

The Byzantine canonical scholia: a case study in reading Byzantine manuscript marginalia¹

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The scholia to the canonical manuscripts of the Collection in Fifty Titles and Collection in Fourteen Titles serve as an excellent case study in the potentials of marginalia to illuminate historical narratives and broaden our understanding of how the Byzantines encountered and read their traditional texts. This article explores these potentials by a) offering an overview and taxonomy of the canonical scholia; b) (re)discovering a Macedonian ‘proto-commentator’ hiding in plain sight in the margins of one manuscript; c) sketching some of the scholia’s hermeneutic particularities in comparison to the twelfth-century canonical commentaries.

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There is something peculiar about our knowledge of Byzantine manuscript scholia: in one sense we know these texts quite well, and yet in another we hardly know them at all. We know them well in that many significant scholiastic traditions have been published and studied. To get a sense of this, one only needs to dip into Eleanor Dickey’s *Ancient Greek Scholarship*, an impressive catalogue of several centuries’ worth of editions and studies on the scholia.² Yet Dickey, as one can guess from the title of her book, is a

1 Warm thanks are due to Bernard Stolte, Wolfram Brandes, and the late Andreas Schminck at the Edition und Bearbeitung byzantinischer Rechtsquellen (Forschungsstelle der Akademie der Wissenschaften zu Göttingen) for their assistance and encouragement throughout this project. An abbreviated version of this paper was read at the 2016 Byzantine Studies Association of America conference in Ithaca, New York.

2 E. Dickey, *Ancient Greek Scholarship* (Oxford 2007). I use the term ‘scholia’ in the generic sense of any variety of manuscript marginalia that provides some type of reading aid or exegesis for a central text. See Dickey, *Scholarship*, 11 n. 25 for a discussion of the different uses of this term. For the broader context of the Byzantine scholia, see now especially F. Montanari et. al. (eds.), *Brill’s Companion to Ancient Greek Scholarship*, 2 vols. (Leiden 2015) and also the works of Nigel Wilson, notably *Scribes and Scholars: A Guide to the Transmission of Greek and Latin Literature* (with D. Reynolds) (3rd edn. Oxford 1993) and *Scholars of Byzantium* (2nd edn, London 1996). Other recent publications include F. Montanari and L. Pagani (eds.), *From Scholars to Scholia: Chapters in the History of Ancient Greek Scholarship, Trends*

classicist, and the majority of the scholarship she has catalogued, even when it has been done by those well-versed in Byzantine studies, has a distinctly classicist flavour: it has been overwhelmingly concerned with the excavation of the classical past in Byzantine manuscripts, whether through extracting or reconstructing ancient scholarship, improving critical texts, or simply enriching our modern literary or historical appreciation of the classical tradition.³ In this sense, scholarship on the scholia recalls the days when Byzantine studies was mostly a supplementary discipline of classical philology.

A critical question for Byzantinists — what do these traditions tell us about the *Byzantines* — has been broached surprisingly rarely. Almost inevitably, scholia on post-classical texts, or the ‘new’ (usually Byzantine) scholia on classical texts, are the least likely to be studied, and the least likely to have satisfactory editions. When they have been studied, their implications for Byzantine studies have often been treated in passing. Only quite recently have studies on specific scholiastic texts or traditions emerged with a more strictly Byzantine orientation.⁴ But we are still far from a synoptic — much less comprehensive — picture of what Byzantine manuscript scholia can contribute to our understanding of Byzantine culture and society.

in Classics – Supplementary Volume 9 (Berlin 2011) and the entire issue of *Trends in Classics*, 6.1 (Oct 2014), which includes a useful recent bibliography.

3 For the works of the classicists, this is self-evident. In a more explicitly Byzantine-studies context, I would point especially to the *oeuvre* of Nigel Wilson as exemplifying this approach (above n. 2). A recent example in the legal literature would be José-Domingo Rodríguez Martín, ‘Lost and found: on recovery of forgotten classical institutions in early Byzantine legal texts’, in J. Codoñer and I. Pérez Martín (eds.), *Textual Transmission in Byzantium: between Textual Criticism and Quellenforschung* (Turnhout 2014) 513–38.

4 For example, F. Budelmann, ‘Classical commentary in Byzantium: John Tzetzes on ancient Greek literature’, in R. Gibson and C. Kraus (eds.), *The Classical Commentary: Histories, Practices, Theory* (Leiden 2002) 141–69; A. Kaldellis, *Byzantine Readings of Ancient Historians* (New York 2015); F. Pontani, ‘The first Byzantine commentary on the Iliad’, in *Byzantinische Zeitschrift* 99/2 (2006) 551–96; G. Russo, *Contestazione e conservazione: Luciano nell’esegesi di Areta* (Berlin 2012); B. Stolte, ‘A note on the un-Photian revision of the Nomocanon XIV Titulorum’, in *Analecta Atheniensia ad ius Byzantium spectantia* (Athens 1997) 115–30; R. Webb, ‘Greek grammatical glosses and scholia: the form and function of a late Byzantine commentary’, in N. Mann and B. Olsen (eds.), *Medieval and Renaissance Scholarship* (Leiden 1997) 1–17. See also the brief but important comments of I. Pérez Martín, ‘Byzantine books’, in A. Kaldellis and N. Siniosoglou (eds.), *The Cambridge Intellectual History of Byzantium* (Cambridge 2017) 37–46 at 44–5. U. Kenens, ‘Perhaps the scholiast was also a drudge: Authorial practices in three middle Byzantine sub-literary writings’, in A. Pizzone (ed.), *The Author in Middle Byzantine Literature: Modes, Functions, and Identities* (Berlin 2014) 155–70, moves mostly in the older direction. W. Lamb, *The Catena in Marcum* (Leiden 2012) is an interesting example of the potentials of the new attention being paid to marginal commentaries in Biblical studies circles. The older literature did not entirely ignore the Byzantine implications of the scholia; for example, the person and social context of the indomitable John Tzetzes was always too interesting to ignore. See for references Wilson, *Scholars*, 190–6; F. Pontani, ‘Scholarship in the Byzantine empire (529–1453)’, in Montanari et al., *Ancient Greek Scholarship*, 379–393. See also the suggestive comments of P. Lemerle, *Le premier humanisme byzantine* (Paris 1970) 237–9.

This is a situation worth rectifying. For cultural historians, scholia represent potentially unique windows onto how the Byzantines read, encountered and interacted with their texts. They can also shed light on social realities and help refine the history of the sources. One tradition of scholia, those connected to the texts of the canonical *Collection in Fifty Titles* (*Coll50*) and the *Collection in Fourteen Titles* (*Coll14*), happen to illustrate these potentials very well.⁵

I. The Byzantine canonical scholia: overview and taxonomy

The tradition of Byzantine canonical scholia on the *Coll50* and the *Coll14* texts is modest, especially when compared to the massive apparatuses that can be found accompanying Homer, the dramatists, biblical texts, or the secular legal texts.⁶ Of the published scholia, the longest are approximately 400–500 words, but the average is closer to 20.⁷ The total number of scholia in the *Coll50* and *Coll14* texts depends on exactly what one counts. A little over a thousand texts have been published to date. Perhaps half of that number is still unpublished, although an exact determination awaits a new edition.⁸ This figure does not include scholia on later canonical texts based on the *Coll50* or *Coll14*, such as the twelfth-century commentaries, or the *Epitome* of Constantine Harmenopoulos.⁹

5 On the sixth-century canonical collections, see S. Troianos, ‘Byzantine canon law to 1100’, in W. Hartmann and K. Pennington (eds.), *The History of Byzantine and Eastern Canon Law to 1500* (Washington, DC 2012) 115–169; D. Wagschal, *Law and Legality in the Greek East* (Oxford 2015).

6 Examples can be easily accessed online from <http://library.princeton.edu/byzantine/manuscript-title-list>. See (respectively) Florence Laur. Plut. 32.03, 32.09, and 6.18, and Paris BN gr. 1350.

7 The most recent and extensive editions are V. Beneshevich, *Приложения к исследованию: Канонический сборник XIV титулов со второй четверти VII века до 883 г.* (St. Petersburg 1905) 3–80 (published as part of the 1974 Leipzig reprint of *Канонический сборник*; henceforth = ‘Sbor.’), and V. Beneshevich, *Ioannis Scholastici Synagoga L titulorum ceteraque eiusdem opera iuridica* (Munich 1937) 157–90 (henceforth = ‘Syn.’). Some scholia to the nomocanonical section of the *Coll14* are also found in Sbor. 145–8. Beneshevich provided numbers for each scholion which I have followed. Beneshevich did not, however, include all of the scholia previously published by J.B. Pitra, *Iuris Ecclesiastici Graecorum Historia et Monumenta*, vol. 2 (Rome 1868) 641–62 and throughout the footnotes of 445–640; or by J. Hergenröther, *Photius: Patriarch von Constantinopel*, vol. 3 (Regensburg 1869) 113–27; or even by W. Beveridge in the *Annotationes to Synodikon Sive Pandectae Canonum*, vol 2 (Oxford 1672). These works must still be consulted. The second volume of the *Repertorium der Handschriften des byzantinischen Rechts* series, A. Schminck and D. Getov (eds.), *Repertorium der Handschriften des byzantinischen Rechts: Teil II: Die Handschriften des kirchlichen Rechts I* (Frankfurt 2010, henceforth = *RHBR* 2) has scrupulously catalogued the scholia for all canonical manuscripts described; volume three has recently become available.

8 The author is currently working on such an edition.

9 Although not extensive, *RHBR* 2 has noted scholia attached to Zonaras (Milan Ambr. A.53 inf., Paris BN Cois. 39, Paris BN gr. 1321, Rome Casan. 1400, Rome Coll. gr. 12, Sofia NCID gr. 158, Vat. Palat. gr.21). For Balsamon, see Venice Marc. gr. 168. These scholia are unpublished. An edition of scholia to Harmenopoulos may be found in J. Leunclavius (ed.), *Iuris Graeco-Romani*, vol. 1 (Frankfurt 1596) 1–71 (J.-P. Migne, *Patrologia Graeca* 150, 45A-168C).

The distribution of the scholia among the canonical sources is uneven. Manuscripts vary, but the early local councils of Ancyra, Neocaesarea, Laodicea, and especially Gangra, as well as the later Photian councils, Protodeutera a. 861 and Hagia Sophia a. 879, tended to attract few, and relatively short and infrequent, annotations. This is also true of patristic sources such as Timothy, Theophilus, Athanasius, or Gennadius. By contrast, the Apostles, Trullo, Carthage, and especially Basil are frequently accompanied by exceptionally rich apparatuses. Most other sources fall somewhere in between. This variation may reflect different patterns of reception (perhaps lower for the local councils), the comparative prestige of certain sources (esp. Apostles, Basil), or the relative need for interpretative aids (i.e., more for Carthage, a western source translated from Latin, and often difficult to read). It may also simply reflect the vagaries of transmission.

Across the *Coll50* and *Coll14* traditions, four basic types of scholia may be identified:

1) **Rubrical or summary scholia.** These are simple topical summaries of content, either of a whole canon, or of parts of a longer canon, sometimes found along the margins of longer texts as a kind of running guide. They often start with $\pi\epsilon\rho\iota$ or $\delta\tau\iota$. Typical examples would include ‘Regarding hermits’ (Sbor. 401, on Trullo 42) or ‘That the property of the bishop must be kept separate’ (Syn. 51, on Apostolic 40). Constantinople 6, Basil 1 or Gregory of Nyssa’s canonical letter often provide good examples of running rubrics. As a whole, they are quite common.

An important subset may be termed ‘schematic rubrics’. These diagram-like rubrics graphically illustrate distinctions or different aspects of an issue treated in the text. For example, the scholion ‘There are three parts of the soul: the rational, the desirous, and the appetitive’ (Sborn. 674, to Gregory of Nyssa’s introduction) is generally found in the manuscripts with the first clause on one line and three lines extending below it to each of the following three parts.¹⁰ Such rubrics are common when any type of distinction is made. Their purpose is no doubt pedagogical, and perhaps mnemonic. They are known in other scholiastic traditions, for example, those on Plato.¹¹

Another subset of rubrical scholia are the penitential scholia. These highlight the type and length of a rule’s sanction: ‘Here adultery is penalized by seven years’ (Syn. 110, on Ancyra 20); ‘Let the fornicator mourn for two years, for two let him hear; for two let him prostrate; for one let him stand’ (Sbor. 631, on Basil 58). These point to one eminently practical use of canon law manuscripts: as handbooks for apportioning penances.

The rubrical scholia, as a whole, appear to be quite dull, and they are among those most likely to be omitted by editors. But they raise interesting questions

10 For an example, see Paris BN sup.gr. 1085, 144v.

11 For some early examples, see the scholia on Gorgias in Oxford Bod. Clark 39, 371r, or Vienna sup. gr. 7, 370r.

about what a canon's central issue was perceived to be, and why certain aspects were deemed more worthy of emphasis than others. A quick example is afforded by Trullo 95, which deals with the various modes of reception of heretics into the Byzantine church. It does not inspire a large quantity of marginalia, but when a few scholia emerge in an eleventh-twelfth century manuscript (Vat. gr. 1980), one particular issue is highlighted: rebaptism ('Why some heretics are baptized' – Sbor. 447). This naturally raises the question: was this a particularly topical issue at that time? (Latin rebaptism?)

2) **Reference scholia.** These scholia give cross-references to other canons or civil legal texts. For example, 'Seek the 2nd canon of the first synod; canons 19, 73, 76, 95 of Carthage; canon 8 of the synod in Trullo; canon 2 of the [second] synod in Nicaea; constitutions 2 and 17 of the Novels.' (Syn. 315) Similar scholia are well known from the civil legal texts. They almost always appear in highly abbreviated form.

Like the rubrical scholia, these scholia are both common in the manuscripts and prone to omission in editions. Until a complete edition is produced it will be difficult to assess their significance. They may, however, turn out to be more interesting than they first appear. Which canons are cited? Which not? Why? It may be that we can learn more about how a canon was understood by how it was contextualized by other rulings. The omission of certain sources could also assist in determining the date of composition of a scholion. It may even be possible to relate reference scholia to the systematic portions of the collections, which are essentially organized collections of cross-references.¹²

3) **Exegetical scholia.** These provide substantive clarification, explanation, or further interpretation of a text. These are the best published of all the scholia, and include all the longest texts. They are quite varied, but a few distinct sub-types may be identified, many recognizable from the broader tradition of Greco-Roman exegetical practice.¹³ There are thus 'historical' comments (ἱστορικά), which provide further information on geographical or historical *realia*. For example, Sbor. 27, to Apostles 37 (on the date 'twelfth of Hyperberetaios') notes: 'This the ninth of October according to the Romans.'¹⁴ There are scholia that identify biblical, patristic or canonical

12 In the case of one manuscript, St. Petersburg RNB gr. 66, the extensive reference scholia turn out to be the *Coll14* references broken up across the margins. Could something like the lost *Collection in Sixty Titles* be lurking in fragmented form in other marginal cross-references?

13 Used with caution, M. Gluck, *Priscians Partitiones und ihre Stellung in der spätantiken Schule* (Hildesheim 1967) 17–23 and H. Marrou, *Histoire de l'éducation dans l'antiquité* (4th edn., Paris 1958) 229–34 *et passim* still present the best overview. See S. Matthaios, 'Greek scholarship in the imperial era and late antiquity', in Montanari et al., *Scholarship*, 184–296 for recent bibliography.

14 For other examples see Sbor. 224, 247, 350.

citations: ‘Of the letter to the Hebrews’ (Sbor. 351).¹⁵ There are also grammatical (τεχνικά) and lexical (γλωσσηματικά) notations, clarifying the meaning of a construction or providing a gloss on an unusual or archaic word. For example, Sbor. 455, to Second Nicaea 1 (to ‘unshaken and unmoved’ [ἀκράδοντα καὶ ἀσάλευτα]): ‘We must hear these as adverbial, as ‘unshakenly and unmovably [ἀκραδάντως καὶ ἀσαλεύτως]’.¹⁶ There are even a very few text-critical comments (διορθωτικά), discussing variant readings or other textual issues.¹⁷

Not surprisingly, exegetical scholia on the canons often evince characteristically juristic preoccupations, such as concern about definitions, distinctions, gaps in the legislation, ambiguities, or contradictions. For example, scholia explain the difference between ‘rustic’ (ἀγροικικαί) and ‘country’ (ἐγγχωρίοι) dioceses (Sbor. 189), or between letters pacific (εἰρηνικαί) and letters commendatory (συστατικαί) (Sbor. 20a). In Trullo 24, which forbids the attendance of clergy at wedding games, a scholiast quickly comments that clergy are, of course, permitted to stay at a *solemn* wedding (Sbor. 374). Apostolic 65 condemns those who kill someone from just one strike; a scholiast asks what happens to those who strike someone multiple times but do not kill them (Sbor. 41)? Yet another scholiast, commenting on Chalcedon 15, worries about the age at which a deaconess may be ordained: 40 years, as Chalcedon 15; or 50, as the civil law; or 60, as scripture? (Syn. 195) Yet another is eager to point out the discrepancy in the meaning of ‘neophyte’ between Nicaea 2 and Serdica 10 (Sbor. 73). Many similar examples could be offered.

Interestingly, the more technical types of juristic scholia found in the civil tradition (generally traced to the teaching of the *antecessores* in sixth-century Berytus and now found primarily in the ‘old scholia’ of the Basilica¹⁸) are almost entirely absent. Thus, there are no instances of case-examples with the stock figures ‘Peter’ and ‘Paul’. There are no short narrations of a law’s original circumstances, or explicit comparison of jurists’ opinions. There is no language of θεματίζω/θεματισμός, παραγραφαί, παράτιτλα, παράπομπα

15 These may be found especially in Trullo, Second Nicaea and Basil. For other biblical examples, see Sbor. 307–11, 365, 366, 396, Syn. 218; for patristic, Sbor. 394, 474; for canonical, Sbor. 388, 406.

16 See also Sbor. 5, 11, 189, 500, 668; Syn. 318 – among many others. Glosses are sometimes interlinear: see Florence Laur. 10.10 *passim*.

17 For example, Sbor. 519 on the Introduction to Basil’s first canonical letter, to ‘ἡ περὶ τὸ ἀκριβὲς μέριμνα’: ‘It is written also this way “ἡ περὶ τὸ ἀποκρίνασθαι μέριμνα”’. See also Sbor. 325, 613.

18 For an overview of the Basilica scholia, see S. Troianos, *Le fonti del diritto bizantino*, trans. P. Buongiorno (Torino 2015) 185–8 (translation with updated bibliography of *Oi Πηγές τῶν Βυζαντινοῦ Δικαίου*, 3rd edn. Athens 2011) and recent comments and bibliography in T. van Bochove, ‘The Basilica: between *Quellenforschung* and textual criticism’, in Codoñer and Pérez Martín, *Textual Transmission*, 539–75 at 543–5. On the *antecessores* and their teaching methods, see especially H. Scheltema, *L’enseignement de droit des antecessors* (Leiden 1970).

or the like. Generally, inasmuch as the technical and conceptual architecture of the canon law is less developed than the civil, so also the technical and conceptual complexity of the canonical scholia is lower than their civil counterparts; they are, as a rule, shorter and simpler. This contrast fits with a pattern that obtains generally in Byzantine legal discourse: a clear affinity exists between the church-legal and civil-legal texts, but the former never adopt the more technical trappings of the latter nor attain to the same level of doctrinal sophistication.¹⁹ Byzantine canonical discourse never seems to form itself as a direct image of the more professionalized, civil discourse to the same degree that will be observed, for example, in the high medieval west.²⁰

4) **Emphasis or highlighting scholia.** There is a final, fascinating type of scholia, which is much neglected.²¹ These are the small indications in the margins that draw attention to adjacent passages. Two varieties are especially common: σημείωσαι and ὠραῖον notations. The former mean *nota bene*; the latter connote something between ‘beautiful/fine’ and ‘useful’.²² Sometimes these occur together, and occasionally they are rendered more emphatic by the addition of λίαν or ἄγαν (‘very’).²³ They tend to run in identifiable traditions in the manuscripts, and are more evident in some sources than others. They are particularly (at times bizarrely) rich in Basil. Some are quite venerable, found in the oldest extant canonical manuscript.²⁴ Occasionally one also finds χρηστός (‘useful’) or ὄρα (‘see’, ‘look’).²⁵ The interpretive potential of these small notes is unexplored. What exactly do Byzantine readers/scribes find worthy of emphasis in the canons? What type of sentiments? We will examine a few examples shortly.

II. Source History. Arethas of Caesarea: the forgotten canonical ‘commentator’?

The potential of the scholia for illuminating several aspects of the standard source narrative have been largely unrealized over the last century. Several important observations about these texts have been made, but these have been mostly overlooked or under-developed in recent scholarship.

19 On this question more broadly, see Wagschal, *Law and Legality*, 276–9 *et passim*.

20 On the lack of professionalization in Byzantine canon law, see Wagschal, *Law and Legality*, 80–3.

21 Although see the important comments of K. McNamee, ‘Another chapter in the history of scholia’, *Classical Quarterly* 48.1 (1998) 269–88 at 286–8; also, Russo, *Contestazione*, 9.

22 Good examples, available online, can be found in Paris BN sup. gr. 614 (e.g. 167v) or Paris BN sup. gr. 1085 (e.g. 126v–127r).

23 For example, Paris BN sup.gr. 1085, 127r.

24 Patmos 172 (early 9th c.?), in Dionysius, Peter and Basil.

25 For examples see Paris BN sup. gr. 1085 11v–12r, 87v–88r; Paris BN sup.gr.614, 144r, 146r.

One of the great mysteries of the Byzantine canonical tradition is the explosion of formal jurisprudential work in the twelfth century. This development begins as a curious proliferation of question-and-answer type treatises — ἐρωταπόκρισις material²⁶ — at the very close of the eleventh century, and comes to its fullest flowering in the ‘big three’ corpus commentaries of the twelfth century: that of Alexios Aristenos, working c. 1130; that of John Zonaras, writing perhaps in the 1150s;²⁷ and finally that of Theodore Balsamon, working and re-working his commentary c. 1177–93. Today, thanks to the work of Victor Tiftixoglu, we also know of a fourth, anonymous commentator who was probably active while Balsamon was still alive and who seems to have substantially re-worked (and challenged) portions of Balsamon’s commentary. This work remains unedited in Sinai 1117. It does not seem to have enjoyed a wide circulation.²⁸

Before this point the jurisprudential silence is almost deafening. According to the standard source histories, one has to reach all the way into the sixth and early seventh century to find what might — generously — be considered a significant moment in the jurisprudential shaping of the canonical material. This is the period that saw the creation of the thematic or systematic re-workings of the standard source collections.²⁹ From that time until the eleventh/twelfth century, the jurisprudential landscape is otherwise remarkably barren. Canonical legislation continued, and the standard collections were gradually updated. Some interesting hybrid collections, like those of Nikon of the Black Mountain, appeared.³⁰ But only a few texts produced in this period could be counted as properly jurisprudential/exegetical: a few question-and-answer texts associated with Photios, some works on the transfer of bishops by Arethas of Caesarea, and a handful of treatises on marriage and episcopal elections.³¹

This gap, however, has opened in the narrative because the scholia have been mostly ignored. Scholars have generally avoided these texts — and for some good reasons. Quite aside from technical textual issues,³² authorship is often difficult or impossible to determine: scholia on the *Coll50* and *Coll14* are anonymous, and prone to re-editing. More importantly, dating is notoriously problematic. If we are lucky enough to have a manuscript that is securely dated — far from a given in the Greek tradition — the

26 For discussion and further references, see S. Troianos, ‘Byzantine canon law from the twelfth to the fifteenth centuries’, in Hartmann and Pennington, *Canon Law*, 170–214, at 198–9.

27 But see now T. Kampianaki, *John Zonaras’ Epitome of Histories (12th cent.): a Compendium of Jewish-Roman History and its Readers* (DPhil University of Oxford 2017) 17–19, who argues for a *terminus post quem* of 1166.

28 For the most recent survey on the twelfth-century commentators in English, see S. Troianos, ‘Canon law from the twelfth’, 176–185.

29 For the general literature, see n. 5 above.

30 On which, Troianos, ‘Canon law to 1100’, 141–3.

31 Troianos, ‘Canon law to 1100’, 168–9.

32 Scholia can be highly abbreviated and solecistic; in microfilms, they are frequently out of focus or cut off; and in editions their *mise en page* can be difficult to determine. Generally their textual variability requires repeated consultation of multiple manuscripts.

scholia could nevertheless have been added long after the original production. Without careful attention to hands and inks — the latter requiring physical examination of the manuscript — it is often difficult to be completely sure of the synchronicity of a text and its marginalia. Prudence has advised caution.

But caution about dating has been excessive. There are approximately 12 manuscripts dated to the ninth and tenth centuries which contain scholia. We can add a few more from (probably) the earlier eleventh century.³³ As a rule, the hands for the scholia seem at least broadly appropriate to the manuscripts' era. Even if in some cases it should turn out that a manuscript or a set of scholia are archaicizing and the manuscript and/or scholia misdated, it is reasonable to assume that at least *most* hail from before the twelfth century — enough for our purposes.

However, even if we wish to exercise a great deal of caution, it is possible to dismiss virtually all of these manuscripts from our consideration and still make substantive assertions about pre-twelfth century scholia. As it happens, there is one tenth-century manuscript of whose date we are virtually certain, and which contains many of the most important early scholia: Rome Vallicelliana F.10.

This manuscript is one of the famous manuscripts commissioned by Arethas of Caesarea (c. 850-after 932; bishop from 902) and it contains his own autograph scholia.³⁴ Arethas' hand in this manuscript has long been known, or at least suspected. In 1868 Cardinal Jean-Baptist Pitra raised Arethas' name as a possibility for the manuscript's distinctive scholia.³⁵ In 1914, the great Russian canonist Vladimir Beneshevich and the Arethan scholar Socrates Kougeas together re-discovered and re-asserted this possibility much more forcefully.³⁶ Their work convinced Patricia Karlin-Hayter and Paul Lemerle,³⁷ and in 1972 Anna Meschini, in a short monograph, reviewed the manuscript closely and confirmed that in her opinion the scholia were in the main from Arethas' own hand.³⁸ Lidia Perria, the most recent paleographer to survey the Arethan manuscripts, has taken this view for granted.³⁹

33 The 9th and 10th c. manuscripts are Athens EBE 1370; Jerusalem Patr. Bibl. Tim. Stav. 2; Moscow GIM Sin. gr. 398; Paris BN gr. 1334; Paris BN sup. gr. 614, 1085; Patmos 172, 173; Rome Vallic. F.10; Sinai 1112; St. Petersburg RNB gr. 66; Vatican BAV gr. 843; Vatican Pal. gr. 376. The 11th c. manuscripts: Oxford Bod. Auct. T.2.6, Barroc. 185; Sinai 1111; Venice Marc. ap gr. III.17; Vienna ÖNB hist. gr. 56.

34 For a full bibliography of this manuscript, see *RHBR* 2, 139. On Arethas and Arethas' scholarly work generally, see *PMBZ* 20554; Pontani, 'Scholarship', 342–55; R. Jenkins, *Byzantium: The Imperial Centuries AD 610–1071* (London 1966) 212–26; P. Karlyn-Hayter, *Vita Euthymii Patriarchae* (Brussels 1970) 200–7; Lemerle, *Humanisme*, 205–41; L. Perria, 'Impaginazione e scrittura nei codici di Areta', *Rivista di Studi Bizantini e Neoellenici* NS 27 (1990) 55–87; Wilson, *Scholars*, 120–35.

35 Pitra, *Iuris Ecclesiastici*, 656.

36 S. Kougeas, 'Νέος Κώδιξ τοῦ Ἀρέθα', *Φιλολογικὸς Σύλλογος Παρνασσός. Ἐπετηρὶς* X (1914) 106–16, following the appearance of his monograph on Arethas, *Ὁ Καισαρείας Ἀρέθας καὶ τὸ ἔργον αὐτοῦ* (Athens 1913).

37 Karlin-Hayter, *Vita*, 205–6; Lemerle, *Humanisme*, 235.

38 A. Meschini, *Il Codice vallicelliano di Areta* (Padua 1972).

39 Perria, 'Impaginazione', 65, 82.

There is little question, then, that we have a significant set of scholia – about 300 – whose *terminus ante quem* is sometime in the early tenth century.

Caution is still advised. The fact that the scholia were written by Arethas' hand does not mean that he composed them. (Bernard Stolte is right in saying that we can never assign an anonymous canonical scholion with absolute confidence to any one author.⁴⁰) But there are many factors that strongly point to Arethas' authorship.

First, the scholia seem to constitute a defined set in the tradition, with few of them enjoying independent streams of transmission.⁴¹ This suggests a coherence of compositional act, which points to a single author. Were this set of scholia a compilation of older traditions, we might expect more of them to enjoy independent streams of transmission.

An analysis of style further reinforces this sense of coherence. Most of the scholia are very distinctive in tone and syntax. In particular, they frequently exhibit a *recherché* obscurity combined with a bold, almost irascible, character. This strongly distinguishes them from the other scholia, and points directly towards Arethas, who is well known for precisely these characteristics.⁴² Kougeas was completely convinced that the overall tonality, diction and character of the scholia were a fit for Arethas.⁴³

It is the content of the scholia, however, that points most forcefully to Arethas. One scholion, considered particularly telling, refers to Basil the Great as the light of 'our' Caesarea: ὁ τῆς καθ' ἡμᾶς Καισαρείας φωστῆρ (which also demonstrates that Arethas was bishop of Caesarea when this scholion was written).⁴⁴ But equally important is the fact that the topic of tetragamy and multiple marriages is a special preoccupation of the author.⁴⁵ Here it is interesting to note that, although obscure in meaning, the scholia are generally negatively disposed towards tetragamy.⁴⁶ This may suggest that these scholia were written before Arethas' notorious pivot from the anti- to the pro-tetragamy camp. If this pivot occurred in 907, and the controversy did not break out until 905/6, we might reasonably venture that these scholia were written in the intervening year — and thus again assert a *terminus ante quem* for the manuscript. If we assume that Arethas would most likely have acquired a canonical manuscript at or

40 Stolte, 'Note', 122.

41 So far only two other manuscripts, Florence Laur. X.1 and Venice Marc. gr. 169, both from the 12th-13th c., have been identified that contain some of the Vall. F.10 canonical scholia. The number is limited to 14 for the former, and 4 (!) for the latter, and encompasses texts that mostly lack the distinctive flavour of the other Arethan scholia. Perhaps some of these were copied from elsewhere? These are noted by Beneshevich in *Приложения*. Full resolution of this question awaits a complete edition of the scholia.

42 See, for example, the comments of Pontani, 'Scholarship', 345; Russo, *Contestazione*, 13; Lemerle, *Humanisme*, 240–1; Wilson, *Scholars*, 133–4.

43 Kougeas, 'Νέος Κῶδιξ', 108–22.

44 Sbor. 99. So Kougeas, 'Νέος Κῶδιξ', 112.

45 Sbor. 103, 547, 548, 550, 552, 554, 555, 647. The author is also generally concerned about the whole issue of penitential binding and loosing; see for example Sbor. 612, 641. See Kougeas, 'Νέος Κῶδιξ', 113.

46 See Karlin-Hayter's nuanced discussion of some of these scholia, *Vita Euthymii*, 205–7.

around the time of his ordination to the episcopate c. 902/3, we could even venture a likely window for the manuscript's acquisition, and perhaps creation, between c. 902–906.⁴⁷ However, the scholia may have been written later, retrospectively, and Arethas' position throughout the controversy is in many ways opaque and confusing; further, Perria has noted that the scholia seem to have been added in phases.⁴⁸ The situation may be more complex.

In any case, aside from the tetragamy, there are numerous other preoccupations of the scholia that seem coherent with Arethas' life and concerns. For example, he expresses disdain of those who 'now' resign without any legitimate reason – presumably a jab at Patriarch Nicolas I Mystikos.⁴⁹ We also know that Arethas was a self-consciously learned author who had conflicts with fellow bishops; as it turns out, the scholiast is unusually sensitive about episcopal ignorance, misbehaviour, and corruption.⁵⁰ There are also a surprising number of scholia that are concerned with imperial wrong-doing, including one pointed question referring to a provision in Carthage 30 for litigants who face violence: 'And if the one who is using violence in an accusation is an emperor, what do you ordain, holy fathers?'⁵¹ Presumably this reflects Leo VI's two attempts to try Arethas for 'impiety'. No doubt related are sharply worded concerns about false accusations against bishops.⁵² Finally, to speak broadly, Arethas was among the most learned men of his day, and there is no question that the Arethan scholia are as a whole distinguished by unusual length and creativity.⁵³

If Arethas is indeed the author of at least most of these scholia — which seems almost certain — our narrative of the development of Byzantine church law changes significantly. A quasi-commentator has suddenly emerged out of the margins of a tenth-century manuscript. For a legal tradition that contains perhaps 4–5 figures who might be considered 'commentators', the significance of even one additional voice is immense. The fact that this voice comes from the Macedonian age, two centuries before the next earliest commentator, makes this identification particularly important. It will take historians and canonists some time to digest fully the implications for our understanding of the development and scope of Byzantine church law.

One immediate question, however, is the relationship of this early scholiast and the later commentary tradition. Perhaps the commentators do not emerge quite as *ex nihilo* as they seem? Over a century ago Mikhail Kraznozhen, in what is still the only

47 Rome Vallic. F.10 is the only manuscript of Arethas' library without a subscription or note of date of acquisition; the end of the manuscript is mutilated which may account for this absence. Perria, 'Impaginazione', 67.

48 Perria, 'Impaginazione', 82.

49 Sbornik 170; Kougeas, 'Νέος Κῶδιξ', 113–114 also noted this, and several of the following examples.

50 Sbor. 230, 371, 430, 464, 465.

51 Sbor. 268. See also Sbor. 124, 428, 463, 715.

52 Sbor. 164, 206,

53 See for example Sbor. 283a, 372, 475, 555, 588.

monograph on the twelfth-century commentators, did consider the scholia as a possible source for the corpus commentaries. His chapter on the scholia remains the single most significant treatment of these texts to date.⁵⁴ Unfortunately, Kraznozhen was writing before it was realized that the Vallicelliana scholia were by Arethas' hand, and his analysis is problematic in a number of ways. He recognized (on the basis of Hergenröther's earlier suggestions) that at least some of the scholia must be pre-eleventh century,⁵⁵ and that there is overlap between the scholia and the commentators. However, he did not consider that some of the scholia might post-date the commentators, and thus be drawing on the twelfth-century commentaries. He was also very generous in identifying dependencies, citing vague similarities as evidence of knowledge of the scholia; many of these might better be accounted for as independent or very routine observations.⁵⁶ Most problematically, he seems in places to have confused two different Vallicelliana manuscripts, with the result that he sometimes cites Balsamon and Zonaras as quoting Vallic. F.10, when in fact they are being cited in Vallic. F.18, a 16th c. manuscript of Manual Malaxos.⁵⁷ His conclusions therefore must be treated with caution.

Fresh analysis, however, reveals that the scholia in Vallic. F.10 were without any doubt known by at least one commentator: Aristenos. In numerous places Aristenos cites the scholia verbatim, if never with attribution.⁵⁸ By contrast, Zonaras and Balsamon cite Arethan scholia only when Aristenos has first quoted them, and in ways that do not demonstrate independent access to the texts.⁵⁹ Arethas' scholia therefore clearly penetrated the later tradition through Aristenos. This influence may in some cases have been significant. To give one example: Arethas may be the source of a controversial reading of one part of Chalcedon 28, voiced by Aristenos, but rejected by Zonaras and Balsamon.⁶⁰ The question involves the application of the word 'only' in one phrase, and has implications for the extent of Constantinopolitan jurisdiction.⁶¹

54 M. Kraznozhen, *Толкователи канонического кодекса Восточной Церкви: Аристины, Зонара и Вальсамон* (Yurev 1911) 62–86.

55 Kraznozhen, *Толкователи*, 64–5.

56 See for example his treatment of Apostolic 29, 41, 50, 80, Nicaea 2, Second Nicaea 2, Serdica 7, 10, 14, Carthage 4, Dionysius 4, Basil 3.

57 See his analysis of Apostolic 31, Constantinople 6, Trullo 90.

58 Sbor. 15, 51, 70, 81, 123, 124, 129, 138, 189, 201 Cf. also 9, 52, 122, 125, 142, 174, 190.

59 For example, see Sbor. 189 and Chalcedon 17, G. Rhalles and M. Potles (eds.), *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, 6 vols. (Athens 1852–1859, henceforth = RP) II, 259–63; or Sbor. 201 and Chalcedon 28 (RP II, 282–6). Other resonances are too general, and the point being made too obvious, to permit firm conclusions about direct influence. See above n. 55 for examples.

60 Sbor. 201.

61 RP II, 281–6; for discussion, see P. L'Huillier, *The Church of the Ancient Councils* (Crestwood, NY 1996) 277, who was aware of the scholion.

III. Edgy commentary: the hermeneutic particularities of the scholia

Whatever their source-historical import, it is the hermeneutic characteristics of the scholia that may be of greatest interest to the broader audience of cultural and legal historians. Marginal notations occupy an almost unique place in the Byzantine textual patrimony. As a quasi-genre of commentary, they would seem to occupy a tantalizingly liminal space between a Byzantine reader's immediate reactions to, and thoughts about, a text, and a more formalized, composed exegesis. Certainly in physical shape, physical location on the page, style, and grammar they strike a distinctly 'sub-literary' figure: they seem unguarded, off-the-cuff, informal — 'marginal'. As such, we could expect that they might offer a view of unparalleled intimacy and directness onto something that can be otherwise elusive: the very operation of Byzantine reading and interpretative practices. At the very least, they might offer a *different* perspective on these practices.

The canonical scholia happen to be a particularly good test case for exploring such hermeneutic possibilities, since they can be easily compared to much more finished, formal commentary traditions: the commentaries of the twelfth century. When this comparison is made, the scholia do emerge as surprisingly distinctive.

By far their most striking characteristic, compared to the commentaries, is their unusually colourful and bold character; they are much more prone to polemical, ironic, caustic and even subversive commentary. Written along the physical edges of the manuscripts, they seem to skirt along the very edges of the acceptable and conventional. To give a small example: Apostolic canon 55 forbids 'insulting' (ὕβριζω) a bishop. The twelfth-century commentators give some rationale for the canon, but do little more than paraphrase the rule.⁶² But a scholiast (probably Arethas) ventures that this rule refers only to 'insolent and arrogant' insults; apparently it doesn't apply when the bishop does something worthy of insult!⁶³ The acerbic, and in fact subversive, implication of this comment is immediately evident: there *are* times when insulting a bishop might be acceptable.

Another, more substantive instance is preserved in at least four manuscripts (twelfth-thirteenth century).⁶⁴ Commenting on Chalcedon 28, which treats the primatial privileges of Constantinople, a scholiast asserts that, since Rome no longer

62 RP II, 73–4.

63 Ἐξ αὐθαδείας δηλονότι καὶ ἀλαζονείας, ἀλλ' οὐκ ἄξια ὑβρεως δράσαντα. Sbor. 37.

64 Munich BS gr. 122, Venice Marc. gr. III.2, Florence Laur. V.22, Paris BN gr.1370. See V. Beneshevich, 'Zur slavischen Scholie angeblich aus der Zeit der Slavenapostel', *Byzantinische Zeitschrift* 36.1 (1936) 101–5. The instances in the last three manuscripts are found as part of a small appendix collection of texts on Constantinople's primatial rights. Edition (from the Florentine MS): A. Pavlov, 'Анонимная греческая статья о преимуществах Константинопольского патриаршего престола и древнеславянский перевод ее с двумя важными дополнениями', *Vizantiiskii Vremennik* 4 (1897) 143–154. See also S. Troitsky, 'Кто включил папистическую схолию в православную Кормчую', *Богословские Труды* 2 (1961) 7–47. Peter L'Huillier knew of this scholion through the Slavonic tradition, and offers several comments on the broader currency of its content: L'Huillier, *Councils*, 283–4. Hergenröther, *r.* 3.115 speculated that this scholion

holds the civil primacy, it also no longer holds the ecclesiastical primacy. Thus, Constantinople should be considered not simply equal to Rome, but superior.⁶⁵ This bold notion, although not unknown in broader Byzantine literature, is attested (to this author's knowledge) in only one other place in the canonical tradition.⁶⁶ The commentators are certainly more circumspect.⁶⁷

On a few other occasions, scholia get even more audacious: they directly criticize a canon of the 'core' tradition.⁶⁸ Thus, Nicaea 13 declares that a penitent who had been granted communion on the verge of death, but then recovers, should return to penance. But a scholion in a tenth-century MS (Vat. gr. 1080) disagrees, and says that this is 'most unreasonable', 'absurd' (ἀλογώτατον), as it would imply that we expect God to adhere to a judgement when we do not.⁶⁹ Arethas does something very similar with a canonical excerpt from Basil's treatise on the Holy Spirit (from chapter 29, 'canon' 92). Here Basil suggests that the doxology 'with the Holy Spirit' is not to be found in the Scripture. Arethas retorts: 'I'm amazed how the present saint says these things, since the holy scriptures are full of the all-holy theology of the Spirit...[Arethas adduces an example from Acts 5]...I'm amazed that he says this.'⁷⁰ Arethas' frustration and astonishment is quite palpable. It is difficult to think of a place in the commentators where such important sources are treated so brusquely.

A related, and widespread, phenomenon are the many occasions when the scholia shift from offering substantive exegesis to editorializing — i.e., to providing commentary in the sense of 'colour commentary'. In these cases, the canons typically evoke an expression of indignation, perplexity, critique, or admiration from the scholiast. In effect, the scholiast does not so much explicate the canon as express a moral or qualitative judgement on the provision at hand or the circumstances being addressed. Such sentiments are not conspicuous in the commentaries.

These editorializing comments can sometimes be very brief. For example, some canons are noted as simply 'severe', 'harsh' (αὐστηρός),⁷¹ while certain misbehaviours are characterised as 'fearful', 'frightening' (φοβερός).⁷² Some rules (generally of western origin) are 'strange', 'foreign' (ξένος).⁷³ In one case a regulation is noted as

should be traced to the hand of Photios. Troitsky's arguments ('Папистическую схолию', 16–23) for an even earlier date are unconvincing.

65 Pitra, *Iuris Ecclesiastici*, 646–7.

66 The twelfth-century *Order of the Patriarchal Thrones* of Neilos Doxapatres. See J. Morton, 'A Byzantine canon law scholar in Norman Sicily: Revisiting Neilos Doxapatres's *Order of the Patriarchal Thrones*', *Speculum* 92/3 (2017) 724–53, which brought this fascinating text to my attention.

67 RP II, 282–6.

68 For the concept of 'cores' in the Byzantine canonical tradition, see Wagschal, *Legality*, 68–73.

69 Sbor. 67.

70 Sbor. 665.

71 Sbor. 17, 34, 40, 75; Syn. 40.

72 Sbor. 87, 270.

73 Sbor. 213, 222, 269, 271, 273, 293.

‘philanthropic’.⁷⁴ Other examples are more involved, and can contain interesting social-historical nuggets. Among them is a scholion to Trullo 70, which forbids women from speaking during the liturgy. Here Arethas notes, quite contrary to the twelfth-century commentators, that ‘this does not bar simple speaking (for this is not permitted for men either [!]) but forbids teaching. For it seems that at that time some women were able to do this, which now not even bishops are able to accomplish.’⁷⁵ Here Arethas offers on the one hand a substantive exegesis, but on the other hand sharp editorial on contemporary episcopal abilities. Another striking example is Arethas’ comments on Second Nicaea 6. Here the canon legislates on yearly provincial synods and notes that metropolitans are not to exact anything from the gathered bishops. Arethas remarks: ‘I’m amazed at you, holy ones! And for what other reason is the gathering now? Is it not to levy tribute? Entirely.’⁷⁶

This last example exhibits another interesting feature of some scholia: Arethas is asking a question, and directly addressing the authors of the canons. This raises the issue of the literary form of the texts. The scholia are not simply indicative statements. There is a *querying and conversation* going on.⁷⁷ In this, the scholia have an almost oral quality. Even a few examples will illustrate this point. Apostolic 59 ordains that bishops must take care of the clergy’s material needs. Arethas asks: ‘And if he not only does not provide, but even deprives him of the means to live, what would he suffer?’⁷⁸ Trullo 19 establishes regulations on teaching the laity; Arethas notes: ‘The law is most excellent, but what should we teach, not even knowing the names of the sacred books?’⁷⁹ Carthage 70 rules that the higher clergy should abstain from their wives. If they do not, the canon says, ‘let them be removed from their order’. Arethas sensibly, if probably sardonically, asks: ‘And who will be able to convict them?’⁸⁰ Numerous other examples can be adduced, and not all from Arethas.⁸¹

It is sometimes hard to know how to take these questions. Some are clearly rhetorical, even ironic or impetuous – which is fascinating given that the canonical tradition is otherwise so permeated by an aura of sacrality and reverence. At times, however, the questions seem genuine. Carthage 101 refers to ‘strife’ between Rome and Alexandria; one scholiast asks: ‘What was the strife?’⁸² Even Arethas, on Serdica 13, which forbids clergy from accepting excommunicated clergy, seems to truly wonder: ‘If this is about the clergy, what about the laity?’⁸³ Ancyra 10 permits

74 Sbor. 441.

75 Sbor. 430.

76 Sbor. 465: ‘θαυμάζω ὑμῶν, ἅγιοι· καὶ τίνος ἄλλου χάριν ἢ συνάθροισις νῦν; οὐ φορολογίας; πάνυ γε’.

77 Kougeas, ‘Νέος Κῶδιξ’, 109 also drew attention to this.

78 Sbor. 39.

79 Sbor. 371.

80 Sbor. 290.

81 Sbor. 15, 41, 52, 81, 85b, 102, 103, 234, 264, 170, 225, 364, 434, 463, 488, 575, 625.

82 Sbor. 300

83 Sbor. 234.

deacons to be married in certain circumstances. A scholiast asks: ‘Does this contradict the apostolic canons or not?’⁸⁴

Whether rhetorical or real, all these queries clearly evince a kind of ‘thinking out loud’. But for whom exactly are these questions meant? Who is the audience? Are the scholiasts conceiving of their work as a kind of ongoing engagement with each other and other readers of these texts? What is the intention and function of these remarks? Are we witnessing the early stages of other compositions?⁸⁵ Arethas’ texts are particularly interesting for both their sharpness and their unique way of directly addressing the authors of the canons, a characteristic of his other scholia that has been noted.⁸⁶ However, in all cases we see a distinctly dialogical dimension emerging in the Byzantine reception of their legal texts, and one that is different from that found in the commentators.⁸⁷

On this literary note, we may turn finally to the ‘emphasis’ or highlighting scholia. Some of these, particularly the σημείωσαι notations, function as we might expect: they serve to highlight rules that the scholiast thinks are of particular interest or relevance. Sometimes these choices are intriguing. One tenth-century manuscript, for example, singles out two particular Apostolic canons as worthy of special σημείωσαι notation: Apostolic 59, commanding bishops and priests to care for the material needs of lower clergy, and Apostolic 77, permitting physically disabled people to ascend to the episcopate.⁸⁸ Another roughly contemporary manuscript, probably related to the former, ignores both of these but now highlights Apostolic 61, on sexual behaviour of potential clergy, and Apostolic 84, which forbids insulting the emperor.⁸⁹ Why the difference? Why were some canons of interest to one scholiast, and not to another? Perhaps an even more interesting example may be found in this same (latter) tenth-century manuscript, and appears to be unique among the earliest witnesses. Here Gangra, usually devoid of any notation, finds all of its canons relating to the denigration of marriage by ascetics carefully marked ‘ὄρα’. Did monastic extremism represent a particularly pressing issue for this scholiast?

84 Sbor. 85b.

85 See I. Pérez Martín, ‘Byzantine books’, 44–5.

86 The dialogical elements of Arethas have frequently been remarked; see Lemerle, *Humanism*, 239; Pontani, ‘Scholarship’, 344; Wilson, *Scholars*, 123. Examples from the scholia on Lucian can be found in Russo, *Contestazione*, *passim*. On the pedagogical and controversial contexts of Balsamon’s dialogical language, see R. Macrides, ‘Nomos and kanon on paper and in court’, in R. Morris (ed.), *Church and People in Byzantium* (Birmingham 1999) 61–85, repr. in Macrides, *Kinship and Justice in Byzantium, 11th-15th Centuries* (Aldershot 1999), study no. VI.

87 Balsamon will frequently address his reader (‘ἀνάγνωθι...’; ‘μὴ εἴπης...’, ‘σὺ δὲ...’, ‘σημείωσαι...’) and both he and Zonaras will report questions raised or will use questions in developing their arguments (e.g. RP II:208–15; 420–3; III:127–8, 327–8; others can be found easily). However, the editorialising tone and the direct addressing of the canons are on the whole absent.

88 Paris BN sup. gr. 614.

89 Paris BN sup. gr. 1085.

Such questions are unlikely ever to find full resolution, but the potential of these markings to add a whole new layer of nuance to our understanding of the Byzantine reception of these texts — and perhaps occasionally illuminate the authors/audiences of these notes — is unmistakable.

The ὥροῖον marks may be even more fascinating. Some of these also highlight specific rules, but others have a very different function: they draw attention to turns of phrase or expressions that are worthy of note (and probably memory). An excellent example may be found in an annotation to the first canon of Serdica, which forbids the transfer of bishops from one see to another. The canon contains a sentence that is perhaps the only instance of sarcasm in the canonical corpus: '[bishops are forbidden to transfer from city to city] for no bishop has ever been found who has striven to be transferred from a greater city to a lesser'. This line is very frequently noted as ὥροῖον in the manuscripts! Such pithiness in the articulation of a rule's rationale seems to have often triggered an ὥροῖον notation. Trullo 83 forbids giving dead bodies the Eucharist, 'for it is written, take, eat; but dead bodies are able neither to take nor to eat' — this gets an ὥροῖον. Likewise noted as ὥροῖον is the phrase in Gennadios (forbidding simony) that explains: 'For those who ordain are servants of the Spirit, not sellers of the Spirit.' Numerous other examples await cataloguing. In all cases, the notations reveal a literary and aesthetic appreciation of the texts that is otherwise almost entirely invisible in the canonical tradition and is perhaps surprising in a legal context.

IV. Assessment

Byzantine manuscript scholia, penned by Byzantines, for Byzantines, may represent one of the final textual frontiers for Byzantine cultural history. Their special power lies in their very liminality: they seem to occupy a space between the formal and informal, public and private, written and oral. This allows them to add a truly different dimension to the study of a textual tradition: that is, they add a new level of nuance and granularity to our understanding of how the Byzantines received and 'digested' a textual tradition. Further, they do this by speaking in a register that is otherwise difficult to access. This raises the question of how many types of 'voices' a tradition contains — commentaries, letters, histories, treatises, scholia, documents, images, etc. — and how each one of them can be used to peer into different aspects of a cultural phenomenon.

Within the confines of the history of Byzantine law, the canonical scholia have a number of important implications. Some of the most dramatic are the simplest. Within the published scholia we can find a proto-commentator hiding in plain sight; and this commentator, as well as the numerous other scholiasts, adds a host of new substantive interpretations and opinions to the store-house of Byzantine legal doctrine. Scholarship will no doubt be occupied for some time in assessing and assimilating the significance of these ideas.

But the scholia also raise some subtler questions about Byzantine legal culture and practice. The broad overlap of the scholia with the forms of general literary exegesis

points to a legal culture that functions in a more literary, rhetorical mode than modern legal sensibilities might otherwise expect.⁹⁰ Why would it be important, from a forensic perspective, to know where in the bible a certain quote comes from, or to draw attention to certain aesthetically or morally significant passages? This suggests a forensic practice that is more (explicitly) invested in extra-legal narratives than is typical in more familiar, formalist systems, and one that demanded a fairly broad cultural formation of its practitioners.

The dialogical, polemical and editorialising edge of some of the scholia also points to a more varied and lively (and broader?) canonical discourse than we might otherwise suspect. Here the instances of critique or subversion of the tradition are particularly interesting. How *directly* controvertible and malleable was the tradition? What exactly were the limits of interpretation?

90 For further discussion, see Wagschal, *Legality*, 275–88, *et passim*.