

Ecclesiastical Jurisdiction, the Nation-State, and the Specter of Byzantium

George E. Demacopoulos

While it is customary for Orthodox Christians to look to canonical legislation when they seek to evaluate the challenges of the contemporary world, it is rarely the case that inquirers properly account for the full context or *Sitz im Leben* of the canons. And while one might make a case for the timeless insight of canonical prescriptions when dealing with dogmatic teaching or moral prohibitions, it is less appropriate to do so when trying to apply the canons to issues of ecclesiastical jurisdiction, such as the question of autocephaly. This is because ecclesiastical borders in the Orthodox Church have always reflected broader geopolitical realities, if somewhat belatedly, and this is precisely the context in which the few canons that speak to these issues emerged. In other words, the canons on questions of jurisdiction do not offer theological verdicts but simply confirm that the ecclesiastical map of the Byzantine church should mirror the jurisdictional framework of the imperial provincial network. Perhaps even more problematic for the modern appropriation of these canons is the fact that they presume an imperial superstructure that no longer exists.

In the early Church, the emergence of diocesan boundaries was little more than the recognition of a sociological reality: that there was a geographic gap between towns or villages with

a Christian presence. The bishop was the overseer (*episcopos*) for a local assembly (*ekklesia*) of Christians in that location, regardless of the size of community, and each distinct community constituted “the Church” as a sacramental whole. When the number of Christians increased, especially after the legalization of Christianity in the fourth century, church leaders turned to Roman imperial structures to accommodate and regulate this growth. Individual dioceses were grouped into larger metropolitanates, each administratively guided by a metropolitan bishop. The Church not only appropriated this concept from the Roman political structure, but also adopted the map of the imperial provincial network, recognizing the same metropolitan cities that the Romans had designated to govern each province. Whenever the Romans altered the boundaries between or within provinces—as they did frequently—the Church followed suit by modifying its own ecclesiastical map to mirror the secular one.

Thus, the earliest articulations of autocephaly that survive in canonical legislation are little more than the Church’s adaptation of the internal structure of the Roman government, which afforded administrative independence to a handful of Roman provincial governors with super-juris-

dictional authority. Each of these super-jurisdictions consisted of multiple provincial metropolitanates under a single political leader, who reported directly to the Roman emperor. Even the rights assigned in canon law to the Church's autocephalous leaders mimic the rights of provincial governors within the imperial structure. So while it is true that a handful of Church canons from the fifth through the seventh centuries describe the conditions of autocephaly and emphasize the independence of an ecclesiastical primate, these same canons simply presume the existence of an overarching imperial structure and make very little (historical) sense without one. This is because the same canons take for granted that each autocephalous leader is a citizen of a common political structure—the Roman or Byzantine Empire—and, as such, is beholden to the empire (and to the emperor) in multiple ways. To put it in contemporary political terms, the super-jurisdictions were self-governing but they were not sovereign.

There are several reasons for caution as we seek to understand the application of these historical realities today. First, there is no evidence that the bishops who drafted this legislation thought through the ecclesiological implications of—or made theological arguments for—this precise model. From a historical point of view, it seems much more likely that they simply appropriated the imperial model because that was the model with which they were familiar and because church and state were so completely integrated by the sixth century that it would not have occurred to anyone that the Church should develop a distinct administrative superstructure.

Second, the scope of Byzantine canon law regarding issues of jurisdiction was primarily concerned with the

Christian communities that existed within the empire. It was only tangentially concerned with the administration of the Church beyond imperial borders. In fact, even though a significant proportion of Christians from the fourth through the seventh centuries lived beyond the imperial borders, Byzantine canon law made no effort to establish specific diocesan boundaries or relate external jurisdiction and bishops to those of the empire. For example, even though the Council of Nicaea (325) granted—in rather vague terms—jurisdictional authority “over the East” to the bishop of Antioch, there is no surviving evidence to suggest that anyone took that to mean an East beyond the Roman frontier. The very large population of Christians on the other side of the Roman-Persian border operated independently; theirs was an ecclesiological domain beyond the scope of Byzantine canonical interest.

To be sure, Canon 28 of Chalcedon (451) grants the Archbishop of Constantinople the right to ordain and appoint bishops in the “barbarian lands.” This remains a point of interest because of its implications for the jurisdictional authority of the Ecumenical Patriarchate. But with respect to what it meant in the Byzantine period, I would note that this canon does not establish specific jurisdictional boundaries within the “barbarian lands” and it presumes that there are no bishops currently serving the populations under consideration. Thus, the canon does not refer to those communities long since established but existing outside of the empire (such as the Christians of Persia or Ethiopia), but rather to those communities that do not presently have episcopal oversight (such as the Germanic tribes north of Thrace). In other words, Canon 28 of Chalcedon is almost surely concerned with the rights and regu-

lations of bishops within the Byzantine empire (Constantinople vis-à-vis Rome, Alexandria, and Antioch) regarding expansion into new areas and under whose jurisdiction those Christians would fall. It does not attempt to regulate the jurisdiction of existing bishops who reside beyond the empire, nor jurisdictional disputes between bishops within the empire and those outside it.

The longstanding misapplication of the Byzantine canonical tradition no doubt stems partly from the fact that some Byzantines had a habit of employing universalist language even though they were seeking to regulate issues inside the empire. Indeed, in the modern world we often invoke the universalist term *oikoumenie* when we discuss the early Church. The word literally means “the inhabited earth.” It is precisely for this reason that we refer to the “Ecumenical” Councils, because we hold their dogmatic claims to be universally binding. But in the legislation of the Roman emperor Justinian, which provides the foundation for so much of our thinking about matters of autocephaly and pentarchy, the word *oikoumenie* functions as a stand-in for “the empire.” One might make the case that Justinian’s language, at least rhetorically, envisioned a global

horizon in its articulation of imperial legislation. But scholars of Byzantium are increasingly challenging the notion that Justinian’s contemporaries shared this universalist political vision and they are especially doubtful that subsequent Byzantine thinkers viewed their empire in such terms.¹ As we will see, the apparent incongruence of individual state interests and the universalist claims of Christian theology as reflected in Byzantine canonical efforts to establish ecclesiastical jurisdictions was compounded by the rise of the nation-state.

The Challenge of the Nation-State

In his groundbreaking work *Imagined Communities*, Benedict Anderson makes a compelling case for the nation-state as a uniquely modern phenomenon. For Anderson, the nation-state unites otherwise diverse peoples through a complex matrix of such deep imagined associations and dependencies that individuals are willing to wage war in order to defend people whom they have never met.² For Anderson, this sociopolitical fidelity exists only in modernity because it is only after the Enlightenment that individuals began to conceive of citizenship as commitment to an idea. This notion of belonging is different from a premodern clan, kingdom, or empire, because in those arrangements, an individual’s fidelity to the group was predicated upon hierarchical associations involving specific individuals—the clan leader, the king, the king’s representative, and so forth. In the nation-state, however, the citizen’s allegiance and identity are to the nation, the idea of the nation, and the equality that one believes him or herself to share with other citizens of the nation. For example, in premodern France, one’s loyalty was to the French king, and one’s standing vis-

¹ See especially Anthony Kaldellis, *Hellenism in Byzantium: The Transformations of Greek Identity and the Reception of the Classical Tradition* (Cambridge: Cambridge University Press, 2007).

² Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1983).

Nicolaus Germanus, Map of the world after Ptolemy, 1467. National Library of Poland. Detail.



à-vis the state was determined by his relationship to the king or the king's representative. In post-revolutionary France, one's loyalty was to the idea of France itself, and one's standing was that of a citizen among fellow citizens. One might challenge Anderson's pre-modern-modern dichotomy by pointing to aspects of Byzantine civilization with which he seems to be unfamiliar. But his insights regarding the modern nation state are particularly fruitful for thinking about the challenges of ecclesial jurisdiction in the age of the nation-state.

For our purposes, one of the key dimensions of Anderson's assessment of the modern nation-state is that while the nation-state considers itself sovereign, it never sees itself in universalist terms. No national ideology presumes to be a stand-in for the whole of humanity—there is no *oikoumenie* of the nation—because the very organization of the nation-state presumes the existence of other nations. As such, the idea of the nation emphasizes a variety of factors, both preexisting (such as language) and newly developed (such as a legal system), in order to differentiate one nation from another. Put more succinctly, a national imagination encourages an outlook that is distinctive rather than universalist. In some iterations, a nationalist imagination is benign, but in others it can epitomize evil. Orthodox Christian history since the nineteenth century has witnessed both extremes and everything in between.

Ecclesiastical Jurisdiction after the Nation-State

If we provisionally adopt Anderson's working definitions, we are reminded that many factors we presume to bind members of a nation together—such as language, culture,

ethnicity, and shared history—reflect social, cultural, and political realities that do not easily map onto the Byzantine experience. They are especially difficult to square with the Byzantine canonical tradition concerning autocephaly. Yes, the Byzantines developed advanced systems of organization, both politically and ecclesiastically, and those systems allowed for relative independence and self-governance. But we should not lose sight of the fact that the individual parts were never sovereign. They were always part of a larger imperial, civilizational, and ecclesiastical whole. What is more, between the fourth and the seventh centuries, when the canons on jurisdiction were composed, the boundaries between autocephalous churches were never constituted on the basis of cultural or linguistic difference.

During the nineteenth century, when political activists in Eastern Europe first aspired to establish independent nation-states on the French model in Greece, Romania, Serbia, and other lands, they drew upon the Byzantine tradition of autocephalous churches as a means to reinforce national identity by aligning political and ecclesiastical interests and independence.³ This approach was not entirely new: the Byzantines, too, had always aligned political and ecclesiastical identity. But the conditions of autocephaly that emerged from the nation-state experiment were fundamentally different than those of late antiquity. Not only were the emergent autocephalous churches organized upon principles of social, ethnic, linguistic, and political difference, but there was no overarching structure to keep them aligned institutionally or sociologically. From the very beginning, these churches were deeply invested in the cultural and political independence of

³ See *Orthodox Christianity and Nationalism in Nineteenth-Century Southeastern Europe*, ed. Lucian Leustean (New York: Fordham University Press, 2014).



Theodoros Vryzakis,
Metropolitan Germanos of Old Patras Blessing the Greek Uprising, 1865.

their respective nations. Indeed, they were agents of independence. Both their popular support and their official status were (and remain) linked to their willingness to envision and articulate an expression of Christianity that reinforces national distinctiveness. It would be difficult to overstate how much this historical reality has transformed the Orthodox experience of autocephaly.

Thus far, the emergence of national churches has not led to the kind of dogmatic disintegration that occurred centuries after the Roman Church was politically and culturally isolated from Byzantium. Nevertheless, there have been countless non-dogmatic,

jurisdictional disputes between autocephalous churches since the formation of national churches. Many of these disputes have led to schism, if only temporarily. I would like to suggest that it is precisely because the Byzantine canonical texts did not anticipate a post-imperial national church structure, that the Church has been so ill-prepared to adjudicate and resolve jurisdictional disputes when they have occurred.

Indeed, one need look no further than to the Council of Crete in 2016 to be reminded how different our present situation is from the Byzantine. The documents of the Crete Council were innocuous compared to some to dogmatic disputes of the fifth or sixth century. But for the organization of Crete, there was no imperial superstructure to force the participation of those primates who did not want to attend. By way of contrast, during the height of the Christological controversies in the fifth and sixth centuries, no bishop could refuse a summons to a general council of the Church, because the summons came from the emperor. Indeed, at the Fifth Ecumenical Council, the bishop of Rome was present only because he had been dragged there by Justinian's soldiers! I am not suggesting that the Byzantine model was preferable or even appropriate, but simply identifying just how different our situation is today. With no Pope and no emperor, there is nothing to prevent the leader of a national church from self-imposed isolation if that is the path he chooses.

Perhaps nothing points to the inadequacy of the Byzantine canonical tradition to answer the jurisdictional questions of the twenty-first century more than the multi-part controversy over the situation in Ukraine. For starters, there is the question of which hierarchical body serves as

the final court of appeal when condemned clerics seek readmission to communion in the Church. Byzantine history suggests that both the See of Rome and, later, the Patriarchate of Constantinople served this function. But there is also Byzantine-era precedent to suggest that this primate authority was not always recognized by other autocephalous churches, even if the same churches in other situations were perfectly willing to recognize it. Then there is the question which episcopal body possesses the authority to grant autocephaly to a new (national) church. The nineteenth and twentieth centuries are littered with examples of this kind of dispute. In nearly every previous situation (except for the formation of the Orthodox Church in America), each independent church was eventually recognized by the other primates. This time might be different. But I doubt it will, in the long run.

Several autocephalous leaders, eager to avoid taking sides between Moscow and Constantinople, have proposed the convening of a new synod to resolve the various jurisdictional questions pertaining to the Ukrainian Church. Theoretically, that makes a great deal of sense. The Orthodox Church is, historically, conciliar. But in the absence of an emperor, why would the Patriarch of Constantinople or the Patriarch of Moscow attend such a council if they anticipated a rebuke? Would they not lobby others to avoid the

council as well? In practical terms, what mechanism would force them to attend?

In sum, ecclesiastical jurisdiction in the Orthodox Church continues to be what it has always been: a mirror of broader geopolitical developments. The emergence of national churches reflects and reinforces the reality of the nation-state. This mirroring is not likely to stop, either in Ukraine or elsewhere. To my mind, this situation presents two distinct but mutually compounding challenges. The first is that there will always be a temptation for national churches to prioritize local interests, constituencies, and political pressures over the universalist thrust of the Christian message, whenever a situation arises that puts the two in conflict. The second (and more problematic) challenge is that the Church's canonical tradition cannot adequately govern an ecclesial superstructure comprising national churches, because that canonical tradition was born of and presumes an imperial structure that no longer exists.

To be clear, I remain hopeful that should the Church face a true crisis of dogmatic proportions at some point in the future, the necessary administrative mechanism will emerge to resolve the situation. But what that mechanism will be and how it will compensate for the fragmentation of our post-Byzantine, national-church dysfunction I do not know. ✪



George E. Demacopoulos is the Father John Meyendorff & Patterson Family Chair of Orthodox Christian Studies at Fordham University. Along with Aristotle Papanikolaou, he co-founded the Orthodox Christian Studies Center at Fordham. He is a co-editor of the *Journal of Orthodox Christian Studies* and the author of four monographs, the most recent being *Colonizing Christianity: Greek and Latin Religious Identity in the Era of the Fourth Crusade*.