Conciliarism at the Fifth Lateran Council?

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Conciliarism at the Fifth Lateran Council? Despite the current interest in things conciliar this is a strange and, no doubt to some, a rather forced juxtaposition. For what, after all, is there to be said about it? The council may indeed have been a great non-event in the religious history of the sixteenth century but it was surely a highly papalist non-event. Was it not, in form and procedure, a faithful copy of the papal general councils of the pre-Conciliar era—of Lateran IV (1215), of Lyons (1274), of Vienne (1311)? To what did it owe its convocation if not the desire of Julius II to cut the ground from under the feet of the dissident *conciliabulum* of Pisa (1511-12)—itself, of course, summoned by the cardinals of the opposition with the support of the French king and very much a conciliarist's council? Were not the first half-dozen sessions occupied almost exclusively with the condemnation of the activities of that council, the proscription of those who persisted in adhering to it and the reconciliation of those who had abandoned it? Did not the eleventh session witness the definitive rejection of the Pragmatic Sanction of Bourges, the base from which for so long conciliarist thinkers had been able to operate with impunity? Did it not witness also the unambiguous assertion of the superiority of pope to council, and was not this principle underlined in practice by the craven responsiveness of the council fathers to papal demands? And so on. It is easy enough to envisage the questions, the queries, the dissents.[1]

But on this matter, as on others, second thoughts are not necessarily redundant. Over the last few years it has become increasingly clear that despite the defeat of the conciliar movement at Basel, despite the subsequent papalist reaction, despite, even, Pius II's publication of the bull *Execrabilis* (1460), conciliar theory was very much alive at the beginning of the sixteenth century. And not only in France, where the Parisian theologians claimed it as a tradition going back to the days of the Council of Constance,[2] or in Scotland, where it had enjoyed, it

1. For the general background to the council and to the *conciliabulum* of Pisa, see Pierre Imbart de la Tour, *Les origines de la reforme.* 4 vols. (Melun, 1905-46), II, 1-178; Augustin Renaudet, *Préréforme et Humanisme à Paris pendant les premières guerres d'Italie: 1496-1517.* 2nd ed. (Paris, 1953); Hubert Jedin, *A History of the Council of Trent,* tr. Ernest Graf, 2 vols. (London, 1957-61), I, 1-165; Ludwig Pastor, *The History of the Popes from the Close of the Middle Ages.* 40 vols. (London, 1891-1953), VI, chs. 4-7, VIII, chs. 9 and 10. For the French side of the Pisan affair, reference should also be made to Victor Martin, *Les origines du Gallicanisme.* 2 vols. (Paris, 1939), especially II, and to Aimé-Georges Martimort, *Le Gallicanisme de Bossuet* (Paris, 1953), ch. 1. For the events of the Lateran Council, see especially J. Mansi, *Sacrorum conciliorum nova et amplissima collectio* (31 vols.; 1759ff.), XXXII, 649-1002; also C. J. Hefele, *Histoire des Conciles d'après les documents originaux,* tr. and ed. H. Leclercq, 11 vols. (Paris, 1907-51), VIII,[1] 297-558. For a more recent analysis of its reform program, see N. H. Minnich, "Concepts of Reform Proposed at the Fifth Lateran Council," *Archivum Historiae Pontificiae,* VII (1969), 163-251; N. H. Minnich and H. W. Pfeiffer, "Two Woodcuts of Lateran V," *ibid.,* VIII (1970), 179-214, for an interesting study of "conciliar iconography".

2. Thus John Major, *Disputatio de authoritate concilii supra pontificem maximum,* in Louis Ellies Dupin, ed., *Joannis Gersonii Opera Omnia.* 5 vols. (Antwerp, 706), II, 1132: "Super praefata quaestione sunt modi dicendi oppositi, quorum unus tenet Papa esse supra Concilium Universale: hunc . . . tenent communiter Thomistae. . . . Alium modum semper nostra Universitas Parisiana, a diebus Concilii Constantiensis imitata est; sic quod in ea, qui praedictam viam tenuerit, in campo cogitur eam revocare"; see also col. 1144, and Jacques Almain, *Tractatus de authoritate ecclesiae et conciliorum generalium, ibid.,* 1070.

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https://doi.org/10.2307/3163876 Published online by Cambridge University Press

seems, an equally unbroken popularity, but also in Italy, where the jurists (if not the theologians) lent it their support and where it was to find a distinguished spokesman in the very court of Julius II himself.[3]

France, Scotland, Italy—these, again, were the countries that provided the latter-day apologists for conciliar theory when, with the convocation of the Council of Pisa in May, 1511, what had seemed like a blunted diplomatic weapon was transformed into a pointed ecclesiological threat.[4] And the vigorous expression given to conciliar ideas at this time, especially by the Parisian theologians, Almain and Major, did much to set the tone both of subsequent theological Gallicanism and of much else besides.[5] It would be odd, then, if the Lateran Council, convoked, as it was, in the midst of a flurry of conciliarist propaganda, did not in some way witness to the impact of conciliarist ideas. That it did so in a negative sense is revealed, of course, by its frequent denunciations of Pisa and of the people and ideas associated most intimately with it. But it is important to be clear about what precisely the council was condemning when it denounced conciliarist ideas. It is equally important to take note of what it refrained from condemning in those ideas and on what matters it preferred to remain silent. Above all, it is important to be clear about the meaning one is to assign to such expressions as "conciliarism" and "conciliar theory". And it is this last point that must concern us first.

Whatever its subsequent incapsulations might suggest, conciliar thinking of the classical age (the period dominated by the Councils of Constance and Basel)

3. Namely the Bolognese jurist Gozzadini—see H. Jedin, "Giovanni Gozzadini, ein Konziliarist am Hofe Julius II," *Römische Quartalschrift*, XLVII (1939), 193-267; also Josef Klotzner, *Kardinal Dominikus Jacobazzi und sein Konzilswerk* (Rome, 1948), 236ff. For the fate of conciliar theory in the continental countries see the admirable account in Jedin, *History*, I, 32ff. For Scotland see J. H. Baxter, "Four 'New' Medieval Scottish Authors," *Scottish Historical Review*, XXV (1928), 90-97; J. H. Burns, "John Ireland and 'The Meroure of Wyssdome'," *Innes Review*, VI (1955), 77-98, *Scottish Churchmen and the Council of Basle* (Glasgow, 1962), and "The Conciliarist Tradition in Scotland," *Scottish Historical Review*, XLII (1963), 89-104. No comparably vital conciliar tradition had grown up in England, but conciliar theory did enjoy a temporary vogue there in the sixteenth century—see F. L. Baumer, *The Early Tudor Theory of Kingship* (New Haven, 1940), 50-53; W. Gordon Zeefeld, *Foundations of Tudor Policy* (Cambridge, Mass., 1948), 133-35; P. A. Sawada, "Two Anonymous Tudor Treatises on the General Council," *The Journal of Ecclesiastical History*, XII (1961), 197-214. Sawada suggests (210-11) that the second of his treatises was the work of Alexander Alesius (1500-1565), a Scot who had been in England since 1535. If this attribution is correct, it may perhaps serve as further evidence of the importance of the Scottish conciliarist tradition and of its strength at the University of St. Andrews where Alesius was educated. See Burns, "Conciliarist Tradition in Scotland," 89, 100-102, and Zofia Rueger, "Gerson, the Conciliar Movement and the Right of Resistance (1642-1644)," *Journal of the History of Ideas*, XXV, No. 4 (1964), 467-86 at 483-84. For evidence of Sir Thomas More's adhesion to the conciliar position, see E. F. Rogers, *The Correspondence of Sir Thomas More* (Princeton, 1947), No. 199, pp. 498-9. A discussion and listing of appeals to a general council after Pius II's prohibition may be found in Giovanni Picotti, "La pubblicazione e i primi effetti della 'Execrabilis' de Pio II," *Archivio della Società Romana di storia patria*, XXXVII (1914), 33ff.

4. For a discussion of the conciliarist literature evoked by Pisa, see Klotzner, *Kardinal Dominikus Jacobazzi*, 209ff. For the contributions of Almain and Major, see Francis Oakley, "Almain and Major: Conciliar Theory on the Eve of the Reformation," *American Historical Review*, LXX (1965), 673-90; Vincent-Marie Pollet, "La doctrine de Cajetan sur l'Église," *Angelicum*, XII (1935), 229-34; Olivier de la Brosse, *Le Pape et le Concile: La comparaison de leurs pouvoirs à la veille de la Réforme* (Paris, 1965), esp. 185ff.

5. On this matter of subsequent influence (on secular political thinking as well as ecclesiology), see Francis Oakley, *The Political Thought of Pierre d'Ailly: The Voluntarist Tradition* (New Haven and London, 1964), 212-32, and "From Constance to 1688 Revisited," *Journal of the History of Ideas*, XXVII (1966), 429-32; also Zofia Rueger, "Gerson, the Conciliar Movement and the Right of Resistance (1642-1644)," *ibid.*, XXV (1964), 467-80.

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betrays many nuances—too many indeed, and too elusive to trap within the framework of any simple classification.[6] It is possible, however, to discern within the pattern of that thinking three broad strands, distinct in their origins, distinct in their subsequent careers, but woven momentarily (and fatefully) into a meaningful and historic configuration.

The first of these is the demand for reform of the church "in head and members" and the belief that this could best be initiated and consolidated through the periodic assembly of general councils. Official ratification was given to this point of view in the decree *Frequens,* promulgated in 1417 at Constance and providing for the assembly of councils at frequent and regular intervals.[7]

The second strand is a less prominent one. It envisaged the constitution of the church in oligarchic terms, its government ordinarily in the hands of the Roman curia, the pope being limited in his power by that of the cardinals with whose "advice, consent, direction and remembrance" he had to rule.[8] This position was expressed most forcefully at the Council of Constance by the cardinals, Francesco Zabarella and Pierre d'Ailly.[9]

The third strand is the strict conciliar theory itself, involving, as it did, an assertion of the superiority of general council to pope. This theory itself could mean more than one thing, but the Council of Constance endorsed at least one form of it in the decree *Haec sancta,* which declared, among other things, that Constance was a "lawfully assembled" general council representing the Catholic Church,

> that therefore it has its power immediately from Christ; and that all men, of every rank and position, including the pope himself, are bound to obey it in those matters that pertain to the faith, the extirpation of the said schism, and to the reformation of the said church in head and in members.[10]

The threads of all three of these strands were woven into the complex fabric of the theories expounded by d'Ailly, Zabarella and Nicholas of Cusa, and if the curialist oligarchic theory was lacking in the thinking of other conciliarists of the classical era, the other two strands were present and in intimate juxtaposition. And yet the connection between them is not to be taken for granted. As early as the opening years of the fourteenth century, Guilielmus Durantis (the Younger) had linked the demand for reform in head and members with the proposal that general councils should be assembled at regular ten-year intervals. But he produced no systematic ecclesiology, and it would be improper to regard him as a proponent of the strict conciliar theory.[11] As Jedin has said, "it required the pitiful situation created by the Schism to bring about the alliance of

6. On this matter, the remarks of Paul de Vooght are very much to the point—see his "Le Conciliarisme aux conciles de Constance et de Bâle," in B. Botte *et al., Le Concile et Les Conciles: Contributions à l'histoire de la vie conciliaire de l'église* (Chevetogne-Paris, 1960), 143-71 at 146ff. It should be added that even what we will call *the strict conciliar theory* was susceptible of subtle variations. Thus, whereas for Pierre d'Ailly the *plenitudo potestatis* concerned the *potestas jurisdictionis* alone, for Jean Gerson it involved also the *potestas ordinis*—see d'Ailly, *Tractatus de ecclesiastica potestate,* Dupin, II, 950C; Gerson, *De potestate ecclesiastica,* Dupin, II, 239B-D.
7. Text in Mansi, XXVII, 1159.
8. Thus d'Ailly, *Tract. de eccl. pot.,* Dupin, II, 929-30. The words are taken from the alleged *professio fidei* of Boniface VIII, on which see S. Baluzius and J. Mansi, *Miscellenea.* 4 vols. (Lucae, 1761-64), III, 418.
9. See Brian Tierney, *Foundations of the Conciliar Theory* (Cambridge, 1955), 220-37; Oakley, *Political Thought of Pierre d'Ailly,* 117-29.
10. Text in Mansi, XXVII, 590.
11. See Tierney, *Foundations,* 190ff. Tierney stresses, however (196), that the work of Guilielmus Durantis does provide "an interesting link between the current theories of episcopal authority and the later conciliar doctrines."

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conciliar theory with the demand for reform."[12] Already by the mid-fifteenth century, as the career of Nicholas of Cusa so well illustrates, this alliance was beginning to crumble, and, in the years after Basel, even those who believed that the necessary reform in head and members could be achieved only by means of a general council increasingly recoiled from advocacy of the strict conciliar theory.[13] At the same time, the advocates of that theory were not necessarily themselves very interested any longer in reform. In its formal pronouncements the *conciliabulum* of Pisa might strive later on to give a different impression, but the real ecclesiastical evil which it met to remedy was nothing more spiritual than the adoption by Julius II of a diplomatic stance hostile to the French presence in Italy, and in the tracts of its most prominent apologists reform is hardly mentioned at all.[14]

It was with the Lateran Council, then, that those most intent on reform chose to align themselves. But it must be insisted that their rejection of the conciliarist ideas of men like Almain did not necessarily mean an abandonment of the first of the three elements that had gone to make up the conciliar thinking of the classical era—namely, that reflected most clearly in *Frequens*. Of course, given the use made of *Frequens* by the initiators of the Council of Pisa,[15] it is not surprising that Julius II should seek, when he in turn convoked the Lateran Council, to prevent any misunderstanding of his action by pointing out that that decree had long since lapsed into desuetude and that, even if it had not, extenuating circumstances would have rendered it inapplicable in his own day.[16] Nor is it surprising that Cardinal Cajetan should denounce the idea of the mandatory periodic assembly of councils as an infringement of the legal rights of the papacy.[17] Given the context of events, what *is* surprising is the demand of Ferdinand of Spain for a pledge that general councils be held every ten or fifteen years. This demand was made (not without reference to *Frequens*) in the instructions given to the Spanish envoys to the council—instructions themselves based upon memoranda submitted by a group of bishops, theologians, canonists and diplomats.[18] And it was a demand made again and more forcefully in the great program for reform presented to Leo X by the two Camaldolese monks, Giustiniani and Quirini. For, as they stated quite explicitly, they regarded it as nothing less than vital to the recovery and maintenance of the health of the church that general councils be held every five years.[19]

These are striking and important manifestations of the persistence of one strand of conciliarism in the thinking of the supporters of the Lateran Council. But what about the oligarchic strand? Was it equally conspicuous? One might well expect that this would be so. The source of the oligarchic view lay in the

12. Jedin, *History*, I, 9.
13. See Jedin, *History*, I, 32ff. Gozzadini is an exception to this generalization for he combined conciliar theory with a fervent appeal for sweeping reforms. See above, note 3.
14. Thus Almain and Major—see Oakley, "Conciliar Theory on the Eve of the Reformation," 688-90.
15. See Jedin, *History*, I, 108-09.
16. Hefele-Leclercq, VIII[1], 299. The bull is printed in C. Baronius, O. Raynaldus and J. Laderchius, *Annales ecclesiastici*. 37 vols. (Paris, 1864-83), XXX, ann. 1511, Nos. 9-15; see especially No. 11.
17. Thomas de Vio Cardinalis Cajetanus, *De comparatione auctoritatis papae et concilii*, ch. 16, No. 237, ed. V. M. Pollet (Rome, 1936), 110.
18. Printed in José M. Doussinague, *Fernando el Católico y el cisma de Pisa* (Madrid, 1946), App. 50, 539. For a discussion of the memoranda see also Minnich, "Concepts of Reform," 212-22.
19. "Libellus ad Leonem X," in J. B. Mittarelli and A. Costadoni, eds., *Annales Camaldulenses*. 9 vols. (Venice, 1755-73), XI, 708.

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traditions of the Roman curia.[20] It had received explicit theoretical formulation in the glosses of the decretalists, Hostiensis (d. 1271) and Johannes Monachus (d. 1313), who, taking as their premise the idea that "Pope and cardinals together formed a single corporate body subject to the normal rules of corporation law,"[21] had maintained that the cardinals share with the pope, therefore, the exercise of the *plenitudo potestatis*. Its synthesis with the more "democratic" conciliarist views came only later on in the classical age of conciliar theory.[22] The synthesis was not a very stable one, and the years after the collapse of Basel witnessed its disintegration. Thus, by the time of the Pisan crisis and the convocation of the Lateran Council, advocates of the strict conciliar theory like Almain and Major, though they drew heavily on d'Ailly's conciliar thinking, were quick to dissociate themselves from the specifically oligarchic elements in his theory.[23]

The reason for this is not too hard to find. The old curialist oligarchic tradition was by no means defunct. But it found its home now, where it had found it before—not among the radical conciliarists, but in the Roman curia itself. In his great *Summa,* Torquemada had reproduced verbatim (though naturally without acknowledgment) much of d'Ailly's discussion of the role of the cardinalate in the government of the church. The advocacy of these views by the dean of papalists himself had been a factor of some importance in the struggle for power that raged between the College of Cardinals and the popes during the latter half of the fifteenth century.[24] In this struggle, the efforts of the cardinals had not met with much success. The election capitulations, the faithful observance of which they sought to impose on pope after pope, were, as Jedin has said, "rearguard actions, not offensive strokes."[25] But that the old curialist tradition was still alive at the time of the Lateran Council is clearly reflected in the tendency, widespread even among those who rejected the strict conciliar theory and who denounced the Pisan adventure, to ascribe to the cardinals a right to convoke a general council in cases of emergency even against the express wish of the pope.[26]

It is reflected also, perhaps, in the hostility that the cardinals themselves betrayed at the council towards a proposal which, according to Ludwig von Pas-

20. For the oligarchic tradition in general, see J. B. Sägmüller, *Die Thätigkeit und Stellung der Cardinäle* (Freiburg im Br., 1896), 170ff., 215ff.; Tierney, *Foundations*, 68ff., 180ff., 220ff. For a recent contribution critical of the interpretations sponsored by Sägmüller and Tierney, see John A. Watt, "The Constitutional Law of the College of Cardinals: Hostiensis to Joannes Andreae," *Mediaeval Studies*, XXXIII (1971), 127-57.
21. Tierney, *Foundations*, 184.
22. Though John of Paris, at the beginning of the fourteenth century, came very close to the final synthesis—see Tierney, *Foundations*, 157-78. In the case of d'Ailly, it would be fair to say, the adoption of these oligarchic views seems to have been less a function of his conciliarism than an outcome of his elevation to the cardinalate—see Oakley, *Political Thought of Pierre d'Ailly*, 251.
23. See especially Almain, *Tract. de auth. eccl.*, Dupin, II, 1011C-D; see *ibid.*, 996C, and Oakley, "Conciliar Theory on the Eve of the Reformation," especially 686ff.
24. Compare Juan de Torquemada, *Summa de ecclesia* (Rome, 1489), Bk. I, chs. 80-81 (no foliation) with d'Ailly, *Tract. de eccl. pot.*, Dupin, II, 929ff. For a succinct account of the constitutional struggle, see Jedin, *History*, I, ch. 4, 76ff.
25. Jedin, *History*, I, 90.
26. For an elaboration of this line of argument by a member of the Pisan camp, see Philippus Decius, *Consilium . . . de auctoritate papae et concilii.* in Melchior Goldast, *Monarchia.* 3 vols. (Frankfurt, 1611-1614), II, 1667-76 esp. 1673ff. And by a supporter of the Lateran Council, see Domenico Jacobazzi, *De Concilio*, esp. Bk. III and Bk. VII. Printed in Mansi, *Sacrorum conciliorum*, "Introductio" (Paris, 1903). See especially pp. 112-118 and 286f., where he questions the applicability of the emergency doctrine to the Pisan assembly. For his career, see Klotzner, *Kardinal Domenikus Jacobazzi*, 19-54.

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tor, "might have developed by an inevitable sequence into a sort of oligarchic constitution, and have led, through a system of episcopalism, to the weakening of the apostolic authority."[27] This proposal has not attracted a great deal of attention among historians,[28] but the fact that it was put forward at all, as also the reception it enjoyed, must surely take on an added interest today in the wake of the Second Vatican Council, the establishment at Rome of a Synod of Bishops, the recovery in Roman Catholic ecclesiology of a sense of episcopal collegiality, and the difficulties encountered by those bishops who have sought to infuse an element of that collegial sense into the recalcitrant complexities of a highly centralized ecclesiastical bureaucracy.

The proposal in question came from the bishops themselves and it forced itself on the attention of the curia in the months that elapsed between the tenth and eleventh sessions of the council (May 4, 1515 to December 19, 1516). After their bitter struggle with the regular clergy on the matter of monastic privileges and exemptions, the bishops were clearly impressed with the need to close their own ranks if they were to protect their common interests. As a result, they proposed the establishment of an episcopal "sodality" or "fraternity" (*episcopalis societas, confraternitas, sodalicium*).[29] But the scheme was destined to be abortive. It enjoyed a very cool reception in the curia, and Leo X, stressing the fact that the cardinals were utterly opposed to it, warned that if the bishops persisted in their demands, he would postpone the next session of the council, maintaining in full force, meanwhile, those very monastic privileges to which they objected so strongly.[30]

Unconvinced, nevertheless, by the further point that the existing Bishops Assistant at the papal throne were quite capable of protecting their interests, the bishops then petitioned the pope, asking him this time to add to the ranks of those curial bishops some non-Italian prelates and to permit them to hold meetings when it was necessary to do so in order to consult the needs and protect the interests of the episcopate as a whole. Leo, however, was unwilling to permit such assemblies, nor did he view with favor the bishops' further request that they be allowed a common chancellor, a common treasury and the right to elect proctors to represent common episcopal interests.[31] At his behest, moreover, the cardinals addressed themselves to the task of examining the arguments put forward in support of the original proposal for an episcopal sodality. Their verdict, expressed unanimously in Consistory, was a negative one.[32] And for many reasons, not least of which were these: in the first place, that the bishops being (unlike temporal rulers) brothers, sons, members of the Roman pontiff, they shared with him a common purpose, and the activities of a proctor would hardly

27. Pastor, *History of the Popes*, VIII, 400.
28. Thus F. Vernet in *Dictionnaire de théologie catholique*, VIII,2 s.v. "Latran (Ve Concile oecumenique de)" makes only passing reference to it (col. 2672), and neither Jedin nor Minnich mentions it at all.
29. These are the words which occur in the documents. See Baronius-Raynaldus, *Annales*, XXXI, ann. 1516, Nos. 1-4 (citing Paris ed Grassis); also C. J. Hefele-J. Hergenröther, *Conciliengeschichte*. 9 vols. (Freiburg im Br., 1855-90), VIII, App. H. and J., 845-53, where two documents, one emanating from the bishops and one from the cardinals, are printed. These documents are not included in Hefele-Leclercq, *Histoire des Conciles*, though the affair is discussed (VIII1, 517-24).
30. Baronius-Raynaldus, *Annales*, XXXI, ann. 1516, No. 1.
31. Hergenröther, *Conciliengeschichte*, VIII, App. H, 845-6; Baronius-Raynaldus, *Annales*, XXXI, ann. 1516, Nos. 2-3.
32. Hergenröther, *Conciliengeschichte*, VIII, App. J, 845-53.

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be congruent to an intimate relationship of this type;[33] in the second (a point to which they returned no less than five times), that the bishops' proposal was open to the same objections that they themselves would make if their clergy petitioned to establish analogous sacerdotal confraternities in their own dioceses.[34] The reasons proffered on behalf of the proposal for an episcopal sodality, therefore, were declared insufficient and contradictory, and a "perpetual silence" was imposed on the whole idea.[35]

When one recalls the degree to which the council was composed of Italian prelates, and when one recalls, too, their (and its) reputation for docility,[36] the most striking thing about this proposal is the fact that it was advanced at all. It would be easy, of course, to exaggerate its ecclesiological significance. Theological considerations played little direct role in rallying the bishops to the idea. What moved them, above all, was their dismay at the damage done to their jurisdictional authority by the privileges extended to the regular clergy, and their conviction of the need to take new steps if their own interests were to be protected. But however precise and immediate its goals, their proposal did have its constitutional implications, and the cardinals' consistent hostility may well indicate that they saw it as a potential threat to the constitutional position which they had been fighting to secure for themselves by repeated attempts to limit the pope's freedom of action. For Pastor, certainly, these constitutional implications were obvious and important—though for him, again, writing three centuries after the event and under the very different conditions which prevailed in the years after the First Vatican Council, what was involved was "a decentralizing tendency," a potential threat to "the apostolic authority" and to "the monarchical principle on which Chrst founded His Church".[37]

An anachronistic view, perhaps, but less startling if one recalls what it was that the bishops were reacting against. For the regular clergy had themselves stressed that there were constitutional issues involved in their dispute with the bishops. Indeed, they had been willing to denigrate as incipient conciliarism any attempt to whittle away their privileges. These privileges were the work of the Roman pontiffs,[38] and the decrees of those pontiffs, strengthened by use and confirmed by custom, no right could destroy, no law abrogate.[39] It was the pope alone, and not the council that was competent to act as their judge.[40] Their cause was his, indeed it was that of the church itself. For the principle they were striving to defend was no matter of merely private concern, it was the point on which pivoted the whole defense of the church against the schismatic tendencies manifested so recently and so deplorably at Pisa. And what was this principle? Nothing other than this: that "the council is altogether subject to the pope"—his to convoke, his to grant (*audire*), its decrees his to confirm.[41]

33. *Ibid.*, 848-49.
34. *Ibid.*, 847, 849, 850, 951 and 853. The concluding sentence of the memorandum (853) reads: "Ad quod dignoscendum persuasum habeant ipsarum rationum inventores, hoc ipsum sodalitium eisdem ipsis rationibus a suo clero in singulorum diocesibus postulari, et quod ipsi responderent, habeant pro responso."
35. *Ibid.*, 852-53.
36. J. J. Döllinger, *Kleinere Schriften*, ed. F. H. Reusch (Stuttgart 1890), 419, describes it as Leo X's "italienisches Taschenkonzil, das sogenannte fünfte lateranische. . . ."
37. Pastor, *History of the Popes*, VIII, 400-402.
38. See "Supplicatio pro parte et nomine omnium religiosorum," in Hergenröther, *Conciliengeschichte*, VIII, App. D, 817-18.
39. "Responsiones Fratrum Reverendissmis Episcopis et Praelatis," *ibid.*, App. E, 824.
40. *Ibid.*, 824.
41. *Ibid.*, 824-25.

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The significance of the scheme for an episcopal sodality may indeed be hard to assess, but, given this context, to view it simply as an ad hoc tactic in the arena of clerical politics would surely be to underestimate its importance. Ineffective though it was, it stands as witness to the marked ecclesiological tensions of this period of papal restoration and increasing papal power. It reflects the growing realization that "the balance of power in the ecclesiastical organism was somewhat upset".[42] The cardinals of the restoration era had long since realized this and had sought to redress the balance by taking their stand on the old curialist oligarchic tradition. But without notable success. And now the same realization was dawning on the bishops—even on the Italian bishops—and their reaction may properly be interpreted as a tentative groping towards the principle and practice of what we have since become accustomed to call "episcopal collegiality".[43]

Perhaps so. But despite these tensions, despite this manifestation of protocollegiality, despite the survival of oligarchic notions in the Sacred College, despite, even, the powerful support that still lingered for the provisions of *Frequens*, would it not be fair to say that the sentiments expressed by the *regular* clergy represent the controlling opinion of the council and that the strict conciliar theory —the third and most fundamental element in the conciliar thinking of the classicial era—awakened no echoes in it? This, of course, is the view most commonly held, and the arguments in its favor are compelling. It could, for instance, be pointed out that the council owed its very existence to the pressing need of Julius II for a weapon to defeat the conciliarist pretensions of Pisa. It could be pointed out, too,[44] that Cajetan's onslaught at the second session of the Council of Pisa and the theory behind it aroused no dissent. Above all, it could be pointed out that the bull *Pastor aeternus* (1516), which formally condemned the Pragmatic Sanction of Bourges, stated also that the pope, having authority over all councils, had the right to convoke, transfer and dissolve them[45]—so that, in fact, "to the [previous] papal prohibition of appeal to a council the assembly now added a condemnation of the theory itself."[46]

But then even the strict conciliar theory had its nuances, and we have to ask what exactly it was that the council, in its assembly, in its activities and in its formal pronouncements, was condemning. Certainly their very adhesion to the Lateran Council indicates that the participating prelates would have no truck with conciliar theory in the form espoused by Almain and the defenders of Pisa;[47] or, at least, that they had no sympathy with the use to which that theory was being put at Pisa. But did this lack of sympathy with Pisa mean that they felt unable to accord any validity to the provisions of *Haec sancta*?

In some cases this may well have been so, but, if it was, nobody at the council seems to have been willing to say as much. When those who supported Pisa sought to make their peace with the pope and to take their seats in the council, while they were required, of course, to abjure the schismatic Pisan assembly and

42. Jedin, *History*, I, 137.
43. That is, episcopal, not *sacerdotal* collegiality, for the central argument in the analysis of the cardinals depended for its force on the assumption that the bishops would not entertain the possibility of applying the same principle to the clergy for their own dioceses.
44. And often has been pointed out, for example, by Wilhelm Maurenbrecher, *Geschichte des Katholischen Reformation* (Nördlingen, 1880), 107; Pastor, *History of the Popes*, VI, 412; Hefele-Leclercq, *Histoire des Conciles*, VIII[1], 356.
45. In Mansi, XXXII, 967.
46. Jedin, *History*, I, 133.
47. See Oakley, "Conciliar Theory on the Eve of the Reformation."

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to declare their adherence to the pope and the Lateran Council, no mention was made of *Haec sancta,* and no explicit rejection of conciliar theory was required of them.[48] Again, though Cajetan's whole sermon was concerned with matters ecclesiological and conciliar, he, too, was silent on *Haec sancta.*[49]

Elsewhere, of course, in his *De comparatione auctoritatis papae et concilii,* he had been more explicit, not only insisting on the superiority of pope to council, but also casting doubt on the authority of the Council of Constance in its early sessions when *Haec sancta* was promulgated, and denying that Martin V had ever confirmed that decree.[50] And yet, even here, his case is not as monolithic as we might expect, for, while seeking to limit its application, he does retain some elements of the conciliarist position. Thus, he is willing to admit that under certain exceptional circumstances a general council can assemble itself, even against the wishes of the pope, and take whatever action is necessary to prevent the destruction of the church. The circumstances he has in mind are those that arise when there have been one or more doubtful elections to the papacy, and when a pope, the legitimacy of whose title is unquestioned, falls into notorious and obstinate heresy.[51] He includes among the actions necessary to meet such crises the deposition of an heretical pope, and it should be noted that what he is ascribing to the council here is an actual deposing power—a power of jurisdiction —and not merely the right to declare that a pope is in fact a heretic and has thereby ceased ipso facto to be pope.[52]

On this critical issue, then, there are serious hesitations even in the thinking of the man who was perhaps the most distinguished theologian of his time and certainly the most formidable adversary of the Gallican conciliar theorists. In this he was by no means unique. Similar hesitations had characterized the ecclesiology of more than one of those churchmen in the era of papal restoration whom we tend to classify as high papalists. This is true most notably of Torquemada himself, who certainly admitted that the council was in some case superior to the pope. His position on these matters, though it may be in tension with his general ecclesiology, was not far removed from the Decretist teaching on the case of the heretical pope and was close to "the mitigated conciliarism" of the majority of the fathers at the Council of Constance.[53]

Few would be disposed to question the enduring influence of Torquemada's

48. As, for instance, in the case of the Cardinals Carvajal and Sanseverino who were reconciled with Leo in 1513. For the short declaration which was read at the seventh session of the council, see Mansi, XXXII, 814-15; for the longer statement to which they subscribed at the consistory held on 27 June 1517, see Baronius-Raynaldus, *Annales,* XXXI, ann. 1513, n. 47 (Translation in Hefele-Leclercq, *Histoire des Conciles,* VIII[1], 406-408).
49. He limited himself to denouncing the error that traced its lineage back to the evil days of the Great Schism when nobody knew for certain who was the true successor of Peter —namely, that of trying to subject the pope to the council. *Oratio . . . fratri Thomas de Vio Cajetani,* Mansi, XXXII, 719-27, esp. 724E-726A. Minnich has drawn attention to the fact that Mansi omits (at 726B) one section of Cajetan's speech—see "Concepts of Reform," 177-78 and Appendix 3, 239-41, where he prints the missing section.
50. *De comp.,* ch. 8, esp. Nos. 98-104; ed. Pollet, 54ff.
51. *De comp.,* ch. 16, esp. Nos. 229-231; ed. Pollet, 107-8; see the discussion in Brosse, *Le Pape et le Concile,* 168ff.
52. He explicitly rejects this last view, even though he involves himself thereby in an intricate and implausible attempt to avoid admitting that the pope's authority is in some way inferior to that of the council—see *De comp.,* chs. 20-22, ed. Pollet, 125ff.; see Oakley, "Conciliar Theory on the Eve of the Reformation," 675ff.
53. And if this majority was by no means radical in its views it was radical enough to approve the decree *Haec sancta.* For a discussion of Torquemada and of the differences between radical and moderate conciliarists, see de Vooght, "Le Conciliarisme aux conciles de Constance et de Bâle," esp. 179. See also his recent book cited below, note 61.

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ideas in the papalist camp. Mention of Quirini's *Tractatus super concilium generale,* with its provision for the deposition of heretical popes by general councils, will suffice to indicate that that influence was very much at work among the ecclesiastics involved in the Lateran Council.[54] Quirini insisted, of course, that "the pontifical authority is above the council,"[55] for this had long been the motto of those who adhered to the papalist position, but, as de Vooght has said, their papalism was often more qualified (*nuancé*) than the slogan under which they served.[56] And this is also, it may be suggested, the background against which the formulas of *Pastor aeternus* must be judged. For what, after all, did it say about conciliar theory? Very little, in fact, and then only indirectly. Having declared the Pragmatic Sanction of Bourges to be null and void, it was necessary to forestall those who might try to argue that its provisions were grounded in the decrees of the Council of Basel and could not, therefore, be abrogated. In order to do this, the bull pointed out that these decrees dated to the period *after* Eugenius IV had translated the council to Ferrara. They emanated, therefore, from the rump assembly, which, in defiance of his edict, continued to meet at Basel. This was not a true council at all but a mere *conventiculum* or *conciliabulum,* and its pronouncements possessed no legal validity. For it is the Roman pontiff alone, inasmuch as he has "authority over all councils" who possesses "full right and power to convoke, transfer and dissolve councils".[57] Thus, the bull is concerned with the conciliar question only at one remove. It addresses itself explicitly to no more than the papal right of convoking, transferring and dissolving councils. It does not spurn the superiority decrees of Basel, nor is there any mention of Constance or any rejection of *Haec sancta.* And this, it should be emphasized, is not because such a move would have been regarded as redundant at the time, for Ferdinand the Catholic, in the instructions he gave to his representatives at the council, had explicitly suggested the need for a formal repudiation of *Haec sancta.*[58]

It could be argued (and seems usually to have been assumed) that such a repudiation was in fact *implicit* in the actual words of the bull. But implicit to

54. Printed in Mittarelli and Costadoni, *Annales Camaldulenses,* IX, 599-611. For the right of the cardinals, indeed of "any of the faithful", to assemble a council when a pope suspect of heresy refuses to do so, see especially §§ 8-9, pp. 600-603; see § 25, p. 607. See also § 40, pp. 610-11, where he argues that the Council of Constance held its authority immediately from Christ since there was at the time no pope whose title to office was everywhere recognized to be legitimate.
55. "Auctoritas pontificis sit supra concilium," *ibid.,* § 25, p. 606; similarily § 23, p. 606: "Concilium Generale superius non est pontifice Romano auctoritate, immo inferius."
56. De Vooght, "Le conciliarisme aux conciles de Constance et de Bâle," 175.
57. Mansi, XXXII, 967-68: "Nec illud nos movere debet, quod sanctio ipsa, et in ea contenta, in Basileensi concilio edita, et ipso concilio instante, a Bituracensi congregatione receptata et acceptata fuerunt, cum ea omnia post translationem ejusdem Basileensis concilii, per felicis memoriae Eugenium papam quartum, etiam praedecessorem nostrum factam, a Basileensi conciliabulo, seu potius conventicula, quae praesertim post hujusmodi translationem concilium amplius appellari non merebatur, facta extiterint, ac propterea nullum robur habere potuerint: *cum etiam solum Romanum pontificem pro tempore existentem, tanquam auctoritatem super omnia concilia habentem, tam conciliorum indicendorum, transferendorum, ac dissolvendorum plenum jus et potestatem habere,* nedum ex sacrae scripturae testimonio, dictis sanctorum patrum, ac aliorum Romanorum pontificum etiam praedecessorum nostrorum, sacrorumque canonum decretis, sed propria etiam eorumdem conciliorum confessione manifeste constet. . . ." (Italics mine).
58. See Doussinague, *Fernando el Católico,* App. 50, 539. But note that even Ferdinand did not think the pope's superiority to the council to extend to the case of the heretical pope or to the case of the pope whose title to office was in doubt: ". . . proporneys ante Su Santidad en el conçilio que aquellos dos decretos se revoquen expressamente y se haga nuevo decreto que declare que el Papa es sobre el concilio *excepto en el caso de la eregia como dize el canon Si Papa XL dis. y en el caso que dos o tres son elegidos en çisma por Sumos Pontifices que solo en estos dos casos el Conçilio pueda conosçer y sea jues de la causa del Papa y no en mas."* (Italics mine)

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whom? To those writing in the aftermath of the First Vatican Council, understandably enough, and to Martin Luther at Leipzig, it would seem, but to how many others in the early sixteenth century? The willingness to assert the general superiority of pope to council did not necessarily entail a rejection of the whole conciliar theory, and certainly not of the central Decretist contribution to that theory. It may be assumed, therefore, that even the most convinced of papalists would have serious hesitations about any total repudiation of the provisions of *Haec sancta.* In any case, the Council of Basel had solemnly reaffirmed *Haec sancta* at its eighteenth general session—three years, that is, before Eugenius IV had transferred the council to Ferrara.[59] Moreover, the substance of the decree had already been asserted in the earlier sessions, and in 1433 in the bull *Dudum sacrum* Eugenius himself had recognized the validity of those early sessions.[60] Much has been made of the fact that the papal legates were not present at the eighteenth session, and it has also been asserted that Eugenius, in conceding his general approval to the earlier sessions of the council did not necessarily approve all the decrees enacted in those sessions. But whatever the force of these objections, they are irrelevant to the reasoning of *Pastor aeternus* which sought to deny the validity only of those decrees passed *after* the council had been transferred from Basel—and that did not happen until 1437.

The fact that the bull has customarily been understood in a very different sense is not altogether surprising, and it bears some analogy, it may be suggested, to the fate suffered later on by the Tridentine decree on Scripture and Tradition. For centuries, after all, it was customary to assume that Trent had endorsed the teaching that the Gospel was to be found only *partly* in Scripture and *partly,* therefore, in the traditions (the *partim . . . partim* formula). Such a teaching had been widely received in the years immediately prior to the assembling of the council; it was to become a cliché of Counter-Reformation theology; and the text of the decree itself, it must be confessed, can quite readily be interpreted in such a way as to support it. Close scrutiny of the actual debates at Trent, however, has made it clear that the fathers of the council, in response to vehement minority protest, had actually excised a *partim . . . partim* formula from the draft decree, rewording it in such a way as deliberately to leave the question open.[61] Here, as elsewhere in the history of general councils, it is as important to be aware of the doctrinal option which is not specifically excluded as it is to note the position which is actually endorsed. And if Trent, it would seem, chose not to exclude the view that all revealed doctrine is contained in the Scripture, what was not, in turn, excluded by Lateran V, that most "papalist" of councils, was the moderate formulation of the strict conciliar theory enshrined in the decree *Haec sancta.*

For if the argument set forth in the preceding pages is correct, it has to be concluded that the crucial phrases of *Pastor aeternus* should be handled with caution, that they will be understood most properly if given a restricted meaning, that they simply will not bear the strain to which historians and theologians, in a vain attempt to elicit a thoroughgoing and unambiguous condemnation of con-

59. It did so on June 26, 1434—see Mansi, XXIX, 91; see Hefele-Leclercq, *Histoire des Conciles,* VII², 849-54; de Vooght, "Le Conciliarisme aux conciles de Constance et Bâle," 168ff.
60. Mansi, XXIX, 78f.; Hefele-Leclercq, *ibid.,* 841ff; de Vooght, *ibid.,* 166ff.
61. See George H. Tavard, *Holy Writ or Holy Church: The Crisis of the Protestant Reformation* (New York, 1959), especially pp. 113-209; Jedin, *History,* II, 52-98.

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ciliar theory, have usually subjected them.[62] Possibly a surprising conclusion—but certainly not an original or even a modern one. Nearly three centuries ago, after all, Bishop Bossuet said something very similar. And on this matter, if not on all, Bossuet seems to have been a better historian than his critics.[63]

62. This conclusion is not irrelevant to the current debate in Roman Catholic circles about the doctrinal status of *Haec sancta* which Paul de Vooght touched off in 1960 with his claim that the decree was approved by Martin V and recognized by Eugenius IV—see his "Le Conciliarisme aux conciles de Constance et de Bâle," and the refinement and further elaboration of the case in his *Les pouvoirs du Concile et l'autorité du Pape au Concile de Constance* (Paris, 1965). J. Gill, "The Fifth Session of the Council of Constance," *Heythrop Journal*, V (1964), 131-43, commenting that "[The] principle of superiority of council over pope, forgotten and denied in the intervening centuries, is being revived," has dissented sharply from de Vooght's position. Hans Küng, *Structures of the Church*, trans. S. Attanasio (New York, 1964), 268ff., endorses de Vooght's view, notes that the Fifth Lateran Council did not abrogate *Haec sancta* and argues for the continuing validity of that decree. Hubert Jedin seeks middle ground between de Vooght and Küng on the one hand, and traditionalists like Gill on the other, in his *Bischöfliches Konzil oder Kirchenparlament? Ein Beitrag zur Ekklesiologie der Konzilien von Konstanz und Basel.* 2d. ed. (Basel u. Stuttgart, 1965). And Brian Tierney attempts to carve out a position mediating between Jedin and Küng in his "Hermeneutics and History: The Problem of *Haec Sancta*," in T. A. Sandquist and M. R. Powicke, eds., *Essays in Medieval History for Presentation to Bertie Wilkinson* (Toronto, 1969), 354-70. The literature on the issue is now becoming quite extensive, but particular reference may be made to the contributions of Franzen, Zimmermann, Bäumer, Hürten and Riedlinger in A. Franzen and W. Müller, *Das Konzil von Konstanz: Beiträge zu seiner Geschichte und Theologie* (Freiburg, 1964), and to J. Pichler, *Die Verbindlichkeit der Konstanzer Dekrete* (Vienna, 1967). In two recent summary statements most of this literature is analyzed, criticized or commented upon—see Francis Oakley, *Council over Pope? Towards a Provisional Ecclesiology* (New York, 1969), pp. 105-41, and Paul de Vooght, "Les controverses sur les pouvoirs du concile et l'autorité du pape au Concile de Constance," *Revue Théologique de Louvain*, I (1970), 45-75. An historical dispute, but clearly one with extremely important theological implications.

63. *Defensio Declarationis Conventus Cleri Gallicani de ecclesiastica potestate*, Bk. IV, ch. 18, in *Oeuvres Complètes de Bossuet*. 12 vols. (Paris, 1836), IX, 312-13. For a typically strained attempt to circumvent Bossuet's arguments, see F. Vernet in *Dictionnaire de théologie catholique*, VIII², s.v. "Latran (V^e Concile oecumenique de)", 2679-80.

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