

STUDI GREGORIANI

PER LA STORIA DI GREGORIO VII
E DELLA RIFORMA GREGORIANA

RACCOLTI DA G. B. BORINO

IV

Acc. 52: 157



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EDITORE - ROMA - 1952

CARDINAL HUMBERT AND THE ECCLESIA ROMANA

The dynamic and creative forcefulness, the characteristically individualistic style and expression, the profound argumentation in his literary products, the conciseness of legal work — all these features have rightly secured Cardinal Humbert a permanent place in the history of the medieval papacy. The illuminating researches of Professor Anton Michel have indeed thrown into clear relief the prominent part that the learned Cardinal has played in shaping precisely those foundations upon which the future medieval papacy was to rest securely. A perusal of the various works of the Cardinal cannot but create the impression that the fifth century is re-enacted dramatically in the eleventh century with the ideological armoury and resources of the ninth century. In more than just one respect Humbert resembles Anastasius, the great and influential savant of the mid-ninth century.

The pivotal point in the programme of Humbert is the closely reasoned, sharp hitting and high-spirited attack against the prevailing *Rex-Sacerdos* ideas and practices. In launching his frontal assault the learned and enthusiastic Cardinal draws skilfully on ancient material and equally skilfully blends this with the reality of the mid-eleventh century. The avenue chosen by him to show how the *ordo rationis* or the prevention of *confusio*¹ should be realized was that of a recourse to the ancient Roman tradition.² That, incidentally, is the reason why the Cardinal relied so heavily

¹ See *Adv. Simoniacos*, in *MGH., Libelli de lite*, I, 205: *Ad totius ... religionis conculcationem prae-postero ordine omnia fiunt*; see also HUMBERT's *Sententiae* (the former *Diversorum patrum sententiae*, or *collectio minor* have now been identified, thanks to the most minute investigation of A. Michel, as Humbert's work, see A. MICHEL, *Die Sentenzen des Kardinals Humbert, das erste Rechtsbuch der päpstlichen Reform, in Schriften des Reichsinstituts f. ältere deutsche Geschichtskunde (MGH.)*; idem, *Pseudo-Isidor* etc., in *Studi Gregoriani*, III (1948), 149 ff; against Michel there is the lonely voice of Father F. PELSTER S. J., in *Studi Gregoriani*, I (1947), 347 ff), in THANER, *Anselmi ... Collectio Canonum* (c. 31), at Anselm's IV, 8, p. 195.

² Cf. MICHEL, *op. cit.*, p. 64; *Die Restauration altkirchlicher Verhältnisse*.

on Pseudo-Isidore, the pantheon of papal prerogatives, in a way the influential pathmaker of hierocratism.³ And just like the great popes of the fifth century, so also with Humbert — either as a literary author, or as a draughtsman of official papal communications⁴ — we witness that the lever with which the right order could most effectively be implemented was the primacy of the Church of Rome. This indeed was the strongest tool in the hands of all those who attempted to implement the effective government of the Christian world through the *ecclesia Romana*. Humbert invokes the time-honoured commission «Thou art Peter...» and basing himself on the equally time-honoured doctrines comes to the conclusion that the Roman Church is the hinge and head — *cardo et caput* — of all other churches.⁵ The Roman Church is the mother of all churches, and hence like a mother cares for the oppressed children, in the same way all oppressed Christians have the right to appeal to their spiritual and ideological mother.⁶ In a word, the Roman Church is the *exordium* of Christianity: it is the *principium* and the *fons* of all ecclesiastical life, embracing as it does *universam terram*.⁷ The *ecclesia Romana* is the epitome of all Christianity: *Romana ecclesia... afficit totius Christianitatis membra*.⁸

To Cardinal Humbert, then, the world, as far as it was Christian, was synonymous with Christendom: standing as he does on the ancient roads, to Humbert this Christian world was nothing but an *ecclesia*, the *congregatio fidelium* which is epitomised in the Roman Church. It is therefore perfectly in keeping with this axiomatic view that not only the Gelasian *mundus*⁹ is here exchanged for *ecclesia*, but also that the secular power becomes, ideologically, part and parcel of this *ecclesia*. The Cardinal's distinctive terminology, *ecclesia* on the one hand, and *sacerdotium* on the other hand, enables him to lay down a neat and tidy delineation within the larger framework of Christendom: for this, according to him, consists of

³ MICHEL, op. cit., p. 97: *Die unerschöpfliche Fundgrube, der eigentliche Steinbruch*; see also MICHEL, in *Studi Greg.*, I, 72.

⁴ On this see MICHEL, *Humbert und Kerullarios*, Paderborn 1925.

⁵ *Sententiae*, cc. 2, 12 (THANER's *Anselm*, I, 20, p. 7; I, 9, p. 10); cf. also LEO IX's letter in CORN. WILL, *Acta et Scripta* etc., c. xxxii, pp. 81-2; furthermore, MICHEL, *Sentenzen*, p. 18.

⁶ *Sententiae*, c. 3 (THANER, II, 6, p. 77).

⁷ *Fragmentum B*, printed by Percy SCHRAMM, *Kaiser, Rom und Renovatio*, II (Leipzig 1929), 133.

⁸ *ibid.*, p. 131.

⁹ In the famous *Duo quippe* letter, see A. THIEL, *Epistolae Romanorum Pontificum*, ep. 12, pp. 350 ff.

two agencies. If we wish to compare, he says, the sacerdotal and royal dignity, one should say

*sacerdotium in praesenti ecclesia assimilari animae, regnum autem (scil. in praesenti ecclesia) corpori, quia invicem se diligunt et vicissim sese indigent... ex quibus sicut praeceminet anima et praecipit, sic sacerdotalis dignitas regali, utputa coelestis terrestri.*¹⁰

The Christian world, in a word, was a Church.¹¹ Under this presupposition that the world is an *ecclesia*, the *sacerdotium* quite logically and naturally assumes the leadership of the whole *ecclesia*.

It is natural and logical, furthermore, that the *clericalis ordo* within the Church has to fulfil functions which its laical counterpart is incapable of fulfilling: as an eighth-century pope had said, and as Humbert no doubt would have endorsed, the former alone have the *sensus Christi*¹² and consequently the guidance of the Christian body is a matter for the clerics, and not for the laical component parts. The inevitable consequence was, on the one hand, the fiery attack on lay investiture which as plainly as possible was the concrete manifestation of the *Rex-Sacerdos* idea in practice, and, on the other hand, the concentration of the powers and rights, diffused as they were throughout the churches, in the Roman Church. The *ecclesia Romana* was, as we termed it, the epitome of all Christianity. Or differently expressed, the primacy of the Church of Rome was an indispensable requisite for the proper functioning and working of the Christian body, called a Church. Every other arrangement was bound to lead to a perversion of the right order.

For our present purpose we may leave aside the magisterial primacy of the Roman Church and concentrate our attention on the jurisdictional primacy. It will be recalled that the principle of jurisdictional primacy had been theoretically and ideologically hammered out by the time of Gelasius I, and it is needless to point out that this principle played a most conspicuous rôle in the thought of Cardinal Humbert. But in order to set the original contribution of the Cardinal into a proper perspective, that is, in order to show what, according to him, was the *ecclesia Romana*, it will be profit-

¹⁰ *Adv. Sim.*, loc. cit., p. 225.

¹¹ See especially the stimulating study of J. RUPP, *L'idée de Chrétienté*, pp. 53-71.

¹² See GREGORY II's letter in MANSI, XII, 977: *quoniam Christi sensum nos habemus*. On this see also E. CASPAR, in *Zeitschrift f. Kirchengeschichte*, 1933, p. 86, and P. SCHRAMM, *Sacerdotium und Imperium* etc., in *Studi Gregoriani*, II (1947), 415.

able to review briefly the fate of the principle of the jurisdictional primacy since its formulation by Gelasius I. This will be all the more advisable since the principle of the pope's immunity, to whose modification Humbert contributed so much, stands in closest proximity to the jurisdictional primacy of the Roman Church.

Despite the inimitable conciseness of Gelasius's language, the forger working a few years after this pope's death (circa 501) considered it necessary to give the Gelasian statements a more popular and more easily appealing form. The forger invented a synod held under Silvester in 324, and this synod passed the so-called *Constitutum Silvestri* decreeing in canon XX this:¹³

Nemo iudicabit primam sedem justitiam temperare desiderantem. Neque enim ab Augusto, neque ab omni clero neque a regibus neque a populo, iudex iudicabitur.

The forger thus gave the jurisdictional primacy of the Roman Church his own peculiar flavour, without receding too much from his papal source.¹⁴ Being the juristic expression of an important principle, it became a traditional axiom that weathered many a storm.¹⁵ Its inclusion in Pseudo-Isidore¹⁶ ensured its longevity and its canonical authority. A pope of Nicholas I's calibre obviously saw its great ecclesiastico-political value when he rendered the principle in this way:¹⁷

Cum enim Christi munere propter primatum ecclesiae Romanae in beato Petro concessum nemini sit de sedis apostolicae iudicio iudicare aut illius sententiam retractare permissum.

It is clear that this principle rendered in a typical Nicholean language

¹³ MANSI, II, 632; MIGNE, *PL.*, VIII, 839. On the series of Symachan forgeries, see P. COUSTANT, *Epp. Rom. Pontificum*, = *PL.*, VIII, 841-45; DUCHÈSNE, *Liber Pontificalis*, I, pp. cxxxii ff.; MAASSEN, *Geschichte der Quellen und Literatur des canonischen Rechts im Abendland*, pp. 411 ff.; E. CASPAR, *Geschichte des Papsttums*, II, 107 ff.; A. KÖNIGER, *Prima sedes a nemine iudicatur*, in *Festschrift f. Ehrhard*, pp. 273 ff., at pp. 298 ff.

¹⁴ About the barbarous Latinity of the fake, its notorious ignorance in matters canonical, see the brilliant study by St. KUTTNER, *Cardinalis. The history of a canonical concept*, in *Traditio*, III, 191.

¹⁵ The *Constitutum Silvestri* was incorporated in at least three canonical collections of the sixth century, the *Coll. San Blasiana*, *Coll. Theatina*, and the collection in MS. Vat. Lat. 1342; on this see MAASSEN, *op. cit.*, pp. 411 ff., 506 ff., 515, 526 ff.; C. H. TURNER, *Chapters etc.*, in *Journal of Theological Studies*, XXXI (1931), 9-20; E. LOWE, *Cod. Lat. Antiquiores*, I, 34, 44, and especially KUTTNER, *art. cit.*, p. 190.

¹⁶ P. HINSCHIUS, *Decretales Pseudo-Isidorianae*, pp. 449-50, 463. On the pre-Pseudo-Isidorian transmission, see preceding note and KUTTNER, p. 203.

¹⁷ *MGH.*, *Epistolae*, VI, 606.

had become a fundamental axiom whenever the primacy of the Roman Church was defended. We find this principle, naturally, also in Humbert's *Sententiae*, apparently modelled on Nicholas I, but slightly re-arranged in its formulation, re-arranged, that is to say, to make it suitable for juristic consumption.¹⁸

Nemini est de sedis apostolicae iudicio iudicare, aut illius sententiam retractare permissum: videlicet propter Romanae ecclesiae primatum, Christi munere in beato Petro apostolo divinitus collocatum.

The Humbertine juristic formulation of the jurisdictional primacy of the Roman Church went into Anselm's collection,¹⁹ into Ivo's collection,²⁰ and finally into Gratian.²¹ At the same time the Cardinal was also a mere transmitter of the formula employed by the Symmachian forger in the 20th canon of the *Constitutum Silvestri*. Humbert incorporated this canon in his *Sententiae* without any change²² and from here the formula went into Anselm's collection,²³ into Ivo's²⁴ and into Gratian²⁵ to mention only the main stages of post-Humbertine transmission.

The principle of the jurisdictional primacy of the Roman Church must not be confused with the pope's personal immunity from any sort of accusation. The two principles must strictly be separated, as in fact Humbert did, a feature that is usually overlooked. It is true that papal immunity stands in close proximity to the jurisdictional primacy of the Roman Church, but each concerns different aspects. The one is concerned with the Roman Church as exercising supreme jurisdiction, from which there lies no appeal to any other authority — *Roma locuta, causa finita est* — and the other concerns the pope personally as the object of a judicial trial and examination. As regards the latter principle, Humbert's contribution was fundamental and as far-reaching as Gelasian dicta had become in the political field. Far-reaching, that is to say, within the internal constitu-

¹⁸ *Sententiae*, c. 17 (THANER'S *Anselm*, I, 21, p. 16). The words italicized indicate Humbert's change in wording. On this moulding process cf. E. PERELS, in *Neues Archiv der Gesellschaft f. ältere deutsche Geschichtskunde*, XXXIX (1914), 72, 111, 119, and MICHEL, *Sentenzen*, p. 13, note 2.

¹⁹ I, 21, except that *enim* is inserted between *nemini* and *est*.

²⁰ *Panormia*, IV, 10.

²¹ *Decretum*, XVII. IV, 30, attributing it to Nicholas I.

²² c. 8, THANER, p. 15, ad c. 19, note 1.

²³ I, 19.

²⁴ *Panormia*, IV, 5.

²⁵ IX, III, 13.

tion of the Church, and hence perhaps not so noticeable to medieval contemporaries and still less noticeable to the modern historian. But in order to bring Humbert's contribution into clear relief, we must examine the historical background. Humbert sets forth his views on the personal immunity of the pope not in the *Sententiae*, but in the fragment *De sancta Romana ecclesia*.²⁶ In it the Cardinal employs his own language. With every justification this fragment has been called a «hymne»,²⁷ the «höchste Leistung» in the defence of the Roman primacy,²⁸ written «in leuchtender Sprache».²⁹ But this literary product of Humbert is, as we hope to show, even more. It not only programmatically and concisely sums up in little more than a printed page the ideological development of previous centuries, but it also opens up the future constitutional development within the Roman curia. All this is achieved with an economy of words and an incisiveness of expression which cannot find a parallel. In a way it may be what Schramm has called the «Posaunenstoss, der die Katastrophe von Canossa einleitet».³⁰ But this literary piece of Humbert assumes a special significance because of the modification of the principle of the pope's personal immunity. When we attempt to trace the genesis of this principle of papal immunity, the same forger who has just attracted our attention, will once again have to serve as the «point d'appui». In the same *Constitutum Silvestri* purporting to be the record of the synod held under Silvester, we find the following stipulation in canon III:

Neque praesul summus judicabitur a quoquam, quoniam scriptum est: Non est discipulus super magistrum.³¹

Just like the complementary principle of the jurisdictional primacy of the Roman Church, so also was this principle of the pope's per-

²⁶ See SCHRAMM, op. cit., I, 238 ff.; II, 126 ff.; and identified by MICHEL, *ibid.*, II, 134 ff.

²⁷ H. X. ARQUILLIÈRE, *Grégoire VII, essai sur la conception du pouvoir pontifical*, p. 314.

²⁸ SCHRAMM, op. cit., II, 125.

²⁹ MICHEL, in *Studi Gregoriani*, I, 67.

³⁰ vol. I, p. 241.

³¹ Text in MANSI, II, 623, also in COUSTANT, op. cit., app. 44; the biblical reference is to *Math.*, X, 24. The text is also printed by KUTTNER, art. cit., p. 190, with critical notes, note 57.

It should be borne in mind that whilst canon XX of the *Constitutum* deals with the jurisdictional primacy of the Roman Church, canon III is concerned with the personal immunity of the pope from any sort of accusation. This distinction is not always clearly made resulting in considerable confusion.

sonal immunity nurtured by collectors.⁸² We have in fact the testimony of Alcuin how the lapse of 300 years — or from Alcuin's point of view, the lapse of nearly 500 years — had increased the authority of canon III of the *Constitutum*. Before Charlemagne sat in judgment over Leo III in December 800, Alcuin had written to his friend Arn of Salzburg pointing out the inadmissibility of trying a pope; he protests against the pending trial and says:⁸³

If I remember rightly I had read in the canons of St. Silvester that a Bishop can be accused only on the testimony of 72 witnesses... and I also read in other canons that the apostolic see must not be judged, but that it judges everyone.

When then in actual fact Charlemagne did sit in judgment over Leo III at Christmastide 800, the episcopal participants of the synod — the trial was conducted in the manner of a synod⁸⁴ — declared:⁸⁵

Nos sedem apostolicam, quae est caput omnium ecclesiarum, iudicare non audemus. Nam ab ipsa nos omnes et vicario suo iudicamur, ipsa autem a nemine iudicatur quemadmodum et antiquitus mos fuit.

The Fathers of that synod reiterated the idea of the Symmachan forger and changed his wording only insignificantly. They and the forger therefore maintained that the pope's personal immunity was unconditional: under no circumstances whatsoever was a pope to be tried for any crime and for any reason. The papal pronouncement of Nicholas I which is in fact a literal copying of the third canon of the *Constitutum*, endorses the unconditional papal inviolability.⁸⁶ That Pseudo-Isidore also reported this important principle, needs no explanation.⁸⁷

And yet, despite his thorough familiarity with Nicholas I, with the Symmachan forger and the Frankish forger, Cardinal Humbert in the *De sancta Romana ecclesia* makes a statement that although purporting to fix the pope's personal immunity, has a very significant addition.

⁸² On the transmission see supra note 15.

⁸³ MGH., *Epistolae*, IV, 296. See also E. CASPAR, *Das Papsttum unter fränkischer Herrschaft*, in *Zeitschrift f. Kirchengeschichte*, 1935, pp. 223-4.

⁸⁴ CASPAR, art. cit., p. 226.

⁸⁵ *Liber Pontificalis*, II, 7: Vita Leonis III.

⁸⁶ MGH., *Epistolae*, VI, 466.

⁸⁷ Headed: *Excerpta quaedam ex synodalibus gestis s. Silvestri papae*, c. 2, at HINSCHIUS, *Decr. Ps. Isid.*, p. 449. The forged decree was also incorporated in the *Capitula Angilramni*, c. 51 (2), HINSCHIUS, p. 766.

Cuius (*scil.* papae) culpas redarguere praesumit mortalium nullus, quia cunctos ipse iudicaturus a nemine est iudicandus, nisi forte deprehendatur a fide devius.

In this form the statement went into the collection of Cardinal Deusdedit,³⁸ into that of Ivo,³⁹ and finally into Gratian.⁴⁰ Since Anselm so largely relied on Humbert's *Sententiae*, he did not incorporate this statement: Humbert did not have it in his *Sententiae*. Nor, significantly enough, did he have the *Neque praesul summus* (can. III of the *Constitutum Silvestri*) which, incidentally, may be further proof for the identity of the author of the *Sententiae* and of the *De sancta Romana ecclesia*.⁴¹

When one realizes what great importance this statement had to play in later canonistics and particularly in the interminable constitutional quarrels concerning the Church government, we can perhaps then measure the contribution and the influence of Cardinal Humbert. Nevertheless, the Humbertine fixation of papal immunity is an astonishing piece: does it not throw out of gear the whole papalist-hierocratic machinery? Can this still be reconciled with the basic thought of Humbert? Or is it nothing but a colossal blunder the implications of which its author had not seen? The whole tenor, diction and composition of this document militates against even considering this last-mentioned possibility. But then, how is one to explain a statement like this coming from a convinced hierocrat and curialist such as Humbert was? Perhaps his position as a curialist will give us the clue, but first we must again enquire into the genesis of the so-called heresy clause: *nisi forte deprehendatur a fide devius*.

Whether or not inspired by the forged Symmachan decrees, Isidore of Seville in his *Sententiae* laid down that a superior should not be judged by his ecclesiastical inferior; that only if the superior fails in his faith he should be reproved («corrected») by his inferiors; any moral failings should be tolerated.⁴² Stern as Pseudo-Isidore's views were on the hierarchical ordering, he deals in several places with the problem of accusation by ecclesiastical inferiors of their

³⁸ I, 231, see Wolf von GLANVELL, *Die Kanonensammlung des Cardinals Deusdedit*, p. 177, although strangely enough he also had the *Neque praesul summus*, I, 89, p. 74.

³⁹ *Decretum*, V, 23, and *Coll. Tripart.*, III, 9 (3).

⁴⁰ *Dist.* 40, c. 6.

⁴¹ If any further proof were needed after Michel's conclusive evidence.

⁴² *Liber Sententiarum*, III, xxxix, 5, MIGNE, PL., LXXXIII, 710: *Rectores ergo a Deo iudicandi sunt, a suis subditis nequaquam iudicandi sunt*; no. 6: *Quod si a fide exorbitaverit rector, tunc erit arguendus a subditis: pro moribus vero reprobis tolerandus magis distringendus a plebe est*.

superiors, and he makes a number of popes say that if a Bishop should deviate from the faith he should be corrected secretly by his inferiors, and only if he is incorrigible, he should be reported to the apostolic see.⁴³ In substance Isidore and Pseudo-Isidore are identical: both are insistent that moral defects of the superior should be suffered by the inferiors; both agree that deviations from the faith should be put right. Pseudo-Isidore adds, however, that in the case of an incorrigible adherence to unorthodoxy report should be made to the apostolic see.⁴⁴ About the pope himself both were silent. And it is with respect to the pope that Humbert's innovation emerges so fully, an innovation, however, that was reserved for the *De sancta Romana ecclesia* and which we will not find in his *Sententiae* where he closely follows the old models.⁴⁵

What Humbert did in *De s. Romana ecclesia* was to combine canon III of the *Constitutum Silvestri* with the Isidorian and Pseudo-Isidorian provisions of the superior's heresy, and in this way he arrives at a true immunity of the pope from accusations of a moral nature. Humbert excluded from the immunity the pope's deviation from the faith. Purely moral failings on the part of the pope are the object of papal immunity. The novelty was that Humbert infused into the (hitherto unconditional) immunity of the pope (can. III of the *Const. Silv.*) the Pseudo-Isidorian provision of a Bishop's accusation before the apostolic see. The immunity of the pope, according to Humbert, was conditional in that he was not accused of heresy: in this case all immunity vanishes and the pope is answerable. For moral defects — simony, adultery and the like — papal immunity remains, and nobody can judge him.

⁴³ *Si incorrigibilis, quod absit, apparuerit, tunc eris accusandus ad primates suos aut ad apostolicam sedem*, Fabian, ep. II, c. 23 (HINSCHIUS, p. 166), see also Clement I, ep. I, c. 42 (HINSCHIUS, p. 45), Anacletus, ep. III, c. 39 (p. 85). See also Fabian, c. 22 (p. 165): *Apostolica auctoritate iubemus ne pastorem suum oves, quae ei commissae fuerant, nisi a fide erraverit, reprehendere audeant ... neque potest esse discipulus super magistrum*. Cf., furthermore, Eusebius, c. 11 (p. 237), Johannes, ep. I (p. 694), and Symachu's synod (p. 676).

⁴⁴ See preceding note. BURCHARD does not open the way to the apostolic see, cf., e.g., I, 136; *Doctor autem vel pastor ecclesiae, si a fidelibus exorbitaverit, erit a fidelibus corrigendus. Sed pro reprobis moribus magis est tolerandus quam distringendus*; and c. 139: *Oves, quae pastori suo commissae fuerint, eum nec reprehendere, nisi a recta fide exorbitaverit, debent nec ullatenus accusare possunt*, PL., CXL, 589, 590. See furthermore GRATIAN, *Decretum*, II. vii. 13 (= ANSELM: III, 44, THANER, p. 136; Ivo, *Panormia*, IV, 39).

⁴⁵ c. 74, at ANSELM, III, 37, THANER, p. 134, where we find the agreement with Isidore, Anacletus in Pseudo-Isidore, c. 38, p. 85 (and Burchard); see also c. 78, at MICHEL, *Sentenzen*, p. 35, no. 12.

Every difficulty of interpreting this statement would disappear if, as has once been suggested, the *nisi* clause could be made to refer to *mortalium nullus*, and not to *judicandus*.⁴⁶ Freely rendered the Humbertine statement might then read: «only he who is devoid of faith can have the temerity of judging the pope for his faults, for he judges all and is not judged by anyone». This interpretation, however ingenious, not only does violence to Humbert's diction, for nothing justifies us to juggle about with the construction of an undoubtedly carefully built up sentence, but also contradicts the very tenor of the immediately preceding sentences. In the preceding sentence Humbert says that it depends on the pope whether he will make the whole world run after God in ecstasy and enthusiasm, or whether, when useless, unmindful of his duties and negligent of his and his brethren's spiritual well-being, he will drag innumerable nations down to hell: and then follows the enigmatic sentence that, namely, «whose (scil. the pope's) defects in these affairs no mortal presumes to judge, because he will judge...» It is clear, then, that Cardinal Humbert considers the pope's negligence of his duties and so forth as these defects (the *culpae*) which no mortal can judge. In so far he moves entirely within Isidore's, Pseudo-Isidore's (and also Burchard's) *reprobi mores*. But it is not a mere *culpa*, our Cardinal thinks, if the pope should deviate from the faith — that is something entirely different from a personal defect, such as the commission of a crime and the like. And for this he may be judged. That this is the meaning follows also from the immediately succeeding sentence. Here the possibility that the pope can fall into heresy is openly admitted when he says that the *universitas fidelium* prays all the more ardently for the pope's ever-lasting government, because they — the faithful — consider that, after God, their salvation depends on the pope's safety (scil. in matters of faith). There can be no guarantee for the pope's orthodoxy, and therefore the prayers of the faithful are necessary. There is, then, nothing to justify the interpretation that the heresy clause does not refer to the pope.⁴⁷

Another interpretation has been attempted. It is suggested that the Cardinal's meaning will become clear if a distinction is made between his official and his private capacity.⁴⁸ This argumentation

⁴⁶ So MICHEL, in SCHRAMM, op. cit., II, 136. But see the cautious approach of SCHRAMM, *ibid.*, p. 126, and also K. HOFMANN, *Der Dictatus Papae Gregors VII.*, p. 125.

⁴⁷ MICHEL himself (*Sentenzen*, p. 32, note 1) has since withdrawn this interpretation.

⁴⁸ *Idem*, *ibid.*, and in *Studi Gregoriani*, I, 68.

is based on the interpretation of letters of Leo IX which, in fact, were drafted by Humbert. The Humbertine passage, in other words, is to be explained by a recourse to official papal communications. Surely, this kind of interpretation violates the canons of historical analysis. Nothing entitles us to set this literary product of Humbert lightly aside, for it is — as Professor Michel is only too ready to admit — a programmatic declaration, and not the result of some pious, momentary inspiration: its diction, its conciseness, its extremely well chosen biblical allusions and borrowings — all these compel us to consider the fragment on its own merits. We are not forced to go outside it and to make a loan in official papal documents, if we wish to interpret Humbert himself. Apart from this, it may be that the distinction between the private and official capacity of the pope was implied in the letters adduced by Michel, but these letters had not gone into the canon law.⁴⁹ What has gone into it is the passage from the fragment, and that is what matters. If the distinction had been operative in Humbert's mind, then there is every reason to assume that he had expressed it in the fragment. Humbert was not at a loss for the right word in the right place. The attempt to interpret Humbert's product by a recourse to extraneous matter is at the same time a degradation of the very man to whom his modern rescuer had devoted years of his life.⁵⁰

Having rejected the two interpretations of the important passage, what can we offer in their place? Is there a *tertium*? We think there is. This literary product of Humbert is all of a piece. After stating the function and the basis of the Roman Church Humbert continues: «As a matter of fact» — *revera* — all Christians look with such awe and reverence to the apex of this Church that they prefer to accept the interpretation of doctrine from his own mouth to the sacred writings themselves. Here the Cardinal does not say that all Christians should look at the pope in this way, but he merely states a fact, of which he no doubt approves. And the opening of the immediately following sentence gives us the opinion of the Cardinal himself: the operative words are *quod si*. Freely rendered our author says: «That is true, if the pope strives to be irreproachable to God and man, in his works and speech, for then he will indeed

⁴⁹ Except the one in Ivo's *Decretum*, V, 44.

⁵⁰ See MICHEL himself in *Studi Gregoriani*, III, 161, and *Savigny Zeitschrift*, Kanonist.-Abtlg., XXXV, 339.

make the world run after God ecstatically, but if he should be forgetful of his position he will drag innumerable people to hell».⁵¹ Humbert then leaves this part dealing with the pope and reverts to the Roman Church,⁵² to which — and not to the pope — may be attributed the words of Job: «He breaketh down and it cannot be built again; he shutteth up a man, and there can be no opening; he withholdeth the waters, and they dry up; also he sendeth them out, and they overturn the earth». For the Roman Church is the mother of all the faithful in Christ. What matters is the see of him to whom Christ had spoken the words «Thou art Peter...» — *sedes illius, cui dictum est: Tu es Petrus...* The Roman Church in a special sense, not the pope, fulfills the Petrine commission: *ipsa specialius in Petro coeli terraeque retinet habenas*. Through the medium of St. Peter the Roman Church was divinely endowed with the functions attributed to it. It is the see of Rome that matters: the emphasis is on the Church of St. Peter, on his see, at the expense of the pope who, by virtue of being Bishop of this apostolic Church, is its apex.

Humbert speaks as a curialist in the most literal meaning of the term. The Roman Church is to him the curia in whose birth he himself had such a large share.⁵³ Our passage is not only the programmatic declaration of a hierocrat concerning the Roman Church, but also the programmatic vindication of the rights of the Roman curia. As far as the Cardinals were concerned, Roman Church and Roman curia were identical terms. For from the time of Leo IX onwards the Cardinals assume that function that has since been the one attributed to them, namely, they participate in the primacy of the Roman Church.⁵⁴ And when we look at Leo's letters — for corroborating evidence only — we shall see that the cardinal-curialist

⁵¹ *Quod si, ut summopere sibi et omnibus expedit, zelo domus Dei sine intermissione tabescens, fidelis dispensator et prudens existens, Deo et hominibus opere et sermone irprehensibilem sese conservare studuerit, ut vere fatear, universum pene mundum secum attonitum et sollicitum post Deum currere facit, ex utroque sexu populos diverse professionis, condicionis et etatis cateratim domino suo super omnia bona ipsius constituendus ducit. Si vero sue et fraterne salutis...*

⁵² *Salvo enim divine omnipotentie misterio...*

⁵³ See MICHEL, *Papstwahl und Königsrecht*, pp. 13 ff.; idem, in *Studi Gregoriani*, I, 86; see, furthermore, J. B. SÄGMÜLLER, *Die Tätigkeit und Stellung der Cardinäle bis auf Bonifaz VIII.*, pp. 128 ff., idem, *Lehrbuch des katholischen Kirchenrechts*, (4th ed.), I, 4, p. 517; cf. C. JORDAN, *Le sacré Collège au m. a.*, in *Revue des cours et des conférences*, XXIII, 128 ff.; H. W. KLEWITZ, *Die Entstehung etc.*, in *Savigny Zeitschrift*, Kanonist. Abt., XXV, 115 ff., and KUTTNER, in *Traditio*, III, 172 ff.

⁵⁴ See especially, KUTTNER, art. cit., p. 176.

pattern emerges here too. To take only one example of Leo's letters: to the patriarch in Constantinople he writes in a language that shows the modification of the term Roman Church, or rather the clarification of this institution when he says: «Like the immovable hinge that sends the door forth and back, thus Peter and his successors have the free judgment over the entire Church... Therefore his clerics are named cardinals, for they belong more closely to the hinge by which everything else is moved».⁵⁵ Humbert as the draughtsman of this letter expresses exactly the same idea which he had conveyed in *De s. R. ecclesia*. The Roman Church consists of the cardinals and the pope. It is the Church of the apostle to which Christ's words were directed.

Humbert is as convinced of the primacy of the Roman Church as he is of the rights of the Cardinals. The *De s. Romana ecclesia* contains the germ of all the later constitutional quarrels between the pope on the one hand and the College of Cardinals on the other hand; but it also contains the germ of the later canonistic theory that the Roman Church was a corporation to which all the consequences of a properly developed corporation theory could be applied.⁵⁶ In a word, the Roman Church had become the corporate epitome of universal Christendom. The pope is merely the head of this corporate epitome, and it is in this function, as the apex of the apostolic see, that he addresses the faithful. They have every reason to see in him the actual Ruler — *revera*, says the Cardinal, «they look at him with reverence and prefer his interpretation to the sacred writings themselves»; but although this is a matter of fact, the point in theory is that the pope as an individual may fall into error. When therefore Gregory VII in *Dictatus Papae* 22 lays axiomatically down that «the Roman Church has never erred», he expresses exactly the same idea as Humbert: Gregory does not evade the question at all.⁵⁷ According to Humbert, the pope virtually appears to the universal Church as the true Ruler, but there is, theoretically, just the chance — *forte* — that he deviates from the faith, in which case, theoretically, he is subject to judgment. The pope partakes in the

⁵⁵ LEO IX's letter in C. WILL, *Acta et Scripta* etc., cap. XXXII, pp. 81-2.

⁵⁶ O. GIERKE, *Deutsches Genossenschaftsrecht*, III, 251 ff.; SÄGMÜLLER, *Cardinäle*, pp. 225 ff.; B. TIERNEY, *A Thirteenth-Century Conciliarist*, in *Catholic Historical Review*, XXXVI (1951), 426 ff.

⁵⁷ As MICHEL (op. cit., p. 32, note 1) would have it: «Der DP 22 umgeht die Frage, insofern er die Unfehlbarkeit der 'römischen Kirche' zuschreibt».

function of the Roman Church, but only in so far as he is a member of this corporation.⁵⁸

What reasons might the Cardinal have had to dwell at such inordinate length on the possible moral defects of the pope, whilst the — dogmatically at least — much more important issue of the pope's orthodoxy is given so little prominence? The latter is subordinated to a mere *nisi* clause, whilst the pope's moral deviations are painted in rhetorically bleak terms. The reason for this stands in closest proximity to the fundamental opposition of Humbert to the *Rex-Sacerdos* idea. The dealings of Henry III were still fresh in the memory of the curia, and Henry's removal of the two popes for what Cardinal Humbert indubitably would have called a *culpa* was unjustifiable by reason of the relevant canons purporting to safeguard the immunity of the pope. There was *mortalium nullus* who had the right to sit in judgment over the pope's moral failings. The accountability of the pope for heresy is almost tucked away — surely a far more important aspect than a simoniacal or otherwise immoral pope. The importance of this pronouncement would have warranted a statement which would not have been so disproportionate in comparison with the preceding lengthy exposition of his moral deviations. Admitting the legal possibility of subjecting the pope to a judgment for his aberration from the faith — the question at once arises: who is to judge him? And, who is to watch the pope's orthodoxy? It is certainly strange that Humbert deals with a negative point at such great length, whilst the positive point is, so to speak, only half-made.

We may perhaps find the answer in the source from which he derived the *nisi* clause. As we pointed out before, this heresy clause was the exception which permitted inferiors to charge their ecclesiastical superior and to notify their heresy to the apostolic see. The step which Humbert took in applying the heresy clause — which, we should bear in mind, had never been used in connexion with the *Prima sedes a nemine judicatur* — to the pope would indicate that he also accepted the apostolic see as the last resort. The tenor and the fundamental ideas of the *De s. Romana ecclesia* leave little room for doubt as to who was to sit in judgment over the pope,

⁵⁸ This, indeed, may later lead, in a rather tortuous and circuitous route to the distinction between private and official capacity, but in the *De s. Romana ecclesia* there is absolutely no support for this distinction.

who was to control his orthodoxy, and who in fact was to deal with him if he deviated from the faith: the Roman Church. As the corporate epitome of the universal Church the Roman Church, that is, the curia as constituted by the Cardinals, has the right to judge the pope's heresy. Moreover, if there is *mortalium nullus* who should sit in judgment over the pope's moral deviations, there must be some mortals who can do so in the case of his heresy. It would have been most imprudent on the part of the learned Cardinal to say all this explicitly, but how else is one to justify, firstly, the peculiar construction of this literary product, beginning with the Roman Church, then going over to the pope, and reverting again to the Roman Church; and, secondly, the novel combination of the immunity of the pope (hitherto unconditional) with the heresy clause (hitherto applicable only to non-papal ecclesiastics)? To the initiated it must have been clear enough what the author of the *De s. Romana ecclesia* wished to say — and none understood the Cardinal better, that is, Dist. 40, c. 6 of the *Decretum*, than the leading canonist of the following century, Huguccio, who had no qualms in saying: *Cardinales possunt deponere papam propter haeresim.*⁵⁹

We suggest, therefore, that *De s. Romana ecclesia* constitutes an entirely new departure, in so far as the internal constitutional government of the Church is concerned. It created what might be called the problem of the cardinalate, that is, the function and position of the Cardinals within the Roman Church. The canonical status of the Cardinals was a problem that was to emerge as soon as the College of Cardinals came into being, and this problem was inconspicuously tucked away in *De s. Romana ecclesia*. To anyone acquainted with the endless disputes within the curia as to the standing of the Cardinals, it must be plain that the seeds of this controversy were contained in this literary product. Sometimes this problem smouldered under the surface, sometimes it broke out with elemental force and with a fury which characterizes a repressed tension, as it was the case in the eventful year 1378. It was a problem that was to engage the attention of the leading canonists in the centuries following Humbert's own.⁶⁰

⁵⁹ Huguccio's *Summa* ad Dist. 63, c. 23. For further details see the present writer's *Origins of the Great Schism*, Appendix: *Cardinal Zabarella and his position in the Conciliar Movement*.

⁶⁰ See esp. TIERNEY, art. cit., pp. 429 ff., and SÄGMÜLLER's articles in *Theologische*

To say, however, that Humbert's piece began to exercise influence in the canonistic sphere only by virtue of its inclusion in Gratian's *Decretum* would be accurate in one sense only, namely, in so far as the theory of corporation was to evolve the corporate nature of the Roman Church with the pope as a mere head of this corporate body. The echo of Humbert's piece can be felt, however, almost immediately. We have in fact two witnesses, each obviously focussing their attention on this weighty document. The one is the author of the *Dictatus* of Avranches, who in cap. 2 gives a direct reply to Humbert and flatly contradicts the Cardinal's statement: *A nemine papa judicari potest, etiamsi fidem negaverit.*⁶¹ And it way well be that DA. should be dated earlier than has hitherto been assumed, namely, to the very beginning of Gregory VII's pontificate.⁶² The other witness as strongly endorses the view of the *De s. R. ecclesia* as the DA. denies it. Cardinal Hugh asserts, like his greater colleague, that what matters is the see of Rome, not the pope.⁶³ The pope, according to Hugh, is merely the mouthpiece of the Holy See.⁶⁴ Lastly, the Roman Church being the Cardinals together with the Pope, the former have the right to depose the latter, as, according to Hugh's reading of history, they had done so in the cases of Anastasius and Liberius: *Liberius et Anastasius... a cardinalibus sanctae sedis ut profani dampnati sunt.*⁶⁵

The controversy regarding as to who constitutes the Roman Church naturally came only to the fore, when circumstances favoured the open eruption of the problem. As the machinery of Church government grew more complicated as time went on, so also increased the opportunities for friction between pope and cardinals: the succeeding centuries show this all too clearly, especially when such land marks are given their proper historical evaluation as Frederick

Quaralschrift, LXXX, 618; LXXXIII, 45 ff.; LXXXVIII, 595. See also V. MARTIN, *Comment s'est formée la doctrine de la supériorité du concile*, in *Revue des sciences religieuses*, XVII, 121 ff.

⁶¹ S. LÖWENFELD, *Der Dictatus Papae* etc., in *Neues Archiv* etc., XVI, 198.

⁶² So SACKUR, in *Neues Archiv*, XVIII, 150; see also HOFMANN, *op. cit.*, p. 21.

⁶³ MGH., *Libelli de lite*, II, 404 (Ep. Ugonis, no. IV), and p. 419 (Ad Mathildam): *... verbum Domini dicentis Petro et per Petrum Romanae sedi 'Quodcumque ligaveris super terram ...' est autem privilegium Romanae sedis semper assistere per cardinales ... ipsi pontifici vel vicario ipsius sedis, id est, quem ipsa sedes sacrosancta os suum facit, per quem et cum quo praedicat, per quem sacramenta administrat...*

⁶⁴ See the preceding note.

⁶⁵ *ibid.*, p. 418.

II's appeal to the cardinals,⁶⁶ the Colonna troubles during Boniface VIII's time,⁶⁷ the Avignonese re-organisation of curial business culminating in the disaster of 1378 which was primarily concerned with this particular constitutional issue.⁶⁸

We cannot omit to mention that amongst the most extreme papalists of later days we also find at the same time the staunchest attackers of papal absolutism within the curia: whether or not it is a coincidence, it is a fact nevertheless that this dichotomy — an extreme papalism directed outwards vis-à-vis the universal Church, and a rigid constitutionalism directed inwards, that is, within the curia — can usually be observed with canonists who were cardinals. It is the beginning of this very same dichotomy which we find with Cardinal Humbert — an enthusiastic defender of papalism as well as of the constitutional restriction of the pope's function at least as far as his orthodoxy was concerned. Once this breach was admitted it was only a matter of resolving a theory, particularly the one based on the concept of corporations, that other constitutional restrictions of the pope within the curia followed as a matter of course. The stimulus given to these later developments by Cardinal Humbert in particular and by the Gregorian era in general is an aspect that would merit closer attention than it has hitherto received.

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⁶⁶ See B. SÜTTERLIN, *Die Politik K. Friedrichs II. und die Kardinäle*; and H. WEIRUSCOWSKI, *Vom Imperium zum nationalen Königtum*, pp. 179, 189, 191.

⁶⁷ It is not without significance that Boniface VIII in his *Unam Sanctam* said this: *Si deviat spiritualis minor, a suo superiori (judicabitur). Si vero suprema, a solo Deo, non ab homine, poterit judicari*, in *Extravag. Comm.*, I, viii, 1.

⁶⁸ See *Origins of the Great Schism*, pp. 170 ff. Cf. also Professor R. P. E. de MOREAU S. J., *Une nouvelle théorie sur les origines du grand schisme d'Occident*, in *Bulletin de l'Académie royale de Belgique, Classe des Lettres*, XXXV (1949), 182 ff.