

## **Section 1.PART V. DOCUMENTS OF THE INVESTITURE CONTROVERSY**

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## A. THE WAR OF PROPAGANDA

in B. Tierney, ed., *The Crisis of Church and State, 1050-1300*, (Englewood Cliffs, NJ, 1964),<sup>†</sup> 74-84

The conflict between Gregory VII and Henry IV stimulated an unprecedented outburst of polemical pamphleteering, a new departure in the medieval tradition of political thought.

The initial exchanges between Gregory and Henry had confused rather than clarified the issues between them. From the reformers' point of view the real need was to discriminate between the spheres of spiritual and temporal authority so clearly as to end the practice of kings arbitrarily appointing bishops and bestowing on them the symbols of their spiritual office. But Gregory found it impossible to conceive of any effective separation between church and state and by his claim to depose a king laid himself open to the charge of seeking supreme temporal and spiritual power for himself. The essential interest of the king was to retain an effective voice in the selection of bishops since these officials played a vital role in the civil government of his kingdom. His right to make such appointments had formerly been based on the theocratic assumption that the royal office was itself an ecclesiastical dignity, that the king was head of the church, but Henry had largely abandoned this ground when he insisted on a separation of priesthood and kingship in the course of his argument against Gregory. There was a great need then for intellectuals to reconsider the theoretical issues that lay behind the open strife of pope and king.

A striking feature of the whole debate is that hardly any of the major participants propounded really extreme doctrines of papal or royal theocracy. The one who came closest to doing so was the anonymous royalist author of the so called York Tractates (*No. 37*), who wrote in England about 1100, and even he started out from the Gelasian doctrine that sacerdotal authority and royal power were both necessary for the governance of the Christian people. Having stated the principle, however, he certainly succeeded in developing it in a way that very thoroughly subordinated the priestly office to the royal one. It is often pointed out that the "Anonymous of York" held a theory of "sacral kingship" that was already somewhat archaic in his own day, and it is true that for the rest of the Middle Ages kings chose to defend their authority with arguments that were more legalistic and less theological. But it must also be remembered that a belief in the supernatural authority of kings remained widespread throughout Europe for centuries after 1100, and, indeed, the existence of such a trend of thought contributed significantly to the eventual defeat of the more extreme political claims of the papacy. The doctrine of royal theocracy cannot be dismissed as an aberration of the Dark Ages but was rather a continuing element in European political theory.

More typical examples of eleventh-century polemical writers are Manegold of Lautenbach (*No. 38*), a vehement supporter of Gregory VII, and the author of the *Liber de Unitate Ecclesiae Conservanda* (*No. 39*), an adherent of the imperial party. Both addressed themselves with particular care to the question whether a pope could depose a king. Manegold built up an impressive picture of the supreme jurisdiction that inhered in the Roman church as the see of St. Peter and gave a wholly approving account of the proceedings in Rome when Pope Gregory deprived Henry IV of his royal office. But he did not conclude his argument with an assertion that the pope possessed a superior temporal jurisdiction which empowered him to depose a king. Instead his thought moved off in a quite different direction and he propounded a primitive but quite explicit theory of social contract. The king's power was derived from the people, he argued, and they chose him with the understanding that he would rule justly. If a king became a tyrant, he broke the contract that bound him to the people and so by his own action relinquished the royal dignity and released the people from all obligations of obedience to him. Manegold did not suggest at all that the king's power was derived from the pope and, indeed, the whole argument implied that any sentence pronounced by the pope could only be a declaratory one.

The imperialist argument in the *Liber de Unitate Ecclesiae Conservanda* was even more explicitly dualistic. The author not only quoted Gelasius but insisted that the pope's teaching required a real division of authority between spiritual and temporal rulers. The special interest of his work is that he took up all the historical arguments that Gregory had advanced in his letter to Hermann of Metz and refuted them one by one in a very effective rebuttal of a large part of Gregory's case. Although the problem of Henry's deposition was obviously of the highest importance, the most valuable contribution that 11th century intellectuals could make to the resolution of the whole conflict was something other than this scoring of debating points about the licitness or otherwise of the pope's action. There was also an urgent need for a new analysis of the whole act of royal investiture which would start out from the premise that spiritual office and temporal jurisdiction were two different things, conceptually separable from one another. Ivo of

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Chartres, a French canonist of massive learning, took a major step in this direction in a pungent and penetrating letter (1097) to Archbishop Hugh of Lyons, the papal delegate in France (*No. 40*). Ivo was writing to defend one Daimbert, archbishop of Sens, who had been attacked by Hugh for accepting investiture from the king. Ivo was himself a supporter of the reform movement, but he suggested that Hugh and the other papal reformers were losing sight of the essential goal of their program. “You strain at a gnat and swallow a camel,” he wrote tartly. The one really important thing according to Ivo was that bishops should be chosen by canonical election and without simony. The king obviously could not bestow spiritual office; on the other hand, he did have a right to bestow the temporal possessions of the bishopric on the chosen candidate. It was of no great significance, Ivo thought, whether the king performed this legitimate function by conferring episcopal staff or by some other symbolic ceremony.

It is not quite true—as has sometimes been maintained—that Ivo was the first to suggest the solution to the investiture contest that eventually came to be accepted in practice. His distinction between spiritual office and the temporal possessions of a bishop was indeed all-important, but the episcopal staff was too widely regarded as symbol of spiritual office for the reformers ever to acquiesce in its continued use by secular rulers. A solution more acceptable to them was put forward by Hugh of Fleury, a moderate royalist who wrote a few years after Ivo (*No. 41*). The king, he suggested, had the right to assent to an episcopal election on behalf of the layfolk, whose acceptance of a newly elected bishop was part of the established canonical procedure, and a right to invest the new bishop with the temporal lands and jurisdictions pertaining to his see. But he ought not to use the disputed symbols of staff and ring in doing so. The staff and ring were rather to be bestowed by the consecrating archbishop, since they symbolized “care of souls.” The temporalities of the see were to be conferred by the king in some other fashion. In this way, Hugh concluded, the command of Christ would be fulfilled to “render to Caesar the things that are Caesar’s and to God the things that are God’s.”

#### **a. THE “ANONYMOUS OF YORK”**

37. *Tractatus Eboracenses* (c. 1100), ed. H. Boehmer, *MGH Libelli de Lite*, III (Hanover, 1897), pp. 663, 667, 679.

By divine authority and by institution of the holy fathers kings are ordained in the church of God and are consecrated at the altar with sacred unction and benediction, that they may have the power of ruling the people of the Lord, the Christian people, which is that holy church of God—a chosen race, a holy race, a purchased people (cf. 1 Peter 2:9). What else indeed is the church but the congregation of faithful Christians living together in the house of Christ in charity and in the one faith? Therefore kings receive in their consecration the power to rule this church, that they may rule it and strengthen it in judgement and justice and administer it in accordance with the discipline of the Christian law; for they reign in the church, which is the kingdom of God, and reign together with Christ, in order that they may rule, protect and defend it. To reign is to rule the subjects well and to serve God with fear. The episcopal order too is instituted and consecrated with sacred unction and benediction, that it also may rule the holy church according to the form of doctrine given to it by God. Accordingly the blessed pope Gelasius speaks thus, “Two there are by which this world is chiefly ruled, the priestly authority and the royal power.” By “this world” he means the holy church, which is a sojourner in this world. In this world, then, the priestly authority and the royal power hold the principate of sacred government. Some seek to divide the principate in this fashion, saying that the priesthood has the principate of ruling souls, the king that of ruling bodies, as if souls could be ruled without bodies and bodies without souls, which cannot be done by any means. For if bodies are well ruled it is necessary that souls are well ruled too and vice versa, since both are ruled for this purpose, that at the resurrection they may both be saved together.

Christ, God and man, is the true and highest king and priest. But he is king from the eternity of his divinity, not made, not created, not below or separate from the Father, but equal to and one with the Father. He is priest from his assumption of humanity, made and created according to the order of Melchisedech and so less than the Father. As king he created all things and rules and preserves all things, governing both men and angels. As priest he only redeemed men that they might reign with him. This is the sole reason why he was made priest, to offer himself as a sacrifice so that men might be made sharers of his kingdom and of his royal power. For everywhere in the Scriptures he promised the kingdom of heaven to the faithful but nowhere the priesthood. It is clear, therefore, that in Christ the royal power is greater and higher than the priestly in proportion as his divinity is greater and higher than his humanity. Hence some hold that among men likewise the royal power is greater and higher than the priestly and the king greater and higher than the priest, as being an imitation and emulation of the better and higher nature or power of Christ. And so it is

not contrary to the justice of God, they say, if the sacerdotal dignity is instituted by the royal or subjected to it, for so it was done in Christ; he was made a priest by his royal power and was subjected to the Father in his priestly power while he was equal to him in his royal power. ...

But now let us see what the king confers on a man who is to be created bishop by the prerogative of the pastoral staff. I think that he does not confer the order or right of priesthood, but what pertains to his own right and to the rule of worldly things, namely the lordship and guardianship of the things of the church, and the power of ruling the people of God, which is the temple of the living God, and the holy church, the bride of Christ our Lord. That a bishop has lordship over earthly things, that is, possession of estates, by the law of kings is stated by Augustine at the end of his sixth treatise on John where he says "Each man possesses all he does possess by human law, for, by divine law, 'the Lord's is the earth and the fullness thereof'. ... By human law and therefore by the law of emperors. ..."

No one should take precedence by right over [the king], who is blessed with so many and such great blessings, who is consecrated and made like unto God with so many and such great sacraments, for no one is consecrated and made like God with more or greater sacraments than he is, nor indeed with equivalent ones, and so no one is co-equal with him. Therefore he is not to be called a layman, for he is the anointed of the Lord, a God through grace, the supreme ruler, supreme shepherd, master, defender and instructor of holy church, lord over his brothers, worthy to be adored by all men, chief and highest prelate. It is not to be said that he is inferior to the bishop because the bishop consecrates him, for it often happens that lesser men consecrate a greater, inferiors their superior, as when the cardinals consecrate a pope or suffragan bishops a metropolitan. This can be so because they are not the authors of the consecration but ministers. God makes the sacrament efficacious; they administer it.

#### ***b. MANEGOLD OF LAUTERBACH***

28. *Manegoldi ad Geberhardum Liber* (1080–85),  
ed. K. Francke, *MGH Libelli de Lite*, I (Hanover, 1892), pp. 325, 358, 365, 391–2.<sup>1</sup>

Since then it is evident from the aforementioned opinions of the holy fathers and from others, so numerous that it is irksome to include them, that the Roman church is distinguished with such great authority, and indeed excels all the principalities and powers of this world in its singular and incomparable dignity, and since, according to the harmonious witness of the holy fathers, no one is permitted to judge its judgements or reverse its sentences and no one may rightfully have the will or power to disobey its decrees, anyone who has not remained in communion with it is a stranger and a sinner and an enemy of God, and whatever is done against its discipline can in no wise be held lawful. Let our conspirators see then, let them see, these men who publicly and contumaciously forsake the holy faith and the Catholic religion, how guilty they are of sacrilege, how inextricably they are bound by the knot of their innumerable wickednesses, these men who day by day destroy the souls of those whom they lead to despise the Roman see, who subject to the torment of eternal fire along with themselves as many as they seduce from its unity by their rash examples of sacrilege and their pestiferous arguments.

... As for the king himself, the author and fomentor of so much evil, the holy council decreed that the apostolic sword be unsheathed to cut him off from the body of the whole church and that, bound by the bond of anathema, he be deprived of the royal dignity. It absolved from their oaths all those who had sworn oaths to him and forbade anyone to serve him as king, for it was fitting that he who had presumed to annul and trample under foot the honor divinely conferred on St Peter by special privilege should himself lose the honor that he seemed to possess, and that he who disdained to obey as a Christian should be judged unworthy to rule over Christians. ...

Just as the royal dignity and power surpasses all earthly powers, so too the man appointed to exercise it should not be base and infamous but should excel others in wisdom, justice and piety as he does in place and dignity. It is necessary, therefore, that the one who is to have charge of all and govern all should display

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<sup>1</sup> For recent literature on this text, see H. Fuhrmann, "Volkssouveränität" und "Herrschaftsvertrag" bei Manegold von Lauterbach, in *Festschrift für Krause* (1975) and J. Nelson, in *The Cambridge History of Medieval Political Thought* (1988), pp. 246–7, both with references.

greater virtue than others and should be careful to exercise the power committed to him with a fine balance of equity; for the people do not exalt him above themselves so as to concede to him an unlimited power of tyrannizing over them, but rather to defend them against the tyranny and wickedness of others. However, when he who is chosen to repress evil-doers and defend the just begins to cherish evil in himself, to oppress good men to exercise over his subjects the cruel tyranny that he ought to ward off from them, is it not clear that he deservedly falls from the dignity conceded to him and that the people are free from his lordship and from subjection to him since it is evident that he first broke the compact by virtue of which he was appointed? Nor can anyone justly or reasonably accuse the people of perfidy when it is evident that he first broke faith with them. To take an example from a meaner sphere, if a man hired someone for a fair wage to look after his swine and then found that he was not caring for them but stealing, killing and destroying them, would not the man withhold the promised wage from him and remove him ignominiously from his task of caring for the swine? Now, if this is observed in base things, that a man who does not care for his swine but destroys them shall not be kept as a swineherd, are there not just and reasonable grounds for maintaining that, in proportion as humans differ from swine, so too it is more fitting that anyone who does not strive to rule his subjects but rather to lead them into error should be deprived of the power and authority over men that he has received? Why should we be surprised if this rule is observed under the Christian religion when the ancient Romans in the days of the illustrious Collatinus and Brutus, refusing to endure the pride of Tarquin because of the shameful deed which his son, not he himself, had perpetrated against the noble matron Lucretia, expelled him and his son from the country and from the kingship, and created a government by two consuls holding office for a year to prevent anyone growing haughty through long exercise of authority. ...

The nature of man excels that of all other living creatures in this, that, being capable of treating by reason whatever has not fallen out by fortuitous hazard, it inquires into the causes of things with rational judgement and considers not only what is done but why it is done. Since then no one can make himself an emperor or king, the people raise some man above themselves for these reasons, to rule and govern them by virtue of his just authority, to apportion to each his own, to protect the good, to repress the wicked and to deal out justice to all. If, however, he breaks the compact by which he was elected and ruins and confounds what he was established to order correctly, reason justly considers that he has absolved the people from their duty of submission to him since he himself first broke the bond of mutual fidelity by which he was bound to them and they to him.

### *c. DE UNITATE ECCLESIAE CONSERVANDA*

39. *De Unitate Ecclesiae Conservanda* (1090–93),  
ed. W. Schwenkenbecher, *MGH Libelli de Lite*, II (Hanover, 1892), pp. 185–87, 194–96.

... [Pippin], when he was head of the household in the Frankish kingdom, that is, prefect of the palace, and all the royal power and dignity belonged to him, was the first of the prefects of the palace to be chosen king. He was consecrated with the blessing of the holy Boniface, Archbishop of Mainz, the judgement of Pope Zacharias having been obtained beforehand since the consent and authority of the Roman pontiff seemed necessary for this matter. Burchard of Wurzburg, a bishop of holy life, with other messengers fit for this mission, was sent to him by command of the princes to consult the oracle of his opinion and receive his response concerning this question, how they might reform the realm of the Franks and bring it to the state of its former dignity. For a long time it had lacked the prerogative of royal honor, since the one who was called king possessed nothing but the shadow of an empty name. Neither the wealth nor the power of the kingdom nor any ordering of its affairs rested with him but rather with the head of the household who controlled the palace. Therefore it seemed to them just and fitting that hereditary succession to the whole royal dignity and power be taken away from Hilderic [Childeric] and that the royal title be transferred to Pippin, at that time prefect of the palace, who was worthy of it by virtue of his nobility and courage. Seeing that he vigorously carried on the government of the household and of the armies of the realm it would be appropriate for him to receive the title of king along with the labors and the duties of the office. When Pope Zacharias had considered this proposal and deemed it just and expedient he gave his consent to it and afterwards Pope Stephen confirmed this judgement. Pippin was made king by common consent of the princes, and Hilderic received the tonsured crown and the habit of monastic life in place of the empty name of king. Now if this is

so, or rather because this is so, it seems that the above-mentioned Pope Gregory also called Hildebrand, unjustly imputed to Zacharias and Stephen holy pontiffs of the Roman church, the acts of deposing Hilderic from the kingship solely by their own authority and of absolving the Franks from the oaths of fidelity that they had sworn to him, when perchance the princes of the realm would have considered it unworthy to swear an oath to a man of the sort described above. He wrote this, along with much else, to Hermann, Bishop of Metz, in order to convince his party that they might safely abandon their king, as if this example proved that he had power to depose him. ...

If [his] words had been tempered with the charity that edifies, the breach with the rulers of the world that now exists would not have arisen since, as the holy Pope Leo writes, "There can be no general security unless the things that pertain to the profession of religion are defended by royal and priestly authority." So too Pope Gelasius declared "Christ, mindful of human frailty, regulated with an excellent disposition what pertained to the salvation of his people. Thus he distinguished between the offices of both powers according to their own proper activities and separate dignities. ..." Since God himself has thus arranged things and has instituted these two, the royal power and the sacred authority of priests, by which this world is chiefly ruled, who can attempt to go against this except one who resists the ordinance of God? ...

... The above-mentioned Pope Hildebrand cites St. Ambrose in his letter in order to strengthen and confirm his party in schism, saying that Ambrose excommunicated the emperor Theodosius for a certain sin. But St. Ambrose, who corrected with ecclesiastical discipline the emperor Theodosius when he was incited by the clamor of some of his supporters to avenge the grave crime of the Thessalonians, did not divide the church, rather he taught that we should render to Caesar the things that are Caesar's and to God the things that are God's. ... It is this excommunication, which was profitable to the church and the emperor Theodosius alike, that is now cited in the letter with which we are dealing as a precedent for propagating a schism by which princes and nobles of the realm are separated from the companionship and service of their emperor. Ambrose, that strong tower and wall of the church, attempted nothing of the sort. ... It is written indeed that Pope Innocent excommunicated the emperor Arcadius because he consented to the deposition of the holy bishop John. Where this is taken from is still unknown to us but we know for certain that it is not found in the *Gesta Romanorum Pontificum* or in the *Liber Decretorum* or in the *Historia Tripartita*, where we find more about that sentence of deposition than anywhere else. ....

#### **d. IVO OF CHARTRES**

40. *Epistola ad Hugonem Archiepiscopum Lugdunensem* (1097),  
ed. E. Sackur, *MGH Lielli de Lite*, II (Hanover, 1892), pp. 644-46.

... You write that the chosen candidate [Daimbert] received episcopal investiture from the hand of the king, but we have not been informed of this by anyone who saw it. In any case, even if he did, we cannot see how the inclusion or omission of this investiture injured the faith or holy religion since it does not have the force of a sacrament in the making of a bishop. Again, it does not seem that kings are prohibited by apostolic authority from installing in bishoprics after canonical election has been held, for we read that supreme pontiffs of holy memory have sometimes interceded with kings on behalf of men elected to churches in order that the bishoprics to which they were elected might be granted to them by those same kings, and we read that others have delayed consecrations because royal installation did not follow the election. ... Why should it matter whether this installation is accomplished by hand or by gesture, by word or by staff, when the kings do not intend to bestow anything spiritual but only to add their assent to the petition of the people, or to confer on the persons elected the ecclesiastical estates and other worldly goods which the churches receive through the munificence of kings. Thus Augustine writes in his sixth treatise on the Gospel of John, in the first part, 'Does not a man possess whatever he possesses by human law? For by divine law "the Lord's is the earth and the fulness thereof." By human law we say, "This estate is mine, this house is mine, this slave is mine." Take away the laws of the emperors and who will dare say, "This estate is mine, that slave is mine, that house is mine'. ..." If these things [*i.e.*, rules against lay investiture] were established by eternal law it would not lie within the power of rulers sometimes to judge strictly according to them, sometimes to relax them out of mercy so that men remain in dignities received in a fashion contrary to what they prescribe. But since in fact what they forbid is illicit essentially because it has been prohibited by rulers, so too the remission of them by rulers according to their own judgement is licit. We see no one or

almost no one condemned for this kind of transgression but we see many disquieted, many churches despoiled, many scandals arisen, and a division between the kingship and the priesthood without whose harmonious cooperation there can be no sound and secure conduct of human affairs. ... I do not say this as one who wants to set himself up against the apostolic see or resist its salutary decrees or cast doubt on the decisions of his superiors in so far as they are supported by cogent reasons and by the evident authority of the ancient fathers; but I do wish, together with many other devout persons, that the ministers of the Roman church, like experienced doctors, would concern themselves with curing the most grievous sicknesses and not have to hear their mockers saying, "You strain at a gnat and swallow a camel. You pay tithes on mint and anise and cummin but leave undone the weightier matters of the law" (cf. Matthew 23:23–24). ...

**e. HUGH OF FLEURY**

41. *Tractatus de Regia Potestate* (1102–04), ed. E. Sackur, *MGH Libelli de Lite*, II (Hanover, 1892), p. 472.

I think that a king, inspired by the Holy Spirit, can appoint a pious cleric to the honor of prelacy. The archbishop indeed ought to commit to him the care of souls. The most Christian kings and princes promoted holy men in the church according to this prudent custom down to our own times. ... If, indeed, a bishop has been elected by clergy and people reasonably and according to ecclesiastical custom the king ought not to use force against the electors tyrannically or harass them but rather should lawfully give his consent to the ordination. But if the one elected is found to be reprehensible, not only the king but the people of the province ought to withhold their assent and approval from his election and, moreover, they ought to expose publicly the crimes that mark him with detestable infamy so that by this reproach the audacity of the electors may be restrained. After the election the elected bishop ought to receive from the king's hand, not the ring and staff but the investiture of secular things, and he ought to receive from the archbishop, among his orders, the care of souls through the ring or staff, so that this kind of business may be carried through without dispute and the privilege of his authority may be maintained by both earthly and spiritual powers. If this is regularly observed, what our Savior commanded in the Gospel will be fulfilled—"Render to Caesar the things that are Caesar's and to God the things that are God's" (Luke 20:25).

## B.TWO KEY DOCUMENTS

in B. Tierney, ed., *The Crisis of Church and State, 1050–1300*, (Englewood Cliffs, NJ, 1964),<sup>†</sup> 13–14, 49–50

**a. GELASIUS I: PRIESTHOOD AND KINGSHIP**

3. Letter to the emperor Anastasius (494),

ed. E. Schwartz, *Publizistische Sammlungen zum Acaianischen Schisma* ("Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-Historische Abteilung," Neue Folge X; Munich, 1934), pp. 20–21

... Two there are, august emperor, by which this world is chiefly ruled, the sacred authority [*auctoritas*] of the priesthood and the royal power [*potestas*]. Of these the responsibility of the priests is more weighty in so far as they will answer for the kings of men themselves at the divine judgement. You know, most clement son, that, although you take precedence over all mankind in dignity, nevertheless you piously bow the neck to those who have charge of divine affairs and seek from them the means of your salvation, and hence you realize that, in the order of religion, in matters concerning the reception and right administration of the heavenly sacraments, you ought to submit yourself rather than rule, and that in these matters you should depend on their judgement rather than seek to bend them to your will. For if the bishops themselves, recognizing that the imperial office was conferred on you by divine disposition, obey your laws so far as the sphere of public order is concerned lest they seem to obstruct your decrees in mundane matters, with what zeal, I ask you, ought you to obey those who have been charged with administering the sacred mysteries? Moreover, just as no slight risk attends pontiffs who keep silent in matters concerning the service of God, so too no little danger threatens those who show scorn—which God forbid—when they ought to obey. And if the hearts of the faithful should be submitted to all priests in general who rightly administer divine things, how much more should assent be given to the bishops of that see which the Most High wished to be pre-eminent over all priests, and which the devotion of the whole church has honored ever since. As Your Piety

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is certainly aware, no one can ever raise himself by purely human means to the privilege and place of him whom the voice of Christ has set before all, whom the church has always venerated and held in devotion as its primate. The things which are established by divine judgement can be assailed by human presumption; they cannot be overthrown by anyone's power.

**b. [GREGORY VII:] PAPAL POWER**

26. *The Dictatus Papae* (March 1075),

trans. S.Z. Zeller and J.B. Morall, *Church and State Throughout the Centuries* (London, 1954), pp. 43–44

1. That the Roman church was founded by God alone.
2. That the Roman Pontiff alone is rightly to be called universal.
3. That he alone can depose or reinstate bishops.
4. That his legate, even if of a lower grade, takes precedence, in a council, of all bishops and may render a sentence of excommunication against them.
5. That the Pope may depose the absent.
6. That, among other things, we also ought not to stay in the same house with those excommunicated by him.
7. That for him alone it is lawful to enact new laws according to the needs of the time, to assemble together new congregations, to make an abbey of a canonry; and, on the other hand, to divide a rich bishopric and unite the poor ones.
8. That he alone may use the imperial insignia.
9. That the Pope is the only one whose feet are to be kissed by all princes.
10. That his name alone is to be recited in churches.
11. That his title is unique in the world.
12. That he may depose Emperors.
13. That he may transfer bishops, if necessary, from one See to another.
14. That he has power to ordain a cleric of any church he may wish.
15. That he who has been ordained by him may rule over another church, but not be under the command of others; and that such a one may not receive a higher grade from any bishop.
16. That no synod may be called a general one without his order.
17. That no chapter or book may be regarded as canonical without his authority.
18. That no sentence of his may be retracted by any one; and that he alone of all, can retract it.
19. That he can be judged by no one.
20. That no one shall dare to condemn a person who appeals to the Apostolic See.
21. That to this see the more important cases of every church should be submitted.
22. That the Roman Church has never erred, nor ever, by the witness of Scripture, shall err to all eternity.
23. That the Roman Pontiff, if canonically ordained, is undoubtedly sanctified by the merits of St. Peter; of this St. Ennodius, Bishop of Pavia, is witness, many Holy Fathers are agreeable and it is contained in the decrees of Pope Symmachus the Saint.
24. That by his order and with his permission, subordinate persons may bring accusations.
25. That without convening a synod he can depose and reinstate bishops.
26. That he should not be considered as Catholic who is not in conformity with the Roman Church.



27. That the Pope may absolve subjects of unjust men from their fealty.

### C.OUTLINE OF THE EARLY SOURCES OF CANON LAW

from R.C. Mortimer, *Western Canon Law* (London, 1953)<sup>†</sup> 18–23  
 [Included for its outlines of the topics covered by early canons.]

It will be convenient to interrupt at this point this short historical sketch of the development of Western canon law in order to describe briefly the nature and content of this ancient law. This is, in my judgement, a matter of supreme importance. For this ancient law contains the fundamental principles of Church Order. I believe that a close study of this law will greatly help us all to a better understanding of the nature of the Church, and even that the way to Reunion, ultimately, lies in a return to these principles where they have been abandoned, denied or forgotten. Certainly, I think, that any scholar who would present to the modern world a carefully analysed and annotated account of the content of this law would render a service of the greatest practical advantage and benefit.

Perhaps the easiest way of indicating roughly the nature of this law and the kind of matters with which it deals would be to summarise shortly the canons of three Greek councils, one Decretal and one Gallican council. These are the Canons of Nicaea:<sup>2</sup> (1) Of those who castrate themselves. (They are not to be ordained.) (2) Of the newly baptised. (They are not to be ordained immediately.) (3) Of the kind of woman who may be allowed to live in the same house as the clergy (i.e. of clerical housekeepers). (4) Of the election and consecration of bishops. (Elected by all bishops of the province: consecrated by at least three: the Metropolitan confirms.) (5) Of persons excommunicated. (A man excommunicated by one bishop is not to be absolved by another.) Provision of an appeal from the Bishop to the Synod. (6) Of the privileges which belong to certain sees. (7) Position of Bishop of Jerusalem. (8) Of the Puritans (i.e. Novatianists) conditions of re-union and reception. (9) Of the careless ordination of unworthy priests. (To be deposed.) (10–14) Treatment of different classes of lapsed Christians. (15) Transference of clergy from one diocese to another forbidden. (16) The same, plus prohibition of a bishop's ordaining a man from another diocese. (17) Clergy are not to practice usury. (18) Of the privileges of the priesthood. (A liturgical canon dealing with duties and demeanour of the grades of the hierarchy in the Eucharist.) (19) Of Paulianists: conditions of re-union and reception. (20) No kneeling in church at Easter-tide.

The Canons of Neo-Caesarea:<sup>3</sup> (1) Priests not to marry. (2) No marriage with deceased husband's brother. (3) None to marry often. (4) No penance for intention (unfulfilled) to commit adultery. (5) Treatment of catechumens who commit grave sins. (6) Women with child may be baptised. (7) Clergy not to take part in the celebration of second marriages. (8) Adulterous wife bars a man from ordination: if he is already ordained, he must separate from her. (9) Priests guilty of grave sin before ordination to be suspended. (10) Deacons: the same. (11) None to be ordained priest under thirty. (12) A man baptised because it was thought he was going to die is, as a rule, ineligible for ordination. (13) The inferior status of parochial clergy. (14) Each diocese to have seven deacons.

The Canons of Antioch:<sup>4</sup> (1) Nicene regulations about how to calculate the date of Easter to be observed. (2) Against schismatics, and those who join with them. (3) Against clergy who migrate to another diocese without leave. (4) Against clergy who dare to minister after being excommunicated. (5) Against schismatics. (6) A man excommunicated by one bishop is not to be received by another: provision of an appeal to a synod. (7) Provisions for strangers to be received in church only if they have commendatory letters. (9) The authority of metropolitans: and of diocesan bishops. (10) Of the limited powers of 'country bishops'. (11 and 12) Appeals to the State: must be authorised by metropolitan or council. (13) Bishops not to ordain outside their own provinces. (14) Provision for a bishop to be tried by the Synod and neighbouring bishops to be called in if necessary. (15) No appeal from a unanimous verdict. (16) Election of bishops. (17

<sup>†</sup> Copyright © 1953 Robert Cecil Mortimer (?).

<sup>2</sup> Held in the year 325. CD.

<sup>3</sup> Held, it is generally thought, sometime between 314 and 325. CD.

<sup>4</sup> Held in 341. CD.

and 18) Of non-resident bishops. (19) Of the consecration of a bishop. (20) Two synods to be held every year. (21) No translation of bishops. (22) Bishops not to ordain in the dioceses of other bishops. (23) Bishops not to appoint their own successors. (28 and 29) Church property: the Bishop to administer.

The letter of Innocent to Victricius.<sup>5</sup> (1) Election of a bishop requires consultation with the Metropolitan: his consecration requires more than one bishop. (2) Soldiers are ineligible for ordination. Disputes between clergy are to be settled by the provincial synod. No appeal except to Rome, as laid down at Sardica. (3) None in minor orders to marry a widow. (4) A layman marrying a widow is ineligible for ordination. (5) None who marry twice are eligible for ordination. (5) No bishop to ordain anyone belonging to another diocese. (6) Heretics not to be re-baptised. (7) The higher clergy are not to co-habit with their wives. (8) Monks taking orders are not exempt from their vows. (9) Officers of state and civil servants are not to be ordained, because their official duties raise complications for a clergyman. (10) Nuns who break their vow of chastity are to be excommunicated. (11) Women, not being nuns, who have made a private vow of chastity and break it may be admitted to penance.

The *Statuta Ecclesiae Antiqua*. This collection of 104 canons is called, in the *Hispana*, the fourth Council of Carthage. There is no doubt, however, that it is in fact Gallican, and dates, probably, from the time of Caesarius, Bishop of Arles—early sixth century. Canons 1–10 are liturgical and give instructions for the manner of ordaining to all ranks of the clergy from Bishop to Cantor. (12) Widows and nuns to prepare women for baptism. (14) The Bishop to keep a guest house near the church. (15) The Bishop to live simply, and (16) not to read pagan books. (17) If a guardian to orphans, etc., to act through the archdeacon. (18) Not to act as executor of wills. (19) Not to go to law. (20) To spend his time in prayer and reading. (21) To attend the synod in person, or by delegate. (22) Not to ordain without consulting his clergy and without the approval of the laity. (23) Not to hear accusations without the presence of his clergy. (24) No-one to leave church during the sermon. (27) Translations and preferments grudgingly allowed. (28–30) Conduct of trials. (31–32) Church property is held by the Bishop in trust, and is to be administered with the help of the clergy. (33) Visiting clergy are to be invited to preach and to celebrate. (36) A deacon may give communion if necessary. (44) The clergy cut their hair but do not shave. (45–50) Proper clerical behaviour. (51–53) Clergy are to earn their livings by handicrafts or by farming. (54–62) Quarrelsome and indecorous clergy. (64) No fasting on Sunday. (65) Easter to be kept on the proper day. (67–69) Offences which bar from ordination. (74–82) Administration of penance. (84) Anybody—heretic or Jew—may attend the Mass of Catechumens. (85) Baptism is to be received fasting. (87) No recourse by Christians to pagan courts. (88) Going to games instead of Church on Sundays—excommunication. (89) Excommunication for sorcerers. (90–2) Exorcisms. (94–5) Offerings to the Church from unworthy persons to be refused. (99–100) Women not to teach in Church or baptise. (101–103) Maintenance of widows.

There are, of course, in these ancient canons many details which the lapse of centuries has made obsolete, undesirable or unenforceable. All the regulations regarding public penance, for instance, have nothing but historic interest for us. The condemnation of widows and widowers marrying again it is not desirable to revive. The western development which insisted upon strict clerical celibacy is more open to debate, as is the general prohibition of marriage after ordination. The requirement that the bishop remain the bishop of the See to which he is consecrated and that he be not allowed to be translated to another See is, I understand, the law of the Protestant Episcopal Church in America. It might be well to enforce it elsewhere in the Anglican Communion: though the advantage to the Church of some degree of flexibility is undeniable. But it is not to the details of the ancient law that I would call attention, but to its general structure and broad content. Here are laid the foundations of Church Order. Here are established customs and provisions which have been so much part and parcel of Church life that we tend to take them too easily for granted. The organization of the Church into dioceses and provinces is clearly established. The rights and duties of a bishop within his diocese are prescribed, as are his relations with his fellow-bishops. The way in which bishops are to be elected is laid down, the assistance of the clergy and the consent of the laity therein are demanded: the rights and duties of metropolitans in this respect are set out. There are rules concerning the creation of new Sees. There are many canons concerned with the qualities which are to be demanded in

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<sup>5</sup> Innocent I, pope, 402–17. The letter was written in 404. CD.

candidate for ordination. It is required that men be ordained only after due examination, and that they pass through the various grades of the hierarchy. Once ordained they are subject to their bishop, minister by his leave, and depart to another diocese only with his consent. A high standard of morality is demanded of them, and if they fail they are to be degraded. By means of regular synods the dioceses are to act in harmony with one another. Those whom one bishop excommunicates, other bishops are not to receive; but on appeal, all the bishops together in synod shall judge. The great churches—Rome, Constantinople, Antioch, etc.—occupy positions of special authority, yet this is based not on precise jurisdiction, but on veneration and prestige. The principle that Church matters and disputes between church men are to be settled in Church courts is sharply defined, and the general procedure in such matters—who are to judge and who may accuse and so forth—is laid down. The prohibition of marriage after divorce and within certain degrees of kinship finds frequent expression. The requirements for the due administration of the Sacraments of Baptism, Confirmation, Penance and the Eucharist are constantly stated.

Though the various collections in which this law is contained are not always in agreement with each other in every detail, though indeed there are inconsistencies and contradictions within each collection itself, nevertheless there emerges from these ancient codes a fairly clear picture of an ordered Church life; ordered in the relationship of province and diocese to each other, ordered in the selection and consecration of the Ministry, ordered in the several duties of the varied ranks of the clergy and of the laity, ordered in the administration of the Sacraments. I repeat that a closer study of this ancient law will be amply repaid in a deeper and clearer understanding of what the Church is.

