

PONTIFICAL UNIVERSITY GREGORIANA

**Miscellanea Historiae Pontificiae**

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Salvatore Vacca, O.F.M.Cap.

**PRIMA SEDESA  
NEMINE IUDICATUR**

Genesis and historical development of the axiom  
up to  
the Decree of Gratian



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1. W.M. PEITZ, S.J., *Das vorephesinische Symbol der Papstkanzlei*, 1939, pp. VII 4- 128 and 3 plates.
2. G. HOFMANN, S.J., *Papacy, conciliarism, patriarchy (1438-1439)*. W.M. PEITZ, S.J., *Liber Diumus*, 1940, pp. 82; 100.
3. A. MERCATI, *Bollandiana dall'Archivio segreto Vaticano*,  
5. KUTTNER, *L'édition Romaine des Conciles Généraux et les actes du premier Concile de Lyon*, 1940, pp. 67; 63.
4. H. J. EDI N, *Der Quellenapparat der Konzilsgeschichte Pallavicinos*, 1940, pp. 112.
5. 11. GRABMANN, *The Popes of the Thirteenth Century and V Aristotelianism*. Part I. *The ecclesiastical prohibitions of Aristotle under Innocent III and Gregory IX*, 1968, pp. Vili + 133. - Part II. *William of Moerbeke O.P., the translator of the works of Aristotle*, 1970, pp. XI 4- 194. [Anastatic reprint].
7. AA.W., *Xenia Piana*, Pius XII dicata, 1943, X 4- 514.
- 8.16.17.24.25. P. PIRRI, S.J., *Pius IX and Victor Emmanuel II from their private correspondence*. I. *Laicizzazione dello Stato Sardo, 1848-1856*, 1980, pp. XLII 4- 143\* 4- 263. [Reprint with Preface by G. MARTINA]. - II. *The Roman Question, 1856-1864*. Part I: *Text*, 1951, pp. XVI 4- 600; III. *The Roman Question, 1864-1870*. Part I: *Text*, 1961, pp. XII 4- 336; Part II: *The Documents*, 1961, pp. XV 4- 465.
9. F. KEMPF, S.J., *Die Register Innocenz IH. Eine paläographisch-diplo- matische Untersuchung*, 1945, pp. 138 and 2 plates.
10. A. MERCATI, *Nell'Urbe dalla fine di settembre 1337 al 21 gennaio 1338*, 1945, pp. Vili + 168 4- 3 plates.
12. *Regestum Innocenti III papae super negotio Romani imperii*, herausgegeben von F. KEMPF, S.J., 1947, pp. XXXII + 447.
- 13-14. AA.W., *Gregory XVI, Miscellanea Commemorativa*. P. I: 1948, pp. VII 4- 456 and 4 plates. - P. II; 1948, pp. V + 603 and 5 plates.
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19. F. KEMPF, S.J., *Papsttum und Kaisertum bei Innocenz HI*, 1954, pp. XX 4- 338.
20. P. RABIKASKAS, S J., *Die römische Kuriale in der päpstlichen Kanzlei*, 1958, pp. XXIV 4- 255.
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28. G. MARTINA, S.J., *Pius IX and Leopold II*, 1967, pp. XX 4- 554.
29. S. OLSZAMOWSKA-SKOWROŃSKA, *La Correspondance des Papes et des Empereurs de Russie, 1814-1878*, 1970, pp. XIX 4- 386.
30. ROBERT D'ANJOU, *La Vision Bienheureuse*. *Traité envoyé au Pape Jean XXII*, édité par M. DYKMANS, S J., 1970, pp. 94\* + 118.
31. AA.W., *La vita religiosa a Roma circa 1870. Research in History and Sociology*, edited by G. MARTINA, S.J., 1971, pp. Vili 4- 273.
32. L.M. MARTINEZ-FAZIO, S.J., *La segunda basilica de San Pablo extramuros. Estudios sobre su fundación*, 1972, pp. XX 4- 395.

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## BIBLIOGRAPHY

### SOURCES

- Acta synodorum habitarum Romae, A. CCCCXCVIII*, edidit Theodorus MOMMSEN, in *M.G.H., Auct. Ant.*, XII, Berolini 1894, 399-455.
- ADALBERTUS-BERNALDUS, *Ad Rernhardum*, Ep. 3, edidit Friedericus THANER, in *De lite imper. et pontif.*, II, Hannoverae 1892, 47-58.
- ADAM (Scolasticus Bremensis), *Gesta Hammenburgensis ecclesiae pontificum*, edidit Bernhard SCHMEIDLER, in ADAM VON BREMEN, *Hamburgische Kirchengeschichte*, Hannover-Leipzig 1917, 1-283.
- ALCUINUS, *Ad Arnonem Archiepiscopum Salisburgensem*, Ep. 159, edidit Ernest DÜMMLER, in *M.G.H., Epp.*, IV, 2, Berolini 1895, 257-259.  
, *Ad Arnonem Archiepiscopum Salisburgensem*, Ep. 179, edidit Ernest DÜMMLER, in *M.G.H., Epp.*, IV, 2, Berolini 1895, 296-297.  
, *Ad Arnonem Archiepiscopum Salisburgensem*, Ep. 184, edidit Ernest DÜMMLER, in *M.G.H., Epp.*, IV, 2, Berolini 1895, 308-310.
- ALCUINUS, *Carolus Regi*, Ep. 177, edidit Ernest DÜMMLER, in *M.G.H., Epp.*, IV, 2, Berolini 1895, 292-293.
- Annales Altahenses maiores, a. 1061*, edidit Wilhelmus DE GIESEBRECHT-EDMUNDUS L.B. AB ÖFELE, in *M.G.H., SS.*, XX, Hannoverae 1868, 772-824.
- Annales Hildesheimenses*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 42-112.
- Annales Laureshamenses*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, I, Hannoverae 1826, 22-39.
- Annales Laurissenses*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, I, - Hannoverae 1826, 114-123.
- ANONIMUS VALESIANUS, *Consularia Italica, Pars Posterior*, edidit Theodorus MOMMSEN, in *M.G.H., Auct. Ant.*, *YK, pars posterior*, Berolini 1892, 306-328.
- ANSEGISUS ABBAS, *Capitularium Collectio*, edidit Alfredus BORETIUS, in *M.G.H., Capitularia Regum Francorum*, I, Hannoverae 1883, 394-450.
- ANSELMUS EPISCOPUS LEODIENSIS, *Gesta episcoporum Eodiensium, II*, edidit Georgius Heinricus PERTZ, in *M.G.M., SS.*, VII, Hannoverae 1846, 191-234.
- ANSELMUS LUCENSIS EPISCOPUS, *Fiber contra Guibertum*, in *PL*, 149, 445-476.  
, *Collectio canonum una cum collectione minore, iussu Instituti Savigniani*, edidit Fridericus THANER, öniponte 1906.
- ATTO VERCELLENIS EPISCOPUS, *De Pressuris Ecclesiasticis Eibellus*, in *PL*, 134, 51-96.
- AUXILIUS, *In defensionem sacrae ordinationis papae Formosi*, in Ernest DÜMMLER, *Auxilius und Vulgarius. Quellen und Forschungen zur Geschichte des Papstthums im Anfänge des zehnten Jahrhunderts*, Leipzig 1866, 59-95.  
-----, *Infensor et Defensor*, in *PL*, 129, 1074-1102.
- AVITUS EPISCOPUS VIENNENSIS, *Ad Senatores Urbis Romae*, Ep., in MANSI, 8, 293-295.

- BENEDICTUS DIACONUS, *Capitularium Collectio*, in PL, 97, 697-912.
- BENEDICTUS SANCTI ANDREAE MONACHUS, *Chronicon*, edidit Georgius Heinricus PERTZ, in *M.G.H.*, SS., III, Hannoverae 1839, 696-722.
- BENO ALIQUE CARDINALES SCHISMATICI, *Contra Gregorium VII et Urbanum II scripta*, edidit Kuno FRANCKE, in *M.G.H.*, *De lite imper. et pontif.*, II, Hannoverae 1892, 366-422.
- BERNHARDUS, *Ad Adalbertum Epistolam II*, edidit Ernest DÜMMLER, in *M.G.H.*, *De lite imper. et pontif.*, II, Hannoverae 1892, 29-47.
- BERNOLDUS (Monachus S. Blasii), *Chronicon*, edidit Georgius Heinricus PERTZ, in *M.G.H.*, SS., V, Hannoverae 1844, 385-467.
- BERTHOLDUS, *Annales, a. 1076*, edidit Georgius Heinricus PERTZ, in *M.G.H.*, SS., V, Hannoverae 1844, 228-284.
- BONIFACIUS I, POPE, *Dilectissimis fratribus universis episcopis per Thessaliam constitutis*, Ep. 14, in PL, 20, 777-779.  
-----*Dilectissimo fratri Rufo*, Ep. 13, in PL, 20, 774-777.
- BONIFACIUS Vili, POPE, *Unam sanctam*, in *Corpus Iuris Canonici*, edidit Aemilianus FRIEDBERG, II, Lipsiae 1881, 1245-1246.
- BONIZO EPISCOPUS SUTRINUS, *Liber ad amicum*, edidit Ernest DÜMMLER, in *M.G.H.*, *De lite imper. et pontif.*, I, Hannoverae 1891, 571-620.
- BONIZO, *Liber de vita Christiana*, edidit Ernest PERELS, Berlin 1930.
- BURCHARDUS VORMATIENSIS ECCLESIAE EPISCOPUS, *Decretorum liber*, in PL, 140, 537-1058.  
*Canones Sanctorum Apostolorum*, in PG, 137, 217-1498.  
*Capitularia excerpta de canone*, edidit Denuo BORETIUS, in *M.G.H.*, *Leges*, I, - Hannoverae 1883, 133-134.
- CASSIODORUS SENATOR, *Chronica, ad. A. DXIX*, edidit Theodorus MOMMSEN, in *M.G.H.*, *Auct. Ant.*, XI, Berolini 1894, 109-161.  
*Chronicon farfense (II)* by GREGORY OF CATINO. *Preceding the Constructio Farfensis and the writings of Ugo di Farfa, I-II*, edidit Ugo BALZANI, (Fonti per la Storia d'Italia, 33-34), Rome 1903.
- CLÉMENT DE ROME, *Épître aux Corinthiens*, edidit Annie JAUBERT, (*Sources Chrétiennes*, 167), Paris 1971.
- Codex Iuris Canonici PII X PONTIFICIS iussu digestus BENEDICTI PAPAE XV Auctoritate promulgatus. Praefatione, Fontium Annotatione et Indice Analytico- Alphabetico ab E.mo Petro Card. GASPARRI auctus, Romae, Typis Polyglottis Vaticanis 1917.*
- Codex Iuris Canonici*, auctoritate IOANNIS PAULI PP. II promulgatus, Libreria Editrice Vaticana 1983.
- Concilium Moguntiacense*, a. 888, in MANSI, 18, 67-68.
- Concilium Romanorum*, a. 863, in MANSI, 15, 651-660.
- Concilium Romanum*, a. 1059, in MANSI, 19, 897-912.
- Concilium Romanum*, a. 800, edidit Albertus WERMINGHOFF, in *M.G.H.*, *Concilia Aevi Carolini*, II, 1, Hannoverae-Lipsiae 1906, 226-227.
- Concilium Romanum*, a. 964, in MANSI, 18, 471-474.
- Concilium Serdicensis*, a. 342-343, in *Ecclesiae Occidentalis Monumenta Iuris Antiquissima. Canonum et Conciliorum Graecorum interpretationes Latinae*, edidit C. H. TURNER, I, Oxoni 1930, 446-559.

- Concilium Vaticanum I*, a. 1870, *Constitutio dogmatica, Pastor aeternus*, in *Enchiridion Symbolorum Definitionum et Declarationum et Declarationum de Rebus Fidei et Morum*, edidit Henricus DENZINGER-Adolfus SCHÖNMETZER, Barcinone-Friburgi Brisgo-viae-Romae 1976<sup>^</sup>, 3050-3075/595-601.
- De Ordinando Pontifice*, edidit Hans Hubert ANTON, in Hans Hubert ANTON, *Der sogenannte Traktat "De ordinando pontifice". Ein Rechtsgutachten in Zusammenhang mit der Synode von Sutri (1046)*, Bonn 1982, 75-83.
- Decretales Pseudo-Isidorianae et Capitula Angilramni*, edidit Paulus HINSCHIUS, Lipsiae 1863.
- Decretum Magistri Gratiani*, edidit Aemilius FRIEDBERG, I, Lipsiae 1879.
- DEUSDEDIT CARDINALIS, *Fragmenta libri de privilegiis Ecclesiae Romanae*, in PL, 150, 1569-1572.
- Didachè*, edidit Willy RORDORF - André TUILIER, {*Sources Chrétiennes*, 248}, Paris 1978.
- Didascalia et Constitutiones Apostolorum*, edidit F. X. FUNK, I, Paderborn 1905.
- Diversorum patrum sententiae sive collectio in LXXIV titulos digesta*, edidit Joannes T. GILCHRIST, *Monumenta Iuris Canonici*, Vatican City 1973.
- EINHARDUS (Abbas), *Annales*, edidit Georgius Henricus PERTZ, in *M.G.H., SS.*, I, 134-218.
- EPIPHANIUS, *Panarion*, edidit Karl HOLL, {*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, II}, Leipzig 1922.
- Epistolae Romanorum Pontificum, et quae ad eos scripta sunt a S. Clemente I. usque ad Innocentium III*, edidit Petrus COUSTANT, I, Paris 1721, reproduction 1967.
- EUSEBIUS, *Die Kirchengeschichte*, edidit Theodor MOMMSEN, {*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, 11,2}, Leipzig 1908.
- Fragmentum Laurentianum*, edidit Theodorus MOMMSEN, in *M.G.PL, Gest. Pont. Roman.*, I, Berolini 1898, IX-XI.
- GELASIUS, POPE (Sanctus), *Ad Anastasium Imperatorem*, Ep., in PL, 56, 633-640. -----, *Ad Episcopos Dardaniae*, Ep. 13, in MANSI, 8, 49-63. -----, *Ad Faustum commonitorium*, Ep. 4, in MANSI, 8, 16-19.
- GERBERTUS, *Acta Concilii Remensis ad Sanctum Basolum*, edidit Georgius Henricus PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 568-686.
- GREGORIUS CATINENSIS FARFENSIS, *Orthodoxa defensio imperialis*, edidit L. von HEINEMANN, in *M.G.H., De lite imper, et pontif*, II, Hannoverae 1892, 535-541.
- GREGORIUS II, POPE, *Ad Bonifacium Episcopum*, Ep. 13, in MANSI, 12, 244-246.
- GREGORIUS MAGNUS (S.), *In librum primum Regum*, edidit Patricius VERBRAKEN, in CC., 144, Turnholti 1963. , *Moralia in Iob*, Books XXIII-XXXV, edidit Marcus ADRIAEN, in CC., 143B, Turnholti 1985.
- HADRIANUS II, POPE, *Allocutio tertia, ad Concilium Romanum a. 869*, in MANSI, 16, 122-128.
- HEINRICHS IV REX, *Epistula Romanis, 1081 and 1082*, edidit Philippus JAFFE, in *Monumenta Bambergensia*, Berolini 1869, 498-502.
- HINCMARUS ARCHIEPISCOPUS RHEMENSIS, *De presbiteris criminosis*, in PL, 125, 1093-1110.

- HUGO MONACHUS FLORIANENSIS, *Tractatus de regia potestate et sacerdotali dignitate*, edidit E. SACKUR, in *M.G.H., De lite imper, et pontif.*, II, Hannoverae 1892, 446-496.
- HUGO MONACHUS, *Chronicon*, edidit Georgius Heinricus PERTZ, in *SS.*, VIII, Hannoverae 1848, 285-503.
- HUMBERTUS A SILVA CANDIDA, *Libri III adversus simoniacos*, edidit Fridericus THANER, in *M.G.H., De lite imper, et pontif.*, I, Hannoverae 1891, 95-253.  
*, De Sancta Romana Ecclesia. Fragmentum B*, in Percy Ernst SCHRAMM, *Kaiser, Rom und Renovatio. Studien und Texte zur Geschichte des römischen Erneuerungsgedankens vom Ende des karolingischen Reiches bis zum Investiturstreit*, II, B.G. Teubner-Leipzig-Berlin 1929, 128-129.
- IGNACE D'ANTIOCHE, *AUX Éphésiens*, in IGNACE D'ANTIOCHE - POLYCARPE DE SMYRNE, *Lettres. Martyre de Polycarpe*, edidit Th. CAMELOT, *{Sources Chrésiennes*, 10), Paris 1959, 66-93.
- Invectiva in Urbem Romanam pro papa Formoso*, edidit Ernest DÜMMLER, in *Gesta Berengarii Imperatoris*, Halle 1871, 137-154.
- ISIDORUS HISPALENSIS EPISCOPUS (Sanctus), *Sententiarum Libri tres*, in *PL*, 83, 557-738.
- Ivo CARNOTENSIS EPISCOPUS, *Decretum*, in *PL*, 161, 47-1022.  
 -----, *Panormia*, in *PL*, 161, 1037-1344.
- JOHANNES VIII, POPE, *Basil (I) et Constantine et Alexander imperatoribus*, Ep. 207, edidit Erich CASPAR, in *M.G.H., Epp.*, VII, Berolini 1928, 166-176.
- JONAS AURELIANENSIS EPISCOPUS, *De cultu imaginum. Libri tres*, in *PL*, 106, 305-394.
- Kanonensammlung (Die) des Kardinals Deusdedit*, edidit W. v. GLANVELL, I, Paderborn 1905.
- LEO IX, POPE, *Ad Michaelem Constantinopolitanum Patriarcam*, Ep. 1, in MANSI, 19, 635-656.  
 -----, *Ad Thomam Episcopum Africanum*, Ep. 3, in MANSI, 19, 657-658.
- LEO MAGNUS (S.), *Ad Anatolium Episcopum Cp.*, Ep. 106, in *PL*, 54, 1001-1009.  
*Liber canonum contra Heinricum quartum*, edidit Fridericus THANER, in *M.G.H., De Ute imper, et pontif.*, I, Hannoverae 1891, 471-516.
- Liber de unitate ecclesiae conservanda*, edidit W. SCHWENKEBECHER, in *M.G.H., De lite imper, et pontif.*, II, Hannoverae 1892, 173-284.
- Liber Pontificalis (Le)*, edidit Louis DUCHESNE, I-II, Paris 1886-1892.
- LIUDPRANDUS, *Antapodosis*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 347-363.  
*, Liber de Rebus Gestis Ottonis Magni Imperatoris*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 273-339.  
*, Relatio de legatione Constantinopolitana*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 340-346.
- MAGNUS FELIX ENNODIUS, *Libellus pro synodo*, edidit Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 48-67.  
*, Luminoso*, Ep. 3, 10, edidit Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 83.  
*, Luminoso*, Ep. 6, 16, edidit Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 223.

- MANEGOLDUS, *Ad Gebhardum Liber*, edidit Kuno FRANCKE, in *M.G.H., De lite Imper, et Pontif.*, I, Hannoverae 1891, 303-430.
- MARSILIUS DE PADUA, *Defensor Pacis*, edidit Richard SCHOLZ, in *M.G.H., Fontes Iuris Germanici Antiqui*, I-II, Hannoverae 1932-1933.
- NICOLAUS I, POPE, *Ad Michaelem Graecorum Imperatorem*, Ep. 88, edidit Ernest PERELS, in *M.G.H., Epp.*, VI, 4, Berolini 1925, 454-487.  
 -----, *Ad Photium*, Ep. 12, in *PL*, 129, 785-790.  
 -----, *Kodulfo Bituricensi Archiepiscopo*, Ep. 29, edidit Ernest PERELS, in *M.G.H., Epp.*, VI, 4, Berolini 1925, 295-297.
- ORIGINES, *Die Schrift vom Martyrium*, edidit Paul KÖTSCHAU, (*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, 11,2), Leipzig 1899, 3-47.
- OTHLONUS, *Ex libro visionum*, edidit Rogerus WILMANS, in *M.G.H., SS.*, XI, Hannoverae 1854, 378-387.
- Papstwahldekret (Das) von 1054. Überlieferung und Textgestalt*, edidit Detlev JASPER, Sigmaringen 1986, 98-119. *Decretum Electionis Pontificiae*, edidit Ludewicus WEILAND, in *M.G.H., Leges*, sectio IV, I, Hannoverae 1893, 538-541.
- PETRUS CRASSUS, *Defensio Heinrich IV regis*, edidit C. von HEINEMANN, in *M.G.H., De lite imper, et pontif.*, I, Hannoverae 1891, 434-453.
- PETRUS DAMIANI, *An Erzbischof Heinrich von Ravenna*, Ep. 40, edidit Kurt REINDEL, in *M.G.H., Die Briefe des Petrus Damiani, Epp.*, I, München 1983, 384-509.  
 -----, *Actus Mediolani*, in *PL*, 145, 89-98.  
 -----, *Ad Annonem Archiepiscopum Coloniensem*, Ep. 6, in *PL*, 144, 293-295.  
 -----, *Disceptatio synodalis*, edidit Ernest DÜMMLER, in *M.G.H., De lite imper, et pontif.*, I, Hannoverae 1891, 77-94.  
 -----, *Domno suo Alexandro papae*, Ep. 12, in *PL*, 144, 214-218.
- POLYCARPE DE SMYRNE, *Lettre aux Philippiens*, in IGNACE D'ANTIOCHE - POLYCARPE DE SMYRNE, *Lettres. Martyre de Polycarpe*, edidit Th. CAMELOT, (*Sources Chrétiennes*, 10), Paris 1959, 218-221.
- PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici. Fontium annotatione et indice analytico-alphabetico auctus*, Libreria Editrice Vaticana 1989.
- Pseudo-Klementinen (Die)*, *Home lien*, edidit Bernhard REHM, (*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, I), Leipzig 1953.
- Quarta synodus habita Romae Palmaris*, edidit Theodorus MOMMSEN, in *M.G.H., Auct. Ant.*, XII, Berolini 1894, 426-437.
- Quoniam Omnia, Gaudeo Promptam, Gloriosissimus*, apocryphal letters, in MANSI, 2, 719-722.
- RATHERIUS EPISCOPUS VERONENSIS, *Praeloquium Libri sex*, in *PL*, 136, 143-344.  
 -----, *Ad Agapetum*, Ep. 7, in *Die Briefe des Bischofs Rather von Verona*, edidit F. WEIGLE, in *M.G.H., Briefe der Deutschen Kaiserzeit*, I, Hannoverae 1949, 33-43.
- REGINUS PRUMENSIS, *Chronicon*, edidit Georgius Henricus PERTZ, in *M.G.H., SS.*, I, Hannoverae 1826, 537-629.
- Register (Das) Gregors VII*, edidit Erich CASPAR, in *Epp. selectae*, I-II,

- Berlin 1920-1923.
- Relatio Episcoporum, Ad Regem Theodericum, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, Berolini 1894, 422-442.*
- RICHERUS, *Historiarum Libri IIII, edidit Georgius Heinricus PERTZ, in M.G.H., SS., III, Hannoverae 1839, 561-657.*
- Romanum concilium sub Damaso habitum, in PL, 13, 582-584.*
- RUFINUS AQUILEIENSIS PRESBYTER, *Historiae Ecclesiasticae Libri duo, in PL, 21, 465-540.*
- SAINT CYPRIEN, *Correspondance, edidit LE CHANOINE Bayard, (Collection des Universités de France, I-II), Paris 1945-1961.*
- SIMMACHUS, POPE, *Apologetica adversus Anastasii Imperatoris libellum famosum, in MANSI, 8, 213-217.*
- STEPHANUS V, POPE, *Ad Rasiliium Imperatorem, Ep. 1, in PL, 129, 785-789.*
- SYXTUS III, POPE, *Ad Orientales episcopos, Ep. 3, apocryphal letter, in MANSI, 5, 1154-1156.*
- TERTULLIANUS, *Liber ad martyres, in PL, 1, 691-702.*
- THEODERICUS REX, *Anagnosticum, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, Berolini 1894, 425-426.*
- , *Praeceptio IIII missa ad Synodum, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, Berolini 1894, 420-422.*
- THEODORUS LECTOR, *Excerpta ex Ecclesiastica Historia, Libri duo, in PG, 86, 165-216.*
- THIETMARUS, *Chronicon, edidit Georgius Heinricus PERTZ, in M.G.H., SS., III, Hannoverae 1839, 733-871.*
- Tractatus de investitura episcoporum, edidit Ernestus BERNHEIM, in M.G.H., De lite imper, et pontif., II, Hannoverae 1892, 498-504.*
- VICTOR III, POPE, *Dialogues, in PL, 149, 965-1018.*
- I/270 Anselmi Episcopi Lucensis, edidit Rogerus WILMANS, in M.G.H., SS., XII, Hannoverae 1856, 13-35.*
- WIDO EPISCOPUS FERRARIENSIS, *De scismate Hildebrandi. Pro illo contra illum, edidit Ernest DÜMMLER, in M.G.H., De lite imper, et pontif, I, Hannoverae 1891, 532-567.*
- YPPOLITUS, *Philosophumena, sive omnium haeresium refutatio, in PG, 16, 3, 3009-3454.*
- ZOSIMUS, POPE, *Aurelius ac caeteris.., Ep. 12, in PL, 20, 675-678.*

## STUDIES

- ADELSON H.-BAKER R., *The Oath of Pope Leo III in 800, in Traditio 8 (1952) 35-80.*
- ALBERIGO Giuseppe, *Cardinalato e Collegialità. Studies on ecclesiology between fXI and XIV century, Florence 1969.*
- , *Regime synodale e Chiesa romana tra l'XI e il XII secolo, in Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 229-263.*
- ALESSANDRINI Ada, *Teodorico e papa Simmaco durante lo scisma laurenzi ano,*

- in *Archivio della Reale Deputazione Romana di Storia Patria* 67 (1944) 153-207.
- AMANIEU A., *Anségise*, in *Dictionnaire de Droit Canonique*, I, Paris-VI 1935, 564-567.
- AMANN É., *L'Epoca Carolingia (757-888)*, {*Storia della Chiesa dalle origini ai nostri giorni*^ VI), edidit Augustin FLICHE - Victor MARTIN, Paris-VI, Torino 1977<sup>2</sup>.
- , *Rathier de Vérone*, in *Dictionnaire De Théologique Catholique*, XIII, 2, Paris-VI 1937, 1679-1688.
- ANTON Hans Hubert, *Der sogenannte Traktat "De ordinando pontifice". Ein Rechtsgutachten in Zusammenhang mit der Synode von Sutri (1046)*, Bonn 1982.
- ARNALDI G., *Anastasio Bibliotecario*' in *Dizionario Biografico degli Italiani*' III, Rome 1961, 25-37.
- ARNALDI Girolamo, *Appunti sulla crisi de ir aristocrazia pontificia in età postcarolingia*' in *Studi Romani* 5 (1961) 492-507.
- Liutprand and the idea of Rome in the early Middle Ages*, in *Archivio della Società Romana di Storia Patria* 78 (1955) 23-34.
- BAIX F., *Benedictus Levita*, in *Dictionnaire de Droit Canonique*, II, Paris-VI 1937, 400-406.
- , *CadaluS*' in *Dictionnaire d'Histoire et de Géographie Ecclésiastique*, XI, Paris-VI 1949, 53-99.
- Giuseppe BARBAGLIO, *Le lettere di Paolo. Translation and Commentary*' I, Rome 1980.
- BARONIUS Caesar (Card.), *Annales Ecclesiastici*, edidit Augustinus THEINER, III-IV-VII, Paris 1861 ff.
- BECKER Hans-Jürgen, *Die Appellation vom Papst an ein allgemeines Konzil-Historische Entwicklung und kanonistische Diskussion im späten Mittelalter und in der frühen Neuzeit*' Köln-Wien 1988.
- BERGAMINI A., *Triduo pasquale*, in *Nuovo Dizionario di Liturgia*, Cuneo 1988<sup>3</sup>, 1534-1538.
- BERTOLINI Ottorino, *Il Liber Pontificalis*, in *La storiografia altomedioevale*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XVII, 1), Spoleto 1970, 387-455.
- Roma di fronte a Bisanzio e ai Longobardi*, Bologna 1941.
- BLOCH Marc, *Apologia della storia o mestiere di storico*, Torino 1985<sup>9</sup>.
- CANTALAMESSA Raniero, *La pasqua della nostra salvezza. Le tradizioni pasquali della Bibbia e della primitiva Chiesa*, Torino 1971.
- CAPITANI Ovidio, *Ausilio*, in *Dizionario Biografico degli Italiani*, 4, Rome 1962, 596-600.
- , *Episcopacy and Ecclesiology in the Gregorian Age*, in *Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 316-373.
- , *Episcopal immunities and ecclesiology in the "pregregorian" and "Gregorian" ages. The start of the "restoration"*, Spoleto 1966.
- La figura del vescovo in alcune collezioni canonistiche della seconda metà*

- del secolo XI, in e diocesi in Italia nel Medioevo (secc. IX-XIII)*, Padova 1964, 161-191.
- Motivi di historiografia medioevale italiana secc. K-XZK*, in *Nuove Questioni di Storia Medioevale*, Milan 1974, 729-800.
- Raterio e il diritto canonico*, in *Raterio da Verona*, (Convegni del Centro di Studi sulla Spiritualità Medioevale, X), Todi 1973, 137-164.
- CARBONI A., *La notorietà delitto nelle riforme ecclesiastiche medioevali*, in *Studi Sassaresi* ser. II, 28 (1959) 49-99.
- CASPAR Erich, *Geschichte des Papsttums*, II, Tübingen 1933.
- CERVATO Dario, *Raterio di Verona e di Liegi. Il ter^p periodo del suo episcopato veronese (961-968): scritti e attività*, (P.U.G. Tesi), Romae 1983.
- CESSI Roberto, *Lo scisma laurensfano e le origini della dottrina politica della Chiesa di Roma*, in *Archivio della Reale Società Romana di Storia Patria* 42 (1919) 5-229.
- CHEVAILLER L., *Yves de Chartres*, in *Dictionnaire de Droit Canonique*, VII, Paris 1965, 1641-1666.
- CONGAR Yves, *De la communion des églises a une ecclésiologie de l'église universelle*, in *L" épiscopat et P église universelle*, edidit Yves CONGAR - B. D. DUPUY, Paris 1964, 227-260.
- Il posto del papato nella devozione ecclesiale dei riformatori de II secolo*, in *Sentire Ecclesiam*, edidit J. DANIELOU - H. VORGRIMLER, I, Roma 1964, 331-361.
- , *Homo spiritualis. Usage juridique et politique d'un terme d'anthropologie chrétienne*, in *Aus Kirche und Reich. Studien tP Theologie, Politik und Recht im Mittelalter, Festschrift für Friedrich KEMPF*, edidit Hubert MORDER, Sigmaringen 1983, 1-10.
- L'ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968.
- L'église de Saint Augustin à l'époque moderne*, Paris 1970.
- The norms of fidelity and Christian identity through the history of the Church*, in *Concilium* 3 (1973) 21-39.
- CONTE Pietro, *Il significato del primato papale nei Padri del VI Concilio Ecumenico*, in *Archivum Historiae Pontificiae* 15 (1977) 7-111.
- DEJAIFVE Georges, *Der Erste unter den Bischöfen. Über den Zusammenhang von Primat und Bischofskollegium*, in *Theologie und Glaube* 51 (1961) 1-22.
- DUCHESNE Louis, *Étude sur le Liber Pontificalis*, Paris 1877.
- , *I primi tempi dello Stato pontificio*, Turin 1970<sup>2</sup>.
- DÜMMLER Ernest, *Auxilius und Vulgarius. Quellen und Forschungen ^ur Geschichte des Papstthums im Anfänge des zehnten Jahrhunderts*, Leipzig 1866.
- DVORNIK François, *Le schisme de Photius. Histoire et légende*, Paris 1950.
- Eco Umberto, *Tipologia delle Falsificzioni*, in *Fälschungen im Mittelalter*, - Internationaler Kongress der M.G.H., München 16. September 1986, Teil I, *Kongressdaten und Festvorträge. Literatur und Fälschung*, I, Hannover 1988, 69-82.
- FLICHE Augustin, *La Réforme Grégorienne. Grégoire VII*, II, Paris, 1926.

- , *La Réforme Grégorienne. L'opposition antigrégorienne*, III, Louvain 1937.
- La Réforme Grégorienne. La formation des idées grégoriennes*, I, Paris 1924.
- Fois Mario, *I compiti e le prerogative dei cardinali vescovi secondo Pier Damiani nel quadro della sua ecclesiologia primatiale*, in *Archivum Historiae Pontificiae* 10 (1972) 25-105.
- , *Pope and Cardinals in the XI Century A Question of Method and a Reply*, in *Archivum Historiae Pontificiae* 14 (1976) 383-416.
- , *Review of the work by Giuseppe ALBERIGO, Cardinalato e Collegialità. Studies on Ecclesiology between 17XI and the XIX century*, Florence 1969, in *Archivum Historiae Pontificiae* 8 (1970) 375-378.
- FOURNIER Paul, *Un groupe de recueils canoniques italiens*, in *Mémoires de l'Académie des Inscriptions et Belles Lettres* 40 (1916) 96-123.
- FOURNIER Paul - LE BRAS Gabriel, *Histoires des Collections canoniques en Occident depuis les fausses décrétales jusqu'au Décret de Gratien*, I-II, Paris 1931-1932.
- FRUGONI A. *Attone di Vercelli*, in *Dizionario Biografico degli Italiani*, IV, Rome 1962, 567-568.
- FUHRMANN Horst, *"The True Emperor is the Pope": temporal power in the Middle Ages*, in *Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano* 92 (1985/1986) 367-379.
- > *"Quod catholicus non habeatur, qui non concordat Romanae Ecclesiae"*. *Randnotizen zum Dictatus papae*, in *Pestschrift für Helmut Beumann, zum 65. Geburtstag*, edidit Kurt-Ulrich JÄSCHKE-REINHARD WENSKUS, Sigmaringen 1977, 263-287.
- , *From the Early Middle Ages to the Gregorian Reform*, in *Concilium* 4 (1971) 76-83.
- , *Einfluss und Verbreitung der pseudoisidorischen Fälschungen. Von ihrem Auftauchen bis in die neuere Zeit*, I-II, Stuttgart 1972-1973.
- , *Von der Wahrheit der Fälscher*, in *Fälschungen im Mittelalter*, - Internationaler Kongress der M.G.H., München 16.-19. September 1986, Teil I, *Kongressdaten und Festvorträge. Literatur und Fälschung*, Hannover 1988, 83-98.
- GHELLINCK De Joseph, *Le mouvement théologique du XII. me siècle*, Paris 1948.
- GILCHRIST Joannes T., *Prolegomena*, in *Diversorum patrum sententiae sive Collectio in LXXIV titulos digesta*, edidit Joannes T. GILCHRIST, *Monumenta Iuris Canonici*, Vatican City 1973.
- GOEZ Werner, *Gestalten des Hochmittelalters*, Darmstadt 1983.
- GRIS AR Hartmann, *Analecta Romana*, I, Rome 1899.
- Rome at the end of the ancient world according to written sources and monuments*, Rome 1908.
- GROTZ Hans, *Erbe wider Willen. Hadrian II (867-872) und seine Zeit*, Wien-Köln-Graz 1970.
- HAGENEDER O., *Das crimen maiestatis. Der Prozess gegen die Attentäter Past Leos III. und die Kaiserkrönung Karls des Grossen*, in *Aus Kirche und Reich. Studien zur Theologie, Politik und Recht im Mittelalter, Festschrift für Friedrich Kempf*, edidit Hubert MORDEK, Sigmaringen 1983.
- HEFELE Charles Joseph, *Conciliengeschichte*, IV, Freiburg 1879<sup>2</sup>.

- HOVE van A., *Prolegomena, Mechliniae-Rome* 1945.
- HUILLIER Pierre, *La Collégialité et Primauté. Réflexions d'un orthodoxe sur les problèmes historiques*, in *La Collégialité Épiscopale. Histoire et théologie*, Paris 1965, 331-344.
- I papi nella storia*, edidit Pio PASCHINI - Vincenzo MONACHINO, I-II, Roma 1961.
- JACQUELINE B., *A propos des Dictatus papae: les Auctoritates apostolice sedis d'Avranches*, in *Revue Historique de Droit Français et Étranger* 34 (1956) 569-574.
- KASPAR Walter, *Ciò che permane e ciò che cambia nel ministero pe trino*, in *Concilium* 8 (1975) 43-58.
- KEMPF Friedrich, *Chiese territoriali e Chiesa romana nel secolo Vili*, in *I problemi de ir occidente nel secolo Vili*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XX, 1), Spoleto 1973, 293-317.
- , *Die päpstliche Gewalt in der Mittelalterlichen Welt. Eine Auseinandersetzung mit Walter ULLMANN*, in *Saggi storici intorno al papato*, (Miscellanea Historiae Pontificiae, XXI), Rome 1959, 117-169.
- Ein zweiter Dictatus papae? Ein Beitrag zum Depositionsanspruch Gregors VII*, in *Archivum Historiae Pontificiae* 13 (1975) 119-139.
- , *The deposition of Frederick II in the light of canonical doctrine*, in *Archivio della Società Romana di Storia Patria* 90 (1967) 1-16.
- , *The Gregorian reform (1046-1124)*, in *II Early Middle Ages VIII-XII century*, (History of the Church, IV), edidit Hubert JEDIN, Milan 1975, 456-521.
- , *Pier Damiani und das Papstwahldecret von 1059*, in *Archivum Historiae Pontificiae* 2 (1964) 73-89.
- KÖNIGER Albert Michael, *Prima sedes a nemine iudicatur*, in *Beiträge zur Geschichte des christlichen Altertums und der Byzantinischen Literatur, Festgabe Albert EHRHARD zum 60. Geburtstag*, edidit Albert Michael KÖNIGER, Ed. RODOP, Amsterdam 1969. Lithographed from the original: Bonn-Leipzig, Kurt Schröder-Verlag 1922, 273-300.
- KUTTNER Stephan, *Cardinalis. The History of a Canonical Concept*, in *Traditio* 3 (1945) 129-214.
- Graziano: l'uomo e l'opera*, in *Studia Gratiana*, I, Bologna 1953, 17-29.
- LANNE Emmanuel, *To what extent is primacy unacceptable to the Eastern Churches?*, in *Concilium* 4 (1971) 87-93.
- LECLER Joseph, *Le Cardinalat de l'Église romaine. Son évolution dans l'histoire*, in *Études* 330 (1969) 871-883.
- LECLERQ Jean, *"Simoniaca heresis,"* in *Gregorian Studies* 1 (1947) 523-530.
- LEONARDI Claudio, *Alenino e la Scuola Palatina*, in *Nascita dell'Europa ed Europa Carolingia: un'equazione da verificare*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XXVII, 1), Spoleto 1981, 459-496.
- LINDEMANS Stephen, *La Primauté du Pape dans la tradition littéraire du X.me siècle*, Louvain 1965.
- MAASSEN Friedrich B. C., *Geschichte der Quellen und der Literatur des canonischen Rechtes im Abendlande bis zum Ausgange des Mittelalters*, I, Graz 1870. Reprint, Graz 1956.

- MACCARRONE Michele, *Fundamentum Apostolicarum Sedium. Persistence and developments of the ecclesiology of Pelagius I in the Latin West between the eleventh and twelfth centuries*, in *The Greek Church in Italy dall'Vili al XVI secolo*, II, Padua 1972, 591-662.  
*La dottrina del primato papale dal IV al Vili secolo nelle relazioni con le chiese occidentali*, in *Le chiese nei regni dell'Europa occidentale e i loro rapporti con Roma sino all'800*, (Settimane di Studio del Centro Italiano di Studi dell'Alto Medioevo, VII, 2), Spoleto, 1960, 633-742.  
*La teologia del primato romano del secolo XI*, in *Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 21-122.
- Vicarius Christi. History of the papal title*, Rome 1952.
- MANN Ucci Ubaldo, *Istituzioni di Patrologia ad uso delle Scuole Teologiche*, II, Roma 1915.
- MARCHETTO Agostino, *La fortuna di una falsificazione*, in *Apollinaris* 61 (1988) 311-326.
- MARONGIU Antonio, *Ipotesi sul Dictatus Pape. Alle favolose origini di un potere legislativo unico pontificio*, in *Critica Storica* 24 (1987) 525-534.
- MARTINA Giacomo, *History of the Church*, Rome 1980.
- MASSIGLI Renè, *Sur ? origine de la Collection Canonique dite Hadriana Augmentée*, in *Mélanges d'Archeologie et d'Histoire* 32 (1912) 367-377.
- MEULENBERG Leonardus, *Gregory VII, j bishops: centralisation of power?* in *Concilium* 1 (1972) 86-102.
- MICHEL Anton, *Die Folgeschweren Ideen des Kardinals Humbert und Ihr Einfluss auf Gregor VII.*, in *Gregorian Studies* 1 (1947) 65-92.  
*, Die Sentenzen des Kardinals Humbert, das erste Rechtsbuch der päpstlichen Reform*, in *Schriften des Reichsinstituts für ältere deutsche Geschichtskunde, M.G.H.*, VII, Stuttgart 1959.
- MONACHINO Vincenzo, *Il ruolo dei papi nelle grandi controversie cristologiche*, in *I papi nella storia*, I, edito da Pio RASCHINI - Vincenzo MONACHINO, Roma 1961, 57-170.
- MORDEK Hubert, *Dictatus papae et Proprie auctoritates apostolice sedis. Around the idea of the pontifical primacy of Gregory VII*, in *Rivista di Storia della Chiesa in Italia* 28 (1974) 1-22.  
*, Proprie auctoritates apostolice sedis. Ein zweiter Dictatus papae Gregors VII?*, in *Deutsches Archiv für Erforschung des Mittelalters* 28 (1972) 126-132.  
*, Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica, die älteste systematische Kanonensammlung des Fränkischen Gallien. Studien und Edition*, Berlin-New York 1975.
- MOYNIHAN James M., *Papal Immunity and Liability in the Writings of the Medieval Canonists*, (Analecta Gregoriana, 120), Roma 1961.
- NAVARRÉ Leander, *Ennodius' historical contribution*, in *Augustinianum* 2 (1974) 315-342.  
*, The literary and conceptual components of the Dictiones of Ennodius*, in *Augustinianum* 3 (1972) 465-478.

- PASZTOR Edith, *Lotta per le investiture e "ius belli". La posizione di Anseimo di Lucca*, in *San?Anseimo, Mantova e la lotta per le investiture*. Atti del Convegno Internazionale di Studi (Mantova 23-24-25 May 1986), edidit Paolo GOLINELLI, Bologna 1987, 375-421.
- Motivi dell'ecclesiologia di Anseimo di Lucca. In margine a sermone in Pullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano* 77 (1965) 45-104.
- , *Reform of the Church in the eleventh century and the origin of the College of Cardinals. Problemi e ricerche*, in *Studi sul Medioevo Cristiano offerti a Raffaello MORGHEN per il 90mo anniversario dell'Istituto Storico Italiano (1883-1973)*, Roma 1974, 609- 625.
- , *Priesthood and Kingdom in the "Vita Anseimi Episcopi Lucensis"*, in *Archivum Historiae Pontificiae* 2 (1964) 91-115.
- PERELS E., *Papst Nikolaus I. und Anastasius Bibliothecarius*, Berlin 1920.
- PETRAU-GAY J., *Burchard de Worms*, in *Dictionnaire de Droit Canonique*, II, Paris 1937, 1140-1157.
- PETRUCCI Enzo, *Discussion on the paper by Giuseppe ALBERIGO, Regime synodale e Chiesa romana tra XI e il XII secolo*, in *Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 226-270.
- Ecclesiology and Politics of Leo IX*, Rome 1977.
- , *Leo IX's Relations with Constantinople*, in *Studi Medievali* 14 (1973) 733-831.
- PICCOTTI G. B., *I sinodi romani nello scisma laurenfiano*, in *Studi in onore di Gioacchino Volpe*, II, Florence 1958, 742-786.
- PLÖCHL Willibald M., *History of Canon Law*, I, Milan 1963.
- PÖLNITZ P. Winfrid von, *A propos des synodes apocryphes du pape Symmache, Les prétendus évêchés de Linternum et de Gravisca*, in *Revue d'Histoire Ecclésiastique* 32 (1936) 81-88.
- POMA Antonio, *Ingiudicabilità e santità pontificia in alcune documenti antichi*, (Dissertazione Gregoriana), Rome 1936.
- QUASTEN Johannes, *Patrologia*, I, Turin 1980.
- Quinta centuria ecclesiasticae historiae continens descriptionem amplissimarum rerum in regno Christi*, Basileae 1562.
- RAMBAUD-BUHOT Jacqueline, *La critique des faux dans l'Ancien Droit Canonique*, in *Bibliothèque de l'École des Chartres* 126 (1968) 5-62.
- RICHE Pierre, *The Pope of the Year One Thousand. Silvester II*, Alba 1988.
- RYAN Joseph, *Saint Peter Damiani and his Canonical Sources*, (Studies and Texts, II), Toronto 1956.
- Sant' Anselmo, Mantova e la lotta per le investiture*. Acts of the International Conference of Studies (Mantua 23-24-25 May 1986), ed. Paolo GOLINELLI, Bologna 1987.
- SCHATZ Klaus, *Der päpstliche Primat. Seine Geschichte von den Ursprüngen bis zur Gegenwart*, Würzburg 1990.
- SCHMALE Franz-Josef, *Die "Absetzung" Gregors VI. in Sutri und die synodale Tradition*, in *Annuario Historiae Conciliorum* 11 (1979) 55-103.

- SCHRAMM Percy Ernst, *Kaiser, Rom und Renovatio. Studien und Texte zur Geschichte des römischen Erneuerungsgedankens vom Ende des karolingischen Reiches bis zum Investitur streit*, II, Leipzig-Berlin 1929.
- SCHÜSSLER-FIORENZA Elisabeth, *Judging and Judgment in New Testament Communities*, in *Concilium* 7 (1977) 27-39.
- SCIPIONI Luigi I., *IZ^jforo e popolo. The exercise of authority in the early church (third century)*, Milan 1977.
- SILVAGNI A., *Note ^epigrafia medioevale*, in *Archivio della Reale Società Romana di Storia Patria* 32 (1909) 445-463.
- STICKLER Alphonsus M., *Historia Iuris Canonici Latini. Institutiones Academicæ*, I, Roma 1975, nova impressio.
- Storia della Chiesa dalle origini ai nostri giorni, edito Augustin Eliche- Victor MARTIN*, III-XIII, Torino 1972<sub>s</sub> s.
- History of the Church, edito Hubert JEDIN*, II-V 2, Milan 1977 ff.
- TOWNSEND W. T., *The so-called Symmachian Forgeries*, in *The Journal of Religion* April (1933) 165-174.
- ULLMANN Walter, *Cardinal Humbert and the Ecclesia Romana*, in *Studi Gregoriani* 4 (1952) 111-127.
- *Il papato nel Medioevo*, Bari-Roma 1987.
- *Il pensiero politico del Medioevo*, Roma-Bari 1984.
- Principles of government and politics in the Middle Ages*, Bologna 1982<sup>2</sup>.
- , *The Significance of the Epistola Clementis in the Pseudo-Clementines*, in *Journal of Theological Studies* 9 (1960) 295-317.
- VINAY Gustavo, *Raterio o di una storiografia inattuale*, in *Raterio da Verona*, (Convegni del Centro di Studi sulla Spiritualità Medioevale, X), Todi 1973, 11-34.
- VIOLANTE Cinzio, *Anseimo da Baggio santo*, in *Dizionario Biografico degli Italiani*, 3, Rome 1961, 399-407.
- VOGEL Fridericus, *De vita et scriptis Ennodii*, in *M.G.H., Auct. Ant.*, VII, Berlin 1961, I-XXIII.
- VRIES De Wilhelm, *Lo sviluppo netterà costantiniana*, in *Concilium* 4 (1971) 65-75.
- WALLACH H., *The Genuine and the Forged Oath of Leo III*, in *Traditio* 11 (1955) 37-63.
- WALTER Eugen, *First Letter to the Corinthians*, in *Spiritual Commentaries on the New Testament*, Rome 1970.
- WEISWEILER H., *Die pästUche Gewalt in den Schriften Bernolds von St. Blasien aus dem Investitur streit*, in *Studi Gregoriani* 4 (1952) 129-147.
- WILLEMS P., *Le droit public romain ou les institutions politiques de Rome depuis l'origine de la ville jusqu'à Justinien*, Louvain 1888<sup>6</sup>.
- ZAFARANA Zelina, *Ricerche sul "Liber de unitate ecclesiae conservanda"*, in Zelina ZAFARANA, *Da Gregorio VII a Bernardino da Siena. Saggi di storia medioevale con scritti in ricordo di Zelina Zafarana*, edito O. CAPITANI - C. LEONARDI - E. MENESTÓ - R. RUSCONI, Florence 1987, 9-90.
- ZAPP Hartmut, *La giurisdizione diocesana. Historical overview*, in *Concilium* 7 (1977) 40-55.
- ZIMMERMANN Harald, *Das dunkle Jahrhundert. Ein historisches Porträt*, Graz-

Wien-Köln 1971.

*Papstabsetzungen des Mittelalters*, in *MiÖG* (1960-1961). The author later enriched the study and published it as a book: Harald ZIMMERMANN, *Papstabsetzungen des Mittelalters*, Graz-Wien-Köln 1968.

ZOCCA Elena, *Honorius I and the Western tradition*, in *Augustinianum* 27 (1987) 571-615.

## INTRODUCTION

The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, six years after its promulgation, published its sources<sup>1</sup>. This event further stimulated our study, which already had its own history and aims. In fact, the *Fontes* offer the possibility of revisiting the historical-magisterial and -disciplinary background of each canon, prompting scholars to analyze and reread the content and evolution of the various assertions in order to better understand their current juridical content and historical-ecclesiological foundation. It is a common conviction that ignorance of the past not only harms knowledge of the present, but also compromises action itself. A return to the past and to the sources communicates greater awareness and clarity in being and acting.

The purpose of the research is to analyze and deepen, in a historical perspective, the principle recited in Canon 1404 of the current Code of Canon Law: *Prima Sedes a nemine iudicatur*. We will try to study its history, to understand how and in the midst of what obstacles this axiom has developed and evolved over time, and finally we will analyze its application and actualization throughout the history of the papacy up to the Decree of Gratian (1141). This, in fact, with regard to the content and development of the theme, stands as the point of arrival and synthesis of a millennium of ecclesiastical history. It constitutes, at the same time, the starting point and the foundation for the study of canonical sources in the elaboration and drafting of the Code of 1917.

It is very difficult to grasp at a glance the problematic nature of the axiom *Prima Sedes a nemine iudicatur*. The dictation and the extent of its statement have given rise to not a few problems throughout the history of the Church: many have contested or supported its juridical and historical significance. The problem it poses is in fact known only in its broad outlines, yet no one has studied the historical itinerary of the statement from its genesis to its recognition and development. The thematic authorship of the subject is due to Prof. Hans Grotz, to whom

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<sup>1</sup> *Codex Iuris Canonici*, auctoritate IOANNIS PAULI PP. II promulgatus, Libreria Editrice Vaticana 1983; PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici. Fontium annotatione et indice analytico-alphabetico auctus*, Libreria Editrice Vaticana 1989.

I express gratitude for being able to communicate and instill interest and tenacity throughout the search for sources.

The study is an attempt to revisit in an analytical and systematic way a theme that touches on very delicate questions, hotly debated, and that will still interest scholars for a long time. Koniger<sup>2</sup>, Poma<sup>3</sup> and Zimmermann<sup>4</sup> have dealt with the historical origin of the formula. The latter, a professor at the University of Tübingen - known for other very insightful works and for the edition of papal documents of the tenth century - dealing with the popes deposed during the Middle Ages, only reflexively spoke of the applicative extension and recognition of the axiom for the period covered by his study. The juridical aspect, on the other hand, has been studied - *sommatim* and without an attempt at a historical-juridical reading of the problem that emerged from the sources concerning the subject - under consideration - by Moynihan<sup>5</sup>.

For the search for documents, a number of tools were used to find and study the sources necessary to carry out the research. First of all, the monumental documentary series, the work of several generations: *Monumenta Germaniae Histórica*. Already its analytical indexes have paved the way and set the course for heuristics, making it possible to collect multiple data and a wealth of material of a high scientific level. The rich documentation and philological rigor of such a work, as voluminous as it is authoritative, offered a good guarantee that the

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<sup>2</sup> Albert Michael KÖNIGER, *Prima sedes a nemine indicatur*, in *Beiträge zur Geschichte des christlichen Altertums und der Byzantinischen Literatur. Festgabe Albert EHRHARD zum 60. Geburtstag*, editio Albert Michael KÖNIGER, Ed. RODOPI, Amsterdam 1969. Lithographed from the original: Bonn-Leipzig, Kurt Schröder-Verlag 1922, 273-300.

<sup>3</sup> Antonio POMA, *Ingiudicabilità e santità pontificia in alcune documenti antichi*, (Dissertazione Gregoriana), Rome 1936.

<sup>4</sup> Harald ZIMMERMANN, *Papstabsetzungen des Mittelalters*, in *MIÖG* (1960-1961). The author later published the study, enriching it, as a book: Harald ZIMMERMANN, *Papstabsetzungen des Mittelalters*, Graz-Wien-Köln 1968. Franz-Josef Schmale - a contemporary scholar, Professor emeritus of the University of Bochum, known for several suggestive studies aimed at illuminating the history of the eleventh and twelfth centuries - states that the investigation of Zimmermann appears, in some cases, for example about Gregory VI in Sutri, as a collection in itself uncertain. There would be inaccuracies regarding the classification of the papal depositions. Zimmermann uses only some sources while deliberately forgetting others, in the light of which he reads historical events differently. Therefore, according to Schmale, one must be very careful in defining papal depositions in the Middle Ages because often, when faced with concrete cases, the sources are tendentious, partial. Not all are depositions, but they are often condemnations, arrests, eliminations of antipopes, or partial non-recognition, or refusal of obedience, as for example at Worms in 1076 against Gregory VII. Sometimes, some pontiff was deposed by the emperor or by a synod directed by the emperor or king, without his being present at the synod. The declaration of the synod was merely verbal, but in effect ineffective, because the pope in question, even after the condemnation of deposition, remained in office in the normal discharge of his office and functions. Cf. Franz-Josef SCHMALE, *Die "Absetzung" Gregors VI. in Sutri und die synodale Tradition*, in *Annuaire Historiae Conciliorum* 11 (1979) 58-59.

<sup>5</sup> James M. MOYNIHAN, *Papal Immunity and Liability in the Writings of the Medieval Canonists*, (Analecta Gregoriana, 120), Roma 1961.

research could be continued and the proposed topic developed. Migne's series, though without great pretension to scientificity and criticism, has also proved - thanks also to its indexes - very useful; despite its limitations, it has been a valid working tool. Also the *Storia dei Concili di Hefele* in the German edition<sup>6</sup>, no less than the works mentioned above, made me go over the history of the Councils, thanks also to its analytical index, unfortunately absent from the French edition of Leclercq, already in itself enriched. The Mansi, instead, was consulted and followed to cite the various documents inherent in the study.

When to the juridical history of the axiom the *Pontes* of the current Code of Canon Law were used, but since they do not contain any text concerning the dictate of canon 1404 *Prima Sedes a nemine iudicatur*<sup>7</sup> they refer to canon 1556 of the previous Code<sup>7</sup>.

Considering the results of our research we can state that, should any documents not cited here come to light, these, we believe, will not add much to our knowledge of the subject. The discovery would certainly be useful as far as documentation is concerned, but not as far as the content and the essential development of the studied statement is concerned. As we have already been able to understand, we have no unpublished documentary material: everything has been published and critically studied also under the philological aspect. But this does not mean that there is nothing new to be said. The analysis of the sources - even if they have already been published and used for other studies, therefore with the possibility of repetition - should lead us to critically revisit documents already considered exhaustively analyzed.

The novelty of the study should be precisely an *overview* capable of broadening the cognitive horizons of the principle *Prima Sedes a nemine iudicatur*. Understanding the sources has not been an easy task, since in their drafting and literary style they are, at times, particularly obscure and biased.

The documents that have been analyzed are characterized and specified in: literary, juridical and theological-magisterial sources.

Among the literary sources we consider: the narrative works, that is the - chronicles, the annals, the *Liber Pontificatus* the private, administrative and diplomatic correspondence. We would have liked to study the said principle *Prima Sedes a nemine iudicatur* in a separate chapter, starting only from the medieval chronicles; but it was not appropriate because not very recurrent, moreover it would have been a useless repetition that would not have enriched the knowledge, since the chronicles have already been recalled during the writing of the work. Also included among the literary sources are the apologetic libels that the antagonistic parties and factions composed to defend and support or denigrate and

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<sup>6</sup> Charles Joseph HEFELE, *Conciliengeschichte*<sup>4</sup> IV, Freiburg 1879<sup>2</sup>.

<sup>7</sup> *Codex Iuris Canonici* PII X PONTIFICIS IUSSU DIGESTUS BENEDICTI PAPAE XV AUCTORITATE PROMULGATUS. Praefatione, fontium annotatione et indice analytico-alphabetico ab E. mo Petro Card. GASPARRI auctus, Romae, Typis Polyglottis Vaticanis 1917, 453, note 4.

obstruct a precise political or theological line, or a particular personality. This - literary genre was highly developed during the Laurentian schism and particularly during the struggle between Henry IV and Gregory VII and his successors. It is interesting to note how much it favoured the spread of certain ideas in the exaltation and defence of an ideology or an eminent personality.

The juridical sources played a very significant role: we could not have fully understood or carried out the research without them. Their absence, in any case, would have been unjustified and would have failed to grasp the value of the juridical element throughout the Middle Ages: truly incomprehensible without law. To separate law from medieval history would even be to deny one of its fundamental components. Church law is an integral part of culture, otherwise we could never know the Middle Ages, nor would we be able to evaluate one of the essential dimensions of Western civilization. Canon law is really like a thin thread that can be discovered wherever one closely examines the weaving of the civilization of the middle centuries<sup>8</sup>.

The codification of laws and the juridical-canonical activity that is imposed in certain historical periods, constitute one of the most interesting historical phenomena in the history of the Western Church. Only those canonical collections up to the Decree of Gratian have been consulted here, which are related to the principle *Prima Sedes a nemine iudicatur*. The analysis develops a historical-juridical exegesis of the principle, and implies the examination and relative interpretation of all the material of previous ecclesiastical law, in order to ascertain the possibility that it served not only as a model but also as a support and foundation in content. With this in mind, it is interesting to study what might be called, improperly, indirect tradition, that is, the republication and reinterpretation of our canons and legal norms during the conciliar assemblies and in the later canonical collections, and their presence in epistolary correspondence.

Finally, the theological-magisterial sources consist of the minutes of the councils, the papal decretals and all that theological material that has arisen from diplomatic correspondence concerning the life and essential problems of the whole Church. We insert here the correspondence of Rome with Constantinople, of the pope with the patriarch and with the emperor of the East. The documentary material set out requires historical, theological and canonistic competence from the scholar who is about to read it.

A particular note in the economy of our study concerns the methodology. In defining the features of the research we did not start from the analysis of the final result of the statement *Prima Sedes a nemine iudicatur*, but from its genesis, its development, up to its legal formulation. In other words: we tried to clarify through which process it became what it is, that is, to explain what factors,

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<sup>8</sup> Cf. Stephan KUTTNER, *Gratian: the man and Popery*, in *Studia Gratiana*, I, Bologna 1953, 18-19.

circumstances and elements influenced the formation of its content. - Understanding the current configuration of ideas and structures required a genetic analysis of the same kind. They did not spring from nothing, but had their roots precisely in the historical process; the medieval age lends itself particularly well to the study of the concrete formation of ideas and political and ecclesiastical institutions<sup>9</sup>.

To implement this the analytical method was followed. It was thus possible to understand the historical process by researching which principles or general conceptions, as well as actions of civil and ecclesiastical government, produced the law itself. This method enabled us to grasp the particular elements included in a historical source of general or specific content. With the systematic method we would have risked sacrificing the richness of the elements gathered in the search for sources.

A further help in carrying out the research came from the use of the regressive method: starting from the sentence *Prima Sedes a nemine iudicatur*, affirmed and reported by Gratian in his Decree, we were led to its origin and formulation, allowing us to go back to its first elements. The *Pontes* of the 1917 Codex and the edition of Gratian's Decree edited by Friedberg<sup>10</sup> together with the edition of the Register of Gregory VII, edited by Caspar<sup>11</sup>, which reports all the references to which the pontiff had referred to in the drafting of the *Dictatus Papae*, have been of great help to us.

In the same vein is a letter that Alcuin addressed to the archbishop of - Salzburg, Arnone<sup>12</sup>, concerning the incident that happened to Pope Leo III (795-816). In it the theologian of the Palatine court appeals, citing them, to some *auctoritates* on the basis of which the pope could not be judged by anyone. The sources to which Alcuin refers have a precise role within the study: they are the Sim- Machian apocrypha. The attack happened to pope Leo III led the research, starting from Alcuin's epistle to the pontificate of pope Simmachus (498-514). Thus, through the regressive method we could go back to the origins of the axiom *Prima Sedes a nemine iudicatur*.

*It would be a serious mistake to believe that the order adopted by historians in their research must necessarily model itself on that of events. Instead, they often profit by beginning to read history backwards, only then to give it back its true movement*<sup>13</sup>. This way of proceeding was very profitable in that it saved a lot of time, but above all it gave the scientific certainty that one was moving in the right direction, both with regard to the theme of the research, and with regard to the

<sup>9</sup> Cf. Walter ULLMANN, *Il pensiero politico del Medioevo*, Roma-Bari 1984, 3-4.

<sup>10</sup> *Decretum Magistri Gratiani*, edidit Aemilius FRIEDBERG, I, Leipsiae 1879, 70. 71. 339. 606. 609. 610. 611.

<sup>11</sup> *Das Register Gregors VII*, edidit Erich CASPAR, I, Berlin 1920, 201-208.

<sup>12</sup> ALCUINUS, *Arno Archiepiscopus*, edidit Ernest DOMMLER, in *Epp.*, IV, 2, Berolini 1895, 297-298.

<sup>13</sup> Marc BLOCH, *Apologia della storia o mestiere di storico*, Turin 1985<sup>9</sup>, 55.

discovery of all those elements that founded its content and historical substratum. History at the indie- tro, so to speak, made it possible to grasp the creative and active moment, that is, the constitution, structure and evolution, up to the full display of the principle *Prima Sedes a nemine iudicatur*.

During the reading of the sources, the semantics of the terms, mainly for the concept of *Prima Sedes*, was carefully considered. In addition, particular attention was paid to the historicization of each document so that it could be understood in its entirety. This, however, was not intended to rewrite and reread the history of the Church of the period under consideration. We have therefore made reference to some studies of a general and specific nature, widely appreciated, both to situate and set the documentary material and to avoid useless repetitions<sup>14</sup>.

In addition to the research of sources and the elaboration of the subject, there is the analysis of the bibliography. As has already been said, there is no specific study inherent to our theme; the same cannot be said of the single historical figures and events directly connected with our study. The bibliography in this sense is very rich: we have used it critically and sparingly, but always with subsidiary value.

The study covers a long span of ecclesiastical history and the same titles of the chapters can be considered as specific topics of possible further investigation. The research, which covers an entire millennium of history, will undoubtedly have its limits, but perhaps also its advantages, such as the possibility of grasping the genesis, evolution and affirmation, in the history of the Church, of the axiom *Prima Sedes a nemine iudicatur*.

It is hoped that the study will offer a complete and essential overview. The present in-depth study is set within a lively problematic still open within the Western Church and its Sister Churches. This is a sign, at one and the same time, of an ecclesial restlessness that wants to understand the present more and better in the light of the past, but also of an ecumenical solicitude that in the historical fragment seeks the signs in the eschatological ecumene. That is why we are deeply aware of its interest and its significance for the theology of the Church and for the ecumenical cause. *We are convinced in particular that the day when the development of the papal institution, or rather of certain ideas inherent in it, will be present in its full truth, more than one difficulty will fall away or at any rate will be reduced*<sup>^</sup>.

This ecumenical concern, however, does not make us forget that the - principle *Prima Sede a nemine iudicatur* is an essential element of the structure and institution of our Church. It is in fact intimately linked to the dominion of the jurisdictional primacy of the Roman Pontiff: a fundamental reality for Catholicity,

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<sup>14</sup> The major works consulted to historicize the sources, are: *I papi nella storia*, edito Pio PASCHINI - Vincenzo MONACHINO, I-II, Roma 1961; *Storia della Chiesa*, edito Hubert JEDIN, II - V 2, Milano 1977 ss.; *Storia della Chiesa dalle origini ai nostri giorni*, edito Augustin FLICHE - Victor MARTIN, III-XIII, Torino 1972<sup>3</sup> ss. The specific studies will be cited in the course of the work.

but an obstacle and difficulty in its reception by the Sister Churches. Lanne, the theologian of the Oriental Church, affirms: *In the Orthodox Church it is the universal and immediate jurisdiction that offers reasons for contrast, while infallibility is conceived only as a corollary... an immediate and ordinary - primatial jurisdiction does not make sense, because it contradicts the doctrine of the episcopate*<sup>15</sup>. Dejaifve, a Catholic theologian, argues: *Whether one wants it or not, the primacy of Peter is a snag on the road that should lead Christians who sincerely yearn for unity to Rome. Irony of fate: the one who is the foundation of the Church sees himself under accusation, he is considered primarily responsible for the continuing schism among Christians! It is a paradoxical situation that must be remedied*<sup>16</sup>.

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<sup>15</sup> Emmanuel LANNE, *To what extent is primacy unacceptable to the Eastern Churches?*, in *Concilium* 4 (1971) 88-90.

<sup>16</sup> *Ob man will oder nicht, der Primat des Papstes ragt wie ein Stein des Anstosses auf, der die Christen, die sich ehrlich nach Einheit sehnen, nach Rom führen sollte. Ironie des Schicksals: Der das Fundament der Kirche ist, sieht sich unter die Anklage gestellt, in erster Linie für die Fortdauer der Spaltung unter den Christen verantwortlich zu sein! Man darf sich nicht zu schnell mit dieser paradoxen Situation abfinden.* G. DEJAIFVE, *Der Erste unter den Bischöfen. Über den Zusammenhang von Primat und Bischofskollegium*, in *Theologie und Glaube* 51 (1961) 2.



## 1. PRIMA SEDES A NEMINE IUDICATUR

### BIBLICAL AND PATRISTIC EMERGENCIES

The New Testament does not present any juridical norm, nor a clear ordering of ministries or atemporal and perennially valid principles, but only indications historically conditioned by cases that concern poorly organized and structured communities. The hermeneutical problem arises, therefore, in the search for and methodological derivation of the relationship that exists between juridical-ecclesial discipline and historical interpretation<sup>17</sup>.

Through the historical-critical method of biblical interpretation one wants to try to identify the particular historical character and the cultural conditioning of the New Testament writings that found the juridical axiom *Prima Sedes a nemine iudicatur*, placed as a juridical transposition, then as an application to the *Prima Sedes* of the spiritual anthropology of *1 Cor 2 > 15*. This can be characterised as a process of juridicality of ecclesiological values that originally, as we will see, referred to a spiritual context rather theological, moral and charismatic<sup>18</sup>.

To develop the problem of the origins of our principle, we follow, in full, but not in its entirety, an extensive and rich study made by K niger<sup>19</sup>. The latter has shown that the formulation of the axiom is based on forced interpretations of certain passages of sacred Scripture.

The idea of judging (*Sbapbat\ Krinein*) in both the Old and New Testament writings, does not present any special significance. It appears in the connections of the whole scale of meanings beginning with *dividing* and *being of the opinion* up to judging *which issues a condemnation* in judgment.

We consider, first of all, those passages in the New Testament in which judgments are made by a judge or in which there is at least a criticism or condemnation. In the first place are

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<sup>17</sup> Cf. Elisabeth SCHÜSSLER-FIORENZA, *Judging and Judgment in the Communities of the New Testament*, in *Concilium* 7 (1977) 31.

<sup>18</sup> Yves CONGAR, *The Norms of Fidelity and Christian Identity Through the History of the Church*, in *Concilium* 3 (1973) 28-31.

<sup>19</sup> Albert Michael K NIGER, *Prima sedes a nemine iudicatur*, in *Beitr ge zur Geschichte des christlichen Altertums und der Byzantinischen Literatur. Festgabe Albert EHRHARD zum 50. Geburtstag*, edidit Albert Michael K NIGER, Ed. RODOPI, Amsterdam 1969. Lithographed from the original: Bonn-Leipzig, Kurt Schr der-Verlag 1922, 273-300.

find the apostles who, in accordance with the promise of the Lord, one day in the new creation, will have to judge the Twelve Tribes of Israel (Ai/ 19,28). Despised and persecuted by the Jews in the world of evil, the apostles, in the future Kingdom of God, will come to His right hand. And not only that: they will have to experience Triumph, over those who had once, guiltily, broken the bar over them, and will have to submit to their judgment and lordship. But once the judgment is passed, there will be no need for further debate.

Developing this idea of the victory and final judgment of the Lord's first disciples, Paul affirms, with a retrospective glance at the Old Testament promises, that the saints, that is, Christians in general, will judge the world, men, and even angels on the last day (7 *Cor* 6:2 ff.)<sup>20</sup>. Then it will become manifest whether the enemies of Christianity have acted justly, or not rather those who because of the name of Jesus Christ have been persecuted. The judgment of the world will make it known that every violence done to the saints will do harm to those who did it, and those who on earth might have seemed the servants now become the lords. In Christ and with Christ they pronounce judgment on the injustice and wickedness wrought from the beginning, because they have persevered in his grace. Their exaltation means at the same time the humiliation of the enemies of Christianity.

Later on, the concept of saint and martyr became more and more restricted, and it began to acquire more and more value, when the holy Seer of Patmos contemplated visions that developed and strengthened Pauline thought: *Then I saw some thrones, and to those who sat on them was given the power to judge. I also saw the souls of those beheaded because of the testimony of Jesus and the Word of God, and those who had not worshipped the beast and his statue and had not received the mark on their foreheads and hands. They revived and reigned with Christ for a thousand years (Rev 20:4)*. The martyr would thus become lord and at the same time judge, especially over those on earth who passed unjust judgment against him. Since his passion and death was held to be an imitation of Christ's passion and death, according to the apostle's word, the participation in Christ's glory and lordship in heaven is thus founded.

For that very reason he who has suffered martyrdom is removed from the judgment of men: there is no longer any judgment against him, for he himself is now the judge. One alone has pronounced true judgment upon him to make him his companion in heaven: Christ, the Lord.

These ideas would be expressed even more decisively in the later periods of the second and third centuries, when the number of martyrs grew continually and the living faith of persecuted Christians was nourished, even more than before, by the unshakable hope in the reward and compensatory justice of the heavenly judgment. It is clear that this faith rests on the foundations of eschatology: it promises both reward and satisfaction, but this applies to the next life<sup>21</sup>.

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<sup>20</sup> *Ibid.* 274.

<sup>21</sup> *Ibid.* 275.

Thus Tertullian, in a letter of consolation (197ca.) to two Christian prisoners, reminds us that the martyrs will be the future judges of their judges<sup>22</sup>.

The same thing is done by unwavering confessors before Bishop Cyprian of Carthage who, referring to a passage in the Book of Wisdom (*Wis 3:4-8*) - according to which the righteous who endure punishment for the sake of God would judge the nations and rule the peoples - concludes that martyrs for the sake of Christ will one day judge and rule with Him<sup>23</sup>.

Origen sent in 235 a writing of exhortation to two confessors that they might endure in martyrdom, for he who is able to drink the cup with Jesus will drink and reign with him in eternity<sup>24</sup>.

With great expressiveness, the bishop Dionysius of Alexandria writes about the martyrs: they are those who sit with Christ, they are his companions in the kingdom, they will take part in his judgment and will be co-judges<sup>25</sup>.

Therefore the apostles, as well as Christians in general and martyrs in particular, on earth are subject to the judgment of the enemies of Christianity - because in the world it is not possible otherwise - but the time will come when they will no longer be under any judge, they themselves will take on the role of judges, and according to law and justice they will pronounce judgment<sup>26</sup>.

Moreover, the idea that the Christian, already in this life, is exempt from judgement by the judge and from opposing criticism is not foreign. God and Christ are those in whose hands the judgment and the creation of law lie. For this reason, men are forbidden, as a matter of principle, to judge others. This prohibition proclaims, with extreme strictness, the right of our neighbor, who is subject only to divine judgment. The standard and measure which the Christian uses to judge others will also be the standard by which God will judge him. Thus the terms *judging* and *judgment* in the New Testament are continually placed in relation to the eschatological activity of judging by God and the divine justification of man<sup>27</sup>.

The prohibition against judging others not only concerns the *private judgment* of the individual, but also requires that no judgments be made in the community. This idea is naturally connected with the understanding of the Church as the Church of God, the community of the saints, the baptized, the justified, the "without sin". When in John's Gospel the Lord repeatedly reminds us that he who

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<sup>22</sup> *Index expectatur, sed vos estis de iudicibus ipsis indicaturi.* TERTULLIANUS, *Liber ad martyres*, c. 2, in *PL*, 1, 696.

<sup>23</sup> SAINT CYPRIEN, *Correspondance*, Ep. 31.3; Ep. 6.2, *édité* LE CHANOINE Bayard, {*Collection des Universités de France*, I}, Paris 1945, 79.15.

<sup>24</sup> ORIGÈNES, *Die Schrift vom Martyrium*, *édité* Paul KOETSCHAU, (*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, 11,2), Leipzig 1899, 24.

<sup>25</sup> EUSEBIUS, *Die Kirchengeschichte*, *édité* Theodor MOMMSEN, (*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, 11,2), Leipzig 1908, 610.

<sup>26</sup> Albert Michael KÖNIGER, 276.

<sup>27</sup> Elisabeth SCHÜSSLER-FIORENZA, 33-34.

believes will not be judged and he who hears his word will not come into judgment (*Jn 3:18; 5:24*), *this* is clearly to be understood primarily eschatologically, just as on the other hand the admonition not to judge lest one be judged (*Mt 7:1*) was to be understood in a moralistic sense. But such statements had consequently to - generate the conviction that for a true Christian who lives according to the Gospel, a judgment of condemnation or any other censure cannot be considered even in this world. Before the souls of believers were the threatening words of Jesus: *Whoever puts his hand to the sword shall perish by the sword (Mt 26:52)*. This eventually had to be applied to the Judge and the judgment. If He Himself allowed Himself to be handed over to Pilate and the council, He did so not because He acknowledged the judgment, but so that the Scripture might be fulfilled and the eternal plan of the Father might be brought to completion. According to his own words, his request to the Father would have been sufficient and more than twelve legions of angels would have come to help him (*Mt 26:53*).

The disposition that Jesus gives for how to behave toward the sinning brother (*Mt 18:15-17*) in no sense wants it to be understood as a judgment. In all the degrees of the procedure he prescribes to be observed according to the sinner's behavior, it is always brotherly love that has the first and last word, not a rigid paragraph of law. If first the individual, then two or three witnesses, then the community come into action, it is always a conciliatory proceeding. Neither the two witnesses nor the community represent a judging court; the community is the highest instance, and as a fraternal bond, its moral influence is great<sup>28</sup>.

Like Jesus, Paul also knows that he is being judged unjustly (*Acts 26:6; 1 Tim 4:3*), and he recognizes this only because he, like the martyrs later in their dealings with their pagan judges, because of the necessity of the situation must give reason and submit to their judgment (*7 Cor 4:3*). In the first letter to the Corinthians, the Apostle strongly rebukes the fact that Christians resort to pagan courts, the very ones who will one day have to sit in judgment of the world and pagan judges. He wants Christians among themselves to know nothing of judgment (*7 Cor. 6:1-7*). He writes rebuking them:... *It is already a defeat for you to quarrel with one another! Why not rather suffer injustice? Why not rather allow yourselves to be deprived of what belongs to you? (7 Cor. 6, 7),... Is there one among you who, having a quarrel with another, dares to be judged by the unjust rather than by the saints? If, then, you have disputes about things of this world, do you take as judges people who have no authority in the Church? (7 Cor 6:1, 4)*.

It is a clear mockery that Paul, in this last sentence, addresses to the disputants and to the Corinthians: he knows well that, precisely the lesser ones, they are not fit for judgment and he asks: *So there would be no wise person among you who could arbitrate between brother and brother? (7 Cor 6:5)^*.

Paul does not intend to deny the value of the institutions of the state judiciary, but instead he wants believers to be able to do without them, to the extent that they

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<sup>28</sup> Albert Michael KONIGER, 277.

are capable of peacefully resolving disputes, lawsuits, opposing interests, without having to go to the courts. It is not without significance that the

<sup>13</sup> The text does not give us an absolutely unequivocal answer as to whether or not Paul wanted the institution of a tribunal, a court of judgment within the community. It is also believed that the Apostle was perhaps referring to the Jewish courts, according to the synagogal tradition, or to the practice and life of the community of Qumran. Cf. Giuseppe BARBAGLIO, *Le lettere di Paolo. Translation and Commentary\** I, Rome 1980, 316-323. Paul's astonishment at the behaviour of the Christians is heightened by his sensitivity as a Jew and a Pharisee: the Jews of the diaspora were in fact forbidden to take recourse to the pagan courts, and in the event of a dispute they were allowed to turn to their own courts recognised by the Roman authority. In *1 Cor 6:5* voluntary settlement on the arbitration of a third party is suggested, a procedure honoured by Jewish society, especially in the absence of authorized judges or proper jurists. The idea of constituting an administration of justice all of its own for the Christian community was not entirely out of place. Just at Corinth, the proconsul Gallio had referred to the Jews the judgment of internal quarrels among the Jews (*Act 18:14 ff.*). This corresponded to the Roman custom, in a special way towards the Jewish element. Likewise, as we know, even Pilate had done everything to free himself from the trial against Jesus (*Jn 18:31*). Cf. Eugen WALTER, *First Letter to the Corinthians\** in *Spiritual Commentaries on the New Testament*, Rome 1970, 97. The *correctio pastoralis* of the bishop from the very beginning represents the centre and goal of every concern that concerns problems connected with faith and discipline; sometimes it is very difficult to distinguish between a penitential discipline and an ecclesiastical penal procedure. The earliest sources already testify to ecclesiastical jurisdiction and often contain the admonition which we also find in *1 Cor 6:1-7*: Christians should not settle their civil disputes with pagan judges. Cf. Hartmut ZAPP, *La giurisdizione diocesana. Historical overview\** in *Concilium* 7 (1977) 41.

text insists on the qualification "brothers" to indicate the members of the - community. The Church is a fraternity and is called to live as such.

Once again it is brotherly love, and not the requirement of any law, that must lead to a decision in the case of disputes, as they occur in reality. Among Christians there is no need for judgment.

Subsequently the Fathers, in the light of subsequent situations, interpreted Saint Paul as if he had wanted to set up a Christian tribunal in place of the pagan one and the ecclesiastical code - backed by imperial policy - consequently recognized the pre-eminence of the bishop's judgment over the civil one<sup>29</sup>. But this was not the original thought of the Apostle, who wanted to resolve everything on the basis of charity and forgiveness, even if he referred and appealed to an arbitration and a conciliatory procedure within the ecclesial community, to resolve the various disputes between Christians.

Even the admonition to Timothy to accept the accusation against a presbyter only if it were corroborated by two or three witnesses, is made in the spirit of brotherly love, and Paul has no court in the least before his eyes when he completes

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<sup>29</sup> Cf. Hartmut ZAPP, *La giurisdizione diocesana. Historical overview\** in *Concilium* 7 (1977) 40-45.

his words by saying: *examine before all who do wrong* (7 *Tim* 5:19; *Gal* 6:7)<sup>30</sup>. Still less can it be concluded from the behavior of the community at Corinth toward the grossly guilty sinner that there was judgment in this case (7 *Cor* 2:6-11). For even that behavior is based on forgiveness and on a law, albeit the law of brotherly love.

The case of Ananias and Zaphira (*Acts* 5:1-10) teaches that the Christian has his judgment directly from God. St. Peter pronounces no judgment on them; he had only rebuked them by warning them. God Himself judges them and smites them. The apostle only prophetically announced the final punishment to Zaphira.

Again, a passage from Paul deserves attention, not so much for reasons of content, but for formal reasons. In the First Letter to the Corinthians, where he deals with the madness of the cross, we find the phrase: *ho dè pneumatikòs anakrinei mèn pània, autòs dè hyp'oudenòs anakrinetai* (7 *Cor* 2:15). The sense and tenor of the text are clear: the Holy Spirit works in the Church. The *spiritual*, that is, the man taken and guided by the Holy Spirit, the Christian, sees everything from the perspective of knowledge enlightened by God, both eternal and temporal things. He evaluates both with a just measure and appreciates them in their true value. Things are different for the man who is without faith, the *one who remains outside, the psychic*. He lacks the Holy Spirit and, therefore, the prerequisite of right knowledge. His judgment is clouded and diverted by earthly feelings and desires. Involved in temporal things, he is utterly incapable of thinking and understanding the thoughts and ways of the spiritual man. The spiritual man judges everything and everyone, but is not judged by anyone.

Paul's thought was by no means equivocal for the first Christian generations. It was later, with the fading of the charismatic atmosphere, that a literal, one-dimensional and one-sided understanding was reached, with the consequence that the principle according to which the Christian could not be judged by anyone - became current: his judge remained God alone.

In later periods this passage was exploited for specific purposes. There is no doubt that the ancient Latin translations favored this interpretation, reading *Yanakrinein* of the original text with the simple and equivocal *indicare* and at times with the slightly clearer *diiudicare*, so that *1 Cor* 2,15 sounded for the most part: *Spiritualis autem iudicat omnia, ipse autem a nemine iudicatur*<sup>31</sup>.

The consequence has been that Eastern exegesis, on this point, sticking to the Greek text, has understood Paul's thought well, never recognizing the principle *Prima Sedes a nemine iudicatur*, while the great Western exegetical work, basing itself on the Latin text, has misrepresented it and, in particular as regards the second part, has generally understood it from the perspective of the judge and the judgment<sup>32</sup>.

<sup>30</sup> Albert Michael KÓNIGER, 279.

\* *Ibid*, 280.

<sup>32</sup> *Ibid*, 281; Cf. Wilhelm VRIES De, *Development in the Constantinian Era*, in *Concilium* 4 (1971)

Therefore it can be understood how another passage of Paul *1 Cor 4:4*, close to this text now examined, seen according to this pre-understanding, was included in the same order of ideas about the judgment on Christians. The original text stood with this tenor: *oudèn gàr emauto synoi- da... ho dè anakrinon me kyriós estin* the *Vetus Latina* rendered it instead: NA *hil enim mihi conscius sum; qui autem iudicat me, Dominus est*. Here too the rendering of the more significant *anakrinein* by simply *pointing to it* has led to a different meaning from that which it originally had for the Apostle.

However, before we move on to an analysis of the use made of prophecy in later centuries, especially with regard to the first step, it is necessary to keep in mind another set of reflections concerning prophecy and structure in the Church. Already the prophets of the Old Testament were regarded as particularly protected by God. According to the Jewish view, God sends on the slanderers of one of His prophets a punitive judgment because He alone judges actions and omissions. Thus the Psalmist effectively admonishes: *Do not touch my anointed, and do not bring suffering upon my prophets (Sai 104:15; Zech 2:8)*.

Likewise, New Testament prophethood was not only surrounded with the highest regard, but it was not permitted to be attacked in any way by those who had once proved themselves true prophets.

In the *Didache* we find the admonition: *Do not criticize the prophet who speaks in the Spirit (unseemly) or pass judgment on him (condemning)*. Immediately following is the motivation, with reference to the word of the Lord, *For sin against the Holy Spirit is unforgivable ... do not judge a proven prophet, for he has with God his jus- ditjo*<sup>33</sup>. The prophet may be said to be *the tyre in a characteristic sense*.

What applies to every Christian in a general sense in regard to the thought of primitive Christianity, applies to him in a very special way, for he is not only led by the Holy Spirit, but is determined and inspired unto prophetic preaching and prophecy. To his character - being a Christian man who carries the Holy Spirit within him - he adds one of his own: having received a commission directly from God.

In the prophet converge, as in a focal point, conceptions of the privileges of the Christian, of the saint. One understands, consequently, why he was accorded a special place, more than for any other Christian, in relation to evaluation and judgment. Such conceptions are maintained in part even when New Testament prophethood, as an institution, disappears towards the end of the second century.

Still in 400, Epiphanius of Constance reports the conviction that any attack on a prophet inspired by God was a sin against the Holy Spirit<sup>34</sup>. However, long before prophethood disappeared, the structure and organization of ecclesiastical

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<sup>33</sup> *Didache*, XI, 7.11, edidit Willy RORDORF - André TUILIER, (*Sources Chrétiennes*, 248), Paris 1978, 184-187.

<sup>34</sup> EPIPHANIUS, *Panarion*, edidit Karl HOLL., (*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, II), Leipzig 1922, 310-311.

offices had been consolidated. Clearly things did not go as if the two realities, at some point, could be precisely separated from each other.

The Apostles are included in the succession of prophethood; moreover, they constitute the summit and the starting point both for the itinerant prophets and for those in charge at headquarters. The triad: Apostles, Prophets and Teachers, and the other: Bishops, Presbyters and Deacons, are schematic formulations. Within them, relative to each grouping, there are in no way separations, as might appear from the outside; but, in different ways, they are found in each other. It is significant that Paul points to episcopacy as a *charism* and understands it, consequently, as a *tyme*, and apostleship and prophethood as episcopacy and *diakonia* in the interest of the Church of God (*Rom 11:13; Eph 4:11*).

Certainly Apostles and Prophets or Apostles and Bishops are not the same thing; but just as the Apostles were constituted by God as the first and highest bearers of the Spirit, so also are the Bishops. In the place of the charismatic, of the Christian filled with the Holy Spirit, the ecclesiastical official is gradually introduced. This substitution, reduction and identification with all spiritual gifts is absolutely not permissible. There is here, in a certain sense, a falsification of the original meaning of the biblical datum and thought. An official cannot generally be equated with a charismatic. Yet this substitution and identification of the spiritual man for the bishop has been made<sup>35</sup>.

It is true: the distribution of the gifts of grace (the charisms) must not be separated internally from that of the services (*7 Cor 12:4; 1 Tim 4:11*). A double organization, in the sense of a pure division between charism and office-ministry, is not possible. It is therefore a distinction within the overall organizational practice of the early church. So also the idea of succession is not entirely foreign, not even to early Christianity, where the apostle's exhortation to Timothy to pass on to trustworthy men what he himself has heard, allows one to build a bridge to the now classic passage in the letter of Clement (c. 96), in which it is stated that Christ passed on to the apostles and office and teaching, which, in turn, they passed on to the firstborn and finally to other tried men<sup>36</sup>.

The passage clearly betrays the initial strengthening of the local powers after the disappearance of the apostles, when the need had become urgent to subject the many itinerant prophets to a more precise examination, a task which, in general, rested more in the hands of the bishops (presbyters) than in those of the community. But the Dementinian text is also the best testimony to the fact that already in the first century the conviction was alive that the forces which came forth from Christ and the apostles had been maintained and transmitted by them. Thus it is no wonder that the bishops, in their growing influence and diminishing charisms, were compared to the apostles and regarded as privileged charismatics.

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<sup>35</sup> Cf. Albert Michael KONIGER, 282-283.

<sup>36</sup> CLEMENT DE ROME, *ÉPITRE aux Corinthiens*, edidit Annie J AUBERT, {*Sources Chrétiennes*, 167}, Paris 1971, 168-170.

It was therefore a logical consequence if they were granted that prerogative that they could not be judged by anyone, since they were now revered and recognized as sent by God and bearers of the Holy Spirit in a very special sense.

Pope Clement's letter (92-102) is based mainly on this idea: since the office of bishops and presbyters is willed by God, and is founded on regular succession, therefore in Corinth something iniquitous is done if a presbyter (a bishop) is deposed. Clement points out that such a procedure would be no small sin. And at this point he speaks with the *we*, to indicate that this is the common Christian conception<sup>37</sup>. Behind this admonition is a direct reference to the word of the Lord about the unforgiveness of sin against the Holy Spirit.

This is what the *Didache* had already sustained with regard to the prophets; it follows that the bishops are placed on the same level as the prophets with regard to their untouchability. Bishops cannot be deposed, nor accused: they are judged only by God<sup>38</sup>.

Whether then in Corinth it is a matter of a tension between spirit and office, between prophets - generally called charismatics - and ecclesial structure, which casts doubt on their charism, or whether it is simply a matter of a habitual assault on local ecclesial authority, this remains an open question. On the other hand, there remains little doubt that in the concept of presbyters, which Clement's letter so often speaks of and which he defends, bishops are not also to be co-included, although the use of New Testament language would allow only them to be seen in it.

The principle of Clement's letter, according to which presbyters (bishops) cannot be deposed, is not at all opposed by the letter of Polycarp (+ 156)<sup>39</sup>. From these we learn that at Philippi a presbyter named Valens, misled by greed, had stolen the money of the community.

Polycarp expresses his deep sorrow at the man's incocrencies with the role he had been given, and he hopes that the Lord will give him and his wife a true feeling of repentance. Finally he recommends to the community to see in such a couple the members who suffer and who because of their error are to be *recalled*<sup>40</sup>

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<sup>37</sup> *Ibid*, 172-173.

<sup>38</sup> Albert Michael KONIGER, 284.

<sup>39</sup> In this letter a faithful picture is drawn of the doctrine, organization, and charity of the Church at that time. Quasten argues, following P. N. Harrison, that the document called the *Epistle of Polycarp* actually comprises two letters written by Polycarp at two different times. Copied very early on the same papyrus roll, they would be blended into one. The first would contain only chapter 13, and perhaps 14 as well, and would be a short remittance note. Polycarp would have enclosed it as an accompaniment in a despatch of the epistles of Ignatius to Antioch soon after the passage of the prisoner to Smyrna and Philippi during his journey to Rome. This note would certainly be datable to the beginning of September of the year in which Ignatius was martyred (110). Twenty years later, Polycarp would write a second letter comprising the first twelve chapters. Johannes QUASTEN, *Patrologia*, I, Turin 1980, 79.

<sup>40</sup> POLYCARPE DE SMYRNE, *Lettre aux Philippiens*, in IGNACE D'ANTIOCHE - POLYCARPE DE SMYRNE, *Lettres. Martyre de Polycarpe*, edidit Th. CAMELOT, (*Sources Chrétiennes*, 10), Paris 1959,

. From the text we may assume that there was no bishop-monarch in Philippi; a college of presbyters headed that community. Whether Valens was deposed or fled in shame after his action was discovered is unclear. The second hypothesis seems more likely, but Polycarp does not consider it a sufficient sign of true repentance, and the reference to the *recalled* supposes more a voluntary flight than a deposition<sup>41</sup>.

On the contrary, what Hippolytus (+ 235) reports about Bishop Callistus (+ 222) is clearer. The latter is said to have said and taught, according to the testimony of Hippolytus, that a sinful bishop, even if his was a sin of those that lead to death, could not be imputed to him as a sin and therefore could not be deposed<sup>42</sup>.

He reaffirms the thought already defended by the letter of Clement, and which, through prophethood, reaches the earliest days of Christianity. There is no doubt that Callistus was acquainted with the writing of his predecessor, which, in its fundamental tendency, he understood very well. Therefore it seems worthy of faith what Hippolytus has related about him in this regard, fitting well into the framework of his conceptions at that time. It is a reality of the Church understood as *Corpus permixtum*, as a field with wheat and tares, as an ark with pure and impure animals. It is not excluded that Callistus was already under the influence of a Latin translation of the New Testament, and therefore also of the passage *I Cor 2, 15*, where by *pneumatico*^ or better, by *homo spirituali* who cannot be judged by anyone, the bishop could understandably be understood. Surely, with the restoration of the ancient principle of the immovability of the bishop, he - pursued definite purposes, whether generically pedagogical, or wholly concrete objectives, or vouchsafing for his character, always assuming that Hippolytus, in his very polemical work, spoke all and nothing but the truth.

It must not be forgotten that in Clement's time, if on the one hand the episcopate had gained in power and consideration externally, on the other - as a result of the Gnostic and Montanist intrigues of the second century and the ever-widening insertion of Christians into this world - errors and tensions within the Church became more significant than before and therefore it was more likely that suspicious bishops would be violently attacked by their opponents.

Callistus himself is opposed by Hippolytus, in a very decisive way, because of a point of view of his that is contrary to this. This was the most opportune moment to erect around the office of bishop the rampart of an ancient and inviolable tradition. In fact there was no evidence in Clement's letter that the bishop could not be removed even in the case of a most serious sin, the sin which leads to death, namely, that against the Holy Spirit. It makes no sense to want to diminish the meaning of these words, attributed to Callistus and probably also affirmed by him, in themselves clear, by referring to their content and claiming

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218-221.

<sup>41</sup> Albert Michael KÖNIGER, 285-286.

<sup>42</sup> YPPOLITUS, *Philosophumena, sive omnium haeresium refutatio*, Lib. IX, in PG, 16.3, 3386.

that the concept of sin leading to death in Callistus' time was very fluid. Let us leave that astonishing statement its most obvious meaning, and we shall find ourselves, not arbitrarily, in c. XI of the *Didache*, which may have been well known to Callistus. In it the prophet is spoken of - the use of it for bishops, however, creates no difficulty - by saying that no judgment of condemnation can be pronounced upon him, even in case he, in regard to a worldly mystery, should act otherwise than his teaching would require. The passage is the well-known *crux interpretum* of the *Didache*<sup>43</sup>.

The most acceptable explanation can only be that which sees in these words a reference to earthly activities which stand in connection with marriage, with the *great mystery*. What is not permitted, or what causes scandal in others, may be permitted to the prophets of the New Testament, as once to those of the Old Testament, and cannot be imputed to them as a sin, because they are messengers of God. The same thing must have occurred to Callistus. If the bishop does something that may seem to others to be a grave sin, the same yardstick does not apply to him; he will know why he acts as he does because he is working in the Spirit, and after all God is his judge. Thus Callistus did not propose a new teaching but rather ancient conceptions, at a time, admittedly, when they could no longer advance that claim to absolute value of a century earlier.

We find again the principle of the untouchability of bishops, at the time of Cyprian of Carthage (+ 258). He was the Roman bishop Stephen (254-257) who openly supported the same perspective as his predecessor Callistus, that is, that a bishop could not be deposed even in the case of serious misconduct. This is shown by his attitude towards the Spanish bishops Basilides and Martial, accused of idolatry and other serious faults. He recognized them as legitimate bishops and defined those who had been elected to replace them as usurpers<sup>44</sup>. It cannot be accepted that Stephen had been misled by Basilides, who had come to Rome, and that because of this he had declared him innocent; Basilides, already in his own country, after the discovery of his faults, had held himself responsible.

Perhaps Stephen should have acted according to this same criterion with regard to the bishop Marcian of Arles, who was indulgent to Novazianism, despite the repeated accusations made against him. He made no move against this disturber of unity and order in the Church to depose him or declare him to be such<sup>45</sup>. Undoubtedly, in this way the bishop of Rome held to the most ancient traditions, if it is true that his predecessor Cornelius (251-253) - according to Cyprian's account, and under his influence, was of the opinion that sinful bishops could lose their places<sup>46</sup> - was more conservative than he could have easily departed from the normal line marked out long ago.

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<sup>43</sup> Albert Michael KONIGER, 287-288.

<sup>44</sup> SAINT CYPRIEN, *Correspondance*, Ep. 67.5, *édité* LE CHANOINE Bayard, (*Collection des Universités de France*, II), Paris 1961, 231.

<sup>45</sup> *Ibid*, Ep. 68:3, II, 236.

<sup>46</sup> *Ibid*, Ep. 67:6, II, 232.

Cyprian is convinced that the bishops are the successors of the apostles and as such are in this world the representatives of Christ the Priest and Judge. God Himself has constituted them as such: he who arrogates to himself the right of judgement over them, judges God also, for He has said to the apostles and to those who *preside* as their successors in the ministry: *He who hears you, hears me; he who despises you, despises me*. Whosoever rebels against them, and despises them, arrogates judgment to the judgment of God, inasmuch as they were given and constituted by him<sup>47</sup>.

Cyprian, identifying the apostles with the bishops and teaching the doctrine of the divine constitution of bishops, presupposes in them a special presence of the Spirit. He thinks that the bishop cannot be brought into judgment by anyone, nor can anyone judge him; he is free to exercise his will and power as he pleases: he will have to give an account of his actions to God alone. Every earthly instance is excluded for him<sup>48</sup>.

With this, the bishop of Carthage manifests opinions already known for a long time, and it is very indicative that he recalls as a witness the letter to the Romans of the Apostle Paul, where it is said that every Christian must lay aside in the future, all judgment, and that therefore one should not judge one another (Ro/z? 14,12). Cyprian applies the Apostle's words to the Bishops<sup>49</sup>. In a concrete case, when a layman, Papianus, dishonored him with letters and in various ways slandered him, Cyprian replied, without calling into question any earthly judge, simply: *Habes tu litteras meas et ego tuas. In die iudicii ante tribunal Christi utrumque recitabitur!*<sup>50</sup>

But Cyprian does not ignore, nor does he live outside his time and history. He knows the vicissitudes of life and does not close his eyes to the fact that there are bishops who are lacking. During early Christianity this was not mentioned because the occasion did not arise. One compares, in this regard, the letters of Ignatius<sup>51</sup> and Cyprian to realize immediately, with clarity, how things have changed: there we still find bishops who are not reprobate and pure Christians *bearers of God, in union and harmonious communion of love*, here, a century and a half later we have continual contentions, quarrels and divisions; there, the taciturn bishop, the shining model, here, the quarrelsome bishop, the pressing

47 *Ibid*, Ep. 45:3; Ep. 59:4,5; Ep. 66:1,4, II, 114-115; 172-174; 220-223.

48 *Manente concordiae vinculo... actum suum disponit et dirigit unusquisque episcopus, rationem propositi sui domino redditurus. Ibidem*, Ep. 55,21, II, 144; *Cum... singulis pastoribus portio gregis sit adscripta quam regat unusquisque et gubernet rationem sui actus domino redditurus. Ibidem*, Ep. 59,14, II, 183; *Nemini praescribentes aut praeiudicantes quo minus unusquisque episcoporum quod putat faciat, habens arbitrii sui liberam potestatem. Ibid*, Ep. 73:26, II, 278. Cf. Louis I. SCIPIONI, *Bishop and People. U exercise of authority in the early church (third century)*, Milan 1977, 88.

49 SAINT CYPRIEN, Ep. 69:17, ii, 252.

33 *Ibid*, Ep. 66:10, II, 227.

51 IGNACE D\*Antioche, *AUX Épbésiens*, in IGNACE D'ANTIOCHE - POLYCARPE DE SMYRNE, *Lettres. Martyre de Polycarpe, edidit* Th. CAMELOT, {*Sources Chrétiennes*, 10}, Paris 1959, 72. 98.

necessity; there, serious enemies only from without, here, funereal and blasphemous critics, fomenters of divisions even within.

The exterminating angels of Gnosticism and Montanism have passed through the doors of Christians not without doing harm, and the pressure of increasing persecution has unnerved and misled many leaders and teachers. This is the situation from which the bishop of Carthage speaks of the sinful bishop. One would be disappointed if one expected in Cyprian a change in his conception in connection with recent events, like Callistus or Stephen. In reality he commends sinful bishops to the divine judge, but he does not tolerate them within the Church. The congregations must separate from them, and the co-bishops must remove them from the ecclesial communion. They have lost their office without the need of the judgment of an earthly judge<sup>52</sup>. But it certainly cannot be said that in Cyprian, ideal and life, theory and praxis coincided without contrast. This is true of his concept of the Church, but it is particularly true of the untouchability and immovability of the bishops<sup>53</sup>.

Prompted by the growing needs that arose in the second half of the second century, councils began to gain more and more influence. Thus, if a provincial council issued decisions for the whole provincial Church, even those bishops who thought otherwise had to submit to them. The councils judged the bishops and thus exercised jurisdiction over them, without awaiting the future judgment of God<sup>54</sup>. Strictly speaking, the declaration that a bishop could be declared *abstentus* (removed), could be issued either by an individual bishop or by a synod, and implied a judgment - though not in a formally legal sense - a *sententia*<sup>55</sup> to use a terminology dear to Cyprian<sup>55</sup>.

Above the bishop, therefore, there is a higher earthly instance, even if not by right. In this there is no doubt: in Cyprian there remains an ideal linked to the past, that of the untouchability and immovability of bishops, and he wants to be their guardian and defender in all cases in which the unity of the Church is undermined. But often his impulsive and impetuous character and the circumstances of the time (heresies and schism) forced him to make choices to the contrary.

In the period that followed, characterized by the increasing insertion of Christianity into public life, a strict organization would become increasingly necessary that would clearly mark out the failing bishops and, where possible, set them on the right path by referring them to divine judgment. If one assesses the situation without prejudice, one will easily recognize how necessary it was for the bishops also to have an earthly instance. This was found at first in the synods, always convened as organs of law. While Cyprian's idealism, in practice unusable, was lost in Donatism, the conviction was arrived at that on earth a bishop could

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<sup>52</sup> SAINT CYPRIEN, Ep. 67:3,6; Ep. 68:3; Ep. 73:26, II, 229. 231-232; 236; 278-279.

<sup>53</sup> Albert Michael KONIGER, 293.

<sup>54</sup> SAINT CYPRIEN, Ep. 59:10, ii, 178.

<sup>55</sup> (*Felicissimus*) *acipiat sententiam... ut abstentum se a nobis sciat. Ibid*, Ep. 41:2, II, 103.

judge another bishop, as the prophets themselves had already been judged. The deeper reason for this awareness rested on the authority of the divine calling of the bishop, from which it rightly followed that even a majority of bishops or a synod was an organ of God filled with the Holy Spirit. A biblical model, in this sense, was to be found in the apostolic council of Jerusalem (*Acts*)

The provincial synod later became the first instance for the episcopate. Further on, we move towards a regulation of the legislative principles necessary for a juridical process<sup>56</sup>. This change becomes even more evident when the Didascalia, circa 300, describes in great detail the process in case of disputes and punishments among Christians. One finds there the admonition of St. Paul, according to which a Christian must not appear before a pagan tribunal; he also associates with the bishop presiding in judgment the idea that it is Christ himself who is present in the debate<sup>57</sup>.

A historical fact that aroused astonishment in contemporaries and later historiography, but which is not mentioned by Königer, deserves to be mentioned here: it is the behavior of the emperor Constantine, during the celebration of the Council of Nicaea (325), towards some bishops accused by their brethren.

Rufinus (345 ca.-410/411) recounts in his *History of the Church*: "At that council an admirable fact also occurred on the part of the emperor, and I do not think I should pass over it in silence. Bishops from almost all parts were gathered and, as usually happens, obeying different reasons, they provoked certain specious disputes among themselves. The emperor was frequently questioned by the individual speakers, who were offered pamphlets, and certain faults revealed to him, and thus the attention was more directed to these pretexts, than to the subject on which the assembly had been determined. He then, observing, that by reason of these contentions, the cause of the principal subject was altogether eluded, fixed a certain day, on which each of the bishops, having some reservation to propose, should present it. And he sat down, and received from each of them the writings they had presented, and then, having considered them, without revealing what was contained in them, he addressed the bishops in these words: "*God has made you bishops, and has given you power to pass judgment on us also, and for this reason we are rightly judged by you, but you cannot be judged by men. By reason of this principle you must await the judgment of God alone in cases arising between you, and therefore your disputes, whatever they may be, must be reserved for divine judgment. In fact, you yourselves have been given by God to us as gods, and it is not fitting that a man should judge the gods, but only He of whom it is written, "God has set himself in the assembly of the gods, and has made himself judge of the gods in me^o to them.*"

A century later the Apostolic Canons regulated the punishments for guilty

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<sup>56</sup> *Ibid*, 297.

<sup>57</sup> *Didascalia et Constitutiones Apostolorum*, II, 45-51, *editio* F. X. FUNK, I, Paderbom 1905, 140-148.

bishops as if the principle of episcopal unjusticiability had never had value<sup>58</sup>. But, while this principle, in general, was excluded for the episcopate as a whole, it - subsequently maintained its value and reference for only one person: the bishop of Rome, who, according to the natural course of things set out so far, should also, precisely as a bishop, have submitted himself to the synodal judgment<sup>59</sup>.

Constantine had exempted the clergy from civil jurisdiction by subjecting priests to the jurisdiction of their bishop and bishops to that of the metropolitan. The Council of Sardica then in 342-343 had established that the Roman See would be the last instance of appeal for ecclesiastical trials; it also recognized that without the pope, in the final analysis, no bishop could be deposed and determined the criterion that the bishops had to follow when it was necessary to appeal from provincial councils to the supreme authority of the church<sup>60</sup>. It is true, however, that above all in the criminal trials of the fourth and fifth centuries, this regulation was not always observed, although the bishops of that time always appealed to it (*privilegium fori*).

In the case of Pope Damasus (366-384), accused before the Emperor Valentinian I (363-375) of sedition and murder, and substituted by the antipope Ursinus, the Fathers of the Roman Council (378)<sup>61</sup> petitioned the Emperor Gratian (375-383) that the jurisdiction in regard to the holder of the Roman See should belong, in criminal cases, only to the Emperor and not to Roman officials. They had made two petitions: that the pontiff should not be subject to public civil judgments, for if all bishops were exempt from them, he was all the more so by reason of the prerogative of the Apostolic See; and that the cause of the pontiff should be dealt with directly either by a council or by the emperor.

The petition seems to have been rejected, since no imperial letter was delivered as a response to the synodal request. However, this petition is very significant because it marks an important milestone in the history of ecclesiastical

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<sup>58</sup> *Canones Sanctorum Apostolorum*, cann. 25-31. 74, in PG, 137, 86-99, 186-190.

<sup>59</sup> Albert Michael KONIGER, 297.

<sup>60</sup> *Osius episcopus dixit: Illud quoque, ut episcopus de provincia ad aliam provinciam in qua sunt episcopi non transeat; nisi forte a fratribus suis invitatus, ne videamur iannam caritatis clausisse. Illud quoque providendum est; si in aliqua provincia forte aliquis episcopus contra fratrem suum episcopum litem habuerit, non ex his unus ex alia provincia advocet episcopos. Quod si aliquis episcopus indicatus fuerit in aliqua causa, et putat bonam causam habere, ut iterum iudicium renovetur, si vobis placet, sanctissimi Petri Apostoli memoriam bonoremus: scribatur vel ab his qui examinarunt vel ab episcopis qui in proxima provincia morantur Romano episcopo; si iudicaverit renovandum esse iudicium, renovetur, et det indices, si autem probaverit talem causam esse ut ea non refricentur quae acta sunt, quae decreverit confirmata erunt. Si hoc omnibus placet? Synodus respondit: Placet... Quod si qui rogat causam suam iterum audiri et depraecatione sua moverit episcopum Ro- manum ut e latere suo presbyterum mittat, erit in potestate episcopi quid velit aut quid aestimet: (et) si decreverit mittendos esse, qui praesentes cum episcopis iudicent, habentes (eius) auctoritatem a quo destinati sunt, erit in suo arbitrio, si vero crediderit sufficere episcopos, ut negotio terminum imponant, faciet quod sapientissimo consilio suo iudicaverit. Concilium Serdicense, a. 342-343, cann. 3-5, in Ecclesiae Occidentalis Monumenta Iuris Antiquissima. Canonum et Conciliorum Graecorum interpretationes Latinae, edidit C. H. TURNER, I, Oxoni 1930, 455-462.*

<sup>61</sup> *Romanum concilium sub Damaso habitum*, in PL, 13, 582-584.

law. Reading the history of the Church prior to Pope Damasus, one sees how several bishops of Rome were dismissed from their office by a tribunal presided over by the emperor, and this from the time of the persecutions first and then of the schisms. Such was the case, for example, with the conflict that arose at the beginning of the third century between Hippolytus and the already mentioned Callistus. Hippolytus, an opponent of the latter, disapproving of the principle, reports that Callistus asserted that the deposition of a bishop fallen in mortal sin should not be demanded. We also note, in the third century, the schism operated by Novatian and Cornelius and the case of Pope Liberius, exiled by the Emperor Constantius after the synod of Milan (355)<sup>62</sup>. The Roman synod of 378 had recognized the emperor as supreme judge and the only one competent to judge the bishop of Rome.

Pope Zosimus, in a letter of 21 March 418 addressed to the bishops of the Council of Carthage, affirms for the first time that, according to the tradition of the Fathers, the authority of the Apostolic See is such that no one has ever dared question its deliberations. He derives this statement from the same promise that Christ made to Peter: whatever the apostle Peter had bound on earth would be bound in heaven, and whatever he had loosed on earth would also be loosed in heaven (*Mt 16:19*). Therefore, the Petrine power to bind and loose is transmitted from Peter to his successors who have inherited the See to which the care and concern of all the Churches belongs. Hence the authority of the bishop of Rome is such that no one can ever challenge the power and validity of his declarations<sup>63</sup>. Pope Zosimus only adds that the decisions of the Apostolic See cannot be annulled or cancelled by anyone. He maintains the impossibility of appeal against the pope, in the sense *Roma locuta est, causa finita*; but he does not speak, either implicitly or explicitly, of the principle of the pope's unjusticiability and immunity, as Poma<sup>64</sup> and Moynihan<sup>65</sup> would like to assert. In Zosimus we have the fundamental expression of what would be much later the *primatus iurisdictionis*<sup>6</sup>, clearly distinct from any claim to see included in it also the principle of the personal immunity of the pope: *Quamvis Patrum traditio apostolicae sedi auctoritatem tantam tribuerit, ut de ejus judicio disceptare nullus auderet,... tamen cum tantum*

<sup>62</sup> Harald ZIMMERMANN, *Papstbesetzungen des Mittelalters*, in *MIÖG* 6 (1961) 4-8.

<sup>63</sup> *Quamvis Patrum traditio apostolicae sedi auctoritatem tantam tribuerit, ut de ejus judicio disceptare nullus auderet, idque per canones semper regulasque servaverit, et currens adhuc suis legibus ecclesiastica disciplina Petri nomini, a quo ipsa quoque descendit, reverentiam quam debet exsolvat: tantam enim huic Apostolo canonica antiquitas per sententias omnium voluit esse potentiam, ex ipsa quoque Christi Dei nostri promissione, ut et ligata solveret, et soluta vinciret (Matth. 16,19); per potestatis data conditio in eos, qui sedis haereditatem, ipso annuente, meruissent: habet enim ipse, cum omnium Ecclesiarum, tum hujus maxime ubi sederat, curam... tamen cum tantum nobis esset auctoritatis, ut nullus de nostra possit retractare sententia.* ZOSIMUS, *Aurelius ac caeteris* Ep. 12, in PE, 20, 676.

<sup>64</sup> Antonio POMA, *Inginducibilità e santità pontificia in alcune documenti antichi*, (Dissertazione Gregoriana), Rome 1936, 3-4.

<sup>65</sup> James M. MOYNIHAN, *Papal Immunity and Liability in the Writings of the Medieval Canonists*, (Analecta Gregoriana, 120), Rome 1961, 1.

*nobis esset auctoritatis, ut nullus de nostra possit retractare sententia*<sup>66</sup>.

The same legal claim was reiterated a few years later on March 11, 422, in a letter from Boniface I to the papal vicar Rufus, bishop of Thessalonica. The pontiff, with explicit reference to the words of his predecessor, affirms that a sentence issued by the apostolic see has a definitive value and, therefore, cannot be revoked by anyone<sup>67</sup>.

In another letter he writes that the apostolic see, in relation to all the churches has the same function as the head in relation to all the members of the body. Anyone who wishes to depart from it and not be in communion will be cut off from the Christian religion<sup>68</sup>.

According to Boniface I it is not possible to dissent from the judgments issued by the head of the Church: to contest or reject his judgments would mean leaving ecclesial communion. The life of faith depends on the relationship - established with the head of the Church, that is, with the See of Rome. One must therefore recognize the authority of the head as guide and judge of cases, so that a sentence pronounced by him should not be subject to retraction of any kind. The pontiff refers to communion with the See of Peter and, appealing to his authority, develops the juridical idea of the relationship between Peter and his See<sup>69</sup>.

Pope Gelasius declared still more explicitly, in two letters, one addressed to Faustus, the papal legate at Constantinople (493), and the other to the bishops of the province of Dardania (Feb. 1, 495), that it was for the one in Rome to judge over the whole Church. This could not be brought before a tribunal, and its judgments could not be judged by anyone. In the letter sent to Faustus, the Pontiff assigned to himself the right to judge the deposition of the Patriarch Acacius and countered the objection of the Eastern bishops who - according to Eastern canonical disposition and practice - ascribed to their competence the right to judge the Patriarch's cause. So, in this case, the Orientals refused to accept and recognize Roman authority. Gelasius claimed that only the bishop of Rome could decide on the deposition of Acacius and not any council. Thus he defended his position and his claim, answering the objections of the Greek bishops: the canons had prescribed that in judging and defining a sentence deemed unjust, recourse should be had to the apostolic see as the superior see. The first See has the right to examine the case; no one can ever appeal against it: its judgment is unquestionable and its sentences cannot be set aside by anyone; finally, all are bound to observe its decrees. The first see judges over the whole Church, and can be judged by no one;

<sup>66</sup> ZOSIMUS, *Aurelius ac caeteris...*, Ep. 12, in PL, 20, 676.

<sup>67</sup> *Ad synodum... talia scripta direximus, quibus universi fratres intelligant... de nostro non esse iudicio retractandum. Numquam enim licuit de eo rursus, quod semel statutum est ab apostolica sede, tractari.* BONIFACIUS, *Dilectissimo fratri Rufo*, Ep. 13, in PL, 20, 776.

<sup>68</sup> *Hanc ergo Ecclesiis toto orbe diffusis velut caput suorum certum est esse membrorum: a qua se quisquis abscedit, fit christianae religionis extorris, cum in eadem non coeperit esse compage* ID., *Dilectissimis fratribus universis episcopis per Thessaliam constitutis*, Ep. 14, in PL, 20, 777.

<sup>69</sup> Cf. Yves CONGAR, *D'église de Saint Augustin à l'époque moderne*, Paris 1970, 27.

the canons themselves can never call the apostolic see to judgment<sup>70</sup>.

Here is reported, in a certain way, *expressis ver bis*, as Schatz<sup>71</sup> - who sees in the Gelasian text the foundation and statement of the principle *Prima Sedes a nemine iudicatur* - the unjustifiability of the Roman pontiff. This idea would be given to us if we were to take the expression *ipsam (prima sedes) ad nullius commeari iudicium* in isolation, extrapolating it from the whole context in which it is inserted. The entire text in fact states that the judgment of the first See remains unquestionable and can be neither violated nor touched by anyone. Gelasius then does no more than reiterate, in brighter and stronger tones - to the point of altering the idea already reported by his predecessors, Popes Zosimus and Boniface - that a judgment, once pronounced and issued by Rome, is irreformable, in the sense that *Prima locuta est, causa finita*. The context of the expression instead leads us to assume and interpret it, in a specific sense, with a minimal meaning. It has the same valence and the same sense as the following expression: *nec de eius unquam praeceperunt iudicio iudicari*. Gelasius affirms only, and in a categorical and clear way, that it is not possible to appeal against a judgment of the pope. Much later, starting in the ninth century with Pope Nicholas I and particularly during the Gregorian reform, this statement was given a broader meaning and sense: the existence of the principle of the pope's personal immunity and unjustifiability could already be seen in it, but it was always an interpolation or a misinterpretation of the Gelasian passage.

By virtue of Peter's authority, the first See has the right to judge over all, and no one will be able to review its judgment. It also has the power to absolve those who have been unjustly condemned and to condemn, without the need of a synod, those who deserve it.

The Christian Community knows that the sacrosanct Roman Church has the right to judge everyone, but no one is allowed to judge her judgment. While it is true that one may appeal to it from all parts of the world, one is not permitted to do so against it. All this is possible because of the *principatus* which the apostle Peter received and will continue to hold by virtue of the words of the Lord<sup>72</sup>.

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<sup>70</sup> *Nobis opponunt canones, dum nesciunt quid loquantur. Contra quos hoc ipso venire se produnt, quod primae sedi, sana rectaque suadenti, parere fugiunt. Ipsi sunt canones, qui appellationes totius ecclesiae ad huius sedis examen volvere deferrunt. Ab ipsa vero nusquam prorsus appellari debere sanxerunt; ac per hoc illam de tota ecclesia iudicare, ipsam ad nullius commeari iudicium, nec de eius unquam praeceperunt iudicio iudicari, sententiamque illius constituerunt non oportere dissolvi, cuius potius decreta sequenda mandarunt... Ceterum isti, qui sacri, qui ecclesiastici, qui legitimi celebrantur, sedem apostolicam ad iudicium vocare non possunt.* GELASIUS, *Ad Faustum commonitorium*, Ep. 4, in MANSI, 8:17-18.

<sup>71</sup> Klaus SCHATZ, *Der päpstliche Primat. Seine Geschichte von den Ursprüngen bis zur Gegenwart*, Würzburg 1990, 95ff.

<sup>72</sup> *Non reticemus autem quod cuncta per mundum novit ecclesia; quoniam quorumlibet sententiis ligata pontificum, sedes beati Petri apostoli jus habeat resolvendi, utpote quod de omni ecclesia fas habeat iudicandi, neque cuiquam de eius liceat iudicare iudicio, siquidem ad illam de qualibet mundi parte canones appellari voluerint, ab illa autem nemo sit appellare permissus... Sed nec illa praeterimus, quod apostolica sedes... sine ulla synodo praecedente, et absolventi, quos synodus inique damnaverat, et dammandi nulla existente synodo*

Gelasius, when he formulated these concepts, knew that he was referring to the most ancient Roman tradition. In continuity and in correlation with the development of the primacy of the Bishop of Rome, already from the fourth century the *primatus iurisdictionis* had been particularly evident<sup>73</sup>. And this from the Council of Sardica 342-343 and, subsequently, with popes Zosimus and Boniface.

According to Gelasius, the motivation on which the unquestionability of the judgment of the Church of Rome is based is linked to the idea of the primacy it enjoys among all the Churches: it has received as inheritance all those privileges that its founder obtained directly from the Lord. It emerges clearly, both in Pope Zosimus and in Gelasius, the scriptural reference of *Mt 16,18-19* applied exclusively to the Church of Rome, as first apostolic See, and heir to the Petrine prerogatives. With these statements both papal decisions and the superior power of jurisdiction of the apostolic See are guaranteed and defended. Among the apostolic Churches, that of Rome has a privileged place, both by virtue of the text of *Mt 16:19*, and of the person of the apostle Peter, whose chair was inherited by the Roman Church.

The formula *bind and dissolve* indicates an authority that extends to everything, an expression of the development of the papal monarchy that is becoming more and more consolidated. The most common statement expressing this concept is that of Rome-Gz/w/, the head of the whole body which is the - universal Church. This is considered by the popes of this period as a body, not only in the sense of a spiritual and sacramental communion with Christ, but also in the social or corporate sense of the word: it has as such a *caput*, a *princeps*. The caput, who holds the place of Peter, has a role and a burden of universal responsibility. It is interesting to observe the shift that the original Pauline idea in which Christ is the only Head of the Church has undergone. It, in fact, has no other head but Christ the Bridegroom, while the pontiffs speak of the Roman Church as *Caput Ucclesiae*.

Moreover, Gelasius is convinced that Peter himself transfers this burden to his successors: Peter is present and lives in his successors. In this regard, Leo the Great liked to call himself: heir, the heir Peter.

For the popes of the fifth century, the bishop of Rome is the vicar of the prince of the Apostles, the visible and actual executor of his actions. The privilege of Peter continues to exist in his successor or heir. This one is the *Caput*, the *Princeps*. The concept that Peter retains *principatus* among the Apostles means

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*quos oportuit, habuerit facultatem... pro suo scilicet principatu, quem beatus Petrus apostolus Domini voce perceptum, ecclesia nihilo minus subsequente et tenuit semper, et retinet.* GELASIUS, *Ad Episcopos Dardaniae*, Ep. 13, in MANSI, 8.54.51.

<sup>73</sup> Als Gelasius diese Sät^e formulierte, konnte er auf eine ältere römische Tradition ^urück- greifen. Im Zusammenhang mit der Ausdehnung des Primats des römischen Bischofs war schon seit dem vierten Jahrhundert der *primatus iurisdictionis* besonders betont worden. Hans-Jürgen BECKER, 22.

that he has supreme power in his order<sup>74</sup>.

The Roman See is called the Apostolic See because it is the See of the living Peter, since the Vicar of Peter sits there. The expression *sedes apostolica* became very common from the second half of the 4th century and designates, rather than the Roman Church, the person of the pope himself<sup>75</sup>. Therefore, this identification between the *Apostolic See* and the person of the pope leads to the conclusion that the bishop of Rome, the pope, and not the Church understood as *Congregatio fidelium*, enjoys the privilege of insindacability in his judgments. The principle *Prima Sedes a nemine iudicatur* will, therefore, be extended only to the person of the pontiff. And this because of the identification of the Roman pontiffs with Saint Peter and the perennial presence of the Apostle in that Church.<sup>76</sup>

One can conclude, therefore, that up to Pope Gelasius the principle of the unquestionability and untouchability of papal verdicts was affirmed, but there was no explicit mention of the personal exemption of the Roman pontiff. The authority of the bishop of Rome was therefore recognized as supreme judge in major cases, so that a sentence pronounced by him could not be subject to retraction of any kind<sup>63</sup>.

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<sup>74</sup> Cf. Yves CONGAR, 24-28.

<sup>75</sup> Cf. Michele MACCARRONE, *Vicarius Christi. Storia del titolo papale*, Rome 1952, 44.

<sup>76</sup> *Ibid*, 45.

## 2. SYMMACHUS (498-514)

The tormented pontificate of Symmachus took place at a very delicate moment: a split with the East was taking place (the Acacian schism: 484-519) and in Italy an Arian king, Theodoric (493-526), whose throne had been recognized by the emperor Anastasius I (491-518) through the mediation of the senator Festus and his party. Within the Roman Church were reflected the opposing aspirations that agitated the political life of the West: the contrast between the national party and Byzantine imperialism, between ecclesiastical autonomy and civil arrogance.

The void of authority generated by the fall of the Western Roman Empire (476) was filled by the popes. We are in a period of transformation of Roman and Italian society, and the general crisis turns to the advantage of the Church of Rome. In fact, this interesting phenomenon occurs: the more the civil power dissolves, the more the Roman church acquires religious and political authority.

On the death of Pope Anastasius (498) we see a real conflict for the election to the chair of Peter. On the one hand the loyalists of Constantinople, led by the head of the senate Festus, nominated the pro-Byzantine archpriest Laurentius, on the other the opposite current, supporters of the Leonine-Gelasian papal princes, pursuing a purely Roman policy, elected the deacon Simmachus, before the consecration of Laurentius took place. King Theodoric, who owed to Festus and his party the official recognition of his sovereignty, acted with great caution: he feared the excessive pro-Byzantium tendencies, while he was not unaware that the majority of the clergy had declared themselves for Simmachus His conduct during the Laurentian schism in fact arouses perplexity.<sup>77</sup>

The double papal election of Simmachus and Lorenzo was followed by turbulence and perhaps an imposition of the senate forced the two to go personally to Ravenna, to the king's *comitatus*, to have a *iudicium aequitatis*. Theodoric - declared that he recognized the one who had been elected first and had a larger following, that is, Simmachus. The latter, having obtained the recognition

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<sup>77</sup> Cf. Ada ALESSANDRINI, *Teodorico e papa Simmaco durante lo scisma laurenziano* in *Archivio della Reale Deputazione Romana di Storia Patria* 67 (1944) 154.

On March 1, 499, he hastened to convene a synod in Saint Peter's, during which he issued a decree on papal election by which he intended to prevent a repetition of what had happened, assuring the reigning pope of a sort of right of designation in regard to his successor. In practice, any external interference in the election was excluded, as was recourse to an *iudicium of the emperor* or of the ruling king in Italy. Among the signatories of the synodal decrees, we find Lorenzo himself<sup>78</sup>, who shortly afterwards was removed from Rome by promotion to bishop of Nocera.

But the triumph of Simmachus was brief. Festus resumed the struggle and had the foresight not to deal directly with the religious disagreement between Rome and the East, but preferred to accuse Simmachus to the king of various offences, that is of having irregularly celebrated Easter on 25 March instead of 22 April, of having alienated ecclesiastical property in a non-legitimate way, and he did not exclude the infamous accusation of foul practices with women<sup>79</sup>.

Theodoric summoned Simmachus in Ravenna in front of the *comitatus regis*, and in the meantime he sent to Rome as visitor the bishop Pietro d'Altino, to guide the situation of the moment, that is *for the Easter days*<sup>80</sup> of the year 501<sup>81</sup>. The Laurentian version reports that Simmachus would have seen those women in Rimini because of whom he had been accused<sup>82</sup>. The pope, having learned - according to the Roman version - that his see had been occupied<sup>83</sup>, tried to return to Rome, where Theodoric summoned, at the behest of the senate and the clergy, a synod of Italian bishops to judge the accusations made against the pope<sup>84</sup>.

Theodoric then sent an *iussio* to the various ecclesiastical provinces of Italy. The bishops of Liguria, Venetia and Emilia, certainly not all forced by the necessity of such a pause, gathered at the court of the king, in Ravenna, to ask if their presence at the synod was really indispensable, since they were old and infirm. The king replied that the faults ascribed to the pontiff were so serious that, if found to be true, a synodal judgment was required. The bishops still insisted, saying that the king was not permitted to convene a synod, since this right pertained only to the bishop of Rome by virtue of the privileges which Christ had conferred on Peter, recognized by the councils. They further asserted that never in the history of the Church had it occurred that the bishop of Rome was judged by a synod of

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<sup>78</sup> *Acta synodorum habitarum Romae, a. CCCXCIVIII, edidit* Theodorus MOMMSEN, in *M.G.H., Aue/. An/.*, XII, Berolini 1894, 399-415.

<sup>79</sup> *Fragmentum Laurentianum, edidit* Theodorus MOMMSEN, in *M.G.H., Gest. Pont. Roman.*, I, Berolini 1898, IX, rr. 12-14.25. The abbreviation rr. indicates the corresponding line of the cited page.

<sup>80</sup> *Ibid.*, x, rr. 1.

<sup>81</sup> Cf. G. B. PICCOTTI, *1 sinodi romani nello scisma laurenzi ano*, in *Studi in onore di Gioacchino Volpe*, II, Florence 1958, 765.

<sup>82</sup> *Fragmentum Laurentianum*, IX, rr. 15-20.

<sup>83</sup> *Fiber Pontificalis, edidit* Louis DUCHESNE, I, Paris 1886, 260, rr. 10-14.

<sup>84</sup> *Fragmentum Laurentianum*, X, rr. 3-6.

bishops. Therefore the cause of Simmachus really presented itself as a novelty<sup>85</sup>.

In truth there was no lack of examples of councils convened by the emperor, but Theodoric was neither emperor nor Catholic. Instead, there was no trace of judgments pronounced by bishops on the bishop of Rome.

This difficulty was felt, perhaps, also by the king, who replied to the bishops that the pope had given, no doubt at his request, his consent to the convocation; and for this purpose he had them deliver copies of the papal letters and acts relating to the cause.

The Laurentians accused the Simmachians of making pretexts so as not to bring the pontiff to judgment: *this they openly affirmed in defense of the Roman Pontiff that by no one should he be called to judgment, even if his conduct be such, as one accuses him of* We have here the first historical affirmation of our axiom, attributed polemically to a faction. The Simmachians were in fact the first to assert verbally, and then to formulate through apocrypha, the principle that the Roman pontiff could not be judged by anyone and in any case, and this in confirmation of a supposed distant tradition of papal immunity. The apocrypha are the legible witnesses of what was then asserted and accomplished.

## 2.1. THE ROMAN SYNOD OF 501

The synod met in May and lasted until October 23, 501<sup>86</sup>. It was formally divided into two convocations and four sessions. In the first session, held in May in the basilica of Julius (S. Maria in Trastevere), the pope authorised the bishops present to proceed against him if they found him guilty, requesting however that before starting the debates all the churches and the administration of goods should be returned to him and the visitor removed.

The synod fathers petitioned the king, suspending the sessions pending a reply. Theodoric rejected Simmachus' prejudice for the possession of his property, ordered him to submit to the judgment of the synod and commanded the work to continue.

The synod was then convened for the second time during the summer, in the

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<sup>85</sup> *Memorati pontifices, quibus allegandi imminebat occasio, suggesserunt ipsum, qui dicebatur impetitus, debuisse synodum convocare, scientes, quia eius sedi primum Petri apostoli meritum vel principatus, deinde secuta iussione domini conciliorum venerandorum auctoritas singularem in ecclesiis tradidit potestatem nec ante dictae sedis antistitem minorum subiacuisset iudicio in propositione simili facile forma aliqua testaretur. Quarta synodus habita Romae Palmaris, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, Berolini 1894, 426, r. 16; 427, rr. 1-5.*

<sup>86</sup> Many historians date the synod to 501. Some, but they are few, date it to 502: among them G. B. PICCOITI, 742-786. The latter, starting from the very well documented study of Roberto CESSI, *Lo scisma lauren^iano e le origini della dottrina politica della chiesa di Roma*, in *Archivio della Reale Società Romana di Storia Patria* 42 (1919) 5-229, distances himself from it by affirming that the synod is to be placed in 502, in so far as that of 6 November 502 is very close in its problems to the synod of 23 October.

basilica of S. Croce in Gerusalemme near the Sessorian palace. The friends of Simmachus were agitating to prevent the judgment: they argued that the pope should not be subjected to interrogation and that King Theodoric had entrusted the matter to them as a new cause<sup>87</sup>. They also appealed to civil and ecclesiastical laws to prevent their opponents from calling the pope's servants to testify as to his conduct. While the synodists were debating what to do, the pope decided to appear freely at the synod. But on his way to the second session he was attacked by the partisans of Festus, who killed some of his retinue. Simmachus then returned to his refuge in St. Peter's and made it known that he would not present himself again.

After the attempt on the pope, the synods interrupted work again because they were no longer able to continue. An echo of these events seems to be the apologetic pamphlet sent by Simmachus to the emperor Anastasius with replies to various objections. To a first imperial objection the pope replies: *Among a shower of stones he escaped unharmed: God has judged*<sup>88</sup>. He thus affirms that he had suffered the judgment of God, which was in his favor, and through metaphor reaffirms his doctrine that the legitimacy of his powers descends directly from God. In this letter Simmachus upholds the full equality of the two dignities, imperial and papal, in equal degree subordinate to the divine mind. These authorities develop in an autonomous sphere without opposing each other. How could Anastasius claim to set himself up as accuser because of his quality of emperor and judge?<sup>89</sup> The pontiff claims and defends the supreme right of his dignity, by virtue of which the pope's word is sovereign.

On 27 August Theodoric sent a new *praeceptio* in which he reminded the bishops that he had convoked the council at the request of the senate and the clergy in order to judge the accusations against the pope. He also emphasized that he had entrusted to the synod the right to give sentence of acquittal or condemnation according to justice, issuing, that is, a subjective judgment, not based on positive law. The lack of a law, by which a pope could be judged, was thus implicitly - admitted. Theodoric finally called for a judgement for the good of the Church and for peace in the city of Rome, giving therefore the faculty to interrogate any person from whom the truth could be drawn.

There is here, perhaps, a clear reference to the question of the interrogation of slaves, which he accepted against the laws of Roman law. That if then the synod wished to settle the question without discussion, it certainly did so, so long as it

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<sup>87</sup> *Unum quia dicebant crimina memorati superius Symmachi papae apud [sic] regiam constitisse - notitiam; quod falsum esse clariuit: non enim quasi novam causam audientiae commisisset, si eius conscientia convictum de errore solam sciret expectare sententiam. Quarta synodus habita Romae Palmaris, 428, rr. 14-17.*

<sup>88</sup> *Apologetica adversus Anastasii Imperatoris libellum famosum, in MANSI, 8, 214.*

<sup>89</sup> *Quid facies, imperator, in divino iudicio? An quia imperator es nullum Dei putas esse iudicium? Taceo quod imperatorem accusatorem esse non conveniat. Postremo iisdem divinis humanisque legibus nemo possit esse accusator et iudex. Ibid, 214.*

rendered peace to the clergy, the senate, and the city of Rome<sup>90</sup>.

The bishops met on September 1, but uncertain what to do, since the pope categorically refused to appear before the synod. The matter was really unusual: Simmachus could not be accused of contumacy because he had been present in the previous sessions, nor could he be subject to the authority of the synod since the appeals of all the bishops belonged only to the pope, according to the canons<sup>91</sup>.

On the one hand they acknowledged the sovereign authority of the papacy, and confessed their incompetence to judge the pope, but on the other they knew that they had received from the king the power to do so. Therefore they decided to refer the case to the king. They wrote that it was unheard of and unprecedented that the pontiff of that see should be summoned and questioned in judgment, and that never before had such a trial occurred. The synod fathers, thus declaring the synod incompetent, denied to the synod itself the right to exercise the functions of a judging assembly.

But Theodoric insisted on the first of October with a new and final *praeceptio* to the whole synod, in which he declared he was surprised that he had been asked for advice: if he had wanted, he could have pronounced the judgment in the royal council, but since the cause concerned God and the clergy, who together with the senate had asked for the council, he had thought it right to entrust the judgment on the pontiff to the bishops<sup>92</sup>. The king stressed that it was not a matter of juridical incompetence on his part, but of delicacy and personal freedom that enabled him to gain greater consensus and support in the peninsula, an attitude that we can interpret as an obvious political tactic. So, if the bishops didn't want to discuss the cause, let them conclude in any way, without fear of him, but only of God, to whom they had to account. He would approve the decision, provided they restored peace. But if they did not achieve such a goal they would be deemed partisans of either side<sup>93</sup>. Theodoric argued that it would be better to argue the case so as not to give the priests occasion for negative behaviour. From this we infer that he wanted the pope to be judged.

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<sup>90</sup> *Praeceptio regis IIII missa ad Synodum, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, 421, rr. 23-26.*

<sup>91</sup> *Quia nobis quod possumus facere non remansit, nec invitum ad disceptationem nostram adducere possumus, quoniam ipsi per canones appellationes omnium episcoporum commissae sunt, et cum ipse appellat, quid erit faciendum? Nec in absentem valemus ferre sententiam nec contumacis loco deputare, qui se indicibus bis occurrisse proclamat, maxime quia causa nova est et pontificem sedis istius apud nos audiri nullo constat exemplo. Relatio episcoporum ad regem, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, 423, rr. 8-13.*

<sup>92</sup> *Causam quae agitur si mihi visum fuisset aut iustitiam habuisset, ut ego debuissim audire, cum proceribus palatii mei potueram tractare et indicare, quomodo et deo placuisset et posteritati ingratum non fuisset. Sed quia causa est dei et clericorum, ideoque modo ad petitionem senatus vel cleri feci ex diversis civitatibus convenire antistites. Anagnosticum regis, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., XII, Berolini, 1984, 425, rr. 2-7.*

<sup>93</sup> *Si vero vobis visum fuerit, sine discussione causam finite: aut discussa aut indiscussa quemadmodum visum vobis fuerit indicate. Meam personam nolite metuere, reddaturi rationem ante conspectum dei: tantum est, ut senatum, clerum et populum pacificum dimittatis et quod indicaveritis, scribatis. Ibid, 425, rr. 9-12.*

On October 23, 501 the fourth and final session of the synod took place, which in the acts is designated by the epithet *Palmare*<sup>TM</sup>.

It should be noted that, from the first synodal session, only the bishops were present. This was against the Roman custom, which provided for the presence of presbyters and deacons in synods, but reveals at the same time that the pope was considered undoubtedly superior to them, who as subjects could not take part in the judgment on the pope, unlike the bishops, who were considered equal to the pope.

The Laurentian dissidents did not take part in this session because they wanted the procedure to be respected and a regular sentence pronounced. The majority of the synod, on the other hand, affirmed that, by referring the cause to divine judgment, it was not intended to set priests on the road to error, but rather to recall them. They urged that the members of the Church should not be dispersed, and emphasized the authority of the apostolic see and the primacy of the bishop upon whom the privileges of Peter were poured. Appealing also to Holy Scripture, all were invited to recognize themselves as sinners and to open themselves to forgiveness and fraternal charity. And if this discourse was addressed to all Christians, all the more was it to be applied to the successor of Peter, heir to his privileges<sup>94</sup>.

The Simmachian party triumphed, and concluded, not with a sentence, but with a declaration, dismissing the charge against Simmachus because he was holder of the Apostolic See, which stands above all these malcontents. Simmachus was thus committed to the tribunal of God<sup>95</sup> and it was omitted to examine his accusation. By thus remitting the sentence to the Supreme Judge, the bishops shirked the duty of pronouncing it, and as the divine judgment could not be given until after death, in waiting Simmachus remained the legitimate pope. The synod pronounced no verdict, but only a recognition of the legitimate pontifical dignity, and declared the pontiff to be *immune, free, and without any obligation of the Christian people on the charges*. It therefore exhorted all the faithful to re-enter into communion with Simmachus, not forgetting that God is the God of peace, and therefore, those who did not accept the synodal decision had to account for it to God<sup>96</sup>.

The behavior of Theodoric had also indirectly contributed to this synodal

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<sup>94</sup> *Maxime cum illa quae praemisimus inter alia de auctoritate sedis obstarent, quia quod possessor eius quondam beatus Petrus meruit. Quarta synodus habita Romae Palmaris, 430, rr. 19-20.*

<sup>95</sup> *Symmachus papa sedis apostolicae praesul ab huiusmodi propositionibus inpetitus quantum ad homines respicit, quia totum causum causis obsistentibus superius designatis constat arbitrio divino fuisse dimissum. Ibid, 431, rr. 11-13.*

<sup>96</sup> *Sit immunis, et liber et Christianae plebi sine aliqua de obiectis obligatione in omnibus ecclesiis suis ad ius sedis suae pertinentibus tradat divina mysteria, quia eum ab inpugnatorum suorum petitione propter superius designatas causas obligari non potuisse cognovimus. Unde secundum principalia praecepta, quae nostrae hoc tribuunt potestati, ei quidquid de ecclesiasticis intra sacram urbem Romam vel foris iuris est, reformamus: totam causam dei iudicio reservantes universos hortamur, ut sacram communionem, sicut res postulat, ab eo percipiant et dei et animarum suarum meminerint, quia ipse et amator pacis est et ipse pax est. Ibidem, 431, rr. 13-21.*

conclusion, who, with his theory of non-intervention, left greater freedom to the Roman episcopate.

The affair of Pope Symmachus shows that the bishops were very strict in the observance of both civil and ecclesiastical laws. From the time of the convocation of the synod they doubted whether the king had the right of convocation, a prerogative this being reserved to the pope; and during the synod proceedings, they appealed to all existing laws in order not to pronounce a judicial sentence against the pope. The difficulty arose from the fact that the cause was entirely new, and history furnished no example which might enlighten them as to the manner of proceeding. The pope is the superior who cannot be judged by inferiors; on him are poured the same privileges which Christ wished to impart to the apostle Peter. The synodal assembly therefore refused to be a judging body, declaring itself lacking the appropriate competence and authority: it was the official recognition that Simmachus - that is, the pope - was superior to the synod and to Theodoric himself. The pontiff of Rome, as institutionally superior to any authority, could not be judged by anyone, whatever the accusation made by his adversaries.

This synod, like the others celebrated during the pontificate of Symmachus, remains a milestone on the road to the complete affirmation of papal power<sup>97</sup>.

## 2.2. ENODIUS (474ca.-521) AND AVITUS (450-525)

Theodoric wanted, with the synod of 501, to restore peace within the city of Rome, but his wish could not be fulfilled. He did not fail to abide by the decisions of the assembly, whose legality he always acknowledged, but the Laurentian schism persisted and was effectively extinguished, not after the celebration of the Symmachian synods (October 23, 501 and November 6, 502) nor after the withdrawal of Laurence (506), but only after the death of Pope Symmachus (514)<sup>98</sup>.

The Laurentians protested that the acts of the synod were null and void and insinuated to the king the reasons for the official and legal recognition of their exponent Lorenzo, while the Simmachians defended the deliberations emanating from the synod of 501. So the struggle was rekindled, which was not stopped even by bloodshed. Both factions once again faced each other with great violence, and force was not the only means used.

Seeing violent means insufficient, they resorted to other means. There were conflicts of the pen, a close verbal combat. The struggle moved on two distinct

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<sup>97</sup> Cf. G. B. Picconi, 785-786.

<sup>98</sup> Only the death of Simmachus opened the way to reconciliation, greeted with good wishes by Cassiodorus in the year of his consulate: *Me etiam consule in vestrorum laude temporum adunato clero vel populo Romanae ecclesiae rediit optata concordia*. CASSIODORUS SENATOR, *Chronica*, ad. A. DXIX, edidit Theodorus MOMMSEN, in M.G.H., *Auct. Ant.*, XI, Berolini 1894, 160. This is also attested by the *Fragmentum Laurentianum: Pro quibus rebus usque ad finem vitae eius ecclesia Romana in schismate perduravit*. *Fragmentum Laurentianum*, X, rr. 45-46.

levels and involved people of different culture and social extraction. The first level included the publication and

distribution of pamphlets addressed to the educated classes. A second plan was constituted by the distribution of a multiplicity of flying leaflets, the recipients of which were instead the popular classes. The synod had just ended when an anonymous Laurentian published a violent pamphlet *against the synod and the improper absolution*<sup>99</sup>. In opposition to it, Enodius<sup>100</sup>, then deacon of the church of Milan and very close to pope Simmachus, hastened to write an apologetic work: *Libellus in favour of the synod*. Ennodius has been called for his many reports and services to popes Simmachus (498-514) and Ormisda (514-523) a *factor in history*<sup>TM</sup>.

We want, here again, to draw attention to the testimony of a letter that Avitus III, bishop of Vienne, on behalf of the Gallic episcopate, wrote to the senators Faustus and Simmachus<sup>101</sup>, as a fragment of ecclesial memory on the idea of the unjustifiability of the pope. It is not a pamphlet, but a letter-monitory.

#### A) Ennio

Enodius, drafting the refutation of the opposing pamphlet against the legality of the synod follows the chronology<sup>102</sup> and the statements of the Laurentian anonymous, sentence by sentence, to neutralize the accusations against him. His writing is valuable from the historical point of view, but he did not pronounce himself for the absolute innocence of Simmachus: the question remains unresolved<sup>103</sup>. In fact, it is not easy to admit that the Laurentians have invented everything. The *Liber Pontificalis*, in the Laurentian version, mentions the

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<sup>99</sup> We do not possess the text of Laurentius' pamphlet. Its contents can be reconstructed through direct quotations made by Enodius in his pamphlet, in which he refutes sentence by sentence the accusations against him. Enodius himself quotes the title of the booklet from the Laurentian synonym: *Adversus synodum absolutionis incongruae*. MAGNUS FELIX ENNODIUS, *Eibellus pro synodo, edidit* Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 49, r. 39.

<sup>100</sup> Enodius, a cleric and bishop in Milan and Pavia, two of the focal points of the geography and ecclesiastical hierarchy of his time, negotiator with pontiffs, friend and favorite of princes and kings, lived (474ca.-521) as in the watershed between the ancient and medieval worlds, witnessing the most critical moment of the transition from one civilization to the other. It is his undeniable merit to have been - with Avitus, Apollinaris Sidonius, Cassiodorus, Boethius - one of the last Latin writers who attempted to prolong, in the very sense of barbarism, the presence of classical letters. Cf. Leandro NAVARRA, *Le componenti letterarie e concettuali delle Dictiones di Ennodio*, in *Augustinianum* 3 (1972) 465-478.

<sup>101</sup> Faustus was a close friend of Ennodius, while Simmachus was the father-in-law of Boethius.

<sup>102</sup> Enodius' pamphlet has many points of reference, so many similarities, even textual, with the episcopal report, sent by the synodal members to King Theodoric, and with the verbal decree of the Palmar synod, as to suggest that he had also been charged with drafting the acts of the synod. Cf. G. B. PICCOTTI, 754 note 2.

<sup>103</sup> Cf. Leandro NAVARRA, 335.

corruption exercised with money both in the election of the pope and subsequently<sup>104</sup>. We find confirmation of this in two letters of Enodius himself<sup>105</sup>. But the same accusation was launched, according to the testimony of Theodore the Reader<sup>106</sup>, against Lorenzo.

A careful reading of the booklet reveals two key theses of historical importance: the primacy of the Roman Pontiff and his unjustification by men. The statements are intimately linked and refer to each other. Enodius clearly and categorically upholds the right of the Apostolic See to intervene in provincial synods and *causae maiores*: *Read, O you madmen... can these councils issue decrees on anything without first having been submitted to the supreme Apostolic See for approval? And if it ever happens that it is a question of those causes which are called major, is it not true that the decision has been reserved to the judge of the same See? In this regard it is written: If any bishop has been deposed in a provincial council, let him appeal, if it pleases him, to the Roman Pontiff, who, if he finds it expedient, will change the sentence in favor of the one who has been condemned*<sup>107</sup>.

A theme very dear to Enodius is the concept of the sanctity and impeccability of the pope. This idea places the Roman pontiff even more in a particularly privileged situation, that does not allow his conduct to be questioned. The pope is holy because he is the heir of Peter and a sharer in the holiness of the apostle: *We do not hold that St. Peter and his successors, with the privileges of the first See have also received from the Lord the freedom to sin. He (St. Peter) transmitted to*

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<sup>104</sup> *Tunc conunguntur utrique, Symmachus scilicet et Laurentius, regium subituri iudicium petere comitatum. Ibi Symmachus multis pecuniis optinet; Laurentius ad gubernandam ecclesiam Nuceriam, Campaniae civitatem plurimis coactus minis promissionibusque dirigitur... Accusatur (Symmachus) etiam ab universo clero Romano, quod contra decretum a suis decessoribus observatum ecclesiastica dilapidasset praedia et per hoc anathematis se vinculis inretisset. Fragmentum Laurentiana, IX, rr. 8-12. 24-25. X, r. 1.*

<sup>105</sup> In a letter, to Luminoso, he speaks of a certain sum given as a loan to the pope by the bishop of Milan behind his vassal and distributed in Ravenna to important personages whom for prudence he does not name; he therefore begs his friend to intervene for restitution: *Certis enim potentibus, quorum nomina tutum non est scripto signari, novit dominus, quia plus quam quadringentos auri solidos erogavit.* MAGNUS FELIX ENNODIUS, *Luminoso*, Ep. 3,10, *edidit* Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 83, rr. 21-22. In the second letter he returns with Luminoso on the matter of the money lent for the propaganda of Simmaco, and, again begs him to get him out of the jam: *Meminit amplitudo vestra quae de expensis, quae apud Ravennam episcopus meus fecerat, me ei redhibitionem promittente, pro sedis apostolicae utilitate, vobiscum fuerit conlocutus.* MAGNUS FELIX ENNODIUS, *Luminoso*, Ep. 6:16, *edidit* Fridericus VOGEL, in *M.G.H., Auct. Ant.*, VII, Berolini 1961, 223, rr. 11-13.

<sup>106</sup> Theodore Reader is so nicknamed because of his function as a reader in the church of St. Sophia in Constantinople: he lived in the sixth century. He wrote a tripartite ecclesiastical history, which ran from Constantine the Great to 518 and was highly prized because it condensed the ecclesiastical histories of Socrates, Sozomenus and Theodoret. From this work, now lost, excerpts are preserved, of which the one that narrates the events from Theodosius II to Justin I (518-527) has the character of authenticity. THEODORUS LECTOR, *Excerpta ex Ecclesiastica Historia*, Lib. II, ch. 17, in *PG*, 86, 192.

<sup>107</sup> *Legite, insanissimi, aliquando in illis praeter apostolici apicis sanctionem aliquid constitu-*

*his successors by the inheritance of innocence the perennial dowry of his merits, and that which was granted to him because of the exemplary nature of his anions, pertains also to him, whose equal freedom of conduct he illustrates. Who, indeed, will ever doubt that he who is raised so high by such elevation is not to be a saint? And who, if his personal merits were to fail, would clothe himself with those lent him by those who preceded him in that office? God either raises to such sublimity men already illustrious, or enlightens those who are elevated to it. For He knows well and in advance who is fit to serve as the foundation of the Church, on which to rest its very bulk<sup>^</sup>.*

This thesis further motivates the principle of the unjustifiability of the bishop of Rome: who, in fact, will dare judge him who is already holy? He stands so high, compared to other men, that no one will ever be able to reach him, nor will ever be able to injure his dignity. His position elevates him not only from the ordinary level of Christians, but also from the ecclesial level. No patriarch, no bishop can be compared in greatness and authority to the Bishop of Rome.

The Laurentians persisted in their contrary arguments, pointing to the example of Samuel, who for his own conduct had appealed to the judgment of the people, and to that of Athanasius, bishop of Alexandria, who had consented to have the unjust calumnies of his adversaries examined. But Enodius replied that, in the former case, there was no question of a judgment; nay, the superiority of the priest declaring his innocence before the people by appealing to the judgment of

*tum, et non de maioribus negotiis, ad conlationem si quid occurrit, praefatae sedis arbitrio fuisse servatum. Sic enim habes: "Si quis episcoporum iudicio provinciali depositus fuerit, Romanum papam, si placet, rursus appellet, et ipse, si videtur, reparet iudicia in opitulatione dammati". Libellus pro synodo, 60, rr. 9-13. Here Canon 3 of the Council of Sardica (342-343) is cited.*

<sup>38</sup> *Non nos beatum Petrum, sicut dicitis, a domino cum sedis privilegii vel successores eius peccandi indicamus licentiam suscepisse. Ille perennem meritorum dotem cum bereditate innocentiae misit ad posteros. Quod illi concessum est pro actu luce, ad illos pertinet quos par conversationis splendor inluminat. Quis enim sanctum esse dubitet, quem apex tantae dignitatis adtollit, in quo si desint bona adquisita per meritum, sufficiunt quae a loci decessore praestantur? Aut enim claros ad haec fastigia erigit aut qui eriguntur inlustrat. Praenoscit enim quid ecclesiarum fundamento sit habile, super quem ipsa moles innititur. Ibid, 52, rr. 13-21.*

God<sup>108</sup>. In reference then to the fact of Athanasius, there was not even comparison with the bishop of Rome<sup>109</sup>.

Concerning the question of the judgment on the pope Enodius states: *by its specialty the cause is superior to the competence of the one called to judge. The synod, rather than its own integrity, had been concerned - in the case of*

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<sup>108</sup> *en\*em Samuel dixit? Scire dominum, quod nullius unquam substantiam, nullius pecus abegisset, adversatum se muneribus... postremum sub divina adtestatione patefecit innocentiam, ne humanum subiret examen. Ibid, 55, rr. 17-21.*

<sup>109</sup> *Quamvis beatum Athanasium Romano antistiti, quantum nosse datur, inparem locus ostendat. Ibid. 55, rr. 30-31.*

Simmachus - *with the dignity of the pope offended as he went to the session*<sup>110</sup>. The Simmachians had protested against the decision of King Theodoric who, at the request of Festus and Probinus, had given the Roman Church the visitor Peter, bishop of Altina. But the Laurentians replied that the pope had also sent visitors to the other Churches, so it was right that he should submit to the law that he himself had established. At this point Enodius replied: *A legislator, if he does not wish it, is not included within the limits of the law he has made: even a prince, if he voluntarily does not submit to a law because of the high position he occupies, cannot be sued for having broken in himself what he has decreed for others. There is a law of probity, internal and spiritual, which punishes the transgressor and leads him to the moral life, without his (self) discipline coming from mere external necessity. Let it be admitted that God willed that the causes of other men should be brought to an end by meZP of men, but no doubt, He willed to reserve for His judgment the prelate of this see. That is, he willed that the successors of blessed Peter to heaven should only render an account of the innocence and present to the investigation of the most subtle auditor a renewed conscience. Do not think that these souls, whom God, in preference to all the others, wanted to reserve for His judgment, have no fear of inquisition. Before the judge the splendour of his office will not be useful to the offender when the facts themselves become (almost) witnesses and judges. Perhaps it will be said that in the judgment the condition of all will be such. I will answer thee: to one only it has been said: "Thou art Peter, and upon this rock I will build my Church; whatsoever thou shalt loose on earth shall also be loosed in heaven. I will also tell you that by the word of the holy pontiffs the dignity of this See has become venerable throughout the whole world; in every part of it, wherever there is a believer, he is subject to it because it has been established as the head of the whole body. Of her, I think the prophet wrote: "If this one is humbled, to whom will you turn for help, and where will you go to put your greatness? (Is 10:3)"<sup>111</sup>.*

The exaltation and defense of a person, an ideology or a political line is

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<sup>110</sup> *Non habebat synodus firmitatem: transibat negotii qualitas audituros et plus adhuc remanserat in reverentia pulsati, quam esset in nostri integritate collegii. Ibidem, 59, rr. 33-35. In Enodius the verb *audire* also stands for to judge.*

<sup>111</sup> *Dico tamen, latorem juris definitionis suae, nisi velit, terminis non includi, et nisi princeps fastigii summa moderetur, frustra ad illud quod dederit ius vocatur. Lex probitatis et mentis est, quae hominem viventem sine lege castigat. Proprie moribus inpendit, qui necessitati non debet disciplinam. Aliorum forte hominum causas deus voluerit per homines terminare, sed istius praesulium [sic] suo sine quaestione reservavit arbitrio. Voluit beati Petri apostoli successores caelo tantum debere innocentiam et subtilissimi discussoris indagini inviolatam exhibere conscientiam. Nolite aestimare eas animas de inquisitoribus non habere formidinem, quas deus praeceteris suo reservavit examini. Non habet apud illum reus de allegationis nitore subsidium, quando ipso factorum utitur teste quo iudice. Dicis forsitan: "Omnium animarum talis erit in illa disceptatione condicio". Replacabo uni dictum: "Tu es Petrus, et super hanc petram aedificabo ecclesiam meam, et quaecumque solveris super terram, erunt soluta et in caelo", et rursus sanctorum voce pontificum dignitatem sedis eius factam toto orbe venerabilem, dum illi quicquid fidelium est ubique submittitur, dum totius corporis caput esse designatur, de qua mihi videtur dictum per prophetam: "Si haec humiliatur, ad cuius fugietis auxilium, et ubi relinquitis gloriam vestram?" (Is 10:3). Ibid, 61, rr. 32-41; 62, rr. 1-7.*

proper to the apologetic genre. Enodius in fact defends the work of the Palmar synod and exalts the See of Peter and the one who legitimately holds it. He defines the pope as the guardian of ecclesiastical discipline, great king of pastors, head of the whole body, foundation of the Church and vicar of Peter; and he addresses these titles to the Roman Church: rock of the Churches, mother-chair of the episcopate and the priesthood, head of the whole body. These attributes, referring to the bishop of Rome and to his See express and define his special position within the whole ecclesial body. The role of the Church of Rome, by virtue of the Petrine privileges that pertain only to its bishop, is irreplaceable and incomparable.

The pontiff of the Roman Church, as the vicar of Peter, has received the power of the keys. The formula *bind-tie* expresses the absolute authority that Christ has placed in the hands of Peter: this means that He institutes him as His representative. The idea of Peter as the foundation stone of the Church expresses the same truth: Peter has received the power to be Christ's substitute and representative in the Church. Now what is said of Peter refers equally to his successors in time. According to the theological vision of Enodius, this is what the superiority of the apostolic see consists in: the pope has transcendent authority and the right to exercise it with the same capacity and authority conferred on the apostle by Jesus Christ. From this principle derive not only the claims of papal authority before the whole Church, but also the spread of the doctrine of the pope's personal unjusticiability.

The authority of Simmachus is sovereign. He is the source and guardian of ecclesiastical discipline, and as lawgiver he stands above the law; therefore, who can ever judge him? By virtue of what law? The pope is not bound to observe the laws and decrees which he himself has enacted; if he wishes, he can only observe them in moral and spiritual terms, never in juridical terms and on the basis of a coercive law. Indeed, he is exempt from any coercive force of law. Ultimately, the Roman Pontiff cannot be judged by anyone. He is the lord and master of all ecclesial reality: to subject the servant to the master and the disciple to the master is of great benefit to the Church. The unity of the Church is safeguarded only if the pope is not challenged. Spiritual solidarity is essential and communion with the Bishop of Rome is a bond of unity and a guarantee for the future of the ecclesial body.

The booklet of Enodius is the first among the documents examined to affirm with rigor the principle of the personal unjusticiability of the Roman pontiff. But a consideration imposes itself as to the substance and the theological foundation underlying the axiom *Prima Sedes a nemine iudicatur*: the Simmachian apocrypha, of which we shall speak later, sins of vacuity in proving at all costs that Simmachus could not be judged by anyone. The theological thought is very poor, even insignificant, though it influenced not a little later theological thought. Far more important than these, in value and prestige, was the booklet of Enodius, which, as we have said, emerged from the affair of Simmachus and the conclusion of the Palmar council, that is, from an openly apologetic and controversial context.

From the accidental and transitory considerations made by the deacon of Milan, consequences were later drawn for the orientation and life of the whole Church. The principle *Prima Sedes a nemine iudicatur* is the fruit of an individual and personal thought of the Milanese cleric that however took on so much importance because it was in contrast with the events of the time (the tension between the Laurentian faction and the pro-Byzantine party). Particularly significant is Enodius' continuous manipulation of civil and canonical juridical norms, of moral and spiritual principles in a merely ironic and controversial sense. Enodius, an uninhibited manipulator to his own use and consumption of canons and religious and spiritual principles, is the product of a political and religious situation in which diatribe reigns. In this climate, the booklet is a conspicuous manifestation of the inability to impose one's thesis and one's thought on one's adversaries. The author of the pamphlet, an exponent of an ecclesiastical circle, is intolerant, because he does not accept the ideas and principles of others and, even more, he is unable to involve and amalgamate his own thesis with the interests and thought of his opponents. This incapacity seems to emerge, and often with bitter awareness, in his own witticisms, in the incomprehensible allusions and ironies, in that same Latin of his, sometimes closed, difficult, so terribly twisted, full of sayings and proverbs. Undoubtedly, the pamphlet is the expression of a climate of tension and animosity, the result of two enemy parties having conflicting opinions and interests. The apologetic tone and the controversial spirit exacerbate, alter feelings and exasperate the terms of the theological debate. Only those who shout the loudest and support the most conspicuous ideas and principles, which can attract exaggerated attention, assert themselves and impose themselves. The principle of the unjustifiability and personal immunity of the Roman Pontiff thus arises not in a climate of serene and mature theological reflection, but in a highly polemical context, the terms of which should be much reduced.

As for its doctrine, the apologetic pamphlet later had a leading value in theological thought; to the point that it was wanted to be unanimously approved by a council and to have not only the force of law, like the same synodal conclusions, but also the same authority of a council. Thus it was said that the booklet had been the subject and document of an alleged council, the fifth council, apocryphal, the celebration of which was attributed to Simmachus himself, dating it to 504 or perhaps even earlier<sup>112</sup>. It is a forgery not earlier than the ninth century<sup>113</sup>.

The pamphlet in fact has only the value of a private writing and cannot be considered a document of a council. The work was highly valued by Pseudo-Isidore and was of great importance in the ninth and tenth centuries. It was

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<sup>112</sup> Cf. Winfrid von POLNITZ, *A propos des synodes apocryphes du pape Symmache. Les prétendus évêchés de Linternum et de Gravisca*, in *Revue d'Histoire Ecclésiastique* 32 (1936) 81-88.

<sup>113</sup> Cf. Antonio POMA, *Injudicability and pontifical sanctity in some ancient documents*, (Dissertazione Gregoriana), Rome 1936, 33-40.

diligently read and recorded in the catalogues and codices of the ancient libraries<sup>114</sup>. The canonical literature of the eleventh and twelfth centuries quotes and recalls it punctually. It continues, however, to be identified with the *fifth council of Symmachus*.

#### B) Avito

Simmachus also enjoyed a great consensus outside Rome and in more distant lands; his doctrine and his way of conceiving the role of the bishop of Rome spread rapidly. The bishops of Gaul expressed their adhesion to his person and his theory through their most distinguished representative: the bishop of Vienne, Avitus. The latter, in an official letter-monitory, addressed the senators Faustus and Simmachus, manifesting his disapproval of the accusations made against the pontiff by a secular authority (Theodoric was an Arian), and praised the council that, recognizing its own illegal temerity, had refused to pronounce judgment on the pontiff, entrusting the cause to divine justice.

Avitus hoped that the bishops of Gaul might also go personally to Rome, to perform their religious and civil duties there; or that at least the historical situation might permit the gathering in council of the bishops of Gaul. In that case the assize would have conveyed an exact report of their thoughts concerning the Roman cause. But since the division of that province into various kingdoms prevented this from being done, he begged the senate not to be annoyed by the letter he was sending, nor to consider it the expression of the feelings of one person alone: "*For I was deputed to this task by voice and letter by all my brethren of Gaul, from whom I received the mandate to make known to you alone what we all urgently request of you. Anxious, and exceedingly anxious we are on this cause of the Roman Church, since we feel that the position, our state is attacked when the supreme head is attacked, and the same cause, without the ill-will of the multitude, would have affected us all if the conditon of the Head had been shaken*"<sup>115</sup>. Avitus communicates how the bishops of Gaul had learned the news of the conclusion of the Palmar Council: *To our solicitude has been transmitted from Italy, in several copies, the formula of the synodal decree issued around Pope Symmachus by the bishops of Italy, assembled in Rome. Concerning this decree, though worthy of respect because it was made by so numerous and venerable a council, we think that, as the holy pope Simmachus was accused by the worldlings, he ought to expect from his brethren in the priesthood comforts, not judgment. Since the*

<sup>114</sup> Cf. Fridericus VOGEL, *De vita et scriptis Ennodii*, in Berolini 1961, XXVII ff.

*Auct. Ant.*, VII,

<sup>115</sup> *Quoniam a cunctis Gallicanis fratribus meis ad hoc ipsum non minus per mandata quam per literas oneratus, quaecumque a vobis omnes ambimus, unus suggerenda suscepi. Dum de causa Romanae ecclesiae anxii nimis ac trepidi essemus, utpote nutare statum nostrum in lacesito vertice sentientes; quos omnes una criminatio utique sine invidia multitudinis percusserat, si statum principis obruisset. AVITUS EPISCOPUS VIENNENSIS, Epistola ad Senatores Urbis Romae, in MANSI, 8, 293.*

heavenly Arbiter wants us to be subject to earthly powers, preaching that for any accusation we must appear before kings or princes, we cannot then easily understand on what ground and under what law the superior can be judged by the inferior. And if the Apostle proclaims that no accusation should be brought against a priest (1 Tim. 5:19), how can it be believed that this is permitted when, it is a question of accusations against the Primate of the universal church?<sup>41</sup> .

The bishop of Vienne confesses his respect for the Palmian council, but is intransigent in saying that the council ought not even to have discussed the faults of Simmachus: *Putting this in mind, the venerable council by a praiseworthy constitution decreed that the cause taken by him almost recklessly under consideration, let it be said this without disrespect, should rather be reserved to the judgment of God; mentioning, however, briefly, how neither to him nor to the most glorious king Theodoric had been presented any proof of the objected faults of the pope*<sup>116</sup> .

Avitus continues: *Having considered this, both as a Roman senator and as a Christian bishop, I beseech you ... to have no less at heart the condition of the Church than that of the State, and to act in such a way that the power granted you by God may be of benefit to us as well. Love in your Church the See of Peter which is in your city, the capital of the world. If you ponder the matter with the usual depth of your judgment, you will see that it is not simply a local cause. In fact in the other bishops one can reform something that falters, but if one challenges the bishop of Rome, who is the pope, one will see the whole episcopate falter*<sup>117</sup> .

Avitus defines the See of Rome as the apex of the world and its bishop as prince of the universal Church, governor, master, the most eminent person, the shepherd of the flock, he who presides over the fold of the Lord. The pope is the foundation of the episcopate, to criticize his person is to shake the entire episcopate, to make an attempt on his life is to compromise the life of the entire flock. He is the helmsman of the ship that is the Church; the ship cannot follow his course if the oarsmen set themselves against him or even hurl themselves against him<sup>118</sup> . The life and integrity of the whole Church depend on the integrity of the

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<sup>116</sup> *Quod synodus ipsa venerabilis laudabili constitutione prospiciens, causam quam (quod salva ejus reverentia dictum sit) pene temere suscepit inquirendam, divino potius servavit examini: perstringens tamen, prout breviter potuit, nihil vel sibi, vel gloriosissimo viro Theuderico regi, de his quae papae dicebantur objecta patuisse. Ibid., 294.*

<sup>117</sup> *Quibus cognitis, quasi senator ipse Romanus, quasi Christianus episcopus obtestor... ut in conspectu vestro non sit ecclesiae minor, quam reipublicae status; quodque vobis Deus posse praestitit, prosit et nobis: nec minus diligatis in ecclesia vestra sedem Petri, quam in civitate apicem mundi. Si profundo illo tractatus vestri concilio rem videtis, non ea tantummodo quae Romanae geritur causa cogitanda est. In sacerdotibus ceteris potest, si quid forte nutaverit, reformari: at si papa urbis vocatur in dubium, episcopatus jam videbitur non episcopus vacillare. AVITUS EPISCOPUS VIENNENSIS, Epistola ad Senatores Urbis Romae, in MANSI, 8, 294.*

<sup>118</sup> *Nostis bene inter quas haeresum tempestates, veluti ventis circumflantibus, fidei puppem ducamus. Si nobiscum hujusmodi pericula formidatis, expedit ut gubernatorem vestrum participato labore tueamini: alias autem quae ratio est, si nautis in magistrum furentibus non sine illorum periculo cedatur isto discrimine? Reddet rationem qui ovili dominico praeest, qua commissam sibi agnorum curam administratione dispenses: ceterum non est gregis pastorem proprium terere, sed judicis. Ibid. 294-295.*

Bishop of Rome. The latter cannot be judged; he stands on the same level as earthly rulers. There is no law that allows an inferior to judge his superior. Moreover, according to the apostle Paul, if it is forbidden to accuse a priest, how much more must this precept be applied to the prince of the universal Church. The pope is not obliged to give an account of his actions to his subjects; he is the shepherd of the sheep and must give an account only to God, the Supreme Judge. The image of the shepherd clearly expresses the idea of the sovereign power which Christ conferred on Peter and which he transmitted to his successors.

### 2.3. THE SIMMACHIAN APOCRYPHA

While the Laurentians were furiously stirring up riots and violence in the city of Rome, the Simmachians on the other hand, better prepared and organized, were dominating the struggle with principles. They were compiling a series of forgeries in support of their predominant thesis: *Prima Sedes a nemine iudicatur*. This literary production is of little stylistic value, but it is no less important than the book of Enodius and the letter-monitum of Avitus in helping us understand the ideology then in vogue. It consisted of a series of pamphlets, known as Simmachian apocrypha, which certain circles ascribed to the Roman pontiff. In them alleged cases of popes of the fourth and fifth centuries were evoked to justify Simmachus and the Palmar Council. They are pseudo-historical narratives, in which the events of Pope Simmachus left a certain echo.

Already before the compilation of these forgeries, which coined the axiom *Prima Sedes a nemine iudicatur*<sup>119</sup> Pope Gelasius had investigated ancient convictions about the juridical authority of the Church of Rome<sup>119</sup>; but in them the case of the personal exemption of the Roman Pontiff, who was considered only as an individual person and member of the ecclesial Community, was not explicitly found. The new axiom would henceforth have a relevant influence on the theological-ecclesial consciousness.

Previously, in the time of Pope Damasus, the Roman synod of 378 had asked the emperor Gratian that jurisdiction concerning the holder of the Roman See be given, in the future, to the emperor alone. Now, with the Palmare synod, this stage is passed, though the juridical foundations, that is the documents, to prove such a principle do not yet exist. Perhaps, to make up for such a legal vacuum, these apocryphal documents were circulated by a follower of Simmachus. Today there is no longer any doubt that they are forgeries that, read in the historical-legal context, affirm two principles: the exemption of the legitimate holder of the first See from all earthly jurisdiction, not excluding that of the emperor, and the universal recognition of the primacy of jurisdiction of the pope.

This constitutes an important and fundamental milestone both in the history of ecclesiastical procedural character and in the intent of the popes to have their

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119 Cf. 28-31.

primacy of jurisdiction recognized by the entire Church<sup>120</sup>.

The first scholar to deal thoroughly with these apocryphal narratives, and clearly demonstrate their inauthenticity, was Pierre Coustant with the publication of *Epistolae Romanorum Pontificum*, in 1721. He also established the chronological origin, placing it during the Laurentian schism<sup>121</sup>. The Simmachian apocrypha are: the *Gesta Xysti III*, *Polychronii*, *Silvestri*, *Marcellini et Eiberii*. These acts, though apocryphal, have some reliability in their thought. Before Coustant's researches, they had been attributed to the Donatists, particularly the *Gesta Marcellini*. This is an obvious mistake, since this document does not precede the Carthaginian Collection<sup>122</sup>, (in which case we would have concomitant references and quotations, and other documents would also be ascribed to the work of the Donatists). There is no basis for such a hypothesis. The *Gesta Marcellini* are very similar to the *Constitutum Silvestri* in both the barbarity of the style and the obscurity of the discourse. The similarity of the two texts can also be seen in their doctrinal statements: *Prima sedes non iudicabitur a quoquam* (*Gesta Marcellini*), *Neque praesul summus a quoquam iudicabitur* (*Constitutum Silvestri*). In these points as in many others the texts appear very familiar.

Coustant also links to them the *Gesta Xysti III*, where 1 exconsul Maximus asserts that it is not lawful to pass sentence against the pontiff. To prove the nature and the apocryphal character of all our documents, Coustant notes that the Carthaginian Collection itself, which arose during the pontificate of pope Sixtus III (432-440), does not contain the acts of the *Gesta Xysti III*, and that Colbert's codex<sup>123</sup> preserves all these documents (the Simmachian apocrypha) not listed and arranged chronologically, according to the succession of the respective pontificates, but at the end of the codex as if it were a separate file. This testifies to how the compiler of the codex had some doubts about their authenticity.

The Simmachian apocrypha, on account of their similarity in invention and falsity, as also of coarseness of style, come, probably, from one and the same workshop, and are the work of one and the same person. As for the *Gesta Marcellini* or Council of Sinuessa<sup>124</sup> and the *Gesta Silvestri* if they had really

<sup>120</sup> Cf. Harald ZIMMERMANN, *Papstabsetzungen des Mittelalters*, in *MIÖG* (1960) 4.

<sup>121</sup> *Epistolae Romanorum Pontificum, et quae ad eos scriptae sunt a S. Clemente 1. usque ad Innocentium III.*, edidit Petrus COUSTANT, I, Paris 1721, reproduction 1967.

<sup>122</sup> The Carthaginian Collection is also called *Codex canonum Ecclesiae Africanae*. During the Council of Carthage (419) the canons of all the councils were recited. Hence this collection arose. It expresses and constitutes one of the most important moments in the canonical history of Africa. It was assumed by Dionysius the Lesser and its canons were accepted both in the West and in the East. The *Codex* comprises 133 canons, all of African origin.

<sup>123</sup> Colbert's codex derives from the collection of Saint Blaise and from many of the decrees and texts of the Quesnelliana. It distinguishes the synodal canons from the decretals and takes care to restore the chronological order of the texts. Scholars are not unanimous in establishing his Italian or Gallic origin. It is thought to have been in Italy during the period of the Gregorian reform.

<sup>124</sup> Sinuessa is the site of the Apocryphal Council celebrated during the pontificate of Pope Marcellinus (296-304). Sinuessa is a town in Latium on the border with Campania,

existed they would have been invaluable to the bishops who were convened at Rome in the case of Pope Damasus, who would certainly have invoked and quoted them in his own defence, without having to have recourse to the bishops and emperors. The author of the apocrypha seems to have had but one concern: to defend the Palmare synod and the theory that the pope by no one should be judged<sup>125</sup>.

In the drafting of the Simmachian texts there are some dissonances and divergences, which do not, however, affect the doctrine of papal unjusticiability. For example, while the *Gesta Silvestri* and the *Gesta Marcellini* require 72 witnesses to judge and condemn a prelate, the *Gesta Polychronii* speak of 40 witnesses. This variant derives, perhaps, from a *lapsus memo-riæ* of the forger. And it is not the case to think of a second editor, always anonymous, of the apocryphal texts<sup>126</sup>.

The Simmachian apocrypha do not report the facts as they happened, but reveal and make us understand how the writer wants us to believe they happened. They are propaganda means - we would gladly call them *pamphlets of Symmachus*\*® - written to make people aware and involved in the pope's cause. They thus had the purpose of creating a mentality and the aim of founding and reinforcing the thesis of the synods of 23 October 501. Later on, these apocryphal texts will be very fortunate because they will be included not only in the canonical collections, which were being formed, but some of them will even enter the *Liber Pontificalis*. All this will ensure their notoriety and great reliability and credibility.

### 2.3.1. *Gesta de Xysti III purgatione*<sup>^</sup>

The account of Sixtus III (432-440) opens with a very curious tale, in which two different stories are intertwined, at the centre of which we find the person of the pope involved. The first episode tells how during the consulate of Valentinian and Anatolius, a nobleman by the name of Crescentius wanted to leave part of his property to the Church before his death. It consisted of an estate bordering on that of a certain Marinianus. The latter, knowing that the property had been inherited by the Church, went to Bishop Sixtus to ask for it for himself. But the pope would not agree. This did not please Marinianus, who became a declared enemy of the pontiff.

The second episode is connected with an affair which Sixtus is said to have had with Epiphanius and Bassus. Epiphanius was Basso's servant, and having had a quarrel with his lord, he went to the pope to ask for justice. Basso, hearing of the matter, reacted and replied to the pope that no one had ever dared to judge a lord in the exercise of his authority over his servant. Sixtus, seeing the hardness of heart

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colonized by the Romans. In the surroundings it produced abundant and good wine; it had very popular thermal baths. Today, only ruins remain near Mondragone.

<sup>125</sup> Cf. Petrus COUSTANT, LXXXV.

<sup>126</sup> Cf. *Ibid*, *Appendix*, 27-28.

of Bassus, appealed to the emperor Valentinian who pronounced in favour of the servant Epiphanius. The conclusion was that the bishop of Rome made another enemy. This is the content of the two different stories.

The *Gesta* recount that later the two enemies of the pope, Marinianus and Bassus, allied themselves and made a coalition to attack him. And starting from a statement testified - they say - by the pope's servant, to the emperor they accused Sixtus of having raped the consecrated Chrysogonite. The reaction of the imperial house was immediate, so much so that both the emperor and his mother abstained from communion with the pope.

Sixtus, having been informed of the charges against him, went to the basilica of St. Peter's and there made it known that he wanted proof of his conduct. The Roman people demanded of the emperor and the clergy of the city that they proceed according to the will of the pope. Thus, an assembly was assembled in the basilica of Helena, called Sessorius<sup>127</sup>, with the presence of the senate of the city, summoned there by the emperor, and the presence of the clergy and monks, summoned by the bishop.

During the assembly proceedings, exconsul Maximus said: *It is not - permissible to pass sentence against the pontiff.* But Sixtus intervened so that the truth might be known: *Since it is in my power to judge and not to judge, I order that the truth not be hidden*<sup>^</sup>. The emperor Valentinian invited Bassus to publicly reveal the accusations against the pontiff. Finally, approving Maximus's request, the emperor dismissed himself from the assembly and entrusted the self-judgment to the arbitrariness of Sixtus. In this way, the assembly was dissolved.

At another session, Sixtus had all the presbyters summoned to the council; the emperor also attended. It ended with the condemnation of the two enemies of the pope, Marinianus and Bassus, who were deprived of communion. As soon as they knew what the synod had decreed against them, they suffered deeply. Bassus would have wanted to leave all his goods to the Church if he had been readmitted to communion, while Marinianus asked forgiveness for his actions, recalling the words of the gospel: *Forgive and it will be forgiven you, give and it will be given to you (Le 6:38)*. But Sixtus remained inflexible and opposed other scriptural passages to Marinian's Gospel text: *Whoever has sinned in this world will be forgiven; but whoever has sinned against the Holy Spirit, will not be forgiven either in this world or in the future (Mt 12:31); the servant is not above the master nor the disciple above the master (Jn 13:16); Jesus, since they insisted on questioning him, lifted up his head and said to them: "Whoever among you is without sin, let him cast the first stone at her" (Jn 8:7)*<sup>128</sup>. And so it was that the

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<sup>127</sup> It is the basilica of the Sixtorian palace, founded by St. Helen, it is also called the basilica of St. Cross in Jerusalem. Recall that the second session of the synod of 501 to judge the pope took place here.

<sup>128</sup> *Nam et Marinianus ore proprio clamabat dicens: Scriptum est in verba evangelica, "Dimittite, et dimittetur vobis; date et dabitur vobis". Hoc cum audiret Sixtus, dixit, scriptum est in evangelica verba doctrinae: "Qui peccaverit in hoc saeculo, remittetur ei: qui autem peccaverit in Spiritu Sancto, non remittetur*

enemies of the pope died without being reconciled with the Church, although they had earnestly requested it.

The *Gesta de Xysti III purgatione* provide a procedure and a model of an accused pope. It is easy, behind this novel, to reconstruct the authentic events and to trace back to the will of the forger, who, by drafting them, wanted to set precedents.

Sixtus and Valentinian prefigure Simmachus and Theodoric; while Marinius and Bassus cover the role of Faustus and Probinus, enemies of the pope. The evident intention is to find an antecedent to the accusation of incontinence raised against Simmachus by Lorenzo's followers, and then to defend the thesis that the pope cannot be judged by anyone. The council is set in the basilica of Santa Croce in Gerusalemme, where the second session of the council of 501 was held. It is interesting to note the differences between the two synod sessions: the outcome of the story in the novel about Sixtus is what the narrator hoped for the trial of Simmachus, which unfortunately did not happen. In fact, Simmachus did not appear except at the first session of the council, but was absent at the last (October 23, 501), when the synod fathers entrusted any judgment on his life to divine will. The senators, enemies of the pope, were by no means condemned; rather they continued for a long time to cause him grave concern.

The author of the forgery did not merely substitute his desires for the truth of the facts, but by giving vent to imagination manifested his spirit of revenge. The council which was to judge Bishop Sixtus was held in two sittings. The first was called by the emperor at the request of the Roman people. The emperor summoned the senate, and the pope summoned the clergy and monks. We note here a distinction in the scope of the powers and extent of imperial and papal authority. The second session was convened solely by Pope Sixtus with the participation of the emperor. It revolves much around the person of Sixtus, who will also concern himself with the extension of the synodal minutes. Both sessions end by decreeing that the bishop of Rome could not be judged and that the papal accusers were to be condemned.

In the conclusion of the first session it was affirmed that it was not possible to give any judgment against the pontiff, since in his discretion lies the capacity and power to judge and not to judge. This assertion bears no theological motivation. The emperor himself entrusts, or perhaps recognizes, to the bishop of Rome the faculty of being able to judge. In any case he renounces a right that the legislation attributed to him. No less interesting is the close of the second session.

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*ei nec in hoc saeculo nec in futuro!"; et nec eos revocavit ad communionem: ita ut de saeculo ambo sic transirent. Et damnavit eos VI. Kalend. Septemb. ita tamen ut Xystus episcopus sedens in sedem suam sic se iudicabat dicens, et proferens Evangelia, per eadem doctrina dicebat: "Non servus supra dominum, neque discipulus supra magistrum". Et quia dixerunt Bassus et Marinius de me peccatore, quod scorti adsimulare negotium, relegit Evangelia in loco ubi scriptum est: Sedens Jesu, et scribente digito in terra; et quia non inveniebant Judaei quomodo eum damnarent, adulteram adduxerunt ei, et hoc respondit Jesus: "Si quis ex vobis sine peccato est, injiciat super istam lapidem". Et per haec verba evangelica iudicabat sedem suam. Ibid, 119-120.*

To Marinianus, who earnestly asked to be reintegrated into ecclesial life, the pontiff replied that all sins could be forgiven, except that against the Holy Spirit. Sixtus, therefore, places his vocation and dignity in close relation to the Holy Spirit. Bishops, according to an exaggerated and strong exemplification, were compared to apostles and prophets, and were regarded as privileged charismatics. The Didache had stated not to test or judge any prophet who speaks by inspiration, for all sins will be forgiven, but this sin will not be forgiven<sup>129</sup>. This is blasphemy against the Holy Spirit (*Mt 12:31*). Those who test a prophet concerning what he says under inspiration offend the Spirit who speaks in him.

Now, the prophet is identified with the bishop of Rome, consequently he had to be recognized with that same prerogative, that is, that he could not be judged by anyone, because he was bishop of Rome, venerated as sent by God and bearer of the Spirit in a specific sense. From here also derives in part the privilege of untouchability<sup>130</sup>.

The forger of the fable centered on Sixtus adds other evangelical justifications by which the pope justified the condemnation of his enemies and indirectly expressed a pyramidal conception of ecclesial authority.

### 2.3.2. *Gesta de Polychronii episcopi Hierosolymitani accusatione*<sup>^</sup>

The *Gesta Polychronii* are a curious fable like the *Gesta de Xysti III purgatione*. They speak of a certain Polychromus, bishop of Jerusalem, of whom no record is given. He had imprudently claimed that his Church was the first See and his bishop the supreme priest, the true pontiff, superior to all. He was accused of simony: in fact, he ordained priests and deacons in return for payment. The accusation reached the ears of pope Sixtus III by the declaration of bishop Euphemius, suffragan<sup>©</sup> of Polychronius.

The bishop of Rome hastened to convene a synod, composed of bishops, presbyters, and deacons. The synodal legates, having heard the accusation of Bishop Euphemius, ordered an inquiry to be made at Jerusalem into the case of Polychronius. The synodal legates then called an assembly in Jerusalem to examine the charges against Polychronius. In the course of the assembly, in which Euphemius renewed with exactitude the accusations against his patriarch, Bishop Castus pointed out that the presence of forty witnesses was necessary; and he demanded that the accusing bishop Euphemius should be absolutely condemned in obedience to the Roman canons. The reason for the condemnation was explained by Leo, deacon of the Roman Church, in these terms: *You yourself will condemn*

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<sup>129</sup> *Didache\** XI, 7.11, *editio* Willy RORDORF - André TUILIER, (*Sources Chrétiennes\** 248), Paris 1978, 184-187.

<sup>130</sup> Cf. Albert Michael KÖNIGER, *Prima sedes a ne mine indicatur\** in *Beiträge zur Geschichte des christlichen Altertums und der Byzantinischen Literatur. Festschrift Albert EHRHARD zum 60. Geburtstag*, *editio* Albert Michael KÖNIGER, Ed. RODOPI, Amsterdam 1969. Lithographed from the original: Bonn-Leipzig, Kurt Schröder-Verlag 1922, 283-284.

yourself, because you dared to accuse and condemn the pontiff who consecrated you coepiscop. Bishop Abundatius, in an even clearer way, added: *It is not permitted for anyone to accuse his pontiff, since the judge cannot be judged*<sup>131</sup>.

The assembly was again assembled in the basilica of the holy Resurrection of Our Lord Jesus Christ in Jerusalem. Here, for the second time, the anathema was hurled against the accusing bishop Euphemius. As for the patriarch of Jerusalem, Polychronius, it was decreed that he should be removed from his see and that three properties of the Church should be entrusted to him as usufruct. Having done this, the Roman envoys returned to Rome, where Sixtus, taking note of what had been decreed, gathered the bishops and in the presence of the emperor signed with them the condemnation against Euphemios<sup>132</sup>.

Sixtus III is therefore also involved in this curious tale. The analogy with the trial of Symmachus is notable: the same idea of the superior dignity and greatness of the bishop of Rome, which imposes itself even on the venerated See of Jerusalem. In fact, the decision on the conduct of Bishop Polychronius was taken not so much by the council of Jerusalem and the delegates of Rome, but by Pontiff Sixtus. The same is the case with the condemnation of Bishop Euphemius, who had accused his superior, the metropolitan, from whom he had received episcopal consecration.

Summing up, we observe that in the statement of Abundacius - it is not permitted to accuse one's own pontiff, since the judge cannot undergo a sentence - we have a more restrictive disciplinary measure than that presented in the *Gesta de Nysti III purgatione*: any superior pontiff, and not only that of Rome, cannot even be accused. How much less the Roman pontiff!

Euphemius is condemned simply because he had accused his superior, who was truly a sinner. The condemnation is irreversible in spite of the fact that the accused had publicly confessed that he was a sinner and had done wrong. And the sin against the Holy Spirit of the *Gesta de Nysti III purgatione*. In the case of Polychronius forty witnesses had been called, but they, in fact, played no decisive role in the judgment; practically everything had been decided previously in Rome by Pope Sixtus. The thesis developed is always identical: to justify the work of the synod of 23 October 501 and the conduct of Pope Symmachus<sup>133</sup>.

A pyramidal Church structure emerges, in which the theological content of the aforementioned axiom on the primacy of the bishop of Rome is evolving like a chrysalis, from the twisted and opaque forms of history.

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<sup>131</sup> Leo diaconus urbis Romae dixit: "Ex te enim damnaberis, quoniam pontificem, qui te consecravit coepiscopum, condemnabas et accusabas". Cecidit autem in terra ante omne concilium episcoporum, et ibi confitebatur se peccasse. Respondit Abundantius episcopus missus ab urbe Roma, et dixit: "Non licet quemquam accusare pontificem suum, quoniam iudex non judicabit". *Ibid*, 121.

<sup>132</sup> *Ibid*, 120-124.

<sup>133</sup> Cf. Erich CASPAR, *Geschichte des Papsttums*, II, Tübingen 1933, 108-109.

### 2.3.3. *Silvestri Constitutum*<sup>lx</sup>

It is a verbal-trial of a pseudo-Roman council held under the presidency of Pope Sylvester<sup>134</sup>, predating the council of Nicaea. This document was declared apocryphal long after its composition. It was drawn up in Rome like all Simmachian apocrypha; this is evident from the general character of its provisions. Let us recall, as an exemplification, the topographical precision with which its author placed the celebration of the pseudo-council: in the place where a monumental remembrance of pope Sylvester, the *Litulus Hquitii aut Silvestri*,\* - was preserved near the baths of Trajan.

One of his main articles is evidently inspired by the controversy between the Simmachians and the Laurentians. It seems that, independently of his intention to support the cause of Simmachus, the editor of the account also had a desire to claim for Rome the honour of having been the scene of the first ecumenical assemblies of the Christian episcopate. The memory of Nicaea and the glory that might result from it for the Eastern Church obsessed and imbued him. At a time when relations between the Eastern and Western Church were beginning to cloud, this sentiment must have been very much alive in our forger, who - Constant observes - must have been a poor and ignorant cleric, a barbarian, probably some Goth converted from semi-Arianism<sup>135</sup>.

The *Constitutum Silvestri* contains 20 chapters or decrees, divided into two sections, with the addition of three letters, written in the same barbarous style and dated like the *Constitutum* according to the government of imaginary consuls<sup>136</sup>.

The first letter is a question, a request for confirmation addressed to Rome by the council of Nicaea (325), the others are two different drafts of the reply addressed by Sylvester to the council, in which the pope confirms the decisions of Nicaea and communicates to the 318 Fathers the decrees of his council (324)<sup>137</sup>.

Here are the contents of the *Constitutum Silvestri*! At that time, many nobles were happy with the conversion of Constantine, who had been baptized, after being

<sup>134</sup> The person of Pope Sylvester did not escape the legend that handed down to posterity a rather heroic figure to contrast with that of Constantine the Great. Among the Simmachian apocrypha, in fact, three concern Sylvester, they are: the *Actus beati Silvestri*^ the *Constitutum Silvestri* and the so-called *Synod of 275 bishops*^ but among them only the *Constitutum Silvestri* contains the principle of the unjustifiability of the Roman pontiff. In the *Actus beati Silvestri*^ of which there are editions in Latin, Greek and Syriac and which were falsely attributed to Eusebius of Caesarea, a fictional life of Sylvester is recounted. The *Constitutum* and the synod of 275 bishops are a collection of decrees and decisions of an alleged synod held by Sylvester in the Baths of Trajan. To these apocrypha in the Vili century was added the famous *Donatio Constantini* by which Constantine, transferring his See to the East, left his sovereign rights over Rome to Sylvester and conferred many privileges on him and his clergy.

<sup>135</sup> Petrus COUSTANT, 179.

<sup>136</sup> Cf. Louis DUCHESNE, *Étude sur le Liber Pontificalis*^ Paris 1877, 174-176.

<sup>137</sup> The three letters are: *Quoniam omnia*, *Gaudeo promptam*, *Gloriosissimus*, and are found in MANSI, 2, 719-722.

cured of leprosy, by pope Sylvester. He gathered a council in Rome, at the Baths of Trajan, with the approval of Constantine and his mother Helen. It was attended by 284 western bishops, 57 eastern bishops, from the part of Rhinolura<sup>138</sup>, 142 Roman presbyters, 6 deacons, 6 subdeacons, 45 acolytes, 22 exorcists, 90 lectors, 14 notaries. The presbyters, deacons, clergy and all the lower grade ministers stood behind the shoulders of the bishops. The synods first examined the Arian question, then they dealt with the ecclesiastical orders. At this point they determined the following: 'No' *it is permissible for a presbyter to bring any accusation against the bishop, a deacon against the presbyter, a subdeacon against the deacon, an acolyte against the subdeacon, an exorcist against the exorcist, a lector against the exorcist, an ostiary against the lector. A prelate cannot be condemned except before 72 witnesses. But the supreme presbyter cannot be judged by anyone, for it has been written that "the disciple is no more than the master." The presbyter cannot be condemned except at the presentation of 44 witnesses, the cardinal deacon<sup>139</sup> of the city of Rome before 56 witnesses, the subdeacon, the acolyte, the exorcist, the reader before 7 witnesses. All witnesses must have wives and children and preach Christ. Only in this way can the truth be assured<sup>140</sup>.*

Subsequently Sylvester reconvened all the synods in the same place, who considered the whole life and organization of the Church. It was decreed that no one should call clerics as witnesses against a layman, and that no cleric should be allowed to give judgment in public except in church. It was forbidden for any cleric to enter the curia of the senate<sup>141</sup> and it was declared that no cleric, though a sinner, could be condemned to death. No deacon could bring an accusation against a presbyter. It was also decreed that *no one could judge the first See, since all Sees wish to be judged by the first See. The supreme judge could be judged neither by*

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<sup>138</sup> Rhinolura lies between Idumea (to the south) and Egypt and overlooks the Mediterranean. It is unthinkable that so many Egyptian bishops met in Rome when the struggle over the Arian question was raging there (in Egypt). The fact that the bishops bore Latin names such as *Quodvultidens, Spesindeo, Sempervivus* also makes one suspect the inauthenticity of the document.

<sup>139</sup> It is the first testimony that attributes to a deacon of the Church of Rome the title of cardinal. Here the term cardinal has nothing in common with dignity or with any pre-eminence; by it is meant the juridical concept of incardination from one local Church to another, from one church to another. This text will be interpolated later by Pseudo-Isidore, who will apply the term cardinal, with the same meaning, to presbyters. Cf. S. KUTTNER, *Cardinalis. The History of a Canonical Concept*, in *Traditio* 3 (1945) 130; 189.

<sup>140</sup> *Postea autem fecit gradus in gremio synodi, ut non presbyter adversus episcopum, non diaconus adversus presbyterum, non subdiaconus adversus diaconum, non acolythus adversus subdiaconum, non exorcista adversus acolythum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam. Et non damnabitur praesul nisi in LXXII. Neque praesul summus a quoquam judicabitur: quoniam scriptum est: "Non est discipulus super magistrum". Presbyter autem nisi in XLIV. testimonia non damnabitur. Diaconus autem cardine constructus urbis Romae nisi in XXXVI. non condemnabitur. Subdiaconus, acolythus, exorcista, lector, nisi, sicut scriptum est, in septem testimonia filios et uxores habentes et omnino Christum praedicantes. Sic datur mystica veritas. Petrus COUSTANT, 47-48.*

<sup>141</sup> This decree reveals that the senate, in the matter of Simmachus, was the chief enemy of the pontiff.

*Augustus, nor by all the clergy, nor by kings, nor by the people*<sup>142</sup>.

These principles were subscribed to by all the synods, including the emperor Constantine and his mother Helena. And Sylvester took care to fix them in the canon of the city of Rome and to spread them among all the bishops.

In these canonical rules we find indicated, with considerable prominence, the system of procedure of which the *Gesta Xysti*, *Poly chronii*, *Marcellini* give us the application. This *Constitutum* is a true decretal from the diplomatic point of view, but it is false in its historical content. And undoubtedly the oldest of the false disciplinary constitutions drawn up under the name of a pope<sup>143</sup>.

The text of the apocrypha presents many misunderstandings in style. The literary form is very deficient, yet better than that of the *Gesta Marcellini* and the other Simmachian apocrypha. The content of the *Constitutum* is organized and structured in a manner that follows the model and style of an actual papal decretal and synodal minutes.

The synod was convoked by Sylvester with the approval of the emperor and his mother Helena. The pope had the authority to lead and preside over the synodal proceedings. Every subject was presented by him and submitted to the examination of the synod members, who showed themselves very obedient to his wishes and desires: *the synod opposed nothing to Silvester's speeches: "none of your deliberations will be judged or contested by us"*. Silvester is acknowledged as having great and undisputed authority in regard to doctrine, faith and discipline.

The decree of unjusticiability, according to the logic of the *Constitutum*, is inscribed within the framework of ecclesiastical discipline. It captures a church hierarchically structured and organized by degrees and orders, in which the superior cannot be judged by the inferior. The degree of authority of a superior is defined by the number of witnesses required in the case of a trial. The principle of the unjusticiability of the first seat, identified with its bishop, is twice affirmed: *Neque praesul summus a quo- quam judicabitur: quoniam scriptum est: non est discipulus super magistrum; Ne- mo enim judicabit primam sedem... Neque ab Augusto, neque ab omni clero, neque a regibus, neque a populo judex judicabitur*<sup>142</sup>. So unjusticiability is an exclusive privilege of the bishop of Rome, of the pope, who being master cannot be judged by his disciples.

This principle was welcomed, accepted and subscribed by the synod, but also by Constantine himself and the prefect of the city of Rome. Therefore from now on also the civil authority, that is the political power, will be called upon to respect its validity and application.

With this pseudo-historical example the falsifier wants to call the senate, the

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<sup>142</sup> *Nemo enim judicabit primam sedem: quoniam omnes sedes a prima sede justitia desiderant temperari. Neque ab Augusto, neque ab omni clero, neque a regibus, neque a populo judex judicabitur.* Petrus COUSTANT, 52.

<sup>143</sup> Cf. Louis DUCHESNE, *Le Liber Pontificalis*, I, Paris 1886, CXXXIV.

people and Theodoric himself to obey the synodal conclusions of 23 October 501.

#### 2.3.4. *Sinuessanae Sjnodi Gesta de Marcellino*<sup>^</sup>

After the synod of 501, convened to re-establish peace within the city of Rome, in vain were the efforts of the bishops and Theodoric to calm the strife that flared up again because of the synod's conclusion. They went so far as to invent the story of another synod - *Sinuessanae Sjnodi* - in defence of the pope and in support of the thesis of papal unjusticiability.

Let us hear the story. Under the emperors Diocletian and Maximilian, many attributed the political and civil decadence of the Roman empire to the rise and spread among the Romans of the Christian religion, called superstition. For this, Christians were persecuted and forced to sacrifice to pagan deities. Even Marcellinus, bishop of Rome, was forced by the emperor Diocletian to sacrifice to the gods. Some witnesses (two deacons and three presbyters), as soon as they saw the pontiff enter the pagan temple, ran to report the event to the presbyters who were at the Vatican.

<sup>82</sup> Petrus CONSTANT, 47. 52.

<sup>83</sup> *Ibid*, 29-36.

Immediately, some of them arrived on the scene and noted that the pope was about to offer incense. A council was then assembled to judge Marcellin's actions. The synodal assembly, assembled in Cleopatra's crypt in the city of Sinuessa, condemned the deacons and presbyters who had abandoned the pope and allowed him to enter the pagan temple. The question was, moreover, raised of witnesses, before whom the prelate was to defend himself. They were to be 72 and of undoubted moral life. It was noted, however, that among those who appeared - before Marcellin were some who had repudiated their wives, with whom they also had children.

Several of the synods said that they did not want to judge Marcellin's case and delegated to the pope the responsibility and power to self-justify or self-condemn, saying to him: *You are the judge, of yourself you will condemn or justify: but in our presence. For whatever your judgment may have been, you will condemn or justify yourself, because you are the judge, you are the guilty one*<sup>144</sup>. Thus Bishop Peter added: *Hear, O pontiff, judge thy cause: for by thy mouth thou shalt justify thyself or condemn thyself, because the limbs cannot be healthy, if the head hath suffered*<sup>\*145</sup>.

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<sup>144</sup> *Synodus autem universus hoc dixerunt cuncto iudicio: "Tu enim eris iudex; et ex te enim damnaberis et ex te justificaberis; tamen nostrae praesentiae. Illud vero dum veneris ad iudicium tuum, ex te damnaberis, et ex te justificaberis; tu enim iudex, tu reus."* *Ibid*, 30.

<sup>145</sup> *Respondit Petrus, et dixit ad Marcellinum episcopum: "jam audi pontifex, et judica causam tuam:*

Marcellinus acknowledges and confesses at last that he has sacrificed to the gods, and prostrate on the ground with his head covered with ashes, before three hundred bishops he says aloud: *I have sinned before you and can no longer be a member of the priestly order, because a miser has corrupted me with Poro*<sup>146</sup>.

After the confession of Pope Marcellinus, Bishop Elciades took the floor and said: *He has condemned himself, rightly, with his own mouth, and has cast anathema upon himself. For no one ever judged the pontiff, nor the prelate his priest; for the first see can be judged by no one*<sup>146</sup>.

It must be stressed that this source, in presenting us with the protocol of a purely invented trial against a pope, 13 times refers to the principle that the pontiff cannot be judged by anyone, that in fact he has never been judged, and that he must be judged only by himself.

The pregnant affirmation of the apocrypha had, subsequently, enormous success. The principle *Prima Sedes a nemine iudicatur* became "the classic formula for expressing the *primatus iurisdictionis* of the pope"<sup>147</sup>. One final - observation emerges from the case. Marcellin's conduct offended both the moral realm, because of corruption, and the principles of faith, because of apostasy, and yet the synods refrained from judging the pope.

It follows, thus, that even in the case of apostasy and heresy, the first See cannot be judged by anyone. The bishop of Rome always enjoys the privilege of personal immunity and unjusticiability, since he stands above any judging body.

### 2.3.5. *Gesta Liberti papae*<sup>148</sup>

The apocryphal account does not directly concern our theme. We shall therefore speak only of its most important points. Its purpose is to show that, even though Simmachus was far from his church at Latera-no, where the Laurentians had introduced themselves, he was still the legitimate holder of the Roman See, so he could certainly celebrate Easter and baptism<sup>148</sup>.

The *Gesta Liberii* are connected in their plot with the *Constitutum Silvestri*. Liberius has been exiled by an emperor named Constantius or Constantia, three

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*quoniam ex ore tuo justificaberis, et ex ore tuo condemnaberis: quoniam omnia membra sana esse non possunt, si caput maestavit*". Ibid. 33.

<sup>146</sup> *Sacerdos, nomine Helciadis episcopus subscripsit primus in ejus damnationem, non tantum tempore quod exigebat ordo, sed etiam futuri temporis. Quod etiam et ipse voce clara dicebat: "Iuste ore suo condemnatus est, et ore suo anathema suscipit maranata; quoniam ore suo condemnatus est. Nemo enim umquam iudicavit pontificem, nec praesul sacerdotem suum: Quoniam prima sedes non iudicabitur a quoquam"*. Ibid. 35-36.

<sup>147</sup> Cf. Erich CASPAR, II, 110.

<sup>148</sup> Since the second century, the Easter night has also been characterized by the celebration of baptism as an integral part of the vigil; the same biblical readings figuratively enunciated the paschal mysteries brought about through baptism in water and in the Spirit. Cf. A. BERGAMINI, *Triduo pasquale*, in *Nuovo Dizionario di Liturgia*, Cuneo 1983, 1534- 1538; Raniero CANTALAMESSA, *La pasqua della nostra salvezza\* Le tradizioni pasquali della Bibbia e della primitiva Chiesa*, Torino 1971.

miles away from Rome, in the cemetery of Noella. As the day of Easter approached, the pope was desolated that he could not celebrate the baptismal solemnity at the Lateran; but he was persuaded that it was not necessary to have a monumental baptistery at his disposal to celebrate such a liturgy. He therefore decided to celebrate the baptism in the Ostiense cemetery, near the cemetery of Noella, of which an ancient tradition narrated that Saint Peter had baptized the first faithful of Rome there.

For the Solemnity of Pentecost, Liberius found himself in difficulty once again. So, the presbyter Damasus proposed to him to build a baptistery in Saint Peter's. Damasus accepted the suggestion and worked for the realization of the project: he diverted some streams that flowed through the lands of the Vatican cemetery and built a pool, in which, on the day of Pentecost, he baptized a crowd of believers.

The *Gesta Liberti* say nothing about our subject, they are, however, of some interest in the history of pope Simmachus. For during the contest with Lorenzo, since a large part of the churches of Rome, including the suburbicarian basilica of St. Paul's, was in the power of the Lau-renzians, it is probable that Simmachus, in the impossibility of celebrating Easter at the Lateran, solemnly conferred baptism in some church outside the walls, perhaps in St. Peter's, which seems always to have been under his power. Here again there is an intention to find a precedent for this dispensation in the ancient usages<sup>149</sup>.

### 2.3.6. *Synoptic comparison of the Apocrypha*

The texts of the Simmachian apocrypha present in textual criticism many linguistic concordances and expressive parallelisms: *extra urbes suas, extra civitatem damnarent, clara voce, vincat nos justitia, introducant testes, universa velamina cordis mei*. The most important concordances are, certainly, the definitions which appeal to the unjusticiability of the pope: *non licei quemquam accusare pontificem suum, quoniam iudex non iudicabitur; praesul summus a quoquam iudicabitur*. The terms *praesul, pontifex* indicate the person of the pope, that is, the bishop of the first see.

The office and function of the first See place its holder in a higher position than the people, the kings, the emperors, the presbyters, the bishops and the council itself. The authority of the bishop of Rome is based, according to the Simmachian apocrypha, not so much on the onto-logical-sacramental character of the episcopal order or on the fact that the pope sets himself as heir of the Petrine privileges, as on the fact that the bishop of Rome is at the head of the structure-church and is therefore the superior of all.

In these texts there is poverty of thought and the doctrine of papal primacy is badly applied. Those who drafted them knew little about the theology of the role of the bishop of Rome within Christendom. Despite this, the apocrypha later

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<sup>149</sup> Cf. Louis DUCHESNE, *Étude sur le Liber Pontificalis* Paris 1877, 181-183.

offered an excellent pseudo-legal basis for the principle *Prima Sedes a nemine iudicatur* : the presbyter, like the coepiscop, cannot accuse, much less judge, the bishop from whom he has received ordination. The consecrated person is on a - lower step than the consecrant. Only the principle and the juridical terminology applies; the superior-subordinate relationship does not take place in a context of theological obedience. Within the Church there is a hierarchy of ranks and orders related to each other by juridical bonds and by a fe-de- obedience which is characterised only by its juridical content. The higher a person is in the ecclesiastical order, the greater the obedience and respect which must be paid to him. This is particularly noticeable in that provision which required a certain number of witnesses in order that a judgment against an accused ecclesiastic might proceed. But the *summus praesul* is exempt from these provisions; he cannot be accused and still less judged.

### 2.3.7. *The Liber Pontificalis and the Simmachian apocrypha*

In this section we will study the Simmachian apocrypha as sources for the *Liber Pontificalis*.

A little later than their diffusion was the *Liber Pontificalis* which, by assuming the doctrine of the apocrypha, guaranteed the forgeries a prestigious - future in the West. It has its origins in the Laurentian schism and is an important source for the history of the popes from the 6th century onwards. In Rome there existed already in the fourth century the so-called Liberian Catalogue containing the names of the popes and the duration of their pontificate, which a Laurentian, after the death of Symachus (514), enlarged and continued, composing on its basis small biographies of all the popes. But the work was lost, with the exception of the last pages very hostile to Simmachus. Later on another work of Simmachian tendency had more credit<sup>150</sup> . What we possess today is the second redaction composed around 530<sup>151</sup> .

The history of the first four centuries is largely manifestly legendary; but from Simmachus onwards it is reliable. The author was in fact a witness of events, as may be inferred from the tone and immediacy with which the events were written<sup>152</sup> . The same is true of the additions made by contemporaries or by slightly later authors.

These collections of biographical news of the popes, from St Peter onwards, were gradually updated in successive editions, sometimes to the point of giving news of the pope still living. They then found rapid diffusion outside Rome, in the

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<sup>150</sup> Cf. Roberto CESSI, 72-85. The author demonstrates the intervention of later rehashes on the compilation of the Simmachian *Liber Pontificalis*.

<sup>151</sup> Cf. Vincenzo MONACHINO, *Il ruolo dei papi nelle grandi controversie cristologiche*, in *I papi nella storia*, I, editi Pio RASCHINI - Vincenzo MONACHINO, Roma 1961, 143-144. The observations of Louis DECHESNE, argued in his works already cited, are still very reliable on the lives of the individual popes.

<sup>152</sup> Cf. Hartmann GRISAR, *Analecta Romana*, I, Rome 1899, 4-16.

Italian peninsula and in the countries of Western Europe<sup>153</sup>.

We must, therefore, be careful in giving much credence to the information scattered in the biographies of the ancient popes before the sixth century, concerning internal ecclesiastical discipline. Often there is material which the compiler has assumed from apocryphal sources.

This phenomenon is present in the *Liber Pontificalis*, where the author or authors made use of the Simmachian apocrypha, leaving out what did not interest him, such as the *Gesta Marcellini seu De Synodo Sinuessana*. Completely ignored is the Council of Sinuessa with its clear and categorical declaration: *Prima Sedes non iudicabitur a quoquam*. There is no mention of Marcellin's condemnation, but instead there is mention of his fall, later repaired by martyrdom<sup>154</sup>. The difference between these two documents - the apocrypha and the *Liber Pontificalis* - is evidently that the author of the former is interested in Marcellin's history from a juridical perspective, while the editor of the latter considers only the historical element<sup>155</sup>.

As for the *Constitutum Silvestri*, the first author of the *Liber Pontificalis* assumed not only the novel centered on the life of Pope Sylvester, but also some of his decrees<sup>156</sup>, which we omit because they are beyond our interest.

Not so with the *Gesta de Xysti III purgatione*. The novel narrated there about the vicissitudes of the pope, has entered the *Liber Pontificalis*, undergoing, however, a heavy and significant change, which does not substantially touch the principle of the pope's unjustifiability, but only the fate of Bassus, the enemy of Sixtus. It reports on a council celebrated while Valentinian was emperor, during which the pope Sixtus III, after a verbal confrontation made in the presence of 56 bishops, was justified of his faults. His accuser, on the other hand, was condemned and stripped of his possessions. But when he died, he was buried by Sixtus himself, the pontiff he had slandered and accused<sup>157</sup>.

<sup>153</sup> Cf. Ottorino BERTOLINI, *Il Liber Pontificalis*, in *La storiografia alto medioevale*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XVII, 1) Spoleto 1970, 387-455.

<sup>154</sup> *Q<sup>uo</sup> tempore fuit persecutio magna... per diversas provincias martyrio coronarentur christiani. De qua re et ipse Marcellinus ad sacrificium ductus est ut turificaret, quod et fecit. Et post paucos dies, paenitentiam ductus, ab eodem Diocletiano pro fide Christi cum Claudio et Cyrino et Antonino capite sunt truncati et martyrio coronantur. Liber Pontificalis, edidit Louis DUCHESNE, I, 162, rr. 3-6.*

<sup>155</sup> *Ibid*, CXXXIII.

<sup>156</sup> Cf. Louis DUCHESNE, *Etude sur le Liber Pontificalis*, Paris 1877, 176-178.

<sup>157</sup> *Xystus, natione Pomanus, ex patre Xysto, sedit ann. VIII d. XV/III. Hic post annum et menses VIII incriminatur a quodam Basso. Eodem tempore audiens hoc Valentinianus Augustus iussit concilium [sancta synodus] congregari; et facto convento, cum magna examinatione, iudicium synodicum, purgatur a L VI episcopis, et condemnatur Bassus a synodo, ita tamen ut ultimo die viaticum ei non negaretur pietatis ecclesiae. Hoc audiens Valentinianus Augustus cum matre sua Placidia Augusta, furore sancto commoti, scriptionem Bassum condemnaverunt et omnia praedia facultatum [sic] eius ecclesiae catholicae sociarunt. Qui notu divinitatis intra menses III defunctus moritur Bassus. Cuius corpus Xystus episcopus cum linteaminibus et aromatibus, manibus suis tractans, recondens sepellivit ab beatum Petrum apostolum, in cubiculum parentum eius. Liber Pontificalis, I, 232, rr. 1-8.*

We have a spurious letter attributed to Sixtus, (it is not mentioned or named in the *Uher Pontificalis*, but is found outside it), intimately connected with his history, according to the *Liber Pontificalis*<sup>TM</sup> version. It is an epistle which Pope Sixtus is said to have addressed to the Eastern bishops, and which Cyril of Alexandria is said to have read publicly to defend the pope against the charge of Pelagianism. The writer of this letter makes Sixtus recount his whole personal affair, and makes the pontiff say, that if he had wished to escape the accusation he could have done so, as no one is permitted to accuse a master. But by consenting to have them proved to him, he had wished to amend himself before all spontaneously. It was not his intention to offer an exemplary case or a paradigm to those who in the future might find themselves in similar circumstances.<sup>158</sup>

The author of the *Liber Pontificalis* who compiled the life of Sixtus III, and the writer of the apocryphal letter addressed to the Eastern bishops, convey the same forgery as the *Gesta Xysti III*; though with some corrections. For instance, they accept that Bassus accused the pontiff, but exclude that he was condemned without remission: instead, the unfortunate man received, after his death, the honours of burial from the pontiff's own hands. It is a more conciliatory conclusion, which mitigates the spiritual insensitivity of the *Gesta Xysti III*.

It is still revealed that the council consists of 56 bishops, that is, of homogeneous and competent members. We are not dealing with the mixed assembly of the *Gesta Xysti III*, consisting of Roman senators, clerics, and monks.

Apart from any consideration, they are always episodes that have no historical content, and are extraneous to the true history of Sixtus III and his time. They are in fact narrated along the lines of the history of Pope Simmachus, taking care to change the names.

Notwithstanding the manipulations that the Simmachian apocrypha underwent in the context of the *Liber Pontificalis*, it is interesting to consider the degree of authority with which these productions were collected in the literary and ecclesial environment, influencing the juridical history of the Church for a long time and not a little: the canonical collections collected several formulas that then acquired the force of law in the Western Church. Certainly they were much retouched, because everyone believed themselves authorized to arbitrarily manipulate their content<sup>159</sup>.

### 2.3.8. *The Simmachian Apocrypha in the canonical collections*

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<sup>158</sup> *Quod audiens Valentinianus Augustus, nostra auctoritate synodum congregari jussit. Et facto concilio, cum magna examinatione, satisfaciens omnibus, licet evadere satis aliter potuissem, suspicionem tamen fugiens, coram omnibus me purgavi me scilicet a suspitione et aemulatione liberans, sed non aliis, qui noluerint, aut sponte hoc non elegerint, faciendo formam, exemplumque dans, cum scriptum sit: Si quis crimen objicere voluerit, scribat se prius probaturum Et alibi: Criminationes adversus doctorem nemo recipiat. Ibid, 1155.*

<sup>12</sup> Cf. Louis DUCHESNE, *Le Liber Pontificalis*, I, Paris 1886, CXXXVII-CXLI.

The canonical collections of decretals are collections compiled over the centuries concerning the laws of the Church, and constitute some of the *Fontes cognoscendi iuris canonici*. Originally they were merely responses given by the popes to various questions raised by bishops residing in western countries; they therefore contain decisions concerning ecclesiastical discipline, the office and customs of the clergy, and the administration of the sacraments. With them, beginning in the latter part of the fourth century, the popes established the principles of ecclesiastical organization.

Norms of law are formulated that little by little take on obligatory force; and this happens not by imposition from above, but by voluntary, reverential and obedient reception from below, from all the territorial Churches, that in fact recognize the supreme power conferred by Christ on Peter, believed to be present and operative in a specific way in the Roman Church.

At the beginning of the fifth century, before the pontificate of Leo the Great, two collections of decretals existed: the *Canones urbi cani*, probably composed in Gaul during the pontificate of Sixtus III, and the *Fpistolae decretales*, probably of Roman origin and slightly later than the first collection<sup>160</sup>. The texts gathered in these collections were totally insufficient to ensure the pope's position as head of the Church, especially after the disputed election of Symmachus in 498. It was in this context that the Simmachian apocrypha were born.

Beginning in the fifth century, an attempt was made to bring together in the *Collectio Dionysiana* the decretal epistles and conciliar canons<sup>161</sup>. It should be noted that in addition to the regular collections of these letters, there were also others whose texts were in part spurious or artfully altered.

Latin canonical collections found unbroken acceptance from the fifth-sixth century. A canonistic activity began in Rome, unofficial it is true, but valuable for the subsequent development of canon law. This epoch goes from Dionysius the

<sup>160</sup> Cf. A. HOVE van, *Prolegomena*, Mechliniae-Romae 1945, 150. The *Canones urbicani* are canons issued by the Roman pontiffs gathered in synod together with the suburbicarian bishops. They are also called *Fpistolae Synodicae* and also include five papal decretals. Cf. Alphonsus M. STICKLER, *Historia Iuris Canonici Latini. Institutiones Academicae*, I, Rome 1975, nova impressio, 15.42.

<sup>161</sup> This collection was compiled by Dionysius the Small. He was a Scythian monk, but lived for a long time in Rome. Here he composed, between 498 and 514, a collection commonly referred to as *Collectio Conciliorum Dionysiana Prima*, in which he included the Greek canons of the *Syntagma* (a collection of canons of the council of Antioch, celebrated in 341. The ancient Greek, Latin and Syriac canonical collections usually refer to 25 canons of this council) up to the Council of Chalcedon (451), to which he added the canons of Sardica, those of Carthage in 425 and finally the *Canons of the Apostles* (a collection of judgments in the form of canons, the authorship of which is attributed to the apostles. This collection contains 84 or 85 canons in the Greek text which is the original. Dionysius translated it into Latin, in a collection of 50 canons). Upon finding a better copy of the Carthage canons, Dionysius decided to make a second redaction of his collection and introduced changes into the text of the previous one; finally he made a third. Cf. Alphonsus M. STICKLER, 46-48; Cf. Giuseppe D'ERCOLE, *Dionysius the Small*, in *Enciclopedia Cattolica*, 4, Florence 1950, 1669-1670.

Lesser to the Pseudo-Isidorian decretals, and is the period of the elaboration of the canon law of the West, supplemented for the most part by regional elements, updated according to the emergence of various situations and disciplinary needs but not yet contaminated by the imposing literary falsification, which will be of the following period.

Towards the end of the fifth century and the beginning of the sixth, the drafting of ancient law was completed. The theological dispute, which heralded the spiritual separation between East and West, and the immigration of peoples, which provoked an enormous crisis in the socio-political order by infecting the West with semiarianism, gave a strong impetus to canonical collections, which proved to be of considerable importance. The fall of the empire in the West increased the independence and the juridical role of Rome, while the conflicts with the East prompted the papal chancery to set up numerous dossiers, in which the pope justified his role towards Constantinople.

This period is one of the most intense for Roman canonical activity. It lasted about thirty years, from the advent of Pope Gelasius (492) to the death of Ormisda (523). And the acute phase of the Acacian schism (484-518) and the period in which Theodoric reigned (493-526). The disagreements with the East over the Acacian and Laurentian schisms and the relative freedom of action granted to the See of Rome by King Theodoric, favored the spread of the canonical collections that, together with the Simmachian apocrypha, helped to fortify the Roman primacy.

In this period collections from all countries converged in Rome: Africa, the East, Greece, and Roman archives were consulted with great interest. There followed a renewal in canonical activity and a great desire to study ancient law, which led to the formation of the first general collections.

Dionysius the Small brought together all the great series of canon law: the East, Africa, Rome are present with equal and scrupulous attention<sup>162</sup>. The collections of Dionysius are the only ones whose author and origin we know clearly. They are of the same period: the *Quesnelliana* collection<sup>163</sup>, the collection of *Freising*<sup>TM</sup>, the collection of *San Biagio, the Vatican 1342* and the collection of *Chieti* or of *Ingilramo*. The latter three bear the Simmachian apocrypha: thus enriched they could only be accepted long after the death of Pope Simmachus (514).

The *Vatican 1342* collection and the *Chieti* collection seem to have been compiled after the death of Pope Ormisda (523) because in the series of pontiffs, the latter is mentioned already dead<sup>164</sup>. The study of Maassen<sup>165</sup> gives insight

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<sup>162</sup> Cf. Paul FOURNIER - Gabriel LE BRAS, *Histoire des Collections canoniques en Occident depuis les Fausses Décretales jusqu'au Décret de Gratien. De la réforme carolingienne à la Réforme Grégorienne*, I, Paris 1931, 21-25.

<sup>163</sup> Cf. Alphonsus M. STICKLER, 50-51.

<sup>164</sup> Cf. A. HOVE van, 161.

<sup>165</sup> Cf. Friedrich B. C. MAASSEN, *Geschichte der Quellen und der Literatur des canonischen Rechtes*

into the penetration of the Simmachian apocrypha into the Roman collections of the early Latin Middle Ages.

The *Chieti* manuscript contains only excerpts from the *Constitutum Silvestri* and puts the other apocrypha at the end almost marginally; which suggests external manipulation.

In the *St. Blaise* and *Vatican 1342* collections, however, our apocrypha - appear more frequently throughout the compilation of the collection. These two have often been copied and employed in the compilation of other more extensive collections: it is they who have ensured the preservation and dissemination of our documents.

The *Vatican 1342* collection is the richest collection of Simmachian forgeries, which together with the previous two has strong Roman connotations. Six manuscripts report its contents. Five manuscripts instead report the *St. Blaise* collection, entered in full in the *Colbert* manuscript<sup>x</sup> and partially in the *Diessen* manuscript, which dates from the seventh century and comes from Gaul<sup>166</sup>.

The collections that interest us most are the *San Biagio* and the *Vatican 1342*.

a) Collection of *Saint Blaise*<sup>167</sup>: in this collection the apocrypha are inserted after the Greek and African councils and before the papal decretals. They form a compact group in the following order:

- *Constitutum Silvestri*
- *Gesta Xysti*
- *Gesta Polychronii*
- *Synodus Sinuessana*.

b) Collection of the *Vatican 1342\**. is most complete; the apocrypha are - distributed in the midst of the documents of which the collection is composed. It begins with the apostolic canons, followed by the canons of the council of Nicaea and those of Ancira, between these two the *Constitutum Silvestri*<sup>^</sup> isolated from the other apocrypha added later. The *Constitutum Silvestri* is closely related to the council of Nicaea and includes a number of documents which are not present in the collection of *St. Blaise*. The order in which they are arranged is as follows:

- *Quoniam omnia*: this is the letter of the council sent to the pope.
- *Gaudeo propter*: is the pope's answer.
- *Constitutum Silvestri*.
- *Gloriosissimus*: this is Sylvester's letter addressed to the council.
- *Synod of 275 bishops*.

Immediately before the documents issued by Pope Damasus are the *Gesta*

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*im Abendlande bis zum Ausgange des Mittelalters*, I, Graz 1870. Reprint, Graz 1956.

<sup>166</sup> Cf. Friedrich B. C. MAASSEN, 504 ff.

<sup>167</sup> *Ibid*, 512 ff.

*Liberti*, placed in their exact chronological place, as if they were authentic documents. With the same precision, between the decretals of Celestine and those of Leo the Great are located:

- *Gesta Xysti*
- *Gesta Polychronii*
- *Synodus Sinuessana*.

The Council of Sinuessa is the only one found outside of its chronological context. This is a very serious anomaly, given the careful and scrupulous concern of the editor to place all the apocrypha in their proper order. The collection of *Saint Blaise* has been reconstructed with less interest; it brings together all the apocrypha already found in *Vaticanus 1342* without, however, respecting the chronological order. The two collections are therefore almost identical, apart from the chronological concern and the analysis of the four documents relating to the confirmation of the Council of Nicea by Pope Sylvester<sup>168</sup>.

The question now arises as to which of these two collections, consisting - respectively of five and nine documents, is the oldest. Could that of *Saint Blaise* be an extract of that of *Vatican 1342*? Or could the latter be an interpolation of the former? According to Duchesne<sup>169</sup> the collection of the apocrypha, included in the collection of *St. Blaise*, has preserved its original form; hence it is earlier than that which we find in *Vatican 1342*.

No critic has pointed out the characteristics of the style or the intentions of the two texts. One notes in them the same barbaric language typical of our false documents, the same expressions, the naive conception of ecclesiastical discipline and juridical procedure, the identical concern to accuse those who wanted to sue and threaten the dignity of the pope. All this is of the same age and by the same hand, the work of a defender of Pope Symmachus more zealous than literate.

It is important to note that these writings are completely ignored by Dionysius the Small, who in his collection, the most important of the time, does not mention them at all. Evidently in Rome, where Dionysius worked, they were not given the slightest authority, perhaps because they were known to be forgeries - and Dionysius was not such a naive writer - or perhaps Dionysius himself would have been of anti-Simachian tendency. The latter conclusion seems the least probable.

The apocrypha are not even included in that copy of the Dionysiana, which Pope Hadrian I in 774 sent to Charlemagne<sup>170</sup>. This was enriched with some additions and changes, taking the name of *Dionysio-Hadriana*. Subsequently it underwent further changes and additions, including our apocrypha. Thus

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<sup>168</sup> Cf. Louis DUCHESNE, *Le Liber Pontificalis*, I, Paris 1886, CXXXV.

<sup>169</sup> *Ibid*, CXXXVII.

<sup>170</sup> Cf. Hartmann GRISAR, *Rome at the end of the ancient world according to written sources and monuments*, Rome 1908, 727-731.

interpolated, the *Dionysio-Hadriana* collection has been called by Maassen the *Vermehrte Hadriana*, i.e. the *augmented Hadriana*<sup>171</sup>; its main source is the *Vatican collection 1342*.

At the time of Charlemagne, between the end of the eighth and the beginning of the ninth century, all the Roman collections were revived. This is the time when most of the manuscripts that have come down to us are transcribed in the monasteries. The great abbeys transcribe the *Quenesnelliana*. Between the Rhine and the Danube the *Freising* group is revived and in all countries the collection of *St. Blaise*<sup>ni</sup>.

### 2.3.9. *The normative force of the Simmachian apocrypha and its reception in historiography*

#### A) Panoramic view

Throughout the period from the origins to the second half of the twelfth century the life of the Church and of the faithful is regulated by a collection of texts, some authentic and some false<sup>172</sup> that one wants to define as the ancient law. Fuhrmann<sup>173</sup>, who has studied the pseudo-Isidorian influence on the 1917 *Codex Iuris Canonici*, is also of this opinion. As a result of his research, he noted in the sources of the Codex a notable presence of false decretals: more than 120 canons of pseudo-Isidorian inspiration, and the citation of 300 chapters of Gratian also coming from Pseudo-Isidore. The well-known scholar added that a pure and simple numerical comparison does not fully express the dependence of the Code of Canon Law on the false decretals, because beyond the *materiality* of the quotations, the *spirit* of them clearly shines through. The bulk of the references to the forgeries are found in the canons concerning procedural procedure and criminal law. The scholar has also defined that 20% of the Decree of Gratian was composed of forgeries of ancient times, among which appear in the forefront: the Simmachian apocrypha, the pseudo-letter of Clement to James the Lord's brother, the *Donatio Constantini*, and the pseudo-Isidorian decretals. From the latter, according to Fuhrmann, it is unquestionable that a thrust would have departed that would have changed the law and organization of the Church and strengthened papal jurisdiction<sup>174</sup>. A number of forgeries were fabricated in the Middle Ages just to meet the real needs of ecclesiastical society.

<sup>171</sup> Cf. Friedrich B. C. MAASSEN, 454ff.

<sup>172</sup> Cf. Jacqueline RAMBAUD-BUHOT, *JL? critique des faux dans l'ancien Droit Canonique*, in *Bibliothèque de l'École des Chartres* 126 (1968) 5.

<sup>173</sup> Cf. Horst FUHRMANN, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen. Von ihrem Auftauchen bis in die neuere Zeit*, I, Stuttgart 1972, 35-36. Professor Horst Fuhrmann teaches medieval and modern history at the University of Tübingen. He is a member of the Advisory Board of the National Institute of Medieval Canon Law and general editor of the *Monumenta Germaniae Historica*.

<sup>174</sup> ID., *Von der Wahrheit der Fälscher*, in *Fälschungen im Mittelalter*, Internationaler Kongress der M.G.H., München 16.19. September 1986, Teil I, *Kongressdaten und Festvorträge. Literatur und Fälschung*, Hannover 1988, 93.

The council of October 23, 501, in deference to the high authority of Peter, transmitted to his successors, dared not judge the pope, and referred the judgment to God who knows the secret of the heart. The *Constitutum Silvestri* makes it exceedingly difficult to sustain an accusation against members of the clergy, and still more against the pope, by requiring a greater number of witnesses in proportion as the cause rises in the grades of ecclesiastical dignity.

The Simmachian forger, after supporting the cause of Simmachus and the concluding judgment of the council, proceeds further by formulating the maxim *Prima Sedes a nemine indicatur*. He certainly did not create the doctrine of papal inexcusability, his preparation and theological culture did not allow him to do so as is evident from the theological content of the texts. The first logical reflection in defense of the pope is found in Ennodius and Avitus; they, however, did not arrive at such an incisive and effective expression as the well-known axiom coined by the forger of the Sim-Machian apocrypha. The latter contributed not a little to the diffusion of the doctrine of immunity by the use of clear, concise formulas, very apt to become its vehicle. The principle of the "primacy of jurisdiction" (in the sense of the last instance of appeal) was theoretically and ideologically - designed, in the perspective of a ruling of papal unjusticiability, starting with popes Zosimus, Boniface and Gelasius. Despite the clarity of ideas and the precision of language of the latter, as well as the further development of the ideas of Ennodius and Avitus, the Simmachian forger thought it necessary to give the pre-existing statements a more popular, striking form in order to make them easier to understand.

The apocrypha that has been most successful is the *Constitutum Silvestri*<sup>175</sup>. Its canon XX, which together with the Simmachian apocrypha expresses the absolute in-judicability of the pope, gives the primacy of jurisdiction of the Church of Rome its peculiar meaning, but departs far too far in terms from the Gelasian source, accentuating and forcing much of its sense and content. The principle expressed, being of considerable juridical importance, easily penetrated the tradition, becoming a sure axiom which has successfully weathered many a blizzard. Its inclusion in the Pseudo-Isidore gave force to its authenticity and antiquity, as well as to its canonical authority.

The Simmachian apocrypha reflect the mentality of certain Western classes about the Roman See in growing prestige. They finally express the principle of the absolute personal immunity of the pope: nobody can judge the first See, that is its titular, since it is written that the master is greater than the disciple, and the latter is not above the master. The pope's immunity is unconditional: in all circumstances the pope must not and cannot be judged, whatever the charge<sup>176</sup>.

However, the value and juridical scope of this statement were not

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<sup>175</sup> Cf. 58-61.

<sup>176</sup> Cf. Walter ULLMANN, *Cardinal Lambert and the Ecclesia Romana*, in *Studi Gregoriani* 113-117.

immediately recognized: the history of the papacy records in fact, from the earliest times up to the fifteenth century, a large number of popes tried, dragged into the dock, accused and often even deposed<sup>177</sup>.

But if the authority of the Simmachian forgeries was not always taken into account, the same was not true of their authenticity. Throughout the Middle Ages no one suspected that the principle *Prima Sedes a nemine iudicatur* was the fruit of forgery.

Only Incmar of Reims (806-882) made criticisms, but these were soon overlooked and forgotten until the critical edition of the papal letters edited by the Maurine monk Pierre Constant<sup>178</sup>; he also indicated as the probable period of their production the Laurentian schism. Today, nobody doubts anymore that these acts are spurious<sup>179</sup>.

#### B) Incmar of Reims<sup>180</sup>

Incmarus of Rheims spoke of and challenged the content and authenticity of the *Constitutum Silvestri* in his work *De Presbyteris criminosis*, which, in line with the ecclesiastical legal tradition, gives careful consideration to the procedure to be followed in disciplinary matters with regard to suspected or guilty clerics<sup>181</sup>.

To accuse and judge a presbyter necessarily required a preliminary investigation, the summoning of witnesses and a judicial assembly presided over by the bishop. But if the presbyter was absent, no sentence could be passed on him. And if he, accused and summoned to trial, had deliberately not presented himself, he would have been denounced in absentia.

Incmaro stops his attention on the witnesses, for whom he required suitability and reliability as to number only 7 were necessary and not as many as the *Constitutum Silvestri*<sup>TM</sup> required - according to the degree of dignity of the accused. The archbishop stressed that one should not stop, with regard to the conduct of presbyters, at the hearsay or hearsay of the people, but, until the popular accusations were founded and proved in a trial, they would be of no value and the accused presbyter would still not be found guilty.

<sup>177</sup> Cf. Harald ZIMMERMANN, 6.

<sup>178</sup> *Epistolae Romanorum Pontificum et quae ad eos scriptae sunt a S. Clemente L usque ad Innocentium 111., edidit* Petrus COUSTANT, I, Paris 1721. Reproduced 1967.

<sup>179</sup> Cf. Harald ZIMMERMANN, 4.

<sup>180</sup> Incmar (806-882) was archbishop for 37 years in the see of Rheims. He had great solicitude for the laity, less so for the presbyters. The see of Rheims was metropolitan. Incmarus greatly emphasizes his office as metropolitan, particularly in regard to the election of bishops and the province's supervision of monasteries, churches, and the judiciary. The archbishop intervened still more in the formal exercise of justice, where he was the appellate judge of his suffragans, with power to take up the whole inquiry concerning the facts of the case. He demanded a power of avocation, enabling him to declare the tribunal of the suffragan bishop incompetent, in order to apply to his own tribunal.

<sup>181</sup> HINCMARUS ARCHIEPISCOPUS RHEMENSIS, *De presbyteris criminosis*, in PL, 125, 1093-1110.

Incmarus gives due consideration to the *Constitutum Silvestri*, which he says he found anonymously in the collection of Isidore, bishop of Seville, and cites the decree, without quoting in full Canon XX, which defines the unjusticiability of the Roman pontiff. He disputes the rule that forbade the testimony of a family member of the accused, saying that this rule was in dissonance not only with sacred Scripture, but also with dommatic literature: the Lord Jesus Christ Himself had wanted the testimony of those with whom He had lived, that is, the apostles. He also criticizes the principle which forbade an inferior to bring accusations against his superior, the sheep against their shepherd, as well as the demand for all those witnesses invoked by the decrees of Pope Sylvester<sup>182</sup>.

The Archbishop of Reims notes internal contradictions in the *Constitutum Silvestri* and dissonances with the sacred canons. He affirms its insostenibility, as for example is the case with the witnesses. He asks: where and how could they have found all those witnesses and such that their moral life could not be doubted, that they had wives and children and preached Christ? It would have been more logical, in such cases, to call to witness only the religious. With such a practice, says Incmaro, it is truly difficult to exercise justice.

### C) Modern Times

#### 1. Centuriators of Magdeburg<sup>183</sup>

The *Centuriatores Magdeburgenses* do not speak of the simmachiana apocrypha. They report what had been handed down from the various collections of the councils<sup>184</sup>. They only point out that the *Gesta Marcellini* were neither

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<sup>182</sup> *Sic e contra tales debent audiri accusatores ac testes de vita et conversatione presbyteri, qui ejus vitam et conversatione noverunt in omni tempore, ex quo intravit et exivit cum eis presbyter illis et praepositus ordinatus. Sufficiant ergo, ad refellendam vanam opinionem eorum, qui dicunt quoniam a suis oribus vel subjectis praelatus regulariter accusari non valeat, haec tanta et talia testimonia. Caeterum quoniam quidam quasi in auctoritate proferunt sanctum Silvestrum papam decrevisse talia, quae catholica Ecclesia inter synodalia decreta non computat, quae majores nostri inde nobis tenenda suis posteris reliquerunt, hic necessarium ponere duximus. Scriptum namque est in quodam sermone, sine exceptoris nomine de gestis sancti Silvestri excepto, quem Isidorus episcopus Hispalensis collegit cum epistolis Romanae sedis pontificum a sancto Clemente usque ad beatum Gregorium, eundem sanctum Silvestrum decrevisse: "Ut nullus laicus crimen clerico audeat inferre et ut presbyter non adversus episcopum ... Testimonium clerici adversus laicum nemo recipiat". Quae dicta quam adversa sibi, et quam diversa a sanctis canonibus et sacris legibus sint, nemo est qui dubitet, qui et haec dicta cum ratione attenderit, et sacras regulas ac leges diligentius legit... Quod quam absurdum sit, ut uxores et filios habentes potius ad testimonium recipi debeant, quam continentes et religiosi, ratio aperta demonstrat. Ibid. 1103-1104.*

<sup>183</sup> This name is taken from the title of the work *Ecclesiastica historia secundum singulas centurias per aliquot studiosos et pios viros in urbe Magdeburgica*. It is the first general history of the Church compiled by the Protestants, distributed in periods of one hundred years or Centuries, written, at least for the most part in the city of Magdeburg and to which scholars such as Piaccio Illirico (1520-1575), director and soul of the whole work, collaborated. The first three Centuries were printed in Basel in 1559; the others up to the thirteenth, between 1560 and 1574, again in Basel.

<sup>184</sup> *Quinta Centuria Ecclesiasticae Historiae continens descriptionem amplissimarum rerum in regno Christo*, Basileae 1562, 905-906.

reported nor quoted by Eusebius of Caesarea<sup>185</sup>.

## 2. Baronio<sup>186</sup>

Baronius, though noting the inaccuracy of the consular date, believed the Roman synod of 324 to be authentic and historically true. He asserted, twice, that the canons of the said synod had been quoted by Pope Nicholas I in decided words in his letter addressed to Emperor Michael in 865. The authoritative personality of Nicholas I, who supported the truth and authenticity of the Simmachian documents, constitutes for Baronius *argumentum auctoritatis*<sup>TM</sup>. As for the apocrypha of the Council of Sinuessa, Baronius regards them as a Donatist creation: the schismatic Donatists in Africa are said to have accused Pope Marcellinus, during the persecutions, of having yielded before the civil authorities by handing over sacred books (*traditio*) and offering incense on pagan altars (*thurificario*). Hence he subjects the acts of Sinuessa, so doubtful and far-fetched, to critical examination. He asks how three hundred bishops could have gathered and assembled at that time, when persecutions were raging and emperors were fierce opponents of Christianity. The chronology also did not coincide with the politico-military activity of the emperors Diocletian and Maximian<sup>187</sup>. He extends the same doubt to the *Gesta Xy-sti*. As for the *Gesta Polychronii*, after an examination of the catalogue of the bishops of Jerusalem, he asserts that never in that see was there a bishop of such a name. However, in deference to the authority of Nicholas I and Pier Damiani, who had quoted the texts, he hopes that someone, later on, will take care to study these documents carefully, in order to clarify their historical value and the truth of their contents<sup>188</sup>. As for himself, Baronius refrains from pronouncing a definitive verdict.

## 3. Labbe<sup>136</sup>

Labbe - Coustant reports<sup>189</sup> - intuited the apocryphal character of the

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<sup>185</sup> *Ibid*, 609-610.

<sup>186</sup> Cesare Baronio (1538-1607) is the conspicuous representative of Counter-Reformation intransigence, of the generation called upon to apply and complete the measures of the Council of Trent. His work, the *Annals* (twelve volumes: the first was published in 1558, and the last came out after his death, in 1607) is considered as the almost official response of the Catholic Church to Protestantism. It is therefore a work of apologetics and controversy no less than of erudition. Baronio's life was ordered and depended on the composition and publication of the *Annals*. Cf. A. PINCHERLE, *Baronio Cesare*, in *Dizionario Biografico degli Italiani*, VI, Rome 1964, 470-478.

<sup>187</sup> *Id.*, Ili, Paris 1863, 400-401.

<sup>188</sup> *Id.*, VII, Paris 1861, 445-446.

<sup>189</sup> Labbe Philippe (1607-1667), Jesuit, biographer and theologian. He has been called, for his rich culture, the *library of libraries*. He left more than 80 works, of which the principal one is the conciliar collection in 18 volumes: *Sacrosancta Concilia ad regiam editionem exacta cum duobus apparatusibus*, it covers the years 34-1564.

*Constitutum Silvestri*^ by considering the statement that the *summus praesul* could be judged neither by the people, nor by the clergy, nor by the king, nor by the emperor. He had noted that in the time of Pope Sylvester there were no kings, therefore an interpolation of Isidore Mercator, i.e. the pseudo-Isidore, was evident.



### 3. GREGORY MAGNUS (590-604) AND ISIDORE OF SEVILLE (+ 636)

Two authorities we draw on, at this point of our study, are Gregory the Great and Isidore of Seville, extremely important for the ideas we are now going to develop. With them the era of the Fathers can be considered closed, at least in the West, even if their influence is felt until after Bede (+ 735).

They elaborate a conception of the Church within which are found the organisms of the priestly functions; there is then a geo-rchized totality in which the observance of an order, whereby each one realizes the *rectitudo*, is the condition of peace. This is the state of internal and external equilibrium in which everything created fits into God's desired place within the cosmos, thus participating in the highest good which is the unity of being in God<sup>190</sup>.

Isidore, as an excellent compiler, was the greatest scholar of his time, worthily concluding the patristic age. His importance is mainly due to his literary activity, which, even if it does not offer us originality of thought, nor speculative acuity, is nevertheless admirable for its versatility and erudition, as well as for the tireless diligence in extracting and compiling what he believed useful to preserve for his Church and nation.

His works include especially the *Labri tres sententiarum*<sup>191</sup>. This work deserves special attention not only for the purposes of our study, but also for its influence on medieval theology. The title is taken from Prospero, and the contents, almost entirely, from Augustine and Gregory the Great.

These books become the *type of* the scholastic manuals of judgments, so frequently used in the twelfth century, that they had an extraordinary diffusion in the theological schools. They are manuals of dogmatic ethics. The first book deals with dogma, the second with general ethics, and the third with special ethics; for the writing of the latter book Isidore depends heavily on Origen and Gregory the Great's *Moralia in Job*<sup>192</sup>.

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<sup>190</sup> Cf. Yves M. J. CONGAR, *L'ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 102.

<sup>191</sup> ISIDORUS HISPALENSIS EPISCOPUS (Sanctus), *Sententiarum Libri tres*, in PL, 83, 538-738.

<sup>192</sup> Cf. Ubaldo MANNUCCI, *Institutions of Patrology for the use of theological schools*, II, Rome 1915, 298-301.

It is precisely in this book that Isidore, using the work of Gregory the Great, develops the theme of the judgability and correction of superiors. Gregory the Great, commenting with moral-spiritual tones and content on the book of Job, had said: *He who suffers from a hypocritical superior, let him not accuse the one who suffers, because he has deserved to be under a perverse superior, therefore let him accuse his own faults rather than the injustice of those who govern him... Why should we despise those who have received authority over us from the wrath of God? But since the superiors have God as their judge, let the subjects be careful not to judge the lives of the superiors without serious reasons... Therefore, except what touches the faith, it is a virtuous work to put up with the superior in everything. Let no one despise H<sup>uo</sup> superior because perhaps in some of his actions he is reprehensible ... Even if there is reason to take back the life of the masters, the subjects too must honor them, despite their sorrow ... and they must never lose the reverence due to them*<sup>193</sup>.

According to Gregory the Great, therefore, the lives of the *rectores* can never be judged solely on the basis of their unedifying conduct, except in cases involving faith: only then can and must the subjects take action against them. But even this is said only in a secondary proposition *dum salva fide*, without further explanation.

It should be noted that, both in Gregory the Great and in Isidore of Seville, the term *rectores* indicates those who stand as *fundamentum ecclesiae*, that is, the bishops, teachers of the faith and preachers of Christ. In another of his works the same Gregory writes that priests who live disorderly can never be judged by the laity<sup>194</sup>. Here the right of *privilegium fori* is asserted, since when the life of clerics is called into question, only the bishop can intervene and interfere, since he alone has authority over priests.

Gregory the Great's idea was taken up, immediately afterwards, by Isidore of Seville, in the third book of the Sentences. The archbishop of Seville writes that bishops cannot be condemned: to attempt on the life of a bishop is to upset the divine order, since he was constituted as such by the will of God<sup>195</sup>. No one can

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<sup>193</sup> *Nullus, qui talem rectorem (hipocritam), patitur, eum quem patitur accuset, quia nimirum sui fuit meriti perversi rectoris subiacere ditioni. Culpam ergo proprii magis, accuset operis quam iniustitiam gubernantis.... Quid ergo illos illos nobis praeesse despiciamus, quorum super nos regimina ex Domini furore suscipimus?.... Sed quia rectores habent iudicem suum, magna cautela subditorum est non temere vitam iudicare regentium... Igitur dum salva fide res agitur, virtutis est meritum, si quicquid prioris est toleratur... ne eum sibi praeesse quisque de spiciat, quem fortasse contingit ut in aliqua actione reprehendat... Si autem magistrorum vita iure reprehenditur, oportet ut eos subditi, etiam cum displicent, venerentur... Subtilis etenim via tenenda est rectitudinis et humilitatis, ut sic reprehensibilia magistrorum facta displiceant, quatenus subditorum mens a servanda magisterii reverentia non recedat.* GREGORIUS MAGNUS (S.), *Moralia in Iob, Lib. XXV, Libri XXIII- XXXV, edidit Marcus ADRIAEN, in CC., 143 B, Turnholti 1985, 1260, rr. 31-36; 1261, rr. 64-65, 72-73, 77-79; 1262, rr. 99-106.*

<sup>194</sup> *Cum sacerdotes male vivunt, a laicis iudicandi non sunt.* ID., *In librum primum Regum, Lib. IV, edidit Patricius VERABRAKEN, in CC., 144, Turnholti 1963, 318, rr. 875-876.*

<sup>195</sup> *Dei ergo ordinem accusant, a quo instituuntur, qui episcopos condemnant, dum minus spiritualia, sed magis terrena sectantur.* ISIDORUS HISPALENSIS EPISCOPUS (Sanctus), *Sententiarum Libri tres, Lib. III, ch. XXXIX, 2, in PL., 83, 709.*

judge a *rector*, even if he acts disorderly and does not lead a holy and irreproachable life<sup>196</sup>.

The bishops, therefore, are to be judged by God alone, never by their subjects, and this in accordance with the example of the Lord, who overturned with the lash the chairs of the dove-sellers and the tables of the money-changers, driving them out of the temple (*Mat. 21:12*). Only God can judge them, as the Psalmist says: *God stands in the divine assembly, he judges in me^o the gods (Sai 82, 1)*. Only in the event that the bishop should fail in the right faith could he be accused. But if he should live disorderly, or if he should be of bad morals, that is not the reason why he should be expelled, but rather tolerated pending conversion<sup>197</sup>. Moral failings are not sufficient to reprimand and accuse a bishop. Only if a *rector*, a superior or a bishop were to fail in fidelity and in the truth of the faith, could he be accused by his subjects.

Gregory the Great and Isidore of Seville do not speak of papal immunity, but of episcopal immunity. The integrity of bishops is compromised should they err in matters of faith. In this case, they are liable to judgment. But who can judge their cause and who is responsible for passing judgment on them? According to tradition, developed around the jurisdiction of the forum, it would be up to the metropolitan and the provincial synod, but if the accused - not satisfied with their judgment - wished to appeal, he could have recourse to the bishop of Rome, whose authority was supreme and whose judgment was unquestionable and incontrovertible. Isidore of Seville and Gregory, however, do not speak of this, nor do they specify who they mean by bishops who had fallen into heresy and were therefore subject to judgment. Perhaps the bishop of Rome, the *fundamentum - ecclesiae*, was also among the *rectores*? It's difficult to say.

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<sup>196</sup> *Non est itaque iudicandus a plebe rector inordinatus, dum magis noverint populi, sui fuisse meriti perversi regimen suscepisse pontificis. Ibid, 710.*

<sup>197</sup> *Rectores ergo a Deo iudicandi sunt, a suis autem subditis nequaquam iudicandi sunt: exemplo Domini, qui per se vendentes columbas et nummulariorum mensas proprio evertit flagello, et projecit a templo (Matth. 21,12), vel etiam sicut dicit Psalmista: "Deus stetit in synagoga deorum, in medio autem deos discernit" (Psal. 82,1). Quod si a fide exorbitaverit rector, tunc erit arguendus a subditis; pro moribus vero reprobis tolerandus magis distringendus a plebe est. Ibid, 710.*



#### 4. LION III (795-816)

When Pope Adrian I died (795), the priest Leo, titular of Santa Susanna, was elected and consecrated on the day of Saint John the Apostle and Evangelist (27 December) of the same year. He immediately had to face opposition from the aristocracy, close to his predecessor, who tried in every way to depose him.

This difficult situation found its outlet in a violent conspiracy against the pope. On April 25, 799, the pope had descended on horseback from Lateran to go to St. Lawrence in Lucina, where he was supposed to lead the Major Litany, which was to go to St. Peter's, but on the way he fell victim to an assassination attempt. The leaders of the sedition were two high officials of the palace: the primicerius Pasquale (nephew of the late pope Hadrian) and the sacellarian Campulo. The pope was left alone, thrown from his horse and clubbed. Then it was said that the attackers attacked him, trying to blind him and to tear out his tongue. Again, it was said that the attempt was made inside the monastery of Ss. Stefano and Silvestro. Later the pope was taken to the Caelian, to the monastery of St. Erasmus, where he remained under strict guard. Nevertheless, soon after, a faithful servant named Albinus managed to accompany the pope to St. Peter's. From here, with the help of Duke Guinigi, he was taken to Spoleto.

When Charlemagne learned of what had happened, he gave orders for the pope to join him in his then camp at Paderborn, where Leo III was well received. During that stay at court, envoys from the insurgents arrived to present the king with charges against the pontiff.

Therefore, in the autumn of 799 the pope was authorized to return to Rome. He entered on November 29, accompanied by the archbishops of Cologne and Salzburg, Hildebald and Arnon, and several other Frankish bishops and counts. The reception was *very solemn*. Subsequently, at the king's behest, an inquiry was opened under the leadership of the two archbishops Hildebald and Arnone - concerning the charges brought against the pope. The investigators, having heard the depositions of the accusers, did not consider themselves authorised to make a decision and referred everything to the king.

Charlemagne arrived in Rome on 24 November 800 and was welcomed by the pope with great honours. One source says: after seven days the king called an assembly, at the beginning of which he told everyone why he had come to Rome. The first reason was particularly difficult and del-

The task to be discussed was to examine the accusations that had been made against the pontiff<sup>198</sup>. The Carolingian sources<sup>199</sup> agree in stressing the role of King Charles during the assembly proceedings, suggesting that the king was the only supreme instance to judge the pope. This thesis is supported by the following ideas: the reason for the coming of Charles, the convocation of the assembly, the position of the king in the assembly session.

On the Roman side, the *Liber Pontificalis* specifies that the assembly was made up of archbishops, bishops, abbots, priests and the Frankish and Roman nobility. These were assembled to examine the accusations presented against the pontiff<sup>200</sup> by his opponents, only out of envy<sup>201</sup> and not because of the truth of the facts.

Alcuin instead hinted and implied that the pope was not exactly innocent. It cannot be clearly known what Leo was accused of. According to a letter of Alcuin, sent to the archbishop of Salzburg Arnon, in August 799, he was charged with *crimina adulterii et periurii*<sup>202</sup>. Another letter of Alcuin, in response to one of

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<sup>198</sup> *Post septem vero dies rex, contione vocata, cur Romam venisset omnibus patefecit, et exinde cotidie in ea quae venerat facienda operam dedit. Inter quae vel maximum, vel difficillimum erat quod primum inchoatum est, de discutiendis quae pontifici obiecta sunt criminibus. Annales Laurissenses, A. 800, edidit Georgius Henricus PERTZ, in M.G.H., SS., I, Hannoverae 1826, 188, rr. 14-17. We denote by the abbreviation rr. the lines of the corresponding cited page.*

<sup>199</sup> Carolingian historiography at the end of the fifth century and throughout the ninth century is characterized by the *Annales*. From the outside, the *Annales* - at first brief notations for the use of the monasteries made in the margins of the indications of the Easter incidences - may appear to be a regression from the corpulence of, for example, Gregory of Tours. They are an intentionally anonymous work, restricted in time, more objective, but by no means unconnected; they became histories rich in political interests when the rise of the Carolingian monarchy and its powerful support - but also control - of the monasteries: the anonymity of the *Annales* favored in this way the pro-Carolingian orientation of that historiography. For them, anonymity did not mean less interest, since their compilers certainly all gravitated around the environment of the Palatine chapel. The *Annales* were written in synchrony with contemporary events, without literary pretensions. From time to time they were also continued for generations, and consequently we have different authors. In the Carolingian age, they are the most important sources, following the chronological, annalistic method, they report facts also quite detailed. At Charlemagne's court they soon understood how useful this kind of historiography could be to propagandize their own politics. Cf. Ovidio CAPITANI, *Motivi di storiografia medioevale italiana secc. V-XIV*, in *Nuove Questioni di Storia Medioevale*, Milan 1974, 746-748.

<sup>200</sup> *Qui post modicum tempus ipse magnus rex... fecit in eadem ecclesia congregare archiepiscopos seu episcopos, abbates et omni nobilitate Francorum atque synclitu Romanorum. Et sedentes pariter tam magnus rex quam beatissimus pontifex, fecerunt resedere et sanctissimos archiepiscopos seu episcopos et abbates, stantes reliquos sacerdotes seu optimates Francorum et Romanorum, ut crimina quae adversus alium pontificem dicta fuerant delirarent. Liber Pontificalis, edidit Louis DUCHESNE, II, Paris 1892, 7, rr. 3-7.*

<sup>201</sup> *ipsum apostolicum condemnare voluerunt... quia non propter aliam inistitiam sed per invidiam eum condemnare volebant. Annales Laureshamenses, A. 800, edidit Georgius Henricus PERTZ, in M.G.H., SS., I, Hannoverae 1826, 38.*

<sup>202</sup> *Intelligo quoque multos aemulatores eiusdem predicti domni apostolici; deponere eum quaerentes - subdola suggestione; crimina adulterii vel periurii illi inponere quaerentes. ALCUINUS, Ad Amonem*

Arnon, at the beginning of the 800s, informs us that he had complained strongly *de moribus apostolici*<sup>203</sup>. In any case, the *Liber Pontificalis* states that the enemies of the pope when during the assembly they were invited to give their evidence had nothing to object against the pontiff<sup>204</sup>.

The plenary sessions took place between the first and the twenty-third of December 800 under the presidency of Charles. According to some accounts it seems that the synods were not all of the same opinion: one side was of the opinion that the pontiff could not be judged by anyone; the other, instead, demanded that the pontiff make a declaration, since in view of the accusations against him a simple restitution of Leo seemed impossible. The pope, therefore, would either have to take an oath of purgation or declare his withdrawal.

The *Liber Pontificalis* relates that all the archbishops, bishops and abbots present, having heard why the assembly was gathered, said unanimously: *We dare not judge the apostolic see, which is the head of all the churches of God. For we all, by it and its vicar are judged; but it by no one can be judged, as it has been by ancient tradition. So as the supreme pontiff himself will have canonically determined, we will obey him*<sup>205</sup>.

The reason for which the assembly had been summoned is reported in agreement by all the sources concerned and contemporary to this incident that happened to the pope: to discuss the accusations against the pontiff. The conclusion of the assembly, however, on the conduct of Leo III, is presented in a very different way, perhaps because it expresses the interests of the writers of the sources, both Roman and Carolingian.

The latter take great pains to specify the trial procedure of the assembly, claiming that the pope's case was discussed and examined, but since no one came forward to prove the charges, Leo III was found innocent<sup>206</sup>.

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*Archiepiscopum Salisburgensem*, Ep. 179, edidit Ernest DCMLER, in *Epp.*, IV, 2, Berolini 1895, 297, rr. 13-15.

<sup>203</sup> *Et vero scripsisti mihi de domni apostolici religiosa vita et iustitia; quales et quomodo iniustas patitur perturbationes a filiis discordiae. Multo me gaudeo refocilatam fore fateor, quod pater ecclesiarum pio animo et fideli absque dolo Deo servire satagit.* ID., *Ad Amonem Archiepiscopum Salisburgensem*, Ep. 159, in M.G.H., *Epp.*, IV, 2, 258, rr. 1-3. *Epistola vero prior (si riferisce alia lettera 159), quae ad nos sub vestro nomine pervenit - quaerimonias quasdam habens de moribus apostolici et de periculo tuo apud eum propter Romanos - clericus vester, ut aestimo, attulit eam mihi, nomine Baldricus... Sed quia ego nolui, ut in alterius manus pervenisset epistula, Candidus tantum illam perlegebat mecum. Et sic tradita est igni, ne aliquid scandali oriri potuisset propter negligentiam cartulas meas servantis.* ID., *Ad Amonem Archiepiscopum Salisburgensem*, Ep. 184, in M.G.H., *Epp.*, IV, 2, 309, rr.6-12.

<sup>204</sup> *Paschales quamque Campulus cum sequacibus eorum... nihil habuerunt adversus eum quod dicerent.* *Liber Pontificalis*, II, 7, rr. 1-2.

<sup>205</sup> *J2<sup>w</sup> universi archiepiscopi seu episcopi et abbates unanimitè audientes dixerunt: "Non sedem apostolicam, quae est capud (sic) omnium Dei ecclesiarum, iudicare non audemus. Nam ab ipsa nos omnes et vicario suo (sic) indicamur; ipsa autem a nemine indicatur, quemadmodum et antiquitus mos fuit. Sed sicut ipse summus pontifex censuerit, canonicè obediemus".* *Ibid.*, 7, rr. 7-11.

<sup>206</sup> *Qui tamen, postquam nullus probator criminum esse voluit, coram omni populo in basilica beati apostoli evangelium portans ambonem conscendit; invocatoque sanctae Trinitatis nomine, in-reiurando ab obiectis*

The *Liber Pontificalis*, on the other hand, almost makes it clear<sup>207</sup> that the case concerning the accusations against the pontiff was not discussed at all, and the objected accusations were not even presented in the assembly. All this was done on the basis of the principle *Prima Sedes a nemine iudicatur*: *We dare not judge the Apostolic See - the archbishops, bishops and abbots affirmed - because it is the head of all the churches of God. We are all judged by it and by its vicar, but it can never be judged by anyone.*"

The Roman source presents the assembly's conclusion as the result of observing the traditional formula that forbade judging the apostolic see, i.e. the pope. The *Annales* emphasize the role of King Charles, whose presence in Rome had perhaps been invoked by the pope during his presence in Paderborn. It is implied that Charles' authority would be the only one that could judge the pope. But Leo III's intention was certainly another: to suppress the seditious as a matter of urgency. In fact, imperial authority was required to pronounce sentence against them; the occasion presented itself with the appointment of Charles as emperor. Thus it is well known that the Romans were unwilling to recognize any legal authority superior to the pope in ecclesiastical matters. In fact, in later times, according to the practice of the Church, the popes in such cases never invoked or called upon the Frankish emperors to intervene as judges<sup>208</sup>. Ultimately, the result of the negotiations of December 23, 800 was a compromise.

#### 4.1. THE STANCE OF ALCUIN AND THE CONVICTION OF THE AUTHOR OF THE LIFE OF LEO III

Alcuin - from the second half of the 5th century - was Anglo-Saxon and came from the kingdom of Northumbria. Considered the most illustrious scholar in England, he was already head of the cathedral school of York, and in the last decades of the Vili century he was at the centre of the intellectual elite that gathered around Charlemagne. One could not think of the Carolingian renaissance without him, who became the sovereign's trusted advisor, and in a sense, his *minister of education*, head of the palatine school and, later, abbot of St Martin's in Tours<sup>209</sup>.

With his synthetic ability he was able to embrace the various problems of the Frankish kingdom and of the Church: not by chance, with his treatises on theology, he was to be one of the protagonists in the struggle against heresies. He had a - contemplative nature and his conception of the Roman See was based not so much

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*se criminibus purgavit. Annales Laurissenses*, 188, rr. 18-20.

<sup>207</sup> One must be careful because even the *Tiber Pontificalis* is not a source above suspicion, absolutely true. It could also be the case that the editor of the life of Leo III later used the life of Pope Symmachus as a paradigm for his own.

<sup>208</sup> Cf. O. HAGENEDER, *Das crimen maiestatis. Der Prozess gegen die Attentäter Past Leos III. und die Kaiserkrönung Karls des Grossen*, in *Aus Kirche und Reich. Studien ^u Theologie, Politik und Recht im Mittelalter, Festschrift für Friedrich KEMPF*, edidit Hubert MORDEK, Sigmaringen 1983, 55-79.

<sup>209</sup> Cf. Claudio LEONARDI, *Alcuin and the Palatine School*, in *Nascita deir Europa ed Europa Carolingia: un'equazione da verificare*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XXVII,!), Spoleto 1981, 459-496.

on authority as on the idea of service, the service of the pastor. If we wanted to make a juxtaposition, *servatis servandis*, Alcuin seems to be, in the specific case of Pope Leo III, what Avitus of Vienne had been, three centuries earlier, in the affair of Pope Symmachus. This testifies how faithful and close the Frankish and Northern European Church was at that time to the Apostolic See, the mother and head of all the churches. Alcuin is animated by the same love with which Avitus had written to the Roman senate in defense of the person of the pope, and especially in defense of the principles of communion with the supreme Pastor, the bishop of Rome. The Palatine theologian is very clear in his theological approach, he does not fail to point out to Charles, despite his deep respect, the sphere of his competence and the danger of substituting himself for the pope, in an area - such as that of the faith - that cannot be his. He sees in the only Frankish king the salvation of the Church of Christ, asking him to intervene and to take an interest in the person of the pope, mistreated by the Romans<sup>210</sup>; he also defines Charles as the decorum of the Christian people, the defence of the Church, the consolation for the present life<sup>211</sup>.

Decisive for our investigation is the letter that Alcuin had sent in August 799 to Arnone, archbishop of Salzburg. In it he shows us, with great clarity, his attitude towards the incident that was seriously disturbing the See of Rome, because of the insults and accusations made against Leo III: *I also understand that there are many enemies of the pope, who seek, by false accusations of crime, adultery and perjury to depose him; they demand that the pontiff justify himself by taking a solemn oath, with the devout intention that he should not take that oath but abdicate and retire quietly to a monastery... This must not, at all, be done; he, neither must take an oath nor abdicate. I would answer for him if I were beside him, "Let him who is without sin cast the first stone" (John 8:7)*<sup>212</sup>.

Certainly Alcuin was not convinced of the innocence of the pope, accused of adultery and perjury: what he contested was the competence of those who intended to put him on trial. The following text shows us how important this principle was for him. Appealing in the first place to Holy Scripture and hence to law, he shows how much the famous axiom on the pope's unjustifiability was, at that time, known and rooted in the conscience of theologians: *It occurs to me that I once read, if I remember rightly, that the canons of Sylvester required the presentation of 72 witnesses to accuse in a trial a pontiff, and that their lives must be such as papal authority required, that is, of undoubted moral life and sanctity of life; further, in*

<sup>210</sup> ALCUINUS, *Carolus Regi*, Ep. 177, in.

*Epp.*, IV, 2, 292-293.

<sup>211</sup> *Ibid.* ep. 178, 294-296.

<sup>212</sup> *Intellego quoque multos esse aemulatores eiusdem praedicti domni apostolici; deponere eum quaerentes subdola suggestione; crimina adulterii vel periurii illi imponere quaerentes; et tunc, sacramento gravissimi iurisrandi ab his se purgaret criminibus, ordinantes; sic consilio secreto suadentes, ut deponeret sine iuramento pontificatum et quietam in quolibet monasterio ageret vitam. Quod omnino fieri non debet, nec ille consentire se quolibet sacramento constringere aut sedem suam amittere. Responderem pro eo, si ex latere eius stetissem: "Qui sine peccato est vestrum, primus in illum lapidem mittat" (Ioh. 8,7). *Ibid.*, Ep. 174, 297, rr. 13-20.*

other canons, I read that the apostolic see may judge, but cannot be judged<sup>213</sup>.

Continuing to read the text we realize that his esteem for the Roman See has deeper roots than that of the canons themselves. The stability of Peter, and of the pope therefore, is the guarantee of that of the Church. This indefectibility of the foundation of the Church is assured by the Lord, and that is why the injustices and impieties of men will never succeed in bringing down what is a divine institution. One wonders here whether, when he speaks of the indefectibility of the Church, the Palatine theologian also means to refer to the person of the pope. It does not seem so to us. Alcuin then continues with a trio of exhortations, quite significant, with which he underlines the purpose of papal primacy and the founding principle of the authority of the first See: the patrimony of faith and its integrity<sup>214</sup>.

Again, in that letter, he recalled the *Constitutum Silvestri* - that is, the canons of the pseudo-Roman council of 324<sup>215</sup> - to which he opposed the authority of the apocryphal council of Sinuessa, held, as was alleged, by Pope Marcellinus in 303<sup>216</sup>. Both *canonical* authorities claimed by Alcuin, recall and define the principle *Prima Sedes a nemine iudicatur*. The bishop of Rome is the bishop of the first and supreme apostolic see and the pope of the universal Church. This is a quality that Alcuin highlights in relation to the image of the head: the head cannot be judged by the members.

Linked to the image of the pope-head of the ecclesial body is the concept of the bishop of Rome - *Vicarius Petri* - on this concept it will perhaps be useful to spend a few words here, although Alcuin did not use this expression, unlike the editor of the Life of Leo III, in the *Ciber Pontificalis*.

The pope cannot be judged, according to the *aber Pontificalis*<sup>217</sup>, because he is the vicar of Peter, and the Church of Rome is the apostolic See, the mother of all the Churches. No Church, as daughter, can judge its mother, the Apostolic See. It is possible to note, moreover, a strong restriction, both of the term and of the ecclesiological title *Sedes apostolica*. what at first was common to all those bishops whose sees had a direct connection with the apostles, later became - exclusive to the pope. By the end of the Middle Ages this title now indicated the religious elevation of the papal dignity<sup>218</sup>. But attention is especially directed to

<sup>213</sup> *Memini me legisse quondam, si rite recordor, in canonibus beati Silvestri non minus septuaginta duobus testibus pontificem accusandum esse et iudicio praesentari; et ut illorum talis vita esset, ut potuissent contra talem auctoritatem stare. Insuper et in aliis legebam canonibus apostolicam sedem iudicariam esse, non indicandam. Ibid, 297, rr. 21-24.*

<sup>214</sup> *Q^ potest immunis esse in ecclesia Christi pastor, si ille a malefactoribus deicitur, qui caput est ecclesiarum Christi? Suo Domino stabit, aut cadet; stabit vero, potens est enim Dominus statuere illum... Labora pro capitis tui salute, pro summi pastoris incolumitate, pro sanctae sedis auctoritate, pro catholicae fidei integritate; ne lupinis morsibus pastorum pastor pateat. Ibid, 297, rr. 26-28; 31-33.*

<sup>215</sup> Chapter Two of our study examined the texts quoted by Alcuin. We refer to it for the texts of these quotations, 58-61.

<sup>216</sup> We refer, as in the previous note, to Chapter Two of our study, 61-63.

<sup>217</sup> *Liber Pontificalis*, 7, rr. 7-11. The text is quoted in note 8 of this chapter, 85.

<sup>218</sup> Cf. Michele MACCARRONE, *La dottrina del primato papale dal IV all'V secolo nelle relazioni*

the principle of the pope as *Vicarius Petri*. This doctrine had been developed in the relations of the popes with the Anglo-Saxons and the Franks. Now it takes new developments and shows its importance particularly in the history of the papacy of the Carolingian period<sup>219</sup>.

The ancient conception of the pope, vicar of Peter, had not been forgotten in Rome, as is attested by the *aber Pontificalis*, in which this title is reported in the narration of the events mentioned and, with significant rilievo, once in the life of Adrian I<sup>220</sup> and twice in that of Leo III: Charlemagne at Paderborn received the pope with veneration and honour as vicar of blessed Peter<sup>221</sup>. Moreover, in the assembly held in St. Peter's on December 1, the bishops and abbots refused to judge the pope on account of his office as vicar of St. Peter<sup>222</sup>.

Let's go back to Alcuin: this one, very devout like his compatriots towards the Apostolic See, had not been personally sent by Charles to the meeting in Rome; perhaps it was feared that he would intervene too directly and explicitly in favour of the pope, as in fact emerges from the above-mentioned letter sent to Arnone.

Putting the letter of Alcuin and the testimony of the *Liber Pontificalis* into synopsis we immediately notice that both texts move in the same doctrinal and juridical direction: one has the feeling that they are quoting the same canonical authorities. Certainly they refer to the ecclesial tradition and the juridical discipline according to which cases were not presented where the popes had been subjected to judgment: rather, according to ancient practice, the *canons* expressing the principle were handed down: *Sedes apostolica a nemine iudicatur*. They had already forgotten, or perhaps they no longer wanted to know, that the Byzantine emperors had subjected the popes to judgment: Pope Martin (649-655) condemned by the emperor Constant II during the Monothelite controversy, was an example.

A text that further clarifies the sense of the research is the speech that Pope Leo III delivered in the assembly. On that occasion, the pontiff affirmed that he was free from all forms of constraint by virtue of canonical tradition and ecclesiastical discipline, yet he freely exonerated himself before the assembly. With Leo III, according to the testimony of the *Liber Pontificalis*, the principle of the supreme judicial and judiciary power of the Bishop of Rome was affirmed.

#### 4.2. THE OATH OF LEO III

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*con le chiese occidentali*, in *Le chiese nei Regni dell'Europa occidentale e i loro rapporti con Roma sino all'800*, (Settimane di Studio del Centro Italiano di Studi dell'Alto Medioevo, VII, 2), Spoleto, 1960, 687.

<sup>219</sup> Cf. ID., *Vicarius Christi. Storia del titolo papale*, Rome 1952, 61-66.

<sup>220</sup> *Liber Pontificalis*, I, 496, r. 12.

<sup>221</sup> *Sicut vicarium beati Petri venerabiliter et honorifice cum hymnis et canticis spiritualibus eum suscepit*. *Liber Pontificalis*, II, 6, r. 3.

<sup>222</sup> *Nos sedem apostolicam... iudicare non audemus. Nam ab ipsa nos omnes et vicario suo iudicamur*. *Ibid*, 7, rr. 8-9.

Charles had been invited to Rome to resolve the situation concerning the person of Leo III. But strangely enough, when it came to the decisive point, as the *Annales Laurissenses*<sup>21</sup> recounts, none of the accusers was willing or able to prove the accusations made up to then. The suspicion nevertheless remained in the air.

It was then that Leo III, of his own free will, made a declaration. According to Germanic law the accused had to defend himself by taking an oath. The *Annales Lanrissenses* say: since no one had been willing or able to establish the charges, the pope took the oath without calling into question any principle. It would seem, therefore, that the emperor called the two parties to judgment: the one who had taken responsibility for uttering the accusations would have had to prove the truth of them.

In canon law it was clear that the pope had no ecclesiastical superiors; at least up to that time no legitimate ecclesiastical court had pronounced judgements against a pope<sup>223</sup>. In the civil forum, however, the situation was different. For common law crimes such as murder, adultery, lese majesty, the ordinary courts had jurisdiction, whatever the rank of the accused. Now, as long as the imperial government lasted, the pope had enjoyed no exemption in this respect. But now, at least according to the facts, the pope was sovereign, and a sovereign could not be tried.

In any case the pontiff, during the assembly of 23 December 800, made a declaration before all, that is the oath required perhaps by Charles or by Germanic law<sup>224</sup>. The text that has been handed down to us is intended to be - according to its *verbatim* title - the oath of Pope Leo, which has aroused not a few perplexities and doubts. Its form is much more extensive than the testimony of the *Liber Pontificalis* and the Carolingian sources. The text reads: It has been *heard, dearly beloved brethren, and has spread in many places that perverse men have risen against me, have wanted to mutilate me and have imputed to me enormous crimes. To examine this cause, the most clement lord, King Charles, here present, has come*

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<sup>223</sup> Cf. Louis DUCHESNE, *I primi tempi dello Stato pontificio*, Turin 1970<sup>2</sup>, 77-78.

<sup>224</sup> The procedure of the purgatory oath gave the accused cleric himself the alternative of declaring himself innocent by oath or of acknowledging his guilt. This procedure was based on a decretal of Gregory II in the year 726. The pontiff writes: *De presbytero vero, si quilibet sacerdos a populo fuerit accusatus, si certi non fuerint testes, qui criminis illati approbent veritatem, iusjurandum erit in medio, et illum testem proferat de innocentiae suae puritate, cui nuda et aperta sunt omnia; sicque maneat in proprio gradu.* GREGORIUS POPE II, *Ad Bonifacium Episcopum*, Ep. 13, in MANSI, 12, 245. The recourse to the purgatorial oath tended to save ecclesiastics from hasty condemnation, and especially to free them from popular accusations, leaving them morally responsible before God. In cases of generally manifest guilt, the judge proceeded expeditiously to sentence without a formal charge having been brought and witnesses heard. The purgatory oath was gradually assimilated to the Germanic trial evidence, so that the participation of conspirators (*sacramentales*) was required. And so that purgatorial oath which originally was simply a subsidiary proof, in the case that accusation and witnesses were lacking or that only vague public fame and not true "notoriety of the crime" existed, ended up by becoming - especially in the dioceses of Germany - a prevalent or even exclusive proof with respect to the others. Cf. A. CARBONI, *La notorieta delitto nelle riforme ecclesiastiche medievali*, in *Studi Sassaresi* ser. II, 28 (1959) 49-99.

to this city with his clergy and princes. For this reason, I, Leo, Pontiff of the holy Roman Church, without being judged or corrected by anyone, spontaneously and voluntarily purify myself before God who knows my conscience, before his angels, before blessed Peter, prince of the apostles, in whose basilica we find ourselves: I declare that these crimes and wickednesses that they impute to me I have not perpetrated nor do I order them to be perpetrated. This is witnessed by God, before whose judgment we shall one day appear and in whose presence we find ourselves. This I declare voluntarily in order to remove all suspicion; not that this is prescribed by the canons, nor that I wish to set a precedent and impose such a custom in the holy Church on my successors and on my confreres in the episcopate<sup>225</sup>.

The *Liber Pontificalis* reports the words of the oath in a short and essential form: *The venerable prelate said: "I follow the vestiges of the pontiffs, my predecessors, I am ready to purify myself from such false accusations that have been unjustly poured out against me... I have no knowledge of these crimes that the Romans, with their false accusations, have imposed on me, who have unjustly persecuted me, and I know that I have not done such things"*<sup>226</sup>.

The Carolingian sources make the justification of the pontiff consist almost exclusively in the papal oath, suggesting that the oath of purgation was the *conditio sine qua non* for the pope to be recognized as innocent and legitimate: the pontiff, by swearing, exonerated himself from the accusations made<sup>227</sup>. We are particularly interested in the fact that the long oath, probably pronounced by Leo III, is in agreement with both the *Liber Pontificalis* and Alcuin's letter addressed to archbishop Arnone, as far as papal unjustifiability is concerned. Leo III, in fact, declares that he was neither judged nor forced by anyone; he freely exonerates himself and justifies himself before all<sup>228</sup>. In the same way the Fathers, in the

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<sup>225</sup> *Auditum, fratres karissimi, et divulgatum est per multa loca, qualiter homines mali adversus me insurrexerunt et debilitare voluerunt et miserunt super me gravia crimina. Propter quam causam audiendam iste clementissimus ac serenissimus dominus rex Carolus una cum sacerdotibus et optimatibus suis istam pervenit ad Urbem. Quam ob rem ego Leo, pontifex sanctae Romanae ecclesiae, a nemine indicatus neque coactus, sed spontanea mea voluntate purifico et purgo me in conspectu vestro coram Deo et angelis eius, qui conscientiam meam novit et beato Petro principe Apostolorum, in cuius basilica consistimus: quia istas criminosas et sceleratas res, quas illi mihi obiciunt, nec perpetravi nec perpetrare iussi; testis mihi est Deus, in cuius iudicium venturi sumus et in cuius conspectu consistimus. Et hoc propter suspitiones tollendas mea spontanea voluntate facio; non quasi in canonibus inventum sit, aut quasi ego hanc consuetudinem aut decretum in sancta Ecclesia successoribus meis necnon et fratribus et coepiscopis nostris imponam. Concilium Romanum, a. 800, edidit Albertus WERMINGHOFF, in M.G.H., *Concilia Aevi Carolini*, 11,1, Hannoverae-Lipsiae 1906, 226-227.*

<sup>226</sup> *Venerabilis vero praesul inquit: "Praedecessorum meorum pontificum vestigia sequor et de talibus falsis criminationibus quae super me nequiter excarserunt, me purificare paratus sum... Quia de istis criminibus falsis, quibus super me imposuerunt Romani qui inique me persecuti sunt, scientiam non habeo, nec talia egisse me cognosco". Liber Pontificalis, II, 7, rr. 11-12; 16-17.*

<sup>227</sup> *Coram omni populo in basilica beati Petri apostoli evangelium portans ambonem conscendit; invocatoque sanctae Trinitatis nomine, iureiurando ab obiectis se criminibus purgavit. Annales Laurisenses, A. 800, 188, 18-20.*

<sup>228</sup> *Ego Leo, pontifex sanctae Romanae ecclesiae, a nemine indicatus neque coactus, sed spontanea mea*

assembly of December 23, 800, had declared that they did not want to judge the Apostolic See<sup>229</sup>.

Wallach<sup>230</sup>, examining the text of Leo III's annexed oath, stated that it does not contain the pontiff's original words. According to the scholar, the authentic words - which deny the accusations of his opponents - pronounced by the pope are: *Quia de istis criminibus falsis nec talia egisse me cognosco*<sup>^</sup>. Therefore, according to Wallach, we are not dealing with an oath but with a text of innocence. From a general synoptic view of the content, it seems that the author of the oath made use of the apocryphal letter attributed to Sixtus III<sup>231</sup> in its drafting, and in extended form. There is also an obvious discordance between the latter text of the oath, as we have already said, and the testimony of the *Liber Pontificalis* in which the pope intends to declare himself innocent in continuity with his predecessors, whereas this is denied in that separately handed down text. According to Wallach, Leo III did not take an oath of purgation, as some say, because this was not founded on canon law, nor did it exist in Roman law, but was proper to Germanic law. The oath of purgation, distinct from the testimonial oath, did not develop until the ninth and tenth centuries, under the influence of the new Germanic peoples, in strict canonical form. Since other demonstrative means were involved, precisely the evidence of witnesses was not sufficient<sup>232</sup>.

While Wallach denies the authenticity of the separate text of the pope's oath, other scholars deny that in the case of Leo III there was a formal legal process, that is, that the trial had a true forensic character. The pope would have freely taken an oath of innocence, as his predecessor Pope Pelagius had done in a similar - situation<sup>233</sup>. There was thus a fact, a historical precedent only, but not a legal one<sup>234</sup>. There is no evidence to support whether Charlemagne subjected Leo III to a formal trial. What really happened is that, at a great meeting of high ecclesiastics in St. Peter's basilica - Frankish magnates and other high-ranking laymen - the charges brought against the pope by the Romans were discussed at length; but the pope, under solemn oath, denied all offences and all charges. If the pope took this oath, it was by the unanimous approval of the whole assembly of the old principle - still never applied - that the pope could not be judged by anyone. It was the first time that such a principle had been resorted to, and the significance of its practical

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*voluntate purifico et purgo me.* Cf. Ia note 30 of this chapter, 92. Likewise, the *Annales Lauresbamenses*, at this point close to the testimony of the Roman tendency, state: *Tunc visum est et ipsi piissimo principi Carolo et universis episcopis et sanctis patribus qui ibi adfuerunt, ut si eius voluntas fuisset et ipse petisset, non tamen per eorum iudicium sed spontaneae voluntate se purificare debuisset; et ita factum est.* *Annales Lauresbamenses, Anno 800, edidit* Georgius Heinricus PERTZ, in *M.G.H., SS.*, I, Hannoverae 1826, 38.

<sup>229</sup> Cf. note 8, 85.

<sup>230</sup> Cf. H. WALLACH, *The Genuine and the Forged Oath of Leo III*, in *Traditio* 11 (1955) 38.

<sup>231</sup> Cf. chapter two of our study, 67.

<sup>232</sup> Cf. Willibald M. PLÖCHL, *History of Canon Law*, I, Milan 1963, 448.

<sup>233</sup> *Liber Pontificalis*, I, 303, rr. 7-12.

<sup>234</sup> Cf. H. ADELSON - R. BAKER, *The Oath of Pope Leo III in 800*, in *Traditio* 8 (1952) 52.

application cannot be emphasized enough. In his function as pope and successor of St. Peter, he was above the law. The application of this principle was both historically, and from the papal point of view, much more important for the purposes of governing, than for the events that ensued<sup>235</sup>.

It's interesting to see, finally, how the case of Leo III came to an end. The Carolingian sources state unanimously that in 801, a few days after the coronation of Charlemagne (on Christmas night of 800), the new emperor had those who had made the pontiff suffer with wounds and insults the previous year, brought before his court and put them on trial. After explaining the reason for which they were condemned, according to Roman law, Charles issued the death sentence for lese majesty. The benevolent intercession of the pope saved their lives; however, in order not to leave such a great villainy unpunished, Charles banished the culprits to exile<sup>236</sup>. The *Liber Pontificalis* merely says that the pope's accusers were sent into exile by the emperor.

Leo III was therefore considered equal to a sovereign, and his accusers sent beyond the Alps for perpetrating unfounded acts of violence and violating the peace, setting themselves against the pontiff<sup>237</sup>. As for Charlemagne's behaviour towards the Church of Rome and the pope, it is interesting to note how he always sought collaboration with the Chair of Peter on matters of faith, despite the claim that he also had to deal with the theologians who lived in his palatine chapel<sup>238</sup>. In the matter of Pope Leo III, he adopted a behaviour different from that which had been proper to the Byzantine emperors, whose methods were usually coercive. No Byzantine emperor recognized the principle that the pope could not be judged by anyone. Charlemagne and the Franks, on the other hand, participating in the Roman synod of December 23, 800, recognized this<sup>239</sup>, at least in their way of acting.

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<sup>235</sup> Cf. Walter ULLMANN, *Il papato nel Medioevo [The papacy in the Middle Ages]*, Bari 1987, 84.

<sup>236</sup> *Post paucos vero dies, iubente ipso, hii qui eundem pontificem anno superiore deposuerunt, in iudicium adducti, et habita de eis quaestione, secundum legem Romanam, ut maiestatis rei, capitis damnati sunt. Pro quibus tamen papa pio affectu apud imperatorem intercessit, nam et vita et membrorum integritas eis concessa est; ceterum pro facinoris magnitudine exilio deportati sunt.* EINHARDUS, *Annales, a. 801*, edidit Georgius Heinricus PERTZ, in *M.G.H., SS.*, I, 189, rr. 30-34.

<sup>237</sup> Cf. Harnald ZIMMERMANN, *Papstabsetzungen des Mittelalters*, in *M.I.Ö.G.* 69 (1961) 25-36.

<sup>238</sup> Cf. Friedrich KEMPF, *Chiese territoriali e Chiesa romana nel secolo Vili*, in *I problemi deli occidentale nel secolo Vili*, (Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, XX, 1), Spoleto 1973, 312-313.

<sup>239</sup> Cf. Harnald ZIMMERMANN, 38.



5. THE CANONICAL COLLECTIONS: FROM THE CAROLINGIAN  
REFORM  
TO THE PSEUDO-ISIDORIAN DECRETALS

Reorganising the hierarchy, re-establishing discipline between clergy and laity, restoring the destination of ecclesiastical property: these were the objectives set by the reformers of the Frankish kingdom from 740 onwards. The protagonists were above all Charlemagne, Pepin the Short, Charlemagne, a certain number of bishops, first and foremost St. Boniface, and the popes. The Carolingian reform, like all the reforms of the Church, was only a restoration of the ancient rules. Respect for ancient texts is fundamental among the reformers. In this period, therefore, various collections were collected because there was a great aspiration for legal unity: a book common to all the peoples of the monarchy was sought<sup>240</sup>.

5.1. THE RECEPTION OF THE SIMMACHIAN APOCRYPHA IN THE *VETUS GALLICA* AND  
IN THE DIONYSIAN COLLECTION<sup>241</sup>

The ancient canons are found in many collections, but it is not known to which to give preference, since there is no official codex. This concern had embarrassed Pippin the Short (741-768) as early as 747, and had taken a more precise form with Charlemagne, with whom, it may be said, the study of canonical collections became one of the parts of the great programme of intellectual renewal. A collection of texts containing the ancient discipline, applicable throughout the Christian world, was indispensable to his work of reform. This collection, which already existed, was one which the Roman Church had watched carefully, and which was everywhere diffused: in Italy as in Spain, in the British Isles as in Germany. It, in the form of a small collection in twenty-seven chapters, was given by Pope Zachariah to Pepin the Short. The same collection interpolated and amputated of the preface of Dionysius and augmented with some canonical texts, Charlemagne received from Pope Hadrian I, at the time of his journey to Rome, in 774, and is known by the name of *Collectio Dionysio-Hadriana*.

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<sup>240</sup> Cf Paul FOURNIER - Gabriel LE BRAS, *Histoire des Collections canoniques en Occident*<sup>1</sup>, Paris 1931, 92-94.

<sup>241</sup> Cf 68-69, 72.

This collection provided the Frankish Church with an official code, whereby on the one hand it affirmed the superior authority of Rome in the composition of canonical collections, and on the other hand it brought about the decline of local collections. The fixation of the universal tradition was still the work of Rome, and the *Dionysiana* provided, for the second time, the instrument of it.

The diffusion of the *Dionysiana-Hadriana* was rapid and remarkable only after the nineteenth century: more than forty manuscripts have come down to us, of the many that were copied in the century following the delivery of the collection to Charlemagne. Short extracts were also made, and it was itself by no means preserved from indiscreet additions and rehashes<sup>242</sup>.

The *Collectio Dionysiana-Hadriana* was not the only one existing within the Frankish kingdom; there was already another, in a certain sense even more - important, which in fact was considered as its systematic *pendant*.

This is the oldest and largest systematic collection of Frankish Gaul, drawn up not according to the arrangement of a chronological collection - in which the historical order of the documents is followed - but by subject: it is the *Collectio Vetus Gallica*, known for a long time as the *Collectio Andegavensis* (Collection of Angers), so called by Mordek<sup>243</sup> because of its content, its place of origin and the significance of the collection itself. This, in its original form, was compiled between 585 and 626/627. In all probability, its first drafting took place in Lion, credited by Eterio, bishop of the same city (c.586 -602), very close to the See of Rome, which he considered mother and head of all the Churches. The purpose of the *Vetus Gallica* is the return to the ancient ecclesial discipline and the restoration of ancient customs. Lion's first draft, which has been lost, was followed by a second draft, drawn up in Autun, most probably by Bishop Leodegarius himself (663-680?), a man expert in canon law and a proponent of ecclesiastical reform. From here the *Vetus Gallica* came, through the bishop of Autun, to Luxeuil (ca. 675) to arrive, finally, at Corbie, where its third and final redaction was made, in the second quarter of the eighth century, possibly by Abbot Grimo, from ca. 694 to 747, then bishop of Rouen, towards the end of his life.

The collection, well ordered and systematically structured in content, historically proved effective over a long period of time: from the end of the sixth century until the beginning of the eighth. Moreover, it was used as a secondary model for other collections, coming into contact with the Pseudo-Isidorian decretals, which soon supplanted it.

The *Collectio Dionysiana-Hadriana*, when it arrived in the Frankish kingdom, was enriched by the *Collectio Vetus Gallica*. Now, as far as our subject is concerned, the latter contained some canons of different origin, among which

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<sup>242</sup> Cf. Paul FOURNIER - Gabriel LE BRAS, 95-98.

<sup>243</sup> Cf. Hubert MORDEK, *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica, die älteste systematische Kanonensammlung des Fränkischen Gallien. Studien und Edition*, Berlin-New York 1975, 18. 69-70.

was an apocryphal Simmachian: the pseudo-Silvester<sup>244</sup>. Later there will be at the Carolingian court the two collections: *Dionysiana-Hadriana* and *Vetus Gallica*, either in their separate and distinct forms, or merged together.

Among the written documents through which the influence of the *Collectio Vetus Gallica* developed, Mordek examines Carolingian Capitulaire No. 47 (so defined in Boretius' edition)<sup>245</sup> containing the pseudo-Silvester. The Frankish collection reports the Simmachian apocrypha under the title *Capitula excerpta de canone*, while Boretius dated this apocrypha, integrated into the Capitulaire, to around 806 or perhaps later<sup>246</sup>.

The author of the Capitulaire, according to Mordek, would have taken the Simmachian forgery from the *Collectio Vetus Gallica*, contained in a manuscript having the characteristics of the North-French version. This is a group of manuscripts from northern France, namely the Brüssel 10127-44 and the Stuttgart HB. VI. 109. In their version would be found the best final editing and preservation of the *Collectio Vetus Gallica*. The text of the Simmachian canon: INCIPIT CANON SANCTI SILVESTRI ET CCLXXXIII EPISCOPORUM. *Fecit hos gra(n)dus in gremio sinodi, ut non presbyter...?* was also found in some manuscripts of the southern class of Germany and in that of the south of France, namely: in the appendix of manuscript 675 of the *Vetus Gallica* in Sankt Gallen, in the codices Einsiedeln 205, Wien Lat. 2171 and Brussels 8654-72 outside the corpus, in the codices Berlin Phill. 1763, Alb. 38 and 38 bis in the appendix. But the author of the Capitulaire used a manuscript of the North-French version, i.e. codex Lat. 3843 (Paris, Bibl. Nat. Lat. 3843), which dates from the second quarter of the ninth century.

The canon of Pseudo-Silvester, in exactly the same form as expressed in the Capitular, is also given at the end of the Parisian codex of the *Dionysio-Hadrian* collection (Cod. Par. Lat. 3843, fol. 212 ra), which is also dependent in part on the North-French version. Mordek thus postulates the existence of an ancient manuscript, now no longer preserved, very similar to the Stuttgart HB. VI. 109<sup>247</sup>.

The *Dionysio-Hadrian* was a fundamental instrument for the Carolingian reform<sup>248</sup>: from then on, councils and capitulars citing the rules of ancient law would refer to it. Numerous texts later enriched it further in some manuscripts; sometimes including apocrypha that had credited the old contemporary collections of the *Dionysian*. The *Collectio Dionysio-Hadriana* was later enriched by other

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<sup>244</sup> *Ibid.* 151-154. 188.

<sup>245</sup> *Capitularia excerpta de Canone, edidit* denuo BORETIUS, in *M.G.H., Leges*, I, Hanno-verae 1883, 133-134.

<sup>246</sup> *Ibid.* 133. Boretius, editor of the Capitulaire, claimed that the provenance of the Capitulaire had been, in essence, unclear.

<sup>247</sup> Cf. Hubert MORDEK, 184-188.

<sup>248</sup> Cf. Alphonsus M. STICKLER, 50.

Simmachian apocrypha<sup>249</sup>, which were placed in their chronological order<sup>250</sup>.

Thus formulated the collection has been called the *Dionysio-Hadriana Accresciuta*, the writing of which is later than 872<sup>251</sup> and whose origin is probably Ravenna<sup>252</sup>.

## 5.2. CAPITULA ANGILRAMMI

Angilramno, was first abbot of the Benedictine monastery of Sens, then bishop of Metz in 768, and from 784 was also chaplain to the court of Charlemagne. He died in 791. He is known for the writing attributed to him, of these chapters.

The *Capitula Angilramni* consist of 71 (72) chapters of varying size and content. The primary interest is the proper administration of procedural jurisdiction, civil and criminal, in the cases of clerics, especially of the privilege of the forum and that which concerns the arbitrary interference of the laity. This booklet was compiled, even before the collections of a larger size and of a general nature, in order to divulge the most urgent fundamental norms concerning procedural law<sup>253</sup>.

The editor has also included in his collection the canon concerning the unjustifiability of the pope, from the *Constitutum Silvestri*<sup>254</sup>: *...The prelate must be condemned before 72 witnesses. But the supreme prelate cannot be judged by anyone, for it has been written: the disciple is no more than the master.*

## 5.3. ANSEGITO, ABBOT OF FONTANELLE (770ca.-833)

Under the name of Capitulari di Ansegiso there has come down to us a collection of capitulars which are said to have been promulgated by Charlemagne and by Ludovic the Pious, and to affect the government of these personages. The collection was compiled in 827, by a cleric named Ansegiso, abbot of Fontanelle, who enjoyed the confidence and esteem of these people. In 807 Charlemagne entrusted him with the abbey of St-Germer-en-Flay for reform, together with important political missions; he was also adviser to Ludwig the Pious, who appointed him abbot of Luxeuil in 817 and abbot of Fontanelle in 823.

Ansegiso is the author of one of the principal and oldest collections of Capitulari. This collection is very reliable, and although its character was private,

<sup>249</sup> Cf. 50-64.

<sup>250</sup> Cf. Friedrich G. B. MAASSEN, 454-465.

<sup>251</sup> *Ibid*, 465.

<sup>252</sup> Cf. Renè MASSIGLI, *Sur Parigine de la Collection Canonique dite Hadriana Augmentée*, in *Mélanges d'Archéologie et d'Histoire* 32 (1912) 377. The scholar dates the collection in 867. Cf. Alphonsus M. STICKLER, 50. 109.

<sup>253</sup> Alphonsus M. STICKLER, 128.

<sup>254</sup> *Decretales Pseudo-Isidorianae et Capitula Angilramni*, edidit Paulus HINSCHIUS, Lipsiae 1863, 768.

the intent was to secure the good of the Church<sup>255</sup>. The collection also records the decree of the apocryphal Roman council of 284 bishops which states: no subject may bring an accusation against his superior. Moreover, the *summus praesul* by no one can be judged, since it has been written that the disciple is not superior to the master<sup>256</sup>. This text, as can be seen, is of the same content as Capitulaire n. 47.

The abbot of Fontanelle, in order to compile his work, chose only 26 of the 90 capitulars then considered authentic, among which he also included *our apocryphal Simmachian*, that is, the canon of the pseudo-Sylvester contained in the Carolingian capitulaire. The *Collectio Vetus Gallica*, of which we have spoken, was not only the source of the legislation for the reign of Charlemagne, but also for the collection of Ansegisus. We know that Ansegiso's collection quickly became the officially recognized and most widely used code of law in the Frankish kingdom<sup>257</sup>.

#### 5.4. BENEDICT LEVITE

The *Capitula* of Benedict Levite are the work of a forger; his claims deserve little credence. Benedict Levite is but an imaginary character, under whose name many forgeries were secretly inserted. He is a supposed deacon of the church of Mainz, who is said to have composed the work at the behest of Bishop Antgar (+ 847). The author pretended to want to complete the collection of Ansegiso, finished in 827, filling in many gaps and adding the *Capitulari* which, according to his assertion, had been promulgated after the work of the abbot of Fontanelle.

The drafting began around 1 847 (the date of the drafting of all the Pseudo-Isidorian decretals, whose editor is probably the same); its purpose was the desire to make known to the three nobles Ludovic, Lothair and Charles, sons of the Emperor Ludovic the Pious, the rules that both their parent, grandfather and great-grandfather had followed in the government of the clergy and the people. Even the authentic *Capitulari*, which occupy but a small space, have often undergone considerable interpolation and modification. More than three-fourths of the chapters are apocryphal, because they are partly extracted from the most diverse sources, or simply invented.

Benedict Levite, like Ansegisus, was influenced by the *Vetus Gallica* *College* from which he also drew some legal material<sup>258</sup>. The forger was a fairly educated man, and for this reason he cites everything concealing himself under the most respectable authorities. But this work is not an isolated enterprise, it belongs in fact to a factory of apocrypha dating back to the ninth century. According to the

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<sup>255</sup> Cf. A. AMANIEU, *Ansegise*, in *Dictionnaire de Droit Canonique*, edidit R. NAZ, I, Paris-VI 1935, 564-567.

<sup>256</sup> ANSEGISUS ABBAS, *Capitularium Collectio*, edidit Alfredus BORETIUS, in *Capitularia Regum Francorum*, I, Hannoverae 1883, 411, rr. 28-38.

<sup>257</sup> Cf. Hubert MORDEK, 189.

<sup>258</sup> *Ibid*, 192-193.

most probable chronological order, they are: the *Capitula Angilramni*, the *Capitula of Benedict Levite*, *VHispana d'Autun* and the false decretals of the pseudo-Isidore, without counting the canons attributed to Isaac, bishop of Langres (+ 878), which are an extract of the three books of *Benedict*.

The dominant idea, in these forgeries, is to free the Frankish Church from the violence and tyrannical power of the lords and high officials, to secure for clerics and bishops the right to remit ecclesiastical jurisdiction, to combat the institution of the *corepiscopi*, and to limit the powers of the metropolitans. According to Baix, Benedict would be, as it were, the elder brother and not the twin brother of the pseudo-Isidore<sup>259</sup>.

Benedict also cites Pope Sylvester's decree of the apocryphal Roman Council of 284 bishops 22, which establishes the principle of the unjusticiability of *Summus praesul* on the grounds that the disciple is no more than the master<sup>260</sup>.

### 5.5. THE PSEUDO-ISIDORIAN DECRETALS

The Pseudo-Isidorian decretals matured in a period in which there was a strong desire and will to free the Church from secular force and interference and to liberate the suffragan bishops! from the arrogance of their metropolitans. In order to carry out this programme great prominence is given to the authority of the Roman pontiff, the supreme judge, to whom is reserved the last word in *causae maiores*. It is also made clear that the jurisdiction of the bishop of Rome is exercised not only over individual bishops, but also when they are gathered in council. The papacy became the keystone of the ecclesiastical edifice, the support of the episcopate and the hinge of its independence.

The decretals of the pseudo-Isidore are a forgery, probably created against the metropolitan archbishop of Rheims, Incmarus. His influence had soon turned into arrogance towards one of his suffragans, with the danger that the bishops, in their individual dioceses, were considered merely executors and instruments of the metropolitans, who, in provincial synods, assumed a leading role, imposing themselves in the direction and conclusions of the synod.

Incmar immediately emerged for his preparation in the legal field, which he put into practice especially in the vindication of his metropolitan rights. The suffragan bishops, not being able to count on the help of King Charles the Bald, counted on the intervention of the pope, thus avoiding any hypothesis of an alliance openly declared against the king or the archbishop. It is thus that from a very creative intelligence, matured in the ecclesiastical province of Rheims, between 1'845 and 1'852, comes what is defined as the greatest forgery in history<sup>261</sup>.

<sup>259</sup> Cf. F. BAIX, *Benedictus Levita*, in *Dictionnaire de Droit Canonique*, I, 400-406.

<sup>260</sup> BENEDICTUS DIACONUS, *Capitularium Collectio*, in PJJL, 97, 739.

<sup>261</sup> Cf. Hans GROTZ, *Erbe wider Willen. Hadrian II. (867-872) und seine Zeit*, Wien- Köln-Graz 1970, 46.

The Pseudo-Isidorian was the result of this effort. This collection of ecclesiastical law was compiled under the name of a certain Isidore Mercator and collects a large number of apocryphal texts, according to the following chronological order: *Hispana d' Aut un, Capitula Angi Ir am ni, False Capitulari and False Decretals*. For the drafting of the forgeries the author (but they could also be different, considering the size of the work) made use of Holy Scripture, authentic Council acts, papal letters, writings of the Fathers and sources of Roman and Frankish law.

The overt purpose of his work, as he assures us in the preface, was to collect, in a systematic way, the canons and use them for the reform of the Church, but the recondite one was certainly to strengthen the power of the bishops both against the metropolitan and provincial synodes, as well as against that of the laity.

In this work the bishop of Rome holds the supreme legislative authority and appellate jurisdiction. The purpose of the protection of the rights of the bishops appears from the judicial protection which the forger places, in their defence, in case of comparison before the tribunal summoned by the metropolitan or sovereign. The principle upheld, already well known, is that of the illegality of the judgement passed on churchmen by the laity: it is reserved to God. This practically means that bishops could only be judged by their brothers in the episcopate.

But since, at that time, they were succubi of the temporal power, Pseudo-Isidore devised and re-presented, in spurious decretals, several protective norms for the accused, insisting on the necessity of the *consilium* of the bishop of Rome in cases of condemnation or deposition of a bishop.

Pseudo-Isidore, in order to give more value to episcopal authority in regard to the metropolitans, strongly repeated, that bishops could not be deposed, nor accused; they have their judgment from God.

To the person of Clement the Roman, the pseudo-Isidore has falsely, attributed another view of the untouchability and unrighteousness of bishops. This is expressed in a letter, which purports to have been written by the pope to James, the Lord's brother and bishop of Jerusalem.

Such was Clement's prestige in the early Church that numerous apocryphal writings were unduly attributed to him. This letter forms part of the *Pseudo-Clementines*, so is called the vast novel for didactic purposes which has Clement Roman as its protagonist. The narrative is but a mere introduction to the missionary sermons of *St. Peter*, and belongs in reality to the apocryphal Acts of the Apostles<sup>262</sup>.

In the *Pseudo-Clementines*, Clement's letter addressed to James, the Lord's brother, is intended to serve as a guide to the very use of the collection. The *first Clementis* is the work of an unknown author and dates from the end of the second century or the beginning of the third, and has had many heavy manipulations over

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<sup>262</sup> Cf. Johannes QUASTEN, *Patrologia*, I, Turin 1980, 46-64.

time.

Pseudo-Isidore opens his collection with the striking quotation of this letter, considered the first decretal issued by Pope<sup>263</sup>. To the same pseudo-Isidore, or to an earlier author, is ascribed its prolongation and the addition of an appendix, including the idea of the judiciability of bishops. Ultimately, this letter is presented here as a forgery of a forgery.

It shows, in practice, that a certain pre-eminence had been attributed to the Roman Church<sup>264</sup>. In it Pope Clement said that Saint Peter had summoned the Roman Christian community, and addressing it in an unequivocal way, had said: *I (Peter) give him (Clement) the authority to bind and loose, so that whatever he (Clement) decides on earth will be approved in heaven, because he will bind what is to be bound and loosen what is to be loosed*<sup>265</sup>.

Clement thus becomes, according to this testimony, *the first pope* after St. Peter, who designated his successor before the Roman assembly<sup>266</sup>. He receives all the privileges and powers which Peter had had directly from Christ; all that had been Peter's now passes to the person of Clement. As to our assumption it is established that the life of priests is superior and holier than that of the laity; the spiritual, and by this the priests, must always be placed above the carnal, that is,

<sup>263</sup> *Epistula Clementis ad Iacobum Fratrem Domini*, in *Decretales Pseudo-Isidorianae et Capitula Angilrammi*, edidit Paulus HINSCHIUS, Lipsiae 1863, 30-46.

<sup>264</sup> Walter ULLMANN attributes a singular significance to this letter. According to the well-known scholar, this document must have contributed greatly to the later development of the concept of the papacy as an institution. The author of the document - says ULLMANN - set out to determine the juridical nature of the one and only successor of Peter, who was so clearly distinguished from all the other bishops. Consequently, as sole successor of Saint Peter the pope could act in the same way as the apostle would have acted, in virtue of the powers conferred on him by Christ. The idea of a monarchy conceived in a juridical sense was certainly latent in this document. Cf. Walter ULLMANN, *Il papato nel Medioevo*, Bari-Roma 1987, 12-14; ID., *Principi di governo e politica nel Medioevo*, Bologna 1982; ID., *The Significance of the Epistola Clementis in the Pseudo-Clementines*, in *Journal of Theological Studies* 11 (1960) 295 ff. Friedrich KEMPF, *Die päpstliche Gewalt in der mittelalterlichen Welt. Eine Auseinandersetzung mit Walter ULLMANN*, in *Saggi storici intorno al papato*, (Miscellanea Historiae Pontificae, XXI), Roma 1959, 117-169. Here KEMPF expresses a judgment on the method followed by the English historian: *Was Ullmann hier vorbringt, ist nicht eigentlich Geschichte, sondern Theologie, und zwar eine sehr anfechtbare Theologie*. Ibid, 137.

<sup>265</sup> *Clementem hunc episcopum vobis ordino.... Propter quod ipsi trado a Domino mihi datam potestatem ligandi et solvendi, ut de omnibus quibuscumque decreverit in terris hoc decretum sit et in caelis*. CLEMENS, *Epistula ad Iacobum*, in *Die Pseudo-Klementinen, Homelien*, edidit Bernhard REHM, {*Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, I}, Leipzig 1953, 6-7. CLEMENS, *Ad Iacobum fratrem Domini*, Ep. I, in Paulus HINSCHIUS, 31.

<sup>266</sup> The oldest list of the bishops of Rome, which is given us by Irenaeus {*Adv. Haer.* 3:3, 3}, places Clement as the third successor of St. Peter in Rome. He was pope from c.92 to c.101. According to Tertullian he received his consecration from St. Peter himself. Epiphanius confirms this assertion but adds that Clement, for the sake of concord, left the pontificate to Linus and resumed it only after the death of Anacletus. We know almost nothing of his earlier life. Irenaeus claims that Clement knew St. Peter and St. Paul. Cf. Johannes QUASTEN, I, 46-64.

the laity. Superiors (the spiritual, priests) can in no way be accused or judged, since this is forbidden both by civil and divine laws<sup>267</sup>.

Moreover, bishops cannot be accused except by the Lord, nor can they be removed from their offices, for these are the exclusive property of God and no one else. Who, indeed, can judge the servant of another? If these things are not borne by men, neither does the God of gods and the Lord of lords, on any account, bear them<sup>268</sup>. The people of God, mindful of the words and precept of the Lord: *Do what they tell you and do not do what they do* (Mt 23:3) is required to observe all the commands given to them by the bishops, even if the bishops should act otherwise. If the bishops themselves should deviate and depart from the commandments, they can neither be reproved nor rebuked by their inferiors, but they must be tolerated, unless they have erred in the faith<sup>269</sup>. Therefore, let no one rise above his doctors and teachers, for it has been written that the disciple neither must nor can be above the teacher (Mt 10:24). The obedience and humiliation due to teachers is given to the Lord<sup>270</sup>. Papal authority is so strongly emphasized that in the Pseudo-Isidorian decretals we find provisions whereby the accused may appeal to the See of Peter even without having been judged. The Apostolic See can also assign to itself those causes that in its judgment require it. The *causes maiores et difficiliore*s have always been reserved to the See of Peter, since they concern the bishops, the only ones involved.

In the field of ecclesiastical legislation the bishop of Rome is presented as supreme legislator for the universal church and, radicalizing a general tendency of the 9th century, the Roman tradition is made to assert itself as obligatory norm also for the East, though at a level of secondary importance. The false decretals offered solid arguments for an evolution aimed at emphasizing the role of the Apostolic See<sup>271</sup>.

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<sup>267</sup> *Cunctorum sacerdotum vitam superiorem, sanctioremque ac discretam a saecularibus et laicis hominibus esse, et spirituales, atque sacerdotes, super carnales ac laicos semper constitutere, et fore debere docere, quoniam pro minimo nobis esse debet, ut a talibus arguamur, et iudicemur, vel ab humano die (1 Cor 4,3). Majores vero a minoribus, nec accusari nec iudicari, ullatenus posse dicebat, quoniam non solum hoc divinas, sed et leges saeculi inhibere dicebat.* Paulus HINSCHIUS, 40.

<sup>268</sup> *Eos autem a solo domino iudicandos aut removendos, et non ab aliis esse dicebat, quia sui sunt et non alterius. Et quis est qui alterius iudicet servum? Nam et si ista non patiantur homines, nec deus deorum et dominus dominantium haec ullatenus patitur.* Ibid, 42.

<sup>269</sup> It should not be forgotten that both the insertion and the argumentation are in no way found in the original letter of the *Pseudo-Clementines*. This interpolation will have been made in the light of the thought of Gregory the Great and Isidore of Seville (cf. 75 ff.) at a later time.

<sup>270</sup> *Eorum praeceptis in omnibus obedire, aetiamsi ipsi aliter, quod absit, agant, memores scilicet illius dominici praecepti: "Quae dicunt facite, quae autem faciunt facere nolite" (Matth. 23,3). Ipsi autem episcopi si exorbitaverint ab istis, non sunt reprehendendi vel arguendi, sed portandi, nisi in fide erraverint. Hi ergo super hos sunt, non illi super istos, quoniam major a minore nec argui nec iudicari potest. Nullus se extollat erga doctores ac magistrum suum, quia discipulus super magistrum nec esse (Matth. 10,24) debet nec potest... Obedientia enim et humilitatio, quae a magistris agitur, domino exhibetur.* Paulus HINSCHIUS, 44-45.

<sup>271</sup> Cf. Agostino MARCHETTO, *La fortuna di una falsificazione*, in *Apollinaris* 61 (1988) 315-323.

Leo IV (847-855) and his successor, Benedict III (855-858), neither received nor knew the decretals of the pseudo-Isidore. No one, today, disputes that Pope Nicholas I (858-867) did not know them, even if it has not been demonstrated so far whether there is a quotation from the pseudo-Isidore in his writings: the use must not have been explicit, but the spirit of the theoretical arguments that founded the papal law was common<sup>272</sup>. Certainly the presence of the Pseudo-Isidorian decretals in Rome was not insignificant. Both the principles issued by Pseudo-Isidore and the ecclesiological consciousness of Nicholas I found themselves in the same theological vision.

The heart of the ecclesiology of Nicholas I consisted in the principle of the ecclesial responsibility of the bishop of Rome over the universal Church: the pope is the Apostolic See, he is the *Ecclesia Romana*, and this is like the epitome, the synthesis of the universal Church; the body is summed up in the head and must follow its direction. Therefore, he affirms that the bishop of Rome is the sovereign legislator, in a unique sense, of the universal Church<sup>273</sup>.

The decretals of Pseudo-Isidore were also ordered in this direction. In fact, the succession of events moved in this direction: while Nicholas I was maturing these ideas, the Pseudo-Isidorian decretals arrived in Rome confirming what he thought. So he favored their dissemination to confirm his thesis and ward off the possibility that they might be interpreted as apocryphal works. In conclusion, the decretals were not so necessary to ground the thought of Nicholas I on the claim of papal primacy, but they had the merit of supporting and confirming what was already his conviction<sup>274</sup>.

The Simmachian apocrypha were well known in the papal curia in the mid-nineteenth century, and also towards the end of the same century, contributing in no small measure to the diffusion and affirmation of papal rights. It is interesting to note that they, because of their content and value, had that importance which was later given to the Pseudo-Isidorian decretals<sup>275</sup>. Of the Simmachian apocrypha we find in the midst of the Pseudo-Isidorian decretals, the *Constitutum Silvestri*<sup>6</sup>. We quote here the Simmachian maxim: *Neque praesul summus a quoquam iudicetur, quoniam scriptum est: Non est discipulus super magistrum* becomes the heart and driving force of Pseudo-Isidore. Now, and especially during the Gregorian reform, the principle of papal unjusticiability will be frequently cited under the authority of Pseudo-Isidore himself, whose authenticity, in this period, is universally recognized.

The collection *Anseimo Dedicata*<sup>276</sup> is very close to the spirit and conception

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<sup>272</sup> Cf. Horst FUHRMANN, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen, von ihrem Auftauchen bis in die neuere Zeit*, II, Stuttgart 1973, 246-247.

<sup>273</sup> Cf. Yves M. Y. CONGAR, *U ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 216.

<sup>274</sup> Cf. Horst FUHRMANN, 272.

<sup>275</sup> *Id.* at 241-242, supra note 13; 297, supra note 21.

<sup>276</sup> The collection was compiled by a cleric who was part of the entourage of the

of papal power of Pseudo-Isidore; its compiler does nothing but quote the Pseudo-Isidorian decretals. Of them he also reports the *Constitutum Silvestri*, which affirms the unjusticiability of the pope<sup>277</sup>. The authors of the canonical collections, so numerous from the end of the eleventh century, and among them Gratian, give the Pseudo-Isidorian texts the same value as the ancients. It should also be noted that Pseudo-Isidore, with regard to the principle of the untouchability of the pope, not only inserts the *Constitutum Silvestri*, but also reports the apocryphal letter that Sixtus III<sup>278</sup> is said to have written to the Eastern bishops, in which was inserted the story of the accusation of the pope by Bassus and its justification<sup>279</sup>. In it was reported the principle: *criminationes adversus doctorem nemo respiciat*<sup>280</sup>.

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archbishop of Milan, Anseimo (882-896) and discusses the prerogatives of the Roman See.

<sup>277</sup> *Anseimo Dedicata*, II, 67; III, 96; III, 141. *Ps. Silvester c. 2*, Paulus HINSCHIUS, 449.

<sup>278</sup> Paulus HINSCHIUS, 561-565.

<sup>43</sup> Cf. 67.

<sup>280</sup> Paulus HINSCHIUS, 563.



## 6. NICCOLÒ I (858-867)

During the Carolingian period, the papacy reached its zenith with the pontificate of Nicholas I. This was due both to the decline of the Carolingians, divided among themselves for power, and to the emerging and imposing personality of the pontiff himself. A medieval chronicler, Reginus of Priim ( + 915), affirms that *after the blessed Gregory, no bishop elevated in the city of Rome to the papal see can be compared to him: he reigned over kings and tyrants and subjected them to his authority, as if he had been the master of the world* \.

The letters of Nicholas I are the most important source for reconstructing his pontificate, because they constitute the main means by which he, in fact, exercised it. He left, yes, to others the task of drafting the text, but he always found the possibility to revise them, before sending them; therefore, even if Anastasius<sup>281</sup> drafted the letters, it was always the pope who conceived and supported them. The role of Anastasius was, therefore, of great importance and his help was decisive in the elaboration of the guidelines of Nicholas I's policy, although he always maintained his autonomy. The authorship of his letters is absolutely indisputable<sup>282</sup> .

Very pertinent to our study, is the letter that the pontiff, in September 865, sent to the East as a reply-reaction to that which the Emperor Michael had sent to Nicholas I. We find ourselves during the Photian schism<sup>283</sup> . The contrast between East and West is to be found in the

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<sup>281</sup> Anastasius Librarius had worked with three popes: John Vili (872-882), Hadrian II (867-872) and Nicholas I (858-867). He was an uncompromising opponent of Photius and an ardent proponent of Roman primacy. He had an excellent knowledge of Greek and for this reason his collaboration in the papal curia was very useful. A great connoisseur of the doctrine of the Fathers and of the sources, moreover, he was an expert in Eastern things. His action greatly influenced the ecclesial life of the time. Cf. G. ARNALDI, *Anastasio Bibliotecario*, in *Dizionario Biografico degli Italiani*, III, Rome 1961, 25-37. Hans GROTZ, *Erbe wider tillen. Hadrian II. (867-872) und seine Zeit*, Wien-Köln-Graz 1970, 33-36 ff.

<sup>282</sup> Cf. É. AMANN, *L'Epoca Carolingia (757-888)*, (*Storia della Chiesa dalle origini ai nostri giorni*, VI), *editit* Augustin FLICHE - Victor MARTIN, Turin 1977<sup>2</sup>, 566 note 1.

<sup>283</sup> Two scholars have dealt with the Photian schism in a fairly exhaustive and complete way: François DVORNIK, *Le schisme de Photius. Histoire et légende*, Paris 1950; Hans GROTZ, *Erbe inwider Willen. Hadrian II. (867-872) und seine Zeit*, Wien-Köln-Graz 1970.

fact that in the eighth and ninth centuries the assertion of Roman primacy underwent a strong change. In fact, in the West, the pope's singular position had been further imposed, almost crystallized, and then renewed under the influence of growing Germanic theology. The significant political facts, together with the influence exerted by the legend of Sylvester, the *Donato Costantini*, and the Pseudo-Isidorian decretals, constituted the pope as a substitute for the imperial crown. In the East, on the other hand, ecclesial consciousness of the Roman primacy developed much more slowly, the ancient conception of Caesaro-papism asserting itself as customary.

In this historical-theological context Nicholas I sought to impose his views with energy and authority on the East, which was not yet well prepared to recognize the new ideas formed in Rome. Before setting out the contents of the epistolary text of 865, it is therefore well to explain briefly the preceding events.

The pontificate of Nicholas I can be divided into two parts: in the first, which coincides with his first year, the pope acted prudently; in the second part he initiated a certain development towards a certain direction. In the middle is placed the year in which a rigid change took place: 1'862. In 861 a council had been held in Constantinople with the participation of the papal legates, the conclusions of which - the recognition of Photius as legitimate patriarch and the approval of the deposition of Ignatius - did not please the pope only because he had not obtained the lands of Illyricum. Nicholas I therefore drastically changed his political line: from being respectful and wait-and-see which he was, he became completely resolute and aggressive. So in 862, he wrote to Photius exalting the primacy of Rome (probable author was Anastasius Librarius), he distanced himself from the work of his legates during the Constantinopolitan Council of the previous year, and confirmed the legitimacy of Ignatius; moreover he wrote to Emperor Michael III declaring illegitimate the deposition of Ignatius imposed by him.

Writing to Photius, he declares: the primacy of this Church, as every Orthodox Christian is convinced, is of blessed Peter, prince of the apostles and custodian of the heavenly kingdom, to whom Jesus Christ granted the power to bind and loose in heaven and on earth and granted him to open the gates of the heavenly kingdom<sup>284</sup>. By this special privilege it is incumbent on the Apostolic See, not only to judge all the metropolitans, whose cause is always reserved to it, but, again, it is customary for it to condemn or acquit the patriarchs, finally it has always been of positive and divine right that it should judge all priests.

It may, moreover, throughout the Church of Christ, make laws, establish decrees, and promulgate judgments<sup>285</sup>.

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<sup>284</sup> NICOLAUS I POPE, *Ad Photium*, Ep. 12, in PL, 119, 785.

<sup>285</sup> *Aut legite sacros (can)ones et sinodalia gesta revolvite et videte, quod sedi apostolicae (non) solum quoslibet metropolitanos, quorum causa eidem est sedi semper servanda, verum etiam patriarchas moris fuisse pro emergentium qualitate damnasse vel etiam absolvisse insque semper et fas habuisse de omnibus sacerdotibus indicare, utpote cui facultas est in tota Christi ecclesia leges speciali praerogativa ponere ac decreta statnere atque sententias promulgare. Quod vestra reverentia non nos existimet, quia nostra dicimus, in hoc quicquam praeter*

During the Roman synod of 863 this doctrine was taken to its extreme consequences by decreeing: if anyone despises the dommatic decisions, prescriptions, interdictions, sanctions or decrees wisely promulgated by the bishop of the Apostolic See concerning the Catholic faith or ecclesiastical discipline, in order to prevent imminent or feared evils, let him be anathema<sup>286</sup>.

After these papal letters and the announcement of the revocation of the verdict of the Council of Constantinople in 861, it seemed that at the Roman synod of 863 the bridge with the East was broken. Byzantium in fact did not respond. It was only in 865 that the emperor sent Rome a letter, which has not come down to us, in which Michael III addressed the pope in very strong words: so far in the eastern capital was the idea of subordinating itself to the Roman conclusions. This letter was for the papal curia a provocation; by now a definitive point had been reached and Nicholas I felt obliged to reply to the emperor.

The pope's reply, which certainly reflects the pseudo-isidorian spirit, is very much influenced by the style of Anastasius Librarius<sup>287</sup>. The letter concludes with a strange offer: the pope proposes a new examination of the cause of Photius to be examined in his presence, either by Photius himself, or by his legates. Nicholas intended to re-examine everything, although he had already pronounced his sentence against Photius<sup>288</sup>. The pontiff summarizes, in the first part of the letter, the principles of the primacy of magisterium and jurisdiction of the Roman pontiff, and expresses a conception of papal power in terms of a pastoral monarchy. He is conscious of exercising a supreme magistracy of justice, peace and unity, thus defining the relations and jurisdiction of the See of Rome within, and over, the whole Church.

With regard to the Church of Constantinople he asserts principles that are completely foreign to its disciplinary and theological praxis. The pope interprets all ecclesiology according to the perspective of the juridical tradition of the Western Church, or rather, according to the vision that was maturing in that period, and that later became Roman doctrine. He extended the jurisdictional and disciplinary powers of the See of Peter over the whole Church, and applied to the Church and the empire of Byzantium what was, in some sense, held to be a value based on the tradition of the Latin West<sup>289</sup>.

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*veritatem edicere, cum Dei potius quam nostra sint beati Petri meritis Romanae sedi collata, et arbitremur quod nos hinc asserimus etiam vos nullatenus ignorare et quae in praesenti pagina scribimus vos affatim in archivis vestris recondita possidere.* ID., *Rodulfo Bituricensi Archiepiscopo*, Ep. 29, edidit Ernest PERELS, in *M.G.H., Epp.*, VI, 4, Berolini 1925, 296, rr. 31-40.

<sup>286</sup> *Si quis dogmata, mandata, interdicta, sanctiones, vel decreta pro catholica fide, pro ecclesiastica disciplina, pro correctione fidelium, pro emendatione sceleratorum, vel interdictione imminentium vel futurorum malorum a sedis apostolicae praeside salubriter promulgata contempserit, anathema sit. Concilium Romanorum III, a. 863, in MANSI, 15, 652.*

<sup>287</sup> Cf. E. PERELS, *Papst Nikolaus I. und Anastasius Bibliothecarius*, Berlin 1920, 225 ff.

<sup>288</sup> Cf. Hans GROTZ, *Erbe wider Willen. Hadrian II. (867-872) und seine Zeit*, Wien-Koln-Graz 1970, 69-101.

<sup>289</sup> Cf. Pierre HUILIER, *JLZ. Collégialité et Primauté. Réflexions dun Orthodoxe sur les problèmes*

The letter of 865 can be considered, and rightly so - in relation to the well-known principle *Prima Sedes a nemine iudicatur* - the point of arrival and authoritative foundation of the Simmachian apocrypha. These, having been cited by Nicholas I, acquired a great juridical and theological value, precisely because the personality of a pontiff, such as he was, assured them a good dose of reliability, to the point that, along the development of historiography, many have not doubted their authenticity. The Simmachian apocrypha, in fact, are all quoted here. The letter could be considered the synthesis or a complete, and fully elaborated treatise of the axiom *Prima Sedes a nemine iudicatur* to such an extent that it could be called the *Canonical Collection* of the ruling on papal in-judicability. Nicholas I, or whoever for him-Anastasius Librarian-has collected all the literary and canonical material then extant concerning the principle *Prima Sedes a nemine iudicatur*. from Boniface I up to the Palmare synod of 501, including all the texts relating to this synod, i.e., the Simmachian forgeries. The binder reveals himself to be a good connoisseur of the Fathers and of ecclesiastical history; undoubtedly a well-prepared man: he often cites, proposing him as a model of government, the emperor Constantine the Great, and recalls Gregory the Great and his works.

Nicholas I, especially in his various disputes and relations with the bishops, refers to his archives as privileged sources which enable him to act in the spirit of tradition. The appeal to the archives of the Holy Roman Church, as well as to canon law, enables him to remind the East, above all, of what he is, and what others are before him, namely the consideration and obedience due to him, as well as the prerogatives that belong to him.

In this perspective his letter is truly a source for canon law, since it develops and reports all the privileges of the Church of Rome. The dictation of the Simmachian apocrypha, contained in it, testifies to the extent to which they were taken into account by the ecclesial conscience. Probably they had also contributed to enriching the archival material of the Roman curia.

The pope reminded the emperor of the praiseworthy contribution of those Roman emperors who had supported and honoured the Church: first of all Constantine, who, in the face of the accusations he had received against the bishops, said to the fathers during the Council of Nicaea<sup>n</sup> : *You are gods, established by the true God; go, settle your accusations among yourselves, because it is not right that we judge* .<sup>xl</sup>

The pontiff invites Emperor Michael III to respect priests, however they may be, because of Him whose servants they are. God calls His priests angels and gods: to them, therefore, is due respect and veneration following the example of the Emperor Constantine. The pagans themselves respected their priests, although they were idolaters: *You must examine not what the ministers of God are worth, but only what they say in the name of God. You must not examine who the priests of the Lord are, but what they say in his name. You are not to examine what the*

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*historiques\** in *Ltf Collégialité Episcopale. Histoire et théologie\** Paris 1965, 342-343.

*vicars sitting on the throne of Peter are like, but only what they are doing for the reformation of the churches and for your salvation. For you will not say that they are inferior to the scribes and Pharisees sitting on the throne of Moses...consider therefore this, O emperor: if those who sat on the throne of Moses must be obeyed, must not those who sit on the throne of Peter be obeyed with all the more reason?*<sup>290</sup>

Nicholas I, in supporting his thesis on the respect of priests and bishops, particularly follows the works of Gregory the Great, moving, therefore, in a moral-spiritual perspective. Thus he quotes the *Pastoral Pegola* (III. c.4): It is necessary to exhort the subjects not to judge their superiors superficially, if at times they perceive in them something that is wrong... They must be warned not to rage against their superiors' faults. If their faults are rather serious, let them judge them in conscience, without refusing the respect due them. For this is the reason that must induce them, in the fear of God, to accept being subjected to it.... The sword of criticism is not permitted to strike at the deeds and lives of superiors, even if it were deemed right and proper to intervene.... Let the subject be horrified at having offended constituted authority and fear the judgment of Him from whom authority came to the shepherd. To offend superiors is to offend the order of the one who gave them to us<sup>291</sup>.

When one then goes on to speak of the respect due to the Bishop of Rome, the tenor and content of the reasons become even stronger and theologically founded. At the basis of the argument lies canonical tradition and above all the salvific plan of the Father realized in Jesus Christ, of which Peter is the witness. The pontiff defends the principle that the superior can never be judged by the inferior; very often he claims the authority of superiors, establishing a hierarchy of values and degrees. He writes in this connection: Sixtus, bishop of the Apostolic See<sup>292</sup>, condemned Bishop Euphemius, only because the latter had accused his patriarch Polychrome, bishop of Jerusalem, of simony, and for having moreover falsely asserted that his see, Jerusalem, was first. Euphemius, who had very presumptuously accused his patriarch, was condemned and excommunicated by the synod. For on that occasion Bishop Leo said to him, *Thou shalt condemn thyself because thou hast accused and condemned the pontiff who ordained thee co-episcop.* And the papal legate Abiundo added: *No one is allowed to accuse his pontiff, because the judge cannot be judged*<sup>293</sup>. In line with this conception, Pope

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<sup>290</sup> *Ibid*, 456, rr. 17-25.

<sup>291</sup> *Ibid*, 464, rr. 8-34.

<sup>292</sup> This is the *Gesta Poly chronii*, that is, a text of the Simmachian apocrypha, of which we have already spoken, 56-58.

<sup>293</sup> *Xystus apostolicae sedis antistes Euphimum episcopum dampnasse describitur* (sic), *nihil aliud in depositione illius obiciens, nisi quod Polychronium Hierosolymitanum episcopum pontificem suum accusaverit. Et quidem Polychronius a legatis sedis apostolicae, eo quod sedem Hierosolymitanam primam esse mendaciter affirmabat et per simoniacam heresim ordinationes fecisse probatus est, ecclesiae primatus est gubernaculis et urbe reiectus. Sed et Euphimiis nihilominus, quia hunc praesumptiose, licet veraciter, accusaverat, dampnationi a synodo subactus est et, quoniam linguam suam contra sibi praelatum erexerat, anathema suscepit, adeo ut Eeo*

Nicholas I calls into question another text, of our knowledge<sup>294</sup>, which further corroborates the idea of the pontiff: Saint Sylvester, who had baptized the great emperor Constantine, had ruled: *Neither by the emperor, nor by the clergy, nor by kings, nor by the people can the judge be judged*<sup>TM</sup>.

The pope also affirms that regularly consecrated bishops cannot be judged, which is why the utmost discernment and great care is required in choosing candidates for the episcopate. Gregory the Great, writing to the clergy of the Church of Milan, on the occasion of the election of their bishop, recommends the utmost obedience. The prelate, after consecration, cannot be judged, first because his subjects cannot have the competence to judge him, then because in the person of the prelate they serve Almighty God who consecrated him. From this perspective, not even priests, even if delinquent and nefarious, can be judged by inferiors. Moreover, it is not permitted for the subjects to legitimately judge the life of their prelate, who not even in the case of heresy can be taken superficially.

By virtue of these principles, founded on the doctrine of the Fathers, Nicholas I showed that he who is greater in power can never be subject to the judgments of he who is lesser in authority. Therefore, Patriarch Ignatius of Constantinople could not be subjected to judgment by the suffragan bishops and his subjects, nor could he be easily taken back<sup>295</sup>.

The pope goes on again: with the help of divine inspiration, we would not mind, nor will it be impossible for us to prove to you (if you will listen to us), that no one can be subjected, legitimately, to the judgments and definitions of those who are in an inferior state of dignity and order. In the time of the emperors Diocletian and Maximian, the bishop of the city of Rome, Marcellinus<sup>296</sup>, who was afterwards to be a distinguished martyr, was induced by the heathen to enter their temple, and to lay incense on their altars. For this reason, a council was called, consisting of several bishops, at which the pope himself confessed his guilt. But none of the bishops dared to pronounce sentence against him. Repeatedly they all said to him: *With your own lips judge your cause: not with a judgment of ours. Never shalt thou hear a judgment from us; therefore commit thy cause to thy conscience. With thy mouth shalt thou justify or condemn thyself. For the First See cannot be judged by anyone*<sup>297</sup>.

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*ecclesiae Romanae diaconus ei diceret: "Ex te enim dampnaberis, quoniam pontificem, qui te consecravit coepiscopum, condemnabas et accusabas". Qui cadens in terra ante omne concilium episcoporum ibi confitebatur se peccasse, Abundio episcopo, misso ab urbe Roma, dicente: "Non licet quemquam accusare pontificem suum, quoniam index non iudicabitur". Quo audito Valentinianus Augustus, sicut apud nos scriptum habetur, cuius vos in hoc imitatores esse debetis, gavisus est in dampnatione episcopi Euphimi, qui extitit accusator Polychronii pontificis sui. NICOLAUS I POPE, *Ad Michaelem Graecorum Imperatorem*, 464, r. 37; 465, rr. 1-13.*

<sup>294</sup> This refers to the twentieth canon of the *Constitutum Silvestri*. Cf. 58-61.

<sup>295</sup> *Ibid*, 465, rr. 33-37; 466, rr. 1-9.

<sup>296</sup> Niccolo I cites Simmachian Papocrypha: *Gesta De Marcellinus*. Cf. 61-63.

<sup>297</sup> *Nunc autem divina inspiratione non nos pigebit nec nobis impossibile erit ostendere vobis, si tamen audire velitis, non posse quemquam rite ab his, qui inferioris dignitatis vel ordinis sunt, iudicialibus summitti*

The pope, in order to affirm the unjusticiability of the First See, again called into question the text of the *Constitutum Silvestri*\*. Pope Sylvester called a council, during which he affirmed that no presbyter could accuse a bishop as well as a deacon the presbyter, or a subdeacon the deacon, an acolyte the subdeacon, an exorcist the acolyte, a lector the exorcist, an ostiary the lector, and the *summus praesul* by no one can be judged, for it has been written that the disciple is not superior to the master (*Mt 1:24*)<sup>298</sup>.

Finally, the other Simmachian apocrypha is also quoted: the *Gesta de Xysti III purgatone*<sup>299</sup>: The same thing was said at the time of Pope Sixtus, when, accused by rumors during a council in which the emperor also took part, it was said: *It is not licit to give a judgment against the pontiff*. The emperor left it to the freedom of the pontiff to judge himself by his own sentence, and this because none of the bishops of the smallest cities can be subjected to judgment<sup>300</sup>.

Next, Nicholas I reports some historical facts in which he points out the primacy of the Roman See over all others. He affirms that the apostolic one is the First See which blesses all but receives blessing from none, since it is written in the letter to the *Hebrews* 7, 7, that the lesser receives blessing and cursing from the greater. No priest can ever claim to bless his superior, much less curse him, according to the Gospel words already quoted by Pope Sylvester: *The disciple is not superior to the master (Mt 10:24)*<sup>23</sup>.

Having exhausted the Simmachian forgeries, Nicholas I cites Pope Gelasius I, who, in his letter to the bishops of Dardania, had affirmed that the See of Rome was the greatest See in dignity. In another place he had argued that one can be absolved, in the last resort, only by the First See and not by any inferior: the inferior certainly cannot absolve the superior; only the latter, since he is higher and greater, can conveniently absolve the inferior. Hence, we come to the

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*diffinitionibus. Siquidem tempore Diocletiani et Maximiani Augustorum Marcellinus episcopus urbis Romae, qui postea insignis martyr effectus est, adeo compulsus est a paganis, ut in templum eorum ingressus grana turis super prunas poneret. Cuius rei gratia collecto numerosorum concilio episcoporum et inquisitione facta hoc se idem pontifex egisse confessus est. Nullus tamen eorum proferre in eum sententiam ausus est, dum ei saepissime omnes perhiberent: "Tuo ore iudica causam tuam, non nostro iudicio"; et iterum: "Noli", aiunt, "audiri in nostro iudicio, sed collige in sinu tuo causam tuam"; et rursus: "quoniam ex te", inquit, "iustificaberis aut ex ore tuo condempnaberis"; et iterum dicunt: "Prima sedes non iudicabitur a quoquam". NICOLAUS I POPE, 466, rr. 12-23.*

<sup>298</sup> *Hinc etiam superius memoratus confessor Christi Silvester fecit gradus in gremio synodi, ut non presbyter adversus episcopum, non diaconus adversus presbyterum, non subdiaconus adversus diaconem, non acolythus adversus subdiaconem, non exorcista adversus acolythum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam. Neque praesul summus a quoquam indicabitur, quoniam scriptum est: "Non est discipulus super magistrum" (Matth. 10,24). Ibid. 466, rr. 24-29.*

<sup>299</sup> Cf. 53-56.

<sup>300</sup> *Sed et, cum quidam tempore quodam contra Syxtum papam temptassent quaedam non boni rumoris obicere et in concilio, cui Valentinianus Augustus intererat, dictum fuisset non licere adversum pontificem dare sententiam, surrexit idem protinus imperator et in arbitrio praefati pontificis tribuit iudicare iudicium suum. Etenim nullus pontificum minorum vel inferiorum urbium subactus iudiciis invenitur. NICOLAUS I POPE, 466, rr. 29-33.*

conclusion that the inferior, since he cannot absolve the superior, cannot bind with a sentence the one who is superior to him.

The pope, at this point, recalls the historical episode of Pope Symmachus, who, having been accused, summoned a council in which the validity and consistency of the accusations made against him would be examined. The synodal bishops, who came from the various regions of Italy, did not want to pronounce any sentence against the pope, but referred everything concerning the life of the pontiff to the judgment of God, since history offered no example in which the pontiff of the Church of Rome, heir to the privileges and authority of the first of the apostles, was judged by a council of bishops or by a gathering of subjects<sup>301</sup>.

Such premises prepared and founded what the pontiff in decisive fashion was about to affirm and whose content, in any case, was to be perceived not only as something extraneous, but also fantastic, compared to the ecclesiological sensibility of the East. The pope stood up against the emperor, both because of what had been done at the council of 861 and because of the importance given to it, and argued: *Tell me where have you read that your predecessors emperors attended councils, except when it dealt with the faith which is universal and common to all Christians, clerical or lay? You did not content yourself with attending this council assembled to judge a bishop, you brought thousands of secular people there to be spectators of its obnoxiousness. In this you are quite different from the Emperor Constantine who said he was willing to cover with his mantle the priest who was guilty of some fault... Contrary to the ecclesiastical rite, in opposition to all laws... The superior was subjected to the judgment of the inferiors, although the holy canons and the examples of the Fathers prove to us that we must always direct<sup>ars</sup> <sup>na</sup> <sup>na</sup> <sup>PTM</sup> <sup>ia</sup> authority, and, in all disputes, refer the judgment to the possessor of the highest see. This is a rule which has always been observed, not only by Catholics, but also by heretics<sup>11</sup>.*

Nicholas I ostensibly defends the deposed patriarch Ignatius, but in fact he does nothing more than assert his rights, although in Constantinople this had little effect. The pope clearly states that his authority is sovereign over the whole Church: Rome stands above all the Churches; to it, according to the pope, all major causes must be referred, including the case of Ignatius.

In the second part of the letter, Nicholas I states that the privileges of the See of Rome are perpetual because they were planted and rooted by God Himself. One can bump them, but not change them; one can attack them, but not destroy them...as long as the name of Christ is preached, they will remain unchanging. These privileges have been established by the very mouth of Jesus Christ: it is not the councils that have granted them; they have only honored and preserved them<sup>302</sup>.

It must also be noted," the letter continues, "that neither the Council of

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<sup>301</sup> *Ibid*, 468, rr. 15-34. Cf. 33-40.

<sup>302</sup> *Ibid*, 475, rr. 1-8.

Nicaea nor any other synod granted a single privilege to the Church of Rome. It was well known that, through Peter, this See had obtained the fullness of all power and the guidance of all the sheep of Christ. Thus, in fact, the blessed bishop Boniface attests, when he writes to all the bishops of Thessaly: *The universal institution of the nascent Church has drawn its origin from the honor accorded to the blessed Peter to whom the direction and supreme power have been given,. For these reasons, and others of the same order, we are concerned with the fate of all the Churches, and therefore also to take untiring care of that of Constantinople.*

So, according to Nicholas I, the principle *Prima Sedes a nemine iudicatur* finds in the primacy of the Church of Rome the foundation and justification for its extension even over Constantinople, though here it is seen as an unheard of innovation. It seems that all this argumentation of Nicholas I (the answer is Anastasius Librarius) did not convince or make a great impression on the Orientals. They, having heard the news of the *Risposte ad consulta Eulgarorum*, drawn up by the pope in a polemical and ironic tone - in which he scorned the Christian traditions and customs of the East, and having learned of the expulsion of the Greek missionaries from Bulgaria, following the arrival of a Roman delegation in that country - summoned a large synod of Eastern bishops, who gathered around Patriarch Photius and declared Pope Nicholas I deposed. This happened a few months before his death (+ 867)<sup>303</sup>.

One last remark, before ending this chapter, seems to us opportune. We know that Nicholas I, in order to affirm papal primacy and claim his authority over the whole Church, used the title *Vicarius Petri* to show that the pope had the same authority in the Church as Christ had conferred on the Prince of the Apostles<sup>304</sup>. The pontiff also linked the principle of unjusticiability to the concept of authority: he was of the opinion that the highest authority could never be judged by anyone, nor could his judgment be challenged.

Nicholas I, in a letter of 867 addressed to Charles the Bald<sup>305</sup>, stated that the pope was the supreme judge in the Church and therefore one could not appeal to another after having been judged by him. The Apostolic See is the highest authority, whose judgment is unquestionable and final. This concept, however, was almost a regress from the pure doctrine of Pope Gelasius.

For the purposes of our research it seems to us sufficient to have demonstrated, through a theological and canonical literature nourished in its - theological motivations and foundations, the continuity of the principle *Prima Sedes a nemine iudicatur* and its extension in the life of the Church.

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<sup>303</sup> Cf. Hans GROTZ, *Erbe wider Willen. Hadrian II. (867-872) und seine Zeit*, Wien- Köln-Graz 1970, 107-111.

<sup>304</sup> Cf. Michèle MACCARRONE, *Vicarius Christi. Storia dei titoli papale*, Rome 1952, 67-68.

<sup>305</sup> *Non nisi ubi est major auctoritas, liceat provocare. Itaque, cum non sit apostolicae sedis auctoritate, quae amborum negotium exsecuta est, usquam maior auctoritas, nescimus, si alicui liceat de eius iudicare iudicio, vel eius retractare sententiam.* NICOLAUS I PAPA, *Karolus Calvo*, Ep. 48, edidit E. PERELS, in *M.G.H., Epp.*, VI, 4, 330, rr. 25-28.

The letter of Nicholas I of 865, like those sent by him to the Orientals, is presented as a true dogmatic treatise on the monarchical constitution of the Church. It was later to become one of the most important documents in the evolution of papal doctrine. From the eleventh century onwards it was in fact used by the canonists of the Gregorian and post-Gregorian epoch: not only did the great ones such as, Anseimus of Lucca, Deusdedit, and Ivo of Chartres draw from this letter for the doctrine of papal primacy, but they also made use of it for many other collections of lesser importance.

Gratian transcribed in his *Decretum* 24 passages of the same. This fact contributed enormously to the popularity of Nicholas I among the theorists of pontifical law<sup>306</sup>, and for what concerns us directly, he can be considered the most reliable and authoritative propagator of the principle *Prima Sedes a nemine iudicatur* and of all the literature underlying it, particularly the Simmachian apocrypha. His ideas on papal primacy, which became leading ideas throughout the Latin Middle Ages, made Nicholas I the first precursor of Gregory VII<sup>307</sup>.

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<sup>306</sup> Cf. François DVORNIK, 162.

<sup>307</sup> *Ibid.*, 386.

## 7. ADRIAN II (867-872)

The Roman council of June 869, presided over by Pope Adrian II, condemned the council of Constantinople of the summer of 867 and renewed the condemnation of the two previous Constantinopolitan councils, that of 859 and that of 861 \

In it, on the matter of the Photius schism, the situation has not been defined, nor do its judgments constitute the last word. In fact, at the Council of Constantinople in 879-880, Rome also recognized Photius as legitimate patriarch, without his having made a retraction.

The Roman council condemned the Constantinopolitan council of 867<sup>308</sup>, including Photius and the Greek Fathers who had participated in it, because it had launched a condemnation against Pope Nicholas I<sup>309</sup>. Unfortunately, the acts of the Constantinopolitan of 867 were destroyed. During the Roman Council, Pope Adrian II called the decision of the Council of Constantinople arrogant and intolerable, since it could not condemn the bishop of Rome.

No one, in fact, had ever dared to do so and never had such a thing been heard. The Pontiff says: *We read that only the Roman Pontiff has judged*

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<sup>308</sup> This council, solicited by Photius, seems to have deposed, as a heretic and ravager of the Lord's vineyard, Pope Nicholas I, who died before he was even informed of the decisions taken on his account at Constantinople. Pope Nicholas I then was condemned and declared deposed by the whole synod, not by Photius alone, to whom all responsibility is ascribed. Never in fact has it been noted that Photius imposed his will on the synods: it was his enemies who attenuated the authority of the synod in order to brand and strike down Photius alone. Cf. Hans GROTZ, 110-111.

<sup>309</sup> Nicholas I, with great vehemence, had provoked the sensibilities of the Orientals by his replies *ad Consulta Bulgarorum*. The pope wanted to extend his jurisdiction over the Bulgarian land, without taking into account that the Church of Constantinople felt it to be its own.

*/ prelates of all the Churches; but we do not read that these were judged by any: even if Pope Honorius, after his death, was condemned by the Orientals, it was on the ground that he had been accused of heresy, which is the only ground that permits subjects to oppose their superiors and reject their perverse sentiments: but even in this case no patriarch or bishop is permitted to pronounce sentence against the pontiff of the first see, unless he first has the preliminary consent and authority\*\*.*

Hadrian II makes it clear, about the condemnation of Pope Honorius, that the papal legates, when they left in 680 for the Sixth Ecumenical Council<sup>310</sup>, had

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<sup>310</sup> Honorius (625-638) is remembered by history for his hasty and imprudent proceeding on the question of monothelism. Sergius, Patriarch of Constantinople, had proposed to him to proscribe the two terms monoenergy and dienergy, and to proclaim instead that Punic Son of God, at the same time God and man, worked divine and human things, and that every operation both divine and human derives without division from one and the same Incarnate Word, since it is impossible for the same subject to have two wills at the same time, concerning the same thing. Honorius made Sergius' ideas his own, forbidding the expression of either one or two energies, for the reason that Jesus Christ acts in many ways, which can neither be counted nor reduced to one or two. He then added that it was necessary to teach that the same Incarnate Word works divine things divinely and human things humanly, and that in all His action there is but one agent and one will, not in the physical but in the moral sense, that is, the moral unity of will in Jesus Christ, in whom there could be no human will opposed to the divine. But the expression was ambiguous and lent itself to exploitation by the Monothelites. As for Pope Honorius, certainly his orthodoxy cannot be doubted and he cannot be described as a monothelite, since he never admitted that the human nature of Jesus Christ had been completely absorbed by the divine; with his ambiguous expression, then, concerning the one will, he only wished to emphasize the moral unity of the will in Christ Jesus, inasmuch as from his human will every unruly tendency, every repugnance or resistance to the divine will was to be excluded. The Sixth Ecumenical Council (7 November 680/16 Sept. Sept. bre 681) with the approval of the papal legates condemned the authors and leaders of monothelitism: *Cyrus of Alexandria, Sergius, Pyrrhus, Paul and Peter of Constantinople, Theodore of Pbaran and Pope Honorius who followed them in error*. Pope Leo II in 682 confirmed the sixth ecumenical council and raised no protest against Honorius' condemnation. It must be noted, however, that he did not consider the case of Honorius to be one of heretical nature, but only one of negligence. Now, Pope Honorius' condemnation was not as well founded as that of the other leaders of Monothelitism since, although he had affirmed a will in Jesus Christ, he had not professed the Monothelite error. Cf. Vincenzo MONACHINO, 208-220; Elena ZOCCA, *Onorio I e la tradizione occidentale*, in *Augustinianum* 27 (1987) 571-615. However, the reprise of Pope Honorius' condemnation in the following two centuries is dogmatically relevant. First, in the Quinisestus (at the end of 692 the memory of the fact must still have been very much alive in Constantinople, even if it is true that such a council intentionally entered into disciplinary tension with Rome); then the Nicene II, the Ecumenic VII of 787 (where the same papal legates also subscribed to the condemnation of Honorius); finally, in the Council of Constantinople of 869. Undoubtedly this is a traditional practice for the conciliar confessions of faith as for the synodical ones. But the fact that the formulation of the Sixth Ecumenical Council of the undifferentiated type is adopted, and the absence of any precision (except perhaps for the Council of 869), suggest that this condemnation is not a "problem". Cf. Peter CONTE, *The Significance of Papal Primacy in the Fathers of the Sixth Ecumenical Council*, in *Archivum Historiae Pontificiae* 15 (1977) 94.

been instructed by Pope Agatho (678-681) on the various council deliberations. This meant that there was something fundamental that needed to be clarified and pointed out. Hadrian II, more out of a technical-juridical than ecclesiological concern, argued that the pope could be condemned only for heresy, and with the prior authorization of the pontiff of the First See itself: hence the priority of Agatho's condemnation of Honorius over that pronounced by the Orientals. In short, it was always the pope who determined what to do about his person or the bishop of Rome. Hadrian II hints that Pope Honorius, now dead, was condemned only because there was the unofficial consent of his successor, Agatho. And on this legal provision the papal legates would have been prepared before and during the Sixth Ecumenical Council. Therefore, only in cases of heresy can the pope be judged. But it is always he himself who establishes and fixes the possibility of being judged. He could always remain the bishop of Rome, if he were not the one to admit of being judged by a council of bishops.

As for the principle invoked, Pope Hadrian may have been aware of the apocryphal Council of Sinuessa, also adduced by Nicholas I in his letter to Michael emperor of Constantinople, in 865. The pope, to support his thesis, also refers, as a historical example, to the Council Palmare (501) during which the synods, called to judge Pope Symmachus, dared not pass judgment against the pontiff because it had never occurred that the bishop of the Apostolic See had been judged by his subjects. The synod did not wish to set itself against the pontiff, the head of the Church, and therefore entrusted and referred all judgment to God<sup>311</sup>.

But Photius had acted in that way only because, according to the pontiff, he had not read the acts of the Palmar Council, which in Greek perhaps did not exist<sup>312</sup>. A constant in the Photius question is the Roman claim that Constantinople must not only know the laws of ecclesiastical discipline and the doctrinal procedure of the Roman Church, but also observe them. Rome sets itself as head and mother of the whole ecclesial body to which all the Churches must refer with obedience and respect. In fact, the decisions of the Church of Rome can never be contested or

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<sup>311</sup> Cf. 35-40.

<sup>312</sup> *Meminimus interea scriptum quod rege quondam Italiae Theodorico papam Symmachum usque ad damnationem impetere volente, et ideo quotquot potuit ex Liguria, Aemilia, Valeria, et ex diversis regionibus, et ex Sicilia insula hujus rei gratia episcopos Romam accurrere praecipiente, et his ad se venientibus dicente, plura ad se de papae Symmachi actibus horrenda fuisse perlata, et in synodi (sic), si vera esset inimicorum ejus obiectio, judicatione constare; venerabiles antistites, ipsum, qui dicebatur impetitus, debuisse synodum convocare perhibuissent, scientes, quia ejus sedi primum Petri apostoli meritum, vel principatus, deinde secuta jussionem Domini conciliorum venerandorum auctoritas, et singularem in ecclesiis tradidit potestatem, nec ante dictae sedis antistites minorum subiacuisse judicio, in propositione simili facile formali (sic) qua testaretur. Ad postremum vero isti ipsi venerabiles praesules, cum vidissent quod non sine sui discrimine potuissent contra caput manus suas erigere, quidquid de saepefati Symmachi papae actibus delatum fuerat, totum Dei judicio reservarunt; ita ut singuli quique in subscriptione sua hoc patenter judicent, perhibentes: Laurentius episcopus ecclesiae - Mediolanensis huic statuto nostro, in quo totam causam Dei judicio commisimus, subscripsi; similiter Petro episcopo ecclesiae Ravennatis, et ceteris episcopis subscribentibus: Verum si haec Photius non legit, quia Graece forte non reperit. HADRIANUS PAPA II, Allocutio tertia, ad Concilium Romanum, a. 869, in MANSI, 16, 126.*

rejected.

An expression of this way of feeling and living the communion of faith is the behaviour that Rome had with Constantinople with regard to Bulgaria. At the last session of the Council of Constantinople in 869-870 a Bulgarian delegation took part to ask the Council Fathers to decide whether their young Church should belong to the patriarchate of Rome or that of Constantinople, since Rome had rejected an archbishop chosen by the Bulgarian king. The Byzantines argued that the request should be settled outside the council, under the presidency of the emperor and with the advice of only the representatives of the eastern patriarchates.

The papal legates, unprepared on the question, vigorously opposed it, - stating: *Only the holy See, with whom you in no way stand on the same footing, has the right to judge on all matters of the church. It on this cause has not elected you as judges nor given us the power to decide. We therefore reserve the matter entirely for your knowledge and decision\**. But it was all in vain: it was decided without them that Bulgaria should be part of the patriarchate of Constantinople, and Rome lost for ever the last chance over Bulgaria. This did not happen because of the papal legates nor because of the Byzantines. The loss of Bulgaria was due to the knowhow of Rome itself, which, faced with the fury and insistence of the Bulgarians, believed that it had to adopt a policy of procrastination<sup>313</sup>. After the Council of Constantinople in 869-870 there was a change of course in Byzantium. Relations between Basil and Photius were resumed and intensified: this reconciliation was followed by Photius' reconciliation with Ignatius, on whose death (23 October 877) Photius returned to the patriarchal see.

The problem then arose of cancelling what the Council of 869-870 had issued against Photius. The emperor was therefore concerned to have a council convened and in May 879 he asked Pope John Vili (872-882) for recognition of the new (and old) patriarch and for regularisation of the situation in Constantinople. The pope sent Basil a letter<sup>314</sup> in which he expressed his satisfaction at having recognized the authority of the Roman See, an authority confirmed by the founder of the same See, according to what had been said to Peter: *Shepherd my sheep*. He also noted that Basil had recognized the Roman See as the head of all the Churches. The pope declared his agreement that Photius should be recognized as the legitimate patriarch, but on condition that he apologize before the synod and make amends for his former conduct. In the exercise of his powers of binding and dissolving, the pope freed Photius and his bishops from the censures issued against them, but with the condition that Photius should exercise no ecclesiastical power over Bulgaria.

The letter expresses a number of prerogatives and rights, among which is that of judging the Patriarchs by the Roman See: *Peter's See holds the keys of the*

<sup>313</sup> Cf. Hans GROTZ, 229.

<sup>314</sup> JOHANNES Vili, *Basil (I.) et Constantine et Alexander imperatoribus*, Ep. 207, edidit E. CASPAR, in: *Epp.*, VII, Berolini 1928, 166-176.

*heavenly kingdom, has the power, after due consideration, to absolve prelates from all bonds. It is well known that many Patriarchs, Anastasius and Cyril of Alexandria, Flavian and John of Constantinople, and Polychrome of Jerusalem, who were condemned by synods, were immediately acquitted and rehabilitated by the Apostolic See^.*

We have quoted this letter in order to point out that among the patriarchs listed by the pope, unjustly condemned by the synods, there is also Polychrome, patriarch of Jerusalem, a character as we have said<sup>315</sup> created by the imagination of the author of the Simmachian apocrypha. It is interesting to note how the Simmachian apocrypha continues to exert a certain attraction on the Roman argument against Constantinople. It is likely that John Vili knew the name of the patriarch of Jerusalem, Polychrome, from the letter of Nicholas I sent in 865 to Emperor Michael III. The ecumenical council of 879-880 revoked and replaced that of 869-870, but did not obtain from Photius, according to the pope's wishes, any retraction.

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<sup>315</sup> Cf. 56-58.



## 8. STEPHEN V (885-891)

In the early days of Pope Stephen's pontificate there arrived in Rome, from Constantinople, the reply of the emperor Basil I to the synodica of Pope Adrian III (-1-885), in which the pontiff had recognized Photius as patriarch of Constantinople: the Byzantine emperor said that he had not wished to recognize as pope Marinus (882-884) because his election was contrary to the canons.

Marinus was bishop of Cere, but when he was elected pope he exercised the functions of archdeacon in Rome: the canons, in fact, forbade the passage of a bishop from one see to another. But Stephen V's reply to Basil was very harsh. The pope reproached the emperor both for the offenses caused to pope Marinus and for having defended Photius; he also claimed his privileges against the difficulties that the Eastern Church was causing him. The pontiff affirmed: *To you has been entrusted the task of curing the wickedness of tyrants, of making your subjects observe justice, and of organizing on land and sea your armies. These are thy duties. While the care of the flock has been entrusted to us. Listen to what the Lord said to Peter: "You are Peter, and upon this rock I will build my Church, and the gates of hell shall not prevail against it" (Mt 10:18). Instead, do you know what it says about your power and empire? "Do not be afraid of those who kill the body; verily they cannot kill the soul" (Mt 10:28). And about the ministry entrusted to us he says, "To you I will give the keys of the kingdom of heaven" (Mt 16:19) and the things that follow. Therefore, I beg you to adhere to the decrees of the princes of the apostles and may you honour their name and dignity. The institution of all the priests of the Church takes its origin from the prince of the apostles, through whom we admonish and teach the purest and clearest doctrine... Outrageous sound the blasphemous words against Pope Marinus, against our Lord Jesus Christ, who rules by His will the whole universe... Who ever - I say - has dared to say such things against her immaculate spouse and priest and against the mother of all Churches? Perhaps, you forget that the disciple is no more than the master, and the servant is no more than his master? (Mt. 10:24). I ask you: Who seduced you so that you could say these things about the pontiff and his Church, to which you must be subject with all respect and veneration? Who made you a judge of the pontiff, by whose sacred doctrines you are to be guided and whose prayers are elevated to God for you? Do you know that sacred text which says, "Ye shall not touch my anointed ones, and against my prophets ye shall not malign?" (Sai 105:15). These things are said concerning priests. You make yourself equal with God, you who dare to judge His angels.... How could you judge the priests, who are subject only to the judgments of God, and they alone have the power to judge and to*

*I would dissolve... You wrote that Marino wasn't a bishop. How is that possible? Perhaps Gregory of Na<sup>o</sup> was not transferred and Meletus of Sebaste was not transferred to Antioch.... Are you ignorant of what Blessed Sylvester decreed through legates at the synod of Nicaea, at the presentation of Constantine himself: "That the first See cannot be judged by anyone?" L*

The letter is of extreme importance not only for our assumption, but also for the meaning of the relations between pope and emperor. It takes up the theory of the two powers that Gelasius, four centuries earlier, in 494<sup>316</sup>, and then Simmachus (498-514)<sup>317</sup> had set out to the emperor of Constantinople. The latter is the head of the realities concerning the secular sphere, while the pope is the head of the spiritual ones. Both authorities are independent and enjoy the same honor, but in equal degree subordinate to the divine mind. They develop in an autonomous sphere, without overlapping: how, then, could Basil judge the matter of Pope Marinus? To the emperor Basil, who had dared to face the judgments of pope Marinus, Stephen V recalls the Council of Nicaea, where Constantine - the first Christian emperor, and an example for his successors of all times - had proclaimed that the First See could not be judged by anyone: there is here a clear reference to the Simmachian apocrypha and specifically to the *Constitutum Silvestri*.

The pope does not limit himself to quoting the apocrypha, but theologically finds, starting from the Petrine texts, the principle according to which the pope cannot be judged by anyone. It is interesting to note that the Matthean text *16, 18* is applied to the person of Peter, and the following verse *16, 19* is applied to the pope, in which the institution of the primacy of jurisdiction and magisterium is expressed. Only the pope was given the power to bind and loose: the keys are a symbol of sovereign and absolute authority. On the verses of *Mt 16: 18-19* the pope bases the idea that the Roman Church is, with respect to the others, in a relationship of mother-child, master-servant, master-disciple. By virtue of this quality and specificity, the Roman Church and the pope are of divine institution. Therefore, who can ever judge the pope, the First See? The primacy of Rome is expressed by Pope Stephen as the supreme instance that cannot be judged by anyone.

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<sup>316</sup> GELASIUS (Sanctus), *Ad Anastasium Imperatorem*, Ep., in PL., 56, 634.

<sup>317</sup> SIMMACHUS PAPA, *Apologetica adversus Anastasii Imperatoris libellum famosum*, in MANSI, 8, 214.

## 9. THE SYNOD OF MAGONZA (888)

The archbishops Liutbert of Mainz, Willibert of Cologne, and Ratbod of Trier, with their suffragans and a large number of clergy, came to this Germanic council. We report on this synod because it cites the *Constitutum Silvestri in regard to the unjusticiability of the pope*.

The bishops noted, with regret, that because of the violence perpetrated against the country by the Norman incursions and the climate of political semi-anarchy in the kingdom, general and provincial councils had not been convened for a long time.

The purpose of the synod was to establish a better situation with regard to discipline and moral life. To this end, they drew up twenty-six chapters, most of which referred back to previous councils: they confirmed the prescriptions for the protection of the physical and patrimonial immunity of ecclesiastics and for the right of asylum in the church; they established the obligation to pay tithes and laid down norms concerning prayer, the preservation of peace and duties towards the sovereign. To avoid disputes between bishops, it was decreed that the faithful of another diocese should not be judged, nor should sacred ordinations be conferred on them. Moreover, the rule of celibacy for priests and virginity for virgins was recommended.

Among the twenty-six canons, in the twelfth there appears a Simmachian apocrypha, which recites the unjustifiability of the Roman pontiff: *It is not permitted for a presbyter to accuse the bishop, a deacon the presbyter, a subdeacon the deacon, an acolyte the subdeacon, an exorcist the acolyte, a reader the exorcist, an ostiary the reader. And a presbyter cannot be condemned except before seventy-two witnesses: but the supreme pontiff can be judged by none, for it was written, The disciple is not above the master. The cardinal presbyter cannot be condemned except before forty-two witnesses, the cardinal deacon of the city of Rome except before twenty-six, the subdeacon, the acolyte, the exorcist, the lector, the ostiary, as it has been written, can be condemned only before seven witnesses, provided these are serical no infamy and have wives and children*<sup>318</sup>.

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<sup>318</sup> *Presbyter non adversus episcopum, non diaconus adversus presbyterum, non subdiaconus adversus diaconum, non acolythus adversus subdiaconum, non exorcista adversus acolythum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam. Et non condemnabitur praesul, nisi in septuaginta duobus: neque praesul summus a quoquam iudicabitur, quoniam scriptum est: "Non est discipulus supra magistrum". Presbyter autem in cardine constitutus, nonni-*

The quotation from this text is very important because it enables us to - perceive the resonance and the reception that the principle *Prima Sedes a ne mine iudicatur* had in an ecclesiological context and setting that was no longer strictly Roman but Germanic. The synodal bishops accepted the axiom unconditionally, without any restriction or hesitation. In this way, the principle on the pope's inexcusability passes into the disciplinary life of the Western Church and is embodied undisturbed in ecclesial praxis, to the point of constituting itself as a load-bearing element of the primacy of jurisdiction of the bishop of Rome over the whole Church.

*si in quadraginta duobus testibus damnabitur; diaconus cardinalis constitutus urbis Romae, non nisi in vigintisex condemnabitur; subdiaconus, acolythus, exorcista, lector, ostiarius, nisi, sicut scriptum est, in septem testibus non condemnabitur. Testes autem sine aliqua sint infamia, uxores et filios habentes. Concilium Moguntiacense, in MANSI, 18, 67-68.*

## 10. AUSILIO

From the last quarter of the 9th century the papacy was to suffer the full repercussion of the crisis of authority that characterized the post-Carolingian era throughout the West. In the space of a few decades one arrives at the situation in which the freedom of the pontiff, in the very exercise of his functions as bishop of Rome, is seriously compromised by the action of the local aristocracy. The papal authority for more than a century and a half seemed to fall into catalepsy<sup>319</sup>.

From 920 to 1046 as many as twenty-six popes succeeded one another<sup>320</sup>, for many of whom it is difficult, today, to ascertain their legitimacy. Many died violent deaths: strangled, starved, mutilated and even blinded<sup>321</sup>. On average their pontificate lasted just four to five years; the longest was fourteen years, and the shortest just over two months, including deposition and exile. Altogether almost twelve popes were deposed, five killed and as many expelled; without counting that in the meantime six schisms had occurred in Rome.

The Apostolic See lost much of its prestige, either through the unworthiness or inadequacy of its incumbents, with rare exceptions, or because they had no chance. Throughout this period it did not set itself up in enforcing the principle *Prima Sedes a nemine iudicatur*, which, certainly, had not been forgotten by the ecclesial conscience, nor had it been obliterated from the memory of its contemporaries.

The description of this reality, however, should not lead us to conclude that the tenth century was, in all respects, a dark century, as it is called. In spite of everything, the authority of the Apostolic See has always been recognized, together with the principle that the pope is, per se, the Lord of Rome. For the pontiff of Rome has never been vassal of the emperor, and Rome has never ceased to be a place of pilgrimage and worship.

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<sup>319</sup> Cf. Yves CONGAR, *De la communion des églises à une ecclésiologie de l'église universelle*, in *D'épiscopat et l'église universelle*, edidit Yves CONGAR - B. D. DUPUY, Paris 1962, 237.

<sup>320</sup> Note that from 1830 to 1958 there were only seven popes.

<sup>321</sup> Cf. Giacomo MARTINA, *Storia della Chiesa*, Rome 1980, 118.

## 10.1. HELP

The person and work of Ausilius, whose place of origin is not known with certainty, probably Frankish or Germanic, certainly not Italian, fits into this climate. What is known is that he was ordained a priest by Pope Formosus (891-896)<sup>322</sup>, and when his ordinations were declared invalid under the pontificate of Sergius III (904-911), Ausilius had to prove their validity. He was then in Naples, and here he dedicated himself, with diligent competence, to the problem - theologically relevant - of the validity of the consecrations<sup>323</sup>. He proved, at the same time, that the promotion of Formosus to the supreme pontificate was canonical.

We have many books written by his hand between 908 and 912, in defence of Pope Formosus, in which he gives evidence of a wide canonistic and theological knowledge of Augustinian inspiration. They also testify to a great respect for the sanctity of the Apostolic See; known to Pier Damiani and Cardinal Umberto di Silva Candida<sup>324</sup>, in the 12th century they had not yet been forgotten<sup>325</sup>.

Auxilius affirms that the pope has supreme power over the Church: *The heavenly power of binding and loosing has been given to all the bishops, but principally to the vicar of the apostles, who has the place of the apostle Peter and the keys of the heavenly kingdom. Therefore, whatever has been bound will be bound*<sup>326</sup>. The power of the pope is the highest power that exists on earth: *The apostolic power, without doubt, excels above all human powers, and in all those things which it ordains, it is not to be opposed*<sup>327</sup>. The pope is not subject to any control that could limit his power because he is the supreme judge who has power over all, and he cannot be judged by anyone: *The Holy Roman Church has primacy over the Churches, therefore she judges all of them, but she herself is not judged by anyone*<sup>328</sup>. It is noteworthy that Ausilius speaks of both the pope and the Roman Church as subjects to which the principle of unjustifiability and immunity applies.

<sup>322</sup> Formosus was probably born in Rome. He was appointed bishop of Porto, in 864 or 865, by Nicholas I. He was sent by the pope to the Bulgarians to respond to the appeal of King Boris, who had decided to convert his people to Catholicism. Boris insisted that Nicholas I, and later Hadrian II, appoint him head of the ecclesiastical hierarchy in Bulgaria. But both popes refused.

<sup>323</sup> Cf. Ovidio CAPITANI, *Ausilio*, in *Dizionario Biografico degli Italiani*, 4, Rome 1962, 596-600.

<sup>324</sup> Cf. J. RYAN, *Saint Peter Damiani and his Canonical Sources*, (Studies and Texts, II), Toronto 1956, 162-164.

<sup>325</sup> Cf. E. DÜMLER, *Auxilius und Vulgarius. Quellen und Forschungen zur Geschichte des Papstthums im Anfange des zehnten Jahrhunderts*, Leipzig 1866, 27.

<sup>326</sup> *Ugandi atque solvendi potestas omnibus episcopis coelitus est collata, precipue tamen Apostolorum vicari, qui vicem apostoli Petri, et claves regni coelitus tenet. Ed idcirco, quo modo libe t ligaverit, ligatum erit. AUXILIUS, Infensor et Defensor*, in PL, 129, 1089. B.

<sup>327</sup> *Apostolicae potestati, quae procul dubio omnes humanas potestates excellit, in omnibus quae jubet resistendum non est. Ibid.* 1088. C.

<sup>328</sup> *Sancta Romana Ecclesia super Ecclesias primatum tenet, ideoque iudicat omnes, et ipsa a nemine iudicatur. Ibid.* 1088-1089. A.

Who is that ignorant man) who seizes such great authority) to the point of daring precisely to speak against the pontiff of the Roman See, whom all judge and he himself by none is judged? Because of the things said, in truth, it is right that he should be condemned with anathema<sup>329</sup>. Often Auxilius affirms not only that: the apostolic pontiff judges everyone but he cannot be judged by anyone<sup>330</sup>, but also, that one cannot accuse him nor write against him.<sup>331</sup>

Auxilius, in order to defend pope Formosus, invokes against the council *ad cadaver* (897)<sup>332</sup>, which had declared the nullity of ordinations conferred by the pope, the following principle: *The apostolic pontiff judges all, but he by no one can be judged. It is just so; then, who claims to be able to judge him? Precisely, one thing is to judge, and another is the outburst of lamentation of the afflicted. We, therefore, do not seek to judge anyone, for neither must we nor can we, but we invoke, with lamentations full of tears, heaven and earth against the judge who cruelly judges*<sup>333</sup>.

The accusers of Formosus committed, according to a Formosian author, a double error: to have judged a dead man; and to have accused one already dead, and moreover pope<sup>334</sup>. The Formosian faction knew very well, from what emerges from their claims, the Simmachian apocrypha and the apologetic pamphlet of Enodius which states: *God willed that the successors of Peter should have such dignity, that they cannot be judged by anyone*<sup>335</sup>. Auxilius adds to the principle *Apostolico pontifex a nemine iudicatur* the possibility of not following the pope should he deviate from the Catholic faith and religion: *Holy Roman Church has primacy over the Churches, therefore she judges them all, but she herself is judged by no one... Pontifical sees are one thing, their presidents another. Therefore, to*

<sup>329</sup> *Qui\* est iste vir imperitus, qui sibimet tantam usurpat auctoritatem, ut contra Romanae sedis pontificem qui indicai omnes et ipse a nemine indicatur, prorsus audeat loqui; pro talibus quidem dictis dignus est anathemate plecti.* AUXILIUS, *In defensionem sacrae ordinationis papae Formosi*, in E. DCMLLER, 76.94.

<sup>330</sup> *Apostolicus... pontifex omnes indicat et ipse a nemine indicatur.* *Ibid*, 92.

<sup>331</sup> *Si advenis et peregrinis Ecclesiae praepositos accusare licet, vel iudicare, aut praepiudicare, aut aliqua scriptura adversus eos facere, frustra ergo in pontificalibus epistolis ita praefixum habetur.* AUXILIUS, *Infensor et defensor*, in PE, 129, 1099. A.

<sup>332</sup> At the death of Pope Formosus (896), guilty of having supported the succumbing political faction of Arnulf of Carinthia, his successor Stephen VI, creature of the Duke of Spoleto, had his corpse exhumed and in a synod held a trial against it, which ended with the condemnation of the former pope whose body was thrown into the Tiber (*synodus ad cadaver*).<sup>16</sup> *Apostolicus... pontifex omnes indicai et ipse a nemine indicatur. Ita est, sed quis eum indicare contendit? Aliud namque est indicare, et aliud est afflictorum gemitus in querellas prorumpere. Nos enim neminem indicare quaerimus, quoniam nec debemus, nec possumus, sed contra iudicem crudeliter indicantem lacrimosis questibus caelum et terram invocamus.* AUXILIUS, *In defensionem sacrae ordinationis papae Formosi*, in E. DUMMLER, 92-93.

<sup>334</sup> *Si Romanus pontifex vivus a nemine indicatur, mortuus a quoquam iudicabitur?... Quod si nemo subiectorum exutus carne est indicandus, quid de summo pontifice, qui nec vivus reprehendendus erat. Invectiva in Urbem Romam pro Papa Formoso, edidit E. DUMMLER, in *Gesta Berengarii Imperatoris*, Halle 1871, 140,144.*

<sup>335</sup> *Beati Petri successores tante dignitatis habere privilegium, ut Romanus pontifex a nemine iudicetur... Uni solum dictum est: Tu es Petrus et... usque solutum in celis (Matth. 16, 18-19).* *Ibid*. 143.

these alone are due, with veneration, honor and dignity. But if the presidents deviate from the faith, we must not follow them; it is given that, when they begin to live against the Catholic faith and religion, in such cases we absolutely must not follow them<sup>336</sup>.

Per Ausilio aliud sunt pontificales sedes, aliud praesidentes. The See always deserves respect, since those who occupy it can err. Ausilio is not the first to speak of the distinction between *sedes et sedens*. Before him, Leo the Great, in his letter to Anatolius, Patriarch of Constantinople<sup>337</sup>, had made this distinction, applying it to the Church of Antioch and Alexandria. This distinction, aimed at defending the rights of these Churches against the usurpation of the Constantinopolitan one, recited: *The Sees are one thing, the presidents another; but great honor is for each one its own integrity*<sup>338</sup>.

Help therefore applies this principle to the See of Rome. Claudius of Turin (+ 827), had affirmed, according to his rival Jonah of Orléans (+ 843): *Certainly he is not called apostolic who sits in the chair of the apostle, but he who performs the office of the apostle*<sup>339</sup>. This is an expression of a spiritual and moral conception of the primacy: to participate in the privileges of Peter it is not enough to occupy his See, but one must also imitate its virtues. The pope, who is not firm in the faith, could fail in the fulfillment of the divine law, and in this case, obedience must be refused him. Moreover, in matters of faith he might fall into heresy: as Pope Liberius<sup>340</sup> and Pope Marcellinus<sup>341</sup>. One must obey the apostolic power, but not in those things which the Christian law rejects and forbids<sup>342</sup>. The Formosian faction, as we have already pointed out, knew

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<sup>336</sup> *Sancta Romana Ecclesia super Ecclesias primatum tenet, ideoque iudicat omnes, et ipsa a nemine iudicatur... Alius sunt pontificales sedes, aliud praesidentes. Proinde honor et dignitas uniuscuiusque sedis venerabiliter observanda sunt. Praesidentes autem si devierint, per devia sequendi non sunt; hoc est, si contra fidem vel catholicam religionem agere coeperint, in talibus eos ne-quadam sequi debemus.* AUXILIUS, *Infensor et defensor*, in PE, 129, 1088-1089.

<sup>337</sup> LEO MAGNUS (S.), *Ad Anatolium Episcopum Cp.*, Ep. 106, in PE, 54, 1001-1009.

<sup>338</sup> *Ibid*, 1007.

<sup>339</sup> *Certe non ille dicendus est Apostolicus, qui in cathedra sedet apostoli, sed qui apostolicum implet officium.* JONAS AURELIANENSIS EPISCOPUS, *De cultu imagum. Eibri tres*, in PE, 106, 385.

<sup>340</sup> *Eiberius autem apostata factus.* AUXILIUS, *De ordinationibus a Formoso Papa factis*, in PE, 129, 1068. D.

<sup>341</sup> *Etenim Marcellinus papa licet diis sacrificasset, tamen a nemine fuit iudicatus, quia summum pontificem nefas est a quoquam iudicari. Inectiva in Urbem Romam pro papa Formoso, edidit E. DCMLER, 144.*

<sup>342</sup> AUXILIUS, *Infensor et Defensor*, in PE, 129, 1088.

well all the literature which founds the principle *Prima Sedes a nemine iudicatur*. These last two quotations give us further confirmation of this. The anonymous writer of the invective in favor of pope Formosus commented on the case of pope Marcellinus, stating that the pontiff - although he was an apostate in that he had sacrificed to the gods - was not judged by anyone, since no one is allowed to judge the supreme pontiff.

## 10.2. The VALLICELLIAN MANUSCRIPT XVIII <sup>343</sup>

In this manuscript we find several collections that a canonist, in a somewhat bizarre way<sup>344</sup>, wanted to bring together in a large collection, of which we mention the 451 canons. The author presents many texts that are fundamental to the arguments of the apologists of the Formosian party. Fournier supposes that this manuscript was composed shortly after the writings of Auxilius<sup>345</sup> because it firmly defends the privileges of the Roman Church. It also states that the bishop of Rome has special power to decide on matters of faith and to judge the patriarchs, especially that of Constantinople.

But if the pope were to fall into heresy, then he would have to condemn himself because he could not be judged by anyone. In this connection the author not only cites the case of Pope Marcellinus, but also that of Popes Liberius, Sixtus III, and the pseudo-patriarch of Jerusalem, Polychrome<sup>346</sup>.

As can be seen, our apocrypha are almost all quoted and enjoy considerable credibility. The pope is not judged or condemned by others or by the council, even in the case of heresy. The council convocation is mentioned, but there is no council authority that can judge the heretical pontiff: he can freely judge himself if he wants.

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<sup>343</sup> Cf. LINDEMANS Stephen, *La Primauté du Pape dans la tradition du X.me siècle*, Louvain 1965, 25-29.

<sup>344</sup> Cf Paul FOURNIER, *Un groupe de recueils canoniques italiens*, in *Mémoires de l'Académie des Inscriptions et Belles Lettres* 40 (1916) 96-123.

<sup>345</sup> *Ibid*, 116ff.

<sup>346</sup> *De sancto Marcellinus papa qualiter idolis thurificaverit et ob hoc damnatus fuerit et postmodum ad martyrium pertinuerit*, can. 404; *De eo quod tertius Xystus Papa falso crimine infamatus sit, et synodali iudicio purificatus*, can. 407; can. 408. Paul FOURNIER, 97-115.

## 11. CANONISTS IN THE X CENTURY

The awareness in the tenth century of the content of the papal primacy and its ecclesiological function is exactly identical to that which we find among the originators of the Gregorian reform. The reformers of the 11th century in fact took up the tradition concerning the primacy, as it was presented in the writings of antiquity and the Middle Ages, until then<sup>347</sup>. The writings of Attone of Vercelli (885-961) and of Raterio of Verona (890-974) are very significant in this regard: both supported, with their action, the full moral dignity of the clergy and its independence from lay power.

In these two authors we can trace a concept of Church that is influenced both by Cyprian influence and by the Leonine vision. Their conception is based on the episcopal and ecclesial interpretation of *Mt 16:19* read in correlation with *Mt 16:18* and *Jn 20:22-23*, widely diffused in the rest of the Church, even in the West. In these texts the power to bind and loose is given equally to all the apostles; - episcopal authority is also defined. In *Mt 16,19* the primacy of Peter does not emerge so much as the character of the episcopate and the priesthood: the keys were given to all the apostles, the power is unique as unique is the flock over which it must be exercised: the unity of the flock corresponds to the *communis cura* of the pastors. The fact that the power, at the beginning, was given to Peter means precisely this unity, since Peter represents all the apostles, or the Church itself. The apostles receive the same honor and the same power as Peter<sup>348</sup>.

Attone of Vercelli and Raterio of Verona, notwithstanding their Cyprian conception, that is *episcopalian*, which extends also to the unjusticiability of bishops, also send us other texts, from which the principle *Prima Sedes a nemine iudicatur* is evident. And this should not surprise us, since in the early Middle Ages both conceptions of the episcopate (Cyprian and Leonine) could be fused into a single thought<sup>349</sup>.

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<sup>347</sup> Cf. LINDEMANS Stephen, *L'Primauté du Pape dans la tradition du X.me siècle*, Louvain 1965, 1-4.

<sup>348</sup> Cf. Yves M. Y. CONGAR, *U ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 141-144; ID., *Ueglise de Saint Augustin à Npoque moderne*, Paris 1970, 65,179.

<sup>349</sup> Cf. Friedrich KEMPF, *U papato dal sec. VII alla metà del sec. XI*, in *Problemi di storia della Chiesa. U Alto Medioevo*, Milan 1973, 60, note 2.



11.1. ATTONE OF VERCELLI (885-961)<sup>350</sup>

Our interest, as for the canonical collections of the first half of the ninth century, is to report the most important collections that have transcribed and reinterpreted all the literature concerning the principle *Prima Sedes a nemine iudicatur*.

Attone, bishop of Vercelli, reveals a great and rich knowledge of canonical procedural literature. His works include *De pressuris Ecclesiasticis*<sup>351</sup>. The first part is dedicated to the canonical procedure in juridical trials, *De iudiciis episcoporum*, where he speaks of the unjustifiability of the pope. No bishop, he says, is required to appear before the secular courts. If a bishop is accused, judgment is given by the metropolitan. The latter, in order to examine the case, as primate summons a synod, in which all the bishops of the same province are called to attend<sup>352</sup>. For the accused to be condemned, his presence is necessarily required and the judgment must be made public. Moreover, the testimony of 72 reliable and honest witnesses must be heard<sup>353</sup>, because experience taught that, according to the acts of the Roman Pontiffs, corrupt and false witnesses had been introduced: the case of Popes Damasus, Sixtus and Simmachus was an example. These, accused by some perverts, were unanimously justified by the synods of the bishops<sup>354</sup>. On

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<sup>350</sup> Attone of Vercelli, from a Lombard family, became bishop of Vercelli in 924, and had relations with the successive kings of Italy Hugh, Lothair and Berengar, from whom he obtained privileges and donations for his diocese. An expert in the canonical and scriptural sciences, and a connoisseur of Greek, Attone was an effective and elegant writer. In *De pressuris ecclesiasticis libellus*, composed around 940 or in any case before 943, he deals with simony, using, for the first time, both for those who sell and those who buy the episcopal dignity, the term *haeresis*. He then points out how lay intervention in the episcopal election, not keeping within the limits of *consensus* with regard to the elected, is often the cause of unworthy choices. For this polemic Attone occupies a prominent place in the movement of *episcopal reform* that would, according to Eliche, prepare the Gregorian reform. Cf. A. FRUGONI, *Attone di Vercelli*, in *Dizionario Biografico degli Italiani*, IV, Rome 1962, 567-568.

<sup>351</sup> ATTO VERCELLENSIS EPISCOPUS, *De Pressuris Ecclesiasticis*, in *PE*, 134, 51-96.

<sup>352</sup> *Si quis episcopus ab illis accusatoribus qui recipiendi sunt, fuerit accusatus, postquam ipse ab eis charitative conventus fuerit, ut ipsam causam emendare debeat, et eam corrigere noluerit; non olim, sed tunc ad summos primates causa ejus canonice deferatur, qui in congruo loco infra ipsam provinciam tempore congruo, id est autumnali, vel aestivo, concilium regulariter convocare debebunt, ita ut ab omnibus ejusdem provinciae episcopis inibi audiat. Quo ipse et regulariter convocatus, si eum infirmitas, aut alia gravis necessitas non detinuerit, adesse debebit; quia ultra provinciae terminos accusandi ante licentia non est, quam audientia rogetur.* *Ibid*, 55.

<sup>353</sup> *Patriarchae vero vel primates accusatum discutientes episcopum, non ante sententiam proferant finitivam, quam apostolica fulti auctoritate, aut reum seipsum confiteatur, aut per innocentes et regulariter examinatos convincantur testes, qui minori non sint numero quam illi discipuli fuerunt, quos Dominus adjumentum apostolorum eligere praecepit. Id est, septuaginta duo.* *Ibid*, 56.

<sup>354</sup> *Satisfactionem igitur accusati sacerdotis (sub jurejurando minime dicunt valere, nisi plures etiam sacerdotes secum) compellat jurare, inique hoc assumentes in testimonium, quod factum se legisse jactant in actibus Romanorum pontificum. Nam quod de Damaso et Sixto, atque Symmacho venerabilibus pontificibus inventur, eo quod dum a quibusdam perversis de criminibus accusarentur, collectis episcoporum conciliis synodice purgati sunt, hoc se his verbis penitus intelligere fatentur, quod omnes praedicti episcopi cum ipsis pontificibus, pro illatis jurassent criminibus, quasi non eos propria tantummodo absolveret satisfactio, nisi hoc etiam*

their account, about guilt and absolution, Attone does not want to discuss them on purpose because the facts, perhaps, seem to him not very transparent<sup>355</sup>. But he points out that the accused popes were all judged by councils of bishops, which held them to be free from all guilt and crime.

Ultimately, the bishop of Vercelli places his attention here on the authority of the council. With great seriousness and severity, he speaks of canonical procedure and affirms that everything must be verified and proven because, even if things should be true, they must be scrutinized with a careful and prudent judgment and the result must be communicated with a judicial order. Attone goes on to say that no one should presume to judge a pontiff if things are unclear. Moreover, one whom God has reserved for His judgment cannot be condemned by human judgment. Constantine himself, the most holy emperor, at the council of Nicaea, recognized this principle, when, when confronted with the accusations which had been presented to him against certain bishops, he said: *by no one can you be judged, we reserve judgment on you to God alone. You are gods and therefore cannot be judged by men. For' the Lord said to the people of Israel, 'Do not insult God or curse the leaders of your people' (Ex 22:28)*<sup>356</sup>.

Shortly afterwards, Attone reports the decree of the blessed pope Sylvester, namely, the *Constitutum Silvestri*, in which it is stated: no one of inferior rank accuses his superior, and, the *summus praesul* can be judged by no one, since the disciple is no more than the master<sup>357</sup>.

#### 11.2. RATERIO OF VERONA (890-974)<sup>358</sup>

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*praedictorum confratrum firmaret juratio. Ibid, 56.*

<sup>355</sup> *Nobis tamen quod sic intelligendum sit, revera non patet. Plane enim a praedictis episcopis praedictos pontifices purgatos accipimus, si ipsorum suggestione, propria tantummodo satisfactione ipsi etiam faventibus, eos alienos a criminibus fuisse firmatum est. Sed si pro alicujus justi innocentia alicui placuit sacramentum praebere charitatis causa ut eum vel sic a persequentibus liberaret, omnimodis placet. Veruntamen licet perversorum infestatione in primitiva Ecclesia hoc fieri potuisset; (nullum tamen exemplum) in posterum relinquere debuit. Quo etenim sancto concilio, vel cujus catholici et apostolici viri decreto sancitum sit, sacerdotes Dei a criminibus absolvi non posse, nisi confratrum satisfactione, penitus ignoramus. Ibid, 56-57.*

<sup>356</sup> *Non enim potest humano condemnari examine, quem Deus suo reservavit iudicio. Constantinus etiam sanctissimus imperator, cum in Nicaena synodo querelam quorundam episcoporum coram se delatam conspiceret, ait: "Vos a nemine judicari potestis, quia solius Dei iudicio reservamini. Dii enim vocati estis, idcirco non potestis ab hominibus judicari. Quod et Dominus in Exodo ostendens ait: "Dii ne detrahas, et principi populi tui ne maledicas (Exod. 22,28)". Ibid. 67.*

<sup>357</sup> *Beatissimus etiam Sylvester summus pontifex, et universalis apostolus collecta synodo in sancta et venerabili Romana Ecclesia per omnia interdixit, ut nullus laicus crimen clerico audeat inferre, et ut presbyter non adversus episcopum, nec diaconus adversus presbyterum, non subdiaconus adversus diaconum, non acolythus adversus subdiaconum, non exorcista adversus acolythum, non lector adversus exorcistam, non ostiarius adversus lectorem, det accusationem aliquam. Et non damnetur praesul, nisi in septuaginta duobus, neque praesul summus a quoquam judicetur: quoniam scriptum est: "Non est discipulus supra magistrum" (Matth 10:24). Ibid. 67.*

<sup>358</sup> Born in the region of Liege about 1,890, he was bishop of Verona, from where he was driven out three times. Later he was bishop of Liege, from here also he was once banished.

Raterio has often spoken in his works, and on different occasions, about the pope and his powers, but nowhere does he offer a systematic view of what he thinks of the papal primacy. The bishop of Verona has dealt with the question of the unjustifiability of bishops and the Roman Pontiff, especially when he had to defend himself against the secular power, against which he does not refrain from raising his voice in judging bishops. He affirms several times that bishops cannot be judged by anyone: God alone is their judge, according to the words of the Apostle, who said: *My judge is the Lord (1 Cor 4,4)*<sup>359</sup>. Raterio accuses King Hugh, who had arrested him only because he had been caught *cum malefactoribus*. *In so doing*, he had made a precise infraction of the general rules of behaviour of kings: in the face of bishops, the king must maintain a proper attitude of veneration, not to say subjection. The bishops are his prelates, or rather they are his gods, given to him by the supreme, unique and singular God, they are his angels, sent to him by the Angel of Great Counsel.

And he reports the episode of Constantine, during the Council of Nicaea: *If you think I am lying, question your predecessor, Constantine, question the same psalm, question the Lord: "You" - he (Constantine) said - "were given to us by God, you are gods, and it is not fitting that a man should judge the gods"*<sup>360</sup>. To judge the bishops is to go against Christ Himself; they are the greatest authority after God, and are the judges of kings themselves<sup>361</sup>.

A bishop may be canonically judged, if legitimately examined he has confessed with his mouth his crime<sup>362</sup>. It is important to point out that Raterius applies to bishops the dictate of the Symmatic apocrypha, which has hitherto been cited only in defense of the pope.

The apocryphal Council of Sinuessa is recalled here, where the synods

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Between arrests, imprisonment, and forced residence, he was postulant, vagabond, - schoolmaster, and monk. He spent his life attacking to defend and defending to attack. His life was very eventful because of his episcopate. The list of his works, of an occasional nature, is very long, and the most voluminous work is the *Prae-loquium libri sex*, written between 935 and 937. Cf. E. AMANN, *Rathier de Vérone*, in *Dictionnaire De Théologie Catholique*, XIII, 2, Paris 1937, 1679-1688; Gustavo VINAY, *Raterio o di una storiografia inattuale*, in *Raterio da Verona*, (Convegno del Centro di Studi sulla Spiritualità Medievale, X), Todi 1973, 12; Dario CERVATO, *Raterio di Verona e di Liegi. Il ter^o periodo del suo episcopato veronese (961-968): scritti e attività*, (P.U.G. Tesi), Romae 1983.

<sup>359</sup> *Quod vero a nemine nisi ab ipso Deo possint judicari, aut reprehendi, testatur Apostolus quibusdam detractoribus obvians: "Hic jam", inquit, "quaeritur inter dispensatores, ut fidelis quis inveniatur" (1 Cor 6,2); nostrique assumens personam, dum defendit suam: "Qui autem", ait, "judicat me, Dominus" (1 Cor 6,4). RATHERIUS EPISCOPUS VERONENSIS, *Praeloquium Libri sex*, in PL, 136, 232.*

<sup>360</sup> *Quod si sibi putas mentiri, antecessorem tuum interroga, Constantinum, interroga psalmum ipsum, interroga Dominum: "Vos," ait, ille jam factus, (Constantinus) "nobis a Deo dati estis dii, et conveniens non est, ut homo iudicet deos." Ibid, 223.*

<sup>361</sup> *Ibid. 225.*

<sup>362</sup> *Canonica vero judicatur auctoritate, si examinatus legitime, crimen suum in concilio proprio publicaverit ore. Ibid, 259.*

strongly urged Pope Marcellinus to self-justification or self-condemnation<sup>363</sup>.

Bishops are untouchable even if denied<sup>364</sup>; bishops are instituted by God<sup>365</sup>; and again: *Dii sunt, Domini sunt, Christi sunt, coeli sunt, angeli sunt patriarchae sunt, prophetae sunt, apostoli sunt evangelistae sunt, martyres sunt, uncti sunt, reges sunt, principes sunt, iudices sunt, non tantum hominum, sed et angelorum*<sup>366</sup>. Bishops are unjust even if they are guilty<sup>367</sup> and delinquent: only by God can they be punished and corrected<sup>368</sup>.

However, after these categorical statements, Raterio recognizes the right of the See of Rome to judge the bishops. At the beginning, when some difficulty arises in the life of the Church, he says what must be done: *The bishops have their general assemblies, the universal synods, the ancient canons, the regular councils, the decrees of the holy Fathers, the sanctions of the various pontiffs. There is nothing that could happen between them, sen^a that they could not come to a judgment among themselves. In the end there is the universal, principal, capital See, because distinct from the heads of the Church themselves, nourisher, mother, judge, and teacher of all. If anything has been done among them against the right order, it may be judged by it, examined, and punished by a legal sanction*<sup>369</sup>.

The Apostolic See is therefore the last and supreme instance that can judge and punish. The bishop of Rome is also the doctor and has the highest authority in matters of faith. As for the principle that the pope cannot be judged by anyone, Raterius does not speak of it at length and expressly, although he had occasion to do so in connection with the council of 963, at which John XII was deposed. He speaks of it, in a sense, in his letter sent to Pope Agapitus in 951: the supreme pontiff cannot be taken back by anyone<sup>370</sup>. In it Raterio places the privilege of the pope's unjusticiability on the same level as that of the king. Elsewhere he vindicates the right according to which the pope can be judged by no one, and applies it also to himself when he defends himself against his enemies: *Please consider, while the supreme pontiff can be taken back by no one, how much less can one of them (of the bishops) be scourged, put in prison... tormented?*<sup>15</sup>

The bishop of Verona recognized the right of injustice to bishops, to the

<sup>363</sup> Cf. 61-63.

<sup>364</sup> RATHERIUS EPISCOPUS VERONENSIS, *Praeloquiorum Libri sex*, 226.

<sup>19</sup> *Ibid*, 227.

<sup>366</sup> *Ibid*, 227.

<sup>367</sup> *Ibid*, 230.

<sup>368</sup> *Ibid*, 231.

<sup>369</sup> *Habent (episcopi) conventus inter se generales, synodos universales, canones antiquos, concilia - descripta, sanctorum decreta Patrum, sanctiones diversorum pontificum. Nihil est quod possit inter eos contingere, unde proprium inter se non possint iudicium invenire. Postremo est sedes universalis, principalis, capitalis, quia ipsis capitibus Ecclesiae insignis nutrix, mater, iudex et magistra omnium. Si quid contra rem actum ab aliquo vel in aliquo est horum; in ea iudicari, examinari, vel legali potest sanctione puniri. Ibid*, 251.

<sup>370</sup> *Summus enim pontifex a nemine debet reprehendi, et cor regis in manu Dei. Quae duo utrumque commonefaciunt, credo: illum, ne reprehendenda agat, istum, ne cor suum a manu Dei... auferat. RATHERIUS, Ad Agapetum, Ep. 7, in Die Briefe des Bischofs Ratber von Verona, edidit F. WEIGLE, in M.G.H., Briefe der Deutschen Kaiser^eit, I, Hannoverae 1949, 41, rr. 6-10.*

pope and also to the king. His writings undoubtedly express the power of the pope as supreme judge in ecclesiastical matters: the discipline to be observed for the whole Church is dictated in Rome. Uncertain questions must be proposed and submitted to the See of Rome, which has all the power to resolve them. Nevertheless, there is in Raterio also the dimension of episcopal and conciliar power; but to infer anything about a Raterian episcopalism - if by it we are to mean an organic vision and not inspired by specific contingent motives of the function of the bishops within the whole Church - is at least risky.<sup>371</sup>

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<sup>371</sup> Cf. Ovidio CAPITANI, *Raterio e il diritto canonico*, in *Raterio da Verona*, 149.

## 12. JOHN XII (955-964)

The historical context in which Pope John XII lives is that of the tenth century, defined as a dark century for the reasons already mentioned above<sup>372</sup>. In truth, we cannot conclude that it was obscure in all respects: the authority of the Apostolic See was always recognized.

In 993 John XV canonized Bishop Uldaric of Augsburg: until then, a pope had never approved the cult of a saint who lived outside the Church of Rome, now by virtue of his primatial authority, he decided on something that - in itself - according to custom, was the prerogative of the local bishop. A sign of the rise of papal power during this period is also the delivery of the pallium and the institution of monastic exemption. The monks, in order to better defend their property and their lives from the interference of lay or ecclesiastical lords, surrendered themselves to the protection - or ownership - of the Holy See, establishing a network of monasteries dependent directly on Rome.

In this period there is also talk of an Ottonian rebirth and spiritual renewal, thanks to the emperors and the great monastic spiritual centre of the time, which was Cluny. An equally lasting influence was exerted by the monastic reform of Gorze, but this is certainly not the place to dwell in the analysis of this century, made of dense shadows and intense splendor. Several authors of profound competence have dealt with it<sup>373</sup>.

The sources which give us knowledge of the pontificate of John XII are the *Uber Pontificalis* and the works of Liutprand of Cremona and Benedict of St. Andrew. These three testimonies seem to be independent. As for the chronicles - contemporary or later - they all depend, more or less directly, on Liutprand. To him we owe the most terrible indictment against John XII, though he is by no means a witness above suspicion. The author who compiled the life of John XII in the *Liber Pontificalis*, though independent from Liutprand, also inclines towards the same version of the bishop of Cremona.

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372 Cf. 131.

373 Cf. Harald ZIMMERMANN, *Das dunkle Jahrhundert. Ein historisches Porträt*, Graz- Wien-Köln 1971.

Analysing the works of Liutprand<sup>374</sup>, a profound connoisseur of Greek - at a time when it was almost ignored in the West - one notices a strong anti-Roman spirit. He does not question the spiritual significance of the Church of Rome, but the conduct and character of the Romans<sup>375</sup>. Liutprand asserts the exceptional position of Rome at the centre of the Christian world, because it was there that the Apostles Peter and Paul had come to die. With the bishop of Cremona, an imperial, Christian and Germanic ideal was becoming more and more clearly defined. The work that interests us here is *VHistoria Ottonis*, composed in 964<sup>376</sup>. It recounts the events that led to the Roman coronation of Otto, the condemnation of John XII, and finally the deposition of Benedict V.

Liutprand's vision differs from that of Benedict of Sant'Andrea sul Soratte. The latter wrote a *Chronicon*<sup>377</sup> in which the vision of the ruins and mourning inflicted on Rome finds no other echo than regret for past greatness and invective against the present situation. The reasons for Liutprand's strong polemic are absent in Benedict, because of his inability to link a general historiographical view to a new and active force. Otto is seen as a barbarian, and the possibility that Roman imperial greatness might be resurrected by him does not even cross the mind of the monk of Soratte<sup>378</sup>. Instead, for Liutprand, the power and strength of ancient Rome are operative: he finds almost the reason for a new life in the deeds of these powerful Germanic kings. Benedict of St. Andrew then writes in a Latin that, in literary terms, leaves much to be desired, because grammatically deficient; but it is to be assumed that he witnessed the events of John XII.

After the death of Pope Agapitus (955), Octavian, at the behest of his father Alberic, gave up his birth name and ascended the papal throne with the name of John XII. He led a very unbridled life, among adulteries and vanities<sup>379</sup>.

Then reigned in Italy Berengar II (950-961) and Adalbert (950-961), known for their tyranny. Pope John XII, in order to free himself from their dominion over the Holy Roman Church entrusted to him<sup>380</sup> and over his own person, sent the

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<sup>374</sup> LIUDPRANDUS, *Relatio de legatione Constantinopolitana; Antapodosis; Liber de Rebus Gestis Ottonis Magni Imperatoris*, edidit G. H. PERTZ, in *M.G.H., SS.*, Ili, Hannoverae 1839, 347-363; 273-339; 340-346.

<sup>375</sup> Cf. Girolamo ARNALDI, *Liutprando e ridea di Roma nell'alto medioevo*, in *Archivio della Società Romana di Storia Patria* 78 (1955) 23-34.

<sup>376</sup> Cf. Ovidio CAPITANI, *Motivi e momenti di historiografia medioevale italiana: sec. V-XIV*, in *Nuove questioni di storia medioevale*, Milan 1974, 757-758.

<sup>377</sup> BENEDICTUS SANCTI ANDREAE MONACHUS, *Chronicon*, edidit G. H. PERTZ, in *M.G.H., SS.*, III, Hannoverae 1839, 696-722.

<sup>378</sup> Cf. Ovid CAPITANI, 759.

<sup>379</sup> *Totam vitam suam in adulterij et vanitate duxit. Liber Pontificalis*, II, 246, rr. 2-3; similar things were said by Benedict of St. Andrew in his *Chronicon*, 717.

<sup>380</sup> *Iohannes summus pontifex et universalis papa... lobannem videlicet cardinalem diaconem, et Adonem scriuarium, serenissimo atque piissimo tunc regi, nunc augusto Cesari, Ottoni destinavit... quatinus... se sibi que commissam sanctam Romanam ecclesiam ex eorum faucibus liberaret, ac saluti et libertati pristinae restitueret.* LIUDPRANDUS, *Liber de rebus gestis Ottonis Magni Imperatoris*, 340, rr. 4-11.

cardinal deacon John<sup>381</sup> and the scribe Azzone to the Emperor Otto, then king, begging him to intervene. Benedetto di Sant'Andrea depicts the two messengers as the appointees of a Roman party that, tired of the pontiff's way of acting, asked the Germanic sovereign to restore some order and dignity in the Church<sup>382</sup>.

Liutprand relates that Otto, bent by the tearful complaints of the messengers, and looking not to his own interests but to those of Jesus Christ (*FU 2,21*), gathered his troops to come at once to Italy. Here, having driven Berengar and Adalbert from the kingdom, he made his way to Rome to be received with extraordinary pomp by John XII, from whom he received the imperial coronation on 2 February 962. Subsequently, he obtained an oath on the most precious body of St. Peter, from Pope John himself and from all the notables of the city, that they would never help Berengar and Adalbert. After these facts Otto returned to Pavia<sup>383</sup>.

In 963 Pope John, forgetting the oath and promise made to Otto, established political relations and friendship with Adalbert, assuring him of aid against the emperor.

But when the emperor learned of the pope's change of policy, he sent to Rome some of his own people to inquire whether what was said was true. The imperial legates, on their return from Rome, reported to the emperor that the suppositions were true, saying further: *What we say is not unknown to the people. Witness the widow of his vassal Raniero, to whom, seized by blind fire, he gave crosses and golden chalices consecrated to the blessed Peter, after having placed her at the head of many cities. Witness is Stefania, concubine of her father, who died recently in giving birth to that which she had conceived with him.... Witness is the absence of the women of all other nations, except the Romans, who feared to come to the holy apostles' threshold to pray, having heard that a few days ago he had raped many of them, married, widows, virgins. Witness the churches of the*

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<sup>381</sup> Here the term cardinal has nothing in common with dignity or with any pre-eminence; by it is meant the juridical concept of incardination from one local Church to another. In Rome, before the 8th century, we also have bishops and presbyters qualified as *cardinals*. The cardinal bishops were the seven bishops of the suburbicarian dioceses, close to Rome, who were called by the pope to exercise liturgical functions in the principal basilicas of the City. Therefore, their title recalls the idea of a transfer or rather an extension of their ministry. Cardinal presbyters were the heads, presidents, or simple presbyters of the titular churches of Rome, who were transferred to the other churches. As for the cardinal deacons, their origin, not forgetting their service in the administration of the seven regions of Rome, is always connected with a transfer from one church to another, or a title to a new church in which they were to exercise their ministry. Cardinals are only those who perform liturgical services. Cf. S. KUTTNER, *Cardinalis. The History of a Canonical Concept*, in *Traditio* 3 (1945) 129-214; Joseph LECLER, *Le Cardinalat de l'Église romaine. Son évolution dans l'histoire*, in *Études* 330 (1969) 871-883.

<sup>382</sup> *Iohannes diaconus et Azo protoscrinii belecti (sic) sunt robusti; erat cor unum et anima una inter se, ut magis ad morte subtrahere (sic) pontifices quam ad vitam, ut Romanum imperium in Saxonicum regem, concedere, ut ecclesie sancte in presulis benigni preesset. Miserunt legatos ad Otto primus Saxones regem ut veniret et possideret Italia, et Romanum imperium.* BENEDICTUS SANCTI ANDREAE MONACHUS, 717, rr. 35-39.

<sup>383</sup> LIUDPRANDUS, *Liber de rebus gestis Ottonis Magni Imperatoris*, 340, rr. 22-34.

*holy apostles, which receive the rain not in drops, but all over the roof in downpours, even on the sacred altars themselves*<sup>13</sup>. Otto, hearing the depositions of the legates concerning the pontiff's conduct, said: *He is a child: he will easily change by the example of good men. I hope that, by an honest reproof and a liberal work of persuasion, he will extricate himself from those evils.*

So he descended again into Italy, and, on May 10, 963, besieged and took the fortress of Montefeltro, in which Berengar was held. After this he made his way to Rome, where, on November 3, he was received by the Romans, who renewed their allegiance, and added by oath that they would never elect or ordain a pope without his consent or that of his son. Meanwhile, Pope John fled.

Three days later, the people of Rome and the bishops begged the emperor for an assembly, which took place in St. Peter's, and was attended by the archbishops, the bishops of Italy, Saxony, and Franconia, the primates, and the militia of the city of Rome. This council, thus organized, seemed more like a diet than an ecclesiastical synod. The emperor, opening the council, took the floor, saying, *How good it would be if Pope John would attend so illustrious and holy a council! But since he has*

<sup>13</sup> *No" clam populo est, quod fatemur. Testis est Ranier ii sui ipsius militis vidua, quam caeco captus igne, multis praefectam urbibus, sacrosanctis beati Petri donavit aureis crucibus atque calicibus. Testis est Stephana, eius amita, quae in effusione quod ex eo conceperat recens hominem exivit... Testis omnium gentium praeter Romanarum absentia mulierum, quae sanctorum apostolorum limina orandi gratia timent visere, cum nonnullas ante dies paucos hunc audierint coniungatas, viduas, virgines, vi oppressisse. Testes sunt sanctorum apostolorum ecclesiae, quae non stillatim pluviam, sed totum tectum intrinsecus, supra ipsa etiam sacrosancta altaria imbrem admittunt. Ibid, 340, rr. 48-49; 341, rr. 1-9.*

<sup>14</sup> *"Puer", inquit, "est, facile bonorum immutabitur exemplo virorum. Sperabo eum obiurgatione honesta, suasionem liberali, facile ex illis sese emersurum malis". Ibid, 341, rr. 17-19.*  
*declined so great an assembly, let us consult you, O holy fathers, who have in common with him life and business*<sup>384</sup>.

Then the bishops of Rome, the cardinal presbyters and deacons<sup>385</sup> together with the people, said: *We marvel that your most holy prudence asks of us what is not unknown to the Iberians, Babylonians, and Indians. He is not one of those who are disguised as lambs, but inwardly are ravening wolves; he is openly cruel, so publicly does his devilish business, that he does not use any other way*<sup>386</sup>.

Hearing this, the emperor gave orders that the accusations against the pontiff should be presented one by one, and that at the end they should discuss in council what to do.

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<sup>384</sup> *"Quam decorum esset, tam claro sanctoque domnum papam Iohannem interesse concilio. Verum cur tantum declinaverit coetum, vos, o sancti patres, consulimus, quibus communis cum eo vita ac commune negotium extitit." Ibid, 342, rr. 50-52.*

<sup>385</sup> Cf. supra note 10, 145.

<sup>386</sup> *"Miramur, sanctissimam prudentiam vestram nos hoc velie percontari, quod non Hibericos, nec Babilonicos, nec Indicos incolas latet. Non hic iam vel de ipsis est, qui veniunt in vestimentis ovium, intrinsecus autem sunt lupi rapaces; ita aperte saevit, ita palam diabolica pertractat negotia, ut nihil circuitumionis utatur". Ibid, 343, rr. 1-5.*

The cardinal priest Pietro began, testifying that he had seen the pontiff celebrate mass without taking communion. The bishop of Narni, Giovanni, along with a cardinal deacon, said he had seen John XII ordain a deacon in a stable, and out of canonical time. The cardinal deacon Benedetto, with the other deacons and priests, said that the pope made ordinations of bishops in return for sums of money, and that he had ordained a ten-year-old boy a bishop in the city of Todi. As to the sacrileges, they asserted that they had not seen him with their eyes, but that they knew with absolute certainty, that he had abused the widow of Raniero, Stefania, the concubine of her father, Anna, a widow, and her niece, and had turned the sacred palace into a whorehouse and prostibolo. Moreover, they alleged that he had publicly practiced hunting, that he had blinded Benedick, his spiritual father, to death, and that he had killed, after emasculating him, Cardinal John the subdeacon; they testified, also, that he had caused fires, and had worn armor, helmet, and sword. All, both clerics and laity, cried out that he had toasted to the health of the devil and to the game of dice; that he had invoked the help of Jupiter, Venus, and other demons; that he did not celebrate Matins, the canonical hours, and that he did not make the sign of the cross<sup>387</sup>.

Otto believed in the truth of the things denounced against John XII and accepted the proposal of the synod members to summon him to council. So, on 6 November he addressed a letter to the pope in which he urged him to come to council to give an account of his conduct and to exonerate himself from his accusations: *We therefore urgently beg Your Paternity not to neglect to come to Rome and exonerate yourself from all these accusations. If perhaps you fear the violence of the reckless mass, with oath we confirm that nothing will be done, against the sanction of the sacred canons*<sup>TM</sup>.

On receiving the letter, the pope replied in these terms: *John bishop, servant of the servants of God, to all the bishops. We heard that you want to make another pope; if you do so, I excommunicate you by Almighty God, so that you will not be able to ordain anyone or celebrate mass*<sup>388</sup>.

On 22 November the bishops send another letter to the pontiff in Tivoli, in which they write *If you decide to come to the synod and exonerate yourselves of what is objected to, we obey your authority without doubt. But if, that being otherwise, you refuse to come and exonerate yourself of the capital crimes of which you are accused, all the more since nothing prevents you from coming... then we shall take no account of your excommunication and we shall rather retaliate against you, since, indeed, we can justly do so*<sup>389</sup>. But, having arrived at

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<sup>387</sup> *Ibid*, 343, rr. 7-22.

<sup>388</sup> "*Iohannes episcopus... Nos audivimus dicere, quia vos vultis alium papam facere; si hoc facitis, excommunico vos da (italismus, loco de) Deum omnipotentem, ut non babeatis licentiam nullum ordinare, et missam celebrare*". *Ibid*, 344, rr. 10-13.

<sup>389</sup> "*Si ad synodum venire et obiecta purgare non differtis, auctoritati vestrae procul dubio obedimus. Sed si, quod absit, venire et obiecta vobis capitalia crimina purgare dissimulatis, cum praesertim vos nihil venire impediatur, non maris navigatio, non corporis egritudo, itineris longitudo, tunc excommunicationem vestram*

Tivoli, the messengers did not find the pontiff, since for fear of the emperor he had settled in the parts of Campania. So they returned to the synod, assembled for the third time, on December 4, 963<sup>390</sup>.

The emperor, after speaking of the papal conduct, questioned the synods as to what should be done under the circumstances concerning John XII. The bishops, unanimously, together with the clergy and people, decreed that the pope should be expelled from the holy Roman Church, and that another should be appointed in his stead, more capable than the former of leading the Church, and of holy and upright conduct. This proposal pleased the emperor, who, having deposed John XII on account of his evil customs,<sup>391</sup> immediately chose Leo the protoscriptivist to be the head of the holy and universal See. He was elevated to the high priesthood on December 6, 963, after which Otto prepared to depart from Rome.

Learning of this, John XII, bribing them with money, sent messengers to Rome to kill the newly elected pope and the emperor himself. Otto, on January 3, 964, suffered an assassination attempt, and having cleared the city of turmoil and tumult, departed from Rome. Meanwhile, John XII returned again to Rome and put Pope Leo to flight, who found refuge with the emperor.

On February 26, 964, John XII convened a council, at which he annulled the election of Pope Leo, punished all his supporters, and declared the council of December 4 null and void because it had been convened in his Church and in his absence. Pope Leo could not be considered a legitimate pope because the Church of Rome, in the person of John XII, already had its bishop. Therefore, he was an invader deserving of condemnation, together with all those who had supported his election<sup>392</sup>.

Otto decided to return to Rome, but when he assembled his troops the pope was already dead (14 May 964). Regardless of the oath they had sworn to Otto I, the Romans elected Cardinal deacon Benedict as pope on 22 May 964, to whom they promised fidelity and a commitment to defend him from the emperor.

Otto descended to Rome and besieged the city with his troops, on 24 June 964; he re-established in the Roman See his candidate Leo, defining Pope Benedict usurper of that Church. The latter, stripped in public of the papal robes and deprived of the episcopal and presbyteral order, could only exercise the diaconate, and not in Rome but in exile, in the parts of Saxony, where he died.

Pope John XII, according to the sources cited, was deposed and condemned, it is not known because of his incorrigible conduct, or by contumacy. In his case, the axiom *Prima Sedes a nemine iudicatur* is not cited to defend him against the charges. It seems that in this case such a principle never existed in the history of the Church. The concern of the emperor, and the accusation sustained by the

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*parvipendemus, eamque potius in vos retorquebimus, quoniam quidem iuste facere possumus". Ibid, 344, rr. 33-38.*

<sup>390</sup> BENEDICTUS SANCTI ANDREAE MONACHUS, 718, rr. 12-13; *Liber Pontificalis*, II, 246.

<sup>391</sup> *Ob improbos mores*. LIUDPRANDUS, 345, r. 23.

<sup>392</sup> *Councils!" Romanum, a. 964, in MANSI, 18, 471-474.*

bishops of the synod against the pontiff, make us suspect, however, that something prevented them from proceeding with freedom as to the judgment to be passed upon the pope. Why, we ask, this scruple and so much care in the manner of - proceeding? The bishops shifted their accusations to the purely theological-liturgical field; their attention was, yes, directed to the disorderly conduct of the pope, but above all they tried to accuse him of simony, already considered before Gregory the Great (+ 604) a heresy<sup>393</sup>. Therefore, we can say that the synod fathers were questioning the orthodoxy of John XII. According to this hypothesis, therefore, the pope was deposed because he had fallen into heresy. On the basis of this principle, the bishops were certain that they were moving within the disciplinary tradition that provided - in the case of a bishop failing in the faith - that they could take him back and judge him. Or, it is possible that they were influenced by the theory according to which, it is not he who sits in the Cathedra of the apostle who is apostolic, but he who fulfills the office<sup>394</sup>. The conduct of Pope John XII, in this sense, certainly did not present himself as a paradigm of an apostolic man. Therefore, the bishops did not feel obliged to consider him still as such, but only as a bishop like all the other bishops, and his power would be conditioned by the morality of his life. Finally, one could also think of a political conditioning: as if the emperor had wanted to punish the pope for his infidelity. But it has also been noted that the emperor, for his part, felt little freedom, perhaps because of a political tactic that led him to act always in harmony with the Council. In any case, the episode of John XII testifies that the principle *Prima Sedes a nemine ludicatur*, though present, had not yet penetrated concretely. The fact then, that in Rome, in the tenth century, more than one pope was eliminated because he was imprisoned or killed in prison - like John X (4- 928) - shows that our axiom did not find much acceptance. On the contrary, it happens that outside of Rome and Italy he is still quoted: Tietmaro of Merseburg (975-1018)<sup>395</sup>, re-reading about fifty years later the story of Pope Benedict V, found his deposition unjust. He wrote that the emperor of the Romans, powerful and overbearing, had unjustly accused and deposed Pope Benedict, whom no one could judge but God alone, and

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<sup>393</sup> Before Gregory the Great, the expression *simoniaca heresis* is frequently used. According to this pontiff all those who communicate the Holy Spirit on condition of receiving silver fall into *simoniaca heresis*. Therefore simony must be eradicated like all other heresies because it is opposed to the faith and destroys the unity of the Church. After Gregory the Great the expression *simony heresis* became more and more important. Its content becomes more precise especially during the Gregorian reform. Cf. Jean LECLERQ, "*Simoniaca heresis*", in *Studi Gregoriani* 1 (1947), 523-530.

<sup>394</sup> Cf. 134, supra note 22.

<sup>395</sup> Tietmaro is the greatest of the Saxon historians. In 1009 he was elected bishop of Merseburg. He wrote, from 1012 to 1015, the *Chronicon* in nine volumes, which he retouched and increased from 1016 to 1018. His chronicle constitutes one of the most important sources for the history of Germany. In him may be discerned the reflection of a firm national consciousness. Charlemagne is considered ethnically akin, as well as an anticipator, to the triumphs that the Saxon house would go on to achieve. Cf. Ovid CAPITANI, 752.

as if that were not enough, he was relegated to exile<sup>396</sup>. As can be seen, the principle of the pope's unjustifiability was not forgotten; on the contrary, it was pronounced and reiterated beyond the Alps, in an environment characterized by a strong nationalistic-Germanic spirit and a firm anti-Roman consciousness.

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<sup>396</sup> *Romanorum prepotens imperator augustus valentior sibi in Christo dominum apostolicum, nomine Benedictum, quem nullus absque Deo indicare potuit, iniuste, ut spero, accusatum, deponi consensit, et, quod utinam non fecisset, exilio ad Hammaburg religari precepit.* THIETMARUS, *Chronicon*, edidit G. H. PERTZ, in. SS., III, Hannoverae 1839, 752, rr. 32-35.

### 13. THE COUNCIL OF SAINT-BASLE DE VERZY (991) AND GERBERT

From a historical point of view, the Council of 991 was part of the political change that marked the passage from the Carolingian line to that of the empire, then of the House of Saxony (the Ottons), then of France, and of the young Capetian dynasty.

From the ecclesiological point of view, we are faced with a papacy that is unable to escape from moral decadence, from the pretensions of factions and popular groups, without the intervention of the emperor, then a boy. However, we also encounter pontiffs capable of asserting their rights and imposing themselves, such as John XV (985-996) and Gregory V (996-999) k

Arnulf, on the death of Adalberon (23 January 989) was made archbishop of Rheims with the help of Hugh Capetus; the latter, having been betrayed asked without result for a sentence of excommunication from Pope John XV. But, since the papal authority shirked, all that remained was to settle the question of the traitor among the French prelates. Meanwhile, Archbishop Arnulf had been handed over to the royal police, at the prison of the bishop of Orléans, with the intention of replacing him with another titular. Hugh, in fact, had already foreseen Gerbert of Aurillac<sup>397</sup> for this post.

At such a juncture, on 17 June 991, an important council gathered in the monastery of Saint-Basle of Verzy (not far from Reims), gathering, along with the suffragans of Reims, the archbishops of Sens and Bourges, the bishops of Orléans, Autun, Lagres and Macon; as well as numerous abbots of monasteries, among them the well-known Abbot of Fleury. Animator of the assembly was Arnulf of Orléans, supported - it seems - by Gerbert (the future Pope Sylvester II (999-1003).

We do not possess the official acts of the council, but Gerbert gives us a long summary<sup>398</sup>, which is not, as he himself points out, a literal account of the minutes. In that assize it was a question of proving, in the first place, the guilt of Arnulf; but a difficulty was raised by the defenders of the accused, especially by Abbot Abbot of Fleury, arguing-

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<sup>397</sup> Cf. Pierre RICHE, *Il papa dell'anno mille. Silvester II*, Alba 1988, 132.

<sup>398</sup> GERBERTUS, *Acta Concilia Remensis*, edidit G. H. PERTZ, in *M.G.H.*, SS., III, Hannoverae 1839, 658-686.

of the rights and prerogatives of the Roman See. The cause had already been entrusted to Pope John XV, while the right to examine *causae maiores* was - reserved to the Apostolic See,

Arnulf of Orléans, a friend of Gerbert, carefully prepared the council<sup>399</sup> together with him, and did not allow himself to be overwhelmed during the accusation. The African councils of the early fifth century offered legislative texts in this sense. At the council two different traditions of canon law confronted each other: on the one hand, the conception of Abbot of Fleury, a canonist of pro-Roman sentiments and a convinced advocate of the monarchical authority of the pope over all the Churches; on the other, that of the bishop of Orleans, Arnulf, and of Gerbert himself.

Abbon of Fleury, in order to support the papal thesis - that the bishop's cause should be submitted to the Apostolic See - presents the texts of Pope Damasus and other documents taken from the Pseudo-Isidorian decretals.

Arnulf of Orleans pronounces a place speech, inspired certainly by Gerbert<sup>400</sup>, in which, after renewing his esteem for the Church of Rome, he pronounces a warm and heartfelt praise of its ancient bishops: Leo the Great, Gelasius, Innocent, Gregory the Great. These great pontiffs, Arnulf says, by virtue of their acknowledged moral and cultural authority, had enacted all that - ecclesiastical discipline, already unanimously accepted by all. Finally, without wishing to cause any outrage to the privileges of the Roman bishops, he listed, in a harsh tone, the succession of the various popes, beginning with John XII.

It is curious to note how the trial against Arnulf of Rheims became a trial against the papacy<sup>401</sup>. Arnulf of Orleans challenged the principle that the pope could in any way *praeiudicate* the canons; he based his arguments on what Rome was then, the city of the Apostles now become a centre of tyranny: from John XII, immersed in a dunghill of vices<sup>402</sup>, to the hideous monster Boniface VII<sup>403</sup>, the

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<sup>399</sup> Pierre RICHÉ, 140 FF.

<sup>400</sup> *Ibid*, 145.

<sup>401</sup> *Ibid*, 144.

<sup>402</sup> *Vidimus lohannem, cognomento Octavianum, in volutabro libidinum versatum. Ibid*, 672, rr. 25-26.

<sup>403</sup> The sad events of Rome in this period are also recalled in a sepulchral inscription placed at the main entrance of the basilica of Santa Croce in Gerusalemme. It is the sepulchral epigraph of Benedict Vili. Towards the month of June 974, Crescenzo di Teodora, leader of the Romans, imprisoned Benedict VI, elevated to the papacy by the imperial party (972), in Castel S. Angelo, giving him as his successor François, who took the name of Boniface VII. The latter had the pontiff strangled as a prisoner, so as not to return him to the imperial messenger. Boniface VII himself was seized and deposed at a council, during which Pope Benedict VII was elected, consecrated between October 8 and 22, 974. In the meantime, Boniface VII had managed to escape and take refuge in Constantinople. Benedict VII died in October 983 and his successor was, by will of Otto II, John XIV who died shortly after his election, in December of the same year (983). He was succeeded by Benedict Vili. Boniface VII, who after his deposition had taken refuge in Constantinople, returned to Rome in the early months of 984 and occupied again the papal chair, while he imprisoned Pope Benedict

most detestable man, all red from the blood of his predecessor<sup>404</sup>.

The bishop of Orleans thus concluded his review of the pontiffs of his time: *Was it really ordained, that such monstrous men, full of hyignomy, empty of divine and human knowledge, should be subjected to the innumerable priests of God, who throughout the world are famous for their knowledge and the merits of their lives? Let us rather look to our primates (the metropolitans) as far as we can, and seek in our own time, where the food of the divine word might be found. Certainly, more than one, present at this holy meeting, can testify that in Flanders and Germany, close to us, are to be found bishops eminent for science and virtue. Now, then, if the tensions between the sovereigns would allow it, would it not be better to refer rather to their judgment than to that of a city where, nowadays, everything is venal, and where judges are issued in measure of the coins disbursed? And if any one has said, quoting the words of Gelasius, that the Roman Church must judge over the whole Church, while she cannot be subjected to the judgment of anyone, and that her judgment can never be disputed, I say to him, let him first put in the Roman Church a man, whose judgment cannot be judged. Although the African bishops hold the principle of God sending his spirit of justice upon one man impossible, while he would deny it to the innumerable bishops assembled in council*<sup>405</sup>.

With these arguments Arnulf of Orleans succeeded in convincing the assembly, which decided to proceed against the archbishop of Rheims. After some hesitation, he confessed his guilt, consented to his deposition and degradation, and allowed Gerbert to be elected in his place.

The pope, knowing what had happened, sent a legate to Reims, but without getting any answer from the bishops. John XV then tried to issue an excommunication against them. Gerbert contested the legality of the pope: Peter's privileges had no more value when the laws of equity were not observed. It was

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Vili in Castel S. Angelo, where he let him die of hunger before poisoning him. It is said that Boniface VII himself was poisoned and his corpse defaced. These are the events reported in that epigraph. Certainly, with this epitaph the cruelty of Francone was vituperated. Cf. A. SILVAGNI, *Note d'epigrafia medioevale*, in *Archivio della Reale Società Romana di Storia Patria* 32 (1909) 445-463.

<sup>404</sup> *Succedit Romae in pontificatu horrendum monstrum Bonifacius, cunctos mortales nequitia superans, etiam prioris pontificis sanguine cruentus.* GERBERTUS, 672, rr. 34-35.

<sup>405</sup> *Num talibus monstis hominum ignominia plenis, scientia divinarum et humanarum rerum vacuis, innumeros sacerdotes Dei per orbem terrarum, scientia, et vitae merito conspicuos, subici decretum est?... Hxpectemus ergo primates nostros quoad possumus, atque interim divini verbi pabula, ubinam reperiri valeant, investigemus. Certe in Belgica et Germania quae vicinae nobis sunt, summos sacerdotes Dei religione admodum praestantes inventi, in hoc sacro conventu testes quidam sunt; proinde si regum dissidentium animositas non prohiberet, inde magis episcoporum iudicium petendum fore videretur, quam ab ea urbe, quae nunc emptoribus venalis exposita, ad nummorum quantitatem iudicia trutinat. Quod si quispiam dixerit secundum Gelasium, Romanam aeclesiam de tota aeclesia indicare, ipsam ad nullius commeari iudicium, nec de eius unquam iudicio indicari, is, inquam, qui hoc dixerit, eum nobis in ecclesia Romana constituat, de cuius iudicio indicari non possit; quamquam hoc ipsum Africani episcopi impossibile indicant: "Nisi forte", inquit, "quisquam est qui credat, unicuilibet posse Dominum nostrum examinis inspirare iustitiam, et innumerabilibus congregatis in concilium sacerdotibus denegare".* *Ibid.*, 672, rr. 38-41; 673, rr. 4-15.

therefore a matter of facing up to Roman claims.

In 995 a council met at Chelles, under the presidency of King Robert: the soul of the resistance to Roman action, as at Verzy was Gerbert. The latter continued to affirm that if the pope of Rome had expressed any opinion contrary to the canons of the holy Fathers, it would have been considered null and void, since it is written: *Flee the heretic, flee him who separates himself from the Church*<sup>406</sup>. At Chelles the abdication of Arnulf and the promotion of Gerbert was again approved. But, after the death of Hugh Capete (October 24, 996), Gerbert had little luck. In fact, he immediately came into conflict with Hugh's son, Robert, because of the latter's illegitimate marriage, who was working for the return of Arnulf to the See of Reims. Moreover, at the synod of Pavia, presided over by Gregory V in February 997, the pontiff, among other things, decreed that the bishops who had taken part in the deposition of Arnulf of Rheims<sup>407</sup> should be suspended from their episcopal offices. Following this synod, Gerbert was abandoned by the clerics of his entourage and his knights<sup>408</sup>. Forced to leave Rheims, where in the meantime Arnulf had returned with the help of Robert, he also had to leave France, returning to the service of the Emperor Otto III. From 997 to 999 he was in exile in the land of the empire, then passed to Italy and here on 28 April 998, under pressure from Otto III, Gregory V appointed him - archbishop of Ravenna. He then went to Rome, where on 2 or 3 April 999 he was called by the Emperor to the Chair of Peter, with the name of Sylvester II<sup>409</sup>.

But, although they are the same person, there is certainly a certain contrast between Gerbert and Sylvester. There is, in fact, a change of perspective in the theological conception of the Church: in a certain sense, the first protagonist of Gallicanism becomes a universal father of the Church who, conscious of exercising the ministry of Peter, becomes one of the most intransigent supporters of the traditional rights of the Apostolic See.

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<sup>406</sup> *Placuit quoque sanciri, si quid a papa Romano contra patrum decreta suggereretur, cassum et irritum fieri, iuxta quod apostolus ait: "Hereticum hominem et ab ecclesia dissentem, penitus devota (Tit 3,10)".* RICHERUS, *Historiarum Libri III, edidit in M.G.H., SS., III, 651, 39-41.* Richerius of Saint-Remi, a disciple of Gerbert, prompted by Gerbert himself, wrote a history which stands as a continuation of the *Annales* of Icmaro. Richerius recounts events from 888 to 995. Thanks to him we thus have a valid testimony to the teaching of the Master. Cf. Pierre RICHÉ, 43-44.

<sup>407</sup> Pierre RICHÉ, 188.

<sup>408</sup> *Ibid.*, 190.

<sup>409</sup> *Ibid.*, 201-229.

#### 14. ENRIC III (1039-1056) AND THE DEPOSITION OF GREGORY VI (1046)

John XIX (+1032), belonging to the family of the Tusculan counts, was succeeded by his nephew Theophilatus, with the name Benedict IX (1032-1045). He certainly did not represent the papacy that Christianity, in that period of religious unrest, expected. His fall was not due to religious reasons, but to some Roman factions opposed to the supremacy of the Tusculans. In September 1044 a revolt forced the pope to flee. In his place, in January 1045, Silvester III, bishop of Sabina, supported by a side family of the Crescenzi, took over. After a few months Benedict succeeded in driving him out, but - on entering Rome - he found the situation so risky that he declared himself willing to abdicate if the money he had had to pay to secure his election was returned to him.

What follows is unfortunately shrouded in obscurity. Probably, with a small group of trusted and honored men - among them John Gratian of St. John at the Porta Latina - Benedict agreed on a certain sum, which, before or after his official retirement, he received in sound money from the hands of the Jew Baruch.

Later on, Gratian was elected pope, who took the name of Gregory VI (1045-1046). He initially met with no opposition in Roman circles. Even Henry III himself, at first, recognized him. In 1046, Henry went down to Italy, probably only for the coronation. First he went to Pavia, where he held a synod in which simony was forbidden. Then, in Piacenza, he received Gregory VI with great honors. But, in December (1046) a synod was convoked at Sutri, whose main topic was the deposition of Gregory VI. Some sources of the time had seen in his election an act of simony, and simony was considered heresy. It is not clear whether the pope abdicated with his full assent or under external pressure.

These events continue to represent a disturbing problem for scholars. In fact, the acts of the synod are missing, and although many sources speak of them, none of their authors were eyewitnesses: what they wrote they learned and reported according to their own interests. Their views are therefore to be received with reservation. The most disparate and contradictory things have been affirmed about the synod of Sutri: this is due to the diversity of the sources, which have led the historians to non-homogeneous interpretations and evaluations. However, they have played a considerable role.

volutes, generating problems of great value, for example: how many popes were deposed in Sutri? And by whom? By the emperor or by the synod?

Schmale<sup>410</sup> has addressed the issue in a very accurate study: reading the sources concerning the synod of Sutri in the light of the synodal procedure of the Middle Ages, he came to the conclusion that Gregory VI - in view of the synodal and juridical tradition of the Church - was not deposed, but that he himself judged himself and, therefore, resigned from his office. It is important, however, to note that the synod of Sutri, a unique case not only until 1046, but also afterwards, recognized a tribunal organized against the pope<sup>411</sup>.

The historian affirms, first of all, that at Sutri there was only one pope, Gregory VI, who, from May 1, 1045, was the sole and undisputed holder of the title of bishop of Rome. Sylvester III, at the time of Benedict IX, had briefly claimed to be pope not by reason of right, but merely because he had resided in Rome; so when Benedict returned to Rome, he very soon renounced his dignity. Now, Gregory VI succeeded Benedict only after his renunciation<sup>412</sup>, so that when the synod begins (20 December 1046) the pope is one and is considered legitimate, but because of an accusation in the synod he is really an accused.

In Sutri, the work was carried out according to the synodal procedure that medieval ecclesiastical law had established. It must be stressed, however, that the synod was convoked by King Henry. Now, to convene does not mean to sue (*yorladen*) but to invite (*einladen*) and in this sense *einladen* was used as a technical term for synods. Gregory VI was thus invited to attend them as pope and not to be judged there<sup>413</sup>. The order of procedure of medieval synods was as follows: if the king was present at the synod, he presided together with an ecclesiastic and participated as a synodal; the judgment, however, was not given by the king, but by the synodal assembly. This judgment was then to be promulgated by the ecclesiastic, or by the pope, if he was present: in any case, he was to approve the judgment which the synod members were to pass.

Thereafter, the judgment was promulgated by the pope within the Church, while the king, by virtue of his authority, would enforce it in the civil sphere. It was the task of the king, or the emperor, to accept the judgment that the spiritual component had issued with obligatory value for ecclesiastical law, and then to promulgate and apply it effectively for the legal-secular sphere<sup>414</sup>.

The most detailed narrative handed down to us of the council of Sutri, although discarded by some historians<sup>415</sup>, is that of Bonizone of Sutri, reported in

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<sup>410</sup> Cf. Franz-Josef SCHMALE, *Die "Absetzung" Gregors VI, in Sutri und die synodale Tradition*, in *Annuario Historiae Conciliorum* 11 (1979) 55-103.

<sup>411</sup> *Ibid*, 60.

<sup>412</sup> *Ibid*, 57.

<sup>413</sup> *Ibid*, 76.

<sup>414</sup> *Ibid*, 65.

<sup>415</sup> Some authors have thought that the synod of Sutri transferred here by weight the proceedings of the apocryphal council of Sinuessa, where Pope Marcellin had been invited by the three hundred bishops to justify himself and judge the cause for himself. According to

his work *Liber ad amicum*<sup>416</sup>. It, contradicted by other shorter sources<sup>417</sup> in their content, is confirmed by the *Dialogues* of the famous abbot Desiderius of Montecassino. The narrations of Bonizone and Desiderio are therefore the most detailed on the synod of Sutri.

Bonizone writes the work in nine books and dedicates it to Pope Gregory VII. The fifth contains the accounts of Gregory VI's self-accusation and self-deposition. The author develops the idea that the pope, by virtue of his spiritual power, is at the apex of all temporal authority. Every Christian, including the emperor and any bishop, is obliged to submit and obey his every order. To substantiate this thesis, Bonizone probably uses the ecclesiastical history of Rufinus of Aquileia; recalling the personality and role of Constantine during the Council of Nicaea. On that occasion the emperor, as a sign of respect and veneration, had made the bishops sit in the pews, while he sat on a stool. All this stemmed from the fact that the bishops represented the Twelve Tribes of Israel

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Capitani, Bonizone and Desiderius of Montecassino, being of Gregorian-Roman tendency, would have reported the account of Gregory VI's voluntary self-deposition in an attempt to reconcile the typical Gregorian ideas about the pope with what had happened at Sutri. Cf. Ovidio CAPITANI, *Episcopal immunities and ecclesiology in the "pregregorian" and "Gregorian" ages. - L'avvio alla "restaurazione"*, Spoleto 1966, 33, note 61. Hans Hubert Anton, basing himself - particularly on the testimony of the *De ordinando pontifice*, thinks instead that the pope was deprived of his office during a formal synodal procedure, because of his transgression, that is his sin of simony, according to the already known principle containing the clause *nisi a fide devius*, dealt with by Gregory the Great, by Pseudo-Isidore and by Ausilius. This provision, which was applied and referred to bishops, now seems to have been extended to the bishop of Rome as well. The deposition of Gregory VI, undertaken de facto by Henry III, was apparently linked to a non-spontaneous deposition-confession of the pope. Hans Hubert ANTON, *Der sogenannte Erakiat "De ordinando pontifice". Ein Rechtsgutachten in Zusammenhang mit der Synode von Sutri (1046)*, Bonn 1982.

<sup>416</sup> BONIZO EPISCOPUS SUTRINUS, *Liber ad amicum*, edidit E. DUMMLER, in M.G.H., *De lite imper. et pontif.*, I, Hannoverae 1891, 571-620.

<sup>417</sup> *Heinricus rex Italiam ingressus, pacifice a Romanis suscipitur. Papas tres non digne constitutos synodaliter deposuit, et Suidegerum Babenbergensem episcopum papam constituit. Annales Hildesheimenses, A. 1046*, edidit G. H. PERTZ, in M.G.H., *SS.*, Ili, Hannoverae 1839, 104; *Heinricus rex... necessitate Romam tractus est, comitem habens cum ceteris imperii magnatibus et nostrum archiepiscopum. Ubi depositus, qui pro apostolica sede certaverant, Benedicto, Gratiano et Silvestro scismaticis. ADAM MAG., Gesta Hammaburgensis ecclesiae pontificum*, edidit Bernhard SCHMEIDLER, in ADAM VON BREMEN, *Hamburgische Kirchengeschichte*, Hannover-Leipzig 1917, 148, rr8-12. The schism is not located either immediately or during the synod of Sutri, but if one can speak of schism it refers only to the few months of 1044. Cf. Franz-Josef SCHMALE, 57. According to Schmale, in these sources we have a very concise way of recounting the event. Precisely because they narrate that Henry deposed three popes, we should be cautious and suspicious about their reliability. Schmale then cites another case from another source, according to which Henry III deposed the elected archbishop of Ravenna, Widger. But, it appears that, in this case, Henry had only begun an enquiry and summoned a synod, and had not yet reached a verdict, because that dignitary, foreseeing a possible negative judgment by the synods, spontaneously renounced. Certainly, in this case also, the initiative came from Henry; everything, however, has been recounted in such a reduced and simplified way as to make us think that Henry pronounced and carried out a deposition judgment. Cf. Franz-Josef SCHMALE, 60 ff.; Cf. 165, note 30.

who would one day be called upon to judge all nations.

Bonizone recounts that, at first, the synod deposed Silvester III, then ratified the abdication of Benedict IX. Following the testimony of Gregory VI on the circumstances of the abdication of Benedict IX, the question arose among the synod members about the election of Gregory VI, who was attributed with the responsibility for having paid a sum of silver to free the Church of Rome from Benedict IX. The latter, in turn, had decided to depose the episcopal dignity.

Now, at Sutri one no longer found oneself before any bishop or bishops only, but before the pope, he who is the head of all the bishops, as the king is the head of all the judges. The synodists also seemed to be well acquainted with the *Constitutum Silvestri*<sup>418</sup>, which affirmed *summus prae-sul a nemine iudicabitur* since, according to the word of the Lord, *the disciple is no more than the master and the servant is no more than the master (Mt 10,24)*. At Sutri it was replied that Constantine had not wanted to judge the bishops because they were gods, and because it was not right that the greater should be judged by the lesser<sup>419</sup>: the pope can excommunicate all, but cannot be judged by anyone, and the See of Rome cannot be subject to the dominion of princes and kings.

At Sutri the bishops considered themselves incompetent to judge anything against the pope; for they had not been given license to judge the judge, their leader. Therefore, unable according to ecclesiastical law, they earnestly urged the pontiff to acknowledge himself guilty of guilt, that is, of having been guilty of simony on the occasion of his election as bishop of Rome, and to judge himself and punish himself.

Gregory VI finally accepted the invitation of the synod members and confessed his guilt, but asked the bishops present what he should do. They replied: *You, examine and judge your cause in your conscience; judge yourself with your own mouth. It is better to live in poverty with blessed Peter, with whom you will be rich forever, than to follow Simon Magus, with whom you will be rich today, but already dead forever*<sup>420</sup>. Gregory VI then concluded with these words: *I Gregory bishop, servant of the servants of God, because of the most foul venality*

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<sup>418</sup> The bishop of Sutri seems to be convincing on the Sutrenian synod, but that does not exclude the possibility that those who participated in the synod were acquainted with the apocryphal Sinuessa synod in addition to the *Constitutum Silvestri*. It seems, in fact, that they refer to it when they invoke the principle *Prima Sedes a nemine iudicatur*, which seems to have been actualized according to the version and perspective presented by the Simmachian apocrypha, *Gesta de Marcellinus*.

<sup>419</sup> *Hic est Constantinus, qui legem posuit aevangelicae doctrinae consonantem: ut omnes episcopi - Romanum pontificem haberent caput, sicut, omnes indices regem... Hic est, qui nobis sane tam Nicenam synodum congregavit; in qua omnium episcoporum subsellia ipse composuit, et ipse subpedaneo sedet scabello, indignum iudicans, imperialem sedem thronis illorum admisceri, quorum sedes iudicaturae sunt XII tribus Israel (Matth. 19,28). Cui cum quadam die libelli accusationum ab episcopis perirgerentur, fertur dixisse: "Ab sii, ut ego iudicem deos. De vobis enim dictum est: "Ego*

<sup>420</sup> *"Tu in sinu tuo collige causam tuam; tu proprio ore te iudica. Melius est enim tibi cum beato Petro... pauperem hic vivere, ut dives sis in aeternum, quam cum Symone mago, qui te decept in presenti divitiis nutescere et in aeternum perire". Ibid, 585, rr. 39-42.*

of the heresy of simony, by which I obtained my election, I judge myself removed from the Roman episcopate. And he added: Do you like this? They answered: What you like, therefore, we sign<sup>421</sup>. Thus all the participants in the synod subscribed to the self-accusation and self-deposition of Gregory VI.

After this, King Henry III's candidate, the Bishop of Bamberg, was elected Bishop of Rome, who took the name Clement II. On Christmas Day 1046, he consecrated and crowned Henry III and his wife as emperor.

Desiderio di Montecassino<sup>421</sup> and Bonizone, setting out the facts claim that at the synod of Sutri, the case of Gregory VI was resolved according to the

*dixi, dii estis" (Ps. 81,6). Neque enim rectum est, ut maior a minore iudicetur. BONIZO EPISCOPUS SUTRINUS, Liber ad amicum, 573, rr. 21-23; 574, rr. 1-7.*

principle *Prima Sedes a nemine iudicatur*. Schmale asserts that this is precisely what would have happened: the synodal procedure expounded by these two - authors is in no way opposed, neither to the synodal procedure of the Middle Ages, nor to ecclesiastical law, especially with regard to the pope's unjusticiability.

The synod of Sutri does not adopt a procedure contrary to ecclesiastical law, nor does it present a violation of it by the emperor-king. Gregory VI was forced to submit his resignation neither by Henry III, nor by the synod<sup>422</sup>. On the contrary, the pontiff himself, having acknowledged his own faults, self-judged and laid down his pontifical robes. The abbot of Montecassino and the bishop of Sutri affirm that the pope abdicated spontaneously. Bonizone reports that Gregory VI pronounced a sentence of self-condemnation and self-deposition because the participants in the synod did not want to judge him, urging him, however, to judge himself.

Most of Henry III's contemporaries approved of his actions towards Gregory VI. They were the most prominent people in terms of holiness and seriousness of life: Odilon of Cluny, Pier Damiani and Hildebrand, the future Gregory VII, who always held the memory of Henry III in high esteem.

However, two voices rose to denounce the abuses of power committed by the emperor in his ecclesiastical policy. They referred to the principle of the pope's unjusticiability, inasmuch as they interpreted the events of Sutri as if the pope had

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<sup>421</sup> *Sed antequam Urbem ingrederetur, plurimorum episcoporum, nec non abbatum, clericorum quoque ac religiosorum monachorum, in Sutrina urbe concilio congregato, Joannem, qui Gregorius dictus est, missis ad eum episcopis, ut de ecclesiasticis negotiis, maximeque de Romana tunc Ecclesia, quae tres simul habere pontifices videbatur, ipso praesidente, tractaretur, venire rogavit. Sed haec de industria agebantur, jam enim dudum regio animo insederat ut tres illos, qui injuste apostolicam sedem invaserant, cum consilio et auctoritate totius concilii juste depelleret, et unus qui secundum statuta SS. Patrum Dominico regi sollicitae praesesset, clero et populo eligente, ordinaretur. Praedictus itaque pontifex exortatus a rege, caeterisque pontificibus, Sutrium, ubi synodus congregata erat, allectus spe quod, aliis duobus depositis, sibi soli pontificatus confirmaretur, gratanter perrexit. Sed postquam eo ventum est, et res agitari ac discuti a synodo coepta est,*

<sup>422</sup> Cf. Franz-Josef SCHMALE, 102.

been deposed by Henry III. For this they made the criticism, pointing out that the king was not competent to depose the pontiff, opposing precisely the theory of the judicial immunity of the pope.

It is *De ordinando pontifice*<sup>423</sup>, and Wazone bishop of Liege<sup>424</sup>. The title of the treatise *De ordinando pontifice* is not appropriate: in it

*agnoscens se non posse juste honorem tanti sacerdotii administrare, ex pontificali sella exsiliens, ac semetipsum pontificalia indumenta exuens, postulata venia, summi sacerdotii dignitatem deposuit.* VICTOR III POPE, *Dialogi*, in PL, 149, 1005. All this account is reliable and can be relied upon, since it seems to correspond to the historical facts. The only exception is that proposition *sed haec de industria agebantur... clero e populo eligente, ordinaretur*, in this sentence, Fautore was obviously expressing only his presumption, which need not have conformed to reality.

one finds nothing that can refer only to the pope; in fact, the term *pontiff* can include all the bishops. One finds in it the new ideas of ecclesiastical reform: the government of the Christian people is reserved to the hierarchy of the Church, while its royal sacredness is denied. In a time of general crisis, which goes beyond the single episode and the conscience of the anonymous author, the treatise offers the reader a concrete possibility to verify a fundamentally juridical conception of the Church.

In its two essential points of procedure are amply developed: the judiciability of a bishop in general, to whom the pope is assimilated, and the definition of the judicatory see. Thus the treatise should be entitled *De indicando pontifice*, or *De episcopis depositis*. The unknown author, probably a French bishop<sup>425</sup>, was - certainly not an eyewitness; he is wrong in several points because he describes what had happened before and after the synod of Sutri<sup>426</sup> as if it had already happened.

The *De ordinando pontifice* imputes to the king the deposition of Gregory VI<sup>427</sup> and does not speak of a self-deposition but of a self-accusation, or rather of a confession made to Henry III, who, moreover, had no right to receive it, let alone demand it. Henry III, according to this author, committed a juridical and canonical

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<sup>423</sup> *De ordinando pontifice*, edidit Hans Hubert ANTON, *Der sogenannte Traktat "De ordinando pontifice". Ein Kechtsgutachten in Zusammenhang mit der Synode von Sutri (1046)*, Bonn 1982, 75-83. It is the source chronologically closest to the synod of Sutri, dating from about a year after the events. Cf. Franz-Josef SCHMALE, 69.

<sup>424</sup> ANSELMUS EPISCOPUS LEODIENSIS, *Gesta episcoporum Eodiensium*, II, edidit G. B. PERTZ, in *M.G.H., SS.*, VII, Hannoverae 1846, 228 ff.

<sup>425</sup> Hans Hubert ANTON, 70.

<sup>426</sup> Cf. Ovidio CAPITANI, *Episcopal immunities and ecclesiology in the "pregregorian" and "Gregorian" ages. L'avvio alla "restaurazione"*, Spoleto 1966, 28-31; Franz-Josef SCHMALE, *Die "Absetzung" Gregors VI. in Sutri und die synodale Tradition*, in *Annuario Historiae Conciliorum* 11 (1979) 69-71; Anton MICHEL, *Die Folgeschweren Ideen des Kardinals Humbert und Ihr Einfluss auf Gregor VII*, in *Studi Gregoriani* 1 (1947) 87 ff.

<sup>427</sup> *Iste Deo odibilis non dubitavit deponere, quem sibi non licebat eligere.* *De ordinando pontifice*, 83, r. 280.

irregularity, that is why he is *nequissimus*\*, he had no authority to set himself against the pope and judge him.

The anonymous, knowing the ecclesiastical history of Rufinus, points to the authoritative and paradigmatic example of the Emperor Constantine. The latter, finding himself at Nicaea in similar circumstances, said respectfully to the accused bishops: *You, by no one can be judged because judgment on you is reserved to God alone, you are called gods, therefore you cannot be judged by men*<sup>428</sup>.

The secular power to judge bishops is denied on the principle that superiors cannot be rebuked by inferiors: *You shall not rebuke the elder*, says the apostle Paul (7 *Tim* 5, 7)<sup>429</sup>. The author of *De ordinando pontifice*, in supporting his thesis, also cites the Capitulaire of Charlemagne where, according to the *Constitutum Silvestri*, it is stated that the supreme prelate cannot be judged by anyone<sup>430</sup>.

Even if Gregory VI had been an illegitimate pope, Henry III could not have freely taken him back or judged him. This competence, according to ecclesiastical provision, is not proper to the laity, but to bishops and clerics<sup>431</sup>. In the Church, the people recognise as their superior the priest, these the bishop who, in turn, recognise the supreme and universal pontiff, he whom alone God has reserved for his judgement<sup>432</sup>.

The *De ordinando pontifice* seems to be a work of great scope, in which is sketched what according to the ancient theory of Eliche<sup>433</sup>, could be called the Lorraine program. It would be Cardinal Bishop Umberto di Silva Candida who, ten years later, would expound this theory in all its breadth. Its essential lines are: a) The annulment of all ordinations made by a simoniacal bishop. The reason for this lies in the fact that such a prelate had not received the Holy Spirit on the day of his consecration, because of his venality, so he could not communicate to others what he himself did not have, b) The return to the ancient rules of election by the clergy and the people, c) The commitment to elevate the function of the priest and

<sup>428</sup> *Sileat ergo, sileat vaniloquium nostrum, veniat imperator ille nequissimus ad iudicium, introducantur testes ex ordine suo, qui eum convincant, in sacerdotem eum non debuisse mittere manum. Dic, religiosissime imperator Constantine, qui beato papae Silvestro oboedisti, qui ad benedictionem eius caput tuum inclinasti, dic, quid in Nicena synodo de episcopali excellentia revelasti: " Vos", ait, "a nemine diiudicari potestis, quia Dei solius iudicio reservamini; dii etenim vocati estis, idcirco non potestis ab hominibus iudicari". Ibid, 80, rr. 183-189.*

<sup>429</sup> *Nostrum tamen non erat de talibus loqui, cum etiam in inferiori gradu episcoporum denegetur nobis potestas iudicandi. Ut enim ipsa auctoritas nos instruit, maiores a minoribus non debent redargui, secundum apostolum, qui ait: "Seniorem ne increpaveris" (1 *Tim* 5,1). Ibid, 75, rr. 9-12.*

<sup>430</sup> *lam vero Karolus rex ex capitularibus suis loquatur: "P resui", infit, "summus a quoquam non indicabitur". De ordinando pontifice, 81, rr. 200-201.*

<sup>431</sup> *Nec illud ad hoc noceat, quod praelibatum est, libertas reprehendendi vel iudicandi, si vero episcopus (Gregorius VI) non est. Non enim eam annuimus laicis, sed qui in ecclesiastica dispositione auctoritatem habent, videlicet episcopis et clericis. Ibid, 81, rr. 223-224; 82, rr. 225-226.*

<sup>432</sup> *In ecclesia populus sacerdoti, sacerdos episcopo potest confiteri, episcopus summo et universali pontifici, ille autem soli Deo, qui eum suo iudicio reservavit. Ibid, 82, rr. 254-256.*

<sup>433</sup> Cf. Augustin FLICHE, *La Réforme Grégorienne. La formation des idées grégorienne*, I, Paris 1924, 119.

especially that of the Roman pontiff over all temporal authority.

What is greatly emphasized here is the principle that only God has the power to depose and judge the supreme pontiff<sup>434</sup>.

Wazone, bishop of Liege between 1041 and 1048, though not having - witnessed the events of Sutri - because he was far away - takes a different attitude: for him, not only the judgement, but the very accusation against a pontiff seems impossible.

When Henry III came to Italy, Wazon had courageously defended the rights and prerogatives of the Holy See. If he could not prevent the deposition of Gregory VI, he at least tried, after the death of Clement II, to obtain a just reparation from Henry. Consulted by the latter as to the choice of the future pope, the bishop of Liege studied the Gesta of the Roman pontiffs, the decretals, and all the authentic canons, observing, says his biography, that *the supreme pontiff, whatever his kind of life, must be held in great honor, and no one ever had the right to judge him, and that the accusation of one person of inferior degree against another of superior degree could not be permitted.*

Strong in his preparation he made known to the emperor: *May it please your serenity to reflect well that the place of the supreme pontiff, deposed by men, who had no authority to judge him, is reserved by divine disposition for this pontiff, since the one whom you have had ordained is dead, while the first still lives. Therefore, since it has pleased you to solicit our opinion in this matter, let your greatness cease for this reason to seek a successor to this one who still lives, because clearly the divine and human laws do not grant you such a right, and the writings, as well as the words of the holy fathers, ordain that the supreme pontiff can be judged by no one but God alone*<sup>435</sup>.

Wazone seems to be a serious and well-prepared person: he has a good knowledge, according to the possibilities of the time, of the history of the papacy, of the decrees, canons and simmachian forgeries, and of the whole canonical and juridical tradition<sup>436</sup>.

Between the author of *De ordinando pontifice* and the bishop of Liege we can note a different mentality, precisely in the application of the principle of unjusticiability, laid down by traditional canon law. Wazone held that he should not invoke any exception to that principle; he was categorical and clear: the pope could not be accused or judged by anybody. The author of *De ordinando pontifice*

<sup>434</sup> *Ibid.*

<sup>435</sup> "*Recogitet... serenitas vestra, ne forte summi pontificis sedes depositi a quibus non oportuit ipsi divinitus sit reservata, cum is quem vice eius ordinari iussistis defunctus, cessisse videatur eidem adhuc superstiti. Quocirca quandoquidem nostram super his flagitare placuit sententiam, desinat sublimitas vestra aliquem in eius locum qui superstes est velle substituere, quia nec divinas nec humanas leges certum est concedere hoc, astipulantibus ubique sanctorum patrum tam dictis quam scriptis, summum pontificem a nemine nisi a solo Deo diiudicari debere.* *Ibid.*, 228, rr. 46-51; 229, r. 1.

<sup>436</sup> *Ille autem ut erat in omnibus et in talibus maxime scrutator studiosissimus, vigilanter cum aliis quibus laboris huius partes expenderat, hinc gesta pontificum Romanorum, hinc eorumdem decreta, hinc autenticos canones, capitulare recensere sollicitus fuit.* *Ibid.* 228, rr. 37-40.

is more vague and generic. He equates the pope almost to any bishop, allowing a glimpse of some possibility of judgment against superiors, including the bishop, should their conduct endanger the spiritual life of the faithful<sup>437</sup>. The Bishop of Liège, on the other hand, affirms that whatever has been and is the life and conduct of the pope, he can never be accused and judged, but must always be held in great consideration and honour. The prohibition of accusation, though relatively, also applied to bishops, who could not be rebuked by their inferiors, but the action of the metropolitans, the provincial synods, and, in the last instance, of the pope, was valid. God alone is superior to the pope; therefore all judgment on the bishop of Rome is reserved to God alone.

According to Wazone, the king cannot judge either the bishops or, *a fortiori*, the pope. Obedience is reserved only to the Roman pontiff, head of the universal Church, while loyalty is reserved to the emperor<sup>438</sup>. In this way, the Bishop of Liège proclaims the independence and freedom of the Church from secular power.

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<sup>437</sup> Cf. Ovid CAPITANI, 36-37.

<sup>438</sup> In 1044, Henry III named a canon from Ravenna, Widger, bishop of Ravenna, who caused such a scandal that he had to be deposed. In 1046, Widger was brought before an assembly of bishops at Aix-la-Chapelle to justify himself against the accusations made against him. The prelates, who knew the king's intentions, were unanimous in their opinion that he should be deposed. Wazone thus expresses his opinion: *Nw we must obey the pontiff, to you, O king, allegiance. To you we give an account of our secular administration, to him of all that pertains to the divine office. Thus, in my opinion, and I strongly affirm it, all the crimes of ecclesiastical order which he (Widger) has committed depend solely on the supreme pontiff. If, on the contrary, in secular matters he has given evidence of negligence or infidelity, it belongs to you, and rightly so, to ask him for an account.* ANSELMUS EPISCOPUS LEODIENSIS, *Gesta Episcoporum Leodiensium*, 224, rr. 21-26.



## 15. LION IX (1048-1054)

In this chapter we will consider the principle *Prima Sedes a nemine indicatur* in the thought of Leo IX and in that of Umberto di Silva Candida.

## 15.1. LEO IX (1048-1054)

Leo IX is commonly considered the first reforming pope of the eleventh century. We know that his action is in continuity with all those ideas of reform that had arisen already in the tenth century. Attone of Vercelli and Raterio of Verona<sup>439</sup>, for example, were fully convinced that the reform of and in the Church was not possible without the independence of the ecclesiastical legal system from secular power, because its interference, especially in the election of the pontiff, prevented an authentic reform.

With Leo IX the reform of the Church would by then be directed from Rome, still in collaboration with the emperor, as was in the nature of things, in the hopes of the best spirits, and of the people themselves<sup>440</sup>. The problem for the pontiff was that of a moral renewal of the clergy, together with the recovery of rights, patrimony and jurisdiction. As for the life of the clergy, the need was felt for a return to the purity of the primitive Church. With Leo IX the role of Rome within the whole Church was even more clearly delineated: the pope was therefore concerned with restoring apostolic authority and leveraging reform. The restoration of apostolic authority, as planned by Leo IX, touched on different aspects. It is sufficient to note that both the pope's thinking and his program tended to make the principle of Roman primacy triumph. Writing to the archbishop of Carthage, he reminds him that the latter has only the right to convene provincial synods and consecrate bishops, while the Roman pontiff can convene general councils and with a definitive sentence can depose the bishops of all the Churches. This, because only to Peter, prince of the Apostles, did the Lord say: *You are Peter, and upon this rock I will build my Church, and I will give you the keys of the kingdom of heaven (Mt 16:19)* and elsewhere, *confirm your brethren (Le 22:32)*; this means

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439 Cf. 137-142.

440 Cf. Enzo PETRUCCI, *Ecclesiologia e Politica di Leone IX*, Rome 1977, 29.

that important and particularly delicate affairs, that is the *causae maiores et difficiliore*s, must be resolved by the successors of Saint Peter, who occupy his Holy See, the most prestigious<sup>441</sup>.

All this also has its repercussions in the interpretation and application of the legal axiom *Prima Sedes a nemine iudicatur*.

The same doctrine Leo IX set against it in relations with the Church of Constantinople. His letter, addressed to Michael Cerulario Patriarch of Constantinople, is a clear expression of it: it is a true treatise of the rights of the Roman Church, head and mother of all the Churches.

The letter is set within the somewhat tense relations between the Church of Rome and that of Constantinople. The disagreement, or an at least ambiguous - understanding, on the socio-legal reality of the universal Church and, on the - primacy of the pope, in particular, had already lasted for centuries, from the time of Patriarch Photius. To get an idea of the existing divisions in the dogmatic and canonical field, it's enough to think of the Council Quinisestus (691- 692), where we find, on purpose, dispositions contrary to the disciplinary tradition and the usages of the Roman Church, while there is no reference to canonical sources, decretals or papal decisions. In reality, the two souls of the Christian world had developed historically, according to the peculiarities proper to each of the two cultural areas of the Mediterranean basin: the Greek-Oriental and the Latin-Germanic. The diversity between these two worlds generated a progressive estrangement also between the two Churches. In this historical, ecclesiological and juridical line the recognitions of the Roman primacy, pronounced at different times and on different occasions in Byzantium, did not have the same ecclesiological content that was attributed to it in Rome and in the West<sup>442</sup>. Therefore, both in the Latin Church and in the Greek Church, there had accumulated so many reasons for mutual estrangement, misunderstandings and competition, that it would have been difficult, if those conditions had persisted or worsened, to avoid the separation<sup>443</sup>.

Leo, archbishop of Ochrid, supporter of the patriarch Cerularios, wrote a

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<sup>441</sup> *Hoc autem nolo vos lateat, non debere praeter sententiam Romani pontificis universale concilium celebrari, aut episcopos damnari, vel deponi; quia, etsi licet vobis aliquos episcopos examinare, diffinitivam tamen sententiam, absque consultu Romani pontificis, ut dictum est, non licet dare: quod in sanctis canonibus statutum, si quaeritis, potestis invenire. Quamvis enim omnibus statutum, si quaeritis, potestis invenire. Quamvis enim omnibus generaliter apostolis dictum sit a Domino: "Quaecumque ligaveritis in terra, ligata erunt et in coelo; et quaecumque solveritis in terra, soluta erunt et in coelo" (Matth. 18,18); tamen non sine causa specialiter et nominatim dictum est B. Petro apostolorum principi: "Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam: et tibi dabo claves regni coelorum" (Matth. 16,19). Et in alio loco: "Confirma fratres tuos" (Lk. 22,32). Scilicet, quia omnium ecclesiarum majores et difficiliore*s causae, per sanctam et principalem B. Petri sedem a successoribus ejus sunt diffiniendae. LEO POPE IX, *Ad Thornam Episcopum Africanum*, Ep., in MANSI, 19, 658.

<sup>442</sup> Cf. ENZO PETRUCCI, *Relations of Leo IX with Constantinople*, in *Studi Medievali* 14 (1973) 739.

<sup>443</sup> Cf. ID., *Ecclesiology and politics of Leo IX*, Rome 1977, 65.

letter to the bishop of Trani (but the real addressee, after all, was the pope), demanding that the Latin Church repudiate all the rites not pleasing to Byzantium. The bishop transmitted the letter to the papal curia, which reacted immediately, commissioning Umberto di Silva Candida to reply.

The curia immediately understood that the question raised by Constantinople on the liturgical usages of the Latins was a pretext: the real objective of the patriarch's attack was the primacy of the Church of Rome and its bishop. Consequently, the long reply of 41 chapters was developed mainly around the theme of the primacy. The papal letter shows that the reforming leadership dealt with Constantinople according to the same criteria with which it dealt with problems in the West. They accused Cerularios and wanted to judge him<sup>444</sup>. The letter, therefore, takes the form of a procedural act against Michael Cerularios.

In the controversy, therefore, it was a matter of justifying the direct intervention of the Apostolic See, presenting and defending its own conception of the Roman primacy. The defense of the principle *Prima Sedes a nemine iudicatur* is inscribed in this context; the letter could be compared, in content and spirit, with that that Nicholas I, in 865, had sent to the Emperor Michael III. Leo IX, however, does not quote all the Simmachian apocrypha, as Nicholas I had done, but limits himself to quoting the *Constitutum Silvestri*. This is not to say that Leo IX did not develop the doctrine of the pope's injustice: quite the contrary! The ideological and theological theory of our axiom finds here a further biblical enrichment through the development of certain traditional metaphors or images, such as the idea of the mother and the body.

Leo IX - but it would be more exact to say Umberto di Silva Candida - countering the Eastern ecclesiological vision, expressed himself as follows: *In this true madness... you condemn with anathema the supreme and apostolic See and all those who faithfully observe its teachings. You are so blinded by your ill-advised and imprudent arrogance that you do not see what you do, how you do it, and to whom you do it. Thus you condemn without trial that See, which neither to you nor to any of mortals is lawful to judge, since the most blessed pontiff Sylvester, by divine inspiration decreed that the supreme See be judged by no one, and this decision was approved by his spiritual son, the most religious Augustus Constantine, and by the council of Nicaea. Moreover, to the see of Rome was inviolably and firmly preserved that privilege, which the emperor himself, on the fourth day after his baptism, granted to the Roman pontiff, in which it is established that the bishops of the whole world should have him for their head, just as all officials have the emperor for their head. And this decision, which is to be always and by all respected, as a norm promulgated truly by divine inspiration, was accepted at the other ecumenical councils<sup>1</sup>.*

The pope presents the privilege of unjusticiability as having been approved

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<sup>444</sup> Cf. ID., *Relations of Leo IX with Constantinople*, in *Studi Medievali* 14 (1973) 751. 813.

by the Council of Nicaea. This connection between the *Constitutum Silvestri* and the council makes us think, and rightly so, that the writer of the letter had in his hands, or at least knew, the canonical collection of *Vatican 1342\**. It alone unites the *Constitutum* containing the principle *praesul summus non a quoquam iudicabitur... nemo iudicabit primam sedem quoniam a prima sede iustitiam desiderant temperari* with the council of Nicaea by means of the three apocryphal letters: *Quoniam omnia* - the letter addressed by the Fathers of the Nicene council to Pope Sylvester -, *Gaudeo propter and Gloriosissimus*, the two letters, which are different drafts of the one papal reply to the council fathers. Pope Sylvester would thus have linked the decrees of the Roman pseudo-synod of 324, i.e. the *Constitutum Silvestri*, to the approval of the council.

Leo IX, or rather Humbert, connects to it a privilege presented by the *Donatio Costantini*, namely, the right of the pope to be, in this world, the head of all priests, as judges have their king. The whole is presented as if it were authentic and historically true, under the pretence that the Orientals would have accepted it without hesitation, as, moreover, others had already done, among them Nicholas I and Anastasius Librarius. Here, a new element is added to the principle of inexcusability which has an extremely revolutionary value with respect to the past. The principle *Summa Sedes a nemine iudicatur* becomes a fact of a dogmatic nature because it is founded not only on canonical provisions, but on divine inspiration.

The whole argument will certainly have seemed like something unheard of for the East, which has never accepted the primacy of universal jurisdiction on the part of the Roman Church.

<sup>7</sup> *In qua utique vesania... vos... summam et apostolicam sedem, cunctosque institutionis ejus fidissimos observatores anathemate damnatis: incauta, impudenti arrogantia adeo coecati, ut non animadvertatis quid, et qui faciatis, et cui. Illi nempe facitis praesudicium, de qua nec vobis, nec cuilibet mortalium licet facere iudicium: beatissimo et apostolico pontifice Silvestro divinitus decernente, spiritalique ejus filio Constantino religiosissimo Augusto cum universa synodo Nicaena approbante ac subscribente, ut summa sedes a nemine iudicetur: inviolabiliter et inconcusse sibi conservato illo privilegio, quod idem princeps quarto baptismatis sui die devotus contulit pontifici Romano: salicet in toto orbe sacerdotes ita hunc caput habeant, sicut omnes iudices regem. Quorum semper omni mundo reverendam sententiam, sicut veraciter divina inspiratione promulgatam amplectae reliquiae universales synodi.* LEO POPE IX, *Ad Michaellem Constantinopolitanum Patriarcam*, ch. X, in MANSI, 19, 641.

<sup>8</sup> Cf. 70 ff.

The pope invites the Orientals to respect the privileges of the Apostolic See and, speaking of the privilege of papal immunity, replies: *You, condemning without trial the supreme See, which no one can judge, have incurred the anathema of all the Fathers of all the venerable councils. And to this anathema you will be indissolubly bound, if, keeping an impenitent heart on such presumption, you will not be absolved by me of the vicars of him, to whom in particular Christ, the Son of the living God, said: "What you loose on earth, you*

will also loose in heaven" (Mt 16, 19)<sup>445</sup>.

Here we have an ecclesiology in which the Church is deduced from the Petrine-Roman institution<sup>446</sup>. Leo IX, in full coherence with the charismatic-juridical interpretation of the Roman primacy, affirms: *The faith of the Roman Church, which Peter built on stone, has not yet failed, nor will it fail in the centuries, since Christ, his Lord, prayed for it in the imminence of his passion, and assured it with the words: "I have prayed for you, Peter, that your faith may not fail, and that you, when you have repented, may confirm your brethren" (Le 22:32). With this the Lord made it clear that the faith of the brethren is destined to be endangered by various shortcomings, but also to be held fast by the unshakeable and steadfast faith of Peter, as by the support of a firm anchor, and to be confirmed in the foundation of the universal Church. Only those who manifestly grasp the words of truth can deny this assertion, for as the whole door is regulated by the hinge, so by Peter and his successors is established what is of benefit to the whole Church. And just as the hinge, by remaining immovable, causes the door to move to and fro, so Peter and his successors have the right to judge every Church freely, while no one must remove their position because the supreme See is to be judged by no one*<sup>n</sup>.

In this chapter we find the primacy of infallibility and the primacy of jurisdiction closely united. The concepts that define the relationship between the Roman Church and the rest of the Church are expressed by the terms: *caput, mater, fons, fundamentum*. The Church of Rome is the *head* from which the members receive life and direction; it is the *mother* from which the other daughters receive guidance; the *foundation* that gives everything else its solidity and support. These titles qualify the Church as the decisive element from which the whole *Ecclesia* is built and formed, over which, therefore, it retains sovereign authority.

Leo IX states: *We are one body and one spirit, but we have been called in the one hope of our vocation (Eph. 4:4). The very harmony of body and members teaches us how and how much the unity of the Church is to be appreciated... God has disposed the members of the body as He willed: each fit for its function. If one member, not content with his function, wished to carry out that of another, he would upset the whole order of the body... It is great foolishness not to want to be what we are*<sup>447</sup>. Then he adds: *And if Peter, a figure in his person of our supreme*

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<sup>445</sup> *Quia praejudicium faciendo summae sedi, de qua nec iudicium licet facere cuiquam hominum, anatHEMA accepistis ab universis patribus omnium venerabilium conciliorum. Quo indissolubili- ter adstringemini, si cor impenitens retinendo super tantam praesumptionem, ab illo per vicarios ipsius non solvamini, cui specialiter dixit Christus Filius Dei vivi: "Quaecumque solveris super terram, erunt soluta et in coelis" (Matth. 16,19). LEO POPE IX, Ad Michaelem Constantinopolita- num Patriarcham, ch. XI, in MANSI, 19, 641.*

<sup>446</sup> Cf. Yves J.M. CONGAR, *L'ecclesiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris, 1968, 97.

<sup>447</sup> *Simus unum corpus, et unus spiritus, sicut vocati sumus in una spe vocationis nostrae. Ipsa corporis compositio et membrorum nos doceat, qualiter et quanti habenda sit ecclesiae unitas... Disposuit Deus, sicut voluit, corporis membra, singula officio suo apta. Membrum vero suo officio non contentum, sed cupiens praeripere*

head and his vicar, and his successors have the special dignity of the earthly and heavenly kingdom, do not envy it and take it away from the head of the Roman Church, because by me<sup>448</sup> of charity you will be able to acquire it all and reign in us<sup>448</sup>. Afterwards he replies: *Why do you defy to annul the glory which by the will of God and human disposition has been granted to us? Do you not consider as your own the hand and foot the honour and dishonour of the head? The body, which has only one sense, that is, touch, does not grieve, but rejoices that the chief over it is powerful, having them all, because he makes them serve and watch for the benefit of the whole body subject to it. And the head, since it is the judge of all the senses, is not judged by any of them, since it is more than sufficient to judge itself as the Apostle says: "The spiritual man judges of everything, and is judged by no one" (1 Cor 2:15). If in you you do not experience what we have said about the body, it means that you are not and do not live in the body. And if you are not in the body of Christ, which is the Church, and do not live by it, reflect at last where and what you are. You have been cut off, parched, and like a branch cut off from the vine you have been cast off and dried up, to be put to burn in the fire<sup>449</sup>.*

With Leo IX, or rather with Umberto di Silva Candida, the text of 1 Cor 2:15 is used to justify the juridical principle *Prima Sedes a nemine iudicatur*. From this place it seems that the Pauline text undergoes an evolution and a fundamental change: the original meaning and anthropological and charismatic context thus acquires a typically legislative connotation<sup>450</sup>.

Leo IX does not pose the problem of the pontiff who is unworthy or who deviates from the faith. According to his vision, faced with the height of the office and the greatness of Peter's merits, a pontiff - however holy - will never come to be, by his own personal merits, worthy of the privileges of the Apostle. He distinguishes the person of the pope from his See: everything good is to be referred to the Chair. However, it is not licit in the case of any negligence to use the faults of the pontiff to offend the dignity of his Chair, much less to diminish its authority. In Leo's letter, the hypothesis of a doctrinal deviation on the part of the pope seems excluded, because even if personally on the moral level he can deviate, on the magisterial level instead - by virtue of the Chair of Peter - *neesse habemus recta predicare* (we cannot but preach just things)<sup>451</sup>.

In any case, Leo IX affirmed the principle *Summa Sedes a nemine iudicatur*.

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*alienum, conturbat corporis ordinem totum... Et quantae insipientiae est nolle nos imitari quod sumus. Ibidem, ch. XXXVII, 655.*

<sup>448</sup> *Et si Petrus singulariter figura summi capitis nostri, vicariusque ejus, ac sui successores jam in terris retinent specialem dignitatem terreni coelestisque regni, nolite invidere vel detrabere Romanae ecclesiae apici, quem per caritatem totum valetis adipisci, et in nobis regnare et ipsi. Ibidem, ch. XXXVIII, 655.*

<sup>449</sup> *Cur vos annullare nitimini nobis divinitus et humanitus concessam? Nonne decus vel dedecus sui capitis manus seu pes suum non ducit? Nec dolet, sed potius gaudet uno sensu, id est, solo tactu*

<sup>450</sup> Cf. Yves CONGAR, *Homo spiritualis. Usage juridique et politique d'un terme d'anthropologie chrétienne*, in *Aus Kirche und Reich. Studien %ou Théologie, Politik und Recht im Mittelalter, Festschrift für Friedrich KEMPF*, editio Hubert MORDEK, Sigmaringen 1983, 3.

<sup>451</sup> LEO PAPA IX, *Ad Michaelem Constantinopolitanum Patriarcham*, ch. XXXV, 654.

Injudicability is proper to the head of the whole ecclesial body, while the primacy of the indefectibility and infallibility of the faith is referred to the Roman Church, as ecclesiological reality. Leo applies the privilege of unjusticiability exclusively to the person of the successors of Peter, that is, only to the pontiffs who succeed themselves in that See: Peter and his successors have the right to judge and cannot be judged by anyone. In this perspective, the *Summa Sedes* is identified with the *summus praesul*. The pope is the head of all Christians, as the Roman Church is the head of all the Churches. Therefore it follows from the letter that the immunity of the pope is the same as that of the *Summa Sedes*, and that both, therefore, possess the same extension.

*donatum corpus, superpositum sibi caput omnibus pollere sensibus, quia eos militare facit, et invigilare corporis subjecti utilitatibus: et caput de omnibus indicans sensibus nullo sensu indicatur, utpote solius sui iudicio sufficientissimum: utque apostolus dicit: "Spiritalis iudicat omnia, ipse autem a nemine iudicatur" (1 Cor 2,15). Haec et supra dicta de corporis nostri harmonia si non sentitis in vobis, in corpore non estis, nec in corpore vivitis: et si in corpore Christi, quod est ecclesia, non estis, nec de eo vivitis, jam videte ubi et quid sitis. Abscissi estis, putrescitis, et ve lut palmes praecisus de vite foras missi estis, et arescitis, ut in ignem mittamini, et ardeatis: quod divina pietas longe faciat a vobis. Ibid, ch. XXXIX, 656.*

#### 15.2. UMBERTO DI SILVA CANDIDA (+ 1061)

Among the Pre-Gregorian, Cardinal Umberto represented, with Pope Leo IX, the Lorraine group whose tendencies differed markedly from those in Italy, embodied by Pier Damiani.

Leo IX, Lorraine by adoption, having entered the abbey of Moyenmoutier very young, knew Umberto and appreciated his learning. As soon as he was elected pope, he endorsed him for the wisdom of his advice, and later conferred the purple on him. From 1049 Umberto followed the pope to Rome and took part in the government of the Church<sup>452</sup>: he was called inseparable companion and most grateful adviser to the pope<sup>453</sup>.

Umberto was considered the intransigent defender of the Roman tradition, of that idea - all *Gregorian* - that the Holy See is the custodian of orthodoxy, and for that reason he was to be pointed out as one of the precursors and collaborators of the reform<sup>454</sup>. The bishop of Silva Candida specifies that the particular recognition of the Roman Church is not linked in any way to the civil history of Rome, but derives only from the prestige that comes to it from the presence of its founders, the apostles Peter and Paul. Its condition of privilege therefore is not given by the fact that it gave birth to great emperors and illustrious personalities, but only to the many martyr saints and confessors.<sup>455</sup>

<sup>452</sup> Cf. Augustin FLICKE, 265 ff.

<sup>453</sup> *Papae comes jugis consiliariusque acceptissimus*. OTHILONUS, *EX libro visionum*, edidit Rogerus WILMANS, in *M.G.H.*, SS., XI, Hannoverae 1854, 384, r. 16.

<sup>454</sup> Cf. Augustin FLICKE, 276.

<sup>455</sup> *Sancta Romana aeclesia et reverenda et amanda est, non quia Romana fundata est super arenam per Romulum et Remum... set quia haedificata est super Christum petram per Petrum et Paulum... set quia*

While ancient and pagan Rome had subjugated the whole world, Christian Rome - that of the apostles and martyrs - possessed the keys of the celestial kingdom<sup>456</sup>. His ideal of a Christian emperor was Constantine the Great, whom he did not fail to point out, as an example for the conduct of secular power, through those famous words pronounced during the Council of Nicaea: *You cannot be judged by anyone because you are reserved to the judgment of God; in fact, since you are called gods, by no man can you be judged. Therefore, go and examine your causes among yourselves, for it is unworthy for us to judge the gods*<sup>457</sup>.

Umberto also recalled to memory, as a historical period to be imitated in Christian life, the Carolingian age. This epoch was overwhelmed by the Ottoman period<sup>458</sup> which, according to the cardinal bishop of Silva Candida, was responsible for the decadence, due to the sloth and insipience of the Roman pontiffs. The Ottomans had usurped, allowing even secular princes to do so, the privileges and prerogatives of the Church, which was now in a very difficult situation.

The creativity, style, and skill of argument in his literary productions, as well as the precision of his research-including that of forgeries-ensured Umberto a prominent place in the history of medieval papacy. Central to his programme is a fierce attack on the idea and practice of the priest-king.

In advancing his concept of the Church, he makes much reference, and skillfully, to the canonical and juridical tradition of the Roman Church, especially to Pseudo-Isidore, the *pantheon* of papal prerogatives.

His ecclesiological thought is typically Roman and is in continuity with that of the fifth-century popes, Nicholas I and John Vili. Umberto's ecclesiology is deduced from the Petrine-Roman institution: the Church is conceived as a single kingdom under the papal monarchy of which the bishops only share and participate, in a particular way, the universal responsibility and powers. He thus moves away from a conception of the Church as the People of God, moving

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*patronos sibi post Petrum et Paulum vindicat Clementem, Xystum, Laurentium, Cornelium... Alios quoque utriusque sexus martyrum et confessorum innumerabiles populos.* HUBERTUS A SILVA CANDIDA, *De Sancta Romana Ecclesia. Fragmentum B*, in Percy Ernest SCHRAMM, *Kaiser, Rom und Renovatio. Studien und Texte zur Geschichte des römischen Erneuerungsgedankens vom Ende des karolingischen Reiches bis zum Investiturstreit*, II, Leipzig-Berlin 1929, 129. 131.

<sup>456</sup> *Ibid*, 130.

<sup>457</sup> "*Vos, a nemine iudicari potestis, quia solius Dei iudicio reservamini; dii etenim vocati estis, iccirco non potestis ab omnibus diiudicari. Ite et inter vos causas vestras disponite, quia dignum non est, ut nos iudicemus deos*". HUBERTUS A SILVA CANDIDA, *Libri adversus simoniacos*, in M.G.H., *De lite imper. et pontif.* I, 207, rr. 9-11. Humbertus will have learned this information either from the *Storia Ecclesiastica* of Rufinus of Aquileia, who was the first to report this account, or from the various historiographers who later always referred to this work, as for example, Cassiodorus in his *Storia Tripartita*.

<sup>458</sup> *Nec ipse tunc Pipinus rex nec filius eius primus Francorum imperator Magnus Karolus hunc canonem infringere fuit aggressus, sed nec pronepotum seu heredum regni et imperii eorum ullus usque ad Ottonum tempus.* *Ibid*, 211, rr. 18-20.

towards an ecclesiology of the hierarchical clerical organism. What interests him is the institutional aspect of the Church<sup>459</sup>.

At the same time, Umberto was the transmitter of the axiom used by the Simmachian forger in the *Constitutum Silvestri*, that is, that the supreme pontiff cannot be judged by anyone. He develops his conception of the pope's personal immunity in the *Fragmentum A*<sup>460</sup>. It has been called - and rightly so - *Hymne, la höchste Leistung* in defense of the papal primacy, written in *leuchtender Sprache*. It stands as an ideological and programmatic synthesis of the previous centuries, but at the same time opens up the constitutional development of the Roman curia.

The relevance of the text lies in the fact that it makes a change to the principle *Prima Sedes a nemine iudicatur*. Until Umberto, except for a few voices to the contrary, it was commonly accepted that the pope could not be judged by anyone; he could judge and sentence on everything within the whole Church, and his sentences could not be contested, nor could he be judged. The pope's immunity was unconditional and inviolable: whatever his conduct and his life of faith might have been, he could not be accused or judged.

Umberto, in spite of all this tradition, says in *De Sancta Romana Ecclesia*: *Let no mortal presume to recall the faults of the pope, for he judges all, but can be judged by none, unless he be found out of the faith. For his eternal position, the universitas fidelium prays as unceasingly as considering that his salvation, after God, is very much bound up with his safety*<sup>2</sup> ^.

In these terms the statement was included in the collections of Cardinal Deusdedit, of Ivo of Chartres, and of Gratian. Only Anseimo da Lucca does not report it, as he used Umberto only for his Sentences.

Ullmann states that the jurisdictional principle of the Roman Church must not be mistaken for the personal immunity enjoyed by the pope before any accusation. The two principles must be clearly separated, as Umberto did<sup>461</sup>. The observation is pertinent, but only if the distinction is clear; how could the relationship between the Roman Church and the pope be clarified, since one recalls the other and vice versa? The pope enjoys personal immunity in that he also has primacy of jurisdiction. In Umberto, in truth, the relationship between the Roman Church and the pope is not specified, because he holds that the latter is indefectible in faith, while the pope can be *a fide devius*. In any case, the previous tradition has always linked the papal prerogative of unjusticiability to the *principatus* of Peter which is perpetuated in his successors. Furthermore, it has always understood the concept of immunity in reference to the person of the pope, of the bishop of Rome;

<sup>459</sup> Cf. Yves J.M. CONGAR, *L'église de Saint Augustin à Hépoque moderne*, Paris 1970, 95-98.

<sup>460</sup> HUMBERTUS A SILVA CANDIDA, *De sancta Romana ecclesia. Fragmentum A*, in Percy Ernest SCHRAMM, *Kaiser, Rom und Renovatio. Studien und Texte zur Geschichte des römischen Erneuerungsgedankens vom Ende des karolingischen Reiches bis zum Investiturstreit*, II, Leipzig-Berlin 1929, 128-129.

<sup>461</sup> Cf. Walter ULLMANN, *Cardinal Humbert and the Ecclesia Romana*, in *Studi Gregoriani* 4 (1952) 1952, 115.

never, in fact, has it been applied to the Church of Rome as local Church. The local Church that lives in Rome has never been summoned by an ecclesiastical tribunal or by a council, to judge itself; things have been different for its bishops. The expression *Prima Sedes a nemine iudicatur*, used in the past, has been referred to popes and has become the legal maxim to indicate always the non-judiciability of the bishop of Rome, rather than of the *Prima Sedes* itself. This says that see and bishop, in this case, were not distinct but synonymous.

In our days some historians like Ullmann<sup>462</sup>, Alberigo<sup>463</sup> and Petrucci<sup>464</sup> interpret Umberto's thought not in reference to the person of the pope, but to the Church of Rome as a local Church. Other scholars, such as Maccarrone<sup>465</sup>, Capitani<sup>466</sup> and Fois<sup>467</sup>, have responded to their interpretations.

Ullmann applies the theory of the corporation to the Roman and universal Church. The Church of Rome is the corporate epitome of *Christianitas*, the pope is its head and, at the same time, a member, so he shares in its function and life. The Petrine mission was entrusted to the Roman Church and not to the pope, therefore to it belong the privileges and prerogatives connected with the person of the Apostle. Now the pope, as a member of the Church-corporation, enjoys its privileges, but as an individual he may err and thus be judged; the task and the competence to do so belong to the Roman Church, to which belongs the privilege of unjudiciability. But the power to judge the pope belongs specifically to the Roman Curia, that is to the cardinals, because they share in the primacy of the Church. Therefore, should the pope fail in fidelity to the faith, the cardinals take over his government<sup>468</sup>.

Alberigo maintains that in the *Fragmentum A* the expression *Ecclesia romana* refers to the universal Church: this does not have a personal meaning, so that the pope would be the epitome of the universal Church. The privilege of inexcusability belongs to the community, to the Roman Church; the pope *uti singulus* participates in an eminent degree in this prerogative to the point of being extended to him, but with a limit: *nisi a fide devius*<sup>25</sup>. Again according to Alberigo, the Roman Church, in Umberto di Silva Candida, is not identified with the person of the pope, even though it is in a vital relationship with the successor of Peter,

<sup>462</sup> Cf. Walter ULLMANN, 120-127.

<sup>463</sup> Cf. Giuseppe ALBERIGO, *Cardinalato e Collegialità. Studi sull'eccelesiologia tra fXI e il XIV secolo*, Florence 1969. ID., *Regime sinodale e Chiesa romana tra rXI e il XII secolo*, in *Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 229-263.

<sup>464</sup> Cf. Enzo PETRUCCI, *Discussion of Giuseppe ALBERIGO's paper, Regime synodale e Chiesa romana tra fXI e il XII secolo*, in *Ibidem*, 226-270.

<sup>465</sup> Cf. Michele MACCARRONE, *La teologia del primato romano del secolo XI*, in *Le Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea del Centro di Studi Medioevali, VII), Milan 1974, 21-122.

<sup>466</sup> Cf. Ovidio CAPITANI, *Episcopato ed Ecclesiologia nell'età gregoriana*, in *Ibidem*, 316-373.

<sup>467</sup> Cf. Mario FOIS, *Papa e Cardinali nel secolo XI. A question of method and a reply*, in *Archivum Historiae Pontificiae* 14 (1976) 383-416.

<sup>468</sup> Cf. Walter ULLMANN, 122-125.

since it also includes the college of cardinals<sup>469</sup>. In Umberto, in Alberigo's opinion, the summit of the universal Church is constituted by the complex and articulated union, at the same time, that binds, in a relationship of mutual communion, the successor of Peter and the cardinals. Except in the case of the pope's heresy, *Fragmentum A* never seems to hint at an autonomous subsistence of the cardinalate, independent of the bishop of Rome. The cardinals have the power to judge the pope should he deviate from the faith<sup>470</sup>.

Petrucci shared with Alberigo the idea that the Roman Church, as understood by Cardinal Umberto, essentially expresses the concept of the local Church living in Rome. The guarantor of the purity of the faith is not the pope or the clerics, who can singularly err - and for that reason be singularly judged - but this local Church, that as *caput et fundamentum* of the universal Church, can never err: that is why it is not so much the pope, but the *Summa Sedes a nemine iudicatur*<sup>2</sup> \*. Petrucci, on the other hand - as regards the presence of the College of Cardinals in the *Fragmentum A* as the competent body called upon to judge the pope, should he depart from the right faith - distances himself from Alberigo by denying to see the cardinals there<sup>471</sup>.

Maccarrone maintains that the author of *Fragmentum A* exalts the figure and personal prerogatives of *ddX antistes et rector* of the Roman Church. It no longer exalts the Roman Church nor the Apostolic See, but only the pope, whose word is like an oracle from which the Christian people expect to know the discipline of the Church and the doctrine of the faith. The expressions *illius velle, illius nolle*, to which is added *ad eius arbitrium*, express the function of judge that was proper to the pope, to whom recourse was made by the whole Church. Proceeding in the analysis of the *Fragmentum A*, Maccarrone points out that the pope, being never mentioned by his name but rather designated in his prerogative of *antistes, rector*, and *apex* - respectively of the Roman Church and of the Apostolic See - is rather conceived as an absolute sovereign. Such an interpretation was inspired by Roman

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<sup>469</sup> The existence of the College of Cardinals is generally simplified and not well historicized. The formation of the cardinalate, in the history of the Church in the eleventh century, constitutes an evolutionary process of considerable importance. This process took place over a not excessively long period of time - roughly between 1046 and 1130 - in a wide-ranging context and in a well-defined socio-political reality: Christendom, which saw the range of action of the Bishop of Rome transformed into that of head of the universal Church. It was only at the end of the 11th century that all the necessary premises for the formation of the college, which had begun with the pontificate of Leo IX, were fulfilled, but with the sole intention of seeing in the cardinals men of trust, capable of collaborating with him in the work of reform, and not of forming around the bishop of Rome an organism that would bring about institutional change. Edith PASZTOR, *Riforma della Chiesa nel secolo XI e ? origine del collegio dei cardinali. Problemi e ricerche*, in *Studi sul Medioevo Cristiano offerti a Raffaello MORGHEN per il 90.mo anniversario deirIstituto Storico Italiano (1883-1973)*, Rome 1974, 609-625.

<sup>470</sup> Cf. Giuseppe ALBERIGO, *Cardinalate and Collegiality. Studi sul? eclesiologia tra fXI e il XIV secolo*, Florence 1969, 22-41.

<sup>471</sup> *Ibid*, 268.

law<sup>472</sup> according to which he was placed above all human law and all limits (except deviation from the faith), so that men who cared for their salvation had to take care to know the *velie* and the *nolle*, It is a conception of the person and office of the pope that does not derive from the theological and ecclesiastical tradition, but traces the ancient imperial model<sup>473</sup>, renewed by the Ottonians. The position of the pope, superior to all, prevents him from being rebuked for his faults, being the judge of all and judged by none, *nisi forte deprehendatur a fide devius*. Hence the duty, for all the faithful, of praying for him. Maccarrone concludes as follows: *Therefore, if we consider this fact, every interpretation that wants to see in the Roman Church, outlined in this text, and precisely in its most representative part constituted by the college of cardinals, Porgano who should judge the pope in the case in which "deprehendatur a fide devius" falls. In the Fragmentum A there is the Roman tendenda to resolve to the advantage of the pope, of his person, the theological progress made with the pontificate of Leo IX*<sup>474</sup>.

Fois<sup>475</sup> sees in the *Fragmentum A* the identification of the Roman Church, as the *cornerstone* of the universal Church and *Summa Sedes*, with Peter and his successors. According to the scholar it is a matter of the same immunity as the *Summa Sedes*, without distinction between *sede* and *sedentum*<sup>476</sup>. Moreover, he argues that in the 11th century (apart from the anti-Gregorians at the end of the century) there was no conception of the existence of primatial privileges of the Roman Church other than those granted to Peter and transmitted to his successors in his Roman episcopal see, and only to these. Finally, at the time of Leo IX, the existence of the College of Cardinals as a consultative body, much less as a judicial organ of the heretical pope, cannot be demonstrated<sup>477</sup>.

Capitani asserts that in the *Fragmentum A* there is a clear reference to the *status* of the pope. He may find himself *a fide devius*: but this clause, rather than

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<sup>472</sup> The conception of the sovereign, as the head of the whole civil and state structure that is revealed in the absolute monarchy, in Roman law occurs after Diocletian (305), although the preparation and the rise of it had already been manifested in the third century. In this period, the emperor is considered in everything superior to the laws (*legis solutus*) and is called in official documents by the title of *Dominus*, and later, after the emperor Aurelius, *Dominus et Deus*. Cf. P. WILLEMS, *Le droit public romain ou les institutions politiques de Rome depuis Paris de la ville jusqu'à Justinien*, Louvain 1888<sup>6</sup>, 422.

<sup>473</sup> Enodius of Pavia, in his *Libellus* in favor of the Palmare synod (501), develops the same view in the way he conceives of the pope's role as judge and legislator within the Church. He who makes the laws is not bound to observe the legislative dictate, since he himself is the source of law. Cf. 41 ff.

<sup>474</sup> Cf. Michele MACCARRONE, 51-54.

<sup>475</sup> Foïs, prior to his study *Pope and Cardinals in the Eleventh Century*, had reviewed the work of Giuseppe ALBERIGO, *Cardinalate and Collegiality...* in *Archivum Historiae Pontificiae* 8 (1970) 375-378. Here, the reviewer expressed his reservations about the method used by Alberigo and his interpretation of the texts.

<sup>476</sup> Cf. Mario Foïs, *Papa e Cardinali nel secolo XI. A question of method and a reply*, in *Archivum Historiae Pontificiae* 14 (1976) 393.

<sup>477</sup> *Ibid.*, 394.

being a limiting element - as it was in the canons relating to the immunity of bishops - is above all indicative of the possibility of a collective tragedy. The pope *etiam a fide devius* - says Capitani - could in that case be reproached, accused but never judged. And it is a misunderstanding to read the passage in question as if *nisi forte deprehendatur a fide devius* were a corrective of *a nemine iudicatur*. is only an exception to *cuius culpas istic redarguere presumit mortalium nullus*.

The sense of the pope's unjustifiability as a corrective probably arose from the title that the passage in *Fragmentum A* received at Gratian, where it entered only partially. It is the very logic of the whole text that suggests this interpretation: to subject to judgment the pope who has deviated from the faith is still a possibility of recovery entrusted to humanity. It means having recourse to an exceptional, but objective instrument that rescues from the destiny of eternal damnation the society that would risk plunging into the abyss of Gehenna, if the supreme pontiff turned out to be inferior to his task. Hence the necessity of ecclesial prayer for both physical and moral integrity.

Of course, the pope is condemnable: but by God alone, not by men, none of whom - other than cardinals! - would be saved if the pope were guilty. And mind you: guilty, not necessarily a heretic! The pope has that collective responsibility of society, which no bishop has. The ability of the cardinals to judge the pope, moreover, had not been hypothesized either by *Fragmentum A* - which is completely silent on this point - or by Pier Damiani<sup>478</sup> .

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<sup>478</sup> Cf. Ovid CAPITANI, 361-364.



## 16. PIER DAMIANI (1007-1072)

The Gregorian reform started from a deep desire for moral renewal that would face the phenomenon of simony and Nicolaitism. With Leo IX its future development began to take shape, reaching a phase of concretisation.

Leo IX set in motion a movement, the evolution of which would prove to be full of consequences. Forced by the struggle against simony, he had to make use of papal rights, thus initiating a new phase in the history of the primacy. The conflict with the Greek Church also gave Umberto di Silva Candida - the pontiff's adviser - the opportunity to exalt the greatness of the Roman Church.

The reform developed with Nicholas II, thanks to the decree of 1059 - concerning the pontifical election by the cardinal bishops first and the other cardinals second<sup>479</sup>. Under his pontificate, the papacy had to deal above all with the Church of Milan, which had long been troubled by simony and Nicolaitism.

On the death of Nicholas II (1061), the cardinal bishops, under the protection of the Norman troops and making use of the prerogatives conferred on them by the decree of 1059, elected to the Apostolic See the bishop of Lucca Anseimo (*senior*), who took the name of Alexander II (1 October 1061). Count Gerard of Galeria (an exponent of the Roman nobility) had sent an embassy to Germany in the name of the Romans, to solicit the designation as pope of Cadalus<sup>480</sup>, bishop of Parma. The German court agreed to this desire, and the antipope Honorius II was appointed (October 28, 1061).

In fact, the disagreement had not arisen over the person of the pontiff as such; it had other motives. Pier Damiani and others supported the provisions of Nicholas II on papal election, while the decree of 1059 itself, which did not seem to guarantee imperial rights to an adequate extent, aroused the joint reaction of the court and part of the German episcopate. The court had refused to receive the papal legate who had brought the apostolic letters; nay, it assembled a council, at which it quashed those papal provisions. The controversy became

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<sup>479</sup> *Das Papstwahldekret von 1054. Überlieferung und Textgestalt*, edidit Detlev JASPER, Sigmaringen 1986.

<sup>480</sup> Cf. BAIX F., *Cadalus*, in *Dictionnaire d'Histoire et de Géographie Ecclésiastique*, XI, Paris-VI 1949, 53-99.

was therefore based on a conflict of principles. On 14th April 1062, Cadalus attacked the papal troops at the *Campus Neronis* and entered Rome. In order to put an end to the schism, in May 1062 Godfrey of Lorraine proposed that the two contending parties withdraw to their respective bishoprics until the king of Germany had made a decision concerning them.

There was no lack of opposition against Cadalo and against all those who opposed the decrees of Nicholas II, such as Pier Damiani and Anseimo di Lucca (*iunior*), nephew of Alessandro IL

#### 16.1. PIER DAMIANI (1007-1072)

Pier Damiani, born in Ravenna in 1007, became a hermit at Fonte Avellana in 1035; zealous for monastic and ecclesiastical reform, he wrote against simony and Nicolaism; he was made cardinal by Stephen IX in 1057. Meanwhile, Hildebrando - the future Pope Gregory VII - who had been a trusted collaborator of the popes since the time of Leo IX, was convinced, like Humbert, that reform - to be radical - had to touch even the legal order of Church life and rely on the papacy. Thus, in 1060 he asked Pier Damiani to collect all the texts on the primacy of the Roman See<sup>481</sup>, something he never did.<sup>482</sup>

The cardinal monk died on November 22, 1072, a year before the election of Gregory VII. Placed among the Pre-Gregorians, he was considered a fervent reformer because of his links with Hildebrand and the reforming popes.

Towards the end of 1059, during the struggles of the pataria, Damiani - together with Anseimo di Lucca (*iunior*), was sent by Pope Nicholas II to Milan. The news of this mission is due to Pier Damiani himself, who gave an account of it. Brilliantly expounding the principles of Roman primacy, he succeeded in winning the initial opposition of the Milanese. They were in fact appealing to the special position of the Ambrosian Church to contest the principle of submission to the laws of Rome and the right of the Roman Pontiff to judge and dispose in their See<sup>483</sup>. Pier Damiani addressed them with these words: *Know, beloved brothers, that I have not come here to seek the glory of the Roman Church, but to work for your salvation and your glory. What need has it, of the praises of a man of nothing, this Roman Church, while its praises are uttered from the very mouth of the Saviour? And what province in all the earth escapes his power, which reaches as far as to open and close heaven itself? The limits of patriarchs, of metropolises, of dioceses, have been fixed by emperors and kings, by men in a word, and these*

<sup>481</sup> PETRUS DAMIANI, *Actus Mediolani*, in PL, 145, 89.

<sup>482</sup> Some thought to find in the Collection of the LXXIV Titles the work desired by Hildebrando, because it collects and reorders all the reforming ideas then in circulation, reaffirming the leading position of the papacy. Cf. 191 ff.

<sup>483</sup> *Post diem alterum factione clericorum repente in populo murmur exoritur, non debere Ambrosianam Ecclesiam Romanis legibus subjacere, nullumque judicandi, vel disponendi jus Romano pontifici in illa sede competere.* PETRUS DAMIANI, *Actus Mediolani*, in PL, 145, 90.

*founders have reserved to themselves, according to their power or their will, rights of spiritual prerogatives, whereas, it is Christ Himself who established the Roman Church on the rock of faith, soon after it arose, confirming to the blessed porter of eternal life the rights of the earthly empire and those of the heavenly empire.... It would be injustice to deprive any Church of its rights, but it would be heresy to deny to the Church of Rome the privilege eh\*she has received from the supreme head of all the Churches, the former would be injustice; the latter heresy<sup>484</sup>.*

In Pier Damiani, the Roman Church and the Apostolic See are identified with the pope. They indicate the same reality and express the primacy of Peter - persistent in the papacy - in its twofold aspect of magisterium and jurisdiction<sup>485</sup>.

Pier Damiani was a fierce defender of the decrees of Nicholas II and a tenacious advocate of the papal legitimacy of Alexander II against the invading Cadalus. In October 1062<sup>486</sup>, a general synod had been convened at Augsburg, attended by the king and papal legates, to resolve the schism that had arisen after the death of Nicholas II. Among those gathered at the council was the same bishop who had consecrated Alexander II (the pope). This bishop, with a decisive volte-face, pleaded the cause of the king against Alexander II because the Roman Church was tormented and divided by internal struggles. He said: Come to the aid, *O most powerful princes, of the mother of the Churches, come to the aid of the Apostolic See. Behold, in fact, while all, graphies to you, live in peace, only the Roman Church is tormented by internal strife because of Alexander who names himself*

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<sup>484</sup> *Noverit charitas vestra, dilectissimi, non me pro Romanae Ecclesiae huc honore venisse, sed vestram gloriam quaerere, vobis salutem et gratiam, quae in Christo est, cum ejus auxilio, si permittitis, providere. Quo enim pacto honore indiget parvuli hominis, quae laudes atque praeconia ex ipsius ore sortita est Salvatoris? Quae autem provincia per omnia regna terrarum ab ejus ditone extranea reperitur, cujus arbitrio ipsum quoque coelum et ligatur et solvitur? Omnes autem sive patriarchi cujuslibet apicem, sive metropoleon primatus, aut episcopatum cathedras, vel Ecclesiarum cujuscunque ordinis dignitatem, sive rex, sive imperator, sive cujuslibet conditionis homo purus instituit, et prout voluntas, aut facultas erat, specialium sibi praerogativarum jura praefixit: Romanam autem Ecclesiam solus ipse fundavit, super petram fidei mox nascentis erexit (Matth. 16), qui beato vitae aeternae Clavigero terreni simul et coelestis imperii jura commisit. Non ergo quaelibet terrena sententia, sed illud verbum, quo constructum est coelum, et terra: per quod denique omnia condita sunt elementa, Romanam fundavit Ecclesiam. Illius certe privilegio fungitur, illius auctoritate fulcitur. Unde non dubium, quia quisquis cuilibet Ecclesiae jus suum detrahit, injustitiam facit: qui autem Romanae Ecclesiae privilegium ab ipso summo omnium Ecclesiarum capite traditum auferre conatur, hic procul dubio in haeresim labitur: et cum ille notetur injustus; hic est dicendus haereticus. Fidem quippe violat, qui adversus illam agit, quae mater est fidei; et illi contumax invenitur, qui eam cunctis Ecclesiis praetulisse cognoscitur. Ibid., 91.*

<sup>485</sup> Cf. Mario Fois, *I compiti e le prerogative dei cardinali vescovi secondo Pier Damiani nel quadro della sua ecclesiologia primata*, in *Archivum Historiae Pontificiae* 10 (1972) 28-35. Friedrich KEMPF, *Pier Damiani und das Papstwahldecret von 1059*, in *Archivum Historiae Pontificiae* 2 (1964) 75. The latter author explains Damiani's thinking by recalling the Cyprian identification of the bishop with his own church and thinks that Pier Damiani had a hand in the formation of the text of the decree.

<sup>486</sup> The date of the convocation of the synod (*generale conloquium*) reported by the *Annales Altahenses maiores* is not correct. The general synod of Augsburg met in October 1062 and not for the solemnity of the Assumption in 1061. Cf. Wilhelmus GIESEBRECHT De- EDMUNDUS L. B. AB ÖFELE, in *M.G.H., SS., XX, Hannoverae* 1868, 811, note 72.

pope, since nevertheless he is not and never will be, if ever one judges justly of him. Not as a shepherd, with the consent of the king, as our patrician, has he entered the fold, but clearly as a thief and usurper has he ascended, by the hireling of the Normans, that is, of your enemies. Behold, I myself am present who anointed him, but I call God my witness that I did so, forced with violence. For this reason, O most righteous judges, I beseech you, while there is still time, to stop this disease, lest, together with the sick and corrupt head, the other limbs too quickly begin to languish<sup>487</sup>.

After this speech the curia discussed at length what should be done; for to the bishops it seemed neither right nor easy for the disciples to judge the master<sup>488</sup>.

It was therefore decided to open an inquiry in Rome concerning the case of Alexander II. The inquiry was entrusted to the bishop of Halberstadt, Burcard, with the task of gathering new information. The cause of Alexander II was instead defended, before the assembly of Augsburg, by Pier Damiani, whose argument is found in his treatise *Disceptatio synodalis inter advocatum et Romanae ecclesiae defensorem*<sup>489</sup>.

Here, the monk of Fonte Avellana also took a stand against the council promoted by the royal court, which had overturned the decrees of Pope Nicholas II and, almost, condemned the pontiff, with a synodal sentence. Pier Damiani worked forcefully for the primatial recognition of the Apostolic See in the disciplinary theological field: all must abide by the decisions, judgment and correction of the Roman See. He calls the work of the royal court *incredibilis prorsus audacity* and presumption: *You force me to publish what I was determined to keep silent out of respect for the court. But, according to the instance of your refusal, the central motive of your egregious work is proffered, which is unheard of in all ages. Yes, you, counselors of the court, in agreement with certain "holy" German bishops, conspired against the Roman Church and assembled a council in which you, by a purported decree, condemned the pope and had the insane*

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<sup>487</sup> *Oh hanc igitur causam legati Romanorum Augustam venire, cum rex ibi adsumptionem Deiparae Virginis ageret et generale colloquium haberet. Ex his vero idem episcopus unus erat, qui Alexandrum consecraverat. Is ergo accepto dicendi loco tali perorabat modo: "Succurrite, potentissimi principes, ecclesiarum matri, succurrite apostolicae sedi. Ecce enim, cum omnes per vos in pace agant, sola Romana ecclesia bellis intestinis quassatur per Alexandrum, qui se papam nominat, quod tamen non est nec unquam erit, siquidem de eo iuste indicatum fuerit. Non enim ex consensu regis, utpote patricii nostri, ut pastor in ovile intravit, sed data pecunia Nordmannis, inimicis videlicet vestris, ut fur et latro aliunde ascendit. Ecce adsum ego ipse, qui eum consecravi, sed Deum testor, quia vim patiens et coactus hoc feci. Quapropter, iustissimi iudices, quaeso, huic pesti, dum tempus est, obviate, ne capite morbide putrescente etiam reliqua membra citius incipiant languescere".* *Annales Altahenses maiores, a. 1061, edidit Wilhelmus GIESEBRECHT DC-EDMUNDUS L. B. AB ÖFELE, in M.G.H., SS., XX, Hannoverae 1868, 811, rr. 13-24.*

<sup>488</sup> *His ergo in curia auditis, diu multumque est disceptatum, quidnam super hoc esset agendum, quia episcopis nec iustum nec facile videbatur, discipulos indicare magistrum. Ibid, 811, rr. 24-26.*

<sup>489</sup> *PETRUS DAMIANI, Disceptatio synodalis, edidit E. DUMMLER, in M.G.H., De lite imper. et pontif, I, Hannoverae 1891, 77-94.*

*presumption to cassate all the acts of his pontificate*<sup>490</sup>. In the *Disceptatio synodalis*, papal immunity, though not expressed with the same explicit clarity as that used by Umberto di Silva Candida and other pre-Gregorian, is nevertheless sustained in such a way as to remove any doubt about the thesis sustained by the author<sup>491</sup>. Pier Damiani judged *unacceptable audacity* the decision of the royal court and, further on, wrote: *the condemnation of the pope is so serious and impossible that it cannot be treated with a human judgment, but only a divine one*<sup>492</sup>.

He further wrote that the cardinals, or another competent body, would never have the power to pronounce a judicial sentence or condemnation against the pope. The privilege emphasized was the principle that the pope could not be judged by anyone, but could judge everyone, including bishops<sup>493</sup>. The monk of Fonte Avellana reveals himself to be an intrepid assertor of the privileges of the Roman Church, which appears to be endowed with a special prerogative in authority. But he maintains the rule of canonical justice and lays down the discipline of ecclesiastical *status*, whose authority extends everywhere, and from which no one can escape.

Pier Damiani is also familiar with one of the texts of the apocrypha *simmachiani*, the *Gesta Polichronii*<sup>494</sup>, and quotes them in a letter sent to the archbishop of Ravenna, Enrico. On this occasion the text does not develop the principle that the inferior can neither accuse nor judge his superior, but is quoted, in the context of the fight against simony, as a disciplinary model to be adopted in the case of bishops accused of that sin. Pier Damiani sees in the behavior assumed by Pope Sixtus towards the Patriarch of Jerusalem, Polychrome, a valid and opportune pastoral method for opposing and defeating bishops stained with simony, who in the case of guilt must be removed and deposed from their sees<sup>494</sup>. The news of the *Gesta*\* Damiani says he learned from the *Gesta Pontificum*. This testifies how much reception and credibility the Simmachian apocrypha had.

The monk of Fonte Avellana, more than a jurist and politician of the Apostolic See, is a mystic fully dedicated to the care of the spiritual life. This attitude of his expresses itself also when dealing with cases in which bishops are

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<sup>490</sup> *Ecce compellis me vulgato sermone depromere, quod ob imperialis palatii reverentiam decreveram silentio preterire. Sed iuxta vestrae scilicet exactionis instantiam iam proferatur in medium opus egregium vestrum, saeculis omnibus inauditum. Rectores enim aulae regiae cum nonnullis Teutonici regni sanctis, ut ita loquar, episcopis conspirantes contra Romanam aecclesiam, concilium collegistis, quo papam quasi per sinodalem sententiam condemnastis, et omnia, quae ab eo fuerant statuta, cassare incredibili prorsus audacia presumpsistis. Ibid.*, 87, rr. 26-32.

<sup>491</sup> Cf. Mario Fois, *I compiti e le prerogative dei cardinali vescovi secondo Pier Damiani nel quadro della sua ecclesiologia primaziale*, in *Archivum Historiae Pontificiae* 10 (1972) 40-46.

<sup>492</sup> *Damnatio papae tam gravis et inexplicabilis est, ut non humano, sed divino dumtaxat sit tractanda iudicio. PETRUS DAMIANI, Disceptatio synodalis*, 90, rr. 35-36.

<sup>493</sup> Cf. Mario Fois, 89.

<sup>494</sup> PETRUS DAMIANI, *An Erzbischof Heinrich von Ravenna\** Ep. 40, edidit Kurt REINDEL, in *Die Briefe des Petrus Damiani, M.G.H., Epp.*, I, München 1983, 437-438.

to be judged and accused. He always appeals to charity and mercy, primary virtues and attitudes that must animate an authentic ecclesial community, called to be united by the one faith and charity. Pier Damiani speaks of the Church in spiritual terms and develops an ecclesiology of communion. The text of *1 Cor 2\* 15* has an anthropological-charismatic character typical of the Pauline context. For the monk of Fonte Avellana the term *spiritual* designates an ascetical distancing from the worldly joys typical of those who live in the world. Let us not forget that Pier Damiani is a monk, and a reformer of monks<sup>495</sup>.

It was he who criticized the custom that forbade presbyters to accuse their bishops to the archbishop and the primate. So at last someone opposed this invalid prerogative, introduced by the false Simmachians. Rather than accusing and judging, it is necessary to be open to charity and forgiveness, following the example of the Lord who did not want to judge the sinner. Fraternal love is the rule of life for Christians. According to the principle of inexcusability, bishops could abuse their authority and office, since they are sure that never, except in the case of heresy, will they be able to suffer attack and accusation from the sheep entrusted to them<sup>496</sup>.

#### 16.2. THE OATH OF ALEXANDER II

In October 1062, the assembly of Augsburg was supposed to pronounce on the legitimacy of Alexander II, who was considered an intruder and a usurper of the Apostolic See, but in fact it ended in a compromise. According to the desire of some Italian prelates, it was decided to proceed to a more accurate investigation, whose instructors would be favourable to Alexander II. Burcard, bishop of Halberstadt, was then sent to Italy<sup>497</sup>: with the help of Godfrey of Lorraine, the pope was able to return to the city of Rome in the early days of 1063, where he convened a council during which he condemned Cadalus<sup>498</sup>. But the success was not definitive.

From France, Pier Damiani - undoubtedly ill-informed of the results of Burcardo's mission - wrote to Annone, Bishop of Cologne, to beg him to convene a general council as soon as possible to settle the dispute against Cadalo, who in the meantime did not give up his claims<sup>499</sup>.

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<sup>495</sup> Cf. Yves M. J. CONGAR, *Homo spiritualis. Usage juridique et politique (Tun terme et anthropologie chrétienne)*, 3.

<sup>496</sup> *Sed ecce dicitur: Ego sum episcopus, ego sum pastor Ecclesiae, non debeo a commissis ovibus accusationum patere molestiis; etenim in causa fidei dignus sum etiam in pravis moribus aequanimiter ferri. Sed dic mihi quisquis es, nunquid non legisti quod in Evangelio scriptum est: "Si peccaverit in te frater tuus, corripe eum inter te et ipsum solum: si te audierit, lucratus es fratrem tuum; si te non audierit, adhibe tecum duos, vel tres testes; ut in ore duorum, vel trium testium stet omne verbum; si autem eos non audierit, die Ecclesiae?" (Matth. 18). Si Ecclesiae ergo referenda est causa quorum libet fratrum, quomodo non etiam sacerdotum? Porro si sacerdos qui in Ecclesia peccat, deditur in Ecclesia discuti, quis jam ferat Ecclesiae se legibus coerceri?* PETRUS DAMIANI, *Domno suo Alexandro papae*, Ep. 12, in PE, 144, 217.

<sup>497</sup> Cf. 184.

<sup>498</sup> MANSI, 19, 906 ff.

<sup>499</sup> *Necessè est ut vestra prudentia totis nisibus elaboret, quatenus generale concilium quantocius fiat et*

The council was held in Mantua, on Pentecost 1064; Alexander II, the German bishops, some Italian bishops, the abbots and a large number of princes took part. The emperor sent the archbishop of Cologne, Annone. The pope opened the council and made an appeal for peace and concord. Later, Annone questioned Alexander II on the validity and truth of the accusations that had been made against him. It was claimed, in fact, that the pontiff had come to the Apostolic See through *heresim symoniacam* and that he had been a friend of the Normans, enemies of the Roman Empire, thanks to whose support he had maintained the See of Rome. Alexander II, who had had to submit to the council and its decisions, protested against the accusations of simony made against him by his adversaries. Therefore, he invoked at the council the presence of those who accused him in order that they might prove the accusation, saying: "*You know, O beloved sons, if my accusers wished to be or to appear truthful, it would be decent, that they should, like me, be present at this time. However, to them I would not be obliged to answer, except with my own free will, for we all know that it is not right for disciples to accuse and judge the master. Nevertheless, that now the holy Church of God may have no occasion of scandal concerning me, I attest and swear, by this advent of the Holy Spirit which we celebrate, that I have ever stained my conscience with the heresy of simony, but by my opposition, in spite of myself, they have dragged me, and against my will consecrated me and placed me in the Apostolic See, And have done this those who, according to the ancient usage of the Romans, have care and power to choose and consecrate the pontiff. As then to the alliance and friendship of the Normans, which you reproach me with, there is no reason for me to answer for it now, but if the king himself, as my son, will come once to Rome to receive the imperial consecration and coronation, he himself in presence will see what is true in this.*" Hearing these things, all were of opinion that he had answered the charges well, and approved his election, while the clergy sang the *Te Deum laudamus*<sup>500</sup> ^.

Thus, the council of Mantua not only recognized Alexander II as a legitimate pope, but also affirmed his immunity: *iustum non esse discipulos magistrum accusare vel indicare*. This principle, thus formulated, is derived from the *Constitutum Silvestri* and the *Gesta Xysti III*. Nevertheless, the pontiff, while contending that he could not be judged by anyone, in order to eliminate all scandal bent on giving the broadest assurances as to the legitimacy of his election. In Mantua, there was a repetition of what had happened in the time of Pope Leo III during the synodal assembly of 23 December 800, when the pontiff accused, exonerated himself with the oath of purgation, despite the fact that he was not

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*perniciosi huius erroris spinas, in quo miser mundus versatur, evellat.* PETRUS DAMIANI, *Ad Annonem Archiepiscopum Coloniensem*, Ep. 6, in PL, 144, 295.

<sup>500</sup> Cf. OVIDIO CAPITANI, *La figura del vescovo in alcune collezioni canonistiche della seconda metà del secolo XI*, in *Vescovi e diocesi in Italia nel Medioevo (secc. IX-XIII)*, Padova 1964, 165.

obliged to do so.

<sup>23</sup> *Alexander respondit: "Nostis quidem, filii charissimi, si accusatores mei veraces vellent esse vel videri, modo deceret eos, sicut me, adfore in praesenti. Quibus tamen non cogere nisi mea sponte respondere, quia cuncti novimus, iustum non esse, discipulos magistrum accusare vel iudicare. Attamen nunc, ne sancta Dei ecclesia scandalum habeat super me, testor et iuro per hunc, quem colimus, adventum Spiritum sancti, quia conscientiam meam nunquam symoniaca here si conmaculavi, sed me reclamantem et renitentem traxerunt et in sede apostolica invitum statuentes consecraverunt. Et hoc illi fecere, qui secundum antiquum Romanorum usum eligendi et consecrandi pontificis curam et potestatem noscuntur habere. Quod autem mihi obviis Northomannorum societatem et amicitiam, nihil est, quod de hoc modo respondeam, sed si quando filius meus rex ipse venerit Romam ad suscipiendam imperialem benedictionem et coronam, ipse tunc praesens comprobabit, quid ex his verum sit". His auditis, cuncti credentes, eum obiecta bene purgasse, et ipsi eius electionem laudavere, clero canente: Te Deum laudamus. Annales Altabenses maiores, a. 1064, 814, rr. 31-43.*

## 17. CANONISTS IN THE XI CENTURY

The production of canonical collections and their diffusion throughout the eleventh century are an objective testimony to the multiple aspects of the Gregorian reform. In the last quarter of the eleventh century two particular elements influence canonology: a greater awareness of the position of the Apostolic See, i.e. of the pope as the sole legislator and interpreter of canonical tradition - in conjunction with the conception of the pontiff as *episcopus universalis*, - and a broadening of the view of the canonical tradition valid for the whole Church, above individual collections and univocal local interpretations L

The attack against the person of Gregory VII and his government further reinforced the opposite tendency: the long series of canons of *De primatu Romanae ecclesiae* now opens all the great collections of the period and constitutes a precise testimony<sup>501</sup>.

Some Gregorians agree that only the Roman Church was founded directly by God, and receives its privileges from him. Therefore, her position in the Church is, in every respect, *special* and *singular*. It might be said that she is the whole Church, as the head is the whole body, as the mother is the whole family, the teacher is the whole school. For this reason, although the two terms *Ecclesia (universalis) et Ecclesia Romana* are different, nevertheless among the Gregorians they tend to mean the same thing<sup>502</sup>.

The ecclesiology of the Gregorian reform is dominated by the idea of the Roman primacy, deduced from papal power and then elaborated juridically. This induces us to follow its course within the canonical collections of the time, to compare them with those already existing before the middle of the 11th century, in order to grasp the underlying inspirational motive.

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<sup>501</sup> Cf Paul FOURNIER - Gabriel LE BRAS, *Histoires des Collections canoniques en Occident depuis les fausses décrétales jusqu'au Décret de Gratien. De la réforme grégorienne au Décret de Gratien*, II, Paris 1932, 28.36.41.

<sup>502</sup> Cf Yves J. M. CONGAR, *Il posto del papato nella devozione ecclesiale dei riformatori dell'XI secolo*, in *Sentire Ecclesiam*, edited by J. DANIELOU - H. VORGRIMLER, I, Roma 1964, 338.

The pope is the origin and norm of all law: he has supreme judicial power and cannot be judged by anyone. With the men of the Reformation, the three texts that refer to Saint Peter (*Af/ 16, 18-19; Le 22, 32; Jn 21, 15-17*) are interpreted in favor of the Roman See alone: such is the case, in particular, of *Mt 16, 18-19*. Thus the papal primacy is founded, not only as a canonical fact - the result of the provisions by which the Church regulates its own life - but also as a fact of a dogmatic nature: a conception of faith that expresses the divine structure of the Church<sup>503</sup>. In this chapter will be studied, according to the perspective of our work, the major collections that arose in this period of time, following the chronological order of canonical publications.

### 17.1. BURCARD OF WORMS (965-1025)

Burcard of Worms, between 1008 and 1012, together with some collaborators, directed the compilation of the Decree, the publication of which - historically had much echo in the development of canon law. The work is divided into 20 volumes; its focus is clearly not the papal primacy but the episcopal office and ministry.

Burcard makes a strenuous defence of typically episcopal privileges, such as that of the bishop's personal immunity and inexcusability; he can never be subjected to judgement by one of his inferiors, still less by a layman.

The first book of the Decree, which treats of the ecclesiastical hierarchy, is entitled *De primatu ecclesiae'*, here the whole Catholic edifice is built more on the episcopate than on the Apostolic See. Only two canons, at the beginning, refer to St. Peter as the one who first received from the Lord the power to bind and to dissolve; afterwards the pope's right to judge trials which the bishops would not be able to complete is mentioned. The bishop of Rome is given these rights of pre-eminence and privilege, inasmuch as, by the inheritance received from St. Peter, he has been constituted supreme head of the ecclesiastical hierarchy, over which he rules, legislates, and judges.

It is asserted that papal decretals are of greater value than the canons of - councils, which require the approval of the Roman pontiff to be valid. This is the homage, at least theoretically, that Burcardo pays to the papal primacy. The Decree, in fact, insists much more on the privileges and rights of the bishops. The bishop, it is said, has received the mandate to teach, to prophesy and to preach and, as a doctor, prophet and preacher, he can be judged by no one. He is the head of the ecclesiastical government, and holds also the keys of heaven. In Burcard we find again the same theory of episcopal unjustifiability typical of the patristic period, when all bishops, indistinctly, enjoyed this privilege that later, by virtue of the merits of Peter, would be referred only to the bishop of Rome. Burcard makes himself interpreter of this ancient tradition, according to which bishops are judges,

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<sup>503</sup> *Ibid.* 340-345.

apart from the intervention of the pope. On the other hand to him is attributed the power to depose bishops and to rehabilitate those unjustly deposed. The bishop of Worms represents, therefore, both the tendency of the German episcopate and the aspirations of his time and his country of origin<sup>504</sup>.

Burcard argues the thesis that bishops are to be judged solely and only by God; since they belong to God, they cannot be subjected to human judgment. For no one has ever judged the servant of another<sup>505</sup>. To affirm this idea, he refers to the authority of the pseudo-letter of Clement addressed to the apostle James, the Lord's brother, and reported by the pseudo-Isidore<sup>506</sup>. The bishop of Worms, a connoisseur of Germanic law, recognizes the possibility and the right of accused bishops to be absolved and amended by an oath of purgation. In this regard, he gives in full the text, in long form, of the oath of Pope Leo III of 23 December 800<sup>507</sup>. If in Burkard the principle *Prima Sedes a nemine iudicatur* is absent, nevertheless we can trace in the text of the oath of Pope Leo III, such prerogative of the Roman pontiff.

## 17.2. COLLECTIO IN LXXIV TITULOS DIGESTA

The Collection of 74 Titles is one of the most important and widely used in the period from 1076 to 1141<sup>508</sup>. It not only influenced the ecclesiastical reform of that period, but also contributed to the general development of canon law which culminated in the Decree of Gratian (1141). The collection was so widespread that, although it was not authentic, it was called the second official collection of the Holy See, after *Dionysi ana*. The question about the author and the date of composition is central and the debate, still open, has not reached a conclusion. Possible authors are considered to be Umberto di Silva Candida or Pier Damiani, but Gilchrist, who edited the edition, considers it probable that the collection was written by Bernoldo of Constance, dating the date of composition to 1076<sup>509</sup>.

The collection is a juridical manual, whose typically canonical perspective is clearly influenced by Gregorianism. Its purpose is to order and arrange all the legal material then existing. It has been defined as the first canonical manual of the eleventh century reform and is much quoted by Gregory VII and by the great jurists contemporary to him: Anseimo of Lucca, Deusdedit and Bonizone of Sutri<sup>510</sup>.

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<sup>504</sup> Cf. PETRAU-GAY J., *Burchard de Worms*, in *Dictionnaire de Droit Canonique*, edidit R. NAZ, II, Paris 1937, 1140-1157.

<sup>505</sup> BURCHARDUS VORMATIENSIS ECCLESIAE EPISCOPUS, *Decretum liber*, in PL, 140, 588.

<sup>506</sup> Cf. 103 ff.

<sup>507</sup> BURCHARDUS VORMATIENSIS ECCLESIAE EPISCOPUS, 608-609. Also Cf. 90 ff.

<sup>508</sup> Cf. Joannes T. GILCHRIST, *Prolegomena*, in *Diversorum patrum sententiae sive Collectio in DXXIV titulos digesta*, edidit Joannes R. GILCHRIST, *Monumenta Iuris Canonici*, Vatican City 1973, XVII.

<sup>509</sup> *Ibid*, XVIII-XXXI.

<sup>510</sup> Cf. Ovidio CAPITANI, *Episcopal immunities and ecclesiology in the "gregorian" and*

In the 74 chapters the monarchical principle of the structure of the Church emerges with rigor: the Apostolic See is the supreme summit of ecclesial authority. The Roman Church was founded by the Lord Himself in the person of Peter, and is *caput et cardo, mater et fundamentum*, principle and end of all the Churches, she who guarantees the norm, discipline and order<sup>511</sup>.

The author of the collection categorically states the principle *Prima Sedes a nemine iudicatur* and cites a number of canonical and magisterial authorities.

Among them is the *Constitutum Silvestri*. Pope Silvester, during a general synod, affirmed: *No one will judge the first See, which undertakes that justice be ordained. The judge, in fact, can never be judged neither by the emperor, nor by all the clergy, nor by kings, nor by the people*<sup>512</sup>.

But the editor does not make use of forgeries alone, and also invokes Pope Gelasius. The latter had written to the bishops that the whole Church, present throughout the world, knows that the sacred Roman Church has the right to judge every Church, and that no one is allowed to question its judgment; and while from every part of the world one has the right to appeal to it, against it no one can appeal<sup>513</sup>.

The *Libellus apologetica* of Ennodius is also quoted, according to the indication of the pseudo-council that would have been celebrated during the pontificate of Symmachus: *God willed that the causes of other men should be brought to a conclusion by the work of men, but, without any doubt, He reserved to His judgment that of the prelate of this See. He willed that the successors of blessed Peter, only to heaven and to the subtlest inquiry of the divine auditor should present their innocence and an inviolate conscience*<sup>514</sup>.

The 74 Chapters also refer to the authentic letter of Nicholas I, sent to all the bishops: *No one is allowed to object to the judgment of the Apostolic See and retract its judgment, naturally because of the primacy given, by the divine will of Christ, through the blessed apostle Peter*<sup>514</sup>.

Quoting a letter of Pope Anacletus, included in the Pseudo-Isidorian

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"Gregorian" ages. L'avvio alla "restaurazione", Spoleto 1966, 183-208.

<sup>511</sup> Cf. Anton MICHEL, *Die Sentenzen des Kardinals Humbert, das erste Rechtsbuch der päpstlichen Reform*, in *Schriften des Reichsinstituts für ältere deutsche Geschichtskunde*, VII, Stuttgart 1959, 1-12. Michel was convinced that Umberto was the editor of the collection, a conviction shared by few today.

<sup>512</sup> *Silvester papa in generali residens synodo dixit: "Nemo iudicabit primam sedem iustitiam temperari desiderantem. Neque enim ab angusto neque ab omni clero neque a regibus neque a populo iudex iudicabitur. Diversorum patrum sententiae sive Collectio in LXXIV titulos digesta, c. 8, edidit Joannes T. GILCHRIST, 23.*

<sup>513</sup> *Gelasius episcopus omnibus episcopis. Cuncta per mundum novit ecclesia quod sacrosancta Romana ecclesia de omni ecclesia fas habeat iudicandi neque cuiquam de eius liceat iudicare iudicio; siquidem ad illam de qualibet mundi parte appellandum est, ab illa autem nemo est appellare permissus. Ibid, c. 10, 24.*

<sup>514</sup> *Nicolaus papa omnibus episcopis. Nemini est de sedis apostolice iudicio iudicare aut illius sententiam retractare permissam, videlicet propter Romane ecclesie primatum Christi munere in beato Petro apostolo divinitus collatum. Ibid, c. 17, 28.*

decretals<sup>515</sup>, it is also stated that the sheep cannot accuse the shepherds. But if the pastors should deviate from the faith, then they can be corrected by the faithful, one must, however, tolerate bad customs and moral defects<sup>516</sup>.

And he refers, again, to a letter of Pope Fabian, inserted in the Pseudo-Isidorian decretals<sup>517</sup>: Let the sheep not dare to reproach their shepherd except when he deviates from the faith... For only in this case can he be corrected... but he is to be tolerated for his misconduct<sup>518</sup>.

The 74 Chapters do not speak of the heretical pope; they do envisage the possibility of pastors deviating from the true faith, but in any case they can never be judged by their sheep, while the personal immunity of the pope is categorically affirmed. The *auctoritates* cited by the author found the juridical principle *Prima Sedes a nemine iudicatur*, referring to eminent personalities, of unconditional fidelity and unquestioned authority, such as Popes Sylvester, Gelasius, and Nicholas I; all, according to the opinion of the time, protagonists of the Roman ideal and supporters of the primacy of the First See over the whole Church.

### 17.3. ANSELM OF LUCCA (+1086)

Anseimo *iunior*<sup>519</sup> bishop of Lucca, nephew of Anseimo *senior*, that is, of Alexander II, is to be considered among the most faithful collaborators of Gregory VII. Adhering to the pontiff's great desire, he compiled a collection<sup>520</sup> containing the main chapters of the reform, later rigorously applied within the universal discipline.

The collection cannot be earlier than 1081, because it contains an extract of the letter of Gregory VII to Hermann of Metz, dated March 25 of that year; it must therefore necessarily be earlier than March 18, 1086, the date of the death of the bishop of Lucca.

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<sup>515</sup> *Decretales Pseudo-Isidorianae et Capitula Angilrammi*, c. XXXIX, edidit Paulus HINSCHIUS, Lipsiae 1863, 85.

<sup>516</sup> *Anacletus in apostolica sede a Domino constitutus omnibus episcopis... Doctor autem vel pastor ecclesie, si a fide exorbitaverit, erit a fidelibus corrigendus, sed pro reprobis moribus magis est tolerandus, quia doctores ecclesie a Deo iudicandi sunt, sicut ait propheta: "Deus stetit in synagoga deorum, in medio autem deos diiudicat"*. *Diversorum patrum sententiae sive Collectio in LX- XIV titulos digesta*, c. 74, 58.

<sup>517</sup> Paulus HINSCHIUS, c. XXII, 165.

<sup>518</sup> *Fabianus presul omnibus episcopis... Ne pastorem suum oves... nisi in fide erraverit, reprehendere audeant. Si autem a fide devierit, erit corrigendus... Pro aliis vero actibus suis magis est tolerandus ab ovibus. Diversorum patrum sententiae sive Collectio in LXXIV titulos digesta*, c. 78, 60.

<sup>519</sup> Cinzio VIOLANTE, *Anseimo da Baggio santo*, in *Dizionario Biografico degli Italiani*, 3, Rome 1961, 406-407; *Sant' Anseimo, Mantova e la lotta per le investiture*. Atti del Convegno Internazionale di Studi (Mantova 23-24-25 May 1986), edidit Paolo GOLINELLI, Bologna 1987.

<sup>520</sup> ANSELMUS LUCENSIS, *Collectio canonum una cum collectione minore, iussu Institute Savignani*, edidit Fridericus THANER, Öniponte 1906. This edition has so far remained incomplete; only the critical edition of the first 10 books has been made. The other three books are still to be read in *PL*, 149, 485-536. Cf. F. KEMPF, *Anselm II*, in *Lexikon für Theologie und Kirche*, I, Freiburg 1957, 596; Cinzio VIOLANTE, 406-407.

The work is divided into thirteen books and follows a perfect logical order: the 89 chapters of the first book and the 82 of the second deal with the primacy of the Roman Church, whose sovereign authority extends over the whole Church, imposing itself on emperors and kings; all the major causes and appeals of all the Churches are referred to it.

The collection of *Deusdedit*, which we will discuss later, is not derived from that of *Anseimo*; *Puna* and the other are independent and come from vast compilations, the fruit of half a century of research. The collection of *Anseimo* must be considered as the prototype of a whole series of Gregorian-canonical collections, mostly Italian, which will culminate in synthesis in the Decree of Gratian (1141).

There is no doubt that it provided texts and canonical material to ecclesiastical writers in the late eleventh and early twelfth centuries, especially those who took part in the controversies raised by the struggle for investiture<sup>521</sup>. The bishop of Lucca used the rulings and authority of the ancient authors to support the project of reform, and above all to free the Church from secular domination. For this reason he welcomed all those texts that proclaimed the sovereign and pre-eminent function of the pope within *Christianitas*. The chapters of the first book are summarized and grouped under the title (*Liber*) *Qui est de principatu et excellentia Romanae Ecclesiae*', those of the second bear the title (*Liber*) *Qui est de primatu Romanae Ecclesiae et libertate appellationis*', the third (*Liber*) *Qui est de ordine accusandi, testificandi et iudicandi*, the last is entitled (*Liber*) *Qui est de auctoritate privilegium*.

The Church of Rome is the *Prima Sedes* because it received primacy from the Lord Jesus Christ Himself, and was consecrated by the martyrdom of the apostles Peter and Paul. Moreover, this primacy was not conferred on her by the apostles but by the Lord himself, when he said to the blessed apostle Peter: *You are Peter, and upon this rock I will build my Church, and the gates of hell shall not prevail against it. To you I will give the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven (Mt 16:18-19)*<sup>^</sup>. The *Corpus Christianorum* has as its head the pope, 1 *episcopus Primae Sedis*, who is also the *summus sacerdos*, the judge of Christendom: *Christ decreed that this holy apostolic See should be the head of all the Churches, when he himself said to Peter, prince of the apostles: "You are Peter and upon this rock I will build my Church" (Mt 16:18)*<sup>^</sup>.

At the center of this ecclesiological conception is the primacy of the Church of Rome, head of all the Churches. Next to the primacy of the Roman Church, *Prima Sedes*, there is that of the pope, *V Apostolica*, who is the head of the entire Christian community and whom no one can judge, because only God is reserved for judgement<sup>522</sup>. The fundamental idea of the ecclesiology of the bishop of Lucca

<sup>521</sup> Cf. Paul FOURNIER - Gabriel LE BRAS, 25-37. Alphonsus Maria STICKLER, 170-172.

<sup>522</sup> Cf. Edith PASZTOR, *Sacerdotio e Regno nella "Vita Anseimi Episcopi Lucensis"*, in *Archivum Historiae Pontificiae* 2 (1964) 103-106.

is expressed in the identity between the Apostolic Church and the Roman Church<sup>523</sup>. In speaking of the primacy he alludes both to that of the Roman Church and to that of the pope. Anseimo refers the text of *Mt 16,17-19* and *Le 22,32* now to the Roman Church and now to the pope. Primacy derives from Peter's role within the apostolic college and finds its roots in *Mt 16:18*. However, we find in Anseimo the two different traditional ecclesiological visions, which read the text of *Mt 16:18* and *Mt 18:18* (the Gospel passages most quoted during the Gregorian reform) attributing the authority conferred by Christ now to Peter and the whole Church, now to the Roman Church or to the pope<sup>524</sup>.

In this paragraph will be studied with particular attention the principle *Prima Sedes a nemine iudicatur* first of all in the *Collectio canonum*, then in the *Contra Guibertum*<sup>525</sup> of the bishop of Lucca, and finally in the work of the biographer of Anseimo. In the two last mentioned places the references to our theme are few, but not less interesting than in the *Collectio*^ where instead they are numerous.

In the *Collectio canonum* Anseimo reports the magisterial authorities and canons concerning our axiom; we want to transcribe the individual canons, authorities and sources as he reports them.

Book one is entitled *De potestate et principatu apostolicae sedis*. It contains the following canons:

C. 19. The first seat by no one is judged. Pope Sylvester<sup>526</sup>. *No one shall judge the first See which desires to order justice. For neither by the emperor, nor by all the clergy, nor by kings, nor by the people shall the judge be judged*<sup>0</sup>.

D. 21. Let no one presume to correct or judge the judgment of the first see. Pope Nicholas I, letter to Incmarus and all the bishops. *No one is permitted to judge concerning the judgment, or to correct the judgment of the Apostolic See, evidently because of the primacy of the Roman Church, transmitted by the divine will of Christ to blessed Peter*<sup>527</sup>.

E. 24. The pope can be judged by no one, only by God. Synod celebrated during the pontificate of Pope Symmachus. *God willed that the causes of other men should be brought to an end by me^o of men) undoubtedly reserved for his judgment the prelate of this See. He willed that the successors of the blessed apostle Peter should render an account of their innocence to heaven alone) and*

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<sup>523</sup> Cf. ID., *Motivi dell'ecclesiologia di Anseimo di Lucca. In margine a sermone inedito*, in *Pullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano* 77 (1965) 45-104.

<sup>524</sup> *Ibid.*, 58.

<sup>525</sup> Anseimo wrote this work to defend Pope Gregory VII, as the legitimate bishop of Rome, against the antipope Guibert.

<sup>526</sup> *Constitutum Silvestri*, Paulus HINSCHIUS, c. 2-4, 449.

<sup>527</sup> *Ut nemo presum at iudicium primae sedis retractare aut indicare. Nicholaus papa omnibus episcopis. Nemini enim est de sedis apostolicae iudicio iudicare, aut illius sententiam retractare permissum, videlicet propter Romanae ecclesiae primatum Christi munere in beato Petro apostolo divinitus collatum. Ibidem, db. I, c.21, 16.*

that to the examination of him alone, most acute inquirer, they should present their intemperate conduct. Do you not think that those souls that God, in preference to all the others, wanted to reserve for His judgment should not be afraid of the judge... (I repeat) that more by the word of the holy pontiffs, that See was made an object of veneration throughout the world, inasmuch as to it the causes of the faithful in all places are subject, it being designated as the head of the whole body; and of her I believe the Prophet wrote: "If this one is humbled, to whom will you have recourse for help, and where will you leave your greatness?" (F<sup>s</sup> 10:3)^.

F. 47. The See of blessed Peter has the right to judge over every Church, but no one can judge it, for which reason it can dissolve anyone who has been bound. Pope Gelasius. *We certainly do not keep silent about what the Church in the whole world knows, that is, that the See of the blessed Apostle Peter has the right to annul those things which have already been concluded by the judgments of the pontiffs (bishops), since it has the right to judge over every Church and no one can review its judgment, since the canons wanted it to be appealed to from every part of the world, while no one can appeal against it*<sup>528</sup>.

G. 53. The pope is to be judged by God alone. Athenorus Pope<sup>529</sup>. *The deeds done by subjects are judged by us, while ours are judged by the Lord...*<sup>530</sup>.

The second book in the collection, entitled *De libertate appellationis*, carries these canons:

H. 4. The most difficult cases and the most important affairs are referred to the Apostolic See, if an appeal has been made. Anacletus, servant of Christ Jesus, who serves the Lord in the Apostolic See, to all the bishops and to all the other faithful, who are called with you to the faith, grace to you and peace and consolation in abundance<sup>531</sup>. *If difficult questions and judgments of bishops and leaders arise, or there are greater causes, if they are appealed to, they are to be referred to the Apostolic See. For the apostles established this by the command of the Lord: that the greatest and most difficult questions should always be entrusted to the Apostolic See, on which Christ built the whole Church when he said to the blessed prince of the apostles Peter: "You are Peter and on this rock I will build my Church"*<sup>532</sup>.

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<sup>528</sup> *Quod sedes beati Petri fas habet iudicandi de omni ecclesia, et nemo de illa, unde et solvere potest quoscumque ligatos. Gelasius papa. Nec plane tacemus quod cuncta per mundum novit ecclesia, quoniam quorumlibet sententiis ligata pontificum sedes beati Petri apostoli ius habeat resolvere, utpote quae de omni ecclesia fas habeat iudicandi neque cuiquam de eius liceat indicare indicio; siquidem ad illam de qualibet mundi parte canones appellare voluerunt, ab illa autem nemo sit appellare permixsus. Ibidem, Lib. I, c. 47, 25.*

<sup>529</sup> *Pseudo-Atero, Paulus HINSCHIUS, c. 5, 154.*

<sup>530</sup> *Quod papa a solo Deo sit indicandus. Atheros papa. Facta subditorum indicantur a nobis, nostra vero indicantur a Domino.... ANSELMUS LUCENSIS, Collectio canonum, Lib. I, c.53, 27.*

<sup>531</sup> *Pseudo-Anacletus, Paulus HINSCHIUS, c. XVII, 74.*

<sup>532</sup> *Ut difficiliores causae et maiora negocia ad sedem apostolicam, si appellatum fuerit, deferantur. - Anacletus servus Christi Jesu in sede apostolica Domino serviens episcopis omnibus et ceteris cunctis fidelibus,*

l. 5. So also Pope Anacletus affirms<sup>533</sup>. \* *If any very difficult cases should arise among you, you shall entrust them to the head of this holy see as head, that they may be brought to an end by apostolic judgment, since the Lord has willed it so ...*<sup>534</sup>.

j. 16. The Holy Roman Church has the right to judge all, but no one can judge her; moreover, she has the power to absolve those who have been unjustly condemned and to condemn, without a synod, those who deserve it. Pope Gelasius to all the bishops. *The whole Church throughout the world knows that the sacrosanct Roman Church has the right to judge everyone, but no one is allowed to judge her judgment. While it is true that, from all parts of the world one may appeal to it, it is not permitted, however, to appeal against it. Thus, we do not omit those things which the Apostolic See has had the power to cassate - without a previous synod - what an iniquitous synod had condemned; or to condemn, ser a synod, those who deserve it, and this on account of its principatus which [Apostle Peter received, and which it will forever have according to the word of the Lord*.

k. 56. No one is to judge the judgment of the Apostolic See, but it can judge all. Pope Gelasius. *These are the same canons, which wished to refer the appeals of the whole Church to the judgment of this See, but they clearly sanctioned that on no side can one appeal against it because its judgment is unquestionable, and they ordered that it is inappropriate to contest its judgment, rather its decrees must be executed*<sup>\*2</sup>.

l. 67. No one can be judged by those who are inferior in dignity and order. Nicholas, bishop, servant of the servants of God, to his most pious and beloved son Michael, emperor, always protected by God. *Therefore, by the help of divine inspiration, it will neither displease us nor be impossible for us to prove to you, if you will hear us, that no one can be subjected, legitimately, to the judgments and definitions of those who are inferior in dignity and order. In the time of the emperors Diocletian and Maximian, the bishop of the city of Rome, Marcellinus, who was afterwards a distinguished martyr, was compelled by the pagans to enter their temple and sacrifice with incense. For this reason a council assembly consisting of several bishops was assembled, at which, after making an inquiry,*

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*qui coequales vobiscum sunt sortiti fidem, gratia vobis et pax atque consolatio multiplicetur. Si difficiliore ortae fuerint quaestiones aut episcoporum vel maiorum iudicia, aut maiores causae fuerint ad sedem apostolicam, si appellatum fuerit, referantur. Quoniam hoc apostoli statuerunt iussione Salvatoris, ut maiores et difficiliore quaestiones semper ad sedem apostolicam deferantur, super quam Christus universam construxit ecclesiam dicente ipso ad beatum principem apostolorum Petrum: "Tu es, inquit, P. et s. b. p. ae. ec. m.". ANSELMUS LUCENSIS, Collectio canonum, Lib. II, c. 4, 76-77.*

<sup>533</sup> Pseudo-Anacletus, Paulus HINSCHIUS, c. XXXIV, 84.

<sup>534</sup> *De eadem re. Anacletus papa. Si quae causae difficiliore inter vos ortae fuerint, ad huius sanctae sedis apicem eas quasi ad caput referte, ut apostolico terminentur iudicio, quia sic Dominum velle ab eoque ita constitutum esse ante dictis testimoniis declaratur.* ANSELMUS LUCENSIS, Collectio canonum, Lib. II, c. 5, 77.

the pontiff himself declared that he had done what he had been accused of. However, none of the bishops dared to pronounce sentence against him; on the contrary, they repeatedly said to him, "With your own mouth judge your cause, but not with our judgment." And again they said, "You will never hear a judgment from us; therefore entrust your cause to your conscience. And they replied, "For by thyself shalt thou judge thyself, and with thy mouth shalt thou condemn thyself," and repeated, "The first seat shall be judged by none."

And again: The same thing had happened in the time of Pope Sixtus, who had been accused with evil rumors. At the council, at which the emperor Valentinian had spoken, it was said, "It is not lawful to pass sentence against the pontiff." The emperor himself left it to the liberty of the said pontiff to make his own judgment.

The holy Fathers at Chalcedon protested against such great arrogance, when, among other things, they condemned, without any reinstatement, the very powerful bishop of Alexandria, Dioscorus, above all, because among other things he had the

*bet mundi parte appellandum est, ab illa autem nemo est appellare permixsus. Sed nec illa preteri- mus, quod apostolica sedes sine ulla synodo precedente et solvendi, quod synodus iniqua dampnaverat, et dampnandi nulla existente synodo, quos oportuit, habuerit facultatem, et hoc nimirum pro suo principatu, quem beatus Petrus apostolus Domini voce et tenuit semper et retinebit. Ibid, Lib. II, c. 16, 82-83.*

<sup>M.</sup> *Quod de iudicio sedis apostolicae nullus debeat iudicare, ipsa vero de omnibus. Gelasius papa. Ipsi sunt canones, qui appellationes totius ecclesiae ad huius sedis examen volvere deferri, ab ipsa vero nusquam prorsus appellari debere sanxerunt. Ac per hoc illam de tota ecclesia iudicare, ipsam ad nullius commere iudicium, nec de eius unquam preceperunt iudicio iudicari, sententiamque illius constituerunt non oportere dissolvi, cuius potius sequenda decreta mandarunt. Ibid, Lib. ii, c. 56, 101-102.*

great impertinence to excommunicate the most holy and most blessed Leo, archbishop of great Rome. Dioscorus was condemned not for heterodoxy, but because, being inferior to the bishop of Rome, he dared to excommunicate him<sup>535</sup>

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<sup>535</sup> *nemo potest ab his qui inferioris sunt dignitatis vel ordinis iudicari. Nicolaus episcopus servus servorum Dei piissimo et dilectissimo filio Michaeli a Deo protecto semper Augusto. Nunc autem divina inspiratione non nos pigebit nec nobis impossibile erit ostendere vobis, si tamen audire velitis, non posse quemquam rite ab his qui inferioris dignitatis vel ordinis sunt iudicialibus submitti diffinitionibus. Siquidem tempore Diocletiani et Maximiani Augustorum Marcellinus epj- scopus urbis Romae, qui postea insignis martyr effectus est, adeo compulsus est a paganis, ut templum eorum ingressus grana thuris super prunas poneret. Cuius rei gratia collecto numerosorum concilio episcoporum et inquisitione facta hoc idem pontifex se egisse confessus est. Nullus tamen eorum proferre <in eum> sententiam ausus est, dum ei saepissime omnes perhiberent: "Tuo ore iudica causam tuam, non nostro iudicio". Et item: "Noli", aiunt, <audiri> "in nostro iudicio, sed collige in sinu tuo causam tuam". Et rursus: "Quoniam ex te", inquiunt, "iustificaberis aut ex ore tuo condemnaberis"; et iterum dicunt: "Prima sedes non indicabitur a quoquam". Item in eadem. Sed cum quidam tempore quodam contra Sycetum papam temptassent quaedam non boni rumoris obicere et in concilio, cui Valentinianus Augustus intererat, dictum fuisset: Non licere adversus pontificem sententiam dare, surrexit idem protinus imperator et in arbitrio prefati pontificis tribuit iudicare iudicium suum. Etenim nullus pontificum minorum vel inferiorum urbiuim subactus iudiciis invenitur. Item in eadem. In tantum autem hanc presumptionem sancti patres apud*

Book Three: *Qui continet de ordine accusandi testificandi et indicando* contains a few canons on the subject of papal injustice.

C. 43. Let those in the lower rank not accuse superiors: the bishop cannot be condemned except in the presence of 72 witnesses, the presbyter in the presence of 64, the deacon 26, the subdeacon and others in the presence of 7. Pope Sylvester<sup>536</sup> said at a general synod: *In no way shall a presbyter presume to present an accusation against the bishop, a deacon against the presbyter, a subdeacon against the deacon, an acolyte against the subdeacon, an exhorter against the acolyte, a reader against the exhorter, an ostiary against the reader. Let the prelate therefore be condemned to the presentation of 72 witnesses, so let the cardinal presbyter be condemned to the presentation of 64 witnesses, the cardinal deacon of the city of Rome to the presentation of 26 witnesses, the subdeacon, acolyte, exorcist, reader, and ostiary to the presentation of 7 witnesses. But the witnesses and accusers must be without any infamy*<sup>^</sup>.

D. 44. Sheep cannot criticize the shepherd, except when he has erred in the faith, and bishops who have been stripped of their property must not present themselves to the knot, if they have not first recovered their goods. John, Bishop of the City of Rome to Archbishop Zechariah<sup>537</sup>.

Book four is devoted to privileges: *Qui est de auctoritate privilegium*, Only one canon interests our subject:

E. 40. The first see cannot be judged by anyone. Pope Sylvester during the synod of 277 bishops<sup>538</sup>. *No one shall judge the first see because all sees desire justice to be regulated by the first; the judge cannot be judged either by the emperor, or by all the clergy, or by kings, or by the people. All the bishops with the forty-five presbyters and seven deacons signed themselves together with the emperor Constantine and his mother Helen*<sup>539</sup>.

Anseimo da Lucca collected in his collection many texts concerning the principle of papal unjusticiability. The ecclesial tradition already *authoritatively*

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*Chalcedonam detestati sunt, ut Dioscorum Alexandrinum antistitem inter cetera idcirco potissimum sine ulla restitutione dampnaverint, quia... presumpsit enim et excommunicationem dictare adversus sanctissimum et beatissimum archiepiscopum magnae Romae Leonem... Propter fidem non est dampnatus Dioscorus, sed quia excommunicationem fecit domino archiepiscopo Leoni. Ibidem, Lib. II, c. 67 106-107.*

<sup>536</sup> Pseudo-Sylvester, Paulus HINSCHIUS, c. 2-4, 449.

<sup>537</sup> *Quod oves pastorem reprehendere non possunt, nisi in fide erraverit, et quod expoliati non debeant ad synodum vocari, nisi prius eis bona sua fuerint restituta, Johannes urbis Romanae episcopus Zachariae archiepiscopo salutem. Ibidem, Lib. III, c. 44, 136.*

<sup>538</sup> Pseudo-Sylvester, Paulus HINSCHIUS, c. 2-4, 449.

<sup>539</sup> *Quod prima sedes a nullo indicanda est. Silvester papa in council CCLXXVII episcoporum. Nemo indicabit primam sedem, quoniam omnes sedes a prima sede iustitia desiderant temperari, neque ab Augusto neque ab omni clero neque a regibus neque a populo iudex iudicabitur. Et subscripserunt omnes episcopi et XLV presbyteri et diaconi VII, et Constantinus Augustus et mater eius Helena. ANSELMUS LUCENSIS, Collectio canonum, Lib. IV, c.40, 218.*

founded the juridical content of the principle. The authorities quoted here recall great names and eminent personalities: Pope Sylvester, who was related to the Emperor Constantine, Pope Gelasius and Nicholas I. We find reported here, all the apocrypha which expressed the well-known axiom *Prima Sedes a nemine iudicatur*, which seems to be founded almost exclusively on these *auctoritates*.

The Simmachian apocrypha came to Anseimo through the great personality and authority of Pope Nicholas I, who made them more credible. In this way, they far exceeded the purpose for which they arose; their influence in history extended enormously, from the Laurentian schism to the Gregorian reform.

The scriptural argumentation, which underlies our principle, is based on the text of *Mt 16:18-19*, read from the Petrine perspective. This provides the - theological-dogmatic support for the idea of papal immunity.

*dare accusationem. Presbi autem non dampnetur nisi in LXXII testibus, presbyter autem cardinalis nisi in LXIII testibus non dampnabitur, diaconus cardinalis urbis Romae nisi in XXVI testibus non condempnabitur, subdiaconus acolytus exorcista lector ostiarius nisi in VII testibus non condempnabitur. Testes autem accusatores sine aliqua sint infamia". ANSELMUS LICENSIS, Collectio canonum, Lib. III, c.43, 136.*

A similar case is found in the *Vita di Anseimo di Lucca*, written by an intimate acquaintance of his whose name we do not know; (we do know, however, that it was Anseimo who ordained him a presbyter and made him a participant in his affairs and work). We find in this Life the news of the assembly held on January 24, 1076 at Worms, during which Pope Gregory VII was accused of having violated the peace of the Church and of having lit a great fire throughout Italy, France and Germany. He was accused of not having been willing to recognize, as bishops and as presbyters, those who had been caught in simony, and finally of having arrogated to himself unheard-of power at the expense of the episcopate, claiming to judge all affairs proper to the jurisdiction of the local ordinary.

Every bishop present at Worms had to sign immediately to refuse submission and obedience to Gregory VII, and to no longer recognize him as pope<sup>540</sup>. This sentence was bitterly contested by the anonymous biographer of Anseimo of Lucca. In his opinion the assembly of Worms had forgotten what the Lord had said to Peter alone three times: "*Yes, monk, do you love me? Shepherd my sheep (Jn 21, 15)*". Only Peter was entrusted with the Lord's flock: *He (Henry IV) not only dares to judge that which the Lord has reserved exclusively for his own judgment, but also implicitly wants to draw it to his forum and condemn it. For this reason the whole holy synod (the Lenten synod of February 1076) rightly issued and confirmed to him (to Henry IV) anathema*<sup>541</sup>.

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<sup>540</sup> Historically this reading of the facts is not very reliable because there were some bishops who shunned the assembly subscription. Cf. Werner GOEZ, *Gestalten des Hochmittelalters*, Darmstadt 1983, 170.

<sup>541</sup> *Igitur, quem sui solius iudicio Dominus reservavit, hic (Henricus IV) non solum indicare verum etiam suum dicere et, quantum in ipso est, audet dampnare. Quam ob causam omnis illa sancta synodus tunc*

Certainly today, such an argumentation to defend principles or privileges would be absurd: to cite Sacred Scripture, in this perspective, would greatly shock today's sensibilities. No exegete today would dare to deduce from the words of the Lord, reported in *John 21:15*, the injustice, not only of Peter, but also of any pope in history. The biographer of Anseimus was well acquainted with the bishop's thoughts concerning the events of the Worms assembly. Anseimus, in fact, had protested against the manner of action both of the assembly, and especially, of Henry IV.

In the work *Contra Guibertum* Anseimo di Lucca had protested against the deposition of the pope, stating that the assembly had acted as if the legitimacy of the pontiff deposited deposited deputies deposited by their will and not by God's will: *The Roman pontiff, as the wise will know, not only cannot be deposed, but neither can he be judged by anyone according to Christian law*<sup>42</sup>.

#### 17.4. DEUSDEDIT (+1097ca.)

Little is known about Deusdedit's life, beyond the probable date of his death, 1097. A supporter of Gregory VII and the Gregorian reform, he wrote two well-known works: the apologetic book for the reform entitled *Libellus contra invasores et simoniacos* and the *Collectio canonum*. The latter, the object of particular attention for our study, was composed between 1083 and 1087, and is slightly later than that of Anseimo di Lucca, dated 1083.

Deusdedit dedicates the *Collectio canonum* to Pope Victor III (1086-1087) but does not set out to bring together, as Anseimus had done, all the elements of ecclesiastical legislation, since he intends to highlight only the privileged situation of the Roman Church and the reasons why the primacy of jurisdiction belongs to it<sup>42</sup>.

Most of the Collection was compiled during the pontificate of Gregory VII<sup>43</sup>. As we did with Anseimo of Lucca, we will list here the canons concerning our subject. The first book of the *Collectio canonum* deals with the privileges and authority of the Roman Church. As these are largely apocrypha already fairly well known, we deem it superfluous to indicate their spurious character. The first book of the collection presents the following canons:

Chap. LXXXIX. Pope Sylvester during the council of 277 bishops. *The supreme prelate by no one is judged because, as it has been written, the disciple*

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*indignata anathema illi conclamat atque confirmat. Vita Anseimi Episcopi Lucensis, edidit Rogerus WILMANS, in M.G.H., SS., XII, Hannoverae 1856, 18, rr. 10-12.*

<sup>42</sup> *Itaque ego auctoritatis ipsius privilegium, quo omni Christiano orbi preminet, ignorantibus patefacere cupiens, domino mihi opem ferente ex variis sanctorum patrum et Christianorum principum auctoritatibus potionibus quibusque in unum congestis, presens defloravi opusculum quadrifaria disperitum partione. Die Kanonensammlung des Kardinals DEUSDEDIT, edidit W. v. GLANVELL, I, Paderborn 1905, 2.*

<sup>43</sup> Cf. Alphonsus Maria STICKLER, 172-173; Paul FOURNIER - Gabriel LE BRAS, II, 37-44.

is not above the master<sup>544</sup>.

Chap. XC. Julius to the venerable brother bishops of the East. *To the first See have been granted, by a singular privilege, the rights of summoning general synods and of deciding in the causes of bishops; and this by apostolic, evangelical, and legal principles; for many authorities have commanded that the causae maiores should always be referred to the Apostolic See, and that the greater, in no way, can be judged by the lesser. It (the Roman Church) as the major See, has been placed above the Churches; it has received the singular pre-eminence not only from the canonical decrees of the holy Fathers, but also directly from the word of the Lord, our Saviour, when He said, "Thou art Peter...." The holy, universal, and apostolic Church holds that no councils should be held without the consent of the Roman Pontiff, nor should any bishop be condemned inasmuch as the holy Fathers willed that the Church should have primacy over all the Churches*<sup>545</sup>.

Chap. CXXXIII. At the council of the 218 bishops, celebrated by Pope Symmachus, Enodius dictated, *God willed that the causes of men should be brought to a conclusion by the mezz%p of men, but he doubtless reserved for his judgment the prelate of this see. He willed that the successors of the blessed apostle Peter should give an account of their innocence to heaven alone, and that to the examination of him alone, the keenest inquirer, they should present their upright conduct. And further on. I will repeat: by the mouth of the holy pontiffs, that seat has become an object of veneration throughout the world, and every one of the faithful is subject to it, inasmuch as it is designated as the head of the whole body. And of her, I believe, the prophet wrote: "If this one is humbled, to whom shall you resort for help; and where then does your greatness remain?" (Isa. 10:3)\*.*

Chap. CLIII. Nicholas bishop to the most pious emperor Michael. *Therefore, by the aid of divine inspiration, it will not displease us nor be impossible for us to prove to you, if you will hear us, that no one can be legitimately subjected to the judgments and definitions of those who are in an inferior state of dignity and order. In the time of the emperors Diocletian and Maximian, the bishop of the city of*

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<sup>544</sup> *Silvester papa in concilio CCLXXVII episcoporum. Neque presul summus a quoquam indicitur. Quoniam, sicut scriptum est, non est discipulus super magistrum. Die Kanonensammlung des Kardinals DEUSDEBIT, Lib. I, Chap. LXXXIX, 74.*

<sup>545</sup> *Julius venerabilibus fratribus Orientalibus episcopis. Primae sedis vocandarum generalium sinodorum iura et iudicia episcoporum singulari privilegio apostolicis, evangelicis atque canonicis concessa sunt institutis, quoniam se moniam semper maiores causae ad sedem apostolicam multis auctoritatibus referri precepte sunt nec ullo modo potest maior a minori indicari. Ipsa namque omnibus maior et pre-lata est ecclesiis, quae non solummodo canonum sanctorum patrum decretis set domini nostri salvatoris voce singularem optinuit principatum: "Tu es", inquit, "Petrus" et reliqua. Et post pauca. Sancta et universalis apostolica tenet ecclesia, non oportere preter sententiam Romani pontificis concilia celebrari nec episcopum damnari, quoniam sanctam Romanam ecclesiam primatum omnium ecclesiarum sancti patres esse voluerunt. Ibidem, Lib. I, Chap. XC, 75.*

Rome, Marcellinus, who was afterwards a distinguished martyr, was compelled by the pagans to enter their temple and sacrifice incense. For this reason, a council assembly, consisting of several bishops, was assembled, and after making an inquiry, the pontiff himself confessed to having done what he was accused of. - However, none of the bishops dared to utter a sentence against him, while several times they said to him, "With your own mouth judge your cause, not with our judgment."<sup>546</sup> .

Chap. CCXXV. De Civitate Dei, Against the Heretic Julian. *I believe that that part of the world in which the Lord wished to crown the first of his apostles with a most glorious martyrdom might suffice for you. If you had listened to the head of this Church, Pope Innocent, you would already have sought to free your youth from the snares of the Pelagians. For what else could that saintly man answer to the African councils if not that which the Roman Church from antiquity has constantly professed together with all the other Churches? Yet you accuse his successor of the crime of prevarication (Pope Zosimus), which no one is allowed to do*<sup>53</sup> .

This chapter is fundamental because it testifies to the existence of the Augustinian text, albeit altered, even outside the *Registrum* of Gregory VII. Let us clarify: this text was found, in the form of a card, within the *Registrum* of Gregory VII, and precisely between the two pages that contained the *Dictatus papae*<sup>547</sup> . From the indication it is clear that the passage quoted belongs to Saint Augustine. It, as well as expressing a certain orientation of the Gregorian reform on the pre-eminence of Rome over the whole Church, also presents an interpolation, or rather, an addition to Augustine's original text, that coincides with the dictate of our axiom: *Prima Sedes a nemine iudicatur*.

Book IV of Deusdedit's collection speaks of the freedom of the Church and also contains a text that reaffirms our principle:

Chap. xLI. Pope Sylvester during the council of 277 bishops. *Let no one judge the first see, for all the others desire justice to be ordained by it. Neither by the emperor, nor by all the clergy, nor by the people, shall the judge be judged. And they subscribed all the bishops, the 45 presbyters, the 7 deacons together with the emperor and his mother Helen*<sup>548</sup> .

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<sup>546</sup> *Nicolaus episcopus servus servorum Dei piissimo et dilectissimo filio Michaeli a Deo protecto semper Augusto. Nunc autem divina inspiratione non nos pigebit nec nobis impossibile erit ostendere vobis, si tamen audire velitis, non posse quemquam rite ab his qui inferioris dignitatis vel ordinis sunt, iudicialibus sum mitti diffinitionibus. Siquidem tempore Dicoletiani et Maximiani Augustorum Marcellinus urbis Romae, qui postea insignis martyr effectus est, adeo compulsus est a paganis, ut templum eorum ingressus grana thuris super prunas poneret. Cuius rei gratia collecto numerosorum concilio episcoporum et inquisitione facta hoc idem pontifex se egisse confessus est. Nullus tamen eorum proferre - in eum - sententiam ausus est, dum ei omnes se- pissime perhiberent: "Tuo ore iudica causam tuam, non nostro iudicio". Ibidem, Lib. I, Chap. CLIU, 101.*

<sup>547</sup> *Das Register Gregors VII, edidit Erich CASPAR, I, Berlin 1929, 208.*

<sup>548</sup> *Silvester papa in council CLXXVII episcoporum. Nemo iudicabit primam sedem, quoniam omnes sedes a prima sede iustitia desiderant temperari. Neque ab augusto neque ab omni clero neque a populo index-*

Concerning our axiom, Deusdedit, besides the interpolated passage of Augustine, has reported no new text with respect to the collection of Anseimo of Lucca.

The principle *Prima Sedes a nemine iudicatur* is becoming more and more institutionalized and consolidated within the ecclesiastical conscience, thus becoming not only a juridical formulation, but above all a dommatic one, thanks to the various quotations and theological arguments.

In his book on the privileges of the Roman Church, Deusdedit disagrees with the decree of Nicholas II on papal election (1059), which states: *Without prejudice to the due honour and reverence due to our beloved son Henry, who is now called king and who it is hoped will be, with F God's help, the future emperor, as we have granted to him, and to his successors, who will personally request this privilege from this Apostolic See*<sup>49</sup>. According to this decree, or rather, according to that *honos regi debitus*, the election of the pontiff is to be communicated to the king, and only after the royal answer can the papal consecration be made.

Deusdedit is of opinion that such a course of action might induce the king to choose for the exercise of Peter's office inept and incapable persons. Moreover, it might be thought that the pope and his power do not derive directly from God, but from the king. He would like to exclude all secular interference in the life of the Church, stating categorically that *wise people know that the pope absolutely cannot be deposed, and likewise that no one can judge him according to Christian law*<sup>49</sup>.

In this, Cardinal Deusdedit agrees with the view of Anseimo of Lucca, expressed in *Contra Guibertum*.

#### 17.5. BONIZONE OF SUTRI (+1089ca.)

We already know Bonizone's report on the synod of Sutri (1046). He figures among the Italians as one of the most ardent supporters of the reform of Gregory VII. He struggled all his life to carry forward the reform process, not only with action but also with his writings.

His best known work is the *Liber ad amicum* (composed between 1085 and 1086), in which he sets out to prove the thesis of whether it is permissible for Christians to resort to force of arms to defend the truth against error<sup>50</sup>. Bonizone has his own conception of the word *apocrypha*, meaning by it a text *nullo auctore roboratus*-. therefore every text whose author is not identified is apocryphal.

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*indicabitur. Et subscripserunt omnes episcopi et XLV presbiteri et diaconi VII et augustus Constantinus et mater Helena. Die Kanonensammlung des Kardinals DEUSDEDIT, Lib. IV, Ch. XLI, 418.*

<sup>49</sup> *Romanus enim pontifex, ut sapientes norunt, non modo deponi non potest, sed etiam Christiano jure a quolibet non potest judicari. DEUSDEDIT CARDINALIS, Fragmenta libri de privilegiis et auctoritate Ecclesiae Romanae, in PL, 150, 1569.*

<sup>50</sup> Edith PÄSZTOR, *Lotta per le investiture e "ius belli". La posizione di Anseimo di Lucca, in Sant'Anseimo, Mantova e la lotta per le investiture. Atti del Convegno Internazionale di Studi (Mantova 23-24-25 Maggio 1986), edito Paolo GOLINELLI, Bologna 1987, 375-421.*

Here we are interested, however, in another work of Bonizone, the *Liber de vita christiana*<sup>551</sup>. It is divided into ten books, where he speaks of the Roman Church and its privileges, demonstrating with a certain method, the fundamental motives of the reform. The *Liber de vita christiana* is not later than 1095, but is certainly placed after the advent of Urban II (1088)<sup>551</sup>.

This work is also concerned with ecclesiastical discipline and in this sphere the principle of papal unjustifiability is mentioned with the dictate of the *Constitutum Silvestri: The supreme prelate is judged by no one. Pope Sylvester. ...The supreme prelate by none is judged since it has been written: the disciple is not above the master*<sup>552</sup>.

Bonizone also refers to the apocryphal letter of Clement to James, brother of the Lord, in the version of Pseudo-Isidore, according to which: *Bishops can be judged only by God. Clement, a bishop, said that they alone by God, and by no one else, can be judged and removed, since they belong to him and not to others. And who is he that judges the servant of another? For if men do not endure such things, neither does the God of gods and the Lord of lords endure these things from another*<sup>552</sup>.

*Bishops cannot be reproved except when they have erred in the faith, Clement the bishop. So if the bishops themselves err, they cannot be reproved or accused by them, but endured, unless they have erred in the faith. The bishops are above them, not they above the bishops, since the greater can neither be accused nor judged by the lesser*<sup>553</sup>.

In this work Bonizone does not go on to speak of the pope's unjustifiability, for he had already found himself in the ideas of the synodalists.

Canonistics offers us the possibility of studying not only the evolution and reception of the principle *Prima Sedes a nemine iudicatur* in the course of time, but also the theological deepening and the underlying doctrinal structure with which the juridical statement was enriched. The canonists of the eleventh century not only collected the then existing canonistic material, but also enriched it with theological arguments. This canonistic-theological literature inherent in the axiom studied attests to how important the principle of unjustifiability must have been for the ecclesiastical structure of the time, and how carefully it was received.

The Simmachian apocrypha themselves were universally recognized as reliable and binding, to such an extent that the *Gesta papae Marcellini* may have been taken at Sutri as a juridical model to be followed in the synodical procedure.

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<sup>551</sup> Cf. Alphonsus Maria STICKLER, 174. Paul FOURNIER Gabriel LE BRAS, 139-146.

<sup>552</sup> *Ut episcopi a solo Domino sint diiudicandi. Clemens episcopus. Episcopos autem a solo Domino iudicandos aut removendos, et non ab aliis esse dicebat: quia sui sunt, non alterius. Et quis est qui alterius iudicat servum? Nam si ista non patiuntur homines, nec Deus deorum, et Dominus dominantium haec ullatenus pati tur. Ibid, III, c. 32, 82.*

<sup>553</sup> *Episcopos non reprehendendos, nisi a fide erraverint. Clemens episcopus. Ipsi autem episcopi si exorbitaverint non sunt reprehendendi vel redarguendi, sed portandi, nisi in fide erraverint. Hii ergo super hos sunt, non illi super istos, quoniam maior a minore nec argui nec iudicari potest. Ibid, III, c. 34, 82.*

The authority of Nicholas I had assured them an even greater reception than the earlier canonical collections containing them could have provided.

Nicholas I is one of the most frequently cited pontiffs in eleventh-century ecclesiastical history and literature: his ideas and the policies of his pontificate became the guiding principles of ecclesiastical life. The reformers wished to continue in the line begun gloriously by Nicholas I. His letter of 865 is much quoted in the canonology of this period, so that all the Simmachian apocrypha and the principle *Prima Sedes a nemine iudicatur*' reported here, were able to benefit from the prestige of the pope, which ensured their future and success<sup>554</sup>.

With 11th century canonology our axiom passes from the juridical sphere to the theological one, enriching itself with such a motivation of faith that by now it will be difficult to make a clear distinction. The pope is intimately and ontologically linked to Peter, head of the apostolic college, to whom was entrusted the mandate to shepherd the one flock of the Lord. Peter is the foundation of the Church and remains present in his successors. To attack and threaten the person of the pope is to shake the whole ecclesial edifice, built on Peter. By virtue of the primacy of Peter, the principle *Prima Sedes a nemine iudicatur* transcends the laws of the Church and of canon law. Hence the affirmation that the judge, the head of the ecclesial body, cannot be judged, if not and only by God. In human coexistence, the pope occupies the same place as the king, in the sense that he is above priests, as the king above judges. There is no one above the pope but God. He is the supreme judge, chief of judges and superior even to justice, since he himself rules it according to his own discretion.

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<sup>554</sup> Cf. François DVORNIK, 386-409; Horst FUHRMANN, *From the Early Middle Ages to the Gregorian Reform*, in *Concilium* 4 (1971) 78-79.

18. GREGORY VII (1073-1085) AND THE *DICTATUS PAPAE*

After the death of Alexander II (1073), Archdeacon Ildebrando, who had long served the Roman Church, was elected by popular acclaim. Having chosen the name Gregory VII, he manifested a very strong character, capable of achieving his goals. In this way, he revealed himself to be the most courageous and energetic of the reformers.

The chief object of his whole life was to restore the *right order*, that is, to consolidate as perfectly as possible the *Pledge of God on earth*, under the able guidance of the successor of Peter and vicar of Christ, to which the powers of the century were to submit in all that concerned the salvation of the Christian world.

Gregory speaks with great emphasis of the Roman Church. She is the mother of all the faithful, of all the Churches, and even goes so far as to call her his mother. Writing to the Catholicos of Armenia he says that the *Roman Church, through blessed Peter, almost by a special privilege, has been considered by the holy fathers, from the very beginnings of the faith, as the mother of all the Churches and will be considered as such until the end*<sup>555</sup>. Clearly, he did not attempt to prove this with the writings of the Fathers because it was his conviction. The special position of the Church of Rome, according to his view, is based on the person of the apostles Peter and Paul, but especially on Peter. Peter means firm rock that destroys the gates of hell and, with adamant rigor, destroys and dissipates whatever obstacle opposes it... To Peter the Lord *first* gave the power to bind and loose; with his prayers he absolves the faithful of all their sins and leads them to eternal life<sup>556</sup>. Here his conception of the primacy is based: *Jesus Christ made Peter head of the apostles, giving him the keys of the kingdom and the power to bind and loose, both in heaven and on earth. On him he also built his Church, with the order to shepherd its sheep. Since then such dignity and power has passed, through Peter, to all who occupy his see, or will occupy it to the end of the*

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<sup>555</sup> (*Sancta Romana aeclesia*) ... quae per beatum Petrum quasi quodam privilegio ab ipsis fidei primordiis a sanctis patribus omnium mater aeclesiarum astituit et ita usque in finem semper habebitur. *Das Register Gregors VII*, edidit Erich CASPAR, in *M.G.H., Epp. selectae*, II, Berlin 1923, VIII, 1, 513, rr.7-10.

<sup>556</sup> *Petrus enim a firma petra dicitur, quae portas inferi confringit atque adamantino rigore destruit et dissipat quicquid obsistit... Omnipotens Deus, qui beato Petro potestatem ligandi atque solvendi principaliter tribuit, eius precibus te tuosque in Christo fideles a cunctis peccatis absolvat et ad vitam perducat aeternam.* *Ibid*, I, 11.70, 230, rr. 17-19, 26-28.

world. This is a divine privilege and a hereditary right<sup>557</sup>. And even if there should be persons in the Apostolic See who are inept and incapable and morally unworthy, such as he considers himself to be, they likewise rule, by divine disposition, with the power of Peter<sup>558</sup>. Moreover, since Christ has promised Peter divine assistance, it is the same Holy Spirit who dictates and inspires all the acts of the pope<sup>559</sup>. Gregory VII manifests this conception of his office of *Vicarius Petri* especially in the most serious moments of the crisis with Henry IV<sup>560</sup>. The pope writes to Siegfried of Mainz stating: *Know well that neither you nor any patriarch or primate has the power to reform apostolic sentences*<sup>561</sup>.

Anyone wishing to speak of Gregory VII's project of reform and renewal cannot fail to take into account what he himself had said: Let us *have recourse to the decrees and doctrine of the holy Fathers, let us introduce nothing new, nothing invented by us*<sup>562</sup>. The pope returns to this many times, and with regard to the observance of the chastity of clerics, he writes to the bishop of Cologne, Annone, reiterating that the rules and precepts concerning the observance of chastity and celibacy of clerics he did not make, but derive from the sanctions and canons of the ancient fathers<sup>563</sup>. The Pontiff carefully and repeatedly stresses that he is inspired by tradition and wants to renew the Church starting from the holy fathers. He says he wants to renew the statutes of the Church in the light of tradition, although he is able to legislate something new, should needs and necessities make it necessary and opportune<sup>564</sup>.

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<sup>557</sup> *Dominus enim Iesus Christus beatus P. constituit principem apostolorum dans ei claves regni coelorum et potestatem ligandi et solvendi in coelo et in terra; super quem etiam ecclesiam suam edificavit commendans ei oves suas pascendas. Ex quo tempore principatus ille et potestas per beatus P. successit omnibus suam cathedram suscientibus vel usque in finem mundi suscepturis divino privilegio et iure hereditario.* Ibid, II, IX, 35, 622, rr. 34-38; 623, rr. 1-3.

<sup>558</sup> *In cuius sede et apostolica administratione dum nos, qualescunque peccatores et indigni divina dispositione vicem suae potestatis gerimus.* Ibid, I, 111,10, 265, rr. 4-6.

<sup>559</sup> *Iudicio enim sancti Spiritus decrevimus et precepimus. Ibidem, II, VI, 1, 389, r. 27. Perpendite, quid sanctus Spiritus per nos licet indignos dignatus est in sancta synodo hoc in anno Rome in quadragesima celebrata statuere.* Ibid, II, VI, 14, 418, rr. 22-24.

<sup>560</sup> Cf. Michele MACCARRONE, *Ea teologia dei primato romano dei secolo XI*, in *Ee Istituzioni ecclesiastiche della "Societas Christiana" dei secoli XI-XII. Papato, Cardinalato ed Episcopato*, (Miscellanea dei Centro di Studi Medioevali, VII), Milan 1974, 93.

<sup>561</sup> *Apostolica iudicia, non dico tibi, sed nec ulli patriarcharum aut primatum retractandi licentiam fore existimes.* Das Register Gregors VII, edidit Erich CASPAR, I, 1,60, 88, rr. 22-24.

<sup>562</sup> *...Ad sanctorum patrum decreta doctrinamque recurrimus nichil novi, nichil adinventione nostra statuentes, sed primam et unicum ecclesiasticae disciplinae regulam et tritam sanctorum viam relicto errore repetendam et sectandam esse censuimus.* Ibid, I, III, 10, 266, rr. 4-8.

<sup>563</sup> *Hinc etiam, karissime frater, de oboedientia tui securior fiducialius adhortor et moneo atque communis domini (beati) Petri auctoritate precipio, ut ad casitatem clericorum predicandam atque inculcandam iuxta patrum decreta et auctoritatem canonum cum suffraganeis tuis omnibus studiosius accingaris... Novit enim fraternitas tua, quia precepta haec non de nostro sensu exculpimus, sed antiquorum patrum patrum sanctiones Spiritu sancto predictante prolatis officii nostri necessitate in medium propalamus.* Ibid, I, II, 67, 223, rr. 24-34.

<sup>564</sup> *Non nostra decreta, quamquam licenter, si opus esset, possemus, vobis proponimus, sed a sanctis patribus statuta renovamus.* Ibid, I, II, 68, 226, rr. 4-6.

It would be very interesting and useful to investigate from which sources Gregory VII drew this tradition: in this way we could establish a criterion on which to compare his thought and action with the conceptions then in force. The only certainty we have is that the pope used the Pseudo-Isidorian decretals as they were collected by the author of the Collection of 74 Chapters. Without excluding the influence of other sources, these therefore remain for us the main point of reference<sup>n</sup>.

Gregory himself arranged the canonical material relating to the Roman primacy into groups, most of which he drew from Pseudo-Isidore, and formulated a short sentence for each group, similar to the titles of the canonical compilations. Thus arose the famous *Dictatus papae*. He had set about writing the *Dictatus* before the publication of the collections of Anseimo of Lucca, of Deusdedit, and of Bonizone of Sutri. Believing, like the latter, that the Pseudo-Isidore was authentic, he structured its contents, but also included some of his own beliefs, which certainly were not those of the Pseudo-Isidore<sup>565</sup>. In the *Dictatus papae*, the prerogatives of the Roman Church and the papacy are summarized in 27 statements, together with the main rights connected with the primacy. The *Dictatus* reduces the Roman idea, which is the ecclesiological heart of the whole reform of the eleventh century, into juridical rules. These are its propositions:

- I. The Roman Church was founded by God alone.
- II. Only the Roman Pontiff alone is rightly called universal.
- III. He alone can depose or restore bishops.
- IV. One of his messengers, though inferior in rank, in council is above all the bishops, and can pronounce sentence of deposition against them.
- V. The pope may depose the absentees.
- VI. We are not to have fellowship or remain in the same house with those who have been excommunicated by him.
- VII. To him alone it is lawful to promulgate new laws in relation to the needs of the time, to gather new congregations, to make an abbey a parsonage and vice versa, to divide a rich episcopate and unite poor ones.
- VIII. He alone can use the imperial insignia.
- IX. All princes must only kiss the feet of the pope<sup>566</sup>.

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<sup>565</sup> Cf. Horst FUHRMANN, "*Quod catholicus non habeatur, qui non concordat Romanae Ecclesiae*". *Randnotizen zum Dictatus papae*, in *Festschrift für Helmut BEUMANN zum Geburtstag*, edidit Kurt-Ulrich JÄSCHKE-REINHARD WENSKUS, Sigmaringen 1977, 263-287.

<sup>566</sup> I. *Quod Romana ecclesia a solo Domino sit fundata.*  
 II. *Quod solus Romanus pontifex iure dicatur universalis.*  
 III. *Quod ille solus possit deponere episcopos vel reconciliare.*  
 IV. *Quod legatus eius omnibus episcopis presit in concilio etiam inferioris gradus et adversus eos sententiam depositionis possit dare.*

- X. His name must be recited in church.
- XI. His title is unique in the world.
- XII. It is lawful for him to depose the emperor.
- XIII. It is licit to him according to necessity to move bishops from see to see.
- XIV. He has the power to ordain a cleric from any church, for the place he wants.
- XV. He who is ordained by him may be head of another church, but not subject, and from no bishop may he obtain a higher rank.
- XVI. No synod can be called general unless commanded by him.
- XVII. No article or book may be called canonical without his permission.
- XVIII. No one must revoke his decision, and he alone can do so with regard to that of all the others<sup>567</sup>.
- XIX. No one can judge him.
- XX. No one dares to condemn those who appeal to the Holy See.
- XXI. The causes of greater importance, of any church, must be referred to his judgment.
- XXII. The Roman Church has not erred and will never err, and this - according to the testimony of the sacred Scriptures.
- XXIII. The Roman Pontiff, if ordained after canonical election, is undoubtedly sanctified by the merits of blessed Peter; this is testified to us by St. Enodius, bishop of Pavia, with the consent of many holy Fathers, as is written in the decrees of blessed Simmachus pope.

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V. *Quod absentes papa possit deponere.*  
 VI. *Quod cum excommunicatis ab illo inter caetera nec in eadem domo debemus manere.*  
 VII. *Quod illi soli licet pro temporis necessitate novas leges condere, novas plebes congregare, de canonica abbatiam facere et e contra, divitem episcopatum dividere et inopes unire.*  
 VIII. *Quod solus possit uti imperialibus insigniis.*  
 VIII. *Quod solius papae pedes omnes principes deosculentur. Das Register Gregors VII, sent. I-IX, II, 55a, I, 202-204.*  
<sup>567</sup> X. *Quod illius solius nomen in ecclesiis recitetur.*  
 XI. *Quod hoc unicum est nomen in mundo.*  
 XII. *Quod illi liceat imperatores deponere.*  
 XIII. *Quod illi liceat de sede ad sedem necessitate cogente episcopos transmutare.*  
 XIII. *Quod de omni ecclesia quocunque voluerit clericum valeat ordinare.*  
 XV. *Quod ab illo ordinatus alii ecclesiae preesse potest, sed non militare; et quod ab aliquo episcopo non debet superiorem gradum accipere.*  
 XVI. *Quod nulla synodus absque precepto eius debet generalis vocari.*  
 XVII. *Quod nullum capitulum nullusque liber canonicus habeatur absque illius auctoritate.*  
 XVIII. *Quod sententia illius a nullo debeat retractari et ipse omnium solus retractare possit. Ibid, sent. IX-XVII, II, 55a, I, 204-206.*

XXIV. Subordinates are allowed to make accusations at his behest and permission.

XXV. He can depose and restore bishops even without a synodical meeting.

XXVI. Anyone who disagrees with the Roman Church should not be considered Catholic.

XXVII. The pontiff can release subjects from allegiance to the iniquitous<sup>568</sup>.

The *Dictatus pape*, a summary of the pope's prerogatives, did not aim at a concrete objective connected with the reform or with union negotiations, but simply summarized the primatial rights that Gregory VII thought he could find in the tradition<sup>569</sup>.

Its use depended on the concrete situation, that is, on the matter that had to be examined case by case, to see whether, and to what extent, the interests of the kingdom of God required intervention. The pontiff would make use of the rights listed in the *Dictatus papae* only when it was indispensable or required by the concrete circumstances.

Gregory did not aim at a constitutional transformation in favor of the Roman primacy; if anything his contribution should be seen in the Petrine mysticism, that is in union and devotion to him. Deeply convinced that no man could be saved unless he united himself in obedience to the representative of Peter, he made use of the rights collected in the *Dictatus papae* only when he thought it necessary. The monarchical system in the government of the Roman Church had become a reality; it only remained to establish it more exactly, to guarantee and consolidate it<sup>570</sup>. Fuhrmann, starting from the dictation of the 26<sup>a</sup> proposition of the *Dictatus papae*: *He is not a Catholic who does not agree with the Roman Church*<sup>571</sup>,

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<sup>568</sup> XNYNYI *Quod a nemine ipse iudicari debeat.*

XX. *Quod nullus audeat condemnare apostolicam sedem apellantem.*

XXI. *Quod maiores causae cuiuscunque ecclesiae ad eam referri debeant.*

XXII. *Quod Romana ecclesia nunquam erravit nec imperpetuum scriptura testante errabit.*

XXIII. *Quod Romanus pontifex, si canonice fuerit ordinatus, meritis beati Petri indubitanter efficitur sanctus testante sancto Ennodio Papiensi episcopo ei multis sanctis patribus faventibus, sicut in decretis beati Symachi pape continetur.*

XXIII. *Quod illius precepto et licentia subiectis liceat accusare.*

XXV. *Quod absque synodali conventu possit episcopos deponere et reconciliare.*

XXVI. *Quod catholicus non habeatur, qui non concordat Romanae ecclesiae.*

XXVII. *Quod a fidelitate iniquorum subiectos potest absolvere. Ibid. sent. XV/III- XXVII, II, 55a, I, 206-208.*

<sup>569</sup> Cf. Friedrich KEMPF, *Ea riforma gregoriana (1046-1124)*, in *II Primo Medioevo VIII-XII secolo*, (Storia della Chiesa, IV), edito Hubert JEDIN, Milan 1975, 482.

<sup>570</sup> *Ibid.* 484-486.

<sup>571</sup> *Quod catholicus non habeatur, qui non concordat Romanae Ecclesiae. Dictatus papae*, in *Das Register Gregors VII*, edito Erich CASPAR, sent. 26, II, 55a, I, 207.

showed that it is an expression of the pope's thinking, since there are several divergent judgments in the earlier canons, and what is more, in sharp contrast to the ecclesiastical law in force up to that time. In fact, the sources of ecclesiastical law contemporary with Gregory VII do not offer arguments and evidence for the rulings of the *Dictatus*. It is clear that it often agrees with the canonical collections of the Reformation, especially with those of Deusdedit, Anseimo di Lucca and Boni- zone, in comparison with which the judgments of *Dictatus* do not appear entirely isolated, even if sometimes clear differences can be seen.

The assertions of the *Dictatus* present differences not only with the collections mentioned, but also with each other; although they all begin with *Quod*, the degree and manner in which the assertions are pronounced differ. Some are presented as findings, others as possibilities. It might be said that Hildebrando-Gregory wished to compose a small systematic compendium of the privileges of the Roman Church, a synthesis of a collection of canons carried over from tradition and new ones, which Gregory perhaps intended to publish at one of the customary Roman synods celebrated during Lent.

It is therefore an almost canonical collection, in which the ideas of Pope Gregory VII come to light in an extremely incisive form. The *Dictatus* is a personal and intimate testimony of the pope's thought, which probably was not destined to a wide diffusion<sup>572</sup>.

Another scholar of our time, Marongiu, starting from the seventh sentence of the *Dictatus papae*: *The pope can, in case of need, take, even by himself, legislative measures, create new parish churches, transform a parsonage into an abbey, divide a too rich bishopric or reunite other poor ones*<sup>573</sup>, affirms that the sentences of the *Dictatus* were used only to cope with a particularly serious situation. A pope, he argues, in case of need, may feel the necessity of taking or adopting urgent and necessary measures without subjecting them to the ordinary procedures and consultations, which may waste a great deal of time; in particular, the pontiff himself may consider it expedient to give orders and dispositions without the need of wasting months, which are necessary to convene the council and the cardinals. The *Dictatus* is clandestine and is adespota, without date, without signature, nor authentication by anyone. It bears the ambiguous and strange title of *Dictatus - papae*, but it is not known whether it refers to a pope rather than to another and whether that *papae* is genitive or dative, whether it means that it was written by a pope, or only that it belonged to him or that it was written for his use, or for popes

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<sup>572</sup> Cf. Horst FUHRMANN, "*Quod catholicus non habeatur, qui non concordat Romanae Ecclesiae*". *Randnoti^en^um Dictatus papae*, in *Festschrift für Helmut BEUMANN^um 65. Ge- burtstag*, edidit Kurt-Ulrich JASCHKE - Reinhard WENSKUS, Sigmaringen 1977, 263-287. ID., "*Il vero imperatore è il papa*": *il potere temporale nel medioevo*, in *Rullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano* 92 (1985/1986) 370.

<sup>573</sup> *Q^od illi soli licet pro temporis necessitate novas leges condere, novas plebes congregare, de canonica abbatiam facere et e contra, divitem episcopatum dividere et inopes unire. Dictatus papae, sent. 7, II, 55a, I, 203.*

in general, as a reminder, a guide. This speech of the author, however, refers only to the dictate of the seventh sentence<sup>574</sup>.

Finally, Mordek argues that the individual propositions of the *Dictatus do* not represent spontaneous inventions of Gregory VII, but, as a whole, are oriented - both in content and form of the text - on the presumed canonical tradition and therefore, for their composition, one or more models must be taken for granted. Was it the pontiff himself, or some of his canonist collaborators, who drafted - on the basis of tradition - decisive compendia to support the idea of primacy? Or was it, instead, a sort of *collection of sources* - presumably in the form of index cards - that served as the material basis from which Gregory then compiled sentences of easy application of the *Dictatus*, validated by a long and authoritative tradition, and aimed at providing, in the various cases, a secure legal basis for his actions and decisions?<sup>575</sup>

For Gregory VII the Roman primacy is essentially the primacy of the Roman pontiff. In fact, none of the twenty-seven propositions in the *Dictatus* has as its subject the episcopate or the bishop as head of the local Church. If many explicitly mention bishops, but almost all the others concern them, it is always in the perspective of their obediencial qualification with respect to the Roman Church and the pope. In antiquity we had more collegiality: here, Congar affirms, the pope is the universal bishop, who has greater power over all Christians than the local bishop. He is the pastor of the bishops themselves. To hear the Gregorian, the scholar maintains, there would be, strictly speaking, only one power, that of the pope. The whole Church would be like an immense diocese, virtually, at least, universal, in which - not being able to be present everywhere nor to suffice for everything - the pope would establish vicars, called *in partem sollicitudinis* without having the fullness of it. The regime thus established has a name. It is no longer the simple primacy: it is the papacy<sup>576</sup>.

In the ecclesiastical order everything derives from the pope, from whom the power of the whole Church proceeds. He is finally the only legislator, the source and norm of all law, the universal and supreme judge who cannot be judged by anyone. He has over the whole Church a jurisdiction (*potestas*) of an episcopal type, but superior to that of the local bishop<sup>577</sup>.

The Roman Church and her bishop now acquire a pre-eminent position over the whole Church. Their role and office place them in a unique and specific condition. Very often the term returns *only* to indicate the exclusive prerogative of

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<sup>574</sup> Cf. Antonio MARONGIU, *Ipotesi sul Dicitatus Pape. Alle favolose origini di un potere legislativo unico pontificio*, in *Critica Storica* 24 (1987) 525-534.

<sup>575</sup> Cf. Hubert MORDEK, *Dictatus papae et Proprie auctoritates apostolice sedis. Intorno all'idea del primato pontificio di Gregorio VII*, in *Rivista di Storia della Chiesa in Italia* 28 (1974) 3. It is clear that this thesis is not easily reconcilable with that of Horst Fuhrmann.

<sup>576</sup> Cf. Yves M. J. CONGAR, *Il posto del papato nella devozione ecclesiale dei riformatori del XI secolo*, in *Sentire Ecclesiam*, edited J. DANIELOU - H. VORGRIMLER, I, Roma 1964, 351.

<sup>577</sup> Cf. ID., *L'église de Saint Augustin à l'époque moderne*, Paris 1970, 105.

the Roman Pontiff. One sees in the Western Church a concentration and centralization of authority in the person of the bishop of Rome. One thing that must be stressed is the change of emphasis: it is no longer said that the First See cannot be judged, but that the pope (*ipse*) cannot be judged. Now the unjustifiability is polarized on the pope and refers exclusively to him. What was affirmed in the past is now said in accentuated and clear-cut fashion. This is not meant to affirm that in the past the principle was understood differently, that is in ecclesiological perspective. Absolutely. Already from the Symmachian apocrypha the axiom was applied to the person of the pope and constituted a singular and personal privilege of the bishop of Rome, successor and heir to the privileges of the apostle Peter.

Finally, we would like to reiterate the significance for our theme of the presence of the card - containing the interpolated text of Augustine's *Contra Julianum* - within the two pages that contained the *Dictatus papae*, whose identical content is also found in the collection of Deusdedit<sup>578</sup>. We wonder who could have interpolated, and thus falsified Augustine's text, since it already appears in Gregory VII.

The passage of Augustine interpolated, highlights the sole authority of the Roman Apostolic See not only in the field of the doctrine of the faith, but also in the jurisdictional one, since it is affirmed that the pope cannot be judged by anyone. It is said that recourse to the *Antistites orientales* is not necessary since the faith, the Roman faith, is common and unique. St. Augustine had affirmed that in doctrinal questions, to judge who was in communion with the Church or in schism, the authority and the testimony of the Apostolic Sees was decisive, that is the Churches founded by the apostles and where the apostles had left an explicit reminder of themselves in word and presence. In this, however, Rome has an eminent role. Now it is said that Rome is the only Apostolic See<sup>579</sup>.

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<sup>578</sup> We transcribe, here, the interpolated text and the original of Augustine's work: *In libro De civitate Dei, Contra Julianum hereticum. Puto tibi eam partem orbis sufficere debere, in qua primum Apostolorum suorum voluit Dominus gloriosissimo martyrio coronare, cui ecclesiae presidentem beatum Innocentium, si audire voluisses, iam tunc periculosam inventum tuam Pelagianis laqueis excuisses. Quid enim, potuit ille vir sanctus Africanis respondere conciliis, nisi quod antiquitus apostolica sedes et Romana cum caeteris tenet perseveranter ecclesia? Et tamen successorem eius, quod nemini licet, crime prevaricationis accusas. Die Kanonensammlung des Kardinals DEUSDEDIT, Lib. I, Cap. CCXXV, edidit W. v. GLANVELL, I, Paderborn 1905, 173.*

*"Puto tibi eam partem orbis sufficere debere, in qua primum Apostolorum suorum voluit Dominus gloriosissimo martyrio coronare. Cui ecclesiae presidentem beatum Innocentium, si audire voluisses, iam tunc periculosam inventum tuam Pelagianis laqueis excuisses. Quid enim, potuit ille vir sanctus Africanis respondere conciliis, nisi quod antiquitus Apostolica Sedes et Romana cum ceteris tenet perseveranter Ecclesia? Et tamen eius successorem (Zosimum) crimine praeviationis accusas ...".* ST. AUGUSTINE, *Contra Julianum*, edidit Nello CIPRIANI, (Nuova Biblioteca Agostiniana, edidit Agostino TRAPÉ, XVIII), Rome 1985, Lib. 91, c. 13, 450-452.

<sup>579</sup> Cf. Michele MACCARRONE, *Fundamentum Apostolicarum Sedium. Persistente e sviluppi deir ecclesologia di Pelagius 1 nell'occidente latino tra i secoli XI e XII*, in *La Chiesa greca in Italia dal? Vili to the sixteenth century*, II, Padua 1972, 612-613.

## 18.1. GREGORY VII AND HIS LETTERS

The thought that Gregory VII expressed in some of his letters constitutes the synthesis of the doctrine underlying the principle of superiority, of the particular position and inexcusability of the Roman pontiff.

At the synod of February 1076 Henry IV was dismissed and excommunicated during a solemn prayer to the Apostle, and his subjects dispensed from their oath of allegiance. Gregory's letter to Ermarino of Metz of August 25, 1076, reveals the reasons which induced the pope to justify his position and the measure against Henry IV. This letter was an answer to the objections raised by some bishops fearful of the king, who had refused to submit to the pope. They said that the excommunication of the king was not appropriate because, being of divine origin, neither could he be touched, nor was he subject to pontifical anathemas, reserved instead for mere mortals.

To justify the deposition and excommunication inflicted on the king, Gregory then wrote the letter to the bishop of Metz in which he put forward one historical and another dogmatic-theological argument in support and justification of his decision.

The pope recalls the precedents set by his predecessors, many of whom, under similar circumstances had legislated or acted as he did. Pope Zechariah, for example, had deposed the king of the Franks and released his subjects from the oath of allegiance. So, St. Gregory the Great, who had not only excommunicated kings and dukes who opposed his orders, but determined that they should be deprived of their dignity. Finally, St. Ambrose who had excommunicated the Emperor Theodosius ordering him not to remain in church in place of the priests<sup>580</sup>. But these historical facts, held in strict consideration, had not exactly unfolded in this way, and could not really constitute precedents with respect to the measures taken by Gregory VII against Henry. We do not enter into this field, as it is beyond our scope.

The historical facts are followed by the dogmatic argument, which is based on the universality of the power of the Roman Church. *Perhaps those gentlemen want to imply that when God entrusted His Church to blessed Peter by saying three times "Shepherd my sheep" He wanted to exclude kings? Why do they not accept, and rather blushing acknowledge, that God - who has especially remitted to Saint Peter the power to bind and loose in heaven and on earth - has made an exception for someone? He who affirms that the Church cannot bind him must also declare that he cannot be loosed from it; in this condition he separates himself*

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<sup>580</sup> *Considerent, cur Zacharias papa regem Francorum deposuerit et omnes Francigenas a vinculo iuramenti, quod sibi fecerant, absolverit. In registro beati Gregorii addiscant, quia in privilegiis, quae quibusdam ecclesi fecit, reges et duces contra sua dicta venientes non solum excommunicavit sed etiam, ut dignitate careant, indicavit. Nec pretermittant, quod beatus Ambrosius non solum regem, sed etiam revera imperatorem Theodosium moribus et potestate non tantum excommunicavit, sed etiam, ne presumeret in loco sacerdotum in ecclesia manere interdixit. Das Register Gregors VII, edidit, E. CASPAR, IV, 2, I, 294, rr. 13-23.*

*totally from Christ*<sup>581</sup>. Peter's power to bind and to loose is referred to all: to kings as well as to mere mortals, so is the power of the Church. Therefore, if no one is excluded from the Church, it also has the power to cover all fields: Since *the holy Apostolic See, by virtue of the power conferred on it by God, judges and decides on spiritual things, why should it not also judge on secular things? The kings and princes of this world, putting their glory and their temporal interests before the justice of God, forget to honor Him, seeking only their own good. From your charity do not ignore whose members they are, and with whom they are united. Those who, with all their will, put God first and obey his laws rather than those of men, are members of Christ, while those of whom we have spoken above are members of the antichrist. If, therefore, spiritual men, when necessary, are judged, why should not secular men, a fortiori, be reprimanded for their evil actions?*<sup>582</sup>

Gregory VII repeated several times the principle of the superiority of spiritual power over temporal power, of the Apostolic See over kings and princes. The Apostolic See has the privilege-power to judge every person, by virtue of the prerogative that derives directly from Peter: its unjustifiability necessarily follows.

The principle of unjustifiability finds its full place in Gregory VII; founded theologically and dogmatically, its application and binding authority is also historically proven.

The pontiff, in order to pursue his project of reform in supporting and reaffirming the rights and privileges of the Holy See, reconciled theology and history (as he conceived it), doctrine and practice. It is difficult to define the scope of extension of the principle according to which the Apostolic See could judge both spiritual and temporal things; that is, whether Gregory VII limited his juridical competence only to the strictly ecclesial-spiritual sphere, or in fact went further, to the point of touching the entire political sphere. Even if his ecclesiastical and spiritual authority goes as far as *ratione peccati* to take disciplinary and spiritual measures in the sphere of Christian life, it has, in fact, consequences that have repercussions on the whole of life, both ecclesial and political.

Often, in his letters, the pope affirms the principle: *If the See of blessed Peter resolves and judges heavenly and spiritual things how much more must it resolve*

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<sup>581</sup> *Sed forte volunt predicti viri subintelligere, quod, quando Deus ecclesiam suam ter beato Petro commisit dicens: "Pasce oves meas", reges exceperit. Cur non adtendunt vel potius erubescendo confitentur, quia, ubi Deus beato Petro principaliter dedit potestatem ligandi et solvendi in coelo et in terra, nullum exceperit, nichil ab eius potestate subtraxit. Nam qui se negat non posse ecclesiae vinculo alligari, restat, ut neget se non posse ab eius potestate absolvi, et qui hoc impudenter negat, se a Christo omnino sequestrat. Ibid, 294, rr. 24-25; 295, rr. 1-8.*

<sup>582</sup> *Quodsi sancta sedes apostolica divinitus sibi collata principali potestate spiritualia decernens diiudicat, cur non et secularia? Reges quidem et principes huius seculi, qui honorem suum et lucra temporalia iustitiae Dei preponunt eiusque honorem neglegendo proprium quaerunt, cuius sint membra cuive adhaereant, vestra non ignorat caritas. Nam sicut illi, qui omni suae voluntati Deum preponunt eiusque precepto plus quam hominibus oboediunt, membra sunt Christi, ita et illi, de quibus supra diximus, membra sunt antichristi. Si ergo spirituales viri, cum oportet, iudicantur, cur non seculares amplius de suis pravis actibus constringuntur? Ibid. 295, rr. 8-19.*

and judge earthly and secular things<sup>^</sup>. The scriptural reference of *1 Cor 6:3* is much invoked, in general, to ground the superiority of spiritual power over temporal power.

In the second sentence of excommunication and deposition, issued against Henry IV on March 7, 1080, Gregory turns to the apostles Peter and Paul, and concludes: "*Do therefore, I pray you, O fathers and most holy princes, that all the world understand and know that, if in heaven you can bind and loose, on earth you can take away and grant to anyone - according to their merits - empires, kingdoms, principalities, duchies, marques, counties and all possessions. For you have often taken from impious and unworthy men the offices of patriarch, primate, archbishop, and bishop, and have given them to pious men. If therefore you can render justice in spiritual matters, what would not make one believe that you can in earthly ones! And if you judge the angels, who rule over all proud princes, what cannot you do of their servants! Let the kings and all secular princes now learn how great you are, what you can, and fear to esteem a decision of your Church little. Execute soon your sentence in regard to the said Henry, so that all may know that, not by accident, but by your power, he will fall with shame*<sup>^</sup>. In this text the pope obviously attributes to the two princes of the apostles not only divine prerogatives, but also implicitly expresses the conviction that he is, as pope, their heir and fully partaker of their privileges and powers. It is not for us to deal here with the historical significance of the aspects of the double deposition of Henry IV pronounced by Gregory VII; it is sufficient to point to the well-considered study of the whole matter by Kempf<sup>583</sup>. We wish to know only the fundamental ideas of Gregory VII in relation to our theme: since the pope is the supreme judge, he certainly cannot be judged by anyone!

Finally, we want to mention the second letter that Gregory VII sent to Hermann of Metz in March 1081. This one, which with respect to the first, is presented as a treatise on papal privileges, is longer and more theologically and politically dense. The pontiff, starting from the Petrine text of *Mt 16, 18-19*, stresses the divine origin of apostolic authority and papal power that, by virtue of the Petrine mandate: *Shepherd my sheep (Jn 21, 17)*, must also be extended to kings, as sheep of the one flock that the Lord has entrusted to Peter. All this, it is said, was accepted and preserved by the holy fathers in the councils, who called the Roman Church the universal mother.

*They, as they accepted her teachings concerning the confirmation of the - faith, so also accepted her judicial judgments, and almost with one mind and one voice agreed that the most important matters, the most weighty affairs and decisions concerning all the Churches were to be referred to her, as to a mother and a guide, that nowhere was it necessary to appeal against her, and that her judgments were not to be, nor could they be, refused or rejected by any one. Hence*

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<sup>583</sup> Cf. Friedrich KEMPF, *Ea deposition of Frederick II in the light of canonistic doctrine*, in *Archivio della Società Romana di Storia Patria* 90 (1967) 1-16. The same study, with a few variants, is found in German under the title: *Die absetz<sup>^</sup>ung Friedrichs II. im Eichte der*

*the blessed Gelasius, strong in divine authority, writing to the Emperor Anastasius gave him these teachings on the manner of understanding the power of the holy Apostolic See: "If it is right that the faithful should be subject to all priests who rightly interpret the word of God, how much more right is it by far to give assent to the authority of that bishop whom the supreme God willed to raise above all priests, and to whom afterwards the general veneration of the Church has rightly rendered the highest honors? From your wisdom you understand, evidently, that no one - endowed only with human intellect - will ever be able to compare himself with the privilege of him whom the words of Christ have placed above all, whom the Church has always venerated by devoutly recognizing him as its head"<sup>580</sup> ... The authority which she possesses to open and close the gates of the kingdom of heaven to whomsoever she will derives from an extraordinary privilege. And would not the Church, with the power she has received to open and close heaven, have the authority to judge the things of earth? Let it never be said! Have you not reflected on what the apostle Paul said, "Do not*

*Kanonistik, in Probleme um Friedrich II., edidit J. FLECKENSTEIN, (Vorträge und Forschungen, 16), Sigmaringen 1974, 345-360.*

<sup>33</sup> *Et sicut eius documenta in confirmatione fidei et eruditione sacrae religionis, ita etiam iudicia susceperunt, in hoc consentientes et quasi uno spiritu et una voce concordantes omnes maiores res et precipua negotia necnon omnium aecclesiarum i iudicia ad eam quasi ad matrem et caput debere referri, ab ea nusquam appellari, iudicia eius a nemine retractari aut refelli debere vel posse. Unde beatus Gelasius papa Anastasius imperatori scribens divina fultus auctoritate, quid et qualiter de principatu sanctae et apostolicae sedis sentire deberet, hoc modo eum instruxit: Etsi, inquit, cunctis generaliter sacerdotibus recte divina tractantibus fidelium convenit colla summitti, quanto potius sedis illius presuli consensus est adhibendus, quem cunctis sacerdotibus et divinitas summa voluit preminere et subsequens ecclesiae generalis iugiter pietas celebravit. Ubi prudentia tua evidenter advertit, numquam quolibet penitus humano consilio aequare se quinquam posse illius privilegio vel confessioni, quem Christi vox pretulit universis, quem aecclesia veneranda confessa semper est et habet devota primatem. Das Register Gregors VII, edidit, E. CASPAR, II, 549, rr. 6-24.*

*do you know that we will judge angels? How much more the things of this life!" ( I Cor 6:5)^... The Emperor Constantine the Great, ruler of almost all the kings and princes of the world, at the holy council of Nicaea - as the blessed Gregory recalls in his letter to the Emperor Maurice - sitting in the last seat, refused to judge the bishops, but attributed to all of them the appellation of men of God, believing that it should be he who submitted to their judgment, and not vice versa<sup>584</sup> ... Who, then, could be so superficial and saccharine as to doubt the superiority of priests over kings? And if, then, kings can be judged by priests for their sins, who can judge them better than the Roman pontiff? ^*

Gregory VII extended, therefore, the principle *Prima Sedes a nemine iudi-*

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<sup>584</sup> *Haec, sicut beatus Gregorius in epistole ad Mauricium imperatorem directa commemorat, Constantinus Magnus imperator, omnium regum et principum fere totius orbis dominus, evidenter intelligens in sancta Nycena synodo post omnes episcopos ultimus residens nullam iudicii sententiam supra eos dare presumpsit, sed illos etiam deos vocans non suo debere subesse iudicio, verum se ad illorum pendere arbitrium indicavit. Ibid, 553, rr. 7-14. Here the authentic letter of Pope Gregory the Great is cited, which is found in his *Registrum, Lib. K ep. 36 (M.G.H., Epp. 1, 318).**

*catum* not only to ecclesial life, but also to political life. In the name of the universal power of the apostle Peter and of Roman supremacy, he placed himself not within the Church, but above it. He thus intends to exercise a permanent control over the government of kings and princes, and to impose on them the practice of the precepts of the Gospel; and if the princes do not wish to comply, they will be subject to excommunication *ratione peccati*.

In this way the theory of priestly government merges with the Gregorian thesis of Roman primacy, expressed by the axiom *Prima Sedes a nemine iudicatur*. It must not be forgotten that the verse of *1 Cor 2:75* acquired in Gregory VII a juridical value inseparable from an extremely firm supernatural conscience. It must be noted, however, that Gregory never quotes this Pauline verse literally; nor can it be said that he identified himself directly with the spiritual man, or that he founded on this verse a hierocratic claim. He rather inaugurated a new way of using the expression *spirituales homines*, which is consistent with the general sense of his thought and his directives. In fact, the expression that usually designates monks to distinguish them from laymen and secular priests is used by Gregory VII to indicate men of the Church, clerics and monks, and to distinguish them from seculars<sup>585</sup>.

## 18.2. THE PRINCIPLE *PRIMA SEDES A NEMINE IUDICATUR* IN THE BOOKS *DE LITE*

The struggle between Gregory VII and Henry IV was not limited to reciprocal anathemas, but also extended to the literary sphere, with an intense and rich pamphletic literature. This activity is evidenced by many works of the period: polemical writings, treatises on controversy, letters. The literary works, according to the orientation of their authors, are divided into *Gregorian and anti-Gregorian*,

Bernard of St. Blaise, a disciple of Bernard of Constance, became a priest at St. Blaise in 1084, where he remained as a monk from 1086-1091, then went to Schaffhausen where he died in 1100. He was a historian and polemicist. In addition to a chronicle - which may be considered the earliest version of historical events in the papal sense - he wrote polemical and apologetic pamphlets, with which he promoted the publication of the decrees of reform. All his apologetics is aimed at affirming the principles of the Gregorian work. The man of letters most hostile to Henry IV was precisely a Saxon, who was also attracted by canonical science, the early treatises of which bear witness to this.

During his younger years he went to Rome, where he took part in the Lenten synod of 1079, where he had the opportunity of meeting Gregory VII. The chronicle of the years after 1075 is the most original and important of his polemical works. This chronicle, despite its accentuated partiality, assumes great value for the pontificate of Gregory VII, because, besides being contemporary with the facts,

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<sup>585</sup> Cf. Yves CONGAR, *Homo Spiritualis. Usage juridique et politique dun terme d'anthropologie chrétienne*, in *Aus Kirche und Reich. Studien ^u Theologie, Politik und Recht im Mittelalter, Festschrift für Friedrich KEMPF*, editit Hubert MORDEK, Sigmaringen 1983, 4.

it was written by a fairly correct person<sup>586</sup>. He had an excellent intellectual formation, and being inserted in Roman circles he was able to obtain a lot of information and knowledge. His work deserves to be taken into consideration<sup>587</sup>.

Bernard of St Blaise protested against the validity of the sentence that had been passed against Gregory VII at the assembly of Worms in 1076. Denouncing its illegality in a letter, sent with the presbyter Adalbert to Master Bernard, he expressed his thoughts there with some resentment.

All the privileges of the holy Apostolic See are enumerated, among which is the principle *Prima Sedes a nemine indicatur*. The argument by which the privilege is claimed is founded almost entirely on the Simmachian forgeries, especially on the *Constitutum Silvestri*. A passage is also quoted from it, interpreted in a papal sense, which has not been previously found; it is a text attributed to Pope Alexander and contained in the decretals of the pseudo-Isidore<sup>588</sup>. The story is recalled to support the thesis that the pope cannot be judged.

The letter states that the Apostolic See has the divine privilege of being judged by no one and of settling, by means of synodal convocations, the judicial cases of the whole Church. This privilege was given to the Apostolic See, not by the apostles, but by the Lord Himself, according to the words of Pope Gelasius, who irrefragably judged the Patriarch of Constantinople, Acacius. The Apostolic See, without having to celebrate a synod, also enjoys the privilege of condemning and reconciling those who deserve it: the whole Church scattered throughout the world knows that the sacrosanct Roman Church has the right to judge over the whole Church, and no one is allowed to judge over her judgment; and if from every part of the world one can appeal to her, nevertheless no one can appeal to her. It, moreover, apart from synodal authority, has the power to cassate and update what a previous synod had established. And this it can do by virtue of the principality which blessed Peter received from the living voice of the Lord, and which it will retain forever (*Mt 16; Jn 21*)<sup>^</sup>.

It is said of Gregory VII that even if he had been guilty, the assembly at Worms, according to the canons, could neither discuss his conduct nor depose him. The matter of Gregory VII could be discussed, with the consent of the pope, only at a Roman synod, because it is written that *the disciple is not above the master* (*Mt 10:24*). In fact, St. Sylvester, the author of the Nicene canons, presiding over a general synod with the consent of 277 bishops, had decreed in Chapter 7: *No one*

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<sup>586</sup> BERNOLDUS, *Chronicon*, edidit G. H. PERTZ, in *M.G.H., SS.*, V, Hannoverae 1844, 385-467.

<sup>587</sup> Cf. Augustin FLICHE, *La Réforme Grégorienne. Grégoire VU*, II, Paris, 1926, 47-51. Bernold depends very much on the thought and person of Gregory VII: cf. H. WEISWEILER, *Die päpstliche Gewalt in den Schriften Bernolds von St. Blasien aus dem Investitur streit*, in *Studi Gregoriani* 4 (1952) 129-147.

<sup>588</sup> *Item sanctus Alexander papa, qui martyrio sua consecraviv decreta, kap(itulo) L, testatur: "Non potest, inquit, condemnari humano examine quem Deus suo reservavit iudicio"*. ADALBERTUS-BERNALDUS, *Ad Bernhardum*, Ep. 3, edidit Fridericus THANER, in *M.G.H., De lite imper. et pontif.*, II, Hannoverae 1892, 51, rr. 6-8. (Paulus HINSCHILS, c. VII, 98).

*shall judge the first See, which desires to order justice. For the judge can be judged neither by the emperor, nor by all the clergy, nor by kings, nor by the people.*

Moreover, Pope Symmachus, writing to all the bishops, had decreed in Chap. 7: *God willed that the causes of men should be brought to a conclusion by men, but in truth, without doubt, he reserved for his judgment the prelate of the holy Roman See.* The same thing was affirmed by the pope St. Alexander, who consecrated his decrees by martyrdom; thus he attests in Chap. 1 : *He cannot be condemned by a human judgment whom God has reserved to his habitation.* To support what we have said, says Bernoldo, we have also the statutes of the holy Fathers. The history of the papacy itself provides examples: when Pope Symmachus, an indefatigable proponent of the Catholic faith, was accused of many crimes, his case was not discussed by the Arian king Theodoric - who then ruled over the Romans - but by a legitimately convened Roman synod, and not by any other person. The same synod, assembled on the authority of Simmachus, in no way set itself against the pope, nor dared to pronounce against the decrees of the Fathers, but rather entrusted the whole cause to the judgment of God, as the very deeds of this synod attest.

Bernoldo concludes, saying: *we affirm these things, not because we believe that the Roman Pontiff can possibly commit vile things and cannot be prevented from doing so - should he publicly fall into some heresy - but, rather, against those who, in uncertainty, have blindly judged the expulsion of the bishop of the Apostolic See*<sup>589</sup>.

In regard to Gregory VII, one had to act with exactitude and scrupulousness; because, if in regard to the accused clerics, all the canonical prescriptions were generally observed, greater attention had to be paid to the Roman Pontiff, who had received, by divine will, the keys of the kingdom of heaven. The Apostolic See, the head and pivot of the Churches, was in fact constituted by God and not by men, attests Bernoldo. As the door is governed by the hinge, so all the Churches, by the will of the Lord, are governed by the authority of the Apostolic See<sup>590</sup>.

From the whole context of the passage it is clear that the Roman pontiffs are the authors of the canons, and that their See has always had the privilege of binding

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<sup>589</sup> *Nempe si culpabilis esset, peregrinorum tamen episcoporum iudicio, iuxta canones nec discutiendus esset, nedum temere deponendus; sed potius in Romana synodo audiendus: si tamen de dubiis rebus, nisi ipse vellet, vel usquam vel a quoquam iuxta canones discuti posset; scriptum est enim: "Non est discipulus super magistrum" (Matth. X). Unde sanctus Silvester, Nicenorum canonum auctor, generali synodo presidens consensu CCXXVII episcoporum, cap. VII., statuit dicens: "Nemo indicabit primam sedem, iustitiam temperare desiderantem. Neque enim ab angusto, neque ab omni clero, neque a regibus, neque a populo index indicabitur". Item Symachus papa omnibus episcopis scribens, cap(itulo) VII., decrevit dicens: "Aliorum hominum causas Deus voluit per homines terminare: sacro vero sanctae sedis Romanae presulum, suo sine questione reservavit iudicio". Item sanctus Alexander papa, qui martyrio sua consecravit decreta, cap(itulo). I., testatur: "Non potest", inquit, "condempnari humano examine quem Deus suo reservavit iudicio". Ibid, 50, rr. 38-43; 51, rr. 1-8 ff.*

<sup>590</sup> BERNALDUS, *Ad Adalbertum*, Ep. 2, in M.G.H., *De lite imper. et pontif.*, II, 29, rr. 22-25; rr. 36 ff.

and dissolving; for this reason it excels among all the Churches and can judge all. No indignity in those who preside over it can absolutely limit its prerogative.

Berthold of Reichenau (1030-1088) has been wrongly attributed the authorship of a historical work: the *Annales*, a compilation of unclear origin, either Swabian or Saxon, whose primitive text is difficult to reconstruct. These *Annales* appear to be the second version of the chronicle written by Bernold of Reichenau<sup>591</sup>. The anonymous author, reporting the episodes of 1076, concerning the assembly of Worms, inclines to Gregory VII, whom he defines as a good shepherd, and diligent watcher of his flock.

The anonymous states that, at Worms, the synods should have borne in mind what Pope Sylvester had decreed during the Roman synod, that is, that the First See could be judged by no one, just as the prince can be judged neither by the clergy nor by the people. Gregory VII had excommunicated Henry IV because he had violated these papal decrees. The excommunication against Gregory VII - therefore constituted an offense against the apostolic majesty which, according to the statutes of the decretals of the Fathers, could not be judged at all. The same principle had been reaffirmed by Pope Gelasius, that is, that the Apostolic See has the power to judge over the whole Church, but no one is permitted to pass judgment on its judgment. This privilege, according to the anonymous author, was given to the Apostolic See - through Peter - by the very word of the Lord.

The apostolic Church perpetually enjoys principality over the whole Church: anyone who wants to violate the decisions of the Roman pontiffs, whether king or bishop, is anathema<sup>592</sup>.

Nicholas I is much quoted in this period, because by virtue of the principle *Prima Sedes a nemine iudicatur* affirmed that no one was allowed to review the judgment of the Apostolic See or contest its rulings.

The action of Henry IV, who had dared to excommunicate the pope - the Apostolic - was judged as something unprecedented. For everyone it was a scandal, as an anonymous author had stated in his *Liber Canonum contra Heinricum Quartum*<sup>593</sup>. There it is stated that the pope, according to the testimony of evangelical and apostolic authority, must submit only to the judgment of God and not to that of men. The disciple is no more than the master. The author, in order to support his thesis, also cites Clement's pseudo-letter and the Pseudo-Isidorian

<sup>591</sup> Cf. Augustin Eliche, II, 39-45.

<sup>592</sup> BERTHOLDUS, *Annales, a. 1076*, edidit G. H. PERTZ, in *M.G.H., SS.*, V, Hannoverae 1844, 228-284.

<sup>593</sup> ... *Non esse nostrum apostolicae determinationi aliquod inferre preiudicium, scribente Nicolao papa: "Nemini est de sedis apostolicae iudicio iudicare aut illius sententiam retractare permisso, videlicet propter Romanae ecclesiae primatum Christi munere beato Petro divinitus collatum". Et, o inaudita inhumanitas, o venenum aspidis insanabile! Vivos vivi nos nituntur in inferos dimergere, cum audiant, videant, sciant, quia ipsi nos excommunicabimus, ipsi nos omni aecclesiastica dignitate privabimus, si consenserimus communicare his quos apostolicus a se nobis excommunicatos mandavit, et ne eis communicemus, per literas sigillatas precepit. Liber Canonum contra Heinricum Quartum, edidit Fridericus THANER, in *M.G.H., De lite imper. et pontif.*, I, Hannoverae 1891, 486, rr.26-33.*

decretals: Clement reported having heard from Peter that the major can neither be accused nor judged by the inferior. Pope Anacletus said that the Lord reserved for himself the deposition of the high priests and granted their election to good priests and spiritual persons. So also held Alexander, Fabian, Sixtus, and Eleutherius, that is, that in no way can one whom God has reserved for His own judgment be condemned by a human sentence. Pope Sylvester, during the synod of 277 bishops, decreed: The supreme prelate cannot be judged by anyone. And Pope Symmachus: God willed that the causes of other men should be brought by men, whereas without any doubt, he reserved for his judgment the prelate of the Apostolic See<sup>594</sup>

Another fierce opponent of the position taken by Henry IV and his followers towards the pope was Manegold. He had to suffer Henry's harassment when his monastery, of Gregorian tendency, was destroyed by the imperial supporters and forced to lead a wandering and uncertain life. He wrote his work after the death of Gregory VII (+ 1085) and dedicated it to the Archbishop of Salzburg, Gebhardo<sup>595</sup>. With this book he intended to denigrate, challenge and slander Henry and his followers, who, according to him, should have been killed as heretics. The emperor was considered the author of the heresy because he had set himself against the pope, the master of the whole Church, the bishop of the supreme See<sup>596</sup>. To the Enricians, who claimed to have no other pontiff than Caesar after electing Clement III, Manegold opposes the principle attested by the Saviour's own words: the disciple is no more than the master. He then recalls what had been established by the authority of the Holy Spirit, that is, that the supreme pontiff by no one can be judged. But the Enricians, forgetful of the undisputed traditional foundation, not only intended to strike the patriarch of Christendom with the sword of judgment, but also wished to evade the obedience of the pope<sup>597</sup>

Hugh, abbot of Flavigny, while in his work<sup>598</sup> had words of praise and esteem

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<sup>594</sup> *Papam vero solius Dei, non hominis subiacere iudicio aevangelicae et apostolicae auctoritatis affirmatur testimonio. Dominus in evange lio: "Non est discipulus super magistrum". Clemens perhibet Petrum dixisse maiores a minoribus nec accusari posse nec iudicari. Anacletus: "Electionem summorum sacerdotum sibi Dominus reservavit, licet electionem eorum bonis sacerdotibus et spiritualibus populis concessisset". Alexander, Fabianus, Sixtus, Eleutherus, eisdem dicunt verbis nullatenus posse condemnari humano examine, quem Deus suo iudicio reservavit. Silvester in synod CCLXXVII episcoporum decrevit dicens: "Neque summus presul a quoquam iudicetur". Simmachus: "Aliorum omnium causas Deus voluit per homines terminare, sacro vero sanctae sedis Romanae presulum suo sine questione reservavit iudicio". Ibid, 498, rr. 24-33.*

<sup>595</sup> MANEGOLDUS, *Ad Gebhardum Liber, edidit Kuno FRANCKE*, in *De lite imper. et pontif.*, I, 303-430.

<sup>596</sup> *Ibid*, 306, rr. 5-6.

<sup>597</sup> *Si enim scripturae sacrae, quas duricia vestra intelligere non meretur, minus satisfaciunt vobis et Salvatoris verba testantia non esse discipulum super magistrum, Spiritus sancti quoque auctoritas, qua statutum est, summum pontificem a nemine iudicandum, et praeterea concordia decretorum, quae non solum impiis manibus vestris iudicii gladium, quo patriarcham christianitatis iugulare intenditis, extorsere, sed cervicositatem vestram iugo obedientiae ipsius modis omnibus subdiderunt. Ibid. 306, rr. 26-31.*

<sup>598</sup> HUGO MONACHUS, *Chronicon, edidit Georgius Henricus PERTZ*, in *M.G.H., SS.*, VIII,

for Gregory VII, expressed himself differently towards Henry IV, calling him not a king, but a tyrant. And in defence of the unjustifiability of the pope, he cites the *Constitutum Silvestri* and the declaration of Ennodius, attributed to pope Symmachus, where it is said that God certainly reserved to his own will the judgement on the pope<sup>599</sup>.

While the *Gregorians* claimed that at Worms they had acted in such a way as to cause a great scandal, the *imperialists* using the statement: *nemo iudicet primam sede*<sup>TM</sup>, *iustitiam temperante*<sup>TM</sup> claimed that the supporters of the pope wanted to confuse the faith of the simple<sup>600</sup>. Imperial literature is not inferior to Gregorian literature. It was claimed that the measure taken by Gregory VII concerning the excommunication and deposition of Henry IV, in the politico-imperial sphere was an interference. The imperialists maintained not only the independence of the politico-regal power from the ecclesiastical-priestly power, but claimed its divine origin by asserting that the principles of immunity and unjustifiability were the privilege and right of the king.

Among the polemical works that arose within the Enrician opposition, the one that most faithfully reflects Henry IV's thinking is the *Defensio Heinrici regis*, whose author is Peter Crassus, probably a jurist from Ravenna, a man well versed in the knowledge of Roman law. He seems to justify, officially, all the acts of Henry IV and to have no other concern than to convince his readers of the legality of the power and acts of the sovereign, for whom he shows great admiration.

The work was written, perhaps, at Henry's own wish and had the precise aim of proving that the emperor's excommunication of the pope was, under Roman law, a legal and legally founded act. The *Defensio Heinrici regis* was intended to be read before the assembly assembled on 24 March 1084 in Rome to judge Gregory VII<sup>601</sup>.

The pope was accused of the means used for his (papal) election and of having transgressed ecclesiastical discipline by leaving the abbey without permission. Moreover, having excommunicated Henry IV without respecting the rules of procedure, he was accused (also) of heresy and apostasy, for which he was deposed.

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Hannoverae 1848, 285-503.

<sup>599</sup> *Auditum sub celo non legitur, omnino nec dicitur, quod possit aliquis papam deponere, et concessa sibi privare potestate. Romanus enim pontifex non modo deponi, sed nec aliquo potest diiudicari. Audiant tantae praesumptionis auctores complices et fautores, quid Symmachus papa de privilegio Romani pontificis senserit. Ait enim in decretis suis capite 2: "Aliorum hominum causas Deus voluit per homines terminare, sedis apostolicae pontificem suo sine questione reservavit arbitrio. Voluit beati Petri successores coelo tantum debere innocentiam et subtilissimae discussionis indagini inviolatam exhibere conscientiam"... Gelasius... Hadrianus, quoque papa in decretis suis: "P resui summus a nemine iudicabitur. Scriptum est enim: Non est discipulus super magistrum". Ibid, 430, rr. 21-25; 431, rr. 26-54; 432, rr. 18-20.*

<sup>600</sup> BENO ALIQUAE CARDINALES SCHISMATICI, *Contra Gregorium VII et Urbanum II scripta*, edidit Kuno FRANCKE, in. *De lite imper. et pontif*, II, 420, rr. 26-30.

<sup>601</sup> During this assembly, however, the second draft of the *Defensio* was read. Cf. Augustin FLICHE, *La deforme Grégorienne. L'opposition antigégorienne*. III, Louvain 1937, 97-138.

Peter Crassus argued that the king's deposition was such an unbelievable fact that it could find no justification in sacred Scripture. Thus he argued that Henry IV was a king instituted directly by God, so that no one could disobey him without causing a serious attack on the divine order. In the *Defensio Heinrici regis*, using the laws of the Roman law code, he defends the king and contradicts the arguments of Gregory VII and his supporters. It is interesting to note that in the legal dispute, Peter Crassus seems to attack the evangelical principle advocated by the *Constitutum Silvestri*: *the disciple is no more than the master*, on which papal unjustifiability is based: *By his teaching Hildebrand has turned peace into war and concord into rebellion; by his condemnation of Henry, a just, valiant, austere king ... He has set himself against the precept of the apostle Paul who commands "Judge nothing before the time" ( 1 Cor 4:5) ... Indeed, it would have been necessary for him first to have carefully judged himself. Gregory the Great, in his letter to King Regare th, says: "Whoever does not judge himself first, does not know how to judge others righteously"... In fact, Saint Paul affirms: "While you judge others, you condemn yourself" (Rom 2:1). And Gregory the Great goes on to say: "He who aspires to show others the way of righteousness must be free of all guilt". A wise man also said: "He must be free of all guilt who wants to condemn another". But perhaps the monk Hildebrando is a man "shy of litigation", and he affirms that the laws forbid the son to sue his father, as is written in the second book of the Code: "He who is under parental authority cannot proceed judicially against his father; but if he is emancipated, he is authorized to do so, asking for a derogation from what is prescribed"... Pope Felix affirmed, "Let the accusers be persons above suspicion, and their faith and conduct of life beyond reproach." Pope Fabian, a man of unique holiness, threatens the accusers with these words, "Whoever does not prove the charges he brings, let him be condemned to the same punishment he has demanded." And the legislator states in the Digest, "Let him who brings accusations know that the lie cannot go unpunished, and that the punishment of the slanderers will be similar to those things which they have demanded." It is shown, moreover, that in the judgment of Henry he (Gregory VII) was accuser, witness, and judge, which the most holy pontiff Fabian forbids, saying, "Let no one presume to be at the same time accuser, judge, and witness."<sup>602</sup>*

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<sup>602</sup> Praedicatione quidem, qua pacem in bellum, concordiam in seditionem mutasse deploratur; iudicio vero, quo contra apostoli iudicium dicentis: "Nolite ante tempus iudicare", in Henricum regem iustum, fortem, severum, magnanimum, largum, beneficum, liberalem, iudiciale ausus est dare sententiam. Nam eum prius perpendere oportuit, cuiusmodi iudicium de se ipso legitime fieri posset. Gregorius in epistola ad Regareth regem missa: "Quoniam qui semetipsum prius non iudicat, quid in alium recte iudicet, ignorat"... Nam apostolus: "In quo enim iudicas alterum, te ipsum condemnas" (Rom. 2:1). Gregorius: "Omni carere debet errore, qui viam rectitudinis alius tentat monstrare". De eodem quidam sapiens ait: "Carere debet omni vitio, qui in alterum maledicere paratus est"... Sed fortassis monachus ille "Jugitans litium" est, dicendo patrem in ius vocari a filio, legibus prohibitum esse. Quod in secundo libro Codicis continetur ita: "Qui in potestate patris agit, adversus eum experiri non potest; si igitur emancipatus es, venia edicti petita, hoc facere non prohiberis". Sed manifestum est, quia hic monachus in tanta crudelitate pater appellari nullatenus potest... Felix papa: "Personae" - inquit - "accusantium tales esse debent, quarum fides, conversatio et vita probabilis et absque reprehensione sit, et quae

A work attributed to Gregory Catinense (+1132), a monk of Farfa Abbey, moves in the same direction. It is a pamphlet in defense of Henry IV, called *Orthodoxa defensio imperialis*. This polemical pamphlet was written in 1111, around the time of the coronation

of Henry V. It is intended to show that the monastery of Farfa, while paying due deference to the emperor and preserving its ancient loyalty to the empire, was not to be considered outside the Church. The author's name does not appear in the unique and, by the way, not ancient Codex in which it is preserved. Of it, then, there are no precise indications to establish the author. The anonymous author of the *Defensio* seems rather an imitator of Gregory; it is likely that he was his disciple<sup>603</sup>.

In the *Orthodoxa defensio imperialis* it is reiterated that the king has the same prerogatives claimed by the pope; moreover, the privilege of unjusticiability is attributed more to the king than to the pontiff himself. The text states: *Examining the events of the old and the new course of history we meet good and bad princes, but we never find a holy man who has written a condemnation against them. Wisdom, who is Christ, says of princes: kings shall reign for me^p of me (Rom 13:6). Therefore Christ alone can condemn them, since they reign by me^p him alone. Therefore, those who pronounce condemnation against them - condemnation which is reserved for God alone - will not escape divine chastisement. Saul sinned, and departed from God, and God forsook him: yet the prophet Samuel never dared to condemn him. Not even the prophet Nathan - condemned King David, although he was guilty of three very serious sins, but he preferred to receive him as a penitent... it is not written that they were condemned... The many kings and emperors, both before and after Christ, were wicked or heretical, but, neither the prophets nor the apostles, nor the holy fathers and other teachers of the Church condemned them to death, nor did they refuse to pay them due deference or honors due to them. They left judgment to God alone, and endured their nefarious wickedness and persecutions for Christ's sake, whose members those kings, in every way, were. On this subject the apostle John says, "He that saith he abideth in Christ must behave as he behaved" (1 John 2:6)*<sup>604</sup>.

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*omni careat suspicionem"... Cui Fabianus apostolicus, vir unicae sanctitatis, minatur dicens: "Qui non probaverit quod obicit, poenam, quam intulerit, ipse patiatur". Legislator in libro Digestorum ita: "Qui crimen intendit, non impunitam fore noverit licentiam mentiendi, cum calumniantes ad vindictam pascat similitudo supplicii"... Nam evidenter patet ipsum in iudicio suo accusatorem, testem et iudicem fuisse, quod Fabianus sanctissimus papa prohibet dicens: "Nullus unquam praesumat accusator simul esse et iudex et testis".* PETRUS CRASSUS, *Defensio Heinrici IV regis*, edidit C. von HEINEMANN, in M.G.H., *De lite imper. et pontif.* I, Hannoverae 1891, 435, rr. 20-31; 441, rr. 3-7; 447, rr. 9-27.

<sup>603</sup> *Il Chronicon Farfense of Gregory of Catino. Preceding the Constructio Farfensis and the writings of Ugo di Farfa*, edidit Ugo BALZANI, (*Fonti per la Storia d'Italia*, 33), Rome 1903, XXXIV-XXXV.

<sup>604</sup> *Veteris enim et novi actus historias relegentes et bonos principes invenimus et malos, sed nunquam reperimus conscripto iudicio ab aliquo sanctorum fuisse condemnatos. De ipsis enim sapientia, quae Christus est, dicit: "Per me reges regnant". Per ipsum ergo solum condemnandi sunt, per quem solum regnare noscuntur.*

Another kind of theorisation, concerning the relations between royal and priestly power, is offered to us by Hugh of Fleury (+1119ca). He is known for his writings, the most important of which is dedicated to Henry I, King of England: the treatise *De regia potestate et sacerdotali dignitate*. The author wanted to put an end to the issues that divided the two powers and condemned the error of those who claimed the human origin of temporal power rather than the divine. Hugh of Fleury declares the superiority of the sovereign over the priest, not, however, by dignity but by order. The sovereign is superior as the man is greater than the woman, as the Father is greater than the Son: by order and not by substance. The Son proceeds from the Father: the substance is one and the same, but the order is different. Hugh's treatise is a polemical response to Gregory VII's second letter sent to Hermann of Metz. It dates from after 1100, that is, after the end of the schism (with the death of the antipope Clement III).

While affirming the high dignity of the bishops, he stressed the irreplaceable role of kings in the life of the Church and of human reality. It was precisely of kings to safeguard, protect and promote peace within the Church. And appealing for peace and concord, he calls on both Gregory VII and Henry IV to seek the path of peace and unity, which can be found if one pursues the path of humility and the spirit of Christ.

Hugh expresses it thus: *Jesus Christ, our God and Lord, granted to bishops the power to open and close heaven to men. Understanding that their greatness consisted in this prerogative, the already mentioned emperor Constantine - during the Council of Nicaea - seated himself in the last seat and refused to judge the bishops, indeed he attributed to all of them the appellation of men of God, believing that it was he who should submit to their judgment and not vice versa... It is then part of the king's task to reconcile the bishops in disagreement, as is testified by numerous documents. At the time of the emperor Valentinian II, the Roman pontiff Sixtus III was accused by one Bassus. When he was informed of this, the emperor, moved by just concern, ordered the celebration of a council, at which the pope was exonerated of all charges and Bassus condemned. At the time of Theodoric, king of Italy, Simmachus obtained the apostolic see, but on the same day a tumult of the people raised Lorenzo to the same dignity. The senate informed Theodoric of the situation, advising him to send them a person who could be consecrated, and sent them Peter, bishop of Altina. But Simmachus summoned a council of 125 bishops, before which he cleared himself of the charges: in this way he remained pontiff*

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*Si quis vero id, quod soli Deo reservandum est, voluerit condemnare, numquam evadet punitionem. Denique Saul peccavit et a Deo recessit et Deus ab eo, et tamen propheta Samuel non illum condemnare a se ausus est. David quoque regem tribus pessimis criminibus delinquentem, propheta Natan non condemnavit, sed magis penitentem recepit... non illos damnatos legimus... Nam multi regum vel imperatorum et ante et post adventum Christi pessimi vel heretici fuerunt, quos prophetae vel apostoli sanctique patres et reliqui doctores ecclesiae ad mortem non condemnarunt nec debitum obsequium vel decus illis proprium abstulerunt, sed soli hoc Deo reliquerunt et eorum nefandas malicias vel persecuciones ad tempus Christi amore sustinuerunt, quia eius omnimodis membra extiterunt. De quo dicit apostolus Iohannes: "Qui dicit*

until his death, and Lorenzo was deprived of the office.

*se in Christo manere, sicut ipse ambulavit debet ambulare."* GREGORIUS CATINENSIS FARFENSIS, *Orthodoxa defensio imperialis*, edidit L. von HEINEMANN, in *M.G.H., De lite imper. et pontif.*, II, 1892, 540, rr. 5-18.

In 962, Pope Octavius (John XII), accused of impiety, was deposed by the Roman emperor Otto I, and replaced with Leo Vili. But as soon as the emperor left Rome, the Romans recalled Octavius, drove Leo Vili from the city, and consecrated Pope Benedict V. Upon learning of this, Otto returned to Rome, and on the basis of a synodical decision deposed Benedict and put Leo Vili back on the papal throne.... Some reproach Gregory VII for having been consecrated without the consent and approval of the emperor: this is the cause of the present contrasts... Gregory VII is also challenged on the decree which states that no bishop should receive from the hand of the king or the emperor the investiture of a bishopric or an abbey<sup>605</sup>.

Hugh of Fleury calls the two parties involved - the priestly and the royal - to dialogue and appeasement, but he seems to be particularly resentful towards Gregory VII, who seems to him arrogant and inflexible in seeking the path of concord: *But the honours of the world often generate in some rulers a proud pride, and when they commit wrongdoing they answer to their accusers: "We cannot be judged by anyone and we are not subject to any power. They do not show themselves docile to the physicians of the spirit, that is, to the teachers who would know and be able to cure their faults with paternal indulgence.... I am afraid,*

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<sup>605</sup> *Dedit enim eis, id est episcopis, Deus ac dominus noster Iesus Christus potestatem aperire et claudere caelum hominibus. Quo eos pollere privilegio intelligens memoratus imperator Constantinus, in Nicæa sinodo post omnes episcopos ultimus residens, nullam iudicii sententiam super eos dare voluit, sed illos omnes deos vocans, non suo eos subesse debere iudicio, sed se ad eorum pendere iudicavit arbitrium... Proinde regis officium est etiam dissidentes episcopos reconciliare, sicut multis documentis possumus approbare. Imperatoris quippe Valentiniani iunioris temporibus Sixtus Romanus pontifex incriminatus est a quodam Basso. Quod audiens modo dictus augustus pia cura iussit concilium celebrari; in quo purgatus est papa Sixtus a crimine, et Bassus condemnatus est. Theodorici etiam regis Italiae temporibus Symmacus sedem optinuit apostolicam, et eodem die Laurentius proventus est ad eundem gradum per sedicionem. Quod senatus Romanus regi Theodorico intimavit et, ut eis mitteret qui ordinaretur apostolicus, suggestit. At ille misit eis Petrum Alinae civitatis episcopum. Sed Symmacus convocavit concilium centum et viginti quinque episcoporum, in quo purgavit se ab his quae ei obiecebantur; et ita demum usque ad diem suae dormitionis permansit apostolicus et Laurentius privatus est sede sua. Anno quoque incarnationis dominicae DCCCCCLX secundo Octhavianus papa, cum de inreligiositate culparetur, Othone Romano imperator iubente a sua sede expulsus est, et Iohannes septimus ei est substitutus. Verum cum modo dictus imperator a Roma discessisset, Romani Octhavianum receperunt, et Iohannem ab urbe expulerunt, et Benedictum papam ordinaverunt. Quod imperator Otho comperiens Romanum rediit, et praefatum papam Benedictum iudicio synodali deposuit et Iohannem loco suo restituit... Unde reprehendi a quibusdam solet, quod Gregorius septimus consecrari vitavit consensu et licentia imperatoris. Pro qua re dissensio ista processit... Reprehenditur etiam illud decretum ipsius, in quo continetur, "ut nullus episcoporum investituram episcopatus vel abbatiae de manu regis vel imperatoris suscipiat". HUGO MONACHUS FLORIACENSIS, *Tractatus de regia potestate et sacerdotali dignitate*, edidit E. SACKUR, in *De lite imper. et pontif.*, II, 486, rr. 38; 487,*

rr. 1-5; 489, rr. 23-35; 490, rr. 1-4, 9-11, 17-18.

however, that someone will rebuke me, saying, "It is not for you, brother, to reproach persons worthy of honor and high position, for whose sins God Himself has reserved judgment. Let us remember, however, the blessed apostle Peter: he was superior to all the other apostles, and to him Jesus Christ had personally said: "You are Peter, and upon this rock I will build my Church" (Mt 16:18-19); yet Paul, though so recently converted to the faith, moved by divine <sup>elo</sup>, dared to reproach him in the presence of all. Paul himself, writing to the Galatians, thus says: "But when Cephas came to Antioch, I opposed him with an open face, because he was evidently wrong..." (Gal 2:11). So then, if so great an apostle, suffering from a weakness of the flesh, was held worthy of reproof, why should not one whose heart is swollen with pride and whose eyes are astonished, like one who is plotting great machinations, be so? The apostle superior to others, the man to whom Jesus Christ himself the wonderful teacher, had addressed his teaching, and to whom the Holy Spirit had filled his soul with light, did not refuse to listen humbly to the neophyte Paul, who gave him salutary admonitions, and gave him reason<sup>606</sup>

After the death of Gregory VII (1085) an apologetic work appeared in - defense of Henry IV and the antipope Clement III, appointed by the emperor during the synod of Brixen in 1080. Guido di Ferrara, of whom we have little information, wrote the *De scismate Hildebrandi*. He served as vice-chancellor and librarian until 1099. His work is certainly later than 20 May 1085, the date of the death of Gregory VII, and earlier than 8 September 1100, the date of the death of Clement III.

Guido di Ferrara writes with the intention of proving that, after the death of Gregory VII, there was no reason to elect another pope, because that of Clement offered sure guarantees. The latter was, according to Guido, a legitimate pope and, therefore, he had to be recognized as such, nor was it possible to judge or condemn him, because in the decrees it was written that the Roman pontiff could not be judged by anyone. Any sentence pronounced against Clement III would have been

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<sup>606</sup> Porro pompa mundi huius quibusque principibus superbiae et elationis tumorem ingerere solet; et dum illicita committunt, reprehensoribus suis dicere solent: "Nos a nemine debemus indicari, et sub nullius sumus positi potestate". Indomabiles se praebentes medicis spiritualibus, id est sanctis doctoribus, qui eorum delicta paterna scirent possentque pietate curare... Verum nunc vereor, ne quis me redarguens dicat: "Non est tuum, frater, honorabiles ac sublimes increpare personas, quorum peccata Deus iudicanda suo reservat iudicio". Sed meminere quisquis ille est, quia beatissimus Petrus apostolus, qui ceteris omnibus apostolis praeminebat, et cui Deus ac dominus noster Iesus Christus ore proprio locutus fuerat dicens: "Tu es Petrus, et super hanc petram edificabo ecclesiam meam" (Mt 16,18-19) ... Quod hunc Paulus nuper ad fidem conversus ausus est reprehendere, ac divino <sup>elo</sup> succensus coram omnibus increpare. Sic etenim idem apostolus Paulus scribens ad Galathas dicit: "Cum venisset Cephas Antiochiam, in faciem ei restiti, quia reprehensibilis erat" (Gal 2:11-16) ... Ergo si tantus apostolus, carnis infermitate praepeditus, reprehensibilis inventus est, quanto magis ille reprehensibilis est, cuius cor tumet, et quasi magna cogitans attonitos habet oculos? Veruntamen ille qui ceteris apostolis eminebat, et quem dominus Iesus Christus magister optimus ore suo docuerat et Spiritus sanctus illuminaverat, Paulum nuper ad fidem conversum salubria sibi suggerentem humiliter audire non renuit, sed illi protinus adquevit. *Ibid*, 490, rr. 23-27, 36-40; 491, rr. 1-20.

invalid because it was illegal<sup>607</sup>. The same applies to the condemnation that the pope had launched against Henry IV, because the pontiff had not complied with the laws and legal provisions.

Along the same lines as Guido di Ferrara, another apologetic treatise by an anonymous author<sup>608</sup> moves: the *Liber de unitate ecclesiae conservandae*. The treatise reaffirms the central and primary function of the Roman Church, but beyond the polemic against the person and claims of Gregory VII, it identifies it with the Church of the antipope Clement III, appointed by the emperor. The work is part of the anti-Gregorian polemical literature that, still after the death of Gregory VII, is a reply to the pontiff's writings (especially to the second papal letter sent to Hermann of Metz) seen as manifestos of Gregorian positions. The anonymous monk disputed the pope's claim that he had the authority to dissolve the oath of allegiance, casting a shadow on the very origin of royal power as such<sup>609</sup>. The essence of his argument rests on the discussion of the Petrine primacy as Gregory VII had claimed and exercised it, that is, as the primary, constitutive and exclusive reality of ecclesial life. The most evident point of contrast is Hildebrand's claim to judge spiritual things and even more secular things, and above all to excommunicate even kings<sup>610</sup>.

The judicial primacy as the apex of the pyramid, expressed in the principle: he who judges is judged by no one. Clement III and his Church have the privilege of unjusticiability. To affirm this, the principle is quoted very often, and under the authority of Pope Gelasius, that *the sacrosanct Roman Church has the right to judge over the whole Church, but no one is permitted to judge its sentences, so the decrees of the canons state that appeals from the whole Church are referred to the judgment of the Apostolic See, but against it one can never appeal, since its judgment is unquestionable. It has the power to absolve or condemn, without a synod, all whom it will*<sup>M</sup>.

The Hersfeld monk maintains that no one can judge the judge because he is the minister of God. It is necessary to accept the invitation of the apostle Peter to be subject and submissive to every human institution, *for the love of God (1 Pet 2:13-17): the ecclesiastical statutes forbid, under penalty of excommunication,*

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<sup>607</sup> Dicit inter alia Iulius papa: "Nullum iudicium nisi ordinabili ter habitum teneatur. Item in decretis: Romanus pontifex a nemine iudicabitur". WIDO EPISCOPUS FERRARIENSIS, *De scismate Hildebrandi. Pro illo contra illum, edidit E. DÜMLER*, in M.G.H., *De lite imper. et pontif.*, I, 548, rr. 10-12.

<sup>608</sup> The author of the treatise is an anonymous monk of Hersfeld, a supporter of the political line of his monastery. This writing has come down to us in numerous fragmentary *excerpta*, quoted polemically several times in the course of the *Liber de unitate ecclesiae conservanda*. It has no title and the end is mutilated. The chronological notations lead back to the period 1091-1093. Cf. Zelina ZAFARANA, *Ricerche sul "Liber de unitate ecclesiae conservanda"*, in Zelina ZAFARANA, *Da Gregorio VII a Bernardino da Siena. Saggi di storia medievale con scritti in ricordo di Zelina Zafarana, edidit O. CAPITANI - C. LEONARDI - E. MENESTÒ - R. RUSCONI*, Florence 1987, 9-90.

<sup>609</sup> *Ibid.*, 21.

<sup>610</sup> *Ibid.*, 24.

*that an inferior, of any rank, dare to accuse the superior*<sup>611</sup>.

Let us recall again, among the works of imperial orientation, the *Tractatus de investitura episcoporum*<sup>612</sup>, by an anonime author. The latter upholds the idea that kings can grant investiture, but if they should abuse the election of candidates to the episcopate, they must be reprimanded and led back to the right path by fearful men and the Roman pontiff. He contests, however, the principle that the pope should not be subject to the same correction, should he err in the promotion and consecration of any bishop. The anonymous person opposes to those who supported this idea - according to the assertion that the pontiff could not be judged by anyone - the Gospel passage in which it appears that Jesus himself submitted to the judgment of men<sup>613</sup>.

Finally, Henry IV himself is cited. The principle of injustice, which Gregory VII attributed to himself alone, was challenged and criticized by Henry IV, who, after the second sentence inflicted on him by the pontiff (1080), wrote to the Romans: *These are the words of Hildebrand: he cannot be judged by anyone. But this is not the rule set by Christ, for He said: "Let the greatest among you be your servant" (Mt 20:26-27). Instead he, who calls himself the servant of God's servants, unjustly oppresses God's servants*<sup>614</sup>.

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<sup>611</sup> *Et cum ecclesiastica prohibeant decreta sub anathematis etiam interpositione, ut inferior quilibet gradus non praesumat superiorem accusare. Ibid. 201, rr. 30-31.*

<sup>612</sup> *Tractatus de investitura episcoporum, edidit Ernestus BERNHEIM, in M.G.H., De lite imper. et pontif. II, 498-504.*

<sup>613</sup> *Reges enim, si in episcoporum investituris excesserint, possunt a timoratis viris et pontifice Romano argui et ad rectam correctionis lineam reduci; si autem in promotione et consecratione episcoporum pontifex Romanus exorbitaverit et sub verbo summae prelationis ad voluntatem suam egerit, non vult, ut reprehendatur, cum dominus Iesus se reprehendi concesserit, dicens: "Si male locutus sum, testimonium perhibe de malo!" (Iob 18:23). Isti autem: "Summus" inquit, "pontifex a nemine iudicetur". Ibid, 502, 22-28.*

<sup>614</sup> *Haec enim sunt verba eius: se a nemine indicari debere. Et est sua sententia, quasi dicat: "Quicquid libet, licet". Sed haec non est Christi regula, ubi dicitur: "Qui maior est vestrum, erit vester servus". Ideoque, qui se servus servorum Dei nominat, iniustum est, ut servos Dei per potentiam opprimat. HEINRICUS IV REX, Epistula Romanis, 1081 ex 1082, edidit Philippus JAFFE, in Monumenta Bambergensia, Berolini 1869, 501.*



## 19. PROPRIO AUCTORITATES APOSTOLICE SEDIS

The *Proprie Auctoritates* are also known as *Dictatus Avranches* because they come from a manuscript which, before being in the municipal library of Avranches, was in the Benedictine abbey of Mont-Saint Michel. Moreover, they are called *Dictatus* because they consist of a series of canonical propositions very similar to those in the *Dictatus papae* of Gregory VII.

What distinguishes them is the different formulation: while the texts of Avranches were drafted in the form of simple statements with the citation of the *auctoritates*, the *Dictatus papae* instead is drafted in the form of *diet* and has only one citation, whose elaboration is the work of Ennodius. The *Proprie auctoritates*, then, unlike the *Dictatus papae*, are classified according to a perfectly logical order<sup>615</sup>.

They were written, no doubt, in central Italy, probably in Rome. Studying the dictation of the 26th<sup>616</sup> and 27th<sup>617</sup> proposition, Kempf<sup>618</sup> came to the conclusion that the *Proprie auctoritates* can be placed after the death of Gregory VII, and precisely in the years 1085-1123/1124. The author is a Gregorian, but it is not known exactly when he composed the work. As term *post quem* of the writing we place 1087, the year of the publication of the collection of *Deusdedit*, while as term *ante quem* is established 1123/1124, when the Codex of Pistoia, the oldest Codex containing the text of the *Proprie auctoritates*, was found. They are probably inserted between the papacy of Victor III and that of Callistus II.

The *Proprie auctoritates* set out the particular privileges of the apostolic see, that is, of the Roman pontiff. They are 37 propositions which, going beyond the *Dictatus papae*, have the pretension of offering the pope and the Roman See concessions far more extensive than the Gregorian text.

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<sup>615</sup> Cf. B. JACQUELINE, *A propos des Dictatus papae: les Auctoritates apostolice sedis of Avranches*, in *Revue Historique de Droit Français et Etranger* 34 (1956) 569-574.

<sup>616</sup> *Pape omnis potestas mundi subdi debet Clemente Gelasius teste*, in Hubert MORDEK, *Proprie auctoritates apostolice sedis. Ein ^weiter Dictatus papae Gregors VII?*, in *Deutsches Archiv für Erforschung des Mittelalters* 28 (1972) 131.

<sup>617</sup> (Pope) *Regna mutare potest, ut Gregorius, Stephanus, Adrianus fecerunt. Ibid.*, 131.

<sup>618</sup> Friedrich KEMPF, *Ein ^weiter Dictatus papae? Ein Beitrag ^um Depositionsanspruch Gregors VII.*, in *Archivum Historiae Pontificiae* 13 (1975) 119-139.

There are four theses that invoke the principle *Prima Sedes a nemine indicatur*:

VII. II pope by no one can be judged, even if he were to abjure the faith as is evident from the life of Pope Marcellinus.

Vili. Whoever had passed sentence against him must be deposed as Dioscorus.

XVII. No one may appeal against the Apostolic See.

XXIII. It is lawful for no cleric to accuse his bishop, except when he has erred from the faith or has detracted from the property of the Church; but he who shall have escaped the accusation of the bishop shall be deposed by order of the pope<sup>619</sup>.

Thesis VII now seems to want to eliminate, a posteriori, even the condition added to our axiom "...nisi a fide devius". This clause, the origin of which goes back to Gregory the Great and Isidore of Seville, although it has been silent in most cases, has always been recognized by the tradition<sup>620</sup>.

The quoted propositions imply knowledge of the Simmican apocrypha, particularly the *Gesta Marcellini seu Synodus Sinuessana* and Nicholas I's letter of 865 to Emperor Michael III. The eighth proposition refers to Dioscorus, the patriarch of Alexandria who was condemned at the Council of Chalcedon because he had had the temerity to excommunicate the bishop of the most important see, Pope Leo the Great.

Nicholas I, in the same letter, had narrated this episode after quoting the Simmachian apocrypha<sup>621</sup>. The logical succession of the *Proprie auctoritates* leads us to conclude that their author drew these principles directly from Nicholas I.

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<sup>619</sup> 7. *A nemine papa indicari potest, etiam si fidem negaverit ut de Marcellino constat.*

8. *Qui contra eum sententiam dederit, deponi debet ut Dioscorus.*

17. *Ab ea nullus appellare potest.*

23. *Nulli clerico licet accusare suum episcopum nisi a fide erraverit vel possessiones ecclesiae distraxerit set precipiente papa, qui se ab accusatione episcopi subtraxerit, deponetur.* Hubert MORDEK, 127. 129. 130.

<sup>620</sup> 79 ff.

<sup>621</sup> 50-64.

' 190-191.

## 20. IVO OF CHARTRES (1040-1116)

Ivo was probably born around 1040 in the region of Beauvais. His intellectual and moral formation was determined above all by his stay in the abbey of Bec, in Normandy, where he had Lanfranc as his teacher.

In 1090 the clergy and people of Chartres elected him, by acclamation, to the episcopal see of the city. Here, before being accepted as suffragan bishop, he had to endure many vicissitudes and opposition from Metropolitan Richerius, Archbishop of Sens. Only by resorting to Rome and appealing to the pope did he cease all opposition.

From a careful examination of his writings, as well as from the quotations given in his letters, he appears to be one of the most learned men of his time. He had a deep ecclesiastical erudition, both in biblical and canonical matters, together with a vast secular culture.

Ivo's output is extensive and comprises four series of writings: sermons, theological opuscula, canonical collections and finally correspondence. Without underestimating his theological merits, Ivo's work stands out first of all in the field of canon law. The bishop of Chartres was one of the greatest canonists, an irreplaceable craftsman in laying the groundwork for the further elaboration of classical canon law.

The *Decretum* of Burcard of Worms \ which at the beginning of the eleventh century towered over all other collections, is now replaced by a great work of synthesis, the work of Ivo. Three collections are attributed to him: the *Tripertita*, the *Panormia* and the *Decretum*. Our attention dwells on the *Decretum* and the *Panormia*.

The *Decretum*, written between about 1091 and 1095, is a text of - considerable size: it contains no less than 3760 chapters, divided into 17 parts, with a brief summary indicating its contents.

The *Panormia*, composed around 1095, is of smaller proportions than the *Decretum*, but exceeds it: the texts, distributed in 8 books, are arranged in a certain logical order. One could call the *Panormia* a compendium of the *Decretum*, and this a stage in the development of the *Panormia*. In fact, the *Panormia* proceeds from the *Decretum*, presenting itself as an encyclopedia of eleventh-century canon law.

The collections of Ivo of Chartres exerted a considerable influence, as evidenced by the numerous compendia that sprang up in France. They were much followed by Gratian, so as to condition his thinking<sup>622</sup>.

On the level of principles, the Roman primacy is formally recognized. Book Five of the *Decretum*<sup>5</sup> contains texts affirming the supreme power of the Holy See over the whole Church. In the *Panormia*\* he maintains, in a Gregorian spirit, that the Roman Church has received from Christ Himself the incontestable primacy which it exercises.

As we have done with the Gregorian collections, here too we want to collect the texts of Ivo concerning the principle of papal injustice, as we find them in his collections.

*Decretum*-. Part V:

Ch. 8. He who is superior cannot be subjected to the judicial judgments of those who are inferior in dignity and order. Pope Nicholas to Emperor Michael.

*Therefore, by the help of divine inspiration, it is neither sorry nor impossible for us to prove to you, if you will listen to us, that no one can be legitimately subjected to the judgments and definitions of those who are in a lower degree of dignity and honor. In the time of the emperors Diocletian and Maximian, the bishop of the city of Rome, Marcellinus, afterwards a distinguished martyr, was compelled by the pagans to enter their temple and sacrifice incense. For this reason a council assembly of numerous bishops was assembled, where, after making an inquiry, the pontiff himself declared that he had done that of which he was accused. But, none of them dared to utter a sentence against him, rather they said, "With your own mouth, judge your cause, but not with our judgment." They also repeated, "By thine own self shalt thou condemn thyself, and with thy mouth shalt thou condemn thyself." And they replied, "The first seat cannot be judged by anyone." The same thing had happened in the time of Pope Sixtus, who had been accused by false rumors. At the council, where the emperor Victorinianus spoke, it was said: "It is not lawful to pass judgment against the pontiff. The emperor himself left it to the liberty of the said pontiff to make his own judgment. In truth, none of the pontiffs is subject to the judgments of inferiors or (the bishops) of inferior cities. The holy Fathers at Chalcedon protested against such arrogance, when they condemned, among other things, the very powerful bishop of Alexandria, without any reinstatement. He, setting his mouth against heaven and his tongue creeping over the earth (Sai 73), had pronounced the excommunication against Pope Leo: in fact, it seemed that in the sentence launched against him, they affirmed principally this: by the excesses of his arrogance he had not at all respected the major. He had indeed the presumption to launch the excommunication against the most holy and most blessed archbishop of great*

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<sup>622</sup> Cf. Paul FOURNIER - Gabriel LE BRAS, II, 56-113. L. CHEVAILLER, *Yves de Chartres*, in *Dictionnaire de Droit Canonique*, edité R. NAZ, VII, Paris 1965, 1641-1666.

Rome, Leo. One reads perhaps of an inquiry made about Dioscorus, that is, whether he had justly or unjustly cast the excommunication I Absolutely not! They condemned him, without any discussion, because, being inferior, he had attempted to lacerate, by accusations, the superior. The prelate of Constantinople, Anatolius, testifying said: "Dioscorus was not condemned because of the faith, but because he had excommunicated Archbishop Leo"<sup>623</sup>.

Ch. 9. The Roman See judges over the whole Church, but suffers judgment from no one.

*Gelasius I to Master E austus, legate of Constantinople. They oppose the canons to us, while they know not what they say. They thus manifest that they oppose the canons themselves inasmuch as they refuse to obey the sound and upright convictions of the first See. These canons are the same as those others where it was intended that the appeals of the whole Church should be referred to the examination of this See. They sanctioned that no party should absolutely appeal against it, and therefore that it should judge over the whole Church, and that it should not be subject to judgment. They prescribed that no one should ever judge her judgment, that her judgments should not be cassified; rather, they - ordered her decrees to be executed.... By virtue of what ancient tradition do they call the Apostolic See to judgment?...? Let them see if they have any other canons, with which to support their folly<sup>624</sup> -*

Chap. 10. On the same subject: the fifth synod of Pope Symmachus.

*God willed that the causes of men should be brought to a conclusion by the halves of men; undoubtedly, he reserved for his judgment the prelate of the same See. He willed that the successors of the blessed apostle Peter should render an account of their innocence to heaven alone, and that to the examination of him alone, the most acute inquirer, they should present their intemperate conduct<sup>1</sup>.*

Ch. 19. The judgment of the Apostolic See can be revoked by no one. Pope Nicholas to Emperor Michael.

*It is clear that the judgment of the Apostolic See (above which there is no greater authority) by no one can be revoked, according to the words that Pope Boniface wrote to Rufus and all the bishops of Thessaly: "No one ever set himself, boldly, against the apostolic summit (whose judgment it is not licit to correct); there has never been a rebel against it, except he who wanted to be judged". And the blessed Pope Gelasius: "About the judgment (that is of the Roman Church) the canons established that one can never judge, they ordered that it was not licit to*

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<sup>623</sup> Ivo CARNOTENSIS EPISCOPUS, *Decretum*, V, Ch. 8, 324-325. Cf. ANSELMUS LUCENSIS, *db. II, Can. 67* \ DEUSDEDIT, *db. I, Ch. CLIU*. Latin texts that agree with the collections of these authors are not given because they have already been cited.

<sup>624</sup> Ivo, *Decretum*, V, Ch. 9, 325; Cf. ANSELMUS LUCENSIS, *db. II, Can. 56*.

set aside the judgment, rather they commanded that its decrees be executed". Therefore, as tradition has well founded, it is demanded that the judgment of the Roman prelate should not be revoked; we do not deny, however, that the judgment of the same may be changed for the better: when, for example, he has ordered something by dispensations because of the weather, or, of urgent necessity. For we read that even Paul, an exalted apostle, gave some dispensations, which he afterwards annulled<sup>625</sup>.

Ivo also poses that case that Umberto di Silva Candida had already presented in *Fragmentum A*<sup>626</sup>, in which the pope - according to the principle *Prima Sedes a nemine iudicatur* - can never be rebuked for his moral faults, although a bad pope can drag countless men behind him to Gehenna. In truth, a pope can be reprimanded if he deviates from the faith (*a fide devius*) so that this does not happen it is necessary for individual believers to pray for the integrity of his faith<sup>627</sup>.

Turning now to the *Panormia*, in book four we find the list of privileges of the Roman Church:

Ch. V. The first seat is subject to no one's judgment. Innocent in the Decretals:

*Pope Sylvester, during a general synod, said, "No one can judge the first see, since it is it that regulates justice. For neither by the emperor, nor by all the clergy, nor by kings, nor by the people, can judge"*<sup>628</sup>.

Chap. VI-VII. Inferiors cannot judge the causes of superiors. Nicholas, servant of the servants of God, to his most pious and beloved son, Emperor

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<sup>625</sup> *Quod apostolicae sedis iudicium a nemine sit retractandum. Item Nicolaus eidem. Patet profecto sedis apostolicae (cujus auctoritate major non est) iudicium a nemine fore retractandum, neque cuiquam de ejus liceat iudicare iudicio, juxta quod Bonifacius papa Ruffo et caeteris episcopis per Thessaliam constitutis scribens: "Nemo", ait, "unquam apostolico culmini (de cuius iudicio non licet retractare) manus obvias audacter intulit, nemo in hoc rebellis existit, nisi qui de se voluit iudicari". Et beatus papa Gelasius: "Nec de ejus (id est Romanae Ecclesiae) canones unquam praeceperunt iudicare iudicio, nec sententiam illius constituerunt oportere dissolvi, cuius potius sequenda decreta mandaverunt". Ergo de iudicio Romani praesulis non retractando, quia nec mos exigit quod diximus comprobato, non negamus ejusdem sedis sententiam posse in melius commutari: cum aut subreptum aliquid fuerit, aut ipsa pro consideratione aetatum, et temporum seu gravium necessitatum dispensatione quiddam ordinare decrevit; quoniam et egregium Paulum apostolum quaedam fecisse dispensatione legimus, quae postea reprobasse legitur. Ivo, Decretum, V, Ch. 19, 328-329.*

<sup>626</sup> 174-180.

<sup>627</sup> *Si papa suae et fraternae salutis negligens, deprehenditur inutilis et remissus in operibus suis, et insuper a bono taciturnus, quod magis officit sibi et omnibus, nihilominus innumerabiles populos catervatim secum ducit, primo mancipio gehennae cum ipso, plagis multis in aeternum vapulaturus. Hujus culpas istic redarguere praesumit mortalium nullus, quia iudicaturus ipse a nemine est indicandus, nisi deprehendatur a fide devius, pro cuius perpetuo statu universitas fidelium tanto instantius orat, quanto suam salutem post Deum, ex illius incolumitate animadvertunt propensius pendere. Ivo, Decretum, V, Ch. 23, 329-330.*

<sup>628</sup> Ivo, *Panormia*, Lib. IV, Ch. V, 1183; Cf. ANSELMUS LUCENSIS, Lib. I, Ch. 19; Lib. IV, Ch. 40; DEUSDEDIT, Lib. I, Ch. LXXXIX (partim).

Michael<sup>629</sup> .

Ch. Vili. The first see judges that of others. Pope Symmachus during the fifth synod, in the Libellus of Ennodius<sup>630</sup> .

Ch. IX. On the same subject. Pope Gelasius to the bishops of Dalmatia and to all bishops:

*The whole Church throughout the world knows that the sacred Roman Church has the right to judge the whole Church, while no one is allowed to judge her judgment, since one can appeal to her from any part of the world, but no one can appeal against her*<sup>631</sup> .

Ch. X. No one is permitted to judge what the pope has established or to retract his sentence. Pope Nicholas to Emperor Michael and all the bishops<sup>632</sup> .

Chap. XI. The judgment of the Apostolic See cannot be revoked by anyone. Nicholas to the Emperor Michael<sup>633</sup> .

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<sup>629</sup> Ivo, *Panormia*, Lib. IV, Chapters VI-VII, 1183; *Decretum*, V, Ch. 8. Cf. ANSELMUS LUCENSIS, *Lib. II, Can. 67*; DEUSDEDIT, *Lib. I, Ch. CLIU*.

<sup>630</sup> Ivo, *Panormia*, Lib. IV, Ch. VIII, 1184; *Decretum*, V, Ch. 8. Cf. ANSELMUS LUCENSIS, *Lib. I, Can. 24*; DEUSDEDIT, *Lib. I, Ch. CXXXIII*.

<sup>631</sup> Ivo, *Panormia*, Lib. IV, Ch. IX, 1184; ANSELMUS LUCENSIS, *Lib. I, Can. 47*; *Lib. II, Can. 16*.

<sup>632</sup> Ivo, *Panormia*, Lib. IV, Ch. X, 1184; ANSELMUS LUCENSIS, *Lib. I, Can. 21*.

<sup>633</sup> Ivo, *Panormia*, Lib. IV, Ch. XI, 1185-1186; *Decretum*, V, Ch. 19.



## 21. THE DECREE OF GRAZIANO (1141)

The Decree of Gratian is not merely a collection of canons and decrees; rather, it stands as a synthesis that initiates a new epoch in the history of canon law: by affirming the trend of canonistic convergence from/to Rome, it makes canon law an autonomous science.

Legal science, based on a critique of the principles of law, is structured through questions of jurisdiction, rules of procedure and the systematic use of accumulated material. Gratian did not want to make a code, as his successors considered, and although they did not give it official value, the Decree had become the *Corpus Iuris Canonici*^ considered in parallel with the *Corpus Iuris Civilis* not yet existing.

Gratian composed a treatise for the teaching of law, to which he gave a new form. The original title of the Decree was *Concordantia discordantium canonum*. It was composed shortly after 1140. The author, in the first part of the *Corpus Iuris Canonici*^ refers to Abelard, whose dialectical method of *sic et non* used in theology for the harmonization of discords and for the harmonization of antinomies is adopted. As for the material, it is tributary to earlier collections, absorbed and supplanted now by his collection.

With Gratian's work a new period in the history of law opens: that of canonical science<sup>634</sup>.

The origin of the work is determined by two factors. A) First of all the Gregorian reform had awakened in the minds of the authors, especially in the *Libri de lite*^ a new sense of the contrasts, of the antitheses existing in the theological and canonical tradition. The battle for the freedom and purification of the Church led the reformers to ask themselves what were - in the enormous mass of ancient and recent texts - the elements of a better founded and common law of the Church. They had to work out and find the criteria for a reconciliation of contradictory texts for their elimination. B) In the patient process of searching the sources of Christian antiquity and eliminating what could not agree with the supreme jurisdictional and magisterial authority of the Roman Pontiff, the Reformers sought to establish a new, more organic *deposit*. It is evi

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<sup>634</sup> Cf. Joseph GHELLINCK De, *Le mouvement Théologique du XII.me Siècle*^ Paris 1948, 205-211, 455-456.

tion that, in the course of this purification and censorship of canonical tradition, not a few ancient elements were suppressed, such as the evidence for an autonomy of the major Churches.

Gratian gave the canonical tradition the structure of a system of law, of an essentially juridical order. But the concept of *ius canonicum* - in the sense of a universal complex of legal norms - already existed before him. The *Concordantia discordantium canonum* became a canonical collection in the style of a manual of reasoning, composed of arguments of reason and justificatory authorities.

The method of enquiry was expressed by the use of the *questio*, which would later be adopted throughout *Scholasticism*. The Decree of Gratian became the *Liber auctoritatum* and, as such, would always be presupposed by the legislative pontiffs as an integral part of the *Corpus Iuris Canonici*<sup>635</sup>,

Gratian introduced no innovation as to the legislative power of the pope. In his Decree there are many quotations, taken from papal letters, forbidding an appeal against the decisions of the pope. In the first place are the decretals of Pope Gelasius. The primacy of Peter and the Roman Church is more than once affirmed as a divine institution: it must be obeyed, which is the head of all the other Churches. The pope (or the first See, or the Roman Church - these are equivalent terms -) is the supreme and, at the same time, sole legislator.

*Distinctio XXI* speaks of the hierarchical structure of the Church, within which the higher the rank of the order the greater the authority. It is proper to the major the *potestas regendi et iubendi*, while it is proper to the minor to practice obedience.

In this *Distinctio*, Gratian quotes in full the letter of Nicholas I to the Emperor Michael III, in which it is stated that inferiors are judged by superiors, quoting a scriptural argument of the same pontiff:

*The inferior office cannot absolve the superior one, Nicholas pope, For only the superior one conveniently absolves the inferior one, Therefore it is established that the inferior one cannot bind with judgment the greater inasmuch as it cannot absolve him, Wherefore the shepherd says, "Shall the axe glory against him whom I cut with it Or the saw exalt itself against him who takes it?" (Isaiah 10:15). In this way, with these biblical reminders, we clearly show that he who has less authority cannot present his judges or submit to his own judgment he who has greater authority*<sup>636</sup>.

C. VII. *Nicholas pope. Therefore, with the help of divine inspiration, we are not sorry nor impossible to prove to you, if you will listen to us, that no one can be legitimately subjected to the judgments and definitions of those who are in an inferior state of dignity and order. In the time of the emperors Diocletian and Maximian, the bishop of the city of Rome, Marcellinus, who was afterwards a*

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<sup>635</sup> Cf. Stephan KUTTNER, *Gratian: Cuomo and C work*, in *Studia Gratiana*, I, Bologna 1953, 17-19.

<sup>636</sup> C. IV. *Inferiores a superioribus iudicandi sunt. Nicolaus papa. Inferior sedes potiore absolvere non potest. Sola enim potior inferiorem convenienter absolvit. Hinc liquido providetur, quia*

distinguished martyr, was compelled by the pagans to enter their temple and sacrifice incense. For this reason a council assembly was assembled, consisting of several bishops, at which, after making an inquiry, the pontiff himself declared that he had done what he was accused of. However, none of them dared to utter a sentence against him, rather they said to him, "With your own mouth judge your cause, but not with our judgment." So they repeated, "Therefore by thine own self shalt thou justify thyself, and with thy own mouth shalt thou condemn thyself"; they replied, "The first seat can be judged by no one." The same thing had happened in the time of Pope Sixtus, who had been accused with evil rumors. At the council, at which the emperor Valentinian had spoken, it was said, "It is not lawful to pass judgment against the pontiff." The emperor himself left it to the liberty of the said pontiff to judge himself by his own judgment. Therefore, no one can be subject to the judgments of minor pontiffs or inferior cities<sup>637</sup>.

C. IX. The sentence of condemnation of minors against superiors is not worth Nicolas pope. The Holy Fathers at Chalcedon detested this arrogance so much that they condemned, without reinstatement, the bishop of Alexandria Dioscorus, especially-

*quem non potest absolvere, nec potest indicio inferior potior em ligare. Unde Propheta ait: "Num- quid gloriabitur securis contra eum, qui secat in ea? aut exaltabitur serra contra eum, qui trahit eam?". His ita ex divina scriptura commemoratis sole clarius exhibuimus, non posse quemquam, qui minoris auctoritatis est, eum, qui maioris est potestatis, iudiciis suis addicere, aut propriis diffinitionibus subiungere. Decretum Magistri Gratiani, edidit Aemilianus FRIEDBERG, I, Lipsiae 1879, Dist. XX, c.4, 70.*

because he had had the presumption of excommunicating the most holy and most blessed Leo, archbishop of great Rome... Dioscorus was condemned not for heterodoxy, but because he had excommunicated the lord archbishop Leo<sup>638</sup>.

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<sup>637</sup> C. VII. Nicolaus papa. Nunc autem divina inspiratione non nos pigebit, nec nobis impossibile erit, ostendere nobis (si tamen audire velitis), non posse quemquam rite ab his, qui inferioris dignitatis vel ordinis sunt, iudicialibus submitti diffinitionibus. Siquidem tempore Diocletiani et Maximiani Augustorum Marcellinus episcopus urbis Romae, qui postea insignis martir effectus est, adeo compulsus est a paganis, ut templum eorum ingressus grana thuris super prunas imponderet: cuius rei gratia collecto, numerosorum episcoporum concilio, et inquisitione facta hoc idem Pontifex se egisse confessus est. Nullus tamen eorum proferre sententiam in eum ausus est, dum ei sepiissime omnes dicerent: "Tuo ore iudica causam tuam, non nostro iudicio". Et iterum: "Noli, audiri in nostro iudicio, sed collige in sinu tuo causam tuam". Et rursum: "Quoniam ex te", inquit, "indicaberis, aut ex ore tuo condempnaberis". Et iterum dicunt: "Prima sedes non indicabitur a quoquam". Item in eadem: Sed et cum quidam tempore quodam contra Sixtum Papam temptassent quedam mali rumoris obicere, et in concilio, cui Valentinianus Augustus intererat, dictum fuisset, non licere adversus Pontificem sententiam dare, surrexit idem protinus imperator, et in arbitrio pre- fati Pontificis tribuit indicare iudicium suum. Etenim nullus Pontificum minorum vel inferiorum urbium subactus iudiciis invenitur. Ibidem, Dist. XXI, C. VII, 71-72. Cf. ANSELMUS LUCENSIS, Lib. II, Can. 67\ DEUSDEDIT, Lib. I, Ch. CLIU; Ivo, Decretum, V, Ch. 8; Panormia, Lib. IV, Ch. VI.

<sup>638</sup> C. IX. Minorum sententia, maiores dampnare non valeant. Nicolaus pope. In tantum banc presumptionem sancti Patres apud Calcedonem detestati sunt, ut Dioscorum Alexandrinum antistitem inter

*Distinctio XCVI* speaks of the role of imperial authority in relation to the Church. The laity, including the emperors, cannot interfere in ecclesiastical affairs, especially in the matter of papal or episcopal election, and the property of the Church. Emperors cannot intervene during synods, they must concern themselves with the faith, without judging the decisions of the prelates. Both emperor and pontiff cannot encroach and usurp the field of others.

C. VII. *The pontiff cannot be absolutely dissolved nor bound by secular power. Nicholas pope. He, called god by the pious prince Constantine, it is clear that he cannot be judged by men, but by God*<sup>639</sup>.

*Questio III* deals with the authority of the metropolitan bishop in relation to the suffragan see. The metropolitan can absolve or condemn the presbyters of his suffragan, without prior consultation. But only the Roman See, with authority judges all, without, however, being judged by any. Gratian supports this thesis by basing himself on the same *auctoritates* as his predecessors.

We consider it superfluous here to refer in full to all the texts concerning our axiom. We therefore limit ourselves to making only a few hints, without interrupting the continuity of our discourse.

D. X. *The judgement of the Apostolic See by no one can be reproved, nor is it permitted to review its judgement, according to Pope Innocent and Pope Gelasius*<sup>640</sup>.

E. XIII. *THE first See is not subject to the judgment of anyone. Pope Innocent: (in truth it is the Constitutum Silvestri)\*.*

*No one will judge the first See, who wishes to order justice. The judge is judged neither by the\*emperor, nor by all the clergy, nor by the kings*<sup>641</sup>.

F. XIV. *Simmachus: God willed that the causes of other men should be brought by men, but he reserved, no doubt, the prelate of this see to his own will^.*

G. XVI. *Pope Gelasius to Legate Faustus:*

*The canons prescribe that appeals must be referred to the consideration of*

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*cetera idcirco potissimum sine ulla restitutione dampnaverint... quia... excommunicationem in S. Leonem Papam dictavit... presumpsit enim et excommunicationem dictare adversus sanctissimum et beatissimum archiepiscopum magnae Romae Leonem... Propter fidem non est dampnatus Dioscorus, sed quia excommunicationem fecit domino archiepiscopo Leoni. Ibidem, Dist. XXI, C. IX. 72. Cf. ANSELMUS LUCENSIS, Lib. II, Can. 67', DEUSDEDIT, Lib. I, Ch. CLIU; Ivo, Decretum, V, Ch. 8; Panormia, Lib. IV, Ch. VI.*

<sup>639</sup> C. VII. *Nicolaus papa. A seculari potestate Pontifex prorsus nec solvi nec ligari valeat. Satis evidenter ostenditur, a seculari potestate nec solvi prorsus, nec ligari Pontificem, quem constat a pio principe Constantino Deum appellatum, cum nec posse Deum ab hominibus iudicari manifestum sit. Ibidem, Dist. XCVI, C. VII, 339.*

<sup>640</sup> *Ibid, Cause IX. Questio III. C. X, 609. Cf. Ivo, Decretum, V, Ch. 19.*

<sup>641</sup> *Ibid. c. IX. Questio III. c. XIII, 610. Cf. ANSELMUS LUCENSIS, Lib. I, Can. 19; Lib. IV, Can. 40; DEUSDEDIT, Lib. I, Ch. LXXXIX; Lib. IV, XLI; Ivo, Panormia, Lib. V, Ch. 8.*

*this court. And they sanction that no one can, nor should ever appeal against it*<sup>642</sup>

H. XVII. *Pope Gelasius to the bishops of Dalmatia:*

*The Church scattered throughout the world is aware that the sacrosanct Roman Church can judge over the whole Church, but cannot be judged... and this is because of the primacy which Peter has received from the Lord*<sup>643</sup>.

I. XVII. *Gelasius to the bishops of Dardania:*

*As a Church scattered throughout the world knows that the See of the blessed Apostle Peter has the right to... judge over the whole Church*<sup>644</sup>.

J. XXX. *Pope Nicholas to all the bishops:*

*No one is permitted to judge the Roman See and oppose its judgment, because of the primacy of the Roman Church, transmitted by Christ to the Apostle Peter*<sup>645</sup>.

Gratian, in order to ground the principle on the unjusticiability of the pope, unlike the previous canonistic tradition, did not insert any new canonical or magisterial text. He left the axiom *Prima Sedes a nemine iudicatur* unchallenged. However, he partially transcribed the *Fragmentum A*<sup>646</sup> of Umberto di Silva Candida. He thus brings together in his Decree the two contrasting juridical traditions that have been co-present in the Church: the first, supported by the Simmachian apocrypha, affirms that the pope can never be judged by anyone; the other holds that in the case of heresy the pope can be reprimanded. So, this conception worked out by Gregory the Great and followed by Isidore of Seville<sup>647</sup>, referring to the *rectores* of the Churches, was handed down up to the 12th century. It must, however, be specified that Gregory the Great and Isidore of Seville spoke of *rectores* of the Churches, a term which indicated both bishops, as well as preachers or doctors: they did not speak *expressis verbis* of the Bishop of Rome. Along the history of the axiom we have also encountered the opinion of some who held that the pope could be *rectores* and judged in the case of heresy. Gratian's text has been a subject of discussion with regard to the development of papal theory and also studied from the point of view of the limits of primacy. In general, the canonists of the 11th century left the principle of papal unjusticiability intact, since in their view, a heretical pope *ipso facto* ceased to be pope. Moreover, there was always the risk of trying a man who was legitimately pope, even though

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<sup>642</sup> *Ibid*, Cause IX. *Questio* III. C. XVI, 611. Cf. ANSELMUS LUCENSIS, *Lib. II, Can. 56*; Ivo, *Decretum*, V, Ch. 9.

<sup>643</sup> *Ibid*, Cause IX. *Questio* III. C. XVII, 611; Cf. ANSELMUS LUCENSIS, *Lib. I, Can. 47*; Ivo, *Decretum*, V, Ch. 9.

<sup>644</sup> *Ibid*, Cause IX. *Questio* III. C. XVIII, 611. Cf. ANSELMUS LUCENSIS, *Lib. I, Can. 48*.

<sup>645</sup> *Ibid*, Cause XVII. *Questio* IV. C. XXX, 823. Cf. ANSELMUS LUCENSIS, *Lib. I, Can. 21*; Ivo, *Panormia*, *Lib. IV, Ch. X*.

<sup>646</sup> 174-180.

<sup>647</sup> 79 ff.

the circumstances had been precisely defined. The problem was also who was to determine whether the pontiff was truly heretical, and which juridically competent body was in a position to judge him.

On the integrity of the pope certainly depends the salvation of the people. However, because of his moral faults and his corrupt conduct, no one can reproach him, because the pope can be judged by no one, while he can judge everyone, but he must be reprovved only if he strays from the faith. From this derives the obligation to pray, because on his safety depends, after God, the salvation of the *universitas fidelium*<sup>648</sup>. The thesis of the possibility of the pope-heretic will be taken into account throughout the Middle Ages, until the time of the Western Schism (1378-1417). The ecclesiological importance of this thesis is remarkable: it makes more evident the fact that the pope cannot be separated from the Church, and that his *supra* position must be conceived within his *in et cum* situation. Again: this thesis clearly brings in a certain distinction between the *situs*, which may fall, and the *see* which never errs; thus it is admitted that the pope may err and fall into heresy<sup>649</sup>.

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<sup>648</sup> C. VI. *Dampnatur Apostolicus, qui suae et fraternae salutis est negligens. Item ex gestis Bonifacii Martiris. Si papa suae et fraternae salutis negligens reprehenditur inutilis et remissus in operibus suis, et insuper a bono taciturnus, quod magis officit sibi et omnibus, nichilominus innumerabiles populos catervatim secum ducit, primo mancipio gehennae cum ipso plagis multis in aeternum vapulaturus. Huius culpas istis redarguere presumit mortalium nullus, quia cunctos ipse indicaturus a nemine est indicandus, nisi deprehendatur a fide devius; pro cuius perpetuo statu universitas fidelium tanto instantius orat, quanto suam salutem post Deum ex illius incolumitate animadvertunt propensius pendere. Decretum Magistri Gratiani, Dist. XL, C. 6, 146. Cf. Ivo, Decretum, V, Cb. 23.*

<sup>649</sup> Cf. Yves CONGAR, *L'église de Saint Augustin à l'époque moderne*, Paris 1970, 190.

## CONCLUSION

The aim of our research was to examine the principle *Prima Sedes a nemine iudicatur* in its historical perspective: from its origins to the Decree of Gratian (1141). But we ask ourselves at this point: what happened afterwards? We want to trace for this a brief historical *excursus* that outlines the development of the axiom up to the Vatican II.

The principle *Prima Sedes a nemine iudicatur* was already being debated after the death of Pope Adrian IV (1159): Frederick I fought against Alexander III (1159-1181) to support his candidate to the Apostolic See, Victor V. With Boniface VIII (1294-1303), however, this principle was authoritatively defined and acquired a juridical and political character.

The latter, in his bull *Unam Sanctam* of November 18, 1302, vigorously proclaimed the principle of the absolute sovereignty of the Roman Pontiff. The occasion for the promulgation of this bull was given by the long and violent conflict with the king of France, Philip IV, called the Fair: he, in fact, was reluctant to admit any idea of subordination to the pontiff in secular matters.

The dispute was caused by the taxes that the king of France wanted to impose on the French clergy, without a previous agreement with Rome. The fact was considered by the pope as a violation of the freedom of the Church by the secular power. The conflict culminated in the promulgation of the bull, destined to establish the fullness of papal power over all of Christendom, including France and its kings. In this way was reached the highest expression of the evolution of the Church's attitude towards secular power after the Gregorian reform.

The bull is an extremely consistent synthesis of Boniface VIII's thought at the height of the medieval period. It states:

*In this one and only Church there is one body and one head, not two, as if it were a monster, namely, Christ and Peter, the vicar of Christ and the successor of Peter, for the Lord said to Peter, "Shepherd my sheep" (John 21:17). "My sheep" He said, speaking generally, and not particularly of this or that flock; therefore it is well understood, that He entrusted all His sheep. If therefore the Greeks or others affirm that they were not entrusted to Peter and his successors, they consequently confess that they are not of Christ's flock, because the Lord says in John that there is one fold, one and only one shepherd.... Therefore it is necessary that the more clearly we should affirm that spiritual power is superior to every earthly power in dignity and nobility, as spiritual things are to temporal things... Therefore, the truth attests... that the spiritual power has the duty of establishing*

earthly power and, if it does not prove good, to judge it. Thus is fulfilled the prophecy of Jeremiah concerning the Church and her power: "Behold, today I have set you over the nations and over the kingdoms" (Jer. 1:10) ... Therefore, if the earthly power errs, it will be judged by the spiritual power; if the inferior spiritual power errs, it will be judged by the superior power; but if the supreme spiritual power errs, it can only be judged by God and not by men; to this the Apostle bears witness: "E\*spiritual man judges all things; but he himself is not judged by any man" (1 Cor. 2:15), for this authority, though given to men and exercised by men, is not human, but sen^ally divine, having been given to Peter by the mouth of God, and founded for him and his successors in Christ, which the fixed rock (Peter) had (before) confessed, when the Lord said to Peter himself, "Whatsoever thou shalt bind..." (Mt 16:18-19) ... Therefore we declare, say, establish, define and affirm to every human creature that it is absolutely necessary for the salvation of every human creature that they submit to the pontiff of Rome<sup>650</sup>

The text that Boniface VIII invokes in favour of the pope's authority is 1 Cor 2:15. The bull is essentially inspired by the mystique of unity or monarchical ideology. The world is one and is subject to a single order, and in Boniface's eyes it can only have one transcendent rule that invokes a single supreme instance on this earth: and this is determined by the pope. If the temporal power deviates, this will be judged by the spiritual power; if a lesser spiritual power deviates, it will be judged by its superior, but the supreme spiritual power must be judged by God alone, and by no man, according to the testimony of the Apostle: *Spiritualis homo iudicat omnia, ipse autem a nemine iudicatur*. In this passage we can grasp the foundation of Boniface VIII's political vision of the world. The spiritual man, as understood by the pontiff, is a sort of superman who affirms his power because he considers himself invested with a royal election.

The ideological bases of the bull are: the papacy's self-consciousness, the utterances of Bernard of Clairvaux, Hugh of St. Victor, the monarchical Dionysian

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<sup>650</sup> *Igitur ecclesiae unius et unicae unum corpus, unum caput, non duo capita, quasi monstrum, Christus videlicet et Christi vicarius Petrus, Petrique successor, dicente Domino ipsi Petro: "Pascere oves meas". Meas, inquit, et generaliter, non singulariter has vel illas: per quod commisisse sibi intelligitur universas. Sive ergo Graeci sive alii se dicant Petro eiusque successoribus non esse commissos: fateantur necesse se de oribus Christi non esse, dicente Domino in Ioanne, unum ovile et unicum esse pastorem... Spiritualem autem et dignitate et nobilitate terrenam quamlibet praecellere potestatem, oportet tanto clarius nos fateri, quanto spiritualia temporalia antecellunt... Nam, veritate testante, spiritualis potestas terrenam potestatem instituere habet, et iudicare, si bona non fuerit. Sic de ecclesia et ecclesiastica potestate verificatur vaticinium Hieremiae: "Ecce constitui te hodie super gentes et regna" et cetera, quae sequuntur. Ergo, si deviat terrena potestas, indicabitur a potestate spirituali; sed, si deviat spiritualis minor, a suo superiori; si vero suprema, a solo Deo, non ab homine poterit iudicari, testante Apostolo: "Spiritualis homo iudicat omnia, ipse autem a nemine iudicatur". Est autem haec auctoritas, et si data sit homini, et exerceatur per hominem, non humana, sed potius divina, ore divino Petro data, sibi quae suisque successoribus in ipso, quem confessus fuit petra, firmata, dicente Domino ipsi Petro: "Quodcumque ligaveris etc."... Porro subesse Romano Pontifici omni humanae creaturae declaramus, dicimus, diffinimus et pronunciamus omnino esse de necessitate salutis. BONIFACIUS VIII PAPA, *Unam sanctam*, in *Corpus Iuris Canonici*, edidit Aemilianus FRIEDBERG, II, Lipsiae 1881, 1245-1246.*

ideology, that of the Franciscans and the Hermits of St. Augustine.

*Wnam sanctam* expresses an ecclesiology founded on unity; this idea dominates the entire bull: one ark of salvation, one body, one head, one flock, one shepherd, one principle. This principle is Christ, and with the same requirement the pope, his vicar. So that Christ and the pope form a single head: the pope is the head of the mystical body! And this is identified with the juridical reality, whereby the bodies of men submit to the jurisdiction of the pope.<sup>651</sup>

One of the most interesting attacks of the anti-hierocratic reaction concerned the use that the pontiffs made of sacred Scripture. Marsilius of Padua (4-1328) was one of the greatest opponents of the hierocratic-papal use that the pontiffs had made of Paul's *1 Cor 2:15*, *1 Cor 6:3* and other Petrine texts, especially *Mt 16:18-19*. He, in his work *Defensor Paris*, stated that the popes had gradually seized one jurisdiction after another, particularly when the imperial see was vacant. They claimed, says Marsilius, to have a coactive jurisdictional supremacy over all men and provinces. He maintains that this is a false opinion, which the authorities of the canons do not at all support, but rather oppose. For, he says, in order to defend this principle, the popes have done violence to sacred Scripture; they have turned its meaning upside down and distorted it by drawing conclusions which do not agree with those of the saints and the most learned teachers of the faith<sup>652</sup>.

It is a very important period marked by the Western Schism (1378-1417). It would be interesting to study the individual theories that were elaborated on the principle *Prima Sedes a nemine iudicatur in order* to resolve the schism. In this perspective, leaning on the canonistics of Gratian, some affirmed the question of the heretical pope. This is the canon which proclaims papal immunity from any human judge *nisi deprehendatur a fide devius*. In case of heresy the pope can be judged, without saying by whom.

The decretists<sup>653</sup> drew up a casuistry on the subject, extending the heretic clause to the pope who was sinful, incorrigible and notorious, and therefore scandalous. As to the body which is to judge the pope, the majority of canonists propose the council; but there are also those who think of cardinals. Only some, however, think that in this case the College of Cardinals or the council are superior to the pope. The majority hold that the pope, at least in the case of heresy, is *minor quolibet catholico*.

Vatican I, during the IV session of 18 July 1870, defined the principle of papal inexcusability: And *since, according to the divine right of the apostolic*

<sup>651</sup> Cf. Yves CONGAR, *L'église de Saint Augustin à l'époque moderne*, Paris 1970, 276.

<sup>652</sup> MARSILIUS DE PADUA, *Defensor Pacis*, edidit Richard SCHOLZ, in M.G.H., *Fontes Iuris Germanici Antiqui*, I-II, Hanno verae 1932-1933, *Dictio I*, ch. XIX, 10; *Dictio II*, ch. I, 5; ch. III, 2-15; ch. V, 3; ch. XXVIII, 19, I, 132-133; 141-142; 152-158; 180-182; II, 552-553.

<sup>653</sup> The dissemination of Gratian's *Decretum* gave rise to a flourishing school of scholars and commentators, who, working on the Decree in the same way as the Bolognese glossators had done on Roman laws, enriched canonical literature with *Summae* and commentaries on Gratian's text. One begins therefore to designate, in a narrower sense, with the name of *Decretistae* these interpreters.

*primacy, the Roman Pontiff is in charge of the whole Church, we also teach and declare that he is the supreme judge of the faithful, and that in any case concerning ecclesiastical jurisdiction, recourse may be had to his judgment. No one, on the other hand, can review a judgment pronounced by the Apostolic See - of which there is no greater authority - just as no one is permitted to judge on a judgment given by it. Therefore, those who assert that it is licit to appeal against the judgments of the Roman Pontiffs in an ecumenical council, as to an authority superior to the Roman Pontiff, are far from the right path of truth.*

*Therefore if anyone should say that the Roman Pontiff has only a power of vigilance or direction, and not, on the contrary, the full and supreme power of jurisdiction over the whole Church, not only in matters of faith and morals, but also in what pertains to the discipline and government of the universal Church; or that he has only a principal part, and not, on the contrary, the fullness of this power; or that it is not ordinary and immediate, either over all the individual Churches, or over all the individual pastors: let him be anathema<sup>^</sup>.*

From this dogmatic definition we come to the *Codex Iuris Canonici* of 1917 which, in canon 1556, defines in lapidary and synthetic fashion the principle *Prima Sedes a nemine iudicatur*.

*Cumen Gentium*, the Dogmatic Constitution on the Church of November 21, 1964, formally reaffirmed the primacy of the bishop of Rome as the supreme authority that cannot be judged by anyone: *His definitions are rightly said to be irreformable by themselves and not by the consent of the Church, because they are pronounced with the assistance of the Holy Spirit, promised in blessed Peter, so that they do not need any approval of others nor do they admit of any appeal to any other judgment* (LG 25).

Finally, we have the dictate of canon 1404 of the current 1983 canon law, which reads *Prima Sedes a nemine iudicatur*.

It is difficult to systematize the historical data that have emerged throughout the discussion: the intention has been to present the facts as they occurred, without the intention of using the elements that have appeared - as rich in content and argumentation as they are contradictory - to draw a conclusion.

The study of the history of the axiom *Prima Sedes a nemine iudicatur* has made us see the consciousness that our Church, incarnated in time and space, has had of itself and of its mission, always identical but carried out in an equally varied way. The past of the axiom studied cannot be used to explain the present, to better justify or condemn it. However, it is a common belief that ignorance of the past not only harms knowledge of the present, but also undermines in the present its very action.

History enlightens; its knowledge has the capacity and potential to free man, the Church and the institutions from so many secular encrustations and to love it with simplicity, but at the same time, in a critical and mature way. In this perspective, history becomes a pedagogue, a testing ground and instrument of our freedom. Historical research has made us grasp the great wealth of images and models that the history of the papacy has embodied and witnessed over the

centuries. It has made us understand many essential and marginal elements, what remains and what changes in Peter's ministry.

Down the centuries we have had different models of papacy, different epochal configurations of the Petrine ministry, testifying to the historical variability of the papacy itself. From a historical point of view, the existence of this differentiation in the various periods testifies, at least implicitly, that there is no single and supra-historical model of pope, but that the Petrine service has been embodied from time to time in relation to concrete historical circumstances. The papacy has become what it has been and continues to be: what it is both for reasons of a properly dogmatic nature and for factors of an ideological-cultural nature.

"What the papacy still lacks is an integration, as well as ecclesiological, Christological and theological in the broadest sense; a new way of interpreting, in the light of the whole Gospel datum, theologically and practically, the ministry of Peter. However legitimate it may be to consider ecclesiastical doctrine, in its real content, as an historical integration of the New Testament, one must not, however, disregard the shortcomings latent in it, that is, the fact that its entire way of thinking and expressing itself is not inspired by the authority, biblically understood, of the disciple, apostle and pastor, but by the profane model of the supreme *auctoritas*"<sup>654</sup>. In this logic, one can speak of an evolution and renewal of the papacy.

The biblical verses most quoted to support the principle *Prima Sedes a nemine iudicatur*<sup>^</sup> from its origins up to the Decree of Gratian are: "*A spiritual man judges all things, and cannot be judged by anyone*" (1 Cor 2,15); "*Do you not know that we judge angels? How much more the things of this life!*" (1 Cor 6:3); "*A disciple is not more than the teacher, nor a servant more than his master*" (Mt 10:24); "*And I say to you, you are Peter, and upon this rock I will build my Church, and the gates of hell shall not prevail against it. To you I will give the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven*" (Mt 16:18-19). Less quoted instead are the words which the Lord said three times to Peter: "*Shepherd my sheep*" (Jn 21:15ff.); "*Do not accept accusations against a presbyter without the testimony of two or three witnesses*" (1 Tim 5:19).

The texts of 1 Cor 2:15 and 1 Cor 6:3 constitute, according to Paul's thought, a constitutive element of Christian anthropology. They first underwent in Western exegesis a clerical use, then in the Late Middle Ages they assumed a load-bearing character in hierocratic theory, thus expressing a juridical and political use. The passage of 1 Cor 2:15 was first applied to the person of the martyr, then to that of the bishop and finally only to the pope; while with 1 Cor 6:3 reference was made to the social and community life of the Christian community in opposition first to the pagan world, and then only to the bishops.

With regard to the text of Mt 16,18-19 there is a Petrine interpretation: it is

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<sup>654</sup> Walter KASPAR, *WHAT Remains and What Changes in the Petrine Ministry*, in *Concilium* 8 (1975) 55.

stated that these words were spoken only to Peter. The power to bind and loose is Peter's and he passed it on to his successors.

The pope cannot be judged because he has received, through Peter, the keys of the kingdom of heaven, which Christ had entrusted directly to the prince of the apostles. He is the vicar of Peter, of Christ: therefore the head of the ecclesial body, who cannot be judged by anyone. This theological conception, which appeared only after a few centuries - characteristic of a current of thought and of certain ecclesial circles - made possible - using also the technique of falsification - the affirmation of the principle *Prima Sedes a nemine iudicatur*. This principle was not immediately universally accepted and shared, indeed it was strongly opposed; and, if at times it was shared, this happened only under certain conditions and with some reservations.

This way of reading and interpreting *Mt 16, 18-19* is not the only one. In the Middle Ages we have at the same time two traditions, two ways of understanding the passage: the Petrine reading, which is the one already set out, and the episcopal and ecclesiological one: the keys were entrusted to all the apostles. The power to bind and loose is common to all and defines episcopal authority. The fact that this was given first of all to Peter expresses precisely this unity, since Peter represents all the apostles and the Church itself. Augustine of Hippo had understood the text in a Christological sense: the stone is not Peter, it is Christ; others see in it the faith in his divinity that Peter is about to confess. This view is the most widespread<sup>655</sup>.

In the 12th century there is the permanence of these ecclesiological themes, counterbalanced by a certain tendency that considers Peter almost of another order with respect to the apostles, or the pope with respect to the bishops. To the extent to which the title *Vicarius Christi* becomes proper and exclusive to the pope, the juridical sense predominates<sup>656</sup>.

The Petrine thesis on which the principle of papal immunity is based was, later, accompanied and supported by legal affirmation, although its biblical content remained. The concept of *principatus*, a constitutional term referred since the first century to the Roman imperial monarchy and applied to the bishop of Rome and his Church, helped to found and support our axiom. The term *principatus* was assumed by Boniface I (422), by Leo the Great and, later, by Gelasius, who used it to justify the prerogative that a judgment of the pope could not be judged by anyone. *Principatus* designated the primacy of jurisdiction which the papacy claimed to have over the Christian community and the whole Church.

Despite this appropriation of Roman imperial terminology, Leo the Great's definition of papal primacy still contained a clear distinction between *principatus in the papal and imperial context*. To understand the evolution of the papacy, it is essential to bear in mind that its *principatus* had nothing to do with history, because it was held to be the direct emanation of a unique and unrepeatable divine

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<sup>655</sup> Cf. Yves M. J. CONGAR, *LI ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 140-155.

<sup>656</sup> Cf. ID., *L'église de Saint Augustin à l'époque moderne*, Paris 1970, 188-189.

act. The *principatus* of the Empire, on the other hand, was above all a matter of history, of human organization and administration; it was the result of a historical development determined exclusively by human actions, and since all power originated from God, the imperial principality itself was considered a second divine emanation.

Perhaps Ullmann is not entirely wrong when he states: for the papacy the historical development was nothing more than a confirmation of what was contained in sacred Scripture, especially in the New Testament, which established (through Saint Peter) the institution of the papacy; for the Empire this relationship was in all respects of fundamental importance, exactly reversed: the order of things established by the divine will was the powerful confirmation of the historical development that preceded<sup>657</sup>.

The idea of the pope being the supreme judge of the Church, that he can be judged by none while he can judge all, and that no law can hinder his liberty, besides finding its substance in sacred Scripture, takes its form also from the Roman milieu. The theocratic thesis of the Roman emperors was a great help to the papacy: indeed, the Roman papacy, in this respect, also contracted a debt to the late Roman constitution and law.

The function of the pope as supreme judge, appealed to by the whole Church, is expressed by the expressions *illius velie, illius notte, ad eius arbitrium*. The figure of the pope, thus delineated, reflects the influence of the emperor and of Roman law. The pope is conceived as an absolute sovereign, above every human law and every limit (except for the deviation of faith), whose *summit* and *night* men must be concerned to know for their salvation. And a conception of the person and of the office of the pope that does not derive from the theological and ecclesiastical tradition, but follows the model of the imperial idea that began with the third and fourth centuries.

The Simmachian apocrypha deserve a word: they are historical forgeries (*reine Fälschung*), formally genuine documents that contain inaccurate or invented data. The medievalists falsified in order to reconfirm their faith in something: an author, an institution, a current of thought, a theological truth, and to support an *order*. On their work we have no right to moralize<sup>658</sup>. They, though they are such, contain the truth which their falsehood conceals in their innermost being: it is the falsifier's conviction that Pope Simmachus was not to be condemned, as was evident from the Palmar Council (501).

Their forger invented the principle *Prima Sedes a nemine iudicatur*, although he made use of some pre-existing elements. Popes Zosimo and Boniface had already expressed a concept substantially identical with that contained in the apocryphal documents. Complementing the constitutional principle that all serious

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<sup>657</sup> Cf. Walter ULLMANN, *The papacy in the Middle Ages*, Bari 1987, 22-23.

<sup>658</sup> Cf. Umberto Eco, *Typology of Falsifications*, in *Fälschungen im Mittelalter*, Internationaler Kongress der M.G.H., München 16. September 1986, Teil I, *Kongressdaten und Festvorträge. Literatur und Fälschung*, I, Hannover 1988, 73. 82.

matters were to be referred to the Roman Church was Boniface I's declaration that the papacy occupied the *apostolic summit* against whose verdict there could be no appeal to any other authority or tribunal. Similar statements had already been expressed by Pope Zosimus in 418. The idea was subsequently taken up and further developed by Pope Gelasius, with whom there was an overcoming: recourse to a council or imperial tribunal was excluded. Gelasius thought only of papal judgments that could not be challenged.

The apocrypha exerted, however, a great influence up to Nicholas I, because they dealt with subjects of considerable interest to the papacy. They became part of many canonical collections, and formed, as it were, the backbone of the pope's constitutional position. The success reported by the counterfeiter was due to the better formulation of his (false) statement, more concise and incisive than the previous theological and disciplinary tradition. But the real success of the Simmachian apocrypha was that of being taken up by Pope Nicholas I in his letter of 865 addressed to Michael III, in which the pontiff demonstrated the superiority of the See of Rome over all the Churches, including that of Constantinople. Until 1721, that is, until the study made by Coustant<sup>659</sup>, the personality of Nicholas I was an impediment in the discovery of their nature and apocryphal character.

The *Constitutum Silvestri*<sup>6</sup> of all the apocrypha has been the best known, and has been most successful because it is recorded in so many canonical collections and in several papal documents.

The principle of papal inexcusability is intimately linked to the history of the papacy and the history of canonical codification. It was punctually affirmed and promoted during certain pontificates: when in the See of Peter there are eminent personalities in terms of culture and political-moral stature, the dictate of the axiom is strongly taken up and sustained in political and ecclesial relations, with secular power and with the East. In this those great personalities whose influence and power were decisive for the environment of the Roman curia played a great part: Ennodius, Alcuin, Anastasius Librarius, Humbertus of Silva Candida, the canonists of the eleventh century. Their word, writings and actions supported the work and person of the pope whenever he was threatened and accused. Without exaggeration, it could be said that the principle *Prima Sedes a nemine iudicatur* arose, developed and imposed itself only through the action and strength of a few men. In fact, it was punctually disregarded when the Church of Rome was led by men of little culture and by personalities whose lives were much debated, or who, despite their goodness and sincerity, did not have a chance and strong support.

The dictate of the axiom was affirmed in clear letters especially when great canonical and juridical activity was fermenting in Rome; in the golden moments of the affirmation of canon law, the assertion on papal in-judicability was strongly reiterated and re-proposed to ecclesial and political consciousness.

In the case of the heretical pope, too, the principle *Prima Sedes a nemine iudicatur* was affirmed. For this they referred to the story of Pope Marcellinus,

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<sup>659</sup> 51 ff.

who, though he had strayed from the faith, had not been condemned by the conciliar assembly. On that occasion, the pontiff, having fallen openly into heresy, was not required to be subjected to a conciliar judgment. The Council of Sinuessa, according to the apocryphal *simmachiano*, did no more than take note of the situation without passing any sentence of condemnation against the pontiff: it was, in fact, he himself who freely judged and accused himself.

We have not pretended to find the complex motives or cause which determined the spread and evolution of the principle *Prima Sedes a nemine iudicatur*. "The superstition of the single cause, in historiography is very often the insidious form of the search for a culprit; hence, of a value judgment. To whom the blame or the credit? Says the judge: The historian merely asks himself: why? And accepts that the answer is not simple"<sup>660</sup>. The limits of this work are all the more evident as the elements that compose it seem to be the result of an artificial juxtaposition of data. Certainly the research should continue. Therefore we put an end to the study we have proposed, but not to the research.

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<sup>660</sup> Marc BLOCH, *Apologia della storia o mestiere di storico*^ Turin 1985<sup>9</sup>, 163.



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33. G. G. FRANCO, S.J., *Appunti storici sopra il Concilio Vaticano*, edited by G. MARTINA, S.J., 1972, pp. Vili 4- 344.

34. JEAN XXII, *Les Sermons sur la Vision Béatifique*, édités par M. DYK-MANS, S.J., 1973, pp. 237. AUSILY 295
35. G. GALLINA, *Il problema religioso nel Risorgimento e il pensiero di Geremia Bonomelli*, 1974, pp. XXXII 4- 579.
36. G. P. FOGARTY, SJ., *The Vatican and the Americanist Crisis: Denis I. O'Connell, American Agent in Rom, 1885-1903*, 1974, pp. XII 4- 357.
37. H. PFEIFFER, SJ., *Zur Ikonographie von Raffaels Disputa. Egidio da Viterbo und die christlich-platonische Konzeption der Stanza della Segnatura*, 1975, pp. 296 and 36 plates.
38. G. MARTINA, S.J., *Pius IX (1846-1850)*, 1974, pp. Vili 4- 566.
39. F. DI BERNARDO, C.P., *Un vescovo umanista alla Corte Pontificia: Giannantonio Campano (1429-1477)*, 1975, pp. XXIV 4- 465.
40. K. SCHATZ, SJ., *Kirchenbild und Päpstliche Unfehlbarkeit bei den Deutschsprachigen Minoritätsbischöfen auf dem I. Vatikanum*, 1975, pp. XXVIII 4- 529.
4142. I. GATTI, II P. *Vincenzo Coronelli, dei Frati Minori Conventuali, negli anni del generalato (1701-1707)*, 1976, Part I, pp. XXIII 4- 688 and 21 plates; Part II, pp. 689-1352 and 16 plates.
43. S. OLSZAMOWSKA-SKOWROŃSKA, *Les accords de Vienne et de Rome entre le Saint-Siège et la Russie 1880-1882. Les documents authentiques*, 1977, pp. XXII 4-556.
44. S. J. MILLER, *Portugal and the Holy See c. 1748-1830. An Aspect of the Catholic Enlightenment*, 1978, pp. XII 4- 412.
4546. AA.VV., *Römische Kurie. Kirchliche Finanzen. Vatikanisches Archiv. Studien zu Ehren von Hermann Hoberg*. Hrsg. E. GATZ, 1979. P. I, pp. XIII 4- 472 and 1 table; P. II, pp. VIII 4- 473-1004 and 10 tables.
47. R. F. COSTIGAN, SJ., *Rohrbacher and the Ecclesiology of Ultramon- tanism*, 1980, pp. XXX 4- 263.
48. 57. I. DUMITRIU-SNAGOV, *Le Saint-Siège et la Roumanie moderne, 1850-1866*, 1982, pp. XXIII 4- 658. - II. *1866-1914*, 1989, pp. XXVI + 1026.
49. M. CHAPPIN, SJ, *Pie VII et les Pays-Bas (1814-1817)*, 1984, pp. 383.
50. AA.VV., *Dalia Chiesa antica alla Chiesa moderna*, edited by M. Fois, SJ.- V. MONACHINO, SJ.-F. LITVA, SJ., 1983, pp. XXVII 4-533.
51. G. MARTINA, SJ, *Pius IX (1851-1866)*, 1986, pp. XIV 4- 760.
52. C. A. NASELLI, C.P., *La soppressione napoleonica delle corporazioni - religiose, 1808-1814*, 1986, pp. 309.
53. G. HELLINGHAUSEN, *Kampf um die Apostolischen Vikare des Nordens J. Th. Laurent und C. A. Lüpke*, 1987, pp. XXVI 4- 364.
54. M. F. MELLANO, *Anni decisivi nella vita di A. Rosmini (1848-1854)*, 1988, pp. 172.
55. F. TURVASI, *Giovanni Genocchi and the Indians of South America (1911-1913)*, 1988, pp. XIX 4- 152.
56. F. DÍAZ DE CERIO SJ.-M. F. NÚÑEZ Y MUÑOZ, *Instrucciones secretas a los Nuncios de España en el siglo XIX (1847-1907)*, 1989, pp. XIII 4- 384.
58. G. MARTINA, S.J., *Pius IX (1867-1878)*, 1990, pp. XII + 614.
59. C. C. FORNI LI, O.F.M. Cap., *Delinquenti e carcerati a Roma alla metà del '600*, 1991, pp. XXXIV 4- 286 and 16 plates.
60. G. CIPOLLONE, O.SS.T., *Christianity-Islam : Captivity and Liberation in the Name of God*, 1992, pp. XXXIV 4- 554 and 8 plates.
61. S. VACCA, O.F.M.Cap., *Prima Sedes a nemine iudicatur. Genesis and - historical development of the axiom up to the Decree of Gratian*, 1993, pp. XXII 4-270.

<sup>15</sup> Yves CONGAR, *L'ecclésiologie du Haut Moyen Âge. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 10.

<sup>41</sup> Albert Michael KONIGER, 296.

<sup>44</sup> *Sed et in eo Concilio admirabile factum Principis non puto reticendum. Etenim cum ex omnibus pene locis Episcopi convenissent, et (ut fieri solet) diversis ex causis inter se quaedam iurgia detulissent, interpellabatur frequenter a singulis: offerebantur libelli, culpa proferebantur, et magis ad haec, quam ad id, pro quo ventum fuerat, animos dabant. At ille videns quod per huiusmodi iurgia causa summi negotii frustraretur, diem certam statuit, qua unusquisque Episcoporum si quid querimoniae habere videretur, deferret. Et cum resedisset, suscepit a singulis libellos: quos simul omnes in sinu suo continens, nec in eis quid contineretur aperiens, ait ad Episcopos: Deus vos constituit sacerdotes, et potestatem vobis dedit de nobis quoque iudicandi, et ideo nos a vobis recte iudicamur. Vos autem non potestis ab hominibus iudicari. Propter quod Dei solius inter vos exspectate iudicium, et vestra iurgia quaecumque sunt, ad illud divinum reserventur examen. Vos etenim nobis a Deo dati estis dii, et conveniens non est ut homo iudicet deos, sed ille solus de quo scriptum est: "Deus stetit in synagoga deorum, in medio autem deos discernit" (Psal 81, 1). RUFINUS AQUILEJENSIS PRESBYTER, *Historiae Ecclesiasticae*, Lib. I, 2, in PL., 21, 468.*

<sup>53</sup> *In der Sache gab Zosimus ^war den Afrikanern nach, doch kleidete er seine Entschuldigung in Worte, die einen Fundamentalsatz des späteren primatus iurisdictionis "darstellen". Hans- Jürgen BECKER, Die Appellation vom Papst an ein allgemeines Konzil. Historische Entwicklung und kanonistische Diskussion im späten Mittelalter und in der frühen Neuheit*, Köln-Wien 1988, 22.

<sup>65</sup> Antonio POMA, 3.

<sup>1</sup> Cf. Ottorino BERTOLINI, *Roma di fronte a Risanalo e ai Longobardi*, Bologna 1941, 49.

<sup>11</sup> *Atque id agitur a nonnullis episcopis et senatorib[us] t[an]tu[m], Symmac[us] ne] audientiae - subderetur, hoc palam pro eius defensione clamantibus, quod a nullo possit Romanus Pontifex, etiamsi talis sit, qualis accusatur, audiri. Fragmentum Laurentianum, X, rr. 5-8.*

<sup>20</sup> The epithet *Palmare* does not appear in the synodal deliberation of October 23; it is found only in the manuscripts. It is believed that the name derives from *ad palmaria*, the portico of St. Peter's, where palm trees were depicted. It is thought that the synod was celebrated here. But, this is difficult to think. There are those who interpret instead that the name indicates the palm of the victory achieved by Simmachus over his adversaries, since the session of 23 October turned out to be in his favor. The most probable hypothesis is that it refers to the place where, in 500, King Theodoric had delivered his speech, that is the building located at that point of the Roman forum near the Senate building, called *ad palmam*. This is attested by an author contemporary to the facts: the Anonymous Valesian, who writes: *'In urbe ecclesiae ambulavit rex Theodericus Romam et occurrit beato Petro devotissimus.... Deinde veniens ingressus urbem venit ad senatum, et ad Palmam populo adlocutus se omnia deo iuvante. ANONIMUS VALESIANUS, Consularia Italica, Pars Posterior, edidit Theodorus MOMMSEN, in M.G.H., Auct. Ant., IX, pars posterior, Berolini 1892, 324, rr. 3-7.*

<sup>28</sup> MAGNUS FELIX ENNODIUS, *Libellus pro synodo, edidit Fridericus VOGEL, in M.G.H., Auct. Ant., VII, Berolini 1961, 48-67.*

<sup>29</sup> Leander NAVARRE, *Ennodius' Historical Contribution, in Augustinianum 2 (1974) 315.*

<sup>30</sup> Avitus was born in Vienne around 450 to a senatorial family originally from Alvernia, to which Sinodius Apollinaris and probably the emperor Avitus (+ 456) also belonged.

<sup>47</sup> *Perlata est sollicitudini nostrae ab Italia in exemplaribus sacerdotalis formula decreti, quam de papa Symmacho apud urbem collecti Italiae antistites ediderunt. Quam constitutionem licet observabilem numerosi reverendique concilii reddat assensus, intelligimus tamen sanctum Symmachum papam, si saeculo primum fuerat accusatus, consacerdotum suorum solatium potius, quam recipere debuisse iudicium: quia sicut subditos nos esse terrenis potestatibus jubet arbiter coeli, staturos nos ante reges et principes in quacumque accusatione praedicens; ita non facile datur intelligi, qua vel ratione, vel lege, ab inferioribus eminentior iudicetur. Nam cum celebri praeepto apostolus clamat, accusationem vel in presbyterum recipi non debere, quid in principatum generalis ecclesiae criminationibus licere censendum est? Ibid., 293-294.*

<sup>49</sup> Avitus framed his authority as a senator as being part of a family that covered certain offices. In the republican age the senate was an order that tended to be de facto hereditary.

With the principate it became so by right, since the sons of senators were obliged to present themselves to the magistracies: the order included senators and their agnatic descendants up to the third degree and all its members.

<sup>60</sup> Cf. W. T. TOWNSEND, *The so-called Symmachian Forgeries*, in *The Journal of Religion* Aprii (1933) 174.

<sup>61</sup> Petrus COUSTANT, *Appendix*, 117-120. The texts of the Simmachian apocrypha can be found in *Appendix*: 1-124.

<sup>63</sup> *Respondit Maximus ex consule, et dixit: non licet enim adversus pontificem dare sententiam. Respondit Xystus et dixit: Quoniam in meo arbitrio est iudicare et injudicare, tamen non abscondatur veritas.* Petrus COUSTANT, 119.

<sup>67</sup> Petrus COUSTANT, 120-124.

<sup>71</sup> Petrus COUSTANT, 44-52.

<sup>86</sup> *Marcellinus autem in conspectu synodi cecidit in terra... In sinu autem CCC. episcoporum caput cinere convolutus Marcellinus episcopus Urbis voce clara clamans dicebat: "Peccavi coram vobis et non possum in ordine esse sacerdotum: quoniam avarus me corrupit auro".* *Ibid.* 34. 35.

<sup>89</sup> Petrus COUSTANT, 89-94.

<sup>100</sup> SYXTILS, POPE, *Ad Orientales episcopos*, Ep. 3, apocrypha, in MANSI, 5, 1154-1156.

<sup>107</sup> *Ibid.*, 51.

<sup>110</sup> Cf. A. HOVE van, 267-268.

<sup>117</sup> Cf. Paul FOURNIER - Gabriel LE BRAS, 98.

<sup>128</sup> *Ibid.*, 1100-1101.

<sup>134</sup> Cf. BARONIUS Caesar (Card.), *Annales Ecclesiastici, edidit Augustinus THEINER*, IV, Paris 1864, 90-92.

138 E regione verborum istorum Eabbens hanc adscripsit notam: "Hunce canonem suppositi- tiam esse Isidori mercem, aut saltem hanc vocem (neque a regibus) irrepsisse nemo dubitaverit, qui sub Constantino nullos in Imperio Romano fuisse reges agnoverit. Certe abest ea vox ab epistola Nicolai papae ad Michaellem imperatorem". Petrus COUSTANT, *Appendix*, 51-52, notaf.

<sup>11</sup> The text was cited in note 8, 85.

<sup>27</sup> *Q<sup>TM</sup> tamen, postquam nullus probator criminum esse voluit, coram omni populo in basilica beati Petri apostoli evangelium portans ambonem conscendit; invocatoque sanctae Trinitatis nomine, inreirando ab obiectis se criminibus purgavit.* *Annales Laurisenses, A. 800., edidit Georgius Heinricus PERTZ*, in M.G.H., SS., I, Hannoverae 1826, 188, rr. 17-20.

<sup>36</sup> *Liber Pontificalis*, II, 7, rr. 16-17.

<sup>8</sup> *Incipit canon Sancti Silvestri et CCLXXXIIII episcoporum. Fecit bos gra(n)dus in gremio synodi, ut non presbiter adversus episcopum, non diaconus adversus presbiterum, non subdiaconus adversus diaconum, non acolitus adversus subdiaconum, non exorcista adversus acolitum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam. Et non damnabitur presul sine LXXII testes neque presul summus a quemquam iudicabitur, quoniam scriptum est: "Non est discipulus super mag(r)istrum". Presbiter autem, nisi in LXIII testimonia, non damnabitur. Diaconus autem cardine constructus urbis Rome nisi XXXVII non <con> dempnabitur, subdiaconus, acolitus, exorcista, lec(i)tor nisi, sicut scriptum est, in VII testimonia filios habentes et uxorem et omnino Christum praedicantes. Sic datur mistica veritas.* Hubert MORDEK, 187.

<sup>22</sup> Cf. 58-61.

<sup>39</sup> *Canonica iam factus (sic) papa vocatione in urbem Romam congregavit et ipse cum consilio praefati Constantini Augusti CCLXXVII episcopos... In qua et consensus subscriptione omnium constitutum est, ut nullus laicus crimen audeat inferre, et ut presbiter non adversus episcopum, non diaconus adversus presbiterum, non subdiaconus adversus diaconum, non acolitus adversus subdiaconum, non exorcista adversus acolitum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam, et non dampnetur praesul nisi in septuaginta duobus testibus. Neque praesul summus a quoquam iudicetur, quoniam scriptum est: "Non est discipulus super magistrum".* Paulus HINSCHIUS, 449.

<sup>1</sup> *Post beatum Gregorium (Magnum) usque in praesens nullus praesul in Romana urbe pontificali honore sublimatus illi videtur aequi parandus. Regibus ac tyrannis imperavit, eisque ac si dominus orbis terrarum,*

*auctoritate praefuit. REGINUS PRUMENSIS, Chronicon, a. 868, edidit, Georgius Henricus PERTZ, in M.G.H., S.S., I, Hannoverae 1826, 579, rr. 11-14.*

n Cf. 24.

<sup>12</sup> *Ecclesiastica quoque testatur historia, quia cum piae memoriae Constantino principi scripto oblatae accusationes contra episcopos fuissent, libellos quidem accepit et eosdem, qui accusati fuerant, episcopos convocans in eorum conspectu libellos, quos acceperat, incendit dicens: "Vos diu estis, a vero Deo constituti. Ite et inter vos causas vestras disponite, quia dignum non est, ut nos iudicemus deos". NICOLAUS I PAPA, Ad Michaelem Graecorum Imperatorem, Ep. 88, edidit E. PERELS, in M.G.H., Epp., VI, 4, Berolini 1925, 455, r.40; 456, rr. 1-4.*

<sup>18</sup> *Consonat autem huic necessariae sententiae sanctus Silvester et magni Constantini baptizator Augusti dicens: "Neque ab Augusto neque ab omni clero neque a regibus neque a populo index indicabitur". NICOLAUS I POPE, 465, rr. 14-16.*

<sup>25</sup> *Denique si in epistola legimus ad Hebreos, quod minor a maiore benedicatur, restat profecto, ut exigente ratione etiam maledicatur... Et revera, ut superius ex evangelio, beato Silvestro commemorante, iam diximus: "Non est discipulus super magistrum". Ibid, 467, rr. 15-16; 25-27.*

<sup>27</sup> *Dicite, quaesumus, ubinam legistis imperatores antecessores vestros in synodalibus conventibus - interfuisse, nisi forsitan in quibus de fide tractatum est, quae universalis est, quae omnium communis est, quae non solum ad clericos, verum etiam ad laicos et ad omnes omnino pertinet Christianos? Vos autem non solum synodo in causa sacerdotis collecta interfuistis, verum etiam numerosa saecularium milia ad videndum eius obprobrium aggregastis, cum magis debueratis in hoc imitari Constantinum pium Augustum, de quo scriptum est, quod dixerit: "Quia si vidissem aliquem eorum, qui religioso circumamicti sunt habitu, turpitudinem aliquam operantem, clamidem meam explicassem et cooperuissem eum, ne videretur a quoquam"... Deinde vero contra ritum ecclesiasticum contraque venerandas leges... Submittitur minorum, inferiorum et subiectorum deliberationibus, cum sacris canonibus praecipientibus et exemplis sanctorum patrum semper ubi est maior auctoritas sit eundem et in omnibus controversiis ad potioris sedis iudicia dirigatur. Quod non solum a catholicis, verum etiam ab ipsis constat observatum hereticis. NICOLAUS I POPE, 470, rr. 4-25.*

<sup>29</sup> *Id. at 476, rr.4-9; 16-17.*

<sup>1</sup> The Constantinopolitan council of 859, attended by at least 170 bishops, had been convoked by Photius. At it Ignatius was dismissed a first time, formally, and a second time in the presence of papal legates during the Constantinopolitan of 861. The council of the summer of 867 had seemed a triumph for Photius, but in fact it marked the end of the first period of the invasion of the patriarchal see of Constantinople (858-867). Michael III (842-867), Photius' protector, was assassinated by Basil (867-886) on September 24 of the same year. The latter succeeded him in the Eastern Empire and with him began the Macedonian dynasty and the second patriarchal period of Ignatius (867-877), who was recalled from exile by the energetic emperor, after having deposed Photius. Relations were reactivated with Adrian II, successor of Nicholas I (858-867) condemned by the council of Photius in 867. Following these events, Hadrian II summoned a council in Rome in 869, which was attended by 30 bishops.

<sup>4</sup> *Siquidem Romanum pontificem de omnium ecclesiarum praesulibus iudicasse legimus; de eo vero quemquam iudicasse non legimus: licei enim Honorio ab orientalibus post mortem anathema sit dictum, sciendum tamen est quia fuerat super haeresi accusatus, propter quam solam licitum est minoribus majorum suorum motibus resistendi, vel pravos sensus libere respuendi: quamvis et ibi nec patriarcharum nec ceterorum antistitum cuiquam de eo quemlibet fas fuerit proferendi sententiam, nisi ejusdem primae sedis pontificis consensus praecessisset auctoritas. HADRIANUS POPE II, Allocutio tertia, ad Concilium Romanum, a. 869, in MANSI, 16, 126.*

<sup>8</sup> *Sancta sedes apostolica vos, quia revera inferiores estis, super sua causa iudices nec elegit, nec per nos eligit, utpote quae de omni aeclesia sola specialiter fas habeat iudicandi; sed neque nobis de hac causa sententia proferre commisit. Liber Pontificalis, II, 184, rr. 2-5.*

<sup>11</sup> *Sedes beati Petri caelestis regni clavigeri potestatem habet ligata quaelibet pontificum congrua estimatione absolvere, quippe cum co sit et multos iam patriarchas, hos est Athanasium et Cyrillum - Alexandrinos Flavianum et Iohannem Constantinopolitanos et Polychronium Hierosolimitanum synodicae damnatos per apostolicae sedis postmodum absolutionem restitutos incunctanter fuisse. Ibid. 171, rr.20-38.*

<sup>1</sup> *Decipitur profecto quicumque putat quod discipulus sit supra magistrum, et servus supra dominum suum (Matth. 10, 24) ... Quis te seduxit ut pontificem oecumenicum comico more scommatibus lacesteres?... An ignoras quod haec (sacra Romanorum Ecclesia) omnium Ecclesiarum princeps existit? Quis te pontificum iudicem constituit, quorum sacris doctrinis dirigi debes, et a quibus preces pro te Deo offeruntur?... An ignoras, in prima Nicaena synodo quod beatus Silvester papa proclamaverit per legatos, praesente ibidem sancto Constantino: "Ut prima Sedes a nemine iudicetur". STEPHANUS PAPA V, *Ad Rasilium Imperatorem*, Ep. 1, in PL, 129, 787-788.*

<sup>1</sup> Cf. Girolamo ARNALDI, *Appunti sulla crisi dell'aristocrazia pontificia in età postcarolingia*, in *Studi Romani* 5 (1961) 494-495.

<sup>25</sup> *Consider, rogo, dum summus pontifex a nemine nec reprehendus, how much minus quilibet eorum flagellandus, carceri mancipandus tormentandus?* RATHERIUS EPISCOPUS VERONENSIS, *Praeloquiorum Libri sex*, 264.

<sup>19</sup> *"Oramus itaque paternitatem vestram obnixae, ne Romam venire atque ex his omnibus vos purgare dissimuletis. Si forte vim temerariae multitudinis formidatis, iuramento vobis adfirmamus, nihil fieri praeter sanctorum canonum sanctionem". Ibid. 344, rr. 6-8.*

<sup>1</sup> Cf. Yves J. M. CONGAR, *U ecclésiologie du Haut Moyen Age. De Saint Grégoire le Grand à la désunion entre Byzance et Rome*, Paris 1968, 180-181.

<sup>9</sup> VICTOR III POPE, *Dialogues*, in PL, 149, 1005.

<sup>13</sup> *"Ego Gregorius episcopus, servus servorum Dei, propter turpissimam venalitate[m] symoniae haereseos, quae antiqui hostis versutia meae electioni irrepit, a Romano episcopatu iudico me submovendum". Et adiecit: "Placet vobis hoc?" Et responderunt: "Quod tibi placet, et nos firmamus". Ibid. 585, r. 43; 586, rr. 1-3.*

" Cf. 99-101.

<sup>29</sup> *In quibus diligenter revolutis nihil aliud quam summum pontificem, cuiuscumque vitae fuerit, summo honore haberi, eum a nemine unquam iudicari oportere, immo nullius inferioris gradus accusationem adversus superiorem recipi debere, invenire potuit. ANSELMUS EPISCOPUS LEODIENSIS, *Gesta episcoporum Leodiensium*, 228, rr. 40-43.*

<sup>11</sup> *Nam Romanae ecclesiae fides per Petrum super petram aedificata, nec hactenus deficit, ne deficiet in saecula, Christo ejus domino rogante pro ea, cui testatur sub ipsa passione sua: "Ego rogavi pro te, Petre, ut non deficiat fides tua: et tu aliquando conversus confirma fratres tuos". Quo dicto demonstravit fidem fratrum vario defectu periclitandam, sed inconcussa et indeficiente fide Petri, velut firmatae anchorae subsidio figendam, et in fundamento universalis ecclesiae confirmandam. Quod nemo negat, nisi qui evidenter haec ipsa verba veritatis impugnat: quia sicut cardine totum regitur ostium, ita Petro et successoribus ejus totius ecclesiae disponitur emolumentum. Et sicut cardo immobilis permanens ducit et reducit ostium, sic Petrus et sui successores liberum de omni ecclesia habent iudicium, cum nemo debeat eorum dimovere statum: quia summa sedes a nemine iudicatur. LEO POPE IX, *ch. XXXII*, 653.*

<sup>26</sup> *Cuius culpas istic redarguere presumit mortalium nullus, quia cunctos ipse indicaturus a nemine est indicandus, nisi forte deprehendatur a fide devius. Pro cuius perpetuo statu universitas fidelium tanto instantius orat, quanto suam salutem post Deum ex illius incolumitate animadvertunt propensius pendere. HUMBERTUS A SILVA CANDIDA, *De Sancta Romana Ecclesia. Fragmentum A*, 129.*

<sup>35</sup> Cf. Giuseppe ALBERIGO, *Regime synodale e Chiesa Romana tra FXI e il XII secolo*, 231-236.

<sup>38</sup> Cf Enzo PETRUCCI, 226.

"6 Cf. 56-58.

<sup>15</sup> *Symmachus papa universis episcopis. Aliorum hominum causas Deus voluit per homines terminare, sacro vero sancte sedis Romane presulum suo sine questione reservavit arbitrio. Voluit beati Petri successores celo tantum debere innocentiam et subtilissimi discussoris indagini inviolatam exhibere conscientiam. Ibid, c. 11, 24-25.*

<sup>24</sup> *Quod Romana ecclesia ab ipso Domino primatum obtinuit, et quod ambo apostoli Petrus et Paulus una die sua eam morte consecraverunt, et quod ipsa prima sedes est, secunda Alexandrina, tertia Antiochena. Anacletus servus Christi Jesu. Haec vero sacrosancta Romana ecclesia et apostolica non ab apostolis sed ab ipso Domino salvatore nostro primatum obtinuit, sicut ipse beato Petro apostolo dixit: "Tu es Petrus" et reliqua usque "soluta et in caelo". Adhibita est etiam societas in eadem Romana urbe beatissimi apostoli Pauli vasis*

electionis, qui uno die unoque tempore gloriosa morte cum Petro coronatus est, et ambo sanctam Romanam ecclesiam consecraverunt aliisque omnibus urbibus in universo mundo tam <1. eam> sua presentia atque venerando triumpho pretulerunt... Prima ergo sedes est caelesti beneficio Romana ecclesia, quam, ut memoratum est, beatissimi Petrus et Paulus suo martyrio consecraverunt. ANSELMUS LUCENSIS, *Collectio canonum*, db. J, c. 66, 34. This is the Ps-Anacletus, Paulus HINSCHIUS, c. XXX, 83.

<sup>25</sup> ANSELMUS LUCENSIS, *db. I*, c.22, 16.

<sup>31</sup> *Ut prima sedes a nullo indicetur. Silvester papa. Nemo indicabit primam sedem iustitiam temperare desiderantem. Neque enim ab Augusto neque ab omni clero neque a regibus neque a populo index indicabitur.* ANSELMUS LUCENSIS, *Collectio canonum*, db. I, c. 19, 15.

<sup>33</sup> *papa a nullo nisi a Deo erit indicandus. In synodo Symachi papae. Aliorum hominum causas voluit Deus per homines terminare, sedis istius presulum suo sine quaestione reservavit arbitrio. Voluit beati Petri apostoli successores caelo tantum debere innocentiam et subtilissimi discussoris indagini inviolatam habere conscientiam. Nolite aestimare eas animas inquisitoris non habere formidinem, quas Deus pre ceteris suo reservavit examini... (Replicabo) rursus sanctorum voce pontificum dignitatem sedis eius factam toto orbe venerabilem, dum illi quicquid fidelium est ubique submittitur, dum totius corporis caput esse designatur. De qua mihi videtur dictum per Prophetam, si haec humiliatur: "ad cuius fugietis auxilium, et ubi relinquitis gloriam vestram?" Ibid, Lib. I, c. 24, 16-17.*

<sup>41</sup> *Quod sancta Romana ecclesia fas habet iudicandi de omnibus, de illa vero nullus, et potestatem habet solvendi iniuste damnatos et damnandi quos oportuerit absque synodo. Gelasius episcopus omnibus episcopis. Cuncta per mundum novit ecclesia, quod sacrosancta Romana ecclesia fas de omnibus habeat iudicandi, neque cuiquam de eius liceat indicare iudicio. Si quidem ad illam de quali-*

<sup>45</sup> *Ut inferiores gradus superiores non accusent, et ut episcopus nisi in LXXII testibus, presbyter in LXIII, diaconus in XXVI, subdiaconus et ceteri nisi in septem testibus non condemnentur. Silvester papa in generali residens synodo dicit: "Presbyter adversus episcopum, diaconus adversus presbyterum, subdiaconus adversus diaconum, acolytus adversus subdiaconum, exorcista adversus acolytum, lector adversus exorcistam, ostiarius adversus lectorem nullo modo aliquam presumat*

<sup>51</sup> *Romanus enim pontifex, ut sapientes norunt, non modo deponi, sed etiam nullo Christiano jure a quolibet potest iudicari.* ANSELMUS LUCENSIS EPISCOPUS, *Liber contra Guibertum*, in PL, 149, 464.

<sup>56</sup> *Simacho episcopo ecclesiae catholicae urbis Romanae in council CCX et VIII episcoporum - presidente... In eadem synodo. Ennodio episcopo dictante. Aliorum omnium causas Deus voluit per homines terminare, set istius sedis presulum suo sine quaestione reservavit arbitrio. Voluit beati Petri apostoli successores caelo tantum debere innocentiam et subtilissimi discussoris indagini inviolatam exhibere conscientiam. Et infra. Replicabo: sanctorum voce pontificum dignitatem sedis eius factam toto orbe venerabilem, dum illi quicquid fidelium est, ubique submittitur, cum totius corporis caput esse designatur. De qua videtur mihi dictum per prophetam: "Si haec humiliatur, ad cuius fugietis auxilium? Et ubi relinquatis gloriam vestram?" Ibid, Lib. I, Chap. XXXI- XXXIII, 90-92.*

<sup>58</sup> *In libro De civitate Dei, Contra Julianum hereticum. Puto tibi eam partem orbis sufficere debere, in qua primum Apostolorum suorum voluit Dominus gloriosissimo martyrio coronare, cui ecclesiae presidentem beatum Innocentium, si audire voluisses, iam tunc periculosam inventuram tuam Pelagianis laqueis excuisses. Quid enim, potuit ille vir sanctus Africanis respondere conciliis, nisi quod antiquitus apostolica sedes et Romana cum caeteris tenet perseveranter ecclesia? Et tamen successorem eius, quod nemini licet, crimine prevaricationis accusas. Ibidem, Lib. I, Chap. CCXXV, 173.*

<sup>61</sup> *Salvo debito honore et reverentia dilecti filii nostri Heinrici, qui inpraesentiarum rex habetur et futurus imperator Deo concedente speratur, sicut iam sibi... Concessimus, et successorum illius, qui ab hac apostolica sede personaliter hoc ius impetraverint. Papstwahldekret von 1059. Überlieferung und textgestalt, edidit Detlev JASPER, Sigmaringen 1986, 101-102. *Decretum electionis pontificiae, edidit Ludewicus WEILAND, in M.G.H., Leges, sectio IV, I, Hannoverae 1893, 540, rr. 3-6.**

<sup>64</sup> BONIZO, *Liber de vita christiana, edidit Ernest PERELS, Berlin 1930.*

<sup>66</sup> *Quod summus praesul a nemine indicatur. Silvester. Neque presul summus a quoquam indicatur, quoniam scriptum est: non est discipulus super magistrum.* BONIZO, *Liber de vita christiana*, III, c.68, 141.

<sup>11</sup> Cf. Leonardus MEULENBERG, *Gregory VII and the Bishops: centralization of the poteret, in Concilium 1 (1972) 88-89.*

<sup>30</sup> *Si enim coelestia et spiritualia sedes beati Petri solvit et indica t, quanto magis terrena et secularia? Ibid, 338, rr. 14-16.*

<sup>31</sup> *Agite nunc, queso, patres et principes sanctissimi, ut omnis mundus intellegat et cognoscat, quia, si potestis in coelo ligare et solvere, potestis in terra imperia regna principatus ducatus mar- chias comitatus et omnium hominum possessiones pro meritis tollere unicuique et concedere. Vos enim patriarchatus primatus archiepiscopatus episcopatus frequenter tulistis pravis et indignis et religiosis viris dedistis. Si enim spiritualia indicatis, quid de secularibus vos posse credendum est? Et si angelos dominantes omnibus superbis principibus indicabitis, quid de illorum servis facere potestis? Addiscant nunc reges et omnes seculi principes, quanti vos estis, quid potestis, et timeant parvipendere inssionem ecclesiae vestrae. Et in predicto Heinrico tam cito iudicium vestrum exercete, ut omnes sciant, quia non fortuito sed vestra potestate cadet, confundetur, utinam ad penitentiam, ut spiritus sit salvus in die Domini. Ibid, II, 487, rr. 4-19.*

<sup>34</sup> *Habet enim potestatem singulari privilegio concessam aperire et claudere ianuas regni caelestis quibus voluerit. Cui ergo aperiendi claudendique coeli data potestas est, de terra indicare non licet? Absit. Num retinetis, quod ait beatissimus apostolus Paulus: "Nescitis, quia angelos indicabimus? How much magis secularia" (1 Cor 6:3). Ibid, II, 550, rr. 3-8.*

<sup>36</sup> *Quis igitur vel tenuiter sciolor sacerdotes dubitet regibus anteferri? Quodsi reges pro peccatis suis a sacerdotibus sunt indicandi, a quo rectius quam a Romano pontifice indicari debent? Ibid, II, 557, rr.7-10.*

<sup>41</sup> *Est enim privilegium sedis apostolicae; ut nulla proveniente synodo, quoslibet dampnandos possit dampnare, et reconciliandos reconciliare: ut beatus Gelasius in decretis ad Orientales episcopos directis ostendit, in quibus Acatium Constantinopolitanum patriarcham absque omni synodo canonice ab apostolica sede dampnatum inrefragabiliter probavit. Scribit enim inter cetera: "Cuncta per mundum novit ecclesia, quod sacrosancta aeclesia Romana de omni aeclesia fas habeat iudicandi, neque cuiquam de eius liceat indicare iudicio: siquidem ad illam de qualibet mundi parte appellandum est; ab illa autem nemo est appellare permissus". Sed nec illa preterimus, quod apostolica sedes sine ulla synodo precedente, exolvendi, quos synodus iniqua dampnaverat, et dampnandi nulla existente synodo, quos oportuit, habuerit facultatem. Et hoc nimirum pro suo principatu, quem beatus Petrus apostolus Domini voce (Matth. XVI; Joan. XXI), et tenuit semper, et retinebit. ADALBERTUS-BERNALDUS, 48, rr. 36-44; 49, rr. 1-3.*

<sup>64</sup> *Sacrosancta Romana ecclesia fas habet indicandi de omni ecclesia.... Quae ius habet de omni ecclesia indicandi neque cuiquam de eius licet indicare iudicio, sicut constituunt decreta canonum!... Sacri canones constituerunt totius ecclesiae appellationes deferri ad examen sedis apostolicae, ab ipsa vero nusquam prorsus appellari debere sanxerunt; ac per hoc illam de tota ecclesia indicare, ipsam vero ad nullius iudicium commeari nec de eius iudicio indicari praeceperunt, neque sententiam illius oportere dissolvi constituerunt, cuius potius sequenda decreta mandarunt... Cum iuxta canonum decreta non liceat alicui indicare de iudicio Romanae ecclesiae... Sicut enim saepe dictum est, non licet alicui indicare de iudicio sedis apostolicae, quae habet facultatem sine ulla synodo precedente exolvendi quos synodus iniqua damnaverat, et dampnandi quos oportuit, nulla synodo excis tente. Liber de unitate ecclesiae conservanda, edidit W. SCHWENKEBECHER, in M.G.H., De lite imper. et pontif., II, 200, r. 34; 238, rr. 22-24; 245, rr. 7-11; 268, r. 8; 269, rr. 15-18.*

<sup>3</sup> Ivo CARNOTENSIS EPISCOPUS, *Decretum*, in PL, 161, 47-1022.

<sup>4</sup> *Ibid.* 1037-1344.

<sup>7</sup> Ivo, *Decretum*, V, Ch. 10, 326; Cf. ANSELMUS LUCENSIS, *db. I, 24\* DEUSDEDIT, *db. I, CXXXIII.*

<sup>9</sup> *Ibid.* Cause IX. *Questio III. C. XIV*, 610. Cf. ANSELMUS LUCENSIS, *Lib. I, Can. 24; DEUSDEDIT, Lib. I, Ch. CXXXIII; Ivo, Decretum, V, Ch. 8; Panormia, Ch. Vili.*

<sup>5</sup> *E/ quoniam divino Apostolici primatus iure Romanus Pontifex universae Ecclesiae praeest, docemus etiam et declaramus, eum esse iudicem supremum fidelium, et in omnibus causis ad examen ecclesiasticum spectantibus ad ipsius posse iudicium recurri; Sedis vero Apostolicae, cuius auctoritate maior non est, iudicium a nemine fore retractandum, neque cuiquam de eius licere indicare iudicio. Quare a recto veritatis tramite aberrant, qui affirmant, licere ab iudiciis Romanorum Pontificum ad oecumenicum concilium tamquam ad auctoritatem Romano Pontifice superiorem appellare. Si quis itaque dixerit, Romanum Pontificem habere tantummodo officium inspectionis vel directionis, non autem plenam et supremam potestatem iurisdictionis in universam Ecclesiam, non solum in rebus, quae ad fidem et mores, sed etiam in iis, quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent; aut eum habere tantum potiores partes, non vero totam*

*plenitudinem huius supremæ potestatis; aut hanc eius potestatem non esse ordinariam et immediatam sive in omnes ac singulas ecclesias sive in omnes et singulos pastores et fideles: anathema sit. Concilium Vaticanum I, a. 1870, Sess. IV, Constitutio dogmatica, Pastor aeternus, in Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum, edidit Henricus DENZINGER - Adolfus SCHÖNMTZER, Barcinone-Friburgi- Brigoviae-Romae 1976<sup>36</sup>, 3063-3064/599.*