

# Beyond Autocephaly: Models of the Regional Church in the Canonical Tradition

By David Heith-Stade\*

## Introduction

In most textbooks and encyclopedias, the autocephaly and autonomy are used as self-evident categories to classify the Orthodox Churches. It has also become a convention to classify the four ancient patriarchates of Constantinople, Alexandria, Antioch, and Jerusalem as autocephalous churches grouped together with the Church of Cyprus and the various newer post-Byzantine autocephalous churches. The importance attributed to the topics of autocephaly and autonomy can also be seen in the pre-synodal process leading to the Council of Crete in 2016 although the issue of autocephaly was removed from the agenda in the end<sup>1</sup>; however, events in Ukraine and Skopje after the council show that the topic continues to dominate contemporary Orthodox theology, canon law, and church politics.

Despite autocephaly being treated as a self-evident concept in contemporary Orthodoxy, the word is not used in a single canon and among the classic canonists only Balsamon uses it once to describe regional churches that are except from the patriarchal jurisdiction of the pentarchy, namely Cyprus, Nea Justiniana, and Georgia<sup>2</sup>. Not even the

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1. Eva Synek, *Das „Heilige und Grosse Konzil“ von Kreta*, Verlag Plöchl, Freistadt 2017, pp. 15-29, 89-93.

2. G. A. Ralles and M. Potles (eds.), *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων*, vol. 2,

major synod of the four ancient patriarchates in 1590, which recognized the creation of the Moscow Patriarchate, used the term autocephaly. Instead, the synod only states in its tomos that Archbishop Iov of Moscow is granted the dignity and honor of a patriarch and the fifth place among the patriarchs, and that his successors will be elected by the synod of Moscow and retain the title of patriarch<sup>3</sup>. Autocephaly is not really an important unit of regional church organization during this period. What we have is the tetrarchy of Constantinople, Alexandria, Antioch, and Jerusalem and other churches that are exempted from the jurisdiction of the tetrarchy. This becomes clear when we look at the reply of the Ecumenical Patriarch dated to 1718 to the proposal for union by the Anglican Non-Jurors<sup>4</sup>:

Our pious Church of Christ is founded on four pillars, namely the four patriarchs, and remains firm and immovable, the first place in the order [of patriarchs] is held by the patriarch of Constantinople, the second by the pope of Alexandria, the third by Antioch, and the fourth by Jerusalem. Joined with these and supporting [the Church] are also the autocephalous archbishops – the archbishop of Moscow, who is also the patriarch of all Russia, the two archbishops of Iberia in Asia, who are peculiarly called catholicoses by the Georgians, and furthermore the archbishop of Ohrid, also called Justiniana Prima, the archbishop of Cyprus and Nea Justiniana, and the archbishop of Peć, and subject to them are innumerable bishops and metropolitans, who until this day unanimously keep and firmly preserve the correct dogmas of our Eastern, Catholic, and Apostolic Church, unaltered and undiminished, without any innovations or corruptions<sup>5</sup>.

This reply dated from 1718, before the institution of the Most Holy Governing Synod in Russia, reflects the post-Byzantine reception of classic Byzantine ecclesiology according to which the universal church is

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Athens 1852, pp. 171-172.

3. W. Regel (ed.), *Analecta Byzantino-Russica*, Tipografiya imperatorskoy akademii nauk, Petersburg 1891, pp. 85-91.

4. G. Williams, *The Orthodox Church of the East in the Eighteenth Century: Being the Correspondence Between the Eastern Patriarchs and the Nonjuring Bishops with an Introduction on Various Projects of Reunion Between the Eastern Church and the Anglican Communion*, Rivingtons, London, Oxford & Cambridge 1868.

5. G. D. Mansi, Jean B. Martin, and L. Petit (eds.), *Sacrorum conciliorum nova et amplissima collectio*, vol. 37, H. Welter, Paris 1905, pp. 407-409 [My translation].

organized into the pentarchy (later tetrarchy) of the ancient patriarchates established by the ecumenical councils and autocephalous archbishoprics (some with patriarchal titles) exempted from the jurisdiction of the pentarchy. However, the combined effects of etatism, imperialism, and nationalism would transform the universal organization of the Orthodox Churches into what we have today.

In 1721 Tsar Peter the Great replaced the office of patriarch with the Most Holy Governing Synod of the Russian Orthodox Church<sup>6</sup>. In 1766 the Ecumenical Patriarchate abolished the Serbian Patriarchate of Peć and in the following year the Bulgarian Patriarchate of Ohrid (see below). In 1811 the Russian government abolished the Catholicate of Georgia after the annexation<sup>7</sup>. In 1833 the Bavarian regency unilaterally proclaimed the autocephaly of the Orthodox Church of the Kingdom of Greece. In 1850 the Ecumenical Patriarchate issued the first modern tomos of autocephaly recognizing the Orthodox Church of Greece. In 1852 the Greek government unilaterally modified the stipulations of the *Τόμος* through the constitutive law on the Church of Greece<sup>8</sup>. In 1872 the Bulgarian Exarchate unilaterally proclaimed its independence from the Ecumenical Patriarchate in the Ottoman Empire and a synod convened in Constantinople responded by excommunicating the Bulgarians for ethnophyletism although the Slavic and Romanian churches continued to be in communion with the Bulgarians<sup>9</sup>. In 1879 and 1885 the Ecumenical Patriarchate also issued *Τόμους* of autocephaly for the Kingdoms of Serbia and Romania. In the 1890s, the famous Habsburg canonist Nikodim Milaš classified the ancient patriarchates as autocephalous churches among the other autocephalous churches in his influential handbook of Orthodox canon law<sup>10</sup>. In less

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6. Cf. J. Cracraft, *The Church Reform of Peter the Great*, Stanford University Press, Stanford, California 1971.

7. Cf. M. Tarchnišvili, „Die Entstehung und Entwicklung der kirchlichen Autokephalie Georgiens“, *Kyrios* 5 (1940-1941), pp. 177-193 at 191-192.

8. Cf. Ch. A. Frazee, *The Orthodox Church and Independent Greece 1821-1852*, Cambridge University Press, Cambridge 1969.

9. Cf. Ü. Eser, *Nationalist Schism in the Empire: Tanzimat Reforms and the Establishment of the Bulgarian Exarchate*, Libra Kitap, Istanbul 2019.

10. Cf. N. Milaš, *Das Kirchenrecht der morgenländischen Kirche*, Pacher und Kisić, Mostar 1905.

than two hundred years the universal organization of the communion of the Orthodox Churches has been completely transformed!

I will use the Orthodox Churches in the Habsburg Monarchy as a case study of the development of modern Orthodox church organization. The Habsburg Monarchy, characterized by legal pluralism and political pragmatism, was a microcosm in which we can observe almost all canonical challenges of the modern Orthodox Churches. The Habsburg Monarchy also directly influenced the reunited Orthodox Churches in Serbia and Romania and indirectly global Orthodoxy through canonists such as Andrei Șaguna<sup>11</sup>, Josef von Zhismann<sup>12</sup>, and Nikodim Milaš<sup>13</sup> as well as the Faculty of Orthodox Theology in Czernowitz<sup>14</sup> among whose alumni we find the famous Bulgarian theologian Stefan Zankow.

Before the revolutions of 1848 there was a single Orthodox jurisdiction in the Habsburg Monarchy composed of the Metropolitanate of Karlowitz and three exempted eparchies of Bukovina, Transylvania, and Dalmatia, which were in various ways subjected to the jurisdiction of Karlowitz only in dogmatic and spiritual matters. When the Habsburg Monarchy came to an end in 1918, it had four separate Orthodox church structures with distinct organizations and systems of church governance: (a) the Serbian Orthodox Metropolitanate of Karlowitz headed by the Serbian Patriarch; (b) the Romanian Orthodox Metropolitanate of Transylvania; (c) the ethnically mixed Orthodox Metropolitanate of Bukovina and Dalmatia; and (d) the Serbian Orthodox Church in Bosnia and Herzegovina. There were also several Greek Orthodox parishes which had largely an exempted status<sup>15</sup>.

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11. Cf. J. Schneider, *Der Hermanstädter Metropolit Andrei von Șaguna: Reform und Erneuerung der orthodoxen Kirche in Siebenbürgen und Ungarn nach 1848*, Böhlau, Wien 2005.

12. Cf. Th. M. Németh, *Josef von Zhishman (1820-1894) und die Orthodoxie in der Donaumonarchie*, Plöchl, Freistadt 2012.

13. Cf. Németh, *Josef von Zhishman*, pp. 245-251.

14. Cf. Ioan Moga, „Orthodoxe Theologie begegnet Moderne: Die Czernowitzer akademische Theologie um das Jahr 1900“, *Orthodoxes Forum* 35 (2021), pp. 125-139.

15. Cf. Anna Ransmayr, *Untertanen des Sultans oder des Kaisers: Struktur und Organisationsformen der beiden Wiener griechischen Gemeinden von den Anfängen im 18. Jahrhundert bis 1918*, Vienna University Press, Göttingen 2018.

## The First Great Migration of the Serbs

Although there was an Orthodox presence in Hungary, Croatia, and Slovenia before the 17th century, the real history of Orthodoxy in the Habsburg Monarchy begins towards the end of the 17th century with the first Great Migration of Serbs and the Habsburg annexation of Transylvania in 1690.

Emperor Leopold I issued in 1690 a call to the Christian peoples of the Balkans to rebel against the Ottomans and join the Habsburg forces in the Great Turkish War (1683-1699). The Serbs under the leadership of Patriarch Arsenije III Crnojević of Peć (1633-1706)<sup>16</sup> responded to this call and were guaranteed among other things religious freedom, the customary rights of the patriarch, and political autonomy under their patriarch; however, in the following year the war turned against the Habsburg. The patriarch and many Serbs were forced to flee with the retreating army. The Habsburg government viewed this as a temporary setback and the emperor issued a new set of privileges in 1691 to help the Serbian refugees to temporarily settle on Habsburg territory until Serbia could be conquered from the Ottomans.

In 1695 a privilege was issued that organized the Serbian Metropolitanate in Hungary, Croatia, and Slavonia. The patriarch was recognized as the archbishop of the new metropolitanate which apart from the archeparchy had seven other eparchies<sup>17</sup>. Patriarch Arsenije III resided in Szentendre and his immediate successors resided in Krušedol Monastery. The privileges stated that the archbishop should be elected by a national congress composed of representatives from the clergy, military, and civilians. The bishops were elected by the synod.

In 1696 the Ecumenical Patriarchate appointed the Greek Bishop Kallinikos as new patriarch of Peć although his successors were Serbs. In the Habsburg Monarchy Isaija Đaković succeeded Patriarch Arsenije III as archbishop in 1708 and was not allowed to retain the title of

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16. Al. Hudal, *Die serbisch-orthodoxe Nationalkirche*. Ulrich Mosers, Graz und Leipzig 1922, pp. 38-49; J. H. Schwicker, *Die Vereinigung der Serbischen Metropolen von Belgrad und Carlowitz im Jahre 1731*, Carl Gerhold's Sohn, Wien 1881.

17. Hudal, *Die serbisch-orthodoxe Nationalkirche*, p. 41.

patriarch since this would scandalize the Roman Catholic episcopacy. The Hungarian metropolitanate remained under the jurisdiction of the Patriarchate of Peć and its archbishops made an oath of canonical obedience to the patriarch although the government discussed in 1734 the possibility of reinstating the patriarchal title to avoid obedience to a foreign hierarchy<sup>18</sup>.

In 1718 the Habsburg Monarchy managed to gain the Kingdom of Serbia as a royal domain through the treaty of Passarowitz (Požarevac) and three new Orthodox eparchies came under Habsburg rule. In 1720 the government reorganized the Orthodox Church into two separate metropolitanates: the Metropolitanate of Hungary, Croatia, and Slovenia composed of seven eparchies and the Metropolitanate of Belgrade composed of five eparchies. The Romanian eparchy of Rimnik belonged nominally to the Metropolitanate of Belgrade but was located outside the Kingdom of Serbia and had a special status. In accordance with local custom, the nobility and clergy nominated three candidates for the episcopal see from whom the crown made its appointment, and the bishop of Rimnik was otherwise completely independent in the governance of his eparchy<sup>19</sup>. Rimnik was the first example of an exempted eparchy under Habsburg rule.

The Serbs were, however, not happy to be divided into two separate jurisdictions in the empire and actively worked to have the two metropolitanates joined into one and in 1731 the government agreed to merging the two metropolitanates when Vikentije II Jovanović (1731-1737) became archbishop of Belgrade-Hungary with Belgrade as his residence<sup>20</sup>.

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18. Hudal, *Die serbisch-orthodoxe Nationalkirche*, pp. 41-42; J. H. Schwicker, *Politische Geschichte der Serben in Ungarn*, Ludwig Aigner, Budapest 1880, p. 74.

19. Schwicker, *Die Vereinigung der Serbischen Metropolien*, pp. 110-120.

20. Schwicker, *Die Vereinigung der Serbischen Metropolien*, *op.cit.*

## The Second Great Migration of the Serbs

In 1737 the see of Belgrade-Hungary was vacant, and the Habsburgs was once again at war with the Ottoman Empire. Patriarch Arsenije IV Jovanović Šakabenta of Peć (1725-1748) allied himself with the Habsburg and the emperor appointed him administrator of the vacant see of Belgrade-Hungary. From this time onward, the archbishops in the Habsburg Empire stopped making an oath of canonical obedience to the Patriarch of Peć<sup>21</sup>.

However, the war turned against the Habsburgs, and they had to cede the Serbia and Rimnik to the Ottoman Empire through the treaty of Belgarde in 1739. Once more the Serbs had to flee to Habsburg territory. This was the Second Great Migration of the Serbs. The Serbs were put under military rule and settled along the military border to the Ottoman Empire. They were now part of the Habsburg defense strategy. In 1741 Maria Theresia confirmed Patriarch Arsenije IV as Serbian archbishop with residence in Karlowitz. In 1748 he was succeeded by Isaija II Antonović (1748-1749) who was not allowed to retain the patriarchal title.

Inside the Ottoman Empire, the Ecumenical Patriarchate began to directly appoint the patriarchs of Peć. The Orthodox Church in the Ottoman Empire formed a part of the tax system<sup>22</sup> and the Ecumenical Patriarchate in consultation with the sultan had to abolish the Patriarchate of Peć in 1766 since most of the taxable population had emigrated to the Habsburg Empire. Through the abolition of the patriarchate, the church structures outside the Ottoman Empire in Montenegro and the Habsburg Empire became *de facto* autocephalous while the church structures inside the empire became a part of the Ecumenical Patriarchate.

In 1767 the Patriarchate of Ohrid was also abolished and subjected to the Ecumenical Patriarchate. In both cases the respective archbishop-

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21. Schwicker, *Politische Geschichte der Serben in Ungarn*, p. 75.

22. H. İnalcık, *Essays in Ottoman History*, Eren, Istanbul 1998, pp. 195-219; Tom Papademetriou, *Render unto the Sultan: Power, Authority, and the Greek Orthodox Church in the early Ottoman Centuries*, Oxford University Press, Oxford 2015; H. Çolak and Elif Bayraktar-Tellan, *The Orthodox Church as an Ottoman Institution: A Study of Early Modern Patriarchal Berats*, Isis Press, Istanbul 2019.

patriarch, who had been appointed by the Ecumenical Patriarchate, petitioned the government to be abolished and incorporated into the Ecumenical Patriarchate since they could not collect the required amount of taxes<sup>23</sup>. The sultan approved these petitions and in 1767 the Ecumenical Patriarchate issued a document arguing that the sultan as the successor of the Byzantine emperors had the right to issue decrees on church organization<sup>24</sup>.

## Transylvania

Before continuing with the 19th century, I must turn to Transylvania. Transylvania was a feudal society in which the ruling class was composed of four denominations: Calvinism, Lutheranism, Unitarianism, and Roman Catholicism. Most of the population were Orthodox Romanian serfs whose denomination was tolerated. Since the Reformation, Transylvania had been under Protestant rulers, who put restrictions on the Roman Catholic Church and attempted to reform the Orthodox Church<sup>25</sup>. With Habsburg rule the restrictions on the Roman Catholic Church were lifted and a process of recatholization began.

Habsburg rule also included the promotion of Uniatism among the Orthodox which resulted in Archbishop Atanasie Anghel (d. 1713) accepting union with Rome in 1700. From the perspective of the government the whole Orthodox Church in Transylvania had become uniate although there was resistance to the union among clergy and laity which led to civil unrest. In 1761 the government acknowledged that a full union had not been achieved and placed the Orthodox who rejected the union in Transylvania under the jurisdiction of the

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23. G. D. Mansi, J.-B. Martin, and L. Petit (eds.), *Sacrorum conciliorum nova et amplissima collectio*, vol. 38, H. Welter, Paris 1907, pp. 863-886, 897-922.

24. Mansi, *Sacrorum conciliorum*, vol. 38, pp. 913-918.

25. E. Chr. Suttner, *Staaten und Kirchen in der Völkerwelt des östlichen Europa: Entwicklungen der Neuzeit*, Academic Press Fribourg, Freiburg, Schweiz 2007, pp. 58-63, 95-98, 372-409; M. Păcurariu, *Geschichte der Rumänischen Orthodoxen Kirche*, Lehrstuhl für Geschichte und Theologie des christlichen Ostens, Erlangen 1994, pp. 266-271, 357-381.



Serbian Orthodox bishop of Buda, Dionisije Novaković<sup>26</sup>; however, the Romanians of Transylvania were otherwise excluded from the Serbian privileges.

The situation improved under Emperor Josef II (1765-1790), whose reign was characterized by a reception of the Enlightenment which included religious tolerance, and in 1781 he issued the famous decree on the toleration of non-Catholics. In 1783 the Serbian Metropolitan of Karlowitz, Mojsije II Putnik (1728-1790), convinced the government to create an exempted eparchy for Transylvania with Hermannstadt as its see<sup>27</sup>. The bishop of Transylvania was directly appointed by the crown and only in spiritual and dogmatic matters subject to the synod of Karlowitz. The first two bishops of Transylvania were Serbs, but in 1810 the government allowed a protopresbyterial synod to nominate three candidates for the eparchy, which led to the appointment of Vasile Moga (1774-1845) in 1811 as the first Romanian bishop of Transylvania since the union<sup>28</sup>. He was succeeded by Andrei Șaguna (1808-1873), who wanted to establish a separate Romanian metropolitanate<sup>29</sup>.

## The Revolution of 1848

In the year of 1848 a wave of revolutions swept across Europe and the Hungarians rebelled against the Habsburg dynasty; however, the Serbs of Hungary under the leadership of Archbishop Josif Rajačić (1785-1861) of Karlowitz and the Romanians of Transylvania under the leadership of Bishop Andrei Șaguna of Hermannstadt (Sibiu) largely remained loyal to the Habsburg dynasty. After the Hungarian rebellion had been quelled, the loyalty of the Serbs and Romanian was rewarded. The Serbs were given their own autonomous province, Serbian Vojvodina and Temeswar Banat (1849-1860), and the Serbian archbishop was granted the title of Serbian patriarch by the emperor. The Romanians

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26. Păcurariu, *Geschichte der Rumänischen Orthodoxen Kirche*, pp. 373-384.

27. Păcurariu, *Geschichte der Rumänischen Orthodoxen Kirche*, pp. 381-383.

28. Păcurariu, *Geschichte der Rumänischen Orthodoxen Kirche*, pp. 454-455.

29. Schneider, *Der Hermanstädter Metropolit Andrei von Șaguna*, *op.cit.*

were granted their own separate metropolitanate and Bishop Andrei Țaguna was elevated to the rank of metropolitan.

This was the era of neo-absolutism which lasted until the Austro-Hungarian Compromise of 1867 which established the dual monarchy characterized by constitutionalism and parliamentarism. This era of radical political and ecclesial changes provoked a refined debate and seminal scholarship among bishops, canonists, scholars, and politicians about the constitutional principles of the Orthodox Church. This included themes such as the nature of patriarchates, the nature of metropolitanates, autocephaly, synodality, the appointment of primates, the appointment of bishops, nationalism, the administration of church property, and the participation of the laity in church governance. Some of the leading figures in this debate were Bishop Eugen Hackmann (1793-1873) of Bukovina, Bishop Andrei Țaguna of Transylvania, and Emilijan Radić (1857-1907). Two Roman Catholic canonists, Josef von Zhismann (1820-1894), who was the government's adviser on Eastern church issues, and Friedrich Heinrich Vering (1833-1896) also contributed as scholars. Theoklitos Pharmakidis (1784-1860) also influenced the debate since Aloys Pichler (1833-1874) had extensively described Pharmakidis' arguments in favor of Greek autocephaly in his *Geschichte der Kirchlichen Trennung zwischen dem Orient und Occident* (1864-1865), which was a very influential handbook of church history among Orthodox theologians in the Habsburg Monarchy. Much of this debate is also reflected in the famous textbook on Orthodox canon law by Bishop Nikodim Milaš (1845-1915) of Dalmatia.

The crown acted as the arbitrator between the various parties in the Orthodox Church. That the crown had the last say in church organization at the time was nothing odd. Western church law attributed to the crown a right of supreme oversight in religious matters (*ius supremæ inspectionis*)<sup>30</sup> and in the Ottoman Empire the Ecumenical Patriarchate had officially recognized the sultan's right, as the successor of the Byzantine emperors, to issue decrees on church organization when

30. Fr. Kunstmann, *Grundzüge eines vergleichenden Kirchenrechtes der christlichen Confessionen*, Ch. Kaiser, München 1867, pp. 64-95.

abolishing the Patriarchate of Peć in 1766 and the Patriarchate of Ohrid in 1767<sup>31</sup>.

### The Canonical Argumentation of Bishop Şaguna

In 1849 Şaguna published a memorandum in which he first officially formulated the argument for an independent Romanian Metropolitanate<sup>32</sup>. The main line of his argument was historical. He tried to prove that there had been a real metropolitan with suffragan bishops in Transylvania since antiquity, but various historical factors had resulted in the disappearance of the suffragan bishops and long vacancies of the metropolitan see. He argued that this metropolitan had been directly subjected to the Ecumenical Patriarchate, but for practical reasons he had been ordained by the metropolitan of Târgovişte in Wallachia, who was the exarch of the Ecumenical Patriarchate. The metropolitanate of Transylvania had become vacant when Archbishop Atanasie Anghel became uniate and the Romanians in Transylvania were without a bishop until Emperor Joseph II (1741-1790) allowed a new bishop to be appointed in 1783. Furthermore, the Romanians in the Banat are refugees from Transylvania who joined the new eparchies of Arad, Temesvár, and Versec in Hungary. Finally, he acknowledged that the bishop of Bukovina has his own historical rights since he was originally a suffragan to the metropolitan of Iaşi in Moldavia, but since Bukovina came under Austrian rule the bishop became exempted from the jurisdiction of his former metropolitan. Şaguna thus petitioned the government to restore the autonomous Romanian Metropolitanate of Transylvania and subject to it the Romanian-dominated eparchies of Bukovina, Arad, Temesvár, and Versec. The arguments of this memorandum are based on an alleged historical right and an implicit national principle of church organization. Romanian nationalists also

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31. Mansi, *Sacrorum conciliorum*, vol. 38, pp. 913-918.

32. A. Şaguna, *Promemoria über das historische Recht der nationalen Kirchen-Authonomie der Romanen morgenländischen Kirche in den k. k. Kronländern der österreichischen Monarchie*, U. Klopff Senior und A. Eurich, Wien 1849.

publicly accused the Serbian hierarchy of Karlowitz of oppressing and discriminating their Romanian flock.

Later Șaguna tried to find a canonical foundation for the national principle. One of the first examples of this is a letter from 1850 to the governor of Transylvania in which he defends that he has referred to himself as the “Romanian diocesan bishop of the Eastern Church in Transylvania” instead of using the official term “Greek non-uniatic diocesan bishop”<sup>33</sup>. Șaguna invoked apostolic canon 34 which in the Latin and Romanian translation used the term “people” or “nation” to argue that ethnicity is a principle of Orthodox church organization: “The bishops of each nation must know who among them is the primate”. Șaguna is thus the real inventor of ethnophyletism and for the rest of his life, this remained his canonical justification of church nationalism. The government changed in the following years its official terminology and replaced the term “Greek non-uniatic” with “Greek Eastern”<sup>34</sup>. In another memorandum from 1850, Șaguna restated and expanded much of his previous arguments<sup>35</sup>. In an interesting passage, he states that the Orthodox Churches in the Habsburg Monarchy belongs, according to Orthodox canon law to the Ecumenical Patriarchate, so the government should allow the churches to appeal to Constantinople through the foreign ministry to settle the matter of church organization<sup>36</sup>.

### The Canonical Argumentation of Patriarch Rajačić

The Serbian Archbishop-Patriarch Josif Rajačić (1785-1861) of Karlowitz responded to Șaguna’s memorandum and Romanian nationalist polemics in an anonymous booklet from 1851<sup>37</sup>. He first argues that the Orthodox

33. Il. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, Tipografia Archidieceșane, Sibiu 1900, appendix: pp. 55-56.

34. M. Burckhard, *Taschenausgabe der österreichischen Gesetze*, 26. Band: *Gesetze und Verordnungen in Cultussachen*, 1. Antheilung. 3rd ed. k. u. k. Hof-Verlag, Wien 1895, p. 276.

35. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: pp. 73-87.

36. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: p. 76.

37. [J. Rajačić], *Antwort auf die Angriffe einiger Romanen und der Presse gegen die Einheit der*

Church is according to its nature composed of regional self-governing churches which were united into one imperial church by the ecumenical councils, which they recognize as their highest authority. Following the decline of the Byzantine empire and the conversions of various countries to Orthodoxy, new independent archbishops, metropolitans, and patriarchs were created with the consent of the four principal churches of Constantinople, Alexandria, Antioch, and Jerusalem. This follows a political principle since various states wanted to avoid foreign influences, and the latest example of this is the Kingdom of Greece (he was writing the year after the *tomos*).

He continues that the Romanians in Moldavia, Wallachia, Bessarabia, Rumelia, and Macedonia all had their separate independent hierarchies, whose metropolitans were exarchs of the Ecumenical Patriarchate, since they were never united in a single state; however, the titular metropolitan of Transylvania could not have been an independent metropolitan since there were never enough bishops there to constitute a synod that could elect and ordain a new metropolitan. Hence the titular metropolitan of Transylvania was a bishop subject to the metropolitan of Târgoviște.

He continues to argue that it is not the Serbs, but the Romanian uniates who have oppressed the Orthodox Romanians in Transylvania, and the sad state of the Orthodox Church in Transylvania is due to the mismanagement of Șaguna's predecessor, the Romanian Bishop Vasile Moga (1774-1845). (It should be noted that when Șaguna was appointed administrator of the vacant eparchy of Transylvania, he submitted a report to the government in which he noted the serious mismanagement under Moga<sup>38</sup>, but in the struggle for Romanian nationalism he was willing to cover up the faults of his predecessor).

Rajačić also points out that the synod of Karlowitz has elected Romanians as bishops of other eparchies and that Christ and the apostles had not founded an ethnic church but the one, holy, catholic, and apostolic church. The apostles themselves preached the Gospel to all

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*Hierarchie der morgenländischen katholischen orthodoxen Kirche und die serbische Nation in den k. k. österreichischen Staaten*, A. A. Wenedikt, Wien 1851.

38. Il. Pușcariu, *Mitropolitul Andreiu baron de Șaguna*, Editura Consistorului Mitropolitan, Sibiu 1909, pp. 471-473.

peoples regardless of their ethnicity or native language. It is also Serbian money that finances the church institutions from which Romanians profit, and the real reason for the lack of Romanian bishops is that educated Romanians do not want to become monks and hence there is not enough Romanian candidates for the episcopacy. Furthermore, if the Orthodox Church in the Habsburg Monarchy should be reorganized according to ethnicity also the small group of Greeks and Roma people would have the right to their own ethnic bishops. Finally, he argues that it is only through the unity of Karlowitz that the Orthodox Church can withstand Uniatism.

The debate continued in this vein and Șaguna continued to send memoranda to the government in which he argued for a separate Romanian metropolitanate, which should also be completely autonomous in relation to the Metropolitanate of Karlowitz. The political circumstance came to favor Șaguna, but the government did not want to act unilaterally, so in 1864 it tasked the synod of Karlowitz with the creation of the new metropolitanate<sup>39</sup>; however, the emperor emphasized that since the Orthodox Church in the empire is a self-governing church alongside the patriarchates and Eastern autocephalies its outward unity should be retained and there should be a way for the two metropolitanates to resolve common issues together. Șaguna replied to this wish of the emperor that there could be a general synod which was limited to dealing with issues of Creed, dogma, sacraments, and rites, but this synod should not be an instance of appeal in administrative and disciplinary issues<sup>40</sup>.

39. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: pp. 238-239.

40. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: pp. 244-246.

## The Canonical Argumentation of Bishop Hackmann

Now Bishop Eugen Hackmann (1793-1873)<sup>41</sup> of Bukovina intervened since he had no intention of becoming a suffragan bishop to Șaguna. In 1861 he had convoked an assembly of clergy, which issued a treatise entitled *The Wishes of the Orthodox Clergy in Bukovina* directed against Șaguna and arguing that Bukovina should be elevated to a separate metropolitanate. Șaguna responded immediately with a polemical treatise entitled *Anthorismos* in which he attacked Hackmann and the suggestions of the clergy assembly of Bukovina<sup>42</sup>.

In 1864 Hackmann sent an extensive memorandum to the members of the synod in which he restated the arguments from the clergy assembly and responded to the subsequent polemics of Șaguna<sup>43</sup>. Hackmann stated that there should be a distinction between administration and matters of faith and discipline. The Orthodox Church should be divided into three administratively independent metropolitanates of Karlowitz, Transylvania, and Bukovina. The metropolitanate of Bukovina should not have any suffragan bishops but at least two auxiliary bishops. The three metropolitanates should form a general synod for matters of faith and discipline and recognize the Serbian Archbishop-Patriarch of Karlowitz as its primate. The Serbian Archbishop-Patriarch should in accordance with the canons convoke the general synod once a year and it should also serve as the court of final appeal in disciplinary cases and as the competent court to decide cases involving the metropolitans. Any administrative regulations issued by the general synod need to be ratified by the metropolitans to come into force in their metropolitanates. Each metropolitanate should have its own synod which in accordance

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41. Cf. K. Scharr, *Der griechisch-orientalische Religionsfonds der Bukowina 1783-1949: Kontinuitäten und Brüche einer prägenden Institution des Josephinismus*, Böhlau, Wien, 2020, pp. 116-150.

42. A. Șaguna, *Anthorismos oder berichtigende Erörterung über die Broschüre „Die Wünsche des rechtgläubigen Klerus aus der Bukovina in Betreff der kanonischen Organisation der Diözese und ihrer hierarchischen Stellung im Organismus der orthodox-orientalischen Kirche in Österreich“*, Diöcesan-Buchdruckerei, Hermannstadt 1863.

43. Pușcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: pp. 248-285.

with the canons convenes at least once a year and serves as the court of first appeal. The metropolitan of Bukovina should in accordance with the practice of the early church and the old Romanian custom be elected by representatives of the clergy, nobility, and people. Hackmann furthermore states that the national principle is not applicable to Bukovina since Romanians and Ukrainians are equally large parts of the population (although Şaguna claimed that Ukrainians only made up a fourth of the population).

In his refutation of Şaguna, Hackmann stated that Şaguna had misinterpreted apostolic canon 34 since *ἔθνος* does not necessarily mean ‘people’ or ‘nation’ but can also mean ‘country’ or ‘province’, and the parallel canon 9 of Antioch as well as the commentaries of the classic Byzantine canonists and the *Πηδάλιον* show that this is the meaning here. Hence the national principle is not canonical. He pointed out that the development of the metropolitan and patriarchal systems in the canons was based on the administrative organization of the Roman Empire and not on nationality. He also rejected Şaguna’s proposal that the general synod should not be competent in disciplinary matters, since the point of the metropolitan and patriarchal systems is that there should be courts of appeal and courts that are competent to judge metropolitans. Hackmann also noticed in passing that Bukovina had never experienced any oppression by the Serbs, but if the national principle was applied the Romanians would oppress the Ukrainians in Bukovina.

Furthermore, Hackmann pointed out that Bukovina had a better historical right to become an autonomous metropolitanate than Transylvania, since, on the one hand, Transylvania had never been a real metropolitanate, and, on the other hand, Suceava, the original metropolitan see of Moldova, was in Bukovina. Since the Ecumenical Patriarchate had allowed both the metropolitans of Kiev and Moscow to have the same title due to changed political circumstances, and since the Ecumenical Patriarchate had also appointed a new patriarch of Peć in the Ottoman Empire after the patriarch had emigrated to the Habsburg Monarchy, there is nothing that prevents the bishop of Bukovina to be given the old metropolitan title of Suceava although the metropolitan see has been transferred to Iaşi in Moldavia. Furthermore, the bishop of Bukovina had due to his



exempted status already some metropolitan rights, for example, the right to appoint archimandrites.

Şaguna had also attacked the suggestion that Bukovina should become a metropolitanate with only auxiliary bishops, since he argued that auxiliary bishops are foreign to Orthodox canon law and a metropolitan should have suffragan bishops. Hackmann responded, with a reference to the commentaries of Balsamon to canon 12 of Chalcedon and canon 8 of Quinisextum, that there are two types of metropolitans in the canonical tradition: those with suffragan bishops and those without suffragan bishops who are usually called archbishops. Concerning the argument that the Orthodox Church does not have auxiliary bishops, Hackmann pointed out that there are many titular bishops in the Romanian principalities. Later he would also clarify that it is for financial reasons that he wanted auxiliary bishops rather than suffragan bishops, since the latter are a greater financial burden to the church<sup>44</sup>.

Şaguna had also argued that Bukovina is too small to become a metropolitanate and Hackmann responded that the provinces of the Byzantine Empire were much smaller than the provinces of the Habsburg Empire and still they had their own metropolitanates, since the purpose is to ensure the right of appeal. Hackmann suggested that the first court should be the consistory presided by an auxiliary bishop and the court of appeal the synod composed of the metropolitan and the auxiliary bishops.

### The Establishment of the Metropolitanate of Transylvania

Following the synod of 1864, the emperor decided to create a separate Romanian Metropolitanate for Transylvania and Hungary with Hermannstadt (Sibiu) as metropolitan see<sup>45</sup>. A mixed commission was

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44. St. Smal-Stocki (ed.), *Nationale und kirchliche Bestrebungen der Rumänen in der Bukowina 1848-1865 von Bischof Hakmann in einem Sendschreiben dargestellt*, Ruska Rada, Czernowicz 1899.

45. Puşcariu, *Metropolia Românilor Ortodocși din Ungaria și Transilvania*, appendix: pp. 305-311; Fr. H. Vering, *Lehrbuch des katholischen, orientalischen und protestantischen Kirchenrechts, mit besonderer Rücksicht auf Deutschland, Österreich und die Schweiz*, 3rd ed.

also created to deal with the division of church property and revenues, which continued to be a source of conflict. The new metropolitanate was assigned the eparchies of Arad, Temesvár, and Versec and a new eparchy was created in Karánsebes. The borders of the eparchies were adjusted according to the ethnic composition of the population.

In 1869 the government promulgated the statute for the Romanian Metropolitanate authored by Şaguna<sup>46</sup>. The statute stated that to maintain the organic and canonical unity of the two metropolitanates there should be common synod to deal with issues of common interest, but the statute also only recognized the metropolitan as the final court of appeal. The general synod of the Orthodox Churches in the Habsburg Empire was never convened, and it was juridically unclear if there was one or several autocephalous churches. In practice, each church was independent and with the advancement of nationalism, the Orthodox Churches gradually lost interest in each other when their national interests were not involved.

The statute is otherwise famous for the rights it grants the laity and Şaguna had published already in 1868, an influential compendium of Orthodox canon law<sup>47</sup> in which he presented his interpretation of the canonical tradition and tried to justify the establishment of a separate metropolitanate and the participation of the laity in church governance as well as the election of the metropolitan and bishops by the clergy and laity of their churches and of the parish priest by the laity<sup>48</sup>. These topics, however, fall outside the scope of this paper.

Şaguna's views on metropolitanates and patriarchates are, however, relevant to the topic. Firstly, he argued that the metropolitanate is the basic regional unit of the Orthodox Church according to the canons<sup>49</sup>. Secondly, he argued that only an ecumenical council had the authority

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Herder, Freiburg im Breisgau 1893, p. 372.

46. P. Brusanowski, *Rumänisch-orthodoxe Kirchenordnungen (1786-2008): Siebenburgen – Bukowina – Rumänien*, Böhlau, Wien 2011, pp. 19-97.

47. A. Şaguna, *Compendium des kanonischen Rechtes der einen, heiligen, allgemeinen und apostolischen Kirche.*, J. Drotfleff, Hermannstadt 1868.

48. D. Heith-Stade, "The Legacy of Metropolitan Andrei Şaguna: A Canonical Perspective", *St. Vladimir's Theological Quarterly* 66, 3-4 (2022), pp. 197-206.

49. Şaguna, *Compendium des kanonischen Rechtes*, pp. 104-109, 222-223.

to canonically create a patriarchate, so only the four ancient patriarchs were canonical patriarchs while the autocephalous archbishops and metropolitan who had been granted patriarchal titles were not canonical patriarchs and thus did not enjoy patriarchal rights<sup>50</sup>. Furthermore, he states that the canonical relationship between a patriarch and his metropolitans is not analogous to the relationship between a metropolitan and his suffragan bishops. Şaguna only recognized the patriarchal rights explicitly formulated by the canons: that their authority is limited to a specific territory; that they have the right to appoint an *οἰκονόμος* (financial officer) in the metropolitanates of their territories if the local metropolitan has failed to do so; that they can hear appeals against the decision of metropolitans and their synods; that they should consecrate the newly elected metropolitan, if he is not already a bishop; that they should decide the case when a metropolitan is one of the litigants; and that the metropolitans should commemorate the patriarch at the liturgy. In passing he also criticized contemporary non-Orthodox canonists who reduced the ancient patriarchates to autocephalous churches<sup>51</sup>.

### The Establishment of the Metropolitanate of Bukovina and Dalmatia

Initially Bukovina remained an exempted eparchy although Romanian nationalists in the nobility joined Şaguna in publicly attacking Hackmann and he responded in 1865 with a more than 212-pages treatise in which he stated all his arguments about the autonomy of the church in Bukovina and the role of the laity in church governance<sup>52</sup>. The treatise contains extensive excerpts from previous documents from the controversy. The emperor finally settled the issue through a decree in 1873 which created an independent metropolitanate for Bukovina and Dalmatia, and elevated Bukovina to an archeparchy<sup>53</sup>.

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50. Şaguna, *Compendium des kanonischen Rechtes*, pp. 94-104, 223-224.

51. Şaguna, *Compendium des kanonischen Rechtes*, p. 104, n. 1.

52. Smal-Stocki, *Nationale und kirchliche Bestrebungen der Rumänen in der Bukowina*, *op.cit.*

53. Buckhard, *Gesetze und Verordnungen in Cultussachen*, pp. 276-277.

In 1874 a second eparchy was created in Dalmatia<sup>54</sup> and in 1884 a statute for the synod of Bukovina and Dalmatia was promulgated<sup>55</sup>. Bishop Nikodim Milaš (1845-1915) published a commentary to it<sup>56</sup> in which he refers to a commentary of Balsamon to the *Nokomanon in 14 Titles* (9, 6) that states that a synod must be composed of at least the metropolitan and two other bishops to be competent to decide cases; however, the synod did not have enough members to ordain a new bishop in the case of a vacancy although in practice the two other bishops did the canonical scrutiny of the candidate and then invite another bishop for the ordination.

### The Orthodox Church in Bosnia and Herzegovina under Habsburg Rule

As a last example, I will treat the organization of the Orthodox Church in Bosnia and Herzegovina<sup>57</sup>. In 1878 Bosnia and Herzegovina came under Austro-Hungarian colonial rule and the organization of the Orthodox Church became an issue. Should it become an autocephalous church or be joined with the Metropolitanate of Karlowitz?

Emilijan Radić (1857-1907), who was a theology professor at the seminary in Karlowitz and otherwise spent his time polemicizing against Šaguna's interpretation of the canonical tradition<sup>58</sup>, published a booklet in which he argued that the church in Bosnia and Herzegovina should be subordinated to Karlowitz<sup>59</sup>. His arguments are historical, canonical, legal, political, and practical. He begins with a historical overview of the

54. Vering, *Lehrbuch des katholischen, orientalischen und protestantischen Kirchenrechts*, p. 375.

55. Buckhard, *Gesetze und Verordnungen in Cultussachen*, pp. 278-284.

56. „Das Synodal-Statut der griechisch-orientalischen Metropole der Bukowina und Dalmatien. Mit Erläuterungen von Archimandrit Dr. Nikodem Milasch zu Zara“, *Archiv für katholisches Kirchenrecht* 53 (1885), pp. 251-263.

57. Cf. H. Grunert, *Glauben im Hinterland: Die Serbisch-Orthodoxen in den habsburgischen Herzegowina 1878-1918*, Vandenhoeck & Ruprecht, Göttingen 2016.

58. Th. Bremer, *Ekklesiale Struktur und Ekklesiologie in der Serbischen Orthodoxen Kirche im 19. Und 20. Jahrhundert*, Augustinus-Verlag, Würzburg 1992, pp. 88-103.

59. Em. Radić, *Ein Kampf um's Recht: Beitrag zur Lösung der orthodoxen Kirchenfrage in Bosnien-Herzegowina*. Dattel, Prag 1879.

Serbian Church and shows that the church in Bosnia and Herzegovina is a daughter church.

An interesting point is his description of the origin of Serbian autocephaly and the patriarchal title. He notes that even though the Serbian eparchy was in practice subordinated to the Archeparchy of Ohrid, the Serbs petitioned the Byzantine Emperor and Ecumenical Patriarch, as the mother church, for autocephaly. This was granted with the provision that the Serbian Church should commemorate the Ecumenical Patriarch and inform him of the appointment of archbishops. Two interesting points here are (a) that Radić claims that the primacy of Constantinople involves all the same rights as the primacy of Rome, and (b) that he claims that it is a mother church that can grant autocephaly although it is Constantinople that has granted autocephaly in all the historical examples he gives. He also notes that the patriarchal title of Peć is strictly speaking uncanonical since it was granted by the Serbian emperor. He points out that the Ecumenical Patriarchate did not excommunicate the Serbian Church in the 14th century because of its autocephaly, but because it had usurped the patriarchal title. In principle he agrees with Şaguna that only an ecumenical council can establish a canonical patriarchate. His conclusion is thus that Serbian autocephaly is independent of the patriarchal title and that the Metropolitanate of Karlowitz is the legitimate successor to the Patriarchate of Peć even though its primate did not have the title of patriarch for a long time. In 1848 the emperor had granted the Serbian archbishop the right to use the title Serbian Patriarch as a reward for the loyalty of the Serbs during the Hungarian Revolution.

Concerning the Patriarchate of Peć in the Ottoman Empire, which was abolished in 1766, he argues that this church was a fiction, since the autocephalous church had emigrated and the church that remained thus lost all the qualifications for autocephaly. He views the subsequent patriarchs appointed in the Ottoman Empire as pseudo-patriarchs and states that it was naturally that the Ecumenical Patriarch as the former mother church should subordinate the remaining church to his jurisdiction since it had lost its autocephalous character through the emigration. He also claimed that the Ecumenical Patriarchate had implicitly recognized the continued autocephaly of the church in the Habsburg Empire.

Furthermore, he argued that the Serbian privileges granted in the 1690s, which among other things recognized the patriarchal jurisdiction of the Serbian archbishop over Bosnia and Herzegovina, were international treatise between the Habsburg government and the Serbian patriarch. Consequently, the government were required by international law subordinate the daughter church of Bosnia and Herzegovina to Karlowitz as the legitimate successor of the Patriarchate of Peć. In another booklet, Radić invoked canon 39 of Quinisextum, which recognized the jurisdiction of the archbishop Cyprus in exile, to justify canonically that Karlowitz was the legitimate successor the autocephaly of Peć<sup>60</sup>.

From the political and pragmatic perspective, he argued that the Habsburg government had previously always exempted the Orthodox Churches that came under its rule from the jurisdiction of any foreign hierarchy, which was also in accordance with the political principle of Orthodox canon law that the borders of the church should conform to the political organization. Hence it would be inconsistent with previous policy to let the church in Bosnia and Herzegovina remain under the Ecumenical Patriarchate. Furthermore, he noticed that although the national principle is uncanonical, the government had sanctioned it through the creation of the Romanian Metropolitanate and since the Orthodox in Bosnia and Herzegovina are Serbs, they should in accordance with the national principle be joined with Karlowitz. Finally, he argues that the church in Bosnia and Herzegovina lacks the qualifications to become an autocephalous church since (a) it lacks funds, (b) it does not have any impressive cathedrals, (c) it does not have any institution for theological education, (d) although it has some monasteries, they are not suitable to train candidates for the episcopacy, and (e) it does not have an intellectual elite among its laity; however, Karlowitz has all this and can thus help the government in its effort to civilize Bosnia and Herzegovina.

The government, however, found it politically imprudent to promote Serbian nationalism, so they concluded a concordat with the Ecumenical Patriarchate in 1880<sup>61</sup>. The eparchies remained nominally under the

60. Em. Radić, *Die orthodox-orientalischen Particularkirchen in den Ländern der Ungarischen Krone: Eine rechtsgeschichtliche Abhandlung*, V. Hornyánszky, Budapest 1885, pp. 25-27, n. 2.

61. „Declaration des öcumenischen Patriarchen in Constantinopel vom 28. März 1880“,

jurisdiction of Constantinople and were largely independent of each other. The emperor appointed the bishops, but the synod in Constantinople did the canonical scrutiny of the candidates. In 1905 the government promulgated a church statute which had been negotiated with Constantinople<sup>62</sup>. The eparchies were still largely independent although there were now two central organs of church governance in the form of the supreme court of appeal and the supreme council for administration and education. There was no regional synod and no primate. The bishops were members of the central organs although they took turn presiding and could not preside both organs at the same time. The synod of Constantinople was also recognized as a court of appeal.

### Concluding Remarks

After reviewing the case of the Orthodox Churches in the Habsburg Empire there are certain things we should reflect on in view of the contemporary situation. Firstly, we should acknowledge the role played by secular rulers and governments in establishing regional churches and that the Orthodox canonical tradition does not historically provide a model for establishing an independent regional church when there is a complete separation of church and state. Secondly, we should question the idea that the autocephalous church is the regional unit in the canonical organization of the Orthodox Churches. The autocephalous church does not exist in the canons, but it is the metropolitanate with its own synod which is the regional unit in the canons. Thirdly, we should be skeptical about reducing the four ancient patriarchates established by the ecumenical councils to autocephalous churches as well as the tendency to equate autocephalous archbishop and metropolitans, who have been granted patriarchal titles, with the four ancient patriarchs.

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*Archiv für katholisches Kirchenrecht* 65 (1891), pp. 437-441.

62. „Allerhöchste Entschliessung vom 13. August 1905, betreffend das Statut über die Regelung der Kirchen- und Schulverwaltung der serbisch-orthodoxen Eparchien (Metropolien) in Bosnien und der Hercegovina“, *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina* 18 (1905), pp. 133-204.

As Şaguna pointed out, the relationship between a canonical patriarch and the metropolitans is not analogous to the relationship between a metropolitan and his suffragan bishops. The canonical rights of patriarchs do not negate the decentralized nature of Orthodox church organization. Fourthly, we should acknowledge that nationalism tends to undermine the canonical constitution of the Orthodox Churches and the example of Karlowitz before 1848 as well as the example of Bukovina show that it is possible to have multiethnic metropolitanates which can handle a variety of liturgical traditions in their parishes. Would it be possible to organize the so-called diaspora into multiethnic metropolitanates with their own synods while letting the ancient patriarchates under the leadership of Constantinople coordinate them and hear appeals by virtue of their patriarchal rights? However, the example of the Orthodox Church in the Habsburg Empire also shows how church finances complicates matters. Would the autocephalous national churches be willing to support ethnic parishes under multiethnic metropolitanates in the diaspora?