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## RECEIVING THE NON-ORTHODOX: A HISTORICAL STUDY OF GREEK ORTHODOX CANON LAW

DAVID HEITH-STADE\*

**RÉSUMÉ** — Cet article analyse le développement de la pratique pour la réception des non-Orthodoxes dans le droit canonique orthodoxe grec. L'argument principal est que le développement de cette institution canonique a été influencé par une ecclésiologie pneumatologique réaliste. Cette étude historique du développement d'une institution canonique fera la lumière sur la façon dont le droit canonique orthodoxe grec a fonctionné dans la pratique.

### *Introduction*

The observant student of canon law, patristics, and dogmatic theology, who for the first time reads canon 7 of the second ecumenical council (381), may ask why Arians, unlike Eunomians, are not received by baptism considering that both held heretical doctrines about the Trinity.<sup>1</sup> However, already the first ecumenical council (325) enacted norms for receiving heretics into the communion of the newly established church of the Roman empire. The Nicaean council decreed in canon 8 that the clergy of the Novatians should be received into the communion of the catholic and apostolic church after a written abjuration of their rigorist position on penance and remarriages.<sup>2</sup> The council also decreed in canon 19 that the followers of Paul of Samosata should unconditionally (*exapantos*) be rebaptized.<sup>3</sup> The Nicaean council did not provide any *ratio legis* but merely enacted norms for receiving Novatians and

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1 There exist many different editions of the Greek Orthodox *corpus canonum*. This study uses G. A. RALLIS and M. POTLIS (eds.), *Suntagma tôn theiôn kai hierôn kanonôn*, 6 vols., Athens, 1852-1859; reprint, Athens, Grigoris, 1966. This is the standard edition used by Greek Orthodox canonists. (= RALLIS/POTLIS)

2 RALLIS/POTLIS, *Suntagma*, vol. 2, p. 133.

3 Ibid., vol. 2, pp. 158-159.

Paulianists into the established church of the empire. The second ecumenical council, however, did provide a partial *ratio legis* for the norms enacted in canon 7.<sup>4</sup> The canon decrees that heretics who come over to Orthodoxy shall be received according to established custom (*kata tēn hupotetagmenēn akolouthian kai sunētheian*). The established custom invoked in the canon is that Arians, Macedonians, Sabbatians, Novatians, Quatrodecimans, and Apollinarians are received by chrismation with myron and the formula “The Seal of the gift of the Holy Spirit,” after they have handed over a written statement (*libellus*) condemning every heresy. But Eunomians, Montanists, Sabellians, and all other sects (*tas allas pasas haireseis*) are received as pagans, i.e. they are made catechumens and are exorcized, catechized, and finally baptized after a long time. No reason is given for why the first group is simply received by abjuration and chrismation with myron, but the Eunomians are described as those “who are baptized with a single immersion” (*tous eis mian katadusin baptizomenous*) and the Sabellians are said to teach the identity of the Son and the Father (*tous huiopatorian didaskontas*). Consequently, the reason for rejecting their baptism seems to be a defect of form or doctrine. But if defect of doctrine is the reason for rejecting the baptism of these sects, why are not Arians also to be received by baptism?

The canons of the first and second ecumenical councils are unquestionably a part of the common law (*ius commune*) of the ancient church; they are received by all churches which date back to the first millennium: the Eastern Orthodox Churches, the Roman Catholic Church, the Oriental (anti-Chalcedonian) Orthodox Churches, and the Assyrian Church (formerly known as the Persian, East Syrian, or Nestorian Church).<sup>5</sup> They are the only universal norms enacted during the first millennium regarding the reception of sectarians into the communion of the established (or ecumenical) church of the late Roman empire. These norms do not provide any general principle or norm but regulate the reception of persons coming from specific sects.

4 Ibid., vol. 2, pp. 187-188.

5 For general overviews of the canon laws of these churches see: W. PLÖCHL, *Geschichte des Kirchenrechts*, 1: *Das Recht des ersten christlichen Jahrtausends von Urkirche bis zum großen Schisma*, Wien, Herold, 1953; H. E. FEINE, *Kirchliche Rechtsgeschichte: Die katholische Kirche*, 5th rev. ed., Köln, Böhlau-Verlag, 1972; W. SELB, *Orientalisches Kirchenrechts 1: Die Geschichte des Kirchenrechts der Nestorianer*, Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1981; *idem*, *Orientalisches Kirchenrechts 2: Die Geschichte des Kirchenrechts der Westsyrier*, Wien, Verlag der Österreichischen Akademie der Wissenschaften, 1989; N. MILAS, *Das Kirchenrecht der morgenländischen Kirche*, translated by A. R. VON PESSIC, Zadar, published by the author, 1897; A.M. STICKLER, *Historia Iuris Canonici Latini*, 1: *Historia Fontium*, Turin, Pontificium Athenaeum Salesianum, 1950; C. VAN DE WIEL, *History of Canon Law*, Louvain Theological and Pastoral Monographs, 5, Leuven, Peeters Press, 1991; P. RODOPOULOS, *An Overview of Orthodox Canon Law*, translated by W. J. LILLIE, Rollinsford, New Hampshire, Orthodox Research Institute, 2007.



The present study will analyze historically the development of the canonical practice of receiving sectarians in Greek Orthodox canon law.<sup>6</sup> The backbone of Greek Orthodox canon law is the *corpus canonum* ratified and promulgated by the Quinisext council in Trullo (692).<sup>7</sup> Although the formal sources received by the council in Trullo predate this council, it was through the enactment of canon 2 of the council that these formal sources received the force of law for all the Eastern Orthodox churches of the Byzantine rite.<sup>8</sup> The sources of the Greek Orthodox *corpus canonum* will, therefore, be treated in the order they received the force of law for the Byzantine rite. The development of canonical praxis during the late Byzantine era was dominated by the juristic interpretations of the Byzantine canonists.<sup>9</sup> The post-Byzantine development was dominated by confessionalism, polemics, and controversial theology which produced the symbolic books of the Eastern Orthodox Churches and various decrees directed against other Christian confessions.<sup>10</sup> The relevant documents from each of these historical periods will be analyzed in order to trace the development of the canonical practice of receiving sectarians.

6 Since Greek Orthodox canon law does not always make a clear distinction between heretics and schismatics the more general term "sectarian" has been used. Although the term "sectarian" may be considered offensive or intolerant it has been used since the various possible euphemisms would result in a loss of conceptual clarity which would be most unfortunate in a legal-historical study of canon law.

7 For a general overview of the collections of formal sources of Byzantine ecclesiastical law see: K. E. ZACHARIAE VON LINGENTHAL, *Die grichischen Nomokanones*, Mémoires de l'Académie Impériale de Science de St.-Petersbourg, Ser. 7, tom. 23, N. 7, St. Petersburg, 1877; idem, *Über der Verfasser und die Quellen des (pseudo-photianischen) Nomokanon in XIV Titeln*, Mémoires de l'Académie Impériale de Science de St-Petersbourg, Ser. 7, tom. 32, N. 16, St. Petersburg, 1885; P. KRÜGER, *Geschichte der Quellen und Litteratur des römischen Rechts*, Leipzig, Verlag von Duncker und Humboldt, 1888, pp. 367-368; C. DE CLERCQ, "Byzantin (droit canonique)," in R. NAZ (ed.), *Dictionnaire de droit canonique* 2, Paris, Librairie Letouzey et Ané, 1937, col. 1170-1177; STICKLER, *Historia Iuris Canonici*, pp. 69-72, 405-413; L. WENGER, *Die Quellen des römischen Rechts*, Wien, Adolf Holzhausens, 1953, pp. 675-677.

8 Even though the term "rite" (*ritus*), which was developed in papal legislation during the Western crusaders' occupation of Eastern Christian territories, is somewhat inaccurate to describe the situation of the first millennium (especially since it presumes a degree of liturgical homogeneity which did not exist then) it is still used here for practical reasons.

9 E. HERMAN has provided an excellent presentation of the Byzantine canonists in I. CROCE and E. HERMAN, *Textus selecti ec operibus commentatorum byzantinorum iuris ecclesiastici*, Rome, Vatican Polyglot Press, 1939, pp. 7-35.

10 On the development of post-Byzantine Greek Orthodox theology see: G. PODSKALSKY, *Griechische Theologie in der Zeit der Türkenherrschaft (1453-1821): Die Orthodoxie im Spannungsfeld der nachreformatorischen Konfessionen des Westens*, Munich, C. H. Beck, 1988.



## 1 — *The Council in Trullo*

The Quinisext council in Trullo (692) enacted new norms (canon 95) and ratified a *corpus canonum*, in canon 2,<sup>11</sup> containing some ancient local norms regulating the reception of sectarians (e.g. canon of St. Cyprian of Carthage, and canons 1 and 47 of St. Basil the Great). However, the *corpus canonum* of the Trullan council is not the common law of the universal orthodox church of the first millennium since it was not received by the Latin Church. The Trullan *corpus canonum* is, rather, the codification of the common law of the Eastern patriarchates, or in more modern terms: the first codification of the canon law of the Byzantine rite within the universal church. It is clear from the canons enacted by the Trullan fathers that they did not perceive themselves to be legislating for the universal church but rather for the Eastern churches (i.e. the Byzantine rite).<sup>12</sup> The fact that the later Byzantine canonists considered the Trullan council as a complementary session to the sixth, or to the fifth and sixth, ecumenical councils should not obscure the fact that the Trullan fathers themselves did recognize legitimate differences between the different “rites” in the universal church, and that they legislated primarily for their own rite and not for the entire universal church.

Canon 95 of the council in Trullo expands canon 7 of the second ecumenical council but divides heretics into three groups: (a) Arians, Macedonians, Novatians, Quatrodecimans, and Apollinarians, who are received according to the ritual prescribed in canon 7 of Constantinople I, i.e. by abjuration and chrismation with myron; (b) Paulianists, Eunomians, Montanists, Sabellians, Manichaeans, Valentinians, Marcionites and other similar sects, who are received as pagans by baptism; and (c) Nestorians, Eutychians, Severians, and similar sects, who are received by presenting a written statement (*libellus*) condemning their doctrines as well as Nestorius, Eutyches, Dioscorus, Severus, and the other leaders of these sects, after which they are admitted to communion.<sup>13</sup> This canon, like the earlier conciliar canons, does not provide any *ratio legis*: it is not stated if it is a defect of doctrine and/or a defect of baptismal form that is the reason for the way these groups are received into the communion of the established church.

The *corpus canonum* received by the Trullan council contains certain further norms from various other earlier sources regulating the reception of sectarians - namely, the canon of the local council held under St. Cyprian of Carthage (third century), the canons of St. Basil the Great (fourth century), the canons of

11 RALLIS/POTLIS, *Suntagma*, vol. 2, pp. 308-310.

12 See canon 3 which recognizes legitimate differences between the Latin rite (the Roman Church) and the Byzantine rite (the Byzantine Church) and legislates only for the latter: see RALLIS/POTLIS, *Suntagma*, vol. 2, pp. 312-314.

13 Ibid., vol. 2, pp. 529-531.



the local council of Laodicea (end of fourth century), and the pseudographical canons of the apostles (late fourth or early fifth century). The norms found in canons 7 and 8 of Laodicea seem to be the source of canon 7 of Constantinople I.<sup>14</sup> The Laodicean canons, like the Nicaean and Constantinopolitan canons, do not give any reasoning behind the enactment. The other canons received by the Trullan council, however, do shed some light on the reasoning behind the enacted norms.

### 1.1 — St. Cyprian of Carthage

The canon of St. Cyprian was not included in the early redactions of the Byzantine compendia of canon law, since its norm had been abrogated by the ecumenical councils. The norm defined by this canon was that all heretics and schismatic should be reconciled with the church through baptism.<sup>15</sup> The Trullan fathers stated that this canon had been in force only in the territory of the African church in accordance with its received custom.

The position of St. Cyprian of Carthage regarding the reconciliation of heretics and schismatics is well known to those who have studied patristics and dogmatic theology, as is his conflict with St. Stephen of Rome on this issue. But before the canon of St. Cyprian can be analyzed, the background of the issue must be considered.<sup>16</sup> The link between baptism as the initiation into the covenantal communion and eucharist as the participation of covenantal communion is already established in 1 Corinthians 10:1-4 and perhaps also in 1 John 5:6. The early church linked baptism and eucharist which were the empirical foundation (*lex orandi*) of ecclesiology. There were, however, already in the early church different emphases in ecclesiological thought: on the one hand, there was the eschatological ecclesiology, which perceived the church of the new covenant as those who had been saved from this sinful world and who would inherit the world to come, and, on the other hand, there was the pneumatological ecclesiology, which perceived the church of the new covenant as the new life in the communion of the Holy Spirit. The early church did, however, think that the ecclesial reality of the new covenant was visible; the later Augustinian and Protestant notions of a distinction between the visible and invisible church would have been alien to the Christianity of the first centuries. The church of the first centuries perceived itself as the Spirit-filled visible communion (*koinônia*) of the saved, united by baptism and eucharist, who would inherit the eschatological kingdom of God.

14 Ibid., vol. 3, pp. 176-178.

15 Ibid., pp. 2-19.

16 See J. PELIKAN, *The Christian Tradition 1: The Emergence of the Catholic Tradition (100-600)*, Chicago, University of Chicago Press, 1971, pp. 155-171. F.-J. NÖCKE, "Spezielle Sakramentenlehre," in T. SCHNEIDER (ed.), *Handbuch der Dogmatik*, 4th ed., Düsseldorf, Patmos Verlag, 2009, vol. 2, p. 241.



The third century represents an era of ecclesial consolidation and mature reflection on the deposit of faith. In the second century the local churches had been consolidated through the rise of the monarchical episcopacy and episcopal absolutism. The need for a common mature reflection on the deposit of faith, the scandal caused by Paul of Samosata, and the chaotic situation which followed the persecution of Decius led to the absolute authority of the local bishop becoming subjected to the collegial authority exercised by councils.<sup>17</sup> The progressive ecclesial consolidation and the Novatian schismatic rigorists after the Decian persecution refusing to have communion with those who had lapsed during the persecution but who had afterward repented and done public penance, confronted the local churches with the issue of what to do with sectarians and dissidents, and especially of what to do with dissidents and sectarians wishing to come over to the communion of the church.<sup>18</sup> St. Cyprian of Carthage and St. Stephen of Rome took opposing positions on this issue. St. Dionysius of Alexandria, who took the same position as St. Stephen, tried to mediate between the hardliners on each side and urged them to respect differences in local custom. Eusebius' account of this conflict is largely based on the correspondence of St. Dionysius.<sup>19</sup>

The opposing positions seem to have been due to different ecclesiological emphases. St. Cyprian emphasized the connection between baptism and eucharistic communion since he saw the church as the communion of the Holy Spirit: if the dissidents had left the eucharistic communion of the church they had rejected the Holy Spirit and consequently their baptism was not sanctified by the Spirit of God. In support of his positions St. Cyprian referred to Ephesians 4:5 and Luke 11:23. The early Roman church's understanding of baptism did not seem to be as developed as in other local churches (it may be that it emphasized the eschatological aspect of baptism, i.e. purification from the present sinful world) and the conservatism of St. Stephen might explain the Roman position of receiving dissidents and sectarians by the imposition of hands in analogy with the practice of reconciling apostates.<sup>20</sup>

17 On the development of various forms of conciliarity in the early church see: H. J. SIEBEN, *Die Konzilsidee in der alten Kirche*, Paderborn, Schöningh, 1979. On Paul of Samosata see: S. ASHBROOK HARVEY, "Syria and Mesopotamia," in M. M. MITCHELL and F. M. YOUNG (eds.), *The Cambridge History of Christianity 1: Origins to Constantine*, Cambridge, Cambridge University Press, 2006, pp. 362-363.

18 On the ecclesiological consequences of the persecutions for the early church see: S. G. HALL, "Ecclesiology forged in the wake of persecution," in MITCHELL/YOUNG, *History of Christianity*, vol. 1, pp. 470-483.

19 "Church History," book 7, chapter 2-9, in *PG*, vol. 20, cols. 639-658.

20 See M. E. JOHNSON, *The Rites of Christian Initiation: Their Evolution and Interpretation*, Collegeville, The Liturgical Press, 1999, pp. 33-88.



## 1.2 — St. Basil the Great

Neither the position of St. Cyril nor the position of St. Stephen prevailed over the position of St. Dionysius, namely that each local church should follow its own custom regarding the reception of heretics and schismatics. St. Amphilochius of Iconium wrote several letters to his older colleague, St. Basil the Great, concerning various issues of church discipline. The canonical replies of St. Basil were used in the sixth century as documentary or formal sources by John Scholasticus<sup>21</sup> in his systematic collection of canons divided into fifty titles.<sup>22</sup> These canonical replies also received formal ratification by the canon 2 of the Trullan council. St. Basil's position on the reception of sectarians and dissidents is found in canons 1 and 47. Like St. Cyprian, St Basil bases his position on a pneumatological ecclesiology, but he is more specific in his treatment of sectarians and dissidents since he wrote at a time when the church had had more experience in dealing with these issues.

St. Basil replies in canon 1 to St. Amphilochius' question regarding the baptism of Novatians. St. Basil states that the position of St. Dionysius applies - i.e. that each local church should follow its own custom regarding the Novatians.<sup>23</sup> But St. Basil notes that St. Dionysius had received Montanists without rebaptism and claims that this is contrary to the decision of the ancient ones who accepted baptisms which did not deviate from the faith. On the basis of precedents, St. Basil divides sectarians and dissidents into: (a) heretical sects (*haireseis*); (b) schismatic sects (*schismata*); and (c) separatists or illegal congregations (*parasunagôgai*). Heretical sects are those who are completely separate and alien in faith (e.g. Manichaeans, Valentinians, Marcionites, and Montanists). Schismatic sects are those who had separated themselves because of a curable difference in opinion regarding some ecclesiastical issue (*ta ekklesiastika*) (e.g., Novatians). Illegal congregations are created by insubordinate presbyters and bishops or by uneducated laypersons (e.g. Meletius of Lycopolis, although no example is given by St. Basil himself in this case).

St. Basil states that the heretics differ in belief about God (*peri autês tês eis theon pisteôs estin hê diaphora*).<sup>24</sup> Therefore, according to St. Basil, the heretical sects have been completely rejected from the beginning of the church, while schismatic sects have been received since they are from the church (*hôs eti ek tês ekklesiâs ontôn*), and the separatists are received after they have corrected themselves through sincere repentance and conversion (separatist clerics often being received with their ranks when they have repented). St. Basil then

21 "Scholasticus" is the Byzantine title for a jurist or lawyer.

22 See the critical edition V. BENESEVIC, *Ioannis Scholastici Synagoga L Titolorum*, Abhandlungen der Bayerischen Akademie der Wissenschaften, Phil.-hist. Abt., N.F., Hft. 14, Munich, Verlag der Bayerischen Akademie der Wissenschaften, 1937.

23 RALLIS/POTLIS, *Suntagma*, vol. 4, p. 89.

24 Ibid., vol. 4, n. 89.



argues that the Montanists are clearly heretics since they blaspheme against the Holy Spirit by identifying the Paraclete with Montanus and Priscilla. St. Basil poses the rhetorical question: What is the reason for approving of the baptism of those who baptize into the Father and the Son and Montanus and Priscilla? They have not been, according to St. Basil, baptized into that which the church has received.

After dismissing the baptism and faith of the Montanists, St. Basil turns to the Novatians, Encratites (an ascetical sect), and Hydroparastats (an ascetical sect which used water instead of wine in the eucharist).<sup>25</sup> He states that these are schismatic sects and that St. Cyprian of Carthage and St. Firmilianus of Iconium had condemned them completely since schism was the beginning of their separate existence. He says that those who have separated themselves from the church do not have the grace of the Holy Spirit among themselves, since the transmission of the Holy Spirit has ceased through the separation. They who had received ordination (*cheirotomia*) from the fathers, thus receiving the spiritual charisma (*to charisma to pneumatikon*) through the imposition of hands, have become laymen through separation from the church, and they have the power neither to baptize nor to ordain; they can no longer transmit the grace of the Holy Spirit to others. St. Cyprian and St. Firmilianus are said to have considered the schismatics as being baptized by laypersons and therefore commanded that when they come over to the church they shall be purified again with the true baptism of the church. St. Basil notes, however, that, according to the *oikonomia* in Asia (*kata tên Asian oikonomias*), their baptism is accepted for the sake of the many (*heneka tôn pollôn*) and it should be accepted. St. Basil then states that the Encratites have made changes in their baptismal rite after their schism and that the aforementioned provision therefore does not apply to them, but they must be received by rebaptism. However, if this practice obstructs the general *oikonomia* (*katholou oikonomia*), the *oikonomia* of the fathers should be restored (i.e. their baptism should be accepted). St. Basil says that this is because he fears that the harshness of this position will make Encratites hesitant about coming over to the communion of the church. But if some Encratites observe the baptism of the church, this does not mean that the church is obliged to recognize their baptism but to obey the *akribeia* ("rigor", "strictness", "precision") of the canons (*douleuein akribeia kanonôn*). *Oikonomia* ("administration", "management", "governance", "dispensation", "the objective work of salvation") designates in Greek canon law a form of equity in the exercise of power by the bishops and councils. Originally, it seems primarily to have meant the bishops' equitable use of power, but it gradually came to be contrasted with *akribia* or *rigor iuris*, i.e. the strict or rigorous application of the canons. *Oikonomia* is basically a responsible use of equity in

25 RALLIS/POTLIS, *Suntagma*, vol. 4, pp. 89-92.



the exercise of power by bishops and councils.<sup>26</sup> Finally, St. Basil states that if their baptism is accepted, they shall be chrismated with myron in the presence of the believers before they can partake of the mysteries (i.e. the eucharist). St. Basil ends his discussion by noting that there is a precedent which is contrary to his reasoning since two bishops, Izoïs and Saturnius, have been received in their ranks and, therefore, there is a certain canon that the congregations of these bishops also must be considered to be in communion with the church, since by receiving the bishops their congregations are also received.

In canon 47 St. Basil returns to the Encratites and groups them together with Saccophores and Apostactites (two other dualist ascetical sects) and bluntly states that their cases differ from the Novatians since a canon has been enunciated concerning the Novatians (although there is some difference concerning this canon, but the Encratites have been passed over in silence)<sup>27</sup> St. Basil states that he rebaptizes them and advises St. Amphilochius to do the same, unless his church for some reason has a general prohibition against rebaptism, as is the case with the *oikonomia* of Roman church. Nevertheless, St. Basil thinks that his policy of rebaptism should be adopted. He considers these dualist ascetical sects to be an offspring of the Marcionites, since they reject marriage and wine and since they claim that the created world is defiled. St. Basil states that, even if they come over to the church and say that they are baptized into the Father and the Son and the Holy Spirit, they shall be rebaptized since they have in effect claimed that God is the Creator of evil. St. Basil does, however, express a wish that a number of bishops should come together and issue a canon regarding these sects in order to avoid further confusion on the issue.

St. Basil presumes a pneumatological realist ecclesiology: the church is the visible communion of the grace of the Holy Spirit united by baptism and eucharist. The bishop is perceived to be the administrator (*oikonomos*) of the church and the transmitter of the grace of the Holy Spirit. The bishop partakes of this grace through his communion with the rest of the church and transmits this grace to his congregation. They who separate themselves from the communion of the church separate themselves from the grace of the Holy Spirit, even if they formally retain the rituals of church. Each local church should, however, follow its own custom concerning the reception of sectarians. The Arians are probably not mentioned since, although their theology had been condemned, they were not at this time a sect separated from the established church but a theological party within the established church.

26 On the concept of *oikonomia* in Greek canon law see: H. S. ALIVIZATOS, *Die Oikonomia: Die Oikonomia nach dem kanonischen Recht der Orthodoxen Kirche*, translated and introduced by A. BELLIGER, Frankfurt am Main, Verlag Otto Lembeck, 1998. This German translation of the seminal work by ALIVIZATOS contains a comprehensive and updated bibliography on the subject.

27 RALLIS/POTIIS *Syntragma* vol 4 nn 197-198.



St. Basil's distinction (which would become somewhat insufficient in the fifth century) defines heretical sects as those who have never been a part of the communion of the church and have a heterodox concept of God (dualist and/or non-trinitarian). Schismatic sects are those who originally were a part of the church's communion but have separated themselves because of a curable controversy concerning some ecclesiastical issues. Illegal congregations are created by insubordination to church authority. When there is no canon or custom regarding a certain sect, St. Basil thinks that, if they have introduced a heterodox concept of God (e.g. dualism) and/or if they have made changes in the baptismal rite, they should be received by baptism even though they use the Trinitarian baptismal formula from Matthew 28:19. But if this harsh policy makes it harder for the local bishop to make the sectarians come over to the church, they may be received by chrismation with myron only, which supplies the missing grace of the Holy Spirit. Furthermore, St. Basil states that illegal congregations are reconciled through penance.

It should be noted that when St. Basil uses the term "canon" (*kanôn*) he does not mean what is later meant by that term. Originally, *kanôn* and *kanones* designated norms or normativity (*ius obiectivum*) derived from the Jesus event, the apostolic kerygma, and ecclesial praxis. The church fathers and the councils tried to define this normativity. The division into canons of the canonical replies and letters of St. Basil is a later practice from the sixth century. The disciplinary decrees of the early councils were not called *kanones* but *horoi* ("definitions", "decrees"). These documents were not originally perceived as the sources of normativity, but instead as the definition of normativity. In the fourth century, the concept of canon gradually evolved from designating norms and normativity in ecclesial praxis to designate the documents in which such normativity was defined. These documents, which were originally the definitions of normativity, became the sources of normativity in the church. Thus, the concept of canon evolved from designating the constitutive or material sources (*fontes essendi*) of normativity, to designating the documentary or formal sources (*fontes cognoscendi*) of normativity.<sup>28</sup>

### 1.3 — The Pseudographical Canons of the Apostles

As the concept of canon gradually evolved in the fourth century from designating normative ecclesial praxis and kerygma to designate the documents or formal sources defining normative praxis and kerygma, the term "apostolic canons" (*kanones apostolikai*), which originally had meant apostolic norms in the life of the church (i.e. apostolic tradition), came to designate certain documents or formal sources. Thus, the 85 pseudographical canons of the apostles

28 The most complete study on the concept of canon in the early church is H. OHME, *Kanon ekklesiastikos Die Bedeutung des altkirchlichen Kanonbegriffs*, Arbeiten zur Kirchengeschichte, 67. Berlin, de Gruyter, 1998.



emerged towards the end of the fourth century or in the beginning of the fifth century. These canons were transmitted as book 8 of the *Apostolic Constitutions* (a West Syrian synthesis of various earlier pseudoapostolic church orders) attributed to St. Clement of Rome. The Trullan fathers expressed some reservation about the *Apostolic Constitutions* of St. Clement, which they claimed had been corrupted by the heretics, but received the eighty-five apostolic canons into their *corpus canonum*. In general, the *Apostolic Constitutions* have had a great influence on the development of the Byzantine rite, despite their disputed orthodoxy. The Trullan fathers did not, however, claim that the apostolic canons were genuine, but they merely called them “the eighty-five canons which have been transmitted to us under the name of the holy and glorious apostles” (*paradothentas hêmin onomati tôn hagiôn kai en doxôn apostolôn ogdoêkonta pente kanonas*).

Four of the apostolic canons regulate baptismal practice, the reception of heretics, and the baptism of heretics: namely, canons 46, 47, 49, and 50. Canon 46 decrees that a bishop, presbyter, or deacon who accepts the baptism or sacrifice of heretics shall be deposed, and it quotes 2 Corinthians 6:15 as the reason.<sup>29</sup> Canon 47 decrees that a bishop or presbyter who baptizes again a person who has the baptism in accordance with the truth (*ton kata alêtheian echonta baptismâ*), or who does not baptize one who has been defiled by the ungodly, shall be deposed since he sneers at the cross and the death of the Lord and does not distinguish between priests and false priests (*mê diakrinôn hiereas pseudoïereôn*).<sup>30</sup> Canons 49 and 50 treat the baptismal formula and rite. Canon 49 decrees that, if any bishop or presbyter does not baptize according to the precept of the Lord into the Father and the Son and the Holy Spirit but instead baptizes into three Fathers or into three Sons or into three Paracletes, he shall be deposed.<sup>31</sup> The rhetorical exaggeration in this canon echoes St. Basil’s argument against the Montanists. Canon 50 decrees that, if any bishop or presbyter does not celebrate the unique initiation with three immersions but with one immersion “into the death of the Lord,” he shall be deposed because the Lord did not say: “Baptize in my death,” but: “Go therefore and make disciples of all the nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit” (Matthew 28:19 NKJV).<sup>32</sup> These canons have a direct bearing on the question raised in the beginning of this article, namely: Why Arians but not Eunomians? Despite the superficial appearance of general norms, these canons are the product of a specific historical context: the conflict with the Eunomians.

29 RALLIS/POTLIS, *Suntagma*, vol. 2, p. 61.

30 Ibid., vol. 2, p. 62.

31 Ibid., vol. 2, p. 65.

32 Ibid., vol. 2, n. 66.



The Eunomians were Arian extremists who were not content with being a condemned theological party within the established church trying to circumvent the Nicaean decrees, as were the semi-Arians, but broke off both from the established church and the semi-Arian party, and established themselves as a sect. The church historians Socrates Scholasticus and Sozomen report that, not only did Eunomius confess an extreme form of Arianism, but he also rebaptized those coming to his sect and changed the trinitarian baptismal formula to “into the death of Christ.”<sup>33</sup> Socrates and Sozomen do claim, however, that Eunomius himself never received this new form of baptism which he had instituted.<sup>34</sup> Since the apostolic canon 50 almost verbatim quotes the Eunomian baptismal formula, it is reasonable to assume that it is specifically directed against the Eunomians and must not be read as stating a general norm regarding the form of baptism.

## 2 — *The Post-Chalcedonian Development*

The threefold division of St. Basil became somewhat strained in the fifth and sixth centuries with the emergence of Nestorianism and anti-Chalcedonianism after the ecumenical councils of Ephesus (431) and Chalcedon (451).<sup>35</sup> The heretics condemned by the first and second ecumenical councils deviated from the orthodox party on issues of *theologia* - i.e. the doctrines about the fundamental Christian concept of God. The orthodox Christian concept of God had been developed by the church fathers based on scripture, worship, and normative kerygma. The outlines of this concept had been officially decreed in the Nicaeno-Constantinopolitan creed: there is only one Deity (the doctrine of monotheism); this Deity is the Creator of the intellectual and material realities; but these realities are essentially distinct and separate from their Creator (the doctrine of *creatio ex nihilo*); both the material and intellectual reality were created good and the Deity is not the author of evil (the doctrine of the goodness of creation).<sup>36</sup> The One Deity did, however, have three forms of existence,

33 SOCRATES SCHOLASTICUS, *Church History*, book 5, chapter 24; “Ou gar eis tên Triada, all’ eis ton tou Christou baptizousi thanaton,” in *PG*, vol. 67, col. 649; SOZOMEN, *Church History*, book 6, col. 26: “peri tên theian baptisin eneôterisan, ouk eis Triada, alla eis ton tou Christou thanaton baptizesthai,” in *PG*, vol. 67, col. 1364.

34 See SOCRATES SCHOLASTICUS, “Church History,” book 5, chapter 24, *PG*, vol. 67, cols. 647-650; SOZOMEN, “Church History,” book 6, chapter 26, in *PG*, vol. 67, cols. 1361-1366.

35 For a general history of the seven ecumenical councils see: L. D. DAVIS, *The First Ecumenical Councils (325-787): Their History and Theology*, Collegeville, The Liturgical Press, 1990.

36 See D. SATTler and T. SCHNEIDER, “Gotteslehre,” in T. SCHNEIDER (ed.), *Handbuch der Dogmatik*, 4th ed., Düsseldorf, Patmos Verlag, 2009, vol. 1, pp. 82-85; *idem*, “Schöpfungslehre,” in *ibid.*, pp. 170-181.



called *hupostaseis* or persons, named Father, Logos/Son, and Spirit/Paracelete, who were simultaneously related to each other in an essential unity which has a single will, power, act, and glory (the doctrine of trinitarianism). The early heretics had denied, or were at least presumed to have denied (e.g. Montanists), one or more of these fundamental orthodox Christian doctrines about God which constituted what the Greek patristic tradition called *theologia*.<sup>37</sup>

In the fourth and fifth centuries there emerged conflicts concerning what the Greek patristic tradition calls *oikonomia* - i.e. the doctrines related to the objective work of salvation. The area of *oikonomia* which became the subject of controversy was Christology. All parties accepted the Nicaeno-Constantinopolitan creed as the authoritative exposition of the rule of faith, and all parties agreed that Jesus of Nazareth was the Christ of God who was both human and divine. They did not, however, agree on how the theanthropicity of Christ should be described and interpreted.<sup>38</sup> This controversy would probably have been peacefully resolved had there not been various aggravating political factors, e.g. ethnic tensions, the hostility between the Christian Byzantine empire and the Zoroastrian neo-Persian empire, and Islamic conquests in the seventh century.<sup>39</sup> The combination of polemics, controversial theology, and the complex political reality of late antiquity produced in the end the following church division: Chalcedonians (the Byzantine and Latin churches), hard line anti-Chalcedonians (the West Syrian, Coptic, and Ethiopian churches), moderate anti-Chalcedonians (the Armenian church), and Nestorians (the East Syrian or Persian church). The Nestorians and anti-Chalcedonians did not really fit into the threefold division of dissidents and sectarians used by St. Basil.

A certain presbyter, Timothy, who was *skeuophylax* ("guardian of the sacred vessels") in Constantinople, wrote in the sixth century a treatise concerning the reception of heretics in which, for the first time, one finds the three ways adopted by canon 95 of Trullo.<sup>40</sup> Timothy seems to have thought that the Nestorians and anti-Chalcedonians were basically misguided dissidents who should be reunited with the established church as easily as possible. The way Timothy and the Trullan fathers adopted for receiving Nestorians and anti-Chalcedonians was something of a mix between the ways St. Basil had prescribed for the reconciliation of schismatics and that of members of illegal congregations: they were to abjure their doctrines in writing and to reject

37 See J. WERBICK, "Trinitätslehre," in SCHNEIDER, *Handbuch der Dogmatik*, vol. 2, pp. 491-501.

38 See H. KESSLER, "Christologie," in SCHNEIDER, *Handbuch der Dogmatik*, vol. 1, pp. 325-358.

39 For a general history of the Byzantine empire see: G. OSTROGORSKY, *History of the Byzantine State*, rev. ed., New Brunswick, New Jersey, Rutgers, 1969.

40 "On the Reception of Converts to the holy Church," in *PG*, vol. 86a, cols. 11-74.



their teachers (Nestorius, Eutyches, Dioscorus, and Severus), but they were reconciled without chrismation.

Neither the ecumenical councils of the undivided church nor the general councils of the Byzantine church enacted a general norm concerning the reception of sectarians and dissidents, but instead enacted norms regulating the reception of specific groups of sectarians and dissidents. The Western general council in Arles (314) convoked by Emperor Constantine the Great, however, in order to deal with the Donatist crisis, enacted a general norm which would prevail in the Latin Church. Canon 9 of Arles echoes St. Stephen's controversy with St. Cyril.<sup>41</sup> The council notes that the Africans, according to their own law, use rebaptism (*propria lege sua utuntur ut rebaptizent*), but the council decrees that, when people come from a sect to the church, they shall be questioned about their creed and, if it is shown that they had been baptized into the Father and the Son and the Holy Spirit, then they shall receive the Holy Spirit through the imposition of hands (*manus ei imponatur ut accipiat spiritum sanctum*). If they do not confess this Trinity (*hanc trinitatem*), however, they shall be baptized. This seems to be the general principle behind the specific norms enacted by the Nicaean and Constantinopolitan councils concerning the reception of sectarians. Since these councils were primarily dominated by Eastern bishops, however, the giving of the Holy Spirit is associated with chrismation with myron, which is the Eastern ritual counterpart to the Western imposition of hands: both rites were perceived to transmit the grace of the Holy Spirit. Like the Eastern canons, the norm enacted by the council of Arles presumes a pneumatological realist ecclesiology: although the sectarians may have a correct baptismal creed and formula, they have not received the Holy Spirit, since they are outside the communion of the church. Reception into the church includes the giving of the grace of the Holy Spirit.

In the eighth century St. John of Damascus stated that trinitarian belief is necessary for a valid baptismal form and those who have not been baptized into the Trinity, which seems to refer both the trinitarian creed and the baptismal formula from Matthew 28:19, must be rebaptized since, if they do not believe in the Trinity, they cannot really believe in Christ.<sup>42</sup>

41 C. MUNER (ed.), *Concilia Galliae a. 314 – a. 506*, Corpus Christianorum, Series Latina, 148, Turnhout, Brepols, 1963, pp. 10-11.

42 "Exposition of the Orthodox Faith," book 4, chapter 9 [82], in *PG*, vol. 94, cols. 1117-1126. "Hosoi de mê eis tên hagian Triada ebaptisthêsan, toutous dei anabaptizesthai," in *PG*, vol. 94, col. 1120.



### 3 — *The Late Byzantine Canonists*

The next great step in the development of the reception of sectarians and dissidents in Byzantine canon law was the work of the great Byzantine canonists in the twelfth century: Alexius Aristenus, John Zonaras, and Theodore Balsamon. These canonists wrote commentaries on the canons which were received by the Byzantine collections and compendia of canons. Balsamon also wrote some specific treatises on canon law and replies to questions posed by various bishops. Major factors which influenced the development were the rise of Islam, the emergence of various new dualist sects (e.g. Paulicians and Bogomils), the progressive mutual alienation between the Greek Church and the Latin Church (which manifested itself in the schism of the ninth century, the so-called great schism of 1054), and the crusaders' occupation of Eastern Christian territory.<sup>43</sup> The mutual alienation between the Latin Church and the Greek Church culminated in the sacking of Constantinople by the fourth crusade on 13 April 1204.

The discussion of the thirteenth century canonists about the reception of non-Orthodox was based on the above mentioned canons: apostolic canons 46, 47, 49 and 50; canon 19 of Nicaea I; canon 7 of Constantinople I; canon 95 of Trullo; the canon of St. Cyprian; canons 1 and 47 of St. Basil. The pseudo-graphical apostolic canons were now usually presumed by the late Byzantine canonists to be genuine works of the apostles. The council in Trullo was considered ecumenical, although there was a difference in opinion on whether it was a complementary session to the sixth ecumenical council or to the fifth and sixth ecumenical councils. All these three canonists used the familiar principle of *lex posteriori derogat priori* from Roman law,<sup>44</sup> in order to harmonize contradictory norms found in the *corpus canonum*. Only Zonaras, however, explicitly and repeatedly stated the principle as it was applied to Greek canon

43 See T. M. KOLBABA, "Latin and Greek Christians," in T. F. X. NOBEL and J. M. H. SMITH (eds.), *The Cambridge History of Christianity 3: Early Medieval Christianities*, Cambridge, Cambridge University Press, 2008, pp. 213-229; M. ANGOLD, "Byzantium and the West 1054-1453," in M. ANGOLD (ed.), *The Cambridge History of Christianity 5: Eastern Christianity*, Cambridge, Cambridge University Press, 2006, pp. 53-78. For a Roman Catholic ecumenical perspective on the alienation and division between the Byzantine Church and the Latin Church see: Y. CONGAR, *After Nine Hundred Years: The Background of the Schism between the Eastern and Western Churches*, Westport, Connecticut, Greenwood, 1959; J. RATZINGER, *Principles of Catholic Theology: Building Stones for a Fundamental Theology*, translated by M. F. McCarthy, San Francisco, Ignatius Press, 1987, pp. 193-218.

44 Dig. 1.4.1.4. Since (Graeco)/Roman law was one of the sources of Byzantine canon law a general knowledge of Roman law is required to be able to appreciate Byzantine canon law. For a general overview of (Graeco)/Roman law see: H. HONSELL, *Römisches Recht*, 6th ed., Berlin, Springer-Verlag, 2006; W. KUNKEL and M. SCHERMAIER, *Römische Rechtsgeschichte*, 14th ed., Köln, Böhlau-Verlag, 2005; L. WENGER, *Die Quellen des römischen Rechts*, Wien, Adolf Holzhausens, 1953; K. E. ZACHARIAE VON LINGENTHAL, *Geschichte des griechisch-römischen Rechts*, 3d ed., 1892; anastatic reprint, Aalen; Scientia, 1955.



law: the most recent norm enacted by the highest authority is in force (a council is a higher authority than a single church father and an ecumenical council is the highest possible authority).<sup>45</sup> This meant that the synods and councils of the autocephalous churches, in theory, had the legislative power to enact whatever norm was needed to fill a void in the ecclesiastical law, as long as it was not contrary to a norm enacted by an ecumenical council. In practice, however, voids in the law were usually filled by imperial legislation, by (re-) interpretation of the received canons, or by custom.

### 3.1 — Zonaras, Balsamon, and Aristenus

Zonaras and Balsamon state in their commentaries on apostolic canon 49 that any baptism which does not use the trinitarian baptismal formula from Matthew 28:19 is contrary to the precept of the Lord and the tradition and custom of the church.<sup>46</sup> In the commentaries on apostolic canon 50, Aristenus and Zonaras state that there is an immersion at the invocation of each of three names in the trinitarian baptismal formula and that those who baptize with one immersion into the death of the Lord shall be deposed.<sup>47</sup> Both Aristenus and Zonaras seem to emphasize the immersions as an explication of the trinitarian baptismal formula. Balsamon, on the other hand, seems to consider the three immersions *per se* as constituting a necessary element in the baptismal rite.<sup>48</sup> In his commentary on canon 7 of the second ecumenical council, Balsamon interprets the formulation “the Eunomians who have been baptized with one immersion” as giving the general principle that all who are baptized with one immersion are to be rebaptized.<sup>49</sup> Zonaras, on the other hand, simply states in his commentary on this canon that those who do not differ from the Orthodox concerning baptism and who baptize in the same way are not to be rebaptized. He does not, however, state whether he considers the number of immersions as an essential or non-essential part of the baptismal rite, but only says that the sectarians must baptize according to the form of the Orthodox Church (*kata ton tupon tês orthodoxou Ekklêsias*) without defining this form.<sup>50</sup> In his commentary on canon 1 of St. Basil, Zonaras develops his reasoning and seems to consider simply the trinitarian formula from Matthew 28:19 as the

45 “Enantia toinun en toutô tô kephalaiôi tôn duo sunodôn eisagousôn, ta tês deuterâs krateri sunodou, hoti te metagenestera esti, kai hoti oikoumenikê, en hê pantôs ek panôn tôn patriarchikôn thronôn sunêsan hê hoi patriarchai autoi, hê topotêrêtai” Introduction to the letter of St. Cyprian in RALLIS/POTLIS, *Suntagma*, vol. 3, p. 6; “Touton oun pantôs deon krateri: hoti metagenesteros estin ho kanôn, kai hoti sunodikos, kai, sunodou oikoumenikês” Commentary to canon 1 of St. Basil, in RALLIS/POTLIS, *Suntagma*, vol. 4, p. 92.

46 RALLIS/POTLIS, *Suntagma*, vol. 2, pp. 65-66.

47 Ibid., vol. 2, pp. 66-67.

48 Ibid., vol. 2, pp. 65-67.

49 Ibid., vol. 2, p. 191.

50 Ibid., vol. 2, pp. 188-189.

necessary form of baptism. He further states that it is through *oikonomia* that the baptism of Novatians is accepted, and that the reason for this *oikonomia* is that *akribeia* ("rigor", "strictness", "precision") would make the Novatians hesitate to come over to the church. However, *oikonomia* is not to be used simply because a sect recognizes the baptism of the church; the church is not obliged to return the favor but must observe *akribeia*.<sup>51</sup> In their commentaries on apostolic canon 47, Aristenus, Zonaras and Balsamon state that those who have received baptism but later apostatized are received back into the church by chrismation with myron.<sup>52</sup>

### 3.1.1 — *The Bogomils*

The Byzantine dualist sects did not pose much of a problem to the canonists: the Bogomils were identified with the Manichaeans, and the Paulicians with the Paulianists (the followers of Paul of Samosata), both of whom were to be received as pagans, by baptism.<sup>53</sup> Balsamon states, however, in his commentary on canon 19 of the first ecumenical council, that those who had been baptized in the Orthodox Church but later had apostatized to Paulicianism, Bogomilism, or Islam were not to be received back by rebaptism but by chrismation with myron if they returned to the Orthodox Church.<sup>54</sup> The fourteenth century jurist Constantine Harmenopoulos, however, refers to a decision by the synod in Constantinople, mentioned by Balsamon, according to which Muslim children, whose Muslim parents had them baptized by Orthodox priests as a superstitious charm against evil, should be received by rebaptism if they later decided to become Christians.<sup>55</sup>

### 3.1.2 — *The Latins*

The Latin Christians, on the other hand, posed more of a problem. While the Greek Church, the anti-Chalcedonian churches, and the Nestorian Church had the same concept of God and used the same Nicaeno-Constantinopolitan creed as the *norma normata* of the universal rule of faith, the Latin Church had made an illicit addition to the creed concerning the procession of the Holy Spirit: the *Filioque*.<sup>56</sup> This made the Byzantine churchmen and zealots suspect that the Latin Church (unlike the Nestorians and anti-Chalcedonians)

51 RALLIS/POTLIS, *Suntagma*, vol. 4, pp. 92-93.

52 Ibid., vol. 2, pp. 62-43.

53 On the theological controversy with the dualistic Byzantine sects see: J. PELIKAN, *The Christian Tradition 2: The Spirit of Eastern Christendom (600-1700)*, Chicago, University of Chicago Press, 1974, pp. 216-227.

54 RALLIS/POTLIS, *Suntagma*, vol. 2, pp. 160-162.

55 "Compendium of Canons," section 5, title 1, *scholium*, in PG, vol. 150, col. 125.

56 On the theological controversies with the Latin church see: PELIKAN, *Eastern Christendom*, pp. 146-198. On the *Filioque* see: B. J. HILBERATH "Pneumatologie," in SCHNEIDER, *Handbuch der Dogmatik*, vol. 1, pp. 502-518.



did not adhere to orthodox trinitarianism.<sup>57</sup> Furthermore, the claims of papal supremacy advanced by the Gregorian reform movement further alienated the Latin Church from the Greek Church: according to the ancient canons received by the Greek Church, the Roman see had only a primacy of honor and the right to act as the supreme court of appeal but nothing more.<sup>58</sup>

It was, however, neither the *Filioque* nor papal supremacy, but the Latin rite's use of *azyma* (unleavened bread) in the eucharist, which provoked the greatest number of Byzantine polemicists and controversialists. The polemics between the Byzantines and Armenians had for centuries included differences in the celebration of the eucharist, especially because the Armenians did not mix the wine with water and used *azyma*. The Armenians' on their part, attacked the Byzantines for adding the *zeon* (hot water) after the consecration. When the controversy arose with the Latins, the Byzantines recycled all their arguments against *azyma* which they had perfected during the centuries of polemics with the Armenians.<sup>59</sup> The two major points of controversy with the Latins during the late Byzantine period were the *Filioque* and *azyma*. During the Ottoman period, Eastern Orthodox controversial theology and polemics would "canonize" the five classical points of controversy between the Eastern Orthodox Churches and the Latin Church thus: the *Filioque*, papal supremacy, *azyma*, the epiclesis, and purgatory.<sup>60</sup>

The more overzealous, chauvinistic, and xenophobic among the Byzantine controversialists managed to make every little difference between the Latin rite and the Byzantine rite into a great heresy. St. Theophylactus, archbishop of Ohrid (ca 1088-1126), seems to have become annoyed at the exceedingly absurd and bizarre accusations made against the Latins by overzealous controversialists who he thought showed a pharisaical lack of Christian charity. Therefore, he composed a treatise entitled *On those who accuse the Latins*.<sup>61</sup> In the treatise he states that the major innovation and error of the Latins is the

57 On 13 September 1995 the PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY published a "Clarification on the Greek and Latin Traditions regarding the Procession of the Holy Spirit," see J. DUPUIS (ed.), *The Christian Faith in the doctrinal Documents of the Catholic Church*, 7th rev. ed., Bangalore, Theological Publications in India, 2001, n. 339.

58 See canon 3 of Constantinople I; canon 28 of Chalcedon; canon 36 of Trullo; canon 5 of Serdica.

59 See J. J. ERICKSON, *The Challenge of Our Past: Studies in Orthodox Canon Law and Church History*, Crestwood, New York, St. Vladimir's Seminary Press, 1991, pp. 133-155; M. H. SMITH, III, *And Taking the Bread...: Cerularius and the Azyme Controversy of 1054*, *Théologie historique*, 47, Paris, Beauchesne, 1978.

60 For a general overview of Greek Orthodox theology during the Ottoman period see: G. PODSKALSKY, *Griechische Theologie in der Zeit der Türkenherrschaft (1453-1821): Die Orthodoxie im Spannungsfeld der nachreformatorischen Konfessionen des Westens*, Munich, C. H. Beck, 1988.

61 PG, vol. 126, cols. 221-256.



illicit addition of the *Filioque* to the creed.<sup>62</sup> Two other secondary points of difference are also raised: the use of *azyma* and the Latin custom of keeping fasts on Saturdays, which shows a blatant disregard for conciliar authority since the ancient conciliar canons explicitly prohibit fasting on Saturdays. For St. Theophylactus, however, these issues do not justify separation.<sup>63</sup> He states that the other differences are a matter of customs (*ethê*), and he continues to say that church history shows that it is not a difference in custom but in dogma which is a valid reason for separation.<sup>64</sup>

While the Bogomils and Paulicians easily lend themselves to be reinterpreted as Manichaeans and Paulianists, it was not possible to make a similar reinterpretation to handle the issue of the Latins. Patriarch Mark of Alexandria wrote to Balsamon a letter containing various questions on canon law. Question 16 was whether it was allowed or not allowed to give communion to Latin prisoners of war who participated in the services of the Orthodox Church. Balsamon begins his answer by quoting Luke 11:23, "He who is not with Me is against Me, and he who does not gather with Me scatters" (NKJV), and states that the Western church has for a long time been separated from the spiritual communion of the four other patriarchates and is alien to the catholic church (i.e. the Greek Church) and the orthodox Christians in matters of customs and doctrines. Therefore, the pope is not to be commemorated at the divine services together with the other patriarchs, nor are Latin Christians to receive communion unless they have first abjured the Latin doctrines and customs, been instructed according to the canons, and become like Orthodox Christians.<sup>65</sup>

The thirteenth century canonist Demetrius Chomatenos, a successor of St. Theophylactus as archbishop of Bulgaria, was asked by Metropolitan Constantine Cabasilas of Dyrrhachium whether Orthodox Christians could worship in Latin churches and, if communion could be given to Latins who were present at the divine liturgy. Chomatenos begins by stating that the Latin churches contain holy ikons and relics of saints recognized by the Orthodox Church and Orthodox Christians are obliged to show respect and reverence to the holy ikons of Christ, of the Mother of God, and of the saints, and to the relics of the saints, even if these are found in Latin churches. Concerning the second issue, Chomatenos refers back to the above mentioned reply by Balsamon to Patriarch Mark of Antioch, but states that this position is not supported by many and refers to canon 15 of the Protodeutera council of Constantinople (861),

62 "On those who accuse the Latins," 3-7, in *PG*, vol. 126, cols. 225-232.

63 "On those who accuse the Latins," 8-10, in *PG*, vol. 126, cols. 232-237.

64 "On those who accuse the Latins," 11-15, in *PG*, vol. 126, cols. 237-245. "hôs ou pan ethos aposchizein Ekklesiâs ischuei, alla to pros diaphoran agôn dogmatos," in *PG*, vol. 126, col. 245.

65 "Replies of Theodore Balsamon to the Questions on Canon Law from Patriarch Mark of Alexandria", 16, in RALLIS/POTLIS, *Suntagma*, vol. 4, p. 460.



which condemns unjustified schisms, and to the above mentioned reasoning of St. Theophylactus. The conclusion drawn by Chomatenos is that the bishop can use *oikonomia* to give communion to Latins.<sup>66</sup>

### 3.2 — Harmenopoulos and Blastares

The two greatest jurists and canonists of the fourteenth century were Constantine Harmenopoulos, who compiled the *Hexabiblos*, the most influential manual of Graeco-Roman law which theoretically remained in force among the Greeks until the promulgation of the new Greek civil code in 1946 (the civil code was intended to come into force in 1941 but the Italo-German occupation of Greece delayed this), and Matthew Blastares, who composed an alphabetical compendium of canon law. Harmenopoulos also composed a short systematic compendium of the canons divided into six sections (1. Bishops; 2. Presbyters, deacons, and subdeacons; 3. Clerics; 4. Monks and monasteries; 5. Laypersons; 6. Women) which were subdivided into titles.<sup>67</sup> This systematic work gives the references to the canons of the late Byzantine *corpus canonum* and provides texts (*keimena*), which are short legal dogmatic summaries of the norms and doctrines contained in the referred canons.<sup>68</sup> Sometimes scholia are added which either provide information on later decisions by the ecumenical patriarch or replies from the canonists on an issue or give a further interpretation of a text.

The first title (*Peri tôn phôtizomenôn, kai tines phôtizontai*) of the fifth section of Harmenopoulos' compendium deals with baptism. The first text refers to canon 7 of Constantinople I and canon 7 of Laodicea; it states that Arians, Macedonians, Sabbatians, Novatians, Quatrodecimans, and Apollinarians are received by chrismation with myron after they have condemned their heresy in writing; all other sectarians are received as pagans, i.e. they are made catechumens and are then baptized. Added to this text is the above-mentioned scholium about Muslim parents who have their children baptized by Orthodox priests. The next text refers to canon 19 of Nicaea I; it states that Paulianists are to be rebaptized. Thereafter follows a text which refers to canon 8 of Laodicea; it

66 "Replies of Demetrius Chomatenos to Metropolitan Constantine Cabasilas of Dyrhachium", in RALLIS/POTLIS, *Suntagma*, vol. 5, pp. 434-436.

67 "Compendium of the Divine and Sacred Canons," in *PG*, vol. 150, cols. 45-168. This author is currently working on a translation of this important work.

68 The *corpus canonum* used by HARMENOPOULOS is divided into: (a) the canons of the holy apostles; (b) the canons of the seven ecumenical councils (20 canons of Nicaea; 7 Canons of Constantinople I; 8 canons of Ephesus; 30 canons of Chalcedon; 102 canons of Trullo; 22 canons of Nicaea II); (c) the canons of the local councils (17 canons of Protodeutera; 3 canons of Hagia Sophia; 15 canons of Antioch; 60 canons of Laodicea; 21 canons of Serdica; 134 canons of Carthage); (d) the canons of the saints (15 canons of Dionysius of Alexandria; 12 canons of Gregory Thaumaturgos; 86 canons of Basil the Great; 8 canons of Gregory of Nyssa; 18 canons of Timothy of Alexandria; 9 canons of Patriarch Nicholas; 5 canons of Cyril [of Alexandria]; 10 canons of Patriarch Nicephorus, in *PG*, vol. 150, cols. 45-50.



states that the Phrygian sectarians (i.e. Montanists) are to be rebaptized. Finally two texts based on the canons of St. Basil the Great give some general norms concerning the reception of non-Orthodox. The text which refers to canon 1 of St. Basil states that the baptism of heretics cannot be accepted, but the baptism of schismatics and illegal congregations can be accepted (*Adekton to tôn hairetikôn baptisma, dekten to tôn aposchistôn kai parasunagôgôn*). This general norm, however, is modified in the next text, which refers to canon 47 of St. Basil; it states that Novatians are to be rebaptized if this is the decision of the majority of bishops (*Hoi Nauatianoï, ei pleionôn episkopôn doxei krisai, anabaptizesthōsan*).<sup>69</sup> This provision indicates the legal positivism of Byzantine canon law. Gregorianist classical Latin canon law was based on a legal naturalism which presumed that the legal system had a nature (*ius aeternum*) which was enunciated or promulgated through legislation by the competent authority - i.e. the formal source of law was perceived to be reflection of a metaphysical or ideal law which *more geometrico* (i.e. axiomatically) could be logically deduced by the scholastic canonists.<sup>70</sup> Byzantine canon law, on the other hand, is much more modern in its positivistic attitude: norms are not derived from some logical coherent abstract ideal or metaphysical law, but instead derive from the governing authority of the society constituted by the particular law. The notion of divine law in the Byzantine tradition is limited to revelation (*ius divinum positivum*); moreover, notions of natural law were not prominent in the thought of the Byzantine canonists. Both ecclesiastical and civil authorities are perceived to be instituted by God and, consequently, they have the power to enact the norms necessary to govern the societies entrusted to them. The Byzantine notion of law, including canon law, is concrete and personal (i.e. enacted law is derived from persons in authority) as opposed to the scholastic Western notion of law which is abstract and impersonal (i.e. enacted law is derived from an abstract ideal or metaphysical law).

Matthew Blastares composed an *Alphabetical compendium* of canon law which summarizes the fully developed doctrines, institutions, and norms of Byzantine canon law. Chapter A.2 treats the reception of sectarians and is composed of a general discussion followed by a catalogue describing various heretical groups. The general discussion begins by referring to canon 1 of St. Basil and the distinction between heretics, schismatics, and illegal congregations. After referring to the threefold distinction of St. Basil, Blastares states that from the beginning the baptism of heretics who differed in faith was

69 "Compendium of Canons," section 5, title 1; in *PG*, vol. 150, cols. 125-128.

70 For a convenient overview of the development of Western legal philosophy see the relevant sections of F. C. COPLESTON, *History of Philosophy*, 8 vols., Westminster, Newman Press, pp. 1946-1966. See also H. J. BERMAN, *Law and Revolution: The Formation of the Western Legal Tradition*, Cambridge, Harvard University Press, 1983, who traces the development of the Western concept of law to the conflict between imperial and papal jurisdictions during the Gregorian reform movement



completely rejected, the baptism of schismatics was accepted, and the participants of illegal congregations were reconciled through sincere repentance. However, Novatians, Encratites, and Hydroparastats were, according to Cyprian and Firmilianus, to be baptized. Blastares then refers to the earliest known council in Carthage under the great Cyprian which through general consensus decided that all heretics and schismatics who came to the church were to be baptized. Blastares summarizes the reasoning as follows: although the schismatics do not err concerning the dogmas, Christ is the head of the body of the church, who animates the members and from whom they receive spiritual growth. They who have been cut off from the union of the body's members no longer possess the grace of the Holy Spirit and cannot impart to others what they themselves do not possess. Blastares notes, finally, that St. Basil states that some Asian bishops have decided to use *oikonomia* (*di' oikonomia*) to accept the baptism of the Novatians and, therefore, their baptism is to be accepted.<sup>71</sup>

Blastares treats baptism in general in chapter B.1. He begins his discussion with apostolic canon 47 and states that it is not commanded to repeat a baptism which is in accordance with the precept of the Lord and the tradition of the apostles. However, those who have been impiously baptized among the godless may without hesitation be rebaptized. But if first they have received the true baptism and then been polluted by the godless, they are received back by chrismation with myron only. If a bishop or a presbyter does not follow this, he is to be deposed. Blastares then turns to apostolic canon 49, which prescribes the trinitarian baptismal formula, and quotes this canon almost verbatim without further comments. Thereafter, he continues with apostolic canon 50 which prescribes three immersions at the recital of the names of the persons of the Trinity and forbids one immersion into the death of the Lord. Blastares correctly notes that this canon is directed against the baptismal rite of the Eunomians, which does not use the trinitarian baptismal formula, and refers the reader to canon 7 of the second ecumenical council, which regulates the reception of various sectarians.<sup>72</sup> Thereafter, he leaves the issue concerning the reception of sectarians and turns to other aspects of the sacrament of baptism. It should be noted that Blastares stresses the necessity of the trinitarian baptismal formula from Matthew 28:19 and seems to consider the three immersions as a secondary ritual explication of this formula.

### 3.3 — The Council of Constantinople, 1484

The issue of the reception of Latins was settled at the end of the Byzantine period. The council of Constantinople (1484), which rescinded the decrees and union of the council of Florence (1438), promulgated a rite for receiving Latins into the Orthodox Church. This rite reflected the position of Balsamon. The

71 *Alphabetical compendium*, Chapter A.2, in RALLIS/POTLIS, *Suntagma*, vol. 5, pp. 57-58.

72 *Alphabetical compendium*. Chapter B.1. in RALLIS/POTLIS, *Suntagma*, vol. 5, pp. 112-113.



rite begins with the ordinary introductory prayers and Psalm 50 (51), followed by a ritual abjuration of: (a) the illicit addition of *Filioque* to the creed, (b) the doctrine of the dual procession of the Holy Spirit, and (c) the use of *azyma*. Thereafter, the convert reads the Nicaeno-Constantinopolitan creed without the *Filioque* and is chrismated with myron. The rite ends with a prayer for the convert, followed by a set of concluding prayers and hymns. The convert is also to submit a written statement (*libellus*) in which he or she swears fidelity to the Catholic Church of the Greeks and its definitions, and to the canons of the apostles, of the seven ecumenical councils, of the local councils, and in which he or she rejects all Latin innovations.<sup>73</sup>

#### 4 — *The Post-Byzantine Development*

The major factors influencing the development in the post-Byzantine era were the emergence of Protestantism, the foundation of the Roman Congregation for the Propagation of the Faith (*Propaganda fidei*), and the influence of Western scholasticism on Eastern Orthodox theology.<sup>74</sup> The first important document of this period regarding the reception of non-Orthodox was the *Confession of faith* (1672) by Patriarch Dositheos of Jerusalem.<sup>75</sup> Both the revised Greek version of the *Orthodox Confession* (1642) by St. Petro Mohyla,<sup>76</sup> and the Confession of Dositheos would be used as symbolic books and doctrinal norms (*norma normata*) by the Eastern Orthodox Churches until the beginning of the twentieth century.

##### 4.1 — The Confession of Dositheos

The fifteenth decree (*horos*) of Dositheos' *Confession* deals with the seven sacraments, and ends by stating that heretics (meaning Oriental Christians, Roman Catholics, and Protestants) who convert to the Orthodox Church are not rebaptized since, although they have not received the complete faith, they have received a perfect baptism.<sup>77</sup> This decree mentions the trinitarian baptismal formula from Matthew 28:19 only when treating the institution of the sacrament of baptism.<sup>78</sup> This decree would serve as the basis for the Greek-

73 The rite and statement is published in I. KARMIRIS, *Ta Dogmatika kai Sumbolika Mnêmeia tês Orthodoxou Katholikês Ekklesiâs*, Athens, 1953, vol. 2, pp. 987-989.

74 For a general history of the Greek Church in the post-Byzantine period see: S. RUNCIMAN, *The Great Church in Captivity*, Cambridge University Press, 1968. For a general history of Greek theology during the Ottoman period see: PODSKALSKY, *Griechische Theologie*.

75 Published in KARMIRIS, *Dogmatika*, vol. 2, pp. 746-773.

76 Published in *ibid.*, vol. 2, pp. 593-686.

77 *Homologia pisteôs*, *horos* 15, in KARMIRIS, *Dogmatika*, vol. 2, p. 758.

78 *Ibid.*, in KARMIRIS, *Dogmatika*, vol. 2, p. 757.



speaking Orthodox Churches' practice from the seventeenth century until the late eighteenth century, and for the Russian Orthodox Church's practice from the early eighteenth century until today.<sup>79</sup>

#### 4.2 — The Decree of Cyril V and the Formal Argument

The rite from 1484 and the practice based on the *Confession* of Dositheos, however, was challenged within the ecumenical patriarchate in the eighteenth century. The aggressive and successful proselytism in the Orient by the *De Propaganda fidei*, which resulted in the union with Rome of the Melkites and Maronites in the beginning of the eighteenth century, gave a great impetus to the traditional anti-Latin sentiments of Greek Orthodox churchmen and theologians. The physician and lay theologian Eustratios Argentis argued emphatically that the Western Christians were not even baptized since they did not celebrate the sacrament of baptism with three immersions in accordance with the apostolic canons, which he presumed to be genuine works of the apostles. Argentis strongly influenced the Ecumenical Patriarch Cyril V, who used the anti-Latin sentiments among the laity to strengthen his position against his Latin-minded opponents in the hierarchy. In 1756 Cyril issued a decree, strongly imbued with the theology of Argentis, which declared that all heretics should be rebaptized. The decree first presents a form of the pneumatological argument of St. Cyril of Carthage (i.e. the grace of the Holy Spirit subsists only in the communion of the Orthodox Church and cannot be imparted outside this communion) but continues with the formal argument of Argentis. The formal argument erroneously presumes: (a) that the canons of the apostles are genuine works; and (b) that the *corpus dionysiaticum* includes a genuine work of St. Dionysius the Areopagite that describes the apostolic rite (while in reality it describes the West Syrian rite of the fifth century). The conclusion reached from these erroneous premises is that the essential rite of baptism is constituted not only by the trinitarian formula of Matthew 28:19, but also by the three immersions prescribed by apostolic canon 50 and described by Pseudo-Dionysius. This formal argument concludes, consequently, that Western Christians are not even formally baptized, since they do not administer the sacrament of baptism as it was instituted by Christ and transmitted by the apostles (i.e. with three immersions).

This erroneous reasoning is given the force of law by the decree of Patriarch Cyril, which was also signed by Patriarch Matthew of Alexandria and Patriarch Parthenios of Jerusalem.<sup>80</sup> This decree and argument was not received by the Russian Church, which continued to base its practice on the reasoning found

<sup>79</sup> On Russian and Slavic practice see: MILAS, *Kirchenrecht*, pp. 493-494 (§ 145).

<sup>80</sup> The decree is published in T. H. PAPADOPOULLOS, *Studies and Documents relating to the History of the Greek Church and People under Turkish Domination*, 2nd rev. ed., Aldershot, Variorum, 1990, pp. 444-447.



in decree 15 of the *Confession* of Dositheos. Both the reasoning of Dositheos and of Argentis show the influence of Western scholasticism on post-Byzantine Eastern Orthodox theology: both are trying to define the necessary minimum (*ritus essentialis*) for the validity of baptism. The formal argument of Cyril V is based on an anachronistic scholastic reading of the church fathers, canons, and canonists. Unlike Western mediaeval scholastic theologians and canonists, the church fathers, canons, and canonists did not try to define the necessary minimum for the legal validity of a sacrament; instead, they were concerned with protecting the integrity of the sacramental symbolism. Consequently, the ancient and Byzantine precepts concerning the form of the sacramental rite are not a definition of the essential rite in the Western scholastic sense of the necessary minimum, but rather an expression of a concern for protecting the integrity of the ritual symbolism. The formal argument suffers from the usual anachronistic hermeneutics of scholasticism in its interpretation of the apostolic canons and Pseudo-Dionysius as defining the essential rite in the sense of the absolute minimum needed for legal validity of the sacrament.

#### 4.3 — St. Nikodemos the Hagiorite and the Formal Argument

The argument of Cyril and Argentis was adopted and expanded by St. Nikodemos the Hagiorite in his commented compilation of canons: the *Pédalion* (1800). St. Nikodemos' reasoning concerning the reception of non-Orthodox is found in a six pages long footnote to apostolic canon 46, which decrees that a bishop or presbyter who accepts the baptism and sacrifice of the heretics shall be deposed.<sup>81</sup> The reasoning of St. Nikodemos presumes that the apostolic canons are a genuine work of the apostles.

St. Nikodemos begins his reasoning by stating that St. Cyril of Carthage followed apostolic canon 46 when he rejected the baptism of heretics. St. Nikodemos repeats the ecclesiological argument of St. Cyril. He claims that, since the canon of St. Cyprian was received by the "sixth" ecumenical council (i.e. by the Trullan council), it has received the same force as a decree by an ecumenical council. Then, he notes the distinction of St. Basil the Great between heretics and schismatics: both lack the grace of the Holy Spirit but the baptism of schismatics can be accepted by *oikonomia*. He states, however, that St. Basil later, in canon 47, rejects the baptism of those groups which he accepted in canon 1. He then quotes some patristic proof texts which reject the baptism of the Arians, arguing that they do not really mean it when they use the trinitarian baptismal formula from Matthew 28:19, since they reject the *homousios*. He states, however, that canon 7 from the second ecumenical council and canon 95 from the Trullan council decree that certain heretics are received without rebaptism, contrary to the apostolic canons and St. Cyprian. St. Nikodemos does not, however, follow the Byzantine tradition by employ-

81. *Pédalion* Athens: Panadimitriou 2003 pp. 51-57



ing the principle of *lex posteriori derogat priori* in order to harmonize these contradictory norms. Instead, he solves the problem by inventing his very own theory of *oikonomia*. According to St. Nikodemos, the apostles and St. Cyprian applied *akribeia*, while St. Basil and the councils applied *oikonomia*. He claims that it was the political circumstances which motivated St. Basil and the councils to use *oikonomia* in accepting the baptism of some heretical sects, and that this could be done since these sects had maintained the baptismal form of the Orthodox Church. He does not, however, consider that the use of the baptismal form of the Orthodox Church is, by itself, a reason for accepting a baptism administered outside the communion of the Orthodox Church; instead, this is a necessary prerequisite for the use of *oikonomia* if the political situation (e.g. if heretical sects are supported by the state) makes it dangerous for the church to apply *akribeia*.

St. Nikodemos' theory is a form of rigorist antiquarianism, since he argues that the most ancient norms should be followed whenever politically possible and, furthermore, presumes that the most strict or rigorous norm is the most ancient. Despite the fact that St. Nikodemos was an anti-Latin controversialist, his concept of *oikonomia* is strongly influenced by the institution of *dispensatio* in Latin canon law. St. Nikodemos was familiar with Latin canon law and even refers to Gratian in the introduction to the *Pédalion*.

The antiquarianism of St. Nikodemos is probably a polemical reaction against the legislative claims of the papacy with which he was familiar from his study of Latin canon law. Concerning the reception of Latins, he argues that they are to be baptized because: (a) they are heretics; and (b) they are not formally baptized in the first place, since they do not use three immersions. St. Nikodemos refers his readers to Eustratios Argentis and various polemic works against the Latins. He claims that the only reason that the Latins were received by chrismation with myron was because of the political circumstances when the military force of the crusades and the Western Catholic monarchs threatened the Orthodox Church. But now, when the church has the protection of the sultan, there is no longer any political reason for this use of *oikonomia*.

In his commentary on apostolic canon 50, which prescribes three immersions against the Eunomian baptismal rite, St. Nikodemos argues that Thomas Aquinas is wrong when he states that the number of immersions is not an essential part of the baptismal rite, since the apostles have decreed three immersions.<sup>82</sup>

#### 4.4 — The Greek *Euchologion* of 1932

In theory the decree of Cyril V remained in force in the nineteenth century, but in practice the manner (rebaptism or chrismation with myron) of receiving

converts by the Greek-speaking churches was left to the discretion of the local bishop. In 1932 the Church of Greece published a revised version of the rite of 1484, which has been continuously republished by the *Apostoliki Diakonia* up to the present in the *Euchologion*. The ritual abjurations have been removed in this revised version of the rite.<sup>83</sup> However, according to the signed written statement submitted by the convert, he or she confesses faithfulness to the decrees of the seven ecumenical councils and the local councils, and rejects all Latin innovations concerning dogmas, sacraments, traditions, and church practice.<sup>84</sup>

There is today no consensus in the Eastern Orthodox Church concerning the reception of converts from Catholicism and Protestantism. Protestants are either received by chrismation with myron or by rebaptism. Roman Catholics may be received according to the Russian usage simply by reading the Nicaeno-Constantinopolitan creed without the *Filioque*, according to moderate Greek usage by chrismation with myron (which is also the Russian usage if they have not received the sacrament of confirmation), or according the rigorist Greek usage by rebaptism.

### Conclusion

The practice of receiving non-Orthodox according to Greek canon law has been dominated by a pneumatological realist ecclesiology: the visible communion of the church is the deposit of the grace of the Holy Spirit. As a college, the bishops have received the spiritual charisma to transmit the grace of the Holy Spirit, and they participate in this charisma through their communion with each other. The scholastic distinction between *ex opere operato* and *ex opere operantis* is alien to Greek canon law, which instead presumes *ex opere communionis*. It is through the communion of the church that baptism receives the grace of the Holy Spirit.

The corollary of this ecclesiology was that St. Cyprian and certain other early church fathers and councils rejected all baptisms administered outside the communion of the church. A distinction between validity and efficacy was introduced by the canons of the ecumenical councils: only the communion of the church could make a baptism efficacious (i.e. fill it with grace). However, baptisms which were formally valid (i.e. administered with the trinitarian baptismal formula and, according to the opinion of some, with three immersions) did not need to be repeated, but could be filled with grace when the

83 KARMIRIS, *Dogmatika* 2, pp. 991-992; *Mikron Euchologion*, 16th ed., Athens, Apostoliki Diakonia, 2004, pp. 92-98.

84 *Mikron Euchologion*. v. 98.



baptized person was received into the communion of the church (ordinarily by chrismation with myron).

The acceptance of formally valid baptisms was a matter of *oikonomia*. The church fathers and Byzantine canonists perceived *oikonomia* as a pastoral tool used to overcome divisions and to reconcile people with the church. But in the post-Byzantine period *oikonomia* came to be perceived by St. Nikodemos and others as a political tool used to protect the Orthodox Church against the aggressions of other Christian confessions. The change in the perception of *oikonomia* reflects the changing historical experience of the Greek Church; what had been the dominant religion and established church in the Byzantine empire became a discriminated religion and one Christian confession among others in certain Muslim and Catholic states.