

JUAN DE TORQUEMADA

EXPONENT OF INFALLIBILITY

in the Fifteenth Century

by

SISTER MARY EDITH
Maryknoll Sister

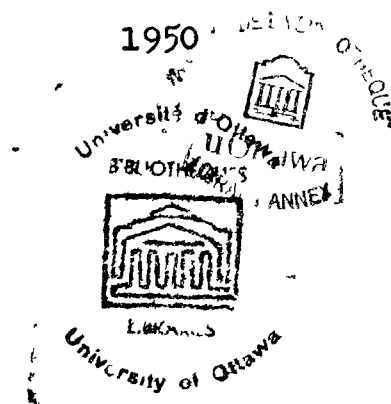
A STUDY OF CONCILIAR SPEECHES
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INTRODUCTION

If history has any meaning it must be related to the working-out of the Divine Plan in the affairs of men, in the purposeful direction of all those manifold manifestations of the human spirit, -- now wastrel, now seemingly bent upon evil, now capricious, now rational, now all but divine. God, the master and the lover of men, would not be the All-powerful if His designs were not forever being fulfilled, not accidentally and as it were by a compensation that in the end rights all the wrongs. Rather it is an eternal Will working wonderfully, in nothing more demonstrably potent than in the struggle of men with the nether darkness. "The drift of the Maker is dark, an Isis hid by a veil", and in this sense history is a contest although the absolute and final issues are always clear. For Ahriman can never conquer Ahura-Mazda; only apparently powerful, he is allowed to precede the light for no designs of his can be anything but dissipated in that radiant blaze.

And if there is one stream of history where this truth deigns to show itself from time to time, it is in the history of the Church of God. If her victory at the end of time is to be the victory of Michael the Archangel, it is only in vast struggles, in battles nearly always seeming all but lost, that her final triumph is made a right and not a meaningless thing. But it is not only in the ultimates where the marks of her victory are displayed to man; they are faintly delineated or even boldly drawn

here and there through the ages "to justify the ways of God to men". The thirteenth century was such a shadow of the things to come, an age of fulfillment and manifestation. But every age bears the outward evidence of divinity stamped deeply enough. With the Church, because it is of another than merely human order, the mystery must be shrouded generally with just that momentary break in the clouds that cheers men on to war anew.

It is easy enough to write down in large statements the marks of most evidently critical periods of history, -- the outward signs, at least. The fifteenth century is sharply distinct even among a number of eras of crisis. Dragon's teeth had been shown the previous century: they had come to a full and bristling harvest. The harvesters were all there, too, some of them not entirely of this world. The crisis was reached in disrespect for the Papacy; this was not simply another age of merited disrepute such as the criminal and sycophant Popes of the tenth century had won. But it was a disrespect, a disobedience equipped with a philosophy. Authority had been under fairly systematic attack since the turn of the year 1300. The "robber council" of Basle exemplified the state affairs had reached:

"Such wicked daring and diabolical presumption had been shown in no age that had gone before; it would have given birth to noisome scandals in the ages to come did not almighty God, that most sure Pilot of the ship of the Church, save His Church unharmed in the tempests and turbulent waves".¹

¹Juan de Torquemada : Summae de Ecclesiae Domini libri quatuor. Lyons: Johann Trechsel, 1496. Liber III, c.50, prin.

In the designs of God, it was a crusader from Spain who was the instrument of choice in the defense of the very meaning of the existence of the Church. Christian kings were warring; princes and prelates were disaffected; in the North there were "texts and aching eyes" and heresy; at the eastern outposts the Turk was girded for battle. And in the center of the whorl was the Pope, secure as the center of gravity, with a small band of loyal men who wore themselves out in the restoration of ordered movement. Among them, Juan de Torquemada stands out in vivid relief, the "Defender of the Faith"¹, "the brilliant light and the pillar of the universal Church"², "the most renowned and the bravest defender of pontifical authority".³

In the thick of the fray, Juan de Torquemada fought for the Apostolic See and for the person of an outraged Pope. He fought to vindicate the prerogatives of the Papacy with all the weapons his splendid intellect could command; and he fought with a great will and a burning zeal. But when the conciliar battles were over, the souvenirs he had gathered were insufficient. A necessity lay upon him to re-arrange his scattered defenses of multitudinous papal pri-

¹It is unknown just when the title of "Defender of the Faith" was conferred on Juan de Torquemada. It may have been after his brilliant defense of the Papacy at the Council of Florence, in the early Fall of 1439. At least two Popes -- Eugene IV (1431-1447) and Pius II (1458-1464) -- used it. cf. Quétif-Echard: Scriptores ordinis Praedicatorum, Vol. 1. Paris, 1719. p. 838

²Ibid. p. 837

³De summi Pontificis infallibilitate personali. Naples: De Angelis, 1870, p.6. In Miscellanea.

vileges into one unified whole. The high-water mark of his teaching was a line that read: "The Apostolic See, in the things that relate to Faith and what is necessary for the salvation of men, cannot err".¹ Thus, the work of the Spanish Dominican was crowned with the honour of being the first full synthesis of the common teaching of the Church about the primacy of the Roman See and its logical corollary of infallibility.

The written records of five conciliar speeches formed the basis for the eventual construction of the Summa de Ecclesia. The first three of these were delivered as the negative side of debates within the Council of Basle itself. The Solemnis tractatus in favorem Eugenii Papae IV contra decreta Constantiensis et contra gesta in concilio Basiliensi adversus Eugenium was the first of these, dated "at the end of the month of May", 1433.² This is Tract A of this thesis. Three years later the conciliar opposition had gained strength. Debaters were given the task of deciding right of appeal to the Pope from the Council. On March 9, 1436 Torquemada voted against the Council by the Tractatus factus contra avisamentum quoddam Basiliensium quod non licet appellare a concilio ad Papam, Tract E for present purposes.³ Only a short time afterwards another negative decision appeared in the Votum

¹Summa de Ecclesia II, c. 169

²Mansi, Joannes : Sacrorum conciliorum nova et amplissima collectio. Paris: Welter, 1900 ff (reprints). Vol.30: 550ff.

³Mansi: 30: 1072 ff.

super avisamento quod Papa debeat jurare servare decreta de conciliis generalibus continuandis et electionibus servandis: alias cadat a papatu. This is Tract D.¹

But the basic summary of papal claims was a speech delivered in the Council of Florence in the early Fall of 1439 after the Council of Basle had been officially condemned by Pope Eugene IV. Tract B, otherwise is the Responsio: Apologia Eugenii Papae IV, sive de summi Pontificis et generalis concilii potestate ad Basileensium oratorem.² Lastly, there is Tract C, the reply to an invective of the Council of Basle provoked by the bull of reprobation; nearly a year had elapsed before the conciliar retort was answered by Cardinal Torquemada at the national church Council of Bourges, 1440. This is the Responsio in blasphemiam et sacrilegam invectivam ad sanctissimum canonem justissimae condemnationis damnatissimae congregationis Basileensium.³

The doctrine here derived from the five tracts is related to the Supreme Pontiff and only incidentally to the General Council. The fundamentals of Torquemada's developments for both subjects

¹Mansi: 30: 29ff

²Mansi: 31B: 1941 ff

³Mansi: 31B: 1910 ff

lie in the Tracts, but the scope of this paper does not extend to the two reciprocal parts of the whole. The object of this thesis is to show that Juan de Torquemada arrived at his full and final synthesis of papal prerogatives from his defenses of the Papacy as found in the conciliar speeches.

JUAN DE TORQUEMADA

Early chroniclers are an unsatisfactory genus. They relate little or nothing of the details that modify and illustrate a biography with vivid incident, with a record of its human associations and its perpetuation of those thousand and one variations every human being reveals as he opens his unique microcosm to be scanned by his fellows. Instead, we must be content as a rule with a few meager statements recited with the epitaph and try to reduce the improbable to a creature of flesh and bones, of will and intellect, of emotion and warmth. In a word, we must build up a creature from the valley of dry bones with the hope that our vision is at least of some affinity with the original, -- not much but some. With Juan de Torquemada we are little better off except as he tells his own story by his writings; this is no small revelation but is still hopelessly inadequate for biography. But we merge such passing glimpses as are known.

The town giving his family its name was in Old Castille, the diocese of Palencia. There, about the year 1400, he entered the order of Friar Preachers, being about sixteen years old. Earliest

memories of Juan associated him with a hungering love for study.¹ When Louis of Valladolid was sent to the Council of Constance in 1417, Friar Juan accompanied him.² There he appears to have appraised the men of Constance and their activities. It must surely have been while he was in attendance at the Council that he learned to distrust, not to say dislike, Jean Gerson "the soul of the Council of Constance". Curiously enough, it was in several ways later on that his work consisted in reversing that of Gerson.

Sometime after the Council, Friar Juan was sent to read for his licentiate at Saint Jacques, Paris. He took the degree in March, 1424, the doctorate in theology following the next February 16.³ Juan was gifted with a memory unusual among good memories and an all but inexhaustible avidity for reading expended especially on the Church writers but to a considerable extent on profane authors also. His Summa de Ecclesia was to serve as a memorial of the abundant treasury he had at ready command.

In the six following years he acted as prior successively of the convents of Valladolid and Toledo.⁴ The rest of his life, more

¹Mortier, D.A. : Histoire des Maîtres-Généraux de l'ordre des Frères Prêcheurs. Paris: Picard, 1909. Vol.IV, pp.276 ff

²Quétif-Echard : op. cit. Vol.1, p.837

³Deniflé, Henri : Chartularium universitatis Parisiensis. Paris: Delalain, 1897. Vol. IV, p. 428

⁴Ferét, P. : La Faculté de Théologie de Paris et ses docteurs les plus célèbres: Moyen-Age. Paris, 1897. Vol. IV, pp. 336 ff

than thirty-five years, was lived amid the whirlwind of passions threatening the Apostolic See.

The year 1431 was a milestones in the lives and fortunes of many. The Council of Basle had been convened.¹ Martin V promptly died, bequeathing Pandora's box to Eugene IV;² unwittingly Martin left a fair share to Juan de Torquemada who had been called to accompany his Master General as a procurator to the Council.³ They were to have gone from Lyons to Rome where, apparently, they stopped over. Was it a time for renewing acquaintance with Cardinal Gabriel Condulmero?⁴ Who can say, but it does seem likely. Torquemada knew so well the mind of the erstwhile delegate to Constance; nor does Torquemada appear to have been any less known to the future Pope. Otherwise it is a little hard to understand how and why the Dominican Friar was called so quickly to stay with the Pope. If

¹One of the last acts of Martin V (1417-1431) was the convocation of the Council by the Bull, "Nuper", February, 1431. Mansi: 29:10. Martin died February 20, 1431.

²Eugene IV: March 3, 1431-February 23, 1447.

³Mortier. op. cit. p. 280

⁴Tract C: 62(2): "Notissimum quippe est omnibus...qui noverunt dominum nostrum in minoribus constitutum antea quam de papatu ejus esset hominum cogitatus, divisionem orientalis et occidentalis Ecclesiae aegre ac molestissime ferentem...in concilio Constantiensi primum..."

A few other references scattered throughout the Tract would seem to indicate that Torquemada had known Eugene fairly well at Constance.

the chronicler is correct, the day following Eugene's coronation was the day Juan de Torquemada was named Master of the Sacred Palace.¹ Thereafter he remained the Pope's man, his theologian and agent in difficult and delicate missions, a position he appears to have retained through four successive pontificates.

There is a notice of a sermon he preached on the Second Sunday of Advent, 1432, at the Council of Basle, the first of the records of his activity there. His theme was based on the text: "There will be signs in the sun and the moon and the stars".² The next notice of the historian occurs the following month when the reform committee selected debaters to reach a conclusion on the subject of binding the Pope to the observance of conciliar decrees under penalty.³ Sometime in 1435 he was commissioned to examine certain propositions of Augustine of Rome, the aging General of the Augustinians.⁴ And the Swedes had been far from content with Gerson's decision at the Council of Constance against the wholesomeness of the visions and revelations of Saint Brigid.⁵ Torquemada

¹Quétif-Echard. op. cit. p.838

²Ferét. op. cit. IV, p. 337 . Lucae. XXI: 25

³Joannis de Segovia : Historia gestorum generalis synodi Basiliensis. Printed in Monumenta conciliorum generalium saeculi decimi. quinti, ed. Ernestus Birk. Vienna, 1873. Vol. II, p.844

⁴De Sacramento unitatis Christi. Mansi: 30: 979-1034

⁵Mansi: 30: 699-814.

was assigned to study the revelations and return suggestions to the Council. In both cases his judgement was ratified.¹ The offending propositions were condemned in the first instance, and as Augustine had already agreed to a retractation, Torquemada handled the affair with tact and consideration. The decision of Gerson² was reversed in the case of Saint Brigid: the Swedes returned to their homeland delighted with the rehabilitation of their Saint.

To make the theological battles of the Dominicans somewhat easier, Torquemada composed a tract on the Holy Eucharist,³ considered an outstanding piece of apologetic. Thereafter, proving himself a faithful Dominican, he opposed John of Segovia on the subject of the Immaculate Conception.⁴ "They allege authorities", said he, "but they adduce no reasons". This was unquestionably an official attitude of Eugene IV no matter how he may personally have been disposed to regard the subject of the new "dogma" for the Council of Basle could not possibly have been allowed freedom at a time (1437) when they had passed decidedly into the class of

¹Mortier. op. cit. IV, p. 302. Hefele, C.J. et Leclercq, H.: Histoire des conciles. Paris: Letouzey et Ane. VII, p. I, p. 318. cf. Mansi: 30: 18 et 26.

²Gerson, Johannis : De probatione spirituum. Opera omnia, ed. Ellies Du Pin. Antwerp, 1706. Vol. I, 37-43. cf. Hefele-Leclercq: VII, I, p. 388

³Quétif-Echard. op. cit. p. 843. Raynaldus, O.: Annales ecclesiastici, ad an. 1437, #20. Vol. 28. ed. Theiner. Bar-le-Duc, 1874.

⁴Joannis de Segovia. op. cit. Monumenta... II, pp 846 et 896.

robber councils. Torquemada was acting under mandate of the papal legates.¹ It appears to have been official Dominican teaching, opposition to the all but general teaching of the Church. But whether Torquemada was himself in sympathy with that of the Dominicans in the matter may at least be questioned. The revelations of Saint Brigid especially favoured the common teaching. Torquemada's verdict on the particular revelation was: "It could be true", a remark that might have had no bearing whatever on what he thought personally.² Yet when he answered John of Segovia, he was careful to say that he did act under instructions. Coupled with a devotion to the Blessed Virgin that distinguished him, coupled also with at least one aspect of that devotion that was slightly unreasonable in its desire to demonstrate her unique privileges, the whole may have considerable meaning. A peculiar mark of his admiration for our Lady was his favouring the opinion of those who claimed that She alone had kept the Faith during the passion of Christ.³ "I marvel at it", said Saint Robert Bellarmine, "that he could hold this opinion actually in opposition to Scripture".⁴ And

¹Candal, Emmanuel, ed. : Apparatus super Decretum Florentinum. Roma, 1942. p. xii, not. 4, quoting Torquemada in his Commentarium Decretum Gratiani.

²Revelationes sanctae Birgittae, art.89. Mansi: 30: 780-781

³Summa de Ecclesia I, c. 30 ad finem.

⁴Bellarminus, s. Robertus : De Conciliis III. Opera omnia II, ed. Justinus Fevré. Paris: Vivés, 1870. p. 358

forthwith Saint Robert disposed of the argument.

The Council of Basle was creating an amount of mischief that may be gauged to some extent by the Pragmatic Sanction of Bourges with its subsequent echo in a similar adoption by some of the German princes. These were symptomatic of an extreme Gallicanism, the settling of ecclesiastical affairs without reference to Rome, before Bourges without precedent in history. They were indication of that disrespect for the Papacy and the disregard of its jurisdiction that had been sapping its prestige since the quarrels of Boniface VIII and Philip the Fair. It was a critical time. Where would the Pragmatic Sanctions lead? To schism with its independent churches on the Greek pattern? Eugene, whose dream was a unified Christendom, was alive to the gravity of the crisis. Above all things it was needful to make plain statement to the princes of the true nature of the conciliar decrees. Defiant of a tradition that had been unanimous in finding its center of gravity in Rome, the centrifugal forces unleashed by Marsilius of Padua and William of Ockham had gathered a fierce and fearful rush of velocity that was threatening the destruction of the Christian world in the destruction of its unity through failure to recognize as the king of Christendom, the Pontiff of the Roman See. The German princes were restive in a precarious neutrality. The Diet of Augsburg met in the Fall of 1438 and the Council was doing something more than casting hopeful glances to affect a change in the neutral status. Nor is there much reason to believe the means the conciliarists

employed were always the fairest.¹ The situation worsened gradually until the time was ripe for the Congress of Mayence in the Spring of the next year. It was a gathering of princes and prelates, but it was the princes who were chiefly vocal.

Had the Congress adopted the Pragmatic Sanction before Torquemada's arrival? It is hard to say. It is always a fair task to attempt to date any of Torquemada's movements with anything like certainty, but he was present, delivering a speech to offset the effects of another Bourges. The Sanctions were decided upon but the German princes retained the uneasy neutrality, recognizing Eugene for the lawfully elected Pope, but far from disposed to reject the decrees of the Council that were operating favourably in their interests.

That year, 1439, was climactic in the life of Torquemada. His activities shifted to the Council of Florence where his ability as

¹Tract C: 38: "Numquid tam apud Christianissimum regem Francia quam apud congregatos in diaetis Norubergensi et Moguntina semper Basiliensium cautela fuit et vigilantia summa, ne oratoribus sanctissimi domini nostri audiri petentibus pro justitia et veritate sanctitatis illius contra errores Basiliensium plena et publica audientia daretur. Scitur quibus artibus usi sunt per eorum fautores et complices ne dictis eorum respondendi locus oratoribus sanctissimi domini nostri protestarentur. Publica sunt instrumenta de injuria ista facta veritati Christiani fidei et justitiae praefati domini nostri. Et cur hujusmodi cautelis semper usi sunt, nisi quia fundamenta infirma sciebant..."

For credit in retaining the German princes for the Pope, it can easily be said that Torquemada's was no small role at the Synod of Mayence. cf. Quétif-Echard. op. cit. p. 838.

a theologian was rewarded with the privilege of drawing up the decree of union between the Eastern and Western Church, sharing the responsibility with a fellow-Dominican, John of Montenegro. The pair were seasoned pleaders, acting in consort since the early days of the Council of Basle.¹ Both were eminent theologians. The Apparatus, witness to another ephemeral reconciliation between the contemplative East and the activist West, is a silent tribute to the great dream of Eugene ever since the days of Constance. It was not long after the signing of the act of union on July 6, 1439, that Torquemada must have begun his wonderful apologia for Eugene and the prerogatives of the Papacy. Delivered in the Florentine Synod sometimes after the condemnation of the Basle-ists by the Bull, Moyses vir Dei,² issued September 4, the Responsio ad orationem Basiliensis³ is a marvellously summarized argument for papal claims.

More work lay ahead. Eugene's delight knew no bounds when Eastern Christendom bowed to the authority of the universal patriarch, yet his western sons gave him reason for anxiety. Any peace effected between France and England for well over a century had

¹Touron, A. : Histoire des hommes illustres de l'ordre de Saint Dominique. Paris, 1744-1746. Vol. VII, pp.287-303; p.401.

²Mansi: 31B: 1716-1720

³This is Tract B of this paper. Mansi: 31B: 1941-1998

never been anything more than an armed truce, either side stopping only for a breathing space. This project was close to Eugene's heart. Torquemada left Florence in late October for Angers, going in company with the Archbishop of Spalatro with the object of establishing a permanent peace between the two countries. It was while he stayed at Angers that the red hat came to him with the title of Saint Sixtus. Juan de Torquemada was a cardinal-priest of the Holy Roman Church.¹

But the matter of the Pragmatic Sanction found Torquemada presiding at the national Council of Bourges in September, 1440.² The Council of Basle, equipped with anti-Pope, had journeyed its full way to power. The Bull of condemnation with the subsequent libellous answer³ gave Torquemada the weapons he needed. He was certainly convinced that the conciliar invective would be proof sufficient that the Council was far from representing the universal Church, that it had stepped wide of the limits of decency. It might be plea sufficient for withdrawing the Pragmatic Sanction. That was the hope of the Pope's representatives. The speech⁴ declaimed in the Council proved the friend Eugene had in the speaker. Nothing

¹Quétif-Echard. op. cit. p. 838. Tournon. op. cit. III, p. 405

²Quétif-Echard. loc. cit. The Council sat August-September.

³Responsio synodalis, October 7, 1439. Mansi: 29: 344 ff

⁴Mansi: 31A: 63 ff. This is Tract C.

could exceed his zeal for the honour of the Apostolic See, his dread of the scandal that was on its way towards creating a wide cleavage among Christians, his personal friendship that spared nothing in its defense of the person of Eugene. For an anger that is almost boundless there is little more revealing than that answer to the Basle-ist speech. The added dignity of his cardinalate suffered no subtraction in as caustic a show of spirit and fidelity as Church annals might yield. Based on a capital scriptural text,¹ the Bourges speech must have been worth hearing, full of wrath, fiery with indignation, terse and incisive in its deliberate assignment of responsibility. When Eugene was able to say as he lay dying, that his life had been an unusually happy one, he may well have thought on one of the Cardinals in tears at his bedside as no mean contributor.²

The speech³ provoked deliberations that extended over six days. The Bishop of Clermont was spokesman for the assembly to the legate. The King, he said, had always been full of respect and deference for the dignity of General Councils, had noticed some good things touched upon at Basle relative to the Faith and good morals. The

¹Jeremiae IX: 5: "Docuerunt enim linguam suam loqui mendacium; ut inique agerent laboraverunt".

²Touron. op. cit. III, ca.p.412. "All were in tears".

³Ibid. pp. 406-407

quarrel between the Pope and the Council was deplorable: His Majesty had frequently worked through his ambassadors in efforts to make an end of the disputes. As for the deposition of Eugene and putting another in his place, the King had never approved these actions. Charles would himself remain within the obedience of Eugene; he begged His Holiness to assemble another General Council in France to end the new schism fraught with such evil to the Church. As for the Pragmatic Sanction, the prelates declared the King most emphatically wanted it observed within the realm. Perhaps, if there were another council convoked, assembling in France, some modifications might be worked out.

All things considered, Eugene's party was content with the way the negotiations had turned. All demands were not gained but the essential point was, -- that France should remain within the orbit of the Roman obedience, recognizing Eugene for the true and legitimate Vicar of Christ. The election of Felix V was to be regarded as a schismatic act that horrified the Church. This turn of affairs amazed the men at Basle, particularly Felix who seemingly had reasons for expecting different results. Cardinal Juan de Torquemada may well have been the means that maintained France stable within the Church,¹ ensuring a quicker end to the Council of Basle eventually.

¹Ciacconius, Alphonsus : Vitae et gestae Pontificum Romanorum et S.R.E. Cardinalium. Roma, 1677. Vol.II, p.917. Quétif-Echard: op. cit. p.838, giving the credit to Torquemada.

Before he had left France, Torquemada wrote a memorandum for Charles VII outlining the reasons against the convocation of another General Council.¹ The decree, Frequens, had not ceased to cause trouble since the days of Constance. The time was singularly inopportune: Constance had bred schisms. The various decrees and definitions and opinions ventilated at Basle had consistently made for the lowering of the prestige of the Holy See. Consciences were troubled as a result of conflicting decisions at Constance, at Basle, and now at Florence. The reformation of the Church, begun at Basle, had ended with less than nothing in the way of betterment; no headway was being made at Florence and the need for reform was still a crying need. Then the hostility! The King of Aragon and the Duke of Milan were in open rebellion; many prelates were disgruntled. The collective effects of Constance and Basle had fomented rancor and uneasiness. Further, the Pope was nervous at the thought of what another Council might do. At the moment he was suffering from the personal attacks of Basle; his hands were full trying to ease the situation for the Eastern peoples. A Council, in matching untimeliness with fear of more scandal to the Christian world, could hardly be the means for effecting much good. In the best interests of the Catholic world, the word that might be best forgotten for a long time was "council!"

¹Opusculum. Mansi: 35: 42-56. The foregoing paragraph is a summary of the reasoning.

When the King of Aragon was at last reconciled with Eugene, Torquemada used the peace to further the interests of the Holy See.¹ He recalled to Alfonso that his prelates were still active at Basle -- Panormitanus, Archbishop of Palermo, and John of Segovia with one other lately raised to the status of cardinal by Felix. Alfonso wrote them, telling them to go back to their dioceses; they were doing something disagreeable to him in remaining at the Council. And they need not wait for a second letter. As all the prelates were his subjects, holding their benefices from him, they had little choice but to leave. This they did in 1443.

After the death of Eugene IV, Tommaso Parentucelli was elected. He took the name of Nicholas V. Two years later he was able to end the schism of Basle. In the meantime a wave of anti-Semitism had broken out in Spain leaving the wretched Jews of Toledo in a woeful plight. Torquemada was given the task of teaching a lesson in practical Christianity, the which he did in a tract, Contra Madianites et Ismaelites. A papal bull made the advice mandatory.²

The Summa de Ecclesia, finished in 1453, was dedicated to Nicholas V.³ In four books it set forth the constitution of the

¹Touron. op. cit. III, pp.409-410

²Ibid. p. 420 ?

³Ughelli, Ferdinando : Italia sacra. Venice, 1717. Vol. I: Sabinenses episcopi, #69, p.180. Prologos Summae de Ecclesia.

Church. The first book, De ecclesia, states precisely what the Church is, its hierarchical disposition, the jurisdiction of its prelates. Book two is the culmination of Torquemada's achievements -- the Roman Pontiff and his primacy. The third book, on the Council, is a definitive statement of the multiple relations between Pope and Council. It is plainly secondary in importance to the thesis ingeniously developed in the second book, just as the purpose of the Council is secondary to that of the Pontiff. The fourth and last book treats of schism and heresy, schismatics and heretics. Taken as a whole there is nothing like the Summa de Ecclesia in the literature of the previous centuries. As the attacks from Marsilius of Padua to the Council of Basle, not to advance farther historically, had been directed at the being of the Church itself rather than at any special doctrine as such; so the Summa de Ecclesia was a work of constructive genius in its diametric opposition. Torquemada gathered into one logically coherent body a summary of what had been taught more or less professedly, in some one or other of its aspects, by the Fathers, Doctors, canonists, early and later scholastic theologians. "No one can better sing his praises, either more glowingly or more truthfully, than in lauding his writings, -- the last word in learning".¹

¹Ughelli. op. cit. #69, p.180.

It is neither necessary nor appropriate to catalogue the fairly lengthy list of occasional works that Juan de Torquemada composed in the quality of papal theologian. They cover a wide theological range from a treatise on the use of holy water¹ to a libellus written against heretics quarreling with evangelical poverty² to a tract opposing the chief errors of Mahomet.³ It is in the later years of his life that the Cardinal appears more in the character of the ascetical theologian with a voluminous commentary on the Psalter⁴, reflections, or rather points, on the sanctoral and temporal cycle from the Gospels,⁵ and a slim book of meditations.⁶ But even in the ascetic works the strict

¹De efficacia aquae benedictae. Augsburg: Anton Sorg, 1478. (The dating is only probable) 8 leaves small folio. This was composed against Peter the Englishman for the Council of Basle. It is a concise summary of the traditional Catholic interpretation of the virtus of water, especially related to sacramentals.

²Libellus contra haereticos impugnantes paupertatem Christi Ms #975: 4, Vatican.

³Tractatus contra principales errores Mahometi. Ms #974:3 Vatican.

⁴Expositio Psalterii. Ms Palatino #38; Vatican. This long commentary (250 folios) enjoyed a long and wide popularity if we can judge by the number of printings made both during the 15th and the 16th century.

⁵Quaestiones Evangelicorum tam de tempore quam de sanctis. Nuremberg: Koberger, 1480. 348 leaves small folio. These are brief, clear, dogmatic studies intended as a basis for ruminating on the eternal truths.

⁶Meditationes devotissimae. Roma: Stephan Plennck, March 13, 1484. This was the second edition, the first book printed in Rome with illustrations and during the Cardinal's lifetime, 1467. 18 folios

disciplines that characterized his dogmatic writings and the precise, careful diction of the scholastic philosopher are manifest. His appeal is to the intellect, not to the emotions except in restraint and within a circumscribed orbit. There is a suggestion of the Shakespearean "quintessence of dust" in the meditations on the Creation:

"Urged on by goodness alone, not from any need, Thou didst arrange to share this happiness with others. And, it not being anyway possible for anyone to be made a sharer of Thy unutterable happiness unless this were done through an understanding, so much the more is it understood the more fully it is enjoyed. Thou didst create a rational creature. Among all other creatures this one is set apart to be ennobled and honoured and lifted up by that light of Thy Face. Such a creature it was as to have an understanding of Thee; and in such an understanding it would love; in that love it would possess; and in the possession would delight. And this creature! In some manner Thou didst discriminate so that one portion should endure in its purity, no partner with a body, but would be angelical. The other part of this creation, the rational soul, Thou didst join with a body. This one, since it was given to know what a capacity Thou didst give it for Thyself, how noble a work, how marvellous didst Thou make it! This one from nothing at all was made fit to attain that happy repose -- this one, something less than Thee...

"Faithful soul, think how God has made man! Be thankful for such munificence. If we think of him as he is in body, God made a creature outstripping others. If we think of him as he is in soul, he is so much the greater as he bears printed there the likeness of the Creator, -- a sharer of reason and fitted for everlasting happiness. Indeed, this was man, My God most high, Father of mercies, powerful Creator! How great didst Thou make him, how evidently great: rich with the gift of reason; one with Thee by infusion of grace; raised up with the honour of virtue given him!"¹

¹Meditationes devotissimae. The Creation of Man. Folio 2r.

The theologian's gift to posterity is the Summa de Ecclesia but the honours even there must be apportioned to the philosopher and the canonist. His several commentaries on Gratian are claims to fame as canonist,¹ again inseparable from the theologian and the philosopher. Torquemada's mind was eminently suited for the work of synthesis, the finish of analytical processes.

His conciliar speeches are evidence enough of his desire for ecclesiastical reform, but after 1450 Torquemada was able to give more direct attention to a practical application of a generally acknowledged and critical necessity. At a General Chapter of the Friar Preachers held in Rome in 1451, Torquemada singled out the Superior of the Spanish province for furthering the revival of monastic observance among Dominicans generally. An early historian has noted the Cardinal's zeal for regular observance with its emphasis on study.² His labours, remonstrances, his liberality and personally edifying example were credited with good effects in

¹Lectura super distinctionibus. Mss. #2267 and 2268 account for the first two volumes of the commentary running to 580 folios. De causis. Mss 2269, 2270, 2271 are the three volumes on the secunda pars of Gratian, just short of 900 folios. Super tractatu de Penitentia. Ms #2569 fills 214 folios. The final portion of the commentaries on Gratian, Super distinctione de Consecratione, is a work extending to 350 folios. Saint Robert Bellarmine labeled the whole "eximius".

²Johannis Lopez: Historia ordinis Praedicatorum II, c.5. This historian is used extensively by Tournon: Les hommes illustres... III, pp 424 ff.

many a Spanish village. He did have the added consolation of realizing that his own convent of Valladolid received the reform gladly and manifested eagerness for regularity.

It is not known whether the reform of some Dominican convents and the foundation of others was the sole object of the journey made to Spain after 1451, but there is a probability of its not being unconnected with the Turkish and Mahometan business, an effort by ambassador extraordinary to gain the interest of the King of Castille in the great peril to Christendom.¹

The charities of the Cardinal found several outlets. The assistance he tendered many Dominican convents in Spain carried the reform along the practical path of establishing schools and of repairing ruinous conditions. At Rome, he founded a society to provide the means of honourable living to poor girls. Each year on the Feast of the Annunciation twelve dowerless Roman girls were supplied either with a marriage portion or a dowry for entering a convent.² The society still flourishes under its title of the Annunciation although it is much changed.³

On September 26, 1468 the Cardinal-bishop of Santa Sabina brought his full life of service to the Church to a close. He was about eighty years old.

¹Touron. op.cit III, p 425

²Ibid. p 435

³Enciclopedia Italiana: "Torquemada". Vol 34, p.55

PART ONE

THE HISTORY OF THE QUESTION

CHAPTER ONE

The close of the thirteenth century marked the end of a chapter in the history of the Papacy. The story written there -- not all glory, not all honour -- was a tale of growth in prestige and influence since the days of the Gregorian Reform.¹ The incisive statements of Pope Saint Gregory VII² had been no new doctrines, but his forceful application of old principles -- the primacy of the spiritual power and its plenitude -- was vindicated in the Popes of the the twelfth, and pre-eminently, those of the thirteenth

¹Lagarde, Georges de : La naissance de l'esprit laique au déclin du Moyen-Age. Editions Béatrice. Vols I et II: Saint-Paul-au-Trois-Châteaux, 1934. I: Bilan du xiii^{eme} siècle. This is an invaluable study for the introduction of the subject of the Papacy and the growing seeds of conflict. The Gregorian Reform is happily outlined. Throughout the six volumes of this series, Lagarde is preoccupied with the inter-action of the notion of papal plenitude. Lagarde is basic.

²Gregory VII (Hildebrand) : 1073-1085. The Gregorian Reform was directed principally towards the abolition of lay investiture as the source of other abuses in the Church. This evil began to abate gradually, the Concordat of Worms in 1122 drawing issues to a close. The agreement of Worms received confirmation at the first General Council of Lateran in 1123 under Callistus III.

century.¹ Of these, none was a worthier heir than Innocent III.² By sheer weight of that spiritual power, Innocent was easily the first man in Europe. Able canon lawyer and theologian, Innocent was such a Pope who could effect in his vigorous young person a definitive marriage between papal theory and application in such wise as to command thorough respect throughout Christendom and on the fringes. There was no question as to the spiritual plenitude

¹Dictatus Papae: This is a series of twenty-seven points drawn up by Gregory VII for his own guidance in the programme of reform. Although they have their prototypes in pronouncements of earlier Popes, they are about as strong as any statements issued by any of the subsequent Popes. To note some of the more arresting:

- a: That the Roman Church was founded by God alone;
- b: That the Roman Pontiff alone by right is named universal;
- c: That he only can depose bishops or reconcile them;
- d: That his legate precedes all bishops in a Council even if he be of inferior rank; he, too, could profer sentence of deposition against them;
- e: That his name alone is made mention of in the churches;
- f: That this name is unique in all the world;
- g: That no synod ought to be termed a general one except by his order;
- h: That his decision ought to be set aside by no one; yet he himself could set aside the judgement of all others;
- i: That he himself ought to be judged by no man;
- j: That no one should dare to forbid an appeal to the Apostolic See;
- k: That major cases of any church whatever ought to be referred to this See;
- l: THAT THE ROMAN CHURCH HAS NEVER ERRED, NOR WILL IT ERR IN PERPETUITY, THE SCRIPTURE BEING WITNESS TO THIS;
- m: That he who is not in harmony with the Roman Church is not to be taken for a Catholic.

Printed in Registrum Gregorii VII, (Monumenta Germaniae Historica, Epistolae II) ed. Kaspar, 1920. pp. 201 ff.

²Innocent III: 1198-1216. He was elected when he was thirty-seven years old.

of papal jurisdiction, no question of proper subalternation of secular to spiritual authority.

These facts were known; they were acknowledged. It was in the very universal admission of that papal prerogative that made Philip Augustus sigh for life under the Sultan who could neither command nor enforce what the Pope could. Through its force, Philip took back his wife; John of England bowed under the force of its interdict. Both conflicts would inevitably have resulted in papal victory. Both did. The unruly sons grudgingly acknowledged a power that could command sovereigns to quit their sins. Yet Innocent was no commander of blind obedience. He had no desire to usurp another and a distinct power -- the governance vested in princes.¹ The Papacy, then, as the century opened cast shadows of the things to come.

But there had been a "cloud the size of a man's hand" appearing in the blue during the pontificate of Alexander III,² -- the Waldensian heresy condemned in the third General Council of the

¹The canon, Novit, (Decretals of Gregory IX: II, I De judiciis, c.13) was a letter Innocent III had sent to the prelates of France: "Let no one think that we entertain any intention of disturbing or lessening the jurisdiction or the power of the illustrious King of the French... Nor do we intend to make a judgement in the question of a fief when it is his business to judge of such matters... But where sin is involved..." . Corpus juris canonici, ed. Friedberg. Leipzig, 1879. Vol. II.

²Alexander III: 1159-1181. He was a celebrated canonist as Rolandus Bandinelli.

Lateran and again at the provincial synod of Verona in 1184.¹ The sect had begun to grow and as it grew, became ever more and more troublesome. It was not long founded by the "the poor man of Lyons", the wealthy merchant Peter Waldo, before it began its stubborn hacking away at the Rock of Peter. It represented not so much an attack on any particularly obnoxious dogma as an attack upon the constitution of the Church itself. Its lay-preaching, nearly sure to contain a latent anti-clericalism, gradually developed a kind of genius -- a first principle -- against the hierarchical order. The sect had a marked and singular repugnance for anything of a dogmatic character;² it might not be too much to say that the Waldensians objected to anything ordered in the realm of Faith. They preferred the free interpretation of the Gospel, giving an initial spin to the wheel that was to come full circle only some few hundreds of years later with the Protestant Revolution.

The distaste for organized religion brought with it unavoidable confusion of thought. The idea of jurisdiction was cloudy: the power of orders had a necessary connection with right living; grace could not flow through muddied channels. The only possible conclusion for the Waldensians logically was that plenitude of power resided, not in any hierarchically established order, but it

¹Denzinger, H.(et Umberg, J): Enchiridion symbolorum. ed. 26. Friburg-im-Breisgau: Herder, 1947. #420, not.2. For the Profession of Faith demanded of Waldensians, cf. pp. 195-198. Mansi: 22: 488

²"Valdesi". Enciclopedia Italiana. Vol. 34, pp. 894-896. This article is a neat summary of Waldensian rise and doctrine.

lay rather in the hands of good men.¹ This was that amorphous "universitas fidelium", -- the Church that cannot err. Innocent III's preoccupations were interrupted a new condemnation in the fourth General Council of Lateran in 1215.² From that time forth it appears to have been nearly routine for councils to condemn the more outstanding dogmatisms of the sect, or the sect broadly in general terms.

Innocent III was of gigantic stature even as great Popes go. His activity was tremendous, the exigencies of the hour giving small pause. He had the Muslim on his hands; he had his recalcitrant sons; he had, apparently, a few difficult daughters. Had Waldensians notions penetrated even the convents, or was this an odd Spanish coincidence? A man, we should surmise fairly immune to odd developments, his surprise comes clear across the ages:

"Something new has come to our ears, something that fills us with astonishment. It has been reported that certain abbesses ...bless their own nuns, hear their confessions in matters involving sin. Having taken up the reading of the Gospel, they even preach publicly".

He ordered the Bishops of Burgos and Palencia to suppress these abuses, but suggested a certain tactful approach as likely to be

¹Torquemada. Summa de Ecclesia II, c.72 : "The keys were given the individual members of the Church. This interpretation ...is wrong...and was condemned among the errors of the Waldensians who said that individual good men held the keys, or the power of binding and of loosing".

²Mansi: 22: 981 ff

a more effective means in reckoning with the offenders:

"Since such a state of things is unheard of and not to be tolerated, we command you in your discretion to have the matters stopped. For although the Blessed Virgin Mary was a worthier person than the Apostles and far nobler, yet it was not to Her but to them that the Lord entrusted the keys of the kingdom of heaven."¹

Innocent III was the first of several eminent canonist Popes who were to be the champions of papal rights and privileges during the century. With the reign of Gregory IX began the "age of the decretals", codifications of papal pronouncements since Gratian.² This was the "new canon law", a large body of papal letters and conciliar decisions amply defending the doctrine of plenitude of power. Apart from some few elements, the subject-matter of the Decretals of Gregory IX comprises only materials from the late twelfth century onward. One of the notable exceptions is the canon Significasti, a letter of unimaginable importance in the conciliar strife of the fifteenth century.³ As an index both to

¹ c.Nova: Decretales Gregorii IX. V : XXXVIII: De penitentiis et remiss., c. 10. Corpus juris canonici, II.

² About the year 1170 Gratian had gathered into one body the chaotic mass of Church legislation accumulated through the ages. He added a commentary to most of the Distinctions of Prima pars; the second part he divided into Causa's and Distinctions, again with commentary. Gratian's work occupies the first of the two volumes in the Friedberg edition. Friedberg is embellished with a perfectly staggering critical apparatus interspersed with fonti of canons as they occur. Most of the numerous forgeries are properly tagged with probable sources.

³ c.Significasti: Decretales Gregorii IX. I: VI De electione,
c.4

obedience and disobedience -- the reflection of more or less acknowledged plenitude of power, -- the significance of the Decretals can hardly bear too much emphasis in the struggles and debates of the next two full centuries.

By the end of the century Boniface VIII¹ had made a further contribution to the decretals with the Liber Sextus. The last additions to the Corpus juris canonici² were the Extravagantes of Clement V³ and the Extravagantes communes of John XXII.⁴ The books of the Decretals were destined to have some stormy periods in history. But if the Decretals were weighty with the elaboration of papal theory since Gratian, the full effectiveness of the new legislation was only realized with its exegesis.

To mention the more influential of the commentators on the Decretals is to call forth a litany of of the great canonists. For the purposes of this thesis three acknowledged masters were intimately connected both with the subject matter as well as its use by Juan de Torquemada. Henry of Suza, more commonly known under his cardinal's title -- Hostiensis -- exerted a profound and widespread influence even on his contemporaries. His Summa was early dubbed "aurea"; it is a work of vast erudition and of wide extent

¹Boniface VIII: 1294-1303

²The Liber Sextus was so-called because it followed the five books of the Decretals of Gregory IX. The Extravagantes of both Popes are much shorter. They are the final pieces in the Corpus.

³Clement V: 1305-1314

⁴John XXII: 1316-1334.

that was treated with something like reverence by canonists.¹ The Summa has for the lay enquirer the added charm of an easy flowing style that carries the reader painlessly through the mighty mazes of the law. Generally speaking, Hostiensis bears witness to the common teaching of the Church at the same moment being defended by the older scholastics in their commentaries on the Sentences of Peter Lombard.² But the Summa is characterized by a rare devotion to the Holy See not a hard matter to understand in the first of the cardinal-bishops.³ Every aspect of the plenitude of power found a supporter in Hostiensis; he was even led to an extremist position when he came to treat of temporal power.⁴ In this respect Hostiensis was the precursor of Giles of Rome.

¹Henricus de Segusio. Summa super titulis decretalium. Folio. Speyer, 1478-1479. cf. Kurtscheid, B. et Wilkes, F.: Historia juris canonici. Roma, 1943. Vol. I, p. 259-260.

²Libri sententiarum quatuor, the ordinary text-book for would be theologians from the 12th century -- late -- onward. The discussions pertinent to plenitude of power are those on the 4th book, Distinctions 18, 19, and 24, mainly.

³The cardinal-bishop of Ostia is the first ranking cardinal. It is his privilege to crown the newly elected Pope.

⁴Saint Robert Bellarmine considered Hostiensis as even more radical in his ascription of plenitude in the temporal order to the Pope -- as far in that extreme as anyone had apparently gone. De Summo Pontifice V, c.1. Opera omnia II, p. 146. This position may be illustrated from his commentary on the canon, Quod super his

The younger contemporary of Hostiensis usually designated by a title also -- Archidiaconus -- was the celebrated Guido de Bay-sio, Archdeacon of Bologna subsequently created an archbishop by Boniface VIII. The Rosarium is a commentary of supreme importance on Gratian, a synthesis of numerous glosses.¹ The third member of the trinity was Johannes Andreas, "fons et tuba juris canonici". His is the classical gloss on the Liber Sextus, the text accepted as the Glossa ordinaria. No other canonist was so fully versed in the literature of both the canon and the civil law as the layman, Johannes Andreas. The first gloss on the Clementines came from his busy pen, as well as glosses on the earlier decretals.²

A full century of commentary is thus covered in these three names, exegesis of the full body of canon law with the exception alone of the Extravagantes of John XXII. The teaching of these three is such that no weightier authorities than their commentaries can be invoked. It is this trio that may be considered as embodying the common teaching of the Church in controversies touching the plenitude of power. Their contribution was no less influential although it has been much less written of by historians than the contribution of the scholastic theologians of the

¹Rosarium decretorum. Venice, 1481. 415 large folios.
cf. Kurtscheid. op. cit. I, p. 239; p.257

²Van Hove, Alphonsus : Commentarium Lovaniense in codicem juris canonici. Mechlin: Dessain, 1945. Vol.I, Tom.I:Prologomena p. 474.

thirteenth century. Particularly indicative of their mind on the primacy of the Roman See are their glosses and teaching on that canon, Significasti, a chapter probably more frequently invoked by Juan de Torquemada than any other single chapter of the "new canon law".¹ Nearly all the canonists commenting on this canon are in full agreement that plenitude of spiritual power resides in the Bishop of Rome. With the glosses on Si Papa² -- from the first part of Gratian and involving earlier teachers of the law

¹Significasti was originally a letter of Pope Paschal II to the Archbishop of Palermo written sometimes between 1099-1118. To a son who has contemned the privileges of Rome, the Pope, in a wonderful series of thetoretical questions reviews the place of the Roman Church in Christian tradition.

In the five Tracts this canon is invoked no fewer than fourteen times, a fact rather remarkable when the late date of the document is considered. Apparently it was very generally regarded as a weighty authority. Sentence by sentence, even word by word in sections, the commentators had drawn nearly every bit of explicit or implicit teaching the canon contains.

Without resorting to anything like counting, the canon must be referred to a hundred times in the Summa de Ecclesia. It must be thought of in connection with the glosses as one of these was found of ready use by the conciliarists.

²The canon Si Papa (Distinction XL, c.6) contains the general teaching that the Pope is, apart from the single case of heresy, beyond the scope of human judgement even for notorious crimes. The authorship of the canon has not gone unchallenged, but its attribution to Saint Boniface the Martyr may easily be as sound as not. Most of the commentators on the canon were unanimous in their exegesis: heresy alone because of its peculiar repugnance to the very notion of Faith was the only cause for the deposition of a Pope. With Significasti its doctrine figured prominently in the conciliar strife of the fifteenth century.

-- it is not too much to say that the canonists formed one solid wall of support for the privileged position of the Pope. Only in one single canonist in one single gloss provided an interesting exception: his status grew with the mounting attacks of the Council,¹ for he had left the record of his belief that a Pope might be obliged to submit to others for judgement in any notorious crime involving scandal in a large way.

The cumulative effect of canonical teaching may be effectively summed up in the words of Juan de Torquemada himself:

"The universal synod² under the presidency of Pope Alexander III made profession of this truth --(that none may judge the Roman See). The canon Licet³ reads: 'In the Roman Church a something unique obtains, for no recourse can be had to a higher power'. The gloss of Hostiensis reads, 'because there is no higher; but it is above all'. Johannes Andreas is of like mind, completing the thought in this fashion: 'Hence, it must be left to the judgement of God in accordance with (the teaching in the canon) Aliorum: IX, Question 3'.

"Again, a definition of the Apostolic See...in the decretal Unam sanctam⁴ has this to say: 'If an earthly power go astray, it is judged by a spiritual power; should a spiritual power err, the lesser is judged by the higher; but if the highest (err), it can be judged by God alone and by no man'.

"...the testimony of many holy Fathers speaks as clearly, evident through many a chapter of the Decretum.⁵ Saint Boniface

¹Huguccio. fl.1200. One of the earliest glossators of Gratian. His work is still in Ms. The pertinent gloss reads, "Credo".

²11th Ecumenical Council -- 3rd Lateran, held in 1179.

³c.Licet de vitanda: Decr.Greg.IX. I: VI De electione, c.6

⁴The Bull Unam sanctam sent by Boniface VIII to Philip of France in 1302. (Extrav. communes. I: VIII De major.et obed., c.1)

⁵Gratian's work is usually referred to as the Decretum

"the Martyr in the canon Si Papa¹ has this to say: 'No mere man may presume to reproach (the Pope) for his sins, because he who is to judge all others may be judged by no man, save only in the event that he strays from the Faith'".²

The early scholastic theologians concurred in vesting plenitude of the power of the keys in the See of Rome. Previous to them the classic De consideratione³ of Saint Bernard cannot be ignored:

"According to the canons, others were called to have a share of the care (of souls); you were called into the plenitude of power. The power of others is hedged about with limitations; yours reaches out to include those who have power over others".

Hugh of Saint Victor had been no less emphatic: "The power of the Supreme Pontiff from the first was established by God. As a result when he sins he can be judged by God alone".⁴

¹c. Si Papa. Dist. XL.

²Tract C: 33. The expression, "a fide devius" is a technical expression meaning heresy in the strict sense -- the wilful persistence in holding for true the contrary of something defined in the matter of Faith or morals.

³De consideratione was prepared by Saint Bernard for one of his monks who had become Pope Eugenius III (1145-1153). In the long treatise there can be no question as to what Saint Bernard thought of papal prerogatives, although he still addresses Eugene as his son, and rather a youngish one besides. The quotation occurs in Liber II, c.8 #16. PL: 182: 752. Tract C: 28(4)

⁴De Sacramentis II, c.4. PL: 176: 418. Tract C: 34(1). Hugh of Saint Victor and Saint Bernard are both invoked by Torquemada in the large grouping he makes of early scholastic theologians and canonists, although he does not intend to imply that either of them was a scholastic.

There was none among the early scholastic theologians not in accord as they distinguished between the power of orders and the power of jurisdiction in their lectures on the final distinctions of the Fourth Book of the Sentences where the power of the keys is the subject matter.¹ The naming alone of Alexander of Hales,² Saint Bonaventure, Saint Albert the Great and Saint Thomas Aquinas, is sufficient to suggest an authoritative body of thought. For none of these was there any question but that plenitude of this power was the undisputed prerogative of the Bishop of Rome. The attacks of the Waldensians had not been of such sort as to make the Papacy as such a special target, hence one would search vain for any kind of systematic treatment of papal jurisdiction. The concerted action of those earlier scholastics was directed against the notion that the keys were held in their plenitude by the common body of the faithful. They were the defenders of the whole priestly order and the hierarchy of jurisdiction in the administration of the Church. Their insistence was perhaps mainly on the priestly power of binding and of loosing and the grading of jurisdictional authority from its basis in the priesthood to its apex in the hierarch -- the Pope. They are at one in stating

¹The subject of the conferring of the keys; how they were conferred on the Apostles; the primacy of Saint Peter; the hierarchical disposition of jurisdiction in the Church.

²According to Torquemada -- Tract C: 34(1) -- Alexander's treatment on the Pope's being beyond human judgement occurs in Part III. I have not been able to check this text.

the Pope lay beyond the scope of human judgement. They agreed that Christ had conferred the primacy on Saint Peter, implying the primacy was equally the privilege of his successors.¹ Several speak for themselves:

"Peter alone received the keys in plenitude of power; the others all received a share..."²

"According to proper order for the Church it is necessary that the high power of governance and the plenitude of jurisdiction be vested in one -- first and supreme -- in whom alone as in the first and simplest of that genus is (personified) the whole status of ecclesiastical prelacy".³

"The Pope enjoys the plenitude of pontifical power after the manner of a king in a kingdom..."⁴

There was much indeed in the teachings that remained implicit. This is graphically shown in the Flores sententiarum sancti Thomae gathered by Torquemada on order of Cardinal Cesarini in 1437. Of the seventy-three questions proposed, the answers found relative in the works of Saint Thomas often had only an indirect reference to the immediate issue. The first asked "Whether there is someone who should have dominion over the bishops, as their superior in the

¹Bonaventura, s. : In Sent. IV. Dist. 24, P. II. He is probably one of the most explicit: "Unus autem inter apostolos princeps extitit Petrus cujus Vicarius et successor est pontifex summus, unde dicitur Apostolicus, qui et Papa vocatur, scilicet Pater patrum". Opera omnia. Paris: Vivés, 1866. Vol. 6.

²Albertus Magnus, s : Ennarationes in Joannem XX: 22-23. Opera omnia, ed. Borgnet. Paris: 1889. Vol. 24. Tract B: 26(2)

³Bonaventura. loc. cit. P. I, art. 2, ad 1; et concl. But the text differs from that quoted by Torquemada. Tract B: 27(2)

⁴Thomas Aquinas. In Sent IV. Dist 19. Tract C: 25(5)

Church?". This brings an "obviously" from Saint Thomas who would probably have been slightly startled at the absurdity of it.¹

Two lesser names adduced as thirteenth century authorities in the work of Torquemada were those of Peter of Tarantaise² and Ulrich of Strassburg.³ The last of these six theologians to die was Saint Albert the Great in 1280: their deaths closed an era. But such had been the contribution made by canonist and theologian alike, that by the time of the second General Council of Lyons in 1274 teaching appeared about ripe for a dogmatic pronouncement that was realized only a century and a half later in the General Council of Florence in 1439.

Saint Thomas had been given the task of disputing with the Greeks preparatory to their short-lived reunion with the Latin Church. His premature death left the work to the young and brilliant Augustine of Ancona, a Hermit of Saint Augustine. It was with distinction that he filled the role.⁴

¹Flores. Q.I. The answer of Saint Thomas is taken from his commentary: In Sent IV. Dist.24, Q 3, art 2, sol.3. Contra Gentiles IV, c.76.

²In the inevitable commentary on the Sentences. Peter was of great repute as a theologian. He became Pope; as Innocent V his reign lasted six months, 1276.

³Ulrich of Strassburg (Udalricus Engelberti) was author of a Summa de Bono in 6 Bks. It is described as "magnam et subtilem". P.G.Thery, the Dominican critic speaks of it: "It is not the Summa of Saint Thomas; but it leaves far behind the Summa's of William of Auxerre, of Alexander of Hales and of Albert the Great!" The subject of this encomium is supposed to have had a great influence on scholastic theology. cf. Grabmann, M.: "Studien über Ulrich von Strassburg" in Mittelalterliches Geistesleben, 1926, p. 189.

⁴Ferét. op. cit. III, p. 486, note; cf. also pp. 485-488.

The Council of Lyons placed a definitive milestone on the road to the later definition of the primacy. It is hard to see how a more decisive witness to the common teaching can be found than in the Profession of Faith tendered to Michael Paleologus:

"...the holy Roman Church enjoys the supreme and full primacy and governance over the universal Catholic Church. She recognizes (this prerogative) with her plenitude of power as received from the Lord Himself in blessed Peter the Prince or chief of the Apostles, whose successor the Roman Pontiff is. And as she is obliged beyond all others to defend the truth of the Faith, so too, if questions should arise about the Faith, they should be brought to her tribunal for decision. To this Church anyone at all who is burdened with affairs pertaining to the ecclesiastical forum can appeal. Likewise in all cases where ecclesiastical examination is needed, recourse can be had to her judgement. to her all the churches are subject; their prelates render to her their debt of reverence and obedience. For in her plenitude of power so rests that she commits a share in her (pastoral) care to the other churches. Many of these, notably the patriarchal churches, this same Roman Church has honoured with various privileges. But withal her own prerogatives have ever been acknowledged in General Councils and in others as well." ¹

¹Denzinger-Umberg. op. cit. #466, pp. 215-217

CHAPTER TWO

THE REVOLUTION AGAINST THE PAPACY

The last quarter of the thirteenth century clouded quickly. With Boniface VIII the full fury of the storm broke meeting the Papacy singularly unprepared. The struggle between Philip the Fair and Boniface was far more than the common contest of Pope and prince from Alexander III to Innocent IV. Much has been said of the extravagant pretensions of Boniface VIII made in behalf of the Papacy. A calm appraisal of papal claims as measured by Gregory VII¹ or Innocent III -- to cite two unoriginal examples -- will not allow the conclusion that Boniface was either new or daring in his forceful demands. But times had changed. The violent youth of the lay spirit, assisted if not brought to birth by the revived study of Roman civil law, bore down with a full and frantic insolence on the person of Boniface.²

Then, there had arisen the Fratricelli,³ a sect fanatic in its attachment to Celestine V whom it considered unjustly dethroned and

¹cf. Dictatus Papae. supra , page 2.

²"Une relation inédite de l'attentat d'Anagni" dans Revue des questions historiques. Paris: Victor Palme. Vol. XI, 1872, pp 511-520.

³Vernet, F. : "Fratricellos". DTC VI, I, 770-784

that chiefly through the force and instrumentality of Boniface. A thorn in the side of the Papacy for more than a hundred years to come, the Fratricelli played directly into the hands of the French civil lawyers when the crisis broke between the Pope and the French King. No doubt, Boniface had not the diplomatic ability that an Innocent III might have brought into play. Boniface was not gifted with vision, but even granted an extraordinarily difficult position as the Pope who followed Celestine, it would not be true to say that he was more uncompromising than Innocent III had been with John Lackland, or Gregory IX and Innocent IV in the conflict with Frederick II. Boniface might have come to terms with Philip had not the Gallican civil lawyers set the stage for resistance. They were powerful enough to scout the Pope's authority with impunity. And this was something new under the sun. The Bull Unam sanctam is powerful in its marching rhetoric, nor does it lack decision in its content. Whether it was good politics to make a de fide pronouncement at that moment or not, it hardly affects the question.

Unam sanctam contains probably not one original statement. How then was its effect so startling that the shock of its publication can still stun historians? A matter of timing, doubtless. A superficial reading of the Bull reveals indebtedness to Saint Jerome¹, Hugh of Saint Victor,² Innocent III,³ and Clement IV.⁴ Its actual

¹c.Quoniam vetus.XXIV:I:c.25; ² De Sacramentis II, c.4;

³ c.Firmiter. Decr.Greg.IX. I:I De sum.Trin.et fide cath.,c.1

⁴ c.Licet. VI^o. III: IV De praeb.et dignit., c.2

composition may have been the work of Boniface but with the close collaboration of Giles of Rome.¹ Giles stood for most extreme claims for plenitude of power even in the temporal order and associated with him was James of Viterbio. But with these names were but few associates as the year 1300 was turned; they were evident departures for the moderate common teaching. The pronouncement Unam sanctam did not stake out a new claim to temporal power even though closely allied with Giles and James in the elaboration of their doctrine.² The harassed Boniface was in no position for bargaining. In his dreadful isolation he would certainly have extended welcome to many a strong ally; that he found some of his champions immoderate was very likely of less account during those several years than it might have been in calmer days. Boniface was anxious to curb the growing autonomy of the secular power: it was with full impact that the French business came upon him in a rush that left him all but breathless.

Theory had instantly to meet fact. The theory resultantly propounded by Giles of Rome exceeded bounds. It is highly improbable that Boniface himself would have devised any such theory of temporal power. It is noteworthy that Boniface had close friends in those moderate canonists Johannes Andreas and Guido de Baysio.

¹De ecclesiastica potestate. ed. R. Scholtz. Weimar, 1929. cf. Einleitung x.

²Lagarde. op. cit. I, p.235 for elaboration of the De regimine Christiano of James of Viterbio in Unam sanctam.

The real and the manifest issue was not, obviously, plenitude of papal power, the rights and claims of spiritual jurisdiction in the Church. The real and the manifest issue was an anti-clericalism that had found fat feeding in the quarrels over tithes, subsidies, and collations to benefices. The anticlericals under the ruthless leadership of William of Nogaret,¹ Pierre Dubois,² and their fellow French civil lawyers, were essentially a Gallican and separatist movement. They did indeed represent the fight for independence of the lay power, but it was an independence that was Machiavellian in scope. In other words, the governmental machinery of France -- in this special case -- was a wheel that revolved within an orbit completely distinct from the orbit of the spiritual power of Rome. Not only were the powers distinct, but the spiritual power was not the judge of the lesser. There was no subordination.

The impact was sudden and furious. It shook the whole of Europe with a suddenness so strong and so revolutionary that its audacity effected almost overnight a complete reversal of the papal prestige and influence that had seemed so secure at the time of the second Council of Lyons. It was in the person of Boniface that disgruntled groups found their scapegoat. There were first

¹"Guillaume Nogaret". Histoire litteraire de France, XXVII, (1877). pp. 233-371

²Pierre Dubois may be termed the theorist of this group with De recuperatione terrae sanctae

the French civil lawyers, anticlerical and Gallican¹, supported by the French clergy who sided with Philip whose propaganda had been effective enough to obscure the papal side. There were the Fratricelli, allied with the Colonna in hostility to the Orsini with whom Boniface had had more sympathy as had the rest of the Roman nobility. The Franciscan Spirituals² were no small addition to the popular clamour. And each of these groups succeeded in being quite vocal, not to say noisy. The opening of the fourteenth century was not one of happy augury for the Church.

But if Boniface VIII had found himself the storm center, it was the dubious prerogative of John XXII³ to try to make some kind of order from the chaotic state of the solvents of papal prestige. It was his to arraign, judge and condemn; he it was who needs must clarify and adjudicate numerous points of theory and practice. The

¹Lagarde. op. cit. II, c.7 (pp. 105 ff) is an excellent resume of this aspect of the crisis. cf. also Martin, Victor: Les origines du gallicanisme. (Paris: 1929) for what is probably the best study of the tangled issues.

²Douie, Decima. The Nature and Effect of the Heresy of the Fratricelli appears to be the only adequate study of the subject. Manchester: University Press, 1932
Jacopone da Todi gave the movement a great surge and popularity.

³John XXII: 1316-1334; the second of the Avignonese Popes. The Franciscan Spirituals detested him on numerous counts but especially for his uncompromising iteration of the previous condemnation by Boniface VIII. In fact, there does not seem to be another Pope whose name was as unwelcome a sound as John's even a century later. In his decision on the Franciscan poverty issue, Torquemada was at the necessity of devoting one of his longest refutations of objections to infallibility to this issue. He slyly concludes: "Perhaps what and what kind of things the Franciscans may have is not especially de fide". (Summa de Ecclesia II, c.112, ad 12; col.9-12)

Fratricelli, taking cue from the Waldensians, laid claims to possessing plenitude of power.¹ The recent incumbent, Boniface VIII, had been no true Pope usurping the just rights of the saintly --but incompetent -- Celestine V.² Anyway, the power no longer lay in the Papacy; that corrupt institution had quite proven its unworthiness of holding the keys; these were now, fortunately, in the hands of the Fratricelli. For there were two churches in the world. One of these was of the flesh, -- ruined with opulence, stained with crime.³ This church was dominated by the Roman prelate who lorded it over the other churches and the lesser prelates. But the other church was a spiritual one, necessarily of the Fratricelli. John XXII who had never enjoyed their affection, incurred their undying hate when he condemned the sect by the Bull Gloriosam Ecclesiam.⁴ In harmony again with the Waldensians, the Fratricelli were at a loss to distinguish between the power of orders and the power of jurisdiction, confusing the efficacy of the Sacraments with the spiritual state of the minister. This befuddled thinking was destined to produce a confusion worse confounded as the years rolled along.

¹Torquemada. Summa de Ecclesia IV, p.II, c.37

²Saint Celestine V: July-December, 1294. He had been a hermit and had been unwillingly elected; he was then over eighty.

³"Fratricellos". DTC: VI,I, 779-780

⁴Denzinger-Umberg. op. cit. #485. p. 224

It was in the midst of such disturbance that the two foremost apologists -- as it were, "theologians" -- of the Fratricelli and the Waldensians, came into prominence. Marsilius of Padua cannot be finally identified with the Waldensians: many points prevent connecting him with the sect as a member. But there is every reason to suppose his association intimate: their peculiar vocabulary he used to the extent where accidental coincidence is impossible.¹ Marsilius first nurtured the seed of discord in the Defensor Pacis.² A thorough protestant, he passed on the theory of private interpretation in his scorn of traditional exegesis on scriptural passages, even those unanimously interpreted.³ No statement was ever more dogmatic than his own. "No", he would say, "when Christ said this, He spoke without distinction, not to Peter particularly".⁴ "The blessed Peter had no more authority than the other Apostles, nor was he the chief of the Apostles; Christ left no head for the Church, nor was anyone His Vicar".⁵ And all the talk about the Roman Bishop's being the

¹Lagarde. op. cit. II, pp.124-138. Details of verbatim agreement are indicated, especially p. 128.

²The Defensor Pacis. ed. C.W. Previte-Orton. Cambridge: University Press, 1928. Especially Dictio II against papal claims.

³ Mattheae XVI:18-19; Joannis XXI: 17 on Peter's commission.

⁴Defensor Pacis II, c.16. p. 274

⁵loc. cit.

Vicar of Christ with plenitude of power -- not so!¹ No words are equal to expressing the contempt Marsilius entertained for those Decretals² with a personal emphasis on Unam sanctam and marked accent on its author, Boniface.³ Nearly the full text of Dictio II was directed with intense concentration against prerogatives of the Papacy, whatever their tenour. The attack on plenitude of power takes on something of the quality of a personal dislike of Saint Peter.⁴ The pen of Marsilius never wrote quietly. Dipped deeply in gall it wrote of personalities; his writing is never mere theory however much he might have been a rebel against an institution. The "universitas fidelium" held the keys; only the General Council had authority to define and issue decrees. There was no individual person who enjoyed such power.⁵ In his study of Marsilius, Lagarde calls the Defensor Pacis a synthesis of the anticlerical passions of France and of Italy.⁶ But Marsilius was an outright rebel; there is no mistaking his meanings.

¹Defensor II, c.20, p. 326

²Ibid. II, c.21, p. 336

³To Marsilius, Boniface was a concise summary of issues the princes had suffered from. "Quamvis etiam temporibus illis proponeret idem Bonifacius adversus iam dictum principem (Philippum) et sibi subditos ac adhaerentes singulariter tendere, reliquosque potuisset adversus illum principes et populos fideles, teste immortalitate ac viventium plurimorum memoria, concitare nisi de medio sorte mortalium sublatus fuisset!" loc. cit.

⁴Dictio II, cc. 23 et 38. ⁵Ibid. II, c.20, p. 321

⁶Lagarde. op. cit. II, p. 105. He considers Marsilius an aper of Guillaume Nogaret.

William of Ockham was a character of another sort. His writings are as easy to handle as a wriggling eel. Was there ever a man who could put so much into words without committing himself to a definite position?¹ His great contribution might be considered a launching of "free thought". Rather than allow a quibbler the opportunity of challenging his own temper, Ockham hid himself in fair security behind a barrier of "quidam dicunt's". But even supposing Ockham's own teachings were unknown, there is no need of reading overmuch before we understand what an extremely versatile tool it was that he forged so cleverly for the Spirituals, for the Fratricelli, for the Gallicans, for the anticlericals. In short, he shaped the instrument of the fairy tale and anyone might wield it who was disposed to undermine authority, that of the Church, notably.

"Not only is it lawful to inquire with a proper intention about the power of the Pope, but it is lawful, too, and expedient to cast judgement on his works if they were manifestly evil... Because they are evil and reprehensible they should be declared such when circumstances allow and pointed out to others!"²

¹The task of uncovering Ockham's real convictions is neatly summarized by J.B.Sykes: S. Riezler had declared the puzzle incapable of solution. J. Haller (Papsttum und Kirchenreform) said the responses at the end of each question (Octo quaestiones) gave Ockham's own views. This idea was scouted by Herman Meyer as too optimistic. But Richard Scholz' editions of several of Ockham's shorter treatises where this impersonal method is not used show that Haller was perfectly correct in his suggestion. This is especially true of the Breviloquium. (cf. Introduction, pp.3 and 4: Octo quaestiones de potestate Papae, pp.1-121 of Opera Politica Guillelmi Ockham. Manchester: University Press, 1940)

²Breviloquium. ed. L. Baudry (Etudes de Philosophie Mediaevale, ed. Etienne Gilson). Paris: Vrin, 1937

"Subjects should know how far they are required to obey the Supreme Pontiff. This they cannot know unless they know how much power he has over them. Hence, if they do not know, they ought ought to make careful inquiries about the things they are obliged to obey, how they ought to obey, and how far their obedience should reach".¹

"The Pope then, if he does not act badly, does not hate the light; nor does he fail to come into the light that his works be challenged. He will not be saddened but glad if his subjects were to try and discover how he holds power over them and by what right, whether they do this by arguing, charging, asking, opposing, or by study and other ways".²

Wide though the separation was between in thought between Marsilius and Ockham, they were two of single mind on the thorny subject of the Decretals, especially those of John XXII censuring the Fratricelli and the Spirituals:

"About the aforesaid decrees...and to any others that might be induced... such -- called decretals -- issued by some Pontiffs are to be censured as entirely heretical... Although speaking generally, the Pope ought to be obeyed, still it is not needful to obey him in all things without exception".³

Marsilius said it a little differently: "The Roman Bishops never dared call them laws; they called them decretals!"⁴

"...nowadays where there is talk of the power of the Pope or even of his will, Christians do not care to know what Christ taught, what the Apostles understood, or the holy Fathers -- something that manifest reason should dictate; unwilling, they are drawn through love or fear or avarice to what pleases the Pope. Thus they seem to transfer honours due the Creator to the Pope..."⁵

¹Breviloquium de potestate Papae I, c.11, pp. 14-15

²Ibid. I, c.5, p.8

³Ibid. I, c.

³Ibid. II, c.21, p. 62

⁴Defensor pacis II, c.23, p. 367

⁵Octo quaestiones VIII, c.7, p. 217

Ockham in teaching a fine casuistry was surely responsible for a bold subtraction of obedience, impossible though it is to say how far his responsibility may have reached. But from disobedience to contempt and dishonour was no great journey to travel, if indeed one did not begin the journey there and at last achieve a philosophy to fit. Torquemada was concerned enough about the interrelations to employ a full chapter of the Summa de Ecclesia to the seriousness of the state of mind. He termed it "crimen laesae majestatis".¹ Ockham in this respect, too, was a fair contributor to rationalism. With Marsilius of Padua he provided not a few ready-made answers that continued to be applied with wearisome regularity throughout the fifteenth century well into the times of Luther and of Calvin.² And Torquemada rightly observed that a subversion of papal authority would not go long without equally undermining the foundations of all authority, the civil not excepted.³

¹Summa de Ecclesia III, c.37.

²It is of much interest to note in both works of Saint Robert Bellarmine -- De Summo Pontifice; De conciliis -- pertinent to this thesis, it is the same objections he is meeting to various German heretics that Torquemada had answered two hundred years before -- the private interpretation both of Ockham and Marsilius in commonly understood scriptural passages, etc. cf. De Summo Pontifice I, c. 12, pp. 501-502 (Opera omnia I); Ibid. II, c.1, p. 537, to cite but two sections.

³Tract C: 31(3); 40(3). Summa de Ecclesia III, c.37: He does not mention civil authority in so many words but suggests the evil as descending from the Pope, then most especially compromising the honour of bishops and the ancient privileges, and gradually winning general disrespect.

But if John XXII had his harassments, he was undeniably able to find his counter-irritants. Augustine of Ancona in his old age was called upon to take up the defense of the Papacy. To John XXII he dedicated his Summa de potestate ecclesiastica, as noble a piece of apologetic as one might come upon. It was probably something nearest approaching a full statement of the common teaching of the Church that had appeared until his time. Saint Antoninus used it as the basis for his own treatment of the subject.¹ Saint Robert Bellarmine thought it of uncommon merit.² Augustine drew careful distinctions between kinds of jurisdictional powers. There is the immediate. This is from God alone: this is the jurisdictional power of the Pope. There is the derivative that bishops receive from the Pope. Finally, there is the ministerial: this is the jurisdiction that emperors and princes enjoy.³ Without a preamble, the opening words of his treatise are arresting, with more than a suggestion of the form of the later Florentine decree:

¹Summa theologica. Verona, 1740. Prologos, Vol.I, col.6

²De scriptoribus ecclesiasticis. (Opera omnia XII, p.445):
"Scripsit egregiam summam de potestate Ecclesiae..."

³Antoninus, s : Summa theologica III, T.22, c.3, col 1194.
Augustinus de Ancona : Summa de potestate ecclesiastica.
Augsburg: Johannes Schüssler, 1483. Q.I, folio 13 ff.

Augustinus Triumphus, "pius et doctus" -- 1243-1328. cf. Glorieux:
op. cit. II, 320-327.

"Utrum error est, ut puto, pertinaci menti non credere Romanum Pontificem universalis Ecclesiae pastorem, Petri successorem et Christi legitimi Vicarium super spiritualis -- et temporalia -- universalem non habere Primatum".¹

The et temporalia suggests Augustine's sympathy with the Augustinians, James of Viterbio and Giles of Rome. Can the three exponents prove this official Augustinian teaching? Doubtless not; besides there is Alexander of Santo Elpidio to contradict them. But it is more than a point of interest that they should tally so completely in this matter of temporal power. Augustine develops the extreme position in Question 20,² but while there is no doubt about his mind, the argument is not pressed beyond the limits of the question. Otherwise Augustine's position followed the moderate tone of most scholastic theologians.

The confessor of John XXII, Alvarus Pelagius, took up the cudgels presumably against Marsilius of Padua, although it cannot be said that he meets the objections squarely in De statu et planctu Ecclesiae. If Alvarus were appraised solely on the merits of that treatise he would not be too easy a character to understand. His pen was strong enough and rather bitter; it had a decided flair for the jeremiad as a form of argument. The second portion of his work -- the planctus -- was indeed modeled on the prophet; failing the fundamental inspiration of Jeremias, his tendency to weeping

¹De ecclesiastica potestate. Principium.

²Ibid. Q. XX, art. 2. Apart from temporal power, Torquemada knew this question well, De modo praesidendi efficacia.

not seldom overwhelms his objectives. The first treatise -- the status -- is hard reading; jerky, fitful phrases make up a fairly compendious gloss. But his doctrine is beyond question not hard to uncover. All jurisdiction in its universality is fixed in the Apostolic See.¹ Like Augustine of Ancona, Alvarus took the far position in temporal power, "the pure doctrine... of ultramontanism on the pontifical power".²

A point of no small ^{interest} in Alvarus is the manner of his using authorities. For the first fifty-four articles his compilation consists of scriptural texts, each thesis heavily armoured by a bristling array of canons with their manifold glosses; not a Father of the Church is in that company. But upon a sudden there come the Fathers as in Article 55 Alvarus began to expound the primacy of Saint Peter. Nineteen large folio double columns are filled with name upon name, some of them recalled with an approach to infinity.³ The result is not precisely an argument but it is such a chain of traditional teaching exposed that for Alvarus it certainly was as good as arguing; each subject is capped with his proposition:

"The Pope is above all -- even the General Councils; and these receive from him principally both jurisdiction and the license to foregather, and not he from them".⁴

¹De statu et planctu Ecclesiae. Ulm: Johann Zeiner, 1474. Liber I, art. 13.

²Ferét. op. cit. III, p. 364

³De statu et planctu Ecclesiae I, art. 55

⁴Ibid. I, art. 13

The papal position was synonymous in its privilege with that of the first Pope.

The planctus may be readier reading from the viewpoint of plain prose, and if the status is not exactly recreational, it does contain a wealth of facts setting forth the common teaching of the Church generally, a compilation exhaustive of canonical sources.¹ Yet for all the change of style, the reader finds more relief in the cataloging qualities of the status after a bout with the woes and spiritual homilies of the planctus. Still, to do the author justice, Alvarus set forth his reasons for making tears prominent in the second treatise: he thought it would act as a corrective for the evils of his time; he did not wish to discourage.² He seems to have had a near genius for name-calling when the subject was Marsilius. "Versipellis ergo vulpecula" might compete without peer for scriptural punning. "Sons of Belial" was mark of thumb disapproval.³

To name yet another Hermit of Saint Augustine given numerous missions by John XXII, is to change the accent from ultramontaniam to the "true Roman doctrine"⁴ in two influential tracts of Alexander

¹De statu I, about the first fifty articles.

²De planctu II, art. 93

³Lagarde. op. cit. II, p. 324, quoting another work.

⁴Ferét. op. cit. III, p. 498

de Santo Elpidio, De ecclesiastica potestate and De jurisdictione imperii et auctoritate Summi Pontificis.¹ The first consists of three tracts with ten chapters allotted to each, short and pithy. The arguments are forceful, falling back chiefly on reason for support. The reasoning, in turn, is illustrated by the use of several, -- not many -- Fathers of the Church. The power of jurisdiction as it is found in the Pope is immediately from Christ.² The ultramontane position in its extreme had invested the Pope not only with plenitude of power in the temporal sphere, but it also considered jurisdiction in the other Apostles as derived from Saint Peter. In this, too, Alexander differs from the other Augustinians as well as from Alvarus Pelagius.³

Alexander's work was a distinct contribution to the literature on the disputed question of jurisdiction, the full body of the first tract summarizing common teaching succinctly enough.⁴ The zeal of Alexander gave reason for John XXII to be pleased; that he was created Archbishop of Ravenna is proof sufficient of the value John had set upon the man and his works, literary and otherwise.⁵

¹De ecclesiastica potestate. Printed in Rocaberti, I. Tomas: Bibliotheca maxima pontificia. Vol. II. Roma, 1698. The other treatise I have not seen.

²op. cit. Tract. I, c. 4

³op. cit. Tract. I, c. 7

⁴Although the teaching is seldom explicit, apparently most of the scholastics considered the Apostles as receiving jurisdiction directly from Christ; but bishops, from the Pope.

⁵Glorieux. op. cit. II, pp. 312-320

Two Dominicans should yet be mentioned as exerting a wide influence, certainly on Dominican theological thought and very likely somewhat farther afield. Petrus de Palude¹ had directed his De causa immediate ecclesiasticae potestatis and those who with him favoured the notion that papal power was the result of imperial donation; Peter concurred with Alexander in rectifying this. In quartum sententiarum, he describes the immediacy of papal plenitude from God,² assigning the Papacy that lofty prerogative whereby it can be subjected to no earthly judgement for crimes³—the teaching of all papalist contemporaries. Peter aligned himself with those who thought that the other Apostles had received their jurisdictional authority from Saint Peter.⁴ In this matter Hervaeus Natalis⁵ parted company with Peter. This Dominican, author of numerous philosophical and theological treatises, was the

¹Quétif-Echard. op. cit. I, pp. 603-609 for biographical details and appraisal. Petrus de Palude lived from about 1275-1342.

²In quartum sententiarum. Venice: Bonetus Locatellus, 1493. Dist. 24, Q. 6, ad 1. Folio 130 recto. The other work I have not seen.

³Ibid. Dist. 19, Q.3, ad 3. Folio 107 verso.

⁴Ibid. Dist. 19, Q. 2, ad 3. Folio 104 verso.

⁵Thus Saint Robert Bellarmine (De Summo Pontifice IV, c.22: Opera omnia II, p. 138). I have not seen the text of Hervaeus but only his teaching as summarized by Saint Antoninus and Bellarmine.

Master-General of the Dominicans from 1318 until his death in 1323. Saint Antoninus thought him subtle in logic and philosophy.¹ His contribution to the slowing accumulating defense of papal claims lights up a few odd corners of the subject in the treatise De potestate ecclesiastica et papali, composed in refutation, among other things, of the errors of Johannes Polliacus.² These had already been condemned by Bull, Vas electionis, of John XXII issued July 25, 1321.³ John had generously retracted his errors, a fact the Bull states. The error intimately connected with the present subject-matter was that bishops and pastors held their respective authority directly from God. As the authority of the bishop is immediately from God, without mediacy of the Pope, so the authority pastors have is of similar immediacy without reference to bishops. The argument of John is curious. Christ, when He established the Apostles as a group, with that establishment gave a status having at once its peculiar powers and jurisdiction. This status with its special prerogatives simply passed, throughout time, from the Apostles to the bishops who succeeded them; and so down through the ages. But the other disciples had been given status also; this was

¹"Hervé de Nedellec". DTC. VI, II, col. 2315. Mortier, D.A. : Histoire des Maîtres-Généraux de l'ordre des Frères Prêcheurs. Paris: Picard, 1905. Vol. II, pp. 531-572.

²Ferét. op. cit. III, pp. 229-231

³c. Vas electionis. Extrav. Communes V: III De Haereticis, c.2.

automatically succeeded to in pastors, descending through the ages. This latter notion, status, was not too serious an ingredient in the conciliar strife of the fifteenth century but it made its appeal to some and added a certain nuisance value to thinking already addled. The idea that bishops received jurisdiction direct entered the contest on its own merits; there had been no debt to John in particular. But Juan de Torquemada considered the errors in quite some detail in the Summa de Ecclesia.¹ Apart from his four condemned propositions, Johannes received his share of acknowledgement from Torquemada.²

By the middle of the fourteenth century, then, a fair body of late scholastic theologians had left records of their alliance with the claims of the Papacy in the matter of the primacy as well as some its consequences; but the teaching was neither full nor sufficiently expanded until its completion by Juan de Torquemada after the Council of Basle.

¹Summa de Ecclesia II, cc. 59 et 60; et passim.

²Tract C: 34(1)

PART TWO

CHAPTER ONE

HERITAGE LEFT BY THE COUNCIL OF CONSTANCE

Constance! In the fifteenth century that word stands for well-nigh a world of woe. The nationalists of France and Italy, pitted against each other by the Western Schism, had previously found eloquent voices as the Universities -- Angers, Orleans, Toulouse, Florence, Bologna -- delivered ex cathedra pronouncements on the status of papal claimants.¹ Gallicanism, not lessened by the schism and a witless King, was rife -- if indeed it was not the ruling power at Constance from the first.² The University of Paris with

¹Council of Pisa, 1409. One of the moving spirits was Pierre Plaoul, doctor of theology from the University of Paris. Spokesmen from the various universities gave their votes to Pierre's deductions chiefly relative to Benedict XIII and his being a schismatic. Because pertinacity in schism was approximated to heresy, they had no difficulty in making pronouncement. Session 14, May 29. cf. Lenfant, Jacques: Histoire du concile de Pise. Vol.II (Utrecht, 1731) pp. 275 ff. for an absorbing account of the proceedings.

²National Council of Paris, 1406. Pierre Plaoul had urged the King to take matters into his own hands relative to the papal claimants. The authority of the French King, said Pierre, was practically admitted as obtaining over the Church. In the crisis it was all of the King's prerogative. There were several bold bishops who defended tradition against the Gallicanism of the Council. cf. Lenfant. op. cit. Vol.I (Amsterdam, 1721) p. 136. Most of the principals at the National Council were later present at Pisa, then at Constance. It is important to remember that the Council of Constance cannot be thought of as an isolated unit. It was of the self-same substance as both the National Council and Pisa in certain theories and their application to the Pope as to a subject of the Council.

a theological faculty long all but stranger to sound doctrinal disputation, felt itself the outstanding power of the times. It was a strange complex of philosophical nominalism,¹ a clearing-house for a nationalism vocal chiefly in the tangled issues of benefices, tithes and annates.²

The Council of Constance was now ardently proclaimed a continuation of Pisa.³ Now, at last, it was constituted as plenary.⁴ And it had been most evidently acephalous. It managed to give a name

¹Deniflé. Chartularium III. cf. Introduction, pp. viii et ix.

²Religieux de St Denys: La chronique du règne de Charles VI. Traduite par M.L. Bellaguet (Documents inédits sur l'histoire de France). Paris: Crapelet, 1839-1852. Vol. I, pp. 398-401.

These were some of Jean Gerson's favourite themes. cf. De ecclesiastica potestate, (Opera omnia. Paris, 1606.) in several places, notably Consideratio IV, col. 117; VIII, col. 120. cf. also De concilio unius obedientiae, cols. 221-229.

³"...tout ce qui s'est passé depuis le mois d'Août de 1409, qu'il sépara, jusqu'au premier de Novembre 1414, que s'assembla celui de Concile de Constance, c'est que tout cela, dis-je, fut une conséquence et une suite de Concile de Pise. Cela paroît par la dernière Session de Concile, où Alexandre V qui élu y Pape, ordonné par l'approbation du Concile, que l'reformation de l'Eglise dans le Chef et dans les membres, sera suspendue jusqu'au prochain Concile, et celui de Pise sera prorogé et continué jusqu'au prochain, qui devoir s'assembler dans trois ans. Il y eût en effet d'assez grands débats au Concile de Constance, pour savoir s'il regarde seulement comme une continuation du Concile de Pise..." Lenfant. op. cit. I, Préface.

⁴Sessions 3 to 5 were acephalous. The Council was not a plenary one until after the election of Martin V, November 11, 1417, that is until the 43rd Session. The nature of the Council in its various stages enters the debates of Basle as an index to their validity.

and a local habitation to the many grievances that private and public passion were only too ready to build into argumentative weapons.¹ The plenitude of the spiritual power vested in the Papacy had been questioned to its very scriptural foundations.² From question to denial of the whole body of that common teaching was the work of a few short years. But Constance did better than disturb the foundations. It gave denial the dignity of dogma:

"In the first place, then, it declares that this (synod) lawfully convened in the Holy Spirit -- making it a General Council and representing the Catholic Church -- has authority immediately from Christ. To it, anyone whatever his state or dignity -- even though it were papal -- is held to obedience in those things that pertain to Faith, to the stamping out of the said schism, and to the reformation of the said Church in head and in members.

"Further, it declares that anyone, whatever his state, condition or dignity -- even though it were papal -- who scorns to obey the mandates, statutes, enactments or commands of this sacred Synod -- and of any other General Council lawfully convened -- in the aforementioned matters or anything related to them in works and deeds, unless he repent, should suffer condign punishment..."³

¹Such agitations as the "liberties" of national churches; the preoccupation of kings, princes and nobles with collations to benefices and the aggrandizement of favourites. The Hundred Years War divided the Council into camps of the allies, each with his own interests in the temporalities.

²Mattheae XVI: 18-19. Following Ockham, cf. Gerson's idea: De potestate ecclesiastica XII, 137: "Christus dixit Petro pro omnibus..."

³Decree of Session 5: Mansi: 27: 590. Session 4: Mansi 27:585 The renowned Florentine canonist, Cardinal Zabarella, presided. He flatly refused to have anything to do with the Decree; he would not even read it to the assembly. Zabarella favoured the notion of conciliar supremacy; apparently, many otherwise disposed to agree with him, would have no part in the legislation; many absented themselves from the session. (I am indebted for the note about Zabarella to J. Cardonus: Elucubratio de dogmatica Romani Pontificis infallibilitate, p. 79, referring to Schelestrate: Compendio Chronologico, p. 53) -- Roma, 1870.

Could anyone living then have imagined where that Decree was to lead? At the opening of the Council the real battle for conciliar supremacy was on. None of the delegates wielded such influence in that issue as Pierre d'Ailly and Jean Gerson.¹ As they were all but the voice of the University of Paris; as their popularity entailed numerous devout disciples whose echoes carried their teachings directly over into the Council of Basle unchanged, the larger outlines of their theories should be reviewed. Juan de Torquemada laid great store by their influence on the men who followed them. In his teaching on the plenitude of papal power he began by destroying the carefully devised thesis Ailly had proffered the Fathers of Constance.² Its principles were appealed to times without number by the advocates of conciliar supremacy at the Council of Basle.

"Certain of the masters who were at the Council of Constance say, as can be gathered from their tracts, that plenitude of power is in the Pope in such-and-such a way; it is also in the universal Church and in the universal Council representing the Church..."³

¹Both had been Chancellors of the University. Pierre d'Ailly held this office for something more than five years, yielding it to Gerson in 1395. (Chartularium.II, xv; IV, xxxii). Gerson's tenure lasted until his death in 1429, theoretically at least; for he was in exile after taking his stand against Jean Petit and regicide. John XXIII had created Pierre d'Ailly a Cardinal, "the Cardinal of Cambriae". It was chiefly owing to him that France remained in the obedience of Benedict XIII until 1398. cf. DTC:I,I, 642-654 (Ailly) DTC: VI,I, 1313-1330.

²Summa de Ecclesia II, c.70, princ.

³loc. cit.

All, perhaps otherwise in disagreement, were at one in their belief that the universal Church could not err in judgements about the Faith. From that sure and solid center, fifteenth century opinion flew off at a tangent. But because any theory had always to be brought back to the question of where plenitude of power lay, both the conciliar and the papal supporters were anxious to base their teaching in tradition. The notions of the conciliar party began to gain more and more adherents after the Decree of Constance had dignified opinion with the force of doctrine, even though a certain recklessness characterized its first tentative feelings for an assured status de jure.¹ The proposals of Pierre d'Ailly were, consequently, avidly and hungrily embraced. He had taught a theological lesson not too much hampered by logic: there were three different ways of considering plenitude of power.

"First, as in a subject: as virtue is in the soul and as an accident is in a substance, -- subjectively;
 Second, as in an object: as an effect is said to be in its cause or in its end, because towards it, it tends as towards its final object;
 Third, as in an exemplar: as a thing is said to be seen in a mirror, or some teaching in a book, representatively;

¹"Hujus rei signum accipe qui post declarationem ex theologiae principiis luce clariorem et quod urgentius est post determinationem et practicatione ejusdem sanctae synodi, inveniuntur qui talia palam asserere non paveant; tam radicatum et ut cancer serpens tam medullitus imbibitum fuit hoc priscae adulationis virus lactiferum". Gerson: De potest. ecclesiastica XI, col. 133; col. 130. The force of the Constance precedent occurs in a large proportion of the Basle-ist tracts.

"In the first way, the plenitude of power is in the Pope as in a subject receiving it and exercising it ministerially. In the second way, it is in the universal Church as in an object containing it causally [and finally]. In the third way, it is in the General Council as in an exemplar, representing it and regularly directing it.

"The first is clear: because the Pope properly speaking is a minister receiving this power subjectively and dispensing it administratively -- according to Luke XXII: 'Let him who is the first among you be as the minister'.¹

"The second is clear: because the plenitude of power is not causally and finally for the sake of the Pope; but the Pope and his power is for the sake [of the Church and is ordained to it as to its end. It is for the edification [of the Church] and not for its destruction -- according to II Corinthians X.²

"The third is clear: from the word of the Apostle. For if the Pope were to use this power for the destruction of the Church, the General Council is the exemplar or the mirror, representing the said universal Church; in its place and name, correcting abuses of such plenitude of power; regulating and directing and even punishing".³

Gerson's description of the plenitude of power closely approximated that of his master:

"...in three ways...the plenitude of power...is in the Church and in the General Council as acting for it... The power...is given for the edification of the Church...the Supreme Pontiff having it subjectively... The plenitude of power, if this be considered in its latitude, is not in the Pope alone except as ...the fountainhead and originally. For this latitude of power comprises within it the other ecclesiastical powers collectively, from the highest to the lowest... The papal plenitude of ecclesiastical power is in them as an integral part is in its

¹Lucae XXII: 26. The edition of Ailly reads: Mattheae. Torquemada's version of Ailly reads correctly, Lucae.

²II ad Corinthios X: 8. Parallel passage in Ockham: Breviloquium II, c.5, p. 225.

³De ecclesiae potestate et concilii auctoritate III, c.1, 923. (In Opera omnia Gersoni, ed. Paris. Vol. I) The bracketed phrases do not occur in the Paris edition. This section: Summa de Ecclesia II, c. 70, prin. Argument developed in answer: Summa II, c.84.

"whole..."¹

"...the power of the universal Church or the General Council lawfully convened can be said to be greater in amplitude or extension, greater in infallible direction, greater in the reformation of head and members, greater in coercive authority, greater in the ultimate decision of difficult matters of Faith; -- greater as it is fuller, embracing at least virtually all power and every governance, papal as well as imperial".²

Gerson had conceded that "formally and subjectively the plenitude of ecclesiastical power is only in the Roman Pontiff".³ It was a plenitude and not a plenitude for:

"it is extended...over all inferiors only while there is some necessity from a failure of the lesser ordinaries; or, as an evident need of the Church appeared; as it could be said of bishops with respect of their own priests...whose defects they could supply".⁴

If there is any meaning in this obscure passage, it would seem to be such as defies any de jure jurisdiction, making it something resting upon no more impressive a foundation than exigency, echoing a kind of ecclesiastical pragmatism. In Tract A, Torquemada quarelled with Gerson's thesis in its closely interwoven texture of the whole cloth of the adversary's arguments for the Council of Basle.⁵ The notion of utility certainly had its excuse in the

¹De potestate eccl. XI. col. 131

²Ibid. col. 137

³Ibid. X, col. 125. cf. Ailly (op. cit. III, c.1, col.921): "Proprie loquendo haec (plenitudo potestatis) solum in Romano Pontifice Petro succedenti, et alio modo in universa Ecclesia..."

⁴loc. cit.

⁵Tract A: 19(4) ff

Schism, but Gerson was carried away to the extent that he applied utility as a measuring rod,

"for according to a need arising in the Church... this status (papal) ought to be moderated in its activities". Added as justification, "Nor would this be at all derogatory to the authority of the Pope, nor to the plenitude of power conferred on him by Christ; but this would rather be heightened".¹

The masters of Constance were refuted in some detail as Torquemada developed his theme, clearing the soil for the groundwork of the structure he was later to erect:

"The position they have taken...seems to be quite wanting in meaning because it implies many things that cannot be true at the same time. The parts...are contradictory or they imply a contradiction... -- in the section where it is laid down that plenitude of papal power is in the Pope as in a subject administering it, in the Church as a final object, and in the Council as an exemplar. This contradicts their opinion that the plenitude of power is chiefly and in a more excellent way found in the Church or in the Council than in the Pope.

"This is clear, for any power is said to be properly and principally subjective and administrative -- as it is in the captain of an army; or, as it is in a master -- in his work, rather than in the object and exemplar. As the art of healing is properly and principally held to be in the physician, rather than in the ailing body to whose cure it is ordained, rather than in a book of medicine. Or, the art of building is chiefly and principally held to be in the architect, rather than in the house to which it is ordered. Surely, they are wrong who say that the Church is the final object of papal power. For although papal power is conferred for the building-up of the Church, nonetheless that Church is not said to be the final end of the direction (intentus) of that power; but the final end is happiness...

"Besides, it appears false to say that plenitude of power is in the Council as in an exemplar or mirror. This figure of speech should rather be applied to the law of Christ or the Gospel according to which the Church is regulated... The second position

¹De concilio generali unius obedientiae (Paris ed.I), col.228

"implies a contradiction... -- where they say the same power is in the Pope and in the Church and in the Council. For they say that the Church should correct, coerce, restrain, and punish the abuses of papal power... Such power could not be in the Council unless it were there in a different degree than in the Pope...

"They say that the plenitude of power is in the Council, not as in a subject and administratively, but as in an exemplar and in a mirror. This contradicts their statement that the Council could coerce, restrain ... and correct the one abusing his power... It is allowable for a Council to advise and direct, even such (a Council) as would have no other powers of jurisdiction over him to correct him. Yet in such a correction -- an act of justice -- no one could coerce and restrain... unless he were exercising and administering this power of jurisdiction on a subject... As the Philosopher says, his power is in the act.¹ For this reason the position taken up by the adversaries appears to be quite wanting in sense".²

Wrapped up inseparably with the conciliar conception of its plenitude of power was the idea of a senatorial rule in the Church. If each of Torquemada's five treatises was directed at saving plenitude of power in some phase or other, his pre-eminent concern was the defense of the Papacy as a monarchy. Once its divine institution was granted, plenitude of power could be vested only in it. Every other papal prerogative was a logical deduction. Every privilege was a reasonable and proper and natural corollary. This was his reason for an oft-repeated and insistent emphasis on the monarchical governance of the Church.³ In the Summa de Ecclesia

¹Aristoteles. Physicorum II ck

²Summa de Ecclesia II, c.70, col.2; Tract A: 32(5)-33(1) is the gist of the argument.

³Tract A: with emphasis on "reason"; pp.11-12 for objections. Tract E: with emphasis on "common teaching". Tract B: in the nature of a practical commentary. Tract D: lese majeste enters in for demanding an oath of the Pope.

after a preliminary discursus on the need for order in the Church, the rational and authoritative arguments are systematically and convincingly launched.¹ Only in such a species of governance could there be plenitude of power in the head; with such a species of governance plenitude of power could only be in the head.² The Fathers of Constance had by necessity to favour and foster government by few or by many since they had declared a plenitude of power in the Council.

The theory had not been more than outlined by Ailly and Gerson. The Papacy was a monarchy; but tempering papal plenitude required a tempered monarchy, preferably with aristocratic ingredients, "something of the democratics; obviously, ... the best sort of Church governance". It would have been representative, too, for the Cardinals forming the aristocratic element were to come from every province. "With the Pope and under him they would rule the Church and moderate the exercise of the plenitude of power".³ Torquemada had met some of the proposals in the first of the conciliar tracts⁴ where his concern saw a practical difficulty. From the infrequency of a Council's being in session he tried to demonstrate

¹Summa de Ecclesia II, c. 2 ff. ²Ibid. II, c. 52 ff.

³Ailly. op. cit. V, col. 918. cf. Gerson: De pot. eccl. XI, 130
It may be noted in passing that Saint Robert Bellarmine was meeting similar aristocratic ideas of Calvin, invoking Torquemada in support of argument for the monarchical order. (De Summo Pontifice I, c. 2, pp. 462-467)

⁴Tract A: 11-12

the undesirability of allowing it plenitude of power -- quite apart from any infringement of historic traditions and the rational need for plenitude of power in one person alone. Tract C carried a livelier objection against "government by many",¹ opposing both the Old and the New Testament.

Although the conclusions reached by the University of Paris and presented to the assembly at Constance had been found inadmissible by the Fathers, they were constantly resorted to by the men of Basle, in substance or literally. If they were not the work of Gerson, they were the production of an imitative disciple. Besides the seven principles excerpted, the conclusions provided several other ready-made arguments:²

"The Church militant -- which the sacred Council represents -- is necessarily greater than the Pope; ...(it) is more useful. The Church... is better than the Pope because the Pope exists for the sake of the Church, as for the sake of its end. But the end is better than the things that are ordained to further the end.

The Church... is more honourable than the Pope.

The Church... is of greater dignity than the Pope.

The Church is stronger and more powerful than the Pope...because the 'gates of hell shall not prevail against her'.

The Church... is more faithful than the Pope, or more constant in Faith... It could happen that a Pope stray from the Faith.. the Church, never.

The Church is wiser than the Pope because of the great multitude ...in which there is more and a fuller wisdom than in one man, the Pope..."³

¹Tract C: 25(4); 26

²Arguments from extracts of Saint Augustine, Saint Jerome., etc. They are referred to in Tract B in a dozen places or more. Mansi 28: 22-24

³Mansi 28: 22

After Constance! Had the Primacy been conferred on the Roman See? Was the monarchical governance of the Church of divine institution? Where was the court of last appeal: in the Pope? in the Council? And after all was the Pope beyond the pale of human judgement for his misdeeds? Was it really true that heresy was the one and only cause for the deposition of the Supreme Pontiff? How closely bound up with the Pope was the hierarchical organization of the Church? Were the jurisdictional powers of prelates derived from the fulness of papal power, or were they not rather the direct commission from God? "The great error and the peril to the whole body of the Church was that concerning the Pope, the head of the Church".¹ When, in compliance with the decree Frequens², the reform Council of Basle convened, Pope Martin V was not the only uneasy prelate in the Church. But death soon relieved him from further conciliar embarrassments: the forces met and sharpened into focus with Eugene IV.³

¹Mansi 27: 1159. Before the election of Martin V, the decree had fixed the intervals for the celebration of future Councils. In the spirit of the decree of Sessions 4 and 5, it decreed trouble for any Pope who should attempt to transfer the Council, etc. It was often resorted to in the Council of Basle to prove Eugene contumacious. Frequens was a trouble-maker.

²Platina, B.: Opus de vitis ac gestis summorum pontificum. p. 554 especially. The anxiety of Cardinal Cesarini was marked from the beginning. cf. Haller, J.: Concilium Basiliense: Studien und Quellen. Basle, 1896-1903. Vol. I, pp. 387 ff.

³Eugene IV: March 3, 1431 - February 23, 1447.

Eugene IV had been a Celestine monk of unusually strict observance, with a preference for monasticism, its hiddenness and its fostering of contemplation. But like his theologian, Torquemada, obedience had had its way of laying public cares upon his shoulders early in his career. He had been early fired with zeal for the unity of all Christendom; his great dream was reunion of the East and West.¹ That reform of the Church "in head and members" was a crying need, Eugene was quick to acknowledge. Towards effecting this within his own household, Eugene had appointed no less a person than Saint Antoninus, the Florentine Dominican, to labour for the reform of the Roman Curia.² But as the Council of Basle grew

¹Tract C: passim, especially 53(3) - 55(5): "It was known to all before anyone had thought of him as occupying the papal throne, how great a grief the division of the Eastern and Western Church was to him; how he burned with a heavenly zeal, first at the Council of Constance where he pressed the matter with much ardour. His next move was to work with his predecessor Pope Martin... (Men)knew it was a burning mind, one intensely eager, that undertook this work immediately upon his creation (as Pontiff) --62(2)(3); "pio desiderio...inflammatus"; "magis ac magis incensus...desiderio"-54.

²The notice occurs in the Preface to the Summa theologica I, xlvii ff. This being the case why was it that reform was not prosecuted? Apparently the number of recalcitrant prelates and the aid they would certainly have received from the Duchy of Milan, as well -- after 1435 -- from the King of Aragon, were among the reasons. After the Council of Bourges, Torquemada suggested some of the reasons hampering Eugene in several directions, as will be seen later on. For similar difficulties in the way of Martin V and reform, cf. Raynaldus (Annales ecclesiastici, Vol.27, pp. 16-19) ad. an. 1425.

more and more intransigent it became even more of a sheer impossibility to attempt to initiate a reform of any adequate proportions. Eugene's anxiety seems to have been mainly for the general Christian conscience. Few were then living whose memories carried far enough into the past to recall a Church not divided by schism or a Papacy of assured prestige in the eyes of Christendom. It was Eugene's preoccupation to heal some of the wounds.¹

¹But Eugene was not merely passive. His hopes were high as he despatched men of ability to ease things here and there. Some indication of this appears in the case of the papal envoy, Petrus de Monte, labouring in France on the matter of the Pragmatic Sanction. cf. Valois, Noel : Histoire de la pragmatique sanction de Bourges (Archives de l'histoire religieuse de France). Paris: Picard, 1906. Vol.I, pp. 111-130.

To add a few more details from Platina's sketch of Eugene: "Of outstanding appearance, he was worthy of veneration. (His monastic penances had left their physical marks on him: he was thin, austere and of arresting mien). His speech was serious rather than eloquent; he was little versed in belles-lettres, but had a wide knowledge, especially of history. He was liberal in everything and was particularly glad to be friendly with men of letters. ... He was not readily moved to anger at insults or evil speaking about himself... He was faithful in keeping to agreements... generous in the table he offered his household, but sparing in his own use of food; he was all but a stranger to wine. He had few close friends but these were men of learning whose works he could make use of in grave circumstances... He was eager to know what went on in the city, what men thought of his pontificate: this was that he might know how to emend anything he did amiss. He was a man of notable accomplishments and of a keen mind". Opus: pp. 594-595.

CHAPTER TWO

STATE OF THE QUESTION AT THE OPENING OF COUNCIL OF BASLE -- 1431

The notion of conciliar supremacy had gained adherents at Constance but the heady precedent established in the fourth and fifth Sessions as well as the practicata¹ previous to the election of Martin, had still a long way to go before a stable status de jure was assured. This was the main study of Basle: to pass from the practical supremacy of the conciliar party at Constance into a position of unquestioned superiority in the Church, a nobler and a better plenitude owing to an ampler and fuller wisdom than could be found in papal plenitude.²

"How can the power of the Church and the power of Peter endure since both are immediately from Christ -- and equal? Inasmuch as the power of the keys is fixed in Peter as in a minister... it follows that the power of Peter as the power of a minister is subjected to the power of the Church..."³

¹practicata. The notion is Gerson's urging the precedent of the Decree as well as the "practice of this sacred synod". cf. De potestate ecclesiastica XI, col. 133. "...practicatum dudum de Papa Joanne XXIII", Sermo pro viagio Regis Romanorum (I, ed. Paris), col. 151

²Conclusiones...Parisiensium quae non sunt admissae... AD 1415. Mansi 28: 22

³Responsio synodalis of John, Patriarch of Antioch. Mansi 29: 518-519 (AD 1437)

The conciliar party, then, did not go so far as to say that a plenitude of power was not vested in the Papacy although their pre-occupation with another plenitude was not easily established in theory. Juan de Torquemada, as we have seen, had shown the reasoning faulty in the patent contradictions that two or three plenitudes involved.² But despite the difficulty of maintaining a theoretical plenitude in more than one subject, the definition of Constance had conferred an actual plenitude. This allowed the men of Basle to improve their situation by setting the Pope over the "Church dispersed". In this fashion appearances were saved, for the Pope did not then need to be head of the universal Church, nor yet of the General Council.¹ Martin himself had helped there. This variation of the conciliar theme did not appear to come under the heading of teachings already condemned in Ockham, Marsilius, Wyclif and Huss .

¹Inter cuncta pastoralis. Epistle of Martin V. The errors of Wyclif (and of Huss) were enumerated and condemned: #41: "Non est de necessitate salutis credere Romanam Ecclesiam esse supremam inter alias Ecclesiae". "Error est, si per Romanam Ecclesiam intelligat universalem Ecclesiam aut concilium generale, aut pro quanto negaret primatum Summi Pontificis super alias ecclesias particulares". Hefelē-Leclerq. VII, I, pp. 518-519. cf. Tract C: 11(4)

²Summa de Ecclesia II, c.70, col.2. ut supra, pp.43-44

One of the finest distillations of Marsilius, Ockham and the fifteenth century progressives was a Basle tract, Inquisitio de potestate Papae, apparently presented to the Council in 1435. The date is not without significance because it was fully two years before Basle had become a "robber council"¹, a year that had won over some of the papal party to the cause of the Council, among them even the papal legate himself.² The forces that had begun to converge on Eugene in July of 1431, found themselves at a high point of power. To the conciliarists there was little question about the outcome.

"The papal governance with respect of the congregated Church, or to the General Council, is not monarchical... This is evident because he (the Pope) is necessarily subject to the laws of Christian polity... Some pertain to the Catholic Faith, others to morals. But the Pope is subject to the laws of Faith and should be rebuked and thrust out if he go astray ... This is obvious from the canon, Si Papa ".³

¹The "robber Council of Ephesus, so named by Saint Leo I: "in illo Ephesino non iudicio sed latrocinio potuit perpetrari", where the high-handed activities of Dioscorus were condemned. This was the second Council of Ephesus, officially castigated and emended by the Council of Chalcedon, 451. The Council of Basle fell heir to the title about 1437. Many had previously withdrawn from the Council in disgust. Juan de Torquemada said the only difference between second Ephesus and Basle was that Dioscorus held the assembly at a physical sword's point. Tract C: 48(2)

²Cardinal Julian Cesarini, named by Martin and confirmed as legate by Eugene, had been harassed from the beginning. The forces at work against Eugene finally convinced Cesarini of the Pope's bad faith. Cesarini returned to his original allegiance later.

³c.Si Papa. Dist. XL . Inquisitio de potestate Papae, dated in Mansi as of 1435. Author unknown. Mansi 30: 927-934

The gloss of Huguccio had become rule of thumb: the Pope might be haled before the court for any notorious crime. Very well, but who was to accuse him? and judge him? It could not, for physical considerations, be the "Church dispersed". It had, by force of alternative, to be the General Council as the "Church congregated". From this the theory develops as a work of genius: only a superior can act as judge, since no one can be both defendant and judge in the same case.

"But the Church congregated is by divine law and human ordinance the judge of the Pope; it has authority over him even in questions of morals... evident from dic ecclesiae..."

Finally, the power of the Pope is simply ministerial.¹

"The Pope is the head and the monarch of the Church dispersed.. with spiritual jurisdiction over individual churches and the individual faithful of the whole world".²

This was the ultimate Basle-ist triumph. An acceptable corollary fell in nicely with the Decretum. "No one can judge the first See".³ But it was possible by a gymnastic process not unknown in the schools to consider "no one" (nemo) as having a distributive meaning; taken collectively, it might be rejected. The reputation and influence of the "lamp of the law",⁴ Panormitanus, gave the

¹Inquisitio. passim

² Ibid. col. 930

³c. Nemo judicabit. IX: III: c.13

⁴Kurtscheid. op. cit. I, p. 267. Panormitanus had been a student of the canonist Zabarella. Both attained great eminence as canonists.

whole conciliar case a status beyond reckoning.¹ It was with this final touch that the theory of conciliar supremacy reached a climax in the Council of Basle. The authoritative shadows of Ailly and of Gerson had fully emerged: they were flesh and blood and substance; the vestment and vesture was the endowment of Basle.

The progress of the debate had followed a strange logical development since the early days of the Waldensians. The irresistible momentum had met the immovable force in the days of John XXII but a new direction had carried it on in the conflict and passions of the Western Schism. With appalling insistence, Pisa and Constance had healed schisms only to bequeath hesitation and uncertainty to Christian men. It was the heyday of the "ampler plenitude", carried over by interested forces into the arena of Basle. What does Basle mean? In the history of the Church of God it was a two-edged sword: one blade tempered, whetted and sharpened to part the seamless robe of Christ. It lay ready, an occasional finger tentatively trying its trustworthiness for the sixteenth century reformers.² But the Providence of God, hand on the hilt,

¹Aeneas Sylvius Piccolomini (later Pius II) is the authority. Mansi 31A: 225. Panormitanus appears to have been the originator of the nemo exegesis: Thomas Campeggius in the early 16th century says: "Verbum nemo excludit omnes etiam collective, contra Panormitanum" -- De auctoritate et potestate Romani Pontificis (et alia opuscula. Venice: Manutius, 1555) c.XX. The notion of the Pope's authority over individual churches is there remarked as favoured by Panormitanus. Ibid. c.22.

²Bellarminus. De Summo Pontifice. De Conciliis in numerous passages refutes identical arguments of the Centuriators of Magdeburg, the Schmalkaldic Synod, and many individual heretics of the 16th century.

watched as well the fashioning of the other blade into an instrument fit for cutting even the Gordian knots woven into the stuff of thought by an untutored dialectic.

"By the power of God manifold good for the Church is drawn out of heresies... The truth of the Faith is made much brighter... Catholic teachers are spurred on to vigilance; doctrines are painstakingly instilled so that simple minds are not deceived with the subtleties of heretics... 'Heretics are useful for discovering the truth, when they overwhelm it to lead (others) into error. For truth is carelessly sought if there are no gainsayers for, as the Apostles says, 'it is necessary that there be heresy'".¹

It was appropriate that Juan de Torquemada should have finished and brightened the other blade,² etching on the surface Veritas.

The traditional position had been turned exactly upside-down because the universal Church had become superior to the Pope in its congregated General Council. Torquemada indicated the strange

¹Summa de Ecclesia IV, II, c. 5, with a quotation from Saint Augustine: De consonantia Mattheae et Lucae de generatione Christi

²The fourteenth century apologists had begun the work of refuting the idea of conciliar supremacy. In the fifteenth century there was remarkably little writing for the papal side. After Constance the work of the English Carmelite, Thomas Waldo, (1440) began a host of treatises. The more notable contributors were: Johannis de Montenegro, companion of Torquemada; Petrus de Monte, a Venetian canonist of wide repute; St. Johannis Capistranus; the Greeks, Georgius Scholarios Gennadios and Cardinal Bessarion.

Towards the close of the century many other tracts made their appearance and the fashion continues well into the sixteenth, until the answers begin to receive new direction from Luther, Calvin and others. It may be interesting to recall that Henry VIII was one of the earliest to take up his pen against Luther.

turn of things:

"They give pre-eminence to the universal Church -- above the Head, above the Prince, above the Rector and Pastor. It has the superiority of power and the authority of jurisdiction -- against natural reason, against the thought and the teachings of the holy Fathers".¹

"Plainly these two notions cannot hold at the same time: that the Roman Pontiff should be the first of the whole world AND nevertheless be subject to the universal Council representing the world;

"Because he is the Prince of the Apostles: that he is the subject of the Christian people and of their Council;

"Because he is the Vicar of Christ, the present one directly established by Christ: that he is subject to another than Christ;

"Because he is the Head of the whole body of the Church: that he should come to be judged and ruled by the Council representing the body;

"Because he is the Father of all Christians: that he is bound under penalty of perishing to the commands of his sons;

"Because he is the Teacher (doctor) of all the faithful: that he should come as an inferior to the college of his students, the universal synod;

"Because he has received from Christ the full power of feeding, ruling and governing the universal Church: that the universal Council should be superior to him in the authority of governance and leadership".²

Most of the arguments set forth in the Basle-ist conciliar tracts had had their origins earlier. Because the work of Torquemada grew more and more comprehensive with each separate defense of the Papacy -- or of Eugene IV when, after 1432, they were complex with personalities leading argument to strife -- it is proper to give in outline the main weapons in the conciliar arsenal with

¹Tract C: 12(5)

²Tract B: 46(3) The quotation is a commentary on the recent definition of the Primacy of the Roman See -- Florence, 1439 -- about two months before the appearance of Tract B. Each word descriptive of the papal status is the subject of the antitheses. Article 8, Part 2: Decretum unionis Graecorum.

something of their historical context. Torquemada himself has made the work of selection simpler by his order of their effectiveness and recurrence.

There might be some question as to whether Saint Augustine or Saint Jerome had lent the more impressive and telling blows for the Council. In the last years of the debates -- nearly pure invective by then -- the Council had invoked Saint Jerome as the doctor whose teachings they followed, to the infinite disgust of Torquemada¹ who countered with a similar barrage.² But historically the weight of Saint Augustine's maxims³ had tipped the scales by sheer force of numbers. For present purposes, then, it is his extracts that will be shown in summary. For all practical purposes the arguments taken from Saint Jerome -- it may be with slight emphasis in pungency -- were made to support identical points.

¹Tract C: 2(1)

²Ibid. 2(3)-(5). One of the favourite -- if not the favourite text -- Hieronimian themes for Torquemada was a chapter appearing in the second part of Gratian's Decretum: "Haec est fides, Papa beatissime, quam in Ecclesia didicimus, quamque semper tenuimus.." Torquemada would very likely have died if he had known that that beautiful act of faith in the integrity and indefectibility of the Roman See had been the production of the heretic Pelagius. But apart from its authorship, no Catholic could quarrel with the doctrine. Torquemada used this to counter the Council's assertion of fellowship with Saint Jerome.

³I use the term "maxims", because most of the persons who employed them most probably saw nothing of their contexts, a point Torquemada drives home from time to time in the Summa de Ecclesia as the progress of this paper will show.

The selection of representative arguments naturally leaves something to be desired as each omission made its contribution to the strength of the total. For the dic ecclesiae and the Si Papa there can be no doubt at all. They are of prime importance. Nearly everyone used them all of the time and everywhere -- which is not overstatement at all. There is no difficulty, either with putting them on the top of the list. Torquemada had already set them there. The first, dic ecclesiae, was the groundwork of the conciliar edifice; the Si Papa fitted snugly into position with it. Saint Augustine was allotted the work of defense; the Acts of the Apostles formed an outer bastion. From their combination and concentrated force, the building of the conciliar party may have appeared an impregnable fortress.

CHAPTER THREE

DIC ECCLESIAE!

Common custom over the ages besides a nearly uniform exegesis of the dic ecclesiae bore witness to small misunderstanding where the precept of fraternal correction was in question.¹ Said the adversaries, "the word, ecclesia, is not to be thought of as a prelate only, but the universal Church. The Glossa ordinaria² is clear: 'dic ecclesiae: that is, the whole Church'. Final and fullest proof that the universal Church was superior to the Roman Pontiff lay in this text. For anyone of the faithful might be sent to the universal Church for judgement to be meted him. As a consequence, the Supreme Pontiff was himself liable to its court.³ From this assumption the end of the journey was not far; by a fairly direct path it reached to the General Council representing the Church. The mooted point was resolved: plenitude of power lay in the universal Church or in the General Council representing it. The Pope was subject to the judgement of the General Council and

¹Mattheae XVIII: 15-17 . Si peccaverit in te frater tuus, vade et corripe eum inter te et ipsum solum... Si autem te non audierit, adhibe tecum adhuc unum vel duos... Quod si non audierit eos, dic ecclesiae; si autem ecclesiam non audierit sit tibi sicut ethnicus et publicanus.

²Glossa ordinaria. There must be variants of the Glossa ordinaria in Mss. The gloss here cited is found in Saint Thomas: Catena aurea, quoting Glossa ordinaria.

³Summa de Ecclesia II, c.92, col. 1 princ.

not merely in the traditionally acknowledged case of heresy.

"This interpretation is not right. The proper understanding is not what the adversaries would have it; theirs is not the Catholic interpretation. And because their interpretation is their main armour, it needs to be seen how that maxim of Christ, dic ecclesiae, is explained in the Glossa ordinaria and the exegetes".¹

Demonstration of the traditional meaning of dic ecclesiae appeared convincing enough when Torquemada had first set forth his points in Tract A.² Six years later the proofs were further expanded in Tract B. In the Summa de Ecclesia the fullest development of his case emerged in nine closely-packed columns with five converging arguments.

The literal sense could not bear the interpretation of the universal Church dispersed throughout Christendom when ecclesia came to be thought of as the judge of an erring brother. Even the universal Church convened in a General Council could not be its meaning. Ecclesia in the text of Saint Matthew was to be understood as a prelate of the Church -- among other senses. Commentaries and glosses defended this explanation as the traditionally sound interpretation of the Fathers. Then came the need for unsettling the basic principle the conciliar party had derived, ecclesia as a synonym for the universal Church. "If that Gloss had

¹Summa de Ecclesia II, c.92, col. 1 princ

²Tract A: 27(3)-29(3); Tract B: 21(2)-22(3); Summa de Ecclesia II, c. 92.

been read for seeking the truth, it should have been read as a whole", but since the adversaries had found their adequacy in the incomplete text, Torquemada's most damaging invalidation of their contention lay in the simple restoration of the text.¹ The final avenue of approach was common sense, demonstrating that dic ecclesiae could not rightly be thought of as the universal Church dispersed over the earth nor yet, gathered in synod. Fraternal correction became impossible even if the precept were binding on the Christian conscience. An insupportable burden lay on the Christian people if the faithful were obliged to fulfill the command by denouncing a straying brother to the General Council; nor would it have been too easy for prelates to excommunicate the wayward one were they under the need of carrying out the command in the General Council.²

Torquemada's position was a direct challenge, not lacking humour. The conciliar advocates could have wanted nothing less than hearing the multitudes coming to the General Council to perform the act of justice fraternal correction implied. The Council, striving for a de jure supremacy over the Pope, realized its opportunity in the matter of fraternal correction, for the Pope, they said in effect, "is our brother". "The Pope is our brother indeed, but he is

¹"vel dic toti ecclesiae ut majorem erubescerentiam patiat. Post haec omnia sequatur excommunicatio quae fieri debet per os ecclesiae, id est sacerdotem, quo excommunicante tota ecclesia cum eo operatur". Catena aurea.

²Tract B: 21(3)(4). Summa de Ecclesia II, c.92 ad finem

also the Prince and the Head of the whole universal Church, holding supreme power in the Church... because he is the Prince".¹

Then, with something like deliberate naïveté, Torquemada reduced the deduction to practical absurdity. He pictured Europe constantly travelling, the Council constantly sitting.

"From the obstacles barring the way, all justice would perish from the earth. Gone would be all the discipline of the Christian polity since the execution of justice would be rare...

"Now, this is the understanding of dic ecclesiae: sometimes ecclesia must be considered the college of cardinals; sometimes it is to be thought of as a conventual chapter; at other times it must mean the gathering of a particular community, or of one people. Sometimes it needs to be interpreted as one small family!"²

The dic ecclesiae had grown in popularity since Marsilius of Padua³ and William of Ockham had formulated their notions of conciliar superiority, -- always bearing in mind its application to the person of the Pope. William of Ockham's exegesis of the passage has a Waldensian note:

"The Saviour then willed that the sin of the erring, after a private correction and the bringing in of witnesses, should at last be announced to some congregation of the faithful, of

¹Tract B: 25(2)

²Tract B: 24(2); Summa de Ecclesia II, c.92 ad finem

³Defensor pacis II, c. 11: "Dixit ergo Christus, 'dic ecclesiae'; nec dixit, 'apostolo vel episcopo seu presbytero' aut ipsorum soli collegio. Et intellexit ibi Christus ecclesiam fidelium multitudinem aut iudicem ad hoc illius (imperatoris) auctoritate institutum..."

"laypeople or of clerics, or both".¹

The text of Gerson has no little interest when its history is observed and the combined form of persuasion that is the result of Constance practicata. Torquemada was disposed to lay a good deal of the responsibility for conciliar exaggeration at Gerson's door.²

"...in this text is found the plenitude of power of the spiritual sword, as well as its exercise in the Church over anyone of the faithful, though he might be the Pope. Nor should this dic ecclesiae be taken here to mean the Pope, for Christ spoke to Peter but not for himself... For there is added in the plural: 'Whatsoever you shall bind on earth,' etc... Then, if the Church did not have such power and its exercise, vainly would Christ have said, 'dic ecclesiae', for the person could not be heard -- against what follows: 'If he will not hear the Church ...' In this text, too, there is based not only the power of exercising (plenitude of power), but the power of defining, of determining, of making decrees, of establishing precepts, laws, and canons; of proceeding against the disobedient even to the sentence of excommunication inclusively... Our brother, then, who says to God, 'Our Father', -- ought to hear the Church.

"The statutes and the practice of this sacred Council confirm this thought: 'Et primo declarat quod ipsa...'³ From the

¹Dialogus III, Tract. II, Lib. II, c. 17 (quoted Lagarde. op. cit. IV, p. 51) A parallel passage occurs in Octo quaestiones. III, c. 12, pp. 121-122: "Videtur autem rationabile ut hujusmodi de papa iudicium ad aliquas certas personas de clero; quibus deficientibus... pertineat vel ad universalem congregationem fidelium vel ad quoscumque fideles qui tantam super ipsum temporalem valeant habere potestatem..." The Dialogus, to which Torquemada usually refers in his mention of Ockham, I have not seen.

²Summa de Ecclesia II, c. 100 ad finem. Torquemada had been present at Constance -- Summa III, c. 14

³The famous decree of Sessions 4 and 5: "Et primo declarat quod ipsa sancta synodus in Spiritu sancto legitime congregata generale concilium faciens et Ecclesiam catholicam militans repraesentans, potestatem immediate a Christo habet, cui quilibet cujuscumque status vel dignitatis, etiam si papalis existat, obedire tenetur in his quae pertinent ad fidem et extirpationem dicto schismatis et reformationem generalem in Ecclesiae Dei in capite et in membris". Mansi 27: 585

"foregoing, if the power mentioned was given to the Church, the General Council representing the Church has it. Rather, it would seem that the Church considered as dispersed would not have that power except in some kind of material or potential form. But congregated or united -- which it is in a General Council -- gives it a form. And the aforementioned power of ecclesiastical jurisdiction is founded in such a unity or union, as the great Augustine seems to have noted: 'the keys of the Church were given to unity'".¹

Because his interpretation of the dic ecclesiae had led Gerson to such lengths, he was forced to deduce plenitude of power as vested in the General Council. Although he did not deny a plenitude in the Pope -- as we have observed -- he yet found it "principally" in the Church. There is something in Gerson of that formless "universitas fidelium" once again -- the Church that cannot err. For Gerson the term "Church" had perforce to be the General Council. Plenitude of power was in the Church mainly "by reason of its inerrancy... -- this is not true of the Pope;-- again, by reason of its power to regulate the exercise of papal authority".²

It can readily enough be seen that every papal prerogative was compromised by such an explanation of the dic ecclesiae, as revived Ockhamist teaching gained popularity after Constance. The mere statement of an ampler authority in the universal Church, or the General Council as its representative, was the nucleus of that

¹De potestate ecclesiastica IV, col.115-116. St. Augustine: Quaestiones novi et veteris Testamenti II, quoted Tract B: 30(3): "Has autem claves non homo unus sed unitas accepit Ecclesiae".

²Ibid. col. 116.

full body of conciliar claims that Basle stood for. Any and every prerogative of the Council must necessarily have been admitted, had that one thesis of the dic ecclesiae been accepted.¹ Hardly a conciliar tract of that Council did not urge its authority.²

¹Even granted the tangled meshes of thought that the Western Schism has fostered, it is not easy to understand how such a man as Gerson could have gone so far afield even with an argument for expediency. The text of Gerson has the note of conviction, too, that is somehow opposed to the notion of expediency as a present necessary end. The temptation is strong to take the times and moments as means to a wider theorizing that he did favour; otherwise it is hard to understand the passionate expressions in several of the pertinent tracts. His influence was manifestly without par at Constance; nor was it much less so at Basle. There are few conciliar arguments of any length that do not owe him a portion of their inspiration. cf. Tract A: 20(1) for verbal agreement of the University of Paris argument -- dic ecclesiae -- as well as the three following arguments for more or less close approximation to the letter of Gerson.

²Various synódal responses. Mansi 29:(from AD 1432): col 245 ff (to 1439): (513 ff. For a lengthy speech of Panormitanus, cf. Joannis de Segovia. op. cit (Monumenta.II, 1144-1193): Responsio Panormitani, "Maximum onus", col. 1147.

That highly interesting document, Inquisitio de potestate Papae, fully supports Torquemada's contention that the dic ecclesiae

was the positive basis for the conciliar theory of supremacy. The pertinent section is an echo of Ockham (Octo quaestiones.III, c.12 pp. 121-122), a yet more faithful imitation of Gerson (De eccl. pot. IV, col. 115): "Et ibi fundatur auctoritas et jurisdictio ecclesiae congregatae, id est concilii generalis, super omnem hominem qui nomine Christiano censetur... Etiam Papa intelligendus est frater". Mansi: 30: 930.

CHAPTER FOUR

ARGUMENTS FROM SAINT AUGUSTINE

The text from Saint Augustine, "where for the most part their dreams were based"¹, would not have furnished so handy an argument for the conciliar party had it not been well removed from its context before it became the canon, Quodcumque, in Gratian.² "Peter, when he received the keys, signified holy Church".³ It was a canon of immense help in fostering the notion that plenitude of power was the privilege of the universal Church. As such it had figured among the non-admissible propositions tendered the Fathers at Constance on the part of the University of Paris. Said the University:

"It follows that the universal Church does not hold the keys from the Pope; rather, it is the other way round... Through election (the Church) gives him... the use of the keys..."⁴

Gerson had found a similar bulwark in the text two years later.⁵

¹Summa de Ecclesia II, c. 75 ad 1

²c. Quodcumque. XXIV : I : c. 6. "Here the glossator says some things that the full text of Lucius does not bear out. And this is often the case, the mistake of the glosses on the Decretum ... that the originals of the holy Fathers are not seen by the glossators, but only the fragments, cut off, as they occur in the Decretum". This note occurs in Summa de Ecclesia II, c.109,col.3 where it relates to a gloss on the c. A recta (same causa and questio) but it bears out the principle.

³Augustinus, s : Tract.L in Joannem. PL 35: 1763

⁴Conclusiones...Parisiensium. Mansi 28: 22-24

⁵De potestate ecclesiastica XII, col. 137

The Basle-ists gave it the additional strength of Archidiaconus to further the conciliar case: "'Signified': that is, in the name and sign of the Church"¹. Again and again the canon, with or without its gloss, was brought forward to bear the brunt of the attack.²

A parallel passage, "Unity accepted the keys"³ in Peter, showed up Quodcumque considerably. Helpful as it has been for Gerson⁴ at Constance, it was a boon for the Basle-ists as faithful versions appeared in their tracts.⁵ There were, indeed, a good many cullings from Saint Augustine that made the effect cumulative. One full of possibilities supported the conciliar claim as such so well that answering its broadside required much reading around the mind of Saint Augustine. "We may consider those bishops who judged the case at Rome not to have been good judges. There yet the plenary Council of the entire Church!"⁶ Juan de Torquemada

¹Tract E: 15(3). Rosarium Decretorum. c. Quodcumque.

²To select four fairly representative treatises from a large number: Responsio synodalis (1432): Mansi 29: 250. Responsio Synodalis by Johannis, Patriarcha Antiochiae (ca.1438): Mansi 29: 515. The tour de force of Cesarini, debating for the Basle-ists as apparent from Tract B: 21; 29. One of the tracts Torquemada very likely was answering in Tract B was "Maximum onus" by Panormitanus.-- in Johannis de Segovia. op. cit (Monumenta II, 1144-1193) The pertinent passage from Saint Augustine occurs, col. 1147

³Quaestiones novi et veteris Testamenti II . Tract B: 30(3)

⁴De ecclesiastica potestate IV, col. 116

⁵Tract B: 30(3)-31(3)

⁶Epistola ad Glorium, Eleusim, Felicemque Grammaticum. Ep.43, c. 7. PL-33: 169

termed this the Achilles in the estimation of the claimants for conciliar supremacy, but his avowed intention of baring the vulnerable heel was realized.¹ Whole chapters of the Summa de Ecclesia he considered needed for the fullest and most elementary explanation of the mind of Saint Augustine and the refutation of the construction the Basle-ists had put upon his passages.² In reality no strong or sound case did result from the usage they made, for although the fourth century Fathers were not treating of papal claims as such, their writings can only with torture be construed in opposition.

"Certainly, it is a simple matter to answer all their talk, for the Basle-ists in their writings commonly labour under one, four, or more defects. Either they use the quotations wrongly, or divorced from their contexts, or incompletely. Then, too, they interpret the Sacred Scriptures and the sayings of the Fathers badly. Or they argue beyond measure foolishly; or they base their evidence on overwrought imagination, fiction, and strange teachings."³

Where the Fathers were thus misconstrued, Torquemada had no fear of fixing a measure of responsibility for departures from an honoured tradition:⁴

"...the rashness of the new masters surely must be decried -- these masters who force the ancient Fathers from the truth they have uttered in favour of the dominion of the Roman Pontiff. Or, they argue the part of sycophants; or from a rash

¹Summa de Ecclesia III, c.46, ad 18; Tract B: 32(3)-34(1)

²Summa de Ecclesia III, c.46; II, c.74 et 75.

³Tract C: 38(3)

⁴Summa de Ecclesia III, c.46 ad finem

"and an unconsidered judgement. These new masters -- with something like diabolical presumption -- come along asserting how it was the ancient Fathers spoke in honour of the blessed Peter and for the fulness of his governance... How beyond words is it dangerous and unsound to set aside the traditions of the Fathers. More, how false to tread them under foot and adhere to the pronouncements of those new masters whose head and teacher appeared to be Ockham and a certain disciple of his named Gerson. These, passing over the expositions of Holy Scripture by Fathers and Doctors of the Church, in the fashion of heretics, explained them according to their own fancy".¹

The task of answering the cloud of witnesses who had staked out their claims on Saint Augustine may have been a "simple matter" but the simplicity of the rebuttal involved infinite care and a large store of patience. But Juan de Torquemada was a good schoolmaster: he set some well-rounded lessons, putting down his points logically, carefully; he illustrated his tale with homely examples; he delineated the history of the thought he was to explain. And at the end he had his students note their shortcomings in logic.

What precisely were the terms likely to have made for confusion in the reader of Saint Augustine? They were: significare, repraesentare, figurare, figura. A full chapter was Torquemada's ultimate lesson, showing eleven different ways of using the terms commonly.

"One is by similitude, or a similar nature. In this was a son is said to be a figure of a father because -- as Chrysostom has it on Matthew -- 'It is said that the son is as the father'; and -- Ecclesiasticus XXX -- 'The father is dead, and as it were not dead for he has left his like behind him', -- Interlinear Gloss -- 'who represents him in his words and deeds even as the

¹Summa de Ecclesia III, c.46 ad finem

"Son of God', -- Hebrews I -- 'Who being the splendour of His glory and the figure of His substance', -- Gloss †- 'that is, of the Father'.

"Something is said to be the figure (figurare) of another by an appropriation or the likeness of some property. As Augustine -- Psalm CXXX: 'All the beasts of the field shall drink' -- 'that is the nations understood by the figure of the beasts, as is clear from the ark of Noe; in it were all beasts. This was a figure of the Church in the unity of whose structure all the nations are folded in'. Notice here how Saint Augustine says the beasts, the nations, the ark -- all are figures of the Church. In this sense of figure we find many things in the Sacred Scriptures and the sayings of the Saints -- representing and figuring. As -- Genesis XX -- the Gloss has: 'Abraham in many things signified the Christ; Sara, the Church'.¹

"Someone is said to be the figure of (figurare) or to represent another, that is, the one by whose power or authority he does something. The ministers of the Church are said to represent or to be the figure of Christ whose authority they wield. Hence -- II Corinthians V:-- 'For Christ we are ambassadors'; and -- II Corinthians II: 'If I have given, I gave in the person of Christ'. For it is said -- De penitentia, Dist.3, #Si quem -- 'Whom the priest judges, God judges whose Person he acts for in the Church'. In this way it is said a vicar represents his bishop; a legate, the Pope whose place he takes; -- as in c.Sane, De offic. deleg.-- and so the Pope, Christ. As Hostiensis says -- c. Quanto, Extrav. De transl. prelat. -- 'The consistory of the Pope and of Christ is said to be the same'. Origen -- Glossa continua -- 'See what power the Rock has whereon the Church was built, that its judgements might remain firm, as it were God judging through it!' By this manner of using representation or figure, it cannot be said without error that 'Peter signified the Church', for he himself did not accept power from the Church but from Christ immediately... He took the place, not of the Church but of Christ; he acted as the ambassador, not of the Church, but of Christ -- as he exercises his authority, not as the vicar of the Church, -- but of Christ. And in this fashion of talking about a figure, the Roman Pontiff represents the person, not of the Church, but of Christ in the Church...²

¹Augustinus: Super Psalmos. Psalmus CIII: 11 (non CXXX). ck
Gen.VII: 8; Gen. XX: 1 sqq. Glossa in Genesim XX. ck

²II ad Cor V: 20; II ad Cor II: 10; De pent. Dist.3, c.
c.Sane, De offic. deleg. c.Quanto, Extrav. De transl.prel.
Origenes in Catena aurea ad Matt XVI.

"Someone is said to be the figure of another in the reception of some favour or some authority, in whom the favour or the authority is to be derived from the intention of the donor, -- as a person might receive a castle from a king for himself and for his descendants. Such a one is said to be the figure of the others -- all those descendants of his -- in the reception of the castle. Now this manner of speaking is proper -- this mode of speaking of a figure or a representation -- to Peter in the reception of the keys. For when the Lord... gave the keys to Peter, He willed them to be in the Church, to remain in it until the end of the world. It is clear that Peter accepted the keys for himself and not only for himself, but for all the others in whom the power of the keys was to be derived. It is on this account that Ambrose says: 'All we priests have received the keys in Peter'¹. Augustine: 'In one, Peter, the unity of all pastors was signified'.² This is the way the canon Quodcumque is to be understood... 'When Peter accepted the keys, he represented holy Church', not indeed in all its members but -- Gloss -- 'in the bishops and the priests'.³ It is in this manner of speaking that Archidiaconus is to be understood...⁴ 'in the name and in sign of the Church, Peter accepted the keys'; because he not only accepted them in his own name but in the name of all in whom, throughout the Church's posterity, they were to be derived..."⁵

With portions of but five of his eleven explanations of the mooted terms noted, it is still necessary to see how Juan de Torquemada went about the work of inserting the maxims of Saint Augustine back into textual integrity. The subject is the canon, Quodcumque, the "first of the authorities" for the Council's case.

"The explanation set down by the adversaries is not the right one... for blessed Peter did not accept the keys -- 'in the name and in sign of the Church' -- as a procurator or a syndic for

¹Ambrosius: De penitentia I, c.7. PL 16: 496

²Augustinus: Sermo "Apostolum Petrum" ck

³Glossa ordinaria. PL 117: 26

⁴Summa de Ecclesia II, c.75

⁵Rosarium decretorum. c. Quodcumque

"for the Church, since he received them in preference to the others (prae ceteris) more fully, as the head. Nor even when he accepted the keys did he signify the Church in all its members -- this is silly -- but only in the chief members, that is the bishops and the priests. But the true and sound understanding of his words according to the Catholic Faith is this: the power of the keys was given to Peter as figur-ing and signifying all the prelates of the Church in whom that power was to be derived. As he who accepts some castle from a king, or some authority in a certain city, for himself and for his descendants in a direct line, -- such a person is said to have received the castle or the authority in the figure of all.

"This is the case in the proposition. Because Peter, for himself and for all his legitimate successors as well as for future prelates, accepted the keys in the Church. When Peter did accept the keys he was said to have signified the Church, or, 'in the name and in sign of the Church', -- that is, in its more outstanding members, the bishops and the priests.

"That this is true, the proper understanding of Saint Augustine, we gather from many passages. And first of all from that very text read integrally. For he says¹ -- Tract 50 on John -- 'Me you will not always have with you' -- 'This is to be understood: Do not be afraid that it was said to Judas: You will not always have Me. For He did not say habes but habebitis, because no one person is Judas. He signifies the evil body of the wicked. For Peter, it is the body of the good, the body of the Church. In one -- the body of the Church -- but in the good. For if the mystery (sacramentum) of the Church were not in Peter, the Lord would not have said to him: 'To thee I will give the keys of the kingdom of heaven: and whatsoever you loose on earth, it shall be loosed in heaven; and whatsoever you shall bind on earth, it shall be bound in heaven, too'. And when the Church excommunicates, the excommunicate is bound in heaven also; and when he is reconciled with the Church, the excommunicate is loosed in heaven. If then it is done in the Church, Peter when he accepted the keys signified holy Church. If in the person of Peter the good were signified in the Church, in the person of Judas the evil were signified. To them it was said: 'Me you will not always have with you''. From this passage the intention of Augustine evidently is not what the adversaries would have it, but what we have just explained.

"In Homily 12,¹ expounding the words: 'Lord, may this be far

¹In Joannem. Tract.L, c.12. PL 35: 1763

²Homelia XII.

PL 36:

"from Thee' -- 'In what Peter said: 'Thou art the Christ, the Son of the living God', he signified the strong. He signified the weak in the Church in that he trembled and wavered and did not want Christ to suffer: in unwittingly fearing life, he signified the weak in the Church. In this one Apostle then, in Peter -- the first of the Apostles and their chief -- in whom the Church was signified, both kinds of people were signified, -- the strong and the weak -- because without both there is no Church!"¹

The fifteenth century conciliar difficulty was related to the universal Church holding the keys because of the desire to have that power vested principally in the General Council representing the Church. As far as the early scholastics and their engagement with Waldensian errors were concerned, the need had been to take the keys away from the "hands of the good" and guarantee their being in the hands of those in priestly orders. To get the keys away from the non-hierarchical universitas fidelium, the energetic disputations of the scholastics cut distinctions between the power conferred by orders and powers entailed in jurisdiction, the peculiar emphasis fastening on the necessity for a sacerdotal order in the Church. Their arguments had not been full enough to include a close analysis of the discrimination between Pope and prelate and priest in a precision of the finer points of jurisdiction. Not that the conciliar party had pleaded support from the scholastic deductions and expositions, but it had a kind of negative stay in the lack of a positive, precise and literal teaching.

In the times of Saint Augustine the keys had likewise been

¹Summa de Ecclesia II, c.75

a subject requiring no negligible amount of clarification and simple, elementary exposition. "In many of his books", Saint Augustine had worked with might and main to stamp out those "most pernicious errors".¹

"One of these was that of Novatian. These people had denied penance after Baptism, holding that among priests there was no faculty for binding or loosing from sins... To get to the root of this error Saint Augustine... laboured to show that the keys were given not to Peter alone, but in Peter they were given to the posterity of the Church in the prelates of the Church... 'We know that the early Fathers and the Church all through the years forgave sins until the seventieth time seven times -- always, that is. This power they have tried to take away from the Church'. Farther along in the same treatise... 'Let us not listen to those who would deny the Church of God can forgive sins; for the wretched ones, while they may not understand the Rock in Peter and do not believe the keys of the kingdom of heaven were given to the Church, -- behold, they have dropped them from their hands!'

"The second error. Those rooted in heresy and schism -- and thus cut off from the unity of the Church -- said they could bind and loose from sins. This is the error of all schismatics... Saint Augustine, wanting to show unity necessary to the Church -- as well for the use as for the fruit accruing from the keys -- says: 'No one can fittingly repent whom the unity of the Church does not uphold. Therefore a person will not seek it (absolution) from priests cut off from the unity of the Church'.

"To destroy the first error -- that of saying there was no faculty among priests for remitting sins -- he says: 'Peter, when he received the keys of the Church, was a figure of the prelates' and the priests. To stamp out the second error -- that of saying the keys of the Church were with those cut off from the Church -- he says: 'Peter, when he received the keys, was a figure of the unity of the Church'".²

¹Summa de Ecclesia II, c.75, ad 2 auct.

²Passim: De agone Christiano II, c.31 ck
De vera et falsa penitentia, c.2; c.3; c.40 Tract B:31(3);
 Author unknown but later than Augustine. Tract B: 31(2)(3). PL 40
Summa de Ecclesia II, c.75, ad 4 auct. Tract B: 30-31 (summary).

This was pre-eminently the work that Juan de Torquemada, in the spirit of Saint Augustine, to rid the Church of the latest in the series of misconceptions about the power of the keys. His accomplishment in the Summa de Ecclesia is a noble piece of apologetic, a summary of the common teaching of the Church, scattered here and there among the writings of the Fathers of the Church, the "modern theologians" and the canonists. His basic exposition of the mind of Saint Augustine¹, the "simple matter", was a main part and a fundamental -- placing the letter of Augustine in harmony with its spirit. His step-wise progress, clearing away of the encumbrances, related the fifteenth century troubles to relics of the old. But Torquemada never stopped with destruction: his mind was essentially a builder, but he despised no step as too obvious for the structure he was building. This is the genius of the Summa de Ecclesia. He hated heresy and schism and every sort of questionable teaching, but his exasperation with muddled thinking was always kept far within the bounds of a large patience and a vast scholarship. This it is that is reflected in his monument to the Church and the Apostolic See.

¹De vera et falsa penitentia, much used in the passage cited -- although not much further -- is not the work of Saint Augustine but it is in complete harmony with his thought and his general teaching.

CHAPTER FIVE

"SI PAPA"

The dic ecclesiae and the Augustinian texts were indeed of prime importance to the conciliarists. The Si Papa¹, hardly less so, has been termed the "stumbling-stone of the Council of Basle".² The teachings of canonists had been all but invariable: apart from the crime of heresy, the Pope could not be called upon by any court to answer for his actions. But as we have noted, Hugguccio the canonist, had delivered himself of an unfortunate "credo", much appreciated in the search for arguments supporting the case for the Council. That gloss³ of Huguccio had been eagerly laid hold of in Ockham's time for evidence of the superiority of the "universal congregation of the faithful"⁴ over the Pope's person.⁵

¹c. Si Papa. Dist XL, c.6.

²Thomas Campeggius. op. cit. Folio 103r: "...fuit petra scandali concilii Basiliensis".

³"Ego nunc credo quoddam idem sit in quolibet crimine notorio Papa possit accusari et condempnari si admonitus non vult cessare". Ms, Folio 48v.

⁴Octo quaestiones de potestate Papae. III, c.12, p.122

⁵The argument of Ockham is long and involved, supported with scriptural irrelevancies and far-fetched illustrations. It is just not a conviction but is a rather wonderful piece of evidence to show how he wriggles out of an uncomfortable position by wandering off from the main issue. The following excerpt may be compared with the reasoning Gerson shows in De auferbilitate Papae ab Ecclesia (ed. Paris): cols 160-169 with the same type of improbable illustrations. It is hard to escape connecting the two in numerous

passages, vindicating the dictum of Juan de Torquemada that Gerson was a follower of Ockham.

"Sicut autem potest ab homine accusari de quocumque crimine si notorium sit et inde scandalizetur Ecclesia et sit incorrigibilis. ...Ita potest in casu hujusmodi ab homine judicari et destitui et deponi. Omnis enim accusatio est coram iudice facienda, nec de hoc Papa turbari ne praeesse non prodesse quaerere videatur; ne contra doctrinam Christi Apostolis pro se et pro universis praelatis Ecclesiae traditam velit tamquam sal infatuatum mitti foras nec ab hominibus conculcari; ne contra praeceptum ejusdem nolit pro salute corporis ejus mystici membrum putridum amputari; ne desideret fratrem peccantem caritate correptum quamvis etiam ecclesiam non audierit, tamquam ethnicus et publicanus non habendum; ne ostendat se nolle carnes putridas resecari, ovem scabiosam repellendam a caulis, expurgandum fermentum quod totam massam corrumpit, sed velit ut sibi parcat et universa ecclesia ad interim **adducatur**, quae omnia desiderio Papae, qui animam suam tenetur pro subjectis ponere, convenit exulare... Videatur autem rationabile ut hujusmodi de Papa iudicium spectet ad aliquas certas personas de clero; quibus deficientibus sive per malitiam sive per dampnabilem negligentiam sive per impotentiam, hoc ad supremum principantem pertineat... pertineat vel ad universalem congregationem fidelium vel ad quoscumque fideles quilibet Christiani sive parvi sive magni, congruum remedium in ecclesia valeat reperiri juxta illud Apostoli I ad Corinthios VI: 'Auferte malum a vobis', qui etiam ait: 'Expurgate vetus fermentum', nisi defecerit potentia temporalis. In quo casu servandum est consilium Hieronymi quod habetur XI, Q.3: 'Quando ergo' ut scilicet taceant Christiani, etiam intelligentes et prudentes ne dent sanctum canibus et mittant margaritas ante porcos qui conversi conculcent eas; ita imitentur Jeremiam prophetam dicentem: 'Solus sedebam quia amaritudine plenus eram'".

Tracts dealing with the preoccupation with Si Papa; Tract B:31(2) 41(5); Tract C: 33(5). Summa de Ecclesia II, c.93, col.8; c.98, col.4; c.101, ad 2.

Bound up inextricably with the Si Papa and the dic ecclesiae was a strained analogy between the Mystical Body of the Church and the human body, with special emphasis on the desirability -- with scriptural sanctions -- of amputating an offending member. The idea had appeared in Ockham's disquisition on Si Papa¹; its usefulness had impressed Gerson and Ailly. The latter's development of the theme was like a rock of refuge for the Basle-ists:

"The Pope is part of the Council just as the head is a part of the body. Therefore, the whole Council is greater than the Pope and as a result, the authority of the Council is greater than the authority of the Pope".²

But Torquemada would distinguish:

"This is true of the totality of quantity, considered dimensionally or numerically... but it is not true of the totality of a virtual quantity... of a quantity integrally, yes; potentially, no".³

The Basle-ist debater had urged:

"We notice how a doctor cuts off a member well and beneficially... Hence public power, for the sake of peace or the safety of the entire body of the Church, could be cut off or even entirely deprived of its power in one of its members..."⁴

Torquemada, willing enough to concede the sacrifice of a member to save the body suggested that the operation might not be attended

¹cf. previous note, #5, pp.77 and 78

²Ailly. op. cit. III, c.2, col. 931

³Summa de Ecclesia II, c.83. A full chapter is devoted to offset the fallacious reasoning of the old fallacy: the whole is greater than a part. The previous summary occurs Tract B:58(6)-59(3).

⁴Dionysius de Sabrenoy's, debating for the Council. Tract A:25(3), using Ockham's argument "pro salute corporis..."

with the happiest results when that member was the head.¹

The argument from this analogy and its combination with the "whole greater than a part" logic, had made Gerson describe papal power "as an integral part in its whole: thus it could not be greater nor higher than that of the whole Church, as a part is not greater than the whole".² So Torquemada continued his theme:

"The common conception of the mind is that the whole is greater than a part of it. But Christ is a part of the Church. Therefore the Church is greater than Christ! ... Yet such a conclusion is false and heretical. But one of the adversaries says in a certain tract says in a similar argument that the 'Church is greater or nobler than Christ inasmuch as He is comprehended within it as Man in the members of the Church'. This is heretical... as it is manifestly opposed to Sacred Scripture... Besides, how could a faithful mind conceive it possible that the Saviour was not greater than the saved; the bridegroom than the bride; the husband than the wife; and the head than the whole body?..."³

¹Tract A:40(5); the argument is amplified in the Summa de Ecclesia II, c.23

²De potestate ecclesiastica XI, col 131

³Summa de Ecclesia II, c.83

CHAPTER SIX

SCRIPTURAL ARGUMENTS

The scriptural passages invoked by the conciliarists would be material enough for a separate thesis as their fifteenth exegesis developed. The particular selection of texts does not mark those that are the most important but it does serve to indicate the type of text and the kind of argument it was made to support. Numerous places in the Acts of the Apostles suggested the equality of Saint Peter with the other Apostles. "It pleased the Apostles and the elders";¹ "It has seemed good to the Holy Ghost and to us";² were frequently applied.

Marsilius of Padua had thoughtfully gathered together a set of texts demonstrating the democracy that was the apostleship. He demonstrated, too, that the earliest Councils proved "Peter did not make determinations about difficult points of Faith out of a plenitude of power, as some dreaming...say the Roman Pontiff has the power to do".³ His assembly of texts was kept fairly intact. Gerson had used them as support for plenitude of power in the Council, especially as determinative of matters of Faith,⁴ besides invoking another fifteenth century favourite: "The Apostles sent

¹Actorum XV: 22.Tract B:25. ²Actorum XV: 28; TractB: 26(3)

²Defensor pacis II, c.16, pp. 274-277

³De potestate ecclesiastica XI, col 131-132

Peter and John into Samaria"¹, 'as men subject to the Church'.

In countering the scriptural foils, Torquemada was at no loss for presenting an even braver array of texts with the whole body of patristic exègesis lending them surer thrusts.² A final selection, "Peter, rising, said to them"³ meant "Peter rose as evidence of the respect he had for the assembly, as to a superior: therefore the college of the Apostles was of higher authority than Peter".⁴ "He rose", said Torquemada, "to be heard better".⁵

¹Actorum VIII: 14; Gerson: op. cit. col 132

²Summa de Ecclesia II, cc. 11, 12, 14; III, cc.30 et 36 ad 2

³Actorum XV: 7

⁴Summa de Ecclesia III, c.45, col 2, obj 3;

⁵loc. cit. ad 3.

CHAPTER SEVEN

THE WORK OF JUAN DE TORQUEMADA

Amid the general confusion there had been at least a verbal agreement that the Papacy was a monarchy by divine institution; that plenitude of spiritual power was somehow or other vested in it; that the Church could not err in the Faith. At the beginning of his battles for the "defense of the authority and the glory of the Apostolic See"¹, Juan de Torquemada considered the basic need to have been an understanding -- or, more properly, a reminder -- of the meaning of monarchy in Church government. The conciliar party was no less certain that the "key to the whole business of reform"² lay in hedging the Papacy about with numerous restrictions.

After a meeting about the middle of January 1433, the reform deputation at Basle had named Torquemada to debate the issues with Dionysius de Sabrenoy's of the University of Paris delegation.³ Torquemada was already well embarked on his stormy voyage as papal theologian: he had already distinguished himself by his insistence on the royal as opposed to an aristocratic form of government in

¹Tract A: 2(1)

²Ibid. 1(3)

³Johannis de Segovia. op. cit. (Monumenta II, p.827 ff;844 ff) Contemporary notes on the choice of the debaters, discussion of the decretum irritans, papal and conciliar proponents, etc. cf. also Haller. op. cit. II, Protokolle, pp. 422-423.

the Church.¹ Months were to elapse before any kind of agreement was reached even on the part of the Council, although the conciliar proponents appear to have outnumbered the traditionalists at that early date. A note in the Council diary six months later reflects the unrest and the need for bringing the discussions to an end.²

Tract A is the record for the negative, "in favor of Eugene and in opposition to the Decrees of Constance and the acts of the Council of Basle against Eugene", denying the contention that the Council was able to qualify papal authority. The Apostolic See from its divine institution held such peculiar and transcendent privilege that it lay beyond the scope of human -- or higher -- judgement. For this reason the General Council exceeded its authority in attempting to impose decrees in restraint of the Papacy.³ Prescinding from the de facto eruptions that were the attempts of some of the Fathers at Constance to heal the dreadful wound in the unity of Latin Christendom, it yet remained de jure that the Council was powerless to frame laws restraining the execution of his powers on the unquestioned incumbent of the Apostolic See simpliciter et indistincte.⁴ The work that faced the

¹Haller. loc. cit.

²decretum irritans in these debates means a decree or law in restraint of the Papacy. As both sides freely discussed it as "decretum irritans", it cannot have the usual meaning of an invalid decree. Tract A: 1(2)

⁴Tract B: 6(6); Summa de Ecclesia II, c.99. Torquemada had constantly to insist on the varying status of Constance.

³Tract A: 5(2)

Torquemada was formidable in view of the dimension of the precedent established at Constance. By a doubtful intellectual process the conciliar party at Basle had managed to transform that precedent -- a doubtful precedent, too, for it had not emanated from Constance as a plenary Council -- not only into a major premise but into something having a rather close resemblance to a first principle.¹

Tract A was pre-eminently an appeal to reason, the only one of the tracts that limited itself to solving a question on rational grounds, illustrated and strengthened with appeals to the Scriptures, the Fathers and the canons. It is a commentary on the classical definition of law according to Saint Isidore of Seville:

"The law should be honourable, just; it should be something possible of accomplishment; in harmony with nature, agreeable to the customs of a country; it ought to be appropriate to time and place, necessary and useful; it should be clear with no obscurity as to its meaning, drawn up for the whole common good and not for the service of private ends".²

It was Torquemada, the canonist, with easy mastery and forceful logic who showed the qualities of good law overlooked in every particular in decrees restricting the papal plenitude of power:

"Since a human law cannot be a regula prima simpliciter there is need of some other and higher norm and it is two-fold. It

¹Tract B: 1; Tract D: 1. Responsio synodalis (1432): Mansi 29: 246, 249. cf. "Cedula deputatorum" (Joannis de Segovia.op.cit Monumenta II, 634) with the words "dicti schismatis" deleted.

²Etymologiarum II, c.21: "Lex"; (c. Erit autem, Dist IV,c.2) "Erit autem lex honesta, justa, possibilis, secundum naturam, secundum consuetudinem patriae, loco temporique conveniens, necessaria, utilis, manifesta quoque ne aliquid per obscuritatem inconveniens contineat, nullo modo privato commodo sed pro communi utilitate civium conscripta".

"is the divine law and the law of nature. Cicero says: 'Law is nothing else but right reason commanding what is proper, acting under divine guidance'.¹ From this it appears that a human law to be licit and good should bear a certain conformity and proportion to divine law. This is the meaning of the first quality of law, -- that it is honesta, or as we should say, agreeable to reason".²

"Then, human law may not be out of conformity with natural law. It is here that the quality, justa, enters in. Saint Augustine would have it: 'In human affairs something is called just because it is right according to a rule of reason'.³

From the first quality of law, -- that it be "honourable" -- Torquemada deduced the General Council incompetent to impose the decretum irritans because such a law struck directly at the plenitude of papal power. As such its result would be to dissipate Christendom.⁴ The law envisaged was a law of the Medes and the Persians: it was to have been simpliciter et indistincte a law that would force the Pope to observe the decrees of Councils,⁵ the chief matter entering into the discussion being the old and iterated nuisance of provisions to cathedral churches and the conferring of benefices and of ecclesiastical status. Torquemada considered plenitude of power especially compromised there. The question

¹Cicero: Philippica XI, c.12: "lex nihil aliud est quam recta ratio et a numine Deorum tracta, ratio imperans honesta".

²Tract A: 2(3)

³Ibid. 2(4); Augustinus: De libero arbitrio I PL 32:

⁴Ibid. 4(4); 6(1)

⁵Ibid. 21(3); 31(1)

bore so directly and so seriously upon the whole realm of papal prerogative and privilege traditionally acknowledged in the Roman See that the good faith of the Council was called into doubt.¹ The Council of Constance had set another standard for ready acquiescence.² As a gauge of the magnitude of the issues involved, Torquemada laid bare no fewer than twenty-four basic, dove-tailing fundamentals for the papal position, showing that the Church could not stand unified without a full acknowledgement of their stability in common sense as well as in tradition.³

Heresy, schism and sacrilege were ugly words. They followed from the first condition of law, for the proposed decree was in constraint of the "honour and dignity of the Apostolic See".⁴

¹Tract A: 42(1); Tract C: 52(2): "a hook to angle for the favour of princes and prelates". (AD: 1440)

²Although Marsilius of Padua and William of Ockham had begun to discredit the legislative function of the Holy See, it was not until Constance that a kind of fashion was set. Gerson: De potest. Ecclesiastica, (esp. Consideratio IV, col.117) treats the decrees of Popes lightly: "si condat Papa leges et canones videtur observandum illud quod sententialiter dicit Augustinus: Leges institunt cum promulgantur. Hoc enim dicitur ad reprimendum praesumptionem quorundam summorum pontificum..." But: X, col 127, speaking of Decretals and their glosses: "...benedictus Deus qui per hoc sacrosanctum Constantiensem concilium...liberavit Ecclesiam ...ab hac pestifera perniciosissimaque doctrina..." cf. Tract C: 9-15 for a resume of the evils following Constance.

³Tract A: 5(2)-19(3) passim

⁴Ibid. 5(3) - 6(2).

The authority of Pope Nicholas II lent weight to Torquemada's argument: "He who should attempt to take away a privilege of the Roman Church, handed down by its head to the chief of all the Churches, -- without doubt that man has fallen into heresy".¹ Because constraint of the Apostolic See would be the means of dividing members from their head, the danger of schism would threaten unity. It was Saint Thomas who bore out the truth of his: "those are called schismatics who refuse to be subject to the Supreme Pontiff".² The idea of sacrilege was involved because the highest judge was a sacred person: "They commit sacrilege who call into question the authority of the principal judgement, for they act against the sacredness of divine law".³

As the decree appeared to annul a divine command, it could not be reconciled with the first quality of law. Saint Thomas had

¹c.Omnes. XXII, c.1. This rather taken from an epistle of Saint Peter Damiam to Hildebrand (later Greg.VII); it is found in the Acts of the Council of Milan (AD: 1059-1060) Mansi 19: 888-889

²IV Sent. D.24, Q.3, art 2, sol 3

³c. Si quis. XVII: IV: c.29. The section referred to is the dictum Gratiani: "Committunt etiam sacrilegium qui contra divinae sanctitatem... aut de principali judicio disputant an is dignus sit quem princeps elegerit".

declared it a necessity for salvation to be under the authority of the Roman Pontiff.¹ Boniface VIII had utilized his formula and solemnized it with a definition of Faith.² The decree evidently withdrew obedience from the Apostolic See.

Finally, another deduction from the first quality of law followed because the decree was not merely not lawful, but it was presumptuous and rash to attempt to impose it, exceeding as it did the authority of the General Council. It did not lie within the ambit of a Council's powers to change the laws and ordinances laid down by God; it was at God's command that the Pope ruled the Church, in His place, and by gift of plenitude of power.³

From the second quality of law, -- that it be "just" -- the same deduction could be made. A thing is reckoned just in human affairs if it be right according to a rule of reason -- a law of nature, that is. For the Council so to act was out of the accord right reason demanded, Saint Augustine and Saint Thomas testifying to this.⁴ Because natural justice required that every body politic preserve the powers of its ruler in all their integrity and plenitude for its own well-being, -- the decree found itself

¹Contra errores Graecorum, c.32: "...subesse Romano Pontifici sit de necessitate salutis", which Saint Thomas may have taken from Maximus the Confessor: "coadunatam et fundatam supra petram confessionis Petri dicimus universalem ecclesiam, secundum definitionem Salvatoris in qua necessario salutem animarum nostrarum est manere et ei obedire suam servantes fidem et confessionem". In Saint Thomas: op. cit. PG 91: 137

²c. Unam sanctam. Extrav. com. I:VIII De major. et obed., c.1: "Porro subesse Romano Pontifici omni humanae creaturae declaramus,

²(cont) - "dicimus, diffinimus et pronunciamus omnino esse de necessitate salutis". (ad finem)

³Tract A: 7(4)

⁴Augustinus: De libero arbitrio I: "Non videtur esse lex quae justa non fuerit". PL 32:

Thomas Aquinas: III Sent. D. 37, art 4, Responsio.

discordant with this quality of law. For obviously a body politic could not frame laws leading to its own dissolution. But the good of Christendom depended in a large way for its own cohesiveness on that very plenitude of power vested in the Apostolic See.¹

Even more serious was the threat that such decrees would destroy the monarchical governance of the Church. Torquemada pointed out that the ecclesiastical jurisdiction of prelates, resulting from their appointments independent of the Papacy -- would be a jurisdiction not hierarchically ordered to one supreme ruler. As such it militated against the divine command that there be "one flock and one shepherd".² Further, the subtraction of obedience invariably resulting was another factor out of harmony with the demand that a law be just.³ The decree, too, would tie the Pope's hands so that he should not be able to perform the solemn duties

¹Tract A: 8(3)

²Joannis X: 16

³Tract A: 9(4)

of his office entailed in Christ's commission to feed the flock. He would not only be prevented from appointing good shepherds for his people, but he could not make suitable provision for poor clerics nor for the duty he had of disbursing the treasures of the Church in alms to the poor.¹

The third condition of the law required that it be "possible, according to nature". From this standpoint such a hampering restriction was certainly not possible de jure, nor de facto could it have any validity. The whole order natural reason demands would be destroyed because the whole power of jurisdiction -- that of all the other prelates of Christendom -- was a power derived from the Roman Pontiff. A host of Fathers besides decisions of the Roman Church, made it impossible to doubt this truth.² To view the matter from a philosophical angle, the prelates of the Church were like secondary causes. Secondary causes have their powers from the first cause -- a higher cause: through it they go into operation. Then, with respect of the causative power, for it to be confined and bound by a secondary cause, would be opposed to the order of nature.³ Further, there was no power in a Council that could restrict or invalidate a power that neither emanated from it, nor depended upon it. The power of the Apostolic See in its very constitution as a power had no such dependency on the General Council.⁴

¹Tract A: 10(2)

²Ibid. 10(3)-11

³Ibid. 11(5)

⁴Ibid. 12(1)

Nor did the Council have the power of altering the status of the universal Church. Papal power was closely interwoven with the status of the Church. The Council was bound to its preservation and indeed it had a further duty of heightening its glory.¹ The Apostolic See was besides, somehow in the nature of a foundation of the Church, according to Saint Thomas.² Here lay the difficulty: the Council was not anxious to have itself compromised by any statement that would deny the plenitude of power resident in the Roman See. But it had not appeared too great a feat to reconcile two plenitudes of power; the Pope undoubtedly enjoyed his by divine institution...and perhaps the Council did also -- in its mission of restricting papal operations.³ Torquemada insisted on the contradiction in terms:

"Some say here that they grant the Council could not take away its power from the Apostolic See, but that the Council could regulate, restrain or even impede its exercise of this power... Now, jurisdiction is the power of making decisions about ius; it is the power of judging and its exercise. Further, it is the full power of judging and its exercise. If this were not the case, it would be neither complete nor perfect. To say, then, that someone has jurisdiction, but that he cannot judge

¹Tract A: 12(2)

²II Sent. D. 44, Expositio textus. The text incorporated in the body of Saint Thomas's article is taken from the Liber de causis. Mandonnet notes this in his edition: Scriptum super libros sententiarum II. Paris: Lethielleux, 1929. p. 113⁴.

³cf. Ailly. op. cit. II, c.4, col. 918: "...ad regulandum usum plenitudinis potestatis et excludendum abusum ejusdem..." cf. Gerson. De auferibilitate XIV, col 163: (concilium)...potest ergo usus talis potestatis tolli vel suspendi".

"or exercise his judgement -- this is nothing else than to say he has power and has not power. Similarly, to have the whole, the full and the perfect power of jurisdiction -- and not to have the whole, the full and the perfect exercise of such power -- this is equivalent to saying that the holding of the full and perfect power of judging (or of doing anything for that matter) is at the same time the inability to judge fully, or perfectly or wholly. This is simply a contradiction in speech. So, too, the laws that are to be drawn up would maintain papal power in its plenitude... yet (that power) would have no operation..."¹

The glory of the Apostolic See was no local thing. It was the glory, too, of all the prelates; it was their haven in distress; it was the protection of their authority. To whom could a bishop go for help if the glory of the Apostolic See were so abased?² The cupidity of princes would batten on the episcopacy. The proposed decree would dissolve the hierarchy.³

In the time that went by between May 1433 and March 1436, the Council had grown more and more powerful -- was, in fact, just beginning to over-reach itself fatally: the acme was reached in 1435. Gradually influential men had been won over to the conciliar side. What forces were at work, the historian can but guess at. The own legate of the Pope, an astute theologian whose devotion to the Church is beyond question, thought himself forced to abandon Eugene. This experience must have been an extraordinarily bitter for Eugene who had relied implicitly on the prudence and tact of

¹Tract A: 12(4). The "some say" are Ailly and Gerson with the University of Paris -- at Constance; again the University at Basle.

²Ibid. 19(2)

³Ibid. 13(3)

of Cardinal Julian Cesarini, confirming his appointment by Martin V as "legate a latere, as an angel of peace for the Apostolic See"¹. The Apostolic Notary, Louis Pontanus, had left the papal side. A papal advocate, Nicholas Tudeschi -- "Panormitanus" -- had gone over to the Council.² But whatever diplomatic trickery it was that had finally prevailed, a small but loyal band stayed with the Pope through the critical years. With redoubled efforts and a loyalty little short of epic, they redoubled their activities in the papal cause.³

¹Raynaldus. ad an. 1432. Vol.28, pp.112 ff -- for numerous letters between Cesarini and the Pope, attesting the confusion of his mind on the question of conciliar claims. There has been speculation as to the part Torquemada's arguments may have had in winning back Cesarini and gaining his adhesion to the rights of the papal cause. After his return in 1437, it was he who ordered Torquemada to cull the passages from Saint Thomas supporting those claims.

cf. Raynaldus, ad an.1431. Vol.28, p.98. The "angel" of peace is a play on Cesarini's cardinalatial title of Sancti Angeli.

²Panormitanus is a puzzle. cf. again Saint Antoninus: Summa: pars historialis III, T.22, c.4 - Folios 169-172 -- where he accuses him of being a trimmer as well as Pontanus: "Alter fuit abbas Siculus... qui stipendiatur unacum Ludovico Romano magno salario eximii juris professoris a rege Aragonum ad Eugenium parum affectum ex eo quod justitia dictante ei prohibuerat terras regni Apuliae invadere: cum ibi nullum jus obtineret, multum operabantur in favorem conciliaboli et in Felicis creati". Panormitanus was one of the orators of the King of Aragon.

³Outstanding among the supporters of Eugene were his theologians, John of Monte Nigro; John, Archbishop of Tarento; John of Mella, Bishop of Brescia who had accompanied Panormitanus to Basle in 1431. He was later rewarded for his services by being named to the Bishopric of Leon. The orators for the Duke of Burgundy, the Bishops of Dijon and Nevers, were also very active in the debates at Basle, for the papal side.

The Council had obtained a de facto superiority over Eugene. In the early part of 1436, the debates had grown in warmth as the reform Council still actively concerned itself with legislating in restraint of the Papacy. Tract D and Tract E, the last of the records of Torquemada's public defenses of papal prerogatives in the Council of Basle itself, contributed a few strong links to the chain being forged for bastioning the Petrine claims. Gone was the urbanity of 1433. No longer did Torquemada evince an interest in enlisting the aid of Cicero or of Aristotle, or of any other champion of sound reasoning. Gone, too, was the ever so slight suggestion of delight in his own country, "myself of the Spanish nation"; "Isidore, the light and the honour of Spain".¹ Nor does such a reference to even a mild patriotism find place thenceforth in his writings.

Juan de Torquemada served notice only that he had nailed the papal colours to the mast-head; to keep them flying, bright with glory, was the sole aim and object of the work of some two score of years that yet remained to him. There was nothing that he was less desirous of than originality. A radical traditionalism, eager to expound how the Fathers of the Church had taught, how the ancient Councils had proclaimed the transcendent privilege of the Apostolic See. He realized only the need to re-state that teaching fully, emphatically, clearly, precisely.²

¹Tract A: 1(3); 2(2). ²Summa de Ecclesia. Prologos, col.3

On ten counts Tract E denied the contention of the Council that would have denied right of appeal from Council to the Pope. The whole Christian tradition cried out against the Council's being the last court of appeal, even where restrictions had been devised in the name of reformation and zeal. The denial of such a right did not savour of sound doctrine. It was a peril to the Christian Faith; it was tantamount to setting aside the teachings of the Fathers and other approved doctrine; it militated against the decisions of General Councils and canons.¹ Nor was it less evil because it contradicted sound natural reason: the Popes as superiors had traditionally confirmed the decrees of Councils before they had had any binding force. The withdrawal of appeal compromised the privileges of the Apostolic See; it prejudiced the honours of churches and of princes for the pages of conciliar history had not been clear of tales of the sordid, of strife and of jealousy.² The condition of bishops was especially serious: their honours and privileges had their only sure guarantee in the Papacy. Finally, such legislation was presumptuous.³

Shortly afterwards, in less than two months time, Tract D was delivered. It is laconic. The sacredness of the Pope's person forbade that an oath be required in surety of his good faith.

¹Tract E: 18-20

²Ibid. 21

³Ibid. 22

The enforcement of any such oath would be action "directly against the authority, the honour and the majesty of a prince. Rather, it appeared to be in contradiction to the very reason for a prince's being".¹ It was on such a note that the debates for the papal cause came to an end as far as Torquemada was concerned, within the arena of Basle itself.

Just when, during 1437, Torquemada withdrew from the Council is not known; certainly by the Fall of the year, the scandalous activities of the Council had decided him that it was no fit place for the Pope's men to remain.² It had been the same year that Cardinal Cesarini had asked to have the materials collected from Saint Thomas in support of papal prerogatives. This Torquemada did under the title, Flores sententiarum sancti Thomae, in a list of seventy-three questions with answers to each from one or more passages from Saint Thomas.³ There is no other commentary.

¹Tract D: 1(4)

²Apparatus super Decretum Florentinum unionis Graecorum. ed. Emmanuel Candal, S.J. Roma: 1942. p.xii, not.#4. I am indebted to Father Candal for this note which he took from Torquemada's commentary on Gratian. I have not see the commentary.

³A note on the Ms reads: "Collecti per magistrum Johanne de Turrecremata in concilio Basiliensi, AD.1437..."Haec sunt, pater reverendissime, quae ego vester humilis capellanus, frater Johannis de Turrecremata, ex libris beatissimi doctoris Thomae de Aquino, jussu vestrae... de auctoritate summi pontificis collegi". cf. Garrastachu, Jacinto: "Los manuscritos del Cardenal Torquemada..." en La Ciencia Tomista. XLI, p. 315

But after Juan de Torquemada had withdrawn from the center of the conflict, he was only to offer an even more steady devotion to the cause "in journeys often". The next three years found him at the Councils of Mayence and Bourges. From this alone can be judged something of the extent of the current crisis, that the Holy See should send delegations of its outstanding champions to cope with the actual or potential disaffection of Europe.¹ For the Diet of Nuremburg in the Fall of 1438, Torquemada prepared a speech that appears to have been delivered by proxy. It contains a list of ten privileges of the Apostolic See that are of rather special significance as categorical assertions made previous to the definition of the primacy at Florence.

- 1: The authority of convoking General Councils;
- 2: The privilege of defining and determining a definition judicially;

¹The Diet of Nuremburg: October-November, 1438; Provincial synod of Mayence: March-April, 1439; 2nd Council of Bourges: August-September, 1440. Among the delegation sent by Pope Eugene IV to Mayence were: Cardinal Nicholas Albergati, Archbishop John of Tarento, Bishop Peter of Dijon, Bishop Anthony of Urbino. A legal specialist, John Francis Capodilista and the theologians Nicholas of Cusa (lately turned to the papal side) and Juan de Torquemada. cf. Apparatus xxiii (1) for some of this information.

For Torquemada: "ut Germania praelatos et principes a Basiliensibus abstraheret quos saltem in obedientia Eugenii continuit: quod et idem in sequentibus paulo post habitis scilicet mense Martio 1439 Moguntiae comities ejusdem orator impetravit". Quétif/Echard. op. cit. I, 838

- 3: The sole privilege of framing canons and of defining opinions (sententias);
- 4: The ultimate authority of the Pope: always recognized by the Fathers in Council;
- 5: The privilege of interpreting the canons;
- 6: The right of moderating, dispensing and changing canons;
- 7: The retracting and annulling of conciliar acts and deeds when these were less just or prudent;
- 8: Legitimate cause concurring, the privilege of changing a Council's location;
- 9: The privilege of dissolving Councils: he has the right to dissolve who has the right to convoke;
- 10: The right of reprimanding and reprovng a universal Council when it does something imperilling the Faith, or is the occasion of marked disturbance in the Church.¹

Although there is no one of these statements that is not more fully developed in Tract B, the order here is more systematic, the tone confident and emphatic, and the doctrine forcefully declared. In the manner of a declaration, rather than of a refutation, the speech for Nuremburg may be considered a long forward stride in Torquemada's logically ordered development of papal privileges.

¹Mansi 31A: 41-62. For the section where the privileges are posited and defended, col. 54 ff.

The Council of Florence was the theatre for a somewhat more prominent role. It was Torquemada who drew up the Apparatus, the documentary evidence of the reunion of Greeks and Latins.¹ In the Decree is a definition of the Primacy of the Roman See, every separate phrase carefully vindicated by appeals to the traditional teachings of both Greek and Latin Fathers. It was signed July 6, 1439. Article 8 of the second part carries the dogmatic formula:

"... We define: the Apostolic See and the Roman Pontiff holds the Primacy in all the earth; the Roman Pontiff is himself the Successor of blessed Peter, Prince of the Apostles; he is also the true Vicar of Christ, the Head of the entire Church, the Father and the Teacher (doctorem) of all Christians; to him also in blessed Peter was handed over by our Lord Jesus Christ, the full power of nurturing (pascendi), ruling, and guiding the Universal Church, -- as likewise is found in the Acts of the Ecumenical Councils and in the sacred canons".²

Among others, Marsilius of Padua had attacked the Primacy;³ the Fratricelli had denied the continuance of Saint Peter's authority in the Church of Rome;⁴ Ockham had declared Saint Peter had never sat in the Apostolic See;⁵ Marsilius had said Saint Peter had not been head of the Church; that the only head was Christ;⁶ Huss had copied Marsilius; the Waldensians had objected to organization: there was no need of a hierarchical order disposed under one head.⁷

¹Apparatus. ed. Candal: complete critical edition.

²Art.8, Secunda pars. ³Defensor pacis II, c.16, p.274

⁴Summa de Ecclesia IV,II,c.37

⁵Summa de Ecclesia II, c.36, col 3 ⁶Ibid.II, c.22, col 2

⁶loc.cit; Hefelé-Leclerq: VII,I, p.511-519, esp.#7 p.519

⁷"Valdesi".Enciclopedia Italiana, Vol.34, pp.894-896.

The "dispersed Church" theory of Constance and Basle had been given a blow also. Did there even remain the need to define infallibility? Explicitly perhaps, but that its definition had been implicit at Florence was acknowledged at the time of the Vatican Council.¹

Yet, critical as was the advance made at Florence, for Juan de Torquemada it meant the stamp of approval for the work that yet lay to his hand. It must have meant a firmer confidence in the doctrine he had gradually been exposing, an assurance that his interpretation of tradition was sound, couched in exact terminology; it meant that the great body of his final synthesis, the Summa de Ecclesia, should consequently be characterized by strong, categorical, exact statement; that fewer chapters would be less firmly asserted "sub meliore iudicio".² For the particular benefit of the Greeks assembled at Florence, as some measure of countering the scandal they may have taken at the rift between Pope and Council, Torquemada delivered that matchless Responsio to the acts and decrees of Basle.

Tract B is the negative of a scholastic disputation conducted in opposition to Cardinal Cesarini in the affirmative.³ This rebuttal was a quasi-official reply to various speeches and pamphlets

¹De Romani Pontificis suprema potestate. Disputatione theologica. Naples, 1870: "Cum igitur Decreti articulus in hunc sensum publice et authentice declaratus esset, etiam hac eodem sensu a Patribus admissus et subscriptus censeretur debet. Quare gravissimi viri non verentur asserere ipsam Romanae Sedis infallibilitatem a Florentina Synodo iam definitam esse", (quoting Muzzarelli: Primato e infallibilita del Papa). In Cardonus: op. cit.

²This is notable in dubiis. ³Summa de Ecclesia II, c.100, col 5

directed personally against Eugene and papal authority generally.

The Responsio is a remarkable document, a concentrated essence of numerous papal prerogatives. Ninety-four incisive predications summarize the material refuting the "first article"¹ of his opponent; twenty-six statements, in summarizing the refutation of the "second article", attempt to make the situation of Constance comprehensible, "on the part of the Fathers who promulgated that Decree... and of their brothers of Basle who renewed it".² The history of Constance -- from one obedience to its final plenary constitution -- was painstakingly outlined in both sections.³ Torquemada's brief was fashioned in a highly ingenious way. Beginning with the late decree of Basle,⁴ raising the status of the original form of Constance to the dignity of "three truths of the Catholic Faith"⁵, Torquemada set out on a journey of utter destruction. With a grave courtesy and ruthlessness, he disposed of his adversary's case. In his place there lay the whole conciliar edifice; when he had passed the road was clear. He had run up the papal colours even higher than before: the glory had not been dimmed.

¹Responsio. Mansi 31B; 1941-1998. 94 statements, pp.2-5

³Ibid. p.5 ff; 51(2) ff. Summa de Ecclesia II, c.99 --for Constance; c.100 for Basle.

²Ibid. 51(1); 26 statements, p.50

⁴"Sicut una". May 16, 1439 defined the Council to be above the Pope. Mansi 29: 179; a portion of the text occurs in Tract B 1(1), "Veritas de potestate concilii generalis..."

⁵cf. not. #A+

The same disadvantage characterizes Tract B as the earlier Tracts, in its being the negative of a debate. But it was with surprising ease that Torquemada managed to keep within the circuit of the affirmative argument, thus laying down an impressive portion of the groundwork for the Summa de Ecclesia. Many sections of this brief were entered with little or no alteration into the appropriate subject matter of the Summa headings.

Before following the arguments Torquemada's developed for the plenitude of power and the consequent infallibility of the Holy See, it is necessary to examine Tract C¹ for an abrupt change in his method. The Basle-ists, officially condemned by the Bull, "Moyses vir Dei", issued September 4, 1439,² had replied with the invective that spared no words in libelling the person of Eugene. Tract C was the answer, somewhat in kind, the answer of a man thoroughly roused, angry and scornful. It was delivered in the second Council of Bourges in an attempt to have the Pragmatic Sanction abrogated.³ In the Tract, Torquemada had allied each of the more glaring of twenty-two "acts" of Basle-ists -- opere et facto demonstrant -- with heresy already condemned, or to doctrines verging dangerously near the borderline, or to such as were offensive

¹Responsio ad sacrilegam invectivam. Mansi 31A: 63-124; in counter-attack to Responsio synodalis of October 7, 1439. Mansi 29: 344 ff

²Mansi 31B: 171 ff

³This is not positively asserted, but it was one of the main requests left for Charles VII to consider. cf. Summa de Ecclesia III, c.40 ad finem: "they (the decrees) were no less evil because they had been accepted by the French kingdom in the Pragmatic Sanction?"

to the faithful, and scandalous. From the fulness of a strong language directed against the "robber Council of Basle", the enumeration of "errors" is set in opposition to the true position.

- 1: "In the failure to acknowledge, opere et facto, the Roman Pontiff as their head, their pastor and their prelate: they fell into the error of the Hussites denying Peter as their head.¹
- 2: "In their refusal to submit to the Roman Pontiff: they fell into the error (of those who believe that) 'To be subject to the Roman Pontiff is not necessary to salvation'...²
- 3: "Showing themselves disobedient to papal mandates, statutes and orders...³
- 4: "Contending they were united to the Church, even cut off from the Roman Pontiff, they fell into the error common to all schismatics -- who deny unity -- the Indians, the Armenians, the Greeks, the Waldensians, the Hussites...⁴
- 7: "In their contention that their decrees and acts were valid unsupported by the authority of the Apostolic See: they fell into the error of saying the Vicar of Christ, the Roman Pontiff, does not hold the Primacy of the Universal Church... 'an error like that of saying the Holy Spirit does not proceed from the Son'...⁵
- 8: "Vilifying and despising the sanctions, declarations and definitions of Faith of the Apostolic See: they fell into the error of those asserting ITS JUDGEMENT IN THE THINGS THAT PERTAIN TO FAITH IS NOT FIRM but subject to error...⁶
- 9: "Lauding their own traditions and teachings beyond measure

¹Tract C: 15(3)

²Ibid. 16(1) quoting c. Unam sanctam.

³Ibid. 17(1); Summa de Ecclesia II, c.108 -- on the duty of obeying decrees and decretals of the sovereign Pontiffs.

⁴Ibid. 17(1)

⁵Ibid. 19(1) quoting Saint Thomas: Contra errores Graecorum. c.32 #Quod Pontifex Romanus est primus et maximus...

⁶Ibid. 19(3). Summa de Ecclesia II, c.109

"...despisers of authority and the teaching of the Apostolic See, they would appear to claim that they could not err in a matter of Faith: they fell into the error of saying Councils cannot err.¹

11: "In their assertion of having power immediately from Christ over all the faithful... without dependence on the Roman Pontiff or the Apostolic See: they fell into the error -- their greatest -- that of those who attempt to destroy the hierarchical order.²

13: "Contending that the chief governance of the Church was not in one but in many: they fell into the error of saying the rule of the Church is not monarchical.³

15: "Taking away appeals indifferently from the Apostolic See against the definition of the Council of Ephesus, 'that from the sentence of the Apostolic See no one can appeal': they fell into the error of saying that the Roman Pontiff has not supreme authority in the Church by virtue of which an appeal may be made from the entire Church to him...⁴

18: "Usurping the exercise of plenitude of power while there sat in the Apostolic See an undoubted Supreme Pontiff: they fell into the error... condemned: that the Roman Pontiff was not the head of the holy, Catholic Church...⁵

20: "Presuming to bind the Roman Pontiff to the observance of their laws and statutes they seem to be involved in the error of those who say the Roman Church did not receive the Primacy and dominion immediately from Christ...⁶

¹Tract C: 21(3). Historically erroneous; the theme is enlarged in Summa de Ecclesia III, c.58. i.e. 2nd Ephesus, corrected by Chalcedon.

²Ibid. 24(2). Summa III, c.28; c.31

³Ibid. 25(4). Summa II, c.2 ff

⁴Ibid. 26(4). Summa III, c.47, col.2, quoting acts of 1st Ephesus.

⁵Ibid. 28(3). Summa IV,II, c.38, col 3 -- errors of Huss.

⁶Ibid. 30(6). Summa IV,II, c.37, col.3 -- errors of John of Jandum and Marsilius of Padua.

- 22: "Daring to cite, to suspend and to depose an unquestioned Roman Pontiff and a faithful Catholic...the like action unheard of by any synod throughout past ages: they show how seriously they have erred against:
- a: the profession of the canons of universal Councils and sacred Synods;
 - b: the definition of the holy Apostolic See;
 - c: the authentic testimony of the holy Fathers;
 - d: the sound teaching of the most illustrious doctors of both laws...¹

It is noteworthy that Torquemada taught it as an error either to deny the infallibility of the Apostolic See or the fallibility of the General Council in matters of Faith, -- the latter understood to be a Council whose decrees had not been ratified.

The five Tracts constituted the skeleton of the Summa de Ecclesia. The method Torquemada employed in the Summa had had its prototype in the Tracts. The greater part of each Tract was devoted to a statement of the true position; then came a summary of the adversaries' objections with their proofs; at the end of the Tract a rapid rebuttal of the adverse arguments had usually not been more than a short and rapid refutation. The Summa de Ecclesia had the advantage of laying out its material in a logical order. First came a chapter devoted to the statement of the position he was proving; this was more or less developed. The intermediary chapter or more than one if it were useful, set forth the objections with the main arguments that had been used to draw the conclusion. Finally, in the refutation of the objections -- often the most authoritative chapter of the group -- the case was finished.

¹Tract C: 32(2)

The Summa was Juan de Torquemada's doctrinal achievement. Tract B was a gesture in that direction, but it was an occasional work that lay under the necessity of following an opponent's outlines.¹ But portions of the Tract are incorporated without even a slight verbal change as is true of each of the other Tracts with the exception of Tract E, where the negative viewpoint countering denial of appeal from Council to Pope, is changed to positive statement of the reverse. The chapter heading states there is no appeal from Pope to Council.²

As one studies the Tracts, it is no great work to discover certain of the Fathers of Constance lurking beneath the arguments of the Council; with Tract B, the pretensions on the part of the Council bear so strong a resemblance to Marsilius of Padua that his influence is certain. But for the more positive identification of the adversaries, the Summa needs to be conned. It is only there that the magnitude of the forces opposed to papal prerogatives and Torquemada's teaching can be appreciated. If he subscribed to the "need that heresies come"³ for the clarification of the orthodox position, opportunity never appears to have been offered in ampler fashion than that afforded the fifteenth century apologist. He

¹Torquemada outlines in Tract B that Cesarini's arguments had been built up on the five portions of the Constance Decree -- here and there through the body of his text.

²Tract E: "Contra...non licet appellare a concilio ad Papam". Summa III, c.47: "Non licet appellare a Papa ad concilium"

³Summa IV,II, c.5

found that he had taken on the issues bequeathed by the Fratricelli and the Waldensians.¹ Marsilius of Padua "who for the most part fathered the decrees of Basle" had his perpetuation in Huss.² William of Ockham had had his Wyclif;³ and there was a "certain disciple of Ockham, by name Gerson"⁴ whom Torquemada clearly thought one of those "Fathers of Constance...whose brothers were of Basle".⁵ The Basle-ists, in their turn, owed much to the theories of Ailly and Gerson.⁶

It should be recalled that the conciliar party in its less heady days, had no desire to deny the plenitude of power in the Papacy; nor did they wish to deny that Church government was monarchical by divine institution. Further, all were in agreement that the Church was infallible. It remains to deduce from the Tracts a precise location of plenitude of power and, following from it, of infallibility.

¹Summa IV,II, c.5 ²Tract C: 15(5);Summa II,c.72; III,c.31

³Tract C: 15(3). Summa II, c.22, col 2

⁴Tract B: 8(3)-9(3); Tract C: 6(5); 12(1); Summa II, c.26.

⁵Summa II, c.44, col 3; Tract A: 20-26(1)

⁶Tract B: 51(1); Summa II, c.44, col 3. Summa II, c.100: "Ubi

non parum admirandum adversarios Basilienses tanta caligine involutos et excaecatos, alitia ut in materiis fidei diffiniendis et declarandis maluerunt sequi homines ab Ecclesia Dei in doctrina sua damnatos; sicut fuit Marsilius de Padua, Ockham cum complicibus suis: ex quorum doctrina extracta sunt pro magna parte decreta illa Basili(ensis). Et quosdam alios novellos doctorellos praefato Ockham et aliquorum Fratricellorum opiniones erroneas renovantes, quam doctores sanctos ab Ecclesia approbatos et alios praestantissimos doctores antiquos et reputatissimos in schola theologica quorum doctrina fulget Ecclesia ut sol et luna". (ad finem)

CHAPTER EIGHT

THE GOVERNANCE OF THE CHURCH:

MONARCHICAL

The contemporary historians of the Council of Basle had been impressed -- if not convinced -- by the earnestness and insistence with which Juan de Torquemada had pleaded the cause of the papal monarchy even before he had taken part in the debates the Tracts are records of. Government by one, a hierarchically ordered rule in the Church of God was best; the aristocratic form was not at all suitable.¹ How well he had pleaded his cause can only be inferred from his later writings -- their note of conviction rings clear -- but he appears to have made an indelible impression on some of the auditors because Augustine Patricius selected a similar plea as a predominating theme in the Bourges speech seven years later.² It does not lack significance that both historians, the first not only a partisan of conciliar politics but often a most active debater for the affirmative against Torquemada, should have chosen to record what he had to say in behalf of monarchy rather than anything else. Tract A, based on the assumption that at least a monarchical

¹Johannis de Segovia. op. cit.(Monumenta conc.gen.II, p.614)

²Augustinus Patricius. Summa conciliorum Basiliensis, Florentini...etc. #112. Mansi 31B: 1912. Augustinus Patricius wrote his history about 1480.

form of government was agreed upon by both sides, did not make any extraordinary attempt to build up inductively the case for monarchy. The conclusions of the Tract were rather deduced from that as a principle.

But in 1436, the passage of three years had not found the Council any less eager to establish senatorial rule in the Church by as plausible reasons as might be. Torquemada thus found himself faced with the need for reiterating first principles. The analogy between the Mystical Body of Christ and the human body, generally in league with the "whole-greater-than-a-part" fallacy, apparently had provided his opening thrust:

"It is affirmed that the Decree of Constance makes the opposite statement. I say -- quod salva reverentia -- the Council defined, as of Faith that the supreme power of the Church is in the Pope.¹ If it is supreme, then, it is impossible that another tribunal on earth be greater, or equal. The body may, indeed, be larger in material magnitude than the head; nonetheless it is not greater nor more excellent in the magnitude of virtue and of power. The opposite is true...

"Nor is their argument of any value who urge the contrary: -- if the Pope were the head of the Church it would follow there were two heads -- for this conclusion was reduced to a cipher in...

Unam sanctam: ...'Hence there is one head of the one and only Church -- not two heads...--Christ, that is, and the Vicar of Christ..., the successor of Peter'.² From this decision we draw two elements: ... of the Mystical Body: it is one -- of the one and only Church -- and in this sense the universal Pope is the head. Second: the Pope is with Christ the one head of the universal Church..."³

¹"Inter cuncta pastoralis", Epistle of Martin V. One of the questions to be put to those suspected of heresy: 'Whether he believed that the Pope...had supreme power in the Church of God'. Hefele-Leclercq: VII, I, p. 524

²c.Unam sanctam. Extrav.com. I:VIII De major.et obed.c.1(prin)

³Tract E: 12(1)-(3)

"Besides, what is claimed by some: -- that it is well for the Pope to be head of the "Church dispersed", of the individual churches, but not of the universal Church as an aggregate -- this cannot be admitted. Further, it appears dangerous... To the unity of the head there ought to be allotted a unity of the body. The body of which the Pope is the head ought, then, to be one. And the Pope should regard that body -- because of its being a body -- as one, for the same reason. This is not the case unless the body is made up of all its parts. This is the universal Church; according to the word of the Apostle (Col.I): 'His body which is the Church'.¹

"Therefore, it is the universal Church as a whole and as united -- rather, as most intimately united (unitissima) -- that the Pope should be considered the head and the ruler... For whether the people are gathered together or are dispersed, the authority of the head does not change...

"Nor should the intention of those denying the Pope to be the head of the universal Church move us to say with them that: because the universal Church or the universal Council cannot err or fail, therefore with respect to it, no one man who can err or fail should be called the head. From Article 2 about John Huss in the Council of Constance, these things were were seen to be erroneous. 'If the Pope is evil he is not the head of the Church militant'.² 'Error', said the Council".³

The monarchical thesis received no further development in Tract E, but the basic principles lay scattered throughout the refutation of the Council's contention that it was the court of last appeal. Because history bore witness that the last high court of justice lay in the Apostolic See, tradition and the canons of Councils made sound witnesses to the authority of the "mother of the Churches".

²"Inter cuncta pastoralis", #2. Hefelé-Leclercq: VII, I, p. 512
Summa de Ecclesia IV, II, c. 38, col 5

¹ad Colossenses I: 18

³Tract E: 13(5)

But as a specific proposition, the argument for monarchy was not seriously displayed previous to 1438 when, it is probable that the De potestate Papae et concilii generalis.¹ Tract B, delivered in the Florentine Synod in 1439, gave monarchy a major position in the full summary of papal prerogatives defended there. The terse and concise compression of the Tract must be further condensed to indicate this.

Once more, the argument began with the idea that unity was a note of the Church. The need for unity had made Saint Cyprian of Carthage insist upon it, in season and out.² The African martyr had helped Torquemada illustrate his theme several, never more so than in pleading for unity or giving warning of its opposite, schism.³ Then, too, the order found among animals,⁴ suggested a more perfect form in a higher order of being. But from the need of order in the Church to insure unity, Christ had founded His

¹De potestate Papae et concilii generalis. This bears no date but from the nature of the proofs I suggest that it appeared before 1439, as well because of the tone.

²Bishop of Carthage. Martyred in the Valerian persecution, of peculiar ferocity in Africa, in AD 258. Excerpted by Torquemada in this section were materials from De unitate ecclesiae, c.8 -- PL 4: 521; Epist. ad Cornelium Papam, #40, c.5 -- PL 4:346; Epist. ad Magnum, c.5 -- PL 3: 1188.

Tract C: 41-42 is almost a gloss on De unitate ecclesiae, c. 12; c. 18 -- PL 4: 524; 525

³It is the theme of De unitate ecclesiae and numerous letters to, or concerned with, Novatian heretics. PL: 3 et 4

⁴c.In apibus. VII:I: c.41. Properly the chapter should be ascribed to Saint Jerome: Epist # 125 ad Rusticum Monachum. PL 22:1080

Church on Saint Peter:

"It was to Peter alone and to his successors that the Lord said, universally and without distinction, 'Feed My sheep'!"¹

"The governance established by Christ was a royal one. Consequently, the supreme authority and supreme rule were not conferred by Christ on many but on one only in the Church".²

Rightly, Torquemada had recourse to the Scriptures as authoritative in the question of Church government, even though a simple argument from unity and order might easily gain the assent of a logical mind on rational grounds. But those were the days when men's minds had long been a stranger to what a unified Church actually meant. The Western Schism had indeed been healed, but men had become accustomed to division; and it was divided minds that began to widen the cleavage manifested in the schism until at last they were appalled at the crevasse becoming deeper and broader. It never did become breached.

Scriptural authority was always and necessarily fundamental, but that conclusions so reached could not be out of harmony with right reason, Aristotle and Saint Thomas demonstrated with the case for reason.³ From the end in view:

"The best governance of many is the rule of one; this is patent from the object of governance, -- peace and unity of the subject people. But the cause of unity is better served when one rules rather than many".

¹Tract B: 10(1); Summa II, c.2 et 4 ²Tract B: 11(2)

³Contra Gentiles, c.76. IV Sent.D.24,Q.2, art 1, using Aristotle: Ethicorum VIII, c.10

The monarchical form of government had impressed Saint Thomas as the ideal. But, Torquemada insisted, the Council had to make up its mind -- following Aristotle's categories of government -- to a governance vested in one, or in a few, or in many.¹ One of the types had to obtain permanently. Absurdity would otherwise follow, for the Church would cease to be a monarchy -- and the Pope to be the ruler -- if, when a Council was in session, the final authority was the Council. The Pope would lose his plenitude of power; the Council should gain it.²

Then, the Church militant had its exemplar in the heavenly hierarchy where God was King. The Church, its hierarchy culminating in the Holy See, was disposed in grades of power and authority. All power, all authority in the Church, were derived from the Pope as hierarch and not from God immediately.³

From the same demand that unity be preserved and the hierarchical order maintained in the Church, the primacy conferred on Saint Peter meant plenitude of power vested in one Apostle, and not in the others:

"If this power, conferred in plenitude on Peter, had been given the other Apostles, then Peter would not have been greater, nor the superior, nor the Prince, nor the head of the Apostles, but would have been equal in powers of jurisdiction. This is erroneous".⁴

¹Politicorum III, c. 9 et 10 ²Tract B: 12(2)

³Tract B: 12(3)-13(1); Tract C: 24(2): "Their greatest error was trying to take away the hierarchical order".

⁴Tract B: 16(1)

The monarchical thesis finished during the Pontificate of Nicholas V¹ was the development of those premises and summaries effected more than a decade previously. But from the principles to the construction of a classic on papal governance was no light labour even when conviction and ardour lent wings to thought. An impressive tribute to the Papacy, the exaltation of the ideal of monarchy has probably found no more ardent an interpreter than Juan de Torquemada. Those chapters in the Summa de Ecclesia² are at once a commentary on a mind marked out by an abiding devotion to the Holy See and a scholarship well able to reflect it. The idea of unity had always been pleasing to him, -- that last resolution into harmony of every disparate symptom in the Church. This highly refined sensitivity to ordered arrangement is like a chord of music: unity, peace, beauty. The unity that comes of a common Faith; the peace that order brings with it; the beauty that heaven reflects. To win them, the Church had been established with a ruler who ruled "with the plenitude of power after the manner of a king in a kingdom".³

¹Nicholas V: March 6, 1447 - March 24, 1455.

²Summa de Ecclesia II. Book two is called "The Roman Pontiff and the Primacy". Nearly all the 116 chapters deal with monarchy explicitly, or the prerogatives that flow from monarchy. The first four chapters deal with it expressly as subject matter.

³IV Sent. D.19

This is Saint Thomas. ck

Nature holds up the mirror: among the bees there is one queen; the cranes follow a leader. The old Roman concept of empire required one emperor: its judicial functions were ordered, where one magistrate officiated in a province. Pushing the Roman genius for government back to its origins in Romulus and Remus, it was discovered that two brothers could not reign together with the result that the greatness of Rome was dedicated in parricide.¹

"There is an order in the Church and that order ought to be. It should be thought of in this way: it ought to be believed that from the whole Christian polity, one is the highest Prince and ruler and governor. Many reasons lead to this conclusion.

"There is an order of authority in the Church, but an order understood in prelacy and subjection. The prelacy is thought of in terms of ascent and descent, -- not equality. As it ascends higher there needs must be a stop somewhere with a reduction to one, for the process cannot go on to infinity. The other way round, too, in descent the multiplication must stop somewhere. In relation, then, to a proper order in the Church, there ought to be some one prelate in whom the status of all ecclesiastical power is vested...

"Saint Thomas has this to say: 'Beyond doubt the governance of the Church ought to be the best ordered, as disposed by Him through whom kings reign and lawgivers frame just laws. The rule of one is the best type of governance for many -- on the authority of Aristotle -- when the end of governance is considered. Augustine would have it that peace and the unity of subjects are the ends of ruling. Moreover, one is a cause more conducive of unity than many. From this, then, it is worthy of belief that the governance of the Church is so disposed by God that one presides over the entire Church'.²

¹I have here paraphrased a chapter from Gratian: c. In apibus VII: I: c.41 -- and have taken the liberty of giving the bees a queen instead of a princeps. Tract B: 10(3)

²Contra Gentiles IV, c.76, using Aristotle: Politicorum III, c. 10 et 11 -- where it would appear, however, that the Philosopher did not prefer monarchy.

"To have unity in the Church it is essential that all the faithful agree in Faith. On this account it was the Apostle said -- I Corinthians 1¹-- 'Let all of you speak in the same tongue; and let there be no schisms among you'. Further, it is Faith that is the basis of the Christian religion according to Hebrews XI²: 'Without Faith it is impossible to please God'. It happens, too, that questions arise about the Faith; the Church would be divided by diversity of opinion unless it were preserved in unity through the decision of one person. It is required for preserving unity of Faith in the Church, then, that one preside over the whole Church as teacher and ruler. Further, it is evident that Christ did not fail the Church in the things that are necessary for He loved her and poured out His blood for her, since it was (even) said of the synagogue -- the Lord speaking through His prophet: 'What more could I have done for My vineyard and have not done?' (Isaias V)³ It is not to be doubted, then, that by the disposition of Christ there is one who rules the Church".⁴

"The governance of the Church is not believed less well-ordered than the governance of nature. Rather, it is far better ordered as grace transcends nature. Yet wherever we look in nature the full governance is finally reduced to one main governing order over the whole. As in the animal body a variety of members is appointed for various offices and actions, all needing one member -- heart or head -- from which the sense movements of all the other members are regulated. In the mechanism of the universe also, there is one heavenly body, the prime mover, through whose motion the movements of all lesser bodies are set in motion and regulated, as Aristotle has it in Physics VIII⁴. In the whole world, too, there is one supreme -- God -- the one King of all the earth. Equally, then, in the governance of the Church should there be one to rule over the entire Christian polity as its head and ruler.

"The whole Church of God is one. In Canticles (VI)⁵ it is said: 'One is my dove'. It is one body, as I Corinthians XII⁶ says: 'We being many are one body'. It is one city, as the Psalm has

¹I ad Corinthios I: 10

² ad Hebraeos XI: 1

³Isaiae V: 4

⁴Summa de Ecclesia II, c.2, col 1

⁵Physicorum VIII ck

⁶I ad Corinthios XII: 13 ff

"it: 'Jerusalem that is built as a city'.¹ It is one hierarchy, as is clear from Saint Dionysius in the book of the Ecclesiastical Hierarchies.² It is one sheepfold, from John X.²

"From all of this, there should necessarily be given one supreme guide and ruler in the entire Church. There should be one head for the whole body; one prince for the city; one hierarch for the whole hierarchy; one shepherd for the whole sheepfold or flock of the Lord. In Joel I³ it was said: 'The sons of Israel and the sons of Juda shall be equally gathered together; and they shall appoint themselves one for head'. And the Lord said in John (X)⁴ 'There shall be one flock and one shepherd'.

"The Church is a kingdom. This means the Church has a 'monarchical or a royal government. In many places in the Scriptures is the Church called the 'kingdom of heaven'. On this account -- Isaias IX⁵-- it is said: 'A child is born to us and a son is given us'. It continues: 'And he shall sit on the throne of David and of his kingdom' --(The Gloss⁶ on this passage here says: 'that is, the Church'). Then, again in Luke (I)⁷ it is said: 'Of His kingdom there shall be no end'. Once more, because the best kind of polity is the monarchical or royal -- since Aristotle is of the opinion (Politics III⁸) that of all the types of city government the most perfect is the kingdom which coheres from the complete order in one, as a most finished kind of government..."⁹

Order could only be won through unity; unity required that government be by one. The primacy of Saint Peter had been traditionally interpreted as monarchical from the institution of Christ. Further, to save unity and maintain the hierarchical order, plenitude of power had of necessity to be vested in one.

¹Psalmi CXII: 3

³Osee I:1, not Joelis

²De hierarcha ecclesiastica V:13. cf. PG III: 574. This is the pseudo-Dionysius, generally accepted in the Middle Ages as the disciple of Saint Paul, Dionysius the Areopagite.

⁴Joannis X: 16
Not Walafrid Strabo

⁵Isaiae IX:6-7

⁶Glossa ad Isaiam IX:

⁷Lucae I: 33

⁸Politicorum III,10 et 11. ⁹Summa II,2

Plenitude of power in the Pope alone followed from the primacy of Peter. Torquemada's introduction to the subject in the Tracts had not had the advantage of position, although the principles he there had enunciated could not have been clearer.¹ Ultimately, it was the heart of every debate. But the final and full synthesis has that added attractiveness that well-reasoned, logically ordered form gives. It was rational deduction supported by proofs in a rich knowledge of history, of philosophy, of theology, of canon law. His preamble gives a clue to the significance he attached to the idea of plenitude of power, supposing one had never set eyes on the Tracts:

"When it is considered to what vastness of governance the Roman Pontiff is raised; when the number and variety of duties laid upon him for the Christian polity are thought about, we must confess that he was called into plenitude of power -- that Roman Pontiff to whom the care of the universal Church was entrusted. For in every community rightly ordered plenitude of power ought to reside in the one who is supreme, extending itself to everything necessary and clearly expedient for the good of the community..."²

Numerous Christian writers were invoked to support his proposition before Torquemada was ready to demonstrate fifteen of the more striking evidences that its exercise had been traditionally recognized in the Supreme Pontiff. That classic description of papal dignity from the eloquent pen of Saint Bernard added imagery

¹Tract B: 11-12; Tract A: 8(4); Tract C: 25(4)-26(1)

²Summa de Ecclesia II, c.52 princ.

to the doctrine. The Pope's office had been figuratively described, proof of the honour given it:

"in the primacy, Abel was a figure; in the pilot's office, Noe; the patriarchate was prefigured in Abraham; in orders, it was Melchisedech. In dignity, Aaron; in authority, Moses; in judgement, Samuel; in power, Peter; and in the anointing, it was Christ".¹

Plenitude was demonstrated in the extension of his kingdom to the ends of the earth;² the power of the keys in the forum of conscience;³ as judge in the power of judgement in the external forum;⁴ the authority that could depose bishops;⁵ a power matched by no other on earth,⁶ -- these were evident testimony, but plenitude was not limited in its exercise to these. It was acknowledged in

¹De consideratione II, c.8, #15. PL 182: 751 . Summa II, c.52, col 2: "Plenitudo potestatis...ex his ex quibus excellentia papalis dignitatis sive principatus nobis figuraliter describitur".

²loc.cit. "...in potestate clavium in foro conscientiae"; "...ad omnia loca, ad omnes personas, ad omnes causas".

³loc. cit. "...in extensione principatus sui: extenditur enim in totum orbem terrarum; nullus enim fidelis in toto orbe Christiano eximitur ab ejus principatu".

⁴loc.cit. "...in clavibus judiciariae potestatis in foro exteriori...est enim judex totius ecclesiae".

⁵loc. cit. col 4: "...in depositione episcoporum".

⁶loc. cit. "...ejus potestas a nulla potestate humana exceditur vel superatur sed ipsa omnem aliam excedit et superat".

the inability of any other power to restrict it;¹ in an authority that might exempt abbots from the jurisdiction of local bishops;² a position above the law that could be bound neither by laws of his own devising nor by the canons of General Councils.³ His authority was shown in a power that might dispense from vows and oaths;⁴ it was shown, too, in the full control of the administration of ecclesiastical affairs.⁵ Such a plenitude gave him the right to commit certain higher powers of office to lesser clerics;⁶ more power could hardly be displayed than the one of granting plenary indulgences, dispensing from the treasury of the Church.⁷ Benefices, offices, dignities, were his to dispense.⁸ His plenitude found expression in the canonization of Saints.⁹

¹Summa II, c.52, col.5: "...quod non arctatur ejus potestas ad hoc ut semper servato ordine inferiorum potestatum operetur".

²loc.cit.: "...in exemptione inferiorum praelatorum a superiori, ut abbatum ab episcopo".

³loc.cit.: "...quod non ligatur legibus a se factis aut etiam sacrorum conciliorum canonibus; sed potest ex plenitudine potestatis supra jus et leges positas facere".

⁴loc.cit.: "...in dispensatione actionum humanarum: puta votorum et juramentorum".

⁵loc.cit. col 6: "...in administratione et dispensatione rerum ecclesiasticarum".

⁶loc.cit.: "...quaedam sunt superiorum ordinum quae potest papa committere inferioribus quibusdam sicut presbyteris, sicut concedit conferre minores ordines quod pertinet ad potestatem episcopalem".

⁷loc.cit. ⁸loc.cit. ⁹loc.cit., col 7: "...in canonizatione sanctorum quae ad solum Romanum Pontificem ut ad judicem et principem universae Ecclesiae..."

The necessary corollary of holding plenitude of power was a magisterium that extended itself to embrace a vast comprehensive judgement and discretion where matters of Faith were at issue, matters necessary to the final salvation of Christians, the official interpretation of Scripture.

"Having treated at length of the superiority of governance the Roman Pontiff has in the Church, it is easy to understand how it pertains to the authority of the Roman Pontiff as the universal teacher and chief master, to determine what things are of Faith. From this, that it devolves upon him to publish a Creed of the Faith, to interpret the meaning of Sacred Scripture, to approve or disapprove assertions of individual doctors in matters related to the Faith. This we shall verify by reasons and authorities.

"In the first part of this second book we proved it allotted to one to preside in every well-ordered body politic. Within that body it was he who should arrange everything by his authority especially in those matters without which the safety of that body could not endure.

"So, too, in the community of the Church there necessarily had to be given one Prince who should advance and direct the whole Christian polity in the things particularly that relate to the salvation of the faithful and the attainment of the final end -- related to this is a knowledge of what is to be believed and what is to be done -- by his authority and magisterium. Since the Roman Pontiff is such that he commands the entire Christian polity, it will be for him to decide and instill into the Christian people the things that are of Faith 'without which it is impossible to please God'.¹

"Aristotle shows that the first in any genus is a standard and a rule for all who follow.² Since the Roman Pontiff is the first and the greatest of the prelates in the Church it will devolve upon him principally to set a norm and a rule, as well for the knowledge of what must be believed as for all things

¹ad Hebraeos XI: 1

²Metaphysicorum II 9I), c.4, 16

"necessary for the guidance of the faithful into eternal life".¹

The prerogative of determining what things are of Faith followed rigourously from the plenitude of power conferred by Christ. Chapters from canon law, the Fathers and Doctors of the Church vindicated the truth of the thesis.² Rational argument proclaimed one Faith a sine qua non for the entire Church; Saint Paul had been emphatic that there be no divisions.³ "But one Faith could not be preserved unless questions arising about the Faith were settled by the one who presides over the whole Church, so that his decision would be held steadfastly by the entire Church".⁴

¹Summa de Ecclesia II, c.107, princ

²Nicholaus II (Papa): Epist. ad Photium; ck. Ambrosius, s: c.Omnes XXII, ad finem; Cyrillus Alexandrinus: Liber Thesaurorum; Bernardus, s: De consideratione II, c.6; Hieronymus, s:(sic)c.Haec est fides XXIV :I: c.14

³I ad Corinthios I: 10 "...et non sint in vobis schismata".

⁴Summa de Ecclesia II, c.107, col.3

CHAPTER NINE

INFALLIBILITY:

HISTORICAL DEVELOPMENT IN

JUAN DE TORQUEMADA

In Tract A the opportunity was first given Torquemada for asserting the prerogative of infallibility vested in the Apostolic See. Of the objections brought forward by Dionysius de Sabrenoy's on behalf of the Council¹, the fourth had advanced the need for a living rule of Faith in the Church. Christ, the wise architect, would surely have so ordered His Church that it might best attain its end. It would appear, indeed, that He had failed to do this if there were not some steady and unerring norm for both Pope and prelates in the exercise of their power. Aristotle² had laid it down as a principle for every genus, that one member should be

¹Dionysius de Sabrenoy's was, I think, next in importance to Johannes Pulchripatris in the University of Paris delegation to the Council of Basle. His principal was of similar mind: the Church cannot err; the Pope can; therefore the Pope's power should be regulated by the Church. (Johannes de Segovia. op. cit. (Monumenta II) p. 610. This appears to have been the official mind of the University, with but slight change of emphasis, from the time of the National Council of Paris, 1406, at least.

²Metaphysicorum I, (II) c.4, 16

reckoned a rule and standard for the rest. Since the Pope was not impeccable, he had to be ruled out; similarly, the cardinals unconfirmed in Faith; hence, the norm was to be found in the universal Church. In it was the "living rule".¹

Torquemada was more than willing to grant the need; he was far from allowing the conclusion:

"In divine matters it is well to judge some necessary unerring norm, just as in the sciences some unchangeable principles must be granted. This is the divine law, too, the Christian Faith, coming from that very lawgiver and monarch, Christ Jesus. It is according to this law the Church should be ruled. In the same way that the power of the Pope is derived from the divine power, the norm of governing in the Pope... ought to be patterned after the norm of governing in the Supreme Governor. ...It is of this norm that it is said: 'The first principle of salvation is to guard the rule of right Faith and not to wander off in the least from the laws of the Fathers'.²

"Granted the reasonableness of a living rule or law -- unerring and undeviating -- in matters of Faith and the things necessary for the salvation of the Christian people, I declare that the General Councils could not regularly be called such a rule or law, for history tells us many did stray from the Faith...

"But there is such a rule and law. It is the Apostolic See: it has never gone astray from the Faith... From Christ that See has the privilege of not erring in Faith: 'I have prayed for thee, Peter, that thy Faith fail not'³, a passage the holy doctors exegete about the stability and constancy of the Faith of the Apostolic See. On this account the Roman Church is called the mother and the mistress of the Faith".⁴

¹Tract A: 21(2)(3)

²cf. note #5, next page

³Lucae XXII: 32

⁴Tract A: 31(1)(2); last line quoted from c.Omnes XXII: c.1. Summa de Ecclesia II, c.109 elaborates the argument.

⁵The formula Hormisdæ. From a letter written to the Bishops of Spain, AD 517. It was a rule of Faith proposed to Oriental clerics before they were restored to communion with the Church. Directed against the Acacian schismatics, the formula was underwritten by the Emperor Justinian, several Patriarchs, as well as the Eastern Bishops. The letter to the Spanish Bishops, "Inter ea quae" where the formula is found in context, is printed as Epistle #22, PL 50: 537 ff.

The formula is of vast importance as documentary evidence of regular adhesion of the East to Rome. Pope Adrian II (867-872) sent it as "Libellus professionis fidei" to the Eighth Ecumenical Council with no changes -- except verb forms in the plural. At the Council it was signed by Latins and Greeks. The Council added a rider that is of much historical value:

"sequentes in omnibus Apostolicam Sedem et observantia ejus statuta speramus ut in una communione quam Apostolica Sedes praedicat esse mereamur in quae vera et integra et vera Christianae religionis soliditas: promittentes etiam sequestratos a communione Ecclesiae catholicae, id est, non consentientes Sedi Apostolicae eorum nomina inter sacra non recitanda esse mysteria".

A section of the letter occurs in Gratian as c. Prima salus (XXIV :I: c.9): "Prima salus est rectae fidei regulam custodire, deinde a constitutis Dei et patrum nullatenus deviare; ...unum quippe horum ad fidem pertinet alterum ad opus bonum. Sicut scriptum est: 'Sine fide impossibile est placere Deo'. (ad Hebraeos XI:1) Sic rursus legitur: 'Fides sine operibus occisa est'. (Jacobi II:14) Et quia non potest Jesu Christi praetermitti sententia dicentis: 'Tu es Petrus et super hanc Petram aedificabo Ecclesiam meam' -- haec quae dicta sunt rerum probantur effectibus: quia in Sede Apostolica immaculata est semper catholica servata religio et sancta celebrata doctrina". Denzinger- Umberg. #171, 183

The foresight of the early Fathers had taught that the Pope was different from the common run of mankind, even if as an individual man, he were of the same species with the rest. They considered that divine Providence exercised a special care of the See of Peter. It is worthy of belief that Providence "so assists this See that in no way whatever does It allow judgements to emanate from it in any way amiss in matters of Faith".¹

Did Torquemada allow for the infallibility of judgement in a plenary or ecumenical Council? Most certainly, but there again, its infallibility was contingent upon approval of the Apostolic See.² If the Holy See were represented by a legate, the Council had historically always deferred its decisions and acts to the Pope for ratification.³ But to state simpliciter that General Councils could not err in Faith "for God would not allow this" was a rash conclusion.⁴

The old Dominican chronicler writes of a notebook Torquemada had kept of the activities at Constance, "of the things that were done and the methods... to serve him in the future".⁵ No dream

¹Tract A: 31(2)

²Ibid. 32(1).Summa III, c.58

³Summa III, c.32, 33, 34; Tract A: 29(5)-30(2)

⁴"qui...jam Ecclesiae studio ardens, quae in concilio gerebantur ut et modum agendi privatim in schedis annotabat sibi aliquando usui futura..." Quétif-Echard: Scriptores ord. Praed.I,837

may be more illusory to the historian than pondering the "might-have-beens", but he may be pardoned a passing wish -- that of the perennial wandering Jew who might have glanced over the shoulder of that student for conciliar affairs busily filling his little notebook. Had he still kept the book "for future use" at Basle, Torquemada might have made some such parallel arrangement of the conciliar arguments:

Gerson: 1417

"...summus pontifex...sit peccabilis... Similiter sacrum collegium (cardinalium) quod ei datum est et coassistit quasi communitas aristocratica, non est in gratia vel fide confirmatum. Superest ut aliqua sit relicta inobliquabilis et indeviabilis regula ab optimo legislatore Christo secundum quam possit abusus...potestatis reprimi, dirigi et moderati. Haec autem regula est vel ecclesia vel generale concilium. Unde cum medium virtutis aliter non habeatur nisi prout sapiens iudicabit, finalis resolutio ad hanc sapientia indeviabilis vel ad generale concilium..."¹

Dionysius: 1433

"Summus Sapiens ecclesiae constructor Christus optime creditur ordinasse ecclesiam suam et in cunctis necessariis ad ejus regimen... permanentiam providisse... Cui tamen non videretur sufficienter provisum nisi usum potestatis papae... provisum fuisset de aliqua re inobliquabili et indeviabili... Sed haec regula non potest dici papa cum sit ipse peccabilis; nec etiam collegium...cardinalium cum non sit in fide et gratia confirmatum. Ergo dicendum est quod illa regula est universalis ecclesia quae privilegium dicitur habere non errandi. Et ita per consequens concilium universale repraesentans eam..."²

¹De potestate ecclesiastica XI, col 130

²Tract A: 21(2)(3)

Tract E:

Of peculiar interest in refuting the proposal of the Council's being a last court of appeal, is not so much a development of the notion of infallibility beyond what had occurred in Tract A, but its determination from another angle. The favourite Augustinian texts with their long fashionable interpretations provided the vantage point:

"...Peter, when he accepted the keys...signified the Church for he received them in his own name and that of all his successors in the Church, as when one king or one prelate receives one privilege from the Pope, not in his own name alone but in the name of all the princes or prelates who should come after him. ...and it appears, resultantly, most dangerous to say there are two supreme powers, the Pope and the Council. They say that although there be but one power in the Pope and in the Council, it is more excellent in the Council because it was given the Council with a norm, but not to the Pope since it happens that he might deviate from the norm.

"But there is no meaning in this, neither in itself, nor in reason; because this power was given to the Pope as to a leader, a head, a prince. It is for this reason that the Church sings: 'Behold I have established you as the Prince over my people'¹...

"Further, this begs the question: it is the presupposition that must be proved. For if we compare the persons of the Council with the person of the Pope, there is no doubt at all that they could err equally with the Pope, and perhaps more so, because the Pope is believed to be strengthened by a more unusual Providence and a greater angel than anyone in the Council. Truly, if a relation be made between the Council and the Apostolic See, -- the sacred canons, the sayings of the holy Fathers and Doctors prove the foundation false, that is, that the power was not given to the papal See with a norm. The second is false -- that he might deviate from the norm".²

¹Breviarium Romanum. First Responsory of the First Nocturn of Matins, June 29.

²Tract E: 16(3)-17(1); 18.

The developed thought closely follows the reasoning of Tract A, from its deduction in Saint Luke through the exegesis of nearly the same Fathers and the same chapters of canon law. The last sentence in the passage is significant. "...power was given to the Apostolic See with an undeviating norm, in those things that pertain to Faith". The question of infallibility, thus related to the power of the keys, foreshadowed Torquemada's synthesis in the Summa de Ecclesia. There he iterated "the first and, as it were, the most basic point of this whole matter (relationship of Council to Pope and plenitude of power) is to understand how the power of the keys was given to the Church, or how this power exists in the Church".¹

With the Council of Basle farther along the way to complete irresponsibility, the Responsio² of 1439, again related the power of the keys to the infallibility of the Apostolic See. There was but slight progress over the advance already evident three years earlier, but a small variation in wording, if not in the thought, re-emphasized the three long mooted locations of plenitude of power. The universal Church, all had always agreed, could not err in the Faith, but "that universal Church... is not said to be an assembly separate or distinct from the Roman Pontiff, since it is called a congregation of all the faithful".³

¹Summa de Ecclesia II, c.71 princ.

²Tract B

³Tract B: 38(4), referring to c. Ecclesia, De consecratione I: c. 8

"For this argument is of no value: the universal Church cannot err in the Faith; the Pope can. Therefore, it is greater in the power of jurisdiction -- or in the power of the keys -- than the Roman Pontiff... These two graces are distinct: that of not erring in the Faith, and the power of the keys. One does not argue the other by necessity..."

"Although the universal Church has the privilege of not erring in the Faith, yet universal Councils have not... Rather, if any reason were brought forward of some authority, the opposite conclusion would be made, since the Apostolic See... has the privilege from Christ, -- as of the tribunal of Christ on earth -- of not erring in the Faith. Universal Councils, separate from the Apostolic See, have not."¹

The contribution of Tract C takes added interest where Torquemada tagged as "error" the assertion of those who denied the stability and indefectibility of the Apostolic See,² and who acted as if General Councils could not err.³ The separate work, De potestate Papae et concilii generalis, probably composed before Tract B and answering another conciliar opponent, is of even greater evidence of the thought he was attempting to express adequately. It has a full countering thrust to Pierre d'Ailly's tentative proposition.⁴ Tract B had carried a distillation of that thought; De

¹Tract B: 39(1)

²Tract C: 19(3)

³Ibid. 21(3)

⁴Tentative, because Ailly's final commitment seems to have been: "Secundum magnos quosdam doctores generale concilium potest errare non solum in facto sed etiam in jure et quod magis est in fide", quoted in Feret. op.cit. IV, p.204, note 4 -- but I do not know the dating of Ailly's works well enough to form a judgement. (Feret cites from the Antwerp edition which I have only used in the De probatione spirituum of Gerson)

potestate Papae gave it in extenso with the very telling omission of a qualifying clause that Ailly had not failed to add; yet the Basle-ists used his text in this truncated fashion frequently. This is Torquemada's text of Ailly:

"...according to some the General Council cannot err in the things that pertain to Faith, which is also proved from that word of Christ: 'I have prayed for thee, Peter, that thy Faith fail not', because this was not said of the personal faith of Peter since he erred, but of the Faith of the universal Church which the General Council represents. Of the Church, too, it was said: 'The gates of hell shall not prevail against her'... For He did not say 'against you' -- Peter -- from which it is clear that the judgement of the Council is to be preferred to the judgement of the Pope, since he could err... According to some others, this is the special privilege of the universal Church that it could not err in the Faith. Although this is piously believed of the General Council when it is fortified with divine Scripture or authority inspired by the Holy Spirit; otherwise, we read, there has often been error".¹

Marsilius of Padua had set the pace for the new exposition of Saint Luke, 'I have prayed for thee, Peter', in a full chapter attacking plenitude of power in the Bishop of Rome.²

The refutation Torquemada attempted in the De potestate Papae appears to have been quickly abandoned as difficult of proof and mingled with no few improbabilities:

"...It is possible that the Pope alone is the Church without wrinkle or spot and whose Faith could not fail, because such a

¹De ecclesiae potestate et concilii auctoritate III, c.4, 932. The last sentence was commonly omitted in the Basle versions. It occurs, abbreviated, in De potestate Papae as the argument to be refuted in Septima conclusio (Folio with signature mark "c" recto)

²Defensor pacis II, 37, pp. 428-431

"Church could consist in those having a formed Faith. But a formed Faith could be preserved in the Pope alone, as it was said to have been preserved in the Virgin alone at the time of the Passion of Christ. Since such Faith could be preserved in only one, would it not seem likely that it would be preserved and remain fixed in that one alone for whom Christ prayed that his faith might not fail, saying: 'I have prayed for thee...' For although at the time Peter fell from the Faith; nevertheless, at the last his Faith did not fail; rather it endured even to the death of the cross on account of the efficacy and virtue of the prayer of Christ especially operating in this regard...

"He prayed uniquely for Peter whom He committed to rule the Church... When God has called someone to an office, or a ministry is given him, a new grace is conferred -- an efficacious aid to the proper exercise of his office, unless he should put some obstacle in the way... And how much greater the dignity of an office is, so much the greater kind of help is joined with it.

"Hence, since to Peter and whoever would be his successor to the supreme dignity in the Church -- if they placed no obstacle -- there would follow the benefit of an assisting grace greater than for others. From this it would appear to follow that any other person might more easily deviate from good morals and from Faith than the Pope. Unless he were to put some obstacle in the way, God assists him more specially... And this notwithstanding that some Supreme Pontiffs, we read, have erred gravely in Faith as well as in morals".¹

The first possibility, the idea of a formed Faith, was entirely abandoned, except as enduring in the Church for all time and notably so in the Roman See. The argument is unlike Torquemada, unlike his usual careful, rational style. That he realized some of the inherent difficulties is apparent in his abandonment of it. Further, there was little or no authority for the suggestion. The "placing no obstacle" idea was abandoned, too; nothing could have been maintained with such a proviso. Again, the idea was foreign

¹De potestate Papae et concilii generalis, XII conclusio Summa de Ecclesia I, c.28: "Ecclesia...non desit esse ac quod in ea fides..."

to the mind of Torquemada. He seems to have been indebted to Augustine of Anchona with his idea of a provisonal inerrancy, "secundum rationabilem usum et secundum intellectum quo inspirata est"¹ where the "rationabilis usus" might have been a troublemaker on the order of the obstacle. But it is hard to know what that "rationabilis usus" might have entailed, perhaps, the same notions of sufficient sound counsel, as in Torquemada.

Then, again, the historical difficulties in the way, may have been the reason for Torquemada's insertion of the "no obstacle" clause. Very likely they were. At any rate, both the clause and the historical difficulties vanished together, at the last. The Popes whose lives had been morally amiss were not the hardest to fit into a theory of papal infallibility, since impeccability had never been an objection of real moment to Torquemada. But where the Faith of some of the Popes had appeared to be compromised, there was some matter for pause. The main offenders had been Anastasius², Formosus³, and Stephen⁴. Liberius⁵ might be added to fill up the measure, not to mention John XXII.⁶ When the time

¹Summa de potestate ecclesiastica q XX, ad finem. Folio 119v

²Anastasius II (496-498). He opposed the Acacian Schism.

³Formosus (891-896) had been Cardinal-archbishop of Porto, elected as Pope by a faction during the exile of John VIII; John deposed him on June 30, 876 but he was freed from ecclesiastical censure subsequently by the future Pope Marinus II in 883. The rest of the story concerns:

⁴Stephen VII (VI) (896-897) tried his predecessor for having left the See of Porto for that of Rome on the legal technicality

⁴ that a bishop could not become the bishop of another See. He annulled the ordinations, etc., made by Formosus. Formosus was at last rehabilitated and his acts regularized by Theodore II(897)

Stephen was strangled in prison during an uprising in Rome. John IX confirmed the rehabilitation of Formosus (898-900). Papal history between 890 to about 965 is rather a wild and wierd tale of violence and family politics. Anyone looking for personal defaulting of the Popes should study this period.

But, as Summa II, c.112 ad 9 reminds us: those errors were of fact and not of Faith.

⁵ St.Liberius (352-366). Affixing his signature to the third Creed of Sirmium has caused much speculation about his orthodoxy. The Creed is not heretical but it is ambiguous. Liberius can be charged with throwing too little light where it was needed, rather than for positive wrong action. cf. Summa II, c.111 obj 3

⁶ John XXII -- with Boniface VIII -- was well on the way to being the most hated of Popes by the various disgruntled groups whom he condemned. And the dislike of him passed on well into the fifteenth century, and the dislike was invariably connected with various Bulls of condemnation. Torquemada devoted a lengthy portion of a chapter to proving John's right to change decrees of his predecessors. Summa II, c.112 ad 12

had come for writing the Summa de Ecclesia, Torquemada's study had yielded a number of distinctions and historical lights. Of these a rather amusing one concerns Anastasius. The original difficulty with Anastasius had been concerned with the relations of heretics to the valid dispensing of the Sacraments. The Sacraments conferred by them were, of course, true Sacraments. It appeared that Anastasius had said the opposite. The matter had found its way into the Decretum of Gratian where it embarrassed

glossators.¹ Gratian personally had been of the belief that heretics did not confer valid Sacraments. Some among the Glossators finally reached the heart of the trouble:

"It appears to be rather that it was Gratian who was of this opinion that the true Sacraments were not found among heretics. So it seems that it was Gratian that erred and not Anastasius!"²

¹c. Anastasius XIX: c.9. A 16th century Corrector's note gives a further touch to the tale. On historical grounds alone, the canon must be a forgery: one of the persons most concerned in the issue had been dead at the time, a fact the forgers had omitted to check.

²The Glossator whose text appears is Archidiaconus. Huguccio was of the same mind. The whole story answering the conciliar objections to Anastasius, the imaginary, is in the Summa de Ecclesia II, c.112 ad 8

CHAPTER TEN

INFALLIBILITY :

The SUMMA DE ECCLESIA

The case for monarchy had been amply stated;¹ the primacy of Peter and its continuance in the Apostolic See had received the fullest vindication in a body of traditional teaching that was unimpeachable.² Plenitude of power had followed as a natural corollary from that primacy. It had not been a case of attempting the proof of a desirable thesis: this was a whole body of historical testimony that had never wavered in assigning plenitude of power to the Bishop of Rome. It was by necessity that the decisions of that See were infallible in matters of Faith and morals: the Christian mind demanded such a guarantee of its Faith. The promise of Christ meant nothing at all if it were unattended with security of judgement. It was, then, a simple attribution of wisdom to Christ founding His Church, that infallibility should be the prerogative of Peter and his successors.⁴ This is the culminating

¹Summa de Ecclesia II. especially the first four chapters.

²Ibid. chapters 5-19 expressly; 38-43, primacy of the Pope.

³Ibid. chapters 52-79; of these, 70-79 treat of the "keys".

⁴Ibid. chapters 109-112, the last answering objections.

point of the teaching of Juan de Torquemada.

"The judgement of the Apostolic See cannot err in the things that pertain to Faith and are necessary to salvation".

This is the proposition.

"In a previous chapter the things we related make it clear as the most vivid light that the Apostolic See had been so strengthened in such great constancy of truth by the mercy of the Divinity, that its judgements could not err from the truth in the things that are of Faith. By the disposition of supernal counsel it was established the mistress of the Faith; the polestar of all the churches by Providence of the maker of all things, God, whose plan is not subject to failure. Hence, it was fitting that that See should have been endowed with this singular gift of infallibility in the things that are of Faith and are necessary to the salvation of men.

"There is a mystery in the very being of that See: a name of divine selection, Peter, -- its meaning in the Syriac language is stone -- was given to the first Pontiff of that See.

"This was the reason the blessed Gregory¹ -- Ep. 181 -- said: 'Who does not know that holy Church was fortified in the stability of the Prince of the Apostles? In a name, he drew out steadfastness of mind, -- as Peter was named from petra -- by the voice of Truth. It was said to him: 'I will give thee the keys of the kingdom of heaven'.² Yet again it was said to him: 'And thou being once converted, confirm thy brethren'³

In harmony with his usual presentation, Torquemada adduced two sets of proof for the strong statement he had laid down with such confidence yet "salvo semper meliore iudicio".⁴ The first

¹Gregorius I, s: Ep. 181^{ck} ad Eulogium Alexandrinum PL 77:

²Mattheae XVI: 19

³Lucae XXII: 32

Summa de Ecclesia II, c.109 princ

⁴Ibid. II, c.112 princ

of these was the voice of authority; basic to all, that "promise of Christ that cannot be shaken", -- the promise of the keys. The exegesis of that passage in Saint Matthew's Gospel traditionally referred to the fixed Faith of the Apostolic See. Saints Cyril of Alexandria¹ and John Chrysostom² had, with Origen,³ evidenced this. Hardly second to the text in Saint Matthew was the even more eloquently moving word of Christ in Saint Luke:⁴ "I have prayed for thee, Peter, that thy Faith fail not; and thou being once converted, confirm thy brethren". By this text the "judgement of the Apostolic See in the things that are of Faith is manifestly proven indefectible". In confirmation Saint Leo the Great was especially strong with some luminously evident testimony, couched in an equally strong and vigorous language.⁵

¹Glossa continua, that is the, Catena aurea ad Matt. XVI #3. This may have appeared -- and probably did -- in some of the lost books of the Libri Thesaurorum. Saint Thomas had made a liberal use of the spurious Greek Fathers in the Catena aurea. (The cases cited in the Summa context are easily matched in the genuine works of both Fathers).

²Catena aurea. loc.cit. cf. Homelia 52 #2 in Joannem. PG 58: 534 -- for a genuine passage of equal support to the theme.

³Catena aurea. loc.cit. cf. Tract. 6 in Matthaeum. PG 12 &

⁴Lucae XXII: 32

⁵Leo I, s : Ep. ad Petrum Antiochiam; Sermo II ordinationis suae. PL 54: ck

But because truth can never be out of harmony with right reason, as the mind of man is so constructed that his intellect must assent to a demonstration of the truth, Torquemada seldom failed -- if, indeed, he ever did -- to give a reason for the Faith that was in him on the pattern of his master, Saint Thomas. It was reasonable to believe that See indefectible in judgement, that See whose authority and magisterium defined what was to be believed by Christians; that had drawn up Creeds of Faith; that had declared and interpreted difficulties in Scripture.

"As a first principle this appears manifest. Otherwise the authority and the judgement of that See would be stable and sure in nothing: -- about Faith, about the condemnation of errors, about the Sacraments, about the canonization of Saints; about the interpretation of doubtful, difficult matters -- but it would be doubtful or fallible. This would be most incongruous, a dangerous thing for the Christian religion".¹

Such reasoning was verified from the nature of assent. For complete assent to any proposition was out of the question if a fear that it might not be true were still in the mind. If the opposite were not entirely false, assent would always be conditional. To demonstrate itself as true, a proof had to show that there could be no opposite; the result commanded conviction, or a non-changing assent.

"The theological virtue of Faith comes from necessary premises. Submission to it could not be false because it rests on a first truth. If this were not the case, assent to it could not be certain and unchangeable.

¹Summa de Ecclesia II, c.110, princ

"If then the Apostolic See (or the Roman Church whose authority and ruling power is vested in the Apostolic See by Christ) could err in the things that pertain to Faith; if it could go astray, then believers would think that (a declaration) were possibly false -- and not by necessity infallibly true -- and as a result, would believe with doubt and fear of possible error. Thus believers would waver; they would be doubtful in Faith and thus unfaithful. Let anyone imagine what a number of strange things would follow!"¹

It appeared reasonable to conclude that the judgement of that See was indefectible, when it was considered how through the course of the ages, it had never been known to have failed in the Faith. Rightly, then, might added proof flow from this, that it should be indefectible in matters of Faith. Historically evident, too, was the strength of that See. The malice of men had never been able to overcome it. Anyone who fought that See's decision had always been thought of as a heretic. Then, again, anyone cut off in excommunication by the Apostolic See was regarded as being outside the Church of God.

An additional reason for regarding its judgement indefectible was ancient practice that had traditionally referred the most important cases to the decision of the Apostolic See for settlement. Serious affairs -- and what more grave than those of Faith? -- and those where decision could not be agreed upon, were sent to that See for judgement. If the judgement of the Apostolic See had not been regarded as indefectible, nothing defined by it would have been thought of as terminated, or sure and undoubted. The result of such a state would be schism; heresies would follow; the first

¹ Summa de Ecclesia II, c.110, col 1

Faith (prima fides) would perish.

The sanctions coming from the Apostolic See were thought of ~~as~~ as binding on all as though the Voice of Peter had spoken. Doctors, however holy or erudite, had traditionally submitted their writings for its examination and correction. What was approved by that See could be condemned by no other. Further, it would hardly appear possible that the Faith of the ancient Fathers should not have wavered regarding the authority and magisterium of that See, unless its judgements had been indefectible; universal synods had acknowledged it the Mistress of the Faith, the standard and the culminating point for all ecclesiastical discipline. The canons of Councils had been ratified by it and by it were given the force of law.

From the mass of reasonable proofs offered, two propositions resulted. The first lay in the necessity for indefectibility of judgement; the second was the wide field of testimony that made a universal statement probable. The conclusion brought those two threads together in a fast knot:

"Since 'without Faith it is impossible to please God'¹ (Hebrews) and as Faith is the first fundament of the whole Christian religion --Chrysostom²-- it is essential that it be stable and unwavering -- like a solid rock in the building of the Church, The Church, for this reason, is said to be founded on a rock³ (Matthew)

¹ad Hebraeos XI: 1

²Johannis Chrysostomos. Homelia VI in Ep. ad Ephesios II,17-22
 PG: 62: 43, 44

³Mattheae XVI: 18

"As diverse questions and doubts arise among the faithful with regard to Faith or the attacks of heretics, it was necessary to establish one tribunal or supreme judgement -- known and sure- in the Church of God where recourse could easily be had in all abstruse matters; this is especially true where Faith or doctrine are issues. This tribunal would need to last until the end of the world, for as long a time as there is a contest for us with the powers of darkness. This is evident. Otherwise there would be firm assent to no determination or definition or declaration issued in the things about Faith. From this it would seem that the Church had not been adequately provided for in what is necessary to salvation, contrary to that word of Isaias(V):¹ 'What more could I do for My vineyard and have not done?'

"Now regularly this tribunal or judgement does not seem to be the universal Council. It would appear to be that Apostolic See or Chair which is this kind of tribunal, to whose judgement all major cases should come for determination and settlement in the Church of God..."²

The universal Council had practical disadvantages. First of all, Councils had erred. Then, a tribunal of this nature ought to be one in continuous session, as if it were necessary every day. The testimony of the most renowned Fathers of the Church lay the claims of the Council open to further question. Saint Cyprian,³ Saint Jerome,⁴ Saint Augustine,⁵ -- their professions would have the Apostolic See the adjudicator. When serious matters had arisen in the past, it is apparent from the Doctors and

¹Isaiae V: 4

²Summa de Ecclesia II,c.110,col 7

³Cyprianus,s : Epistolae ad Cornelium Papam, esp.#40. PL 4: 345.

⁴c.Haec est fides (XXIV:I:c.14).Profession of faith tendered by the heretic Pelagius, not Saint Jerome.

⁵Augustinus,s: esp. Epist.ad Glorium, Eleusim, Felicemque Grammaticum, #43. PL 33: 167

and the canons of Councils, that they were not referred to the Council but to the Apostolic See. Lastly, a question dealing with Faith seems more effectively determined by the Prince who rules the Church than by a number of people.

"From these points it is evident how rash, how foreign to the teachings of the Fathers and Doctors, is the assertion of the adversaries -- that the settled judgement of the Apostolic See is not firm and steadfast, but erring and defectible, in the things that relate to Faith. This error is most pernicious because the definitions of Faith, the condemnations of heretics, the ratification of canons, and the canonization of Saints -- would be doubtful or ambiguous and therefore would be suspected of falsity. This would weaken Faith and defile the Christian religion".¹

The final chapter dealing with the infallibility of the Apostolic See does not contain new principles; but in answering ten objections set out previously, a few arguments posed from another angle double assurance. The whole Christian world with eyes on Rome had been accustomed to expect decisive judgements in matters of Faith from that See. If, "bearing the divine promise in mind",² that See could err, there would be no sure and unquestioned belief in matters of Faith "because all affairs of this nature were settled by the Roman Pontiffs"³ in the past. The argument grows:

¹Summa de Ecclesia II, c.110 ad finem

²Ibid. c.112 princ

³loc. cit

"...it must be believed that the Roman Pontiff, guided by the Holy Spirit, could not err in matters of Faith; otherwise he could with equal ease have erred in the selection of the four books of the Gospels as well as the canonical Epistles. He could have erred in his approbation of the universal Councils as he could in his approbation of some of the books of the Doctors and in his reprobation of others. It is apparent from Distinction xv¹ that these things were determined by Gelasius and Gregory. Thus no Faith would remain certain in the souls of believers. Than this condition in the Christian religion, nothing more dangerous or absurd can be thought of".²

To the sixth objection -- that the Pope could err in the Faith
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by holding an opinion at variance with it; as a result he could err in forming a decisive judgement about the Faith -- Torquemada agreed that the first could perhaps happen. The second could not, the "divine promise still standing".³

Torquemada had always need of being precise in terminology. His conciliar training stood him in good stead. It was the Apostolic See that could not err, something official rather than personal. Pope Saint Agatho⁴ had declared "... all sanctions of the Apostolic See must be accepted as though affirmed by the divine voice of Peter". Archidiaconus had been impressed, "Circumspectly he says 'of the Apostolic See' and not 'Apostolic' (sanctions)".⁵

¹Summa de Ecclesia II, c.112 princ. Distinction XV: c.3: Sancta is a list of books approved and disapproved by the Church. The first 80 or so on the list are probably to be ascribed to Gelasius. In the same Distinction, c.Sicut(c.2) is a fragment of a letter of Gregory the Great to John of Constantinople and other Patriarchs: "As I venerate the four books of the Gospels so I profess reverence for the four Councils". There had been five Ecumenical Councils by the time of Gregory (590-604) but he considered the first four as four corner-stones of the Church, as the Gospels.

²Summa.loc.cit. ³Summa II,c.112, col 5 ad 6 ⁴c.Sic.XIX:c.2
⁵Rosarium. XIX: c.2: "Caute dicit 'Apostolicae sedis' et non dicit 'apostolici'".

"But the sanctions -- or decisions of the Apostolic See, published in judgement by the Roman Pontiff -- are not to be understood of those published secretly, maliciously, or rashly by the Roman Pontiff alone; nor such as he might publish to a section on the improper advice of a few favourites, mistakenly. But they are those which the Roman Pontiff has sanctioned and published, well-pondered and digested; first in council, on the serious and mature study of men of wisdom, especially the cardinals... The blessed Gregory says:¹ 'Such a definition of the Apostolic See is always conceived through the moderation of counsel; it is digested with the maturity of patience. Thus it would be published with such great seriousness of deliberation that no case of necessity would lead to a change, -- unless it were, by chance, published in such a way that it might be retracted'".²

"When all these points have been taken into consideration, namely:

the infallibility of the divine promise;
 the efficacy of the prayer of Christ;
 the influence of the merits of blessed Peter;
 the maturity of counsel with cardinals and other Fathers of learning:

in such difficult matters as touch upon Faith, the Roman Pontiff -- IT MUST BE MAINTAINED -- without doubt has this WHICH WAS SAID ABOUT THE JUDGEMENT OF THE APOSTOLIC SEE, that is, he CANNOT ERR IN THINGS THAT PERTAIN TO FAITH".³

The teaching of Torquemada on infallibility can be summarized confidently on some points; on others the historical development of his thought must be considered. First, there is no doubt whatever that the prerogative of infallibility was vested in the "Apostolic See" and the Church of Rome.⁴ The tendency of his mind, if

¹c. Apóstolicae sedis. XXV : IX : ck

²Summa de Ecclesia II, c.112, col 7 ad finem, ad 6

³loc. cit.

⁴Summa II, c.112, col 6 ad finem, ad 6

De potestate Papae et concilii generalis meant something more than an academic study, was to place infallibility in the person of the Pope. For various reasons, his thesis there propounded had hardly any rational, syllogistic development; nor had it authoritative precedent. At any rate, Torquemada left the difficulties of personal infallibility for the greater certainties of vesting the notion of infallibility more impersonally in the Apostolic See -- or the "Roman Pontiff (who)...without doubt...this judgement that was said of the Apostolic See".¹ This seems to be impersonality with a distinct tendency to personalize the privilege. Then, the Pope was held obliged to discuss the relevant question in council with theologians, and especially with the cardinals whose office was advisory.² Finally, if the matter were of great difficulty or were doubtful, the Pope was held obliged to convoke a General Council in order that he might have the benefit of the greater discretionary judgement of numbers and their wider knowledge.

This third was, perhaps, a difficulty for Torquemada. When disagreement should occur between the Pope and the Fathers in a General Council, the matter might or might not be concerned with Faith. If not, the decision of the Pontiff held against the other

¹Summa de Ecclesia II, c.112, col 7 ad finem, ad 6

²Ibid. col 6 prin; col 3, ad 1 ad finem.

Fathers, whatever their numbers. The matter might relate to some point of Faith already defined; in that case, again, the decision of the Pope would hold against the Fathers who might want to alter or abrogate the definition. But in a matter of Faith not already defined, regularly, the judgement of the Fathers of the whole Council would prevail rather than that of the Roman Pontiff:

"But we say regularly. For it is not impossible that what one man, and ESPECIALLY THE POPE MIGHT THINK, would be something better than all the others... For one could contradict the whole gathering (universitati) if he had a reasonable cause".¹

Further:

"It should be remembered that when a controversy occurs between the Pope and the Fathers of the Council in matters of Faith, although the whole gathering of the Fathers ought to be followed as being pre-eminent and superior in discrete judgement, yet it appears that nothing should be concluded conciliarly until the Pope and the Fathers should agree on one conclusion and decision".²

From this it seems to appear that there was a conflict, not about infallibility itself -- that was a necessary rational deduction -- in the Apostolic See, but about a more precise location of that prerogative. To cite De potestate Papae again:

"It is possible that the Pope alone is that Church 'without spot or wrinkle' and whose Faith could not fail; it could be because such a Church...consists in those having a formed Faith. But such formed Faith could be preserved in the Pope alone..."³

¹Summa de Ecclesia III, c.64, col 2 ad finem

²Ibid. col 3 prin

³De potestate Papae et concilii generalis.XII conclusio ; folio three leaves after the signature mark "ccc" -- recto.

The cited section is inconclusive, as though Torquemada were feeling his way towards some personal location susceptible of solid proof. His difficulty very likely was not unconnected with historical misunderstandings. But whether or not he was really attempting to find a suitable basis favouring a personal emphasis or not, it is a point of no small interest that he should have gone so far from his first position for other postulates, and apparently found them wanting before returning to his original position.

Saint Robert Bellarmine rightly says that the theologians in Torquemada's category had no wish to place infallibility in the counsellors, or in the General Council if that were called.¹ But an answer to the seventh objection² in the Summa de Ecclesia adds to this certainty -- where the Pope may hold an opinion that is heretical but that God would not allow him to teach it. The greater the dignity of a prelate in the Church, the greater the grace that accompanies it. The example of Caiaphas was used, as indicating how he prophesied, not knowing what he did. In the same way, the Pope would be prevented from publishing an untrue doctrine. "A sentence that the Roman Pontiff publishes in judgment, in the things that are of Faith, could not err, -- or a

¹De Summo Pontifice IV, c.2. Opera omnia II, pp 79-80

²Summa de Ecclesia II, c.111, obj 6

judgement of the Apostolic See -- which is the same thing -- could not err".¹ Thus it appears evident enough that the Pontiff publishing a decision on Faith or morals to the Christian world, could do so without benefit of counsel absolutely; in so doing, although his actions might be lacking in the prudence that should characterize him as Pope, yet he could not err in teaching about Faith or the things necessary to salvation "for God would not allow it".

PART THREE

CHAPTER ONE

THE DISCIPLE OF SAINT THOMAS

Juan de Torquemada wonderfully combined a profound knowledge of canon law with a mastery of theology in a mind well-disciplined in logic and scholastic philosophy. His work is stamped with the imprint of his master, Saint Thomas. Like him, Juan de Torquemada was of a singularly docile mind towards the Church; like his master, he brought every case before the bar of reason. Faith and reason were never in conflict. Sometimes rational argument precedes, sometimes it follows authoritarian decision or opinion. But there are few major theses -- if any -- that are worked to their conclusion without recourse to rational argument.

The universal governance of Peter "we will easily demonstrate by the testimonies of the sacred writings as well as by effective reasons".¹ That the jurisdiction of prelates was derived from the Pope was a conclusion "that should now be proven by the second method, that is, by reasons".² That the Council should have power immediately from Christ "seems to quarrel with natural reason";

¹Summa de Ecclesia II, c.15

²Ibid II, c.55

"anything that is in conflict with natural reason cannot be said to pertain to the Catholic Faith".¹

The development of the doctrine of papal plenitude, based on Scripture and traditional exegesis, was not completed without chapters dealing wholly or in part with the treatment of the derived powers of prelates from the philosophical standpoint of causality.² The genesis of the rational arguments for the derivation of power had already been suggested in Tract B with appeal to the Commentary on the Liber de Causis, "a secondary cause holds its power of causing from the first cause".³ This was allied with hierarchical organization in an analogy drawn again from the Liber de Causis to show gradation of power from God to every created thing; the authority of the emperor in descending order through the state. The authority of the Pope in the Church was of this order, the causative power setting other causes in operation.⁴

Again, the papal prerogative of infallibility is a demand of human reason. And here the argument, based on the inspired word, "without Faith it is impossible to please God", is concluded from the nature of assent. There cannot be doubt without the "first

¹Summa de Ecclesia III, c.30 ²Ibid. II, cc.55,56,61 passim

³Thomas Aquinas: II Sent. D. 44. Expositio textus. This is the source quoted in Tract B:17(2); Summa de Ecclesia II, c.65

⁴Summa de Ecclesia II, c.110, col. 2

Faith" withering away.¹

The philosophical trend in Torquemada was one avenue of approach to the solution of difficulties, whether in answer in objections already formulated, or offsetting their invalidity in anticipation, or, more frequently, in his own first setting forth of a question. This is perhaps nowhere shown to better advantage than in the first book of the Summa de Ecclesia where the nature of the Church is defined.

"The Church is the convocation of the many to the worship of the one God. Of this Church the Apostle speaks -- in the fifth chapter of Ephesians² -- in this way: 'Christ loved the Church and delivered Himself up for her that He might sanctify her, cleansing her in the laver of water, in the word of life, that He might show her a glorious Church for Himself'. And further on, 'On this account a man will leave his father and his mother and adhere to his wife: and they shall be two in one flesh. This is a great mystery, but I speak in Christ and in the Church'.

"In these words, the blessed Apostle Paul appears to touch upon the causes of that Church; namely, the efficient, the material, the formal, and the final; from them all can be gathered a perfect knowledge of that Church. For Aristotle says in the first (book) of the Posterior (Analytics)³ 'For then we think we know something fully when we have a knowledge of all its causes'.

"The efficient cause of the Church is distinguished in a two-fold way: one is the principal, the other the instrumental. Christ Himself is the principal -- He who is the planter and founder of the Church. Whence -- Jeremy II⁴ -- He says: I have planted thee, my chosen vineyard, all true seed'. And -- Matthew XVI -- 'Upon this rock I will build my Church'. And the

¹Summa de Ecclesia II, c.110, col 2

²ad Ephesios V: 25-27; 31-32

³Posteriora analytica I

ck

⁴Jeremiae II; 21

"Apostle touched upon¹ this efficient cause of the Church, say-
to the Ephesians (V):¹ 'Christ is the head of the Church and the
Saviour of His body', where the Gloss² explains: 'Christ is
the ruler and the steward (actor) of the Church'. But the Sac-
raments are called the instrumental cause of the Church, which
having power from the passion of Christ as instruments of divine
piety, dispose and operate to the building up and the formation
of the body of the Church..."³

The excerpt is less than a third of the definition of the
Church in its causes. It is typical of the interwoven texture of
his presentation -- that all knowledge is unified and ancillary to
his teaching purpose. Nor is the definition of the Church by any
means finished within the confines of that one chapter. In this
particular case, a complete chapter follows with eighteen different
meanings that the word, ecclesia, may connote. Nor is this any
mere exercise in wits. It is rather the setting in motion of an
inexorable process that resolves the misinterpretations that will
crop up in later chapters and books. To read over that chapter and
be unaware of the controversies that are to arise in due time over
that single word, ecclesia, is to marvel over a method that appears
to take an infinite number of pains in distinguishing a hawk from
a handsaw. But the forewarned reader marvels at the descriptions
and connotations of a single term, the marvel growing as he watches
a clever woodsman clear away the underbrush before felling trees.

¹ad Ephesios V: 23

²Glossa Petri Lombardi: Collectanea in Epistolas divi Pauli.
In Ep. ad Ephesios V: 23. PL 192 ck

³Summa de Ecclesia I, c.1, col 2 ad finem; c.3

His method leaves nothing to be desired in clarity of presentation, with fitting subordination of details. The terminology is precise. If there is an ambiguous statement in the Summa de Eccle- it is still undiscovered country. Torquemada was not Cicero; he was not interested in the latinity of humanist Italy; his business was the exposition of doctrine. Although there is hardly a flourish and scarcely a rhetorical note, Torquemada does not fail in an essential eloquence that stems from a full mind and a masterful purpose. There is no chapter that does not follow normally and freely from the one that went before. This necessarily brings about a curulative force in the progress of his theme. And this is the reason, aside from the sheer logic of each completed chapter, that Torquemada's teaching is difficult to summarize. Its impact can only be felt fully, resultantly. In the matter of the infallibility of the Apostolic See, it is the onslaught of the previous hundred and eight chapters that bears down with the weight of a nearly irresistible force.

But the severity of his clean outlines is never a device that hides his feelings. His devotion to the Church alone could have produced a labour of such exacting measure; his reverence is continually met as he appeals from his adversaries to the pious minds of the early Church. There is a chapter in the third book, not at all irrelevant to the progress of his thesis, that is the best illustration of his reverential fidelity. It bears the title: "On honouring the Supreme Pontiff... and the seriousness of the fault

of those who dishonour him".¹

"For if, when all the East as well as Africa was shining with the title and the glory of the Christian Faith, -- when the whole world spoke Christ, when almost all the Church gloried in the holiest of men and prelates, when the very deserts and mountains nourished saints -- nothing was ever lightly attempted in those places against the authority and the dignity of the Apostolic See. Let it be far from us such need for mourning, if when nearly all the West has preserved the true and unspotted religion of Christ, the authority of that See should be suppressed or diminished".²

The treatment of the subject of a willing obedience is much amplified in the second book, treating of a more direct relation between the Pope and the individual Christian, where the third book emphasizes his relation to the Council. Torquemada introduces the subject by noting the activities of nature -- how they proceed from natural causes, "so human actions proceed from the human will".

"But the things in nature: it is the higher that move the lower to their actions through the excellence of a natural power divinely conferred. From this parallel it is fitting that in human affairs, the superior powers should move the lower through its will from the force of authority divinely conferred. But to move through the reason and will is to command. And thus from that divinely established natural order itself, the lower orders in things natural must needs be subject to the motion of superior orders. Likewise in human affairs, from the order of natural and divine law, inferiors are obliged to obey their superiors.

"It was for this reason that the Apostle said (Hebrews ult): 'Obey your masters and be subject to them'. Now since the Roman Pontiff is the father of fathers, the master, and the

¹Summa de Ecclesia III, c.37

²loc.cit. col 2

"head of all the faithful, it follows that obedience is due him by divine law, by all who glory in the Christian name -- whatever be their state or condition of life... For as the authority of ruling and commanding is vested in the greater, so the need for obedience is in the lesser".¹

There follows a wonderfully knit proof from the obedience of the Fathers of the early Christian past, the preceptive utterance of Boniface VIII, an excursus through portions of Old Testament history to remind his readers of the blessing that follows in the wake of obedience.

"It is only obedience that possesses the merit of Faith; without it a person is convicted of infidelity", says the Gloss² on that passage of I Kings XV: 'Rebellion is sin as witchcraft is sin; all one with idolatry is the unsubmissive heart!'.³

"Really, it is something of a marvel in our opinion, fantastic and unheard of, that sheep should fail... to be subject to their shepherd; that the pastor should lose his title and the right of pasturing and guiding! That the Roman Pontiff should have less authority in a synod than his subject prelates! Who has ever heard the like?... such subtraction of obedience from the true and undisputed Vicar of Christ would appear to be divine lese majeste".⁴

Although Juan de Torquemada would not willingly have gone afield from the teachings of the Church as met in traditions; even if he professed himself a "teachable learner" from a vast body of canonists and theologians; despite his avowed discipleship of Saint Thomas especially "in dubiis",⁵ -- Torquemada's rational

¹Summa II, c.48, col 1

²Glossa ordinaria ad I Reg.XV:

³I Regum XV: 23

⁴Summa II, c.48

⁵Summa IV,II, c.20 prin

faculties were always alive to the possibility of differing from many masters whose teachings he generally revered, -- the "modern ones in theology", not the ancient Fathers and Doctors.

In the development of his monarchical argument, he made use of Giles of Rome, deliberately eschewing the exaggerations and at last, parting company entirely with the later parts of his work; he discriminated nicely, too, on what he used from the first book, using his source with a sobered terminology. An admiration for Augustine of Ancona, even large indebtedness to the teachings of the old Augustinian on the the Apostolic See, did not prevent his selections from being adjusted into his own evolving system.

Usually the teaching of Juan de Torquemada was moderate, but there are two points where his position does not lie with the middle path theologians. In the Commentary on the Sentences, Saint Thomas had come to the conclusion that the position of Saint Peter and the primacy conferred on him by Christ, were such that the other Apostles received their powers of jurisdiction from Saint Peter, not directly from Christ.¹ This position was held by Alvarus Pelagius, Augustine of Ancona and the extremists, Giles of Rome and James of Vietrbio. Among the Dominicans, Saint Thomas had been followed at least by Petrus de Palude, although Hervaeus Natalis and Saint Antoninus had not shred this thought.²

¹IV Sent. Dist 24, Q.3, art 2, ad 1: "Quod quamvis omnibus apostolis data sit communiter potestas ligandi et solvendi... primo Petro soli data est...ab eo in alios debeat...descendere".

²Antoninus, s: Summa Theol. III, T.22, c.4 (Vol 3), col 1201
Bellarminus, s. Robertus: De Summo Pontifice IV (Op. om. II, p.138)

Juan de Torquemada did. It did save the primacy for Saint Peter and apparently put it farther beyond the reach of its critics. His idea was that just as bishops receive their jurisdiction from the Pope now, so the Apostles were given it by the first Pope.¹ Another advantage of his position was that it fully disposed of Marsilius of Padua -- and those after him -- who favoured the "pari consortio" of the c. Sacrosancta². The proofs lead Torquemada to a difficulty that he seems to dispose of in doctrinaire fashion, were not the strange organization of Sacrosancta considered. "Parilitas" in the canon did not mean "aequalitas" but "similitudo!" But taking the canon as it stood, his meaning may not have been such new definition -- "there was a certain discrimination" between the authority of Saint Peter and the others, said the canon. The argument had appeared in Tract B as it did later in the Summa de Ecclesia.³

The extreme position was taken by Torquemada in the case of heresy in the Pope. His solution took care of all the difficulties, but rather too easily. He had constantly to hammer home the idea in the conciliar tracts that the Pope was so fixed in his position by Christ that he could not be deposed for conduct,

¹Summa de Ecclesia II, c.6

²c. Sacrosancta. D.XXII : c.2

³Tract B: 14; Summa II, c.12, col 1

however shocking.¹ As this was one of the major issues in the conciliar briefs, Torquemada's treatment of the theme was careful and lengthy.² Only in the case of heresy obstinately maintained could a Pope be deposed. This was the common teaching of most theologians and canonists. With Torquemada this was, too, repeatedly insisted upon but with an extremity of development in the *Summa de Ecclesia* that is somehow rather marvellous in its logic.³ Even if the heresy is not manifest, yet obstinately persisted in, the Pope ipso facto falls from the Papacy. The argument is long and interesting but the substance of it is simply stated. Faith is the prime connection between the Christian and the Mystical Body of Christ. Hence, when Faith is lost, there is no connection.⁴ It is as simple as that. Consequently, whether heresy were secret or manifest made no difference. In this point of teaching, Torquemada appears to stand alone.

It is not without interest to note how the historical difficulties fade away in such a solution. As the Pope is not the Pope once his Faith is lost, so a Pope could not be deposed, nor could he teach heresy -- for in neither case would he remain Pope. It may be that historical obstacles led him to this solution, but that is a guess beyond proof.

¹Tract B: 25(2)(3); Tract C: 32(2)-34(3); Tract D: 6(4); Tract E: 3(2)-(4)

²Summa de Ecclesia II, c.93 - c.103 incl. III, c.50.

³Ibid IV:II, esp. c.20

⁴Ibid.II, c.102, prin.

CHAPTER TWO

VALUE OF AUTHORITIES CITED

At the time of the Vatican Council certain Gallicans contended that the primacy of the Pope had been founded on the False Decretals. They inveighed against theologians, especially Saint Robert Bellarmine, for the materials taken from the Pseudo-Isidorian collection.¹ They thought the case for infallibility as found in Bellarmine could be effectively fought on this score, that the spurious citations from early Pontiffs could well impede the definition on the basis of a false foundation. It is important, then, to discover to what extent Juan de Torquemada himself had used the False Decretals and the other forgeries, and to evaluate their importance in the prime issues of the monarchical governance of the Church, the primacy of Peter, the papal plenitude of power, the further elaboration of the power of the keys, and the corollary following on the primacy, -- the infallibility of the Apostolic See.

In the five tracts forming the genesis of the Summa de Ecclesia, there occur about five hundred references to ancient authors, Fathers and Doctors of the Church and later theologians and canonists. Besides these, there are close upon eighty -- or even more, perhaps -- references to the False Decretals or other

¹
Appendix de falsis decretalibus. ed Fevre. Op. om. I, p. 616
(Opera omnia Bellarmini)

forgeries in Gratian. There are eight quotations from the Libri Thesaurorum and nine from the pseudo-Dionysius. In addition to these there are a few stray citations from the pseudo-Ambrose and pseudo-Augustine. At first glance the numbers seem like more than the average necessary for embarrassment; but the numbers do not tell the story well.

Distinction XVII¹ in Gratian consists of seven canons, four of them being forged mainly from the Historia Tripartita² of Cassiodorus. The Distinction supports the theory that General Councils were regularly convoked by the Popes, a contention that is difficult to meet historically for it appears fairly certain that Constantine and Valentinian³ did actually call some of the Councils. But, while the matter loomed large enough in the fifteenth century, it was a disproportionate emphasis on a matter not in itself of the utmost significance, important though it may be. The important conciliar issues were rather the matter of referring acts and decrees of Councils for ratification to the Popes, a matter not at all hard to prove from records.

¹Distinctio XVII: c.4: Nec licuit and c.7: Episcopus are genuine and are weighty enough to settle the whole issue, being the works of Saints Pelagius I and Gregory I.

²What is left of Cassiodorus' History: PL: 69

³cf. Forget, J: "Conciles" DTC I, 586-626; esp. ca.col.593

The use of Distinction XVII accounts for a full dozen of the citations: it is important to remember in the matter of these forgeries that the only gain the forgers conferred, as a rule, was showing an authority back to a time where it would be regarded as more valuable and redoubtable. Another dozen quotations from two canons came originally from a letter of Saint Leo the Great¹ -- the father of many a forgery. More than twenty-five others were based on letters or tracts of Pope Saint Gelasius I, Pope Saint Nicholas I, Nicholas II and some other equally stout authorities. Three are nothing more than proverbial expressions while six or eight were interpretations that Torquemada had objected to. When the final count is taken, there remain about fifteen citations from five or six canons favouring the theses Torquemada laboured over.

But where proofs for the primacy of Peter were adduced, very rightly Torquemada considered his basis to have been the rational deduction from the Gospel narrative. In the first seventeen chapters of the second book of the Summa de Ecclesia, he did use the c. Sacrosancta² -- that the forgers had fathered on Pope Saint Anacletus -- but used as a commentary on the chapter, the very portion of the letter from which the canon -- in that part -- had been forged. It was apparently confected from Saint Leo the Great.

¹St Leo I: 440-461

²c.Sacrosancta.Dist.XXII: c.2. #5 is found in Ep #14, c.33 ad Anastasium. cf. also Canon 5, II Ecumen.(1st Constant.) AD 381.

And that c. Sacrosancta had been no unmixed blessing. Torquemada was continually under the necessity of refuting the interpretation Marsilius of Padua had found in the "pari consortio" to whittle a way at the primacy of Peter.¹ A long line of like-minded exegetes had followed Marsilius. But beyond the use of that canon Torquemada had made practically no use of the chapters in Gratian for establishing the primacy of Peter.² Very nearly his chief authority was Saint Leo I, in epistles that are unquestionably genuine.

In his chapters about the "keys" there is scarcely any recourse had to canon law. The early Fathers and Doctors were not only found adequate enough, but considered better authorities. For the final chapters relating to infallibility the forgeries from canon law are negligible; they are never used as proof and only seldom for illustration. Nine Fathers and Doctors are cited as authority for the traditional exegesis of Luke 22. Of these,

¹Defensor pacis II, c.16, p. 282. Summa de Ecclesia II, c.12 ad 1 arg. ex cap.8 -- there is an amusing point to Torquemada's retort to the "pari consortio" objection, taken from the same canon: from Ep.14, c.1 of Saint Leo: PL 54: 671

²Chapters 5-17 are connected with the primacy of Peter. Of these, chapters 5 and 6 give scriptural bases; 7-10 lay out the objections based on Scripture; 11-14 refute the objections with no use of the False Decretals -- except c. Sacrosancta (as in note #1 above) Chapter 15 continues the thesis with no canons. But in the next chapter (16) Torquemada does answer three objections by three references to forged letters of Saints Sixtus and Victor -- the argument is about the Pope's being the 'universal bishop'. But chapter 17 is a wonderful recapitulation of the case for the primacy with numerous genuine Fathers. There is one false Damasus among them.

Pope Saint Lucius I is cited as author of the chapter A recta¹, a text probably forged from Pope Saint Agatho mentioned immediately before him. All the other proofs are strong with great names. In the remaining three chapters, still dealing with infallibility, four canons from the False Decretals are used among sixty citations and none of the canons is given particular prominence. In no case is any used where it is not in the company of the good and the great.

It is true to say that no part of Torquemada's thesis -- now speaking of the second book -- has any dependency on the forger's art. Some of the fabrications were used illustratively and unquestionably add strength to an argument by the mere process of multiplication. Yet on all the variations of the subject of the Roman Pontiff and the prerogatives of the Holy See, it is hardly rash to state that Torquemada clearly had a preference for the Fathers. This may have been the result of his tracing the chapters in Gratian to their contexts. And here, in passing, it may be wondered if his later years did not find him even more wary.

One of the canons that did impress Torquemada strongly and favourably to the end of his days was the c. Haec est fides², with the name of Saint Jerome appended; this was one of the canons that

¹c. A recta. XXIV : I: c.9/. Hinschius.p.179. The short phrase cited is found in Pope Saint Agatho: Ep. ad Constantinum Pogonatum. (verbatim). Mansi 11: 239

² c. Haec est fides. XXIV: I: c.14

Torquemada had not traced back into the text of Saint Jerome, apparently. But even if the chapter records the submission made by the heretic Pelagius, its value is unimpaired -- perhaps, indeed, somewhat heightened -- as testimony to the custom of submitting writings to the Pope for his approval. The thought expressed is not alien to that of Saint Jerome as another c. Quoniam vetus is evidence. But Torquemada had a most distinct preference for the c. Haec est fides. He liked to savour the reverential tones of an undeniably beautiful expression of obedience to the Pope.

Torquemada was not a universal admirer of Gratian's concordance of discordant canons. He did, in fact, evince a healthy criticism of the work, planning a new format for easier handling.¹ He distinguished between canons, too, as regulations -- discordant in themselves -- but understandable when the varying circumstances that made them were taken into consideration.² He objected, too, to the unfavourable excerpting of the Fathers and spoiling if not nullifying their contexts.³ It has been said that with Nicholas of Cusa, Torquemada was a pioneer in the criticism of at least some of the questionable sources.⁴

¹Nova ordinatio Decreti Gratiani where the materials are rearranged under clearly indicated subject-headings.

2

³Summa de Ecclesia II, c.109. cf. Tract C: 38(3)

⁴Van Hove. op. cit. I,1, p.311: "Saeculo XV Nicolas Cusanus et Johannis de Turrecremata authenticitatem antiquiorum pontificiorum impugnarent".

The Libri Thesaurorum¹ is much more of a puzzle than the forged decretals. The books represented an anthology of spurious Greek Fathers, the main contributions being assigned to Saint Cyril of Alexandria and Saint John Chrysostom. At least some of the work had been relegated to the list of apocrypha perhaps as long ago as the time of Pope Saint Gelasius I.² In c. Sancta³, a list of good, bad and indifferent books occurs; the Liber Thesaurus is #46. Why then did so able a canonist as Torquemada use them? It is difficult to find an answer. Saint Thomas had used a good number of excerpts in the Catena aurea and the Contra errores Graecorum; these appear to be the source for Torquemada. The c. Sancta gives a clue in providing a norm for the use of the books on the apocryphal list: "Some of these are read by Catholics. The injunction of I Thessalonians V should be applied: 'Test all: hold onto what is good'". They were probably used because they were

¹The Libri Thesaurorum are exceedingly hard to appraise, so few of the books being extant. The texts were the works of men of mind similar to the forgers of the decretals: nothing is known definitely about their origin.

²It is highly probable that the list ascribed to Gelasius is not his; who might have made it up is another thing. Probably a number of different persons added to the catalogue. The first 82 numbers were supposed to be from a canon of Gelasius in one of the Councils of Rome: and partly, or even mainly, it may be true. Gelasius did issue a Decree: De recipiendis libris (Ep. 42) Mansi: 146. At any rate the listing, if it had been made by Gelasius, did not include all the Thesaurus because Saint John Chrysostom was too late for Gelasius. A false Cyril was known very early as a false Ambrose -- mentioned on the list.

³c. Sancta XV: c.3

marked with the teaching of authentic tradition.

At the time of Saint Robert Bellarmine, many of the original books were missing. About the time of the Council of Florence they had been used by Gennadios Scholarius in his book De primatu Romani Pontificis. It was mentioned at the 6th Ecumenical Council that there were thirty-two books. In Saint Robert's time no more than fourteen remained. But much could have happened between AD 787 and the 16th century: countless books in other categories doubtless perished. Further, to show how commonly the doctrine they contained was unchallenged, Andrew of Rhodes, affirmed at the 7th Session of the Council of Florence that the Thesaurus of Cyril marvellously preached the authority of the Roman Pontiff; nor did any Greek take issue with him!¹ The Thesaurus of Cyril was very likely on that early list of books, too.

Torquemada cited the Thesaurus of Cyril about six times in the Tracts, invariably by way of Saint Thomas. In the Summa de Ecclesia, one of the excerpts -- or, perhaps, two of them² -- is used to introduce the subject of infallibility in chapter 109. A text each of Origen, Chrysostom, and Cyril of Alexandria usher in the theme. In no case do the texts prove or substantiate the

¹Bellarminus, s. Robertus. De Summo Pontifice II, c.15 (Opera omnia I, p. 571) The material throughout this paragraph is found in c. 15 of Bellarmine.

²The citation of Cyril is from the Libri Thesaurorum; that of Chrysostom from Hom. 54#2 in Matthaem. PG 58: 534.

teaching on infallibility as such; they do show a reverence and respect for the Roman See that makes for good reading. It so happens that genuine texts of the same Fathers are equally the match of the ones cited for the profession of filial devotion to the Holy See.

The whole affair of the Thesaurus is puzzling in the use that Torquemada made of it, unless it is remembered that the materials used to illustrate arguments make no direct contribution to the force of his case. To the letter, as the text of a definite Father, they are forgeries; to the doctrine they contain, they are the genuine doctrine handed down by other corrects of tradition. They were never of such an absolute character as to determine an issue. Torquemada may have applied the advice laid down in c. Sancta: "look to the advice of Saint Paul: 'Hold onto what is worthwhile!'" They were acceptable because their teaching was sound, hiding though it did under the shadow of a great name.

Without doubt it can be confidently asserted that the work of Torquemada -- while making use of the forgeries, known and unknown -- relating to the monarchical rule of the Church, to the Primacy of Peter, to the plenitude of power vested in the Pope, and to the consequent corollary of the infallibility of the Apostolic See -- none of these issues was dependent for its inner cohesiveness on the forgeries in canon law, or on the suprious Fathers. In every case, his teaching had strong scriptural basis; it was bolstered up bu solid logical argument; it was attested by a large body of authorities whose integrity cannot be easily impugned.

CHAPTER THREE

INFALLIBILITY AFTER JUAN DE TORQUEMADA

Between Juan de Torquemada and Saint Robert Bellarmine almost exactly one hundred years later, there was no real development in the notion of infallibility. A sampling of the chief theologians cited by Bellarmine is interesting chiefly for their use of Torquemada. Of these, the first may well be Cajetan whose works were devoted mainly against Jacobus Almain,¹ who carried over the conciliar arguments of Gerson with negligible changes over into the time of Luther. De divina institutione Romani Pontificis, written about 1521, is not a lengthy piece of apologetic. Cajetan, too, was interested in refuting Luther and the Resolutio²: as such the question at issue was the primacy and the Roman succession. Cajetan was a Dominican, a successor of Torquemada to the cardinalatial title of Saint Sixtus. It is inconceivable that he did not use the well-known work of Torquemada, but he does not mention in this tract. This is not strange because the arguments of late theologians were not of great value in answering the German reformer.

¹Tractatus de auctoritate Ecclesiae et conciliorum generalium in Opera omnia Gersoni. Ed. Paris, Vol.1, 979-1012

²Resolutio...de potestate Papae, named dozens of times in the critical apparatus to Cajetan. cf. Vio, Thomas del(Cajetanus): De divina institutione pontificatus Romani Pontificis.ed.Lauchert in Corpus Catholicorum. Heft 10. Munster-im-Westphalia, 1925

Thomas Campeggius, a native of Bologna and Bishop of Feltre, wrote about the middle of the sixteenth century against the current errors, taking as his particular opponent Panormitanus in De auctoritate et potestate Romani Pontificis. It adds nothing to the substance of what had already been said by Torquemada but it is a readable, short contribution to controversial literature. In no part of this work does Campeggius mention Torquemada nor the debt due him for the full sections lifted from the Summa de Ecclesia, not so much as a "quidam dicunt". He follows much the same arrangement, too, but is much briefer in his treatment.¹

To mention a third and last contributor to the rapidly growing papal apologetic, there is Dominicus Jacobatius with his Tractatus de Concilio², something all but definitive on the subject. It is a fuller treatise than the third book of the Summa de Ecclesia, expanded with masses of fifteenth century authors -- rather a wonderful summary of the history of opinion. The six books touching on the Council stretch through 622 large folios. His use of Torquemada as an authority of eminence, is constant. Nor does he confine that use to the Summa but the commentary on the Decretum he considered of great weight. The tract was written for Pope Leo X

¹Campeggius, Thomas: De auctoritate et potestate Romani Pontificis et alia opuscula. Venice: Manutius, 1555. Folios 94v-95; 102v-103v -- from Torquemada verbatim; others close or verbatim.

²Jacobatius, Dominicus: Tractatus de Concilio. Printed in T. Rocaberti: Bibliotheca maxima pontificia. vol.10

and was probably connected with the 5th. Lateran Council and the definitive settlement of conciliar claims to supremacy.¹

It has been said that Torquemada marked the end of a phase in the elucidation of the common teaching of the Church; Saint Robert Bellarmine marked another.² Perhaps there is no real difference between the teaching of the one and the other in this regard. Bellarmine himself implied this.³ He both understood the need and the use for counsel, but did not ally it as Torquemada more or less as an ingredient of infallibility:

#"Bellarmine does not treat of the infallible judgement of the Pope except with reference to controversies in Faith. Where there are controversies it is already supposed that some, or rather, many -- and especially bishops -- have defended the right Faith, while others have tried to induce a new and false teaching. It could be assumed that the Supreme Pontiff would not act alone in defining matters of this sort, but would have allied himself with the defenders of the true teaching. For the rest, Bellarmine does not treat more fully those conditions that are required for infallibility of the Pope".⁴

Bellarmino's use of Torquemada was constant. Chapter upon chapter refers to pertinent sections of the Summa de Ecclesia for fuller treatment. In many arguments, Bellarmine follows the order that Torquemada had thought adequate to the subject. Reading Bellarmine brings back reminder after reminder of similar solutions to the

¹Leo X: 1513-1521. Session 11 taught ex professo that the Pope is superior to the Council.

²De summi Pontificis infallibilitate personali. Naples, 1870. "quaestiones et sententiarum progressus...a Turrecremata ante et Bellarmini post Protestantismi originem...comparatur". p.6

³De Summo Pontifice IV, c.2 (II, p 79-80). ⁴ cf. note #2,p.6

old misinterpretations of Saint Augustine,¹ the famous Gloss on Si Papa², and the familiar recourse to the old scriptural texts in the Acts of the Apostles and all the other fifteenth century stock-in-trade. The work of Bellarmine, chiefly controversial, lay mainly in a re-statement of the position taken by Torquemada -- except in the few cases where Bellarmine did not admit the conclusion Torquemada had reached. The contribution to infallibility was more important because it lay by that time within a kind of common, new tradition; it was more confidently and uncompromisingly affirmed. In this Bellarmine was indebted to Torquemada above all theologians. He it was who had channeled the common teaching of the Church into one definite stream: the Apostolic See had the privilege of not erring in the Faith and the things necessary for the salvation of Christians. Bellarmine's explicit statement is more technical: "The Supreme Pontiff could not err in any case when he teaches the entire Church in the things that pertain to Faith".³ The gain was in clarity, but the substance of Torquemada is there:

"Not only in decrees of Faith could the Supreme Pontiff not err, but in precepts regarding morals which are prescribed for the entire Church, and those things regarding salvation, or in those

¹De Summo Pontifice IV, c.3, pp.80-81 ²Ibid. Ic.12, pp 501-2

³Ibid IV, c.3, p.80

"which are per se good or bad..."¹

Each of the points explicitly stated by Bellarmine had been stated with equal assurance by Torquemada but not formally. In the answer to the eighth objection² there occurs: "...in this it is presupposed that decretals contrary to the Gospel precepts could emanate from the Apostolic See. This is false". And he had put in an objection to teaching being infallible that was intended only for a locality, "ad partem"³.

It is evident that Torquemada's teaching, a decisive synthesis of materials relative to papal infallibility, was the groundwork for the solemn definition by the Vatican Council in 1870. Bellarmine's work was the handbook, as it were, but that handbook itself carried Torquemada's teaching only slightly changed in form from the Summa de Ecclesia. And several chapters from the Summa itself were culled and presented to the Fathers assembled at the Vatican for their consideration.⁴ In the subsequent definition, the work of Torquemada for the "glory of the Apostolic See" was, as it were, canonized.

¹De Summo Pontifice IV, c.5. p.87; ³Summa II, c.112, col 7 ad 6

²Summa II, c.112, ad 8 ad finem

⁴De inerrantia Romani Pontificis ex cathedra definientis: suffragium praeclarissimi Cardinalis Johannis Turrecremata, O.P. ex Summa de potestate papali depromptum et reverendissimis patribus concilii Vaticani exhibitum. (Summa II, cc.109-112)

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Argulicus - S. Gersoni

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THESIS ABSTRACT

JUAN DE TORQUEMADA

Exponent of Infallibility
in the fifteenth century

by

Sister Mary Edith
Maryknoll Sister

Presented to the Faculty
of History

UNIVERSITY OF OTTAWA

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THESIS ABSTRACT

PART ONE of this thesis is an attempt to place the question in its historical setting: how was plenitude of power given to the Church, or how was plenitude of power in the Church? How was this understood by the older scholastics and the thirteenth century canonists? How was it understood by the Papacy itself, exemplified in such a person as Pope Innocent III at the dawn of the age? The older scholastics were not uniformly explicit in their teachings about the relation of the Pope to the primacy of Peter. Their main preoccupation had been to save the hierarchical organization of the Church then under attack from the Waldensians and Catharists. Although there is no doubt about their position regarding the primacy of the Pope, the plenitude of power, and the inerrancy of the Church -- their teaching required amplification on many heads. During the thirteenth century the Papacy was at the high point of its prestige.

Before the end of the century that prestige had begun to wane: matters reached a crisis with the quarrel of Boniface VIII and Philip the Fair in the growing autonomy of the lay power. The rise of the "lay spirit" was exemplified in such men as the French civil lawyers who taught how the Papacy might be attacked with impunity. To flaunt the authority of the Pope was one thing; to have a theory that should do credit to the idea was another. The most prominent of the theorists were Marsilius of Padua and William of Ockham: they provided the rationale for

anyone who should be disposed to attack the Papacy; ultimately, their theories were the license for attacks on authority in general -- in principle. In this they paved the way for the Protestant revolt, coupled with their new exegesis of Scripture, or "private interpretation". They both attacked the primacy of Peter and, widely, the prerogatives of the Papacy. They taught that the General Council was superior in authority to the Roman Pontiff, that fraternal correction extended to the Pope even to the point of judging him for his misdeeds.

Representative of the men who rose to meet the challenge to papal authority were Augustine of Ancona, Alexander of Santo Elpidio, and Alvarus Pelagius. They taught expressly that the Pope was above all human authority --(the scholastics had all taught this expressly)-- and as such he could be judged by no man; the General Council was not superior to the Pope; the primacy of Peter extended to the Popes with the same comprehensive powers of jurisdiction given to Peter. Their works -- and those of several contemporaries -- were the first steps in the larger elucidation of papal claims and prerogatives as synthesized by Juan de Torquemada.

The fifteenth century attacks on plenitude of power differed very little from those of the previous century; they had gained momentum with the Great Schism and proved their strength at the Council of Constance. Little changed, they were brought over as a whole into the debates of the Council of Basle. It was in

the Council of Basle that the opportunity was first given Juan de Torquemada to defend the common teaching of the Church.

The Spanish Dominican, Juan de Torquemada, was an eminent canonist and theologian of the fifteenth century. He was named by Pope Eugene IV in the beginning of his pontificate as papal theologian. At the Council of Basle he distinguished himself for his defenses of papal prerogatives. In three conciliar debates, he debated against the Council, covering three years, until 1436. The three resultant briefs contain the germ of much of his later development in doctrine. But another tract, delivered three years afterwards in the Council of Florence, is the basic summary from which the Summa de Ecclesia can be said to have developed.

The culminating point of the teaching of Juan de Torquemada was the infallibility of the Apostolic See in "matters of Faith and the things necessary for the salvation of men". Infallibility with Torquemada was a logical necessity flowing from plenitude of power in the Papacy. His argument begins with the necessity for order in the Church, the necessity for rule by one flowing from that premise; then the primacy of Peter and the plenitude of power involved in that primacy. The nature of assent required that Faith be certain, that there be some tribunal whose judgement could be considered authoritative. Infallibility was, then, the necessary corollary of plenitude of power, otherwise, "it could be said that Christ had failed His Church".

Historically, it was impossible to predicate infallibility of any of the Sees founded by the Apostles, except the Roman See;

Jerusalem, Antioch and Alexandria had all gone astray from the Faith. The Apostolic See was the only one where the prima fides had remained intact from the beginning. Therefore, if infallibility were to be located anywhere, it must be the Apostolic See.

Torquemada insisted that the prime requisite to understanding the roots of the conflict, not only of the fifteenth century, but of the earlier ages, lay in the inability to understand how the keys were given to the Church. It was, then, in the resolution of the question of the keys that the the whole fabric of conciliar pretensions tumbled to the ground.

The exegesis of Matthew 16 and Luke 22 had traditionally interpreted the conferring of the keys and the unique prayer of Christ for the Faith of Peter -- in favour of the Apostolic See. The Acts of Councils had proved that deference always shown the Bishop of Rome; his was the last high court of appeal. The Fathers, the canons of Councils, history, and tradition -- all supported the primacy of the See of Rome.

The Summa de Ecclesia is primarily a work that undertakes to show how the Church is constituted; how the Roman See hold the primacy; what the relations of General Councils are to that See. It is a synthesis of the occasional teaching of Juan de Torquemada as found basically in the five tracts under consideration in this study.

JUAN DE TORQUEMADA:
SOLEMNIS TRACTATUS...in favorem Eugenii
Papae IV: contra decreta concilii Con-
stantiensis in quo fuit depositus Johan-
nis XXIII, et contra gesta in concilio
Basiliensi adversus Eugenium.
ad finem mensis Maii, 1433

MANSI 30: 550-590

TRACTATUS A

TRACT A: This Tract is of a considerably different order from B,D,andE as well as the SUMMA DE ECCLESIA. It is a commentary on the classical definition of LEX: that of Saint Isidore of Seville. Nothing of this type of argument is found in the other Tracts, or the SUMMA as far as I have thus far examined it.

STATE of the TEXT as found in MANSI: 30

The first line omits the word TESTE where the catalogs allow no variant for the Incipit: QUONIAM LEX TESTE.

Perhaps half the references to numerals are mistaken;

Several very badly garbled passages have been noted, i.e:

Pages 22(2); 26(5); 42(top);

Numerous transcribal errors, the result of commonly mistaken letters:

EVAM becomes ETIAM Page 7(1); SPIRITUALITER for SPECIALITER 33(1);

Generally speaking, nearly all the references show mistakes in citing; occasionally meaningless interpolations occur.

EMENDATIONS:

Numerical references I have regularly corrected as well as errors in the Incipits of canons, frequently mistaken in TRACT A;

Frequently, obvious mistakes that apparently resulted from a poor transcription I have corrected;

Other emendations that seemed necessary are noted; interpolations and omissions have been bracketed.

OCCASION of the COMPOSITION of TRACT A:

As a member of the Reform Committee of the Council of Basle, Torquemada and John of Monte Negro (Provincial of the Lombardy Dominicans) were chosen, as Pope's theologians, to debate for the negative side; Dionysius de Sabrencoys (an ambassador of the University of Paris) had debated for the affirmative. (A great deal of discussion on the diversity of opinion on the decretum irritans is recorded by the contemporary historian, John of Segovia (in Monumenta conciliorum generalium saeculi xv, II, 827 sqq; 844 sqq -- as late as 1436)

As the heading suggests, Torquemada's task was directed against the decrees of the Council of Constance and their use and amplification by the Council of Basle.

Dating appears as an Explicit: ad finem mensis Maii, 1433.

IMPORTANCE of TRACT A:

The defense of the principle: Princeps solutus a lege -- in refuting the legality of actions lese majeste -- especially in the exceedingly troublesome question of the papal right to fill benefices, and to assign varying degrees of ecclesiastical status and honours. Torquemada says in the SUMMA (III,c.52) -- that the opposition considered the Papacy shorn of this right to be the "key to the whole business of reform". In TRACT C, answering invective, he calls it a "hook used to angle for the good graces of princes and prelates".(Page 50(2)).

SOLEMNIS TRACTATUS

Fratris Joannis de Turrecremata, ordinis praedicatorum, cardinalis sancti Sixti doctoris illuminatissimi, in favorem Eugenii papae IV; contra decreta concilii Constantiensis in quo fuit depositus Johan XXIII et contra gesta in concilio Basileensi adversus Eugenium.

- (1) Quoniam lex [teste] ^{tam} morali quam divina doctrina non habet vim coactivam nisi ex legislatoris auctoritate; nec praeceptum legis potest in amplius suae ligaturae vires protendere quam se extendat potestas praeceptoris. Per necessarium judicatur in ipsa legum et decretorum celebratione legisferis mensuram praecognoscere potestatis ne contingat vacuas viribus leges condere et propriis transgressis limitibus, alienos usurpando, inaniter gloriari. Hinc gentium doctor et ecclesiae splendidissimum jubar Apostolus Paulus II Corinthiorum X, inquit: "Nos non in immensum gloriabimur, sed secundum mensuram regulae qua mensus est nobis Deus." Ubi Glossa ait: "idest tanta potestate utimur quanta concessa est ab auctore; nec mensuram vel modum egredimur ... 'et non gloriabimur in immensum' potestatem excedendo ... quod illi faciunt qui usurpando gloriantur ultra mensuram." Haec ibi.
- (2) Ceterum est multis viris utriusque juris professoribus, -- Dei gloriam, suaeque ecclesiae sanctae honorem inflammata mente zelantibus, -- et decreta condere (col 551) irritantia simpliciter et indistincte contra apostolicam sedem praesertim in materia collationis beneficiorum et provisionis ecclesiarum, videatur supergredi conciliorum generalium facultatem. Quibusdam aliis non mediocri auctoritatis et sapientiae viris magistris et doctoribus oppositum sentientibus: ut universa in sacro generali concilio decretanda maturitate qua convenit fiant sacra reformationum deputatio, praesentis concilii, honoris et reformationis ecclesiae praecipuam sollicitudinem gerens, sciens juxta sapientum sententiam diu deliberandum esse quod statuendum est.
- (3) Semel super hac difficultate decreti irritantis cujus veritas a nonnullis clavis judicatur reformationis sedis apostolicae, cum matura diligentia deliberandum duxit, hujus materiae curam studiosam, qui eam publico disputationis certamine dilucidarent; ceteris duobus magistris in sacra pagina; videlicet, magistro Dionysio almae universitatis Parisiensis ambaxiatori et mihi magistro Joanni de Turrecremata fratri ordinis praedicatorum nationis Hispaniae, specialiter committens; cujus almae deputationis praeceptoriae commissioni pro parte mea humiliter obediens, alia verborum prolixitate dimissa et si magnitudine ponderis pressus, pro declaratione materia sub tali verborum forma duxi quaestionis titulum proponendum.
- (4) Utrum in omni lege licita ad obviandum abusibus curiae Romanae multiplicibus possit per generale concilium simpliciter et indistincte poni decretum irritans summis pontificibus?
- (5) Et quoniam coram sapientissimorum virorum ac reverendissimorum patrum multa sapientia divina pariter et humana praestantium coetu

sacratissimo locuturus sum, -- ne videar velle docere Minervam aut aquam superinfundere mari, -- circa propositum dubium brevibus intentionem meam absolvere curabo protestationibus tamen quibusdam praelibatis. Protestor quidem primo quod illa quae dicturus sum solum per modum avisamenti et gratia in praesenti ardua materia collationis habendae, ut veritas clarius elucescat dicere intendo; non asserens nisi quae asserenda sunt nec negans nisi quae neganda censet sancta mater ecclesia.

- (1) In quibus si ignorantia mea aut inadvertentia mea variare contingeret pro non dictis haberi supplicio; omnia per me dicenda hujus sacri concilii correctioni submittere. Secundo protestor quod si in defensione hujus auctoritatis et gloriae sedis apostolicae, -- unde caeterorum praelatorum gloria et honor pendere videtur, -- aliquid videar dicere contra abusus dominorum ordinariorum; nullus dominorum meorum capiet ad injuriam cum nullum praesentium teneam, nisi multa prudentia et virtutum venustate dotatum.
- (2) Quibus protestatis venio ad responsionem conclusionis in qua pro fundamento dicendorum exponitur primo conditiones legis. Pro quo notandum, quod sanctus Isidorus, lux ac decus Hispaniae, legem describens in II Etymologiarum (Dist IV, c. Erit autem) ita dicit: "Lex honesta, justa, possibilis secundum naturam, secundum consuetudinem patriae, tempori locoque (page 2) conveniens, necessaria, utilis; manifesta quoque, ne aliquid per obscuritatem in captione contineat, nullo privato bono, sed pro communi utilitate omni conscripta." Haec ille. In qua quidem descriptione novem videntur (col 552) includi conditiones seu proprietates quas lex bona et licita debet habere: et quoniam exsumendae probantes propositum. Ideo quaedam levi explanatione illas duxi primo transcurrere.
- (3) Est ergo sciendum primo, quod cum lex humana non possit esse regula prima simpliciter, oportet quod sit regula regulata et mensurata quadam alia regula superiori. Omnis autem res quae ab alia suscipit certitudinem seu normam, ad hoc quod actu sit recta oportet formam habere proportionabilem suae regulae. Superior autem regula quae est mensura legis humanae, est duplex, scilicet lex divina et lex naturae, dicente Tullio in Philippica XI: "Lex nihil aliud est quam recta ratio et (a) numine Deorum tracta [ratio] imperans honesta." Ad hoc ergo, quod lex humana sit licita et sit bona oportet, primo quod sit conformis et proportionabilis legi divinae. Et ad haec refertur prima conditio posita, cum dicitur "honesta," id est conveniens rationi quae teste Tullio libro De natura deorum, est quae cujusdam naturae quam divinam vocant, thura caerimoniamque affert; et ibidem est per quam reverenti famulatu caerimoniae divini cultus exercentur.
- (4) Sed secundo etiam requiritur quod non discordet a lege naturali; et hujusmodi gratia additur quod sit "justa." Sicut enim dicit Augustinus, libro De libero arbitrio: "In rebus humanis dicitur aliquod justum ex quod est rectum secundum regulam rationis," quae vere dicitur lex. Unde si a naturali lege discordat non dicitur lex sed corruptio legis. Et ideo ut idem dicit Augustinus et ponitur in Decretum, IX Dist. # Constitutiones: "Constitutiones... saeculares si naturali juri contrariae probantur, penitus sunt excludendae."

- (1) Sed tertio requiritur ad hoc quod lex sit valida; quod emanet ab habente auctoritatem condendi eam; alias nullius esset roboris ac firmitatis quoniam nullam vim obligandi ac sui observationem lex habet, nisi ab habente potestatem in re illa de qua lex constituitur et emanat. Ceterum, teste Aristotele, X Metaphysicorum: mensuram oportet certam esse, idest proportionatam et aptam mensurato. Et IV Politicorum: oportet aptare leges politicae et non e contra. Omnes leges proportionari et mensurari his quibus imponuntur, sicut alia lex imponenda est viris et alia pueris. Ideo additur tertia proprietas legis, scilicet quod sit "possibilis secundum naturam," idest tam facultati agentis quam et capacitati naturae patientis. Ut enim Regula juris habet, ad impossibile nullus obligatur.
- (2) Praeterea quod homo cum natura sit animal politicum et civile, I Politicorum non potest solus vivere. Ideo oportet quod lex humana consuetudini et moribus hominum conformetur cum quibus vivere debet; alias diversitas studiorum causaret inter eos diversitatem animorum. Ideo recte additur quarta conditio, videlicet ut sit "secundum consuetudinem patriae."
- (3) Amplius, cum lex humana praecipue fundetur super experientiam publicam, ordinatur enim ad bonum commune, ut infra dicitur. Expediunt aliqua reipublicae uno tempore et uno loco quae non alio; et in ipsa eorum experientia demonstrat. Ideo requiritur quod lex humana sit debitis circumstantiis vestita; (col 553) et hujusmodi grata redditur quinta conditio, videlicet quod sit loco, temporisque conveniens."
- (4) Demum quoniam lex humana in republica habet officium artis medicinalis in corpore animalis, scilicet purgare malos humores, ratione cujus Aristoteles dicit in I [Politicorum] Rhetoricae: quod in legibus consistit salus civitatis, ad hoc quod lex humana sit licita sive bona, requiritur quod sit expediens sive sufficiens ad purgationem malorum de republica. Ideo sexta conditio additur, scilicet quod sit expediens ad consecutionem bonorum reipublicae ac commodorum, et ideo septima additur conditio, scilicet quod lex sit "utilis."
- (5) Item cum lex humana dicitur in decretorium, et quasi lucerna: secundum illud Proverbiorum VI: "Mandatum lucerna est et lex lux, et via vitae," Necessario requiritur quod lex sit manifesta, ne aliquis propter ejus obscuritatem cadat in errorem, et interdum credens facere secundum legem faciat contra legem; nullibi eorum magis vitandus est error, quam in principiis, sive in his quae locum regulae habent; quoniam, ut dicitur in I Coeli et mundi: parvus error in principio, maximus fit in fine. Et ejus gratia ponitur octava conditio, scilicet quod sit "manifesta."
- (6) Ultimo cum lex ordinetur ad bonum commune non debet ad commodum alicujus privati sed "pro communi utilitate" conscribi. Alias enim lex non potest (page 3) esse recta et regalis sed perversa et tyrannica. Quia sicut rex differt a tyranno quia rex dicitur qui recte agit et intendit bonum commune; tyrannus vero qui perverte principatur et intendit proprium et privatum commodum. Sic recta lex et regia

dicitur in qua intenditur bonum commune; lex vero tyrannica et perversa in qua proprium.

- (1) Et ideo hic ultimo scilicet nona conditio ponitur quod nullo privato bono sed pro communi utilitate, et cetera. Hoc ergo supposito fundamento respondeo ad quaestionem negative sub tribus conclusionibus quarum una ponitur in terminis universalibus descendendo ad materias de quibus est principaliter propositum.
- (2) Et prima conclusio est: non in omni lege licita ad obviandum abusibus Romanae curiae multiplicibus possunt generalia concilia simpliciter et indistincte imponere decretum irritans summis pontificibus. Quam conclusionem una tantum ratione communi probare conabor. In deductione aliarum conclusionum probaturus eam multipliciter. Primo sic ponere in omni lege licita universaliter et indistincte decretum irritans contra summum pontificem, est dissipare communitatem politicae Christianae. Ergo tale nec fiendum; nec etiam per generalia concilia est possibile fieri de jure. Et ita conclusio posita est vera.
- (3) Consequentia patet et antecedens probo sic: et supponitur ex dictis contrarie opinantium quod legi licite opponere decretum irritans est legem impermutabilem facere; quia hujus gratia petitur ut decretum conciliorum irritans contra papam attentantem ea infringere adjungatur.
- (4) Tunc antecedens patet sic: quoniam in re maxime variabili cujusmodi est materia actuum humanorum; cum in ea uniformiter semper aliquid observari cum utilitate salutis reipublicae non sit possibile applicare legem impermutabilem ad dissipare rempublicam ut omnium mortalium (col 554) et legalium testatur traditio. Unde hac ex causa surrexit necessitas apud legales ponendi praeclarissimam virtutem ^{κ'ς]} EPICHEYA⁷ nomine. Cujus officium ut libro Ethicorum describit Aristoteles, est in casibus in quibus experitur legum observantiam juxta literae corticem reipublicae utilitati fore molestam; praetermissis verbis sequi quid ratio justitiae et communis deprecatur utilitas.
- (5) Unde Albertus dicit ibidem, legem humanam hac ratione ad humana opera se habere sicut universale ad particularia, quod secundum esse acceptum variari necesse est particularibus variatis dicente Aristotele in libro Politicorum, motis nobis moventur omnia quae in nobis sunt. Sicque actus humani de quibus leges dantur in singularibus contingentibus consistunt quae innumeris modis variari possunt. Non videtur bene possibile in talibus rebus cum salute reipublicae legem humanam constitui quam nullo modo variari contingat. Quare ergo patet conclusio.
- (6) Secunda conclusio: non in omni lege licita ad obviandum abusibus qui fiunt circa sacramenta possunt poni per generale concilium contra papam aut alios irritantia decreta. Patet ergo quoniam lex licita quae data est De consec., Dist I, c. [Sacramenta] dicitur in qua lege cavetur quod "sacramenta altaris non nisi a jejunis celebrentur." Ita licita lex est illa quae ibidem ponitur in c. Sicut non alia, in qua cavetur ne celebretur nisi in locis sacris; et hae leges datae contra abusus quorundam ventre pleno celebrantium et in locis non sacris.

- (1) Item lex sanctissima est data, -- et ponitur I, Q 7, c. Si nulla et capitulo sequenti -- qui nullus capiat ordines ab haereticis episcopis et ab ecclesia praecisis. Et ita de aliis multis legibus potest adduci exemplum. Et tamen in nulla istarum quantumcumque licitarum ad obviandum quibuscumque abusibus potest poni decretum irritans contra papam; immo nec contra minimum sacerdotem. Ita quod non irritetur factum lege illa non commensuratum patet. Quoniam sive celebretur in locis sacris sive in aliis sive stomacho jejuno sive repleto, dum tamen celebrans sit sacerdos et intendit facere quod ecclesia intendit per illam formam verborum conficit. Et in simili modo in multis possumus exemplariter loqui. Et ita patet quod vera est prima conclusio, quae dicit quod non in omni lege licita est, et cetera.
- (2) Tertia conclusio: in materia provisionum ecclesiarum cathedralium et collatione beneficiorum non potest contra papam indistincte poni decretum irritans auctoritate generalium conciliorum. Quae quidem conclusio multipliciter probabitur quia circa eam principaliter consistit virtus veri nostri ad quam probandam deducuntur viginti quatuor rationes ex praenotatis novem proprietatibus legis assumptae.
- (3) Et ex prima conditione legis quae est ut sit "honestas" sive ut sit religioni conveniens, (page 4) arguitur primo sic: nullum decretum potest esse licitum et ita nec validum et per consequens nullomodo emanandum a sacro concilio, -- in quo purissima fidei edocetur veritas et haeresis maxime extirpatur, -- quod continere videtur in se periculum haeresis. Sed tale decretum irritans in materia praesenti contra sedem apostolicam videtur esse hujusmodi; ergo non est licitum et ita nec validum. Consequentia patet in tribus partibus. Major patet ex prima (col 555) conditione legis.
- (4) Minor vero probatur, quia per tale decretum detrahitur privilegio, juri et dignitati ac honori sanctae sedis apostolicae. Dicit enim Leo papa in epistola ad Marcianum imperatorem: "Magnus honor est unicuique dignitas sua." Subtrahere autem privilegium et primatum sedis apostolicae quam periculosum sit exprimitur, Dist XXII, c. Omnes: "Qui autem ecclesiae Romanae privilegium ab ipso summo omnium ecclesiarum capite traditum conatur auferre, iis proculdubio in haeresim labitur; hic est dicendus haereticus. Fidem quippe violat qui adversus illam agit et ille contumax invenitur, qui eam cunctis ecclesiis praetulisse cognoscitur."
- (5) Secundo ex eadem radice sic: omne illud quod est inductivum schismatis in ecclesia Dei est illicitum et inconveniens et tanquam venenum fugiendum a concilio sacro cujus studium est unitatis et pacis vinculo membra totius ecclesiastici corporis fovere connexa. Sed tale decretum sub forma dicta contra sedem apostolicam est hujusmodi, et cetera. Major est manifesta; minor vero probabitur, quoniam dividit membra a capite et filias a matre, dum decernit in provisionibus ecclesiarum ecclesias inferiores non obedire matri, hoc est ecclesiae Romanae in ordinatione ecclesiarum.
- (6) Ut enim sanctus Thomas ponit in II: II, Q 39, art 1 cum "unitas ecclesiae in duobus attenditur," ut dicit, "scilicet [in] connectione

membrorum ecclesiae ad invicem seu [in] communione et item in ordinationem ecclesiae ad unum caput, [secundum, illud Colossenses II, 'Inflatus sensu carnis suae] et non retinens caput, ex quo totum corpus per nexus et conjunctiones [membrorum] subministratum et constructum crescit in augmentum Dei... Caput autem est ipse Christus...cujus vicem in ecclesia gerit summus pontifex. Schismatici dicuntur qui subesse renuunt summo pontifici et qui membris ecclesiae cujus communicare recusant."

- (1) Alexandro vero de Ales in II Sententiarum in materia schismatis quaerit quae sit ecclesia a cujus unitate discessio schisma nuncupetur. Respondit per hoc quod dicit Callistus papa: "Nulli dubium est quin apostolica ecclesia mater omnium ecclesiarum a cujus regulis nullatenus potest deviari." Et habetur Dist XII, c. 1. Item quaerit cujusmodi discessio ab ista ecclesia debeat schisma dici. Respondit, quod illa discessio dicitur schisma cum aliqui vim et potestatem Romanae ecclesiae annullant. Ex quorum dictis patet minor: quod tale decretum irritans videtur irritare, et scindere unitatem ecclesiae, cum ab influxu capitis et matris, scilicet ecclesiae Romanae subtrahat et elongare studeat ecclesias inferiores quod futurum legimus circa finem mundi. Unde Glossa super illud II Thessalonicenses II: "Nisi prius venerit discessio id est ecclesiarum ab obedientia Romanae ecclesiae; itaque illo tempore [...] ecclesiae undique per orbem diffuse subtrahende ab obedientia Romani pontificis ita ut pauci sibi obediant. Et papa tunc temporis circa partes Romanas se includet cum pauci aliis ab ejus obedientia subtractis.
- (2) Tertio, ex eadem radice: nullum decretum potest esse licitum aut validum, quod videtur esse sacrilegum, aut sacrilegium continere. Et ita nullum tale est emanabile a sacro concilio cujus intentio tota versatur reformationi et sanitati membrorum singulorum ipsius ecclesiae; sed hujusmodi decretum est hujusmodi; (col 556) ergo et cetera. Consequentia est manifesta; antecedens pro majori clarissimum est. Minor vero sic probatur; sacrilegium enim teste Isidoro est sacrae rei violatio. Per hoc autem decretum, si fieret violaretur apostolica sedes, ut patet manifeste irritando usum suae potestatis. Et confirmatur per illud quod dicitur in Decreto, XVII, Q 4, c. Si quis: "Committunt sacrilegium...qui de principali judicio disputant dubitantes an ille dignus sit quem princeps elegerit." Tale autem decretum irritans, cum potestatem principis summi in terris, scilicet, summi pontificis non solum judicet, sed irritet et demolire videatur, merito sacrilegum judicandum videtur.
- (3) Quarto ex eadem radice sic: nullum decretum est dicendum licitum, nec a sacro concilio emanandum, quod irritativum divinae legis; cum praecipua cura sacri concilii sit omnes exorbitantias a lege divina de conservationem fidelium tota sollicitudine propellere; sed hujusmodi decretum est irritativum divinae legis; ergo et cetera. Consequentia nota. Major etiam dicente sancto Augustino IV, De civitate Dei, c. 6: "omnium legum inanis est censura, nisi divinae legis imaginem gerat." Minor probatur sic: quoniam lex Dei praecipit obedire ecclesiae praepositis, secundum illud apostoli ad Hebraeos XV: "Obedite praepositis vestris et subjacete eis." quod maxime de papa intelligendum est, (page 5) secundum glossam illius textus, dicit quod "majori potestati magis est obediendum quam minori."

- (1) In tantum enim obedientia sedis apostolicae est necessaria divinae legis imperio, ut "subesse Romano pontifici sit de necessitate salutis," ut deducit sanctus Thomas in libro quem fecit Contra errores Graecorum, c. 32 ad quod inter alias est auctoritas Cyrilli libro Thesaurorum, dicentis: "Itaque, fratres, si Christum imitatur, ut ipsius oves vocem ejus audiamus, manentis in ecclesia Petri et non inflemur vento superbiae ne forte tortuosus serpens propter nostram contentionem nos ejiciat ut Evam olim de paradiso."
- (2) Ex hac radice Bonifacius in quadam decretali Extravagantibus, quae incipit Unam sanctam in fine ita concludit: "Porro subesse Romano pontifici omni humanae creaturae declaramus...et diffinimus...esse de necessitate salutis." Sed manifestum est quod tale decretum irritans, provisiones ecclesiarum etiam justas et bonas factas per summum pontificem, est irritativum divinae legis, quae praecepit obedire in omnibus apostolicae sedi in quibus nec bonae fidei, nec moribus bonis contradicit, ut patet ex dictis.
- (3) Et maxime adhuc confirmatur per illud quod Dominus jubet Matthaei XXIII ubi dicitur: "Super cathedram Moysi sederunt scribae et pharisaei. Omnia quaecumque dixerint vobis servate et facite; secundum autem opera suorum nolite facere." Id est, si praelatis sedentibus super cathedram Moysi tam universale imperium det Dominus obedientiae; quam extensum credendum est quod Dominus praecepit de obedientia praestanda summis pontificibus Petri cathedram tenentibus. Quae tamen lex Christi et mandatum irritatur et violatur per tale decretum, et ideo merito dicitur in Decreto LXXXI Dist., c. Si qui: "Peccatum paganitatis incurrit quisquis dum Christianum se asserit, sedi apostolicae obedire contemnit."
- (4) Item hoc ex eadem radice sic: nullum decretum potest esse licitum (col 557) quod est praesumptuosum et temerarium. Et ita a concilio sacro nullo modo emanandum cum sacrum concilium Spiritu Sancto regatur, qui omnia in numero, pondere et mensura constituit. Sed tale decretum irritans contra potestatem papae in materia dicta est vere praesumptuosum et temerarium, et cetera. Consequentia patet; major est manifesta; minor probatur.
- (5) Cum enim quaelibet actio debeat esse proportionata virtuti agentis et decretum principis legem constituentis auctoritati, praesumptuosum dicitur esse illud quo attentatur quod excedit facultatem operantis. Assumere enim aliquid ad agendum, quod praefertur virtuti agentis ad rationem praesumptionis pertinet. Et ideo dicit Valerius Maximus: "Ea tuta potentia est quae viribus suis modum imponit." Quod vero hoc faciens dictum concilium assumeret opus transcendens virtutis suae terminos, patet; quoniam non est in potestate concilii mutare leges et statuta Dei.
- (6) Lex autem divinae providentiae quae posuit papam loco sui totius ecclesiae praesidentem cum plenitudine potestatis, videtur ordinasse ipsum ordinatorem ecclesiarum omnium et distributorem beneficiorum. Unde Damascenus super illud Lucae IX: "Faciamus hic tria tabernacula," inquit de Petro cujus successor est papa, "non te Dominus tabernaculorum sed universalis ecclesiae constituit"

constructorem, totius sui gregis pastorem." Quibus consideratis dicit Leo papa, quod habetur Dist XIX, Ita Dominus: "Verum hanc petrae istius sacratissimam firmitatem, Domino, ut diximus aedificante constructam nimis impia vult praesumptione videre quisquis ejus potestatem tentat infringere favendo cupiditatibus suis et id quod accepit a veteribus non sequendo."

- (1) Hoc jus videant etiam qui tale in tali materia vel simili decretum irritans attentare proponunt, quod Eusebius papa orientalibus episcopis scribit in quadam epistola dicens: "Ita in lege scriptum est: 'maledictus homo qui transfert terminos sui proximi; et dicet omnis populus: Amen.' Quare miror vos tam audaces esse et tam imprudenter egisse et terminos ac jura beati Petri apostolorum principis invasisse." Loquitur de congregatione concilii absque auctoritate papae.
- (2) Item arguitur ex parte conditionis secundae legis quae est quod sit "justa," idest conformis legi naturali. Sic enim dicit Augustinus in primo libro De libero arbitrio: "Non videtur esse lex quae justa non fuerit." In rebus autem humanis dicitur aliquid justum ex eo quod est rectum secundum regulam rationis quae dicitur lex naturae; unde si a naturali lege discordat non erit lex sed corruptio legis, ut amplissime et magistraliter deducit sanctus Thomas in II [*]
- (3) Ex eadem radice arguo impossibilitatem juris et indecentiam ponendi tale decretum, sicut praefertur et sic. Omnis respublica sive communitas naturali justitia tenetur ad conservationem illius potestatis a qua dependet bonum reipublicae in sua plenitudine et integritate; et ita per consequens non valet facere legem justam aut licitam in derogatione ejusdem potestatis. Sed bonum reipublicae Christianae quantum ad regimen suum pro magna parte dependet ex potestatis plenitudine sedis apostolicae, cujus est ordinare totam ecclesiam et gradus et status in ea. Ergo sequitur quod (col 558) sacrum concilium cujus studium est ea quae sint justitiae exequi, non potest tale decretum irritans constituere, cum hoc non videatur posse fieri sine laesione legis sive justitiae naturalis. Consequentia patet; major et minor etiam.
- (4) Secundo, nullum decretum quod tollit optimum principatum in ecclesia, scilicet regalem potest esse justum; immo omne tale est iniquum et ab omni concilio, Sancto Spiritu recto, tanquam (page 6) hostile vitandum. Sed tale decretum contra sedem apostolicam in materia provisionis ecclesiarum et cetera est hujusmodi. Consequentia nota; major notissima est.
- (5) Minor probatur, quoniam ponere quod inferiores praelati habeant ecclesiasticum regimen sive dispositionem et ordinationem reipublicae Christianae religionis, actus jurisdictionis, et hierarchicae dispositionis, quod actus non posset exercere ipse papa, qui omnibus

*Mansi: q. Concordia in this place.

est superior, est veraciter tunc ponere in ecclesiastica politia principatus non reducibiles ad unum superiorem monarcham tales actus exercere valentem. Cum respectu talium monarchae sive superioris irritetur auctoritas et potestas ligetur, ut circa dispositionem ecclesiastici principatus providendo ecclesiis, conferendo beneficia nihil possit, quod est expressa contra illud dictum Joannis X: "Fiet unum ovile et unus pastor."

- (1) Tertio ex eadem radice sic: nullum decretum est dicendum justum nec per consequens licitum quod spoliat sedem apostolicam suis privilegiis et jure suo; et per consequens nullum tale emanandum a sacro concilio, cujus sollicitudo debet esse, ut unumquodcumque in suo jure conservet. Sed per hoc decretum irritans spoliatur sedes apostolica privilegiis suis et jure a summo principe Christo Jesu, totius principatus capite, collatis et donatis; ergo, et cetera. Consequentia nota, et major est manifesta; praesertim cum, sicut supra allatum est ex Decreto, XXII Dist., c. Omnes: "non dubium quod si quis cujuslibet ecclesiae jus suum detrahit injustitiam facit...Qui autem ecclesiae Romanae privilegium ab ipso summo omnium ecclesiarum capite traditum auferre conatur, hic proculdubio in haeresim labitur."
- (2) Minor vero probatur; quoniam per tale decretum irritans privatur et spoliatur sedes apostolica auctoritate dispositionis, ordinationis, et provisionis ecclesiarum, quae inter privilegiis sedis apostolicae videntur tenere principalitatem; quod (cum in potestate ordinis sit aequalitas inter summum pontificem et alios quoscumque sacerdotes) in potestate jurisdictionis quae respicit institutiones et dispositiones ac ordinationes omnium ecclesiarum et correptiones personarum delinquentium, in eis videtur stare principatus et auctoritatis dignitas sibi collata. Qua ratione caput, mater et cardo omnium ecclesiarum dicitur.
- (3) Unde in Decreto, Dist XXII c. Sacrosancta ex auctoritate Anacleti sic dicitur: "Haec vero apostolica sedes, caput et cardo a Comino, et non ab alio instituta est; et sicut cardine ostium regitur, sic hujus sanctae apostolicae sedis auctoritate omnes ecclesiae, Domino disponente, reguntur." Item Extravag. De Praebendis, c. Licet, libro Sexto: "Dispositio omnium ecclesiarum et omnium beneficiorum mundi ad sedem apostolicam noscitur pertinere." Item in concilio Viennensi dicitur sic: "Salva tamen in praemissis omnibus Romani pontificis potestate, ad quam (col 559) ecclesiarum, personatum, dignitatum, aliorumque beneficiorum plena et libera dispositio ex suae potestatis plenitudine noscitur pertinere." Ita in concilio.
- (4) Quarto ex eadem radice sic: omne decretum quod tollit debitum obedientiae sedi apostolicae est injustum, et ita nullum tale emanandum a concilio cujus praecipua cura debet esse ut capite ecclesiae universalis ipsa ecclesia universalis plenarie obediat, in quibus nec contra legem Dei, nec contra statum generalem universalis ecclesiae mandat, aut praecipit. Sed decretum praefatum irritans potestatem papae in materia praefata est hujusmodi; ergo,

et cetera. Consequentia est bona. Major est manifesta; quia sic supra dictum est ex auctoritate Augustini primo De libero arbitrio: "Lex dicenda non est quae iusta non fuerit," cum autem ex ordine juris naturalis et divini inferiores teneantur obedire superioribus suis. Et per consequens vacuum et invalidum quod in his quae legi superioris, scilicet Dei non contradicunt, superioribus obedientiam subtrahit. Minor vero patet, quoniam per hoc decretum irritans debitum obedientiae apostolicae sedi subtrahitur in dispositionibus ecclesiarum, quod manifeste est contra quo in loco debet attendi quid dicitur Dist XCVIII, c. Obedientiam. "Obedientiam autem inferiores ex ordine superioribus debent; summo etiam pontifici ea debetur ab omnibus obedientia; ut nulli liceat ei communicare, cui pro actibus suis inimicus extiterit, nec in ecclesia esse poterit, qui ejus cathedram deserit."

- (1) Quinto ex eadem radice sic: omne decretum papam reddens impotentem ad faciendum ea quae ex Deo praecepto tenetur facere, est injustum et ita vanum et inane; et per consequens nullo modo attentandum per sacrum concilium, cujus vigilantia praecipua debet esse opitulari, ut unusquisque quae Dei praecepta sunt efficacius et expeditius valeat adimplere. Sed decretum irritans contra papam in materia beneficiorum et confirmationum dignitatum est hujusmodi; ergo et cetera. Major est manifesta; quoniam omnis lex humana tantum habet de ratione legis virtutis et valoris, quantum ad divinam legem ordinat et promovet.
- (2) Minor probatur; quoniam ad pascendum gregem Dominicum sibi utiliter commissum, cujus cura et pastura sibi sub praecepto est injuncta secundum illud Joannis ultimo: "Pasce oves meas." Et illud Glossae ordinariae super illud I Petri V: "Pascite qui in vobis est gregem," ubi sic dicit "Sicut Dominus [soli] Petro totius gregis curam habere iussit, ita [Petrus] sequentibus ecclesiae pastoribus jure mandat, ut quisquis qui secum est, gregem Dei sollicita gubernatione tueatur." Per istud decretum irritans redditur impotens, cum per id claudatur sibi manus potestatis pascendi oves Christi, providendo plebibus de bonis pastoribus, providendo idoneis personis pauperibus clericis de (page 7) beneficiis et subvenire indigentibus de ecclesiae eleemosinis; patet hoc nisi caecis.
- (3) Item ex tertia conditione legis quae est ut sit possibilis secundum naturam. Et arguitur multipliciter quod tale decretum non sit possibile de jure; nec de facto validum. Primo sic: nihil contra communem ordinem naturalis rationis potest emanare sub ratione legis aut decreti concilio cujus praesidere creditur ipse qui Dei virtus (col 560) et Dei sapientia est. Sed decretum irritans contra papam positum in hac materia de qua est sermo, est hujusmodi; ergo. Consequentia bona; major nota est ex conditione legis assignate.
- (4) Minor probatur manifesta pro quo supponitur, quod tota potestas jurisdictionis aliorum praelatorum in toto corpore ecclesiae derivatur et emanat a summo pontifice, quae ut suppono patet cum ex determinatione ecclesiae Romanae cum ex doctrina sanctorum doctorum. Primo

quia ita est per multos Romanos pontifices declaratum et diffinitum quoque patet per illud Gregorii papae, quod habetur II, c. 6, c. Decreto ubi dicit sic: "sanctae Romanae ecclesiae vices suas ita aliis impartitur ecclesiis, ut in partem sollicitudinis vocatae sint, non in plenitudinem potestatis." Idem habetur ex auctoritate Julii papae in capitulo sequenti, dicentis "ipsa namque ecclesia quae prima est, ita vices suas aliis impartivit ecclesiis ut in partem" et cetera.

- (1) Beatus autem Augustinus intra canonicas scripturas enumerat epistolas decretales summorum pontificum. Item beatus Ambrosius Dist XXII se sequi Romanam ecclesiam profitetur. Omnes doctores vero sancti hoc idem dicunt, unde sanctus Thomas in fine II Sententiarum, ita dicit: "Quod potestas inferior et superior dupliciter se habent; aut ita quod inferior potestas ex toto oriatur a superiori et tunc virtus tota inferioris fundatur super virtutem superioris ...et sic se habet potestas Dei ad omnem potestatem creatam; sic etiam se habet potestas imperatoris ad potestatem proconsulis; sic etiam se habet potestas papae ad omnem spiritualem in ecclesia, quia ab ipso papa gradus dignitatum diversi in ecclesia ordinantur et disponuntur; unde ejus potestas est quodammodo ecclesiae fundamentum, ut patet Matthaei XVI." Haec ille.
- (2) Eiusdem sententiae est etiam in IV Contra Gentiles.
- (3) Rationes vero hoc clarissime ostendentes copiose alibi vocatae sunt, immo ad probationem hujus suppositionis tantum duas auctoritates adduco. Prima est Leonis papae sanctissimi quae ponitur. Dist XIX, c. Ita Dominus ubi sic dicit: "Hujus muneris sacramentum ita Dominus ad omnium apostolorum officium pertinere voluit, ut in beatissimo Petro omnium apostolorum summo principaliter collocaret, ut ab ipso quasi quodam capite donis velut in corpus omne diffunderet ut extorrem se ministerii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere."
- (4) Secunda auctoritas est ejusdem in sermone de apostolis qui incipit: "Gaudeo dilectissimi," sic dicit: "Quamvis in populo Dei multi sacerdotes sint multique pastores; omnes tamen proprie regit Petrus quos principaliter regit Christus. Magnum et mirabile huic viro consortium divinae potentiae suae tribuit dignatio, ut si quid cum eo commune esse voluit ceteris principibus, nunquam nisi per ipsum dedit quidquid aliis non negavit." Haec ille.
- (5) Ista suppositione praemissa probatur sic minor, videlicet quod decretum tribuens provisionem ecclesiarum inferioribus praelatis cum irritatione potestatis paralis supra earumdem dispositione et ordinatione sit contra communem ordinem naturalis rationis. Quoniam quod secundae causae quae totam suae potestatis virtutem habent a prima causa superiori, possint et de facto exeant in actum; respectu cujus potestatis (col 561) causalitas superioris causae sit suspensa et ligata ac irritata est contra omnem ordinem rationis. Sicut quod stellae illuminent; sole a sua illuminatione suspensa; ut rami fructificent radice sua virtute irritata; aut membra sive sensus sentiant

capite non influente. In hac autem comparatione esse habere videntur ceteri praelati ad papam, dicente Petro Ravennatae: "quod enim stipiti rami, quod capiti membra, quod soli radii, quod fonti rivuli; hoc apostolicae sedis eminentiae debent omnes ecclesiae, quas ubique terrarum sacra religio fundavit." Et ita patet quod subtrahere dispositionem ecclesiarum a papa cui primo per se et principaliter convenit, et nulli alii nisi ex domo suo, et retribuere aliis cum irritatione papalis auctoritatis, est clarissime contra omnem naturae ordinem et rationis; nisi forte ex dominatus excecatis.

- (1) Secundo ex eadem radice sic: nullum decretum cujuscunque concilii potest restringere aut irritare potestatem quae non emanat aut dependet in suo esse potestativo ab alio concilio. Sed potestas sedis apostolicae in suo esse potestativo, in collatione beneficiorum et provisione ecclesiarum non dependet ab aliquo concilio generali, immo nec per tota sive universali ecclesia. Ergo sequitur, quod concilium generale non potest hujusmodi decretum facere. Consequentia est bona. Major est manifesta, quoniam instituentis potestatem aliquam in aliqua politica est determinare potestatem quanta et qualis sit; augere et diminuire limitare aut irritare et nullius alterius.
- (2) Minor est etiam manifesta quia, ut dicit Callistus papa et scribitur Dist. XXI, c. quavis: "Sancta Romana ecclesia catholica et apostolica nullis synodicalis institutis ceteris ecclesiis praelata est; sed evangelica voce Domini et salvatoris nostri primitum obtinuit: Tu es inquit Dominus, 'Petrus et super hanc petram,' et cetera." Tertio ex eadem radice sic: Nullum sacrum concilium habet potestatem mutandi, minuendi aut in aliquo irritandi quod nec fidei aut statui universalis ecclesiae obviat illud, super quod universalis ecclesia dicitur fundata. Sed potestas papalis est hujusmodi; ergo sequitur, quod (page 7b) tale decretum, sicut praefertur, non est possibile fieri possibilitas juris per hoc concilium nec per quodcumque aliud. Consequentia est bona; major est manifesta, quoniam sacra concilia ad munimen et conservationem ecclesiasticae dignitatis et exaltationem gloriae ipsius ecclesiae universalis instituta creduntur. "Absit enim," ut dicit beatus Bernardus, "ut quod pro veritate institutum est, contra claritatem militet."
- (3) Minor vero probatur per illud Matthaei XVI: "super hanc petram aedificabo ecclesiam meam." quod dicitur sedi apostolicae sanctus Thomas in auctoritate supra allata applicat dicens, quod sedes apostolica est quodammodo fundamentum ecclesiae. Cujus sententiae longe multo ante fuit Origenes dicens: "Vide quantum potestatem habet petra super quam fundatur ecclesia, ut etiam ejus judicia maneant firma, quasi Deo judicante per eam." Item Anacletus longius ante dixit: "Hoc apostoli statuerunt jussione Salvatoris ut majores et difficiliore quae questiones semper ad sedem defferrantur apostolicam super quam Christus universam contruxit ecclesiam, dicente ipso ad (col 562) principem apostolorum: 'Tu es,' inquit, 'Petrus'" et cetera.
- (4) Aliqui volunt dicere ad istam rationem vel similem, quod licet concilium tollere non posset a sede apostolica potestatem aut eam minuere, potest tamen executionem potestatis impedire aut restringere

aut sic regulare quod non valeat exire in actum nisi ut dictatum fuerit per concilium generale. Contra hoc sic: Quoniam nulla videtur, immo oppositionem in objecto, aut vocis ignorantiam continet manifeste, quod sic patet. Est enim jurisdictionis potestas iudicandi, seu iudicandi et exequendi; similiter plena et perfecta potestas iudicandi et iudicatum exequendi, alias non est plena et perfecta. Unde dicere quod aliquis habeat jurisdictionem, ita tamen quod non posset iudicare et exequi est dicere quod habeat potestatem iudicandi et non potest iudicare, quod est habere potestatem et non habere; similiter habere totam plenam et perfectam potestatem jurisdictionis et non habere totum plenum et perfectum exercitium; est dicere habere plenam potestatem et perfectam iudicandi vel alia faciendi, et tamen non posse ille iudicare ad plenum nec perfecte nec totaliter. Quod est habere plenam et non plenam, quod est manifeste contradictio per se loquendo.

- (1) Sic ergo regulae sunt ponendae quod potestas papalis maneat in sua plenitudine potestatis, nedum quoad habitum potestatis in se sed etiam quoad plenitudinem exercitii. Quia sicut omnis potentia est propter suam operationem, ut dicit Aristoteles, ita plena potestas ordinatur ad plenam liberam et perfectam operationem; aliter frustra Deus tantum munus potestatis contulisset ecclesiae, quod est absurdum.
- (2) Quarto ex eadem radice sic: nullum decretum per quod dissolvitur hierarchia universalis ecclesiae cadit sub potestate cuiuscumque sacri concilii. Sed decretum irritans contra potestatem papae in collationibus beneficiorum et provisione ecclesiarum est huiusmodi; ergo, et cetera. Consequentia est nota. Major est indubitatae fidei potestas enim concilio data in aedificationem non in destructionem est data.
- (3) Minor vero sic probatur; quoniam subtrahere inferiores personas hierarchiae a regimine et potestate hierarchae a quo totus influxus descendit potestatis jurisdictionis, secundum quam sub et supra attenditur inter personas ecclesiasticas in hierarchia est confundere totam hierarchiam et eam dissolvere cum nexio et consummatio hierarchiae est principaliter consideranda in ordine ad hierarcham. Dicente beato Dionysio in libro De ecclesiastica hierarchia, quod sicut "Videmus omnem hierarchiam in Jesu consummatam sic unamquamque in speciali in proprium hierarcham divinum, summum sacerdotem." Nec potest dici ab aliquo bene quod connexio hierarchiae nostrae principaliter attendatur respectu Christi qui est principale caput ecclesiae. Licet in aliquo, puto in isto articulo non obediatur summo pontifici; non dissolvetur propter hoc ecclesiastica hierarchia. Hoc non valet, quia non potest bene videri quomodo connexa maneat hierarchia cum Christo, quando in licitis et honestis non obeditur suo vicario, ipso dicente Lucae X: "Qui vos audit me audit; et qui vos contemnit me contemnit." Imo timendum est ut non habeat (col 563) Christum caput qui non habet summum pontificem caput.
- (4) Quinto nullum decretum emanabile a concilio potest ligare papam et ejus irritare potestatem, nisi in casibus in quibus juxta

assertionem adversae partis est superius papae scilicet in materia haeresis, in materia schismatis et in materia reformationis universalis ecclesiae in capite et in membris. Sed dato quod in aliquo casu posset per concilium universale decretum irritans poni contra papam, arguo sic: sed quod papa det beneficia, confirmet dignitates non est primo, secundo, aut tertio. Ergo in dispositione ecclesiarum concilium non potest facere decretum irritans contra papam modo et forma ut praetenditur. Consequentia est bona; major nota, quoniam factum etiam a superiori non valet quando excedat ejus potestatem, ut dicunt domini juristae juxta illum textum: "Ea quae fiunt a iudice, si ad ejus non spectant iudicium viribus non subsistunt."

- (1) Minor vero quantum ad primum et secundum articulos patet; quod vero nec ad reformationis universalis ecclesiae articulum pertineat patet; primo, quoniam reformatio cum praesupponat deformationem, sicut curatio aegritudinem, reformatio non respicit nisi ad ea quae fiunt male et non ad ea quae bene fiunt. Absit autem dicere ecclesiam (page 8) deformare papa, exequendo bene illud, cujus potestatem in executionis praeceptum suscipit a Deo; secundo, quoniam in reformatio dicitur ad primam formam reductio. Cum reformatio vetustissima primitivae ecclesiae pariter et juri divino conformissima habeat, quod papa ordinaret ecclesias et de dignitatibus provideret, sicut de beatissimo Petro summo apostolorum et totius ecclesiae universalis vicario Christi legitur cum concilio apostolorum Jacobum Jerosolymorum episcopum ordinasse. Et deinceps factum legitur de aliis episcopis, sicut in Historia Martiniana dicitur in principio, quod beatus Petrus ordinationes fecit Romae in mense septembris. Episcopos sex ordinavit, presbyteros decem, diaconos septem et de multis aliis posset exemplum poni, quos ad diversas partes Galliae et Germaniae ad Christum populos lucrandos historiae transmisisse commemorant. Et nedum hoc de beato Petro sed de aliis successoribus Romanis pontificibus hoc idem libri historiarum testatur. Mirum esset quod papa faciendo quod sibi jure divino competit et quod illa primitiva ecclesia sanctorum apostolorum practicavit, ecclesiae statum confunderet universalem.
- (2) Item sexto, nullum actum debitum papae ex potestate sibi data a Christo cadentem supra debitam materiam, potest irritare concilium quodcumque. Sed actus dispositionis ecclesiarum et collationum beneficiorum in personis idoneis factus per papam est hujusmodi; ergo, et cetera. Consequentia patet; major nota, quoniam potestas ecclesiae data est ad correctionem malorum, non autem ad irritandum bonos actus legitima potestate exercitos, cum I Petri II dicatur potestatem jurisdictionis esse "ad vindictam malefactorum, laudem vero bonorum." Et Romanos XIII dicatur: "Vis non timere potestatem? Benefac et habebis laudem ex ea." Minor vero est clarissima; dicit enim Quintillianus, libro II: non est aequum id haberi malum, quo uti bene solet.
- (3) (Col 564) Demum ex quarta legis conditione idem arguitur quae est ut sit secundum consuetudinem. Et primo sic: nullum decretum, quod consuetudines primas primitivae ecclesiae, approbatissimos mores, patrum regulas non imitatur, sed transgreditur, est a sacro concilio pro lege et decreto valido emanandum, cujus studium est

patrum vestigia, et illius sanctae primitivae ecclesiae mores nostris temporibus per viam reformationis advocare. Sed in materia praedicta et simili decretum irritans est hujusmodi, ergo, et cetera. Consequentia est bona.

- (1) Major etsi sit manifesta; probatur tamen pro prima parte per illud II Macchabaeorum II: "Parati sumus magis mori quam patrias Dei leges praevaricari;" pro secunda per illud Proverbiorum VI: "Nec dimittas legem matris tuae;" Glossa: "idest ecclesia." Pro tertia est illud Ecclesiastici VIII: "Non te praetereat narratio seniorum; ipsi enim didicerunt a patribus suis; quoniam ab ipsis disces intentum et in tempore necessitatis dabis responsum." Item Proverbiorum XXII dicitur: "Non transgrediaris terminos antiquos quos posuerunt patres tui." Glossa: "Idest antiquitus statutos, a patribus tuis, idest doctoribus;" non transgrediaris terminos catholicae fidei quos ab initio statuere doctores." Item "ridiculum est et satis abominabile dedecus, ut traditiones quas antiquitus a patribus suscepimus infringi patiamur," Dist XII, c. Ridiculum.
- (2) Et ideo rationabiliter dicunt juristae, quod, quod non est sanctorum patrum decreto sancitum, superstitiosis non est ad inventionibus praesumendum. Minor vero probatur; tum quoniam nullibi legitur, ut videtur, quod in quocumque tempore quantumcumque abusus contra potestatem papae fieret decretum irritans; immo in ista materia vel simili ex jure divino papae competenti semper in decretis dicitur expresse vel intelligitur, salva semper summi pontificis auctoritate. Unde expresse habetur Extravag. de electione, Significasti, ubi dicitur quod "concilia [n] ulla [m] legem ecclesiae Romanae praefixerint" et quod "eorum statutis Romani pontifices excipitur auctoritas."
- (3) Ceterum de practica conciliorum sanctorum, ad firmandum in aevum decretalia. In eisdem habetur memoria et scriptura in concilio quodam Romae celebrato sub sancto Hilario papa, in quo legitur: "Hilarius papa episcopus ecclesiae catholicae urbis Romanae synodo praesidens, dixit: 'Quoniam religiosus Sancto Spiritu congregante conventus hortatur ut quaedam, quae pro disciplina ecclesiastica necessaria sunt, cura diligentiori tractemus. Si placet, patres, ea quae ad ordinationum tenorem pertinere juxta divinae legis praecepta in tenore canonum instituta, ita juvante Domino in omne aevum mansura solidemus, ut nulli fas sit sine status sui periculo vel divinas institutiones, vel apostolicae sedis decreta temerare, quae et nos, qui potentissimi sacerdotis administramus officia, talum transgressionem culpa inventi. Et pro confirmatione et stabilitate ita dicit: 'Quod ut deinceps possit tenacius custodiri si placet, sententias omnes et subscriptiones proprias commodate, ut synodali iudicio aditus claudatur inlicitis.' Ab universis episcopis et presbyteris acclamatum: 'Exaudi Christe, Hilario!' Dictum est septies. 'Haec et confirmamus et docemus;' dictum est octies. 'Haec renenda sunt; (col 565) haec servanda sunt;' dictum est quinquies. 'Doctrinae vestrae gratias agimus;' dictum est quinquies. 'Ista ut in perpetuum serventur optamus;' dictum est octies. 'Haec praesumptio nunquam fiat;' dictum est decies. Qui haec violaverit in se inveniat."

- (1) Item quantum ad hoc est illud quod scribitur in decretis synodi universalis Constantinopolitanae, ubi sic dicitur: "Porro si synodus universalis fuerit congregata et facta fuerit etiam de (page 9) sancta Romana ecclesia ambiguitas et controversia, episcopi laudabiliter et cum convenienti reverentia deposita quaestione sciscitari et solutionem accipere; et an proficere an profectum facere, non tamen audacter sententiam dicere contra summos senioris Romae pontifices." Ecce ex istis patet qualiter concilia universalis in quibus zelantissimi fuerunt reformatores ecclesiae tractabant sedem Romanam.
- (2) Secundo, ex eadem radice arguitur sic. In omni republica leges novae a consuetis patrum decretis degenerantes sunt vitandae tamquam periculossimae salutis republicae; et per consequens a sacro concilio cujus studium praecipuum universalis politicae Christianae salutis debet incumbere. Sed tale decretum irritans in tali materia vel simili ratione assignata est novum, quod et a patrum consuetudinibus peregrinum; ergo tale non est emanandum a sacro concilio. Consequentia est bona.
- (3) Major est Aristotelis libro II Politicorum dicentis, quod inducere novas leges in republica est magnum periculum, quia inducere novas leges est assuefacere non obedire legibus et ita nec principibus. Ex quo sequitur consequenter principatus et politicae totalis dissipatio. Ratione cujus dicit Aristoteles I Rhetoricae: magis esse obediendum principibus quam medicis; ratio quoniam medici commodis intendunt corporum; principes sive praelati legum positione animarum salutis, cum populum intendunt inducere ad virtutes II Ethicorum. Et ita apparet major, quod quando possibile est in republica vitandae sunt leges novae, nisi manifesta sit utilitas et condendi necessitas. Ita enim dicit jurisperitus quod in rebus novis edendis evidens debet esse utilitas, ut recedatur a jure quod diu aequum visum est. Minor vero patet ex superiori ratione.
- (4) Ex quinta ratione leges, quae est ut sit "conveniens loco et tempori," arguitur sic. Decretum irritans contra papam in materia collationis beneficiorum et dispositione ecclesiarum non est conveniens temporibus istis; ergo a sacro concilio non est pro tunc decretanda talis lex. Consequentia patet, quoniam emanandae leges a concilio debent esse convenientissimae. Antecedens probatur, quoniam istis temporibus principes jam videntur sic dominari praelatis intra regnorum, provinciarum, sive terrarum suarum ambitum dignitates habentibus; ut decreto illo posito, universum quasi regimen ecclesiae in ecclesiarum provisione et collatione beneficiorum ad dispositionem devolveretur principum saecularium, quod esset absurdissimum. Hoc tamen non addimus generaliter; tamen hoc addimus non ita generaliter sequeretur, cum dispositio ecclesiarum papae providentia gubernatur, non audentibus ita principibus saecularibus impetere papam, sicut praelatos terrarum suarum; patientius etiam supportabunt provisiones factas a papa, quam ab aliis. Ex qua radice sumitur convenientia residentiae summi pontificis in civitate Romana, ut ponit (col 566) Augustinus de Ancona in libro suo De potestate ecclesiastica Q XXI, art 1: quia videlicet: "In

nulla enim patria papa potest uti tanta libertate et tanta juris dictionis potestate nec tanta pro populo Christiano facere utilitatem sicut Romae et in patrimonio beati Petri. Residendo enim in alia patria supponit se sub domini regum et principum et sic vel timore vel amore non libere potest uti justitia et aequitate."*

- 1) Item ex sexta conditione legis, quae est ut sit "necessaria," ut supra expositum est secundum Thomam, et expediens ad remotionem malorum, arguitur sic. Nullum decretum inductivum majoris corruptionis et confusionis ecclesiae Dei est a concilio sacro emanandum, quod maxime intendit juxta institutionem suam verae reformationi ecclesiae intendere. Sed decretum amovens a papa provisiones ecclesiarum et collationes beneficiorum plenarie cum limitatione facti et inferioribus praelatis committens est hujusmodi; ergo, et cetera. Consequentia est bona; major manifesta.
- (2) Minor probatur tam ex ratione dominorum saecularium ut argutum est: cumque experientia nostra videamus multum quamplurimos praelatos pessime providere ecclesiis, beneficiis in temporibus sibi competentibus; si papa male in suo mense, episcopi saepissime pejus in suo, non providentes ecclesiis sed personis; nec personis moribus et litteris adornatis, nisi bene paucis, sed nepotibus, servitoribus et hujusmodi. Itaque vix reperiuntur aliqui valentes viri promoti in ecclesia, nisi per papam, de quibus exempla possunt poni in hoc sacro concilio. Quid ergo esset, si tota ecclesiarum dispositio eorum providentiae plenaria committeretur, currentibus temporibus praesentibus et considerata dispositione mundi, salva reverentia eorum, timendum esset quod maior corruptio esset in ecclesia.
- (3) Nec valet fuga quorundam dicentium, quod tunc papa posset eos corrigere; papa vero peccans non haberet corrigentem. Tum primo, quia nullus esset ausus aut paucissimi accusare episcopos apud papam praesertim in abusus commissis contemplatione dominorum terrae. Item quis se vellet laboribus, periculis et expensis se exponere ad episcopos accusandum? Papa autem non corrigeret nisi accusata vel certa sibi; certa autem non possunt esse sibi mala per alios praelatos commissa legi communi, nisi per denunciationem factam et ita correctio esset incerta. Praeterea posito quod papa vellet corrigere praelatos taliter abutentes auctoritate sua in distributione beneficiorum et dispositione ecclesiarum, cum pares culpae paribus poenis sint merito expiandae, recte justitiae ordine puniret eos sic abutentes ea poena, qua ipse papa a concilio (page 10) propter abusus in dispositione ecclesiarum est punitus videlicet, privando potestate illa distributionis beneficiorum et dispositionis ecclesiarum; quo dato vel dominis cardinalibus committeret, vel se revocare necesse erit, vel novum genus politicae in ecclesiae introducendum foret.
- (4) Item ex septima conditione legis quae fuit ut sit "utilis," arguitur sic. Nullum tale decretandum est per sacrum concilium per

*Mansi: "In nulla alia patria potest papa uti tanta potestate, nec tamen populo Christiano facere utilitatem, sicut Romae et in patrimonio sanctus Petri residendo. In alia enim patria supponit se sub dominio regum vel principum; et sic vel timore, vel amore non libere potest uti potestate sua, seu justitiae aequitate."

quod impeditur utilitas populi Christiani; ergo, et cetera. Consequentia bona; antecedens pro majori patet ex conditione legis assignata. Tum etiam quia sacer conventus tantotum patrum, Spiritu sancto congregatus, nonnisi totius populi utilitatibus studet et commodis.

- (1) Minor vero probatur (col 576) quoniam stante illo decreto manum summis pontificibus claudente super dispositione ecclesiarum primo, ecclesiis pessime provisus per ordinarios, non posse commode de melioribus provideri. Tum etiam emergentibus casibus, ex quibus ecclesiae possent inferri gravamina, vel aliis causis imminentibus, ut puta ratione pacis intendae, ratione haeresis extirpandae, ratione malitiae eligentium refraenandae, ratione violentiae principum quandoque propulsandae, quandoque etiam ratione principum voluntati justae complacendi. Quibus omnibus impedimentis maxima commoditas populi Christi communis esset impedita cum primo decreto illo posito, salvo meliori iudicio, non competere videtur papae illud, quod Bernardus Eugenio in persona omnium pontificum dicebat libro De consideratione: tu "patrum pater." *
- (2) Item sic secundo: nullum tale decretum est utile, immo periculosum et ita nequaquam a sacro concilio emanandum, quod esset perturbativum universalis status ecclesiae; cum sacrum concilium praecipue sit ordinatum ad reformationem ejusdem. Sed tale decretum irritans sicut praetenditur est hujusmodi; ergo et cetera. Consequentia bona; major est nota ex ratione legis. Minor vero patet, quoniam spectat ad statum universalis ecclesiae, quod tota ecclesia militans obediatur sedi apostolicae, et papa praesideat toti universali ecclesiae militanti. Unde XI Dist., c. Nolite dicitur: "Multum enim convenit ut corpus totum ecclesiae in hac sibi observatione concordet quae inde auctoritatem habet ubi Dominus totius ecclesiae posuit principatum."
- (3) Ex octava conditione quae est ut sit "manifesta" ne propter obscuritatem ejus sit aliquibus laqueus scandalum aut erroris; arguitur sic. Omne decretum quod potest esse occasio propinqua erroris, est vitandum a decretis sacri concilii, cujus prima cura est de agro militantis ecclesiae vepres et spinas eradicare haeresis et erroris. Sed hoc decretum irritans in forma quae a multis intenditur est hujusmodi; ergo, et cetera. Consequentia est bona; major nota. Et minor probatur, quia illo decreto mediante ligarentur manus summi pontificis in his quae sibi jure divino competunt.
- (4) Quibus ligatis et papa non utente auctoritate sua in dispositione ecclesiarum et aliorum similium sibi competentium jure divino, in debita fide processu temporis multi errarent circa potestatem papae, credentes multa sibi non competere aut posse facere vel fecisse, quae tamen munere deitatis potest facere; et nullus alius praelatus lege communi nisi ex commissione. Sicut alias per plures et nunc Bohemos satis turpiter est erratum, cujus simile proximum est de sacramento Eucharistiae, quod laicis non ministratur nisi sub una specie, ut dicunt doctores, ne sub duplici specie occasionem capiant erroris, credentes Christum sub utraque specie pleniter atque integraliter non contineri. Magnus autem error et periculosus toto corpori ecclesiae esset circa potestatem papae capitum ecclesiae.

*Mansi: tu pauperum pater.

- (1) Ultimo arguitur ex ultima conditione legis quae est, ut nullo privato sed pro communi omnium utilitate conscripta sit, arguitur sic. Nullum decretum est emanandum a sacro concilio quod non pro communi utilitate sit institutum. Sed tale decretum, ut praefertur, non videtur institutum pro utilitate communi; sed (col 568) pro privatis commodis quorundam cum praepjudicio sedis apostolicae, ergo, et cetera. Consequentia bona; major patet ex conditione legis assignata.
- (2) Minor potest quia tale decretum ex rationibus supra assignatis non cedit in commune bonum universalis ecclesiae; sed tantum videtur deservire commodis temporalibus alioquorum ordinariorum, amicorum, et familiarium suorum, qui tale decreto posito arbitrantur citius et pinguis promoveri, quam manente auctoritate apud papam. Leges autem institutae ad lucra temporalium neglecta Dei lege, dicuntur leges iniquae, de quibus Isaiae X: "Vae qui condunt leges iniquas." Et loquitur exorsse de traditionibus avaritiae causae institutis. Unde Glossa sic habet: "Propheta contra scribas et pharisaeos qui traditiones suas praeponerant legi Dei," de quibus Matthaei XV, "irritum fecistis mandatum Dei propter traditionem vestram." Sed Isaiae unum notabile: "Quid facientis in die visitationis et calamitatis de longe venientis? Ad cujus confugietis auxilium? Et ubi derelinquetis gloriam vestram?" Humiliata enim sedis apostolicae potestate et gloria, quo, quae, aut ad cujus signum sive auxilium confugient episcopi, praelati, clerus ipse?
- (3) Hoc quoque dicit Symmachus papa, et ponitur IX, c. 3, c. Aliorum hominum: "De hac mihi per prophetam dictum est: si haec humiliatur ad cujus fugietis auxilium et ubi relinquetis gloriam vestram?" Gloria quidem et auxilium episcoporum est ipsa sedes apostolica. Unde beatus Sixtus papa in secunda epistola sua universis ecclesiis directa ait: "Ab (page 11) hac enim sede apostolica et sanctis apostolis qua tueri, defendi, et liberari episcopi jussi sunt, ut sicut eorum dispositione, ordinante Domino, primatus sunt constituti; sic hujus sanctae sedis cujus dispositione eorum causas et judicia servaverunt, protectione futuris temporibus sint ab omnibus adversitatibus semper liberi." Omnes ergo praelati qui luminarium coelestium figura in sacra scriptura describuntur. Debent in conciliorum boni studio intendunt, exemplo Tullio in libro De amicitia: de se ita loquentis: "Non minoris curae est mihi qualis post mortem meum respublica futura fuerit, quam qualis hodie est." Paucis enim natus est qui populum suae aetatis tantum cogitat.

SEQUUNTUR RATIONES PRO PARTE CONTRARIA

- (4) Consequenter rationes quae in oppositum videntur adducentur in medium, ut habita collatione partium et pondere considerato, utrarumque veritas ipsa amplius elucescat, et eo modo quo supra rationes pro parte negativa quaestionis ex conditionibus legis sunt sumptae. Ita sequentes quam possibile fuerit ex eisdem capient suae ratiocinationis exordium.

- (1) Ex prima conditione legis quae est ut sit honesta idest rationi, sive legi divinae conformis, arguitur multipliciter; primo sic: Omnis illa lex est licita et ita factibilis a generale concilio, quae ex divinae immediate legis auctoritate sumit ortum. Sed decretum irritans ad obviandum abusibus contra papam est hujusmodi; ergo, et cetera. Consequentia datur; major manifesta. Minor probatur per illud Matthaei XVIII: "Si peccaverit in te frater tuus, corripa eum (col 569) inter te et ipsum," et cetera. Et sequitur: "Si non te audieret, dic ecclesiae; si illam non audierit sic tibi sicut ethnicus." Ex qua auctoritate eliciuntur tria. Primum est quod per ly ecclesiae, intelligit Christus de ecclesiam universalem et non papam quia Christus Petro loquebatur. Clarum autem est quod non praecipitur dicere sibi ipsi sed alteri et non videtur nisi ecclesiae.
- (2) Item quia subjunctum est pluraliter: "quaecumque ligaveritis super terram" et cetera. quod ecclesia universalis habet potestatem corrigendi et ligandi. Alias frustra dixisset Christus: "dic ecclesiae," quia potuisset impune non audiri, contra illud quod sequitur postea, "si ecclesiam non audierit sit tibi" et cetera. Tertium est quia potestas ista ecclesiae a Christo data extendit se ad omnem Christianum. Item ex alio hoc videtur manifestum quod sequitur: "quaecumque ligaveritis" et cetera, ubi multis videtur esse data potestas. Ex quibus manifeste apparet quod ecclesia videns papam non se corrigentem nec audientem disciplinam ipsius ecclesiae, poterit ejus manus ligare et facta contra eius assignatas regulas irritare. Processus rationis videtur notus.
- (3) Secundo sic ex eadem conditione legis: omne quod est peccatum a quocumque fiat est irritandum; immo irritum nuntiandum a concilio generali cujus est de ego Dominico radices eradicare vitiorum. Sed papam se intromittere de provisione ecclesiarum videtur esse peccatum mortale; ergo, et cetera. Consequentia bona; major nota est. Minor probatur, quoniam papa sic faciendo videtur esse per-jurus cum juret summus pontifex in sui creatione inter alia concilia servare concilium Nicaenum usque ad unum apicem illa immaculata servare; et pari honore et veneratione habere et quae praedicaverunt et statuerunt modis omnibus sequi et praedicare.
- (4) Ita habetur Dist XV, c. Sancta, scilicet universalis concilii. In concilio enim Nicaeno statutum invenitur quod confirmatio episcoporum et ita provisio ecclesiastica debeat fieri per metropolitanos. Unde Dist LXIII ex concilio Nicaeno ita habetur capitulo "Illud generaliter clarum est quod si quis praeter sententiam metropolitani factus fuerit episcopus, hunc magna synodus diffinit episcopum esse non oportere." Idem ex concilio Antiocheno habetur, et ponitur Dist LXV, c. Episcopum ubi sic dicitur: "Episcopum non est ordinandus sine concilio et praesentia metropolitani."
- (5) Item tertio ex eadem radice: quidquid pervertit ordinem divinae providentiae est irritandum ab ipso generali concilio; imo tamquam irritum declarandum cum sacrum concilium studeat omnia reducere ad debitum ordinem. Sed papa immediate se intromittere de provisione omnium ecclesiarum est hujusmodi; ergo, et cetera. Consequentia bona; major manifesta.

- (1) Minor probatur et supponitur quod praelati in ecclesia super alios constituti sunt quasi divinae providentiae super alios executores, sive ministri secundum illud apostoli I ad Corinthios IV: "sic nos existimet," et cetera. Tunc probatur sic: ordo divinae providentiae ita se habet, ut regimen inferiorum exerceatur per superiora eis proxima videlicet per regulas proximas. Ergo videtur quod papa vicarius summi provisoris immediate exequens regimen ecclesiarum in provisione earum pervertat divinae providentiae ordinem; et ita patet minor, dicit enim Augustinus II De Trinitate quod "corpora (col 570) inferiora et grossiora per subtiliora et potentiora quodam ordine reguntur."
- (2) Quarto ex eadem radice sic: summus sapiens ecclesiae constructor Christus optime creditur ordinasse ecclesiam suam et in cunctis necessariis ad ejus regimen debitum et (page 12) permanentiam eidem providisse: qui dicit ei Isaiae IV: "Quia potui facere tibi, vinea mea et non feci?" Cui tamen non videretur sufficienter provisum nisi usum potestatis papae et aliorum praelatorum, nec non alia negotia provisum fuisset de aliqua re inobliquabili et deviabili. Si enim, ut IV Metaphysicorum peripateticorum Aristoteles princeps scribit: in unoquoque genere est dandum unum quod est metrum et mensura aliorum, de cujus ratione videtur esse inobliqueabilitas. Multo magis in genere sancto et electo regali sacerdotio ex gente sancta religionis Christianae.
- (3) Sed haec regula non potest dici papa cum sit ipse peccabilis, nec etiam collegium dominorum cardinalium cum non sit in fide et gratia confirmatum; ergo dicendum est quod illa regula est universalis ecclesia quae privilegium dicitur habere non errandi; et ita per consequens concilium universale repraesentans eam. Ergo videtur quod regula usus potestatis papae dependet ex concilio generali. Et sic concilium generale poterit papae ponere regulas irritando quidquid contra eas fuerit attentatum.
- (4) Item quinto ex eadem radice sic: In ecclesia non solum vitanda sunt mala sed etiam occasiones malorum ut ecclesia tota mereatur dici pulchra. Sed papam disponere de ecclesiis ordinandis, et beneficiorum dispositionibus est occasio multorum malorum; ergo hoc vitandum est ab ecclesia. Sed non potest extirpari nisi irritando et annullando omnia in contrarium attentata; ergo, et cetera. Consequentia bona; major patet per illud dictum Matthaei XVIII: "Si oculus tuus scandalizat te, erue eum et projice abs te." Item apostolus de se ipso dicit II Corinthios XI: Haec "facio et faciam, ut occasionem amputem eorum, et cetera." Minor non indiget probatione; experientia enim est manifesta et clamores ipsi qui contra curiam Romanam audiuntur demonstrant.
- (5) Item ex secunda conditione legis quae est ut sit just et naturali rationi conformis. Sic primo arguitur, pro qua supponitur quod plenitudo potestatis est necessaria sicut in fine cum ad illam ordinatur sicut ad finem. Tunc arguitur sic: omnium ordinatorum ad finem regula et metrum et mensura est ipse finis; sed universalis ecclesia, quam generalia concilia repraesentant, est finis potestatis papalis. Ergo illius mensura et regula est sumenda ex lege et

decretis universalis ecclesiae, seu universalium conciliorum eam repraesentantium. Et ita cum tota regula sumenda sit ex eis, irritari possunt omnia quae videntur a fine deordinari vel quod non fuit metrum mensura et regula sua. Consequentia videtur bona; major est Aristotelis in II Physicorum et I Ethicorum. Minor patet, quoniam plenitudo potestatis papalis non est causaliter propter papam, sed papa et ejus potestas propter ecclesiam et ad eam ordinatur sicut ad finem, docente apostolo II Corinthios X et ultimo : "Dedit potestatem nobis Deus in aedificationem et non in destructionem." (col 571)

- (1) Item secundo ex eadem radice sic: et supponitur ista similitudo quod in republica Christianae religionis sacrum concilium respectu papae videtur se habere ut ratio se habet in regno animae ad voluntatem. Ratio similitudinis est quoniam sicut in regno animae ad voluntatem; ratio similitudinis est, quoniam sicut in regno animae, rationis est consulere voluntati. Ita concilium quod dicitur quasi consilium videtur ad hoc celebrari ut in rebus gravibus consilia et regulae capiantur agendorum. Tunc arguitur sic: ratio habet respectu voluntatis potestatem consiliativam, directivam, et praeceptivam. Voluntas ergo habet potestatem executivam consiliorum et judicatorum per rationem; sed quidquid voluntas exequitur contra dictamen rationis rectae est irritum et vanum. Ergo a simili quidquid exequitur papa usum suae potestatis exercendo contra dictamen et mensuram sive regulas assignatas per concilia, irritum est tenendum et ita declarandum. Consequentia est bona; major est Aristotelis, VI Ethicorum, attribuentis prudentiae tres actus, videlicet consiliare, judicare de inventis, et praecipere inventa executioni mandare.
- (2) Minor vero nota est, et patet per Hilarium, X De Trinitate, dicentem: ② "Immoderata est omnium voluntatum pertinacia ubi non rationi voluntas subicitur." Item patet ratio similitudinis ex eo quod homo dicitur microcosmus; id est minor mundus quia scilicet regimen universi est exemplificandum. Item ex eadem radice sic: Quilibet superior potest inferiori legem ponere contrarium legis irritando; sed generale concilium est superius papa; ergo sequitur quod concilium generale, universalem ecclesiam repraesentans, papae potest legem licitam ponere contrarium legis factum per eum irritando. Consequentia videtur nota; major etiam, quia alias non videretur esse potestas sufficiens in superiori. Minor vero patet ex decreto concilii Constantiensis ubi dicitur quod "ecclesia universalis potestatem habet a Christo immediate, cui quilibet cujuscumque status vel dignitatis existat, etiamsi papalis, obedire tenetur in his quae pertinent ad fidem et extirpationem haeresis et generalem reformationem ecclesiae in capite et in membris."
- (3) Quarto ex eadem radice: de ratione legis est quod sit justa et recta; patet ex secunda conditione legis quae est quod sit justa. Sed illud quod semel est rectum est semper; ita [et] * obliquum

*Mansi: ejus.

② MANSI - ut supra

VERUS TEXTUS HILARII

"IMMODERATA EST OMNIS SUSCEPTARUM
VOLUNTATUM PERTINACIA... UBI" etc

semper erit obliquum. Ergo lex talis juste poteste irritare ejus (page 13) oppositum a quocumque fiat. Consequentia videtur bona; major etiam nota. Minor vero patet lignum enim rectum quantum est de se semper rectum maneat et in multis posset poni exemplum.

- (1) quinto ex eadem conditione: naturalis aequitas habere videtur quod quis privetur privilegio, aut minuat in eo, si eo male utatur; et praesertim si abusus ejus [cedit] in scandalum totius communitatis. Sed ad oculum tristi experientia cognoscimus summos pontifices... privilegio suae potestatis abuti et in scandalum totius ecclesiae; ergo merito summi pontifices deberent privari illa potestate, vel ad minus in ea restringi. Sed non videtur rationabilius quam per generalia concilia; ergo id quod prius. Consequentia patet; major nota est; et minor etiam est clara.
- (2) Item sexto sic ex eadem radice: omne id (col 572) quod est in se injustum a quocumque fiat, juste per generale concilium potest irritari; sed papam providere de ecclesiis est hujusmodi; ergo, et cetera. Consequentia bona; major manifesta. Minor patet, tum quia est contra jus commune, secundo quia tollit privilegia ecclesiarum, quia ut dicatur Dist XXII, c. Omnes: "qui cujuslibet ecclesiae jus suum trahit injustitiam facit."
- (3) Item arguitur ex secunda conditione legis, quae est, ut sit "possibilis secundum naturam." Et arguitur etiam multipliciter: primo sic contra illud: quod est dissipativum status generalis universalis ecclesiae a quocumque fiat, potest decretum irritans poni per generale concilium. Sed papam se intromittere de dispositione ecclesiarum et collatione beneficiorum immediate videtur esse hujusmodi; ergo, et cetera. Consequentia bona; major patet, quoniam nec papa, nec quicumque alius mortalium potest aliquid in destructionem ecclesiae.
- (4) Minor vero probatur, quoniam status ecclesiae universalis sive ecclesiasticae hierarchiae consistit in imitatione hierarchiae coelestis, secundum illud Exodi XXV: Omnia "fac secundum exemplar tibi monstratum in monte." In qua coelesti hierarchia Christus mediis mediis hierarchizat infimos; ergo in ecclesia hierarchia superior, qui est papa, non potest sine confusione hierarchiae immediate disponere de dispositione inferiorum ecclesiarum. Secundo ex eadem radice sic: generale concilium potest certis de causis papam abutentem potestate papali privare totaliter vel suspendere: ergo multo magis ad obviandum abusibus ejus potest eum restringere aut limitare. Consequentia videtur optima per locum a majori; antecedens est notum, et in ecclesia pluries praedicatum.
- (5) Item tertio eadem radice: "Privilegia ecclesiarum sanctorum canonum instituta, Nicaeni concilii fixa decreta, nulla possunt ratione convelli vel novitate mutari," ut dicit Leo papa et habetur XXV, Q 2, c. Privilegia. Sed provisiones ecclesiarum sanctorum canonum institutiones, et Nicaeni concilii pertinent ad jura et privilegia ordinariorum; ergo pro eorum privilegiorum et jurium firma custodia possunt generalia decreta irritantia ponere. Consequentia patet; major, minor notae sunt ex decretis superius deductis.

- (1) Item ex quarta conditione legis quae est "secundum consuetudinem" arguitur sic: Praelati sunt sponsi suarum ecclesiarum ut dicitur VII, Q. 1, c. Sicut alterius uxor. In matrimonio autem consensus utriusque partis requiritur ut vinculum quo extremo animi junguntur. Sed hujusmodi consensus inter sponsum et sponsam ecclesiam non exprimitur, nisi per electionem, aut postulationem. Ergo sequitur quod nullus erit iudicandus sponsum sive praelatus alicujus ecclesiae, in quem prius per electionem vel postulationem ipsa ecclesia non consenserit. Consequentia videtur bona; major et minor patet.
- (2) Item ex eadem radice sic: decreta irritantia in materia ista fecit jam concilium generale Constantiense et praesens Basileense. Ergo consequenter ad obviandum aliis abusibus praesens concilium generale et quodlibet aliud potest leges cum irritatione ponere contra papam in materia beneficiorum et dispositione ecclesiarum. Consequentia patet, quia una et eadem potestas et aequae plena est in hoc concilio sicut et in aliis. Item lex ista est conformis (col 573) legibus similibus jam datis et approbatis.
- (3) Antecedens patet, quoniam in hoc sacro concilio sicut et in aliis facta sunt decreta cum irritatione circa provisiones ecclesiarum fiendas contra supposita incorporata in hoc sacro concilio; item circa creationem cardinalium; item contra alienationem bonorum temporalium pertinentium ad patrimonium sancti Petri. Item in concilio Constantiensi decretum est cum irritatione contrarii de reverendissimo domino Angelo Corrario ob laudabilitatem suae cessionis spontaneam, ne nullus papa possit eum a cardinalatu et legati potestate deponere, nec super praeteritis qualibuscumque factis quodammodo impetere vel punire. Et in multis aliis usus fuit praefatorum conciliorum ponere et constituere decreta cum irritatione.
- (4) Item generale concilium invenitur irritasse sacras ordinationes clericorum factas per alienum episcopum sine beneficio et assensu proprii episcopi; sicut patet decreto concilio Nicaeni ubi ita dicitur: "Si quis quidem ausus fuerit clericum qui ad alium pertinet episcopum ordinare in sua ecclesia, cum non habeat consensum episcopi ipsius a quo recessit clericus irrita sit hujusmodi ordinatio." Ergo multo magis potest generale concilium decretare cum irritatione contra papam si disponat in ecclesiis subjectis metropolitanis absque consensu eorum. Consequentia patet, quia cum difficilius sit irritare incompatibiliter actus potestatis sacerdotalis (page 14) quam actus potestatis jurisdictionis.
- (5) Item ex eadem radice: reperiuntur aliqua concilia, in quibus papaemet decretaverunt decreta irritantia contra se, si apostolica decreta facerent, volentes ea esse irrita et vana. Ergo cum universalis ecclesia non sit minoris potestatis quam papa, pari ratione potest limitare facere papalem potestatem si attentaverit oppositum facere decretorum suorum.
- (6) Item ex quinta conditione legis quae est ut "loco temporisque conveniens." Lex licita dicta debet esse firma quoniam ut dicit Aristoteles VI Ethicorum: mensura debet esse permanens. Immo leges justae debent esse quasi immortales et immutabiles cum in eis consistat salus reipublicae, ut dicit I Rhetoricae. Et maxime illa

tempore debet firmari et quasi intacta custodiri, quando videmus ex ejus neglectu et inobedientia majora scandala oriri in republica.

- (1) Sed firmitas legum licitarum per sacrum concilium non videtur aliunde posse sumi nisi per adjunctionem irritantis decreti, visa tam facili, et effrena violatione earum per summos pontifices, sicut nostris temporibus dolenter palpamus. Ergo videtur quod tale decretum irritans possit et debeat poni per sacrum concilium in suis legibus licitis. Consequentia videtur bona, quoniam juri cujuslibet legislatoris incumbit leges suas omni firmitate possibili roborare. Antecedens patet; et confirmatur per illud Gregorii, quod ponitur XXV, c. 2. "Ecclesiasticae moderationi omnino est conveniens ut quae moderata fuerint vel decisa, nulla in posterum debeant refractione turbari."
- (2) Item ex sexta conditione, quae est ut sit necessaria. Reformatio universalis ecclesiae non potest fieri plene sine decreto irritante in materia electionum, confirmationum, et cetera ergo possibile et fiendum est tale decretum. Consequentia patet; quia in tali materia est concilium supra papam. Antecedens probo: reformatio (col 574) dicitur, id est ad pristinam formam reductio. Sed forma dispositionis ecclesiarum in antiquiori et antiquo statu sive more ecclesiae est ut fiat per ordinarios. Ergo si fieri debeat reformatio, necessario debet sic dispositio ecclesiarum et collatio beneficiorum reduci ad ordinarios, ut irritetur omnis illa provisio per quemcumque alium facta.
- (3) Item ex eadem radice: sicut medicus in sua operatione intendit sanitatem quae consistit in ordinata concordia humorum, ita potestas publica sua praesidentiali sollicitudine intendit pacem, quae consistit in civium ordinata concordia. Sed vidimus quod medicus abscidit unum membrum bene et utiliter si per ipsum immineat corruptio corporis. Ergo etiam publica potestas pro pace et pro salute totius corporis ecclesiastici, potest vel amputare vel privare totaliter unum membrum sua potestate, vel de ejus potestate aliquid detrahere, vel minuere quodcumque sit illud. Consequentia patet ex similitudine. Et ideo dicitur in concilio Constantiensi, quod in materia reformationis quae est quasi quaedam cura infirmitatis corporis ecclesiae, etiam papa subijcitur concilio.
- (4) Item ex septima conditione legis, quae est ut sit "utilis". Illa decreta sunt licita et justissima quae remouent a statu dignitatis papalis quae ejus auctoritati non multum derogant et status excellentiam non minuere videntur. Sed decreta cum irritatione, ne papa se intromittat de provisione ecclesiarum et dispositione temporalium in collatione et signatione petitionum et hujusmodi ut totaliter manibus tersis ab hujusmodi fecibus purius valeat divinis et fidei et perditioni intendere; ergo talia sunt a generali concilio emananda. Consequentia videtur ex conditione legis quoniam talis lex videretur utilissima. Antecedens patet et confirmatur exemplo beatissimorum apostolorum qui videntes ex multitudine ecclesiae sibi crescere curas temporalium, quarum occasione spiritualibus poterant aliquantulum minus intendere, excusserunt manus ab illis. Unde Actorum VI dicitur: "Convocantes enim multitudinem discipulorum dixerunt: non aequum nos relinquere verbum Dei et ministrare mensis. Considerate ergo vos," et cetera.

Verus textus sancti Gregorii:

Si ea destruerem quae antecessores nostri statuerunt
non constructor sed eversor esse juste comprobaber.

c.Si ea, D.XXV, C.1

Epistola 17

P.L. 77

- (1) Item ex octava conditione legis, quae est sit "manifesta" et clara: Omnis lex illa licita quae clarissimam habet veritatem. Sic potest apostolica auctoritate poni, quod quocumque in oppositum attentatum sit, irritum et viribus evacuatam sit; sed hujusmodi decretum in tale est hujusmodi; ergo, et cetera. Consequentia videtur bona; major manifesta.
- (2) Minor probatur et deducitur multis auctoritatibus ex quibus plane sumitur, quod papa privilegia et jura aliarum ecclesiarum, canones sanctorum patrum, statuta generalium conciliorum non debeat immutare, in quibus omnibus dispositio ecclesiarum manibus ordinariorum ascribitur facienda. Quod enim dicitur XXV, § 1. c. Confidimus, "quod nullus jam veraciter Christianus ignoret uniuscujusque synodi statutum, quod universalis ecclesiae approbavit assensus nullam magis exequi fidem prae caeteris oportere, quam primam, quae unamquamque synodum sua auctoritate confirmavit, et continuata moderatione custodit."
- (3) Item in eodem capitulo Violatores: "Violatores sanctorum canonum graviter a sanctis patribus judicantur, (col 575), et a sancto Spiritu (instinctu cujus ac dono dictati sunt) damnantur. Quoniam blasphemare Spiritum Sanctum non incongrue videtur qui contra eosdem sacros canones, non necessario compulsus sed libenter, ut praemissum est, aliquid proterve agunt aut loqui praesumunt, aut facere volentibus sponte consentiunt. Talis enim praesumptio manifeste unum genus blasphemantium (page 15) Spiritum Sanctum, quoniam ut jam praelibatum est contra eum agit cujus nutu et gratia canones sacri editi sunt."
- (4) Item ex eodem capite: "Contra statuta sanctorum patrum concedere aliquid vel mutari, nec hujusmodi quidem sedis auctoritas potest. Apud nos enim inconvulsis radicibus vivit antiquitas, cui decreta patrum sanxerunt reverentiam."
- (5) Item in eodem: "Prima salus est rectae fidei regulam custodire et a statutis patrum nullatenus deviare." Et multa similia ibidem et alibi scripta allegari possunt, quae ejus firmitatis robor habent. Item dicit beatus Gregorius scribens Augustino, Anglorum episcopo: "Si ea destruere quae antecessores nostri statuerunt, non constructores sed eversores esse justitia comprobaret."
- (6) Ultimo arguitur ex ultima conditione legis, ut "nullo privato commodo," et cetera. Omnis illa lex est maxime firmanda omni genere firmitatis, ut a nullo valeat permutari, quae pro communi utilitate omnium est instituta et quae dispensationem non recipit sine detrimento hujus boni communis. Sed hujusmodi lex dispositionem ecclesiarum committens ordinariis est hujusmodi; ergo, et cetera. Sequitur quod in omni genere firmitatis est roboranda, et ita cum decreto irritante. Consequentia videtur bona. Major videtur patere per decretum id quod XXV, § 1, c. "Quae ad perpetuam generaliter ordinata sunt utilitatem nulla commutatione varientur nec ad privatum reducantur commodum quae ad bonum commune sunt praefixa." Minor vero patet quoniam ipsi ordinarii melius cognoscentes qualitates personarum, merita et demerita utilius ecclesiis possunt providere, et citius et cum paucioribus laboribus et expensis ecclesiarum ipsarum aut personarum.

SOLUTIO RATIONUM FACTARUM

- (1) Ad primam rationem respondetur negando minorem. Et ad auctoritatem quae inducitur de evangelio Matthaei XVIII: "Si peccaverit," et cetera, dico primo, negando quod per ly, ecclesiae, intelligatur ecclesia universalis, aut universale concilium illam repraesentans, quod ex tribus colligitur. Tum quia hic, secundum omnes doctores datur doctrina de correctione fraterna, Impossibile autem esset praeceptum illius adimplere aut saltem difficile multum si ecclesia, cui dicendum esset peccatum fratris nostri, intelligeretur universalis ecclesia, aut concilium universale illam repraesentans. Oporteret enim aut semper celebrare concilium, aut universalem portare in sinu. Tum secundo, quia non est cujuslibet congregare universalis concilia sicut est adimplere praeceptum praefatum Christi. Tum tertio, quia Christus solum apostolis dicitur dedisse potestatem, cum ait: "quaecumque alligaveritis" et cetera, qui apostoli nec erant universalis ecclesia, nec tunc faciebant universale concilium; unde dicitur quod juxta veram (col 577) intelligentiam et intentionem Christi ibi ecclesia dicitur praelatus.
- (2) Unde Chrysostomus super Matthaeum et adducitur a sancto Thoma: in Glossa continua, exponit sic: dic ecclesiae, "idest qui ecclesiae praesident." Ita etiam habet Glossa decreti in c. Si peccaverit, II, q 1: dic ecclesiae "idest sacerdotibus." Idem etiam aperte colligitur ex decreto Innocentii III in c. Novit, De judiciis; et est glossa in eodem passu in verbo, ecclesiae. Secundum enim philosophum IX Ethicorum: civitas quandoque dicitur id quod est principalissimum in ea; cujusmodi est dux sive rector. Et cum dicitur, quod si praelato intelligeretur non dixisset Petro, "dic ecclesiae;" dico quod hoc non arguit, quia ista doctrina de correctione non dabatur Petro singulariter, nec Christus ei loquebatur ut praelato at ut particulari personae et ad ejus solam personam pertinente. Nondum enim erat adhuc praelatus, sed in persona omnium secundum illud "Quod uni dico omnibus dico." Unde Augustinus De verbis Domini dicit: "'Si peccaverit,' et cetera. Hic admonet nos Dominus noster non negligere invicem peccata nostra, non quaerendo quid reprehendas, sed videndo quod corrigas."
- (3) Praeterea secundo, dato quod in aliquo casu per ly, ecclesiae, non praelatus, sed communitas fidelium intelligenda veniat, sicut videtur Glossa quaedam exponere, dicitur quod hoc non ex ratione alicujus potestatis quae dicatur esse in tali communitate secluso suo praelato et capite. Arguatur esse ex sensu literali praedicti textus ex quo solo, juxta doctrinam Dionysii et Augustini, validum argumentationis sumitur genus in theologia. Sed ratione erubescitiae, unde Glossa ordinaria in loco praelibato ita dicit: Vel dic ecclesiae: ut majorem erubescitiam patiatur." Item Hieronymus in eadem Glossa continua inducitur: "Porro si nec illos audire voluerit, tunc multis dicendum est ut detestationi eum habeant; ut qui

*Mansi: praelibato. (STET)

non potuit pudore salvari, salvatur opprobriis." Quod vero arguitur, nisi ecclesia haberet potestatem ligandi et absolvendi frustra dixisset Christus: "dic ecclesiae."

- (1) Dico quod hoc argumentum non currit, quoniam licet ex isto textu, ut videtur, nulla arguatur auctoritas in congregatione fidelium ecclesiae super papam et alium; non adhuc frustra dixisset Christus: "dic ecclesiae," ut patet expositione sanctorum proxime assignata, qui dicunt ideo "multis dicendum esse ut detestati eum habeant; ut qui non potuit pudore salvari salvatur opprobriis." Ecce ergo quod non (page 16) frustra praecipitur: "dic ecclesiae," etiam si ecclesia non habeat potestatem ligandi et solvendi eo modo quo adversarii intelligunt.
- (2) Item arguitur, quia nisi ecclesia habeat potestatem potuisset impune non adduci contra illud "Si ecclesiam non audierit," et cetera. Dico ad hoc quod hoc etiam non arguit potestatem aliquam in communitate ecclesiae juxta sensum adversariorum, licet enim recusans audire ecclesiam; idest qui non flectitur pudore, aut erubescit opprobria multitudinis, merito sicut ovis morbida sit ab omni conventu Christi segreganda. Non tamen sequitur quod hoc sit fiendum potestate aliqua illius multitudinis, eo modo quo loquitur pars adversa de potestate ecclesiae; sed fiendum est potestate praelati. Unde Glossa: illa praeallegata super illud: dic ecclesiae, dicit sic: "ut majorem erubescitiam patiat. Post haec omnia sequatur excommunicatio quae fieri debet per [os ecclesiae, id est] sacerdotem." et ideo doctores sancti sicut illud (col 577) dic ecclesiae exponunt "idest praelato;" ita exponunt illud si ecclesiam non audierit, et cetera, idest praelatum, scilicet ejus. praecepta contemnendo.
- (3) Quod autem consequenter arguitur, quod in signum, quod ecclesiae dabatur potestas ligandi atque solvendi, sequitur infra: "quodcumque ligaveritis" et cetera. Ecce, inquit, quod sit sermo de multitudinem, quod de apostolorum potestate non videtur intelligendum; quia tunc aequalem recepissent potestatem cum beato Petro, -- quod non est dicendum. Ad hoc dico, quod non videtur verum; imo videtur data aut promissa potestas apostolis, dicente Hieronymo: "Qui potestatem tribuit apostolis, ut sciant, quod qui a talibus condemnatur humana sententia divina sententia roborari." Item Origenes, et adducitur in Glossa Continua: "Quaecumque ligaveritis in terra, erunt ligata et in coelo;" "Dixit in coelo; non dixit in coelis sicut Petro, sed in coelo uno quia non sunt tantae perfectionis sicut Petrus."
- (4) Ecce dico, primo quod apostolis dictum; secundo quod minus videtur aliis permissum apostolis quam Petro; per hoc quod cum ait Matthaei XVI Petro: "Quodcumque ligaveris" et cetera "erit ligatum -- (dicit pluraliter) -- et in coelis." Cum autem aliis apostolis dicit singulariter, "et in coelo," quod tamen si de ecclesia intelligeretur, juxta expositionem Origenis, oportet intelligere minorem potestatem esse ecclesiae universalis, quam Petri sive papae, -- quod est contra adversarios. Et ita illa consequentia nulla est, quae ultimo loco adducitur loquendo de potestate jurisdictionis.

- (1) Patet ergo, quod si per ly, ecclesiae, -- cui denuntiandum est in aliquo casu, -- accipienda sit multitudo fidelium aut concilium universale illam repraesentans, quae potestatem habeat non audientem corripere et punire, non hoc erit secluso praelato. Quia sic communitas illa maneret vacua veribus sicut corpus sine capite. Sed necessario intelligendus et praeintelligendus venit praelatus.
- (2) Ecce in quo ipsa ecclesia potestatem accepit ligandi atque solvendi, et per quae ecclesiam non audiens excommunicationis gladio feriendus est. Et ideo Christus postquam dixit: "Si ecclesiam non audierit." Inquit praelatis quorum auctoritate iudicium fit in ecclesia: "Amen dico vobis quod quaecumque ligaveritis" et cetera; non enim hoc dixit tibi multitudini fidelium, sed apostolis, sive praelatis; est ergo ibi secundum literalem sensum fundata potestas praelatorum contentiosae jurisdictionis, et non alia.
- (3) Unde Nicolaus de Lyra sequendo glossam superius tactam, inquit: quod talis possint praelati efficere, idest excommunicare. Sequitur: "quaecumque ligaveritis," et cetera, ubi nota quod auctoritas ista non datur praelatis ratione personarum tantum sed ratione totius communitatis; nec moritur cum personis sed permanet in successoribus; dicitur in istis praelatis ecclesia suscepisse potestatem istam, ut Augustinus videtur super Joannem dicere.
- (4) Tertio dico quod dato, quod potestas illa intelligeretur de potestate data ecclesiae universali juxta intelligentiam arguentis, nihil arguitur contra conclusionem, quoniam per illam auctoritatem non concederetur nisi potestas corrigendi fratrem si peccaverit, et ita dato quod papa, si peccaret et abuteretur potestate, abusus ejus corrigendus veniret per universalem ecclesiam; non tamen diceretur ei concessa (col 578) auctoritas dissipandi et irritandi beneficia per papa, aut quod papa non possit bene uti potestate, sibi a Deo immediate collata; papa enim disponendo de ecclesiis et de beneficiis immediate non peccat, non errat, non transgreditur aliquam legem prohibentem sibi provisionem hujusmodi; quoniam non divina; lex enim divina non prohibet, immo divino jure sibi competit universalis ecclesiae supremo Domino et constructore sibi curam totius populi pastorem committente et dicente: "Pasce oves meas," Joannis ultimo. Item non prohibet jus commune quoniam in eo semper intelligitur exclusa summi pontificis auctoritas. Non facit etiam aliqui injuriam iutendo jure suo et praeceptum altissimi exequendo. Et ita patet quod ratio prima nullo modo militat, sed fundari videtur vel in propria opinione, vel solum in cortice litterae, abjecta sanctorum doctorum expositione.
- (5) Ad secundam rationem respondeo negando minorem; et ad probationem cum dicitur de professione et juramento papae, et cetera, dico quod papa nullo modo est dicendus juramenti transgressor providendo ecclesiis de pastoribus aut beneficia conferendo, quoniam in nulla parte decretorum illius sanctae synodi habetur quod papa non det, si dare voluerit, aut provideat ecclesiis si bene visum sibi fuerit; unde dicitur Extravag. de electione, c. Significasti, quod in conciliis non reperitur statutum quod legem

Romanae ecclesiae praefixerit cum "omnia concilia (page 17) per Romanae ecclesiae auctoritatem et facta sint et robor acceperint, et in eorum statutis romana patenter accipiatur auctoritas."

- (1) Cum ergo statutum est, -- confirmationes et provisiones fiendas esse per metropolitanos, -- semper tamen intelligendum quod id sanxerunt sacra concilia generalia, salvo in omnibus jure Romanae ecclesiae. Unde sicut dicitur XXV, Q. 1, c. Ideo permitte, "in nonnullis [causis] conciliorum cum aliquid observandum cernitur, statim [sub]inferitur; nisi auctoritas Romanae ecclesiae aliter [fieri] imperaverit, vel 'salvo in omnibus jure Romanae ecclesiae, vel 'salva tamen in omnibus apostolica auctoritate'". Et ideo patet quod ex ignorantia venit decretorum dicere papam contra professionem agere providendo immediate ecclesiis sibi commissis de pastoribus. Intelligenda ergo sunt illa decreta de aliis praelatis attentantibus se per alios confirmari, quam per metropolitanum suum, non per sedem apostolicam, quae semper intelligitur excepta, sicut in antiquis conciliis legimus fuisse acceptatum per alios.
- (2) Unde papa Hilarius in synodo antiqua Romae celebrata refert in quibusdam locis talia perversitatum semina suborta, ut nonnulli episcopatum, qui nonnisi meritis praecedentibus datur, non divinum munus, sed haereditarium putant esse compendium et credunt sicut res caducas atque mortales, ita sacerdotium; ita ut legaturis aut testamentario jure posset dimitti. Nam plerique sacerdotes in mortis confinio constituti in locum suum feruntur alios designatis nominibus subrogasse." Haec ibi et plura alia de ista materia.
- (3) Ad tertiam rationem cum dicitur, quod pervertitur ordo divinae providentiae; respondeo negando minorem illius rationis, et ad probationem dico duo. Primo dico, quod aliud est, (col 579) immediate exeque regimen ecclesiarum, et aliud est providere de rectoribus ecclesiarum; sicut aliud est institutio causarum duarum et aliud est producere immediate effectus singularum rerum. Dico ergo quod primum pertinet ad praesidentem et provisorem universitatis, ut coadjutores sibi assumat, constituendo pastores singulis ecclesiis, sicut Dei est creare duas causas. Regimen vero ecclesiarum debet exequi mediantibus constitutis per eum pastoribus; et ita facit papa qui mediantibus episcopis per eum creatis et aliis inferioribus praelatis, pascere dicitur universum gregem Dominicum; et ita ordo divinae providentiae servatur.
- (4) Secundo dico, quod etiam in regimine ecclesiarum, causis rationabilibus concurrentibus, papa potest multa agere per se ipsum vel aliis committere agenda quam constitutis pastoribus. Sicut enim Deus rebus certum ordinem indidit ut tamen sibi reservaret quod ipse aliquando ex causa esset factururus, dicente Augustino contra Faustum, quod aliquando Deus contra cursum naturae solitum facit. Ita a Spiritu Sancto ordo regiminis in ecclesia institutus creditur, ut ipse qui Christi vices tanquam ejus vicarius gerit, possit ex causa sibi rationabili visa quandoque pro parte aliter disponere. Posset enim papa sine perturbatione

ordinis ecclesiastici per dioceses, -- per quas eum transire contingeret, -- praedicare, confessiones audire, sacramenta dispensare, vel alia de quibus videtur committere. Et ita non militat ratio illa assumpta ex ordine divinae providentiae.

- (1) Ad quartam rationem de regula inobliquabili danda necessario, dico duo. Primum est quod illa ratio non videtur concludere quod detur aliqua lex animata impeccabilis et indeviabilis simpliciter in omnibus praeter Deum, qui est sapientia ipsa, -- per quam tam reges spirituales, quam temporales regnant, "et legum conditores justa decernunt," ut dicitur Proverbiorum VIII, -- sed bene concludere quod sit aliqua regula indeviabilis necessaria, sicut et in communi scientia aliqua principia inobliquabilia danda sunt; et ipsa est lex divina, sive fides Christiana, quae emanat ab ipso legislatore et monarcha Christo Jesu, secundum quam gubernanda est ecclesia. Quoniam sicut potestas papae derivatur a potestate divina; ita ratio sive regula gubernationis in papa ad ecclesiam gubernandam debet sumi ex ratione gubernationis supremi gubernantis; de qua dicitur XXV, q 1, c. "Prima salus est rectae fidei regulam custodire et statutis patrum nullatenus obviare." [DEVIARE]
- (2) Secundo dico quod posito, quod ratio currat de regula sive de lege animata inobliquabili et indeviabili in materia fidei et necessariis ad salutem populi Christiani; dico quod regula sive lex non potest dici regulariter esse concilia generalia, cum plura talia exorbitasse a fide historiae commemorent juxta Glossa in c. Ipsi sunt canones IX, q 3. Sed illa lex et regula est apostolica sedes quae numquam exorbitasse a fide catholica legitur. Habet enim sedes illa a Christo privilegium non errandi in fide juxta illud Lucae XXII: "Ego rogavi pro te, Petre, ut non deficiat fides tua;" quod sancti doctores de firmitate et inobliquitate fidei [SEDIS] apostolicae exponunt. Unde hac ratione mater fidei et magistra dicitur ecclesia Romana, ut in (col 580) c. Omnes, Dist XXII. Propter quod Callistus papa scribens aliquando episcopis, et habetur in c. Non decet, Dist XII: "Non enim decet membra a capite discedere; sed juxta scripturae testimonia omnia membra caput sequantur; nulli enim dubium est, quod apostolica ecclesia mater est omnium ecclesiarum, a cujus regulis nullatenus convenit deviare." Quare Hieronymus ad Damasum papam scribens propter hanc summam auctoritatem illius sedis et in diffinienda fide inobliquitatem, ut habetur XXIV, q 1, c. "Haec est fides, papa beatissime, quam in catholica ecclesia didicimus, quamque semper tenuimus; in (page 18) qua si minus perite aut parum caute forte aliquid positum est, emendari cupimus a te qui Petri fidem et sedem tenes. Si autem haec nostra confessio apostolatus tui iudicio comprobatur; quicumque me culpae voluerit se imperitum vel malevolum vel etiam non catholicam, sed haeticum comprobabit." Haec ille. Alius autem respectus de papa, juxta sanctorum patrum prudentiam habendus est, quam quod sit quid particularis homo ejusdem speciei cum caeteris hominibus. Plane consideranda est etiam divina providentia, quae ita illi sedi assistere credenda est, ut nullo modo ab ea in his, quae fidei sunt, permittat exorbitantia emanare iudicia. Unde Hieronymus loco proxime allegato ita prosequitur: "Sancta Romana ecclesia quae semper immaculata permanens, Domino providente et beato Petro operante

in futuro manebit sine ulla haereticorum insultatione atque firma et immobilis omni tempore persistet." Haec ille.

- (1) Tertio dici potest; dato quod illa regula inobliquabilis in fide sit concilium universale, hoc de plenario concilio, in quo apostolicae sedis auctoritas praesidet, intelligendum est; non de congregatione alia cui apostolica sedes in diffiniendo raro assisteret; sed potius maxime repugnaret. Quare nihil ex illa ratione arguitur ad propositum quis nullum tale concilium legem ponere posset papae, quae aut eius potestatem diminueret, aut volenti benefacere praestaret in provisionibus fiendis impedimentum; attento, quod sibi, et non alteri cura pasturae totius gregis dominici sit commissa.
- (2) Ad quintam rationem de tollenda occasione dico ad majorem et ad minorem. Ad majorem vero dico quod duplex est occasio mali. Quaedam directa quae directe ordinatur in malum; alia indirecta, quae scilicet de se respicit bonum, licet per accidens tendat in malum. Prima enim est omnimode tollenda et eradicanda, quantumcumque pace reipublicae fieri potest. Secunda vero non regulariter cum ea quae sunt per accidens relinquuntur ab arte. Tum primo quia, si quaelibet occasio malorum esset tollenda, cum scientia, teste apostolo, inflat, I Corinthios VIII. Et ex scientificis multi efficiantur haeretici et superbi inflati. Si autem hujusmodi occasionis causa tollerentur universitates et studia, non prudenter ageretur. Si denique omnis occasio abusuum in ecclesia esset auferenda, -- cum nostris demeritis innumeri sint in ecclesia praelati, archiepiscopi, episcopi, abbates abutentes sua potestate -- apud quem remaneret ista potestas? Assignetur ille et laudabimus eum.
- (3) Praeterea si omnis occasio abusuum auferenda esset, -- dicentibus Bohemis quod omnium ambitionum, simoniarum, multorumque (col 581) malorum occasio sit temporalitas ipsa ecclesiae data et ideo esset a clericis auferenda -- non restat nobis respondeo. Apud omnes enim manifestum est, quod si Bohemorum argumenta in materia temporalitatis non militarunt, multominus militant argumenta aliorum in materia nostra, qui sub specie pietatis, scilicet reformationis ecclesiae, primatum sedis apostolicae, universalis ecclesiae quodammodo fundamentum, destruere et deprimere moliuntur.
- (4) Sed nunc dico ad minorem quod loquendo de occasione directa et per se, falsa est. Absit enim ut dicamus quod usus beneficio divinitatis munere ecclesiae data sit per se occasio malorum, licet per accidens possit bene contingere, -- de quo non est ad propositum. Et cum dicitur quod experientia et clamores hoc ostendunt, dico, quod hoc est falsum; nulla enim experientia monstravit quod esset per se et directe occasio. Corrigatur ergo abusus per eum ad quem spectat et maneat intacta liberaque ipsa potestas ad bene agendum.
- (5) Ad sextam tamen de fine dico hic primo, quod hypothesis illa est falsa et contra omnem rationem loquendo de fine, qui est ratio et mensura omnium eorum quae sunt ad finem. Pro quo notandum, quod finis alicujus rei dupliciter dicitur. Uno modo illud quo tendit illa res ex ordine sibi dato, aut naturali aut supernaturali, sive

id quod est intentum ab agente. Alio modo dicitur finis id ad cuius utilitatem est ordinatum opus agentis; cuius exemplum potest poni in arte medicinae: uno modo dicitur finis ejus sanitas; alio modo infirmus sive corpus humanum. Item finis politicae videtur esse pax et tranquillitas ordinis, cum hoc videatur bonum ipsius ad quod universum regimen ejus respicere videtur. Ipsa vero communitas dicitur finis regiminis sive potestatis reipublicae; sic ad ejus utilitatem ordinatum est opus praesidentis et agentis.

- (1) Ita finis potestatis papalis non est ipsa ecclesia universalis sicut id ad quod est ordinata; sed id ad quod per se regimen aut usum ejus ipsa ecclesia recta et gubernata perducitur quod est ipsa beatitudo coelestis. Quod manifeste patet ex ipsa definitione potestatis ecclesiae, quam quidam adversae opinionis magister in suo tractatu ponit, videlicet, quod "potestas ecclesiastica est quae a Christo supernaturaliter et ^①spiritualiter collata est apostolis suis, discipulis, et eorum successoribus legitimis usque in finem saeculi ad aedificationem ecclesiae militantis, secundum leges evangelicas pro consecutione felicitatis aeternae." Et in definitione potestatis jurisdictionis in foro exteriori dicitur: "est potestas coercitiva, quae valet exerceri in alterum etiam invitum, ad dirigendum [et invitos] subditos in finem beatitudinis aeternae velut in finem proximum, et principaliter intentum." Ecce manifeste quod ecclesia, quae est multitudo ipsa dirigenda in finem beatitudinis aeternae, non est finis ipsius potestatis ecclesiasticae primo modo; secundo modo vero sic.
- (2) Sed cum a fine secundo, capto scilicet ab eo (page 19) ad cuius utilitatem ordinatur opus agentis, non capiatur regiminis, nec lex ordinationi eorum quae sunt ad finem. Sic nec medicus regulas capit medicinae a curandis, nec dux bellandi ab exercitu, nec princeps a populo leges ad regendum; sed e contra. Licet quandoque (col 582) bene mensura sive proportio legis aut regulae, quia corpori debili non ita fortis applicatur medicina, sicut forti et robusto; actus autem activorum sunt in patiente bene dispositio in secundo De anima. Secundo, quia teste Aristotele, oportet leges aptari politicae, unde moderatio legum accipitur ex qualitate regendae politicae, sed non dictamen aut ratio legis; sed illa capit politica ex principe, ubi est monarchia. Clarissime patet rationem illam -- ex adverso reputatam Achillem, -- omnino viribus vacuam esse.
- (3) Et ad probationem illius hypothesis per apostolum dico, quod per illam non probatur aliquid nisi quod est finis modo assignato. Aedificatio omnis ecclesiae in virtutibus et hujusmodi non est ipsa ecclesia. Leges enim hujusmodi aedificationis non videntur sumendae ex aedificandae ecclesia, sed ex aedificatore Christo. Sicut est principium ecclesiae, ita est finis ad cuius amplexum est perducenda ipsa ecclesia, cuius vices gerit in terris, ipse summus pontifex. Et ideo notantur in definitione potestatis ecclesiasticae ponitur: ad aedificationem ecclesiae secundum leges evangelicas. Et ita patet solutio rationis.

① SIC MANSI

SED IMMO SPECIALITER

- (1) Ad septimam rationem in qua ex similitudine rationis et voluntatis proceditur, dico primo quod hypothesis est falsa, quoniam ut dicit Chrysostomus in quadam epistola, sicut intellectus est summus pontifex et rex in homine; sic papa in ecclesia. Et est sapienter dictum, quoniam doctor et magister orbis dicitur secundum quod idem Chrysostomus dicit epistola localiter super Joannem quod "Johannes Jacobum localiter in uno loco praelatum determinatum, sed Petrum totius orbis decretavit magistrum et doctorem." Haec ille. Quia ratione dicitur XXV, § 1, c. Ideo: "Sacrosancta Romana ecclesia...habet jus condendi canones utpote quae est caput et curus omnium ecclesiarum, a cujus regula nemini dissentire licet."
- (2) Ceterum dico secundo, quod haec similitudo est falsa secundum opinionem arguentium, quoniam si ecclesia habetur ut finis, ratio vero dispositionis eorum quae sunt ad finem magis congrua videretur similitudo contrario modo assignata. Tertio dico quod concessa hypothese posita, quod in regno ecclesiae papa habet similitudinem voluntatis et concilium generale rationis sive intellectus, nihil arguitur contra propositum; sed confirmat haec ratio conclusionem meam, quod sic probatur.
- (3) Nempe licet consiliare et judicare de inventis sit ipsius rationis secundum se; tamen imperare, sive praecipere illa fieri modo imperativo non est rationis secundum se; sed ex virtute voluntatis sibi competit. Pro quo notandum, quod, ut dicit sanctus Thomas in I II, § 17 ubi quaerit utrum rationis sit imperare: quod "intimare, et denunciare aliquid ad agendum potest esse dupliciter; vel absolute per modum judicativum dicendo: hoc est faciendum; vel monendo ad hoc per modum imperativum, cum dicitur alicui: fac hoc. Cum autem voluntas sit primum movens in regno animae et secundum non moveat nisi virtuti primi, "sequitur quod hoc ipsum quod ratio movet imperando sit ex virtute voluntatis. Unde relinquitur, quod imperare sit actus rationis praesupposito actu voluntatis, in cujus virtute ratio movet per imperium ad exercitium actus." Haec ille. (col 583)
- (4) Ex quibus clare habetur, id quod universa ecclesia sonare videtur, quod concilium quando nuncunque leges denuntiet utiles reipublicae, nisi auctoritas papae interveniat, unde concilia suscipiunt robur et firmitatem, non poterit imperativo modo aliquem movere ad implendum, quia motio intellectus sive rationis attenditur quantum ad specificacionem actus; motio vero voluntatis. Praeterea cum dicat Aristoteles I Politicorum, quod ratio imperet appetitui principum politico quo scilicet aliquis praeesset liberis, qui habent jus in aliquo contradicendi; dicente Augustino, quod interdum praecedit intellectus et sequitur tardus aut nullus effectus.
- (5) Si illa similitudo currat ut concilium locum habeat rationis aut intellectus, papa vero voluntatis aut effectus, sequitur quod concilium nullo modo poterit cogere papam ad legem ejus implendam, ejus actus irritandum. Et ita lex conciliorum respectu papae habere dicatur regulativam rationem, non habebit vim coactivam.

- (1) Si vero dicatur: ad minus ex similitudine illa colligi potest, quod sicut si voluntas non sequitur legem rationis rectae errare convincitur; ita papa si leges justas et sancta decreta universalium conciliorum plena observatione non fuerit amplexus. Dico quod concederem. Sed videndum esset quae leges sint justae et quae sancta decreta, quoniam multi dicunt malum bonum, et injustum aequissimum et tenebras lucem. Decretum autem quod papa non provideret de pastoribus in ecclesia sibi a Deo commissa, et quod solum ordinariis dispositio ecclesiarum et collatio beneficiorum committatur, dimisso papa velut trunco demembrato in sede, non sanctum esset dicendum, seu nefandum, scilicet sacrilegum, ut rationes adductae primo claredemonstrant.
- (2) Ad octavam rationem de superioritate, dico ad majorem quod major esset vera, quando aliquod non est in proposito, dato etiam quod concilium universale esset aliquo modo superius papa. Non enim summus pontifex capit auctoritatem a conciliis, sed ab ipso Domino Deo cujus (page 20) vicarius est in terris. Supersedeo autem nunc de veritate minoris propositionis assumptae dicere, propterea quia ea quae dicta sunt, sufficiunt ad ostendendum articulum factum non probare propositum.
- (3) Ad nonam de rectitudine legis, dico ad minorem quod illa est falsa; quoniam lex quae quandoque est justa, alio tempore servata esset injusta et nociva. Pro quo advertendum, quod rectum in rebus corporalibus dicitur absolute; et ideo rectum in eis quantum est de se manet semper rectum; sed rectitudo legis accipitur non absolute, sed in ordine ad utilitatem communem, cui non semper proportionatur una et eadem res; et ideo talis rectitudo mutatur.
- (4) Unde dicit Augustinus in libro De libero arbitrio, quod lex temporalis, quamvis justa sit, commutari tamen per tempora juste potest. Secundo dico, quod non esset dicenda lex aequa aut justa in qua sedes apostolica detraheretur potestati aut dignitati aut honori. Nec insuper videretur lex recta data a concilio circa regimen ecclesiae, in qua varia et inopinata possint contingere, nisi semper sedis (col 584) apostolicae potestas intelligeretur excepta, sicut in sacrorum universalium conciliorum decretis per sanctissimos zelatores factum legimus.
- (5) Ad decimam de privilegio ec., dico quod duplex ad praesens distinguitur privilegium; unum quod dicitur a juristis reale et illud est quod datum est ecclesiae, dignitati, civitati, aut alicui loco; et hoc dicitur perpetuum et rei adhaeret et sic semper durat nisi forte res destruat. Aliud est personale, quod alicui vel certis personis personaliter conceditur. Quo habito dicitur, quod privilegium dispositionis ecclesiarum et alia hujusmodi non est privilegium personale personae curiae aut alterius; sed est ipsius sedis apostolicae; quod privilegium Christi donantis dispositione [officiis]* adhaeret inseparabiliter

*Mansi: ossibus.

ipsius sedis. Sic enim instituta est ecclesia ab eo, et potestatis munere dotata, ut esset usque in finem saeculi duratura.

- (1) Qua in re cum sit contra omnem aequitatem, ut propter delictum praelati ecclesia perdere debeat privilegia sua, et praesertim illa quae est caput et mater et regula ceterarum, non videtur justum et aequum. Imo etiam nec possibile de jure, ut propter abusus quorumque sanctorum pontificum sedes apostolica suis privilegiis sit spolianda; praesertim cum illa non a quocumque mortali, imo nec ab ipsa universali ecclesia, sed a Christo Jesu immediate illa suscepta.
- (2) Ad undecimam rationem negatur minor in qua dicitur papa providere immediate de ecclesiarum pastoribus esse injustum. Et cum probatur quia est contra jus commune dicitur hoc esse falsum, cum in nullo tali mandetur quod sedes apostolica non valeat providere; imo in omnibus decretis ejus semper sedes apostolica intelligitur excepta, ut supra dictum est. Et per idem respondetur ad sequentem probationem, cum dicitur, detrahere privilegia ecclesiarum sit injustum. Dico quod nullius ecclesiae tollit privilegia aut praelati papa disponendo de pastoribus ecclesiarum; quia nulli praelato ipsius ecclesiae est particulariter concessum, ita lege privata disponere de ecclesia quaecumque, aut collatione beneficiorum, quod papa non posset illud, quia omnia privilegia hujusmodi ecclesiarum particularium emanant ab ipso universali universalis ecclesiae pastore sive principe, summo pontifice, qui etiam si vellet, non posset taliter privilegia concedere, quod sedes apostolica aliter disponere non valeret.
- (3) Ad duodecimam, ubi dicitur quod papa disponendo de ecclesiis videatur dissipare ordinem hierarchicum; respondetur negando minorem. Quoniam illa est falsissima; imo a cunctis piis auribus declinanda; tum quia totius ecclesiae pastura sit commissa summo pontifici, ut dicit Gregorius papa super illud Joannis XXI: "Ascendit Simon Petrus," et cetera. "Petro autem sancta ecclesia est commissa; et ipsi spiritualiter dicitur: 'pascere oves meas.'" Et ipsius est immediate pascere vel de pastoribus providere; mirum autem esset quod papa faciendo quod sibi ex officio competit etiam praeecepto Salvatoris, ordinem hierarchicum confunderet.
- (4) Secundo idem apparet, quoniam si papam immediate confirmare episcopos et sacerdotes consecrari, et hujusmodi disponere est ordinem hierarchiae confunderi, tunc Christianos, apostolos ipsos immediate conferendo in episcopos, et non mediante Petro (col 585) ordinem hierarchicum pervertisset, quod erroneum est dicere. Si dicatur, quod non est simile, quia cum Christus sit Dominus, est super omnem ordinem et Dominus legis; papa autem non. Hoc nihil est, tunc quia papa licet non sit Dominus simpliciter, est locum habens domini in ecclesiastica hierarchia.
- (5) Tertio, quia ipsa ordinatio, -- quod confirmationes episcoporum fierent per metropolitanos, -- non est ex lege divina sed ex lege humana super quam est papa, in qua semper est excepta potestas papae. Unde Bernardus ponit aliqua monasteria a fundatione

sua ad apostolicam pertinere auctoritatem. Tertio, practica beati Petri ostendit illam propositionem erroneam, quoniam ut supra in primis rationibus deductum est, pluries episcopos per se ipsum constituit et ordinavit, quem in hoc confundisse ordinem hierarchicum ecclesiae militantis dicere, esset sacrilegium.

- (1) Demum quarto, tunc ecclesia Romana sic se intromittens de provisione ecclesiarum, tanto tempore fuit in peccato mortali; immo in gravissimo errore, credendo illud sibi jure divino competere, per quod ordo hierarchicus ecclesiae militantis confusus redditur. quod vero credat hoc sibi competere, patet ex concilio allegato. Et ita a magno tempore fuisse in errore quod nefas est credere de ea, de qua dicit Hieronymus, ut superius fuit allegatum (page 21) et ponitur XXIV, c. 1, c. Haec est fides: "Sancta Romana ecclesia, quae semper immaculata permanens, Domino providente, et beato Petro opem ferente in futurum manebit sine ulla haereticorum insultatione, atque firma et inviolabilis omni tempore persistet." Et ejusdem sententiae est beatus Cyrillus in libro Thesaurorum. Ut ergo clarius videatur quod ista ratio procedit ex ignorantia naturae et conditionis hierarchici principatus, est notandum quod in hierarchia est duo considerare; primo ordinem institutionem et distinctionem; secundum est executionem officiorum; primum autem horum est, ipsius hierarchiae immediate, et non aliorum; sicut enim Deus immediate creavit angelos, ita eos per hierarchias et ordines distribuit.
- (2) Secunda vero expletur quodam ordine juxta beati Dionysii doctrinam, ut infima per media reducantur ad supremam; sic in proposito in hierarchia ecclesiastica pariformiter duo consideranda sunt; scilicet institutio dignitatum et dispositio ecclesiarum et distinctio earum, et hoc ad hierarchiam hierarchiae pertinet, videlicet ad papam, sicut angelorum creatio et ordinem institutio et divisio eorum a Deo immediate fuit. Unde Anacletus c. In novo, dist. XXII: "In novo testamento post Christum a Petro sacerdotalis incepit ordo, quia ipsi primo pontificatus in ecclesia Christi datus est, dicente Domino. Tu es Petrus et super hanc," et cetera.
- (3) Secundum vero quod est considerandum, est in ordinibus constitutis et ecclesiis provisio de pastoribus, executio officiorum, sive actum hierarchicorum qui maxime consistunt in ipsa dispensatione sacramentorum; et doctrina veritatis. Et in horum dispensatione currit lex illa hierarchiae, licet non ita immobiliter, sicut in caelesti; licet enim, ut dicebatur arguendo, "ecclesiastica hierarchia imitatur coelestem," a qua est exemplata. "Verumtamen," ut dicit sanctus Thomas in tractatu Contra impugnantes religionem, "non in omnibus. In coelesti enim hierarchia distinctio donorum gratuitorum secundum quam ordines distinguuntur, sequitur distinctionem naturae non autem in hominibus." Et ideo in angelis est major immutabilitas, quam in hierarchia ecclesiastica.
- (4) Ad decimam tertiam rationem de depositione, aut suspensione papae, respondeo negando antecedens. Et cum dicitur quod antecedens est notum et practicatum in ecclesia, dicitur hoc esse

falsum. Nunquam enim jure factum legitur, ut Romanus pontifex propter solum abusum potestatis suae hujusmodi provisionibus suspensus esset aut depositus. Secundo dico, quod dato quod in quibusdam casibus generalia concilia possint vel deponere possint vel deponere papam, vel eum suspendere ab officio papalis administrationis, et quod in talibus possunt decreta irritantia ponere contra abusus ejus notabiles et scandalizantes universalem ecclesiam. Non propter hoc sequitur, quod simpliciter et indistincte possit poni decretum irritans supra sedem apostolicam in his quae sibi competunt ex plenitudine potestatis; cuiusmodi sunt illa, de quibus sermo praesens est; et ideo ratio in nullo militare videtur.

- (1) Ad decimam quartam rationem de privilegiis, et cetera, dico dupliciter; uno modo negando minorem: et ad probationem per decreta posita supra patet solutio per iam dicta, quoniam in omnibus privilegiis datis per summos pontifices et etiam concilia ecclesiis ac praelatis inferioribus semper intelligitur; salvo tamen in omnibus jure sanctae Romanae ecclesiae, vel salva in omnibus apostolica auctoritate, ut supra dictum est.
- (2) Unde etiam Gelasius papa XXV, c. Ita nos, dicit: "Non ergo privilegia ecclesiarum sic inviolata permanere censetur, ut quibusdam de causis intervenientibus apostolica auctoritate eis derogari non possit;" sequitur, "serventur ergo privilegia ecclesiarum cunctis inconcussa temporibus, ne videlicet praeter ejus auctoritatem a quo data sunt, contra ea liceat alicui evenire." Item secundo, dico ad majorem, quod secundum glossam decreti intelligendum est decretum illud de privilegiis, quae sunt de generali ecclesiae statuto vel quae sunt de articulis fidei; vel dici non possunt; id est non debent.
- (3) Ad decimam quintam rationem de consensu requisito etiam negatur minor; quoniam consensus exprimitur etiam per acceptationem et admissionem dispositionis sive provisionis factae per summum pontificem, sicut de curatis qui suarum sponsi sunt ecclesiarum parochialium, patet manifeste.
- (4) Ad decimam sextam, cum dicitur quod facta sunt similia decreta irritantia et cetera, dico primo, quod non sufficit allegare similia decreta irritantia de facto emanasse. Sed requiritur ut argumentum haberet, ostendere talia de jure processisse, cum nos de possibilitate juris non de facto loquamur.
- (5) Secundo dico, quod dato quod in aliquibus casibus, puta cum papa esset fautor haeresis aut schismatis aut publicus sive manifestus dilapidator et alienator bonorum ecclesiae possit per concilium universale poni decretum irritans; non tamen sequitur propterea, quod simpliciter et indistincte posset decretum irritans ponere apostolicae sedis circa provisiones ecclesiarum propter (col 587) defectus aut abusus quandoque commissos per summos pontifices. Quoniam licet, sicut dictum est super eadem materia, aliqua de causa speciali concederetur quod possit poni decretum irritans contra papam; ut puta si sit fautor haeresis aut schismatis; non tamen sequitur quod simpliciter et indistincte posset poni.

- (1) Pro quo notandum est primo, quod bonitas et malitia in actibus moralibus principaliter capienda est ex fine. Unde Aristoteles III Metaphysicorum dicit quod ratio boni ex fine sumitur; et Boethius eidem alludens sententiae, dicit in Topics: "Cujus finis bonus, ipsum quoque bonum est; et cujus finis malus, ipsum quoque malum est." Secundo (page 22) notandum quod, ut dicit sanctus Thomas II II, q. 154, art. 10: "Actus unius virtutis vel vitii ordinatus ad finem alterius sumit speciem illius; sic furtum propter quod committitur adulterium transit in speciem adulterii;...et luxuria secundum quod violat aliquid ad divinum cultum pertinens, pertinet ad speciem sacrilegii."
- (2) Quo notato dico, quod quia in casibus positus papa tribuendo beneficia, et dignitates credendus est hoc facere in favorem haeresis, aut manutentionis schismatis, ut saltem sic reformationem ecclesiae impediret; et ita per consequens ordinaret illa in malum finem. Et quia quod malo fine agitur malum est. Ideo concessio quod decreta illa tam Constantiensis concilii contra Joannem et contra Benedictum sunt rationabiliter et sancte posita in casibus praefatis; non sequitur quod generaliter concilia contra sedem apostolicam indeterminate, non concurrentibus hujusmodi casibus, quod sit possibile poni decretum irritans in materia provisionis ecclesiarum, aut in alia quacumque sibi ex plenitudine potestatis competentis.
- (3) Ad decimam septimam. Cum dicitur de irritatione sacrarum ordinationum, et cetera, dico negando antecedens; et ad probationem cum dicitur de Nicaeno concilio, dicitur, quod illud decretum intelligitur de irritatione ordinationis sive consecrationis, quantum ad executionem ejusdem debitam; non autem quantum ad ipsum ordinem, sive ipsam consecrationem, quam vere suscipit.
- (4) Ad decimam octavam, cum dicitur quod aliqui pontifices decretantes decretaverunt multa irritando contra attentata. Dicendumque, etsi ita, ut supponitur, fuerit -- pro quo non vidi textum -- verumtamen consequentia non valet quia talia decreta fiebant assensu papae, qui poterat juri suo renunciare et ligare manus suas, sed non successorum. Et ita non est ad propositum, quoniam hic attentatur simpliciter et indistincte contra sedem apostolicam poni decretum irritans, cui ipsa sedes non consentit sed contradicit; in qua ipse Deus hanc potestatem usque ad finem saeculi duraturam, esse voluit.
- (5) Ad decimam nonam de immutabilitate legum, dico primo, quod cum certitudinis firmitas varietur secundum variationem rerum, ut dicitur primo De anima et I Ethicorum, et omnis mensura dicatur relative ad mensuratum. Non oportet, quod omnis mensura aequae sit certitudinis, et ita nec omnino infallibilis nec certa, sed quantum est possibile in suo genere. Unde cum illa quae regulanda sunt lege humana sint corrigenda singularia, multipliciter (col 588) variabilia, non possunt leges humanae habere illam firmitatem, sive immortalitatem quam habent conclusiones demonstrativae in aliis scientiis.

- (1) Immo propter hujusmodi rerum varietatem varietatem quibus oportet mensuram ipsam coaptari et cum ipsis variari. Ad salutem reipublicae necessarium est leges esse variabiles, ut dictum est. Et ita auctoritates allatas pro probatione majoris illius dicitur, quod conveniens est, quod quae juste et sancte ordinata sunt, ubi tamen nulla occurrit urgens necessitas vel evidens utilitas, nulla refragatione debent immutari. "Aliter enim," ut dicit Bernardus "non videretur fidelis dispensatio sed crudelis dissipatio."
- (2) Dico secundo ad minorem, negando illam; enim facere decretum in materia praesenti irritans et in alia simili esset pessimum, ut supra est declaratum apertissime. Cumque non sint fienda mala ut eveniant bona, ut dicit apostolus; propter abusus non est privanda sedes apostolica bonis usibus; vellent enim eos considerare, qui ad decretum statuendum irritans concilium dant, illud aristotelis III Ethicorum quod non est bonus consiliarius qui bonum finem inconvenienti nititur consequi medio; nec isti debent ampliorem petere firmitatem suarum legum, quam ipsae leges sint capaces.
- (3) Clarum enim quod lex et decreta conciliorum aliter respiciunt summum ecclesiae pontificem, et aliter alios inferiores. Secundo, falsum est quod assumitur, quod non possit aliunde sumi firmitas decretorum concilii quam per decretum irritans; imo dico quod per hoc magis redderetur lex nulla, quam firma, quia exiret terminos juris. Et ita, tertio ad consequentiam respondendo, dico, quod illa consequentia nulla est, nec probatio, ut patet ex supradictis.
- (4) Ad vicesimam rationem de reformatione negatur antecedens, et ad probationem dico, quod nullo tempore provisio ecclesiarum et confirmatio et alia hujusmodi pertinebant ordinariis. Siquidem etiam principaliter pertinebant summo pontifici qui executioni illa demandaret, quando utile et necessarium atque expediens visum sibi fuisset, ut supra dictum est.
- (5) Ad vicesimam primam de amputatione membri ratione sanitatis totius corporis, dico breviter. Ad hoc id non esse verum quando illud membrum est caput totius corporis, quia capite languescente facilius membra corporis inficiuntur. Caput autem universalis ecclesiae est ipse, unde Dist XII, c. "Non decet a capite membra discedere;" sed juxta scripturae testimonia omnia membra caput sequuntur.
- (6) Nulli vero dubium est, quod apostolica ecclesia mater est omnium ecclesiarum et ideo matris nostrae, quae ecclesia est, caput existit Romana ecclesia, Dist XXII, c. Sacrosancta "apostolica sedes, caput et cardo" est omnium ecclesiarum quae ratio capitis competit ei ratione plenitudinis potestatis praesidentis in ea, scilicet summi pontificis: et ita patet quod ratio non procedit.
- (7) Ad vicesimam secundam dico primo, quod si argumentum militaret, aequè ut videtur, (page 23) militaret contra ordinarios sicut contra papam. Quia textus dicit, quod duodecim apostoli dixerunt, inter quos erat Petrus cui succedit summus pontifex; et alii

apostoli quibus succedunt episcopi. Et ita aequae contra ordinarios essent irritantia decreta ponenda, quod non intromitterent (col 589) se de provisione temporalium beneficiorum. Cum praesertim dicat ibidem Glossa ordinaria: "Ostendunt apostoli episcopos et doctores ecclesiae non debere temporalibus rebus complicari." Praeterea si eo quod providere de beneficiis ecclesiasticis, ut assumitur, sit se intromittere de pulvere terrae et feces manibus tractare, a papa sint ista auferenda, ut manus sacratioribus valeat convenientibus studiis intendere doctrinae, et praedicationi; mirum est quod istae feces tanto affectu sint concupitae, et super dispensatione earum tanta discordiarum in praesenti concilio flamma concre-scat. Secundo, cum tam ad purificandum ordinariorum manus haec ratio concurrat. Dicendum ergo est ad rationem ipsam, quod minor est falsa; et ad probationem dico, quod auctoritas non est ad propositum, tum quia aliud est ministrare mensis et provisionibus emendis pro refectione alicujus multitudinis intendere, et aliud est providere ecclesiis de pastoribus et hujusmodi facere. Unde beatus Petrus licet primum relinqueret; non tamen secundum, ut supra patuit.

- (1) Ad vigesimam tertiam dico, quod minor est falsa; et ad probationem cum adducuntur multa dicta decretorum, primo, ad omnia dico, sicut supra quod in nullo illorum decretorum cavetur quod papa det beneficia, aut provideat de ecclesiae pastoribus, quia sic est provisionis commissio, scilicet, ecclesiarum; et provisionis bonorum facta ordinariis, ut semper intelligatur: nisi sedis apostolicae auctoritas cui ex plenitudine potestatis competit, aliter dispensaverit aut fieri imperaverit.
- (2) Cum dicitur quod Romanae sedis auctoritas non potest aliquid addere vel mutare contra statuta sanctorum patrum, ut dicit sanctus Thomas in tractatu Contra impugnantes religionem; respondetur hoc verum in illis quae sanctorum patrum statuta decreverunt de jure divino, sicut articuli fidei, qui determinati sunt per concilia; sed illa quae sancti patres decreverunt de jure positivo, sunt relicta sub dispositione papae, ut ea possit mutare vel disponere secundum opportunitates temporum vel negotiorum. "Santi enim patres in conciliis congregati nihil statuere potuissent, nisi auctoritate summi pontificis interveniente sine quo etiam nec concilium congregari potest."
- (3) Secundo, dicit sanctus Thomas ibidem quod "Nec tamen papa quando aliquid aliter facit quam a sanctis patribus statutum sit, contra eorum statuta facit; quia servatur [eorum] intentio statuentium etiam si non serventur verba statutorum, quae non possunt in omnibus casibus et temporibus observari, observata intentionem statuentium, quae est utilitas ecclesiae, sicut et in omni jure positivo accidit. Derogatur enim prioribus statutis per statuta sequentia."
- (4) Ista responsio sancti Thomae est juxta responsionem, quae datur ad illas similes auctoritates, XXV, q 1, c. Ideo permittente Domino, ubi sic dicitur: "His itaque respondetur: Sacrosancta

Romana ecclesia jus et auctoritatem sacris canonibus impartitur, sed non eis alligatur; habet enim jus condendi canones utpote quae caput et cardo est omnium ecclesiarum, a cujus regula nemini dissentire licet. Ita ergo canonibus auctoritatem praestat ut seipsam non subiciat eis. Sed sicut Christus qui legem dedit ipsam legem carnaliter implevit octavo die circumcisis...postea vero ut se dominum legis ostenderet, contra [legis litteram leprosum tangendo sanavit. (col 590) Unde dicitur] de eo: Erat Jesus docens tanquam potestatem habens "...dominus legis... sic et summae sedis pontifices canonibus a se, sive ab aliis sua auctoritate conditis reverentiam exhibent et se eis humiliando ipsos custodiunt ut aliis observandos exhibeant. Nonnunquam vero seu jubendo seu diffiniendo sed discernendo seu aliter agendo se decretorum dominos et conditores esse ostendunt." Sequitur "Quamquam si decretorum intentionem diligenter advertamus, nequam contra sacrorum canonum auctoritatem aliquid concedere inveniuntur. Sacri siquidem canones ita aliquid constituunt, ut suae interpretationis auctoritatem sanctae Romanae ecclesiae reservent. Ipsi namque soli canones interpretari valent, qui jus condendi eos habent. Unde in nonnullis capitulis conciliorum cum aliquid observandum decernitur statim subinfertur: 'Nisi auctoritas Romanae ecclesiae aliter [fieri] imperaverit; vel 'salvo tamen in omnibus apostolica auctoritate.' Quaecumque ergo de decimis vel de quibuslibet ecclesiasticis negotiis sacris canonibus diffiniuntur, sunt intelligenda necessario servari nisi auctoritas Romanae ecclesiae aliter fieri mandaverit vel permiserit." Haec ibi.

- (1) Ad ultimam rationem, quidquid sit de minori: dico quod ex tali depressione aut suspensione, aut irritante papalis potestatis in provisione ecclesiarum, et collatione beneficiorum non sequeretur bonum aliquid ipsi universali ecclesiae sed damnum inenarrabile, dissipatio scilicet, ecclesiasticae politicae, ut supra ostensum est. Licet illud petant multi vel quia non patiuntur bene subesse, vel subalternari superiori; vel quia multi inde sperant suae cupiditati plenius satisfieri, aut quia ab ordinariis sperant, alii citius vel pinguis promoveri. Alii vero habentes bonum zelum, sed existimo quod non secundum scientiam ducti, credentes per hanc viam melius ecclesiae Dei illuminare, ut hoc in sacro concilio decretanda, ecclesiae [suae sanctae] sint vere accommodata et utilia. Amen.

EXPLICIT

Hic terminatur quaestio de decreto irritante, quod attentabatur per multos Basileae contra summum pontificem in materia provisionis ecclesiarum, et collationis beneficiorum, composita per fratrem Joannem de rurrecremata sacrae theologiae professorem, de qua debuit ipse respondere publice in sacro generali concilio Basileensi; sed certis de causis, et quia decretum provisionis ecclesiarum transivit sub alia forma, quam sub forma decreti irritantis, supersessum fuit a disputatione publica praefatae materiae. Anno domini 1433, ad finem mensis Maii.

JUAN de TORQUEMADA

APOLOGIA Eugenii Papae IV^{ae}: sive de
Summi Pontificis et Generalis Concilii
potestate. Ad Basiliensium oratorem
in FLORENTINA SYNODO: responsio viva
voce exhibita...1439...(Sept aut Oct).

TRACTATUS B

TRACT B: The basic text containing 94 Propositions in the answer to the opposing debater's First Article and 24 Propositions in answer to the Second Article. These Propositions are the skeleton that the SUMMA DE ECCLESIA clothes with skin and flesh in the final synthesis. This text has special reference to the Liber secundus and Liber Tertius of the SUMMA. Of the SUMMA I should say that Liber secundus and its doctrine was what Juan de Torquemada strove chiefly to achieve.

STATE of the TEXT as found in the MANSI COLLECTION: Vol 31B (really a reprint of a LABBE text in Vol.18)

A clue to the type of error -- probably transcribal -- likely to be found upon collation with the Mss is indicated in the first line: the catalogs of the Mss have no variant for the Incipit: NOTASTIS TENEO. Our text reads: NOTASTIS CREDO, suggesting a Gothic prototype -- of the Humanist writing-form type -- where the transcriber readily confuses N for V; D for T; S for F; C for T; and vice versa.

References to numerals are frequently wrong.

Occasionally the transcriber wrote what he thought he knew instead of what he saw: the lesser known INCIPIT DE SUMMA TRINITATE of c. FIRMINUS (X^o: I: I De summa Trinitate, c.1) was rejected in favour of the well-known Incipit Unam sanctam Page 27(3)

Generally speaking TRACT B is a good text.

EMENDATIONS: I have regularly corrected numerical references to the Bible, to Gratian and to several much-used references, especially when the same passage in other TRACTS or in the SUMMA are properly cited. I have frequently corrected a scribal error without noting the correction when the mistake occurs in a reference that otherwise makes no sense. Other emendations are noted; interpolations and omissions in references are bracketed.

OCCASION of the COMPOSITION of TRACT B:

A scholastic disputatio conducted in the Florentine Synod between September 5, 1439 and October 20, 1439. Cardinal Julian Cesarini had undertaken the first part of the debate on behalf of the Council of Basle with which he was no longer associated. The rebuttal delivered by Juan de Torquemada was the official reply to various speeches and pamphlets directed personally against Eugene IV and papal authority generally. The special antagonist was apparently the celebrated canonist Nicholas Tudeschi, more commonly known to canon lawyers by name of his bishopric, Panormitanus. Of this no direct proof is forthcoming. There is no one tract of Panormitanus that is all-inclusive of the arguments refuted. Therefore, I hazard the guess in the absence of positive check: that TRACT B is a composite reply -- to Panormitanus, to John Patriarch of Antioch, and the common propaganda of the University of Paris generally. (Mansi 30:1185C; 29: 513 sqq; and 28: 22-30 etc) respectively.

The disputation was undoubtedly conducted for the benefit of the Greeks assembled in the Council of Florence where they had the previous July signed the decree of Union. Eugene IV was filled with anxiety by reason of the scandalous Council of Basle. The official condemnation, Moyses vir Dei, published September 4, is referred to on Page 1.

RESPONSIO Joannis a Turrecremata, ordinis praedicatorum, tunc sacri palatii magistrum

APOLOGIA EUGENII PAPAE IV

sive de summi pontificis et generalis concilii potestate.

Ad Basileensium oratorem in Florentina synodo responsio viva voce exhibita.

SUMMARIUM: 1: Apostolica sedes haereses non fovet sed destruit.
2: Romano pontifici jure divino caput omnes inclinant.

PRAEFATIO: Notastis, ~~et~~ superiori die pro vestra sapientia et humanitate, Reverendissimi patres, sanctissimam et religiosam intentionem sanctissimi domini nostri et celeberrimum ejus desiderium; optate enim sanctissimus dominus noster sicut pius pater, utpote in cathedra sedet, quae "nullam unquam haeresim fovet, sed omnes haerēses destruit," nascentes errores de medio populi Christiani evellere. Vult nihilominus hoc cum omni pace et caritate quantum fieri poterit adimpleri, ea gravata servata, quam sanctitatis suae circumscriptio materiam fidei novit pro singularitate celsitudinis suae exigere. Instituit propterea ejus sanctitas de controversia super reprobatione quorundam errorum Basileensium inter deputatos orta, coram prudentissimis circumpectionibus vestris pro utraque parte agitari rationes; et hoc maxime circa propositionem primam inter tres illas, quas Basileenses intelleximus declarasse veritates esse fidei catholicae, cujus tenor est.

- (1) "Veritas de potestate generalis concilii potestate universalem ecclesiam repraesentans supra papam et quemlibet alterum, declarata per Constantiense et hoc Basileense generalia concilia, est veritas fidei catholicae." Audivistis jam heri sapientissimum virum et celeberrimum patrem, dominum meum singularissimum, qui more suo sapientissime et amplissime partem illam fulsit, quam gratia illustrioris veritatis habendae, defendendam suscepit. Utinam tam pro ampliore claritate veritatis, quam pro sublimitate auditorum, alius quam ego institutus fuisset dignitate et auctoritate major, perspicacior ingenio, et locupletior sapientia; qui tantae rerum amplitudinis satisfaciens, dictis per eundem clarissimum et reverendissimum patrem et dominum, plena responsa dedisset. Verum quia ejus mandatis me parere oportet, cui omnes jure divino caput inclinant, responsionem hanc de ejus confisus auxilio, cujus vicariatum defendimus et principatus honorem cum omni humilitate et reverentia et sub omnimodo correctione sanctissimi domini nostri et supportatione pia omnium reverendissimorum patrum et dominorum hic existentium, rem ipsam mihi deputatam aggredior.
- (2) Distinxit autem praefatus dominus (si bene teneo) actum suum in tres articulos principales: in primis enim arbitratus quod illa prima propositio Basileensium parum ante commemorata (col 1942), non posset tangi tactu reprobationis et condemnationis et nisi pariter decretum Constantiense de potestate concilii super papam tangeretur. Induxit primo loco auctoritates multas et rationes pro veritate praefati decreti Constantiensis: de auctoritate concilii universalis supra papam.
- (3) Secundo, visus est per rationes plures persuadere quod praedicta prima propositio Basileensium non debeat tangi. Tertio ejus prudentia studuit argumenta solvere, quae fiebant ab aliquibus patribus inter deputatos: quod non posset aliae duae propositiones damnari, nec veritas translationis factae per dominum nostrum de Basilea ad Ferrariam habere firmitatem, praefata illa propositione

non damnata. Circa primum consideravit dominus proponens quinque partes in decreto illo Constantiense edito de potestate conciliorum, secundum quas primum articulum suum in quinque partes subdistinxit. Prima pars illius decreti Constantiensis (page 2) est, quod "ipsa synodus in Spiritu sancto legitime congregata et generale concilium faciens, ecclesiam catholicam repraesentat".

- (4) Pro hujus partis probatione, inducta est epistola illa domini Martini, quam, approbante universo concilio Constantiensi editam, ad Germaniaeprelatos direxit, in qua inter cetera interrogatoria, quae fienda instituit captis haereticis suspectis de erroribus damnatae memoriae, Joannis Wichlef et Joannis Huss jubetur ut haereticus talis interrogetur, "utrum credat, teneat et asserat, quod quodlibet concilium generale et etiam Constantiense universalem ecclesiam [repraesentans]." [REPRÆSENTET]

RESPONSIO ad PRIMUM ARTICULUM
SUMMARIUM:

- 1: Concilium ab eo congregatum qui indubitatus pontifex non est legitimum dici non potest.
- 2: Congregatio per Joannem XXIII facta Constantiae non consentientibus aliis duabus obedientiis, nec synodum legitimam constituit nec universalem ecclesiam repraesentavit.
- 3: Veritas illa catholica non fuit cui aliae duae obedientiae contradixerunt.
- 4: Concilium generale universalem ecclesiam repraesentare non dicitur si integrum et plenarium non est.
- 5: Integrum et plenarium concilium quando vere existat.
- 6: Congregatio nulla canonica, Romano pontifice excluso, universalem ecclesiam repraesentare potest.
- 7: Definire quod decretum illud Constantiense (col 1943) ad veritatem fidei catholica pertineat temerarium et scandalosum est.
- 8: Concilium generale legitima apostolica auctoritate congregatum habere potestatem a Christo immediate: non est unitas catholicae fidei.
- 9: Papa indubitato in concilio personaliter existente synodo constituentis aut definientis nomine utitur; sed pontifex sacro approbante concilio universa decernit.
- 10: Quomodo synodus statuatur, definiatur, pronuncietur et condemnetur.
- 11: Sine papae auctoritate ne concilium congregari nec quidpiam in eo determinari potest.
- 12: Papa legitimus ecclesiae catholicae caput est et supremam in illa auctoritatem habet.
- 13: Concilium universale potestatem habere a Christo immediate: falsum est.
- 14: Et repugnat articulo fidei: credo unam sanctam ecclesiam.
- 15: Nulli congregationi synodali ecclesia fidelium omnium regimen immediate commisit.
- 16: Petri soli et successoribus universaliter et indistincte dixit Dominus: "Pasce oves meas."
- 17: Ecclesiae regimen monarchicum et regale a Christo constitutum est.
- 18: Species regiminis politicae ecclesiasticae immutabilis est.
- 19: Ecclesiastica hierarchia ad exemplar caelestis formata est.
- 20: Nulla potestas a Christo ecclesiae aut generali concilio tribuitur, quae Romano pontifice mediante non conferatur, qui hierarcha et primus est in tota hierarchia.
- 21: Conciliorum universalium auctoritas et quoad convocationem et quoad actorum robur et firmitatem ab apostolicae sedis auctoritate immediate dependet.
- 22: Jurisdictionis potestatem a Christo immediate apostoli alii non acceperunt sed mediante Petro.

- 23: Apostolis aliis Christus immediate subditos non dedit.
- 24: Nec illis Christum pepulos immediate divississe legimus.
- 25: Nec potestatem aliquam etiam limitatam contulisse.
- 26: Dato quod apostoli jurisdictionis potestatem sicut ordinis a Christo immediate receperint; non tamen concedendum est quod alii praelati ecclesiae potestatem non a Christo immediate suscipiant.
- 27: Jurisdictionis potestatem mediante Romano pontifice Christi in terris vicario praelati ecclesiae accipiunt. (page 3)
- 28: Papa princeps et monarcha est in ecclesiae principatu.
- 29: Est primus in ordine praelatorum ecclesiae et in eo residet plenitudo potestatis.
- 30: Romana ecclesia aliarum ecclesiarum caput est.
- 31: Ad unitatem ecclesiae requiritur quod omnium praelatorum potestas jurisdictionis a Romano pontifice derivetur.
- 32: Dato quod ecclesiae praelati jurisdictionis potestatem a Christo immediate susciperent; non tamen sequitur quod concilium universale a Christo immediate auctoritatem habeat cui etiam papa obedire teneatur.
- 33: Cum Matthaei XVII^o Christus dicit, "dic ecclesiae," non universalem ecclesiam dispersam aut in concilio congregatam, sed praelatum principaliter intendit. (col 1944)
- 34: Fraternalis correctionis praeceptum: nec impossibile nec difficile est.
- 35: Totalitas ecclesiae multiplex.
- 36: Quando et quomodo papa fraterne corrigendus sit.
- 37: Ligandi et solvendi potestas: quomodo episcopis et sacerdotibus omnibus intelligatur collata.
- 38: In concilio qua potestate patres decreta condant.
- 39: Spiritum sanctum pastores posuisse ut regerent: quomodo intelligatur.
- 40: Claves ecclesiae: quomodo apostolis et eorum successoribus Christus dederit.
- 41: Augustini locus XXIV, q. 1, c. Quodcumque: de Petro claves accipiente et ecclesiam significante, explicantur.
- 42: Non Petro tantum ut singulari personae data est clavium auctoritas sed in eo successoribus ejus et universis praelatis in ecclesia Dei futuris quos in partem sollicitudinis suae vocaret.
- 43: "Pasce oves meas," non tantum Petro sed ejus successoribus et aliis in partem sollicitudinis ejus evocandis, dictum est.
- 44: Novatianorum error est dicere, apud sacerdotes nullam esse absolvendi facultatem.
- 45: Haeretici et schismatici nec ligari nec solvere possunt.
- 46: Universale concilium potestatis auctoritate Romano pontifice superius esse: non sensit Augustinus.
- 47: Judicium per papam et patres universae ecclesiae simul habitum: in quo differat cum paucis per papam facto.
- 48: Dei et papae consistorium idem est sicut episcopi et ejus vicarii: ideo nullum majus tribunal in terris invenitur.
- 49: De judiciaria potestate apostolis, episcopis et presbyteris omnibus a Christo tradita: Hieronymi sententia explicatur.
- 50: Non omnia ecclesiae membra claves habent sed episcopi et presbyteri.
- 51: Claves secundum plenitudinem potestatis ecclesia accepit in Petro, cujus Romanus pontifex successor est.
- 52: Christus donavit apostolis ut in ipsi Petrae vocarentur. (col 1945)
- 53: Parem apostolos omnes cum Petro potestatem a Christo accepisse: quomodo intelligatur.
- 54: Pro omnibus et prae omnibus claves Petrus non veluti procurator accepit.
- 55: Petrus et ejus successores in potestate jurisdictionis, ceteris omnibus etiam simul junctis, antecellunt.
- 56: Caput et princeps aliis influens in toto corpore ecclesiae Petrus constitutus est.

- 57: Ex verbis octavae synodi non habetur concilium a Deo immediate potestatem accepisse, aut illi convenire quod dominus Mattaei XVIII, dicit: "ubi fuerint duo vel tres congregati," etc.
- 58: Impossibilitas errandi in fide: quomodo conciliis et quomodo papae conveniat. (page 4)
- 59: Homo confirmatus in gratia, Romano pontifice non confirmato, potestate praestantior non est.
- 60: Beatae virgini quamvis apostolis omnibus digniori claves regni caelorum non commisit Deus.
- 61: An quilibet etiam papa, in his quae sunt fidei, universali concilio obedire teneatur.
- 62: Concilii generalis et universalis ecclesiae decreta ad fidem expresse spectantia, papa amplecti et recipere tenetur.
- 63: Concilia universalis non habent privilegium in iudicio fidei non errandi.
- 64: Decreto generalis concilii de fide definienti, per apostolicam sedem probato et confirmato, etiam Papa obedire tenetur.
- 65: Si apostolica sedes aut ecclesia Romana synodo contradicit, definitioni apostolicae sedis potius quam decreto cujuscumque synodalis congregationis parendum est.
- 66: Ecclesia Romana errare non potest.
- 67: Solo papa, patribus universim in concilio de fide definientibus, contradicente: iudicio potius synodi quam solius Papa standum esset.
- 68: Ubi de fide agitur Papa episcoporum iudicium requirere tenetur.
- 69: Synodus quandoque maior est Papa.
- 70: Declarationibus de fide ab universa synodo, per aperta sanctae scripturae aut sanctorum patrum testimonia unanimiter factis: si Papa obedire renuit veluti haereticus concilio subditur.
- 71: Papa in canonem latae sententiae incidere potest.
- 72: Concilium supra papam catholicum nullam potestatem habet.
- 73: Papa in casu haeresis concilio subditur.
- 74: Decretum Constantiense quod quilibet etiam papa concilio generali in his quae pertinent ad extirpationem schismatis, obedire teneatur: non loquitur universaliter, sed de illo tempore tantum.
- 75: In casu universalis reformationis Papa de honestate non autem de necessitate concilio obedire tenetur.
- 76: Decretum concilii necessitatem coercitivam seu coactionem importans respectu Papae: scriptis et patribus repugnat.
- 77: Concilium generale extra caesum haeresis, Papam indubitatum nec deponere nec iudicare potest.
- 78: Dispensator Papa est a Christo super ecclesiam constitutus.
- 79: Inferior superiorem non iudicat.
- 80: Romano pontifici solus Deus superior est, cujus et servus est.
- 81: Papae iudicium sibi Deus reservavit.
- 82: Papa per singularem clavium praerogativam totius ecclesiae fundamentum est.
- 83: Papa universalis ecclesiae pastor et rector a Christo in Petro constitutus est.
- 84: Grex pastorem non corrigit.
- 85: Romanus pontifex in orbem universam primatum tenet, Petri successor, ecclesiae totius caput, fidelium pastor, doctor, pastor, rector: in Petro a Christo constitutus est.
- 86: Papa per mortale peccatum non desinit esse superior.
- 87: Cur ex sola pertinacia in haeresi a jurisdictionis superioritate quis cadat.
- 88: Pastores mali recte tamen docentes abjiciendi non sunt.
- 89: Veritas fidei catholicae non est quae sedis apostolicae determinationi contradicit.

- 90: Papa deponendus non est etsi imminente necessitate reformationis ecclesiae concilio reformationis volenti, se opponat.
- 91: Incorrigibilitas in papa ecclesiam scandalizante non semper depositionis causa sufficiens est.
- 92: Papa tantum pro haeresi stricte sumpta judicari potest; et aliter dicere, error est. (col 1946; page 5)
- 93: Papa contra ecclesiae universalis statutum facienti, obediendum non est sed resistendum. Non tamen ob id a concilio judicandus est.
- 94: Papa volens deponere simul omnes episcopos aut similia facere, quae a veritate aut sanctorum patrum sententiis sunt devia, aut contra statutum universalis ecclesiae, agere tentans, sustinendus non est.

PRIMA PARS DECRETI

- 1) Dicimus in primis quod pars hujus decreti non potest habere rationem veritatis catholicae fidei. Primo quia ut exploratissimum est, quod dominus Balthasar in sua obedientia, Joannes XXIII vocatus, -- cujus auctoritate congregatio illa facta est et legitima esse describitur, -- fuerit summus pontifex in ecclesia, verus Christi vicarius, caput sanctae ecclesiae catholicae, non habet eam certitudinem indubitatae apud omnium fidelium animos, qualem veritas catholicae fidei importat. "Nihil enim certius fide," ait Gregorius super Ezechielem. Et ut etiam ait Augustinus: Nihil est certius homini sua fide." Secundo, quia obedientia quod praefati Joannis XXIII quae a Constantiae congregata, praefatum decretum ante unionem ecclesiae edidit, sola praeter alias obedientias legitimam synodum universalem constituerit et Christi universalem ecclesiam repraesentaret, non habet certitudinem catholicae fidei ut manifestum est. Tertio, quia illud non potest habere rationem veritatis catholicae cui in ipsa unione ecclesiae duae aliae obedientiae, Gregorii scilicet et Benedicti, apertissime in plena congregatione contradixerunt, et eorum contradictio fuit acceptata. Contradixit in primis dominus Gregorius in sua obedientia vocatus, verum Romanum pontificem verbo et scripto se asserens parti illius decreti: in qua dicitur quod congregatio patrum, quae sub obedientia Joannis Constantiae convenerat, si legitime congregata esset generale concilium faceret, ecclesiam catholicam repraesentans.
- 2) Quare ut clarissimum est ex gestis illius concilii, mittens ad idem dominus Gregorius post oratores suos ad Constantiam. Committit eis, vid domino cardinali sancti Sixti, et domino Joanni clerico patriarchae Constantinopolitano, et domino archiepiscopo Treverensi et domino comite Palatino, et domino Carolo de Malatestis, auctoritatem congregationem ipsam Constantiae, in quantum per serenitatem regiam, et non per Balthasarem se nuncupari facientem Joannem XXIII vocatam, vice sua convocandi et auctorizandi in generale concilium remota tamen omnimode dicti Balthasaris praesidentia et praesentia ab eisdem, etc.
- 3) Verba sunt formalia bullae datae auctoritatis praefatis pratoribus, quae inserta est gestis praefati concilii. Quod autem haec verba et gesta domini nostri Gregorii praefato decreto Constantiensi contradicant, manifestum est.
- 4) Contradixit praeterea eidem decreto obedientia dominorum regum et principum, qui Petro de Luna, -- Benedicto XIII nuncupato, -- tamquam vero summo pontifici adhaerebant. Nam ex gestis ejusdem concilii patet, -- pro eo quod tenebant praefatos patres Constantiae congregatos, non facere concilium universale, nec ecclesiam catholicam repraesentare voluerunt, juxta compacta in Narbona cum bonae memoriae domino imperatore. Sigismundo ut nova fieret ab ecclesia per eos concilii convocatio, sicut et factum est.

- (1) Ex qua hora tantum cum jam (col 1947) omnes tres obedientiae simul essent, habita est certitudo et fides apud omnes universale concilium Constantiae celebrari et ecclesiam repraesentare catholicam.
- (2) Quare cum fuerit dubium tempore schismatis, apud quos vera ecclesia esset, quam supra cathedram Petri Hieronymus dicit esse fundatum, in c. Quoniam vetus oriens. Et "in sedis apostolicae radice" Augustinus dicit "constitutam" in c. Pudenda, xxiv, Q. 1. Non potest dici ad veritatem fidei catholicae pertinere congregationem illam sub obedientia dicti Joannis XXIII Constantiae congregatam pro tempore illo quo praefatum decretum de potestate conciliorum edidit, concilium facere generale, et ecclesiam catholicam repraesentare, sine insupportabili scandalo aliarum obedientiarum.
- (3) Unde quod dominus Martinus dicit in epistola allegata per reverendissimorum dominum meum, referendum non est ad tempus schismatis, pro quo sola obedientia Joannis Constantiae conveniens decretum illud edidit, sed ad tempus in quo omnes obedientiae pro unione ecclesiae facienda, simul convenerant. Est praeterea hic considerandum quod dictum domini Martini in quo sit concilium generale ecclesiam universalem repraesentare, accipiendum est de concilio integro sive plenario, quod id dicitur esse ex decretis concilii Antiocheni, et ex distinctione xvii per totum, in quo auctoritate et assensu Romanus pontifex affuerit.
- (4) Cum enim dicat Augustinus in sermone quodam apostolorum Petri et Pauli, quod solus (page 6) Petrus, cui succedit Romanus pontifex in plenitudine potestatis, inter apostolos totius ecclesiae gestet personam. Nulla congregatio, canonico Romano pontifice excluso, dicenda est ecclesiam universalem repraesentare.
- (5) Quare beatissimus Cyprianus in epistola quam ad lapsos scribit, -- qui a Romano pontifice segregati, nomen ecclesiae sibi ascribere praesumpserant, -- ita dicit, "Dominus noster cujus praecepta ~~matuer~~ debemus et servare, episcopi honorem et ecclesiae suae rationem disponens, in evangelio sic loquitur et dicit Petro: 'Tu es Petrus et super hanc petram aedificabo ecclesiam meam;' infra, "cum hoc divina lege fundatum sit miror quosdam audaci temeritate sic mihi scribere voluisse, ut ecclesiae nomine literas facerent, ~~quam~~ ecclesia in episcopo et clero et omnibus statutibus sit constitutus." Haec Cyprianus, etc.
- (6) Qua parte sit illustrata non esset jam opus ceteras praefati decreti partes tangere quoniam demonstrato non esse veritatem catholicae fidei immo nec opinionem communem omnium fidelium. Patres Constantiae sub obedientia Joannis XXIII congregatos pro tempore, quo declaratio illa de potestate conciliorum supra papam emanavit, fuisse concilium universalem ecclesiam repraesentare catholicam, illico ruit omnis auctoritas et firmitas factae declarationis. Quoniam juxta beati Augustini sententiam ad Hieronymum, si dubitatio aut falsitas ad scripturas sanctas admissa fuerit, nil profecto in eis remaneret auctoritatis. Nihilominus ut ad omnia quae tacta sunt per dominum arguentem plena detur responsio, ad alias etiam partes praefati decreti consideratione nostra tendamus.
- (7) Dicitur autem in secunda parte praedicti decreti quod synodus ipsa "habet potestatem immediate a Christo cui quilibet cujuscumque status vel dignitatis etiam si papalis existat, obedire tenetur." Haec autem declaratio cum ex ipsa verborum forma, accipienda (col 1948) veniat de congregatione illa patrum tempore schismatis Constantiae, sub obedientiae Joannis XXIII congregata: clarissimum est ex jam dictis, quod nullo modo potest habere rationem veritatis fidei catholicae, nec communis opinionis omnium catholicorum. Quoniam quid quid sit de fide aut

opinionem patrum, qui praefatam declarationem ediderunt, patres tamen et principes aliarum duarum obedientiarum, scilicet Gregorii et Benedicti, nec tenuerunt pro tunc, nec adhuc viventes tenent, quod congregatio illa patrum, tempore schismatis sub Joanne XXIII Constantiae celebrata, potestatem a Christo haberet immediate, cui quilibet cujuscumque dignitatis existeret obedire teneretur.

- (1) Quibus rebus sic existentibus, temeraria plane nimis et scandalosa praesumptio est definire decretum illud Constantiae in hac parte ad veritatem catholicae fidei pertinere. Temeraria quidem diffinitio quae nec auctoritate nec ratione certa probari potest; scandalosa vero quoniam sicut per primam partem decreti duae aliae obedientiae concluduntur fuisse schismaticae; per c. Scire debes, vii, Q 1 et c. Non vos xxiii, Q 5 et per Pudenda et c. Schisma xxiv, Q 1. Ita per secundam partem de haeresi convincuntur infectae; per c. Si qui sunt,* Dist lxxxii et c. A recta et c. Alienus xxiv, Q 1.
- (2) Viso jam et clarissime demonstrato, partem illam decreti Constantiensis dicentem synodum habere potestatem immediate a Christo, nullo modo dicendum esse ad veritatem fidei catholicae pertinere, intelligendo illam de congregatione illa, quae Constantiae tempore schismatis sub dicto Joanne XXIII convenit. Reliquum est ostendere quod etiam accipiendo partem illam de synodo universali legitima et indubitata, apostolica auctoritate congregata, non sit veritas fidei catholica quod talis potestatem immediate a Christo, cui etc. Quod multipliciter ostenditur et primo ex gestis et declarationibus fidei in ipso Constantiensi concilio, facta unione ecclesiae, conclusis. Legimus enim in primis gestis praefati concilii, quod cum dominus Martinus electus fuit in Romanum pontificem, amplius synodus non est usa nomine constituentis aut diffinientis, sed ipse dominus Martinus, omnia, synodo approbante, statuisset aut diffinivisset describitur, morem in hoc secutus praedecessorem suorum, qui sive in materia fidei, sive in materia schismatis, sive reformationis ecclesiae, soli in conciliis universalibus, auctoritate propria statuisset et sententiasset leguntur, sicut ipsorum conciliorum gesta in Decretalibus, Clementinis, et Extravagantibus inclusa, clarissima luce demonstrant.
- (3) Quod plane minime per tam gloriosos et doctos Romano pontifices attentatum fuisset, nec ab ipsius universalibus conciliis universale non a papa, sed immediate a Christo auctoritatem haberet in his, quae sunt fidei et schismatis et reformationis ecclesiae; et potissimum cum illa infallibilitate iudicii et superioritate, quam aiunt, auctoritatis. Si enim Ecclesiastici in sacra scriptura ipse Spiritus sanctus, in medio senum prohibet addiscentem loqui, quanto magis prohibitum esse credimus utpote omni reprehensione dignissimum, ut quis iudicio, auctoritate et potestate inferior, in medio (page 7) congregationis senum totius ecclesiae, diffinienti et statuendi sibi assumat superioritatem et principatum? (col 1949) Cum autem blasphemiam esset dicere, apostolicam sedem contra divinam prohibitionem, hunc in ecclesia tanto tempore sibi usurpasse statuendi et diffinienti auctoritatis principatum, quae ut in A recta, xxiv, Q 1: "per Dei omnipotentis gratiam a tramite apostolicae traditionis nunquam errare probatur;" ex ipsa practica concilii universalis apertissime colligitur, quod sancta synodus ipsa Constantiensis ex omni parte Christianitatis.
- (4) Collecta non tenuit, sicut nec tenendum est, ad veritatem fidei catholicae pertinere, quod existente in ecclesia uno et indubitato Romano pontifice synodus universalis potestatem immediate habeat a Christo. Si vero dicatur quod etiam synodus legitur statuere et diffinire, sententiare et condemnare sicut patet ex multis capitulis in decreto, respondetur primo quod hoc legitur factum quando papa non fuit personaliter conciliis universalibus praesens.

*Mansi has Si qui presbyteri, Dist lxxxii. More probably Si qui sunt is meant.

- (1) Secundo quod hoc facit ipsa synodus non auctoritate quam immediate suscipiat a Christo, sed auctoritate Romani pontificis, ut dicit sanctus Thomas: cujus verba, in tractatu Contra impugnates religionem, sunt quae sequuntur. "Sancti patres in concilio congregati, nihil statuere Romani pontifici interveniente: sine qua etiam concilium congregari non potest." Haec sanctus Thomas, ubi nota quod sanctus iste vult quod auctoritas papae, non solum respiciat convocationem, sed quod patribus congregatis potestatem tribuit diffiniendi et statuendi. Praeterea hoc idem notare in c. His itaque respondetur, xxv, q. 1: ubi dicitur quod "summae sedis pontificis, canonibus a se vel ab aliis sua auctoritate conditis, reverentiam exhibent et eis se humiliando ipsos custodiunt ut aliis observandos exhibent." Et manifestum est quod de canonibus universalium conciliorum loquatur.
- (2) Ceterum ex hoc ipso quod synodus universalis auctoritate Romani pontificis canones condit, ipse Romanus pontifex, upote totius ^{republicae} Christianae princeps, conditur dicitur canonum, ut ex eodem canone colligitur. Ceterum quod synodus universalis absente papa auctoritate ejusdem Romani pontificis principaliter diffiniat, et sententiet, accipitur manifeste ex concilio Chalcedonensi. In quo sancti patres congregati in sententia data contra Dioscorum ita dicunt: "Sanctissimus et beatissimus archiepiscopus magnae senioris Romae Leo, per nos et per praesentem synodum nudavit eum, tam episcopatus dignitate, quam etiam omni sacerdotali officio, simulque eum alienavit a ministerio sacrosancto." Clarum est autem quod papa in hoc loco non nisi rationem, sive habitudinem principii influentis auctoritatem ipsi synodo importare potest. Unde in epistola quam super condemnatione ejusdem Dioscori praefati patres imperatoribus Valentiniano et Martino scribunt. Ita juxta translationem, quae habetur in libro Isidori Summorum pontificum, dicunt. "Magna synodus secundum Dei gratiam et vestrae pietatis sanctionem congregata in Chalcedonensi civitate," etc. Sequitur: "nos igitur confidentes et universo orbi factae tempestatis causam inquirentes, hujusmodi rei auctorem comperimus Dioscorum episcopum, quapropter et quia damnatus^{JAM} erat a sedis apostolicae episcopo Leone cujus auctoritate fulti et nos omnes consona voce damnamus."
- (3) Praeterea quod pars (col 1950) decreti Constantiensis dicens synodum immediate habere a Christo potestatem, etc, non contineat unitatem fidei catholicae, manifeste ostendunt duo articuli fidei in ipas synodo Constantiensi diffiniti, quae omnia habentur in epistola decretali domini Martini, quam universo approbante concilio editam praelatis Alemaniae contra errores Wichlevistarum Joanni Huss direxit. Primus est, quod papa sit caput ecclesiae catholicae. Secundus, qui inter interrogatoria fienda haereticis continetur est: quod papa canonice electus habeat auctoritatem supremam in ecclesia. Quod autem primus articulus praefato decreto contradicat, patet manifeste, quoniam ex hac propositione Christianae fidei, quod papa est caput sanctae ecclesiae catholicae habetur, quod habitudo papae ad universam ecclesiam, et per consequens ad universale concilium illam repraesentans, sit habitudo capitis ad corpus: sed sic est quod corpus non nisi mediante capite recipit influxum virtutis, sensus et motus, ut communis habet doctrina. Unde beatus Isidorus libro XI Etymologiarum dicit: "Prima pars corporis caput [est] datumque est illi nomen hoc eo quod sensus et nervi inde initium capiant, atque ex eo omnis vigendi causa oriatur." Ergo cum hoc articulo sive diffinitione fidei -- quod papa sit caput ecclesiae sanctae catholicae non potest stare quod synodus corpus ecclesiae repraesentans non mediante papa sed immediate a Christo potestatem regitivam et motivam suscipiat. Consequentia notissima est et notum antecedens per processum.
- (4) Quod vero secundus articulus praefato decreto etiam contradicat, patet manifeste, quoniam si a cunctis fidelibus indubitata fide credendum, quod papa

(1) canonice electus habeat supremam potestatem in ecclesia Dei, de necessitate sequitur, quod concilium universale non habeat potestatem immediate a Christo cui ipse papa obedire tenetur, cum "obedientiam inferiores ex ordine superioribus tantum debeant," ut in c. Obedientiam, Dist xciii, et In his omnibus, Dist xxi. Si vero quis contentionis amator, dicat quod papa dicitur habere supremam potestatem in ecclesia non sit simpliciter accipiendum respectu universalis ecclesiae, sed respectu tantum singulorum praelatorum in ecclesia, animadvertat ne volens vitare unum errorem altero involvatur.

(1) Cum enim ex superiori articulo convincamur credere, quod papa sit caput totius corporis ecclesiae, quia ecclesiae sanctae catholicae, et caput praestantius sit virtute et potestate, toto corpore; necesse est nos credere, quod papa habeat simpliciter post Christum, cujus vicarius est, supremam potestatem in tota ecclesia, non tantum respectu singulorum sed etiam respectu totius corporis ecclesiae. Quare in c. Nolite errare, Dist xi, dicit Julius papa; et in c. Basilicas, De consecratione, Dist i, Gelasius papa, quod in apostolica sede, "Dominus totius ecclesiae posuit principatum."

(2) Amplius confirmando hanc rationem ostenditur multipliciter ex aliis, quod pars decreti, videlicet quod synodus universalis immediate habeat potestatem a Christo, non contineat veritatem. Potestas quam dicitur synodus immediate habere a Christo aut est eadem cum potestate papali, aut est alia ab illa. Non potest dici quod sit eadem, nec quod sit alia ab illa; ergo fictitium est dicere, quod veritas fidei catholicae sit (col 1951) quod synodus habeat potestatem immediate a Christo. Consequentia est manifesta et major ex sufficiente divisione. Minor vero pro utraque sui parte sic probatur: quod enim non possit dici primum, videlicet, quod potestas data synodo sit eadem cum potestate papali patet, quia tunc nulla superioritas attendi posset in synodo respectu papae. Decretum autem dicit quod synodus habet potestatem immediate a Christo cui etiam papa obedire tenetur. Si enim par in parem ratione paritatis potestatis, non habet imperium; multo minus synodus in papam, si eadem sit potestas utriusque.

(3) Quod vero non possit dici secundum, videlicet, quod sit alia potestas et maxime suprema a potestate papali, patet. Tum primo, quia repugnat supradictis duobus articulis quos ad veritatem fidei catholicae pertinere sacra Constantiensi synodo approbante dominus Martinus Constantiae declaravit quorum primus est quod papa sit caput ecclesiae sanctae catholicae; secundus, quod habeat supremam potestatem in ecclesia Dei. Quod autem per superabundantiam dicitur in unoquoque genere tantum unum est. Tum secundo, quia "pluralitas principatum" non est bona, XII Metaphysicorum. Quod autem bonum non est, non est credendum a Christo in ecclesia sua institutum esse. Tum tertio, quia talis potestas suprema alia potestate papae dari non potest quia, ut inquit beatus Cyprianus, in epistola ad quinque presbyteros: "Deus unus est et Christus unus et una ecclesia et cathedra una super Petrum voce domini fundata; aliud altare construi aut sacerdotium novum fieri praeter unum altare et unum sacrificium non potest. Quisquis alibi collegerit, spargit; adulterium, impium est, sacrilegium est quodcumque humano furore constituitur ut dispositio divina violetur."

- 1) Praeterea concilium universale habere aliam supremam potestatem immediate a Christo, a potestate Romani pontificis, videtur esse contra articulum fidei: "Credo unam sanctam ecclesiam." Ergo pars illa decreti dicentis, synodum immediate habere potestatem a Christo cui etc., magis dicenda est continere errorem quam veritatem fidei catholicae. Consequentia nota est. Antecedens autem ostenditur ex eo quod unitas ecclesiae attendenda est necessario inter alia ex ordine ad supremam potestatem regitivam respectu totius boni communis. Legitur enim Canticorum IV de ecclesia, quod "terribilis est ut castrorum acies ordinata;" "in unum" ut deducit sanctus Thomas in IV, Dist xxiv:—
- 2) "Oportet esse aliquod universale regimen super particularia regimina; quia in omnibus virtutibus et artibus, ut dicitur in primo Ethicorum, "est ordo secundum ordinem finium: bonum autem commune est divinius quam bonum speciale; et ideo supra potestatem regitivam quae communicat bonum speciale, oportet esse potestatem regitivam universalem respectu boni communis alias non posset esse colligatio ad unum." Et ideo cum ecclesiae sit unum corpus, primae Corinthiorum XII, oportet si ista unitas debeat servari, quod sit aliqua potestas regitiva respectu totius ecclesiae supra potestatem episcopalem, qua unaquaeque specialis ecclesia regitur, et haec est potestas papae, qui caput est et rector totius ecclesiae. Unde Glossa super illud Matthaei XVI: "Tibi dabo claves regni caelorum:" dicit, quod adeo "specialiter ligandi et solvendi potestatem Christus Petro concessit ut ad unitatem (col 1952; page 9) nos invitaret. Ideo enim eum principem apostolorum constituit, ut ecclesia unum principalem vicarium haberet, ad quem diversa membra ecclesiae recurrerent, si forte inter se dissentirent. Quod si diversa capita essent in ecclesia, unitatis vincula rumperentur." Cyprianus in epistola ad Magnum dicit: "Dominus insinuans nobis unitatem de divina auctoritate venientem ponit et dicit: 'Ego et Pater unum sumus,' ad quam unitatem redigens ecclesiam suam, denuo dicit 'et erit unus grex et unus pastor.'" "
- 3) Quare sanctus Thomas tam in IV, Dist xxiv, quam in tractatu de "erroribus Graecorum dicit quod, qui hanc "supremam potestatem negant in Romano pontifice schismatici dicuntur, quasi divisores ecclesiasticae unitatis." Sed ponere quod synodus universalis habeat supremam potestatem datam a Christo immediate, aliam a potestate suprema Romani pontificis est unitatem praefatae ecclesiae scindere; tum ponendo dualitatem supremarum potestatem, cui quilibet fidelis teneatur obedire, manifeste est rumpere ordinem et colligationem totius corporis ecclesiae ad unam supremam potestatem ducis et pastoris totius multitudinis Christianae. Quocirca beatus Cyprianus in epistola De unitate ecclesiae ad Novationum loquens ita ait: "Quis ergo sic [es] sceleratus et perfidus? qui sic discordiae furore vesanus? ut aut credat scindi posse, aut audeat scindere unitatem Dei, vestem domini, ecclesiam Christi? Manet ipse in evangelio suo et docet dicens, 'et [erunt] unus grex et unus pastor:' et esse posse in uno loco aliquis existimat aut multos pastores aut greges plures?" et beatus Gregorius concordans in epistola ad Rusticum monachum, ut habetur in c. In apibus vii, Q 1, ita dicit: "In apibus princeps unus; grues unam sequuntur ordine literato; imperator unus, iudex unus provinciae;

Roma autem condita duos fratres simul reges habere non potuit," et cur haec omnia? Certe quia, ut ait beatus Augustinus in libro De nuptiis et concupiscentia, "natura principum amat singularitatem, et omnis potestas impatiens est consortis," xxiii, Q 3, quod autem.

- (1) Item arguitur sic, nulli congregationi synodali ecclesiae Christi commisit immediate regimen omnium fidelium ergo nulli congregationi synodali ecclesiae Christus dedit potestatem immediate cui omnis fidelis cujuscumque dignitatis existat, obedire teneatur. Consequentia patet: quoniam auctoritas regendi et jubendi majorum est tantum respectu inferiorem. "In majoribus siquidem est regendi jubendique potestas; in minoribus, obsequendi necessitas," in In his omnibus, Dist xxi. Antecedens probatur, quoniam soli Petro et solis successoribus ejus, ait dominus universaliter et indistincte: "Pasce oves meas," Joannis XXI. Super quo verbo dicit Theophilus et habetur in Glossa "quod finito prandio, commissionem ovium mundi Petro commendat non aliis." Item Chrysostomus super eodem verbo et habetur in eadem Glossa ita dicit, "Praeteriens alios," scilicet apostolos, "Petro de talibus loquitur; eximius enim erat apostolorum Petrus et os discipulorum et vertex collegii: unde et negatione deleta, committet ei praelationem fratrum. Si diligis me, praeside fratribus et ferventem amorem quem per omnia demonstrasti et animam quam dixisti positurum te esse pro Me, hanc da pro ovibus meis." Ecce quod uni tantum scilicet Christi vicario, omnium fidelium regiminis cura committitur. Ecce quod unus tantum totius Christianae reipublicae princeps a Christo (col 1953) constituitur." Cui ergo dubium, quod soli isti Christus immediate potestatem tribuit, cui quilibet fidelis obedire tenetur?
- (2) Praeterea confirmando hanc rationem ad idem arguitur sic: ecclesiae regimen constitutum est a Christo monarchicum sive regale: ergo suprema potestas et supremus principatus, non multitudini alicui, sed uni tantum in ecclesia a Christo collata est. Consequentia patet, quoniam ut colligitur ex III Politicorum in hoc distinguitur regnum, sive principatus regalis ab aliis speciebus regiminis, videlicet, ab aristocratia et democratia, quoniam in regno principatus, et potestas suprema est apud unum: in aristocratia est apud paucos; in democratia vero apud multos. Unde sanctus Thomas in IV Sententiarum, Dist xxiv dicit, quod "in regno tota potestatis plenitudo residet apud unum: in aristocratia vero non apud unum, sed apud plures."
- (3) Antecedens patet auctoritate et ratione. Auctoritate patet per illud Isaiae IX -- "Super solium David et super regnum ejus sedebit;" Glossa, "id est, ecclesiam." Praeterea ex illo colligitur quod in evangelio ecclesia regni nomine saepenumero describitur nostro salvatore dicente: "simile est regnum" et. Ratione vero probatur sic ut sanctus Thomas probat libro IV Contra Gentiles, c. 76, ita enim dicit: "Nulli dubium esse debet quin regimen ecclesiae sit optime ordinatum utpote per eum dispositum per quem reges regnant et legum conditores justa decernunt. Optimum autem regimen multitudinis est quod regatur per unum; quod patet ex fine regiminis qui est pax: pax enim et unitas subditorum est finis regentis; unitatis autem causa congruentior est unus quam multi. Manifestum est ergo regimen

ecclesiae sic esse dispositum ut unus toti ecclesiae praesit." Haec sanctus Thomas ostenditur regimen (page 10) regale esse sive monarchicum, non solum respectu Christi sed etiam respectu sui vicarii.

- (1) Quare beatus Hieronymus in epistola quam ad Eustochium, de regula vivendi in monasteriis dicitur scripsisse, dicit, quod piscatori Petro a Christo totius mundi monarchae, est traditus principatus. Item hac ratione beatus Gelasius in generali decreto de ecclesiasticis statutis ad omnes episcopos scribens, ait: "conveniens est ut totum corpus ecclesiae in hac observatione concordet, quam illic vigere videt, ubi dominus totius ecclesiae posuit principatum." Dicere autem quod synodus aliquam habuerit a Christo immediate potestatem supremam, cui quilibet fidelis obedire tenetur, est dicere quod non in uno, sed in multitudine Christus ecclesiae suae principatum collocavit. Si quis vero vellet dicere quod licet regulariter ecclesiae principatus in uno locatus sit, nihilominus tempore concilii universalis, principatus ecclesiae multitudini committitur: dicendum quod hoc nullo modo stare potest.
- (2) Tum primo, quia species regiminis politiae ecclesiae non immutabilis permaneret sed multiplicem pateretur varietatem et corruptionem, contra illud Danielis VII: "Potestas ejus potestas aeterna quae non auferetur et regnum ejus non corrumpetur;" et Joannis X: "Erit unum ovile et unus pastor." Tum secundo, quia cum, ut dictum est, regimen monarchicum quo multitudo tota regitur per unum sit optimum et specie principalior inter omnes species politiae. Si tempore celebrationis conciliorum ecclesiae regimen a monarchia transiret in aristocratiam vel democratiam, profecto descenderet a perfectione sua. Tum tertio, quia cum istae tres species regiminis ex opposito distinguantur, simul esse (col 1954 began line above) in uno principatu non possunt, dicente Aristotale III Politicorum. Necesse est dominans aut unum esse aut paucos aut multos. Si synodo existente ecclesiae principatus supremus esset, apud multos, necesse est dicere quod congregata synodo et ecclesia desineret esse regnum et Romano pontifex desineret esse princeps ecclesiae, et plenitudinem habere potestatis; quae omnia sunt inconvenientissima et absurda.
- (3) Praeterea quod pars illa decreti dicens: "Synodum habere potestatem immediate ~~potestatem~~ in primis cum beatissimo Dionysio libro De ecclesiastica hierarchia, quod ecclesia nostra sit ad modum hierarchiae a Christo disposita. Secundo, praesupponitur cum eodem quod hierarchia nostra formata sit ad exemplar sive similitudinem hierarchiae coelestis: unde etiam Moysi a domino dictum est Exodi XXV: "Inspice et fac secundum exemplar quod tibi monstratum est in monte." Praeterea sanctus Joannis dicit Apocalypsis XXI: se vidisse civitatem sanctam Hierusalem novam descendentem de coelo, scilicet, exemplariter, ut doctores exponunt. Quare beatus Ambrosius dicit: quod ecclesia est imago coelestium.
- (4) Et beatus Bernardus libro III ad Eugenium papam, clarissime inducit: sed sic est quod in angelica hierarchia, nulla potestas ad actus hierarchos perficiendos tribuitur desuper a Deo personae, aut ordini, aut toti hierarchiae, quae non tribuatur mediante primo illius hierarchiae; ut patet ex ipsa doctrina beatissimi Dionysii.

* OMITTITUR

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A CHRISTO, etc., NON SIT VERITAS FIDEI CATHOLICAE
SICUT LUCULENTER OSTENDITUR ET PRAESUPPONITUR, etc.

(Ait enim ecclesiae hierarchiae lex divinitatis sanctissima est per prima media in divinissimam reducere lucem).

- (1) Ergo pari modo nulli potestas a Christo, ipsi ecclesiasticae hierarchiae aut universali concilio illam repraesentanti tribuitur, quae non conferatur mediante Romano pontifice qui est hierarcha et primus in tota hierarchia. Quare manifestum videtur, quod cum veritate catholicae fidei, tamen scriptura sancta quam ex sanctorum patrum traditione, habemus quod Romanus pontifex, caput sit ecclesiae sanctae catholicae et hierarcha ecclesiasticae hierarchiae et cum nostra hierarcha ad similitudinem et exemplar coelestis formata fit, non possit stare, quod existente unico et indubitato Romano pontifice in ecclesia concilium universale habeat potestatem a Christo immediate cui quilibet fidelis cujuscumque dignitatis existat, obedire teneatur. Amplius hoc idem sic probatur.
- (2) Nihil quod in auctoritate sua dependet immediate ab auctoritate apostolicae sedis, est dicendum habere immediate potestatem a Christo, cui etiam papa obedire tenetur. Sed auctoritas universalium conciliorum dependet immediate ab auctoritate apostolicae sedis. Ergo concilia universalis non sunt dicenda immediate a Christo potestatem habere cui, etc. Consequentia patet. Major nota est, ex terminis.
- (3) Minor patet, ex distinctione xvii per totum; unde c. Regula dicitur: "quod nec ullum est ratum aut unquam erit concilium," quod Romanae ecclesiae non fuerit auctoritate fulcitum et quod haec dependentia non solum accipienda sit respectu convocationis aut congregationis conciliorum, sicut quidam dicere voluerunt; sed etiam ad robur et firmitatem omnium actuatorum in eisdem, patet ex c. Confidimus xxv, Q 1, ubi Gelasius papa, apostolicam sedem, unamquamque synodum dicit sua auctoritate confirmare. Et Extravag De electione in c. Significasti (col 1955; page 11) dicit Paschalis papa quod "omnia concilia per ecclesiae Romanae auctoritatem et facta sunt et robur acceperunt.
- (4) Ecce quam clare loquitur textus iste quod papam et per consequens non immediate a Christo concilia ipsa universalis robur accipiant. Ex quibus omnibus sic breviter et luculenter demonstratur, quod declaratio illa Constantiae facta, dicens quod synodus universalis immediate habeat a Christo potestatem, non contineat veritatem fidei catholicae. Jam ad auctoritates et rationes accedamus, per quas dominus arguens pro parte adversa, nixus est probare, declarationem praefatam veram esse.
- (5) Verum quia in hac argumentationis parte principalior articulus residet praesentis difficultatis et examinis. Tria praemittam per ordinem circa hunc articulum antequam praefatis inductis auctoritatibus et rationibus formaliter respondeatur. Primo quidam ostendam quod id quod praesupposuit praefatus dominus, videlicet, quod apostoli alii [a Petro] receperunt immediate a Christo potestatem jurisdictionis, non sit usquequaque probabile. Secundo ostendam quod dato, quod hoc esset verum de apostolis non tamen ita esset dicendum de episcopis et curatis, videlicet, quod suscipiant potestatem jurisdictionis immediate a Christo. Tertio ostendam, quod dato, quod hoc etiam esset verum; non probatur aut sequitur ex hoc quod sit "veritas catholicae

fidei, quod synodus universalis habeat potestatem immediate a Christo, cui quilibet, fidelis obedire tenetur".

- (1) Primum vero quod apostoli alii a Petro, non immediate potestatem jurisdictionis acceperunt, auctoritate primo beati Anacleti qui ut habetur in c. Sacrosancta, Dist xxii. Dicit, "Inter apostolos quaedam fuit discretio et licet omnes apostoli essent, Petro tamen a domino concessum est, . . . ut reliquis omnibus praeesset apostolis et Cephas, id est caput et principium teneret apostolatus." Cum autem nomine capitis et principii, origo designatur potestatis, non videtur posse dici beatus Petrus "caput et principium teneret apostolatus" nisi ab eo potestas derivaretur jurisdictionis in apostolos ceteros.
- (2) Secunda auctoritas est beati Cypriani in epistola quae De unitate ecclesiae inscribitur ad Novationum, et habetur in c. Loquitur Dominus xxiv, Q 1: "Loquitur dominus ad Petrum: 'Ego dico tibi quia tu es Petrus et super hanc petram aedificabo ecclesiam meam.' Super unum aedificat ecclesiam, et quamvis apostolis omnibus post resurrectionem suam, parem," (id est communem) "potestatem tribuat et dicat, 'Sicut misit me Pater et ego mitto vos; accipite Spiritum sanctum; tamen ut unitatem manifestaret, unitatis ejusdem originem ab uno incipientem sua auctoritate disposuit. Hoc erant utique ceteri apostoli, quod Petrus pari consortio praediti et honoris et potestatis." (Glossa, "in ordine et dignitate consecrationis, non in administrationis plenitudine.") "Sed exordium ab unitate proficiscitur, ut ecclesia Christi una esse demonstraretur." Haec Cyprianus. Ubi cum ait quod Christus ut ecclesiae unitatem manifestaret, potestatis originem ab uno incipientem disposuerit, manifeste dat intelligi, quod solus unus, scilicet Petrus, super quem unum fundatam dicit ecclesiam, a Christo potestatem immediate suscepit jurisdictionis. Alii vero apostoli mediante ipso Petro, plane ut videtur, si immediate omnes apostoli potestatem jurisdictionis recepissent a Christo, (col 1956) origo potestatis non incepisset in ecclesia ab uno apostolorum, cum data fuisset simul et immediate omnibus.
- (3) Tertio auctoritas est beati Augustini qui super Joannem, Homilia CXIV, dicit sic: "Petrus apostolus propter apostolatus sui primatum gerebat figuratam generalitate ecclesiae personam. Quod enim ad ipsum proprium pertinet; natura homo unus erat, gratia unus Christianus, abundantiore gratia unus idemque primus apostolus. Sed quando dictum ei Christus: 'Tibi dabo claves regni caelorum et quodcumque ligaveris' etc., universam significabat ecclesiam." Et infra, "Ecclesia ergo quae fundatur in Christo, claves ab eo regni caelorum accepit in Petro, id est potestatem solvendi ligandique peccata." Sed videtur quod hoc quod soli Petro attribuitur ratione primatus non esset verum, si alii apostoli cum Petro immediate potestatem jurisdictionis recepissent a Christo; quia dato illo, ecclesia non in solo Petro sed etiam in aliis apostolis claves recepisse diceretur."
- 4) Quarta auctoritas est beatissimi Leonis qui ut habetur in c. Ita Dominus, Dist xix, ita dicit. "Hujus muneris sacramentum ita dominus ad omnium apostolorum officium pertinere voluit, ut in beatissimo Petro omnium apostolorum summo, principaliter collocaret, ut ab ipso quasi quodam capite dona sua, velut in corpus omne

diffunderet, ut extorrem se ministerii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere."

- (1) (col 1956; page 12) Quinta auctoritas est ejusdem in sermone tertio ordinationis suae, ita dicentis. "Multo dignius ad beatissimi Petri gloriam contemplandam aciem mentis attolere, et hunc diem in illius potissimum veneratione celebrare, qui ab ipso omni^m charismatum fonte, ita copiosus est irrigationibus inundatus, ut cum multa solus acceperit, nihil in quemquam sine ejus participatione transierit." Et infra, "De toto mundo unus Petrus eligitur, qui et universarum gentium vocationi et omnibus apostolicis cunctisque ecclesiae patribus praeponatur. Ut quamvis in populo Dei multi sint sacerdotes multique pastores; omnes tamen proprie regat Petrus, quos principaliter regit et Christus. Magnum et mirabile, dilectissimi, huic viro consortium potentiae suae tribuit divina dignatio, et si quid cum eo commune ceteris voluit esse principibus, nunquam nisi per ipsum, dedit, quidquid aliis non negavit."
- (2) Ecce quam clara luce Leo iste irrefragabilis auctoritatis inter patres ecclesiae dicit quod quidquid commune Christus cum Petro ceteris voluit esse principibus, videlicet, apostolis, non nisi per Petrum dedit quidquid donabile esset, per hominem aliis non negavit. Et manifeste habetur quod ceteri apostoli non immediate a Christo jurisdictionem acceperunt, sed mediante Petro beatissimo apostolo eorum principe.
- (3) Consequentur hoc idem ratione probatur et primo sic. ^{AB EO} [Adeo] a quo quis non habet subditum, ab illo non habet aliquam potestatem jurisdictionis: sed alii apostoli non habuerunt potestatem jurisdictionis immediate a Christo. Consequentia patet. Major etiam cum nullus ligare aut absolvere possit, nisi subditum, cum a non suo iudice ligari nullus valeat nec absolvi, De poenitentibus et remissionibus c. Omnis. Nam potestas jurisdictionis qua aliquis potest absolvere et ligare dicitur relative ad subditum. Relativa autem, ut habet doctrina Aristotelis in Praedicamentis, posita (col 1957) se ponunt et perempta se perimunt. Unde [sicut] si non est servus, non est dominus, propter quod (secundum Augustinum, libro De Trinitate) Deus non fuit dominus, quousque habuit creaturam suam; ita si non est subditus, non est praelatus nec iudex, qui possit eum iudicare, Romanorum XIV: "Tu quis es? qui iudicas alienum servum? Suo domino aut stat aut cadit." Minor vero probatur, quia si Christus dedisset aliis a Petro subditos, aut omnes dedisset, aut aliquos. Non est dicendum primum, quod dedisset omnes, tum quia (ut dictum est) "pluralitas principatum" non est bona, ut dicitur XII Metaphysicorum et ideo sic concluditur ibidem, unus ergo princeps.
- (4) Tum secundo, quia tunc ovile Christi non esset unum nec unus ovium pastor sed plures, contra illud Joannis X: "Erit unum ovile et unus pastor." Praeterea secundum non est dicendum, cum nullibi legatur Christum apostolis populos immediate divisisse, nec facile est fingere quos scilicet subditos, quibus scilicet praelatis subjecerit. Item secundo, ratione arguitur sic: si Christus dedisset apostolis immediate potestatem jurisdictionis aut dedisset plenam et omnimodam, sicut Petro, aut particulariter limitatam et coarctatam: sed neutram,

ergo nullam. Consequentia bona. Major patet ex sufficienti divisione.

- (1) Minor quoad primam partem patet. Primo quia, ut dicit beatus Cyrillus in libro Thesaurorum, nulli alii quam Petro Christus, quod suum est plenum commisit sed ipsi soli dedit. Secundo, quoniam si aliis apostolis data fuisset potestas in ea plenitudine qua Petro data est, Petrus nec major nec superior nec princeps nec caput fuisset apostolorum; sed omnes in jurisdictionis auctoritate pares fuissent: quod est erroneum. Ut enim sanctus Anacletus inquit in c. Sacrosancta, Dist xii "Inter apostolos quaedam fuit discretio; licet tamen omnes apostoli essent Petro tamen a domino concessum est . . . ut reliquis omnibus praesent apostolis et Cephas, id est caput et principium teneret apostolatus."
- (2) Secundo vero pars minoris quae dicit, quod etiam Christus non dedit apostolis potestatem aliquam limitatam et coarctatam patet, quoniam nullibi in evangeliiis Christus legitur aliquam talem, potestatis limitationem apostolis indulsisse; nec possibile est fingere certitudinem talis limitationis. De talibus autem quae facta esse dicuntur maxime circa apostolos de clavibus ecclesiae nihil videretur asserendum quod de scripturis sanctis non habeat testimonium explicite vel implicite, quod in hac parte non datur. Et hoc de primo puncto brevitatis causa sufficiat: in quo ostendendum erat non esse usquequaque probabile, apostolos alios a Petro potestatem jurisdictionis immediate suscepisse a Christo.

SECUNDA PARS DECRETI

- (3) Reliquum est jam ostendere secundum. Quod dato quod apostoli immediate a Christo potestatem jurisdictionis sicut ordinis receperint, non tamen concedendum sit, sed omnino negandum quod alii praelati ecclesiae nunc suscipiant potestatem jurisdictionis a Christo immediate. Non enim sequitur -- apostoli qui primi fuerunt lapides aedificii ecclesiae, habuerunt immediate potestatem a Christo -- ergo et alii praelati successores illorum nunc ab ipso immediate suscipiunt sicut exemplariter non sequitur. Si Deus in institutione mundi immediate fecit caelos et elementa et alias partes principales mundi sicut prima individua specierum, quod in propagatione rerum institutarum illa fiant immediate a Deo, quae fuerunt secundum speciem facta immediate in mundi constitutione; (col 1958) imo fiunt multa mediante virtute coelesti et mediantibus aliis causis secundis. "Sol enim et homo generant hominem," dicit Aristoteles II Physicorum. (page 13)
- (4) Quod autem praelati ecclesiae non immediate a Christo potestatem suscipiant jurisdictionis; sed mediante Romano pontifice ejus generali vicario multipliciter ostenditur. Et primo quidem hoc manifestum redditur omnibus illius auctoritatibus et rationibus superius inductis, quibus ostensum est; apostolos non a Christo immediate sed mediante Petro ecclesiae principe ab eo constituto, potestatem jurisdictionis suscepisse. Cum eam habitudinem quam habuit Petrus postquam fuit papa ad apostolos et primitivam ecclesiam, habeat papa ad omnes praelatos ecclesiae et ad omnes ecclesias cum succedat Petro in eadem

sicut fecerunt patres in concilio Carthaginensi Africano scribentes super simili materia papae Coelestino, rogantes et deprecantes, ut deinceps ad aures ejus a concilio venientes cum appellationibus aut querelis, non faciliter et indifferenter admitteret, quoniam hoc justum est; nisi causa esset ita aperte rationabilis admittendi; utpote quia aut favore alicujus aut timore aut alia quavis inordinata affectione non posset rectitudo justitiae sperari in concilio. Et credo quod cum ita deprecati fuerimus dominum nostrum et nos sententiis curiae suae parem reverentiam exhibuerimus, indubie omnes praesentis concilii sententiae in suo robore et virtute manebunt. Et haec cum omni reverentia et correctione sunt quae mihi occurrunt pro voto meo circa hoc avisamentum appellationum.

- (1) Explicit votum magistri Joannis de Turrecremata in materia appellationum in deputationem reformatorii, IX Martii, Anno Domini, 1436.

caput praedicant et attestantur. Dicit etiam Chrysostomus super Actus apostolorum, "quod Petrus a filio super omnes qui filii sunt accepit potestatem non ut Moses in gente una, sed in universo orbe." Et Theophylactus super illud Lucae XXII: "Tu aliquando conversus confirma fratres tuos," dicit quod Petrus obtinuit "ut esset antistes mundi". Item in ecclesiastico officio legitur ei Christus dixisse: "super plebem meam principem te constitui."

- (1) Praeterea secundo sic confirmatur idem ratione, et primo in unoquoque ordine in (page 14) quo maxime residet plenitudo virtutis sive potestatis originaliter, dependet virtus omnium sequentium in illo ordine. Sed Romanus pontifex est primus in ordine praelatorum ecclesiae et in quo solo residet plenitudo ecclesiasticae potestatis. Ergo sequitur quod potestas omnium sequentium praelatorum ecclesiae dependeat et derivetur ab ipso Romano pontifice. Consequentia est bona. Major colligitur ex sententia Aristotalis II Metaphysicorum.
- (2) Minor est canon concilii Constantinopolitani dicentis: "Veneramur secundum scripturas et canonum diffinitiones sanctissimum antiquae Romae episcopum primum esse et maximum omnium episcoporum." Item in concilio Chalcedonensi acclamatum legitur a tota synodo papae Leoni: "Leo sanctissimus, apostolicus et oecumenicus [et universalis] patriarcha per multos annos vivat."
- ANACLETI
- (3) Confirmatur hoc argumentum per illud beati [Isidori], qui ut dicitur in c. In novo, Dist xxi ita dicit: "In novo testamento post Christum dominum a Petro coepit sacerdotalis ordo" (et causam subjungens ait,) "quia ipsi primo pontificatus in ecclesia Christi datus est, dicente domino ad eum: 'Tu es Petrus et super hanc petram aedificabo ecclesiam meam.'"
- (4) Item tertio sic idem confirmando: inter habentia ordinem secundum influentiam omnia quae aliis influunt virtutem influendi recipiunt a primo illius ordinis. Sed ordo qui est inter Romanam ecclesiam et alias ecclesias, sive inter Romanum pontificem et praelatos ceteros, est secundum influentiam prout unus movet alium ad actus hierarchicos. Ergo jurisdictionis ordo omnium praelatorum ecclesiae derivatur a Romano pontifice. Consequentia est bona; major patet ex commento primae propositionis De causis, "Causa enim secunda virtutem causandi habet a prima."
- (5) Minor vero patet auctoritate beatissimi Cyprani, qui ut in c. Loquitur xxiv, Q 1, ecclesias particulares ad ecclesiam Romanam comparat, sicut radios ad solem, fluvios ad fontem, sicut ramos ad radicem. Quare dicit Petrus Ravennae, "quod stipiti rami, quod capiti membra, quod soli radii, quod fonte rivuli, hoc apostolicae sedis reverentiae debent omnes ecclesiae quas ubique terrarum religio Christiana fundavit." Quarto sic confirmatur eadem ratio: omnia membra a capite accipiunt immediate derivationem virtutis, sensus et motus ~~sv~~ regiminis. Sed ecclesia Romana est caput (col 1960) ceterarum ecclesiarum. Ergo ceterae ecclesiae et earum praelati potestatis suae originem suscipiunt a Romana ecclesia sive a Romano pontifice. Consequentia est bona; major patet, quoniam ut superius habitum est, ex sententia Isidori, ex eo datum est capiti hoc nomen: "quod sensus et nervi inde initium capiant atque ex eo omnis vigendi causa oriatur."

- 1) Minor vero ponitur in c. Sacrosancta, Dist xxii ubi sanctus Anacletus ait quod, "apostolica sedes caput et cardo, (scilicet omnium ecclesiarum) est a domino et non ab alio constituta: et sicut (et) cardine ostium regitur sic hujus(modi) apostolicae sedis auctoritate omnes ecclesiae, domino disponente reguntur." Quinto sic, quilibet fidelis tenetur credere unam esse sanctam ecclesiam catholicam. Sed ad unitatem ecclesiae requiritur quod omnium praelatorum potestas jurisdictionis derivetur a Romano pontifice. Ergo necesse est quod quilibet fidelis hoc credat et teneat. Consequentia bona; major patet, cum sit articulus fidei. Et dicatur Canticorum vi: "Una est columba mea; una est perfecta." Dicit Glossa, "id est ecclesia."
- (2) Minor probatur quoniam unitas ecclesiae ut habetur a beato Cypriano in epistola De unitate ecclesiae, et habetur in c. Loquitur xxiv, Q 1, necessario attenditur in ordine ad unam fontalem originem totius potestatis ecclesiasticae quam esse dicit apostolicam sedem sive Romanum pontificem, super quem fundatum esse dicit ecclesiam. Unde ait: "ecclesia Dei luce perfusa per totum orbem radios suos porrigit. Unum tamen est quod ubique diffunditur, nec unitas corporis separatur. Ramos suos per universam terram copia ubertatis extendit profluentes largitur rivos, latius (ex)panedit. Unum tamen caput est et una origo et una mater fecunditatis copiosa." Haec ille.
- (3) Item sanctus Thomas Contra Gentiles, libro IV, c. xxlvi dicit: "Soli (Petro) promisit, 'Tibi dabo claves regni coelorum,' ut ostenderetur potestas clavium per eum ad alios derivanda, ad conservandam ecclesiae unitatem." Ex quibus manifeste colligitur pertinere ad unitatem ecclesiae quod a Romano pontifice omnium aliorum praelatorum derivetur auctoritas: quae erat minor probanda.
- (4) Sexto arguitur confirmando praecedentem rationem sic, teste beato Dionysio X Coelestis hierarchiae. "Omnes hierarchiae sunt etiam connexae et ordines ipsi cujuslibet hierarchiae sunt etiam connexi." Haec autem connexio secundum ejusdem divini doctoris doctrinam, ut sanctus Thomas et Albertus declarant, non tantum attenditur per relationem ad unum ultimum finem secundum quem omnis hierarchiae finis est similitudo et unitas ad Deum; sed secundum ea quae sunt de essentia (page 15) hierarchiae scilicet secundum ordinem, scientiam et actionem.
- (5) Secundum ordinem quidem, inquantum in omnibus hierarchiis invenitur distinctio per primum, medium et ultimum. Secundum scientiam vero inquantum irradiatio extenditur procedendo a primo usque ad ultimos. Secundum actionem autem inquantum primi habent actionem hierarchicam in medios et per medium in ultimos. Sed ecclesia nostra a Deo est ad instar hierarchiae disposita et formata. Ergo necesse est, nisi hierarchiam nostram inconvenientissime asserere inconnexam vellemus, potestatem ecclesiasticam a primo nostrae hierarchiae qui est Romanus pontifex, in omnes inferiores procedere et derivari, processus patet.
- 6) Hujus autem connexionis hierarchiae nostrae duo sunt evidentissima (col 1961) testimonia. Primum est quod qui a beati Petri societate et connexione apostolicae sedis segregatur non potest absolvi a peccatis. Secundum est quod talis existens, si praelatus sit, ipsa potestate ecclesiastica denudatur.

- (1) De primo habetur in Glossa Matthaei XVI, quod "Petrus, ideo specialiter claves regni caelorum et principatum judicariae potestatis accepit, ut omnes per orbem credentes intelligant, quod quicumque ab unitate fidei et societate [Petri] quovis modo segregantur, nec vinculis peccatorum absolvi nec januam regni coelestis ingredi possunt."
- (2) De secundo habetur in c. Factus et in c. Novatianus vii, Q 1, et in c. Dicimus, xxiv, Q 1 quae sunt omnia beatissimi Cypriani testimonia. Supersedeo autem multis aliis quae induci possunt, maxime ex institutionibus, confirmationibus, translationibus et depositionibus, quas circa ecclesias et earum praelatos sedes apostolica jure ordinatio facere solita est quas facere minime liceret, nisi earum jurisdictionis auctoritas ab ipsa apostolica sede modo supradicto dependeret. Quod pro observanda brevitate sermonis tantum de isto secundo puncto dixisse sufficiat.
- (3) Duobus jam punctis luculenter expressis, venio ad tertium in quo dicendum institui, quod etiam dato, -- licet non concesso, -- quod praesuppositum et fundamentum reverendissimi patris domini arguentis verum esset videlicet quod ecclesiae praelati potestatem jurisdictionis a Christo immediate reciperent, sicut papa, non tamen ex hoc habetur, quod decretum praefatum Constantien^{sis}, in illa parte contineat veritatem fidei catholicae. Primo, quia dato quod qui libet apostolorum et nunc quilibet ecclesiae praelatus, potestatem jurisdictionis immediate a Christo habuisset, non tamen ex hoc habetur quod tota ecclesiae communitas collegialiter talem a Christo potestatem immediate accepisset. Secundo, dato quod apostoli tunc et nunc ecclesiae praelati immediate a Christo potestatem suscepissent, non habetur quod decretum illud Constantiense contineat veritatem dicens quod concilium universale habet potestatem immediate a Christo, cui etiam papa obedire tenetur.
- (4) Qui enim apostolos dicit cum Petro et praelatos ceteros cum papa a Christo immediate jurisdictionis potestatem suscipere, debet animadvertere, si errorem indorum et Armenorum et quondam Graecorum, Valdensium pauperum de Lugduno et novissime Boemorum vitare vult.
- (5) quod non aequalem omnes apostoli cum Petro, nec praelati cum ejus successore Romano pontifice suscipiunt potestatem. Solus quidem papa inter eos tanquam caput totius corporis ecclesiae suscipit: et ideo ipse solus in toto corpore ecclesiae plenitudinem potestatis accepit; ceteris, ut supra habitum est, in partem tantum sollicitudinis evocatis, ut ait beatus Gregorius in c. Decreto ii, Q 7.
- (6) In cujus testimonium cum soli Petro potestas a Christo promittitur, dicitur: "Tibi dabo claves . . . et quodcumque . . . in caelis," Matthaei XVI. Cum apostolis vero alia forma servatur, dicitur enim "quaecumque alligaveritis super terram, erunt ligata et in coelo." "In coelo uno dicit, non in coelis sicut Petro dixerat," ait Origines et inducitur in Glossa continua, "quia non sunt tantae perfectionis sicut Petrus." Quare sicut in corpore naturali cui apostolus ipsum simile esse dicit, ad Romanos XII, nulla aliorum membrorum multitudo adaequat virtutem capitis; (col 1962) etiam si mille manus, mille pedes, mille oculi et sic de aliis particularibus membris in uno corpore aggregarentur.

- 1) Ita in corpore mystico ecclesiae potest virtutem et amplitudinem potestatis capitis ecclesiae, scilicet Romani pontificis. Qui ergo jure praelati ecclesiae congregati majores potestate aut superiores Romano pontifice, capite et principe totius ecclesiae, dicendi sint non invenio. Quocirca inter veritates catholicae fidei nullo modo annumerandum venit nisi aliunde apertiori testimonio sacrae scripturae aut sanctorum patrum fuerit roboratum. Dicit enim Hieronymus ad Demetriadem virginem, quod de scripturis sanctis auctoritatem non habetur eadem facilitate contemnitur, qua probatur.
- 2) Tribus jam punctis breviter expeditis venio quarto loco ad respondendum auctoritatibus et rationibus inductis per patrem et dominum arguentem pro hac parte decreti (page 16) Constantiensis qui dicit quod concilium universale "potestatem habet immediate a Christo cui" et cetera. Prima auctoritas inducta fuit Matthaei XVII ubi Christus ait, "Si peccaverit in te frater tuus, corripe eum inter te et ipsum solum;" et sequitur, "si te non audierit dic ecclesiae; et si ecclesiam non audierit sit tibi sicut ethnicus et publicanus;" quod per ly, ecclesiam, non solus praelatus, sed ecclesia ipsa universalis accipienda sit. Patet per glossam ordinariam, quae in eo loco sic habet, "vel 'dic ecclesiae,' id est toti ecclesiae."
- 3) Ad istam auctoritatem, in qua maxime adversa pars fundamentum facere videtur, responsurus duo faciam. Primo ostendam quod in auctoritate Christi per ecclesiam, cui tanquam judici, fratris nostri peccatum post admonitionem denunciari praecipitur, ex sensu literali non universalis ecclesia, nec concilium universale, sed praelatus intelligendus sit. Secundo ostendam, quod dato, quod quandoque ad concilium universale auctoritas illa per aliquos applicetur; ex hoc tamen nulla superioritas in concilio arguitur supra papam. Primum autem videlicet quod in dicta auctoritate, per ecclesiam, -- cui tanquam judici delinquentis fratris peccatum denunciari praecipitur, -- non sit accipienda ex ipsa principali intentione legislatoris, universalis ecclesia nec dispersa per orbem nec conciliariter congregata, clarissime ostenditur.
- 4) Supposito primo cum omnibus doctoribus sacrae scripturae quod correctio fraterna, de qua in praefata auctoritate a Christo datur generalis doctrina, cadat sub praecepto. Quo praesupposito clarissimum est primo auctoritate praedictam de ecclesia universali per orbem dispersa, non posse accipi ex ipsa impossibilitate adimplendi. Ait autem Hieronymus: "Anathema sit qui Deum dixerit aliquod impossibile praecepisse." Secundo, hoc idem patet de ecclesia conciliariter congregata, tum ex ipsa raritate conciliorum universalium; tum ex eo quod synodorum congregandarum auctoritas, non in cujuslibet est potestate sed solum Romani pontificis, ut distinctione xvij habetur; tum propter ipsam oneris insupportabilem gravitatem qua populus Christianus gravaretur, si pro adimplendo praecepto de correctione fraterna teneretur venire ad concilium universale etiam actu congregatum.
- 5) Tanta autem gravitas repugnat suavitati legis Christi, qui ait Deuteronomis XXX: "Mandatum hoc quod ego praecipio tibi hodie non est supra te nec procul positum nec in coelo situm, ut (col 1963) possis dicere: Quis nostrum ad coelum valet conscendere ut deferat

illud ad nos, et audiamus et opere compleamus? Neque trans mare positum ut causeris et dicas: Quis ex nobis tranfretare (poterit) et illud ad nos deferre, ut possimus audire et facere quod praeceptum est? Sed juxta te est valde." Glossa interlinearia "mandata Dei moderata et temperata sunt humanis viribus." Et Matthaeus XI dicit ipse legislator. "Jugum meum suave est: onus meum leve." Plane non leve esset praeceptum Domini de correctione fraterna si fidelis quilibet id adimpleretur ad universale concilium actu existens venire esset obnoxius; ad quod procul dubio obnoxius esset si per ecclesiam cui denuntiandum est delinquentis fratris peccatum, non praelatus, sed synodus universalis ex ipsa intentione literalis sensus accipienda veniret. Quare manifestum videtur non esse de intentione legislatoris salvatoris nostri Dei, per ecclesiam in praedicta auctoritate, designari universalem ecclesiam nec concilium universale; sed praelatum praesidentem, secundum eum intelligendi modum; quo philosophus IX Ethicorum dicit, quod civitas est id quod principale est in ea. Quod etiam multiplici testimonio roboratur.

- (1) Primo ex eo manifeste colligitur quod Christus non universali ecclesiae nec alicui synodo universali sed tantum apostolis ipsis et eorum successoribus ecclesiae praelatis ait: "Amen dico vobis, quaecumque ligaveritis super terram erunt ligata et in coelo;" ubi Glossa Hieronymi ait: hanc potestatem tribuit apostolis. Secundo patet ex Glossa Origenis, qui, ut habetur in Glossa continua, ponderans illud: "'quaecumque ligaveritis super terram, erunt ligata et in coelo,' non dixit in coelis sicut Petro, sed in coelo uno quia non sunt tantae perfectionis sicut Petrus." Tertio patet ex auctoritate beati Chrysostomi qui super Matthaeum, ut habetur in Glossa continua, exponit: "'dic ecclesiae' id est his qui ecclesiae praesunt." Quarto auctoritate beato Thomas qui in IV, Dist. xix et in II IIae, Q 34 in materia de correctione fraterna, exponit dic ecclesiae, "id est praelato in judicio praesidenti".
- (2) Quinto auctoritate Alberti magni super Matthaeum qui ait sic in forma, 'dic ecclesiae', "hoc est praelato in conventu et synodo"; ita quod ly, synodo, sicut ly, conventu, in ablativo pontiur: unde subjungit, si ecclesiam non audierit, ut secundum arbitrium praelati corrigatur, sit tibi quasi ethnicus et publicanus." Sexto ad idem est dominus Hugo cardinalis primus postillator bibliae, qui (page 17) juxta duas glossas quae ponuntur in Glossa continua quae cum una dicit: "'dic ecclesiae,' id est his qui ecclesiae praesident; et alia dicit 'dic ecclesiae,' id est 'toti ecclesiae, ut majorem erubescitiam habeat;" dicit super Matthaeum sic, "Si privata persona corrigit sic exponendum est, 'dic ecclesiae,' -- id est coram praelato ecclesiae eum convince per testes quos noluit audire corripientes" et hoc juxta primam glossam. Si vero praelatus corripit sensus est, 'dic ecclesiae,' id est coram ecclesia illum excommunicat, id est coram congregatione fidelium." Eandem sententiam persequitur magister Nicolaus Gorram super Matthaeum. Septimo ad idem communis est expositor literalis magister Nicolaus de Lyra qui exposuit super Matthaeum: "dic ecclesiae, id est praelato."
- (3) Octavo ad idem est glossa Decreti in c. Si peccaverit ii, Q 1, quae consimiliter exponit dic ecclesiae, "id est sacerdoti." Nono patet testimonio Innocentii papae qui in (1964) c. Novit, Extravag

De judiciis, de pastore et praelato universalis ecclesiae, scilicet de Romano pontifice illam exponit. Decimo patet ex practica et consuetudine observata a sanctis et ab universitate fidelium et ab ipso nascentis ecclesiae exordio. Manifestum est autem, quod practica observata in ecclesia Dei circa observantiam praecepti de correctione fraterna semper fuit et est, denunciato praelato, et non universali ecclesiae sive dispersae sive congregatae, fratris errantis peccatum. Cum ergo consuetudo observantiae sit interpretis legis et ut dicit Augustinus libro De mendacio, ex factis sanctorum colligamus quid in scripturis sentire debeamus. Manifestum est quod verus ac proprius ac principalis intellectus praefatae auctoritatis sit ut per ly, ecclesia, cui tanquam iudici denunciatio fienda est praelatus ecclesiae intelligendus veniat et non universalis ecclesiae synodus.

- (1) Ad argumentum autem quod quidam professores adversae partis contra hoc faciunt, videlicet quod cum Christus in hoc loco Petro loqueretur qui futurus erat praelatus ecclesiae et nemo remittatur ad seipsum per ecclesiam cum dicitur, "dic ecclesiae," non intelligendus sit praelatus sed universalis ecclesiae eo modo quo haberi potest scilicet synodaliter congregata. Responsio est manifesta.
- (2) Dicitur enim primo, quod haec doctrina data^a Christo de correctione fraterna generalis est, omnes fideles respiciens et non solum Petrum, licet ad ipsum specialiter vice omnium directus sit sermo domini in signum principatus sui super alios. Et ita Christus tam subditos quam praelatos ad observantiam hujusmodi praecepti obligare voluit. Verum, et superius commemoratum est ex sententia domini Hugonis cardinalis super Matthaeum exponentis duas glossas ordinarias dupliciter hunc textum. Alia est intelligentia hujus nominis, ecclesiae, quando privata persona corrigit et alia quando publica persona. Nam si privata persona corrigit, tunc est sensus dic ecclesiae, id est praelato. Si vero publica persona corrigit, tunc est sensus dic ecclesiae, id est coram congregatione eum objurga, ut sic, quemadmodum ait Glossa, majorem erubescitiam patiat; vel coram congregatione eum excommunicat ut sic quemadmodum, ait Hieronymus, multorum detestationi habitus opprobriis salvetur, qui pudore salvari non potuit.
- (3) Sed cum hoc modo praelatum remitti ad ecclesiam non sit remitti ad superiorem sive ad iudicem ut de se patet, manifestum est quod ratio ex adverso in nullo probat intentum. Praeterea ratio praefata non procedit quoniam non videtur inconveniens quod quis remittatur ad seipsum secundum aliam et aliam habitudinem consideratam. "Praelatus enim," ait sanctus Thomas in IV Dist xix: 2, 3 "dupliciter potest considerari, aut secundum quod in iudicio praesidet et sic praelato," inquit, "est dicere ecclesiae aut extra iudicium existens et sic dicere praelato non est dicere ecclesiae, per quem modum persona in praelatione constituta, potest a se ut est privata remitti ad se, ut est persona publica: et tunc dicere ecclesiae nihil aliud est quam exire in actum iudicii."
- 4) Quomodo beatus Gregorius scribens Joanni patriarchae Constantinopolitanen, super usurpatione vocabuli universalis ecclesiae, Epistola CCLXV ostendit sic dicens: "Nos quidem in quibus talis

tantaque [super ^{AUSUM} autem] nefarium culpa committitur servamus quod praecipit veritas dicens, 'Si peccaverit in te frater tuus, corripe eum inter te et ipsum (col 1965); si autem te non audierit, dic ecclesiae. Si vero ecclesiam non audierit, sit tibi sicut ethnicus et publicanus.' Ego itaque per responsales meos semel et bis verbis humilibus hoc quod in tota ecclesia peccatum corripere statui, per me scribo quicquid humiliter facere debui, non obmisi; si in mea correctione despiciar restat ut ecclesiam debeam adhibere." Haec Gregorius ubi ecclesiam adire, vel adhibere est censuram ecclesiasticam apponere sicut fecit non convocando super hoc aliquod concilium universale. Praeterea hoc modo ait Nicolaus papa, sicut habetur in c. Praecipue ubi ita dicit regi Lothario: "ceterum cave ne quando vobis, secundum praeceptum domini, duos vel tres testes adhibeamus, immo vero hoc, sanctae ecclesiae dicamus et quod non optamus, de cetero cunctis fiat ethnicus et publicanus." (page 18)

- 1) Quod vero ibi per ecclesiam, non alium iudicem quam seipsum intelligat patet. Et Glossa quae in eo loco dicit, sic ergo in causa denunciationis idem potest esse iudex, accusator et testis. Et Extravag. De simonia, c. Licet. Ceterum ipse beatus Petrus in cuius persona haec constitutio divina primo emanavit absque hoc quod universali ecclesiae diceret aut universale concilium convocaret; Ananiam et Saphiram ejus conjugem sua auctoritate damnavit. Nimirum plane foret periculosum asserere beatum Petrum aliosque sanctos patres transgressores extitisse divini praecepti qui ad correctionem peccatorum absque denunciando universali ecclesiae sua auctoritate processerunt. Amplius si cum dicitur, "si in te peccaverit frater tuus" et cetera, "Dic ecclesiae," semper recursus habendus esset ad aliquem alium.
- 2) Immo nunquam papa aut alius praelatus veniret iudicaturus eum qui in ipsum peccaverat quod est inconvenientissimum et ab omni ratione et veritate separatum. Ad confirmationem autem inducta est Glossa ordinaria per patrem et dominum arguentem qui ait, "vel dic toti ecclesiae," licet etiam ex superioribus in responsione praecedentis argumenti pateat copiose satis responsio ejus. Nihilominus dicitur quod Glossa in ullo deservit proposito partis suae, quinimmo omnino ejus infirmat intentionem, si Glossa bene videatur. Glossa autem ita dicit, "vel dic toti ecclesiae ut majorem erubescerentiam patiatur; post haec omnia sequatur excommunicatio, quae fieri debet per eos ecclesiae, id est per sacerdotem, quo excommunicante, tota ecclesia, cum eo operatur." Haec Glossa. In qua glossa tria veniunt ponderanda: primo quod cum ait, "vel dic toti ecclesiae," per totam ecclesiam non est accipienda universalis ecclesia quia, ut superius ostensum est, fidelibus in diversis regionibus orbis constitutis adimplere hoc esset impossibile; sed illa totalitas ecclesiae accipienda est valde stricte: quandoque enim pro collegio cardinalium; quandoque pro congregatione una conventuali; quandoque pro congregatione una capitulari; quandoque pro congregatione una synodali, aut provinciali; quandoque pro congregatione unius parvae familiae.
- 3) Sic enim accommodata locutione quandoque nomine universae ecclesiae sacra scriptura utitur; sicut apostolus ad Romanos ultimo, ait "Salutat vos cuius hospes meus et universa ecclesia," ubi per "universam ecclesiam" solam provinciam Caei intelligit, ut ait Glossa.

- (1) Secundo considerandum est in praedicta glossa quod dicendum esse "toti ecclesiae," dicit "ut majorem erubescantiam patiat, in quo nihil auctoritatis attribuit communitati. Quocirca manifestum (col 1966) quod remitti praelatum hoc modo ad communitatem non est remitti ad superiorem. Tertio ponderandum est quod ait, "et post haec sequatur excommunicatio quae fieri debet per os ecclesiae, id est per sacerdotem." Ubi manifeste innuit, quod non apud communitatem, sed apud praelatum qui os et vertex est ecclesiae sit auctoritas iudicii, quo excommunicante, sive uniente, tota illa ecclesia, quae est corpus ejus, cujus consensu et approbatione in contumacem fratrem praelatus sententiam condemnationis profert, dicitur cum eo operari; et hoc de primo quod erat dicendum juxta auctoritatem illam.
- (2) Secundo dicitur, quod et si aliquando praedicta auctoritas ad concilium universale apostolica auctoritate fultum applicetur aut ad concilium universale, -- sede vacante, -- non tamen propter hoc habetur intentio arguentis videlicet quod universalis synodus supra papam, unicam et indubitatum iudicii potestatem haberet, et quod papa frater noster est, ergo videtur, quod ad eum se extendat auctoritas praefata, quae ait: "si peccaverit frater tuus in te," et cetera, dicendum quod papa cum hoc, quod est frater noster et naturae conformitatis et fidei religione, est etiam princeps et caput totius ecclesiae universalis, supremam habens potestatem in ecclesia.
- (3) Ratione primi scilicet, quia frater noster: extendit se ad eum auctoritas in ea parte, in qua simplex tangitur correctio fraterna, prout est actus caritatis, videlicet, prout dicit quamdam caritativam admonitionem, quae potest esse inferioris ad superiorem sicut et ipse caritatis affectus. Ratione vero secundi videlicet, quod princeps et pastor supremam potestatem ecclesiae habens totius gregis dominici est: non extendit se ad eum auctoritas praefata in ea parte, in qua contra non suscipientem correctionem fraternam jubetur ecclesiae denunciationem fieri et correctionem iustitiae per coarctationem poenae exhiberi. Quoniam cum hoc genere correctionis nemo corrigendus veniat nisi a superiori; ad illos tantum se extendit Christi institutio qui superiorem habet in terris cujusmodi non est papa, quem Christus utpote vicarium ejus supremum omnibus fidelibus sive dispersis sive in unum convenientibus (page 19) praeesse voluit. Et ideo peccata illius suo solo reservavit iudicio. De hoc plurima inferius dicenda venient; ideo pro nunc dixisse de ista auctoritate sufficiat.
- 4) Secunda auctoritas inducta, est illa Joannis XX ubi Christus ait apostolis: "Accipite Spiritum sanctum; (et) quorum remiseritis peccata, remittentur eis." Super quo verbo, beatus Gregorius in Homilia ut deducit sanctus Thomas in Glossa continua ita dicit de apostolis: "principatum superni iudicii sortiuntur ut vice Dei quibusdam peccata retineant quibusdam relaxent; quorum nunc in ecclesia episcopi locum tenent, et solvendi atque ligandi auctoritatem suscipiunt qui gradum regiminis sortiuntur." Ad istam auctoritatem respondetur, ut sanctus Thomas respondet in IV Sententiarum, ad quam dicit, Dist xix. "Quod ad absolutionem a peccato requiritur duplex potestas scilicet potestas ordinis et potestas jurisdictionis. Prima quidem potestas adaequatur in omnibus sacerdotibus, non autem secunda; ideo ubi Dominus Joannis XX dedit omnibus apostolis communiter potestatem remittendi peccata,

intelligitur de potestate quae consequitur ordinem. Unde et sacerdotibus quando ordinantur illa verba dicuntur. Sed Petro dedit singulariter potestatem remittendi peccata (col 1967) Matthaei XVI. ~~Et~~ intelligatur quod ipse prae aliis habet potestatem jurisdictionis." Haec ibi sanctus Thomas.

- 1) Secundo in eodem IV Sententiarum, Dist xxiv ad eandem auctoritatem respondens ait: "quod quamvis omnibus apostolis data sit communiter potestas ligandi et solvendi, tamen ut in hac potestate ordo aliquis significaretur, primo soli Petro data est, ut ostendatur, quod ab eo in alios debeat ista potestas descendere. Propter quod etiam ei dixit singulariter Christus: Confirma fratres tuos; et "pasce oves meas," 'id est loco mei,' ut dicit Chrysostomus, 'Praepositus et caput esto fratrum tuorum, ut ipsi te in loco meo assumentes, ubique terrarum te in throno tuo sedentem praedicent et confirment.'" Haec sanctus Thomas.
- 2) Ad idem sententia Alberti magni et Bonaventurae. Ex qua responsione cum duo colligamus; primo quod auctoritas illa inducta Joannis XX de potestate ordinis accipienda sit quae aequalis est in omnibus sacerdotibus. Secundo quod potestas jurisdictionis, quae non est communis omnibus nec aequalis in omnibus; in quibus est, a Petro in quo solo per plenitudinem fuit; in alios derivata est. Patet quod ex auctoritate illa non probatur quoquomodo veritas decreti Constantiensis, nec quoad immediationem potestatis jurisdictionis a Christo, quoad superiorem conciliorum supra papam.
- 3) Tertia auctoritas inducta in ordine per praefatum dominum arguentem, est illa Actorum XV. Placuit apostolis et senioribus cum omni ecclesia, eligere viros ex illis et mittere Antiochiam." Et infra, "visum est Spiritui sancto et nobis nihil ultra imponere vobis oneris quam hoc necessario," ut et cetera. Ex hac auctoritate arguit dominus opponens quod apostoli et seniores fecerunt decreta. Ad hanc auctoritatem respondetur quod in nullo probat decretum praefatum veritatem continere. Primo quidem, quia licet aliquo modo concedatur quod patres in concilio existentes simul concurrant cum papa in condendo canones, sicut hic de apostolis cum Petro legitur; nihilominus principatus decretandi, sive auctoritas principalis competit Romano pontifice utpote qui princeps est totius reipublicae Christianae. Unde Glossa Hieronymi super illo passu ^{et} Habetur in Epistola XXII ejusdem ad Augustinum commemoratio qualiter "Jacobus et omnes presbyteri in sententiam Petri transierant;" inquit sic, "non debent haec molesta esse lectori sed mihi et illi utilia; ut probemus ante, apostolum Paulum non ignorasse Petrum principem esse hujus decreti legem post evangelium non esse servandam." Ecce quod Hieronymus decreti illius quod in illa synodo apostoli et seniores fecisse dicuntur, principem Petrum appellat.
- 4) Id quod sequitur, "visum est Spiritui sancto et nobis:" non arguit aliquam jurisdictionem datam immediate a Christo sive a Spiritu sancto toti collegio apostolorum; sed bene arguit datam inspirationem ad intelligendam veritatem. Unde venerabilis Beda in Glossa ita dicit: "Placuit Spiritui sancto, qui arbiter suae potestatis, ubi vult spirat, ubi vult loquitur, et nobis non solum voluntate humana, sed instinctu Spiritus sancti." Haec Glossa. Ex quibus verbis

nihil habetur, nisi quod Petrus et alii apostoli et seniores in sententiam illius canonis de legi post evangelium non servanda, instinctu Spiritus sancti sive Spiritu sancto inspirante et docente convenerant. Planum est autem quod hujusmodi assistentia qua Spiritus sanctus (col 1968) sanctis congregationibus assistit inspirando et docendo quid agendum sit, non abstulit a Petro tunc, -- nec nunc ab ejus successoribus Romanis pontificibus -- superioritatem et praesidentiam super syndodum, non unitatem ecclesiae, non connexionem totius corporis (page 20) ecclesiae, ad unum caput, Christi vicarium; praecipue cum dicat Chrysostomus quod "Petrus erat vertex collegii et caput apostolici chori." Et ita patet quod auctoritas inducta non probat veritatem praefati decreti Constantiensis.

- (1) Quarta auctoritas est illa quae Actorum XX: habetur: "attendite vobis et universo gregi in quo posuit vos Spiritus sanctus regere ecclesiam (deest: "Dei") quam acquisivit in sanguine suo." Ad istam auctoritatem dicitur quod ex ea non probatur intentum arguentis. Et primo quidem quoniam si ex hoc dicitur quod Christus posuerit presbyteros illos, ad quos sermo Pauli dirigebatur, regere ecclesiam suam, -- arguatur quod tales acceperint a Christo regimen immediate sive potestatem jurisdictionis. Consequentia nullas vires habet. Immo sic arguens committit fallaciam figurae dictionis, mutando quid in quale. Under et apostolus cum ait ad Romanos XIII: "non est potestas nisi a Deo," immediate subjungit; "quae a Deo sunt ordinata sunt." Stat ergo quod omnis potestas a Deo sit et tamen quod non immediate singulis conferatur a Deo; sicut Joannes (primo) dicitur, "Omnia per ipsum facta sunt." Et nihilominus multa non immediate sed mediantibus causis secundis a Deo fiunt.
- (2) Praeterea secundo, si ex praedicta auctoritate arguens velit inferre quod alii apostoli sive praelati habeant potestatem regiminis ecclesiae, aut superiorem Petro aut aequalem; negabitur consequentia. Quoniam cum dicat apostolus ad Romanos XIII quod "omnis anima potestatibus sublimioribus subdita sunt," et subjungat, "quae a Deo sunt, ordinata sunt." Oportet quod praelatio attendatur secundum ascensum et descensum, non secundum aequalitatem. "Quare necesse erit," ut arguit dominus cardinalis Bonaventura in IV "secundum rectum ordinem ecclesiae quod suprema potestas regiminis et plenitudo jurisdictionis stet in uno primo et supremo, in quo solo sicut in primo et in simplicissimo in illo genere, est status omnis praelationis ecclesiasticae." Quocirca cum alii a Petro dicuntur aut principes aut rectores ecclesiae aut pastores gregis dominici, non est intelligendum quod aut tales immediate constituti sunt a Christo, aut quod vocati sunt in plenitudinem potestatis, sed accipiendum est mediate, et secundum eam partem sollicitudinis, ad quam per supremum pastorem in ecclesiae sanctae Romanae pontificem, vocati sunt. Unde Glossa super illud I Petri V: "Pascite qui in vobis est gregem Dei," dicit sic, "sicut dominus Petrum totius gregis curam habere jussit: ita Petrus sequentibus ecclesiae pastoribus jure mandat ut quisquis qui secum est, gregem domini sollicita gubernatione tueatur."
- (3) Quinta auctoritas est in illa quae habetur in c. Firmiter, Extravag., De summa Trinitate, #Una vero*, ubi dicitur et est diffinitio

*Mansi: Unam Sanctam -- probably a scribal error.

in concilio universali facta, quod Jesus Christus concessit claves ecclesiae apostolis, eorumque successoribus. Ubi Joannes Andreas dicit, quod "Non soli Petro Christus claves concessit sed et ceteris apostolis." Ad hanc auctoritatem respondetur et primo ad hoc quod non ideo claves dicuntur ecclesiae quod communitati totius ecclesiae datae sint, ita (col 1969) quod singillatim sive collegialiter omnes fideles, claves a Christo susceperunt; cum teste beato Ambrosio libro De penitentia et habetur a Magistro Sententiarum in IV, Dist xviii. Ius hoc solvendi et ligandi solis sacerdotibus competat; sed dicuntur esse ecclesiae triplici ratione; primo quia claves istae datae sunt potioribus partibus ecclesiae, sicut ait Hieronymus quod datae sunt ecclesiae, in episcopis et presbyteris. Solitum est autem, ut patet IX Ethicorum ut communitas dicatur id quod principalissimum est in ea.

- (1) Secundo dicuntur claves ecclesiae, quia potestatis, quae non potest perpetuari in uno aut pluribus singularibus suppositis alicujus multitudinis, sed tantum per successionem, consuevit saepe nominari et dici potestas communitatis, licet non omnibus de communitate talis conveniat potestas, sicut est in privilegio perpetuo dato dignitati alicujus ecclesiae; et ita est de potestate clavium ecclesiae in episcopis et presbyteris. Tertio ideo dicuntur claves ecclesiae, quia ad bonum totius ecclesiae a Christo Petro et ejus successoribus donatae sunt; sicut etiam sacramenta ecclesiae esse dicuntur, quia ad ejus utilitatem instituta, licet collatio sacramentorum non ad totam communitatem sed ad ministros solos ecclesiae pertineat.
- (2) Praeterea ad id quod consequenter in auctoritate ponitur videlicet quod Christus apostolis eorumque successoribus claves concessit. Respondetur quod verum est et etiam quod Joannes Andreas in Glossa loquitur; sed ex hoc nihil auctoritatis inducitur pro veritate decreti Constantiensis. Primo quia quod dicitur, quod Christus omnibus apostolis et successoribus claves concessit, (page 21) intelligendum est ut patet ex superius inductis, Petro per se et immediate; aliis vero apostoli mediante Petro. Secundo, quia quamvis non solus Petrus accepit claves, solus tamen -- ut saepe ex dictis sanctorum commemoratum est, -- in plenitudine suscepit utpote aliorum princeps et caput. Ob quam praerogativam solus Petrus cum clavibus depingitur; solus Petrus de collatione clavium a Christo sibi facta in ecclesia inter ceteros praecipue commendatur.
- (3) Sexta auctoritate inducta per dominum et patrem opponentem, fuit illa Extravag. De poenitentis et remissionibus in c. Nova. Ubi dicitur quod apostolis omnibus Deus claves commisit. Ad istam auctoritatem patet per jam dicta responsio per has enim et hujusmodi auctoritates sicut jam probatum est: nec habetur quod alii apostoli a Petro immediate a Christo susceperint potestatem jurisdictionis; nec quos si susceperint superiorem aut aequalem cum Petro eorum principe potestatem habuerint.
- (4) Septem auctoritas inducta, est illa Augustini super Joannem et habetur in c. Quodcumque xxiv, Q 1. Ubi dicit Augustinus quod si hoc scilicet, "quodcumque ligaveris super terram" . . . tantum Petro dictum est non hoc facit ecclesia. Si autem in ecclesia fit utique quae in terra ligantur et in coelo: et quae soluta sunt in terra soluta sunt
[SOLVUNTUR]

in coelo." Et sequitur, "si ergo in ecclesia sit Petrus quando claves accepit ecclesiam sanctam significavit." Ad illam auctoritatem dicendum quod nihil ex ea favoris seu virtutis decreto Constantiensi praestatur. Quoniam non est ea intelligentia Augustini in hoc loco, quam quidam praetendunt videlicet quod beatus Petrus in nomine ecclesiae ut tamquam syndicus ejus aut procurator sive vices gerens, a Christo claves accepit; cum ipse princeps, caput et (col 1970) rector totius universalis ecclesiae in collatione clavium constitutus esse dicatur. Non autem stant haec duo simul, quod Petrus in susceptione clavium a Christo fuerit syndicus ecclesiae, sive quod per procuratorio nomine illas suscepit et quod sit per claves illas princeps, caput et rector ecclesiae a Christo constitutus. Ceterum haec intelligentia ex eo aliena a fide omnino judicanda est, quia papa non ecclesiae vicarius sed Christi, non ecclesiae vices sed Christi gerit in terris. Non ab ecclesia potestatem suscepit sed a Christo super ecclesiam, quam gubernandum regendamque suscepit.

- (1) Praeterea quod dicitur quod Petrus, quando claves accepit, ecclesiam sanctam significavit; non est ita accipiendum quasi voluerit Augustinus quod universo corpori ecclesiae in omnibus ejus membris datae sunt claves, cum in solis episcopis et presbyteris, testibus beatissimo Ambrosio et Hieronymo, illas suscepit. Sed haec sana et vera beatissimi Augustini intelligentia quod, non Petro tantum ut singulari personae data sit auctoritas clavium; quoniam, ut Augustinus optime arguit, si tantum Petro data fuisset, jam nec absolutio nec ligatio, nec aliqua reconciliatio fieret in ecclesia. Cum ergo in veritate ita fiat, sequitur, quod non tantum Petro data sit, sed etiam data sit in eo successoribus ejus et universis praelatis futuris in ecclesia Dei, quos in partem vocaret sollicitudinis suae. Unde data est ei potestas clavium, ut signanti et repraesentanti universos praelatos futuros in ecclesia Dei manentes in unitate corporis Christi, sive in societate Petri. Et hoc est ipsum Petrum cum claves accepit, ecclesiam sanctam significasse: ut patet ex ipsamet litera bene considerata. Unde dominus Archidiaconus in Rosario suo, hunc locum ad istam intelligentiam exponens, ita dicit, "Si hoc tantum Petro dictum est, scilicet ut ejus personam non transgrediatur, non hoc facit] ecclesia, idest ejus auctoritas." Haec ille.
- (2) Plane haec est vera intelligentia; hoc est veraciter Augustini argumentum, sicut iste clarissimus doctor exponit; si potestas data esset soli Petro, ita quod ejus personam non transgredereetur, profecto auctoritas ligandi et solvendi in ecclesia non esset. Praeterea quod ex ista auctoritate non sequatur aliquid pro veritate decreti Constantiensis patet ex ipsa Glossa ordinaria quae ita habet in loco, "Argumentum quod sententia totius ecclesiae praeferenda sit Romanae, si in aliquo sibi contradicant, (Argumentum, Dist XCIII, Legimus.) —
- (3) "Sed contrarium", inquit, "credo, argumentum infra eadem: Haec est [fides] nisi erraret Romana ecclesia, quod non credo posse fieri quia Deus non permetteret, c. A recta et c. Pudenda." Haec Glossa, et hoc de auctoritate ista.
- (4) Octava auctoritas inducta est ejusdem Augustini super Psalmos ubi ita dicit: "Sunt quaedam quae dicuntur ad Petrum, quae licet

proprie ad eum pertinere videantur, non tamen habent intellectum, nisi cum referuntur ad ecclesiam, cujus ille agnoscitur in figura gessisse personam propter primatum quem in discipulos habuit." Ad istam patet responsio ex responsione data ad superiorem auctoritatem. Verum enim est ut ait Augustinus quod cum claves Petrus recepisse dicitur, licet (page 22) veraciter hoc dicatur, nihilominus cum intellectu ad ecclesiam accipiendum est, id est, ad omnes successores ejus et alios futuros in ecclesia praelatos, sicut saepe commemoratum est. Ex hoc autem non potest (col 1971) argui, quod aliquis in ecclesia, aut tota ipsa ecclesia, potestate clavium major, aut superior fuerit ipso Petro: quod etiam ex eo patet, quod Augustinus in eadem auctoritate dicit, quod Petrus habuerit inter discipulos primatum.

- (1) Nona est auctoritas Augustini, qui in primo De agone Christiano ita dicit: "non enim sine causa inter omnes apostolos hujus ecclesiae personam sustinuit Petrus; huic enim claves regni coelorum datae sunt et cum dicitur: 'Petre amas me? Pasce oves meas,' ad omnes dicitur." Ad istam auctoritatem eadem est responsio quae ad superiores assignata est, quoniam eandem cum illis sententiam importare videtur. Id enim quod primo dicitur, quod cum Petro claves datae sunt, ecclesiae datae sunt, jam in superioribus dictum est qualiter accipiendum sit, videlicet quod ecclesiae non in multitudine fidelium sed in episcopis et presbyteris datae sint.
- (2) Unde dicit Ambrosius, quod "in Petro claves omnes sacerdotes recepimus." Quod vero secundo in auctoritate dicit Augustinus, quod cum dictum est Petro: 'Pasce oves meas,' ad omnes dictum sit. Non ita accipiendum est quod omnibus fidelibus Christus commiserit curam pastorem ecclesiae, maxime cum dicat apostolus ad Romanos XII: "dedit quidem Deus quosdam pastores." "Quosdam" quidem dixit, non "omnes." Sed intelligentia est Augustini, quod ly, "omnes," solum distribuat pro pastoribus in ecclesia successoribus Petri et aliis evocandis in partem sollicitudinis ejus. Quod manifeste Augustinus ostendit in sermone quodam, qui sermo incipit: "Apostolum Petrum primum omnium apostolorum," in quo tractans praefatum verbum: "pasce oves meas," ita inquit, "per singula enim dicebat Petro dominus Jesus dicenti: amas me? Pasce oves meas; pasce oviculas meas. In uno Petro figurabatur unitas omnium pastorum." Haec Augustinus praeterea licet cura pastoralis multis aliis praelatis quam Petro commissa sit, non tamen, ut saepe repetitum est, ¹⁰ ea plenitudine et universalitate qua Petro, qui ita universaliter totius gregis domini pastor a Christo est constitutus, ut non sit dicendus quis Christianus, Christi agnus, nec fidelium hominum conventus, qui dicit se non esse sub cura hujus pastoris," ut sanctus Thomas ait super Joannem in capitulo ultimo.
- (3) Decima auctoritas inducta est, ejusdem beatissimus Augustinus in libro secundo Quaestiones novi et veteris Testamenti, sic loquitur. "Dominus noster Jesus discipulos suos ante passionem suam, sicut nosis, elegit quos appellavit apostolos. Inter hos pene ubique Petrus solus totius ecclesiae meruit gestare personam et propterea audire meruit: 'Tibi dabo calves regni coelorum.'" Et sequitur: "Has autem claves non homo unus sed unitas accepit ecclesiae!"

*Mansi, 1971C: amo te.

- (1) Ad istam auctoritatem respondetur quod non intendit Augustinus negare Petrum claves accepisse, cum Petro a Christo dictum sit: "Tibi dabo claves regni coelorum," Matthaei XVI et Joannis XXI: "Pasce oves meas." Et ipse Augustinus ipsum dicat et apostolorum principem et totius ecclesiae caput appellet. Sed ideo dictum est, quod non unus quia non unus solus singulariter, ita quod non alii in eo susceperint plane in eo etiam ecclesiae posteritas in praelatis suis claves accipit eo modo quo saepe commemoratum est. Pro cuius auctoritatis et multarum similium Augustini plena intelligentia sciendum est, quod duo errores inter, alios emanaverunt circa claves ecclesiae, quos veluti perniciosissimos (col 1972) beatus Augustinus pervigili studio eradicare curavit.
- (2) Primus error fuit Novatianorum, ut dicit sanctus Thomas in III parte, Q 74, art 10, qui negabant poenitentiam lapsis post baptismum dicentes apud sacerdotes, nullam tales absolvendi a peccatis esse facultatem. Istum errorem tangit Augustinus et impugnat primo libro De vera et falsa poenitentia ubi in capitulo tertio in principio, ita dicit: "Sunt quidam qui credant usque in baptismum poenitentiam proficere sed postea peccantibus cassam perseverare." Item in principio capituli quarti, dicit: "adhuc sunt qui reclamant non esse peccatorum remissione baptizatis per poenitentiam." Ad quem errorem penitus eradicandum beatus Augustinus utpote acutissimus argumentator, visus est semper ostendere quod non soli personae Petri claves datae sunt, sed cum Petro datae sunt ecclesiae, id est toti posteritati ecclesiae in praelatis.
- (3) Unde in capitulo quinto praefati libri inducens contra praefatos haereticos illud Joannis XX quod Christus ait apostolis: "Accipite Spiritum sanctum et quorum remiseritis peccata, remittentur eis," dicit sic: "Scimus autem et primos patres et in omni tempore ecclesiam Dei semper usque ad septuagesies septies, quod est semper, peccata dimittere; quam potestatem isti ab ecclesia auferre conantur." Praeterea de istorum perversorum hominum errore apertissime loquens, eumque fortissime expugnans in libro De agone Christiano, c. xxxi, sic dicit, "nec eos (page 23) audiamus qui negant ecclesiam Dei omnia peccata posse dimittere. Itaque miseri dum in petra Petrum non intelligunt et nolunt claves regni coelorum esse datas ecclesiae, ipsi eas de manibus amiserunt." Haec Augustinus. Agit etiam contra hos haereticos Novatianos sacerdotes, parem congressum beatus Ambrosius libro suo De poenitentia: cuius verba causa brevitatis pertranseo.
- (4) Secundus error fuit eorum qui in haeresi et schismate constitutos et ita ab universitate ecclesiae separatos, asserunt posse ligare et solvere: qui error est communiter omnium schismaticorum. Contra quem errorem dicit beatus Cyprianus in quadam epistola et habetur VIII, Q 1, c. Novatianus. "Qui nec unitatem," inquit, "Spiritus nec conventionis pacem observat et se ab ecclesiae vinculo atque sacerdotum collegio separat, nec episcopi potestatem habere potest, nec honorem." Item multa hujusmodi sunt in c. Dicimus et in c. Pudenda et in c. Schisma, xxiv, Q 1. Ubi maxime ad notitiam hujus rei considerandum venit illud quod Cyprianus ponit in epistola (ad Jovinianum) [ad Jubaianum], ita dicens, "Clamat dominus ut qui sitiit veniat et bibat de fluminibus aquae vivae, quae de ejus ventre

fluxerunt. Quo venturus est qui sisit? Utrum ne ad haereticos ubi fons et fluvius aquae vitalis omnino non est? An ad ecclesiam quae una es, et super unum, qui et claves ejus accepit et domini voce fundata est? Haec est una quae tenet et possidet omnem sponsi sui et domini potestatem." Haec ille.

- (1) Beatissimus praeterea Augustinus libro De poenitentia, superius commemorato, contra praefatum errorem loquens et unitatem ecclesiae ad usum clavium esse ostendens, ita dicit: "nemo poenitere digne potest quem non sustineat unitas ecclesiae, ideoque non petat sacerdotes ab unitate ecclesiae diversos." Ad destruendum ergo errorem hunc secundum videlicet, quod ab ecclesiae unitate divisi potestatem habeant clavium jurisdictionis; dixit in auctoritate (col 1973) inducta, quod non unus, sed unitas claves acceperat; ostendens per hoc necessariam esse ad unitatem ecclesiae ad habentem communionem potestatis ecclesiasticae. Et hoc quod haec fuerit Augustini intentio patet, quoniam post illa verba inducta per dominum arguentem quae habentur in sermone apostolorum Petri et Pauli, qui incipit: Istum nobis diem; ita subjungit: "huic ergo Petri excellentia commendatur, quoniam ipsius universitatis et unitatis ecclesiae figuram gessit." Haec Augustinus. Plane Petrus universitatis ecclesiae in praelatis figuram gessit; et hoc contra primum errorem qui a sacerdotibus praesentis temporis clavium potestatem auferebat. Gessit praeterea figuram unitatis ecclesiae contra errorem secundum, dicentium ab ecclesia divisos usum potestatis clavium retinere; et ita patet quod beati Augustini dicta optime considerata non probant, ea quae Basileenses astruunt de potestate concilii universalis ecclesiam repraesentantis; sed illa magis infirmant.
- (2) Undecima auctoritas inducta, est illa Augustini De doctrina Christiana; "Haec igitur claves dedit ecclesiae suae, ut quae soluta essent in terra soluta essent in coelo." Ad istam auctoritatem ex dictis ita plene patet responsio, ut superfluum sit ad eam aliquid dicere.
- (3) Duodecima auctoritas inducta, est illa ejusdem Augustini in epistola ad Glorium et Eleusium, episcopos Donatistarum, ad quos ita post multa alia loquitur: "Ecce putemus illos episcopos qui Romae judicaverunt non bonos iudices fuisse. Restabat adhuc plenum ecclesiae universalis concilium, ubi etiam cum ipsis iudicibus causa posset agitari et si male iudicasse convicti essent eorum sententiae solverentur." Ad istam auctoritatem quae partis adversae videtur Achilles; respondetur quod per eam nullo modo probatur decretum Constantiense in parte illa de qua loquitur continere veritatem. Tum primo, quia per illa verba non est intentio Augustini dicere, quod universale concilium potestatis, auctoritate superius sit Romano pontifice. Primo quia in eadem epistola, sicut etiam in libro De unico baptismo, profitetur quod "in Romana ecclesia apostolicae cathedrae semper viguit principatus." Quod verum non esset, si superior cathedra quam sit apostolica, alia in ecclesia daretur.
- (4) Secundo quia idem Augustinus ut inducitur in c. Pudenda xxiv, Q 1 dicit quod cum ecclesia, nulla esse potest, ea sit, quae in apostolicae sedis radice per successionem episcoporum constituta est. Quomodo autem Augustinus apostolicam sedem diceret radicem fundamentalem ecclesiae, si illius sedis auctoritas ad aliquam aliam

altioris potestatis, et principatus resolvenda veniret, cum natura radicis aut ultimi fundamenti sive primi principii hoc non patiat, sicut ex primo Posteriorum habetur. Quod autem dicit Augustinus, quod "Restabat adhuc plenarium ecclesiae universalis concilium;" non dicit ratione superioritatis principatus aut potestatis (page 24) quae major sit in plenario concilio quam in apostolica sede, sed ratione amplioris et majoris examinis habendi iudicii, quale sperabatur in plenario patrum totius ecclesiae concilio, secundum illud, "ubi consilia multa ibi salus." Proverbiorum XI.

- 1) Quod vero ista fuerit Augustini intelligentia, patet ex verbis epistolae et ex illis quae de ista materia commemorat in libro De unico baptismo. Dicit enim sic in praesenti epistola ad Glorium et Eleusium, "sed jam tamen quasi haberent quod dicerent, malos iudices se esse perpeccatos quae vox est omnium malorum litigatorum, cum fuerint etiam manifestissima veritate superati, quasi non adhuc eis dici possit et justissime dici. Ecce putemus illos episcopos qui Romae iudicarunt non bonos iudices fuisse. Restabat adhuc plenarium universalis concilium ubi etiam cum ipsis iudicibus causa possit agitari." Et hoc eo quia, ut in libro De unico baptismo idem Augustinus dicit, majores accusatorum episcopi Siciliani (Caeciliani) qui innocens erat iudicatus querebanturque imperatori, quod non plene fuerat illud iudicium Romae examinatum atque depromptum. Quam ob causam dicebat beatus Augustinus quod praefati episcopi qui iudicium papae dicebant, licet falso, minus plene examinatum, quod antequam schisma facerent, se ab ecclesia Romana seperantes*, debuissent; si amatores erant unitatis ecclesiae iudicium expectasse plenarii concilii universae ecclesiae in quo cum ipso papa discussio fieret. Nulli autem dubium est, quod iudicium habitum per papam et patres universae ecclesiae simul majus aestimetur auctoritate reputationis, gravitate examinis et plenitudine discussionis, quam iudicium habitum per papam cum paucis, licet non majus dicendum sit superioritate potestatis. Quod autem consequenter dicit Augustinus, quod "si male iudicasse convicti essent eorum sententia solverentur," non ita accipiendum est, quod auctoritate concilii plenarii tanquam superioris iudicii potestate, sententia papae dissolveretur, cum majus tribunal sive iudicium alterius haberi non possit in terris quam sit vicarii Jesu Christi. Idem quidem est consistorium Dei et papae sicut episcopi et vicarii ejus."
- (2) Unde Glossa super illud Matthaei XVI: "tibi dabo claves regni coelorum, dicit: "vide quantam potestatem habeat petra, supra quam aedificatur ecclesia, ut etiam iudicia ejus maneant firma, quasi Deo iudicante per eam." Et ideo in c. Patet ix, Q 3 dicit Nicolaus papa, "iudicium apostolicae sedis cujus profecto auctoritate majus non est iudicium a nemine fore retractandum, nec de ejus cuiquam liceat iudicare iudicio." Quod ergo dicit Augustinus, quod "si male iudicasse convicti essent eorum sententiae dissolverentur," exponendum est id est nullae, aut cassae, aut dissolutae esse jure ostenderentur quia, ut ait regula juris, "Quae contra jus fiunt debent pro infectis haberi;" Extravag. De regulis juris in Sexto. Et hoc modo ponitur illud de c. Multis, Dist xvii . . . "vestrum conventiculum vel conciliabulum cassatur," id est ipso jure cassum est. Ita

*Mansi, 1974B: sperantes.

hic Augustinus hoc accipere videtur cum ait, "si male iudicasse convicti essent eorum sententiae dissolverentur," id est ipso iure nullae, sive nullius firmitatis esse ostenderentur; vel accipiendum est verbum illud, quod auctoritate vel ipsius papae cujus auctoritate plenarium concilium congregatur et sententiae firmantur, deberent dissolvi, vel declarari nullae esse.

- (1) Quomodo legimus factum Dist xvii, c. Hinc etiam, ubi synodo congregata super criminibus quibus impetebatur Symmachus papa, patres episcopi ibidem congregati auctoritate ipsius Symmachi, sententiarunt ipsum Symmachum immunem esse. Praeterea simile legimus de beato Gregorio qui ait, ut habetur II, Q 7 c. "Si quis nos super his arguere voluerit vel extra auctoritatem nos facere contenderit, veniat ad sedem apostolicam et ibi ante confessionem beatus Petri, mecum juste decerte quatenus ibi unus ex (col 1975) nobis sententiam suscipiat suam." Clarissimum est autem quod sententia danda per apostolicam sedem sive contra papam sive pro eo non nisi auctoritate papae sedentis a quo ejus thronus auctoritatem suscipit, danda veniret. Et ita patet quod ex auctoritate illa Augustini in nullo probatur veritas Constantiensis decreti.
- (2) Tertia decima auctoritas inducta, est illa Hieronymi, quae habetur in Glossa super Matthaeum XVI. "Quodcumque ligaveris super terram, erit ligatum est in coelis," et cetera ubi sic dicit. "Habent quidam eandem judiciariam potestatem alii apostoli, quibus post resurrectionem dominus ait: 'accipite Spiritum sanctum et quorum remiseritis peccata, remissa erunt et quorum retinueritis, retenta sunt'. Habet etiam omnis ecclesia in episcopis et presbyteris." Ad istam auctoritatem patet ex superioribus plene responsio. Ex ea enim non habetur aliquid pro veritate decreti dicentis, quod synodus potestatem habet immediate a Christo cui etiam papa (page 26) obedire teneatur, maxime si id quod sequitur in auctoritate Hieronymi, producat in medium. Ait enim Hieronymus post anteposita verba sic: "Sed ideo specialiter Petrus eam accepit ut omnes intelligant, quod quicumque ab unitate fidei et societate ejus separaverint, nec peccatis solvi nec coelum possunt ingredi." Ecce quam manifeste beatus Hieronymus docet, quod Petrus specialius potestatem clavium, quam omnis ecclesia acceperit. Secundo quod omnes ita dependent a Petro, ut quicumque ab ejus societate et fidei unitate se separaverit, nec vinculis absolvi possit, nec ingredi coelum.
- (3) Quartadecima auctoritas est illa ejusdem Hieronymi et ponitur in c. Omnibus consideratis, xxiv, Q 1 ubi ait sic de domo ecclesiae loquens. (Haec) "domus etiam claves accepit et potestatem ligandi et solvendi. Hanc domum si quis corrigenstem corripientemve contemserit, sit tibi tanquam ethnicus et publicanus." Ad istam auctoritatem respondetur quod per eam in nullo probatur intentum arguentis. Primo quidem, quia domus ecclesiae non ita dicitur habere claves, quod in omnibus suis membris dispersis, aut simul congregatis eas habeat sed tantum juxta ejusdem doctoris superius positam auctoritatem, in episcopis et presbyteris eas habet, in quibus contemni dicitur aut venerari. Ex cujus gloriosissimi doctoris sententia satis manifestum est quam alienum sit a patrum doctrina, quod conventus copistarum, advocatorum, et saecularium hominum claves dicatur habere

regni coelorum et quod cum illorum conventus iudicium contemnitur, universalis ecclesia contemni dicatur.

- (1) Secundo, quia licet domus ecclesiae claves accepit eo modo quo dictum est, scilicet, in episcopis et presbyteris; nihilominus specialius, quia in plenitudine potestatis eas accepit in Petro, cujus successor est Romanus pontifex in cujus contemptu, utpote principis ipsius ecclesiae, maxime ecclesia ipsa contemni dicitur, quoniam Petrus, ut ait Augustinus, totius ecclesiae figuram sive personam gessit. Et ut dicit Ambrosius in libro De arca Noe, "senioris nomine de quo dependent ceteri, domus omnis significatur, qui Romanus pontifex cum pro eo quod caput et rector totius domus existat, superiorem extra casum haeresis non habet, non potest proprie dici in alio casu ecclesiam corrigentem, aut corripientem contemnere: hujusmodi enim contemptus proprie non est nisi inferiorum respectu superiorum." Quare manifestum est, quod auctoritas illa, nullam superioritatem arguit concilii universalis supra papa. (col 1976)
- (2) Auctoritas quintadecima inducta est ejusdem Hieronymi, qui super Joelem prophetam, III, ita dixisse fertur. Petra, inquit, Christus est, qui donavit Apostolis suis, ut ipsi quoque vocarentur Petrae, dicens, 'tu es Petrus et super hanc petram aedificabo ecclesiam mean.'" Ad hanc auctoritatem respondetur quod ex ea non habetur in aliquo propositum arguentis; quoniam licet Christus donaverit Apostolis, ut ipsi quoque vocarentur petrae, hoc tamen praecipue Petro donavit, cui specialiter ait: "tu es Petrus et super hanc petram aedificabo ecclesiam mean;" et in quo omnes alii apostoli, primo nomine Petro sumpsērunt. Quare recte post Christum fundamentum fundamentorum, ac petra petrarum, ac totius ecclesiae firmamentum Petrus asseritur.
- (3) Unde Leo papa in sermone tertio consecrationis, dicit: "Cum in Petro fortitudo invenitur et divinae gratiae ita ordinatur auxilium, ut firmitas, quae per Christum Petro tribuitur per Petrum apostolis conferatur." Et ideo beatus Ambrosius (et habetur in c. Fidelior, Dist 1) dicit, eo "Petra dicitur, quia primus in nationibus fidel fundamenta posuerit et tanquam saxum immobile totius corporis Christianitatis compagem molemque contineat." Cui ob hanc singularitatem nominis Petrae, fertur dixisse Paulus Petro, mortis instante hora, ut beatus Dionysius testatur: "Pax tecum fundamentum ecclesiarum et pastor ovium." Patet ergo quod ex eo quod ceteris apostolis suo modo nomen Petrae, aut fundamenti in Petro Christus donaverit, non habetur quod synodus universalis a Christo immediate potestatem suscipiat, cui ipse papa obedire teneatur.
- (4) Auctoritas sextadecima inducta per dominum arguentem est illa Cypriani in c. Loquitur, xxiv, Q 1, ubi ita ait: "quamvis Deus omnibus apostolis post resurrectionem suam parem potestatem tribuat et dicat: 'sicut misit me Pater, et ego mitto vos: accipite Spiritum sanctum.'" Et infra. "Hoc utique ceteri erant apostoli quod Petrus fuit, pari consortio praediti et honoris et potestatis." Ad istam auctoritatem facilis patet responsio; primo per glossam ejusdem capituli: dicit enim ibi Glossa quod ista paritas accipienda

sit in ordine et dignitate consecrationis, non in administrationis plenitudine; in hoc enim Petrus superior fuit, et major utpote apostolorum princeps et totius ecclesiae caput. Ut enim ait beatus Clemens et habetur in c. In illis, Dist lxxx "inter apostolos non fuit par institutio sed unus praefuit omnibus."

- (1) Secundo respondetur, quod paritas in hoc loco (page 27) non dicit aequalitatem, sed similitudinem; unde exponendum est, parem, id est similem, aut communem; quomodo loquitur beatissimus Leo papa, in epistola ad Anastasium, Thessalonicensem episcopum; "inter beatissimos apostolos in similitudine honoris fuit quaedam discretio potestatis." Tertio respondetur, quod dato, -- sed non concesso, -- quod ceteri apostoli cum Petro pari potestate jurisdictionis praediti fuissent, non habetur ex hoc quod synodus universalis a Christo potestatem immediate susciperet, cui papa obedire teneretur; par enim in parem potestatem non habet, nec principatum.
- (2) Decimaseptima auctoritas fuit Alexandri papae in c. Audivimus xxiv, Q 1 sic dicentis. "Unde cum dominus daret omnibus discipulis parem ligandi et solvendi potestatem, Petro pro omnibus et prae omnibus claves regni coelorum, se daturum promisit, dicens: 'Tibi dabo claves regni coelorum.' Quicumque ab unitate ecclesiae quae per Petrum intelligitur, fuerit alienus; (col 1977) execrariND potest, consecrare non valet, excommunicationis vel reconciliationis potestatem non habet." Ad istam auctoritatem dicitur, quod non agit contra sed plurimum confirmat, quod nullo modo potest stare cum veritate pars illius decreti dicentis quod synodus habet immediate potestatem a Christo, cui etiam papa obedire tenetur. Quod sic ostenditur, quod enim primo dicitur, quod parem potestatem dominus apostolis dedit, accipiendum est, ut proxime dictum est, ad auctoritatem praecedentem, aut quod sermo sit de potestate ordinis, quae, ut superius ex sancto Thomas IV, Dist xix et Dist xxiv commemoratum est, aequaliter fuit illa data omnibus.
- (3) Quod vero consequenter dicitur, quod Christus Petro se daturum promiserat claves pro omnibus et prae omnibus, manifestum declarat partem illius decreti Constantiensis non continere veritatem. Nam in eo quod dicit, quod Petro prae omnibus datae sunt claves; datur intelligi quod Petrus et per consequens ejus successor, in potestate jurisdictionis superior, et major omnibus fuerit etiam simul junctis. In eo vero quod dicit, quod pro omnibus et prae omnibus potestatem accepit, manifeste designatur, quod alii Christi discipuli et eorum successores potestatem jurisdictionis non acceperint, nisi per Petrum et ita non immediate a Christo.
- (4) Ubi considerandus est quod cum dicitur Petrus suscepisse pro omnibus et prae omnibus potestatem, non est intelligendum ipsum pro omnibus accepisse ad modum, quo unus procurator nomine aliquorum aliquod donum, sicut castrum aut principatum accipit a principe. Sed intelligendum est ad modum quo dicimus solem accepisse lumen a Deo pro omnibus, quia in majori plenitudine quam ceterae stellae; prae omnibus, quia in eo ordine, ut ab ipso sicut a fonte in ceteras stellas lumen descendat. Et simile est de capite, quod pro omnibus et prae omnibus quidem, quia in solo capite est plenitudo sensuum.

Pro omnibus quidem, quia ab ipso cetera membra sensum motus et regiminis suscipiunt. Ita est de Petro, qui non tantum auctoritate prae omnibus aliis donatus est, sed etiam caput et princeps, aliis influens in toto corpore ecclesiae constitutus est, ut apertissime superius ex doctrina sanctorum ostensum est.

- 1) Praeterea hujus rei causa videlicet quod Petrus in ecclesia non tantum fuit praelatus superior ceteris amplitudine potestatis, sed etiam caput influentia virtutis, dicitur, consequenter quod unitas ecclesiae, per Petrum intelligitur. Sane unitas corporis in uno capite designatur et exercitus in uno duce. Propter quod optime dicitur in c. Non vos xxiii, § 5. "Quisquis ab apostolicis divisus est sedibus, in schismate eum esse non dubium est." Quare optime concludit: "Quod quicumque ab unitate, quae per Petrum intelligitur, fuerit alienus, ligandi et solvendi potestate privatur. "Avelle radium a solis corpore," inquit Cyprianus in epistola de unitate ecclesiae et habetur in c. Loquitur xxiv, Q 1 "divisionem unitas non capit: ab arbore frange ramum, fructus germinare non poterit: a fonte praescinde rivum, praescisus arescit." Ex quibus omnibus clare satis ostenditur ex praedicta auctoritate non probari propositum domini arguentis.
- (2) Decimaoctava et cetera, si bene retinui, ultima auctoritas, est illa octavae synodi, quae dicitur sic in condemnatione Photii dixisse: "haec autem nolentem intelligere Photium ut bene ageret, sed inobedientem et resistentem huic universali synodo (col 1978) repulimus et anathematizavimus, atque a catholica tota et apostolica ecclesia fecimus alienum, per datam nobis potestatem a Spiritu sancto a Christo, et magno pontifice nostro, et Deo liberatore et salvatore cunctorum:" et postea subditur. "Nullus ergo studeat eorum qui Christiano vocabulo digni sunt quique regimen pastorale sortiti sunt, contrarium quicquam agere hujus sanctae et universalis synodi, ac per haec inveniatur Deo contradicens, (page 28) et illius concilii iudicium spernens. Dicit enim Deus Paulus magnus apostolus, 'qui spernit nos, non spernit hominem, sed Deum unum, qui dedit Spiritum sanctum in nobis.' Quis enim nesciat, quod in medio hujus et universalis synodi fuerit incircumscribibilis et incomprehensus Deus, qui ait: 'ubi duo vel tres sunt congregati in nomine meo, sum in medio eorum.'"
- (3) Ex istis contentis in hac auctoritate arguit praefatus dominus. primo, quod synodus habeat immediate a Deo potestatem. Secundo, concilio universali competat illud Matthaei XVIII: "Ubi duo vel tres congregati fuerint." Et ad istam auctoritatem breviter respondetur quod parum habet difficultatis, tum quia non ita habetur in originali sicut inducitur per arguentem. Sed hic habetur per datam nobis potestatem in Spiritu sancto, a primo et magno pontifice nostro, Deo liberatore et salvatore cunctorum." In quibus verbis synodus videtur per magnum pontificem, papam intelligere. Tum secundo dato, quod sic se habet auctoritas, sicut allegata est; non sequitur id quod arguitur. Nam ad primam partem respondetur negando consequentiam.
- (4) Ex quibus enim verbis patrum in synodo congregatorum, non sequitur quod synodus ipsa immediate a Christo potestatem habuerit,

immo ut saepe repetitum est in hac argumentandi forma, committitur fallacia figura dictionis.

- 1) Sane si haec argumentatio locum haberet -- (cum juxta apostolum Romanorum XXI non sit potestas nisi a Deo), -- quilibet qui potestatem aliquam haberet, posset dici illam habere immediate a Deo et ita ne dum ab ipsa ecclesia sed ab ipso universo; -- id quod optimum est scilicet ordo tolleretur.
- 2) Ad secundam partem respondetur quod illa et similia verba Christi optime competunt conciliis universalibus similibus, qualia fuerunt illa octo concilia apostolica auctoritate fulta et roborata, quae debitam reverentiam et caritatem observarunt semper ad sedem apostolicam. Sed illa verba non competunt perversis et malignis synodali- bus sicut patet de multis scilicet, Ariminensi, et Ephesina secunda et ita de aliis quibuscumque quae fuerint ab apostolicae sedis societate et caritate divisae. "Ubi duo vel plures congregati fuerint in nomine meo, in medio eorum sum;" non arguitur quod synodus imme- diate habeat potestatem immediate a Christo jurisdictionis, sicut manifestum est. Alias omnis congregatio quorumcumque fidelium, sive magna sive parva, in Christi nomine conveniens, potestatem juris- dictionis haberet immediate a Christo, -- quod ab omni ratione alienum est.
- 3) Ultimo quantum ad istum articulum respondendum est ad rationem illam supradictam: -- pro ecclesia universalis, ex parte impossibili- tatis errandi in fide. Arguebatur autem sic. Ecclesia universalis nunquam legitur errasse nec errare in futurum potest. Sed Romanus pontifex a fide errasse legitur ut in c. Anastasius, Dist xix et potest errasse ut de se patet. Ergo videtur quod universalis ecclesia et per consequens universale concilium illam repraesentans auctoritate superior (col 1979) sit Romano pontifice.
- 4) Ad istam rationem respondetur breviter. Primo ad antecedens, quod ecclesia universalis quae errare non potest, non dicit congrega- tionem distinctam aut separatam a Romano pontifice cum illa dicatur collectio omnium fidelium, De consecratione, Dist i, in c. Ecclesia.
- 5) Secundo ad consequentiam dicitur negando illam. Haec enim argumentatio nulla est: ecclesia universalis non potest errare in fide; papa vero sic. Ergo illa est major potestate jurisdictionis sive potestate clavium (de qua majoritate est praesens sermo) ipso Romano pontifice. Quod ex eo manifestum est, quoniam istae gratiae datae distinctae sunt, -- videlicet, -- non errare in fide; et potes- tates clavium, -- et una non arguit illam de necessitate, sicut planum est. Aliis quilibet in gratia confirmatus potior esset auctoritate Romano pontifice non confirmato, quod esset absurdum.
- 6) Est autem multum animadvertendum pro solutione multarum hujus- modi rationum, illud quod scribitur, Extravag De poenitentiis et remissionibus, in c. Nova. Quod "licet beatissima virgo Maria dignior et excellentior fuerit universis apostolis non tamen illi sed istis, Deus claves regni coelorum commisit." Ecce quod libet beatissima virgo Maria, mater Dei, sponsa Christi, regina mundi et

angelorum domina; gratia plena et in fide semper immobilis fuerit. Non tamen arguitur inde quod potior fuerit potestate clavium ipso Petro.

- 1) Tertio ratio facta etiam non procedit, eo quod licet universalis ecclesia privilegium habeat non errandi in fide; hoc tamen privilegium universa concilia non habent, cum multa eorum errasse legamus, cum a doctrina apostolicae sedis, in qua semper immaculata, Christianae fidei est religio servata, declinaverunt. Immo si alicujus auctoritatis esset ratio facta clare concluderet in oppositum, cum apostolica sedes, -- juxta illud Lucae XXII: "Ego rogavi pro te, ut non deficiat fides tua;" et juxta sanctorum patrum doctrinam exponentium hunc locum, -- privilegium habeat a Christo, utpote tribunal Christi in terris in judicio fidei non errandi; quod concilia (page 29) universalis et apostolica sede separata, non habent. Et haec de omnibus auctoritatibus et rationibus factis per reverendissimum patrem dominum cardinalem, pro secunda parte decreti facti Constantiae, per obedientiam dicti Joannis XXIII, dixisse sufficiat.

Tertia Pars Decreti Constantiensis

- (2) Tertia pars decreti, quam praefatus dominus arguens tetigit tertio loco, est illa ubi dicitur, quod "quilibet cujuscumque dignitatis, etiamsi papalis existat, tenetur obedire synodo universali... in iis quae pertinent ad fidem." Dicebat praedictus dominus quod decretum illud in hac parte nullam difficultatem habet, et quod omnes in ejus sententia concordare videntur. Ad cujus probationem induxit capitulum Si papa, Dist. xl. De hac parte praefati decreti, -- cum omni tamen correctione sanctissimi domini nostri loquendo cujus auctoritati et judicio omnia dicta mea subjicio, -- non videtur mihi simpliciter et indistincte asserendum decretum illud Constantiae editum in hac parte veritatem non continere fidei catholicae. Cujus ratio est quoniam propositio illa multiplicem habeat intelligentiam; in quarum una potest decretum illud continere veritatem et in alia non.
- (3) Potest autem pars illa decreti primo modo sic intelligi, quod quilibet catholicus etiam papa tenetur obedire, id est amplecti et recipere ea quae synodus jusserit quae manifeste ad fidem pertinent, utpote in sacra scriptura expressa, aut per ecclesiam universalem, aut per apostolicam sedem jam diffinita. Et in hoc sensu decretum illud in hac parte continet veritatem. Sed quod in hoc casu teneatur papa obedire synodo, -- non ex aliqua superioritate potestatis, quae sit in synodo supra papam, -- quia in talibus ad fidem pertinentibus obedire tenetur, nedum synodo sed apostolicae sedi talia docenti, quae nullam habet superioritatem respectu papae. Sed obedientia et reverentia ista attenditur ratione materiae fidei quae auctoritatem supremam habet ex parte Spiritus sancti, "a quo est omnis veritas," ut dicit Ambrosius, "a quocumque dicatur." Quomodo loquitur apostolus ad Romanos X: "non omnes obediunt evangelio."
- (4) Secundo modo pars illa decreti potest habere hunc sensum, quod scilicet papa teneatur stare et obedire diffinitionibus universalis

concilii in iis quae ad fidem pertinere ipsa synodus diffinierit. In quo sensu non videtur quod ita simpliciter et indistincte loquendo pars illa decreti contineat veritatem catholicae fidei. Quoniam cum concilia universalis non habeant hoc privilegium in iudicio fidei non errandi; quia quandoque ut superius dictum est leguntur errasse, sicut manifestum est de synodo universali secunda Ephesina. Nullo modo videtur asserendum quod sit veritas catholicae fidei quod -- ita indistincte et simpliciter -- quilibet fidelis etiam papa tenetur obedire synodo universali in his quae pertinent ad fidem; j. quae ipsa synodus iudicaverit quod diffinierit ad fidem pertinere.

- (1) Nec hoc probat capitulum, Si papa, inductum ex adverso. Quare necessario sensus iste distinguendus est: quoniam aut synodus universalis aliquid diffinivit de fide, apostolica sede probante et confirmante; quae ut habetur in c. Omnes, Dist. xxii "mater fidei" appellatur. Et tunc dicendum videtur quod decretum illud contineat veritatem videlicet, quod tali diffinitioni et determinationi fidei, quam universalis synodus modo assignato fecerit, quilibet fidelis tenetur etiam papa obedire.
- (2) In quo casu optime venit illud quod beatus Gregorius ait et habetur in c. Sicut, Dist. xv, "Sicut sancti evangelii libros quattuor, sic et quattuor concilia et venerari me fateor . . . et haec tota devotione complector integerrima approbatione custodio: quia in his velut in quadrato lapide sanctae fidei structura consurgit et cujuslibet vitae atque communis actionis norma existit Quia dum universali sunt consensu constituta, se et non illa destruit quisquis praesump(er)it aut absolvere, quos (re)ligant aut ligare quos absolvunt," id est iudicare catholicos, quos illa haereticos iudicat, aut e converso.
- (3) Si vero contingat quod synodus aliquid diffiniat, cui apostolica sedes sive Romana ecclesia contradicat, -- sicut factum est de universali synodo Ephesina secunda, -- tunc manifestum est quod magis obediendum est diffinitioni apostolicae sedis quam diffinitioni cujuscumque synodalis congregationis. Unde Glossa in c. Quodcumque xxiv, Q. 1 dicit, "credo quod sententiae totius ecclesiae praeferenda sit sententia Romanae ecclesiae si in aliquo sibi contradicant, argumentum "Haec est fides, papa beatissimi," eadem causa et questione, "Nisi erraret Romana ecclesia, quod non credo posse fieri, quia Deus non permetteret, argumentum eodem c. Pudenda," Haec Glossa.
- (4) Hoc etiam confirmatur omnium illorum patrum testimoniis, qui apostolicae sedis privilegium non errandi in iudicio fidei, esse testantur; de quibus jam aliqua commemorata (col. 1981; page 30) sunt supra. Praeterea quod haec consideratio habenda sit in diffinitionibus fidei factis per synodos quascumque, ostendit beatissimus Leo papa in epistola quam ad Nicetam Aquilegiensem episcopum scribit de quibusdam clericis Pelagiana et Caelestiana haeresibus suspectis. Ut errores cogantur detestari ubi sic inter alia dicit: "damnent apertis professionibus sui superbi erroris auctores et quicquid in doctrina eorum universalis ecclesia exhorruit, detestentur. Omniaque synodalia, quae ad excisionem haerosos apostolicae sedis confirmavit auctoritas, amplecti se et in omnibus approbare, plenis et apertis ac propria manu subscriptis protestationibus eloquantur." Haec ille.

- (1) Ecce quod non inquit simpliciter, illos debere omnes synodales decisiones illius haereseos complecti, sed ad eas tantum quas apostolicae sedis confirmavit auctoritas. Si vero casus talis contingeret quod patres universi in synodo universali convenientes unanimiter aliquam diffinitionem fidei facerent, qui sola persona papae contradiceret, dicerem iudicio, quod synodo standum esset, et non personae papae. Iudicium enim tantorum patrum universalis unius synodi in materia fidei merito praefendum videtur iudicio unius hominis.
- (2) In quo casu optime venit illa Glossa quae habetur in c. Anastasius, Dist xix quod ubi de fide agitur, papa tenetur requirere concilium episcoporum, quod intelligendum est, quando casus est valde dubius et synodus convocari poterit et tunc synodus major est papa, non quidem potestate jurisdictionis, sed auctoritate discretivi iudicii et amplitudine cognitionis. Ut enim habet Glossa in c. Multis, Dist xvii. Pars illa, quae justiori ratione utitur major dicitur, licet sit minor, scilicet alio respectu xxxi Dist., c. Nicaena.
- (3) Ubi autem ita eveniret, quod talibus quae ad fidem pertinere tota synodus, per apertissima testimonia sacrae scripturae, aut sanctorum patrum doctrinam unanimiter declararet, papa acquiescere, obedire, et stare nollet sed contumaciter contradiceret, talibus aperte ad fidem catholicam pertinere declaratis, jam ut pote haereticus subjectus veniret concilio, sicut et quilibet alius a fide devius. Cum enim per haeresim a papatu cadat, factus est, ut ait sanctus Thomas in IV, omni fidei minor: et idem habetur in Glossa in c. Achatius et primo ubi sic dicit, "hic est casus..in quo papa in canonem latae sententiae incidit." Nec obviat regula illa, quia par parem solvere, aut ligare non potest, quia si papa haereticus est, in eo quod haereticus, minor est quolibet catholico.
- (4) Et ad istum facit c. Si papa inductum ex adverso, et non ad alium, sicut ex ipso textu potest. Dicit enim sic: "si papa suae et fraternae salutis negligens reprehenditur" inutilis et remissus in piis operibus et insuper a bono taciturnus, -- quod magis officit sibi et omnibus," et cetera. "Hujus culpas istic hic redarguere praesumit mortalium nullus, quia cunctos ipse iudicaturus, a nemine est iudicandus, nisi deprehendatur a fide devius." Haec ibi. Et intelligitur, ut dicit Glossa "incorrigibiliter."
- (5) Quod capitulum cum loquatur de papa cum jam per haeresim notoriam et contumaciter defensam sit ipso jure pontificatu privatus, -- quia remota fide per quam fit prima connexio hominis ad corpus Christi, -- membrum ecclesiae esse desinit. Manifeste demonstratur, quod ex eo nulla superioritas potestatis arguitur in concilio universali supra papam catholicum sive fidelem; sic nec ex hoc quod juxta glossam jam dictam in c. Achatius (col 1982) papa papam in casu haeresis ligare potest, sequitur quod papa unus superior sit potestate praedecessore, aut successore suo vero catholico existente.

*Mansi: deprehenditur; Gratianus: reprehenditur.

Quarta pars decreti

- (1) Quarta pars decreti tacta per praefatum patrem et dominum opponentem quarto loco est illa, in qua dicitur, quod "quilibet [fidelis] cujuscumque...dignitatis, etiam si papalis existat tenetur* obedire universali synodo in his quae ad extirpationem schismatis". Induxit autem idem dominus pro hac parte, capitulum, Si duo contra fas, Dist lxxix. Circa quam partem primo considerandum est quod decretum Constantiae editum non loquitur de schismate quocumque, sed tantum de schismate illo tempore currente quo decretum est.
- (2) Nam sic ait "et in his quae ad extirpationem praesentis schismatis," quam periculosum autem et scandalosum sit, -- secundum hunc sensum quem forma hujus decreti praetendit, -- dicere quod sit "veritas catholicae fidei quod quilibet" in pertinentibus ad extirpationem illius schismatis, aut in quacumque alia re tenebatur obedire illi congregationi, quae sub Joannem XXIII dicto tempore schismatis Constantiae sub nomine generalis concilii convenit, patet manifeste et in superioribus perapicue ostensum est. Quare aliis promissis testimoniis, videndum est, quid veritatis contineat praefatum decretum, accipiendum illud de alio quocumque schismate et de quacumque alia universali synodo.
- (3) Videndum autem respondendum, quod decretum illud in illa parte veritatem continet in eo casu in quo loquitur c. Si duo contra fas, inductum per reverendum patrem et dominum, Dist lxxix, ubi textus loquitur, quando "duo contra fas," id est (page 31) illicite, -- "temeritate concertantium fuerint ordinati." Quod capitulum locum habet, quando neuter illorum est canonice, sive ut ait Glossa, "electus a duabus partibus;" ad quem casum referenda est intelligentia decreti Constantiensis, quod incipit, Frequens.
- (4) Sed in casu quo unus canonice est electus et per universalem ecclesiam per multos annos indubitatus habitus et veneratus pro tali et eo superstite, alius per nonnullos introizatur; -- non videtur esse "veritas catholicae fidei," immo falsitas, quod papa qui verus et indubitatus est obedire tenetur universali synodo, quae pro extirpatione schismate vellet disponere de depositione ejus. Plane si haec consuetudo introduceretur innumera schismata nascerentur in ecclesia. Nullusque suam dignitatem servaret illaesam et perversis hominibus occasio praeberetur audaciae et temeritatis plurimae ad elevandum idola in ecclesia. Ut hac occasione deponendus ille veniret, quem quilibet princeps, aut communitas gratum non haberet.
- (5) In quo considerandum est quod beatissimus Cyprianus dicit in epistola ad Cornelium de quinque presbyteris qui tenebant cum Novatiano intruso. "Quod si res est, frater, ut nequissimorum timeatur audacia, -- et quod mali jure atque aequitate non possunt, temeritate ac desperatione perficiant, -- actum est de episcopatus vigore et de ecclesiae gubernandae sublimi, ac divina potestate; nec Christiani ultra aut durare aut esse possumus, si ad hoc ventum est ut perditorum minas atque insideas pertimescamus." Et in alia quadam epistola sic dicit, "quid quia honorem cathedrae sacerdotalis Novatianus usurpat? Numquid idcirco nos cathedrae renunciare

debemus? Et quia Novatianus altare collocare et sacrificia offerre contra fas nititur, ab altari et sacrificiis cessare nos oportet ne paria et similia (col 1983) cum illo celebrare videamur? Vanum prorsus et stultum ut quia Novatianus extra ecclesiam vendicat sibi veritatis imaginem relinquat ecclesiae veritatem." Haec Cyprianus.

- (1) In casu ergo quod universalis ecclesia pro schismate hujusmodi tollendo congregaretur, non utique deberet procedere ad deponendum verum et indubitatum habitum Romanum Pontificem et quem nullo jure constat a papatu cecidisse, sed ad persequendos eos perditos homines, qui per novi idoli erectionem, schisma introducere in ecclesiam, tanta temeritate praesumant. Et hoc de quarta parte illius decreti dixisse sufficiat.

Quinta pars decreti

- (2) Quinta pars decreti tacta per praefatum dominum opponentem est, quod "quilibet [fidelis] cujuscumque status^F dignitatis, etiam si papalis existat, tenetur obedire [universali synodo], in his quae pertinent ad generalem reformationem ecclesiae in capite et membris." Licet autem idem dominus dixerit opus esse, -- ut hoc decretum in hac parte declararetur, -- pro eo quod aliqui illud extendebant amplius et extensius intelligant quam accipiendum esse videretur.
- (3) Nihilominus tres induxit casus, si bene retinui, in quibus dixit glossam et doctores aliquod ante Constantiense concilium, fuisse illius sententiae et doctrinae: in quibus videtur, quod decretum illud sit verum. Primus est, quando esset necessitas reformandi ecclesiam et concilium esset congregatum; ad hoc et ipse nollet facere reformationem. Quia in hoc casu videretur quod nollet quod ecclesia esset pulchra et ita decoloraret ecclesiam. Secundus casus quando scandalizat ecclesiam sua mala vita, quia ex hoc daretur occasio credendi aliis multa non esse peccata. Pro quo induxit Glossa c. Si papa. Tertius, quando vellet facere contra universalem statum ecclesiae quam tamen non potest facere, ut dicunt doctores in c. Sicut, Dist xv et c. Si ille, xv, Q 1. Unde Archidiaconus et Innocentius dicunt, quod si vellet facere contra universalem statum ecclesiae non esset sustinendus.
- (4) Ad istam partem in paucis respondetur dicendo, quod ly, "tenetur obedire," intelligeretur de honestate non de necessitate et sic decretum verum esset juxta glossam in c. Confidimus xv, Q 1 nisi sequeretur in alio sequenti decreto, "quod cuicumque^{*} status vel dignitatis etiam si papalis existat, qui mandatis, statutis, seu ordinationibus, aut praecipis hujus sanctae synodi, et "cujuscumque alterius... factis vel fiendis, obedire contumaciter contempserit, nisi respuerit, condignae poenitentiae subjiciatur." Hic enim tenor et haec forma decreti necessitatem coercitivam et coactionem important.
- (5) Propter quam causam omnino videtur impossibile, -- sacrae scripturae et sanctorum patrum sententiis consideratis, -- videre quod haec pars decreti sit "veritas catholicae fidei," videlicet, quod papa teneatur hoc modo obedire decretis, statutis quibuscumque cujuscumque synodi universalis ad generalem reformationem

pertinentibus universalis ecclesiae in capite et in membris. Ita quod papa illa non observans per concilium universale posset punire sive judicari aut deponi, quoniam ex (page 32) superioribus tam ex reprobatione aliarum partium praefati decreti juxta intelligentiam quam de eo Basileenses recipiunt, quam ex his de primatu Romani pontificis dicta sunt et de conciliorum dependentia a sede apostolica; manifestum videtur, ut etiam est communis doctrina theologorum et juristarum quod extra casum haeresis in quo, ut dictum est, papa a papatu cadit, -- cadens a Petra fidei, -- universalis synodus non possit Romanum pontificem (col 1984) verum et indubitatum praedicto modo judicare propter non observantium quorumcumque statutorum seu decretorum universalis concilii, sive propter quodcumque aliud crimen a crimine haeresis.

- (1) Oppositum enim dicere facile ostendere, repugnare sacrae scripturae et sanctorum patrum doctrinis. Primo quidem repugnare videtur sacrae scripturae illi quae habetur Matthaei XXIV et Lucae XII ubi Christus Petro loquens ait, "Quis putas est fidelis dispensator et servus prudens, quem constituit dominus super familiam suam?" Glossa id est ecclesiam. Dicit autem Ambrosius, libro quinto De Trinitate, quod servus iste super ecclesiam a Christo constitutus est Petrus et per consequens ejus successor. Unde in ecclesiastico officio Christum legitur Petro dixisse, "super plebem meam principem te constitui."
- (2) Quod autem huic scripturae sanctae contradicat pars illa decreti patet manifeste, quia haec scriptura dicit, Romanum pontificem potestate sibi a Deo tradita, esse super ecclesiam principem constitutum. Decretum vero dicit, concilium universale ecclesiam representans per potestatem a Deo immediate habitam, esse supra Romanum pontificem et posse illum judicare. Notum est autem quod inferior judicare non potest superiorem. Ad Romanos XIV: "Tu quis es, qui judicas servum alienum?" Suo domino stat, aut cadit." Et I Corinthios IV: "Qui autem judicat me dominus est." Et in c. Inferior, Dist xxi dicit textus, quod inferior sedes nec absolvere nec ligare potest potiore; sola potior est quae inferiorem convenienter absolvit aut ligat.
- (3) Cum ergo solus Deus superior sit Romano pontifice-cum illius solius servus fit et vicarius, -- videtur quod ad solum Deum dominum ejus pertineat ejus judicium in hoc casu. Quod etiam ex sequentibus in praefata auctoritate videtur manifeste colligi: ait enim sic Salvator noster, "Quod si dixerit servus ille in corde suo, moram facit dominus meus venire; et coeperit percutere servos et ancillas, et edere et bibere et inebriari," Glossa, "id est ad vitia incitare et conscientiam infirmorum pravo exemplo vel verbo laniare;" sequitur. "Veniet dominus servi illius in die qua non sperat and hora qua nescit;" Glossa, "judicii vel mortis" et dividet eum a consortio fidelium partemque ejus cum infidelibus ponet." Hoc ibi. Ecce quam manifeste salvator noster sibi soli reservat judicium servi sui delinquentis, quem constituerat super familiam suam.
- (4) Hoc est quod dicit Symmachus papa concilio generali Romae praesidens, in quo, teste Martino in Chronica ducentiviginti episcopi

convenerant. Dicit autem sic ut in c. Aliorum, IX, Q 3. "Aliorum hominum causas Deus per homines voluit terminari; sed sedis istius praesulem suo sine quaestione reservavit arbitrio." Praeterea pars illa decreti contradicit scripturae sanctae illi Matthaei XVI: "Tu es Petrus et super hanc petram aedificabo ecclesiam meam." Ergo non potest dici continere veritatem sed magis errorem. Consequentia patet et antecedens deducitur sic: in hac auctoritate beatus Petrus, non solum prae omnibus singulari praerogativa clavium donatus est, ut ait Glossa ordinaria, sed etiam totius ecclesiae futurum pronuntiabatur fundamentum.

- (1) Unde in commentario Hieronymus et ponitur in glossam "secundum metaphoram petrae recte dicitur ei: 'ecclesiam meam aedificabo' super te." Et iterum Glossa: "Vide quam potestatem habet petra super quam aedificatur ecclesia ut etiam judicia ejus maneant firma, quasi Deo judicante per eam." Sed manifestum est quod ista duo repugnant: pontificem Romanum fundamentum esse ecclesiae per singularem praerogativam principatus clavium (col 1985) et ipsum esse subditum universali concilio ecclesiam repraesentarii.
- (2) Dicit enim propheta Isaias in c. X et habetur in c. Inferior, Dist xxi, "Numquid gloriabitur securis contra eum qui secat in ea? Aut exaltabitur serra contra eum qui trahit eum?" Et sequitur in praefato c. Inferior: "His itaque ex divina scriptura commemoratis sole clarius exhibuimus, non posse quemquam qui minoris auctoritatis est eum, qui majoris potestatis est, judiciis suis addicere." Ceterum arguitur sic, pars illa decreti contradicit scripturae illi sanctae Joannis ultimo: "Pasce oves meas." Ergo illa non potest continere veritatem fidei catholicae, sed errorem magis. Consequentia patet; antecedens deducitur sic per hanc salvatoris institutionem: Petrus qui succedit Romanus pontifex constitutus est universalis (page 33) ecclesiae pastor et rector.
- (3) Unde beatus Chrysostomus super Actus apostolorum: "Petrus a Filio super omnes qui filii sunt potestatem accepit; non ut Moyses in gente una sed in universo orbe dicente Domino ipsi Petro: 'Pasce oves meas,' Inter oves istas et illas non distinguens sed universas oves suas ejus curae commendat." Et beatus Gregorius ad imperatorem Mauritium: "cunctis evangelium scientibus liquet quod voce dominica sancto et omnium apostolorum principi Petro totius ecclesiae cura commissa est, ipsi quippe dicitur: 'Petre amas me? pasce oves meas.'" Sed manifestum est quod ista repugnant ad invicem, quod Romanus pontifex sit pastor totius gregis dominici rector, gubernator: et quod ipse grex aut universalis synodus gregem ipsum repraesentans potestatem habet a Christo immediate judicandi et puniendi pastorem ipsum si gregis sui transgrediatur instituta.
- (4) Ratio enim pastoris et ratio gregis ista simul stare non patiuntur. Ad pastoris enim rationem pertinet cura regendi oves. Ovium vero est obedire pastori. Unde Joannis X: "Oves meae meam vocem audiunt." Et beatus Augustinus in De verbis Domini, Homilia lci: "Animadvert caritas vestra dictum est Petro a Domino per interrogationem: 'diliges me?' Cui respondet ille: 'Tu scis quia amo te;' hoc secundo; hoc tertio; et ad singula verba respondens dicebat

dominus: 'Pasce agnos meos.' Commendat Petro Christus agnos suos pascendos qui pascebat et Petrum:" et infra: "Pertineat ergo ad nos cura; ad oves obedientia; ad nos vigilantia pastoralis; ad vos humilitas gregis." Haec Augustinus.

- (1) Nulli ergo dubium cum contra rationem pastoris sit, -- ut oves aut grex potestate superior sit ipso pastore, quod contra institutionem Christi, qua Romanus pontifex constitutus pastor, et rector totius gregis dominici sit -- pars praedicta decreti. Quamobrem dicitur in c. Oves, II, Q 7: "Oves quae suo pastori commissae sunt eum nec reprehendere nisi a fide exorbitaverit, nec ullatenus accusare possunt; quia facta pastorum oris gladio ferienda non sunt quamquam reprehendenda recte videantur." Idem habetur VI, Q 1, Oves: "Oves pastorem suum non reprehendant," scilicet imperiose; et sequitur ratio, quia non est discipulus supra magistrum.
- (2) Praeterea quod pars illa decreti decreti non posset dici continere veritatem fidei catholicae. Patet quoniam contradicit decreto hujus universalis et oecumenicae synodi Florentinae; in qua orientali et occidentali ecclesiis convenientibus, praesidente sanctissimo et beatissimo domino nostro Eugenio papa IV. Divina et apostolica auctoritate definitum est: "apostolicam sedem et Romanum pontificem in universum orbem tenere primatum; et ipsum pontificem Romanum successorem esse beati Petri principis apostolorum et verum Christi vicarium, totiusque (col 1986) ecclesiae caput et omnium Christianorum patrem et doctorem existere; et ipsi in beato Petro pascendi, regendi et gubernandi ecclesiam universalem a domino Jesu Christo plenam potestatem traditam esse."
- (3) Plane haec simul stare non possunt, ut Romanus pontifex primus sit totius orbis et tamen universali concilio orbem repraesentanti sit subjectus. Quod princeps sit apostolorum seu plebis Christianae et illorum concilio subditus sit. Quod sit vicarius Christi praesentis immediate ab eo constitutus et alteri quam Christo subditus est. Quod sit caput totius corporis ecclesiae et a concilio corpus ecclesiae repraesentante, veniat iudicandus et regendus. Quod sit pater omnium Christianorum et sub poena damnationis damnatorum, de consilio filiorum suorum parere teneatur mandatis. Quod sit doctor omnium fidelium et synodo universali collegio discipulorum suorum veniat inferior. Quod plenam a Christo potestatem acceperit pascendi, regendi, et gubernandi universalem ecclesiam et quod concilium universale ecclesiam repraesentans superius sit illo potestate regiminis et gubernationis.
- (4) Plane hunc locum optime respicit dictum sapientissimi Salomonis qui Proverbiis XXX dicit: "per tria movetur" Glossa interlinearis "inquietatur, terra" Glossa prima, "Ecclesia" and "quartum sustinere non potest pro servum cum regnum coeperit." Quod tunc videtur contingere cum inferiores superiores reprehendere et corrigere et quos Deus exaltavit dignitate principatus humiliare praesumant. Ubi compleri videtur quod dicitur Ecclesiastes X: "Vidi servos in equis," Glossa interlinearis "in dignitate," "principes autem ambulantes quasi servos."

- (1) Nec potest dici quod papa per peccatum mortale desinat esse superior: quoniam hoc falsum est et erroneum. Unde in concilio Constantiensi ut patet in epistola decretali domini Martini super errores Wiclif et Joannis Hus. Sequentes errores sunt condemnati. Nemo gerit vicem Christi vel Petri nisi sequatur eum in moribus. Item alius: papa non est manifestus et verus successor principis apostolorum Patri si vivit moribus contrariis Petro. Item alius: cardinales non sunt veri et manifesti successores collegii aliorum apostolorum Christi nisi vixerint more apostolorum (page 34) servantes mandata et consilia domini nostri Jesu Christi.
- (2) Per solum quidem crimen haeresis pertinaciter defensum, quis cadit a superioritate jurisdictionis et potestatis. Et cum quaeritur, unde hujus differentiae inter crimen haeresis et alia peccata habetur fundamentum, respondetur breviter pro nunc quod de sacra scriptura et ex jure canonico et ex ipsa ratione.
- (3) Ex scriptura quidem nam aliis criminibus, ait dominus, Matthaeus XXIII: "Super cathedram Moysi sederunt scribae et pharisaei. Quaecumque dixerint vobis facite et servate; secundum opera eorum nolite facere." Ecce quod dominus non abjiciendos dicit malos pastores qui doctrinam bonam habent, vitam vero malam. Item ad Romanos XIII dicit apostolus "Omnis anima potestatibus sublimioribus subdita sit," Glossa, "bonis vel malis." Et I Petri II: "Subditi estote dominis vestris, non tantum bonis sed discoloris." De crimine vero haeresis, quod illud faciat praelatum cadere ab auctoritate jurisdictionis et per consequens a papatu, qui principatum jurisdictionis importat, colligitur primo secundum veterum expositionem ex illo Deuteronomii XVII: "Non poteris alterius gentis, quam" scilicet Christianae, "hominem regere facere qui non sit frater tuus," scilicet fidei religione. Praeterea dicit salvator, Matthaeus X: "Qui negaverit me (col 1987) coram hominibus, negabo eum coram Patre meo." Item Joannis III: "Qui non credit jam judicatus est. Item Joannis IIae, I: "Si quis venit ad vos et hanc doctrinam non affert, nolite eum recipere in domo vestra; nec ave dixeritis ei. Qui enim dixerit ave, communicat ejus operibus malignis." Ex quibus manifesta differentia inter haeresis crimen et alia.
- (4) Ceterum ex jure canonico hujus differentiae capitur fundamentum, sicut superius ostensum est in multis capitulis inductis ad ostendendum quod haeretici potestate privantur jurisdictionis.
- (5) Ratione etiam non caret haec differentia, quoniam cum fides sit prima connexio qua quis connectitur corpori Christi, sitque primus lapis aedificii spiritualis. Impossibile videtur quod quis habeat rationem capitis qui non habet rationem membri. Ecce quam clara differentia, ex ipsa scriptura sancta colligitur inter crimen haeresis et alia peccata in ipsis pastoribus ecclesiae. Et ideo non mirum si doctores eruditi tam theologi quam juristae, magnam inter illa differentiam faciant. Amplius arguitur sic contra praefatam partem decreti; illa non videtur posse dici continere veritatem catholicae fidei quae determinationi apostolicae sedis contradicit; sed illa est hujusmodi. Ergo non veritatem sed magis errorem continere dicenda est.

- (1) Major patet illa Hieronymi in c. Haec est fides, papa beatissime, xxiv, Q 1. Minor vero patet in decretali illa, Unam sanctam, quam fecit Bonifacius VIII cujus sunt verba quae sequuntur. "Si deviat terrena potestas, judicatur a spirituali, si deviat spiritualis, judicatur minor a suo superiore; si vero suprema, a Deo solo potest judicari." Haec ibi.
- (2) Alia plurima facile est inducere contra hanc partem decreti. Contra quam manifeste sunt Hugo de sancto Victore, sanctus Thomas, Albertus magnus, Alexander de Ales, Alvarus et alii plurimi in facultate theologica magistri, quorum dicta pertranseo brevitatis causa. Quibus sic habitis venio ad casus positos per dominum arguentem.
- (3) Primus casus assignatus est, videlicet quomodo imminente necessitate reformationis ecclesiae et actu existente concilio papa nollet facere reformationem. Non sufficit ad depositionem papae cum talis negligentia aut mala voluntas non dejiciat eum a superioritate potestatis, nisi ista mala voluntas talis esset quae manifeste oriretur ex aliquo errore in fide catholica; ut puta quia non crederet ecclesiam sanctam esse, contra illud quod de ea ait Spiritus sanctus: "Tota pulchra es amica mea et macula non est in te," Cantorum IV, Aut quod non crederet quod sanctitas vitae requiratur in suscipientibus ordines sacros et promovendis ad ecclesiasticas dignitates de necessitate praecepti et si non de necessitate sacramenti. Contra illud Leviticum XXI, homo de semine Aaron qui habuerit maculam non offeret panes coram Domino nec accedet ad ministerium ejus. Ubi per maculam in Glossa, omne vitium intelligitur. Juxta quam sensum intelligendi sunt doctores si qui illum casum proposuerunt. Sic dico quia nullum talem qui alicujus esset nominis talia docentem ego legi.
- (4) De secundo autem casu quando scilicet scandalizat incorrigibiliter ecclesiam dico quod ista incorrigibilitas malae vitae qua talis scandalizat ecclesiam potest dupliciter intelligi. Uno modo in continuatione criminis, puta quia monitus non curat desistere seu abstinere a peccatis. Alio modo potest intelligi incorrigibilitas illa in defensione criminis ut si pertinaciter defenderet aliqua non esse peccata, -- (page 35) sicut simoniam, sicut avaritiam, sicut promotionem indignorum; -- ita quod crimina prohibita, (col 1988) jure divino laudaret aut defenderet tanquam licita.
- (5) Primo modo loquendo de incorrigibilitate, casus ille juxta superius dicta non habet veritatem; secundo autem modo intelligendo locum haberet, quia jam haereticus esse, sensiens male pertinaciter de lege et scriptura sancta, convincitur.
- (6) Et ad glossam quae allegatur in c. Si papa, dico quod multa sunt propter quae illa glossa nullum doctum seu gravem virum debeat movere, immo parum aut nihil est curandum de illa. Tum primo, quia glossa illa nulla firmatur ratione, nec hoc quod inducit, "si peccaverit in te frater tuus," pro opinione sua, sicut in responsione ad primam auctoritatem est ostensum. Tum secundo quia glossa illa est manifeste contra textum unius summi pontificis martyris, qui multo praestantioris est auctoritatis quam Hugutio unquam fuit. Tum

tertio quia est contra alios multos textus sacrorum canonum, sicut patet de capitulo "Nemo judicabit primam sedem" et cetera, "Aliorum hominum causas," et cetera, "Cuncta novit ecclesia", ix, Q 3; c. Ejectionem, Dist lxxx. Quarto quia contraria est multis aliis glossis et maxime in c. Si quis pecuniam, Dist lxxix quae vult quod tantum pro haeresi stricto sumpta papa posset judicari; scilicet si peccat contra articulos fidei. Quinto quia est contra clariores doctores in jure divino quorum aliqui superius nominati sunt, quibus merito in hac parte credendum est et securius creditur eis quam Hugutioni. Inter quos dominus Alvarus, maximus doctor in utroque jure ponit expresse in libro De haereticis, rubrica 3^a, quod error est, quod papa possit judicari extra casum haeresis a concilio generali.

- (1) De tertio vero casu quando scilicet, vult facere contra universalem statum ecclesiae. Dicitur quod in isto casu licet papae non esset obediendum sed resistendum, non tamen venit propterea a concilio judicandus. Aliud enim est non obedire quod potest facere inferior, cum aliquid contra divinam legem a superioritate praecipitur. Ut enim dicitur Actorum V: "obedire oportet Deo magis quam hominibus." De quo in c. Qui resistit et in c. Si is qui praees II, Q 3. Aliud est resistere cum a superiore aliquid dicitur quod a veritate aut a sanctorum patrum sententiis sit devium, sicut Paulus resistit Petro quia non ad veritatem evangelii ambulabat, -- ad Galatas II; -- aut cum contra statutum universalis ecclesiae generaliter agere attentaret, -- sicut si vellet deponere sicut omnes episcopos, ac similia. Ex quibus patentur universa turbaretur ecclesia.
- (2) Et hoc modo dicunt Hostiensis et Innocentius^{9t} Archidiaconus; quod non est papa sustinendus, id est non permittendus hoc facere sed ei, cum omni tamen humilitate et reverentia, resistendum esset. Non autem dicunt quod in hoc casu deponendus esset cum ipsi cum antiquis doctoribus theologis concordantes, dicunt: papam propter solum crimen haeresis posse ab ecclesia judicari. Aliud est judicare et hoc non est nisi superioris, ut ante dictum est: "Qui autem judicat me Dominus est," I Corinthios IV.
- (3) Et patet ita quod nullus illorum trium casuum sufficiat ut papa subjacere iudicio universalis concilii; et ratio est quae superius assignata est: videlicet, quod propter nullum aliud crimen venit sub iudicio quorumcumque inferiorum. Quare cum quandiu catholicus est, verus summus pontifex sit, dicunt doctores quod semper in honore habendus est. Unde Augustinus libro IX, Veteris et novi Testamenti dicit sic: "Nonne sciens David divinam esse traditionem in officio ordinis regalis? Idcirco Saul in eadem adhuc traditione positum honorificat ne Deo injuriam facere (col 1989) videatur, qui his ordinibus honorem decrevit. Dei enim imaginem habet rex sicut et episcopus Christi. Quamdiu ergo in eadem traditione est, honorandus est vel propter se vel propter ordinem. Unde apostolus inquit, 'potestatibus sublimioribus subditi estote. Non enim est potestas nisi a Deo.'" Haec Augustinus.
- (4) Ex quibus omnibus patet, quod decretum illud per patres obedientiae Joanni XXIII dicti Constantiae editum, juxta intelligentiam quam de eo practicant verbis et factis Basileenses -- secundum quam prosecutus sum istam responsionem, -- non contineat veritatem fidei

catholicae, immo errorem et impietatem. Quare praesumptio maxima et execrabilis temeritas fuit tali intelligentia data, diffinire decretum illud veritatem esset catholicae fidei. Animadvertissent utinam pro eorum salute illud, quod Augustinus dicit in libro De ecclesiasticis (nota: pro, dogmatibus, sed verius ex Concilio Toletano I) dignitatibus in fine ubi ait sic: "Si quis scripturas praeter eas quas Catholica ecclesia recepit, vel in auctoritate habendas esse, vel fuerit veneratus, anathema sit." Et haec dicta sufficiant pro primo articulo propositionis factae per patrem et dominum arguentem.
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RESPONSIO AD SECUNDUM ARTICULUM
SUMMARIUM

- 1: Concilium Constantiense nunquam decrevit concilium esse supra papam.
- 2: Patres Constantia congregati, recta intentione procedebant.
- 3: Petierunt confirmationem suorum decretorum Romano pontifice quem concilio superiorem confessi sunt.
- 4: Basileensium propositio absque offensa concilii Constantiensis, merito veluti haeretica condemnatur.
- 5: Constantiensi decreto de superioritate concilii saepe contradixerunt patres.
- 6: Joannis XXIII renunciavit juri papatus si aliquod habebat.
- 7: Et pro haeresi specialiter fuit a concilio judicatus.
- 8: Concilium generale praesertim sede vacante, potest facere decreta reformationis, pertinentia, tam ad caput quam ad membra.
- 9: Romanus pontifex legibus quoad vim coactivam non subjicitur.
- 10: Legis ratio duo includit juxta sanctum Thomam.
- 11: Concilia ecclesiae Romanae, aut summi pontificis praesudicium, non possunt leges statuere.
- 12: Princeps quomodo solutus sit legibus.
- 13: Rex a Deo tantum puniendus est.
- 14: Basileense concilium legitime convocatum et continuatum esse: quomodo intelligitur.
- 15: Concilium legitime inchoatum et continuatum errare potest in suis diffinitionibus.
- 16: Concilium Ephesinum secundum et Aquisgranum legitime inchoata et continuata tandem erraverunt.
- 17: Concilia plenaria priora, a posterioribus plerumque emendantur.
- 18: Basileenses non observasse, quae Eugenio pontifici max. promiserant, ostenditur.
- 19: Papae praesidentes, noluerunt recipere.
- 20: Praesidentibus apostolicis sed non consentientibus nulla est concilii diffinitio.
- 21: Quomodo praesidentes decretis concilii subscribunt.
- 22: Non errare, non est privilegium conciliorum generalium.
- 23: Basileensium decreta numquam approbavit Eugenius.
- 24: Conciliorum decreta, a Romano pontifici necessario confirmari debent.
- 25: Quamvis potestas papae in concilio sit inclusa, necesse est tamen ut ejus decreta apostolica sede expresse confirmentur.
- 26: Concilium potius includitur in papa, quam e converso.

- 1) (col 1990) Sequitur secundus articulus propositionis factae per dominum opponentem: in quo nixus est duplici via persuadere quod propositio illa prima Basileensium de potestate universalis concilii supra papa, quam veritatem catholicae fidei vocant, quae superius posita est, non condemnaretur. Et prima via sumpta fuit ex parte patrum qui decretum illud Constantiae ediderunt; secunda ex parte eorum fratrum qui illud Basileae renoverunt. Circa primam viam, prima ratio, si bene mente tenui, fecit quia non poterat condemnari sine offensa et scandalo concilii Constantiensis, quod decretum praefatum de potestate concilii universalis supra papam edidit.
- 2) Ad istam rationem respondetur, quod salva pace, numquam concilium universale Constantiense tale decretum edidit. Unde ex parte dicimus, Basileenses falsum dixisse in propositione illa prima praesupponendo quod Constantiae per universale concilium, universalem ecclesiam representans fuerit illa superioritas potestatis concilii supra papam declaratum. Cum enim solum pro tempore quo tres obedientiae fuerunt simul, congregatio illa fuerit indubitata synodus generalis credita et non a tribus obedientiis decretum illud, sed ab una tantum fuerit editum; ut saepe in exordio praesentis responsionis commemoratum est, manifeste falsum est praesupponitur.
- 3) Quod etiam ex alio colligitur, nam tota synodus ex tribus obedientiis aggregata, statuto suo designare videtur, praefatum decretum nunquam de mente sua processisse. Unde in Sessione XXXVI, ita dicitur: "Sacrosanctae Constantiensis synodus" et cetera "statuit et decrevit, quod futurus Romanus pontifex per gratiam Dei de proximo assumendus, cum hoc sacro concilio vel deputandis per singulas nationes, debeat reformare ecclesiam in capite Romanae curiae secundum aequitatem et bonum regimen ecclesiae, antequam hoc sacrum concilium dissolvatur, supra materiis articulorum aliarum per nationes in reformatorio oblatorum, qui sequuntur. Primo, de numero, qualitate, et (page 37) et natione dominorum cardinalium." Et infra in XIII articulo dicitur: "propter quae et quomodo papa posset corrigi vel deponi."
- 4) Ex quo instituto manifeste datur intelligi, quod synodus illa hoc decernens, non prius instituerit aut decreverit, quod papa non obediens etiam incorrigibiliter "statutis, mandatis, et ordinationibus" concilii universalis, ex omnibus obedientiis Christianitatis collecti, in pertinentibus "ad fidem et extirpationem schismatis, reformationem in capite et in membris," veniret per concilium correctione poenali puniendus et maxime poena depositionis; et praecipue eo considerato quod nullus videatur posse dari casus, qui non contineatur in praedictis.
- 5) Secundo arguebatur per eundem dominum arguentem sic. Dato sicut verum est, quod decretum illud factum fuisset ab una obedientia tantum, nihilominus in illa erat major pars ecclesiae. Unde non videtur cautum quod decretum illud a tot populis factum condemnaretur ut haereticum. Ad hoc licet plurima possent dici tam circa praesuppositum; quam circa consequentiam, respondetur breviter sic. (col 1991)
- 6) Primo quod non tractatur hic, neque est de mente sanctissimi domini nostri, quod decretum illud Constantiae factum per obedientiam

Joannis XXIII, condemnetur ut haeticum; quoniam arbitratur sanctissimus dominus noster pro illorum patrum reverentia, religione et integritate, non alium sensum habuisse in illo decreto, quidquid verba ejus in sono literae praetendant, quam sancti patres habuerunt; sicut collegii potest ex reverentia, obedientia, et professione humilitatis ostensis per eos domino Martino Romano pontifici electo per eos, qui mox ut creatus fuit, cathedram sumpsit iudicii supremi. Ipse quidem diffinivit, statuit singula, concilio sacro approbante.

- 1) Praeterea ipsi recognoscentes decretorum suorum firmitatem ab apostolica sede pendere confirmationem eorum a praefato Romano pontifice humiliter postularunt, per quae omnia recte ponderata profitebantur Romanum pontificem superiorem synodo non inferiorem.
- 2) Sed tractatur nunc quod prima illa Basileensium propositio una cum aliis duabus in quibus omnes conveniunt, pariter damnatur sicut jure damnanda est, cum manifestum sit illam ad eorum intelligentiam, quam verbis factisque docent et practicant, alienam esse a scripturae sanctae et a sanctorum patrum doctrina. Et hoc optime potest fieri absque offensa decreti Constantiae facti bene intellecti et absque scandalo decretantium illud. Quoniam planum est, quod una et eadem propositio multiplicem habens intelligentiam; secundum unam intelligentiam possit esse vera et secundum aliam sit haeretica, sicut exempla plurima dari possent, in quibus quia nota sunt et brevitatis causa, supersedeo.
- 3) Secundo respondetur quod domini et patres de obedientia Joannis XXIII ita debent honorem suum zelare in defensione praefati decreti quod non velint alias duas obedientias schismaticas et haeticas declarare, quoniam hic error pejor es nisi decretum illud ad aliam trahatur intelligentiam, quam verba in superficie praetendunt et quam Basileenses praedicarunt: alias non videbantur, salva pace, observare illud quod dominus praecepit: "Quod tibi fieri non vis, alteri ne feceris."
- 4) Tertio arguit dominus opponens, quod licet ab una obedientia tantum fuerit factum praefatum decretum, nihilominus cum post nulla facta fuerit reclamatio per alias obedientias, videtur approbatum fuisse. Respondetur, negando quod nulla fuerit facta reclamatio, imo multiplex, tum primo, quando primo factum est, contradictum et reclamatum est, tam per praelatos et aliquos dominos cardinales, qui ut in gestis ejusdem concilii patet, se absentarunt a sessione illa; quam per multos doctos viros, sicut a fide dignis qui interfuerunt, refertur.
- 5) Tum secundo contradictum est per eum quem obedientia illa pro Romano pontifice venerabatur et cujus auctoritate congregatio illa legitime adunata dicebatur, scilicet Joannem XXIII dictum, qui decreta illa facta erronea esse saepe professus est ut dominus Dynensis ab ore ejus in oppido Schaphusensi prope Constantiam audivit.
- 6) Tertio contradictum est per duas obedientias alias, scilicet, Gregorii et Benedicti, quae ut superius ostensum est in principio praesentis responsionis. Manifeste verbis et factis contradixerunt opinioni dicentium eos, qui de obedientia praefati Joannis XXIII,

Constantiae ante convenerant, concilium generale (col 1992) ecclesiam Christi repraesentare habere potestatem immediate a Christo, cui, et cetera.

- (1) Tum quarto manifestum testimonium hujus reclamationis sive non acceptationis colligi videtur ex eo, quod nunquam amplius convenientibus omnibus obedientiis simul, fuerunt illa decreta repetita nec confirmata; sed statutum fuit, ut (page 38) dictum est, quod per papam et per concilium deberet declarari, per quae et quomodo papa possit corrigi vel deponi.
- (2) Quarto arguit dominus opponens, quod si illud decretum non fuit verum, Joannes XXIII non potuit deponi, maxime cum, ut ex sententia ejus pateat, non fuit depositus pro haeresi, sed juxta glossam c. Si papa scilicet quia moribus suis pravis scandalizabat incorrigibiliter ecclesiam. Nec potest dici, inquit, quod postmodum Florentiae approbavit depositionem suam et electionem Martini; quia talis approbatio non poterat facere Martinum papam. Ad istam rationem dimissis multis aliis quae possent dici, respondetur negando consequentiam et hoc duplici ratione.
- (3) Tum primo quia ipse, ut patet per instrumenta quae includuntur in gestis hujusmodi concilii, renunciavit juri papatus si aliquod habebat. Et quod dicitur quod approbatio sua nihil juris contulit comino Martino, negatur dicendo quod approbatio non fuit talis qualis dicitur esse per dominum arguentem; sed talis fuit ut reverendissimus Placentinus et alii domini cardinales nuper in praesentiarum dixerunt, quod videlicet postquam liberatus a carceribus venisset Florentiam ad dominum Martinum, approbavit renunciationem suam quam fecit in carcere, profitens illam publice non metu, non sophisticè, sed veraciter et libere fecisse.
- (4) Secundo consequentia non valet quoniam in casu haeresis, de qua iste accusatus fuit et testes inducti, universale concilium potest papam judicare, sicut dictum est; unde negatur quod non pro haeresi, sed pro aliis criminibus Joannes ille fuerit judicatus. Unde, sicut patet ex gestis illius concilii, in sententia suspensionis ejusdem facta in sessione decima, vocatur notorius haereticus et incorrigibilis. Sed licet hoc in sententia condemnationis non exprimat specialiter; nihilominus in eadem sententia dicitur, quod propter illa crimina tunc ibi nominata et alia crimina in processu dictae causae contra eum deducta et contenta, tanquam indignum et inutilem et damnosum sancta synodus privat.
- (5) Quinto arguit dominus opponens et praesupponit quod, ut patet ex gestis illius concilii, inter patres deputatos obedientiae Joannis XXIII et patres de obedientia Benedicti, fuerunt compactata Narbonae quaedam capitula inter quae fuit unum scilicet primum, de convocatione fienda per praelatos utriusque obedientiae. Aliud vero capitulum fuit quod est secundum in ordine, quod dicta congregatio et constitutio concilii fienda per dictos dominos, fieret generaliter pro extirpatione schismatis et haeresis et pro sancta unione ecclesiae et pro reformatione universalis ecclesiae in capite et in membris et cetera. Ex istis elicit praefatus reverendissimus dominus, quod

concilium habeat potestatem in reformatione capituli facienda et per consequens videtur, quod omnium illorum patrum fuit haec fides quod concilium haberet hanc potestatem.

- (1) Ad istam rationem, dimisso quod ex convocazione illa nova et institutione concilii, arguatur manifeste non esse creditum apud omnes veritatem esse fidei catholicae; patres convenientes Constantiae quando (col 1993) feda fecerunt decreta, de quibus est sermo, facere concilium generale, aut universalem ecclesiam repraesentare. Respondetur quod per capitulum illud secundum quod in eodem continetur, factum est ut deferretur honori concilii Constantiensis et sub certis conditionibus, non arguitur aliquid contra dicta.
- (2) Non enim negatur quod concilium universale et maxime sede vacante possit facere decreta reformationis pertinentia tam ad caput ecclesiae quam ad membra. Sed hoc negatur quod posset facere leges indifferenter habentes vim coactivam contra caput ejus, Romanum scilicet pontificem. Pro quo notandum est quod ut ait sanctus Thomas in I IIae, Q 96, art 5, ubi quaerit, utrum omnes subjiciantur legi: quod "lex de ratione sui duo habet, videlicet quod est regula humanorum actuum et quod habet vim coactivam.
- (3) Quantum ad primum, concilium universale potest facere decreta et instituta quae respiciant tam caput quam membra, etiam instituta quae respiciant ipsa universalia concilia. Quantum vero ad secundum scilicet, vim coactivam, iudicium condemnationis inferendi transgressionibus legum, non potest cum inferior hujusmodi legem non possit imponere superiori; et ideo dicitur Extravag. De electione, c. Significasti, quod Romanae ecclesiae nulla concilia legem praefixerint, quod etiam in praejudicium Romani pontificis nihil instituere possint. Testatur Innocentius III in c. Innotuit, Extravag., De electione, ubi dicit quod canon Lateranensis concilii ab Alexandro papa praedecessore suo editus, nullum potuit successori suo praejudicium generare cum non habeat imperium par in parem. Quamobrem sanctus Thomas praefato articulo in responsione ad tertium (page 39) dicit, quod princeps dicitur solutus legibus, non quidem quantum ad vim directivam, debet enim legibus vivere, sed quantum ad vim coactivam, quia nullus potest in ipsum iudicium condemnationis inferre, si contra legem agat. Unde super illud Psalmi: "Tibi soli peccavi," dicit glossa: "Rex est omnibus superior ideo a Deo tantum qui major est puniendus est. Si quis de populo erraverit et Deo peccaverit (note: ~~erro, peccat~~)" et regi; rex vero non habet hominem qui sua facta dijudicet, ideo ait, tibi soli peccavi." Haec Glossa. Et haec de rationibus inductis ex parte patrum de obedientia Joannis XXIII et gestorum concilii Constantiensis dixisse sufficiat.
- (4) Jam ad argumenta quae agit praefatus dominus opponens ex parte concilii Basileensis tendamus, licet ex multis eorum quia dispensative per modum tolerantiae ad preces regum et principum apostolica sedes fecit, ut schismaticis tolleretur occasio et Bohemorum tractatus ex dilatione non susciperet impedimentum, argumenta sumpta parum debeant habere virtutis. Argumentum est autem in primis, si bene retinui, sic. Concilium Basileense fuit legitime inchoatum quia

auctoritate et Martini et praesentis sanctissimi domini nostri et hoc pro reformatione in capite et in membris; fuitque legitime continuatum ut in bulla annulationis, dissolutionis, sive translationis ejusdem concilii sanctissimi domini nostri attestatur: et praefatum concilium fecit illas declarationes de potestate concilii universalis, sicut est manifestum. Ergo videtur decretum illud esse verum; alias concilium illud non fuit legitime continuatum; errare enim non stat cum legitima continuatione.

- (1) Ad istam rationem respondetur, quod concilium legitime continuari potest intelligi duobus modis: uno modo quia continuatur ejus potestas (col 1994) instituentis et non evacuatum auctoritate, sed habet processum legitima potestate fulcitum. Alio modo potest intelligi legitime continuari, non per respectum ad auctoritatem dictam, sed ad materiam processus ita quod omnis declaratio facta per tale concilium fuerit vera. Omnis ejus constitutio sancta, est sententia justa.
- (2) Capiendo autem hoc secundo modo legitimam continuationem, conceditur consequentia et negatur antecedens. Licet enim sanctissimus dominus noster declaravit concilium illud legitime continuatum, quia non fuerat intentionis sanctitatis suae, quod concilium illud evacuaretur virtute sua, si causae propter quas illud transtulerat non essent verae aut tantae gravitatis, sicut ejus sanctitas agnovit. Non tamen concessit eis nec declaravit eos in omnibus quae dixerant, definierant, aut constituerant, bene sancte justequae fecisse.
- (3) Capiendo autem primo modo legitimam continuationem concilii, conceditur antecedens et negatur consequentia. Stat enim cum hoc modo legitimationis processus concilii, error aliquis in conclusionibus: sicut patet de II Kphesina, quae sicut fuit legitima auctoritate inchoata, ita etiam continuata, quae tamen gravissime erravit. Praeterea concilium Aquisgrani celebratum legitime fuit et continuatum, de quo in c. Placuit, xxxvi, Q 2. Et tamen ejus diffinitioni praeponitur sententia Hieronymi, ut in eodem loco colligitur et habetur in Glossa in c. De libellis, Dist xxix.
- (4) Praeterea dicit Augustinus Contra Donatistas loquens libro primo De unico baptismo: plenaria concilia saepe priora posterioribus emendari. Praeterea interrogentur patres Basileenses utrum dicant verum apud omnes indubitatum in hoc quod synodus universalis Constantiensis fecisset illas declarationes. Et plane si veritatem loquuntur, dicturi sunt contra diffinitionem eorum, cum manifestum sit per unam solam obedientiam illas factas esse. Non ergo erit inconveniens quod concilium Basileense, licet dicatur fuisse legitime continuatum, scilicet, quoad processum ejus habeat in eis quae declaravit aut instituit, aliquid emendandum et corrigendum.
- (5) Secundo arguebat idem dominus opponens sic confirmando rationem praemissam. Concilium Basileense fuit universale et indubitatum et renovavit hoc decretum, facta revocatione dissolutionis: ergo sequitur quod illud sit verum. Ad istam rationem respondetur; primo ad antecedens, quod attento quod conditiones et promissiones domino nostro factae ut dissolutionem sive translationem revocaret, non fuerunt ei observatae, maxime quod sui praesidentes non fuerunt

recepti juxta dispositionem et juxta morem atiquorum conciliorum, non videtur omnino indubitatum fuisse illud concilium immo apud multos doctos omnino vacuum auctoritate judicatum est: cum praesidentes Papae juxta formam a Romano pontifice datam, noluerit recipere, sed contra omnem modum et rationem, corpus sine ordine dependentiae ad caput sibi a Christo superpositum, potestate propria voluit procedere.

- (1) Secundo dicitur quod non videtur verum quod concilium Basileense renovaverit (page 40) decretum illud Constantiense, immo decretum fecerit novum. Quod patet ex eo forma unius multum differt et litera et intelligentia ab alio, sicut patet intuenti illas, quas supersedo prosequi brevitatis causa.
- (2) Tertio praesidentes omnes quibus in solidum auctoritas data erat non consenserunt, immo contradixerunt et protestati sunt eo modo meliore (col 1995) quo potuerunt, licet aliqui eorum non ut praesidentes, sed ut particulares personae, quasi violenter, cum aliter non reciperentur ad praesidentiam in renovatione illa consenserint.
- (3) Sed quaerebat dominus arguens, unde habeter quod si concilium vult aliquid diffinire et praesidentes nolunt consentire, quod diffinitio sit nulla, cum hoc videatur valde mirabile? Ad hoc respondetur quod hoc colligitur primo ex Chalcedonensi concilio, in cujus gestis in actione sexta, ut habetur in libro pontificum Isidori, ita dicitur: "In omnibus synodis apocrysarii apostolici decretas sententias primo, propter summam auctoritatem ejusdem sanctae sedis, confirmabant et subscribebant, quia aliter nullum robor habebant, unde scriptum est: Paschasius episcopus, vice domini mei beatissimi atque apostolici universalis ecclesiae papae urbis Romae Leonis, synodo praesidens statui, consensi, et subscripsi." Similiter relinqui fecerunt. Haec ibi.
- (4) Secundo colligitur ex distinctione xvii per totum et praecipue in c. Regula, ubi habetur, nullum ratum esse concilium quod non fuerit apostolica auctoritate fulcitum. Clarum est quod ea quae sunt praesidentibus papae contradicentibus, non possunt dici fulta auctoritate apostolica. Secundo respondetur ad consequentiam, negando illam: assignata est ratio negationis in superioribus, pro eo, scilicet, quod non errare, non reperitur privilegium esse generaliter universalium conciliorum etiam indubitatorum, nisi cum ita universali consensu in eisdem cuncta sunt diffinita, quod apostolicae sedis consensus et approbatio intervenerint. Exempla etiam assignata sunt de II synodo Ephesina universali et indubitata. Tertio arguebatur per eundem dominum opponentem sic: Sanctissimus dominus noster approbasse videtur illud concilium per bullas suas, ergo videtur, quod diffinita per illud sunt approbata per apostolicam sedem et per consequens vera sunt, aut apostolica sedes erravit cum illo.
- (5) Ad hoc respondetur sicut idem sanctissimus dominus noster pro se tunc respondit, quod approbavit progressum illius, sicut dictum est, non autem decreta ejus; quod sapientissime factum est. Quis enim nisi imprudentissimus approbaret decreta aliqua, antequam illa

videret, examinaret, atque plene et integre ponderaret, si quid in eis minus rectum, minus verum, aut minus expediens contineatur? aut si quis ineptum, aut si quid diminutum, aut superfluum sit? Quomodo fecisse papa Clemens, ut Joannes Andreas ponit in principio Clemen-
tinarum, de constitutionibus factis in Concilio Viennensi quae quia, ut inquit, aliquae earum erant ineptae, aliquae prolixae, aliquas in totum resecaerunt; aliquas mutarunt quoad verba, mente servata; aliquibus vero earum quibusdam detractis quoad verba et quoad mentem aliqua sunt addita. Praeterea si approbando processum concilii sanctissimus dominus noster approbasset decreta illius concilii: cur tanto studio et tam repetitis vicibus laborarunt Basileenses per oratores suos, ut sanctissimus dominus noster approbaret et confirmaret eorum decreta quod hujusque habere non potuerunt?

- (1) Sed quaerebat dominus arguens, unde reperitur quod necesse est accipere aut habere a Romano pontifice sive apostolica sede confirmationem decretorum factorum per concilia universalia, cum in universali concilio intelligatur esse auctoritas papae? Ad hoc respondetur, quod hujusmodi necessitas (col 1996) confirmandi decreta conciliorum per papam, colligitur primo ex auctoritate sacrae scripturae, secundo ex evidentia rationis, tertio ex practica observata sacrorum conciliorum praestantissimorum.
- (2) Ex sacra scriptura quidem colligitur Deuteronomii XVII ubi dominus ait: "Si difficile et ambiguum apud te iudicium perspexeris, dicit Glossa interlinearis, hoc quoque in ecclesia observandum est; et "iudicium inter portas tuas videris verba variari, surge, et ascende ad locum" (Glossa prima, ecclesiam) "quem elegit Dominus Deus tuus; veniesque ad sacerdotes Levitici generis" (Glossa prima, legitimos) "et ad iudicem" (Glossa prima, pontificem) "qui fuerit illo tempore, quaeresque ab eis qui iudicabunt tibi iudicii veritatem. Et facies quodcumque dixerint, qui praesunt loco, quem elegit Dominus, et docuerint te juxta legem ejus, sequerisque sententiam eorum, nec declinabis ad dexteram neque ad sinistram. Qui autem superbierit nolens obedire sacerdotis imperio, qui eo tempore ministrat Domino Deo tuo, et decreto iudicis, morietur homo ille."
- (3) Ubi licet (page 41) dubiorum difficultium discussionem et indagationem veritatis Deus conventui sacerdotum attribuat: imperium tamen et diffinitum iudicium, cui sub poena mortis obediendum est uni soli, scilicet summo sacerdoti, attribuit. Unde manifeste patet, quod robur et auctoritas et vis coactiva decretorum universalium conciliorum ab uno scilicet summo sacerdote dependet. Praeterea praecipitur Mosi, qui potestate, ut ait Bernardus, libro IV De consideratione ad Eugenium papa, fuit figura Romani pontificis. "Esto to populo in his, quae ad Deum pertinent ut ostendas eis ceremonias et ritum colendi Deum," Exodi XVIII. Ceterum Christus cum aliis apostolis imperaverit, "ut laxarent retia sua," tantummodo Petro inquit, "duc in altum," Lucae IV, "hoc est in profundum disputationum," ut ait Glossa Ambrosii et habetur in c. Non turbatur, xxiv, Q 1.

- (1) Quomodo autem haec divina institutio integra servaretur, qua summo ecclesiae pontifici divinitas tam singulariter injunxit summarum causarum et difficilium quaestionum in ecclesia iudicium, si patrum in synodis convenientium decreta et canones et sententiae, quae communiter de rebus maximis proferuntur, non consensu et approbatione firmarentur summi pontificis? Suffragatur praeterea ad hoc ratio evidens, lex enim non habet vigorem et virtutem coactivam, nisi ex principis auctoritate, aut auctoritate ejus in quo principatus totius communitatis est collocatus. Istud est clarissimum apud omnia jura.
- (2) Sed Romanus pontifex est princeps ecclesiae et "principatus totius ecclesiae" collocatus est ab ipso summo omnium principe Christo salvatore nostro in apostolica sede, ut in c. Basilicas, De consecratione, Dist 1. Ergo necessario firmitas, robur, et auctoritas decretorum conciliorum dependet a Romano pontifice, sive apostolica sede, sicut habetur in c. Confidemus xxv, Q 1, Extravag De electione, c. Significasti. Facit etiam ad hoc ratio beatissimi Thomae in II IIae, Q 1, art ultimo, quam sumit ex unitate fidei, sic "una fides debet esse totius ecclesiae secundum illud I Corinthios I: 'idipsum dicatis omnes, et non sint in vobis schismata:' (quae videtur) servari non posse, nisi quaestio fidei de fide exorta determinaretur per unum, qui toti ecclesiae praeest ut sic ejus sententia a tota ecclesia firmiter teneatur. Et ideo concludit quod ad solam auctoritatem Romani pontificis pertinet nova editio symboli." Haec sanctus Thomas.
- (3) Ex quibus patet quanta necessitas sit ut canones conciliorum et maxime fidem respicientes per eum qui (1997) universali ecclesiae praesidet confirmantur.
- (4) Fundatur praeterea hoc ipsum in practica antiquorum conciliorum, Nicaeni scilicet, et Chalcedonensis, in quibus patres convenientes omnia diffinita et constituta per eos miserunt ad apostolicam sedem, rogantes illa per Romanum pontificem confirmari, sicut patet de patribus Nicaenae synodi, ex epistola ejusdem synodi missa ad papam Sylvestrum, quae habetur in gestis ejus; et de patribus Chalcedonensis synodi ex epistola ejusdem missa super hoc ad Leonem papam, quas pro brevitate tenenda hic interserere non curavi.
- (5) Hoc praeterea observatum in concilio Constantiensi legimus, in quo licet papa Martinus fuerit praesens et fortassis primus omnibus assensum dedisset; nihilominus factus pontifex, in fine omnium rogatus est ut omnia apostolicae sedis auctoritate roboraret, quod sub certa forma fecit ut patet in gestis ejusdem concilii.
- (6) Quod vero dicebatur per dominum arguentem videri hoc non esse necessarium, quia, ut inquit, in concilio universali potestas papae includitur. Respondetur primo, quod haec locutio proprie loquendo non videtur mihi accipienda, quod potestas papae sit inclusa in concilio universali ad eorum sensum, quem praetendunt illi qui dicunt concilium omnia posse quae papa et majora. Dicunt enim quod concilium dicit quid aggregatum ex potestatibus particularibus quarum una sit potestas papae, ita quod concilium dicat unum totum

comprehendens omnes istas intra se potestates, Inde arguentes quod cum totum majus sit sua parte, concilium sit majus papa.

- (1) Sed revera non ita accipienda est ratio concilii sicut isti imaginantur, cum autem Romanus pontifex, utpote caput ecclesiae, plenitudinem et totalitatem habeat potestatis et ab ipso omnis potestas jurisdictionis aliorum praelatorum derivetur, ut superius multipliciter est ostensum. Potestas papae non potest comparari ad potestates particulares aliorum praelatorum, sicut pars totius comparatur ad alias partes ex quibus illud totum resultat, sed ut totum comprehendens virtute quidquid potestatis est in illis. Sicut dicit Boetius, "quod superior virtus comprehendit in se inferiores," et beatus Dionysius in libro V Ecclesiasticae hierarchiae dicit, quod "hierarchici ordinis (col 1998) virtus in omnibus capitur sanctitatis totalitatibus." Unde omnes episcopi congregati cum papa quoad potestatem jurisdictionis, non (page 42) videntur dicere plus potestatis quam papa solus.
- (2) Omnes praetera rectores officiales regis simul convenientes cum rege non dicunt plus jurisdictionis quam rex solus, sicut sanctus Thomas inquit, quod omnes creature et Deus considerata simul non portant plus bonitatis quam Deus solus. Et ideo non est dicendum sicut ex adverso intelligitur, quod potestas papae includatur in concilio; immo fortassis magis proprie diceretur e converso, scilicet quod potestas totius concilii comprehendatur in papa, sicut derivatum et dependens comprehenditur in eo, a quo dependet et emanat. Dicimus enim quod omnium membrorum virtus continetur in capite et omnium inferiorum potestas in principe.
- (3) Secundo respondetur quod ad hunc sensum potest dici, quod in universali synodo includitur potestas papae, quis si rationem concilii universalis habet necessario consensus papae includitur et autoritas ad earum rerum prosecutionem ad quas synodus ordinata est. Sed ex hoc modo comprehensionis potestatis papae in concilio, non sequitur, quod conclusa per patres synodi non egeant confirmatione principis ecclesiae. Et haec de secundo articulo pro mea mediocritate dicta sufficient.
- (4) De tertio autem articulo, quia cum non fuerit opus loqui, nihil respondi. Ideo in hac recollectione responsionis meae supersedeo: per totum omnia per me dicta subjiciens correctioni et emendationi sanctissimi domini nostri Eugenii Papae quarti, verissimi Christi vicarii et principis universae ecclesiae: cujus sanctitatis mandato hanc responsionem in praesentia beatitudinis, suae dominorum cardinalium, fereque omnium praelatorum hujus sanctae synodi oecumenicae, multorumque aliorum patrum, magistrorum et doctorum, satis ex tempore factam, nunc parum copiosus et extensius collegi. Sitque ipse Deus omnis boni fontalis origo pro assistentia gratiae suae in saecula benedictus. Amen.

Explicit responsio facta per magistrum Joannem a Turrecremata, sacri et apostolici palatii magistrum, anno incarnationis domini, 1439.

JUAN DE TORQUEMADA

RESPONSIO in blasphemiam et sacrilegam
invectivam ad sanctissimum canonem ju-
stissimae condemnationis damnatissimae
congregationis Basiliensium.....

Council of II Bourges: 1440

TRACTATUS C

TRACT C: Having for its object, not only denial of conciliar charge, but the retention of the French King within the obedience of Eugene IV, adds nothing to the principles laid down in the other four Tracts. Although the matter is not mentioned in the Tract itself, Torquemada had been sent in the capacity of an extraordinary emergency ambassador to work towards the withdrawal of the Pragmatic Sanction. Unusual interest attaches to the TRACT by reason of its impassioned plea for the cause of Eugene in an exposition of the subversive forces unleashed by the Council of Basle to wean away European princes from the Holy See. The indignant language of a gigantic anger is stamped on every page.

STATE of the TEXT as found in MANSI 31A:

This is the worst of the five, a poor transcriber constantly using the word canone in expanding the abbreviation c., where Torquemada habitually uses capitulo in the manner of contemporary canonists.

Jeremias is thrice metamorphosed into Ezechiel;

Chrysostomus loses to Chrysologus;

References regularly omit bits of texts.

Saint Cyprian is used much in this TRACT: nearly every quotation has slight or gross errors, for example:

The Ms apparently read: de V presbyteris. Under transcriber C, this becomes a supernumerary canon in Gratian: D.v, c.Presbyteris, where the reference is to a letter to Pope Cornelius "de quinque presbyteris" who had moved over into the Novatian camp;

In the other Tracts, the mistakes are the normal, honest ones common to the genus scribe; in this TRACT C, the scribe frequently wrote his own mind. This is evident from parallel passages in the SUMMA, other Tracts, and from the references.

OCCASION of the COMPOSITION of TRACT C:

The Bull, MOYSES VIR DEI of September 4, 1439, provoked a RESPONSO SYNODALIS in early October 1439.

Tract C, delivered before the Council of II BOURGES in September 1440, is an answer in kind.

According to Saint Antoninus (Summa, Par.II, l.3, c.11, 14) the RESPONSO SYNODALIS was authored by Panormitanus; also noted Mansi: 30, 1186D)

IMPORTANCE of TRACT C:

This lies chiefly in the method so unusual with Torquemada who was ever deferential in his speech and courteous to disputants. It is a tribute to the fidelity of his friendship with Eugene IV, a reflection of his oft-expressed anxiety for the Christian conscience exposed to so great scandals over so long a period, and the urgency of Church honour being restored.

The excommunication of Basle-ist men and means is an attempt to use an argumentum ad hominem to advantage and legitimately; an ingredient of this argument, as begging French favour, is also apparent in the employ of a longish list of doctors and scholars of the University of Paris whose texts vindicated papal claims. That Torquemada considered some of these of dubious value appears to be suggested by his omission of a half dozen of them in the SUMMA (II, c.93, ad 6; TRACT C: Page 34(1) where he incorporates the passage bodily otherwise.

RESPONSIO in blasphemiam et sacrilegam invectivam ad sanctissimum canonem justissimae condemnationis dahatissimae congregationis Basileensium.

- (1) "Dissimulare non possumus quod pertinet ad omnes qui diligunt nomen Christi," ut enim ait sanctissimus Leo papa, "contra omnes hostes fidei, pacis et unitatis reipublicae Christianae, pro salute communi una omnium debet esse diligentia;" eo maxime attento quod "error, cui non resistitur, approbatur, et veritas cum minime defendatur, opprimitur; negligere quippe cum possis perturbare perversos, nihil est quam fovere; nec caret scrupulo societatis occultae quod manifesto facinori desinit obviare," ut in c. Error lxxxiii dist. Basiliensium iniquitatem in excelso loquuntur; integritatem fidei, castitatem ecclesiae corrumpunt; transgrediuntur terminos quo posuerunt patres nostri. Nova contra unitatem ecclesia, contra principatum ecclesiasticum, contra apostolicam sedem, deque conciliis universalibus dogmata, a sanctorum patrum peregrina doctrinis seminantes, ostendunt se fabricatores mendacii, et cultores perversorum dogmatum; haereticos se probantes, non tam professione impietatis, quam pertinaci defensione erroris.
- (2) Ubi enim, audita correctione eorum et justissima suorum perversorum dogmatum condemnatione, quam pridie nonas septembris proximi, anno domini millesimo quadragentesimo trigesimo nono, apostolica sedes, omnium ecclesiarum mater, amplissimo dominorum cardinalium et praelatorum approbante concilio Florentiae promulgavit. Debuis-
sent de suis ausibus temerariis poenitentes, apertis confessionibus errores suos humiliter cognoscere, et quod in doctrina eorum, apostolica sedes, fidei magistra, peroravit, simpliciter detestare malignitatis et perfidiae venena retinentes, faciem suam ob durantes supra petram, bellum profanae contentionis adversus Christum Dominum instaurarunt.
- (3) Nam respondere nitentes ad sanctissimum canonem reprobationis eorum, libellum, invectivam quemdam erroribus et insaniis falsis atque mendaciorum figmentis plenum, adversus sanctimoniam et innocentiam domini nostri Eugenii, et apostolicae sedis gloriam stulta temeritate evomuerunt. In quo tam apertis et multiplicibus abundant mendaciis, et propriissime conveniat eis illa prophetae sententia: "docuerunt linguam suam loqui mendacium; ut inique agerent laborarunt," Jerem iae IX.
- (4) Nec mirum si linguas suas Basilienses docuerunt loqui mendacium, quoniam, ut egregius ait Augustinus, tractans illud Psalmi: "Erraverunt ab utero; locuti sunt falsa: quisquis a ventre ecclesiae separatus fuerit necesse est ut falsa loquatur." Et beatus Cyprianus adversus eos scribens, qui a beato Cornelio papa se dividentes schismate unitatem ecclesiae labefactarant, ita ait: "Quid enim apud lapsos et profanos et extra ecclesiam positos, de quorum peccatoribus excesserit Spiritus sanctus, possit esse aliud nisi mens prava et fallax lingua, et odio inventata et sacrilega mendacia?"
- (5) (col 64) Quae nos pro mediocritate nostra dissimulare ob Christi charitatem et zelum sanctae fidei catholicae non volumus,

EZECHIELIS

timentes nobis improperari a domino [Jeremiae] in XIII: "Non ascendistis ex adverso, neque opposuistis murum pro domo Israel:" Verentes etiam ne si Basiliensium figmenta mendaciorum quibus perfidiam suam colorare in praefata invectione nituntur, non detegerentur; apud fideles minus eruditos approbari viderentur eorum errores. Ne igitur horum hominum impiorum doctrina pestifera ac mendacia sacrilega simplicum animos, apud quos saepe, ut ait Origenes super cantica: "pulchriora videntur mendacii sophismata, quam documenta veritatis," a fide catholica avertentia in devium erroris deducant, ostendemus per singula eos, juxta commemoratum propheticum vaticinium, "linguas suas docuisse loqui mendacium."

- (1) Plane falso et temeraria praesumptione Basilienses in primis beatissimo Hieronymo in doctrina et defensione veritatis se comparant. Comparatio certe ineptissima, tenebrarum ad lucem, hominum impiorum ad integerrimum omniumque virtutum genere patrem ornatissimum. Ille pro sancta et catholica doctrina ab apostolica sede in opusculis suis receptus, approbatus: ut in canone, Sancta Romana ecclesia, dist xv, habetur: Isti vero, Basilienses scilicet pro sacrilega eorum doctrina in pestiferis eorum assertionibus ab eadem apostolica sede condemnati et reprobati, ut in commemorato canone Moyses.
- (2) Magna profecto involvi caecitati probantur Basilienses beatissimo Hieronymo se in doctrina et defensione veritatis comparantes, qui in ipsa materia fidei apostolici principatus sanctae illius doctrinae aperta contradictione reluctantur. Sed in quo inquietantes?
- (3) Audiant Hieronymum quid de apostolicae sedis judicio sentiat. Ad Damasum enim papam scribens per integerrimam ejus fidei confessionem, ita ait ut in capitulo Haec est fides, xxiv, Q 1: "Haec est fides, papa beatissime, quam in catholica ecclesia didicimus, quamque semper tenuimus, in qua si minus (page 2) perite aut parum caute forte aliquid positum est, emendari cupimus a te qui Petri fidem et sedem tenens. Si autem haec nostra confessio apostolatus tui judicio comprobatur, quicumque me culpare voluerit, se immeritum vel malivolum vel etiam non catholicum, sed haereticum comprobavit." Haec Hieronymus.
- (4) Sed numquid hanc Hieronymi doctrinam fidei dignitate et gloriae magisterio Basilienses docent et defendunt? an potius impugnant? Unde dum definitionem apostolicae sedis damnant, manifesta ipsius beatissimi Hieronymi auctoritate, imperiti, malivoli, non catholici sed haeretici vincuntur. Audiant deinde quid idem clarissimus Hieronymus sentiat de auctoritate Romani pontificis et immanitate sceleris eorum, qui ab ejus societate se dividunt.
- (5) Ait enim in epistola quadam ad commemoratum beatissimum Damasum papam ut in capitulo Quoniam vetus, xxiv, Q 1: "Quoniam vetus oriens inter se populorum furore collisus indiscissam domini tunicam et desuper textam minutatim per frustra discerpit, et Christi vineam exterminant vulpes inter lacus contritos, qui aquam non habent, difficile ubi fons designatus et hortus ille (col 65) conclusus sit possit intelligi; ideo mihi cathedram Petri et fidem apostolico ore laudatam censui consulendam;" et infra: "cum successore piscatoris, discipulo Christi loquor. Ego nullum praemium

nisi Christum sequens, beatitudie tuae, idest cathedrae Petri communiōe consortior; super illam petram fundatam ecclesiam scio: quicumque extra hanc domum agnum comederit profanus est. Si quis in Noe arca non fuerit peribit regnante diluvio." Et ideo concludens infra ait: "quicumque tecum non colligit, spargit; hoc est qui Christi non est, est antichristi."

- (1) Sed numquid hanc beatus Hieronymi catholicae fidei doctrinam principatum Romani pontificis docent et defendunt Basilienses, si non falsa et stulta comparatione se conferunt catholico doctori in professione veritatis: Si sic manifeste arguuntur profani et schismatici beatitudini sanctissimi domini nostri Eugenii papae quarti, qui super cathedram sedet Petri indubitatus successor, consociari recusant atque ab ejus communiōe separati extra ecclesiae domum quam ille divinitus gubernandam suscipit, agnum comedere temerarie praesumunt.
- (2) Sed dicunt Basilienses assertiones suas in doctrinae beatus Hieronymi fundari, qui ut in capite Omnibus consideratis, xxiv, 21, de domo Dei, idest ecclesia ita loquitur: "quae domus etiam claves accipit ac potestatem solvendi et ligandi; hanc domum," inquit, "si quis corrigenstem corripientemque contempserit, sit tibi tanquam ethnicus et publicanus." Ceterum in capitulo Legimus, dist 93, idem Hieronymus dicit: "Si auctoritas quaeritur, orbis major est urbe."
- (3) Sane his in locis beati Hieronymi, et in ceteris aliis, quae de scripturae sacrae ac sanctorum patrum libris in favorem errorum suorum Basilienses inducere se jactant, accidit quemadmodum ceteris haereticis, apud quos negari non potest ex vitio malae intelligentiae textus sacrae scripturae et sanctorum patrum fidei contigisse dissidium, dum quod legunt sensui suo potius coarctari laborant, quam lectioni sensus suos obtemperare.
- (4) De quibus Dominus per ^[EZECHIELEM] Jeremiam, XIII, ait: "Vae prophetis... qui sequuntur cor suum;" Glossa idest: "non Dei" et sequitur: "et nihil" -- "scilicet veri" ait Glossa -- "vident."
- (5) Sed jam ostendamus per singula nihil in dictis beati Hieronymi contineri sana intelligentia ~~matum~~ quod stultis Basiliensium assertionibus faveat quoquomodo. Primum quidem quod Hieronymus ait quod "domus Dei claves accepit et potestatem solvendi et ligandi;" non eo sensu accipiendum est quod universalis ecclesiae domus, -- quae cunctos in se cujuscumque sexus, cujuscumque status fideles complectitur -- in omnibus suis membris, dispersis sive in unum collectis, claves regni coelorum acceperint. Hoc enim stultissimum esset pensari. Sed ut idem illustris Hieronymus docet -- et habetur in Glossa Matthaei: XVI: -- "in episcopis et presbyteris tantum."
- (6) Hoc enim jus potestatis, ut sic testetur Ambrosius, solis in ecclesia concessum est sacerdotibus. Proinde in istis proprie dumtaxat et maxime in Romano pontifice pro celsitudine principatus et auctoritatis publicae magistratu ecclesia contemni aut honorari dicitur. Qua ex parte loquuntur intelligitur quam adversa sit

doctrina beati Hieronymi illa Basiliensium assertio, credentium -- conventiculum copistarum, advocatorum (col 66) et saecularium hominum -- claves habere regni coelorum. Et quod dum illorum stulta contemnuntur iudicia universalis ecclesia existimetur contemni. Demum considerandum quod domus Dei in episcopis et presbyteris claves suscipiens, non aequali potestatis mensura sed differenti et ordinatissima illas suscipit. Paulo apostolo ad Romanos XIII: "Quae a Deo sunt ordinatae sunt."

- (1) In uno quidem omnium episcoporum summo, videlicet Romano Pontifice tanquam capite et principe (page 3) totius ecclesiae claves suscipit in plenitudine potestatis; in aliis vero secundum proportionem sollicitudinis ad quam evocati sunt, ut in capitulo Secreto et sequenti, II, Q 6. Quare beatissimus Cyrillus vir approbatissimae auctoritatis in libro Thesaurorum, ut sanctus Thomas testatur ita dicit: "Sicut Christus accepit a patre ducatum et sceptrum ecclesiae gentium ex Israel, egrediens super omnem principatum et potestatem et super omne quodcumque, ut ei genera omnia curventur plenissimam potestatem; sic et Petro ejusque successoribus plenissime commisit. Et ita nulli alteri dedit Petro quod suum est plenum, sed ipsi soli dedit." Haec ille.
- (2) Quam superioritatis principatus praerogativam beatus Hieronymus in ipso Petro agnoscens ita eum in libro de obitu seu ortu sanctorum patrum describit: "Petrus in Christo ecclesiae fundamentum, cephas; corporis Christi principatus et caput apostolorum princeps; pastor humani generis; petra ecclesiae clavicularius regni."
- (3) Qui Romanus Pontifex cum pro summa auctoritate extra caesum haeresis superiorem non habeat, ut sanctorum patrum irrefragabilis habet auctoritas, non potest proprie in alio casu ecclesiam corrigentem corripientemque dici contemnere. Hujusmodi enim contemptus proprie non est nisi inferioris respectu superioris. Unde felicitis et sanctae memoriae Innocentius III in sermone anniversarii consecrationis Romani pontificis qui incipit: "Quis putas (in)fidelis servus," dicit, "in tantum enim est mihi fides necessaria ut cum de ceteris peccatis solum Deum iudicem habeam, propter peccatum solum quod in fide continetur possem ab ecclesia iudicari."
- (4) Quare manifestum est praefatum auctoritatem Hieronymi in nullo opitulari Basiliensium erroribus. Quod etiam luculentissime ostenditur de auctoritate inducta de capitulo Legimus. Sane cum Hieronymus dicit, quod "si auctoritas quaeritur, orbis major est urbe," non de auctoritate potestatis sive jurisdictionis orbis respectu ecclesiae Romanae aut sedis apostolicae loquitur, sed de auctoritate consuetudinis. Non est dubium quod consuetudo totius orbis majoris sit auctoritas, quam consuetudo sit urbis; quam nec apostolica sedes observat aut aliis observandam praecipit. Unde religiosissimus presbyter Hieronymus in consuetudinem illam invehitur qua apud aliquas urbis ecclesias diaconi anteferebantur presbyteris, ad Evandrum episcopum loco commemorato ita subjungit: "quid mihi profers unius urbis consuetudinem? Quid paucitatem de qua ortum est supercilium in leges ecclesiae vendicas? Omne quod rarum est plus appetitur. Pulegium apud Indos pipere pretiosius est; diaconos paucitas honorabiles, presbyteros (col 67) turba contemptibiles facit."

- (1) Conqueruntur scilicet Basilienses quod defendendo veritatem catholicae fidei de auctoritate generalium conciliorum et prosequendo constanter reformationem a membris ecclesiae in capite et membris variis injurias et persecutiones substinuerunt a sanctissimo domino nostro Eugenio. Querela plane communis et laus stulta omnium haereticorum qui dum auctoritate publica pro erroribus suis et temerariis ausibus justissime puniuntur, pro justitia, pro fide catholica, pro honore Dei et animarum salute se pati et haereticos appellari mentiuntur.
- (2) Impia quidem Basiliensium congregatio profecto non veritatem catholicae fidei sed perniciosos errores, et novas sectas de auctoritate generalium conciliorum defendit. Non ornamentum in ecclesia, non decorem in domo domini, non reformationem status ecclesiae sed abominationem et confusionem prosequitur. Hierarchicum ecclesiae ordinem divinitus institutum pervertit. Principatum apostolicae sedis, quae cunctarum ecclesiarum mater est et magistra, demoliri laborat. Ab obedientia Romani Pontificis cui tanquam patri et pastori omnium fidelium jure divino caput inclinatur, ipsa superbia et contumax christianum populum in perpetuam scissuram ecclesiae et clavium contemptum contendit avertere
- (3) Si veritatem catholicae fidei Basilienses defensabant cur universos catholicorum principum oratores habuerunt furori decretationis suae adversos? Si veritatem catholicam tuebantur cur de triginta episcopis qui tunc Basileae fuisse dicuntur, solum novem vel octo interfuerunt episcopi; videlicet cardinalis Arelatensis antiquus Summi Pontificis inimicus? Qui ab eo juxta instabilem ambitionem suam non valuit impetrare ut avunculo suo in officio succederet camerae apostolicae; patriarcha quondam Aquilejensis, domini nostri papae capitalis inimicus, propter patriarchatum occupatum a Venetis, non tamen hoc sanctissimo domino nostro disponente sed ipso patriarcha dante illi ad hoc apertissimam causam; Ludovicus de Palude episcopus sine ecclesia, inimicus papae qui in causa ecclesiae Lausanensis contra duces Sabaudiae, concilii sententias contemnentem, non habuit optatos favores.
- (4) Nec silendum est quod tanta in hac re praefatus Ludovicus pertinacitate obduratus fuit ut provisionem oblatam ei per clementissimum ac sanctissimum dominum nostrum, -- tam Avinionensis episcopatus quam archiepiscopatus Tarantasiensis, -- contempserit; episcopus quondam Venetien, furiosus adversarius papae qui in ecclesia Marsiliensi non habuit contra justitiam desiderata suffragia; Gratinopolitanus, Sabaudiensis, Arelatensis, non tam consanguineus sed ab antiquo familiaris, commensalis et ab eodem educatus; Basiliensis homo sine literis, timore ut creditur ductus; et duo religiosi a sui ordinis obedientia apostatae sine ecclesiis cathedralibus episcopi nominati; Raymundus Talon sine mitra qui dicit se episcopum Tricariensem, sanctissimo domino nostro (page 4) jamdudum infensus qui ab ipso ob sua demerita privatus fuit officio auditoris curiae Avinionensis.
- (5) Ecce nomina; ecce merita; ecce numerum eorum, qui furore atque insania percussi (col 68) nomen ecclesiae universalis sibi usurpantes

auctores fuerant cum complicibus suis decretationis erroneae. Ceteri vero omnes episcopi inter quod reverendissimus pater cardinalis Terraconensis et regum ac principum oratores, sacrilegae eorum sessioni contradicentes, non interfuerunt. Intelligant jam christiani qualiter paucorum impietate actum est quod universalem ecclesiam vulneraret et conturbaret.

- (1) Ceterum si veritatem Basilienses defenderent catholicae fidei et non potius errores, profecto apostolica sedes cujus fides, ut in canone Memor, xxiv, Q 1, -- "nullam unquam haeresim fovet sed omnes quidem haereses destruit; tam amplissima synodo approbante non declarasset haereticos sed potius ut catholicos approbasset.
- (2) Praeterea quod Basilienses sicut, universalem ecclesiam omnes praelatos orbis, omnes reges et principes orthodoxos qui tam in concilio Constantiensi quam Basiliensi per se ac per suos oratores fuerunt, in ea via veritatis resedissee, -- quam dominus noster Eugenius impugnat, -- multiplici ex capite falsum est et mendosum.
- (3) Quod primo de Constantiensi concilio manifeste ostendimus. Revolvantur gesta, relegantur scripta, rememorentur conclusa, quae universa ecclesia ex tribus obedientiis congregata Constantiae decrevit declaravitque; et cunctis exploratissimum erit "linguas suas Basilienses docuisse loqui mendacium." Nulla plane assertionum haereticarum Basiliensium ibi voce aut virtute continetur descripta; sed ea potius quibus Basilienses non modo mendaces sed haeretici convincuntur.
- (4) Equidem in epistola decretali papae Martini, quam universa ecclesia approbante in concilio Constantiae edidit, tres errores damnatae memoriae Joannis Hus reprobati leguntur quorum doctrinam Basilienses stultissimis ingenis suis tueri visi sunt. Unus errorum est, non opus esse unum caput in spiritualibus regens ecclesiam quod semper cum militante ecclesia conversetur. Hunc errorem fovere videntur Basilienses qui putantes se habere spiritum sanctum praesidentem et rectorem immediatum, contempto Christi vicario Romano Pontifice, pastore universalis ecclesiae; contra divinae dispositionis regulam supremum principatum regiminis ecclesiae sibi arroganter usurpant.
- (5) Alius error est dicentium quod Petrus non fuerit caput ecclesiae sanctae catholicae et universalis. Quo errore contaminari se Basilienses profitentur dum Romanum Pontificem non universalis ecclesiae neque generalis concilii, sed tantum particularium ecclesiarum caput esse contendunt. Et si quis dicat illos asserverare Romanum Pontificem caput et pastorem esse ecclesiae; animadvertat an verbis eorum facta concordent; an confessionem suam operibus comprobent: Non enim est vere et proprie dicere ubi prolatis discordat a voluntate, discordat ab opere.
- (6) Quocirca de his qui confitentur se nosse Deum, factis autem negant, inquit Salvator, Matthaei VII: "Non omnis qui dicit mihi: Domine, domine, intrabit in regnum caelorum; sed qui facit voluntatem patris mei qui in caelis est." Plane Basilienses Romanum Pontificem

assererantes caput et pastorem universalis ecclesiae contendendo cum eo de superioritate, se non intelligere quae loquuntur; aut fallaces esse, (col 69) sacrilegos derisores; aut ab ecclesia praecisos, cujus illum pastorem caputque adfirmant, manifestissime attestantur.

- (1) Alius error est quod Romanus Pontifex non habeat supremam potestatem in ecclesia. Contra quem seditiosum errorem in ante dicta epistola decretum est ut singuli de haeresi impiorum hominum Joannis Eucliff et Joannis Hus suspecti interrogentur inter alia: utrum credant quod papa, canonice electus qui pro tempore fuerit, ejus proprio nomine expresso, sit successor beatus Petri habens auctoritatem supremam in ecclesia. quem damnatissimum errorem Basileenses fovere et docere cunctis exploratissimum est, quid ad fidei catholicae veritatem pertinere publice astruere non sunt veriti, potestate et auctoritate se superiores esse Romano Pontifici.
- (2) Circa declarationem quam Constantiae de potestate conciliorum generalium decretum esse commemorant, notum est Basileenses ipsos toti mundo concinuisse (?) dolos, ut merito de eis verificanda sententia illa venit Domini per Jeremiam prophetam dicentem: "Seduxerunt populum meum in mendacio suo," Jeremiae XXIII. Mentiti quippe sunt dicentes illam ab universali ecclesia factam, omnes praelatos orbis ac reges et principes orthodoxos eandem approbasse.
- (3) Notissimum quidem est non ab univessa ecclesia sed ab una obedientia tantum Joannis scilicet, XXIII, declarationem illam emanasse. Neque integre a tota quoniam plures patres doctissimi illius obedientiae illi non praebuerunt consensum. Ipse etiam in sua obedientia vocatus Joannis XXIII, post recessum a Constantia cum Scaphusae constitutus audiret praefatam declarationem conclusam, dominis oratoribus Christianissimi regis Franciae visitantibus eum scilicet, domino duce Bavariae, domino Nicolae de Calavilla aliisque eorum collegis, amaro animo conquestus est, falsa quaedam et erronea adversus auctoritatem Romani Pontificis decreta per aemulos suos post recessum ejus esse conclusa.
- (4) Ceterum quod omnes praelati orbis, reges et principes orthodoxi ratam non habuerunt praefatam declarationem, quidquid sit de opinione quorundam patrum praefatae obedientiae Joannis XXIII, non modo ex parum ante inductis a tota ecclesia factis declarationibus. (page 5) fidei aperte colligitur, quibus hanc declarationem adversam esse perfacile est videre. Sed ex Sessione XXXVI concilii Constantiensis luce clarius demonstratur in qua sacrosancta synodus Constantiensis ex omnibus obedientiis collecta "statuit et decrevit quod Romanus Pontifex, ... [tunc] de proximo assumendus, cum sacro concilio vel deputandis per singulas nationes deberet reformare in capite Romanae curiae secundum aequitatem et bonum regimen ecclesiae super materias articulorum alias per nationes in reformatorio oblatorum." Inter quos articulus XIII declarandus erat, "propterea quae et quomodo papa possit corrigi vel deponi."
- (5) Ex quo apertissime colligitur patres universae ecclesiae hanc constitutionem decernentes, non quievisse in declaratione praefata, quae per alios tantum patres obedientiae illius, sancita erat;

quorum aliqui approbatae auctoritatis et timoratae conscientiae superstites sunt hoc ipsum attestantes. Insuper idem clarissime (col 70) colligitur ex eo quod hujusmodi declaratio nusquam repetita aut commemorata ab ipsa plenaria synodo universalis ecclesiae legitur. Nec inter declarationes fidei illius synodi in epistola papae Martini collectas, patres inserere curarunt; sed potius ea quae ut parum ante commemoratum est, praefatae declarationi refragari videntur.

- (1) Praeterea quod Basilienses dicentes universalem ecclesiam catholicam, omnes praelatos orbis, reges omnes et principes orthodoxos resedisse Basileae, in ea via quam sanctissimus dominus noster condemnavit, "docuerint linguas suas loqui mendacium:" Noverunt reges et principes orthodoxi qui sanctissimo domino nostro Eugenio tanquam vero et indubitato Christi vicario et in cultu Christianae religionis ac pietatis integerrimo patri, semper adhaeserunt et adhaerent. Quorum oratores, ut superius commemoratum est, sacrilego Basiliensium furori in decretatione praefatorum errorum viriliter obstiterunt.
- (2) Obmutescat ergo blasphema Basiliensium lingua, -- procax, mendax et venenata -- dicentium sanctissimum dominum nostrum conatum fuisse universalem ecclesiam haereticam fovere. Non sic, impii Basilienses, non sic. Sed ecclesiam malignantium quam vos ipsi a fide ac pietate Christi et a vicarii ejusdem obedientia separati constituistis, sanctissimus dominus noster Eugenius sacro approbante universalis ecclesiae concilio declaravit haereticam. Dicunt insuper Basilienses in eodem concilio ante tres annos auditum esse, sanctissimum dominum nostrum aliud concilium in alio loco disposuisse fiendum in quo haereticarentur decreta concilii Constantiensis et Basiliensis; ob quam causam, ajunt, se maxime restitisse ei ne in alio loco concilium pro sua voluntate institueret.
- (3) Sed non hoc solum mendacium; non hoc tantum sacrilegium confictum est in illorum concilio per impios homines quorum studium semper fuit bonorum virorum animos mendacis et confictis rumoribus alterare in odium et malivolentiam sanctissimi domini nostri, ut saltem hoc modo impietatis suae socios accumularent. Vir sanctissimus dominus Eugenius cujus animus totus semper incubuit in revocandis schismaticis et errabundis ovibus ad ovile dominicum, in refellendis haeresibus et tutanda fide catholica, numquam mente concepit haereticare quaecumque decreta, licet fortasse desideraverit. Hoc ipsum multis probatissimis patribus cupientibus et suggerentibus, aliqua per obedientiam Joannis XXIII Constantiae edita quae in pravum et contra sanctorum patrum sententias in ecclesiae irreparabile scandalum quidam ecclesiastici ordinis eversores interpretabantur, cum concilio praelatorum ecclesiae doctissimorum virorum declarare; quod maxime ad Romani Pontificis officium dinoscitur pertinere.
- (4) Ait enim beatus Gregorius et habetur in capite "Nec licuit" dist xvii: "Quoties aliqua de universali synodo aliquibus dubitatio nascitur ad recipiendam de eo quod non intelligunt rationem ad apostolicam sedem pro percipienda ratione convenient;" ubi glossa notabilis ait: "Videtur hic quod ad solum papam spectat interpretari statuta universalis concilii."

- (1) Sed furiosis Basiliensibus agitantibus in dies studia sua in eversionem fidei (col 71) in dispendium pacis et unitatis ecclesiae, necesse fuit, -- cum aliam salubriorem via ausis temerariis impiorum hominum provideri non posset ut experientia docuerat, -- sanctissimum dominum nostrum cui universalis ecclesiae cura principaliter credita est, auctoritate sibi a Christo data ad locum transferre concilium; in quo ipso pastore ovilis dominici praesidente et dirigente sancta opera inchoata absque vulnere fidei et unitatis ecclesiae violatione felici exitu clauderentur. Quo quidem Basilienses universo approbante concilio damnandi venerunt. Ipsi profecto hoc praesumptione reprobarum novitatum, superba elatione contra Romanum pontificem et temeritate dogmatum impiorum plenissime meruerunt.
- (2) Sed jam responsa quae ad canonem condemnationis eorum confingunt audiamus, ut singulis eorum mendaciorum nebulis profligatis fideles Christi devios anfractus errorum illorum declinantes veritatis lumen aspicientes, inter rectum teneant vitae caelestis. A quaestionibus quibusdam Basilienses exordiuntur, -- quod non sine speciali nutu superni concilii actum esse creditur, -- ut per harum quaestionum solutionem infirmitate decreta roboris eorum quibus errores suos fulcire nituntur, intelligerent universi quam justissime temeritates eorum ab ecclesia sint condemnatae.
- (3) Quaerunt autem in primis an sanctissimus dominus noster tempore quo Constantiae per patres obedientiae Joannis XXIII facta fuit illa de auctoritate conciliorum declaratio; negare velit ibi verum fuisse concilium et declarationes in eo factas validas esse. Plane si quis (page 6) animadvertat juxta apostolicas et canonicas regulas, -- dist xvii per totum, -- nullam congregationem nomen sortiri veri generalis concilii quae apostolica auctoritate vocata fultaque non fuerit.
- (4) Memineritque sanctissimum dominum nostrum non dictum Joannem XXIII sub quo illa congregatio facta Constantiae et legitima describitur sed Gregorium tenuisse verum esse Romanum pontificem. Perfacile intelliget quae esset beatitudinis suae responsio si de hac re personaliter responderet. Necessario certe haberet se et dominum Gregorium universamque ejus obedientiam in schismate fuisse profiteri aut dicere patres obedientiae Joannis pro illo tempore nec verum generale concilium facere; nec illorum decreta valetudinem roburque habere canonum universalis ecclesiae.
- (5) Basilienses iterum quaerunt, reclamavit ne aliqua aliarum obedientiarum contra praefatas declarationes? Plane sic quod, ut ex gestis ejusdem Constantiensis synodi clarissimum rotam formam declarationis ponamus in medium. Ajunt enim in Sessione V patres praefati, "Declaravit ipsa synodus, quod in sa in Spiritu Sancto legitime congregata generale concilium faciens et catholicam ecclesiam repraesentans, potestatem a Christo immediate habet cui quilibet cujuscumque status vel dignitatis etiamsi papalis existat, obedire tenetur in his quae pertinent ad fidem et extirpationem dicti schismatis et reformationem ecclesiae in capite et in membris."

- (1) Huius autem declarationi quoad singulas ejus partes alias duas obedientias contradixisse, quisque etiam parum doctus advertit (col 72), qui in illas contrariis opinionibus circa veritatem Romani Pontificis laborasse non ignorat. Cui praeterea dubium est obedientiam Gregorii et obedientiam Benedicti reclamasse et contradixisse? Reclamare et contradicere declarationi quae dicit congregationem patrum sub Baldassare dicto Joanne XXIII, Constantiae esse legitime in Spiritu Sancto congregatum concilium generale facere ecclesiam catholicam repraesentare, potestatem habere a Christo immediate cui, et cetera.
- (2) In cuius contradictionis testimonium clarissimum mittens post praefatam declarationem dominus Gregorius oratores suos ad Constantiam, committit eis dominis, -- scilicet cardinali Sancti Sixti, Joanni electo patriarchae Constantinopolitano, archiepiscopo Trevirensi, comite Palatino, Carolo de Malatestis -- auctoritatem congregationem istam Constantiensem, in quantum per serenitatem regiam et non per Baldassarem se nuncupari facientem Joannem XXIII, vocatum vice sua convocandi et auctorizandi in generale concilium, et cetera. Verba sunt formalia bullae datae auctoritatis oratoribus antedictis.
- (3) Testimonium ergo contradictionis dominorum principum et praelatorum obedientiae Petri de Luna vocati Benedicti XIII, etiam notissimum est. Reges et principes ac praelati qui ille tanquam summo et vero pontifici universalis ecclesiae adhaerebant, non credentes veram esse praefatam declarationem dicentem praedictos patres Constantiae congregatos sub dicto Joanne XXIII generale concilium facere. Voluerunt juxta compactata in Narbona cum bonae memoriae domino imperatore Sigismundo, per eos apud quos veram esse arbitrantur Dei ecclesiam novam fieri convocationem generalis concilii. Quae omnia ita facta esse ab omnibus acceptata synodus ipsa Constantiensis per diversas sessiones apertissime loquitur.
- (4) Quibus tribus obedientiis tandem ita in nomine Christi Constantiae convenientibus habita est certitudo et fides apud Christi fideles generale concilium universalem ecclesiam repraesentans Constantiae celebrari; et non ante currente ambigua concertatione inter fideles apud quem trium pro reverendissimis pontificibus se gerentium apostolicae sedis pontificium resideret. Ut etiam testatur devotissimus Bernardus, libro vi, De Consideratione: "Fides ambiguum non habet aut si habet, fides non est sed opinio."
- (5) Ex quo jam clarissime quisque percipit quam praesumptuosa et honori regum, principum et praelatorum duarum obedientiarum Gregorii scilicet ac Benedicti, inimica atque infensa sit illa Basiliensium assertio, qua alteram obedientiam pro tempore schismatis legitimam generale concilium universalem ecclesiam repraesentans, constituisse affirmant; quam dum ad veritatem catholicae fidei pertinere contendunt, profecto duas alias obedientias praefatam declarationem non admittentes non modo schismaticas sed haereticas declarare conantur.
- (6) Interrogant consequenter Basilienses: numquid omnes unanimiter et depositionem Joannis laudarunt? Et in privatione Benedicti ab omni jure si quod habebat in papatu consenserunt? quae vigore auctoritatis synodalis declarante per praefatam veritatem facta

esse dicunt. At quid sibi volunt Basilienses domini (col 73) Baltasaris et domini Petri de Luna introducentes condemnationes? Cum gesta circa eos in nullo eorum temeritatibus faveant tam quia nemo eorum a tota ecclesia unquam indubitatus habitus est Romanus Pontifex. Et nihilominus quisque eorum pertinaci animositate pestiferum schisma in ecclesia fovebat. In quo casu, cum non contra papam sed contra praesumptum ageretur, processum esse adversus ambos omnis ecclesia commendaverit.

- (1) Secundo quia praefati domini Joannes et Benedictus de papatu contententes, suspecti de haeresi et ut tales notorii et incorrigibiles delati fuerunt; quemadmodum de Joanne sententia nominata suspensionis illius et de Benedicto sententia condemnationis illius manifeste testantur. Porro quod in hujusmodi casibus domini cardinales et episcopi de universo orbo convenientes turbatae ecclesiae juxta sanctorum patrum regulam providere possint, in nullo arguit assertiones Basiliensium (page 7) veras esse, ut quisquis doctus facile intelligit. Omitto dicere de resignatione Joannis quam in carcere facit. Quamquam postea coram domino Martino florentiae constitutus sponte factam esse professus solemniter approbavit, de quo publica sunt instrumenta.
- (2) Supersedeo etiam loqui de renunciatione domini Sancti Munionis archidiaconi Valentini qui post obitum domini Petri de Luna titulum papatus assumpserat in loco de Paniscula; quam renunciationem juris quod in papatu habere praetendebat, fecit tractante reverendissimo cardinali de ruscio legato a latere ad partes Cataloniae transmissio. In quorum resignationibus sive renunciationibus cessante omni scrupulo conscientiarum multorum, plures notabiles personae praefatarum obedientiarum auctoritate et sapientia multa praestantes potius requierunt, quam in condemnationibus praedictorum Constantiae factis de quarum viribus pro eo quod Joannem et Benedictum, tales quales praenuntiati sunt non crederent, plurimum formidabant.
- (3) Rursum inquirunt Basilienses, numquid omnes ad electionem Martini processerunt eadem synodali auctoritate? Sed quo tendat hujusmodi quaestio percipitis vos ipsi qui legitis. An non intelligitis tanta obscuritate involutos esse Basilienses ut ex jure electionis superioritatem arguant auctoritatis et gesta patrum Constantiae sede vacante in lege universalis ecclesiae vendicant. Et quae pro extirpando inveterato schismate necessitas sola concessit, ad pacis tempus extendunt in quo unus indubitatus pastor catholicus ecclesiae praesidet universae. Haec profecto stultitia cunctorum mater errorum fuit Basiliensium.
- (4) Inferunt consequenter quaedam a domino Martino Constantiae universo approbante concilio definita et ordinata. Primum est, errorem esse si quis diceret "non esse de necessitate salutis credere Romanam ecclesiam esse supremam inter alias ecclesias. Si per Romanam ecclesiam intelligatur universalis ecclesia aut concilium universale," plane hujusmodi declaratio nihil favoris accumulatur erroribus et temerariis ausibus Basiliensium. Eo sane quod universale concilium superioritatem quandam inter alias ecclesias habere conceditur, nullo modo arguendum est ipsum potestatis (col 74)

superioritate esse super caput ejus Romanum scilicet Pontificem maxime cum tota ratio superioritatis universalium conciliorum inter alias ecclesias ab apostolica sede, in qua Dominus totius ecclesiae posuit principatum, censeatur dependere a cujus auctoritate et nomen sortiuntur et robur virtutis; ut patrum doctrina -- dist xvii -- attestatur.

- (1) Inducunt secundo Basilienses ordinatum esse a domino Martino ut quilibet de haeresi Euchaustarum (Wicleffistarum) suspectus interrogaretur; an credat et teneat et asserat quod quodlibet concilium generale et etiam Constantiense catholicam ecclesiam repraesentet. Sed ne hoc quidem favoris quidpiam inducit Basiliensibus quippe illud generale concilium juxta jam dicta accipiendum est, quod apostolica auctoritate fulcitur. Perfectum namque et plenum concilium synodus Antiochena appellandum decrevit in quo metropolitanus antistes interfuerit.
- (2) Quo circa cum egregius Augustinus in sermone apostolorum Petri et Pauli dicat solum Petrum cui in plenitudine potestatis succedit Romanus pontifex, inter apostolos totius ecclesiae gestasse personam. Nulla congregatio catholico Romano pontifice excluso dicenda est universalem ecclesiam repraesentare.
- (3) Proinde beatissimus Cyprianus in epistola quam ad lapsos scribit qui a Romano Pontifice Cornelio separati, nomen sibi ecclesiae, ausu temerario, adscribere praesumpserant, ita loquitur "Dominus noster cujus praecepta metuere et timere debemus et servare episcopi honorem et ecclesiae suae rationem et dispositiones; in evangelio sic loquitur et dicit Petro, 'Tu es Petrus et super hanc petram aedificabo ecclesiam mean,' et cetera. Cum hoc ita divina lege fundatum sit. Miror quosdam ecclesia in episcopo et clero et omnibus statutibus sit constituta." Haec Cyprianus.
- (4) Porro, quod de Constantiensi concilio subjungitur in constitutione Martini non ad tempus schismatis referendum est, pro quo ambigua erat apud quam obedientiam vera esset ecclesia, quam beatus Hieronymus supra cathedram Petri dicit esse fundatam, in capitulo "Quoniam vetus oriens;" et in sedis apostolicae radice egregius Augustinus dicit constitutam, in capitulo Pudenda xxiv, Q 1. Sed referendum est tempus quo ecclesia de tribus obedientiis pro unione Constantiae simul convenit; pro quo solo tempore verum et indubitatum creditum est a tota ecclesia concilium universale. Referre vero hujusmodi constitutionis sensum ad unius obedientiam congregationis pro tempore schismatis, quid aliud est quam alias duas obedientias damnare? Quod de domino Martino et de plenario Constantiensi concilio sentire dementissimum est.
- (5) Sed intelligamus quod imperiti Basilienses ex hac repraesentationibus fallacibus argumentationibus elicere contendunt. An arguere volunt ex hujusmodi repraesentatione synodum superiorem esse potestate Romano Pontifice capite corporis ecclesiae? Stultissima quidem argumentatio quae potissima causa eis extitit ut "errarent ab utero et falsa loquerentur." Unde ipsi scioli praesupponunt universalem ecclesiam super caput super principem (col 75)

[^] #audaci temeritate sic mihi inscribere voluisse, ut ecclesiae nomine litteras facerent [quoniam]

super rectorem et pastorem suum Rominum Pontificem habere superioritatem potestatis et jurisdictionis auctoritatem; contra naturalem rationem, contra sacram scripturam, contra sacrorum conciliorum definitiones, contra sententias et doctrinam sanctorum patrum.

- (1) Unde praeterea illi magistri (page 8) errorum necessitatem hujus consequentiae praesumant, quod repraesentans repraesentati adaequat plenitudinem potestatis, auctoritatis praerogativam et excellentiam dignitatis? quae magis stulta consequentia esse potest?
- (2) Repraesentat papa Christum cujus vicarius est et vices gerit in terris; et princeps Deum "per quem reges regnant et legum conditores justa decernunt." Ait enim Augustinus XXXV quaestion, Novi et veteris testamenti: "Dei imaginem habet rex sicut et episcopus Christi." Repraesentat Paulus Christum qui ait, II ad Corinthios II: "Si quid donavi in persona Christi donavi," -- Glossa: "Ac si Christus donasset." Et in capitulo sequenti: "Pro Christo legatione fungimur;" -Glossa, "Idest, vices Christi." Nullus tamen nisi mente captus diceret, quemquam istorum Christi adaequare virtutem.
- (3) Inferunt tertio ab eodem Martino institutum, ut quisque de praefata Eoclivistarum haeresi suspectus interrogetur: utrum credat quod illud, quod sacrum concilium Constantiensis universalem ecclesiam repraesentans, approbavit et approbat in favorem fidei et ad salutem animarum, quod hoc est ab omnibus Christi fidelibus approbandum et tenendum. Sed nec ex hoc quicquam adjumenti Basiliensium impietati accrescit; quippe, ut jam satis ostendimus, hoc non ad tempus schismatis referendum est in quo saepe repetita declaratio a patribus obedientiae dicti Joannis XXIII emanavit; sed ad tempus in quo tres obedientiae jam simul convenerant, pro quo solo tempore verum, indubitatum generale concilium universalem ecclesiam repraesentans, habitum est ab omnibus.
- (4) Repulsis et penitus infirmatis his quae Basilienses de concilio Constantiensi in favorem impietatis suae inducunt. Jam ea quae de sua congregatione vaniloqua testimonia inferunt, audiamus. Dicunt enim quod in Basiliensi concilio ubi de nulla obedientiarum differentia sermo erat eadem declaratio canonica fuit in publica sessione. Plurima sane in hac attestazione consideranda veniunt, quae Basiliensium testimonia nullius penitus roboris esse declarant. Sunt enim propria; ipsi enim arguunt, ipsi sunt auctoritas. Novum plane et inauditum argumentationis genus. Nisi enim Basilienses dicta sua alia fulciant auctoritate et superioribus magisque indubitatis attestacionibus tueantur, invalida nulliusque roboris habenda sunt.
- (5) Tractans enim beatus Chrysostomus illud Joannis V: "Si ego testimonium de me ipso perhibeo testimonium meum non est verum," idest efficax, dicit: "Nullus enim unquam sibi testans est dignus fide."
- (6) Secundo, illorum testimonia praesumptuoso et temerario nituntur fundamento. Veriti enim non sunt Basilienses fidelium auribus inculcare quod sancta ecclesia catholica Constantiae conveniens

declarationem praedictam fecerit; cum ex dictis exploratissimum sit id, quod declaratum est (col 76) ab una sola obedientia dicti Joannis XXIII et tempore schismatis processisse. Quis autem nisi nimis impia obstinatione laborans totiusve orbis scandalizator, contenderet affirmare veritatem esse catholicae fidei, apud solam obedientiam dicti Joannis illo tempore sanctam ecclesiam catholicam resedisse?

- (1) Tertio, eorum testimonia falsa sunt. Falsum enim dicunt cum ajunt sanctam catholicam ecclesiam Constantiae declarasse concilium generale catholicam ecclesiam repraesentans, potestatem a Christo immediate habere cui quilibet, et cetera. Nemo plane hujus declarationis formam ita universaliter factam Constantiae potuit demonstrare. Licet saepe commemorata obedientia dicti Joannis ut ante patuit, declaraverit, quod ipsa in Spiritu Sancto legitime congregata, generale concilium faciens, et ecclesiam catholicam repraesentans, potestatem a Christo immediate habere, et cetera. Cui autem, vel parum erudito dubium est magnam inter propositionem singularem et propositionem universalem esse differentiam?
- (2) Quarto, invalida sunt eorum testimonia quia decreta eorum non fuerunt unanimitate universali conclusa: tum quia multis partibus, sapientia et Dei timore praestantibus, non consentientibus, quod reclamasse in deputationibus suis, asserentes talem declarationem adversam esse sanctorum patrum doctrinis, negari non potest. Tum quia non expectata plane universa ecclesia. Non enim expectatis plurium regum et principum oratoribus conclusa fuerunt, licet aliquos noverint eorum jam in via constitutos; timentes patres illos gravissimos eorum conclusionibus numquam praebituros assensum.
- (3) Nullus profecto integrae considerationis vir -- qui cum quanta integritate, gravitate atque modestia fidei judicia tractanda sint, -- novit, judicabit esse universali consensu totius ecclesiae conclusa Spirituque Sancto dictata in quibus hujusce factiones et practicae intervenerunt. Demum Basiliensium testimonia luculenta ratione invalida esse demonstratur dum in eorum conclusione non intervenit assensus apostolicae sedis, quae unamquamque synodum sua auctoritate firmat, -- ut in capitulo Confidius, xxv, § 1.
- (4) Sed dicunt Basileenses quod legatus apostolicus tunc praesidentiam exercebat. Licet hoc non necessario arguat apostolicae sedis assensum, nihilominus falsum loquuntur quippe illo jam tempore absolutus erat a legatione apostolica ut manifestum est. Item dicunt Basilienses sanctissimum dominum nostrum revocasse dissolutionem quam fecerat, decernens et declarans praefatum concilium a suae inchoationis tempore continuationem habere. Per hoc plane sanctissimus dominus noster eorum non confirmavit decreta. Licet enim patres in conciliis universalibus legitima continuatione processissent nihilominus in fine, pro suorum canonum robore firmitatis, ad apostolicam sedem (page 9) leguntur habuisse recursum; sicut liber conciliorum et summorum pontificum attestatur.
- (5) Quod de copiosa multitudine praelatorum Basiliensium gloriantur longe a veritate distat; sed et quo spiritu et qua impulsione plures eorum convenerint "adversus dominum et adversus Christum ejus;"

quia totus novit orbis et (col 77) praecipuos eorum terribilis Christus ad suum jam evocavit iudicium, pertranseundum putavimus.

- (1) Intelligentiam vero aliorum reverendissimorum patrum qui superstites sunt quam sana sit magna ex parte declarata est, dum a tabernaculis eorum perfidorum Basiliensium fugientes, cum sanctissimo domino nostro Eugenio una mente, uno animo eademque fide parique zelo ad condemnationem perversorum dogmatum Basiliensium convenerunt. Objiciunt consequenter Basilienses sanctissimo domino nostro mundum voluisse involvere quod assertiones eorum ad sensum eorum repro- baverit; et non aperit, inquit, quid sit ille sensus. Fallaces, stulti Basilienses. Quomodo non expressit sanctissimus dominus noster sufficientissime quid sit ille sensus ad quem eorum erroneas damnaverit assertiones, dum ait ad sensum quem Basilienses facto demonstrant? An non facta eorum notissima vulgatissimum reddiderunt erroneum sensum quem de potestate conciliorum docent et practicant?
- (2) Plane cum validior sit vox operis quam sermonis et efficacius testimonium facti quam verbi, non potuit evidentius, plenius, securius- que eorum erronea intelligentia declarari, quam cum dictum sit quam facto demonstrant. "Fidei veritatem," inquit Bernardus, "opera testantur." Hanc regulam Salvator noster docuit homines cognoscendi. "A fructibus," inquit, "eorum cognoscetis eos." Matthaei VII.
- (3) Plane erroneam Basilienses se habere intelligentiam de aucto- riate conciliorum clarissima luce factis temerariis et acerbissimis fructibus in multis demonstrarunt. Quod ut exemplariter ostendamus aliqua eorum gesta ex multis commemoremus. Sane, in primis intelligentiam circa auctoritatem generalium conciliorum erroneam se habere Basilienses facto demonstrant non recognoscentes opere et facto Romanum Pontificem caput eorum pastorem atque praelatum. In qua sua temeritate Basilienses incidunt in seditiosum errorem Hussitarum Constantiae condemnatum, negantium Petrum fuisse caput sanctae ecclesiae catholicae, contra illud Joannis I: "Tu vocaberis Cephas." Cephas enim, licet una lingua interpretetur Petrus, nihilominus secundum aliam, -- ut sanctus Anacletus et sanctus Isidorus, -- caput sonat: cephalin enim Graece, caput Latine dicitur.
- (4) Quod verbum respectu universae ecclesiae accipiendum esse Beda venerabilis attestatur: "Intuitus autem est," inquit, "Christus Petrum non exterioribus oculis solum sed aeterno divinitatis intuitu videt cordis ejus simplicitatem, animi sublimitatem; cujus merito cunctae esse praeferendus ecclesiae cui ait Christus; 'Tu es Petrus et super hanc petram aedificabo ecclesiam meam'"
- (5) Quod autem principatum praelationis Romani Pontificis non modo super ecclesiam dispersam sive super singulos fideles quemadmodum Basilienses erronea expositione interpretantur; sed etiam super universam ecclesiam synodaliter congregatam intelligere debeamus patenter ostendit beatissimus Chrysostomus qui exponens illud Joannis ultimo: "Pasce oves meas," ita ait: "Praeteriens autem alios Christus Petro loquitur, eximius enim erat apostolorum Petrus, os discipulorum et vertex collegii."

- (1) Secundo, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant, renuentes subesse (text has: subiisse) Romano pontifici, non attendentes quod Dominus ait ad Samuelem cum ab aliquibus de populo suo sperneretur: "non te abjecerunt sed me ut non regnem super eos," I Regum ^{XV} VIII. In qua temeritate Basilienses incidunt in errorem dicentium subesse Romano pontifici non esse de necessitate salutis. Contra quem errorem Maximus in epistola orientalibus directa loquitur: "Coadunatam et fundatam supra petram confessionis Petri dicimus universalem ecclesiam, secundum definitionem Salvatoris, in qua necessario saluti animarum nostrarum est manere et ei obedire suam servantes fidem et confessionem." Haec ille.
- (2) Praeterea contra hunc errorem est apostolicae sedes definitio qua in decretali, Unam sanctam declarat "subesse Romano pontifici esse de necessitate humanae salutis." Et hoc ipsum sanctus doctor in tractatu suo contra Graecos pluribus confirmat auctoritatibus.
- (3) Tertio, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum facto demonstrant, non parentis mandatis, statutis atque ordinationibus papalibus et alios eximentes ab obedientia Romani pontificis; non attendentes institutum divinum esse. Deuteronomii XVII, "Qui superbierit, nolens obedire sacerdotis imperio, qui eo tempore ministrat Domino Deo tuo et decreto iudicis, morietur homo ille." Nec animadverterunt damnatissimi homines, quod Nicolaus papa universali synodo praesidens decrevit, ut in capitulo "Si quis dogmata, mandata, interdicta, sanctiones vel decreta pro catholica fide, pro ecclesiastica disciplina, pro correctione imminentium vel futurorum malorum, a sedis apostolicae praesule salubriter promulgata, contempserit, anathema sit".
- (4) Hac autem sua temeritate Basilienses incedere visi sunt in errorem dicentium non esse obediendum statutibus papalibus quod haereticum esse. Sanctus doctor in libro contra impugnantes religionem pulchre ostendit hos verbis: "Dicitur in Decreto dist. xxii, capitulo Omnes, 'omnis qui Romanae ecclesiae privilegium ab ipso summo omnium ecclesiarum capite traditum (col 78; page 10) auferre conatur, proculdubio in haeresim labitur;" et infra: "fidem quippe violat qui adversus illam agit quae est mater fidei."
- (5) Hoc autem privilegium Christus Romanae ecclesiae contulit ut omnes ei sicut Christo obediant. Unde dicit Cyrillus Alexandrinus episcopus in libro II Thesaurorum: "Ut membra maneamus in capite nostro, apostolico throno Romanorum pontificum a quo nostrum est quaerere quid credere et quid tenere debeamus; ipsum venerantes, ipsum rogantes pro omnibus quoniam ipsius solum esse respondere, corrigere, statuere, disponere, solvere et in loco illius ligare; qui ipsum aedificavit cui omnes jure divino caput inclinant et primates mundi obediunt tamquam ipsi domino nostro Jesu Christo." Unde patet subjungit sanctus Thomas: "Quod quicumque dicit non esse obediendum his quae statuuntur per papam labitur in haeresim." Et beatus Gregorius, -- ut in capite Si qui, dist lxxxi, -- "Peccatum paganitatis incurret quisquis dum se Christianum asserit sedi apostolicae obedire contemnit." (Col 79)

- (1) Quarto, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant contententes se ad unitatem ecclesiae catholicae pertinere a Romano pontifice separatos et societate ecclesiae ejusdem. In qua sua temeritate incidere videntur in errorem illorum schismaticorum qui universalis ecclesiae unitatem negant etiam accipiendam esse ex ordine ad unum caput et cunctorum fidelium pastorem Romanum pontificem. Cujus erroris vinculis alligati fuerunt Indi, Armeni, Graeci, Valdenses, Hussitae; qui tam scripturae sanctae quam sanctorum patrum testimoniis evidenter convincitur.
- (2) Unde Salvator noster Petro quem praepositum ecclesiae suae vices suas gerentem disponebat, ait: "Ego dico tibi, quia tu es Petrus et super hanc petram aedificabo ecclesiam meam, et tibi dabo claves regni caelorum;" ubi glossa ideo dicit "specialiter Petro potestatem ligandi et solvendi Christum concessisse ut ad unitatem nos invitaret. Ideo enim principem eum apostolorum constituit ut ecclesia unum principalem haberet Christi vicarium, ad quem diversa membra ecclesiae recurrerent si forte inter se dissentirent. Quod si diversa capita essent in ecclesia unitatis vincula rumparentur." Haec glossa.
- (3) Item beatus Cyprianus adversus schismaticos qui a Cornelio papa temere et stulte facesserant, ad Nepotianum eorum maximum de unitate ecclesiae scribens, hunc eundem errorem ex eadem domini auctoritate perspicue confutat dicens, -- ut in capitulo loquitur, XXIV, Q 1: Compendio veritatis "loquitur Dominus ad Petrum: 'Ego tibi dico: tu es Petrus et super hanc petram aedificabo ecclesiam meam;' super unum aedificat ecclesiam; et quamvis apostolis omnibus post resurrectionem suam parem potestatem tribuat," -- 'quoad ordinem scilicet, et dignitatem consecrationis,' ut ait glossa -- "et dicat: sicut misit me pater meus et ego mitto vos. Accipite Spiritum sanctum; tamen ut unitatem manifestaret unitatis ejusdem originem ab uno incipientem, sua auctoritate disposuit;" et infra, "exordium ab unitate profiscitur ut ecclesia Christi una monstretur."
- (4) Secundo praefatus error ex illo Christi verbo convincitur ubi Dominus totius ecclesiae unitatem in uno pastore colligens ait: "Erit unus grex et unus pastor," quod verbum beatus Cyprianus in epistola ad Magnum ita dicit: "Dominus noster insinuans unitatem et de divina auctoritate venientem, ponit et dicit: 'Ego et pater unum sumus.' Ad quam unitatem redigens ecclesiam suam denuo ait; 'et erit unus grex et unus pastor.'" Quare beatus Ignatius in epistola VI quam ecclesiae Phyladelphiae scribit, hanc ecclesiasticae servandae unitatis regulam docet: "Principes subditi estote Caesari; milites principibus; diaconi presbyteris; presbyteri vero et diaconi et omnis clerus simul cum omni populo et militibus atque principibus, sed et Caesar ipse obediatur episcopo; episcopus vero Christo sicut Christus patri; et ita unitas per omnia servetur." Haec ille.
- (5) Quinto erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant inculcantes auribus fidelium se spreto et contempto Romano pontifice, universalem

ecclesiam (col 80) repraesentare. In qua temeritate in errorem Valdensium et Pauperum de Lugduno incurrisse videntur, qui Romanum ecclesiam criminantes, ad quosdam profanos apostatas et rebelles apostolicae sedi asserunt universalem ecclesiam esse redactam. Quorum Basiliensium errorem et stultitiam retundit id quod Salvator noster ait beato domino Petro primo Romanorum pontificum: "Tu es Petrus, et super hanc petram aedificabo ecclesiam meam." In quo verbo juxta sententias sanctorum patrum, doctorum et principalium ecclesiae, Petrus Petrique sedes ecclesiae fundamentum a Domino constituitur.

- (1) Quo jure universalem ecclesiam se repraesentare jactant qui ab eo super quod totius ecclesiae aedificii altitudo consurgit, disjuncti sunt? Plane falso catholicam ecclesiam repraesentare se dicunt qui in ecclesia non sunt. Ait enim beatus Cyprianus, -- ut in capitulo Qui, xliii dist: -- "Qui cathedram Petri super quam ecclesia fundato est, deserit, se esse in ecclesia non confidat." Et Augustinus libro VI, De unico baptismo contra Donatistas respondens Fortunato Episcopo dicit: "Jam vero si diligentius quaeramus qui sit foris, maxime quia ipse commemorationem fecit Petri super quem Christus aedificat ecclesiam, nonne illi sunt in ecclesia qui sunt in petra; qui autem in petra non sunt nec in ecclesia sunt?"
- (2) Hunc propterea perniciosum Basiliensium errorem apertissime refellit beatus Cyprianus ad Florentinum Pupianum, scribens in haec verba: "Inde enim (page 11) schismata et haereses ortae sunt et oriuntur, dum episcopus qui unus ecclesiae praeesit superba quorundam praesumptione contemnitur; et homo dignatione Dei honoratus indignis hominibus judicatur" et cetera. Et infra: "Loquitur illic Petrus super quem aedificata fuerat ecclesia, ecclesiae nomine docens, et ostendens quia etsi contumax et superba audire nolentium multitudo discedat; ecclesia tamen a Christo non recedit et illi sunt ecclesiae plebs sacerdoti adunata et pastori suo grex adhaerens; unde scire debes episcopum in ecclesia esse et ecclesiam in episcopo; Et si quis cum episcopo non sit, in ecclesia non est." Haec Cyprianus. Quamobrem inquit beatus Chrysostomus: "Sicuti capiti corpus cohaerere necesse est; ita ecclesiam sacerdoti et populos principi; cohaerere utique debent virgulta radicibus et fontibus fluvii."
- (3) Sexto, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant praesumentes agere concilium generale sine auctoritate Romani pontificis, contra illud Macchabaeorum XIV: Inter alia summi pontificis veteris legis privilegia scribitur, non licere "ulli ex populo et ex sacerdotibus... contradicere his quae [a summo pontifice] dicuntur aut convocare *[ad eum] conventum in regione sine ipso." Quod privilegium non minus credendum est esse Romani pontificis qui sicut illo praestantior est sacerdotio, ita excellentior auctoritate. Unde pariter in novo testamento, ut ait sanctus Marcellus papa et martyr in decretis suis c. V, teste illustri Aimaro libro suo De synodis: "Apostoli inspirante Domino instituerunt ut nulla fieret synodus praeter apostolicae sedis auctoritatem."
- (4) Hinc sanctus Pelagius papa episcopis universis scribens dicit: "Synodorum congregandorum auctoritas apostolicae sedis privatae

commissa est (col 81) potestati neque ullam synodum ratam esse legimus quae ejus non fuerit auctoritate congregata vel fulta; haec auctoritas attestatur canonis; hoc historia ecclesiastica roborat; hoc sancti patres confirmant." Haec ille. Basilienses vero in hac sua praesumptione in errorem illorum incidisse videntur de quibus in capitulo Omnes, dist. xxii dicitur, "qui Romanae ecclesiae privilegium ab ipso omnium ecclesiarum capite traditum auferre conatur, hic proculdubio labitur in haeresim" et cetera.

- (1) Septimo, erroneam intelligentiam se habere Basilienses circa auctoritatem generalium conciliorum facto demonstrant contententes decreta ipsorum et instituta esse valida sedis apostolicae auctoritate non fulta sive confirmata, contra sanctorum patrum et sanctorum canonum doctrinam, dist xvii, per totum. De quo etiam locupletissimus testis est clarissimus pater archiepiscopus Remensis Aymarus, libro de synodis capitulo xviii, ita dicens: "Non mireris quod ipsorum conciliorum auctoritatem Romano pontifici adscribamus. Nam nulla concilia rata legimus quae apostolica auctoritate fulta non fuerint; ut beatus Damasus papa in decretis suis, capitulo xix asserit; cui sanctus Athanasius et Julius papa, Nicenum quoque concilium et reliqui sancti patres adstipulantur. Nam illius sedis episcopus iudex est totius ecclesiae, nec aliquod iudicium valet absque legitimo iudice."
- (2) Porro Basilienses in hac sua temeritate prolapsi videntur in errorem negantium Romanum pontificem habere primatum universalis ecclesiae; qui error quam gravis sit, declarat sanctus Thomas in tractatu contra Graecos his verbis: "Similis est autem error dicentium Christi vicarium Romanae ecclesiae pontificem non habere universalis ecclesiae primatum, errori dicentium Spiritum Sanctum non procedere a Filio; ipse Christus Dei filius suam ecclesiam consecrat et sibi consignat Spiritu Sancto, quasi suo caractere et sigillo... Similiter [quando] vicarius suo primatu et providentia universam ecclesiam, tamquam fidelis minister Christo subjectam conservat, et cetera." Haec ille.
- (3) Octavo, erroneam intelligentiam se habere Basilienses circa auctoritatem generalium conciliorum facto demonstrant, vilipendentes et contemnentis sanctiones et definitiones fidei ac declarationes apostolicae sedis, non considerantes illud quod in c. Si Romanorum, dist xix, dicitur: "Si Romanorum pontificum decreto ceterorum opuscula tractatorum reprobantur; ita ut quod vere sedes apostolica approbavit hodie teneatur acceptum; et quod illa repulit hactenus inefficax habeatur; quanto potius quod ipsa pro catholica fide, pro sanctis dogmatibus, pro variis et multifariis ecclesiae necessitatibus et fidelium moribus diverso tempore scripsit, omni debent honore et ab omnibus prorsus in quibuslibet opportunitatibus discretionem vel dispensationem magistra reverenter assumi?" Haec ibi.
- (4) Et in canone sequenti ait textus sic: "Omnes apostolicae sanctiones accipienda sunt tamquam ipsius divinae voce Petri firmatae." Porro in hac sua temeritate Basilienses in errorem prolapsi videntur invidentium gloriae apostolicae sedis asserentium iudicium illius in his quae de fide sunt non esse firmum sed defectibile, et de facto

errare quandoque. Qui eo turpissime errare (col 82) convincuntur quod apostolicam sedem, -- fidei magistram, -- maculantes et Deum in promissis infidelem, et sanctos ecclesiae doctores fallaces protestantur aperte. In primis quidem hoc eorum errore promissionem illam Christi cassam ducere convincuntur. Petro locutus est dicens: "Tu es Petrus et super hanc petram aedificabo ecclesiam meam."

- (1) Quam Christi promissionem de firmitate fidei apostolicae sedis accipiendam esse, sancti patres, literis et (page 12) et religione in tota ecclesia clarissimi contestantur. Ait enim beatus Cyrillus Alexandrinus patriarcha, ut inducitur in Glossa continua: "Secundum hanc Domini promissionem ecclesia apostolica Petri ab omni seductione et haeretica circumventionem immaculata manet super omnes praepositos et episcopos, et super omnes primates ecclesiarum et populorum in suis pontificibus; in fide plenissima et auctoritate Petri, et cum aliae ecclesiae quorundam errore verecundatae sint, stabilita impassibiliter ipsa sola regnat, silentium imponens et omnium obturans ora haeticorum. Et nos necessitate salutis non decepti superbia, neque vitio superbiae inebriati typum veritatis et sanctae apostolicae traditionis una cum ipsa confitemur et praeedicamus." Haec Cyrillus.
- (2) Item beatus Chrysostomus super eodem verbo ita loquitur: "Vide qualiter Christus reducit Petrum ad celsam de ipso intelligentiam. Haec ei¹ promittit² quae sunt propria Dei solius scilicet peccata solvere, et ecclesiam immutabilem sive non vertibilem facere inter tot persecutionum et tentationum procellas."
- (3) Secundo, Basileenses iudicium apostolicae sedis credentes defectibile esse in his quae fidei sunt, invalidare conantur promissionem illam Christi qua Petro pro sede sua loquens, ait: "Ego rogavi pro te, Petre, ut non deficiat fides tua; et tu aliquando conversus, confirma fratres tuos." Quod autem hoc de fide apostolicae sedis semper immaculata semper firma mansura intelligendum sit, sanctorum patrum attestatur doctrina.
- (4) Unde sancto Agatho papa in suggestionem quam Constantino imperatori scribit, -- quae in VI universali synodo lecta omnium episcoporum subscriptione fuit venerabiliter acceptata, -- ita ait: "Petri annitente praesidio, haec apostolica ejus ecclesia numquam a via veritatis in qualibet erroris parte deflexa est; cujus auctoritatem utpote omnium apostolorum principis semper omnis catholica Christi ecclesia et universales synodi fideliter amplectentes, in cunctis [sequetae] sunt; omnesque venerabiles patres apostolicam ejus doctrinam amplexi; per quam [approbatissima] ecclesiae Christi luminaria claruerunt, et sancti quidem doctores orthodoxi venerati atque secuti sunt; haeretici autem falsis criminationibus ac derogationum odiis insecuti." Et infra: "[Haec] apostolica Christi ecclesia per Dei omnipotentis gratiam a tramite apostolicae traditionis numquam errasse probatur. Nec haeticis novitatibus depravanda subcubuit. Sed ut ab exordio [norman] fidei Christianae percepit ab auctoribus suis apostolorum Christi principibus, illibata fide tenus manet, secundum illius Domini Salvatoris divinam pollicitationem quam suorum apostolorum principi in sacris evangelis [faasus] est:

'Petre,' inquit, 'ecce sathan expetivit ut cribraret vos, sicut qui cribrant triticum; ego autem rogevi pro te, ut non deficiat fides tua; et tu aliquando (col 83) conversus confirma fratres tuos.'" Haec ille.

- (1) Item beatus Bernardus domino papae Innocentio scribens, hoc insigne apostolicae sedis privilegium ex eodem Salvatoris verbo attestatur his verbis: "Oportet ad vestrum referri apostolatum pericula quaeque et scandala emergentia in regno Dei, ea praesertim quae de fide contingunt. Dignum namque arbitror, ibi potissimum resarciri damna fidei, ubi fides defectum sentire non possit; haec quippe praerogativa est hujus sedis; cui enim alteri dictum est: 'ego pro te rogevi, Petre, ut non deficiat fides tua.'" Haec Bernardus.
- (2) Pertransimus brevitatibus causa plures alios testes, sicut sanctum Thomam, Albertum Magnum, dominum Hugonem cardinalem, scripturae sanctae illuminatissimos expositores. Ob quam indubitatum apostolicae sedis praerogativam beatus Hieronymus Damaso papae scribens, -- ut superius ex canone Haec est fides, commemoravimus, -- intrepidus et fide constantissima ait: "Si haec nostra confessio apostolatus tui iudicio comprobatur, quicumque me culpae voluerit, se imperitum vel malevolum vel etiam non catholicam sed haeticum comprobavit."
- (3) Nono, se erroneam intelligentiam habere Basilienses circa auctoritatem generalium conciliorum facto demonstrant, extollentes in tantum traditiones et dogmata sua, ut asserere videantur, -- in parvo etiam numero constitutos auctoritate et doctrina apostolicae sedis contemptores, -- in iudicio fidei errare non posse. Contra quos militat illud in anterioribus commemoratum apostolicae sedis privilegium, videlicet, nihil fore habendum ratum quod apostolica auctoritate fultum firmatumque non sit. Qua ex re, ut felix et sanctae memoriae Nicolaus papa in epistola quam Michaeli imperatori scribit, de qua in actione V octavae synodi universalis, "A sanctis patribus et conciliis observatum extitit, ut absque Romani pontificis consensu nullius insurgentis deliberationis terminus daretur."
- (4) Hac autem temeritate sua Basilienses incidunt in praesumptionem illorum stultitiamque, qui universaliter concilia non posse errare asserere praesumpserunt. quorum temerarium et praesumptuosum atque perniciosum errorem manifeste confutat hoc quod plura concilia leguntur errasse; ut concilium Mediolani celebratum sub imperatore Constantio; item concilium quod sub Tauro praefecto jussu ejusdem regis, copioso numero episcoporum conveniente Arimini celebratum est: in quo, ut dicit Hieronymus in altercatione Luciferani et orthodoxi, "nomine unitatis et fidei infidelitas scripta est." Contra quod Damasus papa viriliter surrexit synodali iudicio condemnans Liberium et omne quod fecerat annihilans. Unde scribens episcopis, et cetera, itaque in Illyrico constitutis, ut legitur libro V, capitulo xxix Historiae tripartitae de eo loquens, ita (page 13) dicit: "Nec praejudicium aliquod fieri potuit per numerum Arimini congregatum, quoniam constat nec Romanum episcopum cujus ante omnia decebat eos expectare decretum, nec Vincentium qui tantis annis episcopatum inviolabiliter custodivit nec alios, talibus

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praebuisse assensum." Item concilium universale Ephesinum quod in eversione fidei constat agitatum esse; item synodus Aquileae facta, qui quintam universalem synodum a Justiniano (col 84) imperatore et Vigilio papa Constantinopoli celebratam suscipere difficit, quam Sergius papa salubriter redarguit et ad concordiam reducit, ut notat Vincentius in Speculo historiali, libro xxiv, capitulo 134, ex historia Gilberti (Mansi notes: Sigeberti) colligens.

- (1) Item synodum trecentorum episcoporum tempore Constantini IV, Constantinopolim congregatam, in qua, -- ut idem narrat Vincentius libro commemorato, capitulo 158 -- edictum promulgatum est de imaginibus Dei et sanctorum deponendis; contra quam Stephanus papa Romae synodum congregat, in qua omnia a Constantino ordinata reordinat. Et venerationem sanctarum imaginum confirmat, earumque profanatores anathematizat, -- ut idem Vincentius commemorat loco et libro supra allato, capitulo 161.
- (2) Item concilium Aquisgrani celebratum cujus definitioni circa sacramentum matrimonii non acquiescitur; videlicet quod raptor non possit matrimonialiter cum rapta copulari, -- de quo in canone Placuit, xxxvi, Q 2. Sed potius testatur auctoritati Hieronymi contrarium definientis, -- ut in canone Iria, eadem causa et quaestio; Unde glossa in capitulo De libellis, dist xx super verbo illorum, doctorum, movens, an potius judicandum sit secundum illum qui utitur ^[INITIUM] auctoritate canonis vel Augustini; respondet, quod secundum illum qui utitur auctoritate canones, nisi Augustinus juvetur auctoritate veteris vel novi testamenti, vel alio canone Nam licet concilium statuerit quod raptor non possit matrimonialiter cunjugi cum rapta -- ut xxxvi, Q 2, capitulo Placuit, -- tamen Hieronymus, contrarium statuit; ei statur ut xxxvi, Q 2, canone Iria. Haec glossa.
- (3) Praeterea beatissimus Augustinus hunc errorem eliminat in quadam epistola contra Donatistas, ubi post quoddam acerrimum argumentum, subinfert ad propositum sic: "Faciunt mille concilia episcopi vestri, huic uni sententiae respondeant; et ad id quod volueritis contemnimus vobis." In hac autem sua temeritate Basilienses vana interpretatione decepti sunt ejus quod Dominus ait: "Ubi cumque duo vel tres fuerint congregati in nomine meo ibi sum ego in medio eorum."
- (4) Sic beatus Cyprianus de Novatianis schismaticis, qui a papa Cornelio divisi hac eadem auctoritate usi sunt in defensionem fomentumque suorum errorum; non enim hujusmodi corruptores evangelii ac interpretes falsi, ut verbis utar ejusdem Cypriani, animadvertunt quod non multitudine, sed unanimitati Christus praesentiam suam exhibet; quam profecto non habent qui a pastoris sui et summi sacerdotis obedientia, fide, societate corporis episcoporum, cleri, et plebis ejus temere discesserunt. An esse sibi cum Christo videtur, inquit Cyprianus contra praefatos schismaticos a Cornelio papa disjunctos, ubi supra in epistola secunda, quam De unitate ecclesiae eleganter scripsit: "Qui adversus sacerdotem Christi facit qui se a cleri ejus ac plebis societate secernit; arma ille contra ecclesiam portat; contra Dei dispositionem repugnat; hostis est altaris et adversus Christi sacerdotium rebellis; pro fide

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perfidus, pro religione sacrilegus, obsequens servus, filius impius, frater inimicus, contemptis episcopis ex ejus sacerdotibus derelictis, constituere audet aliud altare, partem alteram illicitis, vocibus facere (col 85) dominicae hostiae veritatem per falsa sacrificia profanare." Haec ille.

- (1) Plane illa generalia concilia credenda sunt in his quae ad fidem attinent non errare quae universalis ecclesiae consensu, apostolicae scilicet, sedis, quae magistra fidei et caput est omnium ecclesiarum, et patrum ecclesiae unanimitate conclusa sunt. Ita aperte innuitur in capitulo Sicut, dist xv ubi beatus Gregorius quatuor universalia concilia quae hujusmodi fuerunt, sicut libros evangelii se venerari fassus, subinfert: "Quia dum universali consensu sunt constituta, se et non illa destruit quisquis praesumit absolvere quos religant, aut ligare quos absolvunt." Et in capitulo Confidimus, xxx, q 1, ubi felicitis recordationis papa Gelasius ita ait: "Confidimus quod nullus iam veraciter Christianus ignorat uniuscujusque synodi constitutum, quod universalis ecclesia probavit assensus, nullam magis exequi sedem prae ceteris oportere, quam primam, quae et unamquamque synodum pro sua auctoritate confirmavit et continuata moderatione custodit."
- (2) Hujusmodi concilia sunt illa quae plenaria vocat Augustinus, quorum ut ipse ait in epistola ad Januarium, in ecclesia saluberrima auctoritas est, in capitulo Ille, dist xii. Proinde beatus Leo papa scribens ad Aquilegium episcopum et docens formam canonicam qua recipiendi essent quidam haeretici Nestoriana impietate infecti, singulariter notat decreta synodalia sedis apostolicae auctoritate firmata, ita dicens: "Damnent apertis confessionibus suis superbi erroris auctores; et quod in doctrina eorum universalis horruit ecclesia detestentur; omniaque decreta synodalia quae ad discissionem hujus haereseos apostolicae sedis confirmavit auctoritas, amplecti se et in omnibus approbare plenis et apertis, ac propria manu scriptis et protestationibus eloquantur." Ex quibus palam est quam vesana et stulta agitatione Basilienses pulsentur, qui sanctissimum dominum nostrum Eugenium et universam Christi ecclesiam ei adhaerentem, -- praelatos, principes, plebemque Latinam et Graecam non recipientes eorum declarationes in furore quodam, et per paucos apostolicae sedi contradicentes praesumptos haereticos clamant; adscribentes eorum acephalae et profanae congregationi, (page 14) quae de sanctis synodis universalibus sanctorum patrum scripturae commemorant.
- (3) Decimo, erroneam intelligentiam se habere Basilienses circa auctoritatem generalium conciliorum facto demonstrant exigentes bullam, sede principis non vacante, contra voluntatem ejusdem principis. In qua temeritate Basilienses prolapsi in errorem videntur eorum qui generalium conciliorum robur et auctoritatem et suarum sententiarum confirmationem a Romano pontifice negant dependere. Contra quem plura authentica testimonia sunt in anterioribus inducta sunt. Accedit praeterea id quod sanctus Thomas in I: I et in quaestione De potentia ait, quod "ex gestis concilii Chalcedonensis manifestum habere dicit a Romano pontifice sententias concilii confirmari."

- (1) Item Nicolaus papa in epistola ad Focium ita dicit: "Decretalia quae a sanctis pontificibus primae sedis, Romanae ecclesiae, sunt instituta, cujus auctoritate ac sanctione omnes synodi et sancta concilia roborantur (col 86) et stabilitatem sumunt, cur vos non habere vel observare ducitis nisi quia vestrae ordinationi contradicunt?" Facit praeterea contra illorum quod in capitulo Bene quidem, dist xvi dicitur, "quod si cujuslibet provinciae sacerdotes intra suos terminos concilio habito, quidquid sine metropolitani sui auctoritate tractaverunt, irritum esse debere patres sancti sanxerunt. Quanto magis quod in apostolica sede nunc stante praesule qui beati Petri apostoli merito per universum orbem primatum obtinens sacerdotii, statutis synodalibus consuevit tribuere firmitatem?"
- (2) Undecimo, erroneam intelligentiam se habere Basilienses circa auctoritatem generalium conciliorum facto demonstrant contententes se habere potestatem immediate a Christo super omnes fideles, cujuscumque status aut dignitatis existant, sine dependentia quacumque atque mediatione Romani pontificis, sive apostolicae sedis. Contra quos apertissime facit quod proxime est de dependentia auctoritatis conciliorum a Romano pontifice et illud quod in capitulo Significasti, Extravag. de electione dicitur, quod "omnia concilia per ecclesiae Romanae auctoritatem et facta sint et robur acceperint.
- (3) Porro in hac sua temeritate Basilienses prolapsi videntur in errorem maximum eorum qui ecclesiarum auferre moliti sunt hierarchicum ordinem et decorem coelestem, quo militantem ecclesiam a Christo ordinatam beatus Joannes evangelista describit Apocalypsis XXI: dicens: "Vide civitatem sanctam Jerusalem novam descendentem de caelo." Illam dicit quidem descendentem de caelo quia ad imaginem exemplar quidem coelestis hierarchiae formatum novit quemadmodum doctores exponunt; prout pulchre beatus Bernardus libro III ad Eugenium papam explanat.
- (4) "Lex autem hierarchiae sanctissima," ut divinus Dionysius Areopagitica V: Ecclesiasticae hierarchiae inquit "est per prima secunda ad divinissimam reducere lucem. An non sensibiles elementorum essentias videmus, in magis eis cognatiora primum venientes, et per alia propriam dividentes operationem? Pulchre ergo omnis invisibilis et visibilis ornatu principium et fundamentum in deiformes primos infert deificos radios venire, et per illos tamquam lucidiores animos, et ad participationem luminis et traditionem, idest congruentiam vel idoneitatem opportunam habentes, in subjectos proportionaliter ei lucet et superapparet."
- (5) Cum autem Romanus Pontifex sit primus et hierarcha ecclesiasticae hierarchiae, sicut apertissime ex eodem beato Dionysio colligitur, qui capite V beatum Petrum verticem nominat discipulorum, hierarchiae sibi coordinatorum. Proculdubio munus potestatis ecclesiasticae qua in ecclesia actus hierarchici perficiuntur, nulli personae aut ordini aut etiam ipsi corpori hierarchiae tribuitur, nisi mediante Romano pontifice qui in ordine hierarchiae ecclesiasticae supremus est. Unde idem Dionysius loco super commemorato inquit, "Sublissimus et novissimus est [ordo pontificum] et in ipso^[om] perficitur et impletur omnis hierarchiae nostrae dispositio. Ut enim omnem

hierarchiam videmus in Jesu^{CONFIRMATAM} ^{CONSUMMATAM}; sic unamquamque in proprium divinum summum sacerdotem. Ipsa autem hierarchici (col 87) ordinis virtus, in omnibus locatur sanctis totalitatibus et per omnes divinos ordines operatur proprie hierarchiae mysteria."

- (1) Hunc etiam ordimen in ecclesia illustris Paulus, ejusdem Dionysii magister et praeceptor, insinuare videtur, ubi tam ad Romanos quam ad Corinthios de ecclesia sub figura corporis naturalis loquitur. Manifestum esse autem videtur nisi mediante capite in corpus omnem sensum et motum inferri. Inde etiam inquit beatus, Isidorus decimo Stymologiae: "Caput dictum est quod sensus et nervi inde initium capiant atque ex eo omnis vigenda causa oriatur."
- (2) Quamobrem sanctus Leo papa de munere ecclesiasticae auctoritatis loquens, -- ut in capitulo Ita dominus, xix dist, -- dicit: "Hujus muneris sacramentum ita Dominus ad omnium apostolorum officium pertinere voluit, ut in beato Petro apostolorum omnium summo principaliter collocaret, ut ab ipso quasi quodam capite dona sua veluti in corpus omne diffunderet, ut extorem se ministerii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere." Haec ille. Alios potentissimos hujus veritatis testes gratia brevitate pertransimus.
- (3) Duodecimo, erroneam intelligentiam se habere circa auctoritatem generalium conciliorum Basilienses facto demonstrant contententes se potestate superiores esse omnium supremo Romano Pontifici. In qua elatione Basilienses coincidunt in errores jam commemoratos dicentium Romanum (page 15) pontificem non esse caput, praelatum et pastorem totius ecclesiae. Nulli quippe sani intellectus dubium est, caput superius praestantiusque esse potestate toto residuo corpore, praelatum subditis et pastorem ovibus sive dispersis sive in unum collectis. Unde beatus Gregorius in homilia dominicae Resurrectionis et habetur in capitulo Considerandum, dist 1, de principe apostolorum Petro ita loquitur: "Considerandum vobis est cum omnipotens Deus eum quem cunctae ecclesiae praeferre disposuerat et ancillae vocem pertimescere, et se ipsum negare permisit" et cetera. Sed potissime in errorem incidunt dicentium Romanum Pontificem non habere supremam auctoritatem in ecclesia. De quo errore in superioribus ex epistola domini Martini papae, quam, universono approbante concilio Constantiensi edidit, mentio facta est.
- (4) Decimotertio, erroneam intelligentiam se habere circa auctoritatem generalium conciliorum Basilienses facto demonstrant contententes supremum principatum ecclesiae non apud unum sed apud multitudinem esse, contra illud Joannis X: "Erit unum ovile et unus pastor;" et illud quod Salvator ait Petro: "Super plebem meam te constitui principem." In hac autem sua temeritate Basilienses incidunt in errorem dicentium regimen ecclesiae non esse monarchicum; contra quos est illud Isaiae IX: "Super solium David et super regnum ejus sedebit;" --glossa: "idest ecclesiam." Item contra eos est Salvator noster qui repetitis vicibus ecclesiam in evangelio nomine regni describit.
- (5) Item beatus Gregorius, -- ut in capitulo Petrus, XI, Q 7 -- dicit Petrum potestatem regni accepisse. Item sanctus Thomas in IV,

dist xix testatur, papam habere plenitudinem potestatis pontificalis sicut rex habet in regno. Regimen autem ecclesiae (col 88) monarchicum esse ab omnipotenti Deo constitutum, ratio ipsa demonstrat. Nulli enim dubium esse debet quin regimen ecclesiae sit optime ordinatum; utpote per eum dispositum "per quem reges regnant et legum conditores justa decernunt. Optimum autem regimen multitudinis est quod regatur per unum; quod patet ex fine regiminis qui est pax. Pax enim et unitas subditorum est finis regentis. Unitatis autem causa congruentior est unus quam multi. Manifestum est igitur regimen ecclesiae sic esse dispositum ut unus totae ecclesiae praesit. Haec ratio sanctus Thomae libro IV Contra Gentiles capitulo 76.

- (1) Quare beatus Augustinus in sermone quodam apostolorum Petri et Pauli admirans principatum Petri ita inquit: "O mira potentia, ineffabilis gratia Salvatoris! quis persecutorem Saulum martyrem crederet esse futurum? quis plebium piscatorem apostolorum facile crederet principem regibus obsistere, greges sanctificare, regnis omnibus imperare, mundum fraenare legibus?" Cum autem in principatu monarchico sive regali potestas apud unum, scilicet, principem, tantum sit et non apud multos, ut habet doctrina Aristotelis III Politico-rum. Quod etiam sanctus Thomas in IV Sententiarum, dist xxiv confirmat dicens: "In regno tota potestatis plenitudo residet penes unum; in aristocratia autem penes nullum sed apud omnes." Manifeste colligitur nescire quid loquantur dicentes, in regno ecclesiae apud papam et apud multitudinem synodalem simul esse ecclesiae supremum principatum aut supremam plenitudinem potestatis.
- (2) Decimoquarto, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant constituentes aliud supremum tribunal a tribunali apostolicae sedis. In qua temeraria novitate prolabi videntur et in errores supra commemoratos et articulum unitatis ecclesiae manifesta impietate offendere. Duo enim suprema tribunalia unitas ecclesiae non patitur. Quemadmodum enim sanctus Thomas ostendit in IV: dist xxiv: necesse est fore unam supremam potestatem regitivam respectu totius ecclesiae; "alias," ut inquit, "non esset colligatio ad unum." Hanc autem potestatem supremam dicit esse Romani Pontificis, quam "qui negant," inquit, "schismatici esse dicuntur; quasi divisores ecclesiasticae unitatis."
- [DIVERSORES]
- (3) Unde beatus Cyprianus in epistola ad Cornelium papa, de quinque presbyteris "Deus unus est et Christus unus; et una ecclesia et catholica una, super Petrum domini voce fundata; aliud altare construi aut sacerdotium novum fieri, praeter unum altare et unum sacerdotium, non potest. Quisquis alibi collegerit spargit; adulterium est; sacrilegium est; et impium est quodcumque humano furore constituitur, ut dispositio divina violetur." Haec Cyprianus. Quae sententia maxime Basilienses respicit qui furiosis vocibus et tyrannide quadam, contra divinam dispositionem, sedem supremam similem sedi apostolicae ab aequilone erigere praesumpserunt.
- (4) Decimoquinto, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant suscipientes appellationes indifferenter ab apostolica sede, agentes in hoc contra definitionem (col 89) Ephesini concilii, in quo definitum legitur ut a sententia apostolicae sedis nulli appellare liceret. Unde in

capitulo ipsi sunt canones, ix, Q 3 sanctae memoriae Pelagius papa Gregorii praedecessor: "Ipsi sunt canones qui appellationes totius ecclesiae ad hujus sedis examen voluerunt deferri; ab ipso vero numquam prorsus appellare debere sanxerunt; ac per hoc illam de tota ecclesia judicare, ipsam ad nullius commeare iudicium; nec de ejus usquam praeceperunt iudicio iudicari; sententiamque ejus constituerunt non oportere dissolvi, cujus potius sequenda decreta mandarunt."

- (1) In hac autem sua temeritate Basilienses non tantum aperte in errorem incidunt dicentium Romanum Pontificem non habere in ecclesia supremam auctoritatem, merito cujus de tota ecclesia appellatur ad ipsum, (page 16) dicente beato Bernardo, libro III, De consideratione ad Eugenium papam: "Appellatur de toto mundo ad te; id quidem in testimonium singularis primatus tui."
- (2) Verum etiam manifeste condemnant sanctam Chalcedonensem synodum, ex cujus gestis sanctus Thomas in quaestionibus De potentia, Q 10, art 4 haberi testatur, quod a synodo appellatur ad papam. Item reprobare videntur appellationem factam per sanctum Flavianum Romano pontifici praesidente in secunda synodo Ephesina in favorem fidei, quam sanctissimus Leo factum esse commemorat et commendat scribens ad Theodosium imperatorem.
- (3) Sextodecimo, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant retractantes et cassantes iudicia et sententias apostolicae sedis, contra prohibitionem sanctorum canonum, -- ut in canone proxime allato, Ipsi sunt canones, IX, Q 3. In qua temeritate cum "lex superioris per inferiorem tolli non possit," ut in capitulo Ne Romani Extravag. de electione in Clementinis; et maxime, ut glossa Joannis Andreae habet, "cum inferior a superiori recipit potestatem," cujusmodi dicit esse concilii respectu papae, -- eo ^{libet} titulo, capitulo Significasti."
- (4) Basilienses videntur impie credere aliud tribunal iudicii majus esse tribunali Christi, qui in apostolica sede per vicarium suum Romanum Pontificem iudicia quasi exercere videtur ecclesiae, unde glossa Origenis in illud Matthaei XVI: "Quodcumque ligaveris," et cetera, ait: "Vide quantam potestatem habet petra supra quam aedificatur ecclesia, ut etiam iudicia ejus maneant firma quasi Deo iudicante per eam." Et Chrysostomus super illud Joannis ultimo: "Pasce oves meas," dicit, "id est, loco mei praepositus est et caput fratrum tuorum, ut ipsi loco meo te assumentes ubique terrarum, te in throno suo sedentem praedicent et confirment."
- (5) Quare in capitulo Patet, Q 3 dicit felicitis recordationis Nicolaus papa: "Patet profecto apostolicae sedis iudicium cujus auctoritate majus non est iudicium, a nemine fore retractandum." Et in capitulo Nemini, xvii, Q 4 idem habetur. Sane in hac impietatis praesumptione non solum de Basiliensium congregatione proprie verificari videtur quod de Lucifero, Isaiae XIV scribitur: "In caelum conscendam; super astra exaltabo solium meum; sedebo in montem testamenti in lateribus aquilonis; ascendam super altitudinem montium; similis ero altissimo." Sed et illud (col 90) quod de antichristo Apostolus II ad Thessalonicenses ii loquitur: "Qui adversatur

et extollitur super omne quod dicitur Deus aut [creditur] ita ut in templo Dei sedeat ostendens se tamquam Deus." add [SIT]

- (1) Decimoseptimo, erroneam intelligentiam se habere circa generalium conciliorum auctoritatem Basilienses facto demonstrant praesumentes absolvere quos apostolica sedes ligat, et ligare quos absolvit; non advertentes obtenebrati homines, quod ut in capitulo Manet, xxiv, Q 1 inquit sanctus Ieo papa: "Nihil erit ligatum vel solutum nisi quod beatus Petrus aut ligaverit aut solverit." In qua praesumptione Basilienses ferri videntur in errorem dicentium Petrum prae omnibus aliis non accepisse a Christo ligandi et solvendi potestatem, sive principatum judicariae potestatis contra illud quod approbatissima Glossa habet super illud Matthaei XVI: "Tibi dabo claves regni caelorum;" ideo Petrus clavis regni caelorum et principatum judicariae potestatis accepit, ut omnes per orbem credentes intelligant quia quicumque ab unitate fidei vel societate illius quomodo-libet semetipsos segregant, tales neque vinculis peccatorum absolvi nec januam possunt regni caelorum ingredi."
- (2) Hanc praeterea Basiliensium temeritate maximae auctoritatis pater papa Pelagius omnibus episcopis scribens retundit, in capitulo Cuncta ix, Q 3, ubi ait: "Sed nec illa praeterimus quod apostolica sedes sine ulla synodo praecedente, et solvendi quos synodus iniqua damnaverat et damnandi nulla existente synodo, quos oportuit habuerit facultatem." Et hoc nimirum pro suo principatu quem beatus Petrus apostolus Domini voce et tenuit semper et tenebit.
- (3) Decimooctavo, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant usurpantes, sedente in apostolica sede uno indubitato summo pontifice, exercitium plenitudinis ecclesiasticae potestatis. In qua temeraria usurpatione Basilienses incidisse videntur in illorum supra commemoratum, errorem Constantiae condemnatum, quod Romanus Pontifex non sit caput sanctae ecclesiae catholicae. Sane cum Romanus Pontifex caput corporis ecclesiae sit et in corpore solum membrum capitis sensus habeat plenitudinem et virtutis. Solus Romanus Pontifex in ecclesiae corpore, utpote summus Christi vicerius, habeat plenitudinem potestatis.
- (4) Unde sanctus Cyrillus auctoritatis clarissimae patriarcha Alexandrinus, in libro Thesaurorum ait: "Sicut Christus accepit a Patre sceptrum ecclesiae gentium ex Israel egrediens, super omnem principatum et potestatem, et super omne quodcumque est ut ei genua cuncta curventur, plenissimam potestatem; sic et Petro et ejus successoribus plenissime commisit." Et infra: "Nulli alio quam Petro [Christus] quod suum est plenum, sed ipsi soli dedit." Quare beatus Gregorius in c. Decreto, ii Q 6, ait: "Sancta Romana ecclesia vices suas ita aliis impertitur ecclesiis, ut in partem sint vocatae sollicitudinis non in plenitudinem potestatis." Et beatus Bernardus in libro De consideratione ad Eugenium papam, inquit: "Juxta canones tuos alii in parte sollicitudinis; tu in plenitudine potestatis vocatus es; aliorum potestas certis arctatur limitibus; tua extenditur et in ipsos qui (col 91; page 17) potestatem super alios acceperunt."

- (1) Plane si generalium conciliorum est facultas quam Basilienses temere attentarunt, beato Leo pontifex Anatholium patriarcham Constantinopolitanum, qui Chalcedonensem synodum traxerat ut sedes sua prima post Romanam constitueretur, tam dure et graviter non reprehendisset, resipuens atque despiciens dispositionem synodi, dicens: "Id agere non potuisse quia pro sola causa fidei fuerat tantum synodus congregata.
- (2) Unde in epistola ad eundem patriarcham ita praefatus Leo loquitur: "Doleo etiam in hoc dilectionem tuam esse progressam ut sacratissimas Nicaenorum canonum constitutiones conaveris infringere; tamquam opportune se tibi hoc tempus obtulerit, quo secundi honoris privilegium sedes Alexandrina perdiderit; Antiochena ecclesia proprietatem tertiae dignitatis amiserit; ut his locis iuri tuo subditis omnes metropolitani episcopi proprio honore priventur. Quibus auditis et numquam tentatis ita perveneris excessibus ut sanctam synodum ad extinguendam solum haeresim et ad confirmationem fidei catholicae, studio Christianissimi principis congregatam in occasionem ambitus trahas; et ut convenientiam suam tibi debeat, ^{inter}pellas; tamquam refutari nequeat quod illicite voluit multitudo."
- (3) Insuper antedictus Basiliensium error manifesta demonstratione repellitur in epistola beati Leonis ad episcopos directa qui in sancta synodo Chalcedonensi fuerant congregati. In qua eadem causa scribens ita ait: "Ne ergo per malignos interpretes dubitabile videatur, utrum quae in synodo Chalcedonensi per unanimitatem universalem de fide statuta sunt, approbem. Haec ad omnes fratres et coepiscopos nostros qui [in] praedicto concilio interfuerunt scripta direxi, quae gloriosissimus et clementissimus princeps sicut poposci, in notitiam vestram mittere pro catholicae fidei amore dignabitur; ut et fraterna universitas et omnium fidelium corda cognoscant, me non solum per fratres qui vicem meam executi sunt, sed etiam per approbationem gestorum synodaliū propriū vobiscum inisse sententiam. In sola vero fidei causa quod saepe dicendum est, propter quam generale concilium et ex praecepto Christianorum principum et ex consensu apostolicae sedis placuit congregari." Et infra: "De custodiendis quoque sanctorum patrum statutis quae in synodo Nicaena inviolabilibus sunt fixa decretis observantiam vestrae sanctitatis] admoneo. Ut jura ecclesiarum sicut ab illis trecentis decem et octo patribus divinitus inspirata^[15] sunt, ordinata permaneant; nihil alienum improbus ambitus concupiscat, nec per alterius imminutionem suum aliquis quaerat augmentum; quantumlibet extortis assentationibus sese instruat vanitas, elatio, et appetitus suos conciliorum existimet nomine roborandos. Infirmum erit ac irritum quidquid a praedictorum patrum canonibus discrepaverit." Haec ille.
- (4) Ex quibus clarissima luce colligitur solum ad ea generalia concilia congregata habere facultatem ad quae apostolicae sedis auctoritate congregata sunt. Unde sanctus Thomas hoc animadvertens in tractatu Contra impugnantes religionem, ita dicit: "Sancti patres in conciliis congregati nihil statuere potuissent nisi auctoritate Romani Pontificis interveniente, sine quo et (col 91) concilium congregari non potest." Haec sanctus Thomas.

- (1) Decimonono, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant tradentes praerogativas et privilegia principatus Romani Pontificis in dispensationibus, absolutionibus, confirmationibus; in datione pallii, in missione legatorum de latere; et quod maxime mirum est, in concessione plenaria indulgentiarum, -- sede apostolice non vacante et Romano Pontifice dispensatore earum, -- offerente se juxta formam solitam in ecclesia observari, ad concedendum si casus necessitatis exposceret.
- (2) Contra quos omnis practica est ecclesiae et doctorum clarissimorum traditio; quorum communis doctrina est quod potestas faciendi indulgentiam plenariam in solo Romano Pontifice sive apostolica sede locata sit. agnoscat quae dicimus qui doctores famosos theologiae facultatis perscrutari voluerit; et maxime Alexandrum de Ales, Albertum Magnum, sancti Thomam, et Bonaventuram, qui tamquam sublimiora luminaria in schola theologiae facultatis venerantur. Quorum rationes, quidquid Basilienses insipienter gariant, ita Romano Pontifici utpote praesidenti, dispensatori, et rectori totius ecclesiae ac sponso ejusdem praefatam auctoritatem adscribunt; ut liquodo designent illam communitati ecclesiae in casu praesenti nullatenus convenire.
- (3) Ceterum docet nos hoc forma indulgentiarum datarum in universali concilio Lateranensi pro passagio, de quibus in capitulo Ad liberandum, Extravag. de Judaeis et Saracenis, quam in Apparatu Innocentius pontifex -- et Joannes Andreas post eum, -- in qua forma solus Romanus Pontifex auctoritate sibi a Domino commissa, gratiam plenariae indulgentiae describitur concessisse. Synodus vero universalis non peccatorum veniam sed orationum suffragia legitur impartiri.
- (4) Porro in hac praesumptione et temeritate qua et lacerare et exhaurire apostolicae sedis auctoritatem Basilienses moliti sunt. Praeter hoc, quod in plures errores supernuntiatos inciderint tamquam invasores et praedones jurium beati Petri principis apostolorum et novitatum atque sectarum inductores, involvi videntur illa maledictione de qua Dominus ait Deuteronomio XXVII: "Maledictus qui transfert terminos proximi sui. Et dicet omnis populus; amen!" Ubi Glossa ordinaria dicit: "Hic est qui non contentus fide catholica et doctrina superstitiones et sectas inducit."
- (5) Utinam Basilienses imitati fuissent (page 18) prudentiam atque modestiam apostoli Pauli, qui II Corinthios X ait: "Non ^{add [IN]} immensum gloriabimur sed secundum mensuram regulae quam mensus est nobis Deus." Glossa ordinaria, idest: "Tanta potestate utimur quanta concessa est ab auctore; neque mensuram vel modum egredimur; et non gloriabimur in immensum potestatem exercendo, quod illi faciunt qui usurpando gloriantur ultra mensuram." Haec glossa. Cujus apostolici documenti formam profecto si Basilienses observassent tot scandala ab eis sancta mater ecclesia non sentiret. In quo optime dicit beatus Gregorius: "In praecipiti pedem porrigit qui mensurarum suarum limitem non attendit." (col 93)
- (6) Vigesimo erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant praesumentes Romanum Pontificem universalis ecclesiae principem, suis legibus ac

statutis ligare. Cum ab ipsa ratione censeatur alienum ut his in legibus coactus alligetur qui legibus vim et auctoritatem impertitur. Unde jurisperitus ait: "Princeps solutus est legibus," quantum scilicet, ad vim coactivam legis. Quare in capitulo Significasti, Extravag. de electione, dicitur, quod concilia ecclesiae Romanae legem non praefixerunt;" cum omnia concilia per ecclesiae Romanae auctoritatem facta sint et robur acceperint, et in eorum statutis Romanae ecclesiae patenter excipiatur auctoritas;" quoniam ut dicit textus, Mis itaque, xxv, Q 1: "Ita sacrosancta Romana ecclesia jus et auctoritatem sacris canonibus impartitur sed non eis alligatur. Habet enim jus condendi canones utpote quae est caput et cardo omnium ecclesiarum. Regulae dissentire nemini licet." Ita ergo canonibus auctoritatem praestat ut seipsam non subiciat eis.

- (1) Porro in hac praesumptione sua Basilienses potissime inter alios involvi videntur eorum errore, qui Romanam ecclesiam non a Christo immediate obtinuisse primatum et principatum supremum quem habet, asserunt; quorum errorem sanctorum patrum apertissime damnat auctoritas. Unde in capitulo Quamvis, dist xxi ait textus notabilis Pelagii papae qui omnibus orthodoxis scribens, ita inquit: "Quamvis universae per orbem catholicae ecclesiae unus thalamus Christi sit; tamen sancta Romana ecclesia catholica et apostolica nullis synodalicis constitutis ceteris ecclesiis praelata est; sed evangelica voce Domini et Salvatoris nostri primatum obtinuit: "'Tu es,' inquit Dominus, 'Petrus et super hanc petram aedificabo ecclesiam meam.'"
- (2) Item in capitulo Omnes, dist xxii, dicit Nicolaus papa: "Omnes sive patriarchae cujuslibet apicem, sive metropolitani primatus aut episcopatum cathedras vel ecclesiarum cujuscumque ordinis dignitates instituit Romana ecclesia illam vero solus ille fundavit et super petram fidei mox nascentis erexit qui beato Petro, aeternae vitae clavigero, terreni simul et caelestis imperii jura commisit." Et in capitulo sequenti dicit Anacletus papa et martyr: "Sancta Romana ecclesia . . . non ab apostolis sed ab ipso Domino Salvatore primatum obtinuit sicut beato Petro apostolo dicit: 'Tu es Petrus' et reliqua."
- (3) Vigesimo primo, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant superbe contradicentes et repugnantes translationi generalis concilii, -- quam sanctissimus dominus noster Eugenius justissimis causis et necessariis de consilio dominorum cardinalium et plurimorum fecit de Basilea in Ferrariam et tandem de Ferraria in Florentiam, -- non considerantes quod dicitur I Regum XV: "Numquid vult Dominus holocausta et victima, et non potius ut obediatur voci Domini? Melior est enim obedientia quam victima et auscultare magis quam offerre adipem arietem; quoniam quasi peccatum ariolandi est repugnare et quasi scelus idololatriae non acquiescere." Ubi glossa inquit: "Sola obedientia est quae fidei meritum possidet sine quo quisque infidelis esse convincitur." Non advertentes etiam illud Gregorii in capitulo Nulli, dist xix, dicentis: "Nulli fas est velle vel posse transgredi (col 94) apostolicae sedes praecepta."

- (1) Sane in hac sua sacrilega praesumptione Basilienses novum errorem confingentes, -- quod Romanus Pontifex cui universalis ecclesiae cura commissa est, non posset ex causa rationabile transferre concilium generale sine consensu ejusdem concilii, -- facti sunt haeresiarchae. Numquid secunda synodus Ephesina amplissimo numero praelatorum venerabilis, licet apostolica auctoritate congregata et praesidentia summi pontificis legatorum honorata; nihilominus quia in ea non observabatur "justitiae moderatio neque fidei religio"; beato Leo papa, eam non modo inrequisito synodali consensu submovit sed etiam condemnavit auctoritate ejus, qui ait Isiae LIV: "Dissolve colligationes impietatis," atque in eius correctionem synodum Chalcedonensem sua auctoritate disposuit?
- (2) Numquid praeterea Dominus papa Martinus qui non haereticus sed fidelis, catholicus a tota ecclesia habitus est, in bulla facultatis praesidentium quos in concilio Papiensi constituit, auctoritatem tribuit causa legitima subsistente, transferendi concilium ad alium locum nulla mentione facta de consensu concilii. Cujus verba ad praesidentes sunt quae consequuntur: "Et ne propter aliquem casum qui solet quandoque contingere, celebratio et continuatio ejusdem concilii retardetur, opportune providere volentes discretioni vestrae ubi legitima causa subsistat, ipsum concilium de civitate praedicta ad quamcumque aliam civitatem ejusdem nationis ad hoc liberam, habilem, et sufficientem de qua vobis videbitur. Auctoritate nostra transferendi, prorogandi, mutandi et dissolvendi et cetera, apostolica auctoritate tenore praesentium concedimus facultatem." Haec ibi. Quis autem tam perfidus et mente alienatus est, qui facultatem hanc per quam concilium Papiense et (page 19) Senense celebrata sunt et Basiliense institutum asserere audebit haeticam?
- (3) Vigesimo secundo, erroneam se habere intelligentiam circa auctoritatem generalium conciliorum Basilienses facto demonstrant praesumentes citare, suspendere, et deponere Romanum Pontificem indubitatum et fidelem catholicum. Audacia plane magnae impietatis nullo superiori saeculo per synodum aliquam catholicam universalem de aliquo indubitato Romano pontifice exemplata. Veriti enim sunt maligni homines et excaecati et malignitatis caligine obtenebrati, discipuli magistrum, oves pastorem, subditi suum pontificem, filii patrem ad suum provocare judicium. Rem plane nimium exprobrandae praesumptionis quae luce clarissima, et rationi et honestati et sanctorum patrum est adversa sententiis. Gravissime vero in hac sua praesumptione Basilienses errasse liquodo demonstrant universalium conciliorum canones et sacrarum synodorum professio; secundo, sanctae apostolicae sedis definitio; tertio sanctorum patrum authentica testimonia; quarto, clarissimorum doctorum utriusque juris irrefragabilis doctrina; de quibus pauca in medium explicemus.
- (4) In primis est canon ultimus in concilio universali Romae celebrato, praesidente sancto Sylvestro qui in forma talis est: "Nemo judicabit primam sedem; quoniam omnes sedes a prima sede justitiam desiderant temperari; quia nec ab omni clero (col 95) nec ab omni populo iudex judicabitur. Et subscripserunt se cclxxxiv episcopi, et xlii presbyteri, et quinque diaconi."

- (1) Secundo idem roboratur illius sanctae synodi professione quae super objectis Symmachi papae, jussu Theodorici regis Romae extitit congregata, de qua in Hinc, et habetur dist xvii. Tertio, idem profitetur Synodus sacra quae super criminibus objectis contra Symmachum papam jussu imperatoris Valentiniani, Romae convenit, de qua habetur loco proxime nominato. Quarto, idem profitetur sancta synodus quae in causa beati Marcellini Romae copiosa convenit, de qua in capitulo Nunc autem, dist xxi.
- (2) Quinto, idem profitetur octava synodus Constantinopolitana in qua inter alia legitur decretatum: "Porro si synodus universalis congregata et facta fuerit de scientia Romanorum ecclesia quaevis ambiguitas et controversia omnis venerabiliter, cum convenienti reverentia de proposita quaestione sciscitari et solutionem accipere, aut proficere aut profectum facere; non tamen audacter sententiam dicere contra summos senioris Romae pontifices."
- (3) Sexto, synodus universalis in qua Alexander III praesidens fuit, de qua in capitulo Licet, de electione, hanc eandem profitetur veritatem dicens: "In ecclesia Romana aliquid speciale constituitur quia non potest ad superiorem haberi recursus." Glossa Hostiensis: "Quia nulla superior est sed ipsa super omnes est." Et idem Joanne Andreas, addens: "Ideo iudicio Dei relinquitur IX, Q 3, Aliorum."
- (4) Ceterum secundo loco principaliter Basiliensium temeritatem confundit apostolicae sedis definitio quae in decretali, Unam sanctam, ita loquitur: "Si deviat terrena potestas iudicatur a spirituali; si deviat spiritualis iudicatur minor a superiori; si vero suprema a solo Deo et non ab homine potest iudicari."
- (5) Tertio, quod adversus Basiliensium praesumptionem sanctorum patrum testimonia multa loquantur, patet aperte per multa capita Decreti. Unde in capitulo Si papa, dist xxx, ait sanctus Bonifacius martyr: "Hujus," scilicet Romani pontificis, "culpas redarguere praesumat mortalium nullus, quia cunctos ipse iudicaturus a nemine est iudicandus nisi comprehendatur a fide devius; pro cuius perpetuo statu universitas fidelium tanto instantius orat quanto suam salutem post Deum ex illius incolumitate animadvertit propensius pendere."
- (6) Item in capitulo Ejectionem sanctus Anacletus papa et martyr dicit: "Ejectionem summorum pontificum sibi Deus reservavit licet electionem eorum sacerdotibus et spiritualibus populis concessisset." Item Symmachus papa in concilio Laterani praesidens, inquit: Ceterorum "hominum causas Deus voluit per homines terminari; sed sedis istius praesulem suo sine quaestione reservavit arbitrio," et in capitulo Aliorum, ix, Q 3. Eadem sententia per multa alia capitula sequentia colligitur quae brevitatis gratia pertransimus.
- (7) Quarto, quod communis praecipuorum doctorum doctrina temeritatem damnet Basiliensium patet, ait enim venerabilis Hugo de Sancto Victore, libro De sacramentis, parte II: "Potestas summi pontificis a Deo primo instituta est ut cum deviat a solo Deo iudicari possit." Item Innocentius III in sermone consecrationis Romani pontificis qui incipit: "Quis putas est fidelis servus?" inquit: "In tantum

mihī fides est necessaria ut (col 96) cum de ceteris peccatis solum Deum iudicem habeam, propter solum peccatum quod in fide committitur possē ab ecclesia iudicari."

- (1) Item ad idem est Alexander de Alex, sanctus Thomas, Albertus Magnus, Bonaventura, dominus et illuminatissimus doctor Ulricus de Argentina in summa sua, dominus de Tarantasia qui fuit Innocentius V, Aegidius de Roma, Jacobus de Viterbio, Henricus de Gandano, Joannes de Polliaco, Guilielmus Parisiensis, Herveus, Durandus, Petrus de Palude, Alexander de sancto Elpidio, Augustinus de Ancona, et quamplures alii famosissimi doctores qui omnes pro majori parte universitatis Parisiensis doctores praecipui fuerunt,
- (2) Praeterea doctores juris canonici qui quasi innumerabiles sunt, qui sanctorum patrum et doctorum juris divini insecuti sententias, communem profitentur doctrinam quod Romanus Pontifex extra casum haeresis stricte sumptae (in quo casu minor efficitur quocumque fideli) solum Deum iudicem habeat.
- (3) Ubi non parum admirari cogimur execrabilem Basiliensium electionem, qui adversus tot praeclara authentica (page 20) testimonia, adversus tot sanctorum patrum et doctorum irrefragabiles sententias non confundantur tam aperte pestifera dogmata sua pertinaci animositate defendere. "Quid autem iniquius," inquit beato Leo papa in capitulo xxiv, Q 3: c. xxx, Quid autem "quam impia sapere et sapientissimis doctoribus non credere?" Quibus omnibus temerariis ausibus et reprobae novitatis publicis gestis Basiliensium exploratissimum est sufficientiasime apertum esse quis sit reprobus ille Basiliensium circa potestatem generalium conciliorum sensus. Cum sanctissimus dominus noster Eugenius cum sacra amplissima synodo Florentina assertiones illorum reprobans ait ad sensum quem facto demonstrant.
- (4) Sed quaerunt consequenter Basilienses quem sensum concilium Constantiense in depositione Joannis et Benedicti habuit circa auctoritatem generalium conciliorum. Plane quod alium p rorsus quam Basilienses habeant, manifeste superius ostendimus. Ceterum, interrogant, quem sensum habuit concilium Constantiense in capitulo Frequens. Certe alium quem Basilienses. Illi quidem contra contententes de papatu, -- contra praesumptos Romanos Pontifices, contra fautores schismatis decreta constituentes, -- ad tempus intelligentiam suam referunt, pro quo non unus indubitatus Pontifex Romanus in ecclesia praesidet. Praesumptuosi vero Basilienses contra indubitatum et catholicum Romanum pontificem, unitatis ecclesiae cultorem praecipuum inauditae praesumptionis cornua levarunt.
- (5) Sane quid hoc quod patres Constantiae congregati alium sensum quem Basilienses circa auctoritatem generalium conciliorum habuerint non sit in dubium vertere, ut Basilienses ipsi graviter depositionem Joannis et Benedicti, -- si depositio et non magis declaratio dicenda sit, -- et electionem Martini ac consequenter creationem domini nostri Eugenii ex praedictis unusquisque doctus cognoscit.
- (6) Item quam sensum, quaerunt Basilienses, habuerunt legatus apostolicus et alii sacrae Romanae ecclesiae cardinales in concilio

Basiliensi in XI et XII sessionibus ac in responsione synodali quae incipit "Speravit?" Plane (col 97) alium habuisse credendi sunt quam Basilienses habeant. Quidquid tunc verbis praefati domini insonuisse visi fuerunt, timentes translationem tunc factam concilii non posse absque periculo fidei et scandalo, maxime totius Alamaniae rumpi inchoatum tractatum reductionis Bohemorum. Alium autem sensum quem Basilienses habeant praefatos dominos habuisse, ipsi manifeste professi sunt dum animo uno, una fide, concordique voluntate cum sanctissimo domino nostro in condemnationem assertionum Basiliensium quas ipsi Basilienses veritates fidei catholicae vocant, convenerunt.

- (1) Quod praeterea inconueniens est aut in quo honori praefatorum dominorum detrahatur, si ipsi domini a furore temeritatis quorundam magistrorum Basiliensium, congregationis insanientium in scripturis; qui factionis et errorum auctores extiterunt, elongati, apud apostolicum thronum constituti, in quem ait beatus Maximus: "omnes fideles orbis tamquam in solem respiciunt," ex ipso lumen veritatis accipientes, pleniori rerum investigatione habita sensum clariorem, habuerunt. Quod plane ipsis Basiliensibus datum esset ab eo qui vult omnes homines salvos fieri et participes fieri veritatis; si non inflata cervice mentis oculos a solis lumine avertissent.
- (2) Item quaerunt Basilienses an sanctissimus dominus noster Eugenius dicat fuisse haereticos patres obedientiae Joannis Constantiae congregatos quibus se univit et conjunxit. Plane non; primo quia non est arbitrandum (ut stulte Basilienses credunt) praefatos dominos et patres in eo auctoritatis pondere cuncta eorum decreta habuisse, ut ad veritatem fidei catholicae illa incunctanter crediderint pertinere. Quod si secus esset necessarium foret patres praedictos credidisse alias duas obedientias, quibus se unierunt fuisse haereticas, quae decretis eorum de veritate et auctoritate suae synodi a parte, sicut supra retulimus, contradixerunt.
- (3) Quomodo praeterea ad veritatem fidei catholicae patres illi decreta sua crederent pertinere, qui conuocationem et auctorizationem nomine Gregorii factas et novam concilii conuocationem nomine obedientiae Benedicti solemniter celebratam, ad abundantio-rem cautelam certitudinis acceptarunt? Quid magis ridiculosum, quam quod veritas catholicae fidei -- quae nihil habet ambiguum, nihil incertum, quae simplex est et sine ruga, sine duplicitate, -- cautelis varietur humanis?
- (4) Secundo, dominus Eugenius, patres illos obedientiae Joannis, quibus ipse et alii patres obedientiae Gregorii se unierunt et e converso, non dicit haereticos fuisse; sicut nec illi istos quoniam non eum reprobum sensum de auctoritate conciliorum illi habuisse credendi sunt, quem Basilienses adversum Christum Domini, indubitatum Romanum pontificem, omni virtute, pietate ac sanctimonia adornatum, superba elatione insurgentes, beati Petri et ecclesiae principis jura temere invadentes, novum tribunal apostolicae consti- tuentes, habere se manifeste praedixerunt.

- (1) Demum cum de adhaesione et revocatione dissolutionis et quarumdam literarum factis per sanctissimum dominum nostrum consequenter loquuntur; dicunt eundem dominum nostrum cognovisse (col 98) errorem suum quem in dissolvendo concilium sine consensu ejus habuerat. Plane in hoc loco sicut et in pluribus aliis, docuerunt linguas suas loqui mendacium." Iegantur bullae revocationis translationis praedictae; nulla profecto ibi reperietur cognitio aut revocatio cujuscumque erroris sicut neque commissionis. (page 21)
- (2) Nec ideo sanctissimus dominus noster dissolutionem sive translationem factam nullam esse voluit, quasi illam justa et rationabili causa subsistentem, sine illorum consensu, facere non potuerit; sed eo quia notitiam habuit, causas, quibus sanctitas sua mota translationem fecerat, non plane subsistere; quemadmodum beatitudini suae erat suggestum. Secundo, quia ex translatione praedicta intuebatur graves divisiones oriri et graviores oriri posse; considerata etiam pollicitatione solemniter per totam synodum sanctitati suae facta, ut a scandalis ad quae quosdam majores furere perspexerat, abstineretur omnino; eumque ut tenebantur, tanquam Christi vicarium et concilii caput venerarentur et patrem.
- (3) "Sententiam" autem "Romanae sedis," ut ait papa Nicolaus in capitulo Sententiam, xxxv, Q 9: "Non negamus posse in melius commutari dum subreptum aliquid fuerit aut papa pro consideratione aetatum, temporum seu gravium necessitatum dispensatorie quaedam ordinare decrevit; quoniam et egregium apostolum Paulum quaedam dispensatorie legimus fecisse quae postea legitur reprobasse."
- (4) Praeterea quando sanctissimus dominus noster revocavit quidquid attentatum fuerat contra auctoritatem illius concilii non eorum confirmavit insanias; quia non de auctoritate loquitur quam ipsi super papa, supra imperatorem, super omnes reges ac principes ac universos populos Christianos se a Christo immediate habere confingunt; sed de auctoritate quam praedecessor suus dominus Martinus. Et ipse reverendissimo patri domino Juliano cardinali tunc tituli sancti Angeli, apostolicae sedis legato, commiserat ut in praefato concilio procederetur auctoritate apostolica cum consilio ejusdem concilii, in his rebus ad quae erat synodus constituta. De qua aperte loquitur bulla domini Martini quae in principio gestorum Basiliensis concilii in testimonium suae auctoritatis praemittitur.
- (5) Ceterum falsissimum est quod unquam universalis ecclesia senserit, crediderit, credat, aut creditura sit juxta impios sensus Basiliensium; ideo sanctissimum dominum praefatam revocasse translationis sententiam quasi legitima causa subsistente, sine consensu concilii illam facere non potuerit. Hoc quippe a praesumptoribus atque fallacibus Basiliensibus est confictum. Quinimo universalis ecclesia semper credit et creditura est Romanos pontifices generalia concilia, non modo causa subsistente transferre posse; sed etiam ut sanctae memoriae papa Nicolaus scribit, ipsa nequiter celebrata cassare, sicut universali contingit synodo Ephesinae II quam, ut supra retulimus, beato Leo papa submovit; et Chalcedonensem in ejus correptione sua auctoritate constituit.

- (1) "Cuncta per mundum novit ecclesia," inquit sanctae recordationis papa Gelasius, "quod quorumlibet sententiis ligatu, pontificum sedes beati Petri apostoli jus habeat resolvendi, utpote quae de omni ecclesia fas habet (col 99) judicandi," ix, q 3, Cuncta. Hinc quoque manifestum est falsa Basilienses loqui cum ajunt sanctissimum dominum nostrum illos haereticos appellasse qui in veritate et doctrina ecclesiae de auctoritate conciliorum fideliter permanserunt. Sane illos solum haereticos sanctissimus dominus noster approbante amplissimo patrum ecclesiae concilio haereticos declaravit, qui ab universalis ecclesiae doctrina et veritate oberrantes, falsam et novam sectam auctoritatis conciliorum stulte composuerunt; quamque pertinaci animositate illam defendentes in totius ecclesiae scandalum Basileae se confirmarunt.
- (2) Praeterea manifestum est ex superioribus, quam falsa sit illa Basiliensium inanis gloriatio, de qua inobedientia, jactantia, hypocrisis, contentiones, pertinaciae, discordiae et novitatum praesumptiones eorum ortae sunt; qua inaniter se extollentes, ajunt declaratum esse saepenumero doctrinam, quam de auctoritate conciliorum confingunt, fundatam esse in sacris litteris et in doctrinis sanctorum. Falsa prorsus gloriatio ex sacra quippe scriptura cujus splendore cuncti exterminantur errores; nullo modo possunt suis haeresibus praesidia veraciter invenire.
- (3) Sed hoc ideo eis visum est, quia malitia excoecante illorum intellectum, instar ceterorum haereticorum, qui confictos errores et impia dogmata ex divinis scripturis; ex sanctorum patrum dictis perverse intellectis sibi astruere moliuntur, sacram scripturam et sanctorum patrum sententias aliter intelligunt quam sensus efflagitat; et Spiritus Sanctus a quo ipsa scriptura facta est et a quo inspirante sancti Dei homines locuti sunt.
- (4) Quo actum est ut beatus Bernardus, libro v De consideratione de quibusdam dicit, "suam opinionem intellectum reputaverunt; et ita erraverunt." Quare Basiliensibus dicendum est quod beatus Hieronymus in disputatione contra Luciferianum scribit: "Nec sibi blandiantur si de scripturarum capitulis videntur sibi affirmare quod dicunt; cum diabolus aliqua de scripturis sit locutus. Et scripturae non in legendo consistant sed in intelligendo; alioquin si literam sequimur, possumus, et nos novum quoque nobis dogma componere, ut asseramus in ecclesiam non recipiendos qui calceati sunt et duas tunicas habeant."
- (5) Praeterea arrogantium more et superborum vana laetitia se jactantes dicunt Basilienses, quod eorum orationibus et sermonibus sanctissimus dominus noster nec suis in praefato concilio nec in conspectu regum et principum resistere umquam potuerunt. O vanissimi homines et fallaces! Cur non verentur tam aperte mentiri? An credunt gloriam sibi impudentissimis mendaciis mercari? Negare non possunt. Instrumenta sunt publica. Sanctissimi domini nostri requisivisse audientiam ut responsa darent epistolae quam (page 21-B) cogitanti mihi dicunt.

- (1) Sed audientia negata est illis qui profecto, si auditi fuissent pro eorum sapientia facile ostendissent. Epistolam praefatam. Non modo insipientias et insanias falsas sed contradictiones plurimas continere quod quilibet in sanctorum patrum doctrinis eruditus intelliget; quod etiam plures docti viri, catholicae (col 100) fidei defensores scriptis suis demonstrarunt.
- (2) Ceterum numquid tam apud Christianissimum regem Franciae, quam apud congregatos in diocesis Norubergensi et Moguntina semper Basiliensium cautela fuit et vigilantia summa, ne oratoribus sanctissimi domino nostri audire petentibus pro justitia et veritate sanctitatis illius contra errores Basiliensium plena et publica audientia daretur. Scitur quibus artibus usi sunt per eorum fautores et complices, ne dictis eorum respondendi locus oratoribus sanctissimi domini nostri protestarentur. Publica sunt instrumenta de injuria ista facta veritati Christiani fidei et justitiae praefati domini nostri.
- (3) Et cur hujusmodi cautelis semper usi sunt, nisi quia fundamenta infirma sciebant, et facile posse cunctis eorum rationibus et sermonibus responderi? Facile certe respondere est cunctis eorum sermonibus; potissime quia Basilienses communiter in scripturis suis uno, quattuor aut pluribus eorum laborant defectibus. Aut enim falsis aut detruncatis et imperfectis utuntur allegationibus; atque perverse scripturam sacram et sanctorum patrum dicta interpretantur; aut insipienter nimis argumentatur; aut in chimerizationibus et quibusdam fabulis atque peregrinis doctrinis se fundant.
- (4) Denique mendacia accumulantes Basilienses, intellexerunt, inquit, Christiani quanta esset ecclesia Romana, -- si ex spreto conciliis generalibus, abjectis sacris canonibus et debitis regulis, -- unus homo peccator posset de omnibus rebus ipsius ecclesiae pro libitu voluntatis agere. Et dum congregatum esset concilium pro reformatione etiam aliorum, posset illud in quemcumque locum vellet aut in quamcumque regionem transferre. O verbum seditiosum et malitiae veneno plenum! Attendant et intelligant principes orthodoxi quod horum Basiliensium hominum lingua invenenata non modo seditionem evomit adversus sanctissimum dominum nostrum, quem ipsi omnium hominum scelestissimi peccatorem vocant; sed adversus cunctos principatus illorum seditionem eversionemque parant.
- (5) Certe sanctissimus dominus noster sacra concilia a sanctis patribus celebrata non contemnit; sed sanctorum praedecessorum suorum more illa summa veneratione amplectitur et prosequitur devotione; quod et de concilio Basiliensi constituerat, -- nisi ipsi Basilienses generalium conciliorum terminos quos posuerunt sancti patres nostri, -- superba elatione praetereuntes, ausus reprobae novitatis temere attentassent. Ceterum sanctissimus dominus noster non abjicit sacros canones universalis ecclesiae consensu institutos et apostolicae sedis auctoritate firmatos; et si quando utpote princeps ecclesiae illos pro temporum rerumque necessitate temperet, mitiget ac moderet.

- (1) Non vult praeterea idem dominus noster sicut nec facit de omnibus rebus ecclesiae pro libito voluntatis facere; sed cum consilio prudentissimorum patrum, dominorum cardinalium et multorum aliorum praelatorum et sapientium virorum prout rerum gravitas exigit. Peccatores vero homines Basilienses, quia de fide, de rebus ecclesiae, de principe Christianae plebis, non prout acceperint a sanctis (col 101) patribus, nec juxta consilium prudentum dominorum cardinalium, nec non praelatorum et dominorum regum et principum oratorum, sed pro libito depravatae voluntatis suae agere voluerunt. Tot scandalis ecclesiam conturbarunt.
- (2) Ceterum nec sanctissimus dominus noster dicit quid ipse aut quicumque alius Romanus Pontifex debeat pro libito voluntatis in quemcumque locum vel regionem transferre concilium congregatum; sed causa legitima subsistente et cum consilio patrum ecclesiae et sapientium virorum; et maxime in casibus in quibus praedecessores sui non modo transferre, sed illa non rite celebrata cassare et reprobare leguntur.
- (3) Stultum plane totique Christianae religioni nimium periculosum esset si Romanus Pontifex cui principaliter ecclesiae cura commissa erit, cujusque auctoritate generalia concilia congregantur, dissolvere aut transferre non posset concilium congregatum; aut cum synodus ad eorum hominum impietatem maxime esset devoluta, quorum studia privata in eversione fidei et pacis et unitatis agitantur ecclesiae; aut cum episcoporum judicio contempto, inferiores, multitudine seditiosa praevalente hierarchicum ordinem molirentur confundere; aut cum synodum in tyrannidem verti contingeret, aut cum faverent hostibus Romanae ecclesiae; aut cum principes terrae in qua concilium celebrari contingeret, cum multitudine clericorum domini sui adversus Romanum pontificem sive Romanam ecclesiam aut alios reges et principes Christianitatis sinistram aliquid intentare praesumeret; aut cum synodus devolveretur ad manus aliquorum qui pro gloria principatus sui amplianda perpetuare concilium niterentur; aut cavillose et malitiose id ageretur ut adveniente morte Summi Pontificis ad eos futuri devolveretur electio; et sic de hujusmodi.
- (4) Quae omnia tum ex practica praeteritorum temporum, tum ex corruptione hominum, tum ex perversis studiis Basiliensium posse contingere notum est. Manifestum quoque est quam calumniose Basilienses crimentur sanctissimum dominum nostrum; calumniantur (page 22) quidem eum et loquuntur, ac si solus sine consilio maturo praestantissimorum patrum dominorum cardinalium et aliorum praelatorum cuncta fecerit. Advertere nolunt quod non solum ipse sed conventus celeberrimus et amplissimus sacri collegii dominorum cardinalium et praelatorum, ac patrum ecclesiae catholicae in condemnationem eorum interfuit et consensit; Graecorum etiam quibusdam praelatis et Armenorum oratoribus consedentibus.
- (5) Ceterum non sunt veriti Basilienses in sua invectiva regum et principum Christianorum sinceritatem errorum suorum piaculis maculare. Ajunt enim illos assertiones erroneas suas quas falso veritates appellent, semper tenuisse et defendisse. Plane notissimum est reges et principes orbis pro majori parte numquam voluisse

ad Basileam, tamquam ad synodum destinasse oratores; quousque sanctissimus dominus noster declaravit voluisse, non obstante translatione facta concilium Basiliense suum habere processum.

- (1) Praeterea reges et principes illi, qui post translationem primam Basileae oratores habebant ne tractatus reductionis Bohemorum pateretur rupturam, etsi supplicarunt sanctissimo domino nostro certis conditionibus et promissionibus (col 102) intermediis, ut pro bono pacis dignaretur translationem factam nullam habere. Numquam tamen tenuerunt aut defensarunt sanctissimum dominum nostrum translationem illam aut aliam, rationabili causa et legitima subsistente, faciendi non habuisse auctoritatem.
- (2) Quod ex eo luce clarius colligitur quod cum, ut superius retulimus, Basilienses ad decretandum assertiones suas furerent; reges et principes habuerunt adversos. Item, nonne omnes principes Christiani, uno excepto, quem suis mendaciis et erroribus Basilienses insascinarunt, venerantes sanctissimum dominum nostrum ut catholicum patrem omnium Christianorum in sede Petri locatum apertissime profitentur nusquam Basiliensium errores tenuisse aut defensasse? Quis jam non intelligit sanctissimum dominum nostrum verum dixisse, Basilienses per declarationes suas voluisse non modo eundem sanctissimum dominum nostrum; sed universos principes, communitates, ac dominos apostolicae sedis devotos et illum ut catholicum venerantes et colentes, consequenter haereticos judicasse.
- (3) Petunt consequenter Basilienses, quomodo schismaticos illos sanctissimus dominus noster audeat appellasse, qui ut ajunt, in unitate in qua principio fuerunt sive veneratione permanserunt. Quaevis plane implicitam haeresim habens. Quomodo Basilienses semen diaboli, qui mendax est et pater ejus, in unitate ecclesiae in qua a principio fuerunt, sine variatione permanere se dicunt qui ab obedientia Romani Pontificis, qui caput sanctae ecclesiae catholicae est et auctoritate cujus concilium eorum institutum est; tam superbe, tam temere, tam praesumptuose discesserunt? Non attendentes quod ait sanctus Callixtus papa omnibus episcopis scribens in capitulo Non decet, dist xii: "Non decet a capite membra discedere sed juxta scripturae testimonium omnia membra caput sequantur."
- (4) Nulli vero dubium est quod apostolica ecclesia caput sit omnium ecclesiarum a cujus regulis nullatenus vos convenit deviare. Sed hanc profecto haeresim Basilienses fovere cum schismaticis Valdensibus et compluribus se manifeste testantur, ut in ecclesiae unitate se permanere credant sine quocumque ordine obedientiae ad unum Christi principalem in ecclesia vicarium omnium rectorem et caput; contra quam haeresim licet in superioribus plura ex divina scriptura et sanctis doctoribus inducta sint. Recolamus etiam nunc ex eodem fonte contra eandem aliqua pauca.
- (5) Sanctus Thomas in II: II, Q 39, art 1 de schismate loquens ita ait: "Nomen schismatis, sicut dicit sanctus Isidorus, a scissura animorum impositum est; scissio enim unitati opponitur [Unde] schismatici dicuntur [illi] qui propria sponte* se ab unitate

ecclesiae separant... Ecclesiae autem unitas in duobus attenditur, scilicet, in connexione membrorum ecclesiae ad invicem, sive in communione in ordine omnium membrorum ecclesiae ad unum caput, secundum illud [ad] Colossenses II, "Inflatus sensu carnis suae et non retinens caput; ex quo totum corpus per nexus et conjunctiones [membrorum] subministratum et constructum crescit in augmentum Dei." Hoc autem caput est ipse Christus cujus vicem in ecclesia gerit Summus Pontifex. Et ideo schismatici dicuntur qui renuunt subesse (col 103) Romano Pontifici et qui membris ecclesiae ejus subjectis communicare recusant." Haec sanctus Thomas. [E]

- (1) Item Cyprianus in epistola ad Rogationum: "Haec sunt initia haeticorum et ortus et conatus schismaticorum, male cogitantium ut sibi placeant; ut praepositum superbo tumore contemnant; sic de ecclesia egreditur sic altare profanum foris locatur sic contra pacem Christi et ordinationem atque unitatem Dei rebellatur." Haec Cyprianus. Ex quo manifestum sit quam stulte Basilienses loquantur dicentes sanctissimum dominum nostrum ab eadem unitate se separasse et schisma perniciosum fecisse.
- (2) Quis umquam illos homines in tam profundam caliginem casuros cogitasse ut Romanum pontificem quem universus orbis Christianus -- praeter paucissimos praesumptuosos et contumaces Basiliae considerantes, -- tamquam verum et indubitatum catholicum pastorem colit et veneratur, dicat ab unitate ecclesiae separatum? An fortassis in hanc stultitiam devenerint ut arbitrentur ad solos ipsos ecclesiam catholicam et Christi haereditatem abbreviatam esse?
- (3) Ipsi profecto sunt et sacrilegum contra altare legitimum. Chore, Dathan et Abiron impietatem sectantes erexerunt. Ut enim ait sanctae memoriae papa Pelagius: "quisquis ab apostolicis sedibus divisus est in schismate esse non dubium est et contra universalem ecclesiam altare conatur erigere."
- (4) Porro quia in hac sua temeritate Basilienses sceleris et impietatis Chore, (page 23) Dathan, et Abiron se imitatores negant, ut illorum maledictionem cum poenis juris contra schismaticos promulgatis non promeruisse se fingant. Utile erit ad eorum apertissime confutandum hypochrisim et inanes sermones historiam parumper aperire. Legitur enim Numerorum XVI quod "Chore, Dathan, et Abiron et aliorum filiorum Israel, "CCL viri proceres synagogae et tempore concilii per nomina vocabantur," (Glossa "tamquam sublimes surrexerunt adversus Moysen") "Cumque stetissent adversus Moysen et Aaron dixerunt: sufficiat vobis quia omnis multitudo sanctorum est et in ipsis est Dominus. Cur elevamini super populum Domini?" In quibus verbis tria designantur circa impietatem schismatis perpetrari: primo quidem designantur personae schisma committentes et altare erigentens profanum, non quidem Moyses praepositus non Aaron summus sacerdos non populus eis adhaerens, et cetera sed rebelles subditi scilicet Chore, Dathan et Abiron et ceteri eorum complices.
- (5) Secundo notatur causa per quam ortum est schisma scilicet, contemptus praepositi et superba electio subditorum adversus superiorem, cum dicitur: "surrexerunt adversus Moysen." Ait enim beatus

[FLORENTINUM]

Cyprianus in epistola ad Florentium: "Inde enim schismate et haereses obortae sunt et oriuntur, dum episcopus qui unus ecclesiae praesert superba quorundam praesumptione contemnitur et homo dignatione Dei honoratus indignus hominibus iudicatur." Tertio notatur virtus totius argumentationis, qua praefati schismatici elationem suam armabant cum ajunt adversus Moysen et Aaron: "sufficiet vobis," scilicet quod magni estis inter alios de populo Dei, "Quia omnis multitudo sanctorum est et in ipsis est Dominus. Cur elevamini super populum Domini?"

- (1) Quis ista colligens non illico (col 104) intelliget apertissime nos schismaticos figuram Basiliensium gestasse tum qualitate personarum, quia pro tempore concilii quasi sublimes patres per nomina vocabantur? Tum superba elatione qua adversus summum sacerdotem Romanum Pontificem "auctoritate Moysen," ut ait Bernardus, "et dignitate Aaron" stulte insurrexerunt. Cum rationibus quas temeritatis suae et seditionis fundamenta adversus dispositionem Dei et summi sacerdotis principatum confingunt?
- (2) An non verba eorum sunt: sufficiat papae quod sit major in ecclesia superior quocumque fidei; non autem praesumat super ecclesiam universalem, aut super Christianus populum congregatum superioritatem. Omnis quippe multitudo sanctorum est et in ipsis est Dominus: "Ubi duo vel tres congregati fuerint in nomine meo, in medio eorum sum." Non advertentes ignorantissimi homines, quod multitudo sanctorum non confusa, non acephala, non sine ordine, non sine duce est et rectore qui visibiliter eam regat et dirigat. "Est enim," ut ait per Salomonem Spiritus Sanctus: "ut castrorum acies ordinata," Canticorum VI. Secundo non attendunt ad multitudinem sanctorum ad congregationem cui intersit Dominus, non pertinere homines elatos, superiori rebelles, pertinaces, fallaces, hostes unanimatis et pacis ecclesiae, quales Basilienses fore ausus temerarii stultaeque assertiones eorum patenter demonstrent. Ait enim sapiens: "Filii sapientiae ecclesia justorum et natio illorum obedientia et dilectio. Judicium patris audite, filii dilecti, et sic facite ut salvi sitis." Ecclesiastici III.
- (3) Porro quoniam poenam hujus sacrilegae audaciae suae non solum duces Chore, Dathan et Abiron, sed comites sui persolverint, et Basilienses illorum imitatores promeruerint, litera generaliter asserit dicens: "Aperiens enim terra os suum deglutivit eos; descenderuntque viventes in infernum." De quo Augustinus in epistola ad Meritum ita scribit: "Quanti divino iudicio perpendatur hoc facinus lege quod legisse non ambigo; inveniens autem Chore, Dathan, et Abiron hiatu terrae devoratos, ceterosque omnes qui eis consenserant igne de medio eorum exeunte consumptos. Illud ergo scelus ad exemplum devitandi dominus Deus praesenti supplicio demonstravit ut cum talibus patientissime parcat quale ultimo iudicio reservet ostenderet." Haec Augustinus.
- (4) Merito ergo sanctissimus dominus noster cui ex pastoralis officio incumbit curam habere omnium ovium Christi ne quos incautos Basilienses seducerent fraudibus et venenis interficerent ad universam turbam fidelium cum sancto Dei famulo Moysse clamare

compulsus est: "Recedite a tabernaculis hominum impiorum et nolite tangere quae ad eos pertinent ne involvamini peccatis eorum." Hic liquido manifestum est quam impia sit illa Basiliensium blasphemiam qua sanctissimum dominum nostrum fidei religione orantissimum, haereticum vocant.

- (1) Intelligunt jam Christiani quas stultitias et insanias cathedra illa pestilentiae impiorum hominum Basiliensium doceat. Haereticum vocant sanctissimum dominum nostrum quia se cum sit ecclesiae princeps, Christi supremus vicarius, caput et pastor sanctae catholicae ecclesiae Basilienses non credit superiores (col 105) sed potius illis superiorem majoremque. Si inter membra computantur, si ad populum pertineat Christianorum, si de ovili ovium Christi se esse contendant.
- (2) Haereticum vocant quia stultitias eorum et reprobas novitates nullo superiori saeculo exemplatas magister et doctor ecclesiae noluit sustinere. Haereticum vocant quia temerariis ausibus eorum apostolicae sedis principatum ipse princeps ecclesiae exterminari amplius non passus est. Haereticum dicunt quia adversus usurpatores et invasores jurium et privilegiorum apostolicae sedis, Petri successor principis apostolorum principatum defendit. Haereticum vocant quia cum intueretur Basilienses sub specie pietatis uti synodo in prniciem ecclesiae pius pater gladium de manu furiosorum amovit. Haereticum vocant quia (page 24) animadvertens Basiliensium impia studia non modo in manifestam scissuram ecclesiae tendere sed in eversionem ecclesiastici ordinis et Christiani principatus apertissimam confusionem, monarcha ipse ecclesiae, hierarchiae murum se eis pro defensione Christiani principatus opposuit. Haereticum clamant quia nolentibus Graecis extra Italiam Oecumenicam synodum cum Latinis celebrare veritus ne sanctissimum opus unionis ecclesiae orientalis superba quorundam renitentia omnino periret, de universalium fratrum suorum sanctae Romanae ecclesiae cardinalium consilio pluribus aliis praelatis et patribus ecclesiae id ipsum approbantibus, zelator ipse salutis hominum synodum de Basilea transtulit in Ferrariam et tandem superveniente legitima causa transtulit in Florentiam. Haereticum vocant quia oves Christi quas Basiliensium pertinax factio et haeretica tentatio ab ovili dominico moliebat secernere; pastor ipse ovium Christi, transferendo ad praesentiam suam synodum illas sub unitate collectas studuit conservare. Ecce articuli fidei, in quibus insani et stulti Basilienses sanctissimum dominum nostrum haereticum dicunt.
- (3) Hinc quoque sit manifestum quam falsum sit illud quod Basilienses schismatici et haeretici de sanctissimo domino nostro garrunt mentientes proprie de eo verificari sententiam Cypriani in epistola ad Antonianum, "qua dicit de Novatiano contendente super episcopatum urbis Romae episcopatum tenere non posse, etiamsi primo episcopus factus et coepiscoporum suorum corpore et ab ecclesiae unitate discederet". Omnibus quidem est notum fidelibus quod sanctissimus dominus noster licet Basiliensium errores sacrae universalis ecclesiae sacerdotum collegio concordi unanimitate approbante Florentiae reprobaverit; nusquam tamen ipse recedens a suorum coepiscoporum et sacerdotum Christi collegio in fide et doctrina.

Quam sancti patres in apostolica sede tenuerunt et praedicaverunt semper mansit et manet; beatique Petri annitente praesidio divina operante clementia semper mansurus est. Mentiuntur quidem Basilienses quod numquam ab ecclesiae unitate fuerit pacis charitate disjunctus. Sed ipsi Basilienses sunt licet hoc aut pro caecitate non videant aut non intelligere se fingant qui a collegio sacerdotum Christi, collegio qui sanctissimum dominum nostrum ut patrem omnium catholicorum (col 106) et Christi indubitatum vicarium colunt, sunt alienati.

- (1) Obmutescat jam impudentia Basiliensium lingua invenenata quia quanto pluribus stultitiis et falsis criminationibus adversus sanctissimum dominum nostrum invectivos sermones et epistolas replent. Tanto aptius indicant quam juste et merito tamquam schismatici et haeretici sint condemnati. Sed objiciunt Basilienses consequenter sanctissimo domino nostro quod ad ea, quibus sanctitatem suam de simonia, de perjurio, de dilapidatione et violatione canonum et scandalizatione ecclesiae et de aliis turpibus eorum ore dignis criminati sunt, nihil responderit. Plane sanctissimus dominus noster ad hujusmodi Basiliensium falsas criminationes et conficta mendacia non modo uno verbo cum veritate poterat respondere eos mentitos esse; sed per facile aptissimeque exemplariter de multis ostendisse eos esse qui simoniam fovent et latrocinia; qui perjuriis sacrilegis Christianae religionis sacramenta profanant; qui non tantam canonum violatores exorbitantissimis dispensationibus quam corruptores totiusve orbis scandalizatores existant.
- (2) Sed ideo eis praeterquam ad injuriam schismatis et haeresis respondere omisit ne similia aut majora flagitia eis impropere, humanissimam sanctitatem suam per impatientiam more Basiliensium, quorum lingua gladius acutus et venenum aspidum insanabile in arma vertisse videretur furoris. Ait enim Augustinus in quadam epistola: "Non objiciatis haeticis nisi quia non sunt catholici. Ne similes eis sitis qui non habendo quod in causa suae divisionis defendant; non nisi hominum peccata colligere et ea ipsa plura falsissime jactant, ut quia ipsam divinae scripturae veritatem criminari et obscurare non possunt, homines adducant in odium de quibus quidquid fingere in mentem venerit, possunt."
- (3) Intelligunt jam certe fideles ad quantum praesumptio ascenderit Basiliensium ut judicium depositionis etiam renitentibus principibus Christianis protulisse in sanctissimum dominum nostrum summum pontificem se inaniter jactent. In hoc imitium Discorum imitantes qui in synodo secunda Ephesina excommunicationis sententiam in beatum Leonem pontificem dictare praesumpsit. In qua temeritate proprie verificanda venit de Basiliensibus illa beati Cypriani sententia qua in epistola ad papam Cornelium de quibusdam schismaticis eidem summo pontifici rebellantibus, ita loquitur: "Judicare velle dicant de ecclesiae praeposito extra ecclesiam constituti haeretici; de catholico et sano sauci, de integro vulnerati, de stante lapsi, de iudice rei, de sacerdote sacrilegi."
- (4) Quamobrem eorum stulta et praesumpta iudicia Christiani principes et devoti ecclesiae praelati detestati sunt. Ceterum quam

aperte Basilienses "docuerint linguas suas loqui mendacia," dicentes quod eorum synodus non fuerit versa in tyrannidem sed summa semper in ea libertas omnibus patuerit. Non est opus multa in ferre quoniam illos mentiri planissimum est nisi de libertate illa (si libertas dicenda est) loquantur qua nulla infeliciores; suis superioribus rebellandi, de libertate pios scripturae et sanctorum patrum evertendi sensus, (col 107) de libertate detrahendi sanctis Dei. Talis profecto apud illos summa libertas fuit.

- (1) Auditus quidem fuit in plena eorum generali congregatione procurator quidam nomine Joannis Lodegarii in appellatione quadam a sententia (page 25) et declaratione data per reverendissimum patrem cardinalem sanctae Crucis, tunc apostolicae sedis legatum, beatum Franciscum vocasse praesumptum sanctum Franciscum non est veritus. Qui pro blasphemia in sanctum Dei et in ecclesiam universalem quae illum sanctum et gloriosum credit et colit, et pro stulta et injuriosa appellatione gravissime puniri debuit applausus invenit suae blasphemiae temeritatis.
- (2) Quomodo stulti homines non verentur negare eorum synodum in tyrannidem versam ubi principis ecclesiae auctoritate contempta a quo concilia robur habent et auctoritatem tot tamque apostolicae sedis reservata temeritate sumpserunt? Quomodo in tyrannidem non versi fuerunt ubi valida esse multa contra jus, contra rationem voluerunt renitentibus praesidentibus Romani Pontificis aliisque plurissimis gravissimis patribus? Cum tamen in libro conciliorum circa actionem sextam sanctae Chalcedonensis synodi dicatur quod "in omnibus synodis apocrisarii apostolici decretas sententias primo propter summam auctoritatem ejusdem sedis confirmabant et subscribebant quia aliter nullum robur habebant."
- (3) Quomodo summa libertas omnibus semper patuit, ubi non ratio, non lex, non sanctorum patrum auctoritas sed clamor perstreptentis multitudinis popularis quae, ut ait beatus Chrysologus: "Saepe mater est seditionis et contumaciae." Libera erat iudicii synodalis? Atsi aliquando deputati dabantur tales vulpina astutia eligebantur aut in majori numero, qui potius executores essent perversae voluntatis eorum quam investigationis scripturarum et gravitate iudicii veritatis indagatores? Quomodo summa libertas et non potius tyrannis omnibus patuit ubi non pondus ponderi sed numerus numero comparabatur. Ubi votum sapientum patrum ac timoratorum habentium cum zelo sancto discretionem iudicii imperitiae multitudinis clamore compressis quomodo ratione non poterant multitudine vincebantur?
- (4) Quomodo non tyrannis sed summa libertas omnibus patuit quando tam praelati quam alii de diversis regionibus ab eorum dominis privatas sed injustas adversus sanctissimum dominum nostrum habentibus inimicitias, per vim et minas compulsi sunt et sub metu ablationis honorum temporalium et beneficiorum accedere ad concilium; qui adversus sanctissimum dominum nostrum non secundum conscientiam aut sanctorum patrum sententias consulere; sed nihil imperantibus capitaneis malorum negare possent nihil recusare audent. Quomodo non tyrannis sed summa libertas ubi altercationes super novitibus quae attentabantur ortae inter patres concilii, non disputationibus peritorum virorum plerisque deliberationibus aritari

pertractarique sinebantur; licet hoc multi docti viri ut omnia tranquillo et aequo constituerentur examine publice requirerent asserentes se ostendere ex sanctorum patrum sententiis multa non recte fieri, sed omnia juxta quorundam (col 108) paucorum principalium auctorum harum haeresum pertinaces insanias, communi ecclesiae contempta doctrina, violentam resolutionem suscipiebant?

- (1) Quomodo non tyrannis sed summa libertas omnibus patuit ubi cum venerabilis Arnoldus procurator reverendissimi domini archiepiscopi Tarentini nunc vero sacrae Romanae ecclesiae Cardinalis; ipsum de objectis criminibus in publica generali congregatione vellet defendere vix verba inceperat et repente patriarcha olim Aquilejensis furioso impetu de sede discendens procuratorem ipsum per capillos trahens prostravit ad terram. Nec violentia ista punita est sed maxime commendata. Procurator vero ille cui pro injuria ut justitiae ordo poscebat, satisfaciendum fuisset in carcerem ire jussus est. Quam inhonestatem et violentiam conspiciens reverendissimus pater dominus cardinalis Sanctae Sabinae praesidens publice in eadem congregatione de violentia illa et sublata libertate protestatus est?
- (2) Quomodo ubi divina jura et humana impune violantur et libertas loquendi amittitur Basilienses tam impudenter dicere non verentur summam libertatem semper omnibus patuisse? Quo ex loco quisque apertissime intelliget quanta insania furerent Basilienses adversus sanctissimum dominum nostrum qui praesidentem suum inauditum et indefensatum in sua justitia; ipsi accusatores testes et judices simul tanta temeritate ut falsarium condemnaverint; non attendentes malitiosi homines, quod dato quod ipse mandasset decreta factum electionis sigillari non propterea falsarius judicandus veniebat: tum quia legatus et praesidens synodi in auctoritate fungebatur principis ecclesiae; tum quia decretum sigillatum erat decretum patrum ad quos potestas et auctoritas synodi erat devoluta et per consequens dispositio sigilli in hac parte.
- (3) Quomodo praeterea summa libertas omnibus patuit ubi si aliquis de bono publico, de pace, de unitate ecclesiae servanda, de auctoritate summi pontificis non violanda loqueretur aut temerariis ausibus illorum assensum praebere respueret; statim inclamabatur, exprobrabatur variisque illum contumeliis ac maledictis usque ad opprobrium haeresis afficiebant? Quomodo summa libertas omnibus patuit ubi cum major pars celebrantium concilium litigatores essent, aut litigatorum procuratores et advocati, alii ut obtinerent commissiones injustas, alii ne injustitia opprimerentur, majorum votis assentire cogebantur? Quomodo libertas summa omnibus patuit ubi diversis patribus diversorum statuum etiam praelatis majoribus pro veritate zelantibus, et unitate ecclesiae servanda comminationes inferebantur, si non principalium facinorosorum vota mandataque exequerentur?
- (4) Quomodo summa libertas (page 26) omnibus patuit quando plurimi ex injuriis aliis illatis metu fracti a majorum indignatione exasperati votis illorum applaudere aut suae conscientiae metuentes a concilio necessitabantur discedere?

- (1) Sed dicunt Basilienses quomodo sanctissimus dominus noster vocare potest conspirationes et conjunctiones quae a duebus partibus concilii et amplius facta sunt in deputationibus, in congregationibus generalibus (col 109) et sessionibus publicis? Quomodo plane fictae simplicitatis quasi non sit possibile quod tamen per eos quotidie practicabatur, ante deputationes generales congregationes et sessiones publicas hujusmodi conventicula et monopolia fieri. Negare non possunt quod volentes aliqui adversus honorem sanctissimi domini nostri aut in favorem ambitionum suarum vel pro explendis passionibus attentare, tamquam princeps factionis et concilii aurigae simul conspirabant et conveniebant et conclusione capta, quid et quomodo agendum esset practicis diversisque artibus improvise et impetuose in deputationibus et congregationibus obtinebant quaecumque volebant.
- (2) O stulta et caeca gens! Estne haec via hominum quibus praesidet Spiritus Sanctus, spiritus veritatis, spiritus pacis et timoris domini; an hominum quibus praesidet spiritus furoris et erroris, malignitatis et praesumptionis? Nonne cum ageretur de electione loci pro oecumenico concilio infra paucissimos dies supervenerunt personae circiter LXXX, quae ne locus praesentiae sanctissimi domini nostri accommodus eligeretur illuc proficisci compulsae sunt?
- (3) Quoties etiam de diversis partibus principes factionibus ut multitudine vocum possent obtinere quae vellent plures homines adventare fecerunt; et quod ridiculum et detestabile est, notarios, copistas, familiares et idiotas et ignorantes clericos nec congrue Latine loqui scientes admissi sunt ad consedendum in concilio cum patribus paria cum sanctae Romanae ecclesiae cardinalibus, cum apostolicae sedis praesidentibus, cum praelatis et principum oratoribus vota habentes, parique fungentes auctoritate.
- (4) Ecce sanctos patres! ecce patres conscriptos! qui duas partes illas concilii constituebant quarum unanimitate Basilienses scandala sua conclusisse se jactant. Hi sunt quorum pertinacior et impatientior praevalebat multitudo cui resistere non poterant pauciores quibus erat sanior, sincerior, meliorque in agendis sententia. Conclusa vero per dominos legatos et praesidentes reverendissimos patres, dominos sancti Petri, Sanctae Sabinae, et Tarrantinum aliosque praestantissimos patres eorum sequentes acta, esse dicunt Basilienses perpaucos. Pauci profecto numero erant respectu ridiculosae multitudinis illorum; virtute vero et auctoritate tota synodus erat apud quos et zelus et veritas et auctoritas residebat concilii.
- (5) In quo loco optime commemorandum venit quod egregius Augustinus in epistola ad Glorium contra Donatistas, qui in concilio Carthaginiensi multitudine superasse quemadmodum Basilienses inaniter gloriabuntur, dicit sic: "De numero autem septuaginta episcoporum cum quasi gravissima opponeretur auctoritas quae fuerunt dicta meministis; et tamen viri gravissimi ab infinitis quaestionibus catena quadam inexplicabile sese nectentibus suum temperare voluerunt arbitrium; nequaquam curantes quod multi essent illi episcopi aut unde collecti quos videbant tanta temeritate caecatos,

ut in absentes non interrogatos collegas tam praecipites auderant proferre sententias. Et tamen qualis ipsius beati Melchiadis ultima est prolata sententia, quam integra, quam innocens, quam provida atque pacifica et cetera." Et sequitur: "O virum optimum, o filium Christianae pacis, et patrem (col 110) Christianae plebis. Conferte nunc istam paucitatem pro illa multitudine episcoporum; nec numero numero sed pondus ponderi comparate: hinc modestiam inde temeritatem; hinc vigilantiam inde caecitatem. Hic nec mansuetudo integritatem corrumpit nec integritas mansuetudini repugnavit; ibi autem et furore timor tegebatur et timore furor incitabatur." Haec Augustinus.

- (1) Praeterea notissimum est Ephesinam secundam synodum pertinacium hominum praevaletate multitudine contra paucos bene sentientes corruptam. Sed dicunt Basilienses longam esse discordiam inter Leonem papam contra quem Dioscorus sententiam tulisse fertur in praefata synodo Ephesina et inter sanctissimum dominum nostrum quia ille sanctus. Hic vero ut illi mentiuntur, vitiiis et criminibus irretitus. Maledicti profecto Basilienses qui tam imprudentissimo ore patri suo maledicunt. Animadvertant stulti quod sanctissimus dominus noster utpote qui in oculis suis semper humilis fuit non parilitate sanctitatis beato Leone se adaequavit, sed gradu potestatis quam nulla minuere potest indignitas praesidentium ut idem Leo sanctissimus attestatur. "Et si," inquit, "nonumquam diversa sunt merita praesulum; jura tamen permanent sedum; quibus et si possunt semuli perturbationem aliquam fortassis inferre non tamen possunt minuere dignitatem."
- (2) Nolunt intelligere viri excaecati, quod Dioscorus in praefata synodo Leonem excommunicans non est judicatus reprobus quis sanctum virum excommunicasse praesumpsit; sed quoniam in Romanum Pontificem omnibus superiorem sententiam dicere ausus est, sicut patet in canone In tantum, dist vi. Hinc quoque manifestum est quam frivolum sit id quod Basilienses dicunt, longam esse differentiam inter synodum reprobam Ephesinam et Basiliensem quae in plena libertate semper fuit constituta. In Ephesina vero viri armati gladios tenetes in manibus compellebant ad definiendum quod Diocoro placuit. Certe etsi gladii materiales ad definiendum compellentes ibi non fuerint plura (page 27) tamen hinc inde peracta leguntur quibus hae duae reprobae synodi proximam habent convenientiam.
- (3) Primo quidem nam et illa et si ab exordio legitima auctoritate Romani scilicet pontificis Leonis papae fuerit in nomine Domini legatis apostolicis praesidentibus, congregata; nihilominus tandem cum illic, ut inquit Leo papa, "nec justitiae moderatio nec fidei est servata religio" a recto veritatis tramite turpiter legitur declinasse. Ita pariformiter Basiliensis synodus licet apostolica auctoritate fulta et legatis apostolicis honorata fuerit tandem tam excaecata per varios anfractus errorum praecipitata multipliciter oberravit. Secundo, quia sicut in Ephesina synodo teste praefato sancto Leone papa, dum causae privatae sub obtentu religionis exercentur commissum est impietate paucorum quod universam ecclesiam vulneraret; ita in Basiliensi dum sub reformationis specie ambitiones et passiones proprias quidam prosequuntur universa ecclesia conturbatur.

- (1) Tertio, quia sicut in illa praesidentes ab apostolica sede directi constanter reclamasse leguntur, protestantes nequaquam id quod constitubatur (col 111) sedem apostolicam recepturam; ita in ista legatos apostolicos adversus plurimos ausus temerarios et reprobas novitates in synodo saepissime reclamasse notissimum est apertissime protestantes nequaquam eorum gesta apostolicam sedem recepturam.
- (2) Quarto, quia sicut illa Ephesina per medium Dioscori beatissimum Leonem papam excommunicare praesumpsit; ita Basilienses in sanctissimum dominum nostrum Eugenium papam depositionis sententiam temeraria praesumptione tentarunt. Quinto, quia sicut in illa synodo omnium sententiae non fuerunt ex plena libertate prolatae; ita nec in ista sicut exemplariter in multis paulo ante demonstratum est.
- (3) Sexto, sicut illa per quam, ut ait Leo papa, orbis scandala sopienda et sananda pacis dispendia; sed nimis dolendum est in ipsius fidei qua Christiani sumus excidia processit; ita Basiliensis synodus ex cujus studio et opera reformatio morum principum dissidentium concordia et haeresum extirpatio sperebatur in orbe. Non modo plurimas deformitates fecit et erigendo idolum pacem violavit universalis ecclesiae sed etiam in eversionem piorum operum confusionemque Christiani nominis et catholicae fidei excidium moliri manifeste deprehenditur; ut propriissime adaptetur ei quod de vinea Israel Dominus conqueritur, Isaiae V: Speravi "ut faceret uvas et fecit labruscas; expectavi ut faceret iudicium et ecce iniquitas[em]; [justitiam et ecce iniquitatem]; justitiam et ecce clamor."
- (4) Septimo, quia sicut Ephesina synodus temeritates suas et errores veritates a Spiritu Sancto inspiratas asserebat; ita et Basilienses unde verba patrum praefatae synodi Ephesinae ut in gestis Chalcedonensis synodi formaliter habentur sunt quae et sequuntur: "Dioscorus reverendissimus episcopus Alexandriae dixit. Quoniam voces vestras et Deus suscepit et vos ipsi firmas esse aequiescitis et placabiles Deo; si quis praeter ea quae acta sunt aut praeter ea quae placuerunt patribus qui in Nicaea convenerunt et qui huc congregati sunt, aut inquit aut discutit aut retractat, anathema sit!" Sanctus synodus dixit: 'Magnus custos fidei Dioscorus archiepiscopus!' . . . [Item] "si ergo Spiritus Sanctus consedit cum patribus sicut manifeste consedit et ordinavit quae ordinata sunt, qui retractat ea Spiritus [Sanctus] cassat gratiam!" Sancta synodus dixit: 'Omnia haec dicimus. Anathema sit qui retractat; dejiciatur retractans.' Item Dioscorus dixit: 'Nemo deordinet ordinata.' Sancta synodus dixit: 'Hae voces Spiritus Sancti sunt custos patrum. Per te vivunt patres custos fidei.'" Haec ibi.
- (5) An non hujusmodi haereticorum sermones per ora Basiliensium in favorem et auctoritatem temeritatum suarum saepe volvuntur. Hinc patet quam injuste conquerantur Basilienses quod eorum congregationem latrocinium ad quod totius orbis daemonia confluisse viderentur, sanctissimus dominus noster illorum gestis sacrilegis et ausibus temerariis attentis appellaverit; cum hujusmodi vocabulis

sancti patres reprobas synodos soliti sint appellare. Unde Ambrosius in epistola quadam Ariminense concilium latrocinium nominat. Ita pari vocabulo Leo papa Ephesinum secundum describit. Ita Augustinus contra Donatistas concilium quoddam, perversum ac nefarium et maxime traditorem (col 112) vocat.

- (1) Ceterum quam aperte quoque "docuerint linguas suas" Basilienses "loqui mendacium" dicentes omnem eorum intentionem fuisse ab abjicienda idola de templo Dei de quibus loquitur apostolus dicens quod "avaritia est idolorum servitus;" et talem pastorem eligere qui pascat subditos suos verbo et exemplo; praetensa eorum schismatica electio, damnatissima clarius sole demonstrat. Recte jam intelligunt cuncti Christiani quod frons meretricis facta est Basiliensibus qui tam aperte non verentur mentiri. An vero talem pastorem elegerint qui idola illa de quibus Apostolum esse locutum affirmant, abjiciat; qui a simoniaca labe manus puras habeat; qui libertatem ecclesiasticam inviolatam servaverit; qui bona temporalia ecclesiarum non invaserit? Interrogentur episcopi et ecclesiae terrae suae. Interrogentur beneficiati qui pro suarum promotionum habenda possessione saepe numero lacrymabiliter tam Basileae quam in curia Romana conqueri ausi sunt dicentes amplissimas illis extorsisse pecunias.
- (2) Demum quomodo non erubescunt mentiri dicentes ea mente fuisse eum eligendi pastorem qui verbo et exemplis Christianum populum pascere est idoneus, qui elegerunt hominem saecularem quem cognoscant sine literis sine quacumque experientia ecclesiastici regiminis. Quas denique vaniloqui et seductores in illo homine cognoverunt virtutes, quam sanctimoniam quod religionis exemplar quam sufficientiam juris divini aut humani ut dignus habitus sit honore et ministerio summi pastoris; qui in cathedra apostolica sedens verbo, doctrina, et exemplo sanctimoniae et experientia magna regiminis animarum, pascendi dominicum gregem esset idoneus? Ista plane est reformatio quam fallaces et hypocritae facturi erant in ecclesia.
- (3) Sed de hoc quoque nimis multa diceremus quae praefatam idoli erectionem irrisibilem ac damnatissimam cunctis gentibus demonstrarent. quam nunc ob speram conversionis illius sub silentio praeterimus. Hinc manifestum est quod pro ambitione papatus tam diuturnam protractionem concilii Basilienses quaerebant. Nec est verum quod fingunt quod si hoc quaesivissent jamdudum ad depositionem sanctissimi domini nostri processissent. No plane ad scandalum hoc dudum non processerunt licet variis artibus illud attentaverunt; quia Christianorum principum qui illorum depravatas conscientias noverant, animos quibuslibet practicis et promissionibus usi fuerint, nusquam ab amore unitatis ecclesiae et sanctissimi domini nostri devotione deflectere potuerunt.
- (4) Nunc autem occulto Dei judicio infascinato principe Sabaudiae (qui temporalis commodi et maxime gloriae principatus papalis gratia falsas illorum et damnatas opiniones sequi videtur) impietatem scandalosam, quam a multis temporibus conceperant illum opportuno tempore dato perfecerunt. Quam fictitium autem sit primum quod dicunt omnibus laboribus semper animos et pericula sustinuisse, et vitam et bona omnia exposuisse ut reformatio realem et efficacem sortiretur effectum. Porro in hoc loco convenientissime illos

respicit quod Dominus Pharisaeis impropere, Matthaei XXII: "Vae vobis..(col 113) hypocritae qui similes estis sepulchris dealbatis quae a foris (apparent hominibus speciosa; intus vero sunt pleam ossibus mortuorum et omni spurcitia; sic et vos a foris (apparetis hominibus quidem justis; intus autem pleni estis hypocrisi et iniquitate."

- (1) Isti plane similes amicis Job per quos, ut habet glossa in c. II -- haeretici designantur qui simulantes se infirmanti ecclesiae compati dolos deceptionis parant; speciem humilitatis ostendentes ut superba suadeant. Profecto si realem reformationem et efficacem Basilienses habuissent in animo a seipsis procul dubio illam inchoassent scientes, juxta Lactantium de vera religione et sapientia, quod qui bene praecipunt nec faciunt abest ab eis fides et soluta praecepta sunt.
- (2) Debent enim si qui rececandis ceterorum vitiis instant ipsi esse mundissimi sicut saepenumero Basilienses monerati sunt per optimos patres et legatos et alios viros devotos, juxta illud Prophetarum: "Mundemini qui fertis vasa Domini," ne eis diceretur illud Lucae IV: "Medice cura teipsum;" et illud: "Qui vides in oculo fratris tui festucam in tuo cur non vides trabem?" Lucae VI; et illud apostoli ad Romane I: "Inexcusabilis es, o homo, qui judicas; in quibus enim alios judicas teipsum condemnas; eadem enim facis quae judicas."
- (3) Sed Basilienses nulli bonorum hominum exhortationibus realem et efficacem reformationem morum suorum facere voluerunt; sed solo in ore reformationem habentes similes facti sunt ranis quae toto corpore sedentes in luto solum os extra habentes, clamores magnos emittunt. Quot eorum qui Basileae erant manifeste concubinariis suas a se abjecerunt concubinas? quot habentes beneficia incompatibilia aut superflua et simoniace impetrata penitentes reliquerunt? quot eorum superfluos apparatus et vanos dimiserunt? quot illic scandalorum patratores suorum excessuum debitae correctionis subierunt disciplinam? An non apostatae, profugi, de criminibus condemnati, superioribus suis rebelles; illuc tanquam ad speluncam et receptaculum malefactorum undique confluentes defensionis iniquitatum suarum praesidia invenerunt? Qui majores quam ipsi praevaricatores et contemptores decretorum suorum sunt. Quis denique probus vitam, mores et stultitiam eorum furorem ac animos depravatos expertus ab eis non recessit scandalizatus?
- (4) Hic quoque liquido patet quam frivolum sit quod sanctissimo domino nostro objiciunt quod executioni reformationis impedimenta multa praestiterit. Criminatio certe falsa et excusatio nequam. Quomodo sanctissimus dominus noster reformationem et maxime Basiliensium impedivit; qui illos summo desiderio emendatos, correctos et reformatos; amare sanctimoniam, justitiam, pacem, et honestatem semper optavit? Intelligens reformatis illis nulla in ecclesia scandala proventura; quae illis non reformatis sed obduratis animis in malo perseverantibus proxima pertimescebat dicente Domino: "Non potest arbor bona malos fructus facere nec mala arbor bonos," Matthaei VII.

- (1) Respondeant stulti qui suam tam frivolis excusationibus palliant impietatem cujus unquam illorum reformationi sanctissimus dominus noster obviavit. Prohibuit ne quemquam (col 114) sua peccata deflere, emendare vitam, commutare mores, diligere continentiam, contemnere saeculum et mundi pompam humilitate supprimere; refugere falacias, declinare mendacia, similtates tollere, comprimere iras, calcare superbiam, humilitatem amare et dignam superioribus servare reverentiam; colere Deum, refulgere virtutibus et conversatione sancta antecedentium patrum imitari vestigia? Talibus profecto vera perfectaue hominis sit reformatio. Ait enim Apostolus ad Romanos XII: "Nolite conformari huic saeculo sed reformamini in novitate sensus vestri," glossa, "in mente cui non dominantur vitia." (page 29)
- (2) Sed dicunt Basilienses: non vult sanctissimus dominus noster servare electiones, annatas dimittere, et beneficiorum collationes inferioribus praelatis relinquere. Ista profecto est reformatio, quam Basilienses tam ardenti concupiscentia tanto tempore procurant. Qui utinam studio emendationi vitae expurgandisque moribus deformibus intendissent; quanto ad evacuandum jura apostolicae sedis, ad gloriam illius supprimendam et ad Romani pontificis statum extinguendum inardescunt. Iste profecto est hamus cum quo ad perficiendum impietatem conceptam favores principum et praelatorum piscari moliti sunt; non advertentes, fallaces homines, quod in omnibus istis nihil aliud summus pontifex attentavit vel fecit quam uti jure suo; cum ut scribitur in capitulo sacrosancta, dist. xxii ex auctoritate sanctus Anacleti martyr: "Apostolica sedes caput et cardo a Domino, et non ab alio instituta est; et sicut cardine ostium regitur, sic hujus sanctae apostolicae sedis auctoritate omnes ecclesiae Domino disponente reguntur."
- (3) Item Extravag. de praebend., libro VI capitulo licet: "Dispositio ecclesiarum et omnium beneficiorum mundi ad sedem apostolicam noscitur pertinere." Item in Clement, Extravag. ut lite pendente, capitulo Si duobus dicitur quod ad "Romani pontificis" auctoritatem "ecclesiarum, personatum, dignitatum, aliorumque beneficiorum plena et libera dispositio ex suae potestatis plenitudine noscitur pertinere."
- (4) Sed non obstante quod Basilienses dicentes sanctissimum dominum nostrum non servare electiones et collationes beneficiorum ordinariis relinquere, et in parte falsa loquuntur; audiamus quid eis responderit et quam sancte ac juste sanctissimus dominus noster, qui ad omnem reformationem justam et honestam ita semper paratus est, et fuit, ut se nemo in ea re expectanda praecedat. Respondit enim primo, ut ita tali discretionis lima decreta sua temperarent et moderarentur ut jura apostolicae sedis a summo omnium capite Christo concessa non laederentur; sicuti per sanctos patres in conciliis universalibus semper observatum est.
- (5) Secundo, quod provideretur necessitatibus et statui Romani pontificis, capitis et principis ecclesiae sicut naturali et divino jure atque pollicitatione solemni in generali congregatione facta tenebantur; providerent etiam dominis cardinalibus qui Romano pontifici in universalibus ecclesiae rebus adsistunt: et eo maxime

tempore quo per intemperantiam quorundam ipsis etiam Basiliensibus procurantibus denudatus erat (col 115) terris ecclesiae et patri-
monio sancti Petri. Quis tamen demens et excaecatus malitia ut
hanc sanctissimam domini nostri responsionem justam ac humanissimam
esse non videat? Intelligatque quod hoc non sit fugere reformationem
quemadmodum Basilienses garriunt sed promovere; et non velle patrum
statuta divellere, sed firmare?

- (1) Ceterum quam falsum quoque sit, quod ajunt, sua omnia exposuisse
pro reformatione fienda omnibus notum est. Ista dicere possunt
sine rubore falsitatis hi, qui magnas pecuniarum summas illos sibi
accumulare non noverunt; tum de praesumptis indulgentiis datis per
eos sub colore pietatis reductionis Graecorum; tum de decimis et
semidecimis in pluribus locis impositis et collectis; tum de spoliis
apostolicae camerae; tum ex subsidiis praestitis ab aemulis privatas
habentibus inimicitias adversus sanctissimum dominum nostrum; tum
de sacrilegis praticis praesumptae cancellariae eorum et similibus
quae notissima sunt eis, qui mores eorum et praticas quibus in
munitionem atque praesidium principatus sui in demolitionem aposto-
licae sedis statusque sanctissimi domini nostri usi sunt, longo
tempore cognoverunt. Unde plurimos qui primo pauperrimi erant
maximas inter eos sibi aggregasse divitias negare possunt.
- (2) Patefacto jam apertissime invalida falsaque esse fundamenta
quibus errores suos Basilienses colorate visi sunt. Reliquum est
jam illos ostendere linguas suas etiam docuisse loqui mendacium
circa multa quae in tractatu reductionis Graecorum sanctissimo
domino nostro impudenter objiunt. In primis quidem falsum est
quod ajunt, quod cum anno 1434 venissent oratores Graecorum Basileam
et tractaretur cum eis, ut anno sequenti imperator Romanorum et
patriarcha Constantinopolitanus cum ceteris ex oriente venirent ad
aliquem locum nominandum per concilium. Sanctissimus dominus
noster interim misit dominum Christophorum Carratronem nunc epis-
copum Coronensem, ad Constantinopolim ut ibidem fieret conventio
Latinorum et Graecorum; et non venirent citra mare.
- (3) Falsa prorsus objectio; notum quippe Graecis et exploratissi-
mum est universis tunc in curia Romana existentibus, quod dominus
noster a principio sui pontificatus pio desiderio unionis Graecorum
inflammatus antequam Basilienses umquam animo Graecorum reductionem
conciperent. Viam illam intentam prius a felicitis recordationis
papa Martino, praedecessore suo, cum Graecis coepit pertactare vide-
licet, ut legatus aliquis a latere cum aliquibus praelatis notabilibus
magistris in theologia et doctoribus in Constantinopolim mitteretur,
non quidem ad syndodum oecumenicam sive universalem celebrandam;
sed, ut quibusdam difficultatibus facile submotis, vias practicaret
quibus celerius faciliusque sancta unio perfici posset. Sed ecce
hujusce currente tractatu non patientes Basilienses tam gloriosum
opus studio sanctissimi domini nostri consumari, utque sub colore
reductionis Graecorum synodus ipsa extenderetur in longum; celerrime
nuntios mittunt Constantinopolim videlicet episcopum Sedensem et
Provincialem (col 116; page 30) fratrum Eremitarum beati Augustini
provinciae Lombardiae, -- ambos de dominio ducis Mediolanensis, --
qui variis promissionibus et informationibus tandem inducunt impera-
torem et patriarcham ad mittendum oratores suos Basileam expensis
ejusdem synodi.

- (1) Quibus venientibus Basilienses aliam longe diversam deliberationem concluderunt cum eis licet praefati oratores habuissent in mandatis ab imperatore et patriarcha nihil concludere cum patribus concilii nisi prius habito consensu Romani pontificis. Quam deliberationem decreto firmantes, oratorem mittunt ad sanctissimum dominum nostrum qui cum requirere habeant ut praefatam deliberationem consensu suo approbet et confirmet. Quae res merito sanctitati suae admirationem intulit et displicentiam. Admirationem quidem, quia de re tam gravi et ardua qua major in ecclesia esse non poterat, et tot mensibus agitata per eos contra honestae et antiquae consuetudinis normam nihil ei antea intimatum esset. Non advertentes quod ei ut supremo pastori totius gregis dominici de salute Christiani populi et reductione oberantium ovium principalis incumberet dispositio.
- (2) Praeterea hoc apud sanctos patres semper observatum legitur, ut si quod unquam ullo tempore pietati Christianae religionis adversum ortum esset, aut quod magni et ardui disponendum urgeret necessitas, et maxime per viam universalis oecumenici concilii, consulabatur in primis apostolica sedes. Quae sicut "sacerdotalis mater est dignitatis" ita "ecclesiasticae est magistra rationis," ut ait sancto Leo papa. Et inde consilium, ratio, auctoritas et auxilium expectabatur. Displicuit praeterea et merito, conclusio praefata sanctitati suae pro eo quod apostolicae sedi, -- quae caput et magistra est omnium ecclesiarum cui honor a sanctis universalibus synodis a sanctis patribus, ab imperatoribus, a regibus, ab orbe universo semper est exhibitus, -- tam parum ab illis patribus deferebatur. Verum haec omnia humanissimus pater dominus noster praedictae unionis desiderii flamma succensus, patientissime tolerans ne optatissimae rei ruptura sequeretur; ne aliqui putarent ipsum huic rei impedimentum afferre consensum dedit, omnem viam gratam habens per quam ea res tam sancta, tam necessaria, tam ardenti animo concupita effectum esset habitura.
- (3) Secundo, obijciunt sanctissimo domino nostro quod impedimenta multa praestiterit apud Avinionenses et alibi ne ipsi Basilienses haberent pecunias. Objectio certe vana ut ipsa gesta publice demonstrant. Nam sanctissimus dominus noster, dato praefato assensu, desiderio unionis Graecorum magis ac magis incensus, cupiens ut hoc tam salubre propositum felicem sortiretur effectum, de venerabilium fratrum suorum sanctae Romanae ecclesiae cardinalium consilio atque assensu misit Basileam reverendissimos totique orbi clarissimos patres dominos cardinales scilicet sanctus Crucis et sanctus Petri, apostolicae sedis legatos, dans eis inter caetera facultatem ea omnia tractandi et agendi quae memoratae unioni quomodolibet profutura viderentur.
- (4) Institerunt illi pro illorum sapientia et prudentia ut locus eligeretur pro futuro oecumenico concilio celebrando (col 117) qui et gerendis rebus et Graecis et domino nostro esset accommodus; sicut etiam Christianissimus rex Franciae per suum solemnem ambassiatam exhortatus fuerat; attendentes quod, ut dicitur Matthaei V: [MACCHABAEORUM] "Non propter locum gentem sed propter gentem locum dominus elegit;" * [DEUS] et illud Gregorii in capitulo Novit, xi dist: "Non enim pro locis res sed pro rebus loca amanda sunt."

- (1) Qui reverendissimi patres licet omni studio omnique diligentia pro hac sancta et justa petitione laboraverint offerentes ex parte sanctissimi domini nostri praesidia, subsidia, et indulgentias dare generales ubi opus esset, crassante tamen quorundam malitia nihil obtinere potuerunt. Nam ubi tempus eligendi locum advenit tantus fuit in quibusdam privatarum passionum livoris et ambitionis impulsus ut magis oriretur divisionis occidentalis ecclesiae timor quam futurae unionis Latinorum atque Graecorum spes.
- (2) Electa namque est per nonnullos quos major pars turbae popularis in concilio secuta est civitas Avenionensis; quam electionem sanctissimus dominus noster, multis justis et rationalibus causis gratam minime habere potuit; tum quia civitas illa nec nominata nec comprehensa erat in decreto facto cum Graecis de eligendo loco de oecumenico concilio celebranda; tum quia a Graecis saepenumero apertis protestationibus repudiata; tum quia civitas illa distantia sua ab Italia sanctissimo domino nostro tam propter invaliditatem corporis quam propter guerrarum Italiae pressuram non erat locus commodus; tum quia illorum cogitatus tendere in malas partes noverat; quae nunc in oculis universorum detectae sunt; tum quia multis principibus non usquequaque locus ille erat securus. Quibus consideratis, cum clarissimum foret Avenionenses in hac re frustra exposituros pecunias; quis nisi mente vacuus rearguerit sanctissimum dominum nostrum quod avisaverit Avenionenses de hoc ut pius pater; et jusserit tamquam dominus subditis ne bona sua exponerent perditioni; et non magis commendaret qui charitatis et dignitatis suae adimplevit officium.
- (3) Tertio, consequenter objiciunt sanctissimo domino nostro quod noluerit dare salvum conductum omnibus aliis principibus dantibus et concedentibus. Objectio certe frivola. Ad quid sanctissimus dominus noster salvum conductum dedisset pro locis ad quae noverat Graecos protestatos esse numquam venturos? (page 31)
- (4) Quarto, objiciunt sanctissimo domino nostro Basilienses quod impediverit quod unio fieret Graecorum cum bona pace et cum unione ecclesiae Latinae. In qua parte Basilienses, quod "docuerint linguas suas loqui mendacium," probatur manifeste ex diligentibus factis per dominum nostrum ut cum pace ecclesiae Latinae unio fieret orientalium. Unde idem dominus noster cum ex loci Avenionensis electione, causis superius adnotatis, animadverteret non solum unionem illam desideratissimam nisi aliter provideretur, non secuturam; verum in ipsa quoque occidentali ecclesia novitates noxias, scandala plurima emersura; cupiens, sicut ex pastoralis officio (col 118) debito tenebatur, tantis periculis occurrere, de praedictorum fratrum suorum sanctus Romanae ecclesiae cardinalium consilio et assensu, destinato ad concilium Basiliense reverendissimo patre domino Tarrantino.
- (5) Per suas literas commisit dominis cardinalibus apostolicae sedis legatis videlicet, sancti Petri et sanctae Sabinae atque praefato domino Tarrantino, ut iterum universos exhortarentur patres existentes in concilio, ut vellent ob laudem et reverentiam Dei ac salvatoris nostri Jesu Christi et per aspersionem sui praetiosissimi

sanguinis, pro pace et felici tantarum rerum continuatione locum eligere pro hujusmodi transferendo concilio, qui gratus esset Graecis et suae sanctitati, atque accessu facilis, rogantes eos ut disceptationibus et dissentionibus subductis de medio ambulantes in rectitudine et in simplicitate cordis; jactarent in Domino cogitatus suos ac de Deo confidentes in suis conciliis charitatis legibus obsequerentur, quae juxta apostolum "non irritatur, non cogitat malum; non acquirit quae sua sunt; non gaudet super iniquitate; sed e contra patiens est, benigna est," et his similia. Pro affectione sanctitatis suae, ut cum pace omnia fierent existentibus in concilio tranquilla proponenda mandavit.

- (1) Injunxitque praeterea legatis ipsis et praesidentibus nihil omittere per quae ad optatum tantae rei effectum pacifice perveniri posset. Sperabat autem sanctitas sua has justissimas petitiones patres in concilio existentes pro eo maxime non negaturos sed facillime concessuros; cum ex decreto adhaesionis expresse constituisent ac solemniter promisissent, quod nemo ipsorum esset qui pedes ejus ut beati Petri non oscularetur et vicarium Christi non honoraret; quod esset concilii caput et quod omnes ad eum respicerent, et ei complacerent atque obsequerentur, et quantum cum Deo possent sanctitati suae servire curarent; offerentes etiam quidquid dici aut cogitari posset pro honore et statu tam sanctitatis suae quam suorum.
- (2) Sed Basilienses non emolliti dulcedine tam piae obsecrationis nec reverentia tanti patris nec sacramento pollicitationis factae ne dum reverendissimos patres legatos, tam pia, tam sancta et salutaria postulantes, non exaudierunt. Verum etiam ad decretandum civitatis Avinionensis electionem ipso jure nullam renitentibus etiam apostolicae sedis legatis procedere temptarunt. Tentatio plane judicata a gravissimis patribus praesumptuosa nimis et plurimum execranda velle decretare locum contra decretum concilii, contra jus, contra fidem compacturam cum Graecis, contra publicam protestationem Graecorum, contra apostolicae sedis dispositionem, contra pium desiderium summi pontificis et apostolicis legatis cum pluribus aliis praelatis et notabilibus patribus renitentibus; atque ad novam loci alterius electionem procedendum esse decernentibus.
- (3) Ex qua scandalosa disceptatione formidantes reverendissimi domini legati et alii qui locum tantae rei idoneum in decreto compraesens Graecis et Latinis eligere intendebant secuturum scissurae periculum pro pace cesserunt his qui Avinionem eligere contendebant; licet se adventui et (col 119) unione Graecorum non satis consulere nec honori ecclesiae intelligerent; et constituto Avinionensibus termino ut per totum mensem januarii concilium certificarent de mutuo pecuniarum et aliis necessariis rebus. Et si decurso termino nihil fecissent de electione alterius loci praefati domini legati patres concilii sollicitarunt cumque omnino repugnarent etsi satis periculose qui Avinionem elegerant, aliam dilationem et majus scandalum vitarent concedere decreverunt.
- (4) Unde approbantibus cunctis et firmantibus in hanc conclusionem devenit ut secundo induciae darentur, ea conditione adjuncta

quod si civitas Avinionensis non satisfaceret realiter et cum effectu in numerata pecunia de mutuo constituto intra terminum triginta dierum et de hoc sacrum concilium . . . et teneretur, esset legitime certificatum infra duodecim dies; post triginta dies immediate sequentes ex tunc sacrum concilium posset et teneretur ad electionem alterius loci procedere et sibi et universali ecclesiae aliunde providere.

- 1) Qua dilatione secunda discursa inutiliter Avinionsibus infra conductum terminum non solventibus; ne opus sanctae unionis Graecorum impediretur et ne occidentalis ecclesia in his quae promiserat Graecis deficeret, instantibus Graecis ut alius locus eligeretur, facta primo solemnī exhortatione et requisitione per dominos legatos et praesidentes concilii. Processum est per eos et alios ex praelatis, et gravissimis ac religiosis patribus plurimos, saniozem partem ipsius concilii facientes ad alterius loci electionem juxta conclusionem superius expressam; quae concordī omnium patrum ipsius synodi sententia fuerat conclusa. Et electa est Florentia aut Utinum aut alius locus quivis in Italia in decreto compraeensus; qui galeas et alia necessaria maturius praeparasset (page 32) prout ex decreto inde confecto plenius demonstratur.
- 2) Non autem sunt hic praetereunda silentio media pacis et concordiae per dominos legatos et praesidentes et patres de eorum parte oblata Basiliensibus, quae luce clarius attestantur veraciter ipsos Basilienses et non sanctissimum dominum nostrum impedimenta praestitisse ut unio Graecorum cum pace fieret Latinorum. Obtulerunt autem praefati domini legati, orta tempestate et turbatione super decretatione electionum diversorum locorum, super his verbis formaliter. Primo, in genere sumus contenti quod alia pars possit decretare conclusionem locorum dummodo taliter fiat ut unio Graecorum non pereat. Secundo, quod similiter Avinione decretetur et Sabaudia sed addatur quod si Graeci non possint vel nolint venire Avinionem vel Sabaudiam tunc alius locus intelligatur electus ad quem velint venire.
- 3) Tertio, ne propter istam objectionem Avinionenses retrahantur a solvendo, fiat sic quod ille locus ex nunc subrogandus solvat totum quod restat solvendum. Et sic ambassiatores ibunt et laborabunt pro Avinione et Sabaudia cum pecuniis alienis. Quarto, quod vadant galeae ipsorum et nostrae sed suae vadant plus; et si possunt obtinere Avinionem vel Sabaudiam, bene est; et nostrae revertantur vacuae. Si autem sua galeae non possunt (col 120) adducere Graecos tunc nostrae adducant ne tantum bonum perdatur.
- 4) Quinto, ad tollendam istam discordiam plura loca nominentur Graecis et detur electio ipsis Graecis cum hoc quod Avinionenses non habeant amplius exbursare quam exbursaverint. Sexto, quod cum istis ambassiatoribus qui missi sunt addantur aliqui alii et committatur ipsis quod omnem diligentiam faciant pro Avinione et Sabaudia. Sed quod nullatenus revertantur sine Graecis, nec remaneant, propter locum aut portum et multa similia oblata sunt. Et finaliter dixerunt sic in forma domini legati ut publica testantur instrumenta: "Contenti sumus de omni via imaginabili ad

honorem alterius partis dummodo negotium Graecorum non pereat; cum hoc quod quaecumque via de praedictis acceptaretur provideri debeat indemnitati Avinionensium taliter quod ea quae exposuerunt, integraliter recuperent."

- (1) Sed pars alia nullam viam acceptavit etiam oblatam per aliquos ex suis; sed semper stare voluit in Avinione. De quo certe dolendum est quod tanta illorum hominum ad Avinionem habita est consideratio et non ad honorem Dei, ad pacem et unitatem ecclesiae, et bonum publicum Christianorum. Ubi plane quilibet etiam parvulus intelligere potest quod factum Graecorum non quaerebatur ab illis propter unionem Graecorum et salutem animarum. Quoniam si Graecorum salutem veraciter sitivissent non certassent procul dubio de isto vel de illo loco sed ubi melius fieri potuisset. Cum ut allegatum ex Gregorio: "Non pro locis res sed pro rebus loca amanda sunt."
- (2) Ubi maxime stupendum est quam cito de illorum hominum memoria exciderunt verba quae in decreto suo cum Graecis ad aures totius orbis destinarunt. Ajunt enim: "quid utilius ac fructuosius ab exordio nascentis ecclesiae populus Christianus unquam vidit vel audivit quam quod tam diuturnum ac perniciosum schisma penitus extirpetur? Quid igitur pro tam piis et salutaribus rebus per Christifideles tentandum, faciendum et curandum esset? Quid catholicus pro tanto nominis Christiani et fidei orthodoxae incremento non modo caducam hujus mundi substantiam sed et corpus et animam exponere non deberet; nec expedire ut propter locum dumtaxat tantum bonum negligatur?" Haec sunt verba illorum hominum.
- (3) Intelligent jam Christiani si Basilienses docuerint opere quod praedicaverunt. Quis non videat verba illa ficta fuisse non de verae charitatis fonte sed hypocrisis emanata? Quorum Basiliensium execrandam obstinationem et diabolicam perfidiam animadvertentes praefati domini legati protestati sunt coram Deo et omnibus sanctis quod per eos non stabat quin bona concordia fieret; sed propter illos qui rationabiles vias concordiae recipere vel admittere nolebant. Et quod mala et scandala et pericula gravia quae ex hac discordis imminerent, illis coram divino judicio imputarentur, quoniam ipsi coacti essent jus suum tueri et defendere et pro defensione sua congruis remediis providere. Cum nihil aliud coram Deo in his negotiis intenderent quam dare omnem possibilem diligentiam quod ecclesia non repraehendatur de violatione promissorum et tractatus unionis Graecorum cum (col 121) vituperio ecclesiae Latinae non pereat de quibus omnibus requisiti sunt notarii.
- (4) Graecorum autem oratores qui diebus illis Basileae commorantes animos patrum concilii tanta varietate caecatos intellexerant, electionem de Avinione rationibus super nominatis repudiantis, electionem factam per dominos legatos et pios patres eos sequentes habentes gratissimam et legitimam, profecti sunt ad sanctissimum dominum nostrum una cum oratoribus praefatorum reverendissimorum reverendorumque patrum; qui auctoritate concilii in hac re ad eos, sicut in superioribus dictum est, devoluta veram synodum constituerant; qui multa precum instantia sanctitatem ejus exorati sunt ut praefatum electionis decretum de Florentia aut Utino aut de quovis alio loco in Italia qui necessaria pro Graecis maturius praeparasset, admittere et confirmare dignaretur.

- (1) Quae omnia sanctissimus dominus noster attentius considerans, conspiciensque rem eo devenisse, ut praefatos oratores necessario exaudire cogeretur, nec superesse modum alium prosequendi operis tam pii et servandi honoris ecclesiae (page 33) Latinae de consilio et assensu dominorum cardinalium, electionem praedictam in generali consistorio admisit et confirmavit. Ac demum pro ipsius felici executione providentissimus pater dedit operam non sine magnis laboribus et expensis ut cum praefatis oratoribus quatuor galeae et alia mitterentur, quae pro ipsorum Graecorum adventu erant necessaria.
- (2) Haec autem ubi didicerit qui in Basilea Avinionena praetulerant pro inordinatis quibus agitabantur affectibus turbati, vehementique commoti furore multa ad perturbandum praedicta imaginati sunt; inter quae, quod plus ceteris omnibus habet admirationis, praesumptionis, et sceleris, ausi sunt contra rationem, contra justitiam, contra dispositionem Dei, contra reverentiam sanctorum canonum, contra statuta Spiritus Sancti, adversus sacrae antiquitatis exempla, adversus summum pontificem universalis ecclesiae caput Christi indubitatum vicarium, conflare monitorium quoddam, plenum convitiis, blasphemis, et detractionibus; licet, ut non fieret praefati domini legati multique alii verandissimi patres et regum et principum oratores variis modis obsisterent: clamantes ex illo multa scandala in ecclesia profectura.
- (3) Quos cum sanctissimus dominus noster omnino in scissuram universalis ecclesiae furere animadverteret publica necessitate cogente, de dominorum cardinalium consilio et assensu pluribus aliis praelatis et doctissimis patribus idipsum consulentibus et approbantibus auctoritate sibi a Christo data concilium transtulit in Ferrariam, civitatem omnibus liberam et securam, in decreto comprehensam, Graecis gratam, rebusque gerendis accommodatissimam; et deinde per urgente peste transtulit in civitatem Florentiam.
- (4) Basilienses vero insania vecti praedictum monitorium festinant non modo destinare ad omnes principes partium occidentalium ut eorum animos a devotione averterent sanctissimi domini nostri. Sed quod magis lacrimabile est in Constantinopolim mittunt ut orientales viso hujuscemodi libello famoso futurum in ecclesia nostra suspicarentur (col 122) schisma et ab adventu ad partes Latinorum se retraherent.
- (5) Porro domini Graeci qui Basiliensium corruptos et depravatos animos noverant atque mendaces vilipendentes praefatum monitorium tamquam insaniam quamdam et stultitiam, prosecuti sunt iter tractatus coelitus inspirante unionis. Quibus venientibus ad sanctissimum dominum nostrum verum et indubitatum caput universalis ecclesiae vera et indubitata celebrata extitit oecumenica synodus. Quidquid haeretici Basilienses mentiantur; in qua omnipotentis Dei clementia operante unio facta est. Quibus omnibus consideratis clarissimum est, Basilienses mentitos esse dicentes sanctissimum dominum nostrum impedimenta praestitisse ne unio Graecorum fieret cum pace Latinorum, qui omnem curam et diligentiam dedit ut cum pace omnium tractatus pacis et unionis concluderetur Graecorum.

- (1) Obficiunt quinto loco sanctissimo domino nostro Basilienses quod impedimenta praestiterit ne Graeci venirent ad eos. Dicunt enim quod sancta synodus omnem possibilitatem pro Graecorum conductione impendit, mittens oratores suos et galeas Constantinopolim ut Graecos adducerent, obtulitque ipsis Graecis per suos oratores compleri omnia, quae eis promissa fuerant, si advenire voluissent; nec in aliquo defecit ipse sancta synodus, sperans semper ipsos Graecos venire debere ad locum nominatum per eandem synodum sicut cum eis conventum erat. Neque dubium esse debet, inquiunt, cuique Christiano, quod si juvare voluisset sanctissimus dominus noster sicut restitit et impedivit, fuissent adducti.
- (2) Objectio plane tot quasi mendacis composita quot ex partibus constat. Quomodo non sunt veriti dicere omnem eos possibilitatem impendisse pro utilitate Graecorum qui ita pertinacissimis animis laborarunt ut si Graeci non valerent aut nollent ad loca per ipsos Basilienses electa venire ab adventu ad Latinas partes retraherent omnino? Quomodo omnem possibilitatem impenderunt pro conductione Graecorum qui nec preces eorum nec Romani pontificis nec dominorum cardinalium et praesidentium concilii devotissime supplicantium ut locus eligeretur Graecis gratus et praesentiae sanctitatis domini nostri accommodus, audire voluerint? Quomodo falsa loqui tam aperte non sunt veriti qui vias possibles, rationabiles, et justissimas oblatas eis de quibus parum ante commemoratum est, ut cum pace totius ecclesiae Graeci adducerentur tam impudenter respuerunt?
- (3) Praeterea quod falsum sit, quod ajunt, oratores cum galeis misisse Constantinopolim ut Graecos adducerent, nec in aliquo defecisse quod promiserant, manifestum est; quia nec galeas sufficientes nec trecentos balistarios de quibus pollicitum fuerat in decreto conventionali, miserunt. Qualiter autem defecerunt Basilienses Graecis in electione loci superius plenissime dictum est.
- (4) Ceterum praeterquam frivolum sit quod semper se sperasse dicunt, Graecos venire debere ad locum nominatum per eos. Spes certe vana et frivola qua enim ratione sperabant illos debere venire ad loca electa per eos qui (col 123) loca elegerant contra mentem Graecorum quod protestatos noverant coram tota synodo numquam ad illa loca accessuros utpote quae in decreto conventionali nec nominata nec comprehensa erant? Quomodo praeterea sperabant illos venire, quos sciebant electionem factam per dominos legatos (page 34) et alios patres eos sequentes de locis in decreto comprehensis acceptasse requisisque sanctissimum dominum nostrum illam eis confirmari? Demum quod apertissime mentiantur Basilienses dicentes sanctissimum dominum nostrum resistisse et impedivisse ne Graeci adducerentur per oratores illorum; patet manifeste non modo ex superioribus, sed etiam ex his quae in Constantinopolim veraciter gesta sunt.
- (5) Cum enim Basiliensium oratores pro mense Octobris venissent in Constantinopolim omni studio curarunt, promissionibus et minis impedire adventum Graecorum si cum eis venire nollent; comminantes quod omnes principes Latini quorum habebant salvos conductus et literas amodo illis essent adversarii si non venirent in Basileam aut Sabaudiam aut in Avinionem et per portum Avinioni propinquiorem; nec ab ipsis unquam haberent subsidium; immo toto posse impedirent ne sibi daretur oecumenicum concilium.

- (1) Si vero cum illis venire vellent promittebant illi s magnam armatam contra Turcos pollicitantes concilium daturum cruciatum omnibus arma contra Turcos sumentibus. Multis et aliis variis sed vanis argumentationibus illos ad hoc inducere conati sunt. Oratores vero sanctissimi domini nostri et patrum apud quos in hac re auctoritas synodi residebat non illo furore usi sunt; sed spiritu charitatis et mansuetudinis ponentes in optione dominorum Graecorum, sicut in mandatis acceperant, tam a sanctissimo domino nostro quam a legatis et praesidentibus concilii, ut dummodo venirent ad locum ecclesiae Latinae, eligerent quas galeas, quem portum, quem locum vellent.
- (2) Unde capitulum unum instructionum datarum oratoribus sanctissimi domini nostri et patrum supradictorum missis in Constantinopolim est formaliter quod sequitur: "Si forsitan galeae ex Nitia cum oratoribus qui modo sunt in Avinione praevenirent vos in Constantinopolim vel occurrerint, permittatis ipsos agere cum Graecis et in nullo eis impeditis. Et si possint efficere ut Graeci veniant ad loca per ipsos nominata, habete patientiam in nullo resistentes ut omnes intelligant non vos esse ad impediendum missos; ac nos procedere in hoc negotio sancta et recta intentione, sicuti certe est, nihil enim aliud quaesivimus, nec quaerimus nisi ut hoc sanctum opus non pereat praesertim cum opprobriis ecclesiae nostrae. Si vero illud nequeant obtinere tunc, ne sancta unio impediatur nec etiam concilium videatur deficere in promissis, prosequamini electionem nostram et omni diligentia satagite conducere vobiscum Graecos. Quoniam verisimiliter sperandum est si conveniamus invicem in concilio oecumenico sequi debere unionem. Si vero ut praedictum est, ipsi oratores Basiliensium concurrant vobiscum in Constantinopolim, abstinete a jurgiis contumeliis et contentionibus; sed cum omni modestia, patientia et mansuetudine injunctam vobis legationem exsequamini in nomine Salvatoris nostri (col 124) Jesu Christi qui vos feliciter conducat." Haec ibi.
- (3) Quae omnia oratores sanctissimi domini nostri tamquam pacis angeli impleverunt. Sed audiamus ad aperiendam hypocrisim et impudentiam Basiliensium quid dominus imperator Romanorum fecerit. Advocavit ad se oratores Basiliensium et benignissimis exhortationibus pro ejus prudentia allocutus est, eos ad pacem et concordiam ad charitatem inducens, dicens se velle venire cum illis ad Venetias vel ad portum aliquem Italiae, quem facilitate transitus, propinquitate et securitate commodiorem noverat; et ibi tractare de loco concordi, ut cum pace omnium utriusque ecclesiae unio feliciter concluderetur.
- (4) Basilienses vero sicut homines qui non pacem, non charitatem, non zelum salutis animarum sed more basilisci venenum impietatis et malignitatis ventre conceperant. Haec tam salubria pacis et amoris hortamenta spreverunt. Quorum animos cum dominus imperator ab omni via pacis alienatos animadverteret non parum admiratus et scandalizatus quia intuebatur illos non unitatem quaerere, sed aliquid aliud sinistrum in ecclesia sub specie pietatis, dimisit illos. Illi vero quasi furentes, alta et ampullosa verba comminationum et protestationum fulminantes, recesserunt.

- (1) Imperator vero et patriarcha aliique domini Graeci cognoscentes fidem, pietatem, veritatem, et sanctae intentionis rectitudinem quam sanctissimus dominus noster in hoc opere semper habuerat galeas oratorum sanctitatis suae et patrum qui veram synodum repraesentabant, ascenderunt. Quibus venientibus Sancto Spiritu operante unio facta est sicut dictum est. Intelligunt jam universi Christiani qui pacis semitas rimari noverunt quam apertissime damnatissimi Basilienses "linguas suas docuerint loqui mendacium," objicientes sanctissimo domino nostro pacis impedimenta et scandala quae ipsi orbis scandalizatores et divisores ecclesiae manifestum est perpetrasse.
- (2) Ad illud vero quod Basilienses inique et impie objiciunt sanctissimo domino nostro quod Graecorum unioni tanta cura tamque ardenti studio intenderit; ut vel in papatu se perpetuaret aut reformationem ecclesiae impediret; vel in suis sustineretur criminibus; superfluum est aliquid respondere. Notissimum quippe est omnibus illos linguam suam docuisse mendacium loqui, qui noverunt sanctissimum dominum nostrum in minoribus etiam constitutum antea quam de papatu ejus esset hominum cogitatus, divisionem orientalis et occidentalis ecclesiae aegre ac molestissime ferentem praefata, utpote coelesti desiderio succensum multa diligentia instituisse in concilio Constantiensi primum; tum etiam apud felicis recordationis Martinum papam praedecessorem suum.
- (3) Ceterum nota est horum hominum malitia universis qui noverunt ardentem animum et mentis alacritatem quibus sanctissimus dominus noster rem hanc suscepit et sollicitudines pias quibus (page 35) prosecutus est in principio creationis suae, antequam Sathanas sibi hostes aliquos suscicaret.
- (4) Sed demum Basilienses objiciunt: quid prodest domino Eugenio caeteros ad fidem convertere si ipse in schisma et et haeresi permanere (col 125) vellet? Si ceteros vellet unire et se ab ecclesia catholica separare? Objectio plane malitiosa et stulta; malitiosa quidem quia miseri de felicitate laborum et piorum studiorum sanctissimi domini nostri tabescentes, nebulis ferulentae detractionis obscurare clarissima omnique futuro saeculo celeberrima illius opera muliuntur et amplissima sanctitatis illius merita parvi facere. Ajunt enim mentientes illum in schismate et haeresi permanere qui nedum schismatici et haeretici sed, schismatum duces et totius divisiones auctores caeca et obstinata dementia fide et unitate universalis ecclesiae separati sunt.
- (5) Stultam proinde objectionem illam dicimus, quoniam non nisi sensu vacuus verba talia proferret. Arbitrantur amentes et perfidi homines ut quisquam in schismate et haeresi permaneat et fidem communionemque ejus suscipientes ad Christi fidem contulisse dicatur et ad unitatem universalis ecclesiae conduxisse; (Mansi notes "locus turbatus") non intelligentes ignorantissimi homines, quod juxta apostolum ad Corinthios V "Non est conventio Christi ad Belial."
- (6) Cum ergo Graeci in una fide et charitate cum sanctissimo domino nostro Eugenio et apostolica sede universaque ejus sancta

synodo Florentiae convenientes omnipotentis Dei efficiente clementia, fidem et unitatem universalis ecclesiae susceperint. Quid miseri et vaniloqui schismatici et haeretici Basilienses tot stultitias garriunt? De quibus jam aperte demonstratum est propriissime verificatum esse verbum prophetae quod in exordio hujus responsionis ad sacrilegam illorum invectivam pro themate sumpsimus videlicet quod "docuerint linguam suam loqui mendacium et ut inique agerent laborarunt."

- (1) Et recte propheta illos laborasse dicit quia cum Basilienses facile habere potuerint iter rectum, Graecorum exemplo obedientiam et doctrinam suscipiendo apostolicae sedis et sanctissimi domini nostri Eugenii devios sequuntur anfractus, planum deserunt ut in tenebris caeci ac debiles jaceant. Mirum profecto? Negotium Basilienses fugiunt et Graeci et Armoeni sequuntur; proximi relinquunt fidem, derelinquunt ecclesiam; et alienigeni complectuntur.
- (2) Sola Basiliensis congregatio obcaecata tenebris sanctissimum dominum nostrum Eugenium fidelem catholicum non cognoscit quem omnes reges et principes Christiani, uno excepto, quem erroribus suis infascinatam in apostaticum evexit ut patrem omnium Christianorum caput et pastorem venerantur et colunt. Ubi non parum considerandum est quanta fuerit et sit illorum hominum perfidorum Basiliensium cordibus duritia, quos nec scripturarum et sanctorum patrum auctoritas et unitatis ecclesiae amor nec animarum zelus nec proprii (col 126) honoris respectus; nec Graecorum supplicantium et protestantium clamores, nec Latinorum regum et principum preces et humanitas, nec mansuetudo paterna sanctissimi domini nostri Eugenii ab impietate concepta potuerint revocare; ut merito illos magis perfidiae quam fidei gratia quisquam arbitretur convenisse.
- (3) animadvertunt jam luce clarius universi qui Christiano nomine gloriantur, quam juste quam sancte congregatio perfida Basiliensium utpote quae in eversionem fidei et unitatis ecclesiae agitata est tamquam schismatica haeretica a sanctissimo domino nostro Eugenio et universali ecclesia condemnata sit et reprobata; quam rationabiliter idem sanctissimus dominus noster exhortatus fuerit cunctos Christianos populos illorum tamquam putridorum membrorum et scabiosarum ovium consortia vitare ne contagione pestifera plurimos perderent.
- (4) Contra quos nisi a pravitate concepta sensus suos in brevi correxerint opus erit per catholicos principes, qui ecclesiam Dei suscipiant ut ex veteri instituto solitum est contra inimicos fidei catholicae et adversarios pacis et unitatis ecclesiae, finaliter provideri. Verum ne ecclesia sancta tantis perturbationibus, superba illorum elatione vexetur, orandus est omnipotens Deus qui vult omnes homines salvos fieri et neminem vult perire ut Basilienses errorum tenebris caligantes ita dignetur lumine claritatis suae respicere ut haeretica pravitate deposita, ad veritatem catholicae fidei et universalis ecclesiae cito redeant unitatem.
- (5) Nos vero supersedentes respondere multis aliis vaniloquis sermonibus ipsorum Basiliensium et brevitatis gratia et quia ad illos intendere non sit opus, finem praesentis responsionis

facientes, hortamur et obsecramus pro nostrae parvitas zelo sanctissimum dominum nostrum Eugenium papam IV universalis ecclesiae indubitatum pastorem, et reverendissimos dominos sanctae Romanae ecclesiae cardinales, ceterosque pios ecclesiae patres in hac universali synodo Florentina in Christi nomine congregatos, talem legem celebrandis in futurum conciliis generalibus, de modo, de ordine, de tempore, de personis, de mensura potestatis imponere; ut quae in salutem reipublicae sunt instituta non vergant quorundam perfidorum hominum temeritate in illius interitum et ruinam; sicut de Basiliensi synodo heu! experitur universalis ecclesia; quod ipse praestare dignetur Jesus Christus caput ecclesiae et salvator corporis eius qui est in saecula benedictus. Amen.

Ista responsio fuit composita per dominum Joannem de Tarre-
cretata presbyterum cardinalem sancti Sixti dum esset Titularis
apud illustrissimum regem Franciae orator sanctissimi Domini
nostri Eugenii papae IV.

JUAN DE TORQUEMADA:

VOTUM super avisamento quod papa
debeat jurare servare decreta de
conciliis generalibus... A.D: 1438
POST 24 MARTII

MANSI 30: 599-606

TRACTATUS D

TRACT D: This Tract, the shortest of the five, is a succinct argument against the conciliar proposition that an oath be required of the Pope -- his election being conditional on his oath -- to observe conciliar decrees. The conclusion made by Torquemada is that there is no power capable of making such a demand when plenitude of power is vested in the Papacy. Various sections of the Liber tertius in the SUMMA DE ECCLESIA incorporate portions of the argument. The principle again is: Princeps solutus a lege.

STATE of the TEXT as found in MANSI 30

Condition is good;

Apart from the inevitable leaning of scribes to misread numbers, no great faults can be found with the text as it is printed. Two or three difficult spots occur: these the transcriber has mercifully not emended. A lacuna occurs in an important passage.

EMENDATIONS: I have chiefly confined these to spelling and the usual numbers.

OCCASION of the COMPOSITION of TRACT D:

The decreta referred to are the decisions projected by some members of the Reform Committee at the Council of Basle, Session 23: March 24, 1436.

The Explicit of the Tract advises us that the decrees were in restraint of the Pope on several points: the oath being required of the Pope with regard to collations to benefices, ecclesiastical honours and status, and the business of annates. (cf. RESPONSIO SACRAE SYNODI, May 15, 1436 -- to the "evasions" of Eugene IV. MANSI: 29: 283)

Conciliar defendants seem to have been those alligned for the decretum irritans generally, that is, John Patriarch of Antioch with a host of supporters.

The regular defendants for the papal side were: John of Monte Negro, John the Archbishop of Trent (Tarentino?) and Juan de Torquemada -- in the debates proper. The Bishops of Dijon and Nevers (Dignensis et Nivernensis) were of this group. (cf. John of Segovia in Monumenta conc. Gen.II:84-86) The dating as it appeared (before I corrected it) in the Explicit was obviously a typographical error. Mansi notes in his Preface that Torquemada's speech was a result of the discussions in Session 23, in 1436 -- MANSI 30:29

IMPORTANCE of TRACT D:

It is an added clarification of the muddled issues of papal vs. conciliar supremacy. Each of the TRACTS contains something that is more fully developed in the SUMMA. This Tract is another phase of his reasoning, that if the Pope enjoys plenitude of power, the General Council cannot; if the Pope enjoys plenitude of power "as a king in a kingdom", any such decreta irritantes are so much lese majeste.

VOTUM : super avisamento quod papa debeat jurare servare decreta de conciliis generalibus continuandis, et electionibus confirmandis; alias cadet a jure papatu, etc.

- (1) (col 599E) Circa avisamentum positum de juramento papae quod electus in papam debeat jurare aetera decreta hujus concilii; sicut de conciliis continuandis et electionibus confirmandis observare alias cadat a jure papatus et habeatur (col 600) si jurare noluerit tanquam si renuntiasset. Quaeritur utrum sacrum concilium debeat instituere ut summus pontifex juret observare simpliciter statuta et decreta concilii universalis pure positiva sub poena casus a dignitate. Et arguitur ad partes. Pro parte affirmativa arguitur sic.
- (2) In decreto Constantiensis scribitur quod "concilium generale potestatem a Christo immediate habet cui quilibet cujuscumque status vel dignitatis etiamsi papalis existat obedire tenetur in his quae pertinent ad fidem, ad extirpationem...schismatis et generalem reformationem...ecclesiae." Et sequitur: "quod quicumque cujuscumque status vel dignitatis etiamsi papalis existat qui mandatis, statutis, sive ordinationibus aut praeceptis hujusmodi et cujuscumque alterius generalis concilii legitime congregati super praemissis, seu ad ea pertinentibus factis vel faciendis obedire contumaciter contempserit nisi respuerit, condignae penitentiae subjiciatur et debite puniatur."
- (3) Non videtur autem alia magis debita poena inobedientibus constituta sacri concilii quam depositio sive casus a dignitate. Ita enim legitur, fecisse ipse sponsus ecclesiae quam sacra concilia representant, circa multos, videlicet Angelum inobedientem de cujus casu dicitur Isaiae xxiv: "Quomodo cecidisti, Lucifer, qui mane oriebaris." Item Adam hominem primum Dei mandatum contemnentem pariter a sua dignitate dejecit, de quo in Psalmo: "Homo cum in honore esset" etc. Item Saulem a regia dignitate sicut patet I libro Regum c. XIv: "Dicit Dominus ad Samuelem: usquequo tu luges Saul cum ego projecerim eum ne regnet super Israel?"
- (4) In oppositum pro parte negativa arguitur ex eo quod princeps solutus est legibus ut dicitur. Ex quo videtur quod cogere eum jurare ad observantiam legum similium sub poena tali, est directe agere contra potestatem, honorem, et majestatem principis. Immo videtur quod contra rationem principis: et sic conclusio relinquitur dubia. Pro aliqua[?] declaratione praesentis quaestionis, juxta nunc occurrentem intelligentiam, salvo semper meliori judicio: duo faciam articulos. In primo, deliberationem, sive conceptum meum ponam an liceat papam talibus juramentis ad observantiam decreti hujusmodi alligare. Secundo, an sub tali poena.
- (5) Circa primum institutam talem ordinem. Primo, quod conclusionem ponam judicio meo: verum secundo, respondebo rationibus in contrariam. Pro primo sit conclusio. Non licet papa per concilium generale ligari juramento ad observantiam decretorum suorum. Quam conclusionem ex multiplici capite deducam. Primo ex parte dignitatis papalis principatus pro quo notandum quod sanctus Thomas dicit in II IIae, Q. 89, articulo ultimo, quaerens quia juramento excludantur. "Quod in

juramento duo consideranda sunt: unum quidem ex parte Dei cui testimonium inducitur. Et quantum ad hoc debetur juramento maxima reverentia; et propter hoc a juramento excluduntur pueri ante annos pubertatis qui non coguntur ad jurandum quia non habent perfectum usum rationis, quo possunt cum debita reverentia praestare; et iterum perjurii qui ad juramentum non admittuntur quia ex retroactis praesumitur quod (col 601) debitam reverentiam non exhibeant. Aliud autem considerandum est ex parte hominis cujus dictum juramento confirmatur; non enim indiget dictum hominis confirmatione nisi quia de eo dubitatur. Hoc autem derogat dignitati personae ut dubitetur de veritate eorum quae dicit. Et ideo personae magnae dignitatis non convenit jurare. Propter quod dicitur II, c. 5, 'Si quis presbyter' quod 'sacerdotes ex levi causa jurare non debent.' Tamen pro aliqua necessitate vel magna utilitate licitum est eis (page 2) jurare, et praecipue pro spiritualibus negotiis. Pro quibus etiam juramenta competit praestare in solemnibus diebus, quibus est spiritualibus vacandum. Non autem juramenta praestanda pro rebus temporalibus nisi forte ex magna necessitate." Haec sanctus Thomas. Ex quo sic arguitur.

- (1) Cum tanta dignitas sit summi sacerdotii ut in eo sublimatus aut sanctus sit aut sanctus praesumendus sit. XI. Dist., Non nos, ubi dicitur. "Quis enim sanctum esse dubitat quem apex tantae dignitatis attollit?", Glossa, id est nullus praesumat. Multum derogatur dignitati papali in talibus sine necessitate maxima, quae in praesentiarum non occurrit, constringi juramento ad observantiam decretorum quod argumentum maxime currit de juramento fidei, quod a nullo petitur jam Christiano, nisi ab eo qui habetur suspectus in fide. Sicut habet Glossa, Extravag De electione, c. Significasti, ubi Paschalis papa dicit: "Hoc nimirum malo et necessitate compellimur juramentum pro fide requirere." Dicit Glossa, pro fide:retinenda si suspectus esset in fide; De consecratione, Dist 11, Ego Berengarius."
- (2) Secundo ex parte superioritatis arguitur. Princeps enim solutus est legibus, ut dicit jurisperitus. Quod ut sanctus Thomas in IIae, Q 96, art 5 dicit: ita intelligendum est videlicet quod princeps dicitur esse solutus a lege, quantum ad vim coactivam legis: licet non quantum ad vim directivam ejus. Ergo sequitur, quod princeps ex ipsa sua superioritate non est ligandus juramenti vinculo aut cogendus ad observantiam legis. Consequentia patet ab oppositis; ligatum esse et solutum esse respectu unius et ejusdem opposita sunt. Et ideo benedicitur XXV, Q1, Ideo permittente Deo Quod "sancta Romana ecclesia jus et auctoritatem sacris canonibus impartitur sed non eis alligatur."
- (3) Tertio arguitur ex plenitudine potestatis: et hoc sic. Et pono exemplum in materia electionis ut dicitur in concilio Viennensi. Ad potestatem Romani pontificis pertinet "ecclesiarum, personatum, dignitatum, aliorumque beneficiorum plena et libera dispositio ex suae potestatis plenitudine." Ergo non potest ligari juramento ad decretum electionis. Patet consequentia quia tale juramentum tollit liberam dispositionem quam includit plenitudo potestatis.
- (4) Quarto ex impossibilitate juris, pro quo supponitur. Ad potestatem summi pontificis pertinet statuta conciliorum sua auctoritate

roborare sicut tangitur xvii Dist, Regula, ubi dicit Julius papa "nullum ratum esse nec in futurum erit concilium quod sedis apostolicae non fuerit fulcitur auctoritate." Ex quo sic arguitur nullus cujus lex non habet robur nec virtutem coactivam nisi a papa, potest papam cogere ad observantiam legis suae sub vinculo juramenti aut etiam poenae. Sed concilia sunt hujusmodi in legibus hujusmodi et decretis de (col 602) quibus est quaestio; ergo, etc. Consequentia et antecedens patent.

- (1) Quinto arguitur ex parte privilegiorum sedis apostolicae, quae "qui conatur auferre in haeresim labitur," ut dicitur xxi Dist, c. Omnes. Ex qua parte arguitur sic. Inter alia privilegia est hoc unum ut iudex sit canonum sive decretorum; ita ut valeat nunc intendere nunc remittere sicut ecclesiasticae utilitati pro tempore magis competere viderit. Sed hoc privilegium auferitur ab eo cum ad statutorum concilii observantiam simpliciter juramento obligatur. Quoniam ipso facto quod papa observaret aliquid sub aliqua poena juramento constrictus, jam non iudex canonum et statutorum sed observator necessario constituitur; ergo, etc.
- (2) Sexto arguitur ex parte superioritatis suae, et hoc sic. "Papa ratione superioritatis [cui omnes obedire tenentur] in omni juramento promissorio intelligitur semper excepta auctoritas, videlicet, si placuerit papae," ut dicit Hostiensis in Summa libro II, titulo 24, De jurejurando I; et etiam Glossa Extravag. De electione, c. Significasti. Necesse quidem videtur ut semper iudicis supremi, qui debet facta, vota, juramenta, et instrumenta aliorum dijudicare potestas semper maneat absoluta et excepta. Ergo non decet papam ad observantiam statutorum quorumcumque talium simpliciter juramento alligari. Consequentia patet. Quoniam jam cum esset ligata non exciperetur nec absoluta esset, et ita cum aliis dispensare non posset.
- (3) Septimo, arguitur ex parte consuetudinibus conciliorum antiquorum sic. Antiquitus numquam visum est quod "concilia legem Romanae ecclesiae praefixerint," ut dicitur Extravag. De electione, c. Significasti. "Cum omnia concilia per ecclesiae Romanae auctoritatem, et facta sint et robur acceperint et in eorum statutis Romanae^{PONTIFICIS} patenter excipiatur auctoritas." Et idem capitur ex XXV, Q 1, Ideo permittente Deo. Ergo eadem causa nec modo acceptanda est. Consequentia patet duplici causa; una est quia hoc concilium non est majoris auctoritatis quam praeterita; nec minus dependet a sede apostolica quam praecedentia. Secunda, quia non minus honestatem illius (page 3) sedis debet manutenere, quam in ecclesia praeteritis diebus celebrata, etiamsi posset facere, cum in illis fuerint amplissimi et sanctissimi in profusa multitudine congregati.
- (4) Octavo ex honore debito principi apostolico quem inter omnes et supra omnes in ecclesia militante venerari et honorare debemus tanquam illum qui in terris Christi vicarius est et vices cujus gerens, cujus gloriae et honoris splendor ita manutenendus est in populo Christiano, ut citius supportanda et toleranda sint multa damna temporalia quam dare occasionem offuscandi ejus claritatem et gloriam. Ex hoc arguitur sic. Arctare papam ad jurandum observantiam decretorum concilii est praestare occasionem ut papa apud populum Christianum

tanquam infamis et ingloriosus saepissime habeatur; cum timendum sit ut quandoque perjurus aut esset aut saltem judicaretur. Perjurii autem infames judicantur VI, Q 1, Infames. Quod in magnum contemptum sedis apostolicae veniret et per consequens confusionem ecclesiae universalis ut de se patet; quod maxime vitare debent fideles ne caput eorum inhonorabile et confusibile reddatur.

- (1) Immo (col 603) contra legem naturae videtur membra non occurrere omni occasione ex qua eorum caput redderentur confusibile. Nec valet si dicat quod remanet sibi ἐπιέκεις qua dispensare posset causa occurrente rationabile. Quoniam apud eos qui hanc causam contrafaciendi ignorarent aut illam non rationabilem dicerent, opinio illa de papa semper maneret quae causa esset saepe mortalis culpa in multis.
- (2) Nono, ex parte impossibilitatis observantiae arguitur sic. Concilium non debet papam cogere jurare id observare quod saepissime est impossibile aut difficillimum saltem observari; cum lex debeat esse possibilis. Sed haec est hujusmodi; ergo in tali materia est irrationabile praestare observantiae juramentum. Minor patet: tum primo ex importunitate principum quibus necesse est saepissime complacere quando sine offensa Dei fieri poterit sicut in hujusmodi fieri convenit; tum secundo ex conditione materiae quae ex veritate sua et mutabilitate non est capax immortalis sive perpetuae observabilitatis. Sed necessarium est apud summum pontificem manere libertatem observandi vel non observandi prout viderit utilitati rei publicae congruere.
- (3) Decimo arguitur ex parte facilitatis introducendi schismata in ecclesia Dei, et hoc sic. Illud non est faciendum quod verisimiliter in ecclesia Dei paritum esset schisma aut damnabilem scissuram obedientiae debitae sedi apostolicae. Sed hoc decretum videtur hujusmodi; ergo, etc. Probatur minor: quoniam papa juramento ligatus ad observandum talia decreta aut necesse haberet observandi ea, etiamsi eorum observantia nociva et illicita reperiretur, aut non observandi causa rationabili interveniente. Si primum hoc, non quia peccaret observando in nocumentum reipublicae; si secundum, apud multos non capientes rationem suam esse legitimam et sufficientem ad sic disponendum sed proterve sustinentes inobedientes et rebellio ad sedem apostolicam sequeretur, innitentes decreto concilii, accusantes papam, et infamantes de perjurio. Nec valet quod dicitur, quod in decreto electionis ponitur quod illa rationabilis causa debeat inscribi, propter duo. Primo quia talis potestate esse [. . .] propter principes non scandalizandos et provocandos, melius erit silere.
- (4) Secundo, illa ratio quae apud judicem videretur rationabilis et sufficere ad non observandum judicabitur ab aliis non rationabilis saepe. Et ecce turbatio et ecce infamia papae; ecce materia schismatis saepe.
- (5) Undecimo ex parte justitiae arguitur sic. Non decet per concilium universale plus arctari principem et caput ecclesiae ad observantiam statutorum pertinentium ad eum, quam inferiores status ad observantiam statutorum respicientium eos. Patet nullus enim videtur color ad hoc

Non ita legatur:

Ergo in papam pro Ergo si papa ?

faciendum. Immo ad contrarium posset faciliter argui ex necessitate regiminis ecclesiae quod in gubernatore libertatem exigit dispensandi, et etiam quandoque immutandi regulas datas juxta occurrentia negotia. Ergo videtur quod decretum hoc de juramento praestando per papam esset injuriosum sedi apostolicae; cum non instituatur simile pro aliis praelatis aut personis in electionibus aut professionibus suis. Duodecimo, arguitur ex parte formae electionis, sic. Omnis electio incerta, et conditionalis (col 604) juxta dominos juristas, dicitur esse invalida. Sed hujusmodi electio papae videtur hujusmodi esse cum dicatur quod si electus jurare noluerit, etc. Ergo nulla. Et ita ex istis apparet conclusio posita vera.

- (1) Nunc vero restant argumenta pro opposita parte in medium adducere et illis solvere. Arguitur primo, ex parte auctoritatis et potestatis sacri concilii. Concilio subjicitur omnis persona cujuscumque dignitatis etiam papalis in (page 4) materia fidei, schismatis, et reformationis. Sed ista materia est reformationis, ergo, etc. Secundo sic, ex parte officii sacrorum conciliorum. Sacri concilii est regulas omnibus imponere et arctare ad observandum et punire non observatores. Ergo si papa potest ponere regulam et arctare juramento eum ad observandum et punire ut voluerit. Item tertio sic, ex parte debiti papae. Papa ipso facto quod est electus adstringitur implicite ad bene regendum. Ergo ad hoc faciendum potest per juramentum astringi.
- (2) Quarto sic arguitur, quod electio efficeretur conditionalis. Ecclesia nunc est tantae auctoritatis sicut alias; sed alias instituit formam electionis quod qui non esset a duabus partibus electus non haberetur pro papa. Ita nunc potest instituere nunc in forma ipsa, ita quod totum sit de substantia electionis, quod electus a duabus partibus non habeatur papa nisi juraverit. Item quinto sic: quamquam papa sit electus, nisi consentiat, non videtur esse papa quae non consentit nisi juret.
- (3) Sexto sic: ex parte consuetudinis. Reperitur Bonifacius VIII professionem fecisse. Item papa Nicolaus jurasse dare cardinalibus medietatem. Septimo sic: posito etiam quod alias nunquam fuit auditum, ecclesia novis subortis vulneribus posset nova remedia producere per novas regulas et rigorosas, ex quo summi pontifices ita effrene transgrediuntur decreta sanctis patrum. Octavo sic: res ista est honesta et papa potest jurare et ecclesia. Ergo debet papa jurare. Item dicunt aliqui quod ecclesia potest constituere alios causas depositionis papae quam positos. Jam ergo in isto casu potest.
- (4) Ad argumenta apparet mihi sic dicendum prout perfunctorie occurrit. Ad primum respondetur tripliciter. Primo modo quod concilio Constantiensi quando fuit ex omnibus tribus obedientiis congregatum, in quo solo tempore tanquam universale concilium fuit generaliter per totam ecclesiam habitum, non emanavit tale decretum. Secundo respondatur quod etiam concesso praesupponitur non sequitur quod posset cogere papam ad jurandum rationibus supra dictis. Tertio respondetur negando minorem, quoniam ista ita concepta magis ad deformationem et confusionem ecclesiae facerent quam ad reformationem.
- (5) Ad secundum dicendum negando consequentiam: quoniam licet conciliorum sit regulas imponere non tamen summo principi, scilicet papae,

ut in c. Significasti, Extravag. De electione, ubi dicit Glossa ideo quia inferior non potest legem imponere superiori. Ad tertium negando consequentiam, quia licet adstrictus sit papa ad benefaciendum, non sequitur propter hoc quod ad omnia bona, quae facere deberet cogendus sit juramento. Unde quilibet alius praelatus aut (col 605) princeps aut quicumque in officio positus aut statu teneretur benefacere, non tamen juramento adstringitur.

- (1) Ad quartum dico, quod illa conditio cum videatur distrahens potestati et auctoritati papae non potest poni in forma electionis, quia sicut nec ecclesia dat papae potestatem, ita formam electionis potest dare per quam arctaretur potestas data a Christo summis pontificibus aut impediretur bonum et tranquillum regimen ecclesiae. Ad quintum dico, quod electores dando vocem ei, ecclesia consentit in eum et ipso assentienti electioni immediate consequitur potestatem datam a Petro ab ipso Deo. Si vero electores cum conditione eligunt nihil faciunt.
- (2) Ad sextum dico, de Bonifacio, professionem fecit, non juramentum; secundo dico quod non coactus sed voluntarius fecit. Et ad illud de Nicolao dico, quod aliud est de eis quae procedunt de facto et de jure. Item aliud de temporalibus et aliud pertinentibus ad regimen ecclesiae. Ad septimum dico, quod talia medicamenta sunt adhibenda quae non magis inficiant quam sanent; cujusmodi esset istud.
- (3) Ad octavum, non valet consequentia. Multa enim sunt honesta quae tamen non coguntur observari; immo prohibemus illa jurare sicut fit in poenitentibus qui jurare non coguntur non recidivare aut poenitentias facere, et cetera. Nec valet quod respondetur a quibusdam quod non sit simile; quoniam peccatum talis redundat solum in persona illius; sed peccatum papae, aut transgressio illius in damnum reipublicae. Tum primo quia majus damnum est; et major offensa Dei in recidivatione unius hominis, quam transgressione decreti de electionibus, dum tamen alia non occurrant mala sed provideatur bonae aut meliori personae. Facere autem episcopum sic vel sic non habet de se Dei offensam conjunctam, sicut genus peccati. Bene verum in similibus majus est damnum redundans in rempublicam quam in unum hominem, Tum secundo, quia praesupponitur quod papa peccet in provisione illa quod non est verum; cum utatur jure suo. Tum tertio falsum est quod hoc sit malum redundans in malum reipublicae. Item quarto, c. De vita et honestate clericorum est ita sanctum quod ejus observatio redundat in utilitatem reipublicae; quia reformatio totius ecclesiae multum (page 5) debet ex honestate cleri, sicut inhonestas illius in damnum totius ecclesiae, ut practica docet. Et tamen non cogitur clerus jurare observare. Item argueretur de religiosis.
- (4) Ad nonum, multi negant suppositum. Quoniam cum nullus casus videatur esse nisi fidei juxta XL Dist, Si papa, qui casus est a jure divino, quia qui non credit jam judicatus, ecclesia nullum casum videtur posse ponere depositionis papae cum ista potestas sit a Deo.
- (5) Circa secundum articulum de poena, sit conclusio ista juxta judicium meum, semper salvo meliori, quod posito quod papam ligare juramento esset licitum, non tamen sub tali poena. Probatur conclusio,

tum primo quia, dubium est an concilium universale possit ponere talem poenam papae, immo multis sapientissimis doctoribus, in utroque jure divino scilicet, et humano clarissimis, pro certo habetur quod non; quia facta electione et habito quod papae immediate plenitudinem potestatis a Deo, quam ecclesia ei nullo modo potest auferre (col 606), nisi per haeresim ab illa cadet juxta ea quae dicta sunt.

Explicit votum magistri Joannis de Turrecremata
in Basileensi concilio; in deputatione reforma-
torii super avisamento quod papa deberet jurare
servare decreta de conciliis generalibus continu-
andis, et electionibus confirmandis: alias
caderet a jure papatus, et cetera.
Anno domini 1436.

JUAN DE TORQUEMADA:

TRACTATUS FACTUS contra avisamentum
quoddam Basiliensium quod non licet
appellare a concilio ad papam .

9 Martii, 1436

MANSI 30: 1072-1093

TRACTATUS E

TRACT E: The argument in restraint of appeals from the Council to the Pope is another phase of the decreta irritantes. The question is: Can the Council forbid appeals to the Pope from its decrees? If the Pope's is the court of last appeal, no. If the Council's, yes. Hence the argument against the conciliar decisions again hinges on the same principles: plenitude of power must place the Pope beyond the coercive force of positive law; the monarchical status of the Pope precludes judgement of its actions by a lesser power.

STATE of the TEXT as found in MANSI: 30

It is in good condition. Two rather wild transcriptions of canonical glosses occur; the scribe's notion of where any given sentence began or ended was not always the most enlightened, but he shares this distinction with some of the others. But with the sort of honest error peculiar to him, it was no great effort to throw the text into a tentatively edited form.

The text still abounds with numerous errors that I could not correct except ecelectically; but the text as it stands is clear as to the doctrine it contains. Although I have edited the texts about 90% of the way, I think, the final establishment of any of them awaits the collation with at least one Ms.

EMENDATIONS:

The usual numerals; one bad spot on Page 5(1) I have made to read: hac discretione salitum until a Ms can be checked. This appeared to have resulted from a printer's pi. The nearest approach to making any kind of reading would be: ha(c) discretio(ni, or in, or em!) salgitum. Let the reader choose!

OCCASION of the COMPOSITION of TRACT E:

The Council of Basle had issued its decrees against appeals from its court. The Avisamentum against the procedure is dated March 9, 1436. Arguing with Juan de Torquemada on behalf of the Pope were John of Monte Negro and John Archbishop of Trent. (Is Tarentino Trent?)

IMPORTANCE of TRACT E:

Like TRACT D, ~~is~~ it is a development of points not explicitly stated in TRACT A (de decreto irritante); both are in support of the principle: Rex solutus a lege. As such they contribute, verbatim, whole sections to the SUMMA. In the SUMMA (III: 47-49) the Tract (E) is used from the positive point of view, i.e., that there can be no appeal from the Pope to the Council.

TRACTATUS FACTUS
 contra avisamentum quoddam Basiliensium
 quod non licet appellare a concilio ad papam.

- (1) (col 1072) "Sancta synodus Basiliensis," et cetera, "ordinat et statuit definit et declarat, quod nulli simplici personae, collegio, communitati, universitati cujuscumque dignitatis, gradus, status, ordinis, aut conditionis, etiamsi papalis aut imperialis existat, fas est aut fuerit decretis et sententiis generalis concilii quocumque appellationis, aut alterius remedii praetextu, conjunctim, aut divisim contravenire, aut non obedire, aut praecedenti se alicujus eorum occasione laesum, apud alium, quam generale ipsum concilium, ipso vigente, auxilium desuper implorare; et cetera et infra: "Nec alicui praedictorum fas sit a quacumque sive quibuscumque sententiis, seu decretis auctoritate sacri concilii emanatis, aut promulgatis conjunctim vel divisim ad tribunal etiamsi apostolicum fuerit, quam generalis concilii pro tempore existentis, et eo durante, nec a re auctoritate sedis apostolicae judicata ad tribunal sacri concilii donec integraliter paritum et de laesione doctum fuerit." Et infra: "Et nihilominus si contra decretum vel sententiam sacri generalis concilii taliter attemptatur, infra mensem quartum singulis hujusmodi attemptatis expresse et legitime non renuntiaverit, decretis, seu sententiis non obedierit, aut aliquam ex aliis attemptatis prosequutus fuerit, tam ille, quam iudex, advocatus, procurator, notarius, et cetera ad quaecumque beneficia obtenta, vel obtinenda sit inhabilis et de facto privatus et quilibet ex ipsis infamia perpetua innodatus."

Sequitur votum in contrarium

- (2) Circa hoc avisamentum, pace et gratia semper integris patrum avisantium illud et sub correctione et emendatione vestrarum paternitatum, duo facere institui, Primo, assignabo rationes quibus visum est mihi hoc avisamentum nullo modo suscipiendum esse. Secundo, dabo consilium pro voto meo pro firmitate et robore tam decretorum fiendorum hic quam sententiarum datarum in concilio. Circa primum, quia de duobus fit mentio, scilicet, de decretis et de sententiis (instar aliquorum dominorum qui prolocuti sunt): Primo loquar breviter cum decretis conciliorum universalium; secundo de sententiis datis in eisdem.
- (3) In primis, notandum quod canones vel statuta sancti patrum in conciliis universalibus sunt in duplici genere; ut ait sanctus Thomas in Quodlibeta quodam loquens de statutis apostolorum et in tractatu, Contra impugnantes religionem de statutis conciliorum universalium.
- (4) Primum genus est quo eorum statuta sunt de jure divino sicut sunt pertinentia (col 1073) aut ad articulos fidei aut ad substantiam sacramentorum, aut quae manifestam habent connexionem, ad legem divinam pertinentia ad bonos mores. Et de talibus, ut ait sanctus

Textus integer excerptus de Rosario Archidiaconi: folio 90v

"Fateor quando fit cupiditate vel sine causa vel in casu non concesso secundum Innocentium...Dic ergo quod non obedire vel venire contra canones ex certa scientia, mortale peccatum est cum talis possit excommunicari, I: 1 : Si quis...Et hoc intellige quoad statuta praeceptorum et in eo casu quo obediendum est, secundum Ostiensem qui hoc notat ex De majoritate et obedientia, c.2. Sed Joannes de Deo dicit quod hoc quod hic dicitur intelligendum est quando ex contemptu hoc fit, scilicet, contra [sacros canones] Dist XIX: Nulli fas est. Quotidie enim facimus contra honestatem et moderamen canonum et est veniale in quibusdam, XXV: 5: Nunc autem, [Item quod in c. Prima salus in verbo nullatenus deviare, dicit: 'Hoc intellige ex contemptu; alias quotidie [continue, facimus contra canones sicut continetur supra, Violatores']".

Nota: interpollationes et omissiones Turrecrematae.

Thomas, intelligitur c. Contra et c. Prima salus, xxiv, Q 1; de talibus etiam canonibus maxime intelligitur c. Violatores eisdem causa et quaestione. Ex quibus consequitur, quod contradictores institutioni canonum hujus generis, habita notitia quod ad jus divinum pertinent, audiendi non sunt sed magis puniendi tanquam suspecti et adversarii fidei et religionis Christianae.

- (1) Secundum genus canonum est eorum quos instituerunt sanctis patres in conciliis universalibus de jure positivo. Licet enim canones omnes a sanctis patribus unanimi sensu constituti dicantur conditi a Spiritu sancto, non tamen omnes dicuntur pertinere aut ad legem naturae aut ad jus divinum, sicut aliqui domini visi sunt dicere in hac deputationem reformatorii; sed aliqui dicuntur pertinere ad jus positivum. Licet enim omnis veritas a quocumque dicatur, teste beato Ambrosio, "a Spiritu sancto sit. Non tamen omnis veritas dicitur aut theologica, aut juris divini aut fidei, aut ad divinam legem pertinere, sed erit alterius inferioris generis."
- (2) Praeterea si canones omnes quia a Spiritu sancto sunt conditi pertinere ideo dicerentur ad legem naturae aut ad jus divinum indispensabiles essent. Et ita ecclesia errasset in dispensando canonibus factis a sanctis patribus. Item nec mutari possent qui semel essent constituti et multa alia sequerentur quae omnia absurda sunt. Loquendo autem de isto genere canonum de quo principalis est inter nos disceptatio et deliberatio, dico quod aut canones sive decreta facta in concilio sunt unanimi consensu papae aut suorum praesidentium (page 2) conclusa; aut non.
- (3) Si primo modo sit ista conclusio. Canones tales sunt ab omnibus custodiendi, et peccant qui canones praedictos praeceptorios maxime in casu non concesso transgrediuntur. Probat per illud Romanorum XIII: "Omnis anima subdita sit potestatibus sublimioribus;" item ibidem, "Omnis potestas a Deo est et qui potestati resistit Dei ordinationi resistit." Sed resistere Dei ordinationi est peccatum; ergo, et cetera. De quibus canonibus intelligendum etiam venit c. illud Violatores, quando quis ex contemptu potestatis ecclesiasticae aut praesumptione contra canones ageret. Unde ibidem in praedicto c. dicitur sic: "Talis enim praesumptio manifeste unum genus est blasphemantium Spiritum sanctum."
- (4) Unde Archidiaconus in Glossa praedicti capituli Violatores ita dicit in Rosario: "Fateor, quando sic cupiditate vel sine causa vel in casu, non concesso secundum Innocentium. Dic ergo quod non obedire vel venire contra canones ex certa scientia mortale peccatum est cum talis possit excommunicari, I, q. 1, Si quis. Et hoc intellige quoad statuta praeceptorialia, et in eodem casu quo obediendum est secundum Ostiensem qui hoc notat ex De majoritate et obedientia, c. ii, Sed Joannes de Deo dicit quod hoc quod hic dicitur intelligendum est quando ex contemptu hoc fit, scilicet, contra sacros canones xix Dist, Nulli. Alias falsum esset; quotidie enim facimus contra honestatem et moderamen canonum et est veniale in quibusdam xxv Dist, 5, Nunc autem. Item quidem in c. Prima salus in (col 1074) verbo "nullatenus deviare,"

dicit: hoc intellige ex contemptu; alias continue facimus contra canones, sicut continetur supra, Violatores." Haec ille.

- (1) Ex qua conclusione cum notatis sequitur primum corrolarium, quod non omnis transgressio sacrorum canonum etiam mortalis est peccatum in Spiritum sanctum aut blasphemia in Spiritum sanctum, -- ut quidam dominus videbatur nuper dicere -- proprie capiendo blasphemiam in Spiritum sanctum, et peccatum in Spiritum sanctum prout Hieronymus, Augustinus et Magister Sententiarum II, Dist 53 accipiunt. Patet ex dictis.
- (2) Secunda conclusio est hujusmodi; Canonibus non pari nec eodem genere obligationibus universaliter subjicitur papa et reliquus populus Christianus. Probatur quoniam princeps aliter subjicitur legi et aliter populus: pro quo notandum quod, prout dicit sanctus Thomas in I, IIae, q 96, art. 4 quaerens "utrum subjiciantur omnes legi humanae: duo habet lex de sui ratione, (primo quidem,) quod est regula humanorum actuum; (secundo) quod habet vim coactivam. Quantum ad primum, vid, quantum ad vim directivam omnes obligantur et etiam principes quoniam justum est, ut dicitur Extravag. De constitutionibus, quo quisque jure in altero utitur, ipse eodem jure ut debeat. Sapiens ait: 'patere legem quam tu ipse tuleris.' quantum vero ad secundum, scilicet, vim coactivam, princeps non subditur legi," inquit sic sanctus Thomas.
- (3) Ratio quoniam nullus proprie cogitur a se ipso; lex autem non habet vim coactivam nisi ex principis potestate: hinc legisperitus ait quod princeps solutus est legibus quia nullus in ipsum potest judicium damnationis ferre si contra legem agat. Unde super illud Psalmi: "tibi soli peccavi," habet Glossa, sic: "Rex est omnibus superior et ideo a Deo tantum qui est major puniendus est. Si vero quis de populo peccat et Deo peccat et regi. Rex vero non habet hominem qui sua facta dijudicet; et ideo 'dicit, tibi soli peccavi.'"
- (4) Quod vero summus pontifex princeps ecclesiae hoc modo sit et ecclesiasticis sive canonicis, legibus absolutus, habemus in capitulo XVI, Ideo xxv, q 1 ubi ita dicitur: "His itaque responderetur" (videlicet c. Confidimus et c. Quae ad perpetuam et c. Violatores et c. Contra et c. Prima salus quibus arguebatur, quod papa seu summi pontifices etiam impermutabiliter observare tenerentur canones:) "Sacrosancta Romana ecclesia jus et auctoritatem sacris canonibus impartitur; sed non eis obligatur; habet enim jus condendi canones utpote quae est caput et cardo omnium ecclesiarum, a cujus regula nemini dissentire licet; ita ergo canonibus auctoritatem praestat, ut seipsam non subjiciat." Haec ibi et multa alia, per quae patet veraciter. Ergo nec contra hoc militat decretum concilii Constantiensis.
- (5) Non enim creditur quod praefatum concilium voluerit ecclesiae principem aliter adstrinxisse ad observantiam canonum hujus generis quam princeps solet et valet astringi. Unde in c. Significasti, Extravag. I De electione, dicitur quod "concilia legem non praefixerunt ecclesiae Romanae; cum omnia concilia per ecclesiae Romanae

auctoritatem et facta sint et robur acceperint et in eorum statutis Romanæ patenter excipiatur auctoritas;" Glossa Ostiensis "Tamquam superior ix, Q 3 Cuncta per mundum; ergo inferior non potest ei legem imponere; idem De majoritate et obedientia, c. Cum inferior." Haec ille.

- (1) (col. 1075; page 3) Praeterea cum papa subijci sicut ceteri subijciuntur legibus positivis concilium non videatur pertinere ad reformationem; Immo hoc deformationem et deordinationem faciat in Republica, non est credendum patres illius concilii Constantiensis talem habuisse intelligentiam ab omni ordine et ratione alienam. Corollarium primum est, quod licet residuus populus tianus obligentur ad observantiam canonum utroque modo; poena tamen in avisamento si ad transgressores canonum se extendat, sicut ad appellantes, ut mihi visum est nimis dura et periculosa; tum primo, quoniam hoc esset magis zelare leges humanas et instituta hominum quam Christi legem cujus transgressoribus nulla poena par imponitur. Tum secundo, quia ex hoc saepenumero apud multos fideles multorum praelatorum ecclesiae, immo etiam papae pontificium dubium redderetur. Et ita saepe per aliquos exhibita profana aut irrita censerentur. Ex quibus majus vulnus orietur in ecclesiis, quam mala sint quae ex transgressoribus canonum juris positivi possent provenire. Tum tertio, quoniam videretur poena non commensurari delicto, contra illud scilicet Deuteronomii XXV: "Secundum delictum erit plagarum modus;" et ita injusta esset talis poena.
- (2) Corollarium secundum: canones hujus generis scilicet, pertinentes ad jus positivum, non possunt instituti immutabiles. Patet de se quoniam materia eorum; est mutabilis juxta varietatem temporum, locorum, personarum, aliorumque accidentium, quorum varietas nulla mensura, nulla certitudine plena potest cognosci et praevideri.
- (3) Corollarium tertium: necesse est apud summum pontificem residere auctoritatem dispensandi et mutandi prout casus necessitatis et communis utilitas exposcerit. Nequaquam enim, ait Aymarus in libro Conciliorum, Capitulo xxix: "Ecclesiasticae disciplina sufficere posset si non praesul apostolicus illam auctoritatem haberet de canonibus quam supra retulimus. Nam praecedentium patrum statuta ecclesiasticam disciplinam aliquando non tam instituerent quam confunderent si nulla ratione a successoribus eorum mutari possent." Et infra, "Si beatus Gelasius numerum annorum quos sui antecessores singulis annis praefixerunt minuere non posset; penuriae clericorum sui temporis per presbyteros ex laicis infra annum maturatos nullo modo succurrisset. Item si moderni pontifices antiquorum rigorem canonum per lapsos sacerdotes remittere nequivissent; ipsa Christiana religio destituta sacerdotali officio penitus stare non posset; cum jam pene nulli sacerdotes nisi criminaliter lapsi reperiantur quos antiquos canones deposuisse leguntur." Haec ille.
- (4) Ideo Innocentius III et habetur Extravag. De concessione praebendae, c. Proposuit: "secundum plenitudinem potestatis de jure possumus supra jus dispensare." Et dicit Ostiensis "quia de

nullo jure astringimur, immo sumus positi supra jura omnia atque concilia, De electione, c. Significasti." Haec ibi.

(1) Sed dicit aliquis: nullus contrarium dicit; omnes enim in hanc sententiam (col 1076) convenire videntur, quod occurrente causa necessitatis ac evidentis utilitatis papa possit et debeat dispensare; sed quod non dispenset sine causa et indifferenter non violet canones conciliorum. Ego tali respondeo quod affectus iste sanctus est et zelus bonus; sed videat et provideat bene talis, ut ad custodiam canonum servet zelum hac discretione salutum, quem non habere videbitur, si tum necessitatis aut mensura utilitatis punctualiter designetur; aut alterius judicio quam principis ecclesiae hujusmodi taxatio et commensuratio committatur; aut quod magis alienum a tramite rationis videtur, si irritare sive annullare temptaret quod absque legitima causa factum esse diceretur. Hac enim esset orbem implere litibus, hominum conscientias scrupulosas reddere, saepenumero de sacramentorum virtute dubios facere Christianos.

(2) Quibusdam nanque dicentibus, legitima causa fuit dispensationis, aliis vero e contra asserentibus. Saepe veri pastores redderentur non esse, ut eorum sacrificia aestimarentur profana, quae majora mala parturirent, quam ea quae levibus ex dispensationibus nostris temporibus oriuntur. Videamus insuper, patres, qualiter in dispensationibus quae fiunt in hoc concilio a quo orbis et curia Romana reformationem expectat, ponderemus necessitatem aut evidentem utilitatem super quae re ad honorem nostrum nolo plus loqui. Id tantum sit dictum de canonibus constitutis universali consensu a papa vel praesidentibus ejus, concilio pariter conclusis, sive a summo pontifice confirmatis.

De decretis concilii

(3) Sequiter dicendum de institutis de decretis a solo concilio. Pro quo notandum quod si sint aliqua instituta ab aliquo concilio, papa ibidem non existente aut non consentiente sed contradicente per se aut suos praesidentes, videtur mihi quod sit doctorum conclusio cum correctione, dicendo quod tales canones pertinentes ad jus positivum (page 4) nullum robur habent obligandi quemquam ad eorum observantiam antequam per papam roboventur et confirmentur quod ratione et auctoritate multiplici probatur.

(4) Ratione sic. Nulla lex habet virtutem obligandi aliquem, nisi roborata et confirmata fuerit principis auctoritate. Princeps vero roborans et confirmans legem canonicam est papa qui juxta c. Ideo xxv, Q 1, "jus et auctoritatem impartitur" canonibus. Et ita ubi non concurrat ejus auctoritas ~~leges~~ non videntur adstringere, nec ligare. Auctoritate vero patet concilii Chalcedonensis in cujus actione secunda dicitur: "In omnibus synodis apocrisarii apostolici decretas sententias primi, propter summan auctoritatem ejusdem sedis, confirmabant et subscribebant; quia aliter nullum habebant robur." Item in c. Bene quidem, Dist xvi in synodo in qua Symmachus praesidebat ita dicitur: "si cujuslibet provinciae

sacerdotes inter suos terminos concilio habito, quidquid sine sui Metropolitanis auctoritate tractaverint irritum esse debere sanctis patres sanxerunt; quanto magis, quod in apostolica sede non extante praesule, qui merito beati Petri apostoli per universum orbem principatum obtinens sacerdotii, statutis synodalibus consuevit, tribuit facultatem et firmitatem?"

- (1) Item tertio, hoc ostenditur ex practica omnium conciliorum quorum cura (1077) semper fuit canones constitutos ad papam mittere confirmandos et roborandos ejus auctoritate; sicut patet de primis conciliis universalibus, de quibus alias duxi in medium apostolicas confirmationes. Hoc praeterea in concilio Constantiensi factum esse legimus papa Martino creato. Nec valet si dicatur, quod praefatum concilium Constantiense instituit, quod quilibet fidelis tenetur obedire decretis, ordinationibus et cetera universalis concilii; quoniam non creditur hoc intellexisse nisi de eis quae universali consensu conclusa essent in concilio, quod non videtur esse quando papa aut princeps aut praesidentes ejus non concurrunt; quia in tali casu cum decreta non essent universali consensu conclusa non essent valida.
- (2) Corollarium primum. Contradicentes talibus canonibus condendis sive constituendis legibus antequam fiant, (~~intentione constituendis legibus, antequam fiant~~) intentione impediendi reformationem ecclesiae in se vel in aliis, aut alicujus cupiditatis gratia; hostis censendus est reipublicae et non curandus sive non audiendus; maxime cum manifestum esset talem hac laborare perversitate animi.
- (3) Corollarium secundum. Opponentem se avisamentum quorundam conceptorum doctorum sive legum condendarum quia expresse sedi apostolicae diminuunt, aut infringunt privilegia et auctoritatem, non sunt judicandi impeditores reformationis aut male agere; sed laudandi et praedicandi de fidelitate ad istam sedem sanctam, in qua teste beato Gregorio. "Deus noster Jesus Christus totius ecclesiae principatum et primatum collocavit." Tum praeterea quia nulla decreta possunt ad reformationem ecclesiae pertinere quae privilegia illius sanctae sedis infrigant et enervent ac dirimant auctoritatem.
- (4) Corollarium tertium. Opponentem praedictis canonibus ante eorum conclusionem quia videlicet, videntur impropotionabiles regionibus aut laudabilibus et veteribus consuetudinibus terrarum non sunt reprehendendi aut judicandi male agere quoniam hoc juste agere possunt, cum leges commensurandae sint politis et non e converso; et Glossa in c. In his, xi Dist, ita dicit: "cum papa vult condere canones episcopi possunt contradicere et dicere: canon iste non convenit consuetudini nostrae." Haec ibi.
- (5) Corollarium quartum. Contradicentes avisamentum porrectum per aliquos in medium, propter hoc quod videntur et sunt nuda a conditionibus bonae legis, ut puta quia non videntur esse honesta aut justa, aut possibilis, aut secundum consuetudinem patriae, loco, et tempori convenientia, aut non necessaria, nec utilia, aut non clarae, aut communi utilitati servientia; sed magis privatis commodis, magnum servitium faciunt universali ecclesiae et

grande meritotum cumulum promerentur apud Deum; horum enim studium esse ne fiant leges iniquae. Isti videntur esse illi milites de quibus Deus per prophetam Zachariam dicit: "Circumdabo domum meam;" Glossa, "idest ecclesiam," "ex his qui militant mihi." Et Canticorum III dicitur de eisdem: "En lectulum Salomonis septuaginta fortes ambiunt ex fortissimis Israel, qui sunt omnes tenenter gladios et ad bellum doctissimi."

- (1) Et ex istis supradictis satis aperte (col 1078) respondetur quibusdam dominis dicentibus et arguentibus sic: Regulare sedem apostolicam ita (page 5) ut non possit peccare et ut bene et laudabiliter regat ad utilitatem ecclesiae, est bonum et hoc etiam respiciet reformationem capituli ad quod reformandum sicut et cetera membra sacrum concilium convenit. Ergo non prohibere, aut contradicere ne hoc fiat, est magnum peccatum. Istis sic dicentibus conceditur hoc totum; solum restat; si aliquid volunt ad propositum loqui; ut ostendant quod avisamenta sua sint hujusmodi et non cedant plus in destructionem ecclesiae quam reformationem. In hoc enim est disceptatio nostra non in voto reformandi. In hac enim re intervenit diversitas opinionum, contrarietas votorum; dicentibus quibusdam lucem tenebras; aliis vero tenebras lucem.
- (2) Corollarium quintum. Licet canones conciliorum universalium non suscipientes ex contemptu gravissime peccarent; tamen qui sic non suscipiunt eos aut quia consuetudini terrae aut moribus hominum sine magno scandalo non conveniunt; aut quia impederentur majora bona et majora mala sequerentur, peccare non viderentur. Dum tamen prius praelato totius ecclesiae videlicet, papae causa hujusmodi non observantiae nota fieret, sicut de Anglicis legimus; quibus beatus Gregorius permisit agere contra canones multorum conciliorum in gradibus prohibitis matrimonii, sicut habetur xxxv, Q 2 c. Quaedam.
- (3) Et tantum sit dictum et perfunctorie de primo puncto, scilicet, de canonibus concilii universalis, de qua materia locutus sum ea quae supra dixi, ratione aliquorum dictorum per aliquod dominos meos, qui praelocuti sunt ut hi qui inter nos minus intelligunt informentur de veritate.

De sententiis concilii

- (4) Circa materiam sententiarum quae datae sunt aut dabuntur in concilio et de appellatione non fienda ab eis jam restat aliquid dicere. In qua re est primo notandum quod de concilio universali possumus loqui dupliciter; et ita de sententiis datis in eo. Aut enim in concilio praesidet papa ut praelatus et caput concilii et ab eo et concilio unanimi consensu emanat sententia. Et hoc modo loquendo sit ista conclusio. Non potest in hoc casu appellari nec a concilio ad papam nec a papa ad concilium. Patet conclusio: quoniam unum et idem est tribunal et consistorium et idem iudex. Modo ab eodem ad eundem iudicem non est appellatio facienda per c. Non putamus, De consuetudinibus, libro vi.

- (1) Tum secundo, quia nullus est superior iudex in terris ad quem appellatio devolvi possit; et hoc modo currit argumentum dicti capitulo A collatione, De appellatione, libro vi.
- (2) Hoc modo currit illud de Chalcedonensi concilio quod ab electa synodo non liceat appellari cum in eo dicatur quod papa confirmat sententias concilii. Pari etiam intelligentia accipienda est constitutio Toletani concilii ut ex serie textus ejus patet. Nam ut verbis ejus utar, loquitur de his quae fuerint descripta diffinitione universalis auctoritatis (nota: deest aliquid) quando non cucurrit assensu papae qui totius orbis episcopus est et pastor in quo universalis potestatis ecclesiae residet plenitudo. Alio modo loqui possumus de concilio universali in quo papa non est praesens (col 1079) vel si est praesidentes suos, non praesidet concilio universali ut praelatus concilii sed ut alterum membrum concilii; sicut de episcopo dicitur in capitulo praellegato, A collatione, qui aliquando non ut praelatus in capitulo sed ut canonicus interest; quod tum contingit quando vox sua non valet plusquam vox alterius canonici, quo dicitur tantum capitulum et non commune episcopi et canonicorum; et tunc ad eundem tanquam ad superiorem, cum aliud non diffiniat, sed capitulum, quamvis intersit tanquam canonicus, appellabitur. Verba sunt cum textu domini Archidiaconi in loco praedicto.
- (3) Et ita videtur esse de papa; videlicet, quod non praesideat in hoc concilio ut praelatus et caput concilii sed ut alter canonicus, cum vox papae non habeatur major quam minimi de concilio, cum pari honore et pondere currant vota et numerentur cum votis praesidentium. Et si dicatur quod legati ejus praesident loco papae et habent superiorem locum et concludunt dico quod nihil est quia non valeat vox eorum plusquam cujuscumque alterius membri. Non praesident praesidentia auctoritatis sed nominis aut honorarie locali. Praeterea si concludunt vota, concilii auctoritate dicuntur concludere; et si concludere nolunt, sequens potest concludere ex ordinatione concilii. Et ita papa in eis praesidet concilio non ut praelatus et caput et episcopus capituli. Et in hoc casu cum sententia quandoque non emanet unanimi universali consensu quia non communiter a papa et concilio sed solum est sententia concilii aut patris concilii, videtur aliquibus esse dicendum in hoc casu de appellatione ad papam, sicut de appellatione a capitulo ad episcopum quando non praesidet ut praelatus (page 6) capituli in capitulo juxta capitulum praefatum, A collatione.
- (4) Immo necessario ita videtur esse dicendum, si argumentum dominorum qui ex illo capitulo arguunt pro parte contraria aliquas vires habeat. Quia ergo praefatum avisamentum, salva tamen semper reverentia constituentium illud, minus digestum videtur esse cum non faciat distinctionem de conciliis nec de materia causarum nec quando intervenit consensus papae; qui juxta concilium Chalcedonense habet confirmare sententias concilii at non intervenit, Item nec distinguit de sententiis conciliaretur datis aut per particulares iudices. Et ita de aliis quae merito consideranda veniebant. Videtur mihi quod ita universaliter et indifferenter instituere quod a sententiis concilii universalis appellari non possit etiam ad papam sicut innuit avisamentum, sit inconvenientissimum, quod ex multiplici patebit ratione cum exorbitantiam praefati avisamenti manifestam fecero.

- (1) Avisamentum autem illud non admittendum videtur decem rationibus. Primo, quia multipliciter videtur sapere non sanam doctrinam. Secundo, quia periculosum fidei. Tertio, reprobabat approbata per sanctos doctores et ecclesiam universalem. Quarto, quia est contra determinationem sacrorum conciliorum universalium. Quinto, quia est contra rationem naturalem etiam. Sexto, quia est contra multos canones. Septimo, quia est contra privilegia sedis apostolicae. Octavo, quia est praejudiciale honoribus ecclesiarum (col 1080) et principum. Nono, quia maxime est praejudiciale honoribus et praerogativis episcoporum. Decimo, quia videtur praesumptuosum.
- (2) Primum patet, tum quia avisamentum videtur innuere quod suprema potestas coactiva non sit in papa quod est error condemnatus in concilio Constantiensi super quo haeretici praecipuntur examinari. Hoc autem etiam habetur in c. Patet, ix, Q 3 ubi sic dicitur: "Patet profecto sedis apostolicae, cujus auctoritate majus non est, iudicium a nemine fore retractandum; nec de ejus liceat cuquam judicare iudicio." Item Beda super illud Evangelii, "Venit Jesus," Matthaei XVI et habetur xxiv, Q 1, quicumque: Ideo beatus Petrus, qui Christum vera fide confessus est et vero amore secutus, specialiter claves regni coelorum et principatum iudiciariae potestatis accepit, ut omnes per orbem credentes intelligant, quia "quicumque ab unitate fidei vel societate ejus quomodolibet semetipsos segregant, tales nec vinculis peccatorum absolvi, nec januam possunt regni caelestis ingredi."
- (3) Nec valet quod dictum est a quodam domino nuper, quod decretum concilii Constantiensis dicens supremam potestatem ecclesiae esse in papa, non procedit quando contrarium reperitur in jure aut absurditas aliqua sequitur; quia noscito quod haec solutio locum haberet in statutis, aut decretis concernentibus purum jus positivum. Non tamen habet locum in decretis concernentibus determinationem et diffinitionem fidei catholicae, cujusmodi est illud decretum. Quoniam si ex decreto fidei concilii Constantiensis sequitur absurditas aliqua aut repugnantia ad jus et maxime divinum oportet dicere quod istum concilium erraverit in fide, quod ipse Deus non concederet. Falsum etiam est quod alicui juri aut canoni contradicat, cum omnes clarent principatum ecclesiae in sede apostolica collocatum. Et ad hoc ratio etiam militat principatus regalis cujusmodi est ecclesiasticus principatus.
- (4) Praeterea etiam nihil valet quod ab aliis dicitur, videlicet, quod suprema potestas sit in papa respectu particularium personarum sed respectu totius ecclesiae universalis, non. Tamen quia tales non videntur intelligere quod dicunt; si enim papa respectu omnium ecclesiarum particularium habeat supremam potestatem, et cum totalitas ecclesiae nihil aliud dicat, sive importet, nisi omnes particulares ecclesias; necesse erit dicere, quod si respectu omnium particularium, quod etiam respectu totius congregationis ex illis partibus consurgentis. Item dicit Chrysostomus super Actuum apostolorum: "Petrus a filio Dei super omne quod filii est accepit potestatem non ut Moyses in gente una sed in universo orbe," quae auctoritas verificari non potest si respectu congregatae ecclesiae summus pontifex non haberet potestatem; immo concilium dicens se non habere papam supra se, est dicere ad filium Dei non pertinere aut filio Dei non esse subjectum.

- (1) Praeterea contra dicta taliter dicentium sunt decreta sanctis patrum. Dicit enim sanctus Gelasius, ut habetur xi Dist, c. Nolite: "multum convenit ut totum corpus ecclesiae in hac sibi met observatione concordet, quam illic vigere videt, ubi Deus totius ecclesiae posuit principatum." Eadem etiam sunt verba Julii papae. (page 7) (col 1081) Ad idem est c. Basilicas, De Consecratione, Dist 1.
- (2) Ad idem est sanctus Thomas qui in tractatu Contra errores Graecorum dicit in capitulo xxxii quod "similis est error dicentium Christi vicarium Romanae ecclesiae pontificem non habere universalis ecclesiae primatum, errore dicentium Spiritum sanctum non procedere a Filio." Haec ille. Ex quibus verbis apparet quod periculose sit dictum papam non habere primatum universalis ecclesiae sed tantum respectu particularium personarum ecclesiarum.
- (3) Secundo, avisamentum illud videtur quodammodo sapere contra fidem quia contra articulum: "unam sanctam ecclesiam catholicam et apostolicam." Quod probatur sic: quoniam ponendo duo tribunalia suprema in ecclesia, unum apostolicum et aliud concilii universalis, ut in avisamento supponi videtur, non potest unitas ecclesiae servari quae attenditur per ordinem totius corporis ad unum caput nescimus Christum, sed ejus vicarium. Unde schismatici dicuntur qui sedi apostolicae non cohaerent, ut dicit sanctus Thomas in II IIae, Q 39, art 1 et Alexander de Ales in II; et ideo dicit Glossa super illud Matthaei XVI: "Tibi dabo claves regni caelorum." Specialiter potestatem Petro concessit, ut ad unitatem nos invitaret. Ideo unum principem constituit ut ecclesia unum principalem Christi haberet vicarium ad quem diversa membra recurrerent si forte inter se dissentirent. Quod si diversa capita essent in ecclesia unitatis vinulum rumpetur."
- (4) Et beatus Cyprianus in c. Loquitur Dominus xxiv, Q 1: "Loquitur Dominus ad Petrum: 'ego dico tibi, quia tu es Petrus,' et cetera. Super unam ecclesiam aedificavit" et infra: "ab unitate exordium profiscitur ut ecclesia una Christi monstretur." Haec ille. Ergo ex ista dualitate cathedrarum et tribunalium, quae praesupponuntur in avisamento et utrumque dicitur supremum ecclesia duplex et non una monstrabitur.
- (5) Tertio idem ostenditur quod videatur sapere contra fidem, sic: idem censendum est esse tribunal Christi et papae in terris cum ejus sit vicarius et ejus vices gerat in terris. Unde Chrysostomus super illud: "Pasce oves meas, idest, loco mei praepositus esto et caput fratrum tuorum ut ipsi loco mei te assumentes, ubique terrarum te in throno tuo sedentem praedicent et confirment."
- (6) Et hoc pariter colligitur ex illo c. Non putamus, De consuetudinibus, libro vi, sed ponere quod a tribunali papae possit appellari ad aliud in terris, aut per aliud ab alio ad tribunal papae non possit appellari; est ponere primo, quod a tribunali Christi possit appellari; secundo, quod aliquod aliud tribunal sit majus tribunali vicarii episcopi et majus tribunali episcopi cujus est vicarius cum sit unum et idem; quorum utrumque videtur erroneum manifeste. Ex quo patenter contrarie colligitur non esse dicendum universaliter et ita indifferentur quod tribunal universalis concilii

Verus textus Archidiaconi depromptus ex ROSARIO suo, folio 11 :

Glossa Johannis Andreas dicit: "Et hoc maxime cum ille inferior ab illo superiore recipit potestatem: ut in casu nostro coetus cardinalium a papa; per quod idem videtur de concilio supra, eodem titulo, Significasti. IX, 6.3, Cuncta."

est majus tribunali papae sicut avisamentum supponere videtur; et multi etiam de praesentibus audacter licet non, ut videtur, veraciter dicunt.

- (1) Patet corollarium. Tum primo quia ut dictum est nullum majus esse potest tribunali Christi, quod etiam est ipsius papae Christi vices gerentis, sicut unum et idem episcopi et vicarii censentur esse tribunal et consistorium (col 1082). Et ita Augustinus dicit super illud Matthaei XVI: "Quodcumque ligaveris et cetera. "Vide quantam potestatem habere petra super quam aedificatur ecclesia ut etiam judicia ejus maneant firma quasi Deo judicante per eam."
- (2) Tum secundo, quia ut Hieronymus et Augustinus dicunt ecclesia suscepit claves in Petro; ergo ecclesia non habet ampliorem potestatem quam Petrus figurans ecclesiam suscepit. Item tertio, id dicere est contra decreta sacrorum conciliorum universalium et dicta sanctorum patrum et doctorum glossatores canonum; unde Extravag. De electione in c. Significasti: dicitur quod "Romanae ecclesiae legem concilia non praefixerint, cum omnia concilia per ecclesiae Romanae auctoritatem et facta sint et robor acceperint."
- (3) Ubi Glossa Ostiensis ita habet: "Tanquam superior ix, Q 3, Cuncta per mundum, ergo inferior non potest ei legem imponere; idem De majoritate et obedientia, c. Cum inferior." Et Joannes Andreas super verbo "robor" dicit: "Videtur ergo standum papae, si contradicat concilio de hoc, Dist iv in istis." Haec ille.
- (4) Sed ad hoc dicunt aliqui quod hoc dictum intelligatur de conciliis generalibus patriarchalibus et de non universalibus simpliciter. Sed horum dictum est valde alienum a textu et glossis sanctorum ibidem. Nullus enim dubitavit, quod concilia patriarchalia sive provincialia non poterant legem ponere papae. De generalibus ergo simpliciter intelligitur. Et ideo eorum dictum non curandum, quod patet etiam ex xvii Dist per totum. Praeterea probatur quod dicere quod tribunal concilii sit majus tribunali papae sit (page 8) contra determinationem conciliorum.
- (5) Dicitur enim in c. Ne Romani, Extravag. De electione in Clementinarum quod fuit in Concilio Viennensi, dicitur, "Lex superioris per inferiores tolli non potest;" Glossa Joannis Andreas dicit: "Et hoc maxime cum inferior ab illo superiore recipit potestatem; ut in casu nostro coetus cardinalium; et sequitur per quod idem videtur de concilio secundum supra eo, capitulo signanter, ix, Q 3, Cuncta." Haec ille. Item Alexander III, concilio universalis, c. Licet, De electione, dicit: "In ecclesia Romana aliquid speciale constituitur quia non potest ad superiorem haberi recursus;" Glossa Ostiensis, "quia nulla superior sed ista super omnes est." Item dicit Joannis Andreas et addit: "ideo iudicio Dei relinquitur, ix, Q 3, Aliorum."
- (6) Nec valet quod dicitur a quibusdam quod hoc intelligitur quando non est congregatum concilium; tum quia non simpliciter dixisset: "non potest ad superiorem haberi recursus," posset quidem ad concilium haberi recursus; ergo ex modo loquendi etiam universaliter loquitur quod nullo modo in terris regulariter

potest haberi superior papa. Praeterea doctores allegati etiam intelligunt respectu universalis concilii ut patet ex allegatis. Et si dicatur quod oppositum dicit decretum Constantiensis concilii, dico quod salva reverentia quoniam illud concilium diffinivit tamquam ad fidem pertinens: quod suprema potestas ecclesiae est in papa; si ergo suprema; ergo impossibile est quod aliud tribunal sit majus in terra aut aequale.

- (1) Ceterum idem ratione ostenditur: papa est caput ecclesiae universalis ut per multos *doctores*: sanctos (col 1083) habemus. Constat autem quod corpus licet sit majus ipso capite magnitudine materiali non tamen est majus nec praestantius magnitudine virtutis et potestatis; sed e contra. Et si quis vellet dicere quod papa non esset caput universalis ecclesiae sed solus Christus, attendat et caveat ne incidat in errores illos condemnatos in concilio Constantiensi, Joannis Hus scilicet quorum unus in ordine vii est, quod Petrus non est nec fuit caput ecclesiae catholicae; catholicum autem universale dicitur. Alius vero in ordine xxvii est: "non est scintilla apparentiae quod oporteat esse unum caput in spiritualibus regens ecclesiam quod semper cum illa militante ecclesia conversetur."
- (2) Nec eorum motivum est alicujus roboris quo arguunt in oppositum dicentes: Si papa esset caput universalis ecclesiae sequeretur quod essent duo capita quoniam jam ista consequentia est deleta in Extravagan., Bonifacii, Unam sanctam, ubi ita dicitur: "Ergo ecclesiae unius et uniceae unum corpus, unum caput non duo capita . . . Christus Christique Vicarius, Petrique successor."
- (3) Ex qua determinatione duo colligimus: primo quod corporis mystici est unum unius et uniceae ecclesiae; et ita universalis papa est caput. Secundo, quod papa est cum Christo unum caput ecclesiae universalis, sicut episcopus et vicarius; non duo capita sed unum dicitur totius diocesis. Praeterea quod dicitur ab illis, videlicet quod si papa esset caput universalis ecclesiae; quod universalis dici posset quod videtur esse contra c. Ecce, Dist xcix, in nullo militat.
- (4) Dico enim "quod papa universalis dicit possit veraciter cum sit episcopus totius; et ita in Chalcedonensi concilio acclamatum est Leoni papae, 'sanctissimus, apostolicus, oecumenicus' id est universalis," ut exponit sanctus Thomas in tractatu Contra errores Graecorum. Et Gregorius in Registro idem asserit.
- (5) Sed summi pontifices humilitatis causa noluerunt uti hoc vocabulo, ut dicit sanctus Thomas; videbatur enim in cortice suo verbum superbae appellationis ut ait Gregorius in praeallegato c. Ecce, sed humili titulus usus est beatus Gregorius nominando se *servum servorum*.
- (6) Ceterum non videtur habere apparentiam quod dicitur ab aliis quod bene papa est caput ecclesiae dispersae id est particularium ecclesiarum; sed non universalis ut collecta est maxime secundum illud Ecclesiastici III: "Quanto major es humilia te in omnibus."

- (1) Hoc autem non est admittendum; immo videtur esse periculosum in fide sic dicere quod sic ostenditur. Ad unitatem capituli oportet assignare unitatem corporis. Corpus ergo cuius papa caput est oportet quod sit unum, et quod papa ratione corporis respiciat illud corpus ea ratione qua unum. Sed hoc non est nisi corpus collectum ex universis partibus suis quod est ipsa ecclesia universalis, juxta illud apostoli Colossenses I: "Corpus ejus quod est ecclesia." Ergo universalis ecclesiae ut est collecta et unita immo unitissima consideratus papa est caput et rector.
- (2) Praeterea episcopus nedum est caput ecclesiarum particularium sive dioecesis sed totius est simul junctae et collectae. Collectio enim et dispersio plebis non (col 1084) immutat auctoritatem (page 9) capituli, nec obviat quod episcopus dicatur membrum et pars dioecesis suae quoad personale esse suum. Ergo similiter papa totius ecclesiae collective sumptae erit caput. Caeterum si ita esset sicut aliqui dicunt, quomodo una sponsa responderet uni sponso scilicet, una ecclesia uni praelato. Si non ecclesiae totius simul collectae et conjunctae esset sponsus papa suo modo sicut praelati caeteri dicuntur sponsi ecclesiarum suarum, ut habetur vii, Q 1, Sicut alterius uxor ubi dicit Callistus papa, "Sponsa uxorque (episcopi) dicitur ejus ecclesia."
- (3) Sicut enim in electione fit matrimonium inter particularem ecclesiam et episcopum, ita in electione summi pontificis per cardinales vice totius universalis ecclesiae fit matrimonium spirituale inter papam et universalem ecclesiam. Et ideo si papa non esset nisi particularium ecclesiarum caput et sponsus, jam non unius corporis esset caput contra articulum: "Credo in unam sanctam ecclesiam;" nec "unius uxoris vir", contra apostolum, I Timothei iii.
- (4) Et ideo illa solutio per aliquos dominos ad fugiendam vivacitatem rationum et claritatem veritatis nullo modo admittenda est, quae revera non solum potest esse principium schismatis pestiferi in ecclesia sed periculosa in fide Catholica. Quod etiam ex illo manifestum habemus quod in ecclesia cantatur de beato Petro: "Simon Petre, antequam de navi vocarem te, novi te et super plebem meam principem te constitui." Non dicit in plebe, sed super; plebs vero collectivum est sicut et ecclesia. Praeterea idem ostendit illud quod in oratione ecclesia orans dum fit pro papa dicit: "famulum tuum quem ecclesiae tuae praeesse voluisti." Non dicit praeesse in ecclesia aut particularibus ecclesiis sed ecclesiae praeesse. Item ad idem est beatus Gregorius et ponitur Dist 1, c. Considerandum: "Considerandum nobis est cur omnipotens Deus, quem cunctae ecclesiae praeferre disposuerat, et cetera."
- (5) Nec motivum illorum negantium papam totius ecclesiae universalis caput esse, debet nos in aliquo movere ad partiformiter dicendum cum eis qui dicunt, quod quia universalis ecclesia, vel concilium universale errare non possit aut deficere, quod ideo respectu illius non est aliquis homo qui errare et deficere possit, caput dicendus. Ista enim tanquam erronea jam videntur esse in articulo secundo Joannis Hus in concilio Constantiensi ubi sic dicitur: "Si papa est malus non est caput ecclesiae militantis." Error, dicit concilium.

- (1) . Non ergo ideo quia ecclesia universalis militans tota non potest deficere in fide aut in moribus, sequitur quod ideo non possit esse illius caput ministeriale; potest enim quilibet de ecclesia deficere. Praeterea ista ratio ostenditur nulla ex eo quod, praeter actus jurisdictionis et potestatis ecclesiasticae, qui sunt corrigere delinquentes, disciplinare errantes. Sunt multi alii qui possunt in ecclesiam universalem simul etiam collectam cadere, qui sunt actus hierarchici respectu quorum papa potest capitis actum exercere. Nisi quis vellet ita derisorie de universali ecclesia sive concilio loqui, quod simul aggregata non indigeret operatione aliqua hierarchica.
- (2) (col 1085) Praeterea tertio sequeretur ex illa ratione, quod confirmatis apostolis ut amplius peccare non possent, Petrus respectu illorum praelationem amisisset. Et quod etiam nunc papa et alii praelati respectu eorum, qui divina gratia confirmati essent ut mortaliter non peccarent, sicut pluribus legimus esse donatum divinitus, auctoritatem praelationis idest rationem capitis amitterent. Immo Deus et quilibet hierarcha coelestium hierarchiarum, quae peccare jam non possent, nec deficere, jam, si illa ratio esset valida, desinerent esse praelati, quod stultissimum esset cogitare.
- (3) Sciant ergo tales quod sicut lex non solum habet actum corrigendi delinquentes, ut dicit Isidorus etymologiarum, sed alios actus, scilicet praecipere, vetare, permittere et hujusmodi. Ita potestas ecclesiastica habet alios actus praeter actum actualis correctionis delinquentium, quod ad ipsam universalem ecclesiam, vel concilium universale extendere potest papa, et non solum ad particulares ecclesias. Et ideo non solum respectu particularium ecclesiarum caput dicendus est sed etiam respectu totius ecclesiae universalis etiam simul congregatae.
- (4) Aliter capiendum est cum una persona vel unus homo in persona alterius dicitur aliud recipere; aliud est cum una multitudo aut corpus dicitur recipere in persona alterius membri aliquam dignitatem. Pro qua veritate multa decreta sanctorum patrum cum suis etiam glossis apertissime faciunt. Unde Callistus papa in c. Non decet, Dist xii, ita inter cetera ait: "Oportet implere voluntatem matris nostrae quae est ecclesia, cujus caput est Romana ecclesia." Quid clarius? Non enim inquit particularium sed ejus quae est (page 10) mater nostra, quae universalis mater non est nisi ecclesia. Et per consequens universalium conciliorum illam representantium. Demum non militat pro parte aliter dicentium illud Matthaei XVIII, "dic ecclesiae."
- (5) Tum primo, quia ibi ecclesiam accipiunt doctores communiter non pro aliqua congregatione fidelium sed pro praelatis ecclesiae. Unde beatus Chrysostomus exponit sic: "'dic ecclesiae;' idest his qui praesunt ecclesiae." Tum secundo, quia posito auctoritas illa de congregatione aliqua synodali reponenda veniret et applicanda Romano pontifici, intelligenda tantum esset in crimine haeresis, juxta c. Si papa, Dist xl. Praeterea si illud, "dic ecclesiae," velit quis extendere ad omnes sententias per appellationem hic in concilio susceptas, observet primo quod

procedit de admonitione caritativa. Admoneri quidem primo deberet papa ut si quem injuraverit aut sententias aliquas male dederit et praejudiciales justitiae, ut illas corrigat et emendari faciat; alias concilium suscipiet causas illas emendandas et corrigendas; quo ordine praetermisso non videtur honestum quod concilium se debeat intromittere de susceptioni causarum expeditarum per sedem apostolicam; immo nec inchoatarum.

- (1) Et hoc manifeste ostendit beatus Augustinus in epistola ad Glorium, Eleusium, Felicemque Grammaticum, in qua quibusdam Donatisti facientibus schisma provocatum ex quadam sententia data contra eos per quosdam episcopos deputatos Romae per papam Melchiadem, ita inquit: "Putemus illos episcopos qui Romae judicarunt non bonos judices fuisse; restabat adhuc plenarium ecclesiae universalis concilium, ubi etiam cum ipsis iudicibus causa posset agitari, ut si male judicasse convicti essent eorum sententiae solverentur." Haec ille. Ecce dicit: "cum ipsis iudicibus causa posset agitari."
- (2) Videamus autem si doctrinam [?]angelicam et beati Augustini servamus in susceptione appellationum a papa. Ceterum non parum videntur errare qui sic arguunt. Concilium potest in tribus supra papam. Ergo tribunal concilii est majus tribunali sedis apostolicae. Quare? Cum illa tria non respiciant sedem sed personam deficientem in aliquo illorum trium respectu sedis nulla arguitur superioritas. Haec tamen supponitur in avisamento super quo currunt nunc vota nostra.
- (3) Demum pro avisamento non militat illud argumentum quorundam patrum qui sic arguunt: Petrus accepit claves nomine ecclesiae, ut minister ejus ut patet per Augustinum, et habetur in xxiv, c. 1, Quodcumque; et cum ministrum ab eo cujus est minister non sit appellandum. Patet quod a concilio in nulla causa est appellandum ad papam. Hoc autem argumentum pro tanto in nullo militat quia fundatur super falsa allegatione. Secundo, super falsa intelligentia. Super falsa allegatione patet quia textus ille non habet quod Petrus suscepit claves nomine ecclesiae ut minister ejus. Nec in rubrica talia verba sunt; sed rubrica habet oppositum modum loquendi eorum.
- (4) Ipsi dicunt in persona ecclesiae Petrus suscepit claves; rubrica habet oppositum ita dicens: in persona Petri ligandi et solvendi potestatem ecclesia accepit; et textus ita dicit: "Petrus, quando claves accepit ecclesiam sanctam significavit. In persona Petri significati sunt in ecclesia boni. In Judae persona significati sunt mali in ecclesia." Significare autem ecclesia hoc modo, sicut Augustinus ait, non est idem quod accipere nomine ecclesiae potestatem sicut procurator aut syndicus aut servus vice aut nomine domini suscipit aliquid ab aliquo. Cum Petrus caput et rector loco Christi constitutus sit ecclesiae et illum locum habet quem Christus habebat. Clarum est quod Christus non erat syndicus et servus ecclesiae.
- (5) Et si dicatur, ut dicitur ab illis, quod Archidiaconus in Rosario exponens illum locum dicit sic: "Significatur: idest sub signo et nomine ecclesiae accepit; aliter capiendum est cum una

persona alterius dicitur aliquid recipere; aliud est enim una multitudo, aut corpus dicitur accipere in persona alicujus membrum aliquam dignitatem." Haec ille. Dico quod per hoc nihil arguitur. Primo, quia Archidiaconus sic exponat non est tamen textus Augustini sicut in argumento praetendebatur. Secundo posito quod Glossa Archidiaconi esset tantae auctoritatis ut admittenda sit, non dicit nomine ecclesiae, ut minister Petrus ejus accepit, sicut in argumento addebatur. Tertio, non capit ita illud nomine ecclesiae sicut opponens accepit, ut ita dicatur accepisse nomine ecclesiae sicut procurator alicujus domini accipit vice et nomine domini sui aliquam dignitatem a rege.

- (1) Praeterea secundo, argumentum illud peccat quia fundatur in mala intelligentia dicti Augustini. (col 1087; page 11) Quoniam Augustinus non ita accipit significare ecclesiam, nec Archidiaconus nomine ecclesiae, sicut ipsi praetendunt, quod patet ex ipsa Glossa ordinaria; unde Glossa in illud decreti ita dicit: "argumentum quod sententia totius ecclesiae praeferenda est Romanae si in aliquo sibi contradicant, -argumentum, xciii Dist, Legimus; sed contrarium credo argumentum infra eodem, 'Haec est [fides, pater beatissime,] nisi erraret Romana ecclesia, quod non credo posse [FIERI] quia Deus non permetteret..." Haec illa glossa. Nec est verum, quod dicitur ab illis, quod haec glossa sit retractata, quoniam ipse Archidiaconus videtur approbare eam in c. Anastasius; Dist xix et in c. Quodcumque praeallegato, nihil aliud dicit nisi sic: "super argumentum quod praeferenda est," [et] cetera. adde, "super hoc; vide quod legitur et notatur xix Dist, Placet." Sensus ergo verus est. Petrus quando suscepit claves ecclesiam significavit, quia non solum pro persona sua suscepit claves; sed pro suis successoribus in ecclesia."
- (2) Unde quod talis sit intellectus, probatur per Archidiaconum qui allegatur ab aliter opinantibus, nam cum dicit textus ille: "'quodcumque ligaveris super terram, erit ligatum et in coelis:' si hoc Petro tantum dictum est, non hoc facit ecclesia," et cetera super verbo "tantum" dicit sic: "ut ejus personam non transgrediatur ecclesia, idest ejus auctoritas." Haec ille.
- (3) Certe hoc est argumentum bonum et ita voluit Augustinus arguere sicut iste exponit, videlicet, si tantum dictorum fuisset Petro: "quodcumque" et cetera ita tantum illi, ut auctoritas ei data ejus personam non transgrederetur, jam ecclesia non faceret, idest auctoritas illa defecisset. Cum ergo credamus quod in ecclesia sit absolutio et ligatio. Concluditur quod quando Petrus claves suscepit non pro se solo sed ecclesiam significavit; quia nomine suo et omnium succedentium ei in ecclesia suscepit; sicut cum unus rex aut unus praelatus suscipit a papa unum privilegium non solum nomine suo, sed nomine omnium praelatorum aut principum throno suo futurorum.
- (4) Et sic patet quod intelligentia sic arguentium est minus recta; sed consequenter aliqui videntes periculosum esse asserere duas potestates supremas scilicet in papa et in concilio. Dicunt quod licet sit una potestas papae et concilii universalis; est tamen excellentius in concilio, quia datur concilio cum regula, papae

aut non, cum contingat eum deviare a regula. Hoc non videtur aliquo modo stare nec in se nec in ratione. Non in se quoniam papae data est potestas sicut duci et capiti et principi; unde cantatur in ecclesia de eo: "Ecce constitui te principem super plebem meam." Apertissimum est quod excellentius datur potestas capiti quam corpori, duci quam exercitui, et pastori quam ovibus et rectori quam familiae.

- (1) Praeterea ratio nulla est; tum primo quia est petitio principii et ita praesupponitur quod erat probandum. Si enim comparamus personas concilii ad personam papae non dubium quod aequae possunt istae errare sicut papa; et forte plus cum papa credatur singulariori providentia et altiori angelo praemunitum esse quam aliquis in concilio existens. Si vero fiat relatio concilii ad sedem apostolicam, canones sanctorum patrum et dicta sanctorum doctorum probant quod (col 1088) fundamentum est falsum, scilicet quod sedi papali non sit data potestas cum regula. Secundo falsum est quod a regula deviare possit; immo quod de conciliis universaliter hoc asserendum sit forte nulla est auctoritas.
- (2) Primum patet; dicit enim sanctus Callistus papa scribens omnibus episcopis, et habetur in c. Non decet: "Non enim decet membra a capite discedere sed juxta scripturae testimonia omnia membra caput sequantur. Nulli enim dubium est quod apostolica ecclesia mater sit omnium ecclesiarum a cujus regulis nullatenus nos convenit deviare." Et ad idem est Gregorius in capitulo sequenti, apostolicis praeceptis. Ad idem sanctus Cyprianus in c. Qui cathedram, ita dicens: "Qui cathedram Petri, super quam ecclesia fundata est deserat, in ecclesia se esse non confidat."
- (3) Item secundo, falsum est quod sedes apostolica a regula fidei deficere possit. Habet enim privilegium non errandi in fide sedes illa apostolica. Unde Dominus ait Petro, Lucae XXII: "Ego rogavi pro te ut non deficiat fides tua." Quod de firmitate fidei sedis apostolicae in qua fides universalis ecclesiae semper fuit et semper mansura est inviolata usque ad consummationem saeculi sancti doctores exponunt.
- (4) Unde in c. Quamvis, Dist xxi, dicitur: "Prima apostolica sedes Romana ecclesia, (Glossa 'prima dignitate, quia Antiochena tempore praecessit;') ista non habet maculam neque rugam nec aliquid hujusmodi." Hac etiam ratione in c. Omnes, Dist xxii, dicitur "mater fidei." Et ad idem sunt capitula multa in Decreto, sicut c. a recta; item c. Memor (In sede, c. xi), ubi dicit Eusebius: "In sede apostolica extra maculam semper catholica servata est religio," et in c. Quotiens et est Hieronymi, xxiv, q 1.
- (5) (page 12) Ad idem est Cyrillus libro Thesaurorum, et multi alii et praesertim Bernardus cujus ad longum audiamus verba ad propositum optime dicentia, in quadam epistola ad papam Innocentium, in qua ita loquitur: "Amantissimo patri et domino Innocentio, summo pontifici. Frater Bernardus Clarevallensis vocatus abbas, modicum id quod est. Opus est ad vestrum referri apostolatam pericula quaeque et scandala emergentia in regno Dei, ea praesertim quae de fide contingunt. Dignum namque arbitror ibi potissimum

resarciri damna fidei, ubi fides defectum non possit sentire. Haec quippe praerogativa hujus sedis est; cui enim alteri aliquando dictum est: 'Ego pro te rogavi, Petre, ut non deficiat fides tua;' ergo quod sequitur a Petri successore exigitur: 'et tu aliquando conversus confirma fratres tuos.'" Haec ille. Ex quibus patet aperte quod potestas data est sedi apostolicae dum regula etiam inobliquabili in his quae sunt necessaria fidei Christianae; aliter non video quomodo non existentibus conciliis universalibus ecclesiae esset provisum sufficienter.

- (1) Praeterea revertendo ad argumentum istorum, dico quod posito quod illud esset verum; non tamen sequitur quod intendunt. Quoniam licet ecclesia universalis habeat privilegium non errandi in actu et exercitio ecclesiasticae potestatis, de qua loquimur; saepissime enim errat in iudicando. Et ideo dicit Magister Sententiarum ex dictis Hieronymi in IV Sententiarum, Dist xviii, quod non semper Deus sequitur iudicium ecclesiae quae per surreptionem et ignorantiam interdum iudicat. (col 1089) Deus autem semper iudicat solum veritatem.
- (2) Et idem colligitur ex c. Coepisti, ix, Q 3. Praeterea privilegium de non errando in fide licet sit universalis ecclesiae, non tamen semper universalium conciliorum, nisi solum illa dicatur . . . universalis concilii, in qua sedes apostolica venit diffiniens, quoniam concilia aliqua leguntur errasse.
- (3) Unde dominus Cameracensis in tractatu suo De ecclesiastica potestate ita dicit: "Secundum aliquos speciale privilegium est universalis ecclesiae quod non potest errare in fide. Licet hoc idem pie credatur de concilio generali videlicet quando innititur divinae scripturae, vel auctoritati quae a Spiritu sancto inspirata est, alias saepe errasse legitur." Haec ille cujus sententiae alludere videtur in Glossa in c. De libellis, Dist xx, ubi super verbo illorum-scilicet doctorum, dicit sic: "Videtur quod potius iudicandum sit secundum illum qui utitur auctoritate CANONIS Q. Hieronymi vel Augustini quod verum est, inquit, nisi Augustinus juvetur auctoritate veteris vel novi Testamenti vel alio canone. Nam licet concilium universale statuerit quod raptor non posset matrimonialiter conjugii cum rapta, ut xxxvi, Q 2, Placuit. Tamen contrarium statuit et ei statuit ut, xxxvi, Q 2, Tria." Haec ibi.
- (4) Et in c. Placuit, in quo dicitur quod auctoritas concilii non praeiudicat auctoritati Hieronymi, dicit Glossa: "Hoc ideo est quia roboratur auctoritate [Veteris testamenti] et auctoritate Meldensis concilii." Et haec sufficiant pro primo argumento principali in quo volui ostendere avisamentum non esse admittendum, quia videbatur minus bene sapere conformiter fidei doctrinae per sanctos doctores et canones nobis explicitae.
- (5) Secundo, principaliter idem arguitur, ex eo quod praefatum avisamentum videtur periculosum pro fide Christiana; quia aufert ei protectionem et defensionem ubi propter impressionem aut aliqua alia causa in alio concilio imminet periculum fidei; sicut expresse apparet de concilio Ephesino universalis secundo, in quo sicut in superioribus reverendissimus Tarentinus tangebatur: "Appellatio et

protestatio fuerunt protectio fidei nostrae." Nec valet quod dicitur, per quosdam quod illud non fuit concilium. Immo quoniam veraciter concilium in principio sui auctoritate apostolica inchoatum; quod patet, tum quia praesidentes papae in eo fuerunt qui tandem fidem periclitari protestati sunt et appellaverunt; et dicuntur fuisse Julius episcopus, Renatus presbyter, et Hilarius diaconus.

- (1) Tum secundo, patet manifeste quoniam Leo papa scribens praefatae synodo ita loquitur: "Leo papa sanctae synodo quae apud Ephesum convenit, religiosa clementissimi principis fide, et cetera." Ecce synodum vocat et sanctam quam tamen postmodum scandalosam dicit et infelicem. Sed dicunt aliqui quod licet fuerit concilium non tamen fuit universale. Sed hoc iterum nihil est. Tum quoniam Leo papa scribens eidem synodo dicit sic: "Christianissimus imperator haberi voluit episcopale concilium ut pleniori iudicio omnis possit error aboleri." Constat autem concilium episcopale in quo plenius pro extirpandis erroribus celebratur non nisi universale dici, sicut Augustinus usus est nomine plenariorum conciliorum. (col 1090; page 13) Praeterea hoc patet ex eo quod ad hoc invitatus est Leo papa, ut veniret ab ipso imperatore; quod non fuisset factum si non universale fuisset.
- (2) Tertio, patet ex eo quod connumeratur primo universali concilio Ephesino cum dicitur secundum. Primum autem non dicitur respectu alicujus particularis, sed respectu universalis sequentis secundi. Sed non debet aliquis ea de causa credere quod non fuerit universale quia dicitur fuisse episcopale concilium, quis pari modo Nicaenum I universali inter quatuor principalia vocatur episcopale concilium; ut patet in primo capitulo decimi libri Historiae ecclesiasticae, ubi Eusebius ita loquitur de Constantino. "Ille princeps ex sententia sacerdotum apud Nicaeam episcopale concilium convocat, ibique Arrium (nota: cum CCCXVIII (ut XVIII), episcopis residentibus adesse jubet ac de ejus propositionibus et quaestionibus judicari." Haec ibi.
- (3) Episcopale enim concilium dicitur concilium ex episcopis electum. Si vero dicatur et bene ut aliqui visi sunt dicere, quod illud concilium licet fuerit bene inchoatum non tamen bene continuatum. Et ideo perdidit nomen concilii sicut videtur insinuari ex gestis Chalcedonensis concilii. Hoc enim ego iudico melius dictum et verum esse.
- (4) Sed ex hoc tria sequuntur corollaria. Primum erit quod non est de essentia concilii universalis quod si bene incipiat et cum legitima potestate habere bonam prosecutionem, id est terminationem sanctam. Secundum est, quod non est privilegium generale conciliorum universalium non errare in fide. Tertium est, quod periculosum est, dare istam praerogativam ita universaliter et indifferenter conciliis universalibus. Et est ponere scandalum in ecclesia Dei.
- (5) Tertio, advisamentum praefatum non videtur mihi admittendum eo quod reprobare videtur approbata per sanctos doctores, immo per concilium Chalcedonense. Dicens enim, quod nulli fas fuerit decretis et sententiis generalis concilii, cujuscumque appellationis, aut alterius remedii, praetextu contravenire, aut non obedire,

reprobat appellationem factam in concilio II Ephesino per Flavianum, et approbatam per Chalcedonense concilium. Immo videtur condemnare universam ecclesiam quae sententias illius erroneas illius concilii non suscepit. Item condemnat multos qui praeteritis temporibus rationalibus causis non susceperunt canones multos aliquorum conciliorum etiam universalium; de quo supra dictum est in primo.

- (1) Item quarto, hoc avisamentum est contra determinationem sacrorum conciliorum. Unde de Chalcedonensi concilio sanctus Thomas in quaestionibus, De potentia, Q 10, art 4 in solutione XIII argumenti dicit inter alia sic: "Ex gestis Chalcedonensis concilii patet primo, quod sententia synodi a papa confirmatur; secundo quod ad ipsum a synodo appellatur. Praeterea quod a papa non appelletur, habetur ex gestis concilii Ephesini, in quo constitutum est quod a sententia sedis apostolicae nulli liceat appellare."
- (2) Item quinto, contra rationem naturalem videtur esse prohibere universaliter et indifferentur a concilio ad papam non posse appellare, quod probatur sic. Contra rationem naturalem est (col 1091) ut non possit appellari a concilio ad eum qui sententias concilii communiter habet roborare, confirmare, et validare. Sed papa est hujusmodi; unde in concilio Chalcedonensi ut dicit sanctus Thomas in allegato loco, habetur, quod papa confirmat sententias concilii. Item in actione superiori dicitur ejusdem concilii. Idem habetur de praesidentibus papae ut deductum est supra; quod etiam deducitur auctoritate multorum sanctorum, quos adducit Aymarus Remensis episcopus in libro De synodis.
- (3) De quo habetur in c. Excellentissimus, xi, Q 3, qui ita ait in capitulo duodeviginti "Ne mireris quod ipsorum conciliorum auctoritatem Romano pontifici adscribamus; nam nulla concilia rata leguntur quae apostolica auctoritate fulta non fuerunt, ut beatus Damasus papa in decretis suis, capitulo ix asserit. Cui sancti Anastasius et Julius papa, Nicaenum quoque concilium et reliqui sancti patres adstipulantur; sanctus quoque Marcellus papa et martyr in decretis suis, capitulo v. Ipsi quoque apostoli eorumque successores Domino inspirante constituerunt, ut nulla fieret synodus praeter Romanae sedis auctoritatem; nam illius sedis episcopatus iudex est totius ecclesiae; nec aliquod iudicium valet absque legitimo iudice." Haec ille.
- (4) Item idem habetur ex c. Significasti, Extravag De electione cum glossis Ostiensis et Joannis quae superius allegata sunt. Quod vero dicunt aliqui hoc solum verum esse quoad inchoationem sive congregationem conciliorum; quoad solum concilia communi lege dependent ab auctoritate papae. Non autem quoad robur et confirmationem decretorum et canonum et sententiarum eorum nihil militat, cum falsum dicant, ut patet (page 14) ex serie textus auctoritatum et ex superiori actione Chalcedonensis concilii, ubi inchoato et progrediente in actibus suis concilio dicit quod aposcrisarii primo confirmabant sententias, quia aliter nullum robur habebant. Item ex practica ecclesiae quae semper canones factos misit papae absentem a concilio ad confirmandum, sicut omnibus legentibus gesta universalium conciliorum notum est. Et practicatum fuit in concilio Constantiensi.

- (1) Item sexto, arguitur idem quoniam hoc avisamentum videtur esse contra canones multos a Spiritu Sanctus dictatos, contra quos praesumere agere nimium est periculosum, secundum quod dicitur in c. Violatores, supra allegato. Canones autem supra notati sunt multi et etiam notantur plures II, Q 6 per multa capita; in quibus tam episcopis quam aliis oppressis libera datur facultas appellandi ad sedem apostolicam ut in c. Si quis vestrum et in c. Ad Romanam. Item contra canonem illum "Ipsi sunt canones qui appellationem totius ecclesiae ad hujus sanctae sedis examen voluerunt deferre; ab ipsa vero nusquam prorsus appellare sanxerunt; ac per hoc illam totam ecclesiam judicare. Ipsam autem ad nullius commere iudicium nec de ejus unquam praeceperunt iudicio judicare; sententiamque ejus constituerunt non oportere dissolvi ab aliquo cujus potius sequenda decreta mandaverunt."
- (2) Idem in c. Patet #Nemo; idem in c. Cuncta ea causa et quaestio. Nec valet si dicatur quod intelligitur de particulari aliquo non de concilio universalis. Quoniam (col 1092) concilium dicit contrarium in c. Nunc autem, ubi concilium dicit Marcellino: "Ex ore (nota: ad. tuo) te iudica; prima enim sedes non iudicatur a quoquam." Item, non valet quod dicitur ab illis quod canones veteres debent iudicari per canones concilii Constantiensis et Basileensis; quoniam sacra scriptura dicit: "Non transgrediaris terminos quos posuerunt et cetera." Unde non videntur canones a Spiritu Sancto qui contradicunt canonibus antiquorum conciliorum aut decretorum summorum pontificum aut decretorum sanctorum.
- (3) Septimo, idem arguitur quia est contra privilegia sedis apostolicae, contra quem venire periculosissimum est juxta c. Omnes, Dist xxii. Dicitur autem in II, Q 6 in c. Ideo post c. Ad Romanam. "Huic sanctae sedi praefata privilegia specialiter sunt concessa, tam de congregandis conciliis et iudiciis et restitutionibus episcoporum, quam etiam de summis ecclesiarum negotiis, ut ab ea omnes oppressi auxilium et injuste damnati restitutionem sumant, et talia ab impiis non praesumantur absque sua . . . damnatione." Haec ille.
- (4) Octavo idem arguitur, quia praefatum privilegium est praedjudiciale honoribus ecclesiarum et principum propter favores inordinatos qui haberi possunt in conciliis universalibus, cujus exempla habemus de Chalcedonensi concilio; in quo facta fuit contradictio per praesidentes papae Anatholio Constantinopolitano episcopo, qui cum favore multitudinis praefati concilii habuit ut Alexandrinam et Nicaenam ecclesias sibi subjiceret, de quo Leo papa facit mentionem. Nec illud unquam voluit habere gratum aut confirmare, nec ad preces imperatoris ut patet in epistolis suis. Solum quippe ea quae fidei erant ibidem diffinita approbavit. Haec omnia patent in epistolis suis.
- (5) Nono idem arguitur, quantum hoc avisamentum maxime praedjudiciale videtur esse honoribus et praerogativis episcoporum quorum privilegium est, ut in Chalcedonensi reperitur sancitum, quod si episcopus praedicatur infamis liberam habet licentiam appellandi ad beatissimum antistitem Romae, quem habemus petram refugii. Et ipsi soli libera potestate loco Dei sit jus discernendi crimen sic infamati secundum claves a Domino sibi datas; et ideo dicit Glossa in c. Episcopus, VI, Q 2, quod hodie concilium non

deponit episcopum sed solus papa nec concilium restituit episcopum, sed solus papa. Et allegatur c. x, II, Q 6 et manifestius ponitur in c. Cuncta per mundum, xxii, Q 3, ubi dicitur: "nec illa praeterimus, quod apostolica sedes sine ulla praecedenti synodo et solvendi quos synodus inique damnaverit et damnandi nulla existente synodo quod oportuerit facultatem" (habet).

- (1) Quod vero dicitur ab aliquibus quod ista duo capitula intelligantur de provincialibus conciliis non generalibus non videtur esse verum, tum ex serie ipsa capitulorum dictorum, et modo loquendi universaliter. Secundum eo quod sequitur in auctoritate illa, Cuncta per mundum, quam adducit Aymarus ita dicens in libro De synodis: "Sanctae quippe memoriae Anastasium synodus Orientalis edixerat, quem tamen exceptum sedes apostolica qui damnationi Graecorum non consensit, absolvit. Sanctae memoriae Joannem Constantinopolitanum synodus catholicorum praesulum damnaverit, quem simili modo sedes apostolica quia non consensit, absolvit. Itaque sanctum Flavianum pontificem Graecorum damnatione damnatum, pari (col 1093; page 15) tenore; quoniam sola sedes apostolica non consensit potius qui illic receptus fuerat Dioscorus ejusdem sedis praesulem sua auctoritate damnavit, et impiam synodum non consentiendo sola submovit et auctoritate sua ut synodus fieret Chalcedonensis sola decrevit." Haec ille. Ex quibus verbis aperte colligitur quod etiam de generalibus loquatur. Flavianus enim in concilio generali Ephesino II damnatus fuit; ratione cujus Chalcedonensis synodus generalis ad corrigendum illam synodum instituta est.
- (2) Item decimo, arguitur contra praefatum avisamentum quia videatur praesumptiosum cum ultra vires potestatis se extendat. Quis enim dedit potestatem concilio ut si papa quamcumque appellationem a concilio susceperit, sit ipso facto privatus et infamia perpetua innodatus? quod innuitur cum dicitur in avisamento: "nihilominus si contra decretum" et cetera; et infra: "tam ille, quam iudex," et cetera. Ista sunt ad praesens rationes quibus mihi visum est avisamentum propositum nullo modo fore suscipiendum. Et tantum de primo puncto.
- (3) Sequitur secundus punctus, in quo debeo exprimere votum meum, dando et consulendo modo tenendum, ut appellationes non fiant ita communiter et ut decretis obediatur praesentis concilii. Circa vero decreta si volumus illa ab omnibus recipi, studeamus talia facere, quae justa sint et honesta ac possibilia, sicut praedecessores nostri fecerunt. Et non dubium quod si decreta nostra honestatem, justitiam, et possibilitatem contineant quin ab omnibus suscipiantur reverenter.
- (4) Deprecemur et oremus sanctissimum nostrum, instar aliorum famosissimorum conciliorum et sanctorum, ut ore suo roboret illa et mandet observari, cum ipse sit executor canonum.
- (5) Circa sententias vero dico duo pariformiter ad jam dicta. Primo, quod omni studio curemus sententias nostras cum gravitate expedire et cum pondere virium, non per placet aut multitudinem votorum. Secundum quod mittamus ad sanctissimum dominum nostrum;

sicut fecerunt patres in concilio Carthaginensi Africano scribentes super simili materia papae Coelestino, rogantes et deprecantes, ut deinceps ad aures ejus a concilio venientes cum appellationibus aut querelis, non faciliter et indifferenter admitteret, quoniam hoc justum est; nisi causa esset ita aperte rationabilis admittendi; utpote quia aut favore alicujus aut timore aut alia quavis inordinata affectione non posset rectitudo justitiae sperari in concilio. Et credo quod cum ita deprecati fuerimus dominum nostrum et nos sententiis curiae suae parem reverentiam exhibuerimus, indubie omnes praesentis concilii sententiae in suo robore et virtute manebunt. Et haec cum omni reverentia et correctione sunt quae mihi occurrunt pro voto meo circa hoc avisamentum appellationum.

- (1) Explicit votum magistri Joannis de Turrecremata in materia appellationum in deputationem reformatorii, IX Martii, Anno Domini, 1436.