cases, one each day. In Maximus' trial, four witnesses (slanders) and charges are presented by the *sacellarius*, according to both versions of the *Relatio* and the *Vita*.

The *sacellarius*' attempts to fix political crimes upon Maximus failing, they had necessarily to come to the real crime in their eyes, that is his refusal to communicate with the see of Constantinople so long as she acknowledged the *Typos* of Constans. Two patricians, Troilus whom we have already met, and Sergius Eferatàs, are the prin-

30. W. Ensslin in *Byzantium*, Oxford 1953, p. 283.

31. *A Manual of Roman Law - The Ecloga...* rendered into English by E. H. Freshfield, Cambridge 1926, ch. XVII, 3, p. 104. Cp. E. H. Freshfield, *A Revised Manual of Roman Law founded upon the Ecloga of Leo III (726) and Constantine V of Isauria privata aucta*, rendered into English, (with Glossary), Cambridge 1927, p. 76, 85: on high treason (3,4).

32. E. H. Freshfield, *A Revised Manual of Roman Law...* Cambridge 1927, p. 76 - on high treason. 4.

cipal interlocutors of Maximus during this second session of his trial³³. They try now to entangle Maximus into ecclesiastical heresy and disobedience in order to make him a legitimate subject to the church tribunal. Their efforts also fail, though the conversation with them makes it clear enough that the one great obstacle is the Emperor's obstinacy. As a result both the Emperor and the Patriarch meet³⁴, and they decide to send Maximus and his disciples to the furthest exile (655), that is Maximus to Vizii in Thrace, Anastasius to Pérvin or Pérvera and Anastasius the apocrisiarius to Mesimvria. At this time (655) Maximus is seventy-five years old according to his own confession and answer to a relative question of Troilus in the §XIII of the *Relatio*. He had to go through much suffering and torture still until his second exile and death in Laziki, on the southeast shore of the Black Sea (662), August 13th)^{35a}.

It must be noted that Maximus is perhaps the most out-spoken and greatest Byzantine defender of the rights of the clergy and the Church and the most ardent fighter against the hierocracy of the Byzantine Emperor. There is a very important passage in the *Acta*^{35b}, yet totally neglected by the students of Byzantine history, which illustrates this. According to this passage, which is an heroic confession of Maximus, the Byzantine Emperor is not necessarily a priest also, since he does not stand by the Holy Table and does not sanctify the consecrated bread by saying, «the holy things belong to the holy»; nor does he have the right to baptize, nor to conduct the Sacraments of Confirmation, Ordination of bishops, priests and deacons; furthermore, the Emperor cannot consecrate churches; nor can he bear the symbols or the insignia of a priest, pallium and the Gospel, although he may wear the crown and the «alourghis» being Basileus. To the objection that according to the Scriptures Malchisedek was basileus as well as priest, Maximus answers that this unique quality and combination belongs exclusively to Jesus Christ Who, being by nature Basileus of the universe, also became by nature Archpriest (ἀρχιερεὺς) for our salvation. Maximus concludes his eloquent argumentation by pointing out that at the holy offering prayer on the holy Table, the deceased Emperors are commemorated by

33. *Relatio Motionis*, § VI-XI; cp. *Vita*, § XXIII-XXVI.

34. According to the second part of § XXVI of the *Vita*.

35a. The death of Maximus is related in Anastasius' letter to Theodosius - P.G. 90. 174A12ff; cp. *Anal. Boll.* 73 (1955) 5-16 — and in the *Hypomnesticon* 5, *Anal. Boll.* 53 (1935) 75.

35b. P.G. 90, 117B-Df.

the deacon among the laymen, after the mention of bishops and deacons and all monastic orders. Likewise the living Emperors are commemorated after all the clergymen.

Because of the exceptional significance of the passage under consideration I cite it wholly in the original:

«... Καὶ εἶπας· Τί οὖν; οὐκ ἔστι πᾶς βασιλεὺς χριστιανὸς καὶ ἱερεὺς; Καὶ εἶπον· Οὐκ ἔστιν· οὐδὲ γὰρ παρίσταται θυσιαστηρίῳ, καὶ μετὰ τὸν ἀγιασμὸν τοῦ ἄρτου ὑψοῖ αὐτόν, λέγων· Τὰ ἅγια τοῖς ἁγίοις. Οὔτε βαπτίζει, οὔτε μύρου τελετὴν ἐπιτελεῖ, οὔτε χειροθετεῖ, καὶ ποιεῖ ἐπισκόπους καὶ πρεσβυτέρους καὶ διακόνους· οὔτε χρίει ναοὺς, οὔτε τὰ σύμβολα τῆς ἱερωσύνης ἐπιφέρεται, ὠμοφόριον καὶ τὸ Εὐαγγέλιον, ὥσπερ τῆς βασιλείας, τὸν τε στέφανον καὶ τὴν ἀλουργίδα. Καὶ πῶς ἡ Γραφή βασιλέα καὶ ἱερέα λέγει εἶναι τὸν Μελχισεδέκ; ἔφη· Καὶ εἶπον· Ἐνὸς τοῦ φύσει βασιλέως Θεοῦ τῶν ὅλων γενομένου φύσει διὰ τὴν ἡμῶν σωτηρίαν ἀρχιερέως, εἷς ὑπῆρχε τύπος ὁ Μελχισεδέκ . . . Πλὴν, τί θέλομεν διὰ πολλῶν ἐλθεῖν; Εἰς τὴν ἁγίαν ἀναφορὰν ἐπὶ τῆς ἁγίας τραπέζης, μετὰ τοὺς ἀρχιερέας καὶ διακόνους, καὶ παντὸς ἱερατικοῦ τάγματος, μετὰ τῶν λαϊκῶν οἱ βασιλεῖς μνημονεύονται, λέγοντος τοῦ διακόνου· Καὶ τῶν ἐν πίστει κεκοιμημένων λαϊκῶν Κωνσταντίνου, Κώνσταντος, καὶ τοὺς λοιπούς. Οὕτω δὲ καὶ τῶν ζώντων μνημονεῖ βασιλέων, μετὰ τοὺς ἱερωμένους πάντας»^{35c}.

35c. Ibid.

PART II

CRITICAL STUDY

After the preceding general analysis of the content of the *Relatio Motionis*, I will now deal with a detailed comparative and critical treatment of Maximus' trial as it is reported in the *Relatio*.

In both the *Vita* and the *Relatio*, the trial process is initiated by the *sacellarius*³⁶, who in great wrath asks Maximus if he is a Christian. To the positive response of Maximus, the *sacellarius* objects that he cannot be a Christian and at the same time hate the Emperor. He then accuses Maximus as a national traitor and enemy to the Emperor, as a great friend and collaborator of the Turks, and as the cause of the estrangement of Egypt, Alexandria, Pentapolis, Tripolis and Africa from the rule of Constantinople. As proof, the *sacellarius* brings John in, who was the *sacellarius* of Peter, the general of Noumidia in Africa, and who, twenty-two years before, wrote to Maximus asking his advice whether Peter ordered by Heraclius could make a campaign against the Turks, and Maximus, according to the accuser, discouraged him and strongly disapproved of such a campaign as long as Heraclius and his generation ruled over Constantinople. When Maximus requests the letters, the *sacellarius* says that he does not have them, but that a widespread rumor made all these things known. Furthermore, Maximus overthrows this argument by stating that he would secure no profit from the submission of those cities to himself.

The *sacellarius* then brings in another slanderer by the name of Sergius Magoudàs³⁷, who accuses Maximus as a «dream-observer», *ὄνειροσκόπος* and «dream-interpreter and teller», *ἐπίστωρ ὄνειρων* in favor of the Western ruler Gregory the patrician and against the Eastern ruler (Constantine), that is to say, Gregory will overcome Constantine. Maximus argues, in this way: «Why do you bring forth now these witnesses who claim that they have heard such things about me from those who were my clients and by now are dead, and you neglected

36. *Vita*, § XIV; *Relatio*, § I.

37. *Relatio*, § II; *Vita*, § XX.

to try me while they were alive. At that time the trial would have been much easier for you and would have caused instant condemnation of me»³⁸.

Then they bring in a third slanderer, Theodore Hilàs, who charged Maximus that while in Rome he insulted and ridiculed the Emperor in front of him (Theodore), βυτία ποιῶν καὶ λαϊβία³⁹. This incident of the third slanderer is omitted in the *Vita*.

Finally a fourth slanderer is brought in, Gregory, the son of Fotinos⁴⁰, who charges Maximus' pupil as denying the priestly quality and function of the Emperor. Maximus calls him a liar because all that he had said at that time in Rome was that the task of defining and clarifying church dogmas belongs not to the Emperors but to priests. Especially in the *Relatio*'s paragraph Maximus becomes an earnest apologist and defender of the priesthood as a sacrament and divine grace granted only by ordination with the implication that an Emperor cannot automatically be a priest also.

It is apparent that in all this process, the *sacellarius*' aim is to provide satisfactory evidence for the crime of high treason or *lèse-majesté*.

All these attempts having failed, they take Maximus out of the court and bring in Anastasius, his disciple, who even though he is forced by words, threats and blows to renounce and blame his teacher in favor of Pyrrhus, refuses. As a result he is beaten and left half-dead. Thus both he and Maximus are kept in prison. Shortly after this, Maximus again is brought in. Now the tone as well as the aim of Maximus' judges is changed. They try to make him guilty of heresy and charge him as a follower of Origen. Maximus, however, anathematizes Origen's doctrine as well as his followers⁴¹. On the same day, around evening, Maximus is asked to relate his activities during his stay in Africa and Rome and about his meeting with Pyrrhus. He relates whatever his memory has preserved. When he finishes, he is asked if he keeps contact with the throne of Constantinople. Maximus answers negatively and the reason he gives is that the see of Constantinople rejected the four holy councils (note that the second council of Constantinople is not mentioned) by approving the nine chapters of the Synod of Alexandria, (con-

38. *Vita*; P.G. 90, 89D.

39. *Relatio Motionis*, § III; *Vita*, § XXI.

40. *Relatio Motionis*, § IV; *Vita*, § XXI- P.G. 90, 92ACf.

41. *Relatio*, § V; *Vita*, § XXII — P.G. 90, 93AC.

vened in 631 by Heraclius' will through Cyrus of Phasis, Patriarch of Alexandria for the reunion with the Copts and Melkites), the *Ecthesis* (634) and the *Typos* (646)⁴². Maximus then asserts that church dogma is not his own invention or innovation, νεωτερίζων but the pure and unchanged doctrine of church fathers and ecumenical councils. For this reason, when asked⁴³ what he would do if the Romans reconcile and unite with the Patriarch, Maximus answers that even if the Romans accept the heresy of the Patriarch and Emperor he will not give up since the Holy Spirit, he says, anathematizes by the Apostle⁴⁴ even the angel who preaches against the *kerygma* of the Church, παρά τὸ κήρυγμα⁴⁵, and Church without the holy dogmas cannot exist.⁴⁶ Maximus concludes his heroic confession by affirming that he prefers to die than to give up his faith.

In §VIII-XI of the *Relatio* they try to persuade Maximus that the *Typos* is not a document of dogma but an attempt to restore peace and reunion by an appeal to silence on the issues that divide. The interlocutors of Maximus argue that the Emperor approved the *Typos* in order to promote only peace and not to overthrow any Christological dogma. Therefore, they urge Maximus to accept the *Typos* and keep silence for the sake of peace alone. Maximus answers that he would rather obey his conscience, because real peace and union of the Church is impossible and inconceivable without peace of conscience.

It seems very plausible that between the §XI and §XII of the *Relatio* the episode related in Maximus' letter to Anastasius⁴⁷ took place. This letter is found and reproduced also in the *Vita* (§XXIV, XXV and the first part of XXVI), with few changes in the word-order.

In this letter, Maximus narrates that on the 18th of the month, «yesterday» as he writes, which was the holy Pentecost (May 18, 655), an embassy of the Patriarch⁴⁸ came to him and asked him to which church he belongs, that of Byzantium, Rome, Antioch, Alexandria, Jerusalem. All of them are united now! Maximus does not hesitate to declare that the true catholic Church is defined and expressed not by numbers but by the correct and salvatory confession of the faith of Peter the Apos-

42. *Relatio*, § VI; *Vita*, § XXIII.

43. *Relatio*, § VII.

44. Galat. 1,8.

45. *Relatio*, § VII — P.G. 90, 121BC.

46. *Relatio*, § VII — P.G. 90, 117Df.

47. P.G. 90, 132-134.

48. Peter according to Mosq. 380, fol. 240.

tle⁴⁹, and after his proclamation of truth he leaves the whole matter to his judges: τὸ δοκοῦν ὑμῖν... ποιήσατε. Then they make known to him that the Emperor as well as the Patriarch have decided διὰ πραικέπτου τοῦ Πάπα Ρώμης to anathematize him and put him to death if he does not obey them. Maximus submits to the will of God and accepts the verdict.

It is clear from the letter of Anastasius the pupil to the monks of Calarim that the Patriarch Peter meanwhile accepted the apocrisarii of Rome and sent a synodical letter to Pope Eugene by which both he and Peter finally agreed and united against Maximus: «adhuc et senioris Romae propriae consentire sectae coegerunt apocrisarios»⁵⁰.

Anastasius continues (136A5): «unde et talibus circumvenientes litteris, ei qui miserat, mittunt.» For the synodical letter a passage of *Liber Pontificalis*⁵¹ is a very eloquent confirmation: «Huius temporibus Petrus, patriarcha Constantinopolitanus, dixerit synodicum ad sedem apostolicam». As a result, Anastasius entreats the monks of Calarim to send at once to Rome representatives pious and very strong in faith in order to convince the Pope to reject the proposed union with the Patriarch, since such a union is catastrophic, as he says, both for the Pope himself and for the whole Church. For this reason, the Patriarch states through his embassy that Rome and Constantinople are united now, and, it is because of that letter of the Patriarch to the Pope that Anastasius writes to the monks of Calarim.

With the §XII of the *Relatio* we meet a new process of Maximus' trial. On the following Saturday, Maximus and Anastasius the pupil are led to the palace for the second time. First Anastasius is questioned in the presence of the two Patriarchs, who are Peter and Pyrrhus most probably⁵². After Anastasius confesses that he anathematized the *Typos* and also wrote a «λίβελλος», Maximus is introduced.

The main argument of Maximus' prosecutors is that by anathematizing the *Typos* he anathematized the Emperor himself. But Maximus also overthrows this dangerous and tricky argument by declaring that he only anathematized a doctrine strange and foreign to the orthodox and ecclesiastical faith, χάρτην ἀλλότριον τῆς ὀρθοδοξίας καὶ

49. Cp. *Vita* — P.G. 90, 93CDf.

50. P.G. 90, 135C3.

51. v. I, p. 341.

52. cp. E. W. Brooks, «On the List of the Patriarchs of Constantinople from 638 to 715» in *Byzantinische Zeitschrift* VI (1897) 40-47.

ἐκκλησιαστικῆς πίστεως⁵³. It is interesting to note that in answering the *sacellarius*' question, why does he love the Romans and hate the Greeks (Γραικοῦς), Maximus declares, in a diplomatic way, that he loves both, the Romans because they believe the same, ὡς ὁμοπίστους, the Greeks because they speak the same language, ὡς ὁμογλώσσους⁵⁴.

In the §XIII we meet Troilus again, one of the patricians who questioned Martin and who also played an active part in Maximus' trial. Troilus presses Maximus to speak the truth. Maximus does not hesitate to confess that he anathematized the *T y p o s* in the council of Lateran, at the Church of the Saviour and that of the Mother of God. It is interesting to note that Maximus himself, answering the question how old he is, replies seventy-five. Answering another question he says that Anastasius his student has been with him for thirty-seven years. Then a priest cries out: «The Lord gave you back what you have done to the blessed Pyrrhus.» Maximus did not answer him at all.

Both Patriarchs keep absolute silence during this whole process of Maximus' trial. When Maximus mentioned the council of Lateran, Demosthenes, another judge of Pope Martin, objects that such a council is not canonical and valid since the person who convened it (Martin) has been deposed. To this objection Maximus answers that Martin was not deposed, οὐ καθήρεθη, canonically by a synod, συνοδικῆ καὶ κανονικῆ πράξις, but was persecuted, ἀλλ' ἐδιώχθη, by the violence of the Emperor⁵⁵. Then Troilus said: «You do not know what you are talking about, abbot; what was done was done well — τὸ γενόμενον (καλῶς;) γέγονεν.

Not being able to convince Maximus, the jury adjourns the trial and sends Maximus back to prison. The following day, Sunday, or at once, according to the *V i t a* (§XXIII), they go to see the Emperor whom they persuade to condemn both Maximus and his pupil Anastasius to the furthest exile, the one separated from the other; Maximus to *Vizii* in Thrace; Anastasius the disciple to *Pérveris*, the very last frontier of the Roman empire far from the sea, abandoned, naked, without food, or anything else; and Anastasius the apocrisiarius to *Mesimvria*.

The narration of the *R e l a t i o* is concluded with a long prayer put in the mouths of Maximus and his pupil as a strong personal appeal to all Christians to ask from the Lord mercy, patience, strength and cou-

53. P.G. 90, 128BC — § XIII.

54. P.G. 90, 128CD — § XIII.

55. P.G. 90, 128CD — § XIV.

rage to overcome the vicissitudes, temptations, and all difficulties of this life.

The end of the *Relatio*⁵⁶ may be completed by a paragraph preserved in the *Vat. gr.* 453, fol. 148V: «Μαθὼν τοίνυν ὁ βασιλεὺς τὴν τε τοῦ σακελλαρίου πρὸς τὸν ἅγιον δυστροπωτάτην διάλεξιν καὶ τοῦ θαυμαστοῦ ἀνδρὸς τὴν πρὸς σακελλάριον ἀκαταγώνιστον ἐν λόγοις ἀντίθεσιν καὶ ὡς μετὰ τῆς ἤττης πλείστην ἔσσην τῷ σακελλαρίῳ καὶ τὴν αἰσχύνην εἰσήνεγκε, μετ' ὀργῆς αὐτοὺς εὐθύς παραπέμπει ἐν φρουρᾷ κατὰ τὴν Θράκην, τὸν μὲν ἅγιον ἐν πόλει Βιζύῃ, τοὺς δὲ τούτου μαθητάς, τὸν μὲν εἰς Πέρβην, τὸν δὲ εἰς Μεσέμβρειαν»⁵⁷.

The end of the *Relatio* should originally have been the above passage, which was somewhat modified in the second part of §XXVI of the *Vita* where the final decision on Maximus' exile is made by the Emperor and the Patriarch together in a meeting.

The *Relatio* does not include Maximus' and his followers' final banishment — the mutilation of their members. On the contrary the *Vita* provides us with a lively description of the scene of its execution in the §XXXIV-XXXVII⁵⁸. In 662 Maximus and the two Anastasii were summoned to Constantinople before a Monothelitic council, where, together with Martin and Sophronius already dead, they were cursed and anathematized and then turned over to the *Eparchos*, the Prefect of the city, who executes their condemnation, to be flogged and their tongues and right hands to be cut off, those members, that is, by which they had supported the dyothelitic doctrine. Then they were toured through the market, exposed to the scorn of the people, showing their cut members to them, before being shipped off to their fatal exile in Alania, by the Caspian sea, where Maximus died in the fortress of Schimaris (662)⁵⁹.

A miracle is mentioned in §XXXVII of the *Vita*: that Maximus could speak even after his tongue was cut off. Because of this, his executors became more angry and cut his right hand and also that of the two Anastasii.

56. § XV, P.G. 90, 129A10.

57. Cp. Mosq. 391.

58. P.G. 90, 104D-105AC.

59. *Vita*, § XXXIX; P.G. 90, 105BCf. The documents for the above account are: 1. Deposition of Macarius of Antioch at the sixth council (691) concerning the Monothelitic council against Maximus, in *MANSI XI*, 357C. 2. Fragment of this council, *MANSI XI*, 73 and P.G. 90, 169Cff. 3. Letter of Anastasius the apocrisarius to Theodosius of Gangre, P.G. 90, 171ff and *Anat. Boll.* 73 (1955) 5-16. 4. *Hypomnesticon I*, *Anat. Boll.* 53 (1935) 67.

The §XXXVIII of the *Vita* is obviously an addition reporting the death of the persecutors and the triumph of the martyrs in the times of Pope Agathon. The §XXXIX and XL describe the place and conditions of the exile. These paragraphs are not but a resume of a primary document for the end of the story of Maximus and the two Anastasii: the letter of Anastasius the apocrisiarius to Theodosius of Gangre. The *Vita* ends with a beautiful and moving prayer of the biographer to Maximus whose spiritual encouragement and blessings he invokes for a successful fulfillment of this life's destiny and responsibilities⁶⁰.

It should be noted that the trial-process of the Monothelitic council and the pronouncement of its verdict is omitted in the §XXXIV of the *Vita*. Perhaps its report was included in a previous edition of Maximus' *Vita*. In any case the City Prefect, the *Eparchos*, was the highest official of the *Kritai* and the highest in rank among the civil officials. «No eunuch was allowed to hold this office. He was the head of the city after the Emperor, and was addressed as 'father of city'»⁶¹. «By the side of the Emperor as high judicial authorities stood the Prefect of the City and the Quaestor. In the course of the eleventh century the place of the City Prefect was taken by the *Great Drungarius*. In addition, Constantinople had a High Court with twelve judges for important cases»⁶².

What the legal and court situation was in the late sixth and early seventh centuries is more difficult to say, because no legal text of this early period comes down to us, except for a few novels, mostly unimportant. Among the emperors of this period, Heraclius deserves the greatest attention as a possible lawgiver, the author of important monetary reforms, suppressor of the doles of bread and possible reformer of the University of Constantinople. Unfortunately, it is highly improbable that we discover the original text of any novels of Heraclius other than those which we now have, and which had no durable importance. But in Barbarian lawbooks, (Visigoths and Lombards) or even in Arabic sources of the time of Heraclius we may find new enactments which have no precedents in Germanic or Arab customs, and appear in those later Byzantine law books (*Ecloga*, *Basilica*) which come down to us, that is to say, the cutting off of a hand, tongue, nose, etc. In the whole Visigothic code⁶³

60. P.G. 90, 108-109 — § XLI-XLII.

61. W. Ensslin, in *Byzantium*, pp. 287-88.

62. *Ibid*, p. 291.

63. *Lex Visig.*, VII, 5, 1; 6, 2; 5,9.

there are only three laws which enforce corporal mutilations, especially the cutting off of a hand as penalty for those who counterfeited or stole royal documents and their seals, or for a slave who forged money. The mutilation was to be preceded by flogging and shaving, a degrading punishment which is found very often in later Byzantine law. Of course the Visigothic rulers Chindaswinth (642-653) and Receswinth (653-672) reigned shortly after the death of Heraclius (641). With the Arabs, who were influenced by Byzantine law and tribunal customs, there had been at first no connection of sovereign power with coins, seals or public instruments. But, under Omar I (a contemporary of Heraclius), the great seal of the Caliphate was counterfeited. In doubt as to what kind of penalty should be inflicted, the Caliph asked the advice of the bystanders. One suggested the cutting off of a hand; but the opinion of other more traditionalist advisors prevailed, and the forger was only flogged and imprisoned⁶⁴. The *f u k a h a* of Mecca does not allow the cutting off of a hand.

We may conclude, therefore, that corporal mutilations as legal penalty were foreign to the national Germanic and Arabic customs and legal practical before the time of Heraclius as well as to classic Roman law also. However, in the tribunals of the later Roman Empire, mutilations were often inflicted instead of the capital penalty (death) and were apparently adopted through too literal rendering of such passages in the New Testament as St. Matthew 5, 29. Owing to the sacred character of the later Byzantine emperors, *lèse majesté* was regarded as an outright sacrilege, and cutting off a hand was regarded by popular feeling as the proper penalty for such a crime; it was inflicted on three usurpers in the late fourth century and in the early fifth (Rufinus, John, Attalus).

Mutilation as a legal penalty first appears in an enactment of Constantine ordaining that the tongue of an informer should be torn out by the root⁶⁵. It is not quite clear however, whether this was to be done before or after death (strangulation on the gallows). A later law reduced the penalty to death by the sword⁶⁶. Leo I condemned persons who were implicated in the murder of Proterius, Patriarch of Alexandria, to excision of the tongue and deportation⁶⁷.

64. *Al-Baladhuri*, transl. Hitti and Murgotten, New York 1916-24, II, 257ff.

65. *Codex Theod.* X.10.2.

66. *Ibid.* 10.

67. Theophanes, A. M. 5991

In the sixth century, mutilation became more common, and some of the later enactments of Justinian imply practical toleration of hand-cutting as a customary penalty, although no corporal mutilations find place in his own laws⁶⁸. Tax-collectors who falsify their accounts and persons who copy the writings of Monophysites are threatened with amputation of the hands⁶⁹. Moreover, we have records of the infliction of a like punishment on other criminals⁷⁰. Other frequent forms of punishment were amputation of the nose (Justinian II the rhenomitos, 685-711), of the tongue, blinding, flogging, confiscation of property, fines, and exile temporary or permanent. Imprisonment as a punishment was unknown in the old Byzantine law⁷¹. Only from the twelfth century onwards were many political offenders imprisoned and capital punishment was abandoned in practice. The right of asylum, although maintained by the Church for a certain mitigation of these punishments, was denied to those charged with high treason, to heretics, defaulting taxpayers, and fraudulent tax-collectors quite characteristically!

It is interesting enough, finally, that the Isaurian *Ecloğa*, the earliest extant Byzantine law book dealing with criminal law (736), enforces corporal mutilations for nearly all crimes which Leo III had formally sanctioned for the first time. Thus, cutting off a hand is the penalty for all crimes of *lèse majesté*, and, in particular, for the counterfeiting of coins⁷². And the fact that the cutting off of a hand was introduced in two Barbarian codes (of the Visigoths and Lombards-Rothari) and into Arab legal practice just after the accession of Heraclius would suggest that Heraclius was the first Emperor who transformed the unwritten custom of *χειροκοπήσιθω* into a law, and that such a law had almost immediate reception in the West as well as in the East.

68. *No.v. Just.*, CXXXIV, 13. See also *No.v. Maior.*, IV, although this novel was not included in Justinian's Code.

69. *No.v.* XVII, 8; XLII, 1. Cp. *No.v.* CXXXIV, 13, where it is forbidden to punish theft by cutting off *οὐρανὴν τε μέλος*.

70. *John Mal.* XVIII, pp. 451 [for gambling A. D. 429; but no physical penalty is enacted in the law of this year against gambling in C. J. iii, 43 2], 483, 488.

71. G. Buckler, *Anna Comnena*, Oxford University Press, London 1929, 95-6.

72. *Ecloğa*, XVII, 18; forgery of seals and public documents is not dealt with at all in the *Ecloğa*.