

10 Between law and theology

Russia's modern Orthodox canonists

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The overhaul of Russia's universities by Emperor Alexander II (r. 1855–81) as part of his broader reformist endeavors was a landmark in the history of Orthodox thought on church/canon law in modern times. Though not without debate, under pressure from faculties of law, the 1863 University Regulations established departments of “church jurisprudence”—officially renamed “church law” in 1884—within university law faculties. These new departments joined a cohort of some twelve others across different fields of law, together comprising Russia's discipline of jurisprudence until the Bolshevik coup of 1917.¹

Although the study of church/canon law in terms of “church justice” (*tserkovnoe pravosudie*) alongside “state justice” had been proposed for Russia's first institution of higher learning—Moscow's Slavo-Greco-Latin Academy—as early as 1668, that effort came to naught.² The study of church/canon law was

1 *Universitetskaia reforma 1863 goda v Rossii*, ed. V. A. Tomsinov (Moscow: Zertsalo, 2012), lxxxiv–cxvii. For debates regarding the establishment of departments of church law within faculties of law, see “Novye predlozheniia otnositel'no kafedr tserkovnoi istorii i tserkovnogo zakonovedeniia v nashikh universitetakh,” *Pravoslavnoe obozrenie*, 1864, vol. 13, no. 1 (Jan.): 93–104; *Zamechaniia na proekt obshchogo ustava Imperatorskikh Rossiiskikh universitetov*, pts. 1–2 (St. Petersburg: Tip. Imperatorskoi Akademii Nauk, 1862); and A. S. Pavlov, *Sokrashchennyi kurs lektsii tserkovnogo prava* (Moscow, 1895–96), 42–43.

2 Sergei Smirnov, *Istoriia Moskovskoi Slaviano-Greko-Latinskoi Akademii* (Moscow: Tip. V. Got'e, 1855), 12. For examples of histories of canon law as an academic field in Russia's universities, see the numerous publications of A. A. Dorskaia, especially *Gosudarstvennoe i tserkovnoe pravo Rossiiskoi imperii: problemy vzaimodeistviia i vzaimovliianiia* (St. Petersburg: Izd. RGPU im. A. I. Gertsena, 2004) and *Vliianiia tserkovno-pravovykh norm na razvitie otraslei rossiiskogo prava* (St. Petersburg: Asterion, 2007). Also see, E. V. Beliakova, *Tserkovnyi sud i problemy tserkovnoi zhizni* (Moscow: “Dukhovnaia biblioteka,” 2004); I. V. Borshch, *Russkaia nauka tserkovnogo prava v pervoi polovine XX veka: Poisk metodologii* (Moscow: URSS, 2008); N. I. Komarov, D. A. Pashentsev, S. V. Pashentseva, *Ocherki istorii prava Rossiiskoi imperii: vtoraiia polovina XIX-nachalo XX v.* (Moscow: Statut, 2006). For brief overviews, see I. V. Botantsov, “Sootnoshenie istochnikov svetskogo i tserkovnogo prava v Rossiiskoi imperii 1832–1917,” *Leningradskii iuridicheskii zhurnal*, 2016, no. 2 (44): 9–19; O. E. Rychagova, “Razvitie nauki tserkovnogo prava v XIX-nachale XX veka v Rossii,” *Vestnik Omskogo Universiteta*, 2002, no. 2: 96–99; John D. Basil, *Church and State in Late Imperial Russia: Critics of the Synodal System of Church Government (1861–1914)*, Minnesota Mediterranean and East European Monographs, no. 13 (Minneapolis: Modern Greek Studies, University of Min-

officially introduced into Russia's theological academies in the eighteenth century, when higher education in Russia was divided into two parallel tracks.³ This dual arrangement included an imperial state university system, structured on Western European models, and an academy system overseen by the church with a curriculum including the "theological sciences" alongside other areas of study.⁴ In the academies, the subject of church/canon law was at first loosely grouped with the theological sciences, but with time it became a nomadic field, lacking a fixed disciplinary or departmental home, and the training of specialists lagged well into the mid-nineteenth century.⁵

The study of church law in Russia's universities was not unknown, however. Prior to 1863, universities taught church jurisprudence, but only among other courses on Orthodox theology. Overseen by a theological academy graduate—usually an ordained priest who concurrently served as the university chaplain—universities' single-member departments of theology were, by design, independent within the curriculum and thus marginalized from other faculties.⁶ Although professors of theology may have taught a course on church jurisprudence specifically to law students as early as 1835, it was mandatory only for students belonging to the "Orthodox confession" (*Greko-rossiiskogo ispovedaniia*).⁷

The migration of church/canon law from the confessional canopy of university theology departments to secular faculties of law in 1863 was thus a momentous, though publicly little noticed, occasion in the history of Orthodox academic thought in Russia. On one hand, as newcomers to university faculties of law, canonists initially often found themselves in the role of Orthodox apologists, attempting to justify not only the necessity of knowing church/canon law as part of the history of law in Russia, but also the importance of the related subjects of basic theology and religion for the modern jurist. On the other hand,

nesota, 2005), 35–59; N. N. Glubokovskii, *Russkaia bogoslovskaia nauka v ee istoricheskom razvitiu i noveishem sostoianii* (Warsaw, 1928), 94–100.

3 A. E. Ivanov, *Vysshaia shkola v Rossii v kontse XIX–nachale XX veka* (Moscow: Akademiia nauk SSSR, 1991); F. A. Petrov, *Formirovanie sistemy universitetskogo obrazovaniia v Rossii*, 4 vols. (Moscow: Izd-vo Moskovskogo Universiteta, 2002–03); A. Iu. Andreev, *Rossiiskie universitety XVIII–pervoi poloviny XIX veka v kontekste universitetskoï istorii Evropy* (Moscow: Znak, 2009). For the history of the teaching of the theological sciences in Russia's universities, see N. Iu. Sukhova, *Vertograd nauk dukhovnyi: sbornik statei po istorii vysshego dukhovnogo obrazovaniia v Rossii XIX–nachala XX veka* (Moscow: Pravoslavnyi Sviato-Tikhonovskii gumanitarnyi universitet, 2007), 326–44.

4 N. Iu. Sukhova, *Vysshaia dukhovnaia shkola: problemy i reformy* (Moscow: PSTGU, 2006).

5 N. K. Sokolov, *O vliianii tserkvi na istoricheskoe razvitiie prava* (Moscow: Universitetskaia tip., 1870), 6–8; N. Iu. Sukhova, "Tserkovnoe pravo v pravoslavnykh dukhovnykh akademiakh Rossii: problemy i traditsii," *Religii mira: Istoriia i sovremennost'* (Moscow and St. Petersburg: Nestor–Istoriia, 2012): 346–68.

6 *Materialy sobrannye ot delom vysochaishe uchrezhdennoi kommissii dlia peresmotra obshchego ustava Rossiiskikh universitetov pri poseshchenii ikh v sentiabre, oktiabre, i noiabre 1875 g.* (St. Petersburg: Tip. Balasheva, 1876), 251–53.

7 *Sravnitel'naia tablitsa ustavov universitetov 1884, 1863, 1835 i 1804 gg.* (St. Petersburg: Tip. St. P. Tiurny, 1901), 87.

canonists were influenced by their new environment. Their reconsideration of church/canon law as a subject of study—its parameters and provisions, definition of terms, sources, history, and ultimate purpose—had as much impact on Orthodox thought as on jurisprudence in Russia.

Professional profiles

The formidable task of recasting church/canon law into the language of modern jurisprudence fell initially to a small but influential group of academic pioneers. Among the canonists who held the first positions of church jurisprudence were Moscow University's N. K. Sokolov (1835–74), St. Petersburg University's M. I. Gorchakov (1838–1910), and Kazan University's A. S. Pavlov (1832–98).

Over the decades, Russia's canonists taught thousands of law students, including, surprisingly, such figures as Vasily Kandinsky (1866–1944), Sergei Diaghilev (1872–1929), Georgii L'vov (1861–1925, head of Russia's Provisional Government in 1917), and Vladimir Ulyanov (Lenin, 1870–1924). Canonists were also vanguards of scholarship germane to modern Orthodox thought. The initially small cohort of university-based specialists expanded as some retired or passed away, new universities opened, and comparable departments emerged in other institutions of higher learning, such as the prestigious Imperial School of Jurisprudence in St. Petersburg and the Demidov Law Lycée in Yaroslavl. In addition, their ranks were matched by those of equal stature in Russia's four theological academies, which, in response to the demand for cadres to fill university positions, established parallel degree-granting departments of church law in 1884.⁸ Thus, pioneers in Russia's university law faculties were soon joined by canonists such as I. S. Berdnikov (1839–1914), N. S. Suvorov (1848–1909), M. A. Ostroumov (1847–1920), N. A. Zaozerskii (1851–1919), and N. D. Kuznetsov (1863–1936), among others.

Although operating in different methodological and disciplinary spheres, university and theological academy canonists became part of a broader network encompassing their distinct educational worlds. The nature of church/canon law as a subject encouraged such cross-pollination and collaboration. As Gorchakov maintained in the 1870s,

for the sake of a rigorous academic ... approach to their subject of study, and even for the soundness of their official position in the department, university canonists must possess such knowledge of theology so as to be in a position to explain the relationship between law and faith from a theological point of view, even to a theologian, and to find the means within this knowledge to defend juridical principles.⁹

⁸ Sukhova, "Tserkovnoe pravo," 358.

⁹ V. N. Beneshevich, "Pamiati Gorchakova," *Trudy iuridicheskogo obshchestva pri Imperatorskom S.-Peterburgskom universitete za 1911*, vol. 5 (1913): 201–17, here at 207.

At the same time, universities and theological academies enjoyed their distinct subcultures, often remaining mutually guarded. As late as 1906, some faculty at St. Petersburg Theological Academy viewed their colleague Vladimir Beneshevich—a brilliant Byzantinist and university-trained canonist who taught canon law at the academy—as an “outsider” (*chuzhak*). Theological academy professor Ilya Berdnikov encountered a similar sentiment during his tenure at Kazan University’s faculty of law.¹⁰

A brief professional profile of university and theological academy canonists in the late nineteenth and early twentieth centuries illustrates the links—and distinctions—between the two scholarly worlds. Between 1877 and 1917, Russia’s universities and theological academies granted a total of twenty-four master’s degrees and fourteen doctorates in church law.¹¹ Not all graduates subsequently occupied university or theological academy positions in church law. Similarly, not all canonists holding university positions had formal juridical training.

The fourteen doctorates awarded during this period were split evenly between university and theological academy graduates.¹² All seven theological academy graduates were raised in clerical families, and most spent at least part of their careers teaching in secular universities.¹³ Only two of the seven—Nikolai Zaozerskii and Timofei Barsov—taught exclusively in theological academies.

In contrast, only two of the seven doctoral graduates from university law faculties—Suvorov and V. K. Sokolov (1871–1921)—came from clerical backgrounds, and only Sokolov chose to attend a theological academy (Kazan) prior to embarking on university studies. Suvorov was among the few canonists who

10 D. A. Karpuk, “Nauchno-issledovatel’skaia i prepodavatel’skaia deiatel’nost’ dotsenta Sankt-Peterburgskoi dukhovnoi akademii po kafedre tserkovnogo prava V. G. Solomina (1881–1918),” *Vestnik Istoricheskogo obshchestva Sankt-Peterburgskoi Dukhovnoi Akademii*, 2020, no.1 (4): 144–67, here at 146; Sukhova, “Tserkovnoe pravo,” 356.

11 Nikolai Suvorov was granted Russia’s first university graduate degree in church law in 1877 (master’s degree, St. Petersburg University). In 1917, P. V. Verkhovskoi (1879–1943) and Nikolai (Iarushevich, 1891–1961), a future controversial metropolitan, earned the last graduate degrees in the field prior to the establishment of the Soviet regime. See A. N. Iakushev, “Organizatsionno-pravovoi analiz podgotovki nauchnykh kadrov i prisuzhdeniia uchennykh stepeni v universitetakh i akademiiakh Rossii, 1747–1918” (kand. diss., Sankt-Peterburgskaia Akademiia MVD Rossii, 1998), 262. Iakushev’s list does not include Pavel Verkhovskoi’s 1917 doctorate.

12 The information on dissertations specifically in canon law for master’s and doctoral degrees is based on N. Iu. Sukhova, *Russkaia bogoslovskaiia nauka (po doktorskim i magisterskim dissertatsiiam 1870–1918)* (Moscow: Izd. PSTGU, 2013), 183–85. Prior to 1884, students in theological academies who earned master’s degrees and doctorates on topics in canon law were officially granted doctorates in theology. These canon law-based doctorates in theology are not included among the fourteen doctorates noted here.

13 N. A. Zaozerskii (Moscow Theological Academy), T. V. Barsov (1836–1904, St. Petersburg Theological Academy), M. A. Ostroumov (Kharkov University), P. A. Prokoshev (1868–1922, Tomsk Imperial University), A. I. Almazov (1859–1920), V. N. Myshtsyn (1866–1936), and V. A. Narbekov (1862–1932), who subsequently pursued an academic career in church archaeology.

held no theological academy degree, although he received a full seminary education in Kostroma.¹⁴ Of the remaining five university doctoral graduates, two were from the nobility,¹⁵ one was the son of a court bailiff,¹⁶ and the social background of the remaining two is unknown.¹⁷ Nevertheless, even the university-trained canonists Platon Sokolov and Pavel Verkhovskoi augmented their training with studies at St. Petersburg Theological Academy. Only one of the seven university doctoral graduates taught church/canon law at a theological academy (Vladimir Beneshevich, St. Petersburg Theological Academy, 1906–09).

With respect to master's degrees, only one student (in addition to the seven already mentioned who completed university doctorates) received a master's in church law from a university.¹⁸ Theological academies were much more active on this front, granting master's degrees in church law to some six students between 1878 and 1917 (in addition to seven others who subsequently completed doctorates as well).¹⁹ Among the theologically trained canonists at this level, only two were not raised in clerical families: Nikolai Kuznetsov, whose father oversaw the Imperial Moscow Foundling Home, and hiermonk Mikhail (Semenov), son of a Russian mother and a Jewish cantonist and convert to Orthodoxy. In addition, some of the earliest professors in university departments of church law—including Pavlov, whom the eminent historian Vasilii Kliuchevskii ranked among the “best experts in canon law in contemporary Europe”²⁰—received no more than a master's degree in theology from a theological academy. Finally, neither the first specialist in church law at Moscow University (N. K. Sokolov, a graduate of Moscow Theological Academy) nor the last professor of canon law at St. Petersburg Theological Academy (V. G. Solomin, 1881–1918, a graduate of the same school) held any advanced degree.²¹

The vast majority of professors of church/canon law from the late 1860s to 1917 were laymen. Only four trained canonists during this period were clergy, and each was a unique case. Gorchakov, who taught at St. Petersburg University for more than forty years (1868–1910), was an ordained priest before he earned his two doctorates—from the faculty of law at St. Petersburg University and from St. Petersburg Theological Academy. Hiermonk Mikhail (Semenov), an extraordinarily popular and innovative teacher of canon law at St. Petersburg

14 A. A. Dorskaia, “Iuridicheskoe nasledie Nikolaia Semenovicha Suvorova,” *Istoriia gosudarstva i prava*, 2009, no. 13: 17–20.

15 P. V. Gidul'ianov (1874–1937, Moscow University) and Pavel Verkhovskoi (Imperial University of Russia in Warsaw).

16 V. N. Beneshevich (1874–1938, St. Petersburg University, St. Petersburg Theological Academy).

17 M. E. Krasnozhen (1860–1934?, Moscow University, Yuriev University) and P. P. Sokolov (1863–1923, St. Petersburg University, Kiev Imperial University of St. Vladimir).

18 I. M. Gromoglasov (1869–1937), the son of a deacon.

19 Nikolai Kuznetsov, hiermonk Nikolai (Iarushevich), Ilya Gromoglasov, Nikolai Temnikovskii (1860–1934), hiermonk Mikhail (Semenov, 1873–1916), and S. V. Troitskii (1878–1972).

20 V. O. Kliuchevskii, *Pravoslavie v Rossii* (Moscow: Mysl', 2000), 327.

21 Karpuk, “Nauchno-issledovatel'skaia i prepodavatel'skaia deiatel'nost',” 144–67.

Theological Academy, was tonsured before embarking on his dissertation.²² Two other canonists—Ilya Gromoglasov and Pavel Verkhovskoi—sought ordination following the Bolshevik coup of 1917, well after the establishment of their academic careers. The single exception to the predominance of lay canonists in secular departments of church law was at the Imperial School of Jurisprudence, which continued the former practice of appointing theologically trained priests to teach church jurisprudence and, simultaneously, to serve as the school's priest.²³

University graduate students in church law regularly traveled abroad for study and research. For instance, Pavel Gidul'ianov, future professor of church law at Moscow University, spent two years studying in Berlin and Munich. Vladimir Beneshevich spent four years studying law, history, and philosophy at the universities of Heidelberg and Leipzig. Trips in search of sources also took him to Mount Athos, Sinai, Egypt, and Palestine. In 1903, V. K. Sokolov, a graduate of Kazan University's faculty of law, spent a year abroad familiarizing himself with scholarship on canon law in Germany. Mikhail Gorchakov studied at the universities of Tübingen and Heidelberg during his term as cantor in the Russian church in Stuttgart (1863–66). Hence, Russia's canonists were exceptionally well-versed in philosophical, theological, and jurisprudential trends among their European counterparts.

The primary sources detailing the canonists' thinking on the nature of law in general, and church/canon law in particular, are their lecture notes and publications. Given the novelty of their field and its new institutional university setting, a dearth of teaching resources meant university professors had to conceptualize and delineate their subject for themselves and for their students virtually *ex nihilo*. The result was the production of lectures in the form of lithographed student notes or formal textbooks. Leading university canonists whose notes or textbooks were published (sometimes posthumously) included Berdnikov, Gorchakov, Krasnozhen, Ostroumov, Pavlov, N. K. Sokolov, and Suvorov.²⁴

That these textbooks differed widely in approach and content speaks less to a "lack of progress in the field," as one late nineteenth-century canonist argued, than to the complexity of the subject matter and the diversity of thought.²⁵ The

22 Semenov lasted only one year (1905–06) before being let go for his openly liberal, Christian socialist views. For a theological academy student's perspective on Semenov's views, see Viktor Vvedenskii, "Glavnye techeniia v nauke kanonicheskogo prava." *Kursovoe sochinenie studenta IV kursa* (Otdel rukopisei, Rossiiskaia natsional'naia biblioteka, f. 574, op. 2, d. 416).

23 Two of these professors published textbooks on church/canon law, both of which were more of a catechetical nature: Mikhail Bogoslovskii, *Kurs obshchego tserkovnogo prava* (Moscow: Univ. tip., 1885); V. G. Pevtsov, *Lektsii po tserkovnomu pravu* (St. Petersburg: Tip. St. P. Odičnonoi Tiurmy, 1914).

24 Other textbooks at the time included M. P. Al'bov, *Kratkii kurs lektsii po tserkovnomu pravu* (St. Petersburg: Tip. Balasheva, 1882); Bogoslovskii, *Kurs*; P. A. Lashkarev, *Pravo tserkovnoe v ego osnovakh, vidakh i istochnikakh. Iz chtenii po tserkovnomu pravu* (St. Petersburg: Izd. Ogloblina, 1889); Pevtsov, *Lektsii*.

25 M. A. Ostroumov, *Ocherk Pravoslavnogo tserkovnogo prava*, vol. 1 (Kharkov: Tip. Gubernskogo Pravleniia, 1893), 95.

textbooks provide invaluable insights into the varied and sometimes competing understandings of concepts at the heart of the field—church, law, canonicity, authority, and others. These books also testify to the sharpening of canonists’ modern critical sensibilities in the setting of university-based teaching and research.

In scholarly productivity, no period in Russia’s history before or since equals the achievements of both university- and theological academy-based canonists across virtually all realms of church/canon law. The canonists also located and published rare Byzantine, South Slavic, and old Russian canonical texts. These efforts were perhaps best epitomized in the work of Beneshevich, whose “fantastical plan,” as he called it, was to publish a complete collection of all canon law (as he defined the term).²⁶

In addition to primary sources, the canonists also published historically informed studies on issues of particular interest at the time: marriage and divorce; confession and penance; ecclesiastical courts; participation of women in church and liturgical church life (including the issue of deaconesses); internal church governance; and church-state relations in the history of Orthodoxy. Canonists also became increasingly interested in other autocephalous Orthodox churches and the ways in which they appropriated Byzantine church/canon law. Of no less interest was the history of the juridical/canonical foundations, justification, and impact of the jurisdiction of the Patriarchate of Constantinople over the Russian church (tenth to sixteenth centuries) with respect to the development of Russian legal consciousness. And, once discussion of church reforms in Russia began in earnest in the early years of the twentieth century, canonists contributed actively to the debates, especially around issues of laity and “church rights,” freedom of conscience, and church-state relations. Indeed, the intellectual odyssey of the canonists proved critical for Russia’s Orthodox Church following the significant shifts in its legal position in the Russian state in 1905.

The personal fates of Russia’s canonists were as complex, and often as tragic, as those of the rest of the Russian population during the years that saw world war, revolutionary upheaval, the unraveling of the monarchy, the Bolshevik coup, and civil war. Some canonists did not live to see the atrocities of this period or of the Soviet regime that followed it.²⁷ Most, however, did. Demidov Law Lycée’s Vasiliï Myshtsyn (d. 1936), Kazan University’s Vladimir Sokolov (d. 1921), Kharkov University’s Mikhail Ostroumov (d. 1920) and Evgenii Temnikovskii (d. 1919), Kiev University’s Platon Sokolov (d. 1923), and Novorossiisk University’s Aleksandr Almazov (d. 1920) all died of health-related causes. Moscow Theological

26 Mitropolit Isidor (Tupikin), “Nauka kanonicheskogo prava v Sankt-Peterburgskoi dukhovnoi akademii i osnovnye ee predstaviteli,” *Khristianskoe chtenie*, 2019, no. 2: 88–98, here at 92.

27 Canonists who died prior to 1917 included: Moscow University’s Aleksei Pavlov (d. 1898), Kiev University’s Petr Lashkarev (d. 1899), St. Petersburg Theological Academy’s Timofei Barsov (d. 1904), Moscow University’s Nikolai Suvorov (d. 1909), St. Petersburg University’s Mikhail Gorchakov (d. 1910), and Kazan University’s Ilya Berdnikov (d. 1915).

Academy's Nikolai Zaozerskii (d. 1919) and St. Petersburg Theological Academy's Viacheslav Solomin (d. 1918) also died of natural causes. Details surrounding the deaths of two other juridically trained canonists, Yuriev University's Mikhail Krasnozhen (d. 1934? 1941?) and Tomsk University's Pavel Prokoshev, are unknown. Five other canonists—Moscow University's Pavel Gidul'ianov (d. 1937) and Ilya Gromoglasov (d. 1937), St. Petersburg University's Vladimir Beneshevich (d. 1938), Warsaw University's Pavel Verkhovskoi (d. 1943), and the juridically and theologically trained canonist and practicing lawyer Nikolai Kuznetsov (d. 1936)—experienced arrests and imprisonments. Eventually, Beneshevich, Gromoglasov, and Gidul'ianov (despite Gidul'ianov's initial work as a consultant for the Soviet state's People's Commissariat of Justice, which oversaw early Bolshevik efforts to “liquidate” the Orthodox Church) were executed for counterrevolutionary activity.²⁸ Kuznetsov, who often represented the Orthodox Church legally before Soviet officials (1917–19), and Verkhovskoi faced several arrests, served time in notorious Soviet prisons or corrective labor camps, and eventually died in internal exile in remote regions. In the end, no university-based canonists or professors of church/canon law from Russia's theological academies were among the large wave of Russia's Orthodox émigrés through whom Orthodox thought eventually became known in the West.²⁹

The canonists' challenge: Orthodoxy and church law in a modern age

As groundbreakers in the study of church/canon law—which, as Suvorov maintained in 1889, was among Russia's least developed academic fields—Russia's university-based canonists faced numerous challenges.³⁰ Among the most immediate was establishing the field's legitimacy, purpose, and relevance on two fronts. First, canonists faced students who tended to dismiss topics concerning the church, deeming them applicable only for clergy and—as taught in the past—epistemologically out of place in a largely secular educational milieu. Second, the canonists encountered an “onslaught” of criticism from church officials or academic faculty “who consider this field to be the monopoly of the spiritual

28 In his capacity as consultant for this commissariat, Gidul'ianov authored *Tserkov' i gosudarstvo po zakonodatel'stvu R.S.F.S.R. Sbornik uzakonenii i rasporiashbenii s raz'iasnenniami V otдела NKIn* (Moscow: Tip. GPU, 1923).

29 S. V. Troitskii received a master's degree in church/canon law in 1913 but did not become a professor of canon law until he assumed an academic position in the emigration in Yugoslavia. Nevertheless, he referred to himself as “the last of the Mohicans, the sole survivor among the canonists of the old Russian academic school.” S. Troitskii, “O edinstve Tserkvi,” *Vestnik Russkogo Zapadno-Evropetskogo Patriarshego Ekzarkhata*, 1957, no. 26: 101–10, here at 110.

30 N. Suvorov, *Kurs tserkovnogo prava*, 2 vols. (Yaroslavl: Tip. G. Fal'k, 1889–90), 2: iii; N. Zaozerskii, “O zhelatel'noi postanovke prepodavaniia tserkovnogo prava v nashikh uchebnykh zavedeniakh,” *Chteniiia v obshchestve liubiteli dukhovnogo prosveshcheniia*, 1910, no. 1 (Jan.): 26–35, here at 26.

domain.”³¹ Although united in the conviction that the study of church law was vital to church, state, and society, canonists varied widely in their understanding of, and approaches to, their subject.

Indeed, canonists grappled with the question “what is church law?” to clarify what one of them characterized as the “extremely garbled views on the nature of this ‘thing’ that is being studied.”³² Church/canon law by definition was interdisciplinary, including such wide-ranging matters as historical and contemporary reflection on church and authority in the context of ecclesial governance; the person (*lichmost'*) in relation to community and society; and the relationships among law (*zakon*), rule (*pravilo*), and *pravo*—a term historically linked in Russia with truth, integrity, authority, and freedom before it assumed the Western juridical meaning of “law” and “right” in the sixteenth and seventeenth centuries.³³ Also in need of clarification were the sources of church law and the roles of state and church in formulating and implementing both civic and church/canon law. Attempts to identify the provenance(s) of church/canon law resulted in canonists constructing often-competing historical narratives of Russia’s interwoven Byzantine juridical heritage, Western Christian influences, and indigenous ecclesio-judicial traditions.

The study of church/canon law also involved methodological challenges. Russia’s canonists were acutely aware of Orthodoxy’s lack of an established system for the study of canon law comparable to that of their Western counterparts, although none would minimize the influence of church/canon law on the history of law in Russia more broadly.³⁴ As Suvorov explained, although Russia’s Byzantine inheritance included collections of church rules, it did not include the *science* of church law: “the Byzantines could not bequeath that which they did not possess, and that in which they were not proficient.”³⁵ To compensate for the lack of a well-defined Orthodox framework for studying church/canon law, and to present the subject in terms resonating with modern juridical discourse in Russia, most university-based Russian canonists turned to Western Christian counterparts, especially at German universities. The value of Western legal thought for Orthodox church/canon law, however, remained contested. A review of the thought of several prominent late nineteenth-century canonists offers insight into the diversity of views on the definition, nature, and significance of church/canon law on the eve of the Bolshevik Revolution of 1917.

The first canonist in St. Petersburg University’s faculty of law, Mikhail Gorchakov, taught some eight thousand students during his lengthy career

31 Mikhail Gorchakov, quoted in Beneshevich, “Pamiati Gorchakova,” 208.

32 Beneshevich, “Pamiati Gorchakova,” 207.

33 V. V. Vinogradov, *Istoriia slov* (Moscow: Institut russkogo iazyka im. V. V. Vinogradova, 1999), 533–34.

34 David Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381–883* (New York: Oxford University Press, 2015), 80.

35 N. S. Suvorov, “Tserkovnoe pravo, kak iuridicheskaia nauka,” *Iuridicheskii vestnik*, 1888, vol. 28, no. 8 (Aug.): 520–50, here at 522.

(1868–1910).³⁶ His full promise was cut short by the premature death of his wife, which left him to raise five children. Except for four monographs based on his dissertations in civil law and canon law, his publications included articles, published lectures, and reviews of doctoral dissertations. Nevertheless, the large library he willed to St. Petersburg University and incomplete drafts of book manuscripts testified to his academic aspirations. Referring to himself as “a liberal of the 1860s,” Gorchakov retained his pro-reform sentiments to the end of his life. In 1905, at the age of sixty-seven, he was among the famous group of thirty-two St. Petersburg priests who signed the progressive memorandum “Thoughts on the Necessity of Changes in the Governance of the Russian Church.” The document caused a public sensation and elicited criticism from some church officials.³⁷ Nonetheless, on the basis of his stature and erudition, in 1906 the Holy Synod ratified Gorchakov’s participation in the newly formed State Council.

Unlike other textbook authors, Gorchakov linked his understanding of church law as a juridical discipline to his understanding of law and religion more broadly speaking. According to Gorchakov, law is a relational principle involving universal laws foreordained by the Creator and human-created laws designed to regulate social relations justly. In Gorchakov’s estimation, humans do not have full knowledge of the universal laws—the laws of “absolute truth” (*absolutnaia pravda*)—but, instead, are ever in the process of understanding them.³⁸

Gorchakov identified both the individual person and communities as sources of human-created law.³⁹ The person is foundational. Self-aware of “possessing the potential, the ability, and the strength reasonably and freely” to realize themselves, persons strive to develop their individual natures according to their qualities. To achieve their goals, all persons also depend on others, for which reason communities are no less law-generating than individuals. Once one becomes a part of a community, however, the freedom to develop oneself risks limiting the freedom of others. Human-created law, then, involves managing freedom in a communal context. “No single person,” Gorchakov argued, “can claim unconditional rights to fulfill their needs without any checks or interference from others.”⁴⁰ Each member seeks to protect their rights to pursue their perceived “reason-

36 Biographical information is based on Beneshevich, “Pamiati Gorchakova”; “Gorchakov, Mikhail Ivanovich, prof. prot., Nekrolog,” *Tserkovnye vedomosti*, 1910, no. 33 (Aug. 14): 1397–99; M. A. D’iakonov, *M. I. Gorchakov. Nekrolog* (St. Petersburg: Tip. Imperatorskoi Akademii Nauk, 1910); Nikolai Markov, “Gorchakov, Mikhail Ivanovich,” *Pravoslavnyi bogoslovskii entsiklopedicheskii slovar’*, ed. A. P. Lopukhin (Petrograd: T-vo A. Lopukhina, 1900–11), 552–60; Aleksandr Bertash, “Gorchakov,” *Pravoslavnaia entsiklopediia* (Moscow: Tserkovno-nauchnyi tsentr “Pravoslavnaia Entsiklopediia,” 2000–), vol. 12: 156–58.

37 On the memo of the thirty-two priests, see Jennifer Hedda, *His Kingdom Come: Orthodox Pastorship and Social Activism in Revolutionary Russia* (DeKalb: Northern Illinois University Press, 2008), 154–58.

38 M. I. Gorchakov, *Tserkovnoe pravo: kratkii kurs lektsii* (St. Petersburg: Izd. Studenta A. Shiri-aeva, 1909), 9–10.

39 The following summary is based on Gorchakov, *Tserkovnoe pravo*, 6–8.

40 *Ibid.*, 8.

able needs” for the realization of their full human potential. Gorchakov thus identified law as “an expression of the understanding of justice” at a given time in a given society.⁴¹ If humans collectively understood the foreordained universal laws and lived according to them, “absolute truth” would prevail. Having only vague knowledge of these universal laws, however, humans coexist with a variety of ever-changing and often seemingly competing understandings of justice.

Gorchakov’s understanding of church law emerged from this conceptualization of law more broadly. He maintained that faith (or religion) was one of the reasonable needs that all humans possess by nature. Faith, Gorchakov argued, was “one of the most significant aspects of human life, be it in one’s personal life, within society, or within the state.”⁴² Drawing on sociology, anthropology, phenomenology, psychology, and philosophy of religion, Gorchakov defined faith as a particular human disposition engaging “the totality of a person’s powers and life capacities” and informing all relationships. As humans are social beings, people form relationships on the basis of shared faith-informed views.⁴³ These relationships, in turn, network into larger associations with their own rules, forms of governance, and relations with other religious associations. Gorchakov maintained that religion’s intrinsic capacity to generate associations made it relevant to jurisprudence. A jurist’s education remained incomplete without knowledge of such associations and their underpinnings.⁴⁴

Gorchakov claimed that the laws governing these associations—including the Orthodox Church—should not be conflated with other branches of law, because their subject and object were a unique, *sui generis* community stemming from religion (or faith) in broad terms, not just Christianity or Orthodoxy in particular. Gorchakov directly linked the laws governing the Orthodox Church as a juridical discipline to the political and social sciences and, indirectly, to theology. The task of the academic study of church/canon law, then, was twofold. First, it aimed to “systematize in all of its totality the norms of the church’s organization, its internal governance, its relationship to the state and to other social associations.” Second, it aimed to clarify whether the “internal norms” of this law corresponded with the goals of the church as a community and institution, as well as with the general provisions of jurisprudence.⁴⁵

Gorchakov advised law students to define religious communities on the communities’ own terms rather than on the basis of abstract or politically motivated philosophical considerations. Since religious communities typically defined themselves on the basis of theological teachings, Gorchakov argued that these self-definitions were “givens”: jurists must start with them. However, jurisprudence

41 *Ibid.*, 10.

42 *Ibid.*, 1.

43 *Ibid.*, 8–9.

44 According to Gorchakov, jurists are “expected to know, understand, and explain the significance of any religious association that exists . . . within the bounds of the state” where they live. Gorchakov, *Tserkovnoe pravo*, 1.

45 *Ibid.*, 23.

involves such theological givens only insofar as they apply to juridical issues. The specific content of theological views stands beyond the jurist's domain.⁴⁶

Gorchakov's understanding of law and his emphasis on religion as a shared feature of the human condition eliminated any leanings in his work toward Christian or specifically Orthodox exceptionalism. They also underlay his interest in freedom of religion and conscience, topics to which he devoted considerable attention in his textbook. He maintained that Russia's legal designation of Orthodoxy as the "ruling" faith was based on Orthodoxy's majority status, not on confessional "superiority." Following the October Manifesto of 1905, Gorchakov was among the churchmen who advocated abolishing the term "ruling" (*gospodstvuiushchaya*) with respect to the Orthodox Church in Russian law.⁴⁷

Aleksei Pavlov began his long career as a university canonist in Kazan, Russia's "window to the East." Born in the Siberian region of Tomsk to a church cantor, Pavlov graduated from seminary and enrolled at Kazan Theological Academy in 1854. The academy had recently acquired a rich collection of manuscripts related to canon law, and Pavlov's work with them sparked his lifelong interest in the subject.⁴⁸ The academy's dean at the time, Ioann (Sokolov, 1818–69)—future bishop of Smolensk and author of a textbook on church law—tapped Pavlov to mine the archive for sources Sokolov needed for his own work.⁴⁹ Following graduation from the academy, Pavlov taught for a semester at Kazan Seminary before returning to the academy to teach church law and liturgics. In 1864 Kazan University's faculty of law recruited Pavlov to fill the new position in church law.

Pavlov first studied abroad at the University of Heidelberg in 1867, working in particular with professor of Roman law Karl Adolph von Vangerow (1808–70) and Byzantinist Karl Zachariae von Lingenthal (1812–94). After returning to Russia, Pavlov accepted a position in church law at Novorossiisk University in Odessa. In 1875, he moved to Moscow University's faculty of law following the premature death of their young canonist, N. K. Sokolov. By all accounts, Pavlov accepted this offer because of the access to archives and libraries that residence in Moscow afforded him. He remained at Moscow University until his death, in 1898.

Like most other university canonists (except for Gorchakov), Pavlov introduced the study of church law in his works by highlighting the uniqueness of the Christian community. Christians from the very start distinguished themselves

46 Ibid., 14.

47 Ibid., 335; *Zhurnaly i protokoly zasedanii Vysochaishhe uchrezhdennogo Predsobornogo Prisutstviia* (1906 g.), 4 vols. (Moscow: Izdatel'stvo Novospasskogo monastyrja, 2014), 2:539–40.

48 A. Dmitrievskii, "Nezabvennoi pamiatii professorov A. S. Pavlova i N. F. Krasnosel'tseva," *Trudy Kievskoi Dukhovnoi Akademii*, 1899, no. 1: 59–104, here at 60–61.

49 Arkhimandrit Ioann, *Opyt kursa tserkovnogo zakonovedeniia*, 2 vols. (St. Petersburg: Tip. Fishera, 1851). This textbook is often cited as among the first systematic works on this topic in Russia. For Pavlov's assistance in Ioann's work, see P. Znamenskii, *Istoriia Kazanskoi Dukhovnoi Akademii za pervyi (doreformennyi) period ee sushchestvovaniia (1842–1870 gody)* (Kazan: Tip. Imperatorskogo Universiteta, 1891), 212.

through imperceptible sacred bonds uniting diverse peoples in a spiritually united transnational association sharing a vision of God and ultimate purpose eclipsing all other interests and identities.⁵⁰ According to Pavlov, the Christian church, as a sacred “organism,” was autonomous and self-governing. Christians established the church’s norms and rules (*prava*) according to what they considered divinely instituted principles facilitating the community’s ultimate goals. Notably, in the context of nineteenth-century Russia and its Petrine system of church organization, Pavlov’s narrative of church autonomy and Christian self-government carried potentially subversive political undertones.

In contrast to Roman law, where laws concerning religion fell under broader state-legislated domains of public or private law, Pavlov emphasized church law’s particularity. He maintained that rules governing the church as a community could be formulated only by members of that community; the independence and autonomy of the church, in this respect, were absolute. To subsume church law under public law, as in Roman law and Justinian’s *Corpus juris civilis*, would presume that the Christian religion was inherent to, and coincided with, the state. Pavlov was adamant that “Christianity ... did not belong to anyone as a national religion, and the Church was not a state establishment.”⁵¹ Similarly, the church could not be considered a “state within a state,” because the qualitatively different aims of church and state prevented the two from being equated, “even in circumstances when all peoples [within a given state] belonged to a single church ... since the church was ‘a kingdom not of this world.’”⁵² At the same time, Pavlov emphasized that, as an association existing alongside others in a state, the church and its members were still subject to state laws.

Pavlov referred to the church’s rules interchangeably as “canon” or “church” law. He attributed the distinction often made between these terms to the history of church/canon law in the West, a history not shared in his estimation by Christians in the Eastern Roman Empire.⁵³ Accordingly, he argued, Orthodox canonists could use these terms interchangeably.⁵⁴

In contrast to Gorchakov, whose approach was influenced by sociology, anthropology, and the philosophy and phenomenology of religion, Pavlov adopted a historical-critical methodology. Maintaining that the study of church law focused on the “currently operative law of the church,” Pavlov argued that appreciation of church law’s “vital significance” necessarily involved a return to the sources that shaped this law. Church/canon law, in Pavlov’s view, was genealogical in nature. Proper understanding and application involved tracing the origins of a given law, tracking its subsequent development, and “marking the local, national,

50 Pavlov, *Sokrashchennyi kurs*, 1–6.

51 A. S. Pavlov, *Kurs tserkovnogo prava* (Sviato-Troitskaia Sergieva Lavra, 1902), 11.

52 Ibid., 12.

53 According to Nikolai Sokolov, Pavlov’s predecessor at Moscow University, the term “canon law” was not indigenous to Byzantine Orthodox Christianity, especially in Russia, since it grew out of the relationship between the Latin church and Roman law.

54 Pavlov, *Kurs*, 7–9.

and political influences” that produced its current form. By following any given rule’s evolution or “genetic process,” canonists demonstrated that church/canon law was a “living” law “with its own character.”⁵⁵

Pavlov’s historical-critical approach, combined with his starting point as a person of faith, resulted in a theologically informed, ecclesio-juridical appreciation of canon law conveyed in the academic language of his time. While an academic canonist at a secular university, Pavlov maintained an ecclesiological purpose—to discern church/canon law’s “link with the essential nature of the Church,” whose primary goal, in turn, was transformation of the human person and his or her communion with God.⁵⁶ Echoing the imagery of “kernel” and “husk” used by Estonian-born Lutheran church historian Adolf von Harnack (1851–1930), Pavlov spoke about the hidden “essential core” of ecclesiastical institutions and rules in contrast to their visible, pliable, and historically conditioned “external wrapping” (*obolochka*), whose “look” could change over time.⁵⁷ Insights from detailed source analysis, he maintained, enabled the church to weigh the extent and kinds of reforms it could undertake without betraying its being and mission.⁵⁸

Pavlov’s contributions to Orthodox thought were far reaching. He maintained, for example, that the church as “an association for all peoples in all times” across cultures and historical-political circumstances resulted in the coexistence of diverse ecclesial rules considered normative by their respective communities. Pavlov also recognized the institutional mechanisms—councils in particular—through which Christian communities attempted to maintain unity in the face of variation and disagreements over competing practices. According to Pavlov, councils governed by “the principle of equality of spiritual authority of all hierarchs” were the highest administrative body of the church.⁵⁹ Yet in terms of reception, Pavlov maintained that not all Christian communities accepted the disciplinary rules and organizational norms which even imperially overseen ecumenical councils established: only the dogmatic decisions of these councils could claim that honor (and even then, only up to a point).⁶⁰

Because the norms governing organizational and disciplinary matters of church life were formulated by particular persons in particular time periods, Pavlov maintained that church members had not only the obligation but the divinely given *right* to alter the outward shape of communal norms and governances to reflect changing historical circumstances—precisely to preserve the church’s relevance.⁶¹ More than a decade following his death, as debates about church reforms gained public attention in Russia, Pavlov’s voice rang out in the

55 Ibid., 30–31.

56 Ibid., 5, 68.

57 Ibid., 9, 31.

58 Ibid., 30.

59 Ibid., 260.

60 Ibid., 52–53.

61 Ibid., 38–39.

writings of the next generation of canonists. Vasilii Myshtsyn, professor of canon law at Demidov Law Lycée, for instance, quoted Pavlov in 1910 to support his views that “church canons were not immutable or obligatory for all times,” that canons can be changed or rescinded, and that reform cannot be equated with “restoration of all ancient canons.”⁶² In doing so, Myshtsyn corroborated earlier predictions that Pavlov’s deep knowledge of the sources pertaining to church/canon law ensured that his works would have “classic, timeless significance” for future Orthodox thinking on canon law.⁶³

In evaluating the evolving field of academic church law, Pavlov singled out two fellow canonists—Ilya Berdnikov and Nikolai Suvorov—as “extremes” in terms of methodological shortcomings.⁶⁴ According to Pavlov, Berdnikov was too theological in his approach, while Suvorov depended too heavily on Western legal jurisprudence.⁶⁵ While both canonists were lauded as “coryphaei” within the field, their disparate academic training and teaching environments contributed to stark diversity with respect to “ecclesiastical legal consciousness.”⁶⁶ Highlighting the perceived differences, the juridically trained Suvorov referred to Berdnikov as a “spiritual writer,” while the theologically trained Berdnikov noted Suvorov’s self-regard as a “canonist of a special type.”⁶⁷

In 1888, Suvorov published an unfavorable review of Berdnikov’s *Short Course on the Church Law of the Greco-Russian Orthodox Church*, the first textbook designed for both university law students and theological academy students. Berdnikov’s response was eventually published in a 450-page monograph, *The Foundational Principles of Church Law in the Orthodox Church*.⁶⁸ The controversy centered on two primary factors: a) the relevance of Western canon law and jurisprudence more broadly for the study of Orthodox church/canon law, and b) the nature of the church and its governance, including church-state

62 V. N. Myshtsyn, *Naskol’ko obiazatelen avtoritet kanonov? O tserkovnykh kanonakh* (Moscow: Tip. Butaeva, 1910), 6, 9.

63 N. Zaozerskii, “Pamiati A. S. Pavlova,” *Bogoslovskii vestnik*, 1898, vol. 3, no. 9: 348–55 (2nd pagination), here at 352.

64 Berdnikov, Pavlov’s one-time student and a graduate of Kazan Theological Academy (1864), was professor of church law at the academy until his retirement in 1911, periodically also teaching at Kazan University. Suvorov bypassed a theological academy education and, after completing seminary, enrolled in St. Petersburg University. Upon completion of his master’s dissertation under Gorchakov in 1877, Suvorov taught for two decades at the Demidov Law Lycée before replacing Pavlov at Moscow University in 1899, where he remained until his death, in 1909.

65 Pavlov, *Kurs*, 30.

66 *Pamiati professora I’i Stepanovicha Berdnikova* (Kazan: Tsentral’naia Tip., 1915), 13.

67 Suvorov, *Kurs*, 1:31; I. Berdnikov, *Osnovnye nachala tserkovnogo prava pravoslavnoi tserkvi* (Kazan: Tip. Imperatorskogo Universiteta, 1902), 3.

68 I. Berdnikov, *Kratkii kurs tserkovnogo prava Pravoslavnoi Greko-Rossiiskoi Tserkvi* (Kazan: Tip. Imperatorskogo Universiteta, 1888). It should be noted that in his title, Berdnikov uses the adjective *rossiiskii* (“pertaining to the Orthodox Church in imperial Russia”), not *russkii* (“ethnic Russian”). For Suvorov’s review, see note 35; for Berdnikov’s *Foundational Principles*, see note 67.

relations, which at least some regarded as one of the least studied subjects among Russian jurists.⁶⁹

Known for his deep admiration of Europe's historical accumulation of "juridical concepts, categories, and scientific classifications," Suvorov not only encouraged his students and fellow canonists to tap this "capital" but also insisted that its appropriation was necessary for organizing and understanding the "heap of materials" that presented itself as Orthodox church/canon law, especially in Russia.⁷⁰ A supporter of the Petrine church reforms, Suvorov spoke of church-state relations in Russia as a "mix of the Byzantine system and the Western system of state ecclesiality."⁷¹ Contemporary church law could not, therefore, be conceptualized primarily in terms of Byzantine norms and laws established a thousand years earlier, as if those prescriptions were still "active."⁷² European legal thought was essential to the academic study of Orthodox church law in Russia, a fact to which Berdnikov seemed indifferent.⁷³

Suvorov also criticized Berdnikov's narrative of the history of the Orthodox Church's governance and juridical authority. In particular, Suvorov questioned the historical accuracy of Berdnikov's textbook depiction of the Orthodox Church—even after the conversion of the emperor Constantine—as an autonomous, internally self-governing association with its own rules and highest legislative authority vested in councils.⁷⁴ Furthermore, according to Suvorov, Berdnikov's identification of ordination and rank (*san*) as *the* criteria for church governance—including the assignment of legislative, administrative, and judicial roles—resulted in a faulty image of the church as comprising solely ordained clergy at administrative levels. It also reinforced the identification of the church as type of "state" in which no layperson—even emperors—could hold a position of governance without explicit hierarchal permission.⁷⁵ In Suvorov's estimation, this depiction of the Orthodox Church mirrored a "Roman Catholic construct."

Suvorov also criticized Berdnikov's conflation of "rule" (*kanon*) with "law" (*zakon*) and his use of "church law" to refer to both church canons and imperially issued church-related legislation. Berdnikov's textbook thus confused students regarding the church's "rule/law-creating" (*pravoobrazuiushchii*) authority.⁷⁶ For Suvorov, Berdnikov's use of terms suggested that the Orthodox Church was

69 N. Suvorov, "Kharakteristika katolitsizma i protestantizma v ikh otnosheniakh k gosudarstvu," *Iuridicheskii vestnik*, 1887, vol. 26, no. 11 (Nov.): 492–503, here at 501.

70 Suvorov, *Kurs*, 2:iii; "Tserkovnoe pravo," 520–21.

71 Suvorov, *Kurs*, 2:492.

72 Suvorov, "Tserkovnoe pravo," 523–24; 533–34.

73 Ibid., 523, 524.

74 Ibid., 531, 533, 537. Suvorov cites Metropolitan Makarii Bulgakov's (1816–82) *Dogmatic Theology*, which was heavily influenced by Roman Catholic teachings, as a source of this teaching: Makarii, Mit. Moskovskii i Kolomenskii, *Pravoslavno-Dogmaticheskoe Bogoslovie*, 4th ed., 2 vols. (St. Petersburg, Tip. Golike, 1883).

75 Suvorov, "Tserkovnoe pravo," 533, 535.

76 Ibid., 527–31.

governed by its own authority and laws, to which emperors, as secondary, only formally assented.⁷⁷

Even a cursory review of Orthodox church governance in the Byzantine past and Russian present, Suvorov maintained, offered a different picture. Suvorov maintained that with Constantine, the “norms of church law began to flow from two main sources: from church canons and from imperial legislation.”⁷⁸ Initially, Constantine recognized church hierarchs as representing a spiritual authority distinct from imperial authority, identifying himself as “bishop [to those] outside the church.” His task was to enforce “Christian law”—formulated by the church’s hierarchy—as imperial law.⁷⁹ Nevertheless, Byzantine emperors often reverted to the Roman imperial identification of religion with state. Despite Justinian’s well-known codification of two distinct, divinely given authorities in human society—the priesthood (*sviashchenstvo*) and the emperor—Suvorov maintained that this distinction in no way expressed imperial recognition of two *juridically governing* authorities.⁸⁰ A single legal governing authority—the emperor—oversaw both state and church. The emperor served as the juridically “highest church-governing authority” and “rule-generating” center of the institutional life of the Orthodox Church—both internally and externally.⁸¹

While refuting Western academic definitions of “Byzantinism” and “caesaropapism” to describe this phenomenon, Suvorov did not deny the phenomenon but reinterpreted it, focusing on the church hierarchy’s response to the new imperial reality. The church hierarchs, Suvorov claimed, saw the emperor’s role in their own terms. Like their Western Roman ecclesiastical counterparts, Byzantine hierarchs viewed the emperor’s “earthly” power as secondary to, or lower than, their “spiritual” authority.⁸² Byzantine hierarchs imagined the emperor as an administrative “organ” of the church to whom they had willingly *granted* ecclesiastical authority—along with symbolic liturgical functions—in exchange for the commitment to protect the faith and implement the church’s “norms” as state law.⁸³ Thus, Byzantinism and caesaropapism, in Suvorov’s estimation, did not represent the subjugation of church and clergy to state control (as Western scholars understood those terms) but constituted a unique form of “papism.”⁸⁴ Byzantinism was an “expression of the church in the state and its imposition of law on the state.”⁸⁵

77 Ibid., 533–34.

78 Suvorov, *Kurs*, 1:223–24.

79 N. Suvorov, “Predislovie perevodchika,” in Fridrikh Maassen, *Deviat’ glav o svobodnoi tserkvi i svobode sovesti*, trans. and intro. by N. Suvorov, *Vremennik Demidovskogo Iuridicheskogo Litseia*, no. 29 (Yaroslavl: Tip. G. Fal’k, 1882), i–xxxvi, here at xxvi.

80 Ibid., xxvii.

81 Suvorov, “Tserkovnoe pravo,” 531, 534, 539; *Kurs*, 2:63.

82 Suvorov, “Tserkovnoe pravo,” 539; “Predislovie perevodchika,” xviii.

83 Suvorov, “Predislovie perevodchika,” xiv, xxi, xxviii.

84 Ibid., xv.

85 Ibid., xxi.

With respect to Russia specifically, Suvorov maintained that Peter the Great's reforms attempted to neutralize the church hierarchy's potential capacity to position themselves in society as an equal or higher authority, parallel to that of the emperor. The architect of the Petrine church reforms, the archbishop of Novgorod Feofan (Prokopovich, 1681–1736), attributed two distinct but coexisting "jurisdictions" or roles to Russia's ruler: a) "just a tsar," and b) a "Christian tsar."⁸⁶ According to Suvorov, Peter—in his role as just a tsar—attempted to abolish "the spiritual hierarchy's" realization of their imagined "higher authority" vis-à-vis the state by including the clergy as one among several state service ranks. In his second role, as a Christian tsar, Peter represented not a confrontation between two coexisting orders—state and church—but instead the efforts of an "energetic ... tsar-reformer" to overcome "ecclesiastical disorder" and clerical lethargy.⁸⁷

Suvorov maintained that Berdnikov's description of Russia's church governance—a synod of bishops independently engaged in a "law/rule-creating culture" (*pravoobrazovatel'naia kul'tura*) with the emperor "on the sidelines"—implied a "dualism in governing authority" that overlooked the realities of the Petrine system and denied the legal role of the emperor with respect to the church as defined in Russia's law code.⁸⁸ By associating church governance, administrative functions, and church-legislative activity solely with the clergy and church hierarchy, Berdnikov once again revealed his inclinations toward Catholic teachings.⁸⁹ As a result, he virtually ignored the authority of the emperor, viewing it as "extraneous to the church," an institute of "secular," not church, law. As Suvorov saw it, Berdnikov's ecclesial understanding led to one of two conclusions: a) it implicitly rejected the reality that the emperor represented the law-generating center and highest office of church authority in the Orthodox Church; or b) it suggested that the emperor's legal role vis-à-vis the church was a form of "usurpation."⁹⁰

Suvorov's focus on the emperor as the juridically unifying center of the institutional Orthodox Church had far-reaching consequences for his "canonical view" of Orthodox governance. In his estimation, neither bishops (including patriarchs), whose authority was territorially limited, nor ecumenical councils, which met only irregularly and under the emperor's aegis, could claim to represent a single administrative-judicial center within Orthodoxy.⁹¹ The Byzantine church hierarchy attempted to counter this lack in various ways: with such notions as the pentarchy of patriarchs,⁹² or with what Suvorov referred to as the Patriarchate of Constantinople's self-proclaimed "pretensions" to the position of the highest judicial authority among Orthodox churches (which Suvorov denied was ever

86 Suvorov, "Tserkovnoe pravo," 540.

87 Ibid., 541.

88 Ibid., 543.

89 Ibid., 544.

90 Suvorov, *Kurs*, 1:208n25.

91 Ibid., 1:62–63.

92 Ibid., 1:78–79.

ratified as a canon).⁹³ The same motive of providing an administrative-judicial center also led to the idea that ecumenical councils were the “highest linking church-administrative form,” an idea which prevented local churches from being regarded as “self-sufficient organisms.” Suvorov argued that autocephalous churches were in fact “separate juridical units,” whose decision to participate in any council depended entirely on “the considerations of church authorities” in any given country.⁹⁴ He ascribed the efforts of “spiritual writers” to maintain otherwise as contributing to “ahistorical Orthodox self-understanding.”⁹⁵

While disagreeing with Berdnikov’s view of the church as a fully autonomous, self-governing institution, Suvorov also disagreed with the widespread view that the Petrine system had resulted in the church’s “fusion” with, or “absorption” by, the state.⁹⁶ Instead, based on his reading of recent European Protestant experience, Suvorov argued that the Petrine system required Russia’s nineteenth-century canonists and jurists “to clarify the distinction between the emperor as head of state and the emperor as head of the church’s administration,” to demarcate the boundaries between the two and, thereby, the boundaries between state and church as well. In the end, Suvorov maintained, this was one of the most essential tasks facing modern jurisprudence in Russia.⁹⁷

Berdnikov’s response to Suvorov’s review was no less direct. In response to Suvorov’s depiction of his ecclesiastical views as essentially Roman Catholic, Berdnikov asserted that Suvorov’s juridically secularist, Protestant-informed approach to Orthodox church/canon law resulted in an “original perspective” on church governance, authority, and rule-making that the Orthodox Church “never shared.”⁹⁸ Berdnikov’s rejoinder addressed three major areas of disagreement between the two canonists: their understanding of a) the nature of church legislation; b) church-state relations in Byzantium; and c) Russia’s Petrine church reforms and the system of church governance in nineteenth-century Russia.

Suvorov’s rejection of the working premise of Berdnikov’s textbook—the view of the church as a historically independent association (*obshchestvennyi soiuz*) with its own “right of [internal] legislation”—steered Berdnikov’s response. Reflecting on the dynamic nature and competing understandings of “law,” Berdnikov contended that Suvorov’s criticism of his interchangeable use of *zakon*, *pravo*, and *zakonodatel’stvo* (statute law, law/right, and legislation) for both church-issued rules (*pravila*, “canons”) and state-enacted decrees was philosophically and politically driven. Pointing out that his own terminology corresponded to contemporary usage among canonists in Russia and Europe as well as church- and

93 Suvorov, “Tserkovnoe pravo,” 540.

94 Suvorov, *Kurs*, 1:7.

95 Suvorov, “Predislovie perevodchika,” xxii.

96 Suvorov, “Tserkovnoe pravo,” 543.

97 *Ibid.*, 543.

98 Berdnikov, *Osnovnye nachala*, 386–87. Initially Berdnikov published his response in a series of installments in the journal *Pravoslavnyi sobesednik* in 1889–91 and 1897. In 1902, they were published as *Osnovnye nachala* (see note 67).

state-related sources from late antiquity, Berdnikov argued that he had undermined Suvorov's working premise that "lawmaking" was an exclusive function of the emperor as the "highest source of justice [in society]" and the "supreme law-generating authority in all aspects of society's life."⁹⁹ Berdnikov's interchangeable use of these terms also pointedly undermined Suvorov's claim that, historically, Orthodox bishops had no "law-generating" authority. In Berdnikov's estimation, Suvorov's view that bishops did not "legislate" but merely "composed rules" (canons) that remained little more than "opinions" was historically untenable.¹⁰⁰

From Berdnikov's perspective, Suvorov's understanding of law and authority implied that, prior to the fourth century, the church was not an autonomous "legal organism" (*pravovoi organizm*)—a view with which few historians would agree.¹⁰¹ More importantly, Berdnikov disagreed with Suvorov's implication that, beginning with Constantine, the church as an institution had no internal, self-regulating life distinct from the state, and that imperial legislation "regulated all aspects of church discipline and even dogmas of faith."¹⁰² Such a view led to a distorted understanding of Byzantine church-state relations and the "generative center" of church law.

In contrast, Berdnikov argued that episcopal councils not only retained their internal ecclesial "legislative" authority under Byzantine imperial rule but also overturned the traditional monopoly of the Roman state over religion-related legislation.¹⁰³ Byzantine emperors officially promulgated the church's rules/laws not as initiators of those laws or for purposes of "controlling" the church, but in order to confirm the Christian faith. In terms of sacrality, emperors generally viewed conciliar decisions on a par with scripture. Imperial appropriation of church-generated laws as imperial laws, Berdnikov argued, was a sign of the emperors' deference to the church as a means of ensuring divine favor.¹⁰⁴ In the end, in contrast to Suvorov's revisionist view of caesaropapism as applied to Byzantium, Berdnikov staunchly defended his position that the church remained a distinct "social organism" with its own law-generating functions, and that Byzantine emperors did not generally encroach on those functions without consulting the church hierarchy.¹⁰⁵

Berdnikov was no less critical of Suvorov's reading of the fate of church/canon law in Russia's history. Suvorov appeared to believe that "lawmaking in the Orthodox Church belonged only to state authorities," and that without these authorities, Russia's Orthodox Church "had no established order."¹⁰⁶ Such views yielded statements that were, in Berdnikov's opinion, often contradictory and

99 Berdnikov, *Osnovnye nachala*, 24–28, 29, 35.

100 *Ibid.*, 29, 95–96, 107.

101 *Ibid.*, 32, 78, 102.

102 *Ibid.*, 33, 103.

103 *Ibid.*, 81.

104 *Ibid.*, 103–05, 114.

105 *Ibid.*, 107–08, 126.

106 *Ibid.*, 373, 377.

incomplete. Suvorov claimed that ancient Rus' had exhibited little in terms of lawmaking before the sixteenth-century. While recognizing that the princes of Rus' had access to the translated body of laws they received from Byzantium, Suvorov minimized the influence of those texts, claiming that the princes were influenced more by indigenous common law and viewed Byzantine laws as ancillary.¹⁰⁷ Suvorov also saw little in terms of indigenous hierarchal initiative with respect to local church order and "rule-making" in Rus'. In response, Berdnikov asked what type of ecclesial rule-making or lawmaking there could be in Russia's church during a time when it remained officially under the jurisdiction of the Patriarchate of Constantinople. Until the fifteenth century, Russia's church officials were usually appointees from Constantinople and, therefore, mostly Greeks. Given the two canonists' competing reference points in their understanding of church administrative and legislative authority—the emperor for Suvorov, and the ecclesiastical hierarchy for Berdnikov—they also attributed the eventual surge in "indigenous" church governance and legislation to different causes. Suvorov tied this development to political centralization and the rise of Russia's autocrats, who inherited the notion of an inherent link between imperial and ecclesiastical authority from their Byzantine predecessors. Berdnikov, in contrast, attributed the surge to the church's newly established ecclesiastical independence after some four hundred years under Byzantine-Greek dominance, a change that gave the church the freedom to order its own affairs.¹⁰⁸

In contrast to Suvorov, who praised Peter the Great's church reforms as introducing a period of "maximum energy in the generation of church law," Berdnikov remained reserved. He spoke more about a bygone era when councils were the main source of church lawmaking. While he did not find imperial ratification of synodal decisions problematic, he found the procedure by which ratification took place dubious. Committed to the notion of the church as an autonomous, self-governing institution, Berdnikov admitted that, in the nineteenth century, churchmen had no recourse but to seek ways to work "independently from the framework it has been [legally] assigned by the state."¹⁰⁹

Among canonists with professional juridical training who spent their careers at a theological academy, Nikolai Zaozerskii was the best known.¹¹⁰ The son of a rural priest, Zaozerskii enrolled in Moscow Theological Academy in 1872.

107 Ibid., 372, 373–75.

108 Ibid., 378.

109 Ibid., 382.

110 A. Bertash, "Zaozerskii," *Pravoslavnaia entsiklopediia*, vol. 19: 600–06; Sergei Golubtsov, *Moskovskaia dukhovnaia akademiia v nachale XX veka: professura i sotrudniki* (Moscow: Martis, 1999), 42–43; *Protokoly kommissii po tserkovnomu pravu pri Moskovskom iuridicheskom obshchestve za 1911–1912* (Moscow: Tip. G. Lissnera i D. Sovko, 1913). For the politics surrounding the appointment of Zaozerskii's replacement, see T. A. Bogdanova, "Iz akademicheskikh 'istorii': zameshchenie kafedry tserkovnogo prava v Moskovskoi Dukhovnoi akademii v 1910 godu," *Vestnik tserkovnoi istorii*, 2007, no. 1(5): 31–77. Eventually, the position went to Nikolai Kuznetsov.

Following graduation, he taught for two years in Kostroma Seminary before returning to his alma mater in 1878 to teach church law. Zaozerskii earned his master's and doctoral degrees from Moscow Theological Academy, writing dissertations on ecclesiastical courts in the early church and on authority in the church. Zaozerskii published on a variety of topics in church law, including Russia's ecclesiastical court system, relations between church and state, marriage and divorce, primacy, the parish, and the role of laity. From 1909 to 1912, he served as editor of one of Russia's premier theological journals, Moscow Theological Academy's *Bogoslovskii vestnik* (Theological herald). Retiring from teaching in 1911, Zaozerskii continued to publish, remaining an active member of the Moscow Juridical Society and, in 1912, standing as a candidate for the fourth State Duma. He died from health-related causes in 1919.

Unlike Gorchakov, Pavlov, Suvorov, and Berdnikov, neither Zaozerskii nor his students published a textbook based on his lectures. His views on church/canon law are thus found in other publications during his career.¹¹¹ His first work on the subject (1888) opened with his understanding of law broadly conceived, and only then proceeded to Orthodox church/canon law. His intended audience comprised those for whom Orthodox church/canon law seemed to have little to add to contemporary jurisprudence, as well as academic peers in the West who considered Russia's church law "unoriginal," "vague," and nothing but a "weak imitation" of its developmentally stunted, "long-fossilized Byzantine prototype."¹¹²

Defending the integrity of church/canon law as an independent field, Zaozerskii was unapologetically theological in his reasoning while remaining grounded in a historical-philological, analytical approach.¹¹³ He defined the church as a moral and prophetic "social organism," whose ultimate goal was personal transformation through the spiritual gifts and divine enlightenment communally revealed and communicated by Christ to all people.¹¹⁴ This social organism, Zaozerskii maintained, lived according to its own particular "genus" (*rod*) of law, which, given its divinely inspired nature, could not be conflated with other branches of jurisprudence. Hence, the church could not be considered "part" of any state.¹¹⁵ The church enjoyed "the complete capacity and essential need to protect and develop its own law [*pravo*]."¹¹⁶

111 N. A. Zaozerskii, *Pravo pravoslavnoi grekovostochnoi russkoi tserkvi kak predmet spetsial'noi iuridicheskoi nauki* (Moscow: Tip. M. G. Volchaninova, 1888); *Istoricheskoe obozrenie istochnikov prava Pravoslavnoi tserkvi*, vyp. 1: *Kanonicheskie istochniki* (Moscow: Tip. M. G. Volchaninova, 1891); "O zhelatel'noi postanovke prepodavaniia tserkovnogo prava" (see note 30); *O sushchnosti tserkovnogo prava* (Sergiev Posad: M. S. Elov, 1911).

112 Zaozerskii, *Pravo pravoslavnoi grekovostochnoi russkoi tserkvi*, 1.

113 Zaozerskii identified his general approach as "church-historical" and "philosophy of law." Zaozerskii, *O sushchnosti*, 1.

114 Zaozerskii, *Pravo pravoslavnoi grekovostochnoi russkoi tserkvi*, 49–50, 54, 56.

115 *Ibid.*, 53.

116 *Ibid.*, 62.

Two German jurists—Rudolf von Jhering (1818–92) and Rudolf Sohm (1841–1917)—significantly influenced Zaozerskii’s views on the nature of church/canon law. Drawing on Jhering’s *The Spirit of Roman Law in the Various Stages of its Development*, Zaozerskii presented the task of the study of church/canon law as the “re-creation of the representations of the integral juridical image of the Church, which is given in the totality of its objective laws, as formulated in primary sources.”¹¹⁷ While the initial stages of this process included codification of church law, this alone was insufficient. Leveraging lengthy quotations from Jhering, Zaozerskii maintained that the academic canonist’s goal was not to examine legal statutes for literal content, but to discern the underlying ecclesial principles informing them. This approach would then transform church/canon law from little more than a collection of seemingly outdated, disorganized, and arbitrary rules into a set of living principles which, in turn, could be tapped—individually or in various combinations—to generate new norms. Zaozerskii maintained that such an approach to church/canon law—an approach which included historical research, codification, logical systematization, and the final step of discerning the principles informing each rule—could provide the Orthodox Church in Russia with what Jhering called “simple reagents for limitlessly complex life situations.”¹¹⁸ The coordination of formulated norms with underlying principles reflecting the ultimate goals of church life would disclose that growth and development are as integral to church/canon law as they are to believers seeking communion with God.¹¹⁹

Zaozerskii’s second lengthy reflection on the nature of church/canon law was prompted by a translation of Sohm’s history of canon law.¹²⁰ In this polemical treatise against Roman Catholicism and revisionist challenge to late nineteenth-century Protestant views of the early church, Sohm argued that early Christian communities had no formal system of governance—no presbyters or bishops—but were organized by charisms of the Holy Spirit. As purely spiritual organizations, these communities “could not be grasped by any juridical understandings,” which, in Sohm’s estimation, were purely “worldly” constructs. For Sohm, the notions of church and law were antithetical.

Characterizing Sohm’s view of the church as “an organization without rules,” Zaozerskii argued that law was more than a worldly phenomenon based on force and coercion. Law was inherent to the human spirit, “deeply ingrained in the very nature of a rational moral being.”¹²¹ Zaozerskii defended law’s spiritual foundation by appealing to psycho-philosophical studies (unnamed) tying the origins of law to the human striving for freedom and the sense of duty. Freedom

117 Ibid., 131.

118 Ibid., 140.

119 Ibid., 141.

120 Rudolph Sohm, *Kirchenrecht*, vol. 1: *Die geschichtlichen Grundlagen* (Leipzig, 1892), which appeared in Russian as *Tserkovnyi stroi v pervye veka khristianstva*, trans. A. Petrovskii and P. Florenskii (Moscow: D. P. Efimov, 1906).

121 Zaozerskii, *O sushchnosti*, 29.

and duty, in turn, were connected with an innate sense of justice. According to Zaozerskii, these basic human traits resulted in even small groups of persons binding together on the basis of mutually agreed-upon principles regulating their relations. These intrinsic principles, or laws, spiritually linked community members to one another. Thus, law related to the rights of others: “without this shared mutual sense of responsibility there were no rights/law (*prava*), and without rights/law there could be no freedom.”¹²²

Against Sohm, Zaozerskii maintained that church history did not involve a struggle against church law as inimical to the church’s spiritual nature. Rather, church history reflected a “struggle with the *distortion* of the spirit and form of church law.”¹²³ As a corrective, members of the church needed awareness of their mutual “responsibilities” and “duties” through “a sense of conscience and in the name of God,” not through coercion.¹²⁴ In contrast to Sohm’s charismatic communities, Zaozerskii focused on early Christian communities’ disciplinary practices. These practices, according to Zaozerskii, embodied the “inner work” that the awareness of obligation and genuine freedom entail.¹²⁵

With respect to Sohm’s critique of hierarchy, Zaozerskii argued that “the hierarchical principle flows from the nature of the church; it is necessary to its organization as a religious community; [it] corresponds to Christ’s principles and precepts, and at its root, it was his direct formation.”¹²⁶ However, this claim involved a crucial caveat: “power” and “authority,” as defined by “the imperium” and appropriated by the church following Constantine’s conversion, were alien to hierarchy as understood in early Christian communities. The qualities defining the early church’s orders—deacons, presbyters, and bishops—had nothing in common with the coercion and force Sohm associated with law; these offices were based on humility, integrity, duty, moral example, and spiritual guidance. Zaozerskii noted how early Christians appropriated a common civil legal practice used in the election of persons to public office—*cheirotomia*—as a communal recognition of a new pastor’s authority. “The laying on of hands,” he noted, indicated the community’s spiritual unity.¹²⁷

Among his contributions to the field of canon law, Zaozerskii is perhaps best remembered for his laity-minded ecclesial legal consciousness. Well before the revolutionary turmoil of the twentieth century, Zaozerskii promoted conciliarity as the foundational principle of Orthodox church governance, insisting also on conciliarity’s “pan-ecclesial” quality (*vsetserkovnosti*). He considered the church’s third-century councils memorable as “lawmakers” (*zakonodатели*). He compared these “church-constituent acts” to liturgical assemblies in which the entire

122 Ibid., 30.

123 Ibid., 20.

124 Ibid., 39.

125 Ibid., 45.

126 Ibid., 77.

127 Ibid., 71.

church participated.¹²⁸ Zaozerskii's promotion of lay participation in administrative church life resulted in Ilya Berdnikov critically dubbing him the "inspirer of the revivalists."¹²⁹

This brief overview of some of Russia's "new canonist" pioneers illustrates their diversity of thought—not only concerning the sources, meaning, pliancy, permanence, and authority of the norms governing church life, but also with respect to decision-making in the church and church-state relations. Such diversity typified Orthodox Christian thinking on most topics at the time. In 1904, in a term paper on "The Main Trends in Russian Scholarship on Canon Law," a student at St. Petersburg Theological Academy, Viktor Vvedenskii, noted that canonists in Russia could not be grouped according to "schools" of thought. He doubted whether such schools would form until the field produced more generational "links" in the academic chain.¹³⁰ Changes in Russia's political landscape would soon challenge the very formation of such links in ways this young student could not have foreseen.

The canonists' council

In 1905–06, the legal relationship between state and church in Russia shifted dramatically—and permanently—as a result of what one juridically trained canonist called the "crumbling" of the existing state order.¹³¹ With increasing civil unrest and a growing political liberation movement, Emperor Nicholas II (r. 1894–1917) established an elected assembly—the State Duma. Moving toward a constitutional monarchy, he decreed that "no law shall take effect without the State Duma's confirmation," a provision bolstered in the 1906 February Manifesto on the reorganization of the State Council.¹³² Yet, at the same time, the accompanying 1906 revisions to Russia's Fundamental Laws contained no amendments regarding the juridical standing of the Orthodox Church. If, according to Russia's Petrine-inspired church law prior to 1905, "the emperor was the highest protector [*zashchitnik*] and preserver [*kbranitel'*] of Orthodoxy in Russia," then, after 1905, that feature of imperial authority was essentially annulled. Consequently, the Orthodox Church remained juridically subject to an Orthodox emperor and now *also* subject to the Duma and State Council—elected parliamentary-type chambers with members representing an array of confessional affiliations or none at all. Given that these agencies held no historically based sacred authority comparable (at least in many believers' eyes) to the emperor's, this new legal arrange-

128 Zaozerskii, *Istoricheskoe obozrenie istochnikov*, 126–27.

129 I. Berdnikov, *Otkrytiia v oblasti tserkovnogo prava, sdelannye sovremennym tak nazyvaiemyim obnovlencheskim dvizheniem*, vyp. 1: *Smysl 13 Pravila Laodikiiskogo Sobora* (Kazan: Tsentral'naia tipografia, 1908), 5.

130 Vvedenskii, "Glavnye techenia," 9–10 (see note 22).

131 P. V. Verkhovskoi, *O neobkhodimosti izmenit' russkie osnovnye zakony v pol'zu zakonodatel'noi nezavisimosti Pravoslavnoi tserkvi* (Berlin, 1913), 9–10.

132 *Ibid.*, 11.

ment threatened the perceived canonical integrity of the church in unprecedented ways.¹³³

Regardless of how canonists greeted Nicholas II's reforms as a whole, in terms of the legal standing and interests of the Orthodox Church, they were left disoriented.¹³⁴ Nikolai Kuznetsov spoke for many Orthodox believers when he noted that the reforms of 1905–06 were formulated as if “no Orthodox Church exists in Russia, with which until this point the State had been closely tied.”¹³⁵ According to Pavel Verkhovskoi, the new legislation only further shackled Orthodoxy to the state, reinforcing public perception of the Orthodox Church as nothing but a state church. The church's self-governance, Verkhovskoi insisted, depended on legal institutional autonomy, even if achieved via a “coup d'état.”¹³⁶ Only then could the church embark on sweeping reforms enabling it to meet modernity's challenges, including what some canonists saw as the inevitable separation of the state from “religion” and the legal parity of all faiths.¹³⁷ Discourse among canonists and much of Russia's broader educated society shifted rapidly from “church law” to “canon law” or “canonicity” (*kanonichnost'*).¹³⁸ This shift did not signal Orthodoxy's institutional atrophy; rather, it testified to the awakening of an Orthodox legal consciousness and a growing awareness among Orthodox believers of the need for self-definition as a church independent from the state.

In response to public pressure, Nicholas II granted the Holy Synod permission to begin deliberations for a future All-Russia church council to oversee long-awaited reforms to ensure the vitality and integrity of Orthodoxy in the modern age.¹³⁹ Between March and December 1906, some forty-nine clergy and laymen (the latter constituting the majority) met as a Pre-Conciliar Commission (*Predsobornoe prisutstvie*) to draft a plan for the organization of a church council and various reform proposals. For success, reforms had to enjoy wide acceptance as canonical and, hence, authentically Orthodox. The commission, therefore, was by definition an ecclesial one; yet significantly, five of the eight participating canonists were university law professors who were now being asked to think in a theological environment, the conceptual working premises of which they often

133 Vladimir Rozhkov, *Tserkovnye voprosy v Gosudarstvennoi Dume* (Moscow: Krutitskoe podvor'ce, 2004); *Zhurnaly i protokoly* (see note 47), 1:346.

134 For a review of the mixed motives behind various church officials' response to the Manifesto of 1905 and related decrees, see N. Zaozerskii, “O printsipe religioznoi svobody,” *Bogoslovskii vestnik*, 1908, no. 3 (March): 506–16.

135 *Zhurnaly i protokoly*, 1:363–64.

136 Verkhovskoi, *O neobkhodimosti*, 14

137 *Zhurnaly i protokoly*, 1:347.

138 Following 1906, for instance, during discussions of parish reform, state officials sometimes resorted to the language of “canonicity” in their evaluation of proposals. See A. L. Beglov, “Pravoslavnyi prikhod Rossiiskoi imperii na rubezhe XIX–XX vv: sostoianie, diskussii, reformy” (dokt. diss., Rossiiskaia akademiia nauk, Moscow, 2019), 765–67.

139 See Chapter 1 of this volume for further discussion of the making of the council. The All-Russian Council of Moscow of 1917–18 opened on August 15, 1917.

worked to bracket in their professional capacities.¹⁴⁰ In addition, two practicing jurists—Nikolai Kuznetsov and Aleksandr Papkov—emerged as prolific, progressive canonists in their own right, whose contribution to the commission’s deliberations were among the most influential and memorable.

To a large extent, the Pre-Conciliar Commission may be termed “the canonists’ council.” The commission merits the moniker not because the eight participating professional canonists contributed to quick confirmation of proposals (they did not), nor because the canonists spoke more than other members of the commission (they did), but because canons—their definition, interpretation, and authority—dominated the discussion of virtually every topic.¹⁴¹ While the canonists were trained specialists on these topics, the commission’s other vocal participants—theological academy professors of church history or patristics, parish priests, and active laymen—also spoke from their own authoritative, often experiential, perspectives.¹⁴² Indeed, given the unprecedented nature of the commission’s mandate and the rapidly evolving sociopolitical context, it is not surprising that virtually each participant considered himself a canonist to some extent. Arguably, then, the professional canonists’ greatest contribution was to serve as catalysts for the articulation of the diversity—and divisions—brewing in modern Orthodox ecclesial legal consciousness.

A dissenting opinion (“Otdel’noe mnenie”) produced by members of the Pre-Conciliar Commission on the composition of the anticipated church council highlighted the existing fault lines in Orthodox ecclesial legal consciousness. It also typified the criticism which some (though not all) canonists elicited from fellow believers with respect to the function and meaning of ancient canonical rules in contemporary church life. Noting the recently “awakened ecclesial self-consciousness” among Russia’s believers, the dissenting opinion argued for an increased role for laity, criticizing the prevailing differentiation between the episcopate and the rest of the church’s members as alien to the Orthodox understanding of the church as the body of Christ.¹⁴³

140 The academic canonists present included Aleksandr Almazov, Timofei Barsov, Ilya Berdnikov, Mikhail Gorchakov, Mikhail Krasnozhen, Mikhail Ostroumov, Nikolai Suvorov, and Nikolai Zaozerskii. The practicing jurists included Nikolai Kuznetsov and A. A. Papkov (1853–1920), the latter a government official, one-time governor of Finland, and active Orthodox layman. Though a practicing attorney in 1906, in 1910 Kuznetsov replaced Zaozerskii as professor of church law at Moscow Theological Academy, a position he held until 1913.

141 It is noteworthy that canonists were the only lay academics invited from universities.

142 Among the non-juridically trained laymen who actively participated in the discussions, the most vocal was N. P. Aksakov (1848–1909), a Russian religious thinker and theologian who received his doctorate in philosophy from the University of Giessen in Germany in 1868. He subsequently published extensively on issues related to Orthodox canon law. See, for example, *Kanon i svoboda* (St. Petersburg: Tip. Merkusheva, 1905). For an overview of Aksakov’s thought, see N. Antonov, *Nikolai Petrovich Aksakov i ego religiozno-obshchestvennoe mirosozertsanie* (St. Petersburg: Tip. M. Aleksandrova, 1912).

143 “Otdel’noe mnenie men’shinstva chlenov I otdela vysochaishe uchrezhdennogo pri Sviateishem Sinode Prisutstviia po voprosu o ‘sostave Sobora,’” *Zhurnaly i protokoly*, 1:641–51.

The authors of the dissenting opinion based their views on an ecclesial legal consciousness that identified the canonical foundation of church life in spiritual terms. From their perspective, canon law derived from a higher, unattainable living principle, an ideal inspired by the Holy Spirit which could never be fully realized; “it only sought out the best [already] existing forms for its expression.”¹⁴⁴ Accordingly, while the living principles behind them remained eternal, the outward language and forms of the canons by definition were dynamic in light of the ever-evolving movement of human life.

Such a view of church/canon law was further informed by a vision of the church as a spiritual organism, the consciousness of which sparked to life on the day of Pentecost and became the “foundation of Church Tradition.”¹⁴⁵ According to this view, the apostolic church, unified in heart and mind, drafted the earliest rules governing the Christian community. It did so through councils, not only under the perceived inspiration of the Holy Spirit but in an environment without juridically hierarchical regulation, with “neither superiors nor subordinates in the legal sense of this term.”¹⁴⁶ As the authors of the dissenting opinion reasoned, because two centuries of the Petrine system had all but eliminated believers’ conciliar sensibilities, the relationality presupposed by conciliarism (*sobornost’*) required restoration.¹⁴⁷ Given current realities, the authors maintained that bishops could no longer be presumed to represent the voice of the laity. Broad trust in the future council’s decisions could be ensured only if those decisions were a “genuine expression of the voice of the entire Church.” To this end, the council’s participants would have to include believers across all ecclesial ranks and socioeconomic classes.¹⁴⁸

Above all, the dissenting opinion’s authors criticized some canonists’ tendency to speak of the church primarily as a juridical institution rather than as a theologically defined living organism. Some canonists’ proposals regarding the future council, the authors claimed, often resembled plans for “the convocation of a state parliament more than a gathering of believers in Christ.”¹⁴⁹ The dissenting opinion, responding to existential challenges, articulated an understanding of the church primarily as a community (in contrast to an institution) and assigned ecclesial discernment a critical role in the divine-human synergism implied by the formation and interpretation of canons. Although no canonists were among the dissenting opinion’s authors, the statement reflected views widely shared by canonists such as Nikolai Zaozerskii and, especially, Nikolai Kuznetsov and Aleksandr Papkov. Kuznetsov in particular penned numerous lengthy statements during the commission’s proceedings in support of these views from his perspective as a canonist and practicing lawyer.

144 Ibid., 1:641.

145 Ibid., 1:642.

146 Ibid., 1:644.

147 Ibid., 1:643.

148 Ibid., 1:648.

149 Ibid., 1:645.

The identity of “some of the canonists” to whom the dissenting opinion refers remains unclear. Nevertheless, viewing the dissenting opinion primarily as a personal affront, Ilya Berdnikov replied formally in his own “Special Opinion,” leveling three main criticisms.¹⁵⁰ First, he maintained that the dissenting opinion’s definition of the “foundations of canon law” was based not on recognized Orthodox teachings but on something “completely subjective.” The dissenting opinion’s discussion of the church’s canonical foundations was so vague that “even Solomon would not have been able to decipher them.”¹⁵¹ Second, maintaining that the dissenting opinion’s overall ethos reflected the views of Rudolf Sohm, Berdnikov criticized the ease with which its authors dismissed existing canons on the basis of perceived historical relativism. Such an approach to existing canons overlooked the Orthodox Church’s generally accepted teaching “obligat[ing] its members to follow canons issued by ecumenical and local councils.”¹⁵² Third, in contrast to the dissenting opinion’s view of the laity as the source of episcopal juridical authority, Berdnikov located that source in the consecration to episcopal office (*chin*). The dissenting opinion’s emphasis on the primacy of the laity was “a distortion of the Church’s natural order.”¹⁵³

This exchange of opinions during the first weeks of the commission’s sessions defined some of the competing principles characterizing Orthodox legal consciousness among professional canonists at this critical junction in the history of Russia’s Orthodox Church. Several interrelated issues stood out for their tendency to elicit deep disagreement at a time when consensus seemed vital. First, canonists were not unanimous in their understanding of the nature of church/canon law, especially with regard to its permanence: were existing church laws and canons “a collection of [the] active laws in the church” or simply a “helpful archive” for consultation, a collection not exhaustive of all possible situations human life can pose (the latter view suggesting that, in new circumstances, new canons or ecclesial norms could arise)?¹⁵⁴

Second, canonists disagreed over the guiding historical referent(s) of Orthodoxy’s canonical tradition—apostolic times, Byzantium, or both. This disagreement was often linked with a third issue: the working approach to the church as a community or as an institution. Suvorov was reluctant to consider the internal organization of the early apostolic church a canonical norm.¹⁵⁵ Berdnikov did not regard the Apostolic Council (Acts 15) as “ecumenical” and maintained that the term “canonical,” in common contemporary church usage, referred to

150 “Osoboe mnenie professora Kazanskoi dukhovnoi akademii Il’i Berdnikova po povodu otdel’nogo mneniia men’shinstva chlenov I otdela Vysochaishe uchrezhdennogo pri Sviatishem Sinode Prisutstviia po voprosu o sostave Sobora,” *Zhurnaly i protokoly*, 1:142–51.

151 *Ibid.*, 1:143.

152 *Ibid.*, 1:143–46.

153 *Ibid.*, 1:146.

154 *Zhurnaly i protokoly*, 1:168.

155 *Ibid.*, 1:36, 223.

rules explicitly formulated during the imperial Byzantine period.¹⁵⁶ In contrast, Zaozerskii, who tended to conceptualize “church” in terms of community, disagreed, arguing that to bracket apostolic experiences when considering church/canon law would be “unecclisial,” “unorthodox,” and “unchristian.”¹⁵⁷

Finally, canonists disagreed over the ordering center of ecclesial life, hence over notions of authority. Most professional canonists, especially those in university faculties of law, were used to thinking about the church in institutional terms, focusing on relations between church and state, emperors, patriarchs, and church hierarchy. At this historical moment, the notion of popular sovereignty entered the fray, and the laity became a significant source of canonical preoccupation, especially in light of the traditional hierarchical ordering. Gorchakov reflected this internal conflict even within himself, mulling over whether laity should participate in the future council with only a “consultative voice” or with a “deciding voice” along with the hierarchy. On one hand, he adhered to the view of a “fixed” hierarchical ordering of the church, citing universal acceptance among all local Orthodox Churches and the oath every bishop takes upon consecration to uphold historic canons (not limited to those of the seven ecumenical councils).¹⁵⁸ On the other hand, he also maintained that the church was a community, and he advocated for the participation of parish priests and laity both in the future council (with a consultative voice) and on all levels of church administration, arguing that canons, unlike dogmas, pertain to the mundane level of church life shared by all.¹⁵⁹

The Pre-Conciliar Commission’s discussions of church reforms included periodic prescient observations by its members that they were witnessing the initial stages of a momentous “rupture” in the nine-hundred-year history of Russia: namely, the state’s withdrawal from its relationship with Orthodoxy as the state religion, leaving the church “on a par” with other confessions.¹⁶⁰ Even if most commission members were critical of the Petrine system that shaped Orthodox church life as they had known it, and even though they were well-versed in European church-state relations and the history of canon law, the multidimensional challenges of reenvisioning, reforming, and reorganizing Russia’s Orthodox Church in the face of early twentieth-century political, social, and cultural demands drew all Orthodox believers into canonically uncharted territory. This uncertain situation, complicated further by the Soviet experiment, continues to the present day.

156 *Ibid.*, 1:36, 143.

157 *Ibid.*, 1:33.

158 *Ibid.*, 2:323.

159 Of the canonists present, only Gorchakov and Kuznetsov voted in support of a synod consisting of bishops, clergy, and laity, which in the newly reformed church would serve as the central governing body between meetings of the All-Russian Council. The four other canonists—Almazov, Berdnikov, Krasnozhen, and Ostroumov—voted for a synod consisting of hierarchs only. *Zhurnaly i protokoly*, 2:501.

160 *Ibid.*, 1:347.