

CONCILIARISM AND THE PAPACY

In the opening decades of the fifteenth century the Church was in a state of acute constitutional crisis. Three popes, Gregory XII, Benedict XIII and John XXIII, representing three obediences, Rome, Avignon and Pisa, created a tricephalic Church which inspired "that threefold conflict cursed by all." The presence of these multiple contenders to the papacy, each claiming authentic succession to the throne of St. Peter, was intolerable; it divided the Church into opposed parties, created problems of conscience and fragmented her energies. The resulting ambiguity meant that the universal Church was in effect subsisting without a pope at its head, that its essential unity was in peril and that, in consequence, the common good of Christendom was seriously threatened. The Council of Constance (1414-18) resolved this difficult problem. By removing the three claimants and by electing (Nov. 11, 1417) Oddo Colonna, who took the name Martin V, it liquidated the multiple obediences and restored unity to the Church after almost forty years (1378-1417).¹

The nature of the ecclesiological problem which this council resolved as well as the various legal means which its *periti* employed in this task make it unique in conciliar history. In view of the grave disunity in the papacy (and, in Christendom generally) it is not surprising that conciliarism in one form or another entered into the theological perspective of this council; for its ultimate purpose, the restoration of unity to the Holy See, could not be achieved without in some way reformulating the character of the relation of pope to council, and acting with determination on this formulation. This is what the Council of Constance accomplished, and it is from this accomplishment that its theological and canonical problematic stems. If Gregory VII in his day saved the papacy from the empire, Constance may be said to have saved the Church from the papacy, and

¹ Cf. for a general survey of the Council of Constance, A. Franzen, "Das Konzil der Einheit," *Das Konzil von Konstanz*, ed., A. Franzen and W. Müller (Freiburg, 1964), pp. 69-112.

at the same time it saved the papacy from itself. The precise evaluation of its efforts in this direction constitutes an important task for historical theology; a thorough exploration of all the dimensions of the problem exceeds the scope of this short paper which proposes to elucidate some conciliar implications contained in the celebrated decree *Haec sancta* (April 6, 1415) of the Council of Constance.²

The history of the Great Western Schism (1378-1417) is a prolegomenon to understanding the Council of Constance.³ It provided the historical context out of which the council and its dramatic decisions ultimately emerged. The schism which divided the Church at a crucial moment in her history was rooted in an unfortunate historical episode—the tragic conclave which elected Bartolomeo Prignano as Urban VI on April 8, 1378. More precisely the schism arose from a combination of complicated factors and their interplay: 1) the definitive transference of the papacy from Avignon to Rome by Gregory XI, Urban's immediate predecessor; 2) the highly tense atmosphere which surrounded the conclave on the night of April 7-8, 1378; 3) the unreasonable, uncompromising, unbalanced personality of Urban VI face to face with the curial cardinals; and 4) the general dissatisfaction of the French cardinals with this unmanageable Italian pope.

Whether the election of Urban VI was invalid by reason of the grave fear which the cardinals experienced in that tumultuous conclave remains uncertain.⁴ Publicly, solemnly and freely they recognized him at his coronation on Easter Sunday, April 18, 1378. At least on the surface it seemed that they did; there may, however,

² Recent literature on all aspects of the Council of Constance is voluminous. Cf. R. Bäumer, "Die Reformkonzilien des 15. Jahrhunderts in der neueren Forschung," *Annuario Historiae Conciliorum* 1 (1969) 153-64; and A. Franzen, "The Council of Constance: Present State of the Problem," *Concilium* 7 (1965), 29-63.

³ Cf. L. Salembier, *The Great Schism of the West* (London, 1907), and W. Ullmann, *The Origins of the Great Schism* (London, 1948). These are the two standard treatments of the beginnings of the schism.

⁴ K. Fink, "Zur Beurteilung des Großen Abendländischen Schismas," *Zeitschrift für Kirchengeschichte* 73 (1962), 338: "We can only say, that the election of Urban VI was neither absolutely valid nor absolutely invalid, and that the contemporaries, including those most closely involved in the events, were in a state of *invincibilis ignorantia*."

have been hidden motivation of another kind, even inner compulsion. But in the weeks after the conclave it became apparent that Urban posed a serious threat to the sacred college, to its privileges and to its prestige that was totally out of harmony with tradition. The words which Robert of Geneva addressed to Urban epitomize the tension that existed between pope and cardinals: "Unlike your predecessors, Holy Father, you do not treat the cardinals with that honor which you owe them. You are diminishing our authority, but verily I tell you that we will do our best to diminish yours."⁵ In the late spring of 1378 the cardinals gradually deserted the pope in Rome; assembling at Fondi near Naples, they elected on September 20, 1378 the French cardinal, Robert of Geneva, who took the name Clement VII and soon departed for Avignon where he established his papal residence, surrounded himself with his own curia, and solidified the schism.

As the schism developed and became inveterate, the direction of ecclesiological study changed from theory to practice. The double obedience—Rome and Avignon—posed a real problem in the historical order which demanded more than speculation. Theories of the Church and her constitution which the decretists and decretalists had been devising since the late twelfth century were now reconsidered in light of their pertinence to the contemporary state of the divided papacy.⁶ Moreover, the progress and solidification of the schism into well defined obediences exposed constitutional weaknesses in the structure of the Church. Because of the fundamental and exclusive authority of the papacy, the obediences were able to widen, develop and preserve the schism. Each obedience, convinced of the validity of its claim, maintained its supreme position, created its own curia, and exercised jurisdiction over a portion of Christendom, while admitting no higher authority competent to heal or to contain the expanding schism.

In June 1394 the university of Paris proposed to the French king

⁵ Cf. W. Ullmann, *op. cit.*, p. 48.

⁶ Cf. on the origins and development of the conciliar theory from the late twelfth century B. Tierney, *Foundations of the Conciliar Theory* (Cambridge, 1955). Conciliarism had more distant and respectable ancestors than Marsilius of Padua (d. 1342).

three possible methods to solve the problem which the divided obediences in the Church posed: first, *via cessionis*, or the simultaneous resignation of both Boniface IX (1384-1404) of Rome and Clement VII (1378-94) of Avignon, and the election of a new pope by the cardinals of the two obediences; second, *via compromissi*, or the examination of the claims of Rome and Avignon by an impartial board of arbitration; and, third, *via concilii*, or the convocation of an ecumenical council to restore unity to the divided Church.⁷ It soon became apparent that *via cessionis* and *via compromissi* could only be effective where the parties concerned were magnanimous which neither Boniface IX nor Clement VII (nor his successor Benedict XIII [1394-1423]) really were. Proposals and counter-proposals between the two rivals terminated in frustration. From their general deportment it was obvious that the schism would not be terminated by personal initiative—submission to arbitration or submission of resignation—on the part of either Rome or Avignon.

The intransigency of the contenders only served to enhance the possibilities inherent in the solution *via concilii*, an approach that was favored by the impasse at which the schism had actually arrived as well as by the most influential theologians of the day: Pierre d'Ailly for example, Jean Gerson, Heinrich von Langenstein and Conrad von Gelnhausen. If the papacy could not or would not terminate the schism, then a general council would be gathered on the authority of the cardinals; and as representative of the universal Church, it could act with her authority and on her behalf. This was the intent of the thirteen cardinals of both obediences who convoked a council to meet at Pisa on March 25, 1409. Their competence to call a general council in the dire circumstances of 1408-09 could be justified on solid theological and canonical grounds; and the council, which they called, was generally recognized by contemporaries as legitimate.⁸ Both popes, Benedict XIII and Gregory XII—*Benefictus* and *Errorius*, as they were sarcastically called—

⁷ Cf. E. Delaruelle, E. Labande and P. Ourliac, *L'Église au temps du Grand Schisme et de la crise conciliaire (1378-1449)*, *L'Histoire de l'Église* 14 (Paris, 1964), 83-146.

⁸ Cf. on the legitimacy of Pisa as an ecumenical council A. Franzen, *Concilium* 7 (1965), 42, and A. Fink, *op. cit.*, p. 339.

were summoned to defend their positions before the council. Neither appeared.⁹ On the basis of schism, perjury, scandal and heresy both were deposed in the fifteenth session (June 5, 1409) from the papal office. Neither, however, was moved by these dire proceedings. Both continued to maintain their papal positions. On June 26 the council elected Cardinal Peter Philargi as Alexander V (1409-10). Thus the sacred college which thirty-one years earlier had initiated the schism, now augmented it by creating the tricephalic Church.¹⁰

But the initiative which the cardinals had taken at Pisa foreshadowed a new stage of development. Recognizing their official responsibility, they had summoned an ecumenical council as the legal authority for resolving the Great Schism. This action was without parallel in conciliar history. The questions of the right of the pope alone to convoke a council, of the incompetence of a council to judge a pope save in the case of heresy, and of the legitimacy of either Gregory or Benedict were secondary.¹¹ The atmosphere of the time was charged with the conviction that tradition and law must yield to expediency and equity, that the cardinals in the concrete emergency in which the Church was involved were empowered to act on behalf of the common good of Christendom, that at all events the scandalous schism must be terminated and the Church saved by the restoration of papal unity. The papacy had demonstrated that it was incapable of ending the schism, while the cardinals at Pisa had only made a bad situation worse. After the council the ecclesiastical scene became ominous, especially with the election in 1410 of Baldasare Cossa as John XXIII, a man utterly incapable of inspiring the confidence and assurance that Pisa, as a council of unity, required to extinguish the schism.¹²

⁹ In answer to Pisa, Benedict XIII held his own council at Perpignan (1408-09); Gregory held his at Cividale del Friuli (1409). Thus three "ecumenical" councils were held almost simultaneously!

¹⁰ Cf. J. Lenzenweger, "Von Pisa nach Konstanz," *Das Konzil von Konstanz*, ed., A. Franzen and W. Müller (Freiburg, 1964), pp. 36-54.

¹¹ Cf. O. De la Brosse, *Le Pape et le Concile* (Paris, 1965), pp. 144-5; 168-9.

¹² In a sense Pisa was a model for Constance. Both councils set aside the *de facto* contenders despite their claims to legitimacy, and sought a new generally accepted papal candidate as a principle of unity. Pisa failed because it lacked legal method, historical circumstances and dominant personalities.

The tricephalic Church born at Pisa only underlined more vividly the intensity of the constitutional crisis in which the papacy was involved. The scandal of three popes contending for recognition and leadership in Christendom gave urgency to the task of finding an effective remedy for the sickness which was infecting the Church as a whole. Despite the failure of the Pisan council the conviction was still strong that unity could only be secured by the convocation of a general council. This approach to the problem generally found favor among the theologians and the canonists of the day. For two centuries the structure of the Church had been studied from the point of view of the council as an ecclesiastical institution; and various theological and legal concepts had been worked out to show the relation of pope to council, and both to the Church as a whole. In the ecclesiological writing of the time there emerges a view of the Church in which the council is represented as superior in varying degrees to the pope. In the situation of the second decade of the fifteenth century a council inspired by the principles of a moderate conciliarism would be able to resolve the schism by asserting its transcendency as representing the Church over the pope's supremacy as head of the Church.

The German emperor Sigismund (1361-1437) was among those who had confidence in the efficacy of a general council to resolve the problematic of divided Christendom. Accordingly, in 1413 he persuaded the Pisan pope John XXIII to convoke an ecumenical council to restore unity and to reform the universal Church. On November 5, 1414 the great German Council of Constance opened in the cathedral church of that city. Supported by pope and emperor, by the cardinals of the three obediences, by the national hierarchies and especially by the universities, it was in a position to act legitimately on behalf of the whole Church which it represented. Everything about the opening weeks of the council suggested that if the council could resolve the schism, it would enjoy the solid support of Christendom in making its decisions effective and binding.

In the opening months of 1415 it had become apparent to John XXIII that despite his personal convictions about the security and legitimacy of his papal title, the council was not going to support him. From the second session (March 2, 1415), at which he solemnly

swore to abdicate, he was doomed; and, ironically, his doom was being prepared by the very council which he had personally convoked to secure unity, with the hope, of course, that as Pisan pope he would be the valid principle on which the desired unity would rest. By March it was clear that there was no influential group within the council which would support his position as legitimate pope. As truly as John's position had grown out of Pisa's resentment of schism, it would now be liquidated by Constance's desire for unity.

Despite the highly irregular character of the papacy during the years of the schism, the medieval tradition was still alive that linked necessarily pope and council. History gave no precedent of an ecumenical council from which the papacy had alienated itself; and it was problematic whether such a council could maintain itself. As a last and desperate resort, therefore, John decided to appeal to this old tradition by fleeing from Constance, and leaving the council without the support of the pope who had convoked it. This John did on the night of March 20-21, aware that he was violating his promise to abdicate, flying in the face of the greater majority of the council, exposing it to ignominious failure, and threatening to continue the hated schism. Doubtlessly he would dissolve the council, if the council did not dissolve itself. The news of John's flight threw Constance into an emotional uproar that only the persuasive force of Emperor Sigismund was able to sedate.

The next twelve days at Constance were to be epoch-making. The pope had defied the council; now the council would defy the pope. Appraised of John's secret flight and aware of its meaning, the fathers were called into session (March 26). The decree which they issued in solemn form is nothing less than a public manifesto of the council's competence in the Holy Spirit and its independence of papal authority. If *de facto* it had come into existence through the authority of pope John, it refused *de iure* to be dissolved by that same authority. In this sense it firmly declared:¹³ 1) that it was duly gathered in the Holy Spirit; 2) that it was rightly convoked and initiated; 3) that it was not dissolved by the flight of the pope or by any other

¹³ Cf. J. Alberigo, et al., *Conciliorum Oecumenicorum Decreta* (Freiburg, 1962), p. 383.

prelate's flight, but that it "remains in its integrity and its authority, even if ordinations to the contrary have been made, or shall be made in the future"; 4) that the council will only be dissolved when its business—the perfect extinction of the schism and reform in faith and morals—is finished; and, 5) that the council will not suffer any transference save by its own consent. This was the council's first answer to the threat involved in the pope's flight from Constance and his subversive attempts to subtract the cardinals from the council. Within the council as representing the Church there is competence to maintain its legitimacy and its continuity, notwithstanding any other power on earth.

In the fifth session on April 6 the council issued the celebrated decree *Haec sancta* in which for the first time in the history of the Church a conciliar statement sets forth and defends the proposition that an ecumenical council is superior to a pope. Because of the importance of this magisterial decree to the conciliar thought of the Council of Constance it is worth citing its major provisions:¹⁴

This holy synod of Constance . . . declares in the first place that legitimately convened in the Holy Spirit, forming a general council and representing the militant Catholic Church, it has its powers immediately from Christ, and that each and everyone of whatever state or dignity, even if it be papal, is bound to obey it in those things which pertain to faith, the rooting out of the schism and the general reform of the Church of God in head and members. Moreover, it declares that anyone of whatever condition, state, dignity, even if it be papal, who shall contumaciously refuse obedience to . . . the precepts of this sacred synod or of any other legitimate synod . . . shall be subjected to fitting punishment

In order to give the provisions of this decree a practical structure, the council promulgated *Frequens* in the thirty-ninth session (Oct. 9, 1417) which stipulated that another council be held five years after Constance, a second seven years later, and finally a general council every ten years.¹⁵ If the decree *Frequens* had remained operative, there would have been thirteen ecumenical councils between

¹⁴ Cf. *ibid.*, pp. 385-6.

¹⁵ Cf. *ibid.*, pp. 414-6.

Constance and Trent; and their impact on ecclesiastical development could have been impressive.

In the twelfth session (May 29, 1415) John XXIII was deposed canonically for fostering the schism by his flight, for notorious simony and scandalous life. The Roman pope, Gregory XII, offered his resignation through proxy, prince Carlo Malatesta of Rimini, at the fourteenth session (July 4, 1415), after having a bull read which convoked the council anew. This legal nicety was allowed by the fathers for the sake of peace, but in no sense to justify the legitimacy of their assembly which derived immediately from Jesus Christ according to the decree *Haec sancta*.¹⁶ Benedict XIII was deposed in the thirty-seventh session on July 26, 1417, after being allowed to convoke the council, if he so wished. Thus, without having passed judgment on the legitimacy of the three contenders, the council exterminated the Great Schism, and opened the way to a new unity in the papacy.¹⁷

The council contended that it enjoyed a certain supremacy over the papacy. On this contention it acted in terminating the schism. No one seriously contested the validity of its action in deposing John XXIII and Benedict XIII; and after their deposition by the council their "obediences" soon dried up. With the election of Oddo Colonna on November 11, 1417 (in a unique conclave whose membership included the cardinals *in curia* as well as representatives of the Nations) unity was again secured for the papacy—one of the principal reasons for which the council had been originally summoned.¹⁸ The preoccupation of the council with the removal of the papal schism and with the restoration of Church unity is of importance in evaluating the import of *Haec sancta*. The whole thrust of the council was to restore, reform and preserve the papacy. In its thinking the Church was indeed papal, even though the circumstances of the

¹⁶ Cf. A. Franzen, "Das Konzil von Einheit," ed., A. Franzen and W. Müller, *Das Konzil von Konstanz* (Freiburg, 1964), pp. 77ff.

¹⁷ Cf. H. Zimmermann, "Die Absetzung der Päpste auf dem Konstanzer Konzil," ed., A. Franzen and W. Müller, *Das Konzil von Konstanz* (Freiburg, 1964), pp. 113-37.

¹⁸ Cf. K. A. Fink, "Die Wahl Martins V," ed., A. Franzen and W. Müller, *Das Konzil von Konstanz* (Freiburg, 1964), pp. 138-51.

times may have required a certain shift in the relation of the papacy to the council.

In the historical context there was no question at Constance of displacing the papacy from its traditional place in the Church. The council did not restore the papacy to destroy it. The papal office was recognized by the fathers as the seat of the one and only primate of the Western Church, the pope as the successor of St. Peter and the vicar of Christ. The prelates and theologians at Constance were conciliar in one form or another, mostly moderate conciliarists, but in no sense adherents of the extreme radical conciliarism of Marsilius of Padua and his anti-papalism, a school of thought which did not have a decisive influence in the deliberations of the council. Thus the newly elected Pope Martin V with due honor and with the agreement of the fathers presided over the final sessions (42-45) of the council and officially dissolved it on April 22, 1418.

The Council of Constance opened on November 16, 1414 and closed three and a half years later on April 22, 1418. In the course of these years it held forty-five public sessions which handled a wide variety of issues. Only the fifth session on April 6, 1415 in which the decree *Haec sancta* was promulgated is of direct importance to the question of conciliarism. Whereas the acceptance of this decree by the council in which it originated is clear, its relation to the papacy in the person of Martin V is ambiguous. Before his election Oddo Colonna was a very moderate conciliarist, more from practical than theoretical considerations. In the atmosphere of the council it would have been impossible for a papalist pure and simple to have worked effectively. Though he was not present at the session which approved *Haec sancta* (indeed he had fled with John XXIII), he did not oppose the drastic action that the council took in removing the three principal papal contenders. At the moment no other course of action seemed possible or feasible, if the desired papal unity was to be achieved. He would allow for conciliar supremacy, but only up to a point; the papacy's essential and ordinary function in the administration of the universal Church must not be in any way diminished or distorted.¹⁹ Later he spoke in favor of the

¹⁹ H. Küng, *Structures of the Church* (New York, 1964), p. 277: "But

acceptance of the decree *Frequens* which implemented *Haec sancta*; and later as Martin V he acted in accord with its provisions by summoning councils to meet at Siena-Pavia (1423-24) and at Basle (1431). Nothing, however, indicates that Martin V was enthusiastic in his conciliarism.

The questions, therefore, whether Martin V as pope officially approved the decisions of the Council of Constance, and whether in consequence *Haec sancta* enjoys papal confirmation, have been posed. In the closing session of the council, when the Polish legation moved the delicate case of the German Dominican Johann von Falkenberg, the pope replied by way of clarification. The following report of his words is preserved:²⁰

He wished inviolably to hold and observe each and every decree in matters of faith (*in materiis fidei*) determined and resolved in a conciliar (*conciliariter*) manner by the present sacred general council of Constance And thus the pope approves all that has been done in a conciliar (*conciliariter*) manner; and he ratifies all that has been handled in the council in a conciliar (*conciliariter*) manner about a matter of faith. What has been done this way and not in any other way, he approves.

Thus only what Constance had done *conciliariter* and *in materiis fidei* was approved by Martin V. Traditionally this formula has been used to show that *Haec sancta* was not accepted by the Holy See. According to this position Martin V put his approval only on what was enacted by the council *in favorem fidei*; but the decree *Haec sancta* was not such an enactment; therefore, it was not approved by the pope. It was further argued. The pope approved what was done *conciliariter* in the council; but the decree *Haec sancta* was not handled *conciliariter*, because certain cardinals were absent from the deliberations out of which it grew; and the violent character of

Martin in no way denied the conciliar ideas, as they had been defined. Indeed an absolute superiority of the Council over the pope is one thing—and the rights that appertain to the pope in the exercise of his function are something else."

²⁰ Cf. W. Brandmüller, "Besitzt das Konstanzer Dekret *Haec Sancta* dogmatische Verbindlichkeit?" *Annuario Historiae Conciliorum* 1 (1969), 112.

the proceedings of the fifth session shows that it deliberated *tumultuariter*, rather than *conciliariter*. Therefore, it was not approved by the pope.²¹ This kind of argumentation which satisfied generations of theologians has been generally forsaken.

In handling the question of the binding force of the conciliar decrees Paul DeVooght maintains that Martin V gave official, though implicit, approbation to the decisions of the council and, therefore, to *Haec sancta*.²² Proof of this is the bull *Inter cunctas* (Feb. 22, 1418) which contains a questionnaire to determine the orthodoxy of certain suspects, followers of Wyclif and Hus.²³ Here acceptance of the decrees of the Council of Constance is made a condition for establishing right faith. Among the questions which are listed in the bull we read:²⁴

Whether he believes that what the sacred council of Constance, representing the universal Church, has approved and approves in favor of the faith (*in favorem fidei*) and for the salvation of souls, is to be approved and held by all Christians, and that what it has condemned and condemns as contrary to the faith and to good morals is to be held, believed and declared condemned.

The obvious sense of the document is "a profession of faith in the Council of Constance inasmuch as it is a general council, and in the value of its doctrinal decisions."²⁵ But the context of the dogmatic questionnaire seems more preoccupied with the errors of John Hus, John Wyclif and Jerome of Prague than with an explicit and

²¹ *Conciliariter* is used in opposition not to *tumultuariter* but to *nationaliter*. The pope approved of the enactments of the council as a whole rather than of the Nations individually. Cf. R. Bäumer, "Konstanzer Dekrete," *Lexikon für Theologie und Kirche* 6, 504.

²² P. DeVooght, "Le Conciliarisme aux conciles de Constance et de Bâle," *Le Concile et les Conciles*, ed., B. Botte, et al. (Paris, 1960), pp. 155-62.

²³ Cf. I. H. Pichler, "Die Verbindlichkeit der Konstanzer Dekrete," *Wiener Beiträge zur Theologie* 16 (Vienna, 1967), 78-79, 85, who holds that Martin V did not approve the *Superioritätsdekrete* of the third to the fifth sessions, and that *Inter cunctas* affirms "the voice of the occupant of the *cathedra Petri* as the decisive factor for the validity (*Rechtswirksamkeit*) of a conciliar decision."

²⁴ Cf. P. DeVooght, *op. cit.*, p. 159.

²⁵ Cf. *ibid.*, p. 160.

formal and direct confirmation of the council as a whole. As Walter Brandmüller puts it: "The sense of the passage is concerned *per se* with Hus and Wyclif, only *per accidens* with the council."²⁶ Further proof of papal confirmation, derived from the words of Martin V apropos of the Falkenberg case, is contested because a verbal "confirmation" made in the course of a heated discussion seems to lack the proper legal formality that confirmation of an ecumenical council would require; moreover the words of Martin V on this occasion are ambiguous.

Hans Küng, on the other hand, takes the more direct position, proposed by Karl A. Fink, that the Council of Constance received no papal confirmation because an express papal approbation was not deemed necessary.²⁷ Thus Martin V neither approved nor disapproved of the decisions of the council. In the context papal approval was irrelevant; the council openly declared that it derived its authority directly from Jesus Christ and that, in consequence, it was legitimately convoked and gathered in the Spirit. This way of regarding its credentials coincided with its conviction, expressed in *Haec sancta*, that it was superior to the pope who was obligated to it in obedience. "Approbation was not necessary, neither was it asked for by the council."²⁸ Nor does Hans Küng find any evidence of support for papal approbation in the words spoken by Martin V in the last session of the council, when the case of Falkenberg was under discussion.²⁹ The authority of the decree *Haec sancta*, therefore, must stand or fall on the authority of the council alone.

The meaning of *Haec sancta* is to be sought in the historical circumstances in which it emerged. Of fundamental importance here is the consideration that Constance as a reform council was summoned to restore unity to the divided Church by restoring unity to the divided papacy. In the opening months of its deliberations, the most secure method of achieving its goal appeared to be the

²⁶ Cf. W. Brandmüller, *op. cit.*, p. 111.

²⁷ Cf. K. A. Fink, "Konstanz, Konzil von," *Lexikon für Theologie und Kirche* 6, 503; "Am 22. 4. 1418 schloß Martin V. die Synode. Eine gesonderte päpstliche Bestätigung kam nicht in Frage."

²⁸ Cf. H. Küng, *op. cit.*, p. 272.

²⁹ Cf. *ibid.*, pp. 274-6.

removal of the three contenders to the papacy and the election of a candidate who would be accepted by the whole Church. This course of action necessarily involved the resignation of John XXIII whose legitimacy, based on the generally respected Council of Pisa, was accepted by a number of members of the council. Threatened by the pope's unfortunate flight from Constance, an act of defiance which imported dissolution of the council as well as prolongation of the schism, the fathers had to act rapidly and decisively. The prospect of the continuation of the divided obediences in the Church was intolerable to all.

In the highly sensitive matter of the schism, arbitrary and capricious action was out of the question. There was need for a reasoned plan and a consensus. Five years earlier the Council of Pisa had moved with radical decision against Gregory XII and Benedict XIII, removing both of them on its own initiative and proceeding to the election of Alexander V. Despite the repute in which this council was held at the time, the necessity of acting with decisive firmness, and the joy with which its final decision was received, its attempt to secure papal unity failed. The council did not have a well defined method, a firm legal basis and an accepted principle of action. This need was recognized at the time; and it well may have been one of the factors to which the subsequent failure of the council was due.³⁰

The fathers of the Council of Constance, well acquainted with this aspect of Pisa, were resolved to provide a solid basis for the incisive action which they contemplated. When, therefore, the flight of John XXIII menaced its existence, the council's answer was *Haec sancta*. This decree, drawn up in great haste and under emotional tension, was not merely a verbal outpouring of frustration. Rather it was the first stage in a program that culminated in the deposition of Benedict XIII in the thirty-seventh session on July 26, 1417. Thus the council's immediate and direct response to John's precipitous act was not summary deposition but the deliberate prep-

³⁰ The delegates of the king of the Romans, Johann von Krakau, Ulrich von Albeck and Conrad von Soest, contended that the council was virtually acting on the principle that the end justifies the means. Cf. E. Delaruelle, et al., *op. cit.*, p. 150.

aration of the fundamental legal steps requisite for the termination of the schism and the reformation of the Church; and while bearing the signs of the pressure under which the fathers worked, the decree which the council adopted against John was in perfect conformity with legal procedure. Accordingly *Haec sancta* announces to Christendom the competence of the council to act in a superior way face to face with the rebellious papacy.

There was no question of establishing the ecumenical council as the organ of an ecclesiastical parliamentarianism; the council was not asserting itself as an instrument which would displace the papacy and the Roman court in the ordinary administration of the Church. Apart from the fact that such an agreement would have been totally out of harmony with Catholic tradition, its maintenance would have constituted an impossible burden; and the constant pressure of conciliar business would have seriously distracted the bishops from the *cura animarum*. But further, and more decisive, is the consideration that the decree *Frequens* in providing for the future prescribed the convocation of a council only once in every ten years. This arrangement would sharply restrict its area of competence, reserving to it the right to supervise, direct and oversee the general policy of the Church and to take necessary measures against crisis in the papacy, but in no sense allowing it a parliamentarian role or function in the ordinary sense of that expression.³¹

The decree *Haec sancta* insists that its authority is immediately from Jesus Christ and that it is lawfully gathered in the Holy Spirit. Since no earthly power constituted it, no earthly power can liquidate it. In fact, every one in the Church is obligated to it and to its decisions, since every person in the Church is obligated to Jesus Christ whose authority appointed the council to act on behalf of his Church. The obligation of obedience extends to the faith, to the extirpation of the schism and to the general reformation of the Church in head and members. What the council decrees in these areas (especially in the matter of the termination of the schism) binds everyone in the Church including the pope himself. Any other way of formulating the competence of the council would have left

³¹ Cf. H. Küng, *op. cit.*, p. 284.

it powerless to act under the *de facto* circumstances of the spring of 1415.

Further the decree in speaking of the *concilium* and its superiority in the Church is ambiguous. In its technical sense *concilium* includes within its comprehension the pope as bishop of Rome as well as the entire Catholic episcopacy. Thus *concilium* properly denotes the ecumenical council as the supreme magisterial and legislative body in the Church. To its teaching all are subject, because as representative of the universal Church it speaks with the authority of Jesus Christ. *Haec sancta*, therefore, cannot be said simply to contrast pope and council as two separate, independent, opposed and opposing parties. In the circumstances, however, out of which this decree grew, pope and council were *de facto* at variance with one another. On April 6, 1415 (at the time of its promulgation) John XXIII by his flight from Constance had placed the future of the council in peril. In this historical situation *Haec sancta* demanded the obedience of a doubtful pope to the legitimate council from which he had alienated himself. The demand rested on the credentials of the council as a Church assembly, convoked in the Spirit and deriving its authority from Christ.³²

Recent (1962-70) theological and historical research of the problems raised by the Council of Constance has given a variety of interpretations to the decree *Haec sancta*. In what concerns the interests of historical theology the problematic of this decree can be reduced to two moments: 1) Is *Haec sancta* a decree of dogmatic quality? 2) Does it have universal binding force?

Paul DeVooght and Hans Küng interpreted *Haec sancta* as a dogmatic decree. The former epitomizes its import this way: "In a matter of faith and Church government the last word belongs not to the pope but to the Church and to the general council."³³ The decree, however, is not binding with the force of a solemn dogmatic definition because, lacking explicit papal confirmation, it lacked the qualities which Vatican I specified as inherent in infallible defini-

³² Cf. B. Tierney, "Hermeneutics and History: The Problem of *Haec Sancta*," in *Essays in Medieval History Presented to Bertie Wilkinson*, ed., T. A. Sanquist and M. R. Powicke (Toronto, 1969), pp. 357 ff.

³³ Cf. P. DeVooght, *op. cit.*, p. 153.

tions.³⁴ Hans Küng interprets the decree as a solemn definition binding once and for all by virtue not of papal but of conciliar authority. By intent the decree provides "a definite conciliar control," while leaving papal supremacy intact.³⁵ For the Church historian Hubert Jedin *Haec sancta* is nothing more than an emergency decree, promulgated by the council to handle the *de facto* crisis that the flight of John XXIII had created. Passed for an emergency, the decree lost its binding force when the emergency passed.³⁶ Probably the most conservative approach to the interpretation of *Haec sancta* is taken by Joseph Gill. By simply denying the legitimacy of the fifth session, which passed the decree without papal confirmation, he undercuts the problem *in radice*.³⁷

Most of the earlier studies of *Haec sancta* started out from the presupposition that the decree was of dogmatic import because it was promulgated as an authentic conciliar definition. The dogmatic character of *Haec sancta* is now questioned. Primarily and directly the decree is concerned with the power and function of an ecumenical council within the whole structure of the Church; secondarily and only indirectly it deals with the papacy, and here only from the point of view of orderly control in time of Church crisis. The magisterial authority of the Church is indeed a matter of divine revelation; but it is not fully clear that all the concrete institutions in which this magisterium has been historically embodied, and that all the modes in which it has manifested itself, are also matters of revelation. With reference to the binding force of *Haec sancta* the questions might well be posed, whether the ecumenical council as a Church institution is the object of revelation; and whether, if it is not a revealed truth, it can be the subject of dogmatic definition.

In no true sense does *Haec sancta* formulate a solemn dogmatic

³⁴ Cf. *ibid.*, pp. 180-81. At this point De Vooght's thought becomes ambiguous.

³⁵ Cf. H. Küng, *op. cit.*, p. 285.

³⁶ Cf. H. Jedin, *Bischöfliches Konzil oder Kirchenparlament. Ein Beitrag zur Ekklesiologie der Konzilien von Konstanz und Basel* (Basel and Stuttgart, 1963).

³⁷ Cf. J. Gill, "The Fifth Session of the Council of Constance," *Heythrop Journal* 5 (1964), 131-43, and B. Tierney's perceptive critique in "Hermeneutics and History: The Problem of *Haec Sancta*," pp. 357 ff.

teaching, a pronouncement obliging once and for all, irreversible because of its origin in divine revelation. Looked at in the context in which it emerged and in the language in which it is expressed, it is a legal enactment, the embodiment of centuries of canonical thought about the relation of council to Church and to papacy.³⁸ In the fifth session of Constance the fathers were not directly interested in teaching a dogmatic truth about the nature of ecumenical councils. Their interest centered in the provision of a sound legal basis on which a council might act not only in the crisis which John XXIII had created but also in all future crises that may disturb the peace of the universal Church by disrupting the unity of the papacy. In this sense, then, the decree has solid permanence and universal validity. In essence it claims that the common good of the universal Church is above the private good of any individual member to the extent that in and through the council she has the power to defend and to protect herself against the hurt and injury that anyone, no matter what his dignity, may inflict upon her. After forty years of a schism largely inspired and maintained by egotistical considerations, the fathers of Constance proposed the *via concilli* as the ultimate method of securing unity in the Church. Aware that the unique situation then existing in the papacy required decisive measures, they prepared a firm legal basis, *Haec sancta*, to guarantee the success of the drastic course of action on which they were entering, and to restore normalcy to the Church long tortured by schism. By this right the council claimed to bind all members of the Church to the observance of its decisions; and it intended that this right and its exercise be an ultimate control and safeguard.

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³⁸ Cf. B. Tierney, "Hermeneutics and History: The Problem of *Haec Sancta*," p. 367: "The decrees of future councils, which were to be binding on the pope, would, in normal times, be decrees of pope-and-council acting jointly, not decrees of the members acting against the head."