

# CONCORDIA THEOLOGICAL MONTHLY

---

The Posting of Luther's Theses—Legend or Fact?

FRANZ LAU

Some Animadversions on Early Church  
Government

E. G. WELTIN

New Testament Studies, Past and Present

EDGAR KRENTZ

Homiletics

Brief Studies

Book Review

Vol. XXXVIII

December 1967

No. 11



ARCHIVES

# Some Animadversions on Early Church Government

E. G. WELTIN

Throughout the entire history of the Western church, two poles of episcopal government, the primatial and the collegial, have struggled to find some sort of equilibrium. At one time, as during the 15th-century conciliar movement, the pendulum swung far in the collegial direction; at another, as in the 19th-century Vatican council, wide in the primatial. Vatican II seems to have been concerned with prospects of confining the pendulum's movement in the future to a more restricted arc.

The problem of government appears to have plagued the church almost as soon as it emerged triumphant from persecution. Already in its early days of independence and consolidation it apparently found itself quite incapable of implementing its experimentation in parliamentary government with workable conciliar machinery. Obviously the difficulties encountered with conciliar government did not spring from any inherent fatal defects within the system itself. Conciliarism, as a matter of fact, could boast a venerable Scriptural origin harking back to the mid-first-century apostolic assembly in Jerusalem, to which the Holy Spirit Himself had lent His encouragement and dignity. Especially significant was the council of Antioch, 268, where for the first time scrutiny of a bishop's doctrine led to his excommunication.<sup>1</sup> Synodal pro-

cedure, already long in honorable practice before the conversion of Constantine, had readily adapted itself to the Roman political environment not only by accommodating itself to the existing territorial divisions of the empire but also by adapting to its needs contemporary standard parliamentary devices and practices.<sup>2</sup> Already at the first ecumenical council bishops retained *periti* in dialectics to assure effective debating procedures.<sup>3</sup> Battifol long ago demonstrated that Cyprian's African synods consciously patterned themselves after the Roman senate.<sup>4</sup> In senatorial style, they first featured a short address by the president (*relatio*), then solicited the reaction (*sententia*) of each prelate by rank, and finally drew up a resolution (*consultum*). Throughout, the parliamentary terminology employed in ecclesiastical meetings paralleled that of secular assemblies. The modified clause *Omnes episcopi dixerunt* appropriately concluded each topic of discussion, and familiar expressions such as *quid fieri placeat* or *si vobis placet* were employed to solicit responses. Transcripts of the Council of Sardica show how conscientiously Hosius adhered to these formulas.<sup>5</sup> Church parleys bear evidence, too, that one

<sup>1</sup> See I. Ortiz de Urbina, *Nicée et Constantinople* (Paris, 1963), p. 18.

E. G. Welton is professor of history at Washington University, St. Louis.

<sup>2</sup> F. Dvornik, *The Ecumenical Councils* (New York, 1963), pp. 9—10; Ortiz, p. 29.

<sup>3</sup> Ortiz, p. 56, thinks the general level of episcopal intelligence at the council was not exceptionally high.

<sup>4</sup> H. Hess, *The Canons of the Council of Sardica* (Oxford, 1958) p. 29.

<sup>5</sup> *Ibid.*, pp. 29—41.

less admirable, albeit more colorful, senatorial practice was copied as well: the repetitious tiresome shouting of sycophantic acclamations. At Ephesus, for example, the bishops obsequiously exclaimed over and over again: "We thank Coelestine, the new Paul; we thank Cyril, the new Paul . . . one Coelestine, one Cyril, one faith"; or at Chalcedon: "To Marcian, the new Paul, the new David . . . You have the faith of the apostles" etc.<sup>6</sup> Among more praiseworthy parliamentary procedures which church councils early appropriated was the practice of keeping minutes by trained notaries. Thanks to the shorthand transcriptions made by stenographers at the council of Sirmium in 357 and at Rimini in 359, acts of these meetings became available to contemporary collectors.<sup>7</sup>

Already at Nicaea the emperor graciously extended senatorial franking privileges to the bishop-delegates by allowing them the free use of the public post. Even the position of the Bible placed on a pedestal between the emperor and the assembled members of the conclave could be taken as a deliberate substitute for the pagan statue of Victory which stood in the senate building at Rome. Dvornik has professed to see — probably too enthusiastically — a decided boon for Christian history in the old senatorial protocol that prevented the emperor from casting a vote. He maintains that the observance of this tradition in ecclesiastical assemblies did much to assure clerical rather than imperial domination of debate in church councils.<sup>8</sup> He seems to

have forgotten that, as a sort of *princeps senatus*, the emperor generally spoke first in church conclaves and thus greatly prejudiced ultimate decisions. At Chalcedon Marcian's commissioners took the initiative so effectively that they practically assured acceptance of the symbol of Constantinople.<sup>9</sup>

Unfortunately the conciliar movement's auspicious infancy was not followed by a period of consistent growth and full maturity. This arrested development of collegial church government probably helped confirm the ancient world, which only on rare occasions groped toward representative government, in its autocratic traditions. Contemporary political science seems nowhere impressed with the church's parliamentary experiments. No emperor sees in ecclesiastical conciliar experience a model for political governmental machinery as the English Parliament seems to have profited from the representative constitutional polity of the Dominicans in the Middle Ages. On the contrary, Constantine within only a very few years appears quite disenchanted with conciliar methods and, regarding himself less and less a professed servant of bishops-in-council, he tended to act more and more as an external bishop negotiating on his own authority.<sup>10</sup> A few years later, indeed, Constantius felt no pangs over cowering ecclesiastical assemblies by openly drumming on his naked sword in the presence of assembled bishops and bidding them categorically to accept his will as a canon.<sup>11</sup>

<sup>6</sup> See E. Schwartz, *Acta conciliorum oecumenicorum* (Berlin & Leipzig, 1897), I, I, I—VII; Dvornik, p. 27.

<sup>7</sup> Hess, p. 27.

<sup>8</sup> Dvornik, pp. 15—16.

<sup>9</sup> Ortiz, pp. 226—227.

<sup>10</sup> Eusebius, *Vita Constantini*, 4.24.

<sup>11</sup> Athanasius, *Historia Arianorum ad monachos*, 33, 34, 76.

Simultaneously, and greatly because of the ineffectiveness of the faltering conciliar course, the monarchical principle emerged within the church. By 350 it was quite clear that the bishop of Rome was well on his way, both in theory and in practice, toward establishing an effective dominion over at least his Western episcopal peers. Victor in the second century had prematurely and only vaguely pointed out the general direction of the primatial goal; Stephen and Julius in the crucial hundred years between 250 and 350 blazed a path; Innocent, Coelestine, and Leo by 450 paved it as a highway. In the process the famous Matthew passage came to be applied as a scriptural charter for the papacy, thus belatedly rationalizing a trend more than initiating it. This evolutionary development of the papacy might well have lagged and eventually have ceased had the progressive embarrassment of the collegial-conciliar experiment after Nicaea not encouraged it. The follies of the council became the strength of the pope.

The first serious verifiable episode highlighting the contest between the collegial and primatial poles of church government was Cyprian's sharp hassle with Stephen. In this contest, a prelude to the whole historical debate over ecclesiology, Cyprian's doctrinal position — invalidating baptism administered by heretics — proved so crucial and heated as to cause speculation on the basic principles of church government employed by each protagonist to support his sacramental position.

The issue was squarely joined. On one side stood the giant pope of Carthage, an ardent organization man holding that no one could have God for his Father who did not have the church for his mother. Ac-

ording to Cyprian's concept of church polity no heretic could baptize validly with water from the church's fountain since he was himself not in the church. Apostates functioning off the ledge of the one rock on which the church was founded could scarcely be, in Cyprian's opinion, repositories or hosts of the Holy Ghost preparatory to conferring Him in sacramental ministrations. Nor could deceived deserters work efficacious sacramental results when they invoked an heretical god who was largely a figment of their warped imagination.<sup>12</sup> These views he buttressed, as his letters and his *Unity of the Catholic Church* attest (at least in the revised version of its famous Chapter 4), with a passionate advocacy of collegiality in church government, a theory that featured the proposition that the plenitude of ecclesiastical power and sovereignty was vested properly in the corporate body of bishops. Against this fund, the general will of the episcopate, each bishop was to draw, in a Rousseau-like manner, for the authority he would exercise autonomously in his own bailiwick.<sup>13</sup> The later William of Occam and Marsiglio of Padua would have heartily approved the prospectus.

Against Cyprian stood Stephen, largely an unknown man and an unambitious one, judging from the colorless record of both his preepiscopal career and that of the first two years of his pontificate. He displayed, as a matter of fact, almost a shamefully lackadaisical attitude in pressing appeals to Rome and in remonstrating with Cyprian who, despite his leaning toward episcopal autonomy, occasionally himself fished in

<sup>12</sup> Cyprian, *Epistula*, 73.10; 75.7.

<sup>13</sup> *Ibid.*, 73.2.

Roman preserves. But Cyprian's teaching-in-council on the limitations of baptismal efficacy aroused the Roman bishop to take a determined stand. It is probably too generous to accredit Stephen with the full realization that Cyprian's claims supporting the invalidity of heretical baptism and the strong collegial position—while, indeed, generically unrelated—had a common denominator. Both ideas were, in the last analysis, based on a centrifugal individualism quite inimical to tight church organization. Cyprian's baptismal stand immediately made sacramental ministrations subjective, relative, dependent on the character of each minister; his collegial position automatically rendered church government decentralized, localized, sensitive to the independent sovereignty of each bishop or at least of each metropolitan. To enhance ecclesiastical consolidation and centralization, but more probably to protect the objective character of the sacraments and thus head off both ministerial and disciplinary anarchy in the church, Stephen resorted to a glorification of the Roman see as an alternative repository of sovereignty. That in the process Stephen unfurled Matt. 16:18-20 as a charter for Roman primacy is attested by Firmilian of Caesarea, Cyprian's ardent supporter, who vehemently castigated the pope for boasting that he held "the succession from Peter, on whom the foundations of the church were laid."<sup>14</sup> Apparently at this juncture Cyprian re-drafted Chapter 4 of his *Unity of the Catholic Church* bitterly complaining that even Peter himself did not dispute with Paul about priorities or "claim anything to himself insolently, nor arrogantly assume any-

thing so as to say that he held the primacy and that he ought to be obeyed by novices and newcomers."<sup>15</sup>

That the eventual condemnation of Cyprian's sacramental views did not entail a simultaneous destruction of his governmental theories is evident from the fact that the agencies which largely vindicated Stephen's position and rejected Cyprian's advocacy of rebaptism (Arles and Nicaea) were councils themselves, tools dear to the African's heart. However, the same anarchical centrifugalism which spelled defeat for Cyprian's liturgical postulations was within a hundred years to tear apart his constitutional theories as well.

Strangely the fatal move that directly brought the conciliar movement to a stalemate was thoughtlessly made by that system's most strenuous supporters, the Eusebian Arians, during the pontificate of Pope Julius. After the deadlock in this game, the popes were strong enough to make up their own chess rules.

The bishops at Nicaea, especially in Canon 5, decreed that affairs of each province should be adjudicated by its own synod. Unfortunately, it made no provision for appeal. However, Canon 12 of the Council of Antioch (whether that council antedated 341 is immaterial) in directing a deposed bishop to submit his case to a larger synod composed of "a greater number of bishops" laid down the dubious principle that the amount of authority was commensurate with the size of a council,

<sup>15</sup> See Cyprian, *Ep.* 71.3, and the critical study of M. Benevot, *St. Cyprian, the Lapsed and the Unity of the Catholic Church*, Ancient Christian Writers, Vol. 25. Also Dom. Chapman, *Studies on the Early Papacy* (London, 1928) pp. 28—40.

<sup>14</sup> *Ibid.*, 75.17.

that the Holy Ghost, so to speak, assured a degree of orthodoxy in direct proportion to the number of bishops He inspired at a meeting. Seemingly then, one synod could overrule another if the number of bishops composing it were larger.<sup>16</sup> Even Pope Julius, misinterpreting Canon 5 of Nicaea, was prepared to recognize the right of appeal and review from synod to synod. "The bishops," he said, "who assembled at the great council of Nicaea agreed, not without the will of God, that the decisions of one council should be examined in another so that the judges, having before their eyes that other trial which was in the offing, might be encouraged to investigate matters with utmost caution."<sup>17</sup>

Such seems to be the general understanding—as efficient and logical as probably could be devised—until Pope Julius was requested by the Eusebian group, apparently with tongue-in-cheek, to convoke a large council in order finally to settle the Athanasian debacle. When Julius called their bluff by projecting himself as the first bishop daring in his own name to call a potential general council, a prerogative thus far reserved for the emperor alone, the Eusebians balked. Because they feared a reversal of Tyre, they conveniently but fatally disallowed the principle of appeal from synod to synod. In reply to Julius they distinctly stated that the acts of synods were irreversible since the first judges would be dishonored if their findings were restudied. "Let the rules of the church and the sacred traditions and judgments of the fathers remain fixed and firm in perpetuity in regard to

establishing bishops and removing them."<sup>18</sup> In this case, for the sake of expediency, the Eusebians wished to take refuge in a primitive concept of the church which, viewing Christianity as a charismatic dispensation where decisions of an inspired nature were not subject to continual review, refused to recognize that the church had grown into a legislative body where successive canons demanded obedience. They thus acted totally illogically in a day of dawning legalism when on the one hand they maintained the validity of Tyre's excommunications while refusing to accept those of Nicaea and on the other by refusing to submit the decisions of the smaller and later council of Tyre to reexamination.<sup>19</sup>

Hess is probably correct in arguing that this predicament, this denial to condemned bishops of the right of appeal before a larger synod, led directly and consciously to the passing of the appeal canons at Sardica, which in theory, at least, did much to establish Rome as a competitor to the council as the agent of review.<sup>20</sup> Since in his opinion Sardica intended squarely to face the impasse created by the Eusebians, its work should not be dismissed merely as sectional or temporary legislation passed in a huff. Because councils could command no universal acceptance as organs of appeal, the only obvious recourse was to the emperor. But he was an Arian. That the West had already grown suspicious of any emperor's pretensions in ecclesiastical affairs is clear enough judging from the West's support lent to Athanasius, or the subsequent biting remarks of a Lucifer of

<sup>16</sup> Hess, pp. 111—113.

<sup>17</sup> Julius, *Ep. to the Eusebians*, P. L. VIII, 88, 2c, as translated in Hess, p. 113.

<sup>18</sup> *Corpus Scriptorum Ecclesiasticorum Latinorum*, lxxv, 49, as in Hess, p. 114.

<sup>19</sup> Hess, p. 110.

<sup>20</sup> *Ibid.*, p. 114.

Cagliari, who rather robustly and sacrilegiously called Constantius not only a "rabid wild animal," "antichrist's general," the "procurator of the devil," and "a dog returning to his vomit" but also "the filth of all the sewers," as well as from Hosius' scathing indictments and Ambrose's classical statements on ideal church-state relationships.<sup>21</sup> As far as the West was concerned, Arianism and its imperially dominated conciliar machinery had already too greatly magnified the emperor by insisting that the earthly state was a mirror of the heavenly empire, that the emperor as the earthly prototype of God enjoyed a special divine status, and that he faithfully reflected the monarchical nature of the god-head above.<sup>22</sup> Under these circumstances Sardica preferred to appeal to Rome rather than to Constantinople.

Even had the Arians not jeopardized the appellate jurisdiction of synods and thus cracked the entire structure, they probably would have contributed more than their share in undermining the synodal system with disrespect and confusion. Due to their machinations so many major councils were convened (Phillippolis 343, Sirmium 351, Arles 353, Milan 355, Second Sirmium 357, Third Sirmium 358, Rimini 359, and Seleucia 359) that Ammianus complained that the very public transport was being overworked and the state exchequer strained by bishops flying here and there to attend meetings. Each council presumed to tamper with the creed and to act so secularly that its *consulta* could scarcely

be seen as anything but the result of compromise, wire-pulling, and pressure tactics. Sozomen and Socrates amply witness that, in general, councils behaved scandalously. Some were rump sessions after a clique bolted; many were politically pressured, others outrageously illegal. Although insubordinate, boisterous, contentious, compulsive, and confused, they generously meted out excommunications, ostracisms, and exiles with the liveliest of epithets. According to Evagrius the chief occupation of bishops was deposing each other and devising novelties. Synods were often enlivened by downright inventive deviltry. Severed and withered hands were exhibited as false evidence, and even whores were paid to be discovered in beds of distinguished prelates whose point of view had to be discredited by rival factions. Already at Nicaea there was horseplay, although it seems confined to some puerile nodding and winking among the venerable bishops registering their mutual confidence in their strategy aimed to wreck the formulation of any expression or statement their rivals might devise to settle the theological cul-de-sac. Personal absence from contact with the great councils alone went far to give the Roman bishop a reputation for wisdom, impartiality, and orthodoxy.

Obviously though, constitutional dilemmas and frivolity were not alone responsible for the stunted growth of the collegial-conciliar movement. Without doubt, the significant deterrent to its popularity was the plain fact that parliamentarianism shivered very nakedly in an inhospitable Roman atmosphere. Since environment always potently shapes contemporary institutions, church and state forever reflect similar values and devices. The creation of

<sup>21</sup> Lucifer, *De Sanct. Athan.*, II. 26; Athanasius, *H. A.*, 44; Ambrose, *Ep. ad Val.*

<sup>22</sup> See G. H. Williams, "Christology and Church Relations in the Fourth Century," *Church History*, XX (Sept. & Dec. 1951), pp. 3—33 and 3—36.

an elective board of cardinals in the church of the Middle Ages is closely paralleled by the establishment of the medieval electoral system in the Holy Roman Empire. So too, the disinclination of 15th- and 16th-century monarchs wholeheartedly to support the contemporary conciliar movement in the church was prompted by their own selfish fears of a possible triumph of parliamentary principles at home.

The late Roman period simply was not conducive to the evolution of free sovereign assemblies. During the early centuries of the church a universal thickening air of repression seems everywhere to have settled down on the classical world. A pervading atmosphere of individual belittlement seems to express itself as vividly in the arts areas as in the field of government and the obvious stratification of society. In literature the tendency toward insipid eulogistic oratory had become pronounced already since the days of the good emperors. Dio Chrysostom glories in the divine appointment of the ruler, a theme the emperor Aurelian avidly subscribed to, long before Christians lent new encouragement to the doctrine. Eusebius' panegyric *Life of Constantine* and his oration in praise of Constantine cannot be cited as evidence that Christian literature was decadent because it is entirely typical of the age. In architecture the erection of gigantic buildings (the basilica of Constantine, the colosseum earlier, Caracalla's baths, the circus maximus), while built to accommodate larger masses of people, also served to compound the individual's feeling of smallness before the all-powerful emperorgod who erected them. The great number of arches built by the emperors (of the 450 known, 400 stem from the empire)

is further witness to the domination of the monarch if one interprets arches as stylized *juga*, or yokes, originally erected to humiliate a defeated army. If daring new architectural principles and devices tended to emphasize an unbroken continuity of enclosed space with the great outdoors, they at the same time progressively withdrew from the individual the security of walled retreats to dwarf him by exposing him alone and naked, as it were, to the great expanse of the universe.<sup>23</sup> While classical sculpture, as in the *Ara Pacis*, tended to stress casualness in the emperor's association with his peers by depicting him sitting or standing among them gracefully and unostentatiously, later reliefs tend to portray the king dominating the scene, often offensively giving donatives to obsequious senators and soldiers. More and more often, reliefs displayed the emperor frontally. Already the arch of Titus glorifies the emperor even above Victory, who is crowning him, and grossly contorts the emperor's chariot in order to show him in full face.<sup>24</sup> The Severan reliefs at Lepcis Magna should also be cited in this connection. Frequently the crowd in the scene is depicted before the king with their backs to the viewer thus forcing the observer to identify himself with the mob beholding the demigod's presence. Styles from Trajan's time delight in depicting the rulers oversize in comparison to the members of their retinue, who not only shrink in scale but flatten out in relief. The stubby figures of men with oversize blockheads on Constantine's arch resemble puppets standing

<sup>23</sup> See C. Starr, *Civilization and the Caesars* (Ithaca, 1954), p. 288.

<sup>24</sup> M. Wheeler, *Roman Art and Archeology* (New York, 1964), p. 166.

numbly in adoration before their lord and master. The age resorted to freestanding kingly statues of heroic proportions to express the central position of the ruler in society in the same manner as did the later Renaissance to stress man's dominating role in the universe. Colossal statues of *augusti*, such as those of Constantine and Valentinian (or Marcian) glared down with wide-open eyes on their subjects more and more frequently since the days when the fatuous Nero first harmlessly fashioned himself gigantically in bronze as an adornment for his sprawling golden house.<sup>25</sup> Inscriptions on buildings tend, contrary to earlier usage, to name the emperor before the senate and the Roman people, a now stylized phrase conveniently used, as on the arch of Constantine, in its earlier abbreviated and less conspicuous form SPQR. From the late third century on emperors frequently dispatched statues and pictures of themselves to major cities to be greeted there in ceremonial fashion with candle-light processions, enhanced with incense, flowers, and music.<sup>26</sup>

The third century's excessively oppressive air of political centralization necessarily filtered by osmosis into the very bones of the infant church. Already under Trajan the imperial government began to invade local rights by sending out special agents, such as Pliny, to audit regional finances. In their turn, officials directly appointed by provincial governors frequently took the collection of delinquent taxes out of the hands of local curials. In days when communication was unconscionably primitive and so slow and costly that goods doubled their value every 300 miles, it

seems fantastic that principal urban magistrates should be required to receive their letters of appointment from the central government, that harmless local collegia should be scrutinized in the capital, and that even imperative grants of tax remission such as those necessitated by, say, a famine should be required to undergo several ocean voyages and overland trips before they could be inspected by an emperor somewhere in transit between Paris and Cologne. Constantine ordered all provincial governors to forward records of their courts every six months, and annual indictments fixing the tax rate in dioceses had to secure the emperor's signature.<sup>27</sup>

One facet of this astoundingly heavy centralization under the late Roman emperors was the stunted growth of responsible conciliar agencies, not to speak of popular assemblies. These latter organs had so thoroughly degenerated after Tiberius that by Constantine's reign the only direct official communication with the populace at large took place at the theater or the circus, where city officials occasionally read important notices and listened to servile acclamations of the crowd. Constantine seems to have relied heavily on these volatile and spontaneous expressions of public opinion by circus audiences; he used them as barometers guiding him in the promotion or dismissal of his officials. Needless to add, human nature being what it is, enterprising professional corps of acclaimers, generally made up of members of the beatnik theatrical guilds, stood ready to shout for any cause at any time for a fee.

More tenacious than popular assemblies

<sup>25</sup> Starr, pp. 292—298.

<sup>26</sup> *Ibid.*, p. 363.

<sup>27</sup> A. H. M. Jones, *The Later Roman Empire*, 284—602 (Norman, Okla., 1964), pp. 403—405.

were the various types of concilia throughout the empire. But even the best known and most active of these obscure agencies of government, the city councils, had more a negative than a positive inspirational effect on political theory. Membership was hereditary, compulsory, and generally considered burdensome. Nomination compelled anyone having the appropriate property qualifications (generally 300 *solidi* or 150 *jugera*) to assume this civic duty, which instead of prestige involved heavy liturgies.<sup>28</sup> Thus Cochrane<sup>29</sup> pointedly remarks that a state which had, according to Cicero at least, organized originally to protect property rights now made that property the basis of a system of servitude unparalleled in history. More enterprising and able curials naturally sought to earn legal immunity for themselves and their sons from these distasteful hereditary civic obligations by purchasing higher offices in the civil service. This disrupting flight of the curials not only seriously alarmed the central government, already hard put to it to stabilize its tax revenue and to balance its budget, but at the same time contributed progressively to the curtailment of local autonomy and the consequent growth of central control as, more and more, only inept and unprogressive curials remained on the local scene to bungle affairs.<sup>30</sup> Even if city councils managed to retain able men, they functioned mainly as service institutions electing the local officials — subject to the confirmation of the emperor as we have seen — collecting the imperial taxes, and underwriting the military levies.

<sup>28</sup> *Ibid.*, 738—739.

<sup>29</sup> C. N. Cochrane, *Christianity and Classical Culture* (New York, 1957), p. 307.

<sup>30</sup> On the curials see Jones, pp. 740—758.

They did, however, supervise local public works.

True, the city councils, along with some amorphous ethnic groups, were represented in provincial councils. These very vague latter organs, some of which appeared already in the Republic, seem to have become quite general during the Principate. Augustus, for example, is known to have organized a celebrated concilium of the three Gauls. Diocletian apparently attached enough importance to these institutions to adjust them to his new provincial reorganization. But the scope of their activity remains almost entirely unclear. Their main concern appears to have been to promote, at yearly meetings, the official cult of Rome and to celebrate games in honor of the emperor. They did, however, discuss matters, pass resolutions, and on occasion petition the emperor. While at times he recognized the merit of these conciliar requests and responded by issuing pertinent rescripts, most of the petitions seem to have been of such trivial nature that conciliar acts were screened before they reached the emperor. In no way could a council's status be considered other than advisory. Only once, it appears, was the provincial council given elective powers. Justinian and Justin II, in a belated effort to encourage representative government, seemingly urged provincial bodies to nominate, for imperial appointment, the governor of the province. This privilege, though, was apparently never exercised; a law five years later abolishing anew purchase of governorships makes no mention of any provincial elections.<sup>31</sup>

<sup>31</sup> The general material on the provincial councils is well summed up by Jones, pp. 763 to 766.

On a higher conciliar level, close to the emperor, stood the Senate and the Consistory. Unfortunately both bodies had little to offer the church as constructive models for imitation.<sup>32</sup> Exercising no sovereign authority, they became almost entirely dependent upon the Caesars. Already in the early Principate the senate began its decline. From a supreme body originating and debating fresh proposals it degenerated into a captive audience hearkening to imperial speeches which all too often were delivered by a substitute of the emperor. *Senatus consulta* merely regurgitated imperial proposals, sometimes without changing the phraseology. As rubber-stamp approvals, and not expressions of sovereign legislation, these *consulta* came to be ignored as legal precedents by the courts, which preferred to cite laws as imperial decrees. The dependence of the Senate upon the emperor became so entrenched that the proud old Roman conclave of Republican days declined swiftly when, after Diocletian, the Augusti and Caesars set up new regional capitals. Reduced practically to the status of a town council without any imperial significance, the Roman Senate betrayed its debasement by granting its members standing leave to be permanently absent from the capital to live in the provinces. Any interest on the part of the government in the whereabouts of senators was prompted solely by the concern that they be properly enrolled on local tax lists. Probably one should greatly discount Ammianus' charges that the senators who did stay on the job at home frittered away much of their time giving banquets so pompous that the weight of the enormous

fish and fowl dishes were solemnly checked and duly recorded by notaries. Now virtually a town council, the old Roman Senate limited its petitions to the emperor to matters of local concern such as the corn supply, the games, and of course the question of senatorial privileges. Students of early church history will readily recall, for instance, the request initiated by Symmachus urging retention of the pagan statue of Victory in the Senate building. If inactive in legislation, the body was profuse in acclamations. On one occasion in 429 it acclaimed the emperors 352 times, monotonously hailing them "destroyers of informers, destroyers of false charges," and the like. On the same occasion the great patrician Aetius was saluted 55 times, but Paulus, prefect of the city, a mere 23 times. Inured to lethargy, the Senate failed to press its one opportunity in late Roman history to recapture some of its ancient sovereignty. After being forced, when Stilicho died, to elect a successor to Honorius after that emperor had created a critical impasse by refusing to ratify the Senate's last-ditch arrangements with Alaric, the Senate passively abandoned the electoral limelight and succumbed to its old status as a tool of the emperor. The Senate in Constantinople, despite the emperor's presence in the city, was rarely called upon to debate policy or to advise. More commonly it was summoned merely to lend moral support to *faits accomplis*. It was, in many respects, less resolute before the monarch than the old Roman Senate. As a new foundation and a pure imperial creation, the Constantinopolitan Senate listed no ancient families on its roster who, for the sake of tradition, might at least dream of independent attitudes. It does appear

<sup>32</sup> Ortiz de Urbina, p. 29, to the contrary. His is a plain assertion without evidence.

that Theodosius II in 446 encouraged the Eastern Senate to express its views in the field of private law and permitted it to be constituted as a high court of law in his absence.<sup>33</sup>

Although in the Western empire the Consistory was a more active body than in the East, it, too, by the sixth century had become as ceremonial as the Senate. From its inception a private and informal group of the emperor's close friends summoned by his personal nomination, the Consistory was by nature subservient to its head. Normally a council of state and a high court, it included as ex-officio members the great centrally appointed *comites* of the realm such as the *comes sacrarum largitionum* (care of gold and silver), the *comes rei privatae* (care of crown property), the *comes excubitorum* and the *magistri militum*. Selected proconsuls, city prefects, and nobles were summoned by more personal invitation.

During the fourth century the Consistory functioned quite actively as a debating and advising body. Since it dealt with any ad-hoc matter, many Christian issues came before it. Thus the Senate's petition asking Valentinian II to protect the altar of Victory, the official dispatch of Symmachus, the city prefect, over the matter, and the counterobjections of Ambrose — all were read before the Consistory. Ordered to surrender a church to the Arians, Ambrose pleaded his cause before the same body. It was in Consistory, too, that the emperor redressed in 384 the grievance of Egyptian bishops who complained that they had been dragged before secular courts. Since the Consistory customarily received en-

voys, Ambrose appeared before Maximus' Consistory when he visited that usurper as ambassador of Valentinian II.

But even when most active, the Consistory never governed the empire as a sovereign institution. The emperor had no misgivings about bypassing its services. Its subservient nature disqualified it from assuming control even during minorities, when it complacently permitted affairs to pass into the hands of contending cliques or into those of the ladies of the court.<sup>34</sup> While the Consistory stood still, Justina ruled in the West for Valentinian II for five years and Galla Placidia for her son Valentinian III. Pulcheria, Theodosius II's older sister, maintained her hold over her brother through much of his mature life.

Because, then, of the absence of effective sovereign concilia, concentration of power in the person of the emperor was virtually total. The Caesars demanded undisputed control over all appointments involving over one hundred governorships and some thousand military tribuneships and prefectures. Valentinian II, in rebuking Symmachus on one occasion, reminded him that "there must be no questioning of the imperial judgment" when he chose personnel. It was near sacrilege to doubt the worthiness of an imperial appointee. Even the length of service in the bureaucracy was at the ruler's arbitrary discretion. Since offices were normally passed out as virtual prizes by the emperor — the ancient world generally held with President Jackson that administration was a task that any normal man could undertake — the term of incumbency was short, generally one, sometimes two or three years. Civil appoint-

<sup>33</sup> Ibid., pp. 330—332; see pp. 553—559 for the remarks on the Senate.

<sup>34</sup> Jones, treats the Consistory on pp. 333 to 341.

ments went, as a rule, to those members of the upper class who could bring their candidacy to the emperor's attention through the good offices of a mutual associate. Things in general were accomplished through *suffragium*, the recommendation, grace, or pull, of a favorite close to the monarch. The eunuchs of the bedchamber, recruited mostly from Persia and Armenia, too often were the most influential men in the state. Constantius II was known to be entirely amenable to the suggestions of his eunuchs. Eutropius was available at all times to petition Arcadius for a fee, and Chrysaphius monopolized Theodosius II's ear for the last eight years of his life. Euryches the Monophysite long was protected against charges of heresy because he was the godson of the same eunuch Chrysaphius. In the West the situation was different but no better. The general anarchy there permitted generals rather than eunuchs to make up the emperors' minds: Arbogast told Valentinian II what to do; Stilicho dominated all Western affairs after the death of Theodosius the Great in 395. Largesses from Valentinian III during the last 20 years of his reign came principally through the hands of Aetius and finally of Ricimer.<sup>35</sup>

Churchmen knew so well the channels through which to approach the ruler that time and time again canons reiterated the injunction that not every reverend Tom, Dick, and Harry should be allowed direct access to the emperor. They should rather proffer their petitions through their proper channels, their own patriarchs. When Porphyry, bishop of Gaza, desired pagan temples razed, he adroitly appealed to

bishop John of Constantinople, who knew the ropes to the eunuch Eutropius, who in turn had the ear of Arcadius. On a later occasion the same Porphyry varied his approach slightly by going through the eunuch Amantius, who could introduce him to the empress Eudoxia, who accommodatingly contrived a homely trick to lure Arcadius into compliance. It was openly known that, for a clergyman, Cyril of Alexandria understood too well what virtue a hundred pounds of gold could exert in softening up even the most officious eunuch.<sup>36</sup> To buy the prayers of any glamorous woman at court he had a standing gift of plumed Egyptian ostriches.

Besides being the dispenser of all significant favors, the emperor was virtually sovereign in respect to the law. True, imperial decreta (rulings made verbally when trying cases in high court) and rescripts (answers to questions of judges or petitioners) at times were questioned as proper precedents at law. The Senate on one occasion actually shouted 31 times: "We beg that no law be issued in response to petitions." At another time Valentinian III's ministers dared to deny authority of precedent to judgments made by that emperor in Consistory. The same weak ruler actually reiterated in 429 the old classical cliché that the king was under the law. But Justinian later reflected a more accepted view when he indignantly declared that it was absurd to question the power of the emperor as the sole font of law and to dispute his right to interpret its rules. In his code, rescripta and decreta were recorded as bonafide sources of law and the Ulpian-Justinian position that *quod principi*

<sup>35</sup> On the emperor see Jones, pp. 321—329; 376—396; also 341—342.

<sup>36</sup> *Ibid.*, pp. 345—346.

*placuit legis habet vigorem* settled the matter of ultimate sovereignty.

No concilium, then, in effect limited the ruler's complete control over legislation. Many imperial rescripta display unmistakable earmarks betraying that the emperor issued them as laws without debate in any council or consistory. The fact that many are quickly amended, sometimes repeatedly, by subsequent decrees reflects the influence of belated advice on the part of officials apprising the emperor of loopholes or injustices in his earlier pronouncement — faults not likely to be so prominent and frequent in legislation arising out of full debate.<sup>37</sup>

Needless to say, no council challenged the emperor's hold on foreign policy or taxation.

In practice, the emperor owed his position to no electoral body. True, the vestigial republican tenet that the Senate and the Roman people alone could confer imperium prevented the emperorship from becoming legally an hereditary office. To the end, but only in thinnest theory, it remained elective requiring the affirmation of the Senate and the acclamation of the army. But only twice between Constantine and the accession of Valentinian — a most formative period for the early church — was an imperial election held. But since these two elections, on the occasions of the death of Julian and of Jovian respectively, were at best the work of informal caucuses of high state officials rather than the product of any duly constituted long standing council, it is quite historically proper to conclude that the hereditary principle dom-

<sup>37</sup> References to the emperor's position to the law and the constitution can be found in Jones, pp. 572, 321, 339—340.

inated the entire later Roman empire. By general acceptance one rightly speaks of successive dynasties in the period: the houses of Constantine, Valentinian, and Theodosius.<sup>38</sup>

Surely Eusebius is witness that the triumph of Christianity entailed no circumscription of the emperor's totalitarian control. Indeed, the new religion heightened it. It substituted a vibrant concept of the emperor as an external bishop or even as a thirteenth apostle of God's church for the tarnished image of the ruler as a tired god in a dying paganism. Only a few critics, even in the more independent West, dared challenge caesaropapism. For doing so, Athanasius, Liberius, and even the aged Hosius suffered the emperor's violent displeasure. In both East and West the king was in the position of enjoying the new loyalty of a highly institutionalized corps of clergy who were anxious until the ninth century to have him convoke councils, employ his troops to settle ecclesiastical disputes, and pass out government grants. As in pagan days, the very material prosperity of the realm was asserted to depend on the degree of piety the emperor professed before deity.<sup>39</sup> Pope Leo I virtually granted the emperor, as a divinely appointed ruler, infallibility in matters of faith.<sup>40</sup>

That monarchy with a subservient episcopal aristocracy rather than democracy — which Eusebius characteristically judged as abominable — as polytheism — should im-

<sup>38</sup> See Jones, pp. 322—324.

<sup>39</sup> As an example, see Socrates, *Historia Ecclesiastica*, 7.29, or Jaffé, *Regesta Pontificum Romanorum* (Grätz, 1956), No. 380.

<sup>40</sup> P. Stockmeier, *Leo I des grossen Beurteilung der kaiserlichen Religionspolitik* (Munich, 1959), pp. 142—147.

press itself as the political ideal on the young church between 200 and 450 goes without much more saying. The environment plainly was not hospitable to any other constitutional concept. It seems significant that Christian writers automatically use the term "king" when referring to the Roman ruler, a term traditionally odious to even classical Rome itself as implying distinct tyrannical overtones. German invaders were so impressed with the Roman monarchy that they found it expedient to adopt kingship themselves once they entered the empire. How strong was the fascination and influence of Roman political values on Western thought may be judged from the fact that even torture was reintroduced as enlightened when Roman law was revived in the Middle Ages.

In addition to the outward appearances of things there were significant theological underpinnings in the Roman *Weltanschauung* which readily contributed toward making the papacy one pole of the deep inevitable Platonic dualism supposedly lying basically rooted in nature, in metaphysics, and in the Christian philosophy of history. Once the papacy came to be envisaged as an office, a legalized abstraction, it was well on its way toward becoming a reasonable complement to the state.<sup>41</sup>

Platonism early provided the Roman world with a philosophical outlook that readily conceptualized justice, law, the state, and kingship into eternal and real ideas. Into this Platonic vision of kingship there infiltrated elements of divine Hellenistic monarchy and of indigenous Roman

animism, which further emphasized the mystical, unearthly character of the ruler. To recapture and revitalize pristine virtues of early Rome, Augustus had encouraged a vision of himself, rather of his genius or soul, as the embodiment of the spirit of Rome itself. As father of his country, a title actually given him by the Roman Senate, his spirit symbolized the vibrant power of Rome's collective life just as surely as the spirit of a father of an ancient household embodied the abstract fertility of his ancestors. And as the father of a family in primitive times cultivated the hearthfire as the warm outward expression of the living spirit of his family's life-giving ancestors, the emperor through his vestal virgins tended the sacred state fire as a living manifestation of the eternal, throbbing corporate soul of Rome itself.

It is not strange that the uncouth Diocletian should be the bridge that actively carried over into the Christian era these concepts of the emperor as a demigod. His persecution of supposedly atheist Christians demanded that he represent a live pagan religious symbol, and the political anarchy of the third century made it expedient to reemphasize the divinity of the emperor for the sake of order. Anomalously, the practical, two-fisted Diocletian found it both easy and convenient to pose as a semi-divine being enclosed in an aura of perfumed seclusion and splendor at Nicomedia. His rarified, almost unearthly, presence could be approached only after prostration.

Between 400 and 450 the papacy, too, transformed itself into a towering abstraction, both juridic and poetic, which caused it, as a concept, to stand high above and independent of the personality of the in-

<sup>41</sup> J. Bryce, *The Holy Roman Empire* (New York, 1904), pp. 91—102, calls attention to the permanence of this tradition of dualism down into the early Middle Ages.

dividual incumbent in the visible cathedra of Rome. The person of the pope became a mere manifestation or reflection of that greater and real ideal papacy existing apart and eternally. Soon this Platonic view of the pope as almost a docetic embodiment of an abstract office greater than himself attracted to itself subdued elements borrowed from Hellenistic emperor worship to create a uniquely beautiful and exciting mystic image. Popes began to speak of themselves as actual personifications, almost reincarnations, of Peter in whom the great apostle dwelt ever anew. Thus while the individual Roman bishop received his episcopal faculties by ordination from a colleague in a succession of bishops, as pope he held authority directly and independently from Peter, the prime apostle and source of all teaching authority. Siricius seems to have begun this train of thought by styling himself the "heir" of Peter, a powerful term in Roman law that bequeathed him all Peter's rights and burdens. "We bear," he said, "the burden of all; rather blessed Peter bears them in us and watches over us his heirs."<sup>42</sup> Zosimus elaborated upon the thought. In reminding the Council of Ephesus that Pope Coelestine received from Christ through Peter the keys to bind and loose, the papal envoy Phillip remarked: "This is the same Peter who to this very day and forever lives and rules in his successors."<sup>43</sup> Coelestine spoke of himself as saddled with a care of all the churches because Peter within him, conscious of Christ's command to feed the sheep, pressed him relentlessly to act always and everywhere. Thus the pope, aided

as it were by the semiomniscience of the apostle, could not excuse himself from involvement in matters far and wide. Totally unworthy, he heaved as it were with the weight of the apostle within him. In brief, the papacy had become an embodiment of the personalized plenary jurisdiction of the chief of the apostles. Pope and emperor were now fit to complement each other.

Encouraged, then, by the illogicalities and frivolities in the conciliar structure, and influenced both empirically and theoretically by the pervading political theory of the day, the popes by 450 were emboldened by the Matthew passage to play the role of living Peters and thus become a complete competitor to the council. Boniface justified papal power as the repository of *plena potestas* as against the limited authority of councils by adroitly calling attention to an argument *ex silentio*. "The council of Nicaea," he said, "did not dare to decree anything about Peter since it saw nothing could be conferred upon him in addition to his already existing dignity; it knew that already everything had been assigned him by the word of the Lord."<sup>44</sup> Councils were bidden, then, in effect as inferior bodies to be content with their restricted jurisdiction conferred by earthly agreements. The popes enjoyed in contrast a superior Scriptural charter beyond the tampering of men. By 450 Roman bishops felt free to address fellow bishops, in whom Cyprian would have vested all sovereign ecclesiastical authority, indifferently as collegial brothers or as inferior sons. After Chalcedon in 451 the Roman bishop's participation and interest in Eastern "ecumenical" councils grew less

<sup>42</sup> Quoted in E. G. Weltin, *The Ancient Popes* (Westminster, Md., 1964), p. 247.

<sup>43</sup> *Ibid.*, pp. 337 ff.

<sup>44</sup> *Ibid.*, p. 299.

and less active as Constantinople decided to depend totally on conciliar procedures under the presidency of the Eastern emperor. After 879, when the last synod was held in the East to which Rome sent delegates, the apostolic see dealt with councils only when it itself chose to convoke them.

Only when the importance of bishops as property holders in feudal law tended to rub off on their ecclesiastical character, were they emboldened to redream collegial dreams and revive the conciliar movement in the West.

St. Louis, Mo.