

THE GENUINENESS OF THE SARDICAN CANONS.

THE sudden appearance of the Sardican canons on the stage of events, at a not unimportant crisis of the relations between the Roman and the African churches, is one of the most familiar problems of ancient church history. Apiarius, an African presbyter deposed by his own bishop, Urbanus of Sicca, appeals in the year 418 to Rome; Pope Zosimus entertains the appeal, and orders his restoration. The Africans, who had some years earlier formally discouraged attempts on the part of African bishops to carry matters 'across the sea'¹, question the Pope's authority in the matter, and Apiarius is not reinstated: whereupon Zosimus produces authority to support his claim in the shape of a canon which he calls Nicene. The African bishops, assembled in council to meet the Papal legates, are unable to find either the canon in question, or a second which Zosimus had also quoted, in the text of the canons brought back from Nicaea by Caecilian of Carthage, one of the few Western prelates who had been present at the great Council. Of the two canons alleged by Zosimus, the one ordained that any priest or deacon condemned by his own bishop should have a right of appeal to the neighbouring bishops—a provision more or less identical in substance with the fifth canon of Nicaea. The other contained similarly a right of appeal for any bishop condemned by his comprovincials: but to this there was no parallel at all in the Nicene canons as known in Africa, for according to the document on which Zosimus relied it was the see of Rome which was charged with the duty of deciding whether the case should be reheard, and if so, who exactly were to rehear it. In face of this divergence of texts

¹ Council of Hippo, 393, can. xxix (xxviii) 'ut episcopi trans mare non proficiantur.' This was doubtless aimed primarily against bishops going off to push their interests at court.

the African synod decided to consult the principal churches of the East. The answer of one of them is preserved to us in the shape of a revision of the African (Caecilian's) version of the canons, carried out by order of Atticus of Constantinople: the covering letter of Cyril of Alexandria is also extant, but the documents which he sent with it are supposed to have perished¹. Anyhow there was no doubt of the main result: the canons quoted by Zosimus were not known as Nicene to the Eastern churches.

But if Zosimus' quotations were certainly not Nicene, what were they? They belonged to a group of canons which since the time of Zosimus or soon after have been generally ascribed—whether rightly or wrongly it is the purpose of this paper to inquire—to the Council, called as oecumenical but ultimately representing only the West, which met at Sardica in 343² under the presidency of Hosius of Cordova and decreed the restoration of Athanasius and other Eastern prelates who had been ejected from their sees for their adhesion to the Nicene confession. Of the historical character of the Council itself there is of course no question: but if the twenty canons which pass under its name really belong to it, it may well be asked why so little is heard of pronouncements so important during the eighty years which followed the Council—why when we do hear of them it is not as Sardican at all, but as Nicene—or why again the African bishops, instead of contenting themselves with saying that the canons were not Nicene, did not go on to point out that they were Sardican. And to these reasons for hesitation we have to add the reluctance which historians who range themselves on the negative side in the great debate upon the claims of the Roman see, which divides Western Christendom so much more effectively now than in the days of Zosimus, will naturally feel at admitting that a general right of appeal to Rome in causes ecclesiastical was decreed in full council, even if not acted on, before the middle of the fourth century. It is small wonder, then, if doubts as to the genuineness

¹ I have myself argued (in the *Guardian* newspaper for Dec. 11, 1895), that Cyril's answer really lies before us in the very numerous series of Nicene, Athanasian, and Sardican documents which form the nucleus of the collection known as that of the deacon Theodosius, cod. Veron. lx (58).

² It is unnecessary, I think, to enter into any disquisition on the exact date of the Sardican council. The year adopted in the text is at any rate the earliest possible, and so far the most favourable to the hypothesis I am hoping to disprove.

of these canons have occasionally been expressed, and have hovered in the background in the minds of many who have not expressed them¹: and so on all grounds it seems to me matter for congratulation that this indefinite opposition should be brought to a head by so incompetent a champion as Dr. Friedrich of Munich². Dr. Friedrich is a man deserving of the respect which is due to all who have made sacrifices for conscience' sake; he has a special claim to a hearing as the literary colleague and companion of the ever venerable Döllinger: and he is himself a scholar of very real and solid learning. We may rest convinced that the case as stated by him will be well and ably stated, and that, whether we agree with his results or no, we shall all benefit by the material which he has accumulated. If he marshals this material with (to say the least) no bias in favour of the claims and actions of the Roman see in the fifth century, I do not think that those who disagree with him need complain. It is an advantage to them to know exactly the full force of the case that has to be met. It is easier, as will appear in the sequel, to suggest the genuineness of the Sardican canons by showing the difficulties involved in the opposite view, than by positive arguments, which the nature of the case to some extent excludes.

Dr. Friedrich's main results can be stated in very few words. The canons now called Sardican are a forgery of the year 416-417, and the first instance of their use is in the letter of Pope Innocent to the African bishops on the Pelagian question just before his death in March of the latter year (p. 449). They

¹ An article in the *British Magazine* for 1846 (vol. xxix, pp. 241-68) is the only modern attack on their genuineness known to Dr. Friedrich. But the late Mr. E. S. Foulkes held the same view strongly: and if I may trust my recollection, Dr. Bright also once expressed himself to me in a sense which indicated that he would not be surprised to find that further research should prove unfavourable to their genuineness.

² *Die Unächtheit der Canones von Sardica* (Separat-Abdruck aus den Sitzungsberichten der philos.-philol. und der histor. Classe der kgl. bayer. Akademie der Wissenschaften, 1901, Heft iii). Von J. Friedrich, München, 1901.

Since this article was in type, a paper by the Bishop of Salisbury on the same subject has appeared in the *Guardian* for Feb. 26, 1902. Bp. Wordsworth is obviously inclined to accept the main conclusion of Prof. Friedrich: indeed the Bishop's statement of the case appears to me at more than one point the abler and more effective of the two. I am indebted to his paper for several references: but I cannot profess that my belief in the genuineness of the canons has been shaken.

were written in Rome, for they present unmistakable points of contact in matter with Roman documents—the rescript of the emperor Gratian to Aquilinus sent in answer to the Roman synod in 380, the canons addressed to the bishops of Gaul by another Roman synod under either Siricius (384–398) or Innocent (402–417), the decretal letter of Innocent to Victricius of Rouen in 404 (pp. 452–465). But they were written by an African, for they present hardly less unmistakable points of contact both in matter and form with various African synods (pp. 465–472)¹. They were propounded by their forger as canons of oecumenical validity, and the Nicene Council being the only one which down to that time could lay claim to oecumenicity, it follows that they were propounded from the first as Nicene (pp. 472 ff.). The name of Sardica, in fact, was not attached to them till the sixth century (p. 452).

It is unquestionably true that the forgery of a series of canons intended to support at a time of crisis the claims of some one church—whether Roman or other—to particular privileges, is in itself neither impossible nor even improbable: and the claims of the Roman church being the most considerable, the forgeries connected with it are no doubt likely to be the most considerable also. Yet I think one begins to feel uneasy at the proportions which the mass of invention and interpolation assumes in Dr. Friedrich's pages. To accept the hypothesis of a single forgery and a single forger would have been one thing: to follow Dr. Friedrich in the tale of consequential forgeries which he unfolds is surely another—and yet some of these consequential forgeries will turn out, I suspect, to be an integral feature of his case. Does Bishop Gratus of Carthage, presiding at a council reckoned as the first of the series of Carthaginian councils (A. D. 348), make mention of 'sanctissimi concilii Sardicensis statutum': the particular canon which contains the reference is spurious (p. 419). Are there words in Innocent's letter to Victricius which assert that the limitation of the hearing of cases to the province where they arose was to be understood

¹ I see that Bp. Wordsworth too considers the 'Sardican' formula '*Osius episcopus dixit*' a 'very strong argument for the African origin' of these canons, since only the African councils used this form. But it was the proper form of all official acts; cf. the Acts of the Martyrs. It was originally, no doubt, a mere matter of accident in what councils it was adopted.

'without prejudice to the Roman Church, to which reverence must be paid in all causes'—words which might be understood to allude to the system of appeals sketched out in the 'Sardican' canons: this particular passage is an interpolation (p. 443). Is the presence of the name Gratus in canon viii¹ of 'Sardica' an objection against an original attribution of these canons to Nicaea, where not Gratus but Caecilian was present as bishop of Carthage: the name is a later interpolation in the forgery (p. 474).

This last point brings us face to face with what seems to me to create, even before we approach the examination of the problem in detail, a presumption of considerable force against Dr. Friedrich's position. Grant that an enthusiastic supporter of Papal claims produced, at the right moment and out of a fertile brain, Nicene authority in favour of appeals to Rome: yet it remains true that this forgery—the forgery, that is, of canons *purporting to be Nicene*—deceived neither the African nor the Eastern churches, fell into discredit even at Rome, and after the lapse of a generation is not heard of again. At this point it is that, on Dr. Friedrich's theory, a phenomenon meets us which would surely be unique in the annals of literature. The 'Nicene' forgery of 416 is dragged out of the discredit and oblivion into which it had deservedly fallen, is revised and indeed almost rewritten² from the standpoint no longer of 325 but of 343, is labelled with the name 'Sardican,' and is thus equipped for the successful deception of posterity. Small wonder indeed

¹ The numbering of the canons of Sardica is a matter of much difficulty, since no two MSS seem to agree. It is certain, I think, that the canons as originally drawn must have been without numbers at all: probably the system which would best carry out the intention of the framers would be to arrange just so many canons as there are votes of the synod, 'synodus respondit [or 'universi dixerunt'] Placet.' But in this article I have thought it best to follow a printed text (*Die Kanones der wichtigsten altkirchlichen Concilien*, F. Lauchert; 1896).

² I do not think that any one who reads through the present text of the canons will think this too strong a term. The name Hosius is the only name known to be common to Nicaea and Sardica: the other names Januarius, Gaudentius, Alypius, Gratus, Aetius, are all presumably due to the 'Sardican' editor—certainly Caecilian not Gratus was bishop of Carthage, and Alexander not Aetius of Thessalonica, at the council of Nicaea (see my *Ecclesiae Occidentalis monumenta iuris antiquissima*, i 84-89). One whole canon at least Dr. Friedrich expressly declares to have been absent from the original forgery (p. 468): and I imagine he would have to say the same of other canons.

That posterity should have been so long deceived, when one considers the combination of gifts employed by the 'Sardican' redactor to this end. He knew the Greek authorities of the Sardican age: for he has constructed one canon out of a single expression in Athanasius' *Apologia contra Arianos*, οἱ ἐν τῇ κωνσταντινουπόλει τῆς Ἰταλίας (pp. 468-9). He knew the exact chronology of the Carthaginian episcopate: for he interpolates the name of Gratus of Carthage into another of his 'Sardican' canons (p. 474),—and, I suppose, it was he again who interpolated the name of Sardica into the Carthaginian canons of Gratus¹. He could throw himself into the circumstances of a generation removed *ex hypothesi* a century and a half from his own with enough thoroughness to invent one canon about the troubles of the Church of Thessalonica, and another about the reception of fugitives persecuted for their 'catholic' confession. And while he thus revised, retouched, and added all round, he has restrained himself from the least alteration on the occasions where we happen to have the actual means of checking him: for the quotations of Zosimus agree word for word with the best manuscripts of our complete 'Sardican' text.

It will be admitted, I think, that what has so far been said on *a priori* grounds suggests a real difficulty in the way of accepting Dr. Friedrich's theory. I go on to apply one or two criticisms of his work and method—especially from the point of view of an investigation of the text of the canons: and I shall then pass to historical considerations of a wider and more general character.

The textual question is indeed the one on which I can offer most that is new to this debate: for while the various printed texts of the 'Sardican' canons are at once widely divergent from one another and also all of them pretty obviously imperfect, my own collations, now nearly complete, enable me to feel my way with confidence to a form of text which is more original than those hitherto known, and from which in different directions they diverge. That form of text, for the canons which chiefly come in

¹ This highly ingenious expedient of guarding one interpolation by another all but missed its aim, since the council of Gratus has been preserved in not more than one of the great collections of African councils.

question in this paper, I have printed below, pp. 396-7 : reserving the full *apparatus criticus* for its appropriate place in my edition of the canons¹. On one preliminary point of great importance I am happy to find myself in agreement with Dr. Friedrich, and am therefore excused from labouring it here at length—I mean the secondary character of the Greek version of the canons (p. 476)². But with regard to the Latin original, seeing that a correct form of text is an essential preliminary for such delicate investigations as Dr. Friedrich's—and seeing further that Dr. Friedrich has himself abstained from consulting MSS³—I shall make no apology for using my own material as a standard for verifying his results.

1. In the first case, the absence of the personal name 'Iulio' in canon iii, Dr. Friedrich is right (pp. 473, 474). All manuscripts representing collections other than that (or those) of Dionysius Exiguus agree in omitting it: the right of appeal is given by the canon of Sardica 'Romano episcopo'—to the Roman bishop as

¹ It is my hope, after the second *fasciculus* of my book, dealing with the Creed and Canons of Nicaea, is published, to proceed at once to a supplementary *fasciculus*, of which the 'Sardican' council will form the principal element.

² That the Greek text is not an independent authority, but a rendering—though no doubt a contemporary rendering—of the Latin, appears to me sufficiently clear from such readings as ἀπὸ τοῦ ἰδίου πλευροῦ πρεσβυτέρου ἀποστείλοι = 'c. latero suo presbyterum mittat' (can. vii), or τοῖς πένησι καὶ τοῖς λαϊκοῖς ἢ ταῖς χήραις = 'pauperibus ac uiduis aut pupillis' (can. viii), where λαϊκοῖς is from 'populis,' a corruption (actually read in one of our best Latin MSS) of 'pupillis.'

³ I am afraid we must say happily abstained, if we are to judge from his solitary incursion into this field. In the library of Dr. Friedrich's own city of Munich is preserved one of the most precious of all our MSS of Councils, Monac. lat. 6243, known (from its earlier home) as the Freising MS. Dr. Maassen, who was the first to call real attention to its importance, showed that it contained the so-called Isidorian version in its most original form (*Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande* [Gratz 1870] pp. 13 ff. 476 ff.). Dr. Friedrich writes (p. 435), 'In der uralten Sammlung des cod. lat. Monac. 6244, welche die isidorische Version in ihrer ursprünglichsten Form bietet, ist schon der 35. apostolische Canon übersrieben "De primatu episcoporum," und die Ueberschrift des 6. nicänischen Canons (f. 10') heisst "De privilegiis quae quibusdam ciuitatibus competunt."' But Monac. lat. 6243 and 6244 are by no means the same thing: the latter is, in fact, only a MS of the latest and commonest of the collections of Councils, namely that form of the Dionysiana which Pope Hadrian sent to Charles the Great in 774. The 'uralte Sammlung' does not contain the apostolic canons at all, and has no titles to the Nicene canons.

The Freising MS (lent to the Bodleian for my use not long ago by the kindness of the authorities of Munich) is the same from which I printed in this JOURNAL a hitherto unknown catalogue of Biblical books (*J. T. S.* ii 236).

such, not to any particular occupant of the see. But when Dr. Friedrich goes on to say that probably Dionysius too originally omitted the name—a suggestion to which the MSS give no sort of support—I suspect his only reason to be that he cannot afford to allow that Dionysius, writing in the first quarter of the sixth century, had already a different reading from that of the ‘Sardican’ redactor, whom he places, as we have already seen, after the beginning of the same century.

2. The second case which I select for examination—the transmission to Gaul by Innocent of a copy of the Sardican canons under the name ‘Nicene’—is one where the conclusion is, I do not doubt, correct, but the textual arguments brought in support of it are for the most part baseless¹. If Dr. Friedrich had confined himself to citing the single MS, Brussels burgund. 8780–8793, he would have done enough to prove his case: for that MS gives (1) the Nicene canons (in an otherwise unknown version, called by Maassen the ‘Gallic-Spanish), (2) without break the Sardican canons, numbered continuously with the Nicene, (3) as colophon to the whole the words ‘expliciunt canones cccxviii episcoporum² Niceni transcripti in urbe Roma de exemplaribus sancti Innocenti episcopi.’ But he goes on to quote (p. 450) four more authorities for the connexion of ‘Sardican’ canons with Pope Innocent—the collections called by Maassen ‘the Cologne MS,’ ‘the Albi MS,’ ‘the Corbie MS,’ and the ‘Spanish epitome’: though in fact in every one of the four the name of Innocent has nothing to do with the Sardican canons at all, but belongs to the title of the Nicene canons as abbreviated by Rufinus for his Church History. I do not doubt myself that the data of the documents are correct in both cases, and that both the ‘Gallic-Spanish’ version (with the ‘Sardican’ canons incorporated as Nicene) and the abbreviation of Rufinus were sent to Gaul from Rome in the pontificate of Innocent—not necessarily by the pope’s initiative, but perhaps in answer to the request of some Gallic visitor who came to consult the canonical texts recognised in the papal chancery³.

¹ And baseless therefore also the inference drawn by Bp. Wordsworth that ‘when the canons were first circulated in Gaul and Spain . . . they were fortified with a name that gave them credit and protected them against criticism.’

² Maassen (p. 914) wrongly prints ‘patrum’: the MS has ep̄m̄.

³ It is true that Maassen (p. 58), while scrupulously recording the evidence of the MSS, interprets the occurrence of Innocent’s name in relation to the Rufinus-

3. The third case I select is one where errors as to the true text of the 'Sardican' canons vitiate completely an important, if not indeed an essential, argument. It is obvious that any attack on the authenticity of the canons must begin by dealing with the almost contemporary mention of them in Gratus' council of Carthage: and Dr. Friedrich raises against the genuineness of this reference two main objections (pp. 418 ff). The first of these is that Gratus was never at Sardica at all, for the list in Athanasius (*Apol. c. Arianos* § 50) expressly mentions him among bishops who were not present, but expressed a subsequent adhesion to the proceedings of the council: the second, that he could not possibly have quoted 'concilii Sardicensis statutum' as against a bishop ordaining a layman from another diocese, since the 'Sardican' canon to which allusion is supposed to be made says nothing about laymen at all. Now with regard to the first objection, Dr. Friedrich may be right in asserting that Gratus was not at Sardica, though I cannot see that Athanasius 'expressly' asserts anything of the sort. But in what way is the evidence of either Hosius in the 'Sardican' canons, or Gratus in the Carthaginian canons, affected, if he were not at Sardica? Dr. Friedrich cannot surely think that Gratus could not at Carthage 'remember a statute of the council of Sardica,' unless he had been there! His difficulty must, I suppose, lie in the reference to Gratus in the Sardican canons themselves, where Hosius blames the fondness of the African bishops for running off to court, in disregard 'as we learn from our beloved brother

Nicene canons as due to a confusion with the true relation of his name to the Sardican canons. But it would still be improper to give conjecture as though it were fact, even if the conjecture were more certain than it is. For it does not seem to me sufficient reason for throwing over the evidence of the documents if Maassen asserts that 'it is certain that the Gallic-Spanish version of the Nicene canons does not come from Innocent,' and that 'it is wholly improbable that Innocent should have sent the Nicene canons in this abbreviation [of Rufinus] to Gaul.' Rufinus was an Italian well known in Rome, and his History was published in the early years of Innocent's pontificate: the Gallic-Spanish version of the Nicene canons was apparently put together out of Rufinus and the so-called 'Gallic' version, without any reference to the original Greek. I can see nothing against, and a good deal in favour of, the supposition that the (very primitive) 'Gallic' version was brought to Rome to be compared with the Roman texts; that, as there was no authoritative version at Rome, a new version was concocted by comparing the Gallic with the latest Italian version, that of Rufinus; and that the new composite version was sent to Gaul, together with its Italian source, under some sort of papal imprimatur.

and fellow-bishop Gratus,' of his earnest admonitions. So indeed runs the Greek¹: but Dr. Friedrich has himself rightly told us that we must not trust the Greek against the Latin text, and in the Latin Hosius only says that 'the Africans, as we learn, *sicut cognouimus*, despise the salutary counsels of our most holy brother and fellow-bishop Gratus.' There is nothing whatever to show that Gratus was the person who gave evidence against his colleagues: and indeed it is much more probable that the statements to their discredit, including that of their disregard of their primate, came from other sources.

Dr. Friedrich's second objection is that whereas the Carthaginian canon is meant to prevent bishops ordaining *laymen* belonging to other dioceses—'neque laicum usurpare sibi de plebe aliena ut eum ordinet' is the decree which bishop Privatus asks for, and which bishop Gratus reinforces by appeal to a Sardican statute, 'ut nemo alterius plebis hominem usurpet'—the Sardican canons deal only with bishops ordaining or promoting *clerics* from other dioceses. Januarius moves that no bishop may solicit the 'minister ecclesiasticus' of another bishop and ordain him in his own diocese: Hosius adds that every ordination of an 'alienus minister,' without the consent of the ordinand's own diocesan, shall be null and void. The objection would be in any case, I think, a little bit pedantic: but such force as it may seem to have is evacuated when one finds that the word 'minister' has no place at all in the true text of Januarius' canon. What is forbidden there is the ordination of an 'ecclesiasticus alterius ciuitatis,' that is, as I suppose, simply 'a member of the ecclesia of another city,' a 'churchman' in the proper sense of that word².

¹ καθὼς ἔγραψεν παρὰ Γράτου: though even if this were the correct reading, it would not follow that the Council could not have learnt it from Gratus by letter.

It has for some time seemed to me that this indication of the character and proceedings of African bishops throws a good deal of light on the popularity, among the religiously minded population, of the Donatist communion. With all their repellent qualities, were not the Donatists of that day less worldly than their Catholic contemporaries in Africa?

² The meaning 'ecclesiastic' is a later one. Neither Rönisch *Italia und Vulgata* nor Koffmane *Geschichte des Kirchenlateins* gives any help on the word 'ecclesiasticus': and Forcellini-de Vit gives nothing beyond what is already in Ducange. To the latter I owe the two following early references: (1) *Gesta apud Zenophilum* (Routh *Roll. sacr.* iv. 326: Ducange calls it the '*Gesta purgationis Caecilianii*') 'Adhibete conclericos et seniores plebis ecclesiasticos uiros'—that the 'seniores'

In the instance previously cited we saw that, though Dr. Friedrich's textual evidence turned out, when confronted with the texts themselves, to have been incorrectly applied, his conclusion was still sound: but in this case the error does not affect the method only, but the result. And if the texts thus show that the testimony of the Carthaginian council to the 'Sardican' canons remains unshaken by the objections alleged¹, a serious inroad has, I think, been made already on Dr. Friedrich's position. The presumption of truth seems already to lie on the side of the defenders of the genuineness of the canons.

One more criticism of method, and I shall gladly pass to the more positive side of my task. After demolishing the testimony of Gratus, Dr. Friedrich goes on to say that various papal and other documents earlier than Zosimus have been alleged to show traces of acquaintance with the 'Sardican' canons—that Maassen reduced these points of contact to two only—that Löning contested the existence even of these two—and that therefore he himself may be excused from dealing with the matter. Yet the same writer, who on p. 421 passes by as worthless all evidence of earlier Roman knowledge of the canons, argues on pp. 460-464 that the Sardican forger wrote at Rome because his work shows so 'close a relationship both in language and in matter'—*dic grosse sprachliche und sachliche Verwandtschaft beider Texte braucht nicht weiter hervorgehoben zu werden*—with these same Roman documents! Of course it was open to him to admit the relationship all along, and to go on to show that the priority did not lie on the side of the Sardican canons: but it can hardly be a legitimate process to begin by putting aside all alleged references by A to B as not worth discussing, and (having by this

here are laymen, and not clerics, is clear from two other passages in the immediate neighbourhood, 'quod omnes uos episcopi presbyteri diacones seniores scitis' (p. 325) and 'fratribus et filiis, clero et senioribus, Fortis in Domino aeternam salutem' (p. 327): (2) Letter of the secession synod of Philippopolis to the Africans (*Hilaris Opera*, ii [Verona 1730] 650: Ducange calls it 'decretum synodi Sardicensis') 'eum qui aliter quam in uero est audet euangelium praedicare quidam qui se ecclesiasticos esse uolunt facile ad communionem recipiunt.'

For the text of the Sardican canon see below, p. 397.

¹ I ought perhaps also to mention, since Bp. Wordsworth repeats it, the argument that the formula 'uniuersi dixerunt' etc. is absent from this canon only of Gratus' council. The answer is, I imagine, simply this, that 'Gratus episcopus dixit,' together with the authority of the Sardican council, implies the assent of the bishops to the proposal of Bp. Privatus.

means disproved the early existence of B) at a later point to reintroduce the same things without further parley as undoubted references by B to A. For myself I think that Dr. Friedrich's second thoughts are so far best that the canons 'ad Gallos' (it is uncertain whether they belong to Siricius or to Innocent) do present points of contact which are fairly conclusive. But the question whether the Pope borrowed from the 'Sardican' canons, or the 'Sardican' canons from the Pope, will of course be answered differently by Dr. Friedrich and by his opponents.

If I estimate rightly the results so far attained, whether from *a priori* considerations of probability, or from criticism of various details of argument and of method, they are such as to raise a serious presumption against the tenableness of Dr. Friedrich's thesis, and therewith to favour, at least negatively, the genuineness of the texts in question. It is time however to proceed to indicate, at least in outline, those lines of investigation which seem likely to be most fruitful of positive *data*. And the two things which I have most in mind about these 'Sardican' canons—their position in the early collections of canon law, and their relation to the circumstances of the fourth century—are both points in which breadth of treatment is specially to be desired. The evidence must be weighed as a whole: and it is just this which I think Dr. Friedrich, in the midst of much that is interesting and up to a certain point effective in detail, has failed to do.

I. The 'Sardican' canons in relation to the history of the early collections of canon law.

In estimating the evidence, especially the chronological evidence, of the early canonical collections, it is important to keep three stages distinct and separate in one's mind:—

(1) There are firstly (reckoning backwards) the MSS actually extant, the dates of which can be settled on palaeographical—perhaps, in view of the relative paucity of uncial MSS, one should rather say on palaeographical and historical—grounds. The MSS anterior to about A.D. 700 which contain the Sardican canons are the following: the Verona fragment, Veron. lix (57), saec. vi¹; the Corbie MS, Paris. lat. 12097—in a piece of very

¹ Maassen (p. 761) ascribed this MS to the seventh century, Reifferscheid (*Bibliotheca Patrum Latinorum Italica* i 28) to the eighth: I ventured myself to

beautiful uncial writing at the end of this composite MS, saec. vi exeunt.; the Justel MS (which came from Fleury), Bodleianus e Mus. 100-102, saec. vi-vii; the Toulouse MS 364, saec. vii¹; the Cologne MS ccxii, saec. vii; the Lyons MS (Berlin 83 and Petersburg F II 3) saec. vii².

(2) There are next the dates, earlier than the MSS themselves, at which the collections represented in the MSS were put together: for if a ninth-century MS, for instance, contains no material of a date later than the sixth century, we should be justified, in the absence of any contrary indications, in concluding that the collection itself was made in, or not much later than, the sixth century. But lest my own conclusions here should be thought to be biassed by the requirements of my argument, I confine myself under this head to repeating the results given by Maassen. Besides the Dionysian collection or collections—which we know to have been made before 523—Maassen ascribes to the sixth century the following collections containing the complete Sardican canons: (a) Freising MS, Monac. lat. 6243 (perhaps even end of the fifth century), p. 479; (b) Quesnel collection, if I understand rightly what he means to imply on p. 490; (c-f) collections of St. Blaise, Vatican MS, Chieti MS, Justel MS (p. 500); (g) Cologne MS ccxii, p. 584; (h) St. Maur MS, Paris. lat. 1451, p. 623. To these we may add the Verona MS, lix (57), which itself belongs, as we have seen, to the same century; and we have, counting the two editions of Dionysius separately, no less than eleven distinct collections earlier than A. D. 600.

(3) But there is yet a third stage which lies behind the complete collections represented in our MSS: for these collections themselves plead for an earlier date than either in a paper on Verona MSS of Canons in the *Guardian* for Dec. 11, 1895: and I find myself supported by the authority of Dr. L. Traube, in his very striking paper *Perrona Scotorum* (reprinted from the Munich *Sitzungsberichte*, 1900, Heft iv pp. 469-538) p. 507, who pronounces definitely for the sixth century.

¹ Maassen on the information of others ascribed this MS, which he had not himself seen, to saec. ix or viii-ix (p. 592): but I was able to show, in a paper in this *JOURNAL* (*J. T. S.* ii. 266-273), that it must belong to the seventh century, and that it was probably written at Albi.

² I have not yet seen this MS, but as the Petersburg portion appears to contain the complete Dionysiana it no doubt includes the Sardican canons. The history of this MS I discussed in *J. T. S.* i 435-441: the date of the Berlin portion is given by Traube, *op. cit.* p. 521, as seventh century.

selves must have grown up gradually and piecemeal. The large collections were formed out of the aggregation of smaller ones. Each collection will at one moment present points of contact with one of the other collections, at another with another. Thus, to take an instance or two of the manifold combinations of similarity and divergence, the four collections of St. Blaise, the Vatican, Chieti and Justel, are grouped together by Maassen as 'four related Italian collections of the sixth century': yet only two of them agree in giving the same version of the canons of Nicaea. Conversely the Italian 'Verona fragment' and the north-Gallic collection of Corbie are as independent as two canonical collections could well be: yet both give the names of the Nicene Fathers in a form shared by no other MS. And the same Verona MS is joined by another Gallic collection, that of St. Maur, in a similarly isolated way for the canons of Ancyra, Neocaesarea and Gangra. Again the same text (or, in the case of the Greek councils, the same version) will appear in different groups of collections in quite different families of text: and time must be allowed for the development of these differences before the final collections of the sixth century were made. Especially is this the case with the Sardican canons. Maassen, after enumerating the collections containing them, wrote that 'between all these collections great variations of text exist . . . In the division of the canons there are great variations . . . To restore the original Latin by means of the extant material would not be an easy task.' I think indeed that he overrated the difficulty of restoring the original text: but the variations on which he lays emphasis do exist, and they seem to me to prove quite incontestably that the text had a long and tangled history behind it at the time when the canons were incorporated into the various collections of the sixth century. In fact the view that the complete canons, as we have them, are a product only of the same sixth century seems, in face of this evidence of the canonical collections, to be nothing less than impossible.

But let us suppose, what might well be the case, that Dr. Friedrich or some supporter of his were prepared so far to modify the thesis of the pamphlet under review as to throw back to the middle of the fifth century the revision of the canons which gave them their present form and their Sardican name: yet

still, though some textual difficulties would be removed, enough would remain to be fatal (in my judgement) to the thesis even as emended. I do not see, for instance, what answer could be given to the following line of argument. Of all the numerous collections which contain these canons in some form or other, some treat the canons simply as Nicene—one indeed (as we have seen) does this on the authority of 'the holy bishop Innocent'—others treat them simply as Sardican—others again echo the disputes of 418-19 by explaining that the canons are not found in Greek but in Latin only¹. Now it is the very core of Dr. Friedrich's theory that the canons as originally labelled Nicene, and the canons as ultimately ascribed to Sardica, were by no means the same thing, the Sardican reviser having recommended his edition to acceptance by the addition of a good deal of local colour. Since then we are fortunate to find extant one group of MSS with the Nicene label to the canons, and another group with the Sardican ascription only, we should expect to find this difference of local colour reproducing itself as between the two groups. Yet there is not in fact, to the best of my knowledge, a single instance of the absence from our 'Nicene' MSS of any one of the features supposed to be peculiar to the 'Sardican' recension. We are required therefore to believe that the respective collectors or copyists to whom we owe our various 'Nicene' MSS went carefully through their texts, incorporating from the later recension every fragment of 'Sardican' handiwork, and yet retained in their titles just that discredited claim to the name Nicene of which it was the special object of the 'Sardican' interpolator to get rid. If there are those to whom the difficulties of this view seem less than insuperable, I am afraid that I cannot agree with them.

¹ As Nicene six—Brussels burgund. 8780-8793, Quesnel collection, Chieti MS (Vat. Reg. 1997), version prefixed to the collection proper of the Freising MS, Veron. lix (57), Toulouse MS 364 (at one place: at another it has, from Dionysius, 'Canones Sardicensis'); as Sardican five—Dionysius Exiguus (both editions), St. Blaise collection, Vatican collection, Justel MS: as 'found in Latin but not in Greek' four—Freising MS, Würzburg MS Mp. th. f. 146, Köln MS ccxii, St. Maur MS—but all four contain somewhere or other the name of Sardica.

There is no real doubt that the Justel MS goes with the Sardican group, though the MS has been mutilated and has lost the 'incipit' of these canons. I hope shortly to have an opportunity of publishing in the JOURNAL an account of this MS, which has been just discovered to have come from Fleury, and of Justel's curious dealings with the leaves containing Sardica.

II. That not more than one main recension of these canons can be shown to have existed—that the hypothesis of a Nicene and a Sardican stage in the history of these canons is a figment—these results seem to follow from the evidence of the history of the canonical collections. I believe that the diversities of text (which do exist, though diversities of recension do not) would justify us amply in throwing back the common archetype into the fourth century. But I prefer to take the line that, the opposing hypothesis being now sufficiently discredited, we are entitled to demand whether the hypothesis of the genuineness of the canons will not better suit the facts of the case. And I go on therefore to the second line of inquiry which I proposed, namely, the relation of the Sardican canons as we have them to the conditions of Western Church history in the middle of the fourth century. I cannot pretend to speak here with any special authority; and yet I should like to call attention to some aspects of the evidence which seem to be either passed over altogether, or unduly minimised, in Dr. Friedrich's argument.

Let us try to place ourselves in imagination in the position of an able and prominent Western churchman like Hosius at the time of the meeting of the Council of Sardica. He would know that it was not the first Western council to lay down rules for the solution of particular difficulties and the guidance of bishops in certain defined cases: his own Spanish churches had drawn up such a code at Elvira about 305, and the representatives of the combined Western churches had followed suit at Arles in 314. But something more was beginning to be wanted than a mere code of rules: the Church had judicial functions to exercise as well as legislative, and if the individual bishop's independence was to be limited, for instance, on the question of principle whether the profession of actor or charioteer *ipso facto* debarred a man from Christian communion, it might well come to be doubted whether it was wise to leave to his unfettered discretion all matters of personal discipline affecting the clergy and laity of his diocese. Hosius would remember that twenty years before he had helped at the Council of Nicaea to sketch the outline of a system of appeals, under which the bishops of each province were to meet in synod twice a year in

order to revise the judicial decisions of individual members¹. But there were two considerations which would make it impossible at Sardica simply to rest content with what was done at Nicaea, even if the canons of the latter council had as yet made their way to effective recognition in the West². In the first place, the provincial organisation of churches, postulated by the Nicene canon, and ready to hand from then onwards in the East, barely existed in the West even at the date of Sardica. For Western Christianity, being, as must always be remembered, a century younger than Eastern, was proportionately weaker, and was not yet prepared to plant a bishop wherever there was a *ciuitas*, and a metropolitan wherever there was the civil capital of a province: not to say that the Eastern spirit of accommodation to civil precedents and organisation would hardly, even at this early period, have proved itself palatable to Western churchmen. In the second place, the council of Nicaea, though it dealt with the more pressing needs of its own day, and in doing so laid the foundations of a system, had left the work inchoate and unfinished: and the experience of the years that intervened between the two councils had amply shown the necessity for continuing and completing it. It was not only the clergy and laity who needed to be protected against possible injustice: the right to claim a re-hearing, to carry causes from a court of first instance to a court of appeal, could as legitimately be demanded by bishops. The very object of the meeting of the Sardican council was to pronounce upon the cases of Athanasius and other episcopal victims of Arian persecution: and it was not to be expected that a general council should be summoned every time that the sentence of a local or provincial synod called for reconsideration. At Antioch, in 341, the Eastern bishops had indeed contented themselves with deciding, in this

¹ Nicaea can. v.

² Probably it was only through the stress of the Arian struggle in the years after the council of Sardica that first the Creed and then the Canons of Nicaea came to be placed on a pinnacle of commanding and unique authority. St. Hilary of Poitiers in 356 was still unacquainted with the Creed: and of the numerous extant versions of the Canons those that can go back to any part of the fourth century are very few—one from Italy, the Chieti MS (Vat. Reg. 1997), one from Gaul, the Gallican version (MS Köln ccxii and Paris. lat. 3838), and perhaps one from Africa, Caecilian's version; besides the fragment from the Freising MS (Monac. lat. 6243), printed by Maassen p. 922, which is probably also Italian.

matter of episcopal trials, (a) that if the bishops of the provincial synod—the court of first instance—were divided in opinion, the metropolitan should call in bishops from the next province to help in adjudicating the case (can. xiv); (b) that if the provincial synod was unanimous, no appeal could lie at all (can. xv). But they doubtless took their cue from the policy of upholding as final the synodical condemnation of Athanasius at Tyre in 335: while the Westerns at Sardica would of course be actuated by the contrary desire of providing means by which similar condemnations could be revised. What line then was to be suggested? An appeal to the Emperor? Special precautions had been taken against this at Antioch (can. xii): and it was not likely to find more favour in the West¹. But if the court was to be ecclesiastical at all, then, in the absence of any highly articulated church organisation in the Western provinces, there was no alternative open. The thoughts of Hosius and of other Western churchmen could not fail to be drawn to the Roman see, with its large body of clergy, its central position, its immemorial antiquity, its acknowledged primacy, and to find in the Roman bishop a natural arbiter in the thorny question of episcopal appeals.

If we now turn to the Sardican canons themselves, we find exactly what we have seen reason to expect if they really belong to A. D. 343, namely, some sort of separate provision for clerical and episcopal causes. Clerical appeals may be carried to the 'episcopi finitimi,' that is practically no doubt to the comprovincial bishops: but these bishops are spoken of rather as a concourse of individuals than as an organised body, and there is no mention in this connexion either of the word 'synod' or of the word 'metropolitan'². The whole regulation is of a loose and elastic

¹ Even the elaborated system of the council of Chalcedon—though it is true it does not deal specifically with appeals, probably because the Antiochene regulations had become Canon Law for the East—is entirely ecclesiastical, and in one case recourse to the secular courts is definitely forbidden (can. ix). It is interesting to notice the tendency at Chalcedon to erect the 'throne' of the bishop of Constantinople into the apex of the whole system of church judicature (canons ix, xvii).

² Only once in the whole series of the canons is allusion made to metropolitans, where it is laid down that petitions to the emperor must be forwarded through 'coepiscopum nostrum . . . qui in maxima ciuitate id est metropoli consistit': such is the true Latin text, and with it agree the Greek version and the retranslation from the Greek preserved in the collection of the deacon Theodosius, cod. Veron. lx (58). I do not think a more satisfactory test of antiquity could easily be found than in the method of representing in Latin the word 'metropolitan.' The Greek

character, better fitted (one would say) to the ideas of 343 than to those of 416. Episcopal appeals, on the other hand, are to be dealt with through the intervention of the see of Rome, but the distinctions (if any) between the two canons which deal with the subject—canons iii and vii—are not easy to unravel. On the whole it would seem that the provisions of the former canon are more general and include, even if they have not specially in view, a less serious class of cases, such as disputes between two bishops, while the latter applies only to actual trial and deposition and defines the machinery of appeal more minutely. In the first case, if the defeated bishop claims a rehearing, then either the bishops who have acted as judges or the bishops of a neighbouring province (not apparently the unsuccessful litigant himself) may refer to the bishop of Rome, 'in honour of the memory of Saint Peter,' the question whether the trial ought to be reheard, and if so who were to rehear it: the judges in the latter case are apparently to be selected by the Pope from among the local bishops. But in the second and fuller series of prescriptions, the right of appeal is given direct to any bishop deposed after trial by the bishops of 'the region': the Roman bishop has to decide (*a*) as before, whether the case is to be reheard at all, and (*b*) if it is, whether the bishops of the next province¹ (to that from which the appeal comes) will suffice to decide the case, or whether the assistance of a presbyter-legate from Rome will be desirable. In neither class of cases is there any provision for the Pope's calling up the business into his own court and exercising personal jurisdiction.

canons of Nicaea use δ *μητροπολίτης* (can. iv) without qualification or explanation: but in Latin versions of the Nicene canons 'metropolitanus' alone does not appear before A. D. 419 and later, in Atticus, Isidore, Prisca; 'metropolitanus episcopus' in Caecilian, Rufinus, and Dionysius; while three earlier versions avoid the word altogether by a paraphrase, the Gallican having 'qui in metropoli sit constitutus,' the Gallo-Spanish (which here, as often, is indebted to the Gallican) 'qui metropolim tenet,' and the Chieti 'qui in ampliori ciuitate prouinciae uidetur esse constitutus, id est in metropolim'—the closeness of this last rendering to the Sardinian phrase is particularly striking, and may perhaps point to some near relationship between the Sardinian canons and this very early version of the Nicene. A similar instance of antique phraseology was noticed above (p. 379, note 2) in the use of the word 'ecclesiasticus.'

¹ 'Episcopis qui in finitima et propinqua prouincia sunt,' and in the previous canon 'episcopis qui in proxima prouincia morantur': the corresponding phrase in can. xiv of Antioch (see above, p. 387) is ἀπὸ τῆς πληροσχημέου ἐπαρχίας ἐπέμψαι τινὰς. These indefinite phrases appear to embody the first tentative attempts to arrive at some system of checks on the action of the individual province.

These prescriptions, in their very vagueness and indefiniteness, seem to be exactly what we should expect in the first legislative attempts of Western churchmen to guard against the opposite evils of episcopal or clerical immunity and individual or provincial injustice. In a system of judicature which allowed and yet limited appeals, which left each case to be dealt with by local knowledge and yet introduced an arbiter superior to local prejudice, I can see nothing alien to the needs of a generation which was feeling its way to an increasing closeness of federation, or to the circumstances of a moment when the Pope had just earned the special gratitude of all catholic Christians by giving audience to the protest of Athanasius against his synodical condemnation in the East. We have only to look on to the documents of the next generation, as they are recorded by Dr. Friedrich himself (pp. 424-432), to be sensible of a change in atmosphere: what had been vague and misty at Sardica is sharp in outline and definite in tone, now that it is Damasus who asks and Gratian who sanctions. The echoes of Sardica are still heard in the 'concilium episcoporum finitimorum' and the 'quos Romanus episcopus iudices dedit.' But it is the new elements which are most significant—the judicial function of metropolitans, the stated number of bishops who form a court, the personal jurisdiction in appeals, the quasi-œcumenical position of the Roman bishop¹. If the Sardican canons were forged in the Roman interest a generation later still than Damasus and Gratian, their author did his work imperfectly indeed.

To show that the Sardican canons fit the conditions, as far as we can restore them, of the middle of the fourth century, is not of course to say that there are no difficulties in the history of their transmission. It is well known, and is of course the starting-point of all doubt as to their genuineness, that after the almost contemporary allusion in the council of Gratus a deep obscurity falls upon them, which is not wholly lifted till we find Zosimus in 418 pressing upon the African churches the observance of two of them, which he quotes *verbatim*, on the ground not of their

¹ e. g. the phrases 'ad metropolitani per locorum iudicia dedicatur examen,' 'uel ipse metropolitanus est' (contrast p. 387, n. 2 above): 'concilium quindecim episcoporum finitimorum': [Damasus] 'qui in omnes iudex fuerat constitutus.'

Sardican but of their Nicene origin. And even the reference to the Eastern churches hardly sufficed to convince the Romans of the truth of the African assertion that the canons in question, whatever they were, were not Nicene, seeing that St. Leo in the case of Flavian of Constantinople, A.D. 449-450, still bases the right of appeal upon 'Nicene' canons¹.

Strange as is this sudden appearance of the Sardican canons under the guise of Nicene, it becomes less strange if we reflect a little on the history of the *origines* of Western canon law in the interval between the Sardican council and the episcopate of Zosimus. We have already noted the trend towards conciliar legislation at the beginning of the fourth century: we have noted also the difference then existing between the development of the Eastern and of the Western churches. Thus we are prepared to find that—while in the East a more or less continuous chain of codes extends from Ancyra, Neocaesarea, and Nicaea in the first quarter of that century, through Antioch, Gangra, and Laodicea in the middle of the century, down to Constantinople (381) near its close—in the West the Church of Spain has preserved nothing between Elvira (c. 305) and Saragossa (c. 380), the Church of Gaul nothing between Arles (314) and Valence (374), and the Church of Africa nothing between the council under Gratus (c. 348) and that under Genethlius (390). The very germs of the root-principle of canon law were therefore absent from the mind of the Western Church during the greater part of the century, since the conception of a body of law which might be consulted with fair prospect of success in the solution of future difficulties as they arose postulated the survival and collocation of something more than the records of councils so few in number and so diverse in origin. Possibly it was not till the pressure of the great doctrinal struggle with Arianism relaxed that Western Churchmen found leisure to take up again the threads of conciliar legislation. Anyhow, from whatever cause, the chronological commencement of the more or less continuous series of known canons and decretals is extraordinarily well defined.

¹ Leo *Epp.* xliii, xliv, lvi: 'quam autem post appellationem interpositam hoc necessarie postuletur, canonum Nicaeae habitorum decreta testantur quae a totius mundi sunt sacerdotibus constituta,' 'eo quod libellum ad apostolicam sedem miserit . . . per eos qui directi fuerant in concilio a reuerendissimo episcopo Romae, qui secundum definitiones Nicaeni concilii consueti sunt interesse.'

Spain has her two councils of Saragossa in 380 and Toledo in 400—after which the barbarian invasions bring the conciliar movement for the time to a sudden check. Gaul has her councils of Valence in 374, of Nîmes about 395, of Turin in 401. Africa has councils at Carthage in 390, at Hippo in 393, at Carthage in 397 and 401, at Milevum in 402, at Carthage again in 404, 405, 407 and so on. The first extant papal decretals belong to Siricius, 384–398; the first large group of them to Innocent, 402–417. Clearly then, whether or no other earlier councils had drawn up similar codes, now lost, of disciplinary enactments, it was at just the turn of the fourth and fifth centuries that the movement for preserving, collecting, and consolidating began more or less simultaneously in the principal Western churches: the foundation stones of the imposing edifice of the later mediæval canon law were laid about the year 400. But these earliest nuclei of local and contemporary legislation had no natural place for the canons of a council so alien, both in time and place, as Sardica. If the African *corpus iuris* embedded in the acts of the Carthaginian council of 419 omits entirely the African synod under Gratus¹, it is small wonder that Augustine and other African Churchmen should have been equally ignorant of the synod of Sardica².

Probably the Roman Church had not quite so completely lost sight of the Sardican canons, even in the interval between the pontificates of Julius and Siricius when no direct proof of their employment can be found. And if it is objected that a Pope like Siricius' predecessor, Damasus, under whom so much was heard and so much was done with regard to the prerogatives of the Roman see, would have placed in the forefront of his

¹ This is true of the council *as such*, though it is also true that its canons were not wholly lost sight of, since can. v of the council of 419—which Aurelius introduced under the phrase 'terminos patrum statutos'—turns out to be an almost verbal repetition of can. xiii of the council under Gratus, while Augustine also (*Ep.* lxxv: ed. Bened. ii 117) quotes the substance of Gratus' canon xi with the words 'concilio statutum.' [I owe these two references to Bp. Wordsworth's paper.] But in view of the complicated history of the African codes, it is impossible to say whether Augustine at least may not have derived his knowledge of the canon from some intermediate code rather than direct from Gratus' council.

² Dr. Friedrich of course accepts as genuine the documents of the Sardican council other than the canons: but Augustine only associated the name of Sardica with the Arian secession synod, which we distinguish as the synod of Philippopolis (*Ep.* xlv 6; *contra Cresconium* iii 38 [34], iv 52 [44]).

argument the synodical sanction for appeals to Rome given at Sardica, I answer that that is just what he would have declined to do. We have his own testimony to the far-reaching assertion that councils could not give what Christ Himself had already given. 'Sancta Romana ecclesia nullis synodicis constitutis ceteris ecclesiis praelata est, sed euangelica uoce Domini et Saluatoris nostri primatum obtenuit': those are the words of Damasus' synod of 382 *de explanatione fidei*¹. He who claimed the succession to the keys of the Kingdom direct from Christ through Peter, might hesitate to appeal in so many words to the sanction of Sardica, however gladly he availed himself in practice of the privileges accorded by that synod to his see. It was not till the name of Sardica was merged in that of Nicaea that the Roman bishops could afford, without derogation to their claims, to shelter themselves under the authority of a council.

This is one side of the facts: and I think it sufficiently accounts for the absence of traces, in Rome, of any use by name of the Sardican canons under Damasus, and outside Rome, of any current acquaintance with them in the early fifth century. The other side is the unique and unquestioned authority which the canons of Nicaea had by A.D. 400 won everywhere in the West. To the cause of the Nicene faith, and its heroic champion, the West had adhered through good and evil report: and by the time the brunt of the struggle was over and the issue no longer doubtful, the lightest word of the great Council was almost as final as Scripture itself. Other conciliar rules and regulations might have weight: these had binding force and from their verdict there was no appeal. Nowhere was this feeling expressed more strongly than at Rome. 'No canons,' wrote Innocent, when the Eastern bishops had pleaded the sanction of the Antiochene canons for the course taken against St. Chrysostom, 'were binding on Catholics, save those of Nicaea.'

From these two currents of feeling, in themselves comparatively simple—the growing desire for a body of authoritative Church law, and the profound deference paid to Nicene law—there followed, when they met and mingled, some curious developments. That a good deal which was foreign to the intentions, or at any rate to the expressions, of the Nicene Fathers was read

¹ See *J. T. S.* i 560.

into the imperfect Latin versions of the canons was the first result. If Julius tells us that the Nicene council allowed appeals (not from one bishop to a synod, but) from one synod to another, he clearly misunderstood the fifth canon: but such a misunderstanding is just possible with the Chieti version, or even indeed with the Greek original. If Innocent speaks of the 'canons' as debarring from the clergy any who had intentionally mutilated so much as a finger, this extension of the meaning of the first canon of Nicaea might just be covered by a strained interpretation of either the Chieti or the Gallican version¹. How perilously easy it was found to go even further than this, and include under the venerable name Nicene all that was ancient enough for its true history to be wrapped in obscurity, can be amply illustrated from documents that are quite innocent of any connexion with the papal interest. A series of canons from Ancyra, Neocaesarea, Gangra, and Antioch are given in a very early 'Gallic' version with the recurrent title 'in synodo Niceno,' and are numbered continuously with the canons of Nicaea². It was no doubt in reliance on this version that as late as 517 the council of Epaon speaks of an Ancyran canon on homicide as that which 'the ancient canons of Nicaea have decreed,' and that Gregory of Tours speaks of 'reading out the decrees of the Nicene canons' when the words that he goes on to quote are taken from the canons of Gangra³: and it was no doubt also as a solution of

¹ 'Qui partem cuiuslibet digiti sibi ipse uolens abscidit, hunc ad clerum canones non admittunt' (Friedrich, p. 422): the Greek of Nic. 1 has the same word twice *ἐστερηθη* . . . *ἐστέρημε*, but the Latin versions universally change from 'castratus,' 'sectus,' 'consecatus' to 'abscidere.' For points of contact in detail cf. Chieti, 'si quis autem sanus ipse se absciderit' and Gallican 'canon ad clerum admittit.'

² Printed in Maassen, pp. 939-943, from the only known authority, namely the citations in the 'systematic' collection of the St. Germain MS, Paris. lat. 12444. The version is rather an abbreviation than a translation: and a further abbreviation of the abbreviation is to be found in the MSS of the 'Spanish epitome' (Maassen, pp. 648, 649), from which Mansi printed it, iv 531.

³ Conc. Epaon. can. xxxi. 'De paenitentia homicidarum qui saeculi leges euaserint, hoc summa reuerentia de eis inter nos placuit obseruari quod antiqui Nicaeni canones decreuerunt': it is true that Maassen (*Monumenta Germaniae Historica, Legum III, Concilia i*, p. 26), following the majority of his MSS, prints 'Anquiriani' for 'antiqui Nicaeni,' but I cannot doubt that the latter reading, which is given by three of the best MSS, is right. Greg. Turon. *Hist. Franc.* ix 33: 'Regredere hinc et gubernare liberos nostros, nam ego non reuertar tecum: non enim uidebit regnum Dei coniugio copulatus . . . tunc ego accedens ad monasterium canonum Nicenum decreta relegi, in quibus continetur quia si quis reliquerit uirum

the difficulty raised by the discovery that the canons of Ancyra and the sister councils were not properly Nicene, that three of the early Gallic collections introduce the Isidorian version of them with a prefatory canon, under the name of Hosius, purporting to give them the sanction of the (Nicene) council¹. And this confusion of the other early councils with the Nicene goes back to the fourth century. When St. Ambrose claims the authority of the fathers of Nicaea for the disqualification of digamists for the ministry, he must have been alluding to the seventh canon of Neocaesarea as misrendered in the same 'Gallic' version².

An even more striking illustration appears to be afforded by the documents emanating from the struggle between Theophilus and St. Chrysostom in the early years of the fifth century. According to Palladius' *Dialogus de uita S. Ioannis Chrysostomi*, Theophilus wrote to Chrysostom that he supposed he 'was not ignorant of the ordinance of the Nicene canons decreeing that a bishop should not act as judge in a case beyond his jurisdiction' or literally 'beyond his borders'; while at a later point the bishops who supported Chrysostom retorted the same canon on Theophilus and the Synod of the Oak, 'you are violating the canons of the 318 bishops at Nicaea and are judging in a case beyond your jurisdiction . . . we have by us your own letter in which you impress on our fellow-minister John that he ought not to hear cases that are beyond his jurisdiction³.' In each case the same

et torum in quo bene uixit spreuerit, dicens quia non sit ei portio in illa caelestis regni gloria qui fuerit coniugio copulatus, anathema sit.' This is a paraphrase of canon i of Gangra, rather than, as the Ballerini and Maassen (*Quellen* &c, p. 100) say, of can. xiv.

¹ 'Osius episcopus dixit: Quoniam multa praetermissa sunt quae ad robor ecclesiasticum pertinent quae iam priori synodo Anquiritano Caesariensi et Graniensi [sc. Ancyra Neocaesarea and Gangra] constituta sunt et nunc prae manibus habentur, praecipiat beatitudo uestra ut lectione pandantur quo omnes actus modo innotescant quae prioribus nostris pro disciplina ecclesiastica acta sunt. Vniuersi dixerunt: Ea quae a prioribus nostris acta sunt recitentur. Et recitata sunt.' So the Corbie MS (Paris, lat. 12097), the Köln MS (ccxii), and the Albi MS (*Albig.* 2: the Toulouse MS, from which the Albi MS was copied, is here defective): the form of words is clearly modelled on that of the Sardican canons.

² Ambrose Ep. lxiii 64 (ed. Bened. ii 1037) 'cognoscamus . . . patres in concilio Nicaeni tractatus addidisse, neque clericum quemquam debere esse qui secunda coniugia sortitus sit.' The seventh Neocaesarean canon does not happen to be preserved in the Gallic version: but the epitome has 'Presbyter bigamus non ordinetur.' I do not think that the source of St. Ambrose's statement has been identified before.

³ *Chrysostomi opera*, ed. Bened. xiii 25 οἱ μὲν σε μὴ ἀγνοεῖν τὸ διάταγμα τῶν β'

technical word *ὑπερόριος* is employed, and it is difficult to resist the conviction that it is derived from the canon to which allusion is being made. Now not only does the word not appear in the canons of Nicaea, but even the underlying thought can only by rather forced inference be found in them: for in fact, as we have already had partial occasion to see, the Nicene council did not concern itself with more than the affairs internal to each province, and left the relations of provinces to one another entirely aside. Where then did Theophilus and Chrysostom find the prohibition of the *ὑπερόριος* *δικη* to which they both refer? The answer can, I think, only be, from the second canon of Constantinople in 381, *τοὺς ὑπὲρ διοίκησιν ἐπισκόπους ταῖς ὑπερορίοις ἐκκλησίαις μὴ ἐπιέναι*—a canon which twice appeals to Nicene authority, and might thereby the more easily be treated itself as quasi-Nicene. But it is a noteworthy phenomenon that less than twenty-five years after the council of 381 Theophilus can use as simply Nicene, and Chrysostom instead of rejecting can use in his turn, what is at best not more than a Constantinopolitan gloss upon the canons of Nicaea¹.

But if the canons of so many early councils from Ancyra to Antioch, and even to Constantinople, thus tended by the beginning of the fifth century to be confused with the Nicene, what was to prevent the same fate befalling the canons of Sardica? Nay, was not the confusion even easier in this case, seeing that the relation of Hosius to both councils offered an undeniable point of contact? Hosius was known to have been present at Nicaea, and his signature was the first in the long list of subscriptions: Hosius again was the name prefixed to most of the Sardican canons. It is not even necessary to suppose that the identification was first made at Rome: for the parallels just adduced have taken us to Gallic and North Italian, as well as to Alexandrian and Constantino-

Νικαίᾳ κανόνων ὅπου θεσπίζουσιν ἐπίσκοπον ὑπερόριον μὴ κρίνειν δικήν: ib. 28 καταλύεις τοῖς ἐν Νικαίᾳ κανόνας τῶν τῆς ἐπισκόπων καὶ ὑπερόριον δικαίεις δικήν . . . ἔχομεν γάρ σου καὶ τὴν ἐπιστολὴν δι' ἧς παρεγγυᾷ τῷ συλλειτουργῷ ἡμῶν Ἰωάννη τὸ μὴ δεῖν ὑπερορίας εἰσδέχεσθαι δικας.

¹ This conclusion is so startling that if any other solution can be found, I should be quite willing to accept it. But at present I see no escape from it.

It is worth noting, as a further curious complication and confusion, that the Constantinopolitan Creed is given in the Alexandrian collection of MS Veron. lx (58)—cf. above, p. 371, n. 1—under the title 'Symbolus sanctae synodi Sardici.' See the text as published by Mr. A. E. Burn, *J. T. S.* ii 106.

politan, ground. Doubtless a scholar with real historical feeling could not have failed to notice the Sardican colour which tinges the *tout ensemble* of the canons: but no one would be prepared to maintain that Innocent and Zosimus either possessed the instincts of scholars themselves, or stopped to consult scholars before they used the documents which lay to their hand. That Popes should have acted so carelessly, we may indeed with right deplore: but that the canons they produced were a forgery, or even that the title given them was given with intent to deceive, are conclusions, I venture to submit, which are not warranted by the dispassionate examination of the evidence of history.

C. H. TURNER.

CANON III.

Osius episcopus dixit :

Illud quoque ut episcopus de prouincia ad aliam prouinciam in qua sunt episcopi non transeat ; nisi forte a fratribus suis inuitatus, ne uideamur ianuam caritatis clausisse.

illud quoque prouidendum est, si in aliqua prouincia forte aliquis episcopus contra fratrem suum episcopum litem habuerit, non ex his unus ex alia prouincia aduocet episcopos.

quod si aliquis episcopus iudicatus fuerit in aliqua causa et putat [se] bonam causam habere ut iterum iudicium renouetur : si uobis placet, sanctissimi Petri apostoli memoriam honoremus ; scribatur uel ab his qui examinarunt uel ab episcopis qui in proxima prouincia morantur Romano episcopo ; si iudicauerit renouandum esse iudicium, renouetur et det iudices ; si autem probauerit talem causam esse ut ea non refri-centur quae acta sunt, quae decreuerit confirmata erunt.

Si hoc omnibus placet ?

Synodus respondit : Placet.

CANON VII.

Osius episcopus dixit :

Placuit autem ut si episcopus accusatus fuerit et iudicauerint congregati episcopi regionis ipsius et de gradu suo deiecerint eum, et appellasse uideatur et confugerit ad beatissimum ecclesiae Romanae episcopum et uoluerit audiri, et iustum putauerit [ut] renouetur examen, scribere his episcopis dignetur qui in finitima et propinqua prouincia sunt ; ipsi diligenter omnia requirant et iuxta fidem ueritatis definiant. quod si qui rogat causam suam iterum audiri depraecatione sua mouerit episcopum Romanum ut e latere suo presbyterum mittat, erit in pote-

state episcopi quid uelit et quid estimet. si decreuerit mittendos esse qui praesentes cum episcopis iudicent, habentes auctoritatem a quo destinati sunt, erit in suo arbitrio: si uero crediderit sufficere episcopos ut negotio terminum inponant, faciet quod sapientissimo consilio [suo] iudicauerit.

CANON VIII.

Osius episcopus dixit :

Inportunitas, nimia frequentia, iniustae petitiones, fecerunt nos tantam habere nec gratiam nec fiduciam, dum quidam non cessant ad comitatum ire episcopi, et maxime Afri, qui sicut cognouimus sanctissimi fratris et coepiscopi nostri Grati salutaria consilia spernunt atque contemnunt, ut unus homo ad comitatum multas et diuersas ecclesiae non profuturas perferat causas, nec ut fieri solet aut oportet ut pauperibus ac uiduis aut pupillis subueniatur, sed et dignitates saeculares et administrationes quibusdam postulant. haec itaque prauitas olim murmurationem [non] sine scandalo † excitant †. honestum est autem ut episcopus intercessionem suam his praestet qui aliqua iniqua ui opprimuntur, aut si uidua adfligitur aut pupillus expoliatur—tamen et ista nomina si iustam habent causam et petitionem. si uobis ergo, fratres karissimi, placet, decernite ne episcopi ad comitatum accedant, nisi forte hii qui religiosissimi imperatoris litteris uel inuitati uel euocati fuerint. sed quoniam saepe contigit ut ad misericordiam ecclesiae confugiant qui iniuriam patiuntur et qui peccantes in exilium uel insulam damnantur aut certe quamcumque sententiam excipiunt, subueniendum est et sine dubitatione petendum indulgentiam.

Si ergo et hoc uobis placet?

Vniuersi dixerunt :

Placet [et] constituatur.

CANON XVIII.

Ianuarus episcopus dixit :

Illud quoque statuatur sanctitas uestra ut nulli episcopo liceat alterius ciuitatis ecclesiasticum sollicitare et in suis parrociis ordinare.

Vniuersi dixerunt :

Quia ex his contentionibus solet discordia nasci, prohibet omnium sententia ne quis hoc facere audeat.

CANON XIX.

Osius episcopus dixit :

Et hoc uniuersi constituimus ut quicumque ex alia parrocia uoluerit alienum ministrum sine consensu episcopi ipsius et sine uoluntate ordinare, non sit rata ordinatio. quicumque [autem] hoc usurpauerit, a fratribus et coepiscopis nostris [et] admoneri debet et corrigi.