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## Receiving converts in the Orthodox Church: A historical-analytical study of eighteenth century Greek canon law

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## RECEIVING CONVERTS IN THE ORTHODOX CHURCH

### A Historical-Analytical Study of Eighteenth Century Greek Canon Law

David Heith-Stade, Lund

"We must beware of the pitfall of antiquarianism, and must remember that for our purposes our only interest in the past is for the light it throws upon the present."  
O. W. Holmes, Jr.

### Introduction

The Ecumenical Patriarch Cyril V (1748-1751; 1752-1757) promulgated a decree (*horos*), dated 1755 and signed by Patriarch Matthew of Alexandria and Patriarch Parthenios of Jerusalem, stating that heretics who converted to the Orthodox Church should be received as unbaptized (*ἀβαπτιστους δεχόμεθα*), since the baptisms of heretics are "useless waters" (*ὕδατα ἀνόνητα*) without any sanctification and incapable of washing away sins.<sup>1</sup> This decree abrogated the order (*ἀκολουθία*) for the reception of Latins promulgated in 1484 by a pan-orthodox council in Constantinople, which decreed that the Latins were to be received by chrism after abjuring their innovations.<sup>2</sup> The historical context of this decree must be acknowledged. The early eighteenth century was a period of intense Roman Catholic propaganda and proselytism in the Orient. In 1724 a large part of the Melkites were subjected to the Roman see, and in 1736 the Maronites consolidated their ties to Rome. Cyril V did, furthermore, use the anti-Latin sentiments of the Greek populace in Constantinople as a means to consolidate his power and position.<sup>3</sup> Cyril V's decree cannot, however, simply be disregarded as political opportunism. The decree contains theological reasoning which rejected the validity of baptism administered by Western Christians. This theological argument was later further developed by St. Nikodemos the Hagiorite (1749-1809), who pro-

<sup>1</sup> "Ὁρος τῆς ἀγίας τοῦ Χριστοῦ Ἐκκλησίας, συσταίνων μὲν τὸ θεόθεν δοθὲν ἅγιον βάπτισμα, καταπτύων δὲ τὰ ἄλλως γενόμενα τῶν αἰρετικῶν βαπτίσματα", J. Karmiris, ed., *Τὰ Δογματικά καὶ Συμβολικά Μνημεῖα τῆς Ὁρθοδόξου Καθολικῆς Ἐκκλησίας*, vol. 2 (Athens: 1953), 989-991. An English translation of the decree is available in G.D. Dragas, *Manner of Reception of Roman Catholic Converts into the Orthodox Church with Special Reference to the Decisions of the Synods of 1484 (Constantinople), 1755 (Constantinople) and 1667 (Moscow)*. *Greek Orthodox Theological Review* 44 (1999): 243-245.

<sup>2</sup> See text in Karmiris, *Dogmatika*, pp. 987-989.

<sup>3</sup> See S. Runciman, *The Great Church in Captivity: A Study of the Patriarchate of Constantinople from the Eve of the Turkish Conquest to the Greek War of Independence* (Cambridge University Press 1968), 355-359; G. Podskalsky, *Griechische Theologie in der Zeit der Türkenherrschaft 1453-1821* (C. H. Beck: Munich, 1988), pp. 331-333.



foundly affected the subsequent development of modern Greek Orthodox theology. There is still today a debate among Orthodox canonists and theologians concerning the canonical way of receiving baptized non-Orthodox Christians into the Orthodox Church.<sup>4</sup> The position of Cyril V and St. Nikodemos does, however, deviate from the position presented in the Orthodox Churches symbolic books of the seventeenth century, which recognizes baptism administered in the name of the Father and of the Son and of the Holy Spirit.<sup>5</sup> This is an issue that has caused much confusion in modern Eastern Orthodox theology and no clear consensus has yet been reached. This paper will present a short historical-analytical study of the issue.

### The canonical reasoning of Cyril V

Cyril V begins his decree by giving a definition of baptism: Baptism is the first of the means for attaining salvation, which God delivered to the Apostles, without which all the rest of the sacraments are ineffectual. Baptism is, furthermore, defined as the mystical means of a second birth which makes it possible for us to imitate Christ, the author of salvation. The baptismal font is described as the womb in which the human person is born.<sup>6</sup> The Holy Spirit is said to descend on the water according to the order of God, who fashions the embryo. Since Christ was laid in the tomb and arose on the third day, the believers being baptized are immersed three times in water, which depicts in them the grace of the resurrection on the third day.<sup>7</sup> The water is said to be sanctified by the descent of the Holy Spirit so that the body might be illumined by the visible water and receives the invisible sanctification of the Spirit. Just as the water in the cauldron receives warmth from the fire, so the water in the font is said to be transformed through the operation of the Spirit into divine power which purifies those being baptized and makes them worthy of adoption by God; but those who celebrate baptism in another manner do not re-

<sup>4</sup> E. g. J. Karmires, *Ways of accepting non-Orthodox Christians into the Orthodox Church*. *Greek Orthodox Theological Review* 1 (1954): 38-47; P. L'Huillier, *The Reception of Roman Catholics into Orthodoxy: Historical Variations and Norms*. *St. Vladimir's Theological Quarterly* 24 (1980): 75-82; J.H. Erickson, *The Problem of Sacramental Economy*, in: *Idem*, *Challenge of Our Past* (St. Vladimir's Seminary Press: New York, 1991), 115-132; M. Stavrou, *L'Éclésiologie du Baptême des autres Chrétiens dans la Conscience de l'Église Orthodoxe*. *La Maison-Dieu* 235 (2003): 89-123.

<sup>5</sup> See *St. Petro Mohyla*, *Orthodoxa confessio fidei*, pars 1, qu. 102-103 (*Karmiris*, *Dogmatika*, pp. 636-637); *Dositheos of Jerusalem*, *Confessio fidei*, dec. 16 (*Karmiris*, *Dogmatika*, pp. 759-760).

<sup>6</sup> St. John Chrysostom is quoted as the authority for the image of the baptismal font as a womb (PG 59:153).

<sup>7</sup> Cf. St. Gregory of Nyssa (PG 46:585).

ceive purification and adoption but are rendered impure and children of darkness.<sup>8</sup> According to the decree of Cyril the main effects of baptism are purification and adoption, which is imparted by the operation of the Holy Spirit through a sacramental representation of the death and resurrection of Jesus Christ.

Cyril then turns to the question which the decree addresses: are the baptisms of heretics (sic) acceptable when they come over to the Orthodox Church considering that they do not administer baptism according to the tradition of the apostles and of the church fathers, in accordance with the Orthodox Church's custom (συνήθειαν) and enactment (διάταξιν)? Cyril answers that those who by the mercy of God have been baptized in the Orthodox Church and who follow the canons of the apostles and of the church fathers know only one church, their own holy, catholic, and apostolic church; they accept her sacraments, and consequently her baptism. The heretics (i.e. Western Christians) are said not to administrate the sacraments as the Holy Spirit commanded (διετέτατο) the apostles, and as they have been administered by the Church of Christ until the present. Their administration of the sacraments is the invention of depraved people; it is perceived as alien to the whole apostolic tradition and abhorred by the Orthodox. Hence those who convert from them (i.e. the Western confessions) are received as profane and un-baptized. Cyril claims that in doing this they are following Christ who commanded his disciples to baptize "in the name of the Father and of the Son and of the Holy Spirit" (Matthew 28:19) and the apostles who commanded that they who are being baptized are to be baptized with three immersions and emersions (ἐν τρισὶ καταδύσει καὶ ἀναδύσει) and in each of the immersions one name of the Holy Trinity (i.e. Father and Son and Holy Spirit) is to be invoked.<sup>9</sup> This is followed with a reference to Dionysius the Areopagite, called equal-to-the-apostles (ἰσαπόστολος), who describes a baptismal rite in which the person being baptized is dipped three times in a font containing sanctified water and oil while invoking the hypostases of the Trinity, after which the newly baptized is immediately sealed with chrism and partakes of the Eucharist.<sup>10</sup> Cyril, furthermore, claims to follow the second and quinisext ecumenical council,<sup>11</sup> which are said to have decreed that those coming to Orthodoxy who were not baptized with three immersions and emersions while invoking one of the divine hypostases at each immersion are to be received as un-baptized. Therefore Cyril claims to adhere to the divine and sacred enactments (τοῖς θείοις καὶ ἱεροῖς

<sup>8</sup> *Karmiris*, *Dogmatika*, pp. 989-990.

<sup>9</sup> Apostolic canon 50.

<sup>10</sup> PG 3:386.

<sup>11</sup> Cf. canon 7 of Constantinople I and canon 95 of in Trullo.



διατάγμασιν ἐπόμενοι) and he rejects and abhors the baptisms of heretics, since they are alien and contrary to the divine apostolic enactment (τῆς ἀποστολικῆς θείας διατάξεως). Their waters are useless waters according to St. Ambrose and St. Athanasios the Great<sup>12</sup> and they do not sanctify nor grant the forgiveness of sin to those who receive these baptisms. Cyril decrees, consequently, that these converts are to be received as un-baptized and that they without danger (ἀκινδύνως) are to be baptized according to the apostolic and conciliar canons, on which the Christ's holy, apostolic and catholic church firmly relies. That this decree is in accordance with the apostolic and conciliar ordinances (ταῖς ἀποστολικαῖς καὶ συνοδικαῖς διαταγαῖς συνάδοντα) is confirmed by the signatures of the Ecumenical Patriarch Cyril of Constantinople, Patriarch Matthew of Alexandria, and Patriarch Parthenios of Jerusalem.<sup>13</sup>

The argument of Cyril's decree is in summary: Baptism is a prerequisite for salvation and the sacrament which through the operation of the Holy Spirit purifies from sin and grants adoption as a child of God. Christ commanded that baptism be "in the name of the Father and of the Son and of the Holy Spirit" and the apostles enacted that baptism is to be administered by threefold immersion, which is supported by reference to the Apostolic Canons and Dionysius the Areopagite. Baptism is described as a sacramental representation of Christ's death and resurrection on the third day, which is symbolized through the threefold immersion accompanying the baptismal formula. The Western confessions do not administer baptism in accordance with the Apostolic Canons and the testimony of Dionysius the Areopagite. Hence they do not celebrate the sacrament which was instituted by Christ and transmitted by apostolic tradition; consequently they are not baptized and are to be received by baptism if they convert to the Orthodox faith. The canons enacted by the second and quinisext ecumenical council, regarding the reception of heretics, are invoked in support of receiving converts whose baptism has not been according to the allegedly apostolic form. Therefore those converting from the Western confessions are to be received by baptism and this is in accordance with the Orthodox Church's canon law; a point which has to be stressed since Apostolic canon 47 states that a bishop or priest who rebaptizes a person who has already received a true baptism is to be deposed (καθαιρείσθω).

<sup>12</sup> Karmiris has not located these references in his edition.

<sup>13</sup> Karmiris, *Dogmatika*, pp. 990-991.

### The canonical reasoning of St. Nikodemos

The canons which deal with the baptism of heretics are: canons 1 and 19 of Nicaea I; canon 7 of Constantinople I; canon 95 of in Trullo; canons 7 and 8 of Laodicea; canon 57 of Carthage; the canon of St. Cyprian; canons 1 and 47 of St. Basil; and Apostolic canons 46, 47, and 68. St. Nikodemos developed his doctrine regarding the reception of converts in his commentary on these canons in the *Pēdalion*. The *Pēdalion* (Πηδάλιον, 'Rudder') is a collection of the sources of Greek canon law with commentaries by St. Nikodemos. It was first published 1800 in Venice and submitted to the synod of the Ecumenical Patriarchate. The synod gave it official confirmation on the conditions of certain changes which were made in the second edition published 1841 in Athens.<sup>14</sup> Before addressing the doctrine of St. Nikodemos it should be noted that he defends the apostolicity of the so called 'Apostolic canons'.<sup>15</sup>

St. Nikodemos develops his doctrine at length in his commentary on Apostolic canons 46 and 47 which states that a bishop or presbyter who accepts the baptism of heretics and does not rebaptize those who have been baptized by heretics is to be deposed. In a footnote on canon 46 (covering six pages!) he states that St. Cyprian of Carthage followed this canon when he rejected the baptism of heretics.<sup>16</sup> He claims that his practice is also proved by the statement of St. Paul: 'one Lord, one faith, one baptism' (Ephesians 4:5). St. Nikodemos repeats St. Cyprian's argument that since the Church is one, and since there is only one baptism, heretics and schismatics, who are separate from the Church, cannot have baptism, or else there would not be one baptism but many baptisms. St. Nikodemos writes that since the council in Trullo (which he calls the 'sixth ecumenical council') confirmed and ratified St. Cyprian's canon it is no longer a canon of a local council but has become a canon of an ecumenical council.<sup>17</sup> He then invokes canon 1 of St. Basil, who, unlike Cyprian, makes a distinction between heretics and schismatics. St. Basil writes that the schismatics have lost the grace of the Holy Spirit by separating themselves from the Church, but their baptism may be acceptable by some *oikonomia*. St. Nikodemos notes that St. Basil in canon 47 acknowledges that the Romans prohibit rebaptism by *oikonomia*. St. Basil does not follow this practice and rejects in canon 47 the baptism of all those groups which he in canon 1 stated could be received by *oikonomia*. St. Nikodemos also claims that St. Basil in canon 20 states that the Church does not receive

<sup>14</sup> Cf. *Th. Dionysiotos*, *Hagios Nikodēmos ho Hagioreitēs* (Papadimitriou: Athens, 1959), pp. 213-219.

<sup>15</sup> See *Pēdalion* (Papadimitriou: Athens, 192003), pp. xxii-xxiv.

<sup>16</sup> Cf. canon of St. Cyprian.

<sup>17</sup> Cf. canon 2 of in Trullo.



heretics unless she baptizes them. The conclusion St. Nikodemos draws is that St. Basil rejects the baptism of all heretics since they have lost perfect grace and consequently it is obvious that they are to be received by baptism. This claim is further supported by reference to St. Athanasios the Great who writes that while the Arians baptize in the name of the Father and of the Son and of the Holy Spirit, they do not really baptize since they deny the Father and the Son are *homousios*, consequently it is not enough to use the correct baptismal formula if this is not administered with the correct belief in the Holy Trinity. This is followed by proof-texts from St. Gregory the Theologian and St. John Chrysostomos to the same effect. St. Nikodemos then quotes St. Leo the Great and St. Ambrose who write that the baptism and sacraments of heretics do not sanctify those who partake of them.<sup>18</sup>

After giving all these proof-texts, which reject the baptism of heretics, St. Nikodemos asks why the second ecumenical council (canon 7) and the 'sixth' ecumenical council in Trullo (canon 95) failed to reject the baptism of all heretics, in accordance with the Apostolic canons, St. Cyprian's canon, and the before mentioned church fathers, but accepted the baptism of some heretics. The solution which St. Nikodemos proposes is that the canonical discipline of the church is governed by *akribeia* ('strictness') and *oikonomia* ('dispensation'). St. Nikodemos claims that the apostles and the saints applied *akribeia* and rejected the baptism of all heretics while the two before mentioned ecumenical councils applied *oikonomia* and accepted the baptism of some heretics (Arians, Macedonians, and some other). The reason for this *oikonomia* was, according to St. Nikodemos, that these heretics were supported by members of the imperial family, members of the nobility and senate. Since St. Basil in canons 1 and 47 states that the baptism of Novatians was accepted by *oikonomia* for the sake of the majority while at the same time rejecting the baptism of heretics and schismatics. Since the council in Trullo confirmed and ratified these canons of St. Basil while it at the same time decreed in canon 95 that some heretics were to be received without baptism, St. Nikodemos draws the conclusion that this is done by *oikonomia*. He consequently claims that there is no contradiction between the canons regarding the reconciliation of heretics enacted by the second ecumenical council and by the council in Trullo, on the one hand, and the canons of St. Basil, on the other hand, since the former applied *oikonomia* while the latter applied *akribeia*. This was the principal reason, according to St. Nikodemos, why these councils enacted canons accepting the baptism of some heretics; but he continues stating that there also was a second reason, namely that these heretics

<sup>18</sup> *Pēdalion*, pp. 51-53.

observed the form (εἶδος) and matter (ὕλη) of the baptism of the Orthodox and administered baptism according to the pattern (κατὰ τὸν τύπον) of the Orthodox Church. St. Nikodemos then claims that those heretics whose baptism was not recognized by the second ecumenical council and the council in Trullo had corrupted the rite of baptism either by changing the baptismal formula or by not baptizing with threefold immersions and emersions. St. Nikodemos invokes the commentary by the famous late Byzantine canonist John Zonaras on canon 7 of Constantinople I. Zonaras explains that those heretical groups who were not received by baptism did baptize in the same manner as the Orthodox Church while those whose baptism were rejected had not administered baptism correctly according to the form of the Orthodox Church. St. Nikodemos claims that the reason for the canons enacted by the second ecumenical council and the council in Trullo by which some heretics are received without baptism does not only depend on them preserving the Orthodox Church's baptismal form but also on the councils applying *oikonomia*. St. Nikodemos claims that if the political circumstances had been different the councils would not have departed from the norms of the Apostolic canons which reject baptism of all heretics.<sup>19</sup>

After harmonizing the contrary norms for the reception of heretics in the body of canon law by his theory of *oikonomia* and *akribeia*, St. Nikodemos turns to his contemporaries stating that this is not merely of historical interest but also of utmost importance to his contemporaries in connection with the dispute concerning the baptism of the Latins (i.e. Roman Catholics). This is not only a dispute between the Greek Orthodox and Roman Catholics but also between those sharing St. Nikodemos' opinion and Latin-minded Orthodox theologians (λατινόφρωνοι). St. Nikodemos claims that he has shown that the baptisms of the Latins are not acceptable or recognizable either by *akribeia* or by *oikonomia*. He writes that their baptism is not acceptable by *akribeia* since they are heretics. He does not give any proof of their heresy but simply states that the long time the Latins had been separate from the Orthodox Church and the longstanding hatred for them is proof enough that they are heretics. If, however, someone wishes to learn more about the heresies of the Latins, St. Nikodemos refers them to the anti-Latin classics of Greek Orthodox controversial theology.<sup>20</sup> This is an obvious circular argument: the Greeks hate the Latins because the Latins are heretics; the Latins are heretics since they are hated as heretics.

St. Nikodemos writes that since the Latins are heretics they have lost the Holy Spirit and become laymen; consequently they do not possess

<sup>19</sup> *Pēdalion*, pp. 53-55.

<sup>20</sup> *Pēdalion*, p. 55.

baptism according to the canons of the apostles, of St. Cyprian and of St. Basil, which were received and ratified by the sixth (i.e. quinisext) ecumenical council. He then continues by stating that the Latins are not only unbaptized since they are heretics but they are also unbaptized since they fail to observe the form of baptism (three immersions and emersions) decreed by the Apostolic canons and have introduced the innovation of baptizing by affusion sprinkling a little water on the child's head. St. Nikodemos then claims that the Latins in many places do not even baptize by affusion but dip a brush of hogs' hair in water and sprinkle the child's head three times, or dip cotton in water and wipe the child's forehead with it, calling this baptism.<sup>21</sup>

St. Nikodemos does not, however, take a firm stance on the necessity of three immersions and emersions but refers the reader to his comments on Apostolic canon 50. St. Nikodemos also refers the reader to the writings of Eustratios Argentis (ca 1690–ca 1760), a famous physician and lay theologian who wrote extensively on the necessity of three immersions. The decree of Cyril V was influenced by Eustratios Argentis' theological writings.<sup>22</sup> St. Nikodemos then writes that if the Latins or the Latin-minded theologians should claim that it is enough to invoke the names of the Holy Trinity this is like claiming that wicked old women really work miracles by using the divine names in incantations. St. Nikodemos concludes this part of his arguments by stating that the Latins are not only heretics (thus being deprived of the Holy Spirit) but they have also departed from the apostolic form of baptism (i.e. three immersions).<sup>23</sup>

St. Nikodemos then turns to the question of how to receive Latins into the Orthodox Church. He claims that the fact that it is the custom of the Orthodox Church to receive Latins by chrism further shows that they are heretics, or else they would not be received by chrism. After once more resorting to circular reasoning (i.e. the Latins are heretics since they are received by chrism; they are received by chrism since they are heretics) he claims that receiving the Latins by chrism is an act of *oikonomia*. He claims that the custom of receiving the Latins by chrism is comparable to the second ecumenical council accepting (by *oikonomia* according to the interpretation of St. Nikodemos) the baptism of Arians and Macedonians because of the strong political support these heretical groups enjoined. St. Nikodemos claims that the Orthodox Church has used *oikonomia* in accepting the baptism of the Latins so that the pope should not entice the rulers of Western Europe to take up arms against the Eastern Christians.

<sup>21</sup> *Pēdalion*, p. 55.

<sup>22</sup> S. Runciman, *Great Church in Captivity* (Cambridge University Press: 1968), pp. 357-359; Podskalsky, *Griechische Theologie*, pp. 331-335.

<sup>23</sup> *Pēdalion*, p. 55-56.

But since divine providence has granted the Eastern Christians the protection of the Ottoman empire there is no longer any need for this *oikonomia*. St. Nikodemos invokes proof-texts from Theophylact the Bulgarian, St. Gregory the Theologian, and St. John Chrysostomos and states that *oikonomia* is only a temporary measure. To prove his claim that the reception of Latins by chrism is a matter of temporary *oikonomia*, St. Nikodemos cites the fourth Lateran council (1215) which complains that the Greeks receive Western Christians by rebaptism since they had not received apostolic baptism (i.e. with three immersions). The conclusion which St. Nikodemos draws is that Westerners joining the Orthodox Church were originally received by baptism since they were heretics and had not been baptized according to the form prescribed by the Apostolic canons (i.e. three immersions), but when the Orthodox convened to rescind the union of the council in Florence (1438) they decreed that Westerners were to be received by chrism, since, according to St. Nikodemos' interpretation, they feared the rage of the Westerners. But now when the Western Christians can no longer threaten the East by its military forces there is no longer any need for this *oikonomia* and Latins joining the Orthodox Church should be received by *akribeia* with baptism administered according to the form prescribed by the Apostolic canons.<sup>24</sup>

St. Nikodemos develops his reasoning about what constitutes a baptism in his commentary on Apostolic canons 49 and 50 which decree that the baptismal formula is "in the name of the Father and of the Son and of the Holy Spirit" and that the baptismal form is three immersions. In his commentary on Apostolic canon 50, he writes that a baptism without three immersions cannot be called a baptism. The sacramental symbolism he ascribes to the three immersions is the traditional: the belief in the Trinity and the death and resurrection of Christ on the third day. After reproducing proof-texts on the symbolism of baptism from the church fathers, St. Nikodemos turns to Thomas Aquinas' opinion that the numbers of immersions are not an essential part of the sacrament of baptism, and he refers his readers to the Jesuit Balthasar Cordier's (1592-1650) refutation of Thomas' position. He then devotes the rest of his commentary to criticizing the Latins for destroying the baptismal symbolism by the use of sprinkling instead of three immersions, and concludes once more that the departure from the Apostolic form of baptism and its symbolisms means that the Latins are unbaptized.<sup>25</sup> In his commentary on the other canons regulating the reception of heretics, St. Nikodemos does not further develop his doctrine but refers the reader back to the reasoning in his commentaries on the Apostolic canons and supplies only commentaries

<sup>24</sup> *Pēdalion*, p. 56-57.

<sup>25</sup> *Pēdalion*, p. 62-66.



of historical interest on these other canons. The punishment prescribed by these canons is deposition of the bishop or presbyter who fails to comply. In his commentary on Apostolic canon 49, he, furthermore, states that the minister of baptism is a priest or a bishop but not a deacon or layperson. St. Nikodemos does not recognize baptism of emergency administered by a layperson and states that if the person who has received a baptism of emergency survives, he or she is to be baptized by a priest according to the ordinary rite, but if the person dies he or she may be commemorated in the Divine Liturgy with the departed faithful. St. Nikodemos equates, in effect, a baptism of emergency, performed by a layperson, with a baptism of desire (i.e. *baptismus desiderii*).<sup>26</sup>

### Conclusions

Despite his zealous anti-Latin polemics, St. Nikodemos was immensely influenced by Western theology. He cannot, however, as Sir Steven Runniman rightly observed, "be rated highly as a scholarly editor or textual critic".<sup>27</sup> His merits lay elsewhere. His antinomy between *akribeia* and *oikonomia* was based on an essentially Western concept of canon law developed during the Gregorian reforms in the twelfth and thirteenth centuries.<sup>28</sup> He explicitly refers to Gratian, the father of Western canon law, when stating his principles.<sup>29</sup>

Professor Hanina Ben-Menahem's critique of the anachronistic use of modern Western jurisprudence in *Mishpat Ivri* (Jewish law) is equally valid with regard to Greek canon law:

The modern, Western concept of law reflected in *Mishpat Ivri* scholarship is dominated by three claims: (1) laws belong to a unified system; (2) within any such system, there are authoritative sources of law, and any valid application of the law must be justified by reliance upon these sources; (3) the system itself provides the means by which those rules may be recognized as authoritative. ... In the West, this doctrine has a political history. It was a reaction against forms of absolutist monarchy, hence the expression 'governed by rules, not by men'. ... But [the rule of law] never represented an exclusive view within the *halakhah*. A very different conception – arguably the original conception – may be identified,

<sup>26</sup> Cf. footnote on Apostolic canon 47; *Pēdalion*, p. 57-58.

<sup>27</sup> *Great Church in Captivity* (Cambridge University Press: 1968), p. 158.

<sup>28</sup> On the paradigmatic shift in the understanding of law in the West in connection with the Gregorian reforms see the seminal work of Professor H.J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press: Cambridge, Massachusetts, 1983).

<sup>29</sup> *Pēdalion*, pp. xviii-xix.

one which adopts a pluralistic attitude towards the sources of Jewish law, and rejects the view that any valid application of the law must be justified by reliance upon those sources which are regarded, by the rules of the system, as the authoritative ones. It does so by reliance upon a religious ideology. Law is a matter of governance by men, not by rules. But not any men. It is the governance of men who were regarded originally as divinely inspired, later as at least divinely authorised, to depart from the rules of the system.<sup>30</sup>

St. Nikodemos presumes, anachronistically, that all norms found in the body of Greek canon law constitute a coherent legal system providing its own rules for harmonizing contradictory norms. His way of harmonizing contradictory norms is through the theory of *akribeia* and *oikonomia* in which *akribeia* is presumed to be the norm, while *oikonomia* is perceived a temporary deviation.<sup>31</sup> St. Nikodemos' approach deviates from the approach of the Byzantine canonists who instead applied the rule *lex posterior derogat priori* – 'a later law abrogates an earlier'.<sup>32</sup> It is most unfortunate that the theory of St. Nikodemos has become so influential in the Greek-speaking Orthodox Churches, since it is based on anachronistic presuppositions which are essentially alien to Greek canon law. From the perspective of positive law, the decree of Cyril V was binding to those subjects to his jurisdiction since the body of Greek canon law, which is the common law of the Eastern Orthodox Churches, and it does not contain any specific norms regarding the reception of Latins. Furthermore, the body of Greek canon law does not have any general norms for the reception of persons baptized outside the communion of the Orthodox Churches; it has only norms for specific cases. It seems to be futile to search for general norms where none are to be found. The argument concerning baptismal form and symbolism expresses the rich baptismal theology of the Greek church fathers, but erroneously presumes the rite described in the Apostolic canons and *corpus areopagitum* to be the original universal apostolic rite, while it in fact describes the West Syrian rite of the fourth century. The sacramental minimalism and disregard for sacramental symbolism produced by Western scholastic theology is most unfortunate, but it cannot be justifiably criticized on the erroneous pre-

<sup>30</sup> "Postscript: The Judicial Process and the Nature of Jewish Law" in: Introduction to the History and Sources of Jewish Law, edited by N.S. Hecht, B.S. Jackson, S.M. Passananeck, D. Piattelli, A.M. Rabello (Clarendon Press: Oxford, 1996), pp. 431-432.

<sup>31</sup> See *Pēdalion*, pp. xviii-xix.

<sup>32</sup> Cf. John Zonaras' commentaries on the canon of St. Cyprian, canon 1 of St. Basil, the canon 7 of Constantinople I, and canon 95 of in Trullo. The commentaries of John Zonaras are available in G. Rallis and M. Potlis, eds., *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, 6 vols (Athens, 1852-1859).



sumption of the original apostolic universality of the West Syrian baptismal rite of the fourth century. It is rather St. John of Damascus who expresses the general theologoumenon of Greek patristic theology when he writes that those who have been baptized in the name of the Father and of the Son and of the Holy Spirit and have been taught the unity of the divine nature and the Trinity of divine persons are not to be rebaptized.<sup>33</sup> This is also the doctrine found in the Eastern Orthodox Churches' symbolic books. The canonical reasoning of Cyril V and of St. Nikodemos is based on an anachronistic concept of canon law and deviates from the dominant position in the history of Orthodox Dogmatic theology as represented by St. John of Damascus and the symbolic books.

<sup>33</sup> De fide orthodoxa 4.9; 82 (PG 94: 1117).

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