

OLGA TSAPINA

**DUE PROCESS: THE MOSCOW COUNCIL OF 1660  
AND THE DEBATE ON ECCLESIASTICAL GOVERNANCE  
IN EARLY MODERN RUSSIA<sup>1</sup>**

This essay deals with a seemingly minor episode in what is known as the affair of Patriarch Nikon (1605–1681). The affair began on July 10, 1658, when the patriarch left Moscow vowing never to return, and ended in December 1666 with Nikon, stripped of his holy orders and patriarchal dignity, banished to a remote monastery. Since the 1860s, the affair has been covered as a political crisis occasioned by a conflict between the tsar and the patriarch and deepened by the fallout from the liturgical reforms championed by Nikon. Yet it also unfolded as a church trial necessitated by the unprecedented situation that followed Nikon’s dramatic departure from the capital. The church council that met in 1660 has long appeared as a mere kangaroo court that failed to attain the putative goal of ridding the tsar of his own version of a “meddlesome priest.” It merits closer attention, however, as it raised fundamental questions of church governance and due process.

*Keywords: Patriarch Nikon, 1660 sobor, church councils, bishops, ecclesiastical courts, Russian Orthodox Church, 17<sup>th</sup> century*

Olga Tsapina – PhD, The Norris Foundation Curator of American History at The Huntington Library, Art Museum and Botanical Gardens, E-mail: [otsapina@huntington.org](mailto:otsapina@huntington.org). ORCID: 0009-0006-6246-0100

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Even though the records of the 1660 church council have been archived, cataloged, and published as part of the documentary history of Nikon's affair, the proceedings have failed to attract sustained academic attention.<sup>2</sup> In part, this is because the story of Nikon's affair has long been interpreted as a political crisis triggered by the rapidly absolutizing monarchy, a pivotal moment in the history of the breakdown in the traditional pattern of church-state relations, which marked the coming of modernity. In the light of the drama which reached its logical conclusion fifty years later, when the church reform enacted by Tsar Aleksei Mikhailovich's son Peter swept away the very institution of the patriarchate, the 1660 *sobor* indeed looks like a minor and inconsequential episode. The heavily Nikon-centric narrative, as well as the presumption of the tsar's legal omnipotence, have also overshadowed the institution of the church council or *sobor*, its role presumed to be limited to rubberstamping decisions made in higher echelons of power.<sup>3</sup> Yet the *sobor* of the Russian church, like other ecclesiastical councils, functioned as a court of law. Its authority proceeded from the divine presence that occurred wherever "two or three are gathered together" in Christ's name (Matt. 18:20), and its framework rested on the legacy of the ancient ecumenical councils that settled the most fundamental issues of Christian doctrine by means of Roman legal procedure. Its proceedings, imbued with quasi-liturgical solemnity, established the sanctity of what we now call due process.

The 1660 council has been considered primarily as an early stage of Nikon's affair rather than the culmination of the events of the preceding eighteen months. The story of these events is usually reconstructed from Nikon's letters to the Eastern patriarchs. These letters, written some seven years after the fact, present the patriarch as a victim of a tyrannical

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2 Н. А. ГИББЕНЕТ, *Историческое исследование дела патриарха Никона* (Москва: Типография Министерства Внутренних дел, 1884), 167–220; *Дело о патриархе Никоне: Издание Археографической Комиссии по документам Московской Синодальной (бывшей Патриаршей) библиотеки* (Санкт – Петербург: Печатня С. Яковлека, 1897), 1–112. For a survey of the historiography of the affair, see: В. В. ШМИДТ, «Никоноведение: Библиография, историография, и историософия», *Государство, религия, церковь в России и за рубежом* 44–45, № 3–4 (2008): 96–227; Н. В. ВОРОБЬЕВА, *Образ патриарха Никона в историческом сознании и массовой культуре: Монография* (Санктум Пресс, 2013). For a standard summary of the affair, see И. Н. ДАНИЛЕВСКИЙ, *Общественная мысль России с древнейших времен до середины XX в.* Т. 1 (Москва: Росспен, 2020), 412–50

3 Cf. Д. Ф. ПОЛОЗНЕВ, «Церковные суды в России XVII века», *Исторический Вестник* 16 (2002) [http://www.vob.ru/public/bishop/istor\\_vest/2002/1\\_16/5.htm](http://www.vob.ru/public/bishop/istor_vest/2002/1_16/5.htm) (Accessed December 27, 2022)

monarch, a latter-day Metropolitan Philip.<sup>4</sup> However, the texts created in 1658-1659 – Nikon’s missives to the tsar and the reports of the officials who communicated with him – paint a rather different picture.<sup>5</sup> A detailed analysis of this evidence would go beyond the scope of this essay. Suffice it to say, that by the end of 1659, the situation had become untenable.

Since July 1658, Nikon had resided in the cloisters that he had endowed and built up – at first, in New Jerusalem near Moscow and then, following a conflict with the tsar in July 1659, in Valдай’s Iviron (Iverskii) monastery. All the while he insisted that he was still the reigning patriarch and the supreme spiritual leader of the realm. Nikon made clear that his patriarchal status had nothing to do with the duties and responsibilities of his office which he called the mere “archbishopric of Moscow” and blasted as a cesspool of unholy ambition (*liubonachalie*) and corruption. Declaring (repeatedly) that he had no wish to return to the capital, Nikon, in fact, took pride in having severed the mundane entanglements of his office thus freeing himself to be guided directly by God.<sup>6</sup> In the meantime, the operations of the Patriarchal offices came to a screeching halt. Pitirim (d. 1673), the metropolitan of Krutisy, appointed with Nikon’s consent and in accordance with Canon 68 of the Stoglav Council as the acting keeper (*bliustitel’*) of the patriarchal see, was authorized only to keep up the routine administration of the patriarchal domain and adjudicate, in council (*soborne*) with other bishops, pending lawsuits involving non-episcopal clergy. This prolonged power vacuum in Moscow was especially worrisome given rising discontent over the liturgical reforms and the ongoing war, especially as the prospect of a shadow church centered on Nikon’s residence raised unwelcome memories of the Time of Troubles.<sup>7</sup>

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4 Е. В. СКРИПКИНА, «Образ Митрополита Филиппа в диалоге ‘священства’ и ‘царства’ в правление Алексея Михайловича», в *Современные проблемы науки и образования*, no. 3 (2014) <https://science-education.ru/ru/article/view?id=13123> (Accessed November 17, 2022).

5 Nikon’s 1658-1659 correspondence with the tsar is published in Appendix 3 in: С. К. СЕВАСТЬЯНОВА, *Эпистолярное наследие патриарха Никона: Переписка с современниками: Исследования и тексты* (Москва: Индрик, 2007) [https://azbyka.ru/otechnik/Istorija\\_Tserkvi/epistoljarnoe-nasledie-patriarha-nikona-perepiska-s-sovremennikami/13](https://azbyka.ru/otechnik/Istorija_Tserkvi/epistoljarnoe-nasledie-patriarha-nikona-perepiska-s-sovremennikami/13) (Accessed March 7, 2023).

6 ГИББЕНЕТ, *Историческое исследование дела патриарха Никона, 167–76; Delo o Patriarkhe Nikone*, 1-12.

7 This danger was vividly outlined by Ivan Neronov in his petition to the tsar. The petition is usually dated 1660. However, Neronov noted that at the time of writing “it has been two months into the second year” since Nikon abandoned the church, which seems to place it in September 1659. Н. И. СУББОТИН (ред), *Материалы для истории раскола за*

In mid-February 1660, the problem was taken up by a church council. Because Nikon asserted that an “assembly of bishops” (*sobranie arkhierieskoe*) lacked the authority to sit in judgement on a patriarch, historians of the affair have tended to approach the council with some skepticism. In his seminal study, Nikolai Fedorovich Kapterev, citing the council’s records that listed not only bishops, but also abbots, priors, priests, deacons, church servants, and laymen, classified it as a “greater” or “expanded” (*bol’shii*) council of the national church which, he asserted, did have this authority. Since there was no special summons issued, the council fell under Kapterev’s other rubric of an occasional synod attended by the hierarchs who already happened to be in the capital (*priluchivshiesia*). Kapterev also cited the extraordinary length of the proceedings as proof that the 1660 assembly constituted a general council of the national church.<sup>8</sup>

The six months that elapsed between the council’s first meeting on February 16 and the signing of the final document on August 14 did not constitute a continuous session but rather a series of meetings scheduled to accommodate major holidays and other notable events. The council’s records do indeed list priests, deacons, church servants, and laity. These, however, appeared as witnesses. Full membership of the council seems to have been reserved for *vlasti* – the rather multivalent term that, among other things, described senior ecclesiastics, i.e., bishops, abbots, and cathedral deans (*protopopy*) endowed with authority over ordained ministers. Only *vlasti* were admitted to the meetings with the tsar and authorized to sign the final document. (There were also hierarchs who appeared as witnesses). The records occasionally make a distinction between “multicolored” (*pestrye*) and “black” (*chernye*) *vlasti*, the former term describing the attending bishops and deans of major cathedrals, and the latter heads of monasteries; without these qualifiers, the default designation of *vlasti* seems to refer to bishops. While all *vlasti* appear to have been voting members or jurors, only bishops served as judges.

This, however, did not necessarily mean that the council lacked the authority to judge a patriarch. There was no single, overarching doctrine that defined the nature of the patriarchal authority and patriarchal accountability. In the familiar dichotomy of church and state, the patriarch represents the national church in the same way the tsar epitomizes the

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первое время его существования, издаваемые редакции “Братского слова: Том 1 (Москва: Типография Т. Рис, 1875), 167–74.

8 Н. Ф. КАПТЕРЕВ, *Царь и Церковные Московские соборы XVI и XVII столетий* (Сергиев Посад: Типография Троице-Сергиевой Лавты, 1902) 30, 34–5.

nation-state. The notion of the patriarch as the head of the autocephalous church seems to conform to the canonical conception of the ecclesiastical order as a replica of the celestial hierarchy as well as principles of monarchical episcopacy and episcopal autocephaly and the mandate that orders things ecclesiastical had to follow the “public or civil models” (Council of Trullo, 38). Yet, canon law and the annals of church history preserved the legacy of late antiquity where a patriarch was but a senior bishop albeit endowed with supra-metropolitan authority. His privileges, defined as a matter of human custom rather than the eternal Tradition of the apostolic church were contingent on his administrative and judicial duties. Justinian law, reflecting established usage, described patriarchs as superior appellate judges; the word “patriarch,” which was how the Septuagint rendered the Hebrew terms describing the top tier of the judiciary of Jerusalem (2 Chron. 19:8) or senior army commanders (2 Chron. 26:12), fitted the job description.<sup>9</sup>

The principle that bound the right to ordain (*ius ordinandi*) to the right to judge (*ius iurandi*) subjected all bishops, presumably regardless of their ranks, to the judgement of the synod of bishops that elected them.<sup>10</sup> The institutional contours of the synodal courts, usually derived from the Roman Senate or the Sanhedrin of the Old Testament, more resembled the *quaestiones perpetuae*, i.e., a permanent or extraordinary judicial council (*consilium iudicum*) set up in the Roman provinces to determine the guilt or innocence of a person accused of misconduct while holding public office. As adapted to ecclesiastical justice, the synod served as a judicial panel and a jury of one’s peers with the authority to rule on lawsuits involving bishops. In cases when a provincial synod failed to reach a verdict, the defendant faced a general council. With each bishop epitomizing the entire ecclesial community bound by the ties of the Holy Communion (*vinculum communionis*) entrusted to his care, the conciliar court cumulatively represented the entire church, much like how the Roman court of inquiry acted on the authority delegated to it by the *comitia*, i.e., the full assembly of

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<sup>9</sup> In the Slavonic New Testament the word patriarch refers, in passim, to Abraham (Heb. 7:4) and King David (Acts 2:29) and the twelve sons of Jacob who “moved with envy, sold Joseph into Egypt” (Acts 7:8-9). Contrary to the conventional wisdom, Justinian law did not establish the office of the patriarch or the pentarchy. The three novellas that mention the office of the patriarch are *mandatae*, i.e., imperial edicts addressed to civil authorities, which describe the existing institutional framework.

<sup>10</sup> 1 Apostolic Canon; Canon 4 of the First Ecumenical Council; Canons 13 and 49 of the Council of Carthage (419); Apostolic Canon 74.

the Roman people.<sup>11</sup> This basic principle, however, allowed for a variety of scenarios. The vision of the imperial city (*tsarstvuishii grad*) as the nexus of the entire realm made it possible to see the ecclesiastics who happened to be in the capital city or, rather, had been led there by the workings of Divine Providence as representing the entire imperial or national church. A single metropolitan bishop or patriarch, as the representative of his entire jurisdiction, could be subject to the judgement of the patriarchal pentarchy conceived as a patriarchal synod, or the Patriarch of Constantinople (or, to a lesser extent, the Patriarch of Alexandria who bore the title of the judge of the Universe) representing the entire Orthodox oikumene.

In Russia, where the patriarchate was less than seventy years old, the situation was even more confusing. The founding documents of the Moscow patriarchate affirmed both the primacy of Constantinople and the superior authority of the patriarchal pentarchy.<sup>12</sup> The Russian rites of patriarchal installation, which emphasized the importance of the council (*sobor*) of the national church, empowered it, at least theoretically, to judge a patriarch. There was, however, little by way of precedent, save for the 1620 council that posthumously deposed the false patriarch Ignatii.<sup>13</sup> The proceedings triggered by Nikon's dramatic departure from Moscow operated in largely uncharted territory.

The ecclesiastics who attended the council were indeed already in the city in February 1660. In addition to the Moscow *vlasti* – the metropolitan of Krutitsy, the heads of the Moscow cloisters and the clergy of the Kremlin cathedrals – attendees included Kallist (Dorofeevich-Ritoraiskii), the bishop of the newly constituted Polotsk diocese, and Ignatii (Ievlevich, 1619 – ca. 1667), an abbot who acted as his suffragan. Kallist and Ignatii were in the capital to negotiate the status of the diocese and Ignatii's appointment to

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11 ANTON-HERMANN CHROUST, JOHN RICHARD MURPHY, "Lex Acilia and the Rise of Trial by Jury in the Roman World," *Notre Dame Law Review* 24 (1948): 1–91. Cf. BRIAN FLANAGAN, "Tillard: Communion and Synod," in *Synod and Synodality: Theology, History, Canon Law and Ecu-umenism in New Contact : International Colloquium Bruges 2003* (Lit Verlag, 2005), 61–74.

12 П. Ермилов, «Учреждение Московского патриаршества и Константинопольские соборы 1590 и 1593 гг.», *Византийский временник* 103 (2018): 153–78.

13 Б. А. Успенский, *Царь и патриарх: Харизма власти в России (Византийская модель и ее русское переосмысление)* (Москва: Языки русской культуры, 1998), 30, 46–7; А. А. Булычев, «Игнатий», в *Православная Энциклопедия* 21 (Москва: Церковно-научный центр «Православная энциклопедия», 2014), 110–3, <https://www.pravenc.ru/text/293447.html> (Accessed June 04, 2024); СЕРГИЙ Пинчук, «Понятие высшего церковного суда в представлениях участников судебного рассмотрения 'дела патриарха Никона'», *Труды Минской Духовной Академии* 18 (2021): 125–46.

a monastery previously controlled by the Uniates.<sup>14</sup> Another out-of-towner, Mikhail (Mikhailo Boichich, d. 1669), Metropolitan of Colassia (now Kuystendil in Bulgaria, then part of the domain of the Serbian Peć patriarchate) had resided in Moscow since 1651.<sup>15</sup> There was also a group of ten bishops accompanied by abbots and priors of their dioceses who had arrived in the capital for the trial of Stefan, the archbishop of Suzdal'. This trial had been months in the making. It had been triggered in the spring and summer of 1659 by a wave of complaints filed by the laity and ecclesiastics against the unpopular archbishop, whom Nikon had installed a month before he left the capital. With Nikon indisposed and the Metropolitan of Krutitsy unauthorized to preside over lawsuits involving bishops, the petitions went to the tsar, who in October authorized a joint ecclesiastical-civil committee of inquiry.<sup>16</sup> The committee's findings were to be presented to a synod of bishops mandated by Canon 5 of the First Ecumenical Council for settling "ecclesiastical controversies" before the beginning of the Great Lent. Even though Stefan's trial might have been scheduled to be completed before March 12, it did not begin until March 23, apparently preempted by the proceedings against Nikon.

This process began in mid-February of 1660, when Petr Mikhailovich Saltykov (d. 1690), the justice of the Vladimir Court Chancellery (*Vladimirskii Sudnyi Prikaz*), fresh from his assignment as the head of the civil part of the board of inquiry in the case of the archbishop of Suzdal', deposed the eyewitnesses. The involvement of non-ecclesiastical agencies in church trials seems to prove the tight control that the secular state exercised over church councils. However, an inquiry that relied on eyewitness testimony required personnel authorized to depose witnesses under oath, a function forbidden to clergy. The provision that mandated ecclesiastics be deposed by an ecclesiastical court was yet to be established; at the time, all churchmen, including ordained ministers, appeared before civil judges.<sup>17</sup>

14 Е. Н. МАТВЕЕВА, «Игнатий Иевлевич», в *Словарь Книжников и Книжности Древней Руси*, Выпуск 3 (XVII в) Часть 2 (И-О) (СПб: Наука, 1993), 32–33.

15 Н. В. РАДОСЛАВЛЕВИЧ, «Михаил [серб. Михаило] (Боичич; рубеж XVI и XVII вв. – 1669), митр. Кратовский Печской Патриархии», в *Православная Энциклопедия* 45 (2017), 614–5. <https://www.pravenc.ru/text/2563626.html> (Accessed June 04, 2020).

16 GEORG MICHELS, *At War with the Church: Religious Dissent in Seventeenth-Century Russia* (Stanford University Press, 1998), 41–2; И. А. УСТИНОВА, «Дело архиепископа Суздальского и Тарусского Стефана 1659–1663 гг.: Источниковедческий аспект», в *Исследования по источниковедению истории России до 1917 г.: Сборник статей к 90-летию Ильи Андреевича Булыгина* (Москва: Институт российской истории РАН, 2016), 246–68.

17 *Полное собрание законов Российской империи*. Собрание 1 (1649–1825). Том 1: С 1649 по 1675 (СПб.: Печатано в Типографии II Отделения Его Императорского Величества Канцелярии, 1830), 781–782 (No. 28); М. Ф. АРХАНГЕЛЬСКИЙ, *О Соборном Уложении царя*

The witness list shows that the inquiry was concerned only with what happened on July 10, 1658, as the order of the depositions followed the eyewitnesses' proximity to Nikon during the memorable mass. The immediate concelebrants Pitirim, Ioasaf, the archbishop of Tver', Iosif, the abbot of the Moscow Novospasskii monastery, and Metropolitan of Collassia Mikhail were deposed first, followed by the clergy of the Cathedral of the Assumption and other Kremlin cathedrals and abbots and priors. Although the law specified that it was the duty of the clerk to record the oral testimony, Pitirim, along with a handful of other ecclesiastics, was allowed to submit his own written statements. Also sworn in were the royal officers Aleksei Trubetskoi, Ivan Lopukhin, and Prokopii Elizarov who were in direct communications with Nikon during and after July 10, 1658. Two officials went North: Aleksandr Durov, then an officer of the Great Revenue (*Bol'shoi Prikhod*) was to talk with Tikhon (d. July 1660), the abbot of the Novgorod Khutynski monastery; Matvei Pushkin (d. 1706), a courtier who usually served as the tsar's envoy plenipotentiary, went to Valdai to interview Nikon.<sup>18</sup>

Saltykov's office completed taking the depositions by February 16. In the afternoon of that day, the *vlasti* had an audience with the tsar. Although Aleksei Mikhailovich often appears as presiding at (and therefore controlling) the proceedings, he acted more like a superior judge who constituted and adjourned the conciliar court and conferred with its members. The audience on February 16 marked the moment of the constitution of the court, with the tsar's speech, as rendered in the official record, resembling a judge's instructions to the jury. The tsar charged the sobor with investigating and evaluating the events of July 10, 1658, thus constituting it as a court of inquiry rather than a trial court.<sup>19</sup>

The council spent the next few days examining the records of the deposition provided by Saltykov. Having found them true and authentic, it proceeded to cross-examine the witnesses and hear additional testimo-

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Алексея Михайловича 1649 (7156) г. в отношении православной русской церкви (Москва: Типография Ф.Г. Елеонского, 1881), 15–22. While laymen testified under oath, priests and deacons were deposed “by virtue of their holy orders” (*po sviashchensvy or po diakonstvu*), and lectors, signers, and church servants by the formula of the fourth Antithesis of the Sermon on the Mount (Matthew 5: 34–37) that replaced a formal oath with the simple “communication” of “Yea, yea; Nay, nay.”

18 *Дело о патриархе Никоне*, 13–14, 15–16, 18–36.

19 *Дело о патриархе Никоне*, 53; С. А. Белокуров, *Дневальные записки Приказа Тайных Дел, 17165–17183* (Москва: Издательство Общества истории и древностей Российских при Московском университете, 1908), 57.



ny. Despite certain skepticism about its trustworthiness, the sworn testimony, which carried the danger of the sin of forswearing, was a powerful deterrent against dissembling.<sup>20</sup> Eyewitness testimony was subject to the usual problems of biases and selective memory, especially as it concerned events that had occurred more than a year before. Some witnesses, especially lower clerics, seemed to filter their memory through the lens of rumors and speculations that had coalesced into a species of urban folklore.

At the end of February, when the tsar received the record of the courtroom testimony, a committee of five ecclesiastics was charged with determining which “rules of the Holy Apostles and canons of the Fathers” would be applicable to the situation caused by the resignation of the supreme bishop.<sup>21</sup> This committee was still at work when on March 6 Durov and Pushkin arrived from Novgorod. Durov’s contribution, the testimony of Tikhon, the abbot of Khutynskii monastery, tallied with the other evidence, but Pushkin’s report of his interview with Nikon turned out to be predictably explosive. Nikon asserted, in no uncertain terms, that he had not resigned. Not trusting Pushkin to fully convey the message, he handed him a letter addressed to the tsar and signed “Nikon, the Patriarch by the Grace of God.” Nikon insisted that he was still the ruling patriarch, in full possession of a unique patriarchal charisma, recently confirmed by multiple miracles occasioned by his prayers, including the victories that the tsar’s army had scored in January. Since these miracles also proved that his charismatic status had nothing to do with his presence in or absence from the capital, Nikon announced that he had no intention to return.

Nikon also rejected a notion that he could be subject to any judicial proceedings, let alone by a court made of “his” bishops who owed him their full and unqualified obedience. His conception of charismatic pontificate eschewed any relation to the church councils: an ecclesiastic became a patriarch not by dint of election by a church council but at the sacrament of the laying on of hands, when the patriarchal charisma flowed from one patriarch to another. (He hastened to add that the consecrating patriarch remained in full possession of his own charisma). This, Nikon announced, was the universal law (*ustav mirnyi*) that the Holy Church had been maintaining ever since it received it from the Holy Apostles. The letter ended

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20 DAVID GOLDFRANK, “Probing the Collapse of Nikon’s Patriarchate”, in *Russia’s Early Modern Orthodox Patriarchate: Apogee and Finale, 1648–1721* (Washington, D.C.: Academica Press, 2020), 98; NANCY KOLLMAN, *Crime and Punishment in Early Modern Russia* (New York, N.Y.: Cambridge University Press, 2012), 114.

21 *Дело о патриархе Никоне*, 64, 72.

with a thinly disguised threat. Paraphrasing the Parable of the Good Shepherd (John 10: 3-6), Nikon warned that the faithful would not follow anyone who had not been consecrated by his touch, in effect threatening a schism if he were to be denied his unique role in church government.<sup>22</sup>

This development prompted multiple consultations. On March 14, the tsar conferred with Metropolitans Pitirim, Makarii of Novgorod, and Iona of Rostov as well as archbishops Filaret of Smolensk and Illarion of Riazan'. A week later he held a joint meeting of the bishops and the members of the Boyar Duma. On April 3, the tsar met with all the members of the council. On May 9, the tsar presided over a joint session of the full council and the Duma to find "a solution to the patriarchal question."<sup>23</sup> The tsar also solicited the input of the Greek bishops who were in Moscow on fundraising missions: the "humble Metropolitan Parthenius of Thebes," (probably Parthenius Lampradolous); Cyril, the abbot of the Nea Moni monastery in Chios who was also acting as the suffragan of the archbishop of Cyzicus; and Nektarios "the archbishop of Pogoniani" and a "jurist." The involvement of the Greeks, (who all hailed from the jurisdiction of the Patriarch of Constantinople), might have been intended to counteract Nikon's refusal to be judged by the Russian bishops. The same reason might have been behind the authorization of Ignatii (Ievlevich) of Polotsk in the role of speaking for the council (*blagosloveniem vsego osviashchennogo sobora*) at the May 9 meeting.<sup>24</sup>

The documents that emerged from these consultations provide a curious insight into the interactions between the Greek, Russian, and Belorussian legal experts. The Greeks submitted a joint memorial, their individual opinions addressed directly to the tsar, and their list of applicable laws.<sup>25</sup> The sobor also received the opinion of an unnamed Russian judge. Ignatii (Ievlevich) then laid out his views in his May 9 argument. All the judges operated on the shared premise that the patriarch was one of the bishops. There are no indications Nikon's vision of a charismatic patriarchate was taken seriously. The Russian bishops must have remembered that just eight years earlier, it was the council that officially named Nikon the patriarch of Moscow and all Russia. It had also not been a patriarch, but Metropolitan Kornilii of Kazan' acting on behalf of the "other Metropolitans,

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22 *Дело о патриархе Никоне*, 18–20.

23 БЕЛОКУРОВ, *Дневальные записки*, 65–6. Cf. ГИББЕНЕТ, *Историческое исследование*, 75.

24 *Дело о патриархе Никоне*, 84–88.

25 *Дело о патриархе Никоне*, 72–83; 291–299; ГИББЕНЕТ, *Историческое исследование*, 193–213.

archbishops, bishops, and the entire body of ordained ministers of the realm (*vsego osviaschennogo sobora rossiiskogo gosudarstva*)” who had consecrated Nikon.<sup>26</sup> One of the Greek bishops vigorously rejected Nikon’s claims to inalienable charisma, pointing out that Scripture was full of examples of God revoking His grace even from prophets and apostles.<sup>27</sup>

All the documents acknowledged the gravity of the predicament. Not only was it patently uncanonical to have the see of the supreme bishop vacant for more than six months, it was also fraught with the danger of division and civil unrest, given the ongoing war and the fallout from Nikon’s reform. Yet they all warned against a quick solution. Cyril of Chios forcefully drove home this message. His memorial opened with an impressive barrage of biblical and patristic quotes assembled to condemn Nikon as a latter-day Haman but concluded with a strong warning against succumbing to an impulse to act rashly. As awful as Nikon was, it was the tsar’s duty to ensure that his case be decided in strict accordance with the law and the requirements of due process.<sup>28</sup> The Greeks also cautioned against hasty decisions in selecting Nikon’s replacement, specifically warning against election by sortition or casting of lots, a method that had been used to select Nikon’s predecessor and more recently proposed by Neronov. They also insisted that the newly elected pontiff must be endorsed by all four Eastern patriarchs rather than the patriarch of Constantinople, since the tetrarchy, as “the four pillars of the church,” collectively possessed the treasury of merit that constituted the very foundation of the church.

Noting that the case was unprecedented and extremely complex, Ignatii (Ievlevich) proposed several solutions. The best and most improbable scenario would involve Nikon forgoing any legal action and consenting to the election of a new patriarch. Should Nikon want to return to office he would have to apply to the council to do so. If he neither wished to resume the duties of his office nor repented his action, he was to face a formal trial. It was imperative that he provided his own testimony either in person or, should he be unable to attend, be deposed by the duly deputized representatives of the church council rather than a civil officer. The worst-case scenario, which had Nikon refusing to participate in any way, would place a church council in the unprecedented position of trying to dislodge a sitting patriarch. In this case, the only course of action was to appeal to

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26 С. А. Белокуров, «Чин избрания, наречения, посвящения, и шествия на ослати патриарха Никона», *Христианское Чтение* 2 (1882): 7–12, 296–7, 304.

27 *Дело о патриархе Никоне*, 77–81.

28 *Дело о патриархе Никоне*, 81–83.

the patriarch of Constantinople, as stipulated by the founding documents of the patriarchate of Moscow.<sup>29</sup>

The lists of applicable laws submitted by the council's judicial committee and the Greek bishops were similar. Canon 16 of the Protodeutera Council (861) topped both catalogs. The canon, necessitated by "the quarrels and disturbances" in the church, i.e., the forced abdication of Patriarch of Constantinople Ignatius and his replacement by Photius, equated a bishop's prolonged absence from the diocese with unlawful resignation at will, which exempted him from the guarantees of due process and warranted his immediate expulsion.

There were, however, significant disagreements that affected the reading of the evidence and interpretation of the law. The Greeks posited that the evidence had proved beyond a reasonable doubt that Nikon had indeed resigned his see or rather, exercising his authority as a sitting patriarch, had deposed himself. In contrast, the unnamed Russian judge saw Nikon's 1658 performance not as a resignation but rather a publicity stunt, a show of pretend and tortured humility (*smirennomudrie*) designed to impress his devotees and cow critics. He did have a point. There was indeed no incontrovertible evidence that Nikon had resigned or had even intended to resign. The testimony that described Nikon as explicitly abdicating came from witnesses who were unlikely to be sympathetic to the patriarch, most notably Pitirim and Mikhail. There was no love lost between Pitirim and Nikon, especially after the patriarch sought to abolish Pitirim's diocese and send him away to Belgorod.<sup>30</sup> Pitirim gave succor to Ivan Neronov and condemned Nikon for abandoning his sacred office and willfully and maliciously widowing the church. Metropolitan Mikhail's insights might have been conditioned by his feud with Gabriel, the patriarch of Peč, who had resigned his see pleading the non-existent threat of Ottoman persecution and largely invented health problems, only to reclaim his seat later. It was Pitirim and Mikhail who on July 10, 1658, told the tsar that "the patriarch was leaving the see."

The evidence for abdication was either easily disputed or circumstantial. For example, it was not clear what exactly Nikon had renounced in 1658

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29 «Голос, или мнение пречестнаго господина отца архимандрита Борисоглебского, игумнту Божьявленского Полотескаго на бывшем по дело патриарха Никона соборе, в царственном граде Москве, лета от воплощения Бога Слова 1660 месяца маяя дня», *Древняя Российская Вивлиофика* 3 (1788): 374–82.

30 MICHELS, *At War with the Church*, 62; С. В. ЛОВАЧЕВ, *Патриарх Никон* (Москва: Искусство, 2003), 179.

in his address to the congregation. All eyewitnesses described it as a sermon on a text of John Chrysostom that turned into an extemporized speech with Nikon tearfully berating himself as an inept teacher and an unworthy shepherd.<sup>31</sup> While Pitirim recalled Nikon telling the faithful that he was “no longer your patriarch,” most of the eyewitnesses testified that Nikon said that he merely did not wish to be called or styled Patriarch of Moscow. Pitirim and a few other witnesses described Nikon ending the ceremony with a formal oath complete with the formula of self-imprecation: “should I ever think of myself as a patriarch, let me be anathema.”<sup>32</sup> The fact that Nikon was extemporizing could open the patriarch to the charge of uttering a rash oath and therefore taking the Lord’s name in vain. However, because not all witnesses remembered the reference to anathema, the oath was used to prove that Nikon’s actions indeed amounted to resignation: Because a man was “snared” with the “words of his own mouth,” (Proverbs 6:2), Nikon could not be freed from his vow lest he rendered himself a perjurer.

The evidence that Nikon had renounced his episcopal holy orders was a bit thin. All witnesses recalled Nikon taking off his sacramental vestments in the ambo, in full view of the congregation, in a striking violation of the rite that prescribed the presiding bishop to divest in the sanctuary. According to Pitirim, the vestments included the symbols of the patriarchal office and episcopal holy orders, i.e., the pallium (*omophorion*) and dalmatic (*sakkos*); Mikhail noted that Nikon was about to tear off his alb (*sticharion*), which signified ordained ministry, but was prevented from doing so.<sup>33</sup> Yet all witnesses, including Pitirim, confirmed that Nikon walked out of the cathedral attired in a sacramental episcopal mantle adorned with red and white horizontal ribbons (*istochniki*). The testimony showing that Nikon donned monastic garb was discarded as unreliable. Trubetskoi, who had been dispatched by the tsar to the cathedral, testified that when he

31 It is possible that the *mea culpa* recalled by the eyewitness was not what Nikon intended. He might have been commenting on the final part of Chrysostom’s homily, which expresses the frustration of a pastor facing stubbornly recalcitrant flocks.

32 М. Ю. Люстров, «Уход патриарха Никона как подражание образцам (К вопросу о самоознании московского патриарха)», *Герменевтика русской литературы* 10 (1989): 447–59.

33 Nikon was keenly aware of the implications of this line of inquiry. In his 1659 letter to the tsar, he mentioned that he had retained a set of liturgical vestments, including a “simple” episcopal dalmatic (*sakkos*) and pallium (“minor *omophorion*”) and expected to be buried with them. In 1665, he stated that when he left the cathedral, he was carrying nothing but “one *sakkos* and one miter” and a single set of episcopal vestments. *Дело о патриархе Никоне*, 29–30, 37, 42–3, 49–50.

asked for the patriarch's blessing (*blagoslovenie*), a sacrament offered by a prelate on behalf of the church, Nikon replied that he could not do so. According to Mikhail, Nikon added that he could not do it because he was now a "mere monk," but Mikhail was the only eyewitness to recall this detail.

As pictured in Pitirim's affidavit, on July 10 1658, Nikon willfully and deliberately ignored pleas from the clergy, the congregation, and the tsar's representative.<sup>34</sup> These three rounds of rejection seemed to invoke the ceremony of exhortation (*umolenie*) to accept the office of the patriarch enacted at Nikon's installation six years before.<sup>35</sup> Performed in reverse, it amounted to a public negation of the installation and, therefore, an act of abdication. All witnesses recounted that at some point Nikon proffered Trubetskoi a letter which he had jotted down at the communion table sometime during the liturgy. According to Trubetskoi and everyone who was within earshot, Nikon said that it was a petition to the tsar for a "humble cell" to live in, to which Trubetskoi curtly remarked that Nikon already had plenty of cells and refused to take it. The letter was never introduced as evidence, and the only written proof of Nikon's alleged abdication was a letter of his to the tsar signed "Nikon, the former patriarch."

There was also evidence that Nikon might indeed have staged the event. He, for example, requested ancient sacramental objects, including the crozier of St. Peter the Metropolitan (d. 1326), a patron saint of Moscow, which were usually kept under lock and key in the patriarchal treasury; the previous year's liturgy had not required a special set of vestments.<sup>36</sup> All witnesses were struck by Nikon's gesture of placing St. Peter's crozier by the patriarchal throne and picking up a simple wooden cane. The council was rather keen on finding out where the simple wooden cane had come from. It turned out that the patriarch's lector had bought the cane a week before,

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34 The testimony of Nikon's sacristan lev suggested that Nikon might have feared for his life. According to his account, as they walked out of the cathedral, the patriarch bitterly recalled the events of August 1654, when he was assailed by a mob abusing him as an iconoclast and a heretic and calling for his blood. According to lev, Nikon stated that he would not shed his blood for the sake of these "stone-hearted" people who were wallowing in ignorance and superstition. However, when cross-examined, lev conceded that he might have conflated two different conversations. *Дело о патриархе Никоне*, 38, 49.

35 Успенский, *Царь и патриарх*, 64–6.

36 Nikon also requested the relic known as the pallium (omophorion) of the Sixth Ecumenical Council, which, according to a legend, was once owned by St. Nicholas. А. ПЕТРОВ, «Омофор», в *Византийские древности. Произведения искусства IV–XV веков в собрании Музеев Московского Кремля*, ed. И. А. СТЕРЛИГОВА (Москва: Искусство, 2013), 102–3; А. П. ГОЛУБЦОВ, *Чиновники Большого Успенского собора и выходы патриарха Никона* (Москва: Синодальная типография, 1908), 270–2.

at the patriarch's request. All witnesses described Nikon as leaning pitifully on the cane and walking towards the church doors only to find the exit blocked. The sacristan of the Church of the Assumption testified that it was Nikon who had ordered him to place guards there. Most eyewitnesses also testified that Nikon did not get around to saying the dismissal of the liturgy, a very strange lapse for a patriarch. It is possible that he was counting on the tsar coming to the cathedral. Had the tsar done so, the dismissal would have followed a scene in which the tsar was reconciled with the patriarch, even to the point of Aleksei Mikhailovich tearfully repenting his sins.

The unnamed Russian jurist concluded that since Nikon had not resigned, he was still the patriarch, and, because the law prohibited the replacement of any sitting bishop, no council had the authority to even contemplate a successor to Nikon. The range of legal actions against Nikon was too limited, since there was no evidence that the patriarch had committed any offence which would warrant a trial. Moreover, bishops could no more judge the "pastor of pastors and the father of fathers" than sons could judge their father. The only thing a church council could do was to try to compel him to resume the duties of this office. The only individual with authority over Nikon was the patriarch of Constantinople and, should the case ever be resolved, the new patriarch.

In his May 9 speech, Ignatii (Ievlevich) contended that there was no set of laws that could apply to Nikon's case. The Greeks argued that the law was, in fact, quite clear, and that it demanded that Nikon be stripped of his episcopal and sacerdotal holy orders. This thesis, the most famous aspect of the story of the 1660 council, was also put forth, apparently independently of the Greeks, by Ivan Neronov.<sup>37</sup> The Greek bishops held up Matthew Blastares' *Syntagma Canonum* (1335) as offering the clearest guidance on the matter.<sup>38</sup> The relevant passages were contained within the chapter on episcopal resignations (Epsilon, 28) which posited that episcopal status was contingent upon faithfully discharging the duties implicit in the term "bishop," a position described as "an overseer, pastor, and father to fathers." Since all whom God had "called to serve must serve," anyone who failed to do so was unworthy of the sacred office and could

37 Субботин, *Материалы для истории раскола*, 181–2.

38 М. В. Корогодина, «Синтагма Матфея Властаря в России XVII века и Епифаний Славинецкий», в *Каптеревские чтения: Сборник статей* 10 (2012), 9–20; Е. В. Скрипкина, «„Алфавитная Синтагма“ Матфея Властаря' как источник по истории церковно-государственных отношений во второй половине XVII в.», *Вестник Томского Государственного университета* 19, no. 3 (2012): 64–8.

no longer be allowed to preside over the Lord's Supper and must therefore be stripped of his sacerdotal orders. Even though one of the Greek bishops thought that Nikon was a learned and pious man who could be allowed to serve the church as bishop, such a decision would constitute an exception to the letter of the law.

The Greeks' argument rested on the premise that the patriarch was the supreme pastor *par excellence*. They contended that Nikon had always been unfit for the office. Lacking the necessary compassion, humility, patience, and self-discipline, he had spent his entire tenure needlessly antagonizing the faithful and undermining the comity of the clergy (*drugoprinitel'nost*). One of the Greeks who was more sympathetic to the patriarch pointed out that the contents of Nikon's speech indicated that the patriarch must have realized his own shortcomings.<sup>39</sup> The unnamed Russian judge accepted the basic premises that the patriarch was primarily the supreme pastor and that an unworthy pastor should be stripped of his holy orders. He, however, argued that Nikon was more than worthy: in keeping with Apostle Paul's maxim that all the faithful must "endure chastening" (Hebrew 12:4-9), Nikon had dutifully wielded his staff to guide his flocks and, as Nikon himself had remarked on many occasions, had imitated Eli in sparing no rod in punishing his wicked sons (1 Sam. 2:27-36). Even if the patriarch was indeed abusive, it was the duty of the clergy to beseech him, with filial love and obedience, to amend his ways and conquer his temper.<sup>40</sup>

The unnamed Russian judge concurred with Ignatii (Ievlevich) in citing the well-known stories of the frequent abdications of Eastern patriarchs as legal precedents. Since former patriarchs usually retained the episcopal and patriarchal titles, Nikon too deserved the status of a bishop without a see (*bezprestolen*). One of the Greek bishops heartily rejected this notion. The practices adopted under Ottoman rule were quasi-legal contrivances necessary for the survival of the Orthodox church under "infidel" rule. In a Christian realm ruled by a Christian emperor where the church was free to follow the letter of law, these schemes were irrelevant. Besides, all former patriarchs had followed the procedure of applying to the council and the sitting patriarch and providing evidence that they had resigned under duress, and their status of patriarch emeritus had proceeded from the joint decision of the sitting patriarch and church council. There was nothing in

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39 *Дело о патриархе Никоне*, 77–80 (No. 22). Neronov had expressed a remarkably similar view in his 1659 petition to the tsar.

40 *Дело о патриархе Никоне*, 87.



the law that entitled Nikon to retain his title, especially as he did not exhibit any inclination to humble himself before a church council.<sup>41</sup>

The *Syntagma* cited in the Greek bishops' joint memorandum was to be translated into Russian. This job fell to Epifanii Slaventskii (d. 1675), a hieromonk residing in the Chudov monastery and known as a canonist and an expert in the Greek and Latin languages. On May 26, an agitated Epifanii appeared before the council and three weeks later submitted a brief where he fleshed out his objections. Although this document has long been described as a dissenting opinion it was more of an amicus brief: Epifanii noted that he was not present at the council's session, that his station did not enable him to offer any judicial opinions, and that he was merely offering his views for the council's consideration, to be accepted or rejected as the judges saw fit.<sup>42</sup> Epifanii passionately objected to what he saw as overdependence on Greek books, insisting that the Russian sources were more accurate. The core of his argument centered around a distinction drawn between episcopacy (*episkopstvo*) and prelacy (*arkhiereistvo*) in a way that allowed Nikon to relinquish his pastoral obligations but retain the prelacy. In contrast with the anonymous Russian bishop, Epifanii objected to the very principle that the worth of a prelate was determined by his commitment to pastorship. Epifanii's criteria of worthiness were more forgiving: any prelate who shunned "forbidden books" was worthy, as was he who had resigned out of humility.

Because Epiphanius had volunteered to put it together, the final document of the council, usually described as a verdict, has been attributed to him.<sup>43</sup> The document, however, was not a verdict but rather "acts" (*deianii*), the genre harking back to the Roman *actae* or *gestae*, the official records of the entirety of proceedings necessary to lodge an appeal or to establish the *stare decisis*, i.e., the force of precedent.<sup>44</sup> The document reflected the Greeks' positions. It broadcast theses establishing that the patriarch was the supreme pastor rather than a supreme prelate, declaring Nikon unfit for the office, qualifying his *démarche* on July 10, 1658, as an act of self-deposition, and announcing that the See of Moscow was now vacant. With the solemn ceremony of the signing of the acts on August

41 *Дело о патриархе Никоне*, 72–6.

42 ГИББЕНЕТ, *Историческое исследование*, 213–4; *Дело о патриархе Никоне*, 88–93.

43 А. С. ЕЛЕОНСКАЯ, *Русская ораторская проза в литературном процессе XVII века* (Москва: Наука, 1990), 48–64.

44 JOHN DILLON, *The Justice of Constantine: Law, Communication, and Control* (University of Michigan Press, 2012), 35–60.

14, presided over by the tsar, the council adjourned as having fulfilled its mandate.

The 1660 council is worth exploring not only for its place in Nikon's affair. Its proceedings did not constitute a trial but rather approximated a grand jury. Its conclusion that Nikon was no longer a patriarch did not necessarily require any further legal action. It merely pronounced the patriarchal see vacant and encouraged the tsar to launch the process of appointing a new pontiff. The development that culminated in the council of 1666 was the result of Nikon's objections. Disagreeing with the council's findings and insisting that he was still the sitting patriarch, he appealed to the Eastern patriarchs. The 1660 proceedings highlight the role of the church council. Positioned at a nexus of law and religion, it offered a forum for discussion on the concepts of duty, responsibility, legality, and due process, ideas and notions seldom associated with Russia or Eastern Orthodoxy. The arguments heard at the council evinced diverse and even competing visions of church governance, driven, as in other parts of Christendom, by the effort to conceptualize the profound mystery of Christ's church incarnated in human polity.

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