**Origin of the conciliar jurisdiction**

**by**

Estanislao Olivares **S. I.**

One of the problems of ecclesiology brought up to date in the present conciliar era is the origin of the jurisdiction of the council. Does that jurisdictional power by which the council imposes laws on the whole Church come immediately from God or does the council receive it from the Roman Pontiff?

First of all, it is necessary to define the terms. We are dealing with the council which the pope convokes, presides over, and whose decisions the pope confirms: the legitimate ecumenical council[[1]](#footnote-1) . To this council, whose head is the pope, God could communicate jurisdiction immediately, just as he communicates it to the Roman Pontiff outside the Council; or the council could receive the same authority only mediately from God, immediately from the Roman Pontiff, its president.

We assume, therefore, that the council is a subject of authori-

[[2]](#footnote-2)In this regard, we would like to point out that the Council Fathers are not mere advisors, although inappropriately so, and that the relationship between these two subjects of supreme power in the Church is problematic[[3]](#footnote-3) .

The conciliarist theories on the preeminence in any degree of the council over the pope, and even the casuistry on the precedence of the council in the case of a heretic or insane pope, are also far from being discussed.

On the other hand, the problem we are now considering does not refer to the origin of the jurisdiction of bishops in their dioceses. There is a correspondence in the terms of the two problems - medially divine or papal origin of that jurisdiction - but the solution does not necessarily have to be parallel[[4]](#footnote-4) .

We limit ourselves to the case of bishops gathered in council. We say nothing of the episcopal college scattered throughout the world, insofar as they can perform a jurisdictional act, invited and directed by the Roman Pontiff. It is all the more reason for us not to discuss whether this universal jurisdiction as members of the college comes to each bishop by virtue of his episcopal consecration, or whether, on the contrary, he receives it together with the Christian mission which places him at the head of a particular church.

We are not going to study the pontifical documents, but only the authors, theologians and canonists, who interpret them. And we will see, in this historical journey, which of the two hypotheses they lean towards: if they propose the Roman Pontiff as the only source of authority received from God in the Council, which derives to the Council Fathers and constitutes them authentic legislators and judges, or if they believe that the authority comes immediately from God to the whole conciliar body, that is, not only to the governing head, the Pope, but also to the members, the Council Fathers, subordinate in all their activity to the Roman Pontiff. ,

**St. Thomas**

This problem was not reflected in medieval scholarship. In St. Thomas we find some general phrases; for example, the one he repeats in two passages of the *Summa.*

"Cuius auctoritate [Summi Pontificis] synodus congregatur et eius sententia confirmatur "0,

and a similar one from his treatise *Contra impugnantes Dei cultum et religionem,*

"Sancti enim patres in concilio congregati, nihil statuere possunt, nisi auctoritate romani Pontificis interveniente, sine qua nec concilium congregari potest"7 .

Both phrases are fully fulfilled in either of the two opinions under consideration, for even in the sentence that defends the immediately divine origin of conciliar jurisdiction, the Roman Pontiff must intervene to congregate and confirm the council. And, of course, these words of St. Thomas by their generality well indicate that he has not proposed the problem in a reflexive way.

Other phrases of St. Thomas8 , although they refer to the power of Peter and the apostles, give a glimpse of his mind about the origin of the conciliar jurisdiction. In book 4 of the *Summa contra gentes* he says:

"Et ei ei soli promisit: tibi dabo claves regni coelorum; ut intenderetur potestas clavium per eum ad alios derivan da, ad conservandam Ecdesiae unitatem®9 '

1. Sro. Thomas, 2t2, q. I, art. 10, ad sec.; see also 1 P., q. 36, art. 2, ad sec.
2. Id., Opusc. *Contra impugnantes Dei cultum et religionem,* c. **4.**
3. They are cited, e.g., by Torquemada in his *De Summi Pontificis auctoritate, quaes-.*

*tiones omnes Divi Thomae in unum collectae,* 1437, q. 22.

1. St. Thomas, *Summa contra Gentes, c.* 76; Leonine ed. Leonine, T. 15, pig. 241.

and in the *Commentarium in* 4 *sententiarum:*

"ad lum ergo dicendum quod quamvis quamvis omnibus apostolis data sit communiter potestas vel autoritas ligandi et sol- vendi, tamen in hac parte ut ordo aliquis significaretur, primo soli Petro data est, ut ostendatur quod ab eo debeat ista potestas descendere"[[5]](#footnote-5) .

If St. Thomas believes that the apostles received from Peter the power of the Haves, logically he would also believe that the successors of the apostles, the college of bishops, receive it from the successor of Peter. But this is only an inference.

Of the other great medieval doctors, such as St. Bonaventure and Scotus, only phrases remotely related **to the problem** can be quoted.

**First anticonciHarists**

Soon, however, the conciliarist theories proposed the question in an express way. The *Defensor Pads,* 1324, by Marsilius of Padua, and the decrees of the Councils of Constance and Bilea are two summits of the conciliarist approach to the relationship between conciliar and papal jurisdiction. Marsilius affirmed that the pope's primatial jurisdiction is of ecclesiastical origin, granted by the council[[6]](#footnote-6) ; the decree of Constance, confirmed at Basel, is of the following tenor:

"Et primo quod ipsa Synodus in Spiritu Sancto legitime congregata, generale concilium faciens, ecclesiam catholi- cam militantem repraesentans, potestatem a Christo imme-. diate habet, cui quilibet cuiuscumque status vel dignitatis, etiam si papalis exsistat, oboedire tenetur"[[7]](#footnote-7) .

The defenders of the Roman primacy, in attacking this conciliarist extremism, took extreme contrary positions. Alvaro Pe-

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lagiq, . refuting in his *De planctu. Ecclesiae* the theories of Marsi- lio, states.

"Papa enim super omnia etiam generalia concilia est, et ab ipso ipsa recipiunt iurisdictionem et authoritatem, et li- centiam congregandi se, non ipse ab eis principaliter"[[8]](#footnote-8) .

On the other hand, St. Antoninus of Florence, who wrote against the Council of Basel, defends in his *Summa* a more moderate position:

"Nam in his quae sunt iuris positivi indubitanter est Papa supra concilium, quia ipse est caput Ecclesiae. Unde licet potestas sit data Papae et toti Ecclesiae, Papae tamen tri- buta est tanquam capiti, unde debet corpus moveri ad dis- positionem capitis." [[9]](#footnote-9)

It seems to be admitted that the power is also given to the Church, to the council; but it is also given to the Pope, as head of the Church and of the council, which he must moderate, as the head of the body[[10]](#footnote-10) .

**Torquemada, Benetti, Dal Monte**

On the contrary, other defenders of papal supremacy against the conciliarists of Basel proposed the extreme opposite position.

As a prime example of this attitude we can take Juan ee Torquemada. In his treatises and discourses he defended the proposition he enunciated in his *Summa Ecclesiae:*

"Quod universal!um conciliorum auctoritas a Romano Pon- tifice derivatur et pendeat"[[11]](#footnote-11) .

Although we will not now examine the series of arguments he adduces to confirm his thesis, we will indicate that the non-venerous argument contests above all a conciliar power superior to the Pope; this conciliar superiority is what preoccupies his mind; it does not temper the possibility of a supreme power in the council, withdrawn immediately from Christ, in harmony with the supreme authority of the Pope, who presides and directs the council.

The same doctrine he maintains in his *Oratio synodatis de pri matu tion* before the Council of Florence In this speech he first contests the validity of the decrees of Constance and Basel, and then the conciliarist doctrine expounded in them. These are his words:

"reliquum est ostendere, quod, etiam accipiendo partem illam de synodo universal!, legitima et indubitata, aposto- lica auctoritate congregata, non sit veritas fidei catholicae, quod tabs potestatem habeat a Christo, cui, etc."[[12]](#footnote-12) .

The last interrupted sentence and some of the arguments which he continues to adduce show us again that, in denying the immediately divine jurisdiction of the council, Torqucmada is thinking above all of a jurisdiction of the council superior to the pope.

But he goes further in his argumentation. In order to undermine in its foundations the adversary position he affirms:

"Primo quidem ostendam, [...] quod apostoli, alii a Pe tro, receperunt immediate a Christo potestatem iurisdic- tionis, non sit usquequaque probabile.

Secundo ostendam, quod, dato quod hoc esset verum de apostolis, non tamen ita esset dicendum de episcopis et curatis, quod suscipiant potestatem iurisdicionis immediate a Christo.

Tertio ostendam, quod, dato quod hoc etiam esset ve-

rum,- non probatur, aut sequitur ex hoc, quod sit veritas catholicae fidei, quod synodus universalis habet potesta- tem immediate a Christo, cui quilibet fidelis obedire te- netur"[[13]](#footnote-13) .

As can be seen, his position is extreme: neither the apostles themselves, nor their successors - bishops and parish priests - received or receive their jurisdiction immediately from Christ. Therefore, the apostles received from Peter their jurisdiction in the whole Church, and the bishops received from the Pope their particular jurisdiction in their dioceses. But on the third point - the central one of our study - Torquemada always points to the conciliarist hypothesis: even if these powers of the apostles and of each bishop had an immediately divine origin, it would not follow that the council immediately received from Christ jurisdiction over any of the faithful, and, therefore, also over the pope.

A determined follower of Torquemada is Cipriano Benetti, who wrote in 1512 on the occasion of the Council of Pisa his work *De prima orbis sede.* In it he affirms:

" . . . quicquid auctoritatis habent universalia concilia est a Papa, ergo ipsa non possunt decretum irritans facere contra ipsum....

Et haec dicta sufficient. Si latius cupias informari circa istud, quaere tractatum, quern contra Basileense Concilium Cardinalis de Turrecremata edidit, cum esset illic praesens et contra quod hoc opus potissimum militat"[[14]](#footnote-14) .

Preceding Benetti is Pedro dal Monte (1457), although his works *De primatu Papae* and his *Monarchia* were not published until almost a century later in Lion, 1552 and 1537 respectively. In both he asserts that the pope grants the council the authority[[15]](#footnote-15) and po testad to make decrees[[16]](#footnote-16) .

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**Giacobazzi**

The classic treatise - according to Hurter[[17]](#footnote-17) - on this subject, written also on the occasion of the Council of Pisa, is the *De concitiis* of Cardinal Dominic Giacobazzi. In this treatise the extreme sentence of Torquemada is renewed: not only the council and the bishops receive the jurisdiction of the successor of Peter, but the apostles themselves received through Peter their universal jurisdiction.

With regard to the council, Claramerite enunciates it, although in obliquely, in book 2 when he expounds the right that the renouncing bishop has to attend the council; he gives the reason:

"et ratio est: qui episcopi exsistentes in concilio recipiunt iurisdictionem omnes in genere a papa"[[18]](#footnote-18) .

Further on in book 6 we find the statements concerning the apostles and individual bishops: they all receive all their authority from Peter or his successors:

"verum aliter fuerunt 1claves] in Petro et aHter in aposto- lis: quia in Petro immediate a Christo., qui recepit tam- quar " caput plenitudinem potestatis: apostoli vero median- te Petro receperunt potestatem iurisdictionis, tamquam in parte sollicitudinis asciti....

Et per hoc patet responsio, quod sicut hodie episcopi habent iuirisdictionem ordinariam, qui sunt loco apo^tolo- rum sic intelligendum est de aposlolis, quod ipsi eo modo habuerunt potestatem iurisdictionis respectu Petri, quo nunc episcopi respectu Papae; quia papa habet potestatis plenitudinem, episcopi vero sunt in partem sollicitudinis vocati..[[19]](#footnote-19) .

But he finally refers to book 10:

"De his plenius dicam in illo articulo: Quis sit maior, utrum papa an concilium, ubi omnino videndum est latius, quia ibi inferuntur plures aliae pulchrae diffiicultates#[[20]](#footnote-20) .

That is to say, once again the conciliarist approach prevails, which we can see already blurs the problem. And, in fact, in book 10, in touching on the subject, he proposes to us:

"nono, quod papa sit supra concilium apparet quia potes- tas quam habent concilia faciendi constitutiones et decreta est data illis a papa. ,." ,[[21]](#footnote-21)

The anti-conciliar approach is also perceived in the argumentation. For example:

"Pro solutione huius ambiguitatis considero quod [. . . ] nusquam, cum dedit illis [apostolis] aliquam potestatem, loquutus est seorsim a Petro, sed imino semper Petro cum illlis exsistente. Nec reperio aliquam auctoritatem sacrae scripturae, aut conciliorum, vel pontificalem vel legalem ex qua possit clare haberi [. ... ] datam potestatis plenitudinern alteri quam Petro, aut umquam datam ecclesiae sine Petro aliquam potestatem. Et ita divisio ecclesiae a Petro et con- sequenter a papa ponendo maidritatem potestatis magis in ecclesia quam in papa (quasi ecclesia sit sine papa et papa sine ecclesia) videtur quid imaginarium. ..." [[22]](#footnote-22).

We can see that these hypotheses are fully conciliarist; conciliarism is what Gia-Cobazzi contests above all, and to avoid any possibility of supremacy of the council over the pope, he denies the immediately divine origin to any other authority in the Church, even to the apostles.

**Cayetano**

Also on the occasion of the Council of Pisa, Thomas of Vio Cajetan wrote his work *De comparatione auctaritatis Papae.*

*et Concilii tractatio,* dated October 12, 1511, and a year later, November 26, 1512, the self-defense *De comparata auctoritate Papae el Concilii apologia,* against the impugnacion of Jacobo Almain[[23]](#footnote-23) .

Although the purpose of Cajetan's Tractatio is to refute Gerson's theories, it touches first on the subject of the decrees of Constance and Basel; therefore, the subject we are considering - the origin of the jurisdiction of the council - is still included in the general question of the relationship between the pope and the council.

He first alleges the words of Leon I:

"Huius muneris sacramentum ita dominus ad omnium apos- tolorum officium pertinere voluntere, ut in beatissimo Petro omnium apostolorum summo principaliter collocaret, ut ab ipso quasi a quodam capite dona sua velut in corpus omne diffunderet"[[24]](#footnote-24) .

His conclusion is as follows:

"Ubi manifeste patet, a papa omne reliquum corpus eccle- siae, velut a capite potestatem sortiri"[[25]](#footnote-25) .

He concedes, of course, that the universal church - and the ecumenical council, which he always joins in this comparison - receive their power immediately from Christ and from it descends to the other members. That is to say, he maintains the sentence of Tor-Burnt: the jurisdiction of the council, as regards the totality of its components, does not have an immediately divine origin, but derives from papal power.

But, as we say, this opinion of Cajetan's does not constitute a reflex theory on the subject, but an argument for his main intention of denying the superiority of the council over the pope.

In the *Apologia, in the* second part, in which he rejects Gerson's objections against certain passages of his *Tractatio,* in defending his interpretation of the text of the decretal, Significasti, de

electione, he insists in his seniencia, "quod concilia a Papa auctori- tatem habent®[[26]](#footnote-26) .

**On** the adjacent subject of the relationship between the apostles and **Peter, he** believes that de iure ordinarily the apostles would have received jurisdiction from Peter, but that in fact Christ foresaw that trans- misibn and communicated it to them personally:

"In erogando vero ex speciali gratia: si cut praevenit Petrum in conferendo potestatem ordinis, dum ipse Dominus par se ipsum etiam alios apostoles fecit sacerdotes in ultima cena, et confessores post resurrectionem, et sacramen- tum confirmationis,,ita praevenit cundem in dando auto- ritatem gubemandi, ordinandi, iudicandique ecclesiam. Et quemadmodum nihil obstat maioritati ipsius Petri capitis, quod alii non habuerunt ab ipso potestatem ordinis, quia hoc non fuit ex defectu potestatis in Petro, aut exemptio- ne aliorum ab ipso, sed ex praeventione superioris, qui prius dedit id subditis Petri ex gratia, quod ordinarie dandum erat eisdem a Petro, ita etiam nihil officit excellentiae potestatis iurisdictionis Petri supra omnes, quod eius subditis Salvator superior omnibus dedit illam potestatem ex gratia, quam a Petro per viam ordinariam erant accep- turi®[[27]](#footnote-27) .

He differs, therefore, on this point from Torquemada and St. Thomas himself, who see in Peter the immediate source of authority for the other apostles. However, Cajetan was convinced by the New Testament texts which speak of a direct communication of authority to the apostles:

"Et si huic adiunxeris, quod non habuerunt apostolatum a Christo mediante Petro, sed immediate ab ipso lesu Christo, iuxta illud Ioan. XX. [21]. "Sicut misit me pater, et ego mitto vos", et Matth. X, [1], et Marci HI, [14] et Luc. VI, [13], patet quod ipse fecit eos apostolos. Et ad Gil. I. [1], Paulus probat se Apostolum, quia "neque ab hominibus, neque ab homine" tarn mittente quam docente est apostolus, --Solves [. ...] dubium. [...], quod hanc potes- tatem habuerunt a lesu Christo immediate, sicut et apos- tolatum"[[28]](#footnote-28) .

Cajetan's theory on the formation of conciliar authority is also interesting. This authority does not come from a communication made by the pope to the councillors, in such a way that it is an occasional extension of the pope's power to all the members of the council, but is formed by the accumulation of the powers of all those assembled, that is, of papal power and of the powers of each bishop in his own diocese.

He deals with this point in the *Apologia.* He proposes to explain first of all the possibility of certain plenary meetings in the Church:

"Non nego quod episcopi orientales convenientes, possint simul quasi unum corpus et unam authoiritatem ex suis conficere, se etiam sigulos subiiciendo illi, et sic ilia potes- tas in toto illo corpore ratione suae totalitatis exsistens, statuit supra illas ecclesias, actusque iurisdictionis exerce- bit [...] Et similiter omnes universi orbis praelati, mor- tuo summo Pontifice, vel sine illo, si convenirent commu- nicando in unum corpus, et unanimes in constituendo, cons- tituerent in tota synodo ilia potestatem unam super omnes ecclesias, his tamen exceptis, quae summi Pontificis sunt ptropria"[[29]](#footnote-29) .

But, in continuation, apply this theory to the council:

"Simili quoque modo, cum Papa, cum reliquis praelatis orbis Concilium celebrando simul, cum eis constituit, absol- vit, damnat, etc., communicando cum aliis, quasi unus ex eis facere videtur.

In his enim omnibus et similibus non est aliqua potestas

immediate data a Domino lesu Christo ipsi communitati primo, nec est aliqua extranea potestas a potestatibus par- tialibus, sed velut potestas totalis consurgens ex partiali- bus"35 .

Such accumulations of particular powers might seem useless today, since the power of the pope is defined as "ordinary and immediate in each and every Church"36 ; and since the communication of this power alone to all the members of the council would suffice for all to have universal jurisdiction, there is no thought of such a contribution of all to the collegial jurisdiction. However, this thesis of Cajetan gives the Council Fathers a more active and personal role in the jurisdiction of the Council.

**Vitoria**

This same explanation of the formation of conciliar authority is taken up by Francisco de Vitoria, the teacher of so many Tridentine Fathers and theologians and whose doctrine had such an influence on the conciliar debates.

Here are his words in his *second reection, De potestate ecclesiastica,* 1533:

"Sed [illam potestatem... habent qui in concilio congre- gantur] solum quia est unio, vel congregatio ex potestatibus ecclesiasticis, et a singulis derivatur in totum"37 .

The explanations you add further clarify your mind:

"ct ideo nihil posset totum concilium, quod non possent Patres per se singuli secundum suam potestatem: unde haec potestas non est in concilio immediate ex iure divino, sed ex voluntate Piaelatorum, qui volunt ex seipsis unam authoritatem et velut unum corpus constituere"38 .

35 Ibid., num. 501-2, pdg. 226-7.

36 *Concilium Vaticanum,* sessio 4, cap. 3, canon; Denzinger 1831, Denzin- ger-Schdmmetzer 3064.

37 Francisco de Vitoria, *De potestate ecclesiastica,* relectio 2, editio princeps Lugduni 1557, p. 123; edic. fototlpica L. A. Getino, Madrid 1933, p. 268.

38 Ibid.

And further on:

"est itaque solum potestas immediate in toto concilio ex voluntate praelatorum qui instituunt unam potestatem, cui etiam se ipsos subiiciunt, sicut partes toti: hoc enim slgnh ficat, quod volunt congregate concilium, quod volunt stare decretis eius"[[30]](#footnote-30) .

It seems that Vitoria also conceives the conciliar power as a mutual delegation made by all the bishops of their own powers in favor of the others, and - as far as they are concerned - a voluntary submission to this sum of jurisdictions.

He does not speak at this point of papal authority and its contribution to the formation of the conciliar jurisdiction. Vitoria's thought on the relationship between pope and council has been much discussed; but this problem falls outside our scope and we dispense with it. \*

But Vitoria's theory is not the only one. In his *Lec- tures* on 2-2, q. 1, art. 10, of 1526-1527 -six years before the *Releccidn De potestate ecclesiastica-* we find another opinion on the origin of conciliar authority:

".. quaeritur an in concilio sit auctoritas immediate a Deo vel a papa solum.

Respondeo: credo quod melius est dicere quod a Deo immediate, licet papa semper maneat pastor et supra omnes"®,

In 1526, therefore, he believed the sentence defending the immediate divine origin of conciliar authority to be more probable.

Even more; the probability of this sentence is maintained in the same *Second reection, De potestate ecclesiastica.* After expounding the theory we have indicated above, received from Cajetan, he adds:

"si hoc non placet, posset teneri quod potestas in concilio est immediate a Deo, sed non quia tenet locum totius ec-.

clesiae universalis, sed quia est unio ex omnibus praelatis ecclesiae, etiamsi omnes aiii christiani dissentiant"[[31]](#footnote-31) .

Further on, towards the end of the question, he reaffirms this probability by denying to the text of Mt. 18 "dic ecclesiae" any probative value in favor of a concession of power to the universal church:

"Ex omnibus sic patet, quod ex eo loco Mt. 18 nullo modo habeatur quod sit aliqua authoritas iure divino **immediate** nec in ecclesia universal! nec in ecclesia universal!, nec in concilio, quamvis hoc **secundum** posset probabiliter dici in sensu supra explicate"[[32]](#footnote-32) .

But Vitoria admits as probable that the jurisdiction comes immediately from God to the council, as a union of all the prelates of the Church; on the contrary, he does not even allude - as in 1526 - to the opinion that this power is received by the council through the vicar of Christ.

**Cano, Bafiez, etc.**

The cumulative theory of powers in the formation of conciliar jurisdiction, which we have seen in Cajetan and Vitoria, seems to be presupposed in M. Cano, who in his famous *De Locis* denies the titular bishops participation in the council:

"Sane, nisi me opinio fallit, sicut nec simplices presbyteri, ita nec annulares isti episcopi quidem in synodum cogen- di sunt. Totum quippe ecclesiastic! concilii negotium non ordinis sed iurisdictionis potestate transigitur. Ferre nam- que sententiam, solvere aut ligare, absque iurisdictione nemo potest"[[33]](#footnote-33) .

and Domingo Banez alleges the same reason in his *Scholaslica com- men tar ia in* 2-2, to deny the same right to the titular bishops[[34]](#footnote-34) ,

Well, if the jurisdiction comes to the council by communication from the pope, there is no difficulty in the pope also delegating this jurisdiction to the titular bishops; on the other hand, they could not attend the council, nor have jurisdiction in it, if they are required to bring a jurisdiction of their own which they do not have: this seems to be the thought of these two authors.

In the contrary, other authors, both before and after Cano, grant this right to participate in the council to the titular bishops. Thus, among others, Giacoisazzi, in his *De Conciliis*[[35]](#footnote-35) , and Antonio Pauluzzi in his *lurisprudentia sacra,* 1682, Green that they should be admitted to the council. See the words of Pauluzzi:

"quia episcopi exsistentes in concilio recipiunt omnes in genere iurisdictioncm a summo Pontifice non ralione ali- cuius particularis ecclesiae, et ideo admittendi sunt"4 ®.

**Domingo Soto**

Vitoria's disciple, Domingo Soto, in his *Commentarium in* 4 *Sententiarum* published for the first time in Salamanca, 1557, expounds a theory of the origin of the conciliar power, which opposes both the conciliarist sentences and those of the Dominican cardinals. Torquemada and Cajetan:

"ad secundum de conciliis Cardinalis Turrecremata et Caie- tanus locis citatis respondent e regione omnino ad Gerso- nem et alios. Qui enim a parte concilii pugnant, dicunt Pa- pam a concilio recipere autoritatem. Cardinales vero supra citati dicunt e converse, quod Concilium recepit illam a Papa. Sed certe utrumque (ut sub correctione ecclesiae et peritorum dixerim) falsum apparet. Prior enim opinio sa

tis est impugnata. Sed nec posterior censetur vera: quo- mam episcopi, et qui legitime sunt personae concilii legitime congregati praesidente Papa, aut eius legatis, eo ipso quod sunt episcopi per se habent, dum publica autoritate autoritate congregantur, autoritatem ecclesiae, sicut senatores in se- natu. Quare nulla alia indigent Papae autoritate, nisi quod ipse sit praeses tamquam caput. Non quod ipsi episcopi sint tamquam procuratores totius ecclesiae recipientes autoritatem a toto populo, sed per autoritatem episcopalem. quam a Christo susceperunt, dum publico nomine congregantur habent autoritatem, quibus Spiritus sanctus, ut errare nequeant, assistit. [. .1 Ipsi soli per potestatem di- vinam repraesentant totam ecclesiam, ut possint christia- num populum cogere, ut sibi auscultent et pareant. Non ergo aliter concilium habet autoritatem a summo pontifice, quam quod episcopi creantur ab ipso. Et e contrario, si aliqua ratione concilium est supra Papa, non es! quod ipse a concilio ullam recipiat autoritatem, sed quia omne membrum, etiam caput, est pars totius, et ideo tenetur stare decreto et sententiae totius®[[36]](#footnote-36) .

It is not easy to understand the mind of D. Soto. It must be presumed that he is contrary to the divine right of the bishops, that is, he believes that the particular jurisdiction of the bishops in their dioceses is received from the pope. Not only the phrase of this paragraph "quod episcopi creantur ab ipso", but also two other previous sentences of this same article, clearly indicate this:

"Nam etsi episcopi successores apostolorum dicantur, ut can. Quorum vices, dist. 68. illam tamen autoritatem non suscipiunt, nisi per Romanum Pontificem Petri succes- sorem®[[37]](#footnote-37) .

"Sed tamen nullus praeter Petrum reliquit successorem ut per suam autoritatem, et episcopi omnes et clerus ab una sede Petri illam recipiunt®. [[38]](#footnote-38)

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**%**

On the other hand, he clearly denies that the Council receives its authority from the Pope: "it needs no other authority from the Pope than that of its president as head of the Council". Moreover, he speaks of an episcopal authority "which they received from Christ", by which they have the authority of the infallible magisterium, and also "the authority of the Church" "by the very fact of being bishops".

From all these sentences it seems to be deduced that Dominic Soto thinks that the bishops, by the fact of being bishops, receive from Christ an authority over the whole Church, and this is what they exercise in the council. In this case we would have something similar to universal jurisdiction over the Church by virtue of episcopal consecration, or, perhaps, by ascription to the coIegium of bishops: a precedent of the sentence that Bolgeni proposed two centuries later.

**Council of Trent**

At Trent, the origin of the jurisdiction of the council was not dealt with directly, but the subject was touched upon in the debate on the divine right of bishops, that is, in the heated dispute over the immediately divine origin of the particular jurisdiction of each bishop in his diocese, a subject which, as we said, has parallels with our own, but which does not impose the same similarity.

In this polemic we can well -generalizing- call the party that defended this immediacy, and the advocate of the derivation of this power through the pope, Romanist[[39]](#footnote-39) .

In the Spanish party, the Archbishop of Granada clearly stood out. Don Pedro Guerrero. His votum in the general congregations held on October 13 and 20, 1562, where the doctrine and canons on the sacrament of order were examined, is a good defense of the immediatist opinion[[40]](#footnote-40) .

On the contrary, in the Archbishop of Rossano, John Baptist Castagna, the future Urban VII, by reason of his vows of those days[[41]](#footnote-41) and even more by his votum of November, one can see a characteristic defender of the Romanist party[[42]](#footnote-42) .

Regarding the universal jurisdiction of the council, it is clear that the Spanish party would obviously have to defend its immediately divine origin: several of the arguments on which Guerrero bases his opinion - successors of the apostles, parity with the election of the Pope - apply with greater force to the conciliar jurisdiction of the bishops.

In the Romanist party the connection is less obvious. It does not clearly follow from the papal mediation in the origin of the particular jurisdiction of the bishops that the council, through the pope, also receives its universal jurisdiction. But in fact they were inspired and followed authors who defended in both cases the mediate origin[[43]](#footnote-43) .

But we need not be content with conjecture alone. Throughout the debates, there was no lack of express mentions of both opinions by both parties.

Martin Perez de Ayala, then bishop of Segovia, on November 6, 1562, as an argument in favor of the divine right of bishops alleg6:

"si tantum sunt veri episcopi qui habent a Papa iurisdic- tionem, solus Papa haberet plenitudinem potestatis immediate a Deo, episcopi autem et eorum concilium non immediate, cuius tamen contrarium est diffiinitum in concilio Constantiense ,quod probavit Martinus V..."[[44]](#footnote-44) .

Regardless of the value of the argument, and of Martin V's approval, his mind is clear in favor of the immediately divine origin of the conciliar jurisdiction.

The bishop of Lugo, Francisco Delgado, on December 3, alleged, if not the decrees, at least the opinion of the Councils of Constance and Basel in this regard:

"Et videtur haec quaestio determinata in concilio Constantiense, in quo dicitur, concilium habere potestatem immediate a Deo, et idem dicitur in concilio Basileensi, quae concilia si non recipiuntur, tamen verum est, quod illi pa tres sentiebant"[[45]](#footnote-45) .

We do not know if the bishop of Lugo also believed in the superiority of the council over the pope, like the councillors of Constance or Basel; certainly, at least, he was of the opinion that the jurisdiction of the council was determined immediately by God.

Likewise in the Romanist party there are express affirmations on the derivation through the Pope of the conciliar jurisdiction.

Lainez in his votum -written on November 9- deals with this point by refuting the arguments of the defenders of the bishops' divine right:

"Item dicitur: Si episcopi non haberent iurisdictionem a Deo, non possent deffinire de fide in conciliis, et sic non essent bona concilia.

Ad hoc dico, quod episcopi habent potestatem in con- cilio a Papa [...]. Decreta autem conciliorum sunt immediate a Deo propter potestatem Papae"[[46]](#footnote-46) .

Another document of the same tendency is the one that brings us the resolution taken on the night of December 5 by a group of Fathers gathered at the home of Cardinal Simonetta[[47]](#footnote-47) . It is signed by "Pater Laynez, Rossanus. Boncompagnus, Facchincttus, auditor Rotae [Paleottus], advocatus [Lancillotus], promotor [Caste- llus]". [[48]](#footnote-48)They were opposed to the adoption of the new formula of canon 7 presented by the Cardinal of Lorraine. The other three participants in the meeting, Hydruntinus, Reginensis and Lancianensis, were unwilling to accept it in order to avoid greater difficulties.

Well, one of the reasons why the signatories of the document rejected this formula of the Cardinal of Lorraine' is:

"quia in materia de potestate Papae et concilii amitteretur praecipuum argumentum, quod est, omnes episcopos prae- ter Petrum esse a Pontifice. .."[[49]](#footnote-49) .

That is, in the controversy over the supremacy of the pope or of the council, a controversial and difficult question at that time, in which it was therefore not convenient to renounce the most powerful arguments. Again the conciliarist ghost in the approach to the problem.

Lainez also touches on this subject in his *Disputatio de origine iu- tisdictionis episcoporum et de romani pontijicis primatu. He* does not deal expressly with conciliar jurisdiction[[50]](#footnote-50) , but with the origin of the particular jurisdiction of the bishops; however, as in his conciliar interventions, from time to time he expresses his opinion on the origin of conciliar jurisdiction,

"Haec ille [Innocent IV ad Decentium Eugubinum] do- cens imprimis unicam tan turn et generalem auctoritatem, id est universes christianos obligantem, et earn esse sedis apostolicae, a qua et Concilia generalia suam auctoritatem accipiunt" ,[[51]](#footnote-51)

and beyond:

"... concilia vero auctoritate pontificis congregata, quia ex eius auctoritate definitio concilii proficiscitur, divina auctoritate nititur. .." [[52]](#footnote-52).

With regard to the origin of the universal jurisdiction of the Apostles, Lainez judges that the sentence that makes it derive from Peter is as probable as the contrary, and he endeavors to demonstrate this proba- bility with a multitude of arguments85 .

**Other authors' of the Tridentine era**

Other authors at this time of Trent are also decided supporters of the papal origin of the jurisdiction of the Council.

Bartolome de Carranza O.P. in the last of the 4 *Coni rover- sias*96 that he prefixed to his *Summa conciliorum omnium:*

"Tertio ostendimus conciliis universalibus, nullam primo et secundum se datam a Christo iurisdictionis aut definitionis authoritatem, sed Petro et successoribus, a quo accipiunt concilia robur omne, sine quo nullum omnino habent"[[53]](#footnote-53) .

Also Diego Alava Esquivel, who published his treatise *De conciliis universalibus* in Granada, 1552, says:

"Secundo eadem opinio probatur [universale concilium pen- dere a Romano Pontifice in omnibus actibus] : concilia ete- nim universalia, utcumque legitime congregata non habent immediate a Christo potestatem: sed ab ipso Papa, et eo mediante a Christo, sicut latissime conantur probare Car- dinalis de Turre Cremata, Caietanus et Albertus Pighius"[[54]](#footnote-54) .

The opus *De tractandis in concilio oecumenico,* published in Rome in 1561, shortly after his death, is by Juan Antonio Delfino de Casali, O. F. M. Conv. In chapter V he states:

"Necesse est ut qui futuri sint in concilio [. ..] ecclesiasti- cam authoritatem habeant potestatemque huiusmodi, ut catholicum et verum concilium constituant, cui sit plane integrum efficere quaecumque ad propagandam chris tia- nam religionem attineant. Hane vero a nemine praeter epis- copum et pontificem romanum queant sumere, quippe cum

in eo solo plenitude insit ecclesiasticae potestatis, quam qui- dem solus immediate accepit a lesu Christo ...". [[55]](#footnote-55),

and the Bishop of Chioggia, Jacopo de Nacchiante, O. P., in his treatise *De Papae ac Concilii potestate compendiaria tractatio,* Venice, 1562:

"Igitur cum potestas Papae, potestas sit capitis et concilii membrorum sub capite, ilia pastoralis, haec sit creditarum ovium, ilia regia, haec consiliaria, ilia penitus definitiva, haec deffinitionis ambulatoriae, ilia a Christo proximime, haec ab illo, sed per summum Pontificem, haud dubium, quod ilia hanc longo superat intervallo..."[[56]](#footnote-56) .

**Post-Tridentine authors**

After the Council of Trent the sentence of the ori- gen mediate, through the Roman Pontilice, of the conciliar jurisdiction prevailed.

Diego Nunez Cabezudo (+ 1614) in his work *De auctoritate Sum- ' mi Pontificis et Concilii:*

"Secundo probatur conclusio. Summus Pontifex tribuit concilio generali potestatem, quam habet, ergo potestas ipsius Pontificis maior est"[[57]](#footnote-57) .

The Jesuit school is oriented in favor of this judgment: it had the precedent of its second general, Lainez. Although in the origin of the jurisdiction of the apostles they abandon the neutral position of Lainez, and tend to defend its direct concession by Christ to the apostles.

the apostles, without the mediation of Peter. Thus, Bellarmine[[58]](#footnote-58) in his tra- tado *De Summo Pontifice[[59]](#footnote-59) ,* Suarez, *De Legibus ',i* , etc.

But in the case of the conciliar jurisdiction, we have just covered that they defend the immediate derivation. See Juan Azor (+ 1603) in his *Institutiones morales:*

"Caeterum eorum sententia vera, et certa est, qui docent generale Concilium habere iurisdictionis auctoritatem a Deo sed per Romanum Pontificem proxime derivatam"[[60]](#footnote-60) .

And Suarez in his treatise *De Legibus,* 1611, concerning the necessity of pontifical confirmation, in order that the laws of the Conciliars be binding, gives as a cause:

"Ratio autem est, quia concilium congregatum sub oboe- dientia Romani Pontificis non habet immediate ex iure divine iurisdictionem super universam ecclesiam...; ergo tantum habet iurisdictionis quantum illi a Papa concedi- tur..." ,[[61]](#footnote-61)

and in the treatise *De Fide,* postumus:

" Quarto, nullus Episcopus habet iurisdictionem in urdver- salem Ecclesiam, nec omnes simul, nisi a Papa illam re- cipiant..."[[62]](#footnote-62) .

Bautista Fragosi (-]- 1639) in his *Regimen reipublicae. christia- nae:*

"Dicendum tamen est Concilium generale habere iurisdic- tionis auctoritatem non a se ipso, sed a summo Pontifice, ut a Capite in corpus derivatam; atque ita Papa communicat Concilio authoritatem"[[63]](#footnote-63) .

On the contrary, Gibriel Vazquez defends the in- mediacy of the origin of the conciliar jurisdiction, since in his commentary *In* 3 *p. Summae S. Thomae he advocates the same immediate divine origin in the particular jurisdiction of the bishops: In* 3 *p. Summae S. Thomae. Summae S. Thomae* advocates the same immediate divine origin in the particular jurisdiction of the bishops:

"Episcopus iure divino ratione suae ordinationis, siquidem et Christus ipsis promisit, Matt. 18, claves Regni caelorum ad solvendum et ligandum, et intellexit de clavibus ad ex- communicandum, et solvendum ab excommunicatione, ut tome quarto probavimus, et ipsa ordinatione confertur eis, ut sint pastores ac proinde iudices".70 .

And, already shortly before the suppression of the Society of Jesus, in 1766, H. Kilber in his *Principia theologica* of the course of the Wirce-Burgense seems to follow the judgment of divine immediacy:

\*

"151. Obi. Concilium generale, quam habet authoritatem 1.", derivat immediate a Christo, ut ipsa Concilia autumant.... Resp. ad Arg. quoad lm .: D.: Concilium generale comple- tum et perfectum, quale est illud quod unitur et consentit cum Pontifice, habet et derivat auctoritatem immdiate a Christo, Concede...." [[64]](#footnote-64)

On the other hand, Francesco Antonio Zaccaria in his *Antifebbronio* -de- dicated to Clement XIII, 29 November 1766-, proposes the mediate origin, following Lainez to solve objections.

"Quello che ha qualche apparenza di difficolta e, che se i Vescovi non hanno podesta da Dio, non possono diffinire in Concilio, e cid che diffiniscono non e di fede. But it is enough for Lainez to say that 1'abbian dal Papa, and that it is not legitimate Council if the Pope does not concur; and the decisions of the Councils are decisions of God insofar as they are from the Pope, to whom the Holy Spirit is present"[[65]](#footnote-65) .

o regarding the papal power to give laws, even outside the council, obligatory for the whole Church:

"Anzi non ha questa facolta il Concilio Ecumenico? Dunque molto piu il Papa, dal quale ha il Concilio la sua im- mediata autorita"[[66]](#footnote-66) .

Many other authors of other schools and religious orders defend the mediate origin. Let us adduce as an example the Benedictine Antonio Perez in his *Pentateuchum fidei,* concerning the right of suffrage of titular bishops:

" Quarto, quia iurisdictiontionem requisitam ad vocem deci- sivam in Conciliis non est ilia quam Episcopi habent circa suas particulares ecclesias, sed quam accipient a Summo Pontifice, circa universalem Ecclesiam; Episcopi enim iure suarum ecclesiarum non habent iurisdictionem circa universalem Ecclesiam [. ..] nisi accipiant ill am a Pastore uni- versali Ecclesiae..." [[67]](#footnote-67)

and Dominic Graviana, O. P., in his *Catholicae praesumptiones,* 1636:

>Si attendatur Ecclesiastica Hierarchia respectu finis,

necesse est dicere omnem iurisdictionem episcoporum, nedum dicendi ius, sed et decidendi controversias fidei in Concilio a primo Episcopo Romano derivari"[[68]](#footnote-68) .

On the other hand, Carmelite Dominic of the Most Holy Trinity, in his treatise *De Ecclesia militants,* admits the possibility of both sentences, provided that the primatial authority of the Pope is preserved:

"IX Conclusio. Sive episcopi habeant immediate a Christo Domino potestatem iurisdictionis, sive non, semper ta- men ilia, qua utuntur in Conciliis Generalibus, a summo Pontifice dependet, eiusque auctoritati subordinatur."[[69]](#footnote-69) .

**Gian Vincenzo Bolgeni**

We come to the end of the eighteenth century and to Bol- ceni's dissertation *L'Episcopato, ossia la potesta di governar la Chiesa",* 1789, In it he advocates a collegial jurisdiction of the bishops over the universal church, which they exercise, under the authority of the Pope, whether they are gathered in council, or dispersed throughout the world. They do not receive this jurisdiction from the pope, but from God, when by episcopal consecration they are aggregated to the episcopal collegium. On the other hand, the particular jurisdiction over their respective dioceses is received from the pope.

Here are his words:

"I vescovi non ricevono immediatamente da Dio la giu- risdizione sopra le loro Diocesi, ma la ricevono immediata- mente dal Papa, come Capo della Chiesa. ,."[[70]](#footnote-70) .

"Ma nei Vescovi, oltre la giurisdizdizione particolare sopra le loro Diocesi, dee considerarsi una giurisdizdizion universale sopra tutta la Chiesa. My reply. The Bishops considered not each one of themselves, but united together, and always in union, and only 1'autorita del Papa loro Capo, form what is called the Episcopal Body, which succeeds in all strictness of terms to the Apostolic Collegium, and which possesses 1'Episcopate in all its strength, universality, and sovereignty, as was instituted, and conferred by Jesus Christ...."[[71]](#footnote-71) .

"Ma quando si considera tutto il Corpo de'Vescovi o adu- nato legittimamente a general Concilio, o anche disperso per la Chiesa; allora le decisioni di fede emanatte da questto Corpo sono decisioni infallibile, e le leggi di disciplina obli- gano tutta la. Church. Ciascum Vescovo nell'atto, and in vigo- re of his ordination becomes a member of the Episcopal Body, and therefore has the right to govern and master the whole Church, when it will be in union with all the others, and the former^ Body with the others. This and that which I call universal jurisdiction in each Vescoro, which is distinct onninamente from the particular jurisdiction over the Dioceses, and the people. This particular jurisdiction is conferred by the Pope immediately; the universal jurisdiction is conferred by God alone with the Episcopal character, to which it goes for years[[72]](#footnote-72) .

We are now interested in this opinion of Bolgeni insofar as it grants to the council - episcopal college gathered under the authority of the Pope - a jurisdiction that proceeds immediately from God: we dispense with the perdurability of this universal jurisdiction, when they are dispersed in their dioceses and of the moment and reason for which they receive it. Under this aspect, which we will consider, it is not in- n.ovator, but continues the tradition of a sentence that we already know.

Mauro Capellari, Camaldolese monk, the future Gregory XVI, published in Rome, 1799, his work *II trionfo della Santa Sade a della Chiesa, contro gli assalti de novatori respinti e combattuti colie stesse loro anni.* In his preliminary speech he accepts Bolgeni's sentence with enthusiasm.

"I1 right of suffrage, which in the Vescovo as a member of the ChieSh, called from the chiariss. Ab. Bolgeni giurisdizdizione universale, quello poi di governo, giurisdizione parti- colare, ed evidentemente esso autore dimostra nel suo Epis- copato, come la prima viene ai Vescoviata communicata im- mediatamente da Dio....

Quindi e, che fu sempre distinta la potesta dell'ordine,

The first is called universal, and the second is called the sole power of government, which is called the sole power of jurisdiction. Universal is called the first, "because each Bishop, in the act and in force of his ordination, becomes a member of the Episcopal Body, and therefore has the right to govern and master the whole Church, when he will be in union with all the others, and former^ body with the others"[[73]](#footnote-73) .

That is to say that, like Bolgeni, he admits a jurisdiction of the college of bishops over the whole Church[[74]](#footnote-74) , in which the bishops participate by their ascription to the episcopal body by virtue of their consecration. Thus he implicitly affirms the immediately divine origin of this universal jurisdiction.

Bolgeni's followers are also defenders of the immediately divine origin of the conciliar jurisdiction. Among them Georges Philips, professor at the faculties of Innsbruck and Vie- na, in his *Kirrhenrecht:*

"Sie (die Bischofe) nehmen mit Petrus an der Regierung der ganzen Kirchen Theil ....

Allerdings steht auch der Episkopat, wie die Apostel, als ein die Gesammmtheit der Regierung in sich tragendes Collegium iiber der ganzen Kirche, und es haben alle Bis- chofe diese Gewalt kraft ihres bischbflichen Chrarakters, jedoch keiner von ihnen, ausser dem. Nachfolger Petri, kann diese Gewalt fur sich allein in der ganzen Kirche, sondern immer nur in Gemeinschaft mit dem ganzem Korper des Episkopates, dessen Haupt Petrus ist, ausiiben"9 '.

Likewise Vering in his *Lehrbuch des Kirchenrechtes:*

"Die Bischofe haben in ihrer Gesammheit in Unterord- nung unter dem Papst eine jurisdictio (episcopalis) universalis, d. h. Antheil an der Gesammtleitung der Kirche und daher auf einem allgemein Concil berathendc und entschei- , dende Stimme"[[75]](#footnote-75) .

Also Pilgram in his *Physiologic der Kirche,* I860[[76]](#footnote-76) .

**Vatican Council I**

In the controversy over the right of the titular bishops to go to the First Vatican Council, many of the defenders of this right relied on the theory of Bolgeni, and consequently admitted a jurisdiction that did not come immediately from God. Gagnebet in his article "Juridiction collegiale du corps episco- pal"[[77]](#footnote-77) cites many of them: Meric, an Oratorian, in his article in the "Univers", 28 November 1868; Maupied, in his treatise *luris canonici universi compendium,* 1861, and in his opuscule *Le futur Concile selon la divine constitution de I'Eglise,* 1869; Msgr. Co- pella in his article *Sul Diritto di suffragio dei Vescovi titolari e rinunziatarii net Concilio Oecumenico,* published in "La Scien- za e la fede", Napoli, 30 December 1868; the titular archbishop of Nisibe, Monsignor Tizziani, in his work *Les conciles generaux,* 1868; Monsignor Maret in his *Du Concile general et de la Paix religieux,* 1869[[78]](#footnote-78) .

In the preparatory works of the First Vatican Council itself, there are supporters of Bolgeni and of the immediate divine jurisdiction of the Council. Gagnebet quotes Bishop Angelini in the sheet attached to the verbal process of the Commission that discussed the right of assistance of the titular bishops, and even the same verbal process of the meeting of March 14, 1869[[79]](#footnote-79) .

In addition, the Council did not wish to deal with the origin of the

episcopal testaty. This was expressly stated by Bishop Zinelli when he stated that the affirmation of the fullness of the Roman Pontiff's power, which was defined in the canon of chapter 3, disregarded the mediate or immediately divine origin of episcopal power97 . And Kieutgfn makes the same point about his schema of chapter 4. Undoubtedly he is referring above all to the particular jurisdiction of the bishops in their respective dioceses, which was discussed at Trent, but it is clear that a fortiori they did not want to allude to the universal jurisdiction of the council either.

**Between the two Vatican Councils**

But much more numerous in this period - from the first to the second Vatican Council - are the opponents of the immediately divine origin of the conciliar jurisdiction. Gagnebet cites first of all a series of tedlogists ", taatadists *De Ecclesia,* and then another more abundant series of canonists100 and tedlogists101 , all of them opponents of the sentence of Bolgeni.

Of these canonists, however, some102 do not deal with the origin of conciliar jurisdiction; although they oppose Bolgeni, they do not challenge him on the point we are studying. It should be noted, moreover, that many of those who challenge Bolgeni's sentence, even on the particular point of the immediately divine origin of conciliar juris- diction, base themselves, among other reasons, on the incompatibility they see between these theses and the Vatican definition of the Primacy of the Roman Pontiff.

See, for example, Muncunill:

Bolgeni's universal jurisdiction ] non bene componi- " [the universal jurisdiction of Bolgeni ] non bene componi-

97 Mansi, *Amplissima colleciio concitiorum,* 52, col. 1314.

98 Ibid., 53, col. 321.

99 Gagnebet, art. cit. 433, note 4; the tedlogos he cites are: Mazze- 11a, De Groot, Schultes, D'Herbigny, Dieckmann, Dorsch, Billot, Lercher, Journet, Forget, (DTC), lung (DDC), Naz.

100 Ibid. pp. 444-450; these canonists cited are: Bouix, Craisson, Da- ris, Nilles, Veachioti, Cavagnis, Wemz, Lombardi, Aichner, Tauber,1  Badii, Conte a Coronata, Blat, Claeys-Bouuaert-Simenon, Raus, Ferreres, Chelodi, Sipos.

1. Ibid., pp. 450-454; the tedlogos cited are: Palmieri, Wilmers, Straub, Pesch, Muncunill, Van Noort, Zubizarreta.
2. For example, Aichner, Chelodi, Sipos,

tur cum plenitudine potestatis jurisdictionis Pontificis Romani ; in Conciliis generalibus episcoporum jurisdictio non esset a Romano Pontifice, et ita hie non possideret plenitu- dinem potestatis® .[[80]](#footnote-80)

and the same opinion is expressed by J. Forget in Dictionnaire de Theologie Catholique, Vacant[[81]](#footnote-81) .

This same difficulty is highlighted by one of the most recent opponents of the Bolgeni sentence, M. Rosaire Gagnebet O.P., in his article, already cited, *L'origine de la juridiction collegiate du corps episcopal an Concile seton Bolgeni:*

"Les adversaires de Bolgeni ont raison de la remarquer: il est difficile de concilier l'origine immediate de la juridiction collegiale telle que la concoit cet auteur avec la constitution monarchique de 1'Eglise qui exige l'appartenance a un seul de la juridiction universelie®[[82]](#footnote-82) .

On the contrary, A. Straub, although a total adversary of Bolgeni, does not believe he can be refuted with this argument of papal primacy:

"Quam opinionem [Bolgeni] non licet cum nonnullo inde refutare, quod concilium vaticanum uni vel soli Petro pri- matum in ecclesiarn universam ex Matt. 16, 17 ss. promissum et ex Io. 21, 15 ss. collatum esse docet: ita enim affiirma- tur, ex citatis testimoniis evangelii potestatem sunimam inesse etiam Petro, non negatur, alibi earn coliegio pasto rum cum Petro coniunctorum asseri®[[83]](#footnote-83) .

**Final thoughts**

The historical overview we have just given shows that although the majority of authors have followed the theory of the papal origin of conciliar jurisdiction, it has never been the case

there have been others who have advocated an immediately divine origin, or at least admitted it as probable.

Moreover, we have seen that this problem has not found a serene environment for its study since its inception. First, the reaction against conciliarism led to the adoption of the extreme contrary position - the authority of the council comes from the pope, and not vice versa - and then the advocacy of the Roman primacy to be defined, or recently defined, prevents the proper appreciation of the solution of balance and concord of the scriptural texts represented by the theory of the immediately divine origin of the jurisdiction of the council, in which the Roman Pontiff himself is the president with full power in all the actions of the council, from its convocation to the approval of the decrees.

Perhaps for this reason, in this era of the Second Vatican Council, when the Primacy of the Pope has acquired in the consciences of all the full solidity of a fundamental dogma in the divine constitution of the Church, the nature of episcopal jurisdictions is given greater attention with greater equanimity.

And indeed, if we consider the arguments adduced against the opinion of the immediate divine origin, we see that they do not leave us convinced. It is already an indication that these arguments are not convincing that in all ages there have been authors who defend this immediate opinion.

It is evident that -as St. Thomas says- "ea quae ex sola Dei voluntate proveniunt, supra omne debitum creaturae, nobis in- notescere non possunt, nisi quatenus in Sacra Scriptura tradun- tur per quam divina voluntas nobis innotescit"[[84]](#footnote-84) .

Now, if there are data in Sacred Scripture that prove to us the concession to Peter of primatial power in the Church, this must be explained not so much by deductions from what is a monarchical or supreme authority in a civil society[[85]](#footnote-85) , but, above all, in consonance with the other scriptural texts that no less clearly indicate the immediate concession to the apostolic college - Peter and the apostles - of a supreme authority as well.

Moreover, the granting of this power to the apostolic college does not detract from what was previously granted to Peter alone. In the first place, it would be necessary to discuss the probative value of the chronological data; but, above all, the theological interpretation must seek the concordance of the dates revealed in their obvious sense, and not easily assume an incompatibility between them10 ®.

Indeed, it is not clear that the concession of authority made to the apostolic college immediately by Christ, not only as an exceptional fact, but as a matter of law, would imply the denial of the fullness of power granted to Peter; nor is it clear that only in the case of an extension of Peter's power which he himself would grant, the necessary subordination of the apostolic college to its head, and the full power of the latter in the Church, is saved,

109 For esq esq no nos convenes CAcmsh art ?it, pAg- 466

1 For an overview of studies on the subject in the run-up to the opening of the Second Vatican Council, see M. Useros, *Eclesiologia del Episco- pado a la hora del Concilio.* Salmanticensis 9 [1962] 203-229. This topic was also discussed at the XXII Semana Teologica, Madrid 1962; see C. Pozo, La Teologia del Episco- pado del Concilio. Pozo, *La Teologia del Episcopado en la XXII Semana de Teologla:* Estudios eclesiasticos 38 [1963^219-242.

40 Id., *In* 2-2, q. 1, art. 10; ed. C. Pozo, ArchTeolGran 25[1962]282.

46 A. Pauluzzi, *lurisprudentia sacra.* Pars 1, L. 3, dc conciliis ecclesiasti- cis; in Rocaberti, 4, p. 432.

60 V6ase Paleotti, *Acta Concilii Tridentini;* in *Concilium Tridentinum,* T. 2, pdg. 493.

65 Ibid., pp. 77-96.

66 H. Hurter, *Nomenclator Hitcrarius theologize catholicae,* HI, col. 123.

74 F. SuaREZ, *De Legibus,* L. 4, cap. 3, num. 4s; Opera Omnia, edic. Vivis, 5, p. 335.

76 F. SuArez, *De Legibus,* L. 4, ch. 6, num. 2; Opera omnia, edic. Vives, 5, p. 352,

79 G. Vazquez, *Commentarium in* 3 *p.,* d. 240, num. 41, cap. 4; Compluti 1613, pdg. 882.

91 G. Philips, Kircenrecht, I, § 23; in Wilmers, *De Christi Ecclesia,* L. 3, ch. 3, art. 2, propos, 62, note 2.

1. *Code of Canon Law,* can. 212. [↑](#footnote-ref-1)
2. On the problem of the origin of conciliar jurisdiction in relation to the existence of one or two subjects of authority in the Church, see J. Hamer, ie *corps episcopal uni au Pape, son autorite dans I'Egtise*: Revue des Sciences Philosophiques et Th^ologiques, 45[1961j21-31. [↑](#footnote-ref-2)
3. Of both it is established in the C I. C. that they have supreme power over the universal Church. See can. 218, 228. [↑](#footnote-ref-3)
4. Bolgeni, p. e" defends the papal origin of the particular jurisdiction of the bishops in their dioceses and the immediately divine origin of the universal power. See his work *L'Episcopato, ossia la potestA di governare la Chiesa,* 1789, ndm. 94s, pdg. 191-194. [↑](#footnote-ref-4)
5. Id., *In* 4 *Sententiarum,* d. 24, q. 3, art. 2, quaestiuncula 3, ad I; edic Vives, Paris 1882, vol. 11, p. 44. [↑](#footnote-ref-5)
6. Marsilius of Padua, *Defensor pads,* dictio II, ch. 22, § 9f; edic. Schroll, II, pdg. 428 ff. [↑](#footnote-ref-6)
7. *Conciliorum Oecumenicorum Decreta,* Barcelona (Herder) 1962, p. 385; see, id. p. 453. 453. [↑](#footnote-ref-7)
8. Alvaro Pelagius, *De planctu Ecclesiae,* L. 1, ch. 6; in Rocaberti, *Bibliotheca Maxima Pontificia,* 3, pdg. 27. [↑](#footnote-ref-8)
9. J 4 S. Antoninus of Florence, *Summa,* T. 3, tit. 23, de conciliis universali- bus, ch. 2, § 6; in Rocaberti, *id.,* 4, pdg. 113. [↑](#footnote-ref-9)
10. Although he later states as a privilege of the Roman Pontiff "quod dat authoritatem et robur omnibus conciliis" for being the head with full power over all and the foundation of the Church, it does not follow that the Pope, according to St. Antoninus, is also the sole source of this authority. [↑](#footnote-ref-10)
11. John of Torouemada, *Summa Ecclesiae,* L. 3, de conciliis, ch. 28; in Rqcaberti, *id.,* 13, piig. 509ff. [↑](#footnote-ref-11)
12. Id., *Oratorio syuodalis de pritnatu,*pars 2, Concilium Florentinum, se -
ries B, vol. IV,fasc. II, odic, Caudal, Rome 1954, num. 12, pdg. 9. [↑](#footnote-ref-12)
13. Ibid., num. 23, pdg. 18.-The same argumentation in his *Summa Ec clesiae,* L. 2, de potestate papali; in Rocaberti, 13, pg. 348ff. [↑](#footnote-ref-13)
14. Cipriano Benetti, *De prima orbis sede;* in Rocaberti, 7, pp. 761f. [↑](#footnote-ref-14)
15. Pedro dal Monte, *Monarchia;* in *Ad Sacrosancta Concilia a* Ph. Labbeo *et* G. Cossartio *edita Apparatus alter,* pag 725; *De primatu Papae;* in Rocaberti, 18, pag. 121. [↑](#footnote-ref-15)
16. Id., *De primatu Papae;* in Rocaberti, 18, pdg. 121, [↑](#footnote-ref-16)
17. H. HurtEr, *Noinenclator Litterarius Theologiae Catholicae,* II, col. 1225. [↑](#footnote-ref-17)
18. D. Giacobazzi, *De conciliis,* L. II; in *Ad Sacrosancta Concilia.... Apparatus alter,* p. 61, [↑](#footnote-ref-18)
19. Ibid., L. 6; in *Ad Sacrosancta Concilia.... Apparatus alter,* pdg. 271. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Ibid., L. 10; in *Ad Sacrosancta Concilia.... Apparatus alter,* p. 496. [↑](#footnote-ref-21)
22. Ibid.; in *Ad Sacrosancta Concilia.... Apparatus alter,* p. 505. [↑](#footnote-ref-22)
23. J. Almain's challenge is entitled *De auctoritate Ecclesiae.* [↑](#footnote-ref-23)
24. c. 7, d. 19. [↑](#footnote-ref-24)
25. Thomas of Vio Cajetanus, *De comparatiohe auctoritatis Papae et Concilii,* ch. 6, Scripta Theologica, vol. I, edic, V. J. Pollet O. P., num. 77, pdg. 45. [↑](#footnote-ref-25)
26. Id., *De comparata auctoritate Papae et Concilii apologia,* [Chap. XII, 54]; ibid, num. 694-6, pp. 286-7. [↑](#footnote-ref-26)
27. Id,, *De comparatione auctoritatis Papae et Concilii,* ch. 3; ibid, num.

33, p. 27. [↑](#footnote-ref-27)
28. Ibid., no. 27, p. 25. [↑](#footnote-ref-28)
29. Id., *De comparata auctoritate Papae et Concilii apologia,* ch. 6; ibid., num. 501, p6g. 226. [↑](#footnote-ref-29)
30. Ibid., ed. princeps pdg. 124; edic. Getino, pg. 268. [↑](#footnote-ref-30)
31. Id., *De potestate eclesiastica,* relatio 2, edic. princeps p. 125; edic. Ge- tino p. 270. [↑](#footnote-ref-31)
32. Ibid., edic, princeps pag. 129; edic. Getino p. 272. [↑](#footnote-ref-32)
33. M. Cano, *De locis theologicis,* L. 5, de conciliis, cap. 2. [↑](#footnote-ref-33)
34. D. BAnez, *Scholaslica comment aria,* in 2-2, q. 1, art. 10, Salmanticae 1584; in Rocaberti, 8, p. 322. [↑](#footnote-ref-34)
35. D. Giacobazzi, *Dc Conciliis,* L. 2; in *Ad Sacrosancta Concilia.... Apparatus alter,* pdg. 61. [↑](#footnote-ref-35)
36. D. Soto, *In* 4 *Sententiarum,* d. 20, q. 1, art. 5, Salmanticae 1557, T. 1. page 944f. [↑](#footnote-ref-36)
37. Ibid., pg. 934. [↑](#footnote-ref-37)
38. Ibid., pg. 942. [↑](#footnote-ref-38)
39. This is also what H. Grisar calls it, *I. Lainez, Disputationes Tridentinae,* I, Oeniponte 1886, p. 30\*s. [↑](#footnote-ref-39)
40. *Concilium Tridentinum,* edidit Soc. Goerresiana, T. 9, pp. 48-51. [↑](#footnote-ref-40)
41. Ibid., pp. 52-58. [↑](#footnote-ref-41)
42. Ibid, pdg. 112-122. [↑](#footnote-ref-42)
43. For example, the same Archbishop of Rossano who in his vow of November cites among many other authors Torquemada and Giacobazzi. [↑](#footnote-ref-43)
44. *Concilium Tridentinum,* T. 9, p. 141.-The wording of the vow is due to Lainez, who reconstructed it from memory, by order, it seems, of the legacies. Ibid., pg. 139, note 8. [↑](#footnote-ref-44)
45. *Concilium Tridentinum,* T. 9, pAg. 201. [↑](#footnote-ref-45)
46. Ibid., pg. 100. [↑](#footnote-ref-46)
47. V6ase Paleotti, *Acta Concilii Tridentini;* in *Concilium Tridentinum,* T.

2, pig. 493. [↑](#footnote-ref-47)
48. *Concilium Tridentinum,* T. 9, pg. 229. [↑](#footnote-ref-48)
49. *Concilium Tridentinum,* T. 9, p. 228. [↑](#footnote-ref-49)
50. See Lainez, *Disputationes Tridentinae,* I, pdg. 217f. [↑](#footnote-ref-50)
51. Ibid., p. 117. [↑](#footnote-ref-51)
52. Ibid., p. 217. [↑](#footnote-ref-52)
53. B. Carranza, *Conlroversias,* 4; in *Ad Sacrosancta Concilia.... Apparatus alter,* pAg. 706. [↑](#footnote-ref-53)
54. D. Alava Esquivel, *De conciliis universalibus,* Granatae 1552, Pars. I, cap. 5, fol. 29v. [↑](#footnote-ref-54)
55. J. A. Delfino de Casali, *De tractandis in concilio oecumenico,*Romae
1561, chap. 5;*in Ad Sacrosancta Concilia.... Apparatus alter,* p. 596. [↑](#footnote-ref-55)
56. J. de Nacchianti, *De Papae ac Concilii potestate compendiaria tractatio;* in *De Summi Pontificis auctoritate, de episcoporum residentia et beneficiorum pluralitate, gravissimorum auctorum complurium opuscu- la,* Venetiis (Zileti) 1562, fol. 155v. [↑](#footnote-ref-56)
57. D. NtJREz Cabezudo, *De auctoritate Summi Pontificis et Concilii;* in Ro- caberti, 8, pig 264. [↑](#footnote-ref-57)
58. Bellarmine does not deal with the origin of the conciliar jurisdiction. Gagnebet in his article *L'origine de la juridietion colld^ale du corps episcopal an Concile seton Bolgeni,* Divinitas 5[1961]433, note 4, quotes Beiarmi- no, *De Concitis et Ecclesia,* chap. 14; but in this brief chapter he deals only with the authority that convokes the council: he indicates that it is the pope and gives as reason "Praocipua enim auctoritas est in capite, sive in Petro, cui imperatum esl ut confirmct fratres suos...", words that do not require the papal origin of the conciliar jurisdiction. [↑](#footnote-ref-58)
59. St. Robert Bellarmine, *De Summo Pontifice,* L. 4, ch. 23. [↑](#footnote-ref-59)
60. J. Azor, *Institutiones morales,* II, lib. IV, cap. 13. q. 5; Lugduni 1625, col. 455 D. [↑](#footnote-ref-60)
61. Vives, 12, p. 327. [↑](#footnote-ref-61)
62. Id., *De Fide,* disp. XI, de conciliis, sect. I, num. 15, Opera omnia, edic. [↑](#footnote-ref-62)
63. B. Fragosi, *Regimen reipublicae christianae,* T. 2; in Rocaberti, 5, pdg. 142. [↑](#footnote-ref-63)
64. [H. Kilber], *Principia Theologica, cursus Wirceburgensis,* disp. II, chap.

II, art. 4; edic. Parisiis 1852, p. 262f. [↑](#footnote-ref-64)
65. F. A. Zaccaria, *Antifebbronio,* T. 1, diss. II, chap. VI; ed. Pessaro 1767, page 168. [↑](#footnote-ref-65)
66. Ibid., chap. VIII, pg. 183. [↑](#footnote-ref-66)
67. A. PLREZ, *Pentateuchum fidei,* L. 2, de conciliis; in Rocabbrti, 4, pd.g. 706. [↑](#footnote-ref-67)
68. D. Gravina, *Catholicae praescription.es;* in Rocabbrti, 8, pdg. 887. [↑](#footnote-ref-68)
69. Dominicus a Sma. Trinitate, *De ecclesia militants,* sectio 5, de conciliis; in Rocaberti, 10, p. 533. [↑](#footnote-ref-69)
70. G. V. Bolgent, *L'Episcopato, ossia la potestd di governare la Chiesa,* 1789, num. 94, p. 191. [↑](#footnote-ref-70)
71. Ibid,, num. 95, pAg. 192f. [↑](#footnote-ref-71)
72. Ibid., p. 194. [↑](#footnote-ref-72)
73. M. Capellari, *Il trionfo della Santa Sede e della Chiesa,* Rome 1799, § 68, p. 83. [↑](#footnote-ref-73)
74. This last phrase that Capellari takes from Bolgeni clarifies his mind about the right "of suffrage" of the bishops in the council, of which he has spoken before: it is a right "di governare e ammaestrare tutta la Chie- sa". It does not seem, then, that one can say with Gagnebet: "Cettte der- niere [universal jurisdiction] reduite par notre auteur au droit de suffrage au Concile, semble se confondre avec le pouvoir d'ordre." In the note he omits to copy this last sentence in continuation of the previous one he quotes. See, Gagnebet, art. cit. p. 437f. [↑](#footnote-ref-74)
75. Vering, *Lehrbuch des Kirchenrechtes,* p. .557; in Wilmers, ibid. [↑](#footnote-ref-75)
76. F. Pilgramm, *Physiologic der Kirche,* ed. 1931, pg. 72. [↑](#footnote-ref-76)
77. |Gagnebet, *L' origine de la juridiction collegiale du corps Episcopal an Concile seton Bolgeni:* Divinitas 5[1961]431-493. [↑](#footnote-ref-77)
78. Ibid., pp. 438-441. [↑](#footnote-ref-78)
79. Ibid., p. 442. [↑](#footnote-ref-79)
80. Muncunili, *De Ecclcsia Christi,* Barcelona 1914, p. 497. [↑](#footnote-ref-80)
81. J. Forget, in *Dictionnaire de la Theologie Catholique,* Vacant, III, 1, col. 664. [↑](#footnote-ref-81)
82. Gagnebet, art. cit., p. 471. [↑](#footnote-ref-82)
83. A. Straub, *De Ecclesia Christi,* Oeniponte 1912, num. 795, T. II, p^g. 796. [↑](#footnote-ref-83)
84. St. Thomas, 3 *P.,* q. 1, art. 3; quoted by Gagnebet, art. cit., p. 464. [↑](#footnote-ref-84)
85. Estp parent ser ip argumeptaejop de Gagnebet. art. cit., p. 465. [↑](#footnote-ref-85)