INTRODUCTORY: THE CONCILIAR THEORY AND THE CANONISTS

Two major problems concerning the nature and limits of ecclesiastical authority dominated the speculations of political philosophers in the later Middle Ages. The first problem was the centuries-old conflict of regnum and sacerdotium. The second, whose origins and development we shall try to elucidate, was concerned rather with the internal structure of the Church, with the authority of its head and the proper interrelationship of its various members. The two problems were often intimately associated in the course of their historical development, for the partisans of successive princes—of Frederick II, Philip the Fair, Lewis the Bavarian—all found it expedient to couple their claims on behalf of the secular power with appeals to the College of Cardinals or the General Council as embodying an authority superior to that of any individual Pope within the Church. But logically the problems were quite distinct from one another, and there was a sharp divergence in the modes of their eventual solutions. The first one, indeed, could find no clear-cut solution in the polity of the late Middle Ages, for the medieval dream of an ultimate unity achieved through hierarchical organization was becoming ever more remote from the real world of nascent nationalism, and the trend of political events ensured that the rival doctrines of papalists and imperialists should die away before either of them could face the crucial test of practical implementation. In a quite contrary fashion the opposing theories concerning the internal constitution of the Church were forced by the pressure of events to a final crisis in which the partisans of papal absolutism and of conciliar supremacy were engaged, no longer merely on the plane of doctrinaire pamphleteering, but as real contestants for the practical control of the machinery of Church government.

The event which precipitated this crisis was the schism of 1378. In April of that year, on a morning of confused rioting and popular
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tumult, the cardinals elected as Pope Bartholomew Prignani, Archbishop of Bari, and subsequently they assisted at his coronation, accepted benefices from him, and publicly acknowledged him as a true Pope. However, the conduct of the new pontiff, Urban VI, soon gave the cardinals reason to regret their choice and, four months later, having put themselves outside the immediate power of the Pope at Anagni, they declared the election of 8 April invalid on the ground that it had been made under duress, and called upon Urban to recognize the fact. When he refused the cardinals themselves declared the Holy See vacant, and proceeded to the election of a new Pope who took the name of Clement VII. The events of the next year showed that neither Pope could command universal allegiance. Urban was able to maintain himself at Rome and Clement established a rival curia at Avignon; the nations of Europe attached themselves to the obediences of the rival pontiffs, and the Church faced all the degrading scandal, the chaos and corruption of a prolonged schism.¹

The subsequent development of the situation that now faced Christendom was influenced profoundly by the theories of Church government that had grown up during the preceding centuries. The prevailing doctrine of papal authority made it peculiarly difficult to reconcile the contending Popes, since any disposition on the part of either of them to submit the dispute to arbitration could have been interpreted as a tacit abandonment of the claim to be a true Pope, subject to no human judgement. Hence, in the dreary deadlock that ensued after 1378, many minds turned to alternative theories which had emphasized the ultimate authority of the whole Church and which had held that no one, not even a Pope, could lawfully act against the well-being of the Church. The propaganda of the Spiritual Franciscans and of the imperial publicists earlier in the fourteenth century had familiarized Christendom with the idea of a General Council as a panacea for all the ills of the Church, and accordingly it was to a Council that many looked for a deliverance from these latest evils. In the end it was in fact a

¹ The most recent account of the events leading up to the outbreak of the Great Schism is that of W. Ullmann, Origins of the Great Schism (London, 1948), pp. 9–56.
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General Council, convoked at first by an anti-pope, and claiming to legislate in virtue of its own inherent authority, that restored unity to the Church after forty years of embittered schism.

Those years had seen a remarkable profusion of speculations on Church government which soon went far beyond the immediate problem of healing the schism to probe deeply into fundamental questions concerning the nature of ecclesiastical authority and the machinery of Church government by which such authority should be manifested. The clash of personalities involved in the struggle between Urban and Clement gave way to a clash of principles, and the original dispute of the rival Popes broadened into a constitutional crisis in which the most important problem to be resolved was no longer which of the rival claimants should be Pope but whether the Papacy itself should continue to govern the Church in the old way. The ferment of intellectual activity was confined to no one country or class. Among the most eminent theorists of the Conciliar Movement were Conrad of Gelnhausen, Henry of Langenstein, and Dietrich of Niem from Germany, Jean Gerson and Pierre d’Ailly of France, the Spaniard Andreas Randulf and the Italian cardinal, Zabarella. Naturally their views were not always identical. Each tended to approach the problems at issue from his own special viewpoint as lawyer, administrator or theologian, and there were many shades of opinion concerning the relative authority of Pope and Council, and especially concerning the role to be attributed to the College of Cardinals. In strict accuracy, no doubt, one should speak of a collection of conciliar proposals rather than of ‘the Conciliar Theory’; and yet there was sufficient underlying unity of thought among the various writers to render the latter expression significant and useful.

Their various systems of Church government were all based on one fundamental doctrine concerning the nature of the Church, which was already formulated clearly in the Epistola Concordiae of Conrad of Gelnhausen, the first major work of conciliar scholarship to appear after the outbreak of the Schism. Its central feature was a sharp distinction between the Universal Church (the whole congregatio fidelium) and the Roman church (understood as Pope and cardinals), together with an uncompromising assertion that
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the former was superior to the latter. Christ had promised that his Church would never fail, that he would always protect it and maintain the integrity of its faith; but Conrad of Gelnhausen argued that the Church which enjoyed this divine guidance and protection could not be any particular local church, for even in the Roman church individual Popes had erred in the past. Moreover, Conrad brushed aside the argument that the Roman See, understood as the corporate aggregate of Pope and cardinals, might be identified with the unfailing Church established by Christ, for to argue thus, he protested, was to set the College of Cardinals above that first college of the Apostles whose faith had wavered at the time of the Passion. He concluded that, since only the Church as a whole could be certain of receiving Christ’s unfailing guidance, the authority of the Universal Church was superior to that of any organ of ecclesiastical government within it, including the Papacy.¹

The appeal to the underlying authority of the Church, understood as the *congregatio fidelium*, was the very essence of the conciliar position. Around this central principle the later Conciliarists built up a complex group of theories concerning the relationship of the Church in this broad sense to the Pope and the Roman curia. It had often been held in the past, even by the more extreme papal publicists, that the Pope represented the Church in the sense that he personified the Church and so embodied in himself the whole of its authority; but to the conciliar thinkers the idea of representation came to mean something more than mere personification. It implied also an actual bestowal of authority upon the representative by those whom he was to represent, with the corollary that such

authority could be withdrawn in case of abuse. Even the Pope, therefore, was held to possess only a derivative and limited right of government conferred on him by the Church; far from possessing absolute power, responsible to no human tribunal, he could exercise only such authority as was necessary for the ‘edification’ of the Church; if his rule tended rather to its ‘destruction’ he could be corrected and even deposed by a General Council exercising the superior authority inherent in the Church as a whole. The principle of conciliar supremacy was nowhere more clearly

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1 The idea was expressed most clearly at the very end of the conciliar period by Nicolaus Cusanus in his De Concordantia Catholica, in Opera (Baselae, 1563), xviii, p. 741. ‘...quanto particularior est praeidentia, tanto certior est representationio. ...Isti autem rectores per consensum iure divino et naturali constituient deberent et ut Avitus papa dixit, tunc opporert ut qui omnibus praesesse debet ab omnibus eligatur. ...’ Earlier, Zabarella had argued that the Church could take away the Pope’s authority precisely because it had conferred that authority in the first place (p. 708), and further, borrowing a familiar argument from Roman law, he held that in conferring powers on the Pope the congregatio fidelium could not irrevocably alienate its own inherent authority. (The more usual view among the jurists, however, was that the Roman people did irrevocably alienate its powers to the Emperor. On this see C. N. S. Woolf, Bartolus of Sassoferrato (Cambridge, 1913), pp. 35–7, and W. Ullmann, Medieval Idea of Law (London, 1946), pp. 48–9.) Pierre d’Ailly also applied to all grades of the ecclesiastical hierarchy the idea that an official was a representative of his community. See Gerson, Opera, ii, col. 942 (here closely following John of Paris). One must view with reserve de Lagarde’s statement, ‘Jamais le Moyen Âge n’a lié l’idée de représentation à celle d’une délégation populaire’, La naissance de l’esprit laïque (Paris, 1934–46), iv, p. 118. Sometimes in the later Middle Ages the two ideas were very closely associated.

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expressed than in the decree Sacrosancta of the Council of Constance, which Dr Figgis referred to as "the most revolutionary document in the history of the world":

Concilium generale faciens et ecclesiam catholicam representaunt, potestatem a Christo immediate habet, cui quilibet cuiuscunque status vel dignitatis, etiam si papalis exstait, obedere tenetur in his quae pertinent ad fidem.¹

From whatever point of view the Conciliarists approached their problems their underlying assumption was always the same. The whole Christian community was superior to any prelate, however exalted; the Pope was to be a servant of the Church rather than its master.

Accompanying these claims on behalf of the General Council in the conciliar works were speculations concerning the position of the cardinals in the Church. It was sometimes argued that the cardinals acted on behalf of the whole Church in the act of electing a Pope, and there were even suggestions that the cardinals themselves should be elected by the Church. Again, it was commonly held that even the somewhat limited authority attributed to the Roman See did not inhere in the Pope alone but was vested in the corporate association of Pope and cardinals. It was the task of the cardinals, therefore, to restrain an erring Pope and, above all, to summon a General Council if, in an emergency, the Pope refused to do so.² Evidently the conciliar thinkers were not content to give the Church a new head; they were determined to give it a new constitution as well.

¹ Cf. the definition of a General Council given by Conrad of Gelnhausen in Epistola Concordiae, col. 1217, "Concilium generale est multarum vel plurium personarum rite convocaturnm representauntium vel gerentium vicem diversorum statuum, ordinum et sexuum et personarum totius christianitatis, venire aut mutere valentium aut potentium, ad tractandum de bono communi universalis ecclesiae in unum locum communem et idoneum conventio seu congregatio". See also Gerson in Opera, II, col. 824, and Zabarella in Sardius, p. 689, "...ipsam ecclesiam universalem quae representatur per concilium generale...", and again, "...universalis ecclesiae, i.e. concilium".

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It is generally agreed that the theories of the Conciliarists themselves were not unprecedented novelties, invented at the end of the fourteenth century to solve the urgent problems of the Great Schism. Yet, although the conciliar doctrines provide an important field of study for the political theorist as well as for the Church historian, there has been no wholly adequate account of their origins and early development. The earlier works concentrated almost entirely upon the immediate problems raised by the Schism itself. In 1893 Dr A. Kneer showed how the ideas of Conrad of Gelnhausen and Henry of Langenstein grew out of their attempts to solve these problems, and, ten years later, Franz Bliemetzrieder, while severely criticizing some of Kneer’s judgements, also dealt with the conciliar theories only in relation to the immediate context of events. Bliemetzrieder produced a valuable account of the various stages in the development of conciliar ideas during the years of the Schism, but he himself acknowledged that any really adequate investigation of their origins would necessitate an inquiry into the theological and canonistic traditions of the preceding centuries. A year earlier (1903), K. Hirsch pointed out that, long before the Great Schism, the ideas of such writers as Conrad of Gelnhausen and Henry of Langenstein had been anticipated in the works of Marsiglio of Padua and William of Ockham, and also that the Joachimite doctrines of the Spiritual Franciscans played a considerable part in undermining the prestige of the Papacy at the beginning of the fourteenth century.

A few years later H.-X. Arquillièrè was led by his researches into the origins of Gallicanism to postulate a still earlier starting-point

1 Thus Professor Mcllwain, dismissing the Conciliar Movement in half a dozen pages, remarks, 'The space here allotted to the conciliar period is wholly incommensurate with its great importance, but greater brevity seemed possible because there is so little really new in the essentials of the theory advanced at the time', Growth of Political Thought in the West (New York, 1932), p. 349 n. 1.


3 F. Bliemetzrieder, Das Generalkonzil im grossen abendländischen Schisma (Paderborn, 1904).

for the theory of conciliar supremacy.¹ He called attention to the importance of the Decretist text, Dist. 40 c. 6, which laid down that, although normally a Pope was immune from human judgement, this immunity did not extend to a Pope who became a heretic: ‘...cunctos ipse iudicaturus a nemine est iudicandus, nisi deprehendatur a fide devius’. Arquillière cited various sources, including pronouncements in some of Innocent III’s sermons,² to show that this Decretist doctrine reflected an orthodox and established tradition of the Church. He then described how this loophole in the papal defences was skilfully exploited in the reign of Boniface VIII by Nogaret and his followers, who were able to confuse and almost to convince the prelates of France in the assembly of 1303, since the charges they brought against the Pope were indeed technically admissible in canon law. Nogaret’s claims were based on the assumption that Boniface as a heretic had ceased automatically to be Pope and so, in Arquillière’s view, there was still at this time no claim that the General Council was superior to a true Pope. Nevertheless, the very assumption that a Council was competent to pronounce upon the orthodoxy of a pontiff who was actually occupying the See of Peter encouraged the growth of a more extreme doctrine of conciliar supremacy, and this, Arquillière thought, was first explicitly proclaimed by the Spiritual Franciscans at the court of Lewis of Bavaria.³

² ‘L’appel au concile’, p. 52, referring to Migne, Patrologia Latina, ccxvii, col. 656.
³ Art. cit. pp. 54–5. Although Arquillière was the first to consider in detail in this context the importance of the canonistic doctrine concerning a heretical Pope, Gierke had called attention to the same point some years earlier, Political Theories of the Middle Age, transl. Maitland (Cambridge, 1900), p. 50, ‘...the doctrine, hardly doubted in the Middle Age, that in matters of faith only the Church is infallible and the Pope can err and be deposed, led to the opinion expressed by many canonists that in this exceptional case the Pope is subjected to the judgement of the Whole Church’. A considerable number of early canonistic texts relating to the deposition of a Pope was collected by J. F. v. Schulte in his polemical treatise, Die Stellung der Concilien, Päpste und Bischöfe (Prague, 1871).
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More recently these views of Arquillière have been accepted and developed by Mgr Martin in a series of articles on the origins of the Conciliar Theory.¹ Martin not only quoted Gratian’s Dist. 40 c. 6 but also pointed out that certain canonists of the twelfth century extended the application of this text by adding other crimes to the one offence of heresy for which alone a Pope could be judged according to the letter of the law. Huguccio, he noted, even went so far as to assert that a Pope could be judged for any notorious crime whatsoever.² Nevertheless, insisted Martin, in all this there was still no hint that the General Council was actually superior to the Pope. According to the unanimous opinion of the canonists the Pope was the supreme authority within the Church, and a heretical ‘Pope’ was liable to judgement simply because, by reason of his heresy, he had ceased automatically to be Pope.³ Following Arquillière, he cited the Franciscan theologian Pietro Olivi to show that this doctrine concerning a heretical Pope was still current at the end of the thirteenth century, and repeated that Nogaret’s appeal to the Council was based on the assumption that the Apostolic See had become vacant as a result of Boniface’s heresy.

It was in the revolutionary theories of Marsiglio and Ockham that Martin discerned the first deliberate abandonment of the ancient doctrine concerning the supremacy of the Papacy, and it was their works, and especially those of Ockham, that he thought were most influential at the time of the Schism. The canonists had said that a heretical Pope could be deposed, and they had also mentioned schism as a crime tantamount to heresy, but in 1378 the essential problem was to determine which of the contending Popes was in fact schismatic. To resolve this difficulty it was necessary that a Council should have jurisdiction over both Popes,

² Art. cit. p. 127. Martin was here following Schulte.
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and so the Conciliarists rejected the teaching of the canonists and resuscitated the heretical doctrines of the imperial publicists.¹ For Martin the Conciliar Theory was a radical departure from the theological and canonistic tradition of the Church. It was born of the Great Schism and its prophets were the condemned heretics Marsiglio and Ockham.²

This account of the genesis of the Conciliar Theory leaves much to be explained. It may be doubted whether even the circumstances of the Schism could have induced so many devout and distinguished churchmen from so many countries to subscribe to doctrines invented by known heretics a couple of generations earlier. Moreover, if it is in fact true that the main conciliar ideas were derived from Ockham, then clearly any account of the earlier stages in the development of the Conciliar Theory should consist primarily of an analysis of the sources of Ockham’s thought. Here Martin failed to exploit to the full the promising line of inquiry opened up by Arquillière, for he made little attempt to relate the early doctrine concerning a heretical Pope to the general background of canonistic thought in the twelfth century. Had he done so he might have encountered significant anticipations of doctrines whose origin he was content to attribute to the imperial publicists of more than a century later.

A point of view rather different from that of Mgr Martin was put forward by Dr Figgis in his very stimulating Birkbeck Lecture on the Conciliar Theory.³ While recognizing the contributions of Ockham and Marsiglio and the importance of the Schism itself, Dr Figgis suggested that the real source of conciliar thought was to be found in the constitutional developments that had taken place in various secular kingdoms during the preceding two centuries. He thought that the Conciliarists seemed ‘to have discerned more clearly than their predecessors the meaning of the constitutional experiments...to have thought out the principles that underlay them...to have discovered that arguments applicable to government in general could not be inapplicable to the Church’.⁴ The

³ J. N. Figgis, From Gerson to Grotius, 2nd ed. (Cambridge, 1916), pp. 41–70.