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NICHOLAS OF CUSA, Cardinal,

De concordantia Catholica. English
The

Catholic Concordance

EDITED AND TRANSLATED BY PAUL E. SIGMUND

Department of Politics, Princeton University

CAMBRIDGE

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Everett

Translator's preface

Some years ago, the late Ewart Lewis observed that it was likely to be a long time before the "average professor of political theory will turn to his well-underlined copy of Nicholas of Cusa's *De concordantia catholica* with the same facility with which he turned to Aristotle's *Politics*." This first complete translation of the *Concordantia* into English is an effort to make this major work of political and eccelesiological theory available to contemporary scholars. Before its publication the only English translation was a sometimes inaccurate excerpt containing the sections dealing with the theory of consent and Nicholas' proposals for a system of representative councils in the medieval empire. The lack of a definitive Latin text, the length of the work, and the considerable linguistic problems arising from Cusanus' awkward style and defective knowledge of Latin³ have long deterred scholars from undertaking the formidable task of translation.

The problem of establishing the Latin text has been resolved, thanks to the work of dedicated German scholars. In 1928, Professor Gerhard Kallen agreed to prepare a critical Latin edition under the auspices of the Heidelberg Academy of Sciences. Books I and II were published in 1939 but the publication of Book II was delayed by

¹Ewart Lewis, Medieval Political Ideas, vol. 1, New York, 1954, p. vii.

²Francis W. Coker, Readings in Political Philosophy, 2nd edn, New York, 1938, pp. 257–76. An Italian translation has been published by Pio Gaia in Nicolo Cusano, Opere religiose, Turin, 1971, pp. 115–546, and a French translation by Roland Galibois, Nicolas de Cues, Concordance catholique, Sherbrooke, Canada, 1977. A German version is being prepared by Hans Gerhard Senger of the University of Cologne.

Nicholas himself refers to his "uncultivated style" in the Preface to the Concordantia (no. 2).

birthday, a complete set of indices to the entire work was published. recent scholarship, and in 1968, on Gerhard Kallen's eighty-fourth and II were reissued with a critical apparatus that incorporated more World War II and it only appeared in 1959. In 1964 and 1965 Books I

in English but mainly by the Latin (Vulgate) text. quotations are influenced by both the Douai and King James versions most generally available source collections. My translations of biblical referred to when the church councils are quoted, because they are the and Greek texts and Mansi's Sacrorum conciliorum . . . collectio is modern equivalents in parentheses in the text itself. Migne's Patrologia has been used as the principal reference for the early Latin Nicholas' form of citing the canon and Roman law and added the those references that are directly relevant, and I have retained understanding the text. In the interest of space I have included only noted the more important recent scholarly works that may help in have added references to English translations where appropriate and sources in the footnotes are taken from the Heidelberg edition, but I appeared in his text and footnotes. The references to Latin printed Kallen's interpretation, and corrected the very few mistakes that In my translation I have occasionally (only rarely) departed from

was prepared at the Rockefeller Foundation's Bellagio Study Center. National Endowment for the Humanities. The final version of the text Sciences and the Humanities, and by a Senior Fellowship from the from the Princeton University Committee for Research in the Social preparation of the translations was substantially assisted by grants contributions to a fuller knowledge of Cusanus' life and writings. The to Erich Meuthen of the University of Cologne for his continuing 1981 at the University of Trier. All students of Cusanus are grateful located at the Johannes-Gutenberg Universität in Mainz and since those associated with the Institut für Cusanus-Forschung, formerly should mention the excellent work being done by Rudolf Haubst and addition to my obvious dependence on Gerhard Kallen's erudition, I explosion of Cusanus scholarship during the last twenty-five years. In to the host of German scholars who have contributed to a veritable Both the introduction and the footnotes indicate my indebtedness

striking relevance of Cusanus' thought to the currents that have bridge, Mass.: Harvard University Press, 1963). It will also reveal the particular to Nicholas of Cusa and Medieval Political Thought (Cam-The Introduction will refer to my earlier work on Cusanus, in

> implications for both politics and religion. was the conciliarist who perceived most clearly its broader theoretical subsequent efforts to "constitutionalize" church and state has first efforts to come to terms with this problem, and Nicholas of Cusa matters political or religious. The conciliar movement was one of the demonstrated how difficult it is to reconcile authority and freedom in participation and restraint on the arbitrary exercise of power have very also reveal, however, that the later movements for expanded political mistaken impression, fostered by modern commentators4 that considerable emphasis on tradition and authority, should correct the shaken church and state during the twenty-five years in which this deep roots in Western history and religion.5 The checkered history of Nicholas of Cusa was a precursor of modern liberal democracy. It will its heavy burden of references to canon law and theology, and its translation has been in preparation. A reading of the original text with

which I worked on it provided a constant reminder that the faith of runs contrary to the experience of every parent. the celibate Nicholas of Cusa in an underlying order in the universe Stephen, whose appearance and development during the years in This book is dedicated to my three children, Paul, David, and

See John Neville Figgis, From Gerson to Grotius, London, 1916, p. 69; Otto von Gierke, Milan, 1942, p. 27; Andreas Posch, Die Concordantia des Nikolaus von Cues, Paderborn, Political Theories of the Middle Age, Cambridge, 1900, p. 56; Paolo Rotta, Niesle Cusano,

⁵Among the studies in English that have emphasized the importance of the political thought associated with the medieval church for the development of Western consti-Religion, Law, and the Growth of Constitutional Thought, 1150-1650, Cambridge, 1982. Conciliar Movement and the Fifteenth Century Heritage, London, 1979; and Brian Tierney, tutionalism are Karl Morrison, Tradition and Authority in the Western Church, 300-1140, Conciliar Controversy, 1430-1450, Cambridge, 1970, and Council and Commune: Princeton, N.J., 1969; Antony Black, Monarchy and Community: Political Ideas in the Later

Introduction

contacts with the Italian humanists who were interested in his reports early 1425. He seems to have studied philosophy and theology at returned to Germany and enrolled at the University of Cologne in education in canon law at the University of Padua from 1417 until stay at the University of Heidelberg in 1416, he pursued higher ted, and a scholarship, the Bursa Cusana, named after him, was although he was influenced by the devotio moderna that they represenwho served on juries and lent money to the local nobility. There is no 1428 he turned down an offer of a professorship in canon law at the Cologne and he practiced and probably also taught canon law. (In 1423. After receiving a doctorate in canon law (doctor decretorum) he established in the seventeenth century at Deventer. Following a year's proof that Nicholas studied with the Brothers of the Common Life in Kues on the banks of the Moselle river between Trier and Koblenz. Rome as the secretary of the Archbishop of Trier and established University of Louvain.) In 1427 and 1429-30, Cusanus travelled to His father was a moderately well-to-do boatman and vineyard owner Nicholas of Cusa, in Latin Nicolaus Cusanus, was born in 1401 at Deventer, Holland, as many of his earlier biographers assert,

¹ Biographical details have been taken from Edmond Vansteenberghe, Le Cardinal Nicholas de Cues, Paris, 1920; Erich Meuthen, Nikolaus von Kues 1401–1464, 6th edn, Münster, 1982; and the collection of original sources on Cusanus' life, edited by Erich Meuthen and Hermann Hallauer, Acta Cusana, vol. 1 (1401–1437), Hamburg, 1976. I have also drawn on personal conversations with Professor Meuthen of the University of Cologne and with present and former associates of the Cusanus Institut, now located in Trier, especially Rudolf Haubst, and I have consulted Nicholas of Cusa's library in Kues, one of the oldest private foundations in Europe (established by his will in 1464).

and cathedral libraries. In December 1429, he brought to Rome an preserved in the Vatican library. eleventh-century manuscript of the comedies of Plautus that is still of having discovered lost classical manuscripts in German monastic

Trier archbishopric. member of the delegation representing the claim of Ulrich to the Nicholas of Cusa was formally incorporated into the council as a Basel which had begun to meet in July 1431. In February 1432, ter to vote for him. The dispute was then appealed to the Council of named another candidate, Ulrich succeeded in persuading the chapcandidate but after the dispute was appealed to Rome and the pope Empire.) The first vote of the cathedral chapter went to another Moselle valleys, and was one of the seven electors of the Holy Roman exercised temporal power over considerable territory in the Rhine and post. (In addition to his spiritual functions, the Archbishop of Trier in the Moselle valley, made Nicholas his chancellor. Ulrich had been Archbishop of Trier in 1430, he attempted to secure election to that dean of the cathedral chapter in Cologne, and after the death of the In 1430, Ulrich von Manderscheid, a member of the local nobility

matter of dispute to this day (centering principally around the signifithe doctrine of conciliar supremacy contained in Haec sancta is a matters of faith by the present council." Whether that oath included defined, concluded, and decreed in a conciliar fashion [conciliariter] in Following his election, Martin swore to observe "whatever has been two, it had elected a new pope who took the name of Martin V. After persuading the Roman pope to resign and deposing the other created by the existence of three rival claimants to the papal throne. after. The council had met at Constance in order to end the schism years, another seven years later, and councils every ten years there-..." It also stated that it could not be dissolved until the necessary adopted the decree, Frequens, which called for a new council in five reforms had been carried out. On October 9, 1417, the council had extirpation of schism, and reform of the church in head and members Christ [and] every man, whatever his estate or office, including the pope, is obliged to obey it in matters concerned with the faith, the decree Haec sancta (April 6, 1415) that it held its power "directly from the pope. The Council of Constance (1414-1418) had voted in its Since its opening, the council had been embroiled in disputes with

> supremacy)² but in observance of Frequens Pope Martin called a voted to hold another council at Basel in 1431. clusive discussion of possible reform decrees the meager represencouncil which met at Pavia and Siena in 1423-24. After an inconcance of the word conciliariter in relation to the assertion of conciliar tation (two cardinals, twenty-five bishops) in attendance at Siena

intense conflict between the council and the pope that Nicholas or transfer of a council without its consent. Thus it was in a period of interpreted Frequens and Haec sancta as prohibiting papal dissolution decree of Constance. At its second session in February 1432, the and Basel) it had already organized itself and renewed the Frequents arrived at the Basel Council. council reissued Haec sancta asserting conciliar supremacy, and it (it took as long as two months for messages to travel between Rome 1431 he attempted to dissolve the council and to call a new one at the Greeks had indicated their preference for an Italian city. In late to a site in Italy, both so that he could be in attendance, and because papal legates at Siena. Soon after the Basel assembly opened, Pope Martin's successor, Eugene IV, decided that it should be transferred Cardinal Giuliano Cesarini to preside over the council, and gave him Hussite heresy in Bohemia (modern Czechoslovakia) which had conif they saw fit. As the date for the meeting at Basel approached, the and the pope had given them power to transfer or dissolve the council Bologna, but by the time the papal bull of dissolution arrived in Basel the same power to dissolve or transfer it that had been given to the Constance. Before he died in early 1431, Pope Martin appointed tinued to spread even after Jan Hus had been burned at the stake at ing a reunion with the West, and also as an occasion to deal with the representatives of the Greek Church who were interested in negotiat-Basel Council was seen as a possible site for discussions with the The papal legates had acted as chairmen at the Council of Siena

(Deputacio – the Basel Council was divided into committees, rather The disputed Trier election was referred to the Committee

^{&#}x27;For the controversy on whether the claim of conciliar supremacy has "ecumenical" Meuthen, "Der Dialogus concludens Amedistarum Errorum," in Mitteilungen und cited there. On the dogmatic status of Haee sanda, see the literature cited in Erich standing, see Francis Oakley, Council over Pope?, New York, 1970, and the literature Forschungsbeiträge der Cusanus-Gesellschaft (MFCG), vol. 8, Mainz, 1970, p. 43.

than "nations" as at Constance) on Matters of Common Interest (procommunibus) and to the Committee on Peace (pro pace). Nicholas, already known to several participants in the council, was made a member of the Committee on the Faith (de Fide). He remained in Basel in February and March, but in April he returned to Koblenz where he was dean of the Church of St. Florin to give an Easter sermon, which is still preserved.³ He returned to Basel in May, preached in Koblenz in August, returning thereafter to Basel, preached in Koblenz at Christmas, and was back in Basel in January 1433. (The Rhine river made it relatively easy to go back and forth between Koblenz and Basel.) In February 1433, Nicholas of Cusa was one of those named by the council to negotiate with the Hussite delegates from Bohemia and in this connection he wrote a work, De usu communions on the disputed issue of communion under both species, i.e. bread and wine.

for reconciliation with the pope, and in December, Eugene accepted October 11, 1433, introduced a moderating influence as he pressed doctrine of conciliar supremacy. The arrival of the Emperor on papal side, Pope Eugene issued a bull that condemned as heretical the to move in the direction of a formal break with the papacy. On the of submission and pronounced it insufficient, and the council began included Nicholas of Cusa in its membership examined the papal bull council's decrees except for those that "prejudiced the rights of the Holy See." A subcommittee of the Committee on the Faith which formally annulled his earlier bull of dissolution and recognized the the newly-crowned Holy Roman Emperor Sigismund, Pope Eugene to those specified in canon law. In August 1433 under pressure from with papal rights of appointment and reservation to be strictly limited validity. It also voted that all church offices should be filled by election contempt (contumacia) and set deadlines for him to recognize its representatives; and in July the council threatened to cite the pope for suspension and deposition; in June, it refused to recognize the papal church as a whole. In April 1433 the council threatened the pope with alone was infallible and that the pope was only the minister of the representative (legatus) of the pope. The council answered that it valid with the pope's approval and that its chairman should be the Pope Eugene continued to maintain that a council could only be

³ See Nicolai de Cusa, Opera omnia, XVI, fasc. 3, Sermones I (1430-1441) edited by Rudolf Haubst and Martin Bodewig, Hamburg, 1977, Sermo XII, pp. 229-251.

all the demands of the council. The pope revoked all previous bulls against the council, declared it legitimate from its inception, and recognized as one of the council's purposes "the general reform of the church in its head and members." Although he may have appeared thereby to accept conciliar superiority, it was clear from Eugene's letters of the time and from his subsequent actions that he had no intention of subordinating the pope to the council, a doctrine which he viewed as heretical.

The Composition of De concordantia

During this period Nicholas wrote his major work of political theory, De concordantia catholica (the Catholic Concordance). Nicholas refers in the Preface (no. 2) to his use of original sources located in "ancient cloisters" and later (III, 3, no. 316) cites a manuscript that he has seen in the Cologne Cathedral library, so that he seems to have used materials from other locations than Basel. The Concordantia, however, was probably written in Basel, following Nicholas' return from Koblenz in early 1433. The early discussions in Book 1 of predestination, membership of the church, and the validity of sacraments administered by sinful clergy seem to have been influenced by the debates with the Hussites (Bohemians) at the council between January and April 1433. Book II uses records of early church councils that were probably only available there⁵ and in the same Book, he refers to

⁴For details, documentation, and chronology, see Joseph Gill, Constance et Bale-Florence, Paris, 1965 (vol. IX of Histoire des conciles occumentques), Johannes Haller, Concilium Basiliense, vols. 1–11, Basel, 1896–1897; and Johannes Helmrath, Das Basier Konzil, 1431–1449, Cologne, 1987. The major documents relating to the Council of Basel have been translated into English by C. M. D. Crowder, Unity, Heresy and Reform, 1378–1460, London, 1977, Part IV.

⁵ John of Segovia's History of the Council of Basel mentions Cardinal Cesarini's use of an ancient collection of the records of earlier councils (librum de antiquis conciliis antique scriptum) and notes that Nicholas of Cusa, a close friend (singulariter dilectus) of Cesarini's, argued from an even older collection. Nicholas' argument as summarized by Segovia is similar to that of the Catholic Concordance in distinguishing different types of councils and emphasizing the role of the patriarches in the earlier history of the church. See Ernest Birk (ed.), Historia gestorum generalis synodi Basiliensis, Book vii, chs. 14 and 18 in Monumenta conciliorum generalium seculi XV, vol. 11, Vienna, 1873, pp. 605 and 612-613. Book 1, ch. 12, no. 54 of the Catholic Concordance refers to the Council as "gathered there" (the congregatis) which may argue for composition of that chapters outside of Basel. There are also minor parallels between passages in Book 1, chapters 1 and 3 and Cusanus' Christmas 1432 sermon in Koblenz, (Opera ormia, xvi, fasc. 3, Sermones, Sermo xvii, p. 271) including a reference to "graduatione concordante et harmoniaca." However the bulk of the evidence favors composition in Basel in 1433.

ably De usu communionis, which we know he wrote in Basel in March 26, no. 211) to "a certain little work against the Bohemians," presum-1432 (II, 17, no. 155) and in July 1433 (II, 18, no. 162), and alludes (II, "this council" (II, 20, no. 184), mentions decrees adopted in August

include the more general philosophical discussions of consent or the directly focused on the relations of the pope and council, and did not concordantia (Little Book on Concordance in the Church).6 It was more 21, and 26-33 of Book II, which was entitled Libellus de ecclesiastica version of the Concordantia, comprising Book I and chapters I-7, 16-The manuscript evidence indicates that initially there was a shorter

was one of a number of such works written in the first part of 1433

chapter 16 and Book II, chapters 2, 3, 7, 16, and 20. Since the tract ment to, and identical in some of its quotations with, parts of Book I, which has been identified as written by Nicholas is similar in argumaioritate auctoritatis sacrorum conciliorum supra auctoritatem papae) relation to the priesthood. authorities to the analysis in Book III of the temporal power and its to describe the patterns of harmony (concordantia) among the spiritual of interest in the course of the work from the attempt in Books 1 and 11 contained in the final version of the work. This would explain the shift analysis of the constitution of the Holy Roman Empire which are A short tract on the superiority of the councils to the pope (De

continued to exist as a separate treatise. He bases his argument on the presence of a work entitled Concordamia exclesianica in the description of the books accompanying Nicholas at the time of his death in 1464. PP. 51-59. See also the review of the Latin edition by Werner Krämer in Historische Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse, 1963, no. 2, ⁶The Basel manuscript of the Catholic Concordance contains an earlier introduction (pro-Überlieferung der Concordantia des Nikolaus von Kues," Sitzungsberichte der auholica, Book I, Hamburg, 1964, pp. ix-xii) and his article, "Die Handschriftliche preface to the Latin edition of the Concordantia (Opera omnia, vol. XIV, De concordantia form in Book III, ch. 37. On the dating and order of composition, see Gerhard Kallen's suggested electoral procedure in Book 11, ch. 33 which appears in a slightly different Zeitschrift, no. 209 (1969), pp. 143–150. Krämer believes (p. 146) that the Libelius manuscript appears in Book 11, ch. 7 as well as in Book 111 - and the description of a quotation from an imperial decree calling the Council of Arles which in the Basel two sections appear in Book 11 that are located in Book 111, ch. 35 in the final version - a summarizes the argument in a way that corresponds to the chapters cited. In addition, hoemium) which gives the title of the work as Libellus de ecdesiastica concordantia and when several council committees at Basel were discussing the

> not have been completed until mid-1433. conciliar decree adopted in July 1433 (II, 18, no. 162) so that it could this time. That draft includes the aforementioned reference to a offices, the first draft of the Concordantia must have been written after decree of nullification (irritans) against papal appointments to church council's response to the papal bulls including the possible use of a

ment), and a different style indicate that the preface to the third book principally Marsilius of Padua's Defensor pacis (without acknowledgprobably completed before that time. The use of new sources, known in Basel at the end of January 1434, so that the work was the papal submission to the council in December 1433 which was references to the emperor's presence in Basel (III, 24, nos. 465-468; section (Book III). The last part of Book III from its frequent (although not for conciliar supremacy) to the empire in an additional convocation of the Reichstag later in the year led Nicholas to extend arrival of the emperor and the announcement in September of the references elsewhere in Book II. Then, the news of the impending tour chapters (22-25) on provincial councils and additional canon law discussion of the requirement of consent as a prerequisite for 11, 1433, the date of the emperor's arrival. There is no reference to III, 40, no. 505; III, 42, no. 596) must have been written after October his argument for legislation in councils and elective government are of most interest to modern students of political philosophy - the legitimate law and government (Book II, chapters 8-15) - along with Additions were then made to Book II, including the chapters that

See Erich Meuthen, "Nikolaus von Kues in der Entscheidung zwischen Konzil und oncordantia in the introduction and notes to the published edition, "Cusanus Texte, II, p. 111. On the date of composition, and the role of Helwig of Boppard, a fellow Committee on the Faith of the legal form to be used against the pope is mentioned in the Klasse, Heidelberg, 1977. Nicholas' report on February 16, 1433 of discussions in the Abhandlungen der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Traktate 2. De majoritate auctoritatis sacrorum conciliorum supra auctoritatem papae, Geschichtsverständnis" in Remigius Bäumer (ed.), Von Konstanz nach Trient, Munich, Papst," MFCG, vol. IX, Mainz, 1971, pp. 19-33; Meuthen, "Kanonistik und Verfassungsprinzspien der Kirche im Basler Konziliarismus, Münster, 1980, ch. 6. De majoritate and the De concordantia, see Werner Krämer, Konsens und Rezeption: decree in late 1432 and early 1433 are cited in Haller, Concilium, vol. 1, Basel, 1896, Basiliense, vol. 11, Basel, 1897, p. 350. The council's debates on the nullification (irritans) records of the proceedings of the Council published in Johannes Haller (ed.), Concilium 1972, pp. 147-170, and his careful analysis of the relation of De maioritate and De Padua-trained canon lawyer at Basel, as collaborator with Cusanus in the composition of

was added after Book III had been completed. The manuscript evidence also shows that new final chapters were added to Books II and III as well as additional documentation in Cusanus' hand.

It seems then that Book I and the two versions of Book II were written after Nicholas' return to Basel in early 1433, and Book III was written in the latter part of the same year. The entire work, with the possible exception of the preface to Book III and the final chapters of Books II and III, would then have been submitted to the council at the end of 1433 or the beginning of 1434. It is referred to in a work that Nicholas wrote in February 1434 so that it had been completed by that time, although minor additions may have been made thereafter. 8

Second Vatican Council. Catholic Church in connection with the reforms introduced by the renewed attention during the last twenty-five years in the Roman substance and form, but it also contains striking anticipations of modern concepts and practices - including themes that have received 540). In many ways the work appears rigidly formal and traditional in would be of interest to modern political scientists (III, 37, nos. 535and institutional development of the West. While the Catholic Conof the empire including an ingenious preferential voting system that cordance was occasioned by a conflict over the internal constitution of the church, the last book makes practical suggestions for the reform interest to modern political theorists and to students of the political philosophical principles of consent and representation that are of for much of his analysis, but he also relates his argument to general the fathers of the church, and the history of the early church councils intended head of the church. He relies on canon law, the writings of pope possesses an independently-derived position as the divinelyapparently conflicting strands in ecclesiological and political theory. While Nicholas argues for conciliar supremacy, he also grants that the ing, it is an attempt to synthesize and harmonize many different and theologically-inspired outlook that characterizes all of Nicholas' writlawyer's brief for conciliar supremacy. Faithful to its title, and to the crisis in the church, the Catholic Concordance is more than a canon Despite its appearance in the midst of a profound constitutional

The structure of the argument

obscured, and the reader who begins with Book I and reads through with its intricate system of harmonies and parallelisms, and to explain whole, both in order to understand Nicholas' fully developed theory on Marsilius - not at all). Yet it is necessary to consider the work as a argumentation, its sources are cited either too briefly, or at too great relation between the pope and the bishops and the place of Rome in universe and of the church. This is followed by an analysis of the to the end of the work may find its argument difficult to follow. Book I have claimed, but the basic unity of its argument is sometimes structure. It is not as contradictory or confused as some observers outline or table of contents is not sufficient to make clear its basic Because of the way in which the Concordantia was written, a simple 1437 when he became, in Aeneas Sylvius Piccolomini's phrase, "the length (or - in the case of the dependence of the Preface to Book III the Holy Roman Empire seems in many respects to be an afterdisputed issue of the relation of the pope to the council and the need the church constitution. Book II focuses at greater length on the begins with an elaborate outline of the hierarchical structure of the Hercules of the Eugenians." his subsequent change of loyalties to the side of Pope Eugene IV after thought to the argument already developed. It is less elaborate in its for consent to church law and government. Book III on the reform of

On the basic issue, Nicholas upholds the doctrine of conciliar supremacy over the pope. "Even in the decision on matters of faith which belongs to him by virtue of his primacy he is under the council of the Catholic Church" (1, 15, no. 61). It is not required that the council be called by the pope; in cases of necessity or danger to the church the emperor can do so (111, 15, no. 402). In the face of the pope's persistent refusal to attend, the council once it has met "should provide for the needs and welfare of the church" (11, 2, no. 73; 11, 13, no. 125). "The council has power both over abuses and the one who causes the abuses . . . Its power is immediately from Christ and it is in every respect over both the pope and the Apostolic See" (11, 16, no. 148). It can remove him for heresy and "when he governs incompetently" (11, 18, no. 159). The council's "judgment is always better than the individual judgment of the Roman pontiff" (11, 18, no. 158). "The canons of the ancients [in the early church councils] are

⁸See "Cusanus Texte, II, Traktate I. De Auctoritate Presidendi in Concilio Generali," Sizungsberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse, Heidelberg, 1935, p. 27, and English translation by H. Lawrence Bond, Gerald Christianson, and Thomas Izbicki, "Nicholas of Cusa, 'On Presidential Authority in a General Council," Church History, 59, I (March 1990), 19–34.

of greater authority than decretals of the popes which contradict them – despite what modern writers say" (II, 18, no. 177). "The universal council . . . has supreme power in all things over the Roman pontiff" (II, 34, no. 249).

acting with his patriarchal council, "can not err" (II, 7, nos. 94-95), and declarations on matters of faith by the synod of the patriarchate of Rome can not be reversed by the universal council (11, 4, no. 81). and on matters of faith "the Roman See", understood as the pope faith should be unanimous (II, 15, no. 137). He is "judge of the faith"; yield to the majority view in the Council, but decisions on matters of considering the views of Rome (II, 2, no. 74). The pope is obliged to proceed without him, but it cannot define an article of faith without into session. After waiting "a long time" for him to appear, it can 20, no. 187). In ordinary circumstances, the pope calls the council dispensations from church law out of his "personal prerogative" (II, ing him from office (deposition) (11, 16, no. 162). He can grant away from him on a temporary basis (suspension) but only by removnot that of the Councils of Constance and Basel) cannot be taken administration which in Nicholas' opinion (although, as he admits, "first over the others" (u, 13, no. 126) with inherent powers of in the church, for he is the captain of that army" (1, 15, no. 61). He is The pope is "prince of the bishops" and he has "rulership over all men and "to avoid schism" (1, 6, no. 35; II, 34, nos. 259, 261, and 264). his successor, the pope, the head of the church "to maintain unity" church with rights and prerogatives of its own. Christ made Peter and the council; it is part of the divinely-established constitution of the appear to indicate. The papacy as an institution does not depend on Yet Nicholas' theory is not as simple as the above quotations may

Nicholas developed his ecclesiological theory in order to resolve the apparently contradictory statements in the written records of the church concerning the relationship of the pope and the council. Some of the early church councils, as well as the recent Council of Constance, seemed to assert a general theory of conciliar supremacy over the pope. Yet statements of the papacy and in church law (including the forged Pseudo-Isidorean Decretals) seemed to enunciate a theory of papal supremacy. Nicholas, confident as any orthodox medieval universe, convinced that the Holy Spirit was providing the guidance to the church that had been promised to it by Christ, and trained as a

canon lawyer in the interpretation and resolution of contradictory texts (the basic canon law text, Gratian's Concordantia discordantium canonum, usually referred to as the Decretum, was compiled in order to reconcile apparently contradictory canon law texts) was certain that a harmonious intermediate position (medium concordantiae) could be found.

His belief in an ordered harmonious universe was derived from the version of the Christian world view that was transmitted to the Middle Ages by the writings of "Dionysius the Areopagite", (or Pseudo-Dionysius), a fifth-century Syrian Christian disciple of the neo-Platonist philosopher, Proclus. The opening chapters of the Catholic Concordance show the influence of the thought of Dionysius, who was mistakenly thought to be the Athenian convert of St. Paul mentioned in Acts 17:34. Dionysius wrote, among other works, The Celestial Hierarchy and The Ecclesiastical Hierarchy describing the hierarchical order of the universe beginning with God through nine choirs of angels, down to the sacraments, clergy, and people. The clergy, in turn, was divided into bishops, priests, and deacons, and the people into monks, the faithful, and catechumens.

Dionysius' hierarchical and triadic view of the world, as reflected and developed by Nicholas at the beginning of the *Concordantia*, begins with nine choirs of angels, continues through nine heavenly spheres from the prime moving sphere through the planets, sun, and moon to the earth. On earth all nature is divided into rational, sensate, and vegetative; man is body, soul, and spirit; and the church is made up of sacraments, priesthood, and the faithful. The sacramental power of the priesthood is distributed into nine ranks – bishops, priests and deacons; subdeacons, acolytes, and exorcists; and readers, porters, and tonsured clergy (1, 7, no. 41).

It is only in the sixth chapter of Book I that Nicholas reaches the subject of the structure of church government. Although all bishops

On Nicholas' knowledge of Dionysius, see Paul E. Sigmund, Nicholas of Cuca and Medieval Political Thought, Cambridge, Mass., 1963, pp. 247–249. Among the more important mediators of the tradition of Dionysius was Albertus Magnus (1200–1280), whose works Nicholas came to know through his associate at Cologne, Heimericus de Campo. At Cologne and in a visit to France in 1428 he also developed a strong interest in the Majorcan neo-Platonic mystic, Ramon Llull (1235–1316). The definition of concordantia in Llull's Ars generalis was borrowed by Cusanus, and he also adapted a system of preferential voting suggested by Llull (111, 37, nos. 535–541). For discussion, see Sigmund, Nicholas of Cusa, pp. 59–61.

Introduction

the early councils, especially those of the Council of Nicaea. Hy

beyond the history and law of the medieval church. to an argument from original freedom and equality that extends far from canon law in favor of consent to law and government, and moves analysis of the historical record of the church, mobilizes citations granted by laying on of hands in ordination. Instead, he turns to an mental authority, as distinct from the sacramental authority that is point we would expect him to follow earlier conciliarists (e.g. John of the highest level, archbishop, patriarch, and pope (1, 8, no. 42). At this 35). In the governmental hierarchy the nine ranks are: subdeacon, of grades as to governing responsibility [regitivam curam]" (1, 6, no. are equal as to sacramental power "nevertheless there is a distinction Paris) to argue that the consent of the church is required for governdeacon and priest; above them, dean, archdean, and bishop; and on

because of consent of the church, as expressed by the bishops.11 apostles, while Rome, Peter's last see, is the head of the church both cessors of the apostles in union with Peter as their head. 10 Peter was because of its historical importance as the capital of the empire and appointed by Christ to that headship with the consent of the other or ruling authority in the church belongs to all the bishops as suc-The historical record shows, Nicholas argues, that the one cathedra

councils had been called by the Eastern emperors, although papal the popes repeatedly declared that they were bound by the canons of considered necessary to give them ecumenical status. He found that consent and participation by the pope's representatives had been collection" (as he says in the Preface) he found that the first eight When he looked at "the original sources, not some abbreviated

of the papal synod and over Pope Leo's objection successfully raised subject to the bishops assembled in the universal council and to the and, while recognizing papal primacy, insisted that the pope was Orthodox Church today), defended the authority of the patriarchs, Council (Constantinople IV) held in 869-870 (not recognized by the below that of the pope in Rome. And he found that the Eighth the status of the Patriarch of Constantinople to a point immediately found that in A.D. 451 the Council of Chalcedon reviewed a decision church laws (canons) that they adopted.

also draws an analogy between the canon law provisions that bishops a law must be approved by the practice of those subject to it, as well as session, that of the cardinals acting as representatives of the provinces of the church as represented by the council, or when it is not in and archbishops must consult their councils on matters that affect the those under them (II, 18, nos. 163-164, and II, 32, nos. 232-233). He Gratian's requirement that bishops and archbishops be elected by law collection, Nicholas frequently cites the statement in D.4.C.1 that of the church (II, 18, no. 166). diocese or province, and the need for the pope to secure the consent From Gratian's Decretum, the authoritative twelfth-century canon

added in the second version of Book 11) Nicholas also makes a broader philosophical argument - the one for which the work is best known reason, the more rational ought to rule, Nicholas adds the following based on natural law, and arguing that since natural law is based on II, chapter 14, after quoting Gratian to prove that all legislation is the derivation of consent from natural freedom, and equality. In Book Almost as an aside in his historical and legal argument (it was

whether it consists in a written law or living law in the person of a Therefore since all are by nature free, every governance equally free, the true properly ordered authority of one common subjects. For if men are by nature equal in power (potentes) and prince . . . can only come from the agreement and consent of the ruler who is their equal in power can only be constituted by the election and consent of the others, and law is also established by consent. (II, 14, no. 127)

pation in government was something new in the history of political The appeal to natural freedom and quality as the basis for partici-

¹⁰If Peter and his successors are to give the church unity and "prevent schism" (1, 6, no. meanings of "consensus" as it was used at Basel, and its relationship to majority rule, see the Church, leaves this to a majority (maior pars) of the bishops and priests (1, 14, no. 58 35), this seems to imply a final decision in matters of doctrine. However Nicholas, See also II, 26, no. 211; III, preface, no. 270). For a linguistic analysis of the various Josef Wohlmuth, Verständigung in der Kirche, Mainz, 1983. following the doctrine that he found in the writings of St. Cyprian, one of the Fathers of

11 For a similar argument, see Gulielmus Durandus, De Modo Celebrandi Concilii Generalis and Sieben, Traktate und Theorien zum Konzil, Frankfurt, 1983, ch. 2. De Concordantia Catholica," Annuarium Historiae Conciliorum, xIV (1982), 171-226 Concordance, see Hermann Josef Sieben, "Der Konzilstraktat des Nikolaus von Kueshis conciliar theory. For a breakdown and analysis of the sources cited in the Catholic Nicholas' effort to use the historical records of the early church councils as the basis for of Cusa, ch. 4. My chapter does not, however, give sufficient attention to the originality of sources of Nicholas' theory in earlier conciliarist writings, see Paul E. Sigmund, Nicholas (1311), an annotated copy of which remains in Nicholas' library at Kues today. On the

thought. It is true that the opening passages of Roman law contained the statement, "By the law of nature, all men from the beginning were born free" (Institutes I, ii), but this had not led the Roman lawyers or their later commentators to demand any popular role in legislation or government beyond a mythical original transfer of authority by the Roman people to the emperor. The belief in natural freedom and equality goes back to the Stoics, but its use to support the institutionalization of consent through the election of rulers and legislation by representative councils was new.

Corporate consensus vs. individual consent

and then again, fatefully, in 1789. meeting sporadically until the beginning of the seventeenth century hand of Philip the Fair against Pope Boniface VIII. It was to continue called at the start of the fourteenth century in order to strengthen the (counties) and boroughs. In France the Estates General had been the lords spiritual and temporal, the representatives of the shires since the end of that century it had regularly included, in addition to thirteenth century. The English parliament had assembled with increasing frequency since the middle of the thirteenth century, and The Cortes of Castile had been meeting irregularly since the early empire had the Reichstag and the electors who chose the emperor. unity in the Western church. In the temporal sphere, the German itself which was now enjoying new prestige from having reestablished synods in the earlier history of the church, and the universal council cathedral and monastic chapters, local, provincial, and patriarchal institutions played a significant role - the college of cardinals, the made at this time. In the church quasi-representative corporate possible for an argument for the institutionalization of consent to be Political and economic developments in the late Middle Ages made it

These institutions were justified through largely implicit theories of corporate and community consent – not through appeals to natural equality or freedom. The community acted through corporate groups or by consensus rather than by counting heads. Hierarchical considerations counted for much, and the medieval representatives in the English House of Commons, for instance, were always properly deferential in their relations with the king and the lords.

Hierarchical and corporatist conceptions are important in the

part in the college of cardinals led to the adoption of the two-thirds and the fifteenth-century councils (Pisa, Constance, and Basel) of the votes of head and members of ecclesiastical corporate groups. part would also be sounder (sanior) if its number was twice as large as rule in the twelfth century, on the assumption that the larger (maior) sies over the relative voting weight of the "larger" and of the priest to vote on the same basis as high church dignitaries.)12 the council without regard to hierarchical status. (One of Nicholas' gradually extended voting rights to all those formally incorporated in the minority. The canon lawyers also discussed the relative weighting later developments in the state. Controversies over the "sounder" 1437 when he joined the side of the pope against the Council of "sounder" part, which became central to Nicholas' argument after beginning of the Catholic Concordance or to the canon law controverrefer to his original cosmological "chain of being" outlined at the later criticisms of the Council of Basel was that it admitted any simple Basel. Yet here as elsewhere, political theory in the church anticipated thinking of Nicholas and the other conciliarists too. We need only

There are a number of references to majority rule in the Catholic Concordance. In Book 1, 14, no. 59 the true church is made up of a "majority" (major pars) of the faithful in union with Peter and his chair. St. Cyprian is cited several times to demonstrate that the "larger part" of the priesthood will remain free from error (t, 8, no. 43; II, 4, no. 79, and III, Preface, no. 270) although the actual quotation from Cyprian says "the larger and better part" – see no. 43. Nicholas also states that in the council the majority "ordinarily" (II, 4, no. 79) or "normally" (II, 15, no. 137) rules, although immediately following the second assertion, he seems to have some doubts on the question (II, 16, no. 138). Then, it appears, a reading of Marsilius's Defender of Peace rekindled his enthusiasm. At the end of Book II and in the Preface to Book III, written after the rest of the work, there are

¹² Arguing at the 1441 Reichstag, Nicholas cited a case in which the Basel Council had used the vote of a personal servant of one of the bishops in order to break a tie, and asked, "Does not one pope or prince have greater authority in his vote than one manservant?" (Hermann Herre [ed.], Deutsche Reichstagsahten, vol. xv., part 2, Gotha, 1914, p. 763). Nicholas also attacked the deposition of Pope Eugene IV by the Basel Council in 1439 on the grounds that it had only a few bishops and no archbishops present (Helmut Weigel [ed.], Deutsche Reichstagsahten, vol. xv., part 1, Stuttgart, 1933, p. 348). At both Constance and Basel cardinals and bishops were considerably outnumbered by the lower clergy who once admitted as members had the right to vote (see Gill, pp. 207–208).

equal natural rights" (III, 4, no. 331). is required because of "the common equal birth of all men and their ideas is all the more striking in the claim early in Book III that consent and III, Preface nos. 270, 276, 278, and 283). The anticipation of later repeated favorable references to the rule of majorities (II, 34, no. 261,

sion on a regular basis to earlier inchoate ideas about consent to law attempt - the first on such a broad scale - to give institutional expresand national councils should be revived. The result is an ambitious ciliar body and the earlier practice of holding diocesan, provincial, legislation on each level should be adopted by the appropriate con-164). In all cases and especially in that of the universal church, tatives of the church provinces to elect and advise the pope (II, 18, no. clergy. They in turn would elect (i.e., appoint) cardinals as represen-Archbishops would be elected by bishops with the consent of the priests of the diocese with the (apparently tacit) consent of the laity. with the consent (in the sense of absence of opposition) of the faithful. Bishops are to be elected by cathedral chapters representing the the very least, he declares, priests should be appointed by the bishops the Decretum which appeared to mandate the election of priests. At Nicholas endorses legislation by an early Spanish council, quoted in conciliar structure for the church, it was distinctly hierarchical. on natural freedom and equality. When he described his proposed conclusions involving universal suffrage to his theory of consent based It would be a mistake, however, to attribute modern democratic

Theories of representation – personification versus delegation

determine just when a council was truly representative, and when it Council of Siena in 1423-1424 and the small initial attendance at reaffirmed that decree. Yet as the unrepresentative character of the holds its power directly from Christ" and the Council of Basel had superiority on the fact that "representing the Catholic Church [it] Basel suggested, some kinds of guidelines had to be established to on conciliar superiority, the Council of Constance had based that consent requires a theory of representation. In Haec Sancta, its decree consent to an argument for the councils as the expression of that To move as Nicholas does from a general requirement of church

> majority (plures) are present (II, 3, no. 75). church". The council can proceed if all have been called and a patriarchs which he then reinterprets as the "heads of the whole ments for a "full universal council" the participation of the five the records of the Eighth Council Nicholas cites among the requirewas a pseudo-council (conciliabulum). On the basis of his reading of

(I, 6, no. 37). "represents and symbolizes (figurat) the church as a public person" who preside over them as representatives of Christ." The bishop Body of Christ, so particular churches are the mystical bodies of those since "the church is in the bishop" (St. Cyprian, quoted in the represent the faithful? Nicholas replies that they are united to him, nos. 138-139. Cf. also III, 17, nos. 408-410). How do the bishops with voting rights (diffinitio et statuendi potestas) to the bishops (11, 16, before the fifteenth century and Nicholas' own view restricted those allows the admission of "chosen and learned priests," church practice Decretum C. 7 q.l. c.7) and "as the universal church is the Mystical Who are the heads of the church? Although at one point Nicholas

consensus which had formed part of the common assumptions of adopted after 1437. hierarchy to provide a rationale for the papalist position that Nicholas only needed a bit of neo-Platonic philosophizing about absorptive could provide a rationale for the most oppressive tyranny. Indeed it tion (the ruler as the "personification" of his subjects - l'etat, c'est moi) medieval political thought, the theory of representation as impersonaway (confusissime). Like the theories of tacit or implicit community than the pope alone who only represents the church in a very general and bishops - and "the more specific the headship, the more certain contains more "public persons" - patriarchs, cardinals, archbishops, the representation" (11, 18, no. 163) so that it is more representative demonstrate that the council is superior to the pope. The council This mystical or "virtual" theory of representation is then used to

church who give the consent of all the faithful (11, 34, no. 248). The would have a voice, although a limited one, in church government. as well. Through a hierarchical system of councils the lower ranks cardinals represent the church provinces and they take the place (vices (praesides) and of representatives (legati) of the various groups in the The councils are described as made up both of the presiding officers Yet his theory of representation contained more modern elements

sations (II, 21, no. 193; II, 24, no. 202; II, 34, no. 262). The council and the cardinals derive their legitimacy from those below rather than from those above them, and from the laity (in an indirect fashion) as well as from the clergy. The promise of infallibility that Christ made to the whole church is fulfilled more directly by the universal council than by the pope alone because it more certainly represents the church and the majority (maior pars) of the priesthood which St. Cyprian had said would always maintain the true faith and law of Christ. Similarly in the empire and kingdoms "legislation ought to be adopted by those who are bound by it or by a majority of their representatives because ... what touches all should be approved by all" (III, Preface, no. 270). 13

Like the movement from corporate, implicit, or quasi-unanimous consent (consensus) to individual voting on a regularized basis, the movement from representation as impersonation to representation as the result of the conscious selection of another to take action on behalf of an individual or group (delegation) marks an important transition in the development of modern political theory and practice that is anticipated in the Catholic Concordance. In words that sound strikingly modern Nicholas asserts that "all power both spiritual and temporal rests potentially in the people" (II, 19, no. 168) and "rulership comes from God through men and councils by means of elective consent" (II, 34, no. 249).

Parallel hierarchies in church and empire

A similar tension between authoritarian and "democratic" clements in Nicholas' theory can be found in the last book of the *Catholic Concordance* which deals with the German empire and temporal government in general. It too contains a theory of a hierarchy of offices reflecting the triadic organization of all creation. Yet where Pope Boniface VIII in his bull, *Unam sanctam* (1302) had appealed to "the Blessed Dionysius" in support of the strict subordination of temporal authority to the head of the spiritual hierarchy, Nicholas asserts not hierarchical subordination but parallelism. The emperor is

¹³ On the history of the "quod omnes tangir" ("what touches all"...) principle, see Gaines Post, Studies in Medieval Legal Thought: Public Law and the State, 1100-1322, Princeton, 1964, ch. 4.

the "one ruler of the world exercising his authority over the others in the plenitude of power, and in his own sphere he is the equal of the Roman pontiff in the temporal hierarchy on the model of the sacerdotal hierarchy" (m, 1, no. 293).

religious role he can participate in the council as the Eastern included a major part of the world (in terms of area, although he also subject to imperial legislation on the enforcement of conciliar decrees God" and "the vicar of Jesus Christ on earth" (III, 5, no. 341). emperors in the early councils did. In this role he is "the minister of its decrees, he is to be obeyed by all Christians, and because of his laity" (III, 15, no. 399) in the convocation of the council and enforces However, when the emperor "exhorts the bishops and commands the electors of the empire have given their consent to his election. extends only to those who habitually obey his rule, and through the limited area so that the medieval emperor's normal jurisdiction Nicholas recognizes that its medieval successor controls a more argues on the basis of population - see III, 6, nos. 343 and 346), (III, 7, nos. 355-356). Although the Roman empire originally exemption do not recognize the overlordship of the empire" all are does not extend to kings and princes "who de facto or because of (advocatus) of the church. While it is true that imperial jurisdiction emperor, Nicholas relies on the emperor's religious role as protector walk in formal processions.) To save the notion of the superiority of of the emperor and of the kings of other European countries would there had been problems with the order in which the representatives France recognizes no superior in temporals." (At the council itself had recognized in his decretal, Per venerabilem, that "the king of land who did not acknowledge a duty of subordination to the Holy exact parallel between the spiritual and temporal orders. The first was Roman Empire. Already in the thirteenth century Pope Innocent III the existence in Christendom of kings like those of France and Eng-There were two problems, however, with any attempt to draw an

The second problem in Nicholas' structural parallelism between church and empire is that while he had seen the universal council as the instrument of reform in the church, in the empire he looked primarily to Emperor Sigismund. Even in church affairs, it was Sigismund who had been primarily responsible for the success of the Council of Constance and his arrival at Basel in October 1433 raised Nicholas' hopes that he would play a similar role there. He is thus not

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concerned to demonstrate the superiority of the Reichstag to the emperor – although at one point Nicholas asserts that it is "the common opinion of the doctors" that the emperor can be deposed by the people who elected him (III, 4, no. 339). Like the pope in the universal council the emperor in his imperial council (*Reichstag*) comprising the electors, princes, senators, judges, and representatives of the cities and towns is to meet to judge cases and work out common legislation for the whole empire (III, 25, nos. 469–472. See also III, 35, nos. 519–531 for a description of the smaller annual *conventus* comprising the emperor, the electors, and the judges of the empire). Like the pope too, the emperor would have a daily council "to advise him and defend the public good" (III, 12, no. 378).

the reforms that were his basic concern. necessary, and the extension of the conciliar structure to lower levels Reichstag. Stronger limits on the emperor were not in his view established under the emperor's sponsorship at the forthcoming and a common judiciary - based on district courts - all to be of the empire would have weakened the chances for the adoption of strong imperial standing army, a centralized treasury and tax system, representative bodies did not suit his ultimate purpose in Book III, the just the reverse. To remedy it he recommended the creation of a excessive centralization in the papacy; the problem in the empire was reform of the empire. The problem in the church as he saw it was that an emphasis on the restraining role of the Reichstag or other attributed to lack of time since it is clear that the last book of the sion of the accountability of the emperor to the Reichstag. Nicholas' no. 293). Yet there is no mention of a hierarchical system of elected archbishops and counts to bishops "and so on with the rest" (III, 1, Catholic Concordance was hastily written. It is more likely, however, failure to complete his scheme of parallel concordances may be bodies like those that he had described in the church nor any discusthat of the pope as first among the patriarchs, and compares dukes to describes the emperor's relationship with the other kings as parallel to lists three ranks in the empire, as in the church (III, 25, no. 471). He The parallelism of church and empire is carried further. Nicholas

Nicholas was also concerned to strengthen the empire by demonstrating its independence of the papacy. In this connection, he once again demonstrates a remarkable historical sense and an ability to marshal documentary evidence as he traces the constitutional

history of the German empire and criticizes the papalist arguments for the pope's superiority to the emperor. Best-known is his attack on the authenticity of the Donation of Constantine on the basis of the analysis of the historical documents (III, 2, nos. 300–308), but he also raises doubts about what later turned out to be forged papal letters included in the Pseudo-Isidorean collection (no. 309). His interest in geography and astronomy is also displayed in Book III, chapter 6 when he discusses the geographical extension of the empire – an interest that led to the production of one of the first maps of Western Europe in the late Middle Ages.¹⁴

council was that it was concluded in harmony, and on matters of faith author of peace and concord," since one of the signs of a genuine a sign that a church meeting was not inspired by the Holy Spirit, "the of divergent tendencies, "a coincidence of opposites" to use the is dissension, there is no council" (II, 1, no 69 quoting Gratian's even unanimously (II, 15, no. 137, and II, 34, no. 248). "Where there (1440), persistent dissension and incapacity to come to agreement was phrase that he made famous in his later work, On Learned Ignorance no. 495). While Nicholas believed in the possibility of a reconciliation II (955-983) when "everything tended to the common good" (III, 28, IV, 869-870) and in the German empire in the days of Emperor Otto councils in the East - especially the Eighth Council (Constantinople had existed in the church in the period of the great ecumenical reactionary - that is, it should recapture the harmonious order that revolution. This reform was to be orderly, legal, and in a sense sometimes been linked. Nicholas was concerned with reform, not and how far it is from the modern democratic theory with which it has of how thoroughly medieval is the outlook of the Catholic Concordance considerable lengths to which the analogy is carried are an indication process of legislation and the ingestion and digestion of food. The extended comparison (in somewhat questionable taste) between the church and empire to the parts of the human organism, including an strated in an elaborate organic analogy comparing the officers of At the end of the work, Nicholas' knowledge of medicine is demon-

¹⁴Cf. "Cusanus und die Geographie," in Nikolaus Grass (ed.), Cusanus Gedächtnisschrift, Innsbruck, 1970, part IV.

The shift to papalism

unity council. assist in making arrangements for the Greeks to come to Italy for a Bologna to get papal confirmation before going to Constantinople to bishops and the two representatives of the Greek Church, and went to tavern.15 On May 20, 1437, Nicholas left Basel along with two compared by Aeneas Sylvius to the conduct of drunkards in a those who supported Basel or Avignon in France, the atmosphere was and three cardinals and twelve bishops, were heavily out-voted by Cardinal Cesarini who had given up the chairmanship of the council, Greeks in an Italian city, including Nicholas, his former teacher, no. 1). When the members of the council in favor of meeting the 282, repeating the argument of Marsilius, Defensor pacis, D. 1, c. 17, tion of saints, payment of church taxes and fees, establishment of fast arrogated more and more papal prerogatives to itself (e.g. canonizamonarchy as the best form of government, and as the Basel Council days, etc.) it seemed to exemplify that "plurality of rulers" which carried out by a strong emperor working through the Reichstag. In Nicholas described in the Preface as a bad form of government (no. the Preface to Book III Nicholas had strongly endorsed elective Italy, in a manner parallel to the hoped-for reform of the empire to be for church reform in a strong pope working through a unity council in Switzerland, Nicholas was more and more inclined to place his hopes no interest in negotiating with the squabbling churchmen in northern papal position and when it also became apparent that the Greeks had ing French delegation hostile to the Pope, took an increasingly antipositions in 1437. When the Council of Basel, influenced by a growview, all help to explain his change from the conciliarist to the papalist considerable authoritarian and hierarchical elements in his world interest in reunion of the Eastern and Western churches, and the His belief in harmony, his attachment to law and order, his strong

After 1437 Nicholas was an ardent papalist – but at the same time he made efforts to demonstrate a substantial continuity between his papalist and conciliarist thought. Thus in his appearances at the Reichstag where he endeavored to secure imperial support for the

KEIChStag where he endeavored to secure imperial support for the 15"... ut modestiores in taberna vinaria cernas bibulos," Letter to Peter of Nocetus, reproduced in J. D. Mansi, Sacrorum conciliorum nova at amplissima collectio, vol. xxxI, Venice, 1798 (reprinted, Paris, 1906), p. 223.

can "withdraw" from him. 18 holy fathers" thus "exceeding the limits of his authority," the church other apostles, and says that if the pope violates "the statutes of the expressions of a power contained (complicata) in its fullness in the catio) of Peter and views the various church offices as particular erring pope. While he describes the church as the "unfolding" (explithe embodiment of the consent of the church.¹⁷ Even in the pro-papal only finally successful in 1448 - he argued that Basel was no longer Christ to both the pope and bishops, the successors of Peter and the pope, he still asserts that the power to govern the church was given by larmine, he maintains an emergency power for the church against an by post-Reformation defenders of the papacy like St. Robert Belletter that he wrote in 1442 to Rodrigo Sanchez de Arevalo, later used Aeneas Sylvius Piccolomini), he described the college of cardinals as reform proposal to Pope Pius II (himself the former conciliarist, valid because it did not have the consent of the church. 16 Both at the pope against the remnant of the Basel Council - an effort which was Reichstag meetings and in 1460 when as a cardinal he submitted a

In fact this limitation was nearly meaningless. The cardinals continued to be named by the pope. After the Council of Ferrara-Florence in 1438–1439 that briefly reunited the Eastern and Western churches, no councils were held for the rest of the century. A dwindling number of participants in the Basel Council continued to meet until 1449 and even elected an anti-pope, but they were gradually

¹⁶ For analysis of the arguments at the Reichstag, see Sigmund, Nicholas of Cusa, ch. 9 and A. J. Black, Monarchy and Community: Political Ideas in the Later Conciliar Controvery, 1430–1450, Cambridge, 1970, part III. Black has also analyzed the arguments at Basel itself in Council and Commune: The Conciliar Movement and the Fifteenth Century Heritage, London, 1979. The book devotes major attention to the writings of John of Segovia, but includes a discussion of Cusanus' role (pp. 51–57).

¹⁷ The Reformatio generalis is printed in Stephan Ehses, "Der Reformentwurf des Kardinals Nikolaus Cusanus," Historisches Jahrbuch, xxxxI (1911), pp. 281–297. In his reform proposal, Nicholas calls the cardinals the representatives (legat) of the "nations" (not, as in the Catholic Concordance the church provinces) who give the consent of the faithful to the election of the pope and form the daily full council of the church. Aeneas Sylvius' diary also records a confrontation between himself as pope and Nicholas over the naming of new cardinals without securing the consent of the present membership, a procedure which Nicholas said was contrary to the decrees of the Council of Constance. See Leona C. Gabel (ed.), Memoirs of a Renaissance Pope, New York, 1959, p. 228.

¹⁸ Epistola Nicolai de Cusa ad Rodericum de Trevino, Appendix 3, in Gerhard Kallen (ed.), "De Auctoritate Presidendi in Concilio" (Cusanus-Texte), in Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse, 1935–1936, no. 3, Heidelberg, 1935, pp. 110–111.

abandoned by most of Christendom. After the union with the Greeks in 1439. Pope Eugene IV was able to secure the endorsement at Florence of his bull, *Mayses vir Dei*, which condemned the doctrine of conciliar superiority. The conciliar theory seemed dead.

reforms such as the synod of bishops and the increased participation discussions within the Roman Catholic church during and after the whose Politica sacra et civilis (1659) mentions "Cusanus" favorably.20 Locke by way of the constitutionalist writings of George Lawson some isolated references to his argument against the Donation of of laymen in church decisions. Second Vatican Council, has his theory been used to argue for Only in recent times, in connection with the renewed constitutional directly influential on later theorists although there is a link to John Constantine, however, Nicholas of Cusa's political writings were not mentary supremacy in seventeenth century England. 19 Aside from supremacy over the Pope. The example of the actions and claims of Constance and Basel were not lost on later proponents of parliacentury, and of Bossuet a century later continued to assert conciliar theory as expressed in the writings of John Major in the sixteenth council were still made by the French church, and the Gallicanist ciliarism and Cardinal Bellarmine quoted Nicholas. Appeals to the In fact, however, it was not. The Council of Trent discussed con-

The transition to modern constitutionalism

To the student of the history of political thought, the thinking of Nicholas of Cusa, the greatest of the conciliar theorists, is of continu-

¹⁹ See Francis Oakley, "On the Road from Constance to 1688," Journal of British Studies, 1 (1966), 1-31, reprinted in Natural Law, Conciliarism, and Consent, London, 1984; Paul E. Sigmund, "Konzilsidee und Kollegialität nach Cusanus," MFCG, v (1965), 86-97, and Sigmund, "Das Fortleben des Nikolaus von Kues in der Geschichte des Politischen Denkens," MFCG, vt (1969), 120-128; Black, Council and Commune, ch. 16, and Brian Tierney, Religion, Law and the Growth of Constitutional Thought, 150-1650, Cambridge, 1982, pp. 81, 97-98.

²⁰Lawson only knew Cusanus indirectly as one of several conciliar theorists. Locke read Lawson's *Politica* in 1679, shortly before he began to write the *Two Treatics*. It included an argument from community consent similar to that of Locke. See Julian H. Franklin, *John Locke and the Theory of Sovereignty*, Cambridge, 1978, chs. 3-4. However, see Conal Condren, *George Lawson's Politica and the English Revolution*, Cambridge, 1989, who analyzes the important differences between the two theories on such topics as majority rule, individual consent, revolution, and property (pp. 181ft) and dismisses Franklin's claim that Locke "found" his central argument "ready-made" in Lawson as "sheer fantasy" (p. 5).

permanent representative institutions. The theory of natural law that age. It was made the justification for continuing consent through version of the separation of powers.²¹ The doctrine of original moved it in the direction of modern constitutionalism and even of a developed to defend those institutions, and the aspiration of medieval were given concrete institutional expression. A political theory was theoretical limits that medieval constitutionalism placed on the ruler political thought and practice. For the first time the considerable ing interest. It is the expression of a fascinating transitional period in was used mainly to justify existing political and social arrangements. tionary, but this marked a shift from an earlier stage when natural law thought the critical role that was so important in its later development. was part of the common heritage of the West began to acquire in his Cusa's theory something more than a part of the myth of a lost golden Christian interpretation by the church fathers became in Nicholas of freedom and equality that had been asserted by the Stoics and given a Christendom to the rule of law was given a political application that In the Catholic Concordance this role was reformist rather than revolu-

The same kind of shift in the meaning and application of generally accepted terms takes place in Nicholas' theory of representation. However strong the religious and traditional justifications for his authority, the ruler had always been regarded as in some sense the representative of his people. The law too was viewed as inhering in the people as a whole and even in the early Middle Ages, the inquest was used to find out what the law of a given locality or group was. In Nicholas' theory, however, the people must give their consent – usually, but not always, implicitly – to their rulers, and the foundations were laid for the belief that legislatures can make legally binding new legislation through representatives who are responsible to the geographical or corporate group that has elected them.²²

Moreover, these legislative bodies were to meet on a regular or continuing basis. The conciliar structure outlined by Nicholas was

²³ See II, 13, no. 123 and 14, nos. 129–130 on the separation of legislation and adjudication, and II, 15, no. 137 on papal subordination to conciliar legislation. Note, however, that the pope participates in church legislation as a member of the council (II, 15, no. 137).

²²On the development of "proctorial" representation in the late Middle Ages, see Gaines Post, Studies in Medieval Legal Thought, ch. 3. On the late medieval basis of modern constitutionalism, see Quentin Skinner, The Foundations of Modern Political Thought, Cambridge, 1978, II, ch. 4.

not merely an emergency procedure but an integral part of the government of church and state. In the church, universal councils were to be held at least every ten years in accordance with the decree, *Frequens*, of the Council of Constance, and a representative and permanent college of cardinals in Rome was to limit the exercise of papal power. In the empire, the Reichstag, annual smaller meetings of the electors and judges, and a daily council of advisors were all part of Nicholas' scheme for constitutionalizing the exercise of power. It took three centuries for popular participation to be institutionalized in the temporal sphere and over half a millennium for it to become part of the constitution of the Catholic Church. (See the discussions at the Second Vatican Council of the role of "the people of God.") Nicholas' proposals were a remarkable anticipation of later developments in both realms.

He also saw a need for the decentralization of authority in the church. Thus, the bishops had an autonomous, not derivative, role; judicial appeals were to go no further than the church provinces or patriarchates (II, 31, no. 227); and legislation was to be adopted by decentralized diocesan, provincial, or national councils. He did not deal with the problems of federalism as we have seen them in the subsequent political evolution of the West but he clearly saw the advantages of a balance between centralization and decentralization in decision-making.

Since his theory is more constitutionalist than democratic it is something of an exaggeration to describe Nicholas of Cusa as Gierke does as "among the leading champions of popular sovereignty." Nicholas' belief that the emperor backed by coercive force could be the agent of reform in the secular sphere foreshadowed his shift to the side of the papacy after he recognized that a deeply-divided council, however lofty its goals, could not carry out the needed reforms in the church. A strong ruler working in cooperation with a corporately-organized legislature was his chosen agent of ordered reform — not a populist omnicompetent body bent on subordinating the executive to its will, as the Council of Basel was threatening to become. The latter group could not have the unity, the determination, or the resources to carry out the reform within the framework of orthodoxy that Nicholas desired. Western Europe at the beginning of the modern period, like

²³ Otto von Gierke, The Development of Political Theory, trans. Bernard Freyd, New York 1939, p. 149.

parts of the third world today, found authoritarian solutions more efficient than democratic ones and the movement in Nicholas of Cusa's political thought from a qualified conciliarism to a qualified papal absolutism helps to explain why this was the case.

ensure that valid church councils will come to harmonious agreement on the truth. midst" (11, 3, no. 77, and 11, 19, no. 101); and that the Holy Spirit will that "where two or three are gathered together, Christ is in their accept the suggestions of their betters by a "certain natural instinct"; can make itself known. Thus, he believes that the less intelligent will continuing action of Divine Providence to assure that that harmony harmonious order of the universe as created by God, and in the in his thought that makes him more optimistic - his belief in the do with his attitude. Yet there is another religiously-inspired attitude and it may be that the doctrine of Original Sin also has something to his view he quotes the Book of Ecclesiastes in the Old Testament, inclined to evil, and generally irrational in his decisions.24 To support the judgment of the ordinary man, Nicholas describes him as foolish, perhaps on his experience in the Italian city-state, in the soundness of of men. Unlike Marsilius who has a certain confidence, based There is a curious ambiguity in Nicholas' attitude towards the mass

This ambiguous attitude has been present throughout the history of Christian thought. Man's inclination to evil has been emphasized by Christian theorists both to justify authoritarian rule or in support of constitutional limitations on power. Yet the Christian belief in the action of God guiding the individual or the group to the truth has also inspired men to form self-governing religious communities and sects and it underlies many early attempts at democratic government. Nicholas' thought, here as elsewhere, combines these contradictory elements in a fragile synthesis.

From tradition to modernity

The movements from authoritarian rule to participation in decisionmaking, from hierarchy to equalitarianism, from implicit consent and virtual representation to the conscious election of responsible

²⁴Majority rule with lay participation could lead to "the judgment of fools whose number is infinite" (II, 16, no. 138); "Men are attracted to what is forbidden and from adolescence are prone to evil" (III, 39, no. 552). See also III, preface, nos. 272–275.

forms that they will take in modern times. elements in ancient and medieval thought and points towards the new his attempt to do so combines many of the seemingly contradictory faith in the possibilities of achieving a "universal concordance" but the basis of modern constitutional democracy. We may not have his regularized participation through representative instititions, became and state but the other part of his theory, the rule of law and three years. Divine-right monarchy triumphed for a time in church tions remained viable even in his own thinking for only a little over political thought is indeed a "coincidence of opposites," and, in fact, him nor as thoroughly medieval as others have described him. His is neither as thoroughly modern as some of his interpreters have made his synthesis of papal monarchy and conciliar representative instituone stage in this process of transition to modernity. Nicholas of Cusa status to contract, from dependence to autonomy, from particularism The Catholic Concordance can be viewed as a theoretical expression of to universalism, and from fragmentation to centralization of authority. replacement of ascriptive with achievement norms, a movement from an increasing rationalization of relationships and thought, the defined this process in many ways. They have described it in terms of traditional to a more modern society. Theorists of modernization have representatives, are all part of a broader change in the West from a

the search for beliefs and institutions adequate to the needs of the be understood and given institutional expression? What do the welfare? How can the relationship between religion and politics best history, tradition, and religious ideas of the West have to contribute to individuals and groups participate in decisions that affect their between centralized and decentralized institutions and how can reconciled with individual freedom? What is the proper balance resolve are still with us today. How can legitimate authority be the contemporary world."25 The problems that Nicholas tried to deeper understanding of our political traditions in their relevance for writer who died over five hundred years ago "can help toward a an analysis and an English translation of the political thought of a ing elements. It is hoped that making available to a modern audience complex synthesis that resulted from that attempt to combine oppos-This discussion has been concerned with the interpretation of the

Introduction

crucial period at the beginning of the modern age.* important and original expression of its most central elements in a is a "Western Political Heritage," the Catholic Concordance is an best fruits of creative minds struggling to arrive at answers."26 If there other great classics of the history of political thought, can "make us contemporary world? Study of the Catholic Concordance, like that of aware of what these unsettled questions are [and] present us with the

*The following chapters are recommended for course assignment: Bk. 1, chs. 2, 7, 8, 15-17; Bk. II, chs. 1, 2, 8, 12-19, 21, 33, 34; Bk. III, Preface, chs. 1-6, 25, 29-33, ²⁶Robert Dahl, Modern Political Analysis, Englewood Cliffs, N.J., 1963, p. viii.

²⁵Alan Gewirth (trans.), Marsilius of Padua, The Defender of Peace, New York, 1956, p. xvii.

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3, Heidelberg, 1977.

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Chronology

- 1387-1417 Great Schism. As a result of a disputed election after the return of the papacy from Avignon to Rome there are two and, after 1409, three claimants to the papal throne.
- 1401 Nicholas Krebs (Cryfftz) born in Kues (Latin-Cusa) on the Moselle river near Trier.
- 1414–1418 The Council of Constance meets to end the schism. In 1415 adopts decree, *Haex sanda*, asserting conciliar supremacy in "matters of faith, extirpation of schism, and reform of the church in head and members." In 1417, council votes to meet at regular intervals in the future, one claimant to the papacy resigns, two are deposed, and the council elects Martin V as pope.
- Nicholas registers at the University of Heidelberg as "Nycolaus Cancer de Coesse," identified as "a cleric from the diocese of Trier." (Cusanus was in minor orders and was not ordained as a priest for another twenty years.)
- 1417-1423 Studies canon law at the University of Padua, receiving degree of doctor decretorum.
- 1423-1424 Council of Siena meets and adjourns, calling for another council in seven years.
- 1424 Cusanus visits Rome for the first time.
- Registers at University of Cologne as doctor in canon law.

 Teaches canon law and studies philosophy.
- 1426 Practices law in archdiocese of Trier.

Chronology

1443	1432	1431	1430	1429	1428	1427 .	
From February until April, Cusanus is involved in discussions with the Hussites (Bohemians) on the reception of the Eucharist under two species, leading to his treatise, Opusculum contra Bohemorum errorem: De usu communionis. In April he writes a legal brief on the supremacy of the council over the pope, De maioritate concilii. In mid-year writes Libellus de ecclesiastica concordantia, later incorporated as Book I and part of Book II of De concordantia. Late in the year he completes De concordantia catholica, submitting it to the council in December or January.	On February 29, Nicholas is formally incorporated in the council to argue Ulrich's appeal of the papal decision. He is appointed to the Committee for the Faith.	Nicholas submits appeal to meeting of the Reichstag on behalf of Ulrich's candidacy, citing "divine and natural law" and "the will of the clergy and people" (Meuthen, Acta Cusana 1, 41 and 43). Church Council opens in Basel to consider church reform and the Hussite heresy.	Nicholas returns to Trier after the death of the archbishop, becomes chancellor of Ulrich von Manderscheid, a candidate for the archbishopric. Disputed election appealed to pope, who appoints an outsider, Raban, bishop of Speyer, as archbishop. Cathedral chapter elects Ulrich, with Nicholas as witness.	Travels to Rome, bringing eleventh-century manuscript of sixteen plays of Plautus, now in Vatican library.	University of Louvain offers Cusanus professorship of canon law which he declines. Offer repeated in 1435.	Italian humanists write of the discovery of classical manuscripts in Cologne cathedral library by "Nicholas of Trier" (Nicolaus Treverensis). Travels to Rome as secretary of the Archbishop of Trier where he obtains papal grants, confirmations, and dispensations allowing him to hold several benefices in the archdiocese of Trier, which carry endowed income. Henceforth he identifies himself as "dean of the church of St. Florin in Koblenz."	

- 1437 Italy. negotiates the participation of the Byzantine emperor and member of the papal delegation to Constantinople, and minority including Cusanus favoring a location in Italy. On Council majority insists on Basel or Avignon, with the Cusanus goes to Bologna, is appointed by the pope as a May 20 along with other members of the defeated minority representatives of the Greek church in a union council in
- 1438--1439 supremacy. Council of Ferrara-Florence negotiates unification of Constantinople) and condemns doctrine of conciliar Eastern and Western churches (immediately repudiated in
- 1439-1447 Nicholas argues the papal side against the representatives of the council at the meetings of the German Reichstag.
- 1439 Nicholas publishes his best-known work, On Learned Ignorance (De docta ignorantia).
- 1448 council at Basel. Nicholas is named cardinal of the Church of St. Peter in Chains in Rome. 1449 vote by remaining participants to dissolve rump Reichstag and princes support the papal side, leading to
- 1450 Nicholas named Bishop of Brixen (Bressanone) in the Tyrol. Sent on reform mission in Germany.

- 1452-1460 In Brixen, involved in continual conflicts with Sigismund, Duke of the Tyrol.
- 1453 sibilities of agreement among the principal religions. Publishes De pace fidei (On Peace in Faith) - arguing pos-
- 1460 Submits reform proposal to Pope Pius II, calling for elective college of cardinals representing the "nations" of Christendom.
- 1464 Dies in Rome. His body is buried in the Church of St. Peter in Chains, his heart in front of the altar of the chapel

in a General Council (De auctoritate presidendi).

In February, writes treatise On the Authority of the President

1434

at Kues, built at his instruction along with a library for his books and a home for the aged. Still functioning today, it is probably the oldest private foundation in Europe.

Abbreviations

PL	PG	MG		Mansi			Kallen, OCC		Jaffe		Hinschius	
Migne, J. P. (ed.), Patrologia Latina, Paris, 1844.	Migne, J. P. (ed.), Patrologia Graeca, Paris, 1857.	Monumenta Germaniae Historica.	ampliissima collectio, Florence, 1759.	Mansi, J. D. (ed.), Sacrorum conciliorum nova et	1959-68.	tia catholica libri tres, Gerhard Kallen (ed.), Hamburg,	Nicolai de Cusa, Opera omnia, vol. XIV, De concordan-	Leipzig, 1885.	Jaffe, Philip (ed.), Regista Pontificum Romanorum,	Leipzig, 1863.	Hinschius, Paulus (ed.), Decretales Pseudo-Isidoriana,	

The Catholic Concordance

KEFACE

- might easily be considered novel by those who when doubts arise rely unquestioningly on modern writers demand that we make known some of the learning of the ancient authors, long neglected by those who are experiencing our current difficulties, and that we demonstrate the superior qualities of our more enlightened forebears. The discord that has arisen has produced this work by the action of heaven, overcoming our natural disposition and lack of preparation or previous notice.
- eloquence since we are able to speak Latin correctly only with great return to the weighty opinions of those authors. We see that all are mechanical arts. As if the wheel had come full circle, we eagerly being sought once more by those who pursue all the liberal and events which we have now seen that have demonstrated the great effort, overcoming, as it were, the force of nature. through our own fault - defer to others in the pleasing exercise of ability, must - because of the different position of the stars, not Greeks. We Germans, however, although not far behind in native following in the footsteps of their ancestors, to the writings of the that is appropriate to their nature as Latins, devote great effort, ally true of the Italians who, not satisfied with the literary excellence delighted at the eloquence and style of ancient letters. This is especithe public good and the orthodox faith? But we see that the past is power of the universal councils – so long dormant, to the detriment of Who, I ask, would not have been surprised, a few years ago, at the

Other nations should not be surprised to read in the documents quoted below things that they have not heard before. For I have collected many original sources that have long been lost in the armories of ancient cloisters. Those who read these things therefore should be aware that they have been quoted here from the ancient originals rather than from some abbreviated collection. I ask that my uncultivated style not deter anyone from reading, for an open and clear meaning, humbly expressed without disguise, is more easily understood even if it is less appealing. Nevertheless I hope that this collection will be pleasing to all, especially, however, to the partici-

one would be justified in rejecting what they have endorsed. our nation. If this work is approved by two such lofty authorities, no worthy Cardinal Giuliano [Cesarini], the most gentle [papal] legate to invincible emperor crowned by the will of God, as well as to the pants in this holy Council, and in particular to you, Sigismund, our

that produces eternal salvation and the safety of the commonwealth. members, so that we can know the sweet harmonious concordance the substance, the nature, and the combinations and joinings of its and thirdly its body, the holy empire. And everything will be studied church itself as a composite whole, then its soul, the holy priesthood, church - i.e., its soul and body. Therefore we will consider first the on the basis of ancient approved sources, as necessary to understand necessary to examine that union of faithful people that is called the Catholic Church, as well as the parts that together make up that In my treatise on the Catholic concordance, I believe that it is

BOOK I

BOOK I

RATIONAL SPIRITS UNITED IN SWEET HARMONY WITH CHRIST, THE WAY, THE TRUTH, AND THE LIFE, WHO IS THE SPOUSE OF THE CHURCH THE CHURCH IS A CONCORDANCE OF ALL

- heaven to bring all things to fulfillment. adopted sons of God through Jesus Christ who came down from predestined for that marvelous harmonious peace belonging to the to all its members who are subordinated and united to him. Thus one sweet spiritual harmony of agreement emanates in successive degrees church. Concordance is the principle by which the Catholic Church God is all things in all things.2 From the beginning we have been Flowing from the one King of Peace with infinite concordance, a is in harmony as one and many - in one Lord and many subjects. with a few words concerning the underlying divine harmony in the the proper conclusions if he knows the basic principles, I will begin Since anyone endowed with the slightest intelligence can draw
- members of Christ, bone of his bone and flesh of his flesh. Thus Ambrose in Letter XVI To Irenaeus praises this epistle of Paul, "No husband and flesh of his flesh so also the church is made up of the the church it is certain that just as Eve was bone of the bone of her If then the union of Adam and Eve is a great sacrament in Christ and is a sacrament [which symbolizes the union] of Christ and the church. mother and cleave to his wife and they shall be two in one flesh.3 This when he says at the beginning that a man shall leave his father and The Apostle [Paul] writing to the Ephesians demonstrates this

For the source of this definition in Ramon Llull, Ars Generalis, see Paul. E. Sigmund, Press, 1963, p. 61. Nicholas of Cusa and Medieval Political Thought, Cambridge, Mass.: Harvard University

³Eph. 1:15. ²1 Cor. 15:28.

the saints on this subject that I think I must omit for the sake of side of the man and is flesh of his flesh."5 There are many writings of of the woman, and the woman, that is the church, is formed from the signifies Christ; their marriage is a spiritual union. Christ is the head signifies the church, because she is the mother of all the living; Adam such a way that the links between the individual adherents are not letter To Algasia, and in his letter, On Monogamy, he says: "Eve Ambrose above. Jerome agrees in the next to the last section of his perceived by the senses."4 This and other excellent things are said by to Christ, their head, forming the framework of the church edifice in ministries one body made up of all spirits of a rational nature adheres hosts and powers so that by a certain concordance of powers and not only of the saints but of all the faithful and of all the heavenly think we are to understand that there is a union in faith and the spirit, produce one temple and one spiritual dwelling-place for all. Here I ministry, helps to increase his body proportionately in charity so as to who is head of all. From him one body of the faithful, united and with the head so that, so to speak, every member is present in Christ joined in rational harmony with the Word in every branch of the in the church "making some apostles, others bishops, others teachers harmony in faith, he has set up a concordance of the different grades flesh in heaven." But in order for us to achieve that union of eternal we all "will not only sit but will be seated together with Christ as his one." And he says that Christ sits at the right hand of the Father and epistle has bestowed such blessings on the people of God as this ." so that each one "united in faith and knowledge may be in touch

6. And since it is very evident that every living being has been created in harmony [concordantia], so also in the divine Essence where life and existence are one and completely equal there is a most infinite concordance because no opposition can be present where there is eternal life. But every concordance is made up of differences. And the less opposition there is among these differences, the greater the concordance and the longer the life. And therefore life is everlasting where there is no opposition. On this basis you can perceive the basic principles of the most holy Trinity and Unity because it is a unity in

*See St. Ambrose, *Letters*, trans. Sister Mary Melchior Beyenka O.P. New York: Fathers of the Church, 1954, no. 85, pp. 476–480.

⁵Cf. PL 22, pp. 1031 and 1053.

trinity and a trinity in unity, and there is no opposition internally since whatever the Father is, so also are the Son and the Holy Spirit. Behold the ineffable concordance that exists in a God who is three-fold and unitary. From it anyone who wishes to study further the way in which all the perfections that can be asserted or thought of God exist in the greatest concordance of one essence and three persons can derive the most lofty and incomprehensible truth to be seen with the eyes of the intellect.

written, 'He that glorieth in himself let him glory in the Lord.' "8 and justice and holiness and redemption of God. Accordingly it is justice of the Father always in him, he has become for us the wisdom the only-begotten Son of God that as he possesses the wisdom and proportion as we adhere more or less to him. Therefore it is written of live justly in adherence to him, and we are more or less just in him. Since he is justice itself, he brings forth justice in us when we is life itself, gives us life when we are in some manner made sharers in agreement, Christ transforms each of us according to our rank. As spirit to Christ, he is a member of Christ and with our adherence and Church, the mother of all living men." Then, since he is united in have God as his father can not be born again to life except through the As Cyprian says in On the Unity of the Church, "Whoever wishes to unity of the spirit there is a marriage between Christ and the church. Augustine says to Consentius concerning the Trinity, "God, since he through the Son and flows to all things in the Holy Spirit." For in the Magnus on the words, "Thou art Christ, the Son of the living God" principal subject - it is sufficient to cite the comment of Albertus (Matt. 16) that "the Father is the source of life, which is channeled 7. Since this concordance is highest truth itself - but this is not our

8. In summary therefore, we may say that Christ is the way, the truth, and the life, and the head of all creatures, the husband or spouse of the church, which is constituted in a concordance of all rational creatures – with him as the One, and among themselves, the many – in various [hierarchical] gradations.

⁶Albertus Magnus, Commentarius in Matthaeum, 16:18 in August Bourgnet (ed.), Alberti Magni Opera omnia, Paris, 1890, 20, p. 638.

⁷St. Cyprian, De unitate ecclesiae, ch. 6 (PL 4, p. 519).

St. Augustine, Ad Consentium (PL 33, p. 461).

CHAPTER II

THE RELATION OF THE MEMBERS OF THE CHURCH TO CHRIST IS ONE OF DIFFERENT GRADATIONS. THIS IS ILLUSTRATED BY THE EXAMPLE USED BY SAINT AMBROSE OF A MAGNETIC STONE AND THE ARRANGEMENT OF IRON RINGS THAT ARE ATTRACTED TO IT. THE HIERARCHICAL ORDER [OF THE CHURCH] IS ANALYZED ON THIS BASIS.

of the originating Principle. order can be carried out by intermediaries except through the action depend on the First Principle and nothing in the whole hierarchical Infinite down to nothingness, that all the intermediate gradations that order ends in darkness. And such is the gradation from the which it is unable to communicate further. And so the last member of a final point, with no remaining power but only enough for itself and less worthy beings exhausts its life-giving force, coming to rest at ing higher natures. At last this process of multiplication into lower ordered, so to speak, as shadows, figures, or likenesses of the precedthe [divine] likeness, and the lower levels of creation are hierarchically here, by an emanation of their nature, they transmit a lesser degree of degree that it resembles the uncreated simple Infinite Being. From highest in its own mode of existence since it adheres to the Supreme one God, the eternal Light. Nevertheless it [the angelic rank] is the removed from the original infinite concordant essence in which the Being and is self-directing, and it exceeds other created things to the Son is the image and splendor of the Father and three persons are is incapable of concordance with the infinite they are infinitely certain God-revealing concordance. However, since a finite creature [angels] participate symbolically in the First Principle through a and perfectly simple God and reflect him in varied ways and in different degrees of perfection. The highest first created things of union with Christ. First, all things in creation flow from one eternal this fundamental principle, that the church is organized on the basis 9. Now let us investigate more closely how we should understand

10. To illustrate my point I shall cite the example that Ambrose gives in his letter to Sabinus. To explain the decline of human nature ¹St. Ambrose, Ad Sabinum (PL 16, p. 1193).

in subsequent generations, he gives the example of a magnetic stone which has such power to draw iron to it that it transmits its magnetism to that material so that if one carries out an experiment in which several iron rings are brought near that stone, it holds them all in the same way. Then if you should move another ring next to the one that is held to the stone and place the individual rings in order, while the natural attraction of the stone holds them all in order, it attracts the ones that are nearer more strongly, and those further away less intensely. Thus I think of the Word from above as like a magnetic stone the power of which extends through everything down to the lowest being. Its infinite power is not lacking down through the ranks, but there is a marvelous order of interconnection among finite and limited creatures.

as among the angels. And [the realm of] the elements is the shadow of sensate, or the vegetative, and in this there are also orders and choirs modeled on the others because it is composed of the rational, the elements. There is also a third or mixed type of nature which is unity and the sign of the Trinity - a unity in trinity and trinity in unity. since they are either spiritual, corporeal, or mixed. Spiritual things are this hierarchy. We will discuss this elsewhere. lowest angel, so the earth is its lowest reflection - the basest of the hierarchy, the prime mover or ninth sphere, is like the shadow of the orders with three choirs in each. Just as the highest sphere in this this hierarchy repeated in its own way in corporeal nature - as three terms of its constitutive principles?2 If you look further, you can find And so who can capture the hierarchical subdivisions in each choir so that throughout the heavenly choirs of angels there is a hierarchical divided into three orders and each order is divided into three choirs, from the highest to the lowest angel, and then within each angel in In the overall order, all created things demonstrate the Trinity,

12. These matters are important because the investigation of all things in nature and the whole of creation depends on them. For when the concordance of differences in the whole universe is

rational spirits [angels] and men who are united with Christ -the example of the magnet. although not all in the same way but hierarchically, as is evident from originating source, the church which is our subject is made up of the [Principle] and are preserved in union and harmony with their natural created beginnings in a certain graded similarity to the First gation to know that as all created things are constituted as such from everything is ordered to a single end. Suffice it for our present investinature, the whole world shares in a mutual spherical interaction, and examined, wise men perceive that there is a marvelous combination in

CHAPTER III

THEN UNTIL THE ENO OF THE WORLD; THEY HAVE SCRIPTURES, SIGNS, AND SACRIFICES APPROPRIATE TRUTH. PARADISE SIGNAFIES THE REIGN OF THE CLEARER MANNER AT ONE TIME THAN ANOTHER. $oldsymbol{arphi}_{ extsf{ROM}}$ the beginning to the end of time the ALONE IS THE TRUTH IS EXPRESSED IN VARIOUS THE MEMBERS OF [THE BODY OF] CHRIST WERE CHURCH IS ONE AS CHRIST IS ONE. CHRIST WHO TRUTH UNTIL THE COMING OF CHRIST, FROM SUCCESSIVELY BEEN OF LESS HOLINESS AND ENDOWED WITH INCREASING HOLINESS AND TO THE TIME AND PLACE, ALTHOUGH IN A CHURCH.

made by hands nor of this creation which is the model earth and aspires to the society above where there is a tabernacle not society of the angels. Part, however, is a wayfarer in various ranks on heaven, being made up of men who in different ranks enjoy the of angels and men.1 Part of the church reigns now with God in lasting city established by God, a house not built with hands, consists which blessed Paul calls the heavenly Jerusalem, our mother, the 13. Now it is indicated above by Ambrose that the holy church

¹St. Paul, Galatians 4:26; Hebrews 13:14; 11 Cor. 5:1.

assigns their duties to angels and men in a wondrous order and whether a spiritual realth in heaven or a temporal realm on earth. He a heavenly and earthly government - indeed the whole universe, a holy and eternal redemption.2 He sits at the right hand of the Father or more public direction. decrees what is to be done at each time whether by private inspiration heavenly and earthly court in accord with the needs of the times he disposes and directs it in its various orders and he rules over a through whom kings reign and legislators determine what is just, rules words but in acts of mercy. The King of Kings and Lord of Lords in the glory of the Father's majesty and intercedes for us not with the veil, that is into heaven itself, by shedding his own blood to obtain Priest according to the order of Melchisedech, has entered behind our faith, the Eternal Pontiff in an everlasting priesthood, the High in heaven which God and not man has made, the Highest Bishop of tabelmacle made by Moses when God commanded him to do all things as he directed him on the mountain. And in this true tabernacle

subject in the third question, there was a gradation among these by a few and later by a larger number. Hence, as he adds on the same others, earlier in a more hidden fashion and later more openly, earlier observed at one time by some customs and signs, at other times by justice and goodness to mortals. For one and the same religion is manded for the salvation of men by God who is never lacking in in a variety of languages.5 And this variety was established and comaccordance with the time and place just as the same idea is expressed the one Christ is thus expressed in different sacrificial ceremonies in in the second question of his Letter to Deogratia, in which he speaks at scriptures, so that we might know here by laith and there see face to writes in his twelfth letter to Irenaeus, God revealed this Faith in soul feeds on the food of wisdom it becomes a sharer in the divine length about the problem of the diversity of sacrificial rites, says that face.4 There is more on this subject in that letter. Likewise Augustine Christ through the prophets and the apostles and the treasure of his nature.3 For the Son is the Wisdom of the Father. And as Ambrose 14. The holy doctors demonstrate in many passages that when the

³2 Peter 1:4.

⁴Galatians 3:26 in St. Ambrose, Ad Horontianum (PL 16, p. 1126).
⁵St. Augustine, Ad Deogratias, Letters of St. Augustine, trans. Sister W. Parsons, New York: Fathers of the Church, 1953, u, pp. 158ff.

[Popes] Anacletus, Clement, Anytus, Julius, and of other Roman all of these by divine and human law,"15 This is also the opinion of or other clerics of lower rank. The Roman pontiff has been set over of the people are correctly understood to be the equivalents of priests had only priests or counts, bishops are established. And the tribunes no higher officers in that province. In lesser important cities which simply called metropolitans, and elsewhere archbishops if there were city of three or four chies in a province. Hence sometimes these are city' - there were netropolitans who ruled over the greater mother inces. Where there was a metropolis - which is translated as a 'mother Christian archbishops have been established to head individual provinces.' Thus where there were archpriests among the pagans, carry out the more important business of not one but several provsays, 'In those cities in which there once were high priests and leading been established who have the right to pass judgment on the rest and doctors of the law among the pagans, primates and patriarchs have exclesiastical power is hierarchically ordered. As blessed Clement dukes, and counts and tribunes, so according to the holy fathers every earthly power is different from every other in rank, that is, Augustus or the emperor may be first, then the Caesars, then kings,

39. And this argumentation is to be noted well for it demonstrates that church government was added to the temporal power as the soul to the body so that where there was temporal rule and earthly government, a Christ-directed rulership was added to lead all things in peace and harmony in the appropriate way to the one Head of highest power. It remains to give fuller consideration elsewhere to what has been said. Now let us touch on certain fundamentals, and then specifically on the subject of the priesthood.

15 Pope Leo IX, Ad Petrum et Joannem Episcopos (PL 143, p. 730).

CHAPTER VII

THE ECCLESIASTICAL HIERARCHY HAS ORDERS AND RANKS LIKE THOSE OF THE ANGELS. THIS IS PROVEN BY EXAMPLES AND INTERMIXTURE.

third order which will have twelve. next lower order and thus successively down to the last choir of the cates 19. And because the order consists of three degrees of light, the municate the totality of what it has received, and hence it communicontinuous hierarchical order. On this basis, let us imagine that the connected with the upper part of the succeeding first choir of the Hence the 18 degrees which it can communicate pass down to the therefore it remains purely passive as far as that order is concerned. lowest choir in that rank cannot communicate them further and Thus the second choir receives only 20. And that choir cannot comattempts to share these with the second choir but cannot wholly do so. are more than are necessary for the first choir. The first choir first order has 21 degrees of spiritual illumination which act there and the second order so that there is an unbroken sweet melody in a to the first order, it actually communicates a radiance sufficient for second order so that without communicating the radiance belonging municated, so that its influence ends there. Yet that choir is still carried out in the first order remains within it without being comthe whole hierarchy. In the last choir of the first order the illumination continuous ordered relationship of concordance is found throughout is a gradation in this manner in any choir, I now wish to show that a also in the first order again there are three choirs. And although there first in rank. Just as there are three orders in the angelic hierarchy, so created hierarchy there are also different ranks up to the one that is highest, intermediate, and lowest rank, in the highest part of each choirs we said that just as in the hierarchy as a whole there is a 40. Earlier when we were discussing the hierarchic orders and

41. And from this we may conclude that since God is infinite light, every light outside of God, being created and finite when it is compared to God, is considered reflection of the Infinite Light. And the more distant it is from God, the darker it is, although in heaven the eternal divine Light embraces every spirit with a radiance that com-

the orders of religion and that part of the church which is considered more spiritual there are nine choirs from that of bishops down to that of monks. The highest order consists of the bishop, priests, and deacons, all consecrated. The intermediate order is made up of the subdeacons, acolytes, and exorcists, who are mixed. The lowest are the readers, the porters, and the tonsured, who are not consecrated. Likewise the order of deacons, subdeacons, and acolytes possesses comparatively more holiness because it contains two consecrated consecrated but extends below the first order. And so with other mixtures. But monks are linked to the tonsured choir, since they are midway between the laity and the clergy.

CHAPTER VIII

THE PRIESTHOOD IS A TRINITY OF ORDERS, GOVERNING POWER, AND CATHEDRA WHICH ARE ITS SPIRIT, SOUL, AND BODY. AS IN ORDERS, SO ALSO IN GOVERNING POWER AND CATHEDRA, THERE IS A HIERARCHICAL GRADATION. THE CHAPTER ALSO DISCUSSES THE HOLINESS OF THE PRIESTHOOD.

power that is the basis of government and pastoral care is divided into orders. The first order is made up of the pope, the patriarchs, and the archbishops; the second order, of the bishops, archdeacons, and deans; the third, of priests, deacons, and subdeacons. And they have mixed gradations and subordinate connections among themselves.

D. 89 [c. 7] Ad hoc tells us that as in the case of the heavenly ranks, such a diversity of grades must work to preserve the whole so that a great differentiated order is maintained. Also on the subject of the unity of the whole cathedra¹ it should be noted that the whole priest-

¹ Cathedra – literally, the chair or throne of a bishop. It symbolizes the bishop's teaching authority. The First Vatican Council (1870–71) declared that the pope is infallible when speaking on faith and morals, ex cathedra, that is, in his official teaching capacity.

hood constitutes the church as one body, and the orders of the priesthood are like its soul and the Holy Spirit is its spirit, so that the priesthood in the church is made up of body, soul, and spirit. And because the Holy Spirit performs the actions of the priests through the imprint [character] received at ordination, the priesthood is holy. That the Holy Spirit works through the priest has already been shown above by Augustine in Book II of Against the Letter of Parmenianus,² and by Albertus Magnus discussing the creed in his work, On the Sacrifice of the Mass,³ and by others, nearly all of them doctors.

majority of the priests always remains in the [true] faith and law. And proposition which is not unimportant for our purpose that the still not (so) as a whole since the majority always remains in the faith this is an additional important basis for what follows. the departure of some priests from the faith." From this I deduce a worthiness of the other apostles was not diminished by the fall of faith and the truth of the Lord's law and teaching." And as "the where he says: "Although every man is a liar, God is still truthful. and law of Christ, as Cyprian concludes in his letter to Novatian although it is weak and mortal and subject to error in its members, is Judas, so also the other priests do not lose their worth on account of Hence the greater and better part of the confessors stand firm in the until the end of the world. Hence the body of the priesthood, promised that the holy priesthood would remain in him and he in it herefics now and in the future, the words of Christ remain true that Therefore although many priests may become schismatics and

See chapter 5.

³ Albertus Magnus, De sacrificio missae, II, 9 (Alberti Magni, Opera omnia, ed. A. Bourgnet, Paris, 1890, 38, pp. 64 ff.)

Paris, 1890, 38, pp. 64 ff.)

⁴St. Cyprian, On the Unity of the Church, trans. Roy J. Deferrari, Washington, D.C.; The Fathers of the Church, ch. 22 (p. 177).

all the bishops, in which the Roman bishop sits in the first place. out from them, so there is one cathedra for one episcopate made up of Council of Nicaea3 and before, and after that time all bishops went rulers in one chair of Peter, and of these the highest is the bishop of And this letter is to be especially noted because three bishops sit as hear from you I impute to myself. If you believe anything good of me Rome. And as all bishops were joined to these sees at the time of the one as thou, Father, in me and I in thee, and these are one in us!" "2 impute it to yourself for we are one in him who says: 'That all may be And again, although some popes such as Liberius, Honorius,

not also wish to go?' Peter answered him saying: 'Lord, to whom shall him as he was speaking, he turned to the Twelve and said: 'Do you every man is a liar. It is said in the Gospel that when his disciples left unbelief disproved the fidelity of God? No! God tells the truth and Pupianus: "If certain ones have fallen away from the faith, has their church of the faithful. Hence Cyprian says to Florentius and separates himself from it [the majority] separates himself from the majority always continues in the faith and true law, and whoever consummation of the world. Hence whoever thinks that he is in the Christian faith should observe the infallible rule of Cyprian that the that line or holy cathedra will endure\without defect even to the reaches to Christ despite the evil conduct of intermediate popes. For church, which this succession symbolizes, a straight line of pontiffs although not all in the line were holy, it reached to Christ. So in the Abraham to Christ are named by Matthew in succession, [and] other bishops] have fallen into heresy. For the generations from straight line from the Roman pontiffs and in collateral ones [from cathedra, although certain pontiffs, both in the direct succession in a are united to it as its daughters are considered [part of] one see and that the sees which have been founded by the Roman see when they be kept in mind, I think, that it is a certain rule and secure strength error of schism, the see remained unblemished. It should especially and others who sat for a time in the chair of Peter fell victims to the

we go? Thou hast the words of eternal life. And we believe and know flock."5 church: the people united to the priest and the shepherd to his depart, the church does not withdraw from Christ. And these are the obstinate and proud multitude of those who do not wish to hear may church had been founded, teaches in this passage that although the that Thou art the Son of the Living God.' Peter upon whom the

stand it as referring to the faith of the Roman church cessors will not ultimately fail. Still others, as Gorra explains, underevident from the above, I will try to add a few more general observabe in the faith of Christ and constitute a majority in union with their whole church as its representative. And still many fell away from the also understand it as indicating that the faith of Peter and his suchowever, for instance, Albertus Magnus writing on the same passage, holiness - is explained as referring to the faith of the church. Others Peter's faith would not fail6 - and he was heeded because of his tions on this matter. For the passage in which Christ prayed that pastor and with Peter and his bhair. Leaving this conclusion which is church of the faithful is made up of those who consider themselves to church; even among the apostles there was Judas. Therefore the true 59. This is convect doctrine, for Peter spoke in the name of the

CHAPTER XV

BISHOP - IN WHAT WAY HE IS FIRST AMONG THE CHURCHES UNDER THEM, AND IN THIS WAY THE DISCUSSION OF THE RULERSHIP OF THE ROMAN CHURCH IS IN ITS BISHOP. THERE IS ALSO THE PRESIDING BISHOPS REPRESENT THE BISHOPS OF THE FAITH.

the effect that every ruler is assigned a rank for his office according to things touched on above when we quoted St. Cyprian and Leo IX to To give a clearer understanding of our meaning, let us recall the

²Pope Gregory I, Ad Eulogius (PL 77, pp. 898-899).

³The Council of Nicaea (A.D. 325) is recognized as the first Ecumenical Council. It condemned the Arian heresy and adopted the Nicene Creed

^{*}Pope Liberius (352-366) was forced by the emperor to subscribe to Arianism. to the Monothelite heresy that asserted that Christ had only one will, rather than a human and a divine will Honorius (625-638) was condemned by the Council of Constantinople for subscribin

⁵St. Cyprian, Ad Florentium Pupianum (PL 4, p. 418ff)

^{&#}x27;Albertus Magnus, Commentarius in Lucam, 22 (in A. Bourgnet (ed.), Alberti Magni, Opera omnia, XXIII, p. 685).

⁸Nicholas de Gorra, Commentaria in quattuor evangelia, Cologne, 1537, f. 456v.

[c. 4] Illud of the same Distinction, on which see also D. 99 [c. 1], arrangement was divinely inspired according to Leo in the chapter Clement in the chapter [c. 2] In Illis of the same Distinction. And this On this, see D. 80 [c. r] Urbes quoting Pope Lucius, and Pope center of superstition had been." Therefore the Roman bishop has Provinciae. the rank in [church] government that Rome had among the pagans. so that "the center of holiness would be located in the place where the and the headship of the nations" and this was done by divine intention Ambrose writes in [C.] 2 q. 7 [c. 37] Beati, "Rome has the rulership the church is in its ruler.1 On that subject we say first that, as the ruler represents the whole church united to him - as Cyprian says, the law and privileges of the place over which he rules, and also that

understand C. 9 q. 3 [c. 14] Aliorum as meaning that every believer is q. 1 [c. 12] Quotiens; and C. 16 q. 1 [c. 52] Frater noster. Hence I copate of the holy faith . . . " On this, see D. 12 [c. 2] Praeceptis; [c] 24 the glorious city: Your holiness possesses the rulership in the epis-Marcian and Valentinian wrote: "To Leo, the Archbishop of Rome, dispute which had arisen concerning the faith."3 Likewise Emperors bishop of Constantinople also appealed to him in writing on the this power and according to the solemn decree of the councils, the the power of judgment in matters of faith." And below: "Because of the city of Rome to whom antiquity gave the priestly rule over all has Valentinian also wrote to Theodosius: "The most blessed bishop of captain of that army, as Emperor Leo wrote to Theodosius. Emperor rulership is over all men in the church of the believers, for he is the is almost an infinite number of writings of the saints on this. This prince of the bishops since the bishops succeeded the apostles. There therefore the special privileges of the chair are the same now as then. Hence just as Peter was prince of the apostles, the Roman pontiff is Augustine says above, the successors of Peter occupy the same chair; ing to Anacletus and to St. Jerome in the first book of Against Jovinian 61. Although Peter was set over the others by divine grant, accordthis was done with the concordant agreement of the apostles.2 As

> me."5 However a matter of faith is not always defined by the arbitrary matters of faith which is why he possesses the primacy, he is subject to will (lit. - at the nod) of the Roman pontiff alone for he could be a also speaks in this way to Damasus in the tenth question of De subject to the pope as long as he is head of the whole body, i.e., in the the council of the Catholic church. heretic - on which more will be said below.6 Indeed in decisions on Cathedra: "If anyone is united with the chair of Peter, he is united to faith, for the body [of the church] is made up of the believers. Jerome

⁵St. Jerome, Ad Damasum (PL 22, p. 355) Book II, chapter 18.

CHAPTER XVI

EMINENCE BECAUSE OF THE POSITION OF THE CITY THE ROMAN CHURCH SOMETIMES MEANS THE SEE PRIMACY WAS DERIVED FROM THE PAGANS SINCE THE ROMAN BISHOP POSSESSES HIS POSITION OF SEES THERE ARE; AND WHICH IS FIRST. ROME'S OF ROME; WHEN THIS IS THE CASE; HOW MANY ARGUMENTS, NOT LEAST OF WHICH IS THE OF ROME. THIS IS SUPPORTED BY MANY PRIVILEGE GRANTED BY CHRIST.

stantinople was the new Rome the bishop of Constantinople called Sacrosancia. After that council, the sees of Jerusalem and Constaneven usually - understood as meaning the Roman see. In the time of 62. Hence it should be noted that the Roman church is sometimes -Chalcedon, and these five are called the patriarchal sees in D. 22 himself the universal patriarch in a particular council before tinople are also found in the acts of the councils, and because Con-D. 19 [c. 9] Anastasius; D. 66 [65] [c. 7] Quoniam Mos; and D. 22 [c. 2] always honored, as appears in chapter 6 of the Nicene Council' and in dria, and Antioch, although the bishop of Elia, that is, Jerusalem, was the Nicene Council, there were three sees, those of Rome, Alexan-

¹Council of Nicaea, canons 6 and 7 (Mansi 2, pp. 67off.).

²St. Jerome, Adversus Jovinianum, 1, 26 (PL 23, p. 258). Pope Anacletus is quoted in the Decretum, D. 21 c. 2.

³ Valentinianus, Ad Theodosium (PL 54, p. 859).

^{*}Valentinianus and Marcianus, Ad Leonem, 1 (PL 54, p. 899).

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³ Valentinianus, Ad Theodosium (PL 54, p. 859).

^{*}Valentinianus and Marcianus, Ad Leonem, 1 (PL 54, p. 899).

Sane Para. Item: Si Romanorum. But this is not very relevant to our Si Papa notes as well as the text of [the Gloss on] [C.] 22 q. 2 [c. 6] the other patriarchs are also called popes, as the Gloss on D. 40 [c. 6] acts of the councils, especially those of the Eighth Universal Council, 4 are considered heads is discussed below. And just as the Pope of appears in the same place, as in Para. Item Tharasius. In what way they Rome is often called a patriarch, as is done practically throughout the Convenientibus and those occupying them are also called popes, as Constantinople,³ and they are called apostolic sees in [C] 1 q. 7 [c. 4] the seventh action of the acts of the Eighth Universal Council in [c. 23] Antiqua. I find these five sees called the heads of the church in stantinople always preceded Alexandria, see D. 22 [c. 6] Renovantes and the following chapter [c. 7], and [Decretals, v 33] De privilegiis, Hence in the actions of the universal councils which followed, Connevertheless this usage was established over a long period of time. laws of the Council of Nicaea which, he wrote, were inviolable² would have second place - on the grounds that it went against the part of the definition which said that the patriarch of Constantinople although at that time Pope Leo tried in many letters to reverse the enjoy the same privileges of primacy, see D. 22 [c. 6] Renovantes. And D. 22 [c. 3] Constantinopolitanae, although Constantinople was to the Apostolic See should hold the first place because it was the old tinople it was defined by the decree of the judges of the council that ing both the vicar of the Apostolic See and the patriarch of Constanway in the Council of Chalcedon: Henceforth in the canons mention-Rome, and Constantinople the second place as the new Rome, see

hierarchical gradation of primacy which existed among the pagans over all, see D. 22 [c. 4] De Constantinopolitana, Hincmar, the Archwas established by the inspiration of the Holy Spirit.5 And therefore Council of Nicaea in which, he said, the ancients held that every of Laon, quotes from the brief [but] important definition of the bishop of Rheims, in the 15th chapter of his work against the bishop 63. Now it should be noted that the Apostolic See has the first place

[c. 7] Diffinivimus. The question, we read, was settled in the following holy see of the new Rome [Constantinople] since they judged that the most reverend bishops acted correctly in giving equal privileges to the of the ruling power of that city. Guided by the same intention, 120 were right to return its prerogatives to the see of old Rome on account tinople after that of Rome is based on this, when it said: "The fathers wards by the Council of Chalcedon that placed the see of Constanthe ranking of the city. The definition by 150 fathers and also afteris and has been of metropolitan rank, let him hold the primacy."9 Council of Turin it is also defined: "Whoever has proved that his city court over the bishop of Basianopolis.8 In the first chapter of the to prove on this basis that the bishop of Nicaea had been placed by the cities involved is also evident in the dispute in the 12th action of the pacy there." That the ancients argued primacy from the rank of the tress of all lands, Peter established the first rank of the divine episcoemperor, said: "Because Rome is the greatest of cities and the mis-Hence Empress [Galla] Placidia, when she wrote to her son, the is no doubt that the pontiff in the Capitoline of Rome was the highest rank held by the high priests and others in the pagan cities. But there rule regarding a city's privileges that it should keep the governmental primacy according to the canons, but the ancients would observe the Council of Chalcedon, where the attempt is made in many arguments officer in the temple of Jupiter and so it is [today] in the time of grace. the definition of the Council of Chalcedon says that Rome has the Note that primacy is derived from, and primarily based upon,

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exercise authority there or out of reverence for its location, there is no the primacy of a see on the basis of the sanctity of the first one to say approaches the truth, it can be concluded that if we were to argue always remained unaffected and secure. Hence, insofar as what we prelates, nevertheless as is indicated there, this ancient right has

Chalcedon. And although the emperors gave exemptions to certain incontrovertible argument which was approved at the Council of ance in church affairs like it, and rank second after it." This is the

enjoy privileges equal to those of the old Rome and have an importcity honored with the presence of the emperor and senate should

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²See Pope Leo I, Ad Marcianum (PL 54, pp. 991ff.)

³Eighth Council, Constantinople IV, Action 8 (Mansi 16, p. 140).

⁴Eighth Council, Constantinople IV, c. 17 (Mansi 16, p. 17).

⁵ Hinemar of Rheims, Opusculum contra Hinonarum Laudanensem, ch. 15 (PL 126, p. 332).

Galla Placidia, Ad Theodosum (PL 54, p. 861). ⁶Council of Chalcedon, Action 16 (Mansi 17, p. 443)

⁸Council of Chalcedon, Action 13 (Mansi, 7, p. 302). ⁹Council of Turin, c. 2 (Mansi 3, pl 86r).

¹⁰Council of Chalcedon, c. 28 (Mansi 7, p. 370). See also c. 16 (Mansi 7, p. 41).

rank was given to it both because of the importance of the city and because it was shown to be the first see of the first apostle."12 concerning the see of Antioch, where he says: "Hence we note that this pre-eminence of these sees - as Pope Innocent writes to Alexander importance but also religious reasons were involved in determining the as a bishopric since Alexandria was of greater secular importance than neither is Ephesus preferred over Alexandria because of its importance ciple], and Mark presided in Alexandria and John in Ephesus. Yet Ephesus. But we should believe that both factors, not only secular bishop, Mark, is not placed ahead of Saint John, the Beloved [Disthe church. Alexandria is not allotted the first position because its first Christendom. Paul also puts James first when he speaks of the pillars of he was the first to hold the see of Jerusalem which was the first in the New Testament] assert that those of James are placed first because washed the church in His blood. It was also the see of the Apostle Book vII, chapter 16.11 Also the writers on the canonical epistles [of Universal Council, about whose see [cathedra] Eusebius writes well in James, the first archbishop, as appears in the first action of the Eighth doubt that Jerusalem would be first for there the Highest Pontiff

On this, see D. 10 [c. 1] Imperiali. the emperors but according to the ancient custom of the provinces. 14 that of Rome and that metropolitan bishops should not be named by which begins: Onus et honor, that the church of Antioch has yielded to on this topic Pope Anastasius says in a letter to Bishop Alexander and Trier? Have the bishops of these cities assumed more than what was allotted to them in antiquity?"13 There is more on this there. Also empire not ruled for lengthy periods from Milan, Ravenna, Sirmium, wrote to the bishops in Troy that he laughed at this, saying: "Was the that he could not be judged by the Apostolic bishop, Pope Gelasius that he was bishop of the royal city and therefore of such high rank there is a decision of a council to this effect. Hence when Acatius said locality does not increase with an increase in temporal power unless [secular] importance of the place, the rank of the bishop of a given were assigned by the sacred councils and holy fathers according to the 65. Nevertheless, although in the beginning the ranks in the church

66. Because there has been a lengthy discussion of this above, I ¹¹Eighth Council, Constantinople IV, Action I (Mansi 16, p. 27), and Eusebius of Caesarea, *Ecolesiastical History* (PG 20, p. 68).

¹²Pope Innocent I, Ad Alexandrum (PL 20, p. 548).

L 59, p. 71. 14PL 20, p. 48.

martyrs for the faith. popes, more than thirty of whom in succession were crowned as preservation of peace, and on account of having had so many holy ance, [and] by divine grant, for the increase of the faith and the primacy by the statutes of the councils, because of its secular importthink that we may conclude that the Roman see rightly possesses the

CHAPTER XVII

THE ROMAN CHURCH IS SOMETIMES UNDERSTOOD AS MEANING ALL THOSE DIRECTLY CONNECTED TO IT; AND SOMETIMES THE SEE IS TAKEN AS MEANING THE PONTIFF. THE [ROMAN] CHURCH SOMETIMES MEANS THE POPE, THE CLERGY, AND THE FAITHFUL OF HIS DIOCESE, SOMETIMES IT REFERS TO HIS SUBJECTS AS A METROPOLITAN, SOMETIMES TO THOSE SUBJECT TO HIM AS A PATRIARCH, AND SOMETIMES TO THE CHURCH OF THE FAITHFUL. THERE IS ALSO A DISCUSSION OF WHAT IT MEANS TO SAY THAT THE ROMAN CHURCH CANNOT ERR.

directly connected to the Roman church is taken for those most directly connected to the Roman church. See, for example, the pamphlet of Leo IX against the claims of Michael of Constantinople, chapter 32, where he says that the Roman church is like "the hinge on which the door of the church turns and it will always remain firm." His clergy are called cardinals because they are close to that hinge [cardo]. The Emperor Constantine writes to Pope Agatho at the beginning of the acts of the Sixth Universal Council to send three persons from his church and twelve metropolitans from his full council. From this example we can conclude that sometimes "the Apostolic See" means the Roman pontiffs, [and] that sometimes "the Roman church" means the pope with the clergy and laity of his diocese and sometimes all those under his see as metropolitan and archbishop – since many universal councils call him the archbishop of

¹PL 143, pl 765. ²Sixth Council, Constantinople III, Action 1 (Mansi 11, p. 199).

Rome. At times it also means all the metropolitan churches united to the seventh action of the Eighth Universal Council when he speaks of the opinion of the council of Rome the representative of the Patriarch of Jerusalem says: "The Holy Spirit which has spoken in the church of the Romans, has also spoken in ours." At times "the Roman church" means the church made up of all the faithful united with the church can never err, this is true of the whole universal church patriarchate of Rome. Then it is true of it as an archbishopric. And 68. But these possess the chart of the whole universal that the second of the considered in this last way.

things about the council. The discussion of the councils follows. the Greeks a synod, and by us a council, it remains now to add some for the subordinate churches united with it, and this union is called by the Roman church (and also another, Constantinople) is often taken the second come true in our lifetimes! And because, as I have said, part of his statement has come true. May God grant that we may see create the other patriarchates anew. Alas, now we see that the first successively to one patriarchate and that through it God ought to and patrician, said that the patriarchal sees ought to be reduced will be this way until the last day. It appears in the acts of the Eighth among all the bishoprics were more certain and less fallible. And it Universal Council that Bahanes, a most renowned prefect of the court Rome among all the archbishoprics, and the bishopric of Rome bishopric more fallible, although from the beginning of the faith the patriarchate of Rome among all the patriarchates, the archbishop of archbishopric of the city of Rome is still more fallible, and that of the the universal church possesses greater certainty. The belief of the of Rome and so it was and will be, although by the promise of Christ patriarchal sees, the faith is also always more true in the patriarchate reduced to the patriarchate of Rome. Then in considering the today for the reason that the universal church is almost completely infallible and always was and always will be. The second is infallible But these possess the truth in varying degrees. The first is

END OF BOOK I

CHAPTER I

B00K II

A SYNOD IS A MEETING OF BISHOPS AND PRIESTS WHO STRIVE TO COME TO AGREEMENT AS ONE. THOSE THAT DISAGREE DO NOT CONSTITUTE A COUNCIL. COUNCILS ARE OF VARIOUS RANKS FROM THE PARTICULAR TO THE UNIVERSAL, AND THE TERM, UNIVERSAL COUNCIL, HAS VARIOUS MEANINGS. THE CHAPTER EXPLAINS THE GRADATIONS FROM THE LOWEST SYNOD UP TO THE HIGHEST.

council. There are different kinds of synods since they take place on the bishops.² universal if it is composed of the pope or his legate together with all mediate grades. According to Bartholomew of Brescia, who follows different levels from the local to the universal through various interis said there, those who disagree among themselves do not form a concilium [council]. Isidore tells us why it is called a council in D. 15 same end. Synod is a Greek word. It is translated as an "assembly" time" and hodos or "way" because all travel in one way towards the and priests. It is called a synod from syn which means "at the same doubts. First of all, a synod properly speaking is a gathering of bishops synods to determine their authority, and from this to resolve certain 69. My intention is briefly to examine and compare the various Huguccio in the interpretation of D. 16 c. 1, a council or synod is [c. 1] Canones Concilii, and its distinctive characteristic is concord. As [coetus] see D. 15 [c. 1] Canones para. Synodus, and is called in Latin

70. But perhaps this definition is insufficient [for the council of the

³Eighth Council, Constantinople IV, Action 8 (Mansi 16, p. 86). ⁴Eighth Council, Constantinople IV, Action 8 (Mansi 16, p. 140).

¹The Latin is "senum et presbyterorum" – elders and priests, but the context seems to indicate that the senes are bishops.

²Bartholomew of Brescia wrote an *Apparatus* to Joannes Teutonicus' *Gloss* on Gratian's *Daeretum* that is in the library at Kues (no. 224). Huguccio wrote his *Summa* on the *Daeretum* earlier. Bartholomew's comment is on *Decretum* D. 17, not D. 16.

not differ from the faith and tradition of all."3 And there is more involve all the [church] authorities in the world. It is sufficient that it the meeting can perhaps be called universal even though it does not and legislate on things that are appropriate for the Catholic church, church. Therefore when the bishops of two or three provinces meet geographically restricted parts of the world, for by their actions they the smaller meetings [conventicles] that they have held in various every Christian doctrine, decree, or tradition ought to apply to the have separated themselves and many others from the fellowship of the universal church. Heretics have never maintained this universality in whatever does not depart from that unity can be called Catholic. For universal church is called Catholic in Greek, so it is certain that corporate body [universitas] when it is united as one. And as the by bringing many tendencies to unity. For a multitude becomes a called one corporate body [universitas] from the fact that it proceeds in France in the time of Charlemagne contained the following: "It is a certain general council on the veneration of images which was held 20th chapter discussing this holds that the fourth volume of a book on [c. 2] Porro and D. 17 [c. 2] Regula. But Hincmar of Rheims in his legate of the Apostolic See must at least be present, as appears in D. $_3$ true that it is essential to a council if it is to be full and perfect that the Apostolic See [Rome] which I discuss in the next chapter. But it is universal church] since it can also apply to the universal council of the

universal council for various reasons: either because the fathers discuss and define as true a doctrine of the Catholic church, or because general case affecting the entirety of a certain large province and obedience. For depending on what the council decides that decision to all, as I have said, it is properly and generally called universal when council although it is called universal catholic definition. But another matter may still not be a universal catholic council properly speaking. Universal council said: "So that the requirement of an annual meeting universal council said: "So that the requirement of an annual meeting universal council said: "So that the requirement of an annual meeting

³ Hincmar of Rheims, Opusculum contra Hincmarum Laudunensem, ch. 20 (PL 126, p. 360) in the library at Kues (no. 52).

subject of common interest to all Africa, there will be a universal accurate to call any other meeting a pseudo-council [conciliabulum]."5 represent him at the Council of Chalcedon, "Nothing that is not patriarchal [council] and the greatest of all is the council of the synod above him, above which is the metropolitan synod, and above synod. A curate gathers a synod of his parish, and there is a diocesan through various intermediate grades up to the highest universal universal council should also publish canons, see D. 16 [c. 6] Habeo. councils, as the text of D. 100 [c. 4] Optatum proves, although every some definition of the faith against heretics was made, universal gathering. However cases that are not of general interest should be may not tire the brethren, it has been decided that whenever there is a based on the truth of faith should be considered a council. It is more Marcian in the letter in which he writes about the delegation sent to universal Catholic church. And as [Pope] Leo says to [Emperor] that the provincial synod in the kingdom or nation, over which is the But there are different conciliar gatherings ranking from the lowest judged in each province." And it is right to call the councils in which

CHAPTER II

ANY PRESIDING AUTHORITY NORMALLY HAS THE RIGHT TO CALL THE SYNOD SUBJECT TO HIM. THEREFORE THE POPE HAS THE RIGHT TO CALL THE UNIVERSAL COUNCIL. WHAT IS MEANT BY SAYING THAT NORMALLY THE UNIVERSAL COUNCIL CANNOT TAKE PLACE WITHOUT THE AUTHORIZATION OF THE POPE.

72. Any presiding authority in the church of whatever rank has the right to call together those under him. Without him or his representative, a council is not considered fully valid or properly assembled. Hence since the Roman pontiff is the highest officer in the church

⁴Canon 62 of the Council of Carthage (A.D. 419) in North Africa, also cited by Hincmar (PL 67, pp. 213ff., and Mansi, 3, p. 79).

⁵ Paulus Hinschius (ed.), Decretales Pseudo-Isidoreana, Leipzig, 1863, p. 608. Subsequent footnotes will cite Hinschius.

chapter 9 of his decrees. Likewise the Roman pontiffs, Anastasius, Athanasius, and Julius.2 valid without a legitimate judge." Pope Damasus also affirms this in bishop of that see is the judge of the whole church and no judgment is should take place outside the authority of the Roman see. For the inspiration, the apostles and their successors decreed that no synod and martyr, speaks as follows in chapter 5 of his decrees: "By divine presumption is calling you to a general synod etc." Marcellus, pope of Constantinople describes himself as the universal bishop and in his Constantinople, "It has been reported to the Apostolic See that John [Pope] Pelagius [II] writes to the bishops called together by John of the universal council belongs to the universal patriarch. Therefore chapter [12] Si Quis and the following chapter. The convocation of Regula with the chapters which follow and D. 18 [c. 4] Propier, and the council without the bishop. The reason is obvious and the decrees of the holy councils demonstrate this in various passages, see D. $_{17}$ [c. 2] universal patriarchal council without the patriarch, nor a diocesan the same thing appears in many places. A provincial council likewise cannot be celebrated without the metropolitan [of the province] nor a Peter of Carthage¹ to the same effect, see C. 3 q. 6 [c. 9] Dudum, and chapter [2] Regula, and [Pope] Leo IX writes on this in a letter to authorization, D. 96 [c. 4] Ubi Nam, D. 17 [c. 6] Hinc Etiam and the not legitimate to hold a universal council without him or his militant and ranks first among the bishops of the faith, ordinarily it is

Council of Chalcedon³ - and this is the common opinion of all the the metropolitan, as appears in the next to the last action of the be present. Hence just as there is no perfect provincial synod without no universal council, provided that he was at least willing and able to always present in the councils and without it there would have been [c. 1] - nevertheless, the presiding authority of the Roman pontiff was was called at the time of Emperor Basil at Constantinople, see D. $_{15}$ called by them as can be seen from their acts up to the Eighth which by emperors - in fact all eight [of the ecumenical councils] were Although we often read that universal councils were called together Therefore it is not necessary to insist too much on this.

> do so, let us not delay beyond the customary waiting period."5 postponement is not necessary. However if the holy synod wishes to gers sent to them, and they have refused to meet with us -, I think that Archbishop Leo, most beloved of God, have been advised by messencognizance of the things that are decided. Because therefore we have hasten the end of the synod so that he may take specific legal churches. Furthermore our most devout Christian emperor wishes to able harm to all the most devout and holy bishops and the holy quickly and they did not come, Thalassius, bishop of Caesarea in council would sit on the day after the next and asked them to come Notary Dulcitius who were the ambassadors of Pope Leo, that the that when the council notified Bishop Julius, Deacon Hilary and the the same subject we read in the acts of the Second Synod of Ephesus For this reason, constrained by necessity, we denounce etc . . . "4 On of the church of Christ, our Saviour, by putting off needed decisions. hold it altogether unsuitable to take no action on the precarious state time and that it was not right to wait longer, the Council adds: "We been waiting for the representatives of the bishop of Rome for a long of Old Rome" where after further discussion indicating that they had "A Decree by the Council Before the Arrival of the Representatives proven by the text of the Eighth Universal Council which is entitled: provide for its needs and for the welfare of the church. This is well or does not come or does not wish to do so, the council ought to Otherwise, if the council waits for him and he does not send anyone present] provided that he is at least willing and able to be present ancients - so in the case of the universal council, the pope [must be done what is fitting for a holy synod - those who represent the holy Upper Cappodocia said, "For us to delay in this city brings consider-

warning, especially when the papal representatives refuse to come. Nevertheless as the text of the Eighth Council cited earlier proves. 74. Thus he said that it is sufficient for a synod to give a formal

churches were in agreement, settling the Photian schism. It was important for Nicholas as the last occasion at which the Eastern and Western Catholic church but not by the Orthodox churches, as the Eighth Ecumenical Council emperor. The Fourth Council of Constantinople (869-870) is recognized by the Roman

Kallen notes in the Heidelberg Latin edition (p. 99) that there is no Latin text of the ⁴Mansi 16, pp. 3off. 451) and the pope described it as a "latrocinium" (robbery) "Robber Council" of Ephesus (A.D. 449) extant today although Nicholas seems to have used one. That Council's decisions were reversed by the Council of Chalcedon (A.D.

¹PL 143, p. 730.

²Hinschius, pp. 720, 223, 502ff, and 456.

³Mansi 7, p. 378. Emperor Basil I (867–886) whom Nicholas repeatedly praises was an illiterate Armenian who murdered his predecessor in order to become Byzantine

nothing should be done in haste and the council should wait for the representatives of the Roman pontiff for a long time – as they waited in this case for a year and more. And in matters of fairth, even a legitimately assembled council if it still lacks the authorization of the Apostolic See, may not proceed without considering the opinion of the Roman church.

CHAPTER III

THE FULL UNIVERSAL COUNCIL IS MADE UP OF THE FIVE PATRIARCHATES. IT IS ESSENTIAL FOR A COUNCIL TO BE CELEBRATED IN PUBLIC AND NOT IN SECRET, IN COMPLETE FREEDOM WITHOUT FEAR, AND IN AN ORDERLY AND CANONICAL FASHION WITHOUT DISTURBANCE. OTHERWISE IF IT IS NOT CELEBRATED IN PROPER FORM, IT CAN BE IN ERROR, AND ONE CAN APPEAL FROM IT TO ANOTHER COUNCIL. MANY THINGS ARE SAID THAT SHOULD BE ESPECIALLY NOTED.

council is constituted of the five patriarchal sees. For it is said at the end of that Council that Emperor Basil "by divine help and grace" the church, from the ends of the earth." And there is more on this subject there. The text is contained in Book III below. And in the representative of the same Council we read that the synod, on receiving glorify God, the creator of the universe, who has provided what was From this we conclude that a fully perfect synod is made up of the emphasis should be placed on the [form of the] convocation of the emphasis should be placed on the [form of the] convocation of the council in determining its validity, provided that at least the fathers are there who represent the universal church. But if neither the

¹Mansi 16, p. 179. ²Mansi 16, p. 147.

> Council.4 secretly - as is evident in the fifth action of the Eighth Universal universal council to be valid it must be celebrated in public, not could have come, so that this claim is an evasion."3 In addition for a concluded: "The Eastern emperors summoned them and so they council, which was not true of the present meeting, St. Ambrose ing his beliefs because the Eastern bishops were not present. When Aquileia to the heretic Palladius when he refused to answer concerncalled. This, we read, was the reply to St. Ambrose in the Council of them, for it is sufficient for a majority to be there if all have been error. Rather it is necessary to wait for the fathers, although not all of councils including those which had been properly called have been in the heads [of the churches] have not yet come together, I do not has already been legitimately called together and the fathers who are universal church cannot be represented in that council. But where it fathers who are the heads of the churches are there nor is there a Palladius said that he only was required to answer for his faith in a full believe that one should proceed immediately, for we read that many legitimate convocation by the highest power, there is no doubt that the

speak on the faith that he believes and holds so that all may recognize says, "Give permission to speak freely to everyone who wishes to noted above, about the fathers to be assembled in the Sixth Council were free, just, and divinely inspired." From this we conclude that Chalcedon, and other councils and revere their decisions, not just ing the large numbers at the council called by Photius, he said, "We time of [Pope] Agatho, and at the end of the letter to the council by appears in the first action of the Sixth General Council held in the 76. Likewise everyone in it should be able to speak freely, as Alienus. Hence Agatho when he writes to Constantine, in the place unanimity are as necessary as numbers, see [C.] 24 q. 1 [c. 19] decided by many rather than by few, see D. 19 [6 6] In canonicis; great authority [on a council], for more support is given to what is the number of the fathers together with freedom of speech confer because of the numbers of bishops assembled there but because they follow the conciliar legislation of the holy fathers at Nicaea, Agatho.5 Thus when an objection was put to Pope Nicholas concern-D. 20 [c. 3] Dè quibus; [C.] 2 q. 7 [c. 35] Puto, and freedom and

³Mansi 3, pp. 602ff. ⁵Mansi 11, p. 283.

⁴Mansi 16, p. 78. ⁶PL 119, pp. 792ff.

CHAPTER VIII

ON ITS HEAD BUT ON THE COMMON CONSENT OF ALL. IT IS DECLARED THAT THE MANY SIGNATURES TO THE ACTS OF THE COUNCILS PROVE THAT THE POPE DEFINES AND LEGISLATES ON THE BASIS OF ADVICE. ALL THE BISHOPS ARE JUDGES AND LEGISLATORS OF CONSENT OF CONCILIAR DEFINITIONS AND LEGISLATION, AND THEIR SIGNATURES SHOULD STRENGTHEN AND COUNCILS.

Council: "We wish to learn from your holinesses what punishment he three warnings, Paschasinus, the legate of Pope Leo, said to the the deposition of Dioscorus. When Dioscorus refused to appear after few excerpts from the acts of the Council of Chalcedon concerning universal councils.1 To prove that this is not in doubt I will quote a legates" because I do not find that the pope was present at the eight scribed." The papal legates used the same form, and I say "the papal ing," or "Consenting," or "Decreeing," or "Defining, I have subuniversal church the legates of the pope signed in the same form as the others without any difference. Each bishop either says: "Assentand other writings. First, I find that in all the universal councils of the speaks above, and thus we may draw our basic conclusions from these council. For this we should look to the subscribing signatures on other subjects besides the matters of the faith about which Agatho himself with the advice of the council, or with the concordance of the sonally or through a legate, are adopted by the authority of the pope universal or other councils where the pope is presiding, either pertion - there is a question as to whether statutes that are adopted in And to raise another serious problem - always subject to correc-

'Seven councils are generally held to be ecumenical: Nicaea (A.D. 325), Constantinople I (381), Ephesus (431), Chalcedon (451), Constantinople II (553), Constantinople III (680–681), and Nicaea II (787) The Eighth Council, Constantinople IV, is not recognized by the Eastern Church – but was useful for Cusanus' argument, since it was the last Council (before Ferrara–Florence, 1438–1439) at which both the Eastern and the Western churches were represented.

accordance with the canonical rules - which should be kept in mind again by the universal synod in a new citation of Dioscorus in deposition of Dioscorus adopted by the Apostolic See was reviewed so according to his rank, and that the force of the sentence depends in what follows. This is the form for the universal councils. on the unity and agreement of wills. Note also that the sentence of sentence first if the synod commands it, and after them each one does apostolic legates at the council since they sit in the first place pass removed from every priestly or episcopal ministry."2 Note that the everyone in the council passed sentence saying: "I judge him to be celebrated Dioscorus." Anatolius, the bishop of Constantinople, and decree in accordance with the canonical rules concerning the scorus, and they added: "Let not this holy synod hestitate to issue a the sentence by which Pope Leo had deposed and condemned Diothinks should be done." After this the apostolic legates pronounced excellencies be unanimously carried out." Maximus, the bishop of sentence of your holiness." Paschasinus said: "Let what pleases your regulations. All of us in the holy synod are in agreement with the you wish to do something else?" The holy synod said: "We also canons be done." Paschasinus said: "Do your reverences command Antioch, said: "We are all also in agreement with what your holiness pronounce the sentence against him contained in the canonical promulgate a just punishment against the contumacious person and to holy Pope Leo you have a more eminent place than the rest, to Leo, "We beseech your holinesses, since as representatives of the consent. No one disagrees and the will of the holy synod is that we apply the canonical punishment to him? Do you agree or do deserves." The holy synod said: "Let what is in accordance with the unanimous." Julian, the bishop of Hippo, said to the legates of [Pope]

this is the way that Maximus of the holy church of Aquileia signed

Mansi 6, pp. 1043ff.

³ Mansi 10, p. 1162.

the holy, Catholic, and apostolic church of the city of Rome, have signed this definition into law which confirms the orthodox faith and condemns Sergius of Constantinople and Pyrrhus and Paul."³ And

in other councils were also given in the same form. Thus in the Council of Pope Martin [I] which preceded the Sixth Universal Council, I find that Martin signed as follows: "I, Martin, the bishop of

I find that the signatures of subscription of the Roman pontiffs

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approved and confirmed by us."5 And everyone signed in the same machus, etc. have signed what has been adopted by the synod and ecclesiastical authorities." And he subscribed, "I, necessary that the matter be confirmed in a way appropriate to God has granted your presence in my support, I believe that it is were to be reissued and certain ones corrected, and added: "Because way. And in the sixth action Pope Symmachus said that some statutes Milan, have signed this, adopted by us at the inspiration of the Lord. I, Eulalius, bishop of Syracuse, etc." And everyone signed in the same inspiration of the Lord. I, Lawrence, bishop of the holy church of church of the city of Rome have signed this, adopted by us at the against him as a schismatic in accordance with the holy canons." And decrees in the form put forward by us, let proceedings be carried out they signed: "I, Caelius Symmachus, bishop of the holy Catholic layman, whether of greater or lesser rank, presumes to contravene the silence was established, the whole synod said: If any cleric or monk or be forbidden communion." And below: "When they were seated, and cleric, let him be deprived of his office; if a monk or layman, let him should dare to infringe the prohibitions of this holy synod, if he is a gress or act against these decrees" and when the bishops had risen together and afterwards were seated again, they said: "If anyone however as to what should be done if anyone should dare to transmachus, bishop of the Catholic church, said: "Show a like unity statutes of the holy fathers, we have expressly decreed ..." Symaction of the council over which Symmachus presided in the time of King Theoderic that 218 bishops said: "In confirmation of the read the same thing in the synod of Symmachus. We read in the sixth 21 in number, 14 priests, and 4 deacons signed in the same way. We have signed this, as adopted and promulgated by us." And bishops, bishop of the holy, Catholic, and apostolic church of the city of Rome, time of Emperors Leo and Constantine the Younger: "I, Gregory, in the council at Rome over which Pope Gregory II presided at the using the same form. I find that the signatures were given in this way confirming, condemning, and decreeing, along with 103 bishops Caelius Sym-

99. I find analogous signatures in the council of Pavia held by Pope Boniface against clerics living in concubinage.⁶ Note that every

Mansi 12, p. 264. 5 Mansi 8, p. 298.

6 Mansi 19, p. 314. (The Council was called in 1022 under Pope Benedict VIII.)

common decrees." And the other bishops signed in the same way. own signature." And all the bishops said, "So be it, so be it." Also as appears in the sixth chapter of the Council of Africa where Genendure." And this is found at the end of all the councils. confirm all these things with our own signatures so that they may Another council [in Toledo] at which Isidore was present, said: "We metropolitan bishop of Toledo, have signed giving my assent to these all these things with our signature" and thereafter: "I, Eugene, is found in a certain Council of Toledo: "Concluding and confirming bishops were affixed at the end in order in the synod.8 The following to reinforce all of what was formally concluded, the signatures of the synod." Therefore in order to indicate confirmation and consent and should confirm these things in writing by our own hand in order in the all church matters have been brought to a happy conclusion, we representatives of old Rome said: "Because by the providence of God we see at the end of the acts of the Eighth Universal Council, the nadius said: "What has been said by all we should confirm with our signature indicated consent and confirmation. This is the way it

councils are not for that reason ascribed to the metropolitan with the participate, for instance because he is dead, as is noted in D. 18 q. 3 c. 1 and 2, unless he does not wish to be present or cannot ince as the Archdeacon notes on D. 17 [before c. 1], Generalia, [C.] 9 approval which is equivalent to consent. For there is no doubt that a ancient councils], this is to be understood as advice which was also an common consent and no others see [C.] 1 q. 7 [c. 8] Si qui voluerint. consent. The Nicene Council directed that heretics who returned to who were the authors of the canons, as appears in the procedure in D consent of the council, but to the various learned men in the counci [c. 10] Placuit. However statutes that are adopted in these provincial province without its head, the archibishop, who is judge of the provprovincial council cannot legislate on matters that concern the whole the advice" of the council [this usage never appears, however, in the And if sometimes it is found that the pope decreed something "with the faith should profess those decrees that had been adopted by nor from the head of the council but only from a single concordant the force of canons adopted in council is derived not from the pope 100. From this it follows that the signatures cited above prove that

nsi 3, p. 873. 8Mansi 16, p. 188.

⁹Fifth and Fourth Councils (A.D. 633) of Toledo (Mansi 10, pp. 656 and 641).

the authority of their authors but on the fact that the counsel as well as the consent of the others concurred - which is proven by their 16 [c. 9] Sexta, para. Annotatio. 10 And those canons were not based on

¹⁰D. 16 c. 11.

CHAPTER IX

CONSENT TO THE AUTHORITY OF THE LEGISLATOR. CANON. IF OTHER DIRECTIVES ARE ISSUED BY ANY $[\mathit{CONSTMUTIONES}]$ and they are not binding NO CANONICAL LEGISLATION IS VALID UNLESS IT EXCEPT PROM ACCEPTANCE OF, AND PREVIOUS HAS BEEN ADOPTED WITH EXPRESS OR TACIT INDIVIDUAL THEY ARE NOT CALLED LAWS ONSENT OR ON THE BASIS OF SOME OTHER

anyone whether he be pope or patriarch, promulgates decrees that are the church gathering called a synod or meeting. And therefore if than that of concordance. For church canons can only be adopted by Symodus, no more basic foundation for the canons can be discovered there is dissent there is no council, see D. 15 [c.\1] Canones para. evident that since a council is established by consent, because where above states, whatever arises within the province should be heard and finally decided by fellow members of the province. From this it is thing [C.] 9 q. 2 [c. 9] Non invitati, and, as the paragraph Illa cited Episcopi; [C] 3 q. 6 [c. 16] Neminem para. Illa. The same definition by the Nicene Council declares that it is to govern and administer everyis to decide the things that concern each province, [C.] 9 q. 2 [c. 8] together. The Nicene Council dedided that the synod of the province in his name and the spirit of the Lord inspires those assembled no doubt that Christ is presendin the midst of those brought together and to the priesthood by Christ, as well as from the fact that there is authority from the power of binding and loosing given to the church 101. It has been demonstrated above that the council derives its

¹Matthew 18:20 and Acts 15:25

teachings of the canons. Omnium, speak of decretals and letters promulgated concerning the and use or consent or they agree with the canons. Hence the texts of whatsoever except to the extent that they are confirmed by acceptance not in accordance with the church canons, those statutes cannot be Romanorium, and those of Pope Damasus in [C.] 25 q. 1 [c. 12] Pope Leo concerning the letters of his predecessors, in D. 19 [c. 1] Si called canons or church laws and they have no special binding power

confirmed in order to renew their force, to show that they are agreed frequently found in all councils that the canons of past councils are mends his ways when he is corrected by his brethren."5 And it is "We decree that if anyone who knows the acts of the Council of synod says: "With our consent." Another Council of Toledo says: a most favorable ear and approve with true consent." Notice that the heart and soul to the decisions of the holy councils of Nicaea, received them in two summary collections from Pope Hadrian and if acceptance. The [church] laws of Africa would not have bound the force of the statutes\ also requires consent through use and with the responsibility entrusted to them. But I say that the obligatory kings,2 rulers have the power to legislate and command in accordance who commanded us to obey those set over us and to be subject to through non-observance. to and accepted, and to renew any canons that may have abrogated that Council, he should be treated as excommunicated unless he Nicaea presumes to act otherwise and thinks that he need not follow Ephesus, Constantinople, and Chalcedon, which we have heard with from the Arian heresy, said: "We have subscribed with our whole Toledo, held in A.D. 627 when all had been converted to the faith Gaul had not then accepted them.3 Hence the [third] Council of Gauls if Charlemagne had not applied them to Gaul when he 102. I do not wish to deny that by the authority and power of God

² I Peter 2:13.

³PL 67, pp. 136ff.

⁴Mansi 9, p. 987; Hinschius, p. 357

⁵ Hinschius, p. 350.

the universal church, I will not discuss for the present. Nevertheless I do say: Even if he could do this, it is not contrary to our position, which amounts only to saying that the authority to adopt canons does not depend solely on the pope but on universal consent. And against this conclusion no prescriptive right or custom can have any validity, just as it cannot do so against divine or natural law from which this is drawn as a conclusion.

CHAPTER XII

THE FORCE OF CUSTOM PROVES THAT THE BINDING POWER OF STATUTES DEPENDS ON CONSENT. IT IS CORRECT TO EQUATE THE LEGISLATIVE POWER OF THE POPE AS CHAIRMAN OF THE UNIVERSAL COUNCIL WITH THAT OF THE PRESIDING METROPOLITAN IN A PROVINCIAL COUNCIL. AND THEREFORE THE POPE IS NEARLY ALWAYS CALLED ARCHBISHOP BY THE ANCIENTS.

should have this power throughout Egypt on the basis of custom." Thus it commanded that custom be considered in the case of the has power over all his bishops, so also the Church of Alexandria custom is like that of the Roman Church. Just as the Roman pontiff custom, see D. 65 [c. 6] Mos est and [c. 7] Quoniam Mos, saying: "This and preceding consent. Even when it discussed the power of patriarchs, we see that the Holy Council of Nicaea argued from not be said that the source of its force does not still come from usage customs that are opposed to general binding human laws, it should with many legitimately established customs including particular part on the tacit consent and permission of the superior, as is the case the power to legislate. And even if the force of custom also depends in even when it is not known whether it had the consent of any ruler with Ecclesiasticarum. Thus we respect what has been introduced by custom see the discussion in D. 12 in its entirety and especially in D. 11 [c. 5] ing the force of custom based only by usage. On the validity of custom from the concordance of the subjects who are bound by it, by observ-110. Anyone can see that it is true that the force of a law comes

power of patriarchs, see [C.] 9 q. 3 [c. 8] Conquestus. We also see how much power beyond the holy ancient observances the Roman pontiff has acquired from the usage and customary obedience of his subjects today.

metropolitan in a provincial council, as has been concluded above. metropolitan in a provincial council, as will be explained below. not as much power should be attributed to the presiding role of the archbishop. In the universal council of the universal church, however, Therefore among the ancients the Roman pontiff was often called an role is correctly compared to, and equated with, that of the than in a patriarchal council. In a patriarchal council, however, his sal Catholic church, this presiding role possesses less authority to act provincial council. Indeed in a universal council of the whole univeror universal council from the presiding role of the metropolitan in a role of the Roman pontiff is not very different in its effect in a general with the others acting in an advisory capacity. Rather the presiding adulators attribute to him, i.e. that he alone has [the right] to legislate signing conciliar decrees - that in the councils the Roman pontiff proved from the above concerning the significance of the practice of Roman pontiff as is allotted to him in his patriarchal council or to a does not have the power to adopt general statutes which certain of his 111. We wish one brief conclusion to be drawn and rationally

CHAPTER XIII

ALL THE ARGUMENTS THAT MAINTAIN THAT THE POPE HAS THE PLENITUDE OF POWER FROM GOD AND SIMILAR POINTS ARE INVALID. THIS IS DISCUSSED AT LENGTH. THE EXERCISE OF ADMINISTRATIVE POWER BY SUPERIORS IS BASED ON THE SUBMISSION OF THOSE UNDER THEM SO THAT THE POWER OF SUPERIORS DEPENDS ON THEIR INFERIORS. THIS IS WORTHY OF NOTE. PAPAL ADMINISTRATIVE POWER HAS THE SAME BASIS AS THAT OF BISHOPS BECAUSE ALL ADMINISTRATIVE POWER IN THE CHURCH COMES FROM ABOVE AND BELOW, SINCE THE PASTOR IS A MEDIATOR BETWEEN GOD AND HIS FLOCK. ALL THE CONTRARY ARGUMENTS ARE ANSWERED FULLY, ONE AFTER ANOTHER.

writings of the Roman pontiffs arguing (1) that there is a plenitude of writings of the Roman pontiffs arguing (1) that there is a plenitude of power in the Roman pontiff and that all others are called in an advisory capacity, see [Decretals 1 8] De Usu Pallii [c. 4] ad honorem, and (2) that Gelasius, Sylvester, and Nicholas, and Symmachus and other Roman pontiffs say that the pope judges all the other churches and no one judges him, (3) that since the power of the pope is divine, it is given to him by God in the words "Whatsoever you shall bind," as Franciscus Zabarella notes in his Commentaries on [Decretals 1 2] De constitutionibus [c. 6] Cum omnes (4) that therefore he presides as the vicar of Christ over the universal church, see [Zabarella] Commentaries on [Decretals 1 7] De translatione c. 1 and 2,¹ and (5) that since he has the highest power we find that he has judged and absolved the subjects of many bishops even when their bishops were not guilty of negligence and appeals are made to him without going through an

¹On the influence on Cusanus of Zabarella, a leading conciliarist at the Councils of Pisa (1409) and Constance (1414–1417) and a teacher of canon law at Padua before Nicholas studied there, see Sigmund, Nicholas of Cusa, pp. 110–113. The passages cited do not represent Zabarella's own views. See also Thomas E. Morrissey, "Cardinal Zabarella and Nicholas of Cusa: From Community Authority to Consent of the Community," MFCG, 17 (1986), 157–176.

intermediary. Pope Damasus in his letter to Stephen, the Archbishop of the Council of Mauritania, and to all the bishops of Africa which begins "When the letters from you, my brethren, had been read ..." says that the pope has episcopal ministry over the universal church, the Roman church is the highest of the churches, and that any Roman pontiff takes the place of Peter as representative of Christ. He also says that in the metropolitan council cases ought to be discussed with the agreement of all but to decide "the most important cases or to condemn bishops is not permitted without the authorization of the Apostolic See which all ought to call upon if necessary for support and help. For a synod cannot be Catholic without its authority and a bishop cannot be definitively condemned except in a legitimate synod congregated at the proper time by Apostolic authority, and all other councils are not to be considered as ratified without authorization by the Apostolic See."

thermore because the power of legislation depends on the power of jurisdiction the Cardinal [Zabarella] notes in his statement on the chapter *cum omnes* that it is absurd to say that anything more than the will of the pope is required for a statute to have force. For what pleases the prince has the force of law. Besides there is no doubt about the statement of the doctors on the chapter [8] *Cum accessissent* and also on *Cum omnes* [c. 6] of [*Decretals*, 1, 2] *De Constitutionibus*, that the rector of any corporate body [*universitas*] has the exercise of jurisdiction although that jurisdiction itself also remains potentially [*in habitu*] in the corporate body. But no one doubts that the pope is also the master of the ship of St. Peter and of the universal church. Therefore the force of church laws depends on him since a corporation cannot legislate without its rector.³

tra4. Such things and others like them can be argued at length but to answer briefly, suffice it to say that they are all reduced to these basic principles – which can be answered. Arguing especially on the basis of those points [and] citing the actions described in his letter to all the bishops in Dardania, Pope Gelasius concluded that by ancient tradition the Apostolic See acting without a council absolved those unjustly condemned by a council and also that without a council it had

² Hinschius, pp. 502ff (False Decretals)

³On the significance of the power of jurisdiction, see Brian Tierney, Foundations of Conciliar Theory, Cambridge, 1955, pp. 31-33.

the power of condemning those who should be condemned. Nevertheless – before I proceed – he was speaking of the condemnation of the heretic Acatius and the pope based his action on the action of a general synod which had condemned the heresy into which Acatius had fallen. It was as if the pope acknowledged that Acatius would not have been condemned by the Apostolic See without a synod if he had not fallen under the sentence of condemnation of the synod which condemned the heresy into which he fell, – as if the Apostolic See had carried out a sentence already passed – [C.] 24 q. I [c. I] Acatius with the two chapters that follow [c. 2 and 3].

apostles are equal to Peter in power implies any power. Therefore we are correct in saying that all the chapter of Matthew and Mark. Nothing else is said to Peter which to all [when Christ said] "Going into the whole world" in the last Augustine's gloss on the same passage, the same command was given that this feeding is by word and example. Similarly according to St. Jerusalem. And if Christ said to Peter "Feed my sheep," it is clear when it speaks of the twelve foundation stones of the city of book of the Apocalypse no one doubts that it refers to the apostles according to Jerome the other apostles were also foundation stones of the church. When these things are discussed in the next to the last reference to Peter's role as the foundation stone of the church, belief. And if the word, rock [petram], is to be understood as a rock, as a reference to Christ in whom he [Peter] had confessed his "Thou art Peter and upon this rock," etc., we understand the word, "Whatsoever you [plural] bind. . . . " And when Christ said to Peter soever thou shalt bind upon earth" etc. Christ also said to the others which was not also said to the others. Just as Peter was told, "What-[and] [C.] 24 q. 1 [c. 18] Loquitur. For nothing was said to Peter power from Christ than the other apostles, see D. 21 [c. 2] In novo successor in this respect. But we know that Peter received no more received something special from Christ and the pope should be his 2 c. 7] quam ab ecclesiarum - if this is true, Peter ought first to have especially my Lord Franciscus Zabarella, assert regarding [Decretals 1 of jurisdiction by derivation from the pope himself, as the doctors, as a matter of positive law all prelates below the pope have their power 115. But to investigate the truth of this matter as to whether indeed

⁴The scriptural passages quoted are Matthew 16:19; Matthew 18:18; Matthew 16:18; Apocalypse (Revelation) 21:14; John 21:17; Matthew 28:19; Mark 16:15.

a bishop of the whole church, as were Paul and Barnabus who were statements, and because the power of jurisdiction is derived from that which subject more is also said earlier in another place.5 Hence since sent out generally to the whole church, see D. 75 [c. 5] Quod die bishop be attached to this or that place but it is sufficient for him to be out the world without any division into dioceses, see [C.] 7 q. I there was only one general episcopate in the church diffused throughnatural law, because in that situation any priest can absolve anyone account of the negligence of those in the lower ranks or because of is kept within certain limits by positive law in order better and more although not as to actual execution. The exercise of executive power perhaps even all priests - are of equal power as to jurisdiction, power of binding and loosing, it is evident that all bishops - and also [the Decretum] De poenitentia D. 1 [c. 51] verbum and similar Andreae notes in his comments on c. 1 of De renuntiatione6 and see jurisdiction of the church comes immediately from Christ, as Joannes the power of binding and loosing which is the basis of the whole dominico, as Hostiensis notes in his Summa on De Translatione - on latione Praelaturae notes that it is not essential for the episcopacy that a Novatianus Item episcopatus. For this reason c. 1 of [VI I 7] De Transadministration necessarily depends partly on positive law as to the times of necessity we go beyond human positive laws into the area of longer apply, those positive laws cease to bind. And we see that in decrees that no one should enter into the territory of another no necessity, the reasons for the law that sets geographical limits and by means proportionate to the time and the place. Hence when, on final end all power and jurisdiction and human statutes ought to tend peaceably to bring all men to their final end; namely, God, to which 95 [c. 5] Olim. Therefore, following Hostiensis in his Summa on was done by the inspiration of God, see D. 93 [c. 24] Legimus and D. the priests of each diocese is a matter of positive law, although this grades of superiority and inferiority. The fact that to maintain unity from any sin, even someone excommunicated by the pope. Hence there are separate dioceses and that a single bishop is established over [Decretals I] De Maioritate et Oboedientia, we say that all the bishops In addition it should be remembered that in the beginning

See no. 48.

⁶ Joannes Andreae (d. 1348) wrote a standard commentary on the *Liber sextus*, the canon law collection issued by Boniface VIII in 1302.

⁷On Hostiensis, see Brian Tierney, Foundations of Conciliar Theory, pp. 149-153.

Gloss on [D. 21 c. 2] In novo mentioned above as well as that on [C.] 2 patriarch, and pope are administrative in character, as is stated in the are equal in power and the higher offices such as that of archbishop,

pate involves rulership over the priesthood as already indicated we the aforementioned chapter [D. 21 c. 2] In novo, but since the episco-Peter was the first to have the pontificate over the apostles, as noted in St. Peter, we cannot deny that all the bishops are also his successors. 118. However while the Roman pontiff is the principal successor of older, as St. Jerome asserts in his first book against Jovinianus.9 of the apostles to have greater administrative power because he was the case of Peter is that he was chosen by Christ with the agreement chapter [9] Pastoralis of [Decretals III 10] De hiis qui fiunt a praelatis and notes in his Summa discussing [Decretals 1 7] De Translatione and the be distributed and ordered throughout the church, as Hostiensis who have administrative power. This administrative power is held to [C.] 13 q. 1 [c. 1] Ecclesias. Therefore we find the sole difference in and the election or consent of his subordinates, as appears in the text rule of the highest authority is established both by divine ordination by Christ with the agreement of the apostles, so also are the others who have ecclesiastical administrative power. Just as the hierarchical established by divine privilege and by election – as is that of the others clear that the jurisdiction which the Roman pontiff possesses is certain point below at the end of this second part.8 On this basis it is [D. 31 c. 2] In Novo which asserts that Peter was established as ruler confirms their action, as is noted in the same place and discussed at a not deny that the power of God is also involved, who authorizes and transmitted to him by election, which makes him pope. However I do the administrative power together with the power of jurisdiction of the universal church to the one who is elected, the pope receives name of the universal church and from the submission through them observed [by Joannes Andreae] that the cardinals elect the pope in the over them. Thus on c. 1 of De renuntiatione in the Liber Sextus, it is tion over those who elected him by virtue of his administrative power subjects. And so we say that an elected officer has ordinary jurisdicof jurisdiction is established in part on the basis of the consent of the 117. But administrative rank which is derived from the possession

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PL 23, pp. 258ff. ⁸Book II, nos. 249 and 262.

> certain difference of rank among the apostles and although all were successors of Peter is evident from what Anacletus says in a letter to authorities who are chosen to be archbishops or primates are also the ance of the church. And they make decisions in the synod because rule was derived from the fact that he represented Christ, so also in succession from the first ruler, namely Peter. And as Peter's power to ceed the other apostles and what is said of the primate ought also to selves, so also a primate ought to be established over the other was transmitted by the apostles that as they had put Peter over themalso prescribed this same form to be observed by their successors and apostles, it was granted to Peter by the Lord - and the apostles wished that responsibility over them would be his. For there was also a the various nations should know who was to be first among them, so "The blessed apostles decided among themselves that the bishops of all the bishops and priests which begins: Benedictus deus. He says they are the princes and rulers of the church. That the episcopal the flock over which the Holy Spirit placed them for the good govern-Peter."10 Indeed all the bishops have an apostolic command to rule Christ." He does not say "He who hears them, hears the pope or the case of the ruling power of the other bishops, as Anacletus says in have to say that all ecclesiastical power to rule exists by a kind of be said of the archbishop - that he is a successor of St. Peter. bishops. Thus the primate succeeds Peter as the other bishops sucthe other bishops."11 See D. 22 [c. 2] Sacrosancta. Note that this form the other apostles and act as the foundation of the apostolate. They this to be the case - that Cephas, i.e., the head, should rule over all the same chapter In novo. "Therefore he who hears them, hears

exercise of the power of binding and loosing was given by Christ to by God alone, 12 but does not Anacletus in a letter to the bishops of Pope Symmachus and others, write that the Roman pontiff is judged Christ and sent out at his command. The Roman pontiffs, especially above does not say this. He says that the apostles were chosen by Peter and through Peter to the others. Pope Anacletus in the letter the individual provinces. They wish to conclude from this that the Italy which begins *Quoniam apostolicae* likewise say that the high Certain modern writers say that Peter sent the apostles out to

¹⁰Hinschius, p. 79 (False Decretal) - Quoniam Apostolicam, n. 12

¹¹PL 130, p. 78 (False Decretal)

¹²See C. 9, 9.4 c. 14 and c. 13 (False Decretal)

power and others are called in an advisory capacity, we can also say [introductory] paragraph to [C.] 9 [19] q. 3. this concerning any archbishop or patriarch as appears in the bishops. Similarly if a text says that the pope has the plenitude of pope, e.g. that he cannot be judged by his subjects, also applies to the priests, that is the bishops, are judged by God?¹³ See also Pope Pius in [C.] 6 q. 1 [c. 9] Oves. Hence whatever is understood to apply to the

see [C.] II q. I [c. 39] Pervenit - at the end, igitur etc. the jurisdiction of bishops, since this would be a disturbance of order, usage, and consent. For canon law gives the pope no power to violate appealed to him, the matter ought to be resolved through custom, be found [that says] that the pope can do this when a case is not and [C.] 9 q. 3 [c. 8] Conquestus and since no canon of any council can except as authorized in a canon, see [C.] 18 q1. 2 [c. 1] Hoc Tantum, efficacy comes from consent. Hence since no one is obligated to obey mon usage and consent is given through usage, it is obvious that its 10] Lugdunensis, and the chapter [c. 6] Nullum, and the chapter [c. 7] Episcopum. Since therefore this practice has been introduced by comagreement of the appropriate member of the clergy, see [C.] 9 q. 2 [c. would be invalid is rendered valid in a given case with the consent and consent of the proper bishops is given. For an act which otherwise to the bishops, I say the same thing is true of other cases when the If you say that the pope looses and binds those who are subject

written to Pope Boniface by the same council. They even said that which allowed appeals and provided that the legate of the pope was to council to pope Zosimus.15 Likewise they refused to recognize the be sent to the province, as we see in the same letter and in the letter text, [C.] 2, q. 6 [c. 36] si episcopus, ascribed to the Council of Sardica, Si quis episcopus criminaliter which includes the letter of the same trary it was defined by the Council of Nicaea that a case should terminate in the synod where it began, as appears in [C.] 6, q. 4 [c. 5] the pope because this was not allowed in the canons.¹⁴ On the conto which St. Augustine agreed did not allow an appeal from a synod to it would not have been allowed. The decision of the Council of Africa these matters and granted confessional and similar rights and perhaps 121. We do not read that the Roman pontiffs of old intervened in

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> and in the place mentioned above it is said to be that of the Council of tolerated. However they can be repealed by the council, and this these things are useful for the salvation of souls as long as they are allowed the outrageous things which are being done today? But Sardica.16 How could they have taken these positions then and the Apostolic See, said that the text was that of the Nicene Council reform is necessary. because consent and long usage have now introduced this practice, they had not found it in any council, although Faustinus, the legate of

canons to a power to legislate, you are proving nothing, for a bishop and priest can dispense from the penitential canons, see [C.] 27 q. 6 nothing. argument of D. 50 [55] c. [1] Priscis. Hence the argument proves 10] Lugdunensis. And a dispensation does not revoke the canons, see D. 50 [c. 22] Si quis presbyter, [C.] 1 q. 5 last paragraph; [C.] 9 q. 2 [c. [C.] 9 q. 1 [c. 5] Ordinationes, and q. 2 [c. 10] Lugdunensis and the [c. 2] Tempora poenitudinis and a bishop from other penal canons, see If you go on and argue from the papal power to dispense from

power to make judicial decisions as well. synod of the fathers because it has the power to adopt laws, has the power to legislate can make judicial decisions. Thus we say that every power to judge has the power to legislate, although everyone with the to that of judging, does not follow from it. Not everyone with the power of] jurisdiction since the power to legislate, although it is linked potential power [to legislate]. Nor is it correct to argue from [the rector can legislate without the corporate body which possesses a exercise of jurisdiction being his, the converse does not follow - that a since if a corporate body cannot legislate without its rector, the 123. And what is said about the [powers of a] rector, is no objection

been added to, or changed from, that of the Four Councils17 without would be no salvation. Who can know in what ways our teaching has from usage and a law could be abrogated by not being observed, there canons is derived from consent, for unless we could argue validity 124. Hence it is clear from the above that the binding power of the

¹³ Hinschius, p. 76 (False Decretal).

¹⁴The Council of Carthage (A.D. 419) - see no. 71.

¹⁵ Hinschius, p. 311 prints a similar letter by Pope Zosimus.

¹⁶The Council of Sardica (A.D. 343) - today's Sofia - was boycotted by the bishops of the Hamilton Hess, The Canons of the Council of Sardica, Oxford, 1958. were thus cited by Pope Zosimus in his letter to the Council of Carthage in 418. See Eastern church. Its canons were once believed to be those of the Council of Nicaea, and

practices of one's ancestors are observed as the law, see D. 12 [D. 11 where a legal authority is lacking, the customs of the people and the who observe them are similar to law, see D. 12 [c. 6] Diutumi, and more. Thus long-standing customs approved by the consent of those God."18 Note that decrees that have been ignored lose their binding power and they acquire it again when they have been accepted once fallen into disuse over time, we may more easily obtain the mercy of practice of the faith which have been decreed in the councils but have our attention to the religious observance of matters relating to the ted, let them receive a new binding force so that because we devote usage and non-usage, did not help us? Hence in chapter 1 of the same Council of Toledo it is said, "If any earlier decrees have been neglectained in the canons, if in all of these matters concord and consent, penalties of automatic excommunication, deposition and the like conduced in the councils, or how we could evade the numberless our incurring condemnation, or when certain sacraments were intro-

of the Second African Council, discussed below, where it is said that the representatives grant full authority to the council in the name of act as the representatives of all. And this is proved in the eighth canon have been summoned to it, those who are present are considered to the above reasoning, if the others who are concerned with the council be excluded for a time from the community of brotherly love."20 By of Toledo, we read: "If however anyone of us or of those in the violate this sacred decree or neglect to comply with it devoutly, let him province who are not present now in the sacred synod should dare to were adopted by universal consent. 19 Hence at the end of the Council adopted by the bishops who were present representing the others, who are present, as Gregory says when he declares that the statutes synod makes its definitions by the authority of all, not only of those they loose, acts to his own destruction, not that of the statutes. For a who presumes to loose those whom they bind or to bind those whom says that since they were constituted by universal consent, anyone Hence Pope Gregory [I] in professing his belief in the Four Councils Indeed the statutes of the synods are based on this type of consent.

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18 Second Council of Toledo (Mansi 8, p. 784). 19 PL 77, p. 478. 20 Mansi 8, p. 787. 21 Third Council of Carthage, c. 2 (Mansi 3, p. 787).

> whole church and those of the kingdoms of Spain, the Gauls, and of any one province can do for itself. But there is no doubt that any one common agreement on all matters. And it is surprising to say that all any one province can provide for itself so all together can legislate by provinces. And if all the provinces in the world were to meet, just as provinces of Gaul were to meet they could legislate for the seven expression of faith."23 And just as a provincial synod when it meets together confirm in indissoluble harmony in one and the same all the holy fathers, made this definition. For what one synod of the ning, "The holy Council of Chalcedon, that is to say the assembly of approved by the Council of Chalcedon Pope Martin said at the begincouncil held at Rome in the minth year of the reign of Emperor church which they represented there.22 We read in the records of the 125. And there is no doubt that both the universal councils of the authority than that of one, as is said in the following chapter. willing and able to come. For a synod of many provinces has more the pope or anyone else belonging to the synod is not excluded, if province can provide for its needs without the pope. Therefore all of of them gathered with full power as representatives cannot do what decides on the canons necessary for the province, so if the seven holy fathers is seen to decide, all the synods and all the fathers bishops in attendance that to show that Pope Leo's message had been Constantine III under the chairmanship of Pope Martin with 105 ted canons for themselves, that is for the whole world or the universal Africa, as well as of an individual province have always been able to them can so provide, provided that following the normal procedure Narbonne says that the fathers who were assembled in Nicaea adoplegislate for themselves - just as Boniface writing to Rusticus of

²²Boniface I to Hilary, Bishop of Narbonne (PL 20, p. 773).

councils not on the pope but on the consent of all, at the same time since we defend truth and maintain the rights of everyone, we rightly 126. And although we insist that the pope is not the universal bishop but the first over the others, and we base the force of the holy

give honor to the pope, see D. 99 [c. 5] Ecce.

²³ Mansi 10, p. 875

CHAPTER XIV

COERCIVE POWER IS DERIVED' FROM THE ELECTION SINCE BY NATURE WE ARE ALL EQUALLY FREE, ALL LAW AND CANONS. THIS IS A FINE OBSERVATION ITSELF UNLESS IT IS IN ACCORDANCE WITH THE JURISDICTION THUS CREATED IS NOT VALID IN ALL LEGISLATION IS BASED ON NATURAL LAW. AND CONSENT OF THE SUBJECTS. THE

society men wish to make a general agreement to obey their kings to obey their kings" etc. Note that for the convenience of human themselves" etc. and "There is a general agreement in human society contra where it says "An agreement of every race and city among also established by consent. See D. 2 [c. 1] Lex, [and] D. 8 [c. 2] Quae established except by the election and consent of the others and law is common ruler who is their equal in power cannot be naturally consent of the subjects. For if by nature men are equal in power [potentes] and equally free, the true properly ordered authority of one through fear of punishment can only come from the agreement and abstain from evil deeds and their freedom directed towards the good ment imposed on someone against his will. For since all are by nature law in the person of a prince - by which subjects are compelled to free, every governance whether it consists in a written law or is living lords and masters of the others but not by any coercive law or judgwe conclude that those better endowed with reason are the natural of peace, as is contained in D. 2 [c. 5] Responsa prudentum. From this others by these laws and to decide controversies for the maintenance reason, wisdom, and prudence given them by nature and to rule the are chosen as rulers by the others to draw up just laws by the clear by nature in the reason of man. The wiser and more outstanding men Hence since natural law is naturally based on reason, all law is rooted valid, see D. 9 [after c. 11] Cum ergo and [D. 10 c. 4] Constitutiones. is based on natural law and any law which contradicts it cannot be developed at greater length, in the interests of brevity and to please consideration to these arguments. Although one might wish it to be the reader I will limit myself to a summary discussion. All legislation 127. In order for everyone to be better convinced, I add another

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rightly-ordered lords and rulers are established by election, and who elect them. As I have noted elsewhere, this follows Hostiensis in to take place by which he is set up as judge of those who elect him, Since in a properly-ordered government an election of the ruler ought his Summa and other doctors." through election they are established as general judges over those

normally allowed as the tenth canon of the Council of Africa states: elected to have the final decision in every case. But if judges are violation of laws and canons, see [Decretals 2 27] De sententia et re with justice, so that a sentence is legally invalid if it is pronounced in appeal," see C. 2 q. 6 [c. 34]. A judge ought to decide in accordance if by a smaller number than prescribed [by the law] there should be no "Ccrtainly if judges have been chosen by consent of the parties, even chosen in a particular case by the parties involved, appeals are not from them to the highest authority, because they were not specifically 128. And because they are general judges, appeals can be made judicata c. 1 with the cross-references mentioned in the Gloss on that

nate and in accordance with which his decision is reviewed in order to authority of Augustine. But such a review would be in vain if everyby the plenary council, as is stated below on the basis of the works and quotations given below. Yet the papal decision is reviewed once more determine whether it does or does not follow them. his judgment should be limited by the canons, to which he is subordibe impossible for him to act against the law. Hence it is proper that decision that was contrary to the canons, as is noted in the letter of thing that the Roman pontiff wished were law because then it would Pope Boniface to Zacharias which begins Confitemur' and in many 129. Moreover we do not read that the Apostolic See ever made a

power of a judge to adopt canons and statutes? If this were so, if he

power over a canon based on, or incidentally following from, natural

law. And because this is the case, how can we say that it is in the

ruler has no power to violate natural law, and therefore he also has no 130. Furthermore the canons are based on natural law. Even the

²Third Council of Carthage (Mansi 3, p. 882).

³PL 130, p. 1,163, written in A.D. 742 by St. (not Pope) Boniface, the Apostle of

⁴Book II, no. 149.

charged with an unjust decision, since the decision would not be charged with an unjust decision, since the decision would be the law, and therefore it would always be just. But because law ought always to be reasonable, possible, and not against the custom of the country, see accepted by the usage of the users – whether in the civil or canon law, through use is required of laws as is said in the chapter, Legas, it because he could not violate something which did not yet exist. Thus he must have broken a law that has been adopted and accepted in standard for every judge, and that any judge who makes a decision is subject to all the laws and canons.

rightly called those of the church. For the church is a congregation canons are issued in the councils by harmonious acceptance, then the strength of all legislation rightly called those of the church. For the church is a congregation. One person cannot properly issue church canons. Thus we see that canons are issued in the councils by harmonious acceptance, consent, pontiffs or those on doubtful points in new situations have been because the canons agree that those decisions of the Popel but point which ought to be noted. This is the way I understand D. 15 along with similar passages, and there is more on this subject beginning and end of Book III.

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CHAPTER XV

ON THE BASIS OF WHAT HAS BEEN SAID ABOVE WE CAN SAY THAT JUST AS THE BISHOP SHOULD NOT LEGISLATE WITHOUT HIS CHAPTER NOR THE METROPOLITAN WITHOUT HIS SUFFRAGAN BISHOPS, SO THE POPE SHOULD NOT ISSUE UNIVERSAL STATUTES AFFECTING ALL HIS SUBJECTS WITHOUT HIS CARDINALS. NO [CONCILIAR] DECISION IS FINAL UNLESS IT IS RATIFIED BY THE APOSTOLIC SEE SINCE APPEALS HAVE BEEN MADE TO THE ROMAN SEE FROM ALL DOCTRINAL DEFINITIONS - EVEN THOSE BY SYNODS -- EXCEPT FOR THOSE OF THE UNIVERSAL COUNCIL OF THE UNIVERSAL CHURCH. HOW THIS COMMON DICTUM IS TO BE UNDERSTOOD IS ALSO DISCUSSED.

and take the place of all, both in electing the Roman pontiff and in extends to all represented in potentiality in that gathering. We say that church of a patriarchate. Hence the authority of any gathering the church of a province and a patriarch with his metropolitans, the to the same church so that they are all considered to be represented authority, because they represent them or rule over them. For just as either through usage or by the action of those with others under their advising the universal Roman church, we are justified in saying that result of the agreement of the metropolitans and by universal practice meet with him as the head of their patriarchate. And because as a pope and his associated metropolitans since each year they used to according to ancient practice the Roman church was made up of the by them, so also a metropolitan and his suffragan bishops constitute because that gathering potentially contains all the others who belong the bishop and his chapter are said to make up the diocesan church law consists in concord and tacit or express consent which is given 132. From the above it is now clear that the binding force of every universal Roman church without the cardinals, and that if he should the Roman pontiff can take no action in any matters affecting the the cardinals of the various regions have become their representatives

do anything without them, it cannot be accepted with impunity. It is true that this power belonging to the cardinals to represent the tacit consent of the universal Roman church needs to be reorganized so as to enable them to act as representatives who give its express consent. This is treated in another place.¹

dria.4 This is how we read that they acted in all cases. of Ignatius who had been condemned by Photius. Pope Martin acted what has been decided by the synods. Thus we read that Pope above, has a higher jurisdiction and can take judicial cognizance of or Spain, the Apostolic See which, as has often been said, is made up before them in the case involving Eusebius and Athanasius of Alexanin this way in the case of Pyrrthus and Sergius, as did Pope Julius Nicholas in his Apostolic See assembled in synod examined the case of those comprising and representing the Roman church as outlined tinople or Alexandria or some other large provincial synod in France someone is condemned by a patriarchal synod, whether of Constanwithout a meeting of the universal synod of the whole church. For if demned in a synod, this is true, if [by "without a synod", we mean] without a synod, the Apostolic See can reinstate those unjustly consince it can be appealed to that see. And when it is said that by itself of that synod is not ratified until it is confirmed by the Apostolic See if a synod has condemned anyone, including a patriarch, the decision Athanasius in Alexandria were appealed to the Apostolic Sec. 3 Hence of that synod to the Apostolic See. Thus we read that the cases of the decision is certain in which the Apostolic See does not participate Patriarchs Flavian and Ignatius and others in Constantinople and because there is always the possibility of an appeal from the decision they are speaking of the [Roman] see. It is true that no synodal unless it is confirmed by the authority of that Apostolic See - since other Roman pontiffs in D. 17 [c. 2] Regula, - that no synod is valid asserted by the Roman pontiffs; e.g., by Pope Damasus in a letter to Stephen, the Archbishop of the Council of Mauritania,2 as well as 133. From the above it is also easy to understand what is often

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134. Hence it is true that the Apostolic See is superior in jurisdiction to all synods except the universal council of the whole church of which that see is a part, and that therefore it can review the decisions of all lower synods without action on the part of the council of the

¹Воок п, по. 191. ²See Book п, по. 112. ³See Book п, по. 76. ⁴PL 119, р. 1073; 87, pp. 119ff; 8, p. 879.

universal church. For example in the sixth action of the Eighth Council in the answers of Metrophanes, bishop of Smyrna, to the arguments of Zacharias of Chalcedon concerning the absolution granted to Apiarius by the Roman church contrary to the decision of the Council of Africa, we read that it was not accepted [at first] in Africa and that later the decision of Pope Zosimus in his synod to absolve Apiarius who had previously been condemned in the synod of Africa was finally accepted. However he was not admitted to his former church on account of the possibility of scandal but letters of recommendation were given to him by the synod so that he might act as a priest in all the other churches. And note this case on account of helow

135. And on the same point, note the letter of Pope Boniface to says so well at the beginning that the church contains a hierarchical although there is much that is worthy of note in that letter - as when it Justinian, beginning, Prima salus, which you have above.⁶ And professed [belief in] the document of the synod held at the time of instigation of the devil against the Roman church but that now all Aurelius of Carthage and his colleagues rose up in pride at the Africans which says that at the time of Boniface and Celestine, Bishop Eulalius of Alexandria on the topic of the reconciliation of the sions which they also signed in writing, as is noted above. And if they because 216 bishops including Augustine agreed as one to its deciall are subordinate to one first [ruler], i.e. the Roman pope - it seems concordance of inequality on the model of the heavenly army in which not accepting the legislation of the Council of Sardica, since, as is earlier unless this means that the African church itself was in error in tion belonging to that see, it should not be said that they were in error were later led to the recognition of the rights of appeal and jurisdichard to say, as it does, that Valerius and his colleagues were in error, sal Council,8 the Africans were also obliged to accept those statutes as accepted its decisions, as is clear in the actions of the Eighth Univercouncil Catholic but Arian.⁷ Nevertheless because the whole church mentioned at a certain point above, Augustine did not consider that the Council of Sardica adopted a statute in honor of the memory of Catholic without considering those who did the legislating. However

8 Mansi 16, p. 71.

⁵ Mansi 16, pp. 90ff. 6 Book II, nos. 93 and 121.

⁷St. Augustine, Contra Cresconium (PL 43, p. 516).

Book II, para. 138

on positive law and the consent of the synod. proves that the administrative power of the pope depends very much disapprove one except by means of a new synod - so that that text Roman pontiff has the power to judge local councils but only in the the decision of the synod in honor of the memory of St. Peter, that the St. Peter which provided that one could appeal to the Bishop of form set down there, i.e., he can approve a decision but cannot Quod si aliquis which is to be noted carefully. This text proves from legate of the Apostolic See, and this is discussed in C. 6 q. 4 [c. 7] Rome. It was proposed and moved by Hosius, Bishop of Cordoba, the

supposed to be present is not permitted to participate while willing with even more validity for the head [of the synod] and able to do so, since it violated the proper order of charity, so also and even one cardinal is missing they should take no action on any just as a decision of a synod can be contested if anyone who is patriarchal synod, and the pope in general or universal synods. Hence universal statute for the whole Roman church. There is no doubt representatives of the provinces, as I have touched upon elsewhere, would think that if the pope is assembled with his cardinals as [that this is true] of the head of the synod, i.e. the metropolitan in the essential form required is invalid if this is not observed. Therefore I Indeed I think that no one doubts that an act which otherwise has the bishop for a long time, and other bishops did not give their consent.9 cial synod or canon in an episcopal synod or metropolitan in a Council of Rimini was invalid for this reason, for Vincentius who was on the agreement of all. Pope Damasus, for example, argued that the patriarchal synod is essential to his synod because its validity depends the synod and even the lowest-ranking suffragan bishop in a provinchurch laws because they receive their force from the agreement of since he is chief-bishop of the faith. This is also true of all other Indeed the consent of the Roman pontiff himself must also be given, authorization of the Apostolic See is secured, the laws are not valid. the case of legislation on matters of faith it is true that unless the of the Apostolic See, i.e. the Roman pontiff, to be valid. I admit that in council of the universal church must also be ratified by the authority 136. You may perhaps say that the legislation of the universal

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137. It is not true however that the legal authority of a synod which

⁹PL 13, p. 349.

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goes to a synod is bound to submit to the decision of the majority so dependent on its head that unless he consents to a decision, no procedure with those in attendance that ought to be admitted, is also has been properly called and is carried out according to correct who wishes to understand correctly the authorities whom the Koman councils. And with this interpretation we think we can satisfy anyone unless the vote is made unanimous as was the case, we read, in all the less no conclusion, especially on a matter of faith, can be certain vote even if the opinions of particular persons may differ. Neverthemakes its definitions with the agreement of all in deciding by majority because he assumes that normally the majority rules, the synod finally decision of the synod but only of one man. And since anyone who decision can be made. For this would then imply that it would not be a pontiffs cite in their letters. I say, the Roman pontiffs, because I could which did not fully agree with the positions that I have taken above find very little in the records of the councils on all these subjects

CHAPTER XVI

FROM THE SIGNATURES APPENDED TO [CONCILIAR] CONSENT AND SIGN - LAYMEN ALSO DO SO BUT AS INCLUDING ABBOTS AND MONKS ALSO GIVE THEIR POSITIONS SHOULD NOT BE EXCLUDED FROM THE THE POWER TO MAKE DEFINITIONS, BUT OTHERS DEFINITIONS WE CONCLUDE THAT BISHOPS HAVE EXPERTS [PERITI] NOT IN ADMINISTRATIVE AUDITORS AND WITNESSES. ALSO CLERICAL COUNCILS

and that the others ought to be excluded, we do not read there that that council, repeatedly claimed that a council is made up of bishops with others in the Council of Chalcedon and, as appears in the acts of Chalcedon from Alexandria with Dioscorus raised this question along decrees, we should consider that although the Egyptians who came to admitted to the council and also who should be allowed to sign its 138. Since the question has arisen as to which persons should be

Book II, para. 139

the votes of the wise.4 the judgment of fools whose number is infinite might not outweigh prudence and authority ought rightly to lead us to consider whether is made not by unanimity but by majority vote, discretion and qualified and knowledgeable. But in other matters, where a decision in an advisory capacity - but to legislate and sign, if they are at least allowed to enter, non-bishops ought not be admitted – and not merely council speaks on matters of faith, I wonder why, since lay people are on which see [C.] 1 q. 7 [c. 4] Convenientibus. Hence when a universal others summoned such as abbots and monks also sign, we read that statutes ought to be adopted in councils of bishops, and although this is not generally done with the power to make dogmatic definitions bishops de jure, see D. 12 [c. 12] Omnia where the text says that power of definition and legislation has perhaps always belonged to their representatives signed the definition [of dogma]. Hence the his council appear, we do not read that anyone besides bishops and Council of Constantinople where the signatures of Pope Agatho and which contains the text, and in D. 94, c. 1.3 However in the Sixth superiors were located, as is indicated in D. 93 [c. 26], Praccipinus accepted in the sessions and in the signing at the place where their and the senate and deacons signed, and that they were always the Sixth and Eighth Councils that priests and monks, the emperor non-bishops were excluded for this reason.1 In the Fifth Universal Council we read that everyone down to the rank of lector signed,2 in

other acts in the council as witnesses. Thus we read in the Fourth Action of the records of the Eighth Council. "The most excellent when a question of faith was to be defined, and subscribed to the the seventeenth canon of the Eighth Universal Council and in D. 96 come, providing only that it is found. But as appears below, we read in church is being sought and it does not matter from what source it [c. 4] Ubi nam that lay people were admitted to the universal council be included in making decisions since the common good of the indiscriminately, but I think that qualified learned churchmen should Hence I do not think that the laity or clergy should be admitted

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who make up the senate, which by the will of God is honored in every and president, Bahanes: 'Our holy emperors have sent us, his servants senators and glorious princes said to the council through the patrician sion. But if this is not done, we know that you would not want us to what has been decided by Pope Nicholas in the Synod of Rome and if synod, our hands will not sign one word of that synod. Let them hear old Rome and those of the eastern sees: Unless we have heard in most holy lord, the patriarch, and to the most holy representatives of say through me, the unworthy servant of our holy emperors, to our synod, as is proper for a synod, all my brothers and fellow patricians wish to ask us for our signatures at the end of this holy universal way, so that we might act as auditors of what is done. Therefore if you sign at the end of our actions etc." "5 Note that the laity since they are their mouths are closed because of the precepts of the canons and the person both from Photius and from his bishops and in front of us that justice requires from the council in order for them to sign properly. to sign as witnesses in the council can demand what reason and they say nothing in reply, the schism will be healed by their submis-And this should suttice on that subject.

⁵Mansi 16, p. 55

²Mansi 9, pp. 389ff. (Only bishops signed at the Second Council of Constantinople, A.D.

³Mansi 11, pp. 667ff. and 682ff., and 16, p. 190.

*Ecclesiastes 1:15. Note this limitation on earlier discussions of majority rule (no. 137).

CHAPTER XVII

UNIVERSAL CHURCH THE UNIVERSAL COUNCIL HAS JURISDICTION AND SUPREMACY OVER THE PERSON DESPITE CHRIST'S GRANT, FOR THE GOOD OF THE CHURCH BY THE GRANT OF CHRIST. WE SAY THAT THE ARGUMENT IS ANSWERED WHICH IS USUALLY NEVERTHELESS IT CAN CORRECT HIM IN THE SAME MADE THAT THE ROMAN SEE IS OVER THE WHOLE BUT IT IS ALSO CLEARLY SUPERIOR TO HIS SYNOD UNIVERSAL CHURCH IS NOT ONLY OVER THE POPE AND TO THOSE OF ALL THE OTHER PATRIARCHS. WAY THAT A PROVINCIAL COUNCIL CAN CORRECT WHO OCCUPIES THAT SEE WHEN HE ABUSES HIS SUPERIOR TO THE POPE BUT IS SUBJECT TO HIM, A PATRIARCHAL COUNCIL IS NORMALLY NOT ITS METROPOLITAN. THE COUNCIL OF THE UNLESS HE DEPARTS FROM THE FAITH. POWER. EXAMPLES ARE GIVEN.

he is in error on [a matter of] faith, as is defined in the 10th canon of correct that as a metropolitan he cannot be judged by his synod unless the other patriarchs in all the rest of the church. Therefore it is sixth chapter of the Nicene council says. In addition he remains the head, in the unity of the Catholic church which is [a unity] in faith, of because he has the power of all the others, as the definition in the remains as its head. Therefore he cannot be judged by a lower power on [a matter of] faith since as long as he remains in the faith he council [i.e., the patriarchal council], I think that it is true that the after this say the same thing. Therefore in the case of this universal Roman pontiff cannot be judged by the council unless he is in error Alexandria and other sees, see D. 65 [c. 6] Mos, and all the councils in the sixth chapter of the Council of Nicaea referring to the see of This is evident from the above and from what follows, and is defined patriarchal council, as we always read, is subject to the Roman pontiff. council is indeed above the pope. For the universal or general given to the supposedly difficult question as to whether the universal From what we have said above a sufficient answer can easily be

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of the provincial council cannot be punished by that council.² Hence which the Archdeacon comments that a metropolitan since he is head prebendis, [C. 29] Grave, and in [C.] 11, q. 1 [c. 46] Si clericus - on withdrawal of obedience. church which is his flock of sheep, but if he is not in the faith he is not this way, for the shepherd of the church cannot be corrected by the understands by the faithful, his subjects, as is evident in the text depart from the faith ought to be corrected by the faithful. However Pope Anacletus in a letter to all the bishops which begins, Benedictus the shepherd and then he should be corrected with anathema and immediately following. And it is clear why this should be understood for bad conduct he is rather to be tolerated than coerced."3 And he Deus, says, "The teacher and shepherd of the church if he should the Eighth Ecumenical Council and note in [Decretals III 5] De

appears that he cannot be corrected (may it never happen), then he should first be corrected privately by his subordinates. But if it a heretic.5 However a pastor can be corrected privately by those under should not withdraw from him until it is formally established that he is condemned, then, according to the tenth canon mentioned above, one demnation of Arius." But if a heresy has not [already] been demned, just as the Nicene Council included all Arians in its conheld an already condemned heresy were refuted once it was conchurch in observance of the ancient law considered that all those who cal teaching, as Pope Gelasius wrote to Emperor Anastasius and to all heresy since he falls under the sentence of already condemned hereti-141. And there is no doubt concerning the case of condemned denounced."6 But if he is a heretic, then since he is excommunicated his other actions he ought to be tolerated by his subjects rather than should be denounced to his superiors or to the Apostolic See. But in Exigit dilectio, says: "If a bishop should deviate from the faith, he Hence Pope Fabian in his letter to the eastern bishops which begins, him for an error in faith and he can be denounced to his superior. the bishops in Troy concerning Acatius. For he says, "The universal

¹Mansi 16, p. 166.
²Guido de Baysio held that the metropolitan council could judge its head (Kallen, ₂р. 176).

³Hinschius, p. 85 (False Decretal).

⁴PL 59, pp. 44ff. and 62ff.

⁵Mansi 16, p. 166. ⁶Hinschius, p. 166 (False Decretal)

said to be deposed by their inferiors when they separate themselves from them on account of the anathema that comes as a result of Thus superiors and those in higher office when they are heretics are outside the council declared heretical Roman pontiffs anathema. publicly condemned heretics to be anathema and also individuals upon him. In this way we read that the laity in the council declared himself from that heretic and by that separation he says anathema condemned himself, see [C.] 4 q. 5 c. 1; [C.] 24 a. 1 cc. 1, 2, and 3. 142. Everyone, even a simple layman, is also obliged to separate says, has left the church in the presumptuousness of heresy, he has the church, as Saint Cyprian says in [C.] 1 q. 1 [c. 70]: If anyone, he obstinacy in the will, he has separated himself from the whole body of because he is a heretic on account of error in the intellect and ipso facto for that heresy rather than because of any positive law

visions of canon law should be understood: D. 40 [c. 6] Si papa; D. 17 [c. 7] and similar provisions. [c. 6] Hinc etiam; D. 21 [c. 4] Inferior, and the chapter Nunc autem heresy. This is the way in which I think the following relevant prodeposed indirectly by his former subjects if he falls into a condemned obedience. So also any patriarch, including the patriarch of Rome, is namely, the heretic. In this way we read that Popes Liberius and Marcellinus were deposed by separation and withdrawal of once the obedience of all has been withdrawn because of heresy. and [C.] 2 q. 1 [c. 35] Puto. The exercise of administration ceases Therefore the papacy also ceases to be located in its material subject; in the exercise of administration, as is noted in D. 21 [c. 2] In novo sidered to have already given up the papacy since the papacy consists does not wish to carry out his administrative duties then he is conof [17] De renuntiatione of the Liber Sextus. When it is clear that a pope to be deposed, as Joannes [Andreae] in his Novella notes on chapter 1 of administrative duties, when that ceases they are rightly considered the ruling office of a bishop, primate, or pope consists in the exercise superior ceases because of the withdrawal of obedience and because 143. Hence since his exercise of his administrative duties as

by [C.] 9 q. 3 [c. 6] Si autem and the chapter Salvo [c. 4]. In the same proved by the text and heading of [C.] 2 q. 1 [c. 46] Sicut inquit, and council, as is contained above, he can be corrected by it. This is 144. Nevertheless although a metropolitan may not be judged by his

> observe them, as will be discussed more fully below.7 In the case of canons. On this point there does not seem to be any doubt in the case able to correct and reform its head in accordance with the ancient council, although in a given case unable to make formal definitions, is head of a council should be corrected by his council. On this point correct the pope, in accordance with the same text which says that the what has been said about the pope - but otherwise only by way of declaration that the statute applies [de incidisse], in a way similar to they violate a statute of automatic excommunication adopted by a same thing should be said for other patriarchs and archbishops - if pope unless he has formally bound himself to observe them. And the statutes of any other councils, it is clear that they do not apply to the the authentic punitive legislation of those councils and all other ing automatic excommunication, since all Catholics are obliged to of the canons of the universal councils of the Catholic church involv-[D.] 18, [before c. 1] Episcoporum is useful which proves that a way, I would think that the general council of the Roman see can exhortation. higher authority, they can be corrected even in their own councils by a

properly understood, that is, one that represents the whole Catholic passages. For some bishops called the pope their "associate," as did much can be said regarding the different expressions used in similar place of, and represents Peter, see [C.] 2 q. 7 [c. 4] In sancta. And says. And likewise although we find in the records that the pope is canons old Rome had the primacy, as D. 17 [after c. 6] Hinc etiam ordered the canons to be produced and decided that according to the the primacy arose between the churches of Rome and Constantinople apostles and their successors, as appears in [C.] 3 q. 6 [c. 9] Dudum. we read in various places that the power of the Roman pontiff comes church, is over the patriarchs and the Roman pontiff. Hence although 145. But I do not think there is any doubt that a universal council in the Council of Ephesus, and the Council of Turin, and some Optatus, others their "fellow priest," as did Ambrose, and the fathers described as the vicar of Christ, we also find it said that he takes the And the judges in the Council of Chalcedon, when the question of Roman church over all churches comes from the decisions of the from Christ, it also appears in many places that the primacy of the

"patriarch," "brother," others "bishop," some "archbishop," or

cessors. The Gloss says that the primates are those of Rome, Alexandria, and Antioch, see D. 21 [c. 1] Cleros etc. that the primates were established by the apostles and their suc-Mutationes. And the text of D. 99 [c, 2] Nulli proves this when it says 16 [after c. 6] Hinc etiam; C. 24 q. 1 [c. 15] Rogamus; [C.] 7 q. 1 [c. 34] done with the consent of the apostles, see D. 22 [c. 2] Sacrosancia; D. while Peter was established as prince of the apostles by Christ, it was from men and the canons, as is said above. Pope Anacletus says that which the Roman pontiff exercises over all the churches comes partly and possesses high power derived from his see and cathedra - privipontiff as successor of Peter has received great privileges from Christ 146. But it is enough for us [to conclude] that although the Roman leges that are associated permanently with that see - the primacy

of the apostles, awaits the blessed resurrection of the flesh on the last should be located in the place where Peter, the very center and chief declared that he prayed that his faith would not fail, saying: 'Simon, day. Surely he alone is the one for whom Our Lord and Saviour the venerable summit of ruling authority and of all church discipline Holies Himself, the King of Kings and Lord of Lords, confirms - that claimed by all venerable councils and human laws, this the Holy of to be referred by other churches for decision. This has been proin the whole world to which the more important and difficult cases are Roman church is established as the inviolable head of all the churches the fact that your apostolic see is consulting ours, we conclude that Lord and all the holy fathers by which the apostolic see of the holy [you in] your prudence do not wish to depart from the decree of the letter of Leo IX to Peter, the Patriarch of Antioch, he writes, "From to do so can have recourse and can appeal." Hence in the synodal which is not subject to its authority. To it as head all bishops who wish which once was first has yielded to that of Rome, there is no church which begins: Sollicitudinem omnium says, "If your church in Antioch since the patriarch of Antioch defers to the patriarch of Rome. Therefore Pope Marcellus in a letter to the inhabitants of Antioch the see of Peter, but he does not possess the primacy by virtue of this There is no doubt that the patriarch of Antioch has succeeded to

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⁸See PL 11, p. 949, 16, p. 1004, and Mansi 5, p. 1070, 3, p. 861.

⁹PL 7, p. 1093 (False Decretal).

nas not ceased to strengthen them."11 when they are shaken by various trials of their faith, as until now he Peter until the end of time. Rather he will strengthen his brethren Peter has not failed and we believe that it will not fail on the throne of venerable and efficacious prayer has been that until now the faith of converted should confirm thy brethren.'10 And the result of this I have prayed for thee that thy faith fail not and that thou being once Simon, behold Satan has sought that he might sift thee as wheat. But

wish to take away those privileges of the primacy from the Roman see them to their own sees after they had been driven out."12 ted, and defended Athanasius and all the Catholics, and restored mother church has been crushed? To what refuge will they appeal? mercy and sustenance to her daughter under oppression if that one not of one church but of all Christianity. What other mother will give privileges of the Roman church plots the subversion and destruction 36: "Whoever attempts to destroy or diminish the authority and as they have been defined by other councils. [Pope] Leo says the same 147. Hence I do not think that the universal council would ever With whom will they have shelter? For that church received, protecthing in answer to the claims of Michael of Constantinople in chapter

council that represents the Catholic church has power directly from judgment on it.13 Hence it can be said in general that a universal of the true power and privilege of that see the universal council has destroy it, who of sound mind can doubt that without any diminution power using what was granted for the building up [of the church] to moving towards its end and evil on the increase they abuse their to error and sin, and especially because at present with the world Christ and is in every respect over both the pope and the Apostolic Council of Chalcedon expressly involved itself in this and passed primacy of the Roman church for we read in the records that the take judicial cognizance of, and make decisions concerning the believe that it is wrong to say that the universal council also cannot for the preservation and the well-ordered rule of the whole church? I power both over abuses and over the one who commits them - to act 148. But because those who sit in that see are human beings subject

149. And many conciliar actions and canons and proofs from reason

12 PL 143, p. 767. ¹⁰Luke 22:31.

¹³Mansi 7, pp. 354ff ¹¹ PL 143, p. 770. other places cited in this work. [c. 6] In canonicis; [C.] 2 q. 7 [c. 35] Puto, para. Item: Cum Petrus and in Augustine holds this opinion in many places, [for instance] D. 19 the purpose of approving or absolving those who make the decision. pope, the universal council of the whole world is superior to him for It is the opinion of Augustine that even after a decision by the Roman prove from the fact that the whole world is in communion with him [Cecilianus]. If it was done, they were also defeated in the council."15 ted of having judged wrongly, their sentences could be annulled.' Let them indicate whether they did that. That they did not, we can easily the case could be discussed with those judges and if they were convicjudges. There was still the plenary council of the whole church where that the bishops who made the decision in Rome were not good of all bad litigants when they have been refuted by the obvious truth supposedly suffered a decision by biassed judges. "This is the excuse Could it not properly be said to them on this point: 'Let us assume bishops sent by Emperor Constantine, says that those who opposed the decision of Pope Miltiades and his associates said that they had that that decision was reversed by Pope Miltiades and certain other discussed the decision of 70 bishops against Cecilianus and noted Glorias and Eleusius which begins Dixit quidem apostolus, after he has - and there are many similar cases. 14 Hence Augustine in his letter to reviewed the decision of Popes Nicholas and Hadrian against Photius against Pyrrhus and Sergius, and the Eighth Universal Council and the Sixth Council reviewed the decision in synod of Pope Martin Chalcedon reviewed the decision of [Pope] Leo against Dioscorus often reviewed and examined in the plenary councils. The Council of actions and judgments of the Roman pontiff even in his synod are support this opinion. For the dispute over the primacy which took Chalcedon in defense of the Roman see, and also the fact that the by the Nicene Council which was produced in the same Council of place in the Council of Chalcedon proves this; as does the definition

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and a publican by Peter and his successors. And this can be proved by and the council which represents it, is to be considered as an outcast publican."16 Hence it is evident that he who does not obey the church he will not hear the church, let him be to thee as an outcast and a There is no doubt on this point since Christ says to Peter: "If

14 Mansi 7, pp. 302ff., 7, p. 370, 6, pp. 1046ff., 11, pp. 554ff., 16, p. 189.
 15 PL 33, p. 169.
 16 Matthew 18:17.

where, after he criticizes John, the Patriarch of Constantinople, for supreme judge etc. commands and that as a last resort he should turn to the church as the admits that fraternal correction in this way is his duty as Christ It remains for me to turn to the church."17 Note that Pope Gregory refute this in the whole church, write personally. Whatever I should through my emissaries and twice in humble words have striven to brother has sinned against thee, etc.' And so I a sinner who once will put into practice what Truth commands when it says: 'If thy "And we against whom in rash presumption this offense is committed describing himself as the universal patriarch [he says] at the end: the authority of Pope St. Gregory in letter 214 in the [Papal] Register have humbly done, I have done, but I am rejected for that correction.

criminal act."19 It [the canon] does not discuss heresy, since, although "This holy and universal synod rightly and properly defines and canon of the Eighth Council concerning the power of patriarchs cal council is greater [than that of the pope]. This is proved by the clear that those ordinances received their force from the fact that they one should not separate oneself [from communion with one's decision by the synod, even if he claims to know that he is guilty of a from communion with his patriarch before a careful examination and decides that no layman or monk or clergyman may separate himself which also speaks of the Roman patriarch. 18 Likewise it is proved by were made by a higher authority. Hence the authority of the ecumeni-151. The same is also true of many other ordinances concerning the chapter Anastasius [c. 9] of D. 19 and one should always withdraw excommunicated at that time for falling into a condemned heresy, see patriarch], as that text and [C.] 2 q. 7 [c. 8] Sucerdotes and [C.] 8 q. 4 the tenth canon of the same council which begins Divina, which says: Roman see which were made in various ecumenical councils, and it is seventh action of the Eighth Council.20 And because that text refers to Hadrian in synod also states in his third message which appears in the from a heretic, as is stated in the same place in the Gloss and as Pope this when it discusses the aforesaid chapter Sacerdotes [c. 8] and the because even if he has been tolerated, you should note that he was [C.] 24 q. I [C. I]. The Gloss also makes statements that agree with [c. 1] Nonne state, these texts do not apply in the case of heresy

19 Mansi 16, p. 166.

²⁰Mansi 16, p. 127.

other crimes, the pope can also be judged by the council concerning other crimes besides heresy.

seem to prove that a patriarch should carry out depositions not the Council of Chalcedon concerning the deposition of Anastasius stood to apply only in his own patriarchate. And the aforesaid acts of [merely] with the advice but with the consent of his council. For the that the pope alone can depose a bishop should therefore be undercouncils have deposed bishops and archbishops.²⁴ The laws which say other patriarchs besides the Roman pope [acting] together with their and in other places as well as other acts of the councils also prove that metropolitans. The acts of the Council of Chalcedon in its last action are equal for the purpose of the deposition or correction of the tenth canon of the Eighth Council proves that all representatives are equal as to [the possibility of] their deposition. Likewise the text of the Roman patriarch. [D.] 22 [c. 7] Diffinimus says that all patriarchs patriarch can be decided by the council, the same is true in the case of Rome. If there is no doubt that a criminal case involving any other that council it appears that the pope is always called the Patriarch of council speaks of all patriarchs in the same way.23 From the acts of would be deposed," etc., and so this supports our proposition. clear that the pope can be deposed for negligence, for it says: "You 153. Note therefore that the canon that discusses judgments by the in Part III.22 But since the church does not reject this letter, it is also James died as a martyr eight years before Peter, as is discussed below this way to James because it is sufficiently established as true that Nevertheless I do not wish to assert that Clement actually did write in salvation of men, and your disciples would perish in ignorance."21 you would be deposed as one who did not teach the way to the what pertains to salvation more clearly than other men, and therefore deceive yourself and those who hear you. For you could not perceive God. For if you were occupied with worldly concerns, you would cares of the moment you could not dedicate yourself to the word of over secular affairs for fear that because of the burden of the human Christ did not wish to constitute you today as a judge with jurisdiction that Peter said to him when he established him as his successor: "For Clement, as appears in the letter of Clement to James where he says 152. This can also be proved from what was said by St. Peter to

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21 Hinschius, p. 32 (False Decretal). -- Doug 119, --- 29/Mansi 7, pp. 314 and p. 291.

when the one to be deprived of office or deposed falls under a penalty without a council of the universal church or even a patriarchal council commenting on [D.] 22 [c. 5] Qua traditione, says that the pope can when he had been called three times."25 Hence when the Archdeacon was accused by the clergy of his church because he did not come for an offense involving automatic imposition of punishment [latae in accordance with what is contained below. It is true [that he can act] bishops of the Council of Antioch say: "We deposed Athanasius who depose anyone without action by a council, this should be understood

ecumenical council has to decide every question that arises concerncouncil of the whole church, it says in canon 21 which begins Dominicouncil's] reverence for its head. pass judgment rashly, on account of the primacy [of Rome] and [the ing the Apostolic See, it should do this with due reverence and not go into those things, and to take action on them, but it could not pass reverence any question that arises concerning the Roman see, and to Diffinimus - that the universal synod is obliged to hear with due cum sermonem para. Porro part of which is contained in [D.] 22 [c. 7] Council to the effect that the pope is subject to the ecumenical 154. But to cite a clearer definition by the same Eighth Universal judgment rashly on the Roman pontiff.26 Note that although the

various decrees of the Council of Basel as well as those of Constance, council is clearly [simpliciter] superior to the pope. And it is not prejudice of the council? If therefore the authority of the Roman the council was meeting, even by the authority of Rome?²⁸ Why was through his recognized representative, could leave the place where fifth session of this Council of Basel that no one, either in person or the canons which have been adopted and those that could be adopted necessary to produce further examples of this since we have the 155. Hence it is evident from these [examples] that the universal this prohibition adopted if not because to allow it would work to the further, can be reduced to these [three].27 Was it not defined in the Constance only speaks of superiority in three cases, it is clear that all [declaring] that the pope is subject to the council. And although

²⁸Mansi 29, p. 38.

²⁵ Mansi 7, p. 354. ²⁶Mansi 16, p. 174.

²⁷Mansi 29, p. 21 and 27, p. 585. The three cases were "faith, the extirpation of schism, and reform of the church of God in head and members."

pontiff cannot extend to particular persons when it is presumed that this could operate to the prejudice of the council, who doubts that the council as a whole is over the pope? There are more such decrees of this council that prove this, such as those citing and warning the pope and decrees of this kind.

CHAPTER XVIII

REPRESENTATIVES. FURTHER SPECIFIC POINTS ARE COUNCIL THAN IN THE POPE ALONE, THE CHAPTER DESCRIBES HOW CARDINALS SHOULD BE ELECTED POPE IS BASED ON AUGUSTINE'S STATEMENT THAT ARISEN FROM COMMON CONSENT, AND IN WHAT THE ASSERTION THAT THE COUNCIL IS OVER THE THE CHURCH WHICH WAS PROMISED TRUTH AND MADE ABOUT THEM - THAT THEIR POWER HAS CERTAINLY AND INFALLIBLY IN THE UNIVERSAL REPRESENTATION AND ADMINISTRATION, WHY PROCEDURE SHOULD BE FOLLOWED AND IT PRELATES SHOULD BE ELECTED, AND WHAT [DIVINE] ASSISTANCE IS REPRESENTED MORE BY THE [CHURCH] PROVINCES AS THEIR DISCUSSES THE BASIC PRINCIPLES OF SENSE THIS IS TRUE.

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recall to mind what is said above concerning the representativity of the presiding officers of a council. And we may say that by the assistance of Christ the power of binding and loosing and infallibility and freedom from error are in the true Catholic church until the end of time. But since the Roman pontiff is a member of the church which is the Mystical Body of Christ, and infallibility was not promised to any member but to the whole church, there is no doubt that the unerring power of binding and loosing belonging to the whole church is superior to the power of the Roman pontiff, although the power of binding and loosing in both the church and the pope flows from the same source. And I say that this is true not only of the whole church

but also of the priesthood in the church which is like one soul in the whole church. It is true by the promise and delegation of Christ, because the priesthood was established by the Holy Spirit to rule the church of Christ, as the Apostle Peter says: "Feed the flock which is among you" etc. Therefore the priesthood, whether actually or potentially gathered together, exercises the power to feed the whole church which is delegated to it by Christ over the whole church and all its members including the pope. But because the universal council is a congregation or church gathering composed of the members of the whole Catholic church and for this reason represents the whole church, we should then consider that the Roman pontiff because he is the highest pontiff also acts as the figurative representative of the one universal church.

rock therefore, which thou hast confessed, I will build my church. Bu is not Christ from Christian but Christian from Christ. Hence the of Peter. For it was not petra from Peter but Peter from petra, just as it represented the whole church, and this is why he received the name a person by nature he was a man, by grace he was a Christian, by more cerning the passage, "Thou shalt be called Cephas." "It is a wonder-Peter the church." For this, see the text of Augustine in [C.] 11 q. 3 church's relationship to Christ, since the rock symbolizes Christ and him through Peter. Peter's relationship to the rock symbolizes the kingdom of heaven, that is the power of binding and loosing, from But the church that was founded by Christ, received the keys of the the rock was Christ upon which foundation Peter himself also built. Peter had said, 'Thou art Christ, the son of the living God.' Upon this kingdom of heaven and whatsoever thou shalt bind etc.' - he the apostles. When it was said to him: 'I shall give thee the keys of the abundant grace he was an apostle - and at the same time the first of the church as a whole since he was first of the apostles. Considered as church, Augustine says: "The Apostle Peter was the representative of in Sermon 11 and in his last sermon where, when he speaks of the is a figurative representation of the church."2 He says the same thing from petra [rock], and the rock is the Church. Thus the name of Peter ful thing that he changed his name from Simon to Peter. For Peter is 157. Hence Augustine says in Sermon 7 on the Gospel of John con-Lord rightly says, 'Upon this rock I will build my church,' because

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 $^{^1\}mathrm{r}$ Peter 5:2. $^2\mathrm{PL}$ 35, p. 1444. The scriptural quotation is from John 1:42. $^3\mathrm{PL}$ 35, p. 1763 (Tractatus 50).

[c. 87] Illud; and that of Leo in [D.] 19 [c. 7] Ita Dominus; and the Archdeacon discussing [C.] 24 q. 1 [c. 6] Quodxumque and the chapter Quixumque [c. 27], D. 21 [before c. 1] Decretis, and De poenitentia, D. 2 [c. 40] Si es [enim] v. Petrus. See also Augustine, The Christian Combat, c. 20 and his Homily on the Transfiguration and On the Words of the Lord, Book 1, Sermon 13, and On the Apostles Peter and Paul, Sermon 13, and Book 11 q. 79 of Questions on the Old and New Testament, and Ambrose, On Pastoral Care and Anselm on the passage of Matthew, "For the poor you have always with you."

And because Peter is from petra [rock] and the rock is the church which signifies Christ, and for this reason is his Mystical Body, it is evident that as Christ is truth, the rock – which is the image [figura], or sign of Christ – is the church, and the image or sign of this rock is represents or signifies, so the rock is the truth which Peter signifies or represents. From this it is clear that the church is over Peter just as prefigures the New and that the New Testament is the truth in representation [figuram] of the future glory where alone there is the truth so that the New Testament is both truth and representation, respect to that which is below it, and representation with church.

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individual in an obscure way and subject to error, there are many grades of representation and signification between the rock and Peter so that we move from the weakest representation and sign through rock which is truth. But only one person or one gathering which the Greeks call a synod can signify and represent the one church. Therefore in the case of a universal synod we should ask whether it is a united as a synod because it includes, for example, the pope, the patriarchs, and the heads of the provinces etc. According to what has

⁴PL 40, p. 308; PL 158, p. 604 (Anselm of Canterbury); PL 38, pp. 479 and 1348ff; PL 35, p. 2273 (False Decretal); PL 38, p. 1148; PL 37, p. 1537; PL 139, p. 171 (False Decretal). Anselm's Commentary has not been printed.

been said above, when it happens that a universal synod is properly congregated in this way, there is no doubt that the more certainly and truly that synod represents the church, the more its judgment tends towards infallibility rather than fallibility, and that this judgment is always better than the individual judgment of the Roman pontiff who represents the church in a very uncertain way [confusissime]. There is an old proverb that what many look for is found more easily. Hence the individual judgment of a pope should be presumed to be less stable and more fallible than that of the pope along with others – and there is no doubt about this.

ately preceding it. For Letter 61 of St. Ambrose to Theophilus Ambrose as is proven by comparing that letter with the one immedi-St. Ambrose - which was written by a Roman pontiff and not by St. 159. What has been said above seems to be proved by Letter 62 of discord has arisen in the whole world. In the shipwreck of precious pardon our justified grief. Because of these men the whole world is has reason to fear a trial and therefore avoids it. Let the brethren begins, "Evagrius does not have a basis for what he urges, and Flavian decreed by your council." And he proceeds further, "What the the sentence will be useful and assure peace and quiet - if it is you will make decisions which in no way displease him. A decision on holy brother, the bishop of the church of Rome, for we presume that would be a true one. We think that you should certainly consult our brethren and fellow bishops of Egypt - for we felt that your judgment men should be tried by Your Holiness with the participation of our throughout the East who profess the Catholic faith, and that these two when it declared that communion should be established with all those peace, the holy Synod of Capua finally offered a haven of tranquillity disturbed, yet they do not share our sorrow." And below, "Serious is not available to us. If the full synod were meeting today, we would his decision concerning Bishop Bonosus in all truth and modesty whose name I have not found in my manuscript, says that they asked the council, as Ambrose had advised. And at the beginning the pope, the pope himself to what had been written by the judges appointed by result of this trial."5 Following this there is a letter with the answer of Roman church has undoubtedly approved, we gladly approve as the And below: "We note that the procedure for making such a decision

end: "Hence we await your decision."6 to judge as if we had the authority of the synod." And finally at the are the representatives of the whole synod, and it is not proper for us decide has been given to make a decision. For, as we have written, you to whom the synod had given the authority might decide what seemed nothing was to be attempted in violation of your decisions, so that you done rashly, but everything with modesty, patience, and in order. And just to you. Therefore the first thing is for those to whom the power to hibited church by force, he answered him that nothing should be Ambrose to give his advice as to whether he should enter the pro-Finally since after your decision bishop Bonosus asked our brother representatives of the synod whom it chose for the investigation. responsibility for judging the case." And below: "You are the is now your duty to decide everything since you have been given the be right in deciding on the matters to which your writings refer. But it

always nof greater authority and less fallible than is the pope alone. bled although its decisions may vary in degree [of authoritativeness] is 161. Hence we conclude that a universal council if properly assem-Roman church, elected by the judgment of God, sent me, etc."7 since Ambrose says: "Also two years ago, St. Damasus, bishop of the ately following letter, No. 63, says that Damasus was pope at the time Pope who wrote this was St. Damasus, I believe, because the immedialso that those assigned to act as representatives of the whole synod have greater power than the pope in a matter assigned to them. The it clearly proves that the authority of the synod is over the pope and not fitting for him to act with the authority of the synod. Note this, for delegated it to others he says that he cannot decide the case and it is he could have decided on the case himself. But because the synod whole, that is, if it had not delegated the power of judgment to others,

subject, i.e. the person involved, by the decision of the pope himself as stated there, the papacy can be taken away from the material proved from ch. 1 [of 17] De Renuntiatione, in the Liber Sextus. For if was true in the cases of Benedict XII and John XXIII.8 And this is the power to depose [the pope] in cases other than heresy as, we read, From this it follows as a corollary that the universal council also has

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160. Here the pope declares that if the synod were acting as a

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rule well, see [C.] 1 q. 1 [after c. 43], Ecce cum honore; [C.] 8 q. 1 [c. he is guilty of misrule. For when a prelate is elected, he is chosen to can for legitimate reasons resign from office, so his subjects in comargued, the decision of a council is of greater authority and less when he decides that he is incapable of ruling, and if, as we have the church and for its benefit. concerning a papal office which has been given to him in the name of needs of the church which is greater than the decision of one man power over the papacy to direct its occupant in accordance with the person can doubt that a council which represents the church has that first chapter [of Liber Sextus 1 7 De renuntiatione]. No rational council itself, a fortiori, - although the pope says that he possesses it in ceases to exist, those who elected him then give that authority to the given is put into effect and since the reason for which he was elected Quisquis. So when he rules badly the tacit condition on the consent renuntiatione [c. 10] Nisi cum pridem para. Porro; and [C.] 23 q. 4 [c. 5] 11] Qui episcopatum; [C.] 28 q. 1 [c. 8] Iam nunc; and Decretals 1 9 De mon council can cease to give obedience for the same reasons when fallible than that of the pope alone, then it is clear that just as the pope

suspension a person who has received absolution in the area of conalthough at first glance, I would want to assert that despite that is taken away. However since the Council of Constance and this is a contradiction in terms, since it is clear from the above and also or at will, not because the council does not have power but because it a single legitimate pope of the exercise of administration temporarily 162. There may perhaps be some doubt that the council can deprive exercise of the power of binding and loosing in the penitential sphere, of any others which depend on law or men or involve externals. But if intention, although besides that power he would not have the exercise that power because it appears to be attached to the papacy by divine pope would be truly absolved. This suspension ought not to extend to science, where the pope has special power from God, as long as he is of suspension,9 I cannot deny that the pope can be suspended, Council of Basel issued certain decrees against the pope under pain free exercise of administration so that if that is taken away, the papacy from later passages that an essential element in the papal office is the the council wanted expressly to take away from him by suspension the

⁶PL 16, pp. 1222-1224 and PL 13, p. 1176 (Pope Siricius)

⁹Mansi 27, pp. 625ff. and 29, p. 59. The Basel decree was adopted on July 13, 1433. which is helpful in dating this part of the Concordantia.

⁸Mansi 27, pp. 1141ff. and 652ff. (the Council of Constance). Pope Damasus died in 384 and was succeeded by Siricius, who wrote the letter.

would be a novelty. binding and loosing - but this would contradict what is said above and papacy is something other than the free administration of the power of then one should either say that he was deposed at that time or that the

elected to be a bishop. 10 ing to St. Leo, there is no reason which permits someone who is not set up over unwilling subjects, as will be said below because, accordbe chosen by all, see D. 66 [c. 1] Archiepiscopus, and no one should be Anicetus has said, it is proper that the one who is to be over all should rulers who finally bring them together as one, by natural and divine law those rulers ought to be established by consent, and as Pope Rusticus in [C.] 7 q. 1 [c. 41] In Apibus, every ecclesiastical order has the representation by the ruler. Therefore since, as Jerome says to that the more specific the rulership, the more certain and less vague members and part of the body of the pope. From this it is also clear of the provinces who assist the Roman pontiff are called the principal it were, in a single body. So it is that the cardinals as representatives clergy yet more certainly, and finally he represents his daily council, as metropolitanate still more directly, his diocese still more certainly, his vague way, and he represents his patriarchate in a more direct way, his the representation, so that the pope represents the whole church in a that any ruler represents his subjects in proportion to the generality of From this and from what has been touched on above it is clear

2 [before ch. 1] para. 1, and as the Gloss notes on [C.] 1 q. 1 [c. 3] essence there, see [C.] 27 q. 2 [before c. 1] para. 1 and [C.] 32 [31] q. will, this is not the case with matrimony since consent is of the chapters in the same place, and in many similar passages of D. 62 and a spiritual marriage is rightly established by consent between Christ Constat. But the church is the wife or spouse of the bishop, see [C.] 21 63, and in [C.] 24 q. 1 [c. 33] Pudenda and D. 63 [c. 19] Metropolitano. and his church, as is said in [C.] 7 q. 1 [c. 11] Sicut and in other Thus although the sacraments can be given to someone against his strated by the election by all and the consent of the one elected, just as there be mutual consent in this spiritual marriage which is demonsubjects and ruler, reason and natural and divine law all require that 164. On this point for one body to be established in a harmony of

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II a 124,257,2<u>22,</u> 5 q

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 $^{10}\mathrm{PL}$ 54, p. 120. The reference to unwilling subjects is from the *Decreum*, D. 61 c. 13. q. 3 Sicut and similar passages, and therefore etc. On this more will be

> elect the representatives of the provinces who assist the pope and are clergy should elect the bishop with the consent of the laity, see D. 63 stated in D. 67 [c. 1] Reliqui, D. 63 [c. 20] Si in plebibus. Then the convenient provision is made for consent to their appointment, as is observed so that parish priests and curates are elected or at least some said below.11 Hence if right order is to be preserved, the text of the be ruled in the best possible fashion. whole church. With this council, there is no doubt the church would have with him a continuing council which legitimately represents the [but] in better order. This would mean that the Roman pontiff would vacant for too long, then the present procedure should be followed wait for their consent because of the danger that the papacy will be with the consent of the metropolitans. But if it does not seem useful to called cardinals and those cardinals should elect the pope, if possible metropolitans of the provinces with the consent of the bishops should the consent of the clergy, see D. 66 [before ch. 1] Archiepiscopi. The [c. 11] Plebs and [c. 12] Nosse, and the bishops the metropolitan with 1] Nulla and D. 23 [c. 1] In nomine Domini and similar texts should be Council of Toledo in D. 51 [c. 5] Qui in aliquo and those in D. 62 [c.

well as the canon [c. 3] Nullam of [C.] 2 q. 5 [q. 4], bishops at that were associated with him.12 And the canon did not speak of the reasonable, and above suspicion because a number of honorable men sion of the patriarch should be strictly observed, it said that it was just, manded under the pain of automatic excommunication that the deci-165. Hence when canon 26 of the Eighth Universal Council comalso proved by D. 93 [c. 5] A subdiacono and by the statement of Leo "cardinal pontiff" is the title given to the metropolitan etc. And this is proves, the title of cardinal stands for a certain eminence, where the Roman clergy, as appears in the same place and in D. 79 [D. 78] [c. 34] Quanquam because the cardinals were priests and deacons of important than the cardinals - as appears in the Gloss on [C.] 2 q. 7 time always took precedence over cardinals because they were more Roman cardinals because, as is clear from the canon Praesul [c. 2] as Sacrosancta says that the pope is counted among the cardinals and that [c. 5] Si quis ex episcopis. For as the text of D. 24 [c. 3] Presbyteri [c. 9] Si quis pecunia and the chapter [c. 3] Oportebat and the chapter IX above. Also the Archdeacon commenting on D. 22 [c. 2]

¹² Mansi 16, p. 178. 11 Book 11, ch. 32, no. 232

cedure of the Roman curia will easily recognize. reasons as any intelligent person who has any knowledge of the prorepresentatives of the provinces as cardinals for many worthwhile is under consideration. Hence it seems necessary to create such universal church or a matter in some way affecting the whole church the papal council. This is absurd, especially when a case involving the present at the Roman curia, as foreigners they are not summoned to being summoned by a secular prince. Today however even if they are not be excused either on account of conflicting provincial synods or read in canon 17 of the Eighth Universal Council, since they could old this was strictly observed, especially by the metropolitans, as we accustomed to make use of their advice in deciding difficult cases. Of subsequent passages of D. 92. The Roman pontiffs were also the ancient form, as is mentioned in the canon Episcopi [after c. 3] and they did of old, although perhaps they still swear to do so according to metropolitans and bishops do not make an annual visit to the pope as this seems to be especially necessary at this time because the should also be constituted in the same way, as described above. And members of the provinces, so the cardinals who represent them metropolitans of the provinces are established through election by the et Remissionibus para. Cui papa v. Alii dicunt. Therefore just as the notes this in his Summa [commenting on Decretals v 38] De Poenitentia metropolitans, see D. 23 [c. 1] In nomine Domini, and Hostiensis lar cases of utility and necessity. For the cardinals act in place of the observed with due reverence, and provision can be made for particucardinals. The signing is to show that this is done with clear knowledge and careful examination so that in this way the canons can be decided in a council of cardinals and signed both by the pope and the anything important or against the general content of the canons be cardinals be chosen from the representatives of the provinces and that the first essential reform for good government would be that the is difficult to assemble a plenary universal council, I would think that patriarchal council in accordance with canon 17.13 Therefore since it representatives of the provinces who were obliged to come to the Relatio; [C.] 7 q. 1 [c. 42] Pastoralis; and D. 71 [c. 5] Fraternitatem. bishops are also to be called cardinals as is stated in [C.] 21 q. 1 [c. 5] But the text mentioned above speaks of the metropolitans and

¹³Mansi 16, p. 171.

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CHAPTER XIX

FREE ELECTION IS THE BASIS OF ALL PROPERLY ORDERED POWER - A BRIEF BUT WELL-EXPRESSED DISCUSSION.

above by St. Augustine - Peter would be based on (lit. - originate ordered elections on each level would produce the result described act as a loving pastor without pride - we would see how properly elected by those over whom he is to rule - so that he may recognize say that no one should be appointed to ruling responsibility who is not ordained, keeping in mind that the weighty decision of the people is we believe comes from God through the laying-on of hands be sold salutary union [of the faithful] with Christ, the head. Hence Pope which comes from it and is granted by it in order to bring about a rational soul which comes from above, it receives from God through derives its moving, vegetative, and sensible power to rule from the are produced out of the potency of matter but its rational part comes but, as is said above, just as the moving and sensible parts of the soul power to rule which is in rulers comes in its entirety from the people, from) the rock [petra] that is the church of the faithful. Not that the that his rulership comes from those over whom he is ruling and thus 167. If the laws and decrees of the holy fathers were observed which consent without irregularity." And although God has reserved the Hormisda says to the bishops of Spain: "Let not the blessing which the faithful by way of voluntary subjection - but the power of the from God, so the priesthood which is the soul of the church militant grace appoints the one who is chosen by common consent, see [C.] 8 election to the faithful, see D. 79 in the final chapter [c. 11] and divine deposition of the most high priests for himself, he has given their the judgment of God. For God is present where there is genuine it? Let the election observe proper reverence for the priests to be for money. Who would think that something is valuable if he has sold harmony to the body of the subjects through the mediation of a power the sacraments. In this way power from on high can flow in sweet faithful subjects – a power which comes from the potency of matter of

comes from both so the religious proceed from the laity and the Father, so the clergy comes from the laity, and as the Holy Spirit and the religious the Holy Spirit, because as the Son comes from the say that the people represent the Father, the secular clergy the Son, propriate for the Abbot Joachim when he discussed the Apocalypse to through the mediating influence of heaven. Hence it was not inapordered power - just as from the potential of the earth, the lowest of the elements, various vegetable and sensible beings are produced being since it is true that all power is from above - I speak of properly concurrence of that formative radiance from above to establish it in for the power to rule to be activated there must necessarily be the temporal and corporeal, is potentially in the people, although in order q. 2 [c. 2] Dilectissimi. On this there is more at greater length below. And it is a happy thought that all power, whether spiritual or

² Joachim of Flora, In Apacalygsim (Venice, 1527). On the influence of Joachim, see Eric Voegelin, The New Science of Politics, Chicago, 1952, reprinted 1987,

CHAPTER XX

THAT A CANON DOES NOT APPLY IN A PARTICULAR ARGUMENTS. MISPENSATIONS AND A DECLARATION AFFECTING THE CANDON. THIS IS DISCUSSED AT REPRAL UNIVERSAL CANONS. THIS IS PROVED BY CASE CAN TAKE NACE WITHOUT ADVERSELY DOCTRINAL STATEMENTS, AS WELL AS MANY THE POPE CANNOT ABROGATE, CHANGE, OR AUXHORITATIVE TEXTS, EXAMPLES, AND LENGTH AS APPROPRIATE.

above, the problem is resolved. Hence although the pope in the the council and in the chapter [c. 4] Proposuit of [Decretals $_{
m III}$ 8] D_e chapter [c. 4] Significasti of [Decretals 1 6] De Electione says he is over universal council, properly speaking, is above the pope, as is said the universal council so that he cannot act against them. For if the current problem - whether the pope can be bound by the decrees of From what has been written above it is easy to answer another

> Concessione Praebendae says that he is above the laws, this is true [only] can neither adopt nor amend any law contrary to the statutes of the abrogate or change the canons of the universal councils or adopt welfare of the church - but only for that purpose. That he cannot from, and interpret [the law] in cases of utility and necessity for the cannot be taken away in particular cases since he often has to dispense church the Apostolic See has the power of equity [epieikeia], and this him although I grant that because of its rulership over all men in the the laws adopted there or in other particular councils or laws made by burdens of our faith which we must bear?"2 ancestors whose canonical statutes act as a kind of foundation for the be more holy and venerable than never to depart from the way of our certain way to the discipline of the Catholic faith itself. For what can wise decision that they decreed should govern forever, but also in a trary to the statutes of the holy fathers, injury is done not only to the bishops established in Africa, Gaul etc., "When action is taken confathers." And Zosimus also says the same thing to Aurelius and all the Contra statuta where Pope Zosimus says: "The authority of this see anything to the contrary is proved by the noted text, [C.] 25 q. 1 [c. 7] f his own general council over which he presides as patriarch, and of

of the Nicene Council, but also to its canons, as appears in D. 100 c. when he wrote to Paulinus commanded that those who came back to and define that in accordance with the holy fathers anyone who does the end of the letter which begins, Frater noster Adrianus: "We decree observe the statutes of the holy ones that we call canons," And Pope believes and holds the holy gospels to his benefit if he does not that of Zosimus above since it says: "It is clear that no one genuinely I] De libellis says. The end of this latter text agrees completely with the statutes of the fathers, that is, the canons," as the text of D. 20 [c. I, 2, and 3.3 The text [of Pope Zosimus] quoted above says: "Against the faith be required to subscribe not only to the declaration of faith receive communion." And the canons which are thus to be revered not obey the sacred canons may not minister at the sacred altars or St. Gregory in the [Papal] Register says to John, bishop of Larissa, at librum, and they are called general canons, as Gregory says of th by all should be adopted in universal councils, D. 16 [c. 6] Hakee These points are also proved from the fact that Pope Damasus

²PL 20, p. 661. On epicikeia, see Aristotle, Nicomachean Ethics, v, 10. ³ PL 56, p. 686. ⁴PL 77, p. 611.

the Catholic church so that they may see our good works and glorify when it could not act against an orthodox pope. Rather let due honor God who is in heaven. for the increase of faith and divine worship and the universal good of be given and all things ordered in peace by unanimous concordance lament -, that it forgets its subordination in the past to its patriarch position as a universal council - which, alas, is rather a reason to towards the Roman pontiff. Lex it not be so proud of its privileged council to act without passion and with the greatest gentleness doubt has arisen on this point. Therefore it is appropriate for this holy an injunction may be placed on him by the universal council to follow representing the whole church of the faithful, in this new situation council subject to the Roman pontiff, is today the universal council patriarchate alone, 49 and what once was only the general patriarchal however when - alas! - the universal church is reduced to the Roman the exercise of equity powers [epicikeia] as discussed above. Today them under threat of invalidity and grave penalty except in the case of

⁴⁹Cusanus' belief that the pope offered the best possibilities for reunion with the Kastern church was a major reason for his abandonment of the Basel Council in 1437.

CHAPTER XXI

HADVATE AREA

THE POPE SHOULD NOT EXERCISE HIS POWER OF DISPENSATION OR TAKE ANY ACTION WHICH SEEMS CONTRARY TO THE UNIVERSAL CANONS WITHOUT CONSULTING THE CARDINALS.

above; that this holy council could adopt a law – or more accurately revive the ancient law that provides that the pope cannot take any action on difficult cases – especially a dispensation for urgent reasons from the canons of this or other universal councils – without [the consent of] the lord cardinals in their quality as the clergy representing the universal church in the way described above. If he should act otherwise, that action is to be invalid. The opinions of the Archdeacon and of Joannes Monachus and of others on this have been

cited already.¹ Their final conclusion on this is to affirm the principle that the pope cannot do anything affecting the universal church without the [consent of the] cardinals. But I believe that to violate or dispense from the canons, even in a particular case, can reasonably be said to concern the universal church, since a canon of the universal church seems to be violated by this kind of dispensation.

32nd canon of the African Council says: "The donation, sale, or agreement of his clergy, see C. 12 q. 2 [c. 52] Sine exceptione. And the the things over which he has power without the consent and written with its churches, endowments, and tithes, see [C.] 10 q. 1 [c. 3] adiutorium, I will add the following argument from analogy here. see [C.] 3 q. 5 [c. 15] Quia suspecti; D. 20 In quibus; D. 10 [c. 7] Si in exchange of ecclesiastical property by the bishops without the Decretum, but he does not have the right to transfer, give, or exchange Legally a bishop has complete administrative control of his diocese archical in structure, as is said in a certain place above.3 disposition of the pope as a single monarch, nevertheless according to approval and written agreement of the clergy shall be invalid."2 clergy of the Roman church in so far as the Roman church is monagreement of his clergy. For the cardinals act in the name of the ally, I believe, the sacred canons - without the consent and written the above he could not exchange or transfer church property - especi-Therefore by analogy, even if the whole church were subject to the Hence because an argument from analogy is a strong one in law,

only take place for reasons of utility and necessity. Exactly the same thing is true of changes in the canons or dispensation from them. And that is enough for the argument from analogy. This is discussed in the chapter Non liceat [c. 20] of [C.] 12 q. 2, a text which seems to compare the pope to the other bishops with respect to the right to transfer property. Furthermore the African synod which Augustine signed says in [C.] 15 q. 7 [c. 6] Episcopus: "Let no bishop hear a case except in the presence of his clergy; otherwise the sentence of the bishop will be invalid." And it is clear that the bishop has

Book II, nos. 132, 163, 166.

² Fourth Council of Carthage (Hinschius, p. 304)

³Book 11, no. 132.

⁴See note 2. For Nicholas' source in Beno, Gesta Romanae Ecclesiae, see Werner Krämer, "Verzeichnis der Brüsseler Handschriften," MFCG, 14 (1980), 182–197.

on matters concerning the universal church. and pass serious sentences except in the presence of his clergy. Therefore it is obvious that the pope is obliged to act in a similar way administrative control of his entire diocese but he cannot hear cases

the consent of the council of the church, i.e. the universal council. Principally included in this property, it is evident, are the sacred same way the pope cannot transfer the property of the church without it says: "In front of the council of the church ..." Therefore in the sulting the council or priests ... " and the canon [58] Episcopus where priests, see [C.] 12 q. 2 [c. 51] Placuit where it says: "Without conority cannot be made except with the advice of the council or all the Furthermore exchanges or transfers by a presiding church auth-

from ancient times, the opinion of the Roman pontiff was invalid agreement of the see, the opinion of the pontiff is invalid."5 Note that approved and rejects what should be rejected. However, without the ments, through whom and by whom it approves what ought to be and by whom it preaches, through whom it administers the sacraone whom that most sacred see makes its spokesman, through whom deacons it assists the pontiff or representative of that see who is the against Hildebrand who was called Pope Gregory VII: "For it is the verse Sicut[1.7] para. 1. For we read the following in the proceedings 2 [after c. 58] Qui manumittitur, following the Digest [III 4] Quod cuius, sus] in [Decretals 1 31] De officio ordinarii and this is proven in [C.] 12 q. privilege of the Roman see that through its cardinals, bishops, and member of the college, according to the note of the doctors following [Pope] Innocent on the chapter Irrefragabili [c. 13] Conquestus [Excesbelongs only to the college as a whole and not to any individual individual does not have the right to decide by himself, for that right the cardinals] can participate in the decision but a particular the universal councils without the consent of the universal council. And in a case in which the cardinals have to give their consent, any [of But in my view, the pope and cardinals can not repeal the canons of can confirm dispensations with their signatures, this can be done, I reasons of necessity or utility, to actions opposed to the canons and believe, only without prejudice to the [continued force of the] canons. 193. Hence although the cardinals can agree in particular cases for

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⁵Pope Gregory VII (1073-1085) was a reforming pope who opposed simony and lay

spokesman of the Apostolic See. without the agreement of the cardinals, and that the pope was only the

CHAPTER XXII

CRIMINAL CASES BY HIMSELF. COUNCILS ARE WISE AND NECESSARY INSTITUTIONS CREATED FOR THE COUNCILS AND THEY SHOULD NOT END WITHOUT GOOD OF THE CHURCH. THE UNIVERSAL COUNCIL JUDICIAL AUTHORITIES SHOULD MEET IN THESE MEETING AND DECIDING EVERYTHING BROUGHT THE PROVINCIAL SYNOD SHOULD BE CALLED BY MADE UR OF SEVERAL PROVINCES IS DISCUSSED THE METROPOLITAN WHO IS THE JUDGE OF THE PARTICULAR PROVINCIAL COUNCILS. LOCAL AND IT IS ARGUED THAT IT IS SUPERIOR TO PROVINCE ALTHOUGH HE CAN NOT DECIDE ESTABLISHING THE PLACE OF THEIR NEXT BEFORE THEM.

matters of concern to the province. Without this it is not a full and as to have a better understanding of the universal councils, the see [C.] 9 q. 3 Per singulas canons 1 and 2, and many other places cases which concern all the bishops of the province without the judge of the province, he should not decide criminal cases or general made to him, see [C.] 9 q. 3 [c. 2] Per singulos. Although he is the province consists of the metropolitan and his suffragans and others in principal matter under consideration. The provincial council of a 194. Let us briefly add a few things regarding provincial councils so should discuss the common affairs of the province with his suffragans, 3] Cum simus and the final paragraph [Probatur]. But as to how he nullus and the canon Felix [c. 4] and the observations in [C.] \bigcirc q. 3 [c. participation of the suffragan bishops, see [C.] 15 q. 7 [c. 6] Episcopus for the whole province. In it he ranks first in honor, and appeals are perfect council, for he [the archbishop] has the care and responsibility the province. It is called by the archbishop to make decisions on This council is very necessary and it has authority given to it by

CHAPTER XXXIII

AN ORDERLY REFORM IS TO BE INTRODUCED INTO OTHER NECESSARY CHANGES ARE ENUMERATED IF FOR REFORM IT IS NECESSARY THAT EACH ONE CARRY OUT THE OBLIGATIONS OF HIS OFFICE. THE CHURCH AND THE CLERGY.

clergy and excommunication for monks and laymen. superiors who are suspected of any criminal acts are to be freely divine services with the penalty for violation being deposition for the Council.1 As that text also says, let this command be included in the obeyed - as decreed in the tenth chapter of the [Eighth] Universal to be scrupulously obeyed, if we wish to promote the salvation of all. council command that each one must carry out the requirements of In addition let it command that in the absence of a legal decision his office, his vows, his religious duty, and rank. And this command is nor wearisome will prevail in the temple of God. Therefore let the conditions are realized, a sweet concordance which is neither heavy in the church, as Jerome says in D. 92 [c. 1] Cantantes - if all these voices but with our hearts, and theatrical modes should not be heard repetition of psalms, as stated in [Decretum] De Consecratione D. 4 [D. 5] [c. 24] Non mediocriter, - for we should sing to God not with our intelligence and devotion rather than of vocal ability or the wearisome following chapters, and ordinations are made to office on the basis of the text of the Council of Toledo says in D. 12 [c. 13] De hiis and the caretakers in accord with the canonical regulations; and if therefore there is harmony in divine worship throughout the whole province, as q. 3, and they make use of the goods of the church as faithful without becoming a burden to them, as indicated throughout [C.] 10 the chapter [c. 10] Omnes basilicae, and they visit their churches Decretum and [c. 5] Quicumque; [C.] 16 q. 7 [c. 19] Sicut Domini and good curates, as in [C.] 10 q. 1 [c. 4] Regenda and the chapters [c. 3] places above, and the bishops who are legally obliged to do so, appoint 242. If elections are carried out exactly as described in various

And in addition for the preservation of strict moral standards

¹Mansi 16, p. 166.

celestial hierarchies of the angels, should be considered by all princes are not to be subordinated to military authorities, as appears in the archical grade and function . . ." Then let the provision of that holy and their subjects as worthy of all honor according to their full hierthey are the image and figurative representation, as it were, of the that those who by divine grace are called to the office of bishop, since in the various church offices, and especially among the bishops, they 244. In addition in the interest of peace among the churches, let the violation] in other churches, as has been done up to the present. would also be forbidden to violate it, and to give his consent [to its to the chapter [c. 20] Non liceat in the same section the Roman pontiff q. 2.2 It would also be good to reenact that canon because according be observed which appears in the chapter [c. 13] Apostolicos of C. 12 Eighth Council concerning the transfer of church property to others fourteenth chapter of the same council which says: "We have decreed

of ignorant priests disgraces the church and makes the laity hostile to repeated in the second part of the 23rd chapter of the Eighth suitable benefice, as is defined by nearly all the universal councils and fices.4 Let each one carry out his church duties on the basis of one dispensations permitting incompatible offices and a plurality of benesince they interfere with proper church administration, as well as as is contained in chapter 18 of the Eighth Council.3 years and privileges exercised for the same time continue to be valid Council.⁵ At present, the number of petty benefices and consequently And after this let commendations and pensions be taken away

statute be reenacted that provides that goods possessed for thirty

the decision of the majority, and various procedures have been 245a. [Basel Manuscript Only.] The object of elections is to express devised for this purpose. Because the decision of all those voting can De aetate et qualitate [c. 14] Cum sit ars artium.

of great hatred. The text of D. 59 [c. 2] Si officia says that a large and vice. For this reason the holy office of the priesthood is the object

the clergy when they see so many priests living in a state of idleness

be scarce. For "it is better to have a few good ones . . ." [Decretals I 14] number of priests is not desirable because every valuable thing should

Mansi 16, p. 168.
 Mansi 16, p. 172.
 Nicholas was himself a notorious "pluralist." See Erich Meuthen, "Die Pfründen des Cusanus," MFCG, 2 (1962), pp. 15-66.

⁵Mansi 16, pp. 172ff

one who will have as many marks as there are ballots. marks, and after that three marks and so on until he comes to the last one is least fit and place beside his name a single clearly visible mark munion that he has done this. And then let each one withdraw to a Then [he should decide] who is next after him and put down two private place in his residence and look at the ballots to decide which also recall that on the next day each is to swear after receiving comcompare the persons named on the ballots with the others, following each elector with the names of all of the candidates, except the one his conscience as best he can in accordance with the will of God, and ballots, the superior will say a few words and recall that each is to together as a group [capitulariter]. When everyone has received his this with all the electors in the evening while everyone is gathered who receives the ballot if he is one of the candidates - and he is to do them identical. The notary is then to give ballots in the evening to there are candidates, and place one name on each ballot and make registered, let the notary be instructed to make as many ballots as siders are known to the majority of the electors. And after all are didates from that church and from elsewhere, provided that the outmeet together and a notary make a list of all who seem to be canhow anyone voted. On the day before the election let the electors time it preserves the secrecy of the vote so that no one can ever know someone to be elected who is not judged the best by the common election would be the one described below.⁶ It makes it impossible for make the truth keep silent - it seems that a better and truer form of uncertain - since voting is not secret and fear and timidity sometimes judgment of the electors as expressed in a single vote, and at the same case with the procedures now used which make this difficult and another and each one with all the others, and because this is not the not be expressed without comparing all the candidates with one

On the next day let them come with their completed ballots and after hearing mass and receiving communion in a public place let them swear that each of them has compared and marked the persons in this way, following the right judgment of his conscience. Each one is to throw his ballots into a sack and when they are all in, let them come together in the chapter hall and read the ballots with the marks.

⁶In the final version of the *Concordantia* the voting procedure described here was moved to Book III, ch. 37, nos. 535-540 (see below).

And the best candidate in the judgment of all will be the one who has the most marks and the worst the one who has the least. And to keep the numbers limited, if there are less than twelve candidates, let him [the notary] note the number of those eligible beside the name on the ballot, and if there are more than 12 let him note only the number 12 and give the names of only 12 of the candidates to the electors. And on the next day after the results are known let the winner be placed on a ballot and run against another group of eleven candidates and follow the same procedure as before. And once the result is computed in the same way, even with many candidates the winner will undoubtedly be the one whom all consider to be best qualified. And for this purpose it is good to place numbers on the side of the ballots so that the electors do not make mistakes in marking and counting points but mark the number on the ballot. And a point will mark the number beneath it, over which it is placed.

on Conrad's ballot, and 6 on Peter's, and do the same with all the mark over the number 12 on the ballot of Nicholas and over number 1 best, and Conrad worst, and Peter in the middle. Then I will place a consult the advice of religious men and not exclude them, for it has to put into practice. It should also be known that the electors should almost imperceptible, the latter method can be used since it is easier because it is very close to an infallible judgment and the difference is very little from it. To expedite matters more quickly perhaps and also comparisons are made among all candidates although it can differ method although it is secure and good is not so precise as when - see D. 61 [c. 8] Statumus where this is discussed. And this last has the largest number wins. In case of a tie, the older candidate wins them again as before and when the result is computed the one who candidates the twelve most qualified and make comparisons and mark given, if he is a candidate. And then let them choose from all the once to the electors - without the name of the one to whom they are the ballots be prepared as above with the 12 numbers and all given at process of voting may be expedited by a single voting procedure. Let other ballots. But when there are more candidates than twelve the their consent and participation it is invalid, see D. 63 [c. 35] Obeunbeen decreed in a general synod that if an election is held without tibus. Although custom has led in a contrary direction, it is time for Let us suppose that there are three ballots. In my view Nicholas is

reform. This is how it [the ballot] would read: Nicholas 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12; Peter 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12; Conrad 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

246. And because the holy council has begun to adopt decrees on simony, concubinage, universal and provincial councils, and elections, through the Holy Spirit it will provide for all these things and will reduce to canonical order all pestilential practices inspired by avarice, and make each one carry out his responsibility and ministry. And it will think of the way to apply coercive force to the laws and statutes and how the execution of the sacred canons may be made strong and stable, rigorous and pure. And all power consists in this because [new] canons are not needed but only the application [of existing canons]. And they can only be properly applied by good rulers. If we have them, we would easily and quickly find the ways of our fathers through [one who is] the living law.

CHAPTER XXXIV

A BRIEF EPILOGUE ON WHAT HAS BEEN SAID—THOSE WHO DENY THAT PETER'S PRIMACY WAS ESTABLISHED BY CHRIST ARE ANSWERED. IT IS DEMONSTRATED THAT THE PRIMACY OF THE POPE COMES FROM CHRIST BY MEANS OF THE CONSENT OF THE CHURCH, AND THAT HIS POWER COMES FROM GOD BUT HIS COERCIVE FORCE THROUGH THE MEDIATION OF THE CHURCH.

247. The effort of the preceding little work was to begin to analyze the concordance which exists in the church on the basis of fundamental first principles. Its arrangement exhibits our intent in sequence, although not in a way that can be easily studied in a superficial fashion. Nevertheless an attempt will be made to summarize it. There is no doubt that Christ is the way, the life, and the truth, the head and foundation of the church, see Ephesians 4 and 5 and 1 Cor. 10 and the gloss on the verse of Matthew 16: "Thou art Peter" and Augustine in his book, Retractions, on the Gospel on John, and in

be known to some degree for our guidance. order among the various hierarchical ranks in the church militant may and a mystery, and that face-to-face Truth which is in heaven with militant where the Truth that is Christ is still understood as a figure discussed the need to understand the relationship between the church part triumphant, and another part militant, and a third sleeping. I also there is a trinitarian structure in the universal church made up of one church is made up of all rational spirits adhering to Christ and that of this work - which is difficult to summarize - that the one universal will always thus remain. I showed in relatively brief fashion in Book I the Catholic church in which the way and the truth which is Christ Christ-formed body of the faithful in which Christ will dwell is called of believers in Christ among whom Christ himself will dwell. That apostles until the end of the world.2 Hence there will always be a body Christ was heard and he will remain with the successors of the the Church. The faith will never fail in the church for [the prayer of many of his sermons1 and many other authors, nearly all Doctors of the church triumphant. In this way as far as possible the admirable

superiority of the council of the universal church over the particular of fundamental principles, I directed the reasoning intellect to this authority of any individual church ruler and local synod. On the basis 248. After this in Book II I wished to examine the question of the comes to such a conclusion with the consent and representation of all is part of the Christian faith and true. And when the universal council any conclusion as necessary to salvation, it follows that that conclusion conclusion: If the universal Catholic church is infallibly directed by truth that directs one to eternal salvation can exist except through tion of the Holy Spirit and dictates this truly and infallibly, for no the assistance of Christ, when the assent of all Christians is given to and it is held in freedom and properly concluded with the common called and gathered together and if everyone has received a summons. things has not been given. But if a council is correctly and legitimately together in vain, however, if the consent of their subjects to these which has not been settled in their own provinces. They meet representatives who come to that meeting to investigate some matter Christ. But the universal council is made up of the bishops and their the faithful, of necessity it has the assistance of Christ and the inspira-

¹PL 32, p. 616 and 38, pp. 479, 1148, 1238, and 1349.

²Luke 22:32; Hebrews 5:7; Matthew 28:20.

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all the faithful who participate through their representatives and proximately represents the whole Catholic church and the consent of salvation of the faithful, history reveals that it has never erred, since it consent of all and it issues a decree in any matter concerning the

and rulership, is from God by way of man and the councils; namely, intermediate position demonstrable in the Scriptures finally comes to comes from man and the universal council, it seems that in fact the power of the Roman pontiff is from God and according to others it although I have used many arguments, I have emphasized this one rulership and as to the power to command and to legislate. And by means of elective consent. this, that the power of the Roman pontiff as to preeminence, priority, that although according to writings of many of the holy Fathers the ary to ask what was the authority of the Roman pontiff both as to in all things over the Roman pontiff himself. And thus it was necessthat the universal council of the Catholic church has supreme power anyone who understands the difference may easily see that it is true have been approved as authentic - as appears in D. 19 c. 1 - so that universal council of the Catholic church and that of a nation, kingtruth. Therefore I have pointed out the differences between the dom, or patriarchate on the basis of the acts of the councils which to seek to harmonize these writings, while maintaining the aforesaid pope even over that of the synods themselves, it has been necessary theologians, especially those in recent times, exalt the authority of the do not have this privilege. And because various writings of jurists and 249. But the provincial synods - even those of the Roman pontiffs -

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grace of the sacerdotal offices comes from God. of Christ. And this is what [C.] 7 q. 1 [c. 30] Remote says - that the from the fullness of the source, the Head, down to the Mystical Body from Christ there should be no coercion but rather grace flowing and free access to him. Therefore in the church which is descended is the Way of our faith, the only thing necessary for salvation is Christ adheres voluntarily and without coercion. Hence since Christ himself 250. I discussed first the freedom of Christ's law to which one

superabundance of grace. Augustine says in his last sermon on [the but we say that Peter was first among the apostles by virtue of a apostolate just as in the grace of the priesthood all priests are equal, 251. Indeed we say that all the apostles are equal in the grace of the

> superabundance of grace by Christ, in the first chapter of John where writings describe the primacy with which Peter was endowed with a represented the church as a symbol of the whole.3 And the sacred first apostle and on account of his primacy among the apostles also such as Alexander of Hales commenting on John.⁵ He adds on the ing to Bede, incorrectly) to mean "the one who recognizes" by writers not be interpreted as speaking of the time of his conversion or his is evident that the promise of Christ that Simon would in the future future tense - "Thou shalt be called Cephas." He did not say then, Peter," he used the present tense, where he had said earlier - in the the change in name was important. When Christ said, "Thou art according to the interpretation of the great and learned Augustine, Peter. But Peter is from rock [petra] and the rock is the church follows: "He made a great change when he changed Simon's name to Peter. Augustine in his seventh sermon comments on this passage as Christ says, "Thou shalt be called Cephas," which is interpreted Gospel of John, that because of abundant grace Peter was both the same point that his brother, Andrew, who told him earlier that he had recognition of the Messiah, as the name Peter is interpreted (accord-Augustine says that Peter had the primacy among the apostles he can be called Cephas was a promise of a real primacy. Hence when "Thou art named or called Peter" but "Thou art Peter." From this it Christ said, "Thou art Peter." Peter received after the college of the apostles had been created when church as necessarily referring to the rulership and eminence which Augustine himself understands the primacy among the others in the we read in the first chapter of the Gospel of John.⁶ Therefore found the Messiah had already preceded him in that recognition, as Therefore the name of Peter symbolized the church." Observe that

does not exist among the Hebrews.8 Alexander of Hales in his Postilla as Cephas. Bede says that Peter is not Hebrew since the letter "P" in Greek and Latin is derived from petra [rock] and is the same thing with two different meanings because they mean the same thing. Peter says that the prince of the apostles is not called both Peter and Cephas Peter or Cephas. Jerome commenting on the Epistle to the Galatians 252. From the above it is evident that this is why Simon was called

³PL 35, p. 1973. 6 John 1:40ff. ⁴PL 35, p. 1444

⁷PL 26, p. 366.

⁵PL 92, p. 22.

⁸PL 90, p. 141. The letter P is discussed by St. Jerome (PL 12, p. 892).

translated into Hebrew as Petrus. Greek translation and not the reverse; namely, that Cephas is Greek seems that Cephas is either Syrian or Hebrew and Petrus its Latin or Rabbi and Messiah, and immediately adds a translation.9 And so it down two Hebrew words directly above in the same chapter - namely, be proven from the text of the first chapter of John because John puts and thus Petrus is a Latin and not a Hebrew name. And this seems to Ambrose, and other doctors, we should hold that Peter is from petra, the text, "Thou art Peter and upon this rock," like Augustine, Cephas is not Hebrew but Syrian. However this may be, in discussing super Joannem says that Jerome says the same thing. And some say that

"head," which would make Cephas a Greek word. 10 2] Sacrosancta of D. 22 where the term, "Cephas," is interpreted as the church or house by Christ. This is what is said in the chapter [c. explanation of the saints who say that Peter was constituted as head of Gospel and the intention of Christ according to that Gospel and the mean in Hebrew, "the head of the house." And this meaning fits the the way that we pronounce "p." In this interpretation Peter would expressed with a strong hard pronunciation of the first letter, "b," in so among us is put down as "pet" because the Hebrew "bet" is to say that the [Latin] name Petrus comes from the Hebrew bet-ros and to Simon fits that meaning. Therefore it would perhaps not be absurd translation of the name, Peter, to show that the name that Christ gave John the Evangelist wrote his Gospel in Greek and thus made his own Jerome gives in his work on Greek names. There is no doubt that should also have this meaning and not the other translations that St. kephe in Greek is translated as caput [head] in Latin, the name, Peter, name, Peter, is the translation of the name, Cephas. Therefore since noted. The text of chapter 1 of [the Gospel of] John says that the And while I write this, one thing occurs to me that should be

into consideration: Peter is named first in the first chapter of the Acts third book.11 However I do not deny that a final point is to be taken believe those letters of Anacletus are apocryphal, as I say below in the Anacletus, I think we should rather stay with the first doctors since I 254. But despite what is said in Sacrosancta, which is attributed to

> although all the apostles were rectors, pastors, and vicars of Christ, as to him in particular as the first of the apostles and their head. Hence of the Apostles because he is the head, and as such he proposed that whole church and his pastorate was commanded in the words, "Feed keys were promised and given to him as the representative of the that Peter possessed the primacy by more abundant grace because the is sung in the Preface of the feastday Mass of any of them, neverthethe commands of Christ be carried out which Christ had committed less in that pastorate, rectorship, and vicariate, the holy doctors affirm

and principal apostle among the others, immediately after the ascension of Christ Peter began to exercise command in every assembly of 255. But since he had been given that pastorate chosen as the first ning of the seventh book of his Histories.14 And the commentators on of Babylon acted, as Paulus Orosius declares at length at the begindaughter of old Babylon. For Rome acted precisely as the monarchy whom I have read, that Babylon was Rome because it was the you."13 And according to Jerome and Bede and all the interpreters conclusion which says, "The church which is in Babylon greets then in Rome where he wrote his first epistle, as is evident from its was bishop of Antioch as appears in the second chapter of Galatians; the things that someone in the rank of bishop does. And after that he it is clear that Peter was the first bishop of Jerusalem because he did ters 1, 2, and 3 and in Luke, chapter 6. Similarly in the same passages at Jerusalem as the first among the apostles, as appears in Acts, chapfirst showed that he was the vicar of Christ by teaching and baptizing the faithful in the way that rulers are accustomed to do. Hence Peter Rome. But this is not on our subject. the Apocalypse often write that the kingdom of Babylon is that of

after writing this volume seems to say in a certain place in the second 256. Although a certain Marsilius of Padua whose work I have seen Peter, as the doctors explain. And none of the holy doctors up to this it for us to say that this is false on the basis of the aforesaid epistle of that Peter was bishop of Rome, or that he even was at Rome, 15 suffice part [of his book] that it can not be proved from the canon of the Bible

⁹John 1:38 and 1:41.

¹⁰ As John 1:42 clearly states, Cephas is Hebrew for rock (Pera in Latin).
¹¹ Nevertheless, Anacletus' letters are cited in Book II, nos. 118, 140, and 261, as well as in Book III, nos. 307-309.

¹² Acts 1:13 and John 21:17.

^{13 1} Peter 5:13. 14 PL 31, pp. 1062ff.

¹⁵ Marsilius, The Defender of Peace, D. 2, c. 16 (trans. Alan Gewirth), New York, 11, 1956,

contradict. loved."17 Note that this is the opinion of St Jerome whom we can not as not to provide a reason for envy of the young man whom he to them, 'My peace I give unto you, my peace I leave unto you,' and who was a virgin? Deference was given to age because Peter was 'whoever wants to be greater among you, let him be the least of all' so have eliminated any possibility of contention among the disciples said placed over men who were adults. Also the Good Master who should older. Otherwise an adolescent - a mere boy - would have been possibility of schism might be removed. But why was not John chosen was chosen among the twelve so that by establishing a single head the the strength of the church is confirmed equally in all. One, however, apostles and they all receive the keys of the kingdom of heaven and founded on Peter although in another place it is founded on all the was founded on Peter, not on John, St. Jerome says, "The church is Jovinian, when Jovinian says in opposition to virginity that the church what is said above. For example, in Book 1 of his work, Against writings are approved by the church. But approved doctors agree with see there first, and that it is joined to Christ through him, 16 and I think that on this point no Catholic can disagree with the holy fathers whose Roman see goes back in unbroken succession to Peter who held the second book of Against Parmenianus that there is no doubt that the Roman pontiffs in their writings, begin with Peter. Optatus says in the time has ever denied this. For instance Alypius, Augustine, Optatus of Milevis, St. Jerome and all the others who have given a list of the

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From this we conclude that Peter was established by Christ as head of the apostles with authority over them – notwithstanding the fact that the church was equally founded on all the apostles. And when he IJerome] writes to Pope Damasus concerning his faith he says that Peter's see was in Rome – "This is the faith" and below "Thou who holdest the faith and see of Peter." To the same effect see Cyprian in [C.] 24 q. 1 [c. 18] Loquitur; Gregory in D. 50 [c. 53] Considerandum, and Ambrose in the same Distinction [c. 54] Fidelior, Clement in D. 80 [c. 2] In illis; Augustine in [C.] 2 q. 7 [c. 35] Puto. It

Opuatus of Milevis, De schismate Donatistarum, c. 2 (PL 11, p. 947).

18 St. Jerome, Contra Jovinianum, 1, 26 (PL 23, pp. 258ff.).

18 Gratian's Decretum attributed this to St. Jerome, but it comes from another collection (Kallen, DCC, p. 299).

is not necessary to quote their writings for the Catholic church has never dissented from this opinion.

spokesman and the head of the apostles and of the church and proa supremacy over, but within, the church. Hence although he was the above as well as Ambrose in D. 50 [c. 54] Fidelior and the other other apostles indeed have the same power of judging since he said to doubted because the power of judging in spiritual matters is the same of penance or in the distribution of sacraments. There is no doubt on in superiority in the power of binding and loosing [either] in a matter 257. But the governing power that belongs to Peter does not consist and our head, all the faithful since they are sons of God by regenerain their ordination to that true life and truth [who is] Christ, the Lord church, and in Acts, chapter 8, allowed it to send him to Samaria. For he arose in the midst of the faithful and spoke with reverence for the posed actions in its name, as in the first chapter of the Acts, and spoke doctors referred to above. Therefore that supremacy of Peter was not named by and for the church, as Augustine says in the place quoted greater than the church by reason of his primacy because he was many passages are quoted above on the same point. Nor was Peter them after the Resurrection, 'Receive ye the Holy Spirit' "19 And passage in Matthew [ch.] 16, "Whatsoever you shall loose." "The through the intermediary of the priest. Thus Jerome says on the for all bishops as it was for all the apostles since it comes from Christ although by divine intention a superiority in grace continues within in this respect, there is a brotherhood of the faithful in Christ, is one who is your Master," Christ, and "you are all brothers." Hence tion in Christ are only brothers because there is no master but Christ the latter point, and the earlier point set forth above is not to be himself. See Matthew 23, "Do not call one another, Rabbi. For there for it, as in Acts 2, he was no less subject to it as a member. Therefore that brotherhood.

258. Hence although Peter might have been the first apostle as explained above, that primacy did not contradict that brotherhood of the apostles in the church. For Peter was no more a son of God than any other holy apostle although he might have been given more abundant grace. And we should note the letter of Pope St. Gregory on

¹⁹St. Jerome, as quoted in the Ordinary Gloss to Matthew's Gospel

true bishop etc.21 all the patriarchs is denied and no longer is any bishop found to be a no universal patriarch because, if it is allowed to say this, the honor of whom all the members of Christ are subject and consequently there is in our head, Christ, who is the pastor of all, and there is no man to begins, Cum praedicator egregius where he concludes that we are all one thing is said in Letter no. 211, written to Anastasius of Antioch, which tiffs, they might appear to deny it to their brethren."20 And the same they seemed to claim a special honorific title for themselves as pon-Pontiff ever claimed for himself this rash title, universal bishop, lest if the members are under one head, Christ." And below, "No Roman what else were they but the heads of individual communities? And all a member of the holy and universal church, [and] Paul, Andrew, John, stars of heaven" And below, "Certainly Peter, the first apostle, was saying but, 'I shall arise to heaven,' 'I shall exalt my throne over the their name in the dust in comparison with your own, what are you of the universal church, but stars of heaven. When with exaggerated language you desire to make yourself superior to them and to trample above the stars of heaven, "For what are your brothers, all the bishops claims this is like Lucifer because he tries to place his throne or see members of the church are subject to him. Rather he says anyone who bishop possesses a power to rule in the church by virtue of which all this subject to Patriarch John of Constantinople in the Papal Register No. 214 which begins, Eo tempore. There he tries to show that no

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259. But as for the members of the church themselves as separate individuals, we see that by more abundant grace the rulership which was necessary to avoid schism was handed over by Christ to Peter for the well-ordered government of the church, as we read in St. Jerome, so that as he was the first among the individual members, he might also be the servant and minister of all; [this is] because if Peter receives his name from petra on account of the church, and the church is nothing other than the union of the faithful in the church, rulership exists for the sake of the unity of the faithful in order to avoid schism. Therefore it is for the service and preservation of the unity of the faithful that rulership over individuals exists. From this the union of the faithful which we call the church, or the universal council of the Catholic church representing it, is superior to its minister and

²⁰ Papal Register, v, 44, and Krämer, "Die Brüsseler Handschriften" (see II, 21, no. 4).
²¹ Papal Register, v, 41.

individual ruler. And so I understand the words of the Savior in this way – that he [Peter] should be the greatest of the apostles considered as individuals, but the minister of all of them collectively, as comprising the church. I do not mean by this that the presiding curate is absolved from a special ministerial care of each of those under him, but although he is the minister of each one he remains the superior of everyone in the exercise of his power of pastoral care – although as explained above, he is not superior to all collectively.

it is voluntary, not forced."22 And Chrysostom in chapter 3 of the that some have preached that freedom is common to all in Christ. Augustine writing on the last chapter of the First Epistle to Timothy, converted to better things by agreement not by force."23 And second book of Dialogues says, "But in the church, one should be Ambrose says, "Faith does not permit domination and coercion since your faith but we are your helpers," on which the Gloss by [St.] first chapter of 2nd Corinthians: "For we do not lord it over you in purpose of ministerial care. This is proved by a quotation from the established in the church by God in a coercive fashion but for the 260. Also as touched on above: the power to rule is not rooted and properly founded in freedom and not in coercion. able to Christ. Therefore in its basis from Christ all spiritual power is who comes of his own free will and not under compulsion is acceptquotations could be given, [but] it is sufficient to know that only one This is true of spiritual freedom but not of physical freedom."24 More beginning "Whoever are under the yoke" says, "It should be known

unity in order to prevent schism, unless an ecclesiastical ruler has some coercive power – although not the domination that princes exercise – unity can not be rightly preserved. For the rotten member and foot should be cut off and the eye that scandalizes torn out of the church if the body of the church is to be kept healthy. Therefore that coercion will not be like that which princes exercise because their way of ruling is by force on the body and over property. It will be a coercion based on the free subjection of all or a majority, and punishment will only be imposed when it works for the salvation of those punished. Therefore Pope Anacletus and others noted above say that

^{22 2} Corinthians 1:23.

²³St. John Chrysostom, De Sacerdotio, II, 3 (PG 47, p. 634).

²⁴St. Augustine in Gloss on 1 Timothy 6:1.

they are not constrained by Christian or natural law beyond the limits Christian men proper procedure requires their free subjection since or commanding, for it to operate externally to restrain or compel free "all power is from above,"26 whether coercive, domestic, restraining tacit or express consent of the community. Hence it is said although from the approval of the subjects and derives its strength from the subject themselves to their ruler by election. Hence on this basis it is often said above that the coercive power of a ruler or a law comes their election and consent. For those who before were completely free And so the coercive power of a superior over his subjects is based on Christ established Peter as the head with the consent of the apostles. 25

bishop of Trier were elected as ruler and head by the church gathered together, he would more properly be the successor of Peter as ruler ruler or judge of all the others. Therefore if, for instance, the Archtatives of all the others I would not believe that he was the leader or he had the elective consent to their subordination from the represenin that great city and the occupant of the great see of Peter, yet unless world, is venerated as the most illustrious and distinguished authority of Peter or as the principal city among the other bishoprics in the Hence although the pontiff in Rome, whether because it was the see mon consent of the church similar to that of the apostles to Peter. cessors -, has had or should have it, except with the aforesaid comthe [patriarchs] of Antioch or Jerusalem since they are also his sucsacred writings that therefore the Roman pontiff, his successor - or even if Peter definitely had that rulership, we do not read in the can still not be proved to be the ruler of the church for all times. For would be obliged to obey the divine command), the Roman pontiff obtained the consent of the faithful (in which case all Christians miracle or sign that God wished someone to rule before he had on this basis - which I believe to be true - unless it appeared by some authority by men from among men. But it is quite clear from this that them because of having given them our consent as established in established by the consent of their subjects. We are obliged to obey the mediation of human consent. For legitimate superiors are those ecclesiastical or spiritual rulership was established by Christ through 262. In this way, I attempted above to argue further that every

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²⁶Romans 13:1. ²⁵See no. 254, where the letters of Anacletus are declared to be apocryphal.

> this at greater length above. succession in rule, as is demonstrated by the cases of Antioch and way. But succession in a geographical location does not argue to Roman pontiff will never lose the see of Peter and the rulership in this than the bishop of Rome - although we should believe that the the episcopal see of the city of Rome ceased to exist. I have spoken on Jerusalem, and that rulership would not cease in the church even if

power as Christ. survival. Prelates have all power of binding and loosing because they 263. And it is evident that the church has the power freely to choose hath sent me," etc. Thus it appears that as Christ was the true Son of from the words of Christ in the 20th chapter of John, "As the Father its head, since it has received from Christ everything it needs for its mission from Christ. Hence the church has the same missionary God, so the church which is the Mystical body of Christ has a similar have been sent by Christ as Christ was sent by the Father as is evident

other side that it exists only by the election and consent of men and coercive rulership in the church comes only from God, and on the church is established in its reality by Christ through the church for 264. And so I adhere to the conclusion that the primacy in the one should accept those of more learned men. For Ambrose says, the church, are correctly harmonized in this intermediate position. its service. And in my judgment the arguments on the one side that the purpose of church unity and is intended by God as a ministry for considered as more true than those of Marsilius of Padua in his book, this opinion is less offensive to the church and therefore should be as he writes in the 33rd letter to Sabinus. 27 Nevertheless I think that formed offspring, and thus his shameless words please their author," "One's own writings deceive. They are heard with delight like illand he answers all arguments to the contrary by saying that we are not opinion on the basis of the text of St. Augustine in D. 9 [c. 5] Ego solis, church has approved [the writings of] the doctors as acceptable. based on the canon of the Bible. This is a pernicious opinion after the bound to accept the authority of the doctors except insofar as they are The Defender of Peace [Defensor Pacis], since he can only defend his But I assert none of my ideas so firmly that I would not say that

²⁷ PL 16, p. 1195

Hence we should abandon such presumption and follow the texts in

D. 12 [D. 11] [c. 5] Ecclesiasticarum and other things said there. As noted above the arguments of Marsilius [on the lack of biblical foundation for papal primacy] are not true, for when the doctors speak of the primacy of Peter they base their discussion on the words of Christ that are contained in the canon of the Bible and not on other historical accounts concerning Peter – although these too should not be denied, for the saints believed that they were true, as letter 76 of Ambrose to Auxentius concerning the handing over of churches, proves. 28

superiors do not exercise their power for the purpose for which their pastoral rule was established and their subjects do not loyally obey their superiors as their status demands, we have felt obliged to speak of the canonical rules by which the holy fathers maintained the concordance between rulers and their subjects. Therefore we had first to discuss the council of the Catholic church which has supreme authority by consent of all to establish and regulate whatever leads to salvation; then we spoke of other particular councils, and after that of the reforming canons which have now been issued so that this holy what it does, modeling itself on the teaching of the holy fathers and the statutes of the sacred councils.

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267. And this is the comprehensive summary of Books I and II, subject to any correction, delivered in writing, however confused and rough, for the sole purpose of providing an incentive for further study by those concerned.

End of Book II
²⁸PL 16, p. 1053.



BOOK III

PREFACE

discipline exists to supply what nature lacks.3 existence and self preservation. On this basis Aristotle concludes in exist, it possesses inborn faculties designed for this purpose -- instinct, requirement of essence is that it exist. Therefore for any essence to that various means are implanted by natural instinct for the purpose of appetite, and reason. Hence it happens in different ways in nature to preserve its physical existence and its life, to avoid what would be regimes. 1 Natural laws precede all human considerations and provide written about well-ordered political, economic, and monarchic should look to the principles on which they are based - those of the last chapter of the seventh book of the Politics that every art and the first book, third [fourth] chapter of De officiis.2 For the first harmful and to secure what is necessary to it, as Cicero concludes in the principles for them all. First, nature intends every kind of animal Aristotle, Plato, Cicero, and all the other philosophers who have foundations that are both necessary and useful for our purpose, he If anyone should care to trace out from the beginning the

269. But from the beginning men have been endowed with reason which distinguishes them from animals. They know because of the exercise of their reason that association and sharing are most useful – indeed necessary for their self-preservation and to achieve the purpose of human existence. Therefore by natural instinct they have joined together and built villages and cities in which to live together. And if men had not established rules to preserve peace, the corrupt

The classical authors cited in the preface are taken without acknowledgment from Marsilius of Padua, Defender of Peace (1324), a work condemned by the church for its attacks on the pope, but widely read—see Paul E. Sigmund, "The Unacknowledged Influence of Marsilius of Padua on xvth Century Conciliarism," Journal of the History of Ideas, 23, 3 (1962), pp. 392–402.

²Cf. Marsilius, Defender, 1, 4, 2.

³ Marsilius, *Defender*, 1, 5, 4; 1, 7, 2. Marsilius uses a different order of the books of Aristotle's *Politics* than in modern editions.

power necessary to provide for the public good.4 and adopted laws with the common assent of all to preserve unity and harmony, and they established guardians of all these laws with the human life. For this reason cities arose in which the citizens united desires of many would have prevented this union from improving

grows wild."8 after the quotation from Calanus' letter to Alexander, "The unwise pruned vine brings forth fruit; cut back, it flourishes; neglected it man is like a farm; the man who lacks sense is like a vine." "The to preserve themselves, as appears in the eighth letter of Ambrose Aristotle concludes in the first chapter of Book 1 of the Politics. a political and civic animal naturally inclined to civilized life. Hence considered most unfitting by the philosophers. For we see that man is the ignorant and stupid so that they readily trust the wise to help them the weightier part ought to act for the remainder of the polity, as that a natural appetite would be frustrated in many cases which is from the right way appropriate to the time. Otherwise it would happen majority of the populace, citizens or illustrious men will not depart discussed that concern the preservation of the commonwealth, the as it is asserted in the preceding Book that according to St. Cyprian from the true law,6 so also when by common consent matters are Christ has promised that the majority of the priesthood will not depart of the wise and illustrious and the agreement of the others.5 For just adopted with the common consent of all - or at least with the consent beneficial to them and that social life would be maintained by laws infused in all men, they knew that associating together would be most But Almighty God has assigned a certain natural servitude to It was clear that by a marvelous and beneficent divine law

But long before, David said, "The fool is changeable as the moon." have concluded that the wise man is free and the stupid man a slave. letter, immediately above, "With profound argument philosophers 272. On this subject Ambrose writes most elegantly in his seventh

compulsion and better if freely chosen, since good is more and since he had said he should live by the sword, he took away his certain wise men act as guides for the unthinking people. They conslave of his brother so that he would be guided by his counsel. And so in his efforts. Therefore his loving father deliberately made him a control himself and unless he had someone to direct him he would fail slave as a remedy for his ignorance because the foolish man can not make a slave, but ignorance, nor does manumission make one free, gave him the blessing of a voluntary subjection. For nature does no meritorious when performed freely rather than out of necessity be converted. Servitude can be by choice - it is less worthy if by brother over him so that subject to his moderating influence he migh liberty so that he would not perish in his recklessness. He placed his Therefore he put a yoke on the foolish one as if he were a wild animal unwilling to obey those who are wiser and to submit to the laws through the imposition of their power which they use to compel the trol the ignorance of the people by their own force and rule them demonstrating that ignorance is worse than slavery, that he was to be a blessed him calling on him to serve his brother and be his slave, thus of merit - and gave the one his favor and the other his pity - favoring tion acts out of natural necessity but decisions are made on the basis ment to all? His devoted father was torn between his two sons in because of his wisdom, demonstrate his abundant powers of arguconcluded that they should have respect for their father's age. Did not ren.' And he made his brothers masters over him for they had wisely saying, 'Cursed be Ham: he shall be a household slave to his brethson, Ham, had foolishly laughed at his father's nakedness, cursed him wind of doctrine." And further, "Noah, when he had heard that his not seduced by prosperity nor overwhelmed in adversity. Where there but learning. Therefore Esau was born free and became a slave and Therefore first he placed the yoke of necessity on him, then he also by his own efforts and direct himself to virtue by his own efforts. He the wise one and pitying the foolish one because he could not rise up fatherly affection but he finally decided between them - since affec-Jacob, a fount of all learning, who was preferred to his older brother fortune. He is not changeable as a child nor blown about by every the wise man is constant in spirit; he is not affected by alterations in is wisdom, there is courage of spirit, perseverance, and fortitude. For The wise man is not overcome by fear; he is not changed by power;

The entire paragraph is a summary of Marsilius, Defender, 1, 3, 3

⁵Marsilius, *Defender*, 1, 9, 10; 1, 13, 1ff. ⁶Book II, 4, no. 79. See also Book I, 8, no. 43.

⁷The term "weightier part," is a clear sign of the influence of Marsilius, rather than of Aristotle who simply refers to a "stronger part." See Marsilius, *Defender*, 1, 13, 2 and Aristotle's Politics, IV, 12, 1.

⁸Marsilius, *Defender*, II, 13, 1; St. Ambrose, *Ad Simplicianum* (PL 16, p. 1141).

⁹Ecclesiasticus 27:11 (not Psalms of David).

Joseph who was sold into slavery was chosen to exercise power over those who had bought him."10

man, how law is only imposed on the ignorant, and how because of sin he is compelled by fear of punishment to obey the law, he adds, "Therefore the sinner is a slave of fear, a slave of desire, a slave of seems to himself in this way to be free, he is more a slave than if he were subjected to tyrants. For those who live by law are free. But true law is righteousness. True law is not carved on tablets nor cut in the wise man is not under the law he is a law unto himself, carrying nature."

274. The most excellent and learned Ambrose writes these and other important words in that letter and the one which follows. From this one thing is to be kept in mind – that although the ignorant could not govern themselves and so became slaves of the wise out of necessity, the subjection based on that necessity which resulted from that need was voluntary.

the subjection of the ignorant is harmonized through common laws that have the wise as their special authors, protectors, and executors, and the concurrent agreement of all the others in voluntary subjection. And when a government is so organized, then "it is impossible for an aristocracy, that is a city governed according to virtue" by the wise with the consent of the others for the common good, "not to be well ordered," as Aristotle says in Book IV, chapter 7 [8] of the Politics. 12

276. Legislation ought to be adopted by all those who are to be bound by it or by a majority of their representatives because it should benefit the common good and what touches all should be approved by all and the definition of the common good only comes from the consent of all or of a majority. There can be no excuse for not obeying the law when everyone has imposed the law on himself. "It is not good to adopt good laws and then not obey them," as Aristotle says in Book

¹⁰PL 16, pp. 1130–1132. ¹¹PL 16, p. 1138. ¹²Marsiline Defendant 12, and 14, and 15, p. 1138.

¹²Marsilius, Defender, I, 13, 2. Aristotle (in Politics, III, 7) said nothing about consent as a prerequisite for aristocracy. That requirement was added by Marsilius.

ry, chapter 7 [8] of the *Politics*. And it is also the duty of those who adopt the laws to interpret them. It is necessary for a kingdom to be governed by laws, since men are subject to the passions of love and hate.¹³

277. Therefore it is better for a commonwealth to be ruled by laws than by the best of men, as Aristotle concludes when he discusses this in Book II, chapter 9 [15] of the *Politics*, as well as in Book I, chapter I of the *Rhetoric*. For where laws do not rule, there is no polity, as is stated in Book IV, chapter 4, of the *Politics*. But laws ought to be adopted with great care and prudence based on long experience, as is said in Book II, chapter 2 [5] of the *Politics*.

278. Rulers should act to observe the laws and should rule in accordance with those laws as is said in Book III, chapter 6 [11] of the *Politics*, for law is "an eye from many eyes" and "reason free from passion" as is said in Book III, chapter 9 [15] of the *Politics*. Rulers should not change laws made by the majority which have been accepted by everyone.¹⁴

tyrannical, oligarchic, and democratic governments.15 democracy. And the history books are filled with these intemperate the temperate ones mentioned above, tyranny, oligarchy, and of the Politics. And thus three types of government arise opposite to subjects, it is intemperate, as is stated in Book III, chapter 5 [chs. 7-8] the particular good of the ruler and is contrary to the will of the stated by Aristotle in Books III and IV of the Politics. But if it tends to accordance with the will of the subject is called temperate or just, as is each one according to his rank, when it tends to the common good in exercised by several wise men, or a polity by all at the same time and whether it is a monarchy exercised by one man, or an aristocracy not specific about particulars. And then every form of government [epikeizare] correctly in accordance with the spirit of the law where it is Book IV [V, ch. 6] of the Ethics on justice - and exercise equity prudent - as is said in Book III, chapter 2 [4] of the Politics, and in appears in Book III, chapter 6 [11] of the Politics, he should be may decide matters about which nothing is said clearly in the laws, as 279. While the prince should rule according to the laws, yet since he

¹³ Marsilius, Defender, I, 12.

¹⁴ Marsilius, Defender, 1, 11. (The source of all the references to Aristotle in nos. 277 and 278).

¹⁵ Marsilius, Defender, 1, 15.

founded in Europe. 17 But this is beside the point. him [Treberica] and the ancient histories say it was the first city to be birth of Abraham he founded our city of Trier which is named after able poem on the name of this river - and there 42 years after the with the Moselle flowing by - Ausonius has composed a most admir-Europe and finally chose a dwelling place in a certain pleasant field because she was his stepmother. She pursued him and he went to wife because she was in love with him - which he properly rejected kingdom Trebeta, her stepson, the son of Ninus by another Chaldean came Semiramis, his wife, who, the historians say, expelled from the of Belus, who first took arms because he desired to rule. After him Flood,16 and it was Ninus, the first king of the Assyrians and the son For Nimrod began to be a sturdy hunter immediately after the

voluntary consent for the common good. 18 the senate and consuls and also the emperors, were established by and Eleazar, and in the Roman commonwealth, first the kings then known to all about temperate governments, how Moses and Aaron 281. But it would be superfluous to narrate in this work what is

established over willing subjects, should be established by election, see Book III, chapter 8 [14] of the Politics. 19 monarchical or aristocratic regime, since those regimes must be one to whom a final appeal can be made with certainty. But every know whom to obey. It is bad to have many rulers, for there should be ruling and good order would be destroyed when the subjects do not even if the government is made up of several leading men united in agreement. Otherwise confusion would arise when several compete in 282. There are many reasons why there should only be one ruler,

preferred to one that is established by an agreement to a monarch and established by consent without agreeing on the succession is to be But among the sub-types of this tempered regime, a monarchy that is 283. Among all the types of tempered regimes monarchy is the best.

17 In fact Trier (French - Trèves) was named after the Treveri, the tribe that lived between History, New York, 1928). The poem is Ausonius, Mosella, about the river on which both the Moselle river and the Ardennes. Cusanus' sources are the Gesta Trevirorum, a Chronica, 1, 6-8 (Engl. trans. Charles C. Mierow, The Two Cities: A Chronide of Universal medieval history of Trier (printed in MGSS, vIII, p. 130), and Otto of Freysing,

¹⁸Marsilius, Defender, 1, 9, 2.

19 Marsilius, Defender, I, 17, 2 and I, 9, 4.

everyone with their consent.20 election, by all or a majority or at least by those nobles who represent the will of all for the public good, the best method is to have a new tary monarchy, if the best man is always to rule the commonwealth by Rhetoric. Hence although there are many good reasons for a heredifinally die out, as Aristotle says in Book II, chapter 24 [15] of the successors are still less able, the illustrious qualities of the parents such men are of less quality than their parents' natures and their theless, because as in the case of a fertile field the initial offspring of their posterity to the sometime benefit of the commonwealth, nevernoble men, we read, often have been elected as kings together with harmful to the commonwealth. For although illustrious, wise, and his successors. In the latter type, many things occur that are often

rarely used his sovereign power and conformed to the laws and kept observance of the laws. He should follow the laws, as Aristotle says in over the commonwealth continuously and assure the strictest object of contempt. And so the prince, acting as its heart, must watch commonwealth, although not for petty offenses or his rule will be the with the law in cases of serious crimes which give scandal to the heart does to the body. He should inflict punishment in accordance chapter 9 [12] and Book II, chapter 8 [11], and Book III, chapter 2 [4] the love of the people. Theopompus because he wished to make his kingdom last longer, Aristotle declares in the fifth book of the Politics [ch. 11] that lasting he should not exercise his sovereign power frequently. Book vII, chapter 6 [8] of the Politics, and for his kingdom to be more them, and their teaching should give life to the commonwealth as the to do nothing contrary to the laws. Indeed he ought to be subject to and Book vii, chapters 9 [iii, 15] and 12 [14]. It is the duty of the rulei 284. This seems to be the opinion of Aristotle in the Politics, Book I,

is the mistress of the virtues - see the last chapter of Book v1 of the chapter 4 [9] of the Politics. And "virtue" means the prudence which tasks of government; and third, virtue and justice, as is said in Book v, established constitutional order; second, power to carry out the chief 285. Three things are necessary for a ruler: First, devotion to the sentences against the rebellious by coercive force. Hence the ruler Ethics. But power is necessary in order to execute judicial [civil]

²⁰Marsilius, Defender, 1, 9, 9; 1, 16, 11-17.

²¹ Marsilius, Defender, 1, 16, 13; 1, 18, 2-5; 1, 15, 6.

should have an instrument appropriate for this – a well-equipped army. For Aristotle says in Book vii, chapter 6 [8] of the *Politics*, "It is necessary for those who are in association to have arms because of those who disobey the government," and that power should be so great "that it is stronger than that of any individuals whether one or several together but weaker than the whole" – this is said in Book iii, chapter 9 [15] of the *Politics*. The army should be of intermediate size so that it does not appear to be tempted to dominate the monarch for its own advantage but nevertheless is powerful enough to overcome several or many rebels.²²

286. The punishment which the prince is obliged to impose should be compared to a medicinal remedy for the commonwealth as Aristotle teaches in Book III [II], chapter 3 [2] of the *Ethia*. The ruler should take special care to avoid great inequality among his subjects. Once balance is lost, the polity is destroyed by the disproportionate increase of some. "The body is composed of many parts which should grow in due proportion for" health and "symmetry to remain – if this is not done the body will be destroyed if it increases disproportionately, not only in quantity but also in quality," as Aristotle declares in Book v, chapter 2 [3] of the *Politics*, and in Book III, chapter 7 [chs. 12–13] of the same work. 23

young."24 With this example Augustine teaches us that changes are an older man the same amount that I gave him earlier when he was administered it, it would have helped him. But I would not have given medicine was ineffective, he said, "I said the right thing. If I had "It did not cure you because Vindicianus did not prescribe it." When did not improve. He asked Vindicianus the reason and he answered he was asked afterwards why he gave this reason for the fact that the medicine on his own which had restored him to health earlier but he man grew older and fell ill with the same disease. He used the same by using a medicine intended for the young. After a time the young Vindicianus, an expert doctor, cured a young man of a certain illness example Aurelius Augustine tells us in his letter to Volusian that appropriate to the time and place as the situation demands. For spection, prudence, and experience in order usefully to nurse the alling commonwealth with the medicinal punishments that are And so the ruler must exercise his power with great circum-

²²Marsilius, *Defender*, 1, 14, 8–10.

²³Marsilius, *Defender*, 1, 15, 10–11.

²⁴Augustine, *Ad Marcellinum*, letter no. 138 (PL 33, p. 526).

made in divine and human laws in accordance with the time for the same purpose.

288. Venerable Sedulius [Scotus] in the tenth chapter of his little work, *De Rectoribus Christianis* [On Christian Rulers], describes the principal things that are necessary for a king in these lines –

No structure keeps a fixed form for all time,

If it does not rest on firm foundations,

Neither can temples resplendent with light survive,

Nor the hall of kings remain solid without these. The commonwealth asks of a gracious God,

That it stand on the true foundations of just rule.

The first supporting column shines with the brilliant gleam of truth.

And the second is properly an enduring government. The third is to give generous rewards to merit,

And the fourth to speak sweet soothing words.

The fifth is to repress and attack evildoers with admirable zeal. And the sixth one is strong to celebrate the good.

The seventh is to levy taxes with moderation on the people, But the eighth controls the scales of justice.

The commonwealth endowed with these solid foundations shines

As the mount of Zion, and remains strong with these.²⁵

289. More fine words by wise men could be quoted here if it were our purpose to discuss government at length. But besides what is said above, the most important requirement is that every ruler who is a faithful Christian should model himself on the figure of Christ whom he represents and succeeds. And so let him look to Christ who is truth itself. And let him consider first that he [Christ] is Lord and master, God and man, and thus every government is composed of human and divine elements. For all power is ordained of God – Romans 13. And Augustine is correct when he writes on the passage in chapter 19 of the Gospel of John, "Thou wouldst not have any power over me, if it were not given from above," that the power of Pilate over Christ also came from God.²⁶

290. So also St. Bernard writing to the Archbishop of Sens says, "Christ declares that the power of the Roman ruler over him is

²⁵ Sedulius Scotus, On Christian Rulers and the Poems, tr. Edward G. Doyle, Binghamton, N.Y., 1983, p. 68.

²⁶PL 35, pp. 1942ff.

gentle healer. And it is only necessary for the ruler to follow in his remembered forever. For Christ was under the law. He came not to arily be governed in the best way and the name of the ruler will be footsteps for then he walks in the light of truth and will attain eternal destroy the law but to fulfill it, meek and humble of heart, a most as prince in the footsteps of Christ, the commonwealth will necessto be a ruler and accepts the example of Christ in humility and follows people. And when anyone is chosen and called by Christ the true gate, deigned to come into the world out of love for the salvation of the ambition, or criminal simony, but from the purity with which Christ of men should result from the purest consent, not from violence, or sent when she said, "Be it done unto me according to thy word."28 On this model true rule over the one uncorrupted church or congregation man, of the uncorrupted and unstained Virgin by her own free conwas the true son of the Virgin Mary. Hence Christ was born, God and and comes from God. Rulership also comes from man, just as Christ ordained of heaven."27 Therefore all rulership is sacred and spiritual

291. These words are sufficient now for this, since our principal intent in this work is directed toward determining the "Catholic Concordance." Keeping to that principal purpose, let us investigate in order the things related to this.

27PL 182, p. 832. The references to Augustine and Bernard are taken from Marsilius, Defender, ii, 4, 12.

²⁸Luke 1:38.
²⁹Matthew 5:17 and 11:29; John 1:9 and 3:19ff.

INTRODUCTION

Thirdly, by way of a preamble, we should praise the outstanding qualities of our great and most pious Sigismund, here present, who has been crowned Emperor by the will of God. Like Augustus who refused the title of "lord" and like [the Byzantine Emperor] Basil whose virtues will be described later in his humility, he will forgive me if in my uncultivated style (which although it cannot explain trivial things is devoted to great, indeed enormous matters, without offering

a true argument for the future where there has already been clarity) I sing the praises of the unconquerable living Caesar who rules over me, his humble servant. To presume to praise or please any prince while he is alive lends little credibility, especially when it comes from someone like myself of humble condition.

And now, turning to our subject, we will direct our attention to the holy empire which is established among the Germans – concerning its power, preservation, and the concordance through which it is united with the holy priesthood in a Catholic way. And so, to begin this difficult subject, we should inquire about the structure of this holy empire, from whom it depends, and how it came to be among the Germans. It is appropriate therefore to investigate first:

CHAPTER I

THE BASIS OF ALL LEGISLATION AND RULERSHIP AND ESPECIALLY THAT OF MONARCHS AND HOW IT IS STRENGTHENED. THE CHAPTER SHOWS THAT THE EMPEROR IS HEAD AND RULER OF ALL IN THE CORPORAL HIERARCHY, LIKE THE POPE IN THE SPIRITUAL HIERARCHY.

292. The preceding collection has resolved many disputed questions; it has demonstrated sufficiently that concord gives the greatest force to the ecclesiastical order; and it has noted this among the things that it has recommended as worth remembering. In particular [it has said] that the church of Christ is made up of sacraments, priesthood, and the faithful. The sacraments correspond to the spirit, the priesthood to the soul, and the rest of the faithful to the body, linked in harmony in the one church as a composite unit to the Mystical Body of the one Christ. Certain things have already been said above about the priesthood. In accordance with our intention, we will now speak of the body [of the faithful] which is organized in a graded hierarchical order up to the one Ruler of all, as anyone can easily understand, from the lowest of the simple laity who are like the

¹See Book I, no. 47.

feet, through the governors, counts, marquesses, dukes, and kings, up to the emperor as the head.

IX that is contained at a certain point above.2 the bishops, and proceed with the rest as does the quotation from Leo the kings. But compare the dukes to the archbishops, the counts to among all the patriarchs, so the king of the Romans is first among all subject to the Roman church. And as the Roman patriarch is first subject to the empire that the Roman patriarch has over the bishops that His Imperial Majesty has the same legal power over all those what is written above, and to this basic principle: he should recognize the two powers, but I refer anyone concerned with this question to into detail regarding the similarities and differences in kind between the difference between spirituals and temporals. I do not intend to go the Roman pontiff in the priestly hierarchy, always keeping in mind He is normally said to be the equivalent in the temporal hierarchy of lord over the world who rules over the others in the fullness of power. proper order. And so in this order in the Catholic church, there is one 293. All things that come from God, are necessarily arranged in

²See Book 1, nos. 19–20.

CHAPTER II

THE PROPERLY ORDERED POWER OF THE WESTERN EMPEROR DOES NOT DEPEND ON THE POPE BECAUSE OF A GIFT BY CONSTANTINE, AND THAT FAMOUS DONATION IS APOCRYPHAL AS ARE CERTAIN OTHER DOCUMENTS AS WELL. THE TRUE HISTORIES OF PEPIN AND CHARLEMAGNE ARE BRIEFLY ADDED IN ORDER TO DEMONSTRATE HOW THE ROMAN CHURCH FIRST ACQUIRED TEMPORAL POWER.

294. The basic point that should be established first is that the holy empire itself comes from God. Next we ask whether or not it depends directly from him, and after this where it is located today, whether it was actually transferred by the pope from the Greeks to the Germans

as represented by Charlemagne, and what power is exercised by the imperial electors. Since these questions have been treated at length in a variety of ways by many learned men in recent times, I would have preferred to remain silent. But there is one thing that I cannot pass over. Nearly everyone believes that there is no doubt that Emperor Constantine gave the Western Empire to the Roman pontiff Sylvester and his successors in perpetuity, and that therefore even if the argument about the need for a single ruler – namely, that having two heads would be opposed to good order – were not convincing, it is evident that every emperor in the West must in justice recognize that his empire depends on the pope.¹

there was no doubt that Constantine had the power to make such a donation, although this question has not yet been resolved and probably never will be. But in fact I wonder very much if it actually took place in this way since it does not appear in authentic books or approved histories. I have collected all the histories that I could find, the acts of the emperors and Roman pontiffs, the histories by St. Jerome who was very careful to include everything, those of Augustine, Ambrose, and the works of other learned men; I have reviewed the acts of the holy councils which took place after Nicaea and I find no confirmation of what is said about that donation.

actions of his predecessors at the suggestion of blessed Jerome, and in his work the things that are usually said about Pope Sylvester do not appear.² In some of the histories we read that Constantine was baptized by Sylvester and that the emperor magnificently decorated the three churches of St. John, St. Peter, and St. Paul and gave them large annual incomes from different pieces of land in various provinces and islands for the support of the lamps, balsam, and incense and candles – all of which you will find specifically mentioned in the Liber Pontificalis.³ But nothing at all appears there concerning a grant of temporal dominion or the donation of the Western Empire. It is true that after Aistulfus, the king of the Lombards, occupied the

¹ Nicholas was the first to appeal to historical sources to disprove the authenticity of the Donation. Lorenzo Valla's more famous disproof seven years later was based on style and vocabulary. The reference to the adverse effects of two heads is probably from Pope Boniface VIII's Bull, Unam sandam (1302).

²PL 13, p. 1441.

³Liber ponificalis (ed. L. Duchesne), xxxII, pp. 170ff.

Exarchate of Ravenna and many other places and Pope Stephen II, a Roman by birth whose father's name was Constantine, sent numerous legates to Aistulfus and asked him to return these territories to the empire and Aistulfus was unwilling to do so, Stephen visited Pepin and anointed him and his two sons as kings. Along with Stephen there was a representative of the emperor and they secured Pepin's agreement to persuade Aistulfus to give back the lands to the empire. Pepin sent a request to him but without success. Therefore when he could promised Stephen that he would take them from him by force and give them to the see of St. Peter. When he had heard this, the carried out his promise. And the form of this gift is contained in the territories.⁴

ad verum and similar passages. of King Odoacer etc.; see also D. 63 [c. 21] Agatho; D. 96 [c. 6] Cum quidem proves this when it speaks of a patrician appointed in the name with the other territories in the West. The text, D. 96 [c. 1] Bene earlier had full legal rights over Rome, Ravenna, and the March along 298. Hence we always read that the emperors up to that time and over the Exarchate of Ravenna, the city of Rome, and the West. it is clear that Constantine did not give the pope the [temporal] rule ceremony which is contained in the Acts of Pope Hadrian. 5 From this lands and gave them back to [the see of] St. Peter in a solemn obtain it. Then, at Hadrian's request Charlemagne reconquered the others. Pope Hadrian sent numerous legates to him to seek the restoration of the rights of [the see of] St. Peter but he could not favorably disposed to the Apostolic See. After this in the time of read in [C.] 15 q. 6 [c. 3] Alius and in the gloss on the chapter [Pope] Hadrian, King Desiderius again took those cities and some Venerabilem [c. 34 of Decretals 1 6]. I think that this was why Pepin was France to Pepin after King Louis had been deposed, which one can 297. Pope Zacharias transferred the rulership over the kingdom of

299. And we read that the Roman pontiffs acknowledged the emperors as their overlords. For Pope Agatho writes to the Emperor Constantine who was emperor many years after Constantine I and

⁴Liber pontificalis, pp. 440, 448, 452ff. ⁵Liber pontificalis, pp. 492ff.

called the Sixth Council, that the city of Rome was the "servant city" of that emperor. And Pope Boniface I says to Emperor Honorius that as pope he is to rule the priesthood of the Roman church but the emperor rules over human affairs. And at the end he calls Rome "the city of His Majesty." This text appears in D. 97 [c. 1] Ecclesiae. In conclusion, I have never read anything anywhere which contradicts the fact that the emperor remained in possession of the places listed above until the time of Pepin.

300. And I have not read that any Roman pontiff claimed any legal right for [the see of] St. Peter over those areas up to the time of [Pope] Stephen II. I believe that this is true despite the famous opinion to the contrary which appears in the addition, Constantinus, appended to D. 96 [c. 14], because if this section had not been apocryphal, Gratian would undoubtedly have found it in the old manuscripts and collections of the canons. And because he did not find it, he did not include it. Hence whoever added it later inserted that invented story in this way as an additional title [Palea], in the same way that many other extracts from apocryphal works appear.

301. Also I have found this story in full in a certain book which contains much more than the passage in the selection in the *Decretum*, and examining it carefully, I have found clear evidence in the story itself that it was invented and is false, which it would be too long and unnecessary to insert here now.

302. It is also to be noted that the text [c. 14] Constantinus of D. 96 is taken from the legend of St. Sylvester and the one who put it into the Decretum bases the authority of that text upon the approval of Pope Gelasius in his synod. I ask, does Gelasius' reference in D. 15 [c. 3] Sancta Romana seem to indicate approval? The passage is not persuasive since it says that the author of the text is unknown but that it is read by Catholics and therefore it may be read. Anyone can see what kind of approval that is.

303. For there are many histories of St. Sylvester: one in which this [the Donation] does not appear which St. Damasus includes, another whose author is unknown which the text does not say is true but only that it may be read, and it does not say that the Donation is contained in it. Also the ancient decrees only have the text up to the passage, Item decreta Romanorum pontificorum inclusive, and thus that paragraph

does anyone else that I have ever seen who is approved or named as it confirmed the approved writings, as I have seen myself.7 Neither and the writings which were approved, made no mention of those Pyrrhus and Sergius who said that there was one will in Christ, when histories nor did the synod of Pope Martin which was held against the Fifth Universal Council which listed the books of all the doctors from the history of [St.] Sylvester is not found in those books. Also

author is not known? writings of an unknown author that are called apocryphal when the book.8 Who would not rather believe Jerome who is approved than the whose name he does not know, as appears in chapter 90 of the same Sylvester which Vincent says was translated from Greek by someone present time. These things clearly contradict the book of the Acts of churches and discord in the whole world have continued down to the Arian heresy. And from this time, says Jerome, the pillaging of end of his life by Eusebius, the bishop of Nicomedia, fell into the of Book xxIV that, according to St. Jerome, Constantine cruelly killed 304. I have read in the Histories of Vincent [of Beauvais], at the end his wife Fausta and his son Crispus, and, after being baptized at the

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and others, which begins, "Dixit quidem apostolus." And this agrees and especially in his letter to Glorius, Elusius, Felicius, Grammaticus with Jerome. now be where the imperial seat had been - and no one denies this. granted it to Peter and his successors, that is, that the papal see would says that Constantine departed for Rome, the seat of the Empire, and Miltiades and was a Christian then, as Augustine says in many places argument on that basis against what has been said above, since it only And also if that were a text of Miltiades, there would still be no title of that text is wrong when it speaks of the baptism of Constantine. baptized by Sylvester as is usually claimed, then it is evident that the is clear from the list of Roman pontiffs. And if Constantine was gloss. The truth of the matter is that Miltiades preceded Sylvester as this statement is not that of Pope Miltiades according to a certain in D. 21 q. 1 [c. 15] Futuram and seems to be somewhat opposed to 305. Also the text that is ascribed to Pope Miltiades which appears And it is true that Constantine was emperor at the time of Pope

synod signed by the bishops and clergy and citizens of Rome in which for the holy church, base their position almost completely. writings attributed to St. Clement and Pope Anacletus upon which apocryphal in my judgment as are also perhaps certain other lengthy 307. Also I have seen a decree of Pope Leo [VIII] in the Roman those who wish to exalt the Roman see more than is fitting or proper the Donation of Constantine. 10 Those stories about Constantine are territories are named in the same decree and it makes no mention of Peter by Kings Pepin and Charlemagne and Robert. And all the Pope Leo gave back to Otto I all the territories given to [the see of] St.

when those saints lived they betray themselves as false. where the authentic writings are listed, he will find it to be true that Augustine, Jerome, and Ambrose, as well as the acts of the councils then uses and remembers the works of all the holy fathers up to letters. Furthermore if those letters are compared with the times there is no mention in all these writings of those aforementioned those saints and keeps in mind the time when they were written and 308. If anyone reads carefully through all the writings attributed to

authentic: all the Roman pontiffs and did not include Clement not have known writings which are ascribed to St. Anacletus. 12 How could St. Jerome, was the successor of Peter. And the same thing appears in other ning of Super Canonicis Epistulis.11 The letters also say that Clement epistles of James come first in the Bible, as Bede writes in the beginbefore the death of Peter. And this is one of the reasons why the this, if they had also seen those same letters then or held them to be St. Augustine, Optatus of Milevis and others who composed the list of Jerusalem. Yet it is established that James died as a martyr eight years Peter to St. James who was the brother of the Lord and bishop of Peter, and the writer imagines that he sent them after the death of The letters of Clement say that he was pope and successor of

and innumerable other instances these things can be proved and it would be superfluous to put them down here. the church much later. From what has been quoted in these letters in those letters. Jerome and Damasus say that this distinction arose in The distinction between bishops and priests is also mentioned

311. It should not be necessary to support the divine, praiseworthy,

⁹PL 33, p. 162. ⁸Vincent of Beauvais, Histories, ch. 13 (p. 102). ⁷Mansi 10, pp. 863ff.

¹⁰ Pope Leo VIII's decree is also apocryphal (see Jaffe, p. 3706)

¹² Hinschius, pp. 66 and 75. The letters are spurious

saving in all things the judgment of the sacred synod. write what I have been able to find as true by diligent investigation, tinae in the chapter beginning Romani of [11 9] De Jure Jurando. I only the contrary. See the gloss on the word Constantinus in the Clemenwhile Joannes Teutonicus writing on D. 63 [c. 30] Ego Ludovicus holds since Accursius in his commentary on the Authentica, [Novellae 6] Quomodo oportet episcopos after the beginning holds that it is not valid tion of the church. And there still would be doubt as to its validity would not add any ecclesiastical power to the spiritual teaching funcstantine. Even if it were established as certain, everyone knows it should not argue that it is greater because of the Donation of Con-Scriptures and writings of the doctors. Likewise, it [the papal see] and properly directly from the accepted, certain, and approved Holy Decretum of Gratian. The truth would be derived more sufficiently this kind which were taken from those letters and inserted in the

church is the first see and the highest in power and excellence of all without those writings every Catholic believes that the holy Roman firmed by the acceptance of the church, I would also agree, for even And if all the writings discussed above are to be held as con-

CHAPTER III

THE ROMANS OR EMPERORS. HENRY IV WAS CALLED POPE FROM THE GREEKS TO THE GERMANS OR THE FIRST TO BE CREATED EMPEROR PROPERLY ALONG FRANKS] ALSO HAD THE TITLES OF PATRICIAN OF WITH HIS SUCCESSORS WITH FULL LEGAL RIGHTS BY THE PEOPLE AND THE CLERGY AND SYNOD OF ROME. HISTORICAL REFERENCES ARE CITED ON GENERAL COUNCIL OF BASEL. OTTO I WAS THE FRANKS, ALTHOUGH THEY [THE GERMANS AND THE EMPIRE WAS NEVER TRANSFERRED BY THE PATRICIAN WHEN HE WAS CROWNED AT THE THIS SUBJECT.

of [Decretals 1 6] De Electione. But I confess that I have never read this that the empire was transferred by Hadrian to the person of was the father of the pope in temporal matters, just as the pope was ancient gloss on the chapter [c. 22] Hadrianus of D. 63, as patrician he pope did not involve himself in these matters. Rather according to the was used because he was father [pater] of his country [patria], he held king of France and of the Lombards. And as patrician, a term which after the cities and territories named in the acts of Stephen II became Roman patrician in the legislation and the acts of [Pope] Hadrian. For transfer of the empire. It is also true that Charlemagne is called a anointed Pepin and his two sons as kings - but this did not involve in the approved ancient books. It is true that [Pope] Stephen II Charlemagne, as Innocent III says in the chapter [c. 34] Venerabilem his father in spirituals. Isidore in the ninth book of the Etymologies says the office of earthly judge and was in charge of temporals while the And Charlemagne was chosen as patrician, as appears in D. 63 [c. 22] fashion, there was a need for a patrician to defend all these territories. because several cities put themselves under the legal jurisdiction of the father of Charlemagne, and more territory was added later the legal property of [the see of] St. Peter because of the gift of Pepin, Hadrianus and in the chapter [c. 23] In synodo where he is called the [the see of] St. Peter and their citizens cut their hair in the Roman Still certain writers hold - and it is a very common opinion -

monwealth as fathers provide for their sons. that patricians were so named because they provided for the com-

ceeded him, who was called [Pope] Gregory VII and excommunicated bishops, and he occupied the see until his death. Hildebrand suc-Emperor Henry. was declared pope on the 26th of October, and took the name of had been elected 27 days earlier by certain Roman and Norman Honorius. But Anselm, a certain bishop of Lucca, a city in Tuscany, the representatives of the Romans, Chadelus, the bishop of Parma, Romans. At Basel with the common consent of all and by election of Basel and was crowned, he received the title of patrician of the called many bishops of Italy together and held a general meeting at to him and asked him about the election of the pope. After he had patricians, as we read concerning Henry IV at his coronation in A.D. 1061. For when [Pope] Nicholas II died, the Romans sent the crown And after they were crowned the emperors were usually called

Hungarians. Let us not speak further on this. was located not far distant had been totally destroyed by the royal city and endowed it with churches, after Augusta Magna which Henry I, the father of Otto I, built that city of Basel which means the were other Catholic emperors. It is now precisely 500 years since imperial diadem, is present at the council as Henry was then and as 315. Therefore the present council of Basel is taking place in 1433. Majesty Sigismund, crowned at Rome by [Pope] Eugene with the 372 years after the earlier council at Basel and now His Most Serene

certain histories would have it that at the end of his life as it were, he received the title of "Augustus" from the Roman people² and also "emperor," but "king" and "patrician of the Romans," although And we do not find in those true histories that Charlemagne is called council as well as his sons and Leo after that as the Roman emperors. and also after that down to the time of Otto I, that the Roman pontiffs it is very clear from the acts of the Eighth Council of Constantinople, Nicholas I and Hadrian II recognized Basil who had convened that therefore the empire was transferred to him from the Greeks. Rather about Charlemagne being called patrician, it does not follow that 316. Returning to our main argument - granted what has been said

¹ Isidore, Etymologies, 1x, 13 (PL 82, p. 345). For the Latin text with a Spanish translation, see Isidoro de Sevilla, Etimologías, Madrid, 1982-1983.

²Einhard's biography of Charlemagne (Engl. trans., The Life of Charlemagne, London, 1970) says that he was called emperor from the time of his crowning in A.D. 800.

> and I confess that I have never read of that transfer.³ containing all the letters of [Pope] Hadrian I to Charlemagne and Charlemagne's answers to him and also copies of all the [papal] bulls 3] Alius. For I have seen a large volume in the Cathedral of Cologne after his death he was sometimes called emperor, as in D. 15 q. 6 [c

others. Also Louis the Pious, the king of France, is called emperor in emperor [imperator], as St. Jerome says in D. 93 [c. 24] Legimus. antiquity. For the one who was chosen by the army was called Italy, were customarily called emperors or kings. these examples, those who exercised rule [imperare], particularly in is evidently true of Louis in the same place. And if we summarize all it is proved that Lothar was called emperor and pontiff, and the same D. 63 [c. 30] Ego Ludovicus, and in D. 4 in the chapter [9] De capitulis also I have read that Berengar was called emperor as well as many Especially in the histories the kings of Italy are called emperors and 317. Nevertheless I read that the term, empire, was very common ir

under his control for a long time and then when he had been expelled, themselves. For King Hugo had Rome and other neighboring regions the time of Henry and Otto I, there were great divisions and wars in that the kingship went by succession to Otto I, II, and III and that at insignia of Conrad were conferred upon him. And we know further bed, Henry, the duke of Saxony, was elected king and the royal at the direction and urging of Conrad himself, already on his deathsuccession of kings from Pepin and Charlemagne was ended, and that Alberic occupied the city of Rome. then Berengar, and then Hugo, then Alberic waged wars among Italy and elsewhere, and that now this one, now that one, now Arnulf, We also know that after the death of King Conrad the line of

about what took place from the time of the Emperor Basil, Constancan see many similar things, since he wrote clearly and accurately 319. And whoever reads the history dedicated to Raymond, bishop the time of many of these complex events. tine his son, and his [Constantine's] son Leo, and from Charles the deacon of the church of Pavia who was in the chancery of Berengar, of Elvira in the province of Spain which was written by Liutprand, Bald [Bold] to Otto I. What he wrote is true since he was present at

³The Codex Carolinus now in the Vienna Library (Kallen, DCC, p. 340).
⁴Liutprand of Cremona, Antapadosis (trans. by F. A. Wright, New York, 1930) is Cusanus' source for these and later passages on the German empire in the tenth

temporal matters, as discussed above. just as it has made Odoacer a patrician because he was the king, see declares that no one may use the title, patrician, unless he is the king of D. 63 and to emphasize the special status of the king the synod this reason, he is called emperor and king in the text [c. 23] In synodo it until Otto defeated them and freed it from their control. And for although well after this until [the reign of] Otto many tyrants occupied D. 96 [c. 1] Bene quidam. For a patrician is father of the pope in drew from the empire or was taken away from Pepin or Charles, of [Popes] Stephen II or Hadrian that the city [of Rome] ever withthe time of Otto I had died. And I have not found that from the time emperors, after Berengar, Hugo, Arnulf, and Alberic, and others of that of Germany itself. For this reason their rulers were called the kingdom of Italy and the city of Rome, the kingdom of Arles, and through Otto I, the Germans acquired control by force of arms over In summary then, from the time of Henry I, and especially

selves the power to revoke it, as law 2, paragraph [16] Exacts in [the that they granted it with the provision that they retained for themthe words Item populus, where he says that the statement in [Justinian's Digest 1 2] De Origine Iuris and what follows prove. asserts that the people transferred their power to the emperor means sing [Decretals 1 2] De Constitutionibus, in the paragraph Quis possit at granted to Vespasian is contained in the Lateran church. This is also Code 1 17] De veteri jure enucleando, law 1, paragraph [7] Et hoc, which proved by the statement of Hostiensis in his Summa [Aurea] discusexplicitly set down the power that they gave to Vespasian. What was in Rome the bronze tablet on which the senate and people of Rome 6]. For, [he says], today there still exists in the church of the Lateran retained superiority over him as the Cardinal [Zabarella] notes under transferred their power to the emperor in such a way that they still the heading De aere concerning the chapter Venerabilem [of Decretals adopted by the clergy and people of Rome and the Roman people 321. And note that the synodal decree in D. 63 [c. 23] In synodo was

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322. Therefore since he had been made the victorious king of the Romans and was their liberator and since the Romans were not being protected by the Greek emperor who then lived at Constantinople, they gave their consent that Otto should be emperor. The power to direct the empire comes from the consent of the Romans, as will be shown below. And therefore after Otto was called in to expel the

and is called the protector in the chapter [c. 34] Venerabilem of model of the ancients, just as Charlemagne was once called patrician described with the title of emperor in addition to that of king, on the some power over them for themselves, and this is why they are they (the emperors) returned those territories to the church, they kept was given back to the Roman pontiff. And there is no doubt that when ment of the city of Rome and of the cities once donated by Pepin and accordance with the desire of the Romans. And I am very surprised city of Rome and Italy was acquired by force of arms by Otto in 323. But it would be too long to describe how the rulership over the successors acquired the imperial power deservedly and legitimately. by the consent of the synod, clergy, and people, at that time he and his to obey the laws of St. Peter? And how could he preserve the rights of the men subject to the church how could he constrain them by force Charlemagne and by other kings later, see D. 63 [c. 30] Ego Ludovicus, named emperor along with all his successors, although the govern-And because he was the ruler of the city of Rome and Italy, Otto was 23] In synoda - a text which proves that Otto was king of Italy and of tyrant and was made king of the Romans and this had been confirmed St. Peter for the Apostolic See as he swears to do in D. 63 [c. 33] Tibi that had once been given to the Roman church by the kings of France. the Germans - did not mention that he returned the cities to the pope that Gratian when he speaks of the investiture of bishops in D. 63 [c. [Decretals 1 6] De Electione. For if the emperor did not have power over

324. But for now I do not want to continue on these matters for they are not relevant to the present discussion. Suffice it to have touched on the above.

CHAPTER IV

THE ELECTORS DO NOT DEPEND ON THE ROMAN PONTIFF. THEY ARE NOT CREATED BY HIM NOR DO THEY HAVE THEIR POWER FROM HIM BUT FROM THE COMMON CONSENT OF ALL THOSE SUBJECT TO THE EMPIRE WHO HAVE THE POWER TO ESTABLISH AN EMPEROR OVER THEMSELVES, NOT FROM POSITIVE LAW BUT FROM DIVINE AND HUMAN LAW. IT IS RIGHT AND JUST THAT THE EMPIRE SHOULD DERIVE ITS POWER FROM ELECTION BY THEM WITHOUT PAPAL CONFIRMATION, AND THEY [THE EMPERORS] CANNOT BE DEPOSED BY THE POPE ALONE.

of D. 63 [c. 23] says, although according to the gloss [on that passpower to choose a successor, as the text already mentioned, In synodo, But his son, Otto, received from the synod and Roman people the he was still duke of Saxony and became the first king of the Germans. established by election as king at the command of King Conrad while election of the most excellent senate and the whole army."2 Following this procedure, Henry I, the father of Otto, we read, was 326. Note that it says, "by the election of the senate and army." attained this most high rule by the providence of the true God and the Leo, most reverend Archbishop of the glorious city of Rome: We have victorious and august Valentinian and Marcian in glorious triumph, to when they write to Pope Leo on convening the synod, say, "The by the providence of God. Thus Emperors Valentinian and Marcian election, and then the ruler is truly considered to have been appointed certain place above every well-ordered empire or kingdom is based on Durandus), the last word beginning Item quod obtentum. As is said in a Rescripti Praesentiatione of the Speculum Juris (of Gulielmus on which see Joannes Andreae in his Additiones to the section [II 1] Dejurists hold that they act as electors in the name of the Roman people, in the chapter [c. 34] Venerabilem of [Decretals 1 6] De Electione. The 325. We must discuss further the electors of the empire mentioned

¹ The manuscript of Joannes Andreae's *Additiones* is in the library at Kues (no. 269).

² PL 54, p. 899.

age], he received this [only] for the kingdom of Italy, and the succession was maintained following that procedure down to Otto III. 327. After his death, Henry II, the son of the brother of Otto III, was chosen and this emperor with the consent of the nobles and leaders of both estates, the clergy, and the people, established permanent electors who would carry out the election, acting for all. This was done at the time of [Pope] Gregory V, who was a German and a relative of an earlier Otto. We should not therefore admit that the electors have their power of election from the Roman pontiff, so that if he does not agree they cannot act, or if he wishes to do so he can take that power away from them.

328. Who, I ask, gave the Roman people the right to elect the emperor, if not divine and natural law? For in every kind of government rulers are chosen for their positions in a harmonious rightful and holy fashion through voluntary subjection and consent. For all violence is opposed to law. There is a general agreement among men to obey kings, see D. 8 [c. 2] Quae contra mores, sentence beginning Generale, and the final law [1. 7] of the Code [of Justinian, III 13] De jurisdictione omnium judicum and [see also] the Digest, Quod cuiusque universitatis, law I, para. 2.

329. In chapter 75 of the Council of Toledo in the year of Our Lord, 581, at the time of King Sisenandus, it was decided that when the king died the leaders of the people along with the priests were to establish his successor with the common counsel of the kingdom so that retaining the bond of unity no dissension in the country or people would arise because of ambition. A decree is added that a tyrant who has wrongly usurped authority should be excommunicated; and terrible anathemas and maledictions are imposed.³

330. Thus kings are in Greek called "Basilici" since as bases they support the people in a collective harmony, and this is why bases have crowns. "Tyrants" in Greek are the same as "kings" in Latin; for "tyro" means "strong," and a tyrant is a strong king. Subsequently it became customary to call the worst and most dishonorable kings — those who loved luxury and exercised cruel dominion over the people — tyrants, as Isidore says in Book IX of his Etymologies. They are called tyrants as usurpers of authority who are neither asked to rule nor elected.

³Fourth Council of Toledo – A.D. 671 (Mansi 10, pp. 638–639). ⁴Isidore, *Etymologies*, 1x, 3 (PL 82, p. 344).

arises from elective concordance and free submission. There is in the people a divine seed by virtue of their common equal birth and the equal natural rights of all men so that all authority – which comes from God as does man himself – is recognized as divine when it arises from the common consent of the subjects. One who is established in authority as representative of the will of all may be called a public or common person, the father of all, ruling without haughtiness or pride, in a lawful and legitimately established government. While recognizing himself as the creature, as it were, of all his subjects as a collectivity, let him act as their father as individuals. This is that divinely ordained marital state of spiritual union based on a lasting harmony by which a commonwealth is best guided in the fullness of peace toward the goal of eternal bliss. Since the bases of this divine and human law have been shown above, I will not repeat the discussion here.

divine law does not originate from positive law nor from any man upon whose will the validity of the election depends. This is particularly true of the election of a king or emperor whose existence and power do not depend on any one man. Thus the electors – who were created at the time of Henry II by common agreement of all the Germans and the other subjects of the empire – derive their basic authority fundamentally from the common consent of all those who could by natural law have created the Emperor [and] not from the Roman Pontiff who has no authority to give any region in the world a king or emperor without its consent.

virtue of his position as pontiff of Rome who has the right to participate in accordance with his rank in expressing his consent to the common emperor. So also in universal councils, the pontiff as the one in the first rank rightly participates in consenting, along with all the others attending the same council. The force of the decree depends, however, not on his consent as chief pontiff of all, but on the common consent of all, both the pope and the others. The fact that in setting up a king or emperor the consent of priests as well as of laymen must be obtained is not because the kings have the right to rule the priest-hood for we know that the priesthood is like the sun and the empire the moon, as is said in the chapter [c. 16] Solitae, of [Decretals I 33] De

majoritate et Oboedientia, but because the temporal possessions of the church without which the priesthood cannot survive in this perishable life are subject to the empire and its laws, as Augustine says in D. 8 [c. 1] Quo Jure and [c] 23 9. 7 [c. 1] Quicumque.

says in the chapter [c. 34] Venerabilem of [Decretals, Liber Sextus 16] De notes in his gloss on D. 93 [c. 24] Legimus and [Pope] Innocent [III] receives full power by virtue of that election, as Joannes [Teutonicus] who are under imperial authority including the entire priesthood and election by virtue of a general delegation of authority from all those imperial rule. therefore he has the power to command which is the essence of is that having been elected he has received the submission of all and jurande] in the Clementine decretals [11 9 De jure jurande]. The reason does the gloss on the word reges and the chapter [c. 1] Romani [De jure 40] De Verborum Significatione, the chapter [c. 26] Super Quibusdam, as Electione and this is established, as Hostiensis notes in [Liber Sextus, v the Roman pontiff. There is no doubt that the one who is elected whereby these electors were established. The latter carry out the fact at the beginning the Roman pontiff consented to the arrangement bears the chief responsibility for the priesthood. Thus I believe that in king. Therefore this is of particular concern to the Roman pontiff who priesthood ought to participate in consenting to the election of the 334. The one responsible for the protection of the interests of the

[imperandi] the army. The anointing and coronation which, we read, is also accorded to other rulers does not prove that the pope has the power to confirm or annul the emperor's election, nor does it demonstrate his supremacy over the empire in temporal affairs; just as nothing of that sort is involved in the anointing of the king of France at Rheims or in the coronation of the emperor himself by the Archbishop of Cologne at Aachen. This is clear from the fact that Otto I was invested as king of Germany and of the Franks by Hildebert, Archbishop of Mainz, at Aachen by the wish and consent of the rulers and all the people of Germany, Saxony, and France. We also read that at the death of King Conrad, Henry I was anointed and crowned by Herger, the Archbishop of Mainz, with the consent of all, and that when he received the diadem he was unwilling to be anointed since he said he was unworthy.

336. Thus it is clear that anointment and coronation in no way add

to imperial authority; for these insignia are added to the ceremonies as a way of symbolizing to the visible material subjects of the empire the sacred majesty that is inherent in the emperor as signs of the reverence with which his power is to be regarded. We know that similar ceremonies are carried out in the case of the Roman pontiff, and yet immediately after his election and before they take place he becomes pope. The title is changed when the pope crowns the emperor – he is called king beforehand and emperor afterwards – but this is no proof that previously he had less governing power, and this is well known. And so when he had full power to rule, he was really emperor even if he did not carry the title. However this title is reserved for this solemn occasion, so that the ruler may desire to be crowned.

337. On the coronation with the imperial diadem and other ceremonics, see the gloss on the word vestigiis in Romani in the Clementine Decretals [11 9 De jure jurande]. As Isidore says in Book IX of the Etymologies, at a time when army commanders were using the title, imperator, the senate decreed that this should be the name of Augustus Caesar alone and that this name should distinguish him from rulers of other nations. Accordingly, the Caesars have to this day assumed this name for themselves, particularly from the time when they are crowned with a diadem by the bishop of the Romans from whom [i.e. the Romans] the Roman power to rule [imperium] is derived.

writers, it may be sufficient for us to recognize that our imperial electors, when they elect the emperor by virtue of the united common consent of all who are under the empire, do this because all have agreed to transfer their power to them – and that agreement included the Roman pontiff, Gregory V. It follows that the emperor is created by election without confirmation by anyone – just as in electing a pope, the universal authority of the church is rightly transferred to the cardinals by the common consent, tacit or sometimes express, of all, and therefore the pope is elected without confirmation by anyone.

339. Just as elective authority is given by agreement to certain rulers in the two estates so, since an equivalent authority should have the right to take away this power, I do not believe that the Roman pontiff alone can withdraw this power from those princes but when the consent of both the Roman pontiff and of all the others concurs, there

is no doubt that this power can be taken away from them. It is the common opinion of all the experts on the subject that the Roman people can take the power to make laws away from the emperor because he derives his power from the people.⁵ Thus we read that when the Roman people, ruled for a long time by kings, could no longer endure their haughtiness, they created annual rulerships and two consuls, and also dictators and other arrangements that seemed to suit their governmental needs at the time.

⁵There continued to be disagreement among the Roman lawyers as to whether the transfer of power described in Justinian's Code (1, 17 De veteri jure) was revocable or not, i.e., whether power had been conceded (concessio) or transferred (translatio) by the people to the emperor.

CHAPTER V

THE EMPEROR RECEIVES SUPREME EARTHLY POWER FROM CHRIST AND ACTS AS HIS REPRESENTATIVE. THEREFORE HE IS CALLED THE MINISTER OF GOD AND THE VICAR OF CHRIST FOLLOWING THE EXAMPLE OF CHRIST IN HIS RULE OVER ALL NATIONS.

ment that is proper to the empire. First, we assume something that is generally accepted – that by its nature the imperial majesty is independent, first in rank and supreme, and distinct from the spiritual power of the priesthood, see D. 96 [c. 10] Duo sunt, and that it is derived directly from God, see D. 97 [c. 1] Ecclesiae meae, and is over everyone, see [C.] 7 q. 1 [c. 41] In apibus; [C.] 11 q. 1 [after c. 36] para. Hic [Haec] si quis at the word volumus. He [the emperor] is the prince and ruler of this world and all things are in his power, see D. 13 [D. 8] [c. 1] Quo jure; [C.] 24 [23] q. 8 [c. 21] Convenior; [and] D. 63 [c. 30] Ego Ludovicus. The pope is not superior to him with respect to those imperial rights, see [C.] 23 q. 1 [c. 7] In summa; [C.] 2 q. 7 [c. 41] Nos si; and D. 9 [D. 10] [c. 9] De capitulis. And what has been written above argues for this as do D. 96 [c. 6] Cum ad verum, and many singular passages in which he was honored by the pope and

the council, see [D.] 63 [c. 2] Hadrianus II and the chapters In synodo [c. 23] and Reatina [c. 16]. Also the pope often calls him his lord and honors him as such, see D. 97 [c. 1] Ecclesiae meae, as was clear in the case of Pope Agatho when he wrote to Constantine [III] that after God he was the common father of all in the Authentica [Novellae 98] at the end of collection 8 [c. 2], Neque virum quod ex dote est.

341. Many legal provisions as well as other writings could be quoted. But it is his high privilege that he is the minister of God, as Paul says in Romans 13, and he acts as the vicar of Jesus Christ on earth as Pope Anastasius says writing to the emperor, "Your merciful heart is a sanctuary of the public good. Thanks to you whom God has commanded to act as his vicar on earth, unyielding pride does not resist the evangelical and apostolic commands, and the precepts of salvation are obeyed." Note that the Christian emperor by virtue of his rulership is the vicar of Christ, the King of kings and Lord of lords.

342. Hence just as Christ is king of kings so all kings have something of the divine in their governing power and therefore reverence and obedience are due them. But when they order something contrary to a divine commandment it is evident that the command does not share in the divine rulership, and so one should not obey it, see [C.] 11 q. 3 [c. 94] *Julianus* with the other texts located there and D. 10 in its entirety. And so he [the emperor] is first over all other princes because he rules in subordination to Christ, victorious and triumphant, and subjects himself by faith to Christ and his laws. Therefore the Christian empire is higher than all other governments because it is the one closest to God.

Hinschius, p. 654.

CHAPTER VI

THE POWER OF THE EMPIRE EXTENDS TO THE AREAS THAT ARE SUBJECT TO IT, AND OBEY IT. ALTHOUGH THE ROMAN EMPIRE NEVER INCLUDED CERTAIN PROVINCES AND KINGDOMS NAMED IN THIS CHAPTER, THE EMPEROR IS CALLED THE LORD OF THE WORLD BECAUSE HE RULES THE LARGER PART OF IT. IT IS RIGHT FOR HIM TO HAVE THE HIGHEST POSITION OF ALL RULERS BECAUSE HE MOST NEARLY RESEMBLES CHRIST WHO REIGNS THROUGH FAITH.

the great desert of Libya and Mauritania. Troglodytes, and Nubia, a very large area, and others located beyond Persian Gulf towards the Indian Ocean, and the region of the Ceylon, the largest island of all, and southern Arabia beyond the the parts of India located beyond the Indus and Ganges Rivers, and Persian desert towards India and the East, Arachosia [Pakistan] and Himalayan Mountains, and the Kingdom of China, as well as the Scythia, and Norway, and the areas beyond the Caspian Sea and the the Caspian Mountains and the gates of Alexander in northern their rule. They did not rule all of it for they did not gain control of from the fact that the Romans had the greater part of the world under their valor, as the text [C.] 28 q. 1 para. Ex hiis says, deriving that title the world as ruler of the empire that the Romans once conquered by And following this we should say that the emperor is said to be lord of kingdom of France and the Lombards who were his de facto subjects. himself as emperor, he issues commands only to the inhabitants of the the text [D. 63 c. 30], Ego Ludovicus, where although Louis describes beyond the territorial limits of the empire under him, as is evident in 343. We should note that his power to command does not extend

344. These regions, it appears to me from the Cosmography of Claudius Ptolemy, make up no small part of the world – in fact, almost half of the inhabitable land. India alone is said to contain nine thousand walled villages. Scythia also has a very large population

See Elwood Luther Stevenson (trans. and ed.), The Geography of Claudius Ptolemy, Nev York, 1932.

although it does not have cities. Nubia and the regions of the Troglodytes which are beyond the circle of the solstice where shadows are cast in both directions [at different times of the year], and the island of Ceylon are not so heavily populated because of the extreme heat nor are Norway and the outer parts of Scythia because of the cold, but there are great kingdoms there.

345. The Troglodyte region contains the empire of the Negus John whom we call Prester John who is said to be a Christian and a most faithful deacon with seventy kingdoms subject to him.² But I think that those kingdoms are not very populous or large.

346. But no part of the world is as heavily populated as Europe in proportion to its size since it is not one fourth as large as Asia nor half as large as Africa. It starts at Constantinople and extends to Cadiz near the Pillars of Hercules [Gibraltar] beyond Spain. The city of Rome is situated in its western part so that it is called the Western Roman Empire and is said to be over the whole world because the

nations subject to it include the majority of mankind.

347. But now we see what has become of that famed empire. And so we should say that if the Romans had a legal right to their monarchy in the way described, the emperor to whom their power has been transferred is lord of the world by legal right. However if rulership is only rightly possessed through the elective agreement of the subjects as argued above, then he is only lord over those who are actually subject to him and we should conclude that the emperor is lord of that part of the world over which he exercises effective authority.

CHAPTER VII

THE HIGHEST RESPONSIBILITY ENTRUSTED TO THE EMPEROR – THAT BY VIRTUE OF WHICH HE IS OVER THE OTHERS – IS HIS ROLE AS GUARDIAN OF THE ORTHODOX FAITH. HE IS THE EQUAL IN HIS SPNERE OF THE POPE BECAUSE THE FAITH HAS BEEN ENTRUSTED TO HIM AS ITS GUARDIAN IN THE SAME WAY THAT ITS STUDY AND TEACHING ARE ENTRUSTED TO THE PRIESTHOOD. HE ACQUIRES THIS HIGHEST POWER BY THE ELECTION OF CHRISTIANS.

of the emperor is to observe them. of peace is to direct subjects to their eternal end, and the means to reach that end are the holy precepts of religion. Hence the first duty towards which justice and just wars are directed. But the foundation standard of holiness of rule, I maintain that the authority of the for the public good. The public good consists in peace, the goal empire is the greatest. For every king and emperor holds public office New Testaments and the orthodox faith.\And according to the because he accepts both the laws of nature and those of the Old and of those of the New Testament; and a Christian king is the greatest greater since he venerates the laws of the Old Testament and certain divinely instituted; a king who belongs to the Mohammedan sect is because he governs through laws least in agreement with those most is the greatest. Thus a king of the Tartars is the least worthy resembles God least is least worthy while the one who resembles him ness to, or distance from God, and that the one who in his public rule that there are gradations in excellence according to [the ruler's] closeway similar to and approximating the rule of God over all we believe 348. But as the Imperial Excellence is constituted king of all in a

349. Thus we read that the pagan emperors were called supreme pontiffs because of the care which they took for religion. If therefore this is the chief concern of rulership and all others are subservient to this, there is no doubt that our Christian empire outranks the others, just as our most holy and pure Christian religion is highest in holiness and truth. And as every king and prince should care for his kingdom

²On the Troglodytes and the mythical Kingdom of Prester John, believed to be located in Ethiopia, see Vesevolod Slessarov, *Prester John, The Letter and the Legend, Minneapolis,* 1959. Nicholas writes on the basis of a spurious letter from Prester John supposedly written to the Byzantine emperor in the twelfth century. For the texts see Edward Ullendorf and C. F. Beckingham (trans. and eds.), *The Hebrew Letters of Prester John,* Oxford, 1982.

466. Take action, O most Christian prince, to moderate their cruel ferocity through this sacred council and your gentle persuasion. Although the spirit of the Lord cannot be infused immediately, each day they will become more responsive because of daily contact with Christ's faithful and they will look into their hearts and finally see that they were wrong to rely on their own wisdom and proudly set themselves up against the common opinion of all Catholics.

467. This matter should be treated with the greatest care and unceasing use of every means, so that Satan who does not easily leave hearts that he has possessed for a long time may finally be overcome. Like your prototype, Basil, you have, O prince, the admirable gift from on high of being able with effort and prudence to bring back any schismatic to unity. In your royal wisdom you did this at Constance when schism infected the Roman pontiffs, as Basil did it in Eighth Council of Constantinople in the case of the opposing patriarchs of Constantinople, Photius and Ignatius. In addition you have made great efforts in this most sacred Council of Basel to bring the members of the church and its head, our most holy pope Eugene, together in unity, as Basil did with the subject bishops who were opposed to Ignatius in that other council at Constantinople.

468. Now it remains for you to bring back the others who remain in your glorious and flourishing kingdom of Bohemia as Basil, a few years earlier had so laudably done with those image-breakers who destroyed the images of Christ and the saints and condemned their veneration³ – and many Bohemians are followers of this belief. In this time of troubles for the church much like the time when Basil ruled the empire, by divine intention you have been established as emperor for the general welfare so that following in his footsteps, you may do what he did under the inspiration of God. But it is vain to urge the one who is already running to run. Your natural wisdom and religious belief urge you to these holy works much more than any extraneous persuasion, however erudite. Therefore I will not tire you further with words, O great emperor, to induce you to go on with your work.

³ The Iconoclast ("Image-Breakers") controversy in the eastern church had been settled in A.D. 843, well before Basil became emperor.

CHAPTER XXV

THE CHAPTER DISCUSSES THE IMPERIAL COUNCIL MADE UP OF THE PRINCIPAL MEMBERS OF THE EMPIRE, WHICH HAS MET IN THE PAST AND IS VERY USEFUL FOR THE GOVERNMENT OF THE COMMONWEALTH IF IT IS PROPERLY ORGANIZED AND MEETS REGULARLY. EXAMPLES AND WARNINGS ARE GIVEN.

469. At this point we should discuss the imperial council at length, in accordance with the statement above that all matters relating to the good government of the commonwealth should after mature and ample discussion be adopted as laws with the consent of all. This will be easy for us since the universal council of the priests is properly organized along similar lines, and we have already given a description of all aspects of that council above.¹

470. We know that the emperor as the head and first of all commands subordinate kings and princes to assemble. But those who are obligated to meet as members with that head in this universal council of the empire are the princes, the heads of the provinces representing their provinces, and also the heads of the major corporate groups and mayors, and those of the senatorial rank which qualifies them for the imperial assembly [conventus]. These are either the illustres who are the first at his side and parts of his body, see [C.] 6, q. 1 [c. 22] para. si quis, or the expectabiles in a second intermediate group, or the clarissimi, the senators of the lowest group below which there is no grade in the senatorial class,² see [c.] 2 q. 6 [c. 28], Anteriorum, Illud etiam. On the ordering of these offices, consult the Digest.³

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Book II, ch. 6, nos. 85–86.

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472. And because universal decrees for the good of the empire should be made by consent, and also so that a law applying to the whole empire may not be in opposition to that of any part, and in order to give adequate notice of this, the aforesaid leading princes and other most trustworthy sworn representatives meet to demonstrate to all on the basis of their certain knowledge what actions are appropriate to the time and place. In this way the decisions made after careful consideration will be accepted and strictly observed. I have discovered in ancient books that universal councils of the empire used to be held in which the princes personally signed their names after that of the emperor as a lasting guarantee, in the same way as was customary in church councils.

Dagobert and twenty-four princes in which many matters essential for the preservation of justice and peace were determined with the consent of all. I have also read the laws of Charlemagne which were issued in consultation with the faithful, as the text [C.] 11 q. 1 [c. 37] Quiannque, para. Volumus, demonstrates, and I have studied those of Childebert and others. The universal council examined, coordinated, and revised the laws when necessary and made additions, adopting different laws for different parts of our empire, for the Alemanni different laws from the Baiuvarii (whom we now call Bavarians), and for the Riparian Franks different laws from those for the Burgundians and Lombards, and it issued other laws which it called the Salic laws for the Saxons and the people of those regions.

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477. The principal members of that council are those who are called the princes of the empire, whether they are bishops, or laymen, or abbots. But unless they were especially summoned, others did not participate in this council. At the end of the *conventus* when everything had been taken care of, the time and place of another future meeting was set. It was of course always in the power of the emperor to change the time and place if there were good reasons to do so. There was no better nor more useful arrangement for the good of the whole church—and not only for those living under the empire.

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CHAPTER XXVI

ON THE FLOURISHING STATE OF THE EMPIRE AT THE TIME WHEN EVERY EFFORT WAS AIMED AT THE INCREASE OF THE FAITH, AND LAWS HAD STRICT BINDING EFFECT.

482. The last section of this part is the most difficult of all since we are investigating things based on actual experience rather than simply in books. First we will examine the state of the empire at its prime so that we can measure against this the excesses of today and the degree of its decline. After this we should use our intelligence to suggest and describe healthful remedies drawn principally from what was done in the past so that at the very least, better solutions can gradually be discovered through the use of logical inference.

483. The first point is known to those who are acquainted with the brilliant accomplishments of the emperors who established the foundations of the government of this noble Germany. In order not to have to go back in the remote past to the first great universal emperors, since our reforming effort cannot reach such a high degree now, let us pass them over and begin with Otto I. We read that he was the first emperor to whom true imperial authority was transferred without limit or condition on him and his successors, both by the Roman senate and the whole people and by the pope and his council. For at that time the Western Empire was so shaken by various invading tyrants that he would not accept the office of emperor when I was offered except on the understanding that he would be able to hold the

empire in perpetuity and could restore everything taken away from the Roman church.¹ When by divine assistance this was done exactly as Otto desired, all the [imperial] domains came one by one into his power – the kingdom of Italy and the Lombards, the kingdom of Burgundy² – he already had the kingdom of the Germans of which his father, Henry, is supposed to have been the first king.

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485. Also we find that after this the Hungarians of the Catholic faith, the Bohemians, the Danes, the Norwegians, the Poles, the Prussians, and other important provinces were subject to our rulers. The greatest concern of all the emperors was the protection and expansion of the faith.

486. And the emperors exercised genuine governing authority because the voice of the emperor was supported by power and force. Even the most important person could not transgress the law with impunity. Unless a law retains its sanction and its punitive force it becomes blunted and falls into disuse. Man's appetite for evil must be controlled by the bridle of the law and restrained by its limitations. Law without coercion has no sanction and loses its effectiveness. It no more merits to be called a law than a corpse should be called a man. But at that time the laws were strong, the imperial statutes were feared, and large annual meetings of the princes were held so that the severity of the law might be strengthened by constant enforcement so that no transgressor of the law, no matter how powerful, went unpunished.

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empire in perpetuity and could restore everything taken away from the Roman church.¹ When by divine assistance this was done exactly at Otto desired, all the [imperial] domains came one by one into his power – the kingdom of Italy and the Lombards, the kingdom of Burgundy² – he already had the kingdom of the Germans of which his father, Henry, is supposed to have been the first king.

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to be oppressed by a father whose children were to rule over them. Nevertheless to avoid an unfavorable reduction in the domains of his imperial highness in the future as a result of the increase in the power of these office-holders, feudal statutes were introduced as well as strict oaths of fealty which were to be sworn by every new vassal and strictly observed under pain of losing the fief.

492. Finally another law was published that no one could succeed to several large fiefs at the same time. This was done to avoid an increase in the power of any subject through the accumulation of many large fiefs to the point that, out of tyrannical fury and forgetful of his oaths, he might seek to achieve the supreme power – the desire for which grows as one acquires more – and weaken the empire through rebellion and disturbance.

493. In addition it was customary for the emperors to listen readily to accusations of the violation of trust and the breaking of oaths. Thus the fidelity which alone holds an empire together was never neglected. The punishment for the breaking of trust was confiscation. Then to prevent envy from perhaps inciting nobles of the same family against someone to whom the confiscated property was given, the holy emperors often gave the church the properties that had been confiscated in this way.

ments for the good of the commonwealth and the holy empire. For instance they created courts presided over by justices of the peace who passed sentence on the basis of decisions by popular juries which had duly sworn to decide according to their consciences and the merits of the case – thus it was not in the power of the presiding judge to punish those under him at will on the basis of his personal feelings. This was also true in all other cases involving financial affairs, tallages, and customs.

495. And everything tended to the public good. At that time the emperor had the public responsibility to maintain the peace and he had an army paid for by the public for this purpose.² Everywhere he was feared by princes and rulers; everywhere he was worshipped, venerated and loved by the people as the defender of the fatherland, the protector of liberty, the relief of the oppressed, and the most

¹Large fiefs included those belonging to dukes, margraves, and counts. The law against accumulation of large fiefs was regularly violated.

²The imperial army was based on feudal service, not regular payment.

rigorous prosecutor of those who disturbed the commonwealth. At that time an offense against him was one committed against the highest public power and this was the greatest crime because it was committed against the father of his country and of all its inhabitants. But if I wrote down everything that is worth relating I would be more prolix than needed for our purpose.

CHAPTER XXIX

TODAY THE EMPIRE HAS DISCONTINUED THESE PRACTICES AND GREAT ABUSES HAVE BEEN INTRODUCED. THE ROMAN CURIA IS RESPONSIBLE FOR THE EMPTYING OF THE PUBLIC TREASURY AND THE PRESENT DISORDER IN THE ADMINISTRATION OF THE TEMPORAL POWER OF THE CHURCH ALSO HURTS THE COMMONWEALTH.

departed from this, since hardly any of these practices are observed. All concern for the commonwealth has disappeared. The bridle is slackened and anyone violates the law with impunity. Where once there was veneration in fear and trembling, now there is disdain and contempt. The laws are enforced with weapons that are like spiderwebs which can hardly restrain a tiny locust. In the past the laws were like strong nets always tensed for wild boars, ready to limit concupiscence and to restrain troublesome transgressors. Now everyone is concerned with his personal advantage. There is no concern for one's neighbor or with the future because of the lack of interest by the emperors who think that good intentions are enough to restore or reform what has gone awry. All sanctions have ceased to operate. Rebels are not punished. And many tyrannous princes grow powerful while the empire declines.

497. What good are the temporal possessions of the church to the commonwealth? What good are they to the empire? What good to its subjects? Little or none. Otto commanded in D. 63 [c. 23] *In synado* that bishops should be invested with their bishoprics without charge. We see that the pope has not only taken free investiture away from the

emperor, but so much money is charged that everyone in Germany is crushed with a burden that is not merely heavy but overwhelming. Today ambitious bishops have a fierce appetite for the temporal possessions attached to the domains of the church so that we see them do outright after their appointment, what they did in circuitous ways before. All of their concern is with temporals, none with spirituals. This was not the intention of the emperors. They did not want spiritual concerns to be absorbed in the temporal possessions which they gave to the churches for their betterment.

498. And, alas, all these things are the result of the violation of order. Because the canons are not observed, there is no coercion, no discipline, and no punishment. Furthermore the temporal power of the ecclesiastics now causes great harm to the commonwealth and its subjects. When there is a vacancy in a church office there is always danger of schism or the people must be taxed more heavily than others under secular rulers because if it is filled by election, rivalry produces a division in the voting and if it goes to the papal curia, the one who offers the most money wins out.¹

499. And all these burdens are laid on the poor subjects. The curia attracts whatever wealth there is. And what the empire granted and decreed in a holy fashion for the worship of God and the public good, is entirely perverted by avarice and greed through specious reasoning and novel interpretations, and what was imperial is papal and the spiritual becomes the temporal.

¹Nicholas is speaking from personal knowledge of the election of the Prince-Bishop of Trier.

CHAPTER XXX

THE EMPEROR WHO HAS SOLE ADMINISTRATION OVER IMPERIAL MATTERS IS OFTEN IMPROPERLY LIMITED BY AGREEMENTS AND OATHS MADE TO THE ELECTORS IN ORDER TO GET THEIR SUPPORT. THESE SHOULD BE INVALID AND WE OBJECT STRONGLY TO THIS PRACTICE.

500. There is another practice which is destructive of the empire. Although the emperor alone governs for the good of the com-

monwealth, he often acquires his office through agreements with electors who seek their own interest, and because of an oath that he has sworn, he does not dare to try to regain the things belonging to the empire which have been taken in violation of law, nor to remove the customs duties that burden the commonwealth, nor to make other useful laws. He is prevented from revoking the things which were unwisely given or promised by his predecessors without a meeting of all, out of inordinate love or affection or blood relationship. And so it happens that as the electors seek their own interest, they abuse the power entrusted to them and thus convert the power which was given to them for the good of the empire into its destruction.

501. Because the electors should not permit the emperors to surrender imperial rights to the prejudice of the empire, they should always help him to increase his power. But because they have made him promise not to take away what was given or promised to them at some point in a false manner by relatives or parents who ruled over the empire, they keep silent when they see the emperor do the same thing [with others] – so as not to condemn their own actions.

can become rich from the goods of the empire and possess them for long. If the empire comes to nothing because all are trying to increase their holdings, what will follow but the destruction of everyone? Without a greater power in the empire to preserve the peace, increasing envy and greed will produce wars and divisions and then like every kingdom divided against itself,² what has been brought together unjustly will collapse.

503. And so the princes of the empire are mistaken when they take over imperial possessions everywhere in order to become more powerful and stronger, because once the members have dismembered and weakened the entire power of the empire and its head, the hierarchical order will cease to exist. There will be no head to whom one can appeal. And where there is no order, there is confusion. And where there is confusion, no one is safe. And so when the nobles are fighting among themselves, the people will rise up to seek justice through their own arms. Then, as the princes destroy the empire, the people will destroy the princes.

¹Nicholas is referring to the "capitulations," agreed to by the emperor before his election.

²Matthew 12:25; Luke 11:7.

CHAPTER XXXI

THE EMPIRE IS IN SERIOUS DECLINE BECAUSE JUSTICE NO LONGER REIGNS. FORCE AND SELF-WILL, BETRAYAL OF FEUDAL LOYALTY, BURNING AND RAPINE DEVASTATE THE COMMONWEALTH. WE PROTEST AGAINST THOSE WHO SAY THAT IT IS HONORABLE TO TAKE PROPERTY IN VIOLATION OF JUSTICE.

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and by Innocent [IV] in the chapter [c. 12] Olim of [Decretals 11 13] De restitutione spoliorum and the doctors cited there. mentioned by Hostiensis in his Summa [1] De Treuga et Pace [C. 3 4] Hostes. On this subject, see [c.] 23 q. 2 c. 1 and many other chapters robbers, see [Digest XLIX 15] De captivis et postliminio redemptis [1.24] and those who seized the goods of their enemies in this way would be consent of the highest judge would be both dishonorable and unjust, right! What iniquitous reasoning which separates the honorable from Roman law wisely decreed that every breaking of fealty without the the just and says that property unjustly seized can be held with honor. church or the clergy. What presumptuous audacity against all law and somehow legally in their possession, even when it belongs to the all, they think that property seized by force either openly or secretly is possess. Through the base practice of the breaking of fealty [diffidatio] they admit they have not had, and do not have any legal right to breaking of fealty on the basis of some fabricated reason or none at they think that they can protect their honor. After that so-called And the nobles say that they can licitly occupy vast domains which in the judicial sphere. Today honor has been separated from legality. 504. In addition we see great confusion or a complete lack of justice

505. Besides it is clear that the goods of the church do not belong to any prelate or cleric and for that reason a crime by a prelate cannot result in a loss to the church. How, O nobleman, do you think that it is honorable to break fealty to a cleric, or a religious convent, or a prelate? Who is so senseless as to admit that it is honorable to do what cannot be done without major excommunication and sacrilege? If you, a layman, are prohibited by divine law from seizing and mistreating a cleric on your own authority, what virtue do you think there is in a

falsified document of breach of fealty? Do you think that all divine and human laws cease to be operative once you publish a little document? Thus if the goods of the church cannot be seized or taken away by force by a layman without committing sacrilege, do you think that this sacrilege is licit? This great and manifest error has, alas, recently infested parts of Germany. God is offended by it and the public peace and all stability disturbed.

506. Who can describe in detail all the abuses which have been iniquitously introduced in our time and still more iniquitously defended? And all this is because the laws and canons have lost their vigor and there are none to act as guardians and executors and pastors.

CHAPTER XXXII

AID MUST QUICKLY BE GIVEN TO THE EMPIRE WHICH IS MORTALLY ILL. WHAT THE EMPEROR SHOULD DO AND PROPOSE IN ORDER TO BRING ABOUT REFORM.

507. Appropriate measures must be taken soon against the disorders and perils besetting the commonwealth that are discussed above. A mortal disease has invaded the German empire and unless an antidote is found at once, death will surely follow. You will seek the empire in Germany and will not find it. As a result others will take our place and we will be divided and subjected to another nation. And there is no better approach to reform than through the well-worn and proven ways of the ancients to which we must return.

508. The fundamental reform is to establish annual general meetings and to begin here in this holy Council of Basel and make it a rule for the future.¹ And so let the most pious emperor take action, as he has always shown himself most diligent to do, and order all the greater princes of the empire from both estates to come together at his sacred command. Let him earnestly set forth the lamentably diminished state of the empire. Let him indicate what remains in Italy or in Lombardy

An annual meeting was called for by the Golden Bull (1356).

of the [once] flourishing laws of the empire. Let him add what survives in the kingdom of Arles and throughout the whole of Germany. And when he has indicated the miserable state of this once flourishing and powerful empire let him predict what will happen next unless a remedy is applied. Let him seek a remedy from those who were and are most faithful and who are bound to this by desire and oath.

509. With the provident assistance of His Imperial Highness a proper arrangement should be made for a successor.

CHAPTER XXXIII

FIRST AN ANNUAL MEETING SHOULD BE ORDERED AND JUDGES SHOULD BE APPOINTED IN THE PROVINCES. IN EACH PROVINCE THREE JUDGES SHOULD MEET FROM THE THREE ESTATES - THE CHURCH, THE NOBILITY, AND THE PEOPLE. THE CHAPTER DESCRIBES HOW THEY SHOULD TRY CASES.

510. And because after so great a decline the empire cannot be restored to its original healthy state, provision should be made for recovery. First annual imperial councils and [a system of] justice should be provided for. Indeed I find that Constantine the Great, as will be indicated in a certain text below, provided for this kind of meeting and [established] judges in Gaul.¹ For it was after the imperial courts and meetings ceased, that nearly all the abuses were introduced.

511. And so it seems that it should be ordained that twelve or more courts are to be established in this way throughout the provinces subject to the empire. Each court is to be composed of three judges corresponding to the three social classes – nobles, clerics, and people. Those judges should be able to judge appeals in all cases arising in their assigned territories between any persons – including ecclesiastics – concerning their temporal possessions subject to the

¹Book III, nos. 520-526.

empire — by way of appeal from their own superiors or as a court of first instance only if the plaintiff or defendant does not have a superior — because, for example, he is a prince, or if his superior is suspected of being favorable to the other side. And a case which was introduced by way of appeal, would be terminated with the decision of that court. What has come to it as a court of first instance could be appealed to the next meeting [of the Reichstag] if it is a serious matter or between important men. Each judge should pronounce sentence and call upon the disputants according to their status, the noble upon the nobles, the churchman upon the churchmen, and the representative of the people upon the people. However no final decision should be adopted without the deliberation of all three together, and in difficult cases let them get the advice of experts. But if one [of the three] disagrees with the other two, the opinion of the majority should prevail.

512. Also those judges should have the power to put their sentences into execution by the ban,² and the secular arm, and the payment of fines and punishments into the public treasury.

513. A salary should be given to those judges and all other public officials from the public treasury so that they may swear to observe the text of *Ad legem Iuliam repetundarum*, which is repeated in canon law in [C.] 1 q. 7 [c. 26] *Sancimus*.

²The ban was a solemn curse, formally invoked by ecclesiastical authority.

CHAPTER XXXIV

UNDER PAIN OF PUNISHMENT FOR THEFT AND ROBBERY, NO ONE SHOULD BE ALLOWED TO TAKE THE PROPERTY OF ANOTHER EXCEPT BY JUDICIAL PROCESS. A LAW ON THIS SUBJECT SHOULD BE ISSUED WITH THE CONSENT OF ALL IN THE IMPERIAL COUNCIL, AND SIGNED AND SEALED IN THE PROVINCES.

514. And a law should be adopted that under penalty of punishment for theft and robbery no one is to be permitted for any reason to seize on his own authority the property of another by force or to impose

as nearly as possible with the common practice; and in particular captious formulae should be completely abolished; for the simple poor are often most unfairly led astray by the quibbles of lawyers over the use of the wrong legal forms, and so lose their whole case, since "he who omits a sykable loses the case," as I have often seen happen in the diocese of Trier.

531. Finally, evil practices such as permitting sworn statements against anyone and allowing an unlimited number of witnesses should be abolished. Throughout Germany there are innumerable such evil practices that are against true justice and even encourage criminality. Therefore judges of the provinces ought to come together and put the customary practice of their provinces into writing and lay them out before the council, so that they may be examined. And a similar procedure should be employed for other defects of the law.

CHAPTER XXXVI

A STRICT FORM SHOULD BE IMPOSED ON THE ELECTORS OF THE EMPIRE WHO HAVE THE POWER TO ELECT THE EMPEROR, INDICATING HOW THEY ARE TO PROCEED WHEN THERE IS A VACANCY IN THE EMPIRE.

532. Finally, this holy imperial Council of Basel should take the greatest care to see that the electors of the holy empire are given a strict and inviolable electoral procedure. In particular it should bind them under oath to choose the emperor without consideration of personal benefit or special interest, purely and simply for the public good and for the preservation and honor of the holy empire, before God and their consciences. If anyone is found acting otherwise, he should be subjected to perpetual disgrace and to the penalties for the crime of treason.

533. It is urgently necessary that the electors should be threatened with most severe penalties in order to maintain the purity of the elections because of the absurd and dishonest practices which, I have read, have occurred in the past. When the electors look out for their own interests using illicit procedures to bind the one to be elected, the

public interest is entirely neglected. Because, it is said, certain electors control towns and forts in the empire, and, because of customs revenues and other special interests of this sort, shamefully corrupt elections are often carried out involving iniquitous agreements.

s34. Above all, any controversy that makes electors fear that they will lose what they have had for some time which motivates them to act in this way ought to be settled in a general meeting through genuine and honest discussion, so that thus each elector may act freely in an honest election. And since he who seems best by common decision of all the electors ought to be placed over the empire, I shall now describe a plan that will be useful in this matter, as well as in any council or assembly in which a common decision is to be made with the votes of all. This plan is as follows:

CHAPTER XXXVII

A SYSTEM OF VOTING IS DESCRIBED WHICH THEY CAN USE. IT IS A PERFECTLY GOOD AND USEFUL, TESTED, AND PRACTICAL WAY TO PROCEED.

the election of the next emperor, should assemble on an appointed day in all humility and with the utmost devotion to the service of God and free of all sin, so that Christ the Lord may be in their midst and they may receive the grace of the Holy Spirit. After the solemn introduction of the order of business, they should consider the many persons who, because of their outward or inner qualifications for rule, may be worthy of such a great office. So that the election may be carried out without fear and in complete freedom and secrecy, after having sworn oaths at the altar of the Lord that they will choose the best man in the just judgment of a free conscience, they should have the names of all whom they are considering put down by a notary on identical ballots, with only one name on each ballot; and after that name a series of numbers should be affixed – 1, 2, 3, as many as there are persons that have been recognized in the discussion as worthy candidates.

536. Suppose ten have been found in Germany who appear worthy

and from among them the one most worthy is to be chosen in common: Let the name of only one [candidate] be placed on each ballot, the numbers one to ten placed under or beside the name, and the ten ballots, each containing one of the ten names, given to each elector. When the ballots have been received by the electors, each one should go aside alone and secretly – or with his secretary if he cannot read and write – and with all ten ballots placed before him he should read the name of each.

537. Then in the name of God he should ponder, following his own conscience, which number among them all is least qualified and place a simple long mark in ink above the number 1. After this he should decide who is least suitable after him and mark the number 2 with a simple long mark [on his ballot]; and so on until he arrives at the best, in his judgment, and there he will mark number 10, or the number which corresponds to the total number of persons.

538. And it is a good idea for everyone to use the same ink, identical pens, and the same simple marks – long or short, whichever is agreed upon – so that the mark of one cannot be distinguished from the others to guarantee freedom for the electors and peace among all.

carry his ballots in his hand and throw them with his own hand into an empty sack hanging in the midst of the electors. When the ballots have been deposited in the sack, the priest who has celebrated the mass, should be called as well as an accountant with a list of the names in order of the ten, let us say, from whom the choice is to be made. Sitting among the electors, the priest should take the ballots out of the sack in the order in which they come to hand and read the number at the side of the name and do the same for all. When this is completed, the accountant should add up the numbers for each name, and the one who has the highest number will be emperor.

540. By following this procedure countless frauds are avoided. Nothing sinister can happen. It would not be possible to devise a more righteous, just, honest, and free method of election and through it, if the electors vote according to their consciences, it is impossible for the one who is judged best by a collective verdict not to be put in power. It is not possible to discover a method which is more secure. Nay, by this method an infallible decision can be obtained, since every sort of comparison of all persons and of all the estimates and argu-

ments likely to be made by each elector are included in this process—which I was only able to devise with great effort. You may well believe that no more perfect method can be found.

541. Still the following precaution should be taken so that no elector can be perverted by self-interest: If one or more laymen has been listed for general consideration among those to be chosen, the form with his own name should not be given to him, although all the others with that exception, should be given to him. This would avoid an occasion for suspicion that he might adjudge himself the best of all, and place the highest number in front of his own name. With this single exception the prescribed procedure should be followed completely and this will result in an election better than any other that can be found.

CHAPTER XXXVIII

THIS IS A VERY USEFUL PROCEDURE FOR THE DISCUSSION OF DIFFICULT MATTERS IN COUNCILS IN ORDER TO OBTAIN THE FREE OPINION OF EVERYONE WITHOUT INTIMIDATION. WE ALSO DISCUSS ANOTHER INGENIOUS VOTING DEVICE USED BY THE VENETIANS.

542. Using this same electoral procedure many questions can be decided in the meetings of the princes which can be of great benefit to the commonwealth. For often a question is proposed in which the advantage of some of the princes is on one side and the good of the commonwealth on the other. Then individuals do not dare to give advice openly on behalf of the common good because they are afraid that the others are of a different opinion and they cannot win, and thus if they lose, they would gain the enmity of the prince whose interest would be adversely affected by the advice. Often even the chairman, the emperor or his representative, seems to be too partial to one side of a question. Then his advisors are prevented from freely giving advice out of fear of displeasing him.

¹The proposed electoral system (originally in Book II, ch. 33, no. 245a) is taken from Ramon Llull, *De arte electionis*, which is in the library at Kues (no. 83).

543. Therefore since all deliberation ought to be aimed at the praise of God and the public good, and what is of greater benefit to the public and common good should always be more readily chosen, according to this plan when there is any doubtful point on which a decision is to be made let two of the more learned participants stand up in the center and take each side, defending the affirmative and negative positions and analyzing the consequences for each side.

544. For example if the question is whether a customs-system should exist, the affirmative would say, yes, because no one is especially burdened by it but what is paid by the merchants is contributed both by the seller and the buyers and the merchant himself, and that is the most convenient way to raise money for the public good, and unless this easy way is used to raise the money necessary for the protection of the commonwealth, there would be no peace. Therefore for these and other reasons, the affirmative should be chosen.

545. The one who is defending the other side says: This way to collect money is unfair and illicit, taking money for the commonwealth from those who are not its subjects and have committed no crime, and it is of no utility, for the peace is not preserved by it. Therefore the negative should be chosen.

others say that they should exist but be modified as follows, no add others, it should be possible to do so. All of these should be oped should be expressed publicly by these two and if anyone wants to public treasury. These opinions and those that probably can be develthe princes and administrative officials and judges and the rest to the expenditures, others that the money should be divided - half going to not more than one florin for a cart load of wine or one hundred customs duties should be placed on food and drink unless they are duties should remain in force, and others who say they should not, vote under that. Under that let an intermediate position be written if it written in order under the appropriate heading and ballots should be before but the money should be put into the public treasury for public bushels of wheat, and others that customs should be collected as transported for business purposes, and some say [the duty should be] Besides those who say that the affirmative is to be held that customs is expressed - for example, if one of the two says the following: written down and an affirmative vote put down below and a negative 546. When the subject has been discussed, let the question be

prepared according to the number of counsellors voting and a ballot given to each one.

547. When he has it, each one in his residence, after taking an oath, should choose one and cross out the others with pen and ink by drawing a large line through them. In the morning they should come together in council and each one put his ballot into a sack. When they have been deposited, a secretary should take them out, one after the other, and an accountant should sit there, and after the counting has taken place, the opinion which has the most votes in that election will be the best of all. All the ballots should be the same size and written in the same handwriting, as indicated above.

548. The same procedure should be followed in case of a dispute among several magnates on the same matter. All their names should be put on identical ballots. After the case has been explained and is understood, then the counsellors should cross out with their pens the names of all except the one in whose favor the matter ought in their opinion to be decided. In this manner the consultation will remain free and secret and will be the result of careful consideration, which is particularly important.

549. This year I have drawn up a small tract on the way to improve the discussion of controversial subjects. Therefore I will not speak further on this.

to be made on a question, the method of voting employed in the realm of the Venetians would be useful. They have round balls of wool cloth and two vessels or wooden containers shaped like chalices. The wood should be hollowed out at the bottom of the chalice and the balls should fall into that part through a passage from the upper part. One container is black and stands for "no" and the other white and stands for "yes." After the counselor takes one ball between his thumb and forefinger and shows it in the air to the others to avoid fraud, then he lets it fall into the palm of his hand and closes his hand. Then he puts his hand into the white container and if he favors the affirmative opinion he lets the ball drop through the vessel into the bottom and takes his hand out with his fist closed. He also puts his hand into the other container so that no one can know into which one he has

¹ This tract has been lost

dropped the ball. But if he does not favor the affirmative side, he takes his hand out without opening it and puts it into the other one and drops it there. In this way the vote remains secret. After this the balls are extracted by opening the lower part below the passageway, and they are counted and the conclusion is affirmative or negative depending on the number of balls in one container in comparison with those in the other.

551. By agreeing on these procedures one could always decide on the basis of the merits of the case or the situation because freedom of decision and secrecy are preserved.

CHAPTER XXXIX

IF PEACE IS TO BE PRESERVED AND DESOLATION AND GENERAL DISCORD AVOIDED THE POWER OF THE EMPIRE MUST BE RE-ESTABLISHED. THIS CAN BE DONE BY PUBLIC TAXES, TALLAGES, AND A PUBLIC TREASURY. THE ESTABLISHMENT OF A PUBLIC ARMY WOULD BE USEFUL TO THE PROVINCES AND DOMINIONS [OF THE EMPIRE] AND WOULD RELIEVE THEM OF EXPENSE.

empire. Otherwise all the laws that are adopted will be without effect. The strength of a law lies in its coercive force, and power maintains and carries with it coercion. If it is taken away – since men are attracted to what is forbidden and from adolescence are prone to evil¹ – legal sanctions are weakened and therefore peace and justice do not long endure. Since this is the case, a way to carry out reform must be provided.

553. At one time bishops, abbots, princes, and counts were accustomed to provide personal and financial services to the empire, both on a daily and annual basis, in proportion to the province and territory under them. On this basis paid soldiers were kept as the standing army of the empire for the defense of the commonwealth,

¹Genesis 8:21.

and the emperor was accustomed to maintain his imperial status most honorably. When the imperial army for the defense of the commonwealth ceased to exist, the commonwealth lost a great deal.

554. Every prince and every corporate group is obliged to take action to resist robbers in their areas. This is a very great expense and the subjects spend their time on this and cannot carry on their work freely. Deep divisions are created in all parts of the empire and hardly anyone trusts anyone else. But if there were one public army to keep the peace and defend justice for all, the commonwealth would not have so many useless and wasteful expenses.

arrangement whereby this kind of army would be established to keep the peace and maintain justice through moderate annual contributions proportionate to [the size of] the domain and territory. And so an agreed portion of the imperial customs and salt taxes that have been granted to the princes for the commonwealth could easily be reserved each year for the expenses of the empire and a moderate amount could be deducted from all customs duties. And thus those taxes and provincial contributions would be placed in the public treasury at Frankfurt for the army mentioned above and for the expenses of the empire. The proper disposition of the amount so collected would be decided at the annual council in the presence of the electors and others, so that everything would be determined in a just and prudent manner.

556. Then the great expenses would cease which today the princes are needlessly required to incur, and the provinces would be enriched and the commonwealth and empire strengthened anew. Then the bishops could carry out their spiritual duties and assign their temporal duties to administrators and a national army would eliminate all tyranny for the empire.

557. O God, if the determined spirit of all those who raise these proposals would only attempt to put them into practice, then the empire would flourish again in our day. But if we are indifferent to them and overcome by our blind cupidity and if we continue for a long time in the old perverse way, there is no doubt that the holy empire and the good estate of the commonwealth and of all of us will shortly be terminated.

558. Neither a churchman nor a layman can be exempt from the law. For the government of all temporal things must first be directed

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toward the public good. Hence our most excellent Saxon, Hugh, who is called "of St. Victor," in his book, *De Sacramentis*, when he speaks of the property of the church, writes, "Those properties can never be removed from the power of the king. For if reason and necessity demand it, the [royal] power owes them protection and these properties owe the king a contribution in a case of necessity. For just as the royal power cannot refuse to give the protection that it owes to another, so the churchmen who obtain properties on condition of a contribution to the king in return for his protection cannot legally refuse it."²

559. What blessed Ambrose has said in his letter, *De Tradendis Basilicis*³ and what many others have said on this could be cited, but since it all agrees with the above, I omit it for the sake of brevity.

²PL 176, p. 420. ³PL 16, p. 036 (Ad Marcellinum).

CHAPTER XL

LAWSUITS SHOULD BE REDUCED AND APPEALS OF UNIMPORTANT CASES BEYOND THE PROVINCIAL LEVEL TO THE ROMAN CURIA SHOULD BE PROHIBITED. THOSE THAT ARE OF INTEREST TO THE COMMONWEALTH SHOULD BE DECIDED IN THE IMPERIAL COUNCIL, EVEN WHEN THEY INVOLVE RELIGIOUS MATTERS, IN ACCORDANCE WITH THE CANONS OF THE HOLY FATHERS WHICH SHOULD BE RE-ENACTED.

560. No doubt there are many other abuses besides those discussed above, that harm the commonwealth but it would be [too] long to enumerate them. We know that the duration of judicial controversies in both the secular and ecclesiastical judicial systems causes great injury to the commonwealth because of the great confusion which it creates and the interminable length of the litigation, especially because cases do not end in the localities where they arise or in their own provinces. The most trivial case involving benefices is thus repeatedly appealed to the Roman curia where only the most import-

ant cases should be discussed. Thus because they wish a grant of "expectancies" or the bestowal of usurped benefices or on account of litigation, all that is earned by parents is brought by their children to the [papal] curia and nothing is brought back except what they had already possessed in the province; for instance, a little benefice – perhaps already granted to their own parents. And because occasional promotions to a fortune are made in the curia, everyone goes to Rome and stays there from their tender years expecting to be made rich, and they postpone their studies and religious exercises. They bring gold and silver and come back with charters. And because the canons of the holy fathers were opposed to this and experience has taught us how much harm is done to the commonwealth on this account, it must certainly be reformed.

secular power may not interfere with an ecclesiastical order made by the authority of the Roman pontiffs, whether the granting of benefices or of favors or judicial decisions in litigation. While the secular power cannot change any ecclesiastical legislation adopted to aid divine worship or in the interest of the freedom of those who serve God, it must at least provide for the [needs of the] commonwealth, while respecting the above.

of Kings Charles and Louis. Indeed we read that the Roman pontiffs way that we read they did in D. 63 [c. 34] Nos sanctorum which is a text religion, were in error and did not have the power to legislate in the election of bishops, the granting of benefices, and the observance of many holy laws for the good of the commonwealth concerning the 562. No one should say that the most sacred emperors who adopted as many others belong to Charlemagne and his successors among read and collected 86 chapters of the ecclesiastical regulations of the tolic See and synod, I do not want to insist on this. Although I have asked them to make laws for the public good on divine worship and and other matters, I have never found either that the pope was asked pontiff and all the other patriarchs should do in consecrating bishops which may also be found provisions prescribing what the Roman ancient emperors which it would be superfluous to insert here, as well binding force of all those laws came from the approval of the Aposagainst sinners among the clergy. And if perhaps it is said that the

¹ Expectancies were legally binding promises of succession to church offices. They were forbidden by Pope Boniface VIII, but the practice continued.

to give his approval or that the legislation was ever said to be binding because his approbation was given. Rather, as is said above in a certain place, it appears that several Roman pontiffs said that they revered and accepted those ordinances.

563. But accepting the fact that those imperial ordinances on church matters do not have any force except insofar as those ordinances are first found in the canons or are approved and accepted by the synods – as is proved to be the case from the common widely-known saying that laws do not disdain to imitate the sacred canons and the fact that in any opposition or conflict in ecclesiastical matters between a law and a canon the canon undoubtedly takes precedence – nevertheless if the reform that we ask to be carried out were based on the ancient legal holy statutes of the church, there would be no doubt about its power and authority. For no one doubts that those laws agree very well with the canonical statutes, and in no way contradict them.

564. To sum up with one word – if the most devout emperor and the whole council subject to him, considering the needs of the commonwealth and reflecting on the reasons and occasions for the decline in divine worship and the shameful state of morals at all levels, would return to the ancient sacred canons and the most holy practices of the ancients and together with his whole council would decree that whatever went against them – whether privileges, or exemptions, or new practices in the granting of benefices or in disputes – was to be abolished and most strict obedience was to be given to the holy canons, I would like to know what Christian could say that he [the emperor] had attempted to do anything beyond his power and authority when these things were done in the interest of the observance of the ancient canons and of the sacred legal sanctions, for the increase of divine worship and the good of the commonwealth?

565. Let no one persuade you, most wise emperor, to abandon this holy intention of yours. For many, while appearing to obey, invent specious reasons to defend their evil lives and to find excuses for their sins. Christ alone who is the way, the truth, and the life,² should be sought by following the ways of our fathers. Evil practices introduced out of cupidity, ambition, and avarice should be eliminated so that

thus the canons without which the peace of the church cannot be preserved nor religion increased may take on new life.

566. There are many other things that kings should do. In particular they should repress adultery, theft, parricide, perjury, pillage, and similar sins and drive them out of the country, as St. Cyprian says³ – which is also contained in [C.] 23 q. 5 [c. 40] Rex debet along with similar statements. In addition, they should eradicate the deception involved in usurious and criminal contracts, in games of dice, in monopolies and similar practices and they should see that holy feast days are observed, and prevent the excessive expenditures which are customary for weddings and funerals and for fine clothes and the like. In brief they should direct all things to the public good.

³Pseudo-Cyprian, De duodecim abusivis saeculi, ch. 9, quoted in the Decretum.

CHAPTER XLI

NOTHING IS AS HARMFUL FOR THE CHURCH AS DISCORD BETWEEN THE CHURCH AND THE EMPIRE. THERE IS A DISCUSSION AS TO HOW HARMONY BETWEEN THEM CAN BE PRESERVED. BY WAY OF EPILOGUE, A BRIEF CONSIDERATION OF BOTH POWERS IS SET FORTH IN A FIGURATIVE WAY AND WHAT HAS BEEN EXPRESSED AT LENGTH IS SUMMARIZED IN A BRIEF AND PREGNANT COMPARISON.

Catholic Church consists in rightly ordered rule based on common consent and election and the free submission of all or of a majority, and that the canons and both divine laws and those adopted in a human rational way by the common consent of all show this method as the most equitable way from this transitory life to heaven.

568. But we know that the efforts of the envious and ever-deceifful devil often create divisions between the church and the empire, because of arguments about superiority in power or fear of the loss of

tinued harmonious collaboration. be to preserve from harm the hierarchy of the two powers in con-Therefore the first and most important effort of all orthodox men will law nor the enforcement of the ecclesiastical order can continue. threatened with collapse,1 when that conflict rages, neither right nor clear to all from the Gospel saying that a kingdom divided is temporal possessions or something similar. As appears sufficiently

one who is supreme is supposed to minister to the others, not domifirmed in D. 97 [c. 1] Ecclesiae meae. our time of grace are truly distinct, as Nicholas, the greatest of the nate them by his rule, and that both powers come from God and in consider that a minister of Christ is exalted in humiliation, and the in our minds to cause discord, the Roman pontiff, first of all, should 569. And so when the disturber of the peace insinuates these things Roman pontiffs, asserts in D. 96 [c. 6] Cum ad verum. This is con-

return to the old views. arisen because of the sinister desire of many writers to please. Let us that was the true opinion of all the ancients, although doubts have are independent and distinct and that both came from above. And and many similar passages seem at least to prove that the two powers the [Novellae 63] Authentica, Quomodo oportet episcopis at the beginning empire in [St. Paul's Epistle to the] Romans 13.2 I speak of the high praise and command that his subjects obey as is the case for the Roman pontiff, not of the holy priesthood. Also the text [c. 22] Celebritatem of D. 4 [D. 3] of De consecratione and the first section of Let him consider whether the Roman pontiff receives the same

whom, I ask, did the empire depend when Paul appealed to Caesar, or of those writers who say that the emperor has the use of his sword in 571. Even if the pope had the power of both swords, the argument when Christ gave his approval to it [the empire] when he commanded royal power came from God without their recognizing a superior. On that there have been many different infidel kings in the world whose dependence upon him would not in fact be proved. For no one denies this, as if the entire power of the sword depended on him, if he calls to he has the power of the sword, the pope cannot argue that he is first in that the things be rendered to Caesar that were Caesar's. 3 Also even if

> mind the things that have been rightly said above and an infinite 572. The pope should not be exalted by the spontaneous humble number of other things which have been left to us by our forebears. emperors venerated the Roman pontiff in their writings and works as v 20] De crimine falsi. Rather let him recall that the humble Catholic allowed the pope to address him in the second person singular summa trinitate et fide catholica, or because for a long time he has and honors him as father, see the last law [1. 8] of the Code [1 1] De reverence of the emperor for the sake of Christ when he addresses empire ..." And on this let the chapter Victor of D. 97 [c. 2] now quotations can be found that show that the Roman pontiff was their spiritual father and the guardian of souls. Also many more [familiar form] according to the chapter [c. 6] Quam gravi, of [Decretals accustomed to give much greater honor to the emperor - for instance, he says, "All the lowly rulers of the church, servants of your Christian the letter of Pope Agatho and his council to Constantine [III] where

573. In the chapters [c. 4] Omnes principes and [c. 3] Legebatur of synod called himself for many years the universal first patriarch and true that when the patriarch of Constantinople with the support of his and also how many honors he has received from the empire. Is it not pope as to the others. Indeed let him remember the chapter [c. 2] [Decretals 1 33] De maioritate et obedientia the emperor does not deny as first by imperial decree, according to the true writings of Paulus him to supremacy, we read that the Apostolic See was re-established Boniface [III] asked Phocas who had succeeded as emperor to restore bishop, and after the death of Emperor Mauritius and his sons, Pope Omnis anima of [Decretals 111 39] De censibus which is a text of St. Paul, that he should obey the bishops as his fathers. This applies to the Warnefridus, the historian of the Lombards, who was alive at the

stantine I, the acts of the Sixth Council say that Pope Agatho, overthreatened it. Likewise how more than two hundred years after Conthat the church received from the Roman empire when trouble 574. Let him remember the magnificent gifts and the protection come with physical exhaustion because the earlier support for the

Matthew 12:25; Luke 11:7.

³ Acts 25:9-10; Matthew 22:2

 ⁴Mansi 11, p. 286.
 ⁵Paulus Warnefridus, Historia gentis Longobardorum, IV, 36. Warnefridus lived over a century after the events he recounts.

church was little by little disappearing as a result of various calamities, was relieved of these calamities by the emperor.⁶ And let the [symbolic] pre-eminence of the sun over the moon or the soul over the body suffice for him without affirming that the empire does not exist except through him and in dependence upon him.

empire and perhaps other events should move the pope to presume that this is his apostolic right, let him know that, if it were not perhaps against religious humility, a clear answer could be given in all of these cases – that perhaps these cases only argue for that power in the pope as pope because of the consent or acceptance of the contending parties. There were those in the past, including cardinals of the Apostolic See at the time and a certain general council held at Rome, who defended Henry IV when he was crowned at Basel by the representatives of the Romans contrary to the excommunication by Gregory [VII] or Hildebrand.⁷ Indeed a general synod held at Basel at that time elected Honorius as pope, for which act Henry was finally excommunicated.⁸

576. Strong arguments are also found in defense of Frederick II, 9 a man who was certainly most active in the church for the defense of the faith – as well as in favor of other emperors. The people often yielded to the pope for the sake of obedience. These things should not be cited as examples of papal power unless, as indicated above, they were done because of a crime or sin, as is stated in the chapter [c. 34] Venerabilem of [Decretals 16] De electione and the chapter [c. 13] Navit of [Decretals II I] De judiciis.

577. Let all these questions cease to be discussed further. Let us agree with our holy predecessors in the past, that the temporal possessions given to the church should never be preferred to peace. Rather let us follow the example of Pope Leo [VIII] in his council who, as indicated above, gave everything back in perpetuity to Otto I and his successors because [he thought that] in view of the weakness

of the faith at that time and the disturbance which had arisen, it was useful for the emperor to be the strong defender of the faith. 10

the empire to be strong? For without a defender, we see where we are tending. Let it suffice for the pope [to know] that the empire supports the church in all things. It [the empire] does whatever is possible for the protection of the church, no matter how its forces suffer. It does not seize by force; it does not seek to take back what it has given; but it defends and supports the priesthood which alone it venerates as most worthy.

579. On the other hand, the emperor should not raise himself up empire is illuminated by the priesthood as the moon by the sun make himself the equal of that high ecclesiastical power. For the priesthood. Neither on the basis of this nor other texts should he Sinimus, collection 2, which says that the empire does not differ from [Novellae 7] Authentica, De non alienandis rebus ecclesiasticis para. for any reason against the holy priesthood of God, on the basis of earthly things which have been given incidentally by the empire to the empire should seek light for its footsteps from the priesthood. Those Although the moon was created by God as was the sun, its light comes and the plenitude thereof are the Lord's."11 of the honor of God. For "the ends of the earth and the earth itself divine commission he has directed that they be used for the increase very great with goods not his own, when for the public good and by everything in the empire should not think that he has done anything sistence are not in any way to be compared to those that are eternal priesthood and which benefit it by providing the means for its subthrough a righteous life, and God is the end and Christ the way, the from the sun. If every imperial order should direct man to his end The emperor who is not the owner [dominus] but the administrator of

580. The holy priesthood which is related to the empire as the true life-giving soul to the body is especially to be honored. For God is a spirit who is joined by grace to the body, that is the faithful people by means of the sacraments, administered by the priests of the Lord, as their souls, so that man is in God. And so with spirits at peace, all dispute and commotion should be transformed into a harmony and confirmed forever, because as noted above, the whole church is made up of body and soul together and the Holy Spirit inhabits and inspires

ee Book III, no. 483. 11 Psalm 23:11

⁶Mansi 11, p. 190.

⁷On Cusanus' use of Beno, Gesta Romanae ealesiae, here, see Werner Krämer, "Verzeichnis der Brüsseler Handschriften," MFCG, 14 (1980), pp. 182–197. Gregory VII (1021–1085), a reforming pope (1073–1085), opposed Emperor Henry IV in the Investiture controversy.

⁸Cf. Book III, ch. 3, no. 314.

⁹Frederick II (1194–1250), a Holy Roman emperor who was in continual conflict with the church, especially with Pope Innocent III.

the church with concord so that by the action of the Holy Spirit one church made up of all those who believe in Christ can live in concord, with the priests as the soul and the faithful as the body.

581. But as we know, once the harmony and concordant proportion of nature is broken in any living thing, the soul is separated from the body after a period of mortal fever and incurable illness.

gives them life. 13 archbishop the soul in the arms and the bishops in the fingers and so ordering of all and to keep the peace and tranquility of the church superiority which was intended by God to be used for the proper been vacant for long periods, for instance, for seven years after [Pope] priests of the Lord, and think that others can take no action unless he called the peasants where the curate properly represents the soul that on for each rank down to the feet which in the commonwealth are and the patriarchs the soul in the ears or eyes and the rank of in the head or the heart, so the papacy itself is like the soul in the head as to the life which it gives the foot, and is the same soul that resides soul which is complete in the whole and in every part, then greater or alone can come from Christ - and for this he should rightly rejoice. undisturbed, gives him nothing in the way of spiritual power which the priesthood did not cease to act. But he should consider that his Marcellinus and at other times occasionally for two years, 12 and still has permitted it. Rather he should remember that the papacy has Hence just as the soul as it exists in a man's foot is not greater or less thing external to itself, does not decrease the spiritual power in itself lesser executive power in a given province, since it depends on some-He should also consider that if the priesthood is like a single The Roman pontiff should not elevate himself above all the

584. Therefore there is a single power from God of binding and loosing and of giving life to all, although among the members there seem to be some who are greater and others of lesser importance.

585. Therefore the Roman pontiff should be aware that the vital harmony of the church is preserved by the divine and canonical sanctions, which are all rooted in one source, the Holy Spirit and the natural law. The more immediately accessible seat of the soul is in the ¹²See *Liber pontificalis*, 1, 6 (ed. L. Duchesne) on Pope Marcellinus. The papacy was also

vacant from 1241 to 1243.

13 On the use of comparisons of social organization to the human body, see Ewart Lewis, Medieval Political Ideas, New York, 1954, I, pp. 193-224. See also Vincent of Beauvais,

Speculum doctrinale, VIII, 8 (PL 212, p. 740)

purest blood contained at the center of the heart. With the blood the vital spirits provide a flow of nourishment through all the arteries of the whole body. As therefore those arteries go everywhere in the whole body branching out from one source so that the life-giving spirit flows through them, so the divine laws circulate with equal power throughout the whole body of the church, holding all its members in a sweet vital constraint.

586. Therefore there is no member – whether head or foot or inbetween – through which they do not flow and which is not included in the circulation. In the same way, the veins that start from the liver and spread through the whole body and connect with arteries, merging with the flesh as it were as an intermediary between the flesh and the fine blood of the arteries, are like the canon laws in the body of the ecclesiastical commonwealth that are adopted in a council, which can be compared to the liver where all the veins meet. Like the veins, the canons act as an intermediary through which carnal man is led to the spiritual life.

587. Therefore the pope should not be flattered into thinking that someone who is a part of the body of the church is over it and exempt from the salutary precepts of the canonical sanctions. And as the tiny veins that supply the particular members do not have life-giving force nor the nourishment of the soul unless they go back to a common source, so all the statutes of the provinces and local areas should conform to the common canons without any contradiction. And the basic principles on this subject can be developed by analogy with what has been said at greater length above.

said about the empire. For the body is made up of bones, nerves, and flesh. But the nerves that are in an intermediate position and share the nature of both are all connected to the brain where the second seat of the reason is located and they go out to link all the joints of the body in different ways with the one body. And these are like the imperial laws which strike a balance between severity and laxity and bring all the emperor is not exempted, since all those nerves flow from the operation of reason and nature to which law no one is superior.¹⁴

¹⁴ The library at Kues contains a number of medical works. Cusanus may have developed his interest in medicine from his friend, Paolo Toscanelli, in Padua.

you have made." For no one is obliged to observe an unjust law, and observe."15 And there is a popular saying, "Submit to the law which emperor makes laws which he is the first of all to be obliged to you have written for others, you have also written for yourself. For the his 75th letter, to the Emperor Valentinian, says, "You have made laws to prevent anyone from being free to act in any other way. What Even the lawgiver himself is not exempted. Thus Ambrose in

shoot the arrow. the bow will break, and not too little or when it is released it cannot body. A law should be stretched like a bowstring - not too much or nerves are not too loose or too tight since this could harm the whole 590. And so the highest power itself, the head, must see that those

country is rightly compared to the bones that have a sweet marrow country ought to be kept uncorrupted and in perpetual force. The even when the flesh has decayed, so the legislation and laws of the part the whole body is damaged, just as [happens] when a nerve is one, always keeping the law in force. For if a law is corrupted in any and long duration. The flesh, however, may be compared to transitory 591. He should also note that as nerves adhere strongly to the bones mjured in any part of the body. dispensing, now punishing, as is suitable for the well-being of each illness. With these the prince should act as a father now sparing, now men who often fail in human ways because of weakness, ignorance, or

common law which provides for the public good nor against the concord is heard in the harmony of all. and not stretch them too much nor too little so that a common original source of all laws, the natural law of reason. Otherwise individual veins, ought to be revised so that they do not go against the 592. Also particular laws which we may compare to the small respect the harmony in the strings, both the greater and lesser ones, And so the king should be like a zither-player who knows how to the rest and would infect the whole body to which it is connected disease would attack that member easily because it is in opposition to

properly because it is well-proportioned. For when he sees any one of 593. And so like an expert doctor the emperor's concern should be to keep the body well so that the life-giving spirit can dwell in it

no living person is exempt from a just one.

acquired without labor through some deceptive artifice - which can-

abundant avarice has produced various diseases in the body - usury, body therefore unbalanced, whether because the melancholy which is the four temperaments in excess or deficient from the mean and the

fraud, deceit, theft, pillage and all those ways in which great wealth is

not take place without harming the commonwealth - or if he sees the advice of the most learned doctors of the commonwealth in earlier fatherland, he should seek a remedy and listen to the books and concerning virtuous efforts both to gain a livelihood and to protect the or become morose because of a temperament which is phlegmatic or swell up with sanguine pomposity, luxury, banqueting and the like, body grow feverish because of choleric wars, dissension and division,

sees that it is, he should recommend it first to his Privy Council, the smell to determine whether it is suitable for the time and place. If he 594. Let him compound a recipe. Let him test it by taste, sight, and teeth, to analyze it and find out whether there is any comfort and healing power in that recipe. When it has been well chewed there, if parts and members, sometimes using a sweet ointment, sometimes a to each member. Let him show paternal care in all things to all the purified, and the pure elements separated from the impure. After this fuller examination to the Great Council, the stomach, to be digested, he finds that there is something useful in it, he should send it for is a danger of infection. sadness and compassion and only when nothing else avails and there cines. And let him never move to cut off a member except with cleansing lotion, or a cauterizer, and any other preservative mediliver, so that that healing medicinal law may be distributed as required he should send the purified proposal to the consistory of judges, the

will apprehend it very quickly since it truly contains an accurate description of Your Highness. This sums up all the above. You, O unconquerable emperor,

aroused in those most subtle intellects that have been dormant until an occasion to do so may be given to the wise and inquiry will be studious and ablest minds gathered around you. It is to be hoped that this collection may at least be read quickly as a stimulus to the most knowledge can be derived from this inept and uninstructive effort, now and thus when the material is presented, sparked by this little And so act, O great Caesar, that although nothing in the way of

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empire shine forth and increase continually. and all circumspection, a great flame igniting and burning concoal, from the depths of many minds filled with prudence, wisdom, justice of law to the earthly empire and make the splendor of the tinuously may blaze which will destroy all abuses and bring back the

be re-established in our time in praise of Christ who reigns blessed peace in the church and eternal fame for you and your subjects may for your immortal glory, o most kind prince, so that thus the way to 597. We wait for you eagerly, father of all, to initiate and carry forth for ever. Amen. this most happy deed in our time. Act with most eager zeal to do this

synod will hold to be Catholic and true - and ready to be corrected in in all of it to be true or to be defended as true except what this sacred made from various approved writings of the ancients in praise of all respects by all orthodox teaching. humility to this holy Council of Basel, judging and asserting nothing Florin in Koblenz, and lowly doctor of the decrees, offer in all Almighty God, which I, Nicholas of Cusa, dean of the church of St. This is the end of the collection, The Catholic Concordance,

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