

Novel 137.

Concerning the appointment of bishops
and clergymen.

(De creatione episcoporum et clericorum)

In the name of Jesus Christ, our God, the emperor Caesar, Flavius, Justinian, Alamannicus, Gothicus, Francicus, Germanicus, Anticus, Alanicus, Vandalicus, Africus, pious, fortunate, renowned victor and triumpher, ever Augustus to Peter, illustrious Master of the office.

Preface.

If we strive that civil laws, the power over which God, in his clemency, gave us, be in every respect maintained for the protection of our subjects, how much more zeal should we not devote to the observance of the sacred canons and divine laws, which have been made for the safety of our souls? For those who obey the sacred canons, are considered worthy of the help of God, and those who violate them, subject themselves to condemnation. To a greater condemnation are subject the holy bishops, who have been entrusted to examine the canons and to take care that no violation thereof is left unpunished. The holy canons, accordingly, not being obeyed, we have received different complaints against clergymen and monks and some bishops, as not living according to the sacred canons; and others have been found who do not even know the prayer in connection with the holy eucharist and the holy baptism.

c. 1. Bearing the judgment of God, in mind, accordingly, we directed that an ecclesiastical inquiry should be made and punishment inflicted in connection with each of the matters reported to us. For if the general laws do not permit that offenses committed

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by laymen should remain without inquiry and punishment, how can we permit those things to be disregarded which were in the ecclesiastical books, prescribed by the holy apostle and holy fathers for the safety of all men? We have learned that many have fallen into sin because the synods of the holy priests are not held according to the provisions made by the holy apostles and holy fathers. If that had been done, each, fearing censure before the synod, would have striven to learn the sacred liturgies and to live honorably, lest he might be subject to the condemnation of the sacred canons. And this, too, has been no less an occasion for sinning, that bishops, presbyters, deacons and other clergymen are appointed without examination and without testimonial as to the right faith and as to an honorable life. For if those who are entrusted to pray for the people, are found to be unworthy of the ministry of God, how will they be able to make God relent on account of sins of the people? Moreover, that appointments of priests ought to be made with the greatest care, is also shown by Gregory, the theologian, considered among the holy ones, following therein the holy apostles and the sacred canons. For he says this in his great Apologetics: "A person who turns to the canons and rules of Paul which he prescribed for bishops and presbyters to the effect that they should be temperate, chaste, not wine-bibbing, nor cut-throats, suited for teaching, upright in all things, removed from intercourse with the wicked, will he not find that they do not differ much from the rectitude prescribed by the canons?" Again the same person says: "He ought first to be pure in order to make others pure; wise, in order to make others wise; be a light, before illuminating others; approach God, and then lead others to God;

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be holy, before sanctifying others, lead the way by his hands and give counsel with prudence." Again the same Gregory, considered among the holy, writes concerning them in the same sermon: "Who is it who can form in one and the same day, like figures of clay, a leader of the true faith, who will stand with the angels, sing praises with the archangels and manage the office of priest with Christ?" And the theologian shows by these things what kind of persons those who are promoted to the priesthood should be. Concerning those who are unworthy to be appointed, the same person says in the same sermon: "Those who have brought nothing with them to the priesthood, who have not first suffered to acquire virtue, who are at the same time designated as disciples and as teachers of piety, and before they have been purified, purify others, who yesterday were robbers of churches and priests today, who yesterday were foreign to holy things and today priests of the holy mysteries, who are veterans in evil and beginners in piety, are the work of human favor, and not of the favor of the spirit." That the sacred canons, moreover, forbid persons to be clergymen who have married a second time, is shown by the holy Basilus, saying: "The canon excludes from the ministry those who marry a second time." This is said by the holy Basilus, The holy fathers applied so much care to the priesthood, that those gathered at Nicea issued a canon reading thus: "The great synod forbade generally that no bishop, presbyter, deacon nor any member of the clergy should have a woman with him, except, perchance, a mother or aunt or those who escape suspicion."

c. 2. Following therefore the provisions made by the sacred canons, we enact the present law, by which we ordain, that whenever

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it is necessary to appoint a bishop, the clergymen and the primates of the city for which a bishop is to be appointed, shall meet and, with the holy gospels before them, make nominating statements as to three persons, and they shall swear by the holy scriptures, and shall state in the nominating statements, that they have made the selection through no bribery, promise, friendship, favor or affection, but because they know the nominee to be of the true catholic faith, of an honorable life, more than thirty years old; and that they know them to have no wife or children by them, and they do not have and have not had a concubine or natural children; and if either of them formerly had a wife, that she was the only one, not a widow nor separated from her husband, nor one (with whom marriage was) forbidden by the sacred canons and laws; that they know each of the persons selected not to be a curial or subject to curial duties or a provincial apparitor, unless such curial or provincial apparitor has, without censure, lived a monastic life for not less than fifteen years. The rule heretofore laid down by us shall apply also in connection with these persons in the nominating statements made concerning them, so that out of the three so selected, the best one may be appointed by the choice and judgment of the person (bishop) who makes the appointment. The person who makes the appointment shall first demand of the person to be appointed a written statement signed by his own hand which contains a confession of the true faith; he shall also pronounce the sacred oblation in connection with the holy communion, the prayers in connection with the holy baptism and other prayers. The person appointed shall also take an oath by the holy scriptures, that he has not personally or through another person given or promised anything and will not give anything in

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the future either to the person who appointed him, or who made the nominating statements for him, or to any other person, for his appointment. If anyone is appointed bishop contrary to the rule just stated, we direct that he and the person who dared to appoint him contrary hereto, shall be expelled from the episcopacy.

Note.

See Novel 123 c. 1; and c. 1, 3, 31 and 47.

c. 3. But if anyone brings an accusation for any cause against the person who is to be appointed bishop, presbyter, deacon or other clergyman or abbot of a monastery, the appointment shall be delayed, and an investigation of the accusation shall first be made, the accuser also being present and pressing his accusation. If the accuser desists or delays to prosecute, even then the person who will make the appointment shall within three months institute a careful investigation. And if the person accused is found guilty either according to the sacred canons or according to the laws, the appointment is forbidden; but it shall be made if he appears to be innocent, whether the accuser is present or absent. The accuser, moreover, whether, being present, he fails to prove his accusation, or whether he desists therefrom, shall, if he is a clergyman, be expelled from his rank, if he is a layman, he shall be subject to a chastisement that is proper. If anyone shall ordain an accused person before instituting an investigation, both the person making the appointment and the person appointed shall be expelled from the priesthood.

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c. 4. Since, moreover, that which is said in the canons concerning the synods of the holy bishops to be held in the different provinces has not hitherto been observed, it is very necessary that this be corrected. The holy apostles and fathers decided that synods of the holy priests or bishops should be held in each province twice a year, and that matters arising should be examined and receive proper correction, that is to say, one in the fourth week (a) after the holy pentecost, the other in the month of October. As we have learned that on account of this neglect many have fallen into different sins, we direct that at all events a synod be held each year in the different provinces either in June or September; the bishops appointed by the blessed patriarch and who have no power to appoint other bishops shall meet with him; the bishops appointed by the holy metropolitan bishop of each province shall meet with him; so that the matters brought forward -- either those reported in regard to the faith, the canons, the administration of church property, the bishops, presbyters, deacons, other clergymen, abbots of monasteries, monks, or as to (their) manner of life, to be condemned, or any other matters which are in need of correction -- may be discussed, properly examined and properly corrected in harmony with the sacred canons and our laws.

(a) This is the first time we find time reckoned by the week (septimana) in Justinian legal literature. The custom to so reckon time arose out of the Sabbath of the Jews.

c. 5. And these matters shall not only be examined into in the synods to be held each year, but whenever any of the priests, clergymen, abbots or monasteries or monks are accused, whether

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concerning their faith, their disgraceful life or because they have done anything in violation of the canons. If it is the bishop who is accused, the metropolitan bishop shall examine what is brought forward; if it is the metropolitan bishop, the patriarch to whom he is subject; if it is a presbyter, deacon, other clergymen, abbot of a monastery or a monk, the bishop under whom they are shall examine the matter reported, and if it is proven, each shall be subjected to ecclesiastical punishment in proportion to his offense in the discretion of the examiner. These provisions shall apply not only to the bishops, clergymen and abbots of monasteries hereafter appointed, but also to those who are such now, and who are accused by some persons, as happens, on account of matters condemned by the sacred canons and our laws. When these things are thus observed, the laity also will receive much benefit and improvement therefrom in connection with the right faith and honorable ways of life.

c. 6. We further direct that all the bishops and presbyters shall pronounce the prayers in connection with the holy eucharist and holy baptism not silently but with a voice which may be heard by the faithful, so that the hearts of the hearers may be thereby aroused to a greater contrition and a greater praise of God. This is taught by the holy apostle, when, in the first epistle to the Corinthians he says (c. 14 v. 16 and 17): "Else if thou bless with the spirit, how shall he that filleth the place of the unlearned say the Amen at thy giving of thanks, seeing he knoweth not what thou sayest. For thou verily givest thanks well, but the other is not edified." And again in the epistle to the Romans (c. 10 v. 10) he says this: "For with the heart man believeth unto righteousness,

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and with the mouth confession is made unto salvation." On that account the prayers offered in connection with the holy eucharist and the others should be offered to our Lord Jesus Christ, our God, along with the father and the holy spirit, by the holy bishops and presbyters in a clear voice, and all holy priests must take notice, that if they neglect this, they must render an account before the terrible judgment seat of the great God and of our Saviour Jesus Christ, and we, too, when we find it out will not quietly suffer that to be done or will permit it to be left unpunished. And we direct the presidents of the provinces, that if they find any provisions made by us to be neglected, they shall first compel the metropolitan bishops and the other bishops to hold the aforesaid synods and to do wverything which we have, by the present law, directed to be done in connection with synods; if they (the presidents) find that they (the bisnops) hesitate, they shall report the matter to us, so that a proper punishment may be visited by us upon those who defer to hold the synods. And the presidents themselves, and the official staffs under them, must take notice, that if they do not comply with these provisions, they will be subjected to the penalty of death. We, moreover, confirm by the pr sent law all the provisions made by us in the different constitutions concerning bishops, presbyters, the other clergymen, and the heads of hospitals, poor houses, orphanages, and other holy houses.

Epilogue.

Your Glory, therefore, must bring these provisions, declared by this imperial law, to the notice of all by edicts

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posted up in the usual place in the imperial city, and make them known to the presidents of the provinces.

Given at Constantinople March 26, 565 A.D.