

Council and Pope: The Modern Relevance of Conciliarism

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Late-medieval conciliarism provides one theoretical model for the structure of the church, and in particular for its decision-making processes. The development of councils as a means of settling disputes which could not be settled at the local, episcopal level, and of making decisions binding on the church as a whole, in particular of defining the true faith, remains, so far as I am aware, still clouded in our fragmentary knowledge of the early church. But we may guess that the use of councils developed steadily and 'organically', as did the priesthood and episcopate, as the church developed its own (in many ways) unique structure in response to the needs of the time. The same appears to be true of the development of the Roman primacy. The notion that the Roman church was the final court of appeal in theological and ecclesiastical disputes, and the corresponding notion that it was incapable of error, were first developed (though I do not know how widely they were accepted in the East) in the late 4th and 5th centuries. Some, such as St Athanasius, regarded the consent of Rome as the touchstone of a true council. 'Infallibility' as applied to the Roman see in this sense was thus a very ancient doctrine, and some have found it as early as I Clement (96 AD.). But it was quite a different matter to say that the Roman see (or even the pope in person) could pronounce a final, binding decision on a matter of faith without an oecumenical council. As Professor Tierney has recently shown, papal 'infallibility' in this 'strong' sense was a product of disputes between the friars and the French episcopate in the late 13th Century, and it was accepted by very few prior to the Council of Florence (1439), and not all that widely thereafter.¹ The normal view of medieval canon-lawyers was that the pope was supreme in jurisdiction, i.e. his word was law in settling disputes, but that as regards defining faith a council was required; indeed, in matters of faith, he was both fallible and impeachable. On the other hand, a conciliar definition of faith required the consent of the Roman see. (Thus, for St Thomas Aquinas to argue that, because the convocation of a council was the task of the pope, therefore the definition of faith was also his province, was rather like saying that, because the Prime Minister calls a general election, therefore he elects the next parliament.)

The Conciliar Movement of the late Middle Ages, which owed much

¹B. Tierney, *Origins of papal infallibility 1150-1350* (Leiden, 1972).

less than used to be supposed to such allegedly suspect thinkers as Marsiglio and Ockham, gained momentum as a way out of the inter-papal schism (1378-1417): a general council would mediate between the rival claimants.² Thus the conciliar theorists of the Great Schism and of the Council of Constance (1414-8) extended papal liability, in accordance with the views of some earlier canonists, from heresy in the strict sense to schism and refusal to reform the church. Historically speaking, therefore, conciliarism may be compared with the papalism of the 12th to the 14th Centuries, and with the patriarchal theory developed in Eastern Christendom, inasmuch as it emphasised certain doctrines and institutions in response to a particular historical experience and need. It was in this context that the decree *Haec Sancta* was promulgated by the Council of Constance in 1415. This said:

'This holy synod . . . declares itself, having been legitimately assembled in the Holy Spirit, comprising a general council and representing the Catholic church, to hold power immediately from Christ, which everyone of whatever status or rank, even if he be of papal rank, is bound to obey in things which concern faith, extirpation of the said schism and reformation of the said church in head and members'.

Anyone, the decree goes on, even a pope, who contumaciously refuses to obey the statutes of 'this holy synod and any other legitimately assembled general council', should be 'subjected to worthy penance and duly punished, recourse being had to other assistance if need be'. The Council proceeded to depose two of the rival 'popes', and the third resigned.³

The post-Vatican II years have seen a revival of interest among theologians in this long-forgotten decree. Küng and de Vooght have argued that it was intended as a solemn declaration of faith, and must therefore be accepted as a truth about the structure of the church valid for all time, to be maintained in tension with the dogma of papal infallibility.⁴ De Vooght argues with some plausibility that it was indeed accepted as such for some 20 years after its promulgation; it was then discredited by pro-papal pamphleteers who argued that, as it had been decreed when only one-third of the divided Western church was represented at Constance, it was not a true conciliar decree, and thus Martin V cannot have intended to confirm it when he confirmed, in general terms, the acts and decrees of the Council that had been performed 'conciliariter'. Other recent theological historians have suggested that it was intended only to apply to the immediate situation of the inter-papal schism; that it has the status only of positive law; or that it was a pronouncement on the constitution of the church at a particular stage

²For the historical background see E. Delaruelle & others, *L'église au temps du grand schisme et de la crise conciliaire (1378-1449)*, 2 vols. (Paris 1960)—vol. xiv of *Histoire de l'église*, edd. Fliche and Martin. E. F. Jacob, *Essays in the conciliar epoch*, 3rd ed. (Manchester, 1963); and id., *The conciliar movement in recent study in Bull. of the J. Rylands library*, xli (1958), 26-53. H. Jedin, *A history of the Council of Trent*, i, trans. Graf (London, 1957), 5-74.

³J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, xxvii, 590.

⁴H. Küng, *Structures of the church*, trans. Attanasio (London, 1965), 239-84, esp. 278-80. P. de Vooght, *Les pouvoirs du concile et l'autorité du pape, Unam sanctam* 56 (Paris, 1965).

in its evolution, not intended to be held true for all times and places.⁵ It is doubtful whether historical research alone can resolve the question decisively. But we may say that the question of the relationship between different constitutional manifestations of the church has not been settled in favour either of *Haec Sancta* or of Vatican I.

The Council of Constance succeeded in its chief aim of persuading or compelling the rival 'popes' out of office, but after the election of Martin V as the 'undoubted' pope (1417) it dissolved without doing anything about 'reform', which had now become linked in many minds with the conciliarist programme. 'Reform in head and members' meant not simply the elimination of specific abuses, but also structural reform. It was generally, and rightly, believed in France and Germany that papal power over church finance, jurisdiction and appointments had grown considerably and excessively in the preceding two centuries; it was argued that there was no basis for such 'centralism' in the New Testament, and that it accorded ill with what was known about the church in apostolic and patristic times. Thus, not for the last time in European history, historiography came to the service of the reformers, the democratizers, the revolutionaries. They wanted to return to the 'praxis apostolorum et primitivae ecclesiae'.

This was the chief momentum behind the Council of Basle (1431-49) which began with some enthusiasm and ended in bitter failure and disillusionment. Basle abolished papal taxes and restored the electoral and jurisdictional rights of bishops and chapters, strictly curtailing the right of appeal to Rome.⁶ But the foremost article of the structural reformers' creed was the need to restore conciliar supremacy and collective government at all levels of ecclesiastical decision-making. Thus Basle decreed regular provincial and diocesan, as well as regular general, synods, and extended their power over the bishops and also over the exempt clergy. (This, as well as their theological tradition, was one reason why we find so few friars among the conciliarist ranks.) Most ardently of all, the Basileans believed in and acted upon, though they never published as an article of faith, the idea that the general council was sovereign not only 'occasionally', so that it could intervene against an erring pope, but absolutely and without restriction. As the supreme legislature of the church, it could pass laws on any matter which the pope, who was now conceived as a subordinate executive, was bound to carry out⁷; Basle even, to its cost, sought to appropriate much of the work of the Roman curia in appointments to benefices and appellate jurisdiction.⁸ It was chiefly because Eugenius IV refused

⁵Das Konzil von Konstanz: Beiträge zu seiner Geschichte und Theologie, festschr. H. Schäufele, ed. A. Franzen and Müller (Herder, 1964). K. A. Fink, Die weltgeschichtliche Bedeutung des Konstanzer Konzils, in *Savigny Zeitschr. f. Rechtsgesch., kanon. Abt.*, li (1965), 1-23. B. Tierney, *Hermeneutics and history: the problem of Haec Sancta*, in *Essays in honor of Bertie Wilkinson* (Toronto, 1969), 354-70.

⁶R. Zwölfer, Die Reform der Kirchenverfassung auf dem Konzil zu Basel, in *Basler Zeitschr. f. Gerch. u. Altertumskunde*, xxviii (1929), 144-247, and xxix (1930), 2-58.

⁷A. Black, *Monarchy and community* (Cambridge, 1970), 34 ff.

⁸P. Lazarus, *Das Basler Konzil* (Berlin, 1912).

to implement the reform-decrees that the Council of Basle deposed him in 1439; though before doing so it was careful to define conciliar supremacy as a 'truth of the Catholic faith', and so to impute heresy as well to Eugenius.⁹

As a historical movement, this aspect of conciliarism was a complete failure: the papacy and the secular state between them shared out ecclesiastical control in the pre-Reformation era, and the reforms decreed by Basle were never put into effect. The church as a whole had become tired of the whole conciliar controversy; and reformers, particularly in Germany, looked increasingly to the secular power to implement their plans. But it is important to note that the dissolution of Basle implied no settlement of the doctrinal question. The Council of Ferrara-Florence (1438-1445) had, in the decree on union with the Greeks, made a definitive statement on papal supremacy without specifically referring to general councils.¹⁰ But this received no more widespread acceptance in Christendom than did *Haec Sancta* after Basle. Popes condemned conciliarist doctrine and forbade appeals from the pope to a future council. But this was regarded outside Italy, especially in Germany, largely as a latter-day exercise in Roman imperialism. Serious theologians and many canonists continued to regard pope and council as each possessing, in different respects, 'fullness of power'; and certainly, in the sphere of defining doctrine, the authority of a council was still generally considered greatly superior to that of pope or curia (we find it, for example, taken for granted in the writings of St Thomas More).¹¹ This was where the matter rested until the Reformation swept it under the carpet.

The success or failure of a doctrine, however, is not determined by contemporary historical forces; great philosophers have become widely influential only hundreds of years after their death. The ecclesiology of conciliarism, to be sure, owed a certain amount to the cultural milieu of late-medieval, pre-renaissance Europe (outside Italy), where parliamentary assemblies were recognised as having intrinsic rights as 'representative of the whole realm' independently of the monarch, and even as having a limited 'occasional' supremacy over the monarch himself, particularly in Spain but also in England, the German states and elsewhere. The late Middle Ages have with justice been called 'the age of corporations'. The early conciliarists applied to the church as a whole the canonists' teachings on lesser ecclesiastical corporations: just as the cathedral or monastic chapter possessed inalienably certain rights over against its bishop or abbot, and certain important decisions could only be taken collectively, by a majority, so too the general council, which represented the church-as-whole, could on certain occasions override or judge a pope.¹² The Basle conciliarists invoked the

⁹Mansi, xxix, 178 ff.

¹⁰Denzinger, *Enchiridion*, 27th ed. (Barcelona, 1951), 253. Cf. J. Gill, *The Council of Florence* (Cambridge, 1958).

¹¹E. F. Rogers, *The correspondence of Sir Thomas More* (Princeton, 1947), 498 f.

¹²B. Tierney, *Foundations of conciliar theory* (Cambridge, 1955, repr. 1968), esp. 106, ff., 220 ff.

city-state notion of collective legislation by the assembly of citizens and of the accountability of executive officials.¹³ The universities, from which most prominent conciliar theorists came, provided a model of collegiate government, free discussion and limited powers and terms of office for the rector. This debt to 'corporation lore' is summed up by some remarks during a procedural dispute at Basle in 1434 :

'The Cardinal of St Eustachius said, giving himself as an example, that he had been in many notable colleges, he had been a canon in chapters of cathedral churches, a doctor in colleges of doctors, a counsellor of kings in their counsels, a cardinal in the sacred college; and in his experience of these he had always seen this practice observed, that so long as a matter remained under discussion, every aspect, great and small, would receive a mention, so that individuals could speak freely and as they desired about what they thought ought to be done. But, once the greater part of the deliberators were of one opinion, the smaller part gave way to them'.¹⁴ What is more, John of Segovia, representative of Salamanca university, developed this corporation model into a general political theory :

'If anyone considers the nature of *universitas et singulorum* (a corporation—or society—and its individual members), he will judge what has been said not to be absurd but consonant with nature and reason. . . . For he who has power over a multitude . . . although he may exceed individuals does not exceed all, when they concur in some action. . . . This is clear in a leader of an army or a president of any other group. The reason for this is that he who rules over many ceases to be a private and becomes a public person; he loses in a certain way his solitary unity and puts on the united group, so that he is said to exercise or represent the person not of one but of many. He plays the part of a good *rector* so long as he aims at the public utility of many; but when he despises the public good and studiously procures his own good, he then ceases to be a suitable ruler of such a group. A president is said to exceed others, when compared to individual persons or particular associations of the multitude, because he is thought to be aiming at the public good. . . . But, if it occurs that this whole multitude assembles together and asserts or wishes something contrary to what the president says, then, because reality is superior to fiction, the multitude itself deservedly will override him'.¹⁵

But the conciliarism of Cardinal d'Ailly (1350-1420),¹⁶ of Gerson, chancellor of Paris University (1363-1429),¹⁷ of John of Segovia (c. 1393-1458),¹⁸ and of most of the Basle theorists did not derive its chief inspiration either from the contemporary political culture or from canon law, but from theology. These writers derived the principle of

¹³Black, 8 ff., 34 ff., 49 ff.

¹⁴Monumenta conciliorum generalium sec. XV, ed. F. Palacky and others (Vienna-Basel, 1857-1935), ii, 629 f.

¹⁵Black, 142 f., 148 f.

¹⁶F. Oakley, *The political thought of Pierre d'Ailly* (Yale, 1964).

¹⁷O. de la Brosse, *Le pape et le concile, Unam sanctam* 58 (Paris, 1965), 85 ff., 107 ff.

¹⁸U. Fromherz, *Johannes von Segovia* (Basle, 1960).

conciliar supremacy, of collective decision-making, and (in the case of Gerson and Segovia) of the infallible authority of conciliar decrees,¹⁹ from New Testament texts and from apostolic and patristic models. Thus Segovia says that ‘any learned believer can see for himself in the question of the authority of the church, since its truth is not of human but of divine law’;²⁰ he impugns the theorists of papal sovereignty because ‘they have paid most attention to the opinions of the jurists, they have not perhaps spent so much time in the study of divine law’.²¹ The conciliarists cited most frequently Matthew 18^{15–20} (fraternal correction and ‘where two or three are gathered together in my name. . .’), Acts 15 (the council of Jerusalem), I Cor. 12^{12–27} (the church as the body of Christ), and Eph. 4^{11–2} (apostles, prophets, evangelists, pastors and teachers jointly make up the body of Christ).

Nor, particularly in the case of Segovia and other Basle thinkers, were they solely concerned to establish a case for the constitutional sovereignty of council over pope. They were equally concerned with the ethical and theological attitudes that ought to determine the form and manner of church government and decision-making. Citing Eph. 4^{11–2}, Segovia declares ‘Our Saviour wished the church to be governed *in communi*’.²² Another Iberian writer, defending the principle of equality of voting-rights for prelates, doctors and others at a general council, says :

‘All Christians are spiritual brothers, being regenerated by the same Father and mother (sc. the church). . . . And therefore they should be like brothers in the flesh. . . . Therefore they have an equal portion in (the inheritance of the universal church which the universal council represents). Therefore all Christians should have an equal voice in (the church) with a view to its salvation and government. Also, this fraternity among Christians is by reason of charity; for all Christians should be of one will; and because charity makes everything be in common, and . . . puts common before private things. . . . Therefore also there should be one charity, one will, one intention in the council’.²³

The Holy Spirit, Segovia points out, came upon the apostles only when they were gathered together. The favourite text of conciliarist authors was Matthew 18^{15–20}; they believed that the principles which determined the liturgical and ethical conduct of the church ought similarly to be applied to its conduct in decision-making. The very concept *ecclesia* denoted a community, and it was only from a community, the representative *synodus*, that ultimate decisions could come. Citing I Peter 5³, Segovia says that the ‘ecclesiastical president’ (sc. pope or bishop) should behave as one of his people ‘being made one spirit and

¹⁹Jean Gerson, *Oeuvres complètes*, ed. Glorieux, vi: l’oeuvre ecclésiologique (Tournai, 1965), 115 f.

²⁰*Monumenta*, iii, 938.

²¹*Ibid.*, 666.

²²A. S. Piccolomini, *De gestis concilii Basiliensis*, ed. Hay & Smith (Oxford, 1967), 145.

²³H. v. d. Hardt, *Magnum oecumenicum Constantiense concilium*, vi (Leipzig, 1700), 265.

one body with them' (cf. the new canon, no. 3).²⁴ It is in this sphere, I believe, that Segovia and some other conciliarists have much to contribute to modern ecclesiology.²⁵

²⁴Vat. lat. 4039, f. 225 v.

²⁵There is a remarkable and quite unconscious similarity between the parts of K ung's 'Structures' dealing with the theology of the council and the writings of Basle thinkers, especially Segovia—with whom he was clearly not acquainted; e.g. 'a council is not the sum total of individual votes, but the totality of the consciousness of the church' (p. 31).