

A Disputed Novel of Basil II

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TOWARDS THE BEGINNING of his reign the emperor Nicephorus Phocas (963–969) issued a law which instituted strict regulations for the construction and endowment of monasteries and philanthropic institutions.¹ The emperor announced his preference for charitable distributions to the poor or repair of existing dilapidated foundations rather than the erection of any more new monasteries, homes for the aged, and hostels. He forbade therefore any new grants of landed property to these institutions or to metropolitanates and bishoprics. Since new foundations needed some sort of economic base, this prohibition amounted to a virtual ban on future construction of these institutions.²

Nicephorus Phocas' legislation did not succeed in altering the long-established predilection of wealthy benefactors to seek to found their own monasteries and philanthropic institutions; yet the law's fate has been the subject of considerable controversy. Was it ever repealed, or was it simply ignored? If it was formally repealed, which emperor was responsible and what were the circumstances which prompted the change of official policy?

An extant chrysobull of Basil II (976–1025) effecting a repeal of Nicephorus Phocas' law might seem to provide ready answers to the problem, but this document has been dismissed by many scholars as a clumsy forgery.³ I believe, however, that there are compelling

¹ *Nov. de monasteriis* (A.D. 963/4): K. E. Zachariä von Lingenthal, *Jus Graeco-Romanum* III (Leipzig 1857) 292–96 = J. and P. Zepos, *Jus Graecoromanum* I (Athens 1931) 249–52; for discussion see Peter Charanis, "Monastic Properties and the State in the Byzantine Empire," *DOP* 4 (1948) 53–118, at 55–59.

² *Kellia*, individual monastic cells, and *laurai*, monasteries located in deserted places, were exempted from the restrictions. Existing institutions bereft of landed property were allowed to reconstitute their endowments subject to imperial investigation and approval.

³ Basil II, *Nov. quae legem Nicephori de monasteriis tollit* (A.D. 988): *JGR* III 303–04 = Zepos I 259. Rejected as inauthentic by Franz Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches* I (Munich 1924) no. 772; George Ostrogorsky, *History of the Byzantine State*, tr. Joan Hussey (New Brunswick 1969) 307; Nicholas Svoronos, "Histoire des institutions de l'empire byzantin," *Annuaire de l'École pratique des hautes Études, IV^e section* (1970–71) 353–65, at 357f; I. M. Konidares, *To dikaiion tes monasteriakēs periousias* (Athens 1979) 137.

arguments for its authenticity which deserve the consideration of skeptics. To translate:

Our God-given imperial majesty has ascertained, both from monks distinguished in piety and virtue, and from many others, that the ordinance concerning the holy churches and philanthropic institutions enacted by lord Nicephorus has become the cause and origin of present evils and of this universal upheaval and disturbance, an injustice and an insult not only to the churches and the philanthropic institutions but also to God himself. Indeed, this has been confirmed in another way, for since the provisions of this law came into force, in no way whatever has anything favorable occurred in our lifetime unto the present day. On the contrary, absolutely no kind of misfortune appears to be missing. Therefore we ordain through the present pious chrysobull that the aforesaid law is to be null from this present day, and henceforth is to remain invalid and ineffective. In its stead, the prior dispositions concerning the holy churches and the philanthropic institutions which the renowned grandfather of our majesty, his father in turn, and the grandfather of my grandfather most excellently and piously instituted, will be operative. And so that this present disposition will be secure and unalterable, we, subscribing by our own hand, have ordered it to be impressed with a golden seal on the fourth day of the month of April of the first indiction, in the year 6496.

The early editors of the novel up to and including Zachariä von Lingenthal took it to be authentic.⁴ Yet Dölger, in his register of imperial *acta*, raised objections to its authenticity and awarded it an asterisk to denote his opinion that it is a forgery. According to Dölger, this law of A.D. 988 ought to be condemned because it is opposed in spirit to and not mentioned by the later, unquestionably authentic novel of 996 by the same emperor. Also, Dölger apparently was disturbed by the concern of the text to assert its own validity, noting laconically, “Die Siegelankündigung ist ungewöhnlich.” Subsequent critics such as Ostrogorsky have advanced Dölger’s argument by drawing attention to what they thought was inappropriate ‘pro-monastic’ bias in the disputed novel. Ostrogorsky actually preferred to believe a scholial tradition on the manuscripts of Nicephorus Phocas’ novel which attributes that law’s repeal to the emperor John Tzimisce (969–976) instead.⁵ Most scholiasts, however, like the nov-

⁴ E. Bonifidius, *Jus orientale* (Paris 1573) 32; Joannes Leunclavius, *Juris graeco romani tam canonici quam civilis tomii duo* (Frankfurt 1596) 117–18; Zachariä, *JGR* III 303–04; endorsed by André Feradou, *Les biens des monastères à Byzance* (Bordeaux 1896) 39.

⁵ *Cod. Vindob. Suppl.* 47–48, reproduced in *JGR* III 292 n.1 = Zepos I 249 n.1: ὄρα· αὐτῆ ἢ νεαρὰ κατηργήθη παρὰ τοῦ Τζυμισχῆ· κακῶς δέ; so also *Cod. Vat. Ottob. gr.* 243 f.539^r, both of which are dated by Svoronos (*supra* n.3) 358 to the sixteenth century.

el's editors, attribute the repeal to Basil II.⁶ Ostrogorsky therefore based his historical reconstruction on a sixteenth-century scholion in preference to an extant text.

Gustave Schlumberger was troubled by the divergence in the sources long before Dölger condemned the Basilian novel as a forgery. He attempted a reconciliation by accepting a 'first repeal' of Nicephorus Phocas' law by Tzimisces in 969, its reinstatement by the *parakoimomenos* Basil (under pressure from Nicephorus Phocas' nephew Bardas Phocas), and a 'second repeal' by Basil II in 988.⁷ There is no support in the sources, however, for the reinstatement of Nicephorus Phocas' law which this complicated reconstruction requires. It seems rather that we have a genuine (and not just an apparent) disagreement between the sources. In the absence of evidence that both traditions are somehow correct, or that both are wrong, historians must simply decide which is to be believed.

Russian Byzantinists such as Vasili Vasilievsky, Alexander Vasiliev, and more recently Alexander Kazhdan have been almost alone in continuing to maintain the authenticity of the novel.⁸ Most western Byzantinists, however, have come to join Dölger in condemning it as a forgery or in entertaining grave doubts as to its authenticity. Paul Lemerle has written, "The superstitious childishness of this text is shocking. The imprecision and the vagueness of expression are surprising."⁹ The eminent Byzantine legal historian Nicolas Svoronos at one time held the novel under suspicion, but now flatly condemns it as a forgery.¹⁰ To the reasons adduced by Dölger and Lemerle, Svoronos has added the failure of Nicetas Choniates to mention any repeal of Nicephorus Phocas' legislation when he came to discuss a vaguely similar law enacted by Manuel I Comnenus in 1176.¹¹ In-

⁶ N. Svoronos, *Recherches sur la tradition juridique à Byzance: La Synopsis major des Basiliques et ses appendices* (Paris 1964) 22 n.3, 29 n.2.

⁷ G. Schlumberger, *L'épopée byzantine à la fin du X^e siècle I* (Paris 1896) 728.

⁸ V. Vasilievsky, "Materialy dlya vnutrennei istorii Vizantiiskago gosudarstva," *Zhurnal Ministerstvo narodnago prosviescheniia* 202 (1879) 228–30 = *Trudy V. G. Vasilievskogo IV* (Leningrad 1930) 326–29; A. A. Vasiliev, *History of the Byzantine Empire*² I (Madison 1952) 336; A. P. Kazhdan, *Derevnia i gorod v Vizantii, IX–X vv.* (Moscow 1960) 74 n.71, and *Sotsialnii sostav gospodstvuyushchego klassa Vizantii XI–XII vv.* (Moscow 1974) 257 n.67.

⁹ P. Lemerle, "Esquisse pour une histoire agraire de Byzance," *RHist* 219 (1958) 282, now *The Agrarian History of Byzantium from the Origins to the Twelfth Century*, tr. G. Mac Niocaill (Galway 1979) 111.

¹⁰ Svoronos (*supra* n.3) 358; *cf.* (*supra* n.6) 155, and "Les privilèges de l'Église à l'époque des Comnènes: Un rescrit inédit de Manuel I^{er} Comnène," *Travaux et Mémoires* 1 (1965) 325–91, at 383 n.305, reprinted in his *Études sur l'organisation intérieure, la société et l'économie de l'Empire byzantin* (London 1973).

¹¹ Dölger *Regesten* no. 1523, *cf.* 1419, discussed by Lemerle (*supra* n.9) 217, and Svoronos (*supra* n.10) 375–82; Nicetas Choniates *Hist.* 7.3 (207 van Dieten): ὥστε καὶ

deed, the relevant passage in Choniates' *Historia* is read by Svoronos to imply that there was no formal repeal of Nicephorus Phocas' law, thereby opening to critics of the disputed Basilian novel the possibility of condemning it without necessarily accepting in its stead the weakly attested repeal by John Tzimisces. Of the latter Professor Svoronos has written, "There is no chance of it being correct." Konidares, in his study of the legal status of monastic property, has now seconded Svoronos in condemning both the disputed Basilian novel and the tradition of a repeal by Tzimisces.¹²

Although the critics are agreed in dismissing the novel, only Svoronos has attempted to answer what this text is, who wrote it, and when, assuming as he does that the professed attribution is disingenuous. Svoronos tentatively suggested that the reign of Isaac Comnenus (1057–1059), when the imperial government made some attempts to intercept revenues earmarked for the support of monastic institutions, might provide a likely context for the creation of the forgery, or more generally that the forgery was concocted in the second half of the eleventh century by a jurist sympathetic to the landed magnates.¹³ Later Svoronos felt confident enough to assert that the forgery was part of the ecclesiastical reaction to the program of Isaac Comnenus.¹⁴

Now if the novel could be proved to be a forgery, Svoronos' theory of its fabrication in ecclesiastical circles during the reign of Isaac Comnenus would be a plausible solution to the inevitable questions of authorship and motivation. Yet at this late stage in the controversy, can a case still be made for authenticity? I think one can.

Thanks in no small measure to Svoronos himself, it is not difficult to demolish the thesis of a repeal of Nicephorus Phocas' legislation by John Tzimisces. Ostrogorsky believed that such a repeal was among the concessions obtained from Tzimisces by the patriarch Polyeuktos in 969 as his price for recognizing the new emperor in the aftermath of the brutal assassination of his predecessor Nicephorus

τὴν νεαρὰν νομοθεσίαν, ἣν ὁ βασιλεύτατος τῷ ὄντι Νικηφόρος ὁ τὴν ἰσχὺν ἠρωϊκὸς καὶ πολὺς τὴν σύνεσιν, ἔθετο παύουσαν τὰς μονὰς ἐμπλατύνεσθαι κτήσεσι, τεθνηκυῖαν πάλαι τῷ χρόνῳ καὶ τὸ κῦρος ἀποθεμένην, τῷ ἐρυθρῷ τῆς βαφῆς ὡς αἵματι ἀναθάλλψας ἐζῶωσεν.

¹² Svoronos (*supra* n.10) 383 n.305; Konidares (*supra* n.3) 137.

¹³ Svoronos (*supra* n.10) 383; "Société et organisation intérieure dans l'empire byzantin au XI^e siècle: les principaux problèmes," in *Proceedings of the Thirteenth International Congress of Byzantine Studies* (Oxford 1967) 373–89, at 378, reprinted in his *Études*.

¹⁴ Svoronos (*supra* n.3) 358.

Phocas.¹⁵ Yet Leo the Deacon, in his nearly contemporary account, suggests otherwise:

He [Polyeuktos] declared to the emperor John Tzimisces that it was not permitted for him to enter the church until he expelled the Augusta [Theophano] from the palace and also disclosed the murderer, whoever he might be, of lord Nicephorus. Moreover, he should return to the synod the *tomos* which Nicephorus innovated contrary to established custom. For Nicephorus, wishing either to set right sacred matters disturbed, as it seemed to him, by certain of the clergy, or even to dominate sacred affairs, which he was excluded from doing, constrained the bishops to compose a *tomos* which held that nothing concerning ecclesiastical affairs would be valid without his consent.

Dölger himself was careful to follow the text, claiming only that Polyeuktos forced Tzimisces to void the novel of Nicephorus Phocas regarding the imperial oversight of church administration.¹⁶ Although he did not accept the Basilian novel, Dölger was apparently unwilling to substitute in its stead the late scholial tradition attributing to Tzimisces the repeal of Nicephorus Phocas' ban on new monastic foundations.

Some years ago Peter Charanis, who does accept the Basilian novel, revived an old thesis of Vasilievsky that John Tzimisces failed to enforce the legislation of Nicephorus Phocas, and added that this could have given the discordant scholiast the mistaken impression that Tzimisces was the emperor responsible for its repeal.¹⁷ My own study of private religious foundations¹⁸ has convinced me that Tzimisces' behavior as a private patron of these institutions indicates that, in the main, he in fact observed the provisions of Nicephorus Phocas' law. For example, Tzimisces gave an imperial *solemnion* of 244 *nomismata* to the Lavra monastery on Mount Athos, apparently in lieu of the usual donation of property prohibited since 964 by Nicephorus Phocas' law.¹⁹ Leo the Deacon mentions Tzimisces' restoration and enlargement of the hospital of Zoticus at Constanti-

¹⁵ Ostrogorsky (*supra* n.3) 293, based on Leo Diaconus *Hist.* 6.4 (98f Bonn); John Scylitzes *Synops. Hist.* 285 Thurn; Zonaras *Epit.* 17.1.

¹⁶ *Regesten* no. 726, *cf.* 703; followed by Charanis (*supra* n.1) 61 n.23, and Denis Zakythinios, *Byzantinische Geschichte 324–1071*, tr. G. Fatouros (Vienna 1979) 235.

¹⁷ Charanis (*supra* n.1) 61 n.23; rejected by Ostrogorsky (*supra* n.3) 293 n.2.

¹⁸ See "The Crisis of Byzantine Ecclesiastical Foundations, 964–1025," *Byzantinische Forschungen* 9 (1983).

¹⁹ Dölger *Regesten* no. 744; text not extant but mentioned in Athanasius *Typikon*, ed. Ph. Meyer, *Die Haupturkunden für die Geschichte der Athosklöster* (Leipzig 1894) 114; *cf.* V. S. Athanasii *Athonitae* ch. 36, ed. Louis Petit, *AnalBoll* 25 (1906) 5–89, at 50.

nople.²⁰ John Scylitzes records his rebuilding of the monastery of Damideias in the Armeniac theme.²¹ All this was in accordance with his predecessor's concern for improving the physical condition of the empire's existing religious foundations. Tzimisces' greatest philanthropic endeavor was his rebuilding of the church of Christ Chalke in Constantinople.²² Admittedly he did stray a little from the regulations of Nicephorus Phocas in connection with this project by granting some new estates to the church in order to fund an increase in the number of clerical appointments. So much we should expect as a dispensation of imperial *oikonomia*, but otherwise Tzimisces behaved as if the law of Nicephorus Phocas was still in force.

In Psellus' *Chronographia* there is a strong indication that Basil II himself, early in his reign, was aware of and determined to enforce the legislation of Nicephorus Phocas.²³ The *parakoimomenos* Basil, virtual regent of the empire during the minority of Basil II and his brother Constantine VIII, had erected a magnificent monastery dedicated to his own personal patron, St Basil the Great.²⁴ When Basil II assumed personal responsibility for the government in 985 by dismissing his mentor,²⁵ he ordered the demolition of the monastery, though not without some qualms about committing an impiety. Now it is true that Psellus attributes the demolition of the monastery to a personal grudge of the young emperor against the *parakoimomenos*, but he was writing nearly a century after the legislation of Nicephorus Phocas had become—on anybody's reckoning—a dead letter. Moreover, it is useful to have a testimony that Basil II was not immune from the concern for piety thought by some to disqualify him as the author of the disputed novel.

A close examination of Basil II's novel of 996, held by Dölger and other critics to be ideologically opposite to the disputed novel of 988, seems to me rather to reveal a profound respect for private property

²⁰ Leo Diac. *Hist.* 6.5 (99 Bonn).

²¹ Scylitzes *Synops. Hist.* 285 Thurn.

²² *Patria Konstantinoupoleos* 3.213 (282 Preger).

²³ *Chron.* 1.20: ἐβούλετο μὲν ἐκ θεμελίων καθαυρήσειν, τὸ δὲ τῆς πράξεως ἀναιδὲς εὐλαβούμενος, τὸ μὲν ἐκείθεν ὑψήρει, τὸ δὲ κατέσειεν, τὰ ἐπιπλα, τὰς ἐφηρμοσμένας λίθους, τὸ δ' ἄλλο τι ποιῶν τοιουτότροπον, οὐκ ἀνίει ἄχρις οὗ φροντιστήριον ἰδεῖν, χαριεντισάμενος εἰπῶν, τὸ μοναστήριον δέδρακε, διὰ φροντίδος τιθεμένων τῶν ἐν αὐτῷ, ὅπως ἂν ἑαυτοῖς τὰ ἀναγκαῖα πορίσαιτο.

²⁴ Cf. Franz Dölger, *Aus den Schatzkammern des heiligen Berges* (Munich 1948) no. 108 (A.D. 984), an act of donation by Athanasius the Athonite to Abbot John the Iberian, which mentions an earlier donation by Basil II (actually Basil the *parakoimomenos* acting in his stead) of the island of Nea to the monastery of Lavra, another apparent violation of Nicephorus Phocas' legislation by the emperor's regent.

²⁵ Scylitzes *Synops. Hist.* 335f Thurn.

rights in ecclesiastical institutions.²⁶ According to the emperor's own account, pious villagers had become accustomed to building churches on their own lands and embracing monastic life. Frequently these small foundations faced serious administrative crises when their founders died. This provided both an opportunity and a canonically-imposed moral obligation for the bishops and metropolitans to intervene. They chose to annex these foundations as diocesan monasteries and granted them out for administration and exploitation by wealthy benefactors with the result that these individuals gained communal property in violation of existing laws intended to curb land speculation by the upper classes. Basil II decided that the grants should be overturned and the foundations returned to the peasant communities as communal oratories. He allowed the bishops and metropolitans their traditional honorary rights in these foundations, but forbade them any financial perquisites.

The government's interest in encouraging the ecclesiastical hierarchy to supervise the private restoration of religious foundations had come into conflict with its interest in stabilizing patterns of land ownership in the Byzantine countryside. Basil II attempted through this legislation to resolve the conflict without sacrificing the government's interests in either problem. A special provision of the law grants the hierarchy generous latitude to arrange for the restoration of needy institutions by wealthy private benefactors, but not in those cases in which the need for such restoration was merely a pretext for evading the existing restrictions on land speculation. Basil II's law of 996 thus actually attempts to preserve the independence of small private churches in the face of the threat posed by the ecclesiastical hierarchy and their lay associates. There is simply no evidence here that Basil II was opposed on principle to the aristocratic patronage of religious institutions or that he was an anti-monastic zealot.

Indeed, the *Peira* of Eustathios Rhomaios, a relatively unexploited source for the history of this period, provides strong testimony to the benevolent attitude of the imperial government to the existence of private foundations.²⁷ One of the cases recorded by Rhomaios concerns the monastery of Piperatos. Patriarch Nicholas II Chrysoberges (980–992) tried to gain control of it, but the private owners were able to establish to Basil II's satisfaction that the monastery was *autodes-*

²⁶ Basil II, *Peri ton dynaton*: JGR III 306–18 = Zepos I 262–72 (esp. ch. 3); Dölger *Regesten* no. 783.

²⁷ Eust. Rhom. *Peira* 15.4 and 8 (JGR I 43–44 = Zepos IV 49–51), discussed by Thomas (*supra* n.18) and by Emil Herman, “‘Chiese private’ e diritto di fondazione negli ultimi secoli dell’ impero bizantino,” *OCP* 12 (1946) 302–21, at 306–07.

potos, self-governing, and had never been conceded to an ecclesiastical overlord. Another case concerned a private church in a village in the theme of Chaldia. The private proprietors' use of income from pious offerings made at the church of St Auxentius had come under challenge. In his decision Rhomaios reserved three-quarters of the liquid assets of the church for its lay owners, leaving only a fourth for the priests. The chief priest or *protopapas* was guaranteed tenure of office, but could be removed from the financial administration if he were found guilty of embezzlement.

These cases demonstrate the prevailing legal opinion of the time that private ownership was not incompatible with the proper functioning of an ecclesiastical institution. Even if a significantly different attitude from this benevolence could be detected in the novel of 996, this would not by itself be a decisive argument against the authenticity of the disputed novel, unless Basil II is seen as being motivated by a fanatical, anti-aristocratic (and therefore anti-monastic) policy that never varied, regardless of circumstances, throughout his reign of nearly fifty years. Indeed, Lemerle seems to have realized the danger of basing an argument for forgery on a supposed political irreconcilability of the two documents when he suggested that perhaps the disputed novel was no more than "an opportunistic gesture, a momentary concession made in a crucial period of his reign to the power and influence of the clergy and the monks."²⁸ Byzantine emperors were rulers capable of adjusting their policies to meet changed circumstances. Recent research has begun to reveal the complexity of Basilian statecraft, sometimes with surprising results. A little-noticed passage of Nicephorus Bryennius preserves a fond remembrance by the aristocratic clan of the Comneni of the kind treatment of their ancestors by the supposedly anti-aristocratic emperor.²⁹ If it seems unreasonable therefore to suspect automatically any document which could be said to portray Basil II as a friend of the aristocracy or of their interests in the patronage of religious foundations, how much more reasonable then to accept such a document when it can be shown to have a plausible context?

The plausibility of the precise date of 4 April 988 attached to the novel is itself a strong argument for its authenticity.³⁰ This was the darkest hour of the reign, shortly before the battle of Chrysopolis in the summer of 988, and about a year before Basil II's great victory

²⁸ Lemerle (*supra* n.9) 282.

²⁹ Niceph. Bryenn. *Hist.* 1.1 (75 Gautier).

³⁰ So Schlumberger (*supra* n.7) 727, and Albert Vogt in *Cambridge Medieval History* IV (Cambridge 1927) 89–90.

over Bardas Phocas at Abydos on 13 April 989.³¹ Surely if there was ever a time at which Basil II might have been inclined to make a concession to win aristocratic support, this, as Lemerle appreciated, would have been the occasion. If he was profoundly distressed at the miserable state of the empire and the low ebb of his own fortunes (as the novel proclaims), might the emperor not have blamed Nicephorus Phocas' legislation for all of this? The late emperor's brutal assassination might have seemed to contemporaries to be only the first of many demonstrations of heaven's wrath. If, as Schlumberger believed, Bardas Phocas really did take a personal interest in the preservation of his uncle's law, what better time for Basil II to defy him now that he was in open rebellion?³²

Far from being tainted by anachronism, the text of the disputed novel shows an impressively accurate knowledge of the authors of the legislation that would be coming into force to replace Nicephorus Phocas' law after its repeal.³³ It is difficult (though of course not impossible) to believe that forgers working seventy years later in the reign of Isaac Comnenus could have had all of this accurate information at their disposal. Even if, for the moment, the thesis of a forgery in the late 1050's is accepted, it is difficult to see what the author (or authors) could have gained by its concoction, since Isaac Comnenus' so-called 'anti-monastic' measures actually had nothing to do with the right to found or endow a monastery. Concocting a document to show that Basil II repealed a law which abolished these rights would have been of little propagandist value to any ecclesiastical opponents of Isaac Comnenus' confiscations and diversions of the revenue of certain religious foundations, most of which, as far as the sources reveal, seem to have been imperial or public institutions.³⁴

³¹ For the chronology of Basil II's reign see V. R. Rozen, *Imperator Vasili Bolgarobois* (St Petersburg 1883) 399–415.

³² Schlumberger (*supra* n.7) 728; so also L. Bréhier, "Basile II," in *DHGE* 6 (1932) 1092, who speculates further that Patriarch Nicholas II Chrysoberges was responsible for getting Basil II to repeal Nicephorus Phocas' legislation.

³³ Constantine VII (ὁ αἰδιδιμος τῆς βασιλείας ἡμῶν πάππος) *Nov. de potentibus* (947): *JGR* III 252–56 = *Zepos* I 214–17, esp. ch. 2; Leo VI (ὁ πατὴρ ἐκείνου) *Neara* 14, ed. P. Noailles and A. Dain (Paris 1944) 55–59; Basil I (ὁ ἐπίπαππος) *Basilica* 5.1.7, 5.3.8.

³⁴ Psellos *Chron.* 7.60: περικρούεται γὰρ τὰ πλείω τῶν ἀποτεταγμένων τοῖς ἐκείνων ναοῖς, καὶ ταῦτα εἰς τὴν δημοσίαν θείας σύνταξιν, ἐκείνοις τὸ ἀποχρῶν συλλογίζεται, ἐπαληθεύσας αὐτοῖς τοῦ ἀσκητηρίου τὸ ὄνομα; cf. 7.59: εἶτα δὴ δεῆσαν αὐτοῖς χρημασί τε καὶ κτήμασι κατενδαιμονίσαι τὰ ἀσκητήρια . . . τὰ μὲν τὰ τῶν ἀνακτόρων ἀποκεκονούντων ταμεῖα, τὰ δὲ τὰς δημοσίους ἀκρωτηριαζόντων τῶν κοινῶν συνεισφορῶν ἀφορμὰς . . . ; Michael Attaleiates *Hist.* 62 Bonn; Zonaras 18.4; Scylitzes *Continuatus* 642 Bonn; cf. Michael Glycas *Annal.* 601 Bonn, discussed by E. Stănescu, "Les reformes d'Isaac Comnène," *Revue des Études sud-est européennes* 4 (1966) 35–69, at 49–50.

Indeed, there is as yet no evidence of an organized opposition party to these policies in ecclesiastical circles. Michael Attaleiates tells us that they “seemed like sacrilege to the pious,” but he himself goes on to associate himself with the opinion of his serious-minded contemporaries by delivering a lengthy defense of these measures.³⁵ Speculation that opposition to these policies was one of the factors that led to the deposition of the patriarch Michael Cerullarius is just that.³⁶ The idea of a circle of opposition has nothing to support it except, by a form of circular argument, the existence of the ‘forged’ Basilian novel itself. Certainly the novel cannot simultaneously be held to prove the existence of ecclesiastical opposition to Isaac Comnenus’ policies while the fact of the existence of this opposition is cited as one of the indications that this novel is a forgery.

Of course, all of this argument would be for naught if the novel could be shown on textual grounds to be a forgery. However, there is no such unambiguous declaration forthcoming from the textual evidence.³⁷ The novel exists in no less than eight manuscripts (13th–16th centuries) which form part of the textual tradition of the Appendix B of the *Synopsis Basilicorum*.³⁸ The relevant edition of this appendix is dated by Svoronos to the eleventh century. In the older family of manuscripts which makes up Appendix A, one frequently finds the novel included as a marginal gloss (as in the oldest manuscript, *Paris. Suppl.gr.* 623 of the 11th century) or else a record of its existence next to the text of Nicephorus Phocas’ law.³⁹ This is the reflection we should expect to find in the early manuscript tradition of the repeal of an important, far-reaching piece of legislation. By the time of Appendix B, the record had been set straight, and the text of the Basilian novel nearly always finds its place in these manuscripts immediately after that of Nicephorus Phocas which it replaced.⁴⁰ For Svoronos, however, the absence of the Basilian novel in the principal textual tradition of Appendix A is convincing evidence that it is a forgery, concocted after the creation of the earliest manuscripts, passed off as authentic to the gullible compilers of the texts which underlay Appen-

³⁵ Attaleiates *Hist.* 62 Bonn: *πράγμα παρανομίας μὲν δόξαν ἢ ἀσεβίας εἰσάγον, καὶ πρὸς ἱεροσυλίαν τοῖς εὐλαβεστέροις ἐκ τοῦ προχείρου ἀναφερόμενον, ἀποτέλεσμα δὲ μηδὲν ἄτοπον ἀποφέρον πρὸς γε τοὺς ἐμβριφῶς τὰ πράγματα διακρίνοντας*, an opinion shared by Psellus (*Chron.* 7.61) and Scylitzes Continuatus (*Hist.* 642 Bonn).

³⁶ Cf. the argument of Stănescu (*supra* n.34) 51–52, and the deliberately ambiguous discussion by Psellus, *Chron.* 7.65.

³⁷ Svoronos (*supra* n.10) 383 n.305.

³⁸ Svoronos (*supra* n.6) 97 #16 n.1.

³⁹ Svoronos (*supra* n.6) 22 n.3, cf. 39 n.2.

⁴⁰ Svoronos (*supra* n.6) 97 #16 n.1, cf. #15 n.1.

dix B, and obstinately inserted into the existing manuscripts of Appendix A. Admittedly the textual evidence can be read in support of such a scenario, but it cannot be held to exclude a more straightforward interpretation.⁴¹

Dölger's unease with the closing statement of the novel cannot readily be overcome, given the small size of our sample of extant imperial documents of the tenth century. However, the text is not readily convicted under any of the criteria Dölger himself established for the detection of forgery.⁴²

The eminent Byzantine canonist Theodore Balsamon, writing at the close of the twelfth century, serves as a supporting mediaeval testimony, for he treats the novel as authentic and reproduces the text in a discussion of current legislation of Manuel Comnenus.⁴³ True, Nicetas Choniates omits to mention the novel in connection with a peripheral reference to the law of Nicephorus Phocas, but the passage is highly rhetorical and not to be depended upon for a precise recollection of the fate of a piece of legislation obsolete by this time for over two hundred years.

There remains the final objection that Basil II could not have written a novel of such 'superstitious character'. The objection presumes, I think, an insight into the emperor's personality that simply cannot be substantiated. Actually the scant evidence leans the other way.⁴⁴ Accordingly, in default of further evidence for doubting its authenticity, I conclude that it is time to accept what is an important piece of evidence for the ecclesiastical policy of Basil II.

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⁴¹ Svoronos (*supra* n.6) 85 n.3, in arguing that the omission of the text of the Basilian novel in *Athous Pantocrator* (13th century) is significant even though the copyist makes a note of its existence, shows only how stubbornly persistent the idea of a forgery has become.

⁴² Franz Dölger and Johannes Karayannopoulos, *Byzantinische Urkundenlehre* (Munich 1968) 136–37.

⁴³ Theodore Balsamon, *Comm. ad C. Const. I et II* (861) 1, ed. G. A. Rhalles and M. Potles, *Syntagma ton theion kai hieron kanonon II* (Athens 1852) 652–53.

⁴⁴ See *supra* n.23 and S. G. Mercati, "Sull' Epitafio di Basilio II Bulgaroctonos," *Bessarione* 25 (1921) 137–42.