

ROMAIN GOUDJIL, *Une symphonie des pouvoirs judiciaires à Byzance. Le rôle de l'Église dans l'administration de la justice (X^e–XV^e siècle)*. Paris: Sorbonne Université Presses 2024. 450 pp. – ISBN 979-10-231-0801-9

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It has long been a cliché that the history of Byzantine law is a niche, marginal subject. Byzantinists mainly studied legal texts as sources for social and economic history (not the law itself), while legal historians could overlook Byzantium as a dead end of the Roman law tradition with no connection to the modern world (except in countries like Greece or Russia). This cliché is now due for retirement. ROMAIN GOUDJIL's *Symphonie des pouvoirs* is the latest in a string of new publications on Byzantine law by new authors that have appeared over the last decade or so (full disclosure: this reviewer is one of those authors). Moreover, they have tackled the subject from new angles such as the Byzantine legal *mentalité*, the function of law in political ideology, the anthropology of civil and canon law, the experience of reading legal literature, and others.

GOUDJIL's main contribution is not to provide a new theoretical framework or pioneer a new methodology; in fact, his approach is refreshingly traditional, as we shall discuss in more detail below. Rather, he provides an important corrective to a long-standing misconception in Byzantine legal historiography that originated in the nineteenth-century works of MORTREUIL and ZACHARIÄ VON LINGENTHAL.¹ This holds that the middle Byzantine state (9th to 12th centuries) had a well-organized judicial apparatus under the centralized control of the imperial bureaucracy. However, as the empire's secular administration atrophied in the centuries after the Fourth Crusade (1204) and the Palaiologan reconquest of Constantinople (1260), the Byzantine church stepped in to fill the gap, effectively bringing the legal system under ecclesiastical control. This prepared the church to take full responsibility for the legal affairs of Orthodox Christians after

1. JEAN ANSELME BERNARD MORTREUIL, *Histoire du droit byzantin ou du droit romain dans l'empire d'Orient, depuis la mort de Justinien jusqu'à la prise de Constantinople en 1453*, Vol. 3. Paris 1846, pp. 83–103; KARL EDUARD ZACHARIÄ VON LINGENTHAL, *Geschichte des griechisch-römischen Rechts*. Berlin 1892, pp. 384–389.

1453 under the Ottoman Empire. Despite the great antiquity of this narrative, GOUDJIL rightly notes that scholars have continued to advance it to the present day with only a modicum of nuance. His goal is to disabuse us of the notion, thoroughly and uncompromisingly.

This is the author's first monograph, based on his doctoral thesis 'Justice impériale, justice ecclésiastique : Questions de compétence à Byzance (X^e–XV^e siècles)', which he submitted in 2021 under the supervision of BÉATRICE CASEAU at the Sorbonne. Unfortunately, the thesis is still under embargo at the time of writing this review, so I have not been able to read it for comparison. The change in title (from 'Questions de compétence' to 'Le rôle de l'Église') implies a shift in emphasis from a more technical analysis of the judicial process to a broader assessment of ecclesiastical involvement in the legal system. Whatever the case, the book's origins as a doctoral thesis are clear from its well-defined research question, rigorous citation of historiography, and in-depth study of primary source material. It is not light reading by any means and the subject is not particularly fashionable, so it will probably only appeal to specialists in the field. Nonetheless, it makes a valuable contribution and will reward the reader's effort.

At the outset, GOUDJIL explains the three main questions underpinning his book (p. 51):

1. Did the church gain greater institutional competence between the tenth and fifteenth centuries?
2. Were clergy really actors in the exercise of Byzantine justice after 1204?
3. How much autonomy from the imperial administration did the church have in its judicial activities?

In answering these questions, he aims to elucidate the famous Byzantine concept of *symphonia* between church and state in the judicial system. GOUDJIL's vision of *symphonia* is one in which the church is very much a junior partner of the emperor; it did not enjoy greater institutional competence or autonomy as time progressed, while any authority that it did have was purely at the emperor's pleasure. He bases his analysis on an exhaustive review of surviving textual sources, which he divides into three categories (described on pp. 34–51): normative sources (e.g. legal codifications), judicial documents, and literary and narrative sources on the exercise of justice. These are drawn entirely from edited texts; GOUDJIL has not uncovered any new sources or made use of material evidence such as manuscripts or archaeological remains. That said, it is still a valuable

exercise, as many of the textual sources (especially the documents) have not yet been fully exploited.

Devising a coherent structure for a monograph that covers a relatively narrow topic over a broad period of history (about five centuries) is difficult and requires compromises. Proceeding chronologically is good for telling a story but runs the risk of analytical repetitiveness. Proceeding thematically avoids this risk but may elide or overlook important aspects of historical context. GOUDJIL opts for a hybrid of the two approaches: after a substantial introductory chapter (pp. 9–53), Chapters One (pp. 55–94) and Two (pp. 95–115) offer a chronological overview of judicial administration in the middle and late Byzantine eras respectively. Chapters Three through Nine each cover a different theme relating to the church's role in justice (involvement in lay tribunals, matters of daily life, occasional or unusual recourse to church courts, criminal punishment, interference by the emperor, etc.). A concluding chapter (pp. 359–367) sums up the book's main arguments and is followed by five appendices (pp. 369–393) of statistics on primary sources, bibliographies of primary sources and secondary literature, a general index, and an index of juridical sources cited.

Most chapters follow a similar pattern. A few introductory paragraphs introduce the central theme and pose a question of whether or not the church was really so influential in that regard. It is then broken down into subsections, each of which proceed through a range of anecdotes drawn from the book's primary sources. At the end, the author informs us that the clergy did not have as much power as we thought, that the powers that they did have were usually based on Late Antique or Justinianic precedent, that any extra powers that they gained were actually delegated by the emperor on an exceptional basis, that in fact the emperor took away or interfered with the power that they should have had, and so on.

Chapter Three, 'Les clercs au sein des instances judiciaires laïques' (pp. 117–145), provides a good example of this pattern. It begins with the observation that the participation of the clergy in lay tribunals is usually seen as a key sign of the church's oversight of the Byzantine justice system in the late era. It then re-evaluates this assumption in four parts: 'La participation des clercs aux assemblées de justice villageoises' (pp. 118–122), 'Présence et délégation judiciaire : les clercs dans les instances judiciaires impériales' (pp. 122–129), 'À la recherche des instances judiciaires mixtes byzantines' (pp. 129–133), and 'Les hiérarques byzantins : entre hommes de confiance et incarnations de la vertu' (pp. 133–145). GOUDJIL first ex-

plores cases of litigation at the village level, concluding that local clergy played no role. Next, he looks at ‘mixed’ tribunals in which clergy either took part as spectators or acted as judges with delegated authority. Several legal documents from an act of the Athonite Protaton in 943 to an act of the Metropolis of Thessaloniki in 1344 show that both types of ‘mixed’ tribunals were exceptions to the norm. The third part examines three ‘truly mixed’ tribunals (with both lay and ecclesiastical judges, each with the power to pass judgment) from the fourteenth century, again arguing that they were highly unusual instances. The final part argues that, even when bishops did receive delegated authority to act as judges, it was not because they were members of the clergy but rather because they were aristocrats with a good legal education.

Thus, each chapter sets up an assumption from the traditional narrative, proceeds methodically through anecdotal evidence drawn from the sources, and concludes that the assumption was wrong. By the end of the book, it is hard to disagree with GOUDJIL’s main point: the evidence really does not support the idea that the church ‘took over’ the Byzantine justice system in the thirteenth to fifteenth centuries. What should we believe instead? GOUDJIL has a straightforward answer: ‘L’étude comparée du droit byzantin et de la pratique judiciaire révèle l’absence d’évolution majeure et une véritable continuité, entre le XII^e et le XV^e siècle, dans la nature du pouvoir de justice détenu par l’Église’ (p. 359). Despite the destruction of the Fourth Crusade and the reshaping of the Byzantine state in the Palaiologan era, the Byzantine ‘symphony of judicial powers’ remained firmly under imperial control. Plus ça change, plus c’est la même chose.

This is a convincing generalization, but one cannot help but feel that it lacks nuance. This is in large part due to the uneven nature of the evidence; the majority of surviving documentation dates to the thirteenth century and later, while the earlier period has bequeathed more normative sources such as codifications and commentaries. Furthermore, most extant documents derive from the archives of monasteries (especially on Mount Athos) and the Register of the Patriarchate of Constantinople, though if anything this may skew the evidence more in favour of the church. GOUDJIL overcomes this limitation to some extent by supplementing archival documents with normative and narrative sources, though one does wonder about the evidence that we lack. For example, in the first part of Chapter Three mentioned above, he concludes that clergy at the village level ‘ne joue aucun rôle dans le règlement des litiges’ (p. 122) on the basis of just two anecdotes of the early thirteenth century from the archive of the Lembiotissa

monastery near Smyrna. Is it possible that we may someday uncover two other anecdotes showing that clergy *did* sometimes play a role?

Another consequence of this generalization is that it runs the risk of decontextualizing the evidence. The first part of Chapter Eight, ‘Le jugement des clercs ou l’absence de tout domaine réservé à la justice ecclésiastique’ (pp. 287–306), offers a good example of this. It proceeds through two anecdotes from the tenth century (one relating to the Archdiocese of Rhizaion in the 920s, the other to the emperor Nikephoros Phokas in the 960s) on p. 289, one about Metropolitan Niketas of Ancyra in 1084 on pp. 290–291, and one about Metropolitan Nicholas Hagiotheodorites in 1173 on p. 291. The remainder of this section (pp. 291–306) deals exclusively with anecdotes from the thirteenth to fifteenth centuries, with the sole exception of a story about Metropolitan Alexander of Nicaea in 944–945 on p. 295. After all this, GOUDJIL flatly concludes that, ‘Du X^e au XV^e siècle, l’institution ecclésiastique, loin de s’affranchir du pouvoir impérial... reste dépendante de la personne de l’empereur...’ (p. 306). This may be *generally* correct, but it avoids discussing which factors may have been unique to specific periods. It also sidesteps some interesting exceptions to the rule such as the patriarchates of Alexios Stoudites (1025–1043) and Michael Keroularios (1043–1058) in the eleventh century, when emperors were much more dependent on the church than vice versa. Such nuances fade away amid the book’s overriding drive to knock down the traditional narrative.

The book’s tight focus also results in one or two missed opportunities. One of the most intriguing sections, in my view, comes at the beginning of Chapter Nine, ‘Arbitrage et notariat : le rôle quotidien de l’Église auprès des Byzantins’ (pp. 331–357). GOUDJIL describes how parties could bring a dispute before a member of the clergy in a formal arbitration process, in which the cleric could impose spiritual penalties if one of the parties refused to accept the result. This effectively provided an alternative to litigation in the imperial judicial system, backed up by the threat of social rather than legal coercion. I would be fascinated to learn more about these cases, particularly the motivations of the various parties who chose a church arbitration over civil litigation; it would make for an excellent study in legal anthropology. However, this interesting phenomenon serves here mainly as an illustration of the point that this is not an example of the church expanding its power over the imperial justice system, which is self-evident. I hope that GOUDJIL will revisit this subject at greater length in the future, as it may be quite a promising avenue of research.

Of course, the author would be perfectly justified in responding that this was not the point of the book. His aim was to refute a long-standing misconception about the role of the church in the late Byzantine justice system and to assert the primacy of the imperial office in the Byzantine ‘symphony of judicial powers’. Whatever minor criticisms I might raise about generalization and nuance, GOUDJIL has more than succeeded in this aim. His exhaustive re-assessment of the surviving sources must have been an enormous undertaking, an effort that deserves respect and recognition. He has thoroughly disproven the old narrative of an ecclesiastical ‘takeover’ of the judicial system in late Byzantium; this reviewer hopes that other Byzantine and medieval historians pay attention.

Keywords

Byzantine law; ecclesiastic administration