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## TWO TRENDS IN CANON LAW FROM 1150 TO 1250\*

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### 1. Introduction

Generally speaking, canonist scholarship from 1150 to 1250 posits two divergent directions. On the one hand, it leads to a conception of Christendom centred on a papal monarchy dominant over ecclesiastical and temporal spheres. On the other, it undermines this model, by developing elements which touched upon the deposition of the pope. The interesting point is that both views found support in the same *auctoritates*, the second of them owing much of its development to the growth of theories on papal monarchy. The texts that are of particular interest in this respect are Matthew 16,18-19 (*Tu es Petrus*)<sup>1</sup>, and the Translation of the Empire. Matthew 16,18-19, recurrent in the *Decretum*<sup>2</sup>, was repeatedly mentioned in discussions on the nature and extension of the papal authority within the church and its relation to the secular powers. However, it also supported the superiority of the church in relation to a heretical or sinful pope. As for the Translation of the Empire, few events involving government and Papacy (including the Donation of Constantine<sup>3</sup>) received so much attention from the canonists of 1150-1250 as the deposition of Childeric, subsequent unction of Pepin and the

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<sup>1</sup> "Tu es Petrus et super hanc petram aedificabo ecclesiam meam et portae inferi non praevalerunt adversus eam. Et tibi dabo claves regni caelorum. Et quodcumque ligaveris super terram erit ligatum et in caelis, et quodcumque solveris super terram erit solutum et in caelis".

<sup>2</sup> Matthew 16,18-19 is expressly cited in the *Decretum* in: D. 12 c. 2, D. 19 c. 9, D. 21 cc. 2,3 D. 50 c. 54, C. 9 q. 3 c. 14, C. 11 q. 1 c. 14, C. 24 q. 1 cc. 15,18,20,22. The fragments quoted in this paper follow the edition by E. Friedberg of the *Corpus Iuris Canonici* (Leipzig, 1881).

<sup>3</sup> The Donation enters the *Decretum* in D. 96 cc. 13,14, through the hands of Paucapalea, its first commentator. Gratian himself does not mention it. Cfr. D. Maffei, *La Donazione di Costantino*, pp. 25-31. The passage asserts that Constantine granted to the Roman church *coronam, et omnem regiam dignitatem in urbe Romana, et in Italia, et in partibus occidentalibus*. The papal dominion over the *terrae ecclesiae* was also grounded on several minor imperial concessions too. Cfr. B. Guenée, *L'Occident aux XIVe et XVe siècles: les États*, Paris, PUF, 1971, p. 70.

coronation of Charlemagne by the pope. It thereby reveals the relative weight which was given to specifically historical arguments in the canonist debate about the government of Christendom.

## 2. Papal monarchy

Canon Law was, by virtue of its own nature, a living *corpus* constantly improved by new canons, that were occasionally put together in collections. Gratian's *Concordia Discordantium Canonum* (or simply *Decretum*), completed c. 1140, represents a significant step in the scholarship of Canon Law, in that it gave birth to a school of commentators, the decretists. Gratian indeed brought about important features. He arranged the *auctoritates* by subject (contrary to several previous collections which simply followed the order of the councils and letters of pope), putting together different opinions about the same topic and presenting his own opinion. This arrangement and method proved very influential in subsequent compilations of papal decretals, that provided the material for a generation of commentators known as decretalists.

Canon Law from 1150 to 1250 developed in relation to the generally increasing dominion of the papacy in both ecclesiastical and temporal spheres. Such an increase was essentially based on the expansion of the papal jurisdiction, Canon Law thus being an important instrument in this development. The success of Gratian's *Decretum* stemmed especially from the fact that it responded to the demand for legal expertise brought about by this expansion<sup>4</sup>. It is also significant that most popes from that time were themselves canonists, most notably Innocent III and Innocent IV, who brought about major improvements in the canonist scholarship regarding the papal authority in temporal affairs.

There is a line of evolution from Gratian through Innocent III to Innocent IV, which can be revealed by comparing their use of Matthew 16,18 (*Tu es Petrus*) and the Translation of the Empire. This passage was used in the *Decretum* above all to explain the place of the pope in the ecclesiastical hierarchy. A broad survey of the quotations of that passage in the *Decretum* reveals that Gratian is essentially concerned there about the internal affairs of the church: the primacy of the church of Rome<sup>5</sup>, the subordination of all the priests and *summarum dispositiones causarum et omnium negotia ecclesiarum* to its authority<sup>6</sup>, its infallibility<sup>7</sup>, its autonomy vis-à-vis the temporal governments<sup>8</sup>, its being the principle of unity of the whole

<sup>4</sup> Cfr. R. W. Southern, *Scholastic Humanism and the Unification of Europe I* (Foundations), Oxford-Cambridge (Massachusetts), 1995, pp. 283-318.

<sup>5</sup> D. 21 c. 3, C. 24 q. 1 c. 15.

<sup>6</sup> D. 12 c. 2, C. 9 q. 3 c. 14, C. 11 q. 1 c. 14, C. 24 q. 1 c. 15.

<sup>7</sup> D. 21 c.3, D. 50 c. 54.

<sup>8</sup> C. 9 q. 3 c. 14.

church<sup>9</sup> and the origin of the *potestas ligandi et solvendi* of any clergyman<sup>10</sup>. In *Distinctio* 21, in particular, he draws a comparative picture of the several degrees of the clerical order in both Testaments, presenting Peter as the *summus sacerdos*<sup>11</sup>.

Innocent III, by contrast, uses the passage of Matthew 16,18-19 to reinforce the authority of the pope over temporal affairs, and in this sense he represents an extension of the canonist views about the place of the pope in the Christendom. This was possible, however, in part because of his interpretation of the relationship between the Testaments. For Gratian, the New Testament is regarded above all as separating the acts and dignities due to the emperor and the pope<sup>12</sup>. Innocent III, however, sees a bolder line of continuity between the Testaments. This is evident from his metaphorical use of the Old Testament, a type of interpretation that is, in fact, a commonplace of the Augustinian tradition in the Middle Ages and appears in the *Decretum* itself<sup>13</sup>. Innocent III uses this metaphorical interpretation extensively in dealing with the temporal authority of the pope. This resulted in an interpretation of certain passages of the New Testament, for example, that turn out to support more emphatically the place of the pope in temporal affairs. So, combining Deuteronomy 17,8 (*Si difficile et ambiguum*) with Matthew 16,18 (*Tu es Petrus*), Innocent III concludes in the *Per Venerabilem* that the pope has judicial power<sup>14</sup>. The traditional canonist separation of spiritual and temporal powers means that now, although holding both, the pope uses only the former directly, but the latter in certain circumstances *causaliter*<sup>15</sup>. The *Per*

<sup>9</sup> C. 24 q. 1 cc. 18,20.

<sup>10</sup> C. 24 q. 1 c. 20.

<sup>11</sup> Cfr. D. 21 *ante* c. 1: "Petrum vero quasi in summum sacerdotem [Christus] elegit, dum ei [Petro] pre omnibus et pro omnibus claves regni celorum tribuit, et a se petra Petri sibi nomen imposuit, atque pro eius fide se specialiter rogasse, testatus est, et ut ceteros confirmaret subiunxit dicens...".

<sup>12</sup> Cfr. D. 96 c. 6: "...quoniam idem mediator Dei et hominum, homo Christus Iesus, actibus propriis et dignitatibus distinctis officia potestates utriusque [Pontificis et Imperatoris] discreuit". In D. 21 c. 1, he repeats the same idea, by pointing to a situation that has changed: "Ante autem pontifices et reges erant. Nam maiorum hec erat consuetudo, ut rex esset et sacerdos et pontifex. Unde et Romani imperatores pontifices dicebantur".

<sup>13</sup> Cfr. C. 23 q. 4 c. 41: "Veruntamen si facta preterita in propheticis libris figurae fuerunt futurorum, in rege illo, qui appellabatur Nabuchodonosor, utrumque tempus prefiguratum est, et quod sub apostolis habuit, et quod nunc habet ecclesia".

<sup>14</sup> Cfr. *Per Venerabilem* [*Corpus Iuris Canonici*, column 716]: "'Si difficile et ambiguum apud te iudicium esse perspexeris, inter sanguinem et sanguinem, causam et causam, lepram et non lepram, et iudicium inter portas tuas verba videris variari': surge et adscende ad locum, quem elegerit Dominus Deus tuus, venies ad sacerdotes Levitici generis... Sunt autem sacerdotes Levitici generis fratres nostri... Is vero super eos sacerdos sive iudex existit, cui Dominus inquit in Petro: 'Quodcumque ligaveris... Tria quippe [papa] distinguit iudicia: primum inter sanguinem et sanguinem; ultimum inter lepram et lepram, per quod ecclesiasticum et criminale notatur; medium inter causam et causam, quod ad utrumque refertur, tam ecclesiasticum quam civile...".

<sup>15</sup> Cfr. *Per Venerabilem* [716]: "...non solum in ecclesiae patrimonio, super quo plenam in temporalibus gerimus potestatem, verum etiam in aliis regionibus, certis causis inspectis, temporalem iurisdictionem causaliter exercemus...".

*Venerabilem* points out, however, the limits of this sort of indirect power of the pope. In fact, the decretal is a response to the request addressed by the Count of Montpellier through the archbishop of Arles asking the pope to legitimate an adulterine child. The request mentions the fact that the pope had already attended a similar solicitation from the King of France. Although stating that the pope has indeed authority to legitimate for spiritual as well as temporal purposes, Innocent III denies the request. He explains that the Count has a temporal superior with competency to judge the case, while the King of France did not. Besides, the decretal also limits the temporal power of the pope to ambiguous and difficult cases only.

Innocent III was also responsible for the popularity among the canonists of the theory that the coronation of Charlemagne accomplished the translation of the empire from the Greeks to the Franks through the hands of the pope<sup>16</sup>. The narrative of the Translation already had a long history before Innocent III<sup>17</sup>, who uses it as a historical argument supporting the authority of the pope over the princes electors and the imperial power. The Translation appears in the *Venerabilem* to assert that the German princes received from the Roman Church their authority to elect the king whom the pope shall (or shall not) confirm as emperor<sup>18</sup>. In the *Deliberatio*, in turn, Innocent III clearly mentions the Translation to affirm that the imperial power comes from the Roman Church and exists to protect her<sup>19</sup>.

Innocent IV went further in this line of reasoning with his interpretation of the link between pope and emperor<sup>20</sup>. Innocent III had already taken the fundamental step of bringing the Old Testament into the foreground of his discussion about the papal authority in temporal affairs. But it was Innocent IV who elaborated a comprehensive theory of History to confirm the subordination of the emperor to the pope. This theory posits God as governing His

<sup>16</sup> Cfr. J. Watt, *The Theory of the Papal Monarchy in the 13th Century*, London, Methuen, 1961, pp. 35-37; and W. Ullmann, *Medieval Papalism: the Political Theories of the Medieval Canonists*, London, Methuen, 1949, pp. 168ff.

<sup>17</sup> Cfr. M. Maccarrone, "Chiesa e Stato nella Dottrina di Papa Innocenzo III", *Lateranum*, VI/3-4, 1960, pp. 139-147.

<sup>18</sup> Cfr. *Venerabilem* [80]: "Verum illis principibus ius et potestatem eligendi regem, in imperatorem postmodum promovendum, recognoscimus, ut debemus, ad quos de iure ac antiqua consuetudine noscitur pertinere; praesertim, quum ad eos ius et potestas huiusmodi ab apostolica sede pervenerit, quae Romanum imperium in personam magnifici Caroli a Graecis transtulit in Germanos". The use of "pervenio" (instead of simply "venio") seems to indicate that the right of the German princes comes completely from the Roman church.

<sup>19</sup> Cfr. Innocent III, "Deliberatio Domini papae Innocenti super facto imperii de tribus electis" in *Patrologia Latina*, volume 261, 1885, column 1025: "Interest apostolicae sedis diligenter et prudenter de imperii Romani provisione tractare, cum imperium noscatur ad eam principaliter et finaliter pertinere: principaliter, cum per ipsam et propter ipsam de Graecia sit translatum, per ipsam translationis actricem, propter ipsam melius defendendam; finaliter, quoniam imperator a summo pontificem finalem sive ultimam manus impositionem promotionis proprie accipit, dum ab eo benedicatur, coronatur, et de imperio investitur".

<sup>20</sup> Cfr. J. Watt, *The Theory of Papal Monarchy in the 13th Century*, pp. 65-71.

people through a vicar: in the Old Testament, this role was fulfilled by Noah, the kings and judges; in the New, by Christ and his vicar, the pope. In this divine plan, the emperor enjoys no autonomy, being rather an instrument of the pope in the governing of the Christendom. Canonist doctrines on the papal authority over the empire thus become under Innocent IV especially based on the 'history' recounted in the *Scriptures*. The Translation of the Empire, a major non biblical event on this subject in the hands of the canonists, was not put aside, but the emphasis lies now on a different source.

### 3. Elements undermining the papal monarchy

It would seem paradoxical that Canon Law, the voice of the most centralising entity in the later Middle Ages, had any responsibility for the development of anti-monarchical ideas. However, it did so, partly, because of its own ambivalence. Gratian indeed intended to give coherence to a mass of mutually opposing documents from varied sources and times. But, to say the least, the potentially conflicting interpretations amongst them remained, reinforced by a dialectical method that foregrounded the many views that marked the history of Christian doctrine, and, by its character, opened the door to contrasting opinions on the same subjects. In addition, the popes themselves indeed provided material for the less centralising of those interpretations.

Attention should be drawn to the fact that, although Matthew 16,18-19 generally stresses the central place of Peter in the Church, the phrase *et portae inferi non prevalebunt adversus eam* might suggest that the Church, not the pope, shall never fall in mortal sin or heresy<sup>21</sup>. Indeed, at least two passages in the *Decretum* mention heretical popes<sup>22</sup>. *Distinctio* 40 c. 6<sup>23</sup>, however, summarises the difficulties of the case, by stating that the pope cannot be judged by anyone, unless he becomes heretic. In other words, the pope can be judged for heresy, but there seems to be no practical means to do so, since he has no superior. Writing in c. 1210 on the passage of the *Decretum* D. 19 c. 9<sup>24</sup>, Alanus Anglicus found in the synod the solution to the problem.

<sup>21</sup> For this and other ambiguities in Matthew 16,18-19, see B. Tierney, *Foundations of the Conciliar Theory*, Cambridge, Cambridge University Press, 1968, pp. 25-36.

<sup>22</sup> See D. 19 c. 9 and D. 21 c. 7.

<sup>23</sup> "Huius [Papae] culpas istic redarguere presumit mortalium nullus, quia cunctos ipse iudicaturus a nemine est iudicandus, nisi deprehendatur a fide dei". Although this passage refers to heresy, the canonists added mortal sin, cysma, scandal and the like to the list of reasons which justified the deposition of the pope. Cfr. B. Tierney, *Foundations of the Conciliar Theory*, pp. 57-57, especially p. 59. See also D. 21 c. 7, about the fact that the pope has no superior.

<sup>24</sup> Cfr. Alanus, *Apparatus Ius Naturale*, on D. 19 c. 9, in B. Tierney, "Pope and Council: some New Decretist Texts", *Medieval Studies*, 19, 1957: "Argumentum quod in questione fidei maior est sinodus quam papa... quod firmiter est tenendum. Unde accidit ex tali causa quod sinodus potest ipsum iudicare et dampnare, unde accidit quod incidit in excommunicationem latam super heresi in sinodo ut hic, quod non accideret si papa in hoc casu maior esset sinodo vel equalis...".

But his argument remained too limited, as it merely asserted that, *in a question of faith, a council is greater than a pope*, and can depose him.

Paradoxically, the popes themselves indirectly provided the answers to the ambivalence posed by the *Decretum*. Such answers sprang from the same means by which the popes increased their authority in the church, namely, by establishing rules for every aspect of ecclesiastical life. Ironically, it was Innocent IV who made a significant contribution to the solution of the problem<sup>25</sup>. He generally conceived, not the corporation as holding jurisdiction, but its head<sup>26</sup>. Nevertheless, this did not prevent him from speaking of individual churches as corporations in which the bishop and the chapter exercise jurisdiction. In dealing with this, he called attention to the distinction between "counsel" and "consent", and developed ideas on the authority of the canons during Episcopal vacancies. Both topics touch on the heart of the problem, by pointing out what was essential regarding the primary jurisdiction in a church.

The difference between "counsel" and "consent" was expressed in terms of the validity of any act: if it simply requires counsel, an act is valid even if it does not follow that counsel. This is not so, however, if it requires consent. In this case, the act is valid solely if it follows that consent. Thus, the issue of who would, in absolute terms, have primary jurisdiction in a church (which seems to be implied by Innocent IV's statement that the jurisdiction lies in the *rectores* and not the *universitates*) gives way to a broader discussion concerned with whether this or that part of a corporation has the primary jurisdiction in specific situation: the prelate, the canons or both (i.e., the whole corporation)<sup>27</sup>. Innocent IV affirms, for instance, that the consent of both the bishop and the chapter is required to alienate property of a church<sup>28</sup>.

The authority of the canons during the Episcopal vacancies provides another instance regarding the question of the jurisdiction in a church. Tierney points out this evolution in thinking which occurred in this case in the 13th century, by showing that the chapter was increasingly assigned jurisdictions which ordinarily belonged to the bishop alone or with the chapter<sup>29</sup>. The distinction between the powers which the bishop received from election and the powers which he received from consecration came then to the foreground,

<sup>25</sup> Cfr. B. Tierney, *Foundations of the Conciliar Theory*, pp. 106-131.

<sup>26</sup> Cfr. *Commentaria super Libros Quinque Decretalium* X.I.ii.8: "Et est notandum quod rectores assumpti ab universitatibus habent iurisdictionem et non ipse universitates. Aliqui tamen dicunt quod universitates deficientibus rectoribus possunt exercere iurisdictione sicut rectores, quod non credo...". Cited in B. Tierney, *Foundations of the Conciliar Theory*, p. 107.

<sup>27</sup> Innocent IV obviously works out a more complex model. Cfr. B. Tierney, *Foundations of the Conciliar Theory*, p. 110.

<sup>28</sup> Cf. *Commentaria super Libros Quinque Decretalium*: "Item in alienationibus voluntariis semper est necessarius consensus episcopi et capituli". Cited in B. Tierney, *Foundations of the Conciliar Theory*, p. 107 n. 3.

<sup>29</sup> Cfr. B. Tierney, *Foundations of the Conciliar Theory*, p. 128.

namely that, in a case of vacancy, the former return to the chapter, and the latter, to a superior. Innocent IV himself agreed with this principle. All the ingredients were thus present for a further step to be made: the assertion that the powers which a bishop received from his election returned to the chapter not only when he was dead, but also if he fell into heresy, or became negligent.

When he developed those doctrines, Innocent IV was only concerned about the bishop and his chapter. Nevertheless, he worked out a model that could be, and eventually was, applied to the relationship between the college of cardinals or the council and the pope. Ultimately it provided elements for a more developed doctrine on the authority of the church to depose the pope, where "church" means either the Roman church, including the cardinals and the pope, or the universal church, represented in the council.

#### 4. Conclusion

Between 1150 and 1250, Canon Law achieved a refinement and dissemination which it had never seen before. This had much to do with the fact that it became an important instrument in the concomitant development of the papacy as the central governing institution of Christendom. But Canon Law also included elements undermining the papal monarchy, as a result of either the ambivalences of the *Decretum*, or the indirect contribution of canonists like pope Innocent IV.

The destiny of both Canon Law and papacy thus became to a certain extent connected. Looking at the conflicts in the period after 1250 involving Boniface VIII, Clement V and John XXII, on the one hand, and Philip the Fair, Henry VII and Ludwig of Bavaria, on the other, one soon realises this link in the reaction against the papacy. Dante's *Monarchia* and John of Paris' *De Potestate Regia et Papali*, to quote a layman and a theologian, are themselves peppered with canonist arguments developed in the previous century, that they used or disagreed with, but could not ignore<sup>30</sup>. Dante and John of Paris represent, in fact, the two main reactions to the papal use of Canon Law in the beginning of the 14th century. The former reproaches the decretalists' ignorance of philosophy and theology<sup>31</sup>, while John of Paris uses extensively

<sup>30</sup> Matthew 16,18-19 and the Translation are in the *Monarchia* III,8 and III,11, respectively. John of Paris discusses them in the *De Potestate Regia et Papali*, especially the chapters XIV and XV. The fragments quoted here follow the edition by P. Shaw of the *Monarchia* (Cambridge, Cambridge University Press, 1995) and by J. Leclercq of the *De Potestate Regia et Papali* (in *Jean de Paris et l'Écclesiologie du XIII<sup>e</sup> Siècle*, Paris, Vrin, 1942).

<sup>31</sup> Cfr. Dante, *Monarchia* III.3.9: "Sunt etiam tertii –quos decretalistas vocant– qui, theologie ac phylosophie cuiuslibet inscii et expertes, suis decretalibus –quas profecto venerandas existimo– tota intentione innixi, de illarum prevalentia –credo– sperantes, Imperio derogant".



the ambivalence of Canon Law to elaborate a more balanced model of the relationship between the pope and the King of France<sup>32</sup>.

#### ABSTRACT

Canon Law in the 12th and 13th centuries has often been associated with the growth of the papal monarchy. Without denying such connection, this paper aims to suggest that it brought about elements that helped to challenge the central place of the pope in Christendom. First, in broad lines, the use of Matthew 16,18 (*Tu es Petrus*) and the Translation of the Empire by Gratian, Innocent III and Innocent IV, which evolved to support the increasing authority of the pope in temporal affairs, are discussed. Some aspects of this use that could give, and eventually gave, shape to a doctrine on the deposition of the pope, are then pointed out.

<sup>32</sup> See, for example, the sequence of references to the *Decretum* and *Decretales* in the *De Potestate Regia et Papali* XIII.