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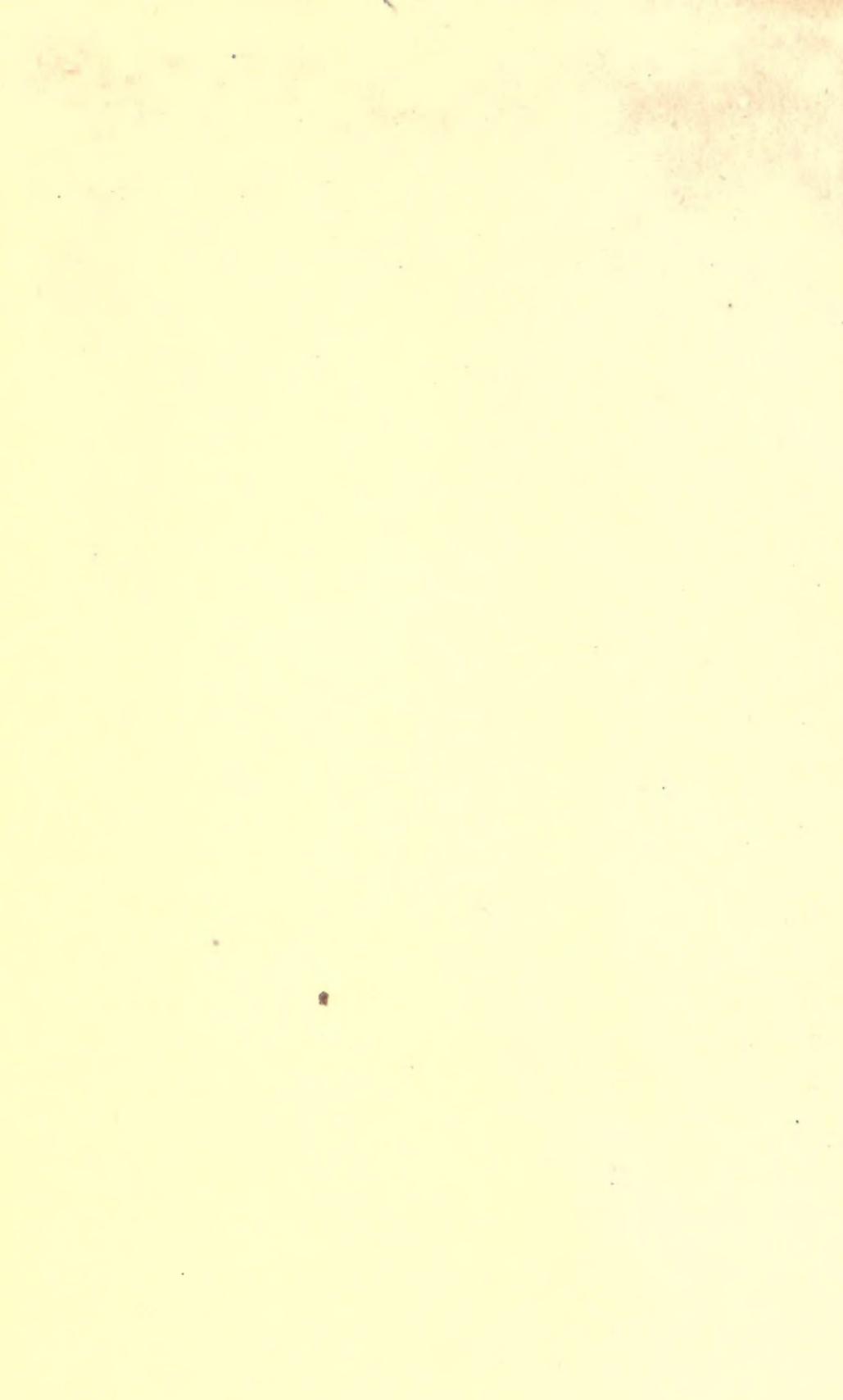


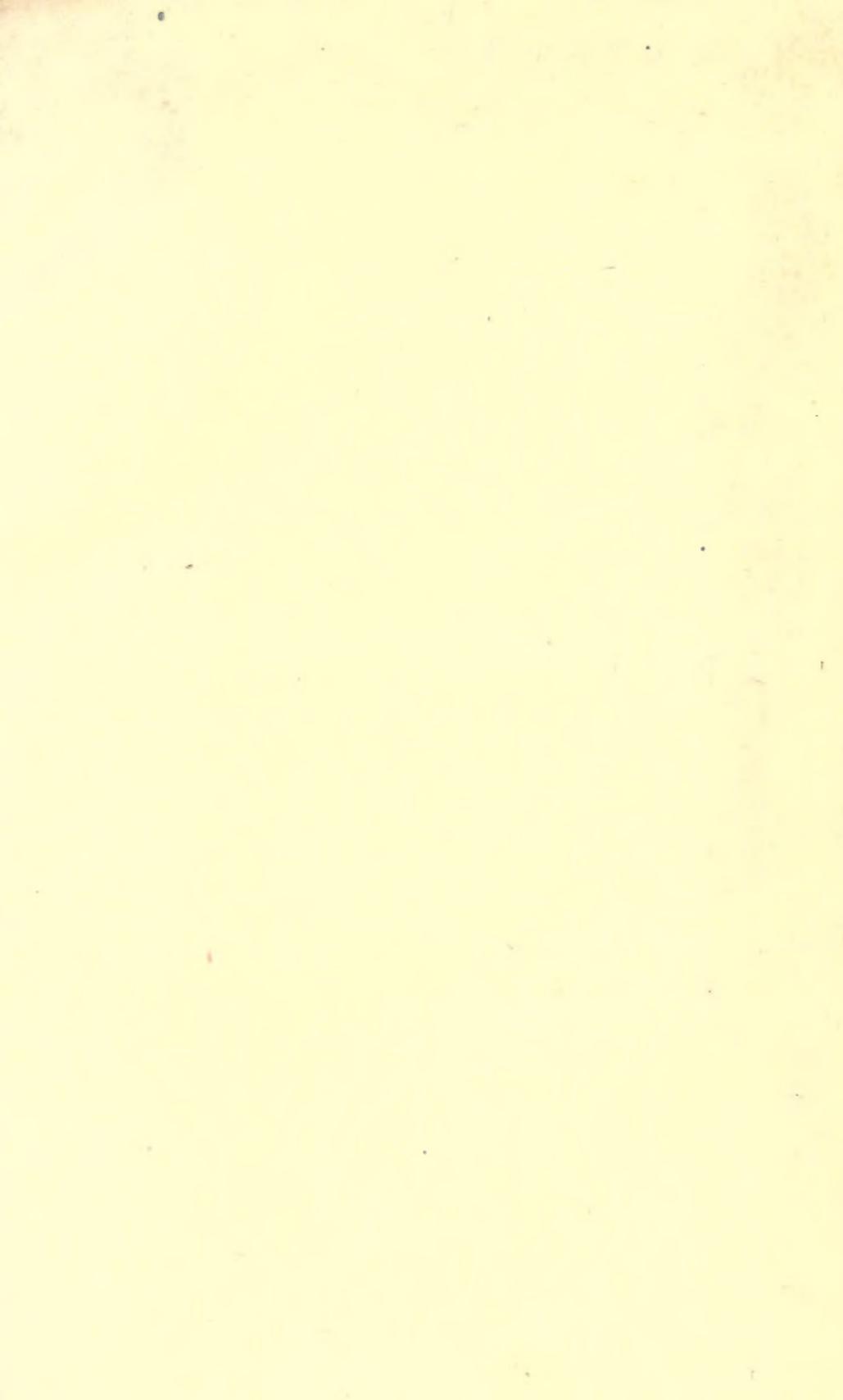
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Catholic Church and Christian State.

A SERIES OF ESSAYS

ON THE

RELATION OF THE CHURCH TO THE CIVIL POWER.

*TRANSLATED, WITH THE PERMISSION OF THE
AUTHOR, FROM THE GERMAN*

OF

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IN TWO VOLUMES.

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THE
Catholic Church and the Christian State.

INTRODUCTION.

I.

No apology is needed for offering to the public a translation of a work by so eminent an author as Dr. Hergenröther, and on a subject so much discussed as the relations of Church and State. The Author is already known in England by his *Anti-Janus*, which has been translated by Professor Robertson ; and in Germany he is recognised as one of the most learned and zealous among the defenders of the Church. As such, he is singled out for especial attack by the champions of the Döllingerite heresy, and is mockingly called ‘the official refuting theologian of the Vatican.’ But as the English public is fortunately unacquainted with these attacks, it is needless to give that portion of the introduction to his essays in which Dr. Hergenröther repels the charges brought against himself and his fellow-labourers, and exposes the rude insolence of his opponents : showing their literary failings and contradictions, which contrast with their arrogant claim to a monopoly of historical and theological learning. It is enough to say that this work, while answering the criticisms on *Anti-Janus*, is far more than a mere answer. The author’s intention has been not to rest on the surface, but to give so thorough and deep an account of the relations of Church and State, as to serve for more than the purposes of ephemeral controversy, and to be a work of permanent value and reference.

It is thus especially suited to the present needs of the Catholics of England, who, amid the controversies as to Church and State, which have grown to such proportions since Mr. Gladstone's too-famous Expostulation, require something more than pamphlets, however excellent, and answers, however conclusive, to particular accusations. A more complete and solid discussion of these subjects is needed, which may serve as an armoury from which to draw weapons against any particular attack, and as a bulwark behind which weaker brethren may securely take their stand: a book, in short, which we may place in the hands of our non-Catholic countrymen, and, until it is read and answered, decline to enter on further controversy. That the present work may satisfy this need is the hope of the Translator; and in view to this end, while translating the text of the second and popular German edition, he has preserved most of the notes of the first edition, which was intended rather for the learned than for ordinary readers. These notes form an invaluable body of references; and the Translator, by combining them with the text of the second edition, hopes to give to the studious few the full advantages of the original edition, and at the same time to give to the general public a text they can easily understand. On the same principle, he has occasionally given in the text an explanatory paraphrase in the place of a literal translation, and has occasionally omitted allusions to modern German writers, newspapers, and political events, which are unfamiliar and uninteresting to English readers, and would often require lengthy explanation. The only considerable passage omitted is a digression on the 'Placet' in Bavaria, which, while of importance to Dr. Hergenröther's fellow-countrymen, especially those of the legal profession, is not of importance to us, for whom the general account of the *placet* is quite sufficient. As to the order of the essays, which is different in the two editions, that of the second has been followed, except in placing the fourth and fifth before the first, second, and third.

The Translator must here advert to a possible misunderstanding as to the words 'Liberal' and 'Liberalism,' which often occur in this work, and always with a bad sense attached to them. He

begs the reader to remember that there is a difference between the English and continental sense in which these words are generally used. In Austria, Belgium, Germany, Italy, and elsewhere, 'Liberal' necessarily implies anti-Catholic: the party called National-Liberal in Germany is the relentless persecutor of the Church; nor is any broad distinction made between religious and political liberalism: whereas in England 'Liberal' has often a sense in no wise anti-Catholic or anti-Christian, and may denote merely giving support to a political party which (at any rate till quite recent times) has shown the most regard to the rights of Catholics. In the present work the word is used in the continental sense; and the Translator has less scruple in so employing it, because it has been used in a closely corresponding sense by Dr. Newman in the *History of my Religious Opinions*.* On the same principle, the word 'Conservative' is used always in a good sense, as opposed to 'revolutionary.'

II.

The Translator has now to give, in a concise and continuous form, certain portions of Dr. Hergenröther's introduction, which are scattered amid his criticisms of his literary opponents, and which are as interesting and profitable to English as to German readers, inasmuch as describing certain common failings and false positions fatal to true historical impartiality.

First, it is a grave error to overlook the changes that have occurred since the Middle Ages, and to compare the mediæval Papacy, not, as would be just, with the mediæval States, but with an ideal and abstract State framed according to modern political notions. The Church, indeed, though changing much in her discipline, has changed nothing in those principles of action which are the result of her dogmas. But nations and kingdoms have undergone the greatest transformations; and even the notion of the State has become different,† as any one would

* See especially the note [A] on Liberalism.

† See Walter, *Naturrecht und Politik*, § 44, Bonn, 2d edit. 1871. Aegidi hardly admits States to have existed in the Middle Ages, but only provinces of the Holy Roman Empire (*Erlanger, Theol. Zeitsch.*, new series, vol. xxxvi. p. 143).

see who compared a modern compendium of constitutional law with analogous works in the juridical literature of former centuries. Gross is the inconsistency of those who still claim for the State various privileges in religious matters formerly conceded to it by the Church, and at the same time proclaim the separation of the two powers—who rest with one foot on the ground of the ancient Catholic State, and with the other on that of the modern State that has no religion—who to-day write on their banners absolute civil and religious liberty, and to-morrow write the omnipotence of the abstract State. Let us ever remember that each age gives its own special character to States, and that those of the present age are no exceptions, but have a special character, which in its own turn will pass away.

A second failing is to forget that ‘there is nothing in the world which cannot be brought into discredit’ (we are quoting from Balmez)* ‘by showing only one side of it; for thus considered, all things are false, or rather are not themselves. All bodies have three dimensions: only to look at one is not to form an idea of the body itself, but of a quantity very different from it. Take any institution, the most just and useful that can be imagined, and look at it simply from the point of view of the evils and disadvantages that it has caused, taking care to bring together into a few pages what in reality was spread over a great many ages, its history will appear repulsive, odious, and execrable. If a partisan of democracy describe in narrow compass, and by means of historical facts, all the disadvantages and evils of monarchy—the vices and crimes of kings—in what light will monarchy appear? If, in his turn, a partisan of monarchy describe democracy and demagogues by the same method of historical facts, how will democracy appear? By assembling in one picture all the evils occasioned to nations by a high development of the social state, we can make civilisation and refinement appear detestable. By selecting certain features from the annals of the human mind the history of science can be made the history of folly, and even of crime. By heaping together the fatal accidents which have

* *Protestanismo y Catolicismo*, vol. iii. p. 252 (2d edit.); English translation, p. 170 (3d edit.).

been occasioned by the masters of the healing art, their beneficent profession may be represented as a career of homicide. In a word, everything may be falsified by proceeding in this way. God Himself would appear to us a monster of cruelty and tyranny, if, putting aside His goodness, wisdom, and justice, we only looked at the evils in a world created by His power, and governed by His providence.' This was precisely the method adopted in the book the *Pope and the Council*, by Janus.

A third error is to suppose that those who defend the cause of the Holy See are pledged to justify all actions of the Popes.* Far from this being the case, most zealous defenders of the Holy See have shown that their zeal is no hindrance to boldly speaking out the plain historical truth. It has been long ago observed† that Cardinal Baronius, ever a foremost champion of the Holy See, not only collected with conscientious exactitude all the evil reports about the Popes (especially of the tenth century) which he found in historical sources, but also was much too credulous in this matter, and in some cases held up Popes to censure where he ought rather to have unsheathed the sword of criticism against historical calumnies. And the *Civiltà Cattolica*, against which so many invectives are cast, in its notice of Von Reumont's *History of the City of Rome*,‡ praisés the author because, with the freedom of a Baronius or Pallavicino, he does not conceal the ill deeds of Popes, cardinals, and prelates, and preserves the mean between the exaggerations on the one side of ill-judged flattery, and on the other of venomous calumny. 'The latter, which infects the writings of so many Rationalists and Protestants at home and abroad, robs history of all credibility, degrading it into a libel; but not less injurious to history is that flattery which changes it into a panegyric, and professes to justify every action of the

* Hefele, Beiträge zur Kirchengeschichte, 1864, vol. i.; apud Möhler-Gams, Kirchengeschichte, vol. ii. p. 188.

† Civiltà Cattolica, 1871, ser. viii. vol. ii. pp. 174, 175.

‡ The statement of Bossuet (Defensio Declar. Cleri Gallic. p. i. l. iii. c. i. p. 273, ed. Mog. 1788), that not all deeds of the Popes are justifiable, is disputed by no Ultramontane theologian. See Bianchi, Della Potestà e Polizia della Chiesa, Roma, 1745, t. i. l. i. § 21, n. 1, pp. 183, 184.

Popes. This seems not to be understood by certain pious and zealous but unwise authors, who maintain certain views in the teeth of incontestable facts, and do not see that not merely their labour is in vain, but also that, being unable long to escape the censure or the ridicule of criticism, they must end by having to confess that they have injured rather than advanced their cause. Reumont is not one of these. He relates and blames in Alexander VI. as in Urban VI., in Leo X. as in Paul IV., in Clement VII. as in Urban VIII., their defects or excesses, their too great severity or too great leniency ; while at the same time he shows all the good qualities with which they adorned the chair of St. Peter. He censures the abuses of Papal nepotism, whereby it became full of danger to the Church and the State ; but, on the other hand, he is fully mindful of the advantages which it often brought, of the distinguished qualities of many of the Papal nephews, and the services which, as cardinals, they rendered to Church and State. He relates and laments the wanton and frivolous life of many prelates and cardinals, especially in certain unhappy periods, to the dishonour of their lofty and sacred office ; but at the same time he places in all its beauty before the eyes of the reader the picture of the virtues and talents, of the meritorious and magnificent works, by which the Sacred College and the Roman prelaty has in every age been distinguished, and has shown itself as the noblest and most glorious senate the world has ever seen.'

A fourth misconception is to suppose that ' Ultramontanes ' wish to bring back the Middle Ages. ' When I combated the crude and reckless assertions of " Janus," and defended to the best of my ability and with full sincerity institutions and individuals of the Middle Ages, I never said that all should be now again as it was then, and that all forms of that development should be retained or reintroduced. Nor had I any intention of rejecting modern civilisation altogether, though I could not conceal from myself that it contains elements of very doubtful value, and is very far from being purified from its dross ; that goods of a lower order receive at the present day undue attention at the cost of goods of a far higher order ; and that many resem-

blances are to be seen to that condition of ancient Greece and Rome, where, as life grew more refined, morals grew more corrupt. Our civilisation, which sprang from Christianity, has become in many ways estranged from its origin, and has gone back instead of going forward.* It must develop, we are told, independently of and in spite of, not the Papacy only, but Christianity in general. Already many Jews, in heart alienated from their religion, boast to take the lead in modern civilisation. Already much is cast aside as mediæval rubbish which formerly was revered by all Christian denominations. The spirit of the Encyclopædists is as powerful as it was a hundred years ago, and is far more widely spread. And yet no proof is brought that that great power, whether the Christian religion in general, or the venerable chair of the Prince of the Apostles, must have irrecoverably lost its civilising and ennobling force. Without the Papacy a fearful deficiency would arise for States, as well as for all cultivation and all law; disorganisation in religious, social, and political life would gain the upper hand; anarchy and the right of the stronger would everywhere triumph; and in the Church there would only be the alternative between Byzantine or Russian servitude on the one side, and the anarchy of unbridled private judgment on the other.'

Lastly, there should be noticed an error, or rather a calumny, which primarily indeed concerns the Catholics of Germany, but which to a certain extent concerns those of England also, especially since the recent charge of disloyalty brought against them. 'The chief effort of all the enemies of the Church is in these days to depict her as dangerous to the civil power, and under this pretext as far as possible to enslave her. This attempt is not new. The reproach of being dangerous to the State was cast against even the first Christians, and has been repeated a thousand times against the Holy See. But as the present time gives such slender support to such an accusation, the past is brought in to the rescue, and a search is made in the history of the Popes, in their letters and publications, for proofs that they

* Hettinger, *Apologie des Christenthums*, 3d edit. vol. ii. part 3, xix. and xx.

strove for the subjection or annihilation of the civil power in every country. In this search the distinction of different spheres is hopelessly confused. If the Holy See is not ready to condemn as usurpations various acts of former Popes, which are denounced as such, he is unblushingly accused of intending to repeat these acts himself. If the ecclesiastical authority, to be better able to meet the storms of a revolutionary age, is strengthened in its centre, this at once is held to weaken the civil authority. The admonitions of the Church are spoken of as declarations of war. Encouragement and protection is given to revolt against her, under the pretext—the common pretext of all heretics—that her doctrine and constitution have been changed. Since the ghosts of the Middle Ages, especially “Hildebrandism,” have been conjured up, the fear of the “Papal-Jesuit conspiracy” has so increased that the whole array of coercive measures, penal laws, courts and officers of justice, the police and the military force, have been held insufficient to meet it. And all these measures have been taken against a despised “sect,” against a society whose head has been robbed of his possessions and of all external power, and who is surrounded by a thousand troubles. True, indeed, this much-troubled head is the lawful successor of Gregory VII. and Innocent III., as well as of the great Leo and of Cephas the Galilean fisherman. True, indeed, in spite of his foes, he possesses in the eyes of millions a dignity and majesty with which the splendour of no earthly throne can compare. True, indeed, moral power is often stronger than physical. But is, then, our enlightened age to fear this moral power? Is not its “science” stronger than this “decrepit” authority? Can this authority have strength to fight when its doctrines are outlawed by “science,” and when the demand is made (as a deputy in the German parliament demanded) that in schools and universities “things” no longer shall be taught “which are in glaring contradiction with science”? Well may we say that the question: What is science? is like that other question: What is truth? and that more than one Pilate is to be found, who after asking this question turns away without awaiting an answer (John xviii. 38).’

III.

Finally, as to the structure and spirit of the following essays, Dr. Hergenröther speaks as follows: 'Instead of a strictly methodical exposition, which would have deterred many readers, and which would have made it impossible to answer fitly the unmethodical works of my opponents, I have preferred the form of separate essays, which are in close connection with each other, and which allow me to treat the chief subjects from various points of view. In this I have had before me the "Polycraticus" of the learned John of Salisbury, who treated the most interesting questions of his time with constant reference to Scripture, the Fathers, and classical authors, and who on every occasion declared his fidelity to the Church. "What," he wrote,* "is more dangerous or more detestable than civil war? Surely nothing except the rage of schismatics and the pestilence of heretics. It is hard to say which is worst of these two—heresy or schism; if, indeed, they are not rather to be considered as one. When Catholics are assailed by a heretic or schismatic it is a filial duty to support the truth and to serve the Popes devotedly; nor to delay when the schism is evident, since schismatics often pretend to be Catholics. For who shall presume to judge the highest bishop, whose cause belongs to God's tribunal alone? And in fact, whoever is guilty of this presumption, strive how he may, will never gain success." Truly we may say of the schismatics of our time what St. Irenaeus says of those of his time,† that they strain out a gnat and swallow a camel, and that they can effect no reform which is not out-balanced by the evil of their schism. Into further controversies

* Polycrat. l. viii. c. xxiii. (Migne, PP. lat. t. cxcix. p. 814).

† S. Irenaeus, Adv. Haer. l. iv. c. xxxiii. n. 7: 'Judicabit (spiritualis homo) et eos, qui schismata operantur, qui sunt inanes, non habentes Dei dilectionem suamque utilitatem potius considerantes, quam unitatem Ecclesiae, et propter modicas et quaslibet causas magnum et gloriosum corpus Christi conscindunt et dividunt, et quantum in ipsis est interficiunt, pacem loquentes et bellum operantes, vere liquantes culicem et camelum transglutientes. Nulla enim ab eis tanta potest fieri correctio, quanta est schismatis pernicies.'

I have no intention of entering ; but I am fully ready to retract or amend whatever, by the judgment of the Holy See or on adequate scientific grounds, may be shown in this work to be incorrect. All for the truth, nothing against the truth ; all for the Church of God and in union with her--this is my motto.'

ESSAY I.

THE HOLY SEE AND CIVIL ALLEGIANCE.

MANY writers and some statesmen have expressed their lively apprehension lest the Church, whenever opportunity arose, should renew those encroachments on the authority of the State which they say occurred in the Middle Ages; and they consider this danger has been increased by the definition of Papal Infallibility. We might well lay aside the historical question of 'mediæval Church encroachments,' and ask the reason for this apprehension, when simultaneously we hear it said that the mediæval notion of the supremacy of the Church has vanished for ever, that the sun of ecclesiastical power is fast setting, that the State has at its disposal greater intellectual forces than the Church, and that the political consciousness of the State is more efficacious than the 'religious emotions' of the Church in preserving manly energy and mental freedom. But in fact neither the teaching of theologians nor the declarations of the Popes afford any just grounds for the aforesaid apprehension, but much rather make plain its groundlessness.

PART I. THE TEACHING OF THEOLOGIANs.

§ 1. This presupposes the union of Church and State. § 2. Recognises for both the right of self-defence. § 3. Does not deny the independence of the State; and § 4. its freedom in its own sphere. § 5. In which, however, it is in many ways morally bound. § 6. The power of the State is not without limits. § 7. The power of the Church also has limits. § 8. The State has nothing to fear from the Church, but *vice versâ*, since the Reformation. § 9. The Church especially threatened from two quarters. § 10. Hindrances to the carrying out of the Church's principles.

§ 1.

The teaching of the theologians of the Middle Ages rested upon the supposition, justified then by facts and considered as a

matter of course, that the temporal and spiritual authority would live under one roof, constituting an undivided Christendom, and that both would be equally guided and governed by Christian principles.¹ Whoever will look at the matter from the mediæval point of view will perceive, as several eminent men of modern times—for example, Leibnitz and Mendelssohn—have done, that the widely-spread doctrine of the indirect power of the Church over temporal concerns is throughout consistent, and for those times an obvious conclusion.² We should not forget, as Phillips well says, that the commonwealth here spoken of does not include all States without distinction, but only the mediæval Christian State; that if we presuppose the separation of Church and State, many things will appear in quite a different light; and also that the Christian State of those ages cannot in all respects be taken as the rule and model for our own time.³

¹ Bossuet, *Def. p. i. l. i. c. ii. p. 87*: ‘*Haec autem valere volunt (adversae partis Theologiae), quando utraque potestas, civilis et spiritualis, pars est ejusdem reipublicae Christianae; tunc enim spiritualem potestatem praesse civili ut spiritum carni.*’ Cf. Bellarm. de Rom. Pont. v. c. vii. n. 2: ‘*Reges et pontifices, clerici et laici, non faciunt duas republicas, sed unam, i.e. unam Ecclesiam. Sumus enim omnes unum corpus (Rom. xii. 5; 1 Cor. xii. 12 seq.); at in omni corpore membra sunt connexa et dependentia unum ab alio. Non autem recte asseritur, spiritualia pendere a temporalibus; ergo temporalia a spiritualibus pendent,*’ &c. See also Bianchi, t. iii. l. i. c. i. § 6, n. 1, pp. 47, 48. Molina, tract. ii. de Just et Jure, disp. 29, n. 24.

² See the quotations in Beidtel, *Das Canonische Recht*, Regensburg, 1849, pp. 339, 341 seq. Besides the passages there given from Leibnitz (*Pensées*, vol. ii. pp. 406, 407), we should notice a letter to Pelisson, of March 18 (28), 1692. Here Leibnitz says: ‘*Quant au pouvoir de l’Eglise ou du Concile oecuménique sur les matières temporelles, je crois qu’il le faut reconnaître à l’égard d’une influence indirecte, que les matières temporelles peuvent avoir sur le salut des âmes. L’Eglise doit régler le cas de conscience encore à l’égard de l’obéissance due ou non aux souverains. J’excepte seulement le pouvoir de rebeller ou la voye de fait, que l’Eglise ne peut et ne doit point autoriser. Elle peut faire défense aux sujets d’obéir aux magistrats en certains cas, et ils sont obligés alors d’obéir plutôt à l’Eglise universelle qu’à leur souverain. Mais lorsque les souverains les maltraitent pour cela, ils ne doivent point être rebelles*’ (Foucher de Careil, *Oeuvres de Leibniz*: Paris, 1859, vol. i. p. 264). Cf. also Leibnitz’s *Réponse au Mémoire de l’Abbé Pirot touchant l’Autorité du Concile de Trente* (*ibid.* pp. 405-407).

³ Phillips, *Kirchenrecht*, vol. iii. § 126, p. 188 seq.

§ 2.

Even under the supposition of the union of Church and State it has been admitted by theologians,¹ some of whom lived in Rome, and wrote under the supervision of the authorities there,² that it would be allowable for civil princes to oppose the Pope in certain cases; for example, if he were to put forth unjust laws relating to discipline, or were forcibly to seize the possessions of others.¹ The mutual independence of Pope and princes is thus preserved. When the necessity for self-preservation is real and obvious, the State may organise its resistance, which is easily done, especially in these days. But the Church also possesses a natural right of self-defence;³ and just as any kingdom may expect from its neighbours that they will not wilfully excite its subjects to revolt, nor be guilty of any injustice towards it, and moreover may take up arms to protect its interests, if its just complaints are disregarded; so the spiritual kingdom of the Church, in cases of pressing need and for the preservation of its vital interests, may, when all representations fail, have resort to any means of defence in its power.⁴ Dollinger, on this subject, makes Bossuet's words his own: 'When necessity calls for it the Pope can do *everything*—of course with the reservation of observing God's laws.' He designates the Papal authority as one truly sovereign and free, 'necessarily endowed according to its nature and constitution with an extraordinary power for extraordinary cases and needs, whereby it may make all merely human rights bow before it, and appoint or allow exceptions to rules.'⁵ Ever according to the requirements of different times the Pope under the guidance of Providence has to increase or relax the strictness of ecclesiastical law, and for new maladies to provide new remedies;⁶ and he must take special measures against the union of wickedness and power.⁷ Thus the doctrine, that the Pope is to be compared to a free prince active throughout the entire Church, is no merely mediæval doctrine,⁸ but one that is implied by the nature and essence of the primacy.

¹ Anton. Cordubens. quaestion. l. iv. q. 10, dict. 3; l. iii. q. 13, reg. 3.

Sylvester in Summa v. Obedientia, n. 5, 6. Andradius in defens. Trid. Fid. l. i. Paris, TT. pro Conc. Basil. (in Monarchia, ed. Haiminsfeldii, t. i.) contra Leonem, p. x. Cajetan. t. i. Opusc. Tract. i. de potest. Papae, c. xxvii. Victoria, Relect. 1, de potest. Eccles. q. ult. n. 3. Sotus in l. iv. dist. 25, q. 2, a. 2. Driedo, l. ii. de Libertate Christiana, c. ii. L. Molina, Tract. ii. de Justitia et Jure, disput. 31, n. 4, 5, p. 64. See also Turrecremata, Summa, l. ii. c. cvi. pp. 246, 247. Bellarmin. de Rom. Pontif. l. ii. c. xxix. de auctore Concil. l. ii. c. ult. p. 51; Opp. t. ii. ed. 1721. Card. Sfondrat. Regale Sacerdot. l. ii. c. xiv. n. 4, p. 416, ed. 1684. Cf. Caron, Remonstr. Hibern. p. i. c. v. n. 16-22, pp. 12, 13.

² Bianchi, t. iii. l. i. § 5, n. 2, p. 43 seq. Mamachi, t. iv. p. 258.

³ L. iii. de Just. et Jure, ff. i. 1; c. iii. de Sent. Excom. v. 39.

⁴ The jus cavendi is therefore reciprocal. Phillips, Kirchenrecht, vol. ii. § 109, pp. 524-530.

⁵ Döllinger, Kirche und Kirchen, pp. 39, 40.

⁶ Abbot Wibald, of Stablo and Corvey, wrote (Ep. 114, p. 1208) to Eugenius III.: 'Licuit semperque licebit Romano Pontifici pro rerum qualitate et temporum varietate rigorem canonum intendere vel remittere et nova remedia novis morbis adhibere.' Cf. Ep. 191, p. 1288 seq.

⁷ Bernard. de Consid. l. iv. c. vii. n. 23: 'Ubi malitiae juncta potentia est, aliquid tibi supra hominem praesumendum. Vultus tuus super facientes mala. Timeat spiritum irae tuae, qui hominum non veretur, gladium non formidat.'

⁸ Syllabus, prop. 34, taken from the apostolic letter of 22 August 1851, against J. N. Nuytz.

§ 3.

But though a preëminence of the Church over the State, an ideal superiority of the Church, is assumed, this doctrine contains in reality none of the dangers often attributed to it. It by no means 'annihilates' or 'destroys' the civil power. For the superiority of the Church over the civil power is only called forth practically when the latter is no longer within its own province, when the interests in question are not purely civil, but have also a religious character. In its own province the civil power is fully independent as long as it does no injury to religion.¹ The Church does not demand a recognition of her superiority over the State for the promotion of the personal and temporal interests of her rulers, but only for the maintenance of the truth revealed by God, which is for the true interest of the State and the Christian people. She only requires that the recognition of God as the source of every right shall not merely be speculative and theoretical, but practically and truly acted

upon by the State, or at least that it shall not be positively contravened, which ever will be and ever has been injurious to the State. We must also remember the incontrovertible theological principle that Grace does not destroy Nature, that the supernatural order does not annul the natural order.² The Church could not possibly exercise everywhere the functions of the civil power, just as little as the civil power could exercise the functions of the Church. The Church needs the State as the State needs the Church.³ The Popes have laid no less stress on the coördination of the two powers than on the superiority of the Church. Innocent III. in a letter to the princes of the German Empire—an important document—brings forward from Holy Scripture four images to illustrate the position of the two powers,⁴ namely: the two Cherubim over the ark of the Covenant (Exodus xxxvii. 7 seq.), the two pillars in the porch of the Temple (3 Kings vii. 15), the two lights in the firmament of heaven (Genesis i. 14 seq.), and the two swords (St. Luke xxii. 38). Of these images, the two first are only applicable to a coördination of Church and State; and, as the Pope uses it, the fourth also illustrates this coördination.

¹ S. Thom. in l. ii. Sent. d. et q. ult.: 'In tantum saecularis potestas est sub spirituali, in quantum est ei a Deo supposita, sc. in his, quae ad animarum salutem pertinent; et ideo in his magis est obediendum potestati spirituali quam saeculari. In his vero, quae ad jus civile pertinent, magis est obediendum potestati saeculari quam spirituali, secundum illud: Reddite quae sunt Caesaris, Caesari,' &c.

² S. Thom. Sum. 2, 2, q. 10, a. 10: 'Jus divinum, quod est ex gratia, non tollit jus humanum, quod est ex naturali ratione.' Cf. Suarez, de Legibus, l. iii. c. vi. n. 9.

³ Petrus Dam. l. iii. ep. 6, ad archiepisc. Colon.

⁴ Reg. super negotio Rom. Imperii, Ep. 2. Migne, ccxvi. p. 997.

§ 4.

The two powers are not independent of each other in such a way that the one should have no need of and pay no attention to the other. On the contrary, each should always be ready to lend a willing ear to the representations of the other, and to redress all well-founded grievances. And in particular the State must obey the divine law committed to the Church.

‘The independence of the two powers,’ says Phillips, ‘can only mean that both are free in their exertions to fulfil their natural end; the Church has not to interfere in civil affairs, nor the State in ecclesiastical. The spiritual power has not to busy itself with the affairs of republics and kingdoms, nor with the temporal causes in the whole world; for these the civil power has to care, and as regards them it is the highest power and independent of the Church, provided these temporal matters do not themselves become opposed to the divine law.’¹ But for this limitation the liberty of conscience guaranteed to each Catholic citizen by modern constitutions² would be violated, a grave injustice would be done, and the well-being of the State itself endangered. The words of St. Bernard addressed to the French King Louis VII. are still true: ‘When the rulers of the earth make no opposition to the divine law, then is it that they hold their kingdoms and their rights entire and with full power.’³

¹ Phillips, *Kirchenrecht*, vol. ii. § 109, pp. 520, 521.

² In this way modern Constitutions conform to those religious requirements which are of a *negative* kind; *i. e.* that the State must command nothing which the Church must forbid, nor forbid what the Church must command. Cf. S. Thom. 1, 2, q. 1, a. 4; q. 96, a. 2.

³ S. Bern. Ep. 256, c. i. p. 462.

§ 5.

Juridical independence is essential to the State. There should exist within it no right of independent individual redress. No opposition to the final decision of its supreme courts should have any legal force. In the province which belongs to it no other power should issue commands. But this juridical independence does not exclude a wide moral dependence, which always exists and operates in various ways.¹ ‘The legislator,’ says Walter, ‘must be conscious that he never stands upon a quite independent footing, from which he can proceed as he will; for the actual circumstances, the customs, the spirit of the nation, limit his power in all directions.’² With regard to those sins which, being outwardly recognisable, *can* be made penal offences, it is not to be decided offhand whether they

ought to be made such ; but this depends on how far religion, morality, and law are merged together by the nation we may be regarding ; and this again depends on the degree of civilisation it has reached.³ The exercise of the State authority to protect public morality is by no means to be gainsaid ;⁴ but it has ' a limit from the fact that outward force cannot reach the conscience and the dispositions of heart, on which morality ultimately depends. These dispositions are determined by our free will, led by the intellect, which apprehends morality. This apprehension is the result of the right use of our religious and moral faculties, and thus is the product of purely spiritual operations. Moreover to keep it alive and vigorous is the special care of the Church. Consequently the State has not to enjoin under pains and penalties the performance of moral actions unless they are also duties of justice ;* for if they are done under compulsion they lose their meritorious character.'⁵

Every State is *morally* dependent to a great degree upon the circumstances in which it is placed : its climate and geographical position ; its commerce, industry, and scientific acquirements ; the peculiarities of its provinces and of the races under its dominion ; the development of the neighbouring countries and its treaties with them ; lastly, public opinion and the state of civilisation in general. Who will deny that at least in equal measure it is morally dependent upon the religious ideas of its inhabitants, and upon ecclesiastical institutions ?⁶ Religion has always exercised great influence upon nations, and through them upon governments. In proportion to its extent and activity every religious body has exercised an indirect authority over the government of the State. This influence, however great in ordinary times, does not, since it is purely moral and not juridical, make any change in the natural rights of the civil power, but only keeps it in check, and puts before it a certain

* We may explain that moralists divide duties into duties of love (*officia caritatis*) and duties of justice (*officia justitiæ*). The former, such as the duty of prayer, of gratitude, or of filial affection, are un-compulsory. The latter, such as the duty to pay our debts, or abstain from assaulting or insulting others, are compulsory. [TR.]

character which its entire course of action should assume. On her side the Church can only exercise a moral influence in so far as she gains the support of public opinion. This she can only do by moderation and by keeping her claims within the limits set by justice. She can only conquer when the goodwill of the faithful is on her side, and when they are borne up by the conviction of the justice of her cause.⁷ This is really the foundation of the doctrine of the indirect power of the Church over temporal affairs. 'This power can exist, even if the civil rulers be unwilling, in the case when they are in contest with the Church and public opinion is against them.'⁸ For that side conquers to which public opinion is favourable. So true is this that those States which pay no regard to the Church, but give themselves up to the dictates of Liberalism, only act thus because they believe that public opinion supports and requires such principles. In truth a direct and really despotic power is exercised in our modern States by rationalism or so-called free thought; that is, by those men of science whose motto is: 'La science, c'est moi.' And the civil power is less averse to their influence, because they reject the immutable principles of religion and morality, which are after all the only safeguards of liberty.

¹ Beidtel, *Das Canonische Recht*, p. 23 seq. 55.

² Walter, *Naturrecht und Politik*, § 390, p. 363.

³ *Ibid.* § 415, p. 392.

⁴ Pignatelli, *Consult. can. t. ii. cons. 56*, pp. 112, 113, n. 11-21.

⁵ Walter, *l.c.* § 447, pp. 428, 429.

⁶ Though not allowing religion to be the formal ground of any political rights, the State 'must always pay it regard as influencing the conduct of the citizens in their private legal relations, and as a source of social forms and social dignity; just as the State has to pay regard to money and credit.' Von Moy, in the *Archiv für Kathol. Kirchenrecht*, vol. xii. pp. 65, 66.

⁷ Beidtel, *l.c.* pp. 55, 584 seq. 356 seq.

⁸ *Ibid.* p. 350.

§ 6.

No State authority can claim to be absolutely boundless. False, then, is the 39th proposition condemned in the Syllabus;¹ for it asserts that the State is the origin and the source of all

rights (God alone is this), and that it possesses rights circumscribed by no limits. The State is finite, and nothing finite is without limits. The State has external physical limits in its geographical boundaries; and internal moral limits in the nature and aim of its existence. 'In the very notion of the State,' says F. Walter, 'considered as an association of reasonable moral beings, is contained a moral limitation of its power. This must be recognised or rather presupposed by every form of government that is not to be unworthy of the human race. Power is not its own end, but is for the general good. Every constitution is bound to make this moral limitation actively felt throughout its whole organisation; and this cannot be done merely by external forms. It is essential to the welfare of the State that this moral limitation of its power should be thus felt. Where it is wanting, power becomes arbitrary and self-interested; and government, as we can see, not in monarchies only, but also in republics, becomes despotism.'²

But this brings us to more general considerations.³ The great conservative* principle, in opposition to that of revolutionists, is, that everywhere and under all circumstances the rights of all be respected—the rights that in the particular State have gradually developed in accordance with revealed and natural law. The State that follows this principle does not cut itself off from its past history in favour of abstract theories: it builds not on new but on the old foundations. A Conservative can approve of no law that violates this principle. And as it is the civil power which has to protect, enforce, and develop the various rights and obligations of all its subjects, it would fail, according to the conservative principle, to fulfil this its proper end, if it deserted the path of organic legal development—that is, if it made laws in *doctrinaire* fashion, without regard to the history of the community. It can only fulfil its end if it regards its authority, not as a right that cancels all other rights existing among its subjects, but merely as one (though it may be the highest) among many other rights. Consequently (according to the conservative principle) the right of the civil power is limited by various

* On the terms 'Liberal' and 'Conservative,' see Introduction. [Tr.]

rights existing in the community.*⁴ The subjects can demand that the civil power respect their rights, while they are bound in their turn to respect the rights of the civil power—that is, they are bound to be subject and obedient to it, so that it may be able to fulfil its mission, which is both its duty and its right.⁵ This mutual relation of rights and duties between sovereign and subject is what St. Paul refers to (Rom. xiii. 1-8, Eph. vi. 1-9), and which in German law is called ‘*Treue*’ (loyalty). When subject and sovereign both fulfil their obligations, then there is said to be ‘*Friede*’ (peace). From this point of view, disloyalty can occur on one side as well as on the other, and the sovereign just as much as the subject can be conceived as disloyal and disturbing the peace. Quite in contrast, the revolutionary principle develops the State on an abstract system, without regard to the history and traditions of the particular country. In consequence, all existing laws and institutions which will not square with the abstract principle of government that has been adopted are swept away, and no personal rights of the subjects, that the State is bound to respect, are any longer recognised: only shadows of rights and of the holders of rights remain—shadows that disappear as soon as the State with its all-absorbing right ceases to regard them. Here all mutual relation of rights and duties between subject and sovereign is at an end: the State alone is active, the subject is passive, and he only becomes active in so far as, putting off the quality of subject, he becomes himself a part of the sovereign power.⁶

¹ The proposition is: ‘*Reipublicae status, ut pote omnium jurium origo et fons, jure quodum pollet nullis circumscripto limitibus.*’ It is extracted from the Allocution ‘*Maxima*,’ of June 9, 1862, where we read: ‘*Omnia . . . legitimae cujusque proprietatis jura invadere, destruere contendunt, ac praeterea animo et cogitatione confingunt jus quoddam nullis circum-*

* Here has been omitted the following passage: ‘*Subject eines Rechtes aber ist immer entweder eine Person oder ein zum Dienste der Person stehendes, dezhhalb mit Personenrecht ausgestattetes Institut. Indem nun das Recht des Staates an dem Rechte der Person seine Schranke hat, hat es seine Schranke an der Person, am Unterthanen selbst.*’ The omission does not injure the text; and to have made the passage intelligible, a lengthy note or lengthy paraphrase would have been needful. [Tr.]

scriptum limitibus, quo reipublicae statum pollere existimant, quem omnium jurium originem et fontem esse temere arbitrantur.' This is the theory called by Liberatore (*La Chiesa e lo Stato*, Napoli, 1871, c. i. p. 1 seq.) absolute Liberalism.

² Walter, *Naturrecht und Politik*, § 257, p. 234.

³ I am here following the excellent Catholic political writer, C. N. G. Rintel, *Der Protestantismus als politisches Princip*. Breslau, 1853, p. 15.

⁴ Guizot, de l'Eglise, p. 167: 'Le caractère essentiel de l'esprit chrétien est la respect de la règle et du droit, de *tous les droits*, des droits de Dieu comme des droits de l'homme, *des droits des gouvernements comme des droits des peuples*, des droits du passé comme des droits de l'avenir. Le caractère dominant et permanent de l'esprit révolutionnaire est au contraire la passion, tantôt la passion de la licence, tantôt la passion d'une idée fixe et exclusive, devant laquelle s'évanouissent tous les droits qui la gênent et à laquelle tous les moyens sont bons pour se satisfaire.'

⁵ Rintel, l.c. p. 16.

⁶ Rintel, l.c. pp. 17, 18.

§ 7.

But the power of the Church is also limited,¹ and in such a way as to prevent her using it to the injury of the State. The Church cannot abolish free-will; she can devise no plan for forcing all men to obey her; she cannot compel us to internal conviction or to external submission. 'The whole power of the Church,' says the Jesuit, M. Liberatore,² 'is moral; she possesses the means of coercion only virtually, in so far as she has the right to demand them from the civil power, which is subordinate to her. Hence there is an almost absolute impossibility of abuse, and for two reasons: first, because having herself need of the protection of the civil power against the violators of her laws and disturbers of her peace, she is led by the nature of her situation to pay scrupulous regard to the rights of the civil power, and rather surrenders to it what is hers than takes from it what is not hers; secondly, because the moral power with which alone the Church is formally endowed derives all its strength from the evidence of its justice. Consequently the Church always takes her stand on evident justice; and she could never think of making claims which could be proved to be unjust. Thus all things which evidently belong to the State, as matters which are purely civil and political, are quite safe from any danger of invasion by the ecclesiastical power.' If in doubtful

and disputed matters the question is about a general rule—a question of principle—it is clear to a Catholic that the Church, as teacher of truth and justice, cannot fall into error. If the question, however, is about the application of a principle, here the Church can claim no infallibility, and by her whole position is compelled to give full weight to the grounds adduced by the opposing party; and here in fact she has always shown, *salvis principiis*, the most compliant disposition.³ We must also remember that in these cases the State, on its side, can meet half-way the advances of the Church, and that even supposing it has to put up with some grievance unredressed, this is a minor evil compared to a conflict with the Church, and the consequent scandal and disquiet among the faithful.⁴ So stands the case where the State is founded on justice, and desires to deal justly with every single citizen. It is otherwise where a faction rules, which seeks at all hazards to trample down a Catholic minority; for here, in spite of pompous protestations of liberty, the government is a sheer despotism.

¹ Audisio, *Droit public de l'Eglise*, traduit par Labis, Louvain, 1864, t. i. p. 307: 'Dieu seul, à proprement parler, ne relève que de lui-même. L'Eglise et l'Etat, étant ses dépendances, et comme deux provinces ou départements de son gouvernement d'ici-bas, n'ont qu'une autonomie non pas absolue, mais relative.'

² *La Chiesa e lo Stato*, c. i. a. 8, pp. 113, 114.

³ Cardinal Gonsalvi, Note of Aug. 10, 1819. Cardinal Antonelli, Note of 29 Feb. 1860.

⁴ *Liberatore*, l.c. pp. 114, 115.

§ 8.

The Christian (Catholic) State, now indeed no longer existent, has, then, nothing to fear from the theological doctrine of the superiority of the Church, deduced from reason and the Fathers; while the States which give no preference to any form of Christianity, and still more those hostile to Christianity, have long taken good care that this doctrine shall in no form have any practical importance. 'The bond of union between Church and State,' says a recent theologian,¹ 'has so suffered through the unhappy division of faith in the sixteenth century, that a complete union of the two powers, such as their nature requires, is no longer to be

thought of. The Church, indeed, true to her mission, can never alter her conduct towards the State ; but with the aforesaid division of faith, the position of the State to the Church must be changed. Whilst all the members of the State still honoured the Church as the guardian of the true faith and morality, the State itself was able to give to her doctrines of faith and morality a *positive* recognition, that is, to make them the base of its own conduct, especially of its legislation. This could not go on when in the same State several religions were recognised ; and now we must be content if the State gives a *negative* recognition to the doctrines of the Church, that is, if it keep from violating them, and thus give its support to the operations of the Church.' The natural and immediate end of the State is the protection of rights ; its remoter end, the temporal felicity of its members. The civil government has no competitor in its office of protecting the whole society and its members both from internal and external attacks.² Von Moy well says :³ ' Since Christianity has set a supernatural end to our life on earth, and Christ has founded the Church for this end, it inevitably follows, at least for those who recognise this end and this Church, that they are bound to bring the order of this earthly life into harmony with its supernatural end, and, at least in this regard, not to place themselves in opposition to the Church.⁴ This conclusion applies to *all* earthly aims and *all* earthly institutions ; and those who recognise the aforesaid supernatural end and supernatural Church are all, in whatsoever earthly situation they may be, bound by the aforesaid obligation. Christianity and the Church may or may not be recognised ; but the rational conclusion from a recognition of them cannot be controverted. As long, then, as the Christian faith universally prevailed, and the Church was universally regarded as an institution founded by Christ for the salvation of men, disputes could indeed arise between the Pope and the Emperor, between bishops and civil princes, about *particular* rights and obligations ; but the *end* of the State, as well as of all the things of earth, could not be opposed to the end of the Church : the temporal order of things could not be opposed to the ecclesiastical order of things, as altogether independent

and simply an end in itself. Nor again, as had happened in heathen times, could Church and State be merged into one ; but they remained rationally united. The Church could no longer identify herself with any State or any civil order ; but every State found in her a source of elevation and consecration for its earthly efforts and institutions, and a healing balsam for the necessities from which they sprang. All this has been changed by the Reformation,⁵ which recognised, indeed, the supernatural end that had been given to our earthly life by Christianity, but rejected the Divine institution of the Church, with her sacerdotal and teaching office.⁶ The work of the Church was thus transferred to the State, and the Church made an institution of the State. Religion became at once a serviceable instrument in politics : and this occurred not merely in Protestant, but also in Catholic countries ; for the need of protection against the violence and encroachments of Protestantism gave such great prominence to the civil sword and State authority, and made the position of the rulers of the Church so difficult, that even in Catholic countries the State grievously encroached on the religious domain.⁷ This abuse was formally erected into a system, and called in France, Gallicanism ; in Germany, Febronianism or Josephism ; in Spain and Portugal, Pombalism. It was a system of hypocrisy and meanness, and its results were soon evident. In the Protestant States the Reformation continued its work of disintegration ; and the break up into a multitude of sects at length rendered it impossible for the governments to continue their ecclesiastical dominion : in the Catholic States the depreciation and misuse of all that was most holy, the insubordination of the powerful and the powerlessness of the clergy, shook the faith of the masses, and in a great measure wholly destroyed that of the upper classes.⁸ This led to the French Revolution, which rejected Christianity and Church alike, and set up the State anew as an institution reposing simply on human wills, and existing simply for this life and for earthly ends. This is the "modern State," according to the pattern of which all other States of Europe have gradually transformed themselves, and made its constitution and principles their own. When it first arose it made a vigorous attempt to

extirpate Christianity, and a weak attempt to create a heathen religion⁹ as a support for itself. As both failed, it had to allow Christianity to exist, but only as a matter of personal taste and individual opinion¹⁰—only as a form, in itself indifferent of religious views, having no claim whatever to political influence or recognised legal position. This is the modern principle of “freedom of conscience” which is as necessarily and essentially connected with the modern State as the idea of the finite with that of the infinite.’

¹ Reinerding, ‘Der Ursprung und die Gränzen der St. Gewalt,’ in the *Archiv für Kath. Kirchenrecht*, vol. xiv. pp. 191, 192.

² Idem, *Archiv*, vol. xiii. p. 378 seq.

³ Der moderne Staat und die Kath. Kirche: *Archiv*, vol. xii. p. 62.

⁴ See Suarez, *de Leg.* vol. iii. p. 7.

⁵ Bluntschli, in Sybel's *Histor. Zeitschrift*, 1861, vol. i. p. 83, recalls the heretics from Arnold of Brescia to Wiclif and Huss, who represented the national idea. The national-political movement played a great part in the Reformation, though the Reformers were scarcely aware of it.

⁶ Bluntschli, *l.c.* pp. 83, 84, says: ‘The Reformers did not indeed renounce the idea of a community of the faithful, but they willingly *subordinated to the State the external manifestation of the Church*, and recognised in the State also a moral nature and end (but this had not been previously denied). To the State exclusively they attributed all power of compulsion, and consequently *all* legislation, government, and jurisdiction. The Protestant State was not yet fully emancipated from theological doctrines, but fully from the rule of the Church. In its essence it was a first attempt, as yet indistinct, after the modern State, which finally has freed itself from denominational limitations and the authority of theology.’

⁷ The Catholic princes who had done good service to the Church at the time of the Reformation, and who had received from her in consequence great privileges, soon assumed the character of her guardians, and in this way pushed the power of the State beyond its former limits.

⁸ Though this state of things came about in most Catholic countries, its characteristic was abandonment and persecution of Catholicism. It is hard to understand the reproach directed (by Schulte, vol. ii. p. 16) against the Church and the Holy See, that the Revolution is permanently installed in Catholic countries. Decatholicised and dechristianised States are no longer Catholic. Under the revolutionary governments of Spain, Mexico, and Italy, the Pope and faithful Catholics have received only ill-treatment, and more of it than any one else.

⁹ On August 10 and November 10, 1793.

¹⁰ This is the view of the *Revue des Deux Mondes*, Avril et Mai 1869, see espec. p. 701.

§ 9.

Two theories especially have gained prevalence outside the

Church. One identifies or at least merges together Church and State, causing the former to be absorbed by the latter, and desiring the State to be raised into a god and worshipped. The other theory desires the two to be separated, but only in such a manner that the Church may be subordinated to the State. The first theory has found especial support among the followers of Hegel. It is maintained by Laurent, who rejects the notion of the Church even as an independent spiritual power, and dissolves it into the State, which indeed he would have limited by the sovereignty of individuals and by private law.¹ The second theory, however, seems the most prevalent. According to Bluntschli,² 'Our century aspires after the separation, not the mingling of the two provinces;' and his formula is: External superiority of the State over the Church, and internal equality of these two moral persons.³ It is not quite clear which of the two theories is to gain the upper hand in Germany; perhaps Hegel's notion of the State will first become realised, and inaugurate a witches' Sabbath, out of which the second theory will be able to develop. However this may be, both theories are equally opposed to the Catholic Church; she is universal, and thus cannot be identified with any single State; her aim extends far beyond earthly existence; she knows that though she is distinct from the State, it is not God's will for her to be separated from it; she knows that she is a *perfect society*,⁴ with her own particular end and means and field of operations, and that she cannot subordinate to any earthly end her supernatural end. A perfect society is one which is neither part of another, nor from the nature of its end falling within the province of another.⁵ Both the theories we have mentioned have sought to deny to the Church the character of a perfect society, of an independent existence, or of a kingdom. Thus the Protestant jurist, Samuel Pufendorf,⁶ held the following view: 'If we assume the independence of the Church a double sovereignty is introduced, since under the pretence of deciding disputes men can be held in subjection just as well as by commands relative to civil conduct; since, further, a spiritual chief, unless he confine himself to imitating our Lord in preaching and doing works of

mercy, and submits patiently to everything,⁷ must be able to carry out the judgments he pronounces; and this again entails a double sovereignty, or if the carrying out is transferred to the State, the latter is degraded into being the servant or bailiff of the Church;⁸ it follows that the Church should only be a subordinate society within the State; (a 'collegium' instead of a 'societas perfecta.')⁹ Such views were elaborated in many works of the last century,¹⁰ and the ecclesiastical authority became step by step so narrowed as to be reduced to a mere shadow. The State desired to be all in all. 'Since the Reformation,' says a modern jurist,¹¹ 'the right of supremacy over ecclesiastical affairs (*jus majestatis circa sacra*) became an integral portion of the conception of the modern State. This brings about the enslavement of the Church, making constantly more firm the chain whereby the State holds her fast. Her constitution, her internal organisation, her power of jurisdiction, all that concerns the education of the clergy—nay, even matters of science, of faith, and of ritual—all these become subject not merely to the protestation or inspection (*jus reprehendendi, cavendi, inspiciendi, placetum*), but also to the direction of the State (*jus dirigendi*).'¹² Thus the positions of Church and State have been quite changed, and the words of the old writer Goffridus have come true: "If the Church is subjected to the civil power, she who was before a mistress will become a slave."¹³ In truth, the absolutist doctrine of the State, making it not merely the highest but the only factor of all development, the one source of every right and every security,¹⁴ leaves no room for the existence of an independent Church, which would be incompatible with it, and only admits religious associations with the rights of corporations.' This rejection of all ecclesiastical independence is, indeed, here and there softened down in its practical application, and the Church can often be content if her rights as a corporation are respected and protected; but she can never regard as a true doctrine that which disregards her divine origin and divine rights.

¹ Bluntschli, l.c. p. 85 seq.

² Ibid. p. 87.

³ *Ibid.* p. 88. Bluntschli allows the similitude of marriage between the two, provided the State (*l'état* rather than *respublica*, *civitas*, *imperium*—the State in the modern rather than in the old sense) be taken as the husband, the Church as the wife.

⁴ Syllabus, prop. 19, from the Allocution of Dec. 9, 1854, Dec. 17, 1860, June 9, 1862.

⁵ S. Thom. Sum. 1, 2, qu. 90, a. 3, ad 3.

⁶ Samuel Pufendorf, *de habitu religionis Christianæ ad vitam civilem*, § 11, p. 33, ed. Brem. 1687, will not allow that the Church is a status, a *summo imperio civili separatus vel exemptus*. By status he means a *conjunctio plurium hominum, quæ imperio per homines administrato sibi proprio et aliunde non dependente continetur*. Cf. § 32, p. 100; also Joh. Heineccius, *Element. jur. natur. et gent.* l. ii. n. 183 seq. t. i. p. ii. Opp.

⁷ The proposition of M. A. de Dominis, *de rep. Christ.* l. i. c. i. n. 13: 'What Christ on earth in mortal frame visibly practised, that, *and that alone*, did He commission men His servants to practise; and what in mortal body He did not practise visibly, that He did not intrust to mortals, and was bound not to intrust it, but to reserve it to Himself as head and master,' was styled in 1618 by the Cologne theological faculty the heretical foundation of the heresy which De Dominis afterwards developed further (Du Plessis d'Argentré, *Collect. Judic.* t. iii. p. ii. p. 194), and which also *ex negatione violentæ dominationis deduces a negatio legitimæ potestatis* (*ibid.* p. 195).

⁸ Pufendorf, *l.c.* § 35, p. 116 seq. Just the same language is now used against the Catholic Church. They say, for example, that Bavaria has two governments, one at Rome, the other at Munich.

⁹ *Ibid.* § 39, p. 130 seq. This is further developed by Justus Henning Böhmer, *Jur. Parochial.* § i. c. i. ii. iii., and *Jur. Eccles. Protest.* l. i. tit. 33, n. 8.

¹⁰ One of these was called: *Principes sur l'essence, la distinction et les limites des deux puissances, spirituelle et temporelle*. Ouvrage posthume du Père La Borde de l'Oratoire. It was forbidden by the Roman Inquisition, August 5, 1753, and Benedict XIV. warned the bishops of Poland against it, as it was much spread there. Roscovány, *Mon.* t. iii. pp. 154-156, n. 473.

¹¹ Hübler, in Dove's *Zeitschrift für Kirchenrecht*, 1863, vol. iii. p. 418.

¹² Hübler here refers to Bluntschli, *Allgem. Staatsrecht*, vol. ii. p. 373 seq., and to the Church laws of Baden and Württemberg in 1860 and 1862.

¹³ Goffrid. *Opusc.* iv.; Sirmond. *Opp.* iii. 589: '*Quando vero Ecclesia seculari potestati subjicitur, quæ ante domina erat, ancilla efficitur.*'

¹⁴ Hübler here refers to Aegidi (*Erlanger, Theol. Ztschr.* N.F. vol. xxxvi.), and Hermann (*Mesznor's Evang. K. Ztz.* 1859).

§ 10.

Where, however, modern States exist with 'freedom of conscience,' and several religious denominations with equal rights, it is impossible fully to carry out the principles of the Church.

Rules for a society in good health cannot be applied in a society that is sick. 'We may still hold,' says Von Moy,¹ 'as unnatural and unreasonable the complete disregard by the modern State of every aim of life that goes beyond man's existence on earth, especially as it is really a practical denial of the immortality of the soul ; none the less, we must recognise it as a fact which we are not able to alter ; nay, we must even admit that in consequence of our present religious divisions there is a certain necessity and justification for it, and for the consequent position of the State. For it is the position which, through the Reformation in Germany, was prepared for the emperor and empire by the treaty of Westphalia, and which by the consequences of that treaty became common to all governments, and acted in favour of all creeds. The right of dissidents to migrate into a country where their own religion prevailed (*jus eundi in partes*) was a natural consequence. But further, the right which was claimed and maintained against the emperor by the German princes to determine at pleasure the creed of themselves and their subjects, can with equal reason be claimed by every father of a family or independent citizen against his own government ; and in immediate connection with this is the right in matters of conscience to be independent of any vote of a majority in a political assembly.' A Catholic, as Von Moy shows, has a right in every State to—1. free intercourse with the Pope and the bishops as to ecclesiastical affairs ; 2. free profession of his faith by word or writing ; 3. free exercise of worship and satisfaction of his religious needs both within and without the sacred edifices ; 4. free pursuit of Catholic moral teaching, especially as to marriage, education, works of charity, and religious associations ; 5. free disposition of property for ecclesiastical purposes. But the influence of the Church on temporal matters, as exercised in the Middle Ages, is impracticable in modern States, unless all dissidents were freely to embrace the Catholic faith, and the civil power itself were to desire the exercise of this influence. But there is not the least appearance of this happening.

Nevertheless, we must always and everywhere hold fast the great truth inseparable from Christianity, that the salvation of

the soul ranks far above all earthly goods; that the kingdom of God is above the kingdom of the world—the spiritual above the temporal. From Scripture and the early Church comes the truth that the supernatural end must take precedence of any other.

¹ *Der moderne Staat und die Katholische Kirche*, pp. 63, 64.

PART II. THE DECLARATIONS OF THE POPES GIVE NO CAUSE FOR APPREHENSION.

§ 1. Nothing defined as to the power of the Church over temporal matters. § 2. The Bull 'Unam sanctam.' § 3. Further objections. § 4. Approbation of the Bull by the Fifth Council of the Lateran. § 5. Utterances on ecclesiastical immunities. § 6. The Bull 'Cum ex apostolatus officio.' § 7. Further objections. § 8. The Bull 'Cum quorundam.' § 9. The Bull 'In coena Domini.' § 10. Other Bulls also irrelevant. § 11. The Schema as to the Church that was laid before the Vatican Council. § 12. Canons in this Schema on the relation of Church and State. § 13. The three last chapters of the Schema. § 14. Confusion of ideas among our opponents.

§ 1.

The Church has never declared it to be an article of faith that temporal princes, as such, are in temporal matters subject to the Pope.¹ Individual theologians, as Bellarmine and Suarez, have indeed held it to be a dogma that in certain cases they are subject;² but these theologians held Papal Infallibility to be also a dogma; and just as their opinion on the latter point does not prove that Papal Infallibility was a really defined dogma before the decision of July 18, 1870, so their opinion on the former point does not prove that the power of the Church over temporal matters is a dogma before a decision has been published; and this has not yet taken place.³

¹ Cardinal Du Perron, *Replic.* l. iv. p. 745. Cf. Bossuet, *Defens. Dissert. Praev.* § 89, p. 75. Natalis Alexander, *Hist. Eccl.* §§ 13, 14, *Diss.* ix. a. 7, n. 4, t. xvi. p. 350, ed. Bing. Bossuet, *Defensio Declar.* l. i. § 1, c. xi. p. 108: 'Placet autem hic in antecessum expromere . . . Gregorium VII. aliosve Pontifices . . . nunquam decreto ad omnem Ecclesiam edito docuisse, eam sententiam, quae ecclesiasticae potestati talia vindicaret, ad integritatem fidei Catholicae aut ecclesiastici dogmatis pertinere. . . . Quare etiam ii, qui pontificiam infallibilitatem vel maxime tumentur, ab hac sententia abhorreere deque his, ut et de aliis pontificum gestis, libere disputare possunt.' Cf. l. iii. c. xxiv. p. 326 seq., c. i. seq. p. 272 seq. Pey, *De l'Au-*

torité des deux Puissances, Strassbourg, 1780, vol. i. p. 91: 'Les Papes eux-mêmes dans les décrets, où ils s'efforçaient d'établir leur prétentions, n'ont jamais rien défini expressément là-dessus.' Fleury, Hist. Ecclés. t. xix. l. 90, n. 18. Gosselin, op. cit. ii. p. 293 seq. Bianchi, t. i. l. i. § 21, n. 1, p. 184. Mamachi, op. cit. t. iv. p. 244. John Trithemius, Chron. Hirsau. ad annum 1106. Martin Gerbert, of St. Blaise, de legitima Ecclesie potestate circa sacra et profana: typis monasterii S. Blasii, 1761, l. iv. c. i. n. 12, p. 637 seq. Phillips, Kirchenrecht, vol. ii. § 116, p. 627. Beidtel, Das Canonische Recht, p. 360. Spalding, Archbishop of Baltimore, Lectures on the Evidences of Catholicity, 4th edit. 1866, pp. 377, 378.

² Quoted by Döllinger, Erwägungen für die Bischöfe des Concils, München, 1869, p. 13, § 19.

³ So also Covaruvias, t. i. Relect. c. peccatum de R. J. in 6, p. ii. § 9, n. 7, says: 'Hactenus nihil certum in hac controversia Ecclesia Catholica definivit; propterea disputationi locus est absque ulla haereseos suspicione.' He then cites a number of older writers. Similarly Navarrus, in c. Novit. de Judic. vol. ii. p. 1, n. 3, &c., cited by Caron, Remonstrantia Hibernorum, p. ii. c. ix. p. 91.

§ 2.

Great efforts indeed have been made to discover such a decision, and the Bull 'Unam sanctam' of Boniface VIII. has been brought forward as such.¹ But in this Bull it is only defined that all must give the due religious obedience to the Pope, not obedience in purely temporal matters.² One sentence alone is marked out as a definition of the Church by the words: 'We declare, define, and proclaim.' All the rest of the Bull is no definition. And we must, as before observed, in every doctrinal decision of the Pope or General Council, distinguish between the definition itself, and the grounds or reasons alleged for it. Only the definition itself is infallible. This is no new distinction, but one that has ever been well known to theologians and canonists, and also to the Roman Court.³ The reasons alleged are doubtless often of great importance, for rightly understanding the particular question, but they have not the same binding force. It is thus no contradiction to this view (as the *Allgemeine Zeitung* of May 6, 1871, asserted), that Bishop Fessler blamed Schulte's book for citing the decisions of the Vatican Council without the reasons prefixed by the Council; for precisely these reasons serve to remove many misunderstandings about the decision itself.

¹ By 'Janus,' Döllinger, Schulte, and others.

² Pey, l.c. : ‘Boniface VIII. termine sa Bulle “Unam sanctam” contre Philippe le Bel par la maxime, qu’aucun Catholique ne conteste, savoir que tous les fidèles doivent être soumis au Souverain Pontife de nécessité de salut, mais sans définir, qu’on doive lui être soumis même sur les matières temporelles.’ See Walter, *Kirchenrecht*, § 44, p. 81, n. 15, 11th ed. Phillips, *Kirchenrecht*, vol. iii. p. 256. Rintel, *Der Protestantismus als politische Princep*. Breslau, 1853, pp. 105, 106. Merkle, in the *Augsburg Pastoralblatt*, 21 May 1870, who cites Fénelon, de Auct. Rom. Pont. c. xxvii. I have treated the Bull in detail in the work *Ueber das Vaticanische Concil*. Mainz, pp. 36-45.

³ In the work mentioned in the previous note I have cited the Dominican bishop Melchior Canus, Bellarmine, Suarez, the Franciscan Bianchi, the Capuchin J. A. Benettis, the canonist Berardi, Pope Gregory XVI. (as Maurus Cappellari), Francis Veronius, Montagne, De la Hogue, Carrière, Gosselin, Pey, Beidtel, Wieser—truly a good number of important writers. We may add to them the Gallican Natalis Alexander, who says (H. E. § 13, 14, *Dissert. ix. art. 2, n. 16, t. xvi. p. 331, ed. Bing.*) : ‘Cujus (Bonif. VIII. in Bulla Unam sanctam) *argumentis assentiri non tenemur, quamvis Ecclesiae Rom. ceterarum matri et magistræ in decretis fidei et morum non parere sit nefas.*’ And more fully he says (*ibid. a. 7, n. 3, p. 349*) : ‘Bonif. *in proœmio ac prolusione, ut ita loquamur, definitionis suæ ut homo ratiocinatur et Scripturam exponit; nihil humani ab ipso alienum putamus. . . . In fine diplomatis § Porro pronunciat ut pontifex, doctrinam Scriptura sacra et traditione contentam, a Rom. et universali Ecclesia semper assertam velut dogma fidei Christianis universis proponit. “Porro,” inquit, “subesse Rom. pontifici . . . esse de necessitate salutis.” Quod et nos ut dogma fidei recipimus, credimus, docemus, et prædicamus, de subjectione Christianorum omnium et singulorum, etiam regum et imperatorum, summo Pontifici jure divino in spiritualibus dumtaxat intellectum. Atque propter istam conclusionem, quæ sola vim definitionis et apostolici oraculi proprie habet, sartam tectam hujus constitutionis auctoritatem voluit procul dubio Clemens V.’*

§ 3.

It has been objected¹ that ‘if this were so, it would follow that the doctrine of the power of the bishops as an ordinary and immediate power has not been dogmatically decided, since in the third canon this doctrine is only mentioned in the *introduction* to the real dogmatic decision. Would Bishop Fessler agree to this?’ We believe he would certainly agree; for the doctrine of the power of the bishops needed no definition, being previously doubted by no one. The decree only intended to treat of the head of the Church; in so doing the doctrine of the episcopal power was also recognised, and this was sufficient for the purpose in hand. Secondly, it has been said: ‘From

Bishop Fessler's assertion it would result that a Pope sitting down to write a dogmatic Bull would in one line possess, in the next be without, the gift of infallibility, and we should never know which of the two had been the case in any given line.' But this we do know perfectly, simply from the wording of the imperative (dispositive) clause. Any tyro in jurisprudence knows how to distinguish between the judicial judgment and the grounds for the decision, between the *dispositivum* and the *motivum arresti*, as the jurists of the French parliament used to express it.² The Popes have ever taken full care, even when they have not themselves drawn up the wording of the entire Bull, that the doctrine to be held fast (*doctrina tenenda*) be clearly expressed for every one, and they will be able to take the same care in future. If they do not, then they will have defined nothing. We must also remember that every doctrinal decision has its history, and that in the controversies preceding the decision the doctrine in question is made clear and prominent; moreover, the freedom of theological opinions allowed by the Church is a sure token that this or that point has not yet been defined. A third objection is that some bishops of the 'Opposition' have called this limitation of the definition absurd. But the authority of a minority of bishops eager to support their view can certainly not decide the matter, unless that view has weighty reasons in its favour. Our opponents reply that this is the case. They say the Pope intended to assert the complete subordination in spiritual and temporal matters of the King of France to the Holy See, since no one assailed the Pope's spiritual power. We answer that history proves just the reverse, for the Pope in the Consistory and the Cardinals in their letter to the French nobles expressly guard themselves against the misrepresentation of the French statesmen, and against the views they were falsely charged with holding. Surely we ought rather to believe the Pope, the Cardinals, and the theologians who followed, who had a constantly observed rule to guide them, rather than the intriguing Peter de Flotte with his companions, and those who had an interest to exaggerate the import of the Pope's words. Outside France the Bull gave no offence, and it was for France

alone that the thoroughly French Pope, Clement V., in order to pacify and appease his countrymen, made the declaration that through the said Bull France and its king suffered no prejudice, and were not bound to greater obedience to the Roman Church than before. It is, however, further objected that in two writings of the fourteenth century this Bull is regarded as defining the complete subjection of temporal princes to the Pope. But the authors of the *Defensor Pacis*, bitter enemies of the Holy See, are no authority, and moreover bring no proofs; while Alvarus Pelagius is an illogical writer,³ and moreover considers as decided merely the question relating to the two swords belonging to the Church.⁴ 'Still,' says Professor Huber, 'allowing Hergenröther's softening down of the Bull, the fact that the Pope is authorised to sit in judgment on the civil power as to matters of sin leaves a back door open for old theocratic absolutism to come in; for the Popes, who in a concrete case decide what is sin, have both in theory and practice asserted over sinful princes and magistrates the power of censure even so far as to depose them; and this was done not only before the time of Boniface, but long after him.'⁵ To this we answer: (a) By the same mode of argument we can say the principle that the State may interfere in religious matters whenever they at all touch on civil life brings with it State absolutism over the Church, so that the latter is completely trodden under; for in individual cases the State decides what has regard to civil life, and often even claims the entire external side of religious life as within its jurisdiction. (b) According to history and existing documents the Popes have 'asserted over sinful princes and magistrates the power of censure, even so far as to depose them,' only as long as they could presume the continuance of the public law which prevailed in Christian Europe throughout the Middle Ages. It was only in the course of the sixteenth century that this public law was everywhere shattered: in the seventeenth and eighteenth it was altogether set aside. The Popes had still, as they must always have, a right to condemn any Catholic prince who was guilty of grave sins dangerous to religion, even though they could no longer inflict a punishment which brought

with it the loss of temporal power, since this was no longer a consequence of excommunication. Even the portion of the Bull not constituting the definition does not say that the civil power in its own sphere, that is, in purely temporal matters, is dependent on the spiritual power. As long as the former remains purely within its sphere it is independent. But just as the modern State claims an influence in religious matters whenever and so far as they touch the civil domain, so the Church can claim an influence, or at least a right of judging, on temporal matters, whenever they enter on the religious domain, and thus cease to be purely temporal. And this, in one form or another, she has always done. Boniface VIII. could quite well adduce in his Bull the doctrine universally taught in the schools without making it the subject of a dogmatic decision. (c) No mention is made of deposition in the whole Bull, but only of passing sentence, which can be done simply by excommunicating. As a final objection reference is made to the *Civiltà Cattolica*, which we are told, in the first number for February 1870, declared as heretical the doctrine that the State has its own province independent of the jurisdiction of the Church. But first of all, this Roman periodical, though its zeal and religious spirit have gained for it the praise and encouragement of the Holy Father, is not decisive as to doctrine, nor is anything more than the work of private individuals; and secondly, it contains no such declaration as alleged. One of its articles treats of the proposals made in hostility to the Council, and especially considers the case of rulers passing laws against the definitions of General Councils. Such laws, according to the ancient doctrine of the Church, are not binding in conscience. They are violations of freedom of conscience. He who believes the doctrinal decisions of the Pope are infallible can be compelled by no law to believe they are fallible. The article proceeds to speak of the superiority of the Church in the same sense as is used by the Fathers of the Church and the theologians of all centuries; at the same time it fully recognises that the civil power is from God. It moreover distinguishes that which Boniface VIII. *defined* (*definisce*), namely, that obedience

to the Pope is necessary to salvation, which without doubt is an article of faith; and that which he *provel* (stabilisce), namely, the subordination of the temporal to the spiritual power, which is the teaching of all theologians and canonists, and which no one can deny who understands the meaning of the words.

¹ By Berchtold, *Die Unvereinbarkeit*, &c. p. 20, note *.

² Every beginner in theology knows that in the Bull of Dec. 8, 1854, the words containing the definition are: 'Declaramus, pronunciamus et definimus, doctrinam, quae tenet, B. V. Mariam . . . ab omni originalis culpa labe praeservatam immunem, esse a Deo revelatam, atque idcirco ab omnibus fidelibus firmiter constanterque credendam;' and that the rest is only further explanation. No less clearly marked is the definition of Boniface VIII.: 'Porro subesse Romano Pontifici omnem humanam creaturam (according to 1 Pet. ii. 13. Cf. Mark xvi. 15. Greg. M. hom. 29 in Evang. The fifth Lateran Council puts: Omnes Christi fideles) declaramus, dicimus, definimus et pronunciamus omnino esse de necessitate salutis.'

³ Mamachi, l.c. p. 182, nota.

⁴ De planetu Eccles. ii. 60: 'Pono extravagantem Bonifacii VIII., quae istam determinat quaestionem.'

⁵ Huber, p. 39.

⁶ In two cases, says the article, a subject is not bound to obey his superior: 1. when there is an opposing command of a higher authority; and 2. when the superior commands things concerning which the subject owes him no obedience. St. Thomas, 2, 2, q. 104, a. 5, is cited: 'Subditi in iis tantummodo superioribus suis obedire tenentur, in quibus ipsi superiores sublimioris potestatis praecepto non adversantur, et in quibus ipsi suis superioribus subjiciuntur. . . . In his quae pertinent ad interiorem motum voluntatis homo non tenetur homini obedire, sed solum Deo.' And reference is made to the words of St. Augustine, *Serm. 6 de Verb. Dom.*: 'If the proconsul commands one thing and the emperor another, who doubts that we must obey the emperor and disregard the proconsul? And thus, too, if the emperor commands one thing and God another, we must obey God and disregard the emperor.' Also to Seneca, *de Benefic.* iii.

§ 4.

The Bull 'Unam sanctam' was expressly renewed by the fifth Lateran Council. This confirmation is adduced by Schulte in proof of the dogmatic character of the Bull (denied indeed by no one). But if he and the other opponents of Papal Infallibility make use of this Bull against the infallibility of the Pope, they must make use of it also against the infallibility of General Councils, since one of these has approved the Bull. The fact is

they no longer recognise any infallibility at all of the Church, though for long they maintained that as faithful Catholics they honoured her. What, however, the fifth Lateran Council does prove is that only the concluding sentence, on the necessity of giving due obedience to the Pope, was considered as a dogmatic decision ; to this sentence alone does the Council expressly refer. Yet even this sentence is unendurable to modern opponents of the Holy See, just as it was to M. A. de Dominis, who declared it contained an intolerable error.¹ His declaration was denounced as heretical by the Cologne theologians ;² and indeed even Gallicans³ have long recognised that the submission due to the Pope is enjoined by the divine law.

It is true that the error of the Manichaeans that there are two principles, one good and one bad, is called heretical by the Pope in this Bull. But this is only said *by the way*—*obiter et incidenter*—and is no dogmatic decision ;⁴ which indeed was unnecessary, since the Manichaean error had been condemned long before. Similarly from the contents of the Bull we can gather confirmation of other propositions, but cannot from this infer that they are defined. The Brief ‘*Multiplices inter*’ of 10th June 1851 is no dogmatic infallible decision, because it decides no more than that the book of Vigil is to be considered condemnable and forbidden ; no doctrine of the Church is affirmed in the Brief, nor are any single determinate assertions of Vigil declared heretical. [See note at end of this volume.]

¹ M. A. de Dominis, de Rep. Christ. l. iv. c. x. n. 98.

² Du Plessis, t. iii. p. ii. p. 227.

³ So the Sorbonne, in 1535, 1542, 1554, 1562, and at other times, declared: ‘*Nec minus certum est, unum esse jure divino summum in Ecclesia Christi militante Pontificem, cui omnes Christiani parere tenentur*’ (Du Plessis, t. i. p. ii. p. 414 ; t. ii. p. i. pp. 323-327 ; p. ii. p. 394).

⁴ What is said by the Pope *obiter et incidenter* deserves the highest respect, but cannot be considered as the matter of a doctrinal decision. So Canus, de loc. Theol. l. v. c. v. f. 170: ‘*Porro quae in Conciliorum vel Pontificum decretis vel explicandi gratia inducuntur vel ut objectioni respondeatur vel etiam obiter et in transcurso praeter institutum praecipuum, de quo erat potissimum controversia, ea non pertinent ad fidem, h. e., non sunt catholicae fidei judicia.*’ Bellarmin. de Cler. i. 28. Tanner, de Fide, disp. 1, qu. 4, dub. 6. Alphons. Lig. Theol. Mor. l. vi. n. 112. Merkle,

Kritik des Gutachtens der Majorität der Münchener Theol. Facultät. Dillingen, 1869, p. 18 seq. nr. 7.

§ 5.

But it is said: 'Both Boniface VIII. and Leo X. (in the fifth Lateran Council) defined that clerical immunities exist by divine law, that the clergy are free from the civil power, and that in consequence they are not bound by the laws of the State. No modern State can be reconciled with such a doctrine.'¹ But in both documents the expressions regarding these points are only incidental and subordinate propositions;² nor do they form in any way the subject of a dogmatic definition. Otherwise the theologians and canonists of later times would not have been able to discuss under the eyes of the Roman Curia whether and how far the clergy were subject to the laws of the State.³ But also the words are incorrectly quoted. It is not said simply that churches and ecclesiastics are by divine law exempt from the power of laymen, but that they are so *both by divine and human law*. The term 'divine law' (*jus divinum*) is often used simply for ecclesiastical law—that is, for what is established by those who in virtue of divine law have authority in the Church.⁴ Moreover, certain distinctions have to be made. As regards exemption from lay power in purely spiritual things, this immunity of ecclesiastics is uncontested; but as regards temporal matters it is universally admitted only in a certain sense.⁵ Many theologians say that in these matters the Pope alone has immunity by divine law, while for other ecclesiastics it exists only by human law;⁶ and that it is for the Pope to regulate it according to times and circumstances. A sufficient proof that all immunities are not equally founded on divine law is presented by the many differences and modifications which the Popes themselves have sanctioned at different times with regard to personal, real, and local immunities.⁷ Since the officers of the Church are also citizens of the State, it is needful that the privileges due to them through the eminence of their spiritual dignity be brought into harmony with the special circumstances of each nation, and be regulated so as to cause no danger to the

civil order. These privileges have thus been frequently the subject of agreements between the Holy See and governments (concordats),⁸ and in this way many limitations have been introduced.⁹ What Boniface and Leo expressed by the words 'jure divino' (by divine law), the Council of Trent¹⁰ expresses by the words 'Dei ordinatione' (by divine ordinance); but, as is clear from the proceedings of the Council, this by no means implies that immunities are *immediately* by divine law.¹¹ Theologians have ever in this question placed human and civil law side by side with divine and ecclesiastical law, and have not regarded the latter as the sole source of immunities.¹²

¹ Allgemeine Zeitung, 19 June 1870.

² Bonif. VIII. (c. iv. Quamquam, iii. 20, de Censibus in 6): '*Cum Ecclesiae ecclesiasticaeque personae ac res ipsarum non solum jure humano, quin imo et divino a saecularium personarum exactionibus sunt immunes,*' &c. (prohibition to exact pedagia and the like from the clergy). Leo X., Bulla reform.: '*Cum a jure tam divino quam humano laicis potestas nulla in ecclesiasticas personas attributa sit,*' &c. (following Innocent III. c. x. de Const. i. 2). Bellarm. de Cleric. i. 28: '*Non loquitur (Bonif.) per modum definientis rem controversam, sed simpliciter et obiter id asserit. Ait enim: cum jure divino,*' &c.

³ Bellarm. l.c. i. xxvii. p. 161, ed. 1721: '*Non sunt exempti clerici ab obligatione legum civilium, quae non repugnant sacris canonibus vel officio clericali.* Cf. Reiffenstuel, Jus Can. l. i. tit. ii. § 13 et 14, n. 290 seq. Mamachi, Orig. et Antiqu. t. iv. p. 75 seq. n. 3, p. 92, n. 4. Rigantius, Com. in Reg. Cancell. Apost. t. ii. in Reg. ix. p. 224. Pignatelli, Consult. Canon. t. vi. Consult. 86, p. 188 seq.: '*An et quatenus obligentur Ecclesiastici legibus et statutis laicorum?*' n. 2, p. 189: '*Leges, quae non repugnant statui ecclesiastico et legibus canonicis, obligant Ecclesiasticos in conscientia in ordine ad communitatem civilem. Nam si Ecclesiastici non servarent has leges, inverterent debitum ordinem politicum, quippe hae leges eo ipso, quod sunt justae, sunt etiam necessariae pro conservatione communitatis cum debito ordine; Ecclesiastici autem ratione exemptionis non possunt invertere ordinem et gubernationem politicam. Praeterea qui sunt de diversa communitate, tenentur servare leges illius communitatis, ubi est res, de qua agitur, aut ubi fit contractus, ut proinde ibi sortiatur forum (c. Licet, ii. 2, de foro comp.). Quando igitur materia, de qua est lex, concernit publicum ordinem politiae civilis aut requirit consortium aliorum, tenentur Ecclesiastici servare leges, quia agitur de eo, quod est sub dispositione civili,*' &c. Cf. M. Gerbert, de Leg. Eccl. Pot. l. iii. c. v. n. 3 seq. p. 452 seq.

⁴ So by Innocent IV. c. ii. de Privi, l. v. 7, in 6. Cf. Gonzalez in c. iv. de Immun. n. 8. Often Old Testament precepts, which were approved and renewed, were called divine laws. M. Canus, de Locis Theol. l. vi. c. viii.

ad 5 f. 207: 'Pontifices et jurisperiti . . . leges aliquot veteres (V. T.) probatas rursum ac denuo restitutas ab Ecclesia *divinas* vocant.'

⁶ Molina, Tract. ii. de Just. et Jure, disp. 31, n. 2, 3, 11, pp. 64, 65, Concl. ii.: 'In causis mere ecclesiasticis clerici divino jure exempti sunt a civili et laica potestate.' Concl. iii.: '*Non omnis* exemptio clericorum est de jure divino'—and for this he cites St. Thomas, Cajetan, Driedo, Navarrus, Soto, and Victoria; Concl. v.: 'Ecclesiastici quoad bona sua exempti sunt a tributis non jure divino, sed humano.' Cf. Schmalzgrueber, Jus Can. lib. ii. p. i. tit. 2, § 6, n. 96 seq.; also the memorial of the theological faculty of Würzburg, of 7 July 1869, fr. iii. § 43-52.

⁶ Molina, l.c. n. 7, Concl. iv.: 'Summum Pontificem arbitror jure divino esse omnino exemptum ab omni universim terrena potestate; reliquae vero personae ecclesiasticae non jure divino, sed humano videntur exemptae a saecularibus potestatibus.'

⁷ As to local immunities, see Bened. XIV. Instit. eccles. Inst. 41, § 3-6; de Syn. Dioec. xiii. c. xviii. n. 13. As to real immunities, c. iv. Non minus, c. vii. Adversus, iii. 49, de Immunit.; Barbosa, de Off. et Pot. Ep. Alleg. xiii. n. 2 seq. p. 87; Phillips, Kirchenrecht, ii. § 60, p. 667 seq. As to personal immunities, Bened. XIV. de Syn. Dioec. l. ix. c. ix. n. 11; Barbosa, l.c. Alleg. xii. n. 2, 23, pp. 74, 78 seq.

⁸ Civiltà Cattolica, ser. viii. vol. i. quad. 498, pp. 656, 657. Liberatore, La Chiesa e lo Stato, c. iii. art. 12, § 2, p. 388 seq.

⁹ Such limitations are numerous in the Concordats with Naples and Sardinia.

¹⁰ Trid. Sess. xxv. c. xx. de Reform.

¹¹ When the appointment of the hierarchy was being discussed (Sess. xxiii. can. 6, de Ord.) the words 'divina ordinatione' were put instead of 'ex institutione Christi,' so as to avoid deciding the question whether it was proxime a Deo or per ipsius vicarium.

¹² Gregor. de Valentia, Comment. t. iv. disput. 9, q. 5, punct. 4, p. 2103 seq. ed. Ingolst. 1603, &c., has the following propositions: 'I. Personas clericorum *non omnino* esse exemptas a potestate saeculari quoad vim ejus directivam in legibus civilibus, quae conducunt ad bonum statum reipublicae et non repugnant ecclesiasticis canonibus aut ipsi statui clericorum. II. Quoad regimen personarum suarum directe atque adeo quoad vim coactivam, itemque quoad bona et causas politicas controversas clericos *recte* esse omnino exemptos a saeculari potestate *jure humano, ecclesiastico et civili*. III. Clericos tum quoad personas tum quoad controversias politicas et bona exemptos esse a saeculari potestate *non solum jure humano ecclesiastico et civili, sed etiam jure divino*.' But he admits that Francis Victoria, John Medina, Sotus, Ledesma, Palatius, Barthol-Salon, Dominicus Bannez, and Covarruvias are against this view, and he himself maintains merely the jus mediatum. 'IV. Quoad causas quidem . . . *mere ecclesiasticas*, cujusmodi sunt quaestiones de fide, &c., clericos *potiori multo* ratione exemptos esse a potestate saeculari non solum jure humano sed *etiam jure divino*.' Bellarm. de Cler. i. xxviii.: 'Exceptio clericorum in rebus politicis tum quoad personas tum quoad bona introducta est jure humano pariter et divino.'

• § 6.

Appeal is also made to the Bull of Paul IV., 'Cum ex apostolatus officio,' of 15th Feb. 1559,¹ to which our opponents are most eager to attach the character of a dogmatic ex-cathedrâ decision,² saying that if this Bull is not an universally binding doctrinal decree (on the point of the Papal authority), no single Papal decree can claim to be such.³ But none of the exponents of dogmatic theology have as yet discovered this character in the Bull,⁴ which has been universally regarded as an emanation of the spiritual penal authority, not a decision of the doctrinal authority.⁵ We see the tactics of the Church's opponents have been reversed: formerly the Jansenists and lawyers of the French parliament denied that the Bull 'Unigenitus' was dogmatic, though all Catholic theologians regarded it as such; now the Janus party and jurists who protest against the Vatican Council assert that the Bull of Paul IV. is dogmatic, though all Catholic theologians deny it to be such. In truth neither the wording of this last-named Bull, nor its contents as a whole, nor the rules universally received among theologians, allow it to be regarded as a dogmatic decision. If there is to be a doctrinal decree binding on all, it is requisite that a doctrine to be held or proposition to be rejected be placed before the faithful in terms implying obligation, and be prescribed by the full authority of the Church's teaching office. This is not the case with this Bull. True enough in the *introduction* the Papal power is spoken of, and in accordance with the view of it held universally in the Middle Ages. But here, as in every other Bull, the rule already spoken of holds good, that not the introduction and the reasons alleged, but simply and only the enjoining (dispositive) portion, the decision itself, has binding force. Introductions quite similar are to be found in laws relating purely to matters of discipline, as any one may see who consults the Bullarium.⁶ As to the enjoining portion of the Bull in question, it only contains penal sanctions against heresy, which unquestionably belong to disciplinary laws alone. To deduce from the introduction a doctrinal decision on the Papal

authority is simply ridiculous. This has been seen by other opponents, who have not therefore, like Janus and Huber, deduced a dogmatic definition from the Pope's introductory words, but have deduced from the enjoining portion a definition as to morals. 'For how a Catholic should behave towards heretics and heretical rulers, whether an action be theft or lawful occupation, whether one is bound in conscience to recognise a claim for succession or other legal claims,—these and similar questions must be reckoned as belonging to Christian morality even by the most milk-and-water infallibilist.'⁷ Such a statement in any one who has really read the Bull leaves us little hope that he understands at all what he is speaking about. Paul IV. renews the earlier censures and penal laws, which his predecessors, acting in concert with the emperors, had issued against various heresies; he desires that they be observed everywhere, and put in force where they have been unenforced.⁸ The point, then, is about the practical execution of previous penal laws, which by their nature are disciplinary, and proceed not from divine revelation, but from the ecclesiastical and civil penal authority. Besides the renewal of old there is an addition of new punishments,⁹ which equally belongs to the sphere of discipline. Many sentences are entirely modelled on civil laws, *e.g.* those of Frederick II. (1220).¹⁰ The Pope does not here speak as *teacher* (*ex cathedrâ*), but as the watchful *shepherd* eager to keep the wolves from the sheep,¹¹ and in a time when the actual or imminent falling away even of bishops and cardinals¹² demanded the greatest watchfulness and the strongest measures. The Bull of Paul IV. may be perhaps considered too severe, injudicious, and immoderate in its punishments, but it certainly cannot be considered an *ex-cathedrâ* doctrinal decision. No Catholic theologian has considered it as such, or placed it in a collection of dogmatic decisions; and to have done so would have only deserved ridicule; for if this Bull is to be considered as a doctrinal decision, so must every ecclesiastical penal law. Papal Infallibility, it is most true, excludes any error as to moral teaching, so that the Pope can never declare anything morally bad to be good, and *vice versâ*; but

infallibility only relates to *moral precepts*, to the *general principles* which the Pope prescribes to all Christians as a rule of conduct, not to the *application* of these principles to individual cases,¹³ and thus by no means excludes the possibility of the Pope making mistakes in his government by too great severity or otherwise. His infallibility, which is his only as teacher, preserves him indeed from falsifying the doctrines of the Church as to faith and morals, but is no security that he will always rightly apply these doctrines, and never personally commit any offence against them.

¹ Lib. Sept. c. ix. de Haeret. v. 3. Raynald. a. 1559, n. 14, M. Bull. i. 840. Sents, Lib. Septimus, v. 5, 23, p. 164.

² Janus, p. 405 seq. Schulte, ii. 12. The Bull was adduced in the Sorbonne, 1627-1629, as decisive for those who, like the Dominican Testefort, would reckon Papal Decretals as Holy Scripture (Du Plessis, t. ii. p. ii. pp. 248, 289).

³ Huber, p. 47.

⁴ Professor Denzinger has collected all dogmatic decisions in his *Enchiridion Definitionum*, which has gone since 1853 through four editions, been recommended by many bishops, and been much praised by the Holy Father. No theological reviewer in all Christendom has complained of the omission of the Bull in question; all would much rather have considered a demand for its insertion ridiculous.

⁵ Dr. Fessler, p. 44. Cf. *Anti-Janus*, p. 168 seq. *Votum on the Vatican Council*, Mainz, 1871, p. 45 seq.

⁶ *E.g.* Urban VIII. Const. 12, d. 7, Mart. 1624 (Bull. ed. Lux. t. v. p. 40): 'Romanus pontifex, in quo dispositione incommutabili divina providentia universalis Ecclesiae constituit principatum, auctoritatem a Christo per B. Petrum Apostolorum culmen sibi traditam intelligens, ut noxia evellat, et destruat, utiliaque plantet et aedificet,' &c. The entire Bull relates to the Constitutions of the *Fratres Reformati strictioris observantiae Ordinis S. Francisci*. Similarly, Const. 64 d. 6 Feb. 1626, relating to the abolition of a congregation of Franciscans (ib. p. 119, § 1).

⁷ *Allgemeine Zeitung*, 12 April 1871, Supplement.

⁸ *Omnes et singulas excommunicationis, suspensionis, et interdicti ac privationis et quasvis alias sententias, censuras, et poenas . . . contra haereticos aut schismaticos quomodolibet latas et promulgatas apostolica auctoritate approbamus et innovamus ac perpetuo observari et in viridi observantia, si forsan in ea non sint, reponi et esse debere, nec non quoscunque . . . (haereticos cujuscunque status) censuras et poenas praedictas incurrere volumus atque decernimus.*

⁹ *E.g.* loss ipso facto of all offices and dignities, incapacity to hold others, confiscation of goods, &c.

¹⁰ Frider. II. Const. a. 1220 (Walter, *Fontes*, pp. 84, 85, § 6):

Sit enim intestabilis, ut nec testamenti liberam habeat factionem, nec ad haereditatis successionem accedat. Nullus praeterea ei super quocumque negotio, sed ipsi alii respondere cogatur. Quod si forte iudex extiterit, ejus sententia nullam obtineat firmitatem, nec causae aliquae ad ejus audientiam perferantur. Si fuerit advocatus, ejus patrocinium nullatenus admittatur. Si tabellio, instrumenta confecta per ipsum nullius penitus sint momenti.

Let any one show even a single instance of a similar conformity to civil laws in a really dogmatic Bull.

¹¹ Paul IV. nowhere in the Bull calls himself 'doctor;' he acts "more vigilis pastoris," 'pro munere pastoralis vulpes vineam Domini demoliri satagentes capere et lupos ab ovibus arcere' (§ 1).

¹² As Bishop Victor of Bergamo (*Raynald*. a. 1558, n. 20), Bishop Jacob of Nevers (*ib.* a. 1559, n. 13), Archbishop Bartholomew (*ib.* a. 1560, n. 22), the Bishop of Nantes (*ib.* n. 35), Cardinal Chatillon Bishop of Beauvais (*ib.* a. 1561, n. 86), &c. Cf. the Brief of Paul IV. against the bishops suspected of heresy, *ib.* a. 1559, n. 19: 'Cum sicut nuper.'

¹³ Cf. Suarez, *de Fide*, disp. 5, § 8, n. 7. Also Schaetzler, *Die Päpstliche Unfehlbarkeit*, Freiburg, 1870, p. 197; and Merkle in the *Augsburg Pastoralblatt*, 11 Feb. 1871, pp. 47-50.

§ 7.

But it is said: 'This Bull is directed to the whole Church, is subscribed by the Cardinals, and thus has been published in the most solemn form, and is certainly *ex cathedrâ*.'¹ These characteristics, however, do not suffice for a dogmatic doctrinal decision. Universally binding laws as to discipline have also been subscribed by the Cardinals, and solemnly proclaimed. Even the Bull 'Cum divina' of Alexander VII. (26th March 1661), which imposed on all ecclesiastical property in Italy certain tithes to help the Venetians in their struggle against the Turks, was subscribed by the Cardinals.² And other Papal disciplinary laws have been issued 'out of the fulness of power' (*de plenitudine potestatis*);³ the word 'define' is used in other places also of judicial judgments;⁴ and laws designated as to be

Pauli IV. Constit. Cum ex Apostolatus officio:

Sint etiam intestabiles nec ad haereditatis successionem accedant; nullus praeterea cogatur eis super aliquo negotio respondere. Quodsi forsitan iudices extiterint, eorum sententiae nullam obtineant firmitatem nec aliquae causae ad eorum audientiam deducantur; et si fuerint advocati, eorum patrocinium nullatenus recipiatur; si vero tabelliones extiterint, instrumenta confecta per eos nullius sint penitus roboris vel momenti.

in force for ever (*constitutio in perpetuum valitura*) have been soon afterwards repealed, because they were found to be of no service to the Church.⁵ The sort of proofs our opponents bring forward in this matter show an entire ignorance of Papal Bulls.⁶ Compare, for example, another Bull of the same Pope directed against the ambitious endeavours of those who coveted the Papal dignity ;⁷ this Bull has equally the agreement of the Cardinals, is published out of the plenitude of the Papal power, is declared to be for ever in force, threatens equally all spiritual and temporal dignitaries without exception, &c. And yet it is undoubtedly not in the least a dogmatic Bull. If it were, there would be scarcely any recent ecclesiastical laws (as opposed to dogmas) for canonists to discuss ; while dogmatic theologians would have been all in strange ignorance of their province.

¹ Schulte, i. p. 34, n. 1.

² Bull. ed. Lux. t. vi. p. 142 seq.

³ Cf. Bened. XI. 1304, c. iii. de Elect. i. 3. Joh. XXII. a. 1319, c. xi. de Præbend. iii. 2, in Xvagg. com. Clem. X. 1671, Const. 52. Romanus Pontifex, Bullar. ed. Lux. vi. 376 seq. Const. Creditæ Nobis, 1670, ib. p. 321 (Indult for the residence of the Papal Court). Innocent XII. Const. Speculatores, 1694, § 3 (Conc. Trid. ed. Richter, p. 531). Pius IX. 26 Aug. 1852 (Acta Pii IX. vol. i. p. 376, Indult for the Congr. Lauretana), &c.

⁴ Innoc. III. l. vi. ep. 90, 104, 109, 189, 202, 203, pp. 96, 111, 114, 208, 227 seq. ; l. viii. ep. 60, 61, 106, 155, p. 626 seq. 675, 734, and elsewhere. Thus l. ix. ep. 88, p. 905 : 'Quod est a nobis sententialiter definitum ;' l. vii. ep. 29, p. 311 : 'Lis ante judicem debet contestari et causa per judicem definiri.'

⁵ So also the Emperor Frederic II. says of his law against the heretics (1220) : 'Hoc edicto in perpetuum valituro' (Walter, Fontes, p. 84, § 6). Cf. Pius V. Const. Cum nil magis, c. un v. 14, de Monet. Tonsor. Const. 2, 3, de Ambitu, v. 10, in libro sept. Const. Romanus Pontifex, 1568 (Conc. Trid. ed. Richter, p. 502) : 'De apostolicæ potestatis plenitudine hac perpetua valitura constitutione.' In like manner, Alex. VII. Const. 25, In sublimi ; Clem. X. Const. 21, In gravissimis (Bull. vi. 42 seq. 328 seq. ed. Luxemb.), in which for the States of the Church the revocation of exemptions from certain taxes is declared, and in numberless other Bulls.

⁶ See my review of Schulte in the Archiv für Kirchenrecht, 1871. vol. xxv. p. cxxix. § 17 ; also Fessler, l.c. p. 82 seq.

⁷ Cap. i. Cum secundum Apostolum. l. v. 10, de Ambitu in lib. vii. Decret.

§ 8.

Here should be considered another Bull of the same Pope,

‘Quum quorumdam’ of 7th Aug. 1555,¹ which has been even called a transformation of previous doctrine. ‘Up to the year 1555,’ says the *Allgemeine Zeitung*,² ‘it was the Papal doctrine³ that only those who persisted in holding a doctrine contrary to that of the Church, and those who having recanted again fell into the same or another heresy, were to be⁴ given over to be burnt at the stake. In that year, however, Paul IV. laid down the new principle that certain doctrines, even though held for the first time and at once recanted, were forthwith to be punished with death; to wit, whoever rejected any of the decisions of the Church as to the Trinity, or denied the perpetual virginity of Mary, was to be placed on a par with relapsed heretics, and to be put to death even though he recanted.’ And Schulte adds: ‘The spiritual judge brought the heretic to the funeral pile, but the temporal judge gave the order to kindle it. In this way the clergy could say: “We do not pronounce the penalty of death.” There is not to be found a grosser example of hypocrisy.’⁵ And Huber considers that in this the temporal power was degraded, since it did hangman’s duty for the spiritual power, and thus recognised its own subordination.⁶

To all this we answer: First, this Bull is certainly no ex-cathedrâ decision of the Pope in his office of teacher. There are no rational grounds for such an assertion, which much rather violates all the rules that have on such matters to be observed. The question was not about *controversies*, but about articles of faith settled long before by the Church.⁷ This *penal law* may be blamed for its severity; only let it be remembered that it was published less than two years after Calvin had caused Servetus to be put to death for denying the doctrine of the Trinity; that it was held as a wholesome remedy to check the fearful progress of error, and to terrify those who led the people astray; and that it was altogether in harmony with the spirit of the sixteenth century. Secondly, the Church truly enough forbids ecclesiastics to coöperate immediately and actively in the killing of a fellow-man, even though it be done with perfect justice. She considers it unfit and unseemly that he who exercises the sacred functions of the priesthood should take part

in putting, however justly, another man to death ; and the right feeling of the Christian people will ever make them take the same view. But for all this the Church has never considered that to pass sentence of death was altogether unlawful. Even for an ecclesiastic to pass a just sentence of death was in itself no guilt, no sin ; only he was forbidden to do so by the Church, because this, like many other actions, was unseemly for him because of his sacred office. What ground is there here for the charge of hypocrisy ?⁶ Thirdly, the criminal legislation of Catholic countries, as Italy, Spain, and France, had at that time not undergone the essential alteration that occurred later. The State, from the point of view then prevailing, felt it no degradation to execute the punishment fixed by law for heretics.

¹ Bullar. Rom. ed. Coquelin. t. iv. p. i. p. 322. Sentis, l.c. c. xxii.

² 19 June 1870.

³ This 'doctrine' (Lehre) is, however, to be found in no definition. Huber (p. 48) says more correctly: 'Till then it had been the *rule*' (Regel).

⁴ 'Were to be' (sollten) is also given by Huber, l.c.; but Schulte, vol. i. p. 49, § 40, gives 'might be' (könnten).

⁵ Schulte, vol. i. p. 50.

⁶ Huber, p. 24.

⁷ Huber indeed (p. 48) says that it is to this day a controversy whether the leading scholastics, as St. Thomas and others, did not hold erroneous views as to the dogma of the Trinity. But one or two learned men, with tritheistic opinions, whose bill of indictment was censured by the Church, and has attracted little attention, do not constitute a controversy, or every singular opinion of any individual would constitute one, and everything would be controverted. The dogmas as to the Trinity here cited are held by almost every sect except the Socinians and those akin to them. Denzinger, Enchir. pp. 301, 302, n. 880, brings against the Socinians only the part of the Bull containing these dogmas.

⁸ Fessler, pp. 62, 63 (Eng. transl. pp. 97, 98).

§ 9.

Especial attention has been called to the Bull 'In coena Domini,' which has been styled a 'classical example of the exorbitant claims of dominion and of the intolerant fanaticism of the Papacy ;'¹ and Janus says that if any Bull bears the stamp of an ex-cathedrâ decision it must surely be this one, which was confirmed again and again by so many Popes.² But here again

there is quite absent any doctrinal decision *ex cathedrâ*, for which alone the Vatican Council claims infallibility. A dogmatic doctrinal decision is unalterable and irrevocable; and precisely the history of the Bull 'In coena Domini'³ shows how absurd is the assertion that it contains such a decision. What it does contain is a collection of the censures reserved to the Pope, and it was enlarged and altered according to times and circumstances. It originated in the fourteenth century.⁴ It was revised by Martin V.,⁵ Paul II.,⁶ Julius II.,⁷ Paul III.,⁸ and their successors. Under Urban V. it contained seven cases, under Martin V. ten, under Paul III. (1536) seventeen, under Gregory XIII. (1583), twenty-one. Before Pius V. its binding force was only known by its yearly proclamation; this Pope in 1568 raised it to a permanent Church law, till any fresh determinations should be announced.⁹ Urban VIII. revised it again in 1627, after which time it remained in essentials unchanged.¹⁰ It imposes ecclesiastical penalties on all formal heretics¹¹ and schismatics, on apostates, on those who without permission read heretical books, on those who appeal from the Pope to a future General Council, on the falsifiers of apostolic writings, on pirates and plunderers of shipwrecked goods, on waylayers and plunderers of pilgrims; on those who imposed in their dominions new tolls and taxes in cases where neither the law nor special Papal permission allowed, or who increased the former taxes;¹² on those who with arms or other means gave support to the enemies of the Christian religion, especially the Turks; on those who did violence to bishops and ecclesiastical dignitaries, or who hindered the exportation of food and other commodities to the seat of the Roman Court, or who appealed from the spiritual courts to the civil power, issued decrees or statutes to the injury of the Church, seized on ecclesiastical property, &c.—almost all things which had already been condemned separately in previous Decretals and Bulls, and among which no one can find a dogma. The whole collection rested on the ground of the mediæval law, and so it is not to be wondered at if the Bull caused no little offence at many courts.¹³ 'Whoever will judge this Bull, not after a mere cursory perusal, but by the light of

history, must confess that it is the result not of Papal ambition, but of the needs of the Church in those times, and that the [reserved] cases, far from being a burden and a molestation, were rather priceless benefits to Christendom.¹⁴ Formerly this Bull was published every year at Rome on Holy Thursday (in coena Domini).¹⁵ This ceased to be done under Clement XIV. in 1770;¹⁶ and though the Bull itself was not abrogated, it was pretty generally admitted in the present century that many of its enactments had lost their applicability.¹⁷ Quite recently Pius IX., by the Constitution 'Apostolicae Sedis moderationi' of 12th Oct. 1869, has introduced a thorough change.¹⁸ This Constitution, though the Janus party may call it the great Bull of excommunication, and Friedrich may see in it only a new edition of the Bull 'In coena Domini,' gives proof that the Holy See well knows how to pay due regard to changes of times and circumstances.¹⁹ Hereby the Bull 'In coena Domini' has, like other disciplinary laws of former times, altogether lost its binding force.²⁰

It has been attempted from this Constitution of Pius IX. to draw the conclusion that in Bavaria, kings, judges, and deputies by hundreds have fallen under the greater excommunication. But in this attempt there has been a total disregard of the distinctions and juridical principles which must be kept in view in judging each individual case. For the commission of a sin, whereof the absolution is reserved to the Pope, there must be in every case a mortal sin that is certain and completed in external act, and though the ignorance of the person concerned does not remove the reservation, *i.e.* does not empower the ordinary confessor to grant absolution, it prevents the censure being incurred.²¹ It would be well if the domain of moral theology were let alone by those who are insufficiently acquainted with it.

¹ Huber, p. 42.

² Janus, p. 408.

³ Hausmann, *Geschichte der Päpstliche Reservatfälle*, Regensburg, 1868, p. 89 seq.

⁴ The first compilation known of was under Urban V. in 1364. Walter, *Kirchenrecht*, § 191, p. 346, n. 13. Hausmann, p. 95.

⁵ Apud S. Antonin. *Sum. Theol.* p. iii. tit. 24, c. xxvii. p. 452, ed. Venet.

⁶ C. iii. Et si Dominici, v. 9, de Poenit. et Remiss. in Xvagg. com.

⁷ Jul. II. Const. 25, Consueverunt, 1511 (Bull. M. i. 507).

⁸ Paul III. Const. 10, Bull. M. iii. t. i. p. 718.

⁹ Hausmann, pp. 95-97, 101.

¹⁰ Schulte, i. p. 40, uses the copy published by Paul V. on 8 April 1610 (Bullar. ed. Coquel. t. v. p. iii. p. 393). Reiffenstuel, in l. v. Decret. tit. 39, § 4, n. 124, t. iv. p. 549 seq. ed. Monach. 1710 seq. gives the copy published by Clement X. on 26 March 1671, 'Pastoralis Romani Pontificis vigilantia' (Bull. ed. Lux. vi. p. 341 seq.).

¹¹ That in consequence of this enactment and the clauses added bishops are not empowered without special license to absolve from heresy, is shown by Benedict XVI. de Syn. Dioec. l. ix. c. iv. n. 5-10; and by Liguori, Theol. Moral. l. vii. n. 82 seq., with special reference to the third proposition condemned on 24 Sept. 1665 by Alexander VII.

¹² During the whole period of the Middle Ages it was held that a king could only impose taxes on his subjects when in certain definite cases and for pressing necessities his revenues were insufficient. Cf. Raumur, Geschichte der Hohenstaufen, vol. v. p. 445. As late as 1586 this was the view of the Spanish jurist, Alphonso Alvarez Guerrerus, councillor of his Catholic Majesty; Op. cit. cap. liv. n. 20-22, pp. 711, 712. The Bull has here especially in view the levying of tolls and payments for convoy, which were used as a means of extortion (Hausmann, p. 131 seq.), and usurped by private individuals, especially by the robber-knights. Cf. Innoc. III. l. xiv. ep. 39, p. 411. So canon 40 of the synod of Würzburg in 1287 (Himmelstein, Synod. Herbipol. Würzburg, 1855, p. 59. Mansi, xxiv. 865): 'Cum imponentes et exigentes nova passagia, vel antiqua seu concessa augmentantes, singulis annis summus Pontifex in coena Domini anathematis vinculo denunciaret subjacere, statuimus,' &c.

¹³ As we see in the libellous work by Le Bret, styled Pragmatische Geschichte der so berufenen Bulle in Coena Domini, Frankfurt, 1769 seq., in four parts. On the remonstrances of courts, see Hausmann, p. 375 seq.

¹⁴ Hausmann, p. 102, § 13. He treats the twenty cases in detail, p. 107 seq. Cf. also Historisch-polit. Blätter, 1848, vii. p. 75 seq.

¹⁵ Similarly in the Greek Church on the Sunday of Orthodoxy (1st Sunday in Lent), a list of heresies and ecclesiastical offences punished with excommunication was given out. Cf. Schröckl, Kirchen-Geschichte seit der Reformation, vol. ix. pp. 18, 19.

¹⁶ Hereon see Theiner, Histoire du Pontificat de Clément XIV. vol. i. pp. 480, 481, 525, 552.

¹⁷ Because the principles on which they rested had become modified by renunciations and other valid acts on the part of the Church; or because, through causes applying to the whole community, the motive justifying them had ceased; or because it can reasonably be presumed that the lawgiver under certain circumstances permits a law to be no longer in force, as being injurious or too difficult to be carried out. See Denzinger's article, 'Ueber die dermalige Geltung der Bulla Coenae,' in the Würzburg Katholische Wochenschrift, 5 May 1855, n. 18, p. 275.

¹⁸ No new censures are to be found in it, while many former ones are

entirely removed, viz. the censures against appropriating stranded goods, against piracy, against supplying the Saracens with weapons, and also the censure against nova pedagia et gabellas, which was so objectionable to statesmen.

¹⁹ Cf. the words of the Constitution: 'Cum animo Nostro jam pridem revolveremus . . . quasdam (ecclesiasticas censuras) etiam, temporibus moribusque mutatis, a fine atque causis, ob quas impositae fuerant, vel a pristina utilitate atque opportunitate excidisse.'

²⁰ Fessler, p. 55; English transl. pp. 87, 88.

²¹ S. Lig. Theol. Mor. n. 580-582. Gury, Theol. Mor. ii. p. 550, ed. Ratisbon, 1862.

§ 10.

Similarly no difficulty is presented by other Bulls brought forward by our opponents and containing penal judgments.¹ It is easy, indeed, to style the explanations given of these Bulls 'simple Jesuitical sophistry,' 'theological vapour,' 'scholastic distinctions,' 'mere trifling,'² and so on—the heretics also of former times were adepts in similar racy phrases and vulgar abuse—but what has not been done and what cannot be done is to prove that these Bulls really define what our opponents would like to make out that they define.³

¹ Cf. Fessler, p. 42 seq.; English transl. p. 70 seq.

² Schulte, ii. pp. 62, 64, 66.

³ The 'protesting Catholic's' mode of interpretation applied to civil law would force us to renounce all the careful distinctions of the *Corpus Juris*, in short that renowned juridical penetration which in similar cases acts exactly in a similar way to that denounced by these protesting Catholics.

§ 11.

Lastly, appeal has been made to the Schema concerning the Church in fifteen chapters and twenty-one canons laid before the Fathers of the Vatican Council, but which did not come on for discussion, much less was passed, yet caused so much stir among the representatives of the civil power. The entire project contains nothing that is new to theologians, and any one betrays great ignorance of the literature on dogmatic theology and canon law who asserts that it contains anything new and unheard of.¹ It establishes the following propositions: i. The Church is the mystic body of Christ. ii. The Christian religion can only be observed and held fast in the Church; the Church

is the external manifestation, the realisation and the expression of the Christian religion in an independent organism.² iii. The Church is a true society, with a determinate constitution given her by Christ, not left to human changes and revolutions; she is not part of another society nor mingled with another, but is perfect in herself, spiritual, and belonging to the supernatural order. iv. She is an external visible society and has a visible unity, so that the religious bodies separated from her in faith and in communion cannot be regarded as members or portions of her. v. She is absolutely needful for the attainment of salvation, and outside her there is no salvation. vi. She is indestructible and infallible in the preservation of the deposit of faith, the final and the highest institution (economy) for the attainment of salvation, so that no newer or fuller outpouring of the Holy Ghost is to be looked for. vii. The Church is a society with inequalities, all her members not having equal rights; in her is the distinction between clergy and laity; in her is a legislative, judicial, and executive authority, as in a complete society, which is not a simple collegium, nor subjected to the civil power. viii. This true Church of Christ is the Roman Catholic. In her St. Peter and his successors have the primacy of honour and of jurisdiction, not a simple office of superintendence and direction. ix. Through the operation of Divine Providence the Popes, for securing the independent exercise of their office, received a temporal dominion which they rightly defend. To be rejected is the heretical doctrine³ that the union of the temporal principedom with the spiritual power is contrary to the divine law, as well as the perverse opinion that it is not within the province of the Church to decide authoritatively anything as to the relation which this temporal dominion bears to the general welfare of Christendom.⁴

¹ This is pointed out by Cardinal Antonelli in his letter to Prince Chigi, on the 19th March 1870.

² This has been recognised by recent thoughtful Protestants. See Ullmann, *Das Wesen des Christenthums*, Hamburg, 1849, pp. 122-124. Schulte (ii. p. 9), on the other hand, objects to the confusion or identification of religion with the Church. But in Catholicism religion and the Church stand to each other as abstract to concrete. Nor is there anything

‘disturbing’ (verwirrend) in the expression ‘religio romana;’ the Fathers of the Church use the expression ‘religio’ and ‘fides romana’ as well as ‘religio’ and ‘fides Catholica,’ as Schrader (de Unit. Rom. Com. l. i. p. 7 seq.) shows, giving many citations.

³ Joh. XXII. Const. 1318, contra Fraticellos. Articuli Wicleff. damn. a. Conc. Constant. 32, 33, 36, 39, art. Hus. 13. Art. 34, 36, ex propositis a Martino V. (Denzinger, Enchir. p. 188 seq.).

⁴ This is in complete harmony with the declarations of the episcopate and of the Catholic world frequently expressed since 1860. See Schröd’s *Votum des Katholicismus*, Freiburg, 1867.

§ 12.

Only the last three chapters and the last three canons regard the relations between Church and State. Let us first look at the canons. Here is condemned above all the assertion that the independent ecclesiastical authority, which is claimed by the Catholic Church as given her by Christ, cannot coexist with a supreme civil power, without the rights of both being injured. If this assertion were true, it would be false that we could give to Cæsar the things that are Cæsar’s, and to God the things that are God’s; no concord, such as has in fact often existed, could exist between the priesthood and the empire (*concordia sacerdotii et imperii*); there would be an antagonism between two orders coming from God, which would reflect on God Himself—a collision between the duties of a Christian and a citizen, which would make impossible the well-being of human society and would rend the unity of the individual; the disputes between the two powers would flow from their own nature, and not from the failings and misunderstandings of men. But in reality no true peace can exist if the liberty of the bride of Christ is trampled on, if the fulfilment of her mission is hindered, if earthly interests are set before eternal salvation. There is nothing in this canon which can cause offence; nor is there in the one following, which condemns those who deny that the origin of the civil power is from God, or that obedience is due to it by divine law, or who assert that this power is in opposition with natural liberty. Far from opposing the civil power, this canon takes up its defence. But just as the Church must condemn one extreme—the defectus—so must she con-

demn the other extreme—the excessus—while she maintains the true mean. Just as she cannot allow the right of the civil power to be contested, so she cannot allow that right to be exaggerated, as is done by those who deduce *all* rights existing among men from the State, and who recognise no authority that is not granted by the State. So the Church must reject the proposition that in the law of the State or in public opinion is to be found the highest rule of conscience for public and social actions; for neither public opinion, which is easily misled, nor the political law, which is often brought about by chance majorities, and may be contrary to justice,¹ can form the highest rule, which absolutely requires a divine sanction. So, too, the Church must condemn the assertion that her judgments as to lawfulness and unlawfulness do not extend to such political and social actions; for this is to misjudge her whole nature and essence, to deny her divine mission, to suppose a different code of morality to prevail for public life than for private life, and to reject the validity of the divine law. So, too, the Church must condemn the assertion that by virtue of the civil law that becomes lawful² which is condemned by divine or ecclesiastical law; for this is to put in unchristian fashion the law of man above and before the law of God. Never can the civil law make lawful in conscience what God and the Church forbid, *e.g.* the denial of the Christian faith demanded by heathen laws or the dissolution of a marriage valid ecclesiastically. Here the Church has to combat principles which are completely heathen.

The last canon rejects the assertion that the laws of the Church have no binding force unless they are confirmed by the sanction of the civil power, and that it belongs to the civil power to judge and to decide in matters of religion. Here the Church merely defends her own independent province against encroachments from without, and in no way herself encroaches on the province of the State. Such assertions can only be made by those who refuse to recognise any independent religious province at all.

¹ Cf. the speech of Von Mallinkrodt in the Prussian parliament on

Feb. 10, given by the Germania, 11 Feb. 1872; also Frhr. v. Ketteler, 1st *das Gesetz das öffentliche Gewissen?* Mainz, 1866.

² To say: 'Something is allowed (left unpunishable) by the civil law, which is declared forbidden by the law of the Church'—which is to state a *fact*—is not the same as to say: 'By virtue of the civil law that becomes allowed which is forbidden by divine or ecclesiastical law' (*vi juris civilis fieri licitum*, &c.)—which is to enunciate a quite false principle. Cf. *Histor. Polit. Blät.* vol. lxxvi. pp. 38, 39.

§ 13.

In the doctrinal chapters the necessity is specially emphasised of concord between the two powers, which both, though in a different manner, are derived from God, and are of mutual advantage to each other. Then is inculcated the duty of rulers towards God and the Church, and the separation of Church and State is condemned. The right and the exercise of the civil power are set forth according to the doctrine of the Catholic Church. The civil power as well as every lawful power comes from God; all are bound to render it obedience, and no revolution is allowed; on the other hand, princes are bound to hearken to the admonitions of the Church, since they cannot have God for their father if they have not the Church for their mother.

Finally, certain particular rights of the Church are brought forward, and their violation is censured. Among such violations are the exclusion of the Church from schools, and the subjection of these to the lay power *alone*; the restriction of the liberty of the Church in the education of the clergy, and the subjection of this education to the direction of the State; the rejection and suppression of the religious orders; the hindering the Church from acquiring temporal possessions. These are matters to which the bishops on all sides have called attention, especially since 1848,¹ and as regards which the Church in no way oversteps the limits of her powers. The right of freely acquiring property must belong to the Church even if regarded simply as a society or corporation; but it belongs to her also as a gift of Christ and at all times; for she has a right to the means necessary for the fulfilment of her end, and she has it from Him, from whom she has the right of existence, as an original and legitimate power² implied in the duty of support-

ing her existence and permanently fulfilling her end. In regard to the actual acquisition of temporal goods she has always followed the civil laws of the particular country ; but the right of acquisition in general is a right natural to her, and not originally coming from the grant of the particular State.³

¹ Cf. the memorial of Würzburg, Nov. 1848; that of the Bavarian episcopate, 20 Oct. 1850; that of the Archbishop of Freiburg, 1853 and 1863; and others.

² Syllab. prop. 26: 'Nativum ac legitimum jus acquirendi ac possidendi.'

³ Schulte, Lehrbuch des Kirchenrechts, 2d ed. § 180, n. 1-3, p. 488 seq.

§ 14.

Thus idly our opponents seek out documents which altogether fail to prove what they wish to make them prove. They confine their attention to the Middle Ages, and to a few misinterpreted documents of quite recent times. They put away the ancient and approved rules of interpretation, and mix up general doctrines of faith and morals with particular penal judgments, principles of justice with police regulations, permanent laws with temporary orders, judicial judgments with the reasons assigned for them. And while proceeding thus they boast that science is on their side alone. Moreover they ignore all those documents which afford a confutation of their view, and to which we now will give attention.

PART III.

THE POPES THEMSELVES SHOW THE GROUNDLESSNESS OF THE ALARM RAISED BY OUR OPPONENTS.

§ 1. Papal documents ignored by our opponents. § 2. Alleged instruction of Pius VII. § 3. The Popes do not interfere in the internal affairs of nations. § 4. They well recognise the difference between mediæval and modern times. § 5. Declaration of Pius IX. on 20 July 1871. § 6. The Church limited to the purely ecclesiastical domain, and even there in many ways not free. § 7. Nominations to bishoprics and abbasies. § 8. Concessions to rulers. § 9. Concordats. § 10. Rome maintains their inviolability. § 11. Rome unchanging, yet paying due regard to changes of times and circumstances.

§ 1.

The Popes have energetically disclaimed the views attributed to them by their opponents. Thus Pius VI., in his detailed condemnation of the French 'Civil Constitution of the Clergy' of 10th March 1791, protested that he did not wish to bring all times back to the former political condition, as calumniators said, in order to make religion hated; and that he did not wish to combat new civil laws, to which, as far as they had reference to his civil government, King Louis XVI. could give his assent.¹ In the same year, Cardinal Antonelli, as prefect of the Propaganda, declared to the Irish bishops as follows: 'We must carefully distinguish between the true rights of the Apostolic See and the claims attributed to her with malicious intent by modern innovators. The Roman See has never taught that faith is not to be kept with non-Catholics, or that an oath may be violated which has been sworn to a king separated from the Catholic communion, or that the Popes may attack the civil rights and possessions of kings.'² In accordance with this the Irish episcopate, without being reprov'd, could make on 25th Jan. 1826 the declaration that the Pope as regards civil matters had no power in the British Empire.³ In the same year the French episcopate could in the same way declare the full and independent authority of the monarch in temporal matters;⁴ and the North-American bishops at the fifth Provincial Council of Baltimore in 1843 rejected the imputation that in civil and political matters they stood under the dominion of the Pope.⁵ The Popes themselves have stated clearly and determinately that they had no wish whatever to attack the rights of the civil power. Pius VII., in the Allocution of 24th May 1802, in which he complains of the organic articles published in France, speaks as follows: 'May God never permit that we, or the pastors placed by Christ under our authority, should ever strive after earthly advantage, or desire to draw to ourselves what does not belong to the Church. We wish ever to have before us the divine injunction to render to Cæsar the things that are Cæsar's, and to God the things that are God's. In this we shall ever give an

example to all, and have a care that the bishops and the other labourers in the vineyard of the Lord by word and deed strive simply for the salvation of the souls intrusted to them, and be full of zeal for this end, and do not mix themselves up in matters that concern them not, which might give opportunity to the enemies of religion to calumniate its ministers. We will admonish them with all zeal, that they strictly follow the precepts of the Apostles, who are our teachers, and that not only by their preaching, but by their example, they inculcate the obedience due to the civil power, by rendering which obedience the Christians from the very outset of the Church became known as models of submission and fidelity to their superiors.⁶

¹ Veruntamen quae de obedientia legitimis potestatibus debita asserimus, nolumus eo accipi sensu, ut a nobis dicta fuerint animo oppugnandi novas civiles leges, quibus rex ipse praestare potuit assensum, utpote ad illius profanum regimen pertinentes, ac si per nos eo consilio allata sint, ut omnia ad pristinum civilem statum redintegrentur *juxta quorundam calumniatorum evulgatas interpretationes*, ad conflandam religioni invidiam, cum revera nos vosque ipsi id unum quaeramus atque urgeamus, ut sacra jura Ecclesiae et Apostolicae Sedis illaesa servantur (Const. 'Quod aliquantum,' 10 Mart. 1791 a. Pont. xvii.).

² Ami de la Religion, t. xviii. p. 198. Affre, Essai sur la Suprématic temporelle du Pape, Paris, 1829, p. 508. Also apud Döllinger, Kirche und Kirchen, p. 46; and Pichler, Gesch. der Kirchl. Trennung, ii. p. 736 seq.

³ Affre, l.c. p. 504. Pichler, ii. p. 737. Döllinger, l.c. p. 48. Portions of the preceding declarations before the parliamentary committee of 1825 are given by Archbishop P. R. Kenrick of St. Louis, in the second appendix to his Concilio in Concilio Vaticano habenda, at non habita, Neapoli, 1870 (a work theologically indeed highly unsatisfactory).

⁴ Affre, l.c. p. 505. Döllinger, l.c. pp. 47, 48.

⁵ Kenrick, the Primacy of the Apostolic See vindicated, Philadelphia, 1845, p. 434. Döllinger, l.c. p. 47.

⁶ Bull. Rom. Contin. t. xi. pp. 335-339, n. 131. Roscovany, Monum. Cath. t. iii. pp. 529-535, n. 562, § Avertat Deus.

§ 2.

On the other hand, Janus and his defender appeal to an Instruction of Pius VII. in 1805 to the nuncio at Vienna, published by Daunou. But to appeal to written testimony without being able to prove its existence, without even taking the least trouble to refute the charge of falsification, is a proceeding which the whole scientific world recognises as disgraceful. The Cheva-

lier Artaud de Montor, the biographer and for many years the ambassador of Pius VII. and Leo XII., declared that this alleged Instruction was wholly untrustworthy, and composed or falsified by private persons.¹ It belongs, without doubt, to the spurious documents, of which Pius VII. in his Brief of 31st August 1806 to Cardinal Caprara says, that these letters are neither from him nor from his ministers. 'If his Majesty [Napoleon] has the originals he can put us to shame. We know not who can have written such foolish, false, and culpable things, and we cannot be answerable for them.'² No original of the Instruction was ever laid before the Pope, and Daunou could give neither the place where it was kept, nor the composer, nor the exact date. It was precisely under Napoleon I. that the falsification of Papal and in general of Roman documents, to suit all sorts of purposes, was frequently practised.³ Other French writers,⁴ filled like Daunou⁵ with passionate hatred to the Papal Chair, have adopted the Napoleonic falsification, but have never confuted the objections early raised against it by Picot and others, nor met the demand to produce the originals, or at least to state where they could be found.⁶

¹ *Histoire de Pie VII.* t. i. c. xxxi.; t. ii. c. v. *Histoire de Léon XII.* t. i. c. i.

² *Ami de la Religion*, t. xxi. p. 116.

³ *E.g.* even Pacca speaks of such falsifications, and in particular of an apocryphal Brief of the Pope, according to which Napoleon had asked the Papal approbation for the marriage law of his code (Card. Pacca, *Mémoire Historique*, p. ii. c. iii. p. 190, ed. Parma, 1830); also of another Brief inciting the Spaniards to the forcible expulsion of the French (*ibid.* p. i. c. vi. p. 69 nota).

⁴ *E.g.* *Origine, Progrès, et Limites de la Puissance des Papes*, 1821, p. 229 (Daunou's work appeared in 1818). For other writers, see *Ami de la Religion*, t. xviii. p. 200; c. x. pp. 251, 298, 426.

⁵ On Daunou, see *Ami de la Religion*, t. xxviii. pp. 1, 193, 196, 369; t. xix. p. 357; t. cv. p. 602; t. cx. p. 33.

⁶ *Ibid.* t. xviii. l.c.; t. xix. l.c.; t. xxi. p. 116. Picot, *Mémoires pour servir à l'Hist. Ecclésiastique du xviii^e Siècle*, t. iii. p. 441 seq.

§ 3.

Long ago has Ferdinand Walter observed that 'the place of legitimacy and the principle of justice has been occupied (in

modern States) by actual power, and whoever knows how to seize this power, and maintain it for a certain time, is sure of the speedy recognition of the other powers. In consequence even the Roman See has had to give up interference in the internal affairs of nations for the preservation of law and justice, and has had to adopt the principle of recognising every actually existing power, as far as is needful for the good order of the ecclesiastical affairs of the country.¹ The adoption of this principle, it should be noticed, is not very recent; for Gregory XVI., in the Bull published 7th August 1831² on occasion of the disputed succession in Portugal, approves and renews a number of publications by his predecessors. Among these are: (*a*) The decretals published by Clement V., where it is declared that the title by which a prince is addressed does not prejudice the rights of any other claimant, nor constitute a recognition of the former;³ (*b*) the letter of John XXII. to Robert Bruce the ruler of Scotland, who was at war with England, and whom, owing to the doubtfulness of his right and the claims of Edward II. of England, the Pope did not at first address by the royal title;⁴ (*c*) the publication of Pius II. in 1459 as to the dispute between Frederic III. and Matthias for the throne of Hungary, declaring that he simply called him king who was in possession of the kingdom, without injury to any other right;⁵ (*d*) the general declaration of Sixtus IV. in the same sense;⁶ (*e*) the discourse of Clement XI. in the Consistory of 14th October 1709 about the war of the Spanish succession, when the Pope spoke of Archduke Charles as the Catholic king, at which Philip V. was very indignant.⁷ Gregory XVI. in the introduction of the Bull says as follows: 'The care for the Churches, which ever occupies the Roman Pontiffs in virtue of the office intrusted to them by God of guardians of the Christian flock, impels them to seek out with all diligence whatsoever over the whole earth and among all peoples brings greater advantage to the right administration of religious affairs and to the salvation of souls. But the situation of the times, the changes and revolutions in the governments and conditions of States, are such that the Popes have often been prevented from meeting

with fitting speed and liberty the spiritual needs of the nations. In particular, their authority is liable to be attacked by worldly men, on the plea that they pronounce judgment through party spirit on the rights of persons, when all they do is in cases of civil strife to enter into agreements with the actual holders of power about the ecclesiastical affairs of the country, especially about the appointment of bishops. The Popes have at almost all times combated this hostile and injurious suspicion, and have been eager to show its untruth, so that they should not be delayed or hindered in the fit measures for the salvation of souls.' After citing the Papal publications mentioned above, Gregory XVI. continues: 'As it has always been the practice and principle of the Apostolic See to take care for the fit administration of religious affairs under the conditions mentioned, without thereby implying on the part of the said See any examination or decision as to the rights of the rulers,⁸ we are now especially bound in these times, when political changes and revolutions are so frequent, to avoid all appearance of at all neglecting the affairs of the Church through human considerations.' The Pope proceeds to say that in future the condition shall be considered attached to all such acts, that no injury be done thereby to the rights of the contending parties;⁹ and he expressly declares that the Apostolic See was here only seeking after the things of Christ, that might more easily conduct the nations to spiritual and eternal salvation.¹⁰ Quite in accordance with these principles was the conduct of Gregory in the time of the civil war between the Carlists and Isabellists in Spain,¹¹ and the conduct of Pius IX. as regards the numerous changes of government that have occurred in his pontificate, as far as they did not touch the territory of the Church, which he was bound by a special oath to defend.

¹ Walter, Kirchenrecht, bk. viii. § 343, p. 609, 11th edit.

² Const. 38, Sollicitudo, Bull. Rom. Cont. t. xix. pp. 38-40. Walter, Fontes, pp. 479-482. The Pope declares: 'Quod si quis a Nobis vel successoribus nostris ad spiritualis ecclesiarum fideliumque regiminis negotia componenda titulo cujuslibet dignitatis, etiam regalis, ex certa scientia, verbo, constitutione vel literis, aut legatis quoque hinc inde oratoribus nominetur, honoretur, seu quovis alio modo actuve, quo talis in eo dignitas

facto agnoscat, aut si easdem ob causas cum iis, qui alio quocumque gubernationis genere reipublicae praesunt, tractari aut sanciri aliquid contigerit, *nullum* ex actibus, ordinationibus, et conventionibus id generis *jus iisdem attributum*, acquisitum, probatumque sit, ac *nullum adversus ceterorum jura et privilegia ac patronatus discrimen jacturaeque et immutationis argumentum illatum censi ac debeat.*'

³ Clem. c. iv. Si summus Pontifex, v. 10, de sent. excom.

⁴ Cf. the two letters to the king of England. Raynald. Ann. a. 1320, n. 40-42. Robert Bruce was unwilling to receive the Papal legates, because the first letter of the Pope had not given him the royal title, but had written: 'Verum quia dissensionis negotio inter te ac praefatum regem super Scotiae regno pendente decenter non possumus tibi regii tituli nomen adscribere; prudentia tua moleste non ferat, si te regem Scotiae in eisdem literis omisimus nominare' (Pauli, Geschichte Engl. vol. iv. p. 259, n. 3). When subsequently the Pope, for the sake of peace, wrote to Robert 'sub regia intitulatione,' he expressly declared that no gain or loss should result therefrom to either of the contending parties.

⁵ Pius II. ap. Raynald. a. 1459, n. 13.

⁶ Sixtus IV. Const. Hac in perpetuum, Kal. Feb. a. 1475.

⁷ Cf. Archiv für Kirchenrecht, 1863, vol. x. p. 185 seq.

⁸ Quin illa inde pro cognoscendis decernendisve dominantium juribus sancita censeretur dispositio.

⁹ Quam quidem de jurium partium incolumitate conditionem pro adjecta actibus hujusmodi habendam semper esse edicimus, decernimus, et mandamus.

¹⁰ In hujusmodi temporum, locorum, personarumque circumstantiis ea tantum quaeri, quae Christi sunt, atque unice, veluti susceptorum consiliorum finem, ea ob oculos versari, quae ad spiritualem aeternamque populorum felicitatem facilius conducant.

¹¹ Archiv für Kirchenrecht, 1864, vol. xii. p. 385 seq.

§ 4.

Indeed from all the acts of the Holy See in recent times can be seen that it well knows the difference between mediæval and modern States and political relations, and that in modern times excommunication no longer has deposition as its consequence. When Pius VII., the noble-hearted victim of so many deeds of violence, solemnly excommunicated Napoleon I., the author of these deeds, he at the same time issued for the subjects of the States of the Church, as well as to all Catholic nations, a prohibition against making the excommunication a reason or pretext for doing to those laid under it any injury whatsoever, whether to their persons, property, or rights. 'For,' continues the Pope, 'while we inflict on those whom we condemn the kind

of punishment which God has placed in our power, and while we chastise the many and heavy wrongs done to God and His holy Church, we have as our main end that those who now cause us to suffer be converted and suffer with us, if God make them penitent so as to know the truth.¹ Just in the same way Pius IX. pronounced excommunication, and nothing further, on the usurpers of the States of the Church.² It was known at Rome as well as elsewhere that modern States and Governments no longer recognise any civil and political consequences as attached to excommunication. Nay, more; Pius IX. declared in plain and precise words to the deputation of the Academia of the Catholic religion on 21st July 1871,³ that of the various misrepresentations of the doctrine of Papal Infallibility, the most malicious was the assertion that in the doctrine was included the right of deposing sovereigns and releasing nations from the duty of obedience. This right, his Holiness went on to say, had at times been exercised by the Popes in extreme cases, but had nothing to do with Papal Infallibility. Its source was not the infallibility [belonging to the teaching office], but the [judicial] *authority* of the Popes. This latter, according to the public law then in force, and by the agreement of the Christian nations, who revered in the Pope the supreme judge of Christendom, extended to passing judgment even *civilliter* on princes and on individual States.⁴ Altogether different is the present condition of affairs, and only malice can confound things and times so different.⁵

¹ Const. *Quam memoranda illa*, 10 Jun. 1809: ‘Dum vero Ecclesiae severitatis gladium evaginare cogimur, minime tamen obliviscimur, tenere nos, licet immerentes, ejus locum in terris, qui cum etiam exserit, justitiam suam, non obliviscitur misereri. Quare subditis imprimis nostris, tum universis populis christianis in virtute sanctae obedientiae praecepimus ac jubemus, nequis iis, quos respiciunt praesentes literae, vel eorum bonis, juribus, praerogativis damnum, injuriam, praejudicium, aut nocumentum aliquod earundem literarum occasione aut praetextu praesumat afferre. Nos enim in ipsos eo poenarum genere, quod Deus in potestate nostra constituit, animadvertentes atque tot tamque graves injurias Deo ejusque Ecclesiae sanctae illatas ulciscentes, id potissimum proponimus nobis, ut, qui nos modo exercent, convertantur et nobiscum exerceantur (S. Aug. in Ps. liv. n. 1), si forte Deus det illis poenitentiam ad cognoscendam veritatem (2 Tim. ii. 25).’

² *Encycl. Cum Catholica Ecclesia*, 26 Mart. 1860; *Respicientes*, 1 Nov. 1870.

³ Given in the *Voce della Verità*, N. 85, d.d. Rome, 22 July 1871, then in the *Civiltà Cattolica*, 19 Aug. quad. 508 (ser. viii. vol. iii.), p. 485. Translated into German in the *Munich Pastoralblatt*, 1871, No. 31; also *Archiv für Kath. Kirchenrecht*, vol. xxvi. No. 5, p. lxxx.; and *Periodische Blätter über das Vatican. Concil.* vol. iii. No. 8, pp. 327, 328. The same view is expressed in the memorial of the opposition bishops given by Schulte (i. p. 5) and Friedrich (Doc. ii. p. 389).

⁴ The report in the *Civiltà Cattolica* of this last sentence is: 'Questa [l'autorità pontificia] secondo il diritto pubblico allora vigente, e per l'accordo delle nazioni cristiane, che nel Papa reverivano il supremo giudice della cristianità, stendersi a giudicare anche civilmente dei Principi e dei singoli Stati.' This or a similar version has been followed by Dr. Hergenröther, and by the French translator of Fessler's *True and False Infallibility* (English transl. p. 128, note). A different version is given in the *Discorsi del Sommo Pontifice Pio IX.* Roma, 1872, p. 203: 'L'esercizio, poi, di questo diritto, in quei secoli di fede che rispettavano nel Papa quel che è, vale a dire Il Giudice Supremo della Christianità, e riconoscevano i vantaggi del suo *Tribunale* nelle grandi contese dei Popoli et dei Sovrani, liberamente si estendeva (aiutato anche, com'era dovere, dal Diritto Pubblico e dal commune consenso dei Popoli) ai piu gravi interessi degli Stati e dei loro Reggitori.' [Tr.]

⁵ The Pope continues (I borrow the translation given by the English translator of Fessler, l.c.): 'As if an infallible judgment delivered upon some revealed truth had any analogy with a prerogative which the Popes, solicited by the desire of the people, have had to exercise when the public weal demanded it.' In the *Civiltà Cattolica*, l.c.: 'Quasi che l'infallibile giudizio intorno ad un principio di rivelazione abbia alcuna affinità con un diritto che i Papi, chiamati dal voto dei popoli, dovettero esercitare quando il comun bene lo domandava.' In the version given in the 'Discorsi' above named this passage is absent. [Tr.]

§ 5.

This declaration is clear and simple. It teaches: *First*, that the source of that former right of deposing was not the infallible teaching office, but the judicial authority of the Popes. Deposition was a punishment; to pronounce punishments is the province of the judicial power; and only in virtue of such power have the Popes acted in these cases. *Secondly*, that the ground of the just exercise of this judicial power lay in the public law of those times, which recognised in the Pope the highest judge of princes and peoples, a recognition in some sense the result of the desire of self-preservation against the threatening barbarous rule of brute force. *Thirdly*, that a renewal of the religious and political relations of those former times is not to be thought of.

The unity of the Christian family of nations has been destroyed, and governments only decide their disputes by arms; it is no longer easy, as formerly, for princes to be tyrants; they are restrained by democratic elements, by constitutions and representative assemblies; the reverence attached to monarchy has to a great extent disappeared, and the Church is far from desiring to diminish the little that remains. No one, least of all the Pope, thinks of resuscitating the old deposing power.¹ It is only the Revolution which threatens sovereigns, precisely that new power which no one by word and deed has more condemned than the Pope has.² Of the many princes dethroned in the last eighty years, not one has been dethroned by the Pope, but all by the Revolution, all by principles unceasingly combated by the Holy See.

¹ Cf. *Civiltà Cattolica*, ser. viii. vol. iv. quad. 511, pp. 12-16.

² *Syllabus*, prop. 63.

§ 6.

Thus in these days the Church is confined to the purely ecclesiastical domain, and her whole endeavour must be directed to preserve here her necessary freedom, or if she does not possess it, to win it back. In most countries, far from possessing this freedom, she is loaded with a heavy yoke, and instead of being able to exercise indirect influence on earthly affairs by instructing and elevating men, she is in many ways fettered and oppressed by the 'jus potestatis civilis in or circa sacra' (the 'right' of the civil power in religious matters), partly positive, partly negative, partly indirect, partly even direct. More and more she is driven away from public life, and confined within the four walls of places of worship. Even here she is watched with Argus eyes, subject to the espionage of the police, and threatened with punishment for occasionally venturing on some freedom of expression. Robbed to a great extent of her former well-earned property, deprived of a number of influential institutions, exposed without protection to the mockery of an unbridled press, suspected by the mighty ones of the earth under numberless pretences, and accused of cherishing vast schemes of dominion, she seems to be

on the way back to the times before Constantine the Great. Yet even in those times she was in one way better off; for while externally persecuted she was free internally, her teaching and discipline were subjected to no State approval, and she freely chose her officers and ministers without State interference.

§ 7.

Very strange is the charge made in several quarters against the Popes, that they who in the struggle about investitures had so energetically fought for the freedom of the Church, 'themselves gave up again the rights of the Church to the civil rulers, to whom they finally conceded the nomination to bishoprics and abbasies—a greater concession than the right of investiture.'¹ But we must carefully distinguish different times, circumstances, and persons. These concessions were derived from a time when the civil power had acquired a *de facto* supremacy over the Church; and the latter, to avoid worse evils, was compelled as far as she could to yield to the menacing demands of the princes. The concessions were at first very limited and of various characters, being more extensive in the case of churches and prelacies that were newly erected and endowed by the princes; and less extensive in the case of those that were older and long in existence.² As late as the time of Gregory XIII. (1577) three kinds of privileges in these matters conceded to different sovereigns were considered distinct at Rome: (1) the right of presentation in virtue of a legitimate right of patronage; (2) the right of nomination in virtue of an apostolic privilege; and (3) simple right of supplication.³ At that time also there were many churches, without as well as within Germany, possessing free right of election; in many others the civil ruler recommended to the Pope ecclesiastics who seemed fit, and the Pope as far as possible paid regard to this recommendation.⁴ But the courts of Europe soon sought to set aside all limits, and to convert the right of supplication into that of nomination and presentation.

The kings of Portugal had an extensive right of patronage in their transmarine dominions, but in Europe, excepting the

see of Lisbon and two bishoprics, only the right of supplication, until in 1740 Benedict XIV. conceded to them the complete right of nomination.⁵ The Papal reservation of vacancies in curia was formerly only set aside for individual cases by special Papal indult.⁶ Also in Poland the kings had rights of supplication and of presentation, except as to vacancies in curia; as late as 1713, on occasion of such a vacancy, Clement XI. filled up the archbishopric of Lemberg.⁷ The concessions made in 1451 to the Duke of Savoy were likewise understood at Rome only in the sense of a right of supplication, and as limited to the duchy; but Benedict XIII. conceded the right of nomination, extending it to all the possessions of the duke, even the island of Sardinia; and Benedict XIV. and Pius VII. made further concessions.⁸ The Spanish kings had in the fifteenth century partly rights of supplication, partly of presentation; rights which were considerably extended by Hadrian VI., Clement VII., and Paul III.; but it was not till 1753 that they acquired by the Concordat with Benedict XIV. the general right of patronage.⁹ The kings of Hungary had an extended right of patronage;¹⁰ the emperors had by special Papal Indults a right of nomination to the bishoprics of the German-Austrian territories.¹¹ In the kingdom of the Two Sicilies the privileges of the kings as to bishoprics were first only granted for the lifetime of the monarchs, and were not everywhere equal;¹² but after the Concordat of 1818 a lasting Indult was granted for all churches.¹³ The Duke of Milan and the Republic of Venice had received in the sixteenth century Indults granting the right of nomination for individual churches;¹⁴ further concessions were made to Venice in the eighteenth century.¹⁵ Not till 1754 did the senate of Lucca obtain the right of nominating the archbishop of their city.¹⁶ In the year 1559 Philip II. received from Paul IV. the right of nomination for the bishoprics of the Netherlands;¹⁷ while Charles V. had as early as 1515 received an Indult, often afterwards confirmed, that without his consent no abbots or conventual superiors were to be appointed.¹⁸ In France, in virtue of the Concordat between Leo X. and Francis I., the king had a very extended right of nomination

in the old provinces. The attempt (after 1532) to extend this to Brittany¹⁹ was resisted by Paul III.²⁰ But the kings, especially Louis XIV., managed to obtain special Indults for all the newly acquired provinces as well as for all the bishoprics not yet in their nomination ;²¹ so in 1664 for Metz, Toul, and Verdun ; in 1668 for Arras and Tournay ; in 1678 for the archbishopric of Alby ;²² in 1695 for the archbishopric of Cambrai ;²³ and lastly, on 14th March 1770, from Clement XIV. for the island of Corsica.²⁴ Up till 2d Jan. 1765 the sees vacant by a natural death in curia were reserved to the Pope ;²⁵ but then even this reservation was given up in favour of the king.²⁶

By looking at each of these documents one after the other can be seen how much and how long the Popes resisted the invasions of the various courts, and yet how at last they were always compelled to make fresh concessions, while the influence of the civil ruler continually increased. The Popes themselves felt how much the liberty of the Church in this way was weakened. Pius V. confirmed and proclaimed on 19th Jan. 1566 the resolution passed by the Cardinals in conclave that rights of presentation and nomination to bishoprics and consistorial benefices should in future only be granted with the consent of two-thirds of the Cardinals ;²⁷ he even recalled, on account of grave misuse thereof, a privilege granted to the Duke of Mantua. But the force of circumstances was too strong ; many new concessions had to be granted ; and all the Popes could do was to admonish the princes to make a fitting use of these privileges, and to guard and regulate the investigation of candidates so as to prevent the elevation to prelacies of those who were altogether unfit.²⁹

In the present century the Bavarian Concordat in the original ninth article gave the king the right of nomination for the sees of Munich, Ratisbon, and Würzburg, and as to the other sees ordered the chapters to propose four fitting ecclesiastical persons to the king. But the Bavarian Government, 7th Sept. 1817, demanded (according to the draft of 1807) the direct royal nomination to all the bishoprics ; and the Holy See felt itself obliged to yield so as not to cause the ruin of the reorganisation

of the Church in Bavaria.³⁰ These facts are certainly sufficient to show the groundlessness of the reproach made against the Apostolic See of having 'surrendered the rights of the Church to the civil rulers,' a reproach which sounds strangely in the mouths of those who are so zealous for the right and the might of the State. It is neither just nor worthy of historical science to make a burdensome necessity imposed from without a matter of reproach to the person who suffers under it, and to mix up in confusion times quite different from each other.

¹ Huber, p. 3.

² Cf. Chr. Lupus. Diss. de regia Antistitum Nominatione, Opp. t. iv. p. 115 seq.

³ Rigantius, in Regul. Cancell. apost. Romae, 1744, t. i. p. 208, in Reg. ii. § 1, n. 12.

⁴ Eugen. IV. ap. Raynald. a. 1440, n. 2: 'Supplicant nobis reges Franciae, Angliae et Hispaniae ceterique pro praelatorum promotionibus nobisque commendant, quos utiles et idoneos credunt. Nos exaudimus, quantum cum Domino possumus et honore nostro preces eorum. Ubi vero aliter videtur nobis pro commodo et bono regimine ecclesiarum, reges et principes acquiescunt.'

⁵ Rigantius, l.c. n. 124-127, p. 227. Fargna, Com. de Jure Patronatus, t. iii. p. 312, p. iv. c. xiv. xv.

⁶ Rigantius, l.c. in Reg. i. § 1, n. 296, p. 81.

⁷ Ibid. in Reg. ii. § 1, n. 121, in Reg. i. § 1, n. 297, 298, p. 81.

⁸ Ibid. in Reg. ii. § 1, n. 39 seq. 46 seq. p. 211 seq. 214, 215. Carutti, Storia di Vittorio Amadeo II. c. xii. p. 179. Bened. XIV. Bull. t. ii. p. 243, Const. 23 Dec. 1748. Pius VII. Const. 23 Jul. 1819, Bull. Rom. Const. t. xv. p. 228 seq. Cf. also the document of 5 March 1816, apud Theiner, Sammlung, p. 19 seq.

⁹ Pirrus, de Elect. praesulum, § 10, p. 58 (Graev. Thes. ant. t. ii.). Mariana, de Reb. Hisp. l. xxvi. c. ii. Archiv für Kath. Kirchenrecht, vol. x. p. 8 seq. xi. p. 257.

¹⁰ Rigantius, in Reg. ii. Canc. § 1, n. 72, p. 185.

¹¹ Ibid. n. 78, 79, p. 220. Constit. Pii VI. et VII. Bull. Rom. Cont. t. vi. p. 414; t. viii. p. 132; t. xiv. p. 389; t. xv. pp. 249, 429, 573.

¹² Rigantius, l.c. p. 208 seq. n. 12 seq. Vivianus, de Jure Patron. l. iii. c. i. n. 38 seq.

¹³ Bull. Rom. Cont. t. xv. pp. 7, 15. Münch, Concordate, i. 721.

¹⁴ Rigantius, l.c. p. 210, n. 23, 25, 27, 28.

¹⁵ Bull. t. iv. ed. Romae, 1762, pp. 20-25, 49, 50.

¹⁶ Ibid. pp. 91, 92. Roscovány, Mon. i. pp. 272-274. Properly the senate had to propose three ecclesiastics for this metropolitan see.

¹⁷ Raynald. a. 1559, n. 33. Rigantius, l.c. n. 116, p. 226.

¹⁸ Pinson, Traité des Régales, t. ii. p. 1140. Rigantius, l.c. p. 242, n. 85.

¹⁹ Cf. in general Thomassin, p. ii. l. i. c. xlv. xlvi.

²⁰ Rigantius, in Reg. ix. Proom. t. ii. p. 4, n. 6 seq.; p. i. § 3, n. 274 seq. p. 111.

²¹ Rigantius, in Reg. ii. § 1, p. 220 seq. 224 seq. Reg. ix. p. i. § 3, p. 102.

²² Bull. Rom. ed. Romae, 1767, t. vi. p. vi. pp. 45, 248, 282; viii. p. 61.

²³ Rigantius, in Reg. ix. p. i. § 3, n. 208, t. ii. p. 102.

²⁴ Bull. Rom. Contin. t. iv. pp. 144, 146.

²⁵ Rigant. in Reg. i. § 1, n. 203, 204.

²⁶ Bull. Rom. Cont. t. iii. pp. 34, 35.

²⁷ Const. 4, Pro debito justitiae, Bull. ed. Taur. vii. pp. 427, 428.

²⁸ Rigantius, t. i. p. 211, n. 33.

²⁹ Greg. XIV. Const. Onus apostolicae, 1591. Clem. VIII. Const. Magna dona, 1599. Urban VIII. Inst. a. 1627 (Bullar. ed. Taur. t. ix. 419; x. 478; xiii. 581 seq.). Bened. XIV. Const. Gravissimum, 18 Jan. 1757.

³⁰ Concordat und Constitutionseid der Katholiken in Bayern, Augsburg, 1847, pp. 70, 87-89. Cf. p. 31.

§ 8.

The Popes have more and more surrendered in favour of the civil rulers, and also of the bishops, their rights of collation, which were made the subject of many exaggerated and unjust complaints. Yet in the time of the Council of Constance, and at the Council itself, it was recognised that the Popes in their nomination to benefices had always paid the greatest regard to the claims of learning.¹ The complaint made nowadays that men of learning are excluded, especially in Germany, from the episcopate, cannot be laid to the charge of the Pope, who has the free disposal of not one single German bishopric, but must confirm the candidate nominated or elected, unless there be any impediment in regard to his faith and morals. As a fact it was for some time a maxim at one of the German courts to raise to the episcopate no learned theologian or canonist, and elsewhere learned men have frequently been struck off the list of candidates.

The concessions mentioned above have brought advantage in strengthening the monarchical power and facilitating agreement between Church and State; but they have also brought disadvantages. Certainly in recent Concordats the Church has given up more than she has gained, if we do not regard the en-

dowments of bishoprics and chapters ; and even these are a small compensation for the Church property secularised since 1803. Most oppressive has she found the great privileges of the civil princes as to the nomination of bishops,² and the civil veto in their election.

¹ Hefele, Conc. vii. pp. 123, 234, 317.

² On the French Concordat of 1516 and 1517 Charles du Plessis d'Argentré remarks (t. i. p. ii. p. 357): 'Extraordinaria dispensatio (qua ad Regem translata est Episcoporum electio) non in perpetuum durare debet, si libertatem Ecclesiae et splendorem imminuat.' As early as 1560, when there was the question of summoning the Council of Trent, the Faculty of Paris declared in its Postulate: 'Nominaciones Regis sunt occasione ruinae ecclesiasticae' (ib. t. ii. p. ii. p. 290).

§ 9.

It has also been asserted that, according to the doctrine prevailing at Rome, Concordats are not real contracts, but grants of the Pope — privileges, whose continuance depends on his good pleasure. Yet the Popes conclude such agreements with the civil power in the form of a contract,¹ establish complete reciprocity and obligation on successors of both parties,² declare that they will not violate nor change the said agreements,³ and even designate their violation as a formal breach of contract.⁴ It cannot, then, be doubted that the Popes regard them as real contracts ; and this is the real point, not what this or that individual canonist may teach. But even those canonists who call Concordats privileges do not teach that their continuance depends on the good pleasure of the Pope, but that they are *privilegia ex causa onerosa* which cannot be set aside by one of the parties.⁵ Opposed to them are canonists of high repute, even in the Papal Court.⁶ The view that Concordats are privileges has also been held by German canonists without arousing complaint, or causing injury to the Concordats with the German nation. Thus, *e. g.* Schmalzgrueber⁷ says of the Concordats with the German nation, that the Pope in the plenitude of his power can act contrary to them,⁸ since the tacit condition is always to be understood: 'provided there does not arise an extraordinary reason in virtue of which the welfare of the Church demands another course ;' for Concordats, though having some-

what the force of a contract (*aliquam vim pacti*), are much rather privileges granted by the Pope, as may be inferred from the fact that spiritual matters cannot fall under a contract properly so called, and that the Pope in *these* contracts has rather surrendered or imparted some portion of his own rights than acquired any fresh right.⁹ It is universally admitted that things purely spiritual cannot be the object of a contract,¹⁰ and that in them the Pope alone is competent; but Concordats as a rule refer not to things purely spiritual, but mostly to things mixed; some writers, indeed, make the latter an essential feature.¹¹ The former class of Concordats treated of collation to benefices, and contained an express limitation. Recent Concordats, from the year 1801, are in many points different from earlier ones. Truly enough privileges and favours granted by the Church are to be found in them, for example, the nomination of bishops, dignitaries, and canons granted to the temporal sovereign. Still these Concordats, as to their entire substance and also as to their form, are by no means simply privileges.

It is idle to cite the Brief of Pius IX. to Maurice de Bonald, 19th June 1871, which neither intends to give nor does give a decision on the nature of Concordats. Here they are called 'Contracts or Indults' (*pacta seu indulta*); the latter in so far as the Church by these agreements (*per hæc conventa*) does not endeavour to obtain a cession of rights, but makes a grant from her own, and thus founds special rights different from those according to common law (*jus commune*). The Brief praised the author of a work defending the principles of the Church,¹² and discussing two questions: whether the government of National Defence had succeeded to the privilege granted by the Concordat of 1801 of presenting to vacant sees; and if so, whether this privilege, in consequence of the abuse made of it during seventy years, could be recalled.¹³ Here the question is primarily about an Indult in the full sense of the word, as the Indult of presentation or nomination.

In general all are agreed that where, in consequence of altered circumstances, a Concordat is injurious and the needs of the Church require an alteration, the Pope can alter it, and act

in opposition to it. Quite a similar claim is made by jurists for the civil power.¹⁴ Such cases, however, are exceptional, and do not justify a groundless and arbitrary revocation. Also Concordats are in no case mere draft agreements (Punktationen), a simple expression of identity of views, receiving their binding force only from the civil power, and for so long only as the civil power pleases.¹⁵

¹ Schulte, Kirchenrecht, i. p. 441 seq. argues from the form.

² Bavarian Concordat, 1817, art. 17, 18. Neapolitan, 1818, art. 30. Austrian, 1855, art. 35. Spanish, 11 Jan. 1753 (Münch, i. p. 461). In the French Concordat of 1516 it is expressly said: 'Illam (Concordiam) contractus et obligationis . . . vim et robur obtinere' (Münch, i. p. 244).

³ 'Paulus V. Const. Ex pastoralis declarat, nec suae unquam mentis fuisse nec praedecessoris sui concordatis derogare. Et jam antea Gregorius XIII. Const. 6 Junii 1572, edita contestatus est, se, sub quacumque forma scripserit concordata noluisse laedere.' Bouix, de Princip. Jur. Can. p. i. sect. iii. c. i. § 3, ex Bineri Apparatu Jurisprud. Canon. p. vi. c. iii. a. 8, § 6. And before this, Jul. III. in Breri ap. Raynald. a. 1554, n. 19: 'Nos attendentes, Concordata praefata vim pacti inter partes habere, et quae ex pacto constant, absque partium consensu abrogari non consuevisse neque debere,' &c. Cf. Urban VIII. apud Lacroix, de Benefic. Eccl. n. 519.

⁴ Pius IX. Allocution of 1 Nov. 1850 and 22 Jan. 1855, as to Sardinia (Acta Pii IX. vol. i. p. 254, vol. ii. p. 5); of 17 Dec. 1860, as to Baden. Cf. Syllabus, prop. 43.

⁵ Pignatelli, t. ix. Cons. 58, p. 109, n. 3: 'Privilegium ex causa onerosa . . . non potest a principe revocari . . . Censetur hoc casu orta *mutua obligatio* ex consensu utriusque partis, quae altera renuente et invita tolli non potest.' N. 4: 'Contractum a principe initum, *etiam cum subditis*, esse *irrevocabilem*, probat textus in c. i. Ex epistolae (ii. 19) de probat. atque communis opinio . . . Quod adeo verum est, ut *nec etiam de plenitudine potestatis* posset Imperator vel Papa contravenire contractui.' N. 5: 'Et idem juris est in successore, qui nec ipse potest resilire a contractu per praedecessorem inito, etiam de plenitudine potestatis, ut scripsit Paulus de Castro in d. l. Digna vox 4 Cod. (i. 14) de leg. . . .' N. 7: 'Nihil est, quod lumine clariori praefulgeat, quam recta fides in principe. Si esset in sola principis voluntate, contractum, quem cum subdito facit, infringere, nullus verisimiliter contraheret cum ipso et sic hominum commercio careret in contrahendo. Esset autem absurdum, ut qui princeps est hominum, careret commercio hominum. Inter majores enim poenas revocatur, inter homines esse et hominum carere commercio, l. iii. cod. i. 7, de apost. Princeps, *etiam Imperator ac Papa*, contrahendo obligatur, *jure naturali*, a quo surgit aequitas obligationis, l. i. Dig. (ii. 14) de pactis. Quod autem habet subsistentiam a jure naturali, a principe tolli non potest, l. fin. (6) Cod. (i. 22) si contra jus vel utilitatem publicam. Iderque princeps obligatur ex contractu ratione consensus, qui est *de jure naturali*,

cui etiam Imperator et Papa subjiuntur clem. (2) Pastoralis (ii. 11) de re judic.'

⁶ P. Nilles, in the Archiv für Kirchenrecht, vol. x. p. 452, n. 1. Cf. Reiffenstuel in l. iii. Decret. tit. 5, § 17-19; especially n. 534 seq. Engel, Coll. Jur. Can. l. iii. tit. 5, n. 54. Schlör, Diss. ad Conc. Germ. in Thes. Jur. Eccl. i. p. 319 seq. Ferraris, Prompta Bibl. Can. Rom. 1844, v. Beneficium, t. i. p. 639 seq. Card. Soglia, Inst. Jur. Publ. Eccles. 1844, p. 135: 'Concordata rationem non habent privilegii, sed pacti, estque illud pactum non temporarium et personale, sed reale et perpetuum, quod religiose observandum est.' Rigantius, Com. in Regul. Cancell. apost. in Reg. ix. p. i. § 3, n. 165, t. ii. p. 98: 'Quin imo posse Papam Concordatis derogare, cum ex ipsius parte contineant meram gratiam, tradunt Kochier ad hanc Reg. Gloss. 11, n. 22. Branden, ad Concordata Germ. q. 8. Simonet, de Reservat. quaest. i. n. 5; q. 99, n. 23, 26. Rota Decis. 266 part. 3 et Dec. 114, n. 2 et seq. p. 6. Recent. n. 166: 'Verum sine justa, gravi, et rationabili causa Concordatis derogare nec consuevit nec debet.' Santarell. Resolut. 18, n. 17. Gonzales, Gloss. 28, n. 26. Pirrhing, in Jus Canon. l. iii. tit. 5, n. 366. Mutta, de Caus. Consistor. sect. 18, n. 22. De Sanetis, Exam. Consist. cap. xviii. n. 18. After citing the words of Julius III. Riganti goes on to say: 'Hinc per clausulas generales, etsi amplissimas, in Pontificiis constitutionibus contentas nunquam censetur derogatum Concordatis quoad illas ecclesias, quae sub illis continentur per viam comprehensionis, ut sunt fere omnes ecclesiae Nationis Germanicae, cum qua inita fuerunt et quarum respectu Concordata ipsa vim pacti et conventionis habent, ad differentiam illarum ecclesiarum, quae sub Concordatis continentur per viam extensionis.'

⁷ Jus Canon. l. iii. t. i. tit. 5, § 6, n. 271 seq. p. 206 seq. ed. Ingolst. 1726, 4.

⁸ But the question here is as to benefices, about which in the Concordat itself there is the limitation: 'Nisi ex rationabili et evidenti causa . . . de digniori et utiliori persona duxerimus providendum.'

⁹ P. 207: 'Ratio est, tum quia spiritualia sub contractum proprie dictum et commercium non veniunt, tum quia per haec Concordata Papa de jure suo potius aliquid remisit vel communicavit, quam acquisivit.'

¹⁰ Rota Dec. 266 in causa Leod. 15 Mart. 1610: 'Quia spiritualia non cadunt in commercium.'

¹¹ E.g. Moroni, Dizionario V. Concordato, t. xvi. p. 35: 'Concordato comunemente si chiama una convenzione conchiusa intorno ad oggetti disciplinari misti fra la potestà ecclesiastica e civile, rappresentata la prima dal sommo Pontefice, la seconda dall' imperatore, re, principe, sovrano, republica o corpo qualunque investito dell' autorità sovrana. . . . Come convenzione fra i due poteri, il concordato verte necessariamente in oggetti disciplinari misti, ecclesiastico-civili, non potendo entrambi convenire che su cose, in cui ciascuno abbia un interesse.'

¹² Deux Questions sur le Concordat de 1801, par M. de Bonald. In a letter to the author, 30 Nov. 1871 (La Fede e la Scienza, 20 Feb. 1872, pp. 232-238), Tarquini has worked out his theory clearly.

¹³ Cf. the work Die ministerielle Antwort auf die Herz'sche Interpel-

lation, Regensburg, 1872 p. 224 seq. Münchener Pastoralblatt, 1871, N. 49. Archiv für Kath. Kirchenrecht, xxvii. p. li. seq.

¹⁴ They insist on the inalienability of the State rights of supremacy (Hoheitsrechte, prerogatives) exactly as the canonists insist on the inalienability of the Papal jurisdiction over the whole Church. The often cited proposition: *Papa non potest ligare sibi manus*—on which Branden says (super Conc. inter Sed. Ap. et inclyt. Nat. Germ. collect. q. 8, col. 1620): ‘*Et facultatem jure divino Pontifici competentem Papa a se abdicare non potest, quamquam Papatui renunciare valeat*’—has only the meaning that the Pope in certain eventualities, in case the higher good of the Church requires it, can make use of the plenitude of his power. The question here is not as to the ordinary course of things, but only as to extraordinary circumstances, on which vide supra, p. i. § 2.

¹⁵ As further references on the question of Concordats can be given: Phillips, Kirchenrecht, iii. § 158, p. 656 seq. Schulte, Kirchenrecht, i. 455 seq. Liberatore, *La Chiesa e lo Stato*, c. iii. art. 10, p. 358 seq. Tarquini, *Institutiones Juris Eccles.* p. 83 seq. The difficulty of fixing the juridical character of Concordats was recognised as early as the 17th century. See Rebuff. *Tract. Concord. quae inter SS. D.N.P. Leonem X. ac Christ. D.N. Regem Franc. sunt edita*, Colon. 1610, p. 902.

§ 10.

Groundless is the charge made against the Holy See of placing itself above all contracts, claiming the right to arbitrarily annul them, and treating the State quite as an inferior. The Holy See has much rather ever held fast conscientiously to these Concordats. In the negotiations with the Sardinian Government of 1850, Cardinal Antonelli repeatedly urged that the fidelity promised *on both sides* was a most solemn guarantee for the engagements entered into, and that neither of the two parties could get free from the obligation without the consent of the other.¹ He expressly gave to Concordats the character of those contracts (treaties) which are called international.² In a circular to the Nuncios, he recognised the obligation of both parties, which sprang from the solemn and mutual promise, and which was as great as the obligation springing from other treaties of a public kind, such as are made between different governments.³

In the Allocution of 1st Nov. 1850, Pius IX. complained of the statement of the Sardinian ministry, that Concordats relating to ecclesiastical immunities could be declared null, and abolished by the civil power alone, without the consent, or even in spite of the opposition, of the Apostolic See.⁴ From this

Allocution, as well as from that of 17th Dec. 1860, relating to the abolition in Baden of the agreement without the consent of the other party, is taken the 43d proposition of the Syllabus.

It is also not true that Rome has 'cancelled' the Concordat for Alsace and Lorraine. She has only declared that it is no longer applicable to them, because they have been separated from France, and the Concordat was only concluded with the French Government for French territory. This declaration cannot be assailed either logically or juridically. Nor is there any renewal of mediæval claims in the demand, that laws as to the Church and ecclesiastical affairs be not passed solely and simply by the civil legislators without even consulting the functionaries of the Church; for more regard is paid when the rights and interests of a mere commercial company are being treated of. There is no presumption in the declaration of the Holy See, that it 'can never admit the right of the civil government to pass laws on the affairs of the Church, and thereby limit the rights of the Church and the sphere of the ecclesiastical authority's competence. In virtue of her divine appointment the Church is completely free and independent of the State; if contests arise as to the exercise of her rights, she cannot allow the civil rulers to decide thereon without the coöperation of the ecclesiastic authority.'⁵ Which of two powers is seeking to tyrannise over the other, the one which proposes a friendly arrangement and holds as sacred the treaties agreed on, or the one which refuses all arrangement, and desires itself alone to regulate all, both spiritual and temporal? The one, which desires to preserve and protect what yet remains to it, or the one which desires to seize on what it never has had, nor can have, a right to? The one which defends itself with ancient principles of law, or the one which seeks under various pretexts to create a new condition of affairs, so as to destroy entirely the ancient law, and which misinterprets historical events long past, so as to dress up an accusation of aggression, and then proceeds to measures of extremest violence?

¹ Acta Pii IX. vol. ii. p. 141.

² Ibid. p. 165.

³ Ibid. p. 184. The president of the Sardinian ministry, D'Azeglio, declared (5 June and 29 July 1850) that Concordats were not to be placed on the same line as public treaties between two civil governments; that their inviolability was not absolute, if only through the condition to every contract: *rebus sic stantibus* (which comes at last to Spinoza's blunt statement, *Tract. Theol. Polit. c. iii.*: 'Foedus tamdiu fixum manet, quamdiu causa foederis pangendi, nempe metus damni seu lucri spes in medio est;'; Hübler, *l.c. iii. p. 435, n. 97*), and that complete changes in the State, as was the case with Piedmont, often demanded a deviation from what had been agreed. See *Acta Pii IX. vol. ii. p. 158 seq. 170 seq.*

⁴ *Acta Pii IX. vol. ii. p. 188.*

⁵ Cardinal Antonelli, in the answer (26 July 1860) to the Baden memorial of June 1860.

§ 11.

It has been said: 'We have the right in judging the Popes and their decrees to apply the modern standard, because Rome has remained unchanged in its doctrines and endeavours.'¹ In this there is a mixture of truth and falsehood. It is true that as to *doctrines* of faith and morals Rome has remained unchanged, as well as in her endeavours, corresponding to her duty, to maintain and extend everywhere the Catholic religion. But as to matters of *discipline* she has paid due regard to changed times and circumstances; she has made no claim to rights that rested, as the deposing power, merely on mediæval law, but rather has expressly recognised their cessation; she has made manifold concessions in Concordats, and has kept to them in spite of frequent breaches of faith by the other party; in opposition to the Revolution she has strengthened the monarchical power and has proclaimed its inviolability; she has exposed herself to the full hatred of the conspirators of Europe, with whom so many governments coquette and make common cause; she has for her part done all she could to repel and to vanquish the dangers that threaten society and civilisation. Are these her titles to be considered a danger to the State?

¹ Huber, p. 53.

ESSAY II.

DOCTRINE OF PAPAL INFALLIBILITY.

ON the 18th of July 1870 the Vatican Council defined as revealed dogma, 'That the Roman Pontiff, when he speaks *ex cathedrâ*—that is, when in discharge of the office of Pastor and Teacher of all Christians, by virtue of his supreme apostolic authority, he defines a doctrine regarding faith or morals to be held by the universal Church—is, by the divine assistance promised to him in blessed Peter, possessed of that infallibility with which the Divine Redeemer willed that His Church should be endowed in defining doctrine regarding faith or morals; and therefore such definitions of the Roman Pontiff are of themselves, and not from the consent of the Church, unalterable.'

During the Session of the Council the definition met with some opponents, a few of whom, since that time in open rebellion against Church authority, have continued their opposition, resisting the doctrine of infallibility as *irrational, novel, and dangerous*.

The examination of these three charges will serve at once to explain and confirm the dogma.

PART I. WHAT IS MEANT BY INFALLIBILITY.

- § 1. Its subject: the Pope discharging his office of universal teacher. § 2. Its object: questions of faith or morals. § 3. Its cause: the assistance of the Holy Ghost. § 4. Its connection with the infallibility of the united episcopate. § 5. Tokens and limits of an *ex-cathedrâ* definition. § 6. Infallibility in no wise irrational.

§ 1.

The definition has been called irrational, and to justify this expression the doctrine has been gravely misrepresented. 'God alone is infallible,' said a writer in the *Allgemeine Zeitung* at

the time of the Council. 'The Pope by claiming infallibility claims divinity.' Schulte speaks of 'a Pope who has been invested with divinity;' of 'an incarnate, inspired, absolute, divine infallibility;' others again of 'the oracle on the banks of the Tiber who can always be appealed to, and who pronounces with full inspiration.' God alone of His own nature is infallible and cannot err, but He can by His omnipotence keep whom He will from error. Catholics have always believed in the infallibility of the Church and of General Councils, without supposing them to be deified. Infallibility is not impeccability. The Pope can sin like other men, and is equally bound to penance. Infallibility is not granted to him in his private capacity for his own welfare, but is a grace added to his office for the good of the Church. This distinction between an individual and his office is not new, neither is it unknown in other cases. The priest also acts infallibly when, by pronouncing the words 'This is My Body,' 'This is My Blood,' he consecrates and changes the bread and wine, even although at the time he be in sin. If in the case of a priest we must distinguish between his personal worthiness or unworthiness and the exercise of his holy office, we must in the same way distinguish between the person of the Pope and the discharge of his office as Vicar of Christ and Pastor and Teacher of all the faithful. When we say the Pope (as Pope) is infallible, we speak thus for the sake of brevity; infallibility does not belong to the Pope's person, but to his office as teacher.¹ The phrase 'personal infallibility' is one very liable to be misunderstood. It can properly only be used when it is applied to St. Peter or any of his successors, each individual Pope, in the exercise of the highest functions of his office as universal teacher, and when thus used it means that his definitions are infallible before they have received the sanction of the Church. But at the same time this sanction can never be wanting; the Head of the Church can never be separated from the body; the Pope as Head cannot be imagined without the members.² There can be no question of a 'separate infallibility.'

In adducing a series of ill deeds on the part of Popes as an

argument against Papal Infallibility its opponents only show that they do not or will not comprehend in what infallibility really consists. As our Lord Himself with regard to the Scribes and Pharisees distinguished between their doctrine and their lives—‘All things therefore whatever they shall say unto you observe and do, but according to their works do ye not,’ Matt. xxiii. 3—so in all ages a *distinction* has been made between doctrine and works.³ Personal holiness and impeccability have never been ascribed to the Pope on the plea of the supernatural assistance promised him by Christ to prevent him in all ages from teaching falsehood instead of truth.

¹ Turrecremata, Sum. de Eccl. l. ii. c. cxii. ad 6: ‘Assistentia Spiritus Sancti promissa a Christo non respicit personam Papae, sed officium sive Sedem.’ He also (Hard. Conc. ix. 1262 seq.) distinguishes persona Papae from Sedes apostolica and Bellarmine persona quidam particularis.

² E. W. Westhoff, Praef. in nov. edit. P. Ballerinii, lib. de Potest. Eccl. Monast. 1847, p. x.: ‘Scimus utique, salvis Christi promissionibus pro Ecclesiae unitate factis, quae vero aeternum salvae inconcussaeque persistent, fieri non posse, ut vel caput a corpore Ecclesiae vel Ecclesia a capite suo visibili divulsa aliquando atque sibi opposita sint; corpus siquidem sine capite non nisi membrorum compago acephala ac sine vita, caput vero sine corpora monstrum esset; qua propter sine episcopis ei adhaerentibus Pontifex Romanus non erit, et qui ipsi uniti sunt, cum eo et sub eo Ecclesiam repraesentant; est qui a capite separati sunt quantumvis numerosi, Christi promissiones non amplius sibi habent, quae non nisi unitis cum capite sunt factae.’ Cf. Can. de loc. v. 5 f. 171.

³ Joh. Sarresbur. ep. 185 ad Mag. Gerardum Pucel. p. 195: ‘Nec retardet vos, si in Ecclesia Romana videtis aliquid reprehensibile, qui meministis in Evangelio mandatum esse fidelibus, ut non imitentur opera sedentium in cathedra Moysi, sed doctrinam eorum operibus impleant.’

§ 2.

The Pope is infallible when, in discharge of his supreme office as Pastor and Teacher, he defines a doctrine regarding faith or morals.¹ Infallibility does not touch his decisions in temporal affairs, such as the exercise of his authority as ruler of the States of the Church. It is simply ridiculous to bring forward, as an Italian (Baron Ferdinand Malvica) has done, in proof against infallibility, some laws of the Papal Government regulating the exportation of corn. The Pope is not infallible in every speech, conversation, or writing; and Gregory XI. acted with

perfect consistency in retracting in his will whatever he might have said contrary to the Catholic faith.² If everything the Pope may say or write does not partake of infallibility, much less do the utterances of Roman congregations of Cardinals. The decrees therefore against Galileo and the Copernican system cannot be adduced as arguments against the doctrine of infallibility,³ and it is little short of ludicrous to speak of the Index, which is merely a list of forbidden writings, as infallible decisions. Not all the solemn publications of the Popes (Bulls and Briefs) lay claim to infallibility, but only those in which a doctrine of faith or morals is determined as binding on the faithful, either prescribed for their acceptance or solemnly marked out for their rejection; and moreover merely the decision itself, not other statements made in the same publication.

Opponents of the dogma often bring forward quite arbitrary sentences from some Papal Brief containing no decision, and use them as objections. In dogmatic decrees of the Popes as well as of Councils it is necessary to distinguish between the definition of a dogma and the reasons, explanations, &c. added to it. Infallibility can only belong to the actual definition.

Infallibility is not without limits, as some have asserted, for it is concerned only with theories which have reference to, and in as far as they have reference to, revealed truth. It does not relate to matters resting upon purely human testimony. A Pope may, for example, be deceived by misinformation or misrepresentations. The Church must teach her doctrine, and she must also teach what her doctrine is not. The end of infallibility—to guard the Church from error—would not be reached if in discharge of her office as teacher she had not the power of delivering an infallible judgment, and of declaring, for instance, that the contents of such a book as Jansen's *Augustine*⁴ were contrary to revealed truth. Again, infallibility cannot refer to merely personal⁵ matters of fact, for these rest upon human testimony alone; but it can refer to dogmatic facts, that is, it can decide whether a doctrine contained in a book is or is not contrary to Scripture and tradition, an extension of ecclesiastical infallibility especially objected to by some oppo-

nents. The Church never decides upon questions raised by merely human curiosity, having no bearing upon revealed doctrine, and referring solely to temporal matters.

¹ Bouix, *Tract. de Papa*, Paris, 1869, vol. i. p. ii. sect. 1, c. i. p. 235: 'Agitur dumtaxat de infallibilitate in definitionibus fidei libere a Papa, non tamquam doctore privato, sed quatenus universalis pastore pronuntiatis.' Cf. Kettler, *Das Unfehlbare Lehramt des Papstes*.

² Du Plessis d'Argentré, *Coll. Judic.* i. p. 117.

³ Bouix, t. ii. p. 469 seq. Cf. p. 445 seq.

⁴ In 1704 the theological faculty of Douay drew this out in detail in their opinion on the notorious 'cas de conscience' (Du Plessis, t. iii. p. ii. pp. 425-439). Cf. Bolgioni, *Fatti dogmatici ossia della infallibilità della Chiesa nel decidere sulla dottrina buona o cattiva de' libri*; Brescia, 1788. Janner, *De Factis Dogmaticis*, *Dissert. inauguralis*; Wirceb. 1861: V. Schätzler, *Die papstliche Unfehlbarkeit*, p. 191 seq. Friedrich refuses to allow that ecclesiastical infallibility extends to *facta dogmatica*. We shall show later that the condemnation of Honorius by the Sixth Council, in so far as it was an ecumenical judgment, in no manner interferes with this extension.

⁵ C. A nobis, 28 de Sent. excom. v. 39. The judgment of Innocent III. is also applicable; according to which any one may be bound in the eye of the Church and not in the eye of God, and conversely: Innoc. III. l. ii. ep. 61, ad abbat. S. Andreae, pp. 599, 600. Abreptio and subreptio are here possible. Cf. Leo X. 1517, c. iii. *Inhaerendo*, v. 9, in Sept. The Pope may err in all Acts and Decrees not relating to revealed truth (Bouix, l.c. p. 238, prop. 3). Calixtus III. wrote to Frederick III. in reference to appointments to benefices: 'Possumus enim et nos ut homines aliquando labi et errare, in his maxime, quae *facti* sunt' (Aen. Sylv. ep. 385). This is the meaning of the utterance of Paul IV. brought forward by the Gallicans in 1557 (Du Plessis, t. iii. p. i. p. 385).

⁶ Vide Schätzler, p. 202.

§ 3.

Infallibility is in no sense 'omnipotence,' in no sense 'a creative dogmatic power' enabling the Pope to create new dogmas at will. The definition of the Council excludes the possibility of this; it says, 'For the Holy Spirit was not promised to the successors of Peter, that by His revelation they might make known new doctrine, but that by His assistance they might inviolably keep and faithfully expound the revelation or deposit of faith delivered through the Apostles.' But some have feared that the Popes may abuse the gift; this also the decision of the Council renders impossible. The very essence of the assistance of the Holy Ghost is the preservation of the Popes from the

abuse of their supreme office of teacher, otherwise the Church would be plunged into error. The whole question is, whether or no Christ has promised such an assistance. If the Pope, in the discharge of his office of supreme teacher, has the assistance of the Holy Spirit, it is impossible the case should ever arise of a Pope misusing his power to the injury of the Church. This assistance is not a direct communication from the Holy Spirit, in other words, an inspiration; but by it the Pope is preserved from error in declaring and defining the truths of revelation. No appeal to the remissness of certain Popes in matters of faith is relevant to the present question, which is solely concerned with positive decisions. Christ promised to St. Peter and his successors that their faith should never fail. He did not promise that they should always fulfil in the best manner their mission of confirming the faith of their brethren. Pope Honorius may be reproached with having encouraged error indirectly by not proceeding against it with timely vigour, but it cannot be said that he ever defined error, which would alone tell against the dogma. Dr. Friedrich again misrepresents the dogma when, referring to Pope Honorius, he exclaims: 'A Pope who is capable of partaking in the guilt of spreading heresy, who can very possibly leave the Church in heresy and help to make her so, is, forsooth, to be infallible!' A Pope is not infallible in proceedings such as those of Honorius, who contributed unintentionally to the increase of heresy by not issuing decisions against it.¹ His letters contain no decision, neither do they contain any false doctrine. No decision of his ever was or could be condemned as false, otherwise the Sixth Council would have contradicted itself, for it recognised that the Holy See had in all time the privilege of teaching only the truth. He was condemned for having rendered himself morally responsible for the spread of heresy by having neglected to publish decisions against it; and in this sense alone was his condemnation confirmed by Leo II. As regards the case of signatures extorted from the Popes—for instance from Liberius and Paschal II.—the want of freedom would render it impossible that these could be ex-cathedrâ decisions. The definitions of the doctrine of the in-

fallibility does not exclude the possible case of the internal conviction of the Pope not being necessarily the truth. The infallibility of the decision of a Pope speaking *ex cathedrâ* proceeds not from his own personality; *he* is not *ex sese* (of himself) infallible, but is so only from the assistance of the Holy Spirit. The *decisions* are infallible *in themselves*, and not only when they have received the consent of the Church, which was the doctrine of the four so-called Gallican articles rejected by Innocent XI. in 1682 and by Alexander VIII. in 1690. In 1682, thirty-five French prelates—of whom nearly all afterwards retracted, and excused their conduct on the plea that they had acted under fear of the king— assembled by order of Louis XIV., and laid down four articles as a foundation for the ‘liberty’ of the Gallican Church. In the fourth article this passage occurred: ‘In matters of faith the Pope has supreme authority, and his decisions are binding upon all Churches, and each Church in particular, but his judgment is not infallible without the consent of the Church.’ It shamefully misrepresents the dogma to refer the words *ex sese* to the person of the Pope instead of to the decision *ex cathedrâ*, thus misinterpreting the opposed proposition, ‘and not by the consent of the Church.’

¹ The condemnation of Honorius is only valid inasmuch as it was confirmed by the Holy See. The French writer, Du Plessis d’Argentré (*Collect. Judic. t. i. Praef. p. 3*), says: ‘(Leo II.) *cum ea exceptione acta sextae Synodi confirmat, quod Honorius ex sua parte tantam permiserit immaculatam fidem maculari. Itaque Latini Honorium Papam non nisi ut fautorem haeresis Monothelitarum condemnare voluerunt.*’ Cf. Schwane, *Dogmengesch. der Patrist. Zeit*, p. 524 seq.

§ 4.

It is incumbent upon the Pope as well as upon the Council before deciding a question to search into the sources of divine revelation, and thus to have recourse to human means for inquiring after the truth. But all human means would not suffice to give us divine faith in a doctrine defined, whether by Pope or Council. The assistance of the Holy Spirit promised by Christ can alone give us absolute certainty of the infallibility of the doctrinal decisions of the Church. This promise Christ

made as much to the Head of the Church as to the head joined to the body of bishops.

The opponents of the dogma assert what is absolutely false, in saying that the doctrine of the Pope's infallibility deprives the episcopal body of the gift of infallibility, and places a single man in the position occupied by the whole Church. The promises vouchsafed to the entire episcopate and to the Church retain their full efficacy; the authority of Christ, which is the supreme power of the Church, speaks in the Pope alone and in the episcopate united to him. The Pope decides not as an individual man, but as Head of the Church reflecting the mind of the Church, which can never be separated from its head. The episcopate has only received promises of infallibility when joined to its head; apart, or separated, it has received none. The infallibility promised and granted to the Head of the Church and to the Apostles with St. Peter (active infallibility) is no other than that secured for the collective body of the faithful (passive infallibility) through the teaching office of the Church.

§ 5.

How is an ex-cathedrâ decision to be recognised? what are the signs by which it is to be distinguished from other utterances? Long before the Vatican Council theologians had discussed the tokens of an ex-cathedrâ decision,¹ and collections had been made as in Denzinger's *Enchiridion* of creeds and definitions,² the Popes of the Middle Ages laid great stress upon the intrinsic differences of their acts. Infallibility is bounded by the salvation of men, which is its end, and by God's revelation, to which it must conform. Innocent III. clearly states that judgments about persons in individual cases must not be supposed to be infallible. Benedict XII. carefully distinguishes between what he taught by a dogmatic decision³ upon the beatific vision from what he had propounded on the same subject in his private writings.⁴ For the Pope speaks ex cathedrâ only when, without constraint or fear, in perfect liberty,⁵ for the protection of the unity of the Church, and for the removal of disputes in matters of faith or morals, he pronounces a deci-

sion or condemnation upon a question regarding faith or morals, whether it be that he excommunicates as heretics and excludes from the Church's communion those who teach contrary doctrine, or whether he defines a doctrine regarding faith or morals as one to be held by the whole Church. Pope Agatho (A.D. 678) held his dogmatic letter to be binding upon all believers. The intention of binding all the faithful in virtue of the office of supreme teacher must be expressly stated. A critic of Bishop Fessler shows no understanding of the matter when he says that the proposition, the Pope must express the intention of binding by virtue of his office of supreme teacher, is new, and possibly condemned by Rome, since old theologians—for example, Gregory of Valencia⁶ and Melchior Canus—have taught this 'new doctrine' on various occasions; and it stands to reason that the Pope is able and willing to express clearly when he publishes a decision in matters of faith as supreme teacher of the Church. The Popes have always made quite clear when they pronounced such decisions; for example, Boniface VIII., in the Bull 'Unam sanctam,' makes quite clear that due obedience towards the Popes is binding upon all ('declaramus, dicimus, definimus et pronuntiamus').

¹ Petrus Ballerini, de Vi ac Ratione Primatus, Veronae, 1766, c. xv. Vide a detailed criticism, by Merkle, on the opinion delivered by the majority of the Munich theological faculty upon the subject of a Papal ex-cathedrá decision, Dillingen, 1869.

² Denzinger, Enchiridion symbolorem et definitionum, Wirceb. edit. iii. 1856; edit. iv. 1865.

³ Const. Benedictus Deus IV. Kal. Feb. 1336. Raynald. a. 1335, n. 9. Denzinger, Enchiridion, n. 456, p. 182, ed. iv.

⁴ Ap. Raynald. a. 1335, n. 24: 'Ista autem quae in hoc libello per nostrum ministerium posita sunt, sic accipi volumus (exceptis conclusionibus per Nos in constitutione, quae incipit *Benedictus Deus*, determinatis) quae non per modum determinationis ecclesiasticae nec ut papaliter dicta aestimantur, sed ut *scholastice et magistraliter* dicta habeantur, sic, quod licitum sit cuique in illis dicere, quod ei magis consonum fidei et veritate divinae Scripturae ac dictis Sanctorum videbitur esse dicendum.'

⁵ The necessity for liberty is included in the required intentio obligandi, which is not possible without liberty. Cf. on this point Ballerini, l.c. pp. 288, 289.

⁶ Gregor. de Valentia, t. iii. disp. 1, q. 1, punct. 7, q. 6, p. 301: 'Quotiescunque Rom. Pontifex in fidei quaestionibus definiendis illa, qua est praeditus, auctoritate utitur ab omnibus fidelibus tamquam doctrina fidei

recipi divino praecepto debet ea sententia, quam ille decernit esse sententiam fidei. Toties autem eum ipsa auctoritate uti credendum est, quoties in controversia fidei sic alterutram sententiam determinat, ut ad eum recipiendam *obligare velit universam Ecclesiam.*' Cf. Melch. Canus, de loc. Theol. l. v. c. v. § Illud item, f. 170.

§ 6.

If we have a true comprehension of the doctrine of the infallibility of the Pope we shall see that it cannot be called irrational. It only appears so when it is misrepresented as its opponents have allowed themselves to misrepresent it. Reason illuminated by faith must further admit that by this means the Divine Founder of the Church has kept His revelation pure and free from error; that the continual assistance of the Holy Spirit for this end is, though entirely supernatural, not contrary to reason; therefore reason need not deny it, though it can only be proved by divine revelation.

PART II. ON THE EVIDENCES OF SCRIPTURE AND TRADITION.

§ 1. Holy Scripture. § 2. St. Vincentius of Lerins. § 3. Testimony of the first six centuries. § 4. St. Irenaeus. § 5. The formula of Homidas. § 6. Faith and obedience. § 7. The second Council of Lyons and the Council of Florence. § 8. The Councils of Constance and Basle. § 9. Prohibition of appeal from the Pope. § 10. The fallible doctrine when new was only tolerated and often disapproved.

The doctrine of infallibility is said to be new, and to have been unknown in early Christian times. The Council appeals against this objection to 'the divine promise of our Lord and Saviour,' and to the traditions handed down from the earliest ages of Christianity. Thus the dogma, being founded upon Scripture and tradition, was of a nature to be defined by the Church.

§ 1.

First with regard to the Scriptural grounds for the dogma: our Lord first promised infallibility to St. Peter (Matt. xvi. 18); then He obtained it for him by prayer from His Father (Luke xxii. 32); lastly, He conferred it upon him (John xxi. 15-17).

a. Matt. xvi. 18: 'Thou art Peter, and upon this rock I will build My Church; and the gates of hell shall not prevail

against it.' Simon Peter had just confessed his faith in the divinity of our Lord with the words, 'Thou art Christ, the Son of the living God.' Our Lord upon that said to him, 'And I say to thee, Thou art Peter,' and the rest. Our Lord built His Church upon Peter; Peter is the foundation of the Church.¹ The gates of hell shall never prevail against the Church, neither therefore against its foundation,² for with the foundation the superstructure also would give way. The Fathers consider false teachers amongst the 'gates of hell.' According to Leo the Great, the strength of the rock remains as firm as the divinity of Christ which Peter confessed.³ Some in our day are desirous of separating the Popes from the Fathers of the Church; but it is undeniable that Leo the Great and Gregory I. were recognised as Fathers of the Church even by the Easterns. Even Photius, when speaking of the Western Fathers St. Ambrose, St. Augustine, and St. Jerome, calls the Popes Damasus, Celestin, and Leo 'Patres Patrum' (Fathers of the Fathers).⁴ The promise of our Lord made after and on account of a solemn profession of faith has special reference to the indefectibility of the faith.⁵ The Church is the pillar and ground of the truth (1. Tim. iii. 15). St. Ambrose says: 'Peter, the foundation of the Church, must stand firm against all false teachers.'

b. Luke xxii. 31, 32: 'Simon, Simon, behold Satan hath desired to have you, that he may sift you as wheat. But I have prayed for thee that thy faith fail not; and thou, being once converted, confirm thy brethren.' Christ, who knew that His Father always heard Him (John xi. 42), prayed for infallibility for Peter, and commissioned him to confirm his brethren. This passage serves also to explain the former one, and we can compare the corresponding statements in each, namely: the gates of hell assail the Church—Satan tempts the Apostles: Peter is the rock of the Church—for his faith shall not fail: upon Peter the Church is built—he shall therefore strengthen his brethren.

When the opponents of the dogma assert that this passage has only recently been adduced in favour of infallibility, they show their ignorance of Scripture and of the interpretation given

to it by the Fathers and theologians. St. Leo says: 'In Peter the strength of all is upheld, and the assistance of divine grace is in such manner dispensed, that the strength given to Peter is through him distributed to the rest of the Apostles.' Gelasius I., Gregory I., and other Popes, refer these passages to the successors of St. Peter. 'Dr. Döllinger wrote: 'The chair of Peter should be the abode of truth. . . . For our Lord's words, like His prayers, were not intended merely for the single persons addressed, and for the immediate moment; . . . they apply above all to the Church, and to its future needs which He foresaw.'

c. St. John xxi. 15-17: 'Feed My lambs, feed My sheep.' Christ, who calls Himself the Good Shepherd (St. John x. 11), appoints St. Peter to be His representative as shepherd of His whole flock, of His lambs and of His sheep. The shepherd must guard his flock from destruction; he must protect it from the wolf that goeth about in sheep's clothing—that is from false teachers (St. Matt. vii. 15); he must lead it into good pastures, and must maintain it in unity of faith. The sheep must hear the voice of the shepherd (St. John x. 3, 4). The good shepherd will instruct his flock in the faith. Our Lord said to the Jews, 'You do not believe, because you are not of My sheep' (John x. 26). It was not necessary to use the word 'teach' instead of 'feed.' The wider signification of 'feeding' includes that of 'teaching.' In the Church the supreme pastor must be the supreme teacher. But unless the word of the shepherd were infallible, it would be impossible to accomplish the charge and obligation undertaken as Vicar of Christ. Whosoever possesses supreme power in the Church must be the supreme and therefore infallible teacher. These three passages from Scripture are most closely connected together. That which Christ promised to Peter immediately after his confession of faith, that for which He besought His Father at the Last Supper, was that with which He invested him when he had confessed his love. 'Simon, lovest thou Me?' Peter is the rock on which was built the spiritual edifice of the Church. He is the shepherd of Christ's whole flock, the foundation that can never be prevailed against, the shepherd whom all his sheep must follow; for Christ prayed

for him that his faith might never fail; and he received the charge of confirming his brethren.

Even Gallicans concluded from these passages that the divine assistance would prevent any error from obtaining more than temporary admission into the Church of Rome or the Holy See; that after some uncertainty truth would always prevail.⁴ But our Lord promised His Church that He would be with her all days, even to the consummation of the world (St. Matt. xxviii. 20). He would have abandoned her, if the supreme teacher whom all are bound unreservedly to follow⁷ were to define erroneously some article of faith. Christ's prayer for Peter would not have been answered. If His Vicar taught error instead of truth he would be no good shepherd, no rock; he would himself be the ravening wolf from which he should have guarded the fold. Our Lord's promise must apply to each successor of St. Peter as supreme teacher individually, not merely to his successors in the aggregate, as Gallicans pretend. The Popes for many centuries have acted on the presumption of their infallibility, have encouraged those who have upheld it, and have allowed it to be taught openly. If the infallibility of the Pope's office of universal teacher were an error, the Holy See and the Church of Rome would long since have fallen into error, for they have committed themselves to the doctrine, first tacitly, and now expressly. The opponents of the dogma cannot deny that at least in recent times the Popes have acted on the supposition that their decisions were final, and have been supported in so doing, for example in the definition of the Immaculate Conception in 1854. They leave the Gallicans far behind in their objections, and cannot refer to them for a justification of their acts.⁸

¹ Leo M. sermo 3, c. iii. p. 13, ed. Ball: 'Firmitatem petrae, quae nullis impulsioneibus quateretur, accessit.'

² The Fathers say this expressly.

³ Leo M. serm. 3 al 2, c. ii. p. 12, ed. Ballerine.

⁴ De Sp. S. mystag. c. lxxviii. seq. lxxxii.

⁵ Bossuet, Def. p. iii. l. x. c. l. t. ii. pp. 191, 192: 'Illud immotum quod in fide Petri omnis ab origine agnovit antiquitas, id duplici modo a PP. intellectum: 1. ut Ecclesia catholica in fide Petri immota consistat; 2. ut immotum aliquid et invictum in Ecclesiam quoque particularem Romanam ac Sedem Ap. Quibus verbis (Math. xvi. 18) Christus, qui suam

maxime unam volebat Ecclesiam, creavit magistratum amplissima prae ceteris potestate ac majestate praeditum, qui omnes moveret ad unitatem, *maxime in fide.*' Cf. c. xxxv. p. 254 seq.

⁶ Bossuet, l.c. c. v. p. 197, § Accipiendi ergo.

⁷ Gerdil, Opp. t. xiii. Animadv. in Com. Febroni Posit. vii. n. 2: 'Quid igitur? Sic nobis existimandum est, Christum, qui pro sui promissi constantia continuo adsit, ut error statim repellatur et labefactata fides statim reviviscat, non potius lapsuro subventurum, ne labatur? Quid si promissio Christi fidem in successione Petri nunquam defecturam, prorsus id postulet, ne ullo umquam tempore corruat? Commenta haec sunt optantium, non cogitata sapientium.' Cf. ib. 325 seq. t. xiv. pp. 159-164.

§ 2.

But it is said that the doctrine of the infallibility of the Pope was quite unknown for a thousand years, that it was not believed and not taught.¹ In support of this assertion, opponents of the dogma appeal to the words of St. Vincent of Lerins:² 'We are to hold that which hath been believed everywhere, always, and of all men.' These words are undoubtedly true, but the conclusion the opponents draw from them is false. The infallibility of the Pope has not been believed everywhere, always, and of all men; therefore it cannot form part of the teaching of the Church. But if this conclusion were sound, every decision on a question of faith by a Council of the Church would be unnecessary or impossible. For example, had the dogmas defined by the first six Councils been believed everywhere, always, and of all men, there would have been no Arians, Macedonians, Nestorians, Monophysites, or Monothelites, and definitions would not have been called for from the Church. St. Vincent does not say, *only* that is to be believed which has been held everywhere, always, and of all men. Such a proposition would be false. If it were true, either there must never have been a dispute or difficulty in a matter of faith, or the Church from the mere fact of the dispute would be unable to decide the question. Thus the gift of infallibility would have been useless. St. Vincent lays down a rule for the guidance of individuals, not for the direction of the Church.³ For it is a matter of course that that must be believed which the Church proposes for belief. Thus the doctrine of the infallibility of the Pope could and ought to have been believed before it was de-

fined, but it was not necessary for every one to believe it, as it was after the definition. The Vatican Council made this perfectly clear, for it added to the definition these words: 'Therefore if any one, which God forbid, should venture to gainsay this our decision, let him be anathema.' St. Vincent gives three tokens by which truth may be recognised—that it has been believed at all times, in all places, and of all men. Now it is a fact that throughout the Middle Ages the doctrine of the Pope's infallibility was dominant and universal. Not till after the schism and the Council of Constance was it in some places obscured and overshadowed.⁴ But that which has for centuries been universally taught by the Church cannot be an error, otherwise the infallibility of the Church, whether active or passive, would be lost.⁵ Can the opponents of the dogma prove, on the other hand, that the fallibility of the Pope in defining matters of faith has been believed everywhere, always, and of all men, or even only during one century, everywhere, and by all? Certainly not. Only isolated Churches and individuals have temporarily doubted the infallibility of the Pope.

¹ Döllinger, *Erwägungen*, p. 1-3. Schulte, iii. p. 1.

² *Commonit. i. c. ii.* (Migne, l. p. 640): 'In ipsa autem Catholica Ecclesia magnopere curandum est, ut id teneamus, quod ubique, quod semper, quod ab omnibus creditum est.'

³ Cf. the *Relatio de Observat. PP. Conc. Vat. Friedrich*, doc. ii. pp. 311-313.

⁴ Ruard. Tapper *Or. iii.* Andreas Duval (apud Zaccaria Antifebron. *Vindic. diss. v. c. ii. n. 2.* Antifebronio, p. i. *diss. ii. c. x. n. 8*), Petr. Ballerini *de potest. Eccles. Append. § 12.* Theophil. Raynaud. *Opp. xx. 389*, ed. Cracov. 1669. The testimony of Peter d'Ailly, Gerson, and others in Bouix, *de Papa*, t. i. p. ii. c. vi. p. 464 seq.

⁵ Canus *de Loc. Theol. xii. 6, n. 8, f. 371*: 'Si scholastici theologii aliquam conclusionem firmam et stabilem uno ore omnes statuerint atque ut certum theologiae decretum fidelibus amplectendum constanter et perpetuo docuerint, illam ut catholicam veritatem fideles sane amplectemur.' L. viii. c. iv. *concl. 3, f. 239*: 'Concordem omnium theologorum scholasticorum de fide aut moribus sententiam.' T. i. *disp. i. q. 1, punct. 7, § 45, p. 374*: 'Quod universi doctores unanimi consensu tradunt, id sibi universa potest ac debet persuadere Ecclesia. Sed quod universa Ecclesia potest ac debet credere, id infallibiliter verum est.' Salmeron apud Andries, *op. cit. p. 121 seq.*: 'Quod, quia Ecclesia nec per unum quidem diem potest errore et semper sequitur sui temporis doctores, in communi, sen-

tentia doctorum cujusvis temporis Ecclesiae sensus invenitur non solum praesentis, sed et praeteritae, quia unus est spiritus.'

§ 3.

The opponents of the dogma, however, only allow the testimony of the first six centuries, and assert that during that time there was no question of infallibility. Now this is not a Catholic but a Protestant view, for it assumes a darkening, an eclipse of the light of the Church; nay, even an apostasy of the Church herself. Were the promises of Christ made only to the first six centuries? Could the Church after the sixth century no longer decide disputes about the faith? By what right can any one thus arbitrarily limit the operation of the Holy Spirit in His Church? If this were the case, all the decisions of the Church since the Sixth General Council must be rejected. Moreover, it is untrue that the doctrine of infallibility was unknown during the first six centuries. If the word 'infallibility' was not employed, we find expressions which mean the same thing, and whether the words 'Papal Infallibility' were employed or not, the thing itself existed always. The opponents (we might call them the Fallibilists), in requiring that the ancient Church should have used that identical expression, act as the Arians acted, who fancied themselves free to reject the decision of the Council of Nicea, because in its definition of the relation between the Father and the Son, a word was used (*homousios*, of the same nature) which was not to be found used of the Son of God either in Scripture or in the writings of the Fathers.¹ The divinity of the Son had always been an article of faith; but the disputes arising from the closer definition of His position with regard to the Father led to still more exact definitions, until the Church defined it expressly according to revealed doctrine. In the same way the doctrine of Papal Infallibility, whilst still undeveloped, was yet contained in the deposit of Faith, was presupposed to exist, and lay at the foundation of the decisions of the Church. A definition of this truth would have been quite unnecessary in the Middle Ages, when it was universally believed. Only when her doctrines had been in some places obscured, in others re-

jected, did the Church establish them more clearly and more firmly. But the doctrine of infallibility was, in fact, expressed in the fifth century, when Sixtus III. declared that upon the Pope was imposed the task of keeping pure the Church of God. Leo the Great says: 'I govern the Church in the name of him whose confession was glorified by the Lord Jesus, and whose faith destroys all heresies.' In the same century the Fathers assembled at the Fourth Council of Chalcedon declare: 'Peter has spoken through Leo. The statement already made [by the Pope] suffices. It is not allowable to change it.' Gelasius I. declared the judgment of the Pope to be final; Gregory the Great said that it removed all doubt. Are not these utterances quite one with the doctrine of infallibility, and in accepting these and others similar, and in acquiescing in the decisions of the Popes, has not the Church always practically confessed the doctrine? Why did the people of Corinth, whilst still the Apostle St. John was living, have recourse to Rome, to the successor of St. Peter, to obtain from him a decision? Why do all bishops without exception apply to the Pope for decisions, and consider themselves accountable to him? Even heretics, from Valentinus, Cerdon, Marcion, Praxeas, the Montanists, and Sabellians downwards, have, undeterred by their ill success, persevered in endeavouring to gain the Holy See to their cause, and to obtain a foothold in Rome. Surely these examples tell in favour of the infallibility of the Pope's office of supreme teacher.

St. Jerome in the fifth century testifies that the faith of Rome could not change, and that unity with the Pope was the test of Catholicity. St. Augustine, referring to the Pelagian heresy, shows he regards the decision of Rome as final. If, to weaken the force of his words, it is objected that the rescripts from Rome merely ended the matter for St. Augustine and the Western patriarchates, we soon see that this is only an empty evasion. Could the East and the West have a different creed? St. Augustine says further: 'Why desire another examination when the matter has already passed the Holy See? A condemned heresy should not be examined into by bishops, but put down by Christian powers.' Theodoret says: 'This most holy

See is set above all Churches on the face of the earth, for this reason amongst many, that it has never been defiled with the defilement of heresy, and that those who have occupied it have never taught heresy, but have always calmly guarded the apostolic gift.' Theodoret certainly did not mean that up to that time as a matter of fact no Pope had failed in faith; he did not hold the supremacy of Rome to be transitory. In his letter to Leo, he declares that he is ready to submit to any decision whatever of the Pope's. St. Peter Chrysologus says: 'St. Peter still lives and takes precedence. He gives the true faith to those who seek it.'² Now no one can give that which he does not possess; the successors of St. Peter must therefore possess the true faith. He gives it to those who seek it.³ He does not seek it by inquiring amongst the bishops, that by their assent it may be found; it is to be sought direct from *him*. Again, in the fourth century St. Ambrose declares, 'Where Peter is, there is the Church,'⁴ which he infers from St. Matt. xvi. 18; and in the third century St. Cyprian testifies that the Church of Rome has never erred in matters of faith.

¹ Athanas. de Decret. Nic. Syn. n. 32. Soer. H. E. l. iii. c. vii. Thom. Sum. p. l. q. 29, a. 3, ad l.

² Petrus Chrysol. ep. ad Eutyech. (Leon. M. ep. 25, Ball. i. p. 780).

³ Ep. cit. c. ii. p. 741 seq.: 'In omnibus autem hortamur te, frater honorabilis, ut his, quae a beatissimo Papa Romanae civitatis scripta sunt (Gr. *γραφόμενα*), obedienter attendas, quoniam B. Petrus, qui in propria sede et vivit et praesidet, praestet (Gr. *δίδωσι*) quaerentibus fidei veritatem.' He thus lays down a general principle which cannot be limited to the ep. ad Flavian, with which the author is as yet unacquainted.

⁴ Ambros. in Ps. xl. n. 30, ed. Paris, 1686, i. p. 879: 'Retro erat Petrus et sequebatur eum, cum a Judaeis ad Caiphae domum, synagogae principis, duceretur. Ipse est Petrus cui dixit: Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam. Ubi ergo Petrus, ibi Ecclesia; ubi Ecclesia ibi nulla mors sed vita aeterna, et ideo addidit: et portae inferi non prevalebunt ei. Et tibi dabo claves regnorum coelorum.'

§ 4.

In the second century St. Irenaeus says:¹ 'That with the Roman Church, because of her more powerful supremacy,² all Churches must agree,³ since in her, by all the faithful on the earth,⁴ the tradition of the Apostles has been preserved.'⁵ As

this important passage plainly expresses the infallibility of the Pope, the opponents of the doctrine are at much pains to weaken it, and interpret it in their own manner. They give these explanations: from all Churches many travellers went to Rome, and there expounded their belief; and it hence arose that the belief and traditions of these Churches were the same as those of the Church of Rome. Or again: the faithful who journeyed to Rome preserved the Roman Church in the true faith.⁶ But if the faith of Rome were preserved pure by those who travelled to her, what end was served by her supremacy, a supremacy not of the city but the Church? Rome in this case must have learnt her doctrine from other Churches, not other Churches from Rome. But there came to Rome in those days many subtle and obstinate heretics, who were almost as numerous as the true believers. How was it she did not imbibe their doctrines? But above all, how in the still dominant heathen city could the foreign Christian pilgrims in the midst of persecution exercise such influence upon their scattered brethren? Would the Church, who holds so fast to her traditions, have yielded them to the strangers who collected around her? If she yielded not, but separated herself from the other Churches, then the words of St. Irenaeus lose all force, for in that case she would no longer have taught the doctrine of all Churches. Is it not much more probable that in case of any difference the travellers to Rome preferred to their own faith the faith of the Roman Church, the greatest Church and the most ancient, that happy Church into which, as Tertullian says,⁷ the Apostles poured out together with their blood their whole doctrine, and which St. Cyprian calls the head and mother Church?

St. Irenaeus, however, does not appeal to the journeys to Rome, but to the succession of bishops. And as it would be too long to number the succession of bishops in all Churches, he gives a short and sufficient way of proceeding; for he says that to put false teachers to shame it suffices 'to declare the tradition received from the Apostles by the greatest Church, the most ancient, the most conspicuous, and founded and established at Rome by the two most glorious Apostles Peter and Paul, and

to declare the faith announced to men by this Church, coming even to us by the succession of bishops.' His argument is as follows: If the faith of the Roman Church has remained pure, the faith of other Churches must also have remained so. For all Churches universally acknowledge the duty⁸ of remaining in harmony with the Church of Rome, and if we know the faith of the Roman Church, we know that of all others. Finally, after enumerating the successors of St. Peter, he says that through this succession the doctrine of the Apostles has reached us, and that we have by it the fullest assurance that the ancient faith will continue unchanged.

The interpretation given by our opponents to this passage is quite untenable. It contradicts those of earlier theologians, of Gallicans⁹ even, and those which they once held themselves.¹⁰ Its only true interpretation bears weighty testimony in favour of the doctrine of infallibility. For how could it be required of all Churches, that they should in matters of faith conform to the teaching of the Church of Rome (which Church is expressly mentioned), if the Roman Church herself might fall into error? Not without purpose does St. Ignatius the Martyr, the disciple of St. John, call the Church of Rome the president of love or of the league of love;¹¹ and St. Cyprian, the most eminent of Churches, whence the unity of the priesthood took its rise, and in which all should be united in the unity of faith and love.¹² She is the mother and mistress of all Churches.¹³ Sixtus IV. rejected the proposition, the Church of the city of Rome can err (in matters of faith); and Alexander VIII. condemned that which said the infallibility of the Pope in matters of faith is untenable. The rejection of the four Gallican articles also was accepted universally in the Church; and this prepared the way for the Church's final decision. But other decisions of the Church had, without defining the infallibility of the Pope as an article of faith, allowed it to be presumed, and contained it, though obscurely.

¹ S. Iren. Adv. Haer. l. iii. c. iii. n. 2: 'Ad hanc [Romanam] enim ecclesiam propter potentio rem principalitatem necesse est omnem convenire ecclesiam, hoc est eos qui sunt undique fideles, in qua semper ab his qui sunt undique conservata est ea quae est ab apostolis traditio.'

² Propter potiore[m] (al. potentiore[m]) principalitatem. Salmasius gives the Greek: *ἐξαιρετον πρωτεϊον*: Massuet, *ὑπερτερον πρωτεϊον*: Gieseler, *ικανωτεραν πρωτειαν*: Armellini (De Philosophum, p. 25), *ικανωτεραν αὐθεντιαν*.

³ Convenire was clearly the Greek *συμβαλινειν*, as even Salmasius (De potest. Papae, c. v. p. 69, ed. Lugd. Batav. 1645) admits. The translator gives (l. iii. c. xii. n. 14) convenire for *συμφωνειν* (Acts xv. 15). He also (l. iv. c. xxxv. n. 3) uses convenire for to harmonise, agree. Cf. also Hagemann, Die Röm. Kirche, p. 614 seq.

⁴ The Greek expressions *οἱ πανταχοῦ* and *οἱ πανταχοθεν* are in ecclesiastical use quite synonymous. St. Irenaeus himself explains the words *qui sunt undique fideles* by *omnis ecclesia*.

⁵ If we here reduce the passive to the active we get more clearly: since in her all the faithful preserve the apostolic tradition; or in Latin: *in qua hi qui sunt undique fideles servant eam, quae est ab Apostolis traditionem*. By using the passive we are reminded of the words of Optatus (De Schism. Donat. l. ii. c. iii. Migne, PP. lat. xi. p. 947-949): 'In qua una cathedra unitas ab omnibus servaretur;' and of St. Augustine's expression (ep. 43, ad Glorium, Eleus et Fel.): 'In qua (ecclesia) semper viguit apostolicae cathedrae principatus.' The 'in qua' is to be taken in the ecclesiastical sense of the Greek proposition *ἐν*, and thus can be taken as 'in her bosom,' 'in her communion,' or 'through her,' 'by virtue of her.' Cf. the biblical and patristic expressions, *ἐν κυρίῳ*, *ἐν θεῷ*, *ἐν τούτῳ κρατύεται*, and others. The translator of St. Irenaeus often uses 'in' for 'per:' l. iii. c. xii. n. 4: 'Salutem in eo (Jesu) dedit hominibus:' c. xviii. n. 1: 'Ut quod perdideramus in Adam, hoc in Christo reciperemus:' l. iv. c. xxi. n. 3: 'In Christo universa benedictio.' Cf. also the famous *ἐν τούτῳ νίκα*. Maret (vol. i. p. 152) omitted the 'in qua,' and rendered 'qui sunt undique fideles' wrongly, as: 'de tous les côtes les fidèles.' Vide on this point Guéranger, The Supreme Teaching Office of the Pope, German transl. p. 81.

⁶ Friedrich, Tagebuch, p. 371. Cf. pp. 3, 4. Döllinger, Erwägungen, p. 89.

⁷ Tertull. de Praescr. c. xxxvii. Bossuet held it to be quite untenable to suppose that 'potentior principalitas' applied to the city and not to the Church of Rome. Def. Declar. p. iii. l. x. c. vi. t. ii. p. 198.

⁸ Necessè est (*ἀνάγκη*). This is also used by old translators to signify a moral necessity (Schneeman, l.c. p. xxvii.), but it equally expresses the necessity of a law of nature (Hagemann, l.c. p. 618).

⁹ De Marca, de Conc. Sacerd. et Imp. l. i. c. ii. n. 60: 'Commune hoc officium communionis cum ecclesia Romana . . . cognoverat ante omnes vetustissimus ille Lugdunensium antistes Irenaeus. . . . Quasi diceret, eam esse vim unitatis, quae principium et originem a Petri sede trahit, ut cum ea sentiendi necessitatem ceteris imponat.' Stephan. Baluz. annot. 63, ad Cypr. Ep. 55. Feuardent et de la Bare in h.l. Iren. et Tert. praescr. c. xxxviii. Bossuet, Orat. in Comit. a. 1682, Instr. past. 2, super promiss. Eccl. Cf. Freppel, St. Irénée et la Primauté du Pape (separate copy from vol. iv. of his larger work, 1870).

¹⁰ Friedrich, Kirchengeschichte Deutschlands, i. p. 409. Döllinger, Gesch. der Christl. Kirche, i. p. 365 ff.

¹¹ Ign. ad Rom. init.: *προκαθημένη τῆς ἀγάπης*. Cf. Möhler's *Patrologie*, p. 144.

¹² Cypr. Ep. 45, ad Cornel.; Ep. 55. Möhler's *Patrologie*, p. 869 seq.

¹³ Conc. Trid. Sess. vii. de bapt. can. 3; Sess. xiv. de extr. unct. cap. iii.; Sess. xxii. de Sacrif. Miss. cap. viii.; Sess. xxv. decr. de delectu cibor. Conc. Later. iv. c. v. (c. xxviii. de Privil. v. 33). Also 1073, Gregory VII. l. i. Ep. 15, ad fidel. Lomb. p. 297. Nicol. i. 865, Ep. 8 (Mansi, xv. 187). Hinkmar of Rheims, de Divortio Loth. reg. Praef. says: 'De omnibus dubiis vel obscuris, quae ad rectae fidei tenorem vel pietatis dogmata pertinent, S. Romana ecclesia, *omnium ecclesiarum mater et magistra, nutrix ac doctrix*, est consulenda et ejus salubria monita sunt *tenenda*.' The later Sorbonne acknowledges it also; for example, Decretal of the 24th May 1664 (Du Plessis d'Argentré, t. iii, p. i. p. 106).

§ 5.

We come now to the formula of Pope Hormisdas in the year 519. Dr. Döllinger, in his *Church History*, tells us it was subscribed at the time by two thousand five hundred bishops, and was confirmed by the Fathers of the Eighth General Council, A.D. 869. The Vatican Council cites from it these words: 'The first condition of salvation is to keep the rule of the true faith. Now the words of our Lord Jesus Christ cannot pass away, who said, "Thou art Peter, and upon this rock I will build My Church" (St. Matt. xvi. 18); moreover these words have been made plain by the event, because in the Apostolic See the Catholic religion has always been kept undefiled, and the holy faith held in honour. Desiring therefore not to be in the least degree separated from the faith and doctrine of this See, we hope that we may deserve to be in the one communion which the Apostolic See preaches, in which is the entire and true solidity of the Christian religion.'

Many attempts are made to weaken the significance of this confession, which even Gallicans admitted.

a. We hear it said that the copies of the text are at variance with one another, and that the originals are lost.¹ These variations, however, do not touch the essential point, and are merely later additions, paraphrases, or abbreviations.² All copies contain these words: 'Therefore³ in all things we follow the Apostolic chair, and preach those things which it has resolved upon.' This presupposes the truth and infallibility of Papal decrees in

matters of faith, for the whole drift of the passage concerns the purity of that faith 'which is always kept intact in the Apostolic See.' In the formula ratified by the Eighth General Council it is further said: 'At the same time we bind ourselves not to permit the names of those to be mentioned in the celebration of the Holy Mysteries who have left the communion of the Catholic Church, that is to say of those who are not in union with the Apostolic See.' To be a Catholic, and to be under obedience to the See of Rome, are here one and the same thing; whosoever does not obey the Holy See is excluded from the Church.

b. This formula is said to treat only of the primacy of the Pope. But the primacy of the Pope is preëminently one of doctrine,⁴ and the formula of Hormisdas refers to the dogmatic definitions of the Holy See, and therefore to the teaching office of the Pope.

c. It has been said that this formula treats merely of the Apostolic See;⁵ but it is only through him who occupies it that the Holy See is free from error or can promulgate its decrees. Those things determined on by the Holy See are the decisions of the Pope.⁶ Whosoever binds himself to obey implicitly the Holy See presupposes that the decisions of every occupant of the Holy See in matters of faith are infallible.

d. If this formula of faith was first prescribed when one dogma, the Incarnation of the Son of God, was being treated of, still the terms used are quite general ones. It was, as Bossuet acknowledged, often repeated, and transmitted to all centuries from the Eighth General Council, at which, though the former question was not being treated of,⁷ the formula was proposed and sanctioned in quite general terms, and indeed as a necessary condition of participation in the proceedings. 'What Christian,' Bossuet inquires, 'could reject this profession of faith?'⁸

e. Finally, it has been objected that this formula must be explained by the words of Pope Gelasius and of St. Irenaeus, and that it possesses not much real weight. But hear Pope Gelasius; he says: 'The decretals of the most blessed Popes are to be received with reverence. The Apostolic See must guard

the decrees of the Councils.' Gelasius also says: 'In matters concerning religion the Apostolic See possesses the supreme judicial power; we are especially to learn from the Holy See the things that are of God.' Further, he says that the See of Peter is the safest harbour for the weak,⁹ the constant guide of the Universal Church; that no court can reverse its decisions; that it continually guards the true doctrine; and that if it were to be spotted with any heretical perversity, which faith teaches us never can happen, there would be no power left for reclaiming those who had gone astray.

Our opponents appeal to the ancient oath administered to the Popes, which contained the promise to maintain inviolable everything which had been defined by Councils or by decrees of former Popes, and to permit no change or diminution in the Gospel revelation.¹⁰ But this only presupposes what no one denies, that the earlier Papal decrees are inalterable and are binding upon later Popes. The Popes commonly issued their decisions at Councils, but they did not do so invariably, and as Pope Gelasius declares (A.D. 485) it was not necessary they should. In many documents a distinction is made between decisions by Councils and decisions by Popes alone. The Pope, however, as the Roman Synod of 485 declares, always decides everything as universal head by virtue of the promise given to St. Peter.¹¹ These decrees of Councils issued by the Popes derived their force from the Popes, not from the greater or less number of assembled Italian¹² bishops. If the early Popes commonly exercised their teaching office by Councils it was not necessary they should do so, and there is no reason the custom should be retained through succeeding ages. The Pope always will deliberate with bishops and theologians before deciding a disputed question; the form of the deliberation may be conciliar or it may not. It was besides quite understood in those days that the decisions of General Councils were only fully valid when they had received the assent of the Pope.¹³ After the Council held at Ephesus A.D. 431 the Eastern bishops declared their conviction that the Pope could annul the resolutions there entered into. The Emperor Marcian only recognised

the decrees of the Council of Chalcedon, A.D. 451, as indisputable after their ratification had been issued by Leo the Great and published for all Churches.¹⁴ The words of St. Irenaeus, as we have already seen, tend as little as those of St. Gelasius to weaken the significance of the famous formula of Hormisdas. On the contrary, they correspond with it exactly. If, according to St. Irenaeus, all Churches must agree in faith with the Church of Rome, and if, therefore, all bishops are bound to follow the decisions of the Pope in matters of faith, both these propositions imply necessarily the infallibility of the Pope, not in his personal character, but when he speaks ex cathedrâ by virtue of his office as universal teacher and judge. The duty of rendering unconditional obedience to such decisions would be degrading and unreasonable, unless it were understood that they could contain nothing contrary to the true faith.

¹ Friedrich, Bonn Th. Lit. Bl. 1870, pp. 369, 370. Cf. Synops. Observ. ap. Friedrich Doc. t. ii. p. 230, n. 22.

² Cardinal Pitra (*Jur. Eccles. Graecor. Hist. et Monumenta*, t. ii. Romae, 1868, p. 216 seq.), who has compared the formula with the Vatican Codices, 4931, saec. xi. 3787, saec. xii. and 3786 and 4903, and twice with the copy of Menna and with that of Justinian, and has exactly compared it with the text in Mansi, Conc. viii. 407, 452, 467, 502, 734, 847, 857, 870, ix. p. 37, speaks of the *editorum Conciliorum procuratores qui eidem saepe formulae offendere pertaesi modo eam suppresserunt, truncarunt modo, &c.* Prof. Theil published in the same year, 1868, the 2d Fasc. of his *Epistolae Romanorum Pontificum Genuinae*.

³ In Mansi, viii. pp. 734, 847, we read: 'Anathematizamus omnes qui contra sanctam Romanam et apostolicam Ecclesiam superbiendo suas erigunt cervices, sequentes in omnibus Apostolicam Sedem.'

⁴ Thus according to Leo M. Ep. 5, c. ii. St. Peter (and his successors) received the *primatus fidei* from our Lord; and the Emperor Marcian addresses this Pope in these words: 'Your Holiness, who has the direction and supreme guidance in the divine faith.' Theodoret, Ep. 116, p. 1324, attributes to the Pope the supremacy as well on other grounds as because of the inviolability of his See and its occupant, and the undisturbed preservation of the Apostolic grace. In a letter to Leo (Leon. Ep. 52, c. i.), with a reference to Romans i. 8, he makes mention of the faith amongst other prerogatives possessed by Rome, and declares himself (c. v. 6) ready to give absolute submission to the decisions of the Popes.

⁵ *Observationes quaedam de Infall. Eccl. Subjecto*, Vindob. 1870, p. 28, § 5, according to Bossuet, *Def. Decl. p. iii. l. x. c. vii. t. ii. p. 201. Also Synops. n. 22, l.c.*

⁶ Theodoret, ep. 116, speaks of the Apostolic See and its occupant. St. Jerome, whose words it is vain for Dr. Friedrich to misrepresent,

speaks of the 'cathedra' and of Pope Damasus as identical; it is quite contrary to St. Jerome's intention not to hold the Pope 'decernens,' or to limit the 'jubere' to the command to other bishops to draw up a profession of faith (instead of its being done by the Pope himself). To support their theory our opponents have to do violence to the words of the Fathers. St. Peter Damian says quite correctly to the Pope: 'Tu ipse es sancta Sedes, tu es ecclesia Romana' (Opp. iii. 221). Prosper (Opp. Aug. t. x. App. p. 176, ed. Paris, 1690) says the blessed chair of Peter speaks to the whole world by the mouth of Zosimus.

⁷ We learn from the Acts of the said Council, Act iv. (Mansi, xvi. 337 seq. 73 seq.; Hard. v. 816), that at that time strangers who arrived in Rome were obliged to subscribe a formula, confessing the true faith and their submission to all the decrees of the Apostolic See.

⁸ Defens. Decl. Cleri Gall. l.c. § Omnes ergo.

⁹ Gelas. Ep. 14: 'Praestans Sedi, quam ipse benedixit, ut a portis inferi nusquam pro Domini promissione vincatur omniumque sit fluctantium tutissimus portus.'

¹⁰ Lib. Diurn. Rom. Pont. form. 84, p. 202, ed. Paris, 1869.

¹¹ Baron. a. 484, n. 26 seq. Mansi, vii. 1139: 'Unde nunc causa Antiochenae ecclesiae apud S. Petrum, collecti rursus delectioni vestrae morem qui apud nos semper obtinuit properavimus indicare. Quotiens intra Italiam propter ecclesiasticas causas, praecipue fidei, colliguntur Domini sacerdotes, consuetudo retinetur, ut successor praesulum Sedis Apostolicae ex persona cunctorum totius Italiae sacerdotum juxta sollicitudinem sibi ecclesiarum omnium competentem cuncta constituat, qui caput est omnium, Domino ad B. Petrum dicente: Tu es Petrus, &c. . . . Quod ergo placuit S. Synodo apud B. Petrum . . . per Tutum ecclesiae defensorem, et beatissimus vir Felix, caput nostrum, Papa et archiepiscopus judicavit, in subditis continetur.'

¹² The Jansenist views about 'Italian bishops' are well known from their literature.

¹³ Ferrand. Diac. (Migne, lxvii. 925): 'Qua (Sede Ap.) consentiente quidquid illa definivit Synodus (Chalc.) accessit robor invictum.' Gelas. Ep. ad Episc. Dardan. et tom. de Anath.

¹⁴ Leo M. Ep. 110, p. 1183 seq. ed. Ballerini.

§ 6.

But, our opponents tell us, obedience and faith are not one and the same thing. In themselves certainly they are not; there is obedience in action and obedience in faith¹ (Romans i. 5). The first is a submission of the will, the latter a submission of the understanding. Faith is, according to St. Paul, a reasonable obedience. Obedience to decisions in matters of faith can only be an obedience of faith, an obedience of the intellect. It is in no sense a 'new doctrine' that an internal, not merely an ex-

ternal, submission must be given to the decisions of the Supreme Head of the Church ; this was, on the contrary, firmly established in the decisions against the Jansenists. For the Jansenists had admitted the Church's right to decide questions of doctrine, but with reference to a matter of fact whether a certain book contained false doctrine, they denied the infallibility of the ecclesiastical decision, and maintained that it was sufficient to preserve on the subject a respectful silence. Pope Clement XI., A.D. 1705, pronounced that a respectful silence was not equivalent to the obedience which the Church required. Since, therefore, outward faith, that is respectful silence, does not suffice, but inward faith, the true assent of the understanding, is required, it must be a question of obedience in faith. The teaching office of the Church rests on the commission received from Christ (Rom. x. 15, Matt. xxviii. 19, John xx. 21), and with it has been given the power of binding the faithful, under pain of exclusion from the Kingdom of Christ. The matters on which the highest office of the Church decides are matters of faith ; the end and aim of such decisions is no other than to lay upon the faithful the duty of believing.

¹ ὑπακοή τῆς πίστεως, Romans i. v. Faith is, according to Basil, Or. de Fide, t. ii. p. 250, συγκατάθεσις ἀδιάκριτος τῶν ἀκουσθέντων : He requires the free will of men. Iren. Adv. Haer. iv. 37, n. 4, 5 : 'Sed quoniam liberae sententiae ab initio est homo, et liberae sententiae est Deus, cui ad similitudinem factus est, semper consilium datur ei, continere bonum, quod perficitur ex ea, quae est ad Deum, obedientia. Et non tantum in operibus sed etiam in fide liberum et suae potestatis arbitrium homines servavit Dominus dicens: Secundum fidem tuam fiat tibi, &c. S. Matthew ix. 29, 22 ; viii. 13 ; xxiii. 37, 38. John iii. 36.'

§ 7.

The Vatican Council appeals moreover to the Second Council of Lyons. The Greeks, with the approval of this Council, pronounced the following confession of faith : 'That the Holy Roman Church enjoys supreme and full primacy and principedom over the whole Catholic Church, which it truly and humbly acknowledges to have received with the plenitude of power from our Lord Himself in the person of blessed Peter, Prince or Head of the Apostles, whose successor the Roman Pontiff is,

and as the Apostolic See is bound before all others to defend the truth of faith, so also if any questions regarding faith shall arise they must be defined by its judgment.' Until now no theologian had dreamt of disputing the value of this or any of the other General Councils of the West.¹ The opponents of the Vatican Council have already gone so far as to reject all the General Councils after the ninth, as having been held under the 'pressure of the Roman monarchy,' an opinion denounced in 1617 by the faculty of Paris and in 1618 by that of Cologne as false, slanderous, and scandalous.²

A striking testimony to which the Vatican Council has referred is afforded by the definition of the Council of Florence, A.D. 1438,³ 'that the Roman Pontiff is the true Vicar of Christ, Head of the whole Church, and the Father and Teacher of all Christians; and that to him in blessed Peter was delivered by our Lord Jesus Christ the full power of feeding, ruling, and governing the whole Church.' The power of teaching the whole Church must be included in the supreme power here delivered to the successor of St. Peter for feeding, ruling, and governing the whole Church, and besides he is expressly called not merely Father but Teacher of all Christians. If the Pope is Teacher of *all* Christians, he is also Teacher of the bishops. If the bishops must follow the teaching of the Pope, the Pope must be infallible, or the Church would not be so.⁴

This decree has always been very perplexing to the opponents of the Holy See; hence they have sought in many ways to destroy its force. They affirm in the first place that the decrees have been falsified and that the original documents have disappeared.⁵ But these assertions have been fully refuted. The originals have not disappeared.⁶ The so-called falsifications appear in all the best authenticated copies,⁷ and are accepted both by Catholic and non-Catholic theologians. The sentence, 'As it is contained in the Acts of the General Councils and in the Sacred Canons (the laws of the Church),' is obviously a reference to earlier Councils and Church legislation, as corroborative testimony in favour of the primacy of the whole earth, but is in no sense a limitation of the primacy.⁸ How

indeed could the supreme power conferred by Christ Himself, as the definition of the Council expresses it, be limited and restricted by conciliar acts and canons?

But, we are told, the Council of Florence was not a General Council ; that at least it was not universally recognised as such. How do they prove this assertion? As though grasping at straws they oppose to the universal acceptance of the Council not by any means the opposition of the whole French or German Churches (though even this would be far from decisive), but only that of individual Frenchmen, who opposed it because they did not see how it could be made to fit with their Gallican system. But it was not a united opposition of the whole Gallican body. In the time of Louis XIV. Pirot says: 'I know at the present moment no French Catholic who does not hold the Council of Florence to have been a General Council.' Since that time all French theologians have admitted the Council of Florence to have been general. But this goes for nothing with our opponents, who style these theologians unscientific. It becomes ludicrous when we find them appealing⁹ to a single German text-book, Alzog's Church history, which does not even dispute the ecumenical character of the Council of Florence, but merely omits it from the chronological list of General Councils given in the appendix, an omission which the latest edition of the book has repaired. We learn from Friedrich's *Tagebuch* (p. 314) that 'the [German] bishops in a body hold the Council of Florence to be ecumenical. Hefele has demonstrated it to them ; he is not, however, very trustworthy in his doctrine upon the Councils' (!). Döllinger also used to make no doubt that the Council of Florence was general.

Other objections, that the number of bishops who met was small, and that the Council was not free, are quite valueless. The number of bishops is of no importance, since all were invited. Our opponents seem to use two kinds of weights and measures, since they take exception in this case at the small number of bishops assembled, but not in the case of the Council of Basle, where the number was even smaller. The charge of want of freedom is founded upon nothing more than the slanders

of the schismatic Greeks, against whose testimony stands that of the orthodox Greeks and of the Latins.

¹ Bossuet (l.c. c. xxxiv. seq. p. 64 seq.) seeks to explain them in his favour.

² M. Anton. de Dominis, de Rep. Chr. l. iii. c. x. n. 11: 'Concilia occidentalia ut Lateranense sub Innoc. III., Lugdumense sub Greg. X. et Florentinum, sub jugo Monarchiae Romanae ecclesiasticae jam dominantis gemendo applaudere tanto Monarchae sunt coacta.' The faculty declares: 'Haec propositio est falsa, calumniosa et scandalosa' (Du Plessis, t. ii. p. ii. p. 109, prop. 43).

³ Hard. Conc. ix. p. 424, ed. Rom. 1864, p. 320.

⁴ M. Canus, de loc. Theol. l. vi. c. vii. Ballerini, de Vi ac Ratione Primatus, pp. 261-263. Append. ad Vindic. pp. 254, 259 seq.

⁵ Janus, pp. 347, 348. Döllinger, in the Allgemeine Zeitung, 21st January 1871.

⁶ Theodor Frommann, in the A. Z. 27th Feb. 1870. E. Cecconi, in the Armonia, 1st Feb. 1870.

⁷ In Florence (Cecconi, l.c.), in Rome in the precious Codex of the archives of St. Peter, in Codd. Vatic. 4037, 4136 (Civiltà Cattolica, quad. 478, ser. vii. vol. ix.), also in the Carlsruhe copy. Gmelin, in Supplement of the A. Z. 24th August 1871.

⁸ Turrecremata, super Decreto Unionis Graec. Venet. 1561, iv. f. 35. Bennetis, Privil. S. Petri, p. i. t. i. p. 486 seq. Ballerini, de Vi ac Ratione Primatus, t. ii. p. 59 seq. Gerdil, Animadvers. in Com. Febronii posit. xi. Opp. xiii. vol. ii. p. 11. Beidtel, Canon Law, p. 395 seq. Scheeben, Die Mannliche Kat. p. 29 seq.

⁹ Friedrich, A. Z. May 3, 1871. Tagebuch, p. 147 seq. Döllinger, l.c.

§ 8.

Our opponents appeal likewise to the Councils of Constance and Basle. But these Councils were never occupied with the question at present under consideration.¹ The decrees of the Council of Constance referred to as declaring the Council above the Pope are not included by the Council amongst matters of faith, and have regard only to the case of a schism; by many contemporaries the application of their meaning was limited to those cases in which it was doubtful who was the legitimate Pope. But in fact they have none of the value of the decisions of a General Council. They were arrived at without due consultation, and by voting according to nationality, which was forbidden by the church legislation. The party of the unlawful Pope John XXIII., who had convened the Council, was alone

represented there. Its decisions are opposed to those of the Second Council of Lyons, of the Council of Florence, and of the Fifth Lateran Council, by which last they were condemned and repealed. Only when, some time later, the lawful Pope Gregory XII. convened a Council, then resigned his dignity, and Martin V. was duly elected, could the assembly form a regular General Council. Martin only ratified those things which the Council had defined upon matters of faith in a conciliar manner.

The Council of Basle, which a writer of that day rightly called a seed of heresy,³ was headless and schismatical, and never met with acknowledgment from the Church. Eugenius IV. confirmed the holding of the Council, but only under two conditions, neither of which was fulfilled. These were, first, that everything that the Council had done contrary to the authority of the Apostolic See should be declared null and void; second, that his legates should have the virtual presidency. He never, however, ratified the canons of this assembly.⁴ The Holy See has never, as some pretend, granted to the German nation the right of not believing in the infallibility of the Pope. Only some of the Basle canons, upon matters of discipline, were by negotiations with the Holy See granted to the German nation.

¹ Bouix, de Papa, t. ii. p. iii. p. 498 seq.

² Bouix, t. i. pp. 499-530.

³ Traversar, Epist. ed. Flor. 1759, t. ii. p. 50: 'An vero Ephesina Synodus est quam ista nocentior? Quis hoc sapiat, nisi plane desipiat? Non ex illa tantum perniciosi erroris, non majus seminarium haeresum effluxit, quam ex hoc furiosae multitudinis factione provenit. Et veretur sanctissimus Dominus N. segregariae isti turbae opponere ejusque vesaniam apostolica auctoritate comprimere ac noxia illius germina evangelica falce praecidere?'

⁴ The Basle canons extended immoderately the resolutions of the Council of Constance, applying them to the undoubted and lawful Pope; on which account Eugenius IV., Const. Moyses vir Dei (Rayn. a. 1439, n. 29; Du Plessis, t. i. p. ii. p. 239) declared: '*Ipsasque propositiones . . . juxta pravam ipsorum Basileensium intellectum, quare facta demonstrant, veluti SS. Scripturae et SS. Patrum et ipsius Constantiensis Concilii sensui contrarium nec non praefatam assertam declarationis s. privationis sententiam cum omnibus inde secutis et quae in futurum sequi possent, tamquam impias et scandalosas nec non in manifestam Ecclesiae Dei scissuram ac omnis eccl. ordinis et Christiani principatus confusionem tendentes ipso S. approbante Concilio (Flor.) damnamus et reprobamus ac damnatus et reprobatus nunciamus.*'

§ 9.

In the third chapter of the dogmatic Constitution of the Church of Christ the Vatican Council declares: 'That they err from the right path who assert that it is lawful to appeal from the judgments of the Roman Pontiffs to an Ecumenical Council, as to an authority higher than that of the Roman Pontiff.' This has long been established by the Church. Martin V. forbade such an appeal at Constance,¹ whereby alone the canons previously resolved upon were rejected. His successors have repeatedly done the same thing.² Especially Pius II. and Julius II.³ If the decision of a Pope cannot be appealed against to a Council, it must in itself be final and unalterable. A final and unalterable decision in matters of faith must be infallible: otherwise we should have no certainty, and the infallibility of the Church would be an illusion. The definitions in matters of faith of a General Council have always been acknowledged to be infallible. If the decisions of the Roman Pontiff were not also infallible, an appeal from him, the fallible judge, to a Council, an infallible judge, could never have been forbidden. Nature and reason would both have been against it.⁴ It would have been tyranny over men's consciences to oblige them to accept the decisions in matters of faith of a fallible Pope from whose judgment no appeal was permitted. If a Papal decision could be rejected as not final, schism, that is separation, from the Pope would be allowable in the Church; the Church's unity would be exposed to danger, and the faith of the Christian to uncertainty; the successor of St. Peter could then in no true sense be called the centre of unity. Bishops are bound to follow the Pope as their Head and Teacher; they are under the obligation of obedience to him.⁵ Were the decisions of the Pope not infallible and final, any bishop might contradict them, and would at the same time be bound to opposition and to obedience. Thus in the ancient principle, that there is no appeal from a Papal decision to a higher authority, the doctrine of the infallibility of the Pope is clearly contained. It is in no wise a 'new doctrine;' it is only the doctrine of the Church newly offered for belief as part

of the revealed truth ; until the definition of the Vatican Council the contrary view had been tolerated, but not more than tolerated. It is not true to say that before the 18th July 1870, the doctrine of Papal Infallibility had been ' for centuries a mere opinion of the schools, quite freely defended and quite as freely attacked.'⁶

¹ Const. 10 Mart. 1418, Mansi, xxvii. 1199. Du Plessis, Coll. Judic. t. i. p. ii. pp. 215, 216.

² For instance, the appeal of the clergy of Rouen and of the University of Paris, under Calixtus III. (Raynald. a. 1458, n. 55); that of the Duke Sigismund of Austria and of the Archbishop of Mayence (Raynald. a. 1460, n. 23; a. 1461, n. 16, 21); that of the Venetians against Julius II., and others.

³ Pius II. Const. Exsecrabilis, 1459, Bull. i. 369. Gobelin, ap. Hard. ix. 1441. Rayn. a. 1460, n. 16. Julius II. Const. Suscepti regiminis, Bull. i. 501.

⁴ Canus, de loc. Theol. l. v. c. vi.; l. vi. c. vii. Cf. Zaccaria Antifebr. l. iv. c. v. p. 37 seq.

⁵ The Sorbonne also frequently expressed the duty of obedience for all.

⁶ Berchtold, p. vi., who appeals to Bossuet as a good Catholic. He proved himself so in many excellent writings, but not in his line of action after 1682. He was not blamed for having confined himself in his controversy with the Protestants merely to the recognition of the ' dogmata expressa.' His *Defensio Declar. Cleri Gallicani*, left unfinished by himself, first appeared thirty years after his death with many interpolations. His Mandement of August 16th, 1699, retracted many things (*Université Catholique*, April 1852, livr. lxxvi. Cf. Bausset, *Vie de Bossuet*, l. x. c. xxi.).

§ 10.

The famous divines of the thirteenth century, whose adhesion to the doctrine of Papal Infallibility is admitted by our opponents, are supported in their belief by the theologians of the twelfth century. St. Bernard says: The authority of the Papal decrees is unalterable. Any injury to the faith should be repaired there, ' where the faith cannot fail, for this is the privilege of the Apostolic See.' Until the middle of the last century the doctrine of infallibility was received universally except in France.¹ And even in France its supporters were not insignificant.² The theological faculty of Paris long upheld this doctrine, and only embraced the contrary opinion in consequence of severe measures, particularly the dismissal of several of its members who were

most friendly to the Popes. The history of this faculty is a proof that professors, 'men of learning,' as such afford no security for the maintenance of the purity of the faith.³ In 1661 the Archbishop Peter de Marca, who was affected with Gallicanism, said in a treatise which he dictated from his deathbed: 'The doctrine of Papal Infallibility is the only one accepted and taught in Italy, Spain, and other Christian lands, therefore the contrary opinion of the schools is only tolerated. The majority also of French jurists and theologians accept this doctrine, and hold the opinion of the Sorbonne in derision.'

The fallibilist doctrine, in opposition to the teaching of the Church, was permitted as long as there was no final decision on the subject. But a denial of the infallibility of any individual Papal decision on doctrinal subjects was never allowed. The Head of the Church has always required submission to its decisions on matters of faith. The contrary opinion has been several times disapproved, as is shown by the propositions already cited which were rejected by Innocent XII., Alexander VIII., and Sixtus IV., as well as by other decisions.

In Germany until the middle of the last century the doctrine of Papal Infallibility was universally acknowledged. Gallicanism and the fallibilist doctrine met with no representatives under imperial or princely patronage until after the publication of the work of Febronius in 1763. It was furthered by the influence of rationalism. In 1767, Kauffmanns, a theologian of Cologne, was still able to say: 'The fallibility of the Pope has been taught by no German, Flemish, or Belgian bishop in synod or pastoral, nor by any public school in Northern or Southern Germany.'⁴ And in modern times the University of Louvain,⁵ and the Colleges of Prague,⁶ Cologne,⁷ Ingolstadt, Würzburg,⁸ and others, have defended the doctrine of Papal Infallibility. It has not been defended by Jesuits alone, but by their contemporaries in other orders, as well as amongst the secular priesthood,⁹ under the eye of princes, bishops, and the whole clergy. Until Febronius, Protestants always held Catholics to believe the infallibility of the Pope. Especially in Austria, the contrary doctrine was chiefly introduced by State authority, which

ordered new school-books and catechisms.¹⁰ And precisely in the degree in which men departed from Catholic principles did they combat the doctrine of infallibility; and as they returned to be of one mind with the Church, in the same proportion did they cling to the old doctrine. This is shown by numerous provincial synods, held quite of late years, which have declared the infallibility of the Pope's office of teacher. For example, the Synods of Cologne in 1860, of Rheims in 1857, of Colozka in 1864, of Westminster in 1852, of Baltimore in 1843 and 1852, and of St. Louis in 1835 and 1858.

Thus the doctrine now declared of faith and binding for ever upon all Catholics, the infallibility of the teaching office of the Pope, is not new. It would be much more true to call the fallibilist doctrine new—a doctrine contrary to the teaching and practice of the Church, and which has only been now and then, and here and there asserted.

¹ Bened. XIV. Ep. ad Inquis. Hispan. 1748, Opp. xv. 117, ed. Venet.

² Amongst them were: Andr. Duval, M. Maucler, Coesseteau, A. Charlas, the Benedictine abbot Petittidier—who in the introduction to the work *De Auctoritate et Infallibilitate Sum. Pont.* expresses the firm conviction of the supporters of Papal Infallibility, that if the question were submitted to an Ecumenical Council for definition, in which '*cuique libere mentem suam aperire licitum foret*' (which in France at that time was not the case, owing to the oppression of the Government), it would decide in favour of the Pope. Tournely also feels himself circumscribed by the despotic theology of the court.

³ Truly astonishing is the representation made by the Paris Faculty to Greg. XIII. against the reformation of the Calendar (Du Plessis, t. ii. p. i. p. 453 seq.), in which '*mathematici et astrologi*' are called detestable in the opinion of the old imperial laws, and a new time for Easter was represented as prejudicial to the Catholic Faith. It was contradicted later that this document belonged to the Faculty. It belonged at any rate to several of its members (cf. Op. cit. i. Append. p. xxiv.).

⁴ *Pro Statu Ecclesiae Cath. et Leg. Potestate Romani Pontificis Apologetic Colon. Agr. 1767*, p. 151.

⁵ The '*Lovaniensis doctrina*' is combated especially in the *Defensio Declarationis Cleri Gallic.* Cf. Reussen's *Syntagma Doctrinae Theolog. Adriani V. Lovan.* 1862, p. 152. Bouix, l.c. t. ii. pp. 111-120. The University of Louvain has in our day expressly petitioned for the definition of Papal Infallibility, which it has always supported.

⁶ As early as the opinion against Huss (Du Plessis, i. ii. p. 162): '*Communitas cleri . . . semper tenet et credit fideliter sicut Romana*

Ecclesia, et non aliter, quod in omni materia Catholica et ecclesiastica standum est fidei, sententiae et determinationi Sedis Apostolicae et Rom. Ecclesiae, eo quod Papa existens caput et collegium Cardinalium existens corpus Rom. Ecclesiae sunt in officio ecclesiastico cognoscendi et deffinendi causas ecclesiasticas veri successores principis Apostolorum Petri et aliorum Apostolorum.'

⁷ Zaccaria, *Antifr. Vind. diss. v. c. ii. n. 3*, upon the censure of 1618 of M. A. de Dominis; also 1765, the condemnation of Febronius.

⁸ Henricus Kilber, in *Theol. Wirceburg, t. i. Wirceb. 1771, disput. ii. c. iii. a. 4, pp. 496-530*. J. Neubauer, *Vera Religio Vindicata, Wirceb. 1771, diss. viii. sect. 1, p. 342*.

⁹ Amongst them the Benedictines Gallus Cartier (*Auctoritatis et Infallibilitatis Summorum Pontificum, Augsburg, apud A. M. Heiss, 1738, 4*) and Celestine Oberndorffer (*Theol. in usum Frising. Lycaei, 1762*), the Capuchin Thomas ex Charmes (*Theologia Universa, Nantzig, 1755, ed. 2, vol. i. p. 347 seq.*), Canon Eusebius Amort (*Theol. Aug. et Wirceb. 1752*), the Minorite Anton Wissingh, Prof. in Treves (*Medulla Totius Theologiae, Treves, 1695, seq. 336, Rump. p. 15*).

¹⁰ Lönovics, *Der Josephinismus, Vienna, 1851*. Beidtel, *Untersuchungen uber die Kirchl. Verhältnisse in den Osterr. Staaten (Researches into the Condition of the Church in Austria), Vienna, 1849*. Rive, *Die Unfehlbarkeit des Papstes, Paderb. 1870, p. 130 seq.*

PART III. POLITICAL EFFECT OF THE DOGMA.

§ 1. That the dogma injures civil allegiance was asserted by the Jansenists and the opponents of the Vatican Council, but not proved. § 2. Conduces rather to the peace and prosperity of the State. § 3. Why the doctrine not long ago recognised as dangerous? § 4. The change not in the Church but in the State.

§ 1.

The third charge laid by its opponents against the doctrine of infallibility is that it is injurious to civil allegiance. There is nothing new in this, for the Jansenists asserted it also, and even the mode of proof adopted by the opponents of our day is borrowed by them from the Gallicans. Through Colbert, Le Tellier, and De Lyonne, the Jansenists succeeded in persuading Louis XIV. of France that the doctrine of the infallibility of the Pope imperilled his throne. The Advocate-general Talon was well served by the Jansenists, and by his management the parliament required the theological faculty not to defend any doctrine in which the infallibility of the Pope was either directly or indirectly contained. And as the faculty refused to accept

this decree, compliance was forced upon them in these terms: 'Every subject of the king is bound to submit absolutely to any order issuing from the courts of law.' We too have seen the dogma of the infallibility of the Pope declared incompatible with civil allegiance;¹ we have heard it said that it has completely transformed the Church, and made it impossible that any State should recognise her without political suicide!

The proof of the political dangers arising from the doctrine of Papal Infallibility is founded upon those perversions of the Church doctrine with which we have been dealing; false inferences have arisen from false propositions. If the definition of the 18th July 1870 be dangerous to the State, the Catholic Church herself must be so, and that, not from this date, but from the beginning. For the Church has always claimed infallibility. It is admitted that the infallibility of a General Council has always been believed in the Church; and this would have been equally prejudicial to civil obedience with the infallibility of the Pope. Only those who hold that the doctrine of the Church is hostile to the welfare and wellbeing of society² could bring forward such a charge. Were not the decrees of the Pope always considered binding, and was not obedience to them always required from the faithful? What difference, then, is it to the State that since the 18th of July 1870 these decrees in matters of faith are pronounced infallible, when before that date they were practically binding and compelled obedience? Every supreme court claims the right of making a final judgment, with which all must rest content and from which there is no appeal; by a necessary legal fiction it claims a kind of infallibility (formal as opposed to material infallibility). This kind of infallibility was without hesitation attributed to Papal decisions; there could be no appeal from the judgment of the Pope. But if this formally unassailable judgment is for Catholics also materially unassailable, this concerns purely the internal domain of faith, and has nothing to do with the State. Injurious consequences might equally follow merely formal infallibility.³ For example, certain sects have dogmas forbidding them to take an oath or fight in war. The State does not care

whether the authority which promulgates these dogmas reckon itself infallible or no; it is only concerned with them in their relation to civil life. Let any one point out one single actual dogma of the Church which is dangerous to the State. Of all the opposition writings, which repeat the charge over and over again, not one can substantiate it. The possibility of the abuse of Papal Infallibility is their strong point. But this for Catholics implies a contradiction. For the infallibility of the Pope rests upon the assistance of the Holy Ghost, which excludes all possibility of its abuse; it has reference to the doctrine of the Church in faith or morals founded upon truths divinely revealed, which can never be dangerous to the State. The Church cannot 'make new doctrines at pleasure;' she can only develop, explain, and confirm those doctrines which are hers already, derived from the sources of revelation, Scripture, and tradition. It is therefore quite as impossible that the State should be endangered by an abuse of the teaching office of the Pope as by any of the truths of revelation. Papal decrees did not first become infallible on the 18th July 1870, but were then universally declared to be so; they really were as infallible before that date as afterwards. And in all the ages of Christianity not one single instance of the abuse of this power has been established. It is a matter of complete indifference to the State whether a Papal decision be in itself infallible, or whether, as Gallicans taught, it becomes so only when it has received the consent of the Church; for the consent of the Church can never be wanting to a Papal decision, since the Pope and the bishops can never be separated. If individual bishops act in opposition to the Holy See, the State gains nothing but a schism, which is productive of good to no country. Papal Infallibility extends no further than the infallibility of the Church;⁴ it is, in fact, one and the same. According to the words of the Vatican Council, the Roman Pontiff, 'is possessed of that infallibility with which the Divine Redeemer willed that His Church should be endowed.' If this is fraught with danger to the State, the infallibility of the Church must have always been so. The definition leaves us thus. Either we are Catholics, in which case

we cannot hold that danger to the State can arise from the doctrine of the Church regarding faith or morals, and we must submit to the decisions of the Church; or we are no longer Catholics, and reject the doctrine of the infallibility of the Church as well as of the Pope. He can possess no claim to be called a Catholic who, after the definition of the Council, after the agreement of the assembled bishops with the Pope (which even Gallicans admitted to be without a Council sufficient to establish a doctrine of the Church), refuses to believe, not merely the infallibility of the Pope, but also that of the Council, the episcopate in union with the Holy See. Frohschammer has truly said: 'If you hold the Pope to be fallible, you cannot maintain the infallibility of the Church.' The Protestant Hase acknowledged that 'every argument against the infallibility of the Pope deals a blow underhand to the infallibility of the Church.'

¹ Döllinger, Erklärung, 18th March 1871. A. Z. 31st March.

² Syll. Prop. xi. Enc. 9th Nov. 1846, and Alloc. 20th April 1849.

³ Beidtel, *Das Canonische Recht*, p. 62 seq.

⁴ It is quite a groundless assertion that the idea of infallibility was unknown to the early Church. For (1) it is clearly denoted when, as is done in Scripture and the writings of Irenaeus, the teaching of those who preside over the Church is declared to be binding, absolute truth, the word of Christ, and an inviolable rule. (2) The word *ἀσφάλεια* is not wanting, and is an exact equivalent for the Latin 'infallibilitas.' It is only necessary to point out Theodor the Studite and Greg. II. (Ep. 1, ad Leon. Is.), who use the adverb *ἀσφαλῶς*, or the adjective *ἀσφαλές*, in this sense.

§ 2.

But let us ask—would the minds now so sorely troubled be at rest if the Pope were fallible instead of infallible? As Head of the Church he could, in the former case, bind the faithful to obedience as well as in the latter case; but Catholics could not with equal tranquillity of mind submit to his decisions. It conduces far more to the welfare and peace of the State that any disputes which may arise between Catholics should be forthwith and once for all settled than that a decision of the supreme teacher of the Church could be met from one year's end to another with objections of material error. A Church not under

the direct guidance of God might cause anxiety to the State; the definition of the 18th July 1870, far from occasioning such anxiety, dispels it. Had the Pope been declared fallible, then indeed cause would have existed for apprehension of an abuse of the power which, in his office of supreme teacher, he would still have possessed. Since, however, it was defined by the Church that whenever he exercises his office of supreme teacher he is directly assisted by the Holy Ghost, any apprehension of this kind is excluded.

The Church can never break with her past history. She can never define a dogma in opposition to what she has always believed. Otherwise all our Lord's promises to her would be unfulfilled, and she would be lost. 'The same Holy Spirit,' wrote Bossuet to Leibnitz, 'who prevents the Church from diminishing the faith, guards her also from adding to it (anything heterogeneous); therefore she must have been preserved as well from useless as from erroneous definitions.'

By the definition of Papal Infallibility the Church has given its deathblow to Gallicanism, and has brought fresh proof of her own wonderful vitality and unity in conflict with the few opponents who have appeared now as on all similar occasions. Civil authority, as ordained by God, has nothing to fear and much to hope from such a Church. True Catholics make no revolutions; they are the victims of revolutions which others excite. They yield a faithful and inviolable obedience to authority, not from fear or favour of men, but because such is the will of God, who has ordained it. If, however, anything is required of them contrary to their creed or their conscience which cannot be lawfully done, especially not by a government pledged to allow liberty of conscience, then, relying upon the words 'We must obey God rather than men,' they offer, and must offer, a passive resistance, but even then nothing more. Popes would rather lose their throne than dispossess a lawful prince; their deeds and words have never been revolutionary, but are always directed to the maintenance of order. 'The enemies of the Church,' the Pope said in a speech in 1871, 'are afraid of the priesthood, are afraid of good Catholics, are afraid of the preach-

ing of the Word of God, but they have no fear of the sects which are eating away the heart of society, subverting thrones, and destroying social order.' They seek to conceal dangers which are close at hand from other sources, and designate the Church, with its Papacy, orders, and priesthood, as inimical to the State. They impute all manner of pretensions to the Popes, and assert it to be probable that at some future period these pretensions will be 'made dogmatic;' hence they conclude that the dogma of infallibility is dangerous to the State, and that those who believe it cannot be good subjects. But in truth not merely the infallible teaching office of the Pope, but the whole of positive Christianity, is incompatible with that liberal State absolutism which acknowledges no right save its own.

§ 3.

Did the Church lose her identity by the definitions of the Council of Trent or of any earlier Council? Has she not the right to declare that a doctrine not always expressly held to be so is part of the revealed truth? Was this her right only during the first ages of Christianity? Has she lost the right to decide any dispute or question which may arise upon the truths of revelation? Yet she is said now to have lost her identity because, retaining all former articles of faith, she has brought forward another which is new not in substance but only in form, because she has drawn the logical conclusion from long-existing decrees, because she has decided a dispute of long standing, and issued a positive decision about the bearer of that infallibility which has always belonged to her. Why was not this doctrine considered dangerous to the State in old times? It was not found to be so either by the Kings of Spain and Portugal, or by the Emperors of Germany; not by the dukes and electors of Bavaria, nor by the ecclesiastical princes of Germany, although it was maintained before them openly, both verbally and in writing; nay rather they took it for granted, since they besought the Holy See for dogmatic definitions, and styled the Pope interpreter of the decisions of God and in-

fallible teacher;¹ they never put a stop to the use of catechisms in which this doctrine was taught.

The united Church of the Palatinate is an instance of a Church which may truly be said to have 'changed,' for in its new Protestant catechism it discards the fundamental doctrine of the Trinity. This has met with no opposition, and though scarcely now entitled to the name of Christian in the old sense of the word, no one has called this Church a 'new Church,' 'which has not, therefore, yet been recognised by the State.' Yet this has been said of the Catholic Church, although the Church which the State recognised as Catholic had the Pope at her head and the bishops in union with him for her pastors. This is the one Catholic Church. Whosoever casts himself from the rock of the Church separates himself from his lawful pastors, and refusing obedience to the Church, is no longer a Catholic. He may call himself Jansenist, or Döllingerite, or what he will; but Catholic he is not, neither old Catholic nor new, for that is a contradiction in terms. Catholic means universal, in time as well as in place. Was the Church recognised as the Catholic Church ever separated from the Pope and the lawful bishops? Was the Jansenist sect, to which the new opponents of the Church have joined themselves, ever recognised as the Catholic Church?

¹ Vide a letter of the converted Duke Rudolph Max of Saxony, the 27th May 1628 (*Hortus Pastorum Auctore J. Marchontio, Colon. Agr. 1699, p. 193*).

§ 4.

No, the Church has not changed; it is the State which has changed, for it now contests and denies to the Church the rights it once recognised as hers; it foments and favours schism and makes new laws to her disadvantage, until by grasping more and more at theological jurisdiction, and by usurping the office of supreme judge in matters of faith, it is pressed onwards to a denial of Christianity.

But the Church is said to have become dangerous to the State because she has now declared theoretically as an article of faith that which in practice has long been acknowledged. But is

she to be denied all further development,¹ whilst the State is to follow out to their remotest consequence the principles contained in itself? The Pope, unfettered from without, has always in all ages guarded the rights of the Universal Church from encroachment from the various States. Why should the *doctrine* be thus feared if the *practice* has not proved dangerous to the State?

The fact is people argue upon a misconception. They talk of Papal omnipotence and a deified Pope instead of an infallible teacher invested with full powers. From this distorted doctrine they draw inferences even more strange. The misrepresentations have been already exposed. The false suppositions and inferences will be examined in detail in the following essays.

¹ Even the Paris theologians had in 1324 declared that it belonged to the Church of Rome to decide what things were to be held as of faith, she being the universal rule of Catholic truth (Du Plessis, t. i. p. i. p. 222): they had petitioned John XXII. in 1333 for a definition on the controversy about the 'visio beatifica' (ib. p. 318); and in 1388 one of its members attributed to the bishops in matters of faith an *auctoritas inferior et subordinata* binding only *secundum quid*; but to the Pope, the *summa simpliciter et absoluta* (ib. p. ii. pp. 76, 84-86). John of Paris (died A.D. 1304) described the Pope as the 'superior in spiritualibus, per cujus sententiam controversiæ terminentur' (de Pot. Reg. et Pap. c. iii.), and declared himself ready to retract, if anything contrary to his doctrine were shown to be determinatum per sacrum canonem aut per Ecclesiam aut per generale Concilium aut per Papam, qui virtute continet totam Ecclesiam (Du Plessis, . i. p. i. p. 264).

ESSAY III.

THE VATICAN COUNCIL.

CATHOLICS have ever held to be infallible a General Council lawfully convoked—that is, that a Council representing the whole Church, and dealing with decisions on doctrines of faith and morals, cannot err. Every catechism teaches this ; it is contained in the thirty-nine articles published by Martin V., treating of the followers of Wickliff and Huss,¹ as well as in the creed of Pius IV., which is in universal use.² Any one who opposes the decrees of such a Council has cut himself off from the Catholic Church. Moreover, as has been already shown, though no Council had been held, the dogma of the infallibility of the Pope in his office of teacher would still be certain, even according to Gallican teaching, from the fact that the Pope and bishops agree in proposing this dogma to the faithful as a doctrine of faith, thus proving the agreement of the whole teaching Church. For it is the universal Catholic doctrine that the faithful are bound to believe all that is taught and proposed to their belief by the Pope and the bishops.

Let us now see (1) who are the adversaries of the Vatican Council ; (2) what they allege against it ; (3) what they propose in its stead.

PART I. THE OPPONENTS OF THE COUNCIL HERETICS.

§ 1. Their inconsistency in rejecting the dogma of the Immaculate Conception. § 2. Their grounds and principles throughout heretical, Protestant. § 3. Likewise their proceedings. Comparison with those of the Arians. § 4. Comparison with those of the Donatists. § 5. All heretics reproach the Church with being corrupt. § 6. Connection with Jansenism. § 7. Their want of unity in contrast with the unity of the Church.

§ 1.

The opponents of the Vatican Council reject also the dogma of the Immaculate Conception ; but the dogma of the Immaculate Conception was defined in 1854, sixteen years earlier, and was only rejected by the *Janus* party in 1870. Either it was not known until then that this dogma ought to be rejected, or this was known, and silence was still maintained. The first supposition does small honour to the penetration and theological knowledge of the party, while the last represents it as hypocritical, and unfit rightly to instruct its contemporaries. Moreover, the Immaculate Conception had been already defined at the Council of Basle,³ whose decisions concerning the Papal rights are revered by this party. Why, then, are not its decisions on the privileges of the Mother of God to be equally revered? In this case no Pope 'imposed' the dogma ; the members of the Council alone proclaimed it. Had the Council of Basle been a General Council, the definition of Pius IX. in 1854 would not have been needed. Those who in 1870 for the first time suddenly rise up against this definition, and declare it to have been brought about 'by means of fabrications and falsehoods,' involve themselves in an endless contradiction, for whilst in the one case they take their stand upon the Council of Basle, in the other they are forced to reject it. In either case they do away with the whole authority of the Council of Basle by maintaining that it defined as an article of faith a doctrine founded on fabrications and falsehoods. If this be so, the Council of Basle should be more severely censured than the Popes, who waited more than four hundred years before making a decision. Moreover, before the definition, Pius IX. obtained in writing the opinion of the bishops and religious bodies, which was not done at Basle ; and yet the Council of Basle is loaded with praise, and those decrees alone are rejected which are not found to be agreeable.

By such conduct the true character of the new Protestants is made known. With Luther they overthrow all authority of Councils ;⁴ they believe only so much as pleases them ; they believe not God and the Church, but their own judgment and

their own self-will.⁵ They will be forced at last, as a layman expressed it at the new Protestant meeting at Munich in 1871, to go back as far as, or even farther than, the reformers of the sixteenth century, 'to primitive Christianity, not to Councils, but to the time of Christ and the Apostles.'

¹ Denzinger, *Enchir.* p. 194, n. 551-553.

² *Ib.* p. 294, n. 867.

³ Sess. 36.

⁴ Vide Luther's proposition condemned by Leo X., 1520 (Denzinger, *Enchir.* p. 223, n. 653): 'Via nobis facta est enervandi auctoritatem Conciliorum,' &c.; designated also by the Sorbonne as 'prop. schismatica et haeretica, si velit Scriptor licitum esse cuiquam Concilii legitimi auctoritati contradicere in iis, quae fidem et mores concernunt' (Du Plessis, t. i. p. ii. p. 372).

⁵ S. Thom. 2, 2, q. 5, a. 3: 'Ille qui inhaeret doctrinae Ecclesiae tamquam infallibili regulae, omnibus assentit, quae Ecclesia docet; alioquin si de his, quae Ecclesia docet, quae vult tenet, et quae non vult non tenet, non jam inhaeret Ecclesiae doctrinae, sed propriae voluntati.' Aug. c. Faust. xiii. 3: 'Quod volunt, credunt, quod nolunt, non credunt, sibi que potius quam divino Evangelio credunt.'

§ 2.

The opponents of the Council are completely Protestant in their point of view. In all their utterances may be traced the Protestant principle, which puts the subjective interpretation of the Word of God by individuals in the place of the living teacher, outwardly visible to all men. The 'Protesting Catholics' of to-day set against the definitions of a General Council their own subjective examination of its decrees; these they declare to be contrary to Scripture and tradition, and they revile the most glorious Council the world has ever seen as 'a false, flattering, and dishonest Synod, a godless Council,' and so forth.¹ The Protestants of the sixteenth century brought precisely the same charges against the Council of Trent, and often with less violence.

But how would disputes ever come to an end if each individual was free to set aside the decrees of the Church on the plea of following Holy Scripture, in other words, his own fancies about Holy Scripture? If a Council be confirmed by the Head of the Church, this fact alone is sufficing proof that it is a gather-

ing of the rightful Church, the pillar and groundwork of truth (1 Tim. iii. 15). It is true that we are to prove spirits, whether they be of God (1 St. John iv. 1), and Christ teaches us the same when He warns us to beware of false prophets (St. Matt. vii. 15). But we have sufficing proof that a doctrine is from God if it be proposed to us by our rightful teachers and by the chief pastor, especially if it be confirmed by the agreement of the remainder of the bishops of the Church.² If a man refuses to submit to these, and claims a right of passing judgment upon his judges, he renders no obedience to the decrees passed by the authorities of the Church, through whom it is the will of the Holy Spirit to teach us; in his pride and obstinacy he disregards the means given us by the Apostle for the proving of spirits, and in this he proves himself to be a heretic. All teachers of error have thus sought to examine by the letter of Scripture the truths proposed by the authorities of the Church to the belief of the faithful, while they have ever maintained that they were keeping strictly to the teaching contained in Scripture. In the same way the opponents of the Vatican Council desire to test the decrees of the Council, and to set themselves up as judges over the Church assembled in her office of teacher, and over her decisions; and for this reason they are heretics, shut out from the pale of the Church.

The heretics of the present day maintain, as did those of old, that the Church, whose chiefs they have condemned, is not the rightful Church. But whose judgment is this? It is the judgment of the heretics alone; they look upon themselves not as heretics but as the true Church. But since they have been condemned in Council by the pastors of that Church, which before their time was esteemed by the whole world to be the true Church, and is still so esteemed by all men except themselves, it follows that if they persist in contradicting the Council they are heretics, precisely as were those who went before them.³

The Emperor Marcian, at the Fourth General Council at Chalcedon,⁴ said: 'Whosoever still inquires further, after truth has been found, is seeking after a lie.'⁵ He made a severe law, forbidding that any matter once decided and lawfully settled in

Council should be again made the subject of fresh investigations and disputes, and thus become a pretence for tumult or for stubborn unbelief. The opponents of the Vatican Council are precisely in the position of those early heretics, the Monophysites, against whom this imperial law was passed. And when they reply, as did Chemnitz to the Council of Trent,⁶ that 'only when a decision has been *rightly* established is further discussion forbidden, and that the question is precisely whether the decision of the Council was *rightly* established,' they make themselves and their party the judges of the Council, and refuse to believe the teaching Church, preferring their own opinion and judgment. But in former days was it the judgment of the Council or the judgment of Eutychus, Dioscorus, and heretics which was to determine whether the decisions at Chalcedon were rightly established, and whether consequently truth was attained, and the decision placed beyond discussion? Marcian's law becomes utterly ridiculous unless it be admitted that the judgment of the Council was to be decisive. His intention was to forbid the disputations held by the teachers of heresy against the decision of the Council, in which they contended that the truth had not been attained nor a right decision determined upon. Accordingly he declared it to be impious, after the judgment of so many bishops, to rely still upon private opinion, and the height of folly, in full daylight, to desire another and an artificial light. In like manner, in the present day a question once determined by the Church in Council cannot be reëxamined by a small party of opponents in order to decide whether the definition has been rightfully made.

The new heretics behave towards the Vatican Council just as open Protestants, such as Chemnitz, and Protestants in disguise, such as Paul Sarpi, behaved towards the Council of Trent; their descriptions of it are most alarming, and quite at the beginning they expressed their extreme fear lest it should meet with general recognition among Catholics, a result which they have been, however, wholly unable to hinder.

¹ Döllinger, in the *Allgemeine Zeitung*, March 31, 1871, and others.

² Cf. Aug. de Bapt. c. Donat. iii. 19; also the works, *De Utilitate Cre-*

dendi and De Vera Religione; also Tertull. De Praescript., and Irenaeus, Adv. Haer., who says (l. iii. c. xxiv. n. 1): 'Cujus (Sp. S.) non sunt participes omnes qui non currunt ad Ecclesiam, sed semetipsos fraudant a vita per sententiam malam et operationem pessimam. Ubi enim Ecclesia, ibi et Spiritus Dei, et ubi Spiritus Dei, ibi Ecclesia et omnis gratia, Spiritus autem veritas.' L. iv. c. xxvi. n. 2: 'Qua propter eis qui in Ecclesia sunt presbyteris obaudire oportet, his qui successionem habent ab Apostolis . . . qui cum episcopatus successione charisma veritatis certum secundum placitum Patris accesserunt, reliquos vero, qui absistunt a principali successione et quocunque loco colligunt; suspectos habere vel quasi haereticos et malae sententiae . . . omnes autem hi deciderunt a veritate.'

³ Cf. Athanas. Ep. ad Epictet. n. 1 (Migne, xxvi. 1052), on the opposition to the Council of Nicaea. The Sorbonne declared in 1521 in the censure of Luther (Du Plessis, t. ii. p. i. p. iii.): 'Nonne impium se prodit et infidelem, quisquis orthodoxae fidei, Ss. Ecclesiae Doctoribus ac sacris Conciliis credere dedignatur? Is nempe cui credit, qui Cath. Ecclesiae fidem habere detractat? Aut quomodo Catholicis adscribetur, qui Ecclesiam non audit, cum ex ore Veritatis dictum sit: Si Ecclesiam non audierit, sit tibi sicut ethnicus et publicanus? Porro ista est peculiaris haereticorum insania, ut Scriptura *pro voto* contorquentes sese eas *solos* credant intelligere, solos se ad veritatem Evangelii putent ambulare, solos se et quos falsa religione seducunt, salutem consequi arbitrentur, nec cujuscunque Doctoris, quantumvis sancti et eruditi, sed nec ipsius Ecclesiae auctoritatem suscipere velint contra eam, quam semel sibi praefixerint, Scripturarum intelligentiam.'

⁴ L. iv. Nemo, i. 1, Cod. de S. Trinit.

⁵ Conc. Chalc. act. vi. Mansi, vii. 170.

⁶ Chemnitz, Examen. Concilii Trid. Praefat. i. part.

§ 3.

Moreover, in their whole conduct they imitate the heretics of old. They have forgotten the words of St. Cyprian: 'Whosoever is not with his bishop is not in the Church;'¹ and like the Donatist Petilian, they express the bitterest hatred against the Roman See, the centre of Catholic unity, herein differing widely from the best among the Gallicans.² They adopt an utterly heretical principle, in that they interpret passages of Scripture according to their own private judgment, and employ them contrary to the mind of the Church.³ They act precisely like the Greek schismatics, who would have 'no addition to the Gospel,'⁴ although many such additions were made, and necessarily made, in the early General Councils, if only in the sense of interpretation and more complete development (*propositio explicita*) of the

deposit of faith revealed from the beginning.⁵ A wonderful likeness may be traced even in detail between the new heretics and those of old, especially the Arians. The followers of Arius opposed the doctrine that the Son of God is of the same nature with the Father, as not being contained in Scripture,⁶ precisely as the infallibility of the Pope in his office of teacher is now opposed as unknown in the Bible. As of old the 'same nature' of the Son (*Homoousios*), so now the 'infallible Pope' is the distinctive sign and mark of true Catholics. The Arians were ever holding fresh assemblies⁷ in opposition to the Council of Nicaea the object of their abuse,⁸ but held in high honour by all the faithful of Christendom.⁹ Precisely similar were the assemblies held in our own day at Nuremburg, Heidelberg, in the Crystal Palace at Munich, and in the hotel of the 'Great Greenfinch' at Vienna. The Arians attracted even unbelievers to their services and pseudo-councils,¹⁰ and the meetings of our protesting Catholics are frequented by Freemasons of all sorts, by Protestants, schismatics, and Jews. St. Athanasius further declares, 'They suffer women and boys to take part in theological disputations ;¹¹ they make poor jokes on holy subjects ;¹² they recommend disreputable persons if only they further their heresy ;¹³ they rest entirely on the civil power,¹⁴ before whom they calumniate the Catholics ;¹⁵ they contend exclusively with the Church, while with heretics they seek to be at peace ;¹⁶ they take less pains to establish their own doctrine than to vilify the doctrines of the Church ;¹⁷ few in number, all the greater is the noise they make ;¹⁸ inconstant and at variance amongst themselves, they often change their opinions,¹⁹ and appeal to ancient teachers, whose meaning they misrepresent.'²⁰ Is not this the exact description of the new Protestants ?

¹ Cyprian. Ep. 69, ad Florent. Pup. Cf. Ignat. Ep. ad Trall. c. i.

² Cf. *e.g.* Dissert. Praevia Declar. Cleri Gallic. § 1, with the expressions of the pseudo-Catholics of to-day.

³ Athan. Or. l.c. Arian. n. 37, 52, pp. 348-360, ed. Maur. Basil. Ep. viii. c. iv. p. 83. Cyrill. Alex. Ep. ad Joh. Ant. Mansi, vi. 674.

⁴ Schulte, iii. p. 2.

⁵ Andr. Rhod. in Conc. Flor. (Hard. ix. p. 72 seq.), Bessarion, and others.

⁶ Athan. de Syn. n. 36, Ep. ad Afros. Ep. n. 6, p. 715. De Decret. Nic. Syn. n. 1. Basil, Ep. 214, ad Terent. Com. c. ii.

⁷ Athan. de Syn. n. 21, Ep. ad Afr. Episc. n. 10, 586, 718, ed. Maurin.

⁸ Athan. de Decret. Nic. Syn. n. 18.

⁹ Athan. Ep. ad Jovin. n. 2.

¹⁰ Athan. Vita S. Antonii, n. 82, p. 686.

¹¹ Athan. Or. l.c. Ar. n. 1, 22, pp. 319-336 seq.; Or. ii. n. 18, p. 384.

¹² Athan. Or. l.c. Ar. n. 7, p. 323.

¹³ Athan. Hist. Ar. ad Monach. n. 2, p. 273.

¹⁴ Athan. l.c. n. 33, 34, p. 287; Or. ii. c. Ar. n. 43, p. 404.

¹⁵ Id. Hist. Ar. n. 65, p. 302.

¹⁶ Athan. Hist. Ar. n. 31, 32, p. 286.

¹⁷ Basil. Ep. 214, ad Terent. c. ii.: οἷς μία μελέτη ἐστὶν ἐν τοῖς ἐπὶ τῆς ἐκκλησίας λόγοις οὐ τὰ ἐαυτῶν παρασκευάζειν, ἀλλὰ τὰ ἡμέτερα διαβάλλειν.

¹⁸ Athan. Ep. ad Episc. Alg. et Lib. n. 7, p. 218.

¹⁹ Athan. Or. ii. c. Ar. n. 40, p. 401.

²⁰ Athan. de Sent. Dionys. n. 1 seq. p. 191 seq.

§ 4.

Again, the new Protestants take exactly the same ground as the Donatists, who sought the true Church in their own land alone, that is, in Africa;¹ for they acknowledge the Church in Germany alone, and amongst the few foreign followers of the German professors, such as Loyson and Michaud. But is this small sect, which is almost wholly confined to one country, and which even there counts comparatively few followers, is this indeed the Church Catholic, which according to the judgment of the Fathers is known by this very mark—that she is spread over the face of the earth, that she exists where sects also exist, while they are not to be found in many places where she is?² The so-called Old Catholics may be answered to-day in the words addressed by Peter the Venerable to one of the Cardinals of the anti-Pope:³ ‘Either the Church, the sheepfold of Christ, in which are the sheep of the True Shepherd, is with us, in which case your sheepfold contains no sheep but only goats, whose place is on the left hand; or it is with you, and in this case the word of the Father is false in which He promised the Son, “I will give Thee the Gentiles for Thine inheritance, and the utmost parts of the earth for Thy possession” (Ps. ii. 8);⁴ false is the voice of the prophet, “He shall rule from sea to sea, and from

the river unto the ends of the earth" (Ps. lxxi. 8) ; false likewise are the words, " All the peoples which Thou hast made shall come and worship before Thee, O Lord, and glorify Thy name."⁵ All this is false if the inheritance and possession of Christ has indeed become so small that He now possesses only the towers of Pier Leone and the few small fortresses of the Count of Poitiers.' Döllinger indeed wrote,⁶ 'Thousands amongst the clergy, hundreds of thousands amongst the laity, think as I do, and hold it impossible to accept the new article of faith ;' but his pretended knowledge of men's hearts has come to shame. A few professors puffed up with learning ; a few priests, many of whom were before not living the lives of priests ; some men of culture so called, who, for the most part, had never been rightly instructed in the faith, or who had long ago thrown it overboard,—such in the main are the new heretics who have nominally been at such pains to guard the purity of the faith. Pastors without flocks, liberal magistrates, long non-practising Catholics, form now the stronghold of 'Old Catholicism,' and this little group presumes to call itself the true Old Catholic Church, and to designate the immense majority of Catholics, the Pope, and the united Episcopate as apostates !

¹ Aug. de Unit. Eccl. c. xvi.

² Cyrill. Hieros. Catech. xviii. n. 23. Vincent. Lerin. Commonit. c. iii. Optat. l.c. Theodoret, Haer. Fab. l. iii. c. vi. p. 347 seq. Aug. de Unit. Eccl. c. ii. : ' Illae quippe (sectae) in multis gentibus, ubi ista (Catholica) est, non inveniuntur, haec autem, quae ubique est, etiam ubi illae sunt, inveniuntur.'

³ Petrus Ven. l. ii. Ep. 4, pp. 192, 193.

⁴ On this text St. Augustine (De Unit. Eccl. c. viii. n. 20) says : ' Quis enim Christianus unquam dubitavit, hoc de Christo esse praedictum, aut hanc haereditatem aliud quam Ecclesiam esse intellexit ?' Cf. Optat. c. Parmen. ii. 1.

⁵ St. Augustine especially urges this against the Donatists—Brevicul. Collat. die iii. in Psalm lxxxi. 121, de Unit. Eccl. c. ii. 25. He also says : ' Hoc ideo dicendum putavi, ut cognoscat eruditio vestra, periculosissime vos opinionem vestram totius mundi sententiae praeponere magisque superbae obstinationi paucorum, quam devotae unanimitati multorum acquiescere.'

⁶ Declaration of March 28, 1871.

§ 5.

The history of the Church teaches that almost all heretics carried on their rebellion against her under the pretext that the ecclesiastical authorities had changed and transformed the Church of Christ, whether in doctrine or in constitution. Long ago, the ancient Gnostics declared that the Apostles had given the Gospel a Jewish interpretation, and they, wiser and more honest than the Apostles, desired to restore it according to the mind of Christ.¹ The Artemonites maintained, that since the time of Pope Zephyrinus (A.D. 202-218) truth had been corrupted in the Church.² The Macedonians in the fourth century pronounced the doctrine of the divinity of the Holy Ghost to be contrary to Scripture, and unknown in the primitive Church.³ The Nestorians rejected the Third General Council (431) as incompatible with the first of Nicea; while the Monophysites rejected the Council of Chalcedon (451) as contradicting that of Ephesus and the teaching of St. Cyril.⁴ The Paulicians, who claimed for themselves the name of the 'Catholic Church,' cast off at once the constitution and doctrines of the Church.⁵ The same course was followed by the schismatic Greeks and the mediæval sects; and they rejected the Roman Church, as having fallen away from truth.⁶

But it is objected by some: 'According to the Fathers, the true faith may at least for a time be lost to the larger part of the Church, and an example of this is to be found in the history of Arianism.' But who may the Fathers be who speak thus? The Fathers declare the precise contrary. There is not a single one who says that the teaching Church can, even for a short time, fall into error; they all teach, with one voice, that the faith is the very being of the Church; that she is imperishable and incapable of error. 'The Bride of Christ,' says St. Cyprian,⁷ 'can never be an adulteress; and the promise of Christ (St. Matt. xxviii. 20) extends to all days, even to the end of the world.' St. Jerome, indeed, on the occasion of the Council of Rimini, exclaimed: 'The whole world wondered to find itself Arian;'⁸ but the words 'miratus est' (wondered) show clearly that

the outward appearance did not correspond with the actual reality; had Arian doctrines preponderated amongst Christians, the world could not have wondered to find itself Arian.⁹ In truth, the Arians did not exceed the Christians in number; and only by the tyranny of Constantius (and later by that of Valens) was Arianism raised to the power, which it lost again as soon as the imperial protection was withdrawn. Many bishops bowed before it from compulsion and fear, as was proved at Rimini; even under Arian bishops the people often remained Catholic, which made St. Hilarius say that the ears of the people were more holy than the hearts of the priests;¹⁰ they often understood the doctrine taught them in a Catholic sense. In the East, the whole people frequently fled to the desert, forsaking the Arian churches, and worshipping God amidst the greatest hardships, and under the open sky.¹¹ There was no lack, either in the East or in the West, of distinguished and resolute defenders of Catholic doctrine. The Council of Rimini gave merely an apparent and momentary success to the false doctrine; for in truth those bishops who had suffered their signature to be extorted from them by threats or by force remained in heart Catholic.¹² The court theology of Constantius perished utterly; the theology of the Church, even without the 'patronising interference of the State,' proceeds ever on its peaceful way.

¹ Iren. Adv. Haer. l. iii. c. xii. n. 12.

² Eus. H. E. v. 28, ex Auct. Anon.: ἀπὸ δὲ τῶν διαδόχου αὐτοῦ (τοῦ Βίκτορος) Ζεφυρίνου παρακεχαράχθαι τὴν ἀλήθειαν.

³ Naz. Or. xxxi. s.v. Theol. n. 21, p. 569. Leont. Byzant. de Sectis, act. iv. (Migne, lxxxvi. 1220).

⁴ Leontius, l.c. act. vi. n. 3, 4; act. viii. n. 2 (pp. 1236-1252).

⁵ Phot. c. Manich. i. 9.

⁶ Everin of Steinfelden to St. Bernard (Du Plessis, l. i. p. 23): 'Dicunt apud se tantum Ecclesiam esse, eo quod ipsi soli vestigiis Christi inhaereant,' &c. Ekbert of Schönau, serm. ii. c. Cath. (ib. p. 45). Ramerius (ib. p. 56. Cf. p. 93). Theodor. Balsam. Resp. ad Marc. q. 15 (Leuenc. l. i. p. 370). Meditat. de Convocat. (ib. pp. 477, 478).

⁷ De Unit. Eccl. c. vi.

⁸ Hier. Dial. adv. Lucifer. The matter is treated in detail by Thomassin (Diss. Vin. Syn. Arim. § 1, p. 109 seq.), because, as he says, with this passage velut ariete novatores Ecclesiae toto orbe diffusae universitatem solent impetere.

⁹ Thomassin, l.c. § 4, p. 111: 'Nempe id novum, id præter mentem et voluntatem suam esset, imo quod impossibile esset et tamen ita *specie tenus* esse videretur.'

¹⁰ Hilar. c. Auxent. Liber. n. 6. '

¹¹ Basil. Ep. 92, al. 69, c. ii. p. 481.

¹² Thomassin, l.c. p. 113, seq. § 8.

§ 6.

The new sect deserves in justice the name of new Protestantism and new Jansenism. The teachers of false doctrine have ever borrowed weapons from the arsenals of ancient heretics, derived expressions from their writings, and sent them forth as something new;¹ and in like manner the German *Janus* party has borrowed its ideas and words chiefly from Protestantism and Jansenism. Protestantism took the pretended corruption of the Church as a pretext for separation; while Jansenism took as its pretext the darkness said to have lasted many hundred years. No wonder, therefore, that the new sect should even outwardly connect itself with the remnant of the old Jansenists. There is in the writings and conduct of the Jansenists and the Döllingerites a harmony which extends even to the smallest details.

The opposition raised against the definition when made, July 18, 1870, is precisely the same as that raised in France in 1713, against the Bull 'Unigenitus.' Both heresies fought against the definition of the Church as being dangerous to the State, and both appealed against it to the power of the State; both allied themselves with any powerful party which would make common cause with them against the Church; both attacked in particular the Society of the Jesuits, who had served the Church so well; both made use of the same means, odious imputations and suspicions against Rome. Here again are the same appellations, the same defenders of 'pure theology,' the same lamentations over the tyranny of bishops, the persecution of 'orthodox' priests, and the refusal of the longed-for sacraments to 'orthodox' laymen; then come complaints of want of clearness in the definition, and of its suspicious origin.² Now, as then, the question of right is separated from the question of fact. The 'Old

Catholics' would not for the world set themselves against a Council which is in truth general; but they contend that the Vatican Council was not truly general. They cannot perceive the dogma defined to be well founded and true; and therefore they oppose the Council which defined it. Again, they hesitate to acknowledge the Council as in truth ecumenical and lawful; and therefore they hold themselves to be freed from the believing submission to its decrees, which else they must acknowledge as due to the mysteries of faith, to those sublime truths which are far above human reason.³ But this alone is sufficing proof that, whatever they may be, they are not Catholics.

Further, every Catholic has always been bound to believe, that the Church must be, now and ever, in her essence unchangeable, imperishable, and infallible; should she ever cease to possess these attributes, then she never was at any time the true Church. But the new Protestants have altogether lost the conception of the infallibility of the Church.

Moreover, a Catholic is bound to hold firmly, that a *real* contradiction between the teaching of the Church and science is not possible, and that there can be merely a *seeming* contradiction; if, therefore, he feel himself repelled by a definition of the Church, and find it hard for his reason to master, the error is to be sought on his side, and not on that of the Church. So said Döllinger as late as 1863.⁴ No Catholic can or ever could say, as did a member of the Munich Congress (1871), that he was so deeply impressed with the truth of his own conviction, although rejected by the Pope and bishops, that even were he the only mortal man who adhered to this principle, he would never profess any other. This is, and always has been, the stubborn and unjustifiable pride peculiar to heretics,⁵ which leads them to take their own judgment as their sole standard, and makes it certain that they will lose themselves in endless inconsistencies and contradictions.⁶

¹ Abbot Wibald writes (Ep. 147, p. 1250): '*Illi ipsi qui ob ignominiosam gloriam haeretici contendunt fieri, non nova inveniunt, sed vetera replicant, et superfluas verborum novitates, quas Apostolus devitandas*

praecipit, quae multorum sunt correctione antiquatae, tamquam propria ratiocinatione inventas in contentionem adducunt.'

² Cf. these expressions with the Remonstrance du Parlement au Roi du 9 Avril 1753, *e.g.* 'Que ces voyes d'autorité si éloignées de l'esprit de la religion n'ont jamais été plus multipliées à son préjudice, qu'au sujet de la Bulle *Unigenitus*. . . . C'est par la violence, que l'on soumet les fidèles à la Bulle *Unigenitus*. . . . Quelle indétermination! Peut-elle se concilier jamais avec l'idée d'un jugement dogmatique, d'un jugement irréformable de l'Eglise universelle?' (p. 182.) 'Combien de curés fidèles à leurs devoirs n'ont été enlevés à leurs paroisses par des ordres, que le faux zèle de quelques évêques est parvenu à surprendre à votre Majesté! . . . Quel spectacle affligeant pour la religion!' &c. Details on this subject in M. Gerbert, *Op. cit.* l. iii. c. vii. n. 13 15, pp. 535-544.

³ The Faculty of Douay, in the Declaration of 1704, art. vi. § 4 (Du Plessis, t. iii. p. ii. pp. 436, 437), says: 'N. 3. L'infaillibilité de l'Eglise n'est pas fondée sur l'évidence de ce qu'elle propose, mais sur l'assistance du St. Esprit, et par conséquent il ne faut pas rechercher l'évidence de l'objet pour lui soumettre son esprit. N. 4. Si l'infaillibilité de l'Eglise n'était fondée que sur l'évidence du fait, elle n'aurait en cela pas plus d'avantage que le dernier des hommes, qui ne peut aussi se tromper sur ce qui est évident. 10. Reconnaître un fait, parcequ'il est évident, n'est pas se soumettre à l'Eglise, mais à une nécessité naturelle, qui entraîne l'esprit du côté de l'évidence.'

⁴ Munich, Gelehrtenversammlung, 1863, Verhandlungen, p. 56. Cf. Conc. Later. v. et Pius IX. ap. Denzinger, *Enchir.* p. 219, n. 621; pp. 444-451, n. 1498, 1508. Const. Vat. *Dei Filius*, cap. iv.

⁵ The words of St. Augustine apply here (c. Crescon. iii. 3), on the false view of heretical baptism taken by the early African bishops: 'Sicut laudabile est a vera sententia non amoveri, ita culpabile est persistere in falsa.'

⁶ Cf. Tertull. *de Praescr.* c. xl. xli.

§ 7.

Again, the new heresy has another point in common with those gone before it. Logic and consistency have never been characteristics of heresy; on the contrary, it is inseparable from glaring inconsistencies and contradictions; and this feature is to be seen again among the new Protestants, or so-called Old Catholics. On the one hand, they no longer acknowledge the 'infallibilistic clergy' as being Catholic and lawful; on the other, they demand from them for their members ecclesiastical employment, and to be allowed to exercise the functions of parish priests. They reject an episcopate submissive to the fatal July decrees, but still they make appeal to a higher court of the same

episcopate, thereby acknowledging its jurisdiction ; they seek to bind the Pope by ancient canons, from which they free themselves. The ancient law of the Church, that no priest may exercise ecclesiastical functions beyond his own diocese, unless by permission of the bishop, they have with sovereign power set aside. The Jansenist Archb^{is}hop of Utrecht, without scruple, exercised his episcopal powers in Bavaria as universal bishop. The parish duties discharged by the priests of the new sect should be considered precisely in the same light as though discharged by priests who have no parochial rights, and in places where such had never been granted to them.¹

The 'Old Catholics' either are or are not excluded from the Catholic Church ; they either do or do not regard the power of the State as forming a part of the Catholic Church. In the former case, as the Austrian Minister of Worship expressed it (Feb. 20, 1872), they must 'consider as lawfully entitled to perform the pastoral functions of the religious denomination acknowledged by law those priests alone who, by the existing laws and the agreements between Church and State, are known to be the regular pastors of the denomination ;' and hence they cannot consider as valid the civil register brought in by the 'Old Catholic' clergy, who had no former rights in the parish ; nor can they consider the marriages solemnised before them as binding. In the latter case they must take their stand on the laws existing for dissenters and other sects, unless they should join some recognised Protestant denomination. Moreover, the 'Old Catholics' vary much in their demands ; some insist on a Church, as of right belonging to them ; others need none, looking upon the whole world as their Church ; some desire parishes of their own, properly organised ; others perceive this to be 'a fatal course, beset with snares at every step ;'² some say the infallibilist bishops and priests still form part of the Church, and are 'the rightful holders of Church authority ;'³ others consider them as wholly cut off from the Catholic Church, and as constituting an heretical Church ; some have perceived that the State 'will never, in order to please a few dissenters, deprive of her rights and titles that Church which in the eyes of the whole

world has an unbroken succession, and the possession of an enormous majority of members and parishes, that Church with which the State long ago entered into close alliance;⁴ others, on the contrary, have held this to be possible, and have straightway demanded that the Catholic foundations should be handed over to them as the rightful Church. On the one side they declare, 'We accept everything which was received in the Catholic Church up to July 18, 1870;' and on the other, 'We oppose not a single dogma alone, but the whole spirit by which for centuries Rome has been animated.'

Thus are the new Protestants at variance amongst themselves, and exhibit that distinctive mark of heresy, disunion; whilst at the very time of the Vatican definition the unity of the Catholic Church was once again most strikingly shown. In the last century Martin Gerbert wrote: 'What schism could be more terrible than that imagined by those who believe it possible for the bishops in Council to differ from the faith of the Roman Church? But they will ever agree in the same sentence, though differences of opinion may from time to time arise in discussion: for neither to the Pope nor to the bishops is a sudden inspiration given, but the determination to which they come after deliberation is, by the assistance of the Holy Ghost, firm and inviolable.' The head will never be divided from the members; and thus we see the entire unity of the episcopate with the head of the Universal Church, while those who set themselves against the Vatican Council have fallen under the excommunication pronounced by it, and have ceased to be Catholics.

¹ Vide *Der Conflict zwischen Kirche und Staat in Bayern*, p. 86 seq. 93 seq.

² Döllinger, *Munich Speech*, 1871, Report, p. 108.

³ Döllinger, *l.c.* 109.

⁴ Döllinger, *ibid.* 129, 130.

PART II. CHARGES AGAINST THE COUNCIL.

- § 1. Pretended want of freedom of the Council. § 2. Letters on the Council and Friedrich's Journal. § 3. Pressure by the Pope and the Curia. § 4. Right of proposal. § 5. Right of definition. § 6. Order of business. § 7. Lay diplomacy. § 8. Charges against the bishops of the majority. § 9. Composition of the Council. § 10. Principle of majority. § 11. Representation and consent of individual Churches. § 12. 'Theologians' and public opinion.

§ 1.

What do our able opponents bring forward? First, they show great fear lest the acknowledgment of the Vatican Council should bring with it the downfall of the modern State, of the German empire, and, in general, of civilisation and true religion.¹ Another, on the contrary, writes: 'Whoever has courage to look calmly in the face the simply horrible caricature presented to us by the Vatican Council will at once lose all fear of its power and vitality.'² Wherefore, then, is so much pains taken to oppose that which is in itself 'powerless and incapable of life'? Hase (a Protestant) is right in saying: 'Had the dogma been withdrawn, or had it been rejected by the majority, the opposition would never have thought of calling in question the ecumenical character of the Council.'³ The Council is not rejected on formal and juridical grounds, but only by reason of the dogma itself.

What, then, is the formal deficiency with which the Council is reproached? The answer is: Above all, the notorious want of freedom of the bishops.⁴ The same reproach was once cast on the Council of Trent, but was refuted on all sides.⁵ In order to prove the want of freedom of the Vatican Council, it would be needful to produce witnesses or documents, and moreover unexceptionable witnesses and documents above suspicion. Up to the present day no one has been able to do this.⁶ Is, perchance, a French pamphlet, the author of which dares not even come forward with his name, and the contents of which have been branded as calumnious and lying by five hundred bishops,⁷ to be reckoned as proof? Or the expressions of Lord

Acton,⁸ too famous for his activity against the Council? Do the voices of the opposing minority alone carry weight, and not those of the majority, who, be it remembered, would always have formed a majority, even without the subsequent addition of those who were at first, from various causes, amongst the oppositionists? Do the assurances of all the bishops speaking with one voice—of those who were never troubled, and of those who for a short time saw cause for anxiety—do all these go for nothing?

The freedom essential to the Council is freedom of speech and of vote. This was fully granted, as even the antagonistic accounts prove without meaning to do so, when they report the more than frank expressions of the oppositionists.⁹ If, on July 18, 1870, two bishops (who, however, on the subsequent definition immediately submitted to it) were able to give a negative vote, 'Non placet,' it surely would have been as easy, or even easier, for twenty or a hundred to have done the same.

Once only, on June 3, was the closing of the debate determined, and then it was on the motion of more than one hundred and fifty of the Fathers, and was carried by an overwhelming majority, in which were numbered many even of the 'opposition;' and this was done after the hearing of sixty-three speakers in fourteen debates, and with the reservation of the special debate, which lasted over four more weeks, and gave many more speakers an opportunity for a free expression of opinion. In truth at no time and in no place has there been such perfect freedom in a like assembly, nor so many occasions given for discussion.¹⁰

¹ Vide Döllinger, *Allgemeine Zeitung*, March 31, 1871, and others.

² Berchtold, p. 9.

³ Hase, *Handbuch der Prot. Polemik*, p. 198.

⁴ Döllinger, *ibid.* and others.

⁵ Pallavic, *Hist. Conc. Trid.* l. xxiv. c. xiv.

⁶ Cf. Ueber das Vatican. Concil. Mainz, 1871, ii. pp. 6-12. Schulte's publication, *Das Unfehlbarkeits-decret. v. 18 Juli 1870, auf Seine Kirchliche Verbindlichkeit Geprüft* (Prag, 1870), was shown in its true colours, by Bishop Fessler, in *Das Vaticanische Concilium, dessen Auserere Bedeutung und Innerer Verlauf* (Vienna, 1871).

⁷ Cf. the Ratisbon Pastoral of Oct. 28, 1870, § 11.

⁸ Cf. Frhrn. v. Ketteler, Die Minorität auf dem Concil. Antwort auf Lord Acton's Sendschreiben, Mainz, 1870. Archiv für Kath. Kirchenrechte, 1870, vol. xxv. p. cliii. seq.

⁹ Histor. Polit. Blätter, vol. lxvi. p. 198 seq. Ueber das Vat. Concil. pp. 9, 10.

¹⁰ Ratisbon Pastoral, Oct. 28, 1870, § 12, p. 46.

§ 2.

On what, then, is founded the calumny that the Council was notoriously wanting in freedom? On the letters on the Council in the *Allgemeine Zeitung*, and on the Journal (*Tagebuch*) of the Roman Council by Friedrich. These are the two sources, and they form in reality but one, as may be seen by any person who takes the trouble to compare the two. They echo each other and are composed of mere pitiful gossip, often repeated at second and third hand,¹ most shameful expressions being put into the mouths of anonymous witnesses, described as prelates, theologians, diplomatists, laymen, &c.² The Journal, moreover, indulges in insulting expressions about the highest dignitaries in the Church, such as can only have been dictated by the bitterest hatred.³ But enough has been said of this book, which is highly praised by its party as 'an historical work.'

¹ Petrus Vener. l. ii. Ep. 33, p. 252: 'Habent vina hunc morem, ut de vase in vas frequenter transfusa a virtute naturali languescant; si recentia hauriantur, vini saporem integre servasse probentur. Sic verba per aures alienas aliorum cordibus committenda *referentium inscitia*, incuria, industria aut non intellectam aut neglectam aut depravatam quandoque augent, mutant, minuunt veritatem.'

² Many of the statements made are simply ridiculous. The Fosfori Infallibili (matches which never fail to strike) were not hawked about for the first time of late (*Journal*, p. 177), but many years ago. In one of the most important Basilicas, the Credo and Agnus Dei were to be sung on Holy Saturday (p. 331), while on this day both are omitted. Concerning the Roman Inquisition, he learns that it still believes that 'horses are made to prick up their ears by the holy souls; therefore the owners of these horses are to have chapels built to the holy souls on the spot.' He speaks in Latin with a chaplain; the auditors, especially the *ladies*, were nevertheless on his side (p. 329), &c.

³ The bishops are flatterers (p. 51), perfidious (p. 137), ignorant (p. 244). He perceived as early as January 2, 1870, that the Council was to be a Synod of flatterers and thieves, 'which we theologians' (p. 251) could not acknowledge.

§ 3.

‘But,’ it is objected, ‘the power of the Pope and of the Curia was contrary to all freedom on the part of the bishops.’ What, then, was to be done? Were the bishops to be released from their oath of obedience to the Pope? Was the Pope, out of favour to the episcopal privileges, defended by a small number of learned men in Germany, to renounce rights founded on history and canon law? Was the disorder which prevailed at Basle to be again regarded as order? Surely the mere subordination of the bishops to the Pope does not destroy their liberty! Members of Parliament do not lose their freedom by taking an oath of obedience to the head of the State; and the oath of obedience taken by the bishops does not bind them to give a vote contrary to judgment and conscience.¹ The Council is not indeed a sovereign national assembly, with the Pope on the other side as president and chief of the executive power; the reason being, that neither the assembled bishops nor the Pope lose the rights and spiritual powers given to them by Christ.² As the bishops individually are all subordinate to the Pope, so when collected together they are not loosed from this subordination.³

¹ Raynald. a. 1560, n. 60; a. 1561, n. 6.

² Bossuet, Def. p. iii. l. vii. c. iv. t. xi. p. 9: ‘Quum profecto Concilium nihil aliud sit, quam Cath. Ecclesiae repraesentatio, integris omnibus, quae cuique a Christo sunt, dotibus, non profecto sublatis, ne non repraesentatio, sed extinctio ecclesiasticae unitatis esse videatur.’

³ Cf. Bouix, De Papa, t. ii. p. 220.

§ 4.

In every large assembly the right of presiding is so far bound up with the right of proposing questions, that the president has to decide the order of succession amongst the subjects to be considered. But now our opponents deny to the Pope the right of proposing as well as the right of defining, and they make appeal in the first place to the Council of Trent. Every member of the Vatican Council, as of the Council of Trent, had the right of making proposals on the subjects under discussion; but, on the

other hand, in this as in the preceding Council, except by the presiding cardinals, no new subject could be proposed for discussion and vote. This rule was in fact maintained at Trent,¹ and the Fathers did not thereby lose their needful freedom, but confusion and disorder were avoided.² The Papal legates at Trent wrote at the time to the Emperor Ferdinand: 'Were each member suffered to make proposals at will the Council would never end; if the Spaniards exercise this right, so will the French, the Germans, &c. We have more than once told the Fathers that in case they desire a proposal made, they can lay it before the legates; and this has, as a rule, been done.'³ In the Councils of the Middle Ages the Papal right of proposition passed unquestioned. The first Councils lawfully held in the East cannot be taken as affording a permanent rule, for at that time the emperor's extensive office of protector of the Church gave to the imperial commissioners the external direction of affairs, and, as a consequence, considerable influence.⁴ As a rule, however, they were considered as distinct from the Council; thus the letter of the Fathers of Chalcedon to Leo the Great distinguishes the Papal power of presiding as that of the head over the members, and the power of the emperor as an honorary presidentship.⁵ In conducting the business of the Council, the Papal legates took the initiative from the imperial commissioners, but they also afterwards conducted it with them, often in a most striking way, as is especially proved by the proceedings of the Fourth⁶ and Eighth⁷ General Councils. The fact that St. Cyril was Papal legate at Ephesus in 431 is disputed without reason, the very acts of the Council designating him as such.⁸ Theodosius II. (431) forbade the imperial commissioners sent thither, to take part in the ecclesiastical inquiries and conferences.⁹ From the fact that a Council which originally was not ecumenical may receive the ecumenical character from the Pope taking part in it, nothing follows as to the right of proposition in Ecumenical Councils; if a Council be convoked and held as ecumenical, still the right of proposition belongs to the Pope. It cannot be taken as proof to the contrary that at Chalcedon the 28th canon was unlawfully brought in and accepted by the

bishops who were servile to the court of Byzantium; for the Pope as well as the legates protested against it, and the Orientals until long after only reckoned twenty-seven canons of Chalcedon.¹⁰ In later times, the ambition of the Byzantine court once more brought forward the canon rejected by Rome, much as the Gallicans have once more brought forward the Declaration of 1682, annulled by Louis XIV. in 1693.¹¹

The condemnation of Honorius at the Sixth Council, before the Roman legates were prepared for it, was the result of pressure on the part of the Greeks; his guilt consisted, as Pope Leo II. plainly declared, in negligence, by means of which heresy was strengthened. It must not be concluded that because the Roman legates did not oppose proposals originating on the other side, that they therefore conceded to it the right of proposition. Neither does it follow from the conduct of the legates that it must have been forthwith, and to its full extent, approved and ratified by the Pope. Often the legates were disavowed by the Pope, and blamed and punished for overstepping their powers.

¹ Bennettis, *Privil. S. Petri*, p. i. t. i. p. 514.

² Pallav. *Hist. Conc. Trid.* l. xxiii. c. xii. n. 7. Massarelli's remarks are made expressly of the general congregations, to which alone they can apply, since that which had been determined in them was only made public in the solemn sessions: 'Nemini enim licet nisi solis Praesidentibus proponere.' This last word, as Fessler observes (*Das Vatic. Concil.* p. 34, n. *), may mean: (1) to propose motions on subjects fixed for discussion; (2) to propose subjects for discussion and vote. The first, in the Vatican Council as in that of Trent, was the right of all members; the last, in both cases, was the right of the presiding Cardinals alone.

³ Raynald. a. 1563, n. 32.

⁴ Hefele, *Conc. i.* pp. 25-33.

⁵ Leo, Ep. 98, c. i.: 'Quibus tu quidem, sicut membris caput, *praeras* (ὡς κεφαλὴ μελῶν ἡγεμόνευες) in his qui tuum tenebant ordinem . . . Imperatores vero fideles ad ornandum decentissime *praesidebant* (πρὸς εὐκοσμίαν ἐξήρχον), ut Zorobabel Jesu.' The allusion to 1 Esdr. iii. 2 shows the coöperation of the two powers for the restoration of religion. Cf. L. Thomassin, *Dissert. x.* in *Syn. Eph. i.* § 14, p. 198, ed. Colon. 1784, seq.

⁶ Cf. De Marca, de *Conc. l. v. c. vi.* Leo. M.—Ep. 93, ad *Syn.*; Ep. 89, ad *Marc.* (Jaffré, n. 253, 247) — preserved completely all the rights of his See.

⁷ Mansi, xvi. 25 seq. 33 seq.; p. 316 seq.

⁸ The force of the words of Celestine, Ep. 17 (Jaffré, n. 160), written to the legates appointed to Ephesus, is overlooked: 'Ad fratrem et coepiscopum nostrum Cyrillum consilium vestrum omne convertite, et quidquid in ejus videritis arbitrio, facietis. Et auctoritatem Sedis Apostolicæ custodiri debere mandamus; ad discrepationem si fuerit ventum, vos de eorum sententiis judicare debetis non subire certamen.'

⁹ Mansi, iv. 1119.

¹⁰ Dionysius Exiguus reckons this number only; also Theodorus Lector (l. iv. p. 168, ed. Migne), Johan. Scholasticus, *Eclogæ Hist.* by Cramer, *Anecd. Paris*, ii. p. 101, and elsewhere. Ballerini, in *Diss.* i.; Quesnell, a. 451, n. 14, p. 869. This is treated in detail in Photius, vol. i. pp. 76-89.

¹¹ The letter to Innocent XII. of Sept. 14, 1693, is given by Du Plessis, t. iii. *Append.* p. 5, strictly according to the Vatican Archives, Theiner, *Hist. de Clément XIV.* vol. i. pp. 332, 333.

§ 5.

The opinion that the Popes, with respect to the right of definition, were in no way superior to other bishops, has been long ago set aside by theologians, and in particular by the Gallicans.¹ The fourth Gallican article of the Declaration of 1682 gives to the Pope, in the decision of questions of faith, the 'principal share' (*praecipuas partes*). It has ever been acknowledged in the Church that a Council without the Pope cannot be a General Council. Whether the Pope defines with the 'approbation of the holy Council' (*sacro approbante Concilio*), as has been the case in all Councils in which the Pope was present in person, or whether the Council speaks in its own name, and the confirmation of the Pope is added,² is in essence the same; but Catholic theologians have ever recognised the participation or confirmation of the Pope to be essential to an Ecumenical Council.³ This one historical fact is unassailable, and is enough to prove the Pope's right of definition: no Council, however numerous, has ever obtained universal recognition if rejected by the Roman See, and only those acknowledged by Rome have been acknowledged also by the whole Church.

¹ Thomassin, *Dissert.* xii. in *Conc. Chalc.* § 1 seq. p. 248 seq. The Sorbonne in 1605 condemned the sentence: 'Le Pape comme Pape n'a plus de puissance qu'un autre en ce qui est de la substance et des articles de la foi et qui n'est point déterminé, si ce n'est qu'il lui soit révélé par exprès' (Du Plessis, t. ii. p. i. p. 542). Febronius himself (*De Statu Eccl.*

c. vi. § 4, n. 3) says: 'Ei (Papae) competit jus relationis seu primae sententiae, ita ut ipsius sit referre ad Patres, quid de re censendum sit, et primam ferre sententiam, quae definitionis vim habet, si Patrum sententiis firmetur.'

² At Constance both forms were used; the first after the election of Martin V., the last before there was a 'Papa certus.' Augustinus Patri-cius, c. 1488, accurately states the distinction, *Ordo celebrandi Generalis Concilii*, c. ix. (Walter, *Fontes*, i. p. 126).

³ Ballerini, not. in Leon. M. Ep. 114 (Migne, l. iv. pp. 1439-1441). Thomassin, *Dissert. vi. in Syn. Occ. ii.* pp. 134, 135. A. Duval, *Tr. de Supr. Rom. Pont. Pot. p. vi. q. 6*, p. 525 seq. ed. 1614.

§ 6.

It is also said that the order of business in the Council interfered with the freedom of the bishops. The opposition party allow that no settled order of business existed in the General Councils of the first century.¹ At Constance² the necessity of some such arrangement was recognised, but under the pressure of extraordinary circumstances the practice of former Councils was entirely set aside.³ Likewise at Trent no restrictive order of proceeding was established; Massarelli's notes⁴ contain only the order as actually observed there (*modus observatus*), and not any rule for such an order (*modus praescriptus*). The question put by Cardinal del Monte, during the discussion on a decree, whether the manner of proceeding gave satisfaction, cannot in truth be taken as proof that an agreement had been made with the bishops upon the whole order of business, as Döllinger desired. The Vatican order of business was in the main the same as that observed at Trent, often agreeing with it even word for word.⁵ A full discussion by the Council of the order of business would not have been possible without great loss of time. The right of the Pope to settle this order by virtue of his presidential office was not disputed even by the episcopal memorial demanding alterations. The order of business was in the first place drawn up and published by the Pope,⁶ then further developed according to the proposals of the majority of the Fathers, suggested by their experience,⁷ and as a matter of fact accepted by all the bishops.

But in order more effectually to preserve freedom of vote to the Fathers, not only was the draft of the decrees submitted

whole and entire (*integra integre*) to their free discussion, so that in word and in writing they could express their opinion upon them,⁸ but the privilege of making independent proposals was likewise granted them, naturally under certain conditions, some of which were intended to facilitate discussion.⁹ A right of making proposals was fully conceded to the bishops, subject only to the control of the committee appointed for the purpose, precisely as was the case at Trent.¹⁰ Thus the Pope granted to the bishops, in a limited degree, a share in the initiative power which was his, without indeed lowering himself to the position of a president subject to his parliament, which innovators would have had him do.

That the presiding cardinals should from time to time interrupt bishops, and call them to order, was formally and materially justified by the practice of all parliamentary assemblies, of the more ancient Councils,¹¹ and even of the Council of Basle,¹² and happened to bishops of the majority as well as to those of the minority.

It is said, that in the disputes respecting the Council the Pope most plainly sided with one party, encouraging and commending the infallibilists by word and in writing, and blaming their opponents. Should he, then, have been silent when men were beginning to cast doubts upon a truth of which he was convinced, were intimidating and holding up to scorn the most faithful defenders of the Holy See, were announcing as true theological doctrine propositions long ago censured and condemned, and going even so far as to call the doctrine of infallibility an heretical doctrine? Is it not the duty and the right of the Pope to protect the faith of the Roman Church from calumny, and to defend it at every point, to uphold the decrees and censures of his predecessors, to preserve the prerogatives of the Apostolic See, especially as the 'Curial system' had become the watchword of the opposition?

The Pope never sought to check the discussion of difficulties, but only to check accusations made in the heat of the conflict against the constitution of the Church, and rash censure of a doctrine ever held in high esteem by her, which

doctrine, though not yet defined, could never be pronounced indefinable. While, on the one hand, those bishops who considered it as unneeded and inopportune to proclaim the infallibility of the Pope's doctrinal decisions as a dogma were appealing to the fact that Catholics had never been so submissive to the Pope as at the present time, those men, on the other hand, who considered themselves as the representatives of German learning called in question in the most shameless way the obedience due to the Pope, and raised aloft the banner of open insurrection. Against this the Pope was forced to lift up his voice, in a manner not to be misunderstood. Neither physical force, nor threats, nor intimidation were employed; nor has a shadow of proof been brought forward of their existence.

The proposal for the definition of infallibility was not amongst those laid before the bishops by the Holy See: it was brought in by an overwhelming majority of the Fathers. Ought the Pope to have simply rejected this petition of the bishops? How would it then have been with the freedom of the Council? What do the oppositionists say on this point? If they say the Council would then have been free, they prove that they desired freedom for their own party only, and were willing to see tyranny exercised over the majority of the Fathers; if they are forced to concede that the Council would not in that case have been free, how can they, in the interests of freedom, complain of the actual conduct of the Holy Father?

¹ Döllinger, Declaration in the Allgemeine Zeitung, March 11, 1870.

² Mansi, xxvii. 657, 658.

³ Mansi, l.c. 563.

⁴ Friedrich, Doc. i. pp. 265-276. Cf. Fessler, Das Vaticanische Concil. Wien, 1871, p. 32.

⁵ The passages given in Cecconi's History, i. Test. p. 172 seq., from the vote of von Hefele, then consultor at Rome, drawn up in 1869, prove moreover that many points of the order of business of Nov. 27, 1869, afterwards so bitterly attacked, corresponded closely with the proposals of this learned German, and in more than one respect put to shame the opponents of the Council.

⁶ Const. *Multiplies inter*, 27 Nov. 1869.

⁷ Decret. Legat. 20 Feb. 1870. Cf. Schreiben, Ueber das Vatican. Concil. § 2, pp. 7, 8.

⁸ Const. 27 Nov. 1869, § 7.

⁹ *Ib.* § 2. Cf. Fessler, l.c. p. 34.

¹⁰ Raynald. a. 1563, n. 32, Lit. Leg. ad Ferdin. I. Imp.

¹¹ Pallavic. Hist. Conc. Trid. l. ix. c. i. n. 7.

¹² Mansi, Conc. xxix. 378.

§ 7.

An attempt prejudicial to the freedom of the Council was indeed made, but it did not proceed from the side of the Pope ; far otherwise. The interference of secular diplomacy, by which in truth an attempt was made to exercise pressure on several bishops of the majority, and on the Pope himself, throughout the course of the Council, was called forth and extolled by that very opposition party which proclaimed the freedom of the Fathers injured by the Pope, and would fain have seen his legitimate influence lessened. In the newspapers of this party, since shown in its true heretical colours, there are not alone complaints as to the exclusion of laymen, and especially of the envoys of princes ; but it is moreover said that the opposition party was supported by France, and by French influence in the States of the Church ; that many bishops who were of this mind thought with painful longings of the Council of Trent, at which the envoys of monarchs supported the foreign bishops ; that first France and then Austria and Prussia mingled drops of wormwood in the joyful cup of the homage of the majority. The two letters of Count Daru, and later his notes, were received, we are told, with exultation, and afterwards the memorials of other powers, until it was at length perceived that the Curia had succeeded in setting aside the attempted interference of governments, so that the combat, as was fitting, had to be fought out by the bishops themselves.

Without speaking of the distinguished ladies who ' had much to do ' with the minority in the Council, the so-called ' matriarchs,' the warning given to not a few of the bishops on their road by the statesmen of various countries, and the influence exercised by accredited envoys in Rome, strengthened by menaces and intimidation from the home press, were all without doubt intended to act as pressure upon the bishops. Even before the opening of the Council attempts at dissuasion and intimidation

of all sorts were made.¹ The adherents of *Janus* were constantly recalling the circular concerning the Council, issued by the former Prime Minister of Bavaria, the Prince von Hohenlohe, dated April 9, 1869. The Pope was openly threatened with the abolition of the Concordats, the withdrawal of the French garrison, the prohibition of Peter's pence, with attacks on Church property, and with numerous apostasies, especially among the Orientals. Intrigues were prepared long beforehand among the Armenians in Constantinople, the results of which are now seen.

'This intimidation,' says a bishop, 'these menaces, supported by a press conducted in a manner corresponding, lasted for months; but some doubt being felt as to their effect, every means was at the same time employed to protract the labours of the Council, and so to lengthen its deliberations that the setting in of the hot season, or some other longed-for occurrence, might make the definition impossible, and render its postponement or that of the Council itself indispensable. And now persons, who must be well aware of the whole conspiracy against the freedom of the Council, bring the outrageous charge against the Pope, as though he had 'through moral pressure' so impeded the freedom of the Fathers of the Council, that they voted for doctrines which they did not acknowledge as true and handed down by tradition.'²

¹ Friedrich, p. 349, tells us that as early as the summer of 1869 the Prussian and Bavarian governments were desirous that the aged king of Saxony should represent them at the Council as their envoy, which, however, he declined to do.

² Ratisbon Pastoral, Oct. 28, 1870, § 15, p. 49.

§ 8.

Truly comic was the demand made by a portion of the German press, that the decision should rest with the bishops of the opposition, even though few in number, because they represented the largest dioceses, and the intelligent inhabitants of capitals and large towns, and because they themselves were the more learned men, while those who belonged to the majority were far behind them in intelligence and learning. This is indeed a new rule never thought of in early ages. Had the votes

of the bishops been weighed according to the 'intelligent inhabitants' of their cities, the head-quarters of luxury and unbelief, how would it then have fared with the Church? Had such a rule prevailed in the first eight centuries of the Church, the subject of so much praise, the heretical bishops of the ancient imperial city Constantinople, who were numerous, would have had the decision in their hands. Do bishops, then, come to a General Council merely as deputies of their people, as envoys from their dioceses? Or were the bishops of Nicea, for instance, in 325, estimated according to their learning? Was the decree of the Council ascribed rather to their knowledge, or to the Holy Ghost? Were not the Apostles 'unlearned men,' through whom God put to shame the wisdom of this world? And have not all heretics charged the bishops who condemned them with ignorance?¹ Here again the so-called 'old Catholics' show themselves the worthy followers of heretics who have gone before; they come forward as the sole 'defenders of learning;' but as is ever the case with falsehood, in so doing they involve themselves in fresh contradictions.

But have the majority of the Fathers been in truth convicted of ignorance of theology and weakness of intellect? If coarse abuse could be taken as proof, then indeed more than enough would have been given.² Happily, however, actual proof to the contrary exists. But how stands the case with the 'learned opposition bishops'? Alas, they lost their reputation at once when they submitted to the decrees of the Council. And even while they were as yet held in honour, a most unfavourable account of their learning was given us by one of the fanatical 'fallibilists,' who pretends to have observed them closely, and to have had considerable influence with them;³ one prelate makes no use of theology, another no use of books. In general, on the side of the minority there are to be found 'no truly great and imposing characters.' The defenders of German learning were anxious to render even the bishops docile pupils and mere tools of their own; while they also felt themselves called upon to save the honour of governments.⁴

So far as the theological arguments of the opposition are

concerned, it is easy to show that they are of no great scientific value. The oppositionists even suffered themselves to be betrayed into declarations which would have met with severe censure, not merely from the 'Curial authorities,' but also from the ancient theological faculties, even from that of Paris; e. g. that the denial of our Lord by St. Peter was an apostasy from the Faith;⁵ that all the Apostles, in an equal degree with St. Peter, were made foundation stones of the Church;⁶ that the words in St. Luke xxii. 32 are to be confined to the person of St. Peter only during the time of Christ's Passion;⁷ that the striking words of the Fathers on the privileges of St. Peter are to be taken as rhetorical exaggerations.⁸ The arguments brought forward against the definition proved weak, and were by no means left unanswered, as has been maintained. The pamphlets were refuted in numberless replies, the speeches in powerful counter-speeches,⁹ and the observations of individuals in the discussions of the dogmatic committee. But even if the fitting solution should not have been found for every doubt and every difficulty, is that any gain for our opponents? Did the ancient Church delay her definitions until learning had removed every difficulty from the path? Even now, after so much labour, do not scientific difficulties still exist on the canon of Scripture established by the Church, on the mysteries of the Trinity, the Incarnation, and the Eucharist?

¹ M. Canus, *De Locis Theol.* l. v. c. vi. seq. 176.

² Take, for example, the revolting manner in which the Bishop of Padernborn is reviled in the *Journal* before mentioned and elsewhere, and also the late Bishop of Würzburg, Dr. Von Stahl, well known for his thorough knowledge of theology.

³ Friedrich, from whom also the other quotations.

⁴ Interesting indeed is the statement in Friedrich's *Journal*, p. 283: 'Had not German learning [in the person of its representatives] saved the position [of the governments] and established an opposition in the Council, and kept it continually alive, even against the will of the governments!! [a noble confession!] and had not our Lord God placed folly and ignorance on the side of the majority and of the Curia, governments would have been brought to shame in the face of the whole world.' All parties in turn come in for a share in his compliments.

⁵ M. A. de Dominis, l. i. c. vi. n. 35 seq., censured by the Faculty of Cologne, 1618, and by that of Paris, 1617 (*Du Plessis*, t. iii. p. ii. p. 197; t. ii. p. ii. p. 105, prop. 8).

⁶ De Dominis, l.c. n. 45, 49, c. ix. n. 7. Censura Colon. l.c. pp. 197, 200, as prop. haeretica.

⁷ De Dominis, l.c. c. ix. n. 8. Censura Colon. l.c. p. 200. Cf. Synops. Observ. n. 18, 22, 114, 134.

⁸ De Dominis, l.c. n. 19 seq. Censura Colon. l.c. When E. Dupin (*Nouvelle Biblioth. des Auteurs*, r. i. pp. 8, 19; r. ii. p. 274) designated the expressions used by St. Augustine and Theodoret in praise of the greatness of the Roman Church as compliments, the Archbishop of Paris, François de Harley, considered the epithet offensive, and Dupin explained: 'Je n'ai point prétendu que ce fussent des compliments, qui ne soient pas fondés sur la vérité, reconnaissant que ces éloges sont très-véritables' (*Du Plessis*, t. iii. p. ii. p. 383).

⁹ Vide Animadversiones in quatuor libellos, and elsewhere. Cf. *Histor. Polit. Blätter*, vol. lxvi. p. 500 seq.

§ 9.

The composition of the Council was another ground of complaint, inasmuch as the Vatican Council numbered amongst its members entitled to a vote many who were not bishops.¹ But there were, in fact, only 59 of these to be set against 608 consecrated bishops—that is, they formed not even a tenth part of the assembly;² they consisted only of special personages, to whom by reason of their position the right of taking part in a Council is granted by ecclesiastical law, as was laid down as early as the Council of Basle.³ These are cardinals, who, as electors of the Pope and organs of the central government of the Church, hold a prominent position, and who had, moreover, the right of vote in the Councils of the Middle Ages.⁴ Also generals of orders, most of whom have more priests under them than have many bishops; and abbots-general, who, since the Seventh General Council, have had power to confer minor orders on members of their order,⁵ and have possessed quasi-episcopal rights.⁶ No one felt any scruple when Paul III., in 1542, summoned to the Council of Trent the bishops, abbots, and others, 'to whom, by virtue of right or privilege, the power of taking part and voting in a General Council has been granted.'⁷ Bishops lawfully consecrated, even though they possess no dioceses (bishops in partibus infidelium), belong by virtue of consecration to the episcopate.⁸ 'Bishops without dioceses' (Maret and others), whom the opponents of the Council could number

amongst themselves, were made welcome by them. Had they been able to claim the whole number, we may be sure no complaint would have been made of their lack of diocese.

¹ Kenrick, *De Pontificia Infallibilitate*, Neap. 1870, p. 35.

² Fessler, *Das Vatican. Concil.* p. 22.

³ Thus, Augustin. Patric. *Ordo Celebr. Conc.* c. iii. (Walter, *Fontes*, p. 120). It is well known that Peter d'Ailly (Mansi, xxvii. 561) and Gerson (*De Pot. Eccles.* ii. 250) proposed a still further extension of the right of vote.

⁴ Hefele, v. 984, seq. vi. p. 116.

⁵ C. xiv. Hefele, iii. p. 447. Thomassin, *de Vet. et Nova Discipl.* p. i. l. iii. c. xvii. n. 3.

⁶ The Abbot of St. Columban had even, according to Bede, several bishops under him.

⁷ *Const. Initio Con. Trid.* ed. Richter, p. 6.

⁸ R. M. Coppola, *Sul Diritto suffragio de' Vescovi titolari e rinunziatarii nel Concilio Ecumenico*, Napoli, 1868. Walter, *Kirchenrechte*, § 157, p. 294.

§ 10.

Louder still are the complaints against the 'principle of majority, which in matters of faith is absolutely inadmissible, but which was followed nevertheless.'¹ 'I ask,' writes Pallavicini, 'with whom rests the power of decision? with the majority, or with the minority? The practice of all councils, of all assemblies, and even common sense itself, give an answer to the question.' In every assembly in which important questions are decided all are settled by the majority, and no one has yet maintained that the decision should rest with the minority.² Had the Pope agreed with the minority in the Council, it is certain that the new Protestants would have praised him as much as they abuse him. Even the Gallicans considered a decision unassailable when sanctioned by the Pope and a majority of the bishops.³ Moreover, Mgr. Maret, once so renowned amongst the oppositionists, even held the Pope to be bound to confirm the decision of the majority in the Council;⁴ and it was only when it became plain that the majority of the Fathers was on the opposition side that support was sought in another quarter. How is the absolute inadmissibility of deciding by majority proved? By the theory, newly discovered, of moral

unanimity,⁵ which however has no sure foundation, either juridical or historical.⁶

Even in the first six General Councils no such absolute unanimity was required. Neither was it insisted upon at Constance; still less at Basle or at Trent. Some amongst the bishops might be affected by heresy, as was the case at the First General Council of Nicea. According to this principle it would always be possible to such to put a stop to any definition. The idea of 'moral unanimity' is, moreover, uncertain and elastic in the extreme, and has never been defined with precision.⁷

Further, 'moral unanimity' did, as a fact, exist when the final and solemn votes were given, which, to the exclusion of all preparatory votes, are alone to be considered here. Two bishops only voted 'non placet,' and even these afterwards gave in to the decision of the Council. Those who withdrew beforehand renounced thereby their right of voting, and were no longer members of the Council. The votes passed July 13th were not decisive, and therefore many members of the Council were absent who were strongly in favour of the definition, and afterwards voted solemnly for it. Amongst the 62 who at that time voted 'yes' conditionally (*placet juxta modum*), the majority was composed precisely by those who, in opposition to Gallicanism, desired the words 'of himself, and not through the previous agreement of the Church,' to be added (*ex sese, non autem ex consensu Ecclesiae*). While all this proved the perfect freedom of the Fathers in giving their votes, it also showed the moral unanimity within the Council; and this was rendered more striking by the adhesion of many bishops who had been unable to appear in Rome, and who far out-numbered those who voluntarily absented themselves. But it has been said that in Rome the first 'no' weighs incomparably more than the later 'yes.' Why should this be? When, at the provisional voting of July 13th, certain bishops replied in the negative, they were opposing no decree of the Church; but when they afterwards voted 'yes,' they did so in the face of an unassailable decree. The Bishop of Ermland observes:⁸ 'A deputy cannot disregard a law passed by the Chambers, and confirmed by the king, on the ground

that he with the minority has ever expressed himself against it and dreaded its consequences. This rule, which applies to the government of a country, applies likewise to the laws of the Church, and bishops are bound to acknowledge and yield obedience to the canons lawfully passed by the highest ecclesiastical authority, even though they may previously have entertained opinions as to their opportuneness differing from the opinions of the majority; and even though from the excited and misguided state of public opinion they may have feared evil consequences from the passing of a decree in itself perfectly just.'

It is true that some fifty bishops did absent themselves from the fourth solemn assembly in the Vatican, July 18, 1870, and in a declaration dated July 17, 1870—before the definition therefore—upheld and renewed their former negative votes;⁹ but still they could neither turn the Council into a 'rump Council,' nor call in question the authority of the decree of 533 bishops, sanctioned by the Pope, as indeed the greater number of the absent bishops have themselves explicitly acknowledged.¹⁰ A document such as this, external to the Council, and proceeding from a fluctuating minority of between a ninth and a tenth part of the Fathers, could have as little weight against the Council as the protest of the 43 bishops assembled under John of Antioch at Ephesus in 431 against the true Council led by St. Cyril;¹¹ it did not even carry the weight of an engagement on the part of those who signed it not to submit to the authoritative decision, and it was, moreover, retracted by the submission which followed.

¹ Berchtold, Döllinger, &c.

² Cf. c. i. De his quae fiunt a maj. parte, cap. iii. 21. Innoc. III. l. ix. Ep. 125 (Migne, ccxv. 945). Turrecrem. de Eccl. l. iii. c. lxxv. Jacobat. de Concil. l. vi. a. 3, n. 1, 2, 57.

³ Natal. Alex. H. E. saec. vii. diss. ii. prop. 2. Regnier de Eccl. Christi, p. i. sect. i. c. iii. Tournely, de Ecclesia, q. 4, a. 4, 5.

⁴ Maret, Du Concile et de la Paix Religieuse, i. p. 424.

⁵ Döllinger, Allgemeine Zeitung. De l'Unanimité morale nécessaire dans les Conciles pour les Définitions dogmatiques, Naples, 1870. L'Unanimité dans les Conciles écuméniques, Paris, Dentu, 1870.

⁶ Steccanella, Adversus novam Doctrinam de necessitate Episcop. Consensus, Romae, 1870. Schneemann, in den Laacher Stimmen über das ökum. Concil. ii. 3, pp. 52-70. M. Schrift, Ueber das Vatican. Concil. iii. pp. 13-16.

⁷ Fessler, l.c. p. 107.

⁸ Letter to the Minister v. Mühler, Dec. 20, 1871: Germania, Jan. 24, 1872.

⁹ The Archbishop of Cologne and the Bishop of Mainz did not sign the declaration.

¹⁰ Cf. Fehr. v. Ketteler, Die Minorität auf dem Concil. p. 11. Cologne Pastoral, Sept. 12, 1870, p. 10 seq. Trèves Pastoral, Sept. 14, 1870.

¹¹ Conc. Ephes. Hard. iii. 750.

§ 11.

Here again is another point of resemblance between this and former heresies. The theory that in a Council the majority cannot pass a decision, that bishops are merely the deputies of their Churches, and that their resolutions must first be agreed to by these Churches, was promulgated for the first time in Germany by the Protestant Samuel Pufendorf.¹ E. Richer² and his adherents in France, amongst whom above all are numbered the Jansenists, gave expression to precisely the same theory. In the foregoing century, its boldest defender, with the exception of Febronius,³ was Petrus Tamburini of Pavia, according to whom in the last resort the faithful are entitled to decide whether a Council has in truth represented the Universal Church.⁴ Precisely similar is the doctrine of the apostate M. A. de Dominis, which, in so far as it insisted on the assent of laymen as necessary to the definition of an article of faith,⁵ was declared by the Sorbonne, 1617, to be heretical, and destructive of the stability of the Church.⁶ Even amongst the Calvinists, in the years 1565, 1582, 1598, the opinion that the government of the Church, and in particular the definition of doctrine, belongs to the people, was condemned,⁷ and appeal to the civil magistrate was forbidden.⁸

Moreover, Fénelon did not, as has been maintained,⁹ consider bishops as legates and deputies of their dioceses, that is, of parts of the Church, but as deputies of the Church Universal.¹⁰ The assembly of the French clergy (1715) declared schismatical and heretical the opinion that bishops are to be looked upon as only delegates and interpreters of the assembly of the faithful, and only commissioned to declare the views of the Churches over

which they preside.¹¹ The theological Faculty of Cologne also declared, January 11, 1715, that assent or acceptance on the part of the faithful could impart no power or additional efficacy to the definition of the Pope.¹² Neither can the decrees or judgments of a General Council be subject to the examination and approbation of individual diocesan synods, nor can their power of binding depend upon their acceptance by such synods, a proposition condemned by Pius VI. (1794) on occasion of the pseudo-Council of Pistoja.¹³

¹ Pufendorf, de *Habitu Religionis Christ. ad Vitam Civilem*, § 38, p. 126, ed. Brem. 1687, teaches that the members of a Council are not to be considered as members of a senate or college: 'Quorum major pars suffragiis suis propositum negotium decidere queat, sic ut ista decisione quisque Christianorum stare utique teneatur, praesertim cum in universum veritas non semper a majori suffragiorum numero dependeat,' but are not to be looked upon otherwise than as 'deputati ecclesiarum.' 'Ad quam decisionem amplectendam Ecclesiae non tenentur, nisi quatenus cum divinis literis congruamprehenderit. . . . Quodsi autem a Conciliis aliquid super moribus decretum fuit, id non aliter vim obligandi habere intelligitur, quam ex antegresso mandato aut subsequente approbatione ecclesiarum, sic ut Concilia nullum in Ecclesiam imperium obtineant.'

² Richer, de *Eccles. et Politica Potestate*, 1611. Cf. also Du Plessis, t. ii. p. ii. p. 308.

³ Febron. de *Statu Eccl. t. i. c. vi. § 8, n. 12, p. 436 seq.*

⁴ Tamburini, *Vera Idea della Santa Sede*, p. 204. *Analisi delle Prescrizioni di Tertulliano*, § 47, 65. Bolgeni, *l'Episcopato*, vol. ii. c. ii. a. 1, p. 93 seq., n. 412 seq.; and *Risposta all' Appellante*, Macerata, 1787, p. 431 seq. Döllinger, *A. Z.* March 11, 1870, wrote in precisely the same sense, and, as the *Civiltà Cattolica* remarked, he wished to bring an Italian's Jansenistical wares into esteem in learned Germany.

⁵ M. A. de Dominis, de *Rep. Christ. l. i. c. xii. n. 42.*

⁶ Du Plessis, t. ii. p. ii. p. 106, n. 13. In like manner the Faculty of Cologne, 1618, *ibid.* t. iii. p. ii. pp. 203, 204. To the earlier sentence (l.c.), n. 9, of the same De Dominis—'Totam Ecclesiam esse columnam et hanc Ecclesiam totam non esse in solis episcopis et presbyteris, neque Spiritum illum, quem Christus sui vicarium relinquebat, in terris alligatum esse soli ordini presbyterorum aut episcoporum'—the Faculty of Cologne remarked (p. 202): 'Propositio partim haeretica, partim fraudulenta; indicat enim in definitionibus Conciliorum plebem habere votum decisivum et apostolum eodem detorquet.'

⁷ The Synod of Paris, 1565, condemned the writings of Jean de Moreli: 'Car en attribuant le gouvernement de l'Eglise au peuple, il veut introduire une nouvelle conduite tumultueuse et pleine de confusion populaire;' and the Synod of Montpellier, 1598, says: 'Le jugement et les décisions, qui concernent la doctrine, n'appartiennent qu'aux ministres et aux pasteurs'

(Actes Ecclés. et Civ. de tous les Synodes Nation. de l'Eglise Réformée de France, t. i. pp. 58, 221).

⁸ Synod of Vitré, 1582; Assembly of Montauban, l.c. pp. 160, 176. Franc. Turretini, Instit. Theol. p. iii. q. 22, de Vocat. Pastor. § 18. Cf. Bianchi, t. i. l. iii. § 1, n. 6, pp. 442, 443.

⁹ Döllinger, A. Z. l.c.

¹⁰ Fénelon, de Summi Pontif. Auctorit. c. xxxiv. t. ii. p. 861, ed. Vers.

¹¹ Congr. Cleri Gall. Collect. des Procès-verbaux, t. vi. Pièces Justificatives, pp. 505, 506.

¹² Roscovány, Rom. Pontif. ii. p. 62 seq.

¹³ Const. Auctorem Fidei, n. 11. Denzinger, Enchir. p. 391, n. 1374.

§ 12.

'It rests finally with us theologians,' says Friedrich,¹ 'to decide whether the Council be ecumenical or no. I answer for it that as an Ecumenical Council it will be disowned.' Naturally enough the Vatican Council did not submit to the guidance of such theologians as these.

But what sort of theologians are they? They are theologians who have all but copied the book of the apostate Archbishop de Dominis, which was an object of indignation and disgust to all Catholics in his day, and even to Gallicans. The independent 'German theologians' are come to this, that they bring forward heretical wares as being 'genuinely Catholic.' They are liberal theologians, who are entirely under the dominion of so-called 'public opinion,'² who bow before the reigning spirit of the world, who desire to strip the Church of her divine character,³ and who, in the place of her supernatural certainty, desire a purely natural moral certainty springing from universal testimony. To obtain this no supernatural aid of the Holy Ghost is needful;⁴ but woe to the Church, the Bride of Christ, if ever-changing 'public opinion' were able to triumph over her! The description given by Tournely (1729)⁵ holds good of these liberal theologians: 'The authority of the Church dispersed throughout the world (*Ecclesia dispersa*) is disowned, and to a General Council alone—which is itself made subject to the judgment of individuals, and is not in truth acknowledged—is appeal made as the highest judge in cases of dispute. The sacred dignity of Pope and bishop is violated; simple priests are placed almost on a level with bishops; the right of private judgment in matters

of faith is claimed and usurped, not merely by simple priests, but even in the most insolent manner by laymen; the Church is represented as so completely shrouded in darkness, that scarcely a faint spark of light seems to be left within her.⁶

¹ Journal, p. 203; also p. 345: he wrote, that in fact the Council could no longer be spoken of as ecumenical, although, alas, the bishops could not be quite clear on the subject.

² Gioberti (La Riforma Politica, Torino, 1856, p. 54): 'La dittatura dell' *opinione*, e quindi dell' *ingegno* ha luogo nella Chiesa come nello stato. In virtù dell' *opinione* i fedeli hanno un potere sulla gerarchia. Dall' *opinione* dipende la signoria estragerarchica dell' *ingegno* nella società cristiana; ma non è mai antigerarchica. In ogni società *oltre i poteri ordinarii* è necessario un potere *straordinario*. Questo è creato dall' *opinione* e fondato su di essa. L' *ite docete* è detto anche ai laici. Il laicato lo esercita ora col commercio, ora colle conquiste.' Dr. Döllinger expressed much the same idea in his speech, Sept. 28, 1863 (Verhandlungen der Kath. Gelehrtenversammlung in München, p. 47), when he pointed out public opinion as the extraordinary power existing in the Church side by side with the ordinary power, and which he likened to the race of prophets amongst the Hebrews.

³ 'Humanum conari Ecclesiam facere;' Cypr. Ep. 52, ad Antonian.

⁴ Cf. Historisch-polit. Blätter, vol. lxvi. p. 508.

⁵ Du Plessis, D'Argentré Collect. Judic. t. iii. p. i. pp. 179, 180. Tournely, *ibid.* p. 183: 'Hoc statuimus et contendimus, . . . legem publica et legitima auctoritate latam firmam *ex sese* et inconcussam esse debere, nec privato cuicumque, ut eam infirmet, fas esse inquirere in examen modum et motivum, quo lata est (Can. de loc. v. 5, quoted). . . . Quodcunque supponatur legis motivum, fieri numquam posse, vi promissionum Christi, ut Ecclesia erroneam acceptet et approbet sententiam. Ergo legis literae, quae sola subsistit et vim habet, standum est ac supponendum, ne ulla deesset ex requisitis conditio ad firmam, certam et inconcussam definitionem.'

PART III. THE HOPES OF OUR OPPONENTS.

§ 1. A new and 'freer' Council. § 2. Döllinger's proposal. § 3. Pretended warfare of the Church against the State. § 4. Excommunication. § 5. The Council a test of States. § 6. The heathen State and State omnipotence.

§ 1.

Throughout the opposition literature the hope was expressed of a 'new Ecumenical Council,' really free in discussion, which should do away with the Vatican Council of 1870.¹ Yet this hope was over and over again checked by the harmony of the assembled bishops, ever plainly expressed, and it must have been

acknowledged from the beginning to be a delusion by all who understood the subject. 'Never,' wrote Bossuet on a certain occasion to Leibnitz, 'will an example be found of a definition once made being deprived of its power by posterity.'

Our opponents say that a new *free* Council should be assembled; the governments of States should *compel* the Pope to do this for the avowed purpose of 'revoking the new dogma, and declaring the Vatican Council of no account.' This, then, would be a *really free* Council! And it should be held in Germany, whither the bishops of the Latin race would either come in small numbers, or not at all. That would indeed be a *universal* Council! And, moreover, appeal is made in the case of Bavaria to the Religionsedikt, § 56, by which the ruler has the right, if divisions arise in any religious denomination, of causing an ecclesiastical assembly to be held, but the concluding sentence is ignored, 'without mixing himself up in matters of religious doctrine.'

Some have cherished the hope that the successor of the present Pope might set aside 'the offensive portions of the decrees of Pius IX.,' and the recognition of the Prussian monarchy, refused by Clement XII., but granted by Benedict XIV., has been brought forward as a precedent; but this shows as little conception of the dogmas and essence of the Catholic religion as the notion that the same end might be obtained by imposing certain conditions on the newly elected Pope. Reasonable, from a human point of view, was the hope of the Revolution that the Papacy was buried with Pius VI., and the expectation that the power and cunning of men would put a stop to any future Papal election, or at least render it doubtful or invalid;² but, seen by the light of the Catholic faith, this hope is idle. Catholics rely on the promises of our Lord, who will not withdraw His aid from His Bride, nor suffer the rock of Peter to fall to ruins. But the less they mix themselves up in the concerns of other religions, the more annoying to them is the way in which men who have not the slightest call to interfere, and who would never dream of obeying the Pope, still insist upon considering the future Papal election as their own affair.

¹ Berchtold, p. 10 ; Friedrich, Journal, p. 343 ; and others.

² The following appeared in the *Allgemeine Zeitung*, June 5, 1872 : ' We have hitherto spoken only of the possible influence of the European powers on the next Papal election, and of the conditional acknowledgment of the new Pope by the German empire. But what if it should come to pass that there is no valid election ? Would not the thousand years old, the "wonderful" organisation of the Roman Catholic hierarchy fall completely all to pieces, so that side by side with the Gallican Church we should necessarily see national Churches in Italy, Spain, and Germany professing the Catholic faith, but existing independently and without any compulsory legislation ?'

§ 2.

When the declaration of Fulda, published by the majority of the German bishops, became known, the design of holding a Council on this side the Alps was felt to be impossible. Therefore Dr. Döllinger, in his declaration, appealed from the bishops ill educated to the bishops better educated, or in reality to public opinion, since he demanded that a conference should be held before the assembled bishops, or before a committee of the cathedral chapter of Munich, at which a government official should be present as a witness ; or he promised to submit to the judgment of the most distinguished of German historical critics.

But it is precisely from history that we learn how fruitless such disputations and conferences have ever been. Huss and Luther also professed themselves ready to retract, if only they were met with clear and convincing arguments. Take as an example the disputation at Leipzig, where each party claimed the victory. This shows us that although the evidence before us is (objectively) convincing, we may, if we choose, refuse to be (subjectively) convinced. Again, is a conference or a disputation to be of greater weight than a definition of faith pronounced by a General Council ? or is it to overthrow an Ecumenical Council ? In the Protestant movement of 1517, the Humanists were dragged into the fray ; and now, in the new Protestant movement of 1871, the historians are dragged in, and are made to decide in a matter of faith ; for with such are we dealing, and not simply with an historical question, as Döllinger with the Protestant Hase supposes.

§ 3.

‘What, then, is the contest which must now be fought out?’ asked the Counsellor of the Court of Appeal, Von Enhuber, at Munich, September 23, 1871; and he forthwith received the answer: ‘It is no other than a contest of the Church against the State.’¹ But were not these the words of the Jansenists and other sects, who gave out that their desire was to defend the State against the Church? How has the Church too much power, especially when her Head is oppressed as he is now? Who can point to a single act of aggression on the part of the Church? Is it possible to consider as such the dogma of Infallibility, which has to do purely with matters of faith? and does not the mere attempt to prove it such involve gross misrepresentation of the dogma? When the peace between Church and State is troubled, the disturbance is not begun by the Church. Can it be said that the Pope did so, when he declined diplomatic interference in questions of dogma? or the Council, when with an immense majority it pronounced a purely ecclesiastical decree? or Catholics, who, in obedience to their ancient faith, submitted to the highest authority in the Church, and made themselves answerable for her just rights, which were threatened by open foes, and by others secret, but soon to be unmasked? or the priests, who have defended the freedom of religious profession, and the rights of their Church, for the most part at the cost of great sacrifice, while those amongst their brethren who were untrue to the Church, and therefore excluded from her, were taken under the protection of the State, and sometimes loaded with honours besides? And are Catholics alone to hold their peace in the face of intrigues against Pius IX. and against the future Papal election, though their aim be nothing less than endangering to the utmost the freedom of conscience of many millions of Catholics, for the sake of a small number of apostates? are they to hold their peace when all that is sacred is dragged in the dust, when absurd caricatures are hailed with delight, when the police are called in on all occa-

sions, and encouragement is given to ecclesiastical rebellion and anarchy in the Church?

¹ Report, Berlin, p. 97.

§ 4.

Again, is the administration of the laws of the Church an attack on the State? or the excommunication, which, according to primitive right, founded upon Holy Scripture, and existing even amongst Protestants and Freemasons, is pronounced by bishops against apostate and heretical priests? which sentence, far from injuring the civil rights of those concerned, has, on the contrary, been the means of making many persons famous who would not otherwise have been so. When the priest Thomas Braun was excommunicated for denying the dogma of the Immaculate Conception,¹ the highest court of justice in Bavaria, on his bringing an action, declared, May 3, 1860: 'The Catholic priest loses his claim on the Catholic Church for the support due to his position on quitting that Church, equally whether he leaves her willingly, or whether, having been ordained, he is cut off from her in punishment by the existing ecclesiastical authorities. For the penalty of complete exclusion from the Church, so long as it lasts, entails the loss of all rights springing from union with her, precisely as though the person in question left her of his own free will.'² Moreover, the Catholic Church, by the well-known principles of her constitution, is entitled to demand from her subjects the acceptance on faith of *all* her decrees dogmatically pronounced, and to punish every positive and continuous denial, even though it be directed against *one* dogma *only*, with the greater excommunication,³ provided the punishment, in the case in question, be inflicted by the proper ecclesiastical courts. There can be no doubt, according to the Verf.-Urk. Supplement ii. § 38*h* and 40, that in this case the episcopal court of Passau was acting within the limits of its power. But the civil court is not competent to decide whether the excommunication has been justly pronounced against the plaintiff.'

The case of the excommunicated priest Thomas Braun has

exactly repeated itself ; whether the dogma in question be that of Papal Infallibility or of the Immaculate Conception, the case is the same from the standpoint of the civil authorities ; both dogmas were published in the same manner, and one is as binding upon Catholics as the other ; the excommunication was in each case pronounced by the proper authority. Whether the Government of the country does or does not itself accept the dogma in no way affects the matter ; the Government must in any event regard it as rightfully existing within the domain of the Church ; and within this domain, according to Catholic principles, the ecclesiastical authority alone has power to decide.

Since in matters touching the Catholic Church the State courts are by no means competent to act, neither most surely are their administrative magistrates, especially in deciding whether an excommunication has or has not been rightfully pronounced. The jurisdiction of the Church authorities is acknowledged by the constitution ; interference in favour of persons cut off from the Church, for the protection of rights which belong to them only as members of the Church, can in no way be justified, especially as by this means the jurisdiction of the ecclesiastical authorities is nullified, and complete Cæsarism ensues.

¹ It is by no means true, as was maintained at Munich in 1871 (Report, p. 98) : ' That the bishops, when the dogma of the Im. Conception was denied, forbore to disturb the peace of the country,' while in the case of the new dogma they ' at once raised a storm, in order apparently to get the sceptre of the State itself into their own hand.'

² On this point was quoted Permaneder, *Handbuch des Kath. Kirchenrechte*, vol. ii. § 557, n. 2 ; Kreitmahr, *Anmerk.* vol. v. c. xix. § 41, n. 3.

³ Reference was here made to *Annotat. ad Cod. Civ.* v. c. xx. § 4, V.-U. Sup. ii. § 41, coll. § 38a.

§ 5.

The Vatican Council, together with its first great object of defending the Catholic Faith, and keeping it pure from the corrupting influences of rationalism and subjectivism, serves also as a test of States, as to whether and in what degree they still preserve the Christian character.

A State which is still Christian cannot repudiate its duty towards a recognised religion endowed with constitutional rights,

in favour of a sect clearly recognisable as such, and declared to be a sect by the competent Church authorities, and which, whether it will or no, proves itself by its own conduct to be such. It is true that a pretence is made of exceeding difficulty in deciding where the real Catholics are to be found, whether amongst the adherents of the Vatican Council, or its opponents. But nothing is easier or more simple. The Catholic Church is there where are the Pope and the Bishops; where exists communion with and obedience to the See of Rome; she is the Roman Catholic Church alone.¹ Even the heathen emperor Aurelian knew well how to distinguish true Catholics from the followers of Paul of Samosata, when he promised the Church buildings, about which a dispute had arisen, to those in communion with the Italian bishops, and especially with Rome.² Have not the followers of Döllinger already proved themselves a sect, and openly declared themselves Jansenists, by bringing from Utrecht (where a Roman Catholic bishop was in residence) Archbishop Loos, who was cut off from communion with the Church as a Jansenist, and was not recognised by a single Catholic bishop?

Plain rights cannot be set aside by an appeal to the 'irrefutable German science,' and to learned men who, besides an unparalleled changeableness of opinion, are answerable for the grossest errors, from which no one yet has succeeded in vindicating them; the faithful turn their backs upon them as false prophets, while the enemies of Christianity lend them the most open assistance; and those men who have long ago banished 'the whole apparatus of the history of revelation to the cabinet of old curiosities' are the loudest in their protestations against 'the good pleasure of an old man or his advisers being the highest law for the actions and inquiries of the human mind.'³ Where nothing exists beyond pure negation the Catholic is never to be found; the 'reformers' of to-day have nothing positive about them, nothing but destruction and anarchy. If the 'Christian State' of these latter days does not perceive this, if it still thinks to find support in these reformers, then all Christian consciousness is completely lost to it.

¹ This is the Church spoken of by the Prussian Verfassungs-Urkunde, 1850, art. 15, and the Bavarian Concordat, art. 1.

² Eus. H. E. l. vii. c. xxx. The Theological Faculty of Paris, 1611, in its censure of a book having great affinity with Janus, entitled *Le Mystère d'Iniquité, c'est à dire, l'Histoire de la Papauté*, by Philippe Mornais Du Plessis, pronounced: 'Merito omnes Catholici execrari illos debent, qui S.R.E. primatum atque unicum Petri Cathedram scriptis suis evertere moliantur, cum certissimum sit, *Ecclesiam, quae est mysticum corpus visibile Christi, nulla re vel nota accuratius dignosci, aut a factiosis Satanae conventiculis quam uno visibile capite secerni posse*' (Du Plessis, t. ii. p. ii. p. 49).

³ *Allgemeine Zeitung*, Jan. 7, 1870.

§ 6.

But to go still further; the question of the day is, whether the ancient heathen State is to be revived in its most brutal development. Against the infallibility of the Church in her office as teacher is opposed in truth the omnipotence of the State in every sphere of life.

The heathen State, as Döllinger once wrote,¹ was founded on the principle of utility, of interest, and of brute force; it sought to penetrate all spheres of life, and as an ever-working, ever-grinding machine, to bow down the nations beneath its yoke. It believed, as up to the very latest times the Government of Japan also believed, that the doctrines of Christianity would undermine its very existence; worship of the fatherland was to it the soul of religion. Freedom of conscience was unknown to it,² and it saw in the Christian Church merely an unlawful society (*collegium illicitum*).

There are in the present day many who desire to replace the power of the State upon its old ground; they would absolutely root out from the Word of God the passage (Acts iv. 19; v. 29), 'God must be obeyed rather than man.' They would enforce the observance of all State laws already passed or to be passed in future (according to the good pleasure of the lawgiver of the day), as binding unconditionally and inviolably, without regard to the laws of God and of the Church. The bishops, it is said, much as in Russia,³ are to submit without condition to all existing laws, and to those which by a continual increase of

government interference are yet to be passed by an insatiable majority in the Chambers. They are said never to be at liberty to consider a human law as non-binding, which declaration neither bishop nor simple layman could ever make without gravely sinning against the first principles of Christianity.⁴ This means no longer to render to Cæsar the things that are Cæsar's, but to deliver up to him also the things that are God's; obedience is to be withdrawn from God, and to be slavishly given to men, who are no longer His representatives, and who are overstepping the authority which in justice belongs to them.

The authority of the Church is no longer to be acknowledged, but in every sphere State omnipotence alone; and while it is impossible to point out one single case in which the rights of the State have been violated in consequence of the new dogma, the ancient rights of the Church, on the contrary, have been already grievously violated and set at naught. Civil governments will be driven so far as no longer to acknowledge any law not springing from themselves; the State will be made into a god, and divine honours will be claimed for it so long as unbelievers guide the helm.

This is the meaning of the fight for life or death with the Catholic Church, which is set down to her political pretensions. A man who has himself merely political aims, and has no conception of religious belief, supposes that the same is the case with others also; and when he meets with firm convictions founded on faith, he presumes some criminal intention, and calls physical force to his aid. Thus true Catholics are suspected by the mighty of the earth as dangerous to the State; whoever stands up for their doctrines is 'no friend of Cæsar;' the warfare is carried on against them, not merely by a restless and uneasy press, by the intellectual pride of the puffed-up wise ones of this world, and the childish darkness of men of superficial knowledge; but the police and the magistrate as instruments of despotism are also brought forward against them, they are threatened in their possessions, and if possible are deprived of all rights. Almost every form of unbelief or of superstition is tolerated, every sect, every party; from Catholics alone are all

rights to be withdrawn; their steadfastness is fanaticism, their sacrifices and assemblies are conspiracy.

Thus the endeavour of their enemies is to reduce all true Catholics to the position of the Christians of the first three centuries. But however grave the times may be, however fierce the battle raging against the Church, Catholics rely not on man, nor on any earthly power, but on the promise of God, which shall never be overcome, and the future will prove that once again, on July 18, 1870, the Church spoke 'to the honour of God our Saviour, to the exaltation of the Catholic religion, and to the welfare of all Christian nations.

¹ Döllinger, *Heidenthum und Judenthum*, p. 697.

² Döllinger, *l.c.* p. 667. Neander, *Kirchengeschichte*, i. pp. 47, 48, iii. a.

³ In Russia every Greek schismatic bishop has to swear at his consecration that he will duly and conscientiously hold the office confided to him, both according to the general and personal instructions, regulations, and orders given, and to be in future from time to time given, in the name of his imperial Majesty by the officers appointed by him; and further, that he will maintain inviolable all things 'prescribed by the regulations of the most holy directing Synod for the whole of Russia, and by the Synodal documents, and likewise all that *in the future* may be unanimously ordered and laid down as law by the same most holy Synod, with the permission of his imperial Majesty' (M. Rajewsky, *Euchologion der Orthodox-Katholischen Kirche*, Wien, 1861, ii. pp. 94, 97).

⁴ This is well pointed out, and a reference is made to Art. 16 of the Augsburg Confession and the Reformers, by a Protestant writer in the *Germania*, June 2, 1872.

ESSAY IV.

THE POPE AND THE BISHOPS.

No assertions have been so frequently repeated as these : that by the Vatican Constitution of the Church the position of the bishops has been changed ; that the episcopate has become an unsubstantial shadow, and that bishops are now no longer bishops, but Papal deputies or plenipotentiaries, and merely instruments of the Pope, who has been invested with the universal episcopate.

These are the charges brought by the opponents : 1. That the Vatican Council has converted the bishops into mere plenipotentiaries of the Pope. 2. That it derives episcopal authority from the Pope, and not from God. 3. That it invests the Pope alone with the almost boundless power of the Church. Let us take these propositions separately.

PART I. THE BISHOPS HAVE NOT BECOME MERELY VICARS OF THE POPE.

§ 1. The power of the Pope the supreme but not the only power. § 2. Doctrine of theologians upon the ordinary and immediate power of the Pope. § 3. The power of the Pope does not annul the ordinary power of the bishops. § 4. The bishops as successors of the Apostles.

§ 1.

According to the doctrine of the Church, the power of the Popes is a *full* power, as it is called by the Council of Florence,¹ because there is no power in the Church in which the Head of the Church does not partake.² It is a *supreme* power, as the Council of Trent³ calls it, because in the Church there is none more exalted, because all others depend upon it, itself independent of all.⁴ It is an *ordinary* power, as it is called by the

Fourth Council of the Lateran,⁵ because the Pope, by the rights appertaining to him as head of the bishops, can perform ecclesiastical acts in any diocese. As the bishop can, for example, according to his ordinary right, baptise where the parish priest either from carelessness or from some hinderance has not baptised, so the Pope can supplement the remissness of a bishop.⁶ The power of the Pope is an *immediate* power, because it springs not from the Church, not from the bishops nor Councils, but from Christ Himself, and also because it can be directly exercised upon the faithful and their pastors.⁷ It does not abolish the direct power of the bishops, but supplements and compensates it when interference is desirable for the good of the Church.⁸ The power of the Holy See is an *episcopal* power, because its rights even over bishops are those of a bishop, and because the Pope is the bishop of bishops, the father of the fathers, the pastor of pastors.⁹

But as St. Bernard,¹⁰ and with him all theologians,¹¹ teach, this supreme Papal power is not the only power to be found in the Church. The Pope has no power to abolish the episcopate;¹² he cannot outstep the limits of Christ's appointment, and all the earlier definitions of the Church are binding upon him. The Vatican Council plainly declares that the supreme authority of the Holy See is not opposed to the authority of the bishops; bishops have by the Holy Spirit been constituted successors of the Apostles, and endowed with ordinary and immediate powers.¹³

¹ Potestas plena. Decr. Union. Denzinger, l.c. n. 589, p. 201.

² Aichner, Compend. Jur. Eccles. Brix. 1862, § 24, p. 66, note 3. Petr. Ballerini, Vindiciae Auctorit. Pontif. c. iii. n. 10, p. 172, ed. Monast.

³ Potestas suprema seu summa. Trid. Sess. xiv.

⁴ Aichner, l.c. Ballerini, l.c. n. 1, p. 165 seq. : 'Suprema illa est quae supra omnes Ecclesiae potestates ita eminent, ut nulli istarum subjiciatur.' With Pius VI. (Respons. super Nuntiaturis Apost. c. viii.) the Fathers of the Provincial Synod of Aix, 1850, tit. ii. c. vii., describe it as 'suprema, plena numerisque omnibus absoluta,' and call it 'veri nominis jurisdictionis, cui populi populorumque pastores subjacent, adeo ut in jure ecclesiastico summus Pontifex nihil non possit, ubi id exposcit necessitas aut justa Ecclesiae utilitas.'

⁵ Potestas ordinaria. Later. iv. 1215, c. iii. s. c. xxiii. de Privil. v. 33

(Rom. Eccl.): 'Disponente Domino super omnes *ordinariae* potestatis obtinet principatum.'

⁶ Ballerini, l.c. n. 7, pp. 170, 171.

⁷ Potestas immediata. Ballerini, de Potest. Eccles. Summor. Pontificum, c. i. § 1 et 2, pp. 9-11. Gerson ap. Thomassin, p. i. l. i. c. vi. n. 14. Also the Conc. Provinc. Burdigalense, 1850, tit. 4, c. i. of the Pope: 'That he is *summus pastor, qui per universum orbem solus dioeceses instituit vel dividit iisque praeficit episcopos et jurisdictione immediata ubique pollet*' (Freppel, de Primatu Rom. Pontif. Taurini, 1870, p. 14).

⁸ Gerson, de Potest. Eccles. ii. p. 256: 'Plenitudo potestatis non potest esse de lege ordinaria nisi in unico summo Pontifice formaliter et subjective. Alioquin ecclesiasticum regimen non esset monarchicum et habere posset multiplex caput ex aequo, quod aperte est haereticum. Nec tamen plenitudo potestatis papalis sic intelligenda est immediate super omnes Christianos, quod *pro libito* posset immediate jurisdictionem in omnes per se vel per alios extraordinarios exercere; sic enim praejudicaret Ordinariis, qui jus habent immediatius, imo immediatissimum super plebes eis commissas actus hierarchicos exercendi. Extenditur igitur plenitudo potestatis papalis super omnes inferiores solum dum subest necessitas ex defectu Ordinariorum inferiorum vel dum apparet evidens utilitas Ecclesiae, quemadmodum dici potest de episcopis respectu plebanorum seu propriorum sacerdotum, quorum possunt supplere defectus.' Cf. Decret. l. i. tit. 10, de Supplend. Neglig. Praelat. Calixtus III. wrote to the Emperor Frederick (Aen. Sylv. Ep. 385): 'Non est, cur aliquis operam nostram criminari possit, tamquam latius evagetur quam nobis liceat aut tamquam in alienam messem falcem mittere videamur, cum non hujus aut illius provinciae sed *universi orbis praesulatum* in apostolicae sedis specula consecuti simus. Quae quum ita sint scimus tamen, *eos, qui vocati sunt in partem sollicitudinis*, non esse turbandos suamque cuique jurisdictionem, *nisi forsitan abutantur*, servandam esse non ignoramus.'

⁹ Potestas episcopalis. Theod. Stud. l. i. Ep. 34. Bernard. de Consid. l. ii. c. viii. n. 15. Cf. Thomassin, p. i. l. i. c. xi. n. 3. Coustant. Praef. in Epist. Rom. Pont. p. xi. n. 15.

¹⁰ Bern. de Consid. l. iii. c. iv. n. 17.

¹¹ Ballerini, l.c. p. 171, n. 9. Neubauer, in Theol. Wirceb. t. vii. Tr. de Leg. c. iii. a. 5, n. 106, p. 140.

¹² Gerson, de Statib. Eccles. Consid. 4: 'Status episcopalis non ita subest statui papali, quod illum Papa possit annullare, sicut nec status papalis posset humanitus destitui.'

¹³ The words run thus: 'Tantum autem abest, ut haec Summi Pontificis potestas officiat *ordinariae ac immediatae* illi episcopalis jurisdictionis potestati, qua episcopi, qui positi a Spiritu S. (Act. xx. 28) in Apostolorum locum successerunt (Trid. Sess. xxiii. c. iv. de Ord.), tamquam *veri pastores* assignatos sibi greges, *singuli singulos*, pascunt et regunt, ut eadem a supremo et universali Pastore asseratur, roboretur ac vindicetur.'

§ 2.

The Vatican Council has imputed no new powers to the Pope. Before the Council no one hesitated in using the expressions commonly employed by theologians. Thus we read in a paper that obtained the prize¹ offered by the Theological Faculty of Munich in 1868: 'It is lawful for the Pope to place reservations upon the jurisdiction of bishops.' Whosoever can place reservations upon the jurisdiction of another holds the supreme authority. This power of supreme pastor possessed by St. Peter is an ordinary and immediate power, since it is derived from the lips of Christ Himself. According to the doctrine of the primitive Church, the inheritance of this supreme power conferred upon St. Peter has descended upon the Bishop of Rome. By virtue of this immediate power of jurisdiction, which extends to all the faithful, the Pope has authority to retain and to forgive the sins of the faithful over the whole world.² Schulte used to have no hesitation in ascribing to the Pope the plenitude of the power of the priesthood conferred by Christ Himself,³ and no objection was made when Phillips wrote:⁴ 'Christ has given to Peter the full, supreme, and ordinary power extending over the whole Church.'⁵ Yet now it is made a difficulty that the Council has adjudged to the Pope the ordinary and immediate power as well over all Churches as over all pastors and all the faithful.

¹ Hausmann, *Gesch. der Päpstl. Reservatfälle*, Ratisbon, 1868, p. 5 seq.

² According to the *Conc. Trid. Sess. xiv. cap. vii. de Casib. Reserv.*

³ *System des Kirchenrechts*, Giessen, 1856, pp. 178, 190.

⁴ *Kirchenrecht*, v. § 201, p. 6.

⁵ Even Gallicans, such as Natalis Alexander, recognise the full and ordinary power of the Pope.

§ 3.

One of the chief allegations against the third chapter of the Vatican Constitutions is this: that it ascribes to the Pope the ordinary and immediate power of jurisdiction in every diocese, together with the fulness of supreme power; and it being inconceivable that there should be two possessors of the ordinary and immediate power of jurisdiction for each diocese, two bishops,

two spouses, the words can only be taken to imply that the Pope is the bridegroom-general for each and every diocese, consequently is properly speaking its only authorised bishop, and the resident bishop becomes merely a dependent of the Pope, an acting intermediary, charged with some of his powers.¹ But as far as this metaphor of marriage is concerned, it is only a metaphor, and the same conclusions cannot be drawn about the mystical spiritual marriage of a bishop with his diocese as about the natural marriage of a man and woman.² In this sense each see must have two spouses—Christ and the bishop. When the Apostles constituted their disciples, Timothy, Titus, and the rest, bishops of certain places, they still exercising their apostolic supremacy, each of these Churches must have had several spouses. The parish priest may also be considered as spiritually espoused to his parish; but this parish forming part of the diocese partakes in the general relation of the latter to the bishop. Secondly, if there were in the same diocese two men having the same spiritual power it would, of course, be irregular and abnormal; but it is not so of two powers existing at the same time, of which one is subordinate to the other. The parish priest also has an ordinary and immediate jurisdiction, which is subordinate to the bishop, and does not exclude his jurisdiction.³ Bishops have an ordinary and immediate jurisdiction, which is also subordinate.⁴ Just as a judge of a court in which cases are first heard is not the less truly a judge because over him are other judges of higher courts, so a bishop is not the less truly a bishop because he is subordinate to the Pope, the Vicar of Christ.

The Pope has been compared by St. Thomas Aquinas to a king in his kingdom, the bishops to the judges in their special cities.⁵ As a king may for just causes (for government should, according to St. Thomas, never be arbitrary) displace a judge from his office, so the Pope, when the safety of the Church demands it, can remove a bishop from his see, as Pius VII. did in France after the Concordat of 1801. A king may limit the powers of a judge, and the Pope may, by reservations, partitions of dioceses, and other measures, limit episcopal jurisdiction.⁶

As a king imparts of his own full powers authority to his inferior officers, so the Pope may by his supreme authority transfer full powers to the bishops, in which case the bishops, as the Council of Trent teaches, may act as delegates of the Holy See.

¹ Berchtold, pp. 7, 8.

² Innocent III., following still earlier usage, often has recourse to this metaphor, especially about the translation of bishops, for example: l. i. Ep. 326, 335, 447, 490, l. ii. Ep. 278, pp. 291, 306, 422, 456, 845, c. ii. vii. de Translat. Episcop. i. 7, and even calls the spiritual bond in a certain sense *fortius quam carnale*, that can only be loosed by *divina auctoritate* (per Christi vicarium). But the translation of bishops shows that this *vinculum spirituale* can be loosed. Salmeron (Andries, Alph. Salmeronis Doctrina, p. 192) says: '*Vinculum episcopi cum sua ecclesia, quantum est ex parte utriusque, indivisibile esse deberet; sed quia Ecclesiae aedificatio exigebat, ut ex variis causis solveretur voluit Deus, ut solubile esset per suum vicarium.*' In relation to another matter, Salmeron uses this comparison, p. 237: '*Sicut copula matrimonii non tollet vinculum matrimonii, novum inducendo, sed firmat antiquum; ita etiam consecratio non inducit novam et superfluum jurisdictionem . . . sed stabilit antiquam datam a Papa (confirmante) ante consecrationem.*' In the act of appointment of the bishop the Pope appears as ratifying the bond in the place of Christ.

³ In their censure upon the work entitled *La Défense de l'Autorité de N.S. le Pape*, par J. de Vernant, Metz, 1658, the Sorbonne made this statement in reference to the proposition, p. 44: '*Les curés ne sont pas immédiatement établis de Jésus-Christ,*' and similar ones, pp. 46 seq., 448, 478: '*Hae propositiones, quatenus asserunt vel inferunt potestatem jurisdictionis curatorum non esse immediata a Christo, quantum ad institutionem primariam, falsae sunt et decretis S. Facultatis contrariae, salva semper immediata episcoporum in praelatos minores seu curatos et plebem subditam auctoritate*' (Du Plessis, t. iii. p. i. p. 104). And in 1735 the Sorbonne said: '*Propositio quae tollit ab episcopo immediatum regimen parochiarum suae dioeceseos est ministerii episcopalis eversiva et Verbo Dei contraria*' (ib. p. 214).

⁴ Thom. in l. iv. d. 17, q. 3, a. 3, sol. 5, ad 3: '*Inconveniens esset, si duo aequaliter super eandem plebem constituerentur, sed quod duo, quorum unus est alio principalior, super eandem plebem constituentur, non est inconveniens, et secundum hoc super eandem plebem immediate sunt et sacerdos parochialis et episcopus et Papa.*'

⁵ S. Thom. in lib. iv. sent. d. 20, q. 4, a. 3, ad 3, quaestiunc 4, sol. 3: '*Papa habet plenitudinem potestatis pontificalis quasi rex in regno, episcopi vero assumuntur in partem sollicitudinis quasi iudices singulis civitatibus praepositi.*' Cf. in l. ii. dist. et q. ult.: '*Sicut se habet potestas Dei ad omnem potestatem proconsulis: sic etiam se habet potestas Papae ad omnem potestatem spiritualem in Ecclesia.*' Turrecrem. Sum. de Eccl. l. ii. c. lxiv.

⁶ Cf. Phillips, Kirchenrecht, v. § 220, p. 339 seq.

§ 4.

But this comparison has been violently attacked, because it is said to repudiate altogether the divine constitution of the episcopate as well as the continuance, if not the right, of any apostolic succession.

To this we reply, first, that a comparison should never be stretched beyond the point of comparison, which in this case is the extension of power, and the question of the origin of the power is wide of the mark; secondly, that we must never forget to make the distinction between the divine institution of the episcopate and the appointment of each individual bishop, as well as to distinguish between the succession of bishops in the episcopate and that in the apostolate properly so called.

Bishops are, indeed, successors of the Apostles, as we learn from the Councils of the Vatican and of Trent, but this does not mean that everything that appertained to each individual Apostle appertains also to each individual bishop, each having the same supreme power.¹ They are their successors, not as being the immediate witnesses and ambassadors of Christ furnished with extraordinary powers, but only as ordinary pastors and guardians of the Church. The individual bishop is not the successor of an Apostle as the Bishop of Rome is the successor of St. Peter; but the congregation of bishops with the Pope at its head is the successor of the College of Apostles.² The Apostles were not limited to any particular space in the exercise of their power; the bishops are limited to their dioceses, and this limitation is an arrangement rendered necessary by the constitution of the Church.³ The opinion of theologians is divided upon the question of how far the episcopal authority is derived immediately from God;⁴ and this we proceed to inquire into more closely.

¹ The Sorbonne in 1617 censured as follows the proposition of M. A. de Dominis (De Rep. Chr. l. ii. c. i. n. 9, 13, 15), Prop. xiv.: 'Sicut Apostoli simul et in solidum aristocratice curam gerebant Ecclesiae cum potestate aequali et universali, ita episcopi omnes simul et in solidum eandem regunt Ecclesiam, singuli cum plena potestate. *Haec prop. est haeretica et schismatica quoad ultima verba* "singuli cum plena potestate."' Prop. xv.: 'Episcopi dicuntur Apostolorum successores, quia in

eorum officio, quod erat Apostolorum omnium commune, succedunt omnes omnibus in solidum. *Haec prop. est haeretica et schismatica cum agat de jurisdictionis apostolicae potestate.* Prop. xvi.: 'In potestate universali succedunt episcopi non modo universi, sed etiam singuli. *Haec prop. haeretica est et schismatica, ut duae praecedentes*' (Du Plessis, Coll. Jud. t. ii. p. ii. p. 106).

² Phillips treats this subject in detail, Kirchenrecht, i. § 23, p. 167 seq. Passaglia, de Ecclesia Christi, lib. iii. c. ix. seq., c. xxviii. seq., pp. 124 seq., 329 seq. Cf. Alex. Halens, p. 4, q. 49, membr. 6, a. 3, § 2. Thom. in l. iv. sent. d. 19, q. 1, a. 3, ad 1. Cajetan, t. i. tract. 3, pp. 42, 43. Dom. a Soto, in l. iv. d. 20, q. 1, a. 2. Bellarmin. de Rom. Pontif. l. iv. c. xxv. Petav. de Eccl. Hierarch. l. i. c. v.; l. iv. c. vii. Suarez, de Fide, disp. 10, sect. 1, n. 4. Pignatelli, Consult. Canon. t. i. cons. 14, n. 3 seq. p. 19 seq. Natal Alexander, H. E. saec. 1, diss. iv. § 4, n. 3, ad 3, t. iv. p. 240. Petrus Ballerini, de Potest. Eccles. c. i. § 4, p. 15 seq. ed. Monast. Schenkl, Syntagma Jur. Eccles. Salisb. 1786, § 36, note 2. Card. Gerdil, Apolog. Compend. del Breve super Soliditate, Opp. ed. Rom. xiii. pp. 135, 136. Also Pichler, Gesch. der Kirchl. Trennung, ii. p. 587 seq. § 6.

³ Gerdil, Animadv. in Febron. posit. xxv. Opp. xiii. 305: 'Equidem positi sunt episcopi regere Ecclesiam Dei, non ut singuli toti Ecclesiae regendae incumbere omniaque munia: quae ad Ecclesiae regimen pertinent, singuli obirent, quod sine perturbatissima confusione fieri non posset, sed ut singuli eam portionem regerent, quae sibi cuique obtigisset, idque non privato cujusque judicio et arbitrio, quod nunquam licuit, sed ex legibus, quibus ecclesiastica disciplina continetur, atque ex ejus supremi capitis auctoritate, quam ad continendos in ordine et officio episcopos atque ad unitatis vinculum constringendum prorsus necessariam Barthelius agnovit.' Against Sarpi's theory, vid. Pallavicini, Hist. Conc. Trid. l. vi. c. iii. n. 1 seq.; l. xii. c. iii. n. 1 seq. Cf. also Bolgeni, l'Episcopato, t. i. c. vi. art. 3, p. 212 seq. ed. Orvieto, 1837.

⁴ Gerson, de Potestate Eccles. Opp. ii. p. 238, de Statibus Eccles. Consid. 2: 'Status praelationis episcopalis in Ecclesia quoad sui collationem primariam fuit *immediate* a Christo datus primis Apostolis, sicut status papalis Petro, licet postmodum talis collatio fieri potuerit et facta sit in successoribus *per homines*.'

PART II. HOW FAR EPISCOPAL AUTHORITY IS DERIVED IMMEDIATELY FROM GOD.

- § 1. Distinction between the power of order and the power of jurisdiction. § 2. Jurisdiction received from the Pope; Council of Trent. § 3. Formula of preconisation. § 4. Opinion of theologians. § 5. Lainez. § 6. Objections answered. § 7. The appointment of bishops. § 8. The Councils of Florence and Basle; authority of the Councils. § 9. Bishops not merely advisers, but judges. § 10. Neither the Vatican Council nor the Council of Trent has decided whether episcopal jurisdiction is derived from the Pope or immediately from God.

§ 1.

There is a distinction made in the Church between the power of order (*potestas ordinis*) and the power of jurisdiction (*potestas jurisdictionis*).¹ The first is conferred by consecration, the second by the mere appointment. He who dispenses the power of order is only an instrument, but in imparting the power of jurisdiction he exercises authority and dominion. The former can neither be changed nor lost; the latter can be changed, restricted, or removed.² If an heretical bishop exercises his power of order—that is if he baptises, or ordains, or says Mass—these acts are all valid, whilst acts of jurisdiction exercised by such a one are invalid,³ because the power has been withdrawn from him. If, for example, a suspended priest dispenses the Sacrament of Penance, his absolution is generally invalid, because in dispensing the Sacrament of Penance he exercises not merely the priestly power, but also the power of jurisdiction, and of this his suspension has deprived him. Further, the episcopal power of order can exist without the power of jurisdiction, as, for example, in the case of a bishop consecrated merely for episcopal acts.* And conversely, jurisdiction can be exercised without orders, as by a vicar capitular in a vacant see, or by a bishop nominated by the Pope, but not yet consecrated.⁴

By ecclesiastical laws, by Councils, and by the Pope, the power of bishops in the matter of jurisdiction may undergo, and has undergone, many changes. But that which is received immediately from Christ must be abiding and unchangeable. Theologians teach that the power of order of bishops proceeds immediately from God; not so the power of jurisdiction, for this it is given to men to confer. If the power of order and the power of jurisdiction were indivisible, if the latter were contained in the former, or both were equal in origin, the power of jurisdiction in the case of all bishops must be equal as the power of order is equal; there could be no metropolitans or patriarchs,⁵ and the power of jurisdiction could no more be lost than the power of order. The episcopal power of jurisdiction

* *i.e.* Confirmation, ordination, and certain blessings.

is therefore not derived immediately from Christ in so far as it exists in individuals; it has been *established* by Christ, but is not conferred immediately by Him upon *individual bishops*; it is imparted to them by the Head of the Church or bishops whom he has authorised. Thus the unity of the episcopate, so much insisted on by the Fathers, is fully upheld; the Holy See is head, root, spring, origin of the spiritual authority;⁶ this agrees with the saying of Optatus of Milan and others, that St. Peter was given the keys of the kingdom of heaven that he might impart them to others. It agrees also with the rights of the Head of the Church to judge and remove bishops, to found new bishoprics, to divide and unite others, or to increase or lessen their power and dignity.

¹ S. Thom. 2, 2, q. 39, a. 3, in l. iv. d. 19, q. 1, a. 3. Gerson, de Potest. Eccles. et Orig. Jur. Opp. ii. 225 seq. Cf. Schwab Gerson, p. 723. Card. Gerdil, de plenitudine potestatis episcopalis an et quomodo singulis episcopis tribuenda, Opusc. iii. de Lire; Opp. t. xi. p. 117 seq.

² Lainez ap. Pallavic. l. c. n. 5, ap. Raynald. a. 1562, n. 124: 'Potestas igitur ordinis a Deo pendet prout consecratio et est immutabilis. In alia, quae jurisdictionis est, occurrit etiam potestas hominis, ideoque variatur saepius et auferri potest ab eodem homine non materia solum, sed etiam potestas. Et quamvis jurisdictionis omnis in universum auctor sit Deus, tamen illam in S. Pontifice tamquam in fonte collocavit, a quo alii omnes eam hauriant, sicut dominari animantibus et terrae a Deo est, huic vero vel illi loco praesse aliunde hoc dominium pendet aliisque causis adscribitur.' According to Salmeron (vide J. B. Andries, Alphonsi Salmeronis Doctrina de Jurisdictionis Episcopalis Origine ac Ratione, Mogunt. 1871, sect. 1, c. iii. pp. 66, 67) the 'potestas ordinis—facultas, qua quis potest exequi quosdam actus eminentes in Ecclesia, qui vel simpliciter vel saltem ex ordine (ordinarie) non possunt fieri a non consecrato' is contrary to the 'potestas jurisdictionis—praelatio quaedam sive superioritas per quam clericus dirigit sibi subditum fidelem in vitam aeternam secundum legem divinam vel canonicam per actus quosdam, qui etiam a non consecrato exercere possunt.' Cf. Lainez ap. Pallav. l. xix. c. vi. n. 6 seq.

³ Gerdil, l. c. p. 118: 'Discrimen ex eo petendum, quod *sacramenta*, tametsi hominum ministerio peragantur, vim tamen efficiendi habent a Deo, quo fit, ut si quis *ordinis* potestate pollet, cetera adhibeat, quibus sacramenta illa constant, nihil jam impressam a Deo efficientiam cohibere valeat. Secus quod attinet ad *regimen*. Nam etsi episcopatus ad Ecclesiae regimen sit a Christo institutus, non ex eo fit, ut quisquis episcopalem ordinationem susceperit, hoc ipso regendi munus explicare valeat. Quid enim si haereticus ab haeretico in episcopum ordinatur vel schismaticus a schismatico? Quid si Catholicus etiam quod et factum quandoque accepimus sic ordinatur, ut nulli ecclesiae praeficiatur? Quid si pulsus a

sede sua episcopus in alienam dioecesim immigraverit, num jure suo in ea regendi officium assumet? Quibus plane liquet, potestati ordinis non ita cohaerere facultatem regiminis, ut seungi ab ea nequeat. Cujus rei summa haec est, quod *ordinis potestas* per sese constare potest velut *absolutum* quiddam et perfectum, nec aliud requirit praeter subjectam materiam aptam sacramento, in quo vim suam exerat. Contra *regiminis facultas*, ut et omnis praefectura, in eorum genere est, quae *referuntur* seque habent *ad aliud extrinsecum* quod nisi adsit, nec illa esse aut intelligi possunt, velut nec pater esse aut intelligi potest, cui non sit filius, aut dominus, qui servum, aut patronus qui clientem non habeat.'

⁴ Bouix, Tract. de Principiis Juris Canon. p. iv. c. iii. § 2, p. 425 seq. ed. Monast. 1853. The Faculty of Cologne censured in 1618 this proposition of M. A. de Dominis—'Quando auferitur tota jurisdictio indigno . . . tunc respondeo etiam ordinem auferri'—as a 'propositio plus quam falsa et haeretica' (Du Plessis, t. iii. p. ii. p. 210).

⁵ Gerdil, l. c. pp. 123, 124: 'Sed ex ipsa remotiori antiquitate solidior quaedam suboritur consideratio, quam et ipse Thomassinus opportune attingit. . . Clamant sc. adversarii, episcopos Apostolorum successores esse idque . . . concedimus. At *remoto Petro* pares certe planeque aequales ceteri fuere Apostoli nec unus aut plures etiam praerogativam ullam sibi arrogare poterant aut vindicare, vi cujus alterum quempiam obstrictam sibi aut ullo gradu inferiorem haberent. Igitur et episcopi, quatenus Apostolorum successores vi episcopalis ordinationis, quam aequalem omnes perinde suscipiunt, in pari aequalitatis gradu constinuntur, unus parque in omnibus episcopatus, ut nil plus juris uni quam alteri episcopalis ordinatio tribuere valeat. *Unde ergo graduum distinctio*, vi cujus, prout ab Ecclesiae primordiis factum est, unus episcopus pluribus aliis episcopis quocumque tandem nomine praesideret? *Non a jure divino*: quippe ordo episcopatus, ut ipsimet sentiunt, unus est et par in omnibus. *Non ab universali consilio*: quippe longe jam ante invaluerat ea distinctio, quam de cogendo universali consilio cogitaretur. *Non a provincialibus synodis*: quippe provincialium distinctionem antecedere debuit ipsa graduum distinctio, qua unus in definita quadam regione ceteris ejusdem provinciae episcopis praeesset. *Non ex pacto convento inter nonnullos episcopos*, quibus commodum visum esset hanc hierarchiae formam instituire: nam nec isti minuere poterunt aut alii subjicere auctoritatem sibi divinitus tributam, nec praeter divinam institutum alterius cujusvis auctoritatem amplificare, aliunde nec successoribus eam legem praescribere potuissent, cui se ipsi sua voluntate subiecissent. Sed jam redeat providum in fundanda Ecclesia divinae sapientiae consilium, omnis evanescit obscuritas atque aperta se prodit quaesitae distinctio. Chr. videl. cum uno instituendo episcopatu *pares potestate ordinis* episcopos omnes esse voluit, unum tamen velut *supremum caput in potestate regiminis* ceteris omnibus praetulit. Hinc facile intelligitur, quemadmodum *ex hoc apostolicae cathedrae principatu tamquam primario fonte* superioris hujusce auctoritatis jura *Pontificio instituto* in alias sedes cum temporata discretione potestatis manaverint factumque sit, ut hac inducta graduum inter antistites aptissima distributione ecclesiastica hierarchia ordinatissimam castorum spiritualium formam, speciemque praesferret.' St. Thomas, l. ii.

sent. d. ult. q. ult. says briefly: 'Ab ipso Papa gradis dignitatum et disponantur et ordinantur. Unde ejus potestas est quoddam Ecclesiae fundamentum, ut partet ex Matth. xvi. 18.'

• Benedict XIV. cites the Epistle of Innocent I., ad Episc. Carthag. Concil. (Hard. i. 1025) n. 1, in which he praises the bishops as 'scientes quid debeat Apostolicæ Sedi; cum omnes hoc loco positi ipsum sequi desideremus Apostolum (Petrum) a quo ipse episcopatus et tota auctoritas nominis hujus emerit.' Also the Ep. ad Victric. 2, n. 2, and before him Siricius, Ep. 5, ad Episc. Afric.: 'per quem et Apostolatus et episcopatus in Christo coepit exordium.' The African bishops wrote to Pope Theodore (Hard. iii. 734) that the Holy See was the 'fons, de quo rivuli prodeunt affluenter, universum longissime irrigantes orbem Christianorum.' Leo the Great says with even greater clearness, Ep. 10, ad Episc. Prov. Vienn. c. i. (c. vii. d. 19): 'Hujus muneris sacramentum ita Dominus ad omnium Apostolorum officium pertinere voluit, ut in beatissimo Petro Apostolorum omnium summo principaliter collocarit, ut ab ipso, quasi quodam capite, dona sua velit in corpus omne manare, ut exsortem se mysterii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere.' Benedict remarks on these words: 'Idque eo sapientissimo consilio a Christo D. factum existimat.' D. Thomas, l. iv. c. gent. c. lxxvi.: 'Ut hoc continuo et quasi perenni influxu jurisdictionis a capite in membra firmior et solidior esset omnium cum illo, nexus et, melius conservaretur unitas Ecclesiae. Soli, ait Angelicus, n. 4, loquens de Christi promissione facta Petro, promisit: *Tibi dabo claves regni coelorum*, ut ostenderetur potestas clavium per eum ad alios derivanda ad conservandam Ecclesiae unitatem.' The same arguments as those of Benedict are used by St. Bonavent. Opusc. Quare fratres minores praedicent, Opp. t. vii. p. 340, ed. Lugd. 1668. Bellarm. l. iv. de Rom. Pont. c. xxiv. et xxv. Vargas, in toto opere de jurisdictione episcoporum. Suarez, de Leg. iv. 4 p. tot. Fagnan. in c. Perniciosam, n. 20, usque ad finem, tit. de off. ordin. We may also cite the words of Leo the Great, Serm. iv. de Natal. ips. c. ii.: Petrus 'ab ipso omnium charismatum fonte tam copiosis est irrigationibus inundatus, ut, cum multa solus acceperit, nihil in quemquam sine ipsius participatione transierit . . . si quid cum eo commune ceteris voluit esse principibus, numquam nisi per ipsum dedit quod aliis non negavit.' Cf. ib. c. iv. Here also St. Cyprian's words, de Unit. Eccl. c. ii., may be referred to, where it is said, with regard to a quotation from St. Matt. xvi. 18 seq. and St. John xx. 21 seq.: 'Super unum aedificat Ecclesiam . . . ut unitatem manifestaret, unitatis ejusdem originem ab uno incipientem sua auctoritate disposuit.' Cf. Ep. 73, ad Jubajan.; Ep. 55, ad Cornel. Also the words of the Fathers of Aquileja, 381, Ep. ad Imp. Constant. p. 554: 'Inde enim (ab Ecclesia Romana, totius orbis capite) et in omnes venerationis jura dimanant.'

§ 2.

If episcopal jurisdiction were not derived immediately from the Pope, it must come from Christ in the act of the consecration of a bishop, or from Christ in some other act external to

the act of consecration, or from some other source. But none of these can be asserted. Not the first, since before his consecration the bishop elect may (as soon as his election has been confirmed by the Pope) exercise the power of jurisdiction. Not the second, for there is no other act besides the act of consecration by which any power is conferred immediately from Christ upon the bishop; such an act would have to be clearly indicated. Lastly, the supposition of any other source would be contrary to the Catholic faith. Although formerly the bishops were chosen by the people, whose choice was confirmed by the higher bishops (metropolitans, primates, patriarchs), the choice of the people conferred no power, and the higher prelates were not appointed immediately from God, but held their power from the Church, and in particular from the Holy See.¹ Thus episcopal jurisdiction can spring directly only from the Pope.

The Council of Trent has spoken on this point. It declares that a bishop can be a true bishop only if he has received the requisite consecration and mission from ecclesiastical authority. Mere election by the people or by the civil power or self-vestiture of the office makes a man not a pastor and servant of the Church, but a thief and a robber that entereth not by the door² (John x. 1). On the other hand, according to the same Council, those are true bishops who have been appointed by the Roman Pontiff.³ Thus the mission of a bishop proceeds from the Pope; it is not merely the assignment to him of a certain dominion, of a diocese, but the act by which actual jurisdiction is conferred and subjects with certain rights and duties placed under him. The form and manner of doing this may have varied at different times; but the act of appointment can never have been lawful if the Holy See rejected it, and did not agree to it either expressly or tacitly.⁴

¹ On this subject, Leo M. Ep. 14, ad Anastas. Thessalon. c. xi. says: 'Cum omnium (Apostolorum) par esset electio, uni tamen datum est, ut ceteris praeemineret. De qua forma episcoporum quoque est orta distinctio, et magna ordinatione provisum est, ne omnes sibi omnia vindicarent, sed essent in singulis provinciis singuli, quorum inter fratres haberetur prima sententia, et rursus quidam in majoribus urbibus constituti sollicitudinem susciperent ampliore, per quos ad unam Petri sedem

universalis Ecclesiae cura conflueret et nihil unquam a suo capite dissideret.'

² Trid. Sess. xxiii. de Ord. cap. iv. et can. 7.

³ Ib. can. 8. Cf. Pallav. l. xxi. c. x. n. 4.

⁴ Gerdil, l.c. p. 127: 'Ad jurisdictionem requiritur subjectae plebis assignatio, quae fit non divino, sed humano jure. Hujusce porro assignationis via et ratio, etsi diversis locis ac temporibus pro diversitate disciplinae varia quandoque fuerit, nulla tamen legitima esse potuit, quae Sedi Apostolicae probata non sit, ex cujus consensione pro plenitudine potestatis per universam Ecclesiam sese fundentis vim roburque accepit.' Cf. Thomassin, p. ii. l. i. c. xlvii. n. 3: 'Episcopi obtinent illi quidem immediate a Christo jurisdictionem suam' (which he endeavours to establish, p. i. l. i. c. l. n. 1 seq.), 'sed non ab illo immediate consecuti sunt territorium hoc suum et peculiarem dioecesim, cum haec partito facta fuerit ab Ecclesia volentibus saeculis nec fieri potuerit aut perpetuari, nisi consensione capituli, in quo est cardo et centrum eccles. unitatis.'

§ 3.

This is quite in accordance with the formula used for the preconisation of bishops, in which by *virtue of the power of God, of the Prince of the Apostles, and of the ruling Pope*,¹ those elected or nominated are confirmed by him; they are appointed to sees and intrusted with the care and administration of them in spiritual and temporal matters. Also in accordance with this is the similarity of the jurisdiction of the ordained priest, who after his ordination must be approved, that is, have faculties given him, by the bishop before he can absolve. He who can withdraw power must have the right of conferring it.² The Pope may remove bishops; he must also be empowered to appoint them.

¹ The words in the *Caeeremoniale Romanum* are: 'Auctoritate omnipotentis Dei et b. Apostolorum Petri et Pauli ac nostra providemus Ecclesiae N. de persona dilecti filii N.N., praeficientes illi Ecclesiae in episcopum et pastorem, curam et administrationem illius Ecclesiae in spiritualibus et temporalibus eidem plenarie committendo in nomine Patris,' &c.: or, 'electionem de persona dilecti filii N.N. electi ad ecclesiam N. canonice factam confirmamus et approbamus, praeficientes eum illi Ecclesiae in episcopum,' &c.

² Reg. J. V. 41, c. i.: 'Omnis res, per quascunque causas nascitur, per easdem dissolvitur.'

§ 4.

Before the Council of Trent this opinion was predominant in the schools amongst both the secular and regular clergy, and

throughout Christendom.¹ The supporters of the contrary opinion were fewer; they differed much amongst themselves, and were more or less near to the other view. It was discussed at the Council of Trent whether the jurisdiction of bishops was derived immediately from Christ or from the Pope. Benedict XIV. declared that the latter opinion was more in accordance with reason and authority. At Trent the majority of the bishops expressed themselves of the opinion that episcopal jurisdiction comes from the Pope. The prelates who opposed this started from various points of view.

¹ Amongst its supporters are: 1. Alexander of Hales. 2. Albertus M. 3. St. Bonaventure. 4. St. Thomas. 5. Richard de Mediavilla. 6. Duns Scotus. 7. Durand a St. Porciano. 8. Hervans Natalis. 9. Petrus de Palude. 10. Alexander a St. Elpidio. 11. Augustine Triumphus. 12. John Bacon of England, the passages from Andries Salmeronis, *Doctrina*, pp. x.-xii. 112-117. 13. Alvarus Pelagius, *De Planctu Eccl. i. c. lviii.*; *Rocab. Bibl. m. Pont. iii. 166.* 14. Aegidius Romanus, *Opusc. c. Exemt. c. ii.*; *Episcopus per Pontificem vel per Auctoritatem ejus assumptos in Partem sollicitudinis, Lib. de Renunc. Pap. c. viii.* 15. Simon Fidatus de Cassia. 16. Thomas de Argentina. 17. Petrus Bertrandus. 18. Thomas Waldensis. 19. John of Capistran. 20. Vincens Ferrerius. 21. John Cappreolus. 22. John Turrecremata. 23. St. Antonin. 24. Laurentius Justiniani. 25. Dionysius Carthus. 26. Hieronymus Savonarola. 27. George Scolarius. 28. Gabriel Biel, *Andries*, pp. xi.-xiii. 117, 118. 29. Card. Cajetan. 30. Alphons. Tostatus, *ib. pp. 117, 118.* 31. Sylvester Prierias, *De Juridica et Irrefrag. Verit. Rom. Eccl. Rocab. xix. 235 seq. 246.* 32. Stanislaus Hosius. 33. Reginald Pole. 34. Thomas Campeggius. 35. Caspar Contareni. 36. William Lindanus. 37. Robert Arboricensis. 38. John Faber. 39. John Fisher. 40. Nicholas Sander. 41. John of Louvain. 42. Driedo. 43. Jacob Latomus. 44. Thomas Stapleton. 45. John Eck, *Andries*, c. pp. xvii. xxviii. 118. 46. Abraham Brzovius. 47. Balth. Nardus. 48. Baldwin Junius. 49. J. Gretser. 50. Fr. Macedo. 51. Frago. 52. Dom Maria Marchese. 53. Angelus Petrica. 54. Boverius. 55. Petrus Labat. 56. Vincent Ferre, *O.S.D.* 57. Em. Schelstrate, *Pichler*, ii. pp. 705-707. 58. Salmeron. 59. Vargas. 60. Maucler. 61. Canus. 62. Dominicus a Soto. 63. Bannez. 64. Blossius. 65. Duval. 66. John a Celaja. 67. Charlas. 68. Coeffeteau. 69. Barthol. Urbinas, *O.S.A.* 70. Peregrin. Nasellus of Padua. 71. Malder. 72. Lainez. 73. Suarez. 74. Bellarmine. 75. Gregory of Valencia. 76. Franciscus Amicus. 77. Petavius, *Andries*, p. xix. seq 118. 78. Muzza-relli. 79. Bennettis. 80. Viator a Cocaleo, *ib. p. xxii.* 81. Benedict XIV. 82. Card. Vincent Petra, t. ii. *Comment. in Const. ap. Const. 4, Innoc. III. n. 35, 36, p. 118 seq.*: 'In hoc dicitur quod jurisdictio absoluta et in se considerata sit immediate a Christo quoad vero jurisdictionem in actu secundo seu assignationem subditorum a summo Pontifice, vel, at com-

munius dicunt, quoad ordinem immediate a Deo episcopalis potestas quoad jurisdictionem vero a Papa.' 83. Prosper Fagnanus, in c. i. Perniciosam, i. 31, n. 30 seq. 84. Kilber, Theol. Wirceb. t. i. p. 469-476, tract. i. disp. ii. c. iii. a. 3, n. 180 seq. 85. Schmalzgrueber, in lib. i. Decret. tit. 31, § 4, n. 26. 86. Reiffenstuel (in a. l. § 3, n. 69 seq.), who quotes also Pirrhing, Sannig, Engel, and others. 87. Phillips, K.R. ii. § 76, pp. 132-135, coll. i. § 13, p. 96, v. § 221, p. 363 seq., where reference is also made to Bolgeni, l'Episcopato, r. i. c. vii. n. 81 seq. 88. Westhoff, not. in Petri Baller. Vindic. Potest. Pontif. c. v. p. 184, ed Monast. 1847. 89. Beidtel, Das Canon. Recht, p. 523 seq. 90. Maaszen, Der Primat des Bischofs von Rom. Bonn, 1853, p. 138, n. 4.

§ 5.

The General of the Jesuits, Lainez, in his speech at Trent, argues the point in detail. The power of order, he says, is received by individuals always immediately from God. The power of jurisdiction is received immediately from God only in certain instances, as in the case of St. Peter and his successors and the Apostles collectively;¹ but in the case of other bishops it is received immediately from the Pope, who can change and limit their jurisdiction. What God willed to be abiding and unchanged He effected Himself; but He has ordained persons and instruments to effect those things which should be subject to change.² The Pope, says Lainez, when he gives to a pastor the sheep to feed, gives him also authority over them. Jurisdiction exists before consecration. As all bishops are consecrated alike,³ all would, if the jurisdiction came from the consecration, enjoy it equally.⁴ If the bishops derived immediately from God their jurisdiction limited to certain places, as the jurisdiction of bishops is limited, it would follow as a consequence that the partition of dioceses was divine also, so that the Pope could neither extend nor circumscribe them. If on the contrary the bishops received from God their jurisdiction not confined to any particular place, it would extend over the whole earth, and there would be as many Popes as bishops. If it is said that Christ confers jurisdiction upon the bishops, and the Popes allow of its exercise, this is ascribing to our Lord the conferring of an incomplete and inoperative authority. Either the words 'Feed My sheep' are only addressed to St. Peter and his successors, in

which case these may be regarded as the source of all jurisdiction ; or they apply to all bishops, and then it becomes untrue to say that the object of this jurisdiction was assigned to the Pope for distribution ; and the unity of the Church is broken.⁵

¹ This is a point of controversy, for many assert that jurisdiction was conferred upon the Apostles by Christ 'per Petrum.' Salmeron, Andries, *op. cit.* sect. 1, c. iv. p. 72 seq.

² Pallavic. l. xviii. c. xv. n. 3, 4. Rayn. d. 1562, n. 124. Salmeron treats in detail the distinction between the wide and narrow sense of the *ius divinum*. Cf. J. B. Andries, *Alphonsi Salmeronis Doctrina*, Mogunt. 1871, sect. 1, c. i. ii. pp. 5-56.

³ S. Bonavent. in l. iv. sent. d. 24, q. 3. S. Thom. Sum. 2, 2, q. 29, in l. iv. d. 24, can. Ita Dominus, dist. 19.

⁴ Raynald. l. c. ; Pallavic. l. c. n. 5, 6.

⁵ Pallavic. l. c. n. 15-17. Salmeron (Andries, l. c. p. 90 seq.) argues upon the text, John xxi. 15 seq. thus: 'Si omnes Christi oves Petro sunt assignatae, ut ab eo *tamquam Christi vicario* pascerentur ac gubernarentur, efficitur, ut quicumque *determinatas aliquas* pascendas habeat oves, non nisi *per illum* earum pascendarum curam debeat assumere. Neque enim dubium est quin mitteret falcem in messem alienam qui absque ejus auctoritate pasceret oves fidei suae non creditas.'

§ 6.

Objections were made to the view held by Lainez, which he also answered. One objection was: 'The Apostles receive their jurisdiction immediately from Christ. Therefore, as successors of the Apostles, the bishops also receive their jurisdiction immediately from Christ.' To the premise Lainez fully agreed, although others, such as Salmeron, held that jurisdiction was conferred upon the Apostles by Christ through St. Peter; but he denied the conclusion. It might be no less logically argued: Adam's body was created immediately by God; therefore so also are the bodies of his descendants. The bishops are not successors of the Apostles in every relation, and with exactly equal rights. The Church never recognised in the bishops of Antioch and Ephesus that supreme power enjoyed by the Apostles Peter and John who at first were placed over them. When the Church had been established and regulated by the Apostles, the extraordinary powers of the apostolic age were no longer necessary to her. The Pope alone has inherited th

supreme authority of St. Peter in a manner in which no other bishop has inherited the power of any other of the Apostles.¹

To the objection, that according to St. Basil and St. Ambrose the words 'Feed My sheep'² were spoken to all the Apostles, and therefore were to be referred to all bishops,³ Lainez replied: Doubtless the words were spoken to all the Apostles; but *in St. Peter alone*. If the words were to be understood as being addressed primarily and directly to all the Apostles, the primacy would be denied, which is heresy.⁴ St. Peter indeed was unable to rule the Church by himself; he had need of the other Apostles; but he was not subject to them; they were not to be his pastors—to feed him. Holy Scripture too shows that the jurisdiction of bishops was limited (1 Peter v. 2; Tit. i. 5). Finally, there may be many degrees of the office of pastor, as Christ, in a far higher sense than His Apostles, feeds His flock and is its Shepherd (John x. 11-14).

The words (Matt. xviii. 18) in which our Lord conferred upon His Apostles the power of binding, of loosing, and those (John xx. 22) in which He imparts to them the Holy Ghost for the remission of sins, apply of course to the Apostles and their successors. But to say the power of jurisdiction, like the power of order, was by these words granted equally to St. Peter and the other Apostles, is to assert the equality of all the Apostles and to deny the primacy. It may be said that these words convey the power of order as far as conferring the sacramental absolution is concerned, without the full power of external jurisdiction. If, however, they refer to jurisdiction at all, it is to a jurisdiction to be imparted at some future time. When Christ spoke these words He had only promised, not yet instituted, the primacy. This was the answer given by Lainez to a third objection. To a fourth he replied as follows:

Although bishops were appointed by the Holy Ghost (Acts xx. 28) to rule the Church of God, it does not follow that the Holy Ghost should directly appoint each individual to this or that particular see.⁵ A reference to the parable (Matt. xxiv. 45) in which a bishop is called a faithful and wise servant whom the Lord hath appointed over His family, because these words

are used in the consecration service, proves nothing. It suffices for the parable and its interpretation that the bishop is placed by God, whether mediately or immediately, over His family. An objection is made: 'That according to 1 Tim. iii. 5, the episcopate and the authority to govern are inseparably connected, and that to govern is the same thing as to have jurisdiction.' But in this passage St. Paul does not say whether the power of order and the power of jurisdiction can or cannot be separated. Neither does he say whether the bishop's power of jurisdiction be imparted directly by God; neither does he indicate the source whence it proceeds. He speaks merely of the qualifications necessary for him to whom it is intrusted.

Granted that some of the Fathers, such as St. Ambrose, St. Basil, and St. Leo, say that bishops and their authority are from God, they nowhere say that this authority is in *all its parts and immediately* from God.⁶ Other Fathers say that on the contrary it is derived from the Roman Pontiff. Either the Fathers in this contradict one another—a supposition neither well grounded nor reverent—or we are to understand them to mean that episcopal jurisdiction is derived *from God through the Pope*.⁷ St. Bonaventure⁸ and St. Thomas⁹ taught this doctrine, and among the Fathers, Leo the Great¹⁰ and Gregory the Great,¹¹ the latter of whom refused the title of universal bishop, calling it unrighteous,¹² but only in the sense imputed to it by the present opponents of the Vatican Council, namely, that of being strictly speaking the sole bishop.¹³ The Pope is bishop in his See of Rome, and must therefore leave their sees to the other bishops. He is, however, also bishop of the Universal Church; as such he can investigate and pass judgment upon all matters of ecclesiastical jurisdiction; but he has not the right causelessly to withdraw from bishops the authority which they lawfully possess.¹⁴ He is justly called Bishop of the Catholic, that is of the Universal Church,¹⁵ a title which occurs in the Bull of ratification of the Council of Trent, issued in 1564 by Pius IV.; also previously in the diplomas of Alexander III., A.D. 1162 and 1169, and as early as 1131 in the Privilegium granted by Innocent II. to St. Bernard.¹⁶ Gregory the Great, in opposition to Byzantine

pride, took the title of Servant of the servants of God (*Servus servorum Dei*),¹⁷ but without intending to merge the dignity of his office in the humility of the appellation ;¹⁸ he only refused the title of ‘ ecumenical’ Pope or Patriarch in the sense in which he understood it. He called it blasphemous when assumed by the Patriarch of Constantinople, whose throne had already been occupied by many heretics, and who took to himself what the Roman Pontiff was not willing to accept.¹⁹ The title of ‘ universal bishop’ was of frequent occurrence as early as the eighth century.²⁰ In 1413 the Faculty of Paris rejected the proposition of Huss that the Pope was not universal bishop ;²¹ and the theologians of Alcalá in 1564 rejected the proposition, ‘ the Pope is not to be styled universal bishop, since St. Gregory refused and abhorred the title,’ as a proposition bordering upon heresy ; whilst they clearly prove that Gregory the Great rejected the title in another meaning, not in the sense of his having power over the whole Church.²² The Faculty of Paris in 1565, and that of Cologne in 1617, acted in a similar manner.²³ Here again the weapons of old heretics are used to fight the battle of a new heresy.

¹ Pallavic. l.c. n. 9. Lainez lays down the rule : ‘ Non requiritur in subrogato natura illius, cui subrogatur, nisi secundum id quod satis est.’ Cf. Salmeron, l.c. pp. 91, 92.

² M. A. de Dominis asserted, l. i. c. viii. n. 3 : ‘ Quod uni Petro et seorsum dicitur : *Pasce oves meas* mysterium tantum est, ut discant omnes Apostoli et ministri Christi, etiamsi sint innumerabiles unicum tamen omnes et eandem exercere pasturam et omnes simul ac in solidum unicum eos debere esse pastorem.’ The Faculty of Cologne censured this proposition as ‘ propositio haeretica et Scripturae violenta expositio’ (Du Plessis, t. iii. p. ii. p. 198).

³ The testimony of these and other Fathers is cited in detail by Salmeron, l.c. sect. ii. c. v. pp. 154-159.

⁴ Pallavic. l.c. n. 7.

⁵ It is certainly concluding too much if from similar texts from Scripture and passages from the Fathers (such as St. Ignatius, St. Basil, St. Chrysostom, Theodoret) without further inquiry the following conclusion is arrived at : ‘ Est igitur episcoporum potestas *immediate a Christo*. Nihil ergo moror eorum argutias qui controversias, non solum contra haereticos, sed etiam contra orthodoxos plerumque tractant. Phrasim Scripturae loquor et SS. Patrum.’ Also Isaac Habert, *Archieraticon gr.* Paris. 1676, ad p. vii. Lit. Observ. 4, p. 87, who beyond this adds : ‘ Improbis autem sit veterator, quisquis ex eo calumniabitur nos S. Pontificis

supra omnes episcopos divinitus institutam potestatem labefactare, quum illam eo firmiter stabilisq; fundatam profiteamur quo apertius exponimus, institutos ab ipso Christo immediate ceteros episcopos hac lege divinoque jure, ut Petri sese subordinatos ac subditos intelligant.'

⁶ For particulars on this point vide Salmeron, l.c. sect. ii. c. vi. pp. 168-173, 177-179.

⁷ Pallavic. l.c. n. 12.

⁸ Bonavent. Breviloq. p. vi. c. xii. p. 250, ed. Hefele, iii. : 'Qui Papa merito appellatur, tamquam unus primus et summus pater spiritualis omnium patrum imo (pastor *in ed. Ven.*) omnium fidelium et hierarcha praecipuus sponsus unicus, caput indivisum, Pontifex summus Christi vicarius, *fons et origo, regula cunctorum principatum ecclesiasticorum a quo tamquam a summo derivatur ordinata potestas* usque ad infirma Ecclesiae membra, secundum quod exigit praecellens dignitas in ecclesiastica hierarchia.'

⁹ S. Thom. in l. iv. sent. d. 24, q. 3, a. 2. Durand. Comment. in l. iv. d. 24, q. 5.

¹⁰ Vide passages cited, § 1, note 6, and § 2, note 1, supra.

¹¹ Greg. M. ad Joh. Subd. l. ii. Ep. 30 (c. x. d. 63) : 'Quanto Apostolica sedes Deo auctore cunctis praelata constat ecclesiis, tanto inter multiplices curas et illa nos valde sollicitat, ubi ad consecrandum antistitem nostrum expectatur arbitrium.'

¹² Greg. M. l. v. Ep. 18, 19, 20 seq. l. vii. Ep. 30, and elsewhere.

¹³ Cf. Salmeron, l.c. pp. 196, 197. Thomassin, p. i. l. i. c. xi. Balzerini, l.c. c. iii. n. 11, p. 174.

¹⁴ Pallavic. l.c. n. 13.

¹⁵ Pallavic. l. xix. c. xv. n. 3. Further transactions, ib. l. xxi. c. iv. n. 12 seq.

¹⁶ Bern. Ep. 352, Migne, clxxxii. p. 556.

¹⁷ Joh. Diac. Vita Greg. M. l. ii. c. i.

¹⁸ Greg. M. l. ix. Ep. 59.

¹⁹ Greg. M. l. iv. Ep. 32, ad Mauric. Imp.

²⁰ Cod. Carolin. Ep. 15, p. 143, ed. Cenni.

²¹ Natal. Alex. H. E. saec. xv. et xvi. c. ii. art. 3, n. 6, t. xvii. p. 167. The Sorbonne used it in the year 1388. Du Plessis, t. i. p. ii. p. 85.

²² Du Plessis, t. iii. p. ii. pp. 105-107.

²³ Ibid. t. iii. p. ii. p. 194, n. 6.

§ 7.

It was supposed that the strongest argument against Lainez was that the doctrine he upheld was unknown for the first ten centuries, and that during that time there was no trace of any interposition on the part of the Pope with regard to the making of bishops.¹ But his interposition is shown in the action of provincial bishops, archbishops, and others.² No one has maintained that each bishop was appointed immediately by the

Pope. The Pope certainly exercised authority over the patriarchs of the East ;³ the jurisdiction of these patriarchs was in every case derived from Peter.⁴ In many countries the Popes exercised a great deal of their authority through their vicars-apostolic, the primates and other hierarchs who in their name appointed and confirmed bishops,⁵ whilst in other countries, as in Italy for example, the appointment was made directly.⁶ In countries where heresy was predominant the Popes interfered personally. Thus Martin I. in 649 gave Bishop John of Philadelphia, by virtue of the supreme power conferred upon him by Christ through St. Peter, authority in the patriarchate of Antioch and Jerusalem, as legate extraordinary of the Holy See, to appoint bishops, priests, and deacons.⁷ The bishops originally consecrated by the Apostles had through these their jurisdiction from Christ Himself ; the archbishops, who in earlier times appointed the bishops, had received their authority with the consent of the Pope, who had conferred upon them the pallium. The appointment of lawful bishops has always been made with the consent of the Pope, either expressed or understood ; that is the appointment has always proceeded immediately or mediately from him.⁸

In the West the Pope was the only patriarch, and almost all the greater Churches were founded by him—for instance the German Church, the Hungarian, the Scandinavian, the English, and others—and amongst the patriarchal rights were included those of consecrating, or causing to be consecrated, the bishops, or at least the archbishops. The intermediate steps between the Pope and the bishops are to be regarded as so many copies of St. Peter's privileges,⁹ and only from its connection with the Holy See could every mode of appointment not proceeding from the Holy See be lawfully possible. The ancient mode of proceeding did not neutralise, but rather presupposed, the divine right of the Pope ; and was besides capable of alteration as soon as the needs of the Church required it, as we have seen in a special manner since the decline of the power of metropolitans.¹⁰ To say that St. Peter was only *primus inter pares*, is to deny altogether the primacy.

¹ Bossuet, *Defens. Decl. Cleri. Gall.* p. iii. l. viii. c. xi. p. 95; c. xv. p. 105. Schenkl, *Syntagma*, § 37, not. 2, n. 3.

² Thomassin, p. i. l. i. c. liv. n. 5 seq.; c. lv. n. 1 seq.; p. ii. l. ii. c. i. seq.

³ Döllinger, *Lehrbuch der K.* G. i. p. 183 seq. Bianchi, t. iii. l. i. c. ii. § 2, p. 1 seq.

⁴ Thomassin, p. i. l. i. c. vii. n. 11 seq.; c. viii. n. 1 seq. Charlas, *de Libert. Eccl. Gall.* l. viii. c. iii. iv. Selvaggio, *Antiqu.* l. i. c. xvii. prop. 4, n. 23 seq. Phillips, *Kirchenrecht*, ii. § 69, p. 30 seq.

⁵ Coustant, *Praef. in Ep. Rom. Pont.* n. 22 seq. p. xviii. seq. Thomassin, l. c. c. xxx. seq.; l. ii. c. cvii. seq.

⁶ Numerous proofs exist in the Briefs of Gregory the Great, for example: l. ii. Ep. 30, 31, 35; l. iii. Ep. 26; can. 23, c. xvi. q. 1; cap. vi. *de Praesumpt.* ii. 23.

⁷ Martin. i. Ep. 5. Döllinger, l. c. pp. 188, 189. The Faculty of Cologne in 1618 expressed themselves against M. A. de Dominis, who (l. iii. c. xii. n. 58) saw in this an encroachment (*Du Plessis*, iii. ii. p. 223).

⁸ Salmeron, l. c. p. 187 seq. For particulars vide Phillips, *K. R.* v. § 221 seq. p. 361 seq.

⁹ Thomassin, p. i. l. i. c. ix. n. 12; c. xxvi. n. 5; l. ii. c. viii. n. 7; l. i. c. xiv. n. 4; p. ii. l. ii. c. lxi. n. 19.

¹⁰ Phillips, l. c. p. 366 seq.

§ 8.

The appeal to the Councils of Constance and Basle, according to which the bishops assembled at a General Council derive their power immediately from God, proves nothing; for (1) the decision of the Council of Constance can only refer to the case of a great schism;¹ (2) these decrees have none of the authority of ecumenical definitions;² (3) moreover, it is not the same thing to say: 'The Council has authority immediately from God;' and to say, 'Individual bishops have their authority immediately from God.'³ A true Ecumenical Council is a Council in union with the Pope. It derives its authority immediately from Christ. Without the Pope it is not an Ecumenical Council, and has no universal authority. It seems to follow from this again that the Pope alone derives his jurisdiction immediately from Christ; and that the bishops do not, because separated from the Pope they cannot compose a General Council.

We must remember to keep these two questions quite distinct: first, whether General Councils are convened and held by divine authority; and second, whether the authority of their

decrees and the power which they exercise are derived immediately from God.

To the first question theologians reply in the negative.⁴ There is no divine command for General Councils. Many centuries have passed in which none were held, and if they were an essential part of the constitution ordained by Christ for the Church they would not have been left without care, their taking place would not be dependent upon external circumstances.⁵ The constitution of the Church is not an aristocracy, but a monarchy; the Pope above the bishops is the head of a General Council, which is not conceivable without him.⁶ But with the decrees of a General Council it is another matter: their authority comes from God: the Council only arrives at its decision with the assistance of the Holy Ghost; to it apply the words (Acts xv. 28), 'It hath seemed good to the Holy Ghost and to us.' But the authority of the Pope and of the Council is really one and the same.⁷ The gift of infallibility is imparted to the Church by its visible Head. And the Church is not infallible, save in union with the Pope. The Council possesses infallibility only with and through the Pope; without him and unconnected with him it has none.⁸

¹ Turceremata, Apol. in Conc. Flor. Relata et Sum. de Eccl. l. ii. c. xcix. c. Aeneas Sylv. Or. Viennae habita. Driedo, Dogm. l. iv. Schelstrate, de Sensu et Auctor. Deer. Conc. Const. Rom. 1686. Beidtel, p. 394.

² Petr. de Alliaco ap. Gerson, ii. 940. Cajetan, de Auct. Pont. et Conc. c. viii. ix. Gregor. de Valentia, disp. i. q. i. punct. 7, § 44, p. 370, ad 7m. ed. Ingolst. 1595. Bennetis, p. i. t. i. p. 377. Ballerini, de Pot. Eccl. c. vii. p. 101. Phillips, K. R. i. § 31.

³ Salmeron, l.c. p. 188, iv. 2.

⁴ Salmeron, t. xii. tract. 77 (Andries, l.c. p. 284 seq.): 'Nos tamen illi sententiae magis assentimur, Concilium inventum esse Spiritus S., tacite suggestum S. Petro . . . et ejus successoribus tamquam remedium certis temporibus opportunum ad terminandas vel extinguendas de fide vel sacramentis controversias vel ad abusus (disciplinae) extirpandos . . . ita tamen ut haec suggestio non efficiat jus stricte divinum, sed jus tantum canonicum s. ecclesiasticum.'

⁵ The greater number of theologians have declared against the necessity of General Councils maintained by Febronius and others (de Statu Eccl. t. i. c. vi. § 7).

⁶ Greg. de Valentia, l.c. p. 360 seq. Salmeron, l.c. p. 282 seq.

⁷ Canus, de loc. Theol. l. v. c. v. seq. 171: 'Ecclesiae vero auctoritatem eam nunc appello, quae synodorum etiam generalium ac summi Pontificis est. Haec enim est *una res prorsus*, ut non differat multum inter Ecclesiae, Conciliorum Sedisque Apostolicae iudicia, propterea quod connexa haec et colligata sunt, quemadmodum esse videmus humanum *corpus et caput*.' Cf. Gregory of Valentia, l.c. p. 363. Thus spoke, on the 1st March 1438, Bishop Peter of Digne before Eugenius IV.: 'Quamquam *una et eadem atque indivisa* sit potestas Papae ex Concilii generalis, tamen aliter et aliter. . . Dixi quod aliter et aliter eadem potestas est in utroque quia in Ecclesia *fundamentaliter et in habitu* in Papa vero *actualiter* in exercitio' (Ceccoli, *Studii Storici sul Concilio di Firenze*, vol. i. p. dlxviii.).

⁸ Vide Schüzler, *Die Pápstliche Unfehlbarkeit aus dem Wesen der Kirche bewiesen*, Freib. 1870, pp. 91, 92. Cf. the whole of the tenth chapter, p. 89 seq.

§ 9.

Are, then, the bishops still really judges, and not merely advisers of the Pope? The bishops assembled at the Council are judges.¹ 1. Because with the Pope they represent the whole apostolate of the Church, which in the Council of the Apostles at Jerusalem pronounced a judicial judgment. 2. Councils attribute to themselves this office of judging; the Pope recognises it in the confirmation of decrees, which are signed by all the bishops.² 3. If the bishops were merely counsellors, there would be no reason to limit the right of speech only to bishops and to persons endowed with some part of the episcopal authority; it would more fitly belong to learned theologians and canonists. In so far as the Pope takes counsel of the bishops in preparing a definition may they be considered counsellors;³ but they must not be regarded as mere counsellors.

¹ Vide Schüzler, *Die Pápstliche Unfehlbarkeit*, l.c. p. 103; the following also teach it: Turrecremata, *Sum. l. iii. c. lxiii. lxiv.*; Canus, l.c. q. 2 seq. 163; Bellarmin. de Conc. l. i. c. xviii.; Salmeron, tract. 79 (*Andries*, p. 283, note); Bened. XIV. de Syn. Dioec. l. xiii. c. ii. n. 3. The introduction of the Const. Vat. *Dei Filius*, of 24th April 1870, has the words: 'Sedentibus nobiseum et iudicantibus universi orbis episcopis.'

² Upon the formula in which the bishops confirm the decrees of the Council vide Hefele, *Conc. i. p. 18 seq.*

³ Greg. de Val. l.c. p. 367 ad 4: 'Quodsi quis propterea quod Pontifex hujusmodi Patrum opera atque iudicio in determinanda fidei sententia utitur, quis putet Pontificis consiliarios eos appellari posse, non est de vocabulo *magnopere laborandum*.'

§ 10.

Neither the Council of Trent nor of the Vatican has decided the question whether episcopal jurisdiction is derived from Christ immediately or mediately through the Pope. The majority of the Fathers at Trent were of opinion that it was communicated immediately from the Pope. The Pope charged his legates, for the sake of peace, to leave this question untouched, since a decision on the subject was not then necessary against heretics.¹ The Vatican Council only teaches that the Pope has the supreme and immediate episcopal authority over all Churches and all the faithful, according to the teaching of the majority of theologians for centuries; that from the Holy See all power in the Church is transmitted to pastors and flocks.²

¹ Dr. Friedrich is quite unauthorised in saying (*Tagebuch*, Supplement, p. 437 seq.) that at Trent the judgment contained in the Creed of the Second Council of Lyons and the propositions of the Fifth Lateran Council were unrecognised, that the Council of Florence was repudiated (p. 199), and that 'the claims of the Curial system were not heard' (p. 244).

² Cf. Andries, *op. cit.* p. xxvi. seq.

PART III. THE POWER OF THE POPE IS NOT THE ONLY POWER ;
IT IS NOT ARBITRARY AND ABSOLUTE.

§ 1. The power of the Church not solely vested in the Pope. Council of Trent. § 2. The opponents of the Council repeatedly contradict themselves. § 3. Restriction upon the power of the Pope. § 4. No change made by the Vatican Council in this matter. § 5. Apprehensions founded upon mere suspicion. § 6. National Churches and bishops as vicars of the civil power.

§ 1.

It has been asserted that, in opposition to the Tridentine canon, according to which there exists a divinely appointed hierarchy of bishops, priests, and deacons, the decrees of the Vatican Council say that the Pope is the only divinely appointed bearer of any church authority. But first, the Vatican Council does not say this; on the contrary, it expressly states that the bishops are appointed by the Holy Spirit; and secondly, the Tridentine canon¹ speaks of the hierarchy of order,

but not of the power of jurisdiction, neither of the relation of the three grades to one another, nor of that of the bishops amongst themselves. Although the Pope possesses the fulness of power in the Church, he does not alone possess all power. Although it may be within his authority to limit the jurisdiction of a bishop, the bishop does not on this account become a mere deputy or vicar of the Pope. The bishops now, as ever, are called, and are, *Ordinaries*.² They possess an ordinary power, which they exercise by virtue of their office, and which they can impart to others. The Council of Trent makes a distinction between the ordinary power of bishops (*potestas ordinaria*) and the special power delegated to them by the Pope. As long as the episcopal office is an essential element in the organism of the Church, which it will be till the end of the world, so long will bishops be no mere Papal vicars.³

¹ Sess. xxiii. can. 6, de Ord.

² S. Thom. Opusc. de Perfectione Vitae Spiritualis: 'Notandum, quod *ordinarium ab ordine dicitur*; unde *ordinarium videtur importare id, quod secundum communem ordinem in republica fit semper*; propter quod illud, quod competit diversis gradibus et statibus in republica ordinatis *ordinarium dicitur*. Unde potestates competentes in hujusmodi institutis, in ecclesia sc. patriarchali, archiepiscopali, episcopali, et parochiali, dicuntur *ordinarii*, et illi, qui simpliciter in talibus statibus et gradibus statuuntur, ut regant populum per se vel per alium secundum gradum et statum, in quibus statuuntur, dicuntur *ordinarii*. Potestas autem *commissarii* proprie loquendo videtur dici quando alicui ab aliquo committitur eadem potestas quae est sua ordinaria, secundum quam vice ejus aliquid agat. Unde *collatio talis potestatis non dicit novum gradum potestatis, sed dicit commissionem ejusdem potestatis ab instituto in ipsa potestate, ita quod potestas commissionem ejusdem potestatis ab instituto in ipsa potestate ita quod potestas commissaria est commissa ab instituto in gradu potestatis simpliciter*. Et ita patet, quod praelati isti a Papa positi *non sunt commissarii sed vere ordinarii*.'

³ Vide Schüzler, Die Päpstliche Unfehlbarkeit aus dem Wesen der Kirche bewiesen, Freib. 1870, p. 45.

§ 2.

The opponents of the Council are on this point full of contradictions. In 1868 Schulte wrote, 'Scarcely any trace remains of the strife between so-called episcopatism and papalism.' Yet now he says that, by the Vatican definition of the 18th July

1870, the bishops have been degraded into Papal deputies and diocesan vicars;¹ and that this degradation of the bishops is contained in their oath to the Pope, which is now, he says, recognised as a real vassal's oath.² But the form of the oath now standing in the Pontificale is more than two hundred years old ;³ its matter existed in the formulas of Gregory VII.⁴ Schulte thinks 'that many bishops may not have been acquainted with the consecration oath, anyhow may not have properly considered it when it was read over to them, many may not have understood it.'⁵ But this would have very little importance as far as regards the question of right. It is alleged that bishops are degraded by holding as distinctions the titles conferred upon them by the Pope of 'assistant at the Papal throne, domestic prelate,' &c. But would it be considered also a degradation if a bishop were to become knight, companion, or grand cross of this or that civil order, privy councillor, &c.? Bishops in using in their title the words 'by the grace of God and favour of the See Apostolic,' words of frequent use in the thirteenth century,⁶ clearly express that they are indebted to the See of Rome for their office.⁷ The opponents of the Vatican Council pretend that they desire the Church to be 'such as she was before the 18th July 1870;' and in reality they desire her to be such as according to the opinion of Febronius she was in the first six centuries, with a complete abstraction of mediæval developments, and a continual movement in favour of a national Church. *Janus*, the prototype of all New-Protestant literature, proves this, as well as the newspaper articles of the same party, and the publications of Friedrich and Schulte. The latter assumes that since the time of Gregory VII. the Church has undergone a complete change. 'The episcopal authority has been annihilated, crushed by Papal omnipotence.'⁸ And yet this change is said to have begun on the 18th July 1870! And those who now assert this could be good Catholics until that 'fatal July day'! But if the life of the Church during long centuries was not according to her true constitution; if she found herself again at Constance and at Basle, having, therefore, lost herself both before and since,⁹ she could not be the true Church.¹⁰

She would long since have ceased to be the Bride of Christ, and would have been without divine assistance; the greater number of bishops and theologians would have erred in faith, and the separation of Protestants from Catholics would have been a lawful act. Wicliffe, like the opponents of our day, called the Pope 'Antichrist';¹¹ but the whole Church has branded him and all his followers. Marcus Antonius de Dominis urged that the spiritual power of the Pope was a late development;¹² but all Catholics have judged him to be heretical.

¹ Schulte, ii. p. 75.

² Schulte, ii. p. 45.

³ Cf. Phillips, Kirchenrecht, ii. § 81, p. 193 seq.

⁴ C. iv. de Jurejur. ii. 24, Mansi, Conc. xx. 526.

⁵ Schulte, ii. 52, 53.

⁶ Zaccaria, op. cit. t. ii. dissert. 12.

⁷ Upon the words of Gregory I. l. i. Ep. 38, ad Petr. Subd., in which he says to the bishops of Sicily, 'in B. Petri Ap. principis natalem (Romam) convenient, ut ei, *ex cujus largitate pastores sunt, gratiarum actiones solvant,*' the remark: 'Idem profitentur antistites, dum se suis in epistolis et commonitoriis praefantur Apostolicae Sedis gratia episcopos. Sedem enim Apostolicam pro S. Petro usurpari et vice versa norunt eruditi omnes.'

⁸ Schulte, ii. p. 68.

⁹ Friedrich, p. 141. This is just the language used by Edmund Richer (Du Plessis, t. ii. p. ii. p. 305) of the 'veritas justi regiminis Ecclesiae jure postliminii in Constantiensi et Basileensi Conciliis restituti.'

¹⁰ In 1644 the Sorbonne condemned several propositions of Brachet de la Milletière, 'in quantum damnant disciplinam et consuetudinem ecclesiasticam ab omnibus cath. communionis ecclesiis receptam, quantumcumque diuturnam tamquam abusivam et institutioni Christi ac evangelicae doctrinae contrariam,' as 'propositiones temerarius, Ecclesiae injuriosis et haereticas' (Du Plessis, t. iii. p. i. p. 20). The censure passed by the Faculty of Cologne upon the apostate De Dominis is also to the point (ib. p. ii. p. 192 seq.). Upon the first proposition, 'Mulier fortissima Ecclesia, miserandum in modum delituit,' it is said: 'Propositio haeretica, visibilitati Ecclesiae, quae nullo unquam tempore delituit, repugnans.' The further one, 'Ecclesia sub Romano Pontifice non est amplius Ecclesia sed respublica quaedam humana sub Papae Monarchia tota temporali; vinea est ad solum Noe inebriendum,' was called 'Propositio haeretica et maledica.' The Sorbonne said upon the same proposition (ib. t. ii. p. ii. p. 105): 'Haec prop. 1 parte est haeretica; dicit enim veram Ecclesiam, cum non alia sit quam quae Romano Pontifici paret, jam desiisse; pro reliqua vero parte est calumniosa et scandalosa.'

¹¹ Du Plessis, t. i. p. ii. p. 40.

¹² De Dominis, de Rep. Chr. l. iv. c. vi. n. 7; c. vii. n. 38, 53; c. ix. n. 19; c. x. n. 53; also the *Censura Coloniensis* (Du Plessis, t. iii. p. ii. pp. 225, 226).

§ 3.

Like these, Döllinger, Schulte, and their followers pretend that the supreme power of the Pope is omnipotent, arbitrary, and absolute.

In the Middle Ages, John of Salisbury, a supporter of the Papacy and friend of Adrian IV., said: 'That the Pope was truly the "servant of the servants," and encompassed by cares and toil;¹ that the very elevation of his dignity restricted his actions;² and that he had no right to overstep the law of God.'³ This last has been frequently expressed by Popes Alexander III. and Innocent III.,⁴ by many of their successors in various utterances,⁵ and is the common doctrine of theologians and canonists.⁶ As Walter⁷ the canonist shows, the Pope is, above all, circumscribed by the consciousness of the necessity of making a righteous and beneficent use of the duties attached to his privileges, and that the Popes have always listened to the most plain-spoken admonitions of learned and pious men.⁸ The Pope is also circumscribed by the spirit and practice of the Church, by the respect due to General Councils⁹ and to ancient statutes and customs,¹⁰ by the rights of bishops,¹¹ by his relation with civil powers,¹² by the traditional mild tone of government¹³ indicated by the aim of the institution of the primacy 'to feed,' finally by the respect indispensable in a spiritual power towards the spirit and mind of nations.¹⁴ Let us hear Dr. Döllinger: 'Outside the Catholic Church it has become almost customary to designate the Papal power as a boundless and absolute power which recognises no law superior to itself, and we hear much of Papal omnipotence, or at least of a never-abandoned claim to universal dominion. All these ideas and charges are untrue and unjust. From one point of view, the Papal power is the most restricted power imaginable; for its first duty, as Popes have repeated times without number, is to watch over the laws and ordinances of the Church, and guard them from infringement. The ordinances of the Church have been long established

and its legislation has been carried into the most minute particulars. The Papal See is also especially bound to be governed by the most careful consideration of the decrees of the Church. Only upon these conditions can the Pope reckon upon the obedience of Churches, and the confidence and respect of the faithful. Hence any one with a knowledge of church legislation could foretell in most cases with certainty how a Papal decision would turn. Catholics hold that a considerable portion of the ordinances of the Church rest upon divine command; are therefore not to be touched by Papal or any other authority. No Pope can dispense what God has ordained. This is acknowledged universally. What can restrain the Pope? de Maistre inquires. *Everything*: canons, laws, national usages, sovereigns, courts, parliaments, prescription, remonstrances, treaties, duty, fear, wisdom, and above all public opinion, the queen of the world.¹⁵

¹ John. Saresb. Polycr. l. viii. c. xxiii. p. 811: 'Qui Romanus Pontifex est eundem pro conditione Ecclesiae, quae nunc est esse servum servorum, necesse est. Non equidem nuncupative ad gloriam, ut quidem opinantur sed substantive utpote qui servis Dei serviet vel invitus. Adeo quidem ut nisi servierit aut ex pontificem aut ex romanum esse necesse sit. Quis ergo eum servum servorum esse ambigit? Dominum Hadrianum . . . hujus rei testem invoco, quia Romano Pontifice nemo miserabilior est, conditione ejus nulla miserior. Et licet nihil aliud laedat, necesse est ut citissime vel solo labore deficiat.'

² Ib. p. 813: 'Si in summa potentia minima licentia est, profecto qui legibus praest, nulli subjicitur, sed ab illicitis arctius coarctatur. Ergo et Romano Pontifici minimum, eo ipso quod plurimum, licet.'

³ Id. 1167, Ep. 198, ad Alex. III. Pap. p. 218: 'Fateor, et verum est, omnia Romano licere Pontifici, sed ea dumtaxat, quae *de jure divino* ecclesiasticae sunt concessa potestati. Liceat ei nova jura condere, vetera abrogare, dum tamen illa, quae a Dei Verbo in Evangelio vel Lege perpetuam causam habent, mutare non possit. Ausim dicere, quod nec Petrus ipse perseverantem in scelere quemquam et voluntate peccandi posset absolvere, nec claves accepit, quibus regni januam posset *impoenitentibus* aperire.'

⁴ Alexander III. c. iv. Super eo, v. 19, de Usuris. Innoc. III. c. Literas 13, de Restitut. Spoliat. ii. 13, ad Bituric. l. xv. Ep. 106, p. 617, Philippo Regi Francorum: 'Cum contra . . . veritatis sententiam nostra non possit auctoritas dispensare.' Huber, page 18, cites a passage from l. i. Ep. 127, p. 116, ad Capitul. Camer., according to which, Innocent III. concluded that from the plenitude of his power the Pope was independent of right. The passage is simple enough: 'Licet autem in-

tentionis nostrae non sit, investituras de vacaturis factas contra canonum instituta ratas habere qui secundum plenitudinem potestatis de jure possumus *supra jus* [Coll. iii. has *super his*] dispensare,' &c. It treats of the appointment to a canonical office, and is not a general proposition. 'Super his' is the best reading; but even if 'supra jus' be preferred, there is no question of 'jus divinum,' which it would have been necessary to have especially named. A dispensation also is a concessio ultra (*supra*) or contra *jus*.

⁵ Bened. XIV. de Syn. Dioc. l. xiii. c. xxi. n. 7, says of the dispensationes in radice matrimonii, that they were granted 'tunc solum, cum impedimentum, propter quod matrimonium irritum fuit, nequaquam ortum habuit a jure divino, vel naturali, sed a lege dumtaxat ecclesiastica, quam positivam vocant et cui summus Pontifex derogare potest.' Also the decree of the same, of the 13th Sept. 1755: 'Quum super matrimonio' (Conc. Trid. ed. Richter, p. 274).

⁶ Barbosa, de Offic. et Potest. Episcopi, p. i. c. i. n. 28. Reiffenstuel, Jus Can. l. i. tit. 2, § 18, n. 455. Schmalzgrueber, l. i. tit. 2, § 8, n. 57. Phillips, K. R. v. § 212, p. 180.

⁷ Walter, K. R. § 126, pp. 241-243, xi. ed.

⁸ Innocent IV. caused a very candid memorial from Bishop Robert of Lincoln on the faults of the Papal Court to be read in presence of the cardinals, and gave the author all proofs of his esteem (Brown, Fascicul. ver. Expet. ii. p. 250; Rob. Ep. 113, 114; Lingard, Eng. Hist. iii. p. 207, n. 1, Germ. Trans.). Hadrian IV. also gave willing ear to the candid expressions of John of Salisbury (Polyer. l. vi. c. xxiv. pp. 623-625). Also Paschal II. A.D. 1111, and Pius VII. A.D. 1813, listened meekly to the reproaches made them. The Popes in so doing followed the example of St. Peter, who suffered St. Paul's reproofs with meekness and charity: 'Erat objurgatore suo ipse qui objurgebatur mirabilior et ad imitandum difficilior.' Aug. in Gal. c. ii. Cf. Ep. 89, ad Hieron. Cypr. Ep. 71, ed. Baluz. Maucler, de Monarchia Divina, pp. 251, 461. Phillips, K. R. i. § 30, p. 244. Petrus Venerabilis wrote to Innocent II. (l. ii. Ep. 28, p. 246): 'Cum jure majestas apostolica omnibus dominetur; soli tantum rationi subjici gloriatur.'

⁹ Of course those meant are such as have been recognised as general, and have been confirmed by the Holy See, as is shown by the quoted passage of the Decretal, c. vii. xiv. 1; C. xxv. q. 1, c. xvii.; C. xxv. q. 2.

¹⁰ Bellarmin. de Rom. Pont. c. vi. vii. C. xxv. q. 1; c. xxi. 19.; C. cad. q. 2.

¹¹ Bellarmin. de Rom. Pont. l. i. c. iii. says bishops are not vicarii Pontificis maximi. Also Petrus Ballerini, l.c. n. 9, p. 171.

¹² It is clear that this has become much more difficult now since there no longer exists any Catholic State, and the Church has become subjected to jura majestatis in sacra that were unknown formerly. None the less it is nowadays more true even than formerly, quod eminentiae regalis obtentu quandoque rigor temperatur ecclesiasticus et canonum severitas mansuescit. Petr. Bles. Ep. 164, p. 459.

¹³ Greg. M. l. viii. Ep. 30, serves as a special example. Vide also Maucler, l.c. p. 248 seq.

¹⁴ Cf. Phillips, l.c. p. 245: 'As a ruler acts wisely in examining the means which are to serve him in accomplishing the objects he aims at in his line of government, so the Pope must also examine and weigh the means furnished him by the epoch in which he lives for the increase and strengthening of the kingdom of Christ upon earth. In this sense we can say with truth that it is the duty of the Pope to consider the spirit of the age.' Innocent III. writes as follows to the bishops of Sardinia, lib. vi. Ep. 16 (Migne, ccxv. p. 23): '*Sic Apostolica Sedes auctoritatem propriam moderatur, ut plus quod expedit quam quod licet attendens potentiam suam publicae utilitati conformet.*'

¹⁵ Kirche und Kirchen, pp. 38, 39. At p. 41 are cited the utterances of Card. Gonsalvi and of Archbishop Kenrick. Cf. the same author, Ueber gemischte Ehen, p. 65.

§ 4.

Was all this changed at one blow on the 18th July 1870? Surely not, or it had been the greatest wonder the world's history had ever seen, especially as rather more than eight weeks later the Pope was deprived by an unparalleled breach of faith of all the earthly support of his power. The defenceless Pope has still to face sovereigns, courts, parliaments, and national usages. Remonstrances and treaties have not lost their significance. The influence of duty, fear, and wisdom is still felt. Public opinion, far from having lost its force, has in many places gained the strength of insanity. The canons and laws of the Church are still in full vigour, and she is bound as of old by agreements and by legislation. Has the Pope acquired the right to revoke or change the commands of God? Can he define a doctrine that is not part of revelation? Can he abolish ancient dogmatic definitions?¹ A definition once made remains unchanged and unchangeable for all time. Has a change taken place in the Pope? Has Pius IX. any powers not held by Pius VII.? All Popes have presupposed the infallibility of their doctrinal definitions, and have ascribed to the Holy See the possession of the plenitude of the power of the Church, recognising at the same time the limits of their authority, and distinguishing between their personal unworthiness and the dignity of their office.² They know full well that the Church's true Head is Christ, whose vicars they are, and to whom they will shortly have to render a strict account of the manner in

which they have performed their trust. It is the uttermost perversion of the doctrine of the Church to speak of the 'omnipotence' ascribed to the Pope by the Vatican decrees, and to say 'that the Pope might in one day abolish all the established dogmas of the Church, and alter all its discipline; that there is no longer any firm dogma.'³

¹ The Council speaks clearly, *Vat. Const. c. iv.*: 'Neque enim Petri successoribus Spiritus S. promissus est, ut eo revelante novam doctrinam patefacere, sed ut eo assistente traditam per Apostolos revelationem seu fidei depositum sancte custodirent et fideliter exponerent.'

² *Vide Innocent III. l. i. Ep. 85, ad Archiep. Mediol. p. 74*: 'Licet et peccatores, simus et nati de peccatoribus, illius tamen et vices agimus et locum tenemus, qui peccatum non fecit,' &c. *Cf. Ep. 88, p. 75.*

³ *Schulte, ii. p. 75 seq.*

§ 5.

At the bottom of all the extravagant assertions which we hear nowadays—for example that the Vatican Council has made 'the boundless absolutism of the Papacy into an article of faith'—lies in point of fact (apart from perversions of the dogma) nothing more or less than a dread lest Papal Infallibility and the supremacy of jurisdiction be misused to overthrow the existing ordinances of Church and State. Such a dread shows an entire absence of Catholic faith. It was of faith before the 18th July 1870, that Christ had conferred upon St. Peter the supremacy of jurisdiction for the well-being of the Church. The Council of Florence had defined this doctrine, and it had been taught universally. It was also of faith, upon the ground of the Catholic interpretation of Holy Scripture, that the whole Church would not be suffered to fall into error. Faith in these doctrines precludes the idea that the Pope, as supreme guardian of revelation, could ever commit the Church to a doctrinal error, or that civil authority could suffer from a power that has always taught, and will always and does always teach, that civil authority is from God, and that obedience towards it is a duty. No injury can ever be done to the faith by the Holy See, to which every age of Christianity has looked to confirm its faith. Bossuet says that its energy at the time of Leo the Great (in the fifth

century) appeared to him so wonderful, that he thought in succeeding ages it must have lessened rather than increased.¹

The power of the Church has never been an absolute power, for she has always possessed in the Gospels and in tradition a fixed code of laws. The necessity of obeying these laws has given her a constitution, and the divine assistance is her sure guide.² Groundless, therefore, and unnecessary is any fear lest the Church should injure the State, and fears with regard to the future position of bishops are equally untenable. Even humanly considered, and setting aside the divine ordinances in the institution of the episcopate, the autonomy of several hundred bishops without a head would be likely to be the cause of far graver abuses than a strong central power.

¹ Corollar. Defens. § 10, t. ii. p. 318: 'Haec habens et exercens Apostolica Sedes tanta antiquitus auctoritate viguit, ut (fidens dixerim) immunita magis quam aucta esse videatur.'

² *Liberatore, Lo Stato e la Chiesa*, c. ii. a. 3, p. 160.

§ 6.

The supposed design of making the bishops vicars of the Pope leads us to consider another design of an opposite character, that of making them vicars of the civil power.¹ J. N. Nuytz aimed at this when he wrote that the decision of a National Council admits of no further discussion, and the civil power can settle an affair as decided by such National Council (*Syllabus*, Prop. 36). A French pamphleteer and an Italian Liberal, who thought that national Churches could be established after being withdrawn and separated from the authority of the Roman Pontiff² (Prop. 37), had the same object in view. It was also intended by J. N. Nuytz and others, who declared that bishops were possessed of a double power—one purely ecclesiastical, limited to their authority to ordain and teach; the other, referring to jurisdiction and temporal matters in the widest sense of the words, and granted expressly or tacitly by the civil power, which could revoke it at pleasure (Prop. 25).³ The same end is indicated by the assertion that the State possesses as inherent in itself the right of presenting bishops, and may require of them

that they take possession of their dioceses in virtue of their nomination before having received the confirmation of the Holy See¹ (Prop. 50); further, that the lay government has the right of deposing bishops from their pastoral functions, and is not bound to apply to the Pope nor obey him in those things that relate to bishops' sees and the institution of bishops² (Prop. 51). In Germany bishops have already before this been regarded as 'anointers' appointed by the State, and now again the former idea of a national Church has found favour in many quarters.³ It has been hoped, by means of State authority and penal laws against Catholics, to found at last a State Church. But the faith of the bishops, priests, and people is unshaken, and although much assistance has been given and material power has lent its aid, the high-sounding preparations for a national Church have served only to found a new and small sect, which has been joined by a few apostate priests who have sought to win over bishops and kings by exaggerating the episcopal and royal power. The national or imperial Church would convert the bishops into vicars of the State. The Universal Church alone maintains them in their true position.

¹ In old times also measures were taken to bring this about. Vide Hugo Grotius, *Commentar. Posthumus de Imperio Summarum Potestatum circa Sacra*, c. ii. n. 2: 'Ecclesiarum pastores, qua tales sunt, i.e. quatenus munere funguntur docendi et declarandi verbum Dei auditoribus suis s. fidelibus, non esse summarum potestatum vicarios.' He asserts, nevertheless, that they: 'Quatenus praeter pastorale munus aliquid imperii aut jurisdictionis accipiunt, ejus accessionis ratione verissime dici *summarum potestatum vicarios aut delegatos*.' Vide on this subject the work, *De Finibus utriusque Potestatis, Ecclesiasticae et Laicae*, Comment. Auctore D. . . . presbytero monacho Ord. S. Bened. e Congreg. Casin. et jurispr. eccl. prof. Primum Lugani, dein Ratisbonae editus impensa J. M. Englerth, 1781, iv. cap. i. p. 4 seq.

² Alloc. Multis gravibusque, 17 Dec. 1860, and Jam dudum cernimus, 18 March 1861.

³ Lit. Ad Apostolicae Sedis, Syll. Prop. 25.

⁴ Alloc. on South America, 15 Dec. 1856, Nunquam fore, Syll. Prop. 50. Those who being elected or nominated enter upon their office before their appointment has been confirmed are, according to the law of the Church, 'intrusi,' even if they act as procurators or stewards. Greg. X. in Conc. Lugd. ii. (c. v. Avaritiae, i. 6, de Elect. in 6). Bonifac. VIII. Const. Ad Reformandum, 5 Aug. 1485. Julius II. Const. Romani Pontificis, 28 Jul. 1505. Julius III. Const. Sanctissimus; cf. Reiffenstuel in

1. i. Decret. tit. 6, § 2, n. 40 seq. Clem. XI. Const. In suprema, 24 Aug. 1709; Ubi nobis, 7 Mart. 1710. Pius VII: Briefs to Cardinal Maury, 5 Nov. and to Mgr. Corboli, 2 Dec. 1810.

⁵ Alloc. Lit. ap. Multiplices inter, 10 June 1851, against Vigil. Alloc. Acerbissimum, 27 Sept. 1852, on New Granada.

⁶ Especially with the Augsburg Allgemeine Zeitung. *e.g.* Supplement, 31 Aug. 1870. It saw in Prof. Leopold Schmidt, who died out of the Church, and who was once a candidate for the bishopric of Mayence, a forerunner of the new national Church.

ESSAY V.

THE SYLLABUS AND MODERN STATES.

THE Syllabus published with the Encyclical of December 8, 1864, is a collection of the principal errors of our day. It is frequently attacked as containing new doctrine, laying down infallible rules, and declaring war to the death with all modern States and modern constitutions. Yet, on impartial examination, any one acquainted with ecclesiastical matters could see plainly that it taught nothing new. The propositions are all in effect contained in the Encyclical 'Mirari vos'¹ of Gregory XVI., August 15, 1832, which at the time no Catholic ventured to attack, but which some now call 'ill-famed;' in the first Encyclical of Pius IX., dated November 9, 1846;² and in later Allocutions and apostolic writings.³ Neither is it correct to say that the Encyclical of December 8, 1864, only refers generally to the condemnation of several pernicious opinions, whilst the Syllabus appended to it is the first decidedly to denounce them. The Encyclical contains many separate condemned propositions, and the two mutually complete each other. We will proceed to consider: 1. The general and legal aspect (the formal significance) of the Syllabus; 2. Its separate propositions.

¹ Bull. Rom. Cont. t. xix. pp. 126-132, Const. 167.

² Acta Pii IX. vol. i. Romae, 1854, pp. 4-24.

³ They are collected in a volume, published by Pustel at Ratisbon in 1865: Ss. D.N. Pii P.P. IX. Epistola Encyclica, data die viii. Dec. 1864; accedit Appendix antiq. mora et novissima documenta continens, &c.

PART I. FORMAL SIGNIFICANCE OF THE ENCYCLICAL OF 1864 AND OF THE SYLLABUS.

§ 1. Difference between the propositions of the Syllabus and ecclesiastical censures. § 2. Has it dogmatic force? § 3. Examples.

§ 1.

Our opponents are quite wrong in supposing that all the propositions contained in the Syllabus are condemned as false and heretical, and that therefore *all* the propositions contradictory to these are so many articles of faith. On reading the whole eighty propositions, very little impartiality would suffice to discover great differences between them. The Pope has *nowhere* declared all these eighty propositions to be heretical, and only the *contradictory* of an heretical proposition can be considered as dogma.¹ Each separate proposition is not described as heretical nor qualified in any other way; they are only condemned collectively as *false and perverse opinions*.

Propositions may be distinguished as heretical, erroneous, rash, impious, scandalous, dangerous, &c.² In ecclesiastical judgments either each individual proposition is qualified, as, for instance, in the Bull of Pius VI., ‘*Auctorem fidei*,’³ August 28, 1794, or a set of propositions are rejected as a whole, without a determinate theological censure being applied to each separate proposition, as in the Bull ‘*Unigenitus*’ of Clement XI., September 8, 1713.⁴ Now and then only a minimum of the deserved censure will be expressed in the wording; for example, Alexander VII. condemned many tenets in 1665 and 1666 as ‘at least scandalous.’⁵ A Pope or a Council can even deliver a dogmatic judgment in different ways, either simply rejecting what is evil, or also determining the degree of the evil, which may be very different, for this reason amongst others, that an error may be either directly or only indirectly opposed to faith.⁶

¹ Cf. Opinion of the Theological Faculty of Würzburg of 7 July 1869, Fr. i. § 1, p. 2.

² Melchior Canus, de Locis Theologicis, l. xii. c. x. Gauthier, Pro-drom. ad Theol. Dogm. Schol. in Thes. Theol. ed Zaccaria, t. i. 53. Denzinger, Enchirid. definit. et symbol. ed. iv. Wirceb. 1865, Praef. p. ix. Reinerding, Theol. Fundam. t. i. p. 235, n. 406. Kilber, Theol. Wirceb. t. i. disp. 3, c. ult. Append. ii. n. 252, p. 682 seq.

³ Denzinger, l.c. pp. 388-422.

⁴ Denzinger, l.c. pp. 351-361.

⁵ Bullar. Rom. ed. Lux. t. vi. Append. pp. 1, 2. Denzinger, l.c.

pp. 317-322. Cf. Zallwein, Princip. Jur. Eccl. t. i. q. 4, c. ii. 652, § 6. Phillips, Lehrbuch des Kirchenrecht, § 246, p. 802, i. edit. Aichner, Compend. Jur. Eccles. § 144, p. 447. Specially appropriate to this is Dominicus Viva Dammatæ Theses ab Alex. VII., Innoc. XI. et Alex. VIII. ad theologicam trutinam revocatae, Patavii, 1732.

⁶ S. Thom. Lect. iv. in 1 Cor. c. xi. Opp. xvi. p. 74, ed. Rom. 1570: 'Pertinet aliquid ad doctrinam fidei dupliciter: uno modo *directe*, sicuti articuli fidei, qui per se credendi proponuntur . . . quaedam vero *indirecte* . . . in quantum ex negatione eorum sequitur aliquid contrarium fidei, sicut si negatur Isaac fuisse filium Abrahæ, sequitur aliquid contrarium fidei, sc. S. Scripturam continere aliquid falsi.'

§ 2.

The propositions which are contained in the Syllabus are, then, condemned in the mass (in globo); nothing further is determined than that these propositions must not be held or maintained. The faithful have to submit to the decision of the Church as it is given to them. It has not been decided that the propositions as a body are heretical, but only that they must be rejected; not that they all militate directly against faith and morals, but only that collectively they endanger them. None of the propositions cited in the Syllabus are entirely free from theological censure; each one is censured in one way or another, but certainly not each one in the same way.¹ The Encyclical of December 8, 1864, and the Syllabus appended to it lay down no rules of faith in a strict sense,² but they are certainly dogmatic decisions as well as the above-mentioned Bull of Clement XI. Otherwise the decision of the Council of Constance against the doctrines of Wicliffe and Huss³ would not be dogmatic; neither the Bull of Leo X. against Luther,⁴ nor that of Pius V. against Baius,⁵ or that of Innocent XI. against Michael Molinos,⁶ or of Innocent XII. against the twenty-three propositions from Fénelon's book (*Maxims of the Saints*).⁷ All these decrees and constitutions condemn propositions in a mass (in globo), and yet to Catholics they are all dogmatic. Martin V., after the publication of the Bull in which he approved of the Council of Constance, desired that any one suspected of heresy should be asked, among other things, whether he believed in the truth of the decision of the holy Council of

Constance concerning the forty-five propositions of Wicliffe and the thirty propositions of Huss, by which these sets of forty-five and thirty propositions were declared not to be Catholic, some of them notoriously heretical, some false, some insolent and seditious, and some offensive to pious ears.⁸

This condemnation of propositions in globo is rightly and wisely done,⁹ in order to prevent any of them being defended or held, although they do not all deserve the same censure.¹⁰ A considerate doctor wisely forbids his patient to partake of the dishes spread out on a richly-supplied table, because all are hurtful to him; although he does not pronounce in what way each one would hurt him, and which would hurt more and which less. Some consider that these condemnations in a mass are a novelty in Church discipline. Even were it so, this would be no reason for Catholics not to respect them. But in fact they are no novelty. When the writings of Arius (especially his *Thalia*) were condemned by the Council of Nice, everything therein contained was not considered in the same light. When the works of Origen were condemned by Theophilus, Epiphanius, and Pope Anastasius, everything that Origen had written was not equally disapproved. At the condemnation of the Three Chapters, in the fifth Ecumenical Council, the whole contents of the letter of Ibas to Maris the Persian, the writings of Theodore of Mopsuestia, and those of Theodoret against Cyril were not considered deserving, in all their parts, of the same censure. In the Sixth Council the letters of Honorius to Sergius and of Pyrrhus of Constantinople to Pope John IV. were condemned. Who can believe that *everything* found in these could be *proscribed* in equal measure? If that had been the case, articles of faith, theological and perfectly correct propositions, must have been likewise condemned.

The distinction between dogmatic judgments which enjoin the acceptance of certain propositions and give a precise rule of faith and those which are only dogmatic judgments in a *wider sense*, inasmuch as they reject certain propositions in general, solves the apparent contradiction among theologians, some considering the Syllabus among the Papal dogmatic deci-

sions in the sense of the Vatican Council, others disputing it. When the Church censures a doctrine without stating the kind of censure, we are bound to consider it worthy of censure, but not necessarily of the highest degree of censure.¹¹

¹ Kilber, Theol. Wireeb. t. iv. tract. 3, disp. 4, c. ii. a. 7, n. 244, p. 349: 'Bullae Unigenitus non deest character definitionis dogmaticae ex eo, quod contra Quesnelli propositiones latae fuerint censurae, ut aiunt, *in globo*. Ratio est, quia hic defectus nec est juris nec facti. *Non est defectus juris*: quia per ejusmodi censuram in globo imprimis propositiones omnes constat rejiciendas, deinde intelligitur, nullam esse censuram, quae alicui saltem propositioni non conveniat. Unde postremo, quamvis vi Bullae et condemnationis distingui nequeat, quatenus nota cuilibet ex damnatis propp. debeat, tamen id Theologorum studio et industria facile cognosci potest, et nullatenus ad rationem dogmatici iudicii necesse est, ut applicationem qualificationum ulterius determinet. . . . atque ex eo (quoque constat), quod non summa claritas et individualis quasi determinatio in condemnationibus requiratur. *Nec est defectus facti*, quia consuetudinis ecclesiasticae est similis condemnatio, ut patet ex decretis.' Conc. Constant. adv. Wicleffum et Hussum, ex Bulla Leonis X. adv. Lutherum, ex Constit. Pii V., Gregorii XIII. et Urbani VIII. adv. Bajum et Jansenium.

² Kilber, l.c. n. 245, pp. 350, 351: 'Equidem ex his conficitur, Bullam Unigenitus non esse *fidei regulam in sensu stricto*; est tamen *judicium dogmaticum* quod servit *ad dirigendos fideles in ordine fidei*, prout Cardinales archiepiscopi et episcopi Parisiis a. 1728 congregati pronunciarunt de judiciis Ecclesiae qualificationes tantum *respectivas* continentibus.' The Bull and also the Popes describe as dogmaticum S. Sedis et universalis Ecclesiae decretum S. iudicium: for example, Clement XIII. in the Brief of Jan. 23, 1765, to the Bishop of Lüttich; also the Sorbonne, in the Decree of Dec. 15, 1729 (Du Plessis, t. iii. p. i. p. 184).

³ Denzinger, Enchirid. ed. iv. pp. 186-193, n. 477-550.

⁴ Ib. p. 220 seq. n. 220.

⁵ Ib. p. 302 seq. n. 881 seq.

⁶ Ib. p. 333 seq. n. 1088 seq.

⁷ Ib. p. 348 seq. n. 1193 seq.

⁸ Art. 11 ex Const. Inter cunctas, l.c. p. 194, n. 555.

⁹ Cf. Bossuet, *Sécond Ecrit sur le Livre de Mgr. Fénelon*, n. 2.

¹⁰ Pallavic. Hist. Conc. Trid. l. i. c. xxi., and Tournely, *Praelect. Theol. de Censuris*, art. 1, t. iii., where many testimonies support this opinion. Eck observed at the disputation at Leipzig, 1519, with regard to the propositions of Huss condemned at Constance: 'Quoniam aliquam certe censuram merentur singulae et ex iis reliquis censuris (praeter notam haeresis) per disjunctionem a concilio inustis, nimirum vel esse erroneas vel scandalosas vel temerarias et alia hujusmodi' (Pallav. l.c. c. xvi. n. 9). Vide particularly Car. Du Plessis d'Argentré, *Coll. de Nov. Erroribus*, Paris, 1724, t. i. p. ii. p. 53 seq.

¹¹ The letter of Cardinal Antonelli which accompanied the Syllabus

only speaks of errores ac perniciosas doctrinas, quae ab ipso (Summo Pontifice) reprobatae ac proscriptae sunt.

§ 3.

It follows that we must not regard the contradictory of each separate proposition condemned by the Syllabus as a dogma of the Church. A dangerous or offensive proposition may be as dangerous or offensive, whether the predicate be denied or affirmed. A clear though coarse example will make this plain. When Fr. Abraham a Santa Clara said in a sermon, 'Ladies who bare their necks *are not worthy* to be spat upon,' he was called upon to retract, because it would apply to some of the persons at court. He is said to have replied by the contradictory proposition: 'They *are worthy* to be spat upon.' Whether the story be true or false, it is a good illustration of our meaning.

The proposition of Quesnell was dangerous and offensive when, treating excommunication as unjust and disobeying the teaching of the Church, he imagined it his duty to propagate his heresy (prop. 91-93), and accused the Church of ignorance and tyranny in matters of faith (prop. 94-95). But it is impossible to derive from his condemnation the doctrine, that fear of unjust excommunication must sometimes (or always) deter us from the fulfilment of our duty. The twenty-fourth proposition of the Syllabus contains two negative errors: 1. The Church has no right of coercion; 2. she has neither direct nor indirect temporal power. In rejecting this second proposition the doctrine cannot be deduced that the Church has a direct and also an indirect temporal power, but only it is false to say that the Church has no temporal power, whether direct or indirect. Again, Berchtold is altogether wrong in saying that according to Pius IX. it is heresy to believe that the Popes have *ever* exceeded the limits of their power. That by no means follows from the twenty-third proposition of the Syllabus.¹ This proposition can be subdivided into three or, if the Pope and the Council are to be divided, into six assertions: '1. The (*a*) Roman Popes and the (*b*) Ecumenical Coun-

cils have exceeded the limits of their power; 2. usurped the rights of princes; and 3. erred in the definitions of doctrines of faith and morals.'

The first and second propositions do not refer to a truth revealed by God, but only to historical matters of fact, principally of the Middle Ages;² they cannot therefore be described as heretical propositions, but as insulting to the Church and the Holy See, as presumptuous and false; in so far as they imply that unjust interferences and usurpations were habitual, and not merely occasional and exceptional, they are certainly quite untrue. The condemnations of the assertions 2*a* and 3*a* in no way necessitate the supposition that in the exercise of their power Popes have remained free from all faults and mistakes, especially in administrative and private matters. The Brief 'Multiplices inter' of June 10, 1851, from which prop. 23 is taken, mentions the judgment of the Congregation of the Holy Office on the book of Vigil, but does not qualify each separate proposition contained in it.³ Ecclesiastical jurisdiction with regard to marriage, the right of confirming the election or nomination of bishops, the claim to the free intercourse of the Pope with the bishops and the faithful, were given by Vigil as examples of how Popes and General Councils exceeded the just limits of their authority, and he had spoken in so mischievous and frivolous a manner that this alone would have justified the censure of these propositions. As regards the third assertion, inasmuch as it denies the infallibility of General Councils it is plainly heretical; and inasmuch as it unceremoniously denies Papal Infallibility, it could, before July 18, 1870, have been declared approximate to heresy, and at all events presumptuous and insulting to the Holy See.⁴ Therefore the same condemnation would not at all have suited each point of the twenty-third proposition, although each deserved one or other of the ecclesiastical censures.

There can be no question of calling the whole Syllabus dogma, in the sense that all these propositions are *heresies*. The learned opponents of the Vatican Council must know this very well, even though their theological acquirements be some-

what slender. Thus, for example, prop. 12 of the Syllabus, 'The decrees of the Apostolic See and of the Roman Congregations hinder the progress of science,' can be censured as false, presumptuous, scandalous, insulting to the Holy See and to the whole Church; but not as heretical, since it does not immediately or directly militate against revelation nor the truths defined by the Church, and the Pope has never defined it as heretical.

So also prop. 38, 'Many Roman Pontiffs have by their too arbitrary conduct contributed to the division of the Church into Eastern and Western,' is not heretical, but a false assertion,⁵ insulting to the Apostolic See. It is the same thing with Professor Nuytz's condemned assertion,⁶ that Boniface VIII. had first pronounced that the vow of celibacy taken at ordination made marriage null. That is historically false; for the question had been settled long before by St. Thomas⁷ and St. Bonaventure,⁸ and before these by the several Councils of the eleventh and twelfth centuries,⁹ and earlier still by the legislation of the East.¹⁰ It is likewise incorrect that the doctrine by which the Pope is compared to a sovereign prince was first authorised in the Middle Ages.¹¹

¹ Prop. 23: 'The Roman Pontiffs and Ecumenical Councils have exceeded the limits of their power, have usurped the rights of princes, and have even committed errors in defining matters of faith and morals.'

² Fessler, *Unfehlbarkeit*, p. 35.

³ The book is described as '*continens doctrinas et propositiones respectivè scandalosas, falsas, temerarias, schismaticas, Romanis Pontificibus et Conciliis œcumenicis injuriosas* [that exactly applies to the assertions we are considering], *Ecclesie potestatis, libertatis et jurisdictiones everivas, erroneas, impias et hæreticas.*'

⁴ Cf. Prop. 29 *Damn.* 7 Dec. 1690, ab Alex. VIII. Denzinger, p. 345, n. 1186.

⁵ Cf. Bennettis, *de Privileg. B. Petri*. p. ii. t. iii. p. 720 seq.

⁶ Prop. 72 of Syllabus: 'Boniface VIII. is the first who declared that the vow of celibacy pronounced at ordination annuls marriage.'

⁷ *Sum.* 2, 2, q. 88, a. 7, 11.

⁸ *In Libr. sent.* iv. d. 38, q. 2.

⁹ Hefele, *Conc.* v. pp. 175, 260, 262, 319, 340, 391.

¹⁰ Zsishman, *Oriental. Eherecht*, p. 475 seq.

¹¹ Prop. 34 of the Syllabus: 'The doctrine of those who compare the Sovereign Pontiff to a free sovereignty acting in the Universal Church is a doctrine which prevailed in the Middle Ages only.'

PART II. THE PROPOSITIONS OF THE SYLLABUS.

§ 1. Prop. 1-18, 77-79. § 2. Independence of the Church as a perfect society. § 3. State interference. § 4. Indirect negative power in religious matters. § 5. The Placet. § 6. Appeal from a spiritual to a temporal judge. § 7. Power of the Church over temporal matters. § 8. Immunities. § 9. Instruction and education. § 10. Princes. Civil and ecclesiastical law. Ordination vows. § 11. Marriage. § 12. The family. Limits of State authority. § 13. Divergence of civil laws from ecclesiastical. § 14, 15. Non-intervention. § 16. Revolution. § 17. Sovereignty of the people. § 18. Practical materialism. § 19, 20. Liberalism. § 21. Errors of modern society. § 22. Folly of the conclusions wrongly drawn from the Syllabus.

§ 1.

We are primarily concerned with those propositions of the Syllabus which treat of the authority of Church and State and their relations to each other. No one will maintain that the propositions 1-7 against pantheism, naturalism, and absolute rationalism are dangerous to the State, unless he identifies the modern State with these systems, denies any divine influence on the world, and considers Christianity itself a danger to the vitality of the State. Again, either propositions 8-14, concerning moderate rationalism, will not be considered dangerous; or Frohschammer's science or philosophy must be considered indissoluble from modern States, and these must feel themselves appointed to enter the lists as its champion.

The propositions about religious indifference and latitudinarianism (15-18) will be spoken of in Essay XVII., as well as the kindred propositions about modern Liberalism (77-79); and propositions 21-23 will also be considered there and elsewhere. The fourth section refers to ecclesiastical condemnation of socialism, communism, secret societies, Bible societies, and of the clerico-liberal unions begun in Italy. The Popes have at all times pointed out the dangers which arise from secret societies; and many rulers refusing to give heed have too late experienced their disastrous effects. When it was asserted that the Papal constitutions against the Carbonari and Freemasons were powerless where these societies were tolerated by the civil go-

vernment,¹ the following facts were entirely overlooked, viz. that the excommunication attached to these constitutions is purely an internal action of the Church, and operates in the ecclesiastical sphere even where unsupported by civil disabilities; that the Church steps in as the real guardian of morals, when such brotherhoods, shrouding their superiors, their aims and objects, in deepest mystery, impose unbounded obligations by fearful oaths. The Church is obliged to oppose the Protestant Bible societies, on account of the propagation of defective and falsified translations and tracts contrary to the faith. Unions of the liberal clergy, as they were formed in Italy, fostered disobedience against the Pope and the bishops, propagated principles opposed to those taught by the Church, and proved themselves thoroughly schismatical, so that even the Italian Government, which they desired to serve, withdrew its support.

¹ Encyclica Quanta cura, § At vero alii of the Prop. 'constitutiones apostolicas, quibus damnantur clandestinae societates, sive in eis exigatur sive non exigatur juramentum de secreto servando, earumque asseclae et fautores anathemate muletantur, nullam habere vim in illis orbis regionibus, ubi ejusmodi aggregationes tolerantur a civili gubernio.'

§ 2.

Offence was likewise taken at the idea that the Church claims recognition as a divinely authorised, true, perfect, and independent society;¹ that she will not allow that temporal authority can determine what her rights are, and within what limits she may exercise them (prop. 19).²

Supposing this proposition to be correct, the universality of the Church would be abolished, since different States could give her different rights and set arbitrary limits to her power. Either the Church has received a special and perpetual authority from Christ, in which case she cannot admit that the State has power at will to extend and retrench her authority, or she has not received such divine authority, and then all claim to it is untenable, the whole Church must be rejected, and no one can call himself a Catholic. And is this claim anything new on

the part of the Church? Do not all the works on canon law treat of the essential rights of the Church? Have not the Apostles and bishops exercised such rights before they met with recognition from the State?³ Have not the Fathers of the Church already rejected with vehemence the interference of the civil power in the domain of ecclesiastical rights?⁴ Has the Church ever admitted prop. 20: 'Ecclesiastical power must not be exercised without the permission and consent of the civil government'? Did the Apostles⁵ recognise this proposition? If they had, would not the conversion of the Roman Empire have been impossible? Would not the Church have become a mere servant of every government? That there may be particular circumstances in which it is advisable or necessary to have the consent of the civil government for *this* or *that act* of ecclesiastical authority is quite a different thing from the general principle that this consent and permission is absolutely necessary in all cases.

The bishops of the Church have not received any of their privileges from the civil authority,⁶ nor can this authority depose or appoint bishops.⁷ The Church with her divinely appointed hierarchy does not receive her right of existence from the State; she was established by God by the side of the State and in spite of the State, at a time when the State was hostile to her. As the Church has the right of existence from herself and not from the State, she must in herself have the right of possessing and acquiring property.⁸ The Church can as little part with her divine right as she can change the institution of the primacy ordained by Christ, and transfer it from the successors of St. Peter to any other bishop,⁹ or as that there can be Catholic national Churches independent of the Roman Pontiffs.

¹ Vid. supra, pp. 24, 25.

² Syll. Prop. 19: 'The Church is not a true and perfect and independent society; she does not enjoy peculiar and perpetual rights conferred upon her by her Divine Founder, but it appertains to the civil power to define what are the rights and limits within which the Church may exercise authority.'

³ Phillips, Kirchenrecht, ii. § 111, pp. 550 seq. 554.

⁴ Hosius Cordub. Ep. ad Const. ap. Athan. Hist. Arian. § 41 (Opp. i.

p. 745, Migne). Athanas. l.c. § 52 (ib. p. 756). Basil. ap. Theod. H. E. iv. 17, 19. Ambros. Ep. 51, n. 5 seq. de Obitu Theod. n. 34. Soz. vii. 25. Many proofs of this may be found in Mamachi, *Antiqu. t. iv. p. 68 seq.*

⁵ S. Hilar. adv. Auxent.: 'Quibus nam suffragiis ad praedicandum Evangelium Apostoli missi sunt? Quibus adjuti potestatibus Christum praedicabant? . . . Anne aliquam sibi assumebant e palatio auctoritatem? Edictisque regis Paulus Christo Ecclesiam congregavit? Nerone se, credo, aut Vespasiano aut Decio patrocinantibus tuebatur?'

⁶ Syll. Prop. 25: 'In addition to the authority inherent in the episcopate, further temporal power is granted to it by the civil authority either expressly or tacitly, which power is on that account also revocable by the civil authority whenever it pleases.'

⁷ Syll. Prop. 50: 'The lay authority possesses as inherent in itself the right of presenting bishops, and may require of them that they take possession of their dioceses before having received canonical institution and the apostolical letters of the Holy See.' Prop. 51: 'And, further, the lay government has the right of deposing bishops from their pastoral functions, and is not bound to obey the Roman Pontiff in those things which relate to bishops' sees and the institution of bishops.'

⁸ Syll. Prop. 26: 'The Church has not the natural and legitimate right of acquisition and possession.'

⁹ Syll. Prop. 35: 'There would be no obstacle to the sentence of a General Council or the act of all the universal peoples transferring the Pontifical Sovereignty from the Bishop and city of Rome to some other bishopric and some other city.'

¹⁰ Syll. Prop. 37: 'National Churches can be established after being withdrawn and separated from the authority of the Roman Pontiff.' Prop. 36: 'The definition of a National Council does not admit of any subsequent discussion, and the civil power can settle an affair as decided by such National Council.'

§ 3.

Other propositions appear even more important, in particular prop. 44: 'The civil authority can interfere in matters relating to religion, morality, and spiritual government. Therefore it has control over the instructions for the guidance of consciences, published conformably with their mission by the pastors of the Church; indeed it can decree in the matter of administering the holy Sacraments and the dispositions necessary for their reception.' This is purely a religious question, in which surely civil authority has no right to interfere. In such cases reference was made to the example of King Ozias,¹ who was punished for exercising priestly functions (2 Par. xxvi. 1-21).²

The express mention of the direction 'for the guidance of consciences,' as well as the mention of the administration of the Sacraments, shows that it is primarily a question of moral theology,³ with which certainly the State cannot interfere. If the question is asked: May not the State protect morality by penal laws, and not simply execute ecclesiastical punishments, the Syllabus does not forbid us to answer in the affirmative, especially if Christian and not heathen morality be presupposed; morality makes common ground between Church and State. These two must not be hostile to each other; they should work in harmony; and this is why the Church rejects⁴ the principle of the separation of Church and State. The teaching of the Church can never be detrimental to the well-being of society or of the State.⁵

¹ Innoc. III. l. viii. Ep. 5, pp. 562, 563, ad Archiep. Cant.: 'Si diligenter attenderent, quod Ozias rex Judae fuit in facie lepra percussus pro eo, quod indutus Ephod incensum adolere praesumpsit, non praesumerent saeculares super rebus ecclesiasticis, quae ad ipsos non spectant, jurisdictionem aliquam exercere.' Thus even earlier, Petrus Bles. Ep. 10 (Migne, ccvii. p. 30), the Glossa Administrationis to c. v. Imperium, d. 10, and others. Hosius, ap. Athan. ad Mon. § 41, alludes to this, and Chrysostomus, de Verb. Isai. c. vi. n. 1 (Migne, lvi. p. 68), and Facundus of Hermiane (pro Defens. iii. capit. l. xii. c. iii.) treat of it.

² Protestant Version, 2 Chron. xxvi. 1-21.

³ Cf. Flor. Riess, Staat und Kirche.

⁴ Syll. Prop. 55: 'The Church ought to be separated from the State, and the State from the Church.'

⁵ Syll. Prop. 40: 'The teaching of the Catholic Church is opposed to the well-being and interests of society.'

§ 4.

The forty-first proposition, that the civil government, even when exercised by a non-Catholic sovereign, possesses an indirect negative power over religious matters, is, in the sense used by Professor Nuytz of Turin, who propounded this proposition, certainly of a kind to deserve ecclesiastical censure. For, first, this 'negative' power is something very positive, viz. giving to civil rulers the right at pleasure to render inoperative or to hinder all that belongs to spiritual government; it includes all the measures which were executed in

the kingdom of Sardinia against the Church from 1848 to 1851, from which she had to endure that the State should arbitrarily determine what was and what was not under her dominion.¹ Secondly, it is an assertion which far exceeds Gallicanism, which at least presupposes the 'most Christian' king, and does not adjudge such a power to a non-Catholic prince. Thirdly, from this assertion is derived not only the right of 'exequatur' or 'placet,' but also the right of 'appel comme d'abus,' which the Church never has acknowledged and never can acknowledge. The Church can never admit that ecclesiastical ordinances receive their validity from the civil power; that apostolical letters, even apostolical dispensations, require the sanction of the State to make them valid;² that the civil power has the right to prevent the free intercourse of the faithful and bishops with the Head of the Church.

¹ Riess, l.c. § 125 seq. p. 120 seq. Opinion of the Würzburg Theol. Faculty of July 7, 1869, ad ii. § 38, p. 32.

² Syll. Prop. 28, 29: 'Bishops have not the right of promulgating even their apostolical letters without the sanction of the government' (28). 'Dispensations granted by the Roman Pontiff must be considered null, unless they have been requested by the civil government' (29).

§ 5.

Both these 'rights' are of quite recent origin. The Placet (placetum regium), by which the promulgation and execution of ecclesiastical publications were made dependent on the approval of the State, appeared in many countries, and was first raised to an abiding measure,¹ at the time of the great schism of 1378. Urban VI. at that time allowed several prelates to submit Bulls and Briefs to civil officials for acknowledgment before allowing them to be published in their dioceses, on account of the numerous Papal documents propagated by the antipope. In many places efforts were made to raise this temporary concession into a custom, and orders were given against apostolic documents being carried into effect which had not been acknowledged by the forms 'placet,' 'vidimus,' &c., wherefore Martin V. published a special Bull² against it. But

soon afterwards the measures became more frequent and by degrees more extended.³ Several Popes⁴ protested against it, and lastly the Vatican Council⁵ also.

And with perfect right. Had the civil power been allowed the privilege of making the publication of the laws of the Church depend on its good pleasure and consent, the Church would be governed not by a divinely appointed hierarchy, but by a temporal sovereignty. For if the necessary publication of every law were limited by another power and dependent on its good-will, this power in fact would become the legislator, and in changing its duty of protection into a right of ratification could refuse its consent to any ecclesiastical resolution which was displeasing to it.⁶ The Placet rigorously carried out would have destroyed the unity of the Church, and have led to religious anarchy and to the absolutism of the State.⁷ It proves a great aversion to and distrust of the Church, as if she were most dangerous to the State; it cannot proceed from the right of protection, to which it is all the more opposed, that the State cannot and ought not to protect what it believes to be hurtful and pernicious.⁸ The Placet is an anomaly in modern times, when States admit no force in any ecclesiastical censure, proclaim liberty of conscience, of association, and of the press, and promise equal rights to all men.⁹ Furthermore, like Proteus, the Placet assumes different characters, has its basis now on this and now on that pretension of State power, and receives sometimes greater and sometimes less extension.¹⁰ Theory as well as practice, literature as well as legislation, have made various exceptions in its application: here and there the decisions of the Roman Penitentiary in secret cases of conscience,¹¹ publications containing purely spiritual matters, dogmatic Bulls,¹² dispensations, episcopal Lenten pastorals, were not considered as coming under the Placet; whilst in other places every kind of ecclesiastical publication required its authorisation, even those constitutions which had already received the Placet 'each time they are used,' as was determined by the edict for the ecclesiastical province of the Upper Rhine, January 30, 1830, in which edict State interference seems to have culminated.¹³

The Placet is quite inefficacious when a dogmatic definition is concerned, for this binds the conscience independently of a formal proclamation.¹⁴ As soon as the faithful know of a definition in matters of faith and morals made by the Church, they are bound in conscience by it. The declaration and explanation of revealed truth can no more depend upon the State in our times than in the heathen Roman Empire. Powerful States and powerful rulers have had no need of the Placet ; even now many States do not know of it, and lose thereby none of their sovereignty.

¹ In England it was already pretty well in use in the 11th and 12th centuries, in Portugal in the 13th. Papius, *Zur Geschichte des Placet*, Archiv seq. Kath. Kirchenrecht, 1867, vol. xviii. p. 166 seq.

² Const. Quoad antidota, in which the above is given.

³ Papius, l.c. p. 170 seq. Phillips, iii. § 135, p. 353 seq.

⁴ Roscovány, *Monum. t. i.* pp. 117, 118, 203, 205, 227, 300.

⁵ Const. Pastor aeternus, c. iii. § Porro ex suprema.

⁶ Droste of Bischofing, *Ueber den Frieden unter der Kirche und den Staaten*, p. 106 seq. Phillips, *Kirchenrecht*, ii. § 112, p. 565. Cf. V. Haller, *Restauration der St. Wissenschaft*, vol. iv. § 408. Beidtel, *Das Canonische Recht*, pp. 288-290. Tarquini, *Del regio Placet Dissert.* Roma, 1852.

⁷ Rotteck, *Staatslexicon*, vol. ix. p. 299.

⁸ Phillips, l.c. p. 566. Beidtel, p. 294.

⁹ Riess, l.c. p. 135, § 143. V. Papius, l.c. p. 233 seq. 237. Beidtel, p. 292.

¹⁰ Beidtel, p. 289. Cf. also Gewart's *Opusc. contra Espenii Doctrinam de Placeto regio*, Lovan. 1830.

¹¹ Papius, pp. 217, 218. The old parliament had excluded these from the Placet, the organic articles included them in it. The decree of the Austrian Court of July 23, 1782, had exempted the publications of the Penitentiary from the Placet, *ib.* p. 208.

¹² Papius, p. 203 seq.

¹³ Papius, p. 222.

¹⁴ Van Espen, *Tract. de Promulg. Leg. Eccl. p. v. c. ii. § 1*: 'Itaque nequaquam dependet a publicatione vel executione decreti seu Bullae dogmaticae, ut quis dogmati assensum fidei praebere teneatur, eo quod praeveniendo omnem publicationem et executionem teneatur quis fide divina credere dogma, quod ipsi sufficienter constat ex divina revelatione esse traditum.' Cf. *De Marca, de Conc. l. ii. c. x. § 9.*

§ 6.

The right of appeal from spiritual to temporal judges, granted on account of pretended abuses, is of the same character as the

Placet, and was rejected with it in the Syllabus.¹ The 'appel d'abus' spread from France² into other countries. This alleged right makes the civil power superior to the spiritual, and substitutes for *possible* abuse of ecclesiastical power an *actual* and *continuous* abuse of civil power. Every legislator is the interpreter of his laws ;³ as in civil matters there exists the right of appeal from lower to higher civil judges, so also in the Church there is a canonical series of appeals from lower to higher spiritual judges.⁴ The ecclesiastical judge has to decide according to ecclesiastical law, which is independent from the State, and therefore not subject to the interpretation of a civil judge, who decides according to civil law, and has no legal title to guard the laws of the Church. If the spiritual judge were to overstep his boundary and encroach on civil jurisdiction, the State would naturally have the right to reject the judgment and prevent its execution.⁵ But this is beside the present question. No appeal takes place, but the State simply declares the judgment as proceeding from an incompetent tribunal to be null and void. If however the spiritual judge confines himself within the limits of his authority, the civil power has no right to interfere. No such right comes from the Church, by whom, on the contrary, interference has been forbidden most stringently ;⁶ nor from the nature of the civil authority, which is only competent in its own sphere, and cannot legislate for the Church, cannot bestow spiritual jurisdiction, nor even decide with certainty concerning its abuse. Moreover, the abuse of a power is no reason for its ceasing to exist, or for its becoming subject to another power, otherwise no power would be possible amongst men.⁷ In France this measure, which has been maintained by the 'organic articles,' has practically only led to the greatest inconvenience, violence, and absurdity.⁸

¹ Syll. Prop. 41 : 'The civil government, even when exercised by an infidel sovereign, possesses an indirect and negative power over religious affairs. It, therefore, possesses not only the right called that of *exsequatur*, but also that of the (so-called) *appellatio ab abusu*' [appel comme d'abus].

² See Essay XV. on ecclesiastical jurisdiction.

³ L. ult. Cod. i. 14, de Leg. ; c. xxxi. de Sent. Excom. v. 39.

⁴ Phillips, Kirchenrecht, p. 570 seq. Beidtel, p. 285 seq.

⁵ Cf. De Marca, de Conc. l. iv. c. xxvii. Walter, § 46c, p. 91.

⁶ Conc. Antioch. 341, c. xi. 12 (c. ii. C. xxi. q. 5). Conc. Agath. et Greg. M. (ib. c. i. 6). Martin V. Const. i. Febr. 1428, Ad reprimendas, Bull. Rom. ed. Rom. iii. ii. p. 459. Roscovány, Mon. i. pp. 109-111. Sixt. IV. Const. 1471. Leo XII. Ep. ad Gall. Reg. a. 1824. Trid. Sess. xxv. de Ref. c. iii. partially refers to this.

⁷ M. Liberatore, l.c. c. iii. art. 5, p. 270.

⁸ Cf. Cormenin, in the Encyclopédie du xix. Siècle, v. Concordat (also Liberatore, l.c. pp. 273-278, 308, 309).

§ 7.

The Church, as a visible body, cannot consent to be refused every kind of judicial capacity and dominion over temporal and material things. The twenty-fourth proposition¹ is in two parts: one denies to the Church that coercive and penal authority which she has always exercised.² Deprived of them she would have no external court of justice (*forum externum*), no censures, no punishments, and would be in a worse position than any private society, which by means of statutes can inflict fines, or otherwise punish negligent or disobedient members. The other part denies all temporal power to the Church, whether direct or indirect.

The Church has exercised a *direct* temporal power in the States of the Church and in the possession of temporal goods and privileges; she justly rejects the assertion that the ministers of the Church, and the Pope in particular, ought to be excluded from all charge and dominion over temporal affairs;³ that amongst Catholics it ought to be very questionable whether the civil power is compatible with the spiritual in the Head of the Church;⁴ and that the abolition of the temporal dominion of the Holy See would largely contribute to the liberty and happiness of the Church.⁵ The groundlessness of these opinions has often been proved,⁶ and it seems to have fallen to our days to give a proof that shall be visible to all eyes. *Indirectly* the Church must exercise her power over temporal things; for it is her duty to admonish the faithful on the one hand not to misuse their earthly possessions, nor squander them on unworthy objects, but to employ their superfluity in favour of those in need; and on the other hand, when in poverty to have recourse to patience, to limit their desire for enjoyment, to be frugal and sparing.⁷ She must oppose the service of Mammon, must teach her children to

use temporal things, so that they lose not those things which are eternal ;⁸ she must protect her temporal goods, and forbid sacrilege under pain of censure ;⁹ she must exercise her office where temporal matters trench upon her sphere. To say she has *not any* temporal power (*potestas ulla temporalis*) is to drive her from her place in the actual world, where her task lies ; to deprive her of those possessions which she defends as useful and necessary to her for its accomplishment, which she has acquired with perfect right, and maintains without intermixing the spiritual and temporal order.¹⁰ For the very reason that the Church is not an invisible institution, but a visible, true, and perfect society for men and amongst men, she is bound to engage in temporal affairs *as far as her aim requires*. Exterior and interior things both belong to her worship as to her life. If she were limited to what is purely interior she would not even be in a position to administer her Sacraments, and would evaporate into a purely spiritual society.

¹ Syll. Prop. 24 : 'The Church has not the power of availing herself of force or any direct or indirect temporal power.'

² See Essay XVII. on the Church and liberty of conscience.

³ 'The ministers of the Church and the Roman Pontiff ought to be absolutely excluded from all charge and dominion over temporal affairs.' Syll. Prop. 27, from the Allocution *Maxima quidem*, June 9, 1862.

⁴ 'The children of the Christian and Catholic Church are not agreed upon the compatibility of the temporal and spiritual power.' Syll. Prop. 75, from the Apostolic Brief *Ad Apostolicæ*, Aug. 22, 1851.

⁵ 'The abolition of the temporal power of which the Apostolic See is possessed would contribute in the greatest degree to the liberty and prosperity of the Church.' Syll. Prop. 76, from the Allocution *Quibus quantisque*, April 20, 1849, on Mazzini's Roman Republic.

⁶ Pignatelli, Consult. Can. t. iii. Cons. 6, n. 15 seq. p. 16 seq.

⁷ The Encyclical of Dec. 8, 1864, pronounces against the Prop. : 'Ecclesiam nihil debere decernere, quod obstringere possit fidelium conscientias in ordine ad usum rerum temporalium.'

⁸ Collect for 3d Sunday after Pentecost : 'Ut te rectore, te duce sic transeamus per bona temporalia, ut non amittamus æterna.'

⁹ Cf. Opinions of the Würzburg Theol. Faculty of July 7, 1869, ad ii. § 39, 40, pp. 33, 34.

¹⁰ Before the above-quoted proposition the Encyclical *Quanta cura* censures this other : 'Excommunicationem a Concilio Tridentino et Romanis Pontificibus latam in eos, qui jura possessionesque Ecclesiæ invadunt, et usurpant, niti confusione ordinis spiritualis, ordinisque civilis ac politici ad mundanum dumtaxat bonum prosequendum.'

§ 8.

The immunity of the clergy, stated in the Syllabus, also gives great offence.¹ But the assertion, 'The immunity of the Church and of ecclesiastical persons derives its origin from civil law,'² must already have been condemned, inasmuch as it contradicts the Council of Trent, according to which this immunity is established by the ordinance of God and canon law. This is expressly added to the Brief of June 10, 1851, from which the proposition was taken.³ Moreover, the Church and theology have only opposed the theory that ecclesiastical immunities were entirely derived from the civil law.⁴ With perfect reason the Church holds fast to her rights, and nothing is more natural than the rejection of the proposition: 'Ecclesiastical jurisdiction for the temporal causes of the clergy, whether civil or criminal, ought by all means to be abolished, even without the concurrence and against the protest of the Holy See;'⁵ or of this one: '*Without any violation of natural law or equity* personal immunity exonerating the clergy from military service may be abolished; its abolition is called for by civil progress, especially in a community constituted upon principles of liberal government.'⁶ But if ever anything were a violation of natural law and equity it is the forcible drawing of the clergy into military service; it is totally opposed to their office, renders the education necessary for their difficult vocation still harder, and even impossible, deprives the Church of the necessary number of ministers, and in many places leaves Christian people without pastors. The necessity for exempting ecclesiastics from military service has been recognised even by non-Catholic governments, and is required by the very nature of the case. It is neither just nor wise to make unsuitable demands upon a body which in its own way is useful to the State, merely for the sake of a mechanical and external universal equality, which from purely natural reasons can never be attained. By drawing the clergy into barracks the esteem in which the priesthood is held, the dignity of religion, the exercise of worship, the education of those desirous of entering the priesthood, the influence and care of the Church

over her ministers would all materially suffer; it is therefore a great injustice, and most disadvantageous to Christian people, who have never opposed this 'privilege' of immunity, and who, moreover, have even considered it necessary and a matter of course.

Holy Scripture says no one can serve two masters (Matt. vi. 24); priests remain unmarried to serve God better and undividedly (1 Cor. vii. 32, 33); soldiers of Christ (2 Tim. ii. 3) cannot also be soldiers of the world, nor involve themselves in secular concerns (ib. iv.); especially must they kill no one (1 Tim. iii. 3: Tit. i. 7). The Church has, on grounds taken from Scripture, forbidden her clergy to bear arms and engage in war;¹ and even the Liberals of our day acknowledge she is right, by deriding the warlike bishops of the Middle Ages, many of whom only took the field to protect their territory. Military service presents an ecclesiastical impediment to ordination, from the want it involves of the necessary meekness of heart enjoined by divine command.⁸ How is it possible to abolish the exemption of the clergy from military service 'without any violation of natural law and equity'? The abolition of a free spiritual jurisdiction would be less absurd, as not in itself and in the same way contradicting the natural law; wherefore in this concessions have from time to time been made, even by Popes. It only follows from the thirty-first proposition that in a country where till then the Church had entire jurisdiction over ecclesiastics the civil power is not justified in abolishing such jurisdiction simply by its own act, without the consent of the Head of the Church, or without paying regard to his protest, however reasonable. This not merely shows disdain of the Church, but violates her existing rights. Still less can the civil power simply by its own authority abolish Concordats, which guarantee such rights.⁹

¹ Among others to Mr. Gladstone, *Expostulation*, p. 17. [Tr.]

² Syll. Prop. 30.

³ Cf. the Ratisbon edition of the Encyclical and Syllabus, p. 59.

⁴ Vide *suprà*, pp. 38-40.

⁵ Syll. Prop. 31, Alloc. of Sept. 27, 1852, against New Granada, and of Dec. 15, 1856, against Mexico. In 1521 the Sorbonne described the

following proposition of Luther's, 'Si imperator vel principes revocar libertatem datam personis et rebus ecclesiasticorum, non potest eis resisti sine peccato et impietate,' to be 'falsa, impia, schismatica, libertatis ecclesiasticæ enervativa ac impietatis tyrannicæ excitativa et nutritiva' (Du Plessis, t. i. p. ii. p. 373, tit. 17). We have lately heard this proposition of Luther publicly repeated in a tribune.

⁶ Syll. Prop. 32, from the letter of Sept. 29, 1864, to the Archbishop of Monreale, concerning the new Italian law, which was even described as hard and unjust by General La Marmora. In Piedmont, in 1854, the number of clergy who were not bound by the conscription was reduced to one for every 20,000 souls. The new law abolished every exemption of the priesthood from military service.

⁷ Can. 5, 6, dist. 50; c. un. d. 53; c. xv. d. 63; c. l. iv. d. 51; c. xxiii. q. 8; c. ii. de Vita et Honest. Cler. iii. 1, Nicol. i. Ep. 27 (Mansi, xv. 291). Thomassin, p. iii. l. i. c. xviii. n. 4 seq.; c. lxx. n. 8, 10 seq.; c. lxxv. n. 1 seq.

⁸ Phillips, K. R. i. § 50, p. 488 seq.

⁹ Syll. Prop. 43: 'The lay power has the authority to rescind, declare and render null solemn conventions or *concordats* relating to the use of rights appertaining to ecclesiastical immunity, without the consent of the Apostolic See, and even in spite of its protest.'

§ 9.

A further set of propositions refers to education in general, and in particular to that of the clergy. They are the following: '33. It does not appertain exclusively to ecclesiastical jurisdiction, by any proper and inherent right, to direct the instruction of theological subjects.¹ 45. The entire direction of public schools in which the youth of Christian States are educated, except (to a certain extent) in the case of episcopal seminaries, may and must appertain to the civil power, and belong to it so far that no other authority whatsoever shall be recognised as having any right to interfere in the discipline of the schools, the arrangements of the studies, the taking of degrees, or the choice and approval of the teachers.² 46. Further even, in clerical seminaries the mode of study to be adopted must be submitted to the civil authority.³ 47. The best theory of civil society requires that popular schools open to the children of all classes, and generally all public institutes intended for instruction in letters and philosophy, and for conducting the education of the young, should be freed from *all* ecclesiastical authority, government, and interference, and should be *completely* subjected to the civil and political power, in con-

formity with the will of rulers and the prevalent opinions of the age. 48. This system of instructing youth, which consists in separating it from the Church, and in teaching it exclusively the knowledge of natural things and the natural ends of life, may be perfectly approved by Catholics.⁴ Two proposals are here censured: the first abandons schools exclusively to the direction of the State, and withdraws them from the influence of the Church, without however assailing their Christian character; the second destroys their Christian character by separating them from religion and the Church, and provides a merely secular worldly education. It is the duty of the Church to oppose both these proposals, and she can do so without violating any civil right; whilst the State in enforcing them greatly prejudices the rights both of the Church and of individual Catholics.

¹ The letter to the Archbishop of Munich declares positively: 'Ad quam (potestatem ecclesiasticam) proprio ac nativo jure unice pertinet advigilare ac dirigere theologiarum praesertim rerum doctrinam.'

² Cf. Reiss, *Der Moderne Staat und die Christliche Schule*, p. 6 seq.

³ This occurred in the S. American republics, to which the Allocution *Nunquam fore*, Dec. 15, 1856, referred.

⁴ Both the latter propositions are taken from the letter to Archbishop Hermann of Freiburg, July 14, 1864. Reiss, l.c. p. 12 seq.

§ 10.

Proposition 54,¹ which has many adherents in our time, is much more plausible. The Church, it is said, by condemning this proposition becomes the judge of all measures of government. The censured proposition came from Francis of Paul G. Vigil, concerning whom the Papal letter of June 10, 1851, thus speaks: 'Kings and other princes *who by baptism have become members of the Church* he withdraws from the jurisdiction of the Church, *exactly as though they were pagan kings*, and as if *in spiritual and ecclesiastical matters* Christian princes were not the sons and subjects of the Church; nay, *confounding heavenly with earthly things, sacred with profane, high with low* in a monstrous manner,² he is not afraid of teaching that in litigated questions of jurisdiction the secular power stands higher than the Church, which is the pillar and the ground of the truth'

(1 Tim. iii. 15). Is it possible seriously to assert that Catholic princes are exempt from the jurisdiction of the Church in spiritual and ecclesiastical matters? In that case they must also have ceased to be members and sons of the Church, or to belong to the kingdom of Christ, which is quite inadmissible.³ Can it be further maintained that in questions of ecclesiastical jurisdiction princes are superior to the Church? Ecclesiastical jurisdiction only extends over spiritual things; were the Church to acknowledge the sovereign of the State as her superior, the independence of the spiritual power would be lost, the reigning prince would be the supreme bishop, as with Protestants, and Cæsaropapism would be established.⁴ But if the decision of questions of jurisdiction were referred to the borderland between Church and State, Vigil's assertion of the superiority of princes over the Church would coincide with the assertion of J. N. Nuytz,⁵ condemned in proposition 42: 'In the case of conflicting laws between the two powers, the civil law ought to prevail.' This proposition, repeated times without number, is certainly false: were it true, the first Christians should unconditionally have obeyed the laws of the heathen emperor against Christendom and renounced the faith; the martyrs would have been rebels, their heroism criminal madness; the fixed principles of ecclesiastical legislation would have to yield to fluctuating State laws, different in every land, and the Church would no longer be able to maintain a single point.⁶ If religious order takes precedence of political order, the laws of the Church cannot be secondary to the laws of the State.⁷ The Church is the interpreter of the divine law, and as such must claim superiority.⁸ But, it might be objected, every law of the Church is not a law of God, neither are all the laws of the Church founded on the laws of God; there are laws of discipline in the Church, which admit of change. Certainly; but it is nevertheless wrong to assert the superiority of the civil law *in every case*, for this also is changeable, and in a still higher degree. A civil law relating to purely spiritual matters oversteps the power of the civil legislator, neither is the discipline of the clergy within his province.⁹ Discipline, in many parts, is so closely connected with dogma as to be inseparable from it.¹⁰

In a conflict, that power generally has the right whose end in respect to the matter in dispute is the most important; and regard has always to be paid in the particular case to the magnitude of the obligation, to the difference between affirmative and negative laws, to the greater or less the necessity, and in general to the doctrines of morality concerning conflicting duties.¹¹ The Church has often in a conciliatory manner declared herself ready to modify,¹² and has modified, laws of minor importance at the proposal or demand of the State, which has here an easy remedy for its grievances. In the course of historical development many matters once of a purely spiritual character are so no longer;¹³ but for such cases the civil government cannot legislate alone; it must come to an understanding with the Church about the desired modifications of ecclesiastical discipline, and must still recognise the Church as independent in her own province.¹⁴ An example is afforded by ecclesiastical legislation concerning the requisite age for taking the solemn vows of religious profession. The decrees of the Council of Trent¹⁵ on this subject were disapproved by many civil governments, who even made other regulations contrary to the personal freedom of Catholic subjects and to the rights of the Church. Pius IX. considered their objections as far as they were reasonable, and prescribed a more advanced age for religious profession,¹⁶ but with perfect justice he censured the assertion: 'The (civil) government *has of itself the right* to alter the age prescribed by the Church for religious profession, both of men and women, and may enjoin upon all religious establishments to admit no person to take solemn vows without its permission' (prop. 52).¹⁷ State interference in the religious life has, under the influence of an antichristian spirit, very often led to the complete destruction of religious orders, which are so beneficial to the Church. So it has been in South America and Italy, and the assertions made: 'The laws for the protection of religious establishments and for securing their rights and duties ought to be abolished, nay more, the civil government may lend its assistance to all who desire to quit the religious life which they have undertaken, and to break their vows. The government may also

suppress religious orders, collegiate churches, and simple benefices, even those belonging to private patronage, and submit their goods and revenues to the administration and disposal of the civil power' (prop. 53).¹⁸ When the Pope opposes such assertions, which are put into practice as soon as made, surely he is only protecting purely ecclesiastical rights. Religious orders, who have done so much good, especially in South America and in Italy, helping and consoling the poor, and showing them a bright example of voluntary poverty, have, by observing the evangelical counsels, and practising the virtues of obedience, chastity, and poverty, given unpardonable offence to the enemies of Christianity, who in hating them hate Christ Himself. Unworthy members of religious orders are therefore incited by these enemies of Christianity to revolt. Those in power are urged to suppress monastic institutions, seeking thereby to make it impossible for any to follow their vocation to a more perfect life. This is a grievous encroachment upon individual religious liberty.¹⁹ With regard to the suppression of simple benefices, collegiate churches, and religious houses, Popes have often made great concessions to the civil government, and have taken into consideration any objections that were advanced; but as the establishment of such institutions strictly belongs to the Church, they can only be abolished by her, and for canonical reasons.

¹ 'Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in litigated questions of jurisdiction.'

² Vigil did not distinguish between king as a man and as a sovereign, but absolutely asserted the exemption of kings from the Church's authority on account of their royal dignity.

³ Ambros. de Basil. tradend: 'Imperator bonus intra Ecclesiam, non supra Ecclesiam.' Joh. VIII. in c. xi. d. 96: 'Si imperator Catholicus est . . . filius est non praesul Ecclesiae.'

⁴ Concerning this, John VIII. says, l.c.: 'Ad sacerdotes Deus voluit, quae Ecclesiae disponendae sunt, pertinere, non ad saeculi potestates.' Cf. Joh. Dam. Or. ii. de Imag. n. 17. Theod. Stud. I. ii. Ep. 129.

⁵ Brief of Aug. 22, 1851, Ad Apostolicae.

⁶ Chilianeum, vol. vi. p. 398.

⁷ Nicol. I. c. i. d. 10: 'Lex imperatorum non est supra legem Dei, sed subtus. Imperiali iudicio non possunt ecclesiastica jura dissolvi.' Cf. Ambros. in Can. 21, c. xxiii. q. 5.

⁸ Phillips, K. R. ii. § 109, p. 530, § 110, p. 538.

⁹ The assertion of the king's advocate, François Grimaudet, n. 6, 'Le second point de la religion est en la police et discipline sacerdotale, sur le quel les rois et princes chrétiens ont puissance d'icelle dresser, mettre en ordre et réformer icelle corrompue,' was condemned in 1560 by the Theological Faculty of Paris as a 'propositio falsa, schismatica, potestatis ecclesiasticae enervativa et haeretica, et probationes ad illam sunt impertinentes' (D'Argentré, Collect. Judiciorum, t. ii. p. i. Paris, 1728, pp. 291, 292).

¹⁰ Brief of Pius VI. to Card. Rochefoucault, March 10, 1791, § Sed priusquam. ed. sep. p. 24.

¹¹ Kreittmayer, in Cod. Civil. Maximil. p. i. c. ii. n. 13.

¹² E.g. Gregory VII. *suprà*.

¹³ Phillips, K. R. ii. § 110, p. 540 seq.

¹⁴ Card. Antonelli to the Sardinian consul, July 19, 1850 (Acta Pii IX. vol. ii. p. 166): 'La sola Chiesa, la quale non ha limiti di territorio, è dessa dovunque l'arbitra della sua disciplina. Essa giudica della convenienza e della maggiore o minore estensione de' suoi diritti riguardo al loro esercizio, e se accomodandosi tal volta alle esigenze degli Stati modifica in parte, ciò lo fa di propria autorità, non potendo a causa della sua indipendenza esservi costretta dal supremo potere civile. Quandi è che se lo Stato in alcuni casi di disciplina ecclesiastica connessi con l'interna sua amministrazione stimi per motivi di opportunità o di ragione politica necessarie alla sua quiete od alla sua prosperità alcune modificazione della disciplina medesima, deve esse provocarle presso il potere competente, che è la Chiesa, deve mettersi d'accordo con questa, e non ha diritto di farlo di sola propria autorità, come lo farebbe, ove si trattasse di modificare ed anche di abolire le prerogative e li privilegi delle civili università e collegi, che sono nello Stato e perciò dipendenti de esso.'

¹⁵ Trid. Sess. xxv. c. xv. de Regul. et Monial.

¹⁶ Decret. S. Congr. Episc. et Regul. March 19, 1857, for Austria; then the Brief of Feb. 7, 1862.

¹⁷ Alloc. of Dec. 15. 1856 (concerning South America).

¹⁸ Alloc. of Sept. 27, 1852, and of Jan. 22 and July 26, 1855.

¹⁹ Brief of Pius VI. to Card. de Rochefoucault, of Mar. 10, 1791: 'Regularium abolitio, a conventu nationali plaudente haeticorum commentis decreta, laedit statum publicae professionis consiliorum evangelicorum, laedit vivendi rationem in Ecclesia commendatam tamquam apostolicae doctrinae consentaneam, laedit ipsos insignes fundatores, quos super altaribus veneramur, qui nonnisi a Deo inspirati eas instituerunt societates.' With regard to Luther's proposition, 'Suadendum, ut vota prorsus omnia tollantur aut vitentur,' the Sorbonne declared in 1521: 'Haec propositio est Christi doctrinae et SS. Patrum observationi, qui vovere consulunt, contraria, ex errore procedens Lamperianorum, Wicelistarum et eorum, qui se jactabant de ordine Apostolorum' (Du Plessis, t. i. p. ii. p. 368).

§ 11.

There is nothing in the Syllabus concerning Christian marriage other than the doctrine of the Church concerning the sacrament of marriage consistently carried out. The Pope, following the Council of Trent, maintained against Nuytz that marriage had been raised by Christ to the dignity of a sacrament.¹ The same Council declared the sacrament to be inseparable from the (natural) contract;² and in consequence it follows that the sacrament of marriage does not only consist in the nuptial blessing given by the priest.³ It has been dogmatically decided that by the natural law the marriage tie is indissoluble;⁴ whence it follows that civil authority cannot sanction divorce. The right of the Church to introduce impediments that invalidate marriage has been protected by the same Council.⁵ This right was derived by F. G. Vigil from the concession of civil princes, for whom also he claimed the privilege of abolishing the impediments introduced by the Church. Both these views had been already condemned by Pius VI. in his dogmatic Bull of 1794.⁶ The Church claims for herself alone the power of imposing impediments invalidating marriage, of dispensing from them, and of deciding as to the validity of marriages, but without thereby excluding the State from legislating on marriage in its civil character.⁷ It is not in itself objectionable that the State should require for the civil recognition of a marriage something beyond what the Church asks. 'It is the duty of every Catholic to obey the laws of the State. The only exception which can be made to this duty is when the civil law ordains anything that is forbidden by the divine law, or *vice versâ* forbids what the latter ordains. Therefore civil directions concerning marriage must be obeyed. Consequently, all impediments either invalidating or impeding marriage⁸ which rest merely on the civil laws are canonically impediments impeding marriage.'⁹ The Religious Edict in Bavaria indeed declares, § 64*d*, 'marriage laws, in as far as they relate to the civil contract and its effects,' to be civil matters; and the marriage and domestic laws of April 25, 1868, art. 33, declare every marriage *to be civilly invalid* which had taken place with

out the certificate of the non-existence of civil impediments given by the appointed (civil) functionary, and to continue to *be civilly invalid* until the certificate was obtained. But it does not at all follow that on account of prop. 68 of the Syllabus the latest Bavarian marriage-laws 'are null and void in their essential parts,' as some think; for by the teaching of the Church these State demands are to be obeyed entirely; civil invalidity does not encroach upon the ecclesiastical domain, which the Church alone defends, and the aforesaid proposition of the Syllabus goes no further than the Council of Trent. The latter moreover declares clandestine marriages to be true marriages as long as the Church has not declared them invalid; likewise those marriages which have been contracted without the consent of the parents.¹⁰ And nevertheless several civil laws had declared both these classes of marriages civilly illegal, before as well as after the Council of Trent.¹¹ It is the Council of Trent, therefore, that should be complained of rather than the 'new dogmas.' The Church has only to decide of the validity of the sacrament; the State, of the civil effects; the Church does not deny the value of every civil impediment, but only of that one which would annul the sacrament and the bond which it creates. A dogma is here in question, and the assertion¹² of Nuytz, reproduced from those of Launoy, Marcus Antonius de Dominis, and the pseudo-synod of Pistoja,¹³ that the canons of the Council of Trent must be considered either not dogmatic or to presuppose power conferred upon the Church by princes, has long been shown to be untenable.¹⁴ The Church is obliged by her dogmas to maintain that the form of solemnising marriage prescribed by the said Council (in every place where this formula has been promulgated) binds, under pain of nullity; that the civil law cannot appoint another form on which the validity of the marriage shall depend.¹⁵ Likewise the Church cannot allow that amongst Christians a merely civil contract constitutes an entirely valid marriage; she maintains that a valid Christian marriage is also a sacrament, and without a sacrament has no validity.¹⁶

With regard to the condemned prop. 74, 'matrimonial

causes and betrothals belong *by their nature* to civil jurisdiction,' by which it was insinuated that they had become to belong to the Church merely by favour of the State, the Council of Trent¹⁷ declared dogmatically that matrimonial causes, amongst which betrothals must be included, should be judged by ecclesiastics; and seventy years before the appearance of the Syllabus the thesis of the Synod of Pistoja, that formal betrothals were a purely civil act, a preparation for the contract of marriage, and subject absolutely to the regulations of the civil law, was condemned by Pius VI.¹⁸ in a dogmatic Bull as false, and as violating the right of the Church in regard to the effects resulting from the betrothals in virtue of canon law; also as derogatory to the established discipline of the Church. For an act preparatory to a sacrament is in this respect subject to the jurisdiction of the Church.

¹ 'It cannot be by any means tolerated to maintain that Christ has raised marriage to the dignity of a sacrament.' Syll. Prop. 65, from the document of Aug. 22, 1851, Coll. Trid. Sess. xxiv. Can. 1, de Sacram. Matr.

² 'The sacrament of marriage is only an adjunct of the contract and separable from it, and the sacrament itself only consists in the nuptial benediction.' Syll. Prop. 66, from the same document, according to Trid. l.c. cap. Doctr.: 'Gratiam vero, quae naturalem illum amorem perficeret, &c. Cum igitur matrimonium in lege evangelica,' &c.

³ Bened. XIV. de Syn. Dioec. l. viii. c. xiii.

⁴ 'By the law of nature the marriage tie is not indissoluble, and in many cases divorce, properly so called, may be pronounced by the civil authority.' Syll. Prop. 61, from the document referred to, and the Allocation of Sept. 27, 1852, Coll. Trid. l.c. Doctr. et Can. 5, 7.

⁵ 'The Church has not the power of laying down what are diriment impediments to marriage. The civil authority does possess such a power, and can abolish impediments that may exist to marriage.' Syll. Prop. 68, against Vigil, Coll. Trid. l.c. can. 4. 'In the better ages, the Church, when she laid down certain impediments as diriment to marriage, did so not of her own authority, but by a right borrowed from the civil power.' Prop. 69 against J. N. Nuytz.

⁶ Const. Auctorem fidei, Prop. 59, 60 (Denzinger, Enchirid. ed. iv. p. 409, n. 1422 seq.).

⁷ Phillips, Lehrbuch, § 270, p. 944 seq. i. ed.

⁸ Impediments to marriage are either *impedimenta dirimentia*, which invalidate a marriage—make it null; or *impedimenta impedientia*, which impede a marriage—make it unlawful, but do not make it null. [Tr.]

⁹ Schulte, Lehrbuch, § 155, p. 433.

¹⁰ Trid. Sess. xxiv. c. viii. de Ref. Matr.

¹¹ In France, for instance, edict of Henry II. 1556, of Henry III. 1579, of Louis XIV. 1692 (Schulte, Eherecht, p. 496).

¹² 'The canons of the Council of Trent, which pronounce censure of anathema against those who deny the Church the right of laying down what are diriment impediments, either are not dogmatic, or must be understood as referring to such borrowed power.' Prop. 70 of Syll.

¹³ Launojus, de Reg. Potest. in Matrim. Paris, 1674 (condemned at Rome on Sept. 10, 1688). M. A. de Dominis, de Rep. Christ. l. ii. c. xi. Const. Auctorem fidei, Prop. 59.

¹⁴ Cf. *Judicium Doctrinale* Archiep. Mechlin. (Card. Frankenberg), of June 26, 1789 (Kutschker, Eherecht, i. pp. 70-74); *Defensio Trid. Canonum de Eccl. Potest. in dir. matr. imped.* Auctore Petro Deodato, Neapoli, 1786; *Nuova difesa dei canoni*, 3 e 4 della Sess. xxiv. del Concilio di Trento, Napoli, 1788.

¹⁵ 'The form of solemnising marriage prescribed by the said Council, under penalty of nullity, does not bind in cases where the civil law has appointed another form, and decrees that this new form shall effectuate a valid marriage.' Syll. Prop. 71.

¹⁶ 'A merely civil contract may among Christians constitute a true marriage, and it is false either that the marriage contract between Christians must always be a sacrament, or that the contract is null if the sacrament be excluded.' Syll. Prop. 73.

¹⁷ Trid. l.c. Can. 12.

¹⁸ Prop. 58, Denzinger, l.c. p. 408, n. 1421.

§ 12.

But the real question concerns the destruction of the Christian character of marriage and of the family, for these as well as the State are threatened with profanation. The following is one of the gravest errors that has been asserted, that the family derives *the whole reason* of its existence solely from civil law. Therefore the civil law has to decide all questions concerning marriage, the rights of parents, instruction, and education.¹ The foundation for this position is thoroughly false, for domestic society, the family, existed before civil society, the State, and therefore has natural right independent of the latter and given to it by the Creator Himself.² Maternal love is so purely natural that it is found amongst savages and animals; family ties are ties of blood, purely natural ties. The family is ordained by the natural law, and therefore it is impossible that 'the whole reason of its existence' can be derived from the civil law. It is founded by marriage, by the inseparable life-partnership of two persons, undertaken with free consent from natural inclination; the State no more than the Church can supply deficiency in

this free consent. Modern jurisprudence has committed many mistakes from not rightly understanding the law of nature,³ and there has arisen one of the greatest errors, namely, that the civil power⁴ is boundless and unrestrained by any natural law. This was condemned in propositions 56 and 39 of the Syllabus.⁴ In truth the civil power does not really extend further than is required for political and civil life, for the protection of law and the interests of society;⁵ a supreme right which extends further than the end for which the State exists is inconceivable and absurd.⁶ The State has to protect the natural rights of the family as well as of individuals; no civil law can abolish them: as it is impossible that the State can undertake the functions of domestic society, its interference must only be one of completion, and it must consider the family as a foundation of its own life.⁷ But the theory which makes the family of no account is also perverted and dangerous in its conclusions. It endangers individual liberty, leads to the profanation of marriage, to the destruction of the family spirit, this 'second soul of mankind,'⁸ to contempt of the parental authority, parental duties, and domestic discipline, which Christianity has struggled hard to establish.⁹ Parental rights are founded on duties, and are therefore unalienable natural rights; the child belongs first to the parents, then to the State, and with the parents rests primarily the duty of its education. The dreams of Rousseau and of the Socialists, with all their disastrous consequences, are based on a false theory as to the family. An enormous abuse of State power¹⁰ in this matter, nay, a whole series of such abuses, has grown up in most countries.

¹ Enc. of Dec. 8, 1864, § Et quoniam.

² Aristot. Polit. l. i. § 4, p. 482, ed. Paris, 1848. L. Taparelli, Corso elementare di natural Diritto, Napoli, 1853, ed. iv. l. iii. c. ii. p. 134 seq. p. 151, n. 157.

³ The Church has always upheld it. It was taught in Rome under Gregory XVI., whilst Ferdinand II. of Naples would not allow it to be propounded in the colleges of his kingdom.

⁴ 'Moral laws do not stand in need of the divine sanction, and there is no necessity that human laws should be conformable to the law of nature, and receive their sanction from God.' Syll. Prop. 56. 'The State is the origin and source of all rights, and possesses rights which are not circumscribed by any limits.' Syll. Prop. 39.

⁵ Dahlmann, Politik, § 11. Bischof, Staatslehre, Giessen, 1860, p. 36.

⁶ Davies, Instit. Jurisprud. Univ. § 786.

⁷ Waitz, Grundlage der Politik, p. 6.

⁸ Lamartine, Voyage en Orient, i. p. 36.

⁹ Balmes, Catholicism und Protest. i. cap. xxiv. seq.

¹⁰ Even Prof. Gneist has acknowledged, May 16, 1872 (Bericht der Reichstagverhandlungen, p. 422), as much as this, that the pages of history are full of *the abuse of State power*. But whilst he desires to have the 'abuse of ecclesiastical power' corrected by the State, he does not inform us who is to correct the abuse of State power.

§ 13.

It has been concluded from the condemned prop. 57 that a civil law which comes into collision with any canon not formally abolished is not to be obeyed; that consequently the doctrines of the Church are incompatible with modern constitutions and with the oaths of allegiance towards them.¹ The proposition runs as follows: 'Knowledge of philosophical things and of morals and also civil laws may and must be at variance with divine and ecclesiastical authority.' This proposition can be divided into two parts, one of which refers to philosophy and especially to ethics, the other to civil laws. It is in close connection with the previous one (56), and both are derived from the same source. In the Allocution of June 9, 1862, those were condemned who maintained that moral laws do not need divine sanction, that there is no necessity that human laws should conform to the law of nature or receive their force from God,² and that therefore there is no divine law—a doctrine contradicting sound philosophy, which has always demanded a divine sanction for laws, traced all binding force to God, and recognised certain first principles of reason as the foundation of all legislation. The Allocution has also declared itself opposed to the assertion that moral philosophy as well as civil legislation may and must be at variance with (declinare) divine revelation and ecclesiastical authority. We have before seen that the duty of conforming to divine revelation and ecclesiastical authority is primarily a negative one for the civil legislation; the civil power must forbid nothing that is commanded by God

and the Church, nor command anything forbidden by God and the Church, whereby all *liberty of conscience* would be destroyed; but beyond this it can leave unpunished actions that are forbidden by moral law and the commands of the Church.³ Merkle says well:⁴ ‘According to the principles of the Church, objective right is superior to every legislator, whether spiritual or civil. He is bound by it, and by objective duties which are not self-imposed. Therefore it is incumbent upon him not to command anything contrary to the law of God. A human law which is opposed to the positive divine law can by no means be a mediate divine law, because God cannot contradict Himself. It can only be the expression of a creature’s will, which of itself cannot bind the conscience; for all human laws derive their binding power from God. . . . St. Jerome says, What the Lord God forbids no human lord can command; such a command would be (according to St. Augustine) a *corruptio legis*, and could (according to St. Thomas) in no right sense of the word be called a law. The Church maintains that no human legislator has a right to command what is wrong; and by this doctrine in the interests of true liberty opposes State absolutism, the principle of tyranny. But still she is very far from teaching that the State is obliged to punish *all* transgressions of moral law. Catholic theologians are unanimous in saying that the State can only forbid such transgressions of the moral law which it considers injurious to the commonweal. . . . The State, therefore, according to the principles of the Church, may not command any transgression of moral laws, but may leave many such transgressions unpunished. Things contrary to moral law are wicked; but the human law, which in good faith tolerates this or that transgression of the moral law, is not wicked.’ The question in prop. 57, according to the context, concerns the connection between laws and morality; there is no censure of the teaching of St. Thomas in this. This proposition has also two other parts; ‘they may be at variance’ is very different from ‘they must be at variance.’ *To make it a duty* that State legislation should be at variance with divine and ecclesiastical authority is an absurdity, because it implies

an immorality, withdraws firm ground from the State, and abandons it entirely to human discretion. A State which considered that to be its duty would at the same time destroy its own moral foundation. That 'it must be at variance' deserves to be censured as an impious and blasphemous doctrine. If 'it may be at variance' means that human laws have a right to set themselves in direct contradiction to divine revelation and to the authority of the Church, it deserves higher censure than if it means that these laws may ignore revelation and the Church. In the latter case we must moreover consider whether the State be Christian or heathen. But it is a mere *falsification* instead of the words 'divine revelation and the authority of the Church' to substitute these: 'any canon not formally abolished,' which could apply to any decree from Gratian's collection, in reality quite open to free criticism.

¹ Schulte, i. p. 45.

² Recueil des Allocutions, &c. p. 457.

³ S. Thom. Sum. 1, 2, q. 1, art. 4, in corp.; q. 96, art. 2.

⁴ Merkle, Die Toleranz, p. 8.

§ 14.

Objections are also raised to the condemnation of prop. 62, 'that the principle of non-intervention ought to be proclaimed and adhered to.' It is said that this condemnation rejects the fundamental principle of the law of nations, namely, the liberty and independence of every State. But it does not in fact touch this liberty and independence. The Pope does not dispute that, as a rule, one State has no right to interfere in the internal affairs of another; and Pius IX. as well as Gregory XVI. had on several occasions from 1831 to 1867 to complain of the unauthorised interference of foreign powers in the government of the States of the Church. But the modern principle of non-intervention is widely different from this; it does not merely forbid an unauthorised intervention undertaken against the lawful wish of the rightful reigning prince in a foreign country, under the pretext of establishing greater order, &c., but it also forbids any assistance to be given even against unjust aggression; in its present form it includes an immoral principle

which strikes at the root of international law, destroys brotherly love between nations, rends asunder the natural ties of humanity, exposes princes and people to every kind of violence, and sanctions robbery and the right of the stronger. Even setting aside positive treaties, intervention is justifiable when a State sees its own rights threatened or fears evil consequences from the proceedings of another State; or when anarchy and interior demoralisation have reached such a pass that morality requires interference from another State to save the afflicted member of the commonwealth of nations; and this may also be justifiable on the ground of self-preservation, to prevent or oppose the injurious intervention of another power.¹ But since no exception is allowed by the principle of non-intervention, those rights which nature and justice require to be based on common support are unable to obtain it and rendered unavailing, whilst lawless deeds meet with impunity, as assistance is denied to the oppressed. Fraught with harm and danger to legitimate governments, who may well think of the maxim, 'to-day to me, to-morrow to thee,' this principle of non-intervention has been applied by its representatives, especially by Napoleon III., in a manner which plainly shows that it can be meted out unequally according to circumstances. France might intervene in the Crimea, in Syria, in Cochin China, in Mexico, and above all in Italy; but for the Father of Christendom, who is no *foreign power* to Catholic nations, his sons might not intervene, unless it were advantageous to their government and for its private interests. By this new principle revolution has won an immense advantage. If it had been generally known and respected in 1848 and 1849, Hecker and his friends need have had no fear lest an army from a foreign State, led by a prince not yet approved by the Liberals of the day, should restore the grand-ducal dynasty of Baden and end the 'glorious' revolution.² But nowadays there are no principles, only the masks of principles, which can be taken on and off to suit the convenience of the moment.

¹ Walter, *Naturrecht und Politik*, § 466, pp. 453, 454, with the addition, that after the danger is passed interference must cease, and it must

not pretend to any profit. Even Rotteck and Berner were obliged to allow some exceptions.

Hecker was the leader of the Baden revolutionists, who were crushed by Prussian intervention under Prince William, now the King of Prussia. [T.R.]

§ 15.

What, then, did the Pope mean in condemning prop. 62 of the Syllabus? The Allocution of September 28, 1860, from which it was taken, gives a complete explanation. It says: 'We cannot help deploring amongst other things this grievous and pernicious principle called the principle of non-intervention, which has lately been proclaimed and put in practice by certain governments and tolerated by others, even in the case of *unjust aggression* on the part of one government against another, so as apparently to assure impunity and license contrary to all laws, both human and divine, for the attacks and spoliation of the rights, properties, and dominions of others, as we have been witness in these unhappy times. And indeed it is astonishing that *the Piedmontese government alone should be permitted with impunity* to despise and violate such a principle; for in the face of all Europe we have seen it force its way with a hostile army into other States and expel the rightful princes; so that the absurd and disastrous conclusion is to be drawn, that foreign intervention is only allowable when intended to provoke and nourish revolution.'

The Pope then warns princes to consider well the consequences of such a principle. 'Here there is in question a gigantic wrong, an act of violence accomplished in an iniquitous manner against the universal law of nations; if not repaired no right will in future be any longer secure. It is the principle of rebellion which is shamelessly served by the Piedmontese government, and from which, as is easy to perceive, a continual danger is menacing all governments, and ruin is threatened to civil society; for by this means the way is opened to *Communism*. It is question of the solemn treaties, according to which the integrity of the States of the Church as well as of the other European States is to be preserved inviolate. It is

question of the violent seizure of that principedom which by a special decree of Divine Providence has been given to the Roman Pontiff, in order to enable him to exercise his apostolic ministry with perfect freedom over the whole Church. All princes ought therefore to be convinced that our interest is the same as theirs, and that in giving us their assistance they are providing for their own rights as well as for ours.'

Wide as the poles asunder are these two things, assistance rendered to a weaker State with its own consent, and an unjust invasion of the territory of a weaker power in order to crush it. The censured assertion, that it is not permitted to one government to give assistance to another when unjustly attacked, would shake the security of States, and render impossible every offensive and defensive alliance, and even every international union. Carried into private life, it would altogether annul the command of loving our neighbour. Christian morality requires that every one should help his neighbour to the utmost in case of need: and the rule of morality for nations is the same as for individuals. To proclaim the universal principle of non-intervention is to extirpate the last remains of Christian international law, and to inflict a greater calamity on mankind than even those ill-advised and ill-conducted interventions between 1820 and 1850.

§ 16.

It might have been expected that rulers of modern States would at least have welcomed the condemnation of prop. 63, and have been thereby in some degree reconciled to the Syllabus. This proposition declares that it is allowable to refuse obedience to legitimate princes, even to rebel against them. But instead of being welcomed, the condemnation of this proposition has been held idle, on the ground that 'whether a prince is legitimate or no rests, according to Boniface VIII., on the Pope's decision alone; so that if the Pope, on account of some violation of Church law, declares a prince to be unlawful, the condemnation of prop. 63 does not make it contrary to Catholic faith that subjects are bound to no obedience, but may rebel.'¹

But we have seen already that the Holy See by no means attributes to itself exclusive judgment on the subject of the rightfulness of princes, but rather negotiates and treats with existing governments; and also we have seen that the suppositions just quoted are entirely false.² Pius IX. in the Encyclical of Nov. 9, 1846, in the Allocution of Oct. 4, 1847, and in the Briefs of Dec. 8, 1849, and March 26, 1860, has expressly quoted the following passages of Scripture, Rom. xiii. 1 seq., 1 Peter ii. 13 seq.³ Nevertheless the objection has been raised that the Pope has made an exception to these decrees, viz. in the case of anything being commanded contrary to the law of God and of the Church. But although in this case, according to Pius IX. and the whole teaching of the Church, subjects are released from the duty of obedience,⁴ they are by no means authorised to make *active* resistance, and still less is rebellion either sanctioned or enforced. *Passive* resistance is sufficient. Rebellion is entirely forbidden. Therefore it was never a matter of faith that the Church had *been invested with any divine authority* to depose princes. This authority she only exercised at a certain period and under special circumstances. The real meaning of prop. 63 is more fully exemplified by the following (64): 'The violation of a solemn oath, nay, any wicked and flagitious action repugnant to the eternal law, is not only not blamable, but quite lawful and worthy of the highest praise when done for the love of one's country.' This proposition is taken from the Allocution of April 20, 1849, given at Gaeta against the Italian and particularly the Roman revolution; it especially condemns the fact of palliating the violation of the sacred oath of allegiance rendered to rightful sovereigns under the pretext of patriotism. Why is this proposition passed over in complete silence?

¹ Berchtold, pp. 31, 32.

² *Suprà*, Essay i. pt. iii. § 3 seq. p. 59 seq.

³ Vide *Recueil des Allocutions*, &c. pp. 184, 196, 250, 402.

⁴ How often we are obliged to repeat the simplest truths! The civil power has no right to command anything contrary to the law of God and of religion. By doing so it would violate liberty of conscience; reject Scripture (Acts iv. 19; v. 29) and universal tradition (Martyr. S. Ignatii, n. 1, Ep. Eccl. Smyrn. de Morte S. Polyc.; Acta Mart. S. Just. n. 1; Acta

SS. MM. Epimachil et Alex. ; Acta Symphor. et Scill. Cf. Ruinart, Acta Martyr. sincera, pp. 14, 35, 49, 64, 69, 74 seq. Justin. Apol. i. n. 17, 68. Iren. v. xxiv. 2. Theophil. ad Ant. iii. 30. Athenag. Leg. n. 1. Clem. Strom. iv. p. 505, ed. Paris, 1641. Tertull. Apol. c. ii. 28, 30, 32 seq. Orig. c. Cels. VIII. 65. Minuc. Felix in Octavio, c. xxxvii. Arnob. l. ii. c. Gent. p. 44 seq. ed. 1651. Lactant. Inst. iv. 8, 10). With regard to faith, sacraments, worship, and religious life, the civil power has no authority, for it only has authority within its own sphere.

§ 17.

Revolutionary principles have been most distinctly condemned by Pius IX. for the good of the State. Thus, for instance, 'The will of the people' (which, according to art. 3 of the declaration of the 'rights of man' in 1789, is the only sovereign) 'constitutes a supreme law, independent of all divine and human right, whether it be acknowledged by so-called public opinion or by other means.'¹ How much have monarchies already suffered from this phantom of the sovereignty of the people! How greatly have nations been deceived by it! Does not the Pope deserve all thanks from governments in having decidedly opposed this error?—as, for example, in the censure of prop. 60: 'Authority is nothing but the result of numerical superiority and material force,'² which so entirely corresponds to Rousseau's teaching, that sovereignty is not a power derived from God, but only arises from the sum of the personal rights of the separate parties to the social contract. The same may be said of the proposition: 'In politics accomplished facts merely from being accomplished have the force of law.'³ Such a political science is not merely irreligious but immoral; it is unprincipled, and therefore senseless, totally subversive of the State and fatal to society when applied, as no power can at last prevent, to the private life of individuals. With it the following assertions are closely connected: 'Right consists in material fact; all human duties are vain words, and all human acts have the force of right.'⁴ An unjust act being successful inflicts no injury upon the sanctity of right.'⁵

¹ Encycl. Quanta cura, § Et quoniam: 'Voluntatem populi, publica, quam dicunt, opinione vel alia ratione manifestatam constituere supremam legem ab omni divino humanoque jure solutam.'

² Syll. Prop. 60. Several translations have taken 'numeri' to be nominative plural, whilst really it is genitive singular. For the Allocution of June 9, 1862, to which this belongs, has: 'Auctoritatem nihil aliud esse, nisi numeri et materialium virium summam.'

³ Enc. Quanta cura, l.c.

⁴ Syll. Prop. 59. Alloc. Maxima quidem, 9 June 1862.

⁵ Syll. Prop. 61. Alloc. Jamdudum, 18 Mar. 1861.

§ 18.

A society governed by such principles as these acknowledges nothing but material power, and makes the accumulation and increase of riches and the enjoyment of sensual pleasures the object of all moral teaching and excellence.¹ When all the ties of religion are cast off, self-seeking and the search for riches and pleasures become the sole aim of individuals and of the mass. The social condition is to mankind not an end, but a means; for otherwise man, ethically considered, would not be a person, but only a thing, existing merely for the use of others. Man has a natural tendency to society, because he finds in it for himself and others protection and assistance; it assures to him the free exercise of his rights and the completion of his being. But civil society began on the earth, and does not extend beyond it, whilst man himself is immortal. If society is to fulfil its whole duty towards man it must treat him as a being with an eternal destiny; to do this it needs religion, both to show him this higher destiny and to give him the means of attaining it. But if society does not treat man as an immortal being, merely looking upon him as bound to it and with no destiny beyond the earth, it cannot prevent him from pursuing temporal possessions, riches, and pleasures as his highest good, and from endeavouring at all costs to possess them. The immaterial goods of earthly nature do not suffice, they are not equally accessible to all, and not satisfying in themselves; from this point of view virtue itself would be only a means of enjoyment, and would therefore only have a relative and not an absolute value.² When earth is substituted for heaven the fruits and treasures of earth become the highest aims of life, and every means is justified which enables them most completely to be enjoyed; so much attention is paid to

the animal part of man that intellectual interests naturally grow weaker. Political economy stript of all morality must be fatal to philosophy, and an unrestrained egotism must bring about the war of all against all—an unfathomable abyss of misery and ruin.

¹ Syll. Prop. 58. Alloc. of June 9, 1862. Enc. of Aug. 10, 1863.

² *Liberatore*, l.c. c. ii. a. 6, § 2, p. 190 seq.

§ 19.

Proposition 80 of the Syllabus,¹ which has been so much questioned, is by no means to be understood as condemning all modern progress. It is true that it condemns the church-hating Liberalism of modern times, which was described in the Allocution ‘Jamdudum’ of March 18, 1861, from which the proposition is derived, as a system specially formed to weaken and, as far as possible, destroy the Church of Christ. Huber pretends that in this Allocution the Pope entirely rejects the demand that he should reconcile himself to modern civilisation, because it favours forms of worship not Catholic, opens public offices to those outside the Church and Catholic schools to their children. But it must be remembered—(1) that the Pope’s words refer to Italy, a Catholic country, and civilisation as there understood; (2) that those were *not the sole, not even the principal* reasons of the Pope’s rejection of the demand; indeed the favour shown to non-Catholics was only mentioned *in contrast with the ill-treatment of the Catholic institutions.*² Pius IX. expressly condemns the acts of violence practised in Italy against the Church under the name of progress and civilisation,³ and also expressly declares that true civilisation has ever found a protector and guardian in the Holy See. He distinguishes this true civilisation from the system which under false names strives to extirpate the Church, and to which it is impossible that the Apostolic See can ever be reconciled; for according to the words of the Apostle (2 Cor. vi. 14, 15), light and darkness, Christ and Belial can never agree together. The Syllabus has protected true Christian civilisation, which shrinks from seeing the Church despoiled and maltreated,

and recoils from materialism and communism. Only prejudice and heretical malice can treat it as a satire on human development. With forms of government and modern constitutionalism it is as little concerned as with modern inventions, railways, telegraphs, &c. As our opponents declare that the *Civiltà Cattolica* is the best exponent of Papal doctrines and decisions, it may not be out of place to quote a passage from this journal. In speaking of prop. 80 it says :⁴ ‘It is not to be imagined that when the Pope condemned Liberalism he also condemned so-called political liberty or the forms of free government. The Encyclical makes no mention of these ; nevertheless there are some who, either from ignorance or malice, endeavour to maintain the contrary. But to dissipate the delusion of the former and the deceit of the latter, it is only necessary to mention that the doctrine of the Church is unalterable. She has ever taught that every legitimate and just form of government is good and acceptable ; in themselves forms of government are neither good nor bad ; they are useful or dangerous according to the principles by which they are animated, the persons by whom they are administered, and the dispositions of the people to whom they apply. In the Middle Ages the Church was constantly struggling and ever in arms against imperial absolutism, and continually defending the liberty of Italian communities ; because, while the former endeavoured to appropriate foreign possessions and rose up against the Church, the latter were defending their own rights and were obedient to her. The words of Pius IX. do not refer to representative constitutions, but to the errors *which under every form of government* may manifest themselves, and which in our day have spread so terribly. His principles are precisely those which his predecessors have always taught ; his merit is simply in having developed and collected these principles, and in having maintained them with unconquerable resolution during the whole of his long pontificate against his numerous and insolent assailants. It was impossible that Pius IX. could include civil and political liberty in his condemnation of Liberalism, and so far was it from being his intention, that at the very time of the publication of the Encyclical ‘*Qui pluribus*,’⁵ which is only further

developed and explained by the Encyclical 'Quanta cura' and the Syllabus, he introduced those administrative reforms⁶ into his States which have caused him to be blamed for liberal tendencies by ignorant critics.'

¹ 'The Roman Pontiff can and ought to reconcile himself to, and agree with, progress, Liberalism, and modern civilisation.' Syll. Prop. 80.

² '*Dum* cuique acatholico cultui favet . . . irascitur adversus religio-
sas familias,' &c.

³ Count Cavour himself acknowledged the immorality of the proceedings in New Italy when he said: 'Were we to act for *ourselves* as we act for *Italy*, we should be great fools' (gran balossi). To which Massimo d'Azeglio remarked: 'The doctrine of a double morality, one for public, one for private use, is justly contested; but let that take its course' (Diario Politico-Militare dell' Ammiraglio C. Persano, Torino, 1871, p. 125).

⁴ Civiltà Cattolica, ser. viii. vol. ii. quad. 504 (June 17, 1871), Pio IX. e la Società Civile, pp. 692, 693.

⁵ Encyclical of Nov. 9, 1846, Acta Pii IX. vol. i. Romae, 1854, pp. 4-24).

⁶ Atti del Sommo Pontefice Pio IX. parte ii. vol. i. Roma, 1857, pp. 4, 7 seq. 26 seq. 52, 123, 150, 191, 222.

§ 20.

The reply may be made that in another place¹ this same journal says, that in this same proposition Liberalism has been condemned absolutely and without reserve. It is perfectly correct that under this name a system most contrary to the teaching of the Church has been condemned, a system which supports itself on material progress and modern constitutions, and endeavours to imbue and leaven them with its spirit; but it is equally true and correct that material progress and modern constitutions are *not in themselves identical* with this system, or *that they coincide with it*. The Syllabus only refers to that system which violently combats the Church in every sphere, and endeavours at every turn to impede her salutary power; and this is clearly shown by the context of the Encyclical published at the same time. Therefore Huber's observation, that there is no interpretation of the words of the decree that will allow the Syllabus to be compatible with the *life of the State according to modern views*, is partly false and partly equivocal. Huber

confuses the administration of the constitution by means of a dominant liberal party with the constitution itself. Dr. Strode and Dr. K.² have satisfactorily shown how very often the former is in contradiction with the latter. The condemnation is a necessary protest of the Church against that which excludes religion from public as well as domestic society, from schools and from daily life, paves the way for socialism and communism, undermines Christian morality, and endeavours to enthrone the principles of the old Jacobins and of the Paris Commune of 1871. The successor of St. Peter had not this or that particular country, this or that individual in his mind, but with one glance, with one act he comprehended the ruin which threatened the Church and humanity, and recognised it by the light of reason illuminated by revelation, and weighing well all consequences. Bold unbelief cries, 'Away with Christ! we have no need of redemption; away with God!³ we help ourselves.' More refined unbelief says the same, but in a more refined manner: 'We allow all honour to be shown to God and to the Saviour, so that it is in the quiet of a chamber or within the walls of a church; but in the world, in civil life, there we have no need of God or of Christ.⁴ There we are the gods;⁵ there our money, our science, our wills govern. Behold, Israel, the gods which have delivered you out of Egypt: modern industry, material progress, natural science, the science of history, a free press, and above all, that which alone governs all and alone can insure your happiness, the modern liberal State. The Church may vegetate in a hidden corner. The forum, the senate house, the schools, and in consequence the future, belong to us alone!'

¹ Reply to P. A. Cicuto, ser. viii. vol. iv. quad. 511, of Oct. 7, 1871, p. 74.

² *Der Conflict Zwischen Staat und Kirche in Bayern.*

³ These words, which were let fall at a dinner of the Paris Commune, are very characteristic: 'If God existed, He would have to be shot' (*Allgemeine Zeitung*, June 8, 1871, from the *Siècle*).

⁴ In the Encyclical *Quanta cura* the censure of the endeavours made to do away with the keeping holy of Sundays and holydays, and to limit works of Christian charity, was aimed at this notion.

⁵ Erasmus of Rotterdam, *Expl. in S. Script.* p. 65: 'Quidquid homo praeferat Deo, id sibi facit Deum.'

§ 21.

Hostile efforts to banish religion from social life, and to act as if there were no divine revelation, result in the withdrawal of the *supernatural* means of grace from humanity. Humanity is thus reduced to a state of simple nature and abandoned to itself; wherefore the Holy Father calls this tendency naturalism. But in this state we have only unredeemed humanity, tainted with original sin, without bit or bridle, yielding to every inclination and to every crime, the mind becoming dark, and the heart hardening, as they did in the heathen world with its false gods, its external cultivation, its ever-increasing moral deterioration. The sons of earth, lately driven out of Paradise, their reason darkened through want of heavenly light, perverted and distorted the simplest ideas, even the truths of nature; it is no marvel, therefore, that the notion of true justice and man's true rights should not only have been obscured but lost, and that *brute force* should take the place of true justice and righteous law.¹ If the original source of all rights is denied, every particular right can only have a doubtful existence from one day to another; the protecting dams are broken away, the floodgates are opened, and in pours the terrible devastating torrent of universal overthrow, the new deluge of literary, religious, political, and social revolution. An immeasurable tract is exposed to intellectual desolation, to horrible convulsions, to terrible barbarity. And society must take all the blame, because it yielded in the beginning, and agreed to the premises from which these consequences have inexorably and inevitably ensued. It has itself prepared the ruin by not only enduring but fostering, cherishing, and favouring these principles.² It will not acknowledge the means of salvation so near at hand. 'The fundamental law of progress, civilisation, and liberty is the Gospel, that is, our Saviour Himself. He has given to the world the highest and purest ideal and the noblest meaning of these three things when, as a foundation for all His teaching, He bids us: "Be you therefore perfect, as also your Heavenly Father is perfect."³ Those religious truths, ignored by the world and repeatedly proclaimed

by Pius IX., alone secure true progress, true civilisation, true liberty; they show how Creator and creature, spirit and matter, reason and faith, nature and grace, the external and internal world, body and soul, Church and State, Christian and citizen, should neither be confounded, thrown together and identified, nor separated, absolutely divided, and placed in opposition to each other; revealed truth alone shows the true harmony that exists in all things, and brings our intellect and life into wonderful unison; moreover whenever such a harmony does not exist between eternal principles and deeds of momentary importance and human commands, between justice and law, these truths of revelation show us how to reconcile them, and prepare the way for further development. We learn to understand our own incompleteness, shortcomings, and imperfections, and to console ourselves with the thought that 'we have not here a lasting city, but we seek one that is to come' (Heb. xiii. 14), where there will be no more weeping, pain, or death, and where the Lamb will be the light (Apoc. xxi. 4, 23), and with the thought that there must be a difference between the ideal world and the real world of earth. But the faithful must be on their guard against accepting imperfect human rules, whose authority is simply based on physical power, as supreme and final, to which everything must submit, and by which even religious truths are to be tested. That would be a return to the barbarity of paganism, the deadly enemy of Christianity, eager to thrust the Church back into the catacombs, and to increase the burden of our corruption, already so heavy, and by which we lose so many blessings of Christianity; for men seek to confine Christian influence within the walls of the churches, to sever it entirely from public life, and to make everything independent of religious principles and rules.⁴

¹ Pius IX. Enc. *Quanta cura*, § *Et quoniam*: 'Ubi a civili societate fuit amota religio ac repudiata divinae revelationis doctrina et auctoritas, vel ipsa germana justitiae humanique juris notio tenebris obscuratur et amittitur, atque in verae justitiae legitimique juris locum *materialis* substituitur *vis*.'

² I wrote thus in 1865 (*Chilianeum*, vol. vi. pp. 295, 296): I can now repeat it even more strongly. Noc's warning was without effect upon

corrupted men ; the words of Pius IX. have met with the same fate from most of his contemporaries, who hurry blindfold to the abyss they will not see.

³ Dupanloup, *Die Convention* v. 15 Sept. und die *Encyclica* v. 8 Dec. 1861, ii. Th. § 5.

⁴ ‘As if,’ says Tosi (*Vorles. über den Syllabus Errorum*, p. 4), ‘mankind had to strive after two totally distinct aims ; as if our supernatural destiny did not include and transform the natural elements of our development ; and as if every form of life, whether of individuals or of the mass, ought not to be pervaded and purified by the spirit of Christianity.’

§ 22.

The following is an example of the false suppositions under which this discussion is carried on : Berchtold says : ‘We are certainly completely justified in basing our argument concerning the irreconcilable contradiction between the new Papal dogmas and the Bavarian State laws on the supposition that the Bulls ‘*Unam sanctam*,’ ‘*Cum ex Apostolatus*,’ &c., and in particular the propositions of the Syllabus are *matters of faith* in the new Catholic Church.’¹ But the Bull ‘*Cum ex Apostolatus*,’ as well as many others, contains no matter of faith. The Bull ‘*Unam sanctam*’ has only defined one proposition to be an article of faith. The Syllabus is only a dogmatic judgment in a wide sense ; moreover most of its propositions are misinterpreted, distorted, and never understood in their proper connection. Hence further arguments based on this supposition rest on a false foundation ; they do not rise above the level of empty declamation, which repeats and repeats, but never proves. The Syllabus rightly understood is only a serious warning against the advancing decay and ruin of religious life and thought ;² also against the utter misconception of the object, signification, and nature of the Catholic Church, regarded nowadays as the ignorant regard without comprehending her old cathedrals and painted windows :

‘Peep into the church from the market outside,
And is anything else but gloom there—say ?
Our friend the Philistine peeps this way,
And rightly enough he sniffs with pride,
And sneers at the church till his dying day,
But, ah—let him venture but once inside !’³—*Goethe*.

¹ Berchtold, p. 15. Cf. p. 24 seq.

² Tosi, l.c. : 'Error is very liable to produce a spiritual miasma, a poisoned atmosphere, in which even the most healthy sicken, and the doctors themselves are at last attacked by the evil. Thus has the process of secularisation spread itself abroad; and some persons who, in consequence of their talents or position, have been chosen to represent the intelligence of the Church, have not been able entirely to divest themselves of this fatal influence. To prevent us all from falling victims to this contagion, the venerable old man who at the present time is governing the Christian community is obliged to raise his voice, in order, by the lightning of God's Word, to dispel the deceitful twilight of modern ideas. Praise and thanks be to the successor of the Apostle-princes; he has spoken the word, and put an end to the fluctuations of opinion.'

³ ' Sieht man vom Markt in die Kirche herein,
Da ist Alles dunkel und duster;
Und so sieht's auch der Herr Philister.
Der mag denn wohl verdriesslich sein
Und lebenslang verdriesslich bleiben
Kommt aber nur einmal herein !'

ESSAY VI.

FUNDAMENTAL PRINCIPLES OF THE MIDDLE AGES.

THE attacks of the enemies of the Church at the present day have mostly reference to her conduct in the Middle Ages, and in order thoroughly to reply to them we must closely examine the principles of those times, which differ fundamentally from the principles prevailing at the present day. How hard it is to many of our contemporaries to place themselves in the position to form a judgment on the relations of Church and State in the Middle Ages has been fully recognised and expressed by the clear-sighted John Frederick Böhmer,¹ and it is also shown by a glance at the opinions on the subject prevailing amongst us. ‘It is almost incredible,’ writes Karl von Thaler with great truth, ‘how few educated men know more of history than is taught in school-books.’² Only a thorough knowledge of the state of society in that day, of the principles of law and justice, and of the manner, condition, and wants of the people, taken in connection with their ever-advancing development,—this knowledge alone can give us a right understanding of the immense influence gained and maintained through many hundred years by the Popes (and by Councils as well)³ over sovereigns and States, an influence which we at the present day find it hard to understand. I will endeavour to portray the leading features—(1) of the influence of the Church on social and political life; (2) of the power of the Papacy; and (3) of excommunication and its consequences in the Middle Ages.

¹ J. Fred. Böhmer's *Leben, Briefe und Kleinere Schriften*, von J. Janssen, vol. i. p. 247 seq. Böhmer's *Leben und Anshauungen*, Freib. 1869, p. 278.

² *Allgemeine Zeitung*, Feb. 2, 1871.

³ Vide *infra*, esp. part iii. § 14 seq.

PART I. INFLUENCE OF THE CHURCH ON SOCIAL AND
POLITICAL LIFE.

§ 1. The Church in the Germanic kingdoms. § 2. Elective and hereditary monarchies. § 3. Restriction of the royal power. § 4. The first duties of a king, those towards God. § 5. The oath of kings. § 6. Their coronation and anointing. § 7. Kinghood and knighthood. § 8. Power of the clergy, especially the bishops. § 9. State of society in that day. § 10. Close union between Church and State. § 11. Natural, divine, and positive law. § 12. Religion and freedom.

§ 1.

With the entrance of Christianity into the world began the action of a new force, which necessarily and rightly led to new relations of national life.¹ The kingdom of heaven thrown open by the Redeemer of the world was a grain of mustard-seed, which was to become a lofty tree; a handful of leaven which was to leaven all things (St. Matt. xiii. 31, 33; St. Luke xiii. 19, 21).² No one can deny that Christianity made a change for the better in the civil, political, and social life of the Roman Empire.³ Its influence was, however, far greater with the German races, where there was no existing heathen civilisation to be purified, but where its work was to implant civilisation for the first time amongst a barbarous and savage people.⁴ The Church was the mediator and peacemaker between the conquered Romans and the victorious Germans; she protected the one and educated and moulded the other.⁵ She was the one source of culture, the one counterpoise to brute force, the one cultivated body throughout the whole human society.⁶

¹ Harless, *Staat und Kirche*, p. 2.

² Chrys. Hom. 46 al. 47, in Matth. n. 2. Migne, lviii. p. 178 seq.

³ Bianchi, t. iii. c. iii. § 19, pp. 353-356. Phillips, *Kirchenrecht*, iii. § 118, p. 13 seq.

⁴ Neander, *Kirchengeschichte*, ii. p. 49, iii. ed.

⁵ Döllinger, *Lehrbuch d. Kirchengeschichte*, i. § 44, p. 217.

⁶ Neander, l.c.

§ 2.

In most of the kingdoms raised upon the ruins of the Roman Empire in the West there was a combination of elective

and hereditary monarchy, so that while the king had to be chosen from among the members of the reigning family, the choice of the nation might fall on any of the princes of the blood royal; no individual prince had by birth full and indisputable right to the throne; the right was only conferred upon him by the assembly of the nation, and especially by the chief men among them. All the sons of the late king had an equal right of succession; and either, with the consent of the nation, a division of the kingdom was made, or the assembly of those privileged to vote made choice of some member of the reigning family to be head of the State.¹ This was the case especially in England,² with the Visigoths in Spain,³ and with the Franks. Pipin made the Franks swear to him that they would never choose a king of any other blood, in order to give a great security to his dynasty.⁴ In the deeds of division of Diedenhofen (Feb. 8, 806), by which Charlemagne divided his kingdom between his three sons, it was stipulated that in case one of them should die leaving a son, and this son were chosen by the people as successor to his father, his uncles should acknowledge him as such.⁵

¹ Guizot, *Essais sur l'Histoire de France*, essai iv. c. iii. pp. 219-223. Giesebrecht, *Geschichte der Deutschen Kaiserheit*, iii. dupl. i. p. 90.

² Hallam, *Europe in the Middle Ages*. Lingard, *History of England*. Ranke, *Englische Geschichte*, i. pp. 14, 30 seq. 34 seq. See especially Freeman, *Norman Conquest*, vol. i. c. iii.

³ Hallam. Ferreras, *Hist. d'Espagne*, t. ii. p. 419. Perez Valiente, *Apparat. Jur. Publ. Hispan. Matriti*, 1751, t. ii. c. vi. vii. 21.

⁴ Vertot, *Dissert. sur la Succession à la Couronne de France* (*Mémoires de l'Académie des Inscriptions*, 4, t. v.). Guizot, l.c. p. 218. Cf. Greg. Turon. l. ii. c. xii. Natal. Alex. H. E. saec. 5, p. ii. c. ult. a. 4, n. 5; saec. 7, c. vi. a. 4, n. 2; saec. 9, et 10, p. i. cap. vii. a. 4, 9.

⁵ Pertz, *Leg. t. i. p. 140.*

§ 3.

In the Germanic kingdoms great regard was felt for the freedom and privileges of the individual,¹ while the authority of the sovereign was limited by the general assembly of the nation. It was commonly the case that the nation in choosing a prince laid on him certain conditions, and could hold him answerable for his conduct.² It was an understood condition that the king

must deal uprightly, govern well and justly, maintain peace and concord, and not misuse his power by oppression. The kingly power was never looked upon as absolute and unlimited; the rights of the people were quite as important as those of the prince, and he was put in mind of his duties, as they of theirs.³ The people were not to exist for the benefit of the prince; and his power was to be employed, not for his own ends, but for the welfare of the nation.⁴

In the appendix to the Capitularies,⁵ following the words of the Councils held in Paris (829) and at Aix (836),⁶ it is said: 'Rex (king) is derived from recte agendo (dealing justly); he may truly be called king who acts piously, uprightly, and mercifully; the ruler who acts otherwise is a tyrant. The duty of a king is to rule his people with righteousness and justice, and to maintain peace and harmony.' The same was said by Pope Nicholas I., by Hincmar of Rheims, and by the Council of Mainz (888).⁷ The following words were written by a French duchess to Count Theobald: 'The sovereign who declines from the path of just judgment deserves to lose his title, especially as God has appointed princes on earth, that after a just trial they may decide and pass judgment.'⁸ Thus there was, if not an explicit, at least an implied, covenant between prince and people, such as is mentioned in Holy Scripture between David and the people of Israel (2 Kings v. 3). In a conference held November 7, 1405, Gerson opposed the error of those who maintained that a ruler has no obligations towards his subjects, and he even declared that these obligations once violated, he was no longer to be considered as ruler.⁹ The conditions upon which a king was to be acknowledged were laid down beforehand, and when these were disregarded, his reign itself was to come to an end. Transactions often took place respecting the accession of this or that prince to the throne much resembling the 'capitulations,' that is, the conditions to which the German emperors even in later times had to swear, before being elected.

¹ Cf. Phillips, l.c. § 120, p. 66.

² Guizot, l.c. pp. 223-226. Lenglet-Dufresnoy, *Méthode pour étudier l'Histoire*, P. iv. c. v. a. 1, t. iv. p. 333.

² Walter, *Kirchenrecht*, book viii. § 343, p. 608, 11th ed.

⁴ Vide Seneca, i. de Clem. c. xix.: 'Rempublicam non esse principis, sed principem reipublicae.' Aug. de Civ. Dei, l. v. c. xii.: 'Rex dicitur a regendo et consulendo, non a regnando atque imperando.'

⁵ Capitul. Addit. t. i. p. 1146, ed. Baluz; Add. ii. n. 24, 25.

⁶ Conc. Paris. vi. l. ii. c. i. Asquisgr. ii. Hefele, Conc. iv. 61 seq. 87.

⁷ Nicol. I. Ep. 4, ad Advent. Meteus.: 'Videte, utrum reges isti et principes, quibus vos subjectos esse dicitis, veraciter reges et principes sint. Videte si primum bene se regunt, deinde subditum populum. . . Videte si jure principantur; alioquin potius tyranni credendi sint, quam reges habendi,' &c. Hinemar, Opusc. de Divortio Lotharii (Opp. i. 693). Conc. Mogunt, 888, c. 2 (Hefele, iv. p. 527).

⁸ Petr. Bles. Ep. 184, p. 476.

⁹ Cf. Schwab Gerson, pp. 240 seq. 428.

§ 4.

In the mediæval States, as in those of antiquity,¹ religion was the foundation and mainstay of society, and the first and most important duty of princes was its care and defence. A ruler was to be, above all, the servant of God, the defender of the Church, of the weak, and of the needy.² In the words of Scripture he was the representative and servant of God for the people of God (1 Chron. xxviii. 5, xxix. 11, 23; Eccles. xvii. 14, 15; Rom. xiii. 4); bound to render strict account³ (Wisd. vi. 2-11; Ezech. xxxiv. 10, 11); by justice alone could his throne be firmly established (Prov. xvi. 12; Ps. lxxi. 2 seq.). He who has not a truly religious mind, said Gerson (Jan. 6, 1391), cannot in truth be called a king; firm trust in God is the highest praise bestowed in Scripture upon a prince.⁴ The words of Leo the Great, 'to reign is to serve God,' were in use throughout the Middle Ages;⁵ likewise those of St. Augustine, 'The wicked man is a slave, even though he be a ruler; and this not to a single individual, but to as many masters as he has vices.'⁶ The first and most important duties of princes were those due to God and the Church, and in discharging them they were to set an example to all their subjects.⁷

¹ Aristot. Polit. vii. 8: Πρώτον ἢ περὶ τῶν θείων ἐπιμέλεια. Plato, de Leg. l. x. Xenophon, Memor. Socr. i. Cicero, de Leg. ii. 6, 7, de Natura Deor. l. i.; de Finibus, l. iv. Plutarch, who calls religion *συνεκτικὸν πάσης κοινωνίας καὶ νομοθεσίας ἔρεισμα*. Valerius Maximus, l. i. c. i. de Rel., who

says: 'Omnia namque post religionem ponenda semper nostra civitas duxit etiam in quibus summae majestatis conspici decus voluit.' Cf. Hugo Grotius, de Jure Belli et Pacis, ii. 20, § 44, n. 3 seq.; Montesquieu, Esprit des Loix, iii. 9.

² Hieron. in Jerem. c. xxii. (Gratian, c. 23, c. xxiii. q. 5). Leg. Visigoth. l. xii. tit. 2, n. 2. Leg. Angl. (Canciani, Barbarorum Leges, t. iv. pp. 185, 311, 337), Jur. Alaman. s. Suevici Specimen. n. 24 seq. Senkenburg, Corp. Jur. Germ. t. ii. p. 6 seq.

³ Conc. Paris. vi. l. ii. c. ii.: 'Scire etiam debet (rex), quod causa, quam juxta ministerium sibi commissum administrat, non hominum, sed Dei causa existit, cui pro ministerio, quod suscepit, in examinis tremendi die rationem redditurus est;' c. v.: 'Nemo regum a progenitoribus regnum sibi administrari sed a Deo veraciter atque humiliter credere debet dari.'

⁴ Schwab Gerson, p. 411 seq. Cf. p. 456 seq.

⁵ Deo servire regnare est. Leo M. Petrus Bles. Ep. 20, p. 74, ed. Migne; Ep. 139, p. 413.

⁶ Aug. de Civit. Dei, l. iv. c. iii.

⁷ Anselm. Cantuar. l. iii. Ep. 132, ad Regem Scotiae; l. i. Ep. 142, ad Reg. Hibern. Petrus Bles. Ep. 67, p. 211: 'Rex cui omne judicium in populo datum est, quomodo judicabit populum suum in lege domini, si legem domini non cognovit?' In the Tract. quales sunt, P. iv. c. xii. p. 1048, he calls Christ, regum omnium potentissimus, qui vices et jura sua regibus suis exsequenda commisit. Petrus Vener. l. ii. Ep. 7, p. 197, ad Regem Norvegiae; Ep. 46, p. 269, ad Reg. Hieros.; l. iii. Ep. 3; l. iv. 37, pp. 180, 369, ad Roger. Reg. Sicil.; Ep. 36, p. 366, ad Reg. Franc.

§ 5.

In many States the monarch was elected only on the express condition of professing the Catholic faith, defending it with all his might against attack, and thus best insuring the peace and welfare of his land.

In Spain, from the seventh to the fourteenth century, the king had to take such an oath; when it was no longer formally taken, a Spanish king was still understood to be ever bound by this obligation; the title 'Catholic king' was a title of honour and of responsibility.¹ In the laws of Edward the Confessor, published by William the Conqueror and his successors, it was expressly said, that a king who did not fulfil his duties towards the Church was to forfeit his title of king; and that he was to be bound by oath to this before his coronation.² Even supposing these laws do not come down from Edward, still there can be no doubt that they put before us the views and principles of

justice which prevailed under the early Norman kings.³ According to the purport of the words, a prince who was faithless in his religious duties not only deserved to forfeit his kingly title, but was in fact to forfeit it.⁴

¹ Perez Valiente, l.c. t. xi. c. vii. n. 18.

² *Leges Edwardi Regis*, art. 17, al. 15 (Wilkins, *Leg. Anglo-Saxon*. Lond. 1721): 'Rex autem, qui vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum et populum Domini, et super omnia sanctam veneretur Ecclesiam ejus, et regat et ab injuriosis defendat et maleficos ab ea evellat et destruat, et penitus disperdat. Quod nisi fecerit, nec nomen regis in eo constabit, verum testante Papa Joanne nomen regis perdit.' Vide Cancian. l.c. p. 337. Howard (*Traité sur les Coutumes Anglo-Normandes*, Paris, 1776, t. i. p. 167) omits the last words, contrary to all former editions (Spelman, *Concilia, Decreta, Leges, Const. Orbis Britan.* Lond. 1639 seq. p. 622; Wilkins, *Conc. Brit.* Lond. 1737, i. 312; Hard. *Conc.* vi. 988), and gives no reason for the omission. Vide Gosselin, ii. p. 303, n. 1. It is not certain whether Pope John has been confounded with Pope Zacharias, or whether the passage refers to John VIII. in c. xxvi. *Administratores*, c. xxiii. q. 5—in which, however, the words are not so strong—or to a lost writing by a Pope of this name.

³ Wilkins, *Conc. M. Brit.* i. 310. Canciani, l.c. p. 224.

⁴ Cf. *Receveur, Hist. de l'Eglise*, t. v. p. 127.

§ 6.

The coronation of kings, which was in early times likened to the consecration of bishops,¹ brought home to the people the loftiness of the royal dignity, and to the king the weight of his responsibilities.² In the West, as in the East, where from the fifth century the emperor had been crowned by the Patriarch,³ the profession of faith, and the oath taken by the king, that he would rule with justice, defend the Church, &c., formed a part of the coronation. In the *Arles Pontificale*, a rite of anointing is given, in which the prince to be anointed is presented to the metropolitan by two eminent bishops with a petition that he may be raised to the kingly dignity;⁴ upon which the metropolitan, precisely as at a consecration, inquires into his worth and fitness, and having received a satisfactory answer, replies 'Deo gratias.' Before the anointing came the taking of the oath.⁵ Most significant are the accompanying prayers and words.⁶ Many were of opinion that kings received full power only at

their coronation and anointing by the Church. The language of documents is in keeping with this view; the twelfth Council of Toledo (681) says, from the deeds laid before it, it is clear that Prince Erwig had attained the dignity of king and received the royal power through the sacred anointing.⁷ Charles the Bold, in his complaint against Archbishop Wenilo of Sens (859), laid stress on the fact that the archbishop had consecrated him and raised him to the throne.⁸

Although the king, either by election or by birth, might have a right to reign (*jus ad rem*), still, according to universal belief, his reign began (*jus in re*) through the anointing and blessing of the Church, or at the very least his power then received its solemn sanction.⁹

¹ Petrus Damiani, sermo 69, in *Dedicacione Ecclesiae*, t. ii. p. 374. Petrus Bles. Ep. 10, ad G. Capell. In the East, the Patriarch Polyeuktus, in a synodal decree of 969 (Bever. Pand. can. i. p. 385; Balsam. in c. xii. Ancy.), even compares this anointing in its effects to baptism.

² Phillips, *Kirchenrecht*, iii. § 120, pp. 67, 68.

³ Theod. lect. ii. 65. Theophan. p. 170, ed. Bonn. Le Quien, *Or. Christ.* i. 133, § 22.

⁴ Pontificale M. S. Eccl. Arelat. ap. Martene, de *Antiquis Eccl. Riti-* bus, t. iii. l. ii. c. x. p. 222: 'Reverende pater, postulat mater Ecclesia, ut praesentem militem ad dignitatem regalem sublevetis.'

⁵ Martene, l.c. pp. 192-199. Cf. formula in Phillips, l.c. p. 72 seq., and that used at the coronation of Edward II. of England, Feb. 24, 1308, Rymer, iii. 63; also Lingard.

⁶ Martene, l.c. pp. 203, 205, 214. Phillips, pp. 74-79. Walter, l.c. p. 608, n. 2.

⁷ Aguirre, *Conc. Hisp.* ii. 683, c. i.: 'Regnandique per sacrosanctam unctionem susceperit potestatem.'

⁸ Libell. Proclam. Hard. v. 488.

⁹ Bianchi, t. ii. l. v. § 12, n. 8, p. 381 seq. against the *Defensio Declarat. Cleri. Gall.* P. i. l. ii. c. xliv. p. 269 seq. ed. Mogunt, 1788.

§ 7.

At the coronation of a king, the principle was expressly laid down that the temporal sword was to be borne for the honour of God. This applied more strictly indeed to kings, but also to the entire Germanic knighthood. As of old, in heathen times, weapons were laid on the altars of the gods and consecrated to sacred conflicts, in like manner the sword was delivered

to the Christian warrior by the hands of the Church, or at least with religious solemnity. In the case of warlike nations, the blessing of the sword by the Church was a means of drawing their whole lives within the domain of Christianity.¹ It was universally held that knighthood bound a man, above all, to the defence of the Church, the weak, and the needy. The truer knights are towards their sovereign, says John of Salisbury, so much the more zealously will they keep faith with God.² Faith must be kept first with God, then with princes and people; the higher ever comes before the lower; the commands of princes cannot be obeyed when contrary to the commands of God; and this the oath itself says.³ All, without exception, belong to the Church, whether bound by an oath expressed in words, or by one taken in silence; a deed weighs as much as a word; if the future knight bring his sword solemnly to the altar, and there make an offering of it to God, he has done as much as abbots and bishops when they make their profession in writing before God. Much is granted them for the service of the Church, but nothing is granted to be used against her.⁴ The chief duty of Christian knighthood was to do battle for the Church, and even when princes received the knightly stroke this duty was ever put before them; as was done in the case of William of Holland, who, after the speech of the Papal legate and the taking of the oath, was dubbed knight by the King of Bohemia with earnest words of admonition.⁵ Often were kings reminded that the sword had been given to them for the defence of the Church,⁶ and that they should imitate King David in their submission to God.⁷

¹ Phillips, § 121, p. 81 seq. Cf. Walter, *Deutsche Rechtsgeschichte*, p. i. § 219.

² Joh. Saresbur. *Polycrat.* l. vi. c. viii.: ‘Sed ipsius juramenti (militaris) verba revolve, et invenies, armatam militiam non minus quam spiritualem *ex necessitate officii* ad religionem et Dei cultum arctari, *cum fideliter et secundum Deum* principi debeat obsequium et reipublicae pervigil famulatus. Illi ergo quid habent militis, qui vocati ex sacramento non obtemperant legi, sed in eo militiae suae gloriam constare credunt, si contemptibile sit sacerdotium, si Ecclesiae vilescat auctoritas, si ita dilataverint regnum hominis, ut Christi imperium contrahatur, si laudes suas praedicent et se falsis ipsos praeconiis mulceant et extollant, cum irrisione

audientium imitantes "militem gloriosum"? . . . Sed quid est usus militiae ordinatae? Tueri Ecclesiam, perfidiam impugnare, sacerdotium venerari, pauperum propulsare injurias, pacare provinciam, pro fratribus, ut sacramenti docet conceptio, fundere sanguinem et si opus est, animam ponere. . . Haec agentes milites sancti sunt et in eo fideliores principi quo servant studiosius fidem Dei, et virtutis suae utilius gloriam promouent, quo fidelius Dei sui in omnibus gloriam quaerunt.' Cf. Anselm's words, in Möhler's *Anselm of Canterbury* (Gesammte Schriften, i. p. 99), and Alanus ab Insulis de *Arte Praedicat.* c. xl. (Migne, ccx. p. 786).

³ *Ib.* c. ix. p. 601: 'Haec autem omni militiae formula praescribenda est et implenda, ut *Deo primum fides debita deinde principibus et reipublicae* seruetur incolumis et semper maiora praejudicabunt minoribus, quia nec reipublicae nec fides principi servanda est *contra Deum*, sicut habet ipsa conceptio militaris sacramenti.' So says St. Augustine in Psalm cxxiv. of the Christian soldiers under Julian: 'Milites Christiani seruerunt imperatori infideli; ubi veniebatur ad causam Christi, non agnoscebant nisi eum, qui in coelo erat.'

⁴ *Ib.* c. x. pp. 601, 602: 'Licet autem sint, qui sibi non teneri videntur Ecclesiae ex sacramento solemniter, quia jam ex consuetudine plerumque non praestatur, nullus tamen est, qui sacramento tacito vel expresso Ecclesiae non teneatur obnoxius. Et forte ideo cessat solemnitas iuramenti, quia ad hoc omnis invitatur et coarctatur necessitas officii et sinceritas fidei. Unde jam inolevit consuetudo solemniter ut ea ipsa die, qua quisque militari cingulo decoratur, ecclesiam solemniter adeat gladioque super altare posito et oblato, quasi celebri professione facta, se ipsum obsequio altaris devoteat et gladii, i.e. officii sui, jugem Deo spondeat famulatum. Neque necesse est, ut hoc profiteatur verbo, cum legitima professio militiae facto ejus videatur inserta. Quis enim in homine illiterato et qui magis arma debeat nosse quam literas, professionem exigit literarum? Nam episcopi et abbates professione scripta vel dicta ad fidem et obedientiam videntur arctari. Et revera arctantur, quia Deo mentiri non licet. Sane aut plus est aut non minus, quod milites faciunt, qui non *schedulam, sed gladium offerunt et quasi primitias officii redimunt ab altari*, unde Ecclesiae in perpetuum famulantur. Nam sicut eis *pro Ecclesia plurimum, ita contra Ecclesiam licet nihil.*' Cf. Petr. Bles. Ep. 94, p. 294.

⁵ Magn. Chron. Belgic. ap. Pistor. Scr. Rer. Germ. iii. 266. Pertz, iv. 363. Phillips, l.c. p. 82 seq.

⁶ Petrus Bles. Ep. 112, pp. 338, 339: 'Recolat . . . rex, se non ad oppressionem pauperum, sed ad tuitionem Ecclesiae potestatem gladii accepisse.'

⁷ Petr. Bles. Tractatus quales sunt, P. iii. c. xix. p. 1036: 'Regem (imitentur) reges, ut quanto latiora sibi regna subduntur quanto de die in diem amplificantur, quanto plus eis honoris impenditur, humiliores efficiantur et gratias agant datori. *Datori dico non dictori*; datori, qui dedit, ut inde plus (se) humiliant, non dictori, qui dicit, ut inde plus jactitent. . . Qui facit, unde reges gaudeant, facit, unde reges contremiscant. Ipse namque est per quem reges regnant (Prov. viii. 15); ipse qui dat salutem regibus (Ps. cxliiii. 10); ipse qui subdidit eis populos, est idem ipse, qui aufert spiritum principum, terribilis apud omnes reges terrae (Ps. lxxv.

13); ipse est qui facit ut potentes potentur tormentis patiantur (Sap. vi. 7) . . . se ipsos sentiant esse *homines*, qui ab hominibus sentiuntur *reges*.'

§ 8.

This being the state of the case, the clergy naturally took an active part in all the weighty affairs of their country, and exercised a powerful influence,¹ to which their learning and intelligence, their wide possessions in land and their firmness of character greatly contributed. Bishops and, later, many abbots also obtained privileges of independence in the German empire. Kings often sought and obtained from them support against their turbulent nobles; mixed parliaments were formed (*concilia mixta*), synods and parliaments in one, composed of the lords spiritual and temporal.² In Spain the bishops, together with the chiefs of the nation, chose the king, who had, before ascending the throne, to promise by oath to fulfil all his obligations.³ So also, according to the English Council of Calcut (787), kings were to be lawfully chosen by the bishops and chief men of the nation.⁴ At Aix (842) the bishops required from the brothers of Lothair I. a vow that they would govern in a manner well-pleasing to God.⁵ In the year 879, Count Bosco was chosen and crowned king by the lords spiritual and temporal of Provence;⁶ and the same was done in other lands.⁷ Bishops, being vassals holding directly from the king, had a share, if not always a personal share, in all his privileges and duties;⁸ their moral weight and their material possessions secured to them a most prominent position. They filled the posts of chancellor and ambassador at the various courts, they were the most valued councillors of the sovereign, and above all they were the leaders of opinion in the assembly of the nation.⁹ They exercised a certain control over temporal justice, their legal orders took precedence of those of earls,¹⁰ and the State officials had moreover to support the bishops with the temporal arm.¹¹ The joint inspection of the public prisons was also given to the bishops,¹² who often set prisoners free on the feasts of the Church,¹³ and through their right of giving sanctuary were a safeguard against private vengeance and the

rude administration of justice in those days.¹⁴ They were treated with the greatest honour by the king,¹⁵ and were often in his absence left as administrators of the realm, as, for example, Archbishop Lanfranc in England.¹⁶

¹ Bossuet, *Defensio Decl. Cleri. Gall. P. i. l. ii. c. xxxvi. p. 254*: 'Cum (episcopi) commissos greges paterna charitate etiam in negotiis saecularibus adjuvarent ipsique reipublicae non tantum ornamento, verum etiam tutelae ac firmamento essent, eos tanta regum ac civium charitas et reverentia prosecuta est, ut jam reipublicae pars maxima interque optimates primi haberentur, multi etiam lapsu temporis suarum urbium principatum ditionemque obtinerent, quae sacro conjuncta ordini et ejus dignitate tanquam fundamento nixa longe tamen absunt ab iis, quae primae institutionis esse constat.' On the political authority of the bishops from the fourth century, vide Thomassin, *P. iii. l. i. c. xxvi. seq. xxxi.*

² Döllinger, *Lehrbuch*, ii. p. 11. Neander, *Kirchengeschichte*, ii. p. 52. Giesebrecht, *l.c. i. pp. 76, 331*, p. 8. Phillips, *l.c. p. 64 seq.* Cf. Willelm. Malmesb. *de Gest. Angl. l. v.*; Thomassin, *l.c. c. xxviii. seq.*

³ Conc. Tolet. iv. 633, can. 75; vi. 638, c. 3; ix. 655, c. 10. Hefele, *Conc. iii. p. 80 seq. 83, 92.* Cf. Fleury, *t. viii. l. xxxvii. n. 50.*

⁴ Can. 12. Mansi, xii. 937. Hefele, *l.c. p. 597.*

⁵ Nithard. ap. Pertz, *Mon. ii. 668.* Hefele, iv. p. 521.

⁶ Pertz, i. 512; iii. 547. Hefele, iv. p. 521.

⁷ Cf. the Council of Pavia, 889 or 890. Hefele, iv. p. 98 seq.

⁸ Phillips, *Deutsche Geschichte*, i. p. 469 seq.; ii. p. 314 seq. 407 seq.

⁹ Cf. Thomassin, *l.c. et seq. P. iii. l. iii. c. xxv. n. 6 seq.; c. xxiv.*

n. 1 seq.

¹⁰ Conc. Tribur. 895, can. 9. Hefele, iv. p. 533. Thomassin, *p. ii. l. iii. c. lxxxix. n. 1 seq.; c. xxvii. n. 1, 9.*

¹¹ Conc. Paris. 846, c. 71. Mogunt, 847, c. 7; 851, c. 2. Tribur. 895, c. 3. Hefele, iv. 112, 120, 171, 532.

¹² Conc. Aurel. v. 549, c. 20.

¹³ Bened. Levita. *Capit. l. ii. c. 107.*

¹⁴ Walter, *Kirchenrecht*, § 345, p. 611, note 7.

¹⁵ For examples, vide Thomassin, *P. ii. l. iii. c. lx. n. 6-11; c. lxii. n. 3 seq.; c. lxiv.*

¹⁶ Thomassin, *P. iii. l. iii. c. xxiv. n. 4.*

§ 9.

The state of society was moreover such that the aid of the Church could not be dispensed with, and could be replaced by no other.¹ Outside the Church violence and barbarity, sword and conquest, the untamed powers of nature, reigned unchecked, both before the time of Pipin and Charlemagne, and after them under their more feeble successors, and indeed long after the

complete extinction of their race. In spite of the contempt for learning and culture, there existed still a deep reverence for religion and for its ministers; in spite of all passions, faith was still living. Monasteries were held in high honour as abodes of purer life, and persons high in rank took pleasure in visiting them, and frequently chose them as places of retreat for the remainder of their lives.² Discipline and sound principles could come from the Church alone; enlightened legislation could be her work alone; and under her influence alone could the condition of society be improved.³ To her was due the mitigation and repression of slavery,⁴ the first organised care of the poor,⁵ the institution of the Truce of God,⁶ the establishment of places of education,⁷ and every true form of progress. Princes and people were eager to confide their weightiest interests to the clergy, and to increase their external means of power and influence;⁸ for by their learning and virtue they merited trust, and by their character and authority they were the most sure support of public order. The Church, on her side, did her utmost to obtain safeguards against the many attacks and acts of aggression of princes and nobles, who sometimes, from desire of vengeance, oftener from mere covetousness, imprisoned bishops and priests, robbed them, misused them, and thrust others into their places.⁹

¹ Fleury, *Hist. Ecclés.* t. xiii. discours 3, *Mœurs des Chrétiens*, n. 57-61.

² Voltaire, *Essai sur les Mœurs et l'Esprit des Nations*, c. cxxxix. (*Œuvres*, xviii. pp. 235-8). Höfler, *Deutsche Päpste*, i. pp. 22 seq. 199 seq.; ii. p. 75 seq.

³ Guizot, *Hist. Générale de la Civilisation en Europe*, leçon iii. v. vi. pp. 86 seq. 132 seq. 172 seq.

⁴ Balmes, *Protest. und Katholicismus*, c. xiv.-xix. pp. 199 seq. Ratisbon, ed. 1844. Möhler, *Gesammte Schriften*, ii. p. 54 seq.

⁵ Ratzinger, *Geschichte der kirchlichen Armenpflege*, Freiburg, 1868, p. 141 seq.

⁶ Phillips, *Kirchenrecht*, iii. § 121, pp. 84-89.

⁷ Walter, *Kirchenrecht*, § 337, p. 600 seq. Daniel, *Classische Studien*. Trans. by Gaisser, Freib. 1855, p. 57 seq.

⁸ Montesquieu, *Esprit des Loix*, l. xxxi. c. xix.

⁹ This is proved by the decrees of many Councils: *e.g.* Troyes, 878; Tribur, 895, c. 7; Troslei, 909; Hohenaltheim, 916 (*Hefele*, iv. pp. 513, 533, 548, 557); and others besides.

§ 10.

In all mediæval States it was considered essential to the general welfare of society that Church and State should be closely united. Their working well together had been looked upon in Christendom from the earliest times as a pledge of happiness and prosperity, and their separation as the foundation and beginning of untold evils.¹ Therefore, just as submission to temporal powers was enjoined by the Church,² submission to the Church was on their side impressed by kings upon all their subjects.³ From this close union between the two powers and from the prominent position of the clergy it followed necessarily that the laws of the Church were confirmed by the authority of the sovereign of the land and by the infliction of external punishments. In the East the emperors regularly confirmed the decrees of General Councils and gave them the authority of laws of the empire, and hence they had to be observed under pain of temporal punishments.⁴

In the Germanic kingdoms the union between Church and State was far closer, and the uncivilised state of the nations increased the necessity for external penalties. The Carolingian legislation adheres closely to the canon law of the Church;⁵ in Spain Councils confirmed or modified the edicts of the king;⁶ in England also the same harmony existed; the decrees of a Council in 691 or 692 were transcribed into the code of laws of King Ina.⁷ The Emperor Henry II. confirmed, as laws of the empire, the decrees of the Council held at Pavia by Benedict VIII. (1018) to secure their being put in force by the civil power.⁸ Peter Damiani desired that bishops should proceed against misdoers according to civil law; and that the king, with the advice of the bishops and guided by canon law, should pass decrees touching on religious matters.⁹ Thus had Charles the Great acted in virtue of his friendly relations with the Church; but at the same time he was careful to avoid any collision with existing ecclesiastical rules, and revoked any decrees which were contrary to the regulations already laid down by the Church.¹⁰ She rightfully and necessarily demanded that nothing contrary to divine or

ecclesiastical precepts or to the freedom and honour of the house of God should be introduced by civil law or by custom into the life of Christian nations.¹¹ The sentence pronounced at Chalcedon still held good, that all imperial laws which were contradictory to canon law should be null and void;¹² but while this principle was unquestioned in the West, the bishops of the East seldom succeeded in dissuading their emperor from passing laws against the Church.¹³ According to the words of Holy Scripture (St. Luke x. 16; St. Matt. x. 40; St. John xiii. 20) and of the Fathers, as also according to the dogma of the relation of the Church to Christ, every offence and insult offered to her was an offence and insult offered to God Himself.¹⁴ The Council of Fimes, under the presidentship of Hinemar (881), declared the dignity of bishop higher than that of king, since bishops consecrate kings, and are bound to render account of them to God.¹⁵

¹ Ivo Carno. Ep. 238: 'Cum regnum et sacerdotium inter se conveniunt bene regitur mundus.' Ep. ad Hag. Lugdun. (Floss, Die Papstwahl unter den Ottonen, p. 172): 'Regnum divisum et sacerdotium, sine quorum concordia res humane nec incolumes esse possunt nec tutae.'

² Romans xiii. 1 seq.; 1 Pet. ii. 19. Aug. c. 24, c. xxiii. q. 5; c. 98, c. xi. q. 3. Tert. Apol. c. 30, de Idol. c. 15. Hier. in Tit. c. 3. Orig. c. Cels. v. 37. Nicol. Myst. Ep. 1, ad Amiram Cret. (Mai Spicil. Rom. x. ii. p. 61).

³ Capitul. Franc. t. i. p. 437.

⁴ Justinian, Nov. 131, c. i. Cod. i. 1, 47, 48.

⁵ Analyse des Capitulaires, in Ceillier, Hist. des Auteurs, t. xviii. p. 380.

⁶ Conc. Tolet. viii. 653, c. 13; xii. 681, c. 9; xiii. 683, c. 1-4. Hefele, iii. pp. 92, 289, 291.

⁷ Mansi, xii. 56 seq. Hefele, iii. 318 seq.

⁸ Mansi, xix. 343 seq. Fleury, t. xii. l. lviii. n. 47. Hefele, iv. p. 638 seq.

⁹ Petrus Dam. t. iii. Opusc. 4, p. 30: 'Ceterum (pontifex) deliquentes, cum causa dictaverit, forensi lege coerceat, et ipse rex cum suis episcopis, super animarum statu prolata SS. Canonum auctoritate decernat.'

¹⁰ Dollinger, Lehrb. ii. § 74, pp. 11, 12.

¹¹ Joh. Saresb. Ep. 184, ad Barthol. Ep. Exon. p. 188: 'Illis (consuetudinibus rex) profecto debuerat esse contentus, quae non sunt divinis legibus inimicae, quae bonis moribus non adversantur, quae sacerdotium non dehonestant, quae periculum non ingerunt animarum, quae matris Ecclesiae, de cuius manu suscepit gladium ad ipsam tuendam et injurias propulsandas, non subruunt libertatem.'

¹² Mansi, vii. 98. The Emperor Marcian expressly recognised this

(cf. Gratian, c. ii. iii. d. 96 ; Quesnell, diss. i. in Opp. ; Leon. M. a. 451, pp. 262, 265, ed. Migne, t. ii.), and was highly praised for it by Facundus of Hermiane. Defens. Trium. capit. xii. 3 (Galland. xii. 801).

¹³ They succeeded sometimes. Thus in the tenth century Nikephorus Phokas wished soldiers fallen in war to be honoured as martyrs, but the bishops held fast to a canon of Basil. Theod. Balsam. in Basil. can. 13. Bever. ii. p. 70. Cedren. Chron. ii. p. 369.

¹⁴ Bernard. Ep. 45, ad Ludov. Reg. Franc. (Migne, clxxxii. p. 150) : ' Non utique episcopo Parisiensi (infensum vos redditis) sed Domino paradisi, et quidem terribili et ei qui aufert spiritum principum (Ps. lxxv. 12, 13). Ipse quippe est, qui ad episcopos dicit : qui vos spernit, &c. (S. Luc. x.) . ' Petr. Bles. Ep. 153, p. 447 : ' Sponsa enim Christi (Ecclesia) est et injurias sponsae Christus reputat suas.' Joh. Saresb. Ep. cit. p. 189 : ' Sponsum exhonorat Christum, quicumque inhonorat ecclesiam sponsam ejus. Sunt enim corpus unum, imo et spiritus unus, et quod amplius est, collatione gratiae quodam modo sunt Deus unus, dum admirabili commercio illa, quae carnis sunt, ex natura primitiva Domino impertit, ut ab eo plenitudinem divinae naturae recipiat et oleo exultationis quadam ratione consortii abundet ab illo et effluat tota.'

¹⁵ Mansi, xvii. 537, c. i. Hefele, iv. p. 522.

§ 11.

All jurisprudence of former days distinguishes between natural and positive law. The first rests upon the principles implanted by the Creator in human nature, has its foundation on its own intrinsic necessity, is unchangeable, eternal, and everywhere the same.¹ The second is founded on the free will of the lawgiver, and is liable to change, because it is called for by no intrinsic necessity.² The natural law was called the eternal law, when considered as God's will determining the order and government of the world ; and was called the natural law when manifested in the heart and consciousness of mankind.³ As originating in God the law of nature is also called divine law.⁴ Positive law is divided into divine law (the old and new covenant)⁵ and human law, which again is subdivided into spiritual and temporal (or civil) law, upon which rests the law of nations.⁶ Public law rules all that concerns the general ordering of the State or of the Church ; private law, all that has to do with the mutual relations and duties of individuals. These two laws rest partly upon natural, partly upon positive human law, knowledge of which is to be gained not from written codes only,

but from customs rendered sacred by long usage.⁷ It was an accepted rule that the civil law might never be prejudicial to the natural law; no civil law, no custom could prevail over it;⁸ and more than this, any temporal law which was contrary to the natural or to the positive divine law was null and void, and was no law at all.⁹ Thus a distinction was ever made between those commands which are binding at all times and in all places and those which have not this character.¹⁰ The task which temporal legislation had before it was, first, to adhere to the natural and divine law;¹¹ and to do this it needed the guidance of the Church, who in the widest and in the strictest sense is guardian of the deposit of the divine law;¹² secondly, to place upon human freedom no restraint which was not demanded by the well-being of society;¹³ and here again the council of the Church was of the highest value. In support of this was quoted Malach. ii. 7, Ag. ii. 12, according to which the priests of God are the guardians of the law, and are to be consulted concerning it.¹⁴ Legislation was to be in conformity with the decrees of the Church.¹⁵

¹ Arist. Eth. v. 7. Cic. de Leg. ii. 4, 5; de Republ. iii. 22 (et pass.); de Invent. ii. 22, 53. Or. pro Milone. Seneca, Ep. 65, ad Lucil.; Rom. ii. 14, 15, and on it the Fathers: Aug. Conf. vi. 4; Instit. Jur. Civ. i. 2, Ulp. f. 1, § 3; Dig. de Just. et Jure, i. 1. Gratian, c. i. 7, d. 1. S. Thom. in l. iv. sent. d. 33, a. 1; Sum. i. 2, q. 94, a. 6. Suarez, de Leg. i. 1 seq. Domat, Droit Public. Préface, pp. 15, 16. Zallinger, Instit. Jur. Nat. Princ. Bouix, Tract. de Princ. Jur. Can. P. i. sect. 1, c. iii. p. 16 seq. Leibnitz, Observ. de Princ. Jur. § 2 (Opp. iv. iii. p. 270): 'Jus naturale est, quod ex sola ratione naturali sciri potest sine revelatione.' Cf. Hemming, de Lege Naturae Apodict. Methodus, Wittenb. 1577; Hugo Grot. de Jure Belli et Pacis, Paris, 1625, l. i. c. i. § 10, 12.

² S. Thom. Sum. i. 2, q. 91, a. 3; q. 95, a. 2. Lactant. Div. Inst. vi. 8. St. Bernard. de Praecepto et Dispens. c. iii. p. 864 seq.

³ S. Thom. l.c. q. 93, a. 1; q. 91, a. 2, 3; a. 4; q. 95, a. 2. Soto, de Just et Jure, libri vii. Salam. 1556. Other authors apud Walter, Naturrecht, § 528, 529, p. 540 seq. Cf. § 61, p. 69.

⁴ Isidor. Orig. v. 2 (c. ii. d. 1).

⁵ Thomas. Instit. Jurisprud. Div. i. ii. § 4, 117. Bouix, l.c. c. iv.

⁶ Bouix, l.c. c. v.

⁷ Domat, Lois Civiles, livre prélim. tit. 1, sect. 1, n. 2 seq. Bouix, c. vi.

⁸ Petrus Bles. Ep. 70, p. 218: 'Jus civile naturale corrumpere non potest, cum jus civile a naturali quodammodo tollatur.' Ep. 82, p. 254:

‘Ubi divina et humana jussio sibi invicem contradicunt, obediendum est Deo magis quam hominibus. Cumque sint duae leges, exterior et interior, interior semper praejudicat, quodque puritas conscientiae dictat mihi, exteriori praecepto fortius est et omnem indulgentiam alienae dispensationis evacuat.’

⁹ S. Thom. i. 2, q. 95, a. 2: ‘Si lex humanitus posita in aliquo a lege naturali discordet, jam non erit lex, sed legis corruptio.’

¹⁰ Joh. Saresb. Polycr. iv. vii. p. 527: ‘Sunt etenim praecepta quaedam perpetuam habentia necessitatem, apud omnes gentes legitima et quae omnino impune solvi non possunt. Ante legem, sub lege, sub gratia, omnes lex una contringit: Quod tibi non vis fieri, alii ne feceris (Tob. iv.). In his dumtaxat, quae *mobilia* sunt, dispensatio verborum admittitur, ita tamen, ut compensatione honestatis aut utilitatis mens legis integra conservetur.’ Cf. l. vii. 17. Bernard. de Consid. l. iii. c. iv. n. 18. Petrus Vener. l. i. Ep. 23, p. 148.

¹¹ ‘Conditor legum temporalium, si vir bonus est et sapiens, legem aeternam consulit, ut secundum ejus immortales regulas, quid sit pro tempore jubendum vitandumque, decernat.’ Aug. de Vera Relig. c. xxxi. Cf. Thom. i. 2, q. 95, a. 2.

¹² In the strict sense, divine law comprises only the natural law and the positive law of direct revelation; in the wider sense, ecclesiastical law also. Cf. Andries, *Doctrina Salmeronis*, p. 20.

¹³ Auct. (not St. Thomas) de Reg. Princ. iii. c. xi.: ‘Ad hoc Deus providit de eis (regibus), ut regnum regant et gubernent et unumquemque in suo jure conservent.’

¹⁴ This was done by the bishops of the kingdom of Charles the Bold, writing to Lewis the German. Baron. a. 858.

¹⁵ In respect to this, St. Bernard. de Consid. l. iv. c. vii. n. 23, calls the Pope, *regum patrem, legum moderatorem, canonum dispensatorem, sal terrae, orbis lumen*. Many laws, especially in cases of marriage, were issued at the request of Popes and bishops; e.g. even by King Luitprand (712-744): *Leg. Longob. Luitpr. v. 4.*

§ 12.

The two ideas especially realised in the Middle Ages were freedom and religion.¹ They were not in opposition, but mutually supported one another; the Church, in which religion was incorporated, was at the same time the guardian of freedom. ‘In the Middle Ages self-government, which was preserved by the formation of corporations, was a means of satisfying the Teutonic spirit of freedom, and associations with their abundant resources elevated the interests of life and strengthened its energies. Thence came that wonderful wealth of creative power which was seen to spring forth in that remarkable

time, almost without help from the State, in every department of human existence, in science, art, political life, industry, commerce, and in devotion to the higher aims of life.² These multifarious societies had all more or less of a religious stamp; they had their patron saints and their festivals, and were brought in continual contact with the Church.³ Civil and political freedom was based on the recognition of the rights due to each class, and this recognition found its main support in the Church; true freedom was realised and secured in Christendom alone.⁴ True national freedom does not consist in outward show, but is founded upon an inward organisation;⁵ the Middle Ages were, moreover, rich in provincial, municipal, and corporative liberties, and strove hard to protect them all. But high though freedom stood, Religion stood still higher;⁶ she taught the true use of earthly freedom, and was herself the highest good, to be worked and striven for above all else. The pastors of the Church were bound by the law of God, which forbids all iniquity, to punish every disobedient subject (2 Cor. x. 6), and to oppose the mighty of the earth if they transgressed a single article of this law.⁷ In such cases the pastors of the flock were by no means to keep silence, but to fulfil their charge with courage; bishops who were merely hangers-on of princes, and proved themselves cowards in their dealings with the great of this world, were not thought worthy of the name of bishop.⁸ Of old those prelates won the highest renown who defended the freedom of the Church,⁹ such as St. Thomas à Becket.¹⁰

¹ Joh. Saresb. Ep. 193, ad Ep. Exon. p. 207: 'Duae causae sunt, quas homines affectuosissime tuentur et quas praeponunt animabus suis: altera *libertatis*, altera *fidei et religionis*.' Also Petrus Bles. tr. de Instit. Ep. p. 1111: 'Duo sunt, *justitia et libertas*, pro quibus quisque fidelis usque ad sanguinem stare debet.'

² Walter, *Naturrecht und Politik*, § 330, p. 300.

³ On the *Confratritiae* under Hincmar in the ninth century, vide Thomassin, P. i. l. ii. c. xxv. n. 5; on the Workmen's Associations in Spain, vide Capmany's *Memoirs of Barcelona* (1779), of which an extract is given in Balmes' *Protestantism and Catholicity*, Eng. Trans. note 35.

⁴ Petrus Bles. Ep. 121, p. 355: 'Ecclesia quidem a diebus antiquis libera est, et filii ejus, qua libertate Christus nos liberavit dicens in Evangelio, quia filii liberi sunt (St. Matt. xvii. 25).' Cf. Aug. de Civ. Dei, l. xv. c. ii.

⁵ Cf. Balmes, l.c. vol. iii. c. xlvi. p. 2, German edit.

⁶ Joh. Saresb. l.c. : 'Illa tamen (causa) quae fidei est, creditur esse praestantior et procul dubio justior est, adeo quidem ut et profanae religionis homines hoc constantissimum habeant.'

⁷ Joh. Saresb. l.c. : 'Haec (lex Dei) iniquitatem prohibet et pastoribus Ecclesiae praescribit, ut omnem ulciscantur in obedientiam.' p. 208. 'In omni ergo divinae legis articulo contendendum est, et potestatibus ascendendum ex adverso, et quidquid charitatem impugnat, quae legis est plenitudo, totis viribus subvertendum.'

⁸ Id. Ep. 201, ad Albert. Card. p. 223 : 'Si pastorale officium non nisi ad nutum principis liceat exercere, procul dubio nec crimina punientur nec tyrannorum arguetur immanitas nec reipsa diu stabit Ecclesia. Ergo quisquis ille sit, qui in tantarum pravitarum usurpatione silere et dissimulare consulit sacerdotes, haereticum esse non dubito et praeambulum Antichristi, si ipse non sit personaliter Antichristus.' *Polyer*. l. viii. c. xxiii. p. 809 : 'Ait Cyprianus : Episcopus si timet, actum est de eo.' *Petr. Bles.* Ep. 100, p. 310 : 'Verumtamen remissio, quae os praelati obstruit, quae adulatorem et venditorem olei facit, dum sibi quietem et honorificentiam venatur in favore principum, haec miseros praecipitat in foveam scandarum.'

⁹ *Petr. Bles.* Ep. 20, p. 71 : 'Non enim potest esse praeclarior famae titulus in praelato, quam si viriliter tueatur statum ecclesiae libertatis.'

¹⁰ *Petr. Bles.* Ep. 22, pp. 77-82 ; Ep. 27, p. 92 seq. (in which St. Thomas is called, religiosorum gloria, deliciae plebis, timor principum, Deus Pharaonis). Vide many examples in Thomassin, P. ii. l. iii. c. lxiii. The example of the ancient prophets is put before bishops by *Petr. Bles.* *Tract. de Instit. Episc.* p. 1112.

PART II. THE POWER OF THE PAPACY.

§ 1. Exalted position of the Pope. § 2. The Pope the father of the one family of Christian nations. § 3. Disputes settled by him. § 4. Public affairs conducted by him. § 5. The Pope the refuge of all. § 6. Legislation of the Popes. Laws upon usury. § 7. The Popes active in the interests of princes. § 8. Their government. § 9. Their temporal power not inconsistent with the spirit of the Gospel. § 10. Their power developed naturally.

§ 1.

The political influence of the clergy, and in particular of the bishops, being so great, that of the Pope must have been yet greater, for as Head of the Church universal he was held in the highest veneration, and from the latter half of the eighth century he had been a sovereign in Italy. He was the one

centre of all Christendom ; he was repeatedly called upon by princes and people, and, as time went on, he could not withhold from intervention in the disputes of individual nations.

Gregory II. specified it as the office of the Pope to make and maintain peace on all sides.¹ Gregory IV. felt obliged (in 833) to make an attempt (which was fruitless) to mediate between Lewis the Pious and his sons ; and Abbot Wala of Corvey proved from ecclesiastical authorities that in so doing he was fulfilling his office.² Nicholas I. (865) designates Rome as a central city, in which thousands seek a refuge and the protection of St. Peter.³ The chair of Peter, besides the splendour which belonged to it as such, shone with the added splendour gained for it by the energy, justice, and wisdom of its occupants ; the Papacy, besides its supreme and inborn rights, had others, which were secondary and additional.⁴ But the deep foundation of them all lay ever in the religious character of the Primacy,⁵ which had the power of adapting itself to every new situation, and by its very nature was bound so to adapt itself.

¹ Gregor. II. Ep. 2, ad Leon. Isaur. : 'Scire autem debes ac pro certo habere Pontifices, qui pro tempore Romae exstiterint, conciliandae pacis causa sedere tamquam parietem integerrimum septumque medianum orientis atque occidentis, ac pacis arbitros, ac moderatores esse, quique ante te fuerunt imperatores in hoc componendae pacis certamine desudarunt.'

² Paschas. Radb. in Vita Walae Abbat. ap. Mabillon, Acta SS. O.S.B. saec. 4, P. ii. l. ii.

³ Nicol. I. Ep. 8. Mansi, xv. 207.

⁴ Bossuet, l.c. pp. 254, 255 : 'Distinguamus . . . quae institutionis sint, quae sint accessionis, quae primaria, quae secundaria, quae innata, quae annexa sint. Pontifices Romani, quo altiore loco erant, Petri nomine ac majestate primum, quae post Christum erat maxima, tum dominae urbis splendore commendati, haec annexa et secundaria longe eminentius (quam reliqui episcopi) obtinebant. Coepit ergo Romana Sedes non modo in ecclesiasticis, quod et ipsi innatum, sed etiam in civilibus majestatem habere negotiis, eo maxime tempore, soluta in occidente imperii vi, Romanorum Pontificum fide atque observantia singulari suam dignitatem in his partibus sustentabant.' He then quotes Gregory II. l.c. and the letters of Gregory I., of which mention will be made in Essay xiii.

⁵ This is also shown by the titles given to the Pope by St. Bernard. *de Consid.* l. ii. c. viii. n. 15 : 'In princeps episcoporum, tu haeres apostolo-

rum, tu primatu Abel, gubernatu Noe, patriarchatu Abraham, ordine Melchisedech, dignitate Aaron, auctoritate Moyses, iudicatu Samuel, potestate Petrus, unctione Christus.'

§ 2.

To nations still outside the pale of Christianity, peace and order were all but unknown, and this was the case even long after their conversion; the Church could endeavour to secure these blessings for them, and it was her duty to do so. 'It follows necessarily on the perfect development of Christianity, that all Christian nations, although in all else they retain their national independence, look upon themselves as brethren, and therefore upon all violence and hostility towards one another as forbidden.'¹ The Church doctrine of the common origin of all men, their common hereditary guilt, and their one Redeemer, led to the perception of the physical and spiritual unity of mankind; and in the Church was created an organisation by which this unity could be realised and made known.² This unity found expression in the language of the Church (Latin), which was likewise the language of diplomacy, in the strivings after knowledge and art, and also in the principles of faith, of morality, and of society. All Christian nations formed one family³—Christendom united in one faith.⁴ This family had need of a head, of a father, and this head it possessed in the person of him who was honoured by all as their common father,⁵ the Vicar of God,⁶ the successor of St. Peter,⁷ to whom Christ had delivered His sheep and His lambs to be fed. Emperors and kings addressed him as father, and were in turn called by him sons.⁸ He was to the whole of Christendom the vicar of the Heavenly King, Jesus Christ, the interpreter of the divine law, the chief pastor of souls, their councillor and leader, the prince of peace; the inexorable avenger of evil and injustice,⁹ the 'hammer' of the guilty, the consoler of the innocent,¹⁰ the universal physician.¹¹ He was the faithful and wise servant, whom the Lord had set over His family (St. Matt. xxiv. 25).¹² The Apostolic See of Rome necessarily became the centre of the national life of Europe, even before the establish-

ment of the Western Empire ; and still more was this the case when that empire became unable to maintain its high position, and the people were in need of some bond of union.¹³

¹ Walter, Kirchenrecht, book viii. § 342, p. 606, 11th ed.

² Walter, Naturrecht und Politik, § 38, pp. 46, 47.

³ Guizot, l'Eglise et la Société Chrét. c. xiv.: 'En même temps que son origine est *divine*, l'idée fondamentale du Christianisme est essentiellement et par excellence *humaine*. Sous l'empire de cette idée le Christianisme a considéré tous les hommes, tous les peuples comme liés entre eux par d'autres liens que la force, par des liens indépendants de la diversité des territoires et des gouvernements. Tous les hommes, tous les peuples étaient compris dans sa mission : *Allez et instruisez toutes les nations*. En travaillant à *convertir* toutes les nations, le Christianisme a entendu aussi les *unir*, et faire pénétrer dans leurs rapports des principes de justice et de la paix, de droit et de devoir mutuels. C'est au nom de la foi, et de la loi Chrétienne, qu'est né dans la Chrétienté le droit des gens.'

⁴ Cf. Döllinger, Kirche und Kirchen, p. 3.

⁵ Theodore the Studite styles Pope Leo III. *κορυφαϊότατος πατήρ πατέρων*, l. i. Ep. 33, p. 1017, ed. Migne. The Pope is usually called *Pater Patrum* even by bishops. Andreas, Prævalit, Ep. ap. Baron. a. 519, p. 35.

⁶ The Pope is styled Vicarius Christi as early as the fifth and sixth centuries ; in the ninth the title is more frequent. Anti-Janus, p. 67, n. 19. St. Bernard, who even sometimes calls bishops *vicarii Christi* (Tract. de Morib. et Off. Ep. n. 36, p. 832, Ep. 183), and also speaks of the Pope as the Vicar of Peter (Ep. 183, 243, 346), calls St. Peter (de Cons. ii. 8, n. 16) *Unicus Christi Vicarius*. Cf. l. iv. c. vii. n. 23.

⁷ Vicarius stands for the Greek *τοποτηρητής*, *locum tenens* (*locum Petri tenens* the Pope is called even by St. Cyprian, Ep. 52; *regens locum Petri* by Innoc. I., &c.), and *vicarius* is in general *qui vices gerit alterius*. Thus it is synonymous with *successor*. St. Cyprian, Ep. 68, unites the two expressions (A.-J. p. 67, n. 15). Schulte, iii. p. 135, considers it significant that in old times the expressions *vicarius* and *successor Petri* are seldom used. But of what account is this, when so many equivalent expressions are used, such as *haeres Petri* (Leo M. serm. 3, c. iv. and elsewhere often), *haeres sedis*, or *administrationis Petri*, and numberless paraphrases? But it is not true that these expressions are rare. Vide Letters of St. Boniface (c.g. Ep. 48, ad Cuthbert, Baron. a. 740, *vicarius Petri*). A distinction between *vicarius* and *successor* has only been strictly made since the twelfth century. Thus John of Salisbury, Ep. 198, ad Alex. III. (Migne, cxcix. p. 217) calls the Pope *successor Petri*, *vicarius Crucifixi*. Innocent III. l. ii. Ep. 211, Alex. Imp. (Migne, ccxiv. p. 769), says: 'Vicarius Christi et principis Apostolorum successores.' Petrus Vener. l. i. Ep. 11, says: 'Vicarius Dei.'

⁸ The Emperor Marcian, at the close of the letter to Pope Leo, Dec. 18, 451 (Leo, Ep. 100, p. 1114), calls the Pope 'Father;' Constantine Pogonatus calls him 'your paternal Holiness' (Baron. a. 678, n. 4); Justinian,

in his letters to Hormisdas, styles his uncle, Justin. I., as *filius vester* (Baron. a. 520, n. 35; a. 521, n. 2, 3); *paternitas vestra*, write the Western princes, e.g. Lothair II. (Baron. a. 866, n. 37-42). Pope John II. calls Justinian his son (Baron. a. 534, p. 198, l. viii. Cod. i. 1, de S. Trin.). Likewise Vigilius, 545 (Mansi, ix. 41, J. n. 593, p. 78); Agatho also calls Constantine Pogonatus (Baron. a. 680; Mansi, xi. p. 234) son, and Nicholas I. calls Michael III. son (Mansi, xv. 234; Jaffé, n. 2124, p. 249), &c. Cf. Thomassin, P. ii. l. iii. c. lx. n. 4.

⁹ Joh. Saresb. Polycr. l. viii. c. xxiii. p. 813: 'Qui omnium coercere debet excessus.' Innoc. III. l. xv. Ep. 189 (Migne, ccxvi. p. 711).

¹⁰ Nocentium malleus, et innocentium consolator. Petrus Bles. ad Innoc. III. Ep. 151 (Migne, ccvii. p. 443).

¹¹ Ignat. Cpl. Patr. ad Nicol. I. Baron. a. 867, n. 108. Mansi, xvi. 47, 325.

¹² St. Bernard. de Consid. l. iii. c. i. n. 2.

¹³ Walter, Kirchenrecht, p. 606.

§ 3.

To the head of the family falls the duty of deciding who shall be adopted into its circle; and in the same way application was made to the Pope respecting adoption into the union of Christian nations, and new kingdoms received recognition from him, as in the present day from treaties and congresses. It is the right and the duty of the head of the family to ward off and to pacify strife among its members; and in the same way, when disputes threatened, the chief pastors of the Church intervened as mediators, or were called in as arbitrators by the disputants themselves.¹ The Church sought to put an end to war, with its horrors and crimes, or failing this, to limit and lessen its sufferings as much as possible, especially by forbidding weapons of too murderous a kind.² The Church authorities were to decide upon the justice of a war, and many held that without this war was never to be made.³ Many wars were, in fact, hindered by the Papal authority, or at least brought to a speedy close. Was that a calamity? Can that be made a cause of complaint, even in the nineteenth century? Can a jurist so distinguished as Walter be accused of falsehood, when he says?—'Even if a perpetual tribunal cannot be established over States, submission to an umpire chosen by either party at least is possible. As civilisation advances, the reason of all mankind will infallibly labour unceasingly to promote this end,

and strive to make it a necessity of international law.⁴ War is justifiable only when States have, as a last resort, no other means of enforcing their just claims against one another.⁵ The organisation of mankind will never be complete without an international tribunal, provided with powers of coercion.⁶ Truly an age which is content with an artificial balance of power in politics,⁷ while the most solemn treaties are despised and violated;⁸ which is forced to endure either a state of war, or a state of armed peace, consuming the marrow of nations;⁹ which, even amid the mightiest social tempests, persists in holding politics aloof from religion and morality, and is ever hastening on towards terrible catastrophes,—such an age has, indeed, no right to look down with insolence upon the principles and the practices of the Middle Ages.

¹ Walter, *Kirchenrecht*, p. 607.

² Walter, *ibid.* specially notes 5, 6.

³ Gerhoch, *de corrupto Eccl. statu* (Baluz. *Miscell.* v. p. 117): ‘*Denique in omni militum vel civium guerra et discordia vel pars altera justa et altera injusta, vel utraque invenitur injusta. Cujus rei veritatem patefacere debet sacerdotalis doctrina, sine cujus censura nulla bella sunt movenda.*’

⁴ Walter, *Naturrecht und Politik*, § 473, p. 462 seq.

⁵ Walter, *l.c.* § 474, p. 464.

⁶ Walter, *l.c.* § 478, p. 469. In this point of view Leibnitz considered the Papal power in the Middle Ages most suitable (*Tract. de Jure Suprematus*, P. iii. Op. iv. 330; *Lettre seconde à M. Grimaret*); and in our own day, David Urquhart has spoken for the establishment of a supreme tribunal of this sort, under the presidentship of the Pope (*Appel d'un Protestant au Pape pour le rétablissement du Droit Public des Nations*, Paris, 1869).

⁷ ‘Behind this bulwark,’ says Trendelenburg (*Naturrecht*, § 228), ‘which States have formed out of the passions of mankind, and which they have been building up for the last three hundred years, without yet making it invincible, something better [?] than itself may be forming, while it serves to maintain peace provisionally. But as long as this repose is protected only by the force of envy and jealousy, as long as only a mechanical balance is calculated on, so that each one may know that there exists on the other side as much power of resistance as on his side of attack, as long as the balance of power rests not on a moral centre of gravity, just so long every State whose power is increasing, or who knows how to shift the weights, is able to disturb the balance of power, and so long is every State as a last resort thrown upon its own might as a safeguard of its rights.’

⁸ *E.g.* the Paris treaty of 1856, torn up by Russia.

⁹ Hardly has the German nation victoriously repelled the attack of its neighbour than the conquered party, even before all the conditions of peace are fulfilled, cries out for 'revanche et vengeance.'

§ 4.

Moreover, it is the business of the head of the family to direct the common undertakings of its members; and naturally the Popes had to take in hand anything which was considered to concern all the Christian nations of Europe. Thus their interposition in the Crusades was thought to be, and was, in truth, indispensable. They alone could lead and regulate such multitudes; they alone could secure to the sovereigns who took up the cross peace at home during their absence; they alone could insure harmony of action, and keep alive the religious principle which had first inspired the undertaking.¹ The Council held at Clermont, 1095, by Urban II., was the origin of the Crusades; the Pope gave the first impulse to the vast movement, when he appointed the Bishop of Puy to be legate on the expedition, and enforced the observance of the Truce of God.² The families and goods of the Crusaders were placed under the protection of St. Peter and the Roman Church, and this was renewed by the ninth General Council (1123).³ In the second Crusade, Pope Eugenius III.,⁴ and in the third Crusade, Gregory VIII. and Clement III. were equally active.⁵ Earnestly as the Popes promoted the Crusades, they never made them obligatory as long as the Crusaders were troubled with disturbances at home.⁶ Innocent III. energetically defended the principle of these expeditions, when those taking part in the fourth Crusade were diverted from their purpose by the Venetians, and he was only in some degree appeased by the hope of the advantages likely to result to the Christian dominion in Palestine.⁷ Even after the wreck of these expeditions, it was the Popes alone who for a long time opposed the power of the Mahometans, especially from the time that Constantinople fell into the hands of the Turks (1453), and when the Sultans were becoming daily more and more menacing to Western Christendom. So long as the danger continued they were

true to the task they had once undertaken, and Pius II. and Pius V. in particular put forth all their strength against the Turks.

¹ Bossuet, P. i. l. iv. c. v. p. 344: 'Placebat . . . Christianis regibus in illis sacris bellis praeesse omnibus pontificiam potestatem, ut et conjunctioribus animis et majori religionis reverentia rem gererent. Saepe etiam reges ac principes bellum sacrum inituri se suaque omnia pontificibus tuenda commendabant,' &c. Cf. Fleury, t. xviii. discours 6, n. 7, 8. Michaud, Hist. des Croisades, t. vi. l. xxii. c. vii.

² Hefele, Conc. v. pp. 203, 207, 208.

³ Conc. Later. i. can. 12. Hefele, v. p. 340.

⁴ Hefele, v. p. 443.

⁵ Hefele, *ibid.* p. 650 seq.

⁶ Paschalis II. a. 1100, 1101, relative to Spain. Jaffé, n. 4368, 4386, p. 481 seq. Innoc. III. l. i. Ep. 5, 270, 271. Migne, ccxiv. pp. 5, 227 seq.

⁷ Gesta Innoc. III. n. 85 seq. p. cxxxviii. seq.; l. v. Ep. 161, 162, p. 1178 seq.; l. vi. Ep. 99-102; Ep. 230-232, pp. 103, 260 seq.; l. ix. Ep. 139, p. 957 seq.

§ 5.

A good father, when called upon by his children, naturally strives his utmost to stand by them and aid them, to defend them and intercede for them. In like manner the Popes were the refuge of all.¹ They would have laid themselves open to the bitterest reproaches had they declined to use an authority so much needed, and so advantageous to the public welfare, and which was looked upon as an adjunct to their supreme power in the Church.² Whosoever felt himself oppressed turned to the Roman See, and if no help came to him from this See, it was felt to have neglected its duty. The Holy See was looked upon as the seat of justice and of righteousness;³ the Pope was the father of the orphan, the judge of the widow, the undaunted champion who neither refused his services to the oppressed nor showed favour to the oppressor;⁴ the Roman Curia, the 'mistress of the world,' was set over all men, as the avenger to chastise, as the judge to show mercy.⁵ The task was a mighty one, and the Papal dignity a most heavy burden.⁶

¹ Joh. Saresb. Ep. 38, ad Hadr. IV. p. 25: Lapis adjutorii. S. Bernard. Ep. 199, ad Innoc. II. p. 367: Refugium oppressorum.

² Bernardi, De l'origine et des progrès de la législation française,

Paris, 1816, l. i. c. ii. p. 71 seq. Hurter, Innocenz III. vol. ii. p. 435, and elsewhere.

³ S. Bernard. Ep. 158, p. 316, ad Innoc. II. : 'Summæ aequitatis sedes.' Petrus Venerab. l. vi. Ep. 28, ad Eugen. P. III. (Migne, clxxxix. p. 443) : 'Oro, obsecro, supplico, ut causam pauperis . . . vobis assumatis et contra potentes et violentos adversarios defendatis. Nostis enim, quod sedes vestra est illius, cui dicitur : Justitia et judicium praeparatio sedis tuae (Ps. lxxxviii. 15) et cui rursus : Justitia plena est dextera tua (Ps. xlvii. 11) et de quo iterum : qui facit judicium injuriam patientibus (Ps. cxlv. 7). Quod si alteri quam vobis loquerer, adderem illud Isaiae (i. 17) : Quærite judicium, subvenite oppresso, judicate pupillo, defendite viduum,' &c.

⁴ S. Bern. Ep. 156, ad Innoc. II. p. 314.

⁵ S. Bern. Ep. 168, ad Cardinales, c. ii. p. 328.

⁶ S. Bern. Ep. 237, c. iii. p. 427 : 'Onus insuetum et nimium, quod et gigantinis, ut aiunt, vel ipsis quoque angelicis humeris formidabile videatur.'

§ 6.

As early as the time of Dionysius Exiguus, Papal decretals were included in codes of law ; they were everywhere produced as authorities, and treated with the highest respect.¹ In later times the collections of decretals by Gregory IX., Boniface VIII., and Clement V. obtained universal acceptance, and had everywhere the force of law.² As early as 1075, Gregory VII. was able to point to the fact that the law of the Roman Pontiffs was more widely obeyed than the law of the Emperor, and that, in the words of Psalm xviii. 5, their sound had gone forth into all the earth, and their words unto the ends of the world.³ Papal legislation has, moreover, done an immortal work for civilisation.⁴ While the civil law recognised trial by ordeal to decide innocence or guilt,⁵ and even questions of law,⁶ the Popes ever rejected this means of procedure :⁷ their decretals were directed towards the maintenance of the Truce of God,⁸ the disuse of tournaments and deadly weapons,⁹ the abolition of the custom of plundering wrecked vessels, made a source of gain even by princes,¹⁰ the amelioration of the condition of serfs,¹¹ the prevention of the unjust oppression of the Jews,¹² the repression of numberless abuses and acts of violence in all lands.¹³ Many clauses of the Roman law were altered by the Papal legislation, such as those relating to property, to prescrip-

tion, and the bona fides requisite for it, as also to contracts, giving greater importance to good faith;¹⁴ the laws also as to testamentary dispositions and oaths were greatly widened.¹⁵ As to usury, Papal legislation dealt with it in detail.¹⁶ This, indeed, is nowadays made a subject of reproach to the Popes, and it is said that by the prohibition of the receipt of interest on the loan of money real usury was increased, and the welfare of whole countries, as well as the growth of commerce, was injured.¹⁷ But it is forgotten that this same reproach must fall, not on the Popes alone, but also on the Old Testament legislation, on the whole ancient Church,¹⁸ on the Councils, which here stand on precisely the same ground as the Popes,¹⁹ on ancient civil legislation,²⁰ and even on the older Protestant theologians.²¹ It is also forgotten that the present economical condition of society, in which money is become a productive commodity, and in which consequently the loan of money is differently regarded, has only come about gradually.²² The circumstances of a loan may differ widely. First, a man may borrow money from necessity, to get provisions for himself and his children, so that he makes no profit from the loan, but practises the most strict self-denial in order to repay it. In this case, the lender, if he requires interest, extorts a gain from the distress of his fellow-man, and makes that distress greater. Secondly, a man may borrow in order to purchase some source of income; in this case, the lender deprives himself of that which brings in a revenue to another, and he may justly stipulate for a share in his revenue. It was on this principle that rested the mediæval contract of *census* or rent, allowed even by canon law.²³ Thirdly, a man may borrow in order to employ the money in a profitable speculation, which can easily be done where commerce and industry are flourishing. Here too interest is fair. The question also arises: Is the amount of interest to be left to agreement, or is a maximum to be fixed by the State? Which is the greater injury, that which hinders the capitalist from making still greater gains, or which exposes the distressed poor to the extortion of money-lenders? Surely, from the moral aspect, the latter.²⁴ Consequently even Popes and

Councils have approved charitable pawn-houses (*montes pietatis*), which for pledges made loans at very low interest to distressed poor, so as to protect them from the avarice of usurers.²⁵ The first of the three cases we have mentioned above is radically different from the two others; and, because in former times it was the most frequent, received especial attention from the legislation of the Church in protection of the poor. Interest on productive loans was allowed in the form of 'census' and of the contract of 'societas.' Special titles were admitted justifying interest, and known as loss arising through the loan (*damnum emergens*), cessation of gain (*lucrum cessans*), and risk of the principal (*periculum sortis*).²⁶ It was not the business of the Church to anticipate the economical development of Europe; but her duty was during its course to guard her principles, the principles of Christian charity forbidding us to turn the distress of our fellow-men to our own profit.²⁷ It is to the honour of the Popes that they have fulfilled this duty.

¹ Phillips, *Kirchenrecht*, iv. § 171, p. 37 seq.

² Phillips, *l.c.* § 184 seq. p. 252 seq.

³ Greg. VII. l. ii. Ep. 75, ad Reg. Dan. p. 426, ed. Migne.

⁴ Cf. Kober, on the influence of the Church and her legislation on culture, humanity, and civilisation, in the *Tübingen Theol. Quartalschrift*, 1858, p. 466 seq.

⁵ *E.g.* Capitul. Caris. 873. Pertz, *Leg.* i. pp. 519-521. Cf. Walter, *Kirchenrecht*, § 346, p. 612.

⁶ *E.g.* under Otto I., the question whether a grandchild inheriting from his grandfather, his father being dead, must divide the property with his uncles. Giesebrech, *Geschichte der Deutschen Kaiserzeit*, i. p. 280, 3d ed.

⁷ Nicol. I. Ep. ad Carol. Calv. 867 (c. 22, c. ii. q. 5). Stephan. V. Ep. ad Aep. Colon. Baron. a. 890 (c. 20, eod.). Alex. II. 1070 (c. vii. § 1, c. ii. q. 5). Luc. III. in c. viii. Ex tuarum, v. 34, de Purg. Canon. Celestin. III. Innoc. III. Honor. III. in c. i-iii. de Purgat. Vulg. v. 35. Innocent III. 1211, renewed the prohibition of ordeals in spiritual courts (l. xiv. Ep. 138, p. 502), and expressed himself strongly against a bishop who had permitted the trial by red-hot iron (l. xii. Ep. 134, p. 320 seq.).

⁸ Alex. III. in Conc. Later. iii. c. i. de Treuga et Pace, i. 34.

⁹ Innoc. III. c. un. de sagittar. v. 15; Alex. III. c. i. ii. de Torneam. v. 13; John XXII. in c. un. h.t. (9) in Xvag. Joh.; Pius V. c. un. v. 18, de Taur. Agitat. in sept.

¹⁰ Greg. VII. in Conc. Rom. 1078, Hard. vi. 1578; Paschalis II. 1110,

Hard. l.c. p. 1898; Celestin. III. 119, Jaffé, n. 10,321, p. 889. Cf. Card. Petra, in *Constit. Apost. t. i. p. 260 seq. 275 seq.* Phillips, *Kirchenrecht*, iii. pp. 91, 709; *Deutches Privatrecht*, i. 131, 407. Cf. also Alex. III. in *Conc. Lat. c. iii. de Raptor. v. 17.*

¹¹ Hadrian I. 790; Urban III. 1187, c. i. 3, de *Conjug. Serv. iv. 9.*

¹² Greg. M. l. i. Ep. 10, 34, 35, 47; l. viii. Ep. 25; l. ix. Ep. 7, 55; l. xii. Ep. 18; l. xiii. Ep. 12. Jaffé, n. 738, 739, 751, 1146, 1163, 1213, 1496. Alex. II. ad *Episc. Hisp. Mansi*, xix. 954. Jaffé, n. 3485, p. 398. Alex. III. (al. Clem. III.), *Mansi*, xxii. 355. Jaffé, n. 9038, p. 806. Greg. IX. 1235. Raynald. ad h.a. n. 20.

¹³ Thus Alexander III. forbade the killing of children by their mothers in Sweden, Ep. 975, ad *Aep. Upsal.* (Migne, cc. p. 850); hindered the robbing of orphans (Ep. 968, l.c. p. 845); and defended the rights of widows even against convents (Ep. 985-987, p. 864 seq.). He would not allow that the Church should ever be appointed heir, on the disinheriting of the real sons (Ep. 1447, pp. 1259-1261). Like Eugenius III. this same Pope forbade the custom reigning in Benevento, that traders and travellers who fell sick in that place might make no will, and might not choose their place of burial, their property falling to the town, as contrary to all law, divine and human (Ep. 624, pp. 595-597).

¹⁴ Walter, l.c. § 350, p. 616 seq.

¹⁵ *Ibid.* § 349, 353 seq. pp. 615, 620 seq.

¹⁶ *Decret. Greg. V. 19; Sext. V. 5; Clem. V. 5, de Usuris. Innoc. III. ad Reg. Franc. 1214. D'Achery, Spicil. iii. 5, 77, Supplem. Ep. 190. Migne, ccxvii. p. 229. Bened. XIV. Enc. 1 Nov. 1745, t. i. Const. 143.*

¹⁷ Janus, pp. 195, 236 seq. Frohschammer, *Das Recht der eigenen Ueberzeugung*, p. 229 seq. *Anm.*

¹⁸ Cf. Hefele, *Theol. Quartalschrift*, 1847, p. 405 seq. Deut. xxiii. 19; St. Luke, vi. 35; Ps. xiv. 5; Ezech. xviii. 8. Tertull. *adv. Marc. iv. 17; Clem. Alex. Strom. l. ii. p. 473, ed. Potter, Can. Ap. 44. Basil, Ambros., Aug., Leo I. (c. i. 8, dist. 47; c. x-xii. 7; c. xiv. q. 4).*

¹⁹ Councils of Elvira, 306, c. 20; of Arles, 314, c. 12; Nicaen. i. c. 17 (c. 2, d. 47); Agath. 506, c. 69 (cf. Hefele, i. pp. 135, 180, 405 seq.; ii. 641); Trullan. 692, c. 10; Aquisgr. 789, c. 5, 39 (Hefele, iii. 303, 623 seq.); Paris. 829, c. 53; Ticin. 850, c. 19; Rhem. 1049, c. 7 (*ibid.* iv. 61, 70, 693); Pictav. 1078, c. 10; Gerund. h.a. c. 9; Londin. 1125, c. 14; Later. ii. oec. 1139, c. 13; Turon. 1163, c. 2; Londin. 1175, c. 10; Later. iii. 1179, c. 25; Avenion. 1209, c. 3, 13; Narbonn. 1227, c. 8; Trevir. 1227, c. 10; Rotomag. 1231, c. 2; Conc. Château Gontier, eod. a. c. 30; Arel. 1234, c. 15 (*ibid.* v. 106, 117, 349, 391, 542 seq., 614, 636, 749 seq., 839, 846, 899, 902, 919). A Council of Paris in 1212 or 1213, c. 25 (*ibid.* p. 774), says: 'Who-soever shall sell his wares at a certain appointed time, in order to gain more by them, shall be punished as an usurer.' Further directions are given by the Councils of Albi, 1254, c. 61-63; Montpellier, 1258, c. 3, 5; Mainz, 1261, c. 25, 44; Sens, 1269, c. 2, 3, 23; St. Quentin, 1271; Lyons, ii. 1274, c. 26, 27; Arles, 1275, c. 15, 18; Cologne, 1279, c. 14; Tours, 1282, c. 6; Forli, 1286, c. 6; Würzburg, 1287, c. 23; Milan, eod. a. c. 12; Pennauviel, 1302, c. 9; Nogaret, 1303, c. 14; Auch, 1308, c. 3; Trier, 1310, c. 31-34, 140, 141; Mainz, 1310, c. 133, 134; Bergamo, 1311,

c. 24, 25; Vienne, 1313, c. 15; Marciac. 1326, c. 48; Tarracona, 1331; Salamanca, 1335, c. 14; Padua, 1350, c. 5; Prague, 1366, c. 11; Benevent. 1378, c. 8-11; Salzburg, 1386, c. 13, &c. (Hefele, vi. 45, 51, 64, 66, 101 seq., 136, 156, 185, 201, 213, 221, 226, 343, 354, 426, 434, 441, 446, 458, 482 seq., 547, 553, 561, 603, 622, 803 seq., 832). Thus also later Diocesan Synods; Bened. XIV. de Syn. x. c. iv. n. 1.

²⁰ Capitul. Caroli M. 789, c. v. (Walter, Fontes, p. 50), 806, c. 9, c. xiv. q. 4). Temporal judges began quite early to seize the possessions of living usurers (as in France) or of those who had died (as in England and Germany), and they were also punished. Vide Friedburg, de Fin. inter Eccl. et Civit. Reg. Judicio, p. 101 seq.

²¹ Melanchthon, in the locis (cf. Schröckh, Kirchengeschichte seit der Reformation, i. p. 283). Dr. Jacob Strauss, preacher in Eisenach, Das Wucher zu nemen und zu geben, and Hauptstück und Artikel Christlicher Leer wider den unchristl. Wucher, a. 1523, art. 5: 'Ain Pfenning über die Hauptsumme aufgeliehen, eingenommen ist wucher.' Carpzov. Pract. Crim. quaest. 92, n. 4 seq.

²² Neumann, De vicissitudinibus, quas can. jus de usur. prav. placita in Germ. inde a saec. 13 usque ad med. saec. 18 subierunt. Berol. 1860. See especially Funk, Zins und Wucher, Tübingen, 1868.

²³ Martin V. 1420; Calist. III. 1455, in c. i. ii. de Emt. et Vendit. iii. 5, in Xvagg. Com.

²⁴ Walter, Naturrecht und Politik, § 176 seq. p. 160 seq. Cf. Kirchenrecht, § 351, p. 618 seq.

²⁵ Conc. Later. v. 1517, Sess. 10 (Hard. ix. 1773); Trid. Sess. 22, c. 8, 11, de Ref. Many Catholic theologians were at first opposed to the montes pietatis, as may be seen in Cajetan, Com. de Mont. Piet. c. i., and Soto, l. vi. de Just. q. 1, a. 6. Paul V. also treats of them (Const. 82, Onerosa, Bull. iii. 352). Cf. Bened. XIV. de Syn. Dioec. l. x. c. v. n. 1.

²⁶ Bened. l.c. c. iv. n. 2 (cf. c. iv-viii.). Devoti, Inst. Jur. Can. t. iv. l. iv. tit. 16, § 6 seq. Gury, Theol. Moral. t. i. p. 325 seq. n. 856 seq. ed. Ratisb. 1862.

²⁷ Cf. Funk, l.c. specially Part ii.

§ 7.

The attempt has often been made to represent the Papacy as dangerous to thrones and nations, while all that it has so nobly done in their favour has been overlooked, and over-much stress has been laid upon isolated facts, or they have even been misrepresented. How much have the Popes, at great cost to themselves, done both for kings and for people! how many concessions they have made!¹ With what ardour did Gregory the Great defend the interests of the ungrateful Byzantine court, while at the same time he took under his protection the populations oppressed by the officers of that court!² Gregory II.

sought to prevent the separation of Italy from the empire of Greece;³ Gregory VII. defended the King of Denmark against his rebellious brothers, and warned the King of Norway not to give them his support.⁴ Numerous are the examples of their benevolent care for princes and people, of their protection of the weaker against the mightier kings and races, of their beneficent labours for the peace and welfare of Christian countries.⁵ Victor II. governed excellently as regent of the empire after the death of Henry III.;⁶ Innocent III. did all in his power for the youthful Frederick II.;⁷ also for the Christian kingdom in Palestine,⁸ and for the prevention of the civil war in Hungary,⁹ &c.; and Gregory X. did as much for the reconciliation of the Guelphs and Ghibellines.¹⁰

Amongst the Popes, Innocent III. was præminent as a promoter of peace.¹¹ ‘The benefits,’ says Lingard, ‘bestowed upon the human race through the influence and peaceful disposition of the Popes are not always appreciated by writers. In an age when warlike gains alone were prized, Europe would have sunk into endless wars had not the Popes striven unceasingly for the maintenance and restoration of peace. They rebuked the passions of princes, and checked their unreasonable pretensions; their position of common father of Christendom gave an authority to their words which could be claimed by no other mediator; and their legates spared neither journeys nor labour in reconciling the conflicting interests of courts, and in interposing between the swords of contending factions the olive-branch of peace.’¹² These merits have been recognised by Protestants, notably by Hugo Grotius.¹³

¹ Cf. Joh. v. Müller, on the Fürstenbund (W. ix. p. 164); Stäudlin, *Universalgeschichte der christlichen Kirche*, Hanover, 1806, p. 223.

² For example, the populations of Sardinia, Corsica, and Sicily, l. v. Ep. 41; Mansi, ix. 1209, J. n. 991.

³ Cf. Döllinger, *Päpstoffeln*. p. 152 seq.; Natal. Alex. H. E. saec. 8, diss. 1, t. xi. p. 168 seq.

⁴ Gregor. VII. l. vi. Ep. 13, p. 522.

⁵ Cf. De Maistre, *Du Pape*, l. iii. Concl. p. 154 seq.

⁶ Cf. Will, Victor. II. als Papst und deutscher Reichsverweser, reprinted from *Hist. Pol. Blättern*.

⁷ Döllinger, *Lehrbuch der Kirchengeschichte*, ii. p. 189.

⁸ Innoc. III. l. i. Ep. 302, 336, 343-345, 407, 408, 508, &c.

⁹ Ibid. l. i. Ep. 10.

¹⁰ Gregor. X. Ep. a. 1273, ad Guelfos Tusciae. Raynald. h.a. Cf. Joh. xxii. ib. a. 1322, n. 6 seq.

¹¹ Gesta Innoc. III. n. 127 seq. p. clxv. seq. Cf. l. vi. Ep. 66, 163, 166.

¹² Lingard, History of England, vol. iv. p. 72, German edition.

¹³ Hugo Grotius, Pro Pace Eccles. t. ii. p. 659, ed. 1679: 'Quot dissidia sanata sint auctoritate Romanae Sedis, quoties oppressa innocentia ibi praesidium repererit, non alium testem quam eundem Blondellum volo.'

§ 8.

'There is something noble,' writes Cæsar Cantu,¹ 'in the idea of a defenceless priest, himself a stranger to worldly interests, watching over the contentions of princes or nations, and in a world ruled more by opinion than by political laws speaking of honesty and duty to those whose only law is caprice and might. Even if the reality did not exactly correspond to the ideal conception, still it must be allowed that the form of power wielded by the Church in the Middle Ages succeeded beyond all systems since contrived in maintaining a free and powerful confederacy between the nations of the West. The tyranny of the Popes, as it is called, humbled princes only in order to enlighten them, and never to degrade them. It would be folly to attribute the growth of the Papal authority to cunning and ambition; the Popes might have increased their possessions or their political power, as did other princes; but they forbore to do so, and never enlarged their territory an inch through the means usually employed by princes, namely, conquest. Unlike in character, in ability, and in inclination, they all strove to attain one and the same end, and differed only in the means of which they made use.'

In truth, the Popes, though of different nationalities, mostly Italian, but also German, French, Spanish, &c., sons of the poorest as well as of the most distinguished families, often weak and aged, by a rare exception in the strength of manhood, at one time men able and versatile in law and in diplomacy, at another, ascetics brought up in the cloister, now surrounded by tokens of homage and reverence, now visited with bitter

adversity and menaced by rebellious subjects,—still, in spite of all these differences, are alike in the guiding principle of their lives.² There, side by side with Hadrian IV., an aged Englishman of poor origin, we see Innocent III., in the freshness of youth, and sprung from the noble family of Conti. The long line of Popes rises before the mind, as they are impressed on the memory by the partly historical mosaics in the Roman Basilica of St. Paul; we recall the deep veneration with which they have not rarely inspired their most bitter opponents; we cast a glance at the 10,749 Papal Briefs collected by Ph. Jaffé, and reaching only up to the year 1198; then at the register of Innocent III., containing almost 3440 Briefs; the collection of Decretals and Councils, and the still imperfect collection of Bulls, and we ask ourselves what monarchy can point to rulers approaching them in the splendour of their line or in the magnificence of their deeds.

‘In the higher interests of life,’ continues Cantu, ‘they one after another manifested the same unchangeable will, while in merely temporal matters they pursued a policy as fluctuating as is human nature itself; hence in the first case their power was irresistible, while in the second they were often scarcely able to defend themselves against the weakest of foes. Great and tumultuous nations, with dynasties equal in power to the Pope’s, or kings greedy of conquest, robbed the Pope of his lands, and took possession of his person; but his voice sounded none the less terrible and awe-inspiring even to the remotest quarters of the world, and nations awoke to the consciousness that above the mighty of this world a power existed which had set a limit to their career of crime, and put a stop to the despotism in which sovereigns indulge only when they know there is no longer an authority above them.’

¹ Cantu, *Weltgeschichte*, book x. c. xv. vol. vi. P. i. p. 339, edition revised by Dr. Will, Schaffhausen, 1863.

² The venerable Peter of Clugny wrote to Innocent II. l. i. Ep. 1: ‘Nihil nos a pastore, nihil a Petro, nihil a Christo, quae omnia in te habemus, separare poterit. *Et Petrus in carcere, Clemens in exilio, Marcellus in catabulo, non minus quam Laterani Ecclesiae praefuerunt et oves Christi eis ut veris pastoribus obedierunt.*’

§ 9.

The objection that such power is contrary to the spirit of the Gospel has often been raised, but never really made good.¹ Christ did not forbid the exercise of all authority to His followers, but only an authority of tyranny and violence, such as was exercised by the princes of the heathen.² His precepts (St. Luke xxxii. 25 seq.; St. Matt. xx. 25 seq.) apply not alone to the clergy, but to all the faithful: temporal rulers, just as much as spiritual, are forbidden to govern tyrannically, as did the princes of the heathen; all Christians, in dealing with those subject to them, are to exercise humility and mildness; he who is in authority is to look upon his office as a service; to rule is to tend a flock (*pascere*), not to domineer (*dominari*).³ This was ever the interpretation of the Fathers.⁴ The Popes themselves looked upon their exalted power not as a dominion, but as a servitude; not as a personal gain, but as a heavy burden; they kept before their eyes the words of Scripture (St. Luke xxii. 25 seq.).⁵ Precisely similar were the words of St. Bernard to Eugenius III., when he told him that his duty was to serve rather than to rule; that he was not a ruler, but a steward bound to render strict account;⁶ that he was placed over others, but only to labour more heavily, like the farmer who has to root out weeds and sow good seed; that the words of Jeremias i. 10 apply to him;⁷ that he must everywhere scare away evil beasts;⁸ that he was the rod of the mighty, the hammer of tyrants, the father of kings;⁹ he moreover recognises in the Pope one who presides over princes, the ruler of bishops, the regulator of empires and kingdoms.¹⁰ The saint does not consider that in this the least injury is done to the coördination of the two powers, which he so beautifully describes in the following words¹¹: ‘Kinghood and priesthood could not have been united in a more lovely or more lovable form, or at the same time in a union closer and firmer, joining them completely in one, than was the case in the person of our Lord, where the two were equally united, since in His human nature He became at once our priest and our king. But this is not all: He has moreover united the two by a close

bond in His body, that is in the Christian people, of which He is the Head, so that this race of mankind was called by the apostle a chosen generation, a kingly priesthood (1 St. Peter xi. 9). That which God has united let not man put asunder; the two are to be united in their views, as they were in their origin; they are mutually to cherish and defend each other, mutually to bear one another's burdens.¹²

¹ Cf. Bianchi, t. iii. l. i. c. i. § 8, n. 5-9, pp. 82-86. M. Gerbert, de Legit. Eccl. Pot. l. i. c. ii. § 1, n. 6, p. 70 seq.

² The *κατακυριεύειν* and *κατεξουσιάζειν* express this clearly, as, following Erasmus, Fritzsche, Meyer, and K. B. Hase (H. Stephani, Thes. v. *κατακυριεύω*) remark. Josue xv. 16 has *κατακυριεύειν*—Latin, *percutere*. Cf. Joh. Sarisb. Polycr. l. viii. c. xxiii. Innoc. III. serm. 2, in Annivers. Consecr. Petrus Comestor. c. cxcv., in Evangel.

³ 1 St. Peter v. 1 seq. *ποιμαίνειν* is opposed to *κατακυριεύειν*. In other places *pascere*=*regere*, as appears from comparing the Bible passages in the Greek, Hebrew, and Latin: Ps. lxxvii. 70, 71; Ps. lxxix. 1, 2; Ps. ii. 9, cf. Apoc. ii. 27; xix. 15; Mich. v. 2, cf. Matt. ii. 6; 2 Kings v. 2; Ezech. xxxiv. 23; Isaias xlv. 28; 1 Paral. xvii. 6; Jer. xxiii. 2, 4; Acts xx. 28; Ps. xxii. 1. Thus in Homer, Il. ii. 85, 243, the king is spoken of as *ποιμένα λαῶν*.

⁴ Chrys. in Matt. hom. 65, al. 66, n. 4 (Migne, lviii. 622). Bernard. de Consid. l. ii. c. vi. n. 10, p. 748. Cf. Petrus Bles. de Instit. Episcopi; Migne, cclvii. p. 1103.

⁵ Innoc. III. l. vi. Ep. 229, p. 259; Alexio Imp. Cpl. (1203): 'Hoc autem [what he had said of patrociniū] dicimus, non ut ambitiose dominium affectemus, sed ut officiose ministerium impendamus, ejus exemplo, qui non venit ministrari, sed ministrare, nec ut dominemur in clero, sed forma gregis efficiamur ex animo; quia *principes gentium dominantur eorum*, et qui potestatem habent inter eos, benefici vocantur, inter discipulos autem Christi *non sic; sed qui major est inter eos, omnium servus existit et qui praecessor tamquam sit ministrator* (S. Luc. xxii. 25, 26).'

⁶ De Consid. l. ii. c. vi. n. 10, 11, on the texts quoted: 'Planum est, quod Apostolis interdicitur *dominatus*; ergo et tu tibi usurpare cave aut dominans Apostolatū aut Apostolicus dominatum. Planum est quia ab utroque prohiberis; si utrumque similiter habere voles, perdes utrumque. Alioquin non te exceptum illorum numero putes, de quibus conqueritur Dominus dicens: Ipsi regnaverunt, et non ex me, principes exstiterunt, et non cognovi (Ose. viii. 4). Forma Apostolica haec est: *dominatio* interdicitur, indicitur *ministratio*. N. 12: Exi, O Eugeni, exi in mundum. Ager enim *mundus est*, ipse tibi creditus est. Exi in illum, non tamquam dominus, sed tanquam villicus, videre et procurare unde exigendus es reddere rationem.'

⁷ L. ii. c. vi. n. 9: 'Factum te superiorem dissimulare nequimus, sed enim ad quid, omnimodis attendendum. Non enim ad dominandum opinor. Nam et propheta quomodo similiter levaretur, audivit: *ut evellas et destruas, et disperdas et dissipes, et aedifices et plantes*. Quid horum fastum sonat?

Rusticani magis sudoris schematē quodam labor spiritualis expressus est. Et nos ergo ut multum sentiamus de nobis, impositum senserimus *ministerium non dominatum* datum. Disce exemplo prophetico praesidere, non tam ad imperitandum, quam ad factitandum *quod tempus requirit*; disce sarculo tibi opus esse, non scepro, ut opus facias prophetae. Et quidem ille non regnaturus ascendit, sed extirpaturus.' From this the author of the writing de Postestate Papae (in the Appendix to Dupuy, Hist. du Différend) deduces a superioritas quantum ad officium praedicationis et correctionis in spiritualibus, non autem quantum ad dominium alicujus jurisdictionis in temporalibus; but this last even the Popes have never claimed, as has been falsely supposed.

⁸ Bern. l. c. n. 13: 'Si cor movisti, movenda jam lingua, movenda est et manus. *Accingere gladio tuo, gladio spiritus, quod est verbum Dei.* Glorifica manum et brachium dexterum in faciendo vindictam in nationibus, increpationes in populis, in alligando reges eorum in compedibus et nobiles eorum in manicis ferreis (Ps. cxlix. 7, 8). Si haec facis, honorificas ministerium tuum et ministerium te. Non mediocris est iste principatus; exturbare est hoc malas bestias a terminis tuis, quo greges tui securi in pascua educantur.' John of Paris also appeals to this passage (ap. Natal. Alex. H. E. saec. 13 et 14, diss. 9, a. 2, n. 13, t. xvi. pp. 328, 329), and remarks on Jer. i. 10, that according to some the words are said in persona Christi, according to others de persona Jeremiae, but that the latter dethroned no king, but was set over people and kings, annunciando et praedicando vera, as in Ps. ii. 6; that the words are used non de evulsione et destructione regum mundi et subrogatione aliorum, sed de destructione vitiorum et plantatione fidei et morum. . . . Hoc magis faciunt sacerdotes de fide et moribus respondendo, quam potentia saeculari dominando. But everything essentially depends upon the judicare de peccato, of which alone there was question here, and not of dethronement. And it was precisely the judicare de peccato which St. Bernard defended. 'In criminibus,' he says to the Pope, 'non in possessionibus potestas vestra' (l. i. c. vi. n. 7).

⁹ S. Bern. l. iv. c. xxi.: 'Ultor scelerum, virga potentium, malleus tyrannorum, regum pater . . . postremo Deus Pharaoni.' Cf. Bianchi, t. ii. l. v. § 12, n. 5, 6, p. 326 seq.

¹⁰ On the elevation of his scholar Eugenius, St. Bernard (Ep. 237) wrote to the cardinals, and expressed his astonishment at the election of this monk: 'Ridiculum profecto videtur, pannosum homuncionem assumi ad praesidendum principibus, ad imperandum episcopis, *ad regna et imperia disponenda.* Ridiculum an miraculum? Plane unum horum. Non nego, non diffido posse fuisse hoc etiam opus Dei, qui facit mirabilia magna solus.' Abbé Leroy, in a note to Bossuet, P. i. l. iii. c. xv. p. 307, seeks to weaken these words, the meaning of which is urged by Bianchi, l. c. n. 3; Gosselin, ii. 239 seq. explains: 'In so far as the Pope, through advice and admonition, has power to dispose of the material sword, he has also power to dispose of empires and kingdoms.' Even if the aforesaid expression is hyperbolic, this interpretation is evidently not strong enough.

¹¹ S. Bern. Ep. 244, c. i. pp. 440, 441, ed. Migne.

¹² Cf. Bern. de Consid. ii. 8; Alvar. Pelag. de Planctu Eccl. l. i. c. xiii.

§ 10.

It cannot be denied that in the Middle Ages the power of the Popes (and also of Councils) was great and extensive, but it did not spring up all at once from the earth, nor was it won by a bold and sudden stroke. 'The Popes,' says Phillips, 'did not then (in the Middle Ages) for the first time become the successors of St. Peter; they did not then for the first time receive the power of binding and loosing, or the office of supreme teacher and of king; but then it was for the first time that St. Peter in his successors could fully enforce upon the whole Christian community, *voluntarily subject to him in Christ*, the obedience which he could claim as a gift from our Saviour, given in reward of his love.'¹ The principle itself of the subordination of the temporal to the spiritual power was not new, but the forms merely in which that principle was put forward, and these were only new in part. In the Middle Ages the religious principle was applied to all the relations of human life, social, civil, municipal, and domestic, with the best result, while ill-success chiefly ensued when this principle was applied wrongly, perversely, or not at all. Had the same course been continued, had every separate part of the great edifice been perfected, and at the same time had every material improvement been made use of, which was put at our disposal by newly-discovered countries and routes, by progress in the natural sciences, by researches into subjects formerly little cultivated, and by the extension of trade and industry, and, at the same time, had the ancient principles of religion and morals been left unassailed, Christian nations would have been preserved from numberless dissensions and troubles, and without prejudice to their moral welfare would have attained to a high grade of material prosperity.² But ancient traditions were cast aside, the principle of authority was assailed, and the age of revolution introduced; society sank back into heathenism; political, social, and domestic life were withdrawn from the influence of Christianity; that was put asunder which up till then had been closely united—politics from morals, morals from religion, education, the State,

and the family from the Church. The era of revolution is far from being at an end, as so many imagine; on the contrary, we are still in the very midst of it; we are tasting of its fruits, and ever dropping its seeds into the well-prepared soil, from which again fresh trees of the same species spring up.

In the mean time some will never forgive the Popes of the Middle Ages for dethroning kings and princes, and releasing their subjects from their oath of allegiance. The question is never asked, How often, on what grounds, and with what right this was done? the act is in itself condemned. But on closer examination, if we consider the legal relations of all the parties concerned, and take into account the public law of the mediæval States, the prevailing acceptation of the oath of allegiance, which was never given unconditionally and to hold good in any event; if, moreover, we remember the civil and spiritual laws which worked together in producing such a state of things, the fact which seems to be so strange becomes clearly intelligible.

Let us, in the following pages, enter upon this examination.

¹ Phillips, *Kirchenrecht*, iii. § 126, p. 181 seq. Cf. also Christophe, *das Papsthum im 14 Jahrhundert*, trans. by Ritter, vol. i. p. 38 seq.

² Cf. Balmes, vol. iii. c. lxxi. seq. p. 387 seq.

PART III. EXCOMMUNICATION AND ITS CONSEQUENCES IN THE MIDDLE AGES.

§ 1. Temporal effects of public penance and of excommunication. § 2. Exclusion from public offices. § 3. From military service. Exceptions. § 4. Intercourse with the excommunicated. § 5. Discipline mitigated, § 6. or increased. § 7. Kings also liable to excommunication. § 8. Release from the oath of allegiance. § 9. Can the Church dispense oaths? § 10. Who can dispense oaths? § 11. Examples. § 12. Principles relating to dispensation from oaths. § 13. More recent times. § 14. Deposing rare. § 15. The eleventh Ecumenical Council. § 16. The first Council of Lyons. § 17. Councils of Constance and Basle. § 18. Councils pass the same sentences as Popes. § 19, 20. Objections. § 21, 22. Answers.

§ 1.

In the Middle Ages it was natural, from the state of society, that public ecclesiastical penance and the penalty of excom-

munication should involve temporal consequences. In the ancient Church all grave crimes were punished by heavy public penances, to which many sinners submitted voluntarily.¹ Commonly in the West, from the fourth to the eighth century, though the rule was not everywhere enforced with equal severity, persons performing such penances were forbidden to solemnise marriage, or to live in wedlock, to hold public offices, especially the office of judge, to serve in war, and to take holy orders.² In later times also, when public penances were becoming more and more rare, these precepts held good in the case of the more grievous sins:³ persons guilty of certain notorious crimes were to be compelled by excommunication to submit to public penance; in case of refusal the temporal arm was to force them to obedience; indeed dukes and earls who refused to assist in this were punished with excommunication, with temporal penalties, and even with the loss of their rank.⁴ The Council of Paris (846) punished sacrilege, rape, and adultery with public penance;⁵ the Council of Mainz (847) declared: 'Whosoever has sinned publicly shall do penance publicly';⁶ so also said the Council of Pavia (850), and it moreover declared that no excommunicated person might hold a state office or perform military service;⁷ the Council of Worms (868) forbade those guilty of the murder of priests and other crimes to bear arms.⁸ By decree of the Council of Tribur (895) any person excommunicated by the bishop, and refusing to do penance, was to be seized and taken before the king for punishment.⁹ Earlier Councils enjoined that any one returning to worldly business, after having been numbered amongst the penitents, was not to be admitted to Communion until he once more went back to the performance of the penance he had vowed.¹⁰

¹ Joh. Morinus, *Com. Hist. de disciplina in admin. Sacr. Poenitent. olim observata*, Paris, 1651, l. v. 18 seq. 24; l. vii. c. iv. seq. Frank, *Bussdisciplin*, Mainz, 1867, p. 444 seq.

² Leo M. Ep. 167, ad Rustic. Narbon. c. 10-13. Cf. c. 3, d. 5, de Poen.; Siric, Ep. ad Himer.; Taracon. c. 5; Nicol. I. Ep. 19, ad Rodulf. Bituric. Conc. Arelat. ii. 443-452, c. 21, 22. Aurel. iii. 538, c. 24, 25. Barcinon. i. 540, c. 6, 7, 8; ii. 599, c. 4. Tolet. iv. 633, c. 54, 55; vi. 638, c. 7; xii. 681, c. 2 (Hefele, *Conc.* ii. p. 283 seq. 755, 757; iii. pp. 56, 78, 83, 287).

³ Capitul. l. vi. n. 71, 98.

⁴ Capit. Tribur. 822, n. 6, p. 629, ed. Baluz.; Capit. l. v. n. 300, p. 885; vii. n. 258, 432, 433.

⁵ Can. 61, 64, 69 (Hefele, iv. pp. 111, 112).

⁶ C. 31 (Hefele, l.c. p. 122).

⁷ C. 6, 12 (Hefele, p. 169).

⁸ C. 26 (Hard. v. 741; Hefele, p. 356).

⁹ C. 3 (Hefele, p. 532).

¹⁰ Conc. Aurel. i. 511, c. 11; Epaon. 517, c. 23 (Hefele, ii. pp. 645, 664).

§ 2.

How widespread was the custom, that penitents were debarred from holding public offices, is shown by the following fact amongst others. At the instigation of the ambitious Count Erwig, King Wamba of Spain, after being deprived of his senses, had his hair shaved, like a dying man, and was placed in the rank of penitents, so as to render it impossible for him to reign longer. Wamba, although he regained his senses, remained a voluntary penitent, and was succeeded by Erwig, whom he himself recommended, and who was acknowledged by the Council of Toledo (681), after an examination of the testimony of the nobles.¹ The case of Lewis the Pious (833) also illustrates the discipline of that day. Lewis had been proclaimed sole emperor by his adherents, and his son Lothair, having got him into his power, wished to make it impossible for him ever to reign. As early as 830 the demand had been made that the aged emperor should suffer himself to be shorn, and should enter a monastery; now, on his knees before the high altar of the church of St. Medardus at Soissons, he was forced to read publicly a list of his sins, to exchange his sword and his armour for the dress of a penitent, and with the usual imposition of hands by the bishop to receive a penance;² he did not however become a monk. All this was approved by the bishops in the Council of Compiègne. The sentence was without doubt most unjust, and the whole proceeding wicked,³ and as such it was afterwards recognised and declared null and void; but this did not alter the conviction that the imposition of a public penance was the most certain and legitimate means by

which a prince could be deprived of the throne. Later (867), the Council of Troyes wrote as follows on this subject to Pope Nicholas I.: 'By the permission of God, the just Judge, and through the influence of the malice of the devil, the sons of the pious Emperor Lewis of worthy memory, together with a party of evil-minded men, but without the *counsel and consent of Pope Gregory (IV.)* (whom Lothair had caused to leave Rome under pretext of keeping the peace), robbed their father of the empire, and took him prisoner as far as the town of Soissons. And to make people believe that he was justly deposed from the throne, certain crimes were devised against him, for which they pretended that by the sentence of *certain bishops*, amongst whom it was said Ebbo (of Rheims) was specially active,⁴ he was on pretext of public penance shut out from the threshold of the Church. Ebbo afterwards published a document, in which he acknowledged that the ignominious deposition of the emperor had been neither canonical nor just.'⁵ The deed was designated as materially but not formally contrary to justice. When the aged emperor was set free by his adherents, and was begged to reign once more, he said: 'The Church cast me down, the Church must raise me up again; the bishops disarmed me, and the bishops must restore to me my weapons.' This was done at the assembly of Diedenhofen in February 835. Each bishop had to read aloud his written opinion on the restoration of Lewis; they all expressed themselves in his favour, even Ebbo himself, who at the same time acknowledged his own guilt. In the cathedral of Metz it was proclaimed that Lewis had been unjustly deposed; he was reconciled by the imposition of hands and by prayers said over him, and then the imperial crown was replaced upon his head.⁶ The canon which forbade public penitents to exercise their offices was never called in question, but only its application to Lewis for crimes, half of which were unproved, and half long ago atoned for.⁷ It is objected that Lewis had before, in 822, done penance at Attigny, without being considered to have thereby lost his right of reigning.⁸ But his penance at Attigny was voluntary, and not imposed according to the form of the canon for convicted criminals;

Lewis was then reconciled to his sons, acknowledged himself to be a sinner, gave copious alms, and promised to abolish all abuses ; he begged for absolution and the imposition of a penance, but he did not shave his head or renounce the use of weapons, or receive the laying on of hands, as was usual with penitents,⁹ and as was done in 833, when a formal episcopal sentence had been passed upon him. The two ecclesiastical acts of 822 and 833 were totally distinct in signification and in effect.¹⁰ The bishops assembled at Compiègne considered the sentence passed upon Lewis as an exercise of their authority.¹¹

It is further objected that the deposition of Lewis had taken place before the assembly met at Compiègne, and was looked upon by the bishops as already accomplished.¹² This may be fully granted ;¹³ but the deed of violence had to receive a legal form, and to be made to a certain degree legitimate and irrevocable by the Church ; just as Lothair afterwards sought to justify himself by the sentence of the bishops,¹⁴ and the learned Agobard of Lyons did all in his power for this same end.¹⁵ When Lewis was reinstated the bishops who were implicated were charged with abuse, but not with usurpation, of power. It is indeed said that at Compiègne Lothair alone was styled emperor, and not his father ;¹⁶ but it must be remembered that Lothair had been joint emperor since 817-818, and long bore the imperial title,¹⁷ which was not then given him for the first time ; and moreover that though the government of the empire had been entirely withdrawn from the old emperor, Lothair needed a more complete justification in the eyes of the people, and hoped to obtain it from the transactions at Compiègne, which were therefore published with the superscription, *exauctoratio Ludovici*. The principle that canonical penance deprived him of the throne comes out clearly enough.¹⁸

¹ Conc. Tolet. xii. c. 1. Lucas Tudel. ap. Morin. l.c. l. v. c. 7, n. 2 seq. ; c. xxi. n. 5. Hefele, iii. pp. 286, 287.

² Hard. Conc. iv. p. 1382. Hefele, iv. pp. 72, 78 seq.

³ So says not only Bossuet (*Defens. P. i. l. ii. c. xxi. p. 229 seq. and Natal. Alex. H. E. saec. 9, diss. 11, n. 1*), but also Bianchi (*t. i. l. iii. § 3, p. 458 seq.*), Mamachi (*Antiquit. t. iv. p. 189*), and earlier, Baron. (*a. 833, t. ix. p. 805*).

⁴ Theganus reproaches him with: 'Tu eum falso iudicio voluisti expellere a solio patrum suorum.' Walafrid Strabo, in his poem, represents the restitution of Lewis as most difficult: 'Nam quid erat moesto tam desperabile regno, quam sua depositis iterato posse venire scepra?'

⁵ Hard. v. 682.

⁶ Hefele, iv. pp. 79, 81 seq.

⁷ Thus Astron. in Vita Ludov. n. 49: 'Ut pro his, de quibus jam poenitentiam gesserat imperator, iterum publica poenitentia, armis depositis, irrevocabiliter, quodammodo Ecclesiae satisfacere iudicaretur, quum ne forenses quidem leges contra unam culpam semel commissam bis invehant vindictam et nostra lex habeat, Deum non iudicare bis in id ipsum. . . . Ad iudicatum ergo cum absentem et inauditum nec confitentem neque convictum. . . . arma deponere et ante altare ponere cogunt.' Cf. Flodoard, a. 834; Annal. Bertin. a. 833; Fuld. a. 834 (Rer. Gall. vi. ed. 1749, pp. 214, 195, 210); Narrat. Cleric. Rhemens, a. 833; Vita Ven. Wallae Abb. Walafr. Carm. (ib. pp. 270, 292 seq.).

⁸ Bossuet, l.c. p. 230.

⁹ S. Cyprian, Ep. 15-17, ed. Oxon. Conc. Agath. 506, c. 15 (Morin. l.c.). Aubespine, in Optat. Milev. Observ. v. p. 165, ed. 1676.

¹⁰ Bianchi, l.c. n. 3-5, pp. 464-469. Mamachi, l.c. pp. 191, 192.

¹¹ Hard. iv. 1379: 'Et hoc . . . manifestare juxta injunctum nobis ministerium curavimus, qualis sit vigor et potestas sive ministerium sacerdotale et quali merentur damnari sententia, qui monitis sacerdotalibus obedire noluerint. Deinde tam memorato principi quam cuncto ejus populo denunciare studuimus, ut Domino devotissime placere studerent et in quibus eum offenderint, placare non different.'

¹² Bossuet, l.c. p. 231.

¹³ Cf. Nithard, Hist. l. i. p. 69, a. 833; Annal. Bertin. h.a.; Thegan. de Gest. Lud. p. 82; Astron, h.a. p. 114.

¹⁴ According to Astron, he declared: 'Nullum plus se compati paternae calamitati vel congaudere prosperitati, nec debere sibi imputari culpam senioris sibi oblati, quum ipsi eum destituissent ac prodidissent, neque carceralis custodiae naevum sibi jure iniuri, quum constaret hoc actum iudicio episcopali.'

¹⁵ Agobardi, Opp. ed. Migne, t. civ. p. 287 seq.

¹⁶ Agobard in the Chartula Porrecta Lothario speaks of the 'ignavia Ludovici venerandi, quondam imperatoris;' in the documents of Compiègne mention moreover is made of 'regnum D. Ludovico Imperatori a Deo ad regendum sub magna pace commissum.' Besides Lewis is there called 'princeps, venerabilis vir.'

¹⁷ Lothair's reign is reckoned in various ways: sometimes from his joint government, sometimes from his coronation by Paschal I., sometimes from the date of his Italian kingdom, sometimes from the death of his father.

¹⁸ Bianchi, n. 7, pp. 471, 472. Mamachi, p. 194. Phillips, iii. § 122, p. 97 seq.

§ 3.

After the ninth century certain exceptions were made to the rule that penitents should not return to military service.¹ Pope Nicholas I. gave the Archbishop of Bourges power to dispense on this point, and in another case he permitted arms to be borne against the heathen in urgent necessity.² A later Council at Rheims, which enjoined canonical penances for those taking part in the battle between King Charles and his rival, King Robert; dispensed from the performance of penance, amongst other times, during sickness and military service.³ Gregory VII. strove to maintain the ancient discipline, together with the mitigations of Nicholas I. ; soldiers performing penance were to lay down their arms, unless they were defending the cause of justice by the advice of the bishop.⁴ In the mean time other works of satisfaction became more and more frequent, and the Council of Clermont (1095) permitted a crusade undertaken with pure intention to take the place of every penance.⁵ From that time princes who were conscious of heavy guilt often voluntarily took up the cross in expiation, as for example King Lewis VII. of France (1145).⁶

¹ Raban. Maur. Ep. ad Heribald. Autissiod, c. xvi. p. 498 seq.

² Nicol. I. Ep. 19, al. 39, ad Rod. Bitur. c. iv. ; Ep. 17, al. 5, ad Rivol. Ep.

³ Conc. Rhem. a. 924 (Labbé, ix. p. 581).

⁴ Conc. Rom. Nov. 1078, c. 5 (Labbé, x. p. 373 ; Migne, PP. Lat. cxlviii. p. 801 ; Hefele, v. p. 114).

⁵ Can. 2 (Hefele, l.c. p. 298).

⁶ Hefele, p. 442 seq.

§ 4.

It is a fact of still greater importance that, from the most ancient times in the Church, excommunicated persons were not only deprived of spiritual goods in the external communion of the Church, but were moreover forbidden certain acts of intercourse with their fellow-men, such as intimate converse with them, embracing them, eating with them, &c. Intercourse with excommunicated persons was commonly punished with excommunication,¹ by the later laws with the lesser excommunica-

tion if it were not a case of complicity in crime.² When public penances were disused, and ecclesiastical penalties, especially censures, were more commonly employed against the passions and violence both of the higher and lower classes, sovereigns themselves looked upon them as the most efficient means of checking the prevailing licentiousness, and attached to these penalties effects on civil life analogous to those effects which they had long been pronounced to have on the 'spiritual life.'³ As early as 595 King Childebert ordered that any one who made an incestuous marriage, and by thus disobeying the bishop incurred excommunication, was to be driven from the king's palace and deprived of his property in favour of his lawful relations.⁴ The Council of Verneuil, assembled by King Pipin in 765, directed that if any cleric or layman guilty of incest, and refusing amendment in spite of the admonition of the bishop, were in consequence excommunicated, all those who knowingly held intercourse with him should incur the same excommunication. The effect of this excommunication was, that such a one might not enter a church, or eat and drink with Christians; no one might accept a gift from him, kiss him, pray with him, or salute him, until he had been reconciled by his bishop. If any man considered himself unjustly excommunicated he might apply to the metropolitan, but was obliged, in the mean time, to obey the sentence. If any one treated the whole affair with contempt, and the bishop failed to move him to amendment, he was to be punished with exile, by sentence of the king.⁵ In the Capitularies excommunicated persons were deprived of their goods and possessions, and if for two years they stubbornly refused to make satisfaction to the Church, or despised her penalties, they were sentenced to transportation or banishment.⁶ Lothair I. commanded that such obstinate sinners should be punished with imprisonment;⁷ Arnulf (895) ordered them to be brought by the counts before the judgment-seat of the king.⁸ In England King Etheldred (1008) forbade the excommunicated, until their pardon had been pronounced, to dwell in the neighbourhood of the court; and King Canute afterwards condemned to death and confiscation of property those who

gave shelter to an excommunicated or outlawed person.⁹ A London Council (1151) renewed the old law, that whoever remained in a state of excommunication a whole year became completely infamous.¹⁰

As had been the case in earlier ages,¹¹ the temporal arm was employed against those who were obstinately impenitent. John of Salisbury, when Bishop of Chartres (1180), relates in a public letter how King Henry of England compelled the excommunicated Count John of Vendôme to seek reconciliation with the Church.¹² As a general rule, excommunicated persons who were not reconciled within a certain space of time forfeited their civil rights, and incurred political proscription.¹³ They were considered incapable of appearing in court as plaintiffs or witnesses, that thus they might be moved to self-examination and repentance for their sins.¹⁴ Peter, King of Aragon, directed (1210) that those who remained under anathema four months should pay a fine of 400 shillings, the same sum after another four months, and that at the end of the year they should become outlaws and infamous.¹⁵ According to the fourth Lateran Council (1215), canon 3, and the laws of Frederick II. (1220), those who made no satisfaction after one year of excommunication were infamous, and incapable of holding any office or dignity ;¹⁶ indeed, by the laws just named, and by the ancient code of Swabian law,¹⁷ the civil judge had power to proscribe an excommunicated person as an outlaw, if he remained under anathema six weeks and a day. Excommunication and political proscription were deemed precisely analogous ; the one followed upon the other. Neither the outlawed nor the excommunicated could appear in court as plaintiffs, though they were forced to suffer actions to be brought against themselves.¹⁸ According to several Councils of the thirteenth and fourteenth centuries, any person remaining a year under anathema was to be forced by the State, especially by means of confiscation of property, to reconcile himself with the Church ;¹⁹ some Councils specified the penalty to be loss of property ;²⁰ others settled certain temporal punishments, especially fines, for those who remained even a short time under anathema.²¹ The Council of Cognac (1238)

inflicted a fine of ten pounds upon those remaining forty days under anathema; the Council of Bezers (1246) inflicted fines increasing to the entire loss of property; the Council of Avignon (1326) also imposed fines, and threatened those judges who should neglect to act.²² According to a Council of Avignon (1209) any one remaining under anathema for six months could be absolved by the Pope alone.²³ Some Councils decided that he who persisted in a state of excommunication a year should forfeit all rights of inheritance, and only be readmitted to the sacraments after performing severe public penance;²⁴ others, that he should be treated as a heretic, or as one suspected of heresy.²⁵ Together with these various directions, there was one universal rule, that as long as the excommunication lasted no intercourse was to be held with the person under anathema, except in order to bring him back to submission to the Church; no obedience was due to him,²⁶ neither was he entitled to administer any public office.²⁷

¹ 1 Cor. v. 11; 2 Thess. iii. 14; 2 Joh. x. 11. Iren. adv. Haer. iii. 3. Ambros. Ep. 40, ad. Theodos. Synes. Ep. 58. Isidor. Hispal. in can. 18, c. xi. q. 3. Nicol. I. can. 3; *ibid.* can. ap. 11, 13 (al. 10, 12). Antioch. c. 2. Carth. 387-390, c. 7 (Hefele, i. 777, 494; ii. 46). Conc. Tolet. i. 400, c. 15. Araus. i. 441, c. 11. Arelat. iii. 443-452, c. 49. Turon, 461, c. 8. Aurel. i. 511, c. 11. Antisidor. 578, c. 38, 39. Reg. Chrodegangi, c. 20. Conc. Hohenaltheim, 916, c. 9 seq. (Hefele, ii. pp. 67, 276, 284, 568, 645; iii. p. 42; iv. pp. 20, 557). Cf. Bingham, Orig. et Ant. t. vii. l. xvi. c. ii. § 1; Selvaggio, Ant. l. iv. c. i. § 5; Bossuet, Defensio, l. i. sect. 11, c. xxii. p. 155 seq.; Kober, Kirchenbann, p. 376 seq.

² Can. 3, 19, c. xi. q. 3, c. A nobis, 2, de Except. ii. 25; c. 29, 30, de Sent. Excom. v. 39, c. 3, h.t. in 6.

³ Cf. Bossuet, l.c. c. xxii. p. 157, § Pertinet etiam.

⁴ Childeb. Constit. n. 2. Baluz. Capitul. t. i. p. 17.

⁵ Conc. Vermer. can. 9 (Mansi, xii. p. 578 seq.). Baluz. l.c. pp. 172, 836. Cf. Hefele, iii. p. 551.

⁶ Capitul. l. v. 300; vii. 215. Baluz. t. i. pp. 885, 1071.

⁷ Const. a. 825, c. i. (Pertz, l. iii. p. 248).

⁸ Hard. vi. 440.

⁹ Canciani, Barbar. Leg. Ant. t. iv. pp. 291, 309.

¹⁰ Hefele, v. p. 464. Cf. letter of St. Thom. à Becket to Card. Albert, 1170, Thom. Cant. l. v. Ep. 22, Bouquet, Recueil, xvi. 419, Ep. 258.

¹¹ Kober, Kirchenbann, p. 439. The petition of the Catholics of Antioch to the Emperor Aurelian (Eus. H. E. vii. 30) is brought forward as proof, also can. Antioch, 341, n. 5 (Hard. i. 434), and African canons

(Hard. i. 964, seq. 889). For examples in ninth century, vide Hefele, iv. pp. 52, 112.

¹² Joh. Saresb. Ep. 326, pp. 376, 377: 'Tandem cum D. Anglorum rex doleret illum tamdiu excommunicationi subjacere, regiam adjecit manum, eundem compellens, ut exhibitione justitiæ se a sententiâ excommunicationis, qua tenebatur, faceret absolvi.' The custom of imprisoning persons obstinate under excommunication by command of the king, in order to force them to submission, was maintained by the English Councils, and their release was forbidden until satisfaction had been made; e.g. Council of Lambeth, 1261, can. 3; of London, 1342, c. 13 (Hefele, vi. pp. 59, 590). For the same end the Council of Gran in Hungary (1114), can. 34, required that the names should be notified to the king of those excommunicated (Hefele, v. p. 290).

¹³ Gaillard, Hist. de Charlemagne, t. ii. p. 124. Fleury, Hist. Eccl. t. xiii. disc. 3, n. 18; t. xvii. disc. 5, n. 13. Bossuet, l.c. et l. iii. c. iv.

¹⁴ Ivo, Decret. l. xiv. c. 69, Ep. 186, ad Laurent. Opp. ii. p. 78.

¹⁵ Hurter, Innoc. III. vol. iii. p. 114.

¹⁶ Hefele, v. pp. 787, 816 seq. Pertz, Leg. iv. 236.

¹⁷ Huillard-Bréholles, Diplom. i. p. 76 seq. Stolberg = Brischar, Kirchengeschichte, vol. lii. (new series, vii.) p. 43.

¹⁸ Senkenberg, Corp. Jur. Germ. t. ii. Jur. Alam. c. iii. 127.

¹⁹ Council of Taragona, 1233, c. 18; of Paris, 1248, c. 20; of Milan, 1287, c. 28; of Anfe, 1300, c. 7; of Trêves, 1310, c. 26 (Hefele, v. 918, 1025; vi. 227, 338 seq. 434). The Council of Cologne, 1266, c. 38, ordered the same, but enjoined a previous accusation before the Council for contempt of the Church's power of the keys (Hefele, vi. p. 83; Kober, l.c. p. 438).

²⁰ Council of Narbonne, 1227, c. 1; of Monteuil near Valence, 1248, c. 13; statute of Lewis IX. 1229 (Du Cange, Glossar. v. Excom.). Hefele, v. pp. 838, 872, 1029.

²¹ E.g. Council of Trêves, 1238, treating of those who remain six weeks under anathema (Hefele, v. p. 938 seq.).

²² Hefele, l.c. p. 1019. Hard. vii. 319, 413, 1509. Kober, p. 434 seq.

²³ Can. 13 (Hefele, v. p. 750 seq.).

²⁴ E.g. Council of London, 1278, c. 6 (Hefele, vi. p. 164).

²⁵ Council of Bordeaux, 1263, c. 2 (Hard. vii. 553; Hefele, vi. p. 72); Council of Compiègne, 1304, c. 4 (Hard. l.c. p. 1276; Hefele, p. 355); of Pressburg, 1309, c. 7 (Hefele, p. 427); Kober, l.c. p. 437 seq.

²⁶ Urban II. can. 5, c. xv. q. 6. Jaffé, Reg. n. 4291, p. 474.

²⁷ Innoc. III. 1213, l. xvi. Ep. 116, p. 913: 'Cum excommunicatorum communio sit aliis interdicta, ipsi officia publica exercere non debent.' Cf. ib. Ep. 94, p. 894.

§ 5.

This strict discipline was on the one hand mitigated, on the other hand rendered more severe. Gregory VII. in his Lenten Council at Rome (1078) modified the prohibition of intercourse

with excommunicated persons, so that their wives, families, and servants, indeed all whose presence would not strengthen their evil dispositions, were permitted to be with them. Travellers who came across excommunicated persons might accept a gift or buy from them, and all were permitted to give them enough to support life.¹ This decree was inserted in the book of canon law,² was only slightly modified by Urban II.,³ and was recognised by Innocent III.⁴ The Council of Piacenza (1095) recognised as within the pale of the Church, and admitted to the reception of the Holy Eucharist, those who came only into personal contact with the excommunicated, but took no part in their worship (that of the Henrician party). The Council of Tours (1236) merely inflicted fines on those Christians who held avoidable intercourse with persons under anathema.⁵ The thirteenth General Council (1245) maintained only the penalties against those who had taken part in the offence, and forbade the infliction of the greater excommunication except after canonical warning upon those who held intercourse with persons under anathema by word, or in any other way for which the threatened penalty was the lesser excommunication; still if this intercourse tended yet further to harden the guilty man, it might be punished in the same manner as complicity in crime if canonical warning were given beforehand.⁶ This warning, which was also insisted upon by succeeding Popes, was, however, declared by Gregory X. in the fourteenth General Council (1274), c. 29, to be canonical only when the persons concerned are mentioned expressly by name;⁷ this must be done three times, or once in a peremptory manner. It was afterwards declared by Martin V. that those only who were excommunicated publicly and by name were to be avoided (*excommunicati vitandi*).⁸

¹ Hard. vi. 1578. Migne, PP. Lat. cxlviii. p. 798. Hefele, v. p. 108.

² Grat. can. 103, c. xi. q. 3.

³ Urban. Ep. ad. Genebald. (Hard. vi. p. 1651 seq.).

⁴ Innoc. III. l. i. Ep. 381, p. 361, ed. Migne: 'Nullus omnino nominatim excommunicato scienter communicare tenetur, nisi quaedam personae, quae per illud Gregorii P. capitulum *quoniam multos specialiter excusantur*.'

⁵ Hefele, v. pp. 194, 931.

⁶ Hefele, v. p. 991 seq. This decree is c. iii. de Sent. Excom. v. 11 in 6.

⁷ C. 9, de Sent. Excom. v. 11 in 6 (Hefele, vi. p. 137).

⁸ Const. Ad evitanda scandala (Hard. Conc. viii. 892). Cf. Suarez, de Censur. disp. 9, § 2, n. 5; Pignatelli, Consult. Canon. t. i. cons. 143, n. 4, p. 187.

§ 6.

On the other hand there was increased severity in the case of complete obstinacy on the part of the excommunicated (*insordescencia*). The sentence of excommunication was most solemnly renewed with ceremonies and words expressive of abhorrence and execration; for example, the burning tapers borne by the clergy were cast to the ground.¹ The expression ‘*anathema*’ was often, especially after the ninth century, used for this renewal of the sentence.² The consequences which, by spiritual and civil law, fell upon the incorrigibly obstinate were usually then pointed out as having actually come into force; such as the incapacity for public offices and loss of those already held, the cessation of all duty of obedience on the part of the subjects of the guilty person.³ Thus Honorius III. declared in one of the decretals inserted in the book of canon law, that a count who remained in a state of excommunication over two years, despising the Church’s power of the keys, and who, after a second warning, still refused amendment, forfeited his right to the obedience of his subjects, who were freed from their oath of allegiance to him as long as he remained excommunicated.⁴ This was completely in accord with the decision of Innocent III., who had declared that those persons whom Gregory VII. had excepted from the usual rule not only had the right, but were moreover bound in duty, to render obedience to the excommunicated, and also to hold intercourse with them, as far as the excommunication alone was concerned.⁵

¹ Gratian, c. 106, c. xi. q. 3. Regino, de Eccl. Discip. l. ii. c. 409. Thus in 1031 the extinguishing of the tapers took place at the Council of Limoges (Hefele, iv. p. 661).

² Council of Paris, 846, c. 56; of Savonnières, 859, c. 9; of Troyes, 878, c. 1 (Hefele, iv. pp. 111, 198, 512); Pope Nicholas I. Ep. 7, et in Conc. Rom. 863 (cf. can. 2, c. iv. q. 1); Johan. VIII. c. 12, c. iii. q. 4; and else-

where. Thus Celestine III. c. 10, *Cum non ab homine*, ii. 1, de *Jud.* : 'Qui si depositus incorrigibilis fuerit, excommunicari debet, deinde contumacia crescente anathematis mucrone feriri.' The *Pontificale Romanum* also makes this distinction (*Phillips, Lehrbuch der Kirchenrechte*, § 189, p. 544, note.

³ Kober, *Kirchenbann*, p. 403.

⁴ C. 13, *Gravem*. v. 37, de *Poenis*.

⁵ C. 31, *Inter alia*, tit. de *Sent. Excom.* v. 39, explanation of the words of the same Pope, quoted § 5 *suprà*. Those persons were understood who, *ante prolationem sententiae excommunicationis*, were bound to obey the excommunicated, *neque postmodum ad contrarium tenentur*. Still, travellers, pilgrims, merchants, were, except in case of necessity, to refrain from intercourse with those under anathema. It was 'in *crimini-bus*' alone that no one was to hold intercourse with them.

§ 7.

But kings and princes were no more exempt from excommunication than the rest of the faithful.¹ The duty of passing sentence upon them fell to Popes and Councils, and was a purely ecclesiastical act, completely within the sphere of the Church. The Gallican Dupin himself says : 'It seems to me that no doubt can be raised but that kings who are sinners or heretics may in this sense be pronounced unworthy of communion with the Church. For though they are monarchs and princes of the civil commonwealth, still they are merely simple members of the religious commonwealth, and must obey its laws, or be cast out from it ; for no one is lord, no one is monarch over the Church, and no one is free from her laws. Therefore without doubt the prince who offends against the laws of Christ and of the Church may be considered and pronounced unworthy of the Church.'² As Christians, they are sons of the Church, not her rulers ; subject to her laws, not raised above them. Protestants have also made use of this right, as, for example, the French Calvinists against Henry IV. ;⁴ and it was fully defended by Samuel Basnage.⁵

¹ The belief of the ancient Christians on this point is shown by Kober, p. 108 *seq.* Bossuet admits the proposition, *P. i. l. i. sect. 2, c. xxi.* pp. 154, 155.

² Dupin, de *Ant. Eccl. Disciplina*, dissert. 6, c. ii.

³ Ambros. *serm. de Basilicis*. Joh. VIII. P. in c. xi. dist. 96.

⁴ J. H. Boehmer, *Jus Eccles.* l. v. tit. 39, n. 40.

⁵ Sam. Basnage, *Annal. Politico-Eccles.* ii. diss. 3, § 10.

§ 8.

On the other hand, deposition and the release of subjects from their oath of allegiance were distinct acts, which did not immediately and of themselves follow upon every sentence of excommunication, but had to be separately declared.¹ By the public law of Christian States, excommunication brought with it temporal consequences, differing only according to the length of obstinate resistance to the sentence, and it was considered monstrous that a Christian people should be ruled by a prince who was cut off, and remained cut off, from the Church; therefore to the sentence of excommunication might be added a declaration that those consequences were come into force which followed also by the *constitution of the State*.² In pronouncing a sentence of deposition, which was only done when all other means were exhausted, the Popes appealed not only to *divine, but also to human law*;³ and this was done also by the most eminent writers on the effects of excommunication.⁴ Since the Pope and the Council were the natural judges in all questions touching religion, it also belonged to them to point out to the people those princes who had fallen into heresy, or under the greater excommunication of the Church. This they could not do without observing and declaring that by the constitution and custom of their countries these princes had forfeited their right of governing, either for a time, or for ever, according to the state of the case. It was to the interest of the sovereign, and of the whole community, that such a declaration should not be left to be made by the people, or by the national assembly, which would have favoured every attempt at revolution,⁵ or even by the bishops of the country in question alone, who were also subjects of the king, but should be reserved to the Pope and General Council. Even when it was supposed that the subjects of a prince excommunicated for apostasy from the Faith were at once and necessarily set free from his rule and from their oath of allegiance,⁶ still a judgment to that effect was needed from the Pope, a *sententia declatoria criminis*, as in other cases also where the excommunication at once took effect by virtue of the

law (*ipso jure*); usually the loss of office was only added as an increase of punishment, and did not in fact follow upon every sentence of excommunication.⁷ Besides this, the acts of jurisdiction of an excommunicated and deposed prince were declared null and void, as, for example, Innocent III. (1212) declared in relation to the acts of the deposed Otho IV. of Germany.⁸ Such princes were no longer looked upon as lawful rulers, but as tyrants.⁹ Even though strictly speaking deposition of the prince could only be effected by the combined action of the spiritual and civil law, still the same effect was at once produced by an entire release of the subjects from the oath of allegiance, in releasing from which the Church was completely within her own sphere.¹⁰

¹ Suarez, de Cens. disp. 15, sect. 6, n. 3: 'Ut excommunicatus princeps dominio et omni jure in subditos privetur, necesse est, ut speciali poena et sententia declaretur aut imponatur' (Gosselin, ii. p. 339).

² Cf. Phillips, Kirchenrecht, iii. § 125, p. 158; § 126, p. 190. For the Papal right of deposition the following are quoted: Bonavent. de Eccles. Hier. P. ii. c. i. (ed. Ven. v. p. 215); Raymund. de Pennaf. l. i. tit. de Haeret. § 7; Aug. Triumph. q. 46; Antonin. Sum. P. iii. tit. 22, c. iii. § 7; Petr. Palud. de causa immed. Eccl. pot. Ant. Aug. jur. Pont. vet. epit. tit. 16, ap. Roccaberti, iv. 206. Several German law-books and others, apud Friedburg, de Finibus, &c. p. 29, n. 5.

³ Gregor. VII. Ep. ad princ. Germ. ap. Paul. Bernr. c. lxxviii.: 'Per quos . . . eum secreto monuimus, ut poenitentiam ageret de sceleribus suis, quae quidem horrenda dictu sunt . . . propter quae eum excommunicari non solum usque ad dignam satisfactionem, sed ab omni honore regni absque spe recuperationis debere destitui *divinarum et humanarum legum* testatur auctoritas.'

⁴ Ivo Carnot. Ep. 186, Opp. ii. p. 78; Gosselin, ii. p. 104, n. 2. Cf. Suarez, Defens. Fidei, l. vi. c. iv: 'Licet respublica seu regnum hominum ex sola rei natura spectatum, prout fuit inter gentiles et nunc est inter ethnicos, habeat potestatem se defendendi a tyranno rege et illum deponendi in eum finem si necessarium fuerit, nihilominus regna Christiana quoad hoc habent aliquam dependentiam et subordinationem ad Pontificem summum, quia potest Pontifex alicui regno praecipere, ut se inconsulto contra regem suum non insurgat vel illum non deponat, nisi prius causa et ratione ab ipso cognita, propter moralia pericula et animarum dispendia, quae in his tumultibus popularibus moraliter interveniunt, et ad vitandas seditiones et injustas rebelliones.'

⁵ Bianchi, t. iii. l. i. c. i. § 6, n. 9, pp. 52, 53.

⁶ S. Thom. Sum. 2, 2, q. 12, a. 2, in corp.

⁷ Kober, l.c. pp. 117, 118.

⁸ Innoc. III. l. xv. Ep. 31, p. 566: 'Sicut ea, quae a Catholicis et devotis principibus rationabiliter ordinantur, firma debent et illibata servari, sic ea, quae a perfidis tyrannis improbe statuuntur, maxime tempore, quo excommunicationis vinculo tenentur astricti, carere debent robore firmitatis, cum tales legitime nequeant jurisdictionis officium exercere ab unitate fidelium separati. Cum igitur Otto, jam non nominandus imperator, sed impius persecutor, cum suis fautoribus anathematis vinculo sit innodatus et a debito fidelitatis ipsius absoluti sint universi, nos omnia, quae idem excommunicatus vel aliquis ejus officialis contra clericos vel ecclesias statuit aut statuerit, sive contra principes aut eorum fautores, qui memorato tyranno suum subduxerint obsequium, ut libertatem et justitiam tam Ecclesiae quam Imperii tueantur, denunciamus irrita et inania esse eaque de communi fratrum nostrorum consilio auctoritate apostolica omnino cassamus.' Cf. ib. Ep. 36, p. 569; Ep. 84, 85, p. 603.

⁹ Thus St. Bernard designated Roger of Sicily, after the excommunication and decrees of Innocent II., Ep. 127, ad Guitm. p. 138 seq.; Ep. 130, ad Pisan. p. 140 seq. Cf. Ep. 136, 139; Ep. 140, ad Loth. p. 146. Cf. Bianchi, t. ii. l. v. § 12, n. 1, p. 319. But when Roger had made his peace with the Pope, and been recognised by him, St. Bernard wrote to him most respectfully (Ep. 207-209, ad Roger. Reg. Sicil.).

¹⁰ Thence it happened that for brevity many ascribed to the Church the right of deposing. Thus Gerhoch von Reigersberg says, in Psalm. xxix. seq. 630: 'Ordo clericalis, cujus nimirum est officium, non solum plebejos, sed etiam reges increpare atque regibus aliis descendentibus alios ordinare.' Cf. Neander, Kirchengeschichte, ii. p. 390, b. iii. a.

§ 9.

A doubt has been raised, not indeed in the Middle Ages, but of late, as to the power of the Church to release from oaths, whether of allegiance or of any other nature. It will be well to set forth here the universal teaching of canonists and moral theologians. The question now before us is clearly not of the oath taken in a court of justice, but of the extra-judicial oath; not of the oath of assertion (*jusjurandum assertorium*), but of the oath of promise (*jusjurandum promissorium*). All are agreed that an oath is not binding if it fail in the requisite justice of its object, for an oath, by which God is called to witness, is a solemn religious act, and cannot bind to evil.¹ It is not lawful to take an oath against religion, good morals, or the rights of a third person, or dangerous to salvation and the public welfare;² oaths, for example, to assassinate or put to death unjustly, such as Herod's oath,³ are forbidden, and are not binding. Every

binding oath must have as its accompaniment *truth, judgment* (i.e. deliberation), and *justice* (veritatem in mente, iudicium in jurante, justitiam in objecto).⁴ Although an oath to which especially the last of the three requisites is wanting does not bind, still the Church insists so strongly on the binding nature of an oath in itself, and therefore on the presumption of its power of binding in any individual case, that where the slightest doubt exists as to what is included in the oath she requires application to be made to her for release from the obligation, even though it be only a seeming obligation.⁵ Such cases could not be left to the subjective judgment of private persons; and since, from the custom of rendering a contract more binding by the addition of an oath, many cases of the kind came under the judgment of the Church, it was her duty to lay down exact laws for such questions as they arose; but in so doing, she did not call in question the competence of the civil judges to receive complaints in the matter of contracts.⁶

The course adopted by the Church necessarily differed much, according to the oaths brought before her. In many cases the interpretation of the oath sufficed. This was the course of Innocent III. as to the oath of the King of Aragon to maintain his father's base coinage; and also as to the promise of the Archbishop of Naples to observe the ordinary legal procedure everywhere, even when the notoriety of the case made it unnecessary.⁷ In other cases, again, he who had made the oath was compelled to carry it out, and he to whom it was made was compelled to make restitution;⁸ sometimes for a sufficient cause absolution or relaxation was given, often with the imposition of a penance.⁹ Innocent III. commissioned the Archbishop of Mainz to declare null and void the oath of the canons of Würzburg, by which they had sworn to the Bishop of Hildesheim, who held their see, to pay his family after his death two thousand marks, and not to obey his successor until the money had been paid.¹⁰ The same Pope declared the Duke of Austria free from his promise of marriage, by reason of the nonfulfilment of conditions on the other side.¹¹ Even an oath made under pressure needed relaxation or absolution from the Church.¹² The declaration that an

oath was null was called absolution, precisely as the declaration of innocence of an accused person was also called absolution.¹³

¹ C. 22, *Inter cetera*, § 1. Porro, c. xxii. q. 4. Cf. the other canons, especially c. 5, 18.

² Schmalzgrueber, in l. ii. *Decret. tit. 24*, § 6, n. 71-74. Reiffenstuel, in h. tit. § 3, n. 73 seq.

³ Joh. Saresb. *Polyer. l. iii. c. xi. p. 499*: 'Rex incredulus salubrius incautum et perfidum solvisset juramentum, quam in exstinguenda lucerna verbi, auferendo praeambulum gratiae, veritatis occidendo praeconem mensam pollueret convivium incestaret, regiam pessumdaret majestatem, dum incestui cuncta serviunt et obtemperant saltatrici. Ethica quidem regula est, quia non omnia sunt semper promissa solvenda, si forte aut accepto damnosa aut pernicioosa sint promittenti . . . ipsoque jure cautum est, ut nulla promissio, quae turpem aut tristem habeat exitum, impleatur.'

⁴ Hieron. in can. 2, c. xxii. q. 4. Also Godfrey of Vendôme, *Tract. de Ord. Episc. (Migne, clvii. p. 282)*.

⁵ Phillips, *Lehrb. der Kirchenrechte*, § 310, p. 1176.

⁶ Phillips, l.c. § 177, n. 3, p. 495 seq.

⁷ C. Quanto, 18, de *Jurejur. ii. 24* (*Innoc. III. l. ii. Ep. 28*, p. 558); c. *Ad nostram*, 21, *ibid.* (l. i. *Ep. 415*, p. 392 seq.).

⁸ Alex. III. c. 7, *Ad nostram*, h.t. in relation to a pledge taken to obtain a loan.

⁹ C. *Cum quidam*, § *Illi vero*; c. *Quanto*, l.c.

¹⁰ *Innoc. l. ii. Ep. 216*, p. 775. To such oaths the words of the same Pope apply, c. *Sicut nostris*, 27, h.t.: 'Non juramenta, sed perjuria potius sunt dicenda, quae contra utilitatem ecclesiasticam attentantur.' What is here meant by 'utilitas ecclesiastica' the context shows; it is a question of injury to episcopal rights by the canons.

¹¹ *Ib. l. vi. Ep. 201*, p. 225.

¹² C. 2, *Pervenit* (*Gregor. VII.*); c. *Si vero*, 8 (*Alex. III.*); c. 15, *Verum* (*Celestin. III.*); c. 21, *Ad nostram* (*Innoc. III.*).

¹³ Pallavicin. *Hist. Conc. Trid. l. xi. c. ii. n. 10*.

§ 10.

The question, who had power to absolve from an oath, was answered as follows.¹ Passing over the case of an oath of promise to God, which is a vow, and in the matter of dispensation must be dealt with accordingly,² we come to the case of a promise to a fellow-man; here we must distinguish whether or not the oath, on the side of him to whom it was made—the recipient—contains anything immoral. If it does, it may be relaxed by the bishop, for such an oath can give no right to him to whom it was made, and can make no contract binding; if it does not,

it can be released, against the will of the recipient, by the Pope alone, and by him only for a weighty cause and for the general good; for in this case there is question of the well-earned right of another, of which he can be deprived only by the highest spiritual power, and on good grounds.³ Often was application made to the Pope even when the bishop would have had power to act. To the question, whether the civil judge or the sovereign had power to release from an oath made to a man, if not by absolving from it, at least by declaring it null and void,—if not directly, at least indirectly,—the answer given was as follows:⁴ (1) It is not beyond the power of the civil judge indirectly to remove the obligation of an oath made by a layman subject to him, if the matter promised by oath belongs to his jurisdiction, and if the public good demands it; (2) the civil magistrates, at least the sovereign, can, if the public good demands it, declare certain kinds of contract so utterly void, that the addition of no oath can make them valid, and (3) even that such oath shall carry with it no obligation, either of justice, or of religious duty; (4) he may for the common good forbid the fulfilment of the obligation promised by oath, in which case the obligation ceases; (5) the emperor may lay a prince or a state of the empire under the imperial ban, and, as a consequence, the subjects are freed from their oath of allegiance. Moreover, a husband, for example, may declare the oath of his wife to be null, and still more, he in whose favour it was made may release her from it.⁵ Princes may declare the oaths of their subjects null, since every oath is taken on the supposition that it does not prejudice the authority of the magistrates (*salva superiorum auctoritate*).⁶ The following were accepted as legal grounds for release from promissory oaths:⁷ (1) Immorality in the promise; (2) extortion of the oath by force or cunning; (3) a higher or a greater good hindered by its fulfilment; (4) want of judgment and deliberation in taking the oath; (5) doubt as to whether the oath was really taken; (6) removal of scandal to others; and also (7) of danger and occasion of sin. But never might the release from an oath, granted for the benefit of a sinner, serve as an authorisation for further sins in others.⁸

¹ Smalzgrueber, l.c. n. 96, 97.

² As to the faculties given to the appointed confessors of princes for the release of oaths made by them, there is only question (1) of *vota indeliberata*, and (2) of a release which may be given in general by the universal principles of law, for these are always presupposed. On the subject of the authority given by Clement VI. to the French King John, Bishop Fessler has given satisfactory information (*Die Wahre und die Falsche Unfehlbarkeit*, pp. 64, 65). That which is to be done '*secundum Deum*' cannot be carried out contrary to God's commands.

³ Thus Suarez, l. ii. de Juram. c. xli. n. 2; Sanchez, l. iii.; Moral. c. xxi. n. 2; Laymann, in c. viii. h.t. n. 2; and elsewhere. St. Thom. Sum. 2, 2, q. 89, a. 9, ad 3: '*Et in tali juramento non videtur habere locum dispensatio vel commutatio, nisi aliquid melius occurrat ad communem utilitatem faciendum, quod maxime videtur pertinere ad postestatem Papae, qui habet curam universalis Ecclesiae.*' From the word '*maxime*' Schmalzgrueber concludes, l.c.: '*Ergo aliquando etiam ab Episcopo id fieri potest juxta rei et personarum qualitatem.*'

⁴ Schmalzgrueber, l.c. n. 100-104.

⁵ Germain, l. ii. Animadvers. c. viii. Marca, de Jurisdict. P. iv. cent. 1, cas. 72, n. 23. Suarez, de Relig. t. ii. tract. 4, l. ii. c. xxxix. n. 5. P. Surdus, Consil. 364, n. 25. Bianchi, t. i. l. i. § 17, n. 3, p. 141.

⁶ Innoc. III. c. 19, Venientes, h.t.: '*In quo (juramento) debet intelligi jus superioris exceptum.*' Cf. Greg. M. in Can. i. d. 85. Suarez, de Relig. l.c. c. xxxviii. Sanchez, de Praecept. Decal. l. iii. c. ii. n. 19. Gonzales, in l. ii. Decret. c. i. Ex administrationis, h.t. n. 8, fin. Bianchi, l. c.

⁷ Schmalzgrueber, l.c. n. 105.

⁸ Alex. II. 1061 (Mansi, xix. 980; Jaffé, n. 3374, p. 390): '*Possumus in perjurio aliquo crimine lapsis misericordiae manum porrigere, sed non debemus ad futurae perditionis (al.: prohibitionis) exemplum licentiam dare.*'

§ 11.

The Eastern Church affords a famous example of release from a promissorial oath. When the Emperor Mauricius (582-602) sent the General Philippikus to his troops they would not accept him; the venerable Patriarch Gregory of Antioch, in spite of illness, addressed to them a powerful speech to recall them to obedience.¹ The rebels, deep as was the impression made by this speech, appealed to their solemn oath, which bound them to be firm in their resolve. To this Gregory replied that he, as bishop, had power to bind and to loose in heaven and on earth; and thus he silenced all scruples.² In Spain the fifteenth Council of Toledo (688) had to pass judgment, at the request of the King Egiza, upon three separate oaths made by him.³ There are also

many such examples among the Popes before Alexander III. Nicholas I. released the Archbishop of Trêves, and others of the clergy, from oaths taken in prison;⁴ Leo IX. released Edward the Confessor from his promised journey to Rome, in consideration of a menacing rebellion;⁵ Gregory VII. (1080) set free Bishop Henry of Liège from an oath, extorted from him by Count Arnulf, that he would not demand back the property taken from him;⁶ he likewise declared to Count Robert of Flanders that his oath to the French King Philip had no binding power:⁷ the count had sworn to support the intruder Lambert, who had been guilty of simony. Paschal II. (1099-1115) declared the feudal oath taken reciprocally by the clergy of the church of Chartres to be null, and forbade it in future.⁸ Calixtus II. (March 4, 1120) pronounced not binding the oath of allegiance extorted from the nobles of the kingdom by the Spanish Queen Urraca, widow of Count Raymund: the queen desired to reign instead of her son, appointed by King Idelphons to be his heir; the Pope moreover added that the oath previously taken to her son retained its binding power.⁹ Hadrian IV. absolved the French Chancellor Hugo from the vow he had made, that he would offer to resign his office upon attaining the dignity of arch-deacon, &c.¹⁰

¹ Evagr. H. E. l. vi. c. vi. 12.

² Ibid. c. xiii. (Migne, PP. gr. l. xxxvi. p. 2864).

³ Hefele, Conc. iii. p. 295 seq.

⁴ C. 2, c. xv. q. 6 (Jaffé, Reg. n. 2027, p. 238).

⁵ Mansi, xix. 1050. J. n. 3236, p. 374.

⁶ Jaffé, n. 3880, 3881, p. 433 seq.

⁷ Jaffé, n. 3953, p. 440. Mansi, xx. 370. He remarks: 'Perniciosius esse, illum *per quem* juretur, quam *cui* juretur, et Deum quam hominem offendere.'

⁸ Ivo Carn. Opp. ii. 233. J. n. 4748, p. 508.

⁹ Jaffé, n. 4995, p. 534.

¹⁰ Mansi, xxi. 804, 806. Jaffé, n. 7093, 7094, p. 675.

§ 12.

When subjects were released from their oath of allegiance to excommunicated princes, it was on the understanding that these princes had themselves been guilty of breaking faith with God ;

the oath of obedience to them was always taken on the condition, expressed or understood, that they should fulfil the obligations they had undertaken to the Church and to their people.¹ If they failed in this, the salvation of their subjects was endangered, for they were easily implicated in the crimes of their sovereign, indeed as a rule they were required by him to do things incompatible with their own higher duties. Although an oath taken to a prince who had broken his own faith was allowed to be in itself ipso facto no longer binding,² yet for greater security, and that the fact might be fully confirmed, a special declaration on the part of the Pope was not to be looked upon as superfluous, or to be dispensed with, nay more, it was required by the universal rules given above. When the faithful were in immediate danger of falling away from the Faith, through the apostasy of a ruler, the Church had power to forbid obedience to be paid to him, and to release them from their oath of allegiance; she did not directly deprive him of his power, but made use of her own spiritual power in such a way as to remove the danger, and to secure the spiritual welfare of the sovereign and his subjects. Other weapons and direct means were employed against simply immoral kings, and in this case extreme measures were not to be resorted to as long as their subjects were in no danger.³

¹ The decree of Innocent III. against Markwald, l. i. Ep. 38, p. 32, says: 'Omnes, qui eidem fidelitate sunt vel sacramento astricti, apostolica auctoritate a sacramento absolvimus, et ne ipsi fidelitatem observent, modis omnibus prohibemus, cum fidelitatem quem aliqui Christiano principi jura-verunt Deo ejusque sanctis adversanti et eorum praecepta calcanti nulla mandentur auctoritate servare.'

² Augustin. Triumph. Sum. q. 40, a. 4: 'Utrum Papa possit Imperatoris subditos a juramento fidelitatis absolvere. . . . Dicendum, quod, sicut scribitur X de reg. jur. (75 in 6): *frustra sibi fidem quis postulat ab alio (eo) servari, qui (cui) fidem praestitam a se servare recusat*. Planum est autem, quod in juramento fidelitatis, quod Imperator Ecclesiae praestat, continetur, quod ipse jurare faciet omnes illos, quibus regnum Italiae seu alia ad Ecclesiam pertinentia committit, ut ipsi Ecclesiae adjuutores existant. Si ergo fidelitatem quam jurat, recusat observare, ipso facto ejus subditi sunt a juramento fidelitatis ejus absoluti.'

³ Bianchi, t. i. l. iii. § 1, n. 8-9, pp. 447-449.

§ 13.

The state of things at the present day is in many respects different. The oath, which is inconceivable apart from religion, and which is peculiarly a religious matter,¹ came to be more and more profaned; it was made far too common;² little or no importance was attached in private law to the promissory oath, and before long the assertorial oath used as testimony in a court of justice came to be the only one held in esteem.³ 'The duty of allegiance,' says Walter,⁴ 'may be strengthened by an oath, and this in itself has the same value as an oath affirming a fact. The nonfulfilment of an oath lawfully sworn should be punished precisely in the same way as false evidence given on oath, and this falls strictly within the sphere of conscience, and therefore of canon law. The task of exactly weighing all the points of conscience in such cases was so far beyond the civil courts that they were unable to enter into them, and were forced to leave the spiritual courts to decide as to the binding power of promissorial oaths, while they themselves merely carried out the sentence. This is no longer tolerated, and therefore in modern times the promissory oath has no civil effects, and is left completely to the sphere of conscience. One undeniable advantage is thus gained: the oath is now in less danger of being dragged into mere business transactions. But there is a certain inconsistency in the fact that a promissory oath taken in matters concerning private law is ignored by the State, while it is maintained in public law (*i.e.* the oath of allegiance), though the State has no tribunal for matters of conscience to decide the often delicate questions which come before it. As a last resort the power of self-interpretation steps in, and this it is which has brought political oaths so much into disrepute.'

¹ Marx, *Der Eid und die Eidespraxis*, Regensb. 1855, p. 80 seq. 93 seq.

² In early times the Church was forced to complain of the abuse of the oath by civil magistrates. Basil, Ep. 85 (Migne, PP. gr. t. xxxii. p. 465).

³ Cf. Walter, *Kirchenrechte*, § 353 seq. 620 seq.

⁴ Walter, *Naturrecht und Politik*, § 106, p. 103 seq.

§ 14.

The assertion that the Popes busied themselves principally in judging and deposing sovereigns, and that no kingdom was secure from their violence, is utterly without foundation. On the contrary, all princes might rule quietly and free from molestation so long as their government was supported by public opinion and a good conscience. Instances of deposition are by no means numerous, and relate in most cases to elective monarchies; but the Papal condemnations fell exclusively upon princes actually guilty of great crimes, and were in accordance with the laws then in force;¹ for this reason their justice was acknowledged and respected by the majority of men in that day, in so far as they were really impartial. Why is complaint made against *the Popes alone*, and *not also against the bishops*, who agreed with them, and against *the Councils*, which adopted their deeds and their words, and acted upon the same principles of public law? This is evident not only in the Roman Councils (1076 and 1080) under Gregory VII., not only in the Council of Rheims (1119), which released from their obedience all the subjects of Henry V.,² but comes out most clearly also in the Ecumenical Councils of the Middle Ages.

¹ De Maistre, *Du Pape*, l. ii. c. ii. v. xi. pp. 218, 235, 353; Gosselin, ii. p. 372 seq. The Protestant Senkenberg (*Methodus Jurisprudens*, addit. iv. de Libert. Eccl. Germ. § 3): '*Jure affirmare poterit, ne exemplum quidem esse in omni rerum memoria, ubi Pontifex processerit adversus eos, qui juribus suis intenti ultra limites vagari in animum non induxerunt suum.*'

² Labbé, xii. 1306. Mansi, xxi. 235-255. Hefele, v. p. 319.

§ 15.

The eleventh Ecumenical Council (1179) released all those bound by compact to heretical princes from the duty of allegiance, from the oath of fealty, and from all obedience, so long as their rulers persisted in their obstinacy.¹ The twelfth (1215) directed that temporal sovereigns who neglected to cleanse their kingdoms of heresy should be excommunicated by the metro-

politan and the other bishops ; in case they made no satisfaction within the space of one year the Pope was to be informed, *in order that he might declare the vassals freed from their allegiance, and give over the land to Catholic rulers.*² Whether or not it is assumed that these decrees were issued in concert with Christian princes, and on the understanding of their assistance,³ it is at least clear that they took the same view of public law as the Popes, and did not consider that the Church was exceeding her powers. The opinion, that these decrees were only passed through the agreement of sovereigns, is grounded upon (1) the presence of princes and civil ambassadors ; (2) the introduction to the decree of the eleventh Council, in which are quoted the words of Leo I. on the support given to the discipline of the Church by the laws of Catholic princes ;⁴ (3) the assent given by clergy and people to these resolutions, as recorded by chroniclers ;⁵ (4) the character of these Councils, which resemble great parliaments of the whole of Christendom ; (5) the conduct of the Popes, who urged princes—*e.g.* Frederick II.—to support similar decrees by civil sanctions (penal law) ; (6) the fact that the origin of the decrees in question appears to be the ancient imperial laws against the Manicheans and other sects.⁶ The learned men who support this opinion acknowledge that it is impossible to limit the expressions as to loss of lands to fiefs of the Church,⁷ but they hold that the highest temporal rulers, kings, were exempted from these rules, and that they are to be understood only of the lesser vassals.⁸ There have been, however, many objections urged against this last opinion, with appeal to the words of the decrees.⁹ It has been urged:—that this was a question of *absolution* from an oath, which was necessarily considered as an act of spiritual jurisdiction,¹⁰ while all a temporal prince could do was to annul an oath in those matters in which it was not taken to God ;¹¹ that the temporal sovereign was indeed entitled to depose a vassal on political grounds, without releasing him from his oath, which then became null, but was not entitled to absolve him from his oath on religious grounds (*ex causa religionis*), of which the Church was alone the judge; that it cannot be said that the Church obtained her right of absolving from an oath on religious grounds from

the consent of temporal princes, which must be maintained if the contested interpretation be accepted; that it is to draw a false conclusion from the proposition, 'the princes have given their assent,' to say, 'therefore the decree of the Council has its binding power from the princes;' that the dogmatic decrees of the four Lateran Councils would also have to be ascribed to sovereigns, for they were issued in precisely the same way; and lastly, that either the sovereigns of that day must be considered completely ignorant and uncultured, or it must be allowed that they acknowledged in the Church the power of releasing from oaths.¹²

¹ Conc. Lateran. iii. c. 27 (Hard. vi. 1684): '*Relaxatos autem se noverint a debito fidelitatis et hominii et totius obsequii, donec in tanta iniquitate permanserint, quicumque illis aliquo pacto tenentur annexi.*'

² Conc. Later. iv. c. 3 (Hard. vii. p. 18 seq.): '*Moneantur autem et inducantur, et si necesse fuerit, per censuram ecclesiasticam compellantur saeculares potestates, quibuscunque jungantur officiis, ut sicut reputari cupiunt et habere fideles, ita pro defensione fidei praestent publice iuramentum, quod de terris suae jurisdictioni subjectis universos haereticos ab Ecclesia denotatos bona fide pro viribus exterminare studebunt, ita quod anodo, quandocunque quis fuerit in potestatem sive spiritualem sive temporalem assumtus, hoc teneatur capitulum iuramento firmare. Si vero Dominus temporalis requisitus et monitus ab Ecclesia terram suam purgare neglexerit ab hac haeretica foeditate, per metropolitanum et ceteros provinciales episcopos excommunicationis vinculo innodetur. Et si satisfacere contemserit intra annum, significetur hoc summo Pontifici, ut ex tunc ipse vasallos ab ejus fidelitate denunciaret absolutos et terram exponat Catholicis occupandam, qui eam exterminatis haereticis sine ulla contradictione possideant et in fidei puritate consentent.*'

³ Bossuet, Defens. Decl. Cleri. Gall. l. iv. c. i. ii. p. 337 seq. Fleury, Hist. Eccl. t. xv. l. lxxiii. n. 22. Gosselin, ii. pp. 110-114.

⁴ Leo M. Ep. 15, ad Turrib. c. i.

⁵ On the words of Roger of Hoveden (Annal. Angl. l. ii.): 'His itaque decretis promulgatis et ab universo clero ac populo circumstante receptis,' Bossuet remarks, l.c. p. 339: '*Populi autem nomine, ecclesiastico more styloque, laici omnes intelligebantur, ipsique adeo principes et eorum legati. Quare si quid in Conciliis adversus haereticos decerneretur, quod ad civilem potestatem pertineret, id, quamquam ad majorem religionis reverentiam Concilii nomine editum, tamen a civili potestate receptum ac ratum habitum ex ea consensione vim suam obtinebat.*'

⁶ Natal. Alex. H. E. saec. 13 et 14, diss. 3, a. 3, t. xvi. p. 48 seq. Bossuet, l.c. c. ii. iii. pp. 339-342.

⁷ Bossuet, l.c. c. iv. p. 342: '*Nos generatim dicta ad omnes (feudos) pertinere non refugimus.*'

⁸ Natal. Alex. l.c. n. 3, p. 49 seq. Bossuet, l.c. c. iii. fin. p. 342.

⁹ Important here are the words which follow those quoted above (in note 2): ‘*Salvo jure domini principalis, dummodo super hoc ipse nullum praestet obstaculum nec aliquod impedimentum opponat, eadem nihilominus lege servata circa eos, qui non habent dominum principalem.*’ These last are plainly principes supremi, lords paramount, while the simple liege lord is dominus = qui habet dominium. Bossuet’s explanation, l.c., is inadmissible: ‘Domini principales dicebantur ii, qui cum inferiores sub se haberent dominos, ipsi supremis absolutisque dominis, h.e. regibus, immediate suberant neque refugere poterant ea, quae supremorum dominorum, regum scil., qui per legatos aderant, consensione decreta essent.’ He holds also that kings must have been mentioned ‘specialiter,’ in case they were included, but ends by saying that it would do them no injury if out of hatred of heresy they agreed to the decree even as applying to themselves. It must not be overlooked that the law makes no other distinction, and includes those who have over them no ‘dominus principalis,’ and also that the same principle applies to both, and that subjects are equally bound to allegiance, whether their immediate superior be subject to another or not.

¹⁰ According to c. 13, Novit, ii. 1, de Judic.

¹¹ Bianchi, t. i. l. i. § 17, n. 2, 3, pp. 140-144. He remarks that the l. ult. seq. l. i. ad municip. proves nothing to the point, since the emperors released from oaths not as emperors, but as pontifices maximi. Plautus in Rudent. act v. scene 3: ‘Libet jurare, tu meo pontifex perjurio es?’ and elsewhere *ibid.* Cf. Gonzales, c. ii. de Judiciis, ii. 1.

¹² Bianchi, l.c. n. 5, 6, pp. 146-148.

§ 16.

The first General Council of Lyons (1245), with its sentence against the Emperor Frederick II., is brought forward on this point by many theologians,¹ while others, on the contrary, contend² that the sentence was approved by the Pope alone, without the consent of the Council, and was passed *sacro praesente* (not *approbante*) concilio (in presence of the Council). But it must not be taken for granted that the bishops were considered merely as spectators and mutes; in the first two meetings their consent had been most clearly given, and it was against their will that the third meeting was put off twelve days.³ While the sentence was being passed the Fathers held lighted tapers in their hands, which they then extinguished, in token of their deep abhorrence,⁴ exactly as had been done in the case of Henry V. at the Council of Rheims (October 30, 1119).⁵ Not one single bishop spoke against the sentence, not one appealed against it. Neither can it be maintained that the bishops took

part in the excommunication only, and not in the deposition. The sentence of excommunication was no longer in question, having been passed upon Frederick in 1239. The accusation now brought against him was of being guilty of complete obstinacy (*insordescencia*); and excommunication was pronounced against those only who persisted in rendering obedience to the deposed sovereign; the ceremony of the extinguished tapers was expressive of public execration, and of assent to the judgment passed. Had not Thaddeus, who defended Frederick, taken for granted that the Council concurred in the sentence of the Pope, he would not have appealed, as he did, in fact, to a still 'more General Council.'⁷ Even Frederick himself, when he proclaimed that no German had taken part in passing sentence against him,⁸ made it clear that the bishops of other countries had taken part in it. Martin V. had therefore a right, in 1282, to say that Frederick II. had been deposed by Innocent IV. with the consent of the Council.⁹ Nicholas of Curbio had before declared that all the prelates had assented, and had proved their assent by their signatures and seals.¹⁰ The words of the chroniclers,¹¹ and indeed all the circumstances, make it evident that the presence of the Council is, in this case, equivalent to its approval, more especially as the Pope speaks of previous careful deliberation with the Council.¹² The competence of the court was questioned by none of the envoys; they strove only for a delay of the sentence, and for indulgence for Frederick's children. A tribunal utterly destitute of material power could never have passed sentence on so mighty a sovereign, had not its right been universally acknowledged; or at least in so doing it would have met with loud opposition, especially from the envoys of sovereigns. An eminent jurist such as Innocent IV.¹³ would never have been guilty of so great a blunder, nor would the bishops of all lands have assented to it.¹⁴ Frederick himself had not at first disputed the competence of the Church to pass judgment; it was only after the Lyons sentence that he did so.¹⁵ This sentence was in no way out of keeping with the character of the times: the Pope made the declaration that Frederick had rendered himself unworthy of all honours and

dignities, and had thereby forfeited them; and that he (the Pope), in virtue of the binding and loosing power in the Church, released his subjects from their oath of allegiance.¹⁶ The anathema, as well as the release from oath, was an exercise of the spiritual power of the keys; the deprivation and removal from office were a consequence of the spiritual and civil laws then universally recognised, and with a view to these they were pronounced. Fénelon's account of the matter may be here mentioned as quite satisfactory.¹⁷

¹ Bianchi, t. i. l. i. § 12, n. 1, p. 111.

² Natal. Alex. H. E. saec. 13 et 14, dissert. 5, art. 3, n. 8, p. 111 seq. Bossuet, l.c. 7, 8. pp. 349-351.

³ Hard. vii. 379, 380. Matth. Paris, a. 1245.

⁴ Matth. Paris, h.a.: 'Dominus igitur Papa et praelati assistentes Concilio candelis accensis in dictum imperatorem Fridericum, *qui jamjam imperator non est nominandus*, terribiliter, recedentibus et confusis ejus procuratoribus, fulgurarunt.'

⁵ Hefele, v. p. 319.

⁶ Gosselin, ii. p. 182. It is always supposed that the members of a tribunal agree in the sentence pronounced by the president in their presence, unless they expressly say to the contrary. Cf. also Roncaglia, Animadv. in Natal. Alex. H. E. saec. 11, diss. 2, § 3, v. fin.

⁷ Hard. vii. 380.

⁸ Huillard-Bréholles, vi. 336.

⁹ D'Archery, Spicil. iii. 684, ed. Paris, 1723, sentence against the King of Aragon. Cf. Mamachi, Antiqu. t. iv. p. 247 seq.

¹⁰ Muratori, Rer. Ital. Ser. iii. i. p. 592: 'Sententiam depositionis saepe dicti Friderici protulit summus Pontifex in majori Ecclesia Lugdunensi A.D. 1244. . . . Quae fuit ab universis ecclesiarum praelatis in eodem Concilio residentibus *approbata*, sicut liquere potest omnibus tam praesentibus quam futuris *per subscriptiones ipsorum et eorundem sigilla pendentia in eadem.*'

¹¹ Guillelm. Nang. in gestis Philippi, iii. p. 538. Matth. Paris, a. 1247. Monach. Paduan. l. iii. Chron. p. 591, ed. Urstis.

¹² 'Cum fratribus nostris et S. Concilio deliberatione praehabita diligenti.'

¹³ Cf. Schulte, Lehrbuch des Kirchenrechts, § 16, pp. 60, 61, 2d ed.

¹⁴ Bianchi, l.c. l. i. § 18, n. 1-6, pp. 148-157. Gosselin, ii. pp. 180-183.

¹⁵ Greg. IX. Ep. 2, ad Stephan. Cant. Aep. (Labbé, xi. p. 313). Fleury, t. xvi. l. lxxix. n. 37; t. xvii. l. lxxxii. n. 9, 20, 46; l. lxxxii. n. 30, 31. Michaud, Hist. des Croisades, t. iv. pp. 512, 514.

¹⁶ Labbé, xi. i. p. 645: 'Nos itaque . . . cum Jesu Christi vices immeriti teneamus in terris nobisque in B. Petri per sona sit dictum: *Quodcunque ligaveris super terram, &c.*, memoratum principem, *qui sese im-*

perio et regnis omnique honore ac dignitate reddidit tam indignum, quique propter suas impietates a Deo, ne regnet vel imperet. est abjectus, suis ligatum peccatis et abjectum omnique honore et dignitate privatum a Domino ostendimus, denunciamus, ac nihilominus sententiando privamus, omnes, qui ei juramento fidelitatis tenentur adstricti, a juramento hujusmodi perpetuo absolventes.'

¹⁷ Fénelon, de Auctor. Summi Pontificis, c. xxxix. p. 387: 'Idem est prorsus ac si diceret: Declaramus eum ob facinora et impietatem indignum esse, qui gentibus Catholicis præsit; declaramus contractum ab imperatore palam violatum jam populos imperii non adstringere; quandoquidem populi nonnisi pactis conditionibus subesse et parere volunt. In hoc Innocentius exercet potestatem a Christo datam: Quodcumque ligaveris super terram, &c., videl. ut Fridericum ligatum peccatis et populos juramento fidelitatis solutos declaret.'

§ 17.

No less clearly speak the Councils of the fifteenth century, especially those of Constance and Basle. (a) The first issued a decree (July 14, 1415) against all who should in any way molest the German King Sigismund on his journey to the Antipope Benedict; for the Dauphin of France, the Duke of Austria, and the Count of Savoy were suspected of being in conspiracy against him.¹ The decree menaced all possessors of spiritual, temporal, and even kingly dignities, with loss of the same in case of disobedience.² (b) This same Council had decreed (May 20, 1415) that neither of the claimants of the Papal chair could be again elected Pope, and warned all the faithful, of all ranks, even kings and emperors, against rendering them obedience, under pain of being chastised as promoters of schism.³ (c) In like manner all holders of spiritual and temporal dignities are included in the decree of July 4th, by which it is prohibited to leave or to disturb the Council; even kings and emperors are menaced with perpetual infamy and forfeiture of office; and this was to take place at once, without further sentence, and to bring with it incapacity for all spiritual or temporal dignities and honours.⁴ (d) Even in the command to keep perfect silence and peace, read and approved in the meeting of July 6th, excommunication and two months' imprisonment were laid down for all those, whatsoever their dignity, whether kingly or imperial, who should disobey it, together with the penalty inflicted on

the promoters of heresy.⁵ (e) In the Monitorium, issued November 21, 1415, against Frederick Duke of the Austrian Tyrol, for plundering and injuring the bishopric of Trent, he is strictly enjoined, 'in virtue of holy obedience, and under pain of anathema, of sacrilege, and of the *forfeiture of all the feudal possessions* which he holds from the Church or the *Empire*,' to give back that which he had robbed, and to acknowledge the sovereignty of the prince-bishop within his territory.⁶ (f) On March 3, 1417, the above-named duke, together with his accomplices, was declared a rebel, and a robber of the Church, was laid under anathema, and punished with the loss of his dominions, and incapacity for holding others.⁷ (g) On July 26, 1417, sentence of deposition was passed on Peter de Luna (Benedict XIII.);⁸ and all the faithful, without distinction of rank or position, were forbidden to consider and honour him as Pope, under the penalty of promoters of heresy and schism, the loss of all spiritual and worldly offices and dignities, together with other canonical penalties.⁹ (h) The decree on the Papal election, October 9, 1417, pronounced against those who should offer violence to the electors, injure their freedom, or cause it to be injured, the penalties of infamy and loss of office decreed by Boniface VIII. against those who should assault cardinals.¹⁰ (i) In the order issued for the protection of the ecclesiastical liberties and possessions of the president of the Council (according to the resolutions of September 23, 1415), by which the laws of the Emperors Frederick II. (1220) and Charles IV. (1377) on this subject were confirmed, all emperors, kings, and other dignitaries were admonished, under heavy penalties, not to burden the churches, even under pretext of the consent of the bishops, without obtaining leave of the Pope.¹¹ (k) In like manner the Bull 'Inter cunctas,' issued by Martin V., with the consent of the Council, February 22, 1418, inflicted on the adherents of the heresy of Wicliffe and Huss, without distinction of rank, the usual penalties, and amongst the rest the loss of *all* offices and dignities.¹² (l) The Council, convoked first (1423) by Martin V. in Pavia, in accordance with the decree of Constance, and afterwards moved to Siena, confirmed the

decrees against the adherents of Peter de Luna with precisely the same formulas.¹³ (*n*) The Council of Basle used the same terms (July 18, 1432) in the passport delivered to the Papal envoys,¹⁴ and spoke no less strongly (*n*) when it accepted the protection of Sigismund and the Duke of Bavaria.¹⁵

¹ Hefele, Conc. vii. p. 231, n. 2.

² Hard. Conc. viii. 441, Sess. xvii.: 'Quicumque *cujuscunque status aut conditionis existat, etiam regalis, cardinalatus, patriarchalis, archiepiscopalis, episcopalis, ducatus . . . seu alterius cujuscunque dignitatis et status ecclesiastici vel saecularis existat, qui serenissimum et Christianissimum principem D. Sigismundum Romanorum et Hungariae regem vel alios cum eodem ad conveniendum cum D. rege Aragonum pro pace Ecclesiae . . . ad dictam conventionem euntes vel redeuntes impederit, perturbaverit vel molestaverit . . . sententiam excommunicationis auctoritate hujus sacri Concilii generalis ipso facto incurrat, absolute eisdem ipsi sacro Consilio seu futuro unico et indubitato summo Pontifici, praeterquam in mortis articulo, specialiter reservata, et alterius omni honore et dignitate, officio, beneficio ecclesiastico vel saeculari, sit ipso facto privatus.'*

³ Sess. xii. Hard. l.c. p. 375: 'Nullus cujuscunque dignitatis vel praeeminentiae, *etiamsi imperiali, regali, cardinalatus vel pontificali dignitate praeferat, eis vel eorum alteri contra hoc decretum ullo unquam tempore obediat seu adhaereat, sub poena fautoriae dieti schismatis et maledictionis aeternae, ad quas contra praesumptores, si qui in posterum fuerint, etiam cum invocatione auxilii brachii saecularis, et alias rigide procedatur.*'

⁴ Sess. xiv. Hard. l.c. pp. 400, 401: 'Synodus *statuit, ordinat et difinit, quod quaecunque persona Concilii, cujuscunque status, gradus, ordinis aut praeeminentiae existat, ab hoc S. Concilio deinceps sine licentia Concilii vel ad hoc deputandorum recesserit, et quaecunque Concilii aut quaevis alia persona ipsum Concilium quomodolibet perturbaverit . . . perpetuo sit infamis omnique dignitate, honore, statu, officio et beneficio, ecclesiasticis et saecularibus, etiamsi imperialis, regalis, cardinalatus aut pontificalis existat, ipso jure privata, spe promotionis omnino sublata, nec aliquatenus ei aperiatur janua dignitatis aut honoris ecclesiastici aut mundani.*'

⁵ Sess. xv: 'SS. Synodus Const. . . . praecipit et mandat sub poena excommunicationis latae sententiae, quam contravenientes vult incurrere ipso facto et sub poena carceris duorum mensium et fautoriae haeresis, ne aliquis, cujuscunque status, auctoritatis, gradus, ordinis, praeeminentiae aut conditionis fuerit, *etiamsi imperiali, regali, cardinalatus, archiepiscopali aut episcopali praeferat dignitate, in hac praesenti sessione ipsam sessionem seu pronunciantes et loquentes in eadem perturbet, murmuret, impediat, et quemvis strepitu voce aut pedibus faciat.*'

⁶ Sess. xx. Hard. l.c. pp. 465-471.

⁷ Sess. xxviii. Hard. l.c. p. 697 seq.

⁸ Sess. xxxvii. Hard. p. 835 seq.

⁹ The words are: 'Atque privationis omnium beneficiorum, dignitatum

et bonorum ecclesiasticorum et mundanorum, etiamsi episcopalis et patriarchalis, cardinalatus, regalis sint dignitatis aut imperialis; quibus si contra hanc inhibitionem fecerint, sint auctoritate hujus decreti et sententiae ipso facto privati, et alias juris incurrant poenas, ne eidem Petro de Luna tanquam Papae obediant.'

¹⁰ Sess. xxxix. Hard. p. 855 seq. : 'Quod si quis hujusmodi metum vel impressionem aut violentiam elec oribus ipsis aut alicui ipsorum in electione Papae intulerit seu fecerit aut fieri procuraverit, aut factum ratum habuerit, aut in hoc consilium dederit vel favorem . . . cujuscunque status, gradus, aut praeeminentiae fuerit, etiamsi imperiali, regali, pontificali vel alia quavis ecclesiastica aut saeculari praefulgeat dignitate, illas poenas ipso facto incurrat, quae in constitutione fel. rec. Bonifacii, p. viii. quae incipit Felicis (c. v. de Poenis, v. 9 in 6) continentur, illisque effectualiter puniatur.'

¹¹ Sess. xix. Hard. l.c. pp. 463, 923 seq. Cf. Hefele, vii. p. 237 seq. The words are : 'S. Synodus hoc perpetuo statuit et ordinat, quod nulla persona saecularis cujuscunque dignitatis, status et conditionis existat, etiamsi imperiali, regali, vel quaecunque praefulgeat dignitate, sub praetextu consensionis episcopi clero tallias, impositiones vel subsidia imponat, exigat vel recipiat, nisi prius Romano Pontifice consulto, sub poenis, banis, et censuris eisdem.' This is spoken quite in the style of the hated Boniface VIII.

¹² Hard. l.c. p. 905 seq. Hefele, p. 345 seq. Here it is said : 'Volumus insuper . . . ut contra omnes et singulos utriusque sexus hujusmodi errores tenentes, approbantes ac fautores et receptatores eorum, cujuscunque dignitatis, status vel conditionis existant, auctoritate nostra inquirere studeant (episcopi et inquisitores) et eos, quos hujusmodi . . . erroris labe respersos repererint, etiam per excommunicationis poenam . . . nec non privationis dignitatum . . . corrigant et puniant.'

¹³ Inhibitionem factam omnibus et singulis Christifidelibus sub poenis fautoriae haeresis et schismatis ac privationis omnium beneficiorum, dignitatum et bonorum ecclesiasticorum et mundanorum, et alias poenas infligendo, ut dicta sententia praefati Concilii (Const.) . . . latius continetur, ratam et gratam habens, ejus executionem continuari volens, decernit, statuit et declarat, omnes et singulos post obitum dicti Petri de Luna continuantes seu perseverantes in credulitate vel obedientia erroris et schismatis ejusdem Petri . . . seu in vice ejus succedentes, eorumque receptatores, defensores et fautores, cujuscunque status, praeeminentiae vel conditionis existant etiamsi pontificali, cardinalatus, imperiali vel regali aut alia quaecunque ecclesiastica vel saeculari praefulgeant dignitate . . . fore obnoxios et ligatos poenis et censuris in dicta sententia contentis.

¹⁴ Exhortatur omnes et singulos Christifideles cujuscunque dignitatis, status, gradus aut praeeminentiae existant, spiritualis et temporalis, etiamsi regali, ducali, archiepiscopali, episcopali, vel alia quavis praefulgeant dignitate . . . eisque virtute obedientiae mandat, ut si per eorum dominia, terras, territoria, civitates, oppida . . . aut alia loca vos et quemlibet vestrum transire contingat, sub poenis, sententiis et censuris tam in Constantiensi et Senensi quam hujus S. Synodi decretis contentis et fulminatis, districte injungendo quatenus vos et quemlibet vestrum . . . secu-

ros, liberos et tutos cum rebus et bonis vestris universis ire, stare et redire sine molestia et impedimento permittant.

¹⁵ Sub poena excommunicationis et *privationis dignitatis cujuslibet ecclesiasticae vel mundanae* interdicat, &c.

§ 18.

It is clear that these so-called reforming Councils, to which appeal has so often been made by liberal theologians of former days, have acted, as did the Popes, or even more strongly, upon the supposition of the subjection of things temporal to things spiritual—of the right of the Church in certain cases to dispose of worldly property, to pronounce the forfeiture of temporal and spiritual offices, and to inflict punishment even on the mightiest of princes. These principles they put in execution in their decrees against all who attempted to oppose them, were they emperors or kings, and this for comparatively small offences. Those who consider the Papal decrees of a like nature as intolerable assumptions, iniquitous usurpations of power, and even as dogmatic errors, are bound to give a detailed explanation of the definitions of these Councils, more especially since they were passed by their own favourite Councils. It is true that Gallican theologians in particular have attempted to place these decrees in a milder light, and to modify and weaken their meaning by various explanations; but either these explanations hold good likewise of the Papal Bulls, upon which so many of the decrees in form or in matter are based, (for example, see (*h*) *suprà*), and in which, in fact, less strong expressions have been chosen, or else the authority of the decrees of these Councils, like those of the Popes, must be rejected; and this would be to give up completely principles which have been hitherto retained, at least outwardly. Those who support the 23d condemned Proposition of the Syllabus of 1864 know well enough that Councils as well as Popes are therein included. Nothing then remains but to reject the authority of Councils together with that of Popes.

§ 19.

Various remarks have been made by Gallican theologians¹ on the subject of these decrees, both in general and in detail. I. In

general the Gallicans say: (1) They are to be understood *divisim et in sensu accomodo*, so that the spiritual penalties apply to kings, but not the temporal.² (2) The Fathers inflicted temporal punishments in virtue of the assent of temporal princes, represented by their ambassadors, and of the civil laws already in existence.³ (3) The Council of Constance gave its safety into the charge of Sigismund, the King of the Romans;⁴ had it been part of the business of the Council to defend itself, it would not have made the demand of the king; Sigismund acceded to the request, thus making clear the distinction existing between the two powers.⁵ (4) Further, the Council openly acknowledged that after the degrading of Huss the Church could do no more, and thus proclaimed that the State alone had power to inflict temporal punishment.⁶ (5) Had the Council of Constance intended to imply the doctrine that the Church has any supremacy or power, direct or indirect, over the State, it would have been in favour of the doctrine on tyrannicide, which it itself condemned.⁷ (6) That the Council had no such intention is proved by the fact that its most eminent members, Peter d'Ailly and Gerson, opposed such teaching.⁸ (7) The Council by no means desired by its utterances to lay down a law or establish a rule. In a question so closely affecting the majesty of temporal rulers it could decide nothing without deliberating on the matter, hearing the princes themselves, and proceeding strictly according to the votes of the Fathers. Since the subject of the authority of the Church in relation to the State was neither deliberated nor voted upon in the discussions by 'nations' or in the solemn assemblies, it is certain that the Council did not intend to determine and define anything to the prejudice of sovereigns.⁹ If the words of the fourth and fifth sessions, on the superiority of the Council, are not to be considered as a binding decree, neither can any such definition be recognised in the expressions now under consideration.¹⁰

¹ Besides Natal. Alex. H. E. saec. 15 et 16, dissert. 5, t. xviii. p. 293 seq. ed. Bing. 1790, and Bossuet, Def. Decl. Cleri. Gall. P. i. l. iv. c. x. p. 355 seq. ed. Mog. 1788, see especially *Remonstrantia Hibernorum contra Lovanienses ultramontanasque censuras de incommutabili regum imperio subditorumque fidelitate auctore R. P. F. R. Caron, theologo emerito*

(reprinted from the London edition of 1665 in the *Traitez des Droits et Libertez de l'Eglise Gallicane*, Paris, 1731, t. ii. p. ii.). In the dedication to Charles II. of England it is said of this Remonstrantia: 'Quod sub umbra alarum tuarum velut sub ara Jovis reposita non minus eo ipso quam Delos Apollini consecrata sacrosancta redderetur et immunis.' Cf. also De la Hogue, de Ecclesia, p. 275 seq.; Tournely, de Ecclesia, t. ii. p. 459 seq.

² Natal. Alex. l.c. n. 4, p. 297.

³ Bossuet, l.c. p. 355: 'Dicimus . . . si quid ibi a Patribus de poenis temporabilis decernatur, id fieri *consensu principum*, qui ex toto orbe Christiano per legatos aderant, eoque jure, quo Ecclesia ad temporales poenas inferendas principum constitutionibus adjuvatur.' So also Caron, l.c. P. v. c. x. n. 32, p. 191, in relation to passage (a) in § 19 above, to which also is added as a second answer: 'Concilium, dum decretum illud emanasset, oecumenicum non fuisse;' and also that the Council of Basle (Sess. xii.) once omitted the deprivation a beneficio saeculari, which are certainly weak arguments.

⁴ Sess. xiv.: 'S. Synodus exhortatur invictissimum principem D. Sigismundum Romanorum et Hungariae regem, quatenus placeat, patentes literas sub suae majestatis sigillis dare et omnibus principibus, vasallis et subditis s. Imperii, et praesertim civibus et incolis civitatis Constantiensis, praecipere et mandare, quod manutenebunt et defendent praedictum Concilium . . . quamdiu duraverit, et quicumque (decretum istud) non observaverit cujuscunque dignitatis . . . existat, . . . eo ipso sententiam imperialis banni incurrat, perpetuo sit infamis, nec ei unquam portae dignitatis pateant, nec ad aliquod officium publicum admittatur, quin imo omnibus feudis ac aliis bonis, quae a Romano tenet Imperio, sit ipso jure privatus.'

⁵ Bossuet, l.c.: 'Quae ad ecclesiasticam dignitatem et utilitatem maxime pertinentia, si per sese S. Synodus decernere potuisset, non erat, cur a rege requireret. Qua de re rex decernit his verbis: *qui statuit terminos gentium secundum numerum angelorum, et utrorumque ministeria miro ordine dispensans, sicut choro angelicos variis dignitatibus . . . mirabiliter insignivit, sic et Ecclesiam adhuc militantem in terris diversis tam spiritualium quam temporalium distinxit titulis potestatum ut pulchra fidelibus, et infidelibus terribilis apparens, ut castrorum acies ordinata procedat.* (Here, as in the language of Boniface VIII., spiritual and temporal rulers are included in the Church militant=Christendom.) Qua temporalium et spiritualium distinctione ex jure divino explicata, temporales poenas ipse decernit, utilitati ecclesiasticae servituras. At si has Ecclesia per se inferre potuisset, distinctionem vanam neque ex jure divino imperator explicasset, neque S. Synodus recepisset.'

⁶ Natal. Alex. p. 297: 'Secundo S. Synodus in sententia contra J. Hus ipsum attento, quod *Ecclesia Dei non habeat ultro quod gerere valeat* [words of Celestine III. c. Cum ab homine, ii. 1, de Jud.], *judicio saeculari relinquere et curiae saeculari relinquendum fore decernit.* Habuisset autem Synodus post degradationem, quid ulterius gereret, si Ecclesia jus haberet gladii temporalis per totum orbem Christianum ratione peccati, et maxime haereseas; poenas enim temporales in J. Hus decernere po-

tuisset, non curiae saeculari decernendas reliquisset.' Cf. Caron, l.c. P. ii. c. vi. p. 64.

⁷ Natal. Alex. l.c. pp. 298, 299, Sexto.

⁸ Ibid. pp. 299-301, Nono.

⁹ Ibid. p. 297, n. 4, Init.

¹⁰ Bossuet, l.c. p. 358, who appeals to the *Doctrina Lovanens.* pp. 73, 74, on Can. de loc. Theol. v. 6. Bellarm. de Conc. ii. 19. The challenge: 'Ostendant has formulas confuse congestas *formam habere decreti*, ostendant, in his *propositum aliquid omnibus ad credendum*, ostendant saltem in iis aliquid distincte dictum, quod ad rem nostram pertineat,' is still more disregarded by the later opponents of the Papal decrees.

§ 20.

II. Next come the remarks made by the Gallicans in detail on the decrees in question, which are as follows: (1) Referring to the passage (*a*) above, the loss of spiritual and temporal offices is to be understood of those which belonged to the Church, either originally, or by rights gained in later times:¹ and the same interpretation holds good of many other passages. (2) As to passage (*d*), they object that it is an absurdity to sentence the King of the Romans to two months' imprisonment, and that the expressions as to the kingly and imperial dignity can relate only to the highest officials of the empire.² (3) In the case of the Duke of Austria (*e*), the Council pronounced the loss of Church fiefs by its own authority, but the loss of the fiefs of the empire by the authority of the imperial law, and also by that of Sigismund, whom the duke had disobeyed.³ (4) As a consequence, the execution of the sentence (*f*) was also given over to the King of the Romans.⁴ (5) In the passage (*h*) the quotation is not from the Bull 'Unam sanctam,' but from the Constitution 'Felicis,' which treats of Church feudatories alone,⁵ and respects the rights of temporal princes.⁶ (6) The decree of the president of the Council (*i*) is founded upon the fourth Lateran Council (which, however, in can. 46⁷ was not speaking of sovereigns) quite as much as on the laws of Frederick II. and Charles IV., which apply only to vassals, dukes, counts, and barons;⁸ when kingdoms are mentioned they are only such as were like Naples, Corsica, and Sardinia, fiefs of the Roman Church.⁹ (7) In the Bull of Martin V. the very words them-

selves prove that the question was not of fiefs in general (*k*), but of Church fiefs;¹⁰ and the same is proved by other passages in the Acts of the Council of Constance.¹¹ In like manner, earlier Councils¹² have reference to the fiefs held from the Church, and bestowed by her. The fiefs of the German Empire may be in some sort considered as Church fiefs, since the empire itself was looked upon as a fief of the Pope.¹³ In short, that which, in expression, is joined together by the Council, must, in interpretation, be separated according to its different members.¹⁴ (8) The words of the Council of Basle (*n*) are also to be understood to mean that those over whom the Church had gained such a right were punished with the loss of temporal dignities and offices.¹⁵

¹ Bossuet, l.c. p. 357.

² Natal. Alex. l.c. p. 297: 'Porro quod poenam carceris in imperatorem et reges ob silentii violationem Synodus decreverit, quam reipsa infligere non potuisset, quis sibi persuadeat? Praeterea nullus in ea sessione praeter Sigismundum . . . rex aderat; his igitur verbis: *etiamsi imperiali, regali . . . praeferantur dignitate sacrae personae imperatoris vel regum non intelliguntur, sed qui primariis imperii vel regnorum dignitatibus conspicui sunt, ad quos hinc poenis coercendos S. Concilium imperatorem ac reges hortatur.*'

³ Natal. Alex. l.c. pp. 297, 298, Tertio. Bossuet, pp. 355, 356.

⁴ Natal. Alex. p. 298: 'Cui Sigismundo S. Synodus latae in eundem Frid. sententiae executionem ut Ecclesiae defensori et advocato commisit.' Sess. xxviii.

⁵ Ib. Quarto: 'Porro si Conc. Const. reges aliosque supremos principes decreto illo poenali complecti voluisset, quoad poenam ex auctorationis et privationis jurium temporalium, laudasset potius Const. Bonifacii, quae incipit: *Unam sanctam, quam Constitutionem Felicis, quum ista in dominos dumtaxat temporales Ecclesiae feudatarios, qui S.R.E. cardinales fuerint hostiliter insecuti vel percusserint aut ceperint ac eorum conscios temporales poenas decernat.*'

⁶ Boniface here says: 'Per hoc quoque saecularibus potestatibus non adimimus facultatem utendi legibus contra tales, quas adversus sacrilegos catholici principes ediderunt.'

⁷ C. 7, de Immunit. Eccles. iii. 49.

⁸ Natal. Alex. l.c. p. 299, Octavo.

⁹ Bossuet, l.c. p. 357.

¹⁰ The words: 'privationis . . . feudorum, quae a quibuscunque Ecclesiis, monasteriis ac aliis locis ecclesiasticis obtinent.' Cf. Natal. Alex. p. 299, Septimo; Bossuet, p. 356.

¹¹ *E.g.* Sess. xli.: 'feudisque et rebus aliis, si quae aut quas in Romana vel aliis Ecclesiis obtinebit, sit privatus.' Cf. Natal. Alex. l.c. p. 298, Quinto.

¹² Conc. Lugd. ii. sub Greg. X. c. 2 (c. 3, de Elect. i. 6 in 6). Conc. Vienn. in Const. Ad providam (Hard. vii. p. 1340 seq.). Natal. Alex. p. 301, Decimo.

¹³ Bossuet, p. 357. Cf. c. ix. p. 351 seq.

¹⁴ Bossuet, p. 356: 'Quae conglobata licet, quis non videat jure tamen diversissimo decerni, nec ab eodem fonte manare, confuseque dicta tamen congrue apteque singulorum ratione habita intelligi exercerique debere?'

¹⁵ Bossuet, p. 357: 'Facile intelliguntur privari dignitate etiam mundana ii, in quos sibi tale jus Ecclesia comparavit.'

§ 21.

Manifold objections can be and frequently have been raised to these interpretations. I. As to the general remarks; it is (1) inconceivable that the Council of Constance in all the passages quoted intended that only the spiritual punishments mentioned, and not the temporal, should apply to kings; the wording of the decree would in this case be far worse than unskilful:¹ it is drawn up in general terms, which are opposed to any such limitation; where the law makes no distinction, we have no right to make any such. The punishments, temporal and spiritual, were inflicted in precisely the same way on all those named, without distinction of rank and position. On other occasions Papal decrees contained the merely general clause, 'Whatever be their rank' (*cujuscunque conditionis, &c.*),² whereas it is in this case made far stronger by the addition of the words, 'although he be of imperial, kingly, or any other dignity' (*etiamsi imperiali, regali, &c.*). (2) There is no sign that the consent of temporal princes or of their envoys—and by no means all Catholic sovereigns were represented there—was asked or given. The Council makes use of the simple straightforward words, 'The holy Council decrees, commands, and defines,'³ and it inflicts punishments 'by the authority of this holy Council, and in consideration of this decree and judgment.'⁴ The Council of Constance claims for itself this right, just as the Popes had done before it, and rather in greater than in less degree. If the Popes are to be blamed for presumption and error, the accusation falls with equal force on the Councils. No single syllable of the decree points to concession or consent on the part of sovereigns to the appointed punishments of loss of

all honours and offices, be they spiritual or temporal ; these are called *mundanae, saeculares dignitates*, and are specified according to the rank of the holder, the kingly and imperial dignity being expressly included. Moreover, how could the consent of sovereigns make this proceeding lawful? Either all Christian sovereigns had *collectively* the power to declare a king or prince deprived of his kingdom, in which case he was not, under all circumstances, an independent prince, or they had not this power ; in which case they could not impart it to the Council, either in person or through their envoys, since no one can give that which he does not himself possess. Thus the consent of sovereigns would in no way have entitled the Council to act as it did. Again, it is hard to conceive why sovereigns should ever have given their consent, unless they and most or many of their contemporaries supposed the Church to have received certain powers in this matter, justified at least by the custom of centuries, by prescriptive title, and by previous consent.⁵ The fact that in individual cases the Council relied upon civil law is no proof that this was always the case, or that it did not consider itself authorised to overstep the limits of civil law and issue its own independent commands. It even confirmed imperial laws. (See above, passage (*i*) in § 17.) (3) It was but natural that the Council should desire to secure its safety by a decree of King Sigismund, since he alone was in a position effectually to insure it and to repel all evildoers ; and without his aid the Council, in spite of its activity in passing laws, had no power to put them into execution. A direct power in matters temporal and the wielding of the material sword had never been ascribed to the Church, even by the Popes. The distinction between the two powers was recognised by the Fathers of Constance as well as by the Popes and by Sigismund ; nevertheless they shared the belief, universal in the Middle Ages, that in extraordinary cases and in urgent need the spiritual power may extend to matters temporal.⁶ (4) In the case of the degradation of Huss, the Council was forced to acknowledge, according to the words of Pope Celestine III. and to the law of the decretals, that the Church

could go no further ; since the spiritual judge was unable, by ecclesiastical law, to pronounce sentence of death, and to take part in any such sentence constituted an irregularity.⁷ (5) The teaching concerning tyrannicide must never be confounded with the theological doctrine of the Middle Ages on the power of the Church over the State, for the two questions are entirely distinct ; the declaration that a certain person has forfeited his rights, goods, and dignities is far from being a declaration that he has also forfeited his life, and least of all is it a decree that a subject has a right to take it from him.⁸ The theological doctrine as to forfeiture of goods, &c. was so firmly rooted at the time of the Council of Constance, that the use made of it by the Council can cause no astonishment.⁹ Indeed (6) the very authors here cited, Gerson and d'Ailly, by no means utterly reject it.¹⁰ (7) It is universally admitted that these expressions of the Councils of the fifteenth century contain no definition of dogma.¹¹ In passing, and in a wider sense, certain theologians have declared that doctrine to be defined which seemed to them undoubtedly true (*sententia certa*) ; but, as has been already shown, there is here no dogmatic definition, either by Pope or by Council. The expressions cited have no less weight than those of the same nature used by the Popes. Certain Gallicans are so inconsistent as to lay stress on the decrees of Constance and Basle treating of the Papal powers (especially those of the fourth and fifth sessions, the ecumenical character of which is on the best grounds contested), while they utterly reject the decrees treating of princes, issued in some cases by sessions the ecumenical character of which has been universally admitted.¹²

¹ Mamachi, *Orig. et Antiqu. t. iv. p. 246*, nota : ' Verba, quae synodus usurpat, tam late patent, ut coarctari in sensum arctiorem nequeant.'

² *E.g. c. 3, de Elect. i. 6 in 6.*

³ ' S. Synodus statuit, ordinat et diffinit.' Roncaglia, note 1 in *Alex. Natal. l.c. p. 302.*

⁴ ' Auctoritate hujus S. Concilii, auctoritate hujus decreti et sententiae.' Vide *suprà*, § 17, (*a*) and (*h*), and note 2 and 9.

⁵ Bianchi, *t. i. l. i. § 19, n. 1, 2*, pp. 158-160.

⁶ Roncaglia, *l.c. p. 303.*

⁷ Roncaglia, *p. 302.*

⁸ Roncaglia, *l.c. pp. 302, 303.* Bianchi, *l.c. § 8, n. 2 seq. p. 79 seq.*

⁹ Roncaglia, p. 302: 'Satis mihi est observare, id temporis adeo invaluisse doctrinam asserentem Ecclesiae potestatem poenas temporales in principes decernendi, ut hoc negare apud quosdam haeresis haberetur. Ita expresse affirmavit Aeneas Sylvius in oratione habita ad Australes, quam legere est apud Muratorium *Anecd. t. ii.*'

¹⁰ Roncaglia, p. 303. Cf. Schwab, Gerson, p. 735. Peter d'Ailly, in the passages quoted by Natal. Alex. (saec. 15 et 16, diss. 5, n. 3, t. xviii. p. 300), denies only the potestas directa et temporalis.

¹¹ Mamachi, p. 247, nota: 'Neque id nos declaratum a Synodo ut fidei dogma nunc dicimus, sed sumtum ac positum ut rem certam.' Bianchi, l.c. § 19, n. 6, p. 166: 'Noi però non pretendiamo, che la nostra sentenza sia stata come domma di religione nei sacri Concilii dichiarata e definita, ci basta che da Sinodi generali sia stata supposta come certa e riputata del poter della Chiesa, ed anche non solo senz' alcuna contraddizione de' principi, ma con pieno consentimento di tutti i signori e monarchi del mondo Cattolico eseguita e praticata.'

¹² Bianchi, l.c. n. 7, p. 167.

§ 22.

In answer to the objections in detail, it may be allowed that single decrees did treat of the loss only of fiefs held from the Church; but it by no means follows from this that all other decrees, especially those in which all sovereigns without exception were included, are to be limited to the domains held as fiefs of the Church.¹ Had the question been one of Church fiefs merely, the Fathers would have had no need of the consent of temporal princes before deposing rebellious vassals; the feudal law then in force would have borne them out, for the Roman Church had over her vassals precisely the same rights as other feudal lords, and could punish 'felony' in the same way.² What need then of the consent of temporal princes?³ Moreover, there is no ground for the assertion that the Holy Roman Empire was considered altogether as a fief of the Roman Church; the German kingdom, distinct according to strict law from the empire, was certainly not so considered; but beyond this the empire itself, although in many ways dependent upon the Apostolic See, was not held in fief. Sigismund, at Constance, would never have agreed to any such assertion.⁴ It cannot therefore be proved that the deprivation of worldly dignities, proclaimed without distinction for certain crimes, as at Constance, was limited to the vassals of the Church and of the Holy Roman

Empire. The words of most of the decrees allow of no exception; and if, according to Bossuet,⁵ the words of the third and fourth Lateran Councils apply to all feudatories, those of the Councils of Constance and Basle are still less capable of limitation.⁶ Moreover, facts are decidedly against it. When, after the conclusion of the Council of Constance, Count John of Armagnac persisted in his adherence to the Antipope Benedict, Martin V. summoned him to receive sentence of loss of sovereignty, according to the decree of the Council.⁷ The Fathers knew well enough that they were unable to subject King Sigismund to two months' imprisonment for causing disturbance in the Council, and that in his case spiritual penalties alone could be inflicted; but it does not therefore follow that when they mentioned the possessors of imperial and kingly dignity (*d*) they intended merely the officials representing them, any more than that they intended merely the servants of cardinals, archbishops, and bishops, when they mentioned those holding the rank of cardinal, archbishop, and bishop. The sentence would without doubt have been ridiculous, had it not set forth the power of the Church to inflict temporal punishments upon all Christians, whatsoever their station; but setting forth such a power the decree might with perfect reason be issued, even though the two months' imprisonment were not intended personally for the king of the Romans and future emperor.⁸ The constitution of Boniface VIII. had not specially and expressly named those holding the dignity of king or emperor; the Council of Constance, according even to Bossuet,⁹ included these also. The reason why the Constitution 'Felicis' was the one especially quoted is, evidently, that it treats of the same subject-matter. The Bull 'Unam sanctam' treated of the subject in general, whereas the 'Felicis' was precisely suited to the particular question, and was therefore adopted as a precedent. In this case the Council of Constance evidently went further than the obnoxious Boniface VIII.; even though the extended formula 'of whatsoever rank,' &c. be set down to the legal style adopted by the Council, still some principle must surely be involved in the widened form of words. Finally, the limited sense given to the words

of the Council of Basle is in accordance neither with the expressions themselves nor, least of all, with the general proceedings of this assembly, which, before it broke up, was without a head and utterly schismatical. For it went further than any Pope or Council in treating of civil and especially feudal questions, so much so that Sigismund complained loudly of this, and of its interference with his rights of sovereignty;¹⁰ it even sought to be judge in the quarrel between Duke Eric of Sachsen-Lauenburg and Frederick II. of Saxony, on the electoral dignity.¹¹ Ostensibly it adhered closely in all things to the proceedings of Constance, but from time to time it went beyond them. Even were the statement of Gosselin admitted,¹² in which he says: 'The Councils of Constance and Basle might take for granted the consent of Christian princes to the decrees in question, especially since they confine themselves entirely (?) to confirming and renewing punishments enjoined by the universal legislature of Catholic Europe for heresy and excommunication,'—still this view neither explains the facts nor is it consistent with them. On the contrary, these Councils took for granted the *sum-total of the rights* claimed and exercised in that day by the Church upon *any title whatsoever*, whether spiritual or temporal; and thus they placed themselves on an equal footing with the analogous Papal Briefs, which have no more given a decisive doctrinal utterance than have these Councils. They met with opposition neither greater nor less than did the analogous decrees of the Roman Pontiffs, and they found support in the same principles which held sway throughout the Middle Ages. A 'supremacy of the Pope over princes and people in political things'¹³ was certainly not asserted by the Bishops of Rome in the first ten centuries; but neither was it asserted by those of later centuries either in any universal sense, apart from special titles, or in relation to such things as were *purely temporal*. Only in so far as things temporal entrenched upon the province of the Church and in extremest need, when the salvation of souls and the stability of the Church were in danger, did they take upon themselves a further power, in the firm conviction that it lay within their authority to employ means requisite to the desired

end,¹⁴ and supported in this conviction by the principles universally held in that day. As a rule, they made use of their spiritual power alone; but a moral superiority over temporal princes was given them by the whole growth of Christian States, and their position as the fathers and leaders of Christendom prepared for them an extensive field of action. When things spiritual and things temporal were so closely united such could not fail to be the case.

¹ Roncaglia, p. 302.

² Bianchi, l.c. n. 3, pp. 161, 162.

³ Mamachi, p. 246, nota: 'Agi deinde de officiis et beneficiis Bossuetius censet, quae Ecclesiae vel *innato* vel *acquisito* jure essent. Hoc autem si verum est, quid opus esset *consensione principum* ad privandos refractarios officio ac beneficio, quod Ecclesiae vel *innato* vel *acquisito* jure competeret? Quid ergo? Vir gravissimus vi arguenti pressus modo hoc, modo illud opponit, ut tueri se posset.'

⁴ Bianchi, l.c. n. 4, pp. 162, 163.

⁵ Bossuet, l.c. c. iv. p. 342.

⁶ Bianchi, l.c. n. 4, 5, pp. 163-165.

⁷ 'Secundum tenorem decreti et sententiae generalis Concilii Const., qua reus declarandus fuerat ac privandus comitatu Armeniacensi et Ruthensi ac omnium aliarum terrarum et dominiorum suorum.' Mansi, note 2 in Nat. Alex. l.c. p. 303, who adds: 'Hic non agitur de feudis imperialibus vel ecclesiasticis, quae elusio est P. Alexandri, sermo est de sententia Concilii executioni mandanda. Quid hic reponet P. Alexander?' Measures contra dominos temporales ac populos qui illos [the Popes deposed at Pisa] fovere ac sustinere voluerint, had already been taken into consideration. Döllinger, Beiträge, ii. p. 302.

⁸ Roncaglia, l.c. p. 302.

⁹ Bossuet, l.c. p. 357: 'Bonifacii VIII. Const. Felicis adversus eos *extenditur* qui imperiali, regali praefulgeant dignitate.'

¹⁰ Bossuet, l.c. p. 358. Martene et Durand. viii. 722. Monumenta Concil. General. saec. 15, Vindob, 1857, pp. 520-522.

¹¹ Döllinger, Lehrbuch der Kirchengeschichte, ii. p. 330.

¹² P. ii. p. 275.

¹³ Huber, p. 6.

¹⁴ According to the sentence: 'Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit' (l. ii. Cui Dig. ii. 1, de Jurisd.).

ESSAY VII.

CIVIL RULERS AND THE HOLY SEE.

CIVIL rulers in the Middle Ages regarded their relation to the Church as it was regarded by Popes and theologians, and shared their opinions except when passion or self-interest interfered. They considered that to support the action of the Church by their civil authority, to punish those who disobeyed her, and to act always as her defenders and protectors, were amongst their gravest duties.¹ The most powerful princes have expressed in many documents their desire to secure, through pious zeal for the Church, peace and prosperity to their governments and everlasting blessedness to themselves.² I. The jurisdiction of the Church was especially exercised by Popes over princes in their matrimonial affairs. II. This ecclesiastical jurisdiction was expressly recognised by princes.

PART I. ECCLESIASTICAL JURISDICTION EXERCISED BY THE POPES OVER CIVIL PRINCES IN THEIR MATRIMONIAL AFFAIRS.

§ 1. King Robert of France. § 2, 3. Simony of Philip I. § 4-7. His marriages. § 8-11. Philip Augustus. § 12. The King of Leon.

§ 1.

That kings were, as Christians, subject in their private lives like all other believers to the supremacy of the Church was never doubted, and Popes often punished and censured their misdeeds. Pope Nicholas I. maintained the sanctity of marriage in regard to Lothair II., who had divorced his wife Theutberge, and lived in adultery with Waldrade.³ Another striking instance is that of King Robert of France, who, with the consent of several bishops of his kingdom, had incestuously married his

kinswoman Bertha. For this satisfaction was required of him from Gregory V., A.D. 997; and the following year he was sentenced to do penance for seven years.⁴ In the year 1000 the zealous Abbot of Fleury (who died in 1004) succeeded in inducing the king to submission; he renounced his connection with Bertha, and lived till his death in 1031 an exemplary life.⁵ Even if the stories of St. Peter Damiani⁶ are mere hearsay, we have plenty of proof of the impression made in France by ecclesiastical censures. There was no cause for deposing the king,⁷ and Robert's final decision set him quite straight with the Church.⁸ Later, in 1069, a new scandal threatened the Church when Henry IV. of Germany wished to separate from his wife; but St. Peter Damiani dissuaded him from his idea.⁹

¹ Childebert in Capitul. (Labbe, Conc. vi. p. 487, ed Venet.): 'Et quia necesse est, ut plebs, quae sacerdotis praecepta non ita ut oportet custodit nostro etiam corrigatur imperio,' &c. Facundus of Hermiane (pro Defens. trium Capitulorum, l. xii. c. iii.) praised the Emperor Marcian because he 'suo contentus officio ecclesiasticorum canonum executor esse voluit.'

² Cf. the diploma granted in 1150 by Conrad II. to the monastery of Corvei (Migne, PP. Lat. clxxxix. p. 1497).

³ Baron. a. 866, n. 37-42. Lothair wrote: 'Cernuo lumine vestram affatim deposcimus paternitatem, ut dum nos vobis missisque vestris . . . per omnia super omnes coaequales nostros obedire volumus, non aliquem nostri Deo miserante consimilem super nos extollere aut terrae praeponere vestrae libeat paternitati.' Nicholas had only warned him that if he did not amend a severe sentence would fall upon him: 'Coram tota et cum tota Ecclesia luce clarius peremptorio Dei iudicio, tota producta spicula, patieris et procul dubio cunctis videntibus praecipitaberis' (Floss, Leonis P. Privilegium, Doc. iv. p. 32).

⁴ Mansi, xix. 233, 223. Pertz, v. 694. Hefele, iv. 619, 622. Hoffer, Deutsche Päpste, i. 125, 170.

⁵ Mabillon, Ann. O.S.B. l. i. c. lxxiv. Helgaldi, Epit. Vitae Roberti Reg. ap. Bouquet, x. 107. Hoffer, l.c. p. 184.

⁶ Petr. Dam. Opusc. 34, c. vi.; Opp. iii. 260.

⁷ Bossuet clearly shows that there was none, Defens. P. i. l. ii. c. xxvii. p. 237.

⁸ Leo IX. wrote subsequently to King Henry (Jaffé, n. 3270, p. 377): 'Pater tuus Robertus laude et consultu episcoporum regni tui Bertam, matrem Odonis comitis, duxit uxorem; ob quam rem, quoniam sibi erat carnis affinitate conjuncta, ab antecessore nostro cum episcopis, qui placito interfuerant, excommunicati, post ad Sedem Apostolicam venientes cum satisfactione, sumpta poenitentia, redierunt ad propria.'

⁹ Hefele, iv. p. 817 seq.

§ 2.

Half a century after Robert, the French King Philip I. was a cause of great sorrow to the Holy See, on account of his oppression of the Church, his practice of simony, and his immoral conduct.¹ In a Brief of the year 1073, addressed to the Bishop of Châlons-sur-Saone,² Gregory VII. complains of him, saying at the same time that as he hears through the chamberlain Alberich that Philip has promised amendment, he has delayed to proceed against him with canonical severity ; Philip shall now, however, renounce the practice of simony, and without demanding any payment allow the Archdeacon of Autun, elected lawfully and with the royal consent, to be consecrated for the long-vacant see of Macon. If this were not done the Pope would no longer suffer the corrupt state of things, but would punish his stubborn obstinacy with the authority of the Prince of the Apostles. 'For either the king will abandon the shameful trade of simony, or the French people, if they do not wish to renounce the Christian faith and be laid under an interdict, will refuse any longer to obey him.'³ This censure was used as a last resort for the amendment of the king ; its terms, as well as those of the following Briefs, show plainly that the temporal effects of ecclesiastical censure had a recognised authority in France.

The king did not dare to disobey, and he made known to the Pope his fidelity and willingness to comply.⁴ Gregory answered him on the 13th April 1074 in a truly sublime Brief.⁵ Philip should first make good the injuries done to the Church at Beauvais, and reconcile himself to God, considering well that his predecessors enjoyed much fame as long as they defended the Church, thus receiving for their virtue honour and power, and losing them with the loss of their virtue. But Philip's obedience proved to be one of words merely, not of deeds ; whereupon the Pope sent an encyclical letter to all the French bishops, lamenting the ruin of France, the multitude of crimes and the impiety that prevailed, and laying all to the charge of the bad king.⁶ He said Philip had disgraced the kingly dignity by sacrilege, adultery, and perjury, and by plundering foreign merchants like a common high-

wayman; that it was the duty of the bishops solemnly to warn him, to resist him in his unrighteousness, and to hold a synod for concerting measures against him; if the king remained deaf to their voice, they were by virtue of the apostolic authority to lay him under a ban, and France under an interdict; if he still remained obdurate, it should be the care of the Pope with the help of God to free France of him.⁷ Gregory called upon Count William of Poitiers and the other nobles to expostulate with the king, threatening that if everything proved unsuccessful he would excommunicate not only the king, but all who still acknowledged him their ruler.⁸ The Pope wrote also in the same sense to Archbishop Manasses of Rheims.⁹

¹ Ivo Carnot. Ep. 35, 66. Guibert. de Nogento, de Vita sua, l. iii. c. ii. Fleury, Hist. Eccl. t. xiii. l. lxxxii. n. 6, 16, 20.

² Greg. VII. l. i. Ep. 35, p. 317, ed. Migne. Jaffé, Reg. n. 3571. Cf. also l. i. Ep. 36, p. 318, to Archbishop Humbert of Lyons.

³ Nam aut rex ipse, repudiata turpi simoniace haeresis mercimonia, idoneas ad sacrum regimen personas promoveri permittet, aut Franci pro certo, nisi fidem Christianam abjicere maluerint, generalis anathematis mucrone percussi, illi ulterius obtemperare recusabunt.

⁴ 'Significasti . . . te B. Petro devote ac decenter velle obedire et nostra in his, quae ad ecclesiasticam religionem pertinent, monita desideranter audire atque perficere' (Greg. l. i. Ep. 75, p. 348. Jaffé, n. 3617).

⁵ Hefele, Conc. v. p. 27 seq.

⁶ 'Quarum rerum rex vester, qui non rex, sed tyrannus dicendus est, suadente diabolo caput et causa est, qui omnem aetatem suam flagitiis polluit et suscepta regni gubernacula miser et infelix inutiliter gerens subjectum sibi populum non solum nimis soluto ad scelera imperio relaxavit, sed ad omnia, quae dici et agi nefas est, operum et studiorum suorum exemplis incitavit' (l. ii. Ep. 5, p. 362 seq. J. n. 3637).

⁷ Nulli . . . dubium esse volumus, quin modis omnibus regnum Franciae de ejus occupatione tentemus eripere.

⁸ 'Si in perversitate perduraverit, nos Deo auxiliante et nequitia sua promerente in Rom. Synodo a corpore et communione S. Ecclesiae ipsum et quicumque sibi regalem honorem vel obedientiam exhibuerit, sine dubio sequestrabimus' (l. ii. Ep. 18, p. 376. J. n. 3650).

⁹ L. ii. Ep. 32, p. 387. J. n. 3666, d.d. 8 Dec. 1074.

§ 3.

Whilst many of the French bishops manifested a weak and lukewarm spirit, some even openly took part with the king. Seeing the Pope deprived of the assistance of the bishops, Philip

endeavoured to stay his hand by making many fair promises, and by repairing, at least in part, the injury he had done to the Church. The Roman Synod of Lent, 1075, had threatened him with excommunication, unless he gave assurance of his repentance and amendment to the legate sent expressly to France.¹ But since first of all with the bishops the principles of the Church had to be asserted, the legate Hugo of Die, at the Synods he held in 1076 and 1077, occupied himself principally with punishing bishops guilty of simony and other crimes.² King Philip was on the one hand writing the fairest promises to the Pope, whilst at the same time he was seeking to prevent the bishops from appearing at the Synods, because he said that was injurious to the lustre of his crown. It became more and more evident that interference was necessary against criminal prelates, for instance, the Archbishops of Tours and Rheims, and that it was necessary also to publish the laws of the Church against simony and lay-investiture. This was done at the Synod of Poitiers in 1078.³ When in 1080 Gregory VII. definitively removed Archbishop Manasses of Rheims from his see, he entreated the king⁴ not to afford him protection, and not to hinder the choice of a successor. He declared to him that he would pardon the sins of his youth if he would from henceforth show himself the friend of justice and mercy, and lead a new life,—which did at last seem more likely. Philip had not only not recognised the Antipope Henry IV., but had placed himself in more friendly relations with the Church, and not resisted the measures taken against those bishops who had allowed themselves to forget their duty.⁵ He knew the right time in which to ward off the blow that threatened him.

¹ Hefele, v. p. 36 seq.

² *Ib.* p. 101 seq.

³ *Ib.* pp. 104 seq. 142 seq.

⁴ L. viii. Ep. 20, p. 593. J. n. 3917.

⁵ Hefele, *l.c.* p. 192.

§ 4.

But this same King Philip was the cause later of great trouble in another matter. In the year 1092 he divorced his wife Bertha,

to whom he had been married since 1071, and who was the mother of his heir Prince Louis, and he married Bertrada of Montfort, who had left her first husband, Count Fulk of Anjou. The canonist Ivo, who since 1090 had been raised to the bishopric of Chartres, in place of the deposed Gaufried, earnestly remonstrated against this step, both with the king and with Archbishop Rainald of Rheims. He was not deceived by the pretence of the alleged approval of the Pope, and in spite of the king's invitation held aloof from the marriage ceremony, which was performed in Paris by the Bishop of Senlis. For this he was imprisoned by King Philip.¹ In a Brief of 1092, Pope Urban II. censures the Archbishop of Rheims and his suffragan for their compliance with the desires of the sensual king, charged them to speak to him conscientiously, and to threaten him with the spiritual sword, and required, above all, the release of the faithful Bishop of Chartres.² The last was effected, and in November 1093, Ivo came with the Pope to Rome, and remained with him till January 1094.³ Through Philip's management a great Synod was held at Rheims, which ratified his marriage, for in the mean time Bertha had died. It was also to pass judgment upon Ivo, being held under the presidency of his metropolitan, Archbishop Richer of Sens, Rainald of Rheims being supposed to be prevented by illness. This, however, was not really the case, and Rainald appeared; but the ambitious Richer had been won over to the king's side by promises, and had ratified his marriage with Bertrada. Ivo refused to allow himself to be judged out of his own province, and he appealed to the Pope.⁴

The legate, Archbishop Hugo of Lyons,⁵ at a Synod held in October 1094, at Autun, excommunicated Philip because he had taken a second wife during the lifetime of the first. The king not being able to go himself, sent an ambassador to the Synod at Piacenza, bearing his excuses and begging for a reprieve, which was granted him till Whitsuntide (from the beginning of March to the 13th May 1095).⁶ In November 1095, at the Synod of Clemont, in Philip's own dominions, Urban pronounced against him and Bertrada sentence of excommunication,⁷ even, according to some accounts, against all who recognised him as king, or who

held unlawful intercourse with him.⁸ This is very probable when all the circumstances are considered: Ivo of Chartres had as early as 1092 represented to the king that by his adulterous connection with Bertrada he was risking his crown and his kingdom; he had kept back for some time the Pope's encyclical letter, believing that a rising would take place against the king. He had already warned the Pope of the craftiness of Philip's ambassador.⁹ Urban, on his side, had seen that an energetic condemnation of the king was now a necessity; and indeed Philip required very strong measures to bring him to submission.¹⁰

¹ Pag. a. 1094, n. 5. Bianchi, t. ii. l. v. § 9, n. 2, p. 274 seq.

² Mansi, xx. 686. Jaffé, n. 4088, p. 456.

³ Jaffé, pp. 458, 459, from Ivo, Ep. 27, Opp. ii. 13. Ivo (Ep. 28, ad Philipp. Reg.) says the Pope had forbidden the bishops from crowning the king's unlawful wife Bertrada.

⁴ Hefele, p. 192.

⁵ Cf. the letter of May 16, 1094 (Jaffé, n. 4134, p. 460).

⁶ Berthold. Constant. a. 1094, 1095. Hefele, pp. 193, 194.

⁷ Bernoldi, Chron. h.a. p. 464. Chron. Andegav. a. 1095, ap. Labbé, Nov. Bibl. mss. l. Paris, 1657, i. 281. Hefele, p. 197.

⁸ Guillelm. Malmesbur. de Gest. Angl. l. iv. c. ii.: 'In eo Concilio excommunicavit D. Papa regem Philippum Francorum et omnes, qui eum vel regem vel dominum suum vocaverint et ei obedierint et ei locuti fuerint, nisi quod pertineret ad eum corrigendum.' Also the Chronicle of the chorister Guido of Châlons and Alberich of Trois Fontaines apud Gosselin, ii. p. 142.

⁹ Ivo, Ep. 15, ad Philipp. Reg.; Ep. 23 (al. 24), ad Widonem Dapifer; Ep. 46, ad Urban P.

¹⁰ Gosselin, pp. 144, 145.

§ 5.

But even before the Pope left the French dominions the king sought to make his peace with the Church. He vowed with his hand in the hand of the Pope, at Nîmes, 1096, to leave Bertrada, and received the promise of being absolved as soon as he had given proof of the sincerity of his intention.¹ Some bishops who were completely on Philip's side declared that they would not give up communion with Philip, and would even free him from the ban, although he should continue to live with Bertrada. The Pope in answer to this

wrote to Richer of Sens and the other French bishops, saying it was not within their power to absolve those excommunicated by the Holy See.² In the following year Philip despatched an envoy to Rome, who was to declare on oath that since the meeting at Nîmes, Philip had held no unlawful intercourse with Bertrada. The Pope, whose suspicions were only too well founded, required that some of the bishops and nobles of the realm should come to Rome and take the same oath.³ He removed the interdict which had been pronounced by the Archbishop of Lyons, and allowed Philip again to wear the crown.⁴ Whether the French bishops actually came to Rome and took the oath is not known, but it is certain that in 1098 Philip was again living with Bertrada, and had broken the promises he had made in his submissive letters.⁵

¹ Chron. Malleacens. Bernoldi, Chron. a. 1096, Ep. Urbani II. ap. Jaffé, n. 4323, p. 475 seq. Hefele, pp. 218, 222 seq.

² Mansi, xx. 665. J. n. 4218, p. 467 seq.

³ Urban. Ep. dat. Lat. viii. Kal. Maii 1097, al. 1098. J. n. 4323, cit.

⁴ *Ib.*: 'Ab interdictionis, quae pro hac causa in eum prolata fuerat, vinculo absolvimus et utendi pro more sui regni corona auctoritatem praebuimus.'

⁵ Labbé, xii. 758.

§ 6.

Cardinals John and Benedict, legates of the new Pope, Paschal II., went immediately after the Synod of Valence (30th Sept. 1100) in person to the king to induce him to leave Bertrada. As their mission was ineffectual, they declared at the Synod of Poitiers in November of the same year that Philip and Bertrada would be again excommunicated. The spiritual and lay followers of the king raised a tumult at this; but the legates and the majority of the bishops were firm.¹ Ivo of Chartres, who had before shown himself so severe, used his influence to induce the Pope to show the utmost moderation possible towards the weak king, and to preserve the kingdom from the danger which the anathema would bring upon it.² Philip felt his position to be critical, and associated his son Louis in the government, as he feared a revolt among his powerful vassals,³ which the prevailing conviction of his guilt would easily render formidable. He therefore

anew entered into negotiations with Pope Paschal, and obtained the promise of absolution under certain conditions. For this purpose Cardinal Richard of Albaro was sent to France by the Pope in the spring of 1104. He convened a Synod at Troyes, and later, by the advice of Ivo, another at Beaugency on the Loire, before which Philip and Bertrada appeared in the course of the summer. Both pledged themselves upon the gospels to separate from one another, and never even to speak together, except in the presence of honourable witnesses, until the Pope should dispense them. As Cardinal Richard was not to act without the advice of the French bishops, and as they expressed no opinion, nothing further was done; whereupon Philip laid a complaint before the Pope of alleged ill-treatment, whilst Ivo, still inclined to clemency, thought that the absolution might have been granted.⁴ Paschal II. gave authority to Bishop Lambert of Arras, in case Cardinal Richard had left France, to absolve Philip and Bertrada in presence of the other bishops, if they would perform satisfaction and keep their oath, and he apprised of it the bishops of the dioceses of Rheims, Tours, and Sens.⁵ Philip and Bertrada fulfilled the required conditions before the end of the year at the Synod of Paris, and were received again into the Church.⁶ They subsequently gave no cause for complaint. Philip died in 1108, after having, together with his son Louis, promised to the Pope to protect the Church against Henry V.⁷ Bertrada, converted by Robert of Arbrissel, ended her days as a penitent in the convent of Fontevraud.

¹ Labbé, xii. 1081. Mansi, xx. 1117 seq. Hefele, p. 234 seq.

² Ivo, Ep. 144 (al. 89): 'Nostrae suggestionis summa est, ut imbecillitati hominis amodo, quantum cum salute ejus potestis, condescendatis et terram, quae ejus anathemate periclitatur, ab hoc periculo eruatis.'

³ Daniel, Hist. de France, t. iii. pp. 398, 613. Velly, Hist. de France, t. ii. p. 425. Gosselin, p. 146.

⁴ Hefele, p. 245 seq.

⁵ Mansi, xx. 1015. J. n. 4462, p. 487.

⁶ Pag. a. 1014, n. 4-6.

⁷ Suger, Vita Ludov. Grossi, p. 289. Jaffé, p. 494.

§ 7.

In this long struggle we see how slow the Popes were in their proceedings against Philip. They appear throughout to be pressed on by the opinion of the best of their contemporaries and by their official duty. On repentance they are always ready to remove the ban, and the idea of a formal deposition does not seem to occur to them. Philip was not in open opposition to the Church; he did not defy her; he even submitted himself several times after he had relapsed into his sin. His crime was not directly against religion, nor against the welfare of the Christian community, although it gave very bad example and much scandal; but as he never positively refused to give satisfaction to the Church, further proceedings were not called for, neither could much result have been hoped from them.¹ As we have seen, the excommunication was not immediately followed by the forfeiture of political and civil rights; a length of time and certain conditions must have intervened. It was easy for those upon whom the ban was laid, by negotiations and promises of obedience, to obtain a respite; and as long as an amendment could be hoped for, the smoking flax was not to be quenched.² If the fact related by Odoricus Vitalis, who said that whilst Philip was excommunicated he never wore his diadem and held no royal feasts, is not to be taken quite literally,³ it at least tallies with that related by Ivo, that at some Church festivals the bishops about the court placed, as usual, the crown upon the king's head,⁴ to inspire him with courage and confidence, whilst more zealous prelates, when he was in their dioceses, omitted to do so, in accordance with the prohibition of the Archbishop of Lyons, when Papal legate, to keep up communion with him.⁵

¹ Bianchi, t. ii. l. v. § 9, n. 1, p. 274 seq.; n. 6, p. 283 seq.

² Gottfried of Vendôme, *Opusc.* iv. (Migne, t. clvii. 220), says: 'Tunc quis a Satana circumvenitur, quando sub specie justitiæ illum per nimiam tristitiam perire contingit, qui potuit liberari per indulgentiam. Præterea bonus et discretus Augustinus in Ep. ad Parmen. dicit, vix aut numquam excommunicandum eum esse, qui in malo opere obstinatum multitudinem habet secum; nam tolerabilius videtur uni parcere, ne in Ecclesia schisma seminetur multorum.' Cf. *ib.* pp. 289, 290.

³ Odor. Vital. H. E. l. viii. a. 1092: 'Tempore Urbani et Paschalis RR. PP. fere quindecim annis interdictus fuit. Quo tempore numquam diadema portavit nec purpuram induit, neque solemnitatem aliquam regio more celebravit.'

⁴ Ivo, Ep. 66, ad Lugd.; Ep. 67, ad Urban II. upon the Archbishop of Tours.

⁵ Natal. Alex. H. E. saec. 11 et 12, c. x. a. 2, t. xiii. p. 434. In England, under Archbishop Dunstan, King Edgar was not allowed to wear his crown for seven years for having dishonoured a nun. Cf. Möhler, Ges. Schr. i. p. 80.

§ 8.

Still more important were the affairs concerning the marriage of the French King Philip Augustus, who after the death of his first wife Isabella married, on the 14th August 1193, Ingeburge, sister of the Danish King Canute II.; but after a short time, having taken a dislike to her, demanded a divorce. A Synod held at Compiègne declared the marriage null, because Ingeburge was related in the fourth or fifth degree to the deceased Queen Isabella, and was therefore a connection of the king's. The beautiful and virtuous Ingeburge, who was treated like a prisoner, appealed to the Holy See, where her brother Canute also lodged a complaint.¹ Pope Celestine, on the 13th May 1195, declared that the hasty divorce granted by the Synod of Compiègne was null,² and despatched envoys to France, who at the beginning of the year 1195 held a Synod at Paris, which however produced no result. In defiance of the Pope's warning against contracting a fresh alliance Philip Augustus, in June 1196, married Agnes of Meron.³ The new Pope, Innocent III., made every effort of kindness to induce the misguided king to mend his ways; he made him the most moving representations, and required that the Bishop of Paris should do the same (1198). He assured him of his fatherly love and his affection for France,⁴ placed before him the evil he had committed in divorcing Ingeburge, and reminded him that in case of the death of his son Louis, born of his first wife Isabella, he would be in danger of having no heir, since the offspring of his connection with Agnes would be illegitimate.⁵ In September 1198 the Pope despatched Cardinal Petrus to repeat the former warnings, and in case of obstinacy

to threaten the interdict.⁶ In a fresh letter he, in a paternal and tender manner, renewed his representations.⁷ He approved the pains the legate had taken to establish a cessation of arms between France and England,⁸ and commissioned the French bishops and abbots⁹ to prevail upon the king to put away Agnes and take back his wife; he told them how hardly it went with him to take measures against the king, but he was determined at all costs to execute his stern duty, more especially as Philip's bad example was inducing other rulers, for instance, the Duke of Bohemia, likewise to violate the sanctity of marriage. In conclusion he desired them to obey the sentence that would be pronounced by his legate.

¹ Mansi, xxii. 667, 671. Gesta Innoc. III. n. 48 seq. p. 93 seq. Migne, t. ccxiv. Hurter, Innoc. III. vol. i. p. 168 seq. Hefele, v. p. 668 seq.

² Jaffé, Reg. n. 10,531-10,533, p. 901.

³ Gesta Innoc. l.c. n. 50, p. 96. Innoc. l. i. Ep. 171 (Migne, l.c. p. 149). Hefele, l.c.

⁴ Innoc. III. l. i. Ep. 171, p. 148: 'Licet dextera Domini suam fecerit in nostra promotione virtutem, de terra suscitans inopem et de stercore erigens pauperem, et illud nos voluerit dignitatis solium obtinere, ut *non solum cum principibus, sed de principibus etiam* judicemus, cum tamen conditionem humilitatis nostrae conspicimus et de quo ad quid simus vocati, pensamus, praeter generale debitum pastoralis officii, quod singulis nos constituit debitores, tibi et regno tuo specialiter nos fatemur teneri, in quo nos recolimus in studiis literarum aetatem transegisse minorem ac divino munere quantaecunque scientiae donum adeptos beneficiorum impensam multiplicem suscepisse. Ad cumulum autem hujus praecipuae dilectionis accedit progenitorum tuorum grata memoria' &c.

⁵ Innoc. l. i. Ep. 4, ad Paris. Ep. pp. 3-5.

⁶ Vide letter to the legate, l. i. Ep. 347, pp. 320, 321: 'Ita quod praeter baptismum parvulorum et poenitentias morientium nullum divinum officium celebretur.' Cf. Ep. 345, 346, p. 319 seq.

⁷ L. i. Ep. 348, 355, pp. 321, 329.

⁸ L. ii. Ep. 23, p. 552; Ep. 24, ad Phil. Reg. p. 533.

⁹ L. ii. Ep. 197, p. 745 seq.

§ 9.

In the mean time Cardinal Petrus had left no stone unturned to induce the king to renounce his connection with Agnes of Meron, but in vain. He therefore convened in 1199 the great Synod of Dijon, in which the subject of the interdict now to be proclaimed was discussed for seven days. The king sent a de-

puty with an appeal to the Pope himself, hoping thereby to postpone the interdict ; but this did not mislead the legate, who having convened a fresh Synod at Vienne on the 14th January 1200, in the Pope's name proclaimed the interdict, of which a communication was made to all the French bishops.¹ Many of these begged permission to postpone the execution of the sentence, but the Pope refused their request ; and all then rendered obedience, with the exception of Bishop Hugo of Auxerre. The king was furious against the faithful hierarchy, ill-treated and banished many of the prelates, and testified extreme exasperation. He said he envied Saladin, who had no Pope to deal with. But the calm firmness of the Pope, the courage displayed by the bishops, even by the once time-serving William of Rheims, uncle of the king, and the fear of further measures on the part of the Pope, obliged him to enter into negotiations, and give assurance of his submission.² Innocent despatched as cardinal legate Octavius of Ostia, a relation of the king, with powers to remove the interdict if Philip Augustus would make good the injuries he had done to many of the prelates, would put away Agnes of Meron, and reinstate Ingeburge as his lawful wife ; if in every way things were restored to what they had been, the Pope would, if the king demanded it, cause the validity of his first marriage to be investigated. He informed the divorced queen of what he had done for her, and bade her continue her prayers ;³ he called upon her brother in Denmark to send competent witnesses and advocates, that the divorce pronounced by the French bishops might be annulled on the ground of non-observance of justice.⁴ The Cardinal of Ostia was received honourably in France.⁵ The bishops consulted with him, the king went out to meet him, and declared himself willing to make atonement.⁶ He indemnified the priests whom he had injured, promised to see Agnes no more until the question of the divorce from Ingeburge had been decided, and in the mean time to treat the latter as queen. On this the interdict was removed, the 7th September 1200. But the king persisted in desiring a divorce from Ingeburge on the ground of kinship, and demanded a fresh trial ; this the legate appointed to be held at a Synod at Soissons, to take place after

a delay of six months, six weeks, and six days.⁷ Innocent rejoiced at the course of events, but desired that his instructions should be executed with even more exactness. Ingeburge had been solemnly acknowledged queen, but had shortly afterwards been once more treated as a prisoner, and was not prayed for by name in the king's chapel. Innocent required that she should be restored to complete freedom,⁸ and reminded the king, who complained of too great severity on the part of the legate,⁹ that he was bound to render him obedience, that the legate had put upon him no undue constraint, but had only fulfilled the requirements of justice, and had made use of the fitting remedy.¹⁰ Another matter in which the Pope's instructions had not been accurately followed was that Agnes had not been removed from France, but only from the king's immediate neighbourhood; her approaching confinement was given in justification of this.¹¹ The Pope removed the interdict from the disobedient Bishop of Auxerre, but rejected his appointment to the archbishopric of Sens.¹²

¹ Mansi, xxii. 707 seq. *Gesta Innoc. n.* 51, 52, p. 97 seq. Hefele, p. 705.

² Hefele, p. 706.

³ *Innoc. l. iii. Ep. 11*, pp. 881-883.

⁴ *Ib. Ep. 12*, pp. 883-884.

⁵ Bishop Odo of Paris and Bishop Nivelon of Soissons extol him in their letters to the Pope. *Innoc. l. iii. Ep. 13, 14*, pp. 884-887.

⁶ Report of the legate to the Pope, *l. iii. Ep. 15*, p. 887 seq.

⁷ Mansi, l.c. p. 721. Hefele, pp. 706, 707.

⁸ *L. iii. Ep. 16*, pp. 891-895.

⁹ *Ib. Ep. 17*, pp. 895, 896.

¹⁰ *Ib. Ep. 18*, pp. 896-898.

¹¹ Hefele, p. 707.

¹² *L. iii. Ep. 20*, pp. 898-899.

§ 10.

At the Synod of Soissons, opened on the 2d March 1201, were present the king, followed by many lawyers, and Ingeburge, supported by the delegates of her brother. The Danish envoys mistrusted the legate and appealed to the Pope himself; and in spite of all entreaties to await the arrival of Cardinal John of Paul, commissioned especially by the Pope for the

Synod, they set forth at once upon their journey. Three days later the cardinal arrived, and for the space of two weeks the marriage of Philip Augustus and Ingeburge was treated of. The king anticipated the judgment of the cardinal, saying that he recognised Ingeburge as his wife, and would part from her no more. He took her from the convent where she was staying, and with her hastened from Soissons. The Synod was thereupon dissolved, as the crafty king desired. Ingeburge was again kept as a prisoner and not treated like the king's wife, although in the same year Agnes, her rival, died. The two children Agnes had borne to the king were declared legitimate by the Pope, because the king had married her in good faith after the decision of the bishops at Compiègne.¹ The Pope was much blamed for too great indulgence towards the king, who, on the other hand, complained of his severity. Innocent strove to convince him how little ground he had for such a complaint by referring him to former examples, assuring him that he could not, by deviating from the right path, offend a Heavenly King for the sake of an earthly one.²

¹ Hefele, pp. 707, 708.

² Innoc. III. l. v. Ep. 50, pp. 1015-1018.

§ 11.

The oppressed queen, in 1203, had recourse once more to the Pope, as 'Vicar of Christ and successor of St. Peter—as the colleague of St. Paul, who had not feared to slay the incestuous Corinthian with the sword of the Spirit—as the zealous imitator of Phinees—as the mountain to which all must lift their eyes, the protector of the oppressed, the refuge of the unfortunate.' She laid her wrongs before him, and besought him to obtain for her release and justice.¹ Innocent III. sent repeated and most pressing letters to the king concerning the queen's hard lot, endeavouring also to influence him through his envoys.² In 1205 he wrote to console the queen,³ but did not conceal from her that up to that time his efforts to move her husband had been fruitless; the latter not only persisted in demanding a divorce on account of relationship, but also be-

cause he said he was prevented by witchcraft (maleficium) from approaching her. In 1207, Innocent endeavoured anew to induce Philip to take her back, or at any rate to cause her to receive better treatment ;⁴ and soon after the king informed him that he would endeavour to live with her in wedlock, but that if he did not succeed this endeavour was not to prejudice his suit for divorce. The Pope agreed,⁵ and in 1208 deputed Cardinal Gualdi for further negotiations.⁶ Philip Augustus laid before the cardinal a third reason for divorce—that his marriage with Ingeburge had never been consummated, and that she wished to become a nun (for a declaration to this effect had been forced from the imprisoned queen), and that therefore his marriage-bonds might be loosed. He begged that the Pope⁷ would without any further appeal empower his legate to dissolve the marriage, whether it were on account of the alleged witchcraft, or on account of Ingeburge's desire for a religious profession, or for any other canonical reason ; he was ready to swear that the marriage had never been consummated. Innocent replied in two letters : in the shorter of the two he recommended him to desist from his plan of getting a divorce, and to take back Ingeburge ; in the other and longer letter he pointed out to him that his case, as now represented, did not correspond with former statements. He laid stress upon Ingeburge's assertion that she had lived with him as his wife, and that Philip Augustus had admitted having at least endeavoured to behave to her as such. Her resolution to enter the cloister was not freely made, but was the result of an imprisonment that had lasted eight years, and was accepted by her as affording a prospect of more happiness ; for the rest, he authorised the legate to institute further judicial inquiries.⁸ In the mean time the only change was that Ingeburge was treated in a more becoming fashion. The statement that the marriage had never been consummated was a matter of grave doubt. Finally, Ingeburge was induced to remove the doubt by a declaration made before two creditable witnesses. Then the king had again recourse to the Holy See.⁹ But the Pope, having consoled Ingeburge, anew declared in 1212 that, after mature deliberation upon the subject, he

could not dissolve the king's marriage, and entreated Philip Augustus not to weary him with fresh solicitations concerning it.¹⁰ In the following year the king effected a honest reconciliation with Ingeburge, and continued to live with her in harmony. In his will he openly testified to the esteem in which he held her. Thus the firmness of the Pope obtained at length the victory.¹¹

¹ L. vi. Ep. 85. Migne, ccxv. pp. 86-88.

² L. vi. Ep. 86, 182, pp. 88 seq. 198 seq. Hefele, p. 768.

³ L. viii. Ep. 113, p. 680.

⁴ L. x. Ep. 42, pp. 1135, 1136.

⁵ L. x. Ep. 176, p. 1266.

⁶ L. xi. Ep. 86, p. 1403.

⁷ L. xi. Ep. 180, p. 1493.

⁸ L. xi. Ep. 181-183, pp. 1494-1499.

⁹ Hefele, p. 770.

¹⁰ L. xv. Ep. 106, 107, pp. 617, 618.

¹¹ Hurter, *Innoc. III.* vol. ii. p. 477 seq. Hefele, l.c.

§ 12.

In the same pontificate there were several other cases of important suits concerning the marriages of princes. When the King of Leon incestuously married the daughter of the King of Portugal, Pope Celestine III. excommunicated the latter as well as the married pair, and laid their dominions under an interdict. This connection was in consequence abandoned. But then the king married his own niece, the daughter of the King of Castile. Innocent III. despatched the legate Rainer to Spain,¹ who repeatedly but ineffectually admonished the king to dissolve the union. He appointed time and place, awaited him beyond the designated period, and then, as all was of no avail, finally laid upon him the ban, and the interdict upon the country. He took no measures against the King of Castile, who did not resist the Papal ordinances, and was willing, on the contrary, to receive his daughter back again. Then the Archbishop of Toledo and the Bishop of Valencia appeared at the chair of the Apostles on the part of the King of Castile, and the Bishop of Zamora on the part of the King of Leon, to request a dispensation for the King of Leon and the Princess of

Castile.² As their request, according to the strict practice of that day, was not granted them, they besought that the interdict might be removed, since it exposed the kingdom to a three-fold danger—from heretics, from Saracens, and also from Christians.³ The Pope, whilst fully estimating the evils represented to him, thought it not fitting to reverse a canonical sentence until due satisfaction was made.⁴ He was unwilling to make so great a deviation from the letter of the law; he did not wish to appear to act with partiality, and suffer a bad example to be given to other countries. He allowed a partial mitigation, because where many participate in the punishment its severity may be relaxed, so as by clemency to avert greater evils,⁵ and he partially limited the interdict in order to prove spirits, and to see whether the consequence he anticipated would arise.⁶ Divine worship was once more permitted,⁷ and later Innocent III. gave permission for sermons to be preached.⁸ (In general, from his time forward the interdict was much mitigated.) Still, however, no Mass could be solemnised in the presence of the excommunicated pair or of their counsellors. In the mean time it appeared that the King of Castile had made only a feigned submission. The kingdom of Leon had been forced to do allegiance to the son of this incestuous marriage, and the king of that country was loth to renounce the towns he had received in dowry with his wife.⁹ But in 1204 the Princess of Castile submitted herself to the Church, left the King of Leon, and applied for absolution; soon after her example was followed by the king, and the only matter then remaining for settlement was the restitution of the places received in dowry. The bishops were empowered to confer the absolution; and thus in this case as well as in the last the interdict fulfilled its purpose.¹⁰

¹ Innoc. III. l. i. Ep. 92, 93, 125.

² Innoc. III. l. ii. Ep. 75, p. 610 seq., to the Archbishop of Compostella, where the event is narrated in detail.

³ L.c. p. 626: 'Asserentes, quod ex eo triplex toti regno periculum ab haereticis, Saracenis et Christianis etiam imminebat. 1. *Ab haereticis*: quia cum per interdictum ipsum clausa essent in partibus illis ora pastorum, non poterant fideles per eos contra haereticos instrui et ad resistendum eis

aliquatenus informari, unde cum ex hoc tum quia rex Leg. ab Ecclesia se asserens aggravatum eis minime resistebat, invalescebant contra fideles haeretici et in regno ipsi haereses variae pullulabant. 2. *A Saracenis*: quoniam cum per extortationes et remissiones Ecclesiae Hispaniarum populus consuevisset ad expugnationem paganorum induci, cessante praedicatorum officio, populi etiam devotio tepescebat, quia cum se cum principe suo, quoad interdictum, eidem videret poenae subjectum, a culpa, cui vel tacendo consenserat, forte non se credebatur immunem, propter quod minus circa debellationem Saracenorum fervebat, ne decederet in peccato. 3. *A Catholicis*: quia cum clerici laicis spiritualia ministrare non possent, laici clericis temporalia subtrahebant, oblationes, primitias et decimas detinentes; unde cum clerici pro majore parte in partibus illis consueverint sustentari, eis subtractis non solum mendicare, sed fodere et servire Judaeis in Ecclesiae et totius christianitatis opprobrium cogebantur.⁷

⁴ The Pope proves it thus: '*Ex animo* quidem, quia sicut Deus perhibet testimonium conscientiae nostrae, ad hoc non nisi justitiae et honestatis obtentu processimus, cum ex contrario potius contra nos oriri praesumptio potuisset, si tam detestabile facinus duxissemus in patientia tolerandum. *Ex ordine*, quia dictus frater R. post commonitiones et dilationes legitimas tandem districtione percussit ecclesiastica contumacem. *Ex causa*: exemplo divino et humano. *Divino*, quia cum David in populi numeratione peccasset, Dominus in populum vasa sui furoris effudit, unde idem David dixisse legitur peccatum suum Domino confitendo: *Ego sum qui peccavi . . . isti, qui oves sunt, quid fecerunt? Auferatur, obsecro, facies tua, Domine a populo tuo* (2 Reg. xxiv. 17); *humano*: cum jamdiu praedecessor noster in praedictos Portugalliae et Legionis reges et regna ipsorum praedictas sententias curaverit promulgare.'

⁵ Quia ubi multitudo est in causa, detrahendum est aliquid severitati, ut majoribus malis sanandis charitas sincera subveniat.

⁶ Relaxavimus ergo, non in totum, sed in una parte solummodo interdictum, nec perpetuo, sed ad tempus, quamdiu sc. nobis placuerit et viderimus expedire.

⁷ Ut in regno ipso divina celebrentur officia. Only religious burial (that is, the customary funeral rites) was not allowed. Well might this appear 'absonum,' the Pope says. But the Conc. Later. iii. c. 20, ordains that those who are killed in tournaments should be denied Christian burial, even if by repentance they have made their peace with the Church; and in this manner the mourning of the Church found special expression.

¹ C. 43, Responso, v. 39, de Sent. Excom.

² L. vi. Ep. 80, ad Reg. Castil. p. 82.

¹⁰ L. vii. Ep. 93, 94, pp. 373-376.

PART II. THE PRINCES RECOGNISED ECCLESIASTICAL
JURISDICTION.

§ 1. The right of censure over them gradually reserved for the Pope. § 2. Recognition of Papal authority. § 3. Titles of honour and intercession with the Popes. § 4-7. Letters of princes. § 8. The Pope as protector of kingdoms. § 9. Papal ratifications of treaties, laws, donations, &c. § 10. Louis IX. of France. § 11. Resistance of individual princes. § 12. Their superiority to all laws. § 13. Ignorance of princes was not fostered by the Church.

§ 1.

The princes recognised that they were subject to the jurisdiction of the Church. Charles the Bald, at the meeting at Savonnières in 859, declared in the statement of grievances against Archbishop Wenilo of Sens, that as a crowned king he could be deprived of his kingdom by no one, at least not before the bishops had been heard on the question and had passed sentence; for by them he had been crowned, and to their paternal correction and chastisements he was willing to submit.¹ In the reign of his father Louis the Pious the conviction prevailed that the king could only be deposed by the sentence of the bishops,² and in the dissensions of his sons the authority of the Church was the strongest weapon each could use against his rival. The bishops who had called the war of Louis and Charles against their brother the Emperor Lothair I. a righteous war declared at a Synod at Aix-la-Chapelle in 842, that Lothair had forfeited the kingdom by his sins, and that God had given it to his brothers. These were, however, called upon, before undertaking the actual government of his States, to swear that their government should not be arbitrary, but regulated by the will of God.³ This view of the power of the bishops was important in so many ways, that later French historians hit on the notion that the subjection of kings to ecclesiastical authority was an error introduced into France by the policy of Pipin and his successors, with the view of enhancing their authority in the eyes of the people by giving it a sacred character.⁴ When, after the death of Lothair II. in 869, the claim of his brother the Emperor Louis II. to his possessions was disregarded by Louis the German and

Charles the Bald, Louis II. appealed to the intervention of Pope Hadrian II., who gave a decision in his favour, which, however, was not acted upon.⁵

This principle continued in full force. The terms in which Fulco of Rheims, in 898, endeavoured to withdraw Charles the Simple from the proposed alliance with the Normans⁶ presupposed an ecclesiastical authority not merely to excommunicate the king, but to withdraw from him the allegiance of his subjects.⁷ Rulers, however, sought more and more to withdraw their dominions from the penal jurisdiction of the bishops, who had several times inflicted censures which were unjust, and which the Pope had reversed.⁸ And thus it came about that the right to excommunicate kings and princes was reserved to the Pope.⁹

¹ Libell. Proclamationis. Hard. Conc. v. 488. Hefele, iv. p. 197.

² Hefele, iv. pp. 78, 79.

³ Nithard, de Dissensionibus Filiorum Ludovici Pii, l. iii. iv. Pertz, M. G. ii. 6, 62, 668. Cf. Fleury, Hist. Ecclés. t. x. l. xlviii. n. 11; l. xlix. n. 46; Hefele, l.c. pp. 98, 99.

⁴ Moreau, Discours sur l'Histoire de France, t. ii. pp. 22, 30. Daniel, Hist. de France, t. ii. pp. 335, 388, 393. Garnier, Hist. de France, t. xxi. p. 189. Fleury, l.c. l. xlix. n. 46; t. xiii. disc. 3, n. 10.

⁵ Baron. a. 869, n. 93 seq.

⁶ Flodoard, Hist. Rhems. l. iv. c. v.

⁷ Contra Bossuet. Defens. P. i. l. ii. p. 285 seq. Vide Bianchi, t. ii. l. iv. § 9, n. 5, p. 122 seq.

⁸ *E.g.* Innocent III. (l. xii. Ep. 37, p. 46), that of the Bishop of Soissons.

⁹ Kober, der Kirchenbann, pp. 122, 123. Schmalzgrueber, in l. v. Decret. tit. 39, § 1, n. 40, who cites for this Avila, Palao, Reiffenstuel, Wiestner, La Croix. At first the Popes granted to individual princes particular privileges, that they and their lands should not be visited by ban or interdict 'absque rationabili et manifesta causa,' or that it should be only after previous admonition, and that when they had appealed to Rome any sentence delivered against them should be null; *e.g.* Innocent III. to the Landgrave of Thuringia (l. vi. Ep. 42, p. 46), and to the Emperor Henry of Constantinople (l. xi. Ep. 120, pp. 1216, 1217). The Popes then granted to individual princes the privilege of not being visited with censure by the bishop or Papal legate, which was in practice and in the teaching of canonists extended to all reigning princes. A privilege of the latter kind was conferred by Urban II. upon King Peter I. of Aragon, 1095; it was confirmed by Innocent III. in 1213 (l. xvi. Ep. 87, p. 888). This Pope in 1214 forbade that King John of England, who had become his vassal, should be censured 'sine speciali mandato Sedes apostolicae' (Supplem. Ep. 185, Migne, ccxvii. p. 226).

§ 2.

The words of Constantine the Great, related by Rufinus, were often repeated ; he had said he did not wish to pass judgment on bishops, because they had authority to judge him.¹ Familiar also was the readiness with which the Emperor Theodosius had submitted to the judgment of St. Ambrose.² Henry IV. of Germany acknowledged that he might be deposed by the Church for heresy or apostasy.³ Even Frederick Barbarossa admitted the right of the bishops to judge him,⁴ although at Pavia in 1160, appealing to the example of Constantine, Theodosius, and Justinian, he claimed the right of convening a General Council. The French King Louis VI., in 1119, laid his complaints and grievances against Henry I. of England, before Pope Callixtus II. at the Council of Rheims.⁵ Henry's nephew Stephen of Blois begged Innocent III. to ratify his ascent of the throne ; later he was forced to undergo many humiliations from the bishops on account of unjust actions committed by him against the Church.⁶ Queen Maria of Aragon laid a complaint before Pope Innocent III.⁷ against the Count Montpelier, for having retained some castles and places belonging to her dowry. The count, on the other hand, complained that she had taken possession of his dominions.⁸ The Counts of Flanders repeatedly sought protection in Rome against the superior strength of the French king ; on December 29, 1299, the Flemish envoys called the Pope universal judge in things spiritual and temporal, by reason of his position as Vicar of Christ, and of his authority over the emperor, the foremost among civil princes.⁹ The famous Abbot Wibald, for many years adviser of the Kings of Germany, who restrained Henry son of Conrad III. from hasty measures against Papal decrees,¹⁰ wrote thus in 1148 to Pope Eugenius III. : ' With you is the manna, with you is the rod (of Aaron), with you is canonical dispensation, with you is the interpretation of laws, with you is the moderation of rules, with you is wine and oil ; it is your privilege to spare the submissive and to resist the proud.'¹¹

¹ Rufin. H. E. i. 2 : ' Deus vos constituit sacerdotes et potestatem dedit de nobis quoque judicandi, et ideo nos a vobis recte judicamur, vos

autem non potestis ab hominibus judicari. . . Vos etenim a Deo nobis dati estis *Dii* et conveniens non est ut homo judicet Deos, sed ille solus, de quo scriptum est: *Deus stetit in synagoga Deorum, in medio autem Deos dijudicat.*' Cf. Soz. H. E. v. 17; Gelas. Cyzicen, Hist. Conc. Nic. l. ii. c. viii. (Migne, PP. gr. lxxxv. p. 1244). In the epistle from Constantine to the bishops concerning the Donatists, in the Append. ad Optat. Milevit. ed. Paris, Labbé, Conc. i. p. 1455, ed. Ven., it is said: 'Dico enim, ut se veritas habet, sacerdotum judicium ita debet haberi, ac si ipse Dominus residens judicet.'

² Joh. Saresbur. Polycrat. l. iv. c. vi. p. 524.

³ Mansi, xx. p. 472 seq. : 'Nec pro aliquo crimine nisi ab fide, quod absit, exorbitaverim, deponendum.' Cf. Baron. a. 1076, n. 20; Fleury, Hist. Eccl. t. xiii. l. lxiii. n. 52; Launojus, de Simonia, Observ. 3, 4, 5, 11, Opp. t. ii. p. ii.

⁴ Radevic. l. ii. c. lxxviii. : 'Deus constituit vos sacerdotes et potestatem vobis dedit de nobis quoque judicandi.'

⁵ Hefele, Conc. v. p. 315.

⁶ Ib. l. c. pp. 386, 394 seq. 435 seq.

⁷ Innoc. III. l. xvi. Ep. 23, pp. 814, 815.

⁸ Ib. l. xv. Ep. 104, p. 615.

⁹ Kervyn de Lettenhove, Histoire de Flandre, 1847, t. ii. pp. 421, 604 seq.

¹⁰ Wibald, Ep. 73 (Migne, clxxxix. p. 1173), to Henry : 'Timemus namque, ne in Romanam Ecclesiam aliquorum suggestione impingatis, quod vobis esse posset lapis offensionis et petra scandali.' Ep. 79, p. 1178, to his sister : 'Juniorem dominum regem nostrum quaedam non exiles personae ad haec dedita opera impellebant, ut in quibusdam dominum Papam offenderet et canonicis decretis contraireret, quod ne fieret, Dei largissima bonitate et nostro studio praevenum est et in meliorem statum omnia commutata.'

¹¹ Novit dextera vestra 'parcere subjectis et debellare superbos' (Virgil, Aen. vi. 853). Wibald, Ep. 114, p. 1209.

§ 3.

Usurpers often sought to make their position more secure by means of the Pope's authority ; the usurper Suerus did this in Norway by appealing to a counterfeit Bull of Celestine III. Innocent III. reproved him sharply ; but after his death acknowledged his son, who was a much better man.¹ Rightful princes frequently besought the Popes for special titles of honour ;² even Henry VIII. applied for one, and received the title of 'Defender of the Faith ;'³ and later still the King of Portugal received that of 'Most faithful King.'⁴ At an earlier period, Charles the Bald, and after him his son Louis, received from John VIII. the

title and dignity of 'privy councillor,'⁵ conferred also at that time upon bishops. Kings and princes often besought pious and influential members of the regular clergy to be their mediators with the Holy See, as, for example, King Alphonso of Spain⁶ besought the Abbot of Clugni, Peter the Venerable. In 1142, St. Bernard complained to Louis VII. that he had busied himself about the king's affairs with the Holy See until he had almost done violence to his conscience and incurred the just anger of the Pope, and that now the king's continual excesses led him to repent of what he had done.⁷

¹ Innoc. III. l. i. Ep. 382-384, p. 362 seq. Supplem. Ep. 11 (Migne, ccxvii. p. 36). Cf. l. vi. Ep. 214, p. 241 seq.; Gesta Innoc. n. 59, p. cviii. seq.

² The most ancient of these titles is undoubtedly that of the kings of France, 'Rex Christianissimus.'

³ Pallavic. Hist. Conc. Trid. l. ii. c. i. n. 8. Rymer, Foed. xiii. 756. Cf. xiv. 13, Conc. M. Brit. iii. 693, 702; Gieseler, Kirchengeschichte, iii. ii. p. 3. No. 4.

⁴ Bened. XIV. Const. Maxima, 23 Dec. 1748.

⁵ John VIII. Ep. 87, ad Ludov. Balbum: 'Te quoque, carissime fili ad vicem genitoris vestri D. Caroli perpetui Imperatoris Augusti, a secretis constituo meum consiliarium.' Cf. Thomassin, p. i. l. ii. c. ci. n. 15.

⁶ Petrus Vener. l. iv. Ep. 9, pp. 313, 314, ad Innocent II.: 'Imperator Hispanus, magnus Christiani populi princeps, . . . licet apud pietatem vestram multum possit et posse debeat, tamen quia inter modernos reges praecipuus amicus et benefactor Cluniacensis ecclesiae est, me ad praesens *mediatorem et apud vos intercessorem* elegit.' The same abbot also interceded for King Louis of France and for the town of Pisa (ib. Ep. 3, p. 304; Ep. 44, p. 462).

⁷ Bern. Ep. 221, c. iii. p. 387, ed. Migne. Cf. Ep. 224, c. i. p. 392, ad Steph. Ep. Praenest.

§ 4.

The letters sent to the Pope from even the most powerful princes testify the esteem in which they held the dignity and power of the Holy See. Ferdinand, King of Spain, when he declared in favour of Alexander III. against the Antipope set up by Barbarossa, informed the Pope of his adherence in these words: 'I have recognised your dominion with my whole kingdom.'¹ It was the custom in letters of congratulation sent to a new Pope on his accession to lay all the most important affairs of Christendom on his heart.² Otho of Brunswick,³ elected

King of Germany, expresses a special loyalty in his letters, as was the case also in those of the princes and nobles who interceded for him with Pope Innocent III.⁴ They extolled the justice and wisdom of the Holy See, which Otho's rival, Philip,⁵ also did in 1207, when he petitioned for the promotion of the Danish Bishop Waldemar⁶ to the see of Bremen. Whether the decrees published by the General Councils of the Lateran and of Lyons had or had not the influence which some authors have ascribed to them,⁷ the recognition they met with shows the conviction entertained by the most powerful princes of the day of the predominant authority of the Church.

¹ 'Vestrum cum toto regno meo suscepi dominium' (Migne, PP. Lat. t. cc. p. 1370, n. x.).

² Vide the formula of Petr. Bles. Ep. 118 (Migne, ccvii. pp. 463, 464).

³ Innoc. III. Reg. iii. p. 999; Ep. 19, p. 1016, in which he venerates the Pope as father and lord; Ep. 20, p. 1016 seq.; Ep. 53, 54, 81, 106, p. 1054 seq. 1087 seq. 1108; Ep. 77, 187, 189, 190, p. 1084 seq. 1167 seq.

⁴ King Richard of England engages for him: 'Quod vobis tamquam unico domino suo et Ecclesie Rom. debitam et juratam fidelitatem impendet' (Reg. Ep. 4, p. 1000 seq. Cf. Ep. 5-10, p. 1001 seq.).

⁵ Innoc. III. l. x. Ep. 215, p. 1323: 'Cum plene cuilibet constare possit, quod ab illo fonte, in quo totius spiritualis juris et ecclesiastici plenitudo consistit, nihil aliud procedere possit vel abinde derivari, nisi quod sanctum sit et quod contineat aequitatem, semper hoc inde sperandum est, per quod unicuique consulatur, conservata tamen huic fonti totius sue auctoritatis integritate.'

⁶ This Bishop Waldemar had been imprisoned on account of a conspiracy in Denmark, was at length, upon the Pope's remonstrance, sent to Rome, but on departing thence without leave was excommunicated and deprived of his see. Innoc. III. l. vi. Ep. 181, p. 194 seq.; l. viii. Ep. 192, 193, p. 768 seq. (respectful letter of the King of Denmark to the Pope and the Pope's answer); l. x. Ep. 41, p. 1134; l. xi. Ep. 10, p. 1346; l. xii. Ep. 63, p. 69 seq.

⁷ Cf. *suprà*, Essay vi. § 15, 16 seq.

§ 5.

When Henry II. was persecuting St. Thomas of Canterbury, there was much anger at the court of France, because of the apparent delay of Pope Alexander III. in coming to the assistance of the archbishop, and using his authority against the king. The nobles and clergy sent letters of remonstrance to the Holy See,¹

and King Louis VII.² and his queen³ also wrote to the Pope on the subject. After the murder of the archbishop, Louis required that severe measures should be taken against Henry.⁴ And later he demanded of the Pope a reform of existing abuses, according to the authority confided to him, by virtue of which he was set as a light for the nations, above all men, high and low, that everywhere he might punish evildoers. 'For your Holiness, to whom so great a power of action is given, can carry out your pious intentions. For who believeth not your testimony? Who hearkeneth not to your word? Who submitteth not to your command? If any venture to resist you, let only the high praises of God and words of power be in your mouth, to execute vengeance upon the heathen and punishments upon the people; to bind their kings with chains, and their nobles with fetters of iron (Psalm cxlix. 7, 8).'⁵ Louis VII. agreed with John of Salisbury⁶ in believing that the Pope was entitled and empowered to chastise all crimes in princes, and to free the Church of them, if their yoke oppressed her; he was firmly convinced that his kingly office obliged him to use the sword confided to him by God, for the defence of the Church and the overthrow of her oppressors.⁷

¹ John of Salisbury, who was at that time living in France, Ep. 198, ad Alex. III. (Migne, cxcix. p. 218): 'Utinam essent aures vestrae ad ora regis et optimatum Franciae! Utinam audiretis, quomodo vobis insultant hostes Ecclesiae et fere universi detrahunt vobis!' William of Chartres wrote to the Pope (Migne, cc. p. 1409, n. 50): 'Exspectat christianissimus rex Francorum, exspectant Ecclesiae et optimates regni, quam opem adversus tyrannum saevientem feretis Archiepiscopo pro justitia exulanti.' Philip, Count of Flanders, wrote (ib. p. 1393, n. 36): 'Exsurgatis in ira vestra et inimicos Ecclesiae debellate, et sic erit Deus vobiscum.'

² Migne, t. cc. p. 1376, n. 17. The king, moreover, says: 'Non est nostrum, vos, qui dominus estis, reprehendere.'

³ Ib. p. 1380, n. 22. Here it is said: 'Vobis sicut patri loquar et domino, cujus honorem dominus meus rex et ego et totum regnum nostrum desideramus ut proprium.' The letter does not merely complain that the Pope lends insufficient protection to the archbishop, but also that the King of England receives 'auctoritatem impune peccandi et archiepiscopum perpetuo proscribendi.'

⁴ Ib. p. 1378, n. 20: 'Excitetur exquisitae genus justitiae, denudetur gladius Petri in ultionem Cantuarensis martyris, quia sanguis ejus pro universali clamat Ecclesia, non tam sibi quam universae Ecclesiae conquerens de vindicta.'

⁵ Ib. pp. 1378, 1379, n. 21 : 'Profecto supernus ille mortalitatis nostrae moderator et arbiter ideo vos in diem hanc sic, ut confidimus, reservavit, ut accepto tempore *justitias judicetis et ponatis prava in directa et aspera in vias planas* (Luc. iii. 5). . . . Date simul et vos voci vestrae vocem virtutis, ut audiant et intelligant universi, quod posuerit vos Dominus in lucem gentium, ut sitis salus ejus usque ad fines terrae (Isai. xlix. 6). Praesto est enim piae intentioni vestrae operandi facultas, cui tanta conceditur sanctae operationis auctoritas. . . . Quis enim non credit auditui vestro? Quis non obedit verbo? Quis non obtemperat jussioni? Quod etsi reluctari quispiam pro sua malignitate praesumpserit, sonent *exultationes* (al. exaltationes) *Dei in faucibus vestris ad faciendam vindictam in nationibus, increpationes in populis, ad alligandos reges eorum in compedibus et nobiles eorum in manicis ferreis.*' St. Bernard also applies this passage to the Pope.

⁶ Joh. Saresb Ep. 201, p. 224, ad Albert. Card. : 'Si Ecclesia Romana voluerit et de Domino non diffidat, eum (Henricum), facile perdomabit.' Ep. 219, p. 244, ad Alex. III. : 'Si illa (Rom. Eccl.) post Deum decreverit salvare nos, continuo liberabimur. Si manus erexeritis, sternetur Amalech, et qui vos Pharaoni dedit in Deum, dijiciet omnes adversarios Ecclesiae a facie vestra.'

⁷ Ludovic. VII. Ep. a. 1171, ap. Baluz. Addit. ad l. ii. de Concordia Petri de Marca, c. xii. post § 8 : 'Digna vox est majestate regnantis, Dei servum et Ecclesiae defensorem et principem profiteri. Adeo de divinae promissionis et clementiae culmine nostra pendet auctoritas, ut ad honorem, laudem et gloriam ipsius et opera nostra et ipsorum intentionem operum referamus. Inde est, quod commissum a Deo nobis gladium et in defensionem ecclesiarum et in oppressionem debemus ac volumus exercere tyrannorum.'

§ 6.

After the murder of the archbishop, Henry II. sent envoys to the Pope, deputed to convey his horror at the crime, and his repentance for the hasty expressions which had given occasion to it. In September 1172, he was reconciled to the Church on his undertaking to fulfil the required conditions.¹ Before the crime of the 29th December 1170 he had shown himself very submissive to the Pope,² and he manifested the same submission in a still higher degree when, in 1173, he besought the assistance of the Pope against his unruly sons; he acknowledged himself to be a vassal of the Pope, and promised obedience to all his commands.³ His sons also applied to the Pope with offers of all possible concessions; but the Pope's desire was not to side with one party or the other, but to reconcile them.⁴ The court of England recognised even more strikingly the extent of the power

of the Holy See, when Richard Cœur de Lion was taken prisoner by Leopold, Duke of Austria, at the command of the Emperor Henry VI. in 1192, and kept in confinement till 1194. Queen Eleanor, his mother, sought to obtain from Pope Celestine III. his release from this unjust imprisonment. She implored the Pope, in letters composed by the learned Peter of Blois,⁵ to aid her by excommunicating those guilty of the act, and by exerting all his authority on her behalf. She spared not even reproaches to move him, saying: 'What excuses can cover your negligence and apathy? for all the world knows you have the power to aid my son; the will only is wanting. Has God not entrusted the guidance of every empire and every power to the Apostle Peter, and in him to you? No king, no emperor, no duke is free from the yoke of your jurisdiction. Where is now the zeal of Phinees? Let it be seen that the two-edged swords have not been put in vain into your hands, and those of the other bishops.'⁶ 'But you will say,' she continues, 'that this authority is given you over souls, not over bodies. Let it be so; it is sufficient for us that you should bind the souls of those who keep my son chained in a dungeon. It is easy for you to loose his chains if the fear of God shall drive away the fear of men. Restore to me my son, O man of God, if indeed you be a man of God, and not a man of blood.'⁷

¹ Cf. Hefele, *Conc.* v. pp. 603, 611 seq.

² Migne, CC. pp. 1383, 1384, n. 26: 'Salutem et debitam in Christo subjectionem. . . . Vos in patrem et dominum in vestris legatis recepi solemnitate debita et veneratione.' With even greater humility towards St. Thomas, n. 27, pp. 1384, 1385. He calls himself, n. 30, p. 1388, 'juri semper stare paratissimum.'

³ *Ib.* pp. 1389, 1390, n. 32: 'Quoniam ergo vos extulit Deus in eminentiam officii pastoralis ad dandam scientiam salutis plebi ejus (Luc. i. 77), licet absens corpore, praesens tamen animo, me vestris advolvo genibus, consilium salutare deprecans. Vestrae jurisdictionis est regnum Angliae et quantum ad feudatarii juris obligationem vobis dumtaxat obnoxius teneor. Experiatur Anglia, quid possit Rom. Pontifex et quia materialibus armis non utitur, patrimonium B. Petri spirituali gladio tueatur. . . . In fide illius, per quem reges regnant, vestrae magnitudini promitto me et dispositioni vestrae in omnibus parituum.' Henry's oath, ap. Rymer, *Foed.* i. 27; Muratori, *Rer. It. Scr.* iii. 463: 'Juramus, quod a Domino P. Alexandro et successoribus ejus catholicis recipiemus et tenebimus regnum Angliae.'

⁴ Hefele, v. p. 613.

⁵ Petri Blesens, Ep. 144, 145, 146, Opp. p. 227 seq. Rymer, Foedera, i. pp. 72, 78. Cf. Fleury, op. cit. t. xv. l. lxxiv. n. 41; Michaud, Hist. des Croisades, P. ii. p. 862.

⁶ Petri Bles. Ep. 145, p. 228.

⁷ Ib. Ep. 146, p. 230. St. Bernard once wrote thus to Innocent II., Ep. 198, p. 366: 'A vobis id omnimodis flagitamus, quod aliunde frustra tentatum est. Circumspeimus et non erat auxiliator. Ventum est ad commune refugium, illo confugimus, ibi confidimus liberari. *Tantum adsit pietas; nam facultas non deest.* Et quidem ex privilegio Sedis apostolicae constat, summam rerum ad vestram potissimum respicere *summam auctoritatem et plenariam potestatem.* Verum hoc inter cetera vestri singularis primatus insignia specialius nobilisque nobilitat vestrum et inclytum reddit Apostolatam, si eripitis pauperem de manu fortiorum ejus. Nulla meo judicio in corona vestra pretiosior gemma zelo illo vestro, quo aemulari consuevistis oppressos nec relinquitis virgam peccatorum super sortem justorum, nimirum propter illud, quod sequitur: Ut non extendant justi ad iniquitatem manus suas (Ps. cxxiv. 3), &c.'

§ 7.

When Richard I. had been set at liberty, he besought the Holy See to obtain for him the restitution of the sum of money which Archduke Leopold and the Emperor Henry VI. had extorted from him as his ransom; also to induce the King of France to relinquish some fortresses and other possessions which he had seized during his absence, and to prevail upon the King of Navarre not to withhold from him the castles which his father had agreed to give him as the dowry of his daughter, Richard's wife. Innocent III. warmly espoused his cause. He commissioned the Archbishop of Magdeburg to engage the brother of the late emperor to make restitution of the king's ransom.¹ He threatened to excommunicate the King of Navarre if he did not relinquish the castles in question,² and addressed himself in a similar manner to the King of France. The latter replied that Richard had violated former treaties, had forsaken his sister and married another, had taken all to himself the property of King Tancred and the treasure of Cyprus, which was theirs in common, and had been the cause of much personal injury to himself. Richard's envoys maintained that Philip had been the first to act unjustly at Messina, and had brought forward vain complaints. The Pope³ communicated these counter-charges to King Richard, and

endeavoured to obtain an adjustment, which was accomplished later. After Richard's death in 1199, his widow, Berengaria, addressed herself to the Pope with repeated complaints,⁴ that Richard's brother and successor, John, had kept possession of her dowry.⁵ The Pope wrote thus in 1204 to the English bishops: 'If a judge who feared neither God nor men would at the instance of a widow procure justice for her from her oppressors, how much less should we close our ears to her supplications, we who, however unworthily, hold the place upon earth of Him who bore the wrongs of all men, dispensed justice without regard to persons, and gave us the command, as the Prophet says, to relieve the oppressed and defend widows? Although God, who searcheth the heart and the reins, knoweth that we love the august King John of England as our dearest son, we cannot yield to him if it cause injustice; for without fear or favour we can deny justice to no one. We owe it to all men, learned and unlearned alike, in virtue of the office of our servitude. For we should consider ourselves guilty of wrong towards his royal majesty if we were in any measure to spare him by showing favour towards him, since we should thereby give occasion for injury to his salvation, which rather we are bound in every way to further and encourage.'⁶

¹ Innoc. III. l. i. Ep. 236, p. 203, Ep. 242, p. 206, to Leopold of Austria.

² L. i. Ep. 211, p. 182.

³ L. i. Ep. 230, pp. 196-199.

⁴ 'Multiplicatis querelis' Innocent calls it, l. vii. Ep. 168, p. 475 seq.

⁵ Innoc. III. l. vi. Ep. 194, p. 220; l. vii. Ep. 168, p. 476; l. xi. Ep. 223, p. 1537; l. xiii. Ep. 74, p. 268.

⁶ L. vii. Ep. 168.

§ 8.

All the princes who took part in the Crusades¹ were under the special protection of the Holy See, and looked to it for sure defence against violence. When the Latin Emperor Baldwin of Constantinople was taken prisoner by the Bulgarians, his brother Henry turned for redress to Innocent III. as his only resource.² When King Waldemar of Denmark went to convert Finland, the same Pope took precautions against the incursions of the Germans into his kingdom.³ The protection of the Pope was

undoubtedly at that time the best safeguard against foreign injustice.⁴ The princes were conscious implicitly, if not explicitly, that international law, unlike positive law of States, is unsupported by any judicial compulsion, and that sufficient material means are seldom present for the punishment of its violation, especially when the countries concerned are far removed from each other; and that consequently to carry out its principles there is every need of the coöperation of conscience, of the influence of religion, and of the authority of the supreme ruler of Christendom.⁵ They felt and understood well the position which necessarily belonged in Christian States to the Head of the Universal Church; they recognised him as the father of the one Christian family, the representative of Christian justice, the avenger of injustice and crime; who, without regard to persons or to self-interest, and responsible to God alone, could adjust, arbitrate upon, and decide all international disputes. 'The perfection of international law depends upon two conditions: (1) The degree in which the notion of a common humanity is developed among nations; (2) The closeness of the connection by which they feel themselves united. Christendom and the Church forming a visible commonwealth of nations has had a powerful influence upon both these conditions. After the fall of the Roman Empire it created amongst new States common interests and an international law, which, founded upon the principles and laws of the Church, was administered by her and her Head as an international tribunal under the protection of the penalty of the Church's ban.'⁶

¹ Amongst others, Peter of Blois, Ep. 219, p. 508, shows us how very much these agitated the Christian world. He says how the King of Sicily, at bad news from the Holy Land, 'statim se cilicio induit et per quatuor dies plangens et a facie hominum se abscondens illi terrae succurrere pro posse suo anxie et constanti devotione promisit.' And the cardinals vowed to renounce all external pomp, to preach the Crusade zealously, to announce a seven years' Truce of God, &c. This is shown too by the letters of St. Bernard, in particular Ep. 256, ad Eugen. III. p. 463 seq.; Ep. 363, ad Orient. Franc. Cler. et Popul. p. 564 seq.

² Innoc. III. l. viii. Ep. 131 (Migne, t. ccxv. p. 709): 'Summum et praeceptum, imo unicum spei nostrae refugium et fundamentum, qui solus prae filiis hominum et principibus et regibus in quantalibet potestate con-

stitutis nobis potestis succurrere.' For other respectful letters from Henry, vide Append. ad Innoc. Reg. n. 7, 8 (Migne, ccxvii. p. 292 seq.).

³ Innoc. l. xii. Ep. 102-104, pp. 116-118, a. 1209.

⁴ Ferrand, *Esprit de l'Histoire*, t. ii. lettre 47, p. 494.

⁵ Ancillon, *Tableau des Révolutions du Système politique de l'Europe*, t. i. Introd. p. 133 s. : 'In the Middle Ages, when there was no social order, the Papacy, and perhaps the Papacy alone, saved Europe from a state of absolute barbarism. It created relations amongst nations far removed from each other, was a common centre for all, a point of union for States otherwise isolated. It was a supreme court of justice raised in the midst of universal anarchy. Its judgments were from time to time received with the respect they merited. It fenced and restrained the despotism of emperors. It compensated for the want of a due balance of power, and lessened the injurious effects of feudal government.'

⁶ Walter, *Naturrecht und Politik*, § 464, p. 451.

§ 9.

It is quite in accordance with this view of the Pope's position that Catholic princes repeatedly sought and obtained the Pope's confirmation for their most important acts; for instance, their *treaties*. Innocent III., in 1198, ratified the agreement between Richard Cœur de Lion and the Archbishop of Rouen,¹ and that between the King of France and Baldwin, Count of Flanders;² also in 1199 the truce between England and France;³ and in 1202 the treaty concluded through the intervention of the Polish bishops between the Duke of Silesia and his uncle;⁴ also subsequently, in 1204, that between the Emperor Baldwin of Constantinople and the Venetian Republic, concerning the conquered Greek empire.⁵ Likewise the King of France, in 1214, besought the same Pope to confirm the covenant he had entered into with Countess Blanca of Champagne;⁶ and John Lackland did the same for a ratification of his agreement with Queen Berengaria.⁷ From a decree of Pope Honorius III. in 1220, it is clear that an amicable arrangement arrived at through the intervention of the apostolic legate between the king and nobles of Cyprus on the one part, and the bishops of the island on the other part, received the apostolic ratification, which was taken advantage of to postpone the execution of some of its clauses.⁸ Popes ratified also the *laws* of princes. Thus Honorius II. (1125-1130) ratified the law of the Emperor Henry V., passed at Rimini,

that the clergy should not be bound by oath.⁹ There are numerous other instances.¹⁰ Popes confirmed also the *judgments* of princes; thus we find Hadrian IV. (1156) confirming the sentence of Louis VII. of France upon the Duke of Burgundy.¹¹ They confirmed the *privileges* conferred by princes; for example, Innocent III. confirmed those granted in 1204 by the Emperor to the Kings of Bohemia,¹² and those conceded in 1205 to the city of Cologne.¹³ Also *statutes concerning partition of territory*, as we see in the matter of the possession of the town of Cracow in Poland,¹⁴ ratified by the same Pope. Also their *wills*, as in 1211 with regard to the will of King Sancio of Portugal.¹⁵ Also their *donations*; for example, those in 1209 of the Emperor Henry of Constantinople,¹⁶ those in 1210 from Frederick II. to his wife Constantia,¹⁷ and those from the King of Leon to a Cistercian monastery.¹⁸ Finally, they ratified the *recall of donations*. Thus in 1211 the Pope, at the request of King Pedro of Portugal, allowed him to revoke the donations made by him during his minority, by which donations the crown had suffered injury.¹⁹

¹ Innoc. III. l. i. Ep. 108, p. 93 seq.

² *Ib.* Ep. 130, p. 117 seq.

³ L. ii. Ep. 24, p. 553: 'Treugas . . . ratas habemus et praecepimus inviolabiliter observari.'

⁴ L. v. Ep. 112, p. 1110. Rayn. a. 1202, n. 19.

⁵ L. vii. Ep. 203, ad Episc. pp. 515, 516. In the letter of the Emperor Baldwin, *ib.* Ep. 201, pp. 510, 511, it is said expressly: 'Sicut tenemur, rogantes, ut dictas conventiones ratas habeatis et eas auctoritatis apostolicae munimine confirmetis.'

⁶ Append. ad Innoc. III. Reg. l. xvi. n. 5 (Migne, ccxvi. p. 976).

⁷ Rymer, Foed. i. 137. Migne, ccxvii. p. 303 seq. Append. Ep. 18.

⁸ Cap. viii. de Confirmat. utili vel inutili, ii. 30.

⁹ Mansi, xii. 362 Jaffé, Reg. n. 5316, p. 588.

¹⁰ Friedberg (*De finium inter Eccl. et Civitatem regundorum iudicio*, &c., Lips. 1861, p. 81, nota 1) gives the following references: Innoc. III. Reg. Ep. 97, a. 1203; Honor. III. 1217; Suhm, *Hist. af. Dan.* ix. 747; Gregor. IX. 1233; Wurdwein, *Nova subsid.* vi. 17; Innoc. IV. 1248; Quix, *Cod. diplomat. Aquens.* i. 119, 1252; Raynald. h.a. n. 17; 1254, *Cod. diplom. Lubec.* i. 190; Alex. IV. 1259; Böhmer, *Reg. Nr.* 160, 162.

¹¹ Bouquet, *Receuil*, xv. 674. Jaffé, n. 6929, p. 666.

¹² Innoc. III. l. vii. Ep. 54, p. 339.

¹³ *Ib.* l. viii. Ep. 176, p. 754.

¹⁴ *Ib.* l. xiii. Ep. 82, pp. 279, 280: 'Boleslaus quondam Poloniae dux . . . hoc perpetuis temporibus observari praecipiens per Sedem Apostolicam obtinuit approbari.'

¹⁵ *L.* xiv. Ep. 58, p. 423: 'Quae omnia suppliciter postulasti per Sedem Apostolicam confirmari.' Cf. *ib.* Ep. 59, 60, 115-118, pp. 424 seq. 473 seq.

¹⁶ *L.* xiii. Ep. 34, 35, p. 227.

¹⁷ *L.* xiii. Ep. 84, p. 281 seq.

¹⁸ *L.* xiii. Ep. 176, n. 345, 346: 'Qui etiam rex nobis humiliter supplicavit ut ad stabilitatem perpetuam concessionem ipsius apostolico dignemur munimine roborare.' Earlier examples of this kind are numerous. Conrad III., in 1146, wrote thus to Eugenius III.: 'Rogamus, ut quod eidem abbati (Wibaldo) et Corbeiensi monasterio de duabus praefatis cellis legitima donatione per praecepti paginam confirmavimus, vos vestri privilegii scripto roborare non abnuatis' (Wibald. Ep. 13, Migne, clxxxix. p. 1137). The monks of Corvei in the same way sought the Papal ratification (*ib.* Ep. 15, p. 1139).

¹⁹ *L.* xiv. Ep. 28, p. 404.

§ 10.

Until the close of the Middle Ages, and even beyond, the letters from kings to Popes testify the deepest awe and reverence. Louis XI. of France,¹ on the 27th November 1461, wrote thus to Pius II., who had required of him the abolition of the Pragmatic Sanction of 1438: 'Knowing as we do that God alone by His providence can well provide for the concerns of man, and that cities and kingdoms are better fortified and defended by religion than by arms and troops, we entertain towards you, the Vicar of the living God, such reverence that we are fully resolved to hear your sublime admonitions, especially in ecclesiastical matters, as the voice of the Shepherd, and obey it. . . . As we are convinced that obedience is better than sacrifice, we have given our consent to that which has been made known to us in your name, namely that the Pragmatic Sanction is antagonistic to you and to your office, because it took its rise in rebellion at a period of schism and revolt and separation from your See, and because it deprives you, from whom all sacred laws proceed, and in whom they have their origin, of all authority, loosening the bonds of all law and all justice. . . . Although some learned men sought to disprove this, and to dissuade us from the abrogation of the Pragmatic Sanction, we, holding and acknowledging that you are the prince of the whole Church, the primate of

religion, the shepherd of the Lord's flock, do follow your commands,² and adhere with full consent to the teaching of St. Peter. Therefore, according to your desire we abolish, proscribe, and abrogate the Pragmatic Sanction in our whole kingdom, in Dauphiné, and all our dominions.³ Leibnitz acknowledged that in essential matters the sovereigns of the Middle Ages were in accord with the principles upheld by the Popes. 'Nothing was more common,' he says, 'than to see kings submit their treaties to the censorship and correction of the Pope, as in the treaty of Bretigny, A.D. 1360, and that of Etaples, A.D. 1492.'⁴ Even Voltaire, in the midst of much malicious exaggeration, acknowledged that every prince who wished to appropriate or receive back a domain addressed himself to the Pope as to his lord; also that no prince would venture newly to style himself king, nor would he be acknowledged as a king by other sovereigns, without the permission of the Pope.⁵ Frederick III. interceded with Eugenius IV. in behalf of young Ladislaus, begging him not to countenance or confirm any other candidate for the kingdom of Hungary.⁶

¹ Hard. Conc. t. ix. p. 1640. Roscovány, Monum. t. i. pp. 113, 114, n. 144. Inter Epist. Aeneae Sylv. n. 402, ed. vet. Nuremb. 1486.

² Teque jubentem sequimur.

³ 'Tu enim, cum scias, quid auctoritate divinitus tibi tradita possis, quas pro regni nostri et ecclesiarum in eo tranquillitate postulabimus, non negliges res necessarias, poterisque semper quod optimum fuerit judicare.' The Pragmatic Sanction was not in fact completely abolished until the Concordat between Leo X. and Francis I.

⁴ Leibnitz, diss. 1, de Auctorum publicorum usu. (Praef. ad cod. diplom. Jur. gent. 1693, f. Opp. t. iv. p. 299). Cf. Tract. de Jure suprem. P. iii. (Opp. iv. pp. 330, 401).

⁵ Voltaire, Essai sur les Mœurs, t. ii. ch. xlvi.; t. iii. ch. lxiv. Cf. also Fleury, t. xiii. disc. 3, n. 10, 18; t. xix. disc. 7, n. 5; Michaud, Hist. de Croisades, t. iv. p. 163; t. vi. p. 225, 4th ed.

⁶ Aeneae Sylvii, Ep. 168, ed. vet. Nuremb.: 'Etsi non dubitemus Apostolicam Sedem tamquam veritatis doctricem justamque vitae magistram quorumlibet juribus favorabilem esse nullique prorsus injuriam facere, quia quidquid ab ejus solio manat, justitiae lancibus libratur et aequitatis: non tamen abs re fore putamus aliquo per nos scribi beatitudini tuae, quibus jus serenissimi principis Ladilai . . . commendatum officiam et eorum qui ficta pro veris referunt impiis resistamus conatibus, &c.

§ 11.

It is true that, appealing to their absolute independence, some princes in the Middle Ages defied¹ the Holy See for long periods, but generally only in the heat of passion and for their personal interests. The prevailing law is not to be estimated simply by deeds, but these should be judged by their conformity to the law. Powerful criminals may set at naught every sentence of condemnation. And thus excommunicated sovereigns might successfully employ the means at their disposal to gain the support of a large number of their subjects or even of foreign princes, and thus fortified, dispute the justice of a sentence which they would have fully recognised at another time or in a case not personal to themselves. Many times have Popes replied with dignity and patience to insulting letters from princes.² Their firmness led, in most cases, to their triumph, and brought powerful princes back to them repentant. Bishops, too, even in later mediæval times, have not unfrequently resisted Popes; but from the opposition of individuals no one can conclude that the rest of the episcopal body desired to dispute the Papal prerogative; thousands of facts and witnesses would render such a conclusion impossible. Still less can the words and deeds of individual sovereigns in direct conflict with Rome be held to weigh against repeated recognition of the power of the Holy See.

¹ In Caron, *Remonstrantia Hibernorum*, P. ii. cap. xi. pp. 101-104, a series of more or less convincing passages is collected.

² Gosselin, ii. pp. 147, 148, 373.

³ *E.g.* the reply of Nicholas I., 865 and 866, to the letters of the Emperor Michael III. Ep. 8, 9 (Mansi, xv. 187 seq. 216 seq.); also Innocent III. to the insults of the tyrannical King of Portugal, l. xiv. Ep. 8, p. 383 seq.: ‘Sancti Petri successores non consueverunt inferre convicia, sed ea exemplo Christi cum patientia sustinere.’

§ 12.

It is often objected¹ that many authors, and some even who wrote in the Middle Ages, lay down the principle that kings have no superior but God, and are restrained from sin only by

fear of Him. Ivo of Chartres² is cited as an instance of this. We need not now point out that Ivo (to whom, by the way, the 'decretum' in question cannot be attributed with certainty) brings forward also proofs of the superiority of the Church and of Papal jurisdiction over kings ;³ in the chapter on the crimes of kings he shows merely the gravity of their crimes and the difficulties in the way of their repentance. His words, 'God alone is the judge of kings,' if taken literally, would imply that their acts might not even incur ecclesiastical censure ; and Bossuet would not wish them to mean this.⁴ They refer primarily to the personal motives and intentions of princes in the acts of their administration,⁵ and their true meaning is that there is no power over the prince to punish him *with the sword* for doing ill in those matters in which subjects owe him obedience. If any one thinks from such passages as this in the writings of the Fathers⁶ to conclude that a prince sinning against the law of God cannot be called to account by the Church, he must also concede that the subjects of the king have over them no power but the king's, thus denying that God has established two powers.⁷ Theologians tell us that princes are not under the law⁸ as far as their coercive power is concerned, but are so with regard to their directive power.⁹ Any one subordinate only to the Pope was in the Middle Ages regarded as subject only to God, for the Pope was considered as simply God's Vicar.¹⁰ His power was not physical or material, but was a moral and spiritual power relying upon public opinion for its efficiency. If simple abbots and monks, such as St. Bernard, could upbraid kings for their crimes, threatening them with the justice of God,¹¹ the Pope could do so with the better right of one to whom by virtue of his office of chief pastor his position gave a higher power. No constitution had then adopted the principle 'that kings are above all human laws, and acknowledge no judge but God in matters ecclesiastical and civil.'¹²

¹ Bossuet, Def. P. i. l. iii. c. xiv. p. 303.

² Ivo, Decret. P. xvi. c. xlii. : 'Populi peccantes iudicem metuunt, reges autem, nisi solo Dei timore metuque gehennae coerceantur, libere in praeceps ruunt,' to Isidor Hispal. Sent. l. iii. c. l. n. 4.

³ Ivo, *Decret.* P. v. c. ccclviii. Ep. 51, ad Henric. Anglor. reg.

⁴ Bianchi, t. ii. l. v. § 11, n. 5, p. 314.

⁵ Bianchi, t. i. l. iii. § 6, n. 4, p. 510. Phillips, *Kirchenrecht*, ii. § 109, p. 521 seq.

⁶ *E.g.* Optat. Milev. de Schism. Donat. l. iii. c. iii. Ambros. in Ps. l., Miserere (ver. 'Tibi soli peccavi'). Chrys. in h.l. Hieron. Ep. 46, ad Rustic; Ep. 22, ad Eustach. c. v. Greg. Turon. *Hist. Eccles. Franc.* v. 18. Caron, *Remonstr. Hibernorum*, P. ii. c. iv. § 2, pp. 55-58, gives many similar passages from the Fathers, who for the most part speak of the sin of King David, as also the words of theologians quoted § 3, pp. 59, 60.

⁷ Phillips, l.c. p. 523 seq.

⁸ John of Salisbury, *Polycr.* iv. 7, p. 527, disputes the general assertion: 'Principem non esse legi subjectum.'

⁹ Not quantum ad vim coactivam, but quantum a vim directivam. S. Thom. *Sum.* 1, 2, q. 96, a. 5 ad 3. Pineda, *Com. t. ii.* in Job xxxiv. 11, 18: 'Nisi ipse rex et princeps velit sponte se subdere legi et servare jus, quis potuit illum coercere aut vi adigere?' Here is cited, l. iv. *Cod. i.* 14, de Leg.: 'Digna vox est majestate regnantis, legibus alligatum se principem profiteri. Adeo de auctoritate juris nostra pendet auctoritas, et revera majus imperio est, submittere legibus principatum.'

¹⁰ Cf. Bianchi, t.; l. iii. § 5, n. 4, pp. 501, 502.

¹¹ Thus St. Bernard, Ep. 170, p. 329 seq. to the King of France, to whom he says: 'Horrendum est incidere in manus Dei viventis (Hebr. x. 31) etiam tibi, o rex . . . quis mihi tribuat mori, ne videam regem bonae opinionis, sed spei melioris conari Dei consilio obviare, irritare adversus semetipsum summi judicis iram, pedes patris orphanorum madefacere lacrymis afflictorum, pulsare coelos clamoribus pauperum, sanctorum precibus, justisque querimoniis charissimae sponsae Christi, qua est Ecclesia Dei viventis.' Ep. 220, 221, 226 are still more forcible.

¹² In the constitution of Frederick III. of Denmark of 1665, art. 2.

§ 13.

Although mediæval sovereigns were chiefly engaged in the practice of arms, they were by no means always without scholarly education. Besides the zeal for learning of Charles the Great, of King Alfred, of the Othos and of Frederick II. of Germany and Sicily, not a few princes possessed an education of some extent, as Henry II. of England.¹ It should be noticed that the Norman clergy begged him to cause his son Henry, for the welfare of the kingdom, to be well instructed in the sciences.² St. Bernard's comparison of a foolish king upon his throne³ to an ape on a house-top (looking at that distance like a man) represented the common feeling of the time. From works dedicated to various princes we see that they must have been judges and patrons of

many sciences and have been educated. Thus St. Thomas dedicated his work upon the government of princes to King Henry of Cyprus,⁴ who died 1253, and another similar work⁵ to Adelaide, Duchess of Brabant. Almost beyond numbering are the works which at the request or encouragement of accomplished princes in various countries were composed for them or dedicated to them.⁶ The Church never encouraged or desired their ignorance; on the contrary, she always desired, revered, and prized well-instructed rulers,⁷ and she alone in those days was in a position to impart a higher education. Historical studies were by no means neglected. When Cardinal Cæsar Baronius dedicated the tenth volume of his *Annals* to the Emperor Rudolph II. he reminded him of the recommendation of the Greek Emperor Basil to his son Leo the Wise, diligently to study the history of past times, since much profit might be drawn from them. The wisest priestly tutors of princes, men such as Bossuet and Gerdil, have never forgotten this, and it was only in the last century that classical and historical education was less given to princes, and modern philosophy and polite literature made to preponderate, while religion became a subordinate subject.

¹ Petr. Bles. Ep. 66, p. 195, to Archbishop Walter of Palermo.

² Petr. Bles. Ep. 67, pp. 210-213.

³ 'Simia in tecto rex fatuus in solio sedens.' Bern. de Consid. l. ii. c. vii. n. 15.

⁴ Uccelli, *Intorno a' due Opuscoli di S. Tommaso d' Aquino*, p. 10.

⁵ *De Regimine subditorum* (not *Judæorum*, as the editions have it). Uccelli, l.c. pp. 14-19.

⁶ Later ages are still more rich in such works. The Franciscan John a St. Maria dedicated his treatise upon the Church and the Christian civil commonwealth (Madrid, 1615) to the Spanish king (Balme, *Catholicism and Protestantism*, iii. c. lii. p. 112 seq.; a note gives an abstract of it). The admonitions of the Deacon Agapitus to the Emperor Justinian were translated into various languages by and for rulers (Migne, PP. gr. lxxxvi. p. 1159 seq.; Fabric. *Bibl. gr. viii.* 36 seq. ed. Harl.). Concerning several translations from the Classics which were executed by the direction of Charles V. of France, as well as of many princes and princesses, vide Schwab, Gerson, p. 79. What the Medicis and other Italian princes accomplished for literature is well known.

⁷ An early example is the case of Pope John VIII. and Charles the Bald (Mansi, *Conc. t. xvii.* Append. p. 172).

ESSAY VIII.

POPE GREGORY VII.

It has long prevailed as a custom amongst writers of history to treat the reign of Gregory VII. as the commencement of a new epoch of the Papacy ; but this view is only correct in a partial sense. Earlier pontificates, particularly that of Nicholas I., whose contemporaries held him a second Elias,¹ and that of Benedict VIII., which has never yet been properly appreciated ;² the deeds of Gregory's immediate predecessors, from Leo IX. onwards,³ who were animated by a spirit like his own, and wanted but the opportunity to display a like courage in similar conflicts ; the previous relations of Church and State in the Western countries ;—all these facts show that if Gregory's pontificate is to be considered the commencement of a new epoch, it can only be so as the period of a reform in the relations between the ecclesiastical and civil orders, by the Church making a more extended exercise of the powers which she had long possessed in germ. That the Middle Ages should fulfil their mission it was necessary that the Papacy, obscured by the pernicious influence of Italian nobles and factions during the time of the Othos and of Henry III., should come once more to the light, with powers undiminished and influence unrestrained. The Papacy alone, not the empire—for Charles the Great and his times were gone for ever—could weld rival nations into unity, and protect and diffuse Christian morality and Christian law ; the Papacy alone could guard the Church's dearest attributes of catholicity, liberty, and purity.⁴ Before Gregory ascended the pontifical throne, everything had been prepared for the great conflict in which he was to engage.

Gregory's good intentions with regard to Church reform are generally admitted ;⁵ but he is reproached with having : I.

‘surpassed the limits of the doctrine of Christ, in his claims to authority over princes and people, and with having disturbed the organisation of feudal States in the struggle about investitures;⁶ he is said in this same struggle to have shown a calculating policy ill becoming the Vicar of Christ, and to have committed enormous blunders in his immoderate zeal; and that finally, having involved [?] Germany and Italy in a long and bloody civil war,⁷ the conflict failed in attaining the end he contemplated.’ II. He is said to have treated all princes as vassals of the Holy See;⁸ and, III. to have claimed for the Pope the right to take and dispose of the possessions of private persons, as well as of empires, kingdoms, and principalities.

Let us examine these three charges.

¹ Reginon. Chron. Pertz. Scr. i. 579. Cf. Lammer, P. Nicholas I. und die Byz. Staatskirche, Berlin, 1857.

² Giesebrecht, Gesch. der Deutschen Kaiserzeit, ii. 172: ‘History has hitherto erected no memorial to Benedict VIII., and yet he deserves one before other Popes. However fragmentary may be our sources of information regarding him, they are sufficient to show us the form of a man who recognised it as his mission to provide for the welfare of all Western Christianity, and who feared neither weariness nor exertion to restore to his high office the value it had lost. Benedict is the connecting link between the famous Popes of the time of the Othos, such as Gregory V. and Sylvester II., and their great successors Leo IX., Gregory VII., and Urban II. As this was overlooked, the gradual development of Papal power appeared less connected than it was in reality.’

³ Will, Die Anfänge der Restauration der Kirche im eilften Jahrh. Marburg, 1859, 1864.

⁴ The pious Abbot Gottfried of Vendôme lays stress on these three attributes above all, Tract. de Ord. Episc. (Migne, PP. Lat. clvii. p. 282). Opusc. vi. (ib. p. 222), he says: ‘Ecclesia semper *Catholica, libera et casta* esse debet. . . . Quando vero Ecclesia saeculari potestati subijcitur, quae ante domina erat, ancilla efficitur, et quam Chr. D. dictavit in cruce et quasi propriis manibus de sanguine suo scripsit chartam, amittit. Hanc enim libertatis chartam Christus vindicavit in cruce et suae sponsae Ecclesiae per semetipsum dedit ut homines alios per peccatum factos diaboli servos, ipsa libera liberos et Dei filios faceret et suos, qui sibi diligenter servirent et tamquam bonae matri devoti filii obedirent.’

⁵ Huber, p. 5, who is more moderate here than Janus. Neander and other Protestant writers have fully acknowledged the purity of Gregory’s intentions.

⁶ Was the feudal system a kind of ‘*Noli me tangere*,’ that must not be ‘disturbed’ even in a case of necessity, as a defence against peril, as

even Pichler allows that Gregory's was? Pichler, *Gesch. der Kirchl. Trennung*, i. p. 223.

⁷ This is Janus all over, p. 124.

⁸ Huber, p. 8.

PART I. GREGORY'S CONFLICT WITH HENRY IV.

§ 1. Gregory's admonitions. § 2. The proceedings of Henry. The Synod of Worms. § 3. Excommunication and release from the oath of allegiance. § 4. Henry IV. at Canossa. § 5. The Pope unconnected with the election of the opposition king. § 6. Recognition of Rudolph. The Antipope Clement III. § 7. Occupation of Rome and coronation of the Emperor. § 8. Gregory's fundamental principles. § 9. Justification of his proceedings against Henry. § 10. With reference to the dispensation of the oath of allegiance. § 11. His principles not novel. § 12. St. Peter Damiani. § 13. No unfairness in Gregory.

§ 1.

In the year 1072, Pope Alexander II. had remonstrated with the King of Germany, Henry IV., concerning whose excesses and crimes his most trustworthy contemporaries speak unanimously,¹ and in the spring of 1073 he excommunicated Henry's counsellors, who were addicted to the practice of simony, and summoned the king to give account in Rome.² The Saxons had already declared that a king rendered more famous by his crimes than by his name should not be left on the throne, especially as he had not received the imperial crown.³ Gregory's intentions with regard to Henry were in the beginning anything but hostile. The king was young, and seemed still capable of amendment. Gregory applied to him to confirm his election;⁴ he tried every means of reclaiming him,⁵ and regarded him as 'future emperor.'⁶ The Empress-mother Agnes coöperated in endeavouring to arrange an understanding between them.⁷ Henry IV. wrote, towards the end of August or beginning of September 1073, to Gregory 'words full of sweetness and obedience, such as neither he nor his predecessors had ever before addressed to the Church of Rome:' he called him father, recognised the necessity for interchanging support between the two powers, testified repentance for his misdeeds, promised amendment and obedience, and besought counsel and assistance.⁸ Gregory en-

praised the Empress Agnes for her efforts after peace;¹⁰ his two letters of the 7th December 1074¹¹ also bear witness to a thoroughly friendly relation. Henry had given a favourable reception to the Papal legate, and had promised his coöperation for the extirpation of simony and the abolition of clerical marriage. On the 20th July 1075 the Pope wrote to the king with regard to the appointment to the see of Bamberg, and still hoped from him the fulfilment of his promises.¹²

¹ Lambert von Hersfeld says of him: 'In omnia genera flagitiorum, ruptis omnibus modestiae et temperantiae frenis, praecipitem se dedit.' Further witnesses are Berthold († 1088), Bernold († 1100), Paul of Bernried, Bruno 'de bello Saxonico,' Donizo, Bonizo, Marianus Scotus, Hugo of Flavigny. Anselm of Canterbury regarded Henry IV. as a successor of Nero and Julian ('de azymo et ferment,' Praef. Opp. p. 135). Cf. also Vita S. Anselmi Ep. Lucens. (Pertz, Scr. t. xii.). The witnesses in Henry's favour are of far less consideration; Benzo's Panegyrikus is called by Schlosser a lampoon. Upon the witnesses, cf. Natal. Alex. Hist. Eccl. saec. 11. et 12, dissert. 2, a. 1, t. xiii. p. 523 seq. ed Bing. 1788; Bianchi, Della potestà e della polizia della Chiesa, Rome, 1745, iv. t. i. l. ii. § 1, n. 2, p. 195 seq.

² Bonizo, Lib. ad Amc. p. 810. Ekkehardi, Chron. Univ. a. 1073. Pertz, vi. 200. Jaffé, n. 3470, 3530, pp. 397, 401.

³ Cf. Bossuet, Defens. Declar. Cleri. Gall. P. i. l. iv. c. ix. p. 352, ed. Mogunt, 1788.

⁴ Cf. Hefele, Conc. v. p. 3 seq.

⁵ Reg. Greg. VII. l. i. Ep. 9, ad Gothofr. Duc.; Ep. 11, ad Beatr.; Ep. 19, ad Rodulf. Duc.; Ep. 24, ad Brun. Veron.; Ep. 26, ad Herlemb. Mediol. (Migne, PP. Lat. t. cxlviii. pp. 291 seq. 308, 310. Jaffé, p. 406 seq.).

⁶ L. i. Ep. 20, ad Rainald. Cum. Ep. p. 303. Cf. p. ii. Ep. 26, p. 671.

⁷ L. i. Ep. 21, ad Anselm.; Ep. 85, ad Agnet. Imper.

⁸ Post Greg. l. i. Ep. 29, p. 312, ed. Migne.

⁹ L. i. Ep. 39, p. 320 seq. d.d. 20. Dec. 1073.

¹⁰ L. i. Ep. 85, p. 317.

¹¹ L. ii. Ep. 30, 31, p. 384 seq. Jaffé, n. 3664 seq. p. 415.

¹² L. iii. Ep. 3, p. 430. J. n. 3720, p. 419.

§ 2.

But soon after (11th September 1075) Gregory had to complain of Henry's inconsistency, and earnestly recommend to him the affairs of the diocese of Bamberg, as a reminder of his admonitions.¹ However, Henry's proceedings with regard to the bishoprics became every day more arbitrary and disgraceful;

deavoured to reconcile the Saxon nobles with the king,⁹ and his severity towards the Saxons increased, and the insolence with which his victory over them inspired him caused him to disregard all his former promises. At last Gregory (1075) bitterly complained that he had returned to his friendship for the excommunicated counsellors, and had disowned by his deeds the submission which in letters he had promised to the Church of Rome; he declared at the same time² that he was willing to modify, as far as his conscience allowed, the decrees of the last Synod, which had prohibited the much misused lay-investiture.³ Gregory declared that he wished to be at peace with the king, if the king would keep peace with God, and repair whatever evil he had done, to the injury of the Church and the peril of his own salvation.⁴ The Papal plenipotentiaries were ill-treated at Goslar, at Christmas 1075. Henry, without fear or shame, remained in the company of the excommunicated lords, and would have no reconciliation: he compelled the legates to proceed to the extremity of summoning him to the Synod to be held in Rome in the ensuing Lent, to answer the charges of the crimes imputed to him, and of threatening him with excommunication in case of non-appearance. Up to this point Bossuet discovers nothing in the Pope's conduct inconsistent with the legitimate sphere of his authority.⁵ Hereupon Henry convened, in January 1076, his Synod of Worms, at which the court bishops declared, upon vain pretexts and with much abuse, that the Pope, whom they had acknowledged till then, was deposed.⁶ Thus the unhappy conflict which produced so much injury to the empire began with a crime that threatened to plunge the whole Church into the direst confusion.

¹ L. iii. Ep. 5, 7, pp. 433, 435.

² L. iii. Ep. 10, p. 439. Jaffé, p. 420.

³ Cf. Hefele, *Conc.* v. 34-42.

⁴ L. iii. Ep. 15, ad Wifred. Mediol. p. 446.

⁵ Bossuet, l.c. p. i. l. ii. c. xxx. p. 241.

⁶ Bernoldi, *Chron.* (Pertz, vii. 432). Lambert, *Ann. a.* 1076, p. 241 seq. Paul. Bernried, *Vita Greg.* c. vi. n. 49 seq. Migne, l.c. p. 63 seq. Pertz, *Leg.* ii. p. 44.

§ 3.

At the Synod held the following month Gregory received the sentence of deposition which Henry had the audacity to send him; whereupon, with the consent of 100 bishops,¹ he excommunicated Henry, and released his subjects from their oath of allegiance, at the same time forbidding the king to exercise his right of government.² This was neither a deposition nor a deprivation; it was merely a suspension, and was, according to the usage of the time, a necessary consequence of the excommunication; for none of the faithful could hold intercourse with an excommunicated person, and no one being excommunicated was capable of governing as long as he remained under the ban. It was not an irrevocable sentence, but a measure to endure until the required satisfaction was performed;³ if, however, the obstinacy continued for a year, the sentence was definitive. The assembly of princes at Tribur and Henry's advocate with the Pope admitted that he would lose his kingdom if he remained under the ban for a year and a day.⁴ It was Gregory's object to move the king to repent, and perform satisfaction;⁵ he reminded the German princes, after the sentence, that he had pronounced it not from earthly motives, but in accordance with his duty; and if Henry returned to God they might receive him in a friendly spirit, and let mercy, not justice, prevail.⁶ He only desired that Henry should dismiss his bad counsellors, take worthy men in their place, repair the evil that had been done, seriously amend his life, and no longer treat the Church like a slave. Henry's partisans stoutly denied the legality of the excommunication;⁷ for they felt what the others expressed,⁸ that a prince who no longer belonged to the Church could not conduct the government of a Christian people. Gregory laid most stress upon the excommunication,⁹ considering the rest of the sentence merely the consequence of this. He reserved it to himself to absolve from excommunication: otherwise timid, timeserving, or unfaithful bishops might have absolved the king, without requiring due satisfaction.¹⁰

¹ 'Cunctis qui convenerant, episcopis id fieri decernentibus,' says Lambert. The biography of Anselm of Lucca (c. iii.) has: 'Omnis illa

synodus jure indignata anathema illi conclamat. 'Omnibus acclamantibus definitum est,' says Paul Bernried, c. vii. n. 62, p. 74.

² 'Totius regni Teutonicorum et Italiae gubernacula contradico.' Mansi, xx. 467.

³ Natal. Alex. H. E. saec. 11. diss. 2, art. 4. Bianchi, t. i. l. i. § 2, n. 9-11, pp. 200-202. Döllinger, Lehrb. d. Kirchengeschichte, ii. P. 218. Phillips, K.R. iii. § 125, p. 158 seq. Hefele, v. 83. Gosselin, ii. c. ii. a. 1, p. 120 seq.

⁴ Lambert, a. 1076: 'Quod si ante diem anniversarium excommunicationis suae, suo praesertim vitio, excommunicatione non absolvatur, absque retractatione in perpetuum causa ceciderit, nec *legibus* deinceps regnum repetere possit, quod *legibus* ultra administrare, annuam passus excommunicationem, non possit.' Paul Bernr. c. lxxxv: 'Quia *juxta legem Teutonicorum* se praediis et beneficiis privandos esse non dubitabant, si sub excommunicatione integrum annum permanerent.'

⁵ Reg. l. iv. Ep. 3, ad univ. fidel. p. 451.

⁶ Reg. l. iv. Ep. 3, ad German. p. 457.

⁷ In Gregory's letter to Hermann of Metz, l. iv. Ep. 2, p. 454, he treats of the objection: 'Regem non oportet excommunicari.' In the letter Audivimus (Ep. P. ii. n. 26, p. 671; Mansi, xx. 377) he answers the question: 'Utrum (Henr.) juste sit excommunicatus.' Bernold of Constance, Apolog. super Excom. Greg. VII. (Migne, l.c. p. 1067 seq.), contests the point with those who took no heed of the excommunication, and, Op. de Vitanda Excom. Communione (ib. p. 1181 seq.), those who considered intercourse with excommunicated persons allowable.

⁸ Stephen of Halberstadt wrote thus to Walram (Migne, l.c. p. 1446): 'Pro quibus nefandis malis ab apostolica Sede excommunicatus (Henr.) nec regnum nec potestatem aliquam super nos, qui Catholici sumus, poterit obtinere.'

⁹ L. iv. Ep. 2, p. 454, Henry is called: 'excommunicatus rex, si fas est dici rex;' it is said of him: 'excommunicationem incurrere non timuit;' Ep. 3, ad Germ. p. 456: 'judicio Spiritus Sancti excommunicatis,' then 'anathematis vinculo alligatus et a regia dignitate depositus.' Cf. Ep. 6, ad Leod. Ep. p. 460; Ep. 8, ad Episc. Tusc. p. 462; Ep. 22, ad Hugon. Ep. Diens. p. 476. Also P. ii. Ep. 25, p. 670 (Mansi, xx. 375), ad Henric. Ep. Trid.: 'Promittimus, festum B. Petri non prius transeundum, quam in cunctorum notitia certissime clareat, illum justissime esse excommunicatum.'

¹⁰ L. iv. Ep. 2, p. 455; Ep. 3, p. 457.

§ 4.

Henry wished to take vengeance on the Pope; but he soon saw himself abandoned, deprived of all consideration, and humiliated before the assembly of princes at Tribur. To escape the loss of his throne, he submitted to the prescribed conditions. The princes, weary of his misgovernment, agreed that his case should be decided at a diet to be held at Augsburg on the 2d

February 1077. The Pope was invited to join this diet, which was to be held under his direction. On his journey towards Germany Gregory learned that Henry had entered Italy.¹ It was his intention to forestall the Pope, and procure absolution before the dreaded meeting at Augsburg.² His appearance before Canossa somewhat perplexed the Pope; for Henry, by taking this journey, had broken the condition imposed on him, of awaiting the Pope at Augsburg; and Gregory neither wished nor dared to pass judgment upon an accused person at a distance from his accusers. The penance which Henry performed at Canossa was in no way imposed upon him by the Pope, but was freely undertaken by Henry, as a proof of his amended dispositions; ³ it was of a character not uncommon in those days, and was not considered degrading. As Henry declared himself ready to make all necessary promises, besides freely undertaking this penance, Gregory could not spurn him in his seeming penitence, and he granted him absolution, with reservations, however, in case of relapse. The Pope communicated these proceedings to the German princes, who must have felt some degree of displeasure with him; and he also acquainted them with the conditions which Henry had accepted,⁴ one of those most insisted upon being that Henry should appear before a diet to answer the charges brought against him by the princes. The Pope had no choice in this: he might pardon Henry's offences against himself and against the Church, but he could not compel the princes to return to their obedience to Henry.⁵ They had already meditated electing another king, A.D. 1076.⁶

¹ Hefele, l.c. p. 77 seq.

² Lambert: 'Rex certo sciens omnem suam in eo verti salutem, si ante anniversarium diem excommunicationis absolveretur . . . optimum factu judicavit, ut Romano Pontifici in Italiam occurreret.'

³ On these and other questions see Floto, Henry IV. vol. ii. p. 129 seq.; and Hefele, p. 84 seq.

⁴ L. iv. Ep. 12, ad German. pp. 465 467.

⁵ Hefele, p. 87.

⁶ L. iv. Ep. 7, p. 461, ad Henr. Ard. et Med.

§ 5.

In spite of all this, on the 28th January 1377 the fickle king broke the covenant he had made at Canossa, and entered into a close alliance with the evil-doing bishops of Lombardy. He barred the passes into Germany, thus preventing the Pope from attending the proposed meeting. Contrary to Gregory's wish,¹ the German princes elected, in March 1077, Duke Rudolph of Swabia to be their king; but although Rudolph had been all submission whilst Henry was violating treaties and detaining a Papal legate in prison, the Pope did not at once declare himself against Henry and in favour of Rudolph; neither did he wish to excommunicate the new king before giving him and his electors a hearing. He still hoped, in council with the German princes, to arrive at a settlement of the dispute, and thus avert the great evils impending.² Rudolph thought otherwise, and sought to end the matter by the sword, A.D. 1078. This civil war can no more be laid to Gregory's charge than the one before it, which was occasioned by Henry's oppression of the Saxons. He had no part in Rudolph's election, and the flame was kindled by Henry's faithless violation of treaties.³ Nay, Gregory was bitterly reproached by Rudolph's followers for not declaring himself positively against Henry, and for still clinging to the hope of his conversion.⁴

¹ Cf. l. ix. Ep. 28, *Notum facimus*, p. 629.

² l. iv. Ep. 23, 24, p. 478 seq.; l. v. Ep. 7, 15, 16, p. 492 seq. 500 seq.; l. vi. Ep. 1, 4, p. 509, 514. The reproach of inconsistency which has been made against the Pope (*Defensio Declar. r. i. l. i. § 1, c. ix. pp. 102, 103*) is refuted if the deeds and proceedings are correctly set forth.

³ Hefele, p. 99.

⁴ Bruno (*Pertz, vii. 372 seq.*). *Mansi, xx. 386. Migne, l.c. p. 745 seq.*

§ 6.

Envoys were despatched by both kings to the Synods held in Rome in 1078 and 1079, but they needed more instructions and fuller powers than they had received; the Papal legates in Germany were endeavouring to keep peace between the parties. On the 1st of October 1079, Gregory declared to the followers

of Rudolph that it was the more unjustifiable of them to accuse him of an inconsiderate policy, since no one had more than he to suffer from Henry; that he had sided with neither; that if his legates had acted contrary to their instructions he deeply regretted it, but could not on that account depart from the path of justice.¹ Not till the 7th March 1080 did he renew the ecclesiastical sentence upon Henry, who had been guilty of fresh crimes, and at the same time he acknowledged Rudolph as king.² Henry's followers then declared the Pope deposed, and on the 25th June elected as antipope,³ under the name of Clement III., the simoniacal Archbishop Guibert of Ravenna, who had been often excommunicated. After Rudolph's death, on the 15th October 1080, Henry proceeded to Italy to install the antipope. Gregory's distress was at this moment extreme; his only hope of earthly assistance was from Robert Guiscard, who had not shown himself hitherto to be very trustworthy. 'Truly astonishing,' writes Hefele, 'is the courage with which Gregory, whilst engaged in a struggle for his own existence, keeps his attention upon the needs of the Church in all parts of the world, not losing sight of the necessities even of private individuals and convents; and equally astonishing is the unruffled calm and firmness which he maintained in the midst of the greatest perils, without deviating one finger's breadth from his principles. His own dire need never prevented him for an instant from entering into everything with apostolic dignity and power, encountering even the great and mighty ones of the earth with admonitions and chastisements, when sacred things or the duty attached to his office appeared to require it.'⁴

¹ L. vii. Ep. 3, p. 547. J. n. 3867, p. 432 seq.

² Mansi, xx. 531-534.

³ *Ecceh. Chron. h.a. Pertz, Ser. vi. 203. Decret. Brixin. ib. Leg. ii. p. 51.*

⁴ Hefele, p. 146.

§ 7.

In 1081, Gregory wrote to Bishop Altmann of Passau and Abbot William of Hirsau,¹ that for himself he did not fear Henry's passage of the Alps, but that he desired to secure Ger-

man support for the loyal Countess Mathilda; he counselled the Germans not to be in too great haste to elect a king, lest they should make an unsuitable choice; the one upon whom their election fell should take an oath of affording the necessary security to the Church. He charged the legate Altmann to receive in a friendly spirit any of Henry's partisans who might return to him. When Henry had advanced as far as Ravenna, Gregory declared that he would rather sacrifice his life than forsake the path of justice. If he had so willed, he might have obtained great concessions from the king.² In May, Henry reached Rome; but the town closed its gates at his approach. He caused the antipope to be crowned in a tent, and after devastating the surrounding country returned to Lombardy. In Germany, Count Hermann of Luxemburg was crowned as opposition king on the 26th December 1081, but he wanted the power and foresight to take advantage of the weakness which at that time existed amongst the partisans of Henry. The Pope remained firm when Henry, for the second time, and again a third time, advanced against Rome.³ On the 3d June 1083, Henry seized the Leonine city with the church of St. Peter, and then asked Gregory to crown him, saying he would abandon the antipope. Gregory, however, maintained that he must first of all perform satisfaction, and thus obtain absolution.⁴ At Easter in 1084, Henry was crowned emperor in St. Peter's by the antipope, but was obliged to retreat before the advancing force of Duke Robert, who came to the assistance of the Pope, besieged in the castle of St. Angelo. Gregory then left Rome, and died at Salerno on the 25th of May 1085.⁵

¹ L. ix. Ep. 3, p. 667 seq.; Ep. 10, p. 674 seq. J. pp. 437, 438.

² L. ix. Ep. 11, p. 615, ad Desid. Abbat. J. n. 3933, p. 438.

³ Hefele, pp. 150, 151 seq.

⁴ Bonizo ap. Oefele, *Rer. boic. Scr.* ii. 818.

⁵ Hefele, p. 156 seq.

§ 8.

Gregory frequently expressed his guiding principles in his letters and encyclicals. In one of the latter he says: 'By this we believe that the love of God is infused into our hearts, that we

wish for one thing, long for one thing, and strive for one end. Our one wish is that the wicked may be enlightened and may return to their Creator. Our one longing is to see Holy Church, now trodden under foot, in confusion, and divided into various parties, restored to her ancient beauty and strength. Our one endeavour and end is that God may reign in us, and that we, with our brethren and those who persecute us, may become worthy to enter into eternal life.¹ In another place he says: 'The princes of the people and the princes of the priests come out with great multitudes against Christ the Son of the Almighty God, and against His Apostle Peter, to destroy the Christian religion and spread the perversion of heresy. But, by the grace of God, neither threats, nor persuasion, nor promises of earthly honour will avail to withdraw from Him to their impiety those who trust in the Lord. They have entered into a league against us, because we cannot be silent when the Church is in danger, and because we resist those who take no shame in reducing the Bride of Christ to slavery. A woman, how poor soever, may lawfully take a husband according to the laws of her country and her own wish; but the will of wicked men and their horrid devices would prevent Holy Church, who is the Bride of God and our Mother, from adhering lawfully, according to God's laws and her own desire, to her Bridegroom upon earth. We cannot suffer that heretics, adulterers, and usurpers should stand in the place of fathers to the sons of the Church, and should brand them with the dishonour of adultery.'² Gregory was well aware how many enemies he made by his zeal for justice;³ he felt the whole weight of the burden that was laid upon him;⁴ he found so little support, because almost every one 'sought their own things, not the things that are Christ's.'⁵ 'We may not,' he writes,⁶ 'disregard the law of God from respect to any one, nor leave the straight path for man's favour; as the Apostle says, "If I yet pleased men, I should not be the servant of Christ"' (Gal. i. 10). In his decrees against the incontinence of the clergy, against simony, and against lay-investiture,⁷ which at that time wrought so much mischief in the Church, he kept to the earlier Church legislation and the decrees of his predecessors down to Nicholas

II. and Alexander II., and could truly say : ' Whilst we observe or defend the statutes of the holy Fathers, we bring forward in our judgments upon ecclesiastical affairs nothing new or imagined by ourselves, but we follow and perform what they have pronounced by the Holy Ghost.'⁸ Gregory's decrees are supported by a succession of previous canons,⁹ and he only increased the severity of some of them to suit the exigences of the time. With all his burning zeal for the purification of the clergy, and in the midst of his great struggle with faithless bishops, perfidious nobles, and evil of all kinds, he showed a tender sympathy for all the woes of Christendom, even for Greeks and Orientals.¹⁰

¹ L. ix. Ep. 21, ad univ. fideles, p. 622.

² P. ii. Ep. 64, p. 708. Mansi, xx. 628.

³ L. ix. Ep. 2, p. 604.

⁴ L. vii. Ep. 8, ad Monach. Cluniac. p. 552 : ' Nos quoque tanti culminis onus quod ultra vires est, sustinentes, ejusmodi solatio sublato, cum neminem aut vix paucos suffragatores similes inveniamus, quanto mentis angore teneamur liquido quidem potestis et ipsi perpendere.'

⁵ L. i. Ep. 9, ad Gottofr. Duc. ; Ep. 42, ad Sicard. Apul. p. 322 ; l. ii. Ep. 49, ad Hug. Abb. p. 460 ; Ep. 77, ad Gebh. Salisburg. p. 428 ; P. ii. Ep. 1, ad Lanfranc, p. 643 (Mansi, xx. 274).

⁶ L. i. Ep. 9, ad Gottofr. p. 291.

⁷ Upon investiture, cf. Cardinal Vincent Petra, Comment in Constit. Apostol. Bull. Venet. 1741, f. t. i. ; Const. Callisti II. § 1, p. 235 seq. ; and Card. Humbert, advers. Simon. (Martene, Thes. nov. Anecd. t. v.). This kind of investiture some held to be schismatical, some to be heretical (Ivo Carnot, Ep. 235, 238 ; Joh. Ludgun. Ep. ad Ivon. ap. Labbé, xii. 1190). Gottfried of Vendôme distinguishes a double investiture : ' Alia est investitura, quae episcopum perficit, alia vero quae episcopum pascit. Illa ex divino jure habetur, ista ex jure humano.' (Opusc. vi. ; Migne, clvii. p. 219).

⁸ L. iv. Ep. 6, ad Henric. Ep. Leod. p. 460.

⁹ Gregory (l. iv. Ep. 22, ad Hugon. Diens.) quotes the can. 22, Conc. viii. oecum. (869). Bernold in his Apology points out the earlier authorities (Migne, l.c. p. 753 seq.). Vide also Hefele, Conc. iv. pp. 759, 791 ; v. 21, 40 seq. In the ninth century, Florus (de Elect. Episc. c. iv. Migne, cxix. p. 13) wrote : ' S. ordinatio nequaquam regis potentatu, sed solo Dei nutu et Ecclesiae fidelium consensu cuique conferri potest. Quoniam episcopatus non est munus humanum, sed S. Spiritus donum.'

¹⁰ L. i. Ep. 49, p. 329 ; l. ii. Ep. 37, p. 390 ; l. viii. Ep. 1, p. 571 seq.

§ 9.

Gregory VII. did not fail to explain and justify his conduct in reference to Henry IV. He did this especially in two letters

to Bishop Hermann of Metz (in 1076 and 1081). This prelate was not amongst those who 'inquired of the Pope by what right he could depose the king and release his subjects from their oath of allegiance.' He merely begged to know what answer was to be given to those who asserted that kings could not be excommunicated, and that the oath of allegiance could never be dispensed. In his first letter¹ Gregory dwells upon the subject of Henry's first excommunication, touching also upon its results; the second letter treats of the excommunication and the release from the oath of allegiance.² Concerning the excommunication Gregory appeals (1) to the supreme power conferred upon St. Peter and his successors, which extends over all the faithful without exception: 'Whosoever denies the power of the Church to bind him denies her power to loose him, and in denying this separates himself from Christ.'³ After quoting 1 Cor. vi. 3,⁴ Gregory says: 'If the Holy See, by the power granted her by God, judges spiritual things, why not temporal things also?' but the context shows that he is speaking of lay people, in so far as they are or should be members of Christ.⁵ He will not have it said that kings are beyond the jurisdiction of the Church, nor that the civil power is above the spiritual, for they are different in their origin and aim, and Pope Gelasius inculcated obedience to the Holy See on the Emperor Anastasius.⁶ (2) Pope Julius says that the Roman Church can open and close the gates of heaven to whom she will. These and similar expressions were in use long before the time of Gregory VII.⁷ (3) Gregory appeals also to a passage in a letter from Clement to James, translated from the Greek by Rufinus, which was very ancient and much used;⁸ (4) to the conduct of St. Ambrose towards Theodosius the Great;⁹ and (5) to the measures of Pope Innocent I. against the Emperor Arcadius concerning St. John Chrysostom.¹⁰ Besides these examples he refers to the penal authority of the Apostles (2 Cor. x. 6; 1 Cor. v. 3-11). Although apocryphal as well as genuine documents are here quoted, all were in use long before the time of Gregory VII., and their genuineness had then never been disputed. The incorrectness of the documents and examples he selected need not at all affect the justice of his

judgment.¹¹ This must be decided by the facts of history and the laws then in force.

¹ L. iv. Ep. 2, p. 454.

² L. viii. Ep. 21, p. 594: 'Quod . . . postulasti te quasi nostris scriptis juvari ac praemuniri contra illorum insaniam, qui nefando ore garrunt, auctoritatem S. et Ap. Sedis non potuisse regem Henricum, hominem Christianae legis contemptorem, ecclesiarum videl. et imperii destructorem atque haereticorum auctorem et consentaneum, excommunicare nec quemquam a sacramento fidelitatis ejus absolvere.'

³ L. iv. Ep. 2, pp. 454, 455; l. viii. Ep. 21, pp. 594, 595.

⁴ 'Know you not that we shall judge angels? How much more things of this world' (1 Cor. vi. 3). This passage, in which St. Paul admonishes the faithful not to bring their causes before heathen judges, but to suffer their disputes to be decided by the 'saints' in the Church, was adduced even in patristic times in favour of ecclesiastical jurisdiction. Cf. Thomassin, de Vet. et Nova Eccl. Disciplina, P. ii. l. iii. c. ci. cii. J. a. Bennettis, Vindiciae Privileg. S. Petri, t. vi. pp. 509-516.

⁵ These words (l. iv. Ep. 2, p. 455) follow immediately: '*Reges quidem et principes hujus saeculi qui honorem suum et lucra temporalia justitiae Dei praeponunt ejusque honorem negligendo proprium quaerunt, cujus sint membra cuive adhaereant, vestra non ignorat charitas. . . . Si ergo spirituales viri cum oportet judicantur, cur non saeculares amplius de suis pravis actibus constringunt?*' The following passage (l. viii. Ep. 21) is to be interpreted in the same way: '*Habet enim (Eccl. Rom.) potestatem singulari privilegio concessam aperire et claudere januas regni coelestis quibus voluerit. Cui ergo aperiendi claudendique coeli data potestas est, de terra judicare non licet? Absit. Num retinetis quod ait beatissimus Paulus Ap.: Nescitis quia angelos judicabimus? Quanto magis saecularia?*' Cf. l. iv. Ep. 24, p. 480; Paul Bernried, n. 86, p. 85. Bernold (Apologet. Rat. c. ix. and de Solut. Juram. c. iv. Migne, l.c. pp. 1223, 1253) understands by 'saecularia' the saeculares principes utpote membra Ecclesiae. Here as elsewhere he expresses Gregory's idea with great exactness.

⁶ L. viii. Ep. 21, p. 595, where, in treating of the respect of the Fathers for the Roman Church, he uses what are in fact the words of St. Gelasius: '*Etsi cunctis generaliter sacerdotibus,*' &c. (Gelas. Ep. 8, ad Anast.; Mansi, viii. 30 seq.; Jaffé, n. 387); but in l. iv. Ep. 2, this was left out, probably through the omission of the rough draughtsman, or even earlier of the clerk to whom it was dictated; and Pseudo-Ambrose was therefore mentioned (Ambrosius in suo Pastoralis, as c. x. d. 96, § ult. Honor.). The falsification asserted by Janus, p. 115, is by no means proved. Bernold, de Solut. Jur. c. iv. (l.c. p. 1253), gives the text in Gratian up to § 1 more accurately. In l. viii. Ep. 21, pp. 597, 598, the passage from Pseudo-Ambrose follows in another order.

⁷ In Anti-Janus, p. 137, No. 81, I quoted the words of Pope Boniface I. which are quite analogous to the passage of Julius in Pseudo-Isidore, Ep. c. xi. p. 464, ed. Hirsch, which, according to Janus, p. 116, was one of the pillars of the foundation 'on which Gregory VII. built his notions of dominion.' The letter of Pope Julius here in question was quoted in France

in the ninth century (Hincmar, Laudun. Ep. ad Hincmar; Rem. Opp. Hincm. ii. 613, ed. Sirm.; Hincmar, Op. ad Laudun. c. xx.). St. Bernard agrees, Ep. 42, 'Si quis tentat excipere, conatur decipere,' that no one can be excepted from the words of St. Matt. xiv. 18, 19.

⁸ We find the words in Greg. VII. l. viii. Ep. 21, p. 596. They are briefly mentioned, l. ii. Ep. 2. See Ep. ad Jacob. c. xviii. (Migne, PP. gr. ii: p. 54), used by the Council of Metz, 888, c. 12, and John VIII. Ep. 234. The letter was especially used in old times. Cf. note in Ep. cit. Cotel. PP. Apost. i. 484.

⁹ L. viii. Ep. 21, p. 597; l. iv. Ep. 2, p. 454. The fact is treated of by Soz, H. E. vii. 25; Theod. H. E. v. 17; the Hist. Tripart; and also the later Greek chroniclers, e.g. George Hamart, Chron. pp. 476, 477, ed. Petrop.

¹⁰ Baron. a. 407, n. 22, 23, ex Glyca (Ann. pp. 480, 482). Nicephoro Call. (H. E. xiii. 34). Gennad. (Georg. Alex. in Vita Chyrs. Cf. Phot. Bibl. cod. 96). Pallad. Vita Chyrs. c. xxiv. xxviii. xxxi. Jaffé, Reg. p. 932 (the genuine letters, ib. pp. 23, 24).

¹¹ Bianchi, t. i. l. ii. § 11, n. 2, p. 290.

§ 10.

Concerning the release from the oath of allegiance and the deposition of sovereigns, Gregory appeals, in his own justification, (1) to the action of Pope Zacharias against Chilperic in favour of Pipin.¹ This example was very telling; because the Frankish annalists² throughout favour his view, and show that however these facts might be explained,³ at least he was not the first to ascribe Pipin's elevation to the authority of the Pope. He appeals (2) to the privileges granted by Gregory the Great to a xenodochium (hospital), a convent, and the church of St. Martin in Autun, to which was appended the decree that any one injuring these institutions, whether he were king, priest, or judge, should forfeit his authority. The defenders of *Janus* (p. 6) briefly dispose of these privileges by calling them spurious. They disregard the fact that the only reason *Janus* alleges for this (p. 114, No. 53), viz. Launoi's assertion on the subject, has been long since refuted,⁴ like the remarks of Blondell elsewhere appealed to.⁵ The authenticity⁶ of these privileges is vouched for by the most ancient and best manuscripts, and has been placed beyond dispute by learned French critics.⁷ They were granted at the request of Queen Brunhilda, and all was arranged according to her wish. We find analogous formulas in the Councils, for instance, in the fifth of Orleans, A.D.

549, concerning a hospital founded by King Childebert in Lyons.⁸ Hence most Gallican theologians have made objection to these 'privileges' on other grounds, *i.e.* that the clause is to be taken in a distributive sense, not cumulative; and that for ecclesiastics deposition is to be understood, and for laics excommunication;⁹ or they would make it out to be rather a curse than a judicial sentence;¹⁰ they never ventured to assert them to be entire forgeries. According to the views universal in his age it was perfectly open to Gregory to appeal, as he frequently did, to divine and human laws.¹¹ He was forced to inflict the ban until amendment had begun, and he could declare that the penalties attached thereto by public law had been incurred. It was the opinion of his contemporaries that, under certain conditions, the oath of allegiance ceased to bind, and that it could be dispensed by the Pope,¹² who could also depose sovereigns in certain circumstances.¹³ With regard to the withdrawal of obedience from an excommunicated prince, it would have been easy for Gregory to appeal to the proceedings of Gregory II. against the iconoclastic Emperor Leo II., as related with much admiration by the Greek chroniclers. The Pope in this case freed Italy from its obedience to an heretical emperor, forbade that tribute should be paid him, and joined in alliance with the Franks.¹⁴ Even if the Greek accounts of the affair are open to the charge of inaccuracy,¹⁵ they must in the eleventh century have satisfied all the requirements of an authentic historical document, and testify at least the conviction of their authors, who speak throughout in praise of the proceedings they describe.

¹ Vide for details: Bianchi, *l.c.* n. 9 seq. pp. 304-327; Charlas, *de Libert. Gallic.* l. vii. c. x. p. 39 seq. t. ii. ed. 1720; Bennettis, *Privil. S. Petri*, P. ii. t. vi. p. 384 seq.; Mamachi, *Orig. et Ant.* t. iv. 224-239. Also Gosselin, t. i. sect. 2, c. ii. a. 2. Doc. No. vii.

² We find there: '*Secundum Romani Pontificis sanctionem rex Francorum appellatus est ad hujus dignitatem honoris unctus sacra unctione*' (Pipinus sc.; *Annal. Lauresh.*). '*Zacharias Papa mandavit, ut melius esset illum regem vocari, qui potestatem haberet. . . . Per auctoritatem ergo apostolicam jussit Pipinum regem fieri*' (*Ann. Loissel*). '*Zacharias P. ex auctoritate S. Petri Apostoli mandat populo Francorum, ut Pipinus, qui potestate regia utebatur, nominis quoque dignitate frueretur*' (*Annal.*

Franc. a Pithoeo ed.). 'Per auctoritatem et imperium s. rec. D. Zachariae P. et unctionem s. chrismatis in regni solio sublimatus' (Auct. an. ap. Mabill. de re Diplom. l. v. tab. 22, p. 384, ed. 1709). Cf. note in Alex. Natal. H. E. saec. 8, diss. 2, t. xi. pp. 192, 193.

³ Many more modern defenders of the civil power have said that Zacharias did not depose Chilperic, but merely acquiesced in the deposition voted by the nobles of the kingdom. Glossa ad c. 3, c. xv. q. 6. Auctor. quaest. in utramque partem disput. (erroneously styled Aegid. Rom.), a. 4 (Goldast. Monarch. ii. 106, ed. Francof.). Somn. Viridar. c. lxxiii. (ib. i. 83). Lupold, de Bebenb. c. xii. p. 388, ed. Schard. de Jurisd. Some think that the fact is not sufficient to prove the 'jus' (Joh. de Paris, de Pot. Reg. et Pap. c. xv. xvi.; Natal. Alex. H. E. saec. 13 et 14, dissert. 9, a. 2, n. 8, p. 823 seq.).

⁴ Vide Anti-Janus, p. 110, No. 72.

⁵ Friedberg, de finium inter Eccles. et Civitatem regundorum judicio, Lips. 1861, p. 26, note 1.

⁶ Editor. Maurin. in Greg. M. l. xiii. Ep. 8, 9, 10, t. ii. p. 1221 seq. Mansi, x. p. 348 seq. Jaffé, Reg. n. 1492-1494, p. 149 seq., quotes these documents without hesitation.

⁷ Such as Simond, Duchesne, Cellier (Hist. des Auteurs, t. xvii. p. 317), Gosselin (op. cit. t. ii. c. ii. a. 2).

⁸ C. 15 (Hefele, Conc. iii. p. 4). A 'privilegium' of Pope John VIII. (872-882) pro conventu Pultariensi, held to be genuine by Innocent III. and inserted word for word by him, 1206, in his Constitution, l. ix. Ep. 44 (Migne, ccxv. pp. 851-854), contains quite a similar formula; it is in strict accordance with the time, and offers no insoluble difficulties. Vide also a diploma of Leo IV. renewed in 1207 (ib. l. x. Ep. 142, p. 1241 seq.).

⁹ Defens. Declar. Cleri Gall. P. i. l. ii. c. ix. p. 208 seq.

¹⁰ Natal. Alex. &c. Cf. Thomassin, de Vet. et Nov. Eccl. Discipl. P. i. l. iii. c. xxx. n. 3. Against these objections, cf. Bianchi, t. i. l. ii. § 11, n. 6 seq. pp. 296-303.

¹¹ P. ii. Ep. 26, ad Germ. p. 672: 'Propter quae (horrenda scelera) non solum excommunicari usque ad dignam satisfactionem, sed etiam ab omni honore regni cum absque omni spe recuperationis debere destitui, *divinarum et humanarum legum testatur et jubet auctoritas.*'

¹² Bernold, Apolog. Rat. c. xiv. p. 1226 seq. Paul Bernried, pp. 85, 86. Gebhard. Salisb. Ep. ad Herm. Metens. ib. p. 859 seq.

¹³ Bernold, de Solut. Juram. c. iv. p. 1253, ed. Migne.

¹⁴ Georg. Harmartol. Chron. l. iv. c. cxxlviii. n. 17, p. 636, ed. Muralt. Theophanes, a.m. 6221, p. 343 (Migne, PP. gr. t. cviii. p. 825; *ibid.* p. 1364, the Latin translation of Anastasius). Zonar. Cedren. Glycas. &c. in Bianchi, l.c. § 16, n. 1 seq. p. 379 seq. The chronology of the two Pagi is certainly incorrect (Hefele, iii. p. 348); also Bianchi, n. 7, p. 388 seq., showed it to be so.

¹⁵ Hefele, iii. p. 354 seq. Many arguments are brought for the Greek accounts by Bianchi, l.c. pp. 391-415. Orsi, Del dominio temporale della Chiesa, c. i. p. 1 seq. ed. 1742.

§ 11.

But above all, Gregory¹ appeals to the words which Christ spoke to the Apostles, 'He that heareth you heareth Me, and he that despiseth you despiseth Me' (Luke x. 16). He remembered the words of Gregory the Great, who wrote:² 'He should not be numbered amongst kings who rather destroys than governs his kingdom, and alienates from Christ all whom he can induce to partake of his perversity. Incited by the lust of dishonourable gain, he seeks to lead the Bride of Christ into captivity, and with wicked daring to bring to naught the mystery of the Passion of the Lord. For transgressing the bounds of the royal authority it is his endeavour to reduce the Church, whom our Lord redeemed with His blood and willed to be free, into the position of a servant.³ How much better were it not for him to acknowledge himself her servant, and follow the example of God-fearing princes in showing towards her respect and obedience! But so insolent is he, that the head of all Churches, the Roman Church, he considers his property, and over the mistress of nations (Lam. i. 1) usurps the right of earthly power. This was forbidden by Him, who committed the Church specially to St. Peter.' Gregory VII. never lost sight of the teaching of the Fathers nor of ancient traditions. The application of his principles was new, not the principles themselves; and it was his acts, not his principles, which created in many so much astonishment.⁴

¹ L. ii. Ep. 73, p. 424; l. iii. 10, ad Henr. p. 440; P. ii. Ep. 59, p. 702; Ep. 34, p. 681; Ep. 8, p. 651; l. ii. Ep. 40, p. 393, ad univ. fid.

² Greg. M. Comment. in Psalm. poenitent. t. iii. P. v. Opp. ed. Maurin. p. 518; cf. p. 532. The genuineness of these Commentaries (see *ib.* p. 464) has been much questioned, and many have ascribed its authorship to Gregory VII. himself; but if they are not the work of Gregory I. they were certainly not composed by Gregory VII. It is a moot point who is the emperor or king pointed at by the words: 'Iste, qui hoc tempore Ecclesiam persequitur.' Marc. Anton. de Dominis de Republ. Eccl. c. xi. n. 31, thinks of Justin II.; Baronius, a. 595, n. 19, of Mauricius; Bianchi, t. i. l. i. c. i. § 7, p. 68 seq. of Antharis, King of the Lombards. The Maurists favour the second and third hypotheses. For a detailed defence of their genuineness, vide Bianchi, t. iii. l. i. c. i. § 7, n. 20 seq. pp. 70-76.

³ *Ecclesiam quippe, quam . . . Salvator noster voluit esse liberam, hanc iste potestatis regiae jura transcendens facere conatur ancillam.*

⁴ Otto Fris. Chron. vi. 35; de Gest. Frid. I. l. i. c. 1. Bossuet, l. i. sect. l. c. vii. p. 98, ed. Mog. 1788, tries to make more of it than the matter warrants, although Otto, according to his position, was not entirely impartial. Bianchi, t. i. l. ii. § 7, n. 6 seq. p. 257 seq.

§ 12.

It has been emphatically asserted that Gregory was opposed in his view by his friend Cardinal Peter Damiani, and that the latter spoke of the harmony of the spiritual and temporal power, not of the subordination of the temporal to the spiritual; also that not both swords, but only one, the spiritual sword, was held by the Church. But we must remember, first, that in the sense of the Middle Ages the harmony of the two powers does not entirely exclude the subjection of the State to the Church, as we shall show elsewhere more in detail; and, secondly, that Gregory very frequently speaks of this harmony of the two powers, and presupposes it as the foundation of his view;¹ thirdly, that as more modern authors have done,² Gregory treats regularly only of a spiritual sword, that of Peter.³ Earlier the sword of Constantine had been ascribed to kings, and the sword of Peter to bishops.⁴ Henry IV. reproached Gregory for pretending to temporal as well as spiritual power; whereas St. Luke xxii. 38 speaks of two distinct swords, the spiritual and civil.⁵ This distinction is not recognised by later writers, who say that a double sword belongs to the Church (that is, Christendom, for all Christian kingdoms were then in the Church)⁶—the spiritual sword, *i.e.* the Word of God (Ephes. vi. 17), and the civil sword; the former to be drawn *by* the Church, the latter *for* the Church, for the civil sword should serve the kingdom of God as well as earthly kingdoms.⁷ Fourthly, Cardinal Peter Damiani above all objected to ecclesiastics engaging in war, and refused to the Pope as well as to all ecclesiastics the use of the civil sword,⁸ which is forbidden them also by the canons of the Church.⁹ Still, in cases of extreme necessity, bishops have used civil force in defence of their possessions; and Leo IX. was compelled from the highest motives to defend the States of

the Church against the Normans, without thereby incurring any reproach from Damiani. The Church has never pronounced a union of the spiritual and civil powers to be impossible. That earthly weapons must be used to protect higher immaterial goods is indeed self-evident, and has been maintained theoretically and practically by every State engaging in a just war of defence.¹⁰ Lastly, Peter Damiani desired to see kings reverence and treat the Church of Rome as their true mother.¹¹ He regarded her as being placed over divine things, and belonging therefore to a higher sphere.¹² There never appears the slightest dispute between him and Gregory.

¹ L. i. Ep. 75, p. 348, ad Philipp. Reg. : 'Cum virtus Christianorum principum in ejusdem regis (Christi) castris ad custodiam Christianae militiae nobiscum convenire debeat.' L. i. Ep. 19, ad Rudolph. Duc. : 'Sicut duobus oculis humanum corpus temporali lumine regitur, ita his duabus dignitatibus (Sacerd. et Imp.) in pura religione concordantibus corpus Ecclesiae spirituali lumine regi et illuminari probatur.' L. ix. Ep. 28, ad univ. fidel. p. 628 : 'Quam pacem (inter pontificatum et regnum) opitulante Domino, sicut Christiana devotio cupit et postulat, in eodem Concilio instaurare et confirmare optamus.' P. ii. Ep. 39, p. 688 : 'Ut causa jurgiorum et discordia, quae inter regnum et apostolicam Sedem jam dudum agitur, annuente Domino congruum valeat finem sortiri, vos ad synodum . . . invitamus.'

² Reg. l. ii. Ep. 76, ad Bamb. p. 427 ; l. vi. Ep. 14, 26, pp. 523, 533 ; l. vii. Ep. 4, ad Wezelin, p. 548 ; l. viii. Ep. 3, ad Alphons. Reg. Castel. p. 577 ; l. viii. Ep. 5, p. 579 ; P. ii. Ep. 26, 49, pp. 671, 696. Greg. ap. Paul. Bern. c. vii. n. 61, p. 73.

³ Card. Deusdedit, Prolog. lib. c. invasor. (Mai Nova PP. Bibl. vii. p. ult. p. 77) : 'Pugnet rex gladio materiali, "quoniam Dei minister est et vindex in iram his qui male agunt."'

⁴ In 969 by King Edgar of England. Hard. Conc. vi. i. p. 675.

⁵ Manifesto of 1076. Mansi, xx. 466. Pertz, Leg. ii. 48.

⁶ 'Gladius' means jurisdiction. Du Cange, v. Spatha. Grimm, Rechts-althümer, p. 167.

⁷ Cf. Sachsenspiegel, vol. i. a. 1 ; others infrà, a. 8.

⁸ Petr. Dam. l. iv. Ep. 9, ad Firman. Ep. : 'Inter regnum et sacerdotium propria cujuscunque distinguuntur officia, ut rex armis utatur saeculi et sacerdos accingatur gladio spirituali, qui est verbum Dei. . . Ozias rex, qui sacerdotale usurpat officium, lepra perfunditur, et si sacerdos arma corripit, quod utique laicorum est, quid meretur ?'

⁹ Thomassin, de Vet. et Nov. Disc. P. iii. l. i. c. lxxviii. n. 4. seq. Gratian, P. ii. caus. 8.

¹⁰ Bellarm. de Rom. Pont. v. 9. Bianchi, t. ii. l. iv. § 9, n. 13, p. 132 seq. Pignatelli, Consult. Canon. t. ix. consult. 68, n. 8 seq. p. 145.

¹¹ Dam. Opusc. iv. (Migue, cxlv. p. 71) : 'Porro autem Rom. Ecclesia

multo nobilius atque sublimius quam mater carnis mater est regis' (p. 72). 'Carnalis ergo mater adjuvat filium in rebus terrenis et mater Ecclesia filio suo praebere non debet auxilium in spiritualibus donis?' Claus. Diet. pp. 86, 87: 'Sublimes istae duae personae tanta sibimet invicem unanimitate jungantur, ut quodam mutuae charitatis glutino et rex in Rom. Pontifice et Rom. Pontifex inveniatur in rege, *salvo sc. suo privilegio Papae*, quod nemini praeter eum usurpare permittitur. . . . Ille tamquam parens paterno semper jure praemineat, iste velut unicus ac singularis filius in amoris illius amplexibus requiescat.'

¹² Dam. l. vii. Ep. 3, ad Henric. p. 121.

§ 13.

It has also been said that in his actions Gregory dealt unequal measure, 'visiting with the utmost severity in Henry IV. things which in William the Conqueror he did not venture to punish.' But we know that for a long time Gregory believed William to be his faithful ally in the reform movement, the Synod of Rouen having coöperated in it, and that he long entertained a favourable opinion of William, who never sided with the antipope.¹ Gregory called him the dearest and only son of the Church of Rome; saying that he manifested towards her the disposition of an affectionate son, and distinguished himself above all other princes.² For a considerable time he remained without accurate information of the circumstances occurring in the remote island, especially since William prevented the bishops from going to Rome, of which Gregory complained in 1079.³ He afterwards sent him many admonitory letters,⁴ and endeavoured to gain Queen Mathilda.⁵ He wrote thus to the legate Hugo of Die:⁶ 'Although the King of England shows himself not so religious as we could desire, still he is more deserving and better than other kings, in that he neither ruins nor sells the Church of God, that he seeks to secure peace and justice for his subjects, that he has made no covenant with the enemies of the Cross of Christ against the Church of God, that he obliges priests to leave their wives, and enforces the payment of tithes upon the laity.' For these reasons he was justified in pursuing towards William a milder and more considerate course of action. Gregory had always hoped that good would come of William, but did not conceal from him his just

displeasure, as, for instance, when William imprisoned his brother, paying no respect to his episcopal dignity.⁷ William complied with the request of the Papal legate that the long-interrupted payment of Peter's pence might be reëstablished; but when the demand was made him in these times of schism and perverse strife against the Holy See to take an oath of allegiance to the Pope, he refused, on the plea that his predecessors had not taken such an oath, and that he had never promised to do so.⁸ It is much to be doubted whether this oath of allegiance (*fidelitatem facere*) is the same as the feudal oath;⁹ for as the Pope's own letters only claim obedience in spiritual things,¹⁰ and as William's refusal to allow the bishops to go to Rome was a great offence to the Pope, an oath of obedience to the Church was much more to the point than a feudal oath; also the legate Zeuzo or Teuzo said many things which he was not commissioned to say.¹¹ England had prior to this entered into especially close relations with the Holy See.¹² Alexander II. had declared the country to be under the special protection of St. Peter,¹³ as William acknowledged at his conquest.¹⁴ Gregory was forced by his position to seek protection and support from the better-disposed princes.

¹ Mansi, xx. 113 seq. 306, 398. Hefele, Conc. v. pp. 29, 141, 142.

² L. i. Ep. 31, ad Lanfranc. Cantuar. 1073, p. 314; Ep. 70, ad Regem Angl. a. 1074, p. 344 seq.: 'Inter reges te solum habemus, quem prae aliis diligere suprascripta credimus.' Cf. l. iv. Ep. 17, ad eund. a. 1077, pp. 470, 471; l. v. Ep. 19, pp. 504, 505, a. 1078; l. vii. Ep. 23, p. 566: 'Gemma principum esse meruisti;' P. ii. Ep. 28, pp. 674, 675.

³ L. vi. Ep. 30, p. 535, ad Lanfranc.; l. vii. Ep. 1, p. 845, ad Hubert. Subdiac.; l. ix. Ep. 20, p. 622, ad Lanfranc.

⁴ L. vii. Ep. 28, 25, pp. 566, 568 seq.

⁵ L. vii. Ep. 26, p. 569.

⁶ L. ix. Ep. 5, p. 610.

⁷ L. xi. Ep. 2, p. 642.

⁸ P. ii. Ep. 11, p. 748. Lanfranc. Opp. p. 304. Cf. Döllinger, Lehrbuch, ii. pp. 140, 141.

⁹ Bianchi, t. i. l. ii. § 13, n. 6, pp. 346, 347.

¹⁰ E.g. l. vii. Ep. 23, a. 1080.

¹¹ L. vii. Ep. 1: 'Significasti . . . Zeuzonem quasi ex nostra parte legatum . . . verba fecisse, quae noveris ex nobis mandata non esse.'

¹² King Ina, 725; Offa of Mercia, 794. Pag. jun. Brev. Rom. Pont. in Greg. VII. n. 20; Hadr. I. n. 56, 57. Bianchi, l.c. n. 3, p. 343 seq.

¹³ Alex. II. Ep. 8, ad Willelm.: 'Novit prudentia tua, Anglorum regnum ex quo nomen Christi ibi clarificatum est, sub Apost. principis manu et tutela exstitisse.' Mansi, xix. 949. Jaffé, n. 3524, p. 400.

¹⁴ Ranke, *Englische Geschichte*, i. pp. 41, 53.

PART II. GREGORY DID NOT TREAT ALL PRINCES AS VASSALS.

§ 1. Feudal suzerainty over single kingdoms. § 2. Hungary and Poland. § 3. Bohemia. § 4. Denmark. § 5. Spain. § 6. Corsica and Sardinia. § 7. Various relations of single States towards the Holy See. § 8. Gregory's declaration that Peter was set as a prince over all the kingdoms of the earth.

§ 1.

It is an unfounded assertion that Gregory VII. treated *all* princes as vassals of the Holy See.¹ He made no claim to feudal suzerainty over France.² His letters to King Philip speak only of religious obedience in matters purely ecclesiastical,³ and all he demanded was that every householder should contribute one penny as an alms to the Holy See, at that time so sorely oppressed. In support of this requisition, he appealed to the example of Charles the Great, who had allowed this subsidy to be raised in three places in his empire, and had ceded to St. Peter the land of the Saxons. In support of the first assertion he appeals to a volume of documents, at that time preserved in the archives of St. Peter.⁴ These documents are not now extant; but the circumstance is very probable and the custom very ancient; but it proves no political dependence.⁵ With regard to Saxony, we know that Charles the Great dedicated and offered to St. Peter the first church consecrated there.⁶ Apulia and Calabria were held in fief from the Holy See from 1059, or perhaps from 1054, and this was renewed under Gregory VII.⁷ In 1076, Demetrius of Dalmatia, to secure peace for his dominions, vowed a yearly tax to St. Peter. He received the title of king from the Pope, and was invested by the Papal legates with standard, sceptre, sword, and crown.⁸ When in 1079 a certain Wezelin revolted against Demetrius, the Pope forbade him⁹ to take up arms against the king, placed there by apostolic authority, or to break the faith which had

been plighted to St. Peter. He declared that any attack made upon Demetrius would be as if done to the Holy See, and that to her tribunal Wezelin must appeal if he had just ground of complaint. It was neither unusual nor uncommon for princes to place themselves and their dominions under the protection of St. Peter.¹⁰ Michael Bogoris of Bulgaria appears to have done so under Nicholas I.,¹¹ and Swatopluk of Moravia under John VIII.¹² In later mediæval times such cases were extremely frequent.

¹ Bossuet, l.c. l. i. sect. 1, c. xii. p. 108 seq. Huber, p. 8.

² Thomassin, de Vet. et Nov. Discipl. P. iii. l. i. c. xxxii. n. 13. Döllinger, Lehrb. ii. p. 140.

³ L. i. Ep. 35, 75, pp. 317, 348; l. ii. Ep. 5, 18, 32, pp. 362 seq. 376, 387; l. viii. Ep. 20, p. 593.

⁴ L. viii. Ep. 23, pp. 603, 604.

⁵ Bianchi, t. i. l. ii. § 13, n. 1, p. 339 seq.

⁶ Carol. M. Cap. Baluz. i. p. 246. Bossuet, l.c. p. 110.

⁷ Hefele, Conc. iv. 725, 767 seq.; v. 13, 139. Cf. Baron. a. 1059, n. 70; a. 1080, n. 39; Murator. Antiqu. vi. 33.

⁸ Baron. a. 1076, n. 65 seq. Georg. Prag. Annal. Reg. Hung. Vindob. 1764, t. i. p. 76. Cattalinich, Storia della Dalmazia, ii. 250.

⁹ L. vii. Ep. 4, ad Wezelin, p. 548.

¹⁰ Bianchi, l.c. § 15, n. 11, p. 377.

¹¹ Anastas. Biblioth. Praef. in Conc. viii. Baron. a. 869, n. 73.

¹² Joh. VIII. Ep. 247 (Mansi, xvii. 181): ‘Divina gratia inspirante *contemtis aliis saeculi hujus principibus* B. Petrum . . . habere *patronum* et in omnibus adiutorem ac defensorem pariter cum nobilibus viris fidelibus tuis. . . . Amore fidelissimo elegisti et usque ad finem sub ipsius et vicarii ejus defensione colla *submitte*ns pio affectu cupis auxiliante Domino utpote filius devotissimus permanere.’

§ 2.

From the time of Sylvester II. (999-1003), Hungary and Poland had been united to the Holy See by a similar tie. ‘Like so many other nations, both of these are indebted solely to the Holy See for the germ of their national independence and development. Sylvester bound them to the See of Peter as members of one Christian family, not inferior to their brethren, rescued them from the predominating German influences, and gave them the means of preserving to the present day a strong nationality.’¹ Hungary was subject to the Holy See from the

time of St. Stephen,² on whom the Pope conferred the title of king, as Kings Andreas and Ladislaus in the thirteenth century openly acknowledged.³ Gregory was anxious that Hungary should preserve its independence, and not become a feudal dependent upon Germany. The national party had often rebelled against subjection to Germany in the time of the Emperor Henry III. Solomon had been crowned king whilst still a child, and during the lifetime of his father Andreas; but his uncle Bela usurped the throne, and kept it till his death in 1063. Solomon was then proclaimed king by the agency of Henry IV., who gave him his sister in marriage. Bela's sons, Geisa and Ladislaus, received only some counties. In the contention between Solomon and Geisa in 1074, Henry IV. supported the former, because he had consented to hold Hungary as a German fief.⁴ Gregory protested against this foolish weakness as contrary to the rights of the Holy See recognised by Henry III.⁵ He looked upon Solomon's defeat by Geisa as a punishment;⁶ but at the same time endeavoured to negotiate peace between him and Geisa, whom he only recognised as duke.⁷ He wished Hungary to remain free (in proprio libertatis statu), and subject to no king of any other kingdom, owning no superior but the Church of Rome, who treated all her subjects not as slaves, but as sons. The King of Hungary should not be 'regulus,' a viceroy, but 'rex,' a true king.⁸ Geisa and Ladislaus reigned one after the other, and remained faithful to the Pope. In 1079, Gregory praised the religious obedience of Ladislaus in terms which show his paternal affection, and could humiliate no king;⁹ and he was always attentive to the affairs of Hungary.¹⁰ As to Poland Boleslaw II., Duke of Poland, accepted the title of king from Henry IV., A.D. 1076, and received the crown from his bishops.¹¹ Gregory, who had praised him the year before for the respect he had shown towards the Holy See,¹² was afterwards obliged to excommunicate him for the murder of St. Stanislaus, 1079; and Boleslaw in consequence fled to Hungary, where he died in misery. Gregory never asserted any special claims over Poland.

¹ Dudik, Mährens Allg. Gesch. vol. ii. p. 98.

² Vita S. Steph. Reg. ap. Sur. t. iv. Sept.

³ Raynald. a. 1233, n. 51; a. 1279, n. 31. Cf. a. 1233, n. 52; 1279, n. 32 seq.

⁴ Dudik, l.c. pp. 238, 284, 292 seq. 367 seq. Cf. Bianchi, l.c. § 15, n. 2-7, pp. 368-374.

⁵ L. ii. Ep. 13, p. 373, Salamoni Regi: 'Regnum Hungariae S. Rom. Ecclesiae proprium est a rege Stephano olim B. Petro cum omni jure et potestate sua oblatum et devote traditum. Praeterea Henricus p.m. imp. ad honorem S. Petri regnum illud expugnans victo rege et facta victoria ad corpus B. Petri lanceam coronamque transmisit et pro gloria triumphus sui illuc regni direxit insignia, quo principalem dignitatem ejus attinere cognovit. (Cf. Giesebrecht, l.c. ii. 625). Tu jus et honorem S. Petri, quantum ad te, imminuisti et alienasti, dum ejus regnum a rege Teutoniorum in beneficium, sicut audimus, suscepisti.'

⁶ L. ii. Ep. 63, p. 414, Geisae Duci, a. 1075.

⁷ Ib. Ep. 70, p. 421. Cf. l. i. Ep. 58, p. 335.

⁸ L. ii. Ep. 63, 70, cit. Martin Gerbert of St. Blaise remarks on this (De legitima eccles. potestate circa sacra et profana. Mon. S. Blasii, 1761, l. iv. c. i. n. 18, p. 660): 'Secundum horum verborum sententiam insignis haec potius praerogativa haberi poterat, qua quis ab omni solutus potestate hujus saeculi soli Deo et Ecclesiae obnoxius foret.'

⁹ L. vi. Ep. 29, p. 534.

¹⁰ L. iv. Ep. 25, p. 481, ad Strigon. Aep.

¹¹ Röppel, Hist. Poland, vol. i. p. 190, book i. chap. viii.

¹² L. ii. Ep. 73, pp. 423, 424.

§ 3.

As to Bohemia, Duke Spitinev II. received in 1059-1060 from the Holy See the privilege of wearing a mitre, and he promised to pay a yearly tribute of a hundred silver marks.¹ Alexander II. confirmed this privilege in favour of Duke Wratislaw; and Gregory VII. wrote to him at some length on this matter,² as well as on the dispute as to the bishop of Prague.³ In 1074, the duke was still remitting to Rome the hundred silver marks *sub censi nomine*.⁴ The reason of the duke's desire to wear a mitre may be found in his wish to appear to the people as impressive as his brother Jaromir, with whom he was not on good terms, and who was a bishop. Wratislaw, who had been wavering since 1075, at length adopted the cause of Henry IV., and allied himself closely with Germany. He was crowned king by Henry's desire; but his coronation was not recognised even by the Antipope Clement III., still less by the lawful Popes who succeeded.⁵ Gregory VII., in 1079,⁶ sent him admonitions, blamed him for holding intercourse with excom-

municated persons, *i.e.* Henry and his followers, and forbade the use of the Slavonic Liturgy, but never asserted any political claim over him.⁷

¹ Dudik, l.c. pp. 287 seq. 350 seq. On the tribute (census) vid. Thomassin, l.c. n. 11.

² Reg. l. i. Ep. 38, p. 319, a. 1073.

³ Reg. l. i. Ep. 17, 44, 45, 61, 78, pp. 299, 324 seq. 337, 351; l. ii. Ep. 7, 8, 71, 72, pp. 367 seq. 422 seq.

⁴ L. ii. Ep. 7, p. 367.

⁵ Dudik, l.c. pp. 352 seq. 423, 431-433.

⁶ L. vii. Ep. 11, p. 554.

⁷ Innocent III. (l. vii. Ep. 49, Migne. ccxv. p. 333) in 1204 recognised as king, at the request of Otho IV., the Duke of Bohemia, crowned by Philip of Swabia (who was not recognised by Rome as King of Germany), and confirmed (ib. Ep. 54, p. 339) the imperial privileges conferred upon him.

§ 4.

Swen, King of Denmark, made to Alexander II. the promise of a yearly tribute.¹ In 1075, Gregory asked if he were still of the same mind, and as he desired a closer intercourse with the Holy See, recommended to him fidelity to the Church, and just government of his people.² In his negotiations with Alexander II., Swen desired to make St. Peter his debtor, hoping thereby to obtain his special protection for himself and his kingdom.³ Gregory mentioned⁴ a rich province not far from Rome (somewhere in the south of Italy), which was in the possession of heretics (Saracens),⁵ and which he would give to a son of the king who was willing to fight for the Holy See. In 1077, he reminded Swen's son and successor of his father's loyalty, and recommended it to his imitation;⁶ and later he wrote to censure the superstition of the Danes,⁷ but without making any demand beyond the most ordinary obedience to the Church. No trace of a claim to feudal sovereignty is to be found in Gregory's letters to the Kings of Norway and Sweden,⁸ nor in those to the Venetian republic.⁹

¹ Baron. a. 1062. Jaffé, Reg. n. 3379, p. 330.

² L. ii. Ep. 51, 75, pp. 402, 426, 427.

³ L. ii. Ep. 75, p. 426.

⁴ L. ii. Ep. 51, p. 403, v. fin.

⁵ On the sea coast, and near Rome, there were no heretics properly so called. Saracens must be meant. In Gregory's time 'infideles' were also called heretics. On the Saracens in Italy, vide Chron. Cassin. i. 43, 50, 53; Baron. a. 1016; Bianchi, l.c. § 13, n. 9, 10, pp. 349-351.

⁶ L. v. Ep. 10, p. 495 seq.

⁷ L. vii. Ep. 21, p. 563 seq.

⁸ L. vi. Ep. 13, p. 521; l. viii. Ep. 11, p. 584.

⁹ L. ii. Ep. 39, p. 391; l. iv. Ep. 26, 27, p. 482; l. ix. Ep. 8, p. 613.

§ 5.

We know on Gregory's assurance that Spain, on the contrary, from old times belonged to the Holy See, and was tributary to her.¹ It is very possible Gregory was in possession of documents that have been lost to us, and quite credible that from 588 to 712 offerings may have passed with regularity from Spain to Rome; for we know that Reccared sent rich gifts to St. Peter.² Gregory's letters to the Kings of Arragon and Navarre,³ as well as to Alphonso of Castile,⁴ only speak of the faith and obedience due from all to the Church of Rome.⁵ The payment of a tribute can in this instance the less prove a feudal tie that it was always customary with the kings of this peninsula, from private devotion, to make their kingdoms tributary to some church or monastery; *i.e.* Alphonso of Castile chose the monastery of Clugny and Alphonso of Portugal that of Clairvaux.⁶ Before Gregory's pontificate, Count Ebulo of Racejo accepted from the Holy See the privilege of fighting against the Saracens in Spain, with the condition of possessing the territory he conquered from them under the authority of the Holy See, in return for a yearly tribute.⁷ Count Berengar of Barcelona relinquished to the Holy See (A.D. 1091) the town of Taracona, which he had taken from the Moors, and held it under payment of a yearly tribute; an arrangement accepted by Urban II.⁸ In this manner conquerors secured their claims from the encroachments of rival powers, whose attacks were forbidden by the Pope, and at the same time acquired a practically independent dominion. Gregory's dealings with Spain were mainly directed to the introduction of the Roman Liturgy and the restoration of a closer relation with Rome.⁹ During the reign of Gregory VII. Bertrand, Count of Provence, made over his county to the Holy See

as a free gift; and after his death the Genoese and Pisans, who had landed in Africa, extorted from the conquered Saracens a yearly tribute to be paid to Rome.¹⁰

¹ L. i. Ep. 7, ad Princip. Hisp. p. 289; l. iv. Ep. 28, ad Hisp. p. 485.

² Gregor. I. l. ix. Ep. 122 (al. vii. 127). Ep. Reccaredi ad Gregor. M. ap. Baluz, Miscell. l. v. Cf. Roder, Tolet. Aep. l. ii. c. xx.; Bianchi, l.c. § 14, n. 1, 2, p. 352-354.

³ L. i. Ep. 63, p. 339; l. ii. Ep. 50, p. 401. Mansi, xx. 622, P. ii. Ep. 3, p. 645.

⁴ L. i. Ep. 64, p. 340; Ep. 83, p. 355; l. viii. Ep. 3, p. 577; l. ix. Ep. 2, p. 604; l. vii. Ep. 6, p. 549 seq.

⁵ The 'servitium, quod B. Petro inde solebat fieri' (l. iv. Ep. 28), is not to be interpreted by the strict feudal law; but often means first-fruits or some similar tax. Bianchi, l.c. n. 3, pp. 355, 356.

⁶ Annal. Cisterc. a. 1141. Petrus Ven. de Mirac. l. i. c. ult. Thomassin, l.c. c. xxxii. n. 9.

⁷ L. i. Ep. 7, ad Princip. Hisp. a. 1073.

⁸ Urban II. Ep. 6, 7. Mansi, xx. 648. Jaffé, n. 4067. Thomassin, l.c. n. 8. Cf. also the note to Bossuet, l.c. c. xiii. p. 112.

⁹ Cf. again l. iii. Ep. 18, p. 448, Simeoni Ep.; l. iv. Ep. 28, p. 484; P. ii. Ep. 70, p. 713.

¹⁰ Baron. a. 1081, n. 33; a. 1087.

§ 6.

The See of Rome had certain special rights over the islands of Corsica and Sardinia. Corsica is mentioned in ancient documents as appertaining to the States of the Church;¹ and Gregory rejoiced that, in 1077, it desired to return to the Roman Church.² He appointed the Bishop of Pisa as his vicar in the island, recommending the people and clergy to render him obedience.³ Urban II., at the request of the Countess Mathilda, in 1091, confirmed this, with the condition of a yearly payment to the Lateran of a tribute of fifty pounds of Lucca coin.⁴ Gregory required from the governors of Sardinia a renewal of the old religious obedience and close relation with Rome, and wrote to them concerning various affairs of the island.⁵ It was a matter of no import, and merely an accidental circumstance, that the son of Demetrius of Russia desired to receive his kingdom from the hand of St. Peter.⁶

¹ Lib. Pontif. in Hadr. I. Cenni Mon. ii. 60, 61, 125. Records of the Othos and of Henry II. Leo III. in 808 speaks explicitly in the letter to Charles of the donation.

² L. v. Ep. 4, p. 489. For about 189 years Rome had no power over the island. Limperani, *Istoria della Corsica*, Roma, 1780, ii. 2.

³ L. vi. Ep. 12, pp. 520, 521; l. iv. Ep. 2, pp. 487, 488.

⁴ Ughelli, *Italia Sacr.* iii. 369. Jaffé, n. 4066, p. 454.

⁵ L. i. Ep. 29, pp. 311, 312; Ep. 41, p. 322; l. viii. Ep. 10, p. 583.

⁶ L. ii. Ep. 74, p. 425. Cf. Pichler, *Gesch. der Kirchl. Trennung*, ii. p. 8.

§ 7.

It is clear that all States in the Middle Ages were not equally dependent upon the Holy See. There was a universal subjection of States on matters of religion; but beyond this, in many instances a special subjection, founded on various titles, generally on the personal desire of the ruling prince. There would have been nothing to find fault with if the Popes, under existing circumstances, had endeavoured gradually to organise a system of States with the aim of insuring the freedom of peoples, the sovereignty of Christian principles, and the protection of the weak against the strong; a system which, maintained by the voluntary subjection of princes and peoples, would have turned all its advantages to their profit, and secured honour and stability to Christian principles as well as to individual States.¹

However existing, traces are too incomplete, and single instances cannot be taken as proofs of vassalage. Mistakes easily arose, because the feudal system was the groundwork of almost all order, and any secondary authority was called vassalage.² Certain is it that the Popes acted in this matter on no widespread, deep-laid, political scheme, inherited by one from the other; things took shape spontaneously, fashioned by impending dangers, by the spirit of chivalry, or by religious enthusiasm. William of Burgundy swore, in presence of Alexander II., of bishops, abbots, and a multitude of people, to draw his sword as often as necessity required, in defence of right and of the possessions of St. Peter;³ and many others did the same; they dedicated themselves to the Prince of the Apostles, or to some other saint, or to some holy place, and made themselves tributary thereto.⁴ This subjection served also to show that a prince placed under the protection of Heaven and of the saints was independent of any other earthly power. Gregory VII.

clearly points this out in his letters to Hungary. The Kings of Scotland appealed from the Kings of England and other rulers, saying that they were subject *only* to the Pope.⁵

¹ *Histor. Polit. Blätter*, 1857, vol. xl. pp. 943-972.

² Du Cange, *Glossar. inf. Latin. v. Feudus*. Likewise Hallam, *Lingard*, and others.

³ *Greg. VII. l. i. Ep. 46*, p. 325.

⁴ Norway was dedicated to the king and martyr Olaf, and was subject to the archbishop (Raynald. a. 1073, n. 19). Godfrey of Bouillon was homo S. Sepulchri et Patriarchae; the Prince of Antioch was vassal of the Patriarch of that place. *Willelm. Tyr. ix. 15 seq.; x. 4; xv. 12*. Raynald. a. 1205, n. 37. Thomassin, l.c. c. xxxi. n. 15; c. xxxii. n. 1. Cf. also Fleury, t. xiii. l. lxiv. n. 67; l. lxv. n. 2; Michaud, *Hist. des Croisades*, t. ii. p. 10.

⁵ Thomassin, l.c. n. 6, 15 seq. Rayn. a. 1299, n. 14, 17.

§ 8.

But it is said Gregory asserted, 'that for all time and in every place Christ appointed Peter prince over all the kingdoms of the earth.'¹ But other Popes said this before Gregory;² and it may rightfully be said³ in reference to the universal office of pastor conferred upon St. Peter (St. John xxi. 15 seq.), unlimited as to place; to the power of the keys, in heaven and on earth (St. Matt. xvi. 19); and to the words of Jeremiah,* which have been referred to St. Peter.⁴ When Leo the Great said Christ made St. Peter prince over the whole Church,⁵ he was understood to mean that as all kingdoms of the world should belong to the Church,⁶ he was prince over all earthly kingdoms. In this sense St. Leo's words still stand in the Breviary,⁷ and they have never been taken to imply anything injurious to civil allegiance. The principle Gregory wished to enforce was, that all princes should acknowledge the sovereignty of Christ,⁸ and, not making their own will the supreme law, should be guided by the law of God, as announced to them by the successor of St. Peter. 'If,' wrote Gregory⁹ in 1074, 'we should suffer princes to rule as they please, and to trample God's justice under foot,

* 'See, I have this day set thee over the nations and over the kingdoms, to root out and to pull down, and to destroy, and to throw down, to build and to plant.' i. 10.

if we should silently consent to this, we should receive their friendship, gifts, marks of submission, praise, and much honour. But as to do this does not accord with our office and our duty, there is nothing which, by the grace of Christ, can separate us from His love; it is safer for us to die than abandon His law.' The Pope, who possessed no material power, and relied for support upon moral principles alone, must have meant that the law of God should everywhere be revered and obeyed; to enforce this was not merely his right, but his most solemn duty.

¹ L. i. Ep. 63, ad Sanc. Reg. Arag. p. 339.

² Nicol. II. Ep. ad Mediolan. (c. i. Omnes, d. 22): 'B. Petro terreni simul et coelestis imperii jura commisit.' Bossuet, p. i. l. i. sect. 2, c. xxxvi. p. 179, explains the passage with a reference to Matt. xvi. 18.

³ Mamachi, Orig. et Antiqu. iv. p. 179.

⁴ By very many authors. Vide Anti-Janus, p. 136.

⁵ Leo M. Serm. 4, c. iv. p. 19: 'Quod tantam potentiam dedit ei, quem totius Ecclesiae principem fecit.'

⁶ Optat. c. Parmen. ii. 1. Aug. de Unit. Eccl. c. viii. n. 20 (on Ps. ii. 8), in Ps. lxxxi. et cxxi.

⁷ Responsorium to the sixth lesson on the feast of SS. Peter and Paul, 29th June: 'Tibi tradidit Deus omnia regna mundi.'

⁸ Greg. I. iii. Ep. 10, p. 439.

⁹ L. ii. Ep. 12, p. 372, ad Halberst. Ep.

PART III. IT IS FALSE THAT GREGORY TAUGHT THAT THE POPE COULD TAKE AND DISPOSE AS HE WOULD OF KINGDOMS AND OF THE POSSESSIONS OF PRIVATE PERSONS.

§ 1. Gregory's words. § 2. Personal holiness of Popes. § 3. Gregory's death in exile. § 4. Alleged fruitlessness of his conflicts. § 5. Their result. § 6. Gregory's aim to free the Church from ignominious shackles.

§ 1.

It is asserted that, according to Papal doctrine as declared by Gregory VII., at a Council held in Rome in 1080, the Pope, when presiding over a Council of bishops, could, in virtue of his authority to bind and to loose, dispose absolutely not only of empires, kingdoms, and principalities, but of the possessions of all men.¹ But as a fact Gregory does not attribute this power

to bishops assembled with him in Council, for of these no mention was made, but to the Apostles Peter and Paul, upon their thrones in heaven,² and thus indirectly to God, who will refuse nothing to these the Church's potent guardians and intercessors. Gregory prays that they will obtain that Henry, being mercifully chastised by God in this life, may be led to amend his ways, that all the world may acknowledge the power of the holy Apostles, and that sinners may do penance, and save their souls (with a reference to 1 Cor. v. 5).³ Gregory's words here, which certainly contain no dogmatic definition, have met with the same misrepresentation⁴ as has befallen other passages.⁵

¹ Allgemeine Zeitung, 19 June 1870. Cf. Schulte, i. p. 32.

² Hefele notes this quite justly against Stenzel and Gfrörer, Conc. v. p. 132. Also Bossuet, l.c. sect. 1, c. x. p. 104. Cf. Fessler, Sammlung vermischter Schriften, Freib. 1869, pp. 73-75; The True and the False Infallibility, trans. p. 70, original p. 41.

³ The words are: 'Agite nunc, quaeso, patres et principes sanctissimi' (who in the beginning are addressed as Petre princeps Apostolorum et Paule doctor gentium), 'ut omnis mundus intelligat et cognoscat, quia si potestis in coelo ligare et solvere, potestis in terra imperia, regna, principatus, ducatus, marchias, comitatus et omnium hominum possessiones pro meritis tollere unicuique et concedere. . . . Addiscant nunc reges et omnes saeculi principes, quanti vos estis, quid potestis. Confundantur utinam ad poenitentiam, ut spiritus sit salvus in die Domini.' Cf. l. viii. Ep. 17, pp. 590, 591.

⁴ If the same remark should be made now as on another occasion, when a similar misrepresentation was corrected (A. Z. 24 March 1871), viz. 'occasionally the Pope did not wait until the Apostles granted his prayer,' we reply that this is a confusion of two distinct things. The *act of the Pope*, which in no way involved the actual loss of dominion nor proceeded upon the general principle that the Pope could at will depose or appoint kings, this *act* was not denied by Bishop Fessler; who only sought to prove, and did prove, that Gregory did not lay down *this general principle ascribed to him*. Shifting the point in question has always been a favourite practice with the Janus party.

⁵ Another passage is quoted (in the Allgemeine Zeitung, 19 June 1870, No. 37) from Gratian, c. xv. d. 81, according to which any one commits the crime of *idolatry* who assists at the Mass of a married priest, and the blessing of such a one becomes a curse. This passage, which, as it stands, is not to be found in Gregory's epistles, is made up of two parts—the one, even to the words of the Prophet, 'I will curse your blessing,' as the Roman censor observes, is to be found in Marianus Scotus (Pertz, ser. v. 561; Migne, l.c. P. ii. Ep. 55, p. 692; Mansi, Suppl. ii. 2; Migne, l.c. pp. 785-

788); the other is very common with Gregory, to wit, that as in 1 Kings xv. 22, 23, and in Greg. M. Lib. ult. Moral. c. x., *disobedience* is called idolatry (l. ii. Ep. 45, 66, pp. 397, 416; l. iv. Ep. 11, p. 465; l. v. Ep. 24, p. 480; l. vii. Ep. 24, p. 568; l. ix. Ep. 20, p. 622; Ep. 34, p. 638; Conc. Greg. ib. pp. 814, 817. Cf. also Innoc. III. l. ii. Ep. 213, vi. 38; Migne, ccxiv. 772; ccv. 43). Gregory was well aware that married priests, who were protected by the Council of Gangra, can. 4, formerly offered the Holy Sacrifice, especially in the East; but he had the strongest motives for executing his decree against clerical marriage with the support of the laity, whom for that reason he prohibited from unnecessarily hearing the Mass of 'presbyteri concubinari' (1074, can. 4). By encouraging bad priests, and by disregarding the punishments which hung over them (can. 3), the people partook in their sin; and this *disobedience* was as the sin of idolatry (in the wider sense of the word); so too the blessing of a suspended or irregular priest, received in contempt of the Church's sentence, could not be productive of good. 'Non tam incontinentium, quam pro incontinentia damnatorum missas audire prohibuit,' says Bernold, Apolog. c. xix. p. 778; who also treats of the Conc. Gangr. c. 4.

§ 2.

What Gregory says of the personal holiness of Popes¹ refers not to himself, but to the many saints amongst his predecessors. It is drawn from the Roman Synod of Pope Symmachus,² and is supported by the example of numerous Popes who have become better and more zealous amidst the anxieties and labours of their pontificate.³ As an instance, take Leo IX., whom Gregory knew personally, and who lived as Pope a life of great austerity, and became more and more holy during his pontificate.⁴

¹ Bossuet, l. i. sect. 1, c. xi. p. 107. Janus, p. 121.

² Bianchi, t. i. l. ii. § 10, n. 3, pp. 280-283.

³ L. viii. Ep. 24: 'Ad Sedem Apostolicam rite ordinatos meritis B. Petri meliores effici et omnino sanctos.' But Ep. 21, ad Herm. is merely 'meliores.'

⁴ Cf. Höfler, Deutsche Päpste, ii. p. 70 seq.

§ 3.

Gregory died in exile, and without having accomplished the work he had undertaken; but the words of Stephen of Halberstadt show us how to regard this seeming failure. 'Is it not,' he says, 'more blessed to die a good death than to live an evil life? Blessed are they that suffer persecution for justice' sake (Matt. v.

10). Was Nero blessed because he outlived the Apostles Peter and Paul; Herod, because he outlived St. James; or Pilate, because he outlived our Lord? Nothing of the kind; what more unblest! The words of Wisdom (v. 1-9) are our mainstay: we may be contemned, sent into banishment, put to death; but not bent, not vanquished. We are proud of our fathers, who, despising the commands of princes, have earned an everlasting reward.¹ Did he live in vain, strive in vain, suffer in vain, whose fame after death was so great, whose followers were so numerous, whose friends were the noblest of his contemporaries, such as Altmann of Passau, Gebhard of Salzburg, Bruno of Merseburg, Anselm of Canterbury, Anselm of Lucca, Paul Bernried, Berthold, Donizo, Hugo of Flavigny, Mathilda of Tuscany, and the Empress Agnes?² If we allow that this holy Pope was not entirely free from all human weakness, the truth remains that, with courage and determination, he fought a fight that was *necessary* to secure the liberty and rights of the Church.³ The struggle was no doubt violent, but a struggle arising from the wisest laws, the most salutary institutions, the best-founded rights, is made violent by human passions; and it cannot be maintained that the *cause* of this civil war was really the opposition made by the Church to the shocking tyranny and vice then prevalent. To attribute the crimes and disorders consequent upon the great struggle to the Pope alone, and not also to Henry IV. and to the antipope, whose followers, in 1089, cruelly murdered Bishop Bonizo at Piacenza, and were guilty everywhere of acts of violence, is to disregard the first principles of justice. Gebhard of Salzburg and Hugo of Flavigny, as well as the assembly at Tribur in October 1076, attributed all the evils of the empire and the Church to King Henry and his assembly at Worms. It is by no means proved that Rome effected Henry V.'s desertion of his father, obstinate and excommunicated though he was.⁴ Conrad, his elder and better brother, had left his father in 1093. This we know, that Henry V., in 1104-5, pretended that he required nothing of his father but the restoration of the peace of the Church and his reconciliation with the See of Rome; and sent deputies to

Paschal II., received absolution from the censures, and dispensation from the oath he had taken not to seize the government during the lifetime of his father.⁵ This the Pope could all the better grant as he had long ceased to consider Henry IV. the lawful king. Henry V. was, however, equally false to his spiritual and to his natural father,⁶ and his disposition was exactly like that of Henry IV., whose defective education and moral faults were repeated in his son. More than one of Gregory's successors had to suffer from them. But it cannot be said with truth that Gregory's conflict failed of obtaining the aim he had in view: he succeeded in his principal object of putting an end to investiture as practised under Henry IV., and of establishing the free election to Church offices, which had become a vital question.⁷ His idea of delivering bishops and abbots from all feudal service was followed up by Urban II. and Paschal II., and was formally expressed for the first time at the Council of Clermont in 1096, and again, more emphatically, at the treaty of Sutri in 1111; but that was only a secondary, not a primary object. That the faith of nations was strengthened and the dignity of the priesthood enhanced; that greater purity was required from the clergy and more firmness from the bishops; that the Church was preserved from the danger of her offices becoming hereditary, and from the formation of a priestly caste; and that new religious societies, full of true zeal, arose,⁸—these were some results of Gregory's conflict, and truly they were not insignificant.

¹ Stephan. Halberst. Ep. ad Walram. (Migne, l.c. p. 1448).

² Vide the witnesses collected by Gretser in Migne, l.c. p. 199 seq. Godfrey of Vendôme, l. i. Ep. 7 (Migne, clvii. p. 457), quotes the 'veridica vox B. Gregorii, qui pro defensione fidei mortuus est in exilio.'

³ Vide also Reumont, *Gesch. der Stadt. Rom.* ii. p. 366 seq.

⁴ Abbot Hermann, in the *Narratio restaur. Abbat. S. Martini*, stands apart and far from the scene of action. Otbert, de *Vita Henr. IV.* and Otho of Freising, vii. 8, say that he was incited to it by the discontented nobles. Vide also Giesebrecht, *Kaisergeschichte*, iii. p. 702 seq.

⁵ Pertz, v. 108. Stenzel, *Gesch. der fränk. Kaiser*, i. 580 seq. Döllinger, *Lehrbuch*, d. K.G. ii. pp. 155, 156. Hefele, *Conc. Gesch.* v. p. 250.

⁶ Hildebert, *Cenom.* ii. Ep. 21: 'Quis enim potest praeter eum invenire,

qui patres suos, spiritualem scil. et carnalem, subdola ceperit factione. Iste est, qui praeceptis dominicis in utraque tabula contradicit.’

⁷ Döllinger, *l.c.* ii. p. 143.

⁸ Paul. Bernried, *l.c.* n. 108, p. 99.

§ 4.

The assertion that Gregory's measures had no lasting result of any importance is not proved, because shortly after his reign 'even' saints of the Church like St. Bernard and St. Hildegarde complain of the great corruption that everywhere prevailed, nor because the secular clergy, as well as the older and more recent orders, soon show a great falling off.¹ Ascetics and saints are precisely those who, in such a matter, would see most clearly and judge most severely. What would St. Bernard say of the world now? In what terms would St. Hildegarde condemn the tendencies of this age to rationalism and materialism? The moral and religious life of any age can only be judged relatively. Our opponents ought to show that the times after Gregory were not better than those before his pontificate, as St. Peter Damiani,² for instance, has depicted them; otherwise nothing is proved. The decline was chiefly local, and never simultaneous in all countries, provinces, orders, and societies. 'A special dispensation of Providence has ever prevented the whole Church from falling at once into lethargy. When this has prevailed in one part, the life of the rest has been all the more active, and has eventually revived the stricken lands. In the seventh century the Irish Church, in the eighth the English Church, in the ninth the French Church, in the tenth and eleventh centuries the Church of Germany flourished most luxuriantly, and imparted life to the rest.'³ At Clugny discipline, relaxed under Abbot Pontius, was restored by Peter the Venerable;⁴ the Carthusians maintained for centuries the rigour of their order and the virtues of their founder;⁵ but these, exercised in secret, were unknown to the world, whilst the crimes of the age were only too apparent. St. Bernard's worthy successors amongst the Cistercians were William of Thierry, Alanus ab Insulis, the Irish Archbishop Malachi, Archbishop Peter of Tarantaise; and the

order earned much praise from Alexander III.,⁶ and worked most beneficially in France for a long time, and in north-east Germany with special success from 1198 to 1220.⁷ We find at this period many distinguished abbots, for instance, Werner of St. Blaise (died 1126), Lietbert of St. Rufus near Valence (died before 1114);⁸ and founders of orders, as St. Norbert, Archbishop of Magdeburg,⁹ and others. A temporary decline should not surprise us; it is the fate of all human things.¹⁰ Universities flourish and decay, States and societies have a period of splendour and a period of decadence, and each has many gradations. A learned Englishman, in the middle of the twelfth century, was of opinion that in every religious order there were persons who might compare with the saints of earlier times.¹¹ Chapters of monastic orders, Councils, and Papal decrees, did much at that time towards maintaining and renewing the pristine vigour of these congregations.¹² Should no attempt at reform be made because, if established, it may not be lasting? Holy men, who count it a gain to save one soul, would not thus reckon the cost of their labours.

¹ Huber, pp. 9, 10.

² Petr. Dam. l. iv. Ep. 9, ad Older. Ep. Firm. l. i. Ep. 15, ad Alex. II.; l. ii. Ep. 1, ad Card. Lib. Gomorrhian.

³ Möhler's Kirchengeschichte, edited by Gams, ii. p. 203.

⁴ Wilkens, Peter the Venerable († 1156), Leipzig, 1857.

⁵ Petrus Vener. l. ii. Ep. 12, p. 201 seq.; de Miraculis, l. ii. c. xxviii. p. 943. Joh. Saresb. Polycr. l. vii. c. xxi. p. 691 seq.: 'Siquidem Carthusienses quasi avaritiae triumphatores praecipue ubique clarescunt.' Ib. c. xxiii. p. 698, he praises the orders of Grammont with the Carthusians. Peter of Blois, pupil of John, Ep. 62, p. 268 seq. also praises the Carthusians.

⁶ Alex. III. 1165, Ep. 311, p. 336, ed. Migne: 'Inter ceteros religiosos causam Ecclesiae prudentius defenderunt et Catholicam fovērunt magnanimitate unitatem et divinis etiam obsequiis noseuntur ferventius inhaerere.' On the monastery of Clairvaux, Ep. 324, p. 349: 'Quam famosum, quam celebre Claravallense monasterium habeatur et in quanta religione quantave hactenus honestate floruerit, non solum ad vicinorum, sed etiam ad longe positorum notitiam jam pervenit.' Cf. Joh. Saresb. l. c. c. xxi: 'Cistercienses B. Benedicti . . . praeepta et vestigia sectantur ad unguem.' Also Richard of Canterbury (Petrus Bles. Ep. 82, p. 252), Stephen of Tournay (Ep. 1), Philip, Abbot of Bonne Espérance (de Contin. Clericor. c. cxxv.), William of Malmesbury (l. iv. de Gest. Reg. Anglor.).

⁷ M. H. d'Arbois de Jubainville, Etudes sur l'état intérieur des

Abbayes Cisterciennes, Paris, 1858. Fr. Winter, *Die Cistercienser des nordöstlichen Deutschlands*, Gotha, 1869.

⁸ Migne, PP. Lat. t. clvii. pp. 719 seq. 711.

⁹ Papebroch, *Acta SS.* t. i. Jun.

¹⁰ Joh. Saresb. *Polyer. l.c. c. xxi.*

¹¹ *Ibid.* c. xxiii. p. 629. Cf. Petrus Bles. Ep. 97, p. 305.

¹² Cf. Gams in Möhler's *Kirchengesch.* ii. p. 608 seq.

§ 5.

Obviously I cannot now write a complete Church history ; and it is useless to spend more time in making mere assertions. The whole of the twelfth century bears ample testimony to the rich results of St. Gregory VII.'s great struggle. Bitter complaints are raised in these days against the spirit of worldliness that then penetrated the whole Church ; but those who make them are neither saints nor ascetics, and their right to complain may well be questioned. We may allow indeed that, in individual cases, the worldly spirit gained admittance, for it is an evil that in all times has had to be contended with. We may even allow that this spirit of worldliness in the Church contributed to the alienation of the Albigenses from Christian principles, although their external and ostensible connection with the East, the fascination always possessed by secret doctrines when artfully spread, and other causes, must not be forgotten ; also that the religious condition of the south of France and north of Italy was different from that of any other part of Christendom. The 'Poor of Lyons' did, there is no doubt, originally intend to 'return to the simplicity of the Gospel ;' but their view was a mistaken one, and their disobedience and self-assertion soon led them to follow the path traced by other sects. It is not untrue, though not the whole truth, that the great mendicant orders arose from a reaction, not against the Church, 'she having become rich and worldly,' but against the worldliness and luxury of her rulers and members. But, on the other hand, it is true that reform movements within the Church met with lively encouragement and support from the Holy See ; that Popes always upheld and recommended voluntary poverty ; and that Franciscans and Do-

minicans, even after their first fervour, performed great deeds in instructing the people, undertook most laborious missions to Africa, America, China, Tartary, and the north of Europe, and earned unending gratitude for civilising the nations. No followers of St. Francis were ever branded as heretics for following implicitly the rule of life enjoined by their founder—for the Paulists (Minims), Alcantarists, and Capuchins did this under the protection of the Holy See—but for disobediently preferring visionary fancies to Papal decisions, for being full of separatist pride, and for disseminating actual heresy. The Fraticelli were only a sickly outgrowth from the parent stem. Other complaints, of Rome being always in the foreground, and ecclesiastical order being suffered, in her interest, to fall into decay, are merely repetitions of the current Protestant objections, which have been outdone by *Janus*. We may reasonably ask what ecclesiastical order the Church possessed independent of Rome; an order perchance like that of the various ‘Churches without the Papacy,’ described with so much learning by Dr. Döllinger in 1861,¹ and which, in the circumstances of the Middle Ages, would have been a more chaotic and confused disorder than is well conceivable. We all agree that the ‘revival of art and science in the thirteenth century, the imposing display of the power of the Papacy in the Crusades and in the world-ruling policy of Innocent III.,’² would be no indemnification for the ‘decay of the Christian life, to foster which is the Church’s highest duty.’ But this decay is far from being proved: it was not greater than in many former centuries, in which, taking them altogether, we might discover as many dark places. Consider the condition of the Frankish kingdom before and during the time of St. Boniface, the condition of Spain at the time of the Moorish invasion, and the disorders of the tenth century. In the Crusades the power of the Papacy was not manifested alone; chivalry was there in all its perfection, and religious enthusiasm in all its strength. The artists and scholars of the thirteenth century contributed as much to the religious life as to art and science, and were amongst the noblest characters that ever lived. The power of the Popes was equally a political necessity and

an instrument in the hands of Providence for planting, propagating, and protecting Christian civilisation.

¹ *Kirche und Kirchen*, p. 156 seq.

² *Huber*, p. 13.

§ 6.

In conclusion, we will venture to repeat the words of one of our most eminent theologians.¹ 'The great exertions of this age' (that of Gregory VII. and St. Anselm) 'had only one profound internal motive; to this unity of object they must all be referred, else they would all and each be without a real signification. But when this one and true spring of action manifested itself, it was under a multiplicity of forms, each of which laid hold of some special force or talent of the human mind; the fulness of time alone completely developed it: this whole, under its many forms, was religious enthusiasm, the renewed yearning after divine and eternal truths which had been so long stifled in the woes and melancholy errors of the time. The flame of religion struggled for freedom, and in the glow which it diffused the chains that bound the spirit were sundered. The liberty of individuals insures the liberty of the mass; for if the individual is, as he should be, truly an organic member of the body corporate, his fate is deeply and wondrously involved in the destiny of the whole. If the body corporate be a slave, the individual cannot be free; therefore the emancipation of the body corporate is the first necessity, whence arose the struggle for the liberties of the Church known as the struggle about investitures. The Church, purchased and redeemed by the blood of Christ, cannot be the handmaid of the State: this was the watchword of the time. It was no idle comparison, but one full of significance, that identified the freedom wherewith Christ has made us free with freedom from the despotism of the State. In the early days of the struggle Gregory openly took up the first position. To insure effective action, the members must share and participate in the operations of the head; or rather, as the desire of the whole is shown only in the centre, it follows that what showed itself in the head was found and manifested

in the members.' This is surely a more profound and more tenable view than those which prevail at the present day.

¹ Möhler's *Kirchengesch.* edited by Gams, vol. iii. p. 314 seq. Cf. *Ges. Schriften und Aufsätze*, i. p. 34 seq.

Note to page 37.

The passage at the end of § 4, p. 37, might mislead. Vigil's book is condemned as containing 'doctrinas et propositiones respectivo scandalosas, temerarias . . . impias et haereticas'—terms similar to those in which Quesnel's propositions are proscribed by the *Unigenitus*. But no one doubts that the *Unigenitus* is a 'dogmatic infallible decision.' Compare Pius IX.'s Brief *Eximiam tuam* (June 15, 1857) addressed to the Archbishop of Cologne on the obligatory force of the Pope's previous condemnation of Günther's writings. And see also Dr. Hergenröther himself when treating of the Syllabus. Part I. § 2, p. 207. [TR.]

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