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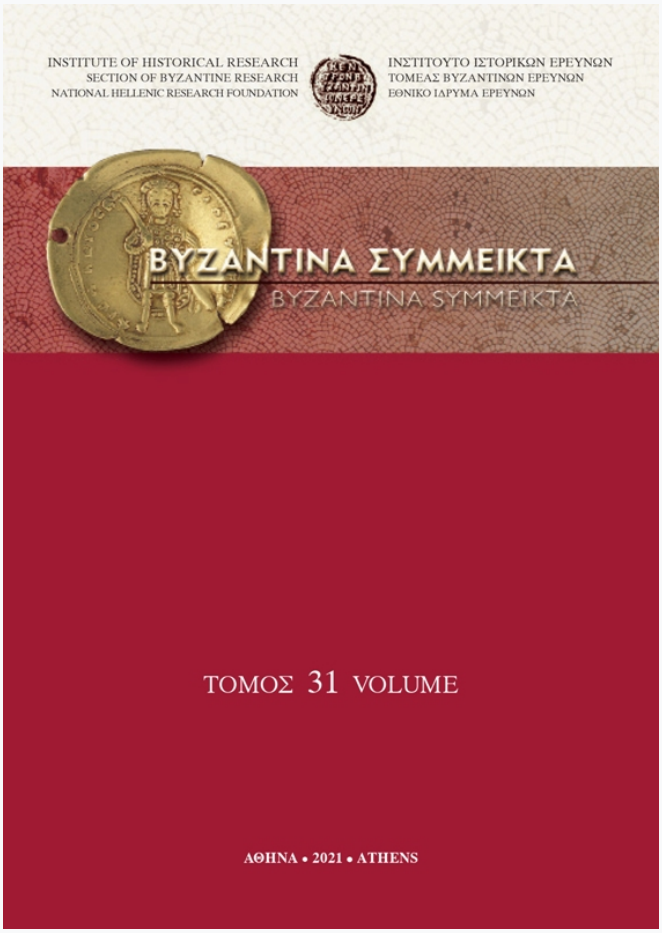

Nomos and canon in Byzantium: the case of the confiscation of the holy vessels during the reign of Alexios I Comnenus.

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BYZANTINA SYMMEIKTA

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ANGELIKI PANAGOPOULOU

NOMOS AND *CANON* IN BYZANTIUM: THE CASE OF THE CONFISCATION OF THE HOLY VESSELS DURING THE REIGN OF ALEXIOS I KOMNENOS

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Angeliki Panagopoulou

Nomos and *Canon* in Byzantium: The Case of the Confiscation of the Holy Vessels During the Reign of Alexios I Komnenos.

In *Alexias*, Anna Komnene is sketching vividly the dilemma of her father, Alexios I, when, in the aftermath of the victorious advancement of the Norman Robert Guiscard and the conquest of Dyrrachium in October 1081[1], he needed mercenary troops –and consequently money– to repel the enemy. Anna Komnene is stressing that the state treasury was empty as a result of the poor financial management by Nikephoros III Botaneiates (1078-1081), the predecessor of Alexios I. She also mentions that the emperor turned to his mother and his brother who, at this crucial moment, tried to raise money through the clearance of their personal gold or silver belongings[2]. Their example was followed by others, closely affiliated to the royal family, without resolving the problem[3]. The financial dead end in conjunction with the threat against the Empire forced the Emperor to turn to the old *nomoi* and *canons* on the confiscation of holy vessels[4]. Anna Komnene does not

1. M. Angold, *The Byzantine Empire, 1025–1204. A Political History*, London–New York 1984, 107-108; J.-C. Cheynet, *Ο Βυζαντινός κόσμος* Β΄. *Η Βυζαντινή αυτοκρατορία (641-1204)*, Athens 2011, 139.

2. Anna Komnene, *Ἀλεξιάς,* ed. D. R. Reinsch – A. Kambylis *Annae Comnenae Alexias* [CFHB XL/1], Berlin 2001, 5, II, 1.72-76; A. Glavinas, *Ἡ ἐπὶ Ἀλεξίου Κομνηνοῦ (1081–1118) περὶ τῶν ἱερῶν σκευῶν, κειμηλίων καὶ ἁγίων εἰκόνων ἔρις (1081-1095),* Center of Byzantine Studies, Thessaloniki 1972, 71ff.; M. F. Hendy, *Studies in the Byzantine Monetary Economy, c. 300–1450*, Cambridge 1985, 230.

3. *Alexias* 5, II, 1.78-2.82.

4. *Alexias* 5, II, 2.84-89: *οἱ δὲ ἐν ἀμηχανίᾳ γεγονότες καὶ πολλοὺς λογισμοὺς ἀνελίξαντες ἰδίᾳ τὲ καὶ κοινῇ, ἐπεὶ καὶ τὸν Ῥομπέρτον αὖθις ὁπλιζόμενον μεμαθήκεσαν,*

fail to stress the anxiety caused by the new war preparations of Robert and she mentions the Komnenoi found out that the confiscation of holy vessels was possible when it came to raise money to save prisoners of war[5]. Besides, she points out that even the welfare of Christians in Asia, who had escaped the massacre and were under the power of the barbarians was similar to those of prisoners, as these people were infected at a daily basis by being among faithless. Given the extension and the widely understood concept of captivity, the convertion of sacred utensils and relics into coins to prevent the infection of the Christians, which came from the West, would be regarded as the release and redemption of prisoners of war[6].

It was decided to cut the necessary coins to pay the mercenary troops, after melting a few of the holy vessels that were not in use any more and could be served as a cause for sacrilege and profanity[7]. The Holy Council and

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μὴ ἔχοντες ὅ τι καὶ δράσαιεν εἰς τοὺς πάλαι κειμένους νόμους καὶ τοὺς κανόνας περὶ τῆς τῶν ἱερῶν ἐκποιήσεως ἀπέβλεψαν: For previous confiscations of ecclesiastical property, see Hendy, *Byzantine Monetary Economy*, 231.

5. *Alexias* 5, II, 2.89-91. *καὶ μετὰ τῶν ἄλλων εὑρηκότες, ὅτιπερ ἐπ' ἀναρρύσει αἰχμαλώτων τὰ τῶν ἁγίων τοῦ Θεοῦ ἐκκλησιῶν ἱερὰ ἔξεστιν ἐκποιεῖσθαι*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 55, 58-59; S. Patoura, *Οι αιχμάλωτοι ως παράγοντες επικοινωνίας και πληροφόρησης (4ος–10ος αι.)*, Athens 1994, 24-25. For the *nomoi* and *canons* relating to the clergy's care for prisoners and the bishops' responsibility for the ransoming of captives in Late Antiquity in East and West, see C. Rapp, *Holy Bishops in Late Antiquity. The Nature of Christian Leadership in an Age of Transition*, University of California Press 2005, 226-232; for the convertion of ecclesiastical treasures to coin in order to be used for the purpose of ransoming prisoners of war, see P. Grierson, Commerce in the Dark Ages: A Critique of the Evidence, *Transactions of the Royal Historical Society* 9 (1959), 123-140, esp. 134-135; Hendy, *Byzantine Monetary Economy*, 231-232, 260-261; S. A. Boyd, A "Metropolitan" Treasure from a Church in the Provinces: An Introduction to the Study of the Sion Treasure, in: *Ecclesiastical Silver Plate in Sixth-Century Byzantium. Papers of the Symposium Held May 16-18, 1986 at the Walters Art Gallery*, ed. S. A. Boyd – M. M. Mango, Baltimore and Dumbarton Oaks, Washington D.C., 1992, 5-37, esp. 7-8; M. Mango, The Monetary Value of Silver Revetments and Objects Belonging to Churches, A.D. 300-700, in: *Ecclesiastical Silver Plate in Sixth-Century Byzantium*, 124-136, esp. 136.

6. *Alexias* 5, II, 2.91-93; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 56.

7. *Alexias* 5, II, 2.93-97: *ὀλίγά τα τῶν πάλαι ἠργηκότων ἱερῶν καὶ καταλελυμένων ὡς εἰς μηδεμίαν χρείαν συντελοῦντα, ἀλλ' ἀφορμὴν μόνον ἱεροσυλίας καὶ ἀσεβείας ἅμα τοῖς πολλοῖς παρεχόμενα ὡς ὕλην χαράγματος εἰς μισθὸν τοῖς στρατιώταις καὶ συμμάχοις τὰ τοιαῦτα χρηματίσαι ἐσκέψαντο*; see also, *Alexias* 6, III, 4.54-56; P. Bara, The Apparition of

the clergy, to whom Isaac Komnenos the Sebastocrator referred pleading the *canons* of the Church about holy vessels not in use any more, reacted against the enforcement of the *canons*[8], but they finally assented[9]. Anna Komnene cites the words of Sebastocrator, who admitted that "he was forced to force those whom he did not want to force"[10]. Furthermore, the Byzantine princess confessed that the issue of the confiscation was the reason why the Komnenoi received harsh criticism, even in the period when Alexias was being written, i.e. in the decade after 1136/37[11].

Leo, the bishop of Chalcedon, ran the campaign against Alexios as the leading figure of the so-called "Komnenian iconoclasm"[12]. According to

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Leo of Chalcedon. Anna Komnene's Reproduction of a Lost Family Account of the Doukai, in: *Transmitting and Circulating the Late Antique and Byzantine Words*, ed. M. Ivanova – H. Jeffrey [The Medieval Mediterranean 118], Brill 2019, 139-157, esp. 149. For the silver that Heraclius was given on loan from the church of Hagia Sophia in 621, to pay his troops for the campaign in Persia, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 55-56; Hendy, *Studies in the Byzantine Monetary Economy*, 231; Boyd, *A "Metropolitan" Treasure*, 7-8; Mango, *Monetary Value*, 135-136.

8. *Alexias* 5, II, 3.1-11: *τούτου γοῦν συνδόξαντος ἀνέρχεται ὁ σεβαστοκράτωρ Ἰσαάκιος εἰς τὸ τοῦ Θεοῦ μέγα τέμενος τὴν σύνοδον ἐκκλησιάσας καὶ τὸ τῆς ἐκκλησίας ἅπαν πλήρωμα. θεασάμενοι δὲ τοῦτον οἱ τῆς ἱερᾶς συνόδου ἐπ' ἐκκλησίας ἅπαντες συνεδριάζοντες τῷ πατριάρχῃ ἔκθαμβοι γεγονότες ἠρώτων ὅτου χάριν παρεγένετο. ὁ δὲ· «λέξων ἥκω τί πρὸς ὑμᾶς χρήσιμον τῇ βιαίᾳ τῶν πραγμάτων παρεμπτώσει καὶ σωστικὸν τοῦ στρατοῦ». ἅμα δὲ καὶ τοὺς περὶ τῶν μὴ χρησιμευόντων ἱερῶν κανόνας ἀπεστομάτιζε καὶ πολλὰ περὶ τούτων δημηγορήσας «ἀναγκάζομαι», φησίν, «ἀναγκάζειν οὓς οὐ βούλομαι ἀναγκάζειν». καὶ γενναίους προτιθέμενος λογισμοὺς ἐδόκει τάχα πείθειν τοὺς πλείονας*; on the synod which may have been held in January 1082 and the laws likely invoked by Isaac, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 59-64.

9. *Alexias* 5, II, 4, 12-14; V. Grumel – J. Darrouzès, *Les regestes des actes du patriarcat de Constantinople* I. *Les actes des patriarches*, fasc. II et III. *Les actes de 715 à 1206*. Institut français d' Études Byzantines, Paris 1989, no 921.

10. See n. 8.

11. *Alexias* 5, II, 4.14-16: *τοῦτο ὕλη μεγίστης κατηγορίας τοῖς βασιλεῦσιν ἐγένετο (οὐκ ὀκνῶ γὰρ καὶ τὸν Ἰσαάκιον ἀπόρφυρον βασιλέα κατονομάζειν) οὐ τότε μόνον, ἀλλὰ καὶ μέχρι καιροῦ διαρκέσασα;* for writing the Alexias, see H. Hunger, *Die Hochsprachliche Profane Literatur der Byzantiner* I. *Philosophie-Rhetorik-Epistolographie-Geschichtsschreibung-Geographie* [Handbuch der Altertumswissenschaft: Abt. 12], München 1978, 403.

12. For the term, see Bara, The Apparition, 143 and n. 15; for Leo's of Chalcedon financial independence, which enabled him to defy the emperor, see M. Angold, *Church and*

Anna, he did not take into consideration how crucial the situation was or the respective *nomoi* and *canons* and he used a rude and abusive language against the Emperor[13]. The latter tried to bring a little calm to the fierce debate by promising to return the holy vessels to the churches they were

society in Byzantium under the Comneni, 1081–1261, Cambridge University Press, 1995, 57; V. Gerhold, Le "mouvement" chalcédonien: opposition ecclésiastique et aristocratique sous le règne d' Alexis Comnène (1081-1094), *Erytheia* 33 (2012), 87-104, esp. 92. On Leo's confrontation with the central power over the confiscation of the holy vessels, see V. Grumel, L' affaire de Léon de Chalcedoine. Le décret ou σημείωμα d' Alexis Ier Comnène (1086), *EO* 39 (1941–1942), 333-341; P. Stephanou, Le procès de Léon de Chalcedoine, *OCP* 9 (1943), 5-64; V. Grumel, L' affaire de Léon de Chalcédoine. Le chrysobulle d' Alexis Ier sur les objects sacrés, *REB* 2 (1944), 126-133; Id., Les documents athonites concernant l' affaire de Léon de Chalcédoine, *StT* 123 (1946), 116-135; P. Stephanou, La doctrine de Léon de Chalcédoine et de ses adversaires sur les images, *OCP* 12 (1946), 177-199; V. Grumel, Léon de Chalcédoine et le canon de la fête du saint Mandilion, *AnBoll* 68 (1950) [*Mélanges Paul Peeters* II], Bruxelles 1950, 135-152; P. Gautier, Le synode des Blachernes (fin 1094). Étude prosopographique, *REB* 29 (1971), 213-284; id., Diatribes de Jean l' Oxite contre Alexis Ier Comnène, *REB* 28 (1970), 5-55; J. P. Thomas, *Private Religious Foundations in the Byzantine Empire*, Washington D.C. 1987, 192-207; Angold, *Church and society*, 46-50; A. W. Carr, Leo of Chalcedon and the Icons, in: *Byzantine East, Latin West: Art Historical Studies in Honor of Kurt Weitzmann*, ed. C. Moss – K. Kiefer, Princeton 1995, 579-584; Gerhold, Le "mouvement", 87-104; Alexios' church policy was also attacked by the patriarch of Antioch, John the Oxite, who accused him of confiscating church valuables, giving ecclesiastical institutions into "epidosis" and maltreating bishops and the clergy; Gautier, *Diatribes*, 33.1-4, 33.10-12, 35.15-17; P. Frankopan, Where Advice Meets Criticism in Eleventh Century Byzantium: Theophylact of Ohrid, John the Oxite and Their (Re)Presentations to the Emperor, *Al-Masāq* 20,1 (2008), 71-88; Bara, The Apparition, 144-148, 151-153; A. Kaldellis, *The Byzantine Republic: people and power in New Rome*, Cambridge 2015, 46; J. Ryder, The Role of the Speeches of John the Oxite in Komnenian Court Politics, in: *Reading in the Byzantine Empire and Beyond*, ed. T. Shawcross – I. Toth, Cambridge 2018, 93-114.

13. *Alexias* 5, II, 4.16-22: *καὶ γὰρ ἀρχιερεύς τις τηνικαῦτα Χαλκηδόνος Λέων προὐκάθητο, οὐ τῶν πάνυ σοφῶν καὶ λογίων, ἀρετῆς δὲ ἐπιμεμελημένος, τὸ δὲ ἦθος αὐτῷ σκληρὸν καὶ ἀπόκροτον οὗτος οὖν τῶν ἐν τοῖς Χαλκοπρατίοις πυλῶν ἀφαιρουμένου τοῦ ἐπικειμένου αὐταῖς ἀργυρίου ἤ καὶ χρυσίου εἰς τὸ μέσον εἰσδὺς ἐπαρρησιάζετο μηδόλως ἤ οἰκονομίας ἤ τῶν περὶ τῶν ἱερῶν κειμένων νόμων ἐπαισθανόμενος*. *Alexias* 7, IV, 1.62-65 *(Λέων) ἦν δ' ἄρα οὗτος παρρησιαστικὸς τὴν ψυχὴν καὶ ἀληθῆ χαρακτῆρα ἐμφαίνων ἀρχιερέως, φρονήματος μέντοι ἁπλουστέρου καὶ τὸν ζῆλον ἔστιν οὗ οὐ κατ' ἐπίγνωσιν ἐνδεικνύμενος, καὶ οὐδὲ τῶν ἱερῶν κανόνων ἀκριβῆ γνῶσιν εἶχε.*

taken from. After many years, Alexios was forced to cause the deposition of the bishop as a result of his rigorous attitude and sent him to exile[14].

As Anna Komnene notes, the repercussions of the above mentioned dispute went on for almost fifteen years (1081–1095) and reached her age. As we can infer from Alexias, it was a hotly debated issue that challenged the limits of the legislative power of the Emperor, the relationship between *nomos* and *canon*, and the attitude of the Emperor towards the *canons* and the Church in general. This paper attempts an approach to the above mentioned issues and their concepts in the 11th century, since even in that period they were not clearly defined[15].

Anna herself uses the terms *nomos* and *canon* in *Alexias* as if there were no substantial differences. The Komnenoi interpreted *nomoi* and *canons* concerning the confiscation of the holy vessels, Isaac Komnenos the Sebastocrator pleaded the *canons* before the members of the Holy Council, *nomoi* and *canons* were invoked by Alexios and the high priests, in order to refute Leo's arguments, while Leo, the bishop of Chalcedon, criticised Alexios without taking into consideration the "*nomoi* about the holy vessels"[16]. The fact that Alexios and his family had the need to turn to the

14. *Alexias* 5, II, 6.50-58; T. Creazzo, Coinvolgimenti politici e sociali nell' affaire di Leone Metropolita di Calcedonia, *Orpheus* 26 (2005) 1-2, 66-85, esp. 67-68; E. Malamut, *Alexis Ier Comnène*, Paris 2007, 195; V. Gerhold, Hétérodoxie théologique, orthodoxie ecclésiologique. Les procès d'hérésie à Byzance et la définition de l'ecclésiologie comnénienne, *Bulletin du centre d'études médiévales d'Auxerre* 7 (2013), 1-14, esp. 2. For the doctrinal content of the discord and the theological debate around the worship of images, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 151ff.; C. Barber, Leo of Chalcedon, Euthymios Zigabenos and the Return to the Past, in: *Contesting the Logic of Painting. Art and Understanding in Eleventh-Century Byzantium*, ed. C. Barber, Leiden, Boston 2007, 131-157; for the coherence of Leo's theology, see D. Krausmüller, Adoring Christ's image: The Icon Theology of Leo of Chalcedon and Theodore of Stoudios, *Greek, Roman and Byzantine Studies* 58 (2018), 423-442.

15. R. Macrides, Nomos and Kanon on paper and in court, in: *Church and society in Byzantium*, ed. R. Morris, London 1990, 61-85; for the relationship of church and emperor being the underlying issue of the controversy, see Angold, *Church and society*, 48; for the reaction of those who could no longer put up with the interference of the laics in the affairs of the Church, see Malamut, *Alexis Ier*, 194.

16. *Alexias* 5, II, 2.88-89: *εἰς τοὺς πάλαι κειμένους νόμους καὶ τοὺς κανόνας περὶ τῆς τῶν ἱερῶν ἐκποιήσεως ἀπέβλεψαν* (the Komnenoi); *Alexias* 5.8-10, II, 3 (Isaac Komnenos) *ἅμα δὲ καὶ τοὺς περὶ τῶν μὴ χρησιμευόντων ἱερῶν κανόνας ἀπεστομάτιζε καὶ πολλὰ*

canons[17] of the Church, seeking a way to legalise the confiscation of the holy vessels and relics but also to deprive the icons from their golden and silver parts, indicates that it was expected from them to act in such a way. The society they lived in had no consistent framework to define the relationship between *nomos* and *canon* on the one hand and the imperial will on Church issues on the other.

It is true that, for political and ideological reasons, stemming from the days of Constantine the Great, the Church and the State were not two distinct "authorities" or "legal orders". Both for men of politics and theologists, they were the two sides of the single and indivisible Christian Empire, the reign of God on earth, two inseparable aspects[18]. The plethora of the imperial

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περὶ τούτων δημηγορήσας; *Alexias* 5, II, 4.21-22: (Leo) *εἰς τὸ μέσον εἰσδὺς ἐπαρρησιάζετο μηδόλως ἢ οἰκονομίας ἢ τῶν περὶ τῶν ἱερῶν κειμένων νόμων ἐπαισθανόμενος*; I. Sakkélion, Documents inédits tirés de la bibliothèque de Patmos. I. Décret d'Alexis Comnène portant déposition de Léon, métropolitain de Chalcédoine, *BCH* 2 (1878), 102-128, esp. 12: *καὶ οἷα πάλιν αὐτῷ παρά τε τῆς βασιλείας μου καὶ τῶν παρισταμένων ταύτῃ ἀρχιερέων πρὸς τὰ λεγόμενα κανονικῶς ἅμα καὶ νομίμως ἀντετέθησαν.*

17. On the content of the term *canon*, see D. Heith-Stade, Canon and *Oikonomia*: a Typology of Normativity. Exceptions in Canon Law, *Kanon* XXIV [Oikonomia, Dispensatio and Aequitas Canonica], 2016, 52-60, esp. 54-56; as concerns the *canons* and their interpretation, see Vl. Phidas, Ecclesiological Presuppositions for the interpretation of the canons, in: *ΑΝΑΔΡΟΜΗ. Τιμητικὸν ἀφιέρωμα εἰς τὸν Ἀρχιεπίσκοπον πρ. Ἀθηνῶν καὶ πάσης Ἑλλάδος Κυρὸν Ἰάκωβον Βαβανάτσον*, Megara 1991, 451-502; P. I. Boumis, Η ερμηνεία του νόμου, in: *Αξίες και πολιτισμός. Αφιέρωμα στον καθηγητή Ευάγγελο Θεοδώρου*, Athens 1991, 361-383; N. N. Afanasiev, The canons of the church: changeable or unchangeable?, *St. Vladimir's Seminary Quarterly* 11 (1967), 54-68; Arch. varth. Archontonis, Περὶ τὴν κωδικοποίησιν τῶν ἱερῶν κανόνων καὶ τῶν κανονικῶν διατάξεων ἐν τῇ ὀρθοδόξῳ ἐκκλησίᾳ, *Ανάλεκτα Βλατάδων* 6, Thessaloniki 1970, 15-32; P. I. Boumis, *Το κύρος και η ισχύς των ιερών κανόνων*, Athens 1985; S. Perentidis, Un canon peut-il être périmé? Mentalités et autorité du texte canonique au XIIe siècle, in: *Το Βυζάντιο κατά τον 12ο αιώνα. Κανονικό δίκαιο, κράτος και κοινωνία*, ed. N. Oikonomides, Athens, 1991, 141-147; I. M. Konidaris, The Ubiquity of Canon Law, in: *Law and society in Byzantium: ninth-twelfth centuries*, ed. A. E. Laiou – D. Simon [Dumbarton Oaks Research Library and Collection], Washington D.C., Harvard University Press 1994, 131-150, esp. 133-134.

18. K. G. Pitsakis, Empire et Église (le modèle de la Nouvelle Rome): la question des ordres juridiques, in: *Diritto e Religione da Roma a Costantinopoli a Mosca* [Da Roma alla terza Roma. Documenti e Studi. Rendiconti dell' XI Seminario. Campidoglio 21 Aprile 1991] (a cura di M. P. Baccardi), Roma 1994, 107-123, esp. 108. See also K. G. Pitsakis, Sainteté et empire. À propos de la sainteté impériale: formes de sainteté "d' office" et de sainteté

legislative acts related to the regulation of Church issues had as a result to regulate these issues both with *canons*, i.e. with legislative resolutions coming from the authority bodies of the Church and with *nomoi*, i.e. acts from the legislative body of the State[19]. The Nomocanon was compiled as

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collective dans l' Empire d' Orient?, *Bizantinistica* 2, III (2001), 155-227, esp. 158-159; IDEM, Αντίσταση κατά της εξουσίας και επανάσταση στο Βυζάντιο: η θέση του δικαίου της Εκκλησίας, in: *Αμφισβήτηση της εξουσίας* [Επιστήμης Κοινωνία. Ειδικές Μορφωτικές Εκδηλώσεις] EIE, Athens 2003, 49-65, esp. 50-51. K. Pitsakis refers to the non-existence of two "jurisdictions" in Byzantium, but rather to a political, ideological, cultural "deal" between the Church and the State; K. G. PITSAKIS, La "συναλληλία" principe fundamental des rapports entre l' église et l' état, *Kanon* 10 (1991), 17-35, esp. 20; see also K. G. PITSAKIS, "Ius Graeco-Romanum" et normes canoniques dans les églises de tradition orthodoxe, in: *Incontro fra canoni d'Oriente e d'Occidente: Atti del congresso internazionale* I (a cura di R. COPPOLA), Bari 1994, 99-132, on the most important sections, in which the unity between secular and canon law is manifested in the Byzantine Empire, as a result of the unity between the Church and the State; for the intention of Fotios to establish a system of a pure *συναλληλία* in the relationship between the Church and the State through the provisions of the «Εισαγωγή», see S. S. TROIANOS, Ο Μέγας Φώτιος και οι διατάξεις της «Εἰσαγωγῆς». Μερικές παρατηρήσεις ως προς τις σχέσεις Εκκλησίας και Πολιτείας, *Εκκλησία και Θεολογία* 10 (1989-1991), 489-504, esp. 498; for the relations between the State and the Church in Byzantium, see also H. G. BECK, *Nomos, Kanon und Staatsraison in Byzanz* [Verlag der Österreichischen Akademie der Wissenschaften], Wien 1981, 5ff; S. TROIANOS, «Θεσπίζομεν τοίνυν τάξιν νόμων ἐπέχειν τοὺς ἁγίους ἐκκλησιαστικοὺς κανόνας...» *Βυζαντινά* 13/2 (1985) [*Festschrift für J. Karagiannopoulos*], 1193-1200, esp. 1194-1195, for the existence of two jurisdictions, but only one "authority"; S. TROJANOS, Kirche und Staat. Die Berührungspunkte der beiden Rechtsordnungen in Byzanz, *Ostkirchliche Studien* 37 (1988), 291- 296, esp. 291-2; MACRIDES, Nomos, 61; F. TINNEFELD, Kirche und Staat im byzantinischen Reich, *Ostkirchliche Studien* 54 (2005), 56-78, esp. 76-77.

19. Since the early Christian centuries, the Church had asked the intervention of the emperor in doctrinal and disciplinary matters; H. SARADI, Imperial Jurisdiction over ecclesiastical provinces: the ranking of new cities as seats of bishops or metropolitans, in: *To Βυζάντιο κατά τον 12ο αιώνα*, 149-163, esp. 149-150. For the imperial legislation related to the regulation of ecclesiastical matters; See A. MICHEL, Die Kaisermacht in der Ostkirche (843-1204), *Ostkirchliche Studien* 4 (1955), 1-42, esp. 8-9; PITSAKIS, Jus Graeco-Romanum, 104ff., 108, 110, 120; PITSAKIS, Empire et Église, 112; K. G. PITSAKIS, L' empereur romain d' Occident: un laic, *Kanon* XV[Kirchenrecht und Ökumene. Festgabe für den metropolitan von Tyroloi und Serention Panteleimon Rodopoulos] (1999), 196-221, esp. 200; PITSAKIS, Sainteté et empire, 160; see also, B. H. STOLTE, Balsamon and the Basilica, *Subseciva Groningana* 3 (1989), 115-125, esp. 115, as concerns the fact that the right of the Emperor to be involved in Church issues was never challenged; for the role of the emperor as the guardian of the faith

a result of resolving the Church issues with the use of both *nomoi* and *canons*, both of which are stated in parallel. The pivotal requirement for incorporating a state provision to the Nomocanon was to be consistent with the principles of life within the Church. This, however, was not always the case, as it is evident in the provisions that were called upon in 1081/2[20].

Anyway, the problematic issue between the Church and the State law did find a resolution of sorts in the 6th century and in particular in 545 when Novel 131 was issued by Justinian. Through this Novel, the Emperor legislated that the holy ecclesiastical canons issued and ratified by the four Holy Councils which had met up to his time, that is, of Nicaea, Constantinople, Ephesos and Chalcedon, were to have the status of *nomoi*[21].

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and his lack of authority in cases of establishing the doctrine or the *canons*, see M. Petrović, *Ὁ Νομοκάνων εἰς ΙΔ΄ τίτλους καὶ οἱ βυζαντινοὶ σχολιασταί. Συμβολὴ εἰς τὴν ἔρευναν τῶν θεμάτων περὶ σχέσεων Ἐκκλησίας καὶ Πολιτείας καὶ τῶν ἐπισκόπων Παλαιᾶς καὶ Νέας Ρώμης*, Athens 1970, 69-71, 119ff; for the arbitrary actions of the emperors and their attempts to resolve doctrinal issues, see Petrović, *Νομοκάνων*, 154ff; for chapter 4 of the *Εἰσαγωγὴ* as the expression of Fotios' wish to make the emperor respect the holy *canons*, see Troianos, Μέγας Φώτιος, 494-498.

20. For the incorporation of the agreement between the Church and the State in various manuscripts of the Nomocanon of 14 titles as well as in the Basilika and in Novels of various emperors, by incorporating in them the preamble of Novel 6 by Justinian, see Petrović, *Νομοκάνων*, 57ff.; for the seed of the state laws in the Church canons and the acceptance of the superiority of *canons* when contrasted to *nomoi* deriving from the state legislation, see Petrović, *Νομοκάνων*, 67ff., 74-84, 119-130; see also S. Troianos, Ο βυζαντινός άνθρωπος μπροστά στον Νόμο, in: *Βυζαντινό κράτος και κοινωνία. Σύγχρονες κατευθύνσεις της έρευνας*, Herodotus (IBE/EIE), Athens 2003, 27-56, esp. 31, for the fact that, up to the times of Constantine the Great, the criterion for assessing the secular legislation was its compliance with the divine law; for the Nomocanon of 14 titles, see S. Troianos, *Οι πηγές του βυζαντινού δικαίου*, Athens- Komotini, 2011, 198-202; S. Troianos, *The history of byzantine and eastern canon law to 1500*, ed. W. Hartmann – K. Pennington [History of medieval canon law], Washington D.C. 2012, 138-141.

21. *Corpus Iuris Civilis*, I *Novellae*, ed. R. Schoell – G. Kroll, Berolini 1922, 654-655: *Θεσπίζομεν τοίνυν, τάξιν νόμων ἐπέχειν τοὺς ἁγίους ἐκκλησιαστικοὺς κανόνας τοὺς ὑπὸ τῶν ἁγίων τεσσάρων συνόδων ἐκτεθέντας ἢ βεβαιωθέντας, τουτέστι τῆς ἐν Νικαίᾳ τῶν τιή΄ καὶ τῆς ἐν Κωνσταντινουπόλει τῶν ἁγίων ρν΄ πατέρων καὶ τῆς ἐν Ἐφέσῳ πρώτης, ἐν ᾗ Νεστόριος κατεκρίθη, καὶ τῆς ἐν Καλχηδόνι, καθ' ἣν Εὐτυχὴς μετὰ Νεστορίου ἀνεθεματίσθη. τῶν γὰρ προειρημένων ἁγίων δ΄ συνόδων καὶ τὰ δόγματα καθάπερ τὰς θείας γραφὰς δεχόμεθα καὶ τοὺς κανόνας ὡς νόμους φυλάττομεν*; see also the 29th chapter of the 9th title of the Nomocanon; Rhalles – Potles I, 210, in: *Σύνταγμα τῶν*

Under no circumstances was the emperor bound by the *nomoi*[22]. Since *nomos* and *canon* were typically at the same level, from the formal point of view it was made possible for the emperor to intervene in the scope of canon law[23]. The provision of Justinian was integrated in the Basilica issued in the beginning of the reign of Leo VI[24].

θείων καὶ ἱερῶν κανόνων, ed. G. A. Rhalles – M. Potles, I-VI, Athens 1852-59; Petrović, *Номоκάνων*, 79-80 and n. 72; Beck, *Nomos*, 8; G. Richter, *Oikonomia. Der Gebrauch des Wortes Oikonomia im Neuen Testament, bei den Kirchenvätern und in der theologischen Literatur bis ins 20. Jahrhundert* [Arbeiten zur Kirchengeschichte 90], De Gruyter 2005, 503; see also Nov. 6 preamble; C.I.C., 35-36, Nov. 6, I, 8; C.I.C., 37, Nov. 137, preamble; C.I.C., 695; there were earlier provisions with the same content as well, such as the *nomos* of the emperors Valentinian and Marcian back in 451 AD, which stated that provisions resulting from favouritism or advocacy and being contrary to the holy *canons* [*πραγματικοὶ τύποι*] were held as invalid; for the incorporation of the provision of 451 in the legal part of the Nomocanon, and in particular in the 2nd chapter of the 1st title, see Rhalles-Potles I, 36; Petrović, *Номоκάνων*, 74-75, 79-80 and n. 71; see also Troianos, Θεσπίζομεν, 1196ff.; S. Trojanos, Nomos und Kanon in Byzanz, *Historia et ius* II: 1989-2004, Athens 2004, 201-221, esp. 202-203; B. Stolte, Civil law in canon law: a note on the method of interpreting the canons in the twelfth century, in: *Το Βυζάντιο κατά τον 12ο αιώνα*, 543-554, esp. 544ff.

22. G. Dagron, Lawful society and legitimate power: ἔννομος πολιτεία, ἔννομος ἀρχή, in: *Law and society in Byzantium*, 27-51, esp. 31ff; for the fact that the *basileus* dictated the *nomos* and was the *nomos* for practical purposes, see B. H. Stolte, "Law is King of all Things?" The Emperor and the Law, in: *The Emperor in the Byzantine World. Papers from the Forty-Seventh Spring Symposium of Byzantine Studies*, ed. S. Tougher [Society for the Promotion of Byzantine Studies 21], London; New York, 2019, 171-178.

23. Troianos, Θεσπίζομεν, 1198-1200.

24. Specifically, Leo expanded the measure so that the *canons* that now "had the status of *nomoi*" (*ἐπέχουσιν τάξιν νόμων*) would also include the *canons* from the Councils since the promulgation of Novel 131 (545) until the Seventh Ecumenical Council at Nicaea (787) (including the canons ratified by Canon 2 of the Council of the Quinisext Ecumenical Synod of Troullo); B V, 3, 2 = Nov. 131 c.1, in: *Basilicorum Libri LX*, series A, vol. I, ed. H. J. Scheltema – Van Der Wal, Groningen, 1955, 141; see also Synopsis Basilicorum E.X. 6, in: *Jus Graeco-Romanum* V. *Synopsis Basilicorum*, ed. K. E. Zachariae von Lingenthal, Lipsiae 1869, (from now on: Synopsis Basilicorum), 297; Petrović, *Номоκάνων*, 79, n. 69, 87, for the fact that the Nomocanon of 14 titles mentions seven and not four ecumenical synods in the 2nd chapter of the 1st title, in which the Novel 131 of Justinian was incorporated. According to the researcher, this explains why the 1st chapter of the Novel 131 included in the Basilika was later supplemented to mention seven ecumenical synods; Rhalles – Potles I, 36-37; Macrides, Nomos, 64-65. See also, S. Trojanos, Die Kirchenrechtlichen Novellen Leos

The issue about the superiority of *nomos* or *canon* is evident in the writings of scholars of canon law in the 12th century. Whereas Anna Komnene is writing Alexias and describes the religious conflict, with her father at the heart of it, the ambiguity as concerns the relationship between *nomos* and *canon* is depicted in the comments of Theodore Balsamon in the Nomokanon of 14 Titles[25]. Balsamon mentions the incorporation of Novel 131 into the Basilica, confirming thus its legal power[26]. He states his view on the superiority of *nomos* and *canon*, according to which *canons* are superior to *nomoi*[27], since the former have been defined and ratified by both the Emperors and the Holy Fathers, whereas the *nomoi* were drawn only by the emperors and could not possibly prevail over the *canons* or the Bible[28].

VI. und ihre Quellen, *Subseciva Groningana* 4 (1990), 233-247, esp. 246, for the fact that Leo VI incorporated the Novel 131 of Justinian into the Basilica in order to expand the power of Justinian law on the equation between *nomoi* and *canons* so as to involve the canons of the synods from the 7th to the 9th century; Troianos, Nomos, 217; Troianos, *History of canon law*, 155.

25. Rhalles – Potles I, 31-32; Macrides, Nomos, 73. From the comments of Balsamon it is evident that, when writing the comments on the validity of a law, the criterion was its inclusion in the Basilica or not, as long as it had been published before the last "rectification" of the 11th century; Petrović, *Νομοκάνων*, 62, 87; see Macrides, Nomos, 74, n. 64, for the fact that Balsamon, in the preamble of the Nomocanon, refers to the "last rectification of laws" made by Constantine Porphyrogenitus; see also Troianos, *Πηγές του βυζαντινού δικαίου*, 259; see also Stolte, Balsamon, 117, 122, for the fact that Balsamon considered Basilica as the absolute guidelines on any legal matter, unless their provisions had been replaced by the Novels that followed; the view on the official nature and the exclusive power of Basilica in the second half of the 12th century is supported also by Trojanos, Nomos, 221; see also R. J. Macrides, Bad Historian or Good Lawyer: Demetrios Chomatenos and Novel 131, *DOP* 46 (1992), 187-196, esp. 194, n. 166, for the fact that Demetrios Chomatenos regarded the Justinian provisions included in the Basilica as valid, even though the conditions in his times had changed.

26. Rhalles – Potles I, 37.

27. A. P. Christophilopoulos, Ἡ σχέσις τῶν κανόνων πρὸς τοὺς νόμους καὶ ὁ Θεόδωρος Βαλσαμών, *EEBΣ* 21 (1951), 69-73, esp. 69; Stolte, Balsamon, 124-125; Stolte, Civil law, 547, as well as for the fact that this saying might not belong to Balsamon. Trojanos, Nomos, 219, n. 64, notes that it is not possible to confirm if the passage of Balsamon on the superiority of *canons* in this particular comment is a note on the margin or an excerpt of a text that appears in individual manuscripts.

28. Rhalles – Potles I, 37-38; Stolte, Balsamon, 123-124; see also Christophilopoulos, Σχέσις τῶν κανόνων πρὸς τοὺς νόμους, 71-72, who, attempting to interpret the above

Despite his view on this highly controversial issue, Balsamon's comments are by no means an integrated approach concerning the relationship between *nomos* and *canon*, nor to the rights of the emperor over the Church[29].

The confusion drawn by Balsamon's comments is basically due to the fact that by giving to *canons* the status of *nomoi*, a *nomos* could prevail over an earlier *canon*. In addition, a posterior *canon* could prevail over an

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mentioned comment of Balsamon, concludes that he thinks of *canons* as being superior to *nomoi*, not because of their special nature but because of the positive provisions of the civil law included in the Basilica; Stolte, Civil law, 545, n. 8, raises objections on the basis of an argumentum ex silentio, since Balsamon's saying is not explicit; Petrović, *Νομοκάνων*, 90-92, for the fact that Balsamon stresses the inferiority of the imperial law that cannot be superior either to the Bible or to the *canons*; see also Pitsakis, Jus Graecoromanum, 107, for the fact that the comment of Balsamon is another indication of the unity of canon and secular law in Byzantium.

29. The embarrassment of Balsamon, when he comments the Canon 16 of the so-called First/Second Council (Πρωτοδευτέρα, 861) is evident: *ἔδοξε γοῦν τὰ τοῦ κανόνος μᾶλλον ὀφείλειν κρατεῖν· ἐγὼ δὲ καὶ ἔτι ἀμφιβάλλω. Καθὸ μὲν γὰρ ἐστὶ τὸ ζήτημα ἐκκλησιαστικόν, πρόσκειμαι τοῖς λέγουσιν ὀφείλειν μᾶλλον τὰ τοῦ κανόνος κρατεῖν· καθὸ δὲ τὰ βασιλικὰ ἀνεκαθάρθησαν μετὰ τὴν τοῦ νομοκάνονος ποίησιν καὶ τὴν τοῦ κανόνος τούτου ἀπόλυσιν, πρόσκειμαι τῇ ἑτέρᾳ γνώμῃ* (Rhalles – Potles II, 699; Trojanos, Nomos, 219). In his comments, the principle that a *canon* not included in the Basilica is invalid, is contradicted at some point; Rhalles – Potles II, 703.21-23; Stolte, Balsamon, 124-125; elsewhere preference is given to the superiority of a *canon* in relation to a Novel included in the Basilica; Rhalles – Potles II, 422; Stolte, Balsamon, 124; in another case, the principle dominating in his work, i.e. new *canons* render old *canons* invalid, is also violated; Rhalles – Potles III, 153-4; at another point of his comments, Balsamon seems to accept the possibility of amendment or repeal of an ecclesiastical *canon* by an imperial law; Rhalles – Potles II, 393-394; Christophilopoulos, Σχέσις τῶν κανόνων πρὸς τοὺς νόμους, 70; see also Stolte, Civil law, 546ff, on the cases in the comments of Balsamon that a *canon* renders a law included in the Basilica invalid or ratifies the power of a law that has not been included in the Basilica. K. G. Pitsakis, Conceptions et éloges de la romanité dans l'empire romain d'Orient: deux thèmes "byzantins" d'ideologie politique avec reference particulière à Cosmas Indicopleustès, Cassia, Théodore Balsamon et les patriarches Michel IV Autôreianos et Antoine IV, in: *Idea giuridica e politica di Roma e personalità storiche* I (a cura di P. Catalano e P. Siniscalco) [Da Roma alla terza Roma. Documenti e Studi. Rendiconti del X seminario, Campidoglio 21 Aprile 1990], Roma 1991, 97-139, esp. 107, notes that Balsamon is faithful to both powers he has been called to serve, i.e. the Empire and the Church, the unity of which in a single legal order he advocates.

earlier *nomos* as *lex posterior* or modify it[30]. Under those circumstances, in the effort to harmonise the two legal orders, it was highly likely for the *nomoi* to receive a favourable treatment. Any contradictions between *nomoi* and *canons* could be resolved mainly with the application of the principle that a new law renders an earlier law invalid[31].

In 1082 the consequences of giving the same status to *nomos* and *canon* gave the Komnenoi the ground to support the confiscation of holy vessels and relics, based on the Novel 120 (CXX) issued by Justinian and included in Basilica that allowed the confiscation when it came to save prisoners of war. The same Novel defined that the holy vessels that were not in use any more could be sold or melted to pay for the debts of charitable houses so as not to sell property[32].

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30. Troianos, Θεσπίζομεν, 1198; Macrides, Nomos, 65; Trojanos, Nomos, 203; Tinnefeld, *Kirche*, 76-77; Richter, *Oikonomia*, 503; Heith-Stade, *Canon*, 58; Petrović, *Νομοκάνων*, 87-88, stresses that non incorporating the provision *οἱ τοῖς κανόσιν ἐναντιούμενοι πραγματικοὶ τύποι ἄκυροί εἰσιν* in the Basilika gave rise to heated conversations, since the content of the Basilica was valid and all the earlier laws that were not incorporated in them were rendered invalid. There was also the issue of the relationship between the *canons «ἔνθα νόμοις ἐναντιοῦνται»* and the Basilica, as they were posterior to the *canons*. The dispute of the two parts is evident from the testimony of Balsamon in his second comment in the 2nd chapter of the 1st title of the Nomocanon; Rhalles – Potles I, 37-38.

31. Trojanos, Nomos, 221; see also Macrides, Nomos, 74 and 84ff, who notes that Balsamon supports the imperial privileges in some cases and accepts the inability of the patriarch to react against imperial power. Besides, Macrides stresses that, when sometimes Balsamon says that *nomoi* should prevail over *canons*, he speaks about *nomoi* that aim at supporting the Church; see also Petrović, *Νομοκάνων*, 85, 92ff, for the incorporation of caesaropapism in the Nomocanon through the comments made by Balsamon.

32. *Περὶ δὲ τῶν ἱερῶν σκευῶν τῶν διαφερόντων τῇ αὐτῇ ἁγιωτάτῃ μεγάλῃ ἐκκλησίᾳ τῆς βασιλίδος πόλεως ἢ τοῖς ἄλλοις εὐκτηρίοις οἴκοις ἐν οἱῳδήποτε τόπῳ τῆς ἡμετέρας πολιτείας κειμένοις γενικῶς διατυποῦμεν, ὥστε μὴ ἄλλως ταῦτα πιπράσκεσθαι ἢ ὑποτίθεσθαι εἰ μὴ ὑπὲρ τῆς τῶν αἰχμαλώτων ἀναρρύσεως. εἰ δὲ πλείονα σκεύη ἔν τινι τῶν μνημονευθέντων εὐαγῶν οἴκων εἴη εἰς μηδεμίαν ἀναγκαίαν χρῆσιν ποιοῦντα, καὶ συμβῇ τὸν τοιοῦτον εὐαγῆ τόπον χρέεσι βαρύνεσθαι, καὶ οὐκ ἔστιν ἄλλα κινητὰ πράγματα ἐξ ὧν ὀφείλει τὰ χρέα ἀποδοθῆναι, ἄδειαν αὐτοῖς δίδομεν πράξεως ὑπομνημάτων, ὡς ἀνωτέρω εἴρηται, συνισταμένης τὰ εὑρισκόμενα περιττὰ σκεύη ἢ ἄλλοις εὐαγέσι τόποις χρείαν ἔχουσι πωλεῖν ἢ χωνεύειν καὶ ὁμοίως πιπράσκειν, καὶ τὴν αὐτῶν τιμὴν εἰς τὸ χρέος παρέχειν, ὥστε μὴ τὰ ἀκίνητα πράγματα ἐκποιεῖσθαι* (Novel 120, c. 10; C.I.C., 589 =B V, 2, 12); the Justinian legislation on the exclusion regarding the inalienability of the

However, since the 4th and mainly in the 5th century, the Church had secured that its property could not be expropriated through *canons* which defined that church estate along with holy vessels, libraries and sacred vestments were dedicated to God and belonged to Him. As a consequence, they were an integral part of the Church and nobody could deprive the Church of them, neither could they be pawned or reduced. Only the sale of estate that did not bring in any income was allowed and only in great need. In that case, the bishop had to explain the reasons that led him to such a decision to the metropolitan bishop[33].

It is obvious that the Justinian Novel still in force in the 11th century and incorporated in the Basilica, allowed the confiscation of the holy

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holy vessels is to be found in the Nomocanon of 14 titles; Rhalles – Potles I, 108-109, 239; regarding the *canon* 12 of the Seventh Ecumenical Synod (with the commentaries of Zonaras, Balsamon and Aristenos), see Rhalles – Potles II, 592-611; regarding the *canons* 33 of the synod of Carthage (with the commentaries of Zonaras, Balsamon and Aristenos), see Rhalles – Potles III, 390-392; see also Institutiones by Justinian on the possibility of confiscating the holy vessels on the basis of the law; *Sacra sunt, quae rite et per pontifices deo consecrata sunt, veluti aedes sacrae et dona, quae rite ad ministerium dei dedicata sunt, quae etiam per nostram constitutionem alienari et obligari prohibuimus excepta causa redemptionis captivorum*: C.I.C, Inst. II, 1, 8, in: *Corpus Iuris Civilis* I, ed. P. Krueger – Th. Mommsen, Berolini 1889; see the translation in Greek: *ἱερὰ εἶνε ὅσα προσηκόντως καὶ διὰ τῶν ἱερέων εἰς τὸν Θεὸν καθιερώθησαν,ὡς ἱεροὶ ναοὶ καὶ δῶρα, ἅτινα καὶ δι' ἡμετέρας διατάξεως ἀπηγορεύσαμεν ν' ἀπαλλοτριῶνται καὶ ἐπιβαρύνωνται, ἐκτὸς λόγῳ ἐξαγοράσεως αἰχμαλώτων*: *C.I.C., Εἰσηγήσεις, Πανδέκται* I, ed. H. Liakopoulos, Athens 1930, 29; see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 60-61, n. 41, where Novel 7 and Novel 55 are also referred; Rapp, *Holy Bishops*, 230; Gerhold, Le "mouvement", 89.

33. Canon 24 of the Council of Antioch (Rhalles – Potles III, 166-167); Canon 33 of the Council of Carthage (Rhalles – Potles III, 390); Canon 24 of the Council of Chalcedon (Rhalles – Potles II, 271-272) Canon 49 of the Council of Trullo (Rhalles – Potles II, 423); Canon 13 of the Seventh Ecumenical Council of Nicaea (Rhalles – Potles II, 612); Canon 10 of the First/Second Council of Constantinople (Rhalles – Potles II, 682-683); P. I. Panagiotakos, Ἀπαλλοτρίωσις τῆς ἐκκλησιαστικῆς περιουσίας, *ΘΗΕ* 2, 1019-1035; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 57; I. M. Konidaris, *Τὸ δίκαιον τῆς μοναστηριακῆς περιουσίας ἀπὸ τοῦ 9ου μέχρι καὶ τοῦ 12ου αἰῶνος*, Athens 1979, 254-263; E. Papagianni, *Ἡ νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καὶ μεταβυζαντινῆς περιόδου σὲ θέματα περιουσιακοῦ δικαίου*, I. *Ἐνοχικὸ δίκαιο – Ἐμπράγματο δίκαιο*, Athens 1992, 259-260, 264-265; E. Papagianni, Νομικοὶ θεσμοὶ καὶ πρακτικὴ σὲ θέματα ἐκκλησιαστικῆς περιουσίας, in: *Οἰκονομικὴ ἱστορία τοῦ Βυζαντίου ἀπὸ τὸν 7ο ἕως τὸν 15ο αἰώνα*, vol. 3, Athens 2010, 253-266, esp. 255-256, 265.

vessels, although it was forbidden by the holy *canons*. The Justinian Novel was opposed to the provisions of the canon law, but Balsamon was of the opinion that *ἔνθα μὲν γὰρ οὐδέν τι οἱ κανόνες διορίζονται, ὀφείλομεν τοῖς νόμοις ἀκολουθεῖν*[34]. Characteristically enough, Balsamon, in his comment on Canon 12 of the Seventh Ecumenical Council of Nicaea stresses that there is no contradiction between the *canon* of the Ecumenical Council of Nicaea and the Novel of Justinian regarding the exploitation, under certain circumstances, of the church or the monastery estate property. This is a statement that brings to light how necessary the conformity of the state laws to the spirit of the *canons* was. He points out that the Novel defines when to confiscate the property of the Church, the monasteries, the Μεγάλη Εκκλησία, and charitable houses that either bring income or not, while allowing the confiscation of holy vessels in case of emergency as well[35].

Besides, the incorporation of the Novel 120 in the Basilica and the equation of *nomoi* to *canons* through the Justinian Novel 131 –also incorporated in the Basilica– consolidated the superiority of the former to an earlier provision of the canon law. Balsamon, in his comments on Canon 26(34) of the Council of Carthage refers to Novel 120 by Justinian as the imperial provision introducing, under conditions, the possibility to confiscate holy vessels, while pointing out that it was written long after the above mentioned canon and it was incorporated into the Basilica defining when the exploitation of ecclesiastical and monastic movable and immovable property was possible and when not[36].

In the second half of the 11th century, the Komnenoi did not lose the opportunity to take advantage of the incorporated –in one of the most important sources of law of the Orthodox Church– provision of the 6th century which was well known in the legal environment of the Church and gave the possibility of an extensive interpretation. Anna refers that Isaac Komnenos tried to convince the members of the Council in late 1081 or in early 1082[37] to approve of the confiscation pleading "the holy canons

34. Rhalles – Potles I, 68.

35. Canon 12 of the Seventh Ecumenical Council (Rhalles – Potles II, 596-597); Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 61, n. 42; Konidaris, *Τὸ δίκαιον*, 256-257; Papagianni, Νομικοὶ θεσμοί, 255.

36. Canon 26(34) of the Council of Carthage (Rhalles – Potles III), 373-374.

37. Grumel – Darrouzès, *Regestes*, no 921; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 54ff.

concerning vessels that are not in use any more". In fact, according to Anna, he presented what a *nomos* prescribed as prescribed by canon law. Given that *nomos* and *canon* were of equal status, a favourable treatment of secular law as opposed to ecclesiastical law, can be traced here[38]. Although Anna tried to show that the confiscation of holy vessels was a necessary evil in the framework of the inconvenience and anxiety caused by the Normans, although Isaac Komnenos obtained everyone's consent to secure the necessary funds "through the law"[39], it is obvious that Alexios and his family had violated the holy canons.

In a letter in 1083 to the emperor, who was to blame the most in this case, Leo the Bishop of Chalcedon refers to the way and the method of the confiscation as "hubris", "injustice" and "offence" (*ὕβρις, ἀδικία, ἀδίκημα*)[40]. He does not fail to mention the places that fell victim to confiscation[41], while Anna tries to mitigate what happened and contrary to Leo she notices that "nothing else was confiscated than the golden and silver ornaments that surrounded the relic of Empress Zoe along with a few other vessels that were not used in the Divine Liturgy"[42]. The words of Leo are confirmed by

38. See p. 411-412.

39. *Alexias* 5, II, 4.25-28: *καὶ ὁπηνίκα μὲν τὰ πρῶτα κατὰ τοῦ Ῥομπέρτου ὁ αὐτοκράτωρ τῆς βασιλίδος πόλεως ἐξῄει, Ἰσαακίου τοῦ σεβαστοκράτορος καὶ αὐταδέλφου αὐτοῦ μετὰ τῆς κοινῆς γνώμης ὁθενδήποτε συμποριζομένου χρήματα μετὰ τῶν νόμων ἅμα καὶ τοῦ δικαίου.*

40. Leo spoke about the breach of faith, the desecration of the holy, the dishonour of the precious nacre, the violation of the Holy Cross, the crash of the holy utensils, the verbal outrage of the image of God, the breaking of the head, the face and parts of the body of Jesus, putting the Saviour of the world into fire as a murderer, giving dogs what is sacred and throwing pearls to pigs; Leo of Chalcedon, Ἐπιστολὴ πρὸς τὸν βασιλέα Ἀλέξιον τὸν Κομνηνόν, *Εκκλησιαστική Αλήθεια* 20 (1900) 403a; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 80-87.

41. Leo of Chalcedon, Ἐπιστολή, 403b: *τὰ Μοναστήρια, ὅσα ἱερὰ ἐσυλήθησαν τὰ ἀσκητήρια, ὅσα τὰ οἰκεῖον περιήρηνται κόσμον τὰ θυσιαστήρια, ὅσα γυμνωθέντα τῆς εὐπρεπείας αὐτῶν, νεκροῖς σώμασι λωποδυτηθεῖσιν, ἐοίκασιν αὐτὰ τὰ Κιβώτια, ἐν οἷς τὰ ἱερὰ δοχεῖα ἀποτεθέντα τοῦ Θεοῦ, στόματι χρώμενα τῷ κενώματι, μυρίων μαρτύρων τρανότερον βοῶσιν, ὡς οὐδὲν ὧν ἐπιστεύθησαν, ἔχουσι μάρτυρες μὲν τοσοῦτοι τοῦ πράγματος καὶ οὕτως ἀπαραλόγιστοι*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 66.

42. *Alexias* 6, III, 34.1-37: *καὶ ἐπεὶ μηδὲν ἕτερον ἀφαιρεθὲν κατεφαίνετο, ἀλλ' ἤ μόνος ὁ τῇ σορῷ τῆς βασιλίδος ἐκείνης Ζωῆς ἐκ χρυσοῦ καὶ ἀργύρου ἐπικείμενος κόσμος καὶ ὀλίγα τινὰ ἄλλα σκεύη μὴ τοσοῦτον εἰς ἱερὰν λειτουργίαν χρηματίζοντα*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 66-67.

both Theodore Skoutariotis, who tends to forgive the emperor[43], and Niketas Choniates, who mentions that the gates of the temple of Chalkoprateia were deprived of the silver and a lot of holy vessels in a number of temples had been melted[44].

From the above it is evident that the violation of the holy canons as concerns the inalienability of holy vessels was in line with the principle of Balsamon developed in his comment on Canon 16 of the Synod of Carthage. Balsamon states that "the emperor stands above any *nomoi* and *canons*"[45]. According to the principle of imperial *oikonomia* (*κατ' οἰκονομίαν βασιλικήν*)[46], a priest could take a secular office as a result of imperial will

43. Theodoros Skoutariotis, *Synopsis Chronike*, ed. K. N. Sathas [Μεσαιωνικὴ Βιβλιοθήκη VII], Venice 1894, 186*: εἰ δὲ καί τινα δυσχερῆ τοῖς ἐν Κωνσταντινουπόλει ἐπισυνέβη ὁποῖα φιλεῖ γίνεσθαι ἐν τοιούτοις πράγμασι*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 67.

44. *Νικήτα Χωνιάτου, Σύνοψις τῶν δογμάτων τῶν κινηθέντων ἐπὶ τῆς βασιλείας τοῦ βασιλέως κυροῦ Ἀλεξίου Κομνηνοῦ*: *καὶ ἄλλων μὲν ναῶν ἱερὰ ἀποσπάσας, τῇ χωνείᾳ παρέδωκε καὶ εἰς νόμισμα κέκοφε, πρὸς δὲ τοῖς ἄλλοις καὶ τὰς τοῦ νεὼ τῶν Χαλκοπρατείων καθελὼν πύλας ἀργύρῳ* διηλειμένας, in: *Annae Komnenae Supplementa, historiam graecorum ecclesiasticam seculi XI et XII spectantia*, ed. Th. K. Tafel, Tubinguae 1832, 1-8, esp. 5-6; see also Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 68-71, for the churches that were deprived of holy items. In particular, it was the church of Chalkoprateia, from which the silver gates were removed along with the silver that was on them, as well as the church of Christ Antifonetes, where the golden and silver ornaments were removed from the relic of Empress Zoe, and the church of Saint Averkios, which was inside the patriarchate.

45. Rhalles – Potles III, 349: *ὁ βασιλεὺς οὔτε νόμοις οὔτε κανόσιν ὑπόκειται.*

46. On the concept of *oikonomia* in the world of theology and canon law, see M. Azkoul, Oikonomia and the orthodox church, *Patristic and Byzantine Review* 6 (1987), 65-79; S. N. Trojanos, Akribeia und Oikonomia in den Heiligen Kanones, in: *Historia et ius* I: 1969-1988, Athens 2004, 783-799; G. Dagron, La règle et l' exception. Analyse de la notion d' économie, in: *Religiöse Devianz. Untersuchungen zu sozialen, rechtlichen und theologischen Reaktionen auf religiöse Abweichung im westlichen und östlichen Mittelalter*, ed. D. Simon [Ius Commune 48], Frankfurt am Main 1990, 1-18; Richter, *Oikonomia*, 492-515; Kaldellis, *Byzantine Republic*, 74; D. Dobromir, *Oikonomia* and *Akribeia* in the canons of St. Basil, *Kanon* XXIV [Oikonomia, Dispensatio and Aequitas Canonica], (2016), 34-44; Heith-Stade, *Canon*, 59-60; A. Anapliotis, Oikonomia and its Limits in Orthodox Canon Law, *Ancilla Iuris* 73 (2019), 74-84; see also Pitsakis, «Συναλληλία», 26, for an interesting interpretation of the term *oikonomia* in the framework of unity of the Byzantine legal order and in contrast with the latin *dispensatio*. On the use of *oikonomia* by Alexios in the sense of administration, see Richter, *Oikonomia*, 527-528; for a change in the concept of *oikonomia* as a result of its

and, though prohibited in the *canons*, they would be no obstacle to this. Although he states that he does not agree with this practice[47], *oikonomia*, i.e. the fact that the emperor had the right to annul a law under certain circumstances as well as to introduce an exception that did not cancel the rule[48], in combination with the "archbishopric jurisdiction" of the emperor

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applicability by the political power and the occasional appearance of *oikonomia* in Justinian law in the meaning of administration, see Richter, *Oikonomia*, 509-510, 516.

47. Rhalles – Potles III, 349-350; Balsamon states that Canon 4 of Chalcedon gave the emperor the right to assign secular tasks to the monks and the clergy. The emperor appoints the bishops, who have the right to allow the clergy to involve in secular pursuits. Since this is permitted to bishops, then the emperor, who is not obliged to obey by the canons, must have that right as well; Rhalles – Potles II, 228-229; see D. Simon, Princeps legibus solutus. Die Stellung des byzantinischen Kaisers zum Gesetz, in: *Gedächtnisschrift für Wolfgang Kunkel*, ed. D. Nörr – D. Simon, Frankfurt am Main 1984, 449-492, esp. 475-477, for Balsamon's effort to set the imperial rights within the Church under the commitments of the provisions of canon law; see also A. Kazhdan, Some observations on the Byzantine concept of law: three authors of the ninth through the twelfth centuries, in: *Law and society in Byzantium*, 199-216, esp. 212ff, for the role of the imperial will on making legal decisions. It is typical that Ioannes Zonaras in his comment on Canon 17 of the Council of Chalcedon explains that "the Fathers of the Ecumenical Council claim that the ecclesiastical order of the cities should be consistent with the imperial decrees for the foundation of those cities, since "we cannot disobey the imperial will"; Rhalles – Potles II, 260. Balsamon states in his comments on the same canon that the emperor has the right to decide what he likes (*τὰ βουλητέα αὐτῷ*), while summarising a *σημείωμα* by Alexios Komnenos in his comments on Canon 38 of the Council of Trullo, he insists that the emperor has the right to give cities bishop cathedrae or to raise a bishop cathedra to a metropole at his will (*κατὰ τὸ αὐτῷ βουλητέον*); Rhalles – Potles II, 261-262; see also Petrović, *Νομοκάνων*, 145ff; Saradi, imperial jurisdiction, 153ff; Stolte, Civil law, 550.

48. On Balsamon's belief that no new law is created through the application of *oikonomia*, see Anapliotis, Oikonomia, 82; on the confrontation of order (*τάξις*) and *oikonomia* in the political and ideological sphere, see H. Ahrweiler, *L' idéologie politique de l' empire byzantin*, Paris, P.U.F., "SUP-l' historien", 1975, 129ff; Leo VI in the Novel 109 refers to the principle of *oikonomia* as a factor that forms the emperor's decisions: *Εἰ δὲ βασιλεύς, οἷα πολλὰ συμβαίνει, πράττων οἰκονομίαν τινὰ καὶ μνηστείαν καὶ τὴν ἐξ ἱερολογίας συνάρμοσιν τοῖς μνηστευομένοις ἔνδον τῶν διορισθέντων ἐτῶν ἐπιψηφιεῖται, τοῦτο πρὸς τὸν νόμον οὐδὲν ἀντίκειται. Ἔξεστι γὰρ τοῖς ἐκ Θεοῦ τὴν οἰκονομίαν τῶν κοσμικῶν ἐγκεχειρισμένοις πραγμάτων ὑπέρτερον ἢ κατὰ νόμον οἰκονομεῖν ὃς ἄγει τοὺς ὑπηκόους* (*Les Novelles de Léon VI le Sage*, ed. P. Noailles – A. Dain, Paris 1944, 355-356); the above mentioned excerpt of Novel 106 was incorporated into Novel 31 (1092) by Alexios I;

deriving from the semi-clerical nature of his office[49], were, according to Balsamon, two factors that justified the fact that the emperor stood above *nomoi* and *canons*[50].

However, obedience to *nomoi* and *canons*, while acting of his own free will and accord since nobody could force him to do so[51], was what gave the emperor the *ἔννομος ἀρχὴ* and rendered him *ἔννομος ἄρχων*[52]. Securing

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Nov. 31, in: *Jus Graeco-Romanum* III, *Novellae Constitutiones*, ed. K. E. Zachariae von Lingenthal, Lipsiae 1862, 376-378. For *oikonomia* as an act of administration in the Novel 109, see Richter, *Oikonomia*, 526-527; Kaldellis, *Byzantine Republic*, 74.

49. Dagron, Lawful society, 34; G. Dagron, Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle, in: *Το Βυζάντιο κατά τον 12 αιώνα*, 165-178. See also Pitsakis, Sainteté et empire, 161ff; Pitsakis, L'empereur romain d'Orient: un laic, 196-221; Pitsakis, «Συναλληλία», 21ff.

50. The decisions of the emperor were indisputable; Nov. 113, I, 529-530; Nov. 113 was incorporated in the Basilica; B II, 6, 23 = Nov. 113 c. 1 pr., 78-79; B II, 6, 24 = Nov. 113 c. 1 § 1; B II, 6, 25 = Nov. 113 c. 2; B II, 6, 26 = Nov. 113 c. 3; *Ὁ βασιλεὺς τοῖς νόμοις οὐχ ὑπόκειται*: *Synopsis Basilicorum* B. III 1, 130; *Ὅπερ ἀρέσει τῷ βασιλεῖ, νόμος ἐστίν* (*Synopsis Basilicorum* B. III 2, 130); *Ὁ οἱαδήποτε ἐναντιωθεὶς βασιλικῇ ἀντιγραφῇ ὡς ἱερόσυλος τιμωρεῖται* (Synopsis Basilicorum B. IV 5, 131); Kaldellis, *Byzantine Republic*, 74; see also S. Trojanos, Die Sonderstellung des Kaisers im früh-und mittelbyzantinischen Kirchlichen Prozess, *Βυζαντινά* 3 (1971), 71-80, esp. 76. As concerns the status of the emperor's decisions in the Justinian legislation that could not be disputed and had been incorporated into the Basilica, see Simon, *Princeps legibus solutus*, 462ff, 473; see also Michel, Kaisermacht, 4-5, for cases that, despite the application of the recognised imperial right of *oikonomia*, the emperor's decisions were characterised as non canonical.

51. Michel, Kaisermacht, 5-6, 10-11, 15; Beck, *Nomos*, 13-14; Dagron, Lawful society, 32, about the *παραινετικὰ κεφάλαια* that were compiled in the 6th century or those attributed to Basil I in the 9th century, which urged the emperor to respect the laws, although he knows that nobody can force him to do so. These texts aimed at giving an answer to the inevitable issue of absolute power, not by transforming the political system but rather by "subtly changing" the emperor; see also Kaldellis, *Byzantine Republic*, 84-85.

52. Dagron, Lawful society, 33; Simon, Princeps legibus solutus, 463ff; it is characteristic that Psellos in the 11th century regarded the principle of justice as one of the main objectives of a fair emperor, who was the source of both the justice and the laws on the basis of his relationship with God; see also Kazhdan, *some observations*, 207. Besides, the legitimacy of the Byzantine emperor as a legislator resulted from the following figure: God was the source of law, but the creator of the specific norms was the emperor on the basis of his relationship with God; Troianos, *ο βυζαντινός άνθρωπος μπροστά στον νόμο*, 31; see also, A. E. Laiou, Law, Justice and the Byzantine Historians: Ninth to Twelfth Centuries, in: *Law and society*

the *ἔννομος ἀρχὴ* was definitely the aim of Alexios I in the early stage of his reign, as, according to Anna Komnene, among the officials there were malicious people that underpinned any attack against the emperor[53]. It is typical that in the *σημείωμα* issued by him in January 1086, Alexios wonders how it was possible for Leo of Chalcedon, who was supposed to seek integrity and had for a long time an authoritative opinion regarding the customs and laws of the church, to try to please people and state that he cares about people's opinions[54]. The emperor should also take seriously into

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in Byzantium, 151-185, esp. 156, 171; Kekaumenos, *Στρατηγικόν,* ed. G. Litavrin, *Sovety i rasskazy Kekavmena,* Μόσχα 1972, 274. 6-7; Simon, Princeps legibus solutus, 482-483, stresses that Kekaumenos presents the emperor as a person subject to divine commands, the orders of whom can be waived by his people, if they contradict with divine commands or lay beyond reason. Actually, the author of *Στρατηγικὸν* is oriented to a contraction of the emperor's almighty; for the emperor's right to act beyond the law only to benefit the Roman people, see Kaldellis, *Byzantine Republic*, 72-82. See also P. Magdalino, Aspects of twelfth-century Byzantine Kaiserkritik, *Speculum* 58 (1983), 326-345, esp. 333.

53. *Alexias* 5, II, 6.42-44: *ὡς δ' ἐπὶ πλέον πρὸς τοὺς βασιλεῖς ἐθρασύνετο χαιρεκάκοις ἀνδράσι πειθόμενος, ὁποῖοι πολλοὶ τότε ὑπῆρχον τοῦ πολιτεύματος, εἰς τοῦτο παρανυττόμενος καὶ πρὸς ὕβρεις καὶ βλασφημίας ἀκαίρους ἐτράπετο.* Anna speaks of a "Chalcedonian Faction": *οὓς οἱ τῷ τοῦ Χαλκηδόνος μέρει προσκείμενοι* (*Alexias* 5, II, 6.49-50). For the danger caused by the possibility that some non-religiously motivated social groups would rally around Leo against central authority, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 131-132; Creazzo, Coinvolgimenti, 68ff; T. Creazzo, Leone di Calcedonia nell' Alessiade: ΑΛΗΘΕΙΑ o convenienza politica?, *Orpheus. Rivista di Umanita Classica e Cristiana* 1-2 (2006), 39-49, esp. 42-43; D. Smythe, Alexios I and the heretics: the account of Anna Komnene's Alexiad, in: *Alexios I Komnenos. Papers of the second Belfast Byzantine International Colloquium, 14-16 April 1989* I, ed. M. Mullett – D. Smythe, Belfast 1996, 232-259, esp. 256; Gerhold, Le "mouvement", 97ff; for conspiracies against the Emperor which had their origins from within the imperial family itself, see P. Frankopan, Kinship and the Distribution of Power in Komnenian Byzantium, *English Historical Review* 122, n. 495 (2007), 1-34; P. Frankopan, Re-Interpreting the Role of the Family in Comnenian Byzantium. Where blood is not thicker than water, in: *Byzantium in the eleventh century; Being in Between. Papers from the 45th Spring Symposium of Byzantine Studies*, ed. M. D. Lauxtermann – M. Whittow, Exeter College, Oxford, 24-26 March 2012, [Society for the Promotion of Byzantine Studies 19], New York, 2017, 281-296; for Leo's supporters and adversaries, his network and paideia, see P. T. Bara, *Leo of Chalcedon. The Network, Paideia, and Miracles of an Early Komnenian Metropolitan* (Unpublished Doctoral Thesis), Szeged 2020.

54. Alexios' σημείωμα (Sakkélion, Documents inédits, 119*: ὧν λαληθέντων, ἐπλήγη μὲν κατὰ τὴν ψυχὴν ἔνδον ἡ βασιλεία μου, εἴ γε τηλικοῦτος ἄνθρωπος, λόγῳ μὲν*

consideration the Church officials of the higher ranks (*τοὺς ἐκκρίτους τῆς ἐκκλησίας*) (higher clerks of the Patriarchate as well as the law scholars – stemming from families of the capital–deacons and clergymen of the Great Church). In the 11th century these people formed a group, the aim of which was to care for certain interests[55]. The formation of canonical awareness, as a result of the systematisation of the canon law in the 11th century[56], made Alexios firmly believe that colliding with the *canons* was extremely dangerous while trying to establish his authority.

But it was not only the *canons* that he collided with. Novel 120 introduced an exception to the general provision on the prohibition of the confiscation of the holy vessels, while its scope was limited and concerned their forced alienation only for the salvation of prisoners of war, or the confiscation of the sacred utensils that were no longer in use to pay off the debts of charitable houses in order to prevent the sale of their own property. As a result, strict conditions were laid down for the confiscation of the holy vessels, which were clearly not fullfiled in the case of the confiscation of 1081/2 carried out by Alexios I. The issue in its essence concerned not only the hierarchical relationship between *nomoi* and *canons*, but also the relationship between general and special provisions. Novel 120 which

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σεμνυνόμενος, βίου δὲ σεμνότητος ἀντιποιεῖσθαι ὑποπτευόμενος, καὶ τῶν ἐκκλησιαστικῶν ἐθῶν καὶ νομίμων διὰ πολλοῦ τοῦ χρόνου τελείως ἐσχηκὼς τὴν διάγνωσιν, πρὸς ἀνθρώπων νεύει ἀρέσκειαν, καὶ φείδεσθαι λέγει τῶν ἀνθρωπίνων γλωσσῶν; Grumel – Darrouzès, *Regestes*, no. 940 F. Dölger – P. Wirth, *Regesten der Kaiserurkunden des Oströmischen Reiches von 565-1453*, *Regesten* von 1025-1204, München 1977, I/2, no 1128, 1129, 1130.

55. For these lobbies, see Grumel, Les documents athonites, 128; V. Tiftixoglu, Gruppenbildungen innerhalb des Konstantinopolitanischen Klerus während der Komnenenzeit, *BZ* 62 (1969), 25-72, esp. 42ff; A. P. Kazhdan – A. W. Epstein, *Change in Byzantine Culture in the Eleventh and Twelfth Centuries*, London, 1985, 165; for the alliance of the emperor with the patriarchal clergy in the framework of imposing the imperial will in the organisation of the Church, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 131; Angold, *Church and society*, 54-60; P. Bara, The Use of the Donation of Constantine in Late-Eleventh-Century Byzantium: the Case of Leo Metropolitan Bishop of Chalcedon, *Chronica. Annual of the Institute of History. University of Szeged* 17 (2017), 106-125, esp. 107, 122; for the hypothesis that some discontented members of the patriarchal clergy might support Leo's party, see Bara, Donation, 124.

56. H. G. Beck, Kirche und Klerus im staatlichen Leben von Byzanz, *REB* 24 (1996), 1-24, for the more frequent conflict between the emperors and the *canons* in the 11th century.

allowed the confiscation of the holy vessels under strict conditions and had been equated with the *canons* by the Novel 131 of Justinian, was the special provision which overrode the *canons*, as the general provisions which prohibited the confiscation and had been ratified by the Holy Synods of the 4th and 5th century. Nevertheless, the confiscation of 1081/2 didn't meet the prerequisites of Novel 120, a fact that forced Anna Komnene to insert a legal fiction in her narrative. She points out that the welfare of Christians in Asia, who had escaped the massacre and were under the power of the barbarians was similar to those of prisoners, due to their permanent exposure to danger, in order to equate them with the prisoners of war[57]. The Christians in Asia and consequently the ones that would be captured in the war against the Normans, thus fell within the narrow scope of the application of Novel 120, resulting in providing Alexios with the legal support he needed for the application of the Novel, which as a special provision laid down particularly strict conditions for the confiscation of the holy vessels that were not met in this particular case.

This is the reason why the emperor stresses in the chrysobull issued in 1082 how crucial the situation was, although he avoids to mention the *nomoi* that allowed the confiscation. Alexios insists particularly on apologizing for violating the *canons*, a fact that was particularly alleged by his opponents. While the emperor was not bound by the *nomoi*, his right to intervene in the scope of the canon law was challenged, despite the fact that *nomoi* and *canons* were typically at the same level. The Byzantines were mainly concerned with the right of the emperor to intervene in certain aspects of religious life, while what he did elsewhere, including most of the political sphere, was understood as secular and thus not problematic[58].

In the chrysobull of 1082 Alexios claims that he had sought advice from certain "spiritual and devout men" who obviously assured him that, were he to handle the issue in the right way, his actions would be justified. Alexios, unlike Anna in the *Alexias*, admits that the confiscation has been applied *to a lot of* churches and offerings[59], he asks for forgiveness and he assures that

57. See p. 402.

58. Kaldellis, *Byzantine Republic*, 192-193; see pp. 406-408 and n. 19.

59. See n. 7; *τῶν ἱερῶν ἔγνω καὶ θείων ἅψασθαι κειμηλίων καὶ τούτοις τὸ τῆς χρείας ἐνδέον παραμυθήσασθαι· τουτὶ μὲν τὸ ἔργον ἐν πολλαῖς τῶν ἁγίων ἐκκλησιῶν*

he had no intense to practice *hybris* or disregard God. Alexios I Komnenos characterises himself as a "debtor towards the holy churches" (*ὀφειλέτης ταῖς ἁγίαις ἐκκλησίαις*) and he promises to return their property to the churches when the danger is not great anymore and the empire becomes strong again[60]. In an emotional atmosphere and swearing in God, Alexios' chrysobull forbids his successors to deprive the sacred churches of the holy vessels ever again. He also characterises anyone who would do so as sacrilegious. Alexios could not possibly bide his successors through a legal act. However, he tried to make himself seem as the guarantee not only for his own devoutness but for the devoutness of his successors as well. This fact indicates how necessary it was to mitigate the reactions against him, in a period when historical sources criticise indirectly the fact that emperors stood above the law[61].

The violation of the holy canons was brought up in a gathering (*συνέδριον*), called by Alexios I in December 1083, in which he analysed further and justified why the confiscation was a necessity and the reasons that led to it. Senators participated in the *συνέδριον* along with military officials, the clergy, curators of the churches that brought along *βρέβια*, i.e. lists with the vessels and relics of each church. Anna Komnene writes in *Alexias* about the "questioning of the emperor" (*ἀνάκρισιν τοῦ βασιλέως*) and that "Alexios was questioned" (*ἐξητάζετο*), while she did not hesitate to state that the emperor rendered himself responsible. He was charged with the accusation of breaching the holy *canons*. In order to support himself, Alexios spoke about the situation and how crucial it was, the *nomoi* that

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διεπράξατο, καὶ πολλὰ τῶν ἀναθημάτων εἰς δημοσίας ἔστρεψε χρείας: Nov. 22 (A. 1082), in: *Jus Graeco-Romanum* III, 355-58, esp. 356; Dölger – Wirth, *Regesten* I/2, no 1085; V. Grumel, L'affaire, 127; on the dating of the chrysobull, see Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 73-80.

60. Nov. 22 (A. 1082), in: *Jus Graeco-Romanum* III, 357; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 73ff; Angold, *Church and society*, 46-48; Gerhold, Le "mouvement", 90. For the patronage of Alexios to charismatic monastic founders as a means to redress the balance of opinion after the confiscation of church valuables, see P. Armstrong, Alexios Komnenos, holy men and monasteries, in: *Alexios I Komnenos*, 219-231.

61. A. E. Laiou, Imperial marriages and their critics in the eleventh century: the case of Skylitzes, *DOP* 46 (1992), 165-176; see also Magdalino, Byzantine Kaiserkritik, 330, 345, on the critic from the part of Ioannes Zonaras against Alexios I for not awarding justice and an "alternative" ideology which was directed against the imperial absolutism.

allowed the confiscation of holy vessels to save prisoners of war and used David as a paradigm along with a relevant act of Pericles in Ancient Greece. He also charged himself and he defined that the church of Antifonitou should be provided every year with a large amount of gold from the state, while he issued an annual grant to those who served as members of the choir in the church of Chalkoprateia[62].

The *σημείωμα* of 1086 gives us valuable information about the accusations from the part of Leo against Patriarch Eustratios for appropriating the holy vessels and delivering the Saints to "fire and melting" (*πυρὶ καὶ χωνείᾳ*)[63]. Patriarch Eustratios got rid of the accusations, but the competent committee recognised, on the basis of the σημείωμα that the patriarch definitely took part in some actions justified by the principle of *oikonomia*[64] as well as by actions of his predecessors that had been accused of conducting like Garidas[65]. Leo based his accusations on the *canons* assigning the bishops as the ones responsible for taking care of the Church issues (*τῶν ἐκκλησιαστικῶν πραγμάτων*) and did not allow the former to take advantage of them[66]. Since the imperial will could not be disputed and it was not easy to form a direct accusation against the emperor, Leo

62. *Alexias* 6, III 5; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 87-92; Gerhold, Le "mouvement", 90; see above, n. 44, for the churches that were deprived of holy items.

63. Alexios' σημείωμα, 118; on Leo's accusations against Garidas, see Leo of Chalcedon, *Ἐπιστολή*, 403-404; Grumel, Le décret, 334; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 83-86, 93-95; for the close connections between Leo and the Doukai, who strongly desired the restitution of patriarch Kosmas on the patriarchal throne, along with the weakening of Alexios' power, see Gerhold, Le "mouvment", 93-95.

64. On the concept of *οἰκονομία*, see above, n. 46.

65. Alexios' σημείωμα, 114-116; see below, 426 and n. 75; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 93-95; the result of the research for the accusations against the patriarch was that he had not kept any vessels for personal use. He had just taken some measures that he himself considered good and useful, in line with what other patriarchs had done before him. As stressed by Stephanou, the accusations against the patriarch were not about the private use of the holy vessels, but their disposal in an arbitrary way; Stephanou, *Le procès*, 17-18.

66. Canon 38 of the Saint Apostles: Rhalles – Potles II, 54-55; Canon 17 of the Council of Chalcedon: Rhalles – Potles II, 258-263; Canon 12 of the Seventh Ecumenical Council: Rhalles – Potles II, 592-611; Canon 15 of the Council of Ancyra: Rhalles – Potles III, 50ff; Canon 24 of the Council of Antioch: Rhalles – Potles III, 166ff; Canon 25 of the Council of Antioch: Rhalles – Potles III, 168ff; Canon 33 of the Council of Carthage: Rhalles – Potles III, 390ff.

turned against Patriarch Eustratios and insisted on his responsibility not to allow the emperor to implement his "irrational impulses" (*ταῖς ἀλογίστοις ὁρμαῖς ἐπιτεθῆναι κώλυμα*). It is characteristic that Alexios Komnenos' *σημείωμα* in May 1087, which was written on the occasion of the right of the emperor to raise bishoprics or archbishoprics to metropolies, a part of which is cited by Balsamon in his comment on Canon 38 of the Quinisext Ecumenical Synod of Trullo, defines that the emperor would never decide before being informed by the patriarch on the content of the holy canons so that a barrier would be set to intercept the irrational imperial will[67].

In the *σημείωμα* of 1086, Alexios stresses that the *nomoi* forgive the confiscation under certain circumstances, while the confiscation without any prerequisites is considered a sacrilege. According to Alexios, those who commit such a sacrilege are reprimanded, but they are not sentenced as "impious" (*ἀσεβεῖς*)[68]. However, Leo accused the Patriarch of being "impious", for supposedly confiscating holy vessels. He based his statements on ecclesiastic and secular law[69]. The accusation was not verified[70]. Alexios

67. Rhalles – Potles II, 393- 394; Nov. 29 (A. 1087), in: *Jus Graeco-Romanum* III, 368-370; Dölger – Wirth, *Regesten* I/2, no 1140; Petrović, *Νομοκάνων*, 153; Saradi, Imperial jurisdiction, 159-160; see n. 47.

68. Sakkélion, Documents inédits, 120: (Leo) *ἀσέβειαν γὰρ εἰςῆγε τὴν τῶν ἱερῶν σκευῶν ἀναπόδεικτον ἐκποίησιν, ἣν κατὰ τὸ ἐφειμένον μὲν οἱ νόμοι γινομένην συνεχώρησαν, οὐ καλῶς [δὲ] προβαίνουσαν, εἰς ἱεροσυλίαν ἄντικρυς ἀναφέρουσι, καὶ τοὺς ταύτην τολμῶντας καὶ ἁμαρτήσαντας κατακρίνουσιν, ἀλλ' οὐχ ὡς ἀσεβεῖς καταδίκῃ ὑπάγουσιν*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 105.

69. Sakkélion, Documents inédits, 123*: καθαπερεὶ γὰρ αὐτὸς νέος καθίσας δογματιστής, καὶ τὸ ἅπαν κράτος εἰς ἑαυτὸν τῶν κανόνων καὶ τῶν νόμων ἐξαρτησάμενος, πᾶσαν εἶπεν ἐκποίησιν ἱερῶν ὁπωσδήποτε παρ' οἱουδήτινος γινομένην, εἰς ἀσέβειαν περιφανῶς ἀναφέρεσθαι*; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 121.

70. Alexios' σημείωμα 120; Grumel, Le décret, 335; this was supported by Alexios in the framework of the *ἐνδημιοῦσα σύνοδος* of 2nd December 1085. Characterising the confiscation of holy vessels as blasphemy was something new that appeared for the first time in that case and was the logical conclusion of Leo's theory on icons, which was officially and in writing supported for the first time in January 1086 before the *ἐνδημιοῦσα σύνοδος*; Grumel – Darrouzès, *Regestes*, no 939; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 104ff.; see Gerhold, Hétérodoxie théologique, 3-4, 7-9, for the fact that Leo's accusations against patriarch Eustratios resulted in depriving the emperor of his role as "guardian of Orthodoxy" and for Alexios' attempt to secure for himself this title, in order to consolidate his authority through the re-imposition of imperial control on the church.

does not mention that it was the *canons* that stated that the usurper of the holy vessels is not only blasphemous but also guilty of disrespect (*τῆς ἐσχάτης δυσσεβείας*)[71]. It is obvious that the emperor, comparing the *nomoi* to the *canons*, aims at proving the strength of the imperial will, concealing though the opposition of *nomoi* to the *canons*. The power of the imperial will is also confirmed by stating the jurisdiction of the imperial court and the fact that its decisions were indisputable. In the *σημείωμα* of 1086, Alexios stresses that the *canons* are the ones that condemn those that deviate the procedure and instead of standing before the ecclesiastical court, they disturb "the ears of the emperor" (*τὰ ὦτα τοῦ βασιλέως*), as Leo did. He points out that canon law legalises the jurisdiction of the imperial court, since whoever turns to the emperor, is found guilty on the basis of the *canons* not because they have turned to him, but because they have deviated the ecclesiastical law. It is remarkable that in the Synod called upon in January 1086, as an initiative of Alexios, Leo was not condemned because of his theory on holy vessels, but because in his attempt to bring patriarch Eustratios before the court, he did not obey by the procedure set out in *nomoi* and *canons* and deviated the ecclesiastical court, to which he ought to have turned. Instead, he turned to the emperor "disturbing his ears"[72]. However, Leo was found guilty also on the basis of secular law, since he did not obey by the imperial *σημείωμα* which proved the patriarch was innocent, committing thus the offence of sacrilege, in line with the principle that *ὁ οἱαδήποτε βασιλικῇ ἀντιγραφῇ ἐναντιωθείς, ὡς ἱερόσυλος τιμωρεῖται*[73].

In the *σημείωμα* of January 1086, Alexios brings back the issue of the chrysobull of 1082 ratifying its power and he introduces the term *oikonomia* as the factor that forms the emperor's decisions[74]. Based on

71. *Καίτοι φανεροῦ καθεστηκότος τοῦ μιάσματος, καὶ δῆλον ὄν, ὡς οἱ τὰ τοιαῦτα πράττοντες, οὐ μόνον καθαιρέσεως, ἀλλὰ καὶ τῆς ἐσχάτης δυσσεβείας τῷ ἐγκλήματι περιπίπτουσι*: Canon 10 of the 1st and 2nd Council of Constantinople (Rhalles – Potles II, 683).

72. Sakkélion, Documents inédits, 126; Grumel, Le décret, 338, 341; Trojanos, Sonderstellung, 74-75; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 117-126; Gerhold, Le "movement", 91.

73. See n. 50; Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 124.

74. *Ἃ μέντοι ἡ βασιλεία μου διὰ χρυσοβούλλου γραφῆς ἐξέθετο πρότερον, αὐτήν τε καὶ τοὺς μετ' αὐτὴν εὐσεβῶς βασιλεύσοντας τῶν ἱερῶν καὶ θείων ἀναθημάτων κατὰ*

oikonomia he also justifies the patriarch's decisions, who is said to have served *οἰκονομίας τινας ἐκκλησιαστικὰς* with his attitude[75]. Alexios assures that his Chrysobull will bind his successors in the future. It was quite possible that his successors would face cases of equal emergence or even greater in the future that might call for even more difficult decisions to be made. However, they would have to justify their choices again and not use his precedent as pretence[76]. At the end of the *σημείωμα*, however, it could be inferred that the emperor left a loophole for possible confiscations in the future[77]. Alexios refers one more time to *nomoi* and *canons* that allow and define the confiscation of the holy vessels, reminding that his Chrysobull does not introduce any new legislation that renders the existing legislation void –either secular or ecclesiastical– but it is binding only for him and his successors. He indicates that the chrysobull is not binding for the Church or the people *(τῷ παντὶ πολιτεύματι)*[78]. As concerns the latter, both the

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τὸ παντελὲς κωλύουσα ἅπτεσθαι, καὶ μηδ' ἂν εἴ τις καταλάβῃ ἀνάγκη χεῖρας ὅλως ἐπιβάλλειν αὐτοῖς, τὸ βέβαιον ἕξει ἐσαεὶ, καὶ παρεμπεσοῦσά τις πρόφασις τῶν οὕτως οἰκονομηθέντων οὐ κατισχύσει ποτέ (Sakkélion, Documents inédits, 127). On the principle of imperial *oikonomia*, see n. 46, 48.

75. *Καὶ ἐφάνη ἐνταῦθα ὁ πατριάρχης διὰ τῆς τῶν σεκρετικῶν προσγραφῶν ἀναθεωρήσεως πάντη καθαρὸς καὶ ἀναίτιος, οἷα μηδέν τι τῶν εὐαγῶν ἀναθημάτων εἰς ἑαυτὸν ἀνελόμενος, οἰκονομίας δέ τινας ἐν αὐτοῖς καταπραξάμενος ἐκκλησιαστικάς, καὶ διαταξάμενος τὰ δοκοῦντά τε καὶ συμφέροντα, καθά που καὶ ἄλλοι τινὲς τῶν πρὸ τούτου πατριαρχῶν ἐνηργήκασι, καὶ μέχρι τοῦ νῦν διὰ τέλους ἀνεπιτίμητοι μεμενήκασι*: (Sakkélion, Documents inédits 116). On the concept of *οἰκονομία* in the world of theology and canon law, see n. 46.

76. *Πλὴν ἡ τῆς βασιλείας μου αὕτη διαταγὴ αὐτῇ προστήσεται, καὶ τοῖς μετ' αὐτὴν τὸ βασίλειον κράτος ἰθύνειν μέλλουσιν, ὅτι καὶ καθ' ἡμῶν ἐκεῖθεν ὁ δεσμὸς ἐξενήνεκται· ὡς ἂν τὸ μὴ διὰ περίστασιν καὶ στενοχώρησιν καιροῦ παρὰ τῆς βασιλείας μου καί τινων τῶν πρὸ αὐτῆς βασιλέων γενόμενον, πρόφασις πορισμοῦ τῆς ἐσύστερον γένηται* (Sakkélion, Documents inédits, 127-128).

77. See Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 125-126, 133ff., on the confiscation of 1087 because of the Petcheneg incursions. Anna stresses that the new confiscation was imposed by the circumstances: *ὡς δὲ καὶ ὁ βασιλεὺς πολλάκις μὲν ἠττηθεὶς καὶ μυριάκις αὖθις κατατολμήσας τῶν Κελτῶν Θεοῦ νεύσει νικηφόρος στεφανίτης ἐπανεληλύθει, ἐπεὶ καὶ αὖθις ἄλλο νέφος ἐχθρῶν, τοὺς Σκύθας φημί, κατ' αὐτοῦ ἐξορμῶν ἤδη μεμαθήκοι καὶ διὰ τοῦτο καὶ ἡ συλλογὴ τῶν χρημάτων, καὶ τοῦ βασιλέως ἐν τῇ μεγαλοπόλει ἐνδημοῦντος, ἐφ' ὁμοίαις αἰτίαις ἐσπουδάζετο* (*Alexias* 5, II, 5.29-34).

78. For the verb *πολιτεύομαι* as a Roman term and the *«πολιτευόμενοι»* as part of the

secular and the ecclesiastical legislation should be taken into account so as to define when confiscation could take place along with the appropriate punishment for those who practice it without a good reason[79]. "Akribeia" (*ἀκρίβεια*), i.e. being accurate in *nomos* and *canon*, being equal to one another in the *σημείωμα*, would give eventually the possibility to practice confiscation under certain circumstances[80].

In conclusion, in an era when the absolute nature of the imperial authority was seriously challenged, confined by both the Church and the people, Alexios was at the heart of an attack concerning the discord for the confiscation of the holy vessels. This attack could be considered as part of the broader criticism that Alexios faced in relation to the management of public resources as his private property[81].

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politeia, according to Leo VI's Novels, see Kaldellis, *Byzantine Republic*, 10-11; for the use of the term *«πολίτευμα»* and its meaning, see Kaldellis, *Byzantine Republic*, 41, 44, 151.

79. *Ἀ δέ γε ἄλλα περὶ τῆς τῶν ἱερῶν ἐκποιήσεως νόμοι καὶ κανόνες διαγορεύουσιν, ὅτε καὶ πῶς ἐφῆκαν γίνεσθαι τὴν ἐκποίησιν διαρθροῦντες σαφῶς, ταῦτα ἕξει τὸ ἰσχυρὸν, καὶ ἡ νομικὴ καὶ κανονικὴ αὐθεντία ἐπὶ τῆς ἰδίας ἀσφαλείας ἑστήξεται. Οὐ γὰρ τὸ παρὰ τῆς βασιλ[είας μου] γεγονὸς χρυσόβουλλον νεαράν τινα νομοθεσίαν εἰςήνεγκεν ἐπ' ἀνατροπῇ τῶν πρὶν κειμένων νόμων, ἱερατικῶν τε καὶ πολιτικῶν, περὶ τῆς τῶν ἱερῶν ἐκπτώσεως ἀλλ' ἑαυτὴν ἐδέσμησε καὶ τοὺς μετ' αὐτὴν βασιλεῖς. Καὶ μέντοι κρατήσει τὰ δεδογμένα εἰς τὸ ἐξῆς παρ' αὐτῇ τε τῇ βασιλείᾳ μου καὶ τοῖς μετ' αὐτὴν εὐσεβῶς βασιλεύσουσι. Παρὰ δέ γε ταῖς τοῦ Θεοῦ Ἐκκλησίαις καὶ τῷ παντὶ πολιτεύματι, οἱ νόμοι καὶ οἱ κανόνες τὸ ἐνεργὸν ἀποίσονται, καὶ κατὰ τὴν ἐκεῖθεν ἀκρίβειαν ἡ τῶν ἱερῶν ἐκποίησις ἐκχωρηθήσεται, ὥςπερ ἡ καταδίκη τοῖς παρὰ τὸ δέον ἐκποιουμένοις ἐκεῖθεν ἐπενεχθήσεται* (Sakkélion, Documents inédits, 128); Glavinas, *Ἡ περὶ τῶν ἱερῶν σκευῶν ἔρις*, 125.

80. It is typical that Alexios in his *σημείωμα* stresses the need to secure "akribeia" (*ἀκρίβεια*), since the case has to do with church issues (*ἐκκλησιαστικὰ πράγματα*). The term *«ἀκρίβεια»* appears again in the "semeioma", when Alexios refers to the persistence of Leo to keep it, when he was asked to prove his accusations "on the basis of the canons" (*κανονικῶς*); Sakkélion, Documents inédits, 118.

81. The complaint that Alexios had treated the public resources as his private property is voiced by John Zonaras: *καὶ τοῖς πράγμασιν οὐχ ὡς κοινοῖς οὐδ' ὡς δημοσίοις ἐκέχρητο καὶ ἑαυτὸν οὐκ οἰκονόμον ἦγητο τούτων, ἀλλὰ δεσπότην, καὶ οἶκον οἰκεῖον ἐνόμιζε καὶ ὠνόμαζε τὰ βασίλεια (Ioannis Zonarae Epitome Historiarum*, III, ed. L. Dindorf, Lipsiae 1870, 18. 29. 23-26); for Zonaras' critique on Alexios, see Magdalino, Byzantine Kaiserkritik, 329-330, 335-338; for the republican values outlined by Zonaras in terms of his critique to Alexios, see Kaldellis, *Byzantine Republic*, 47-48.

With regard to the confiscation of the holy vessels, the most powerful argument of his opponents was that the emperor had broken the *canons*. Alexios did break the holy canons, as it is also evident in *Alexias*, but he had relied on the secular law, its inclusion in the Nomocanon, and the possibilities it gave him within certain limits, which he had eventually also overrun, without admitting it[82]. It is typical that, according to Anna, Isaac Komnenos was forced to force those whom he did not want to force, indicating thus that the clergy adhered to the spirit of the *canons*. On the other hand, Leo of Chalcedon, says Anna, turned against Alexios *μηδόλως ἢ οἰκονομίας ἢ τῶν περὶ τῶν ἱερῶν κειμένων νόμων ἐπαισθανόμενος*, i.e. without taking into consideration the two factors that concerned imperial administration and allowed the deviation from the provisions of the *canons* regarding the inalienability of the holy vessels[83]. Moreover Anna's parallel mention of *oikonomia* and the *nomoi* related to the sacred vessels, suggests that it was the principle of *oikonomia* that enabled Alexios to violate the limits set even by the *nomoi* on the confiscation of the holy vessels.

However, from Alexios' attempt to get rid of the charge of violating the *canons* along with his desire to expatiate, it is evident that the threat for the absolute nature of the imperial power was imminent and it came not only from the part of the officials or of the Church hierarchy, the members of which tried to limit the emperor's authorities both in religious and in political issues in the second half of the 11th century[84], but also from the people, who were politically active in the 11th century and their views were expressed through the guilds, which played an important role in the internal Byzantine life[85].

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82. See p. 420-421.

83. See n. 13.

84. See pp. 418-420 and n. 51.

85. S. Vryonis, Byzantine «δημοκρατία» and the guilds in the eleventh century, *DOP* 17 (1963), 289-314, esp. 302ff; see also S. Vryonis, Byzantine Imperial Authority: theory and practice in the eleventh century, in: *La notion d' autorité au Moyen Age. Islam, Byzance, Occident. Colloques internationaux de la Napoule, session des 23-26 octobre 1978, organisés par G. Makdisi, S. Sourdel et J. Sourdel-Thomine*, Paris 1982, 141-161; Angold, *Byzantine Empire*, 93-98; Kazhdan – Epstein, *Change*, 50ff; for the granting of greater autonomy to cities, during the period of the Comneni, see, P. Charanis, The Role of the People in the Political Life of the Byzantine Empire: The Period of the Comneni and the Palaeologi, *Byzantine Studies/Études Byzantines* 5, 1-2 (1978), 69-79, esp. 75ff; for the republican activity of the people in the eleventh century, see D. Krallis, Democratic Action in Eleventh-

The fact that Alexios was faced with the clash of his decisions with the ecclesiastical law forced him to find ways to assure the doctrine of superiority of the emperor's will. He used the equality of *nomos* and *canon*, established by the secular law, by promoting his need for expiation and by constantly appealing to *canons* both in the chrysobull of 1082 and in his *σημείωμα* of 1086. He tried to put an end to the inconsistency between *nomoi* and *canons*, but he indirectly sought ways to apply the emperor's will after all, which in this case ended up going beyond even the strict limits set by the *nomoi*, in terms of imperial *οἰκονομία*[86].

All this happened in the constantly changing framework at the end of the 11th century, within which the social powers, i.e. the people and the Church, should be seriously taken into consideration. Appealing to these two social powers at the end of his *σημείωμα* in 1086, Alexios demonstrated the ability of the emperor and his counselors to renounce subtly the principle of the imperial *οἰκονομία* and give priority to the above mentioned social factors, the profit of which would lead them to make the choice – either based on a *nomos* or a *canon*, to possibly practice another confiscation in the future. In the second half of the 11th century, rhetoric emerges as the basic tool of the imperial will in order to overcome the inconsistencies between *nomoi* and *canons* and also to cover up the violation of *nomoi* and *canons*, to the benefit of the emperor's authority[87].

Century Byzantium: Michael Attaleiates's "Republicanism" in Context, *Viator* 40, 2 (2009), 35-53; for the Roman republican ideology by which Byzantine polity was shaped and the popular consent as a factor that established imperial legitimacy, see Kaldellis, *Byzantine Republic*, 48, 62-64, 87-88, 99, 101-102, 103, 106, 109-131, 144, 150, 160-161, 172, 181-183; see also N. Oikonomides, The "Peira" of Eustathios Romaios: an abortive attempt to innovate in Byzantine law, *FM* 7 (1986), 169-192, for the need to take the new social reality into consideration when it comes to apply the law in the 11th century.

86. It is typical that the abuse of *oikonomia* was an assumption of twelfth-century critics on contemporary emperors; Magdalino, Byzantine Kaiserkritik, 339.

87. Beck, *Nomos*, 59; Magdalino, Byzantine Kaiserkritik, 345; Macrides, Nomos, 85, for the use of the technique of rhetoric and *oikonomia* both by the Church and by the state in order to resolve the contradictions between *nomoi* and *canons*.

Νομος και *Κανων* στο Βyzantio:
Η Περιπτωση της Εκποιησης των Ιερων Σκευων Επι Αλεξιου Α΄ Κομνηνου

Στο άρθρο διερευνώνται η σχέση νόμων και κανόνων στο Βυζάντιο, καθώς και η στάση του βυζαντινού αυτοκράτορα απέναντι τόσο στους κανόνες και την εκκλησία γενικότερα, όσο και στους νόμους. Αναδεικνύονται, εξάλλου, τα όρια της νομοθετικής εξουσίας του αυτοκράτορα, με αφορμή την έριδα που απασχόλησε το Βυζάντιο για περίπου δεκαπέντε χρόνια (1081-1095) ως αποτέλεσμα της εκποίησης από τον Αλέξιο Α΄ Κομνηνό των ιερών σκευών, προκειμένου να χρηματοδοτηθούν μισθοφορικά στρατεύματα για την αντιμετώπιση του νορμανδικού κινδύνου μετά την κατάληψη του Δυρραχίου από τους Νορμανδούς τον Οκτώβριο του 1081. Η εξίσωση νόμων και κανόνων από την Νεαρά 131 του Ιουστιανού το 545, καθώς και η ασαφής θέση των νομικών του 12ου αιώνα απέναντι στη σχέση νόμων και κανόνων, ως αποτέλεσμα της στενής σχέσης Εκκλησίας και Πολιτείας στο Βυζάντιο, των δύο όψεων της μίας χριστιανικής αυτοκρατορίας, αντικατοπτρίζονται στη χρήση των όρων «νόμος» και «κανόνας» με μία διάθεση εξίσωσής τους στην *Αλεξιάδα* της Άννας Κομνηνής, που καταγράφει τα σχετικά με την έριδα. Από την άλλη πλευρά, διαπιστώνεται η κατασκευή ενός πλάσματος δικαίου από την πλευρά της Άννας Κομνηνής, προκειμένου να καλυφθεί η παραβίαση από τον Αλέξιο Κομνηνό ακόμα και των αυστηρών προϋποθέσεων που έθετε η Νεαρά 120 του Ιουστινιανού για την εκποίηση των ιερών σκευών, με τη ρητορική να αποτελεί ισχυρό εργαλείο της αυτοκρατορικής εξουσίας στον αγώνα για την εδραίωση της ισχύος της.