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*Just War in Byzantium: Natural Law Reasons for Waging War?**

Abstract

The article deals with the legal aspects of just war in the Byzantine tradition and defends the view that war and its just causes in Byzantium were never based on natural law but, on the contrary, primarily on Justinian's definition of the *ius gentium*. War could not be regarded as having a natural law character in Byzantium because, according to Byzantine sources, natural law applied to all living creatures and war was considered unnatural and sinful. The author argues that ideas of legitimate reasons for waging war (such as self-defense) were embedded in the *ius gentium*, which was linked to human rationality and social necessity, and the *ius civile*, which reflected specific norms of the Byzantine state, such as the position of the monarch. The author thus defends the view that the Byzantines developed, at least implicitly, a legally relevant theory of war.

Keywords: Byzantine Just War, Just War in Orthodoxy, *ius ad bellum*, trichotomy of law, *Taktika* of Emperor Leo VI, Byzantine Law, *ius gentium*

1. Introduction

Recently, Ioannis Stouraitis has most clearly and repeatedly articulated the idea that the reasons for waging war (*ius ad bellum*), especially self-defense, had a natural law character in Byzantine thought.¹ This view is primarily rooted in the connection between war

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¹ Stouraitis, “«Just War» and «Holy War» in the Middle Ages,” 231 and 239; Koder, Stouraitis. “Byzantine Approaches to Warfare,” 12: “the Byzantine conception of just war based on the natural law of defence allowed the reconciliation of the political image of warfare as an indispensable means with its religious image

and Byzantine state ideology, which attributed a unique role to the empire in world history. However, the excessive derivation of law from non-legal sources (such as speeches or chronicles) could easily lead to exaggerated legal conclusions.² It has been, for example, claimed that “All wars in Eastern Rome were legitimate because the army – representing the God-chosen people of the new Israel and the new Christian Rome – acted solely in the service of God’s will.”³ As will be shown, such conclusions do not appear convincing in light of the law and legal literature.

On the other hand, in the past, it was argued that the Byzantines did not create a general legal theory of war.⁴ Contrary to this opinion, I believe that legal patterns in Byzantine war thinking can be observed, and legitimate interpretive arguments can fill gaps.⁵ The paper thus aims to demonstrate that war and its just cause could not have been the subject of natural law, but its foundations should rather be sought in *ius gentium* and *ius civile* in the Justinianic sense of these terms.⁶

Even in the works of non-lawyers (philosophers or military theorists) one can repeatedly observe tendencies to distinguish among actions that are (1) common to all living creatures, (2) specific to humans alone because they are linked to free will and sinfulness, and (3) associated with the peculiarities of the Roman (Byzantine) state. I will attempt to prove that these tendencies fit very well into the tripartite division of law (*ius naturale* – *ius gentium* – *ius civile*) mentioned in the first pages of the Byzantine sources from the time of Justinian’s codification through the *Basilika* and Michael Psellos’ *Synopsis legum* to Constantine Harmenopoulos’ *Hexabiblos*.⁷

as an evil thing.”; Stouraitis, “Jihād and Crusade,” 21. Indirectly, for example, Strässle, “Krieg und Frieden in Byzanz,” 110, speaks of the legitimization of war by God.

² It was already generally criticized by Beck, *Res Publica Romana*, 11, who noted that Byzantine writers: “sich vom Schwung einer Metaphysik fortreißen lassen, die von einer illegitimen Analogie zwischen göttlicher Weltherrschaft und menschlicher Regierungsform lebt.” A similar opinion was expressed by Pitsakes, “Ο πόλεμος στη βυζαντινή νομική θεωρία,” 954, when discussing the holy war in Byzantium.

³ Strässle, “Krieg und Frieden in Byzanz,” 123: “Alle Kriege in Ostrom waren legitimiert, weil die Armee – die das von Gott auserwählte Volk des neuen Israel und des neuen christlichen Rom repräsentierte – ganz im Dienste des göttlichen Willens handelte.”

⁴ According to Pitsakes, “Ο πόλεμος στη βυζαντινή νομική θεωρία,” 933, war in Byzantium was perceived as a real fact (or rather a natural phenomenon). Therefore, as an institute, it had no place in Byzantine law and was not considered subject to legislation: the law of war as an expression of the *ius gentium* (Hermogenianus Dig. 1,1,5) no longer existed in Byzantium.

⁵ In particular, arguments *a fortiori* and *a simili*. For instance, the battles were perceived as “partial wars” (Leo VI, *Taktika*, 16,6), and killing was an inseparable part of the battle, so the Byzantine opinion on killing should certainly be relevant in considering the Byzantine opinion on war.

⁶ *Ius gentium* has already been related to the war in Byzantium, yet by Chrysos, “Νόμος Πολέμου,” 201–11, which discusses *ius in bello* and *ius post bellum* on the example of the capture of slaves, or more generally right to war booty. References to *ius gentium* are also offered in Laiou, “On Just War in Byzantium,” 153–77.

⁷ Psellos, *Synopsis legum*, 161, lines 70ff; Harmenopoulos, *Hexabiblos*, 1,1.

2. War and its reasons stem from the *ius gentium*

2.1. *Taktika* of Emperor Leo VI, just war and *ius gentium*

The most significant Byzantine work addressing the issue of (just) war was the *Taktika* attributed to Emperor Leo VI. *Taktika* was a military manual directed at generals, but it was also promulgated in the form of an imperial law.⁸ In addition to the issue of *ius ad bellum* discussed here, it provides valuable information on military strategy, the status of soldiers, and Byzantine *ius in bello* (law in war) and *ius post bellum* (law after war).⁹ Following the *Strategikos*¹⁰ of Greek philosopher Onasander, the *Taktika* identified self-defense against the enemy as the reason for a just war: “Above all, when mobilizing for war, make sure that the cause of this war is just and never take up arms against the enemy unjustly unless they, because of their accustomed impiety, have first initiated hostilities and are invading our land.”¹¹

A weaker motive for fighting in the *Taktika* – although still strongly related to defense – is the punishment of the attacker: “They [the defenders – TP] must then make provision for their security by military means, employing them to defend themselves against the onslaughts of the enemy, to take action against them, and to make them suffer what they may well deserve.”¹²

According to Byzantine legal sources, both elements are part of *ius gentium*. The punishment of murderers is considered part of *ius gentium* in Theophilos’ Greek *Paraphrase* of the *Institutes of Justinian*.¹³ The self-defense as part of *ius gentium* is found in the *Basilika*, the Greek adaptation of Justinianic law compiled in the 9th century.¹⁴ The clearest connection between war and *ius gentium* can, however, already be seen in *Digesta*

⁸ Leo VI, *Taktika*, Epilogue, 69: “Let these, then, be the laws and models for generals [...]” (transl. Dennis, *The Taktika*, 641). For Leo’s legislation of a non-legal character, see Magdalino, “The Non-Judicial Legislation of Leo VI,” 169–82.

⁹ For an overview of the issue, see Michailides-Nuaros, *Ο βυζαντινός δίκαιος πόλεμος κατά τα Τακτικά του Λέοντος του Σοφού*, 14ff. For discussions of Byzantine *ius in bello*, see also Chatzelis, “Stratagems and the Byzantine Culture of War,” 719ff.

¹⁰ Onasander, *Strategikos*, 4,1. For Onasander’s reflection on just war, see Chlup, “Just War in Onasander’s ΣΤΡΑΤΗΓΙΚΟΣ,” 37ff. For the reception of Onasander in Byzantium, see Rance, “The Ideal of the Roman General in Byzantium,” 242ff, or Chatzelis, “Reframing the Roman General in Byzantium,” 37ff.

¹¹ Leo VI, *Taktika*, 2,29 (transl. Dennis, *The Taktika*, 35). Similarly, Leo VI, *Taktika*, 2,31. Maurikios, *Strategikon*, 8,2,12 also demanded a just cause for war but did not specify the requirement: “The cause of the war must be just” (“δικαίαν δεῖ τὴν ἀρχὴν τοῦ πολέμου γίνεσθαι”).

¹² Leo VI, *Taktika*, Prologue, 4 (transl. Dennis, *The Taktika*, 5).

¹³ Theophilos, *Paraphrasis*, 1,2,1. See also *scholion* to it from Gr. Par. 1364 in *Scolii*, 157: “τούς ἡμαρτηκότας κολάζειν.”

¹⁴ Bas. 2,1,3 (= Florentinus Dig. 1,1,3), similarly Bas. 60,3,45 (= Paulus Dig. 9,2,45), where we read: “μόνον γὰρ τὸν βιαζόμενον ἔξεστι τύπτειν διὰ τὴν ἴδιαν ἀσφάλειαν, οὐ μὴν διὰ τὸ ἀμύνασθαι.” In one instance, the *Basilika* defines the rule *vim vi repellere licet* in the sense of the older Roman law as arising from nature (gr. φυσικός, in *Digesta* “*naturalis ratio*”). This contradiction was, however, noted by an anonymous scholiast BS 3/4–8 (scholion P 2 ad Bas. 2,1,3 = Florentinus Dig. 1,1,3) who pointed out that *ius gentium* was sometimes mistakenly (καταχρηστικῶς) confused with *ius naturale* (this is stated also in Theophilos, *Paraphrasis*, 1,2,1). Despite this “imprecision” of Justinianic harmonization, no contradiction was thought to exist between the mentioned provisions. In Florentinus Dig. 1,1,3, one can read: “as Nature has established

and comes from the post-classical Roman jurist Hermogenian, according to whom *ius gentium* was what brought about wars and separated nations.¹⁵

In his *Institutions*, the classical Roman jurist Gaius distinguished only between *ius civile* and *ius gentium*, which had a similar character to *ius naturale*.¹⁶ Because of that, the final distinction between *ius gentium* and *ius naturale* is considered to be Justinianic and thus early Byzantine.¹⁷ It seems that the Byzantine legal tradition had a particular reason to regard self-defense, not only in the context of war, as part of *ius gentium* rather than *ius naturale*. Justinianic and later Byzantine law were deeply influenced by Greek philosophy and Christian thought, which emphasized natural law as the state of being in harmony with God's will, establishing the natural world order for all creatures, not only humans. Thus, the Byzantine sources repeatedly linked natural law to the common nature of all living beings.¹⁸ For example, the *Paraphrase* states: "Nature did not limit her power to man alone, but also arranged what is in the heavens, ordered what is on the earth, and did not neglect what was born in the waters."¹⁹

War, on the other hand, was seen as a consequence of human corruption by the devil. It was perceived as unnatural and sinful, a point that was also emphasized in the introduction to Leo's *Taktika*:

since the devil, the killer of men from the beginning, the enemy of our race, has made use of sin to bring men to the point of waging war against their own kind, it becomes entirely necessary for men to wage war making use of contrivances of the devil, developed through men and, without flinching, to take their stand against those nations that want war.²⁰

For Leo, the natural state was peace, established by natural reason – by God. War was merely a tolerated, "necessary" situation for a man. Notably, according to the *Institutions of Justinian*, the *ius gentium* also arose "on the basis of certain needs and necessities of human life."²¹ Similar logic can be seen in the institution of slavery, which, as an institute

a certain relationship among us, it follows that it is abominable for one man to lie in ambush for another." Bas. 2,1,3 did not adopt this part of the text.

¹⁵ Hermogenianus Dig. 1,1,5: "By this *ius gentium* wars were introduced; races were distinguished; kingdoms founded [...]" The text in Bas. 2,1,5 is abbreviated and does not include any mention of war.

¹⁶ Gai. Inst. 1,1.

¹⁷ See Brtko, *Filozofickoprávne východiská prirodzeného práva*, 69ff and 114ff. The tripartite division is, however, pre-Justinianic. See, for example, Waldstein, "Ius naturale im nachklassischen römischen Recht," 1–65. The unification of dichotomy and trichotomy was not easy. See Ferrini, "Natura e diritto nella Parafrasi greca delle Istituzioni," 71–80. On trichotomy in *Paraphrasis* also: Molinari, *La parafrasi greca delle Istituzioni di Giustiniano*, 123–216.

¹⁸ Inst. Iust. 1,2pr; Theophilus, *Paraphrasis*, 1,2pr; Bas. 2,1,1 (= Ulpianus Dig. 1,1,1); *Eisagoge*, 1,4. Psellos even deals with *ius naturale* twice (Psellos, *Synopsis legum*, 161, line 70ff and 166, line 206).

¹⁹ Theophilus, *Paraphrasis*, 1,2. The application of law to animals may seem strange today, but it was not out of the scope of interest in Byzantine (and medieval) thought. The *scholion* to Theophilus, *Paraphrasis*, 1,2pr (*Scolii*, 157) even claims that there are certain animals (snakes) that do not respect natural law and do not rear their offspring.

²⁰ Leo VI, *Taktika*, Prologue, 4 (transl. Dennis, *The Taktika*, 5). See also, for instance, Nicholas Mystikos, *Epistola*, no. 9 (transl. Jenkins, Westerink, *Nicholas I*, 57): "Past and done is the pitiable and most grievous sin between Bulgarians and Romans, which God grant time may efface, so that it be not in all ages recorded for a common reproach and shame, the sin divided in a measure between us and you!" For the patristic perception of sin, see, for example, Ivanov, "TPEX," 330–45.

²¹ Inst. Iust. 1,2,2.

of *ius gentium*, was said to have emerged specifically in connection with wars and which contradicted the natural law of freedom.²² To some extent, the somewhat forced trichotomous division of law offered by classical Roman lawyer Ulpian takes on new meaning in the Christian context. Although the *ius gentium* was “dictated by natural reason” and applied to “all men, that is, to those who wish to live reasonably,” the Justinianic jurists were referring to human reason, not the reason based on divine nature.²³

The main reason why Byzantine wars should be just is God’s favor. The consequence of the unjust war, according to Leo, was the defeat of the unjust aggressor achieved with God’s help, or, maybe better said, permission.²⁴ A similar motive can already be seen in the Greek philosopher Onasander,²⁵ although Leo’s Christian God is not merely a helper in battle, as we see in the Greek philosopher, but also – and above all – a just judge²⁶:

Just as it is impossible for the unjust person not to suffer at some time the penalty for his injustice from God the judge, so it is impossible for one who has warded off and fought against injustice not to obtain victory from God. For God is a just judge and will bring everything about with justice.²⁷

God’s help is portrayed as an individual judgment of the military conflict by God as the judge. It is a pronouncement of judgment that the aggressor acts unjustly, while the defender – even though he commits murder and acts sinfully – acts closer to God’s favor. However, the judgment does not erase sin and does not establish law. Thus, it certainly does not bind God for the future, because peace was seen as a gift from God, not as a deserved reward or privilege. The Byzantines were aware that law applies more to recurring situations than to exceptional cases,²⁸ so they recognized that war is unpredictable, and God’s will could bring military defeat even in wars which they viewed as just.²⁹

²² Inst. Iust. 1,2,2: “wars arise and bring captivity and slavery, which are contrary to natural law.” Similarly, for example, Inst. Iust. 1,3,2; Theophilus, *Paraphrasis*, 1,3,2; Florentinus Dig. 1,5,4,1.

²³ For citations, cf. Inst. Iust. 1,2,1 and Theophilus, *Paraphrasis*, 1,2,1. In Theophilus, *Paraphrasis*, 1,2,1: “The one who establishes the state and desires to adorn it with laws performs legislative activity in two ways. Either he introduces *ius gentium*, which we sometimes incorrectly call natural law, or civil law, which can be written or unwritten.” (“ὁ γὰρ πολιτείαν συνιστῶν καὶ βουλόμενος ταύτην νόμοις κοσμήσαι ταῖς δύο ταύταις προέχων ὁδοῖς τὴν νομοθεσίαν ἐργάζεται. ἢ γὰρ ἐθνικούς τίθησιν, οὓς καὶ φυσικούς καταχρηστικῶς καλοῦμεν, ἢ πολιτικούς καὶ ἢ ἐγγράφους ἢ ἀγράφους”).

²⁴ The emperor repeats similar thoughts also later (Leo VI, *Taktika*, 20,58): “I feel strongly that the initiation of hostilities must be just. A person defending himself against others who are acting unjustly is truly just himself. He has divine justice for support and as an ally in campaigning against the unjust. The person who first begins injustice has his victory taken away by divine justice itself.” (transl. Dennis, *The Taktika*, 557).

²⁵ Onasander, *Strategikos*, 4,1.

²⁶ According to both sources, a partial consequence of waging a just war was also the preservation of the morale of the army: “The men will be more enthusiastic, holding the shield of justice before them, with the realization that they are not initiating injustice but are warding off those committing unjust acts.” (Leo VI, *Taktika*, 20,169; transl. Dennis, *The Taktika*, 595). Similarly: Leo VI, *Taktika*, Epilogue, 16: “and you will be compelled to believe that God has obligated himself to bring a just war to a good conclusion, and an unjust one to the contrary.” (transl. Dennis, *The Taktika*, 625) and Onasander, *Strategikos*, 4,1.

²⁷ Leo VI, *Taktika*, Epilogue, 17.

²⁸ Bas. 2,1,15–17,19 (= Dig. 1,3,4–6,8); *Eisagoge*, 1,2.

²⁹ Leo VI, *Taktika*, 16,15: “...It is not characteristic of a sincere mind to refer everything to the vengeance of God. The divine judgment is not brought into action immediately, but when the administrator of all things wishes. Who knows if at the same time as the enemy act irreliously they are destroyed, whereas you are saved?” (transl. Dennis, *The Taktika*, 389).

The goal of war, according to the *Taktika*, was the elimination of sin and the establishment of the peace required by God.³⁰ Waging war, therefore, represented more of an attempt to restore the natural state (peace) than the application of natural rights. However, as a means of removing an unnatural state, defense did not necessarily have a natural law character. Similarly, manumission, which restored the natural state of freedom, was an institution of *ius gentium* and not *ius naturale*.³¹

A frequent reason for the outbreak of war in Byzantium was the violation of a treaty. *Taktika* strongly emphasizes that the Byzantines should honor peace treaties, especially since religious persons do not act unjustly.³² Breaching the peace was considered gravely sinful, especially when the conclusion of treaties (or at least treaties between Christians) was associated with oaths to the Gods.³³ So Leo writes: “The crime of breaking an oath (*ἐπιρκίας ἐγκλημα*) is a great evil. Since God has been invoked, it is essential that what has been agreed on should remain firm.”³⁴

Although the obligation to God may indicate a reference to natural law, according to Pomponius’ fragment in *Basilika*, the religious reverence for God was also covered by the *ius gentium*.³⁵ This fact is again explained by the anonymous scholiast who claimed that natural law applies also to irrational animals, but *ius gentium* applies only to humans.³⁶ Religious respect for God is naturally widespread only among humans.

Interestingly, Leo does not directly connect the violation of a treaty with the justified conduct of war and the punishment of the attacker. On the contrary, he says that during peace, the Byzantines should be careful and prepare for possible hostility.³⁷ This view should be perceived by the provisions on self-defense as the only justifiable reason for war. Not every violation of the treaty could justify the necessary conduct of war, but only the enemy invasion of the Byzantine land. However, in praxis self-defense was probably interpreted more widely. As Angeliki E. Laiou has already pointed out in the *Alexias* of Anna Comnena, the violation of treaties is linked to the Greek word *ὕβρις* (insult, Lat. *iniuria*), which may be avenged by (self-defensive) war according to the *ius gentium* as stated in *Basilika*.³⁸ In Psellos, then, for instance, we read that Emperor Isaac I

³⁰ Leo VI, *Taktika*, 2,30: “We must always embrace peace for our own subjects, as well as for the barbarians, because of Christ, the emperor and God of all.” And Leo VI, *Taktika*, Prologue, 4: “In this way, the evil brought about by those wicked people will be excised. With everyone embracing his own safety, peace will be cherished by all and will become a way of life.” (transl. Dennis, *The Taktika*, 5).

³¹ Ulpianus Dig. 1,1,4 (= Bas. 2,1,4); Florentinus Dig. 1,5,4 (= Bas. 46,1,2). See also Ulpianus Dig. 50,17,32 (= Bas. 2,3,32), where freedom as a part of natural law is contrasted with *ius civile*.

³² Leo VI, *Taktika*, 16,15.

³³ *Ibid.* For some notes on oaths in later times, see Laiou, “The Emperor’s Word,” 347–62.

³⁴ Leo VI, *Taktika*, 20,39 (transl. Dennis, *The Taktika*, 551). In Leo VI, *Taktika*, 18,40, it is even written that the Bulgarians who broke the peace were punished by God’s judgment because they broke their oath to God. Also, according to Patriarch Nicholas Mystikos (*Epistola*, no. 5; transl. Jenkins, Westerink, *Nicholas I*, 32–33), the violation of the oath is a denial of faith, “turning away from religion” and “undermining of the very name Christian.”

³⁵ Bas. 2,1,2 (= Pomponius Dig. 1,1,2).

³⁶ BS 2/22–26 (scholion P 1 ad Bas. 2,1,2 = Pomponius Dig. 1,1,2).

³⁷ See also Leo VI, *Taktika*, 20,97.

³⁸ Laiou, “On Just War in Byzantium,” 159 and 163. See Bas. 2,1,3 = Florentinus Dig. 1,1,3.

“granted peace to all who asked for it, but threatened war immediately if they dared to violate the agreements anywhere.”³⁹

Partial conclusion: The just cause of war in *Taktika* does not erase the sinful character of war. There are similarities between the institutes of *ius gentium* and Byzantine just war thinking. Despite the religious aspects of war, such as relying on God’s will or oaths, war seems to be outside the scope of natural law, which was established by Nature at the beginning of the world for all creatures.

2.2. Sources of Canon Law

Since the war was perceived as ontologically evil, even a just cause according to *ius gentium* could not completely justify it in its essence. While *ius gentium* “prevailed” in secular law, where natural law did not yet have full precedence over other types of law, its influence was evident in the theory of canon law, according to which the sinful participation in war could be sanctioned with penances.

The condemnation of killing in war is most clearly seen in the 13th canon of the first letter of Saint Basil the Great to Amphilochios from 374, which was recognized as a binding canon of Orthodox canonical law by the 2nd canon of the Council of Trullo (692):

Our Fathers did not consider killings committed in the wars to be murders at all, so that, it seems to me, granting pardon to those who defend themselves for the sake of chastity and piety. Perhaps, however, it would be appropriate to counsel that those whose hands are not clean abstain from communion for three years.⁴⁰

However, the later Byzantine commentator John Zonaras († around 1166) doubts whether this canonical command was ever practically applied:

Because it can lead to a situation where soldiers will never partake of God’s gifts, especially the best of them who show courage in battle and achieve outstanding feats. They could never live in peace for three years [...]. But why should those who fight for the state and for their brothers, to prevent them from falling into the hands of the enemy or to free those who have been captured, be considered unclean?⁴¹

Zonaras seems to assume that killing in war is justified if it is a form of sacrifice for others. It is especially justifiable if it serves to avert a greater moral evil. If soldiers were

³⁹ Psellos, *Chronographia*, 7,50 (“καὶ τὴν μὲν εἰρήνην αἰτουμένοις ἐδίδου· τὸν δὲ πόλεμον ἡπεῖλει, εἴ τι πονηρὰ παρανομήσαι τολμήσαιεν”).

⁴⁰ “Τοὺς ἐν πολέμοις φόνους οἱ Πατέρες ἡμῶν ἐν τοῖς φόνοις οὐκ ἐλογίσαντο, ἐμοὶ δοκεῖ, συγγνώμην δίδόντες τοῖς ὑπὲρ σωφροσύνης καὶ εὐσεβείας ἀμυνομένοις. Τάχα δὲ καλῶς ἔχει συμβουλευεῖν, ὥς τὰς χεῖρας μὴ καθαροὺς, τριῶν ἐτῶν τῆς κοινωνίας μόνης ἀπέχεσθαι.” (RP 4, 131). St. Basil refers primarily to the letter of Athanasius of Alexandria to the monk Ammon (see below). However, in Basil’s opinion, another early Christian tradition is reflected, one that rejected war. For early Christian views on war, see: McGuckin, “A Conflicted Heritage: The Byzantine Religious Establishment of a War Ethic,” 35–36 and Stoyanov, “Norms of War in Eastern Orthodox Christianity,” 166–219. On justifiable war in Orthodoxy, see also St. Vladimir’s *Theological Quarterly* 47/1 (2003), with notes on war in Byzantium and patristic tradition, especially: Webster, “Justifiable War as a «Lesser Good,” 3–58.

⁴¹ Zonaras, scholion ad canon 13 of St. Basil (RP 4, 131–2).

afraid to kill barbarians because of the threat of punishment, “all would be lost, and the barbarians would take control of everything.” According to Zonaras, if barbarians were to rule the world, there would be no piety or purity left. The victorious barbarians would reject piety to strengthen their own religion, and no one would be able to strive for purity because everyone would be forced to live as they do.⁴²

War, according to Zonaras, is morally permissible when it leads to the preservation of faith and morality. Similarly, the canonist Alexios Aristenos, who lived around the same time as Zonaras, argued that soldiers are in the right only if they defend purity and piety.⁴³ These canonists also referred to the authority of Patriarch Athanasius the Great († 373), who, in his letter to Ammon, distinguished between cases when the killing of opponents is allowed (“killing enemies in battle is lawful and praiseworthy”) and cases when it is forbidden.⁴⁴

The canonists returned to the question of the legitimacy of killing in connection with the 55th canon of St. Basil, which states: “Those who resist robbers, being outside the Church, are to be excluded from Holy Communion; but if they are clerics, they are deposed from their rank. For it says, «Everyone who takes up the sword shall perish by the sword».”⁴⁵

Zonaras and Theodore Balsamon linked this canon to the previous canon and to killing in war. Zonaras began his interpretation by saying that this canon was as unjustly harsh as the previous one.⁴⁶ According to the canonist, laymen who risk their lives to rid territories of bandits and free travelers from danger are worthy of forgiveness. If they risk their lives for the sake of others, they are not only worthy of forgiveness but also reward, for they have sacrificed themselves for the salvation of others.

Balsamon takes a slightly different approach, reflecting an effort to defend an early church father.⁴⁷ He compares the biblical sword by which a “warrior may perish” to canonical punishment, which pious Christians should regard as mortal to the soul. Then, through the Canon on robbers, he defends the binding nature of the Canon on war.⁴⁸ He

⁴² *Ibid.*

⁴³ Aristenos, scholion ad canon 13 of St. Basil (RP 4, 133–4).

⁴⁴ Athanasius was referring to the casuistic evaluation of various events that occur in life and are considered sinful under certain circumstances: “ἐπεὶ καὶ τῶν ἄλλων, τῶν ἐν τῷ βίῳ γινομένων, εὐρήσομεν τὰς διαφορὰς κατὰ τι γινομένης οἷον φονεῦν οὐκ ἔξεστιν, ἀλλ’ ἐν πολέμοις ἀναιρεῖν τοὺς ἀντιπάλους καὶ εὐνομον καὶ ἐπαίνου ἄξιον. Οὕτω γοῦν καὶ τιμῶν μεγάλων οἱ κατὰ πόλεμον ἀριστεύσαντες ἀξιοῦνται, καὶ στήλαι τούτων ἐγείρονται κηρῶν τούτων τὰ κατορθώματα. ὥστε τὸ αὐτὸ κατὰ τι μὲν καὶ κατὰ καιρὸν οὐκ ἔξεστι, κατὰ τι δὲ καὶ εὐκαίρως ἀφίεται καὶ συγκεχώρηται.” (PG 26, 1173). By Stoyanov, “Norms of War in Eastern Orthodox Christianity,” 169: “When, however, the pronouncement is seen in the overall context of the rhetoric and imagery of the epistle, this can allow for different readings, which cast doubt on its interpretation as a rare and important Eastern Christian patristic endorsement of the lawfulness of killing in war.” According to Pitsakes, “Ο πόλεμος στη βυζαντινή νομική θεωρία,” 944, the text is not regulative but belongs to the narrative section of the canon on a completely different topic.

⁴⁵ “Οἱ τοῖς λησταῖς ἀντεπεζιόντες, ἔξω μὲν ὄντες τῆς ἐκκλησίας εἰργονται τῆς κοινωνίας τοῦ ἀγαθοῦ· κληρικοὶ δὲ ὄντες, τοῦ βαθμοῦ καθαροῦνται· Πᾶς γάρ, φησὶν, ὁ λαβὼν μάχαιραν, ἐν μαχαίρᾳ ἀποθανεῖται.” (RP 4, 212). The inner quotation is from Matt 26:52.

⁴⁶ Zonaras, scholion ad canon 55 of St. Basil (RP 4, 212–213).

⁴⁷ Balsamon, scholion ad canon 55 of St. Basil (RP 4, 213–4).

⁴⁸ This approach may be little surprising because in Balsamon, scholion ad canon 13 of St. Basil (RP 4, 132–3), the canonist stated that St. Basil was only giving advice (*συμβουλευτικῶς*) and that the canon was not applicable in practice.

points to the different approach of secular law, which allows the killing of an attacking robber and cites the case of a group of soldiers who killed robbers while passing through a pass. The synod decided that laymen who defended themselves against robbers should be treated in the same way as those who killed in battle, but if someone could have escaped a robbery and instead deliberately killed the robber, they should be punished even more severely.

Zonaras and Balsamon also mentioned the case when Emperor Nicephorus II Phokas (reigned 963–969) attempted to convince the Church to venerate soldiers who had fallen in battle as martyrs.⁴⁹ In this case, according to the canonists, the otherwise ineffective 13th canon found its historical justification. Contemporary church leaders, led by Patriarch Polyeuktos, persuaded the emperor to abandon his request, arguing: “How can we assign those who fell in battle to the martyrs, when Basil the Great excluded them from the sacraments for three years, considering them as those with unclean hands?”⁵⁰

The Byzantine reflection on the sinfulness of war reached its peak in Matthew Blastares’ work *Syntagma kata stoicheion*.⁵¹ Blastares († after 1346) rejected the mitigating arguments of his predecessors. The 13th canon of St. Basil was fully applicable to the late Byzantine commentator. Blastares contrasted participation in war with the original sin, which affects newborn babies: a child is born stained and thus cannot be part of the Church unless cleansed by baptism. Adam’s sin stems from human nature and inevitability and, therefore, is not the child’s fault. Participation in war, however, is always an expression of free will, according to Blastares, and therefore, repentance should follow. Until penance is performed, the soldier cannot be admitted to the gifts of the “New Adam” – Jesus Christ. Blastares drew the necessity of penance from various Old Testament provisions, according to which even Israelites carrying out vengeance ordered by God had to undergo purification.⁵² Passions (including wars) emerged “only after the fall of Adam when human nature was struck by sin.”⁵³ Returning to the *Taktika*, where war is a consequence of the devil’s intervention, a similar motif is found in the Blastares. War, as a consequence of original sin, is characteristic of human dual nature, but not of other living creatures.

Partial conclusion: Participation in war was considered unnatural and sinful in early, middle and late Byzantium. In the efforts of the 12th-century canonists, there is an attempt to justify the violence of war, although they did not argue against its sinful nature. The main argument was the need to defend the loved ones. All mentioned canonists still retained a negative view of war; its justification had more of a morally mitigating character and stemmed from the inevitability of human life.

⁴⁹ This is also mentioned in Skylitzes, *Synopsis historion*, 14,18. In the Byzantine Empire, military saints were held in high regard. However, they are not saints because they fought and killed bravely for Christianity but because they were martyred in the classical sense of the word. See Beck, *Nomos, Kanon und Staatsraison in Byzanz*, 24.

⁵⁰ Balsamon, scholion ad canon 13 of St. Basil (RP 4, 132–3).

⁵¹ Blastares, *Syntagma kata stoicheion*, 22,7 (RP 6, 488–93). On Blastares’ interpretation of Basil’s canon, see also: Viscuso, “Christian Participation in Warfare,” 33–40; Beck, *Nomos, Kanon und Staatsraison in Byzanz*, 30.

⁵² Num 31:19–24.

⁵³ Blastares, *Syntagma kata stoicheion*, 22,7 (RP 6, 488–493).

2.3. Synthesis in *Rhetorica Militaris*

The attempt to legitimize the fight for the homeland based on the Bible can be seen in a military text *Rhetorica Militaris* from the 9th century.⁵⁴

7. And indeed, many times when the holy Gospels were recited, we have heard Christ saying more or less the following: «Thus I confess that you are my disciples, when you love one another,»⁵⁵ and elsewhere: «there is no greater act of love, from giving one's life for someone close to him.»⁵⁶ 8. So if we too take part in the teachings of God with our faith, let us love our brothers and sisters, and let us give our lives for one another and our co-religionists, so that by our actions we may become true disciples of Christ. 9. But even for those who do not understand the divine law exactly like that, because Christ prevented Peter from using his knife,⁵⁷ we should resort to the use of weapons as a last recourse, for the common good and in exceptional circumstances. 10. The laws are good, and above all the laws that come from God himself, and we all strive to obey them. Indeed, what could be more useful to people than the law of God? A law gave value to the Maccabees [...].⁵⁸

Sacrifice for the brethren, which (in a later era) was mentioned also by Zonaras, is here described as an expression of love.⁵⁹ At first sight, it seems that the author of the text is trying to argue from the (natural) law revealed in the Bible. However, he ends up referring to the opinion of others (maybe St. Basil or some other theologians) who have a different view of God's law, since Christ prevented the apostle Peter from shedding blood. It is this view that the author seeks to accommodate by defining war as a last resort in exceptional circumstances (again with the reference to necessity). The divine law of Christ should therefore take precedence whenever possible. At first glance, the text seems to address a conflict between two natural (divine) commandments, or rather an internal contradiction within the commandment of love. However, a closer reading of the text reveals a conflict between *ius gentium* and *ius naturale*. Before the cited text, the author writes: "it is good to fight to protect your compatriots, [...] as all other foreign nations do."⁶⁰

Again, we see a reference to behavior common to all human beings, a feature of *ius gentium*. The author continues: "Likewise, we could make another argument that is derived from an action, «we should be vigilant», using a similar example: «since many other animals do», and add, «of course, they are irrational beings, while we participate having used our reason.»"⁶¹

⁵⁴ *Rhetorica Militaris*, 36,7–10 (transl. Theotokis, Sidiropoulos, *Byzantine Military Rhetoric*, 75).

⁵⁵ John 13:35.

⁵⁶ John 15:13.

⁵⁷ Matt 26:52.

⁵⁸ On the text, especially the reference to Maccabees, see Stouraitis, "Using the Bible to Justify Imperial Warfare," 96ff, who claims: "this synthesis demonstrates that the author and his milieu, contrary to the biblical Maccabees, did not regard or present God's word as a source of normative justification of war making. As he clearly states, the just cause to wage war was determined in secular terms by the necessity to defend the political interests (πολιτικὸν συμφέρον) of the Roman imperial city-state's realm."

⁵⁹ This is also the argument of St. Constantine (Cyril) in his *Vita* to Muslim theologians at the court of Caliph al-Mutawakkil. See *Vita Constantinii*, 6,33ff.

⁶⁰ *Rhetorica Militaris*, 35,1 (transl. Theotokis, Sidiropoulos, *Byzantine Military Rhetoric*, 74).

⁶¹ *Ibid.*, 35,2 (transl. Theotokis, Sidiropoulos, *Byzantine Military Rhetoric*, 74).

Participation in war, as in the later view of Blastares, is here thus presented also as a voluntary act and contrasted with the behavior of animals, creatures who, according to Byzantine sources, are subject only to the laws of nature.

2.4. Byzantine practice of epitimia in the context of the war

Both Balsamon and Zonaras claimed that the epitimias proposed by St. Basil were not applied. Blastares does not comment on the question of practical application. Nevertheless, it can be assumed that in the context of wars against external enemies – often perceived from an Orthodox perspective as heretics threatening Orthodoxy – the penalties were indeed not enforced in practice. There are two main reasons for this:

(1) Canonical penalties were perceived by canonists as the last resort, especially in the Eastern tradition, where they were seen as a means of “healing” moral faults, preceded by admonition and spiritual guidance. Balsamon highlights this aspect in his commentary on Basil’s 43rd canon.⁶² According to the canonist, ecclesiastical penalties are not punitive in the secular law sense but are remedial and sacred: “Therefore, the canon stipulates that anyone who has killed in any way – even those who kill in war – must be treated in accordance with their spiritual health: those who kill willingly require more treatment; those who kill unwillingly or in war require less.”⁶³

He confirms the principle of the strong individualization of sanctions typical of the Eastern canonical tradition, since the disease of sin was not perceived the same, but diverse and varied, causing many kinds of harm.⁶⁴ The cause of the war (and subsequently moral behavior within it) could thus, at least in theory, have had a significant impact on the application of canonical sanctions.

(2) Obligations of citizens towards the states, including participation in war, were considered part of the *ius gentium*.⁶⁵ The *ius gentium* and necessity of acts from the human reason thus provided an exculpatory ground that made such participation reasonable from a human point of view. This framework provided a wide scope for leniency in the Canonical Equity (*oikonomía*).⁶⁶

⁶² “A person who mortally wounds another person is a murderer, whether he struck first or in retaliation.” (Balsamon, scholion ad canon 43 of St. Basil; RP 4, 190–1).

⁶³ *Ibid.*

⁶⁴ See canon 102 of the Council of Trullo.

⁶⁵ Bas. 2,1,2 (= Pomponius Dig. 1,1,2); *Eisagoge*, 1,4.

⁶⁶ From a legal perspective, *oikonomia* represents a principle operating within the application of law in the governance of the Christian community as the House of God (*oikos*). Patriarch Nicholas Mystikos, in his letter to Pope Anastasius III (Nicholas Mystikos, *Epistola*, no. 32, lines: 212–3), understood *oikonomia* as an imitation of divine mercy. To a certain extent, *oikonomia* is inspired by *aequitas*, which seeks the spirit of the law beyond its letter to remedy the moral injustice that may arise from a mechanical application of strict law; nevertheless, *oikonomia* does not possess a purely legal character. Rather, it constitutes an attempt to preserve dogma for the sake of attaining spiritual good in a concrete situation in which strict observance of the canon would prove harmful. See also Theophylact of Ohrid, *Commentary on the Epistle to the Galatians* 5:11 (PG 124, 1013B): “He who does something according to economy does not do it because it is good in itself, but because it is necessary for this time.” I believe that *oikonomia* may be understood also as a hermeneutical instrument and as an argumentative *topos* – that is, an argumentative standpoint from which a departure from strict normativity can be legitimately justified without negating the norm itself – in contrast to the principle of strictness (*ἀκρίβεια*). Owing to its dialectical character, *oikonomia*, unlike the Latin dispensation as a formal

There is, however, at least one example where excommunication was at least considered and where admonitions took place according to the sources. In a letter to the Bulgarian Tsar Simeon in late August or early September 917, Patriarch Nicholas Mystikos asked for leniency and forgiveness for Byzantine aggression.⁶⁷ Although the letter seems rather naive (or a bit deceptive, as it was written after the battle of Achelous, one of the greatest Byzantine defeats at the hands of the Bulgarians), it contains certain motifs of the justice of war. The war is again attributed to the devil and described as evil. The patriarch describes the arguments of the government he was supposed to admonish. First, they tried to justify the mobilization and the subsequent conflict by saying that it was necessary to prepare for a Bulgarian attack, then by saying that it was necessary to scare the Bulgarians away without a fight, and finally by saying that they were acting in self-defense against a Bulgarian invasion. No argument could (at least seemingly) convince Patriarch Nicholas, who claimed to have “censured, rebuked, and reprobated” (*ἐπετίμων, ἐπέπληττον, ἐξωνείδιζον*) Byzantines for attacking Bulgarians, although probably not directly by refusal of communion. On the other hand, through reference to the power to bind and loose, the patriarch threatened Simeon with ecclesiastical punishment if he again crossed the borders agreed upon in the treaties.

The lack of unambiguous documented cases of canonical punishment for participation in (illegitimate) wars can be partially compensated for by examples of usurpers, who also waged armed conflict against the emperor and the state. Patriarch Nicholas Mystikos writes in a letter to Simeon: “For who does not know that God hates usurpation and that men in all ages execrate usurpers as general pests?”⁶⁸ A law from 1025, incorporated by Harmenopoulos into his *Epimetra Hexabibli*, threatens a threefold curse upon anyone who conspires against the emperor or instigates a rebellion against him, as well as anyone who participates in such a rebellion.⁶⁹ The later chronicler Anna Comnena mentions the penance imposed on her father, Emperor Alexius I, after he ascended the throne through rebellion, even though the Patriarch of Constantinople was reportedly on Alexius’ side.⁷⁰ Ecclesiastical penalties for rebellion against the emperor continued to be applied during the Palaiologan period.⁷¹

If the participation of laypeople in war was generally not punished in practice, the opposite was true for clerics involved in warfare. Canon 7 of the Council of Chalcedon (451) prohibited those who had entered the clergy or become monks from engaging in military service or acquiring secular offices. The fact that the participation might be in self-defense or defense of others usually played no role in mitigating this prohibition. As has been demonstrated by Sebastian Nazâru, although not all the time, this canon was enforced with relative strictness by ecclesiastical authorities in accordance with the principle of ecclesiastical rigor (*ἀκρίβεια*).⁷² One example: chronicler John Skylitzes

legal act, retains a certain degree of informality and lacks official enforceability. For examples of *oikonomia* see, for instance, Anapliotis, “Oikonomia and Its Limits in Orthodox Canon Law,” 74ff.

⁶⁷ Nicholas Mystikos, *Epistola*, no. 8.

⁶⁸ Nicholas Mystikos, *Epistola*, no. 5 (Jenkins, Westerink, *Nicholas I*, 26–7).

⁶⁹ Harmenopoulos, *Epimetra Hexabibli*. See also Beck, *Nomos, Kanon und Staatsraison in Byzanz*, 51.

⁷⁰ See Comnena, *Alexias*, 3,5,1–6 and Comnena, *Alexias*, 2,12,5.

⁷¹ Beck, *Nomos, Kanon und Staatsraison in Byzanz*, 55.

⁷² Nazâru, “Război drept și pace în tradiția bizantină,” 354. Beck, *Nomos, Kanon und Staatsraison in Byzanz*, 37.

records the case of a Cappadocian priest who, in the 10th century, defended his city against an Arab raid. The priest interrupted the liturgy and attacked the invaders, injuring or killing many and forcing the rest to flee. Despite his actions to defend the city, the bishop deposed and excommunicated him. When the priest failed to achieve reconciliation, he abandoned the Christian faith and joined the Arabs.⁷³ Similarly, Balsamon, in his commentary on the canon concerning brigands, showed no leniency toward priests who fought: “Clerics who kill in any way are deposed without distinction, whether they kill enemies, robbers, or anyone else.”⁷⁴

Partial conclusion: Once again, it seems that Byzantine law did not regard self-defense (and thus defensive warfare) as a principle rooted in natural law. In canon law, any participation in the war was considered unnatural and therefore morally forbidden, at least for clerics. If fighting was not natural to all human beings, it would not be natural to all living creatures, and so would not be part of the *ius naturale*.

3. *Ius civile*, just war and Byzantine state ideology

3.1. The foundations of the state do not stem from natural law

In the beginning, we were briefly confronted with the idea that the Byzantine *ius ad bellum* “was entirely subordinated to the rational criteria of natural law associated with the overarching idea of Roman imperial statesmanship.”⁷⁵ In the first part, therefore, I have attempted to show that neither war nor the reasons for it could have originated in natural law as the Byzantines understood it, but that the necessity of the *ius gentium* was constantly emerging in them. I will now focus on the relationship between natural law and the state. The aim of the second part should thus be to show that those aspects of state in war, which are usually ascribed a natural law character, can be explained also by using another Byzantine (and Roman) legal category – *ius civile*.

The Byzantine imperial ideology has been widely discussed.⁷⁶ It has been repeatedly noted that the emperor occupied a central position in the plan of divine governance of the world. He was meant to ensure the prosperity and welfare of the Christian empire, to lead other Christian rulers as the father, and, in some sense, to rule the world as Christ’s representative on earth.⁷⁷ The Byzantines are then portrayed as orthodox Romans, the chosen people who, in their view, contributed through their actions to the preservation

⁷³ Skylitzes, *Synopsis historion*, 11,8. These situations were apparently viewed differently in the Armenian Christian tradition. See Takirtakoglou, Arlen, “Paterazmunk’ het’ anosats’,” 330.

⁷⁴ Balsamon, scholion ad canon 55 of St. Basil (RP 4, 213–4).

⁷⁵ Stouraitis, “«Just War» and «Holy War» in the Middle Ages,” 240.

⁷⁶ In connection with the war, see the latest Stouraitis, “Whose War Ethic?,” 81ff. For a general overview, see, in addition to other works cited here, for example Karagiannopoulos, *Η πολιτική θεωρία των Βυζαντινών*, or Angelov, *Imperial Ideology & Political Thought in Byzantium, 1204–1330*.

⁷⁷ As Ahrweiler, *L’idéologie politique de l’Empire byzantin*, 13, summarized: “The universal character of the Byzantine Empire, based on the Roman legacy, was consolidated by the Christian ecumenical idea.”

of the divinely established order.⁷⁸ The territories conquered (and repeatedly lost) by the Byzantines were then to be seen as their lost lands, their loss only a temporary obstacle to ultimate universal dominion. While this ideological perspective may indeed reflect the views of many Byzantine writers, it seems in several respects detached from the legal perspective – one that, in my view, ought to be given more weight than is typically the case when assessing perceptions of “just” war.

Despite the reservations expressed above, the approach related to the study of Byzantine statecraft is not inherently wrong. The question is whether we can still say that the main norms defining the Byzantine state and society (“Byzantine constitution in the material sense”) played a role in the concept of just war.⁷⁹ Given that most of these constitutionally relevant norms in Byzantium were unwritten, as Hans-Georg Beck rightly pointed out, it is not always easy to distinguish between what is still a political (ideological) idea and where the law begins.⁸⁰ However, it is easy to find the “cornerstone” Byzantine constitution, which must be enough for us for now: Byzantium was a Christian state, headed by an emperor.⁸¹

Although sources from the era of Christian Rome repeatedly state that the foundations of the entire world (including the legitimacy of imperial rule and law) stem from God, even for the Byzantines, it seems excessive to describe the nature of their country as natural, given that the country was established by humans – and specifically by pagans.⁸² The norms of the Byzantine constitution were certainly part of *ius civile* (in the broadest sense of the term) since these norms were what distinguished the Byzantine state from other states, and these norms were established by the people themselves.⁸³ This is also confirmed by Theophilos’ *Paraphrase*: “Civil law is that which is local and useful, that is, it is limited to a place and takes into account the needs of that place, removing what is harmful to it.”⁸⁴

However, in the sources, a certain shift can be observed, which deserves to be analyzed a bit:

(1) The Romans and Justinianic jurists acknowledged that history and law existed before their state, and this fact was reflected in legal texts: “Natural law, which nature established together with humankind, is evidently older. *Ius civile*, on the other hand,

⁷⁸ For the Byzantine perception of themselves as a chosen nation, see Eshel, *The Concept of the Elect Nation in Byzantium*.

⁷⁹ On the Byzantine constitution, see Medvedev, *Правовая культура Византии*, 33ff.

⁸⁰ Beck, *Res Publica Romana*, 381: “Constitutional norms are derived from a complex of ideas to somewhat support the weak constitutional foundation of the Byzantine monarchy, while failing to recognize the difference in level between *jus* and the imperial idea.” Partly the norms of *ius civile* were recorded in written form, and partly they were unwritten. See Inst. Iust. 1,2,3; Theophilos, *Paraphrasis*, 1,2,3; Ulpianus Dig. 1,1,6 (= Bas. 2,1,6).

⁸¹ See *πρῶσιμον*, but also Bas. 1,1,1 deals not with the state, but with who is the Christian.

⁸² See *principium* of constitution *Deo auctore*; Leo VI, *Taktika*, Epilogue, 2–7. Also, Patriarch Nicholas Mystikos accepts the legitimacy of non-Christians to rule from God, see letter to the Emir of Crete (*Epistola*, no. 1).

⁸³ Inst. Iust. 1,2,1–2; Ulpianus Dig. 1,1,6 (= Bas. 2,1,6); Gaius Dig. 1,1,9 (= Bas. 2,1,9).

⁸⁴ Theophilos, *Paraphrasis*, 1,2,2.

came into existence only with the formation of states, the establishment of offices, and the drafting of laws.”⁸⁵

Also, according to the philosopher John Philoponos († circa 575), human beings were granted dominion by nature only over animals. Power over other humans did not exist based on a natural order but rather on free choice, essentially on a social contract. Similar ideas can be seen in legal sources: the emperor could legislate because the power had been transferred to him by the people.⁸⁶

(2) Nonetheless, later sources (such as the *Ecloga* and *Eisagoge*) suggest a kind of subordination of all law to God, not only as the source of justice but also as the source of law, with the character of the empire itself being directly linked to God. For instance, in the introduction (*προοίμιον*) to the *Eisagoge*, we read:

Having been initiated into this secret by the monarchy which belongs to His nature and by His threefold rule in some divine and ineffable way, our majesty was roused and moved to pursue with great energy and diligence the restoration and proclamation of the good and world-saving law [...] Accept this law, therefore, in orthodox and God-befitting belief, as stemming from God, as dictated from above, and as written by God’s finger not on stone tablets, but inscribed in your souls by fiery tongues [...] we pray and believe that it is by means of the law that the giver of law and dispenser of justice, Christ, our true God, rules supremely and presides over all Christians and over us [...].⁸⁷

God is referred to not only as the author of justice but also as the lawgiver (*νομοθέτης*) who acted through the emperor.⁸⁸ On the other hand, it is still not natural law from the earlier definitions: the monarchy was “only” divinely and mysteriously initiated (analogically to the sacraments of initiation) into the mysteries (“θείως πως καὶ ἀπορρήτως μνηθεῖσα”) of Christian faith and ethics. Thus, it was the Orthodox Christian state. The purpose of *προοίμιον* should be remembered during exegesis. The Macedonian dynasty (867–1056) began the process of purifying the older law of the heretical emperors (*ανακάθαρσις*) and thus took every opportunity to strengthen the legitimacy of its power. By referring to God, the emperor and patriarch thus sought to convince the addressee that the new law took precedence over the old heretical one and was binding even on the emperors since it had been adopted by the orthodox emperor who ruled by the will of God and was created in accordance with Orthodoxy. Later emperors (if they wanted to call themselves Orthodox) were thus supposed to adhere to the laws. The need for such theological legitimation was also necessary because a precisely similar argument had already been used by the iconoclastic creators of the *Ecloga* against whom the law was objected. In the normative part of the *Eisagoge*, however, we then read the different (and old) idea that the law is a general agreement among the citizens of the state.⁸⁹ In the *Basilika*, to

⁸⁵ Inst. Iust. 2,1,11 and Theophilus, *Paraphrasis*, 2,1,11; Gaius Dig. 41,1,1: “And since the law of nations has sprung as an elder from the same human race, it is necessary that it should be spoken of first” (Bas. 50,1,1 omits this part).

⁸⁶ Inst. Iust. 1,2,6: “But also that which the emperor decrees have the force of law, because the people, through the royal law, which arises from the power of the emperor, have transferred all power to him and onto him.”

⁸⁷ Stolte [et al.], *Prooimion*, 101.

⁸⁸ See Lokin, “Law and Legislation in the Law,” 91ff.

⁸⁹ *Eisagoge*, 1,1: “πόλεως συνθήκη κοινή.”

which the *προοίμιον* and the *Eisagoge* as introductions were directed, we encounter the unchanged trichotomy of law discussed earlier, which was also taken up by later sources.

Partial conclusion: Although some laws were supposed to “come from God” or were claimed to be “inspired by God,” they were not part of natural law, but part of *ius civile* (in a broader sense) or *ius gentium*.⁹⁰ Legitimation of the law created by the emperor as God’s instrument should be distinguished. By Platonic tradition, the emperors should be philosophically and theologically skilled, so the laws should reflect Christian morality.⁹¹ The state, its law and its borders, however, were still not ascribed to natural law, and, therefore, the wars and the reasons for waging them could not be justified by natural law.

3.2. *Rebus repetitis*

Offensive wars are usually attributed to the Byzantines by the cause of the recovery of territories (in Cicero’s terminology: *rebus repetitis*). Justinian placed war and law side by side.⁹² And as he says, with God’s help, he succeeded in both: innumerable provinces were thus again, “by the will of heaven, incorporated into the Roman Empire.”⁹³ In Justinian’s view, God did indeed grant him the success of his “Reconquista,” but the *iusta causa* of the war cannot yet be spoken of on this basis. God only allowed the pious emperor to end his wars victoriously. As has been shown earlier, it was the Justinianic law that clearly linked the *ius gentium* to war.

On the other hand, the idea of bringing back lost things was, at least *prima facie*, introduced into the *Eisagoge* by the Patriarch Photios. According to the legislative work, which was to serve as an introduction to law in the *Basilika*, the emperor’s task was “to preserve and protect by his virtue the things that exist, to retrieve by vigilance the things that have been lost, and to recover by his wisdom and just victories the things that are lacking.”⁹⁴

The clause had been discussed in connection with the idea of just war in the past: Byzantium, experiencing a period of new prosperity under the Macedonian dynasty, was to abandon the defensive doctrine of the iconoclastic emperors and begin to reconquer territories.⁹⁵ It is known that Photios in the *Eisagoge* sought to divide power in the state between the emperor and the patriarch, thus strengthening the position of the supreme representative of the Church in Byzantium. In this and related provisions, Photios thus expressed the value set of a virtuous emperor whose task was to protect the interests of the state, the Church and his subjects, who should be devoted to Orthodoxy and uphold the laws (especially the ecclesiastical ones). One of his rights was to declare war and fight if needed. The context thus suggests that this was a statesmanlike duty of the em-

⁹⁰ Perhaps with the exception of the sources of Byzantine canon law, in which at least Afanasiev, “The Canons of the Church: Changeable or Unchangeable?,” 54–68 saw God-man (mixed) nature.

⁹¹ See Lauritzen, “Philosopher Emperors: Platonic Legislation in Constantinople,” 205–16.

⁹² *Constitutio Summa*, principium: “The supreme safeguard of the State, stemming from two sources, arms and laws, and through them reinforcing its vitality, has made the fortunate Roman race preeminent above all peoples in the past, and God willing, will do so forever.”

⁹³ *Constitutio Imperatoriam*, 1.

⁹⁴ *Eisagoge*, 2,2.

⁹⁵ Ahrweiler, *L'idéologie politique de l'Empire byzantin*, 42.

peror, binding inwardly rather than a legitimation of war outwardly. In other words, the patriarch did not need to justify the war at this point (and certainly not through natural law); instead, he was defining the position of the emperor, whose role as a (secular) ruler in the field of war was in Byzantium (unlike in the West) never questioned.

History knows numerous examples of Byzantine battles for lost territories. An application of the principle of *rebus repetitis* can be found in the *Alexias* of Anna Comnena. It “is the basis of Alexius’ insistence that the Crusaders swear to restore to him all the lands they took from the Turks that had previously been Byzantine.”⁹⁶ The *rebus repetitis* was also included in the treaty between Alexius I and Bohemond, concluded at Devole (1107), according to which Bohemond was to hand over to the Byzantine emperor any land that had been subject to the empire in the past. From the Seljuk Sultan Malik Shah, in turn, the emperor demanded that he withdraw to the lands where he had resided before Romanos IV. Diogenes became emperor; otherwise, he would be exterminated. The Sultan was to “content himself with his own territory and not violate the boundaries of the Roman Empire.”⁹⁷

However, the emperor does not seem to have relied directly on natural law or the metaphysical theories of the Byzantine state. In the case of the Crusaders, the emperor introduced *rebus repetitis* into treaties and oaths, giving the principle a strong legal title. The demands made on Malik Shah, on the other hand, seem to be different. Alexius may have believed that when referencing old borders, he was stabilizing the situation from previous chaotic battles for Anatolia that ended without stable treaties. Thus, he would still rely (although perhaps a bit arbitrarily) on *ius gentium* and self-defense. His daughter Anna Comnena elsewhere paraphrases a letter from Alexius I to the Sultan of Rum, Kilij Arslan, in which the emperor, if the content is to be believed, had no problem recognizing the legitimacy of a Muslim ruler ruling over a territory recently conquered from Byzantium.⁹⁸ In this view, Alexius’ demand appears to have been made more for the sake of power and to take advantage of the Seljuks’ weakness.

It seems that the perception of the principle of *rebus repetitis* as the cause of war in the juridical sense cannot be overestimated. The legal character of it was probably acquired only by (1) its inclusion in the treaty, or (2) as a recapture of land in the struggle for recently lost territory not yet transferred by the treaty.

An example of the first alternative can be seen, for example, in the case of the Armenian kingdom of Ani. After the defeat of the Georgians by Byzantium, Armenians, as the Georgians’ allies, had to accept Byzantine conditions. Emperor Basileios II concluded the treaty according to which the Armenian King Hovhannes-Smbat was granted imperial titles and rule over Ani until his death, and then the territory was to return to Byzantium. When he died, Byzantium “declared war on the ruler of Ani, who was living in peace and had done nothing untoward.”⁹⁹

The second alternative (recently lost territory) was probably used when dealing with rebels and enemies considered to be rebels as were for example Bulgarians.¹⁰⁰ Other

⁹⁶ Laiou, “On Just War in Byzantium,” 158.

⁹⁷ Comnena, *Alexias*, 15,6,5.

⁹⁸ *Ibid.*, 9,3,2.

⁹⁹ Skylitzes, *Synopsis historion*, 21,8 (transl. Wortley, *John Skylitzes*, 409).

¹⁰⁰ To this see Chrysos, “Νόμος Πολέμου,” 207.

claims based on old glory were rather ideological (or political) and arbitrarily depended on the power the Byzantines possessed at the time. In sources, we can see that the Byzantines accepted the legitimacy of rulers in lost territories. Michael Psellos even claims that Emperor Roman III had no reason to fight against the Syrians in Aleppo, whose lands nevertheless once belonged to Byzantium.¹⁰¹ Returning to Leo VI, the *Taktika* explicitly states that war is not to change borders: “If the nations [...] stay within their boundaries and promise that they will not take unjust action against us, then you too refrain from taking up arms against them.”¹⁰² Even in the letters of Patriarch Photios, after all, one can see rather the idea that the fulfilment of the Byzantine power’s aims is to be achieved through Divine Providence, diplomacy and missionary activity.¹⁰³

Finally, another aspect of the use of the *rebus repetitis* is the right of the victorious party to determine the terms of peace. Just as slaves were the spoils for the victor by the *ius gentium*, equally, the return of territories was also one of the considerations when the Byzantines formulated their demands in the sense of the *ius gentium*.¹⁰⁴

4. Conclusions

The reasons for waging war, according to Byzantine jurists, could not have the character of natural law. Since the time of Justinian, Byzantine law has made a distinction between natural law, *ius gentium* and civil law. Natural law was considered immutable, established by divine providence and relevant to all living beings. *Ius gentium* was regarded as a human phenomenon. Although according to Byzantine sources, God was on the side of the unjustly attacked party, the redress of injustice with divine assistance did not inherently have the character of natural law. Similarly to war, although manumission restored the natural state of freedom, it fell under *ius gentium*. Even Justinianic sources associated war in various contexts with the law of nations, which, like natural law, was based on reason, but on a form of reason peculiar to human beings. In Byzantium, self-defense was derived from *ius gentium*, which in the realm of secular law was not the subject of natural law. The situation was different in canon law. War was considered a consequence of original sin, and participation in it was considered sinful and required canonical penance. For this reason, it was not in harmony with natural law. The association of war with the *ius gentium*, which also gave rise to states, created space within the Church for the application of the principle of leniency (*oikovoúia*) in cases where the necessary spiritual welfare of the faithful and interests of the state required it.

In the end, the questions raised by the study of Byzantine reflections on war are, I believe, still relevant today. In the field of international law, the question arises whether the principle of self-defense should be derived from “inherent right” (and so natural law), as it is, for example, in the UN Charter, or whether it is sufficient to subordinate it

¹⁰¹ “διὰ ταῦτα, καὶ μὴ οὖσαν, πλασάμενος πολέμου πρόφασιν” (Psellos, *Chronographia*, 3,7–8).

¹⁰² Leo VI, *Taktika*, 2,30 (transl. Dennis, *The Taktika*, 35).

¹⁰³ Hurbanič, “Byzantská politická ideológia v misijnej praxi 9. storočia,” 125–38.

¹⁰⁴ Chrysos, “Νόμος Πολέμου,” 206, even claims that the law of war means more or less the outcome of the use of armed force.

to the modern *ius inter gentes*, i.e. human rationality as embodied in customary law.¹⁰⁵ The plurality of legal opinions on various phenomena is the challenge of today's world. The Byzantine example shows that even in medieval times, there have been different approaches to just war, not only the traditional Western (Augustinian) view. A kind of revival of Byzantine patterns can also be observed today in the field of Christian thought. For example, the stricter distinction between the concepts of "just war" and "legitimate self-defense," as emphasized by Pope Francis, seems to have some concord with the Byzantine idea: while recognizing the legitimacy of defense from the perspective of the law of nations, from the view of Christian morality, both Franciscus and Byzantine theologians emphasize war as a shared sin.¹⁰⁶

References

Primary printed/edited sources

- Aeneas Tacticus, Asclepiodotus, and Onasander*. Transl. Illinois Greek Club. Cambridge, MA: Harvard University Press, 1928.
- Daibert, Thomas, ed. *Vita des Konstantin-Kyrill*. Wiesbaden: Harrassowitz Verlag, 2023.
- Dennis, George T., ed. *Das Strategikon des Maurikios*. Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1981.
- Dennis, George T., ed. *The Taktika of Leo VI.: Text, Translation and Commentary*. Washington, D.C.: Dumbarton Oaks, 2010.
- Ferrini, Contardo, ed. "Scolii inediti allo Pseudo-Teofilo contenuti nel manoscritto Gr. Par. 1364." In: *Opere di Contardo Ferrini*. vol. 1, ed. Vincenzo Arangio-Ruiz, 139–224. Milano: Ulrico Hoepli, 1929.
- Ferrini, Contardo, ed. *Institutionum Graeca Paraphrasis Theophilo Antecessori*. Berolini: S. Calvary eiusque socios, 1889.
- Franciscus, *Fratelli tutti*. Vaticana: Dicastero per la Comunicazione, 2020.
- Gaius [Gai.]. *Institutiones* [Inst.]
- Heimbach, Gustav Ernst, ed. *Const. Harmenopuli Manuale legum sive Hexabiblos*. Leipzig: T. O. Weigel, 1851.
- Jenkins, Romilly; Heald, James; Westerink, Leendert Gerrit, eds. *Nicholas I Patriarch of Constantinople: Letters*. Washington, D.C.: Dumbarton Oaks, 1973.
- Krueger, Paulus; Mommsen, Theodorus, eds. *Corpus iuris civilis*. Vol. 1: *Iustiniani Institutiones, Digesta*. ed. stereotypica quinta. Berolini: Weidmannos, 1889.

¹⁰⁵ Article 51 of the Charter of the United Nations: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

¹⁰⁶ Franciscus, *Fratelli tutti*, art. 256ff, especially art. 258: "War can easily be chosen by invoking all sorts of allegedly humanitarian, defensive or precautionary excuses, and even resorting to the manipulation of information. In recent decades, every single war has been ostensibly «justified». The *Catechism of the Catholic Church* speaks of the possibility of legitimate *defense* by means of military force, which involves demonstrating that certain «rigorous conditions of moral legitimacy» have been met. Yet it is easy to fall into an overly broad interpretation of this potential right..."

- Migne, Jacques Paul, ed. *Patrologiae Cursus Completus, Series Graeca*. Vol. 26, 124. Paris: Imprimerie Catholique, 1857, 1864.
- Rallis, Georgios A.; Potlis, Michael, eds. *Σύνταγμα των θείων και ιερών κανόνων* [*Sýntagma ton theíon kai ierón kanónon*; *Collection of the Divine and Sacred Canons*]. T. 4–6. Athina: G. Chartofylakos, 1854–1859.
- Reinsch, Diether R.; Kambylis, Athanasios, eds. *Annae Comnenae: Alexias*. Berlin: De Gruyter, 2001. <https://doi.org/10.1515/9783110881172>.
- Reinsch, Diether R., ed. *Michaelis Pselli Chronographia*. Berlin–Boston: De Gruyter, 2014. <https://doi.org/10.1515/9783110347302>.
- Scheltema, Herman Jan [*et al.*], eds. *Basilicorum libri LX*. 17. Vols. Groningen: J. B. Wolters, 1953–1988.
- Stolte, Bernard H.; Meijering, Roos, eds; Aerts, Willem J. [*et al.*], transl. “The Prooimion of the Eisagoge: Translation and Commentary,” In: *Subseciva Groningana* 7 (2001): 93–155.
- Theotokis, Georgios; Sidiropoulos, Dimitrios, eds. *Byzantine Military Rhetoric in the Ninth Century*. Abington: Routledge, 2021. <https://doi.org/10.4324/9781003023111>.
- Weiß, Günter, ed. “Die Synopsis legum des Michael Psellos,” In: *Fontes Minores*. Vol. 2. ed. Dieter Simon, 147–214. Frankfurt am Main: Vittorio Klostermann, 1977.
- Wortley, John, ed. *John Skylitzes: A Synopsis of Byzantine History 811–1057*. Cambridge: Cambridge University Press, 2010. <https://doi.org/10.1017/CBO9780511779657>.
- Zepos, Ioannis; Zepos Panagiotis, eds. *Jus Graecoromanum*. Vol. 2: *Leges imperatorum Isaaurorum et Macedonum*. Aalen: Scientia, 1962.

Legal sources

Charter of the United Nations (June 26, 1945, entered into force October 24, 1945).

Secondary sources

- Afanasiev, Nicholas N. “The Canons of the Church: Changeable or Unchangeable?” *St. Vladimir’s Theological Quarterly* 11/2 (1967): 54–68.
- Ahrweiler, Hélène. *L’idéologie politique de l’Empire byzantin*. Paris: Presses Universitaires de France, 1975.
- Anapliotis, Anargyros. “Oikonomia and Its Limits in Orthodox Canon Law.” *Ancilla Iuris*, special issue: Flexibility in Religious Law (2019): 73–84. <https://doi.org/10.26031/2019.073>.
- Angelov, Dimiter. *Imperial Ideology & Political Thought in Byzantium, 1204–1330*. Cambridge: Cambridge University Press, 2007.
- Beck, Hans-Georg. *Nomos, Kanon und Staatsraison in Byzanz*. Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1981.
- Beck, Hans-Georg. *Res Publica Romana*. München: Verlag der Bayerischen Akademie der Wissenschaften, 1970.
- Brtko, Róbert. *Filozofickoprávne východiská prirodzeného práva v klasickom a justiniánskom období rímskeho práva* [*Philosophical and Legal Foundations of Natural Law in the Classical and Justinian Period of Roman Law*]. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2013.
- Chatzelis, Georgios. “Reframing the Roman General in Byzantium: Onasander’s Strategikos and the Shaping of the Ideal Byzantine Military Leader.” *Dumbarton Oaks Papers* 79 (2025): 37–79.

- Chatzelis, Georgios. "Stratagems and the Byzantine Culture of War: The Theory of Military Trickery and Ethics in Byzantium (c. 900–1204)." *Byzantinische Zeitschrift* 115/3 (2022): 719–68. <https://doi.org/10.1515/bz-2022-0041>.
- Chrysos, Evangelos. "Νόμος Πολέμου" ["Nómos Polémou"; "Law of War"]. In: *Το εμπόλεμο Βυζάντιο (9ος–12ος αι.)* [*To empólemo Vyzántio (9os–12os ai.)*; *Byzantium at War (9th–12th c.)*], ed. Kostas Tsiknakis, 201–11. Athens: The National Hellenic Research Foundation, 1997.
- Eshel, Shay. *The Concept of the Elect Nation in Byzantium*. Leiden: Koninklijke Brill, 2018. <https://doi.org/10.1163/9789004363830>.
- Ferrini, Contardo. "Natura e diritto nella Parafrasi greca delle Istituzioni". In: *Opere di Contardo Ferrini*, vol. 1, ed. Vincenzo Arangio-Ruiz, 71–80. Milano: Ulrico Hoepli, 1929.
- Hurbanič, Martin. "Byzantská politická ideológia v misijnej praxi 9. storočia" ["Byzantine Political Ideology in 9th Century Missionary Practice"]. In: *Pohanstvo a kresťanstvo: Zborník z konferencie usporiadanej 5.–6. II. 2003 v Banskej Bystrici* [*Paganism and Christianity: Proceedings of the Conference Held on 5.–6. II. 2003 in Banská Bystrica*], eds. Rastislav Kožiak, Jaroslav Nemeš, 125–38. Bratislava: Chronos, 2004.
- Ivanov, Mikhail Stepanovich. "ГРЕХ" ["GREKH"; "SIN"]. In: *Православная энциклопедия*. Т. 12: Гомельская и Жлобинская епархия – Григорий Пакуриан [*Pravoslavnaya entsiklopediya*. Т. 12: Gomel'skaya i Zhlobinskaya yeparkhiya – Grigoriy Pakurian; *Orthodox Encyclopaedia*. Vol. 12: Gomel and Zhlobin Diocese – Grigory Pakurian], 330–45. Moskva: Tserkovno-nauchnyy tsentr «Pravoslavnaya entsiklopediya», 2006.
- Karagiannopoulos, Ioannis E. *Η πολιτική θεωρία των Βυζαντινών* [*I politiki theoria ton Vyzanti-nón; The Political Theory of the Byzantines*]. Thessaloniki: Ekdoseis Vantias, 1992.
- Koder, Johannes; Stouraitis, Ioannis. "Byzantine Approaches to Warfare (6th–12th Centuries): An Introduction." In: *Byzantine War Ideology between Roman Imperial Concept and Christian Religion: Akten des Internationalen Symposium (Wien, 19.–21. Mai 2011)*, eds. Johannes Koder, Ioannis Stouraitis, 9–16. Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2012.
- Laiou, Angeliki E. "On Just War in Byzantium." In: *Τὸ Ἑλληνικόν: Studies in Honor of Speros Vryonis, Jr.* Vol. 1: *Hellenic Antiquity and Byzantium*, eds. John S. Langdon [et al.], 153–77. New Rochelle: Aristide D. Caratzas, 1993.
- Laiou, Angeliki E. "The Emperor's Word: Chrysobulls, Oaths and Synallagmatic Relations in Byzantium (11th–12th C.)." In: *Women, Family and Society in Byzantium*, eds. Rowan Dorin, Cécile Morrisson, 347–62. Farnham, Burlington: Ashgate Publishing Limited, Ashgate Publishing Company, 2011. <https://doi.org/10.4324/9781003554363-8>.
- Lauritzen, Frederick. "Philosopher Emperors: Platonic Legislation in Constantinople." In: *Byzantini-sche Rechtsgeschichte im internationalen Kontext*, eds. Peter Schreiner, Peter Jens Laut, Ivan Biliarsky, 205–16. Berlin–Boston: De Gruyter, 2024. <https://doi.org/10.1515/9783111331126-013>.
- Lokin, Johannes Henricus Antonius. "Law and Legislation in the Law Books." In: *Law and Society in Byzantium: Ninth–Twelfth Centuries*, eds. Angeliki E. Laiou, Dieter Simon, 71–92. Washington: Dumbarton Oaks Research Library and Collection, 1994.
- Magdalino, Paul. "The Non-Judicial Legislation of Leo VI." In: *Analekta Atheniensia ad ius Byzantinum spectantia*. Vol. 1, ed. Spyros N. Troianos, 169–82. Athens: Ant. N. Sakkoulas, 1997.
- McGuckin, John Anthony. "A Conflicted Heritage: The Byzantine Religious Establishment of a War Ethic." *Dumbarton Oaks Papers* 65/66 (2011): 29–44.
- Medvedev, Igor Pavlovich. *Правовая культура Византии* [*Pravovaya kul'tura Vizantii; Legal Culture of Byzantium*]. Sankt-Peterburg: Izdatel'stvo «Aletyya», 2001.
- Michailides-Nueros, G. *Ο βυζαντινός δίκαιος πόλεμος κατά τα Τακτικά του Λέοντος του Σοφοῦ* [*O vyzantinós dikaios pólemos katá ta Taktiká tou Léontos tou Sofoú; The Byzantine Just War According to the Taktika of Leo the Wise*]. Athens: Symmikta Seferiadou, 1961.

- Molinari, Marco. *La parafrasi greca delle Istituzioni di Giustiniano tra methodus docendi e mito*. Bologna: Bononia University Press, 2021. <https://doi.org/10.30682/sg311>.
- Nazâru, Sebastian. “Război drept și pace în tradiția bizantină” [“Just War and Peace in the Byzantine Tradition”]. In: *Bellum justum et pium*, eds. Radu Petre Muresan, Ilie Chiscari, 345–98. București: Universitatea din București, 2011.
- Pitsakes, Konstantinos G. “Ο πόλεμος στη βυζαντινή νομική θεωρία” [“Ο πόλεμος sti vyzantiní nomikí theoría”]; “War in Byzantine Legal Theory”]. In: *Τιμητικός τόμος Καθηγητή Ιωάννη Βούλγαρη* [Timitikós tómos Kathigiti Ioánni Voúlgari; *Honorary Volume for Professor Ioannis Voulgari*], 927–59. Athina: Komotini, 2010.
- Rance, Philip. “The Ideal of the Roman General in Byzantium: The Reception of Onasander’s Strategikos in Byzantine Military Literature.” In: *Generalship in Ancient Greece, Rome and Byzantium*, eds. Richard Evans; Shaun Tougher, 242–63. Edinburgh: Edinburgh University Press, 2022. <https://doi.org/10.3366/edinburgh/9781474459945.003.0015>.
- Stouraitis, Ioannis. “«Just War» and «Holy War» in the Middle Ages. Rethinking Theory through the Byzantine Case-Study.” *Jahrbuch der Österreichischen Byzantinistik* 62 (2012): 227–64. <https://doi.org/10.1553/joeb62s227>.
- Stouraitis, Ioannis. “Jihād and Crusade: Byzantine Positions towards the Notions of «Holy War».” *Byzantina Symmeikta* 21/1 (2011): 11–63. <https://doi.org/10.12681/byzsym.994>.
- Stouraitis, Ioannis. “Using the Bible to Justify Imperial Warfare.” In: *The Bible in Byzantium*, eds. Claudia Rapp, Andreas Külzer, 89–107. Berlin: Vandenhoeck & Ruprecht, 2019. <https://doi.org/10.13109/9783666570681.89>.
- Stouraitis, Ioannis. “Whose War Ethic?” *Dumbarton Oaks Papers* 78 (2024): 81–104.
- Stoyanov, Yuri. “Norms of War in Eastern Orthodox Christianity.” In: *World Religions and Norms of War*, eds. Vesselin Popovski, Gregory M. Reichberg, Nicholas Turner, 166–219. Tokyo: United Nations University, 2009.
- Strässle, Paul Meinrad. “Krieg und Frieden in Byzanz.” *Byzantion* 74/1 (2004): 110–29.
- Takirtakoglou, Konstantinos; Arlen, Jesse Siragan. “Paterazmunk’ het’anosats’: Byzantine Propaganda and Holy War, Recipients and Objectives.” In: *Nikephoros II Phokas and Warfare in the 10th-Century Byzantine World*, eds. Georgios Theotokis, Mamuka Tsurtsumia, 321–45. Leiden–Boston: Brill, 2025. https://doi.org/10.1163/9789004724716_015.
- Viscuso, Patrick. “Christian Participation in Warfare.” In: *Peace and War in Byzantium*, eds. Timothy S. Miller, John Nesbitt, 33–40. Washington, D.C.: The Catholic University of America Press, 1995.
- Waldstein, Wolfgang. “Ius naturale im nachklassischen römischen Recht und bei Justinian.” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 111 (2013): 1–65. <https://doi.org/10.7767/zrgra.1994.111.1.1>.
- Webster, Alexander F. C. “Justifiable War as a «Lesser Good» in Eastern Orthodox Moral Tradition.” *St. Vladimir’s Theological Quarterly* 47/1 (2003): 3–58.