

# The Limits of Nonconformity in the Byzantine Church (861-1300): A Study of Canon 15 of the First and Second Council in Constantinople (861)

## INTRODUCTION

### Statement of the Problem

On 17<sup>th</sup> May, 2007, Patriarch Alexis Rideger of the Moscow Patriarchate and Metropolitan Laurus Skurla of the Russian Orthodox Church Outside of Russia (ROCOR) signed the *Act of Canonical Communion*<sup>1</sup> that ended a rupture of more than 80 years between two ecclesiastical bodies.<sup>2</sup> The signing of this document, which took place at Moscow's Christ the Savior Cathedral prior to the solemn liturgy of the Feast of the Ascension, was preceded by an intensive preparatory process. At two academic conferences and a number of bilateral commission meetings, the versions of recent Russian ecclesiastical history maintained by the separated bodies were critically juxtaposed and evaluated. This process resulted in a compromise: the ROCOR recognized the Moscow Patriarchate as its superior and the latter admitted that the ROCOR's separation was not schismatic, but justified by historical circumstances.<sup>3</sup>

In the course of the 87 years of the ROCOR's existence, episcopal assemblies had issued a number of official pronouncements regarding the Church in Russia, some of which represented a black-and-white vision and others taking a more nuanced approach.<sup>4</sup> After 17<sup>th</sup> May, 2007, a substantial contingent of the ROCOR, both clergy and laity, rejected reconciliation and renounced their obedience to Metropolitan Laurus, whose recognition of the Moscow Patriarchate they considered a betrayal of the ROCOR's historical legacy. They further opposed the Moscow Patriarchate's membership in the World Council of Churches and demanded official condemnation by the patriarchate of its collaboration with the Soviet regime.<sup>5</sup> On the other side, there was no overt protest within the Moscow Patriarchate regarding the lenient terms of the ROCOR's reconciliation with the Moscow Patriarchate.<sup>6</sup>

Such divisions and loss of communion are not new to Orthodoxy. In 1448, the Russian Church under Metropolitan St. Jonah seceded from the authority of the Byzantine Church in the person of the ecumenical patriarch.<sup>7</sup> In the seventeenth century, the Old Believers separated from the Patriarchate in Moscow because of liturgical reforms implemented by the official church.<sup>8</sup> During the Soviet oppression of religion in the 1920s and 1930s, some Russian Orthodox bishops rejected the authority of Metropolitan Sergius Stragorodskii of Moscow after he entered into a concordat

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<sup>1</sup> [http://www.synod.com/synod/engdocuments/enmat\\_akt.html](http://www.synod.com/synod/engdocuments/enmat_akt.html) (accessed 10 February, 2011).

<sup>2</sup> 'Russian Churches End Rift', *New York Times*, 17 May, 2007, [http://www.copts.co.uk/index.php?option=com\\_content&task=view&id=64&Itemid=2](http://www.copts.co.uk/index.php?option=com_content&task=view&id=64&Itemid=2) (accessed 10 February, 2011).

<sup>3</sup> *Act of Canonical Communion*. [http://www.synod.com/synod/engdocuments/enmat\\_akt.html](http://www.synod.com/synod/engdocuments/enmat_akt.html) (accessed 23 May, 2011).

<sup>4</sup> Andrei Psarev, 'Looking Toward Unity: How the Russian Church Abroad Viewed the Patriarchate of Moscow, 1927-2007?' **Forthcoming in the GOTR.**

<sup>5</sup> 'Документы Одесской епархии РПЦЗ: Оповещение' 17 May, 2007. <http://www.ipc.od.ua/documents.htm> (accessed 10 February, 2011).

<sup>6</sup> The ROCOR's bishops were not required to commit any public rites of repentance despite the fact that since 1934 the Moscow Patriarchate had considered the ROCOR to be in schism. William Fletcher, *A Study in Survival: The Church in Russia, 1927-1943* (New York, 1965), 71.

<sup>7</sup> John Meyendorff, 'From Byzantium to Russia: Religious and Cultural Legacy', *Rome, Constantinople, Moscow: Historical and Theological Studies* (Crestwood, NY: 1968), 134.

<sup>8</sup> Serge Bolshakoff, *Russian Nonconformity* (Philadelphia, n.d.), 54-57.

with the Soviet authorities.<sup>9</sup> In Greece in 1923, in the wake of the introduction of calendar reforms, some believers separated from the official Church of Greece under the leadership of the Archbishop of Athens.<sup>10</sup> More recently, some monastic communities on Mt Athos in Greece ceased subordination to the patriarch of Constantinople due to his ecumenical activities.<sup>11</sup>

Within the Orthodox Church, the serious step of rejecting the authority of a superior, denying the obedience owed to him, and breaking communion with him, needs to be justified by reference to the canonical tradition. In the case of May 2007, the dissenters cited the second part of Canon 15 of the First and Second Council in Constantinople of 861.<sup>12</sup> This is the only canon in the *corpus canonum* of the Orthodox Church that bears on *both* the rejection of episcopal authority *and* the obedience due to a canonical superior. For their part, the leaders of the ROCOR, who subsequently issued sanctions against the separated clergy, referred to the first part of the same canon.<sup>13</sup>

That Canon 15 remains central to the mindset of many contemporary Orthodox thinkers can be readily observed by Googling ‘Canon 15 of the First and Second Council’ in Russian, Greek, or English. This canon was invoked in all the above-mentioned controversies in the history of the Russian and Greek Churches. Archpriest Vladislav Tsylin, a leading canon law expert of the Russian Church, invokes this same Canon 15 to justify the secession of the Russian Church from the Byzantine Church in 1448.<sup>14</sup> Old Believers use it to justify their stand-off against the modern Russian Church.<sup>15</sup> And a fascinating church leader and teacher of the twentieth century, St. Cyrill Smirnov, Metropolitan of Kazan (d. 1937) refers to this canon in his dispute with another prominent bishop – Metropolitan Sergius Stragorodskii (d. 1944).<sup>16</sup> Canon 15 was invoked by Greeks who objected to the calendar reform of 1923.<sup>17</sup> It was further used by those opposed to participation in the World Council of Churches.<sup>18</sup> Canon 15 therefore has a long and varied history within Orthodox tradition and continues to be relevant.

<sup>9</sup> Ivan Andreyev, *Russia's Catacomb Saints*, ‘Resolution on the Report of the Petrograd Vicars [23, December, 1927]’ (Platina, CA, 1982), 124-125

<sup>10</sup> George Maloney, ‘Palaiomerologites’, *Encyclopedic Dictionary of Religion* 3 (Washington, D.C. 1979), 2695.

<sup>11</sup> *A Study of the Ecclesiology of Resistance: The Writings of Metropolitan Cyprian of Oropos and Fili, Chrysostomos of Florina, and Cyrill of Kazan*, ed. Patrick Barker (Etna, CA, 1994), 50-51.

<sup>12</sup> ‘Одесская епархия РПЦЗ не признает решение о лишении сана’, 12 September, 2009.

[http://www.religion.in.ua/news/ukrainian\\_news/1769-odesskaya-eparxiya-rpcz-ne-priznaet-reshenie-o.html](http://www.religion.in.ua/news/ukrainian_news/1769-odesskaya-eparxiya-rpcz-ne-priznaet-reshenie-o.html)

(accessed 24 October, 2010).

<sup>13</sup> ‘Decision of the Synod of Bishops of the Russian Orthodox Church Outside of Russia’, 9 September, 2009.

<http://www.synod.com/synod/eng2009/9enbpagafangel.html> (accessed 24 October, 2010).

<sup>14</sup> ‘Автокефальные Церкви - Церковь и территория. Церковная диаспора’, *Церковное Право*

[lib.eparhia-saratov.ru/books/22c/cipin/eccllaw/100.html](http://lib.eparhia-saratov.ru/books/22c/cipin/eccllaw/100.html) (accessed 5 February, 2010).

<sup>15</sup> ‘Окружное послание Собора древлеправославной Церкви ко всем древлеправославным христианам: О Церковном расколе XVII века’, 18 May, 2009).

<http://www.starograd.ru/modules.php?name=News2&file=print&sid=365> (accessed 12 December 2009).

<sup>16</sup> ‘Письмо митрополита Казанского Кирилла (Смирнова) по поводу церковных нестроений, вызванных Декларацией Заместителя Патриаршего Местоблестителя митрополита Сергия (Страгородского) и Временного Патриаршего Священного Синода от 16(29) июля 1927 г.’ <http://www.krotov.info/history/20/smirnov.html> c. 1929 (accessed 11 January, 2010)

<sup>17</sup> Θεόδεν βεβαιώσεις’ τοῦ ἱεροῦ ἀγώνος τῆς γνησίας Ὀρθοδόξου Ἐκκλησίας τῆς Ἑλλάδος: Ἐμφανίσεις τοῦ τιμίου σταυροῦ κατὰ τὰ ἔτη 1925 καὶ 1937’, May 18, 2010 <http://orthodoxianthanatos.blogspot.com/2010/05/1925-1937.html> (accessed 14 February 2011).

<sup>18</sup> Metropolitan Cyprian of Oropos and Fili, ‘An Ecclesiological Position Paper for Orthodox Opposed to the Panheresy of Ecumenism’, [http://www.synodinresistance.org/Theology\\_en/E3a3a001EkklesiologikaiTheseis.pdf](http://www.synodinresistance.org/Theology_en/E3a3a001EkklesiologikaiTheseis.pdf) 1984. (accessed 11 January, 2010). Greek text: Ἐκκλησιολογικαὶ θέσεις ὀρθοδόξων ἐνισταμένων κατὰ τῆς παναιρέσεως τοῦ οἰκουμενισμοῦ’ [http://www.synodinresistance.org/Theology\\_el/3a3a001EkklesiologikaiTheseis.pdf](http://www.synodinresistance.org/Theology_el/3a3a001EkklesiologikaiTheseis.pdf) (accessed 11 January, 2010).

Canon 15 completes Canons 13 and 14 of the First and the Second Council of Constantinople (861). Canon 13 forbids a deacon or priest intentionally to cease the liturgical commemoration of his bishop during church services until a σύνοδος (council) has established that the bishop is guilty of some transgression. Failure to obey this rule may result in being deposed from clerical status. If a cleric persists in refusing to commemorate his superiors, laity that follows that cleric should be excommunicated from the Church until they repent. Canon 13 reads:

**Comment:** Rough translation.

The all-depraved-one throwing down weeds of heretics, sown them in the Church of Christ, and seeing these things being cut by the roots by the sword-sheath of the Holy Spirit, came upon another method, attempting to divide the body of Christ by the madness of the schismatics. But this holy council, entirely driving off this plot of him [i.e., devil] decreed since now on [:] if a presbyter, or deacon, who, obviously, being based on some accusations, condemned his bishop, before synodal resolution and examination (ἐξετάσεωv), and before his condemnation has been completed, dared to cease (ἀποστήναι) communion with him, and not commemorate [ἀναφέρει] his name in holy liturgical prayers, according to the church tradition This clergyman is subject of deposition: to be cleared of every sacred honor.<sup>19</sup> For the one who was installed in the rank of presbyters, and seizing the judgment of the metropolitans [i.e., the canonical investigation that belongs to the metropolitans], and before the judgment, he condemning [ὅσον τὸ ἐπ'] his own father and bishop, This one is not worthy of the honor and name of presbyter. And those who associate with him, if some are in holy ranks and these of their own honor have been fallen, if they are monks of laymen [they should be] entirely excommunicated from the Church, until they having spit away communion with schismatics return to their bishop.

Canon 14 rules that if a bishop ceases to pray for his metropolitan<sup>20</sup> in the absence of, or prior to, a conciliar mandate, he should be deposed. Canon 14 reads:

**Comment:** Rough translation

If a certain bishop having accused under certain pretext his metropolitan, before conciliar expertise, departs from communion with him, and not offers his name up, according to the custom, in divine celebration (μυσταγωγία) the holy council ruled this about him [this bishop]: if one withdraws from

<sup>19</sup> Τὰς τῶν αἰρετικῶν ζιζανίων ἐπισπορὰς ἐν τῇ τοῦ Χριστοῦ ἐκκλησίᾳ ὁ παμπόνηρος καταβαλὼν, καὶ ταύτας ὀρθῶν τῇ μαχαίρᾳ τοῦ Πνεύματος τεμνομένης προρρίζους, ἐφ' ἑτέραν ἦλθε μεθοδείας ὁδόν, τῇ τῶν σχισματικῶν μανίᾳ τὸ τοῦ Χριστοῦ σῶμα μερίζειν ἐπιχειρῶν. Ἀλλὰ καὶ ταύτην αὐτοῦ τὴν ἐπιβουλὴν ἡ ἀγία σύνοδος ἀναστέλλουσα παντελῶς, ὥρισε τοῦ λοιποῦ, ἵνα, εἴτις πρεσβύτερος ἢ διάκονος, ὡς δὴθεν ἐπὶ ἐγκλήμασί τισι τοῦ οἰκείου κατεγκωκῶς ἐπισκόπου, πρὸ συνοδικῆς διαγνώσεως καὶ ἐξετάσεως, καὶ τῆς ἐπ' αὐτῷ τελείας κατακρίσεως, ἀποστήναι τολμήσοι τῆς αὐτοῦ κοινωνίας, καὶ τὸ ὄνομα αὐτοῦ ἐν ταῖς ἱεραῖς τῶν λειτουργιῶν εὐχαίς, κατὰ τὸ παραδεδομένον τῇ ἐκκλησίᾳ, μὴ ἀναφέρει, τοῦτον ὑποκεῖσθαι καθαιρέσει, καὶ πάσης ἱερατικῆς ἀποστερεῖσθαι τιμῆς. Ὁ γὰρ ἐν πρεσβυτέρου τάξει τεταγμένος, καὶ τῶν μητροπολιτῶν ἀρπάζων τὴν κρίσιν, καὶ πρὸ κρίσεως αὐτὸς κατακρίνων, ὅσον τὸ ἐπ' αὐτῷ, τὸν οἰκείον πατέρα καὶ ἐπίσκοπον, οὗτος οὐδὲ τῆς τοῦ πρεσβυτέρου ἐστὶν ἄξιος τιμῆς ἢ ὀνομασίας. Οἱ δὲ τούτῳ συνεπόμενοι, εἰ μὲν τῶν ἱερωμένων εἴεν τινες, καὶ αὐτοὶ τῆς οἰκείας τιμῆς ἐκπιπέτωσαν, εἰ δὲ μοναχοὶ ἢ λαϊκοί, ἀφοριζέσθωσαν παντελῶς τῆς ἐκκλησίας, μέχρις ἂν, τὴν πρὸς τοὺς σχισματικούς συνάφειαν διαπτύσαντες, πρὸς τὸν οἰκείον ἐπίσκοπον ἐπιστραφεῖεν (Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων τῶν τε ἀγίων καὶ πανευφύμων Ἀποστόλων, καὶ τῶν ἱερῶν καὶ οἰκουμενικῶν καὶ τοπικῶν Συνόδων, καὶ τῶν κατὰ μέρος ἀγίων Πατέρων, ἐκδοθέν, συν πλείσταις ἄλλαις τὴν ἐκκλησιαστικὴν κατάστασιν διεπούσαις διατάξεσι, μετὰ τῶν ἀρχαίων ἐξηγητῶν, καὶ διαφόρων ἀναγνωσμάτων, George Rallis and Michael Potlis, eds 2 Athens, 1852; repr. 1966, 688-689.)

<sup>20</sup> A metropolitan, as head of the episcopate in an ecclesiastical territory coinciding with a civil province, convoked and presided over the regularly held the provincial synod, which was held twice annually. A. Papadakis, 'Metropolitan' *ODB* 2, 1359.

his own metropolitan [he ] causes schism. [;] For everyone should know his limitations, and neither a presbyter to disdain his own bishop, nor a bishop his metropolitan.<sup>21</sup>

Canon 15 requires that a priest, bishop, or metropolitan be deprived of his sacred functions if, prior to conciliar investigation, he ceases to commemorate the name of his patriarch under the pretext of some culpability, thereby causing a schism within the flock. However, Canon 15 makes the following reservation: If the primate publicly preaches a heresy already condemned by the councils and holy fathers, the subordinate clergy must stop commemorating him, inasmuch as this hierarch has ceased to be an Orthodox bishop. Therefore those who separate from him are safeguarding the Church from schisms and divisions. Canon 15<sup>1</sup> reads:

**Comment:** Rough translation.

Things that were defined about presbyters and bishops and metropolitans are much more applicable to patriarchs. Therefore, if a presbyter or bishop or metropolitan dares to depart from the communion of his own patriarch and not commemorates his name up in divine celebration (μυσταγωγία), according to what is defined and regulated, but before a synodal disclosure and his [the patriarch's] final condemnation [;] he causes schism [;T]he holy council ruled this [; he] is removed of all sacerdotal ministry, if only he will be exposed (έλεγχθείη) in this act of lawlessness. Nevertheless, this is defined and confirmed about those, who having accused under certain pretext their chief hierarchs (προέδρων) and cause schism and intentionally (ένωσιν) tear apart Church. On the other hand, those, who because of a certain heresy condemned by holy councils (συνόδων) or fathers, separating from communion with their chief hierarch, who preaches (κηρύττοντος) this heresy clearly, publicly, and openly teaches the Church, such persons, not only not liable to a penance prescribed by canons, before a conciliar expertise for guarding off themselves from communion with one, who is a so called bishop, but clearly [they] will be worthy of honor of the Orthodox. For not bishops, but pseudo bishops and pseudo teachers they have condemned and not by a schism intentionally cut (κατέτεμον) the Church, but have been zealous to save the Church from schisms and divisions.<sup>22</sup>

<sup>21</sup> Εἴ τις ἐπίσκοπος, ἐγκλήματος πρόφασιν ποιούμενος κατὰ τοῦ οἰκείου μητροπολίτου, πρὸ συνοδικῆς διαγνώσεως ἀποστήσει ἑαυτὸν τῆς πρὸς αὐτὸν κοινωνίας καὶ μὴ ἀναφέρει τὸ ὄνομα αὐτοῦ, κατὰ τὸ εἰθισμένον, ἐν τῇ θείᾳ μυσταγωγίᾳ, τοῦτον ὥρισεν ἡ ἅγια σύνοδος καθηρημένον εἶναι· εἰ μόνον ἀποστὰς τοῦ οἰκείου μητροπολίτου σχίσμα ποιήσει. Δεῖ γὰρ ἕκαστος τὰ οἰκεία μέτρα γινώσκειν καὶ μῆτε τὸν πρεσβύτερον καταφρονεῖν τοῦ οἰκείου ἐπισκόπου, μῆτε τὸν ἐπίσκοπον τοῦ οἰκείου Μητροπολίτου (*Ibid.*, 692).

<sup>22</sup> Περὶ σχίσματος μητροπολιτῶν ἀπὸ τῶν ἰδίων Πατριαρχῶν. Τὰ ὀρισθέντα ἐπὶ πρεσβυτέρων καὶ ἐπισκόπων καὶ μητροπολιτῶν, πολλῶ μᾶλλον καὶ ἐπὶ πατριαρχῶν ἀρμόζει. Ὡστε, εἴ τις πρεσβύτερος ἢ ἐπίσκοπος ἢ μητροπολίτης τολμήσειεν ἀποστήναι τῆς πρὸς τὸν οἰκείον πατριάρχην κοινωνίας καὶ μὴ ἀναφέρει τὸ ὄνομα αὐτοῦ, κατὰ τὸ ὀρισμένον καὶ τεταγμένον, ἐν τῇ θείᾳ μυσταγωγίᾳ, ἀλλὰ πρὸ ἐμφανείας συνοδικῆς καὶ τελείας αὐτοῦ κατακρίσεως σχίσμα ποιήσει, τοῦτον ὥρισεν ἡ ἅγια σύνοδος, πάσης ἱερατείας παντελῶς ἀλλότριον εἶναι, εἰ μόνον ἐλεγχθείη τοῦτο παρανομήσας. Καὶ ταῦτα μὲν ὥριται καὶ ἐσφράγισται περὶ τῶν προφάσει τινῶν ἐγκλημάτων τῶν οἰκείων ἀφισταμένων προέδρων καὶ σχίσμα ποιούντων καὶ τὴν ἔνωσιν τῆς Ἐκκλησίας διασπώντων. Οἱ γὰρ δι' αἵρεσίν τινα, παρὰ τῶν ἁγίων συνόδων ἢ Πατέρων κατεγνωσμένην, τῆς πρὸς τὸν πρόεδρον κοινωνίας ἑαυτοὺς διαστέλλοντες, ἐκείνου τὴν αἵρεσιν δηλονότι δημοσίᾳ κηρύττοντος καὶ γυμνῇ τῇ κεφαλῇ ἐπ' ἐκκλησίας διδάσκοντος, οἱ τοιοῦτοι οὐ μόνον τῇ κανονικῇ ἐπιτιμήσει οὐχ ὑποκείσονται, πρὸ συνοδικῆς διαγνώσεως ἑαυτοὺς τῆς πρὸς τὸν καλούμενον ἐπίσκοπον κοινωνίας ἀποτειχίζοντες, ἀλλὰ καὶ τῆς πρεπούσης τιμῆς τοῖς ὀρθοδόξοις ἀξιοθήσονται. Οἱ γὰρ ἐπισκόπων, ἀλλὰ ψευδεπισκόπων καὶ ψευδοδιδασκάλων κατέγνωσαν, καὶ οὐ σχίσματι τὴν ἔνωσιν τῆς ἐκκλησίας κατέτεμον, ἀλλὰ σχισμάτων καὶ μερισμῶν τὴν ἐκκλησίαν ἐσπούδασαν ῥύσασθαι (*Ibid.* 692-693).

In 883, under Patriarch Photios, these three canons entered the body of Orthodox Church law;<sup>23</sup> since then the canons are binding on all Orthodox. Canon 15 occupies a unique place among other canons since it defines the fault line between causing a schism and protecting the faith. The provision in the second half of Canon 15 contains a regulation that is practically impossible to implement since it allows departure from a bishop only when his teachings have already been judged by a council as heretical. But could an Orthodox remain, in good conscience, obedient to a bishop whose new teaching seems clearly inconsistent with Orthodox tradition, but which has not yet been officially denounced?

This thesis reconstructs the historical background leading to the First and Second Council that produced Canon 15. Then it examines the historical circumstances of the council that produced this canon. My research examines, through close reading, the meaning of Canon 15 and traces when this canon entered the body of Orthodox canon law. This work analyzes how Byzantine canonical experts understood Canon 15 and considers what the attitude was toward Byzantine church divisions of both ecclesiastical and lay contemporaries. Looking at a number of cases, this thesis attempts to establish how the Byzantines used Canon 15, paying specific attention to the weight they gave to the second half of Canon 15.

The mechanism of schism is pertinent to the study of every religion. The results of this research will allow historians and students of religions to juxtapose attitudes toward schisms within the Byzantine Orthodox Church with perspectives regarding this question in other religious bodies and to detect recurrent patterns. For the members of the Orthodox Church this study might provide a new insight on the piece of the Byzantine legislation that is still quite in demand today.

### Introduction to Key Concepts: Orthodoxy, Conciliarity, Councils, and Canons

To understand the issues underlying Canon 15, we must bear in mind the significance of the term *Orthodox*, which is generally associated with the Byzantine Church. The word derives from *ορθο* ('right, true, straight') and *δοξία* ('opinion, praise'), based on *δοκεῖν* ('to think'). 'Orthodox' typically refers to adherence to conventional, traditional, or established faith and practice: right-belief and right-glorification of God. Right-belief implies safeguarding the Canon of Truth.<sup>24</sup> The word 'canon' here denotes a criterion,<sup>25</sup> the rule of faith encapsulated in Christ's teachings as imparted by Scripture.<sup>26</sup>

The struggle to preserve uncorrupted this Canon of Truth underlies all controversies and schisms throughout the history of the Orthodox Church. Whenever a split has occurred, each party

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<sup>23</sup> Metropolitan Paulos Menebisoglou, *Ιστορική εισαγωγή εις τους κανόνες τῆς Ορθοδοξου Εκκλησίας* (Stockholm, 1990), 492.

<sup>24</sup> Παραθήκην in 2 Tim. 1:14, which is translated as 'the good deposit' *The English Standard Version Bible*. See 'Orthodoxy', John McGuckin, *The Westminster Handbook to Patristic Theology*, 246-247.

<sup>25</sup> Aristotle explains, 'By that which is straight, we discern both the straight and the crooked: for the carpenter's rule (canon) is the test of both, but the crooked tests neither itself nor the straight.' 'On the Soul' 1.5, W.S. Hett ed. and tr., *LCL Aristotle 8* (Cambridge, MA, 1936), 411a 5-7. Cited from John Behr, *The Mystery of Christ: Life in Death* (Crestwood, NY, 2006), 59.

<sup>26</sup> 1 John 1: 1. St. Irenaeus of Lyon (d. c. 202) used this term 'Canon of Truth' to define the core Christian creed: 'In the same way, anyone who keeps unchangeable in himself the Rule of Truth [τὸν κανόνα τῆς ἀληθείας] received through baptism will recognize the names and sayings and parables from the scriptures, but this blasphemous theme of theirs [Gnostics] he will not recognize'. *Against the Heresies* 1.9.4 PG 7.146. The English translation is from *Ancient Christian Writers*, Walter Burghardt et al eds 55 (New York and Mahwah, NJ, 1992), 48.

has claimed adherence to Orthodoxy while accusing its adversaries of heterodoxy, or deviation from the Canon of Truth. Protesting parties have generally broken ecclesiastical relations with allegedly errant bishops or patriarchs. The schism between the Churches of Rome and Constantinople in 1054 is a clear an example of such a confrontation.

Inner church unity is a critical component of Orthodox ecclesiology<sup>27</sup> (the systematic theological studies about the church's understanding of herself). The Orthodox Church is a hierarchical church. Each diocese is headed by a bishop, who is a member of the permanent episcopal assembly, the council (σύνοδος), representing the entire Church. The council is usually presided over by a patriarch, metropolitan, or archbishop. Canonical order require that a bishop should be consecrated by all bishops of the district, or at least three of them.<sup>28</sup> During liturgical services the bishops, priests, and deacons pray for their superior bishops (patriarchs, metropolitans, and archbishops). A bishop has the right to act only within his diocese, and he is obliged to coordinate all matters beyond his local competence with superior bishops.<sup>29</sup> A superior bishop of the Church cannot decide on affairs concerning the whole Church without the consent of other bishops.<sup>30</sup>

To find consensus regarding theological or historical issues, the Orthodox Church has traditionally employed the mechanism of the council, a convention of church representatives presenting and adjudicating competing views.<sup>31</sup> Supreme authority at councils resides with the attending bishops, who evaluate arguments against the Canon of Truth.<sup>32</sup>

Interaction among bishops, following the principles of 'conciliarity', offsets the rigid structure of the Orthodox Church that often appears to outsiders as hierarchical and inflexible. The following principle of conciliarity must be observed by the Orthodox episcopate: a senior bishop needs to pay heed to his peers' concerns, but in their turn they have to be respectful of the opinions of their presiding bishop.<sup>33</sup>

There have been four types of councils:<sup>34</sup>

- An Ecumenical<sup>35</sup> (universal) Council, in theory representing the Church of the entire Roman Empire;
- A Patriarchal Standing Synod (Σύνοδος Ἐνδημούσα) – e.g., the Constantinople Council of 861, which issued Canon 15.
- A Metropolitan Council, headed by the preeminent bishop (metropolitan) of a Roman province gathering in a provincial capital (μητρόπολις);

<sup>27</sup> I am using the words 'Byzantine' and 'Orthodox' interchangeably.

<sup>28</sup> Cf. Canon 4 of Ecumenical Council of Nicea (325). *The Seven Ecumenical Councils of the Undivided Church. A Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, H R Percival ed., Second Series, 14 (Grand Rapids, MI: repr. 1956), 11

<sup>29</sup> Canon 13 of the Council of Antioch, *NPNF* 14, 115.

<sup>30</sup> Apostolic Canon 34 expresses this principle unambiguously: 'The bishops of every nation must acknowledge him who is first among them and account him as their head, and do nothing of consequence without his consent; but each may do those things only which concern his own parish [παροικία can be translated as diocese], and the country places which belong to it. But neither let him (who is the first) do anything without the consent of all; for so there will be unanimity, and God will be glorified through the Lord in the Holy Spirit.' *NPNF*, 14, 596.

<sup>31</sup> E.g., as to whether or not the proselytes had to observe Mosaic Law in Acts 15.

<sup>32</sup> The striking exception is the Ecumenical Council of Nicea (787), where monks participated in voting.

<sup>33</sup> See Apostolic Canon 34 in footnote 29.

<sup>34</sup> Aristeides Papadakis, Anthony Cutler, 'Councils', *ODB* 1, 540-543.

<sup>35</sup> From οἰκουμένη -- the inhabited world.

- An Episcopal Council represents a given a diocese (παροικία);

But how can we know whether a council has produced an Orthodox expression of the Canon of Truth? Approval of the acts of one council by subsequent councils has played a critical role in defining the status of a council. Although some councils considered themselves ecumenical, they were nevertheless rejected by the Byzantine Church due to their heterodoxy<sup>36</sup> or violence of church order.<sup>37</sup> In order to discover whether a particular ruling has been *de facto* ratified, it is important to see how the edicts of councils on non-doctrinal issues, which since the Ecumenical Council of Nicea (325)<sup>38</sup> have been called ‘canons’ (κανόνες), were observed in Byzantium after they were issued by a council.

Canons were listed as appendices to the doctrinal acts (όροι) of the councils. Although most canons deal with administrative and disciplinary problems pertaining to clergy, there are a few that directly address pastoral and disciplinary issues relating to lay and monastic affairs; both Christians living in the world and in monasteries can be seriously affected by the implications of canons pertaining to clergy. For example, the first part of Canon 15 assumes that a flock should leave a bishop who initiated a schism; according to the second part of this canon, the same action should be applied to a bishop who introduces a heresy.

The canons were designed to preserve not just the order, but also the ethos of the Orthodox Church and thus safeguard the Canon of Truth. According to the first canon of the Ecumenical Council of Chalcedon (451), it is imperative that the entire Orthodox Church obeys all previously formulated canons. The importance of fidelity to prior canons was reconfirmed by the first canon of the Ecumenical Council of Nicea (787). According to the second canon of the same council, a bishop must solemnly declare his allegiance to the holy canons. A council that sets out to modify specific canons put forth by another council must be at least of the same status as the earlier council. A local council, for example, cannot modify the decrees of an ecumenical council.<sup>39</sup>

Ever since St. Justinian, the Emperor, promulgated Novel 131 (545), the canons of the most influential Orthodox councils enjoyed in Byzantium the same legal authority as imperial law (νόμοι).<sup>40</sup> They were organized along with religious and moral civil law in special collections known as *nomokanones*.

The collection known as the *Corpus of Synagoge in 50 Titles* was rearranged in Constantinople around 580 and thereafter received the title *Syntagma in 14 Titles*, since it was structurally composed of fourteen chapters. In the early seventh century, canons from the *Syntagma in 14 Titles* and civil material were incorporated into the collection known as the *Nomokanon in 14 Titles*. This content of this edition in turn became the basis of that of Canon 2 of the Council of Trullo.<sup>41</sup> In 883, under St. Photios, the canons encompassed by this collection were expanded with

Comment: Footnotes

<sup>36</sup> E.g., the iconoclast council of Hieria (754) and the unionist council of Ferrara-Florence (1438-1439). Archbishop Basil [Krivoshein] of Brussels and all Belgium, ‘The Authority and Infallibility of the Ecumenical Councils’, *Sobornost* 7.1 (1975), 4.

<sup>37</sup> E.g., The ‘Robber’ Council of Ephesus (449). Archbishop Peter L’Huillier, ‘The Development of the Concept of an Ecumenical Council (4<sup>th</sup>-8<sup>th</sup> Centuries)’, *GOTR* 36. 3- 4 (1991), 225.

<sup>38</sup> H. Ohme ‘Kanon’, *Lexikon der antiken christlichen Literatur*, (Freiburg, Basel, Vienna, 2002), 423.

<sup>39</sup> Metropolitan Panteleimon Rodopoulos, *An Overview of Orthodox Canon Law* (Rollinsford, NH, 2007), 138.

<sup>40</sup> Ruth Macrides, ‘Nomos and Kanon on Paper and in Court’, *Church and People in Byzantium*, Rosemary Moris, ed. (Birmingham, 1990), 65.

<sup>41</sup> This canon listed the following canonical material mandatory for the Byzantine Church: The Canons of the Apostles; the Canons of the Ecumenical Councils: Nicea (325), Constantinople (381), Ephesus (431), Chalcedon (451); the Canons of significant Local Councils: Ancyra (314), NeoCaesarea (c. 314), Gangra (c. 340), Antioch (c. 330), Laodicea (between 342 and 381), Sardica (343), Carthage (419), Constantinople (394); Major Canons of the Holy Fathers: St.

material drawn from the Council of Trullo (691), together with the edicts of the Seventh Ecumenical Council (787), the First and Second Council (861), the 879-880 Council in Constantinople, and the Epistle of St. Tarasios (d. 806). This 883 corpus later came to be, by general consensus, accepted as the core canonical corpus of the Byzantine Church; it maintains the same supreme status for the entire Orthodox Church today.

Comment: A.P. Epanagoga?

This vast material required a qualified navigator who could harmonize the canons produced in various cultural and historical circumstances. According to the *Epanagoge*, an official *nomokanon of the Byzantine Church* composed with St. Photios's participation, it was the sole prerogative of the patriarch of Constantinople to interpret canons.<sup>42</sup> However, in reality this role was delegated to the mighty patriarchal officials who also served as imperial representatives in such cases as divorce, which related to both church and state.<sup>43</sup> The commentaries of the famous Byzantine canonists on Canons 13-15 of the First and Second Council will be introduced in a section below.

### Review of the literature

The canonical collection called the *Πηδάλιον*,<sup>44</sup> which was published in 1800 by two Athonite monks, St. Nikodemos the Hagiorite (d. 1809) and Priestmonk Agapios, enjoys a venerable position within the Orthodox Church.<sup>45</sup> St. Nikodemos is, along with Bishop Nikodim Milas (see below), the most reputable canonical interpreter of the modern Orthodox world.<sup>46</sup> St. Nikodemos was the author of the commentaries that he wrote around the *Nomokanon in 14 Titles*, omitting the imperial ecclesiastic legislation.

St. Nikodemos's commentary on Canon 13 of the First and Second Council<sup>47</sup> merely paraphrases the canon. The *Πηδάλιον* also points out parallels to Canon 13 in other canons that deal with the violation of ecclesiastical obedience. He cites Canon 18 of the Council of Chalcedon (451),<sup>48</sup> which prohibits clergymen from conspiring against their bishops. This admonition is reaffirmed by Canon 34 of Council in Trullo (691).<sup>49</sup> Canon 12 of the First and the Second Council requires that the clergymen who worship in private houses without the blessing of their bishop be expelled from holy orders.<sup>50</sup>

The most valuable contribution of St. Nikodemos's commentaries on Canon 13 is a reference to Apostolic Canon 31, which provides an important context for the analysis of Canon 15. Among the key points are that a clergyman may not commemorate a heretic, but also may not break communion with his bishop simply because the latter is a sinner:

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Cyprian of Carthage (d. 258), St. Dionysios of Alexandria (d. 265), St. Gregory of NeoCaesarea (d. 270), St. Peter of Alexandria (d. 311), St. Athanasios of Alexandria (d. 373), St. Basil of Caesarea (d. 379), St. Gregory of Nazianzen (d. c. 390), St. Gregory of Nyssa (d. c. 394), St. Amphilochios of Ikonion (d. after 394), Timothy of Alexandria (d. 385), Theophilos of Alexandria (d. 412), St. Cyrill of Alexandria (d. 444) and Gennadios of Constantinople (d. 471). *The Council in Trullo Revisited*, G. Nedungatt and M. Featherstone, eds (Rome, 1995), 64-69.

<sup>42</sup> Macrides, 'Nomos and Kanon on Paper and in Court', 62.

<sup>43</sup> Macrides, 'Nomos and Kanon on Paper and in Court', 69.

<sup>44</sup> I am using the English translation by D. Cummings, *The Rudder* (Chicago, 1957).

<sup>45</sup> G. Rhalles and M. Potles, the editors of the collection of canonical texts that is considered the standard, explain in their preface that they tried not to stray from the text of canons in the *Πηδάλιον*. *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, I. Athens 1852; repr. 1966, 15.

<sup>46</sup> John H. Erickson, 'On the Cusp of Modernity: the Canonical Hermeneutic of St. Nikodemos the Hagiorite (1748-1809)', *SVTQ* 1.42 (1998), 66.

<sup>47</sup> *Rudder*, 469.

<sup>48</sup> *Rudder*, 264.

<sup>49</sup> *Rudder*, 332.

<sup>50</sup> *Rudder*, 468-469.



If any presbyter, despising his own bishop, shall collect a separate congregation, and erect another altar, not having any grounds for condemning the bishop *with regard to religion or justice* (my emphasis - AP), let him be deposed for his ambition; for he is a tyrant; in like manner also the rest of the clergy, and as many as join him; and let laymen be excommunicated. Let this, however, be done after a first, second, and third admonition from the bishop.<sup>51</sup>

Another parallel reference to Canon 13 of the First and Second Council is Canon 11 of the Council of Carthage (419), which indicates the importance of a trial performed by a council of bishops. This canon rules that a misbehaving and insubordinate priest who has never filed complaints against his bishop to an arbitration tribunal should be anathematized.<sup>52</sup>

St. Nikodemos's comment on Canon 14 of the First and Second Council<sup>53</sup> paraphrases the canon itself and again refers to Apostolic Canon 31. The cited parallel canonical references to Canon 15 are identical to those given for Canon 13. In this comment, Apostolic Canon 31 was highlighted once more. In his comment on Canon 15,<sup>54</sup> St. Nikodemos explains the *ladder of commemoration* at church services. Only the metropolitan (the bishop of a province seat) publicly proclaims (commemorates) the name of the patriarch; the diocesan bishop commemorates only the name of his metropolitan, and the priest commemorates only the name of his bishop.<sup>55</sup> Other than this explanation, St. Nikodemos's commentary on Canon 15 is limited to paraphrase. He specifies some transgressions that are not sufficient to justify a priest's separation from his bishop; these include fornication and sacrilege. The only sufficient cause for separation is heresy in practice and preaching.

Archimandrite, later Bishop, John Sokolov (d. 1869) was the author of the first Russian textbook on canon law.<sup>56</sup> Bishop Nikodim Milaš, the other renowned Orthodox canonist along with St. Nikodemos the Hagiorite, called him 'the father of the new academic field of Orthodox church law'.<sup>57</sup> The second volume of his work contains commentaries on all the canons of the First and Second Council.<sup>58</sup>

In his interpretation of Canon 13, Fr. John points out the antiquity of the tradition of episcopal commemoration, referring to the *Apostolic Constitutions*, which have 'The Bidding Prayer of the Faithful' from the Church of Jerusalem, which calls the congregation and clergy to pray for Bishops James of Jerusalem and Clement of Rome and for their flocks.<sup>59</sup>

In his commentary on Canon 15,<sup>60</sup> Fr. John explains that commemoration is one of the visible signs of ecclesiastical obedience. The canons of the First and Second Council determine that ceasing the commemoration of a ruling hierarch prior to a conciliar condemnation constitutes schism. Illustrating the second part of Canon 15, on renunciation of a heretical bishop, Fr. John

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<sup>51</sup> Percival, *The Seven Ecumenical Councils*, 597. Apostolic Canons became part of the Orthodox canonical tradition. The Apostolic Canons contains Chapter 47 in Book 8 of *Apostolic Constitutions*, which were written in Antioch at the end of the fourth century. David F. Wagschal, *The Nature of Law and Legality in the Byzantine Canonical Collections 381-883* (Doctoral thesis, Durham University, 2010), 48. Available at Durham E-Theses Online:<http://etheses.dur.ac.uk/468/> (accessed 1 December, 2010).

<sup>52</sup> Rudder, 611.

<sup>53</sup> Rudder, 470.

<sup>54</sup> Rudder, 470-471.

<sup>55</sup> The 'ladder principle' of commemoration that represents the entire Orthodox Church as a local community is found in most ancient liturgical manuscripts. Gabriele Winkler, 'Die interzessionen der Chrystostomusanaphora' II, 365-367. I am grateful to Dr. Vassa Larin for this reference.

<sup>56</sup> *Опыт курса церковного законовещения*, 1-2 (St Petersburg, 1851).

<sup>57</sup> *Православное церковное право*, (St Petersburg, 1897), 225.

<sup>58</sup> *Опыт курса церковного законовещения*, 2,551.

<sup>59</sup> Book 8, Chapter 10. *The Ante-Nicene Fathers*, Rev. Alexander Roberts and James Donaldson, eds (Grand Rapids repr., 1951), 485.

<sup>60</sup> *Опыт курса церковного законовещения*, 2, 568.

refers to Archbishop Nestorius of Constantinople (d. 451). He was abandoned by his clergy and people when he began publicly to challenge the use of the name Θεοτόκος for the Virgin Mary.<sup>61</sup> Based on the second half of Canon 15, Fr. John concludes that clergy may cease to commemorate their bishop when he:

a) preaches a doctrine clearly contrary to the doctrine of the catholic Church, a doctrine that has been condemned by the holy fathers or councils – as distinct from some private opinion that might seem erroneous, but that has no special significance and therefore can easily be corrected without incurring a charge of premeditated heterodoxy;<sup>62</sup>

and

b) if a false doctrine is preached by him [a bishop] openly and publicly in Church, and it appears to be deliberate and leads to clear contradiction with the Church, and [this teaching] is not a private expression of an opinion that can be rebuked and abjured in private, without a breach of the peace of the Church.<sup>63</sup>

The only monograph on Byzantine history that mentions Canon 15 is the study by Professor Alexander P. Lebedev (d. 1908) of the Moscow Theological Academy on the history of ecclesiastical councils in ninth century Constantinople.<sup>64</sup> The introduction to the second edition<sup>65</sup> has a review of primary and secondary sources on the history of this council; moreover, its footnotes have been updated to include literature published after the first edition. This book has a chapter on the council of 861.<sup>66</sup> The value of Lebedev's work is that the author, from his reading of primary sources, reconstructed the council's proceedings as well as the events that impacted the council.

Lebedev offers an important key to the reading of Canon 15. Based on Patriarch Photios's epistle to Pope Nicholas,<sup>67</sup> he concluded that Canons 13, 14, and 15 were issued against the anti-Photian party of Patriarch Ignatios.<sup>68</sup>

Nikodim Milaš (d. 1915), Serbian Bishop of Dalmatia and Istra, is one of the most respected canon law authorities in the modern Orthodox world.<sup>69</sup> I turn here to his two-volume commentary on the Orthodox *corpus canonum*.<sup>70</sup> Commenting on Canon 13 of the First and Second Council, Bishop Nikodim explains that no clergyman may separate from his bishop without a trial. In the past, some priests used to separate from their bishops after accusing them of impiety. In so doing, these priests effectively arrogated the rights of the metropolitan, whose prerogative it is to judge the crimes of a bishop.

There is an important reference to canonical parallels to Canon 13 of the First and Second Council: Canon 3 of the Council of Ephesus (431) provides a criterion for deciding whether to leave or stay:

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<sup>61</sup> Nestorius objected to the term "Theotokos" (Mother of God) because, he argued, God has no origin; she should rather be called "Christotokos" (Mother of Christ). St. Cyrill of Alexandria defended the title of "Theotokos" as a safeguard of belief in the divinity of Christ. 'Theotokos', John A. McGuckin, *The Westminster Handbook to Patristic Theology* (Louisville and London, 2004), 330

<sup>62</sup> *Опыт курса церковного законоведения*, 2, 568.

<sup>63</sup> *Опыт курса церковного законоведения*, 2, 568.

<sup>64</sup> *История Константинопольских Соборов IX века*, (Moscow, 1880).

<sup>65</sup> *История Константинопольских Соборов IX века*, (St Petersburg, 2001).

<sup>66</sup> *История Константинопольских Соборов IX века*, 67-84.

<sup>67</sup> *Photius epistolae ad Nicolaem Papam*, PG 102. 612.

<sup>68</sup> *История Константинопольских Соборов IX века* (St Petersburg), 83.

<sup>69</sup> His classical canon law manual *Православно црквено право* (1890) was translated into Russian, German, Greek and Bulgarian. Hierodeacon Grigorije Kalinić, 'His Grace Dr. Nikodim Milas, Bishop of Dalmatia and Istra,' *Journal of the Moscow Patriarchate*, 12 (1975), 56.

<sup>70</sup> *Правила православнее цркве с тумачењима* (Novi Sad, 1895, 1896).

If any of the city or country clergy have been inhibited by Nestorius or his followers from the exercise of the priesthood, on account of their orthodoxy, we have declared it just that these should be restored to their proper rank. And in general we forbid all the clergy who adhere to the Orthodox and Ecumenical Synod *in any way to submit to the bishops who have already apostatized or shall hereafter apostatize.* (my emphasis – AP)<sup>71</sup>

The above-mentioned criterion involves an attitude toward an Orthodox council that has expressed a church norm. This highlighted clause in Canon 3 of the Council of Ephesus resonates in the formulation of Canon 15 of the First and Second Council allowing the faithful to leave bishops who publicly preach ‘a certain heresy condemned by holy councils (my emphasis – A.P.) or fathers’.<sup>72</sup> The prescription is quite logical: if the bishops disobey an Orthodox ecumenical council, then the clergy should disobey the bishops.

**Comment:** A.P. Check after the translation has been polished

Among the parallels to Canon 13 of the First and Second Council, Bishop Nikodim mentions Canon 13 of the Council of Sardica (343), which provides that a priest, whether rightly or wrongly banned from his office by his bishop, has the right to appeal this decision. However, while the investigation is pending, the priest cannot continue to perform his ministry.<sup>73</sup>

In his commentary on Canon 14,<sup>74</sup> Bishop Nikodim paraphrases its text and cites the conclusion of Fr. John. Sokolov. The parallels to this canon are consistent with those that are mentioned above in the *Πηδάλιον*.

Bishop Nikodim’s commentary on Canon 15<sup>75</sup> is lengthier than his analyses of the two previous canons. He indicates that this canon defends church discipline, since all clergy must abide by their patriarch. Bishop Nikodim explains that all three canons are applicable when unproven allegations are made against patriarchs, metropolitans, or bishops.

The Serbian canonist points out that if a bishop expresses an erroneous opinion on a matter of faith and morals, and that error can easily be remedied, then nobody has the right to separate from him; and if someone causes unnecessary division, he will be subject to the penalties prescribed by Apostolic Canon 31.

In 1965, the Ecumenical Patriarch and Archbishop of Constantinople, Athenagoras I (d. 1972), together with Pope Paul VI canceled the mutual anathemas of 1054.<sup>76</sup> Patriarch Athenagoras’s ecumenical statements caused embarrassment and protest among many Orthodox Christians.<sup>77</sup> For some of them the question arose whether the time had come to apply the ‘emergency brake’: Canon 15 of the First and Second Council. This is the background for the emotional correspondence between a famous preacher of the Church of Greece, Archimandrite

**Comment:** Need to be checked against Greek originals

<sup>71</sup> I am using here the Russian edition: *Правила (κανόνες) Православной Церкви с толкованиями 2* (St Petersburg, 1912; JUH repr. n.d.), 306.

<sup>72</sup> *Σύνταγμα των θείων και ιερών κανόνων*, 693.

<sup>73</sup> *Правила (κανόνες)*, 306.

<sup>74</sup> *Правила (κανόνες)*, 307.

<sup>75</sup> *Правила (κανόνες)*, 308-309.

<sup>76</sup> This date is conventionally used as the marker of a long historical process when the schism between the Orthodox and Catholic churches was formalized by mutual excommunications issued by the papal legates against Patriarch Michael Cerulaius and by the latter against the former.

<sup>77</sup> E.g., A ‘deconstructionist’ approach that the anathemas of 1054 were a product of personal temperaments: ‘deplore, finally, bad precedent and subsequent events which, under the influence of various factors, including misunderstanding and mutual distrust, eventually led to the rupture of ecclesiastical communion’. See ‘4.C.’ in the mutual declaration by Pope Paul VI and Patriarch Athenagoras in *Τόμος Αγάπης: Vatican-Phanar, 1958-1970* (Rome-Istanbul, 1970), 281. At **that time** six monasteries on Mount Athos considered that Patriarch Athenagoras had fallen into heresy and ceased to commemorate his name (????). A typical ‘conservationist’ approach is represented by Archimandrite Spyridon Biallis, who argued that the significance of the anathemas could not be reduced to a clash of personalities since Patriarch Michael Cerulaius responded to the Latin anathemas directed against all who did not subscribe to the Roman Catholic believes including *Filioque. Ορθοδοξία και Παπισμός 2* (Athens, 1969), 355.

Epiphanius Teodoropoulos (d. 1989), and those who ceased commemoration of Patriarch Athenagoras.<sup>78</sup>

In his essay, 'On the Commemoration of the Patriarch', addressed to the Athonite monk Nikodemos,<sup>79</sup> Fr. Epiphanius qualifies Patriarch Athenagoras's 'papal-loving' (*φιλοπαπικά*)<sup>80</sup> as heresy.<sup>81</sup>

However, Fr. Epiphanius observes that Canon 15 does not require clergy to separate, but gives them the right to cease commemoration of their bishop, noting that those who separated should not be condemned. The next question is whether to follow Canon 15 is a private matter, a matter of conscience:

'That this is the case, is confirmed by the fact that in the long history of the Church *many, many bishops have been defrocked out of their office for heresy, but no cleric has ever been punished or even prescribed a penalty, because he waited for the conciliar verdict on a bishop heretic rather than immediately seceding from him.* [emphasis in the original]<sup>82</sup>

Moreover, Fr. Epiphanius argues against joining a 'parallel' Old Calendarist hierarchy. He assumes that Canon 15 does not oblige a cleric who has ceased to commemorate his bishop to hasten to join some other non-heretical bishop. Such a clergyman should limit his protest to ceasing commemoration and waiting for a conciliar decision.<sup>83</sup> In his essay, Fr. Epiphanius explains that the decision of the Athonite monks to stop commemoration of the patriarch of Constantinople is at the limits of the permissible according to the holy canons.<sup>84</sup>

Referring to Canon 15, Fr. Epiphanius explains that it allows the Orthodox to cease commemoration of heretical bishops, but at the same time it does not delegate to clergy and laity the right to try these bishops. Such a right belongs only to a council.<sup>85</sup>

Monk Theodoritos Mavros, an Old Calendarist theologian from St. Anne's Skete on Mount Athos, wrote a fifty-page untitled thesis<sup>86</sup> against Fr. Epiphanius's essay 'On the Commemoration of the Patriarch'. There is a section dedicated to Canon 15.<sup>87</sup> Fr. Theodoritos believed that Patriarch Athenagoras was a heretic and therefore he had an obligation to cease communion with him. Fr. Theodoritos shifted to Fr. Epiphanius the burden of proof that this patriarch did not preach any heresy '**condemned by holy councils or fathers.**'<sup>88</sup> Fr. Theodoritos wrote that in fact Fr. Epiphanius had already excommunicated Patriarch Athenagoras, since he had permitted monks not pray for him.<sup>89</sup> Fr. Theodoritos emphasized throughout the history of the Orthodox Church the significance

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<sup>78</sup> Fr. Epiphanius's responses are published in *Τὰ δύο άκρα: οίκουμενισμός και ζηλωτισμός* (Athens, 2008), which is a collection of his essays written during the 1950-1980s. The first edition of this book has been out of print since 1986.

<sup>79</sup> The letter of June 19, 1969, *Τα δύο άκρα*, 69. The addressee of this letter, Fr. Nikodemos belonged to the monastic brotherhood of Priestmonk Ephraim on Mount Athos.

<sup>80</sup> *Τα δύο άκρα*, 96.

<sup>81</sup> *Τα δύο άκρα*, 114.

<sup>82</sup> *Τα δύο άκρα.*, 95-96.

<sup>83</sup> *Τα δύο άκρα*, 95-96.

<sup>84</sup> The epilogue to the essay 'On the commemoration of the Patriarch' in the letter of 11 August of 1969, *Τα δύο άκρα*, 102.

<sup>85</sup> *Τα δύο άκρα*, 102-103.

<sup>86</sup> 22 September, 1969, addressed to Father Nestor. *Το αντίδοτον: Αναίρεσις τῶν κατὰ τοῦ ζηλωτισμοῦ ἄρθρων τοῦ βιβλίου: Τὰ δύο άκρα τοῦ ἀρχιμ. Επιφανίου Θεοδοροπούλου* (Athens, 1990), 49-78.

<sup>87</sup> *Τὸ αντίδοτον*, 49-59.

<sup>88</sup> *Το αντίδοτον*, 51. Canon 15, *Σύνταγμα των θείων και ιερών κανόνων*, 693.

<sup>89</sup> *Το αντίδοτον*, 53.

of the defense of the Canon of Truth by the protests of her rank-and-file members. He believed that the ecclesial conscience of God's nation [or 'people'] (λαός το Θεού) never errs.<sup>90</sup> This conscience can be expressed 'even by a single member of the laity or a single monk'.<sup>91</sup> The value of the contribution of Fr Theodoritos to the discussion is that he introduced a number of proof texts from late antiquity from and Byzantine ecclesiastical history. The words of the defender of Orthodoxy against Arianism, Patriarch Meletios of Antioch (d. 381), are relevant to Canon 15:

Do not show obedience to bishops who exhort you to do and to say and to believe in things which are not to your benefit. What pious man would hold his tongue? Who would remain completely calm? In fact, silence equates to consent. This was clearly indicated by John the Baptist, and by the Maccabees through their legislation, who went as far as risking death, without overlooking the fact that the law is susceptible to changes.<sup>92</sup>

The following citation is interesting since it belongs to Patriarch Photios, who presided over the First and Second Council, 'Can a priest be a heretic? The wolf may escape and get away, but do not be fooled and approach it, and even if it appears to be wagging its tail gently, avoid coming into contact with it, as it is like poison from a snake'.<sup>93</sup> It is noteworthy that Fr. Theodoritos refers to the authority of Bishop Nikodim Milaš's paraphrase of Canon 15.<sup>94</sup>

Fr. Epiphanius parried Fr. Theodoritos's blow with his essay 'Against the Extremes of [Old Calendarist] Zealotism'.<sup>95</sup> Following a standard canon law procedure for analyzing texts,<sup>96</sup> Fr. Epiphanius poses three questions: What is the basis for Canon 15? What are the premises for this canon and what is its goal?<sup>97</sup> He contends that Canons 13, 14, and 15 were designed by the First and Second Council to prevent and punish intra-clerical ruptures.<sup>98</sup>

Fr. Epiphanius assumes that Canon 15 was not designed to inspire people to stop commemoration. Although the canon praises those who separate on the basis of faith, it does not condemn those who wait for a conciliar decision. Referring to the canons and praxis of the Church without specifying rules and cases, Fr. Epiphanius argues that clergy are liable only when they commemorate a bishop who has already been convicted.

The next year, in 1970, Fr. Theodoritos wrote an untitled repudiation<sup>99</sup> of Fr. Epiphanius's essay 'Against the Extremes of [Old Calendarist] Zealotism'. Arguing with Fr. Epiphanius's point that, had the Church considered it obligatory for clergy to cease commemoration, she would have articulated special canons, Fr. Theodoritos explains that his position is superior to Fr. Epiphanius's because 'the only thing that the person is able to enjoy by waiting for the decision of the synod is, according to you, *not be reprimanded and not be punished* (emphasis mine- A.P.)'.<sup>100</sup> However, Fr. Theodoritos's position is in fact that the Church's praise is reserved not for Christians who remain in

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<sup>90</sup> *To αντίδοτον*, 56-57.

<sup>91</sup> *To αντίδοτον*, 57.

<sup>92</sup> *To αντίδοτον*, 58.

<sup>93</sup> *To αντίδοτον*, 56.

<sup>94</sup> *To αντίδοτον*, 54.

<sup>95</sup> 23 November, 1969, addressed to Fr. Theodoritos, *Τα δύο άκρα*, 123-156.

<sup>96</sup> E.g., Vlasios Phidas, 'Principles for the Interpretation of the Holy Canons', *Souroz* 74 (November, 1998),

<sup>97</sup> *Τα δύο άκρα*, 140.

<sup>98</sup> *Τα δύο άκρα*.

<sup>99</sup> *To αντίδοτον*, Athens (1990), 79- 140. This collection of essays of various years countering Fr. Epiphanius's essays was published as a response to appearance of *Τα δύο άκρα*.

<sup>100</sup> *To αντίδοτον*, 108.

communion with a heretical bishop, but only for those who separate from him, before or even after a council if such a council has appeared to be unorthodox.<sup>101</sup>

Fr. Theodoritos continued his excursion in late antique and Byzantine ecclesiastical history. He refers to the priest Hypatios who, as soon as he found out about the heretical views of Archbishop Nestorius of Constantinople, adamantly refused to commemorate his name.<sup>102</sup>

Similarly, Fr. Theodoritos refers to the period after the pro-Union Council of Lyons of 1274, when Patriarch Joseph was dismissed and replaced by John Bekkos; Priestmonk Galaction was jailed for refusing to have ecclesiastical communion with the patriarch who had entered into communion with Rome.<sup>103</sup>

The vigorous struggle for Orthodoxy during the two periods of Iconoclasm (726-787, 815-843) provided Fr. Theodoritos with a multitude of examples of ecclesiastical non-conformity. The writings of St. Theodore of Studios (d. 826), a leader of the Byzantine monastic rigorists, became the main source of Fr. Theodoritos's inspiration. St. Theodore taught that one cannot pray over or even bury a clergyman or layperson who was in communion with heretics if only out of exceptional circumstances;<sup>104</sup> the Orthodox must not have communion with heretics even by sharing meal.<sup>105</sup>

**Comment:** A.P. See if it is in fact might be related to the moechian controversy.

Besides St. Theodore, Fr. Theodoritos refers to two other champions of Orthodoxy: St. Athanasios, Archbishop of Alexandria (d. 373), who fiercely opposed Arianism, and St. Maximos the Confessor (d. 662), a Byzantine monk who stood up against Monothelism. Having demonstrated various historical cases of non-compliance with deviations from Orthodoxy, Fr. Theodoritos makes the following two thought-provoking statements:

1) Without the protests of holy fathers, the foundation for a future Orthodox council could not be laid;<sup>106</sup>

2) The the Canon of Truth would have not come down to us uncorrupted if the Orthodox during all controversies would have passively waited for somebody to convene a council, or if they had constantly exercised *oikonomia*.<sup>107</sup>

Fr. Epiphanius had intense debates with the Greek Old Calendarist theologian Alexander Kalomiros (d. 1990), who attacked his essay 'On the Commemoration of the Patriarch'. In a letter of 19th May, 1970, in an Orthodox newspaper published in Athens, *H φωνη της Ορθοδοξίας*,<sup>108</sup> Fr. Epiphanius cites a piece published in the same newspaper by Kalomiros, who believed that the public proclamation of heresy automatically deprived the bishop of grace:

The fifteenth canon of the First and Second Council write clearly that a heretical bishop is not a bishop, but a false bishop, and thereby [the one who follows him is – A.P.] a false priest. His liturgies are fake liturgies. His ordinations are fake ordinations. The chrism is not holy chrism. All the mysteries are without sanctifying grace.<sup>109</sup>

Fr. Epiphanius does not agree with such linear logic. Arguing against Kalomiros's exegesis of Canon 15, Fr. Epiphanius explains that the factor of publicity in preaching heresy, mentioned in the

<sup>101</sup> *To αντίδοτον*.

<sup>102</sup> *Acta Sanctorum*, 2 November, 267. Cited from *To αντίδοτον*, 109.

<sup>103</sup> *To αντίδοτον*, 109.

<sup>104</sup> *PG* 99. 1157. Cited from *To αντίδοτον*, 113.

<sup>105</sup> *PG* 99. 1205. Cited from *To αντίδοτον*, 113.

<sup>106</sup> *To αντίδοτον*, 114.

<sup>107</sup> *To αντίδοτον*, 114. This word literally means house management. In Byzantine Canon Law this term means wise implementation of strategies designed to assure salvation. On this concept: Pierre L'Huillier, 'L' économie dans la tradition de l' Eglise orthodoxe', *Kanon: Jahrbuch der Gesellschaft für das Recht der Ostkirchen* (Wien, 1983): 19-38.

<sup>108</sup> Nos. 594-595 (15 July, 1970) n.p. *Ta δύο άκρα*, 167.

<sup>109</sup> No. 587 (28 March, 1970); nos. 588-589 (28 April, 1970). There was no specification to what issue belongs this quote. *Ta δύο άκρα*, 167.

second part of the canon, is important only as an indicator for a clergyman that he may cease to commemorate his bishop. This clause of the canon does not define a bishop's spiritual status: 'For God a bishop with heretical views is already a heretic regardless of whether he preaches his heresy openly or if he conceals it in innermost depths of his heart'.<sup>110</sup>

However, Fr. Epiphanius believes that, pending conciliar pronouncement, God bestows his grace, by virtue of *oikonomia*, to bishops and priests who have fallen into heresy: 'Is not it the same as when God acts also through clergy who are thieves, fornicators, adulterers, blasphemers? Does he allow his grace to act through them because of them themselves? - Certainly not! He does so because of the fulness of the Church!'<sup>111</sup>

Bishop Gregory Grabbe (d. 1995), who had a long career as a canon lawyer for the Russian Orthodox Church Outside of Russia, confines himself in his interpretation of Canons 13-15 of the First and Second Council to providing a paraphrase.<sup>112</sup> Commenting on Canon 13, Grabbe states that clergy are exempt from subordination to their bishop only if the latter has been convicted by a council chaired by the metropolitan.<sup>113</sup> The only exception to this is the provision contained in the second half of Canon 15. In his commentary on Canon 15, Bishop Gregory subscribes to the interpretation of Bishop John Sokolov, mentioned above.<sup>114</sup>

According to Bishop Gregory, the second half of Canon 15 provides Orthodox clergy with legal grounds for leaving their doctrinally lapsing bishops. To illustrate this, Bishop Gregory refers to the cessation of the commemoration of Patriarch Athenagoras by Athonite monasteries and to some of the Greek clergy who have found themselves compelled to join the Russian Orthodox Church Outside of Russia in order not to be left without a canonical Orthodox hierarchy.<sup>115</sup>

Reader Basil Lourie's article was a response to a query regarding the meaning of Canon 15 from a reader of *Вертоград*, a periodical published by Russian Orthodox rigorists who had separated from the Moscow Patriarchate.<sup>116</sup> Reader Basil provides an historical and theological analysis of Canon 15. Lourie believes that the Orthodox Church did not accept the provision in the first half of the canon, which requires the excommunication of any clergyman who unilaterally (without prior conciliar investigation) ceases to commemorate the name of his patriarch.

Analyzing the wording of the second half of the canon that allows a clergyman to leave the authority of a bishop whose teaching contradicts the holy councils or fathers, Reader Basil contrasts 'holy councils' with 'fathers'. He argues that 'the fathers' means the consensus on a disputed issue throughout all the generations of holy fathers of the Orthodox Church. Based on this explanation, Reader Basil argues that the Orthodox, both laity and clergy, should abandon bishops who preach teachings that contradict an existing doctrinal consensus; and that they should do so without waiting for a formal condemnation of that bishop. Reader Basil notes that the authors of the canons used the terms 'heresy' and 'schism' interchangeably, since in some cases it is hard to make a distinction, and because schism may turn into heresy.

Referring to the apparent contradiction between the two parts of Canon 15, Reader Basil writes: 'the very same fathers who had attended the First and Second Council changed their own understanding of the canons they had compiled, and only for this reason did their canons enter the legislation of the entire Orthodox Church.'<sup>117</sup>

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<sup>110</sup> *Τα δύο άκρα*, 169.

<sup>111</sup> *Τα δύο άκρα*, 171.

<sup>112</sup> *Книга правил 2* (Montreal, 1974).

<sup>113</sup> *Книга правил 2*, 142.

<sup>114</sup> *Книга правил 2*, 143.

<sup>115</sup> *Книга правил 2*, 144.

<sup>116</sup> 'Правило 15 собора Двукратного', *Вертоград-Информ*, 5.50 (1999), 39-48.

<sup>117</sup> 'Правило 15 собора Двукратного', 41.

Explaining what is meant by the ‘supreme authority’ of the Orthodox Church, Reader Basil concludes that the councils do not necessarily have the kind of ‘infallible’ status claimed for the Pope by Roman Catholics. Only those councils whose acts were deemed ‘orthodox’ by later councils are considered doctrinally reliable. Reader Basil includes a useful summary of the important principle of *oikonomia*.<sup>118</sup>

Reader Basil introduces comments by three Byzantine canonists with exceptional status within the Orthodox Church – Aristenos, Zonaras, and Balsamon (see section below) – as well as by St. Nikodemos the Hagiorite.

Reader Basil approaches Canon 15 from the perspective of its historical context: the struggle within the Byzantine Church between the ‘zealots’ (a party of monastic rigorists) and ‘diplomats’ (churchmen who attempted to negotiate with the imperial powers) as it unfolded between 795 and 920.

The First and Second Council of 861 was presided over by Patriarch Photios. Reader Basil reconstructs the ecclesiology of Saints Nikephoros and Methodios, who preceded Photios on the patriarchal throne of Constantinople. Reader Basil believes that Photios adopted the ecclesiology brought from Rome by Methodios. Their ecclesiology was framed so as to maintain the exclusive authority of the Constantinopolitan Patriarch over the rest of the ecclesiastical hierarchy.

At the end of the twentieth century, Reader Basil argues, a mechanism was defined to keep bishops in check. Therefore, he was especially interested in the second part of Canon 15, since it is dedicated to ‘defending the Church from the schism from above’.<sup>119</sup> Reader Basil believes that the churches participating in the ecumenical movement have ceased to be Orthodox. Since ecumenism can be viewed as encompassing many heresies already condemned by the fathers of the Church, the faithful should leave their ecumenist bishops without waiting for a conciliar condemnation.

The most recent interpretation of Canons 13-15 of the First and Second Council comes from the retired Serbian Bishop Atanasije Jevtič (b. 1938).<sup>120</sup> Bishop Atanasije perceives all three canons as one whole.

Although Bishop Atanasije’s commentary is largely theological, there are two historical contextualisations. In the first,<sup>121</sup> on Canon 13 of the First and Second Council, Bishop Atanasije notes that Canons 13-15 deal with the aftermath of iconoclasm. During this period, some priests and monks ceased subordination to bishops who had adopted the iconoclastic heresy, but some left their bishops for other reasons.<sup>122</sup> Likewise, certain bishops abandoned their metropolitan, and the metropolitan broke with his patriarch.

Bishop Atanasije explains a basic Orthodox axiom: for a member of the Church, termination of communion with his bishop is spiritual death. It is the end of the member’s union with the Church and therefore with Christ. Within a community, the commemoration of their bishop during the liturgy is the sign of Church membership and of the canonicity of the community’s liturgy.<sup>123</sup>

In his commentary on Canon 14 of the First and Second Council, Bishop Atanasije notes that those who separate from communion with their bishop also separate from the Divine Eucharist of the Church, i.e., from ‘the fullness of our salvation.’<sup>124</sup> Such a separation is a sign of utmost lawlessness and of the destruction of the Body of Christ. There is church order, and every member

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<sup>118</sup> ‘Правило 15 собора Двукратного’, 43.

<sup>119</sup> *Σύνταγμα των δειών και ιερών κανόνων*, 693.

<sup>120</sup> *Свештени Канони Цркве* (Beograd, 2005), 407.

<sup>121</sup> *Свештени Канони Цркве*, 407.

<sup>122</sup> Bishop Atanasije does not specify for what reasons referring to the wording of Canon 15 ‘being based on some accusations’.

<sup>123</sup> Bishop Atanasije refers to the second paragraph of the *Epistle to Smyrnians* by St. Ignatius of Antioch (d. 2 cent.).

<sup>124</sup> *Свештени Канони Цркве*, 408.



should 'know his station' in the 'theanthropic'<sup>125</sup> Church.<sup>126</sup> Bishop Atanasije explains that the word *μυσταγωγία* in Canon 15 means not just liturgical celebration but 'initiation into the Holy Mysteries [sacraments], entering and ascending into the kingdom of God.'<sup>127</sup>

Bishop Atanasije's second reference to Byzantine history is to a passage from Homily 15 by Patriarch Photios, who presided over the First and Second Council. This excerpt demonstrates the same attitude toward heretical bishops as does the second half of Canon 15.<sup>128</sup>

For Bishop Atanasije, Canon 15 has a profoundly practical value. He states that Canon 15 has been often abused by zealots, especially by the Old Calendarists when they separate from communion with their bishops and patriarchs on the basis of 'the heresy of ecumenism.'<sup>129</sup> Bishop Atanasije compares modern zealots to the opponents of Photios: both failed to understand the meaning of this Canon 15, which is that the trial of a bishop is reserved to the bishops' council. This is the same point as Fr. Epiphanius made: termination of communion is admissible only if a bishop openly preaches a doctrine 'that has already been condemned by previous holy fathers and councils.'<sup>130</sup> Otherwise the knowledge of one's place in the catholic body of Christ is lost.

**Comment:** A.P. Replace with the final translation

In agreement with Fr. Epiphanius, Bishop Atanasije notes that Canon 15 does not condemn those who, even in the case of a condemned heresy, do not cease communion with their bishop, but rather wait for an official evaluation and judgment. The authors of the canon knew that there was nothing easier than creating a split, but that healing that split was much more difficult.<sup>131</sup>

This survey of literature allows me to conclude that among Canons 13, 14, and 15, Canon 15 occupies the central place. The reviewed authors supplied canonical references that establish the place of Canon 15 within the tradition of the Byzantine Church (St. Nikodemos, Bishop Nikodim Milaš). From the commentaries on the canons it is clear that bishops' councils and their trials have an outstanding responsibility in safeguarding church unity (Bishop Nikodim, Fr. Epiphanius, Bishop Gregory, and Bishop Atansije). Based on the Byzantine canonical references, the following norms may be reconstructed:

- 1) Cessation of commemoration prior to a conciliar verdict is permissible only in the case when a hierarch has been erring in faith, but not on account of moral lapses;
- 2) If the bishops reject an Orthodox Christian doctrine, then the clergy must disobey the bishops.

Based on historical evidence, it seems reasonable to accept that rupture of communion was a necessary step in the defense of Byzantine Orthodoxy (Fr. Theodoritos). Some readings of Canon 15 suggest that such a separation is not mandatory, but optional (Fr. Epiphanius, Bishop Atanasije) and that separated clergy cannot join schismatic bishops, but must wait for a conciliar clarification (Fr. Epiphanius). The opposite point of view states:

<sup>125</sup> derives from *Θεός* and *άνθρωπος*.

<sup>126</sup> *Свештени Канони Цркве*, 408.

<sup>127</sup> *Свештени Канони Цркве*, 408.

<sup>128</sup> 'Is a shepherd heretical? He is a wolf, and one should flee from him and move away, not to lie to himself and not to come to him, even if he seems meek; because a fish is caught with bait and a trap, for bad friendship leaves a heretical virus in simple people who approach him, enslaving those who do not suspect anything evil. Therefore it is required to flee from such people in every case. Is an Orthodox a shepherd? Is he imprinted with piety? Does he have nothing to do with heretics? Then submit yourself to him as to one who stands as the image of Christ (cf. St Ignatius of Antioch); but you do not show the honor him [the shepherd], because if it comes from your whole heart, Christ receives it; for the rest do not be inquisitive; God will question him. Leave judgment to him and show obedience to him because of Christ's love, showing a pure disposition to him'. *Όμιλία*, B. Laourdas, ed. (Thessalonica, 1959), 149. Translated from *Свештени Канони Цркве*, 409 by Novice Philip Beljaev and Hierodeacon Samuel Nedelsky.

<sup>129</sup> *Свештени Канони Цркве*, 408.

<sup>130</sup> *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων* 2, 693.

<sup>131</sup> *Свештени Канони Цркве*, 408.

1) Orthodoxy (the Canon of Truth) can be preserved by rank-and-file church members, even by a single person;

2) Without previous opposition new heresies would have never been condemned (Fr. Theodoritos);

3) Canon 15 was designed to keep church administrators in check (Reader Basil);

4) It is permissible to join an alternative Orthodox hierarchy (Bishop Gregory, Reader Basil).

The explanation of the ladder of commemoration in the Byzantine Church illustrates 'the ecclesiastical chain of command' (St. Nikodemos, Fr. John, and Bishop Atanasije). Various examples from late antique and Byzantine ecclesiastical history demonstrate justifiable instances for breaking this 'pecking order' (Fr. John, Fr. Theodoritos, and Bishop Atanasije). The price of tampering with the order of subordination is extremely high: if the case is unwarrantable one risks cessation of communion with Christ himself (Bishop Atanasije).

It is crucial for an adequate analysis of Canon 15 to understand the ecclesiastical struggle during both periods of iconoclasm, the reasons for convening the First and Second Council, and how this council proceeded (Alexander Lebedev, Reader Basil Lourie). The theory that the ecclesiological views of St. Photios were exported from Rome via his predecessor St. Methodios appears worthy of further research (Reader Basil). St. Photios's homilies help to reconstruct his attitude toward heretical bishops (Fr. Theodoritos, Alexander Lebedev, Reader Basil Lourie, Bishop Atanasije).<sup>132</sup>

From the perspective of the historian, there are significant deficiencies in the literature on Canon 15. The bulk of it heavily leans toward the realm of theology. There is almost (Reader Basil, Bishop Atanasije) no sufficient analysis of the canon from a textological perspective.. Some references to Canon 15 result in simplification (Alexander Kalomiros) and beg the question: if by 'the fathers', in the second part of Canon 15, one means the works of the fathers throughout the generations (Reader Basil), who then has the authority to act as a authoritative spokesman harmonizing their teaching?

The works surveyed here demonstrate a lack of interest in impartial historical research. Some historical references suffer from generalization and are hardly verifiable (Bishop Nikodim, Fr. Epiphanius, and Bishop Atanasije). No evidence was provided that the fathers of the First and Second Council had changed their own perception of their canons (Reader Basil Lourie). Most of the reviewed authors were involved in polemics and, as a result, most of their writings, with the exception of one author (Alexander Lebedev), do not contain independent academic analysis. The single historical study that mentions Canon 15 was written over 130 years ago (Alexander Lebedev) and therefore its scholarship is dated. The historical texts, employed to support their views, were taken out of the broader historical context (Fr. Theodoritos). Besides mention of the famous twelfth century canonists (Reader Basil<sup>133</sup>), there is hardly any evidence of whether Canon 15 was invoked in the Byzantine ecclesiastic controversies that followed the First and Second Council of 861. The historical record regarding Fr. Galaction does not provide enough information to know whether, having ceased commemoration of Patriarch John Bekkos, he referred to Canon 15 (Fr. Theodoritos).

Francis Dvornik's *The Photian Schism* is a groundbreaking work on a role of St. Photios that is a different class from the bulk of literature reviewed above.<sup>134</sup> The author thoroughly analyzed all

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<sup>132</sup> The literature contains a useful identification of the authorities in canon law: St. Nikodemos (Reader Basil Lourie), Fr. John Sokolov (Bishop Nikodim Milaš, Bishop Gregory Grabbe) Bishop Nikodim Milaš (Fr. Theodoritos).

<sup>133</sup> He mistakenly writes that their comments have never been published in full in Russian. In fact their comments were published by the Society of Lovers Religious Instruction in Moscow in *Правила святых поместных соборов с толкованиями* 2 (Moscow, 1880; repr. 2000), 852-855.

<sup>134</sup> Francis Dvornik, *The Photian Schism: History and Legend* (Cambridge 1948; repr. 1970).

available primary and secondary sources. There is a chapter on the First and Second Council,<sup>135</sup> which contains the best introduction on the Byzantine primary sources (see below) related to my topic. However, the crux of the book is a rehabilitation of St. Photios's role in his conflict with the Ignatians and their allies in Rome, but not an analysis of how the Byzantines treated the problems mentioned in Canons 13-15. None of these canons is even mentioned. Although Fr. Dvornik listed in his sources Byzantine chronicles that cover the period within the scope of my research, he did not refer to them in the chapter on the First and Second Council.

In my research, therefore, I shall examine the main Byzantine histories and chronicles that deal with the particular episodes of crisis (listed and discussed in the section 'Timespan and Plan' ) to determine if and how Byzantine historians represented non-ecclesiastic attitudes towards the divisions envisioned by Canon 15 and discussed and commented upon by Byzantine canonists in the 'religious' texts.

### Byzantine Chronicles

The main sources for this task are Byzantine historical chronicles:

- *Χρονικόν*<sup>136</sup>, ascribed to Theophanes Continuatus, covers the period from 813 to 961;
- The chronicle attributed to a certain Genesios written before the eleventh century known as *Regum libri quattuor* and relates the history from 813 to 886;<sup>137</sup>
- *Χρονογραφία*,<sup>138</sup> written in the mid-tenth century by Symeon Logothete, describing events from 842 to 948;
- *Σύνοψις ιστοριῶν*<sup>139</sup> was penned in the second half of the eleventh century by John Skylitzes,<sup>140</sup> who deals with the period from 811 to 1057;
- *Βίβλος χρονική*<sup>141</sup> was composed by the imperial functionary Michael Glykas in the twelfth century and recounts the events from the creation of the world to 1118;
- An anonymous record is known by the conventional name of its author, 'Pseudo-Symeon Magistros'<sup>142</sup> since he based his work on the chronicle of Symeon Logothete, has preserved in a single copy of the twelfth or thirteenth century and encompasses history from Creation to 963;
- Another *Σύνοψις ιστοριῶν*,<sup>143</sup> compiled by the historian George Kedrenos in the twelfth century, begins with Creation and ends in 1057;
- *Ἐπιτομή ιστοριῶν*<sup>144</sup> composed by the canon lawyer and historian John Zonaras, in the twelfth century, like Glykas, begins from Genesis 1:1-10 and takes the reader to 1118;
- A chronicle compiled by Theodore Skoutarites Metropolitan of Kyzikos (d. c. 1277-82) narrates history from Creation to 1261.<sup>145</sup>

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<sup>135</sup> *The Photian Schism*, 70-91.

<sup>136</sup> This author has been called as continuator since he continues from the year where the famous Byzantine chronicler Monk Theophanes finished his *Χρονογραφία*. *Theophanes Continuatus*, I. Bekker, ed. (Bonn, 1838).

<sup>137</sup> A. Lesmüller-Werner, H. Thurn eds (Berlin and New York, 1978). *On the Reigns of the Emperors*, A. Kaldellis, tr. (Canberra, 1998).

<sup>138</sup> It is also known as Leo Grammaticus's *Chronographia*, I. Bekker, ed. (Bonn, 1842).

<sup>139</sup> *Synopsis historiarum*, H. Thurn, ed. (Berlin and New York, 1973)

<sup>140</sup> Skylitzes was another chronicler who picked up the narrative after Theophanes.

<sup>141</sup> *Annales*, I. Bekker, ed. (Bonn, 1836).

<sup>142</sup> *Chronicon*, S. B. Wahlgren ed. (NY, 2006) . A.K., 'Symeon Magistros, Pseudo' *ODB* 3, 1983.

<sup>143</sup> *Georgius Cedrenus*, I. Bekker, ed. 2 (Bonn, 1839).

<sup>144</sup> *Epitome historiarum*, I. Dindorf, ed. 2 (Leipzig, ???)

<sup>145</sup> *Μεσσαιονική βιβλιοθήκη*, K.N.Sathas, ed. 7 (Athens-Venice-Paris, 1894; repr. Hildesheim, 1972), 1-556.

The problem with chronicles is that often authorship, dating, and objectivity cannot be defined unambiguously. The above mentioned *Χρονογραφία* by Symeon Logothete vividly embodies the complexities of using chronicles as a historiographical source. It was difficult to date, but F. Hirsch and other scholars identified it as written in the time of Nikephoros II Phokas between 963 and 969.<sup>146</sup> The question of authorship is complicated. This work has been variously attributed to Theodosios of Meletine, Leo Gramatikos, and the continuation of George Hamartolos.<sup>147</sup> This chronicle is focused on events of church history and on inner and foreign policy with a highlight on key figures.<sup>148</sup>

It is difficult to evaluate the author's objectivity since there are three versions of Symeon's chronicle that represent events from the positions of the rival noble-imperial families of the Lekapenos (the original text<sup>149</sup>) and the Phokas (the continuation of George Hamartolos).<sup>150</sup>

### Byzantine Ecclesiastical Sources

An adequate understanding of the confrontation between the followers of Patriarchs Photios (d. c. 891) and Ignatios (d. 877) has a key role for a correct reading of Canon 15 of the First and Second Council.<sup>151</sup> This council was organized by St. Photios and his supporters. Unfortunately, almost no documents affiliated with it have survived. Since the Ignatians destroyed the acts of the First and Second Council at the Council of Constantinople in 869-870, the acts of the former council have been preserved only partly in Latin translation.<sup>152</sup> However, the seventeen canons issued by the First and Second Council have come down to us<sup>153</sup> because in 883, during St. Photios's second term at the patriarchate, they were appended to the main canonical collection of the Byzantine Church, the *Nomokanon in 14 Titles*.<sup>154</sup>

The Ignatian position is much better represented. A number of important documents has been appended to the Greek acts of the council of Constantinople (869-870) mentioned above, and are known as the so-called Anti-Photian collection, composed by an anonymous Ignatian.<sup>155</sup> There is an undated memorandum regarding the Photian affair written to Pope Stephan V<sup>156</sup> in a quite hostile tone by Archbishop Stylianos of Neocaesarea, a staunch supporter of St. Ignatios.<sup>157</sup> In 861, Monk Theognostos wrote to Pope Nicholas I a report about the elevation of St. Photios to the rank of patriarch and the events of the First and Second Council.<sup>158</sup>

<sup>146</sup> Herbert Hunger, *Die hochsprachliche profane literatur der Byzantiner* (Munich, 1978), 349.

<sup>147</sup> Alexander Kazhdan, 'Symeon Logothete', *ODB* 3, 1982.

<sup>148</sup> H. Hunger, *Die hochsprachliche profane literatur der Byzantiner*, 349.

<sup>149</sup> F. Hirsch disagreed with the conventional wisdom that Logothete was an objective writer. H. Hunger, *Die hochsprachliche profane literatur der Byzantiner*, 349.

<sup>150</sup> Alexander Kazhdan, 'Symeon Logothete', 1982.

<sup>151</sup> Francis Dvornik, 'The Synod of 861', *The Photian Schism*, 70-90.

<sup>152</sup> V. Wolf von Glanvell, *Die Kanonensammlung des Kardinals Deusdedit*, 1 (Paderborn, 1905), 603-10.

<sup>153</sup> *Σύνταγμα των δείων και ιερών κανόνων* 2, 647-704. The list of the manuscripts were Canons 13-15 can be found is available in *Discipline générale antique*, Périclès-Pierre Joannou, ed. 2 (Rome, 1962), 470-475.

<sup>154</sup> Wagschal, *The Nature of Law*, 116.

<sup>155</sup> *Mansi*, 16: 409-457. The collection contains the various pamphlets written by the partisan Ignatians, after 892 and is important source for events of the struggle between Patriarchs Photios and Ignatians followed the First and Second Council. For the description of the contents and authorship see Dvornik, *The Photian schism*, 216-278.

<sup>156</sup> *Sacrorum conciliorum nova et amplissima collectio*, J.D. Mansi, ed. 16 (Florence 1769, repr. Welter 1903), 426-435.

<sup>157</sup> He became a leader for a group of extremists who refused to recognize reconciliation between the Ignatians and Photians reached in 877. J.M. Hussey, *The Orthodox Church in the Byzantine Empire* (Oxford, 1990), 83, 102.

<sup>158</sup> 'Theognosti Libellus Ignatii ad Nicolaum papam'. *PG* 105: 849-861.

The *Vita Ignatii*<sup>159</sup> is found in the Anti-Photian collection. This life of St. Ignatios the Patriarch, written by Nicetas David the Paphlagonian around 906-907, had as its agenda to comment on the contemporary *tetragamy* controversy.<sup>160</sup> (See below in 'Time Span and Plan' about this ecclesiastical conflict.) Despite the fact that it is uncritically based on pro-Ignatian sources,<sup>161</sup> the *Vita* provides us with a unique window into the events surrounding the First and Second Council.

Unfortunately, the Ignatian sources are extremely biased against the Photians and therefore should be used very carefully. The Latin ecclesiastical sources, particularly Anastasius the Librarian (d.c.879), an Ignatian ally in Rome, merit separate study.

### Byzantine Canonists

There are three main Byzantine commentators. Although none of them has been canonized, their commentaries have become an inalienable part of Orthodox tradition.

Alexios Aristenos, a privileged deacon of Haghia Sophia, **the greatest cathedral of the empire**, served as a canon law expert (νομοφύλαξ<sup>162</sup>) in both church and imperial courts until his death in the second half of the twelfth century.<sup>163</sup> In 1130, at the request of Emperor John II Komnenos, he summarized the canons of the ecumenical and local councils, basing himself on the *Synopsis*,<sup>164</sup> adding a very few of his own commentaries. His work on Canons 13-15 is available in the standard edition of canons published by George Rallis and Michael Potlis.<sup>165</sup>

The monk John Zonaras was an imperial judge before a forced renouncement of the world in 1118.<sup>166</sup> As it was mentioned above, he is known for his work as a historian. His commentaries on the canons are notable for the academic integrity and forthrightness he brought to the task.<sup>167</sup> His commentaries on Canons 13-15 follow the text of the canons in the Rallis and Potlis edition.<sup>168</sup>

The most extensive and significant of the Byzantine canonical commentators is the titular patriarch of Antioch, Theodore Balsamon (d. after 1195<sup>169</sup>). He was commissioned by Emperor Manuel I Komnenos and Patriarch Michael Angelos to compile a comprehensive exegesis on the entire corpus of *Nomokanon in 14 Titles*. Balsamon did not limit himself to paraphrase. His style is more elaborate than that of the two previous commentators. He posed dialectical questions and offered analytical commentary of the canons.<sup>170</sup> Therefore his commentaries on Canons 13-15 are especially valuable.<sup>171</sup>

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<sup>159</sup> Andrew Smithies, *Nicetas Paphlago's Life of Ignatius: A Critical Edition with Translation* (Doctoral dissertation, SUNY Buffalo, 1987), iii.

<sup>160</sup> R.J.H. Jenkins, 'A Note on Nicetas David Paphlago and the Vita Ignatii', *Dumbarton Oaks Papers* 19 (1965), 244-247.

<sup>161</sup> Francis Dvornik, 'Patriarch Ignatius and Caesar Bardas', *Photian and Byzantine Ecclesiastical Studies* (London, 1974) 9.

<sup>162</sup> Literally a guardian of law. This title belonged to the head of the law school. Macrides, 'Nomos and Kanon on Paper and in Court', 68.

<sup>163</sup> Macrides, 'Nomos and Kanon on Paper and in Court', 72.

<sup>164</sup> *Synopsis* was a canonical collection of the sixth or the seventh century and updated in the second part of the tenth century by Simeon Logothete. Archbishop Peter L'Huillier, *The Church of the Ancient Council: The Disciplinary Work of the First Four Ecumenical Councils* (Crestwood, NY, 2000), 3.

<sup>165</sup> *Σύνταγμα των θείων και ιερών κανόνων* 2 Athens, 1852; repr. 1966, 691-692, 696.

<sup>166</sup> Macrides, 'Nomos and Kanon on Paper and in Court', 72, 76.

<sup>167</sup> He writes in his comments on Canon 28 of the Fourth Ecumenical Council in Chalcedon that the imperial power in his time has been transformed into tyranny and that the senate does not play any significant role. *Σύνταγμα των θείων και ιερών κανόνων* 2 Athens, 1852; repr. 1966, **283**.

<sup>168</sup> *Σύνταγμα των θείων και ιερών κανόνων*, 2, 689, 692-693.

<sup>169</sup> 'Balsamon, Theodore', *ODB* 1, 249.

<sup>170</sup> Macrides, 'Nomos and Kanon on Paper and in Court', 77-78.

<sup>171</sup> *Σύνταγμα των θείων και ιερών κανόνων*, 2, 690-692, 694-696.

### Time Span and Plan

There are a number of points in Byzantine history where it would be instructive to look to see whether Canon 15 was applied. My thesis will touch on the following representative examples taken from the period from 861 to 1300.

stage.

### Introduction.

Chapter 1. Background to Canon 15. My thesis begins with an analysis of the events of the so-called *Moechian*<sup>172</sup> schism, the ecclesiastical crisis produced by the first imperial divorce in Byzantine history in 795, when Constantine VI sought to set aside his first wife in favour of his mistress. This controversy caused a rupture of communion between the zealots (monks) and diplomats (patriarch and bishops) and lasted until the second outbreak of iconoclasm in 814. After the Triumph of Orthodoxy (843), attempts by St. Methodios, Patriarch of Constantinople, to bring the monastic extremists under rigid ecclesiastical control resulted in yet another new schism. Perhaps the rationale expressed in Canon 15 was already in effect during these ‘early’ disagreements.

Chapter 2. The First and Second Council of Constantinople (861). The fact that imperial and ecclesiastical power were intermingled in Byzantium must be born in mind when considering the elements that influenced the council. After the death of St. Methodios, the sainted empress Theodora appointed St. Ignatios, one of the sons of the deposed emperor Michael II Rangabe (a patron of the monastic partisans), patriarch in 847. In 856, St. Theodora was ‘sacked’ as regent by her son, who became Emperor Michael III. He selected St. Photios as patriarch, but St. Ignatios refused to abdicate, although he was sent in exile, and the rift between the Photians and Ignatians appeared. In 861, in order to formalize St. Ignatios’s deposition, the First and Second Council was convened. I will explain the origin of the council’s name and reconstruct the proceedings of that council in order to establish what the legislators meant when they issued Canon 15, and to whom it was addressed. I shall then trace the understanding and usage of these canons from that council in 861 until they became part of the Orthodox canonical tradition.

Chapter 3. Another Marital Crisis. I would like to look into the *tetragamy* affair, when Patriarch Nicholas I Mystikos refused to recognize Emperor Leo VI’s fourth marriage (906).<sup>173</sup> Patriarch Nicholas was removed from office and Emperor Leo appointed Euthymios in his place. Thus a new division appeared. The situation became more complex when Nicholas was reinstalled (912). I want to determine if the supporters of Patriarch Nicholas maintained ecclesiastical communion with Patriarch Euthymios before the reconciliation was reached (917).

Chapter 4. Byzantine Canonists on Canons 13-15. Here I will provide a translation of the nine commentaries on Canons 13-15 of the above mentioned twelfth-century Byzantine canonists. I will evaluate their style, the content of their *scholia*, and their interconnections.

Chapter 5. A schism between the Byzantine successor states. In 1225, after Constantinople had been captured by the Fourth Crusade in 1204, Demitrios Chomatenos, Archbishop of Ohrid, crowned Theodore Angelos Doukas emperor in Thessalonika. This unusual event produced a schism between the Church of Epirus and the patriarchate in Nicaea. I cannot see how they could have justified this rupture of communion by reference to Canon 15. I want to research whether Chomatenos, a scholarly man, has left any commentaries on Canons 13-15.

Chapter 6. The Arsenite Schism. The deposition of Patriarch Arsenios by his own bishops in 1265 created new turmoil, since many refused to recognize this decision. This deposition was a

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<sup>172</sup> From *μοιχεία* – fornication.

<sup>173</sup> The need for the fourth marriage was driven by Leo VI’s need to have a legitimate heir of the body.

reaction to Patriarch Arsenios's protest against the blinding of Emperor John IV Laskaris by Michael VIII Palaiologos. This schism lasted for forty-five years, and I wonder what reasons were put forward by the Arsenites not to recognize the patriarchs who succeeded Arsenios.

Chapter 7. Anti-Latin Opposition. A number of clergy and monastics ceased communion with Patriarch John Bekkos (1275-1285) who, as Ecumenical Patriarch during the Council of Lyons, enacted a re-union between the Churches of Rome and Constantinople. Bekkos and his unionist followers basically had to submit to Roman claims of primacy, and this submission was rejected by those who opposed the patriarch. These opponents may well have referred to Canon 15.

Conclusion. Based on the materials studied I should be able to answer my research question: To what extent did the Byzantines refer to Canon 15 in theory and practise?

### Methodology

The cornerstone of my research is a cross examination of Byzantine primary sources. I will examine closely all the primary sources in the original high-style Atticizing Greek of the Middle and Late Byzantine periods.

### Conclusion

The events of the modern history of the Orthodox Church demonstrate that Canon 15 is one of the pieces of Byzantine legislation most frequently invoked by Orthodox polemicists.<sup>174</sup> Nonetheless, there is no specialized study focusing on Canon 15 and how it was understood and used in Byzantium. In order to see if the modern 'users' of this canon understand it as it was understood by the Byzantines, one needs to address three main questions:

1. To whom did the canon's promulgators address this canon?
2. How should all the terminology be adequately understood?
3. What was the *receptio* of Canon 15 by the Orthodox?

I may speculate about the outcome of these questions:

1. Canon 15 was the product of concrete historical circumstances. The first part of the canon addressed the moment of the Ignatians's opposition to St. Photios. The second part of the canon was a tribute paid by the Photians to the Ignatians's zeal for Orthodoxy, which was supposed to demonstrate that the Photians were also concerned with defending the Canon of Truth. Therefore, in the second part of this canon the legislators did not mean to encapsulate a blue print for all possible scenarios for all times.

2. The key words are in the second part of Canon 15: 'who preaches this heresy clearly, publicly',<sup>175</sup> 'condemned by holy councils or fathers',<sup>176</sup> A heresy in the patristic lexicon meant a radical doctrinal disagreement, usually on Christological issues.<sup>177</sup> Such a grave deviation from the precepts of Orthodoxy must contradict the universal Orthodox Tradition and should be disseminated intentionally in such a way that it breaks the chain of command.

3. The provision in the second part of Canon 15 could not have been practically implemented because when a new heresy erupts, sympathizing bishops would not assent to the convening of a

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<sup>174</sup> While I was completing my work on this differentiation piece the news came from Russia that on May 6, 2011 Priestmonk Evstratii Filippov ceased communion with Patriarch Cyrill of Moscow and all Russia referring to the second half of Canon 15. "Единственный выход - категорический разрыв с Патриархом Кириллом". Открытое письмо клирика Тульской епархии РПЦ МП иеромонаха Евстратия (Филиппова), <http://portal-credo.ru/site/?act=news&id=83989> (accessed on 14 May, 2011).

<sup>175</sup> Canon 15, *Σύνταγμα των θείων και ιερών κανόνων*, 693.

<sup>176</sup> Canon 15, *Σύνταγμα των θείων και ιερών κανόνων*, 693.

<sup>177</sup> See John A. McGuckin, 'Schism', *The Westminster Handbook to Patristic Theology*, 303.

council that would condemn them as heretics. Therefore, rupture of communion was the last reserve in the protest against perceived heresy and a necessary signal to other Orthodox about a danger in the Church.

Canon 15 is the only canon that defines what makes one an ecclesiastical offender (in its first part) and what makes one a confessor of the faith (in its second part).<sup>178</sup> Canon 15 merits study as a unique piece of church law that speaks volumes about the ethos of the Orthodox Church. This fascinating canon undercuts a military-style ecclesiastical discipline to give way to a rule of individual Christian conscience. Imagine a piece of civil law that has a provision for civil disobedience.

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<sup>178</sup> I am indebted to Novice Alexander Ivanov of Holy Trinity Monastery, Jordnaville, NY for pointing out this feature of Canon 15.