

## Research on William Durant the Younger's *Tractatus de modo generalis concilii celebrandi*: A Critical Review

As far as we can tell, research on the *Tractatus de modo generalis concilii celebrandi* began in 1869.<sup>1</sup> That may seem strange, for 1869 was also the year in which the First Vatican Council met. At that council the Catholic Church not only celebrated a highpoint in its rapid revival following on the losses it had suffered during the French Revolution, but also issued decrees that are, at least on a common understanding, diametrically opposed to the ideas of William Durant the Younger, bishop of Mende from 1296–1330.<sup>2</sup> Durant, after all, is best known for having insisted on one particular proposal for the reform of the church among the many he submitted to the Council of Vienne (1311–12) in his *Tractatus*: that the pope {205 | 206} ought no longer to be permitted to pass or alter any laws without having consulted a general council, and that such

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- 1 Earlier treatments, such as *Gallia Christiana*, 1:96–7, need not be treated here because they barely mention the *Tractatus de modo generalis concilii celebrandi* and their effect on modern research has been negligible. I shall also refrain from analyzing studies devoted exclusively to Durant's life, such as Göller, “Geschichte der italienischen Legation,” and articles in standard works of reference, such as Naz, “Guillaume Durand,” and Mollat, “2. Durant (Guillaume).” I shall focus first and foremost on source-based research that has had a significant impact on the interpretation of Durant's treatise.
- 2 Concerning church history in the nineteenth and twentieth centuries, I should like to refer once and for all to Jedin, ed., *Handbuch der Kirchengeschichte*, vols. 6–7. Jedin, *Kleine Konziliengeschichte*, provides an introduction to the history of general councils. Unfortunately there is no good treatment of ecclesiastical historiography from a Catholic perspective. For the time being the remarks and bibliographical references in Jedin, ed., *Handbuch der Kirchengeschichte*, 1:44–55, 6/2:261–4, 328–34, 7:283–6, will have to do. The history of Protestant ecclesiastical historiography by Meinhold, *Geschichte der kirchlichen Historiographie*, is similarly insufficient for our purposes. That makes it necessary to rely largely on biographical information in dissertations, bibliographies, and biographical dictionaries. For accounts of the historiography of conciliarism see Bäumer, “Erforschung des Konziliarismus,” and Alberigo, “Movimento conciliare.”

councils were to meet every ten years.<sup>3</sup> It is true that there still is no convincing and comprehensive interpretation of the theories behind Durant's demand. The present study is only a preliminary step towards such an interpretation. Nonetheless, at least this much is certain: not only the ten-year period, but also Durant's entire understanding of the role of popes and councils amount to a striking anticipation of the decrees *Haec sancta* and *Frequens* that were passed by the Council of Constance more than a hundred years later, however much this judgment may need to be qualified in detail.<sup>4</sup>

That brings us to the point at hand, for if anything can be said to characterize the history of the Catholic Church in the decades leading up to the First Vatican Council, it is increasing hostility towards so-called liberals in the church and criticism of movements in favor of councils or movements understood to have been inspired by democratic tendencies more broadly speaking. Such increasing hostility and criticism are well reflected in Denzinger's decision not to include *Haec sancta* and *Frequens* in the first edition of his paradigmatic *Enchiridion symbolorum* of 1854,<sup>5</sup> and were given pronounced expression in Pope Pius IX's famous Syllabus of Errors of 1864. The positive correlate of this negative attitude to democracy was an insistence on the singular importance of absolute papal monarchy that, after heated debates, achieved a decisive victory at the First Vatican Council culminating in the declaration of papal infallibility and the definition of papal primacy. No wonder that research into the history of the conciliar movement and late medieval councils suffered for many years thereafter.<sup>6</sup>

The reason why this study must nonetheless begin in 1869 is a book that was published in Leipzig that year under the title *Der Papst und das Concil*. It was written under the pseudonym Janus by Johann Joseph Ignaz von Döllinger

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3 Durant, *De modo generalis concilii celebrandi tractatus*, ed. Crespin, 1.4, fol. 7<sup>r</sup>, 3.27, fol. 59<sup>r</sup>. Unless indicated otherwise, all quotations are taken from this edition of Durant's *Tractatus*. Various reasons can be adduced to justify spelling Durant's name 'Durandus,' 'Durantis,' 'Duranti,' and 'Durant' or 'Durand,' all of which are forms that have in fact been used; cf. Heber, *Gutachten*, 65; Andrieu, *Pontifical romain*, 3:311; and Viollet, "Guillaume Durant," 212. For the purely pragmatic sake of international uniformity I prefer 'Durant,' the form used by Durant's biographer Viollet.

4 The text of *Haec sancta* and *Frequens* can be found in *Conciliorum oecumenicorum decreta*, 409–10, 438–43.

5 Alberigo, "Movimento conciliare," 914, 950. Cf. Denzinger, ed., *Enchiridion symbolorum* (1854), often reissued with various revisions, most recently Denzinger, ed., *Enchiridion symbolorum* (2010).

6 Jedin, ed., *Handbuch der Kirchengeschichte*, 1:45, 6/2:333.

(1799–1890), “doubtless the most learned church historian of his time.”<sup>7</sup> Döllinger had been trained in the school of Tübingen and {206 | 207} studied with Möhler, among others. By 1869 a large number of books he had published during his tenure as professor in Munich had already proved him to be an outspoken opponent of Jesuits and Ultramontanism.<sup>8</sup> As soon as he got wind of the issues that were to be debated at the First Vatican Council, he had written a series of anonymous articles in the *Augsburger Allgemeine Zeitung* that amounted to a sensational attack on any plans to raise papal infallibility to the level of Catholic dogma. “A fighter for the church with the weapons of history,”<sup>9</sup> he expanded his offensive in *Der Papst und das Concil*, which was written in great haste but massively documented with historical evidence.

Durant was the very first author whom Döllinger quoted in the section he devoted to “the judgments of contemporaries” (*Urtheile der Zeitgenossen*) on the papacy. He emphasized that Durant viewed the papal curia as the

chief evil and cause of so many forms of corruption. . . . He goes on to list the most urgent reforms without which the church would sink ever more deeply into corruption; but at bottom *these are directed against the papal system as a whole as it had developed in the preceding two hundred years*, which explains why his book had no effects worth mentioning, even though the pope had asked for it and it had been meant to serve as a memorandum of reform for the Council of Vienne.<sup>10</sup>

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7 “Unbestritten der gelehrteste Kirchenhistoriker seiner Zeit.” Jedin, ed., *Handbuch der Kirchengeschichte*, 1:44–5. On Döllinger there is a good bit of literature. The standard biography is Friedrich, *Ignaz von Döllinger*. The appreciation of Döllinger by his student Lord Acton, “Doellinger’s Historical Work,” is interesting, too. Cf. Vigener, *Drei Gestalten*. Döllinger was important enough to be treated in general surveys of historiography, as for example Thompson, *History of Historical Writing*, 2:537–9; Gooch, *History and Historians*, 503–5; and Srbik, *Geist und Geschichte*, 2:49–52. In our context Brandmüller, *Ignaz v. Döllinger*, is particularly relevant.

8 Consider works such as his *Geschichte der christlichen Kirche*, *Lehrbuch der Kirchengeschichte*, *Die Reformation*, *Papst-Fabeln des Mittelalters*, and *Beiträge zur Sektengeschichte*.

9 “Streiter für die Kirche mit den Waffen der Geschichte.” Srbik, *Geist und Geschichte*, 2:49–50.

10 “Hauptübel und die Ursache so vieler Corruptionen. . . . Er zählt nun die nothwendigsten Reformen auf, ohne welche die Kirche immer mehr in Corruption versinken müsse; aber sie sind *im Grunde gegen das ganze päpstliche System, wie es seit 200 Jahren geworden war, gerichtet*, und so ist denn von seinem Buche, obgleich es der Papst begehrt hatte und es als Denkschrift für das Concil von Vienne dienen sollte, keine irgend nennenswerte Wirkung ausgegangen.” Döllinger, *Papst und Concil*, 241–3. My emphasis.

Döllinger's claim that Durant's proposals had no effects worth mentioning is false: Durant did in fact influence legislation passed by the Council of Vienne. That alone is sufficient to caution us against accepting his perspective on the bishop of Mende without reserve. But the point is that at a crucial historical moment Döllinger enlisted Durant as a radical enemy of the papacy.

Döllinger devoted only three pages of his book to Durant, but the brevity of his treatment should not obscure the significance of his observations. His book, as whose pseudonymous author he was quickly identified, attracted extraordinary interest because it amounted to a highly provocative rebellion by a greatly respected and influential Catholic scholar against the measures to be expected from the First Vatican Council. Döllinger openly espoused the liberal cause:

We—and here the plural is not to be taken figuratively, but literally—{207 | 208} we avow our allegiance to an understanding of the Catholic Church and its mission that its enemies, employing a term that is often abused and whose lack of definition makes it only too convenient for polemical purposes, call 'liberal,' and that is utterly despised as such by all unconditional supporters of the Roman curia and the Society of Jesus—two forces that are closely allied nowadays—and which they never mention with anything but bitterness.<sup>11</sup>

Döllinger also minced no words about his judgment of the papacy:

If one looks at it from the viewpoint of the ancient church from the days of the apostles down to about 845, what the papacy has become since that time looks like a disfiguring, pathological, and suffocating tumor on the organism of the church, stunting and corroding its vitality and bringing sundry scourges in its wake.<sup>12</sup>

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11 Ibid., IV–V: "Wir—und dieser Plural ist hier nicht figürlich, sondern buchstäblich zu nehmen—Wir bekennen uns zu derjenigen Auffassung von der katholischen Kirche und ihrer Mission, welche von den Gegnern mit einem oft missbrauchten und in seiner Unbestimmtheit für polemische Zwecke sehr bequemen Worte, die liberale genannt wird, welche als solche bei allen unbedingten Anhängern des römischen Hofes und des Jesuitenordens—zwei jetzt innig verbündeten Mächten—in völligem Verrufe steht, und von ihnen nie anders als mit Bitterkeit erwähnt wird."

12 Ibid., VIII–IX: "Sobald man sich auf den Standpunkt der alten Kirche, von der Apostelzeit an bis etwa zum Jahre 845 stellt, [erscheint] das Papstthum, wie es geworden, als ein entstellender, krankhafter und athembeklemmender Auswuchs am Organismus der Kirche,

Admittedly *Der Papst und das Concil* was rushed and failed to convince on every point of detail. "Nonetheless Janus came to be mined with growing enthusiasm in support of liberal and Protestant polemics against the Catholic Church."<sup>13</sup>

That was doubtless decisive for the manner in which Durant's *Tractatus de modo generalis concilii celebrandi* has been interpreted since then. Döllinger was the first to draw attention to Durant's treatise, and he did so in order to deploy him in a highly visible place as a witness against the abuses of the papacy. Whoever read Durant thereafter had to think of Döllinger, a man who had refused to submit to the decrees of the First Vatican Council, who had therefore been excommunicated on 17 April 1871, and who became not only a leader of the intellectual opposition in the age of the *Kulturkampf*, but also the spiritual father of Old Catholicism, even if he never did join the Old Catholics officially.<sup>14</sup> If one keeps this in mind and reckons with the difficulties with which the *Kulturkampf* and the modernism crisis confronted the Catholic Church soon after the First Vatican Council, one can well understand why no Catholic scholar published a serious treatment of Durant until 1921.

## 1 Protestant Studies

Around the turn of the century three significant contributions to research on Durant's *Tractatus* appeared within a space of only seven years.<sup>15</sup> It is hardly an accident that all three were written by Protestants: the two Saxons Max Heber and Richard Scholz, and the Baltic German Johannes Haller from Dagö. As will soon become apparent, all three shared the interpretation of Durant as a radical to which Döllinger had pointed the way. Since then Protestants have made no further contributions to research on William Durant the Younger's treatise. {208 | 209}

The first in this group was Max Heber from Falkenstein (1868–1940), son of a Saxon administrative official (*Bezirkssekretär*), who studied theology in Leipzig and philosophy and history in Marburg.<sup>16</sup> Heber, it seems, is known

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der die besseren Lebenskräfte in ihr hemmt und zersetzt und selbst wieder mancherlei Siechthum nach sich zieht."

13 "Nichtsdestoweniger wurde der Janus nun mehr und mehr zur gern ausgeschöpften Fundgrube liberaler und protestantischer Polemik gegen die katholische Kirche." Brandmüller, *Ignaz v. Döllinger*, 62.

14 Jedin, *Kleine Konziliengeschichte*, 111–12, 125–6.

15 Heber, *Gutachten*; Haller, *Papsttum und Kirchenreform*; Scholz, *Publizistik*.

16 Heber, *Gutachten*, 75.

only for his 1896 dissertation on Durant and other reformers—though it may be worth mentioning as a curiosity that he is apparently identical to the Dr. Max Heber who published a new edition of Ernst Moritz Arndt's *Katechismus für den deutschen Kriegs- und Wehrmann, worin gelehrt wird, wie ein christlicher Wehrmann sein und mit Gott in den Streit gehen soll* that was printed in 1913 by the Society for the Distribution of Christian Writings in the Kingdom of Saxony in Dresden on the occasion of the anniversary of the wars of liberation.<sup>17</sup>

Heber devoted his dissertation to the memoranda on church reform that had been submitted to the Council of Vienne. He presented some new information about Durant's life that need not concern us further here, and he was the first to offer a somewhat detailed paraphrase of the countless suggestions to be found in the *Tractatus de modo generalis concilii celebrandi*.<sup>18</sup> In writing a paraphrase he established a tradition that would be followed by a number of other scholars<sup>19</sup> who, when confronted with what appeared to be the confusion pervading the *Tractatus*, found themselves obliged to refrain from looking for any governing principles in Durant's thought, paraphrased the detailed demands on the surface of the treatise instead, and then either pressed the details into a more or less systematic pattern that did little justice to the pattern adopted by Durant himself—like Heber, who used the various spiritual and temporal estates as his main principle of organization—or treated them one by one in the order in which they were printed, but without recognizing how they were related to each other, as did Viollet. In such paraphrases “fehlt leider! nur das geistige Band.”<sup>20</sup> That goes some way towards explaining why, as we shall see below, Durant's work has been given thoroughly contradictory interpretations. Without knowing the structure and foundations of his project it is scarcely possible to avoid focusing more or less at random on one or another passage taken more or less out of context, which makes it correspondingly difficult to resist the temptation to over- or under-interpret such passages in favor of one or another kind of bias.

Heber was entirely right to draw attention to certain characteristic traits of the *Tractatus*, especially Durant's insistence on obedience to the ancient laws of the church (40n4, 72), the degree to which his demands were motivated by his interests as a bishop (46–7, 58), and his novel ideas about general councils (58, 72). Also worth noting is Heber's observation that Durant could have been influenced by Thomas Aquinas, even if his understanding of the relationship between pope and council seemed to lie roughly midway between Thomas and

17 Arndt, *Katechismus*.

18 Heber, *Gutachten*, 40–56, 64–74.

19 Especially Viollet, Posch, Lecler, and Vereecke.

20 Goethe, *Faust, Erster Teil*, Studierzimmer (2), line 1939.

William of Ockham (41n2, 73–4). Most telling for Heber's perspective on Durant, however, is his claim that Durant wanted to transform the pope into a constitutional sovereign, but lacked a well-articulated theory with which to support such a demand.<sup>21</sup> {209 | 210}

While denying that Durant's writing had any theoretical substance, Heber thus continued the radical interpretation of Durant's proposals that Döllinger had pioneered. To be fair to Heber it should be pointed out that he was also the first to acknowledge the main difficulty in the way of interpreting Durant's demands as radical. For if Durant had really been a revolutionary, it was hard to understand how he could have enjoyed such good rapport with the papacy prior to the Council of Vienne and engaged in diplomatic activities on a very high level for so many years throughout his career while maintaining relations with the papacy that were, if not always entirely harmonious, generally good (72–3). But that did not lead Heber to conclude, as it should have, that the category 'radically antipapal' was much too broad to capture the fine distinctions drawn by history. Instead he took refuge in the claim that Durant must have changed his attitude to the papacy and abandoned his radical views (72–3). That was a convenient solution to an interpretative embarrassment, but one for which there is no evidence.<sup>22</sup> Thus Heber's main accomplishment was to have made readers more familiar with a number of Durant's particular demands and to have characterized his place in history less by means of research than by well-turned phrases.

Johannes Haller (1865–1947), the Baltic German son of a minister from the island Dagö, deepened the interpretive groove carved by Heber.<sup>23</sup> Haller is of course a far more significant and better-known historian than Heber. Among his numerous writings, of which a very popular book on the epochs of German history deserves special mention, medievalists are particularly familiar with his idiosyncratic but path-breaking history of the papacy and his work as co-editor of the sources of the Council of Basel.<sup>24</sup> His book *Papsttum und*

21 Heber, *Gutachten*, 41n2: "Duranti will einen konstitutionellen Souverän haben." Ibid., 73: "Da er kein Theoretiker, sondern ein Mann der Praxis war, der keine systematische Abhandlung über die Verfassungsfragen der Kirche schreiben wollte, so begnügte er sich diese Forderung aufzustellen, das Ziel, zu dem man kommen musste und auch kam, anzugeben."

22 {Here I owe Heber an apology. The differences between the *Tractatus maior* and the *Tractatus minor* make it plain that, even if he did not change his mind, Durant did in fact abandon his radical proposals.}

23 On Haller's life see *Neue deutsche Biographie*, 7:552–3. See also Haller, *Lebenserinnerungen*.

24 Haller, *Epochen*; Haller, *Das Papsttum*; Haller, Beckmann, Wackernagel, et al., eds., *Concilium Basiliense*.

*Kirchenreform* of 1903, one of his earliest works, deserves particular mention here, not only because it dealt with Durant, but also because its portrayal of the movements of church reform from the high to the late Middle Ages has never been quite surpassed.<sup>25</sup>

Haller was an excellent writer who would hardly have found it useful to repeat Heber's paraphrases and limited his attention to a few particularly salient points instead. In his opinion, Durant's work was completely disorganized (60) and motivated by episcopal interests (62–3, 65). Admittedly {210 | 211} the radical demands of the bishop of Mende lacked any systematic justification,<sup>26</sup> which explained why his attitude towards the papacy was wavering (66). But what was truly important and influential about Durant's work was his desire to return to the law and the constitution of the ancient church—a desire that came to be characteristic of movements for church reform throughout the later Middle Ages (62, 64–5)—as well as his proposal to limit the power of the papacy in a manner that was intended to erase its entire development in the preceding century and would have turned the pope into a mere civil servant.<sup>27</sup>

This was evidently the same basic understanding of Durant that had been proposed by Heber and similar to Döllinger's views, even if it was put forth with greater élan. The most telling claims are once again that Durant was a radical, but was not able to justify his intentions with any theory worth mentioning.

For those reasons Haller's discovery of a new piece of evidence must be considered his most important contribution to the scholarship on Durant. Haller pointed out that in 1319 Pope John XXII had written two letters in which he cast light on the role Durant had played at the Council of Vienne (58–9). According

25 Haller, *Papsttum und Kirchenreform*, 58–66, 70.

26 Ibid., 65: "Alles dies zwar ohne systematische Grundlegung, bloss in einzelnen praktischen Forderungen formuliert, aber darum nicht weniger deutlich."

27 Ibid., 65: "Wer die Lage des Episkopats, vor allem des französischen und englischen, in jener Zeit kennt—und der französische war in Vienne am zahlreichsten vertreten—wie er, von den Landesherren in strenger Unterwürfigkeit gehalten, zum Teil aus Kreaturen des Hofes bestehend, seine einzige Zuflucht gegenüber fortwährenden Kränkungen, Vergewaltigungen und materiellen Bedrückungen im Papste sah, der wird über die Kühnheit einer Phantasie nur staunen können, die unter solchen Umständen nichts Geringeres als die Wiederherstellung einer ideal gedachten ursprünglichen Kirchenverfassung auf Grundlage des Episkopalismus und Konziliarismus zu predigen wagte und die gesamte Entwicklung, die das Papsttum seit mehr als einem Jahrhundert genommen, schlechtweg austilgen wollte, um das Oberhaupt der Kirche, das bisher des unangefochtenen Besitzes unbegrenzter Alleinherrschaft sich erfreut hatte, in eine von den Beschlüssen der ihm untergeordneten Organe abhängige Beamtenstellung herabzudrücken."

to those letters Durant had tried to foment rebellion among the bishops, aimed at creating a schism with the pope, and gave in only when the pope confronted him directly. Haller concluded that one could not very well treat the *Tractatus* as a mere memorandum on reform submitted to the Council of Vienne, and had to reckon with the possibility that the surviving version had been redacted (58–9).<sup>28</sup> These observations naturally lent further support to the interpretation of Durant as a radical—even if it has to be conceded that Durant's rebellion was not sufficiently grievous to prevent Clement V from dismissing Durant from the council with the usual favors, or to prevent the author of that supposedly schismatic book from continuing a successful career without any noticeable interruption.<sup>29</sup>

Last among the Protestant scholars to be considered here is Richard Scholz (1872–1942), the son of a merchant from Dresden. Scholz studied medieval {211 | 212} and modern history in Leipzig, where he was habilitated in 1902 and went on to teach medieval and modern history as extraordinary professor in 1908.<sup>30</sup> His studies and critical editions advanced the history of political thought in the early years of the fourteenth century by a considerable margin. His books on Giles of Rome and William of Ockham, his editions of writings by Giles of Rome and Marsiglio of Padua, and his study of previously unknown polemical writings at the time of Emperor Louis the Bavarian deserve special mention.<sup>31</sup>

Scholz's most important contribution to our subject is his account of the political debates conducted at the turn from the thirteenth to the fourteenth century, published in 1903.<sup>32</sup> Scholz not only presented the first comprehensive and still useful examination of the various treatises on political thought that were written in response to the conflict between Pope Boniface VIII and King Philip IV—the single greatest outburst of such writings since the Investiture Controversy—but also raised the scholarly treatment of Durant to a new level. This was in part because his review of Durant's manifold proposals was better organized than Heber's and Haller's (211–20). But it was more so

28 {That was a good guess. As the manuscripts confirm, Durant did in fact modify his proposals, albeit not by modifying the treatise he submitted to the Council of Vienne, but by writing a different memorandum while the council was in session; see above, chap. 2.}

29 We know this from E. Müller, *Vienne*, 593. Müller, *ibid.*, 594–5, also proved that the treatise had undeniable effects on the legislation passed by the Council of Vienne.

30 Degener, ed., *Degeners Wer ist's?*, 1435.

31 Scholz, *Aegidius von Rom*; Scholz, *Wilhelm von Ockham*; Giles of Rome, *De ecclesiastica potestate*, ed. Scholz; Marsiglio of Padua, *Defensor pacis*, ed. Scholz; Scholz, ed., *Unbekannte kirchenpolitische Streitschriften*.

32 Scholz, *Publizistik*, here 208–23.

because he demonstrated that Durant, in spite of his treatise's apparent lack of organization, did in fact present a well-defined program of reform with a clearly discernible structure (209, 213, 220). According to Scholz the foundation of this program did not so much consist of the supposed rejection of the papal system that had been noticed before (209, 220–1), and that he did not want to overemphasize (209, 220–1), but rather of a very definite understanding of canon law that drew on the legislation of the councils of antiquity. That justified Durant's emphatic rejection of the new law embodied in papal decretals, for neither those decretals nor the system of papal government that had been built on them during the previous two hundred years agreed with the ancient law of the church (209, 221–2).

Scholz left it unclear what might have led Durant to develop such a theory, but he did point out that the most likely factors included Durant's intensive study of Gratian's *Decretum*, the most important twelfth-century collection of canon law, and probably even more so the revival of Aristotelian philosophy in the thirteenth century that had invigorated ideas about the limits that natural law imposed on every kind of monarchy, including that of the pope (221–2). The crucial factors behind Durant's theory of reform, to which Scholz was the first to pay proper attention, thus appeared to be Durant's reliance on ancient law and the emergence of new intellectual movements in the thirteenth century. {212 | 213}

Not content with this general characterization, Scholz also believed that the specific motives prompting Durant to formulate his theory of reform could be defined with greater precision. Going well beyond the generic references to Durant's episcopal motives that had been made before, Scholz declared that Durant's opposition to the centralizing tendencies of the papacy ought to be seen as the expression of an aristocratic reaction by the Gallican episcopate against the papacy.<sup>33</sup> Haller sharply rejected this idea in his review of Scholz's book.<sup>34</sup> He pointed out that a single treatise could hardly be considered proof that the bishop of Mende had acted as the representative of a whole party, particularly since Durant's pleas went entirely unheard by the Council of Vienne. But Haller's pointed rejoinder did not settle the matter. Durant did after all exercise demonstrable influence on the legislation of Vienne, and even though it is true that Scholz failed to demonstrate the existence of something that might be called a Gallican party, his thesis did point in a promising direc-

33 Ibid., 208: "Die aristokratische Reaktion des gallikanischen Episkopats." Ibid., 220: "Für Duranti [ist] das Ideal eine aristokratisch, vom Episkopat unter dem Vorsitz des Papstes, nach einer festen Verfassung geleitete Kirche, deren souveräne Autorität nicht im Papste, sondern im Generalkonzil liegt."

34 Haller, "Review of Scholz, *Publizistik*," 370–1.

tion of further research.<sup>35</sup> Gallicans like Pithou and Bossuet did quote Durant later on, and at least at first sight it seems entirely convincing to view his propositions as a response on the part of the French bishops to the pressure under which they found themselves at the hands of what they may well have regarded as unholy alliances uniting the king of France with the pope and even more so the pope with the mendicant orders. That agrees well with the emphasis Durant placed on the hierarchical structure of the church, for it was precisely this structure that was slowly being dismantled from above as well as from below, and whose strict preservation had to seem reactionary to mendicant friars depending for their success on the special privileges they were being granted by the pope.

Of more substantive interest than Scholz's speculations about a Gallican aristocratic reaction against the papacy is what he had to say about the content of the theory Durant presented in the *Tractatus de modo generalis concilii celebrandi*. Here one must object that his interpretation went too far in the direction of seeing Durant as a radical. To mention a telling example, one may well agree with Scholz when he declares that Durant attributed the establishment of papal primacy to historical causes, including above all the support given to the papacy by the councils of antiquity (221). For Durant did in fact write: "Since it was, first, the merit of the apostle Peter and, second, the authority of venerable councils securely confirmed by the command of the Lord that transferred a singular authority over the churches to the pope . . ." <sup>36</sup> But the derivation of papal primacy from ancient conciliar authority apparently asserted in those words takes on a rather different meaning as soon as one realizes that they were quoted from Gratian's *Decretum*.<sup>37</sup> If they established a new historical perspective on the papacy at all, they surely did not do so only for the bishop of Mende, but had already done so for Gratian himself.

Scholz moved still further in a misleading direction when he claimed that Durant endowed the council with sovereignty over the church (220). Imposing the modern concept of {213 | 214} sovereignty on the interpretation of the *Tractatus* was to do damage to historical understanding. The concept of sovereignty may well bear a genuine historical relationship to the issues at stake, but it is not well suited to disentangling them. Regardless of how one interprets Durant's ideas, it has to be stressed that his position on the relationship between pope and council was not entirely clear. Nowhere did he answer the

35 Cf. above, n. 29, and below, chap. 6.

36 Durant, *Tractatus*, 3.1, fol. 52<sup>r</sup>: "Cum [papae] sedi primum Petri apostoli meritum, deinde secura iussione Domini conciliorum venerandorum autoritas singularem in ecclesiis tradiderit potestatem . . ."

37 D. 17 d. p. c. 6, *Corpus iuris canonici*, ed. Friedberg, 1:52.

question of who was to make the final decision in the event that pope and council disagreed. Indeed, he never even posed the question—something he could hardly have done without endangering his success since doing so, as he must have known only too well, would have confronted him with tensions deeply embedded in the foundations of canon law itself. Those same tensions after all still form the subject of disagreements in contemporary debates about the significance of the First and Second Vatican Councils. For those reasons alone it seems misguided to search Durant's *Tractatus* for a definition of ecclesiastical sovereignty. Scholz's claim that Durant endowed councils with sovereignty over the church may therefore be described as a conclusion supported chiefly by Scholz's reliance on an inappropriate terminology.

Again, it is simply not true that Durant included conciliar decisions in the category of divine law<sup>38</sup>—even if at a decisive turn he did try to create the impression that they were.<sup>39</sup> Finally, one must insist on a crucial distinction: Durant made a proposal that, had it been enacted, would indeed have subjected the pope to the council, even if it remains to be determined precisely what that subjection would have amounted to. But it was only a proposal; it was not (yet) law. The bishop of Mende knew perfectly well that according to existing canon law there was no way to prevent the pope from departing even from the decisions of ancient councils, notwithstanding that such conduct was not to be approved.

The results of Scholz's study may thus be summed up as follows. He provided an analysis of the *Tractatus* that remains in some ways fundamental, both because it drew attention to the theory supporting Durant's demands and because Scholz was the first to stress the significance of law for that theory. He also deserves real credit for having underlined the coherence of Durant's program of reform. At the same time his interpretation went too far down the path

38 Scholz, *Publizistik*, 222: “[Er rechnet] die Konzilsbeschlüsse, weil sie vom heiligen Geist inspiriert sind, zum göttlichen Rechte, während die ohne Konzil erlassenen päpstlichen Dekretalen nur zu den menschlichen Satzungen gehören, die unter Umständen widerrufen werden können.” Ibid., 223: “Duranti . . . erklärt, dass dem Papste weder gegen (contra ea) noch über das (super his), was die Apostel und Konzilsväter bestimmten, ein Gesetzgebungsrecht zustehe.”

39 For he says in *Tractatus*, 1.3, fol. 5r: “Et si dictatur quod [papa et reges] legibus sunt soluti, potest responderi quod non divinis,” and then quotes papal canons that underline the authority of conciliar decisions. But that is misleading. For elsewhere he says explicitly: “Humanum genus duobus . . . salubriter potest regi: videlicet naturali iure contento in lege et evangelio, et moribus, hoc est humanis legibus sancti spiritus instinctu in canonibus apostolorum, conciliis et a romanis pontificibus et a catholicis principibus prelati pro communi utilitate.” Durant, *Tractatus*, 3.31, fol. 61r. Cf. D. 1 d. a. c. 1, *Corpus iuris canonici*, ed. Friedberg, 11.

towards the radical interpretation of Durant's *Tractatus* that Döllinger had been the first to put forth.

Overall we may conclude that Protestant scholars managed to steer the interpretation of Durant's *Tractatus* in a direction that is still basic to our understanding of its significance. Even where {214 | 215} the Protestant insistence on Durant's supposed radicalism is now being rejected, scholars still work with similarly generic categories of analysis, which can lead them to offer interpretations directly opposite to those offered by Protestants, but not necessarily more appropriate. The earliest studies of Durant were beset by a basic flaw that continues to burden scholarship today, namely, to claim that Durant's position was 'anti-papal,' and then to examine his position only as far as can be done without imperiling this crude categorization. Admittedly the style and genre of the *Tractatus* do not exactly make it easy to work out the principles by which Durant was animated. Nonetheless the authors treated so far seem to have made it too easy for themselves. One may suspect that, at least in part, they did so because they felt uneasy with the results to be expected from a more searching analysis. If they had tried to carry out such an analysis in the crude terms just mentioned, Durant's statements in support of papal primacy—statements at which they merely hinted—would so obviously have had to be characterized as 'pro-papal' as to make any 'anti-papal' interpretation untenable. It seems only logical that Catholic scholars often reacted by making equally one-sided exploitations of Durant's 'pro-papal' statements the starting point of their research.

## 2 Catholic Responses until World War II

Catholic research on Durant's *Tractatus de modo generalis concilii celebrandi* did not resume until the third decade of the twentieth century, fifty years after Döllinger's defeat, after the end of World War I, and, what may well be more important here, after the conclusion of the modernism crisis, in which a new Catholic movement that can only in a broad sense be characterized as 'liberal' had once again been put in its place by the papacy.

The first scholar to be mentioned here is Paul Viollet (1840–1914), who hailed from a family of silk manufacturers in Tours.<sup>40</sup> His name is firmly associated with the history of French public and private law as well as his teaching as

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40 Delaborde, "Notice," 148, and especially Fournier, "Paul Viollet" (1914), and Fournier, "Notice sur Paul Viollet" (1921).

professor of law at the *École des Chartes*.<sup>41</sup> Since his work had made him thoroughly familiar with medieval canonists, it was only natural that, among a number of other contributions to the monumental *Histoire littéraire de la France*, he also wrote a biography of William Durant the Younger and an overview of his surviving writings that was published in 1921.<sup>42</sup> {215 | 216}

Though Durant's life is not the subject under consideration here, it is worth stressing that Viollet's biography has never been surpassed. He was the first to draw at least on excerpts from documents buried in the archives that cast new light on Durant's exercise of his official responsibilities as bishop in the diocese of Mende, and the first to establish with certainty that he died in July 1330 (60–1). Yet even though his biography remains the best, it is by no means definitive. A thorough account of the life of William Durant the Younger remains to be written.<sup>43</sup>

Viollet's description of the *Tractatus* raised the state of scholarship to a new level, not only because he prepared what is still the most thorough paraphrase of its contents (82–117), but also because he identified five of the ten manuscripts now known.<sup>44</sup> That was a major accomplishment, never mind that Viollet failed to recognize the significance of the differences between the manuscripts and the early modern printed editions that were available to him (82n1). It was similarly important that he was able to document instances in which Durant seems to have influenced Pierre d'Ailly, Jean Gerson, Nicholas of Cusa, Pierre Pithou, and the great Gallican Bossuet (123–9). Though his observations on the influence of Durant's ideas are brief, they have not been improved upon except by Ewald Müller's research on Durant's impact on the legislation of the Council of Vienne and Ernesto Bellones brief study of his proposals on the reform of education.<sup>45</sup>

With a single telling exception Viollet refrained almost entirely from offering an interpretation of Durant's theory of reform. The exception was to demonstrate, in direct opposition to Scholz, that one may not take the *Tractatus* to have been advocating the pope's unconditional subjection to existing conciliar laws (118–19). To the contrary, in Viollet's opinion Durant had merely charged the pope with abusing the power of his office by going against the demands of justice—something entirely different from denying that the pope had any

41 Viollet, ed., *Établissements de Saint Louis*; Viollet, *Droit public*; Viollet, *Droit privé*.

42 Viollet, "Guillaume Durant," written before 1914, but not published until 1921.

43 {My *Council and Hierarchy* goes only part of the way towards a biography.}

44 Paris, Bibliothèque Nationale, ms. lat. 1443; Paris, Bibliothèque Mazarine, ms. 1687; Troyes, Bibliothèque Municipale, ms. 786; Tours, Bibliothèque Municipale, ms. 237; Kues, St. Nikolaus Hospital, ms. 168. Cf. Viollet, "Guillaume Durant," 79n2.

45 Both will be mentioned below.

such power to begin with.<sup>46</sup> Thus Viollet launched the Catholic critique of too far-reaching Protestant interpretations.

Given Viollet's considerable restraint on questions of theory, it is not really possible to gain a clear perspective on his judgment of the *Tractatus*. But it is striking that every now and then, in a study otherwise based entirely on meticulously documented research, there is a touch of open hostility.<sup>47</sup> Why the sarcasm? Why the repeated traces of a desire to charge Durant with intellectual and moral dishonesty? {216 | 217} We have no answer to these questions. But a possible answer may be suggested by an incident of some historical interest in Viollet's life.

Viollet, a scholar of scrupulous intelligence as well as a devout Catholic, made a point of standing up for his convictions by serving as president of the Catholic Committee for the Defense of the Law that he founded in the opening years of the twentieth century in order to help reverse the conviction of Dreyfus.<sup>48</sup> The effect was to make him an ally of men like Emile Zola and Georges Clémenceau on the left wing of the French political spectrum. That hardly endeared him to French Catholics, most of whom objected to support for Dreyfus. The same applies to the uncomfortable position in which he placed himself at the beginning of the modernism crisis by writing a historical and theological study of papal infallibility and Pope Pius IX's *Syllabus of Errors*.<sup>49</sup> His book was dedicated "aux chrétiens que des notions inexactes sur la papauté retiennent en dehors du Catholicisme." He was evidently struggling to close the deep divide between intellectuals and Catholics precisely at the time when the breach between the French state and the church was coming to a head. With the help of a very moderate interpretation of the *Syllabus of*

46 Viollet, "Guillaume Durant," 119: "Certes il voudrait, en effet, que le pape ne se mît jamais en opposition avec un concile général sans le concours d'un autre concile, et même qu'il réunît un concile chaque fois que l'intérêt de toute l'Église est en jeu. Mais nous ne voyons pas qu'il nie l'existence des pouvoirs du souverain pontife; mésuser de ses pouvoirs et manquer absolument de pouvoirs sont deux choses différentes."

47 Ibid., 39: "Quant à l'auteur du *De modo celebrandi concilii*, ce pur chrétien des premiers siècles et des grands conciles œcuméniques, il oublie trop facilement certains préceptes de morale chrétienne et même de morale naturelle." Ibid., 86, Viollet charges the bishop of Mende with having forged one of his sources. But if one compares the passage he cites as evidence of forgery with its source in canon law, the charge turns out to be entirely unjustified. Ibid., 80: "Il a pris ou fait prendre quantité de notes. Il les utilise et les commente, sans les avoir au préalable convenablement classées par matières, et sans apporter toujours à l'étude des textes un sens critique parfaitement équilibré." Cf. also *ibid.*, 82, 99–100, 110.

48 Weill, *Histoire du catholicisme libéral*, 226–7.

49 Viollet, *Infailibilité du pape*.

Errors and the declaration of papal infallibility of 1870 he hoped to convince anticlericals that it was not at all necessary for the state to suppress the Catholic Church, and Catholics that their retreat to extreme ultramontane and monarchical positions rested on an equally unjustified understanding of the documents in questions. With those views he landed squarely between the chairs. On 4 April 1906, in one of the very first measures taken by the papacy during the modernism crisis, Viollet's book was placed on the index.<sup>50</sup> That must have affected him deeply. It leaves room for the suggestion that his attacks on Durant may be taken as evidence for the bitterness of a man whose best intentions had been defeated, and who may well have regarded the bishop of Mende as belonging to the very same type of self-righteous critics of the papacy with whom it had been his misfortune to enter into battle.

Jean Rivière (1878–1946), the son of a farmer from the Département Tarn in the South of France, studied theology at the Institut Catholique in Toulouse, received a doctorate in theology, and was appointed professor at the University of Strasbourg in 1919.<sup>51</sup> Having been ordained to the priesthood in 1901 and later on in his career named honorary canon {217 | 218} in Albi (1931) and Strasbourg (1937), his life's work was devoted to the doctrine of redemption. In a series of authoritative books appearing since 1905 he investigated the Christian understanding of redemption from the beginnings to the present.<sup>52</sup> His basic intellectual perspective may be characterized by quoting the judgment he pronounced in his authoritative history of modernism in the Catholic Church, published in 1929:

Even while calling themselves Catholic . . . the modernists were clearly no longer Catholic in spirit. . . . In so far as it is possible to define modernism in general, it was a crisis provoked by the encounter of Christianity with modern science.<sup>53</sup>

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50 Delaborde, "Notice," 169; Rivière, *Modernisme*, 329–30.

51 Lombard, ed., *Jean Rivière*, 23–7.

52 Rivière, *Dogme: essai historique* (1905); Rivière, *Dogme: étude théologique* (1914); Rivière, *Dogme chez saint Augustin* (1928); Rivière, *Dogme après saint Augustin* (1930); Rivière, *Dogme: études critiques* (1931); Rivière, *Dogme au début du moyen âge* (1934); Rivière, *Dogme contemporaine* (1948).

53 "Tout en se disant catholiques, . . . il est clair que les modernistes ne l'étaient plus d'esprit. . . . Pour autant qu'on puisse, en effet, lui trouver une idée générale, le modernisme fut une crise provoquée par le contact du christianisme avec la science moderne." Rivière, *Modernisme*, 551, 554.

While those words testify to Rivière's faith as a Catholic, it should be underlined that they also speak to his qualities as a good historian. The same is true of *Le problème de l'église et de l'état au temps de Philippe le Bel*, the book he published in 1926 that is to be considered here.<sup>54</sup> There is no more balanced account of Durant's plan for the reform of the church than the one Rivière gave there on barely seven pages.

Abstaining entirely from paraphrase, Rivière began by observing that Durant's progressive views on matters within the ecclesiastical sphere were complemented by a conservative insistence on the superiority of the church over the state that was just as clearly expressed, and that he explicitly drew favorable attention to the views of Giles of Rome, the best known curial theoretician of the day, who wrote in good Gregorian fashion (364–5). That alone was enough to put Durant's supposed radicalism in a quite different light. According to Rivière the core of Durant's proposals for the reform of the church was to be found in his defense of the hierarchy and his corresponding attack, not on the papacy as such, but on the absolute power of the papacy. Its substance was Gallican (365–6, 368). Its theoretical foundation consisted of the ancient law of the church, its opposition to absolute papal power, the role of reason, and every monarch's need for good advisers.<sup>55</sup> On that foundation, and not on the basis of any kind of anti-papalism, Durant had sought to erect a kind of parliamentary system, {218 | 219} but without giving general councils the highest authority in the church, a point on which Durant differed from later conciliarists (367–8).

With these brief but convincing remarks Rivière managed to give an unsurpassed characterization of Durant's ideas insofar as those ideas can be characterized in general terms at all. His accomplishment consisted less of new insights than of his thorough integration of material that was already known. Particularly worth remembering is the attention he paid to the connection between law, reason, and council, which deserves to play a large role in any

54 Rivière, *Problème de l'église*, esp. 363–9.

55 Ibid., 366: "A la base et au sommet de la réforme nécessaire il veut placer le droit. Par où il entend d'abord cette loi abstraite du bien qui s'impose à tous les pouvoirs, *regenda igitur atque limitanda et restringenda est sub ratione potestas ut totum ratio regat*, mais aussi les prescriptions du droit écrit." Cited from Durant, *Tractatus*, 1.3, fol. 5<sup>v</sup>. Ibid., 367: "Mais il n'est droit si parfait qui n'ait besoin d'une autorité vivante pour l'appliquer ou le contrôler. '*Ibi salus ubi consilia multa*': Guillaume appuie sur cette parole de l'Écriture tout un système parlementaire." Cited from Durant, *Tractatus*, 1.4, fol. 7<sup>r</sup>. Here I should already point out how fundamentally this interpretation differs from the one by Brian Tierney, who considers Durant's theoretical foundation to have consisted of the canon law of political corporations.

interpretation of the *Tractatus*. One can only regret that he had only seven pages to devote to Durant.

Compared to the results established by Viollet and Rivière, the article published in 1929 by Andreas Posch (1888–1971), professor of ecclesiastical history in Graz, is less successful.<sup>56</sup> Having studied at the universities of Graz and Vienna, Posch received doctorates in philosophy and theology.<sup>57</sup> He is best known for two books devoted, respectively, to Nicholas of Cusa's *Concordantia Catholica* and Engelbert of Admont.<sup>58</sup> His observations about the *Tractatus* can be viewed as an attempt to mitigate the theses put forth by Scholz and to place them in a different historical perspective. That did not really yield new insights—not to mention that Posch seems to have been unaware of the studies published by Viollet and Rivière.<sup>59</sup>

On Posch's understanding, Durant's treatise ought first and foremost to be taken as an attempt to reform the church, not as a work of conciliar theory (289). Posch granted that Durant clearly identified the damage done by papal centralization (288, 291), and that he demanded a return to the old law of the church for reasons evidently including his episcopal interests (296–7). It was also true that Durant supported his endeavor with Aristotelian ideas about natural law (291) and wanted to give general councils a new role in the constitution of the church (303). But he did not go nearly as far as the conciliarists William of Ockham and Marsiglio of Padua (290–1, 295, 298). On balance, Durant's frank acknowledgment of papal primacy rather put him at a considerable distance from later conciliarists (290). He did not ask for anything like popular sovereignty, as Marsiglio did later on. Indeed, according to Posch he did not have any well-developed conciliar theory at all (295, 303). {219 | 220} His central point was simply that papal power needed to place limits on itself (293). It followed that Durant did not qualify as more than, at best, a precursor of conciliarism.<sup>60</sup>

56 Posch, "Reformvorschläge."

57 Kosch, *Das Katholische Deutschland*, 2:3658.

58 Posch, *Concordantia Catholica*; Posch, *Staats- und kirchenpolitische Stellung*. In *Concordantia Catholica*, 38–9, Posch treats Durant again, but does not add anything beyond what he had written in his article.

59 Posch, "Reformvorschläge," cites neither Viollet nor Rivière, and *ibid.*, 289n2, he still identifies the year of Durant's death as 1328, which Heber, *Gutachten*, 71, had already rejected, and which Viollet, "Guillaume Durant," 60–1, had given compelling reasons to replace with 1330.

60 Posch, "Reformvorschläge," 303: "Fehlt bei ihm auch die gründliche Fundierung seines Standpunktes, wie sie Marsilius und Okam, ausgehend von naturrechtlichen Postulaten, später boten, erscheint der Konzilsgedanke bei ihm auch keineswegs in seine letzten

It seems that Posch was concerned to revise Protestant interpretations of a subject that he was the first German-speaking scholar to address since Scholz in 1903. His study has the merit of relating Durant's work to the development of conciliarism as a whole. At the same time it must be pointed out that more recent scholarship has made his identification of conciliarism with the theories of William of Ockham and Marsiglio of Padua untenable. That leaves his decision to exclude Durant from the history of conciliarism on the grounds that he did not share the views of Ockham and Marsiglio rather less convincing than it might have seemed at the time.

The book about the Council of Vienne that Ewald Müller, O.F.M. (1885–1960) published in 1934 similarly continued the Catholic trend towards viewing Durant as something of a moderate reformer.<sup>61</sup> Müller, having earned doctorates in philosophy and theology, like Posch, went on to serve on the faculty of philosophy and theology at the Franciscan College of Frauenberg in the province of Thuringia.<sup>62</sup> His book—the only one he wrote—is an outstandingly thorough piece of research that improved our understanding of Durant's influence on the legislation of Vienne by leaps and bounds. It is Müller to whom we owe a conclusive refutation of Haller's opinion that Durant did not exercise any influence on the Council of Vienne at all (594–5; for details see 475n1, 490, 539–40, 548–9, 570–1, 574, 591). Müller did not have much to say about Durant's theory, however, and the little he did say lacks some coherence. For, on the one hand, he appears to evoke the radical version of Durant by associating him with “episcopalism,” “conciliarism,” and “constitutional monarchy.”<sup>63</sup> But on the other hand he wrote that Durant treated the pope with “almost childlike awe.”<sup>64</sup>

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Konsequenzen ausgebaut, so ist er doch der erste, der das Konzil als ständige Einrichtung, als konstitutionellen Faktor in der Kirche fordert und demselben die Legislative überweist. Ohne ein fertiges System des Konziliarismus zu liefern, hat er doch viele Gedanken desselben vorausgenommen.”

61 E. Müller, *Vienne*, 587–8, 591–610.

62 *Kürschners Deutscher Gelehrten-Kalender 1935*, 935.

63 E. Müller, *Vienne*, 596: “Diese bereits nach der konziliaristischen Seite hinüberneigenden Ideen führt Duranti weiter aus, indem er für die Regierung der Welt den Gedanken einer konstitutionellen Monarchie . . . vorschlägt.” *Ibid.*, 608: “Charakteristisch für die Zeit des beginnenden Episkopalismus und Konziliarismus sind manche Ideen Durantis von einer gemässigten Demokratie in der kirchlichen Regierung.”

64 *Ibid.*, 593n27: “Duranti hat aber an anderer Stelle wieder ganz klar den Primat bekannt.” *Ibid.*, 593n30: “Vgl. die durchaus korrekte Art, ja kindliche Ehrfurcht in seinen Ausdrücken über die römische Kirche.”

in Toulouse in 1935–36 and 1945–46, published a study in 1936 that may be described as moving the Catholic reevaluation {220 | 221} of Durant's intentions in an almost reactionary direction.<sup>65</sup> Torquebiau thought it was inconceivable for the nephew of the famous William Durant the Elder, known by his honorific sobriquet as the *Speculator*, with whom William Durant the Younger was continually confused, to have been an opponent of the papacy, much less a Gallican, as even Rivière still had maintained.<sup>66</sup> The bishop of Mende rather needed to be viewed as a young prelate who insisted all too eagerly on his rights, but would not have dreamed of rebelling against the papacy.<sup>67</sup> Even among long-lived clerics the plain fact that Durant was well over forty years old when the Council of Vienne was meeting surely diminishes the plausibility of the complaint that he was acting from youthful exuberance at least to some degree. A substantive critique of Torquebiau's interpretation must nonetheless take up his well-founded arguments about Durant's theory of law.

Torquebiau picked up a train of thought from Viollet that Viollet himself had not pursued any further. Could Durant possibly have claimed that the papacy was firmly bound to obey conciliar laws? Torquebiau sought to answer this question with a close analysis of passages mostly taken from Durant's chapter on exemptions (274, 275–7, 281–2). He arrived at the conclusion that Durant did indeed believe the pope might perhaps be bound to obey such conciliar laws—but only “perhaps” (281–2)! No matter how carefully one looked for other formulations, Durant never went further than that, and he most certainly never asserted that the council enjoyed authority over the pope (278–9). Conciliar laws themselves were mutable after all (277). What had been presumed to be his conciliar theory thus turned out to have nothing to do with

65 Torquebiau, “Gallicanisme.” There does not appear to be any widely accessible source of information on Torquebiau's life. {I am grateful to Henri Lample, Institut Catholique de Toulouse, for a few new details.}

66 Torquebiau, “Gallicanisme,” 289: “Le neveu et successeur sur le siège de Mende de Guillaume Durand, dit le *Speculator*, qui saluait le Pape des titres les plus magnifiques, reconnaissait en lui le dépositaire de tous les pouvoirs religieux dans l'Eglise du Christ et la source du pouvoir de tous les prélats inférieurs, ne pouvait être, ne fut pas un ennemi déclaré du système papal ni un gallican qui s'ignore.” That is directed against Rivière, *Problème de l'église*, 368.

67 Torquebiau, “Gallicanisme,” 273: “Mais si l'on observe les nuances parfois très délicates de la pensée de l'auteur, si l'on considère avec soin l'ensemble du traité, si l'on tient compte du tempérament de ce jeune prélat, Guillaume Durand apparaît, non comme un théoricien soucieux de faire prévaloir une organisation toute nouvelle de l'Eglise dans laquelle les pouvoirs du Pontife romain se trouveraient singulièrement réduits et ceux des évêques recevraient une extension inattendue, . . . mais comme un prélat qui est jaloux à l'excès des prérogatives réelles ou supposées de sa charge.”

constitutional limitations upon the papacy because it never went beyond the limits of that “perhaps” (279–80). Torquebiau joined this new insight to remarks about Durant’s episcopal motives (282–6) and his recognition of papal primacy (284, 286–7) that are familiar from previous research. In his view this evidence proved conclusively that Durant was no opponent of the papacy.<sup>68</sup>

It must be stressed that Torquebiau’s investigation into Durant’s understanding of existing canon law amounted to a significant advance. He was the first to make it perfectly clear that the central problems for the cohesion of Durant’s ideas consisted of the mutability of human law, {221 | 222} including laws enacted by general councils, and the legislative power of the papacy. He was also entirely right to point out that Durant did no more than “perhaps” to deny the pope’s right to issue exemptions and dispensations in conflict with ancient conciliar laws.<sup>69</sup> Yet the significance of these results does not reach nearly as far as Torquebiau made his readers believe.

For, in the first place, it may be granted that Durant dealt extensively with the problem of exemptions, and that exemptions constitute one of the focal points of his proposals for reform. That is also the reason why his discussion of exemptions includes the clearest statement of his views about the nature of the ecclesiastical hierarchy and the place of bishops in that hierarchy. But his treatment of exemptions is by no means central to the political theory to which the first part of the *Tractatus de modo generalis concilii celebrandi* is primarily devoted. It may be long, but it constitutes only one ‘rubric’ among several, and it follows the concluding fourth chapter of the first part: it is, in other words, an appendix. The appendix is important, but it is an appendix nonetheless. The substance of the theoretical considerations supporting Durant’s spectacular demand to make the validity of papal legislation dependent on the participation of general councils is found in chapters two and three, preceding the presentation of that demand itself in chapter four.

In the second place, Torquebiau took as little trouble to distinguish Durant’s proposals for legislative reform from his description of existing legislation as Scholz had done before, except that he did so for the opposite purpose, namely, to make Durant seem less radical than he was. Durant was an exceptionally

68 See above, n. 66.

69 Durant, *Tractatus*, 1.4, fol. 8<sup>v</sup>: “Unde cum dominus papa tantam et talem observationem <mutare> [P] non debeat, nec forte valeat, ergo nec generales exemptiones, privilegia, libertates, et immunitates derogativas et preiudicativas honori, potestati, statui, ordinationi, et ordini dictorum episcoporum et ordinariorum contra predictam generalem ordinationem sic passim concedere non debet, nec etiam forsitan valet.” The variant *mutare*, instead of *imitari* as in the printed edition, is taken from Paris, Bibliothèque Nationale, ms. lat. 1443, fol. 8<sup>v</sup>.

well-educated canonist who obviously knew perfectly well what the pope was, and what he was not, authorized to do by canon law. Yet that did not prevent him from criticizing the extent of the pope's authority or from proposing limits on its extent. His proposal was that in the future the pope should no longer be permitted to pass new laws or change old laws without convoking a general council.<sup>70</sup>

What matters here is neither that Durant failed to demand a conciliar right of veto against papal measures nor that he never used the formulation *concilium maius papa*. What matters is that he intended to limit the pope's right to change existing laws by requiring him to consult a general council. It will not do to base one's judgment of Durant's intentions solely on his analysis of existing law, for existing law was precisely what he wanted to change. One rather has to recognize that, if Durant's proposal {222 | 223} had been accepted, the pope would no longer have been able to pass any legislation without the participation of a general council—and in that case he would, not “perhaps,” but simply and unequivocally not have been able to do so.

Even if these reflections leave a good number of questions undecided, they should suffice to diminish the credibility of Torquebiau's conclusions. Torquebiau may be called a perfect counterpart to Scholz. As Scholz arrived at too radical an interpretation of Durant by insisting one-sidedly on his novel proposals, so Torquebiau arrived at too moderate an interpretation by insisting one-sidedly on his understanding of existing law. Neither interpretation does justice to the *Tractatus* as a whole: both are based on a selection of passages chosen to support a particular point of view. What Torquebiau did accomplish was to have provided the first convincing identification of the crucial interpretative difficulties.

### 3 Catholic Studies since World War II

With Torquebiau we have, so to speak, exhausted the whole spectrum of interpretations that can be founded on black-and-white views of the *Tractatus de modo generalis concilii celebrandi*. In describing that spectrum I hope to have shown that there was a relatively unilinear development in the scholarship leading from Döllinger and Protestant writers around the turn of the century,

70 Durant, *Tractatus*, 1.4, fol. 7r: “Videretur esse salubre consilium . . . quod [papa et reges ac principes] contra dicta concilia et iura nihil possent de novo statuere vel concedere [!] nisi generali concilio convocato.” Note the conjunctive in *videretur* and *possent*, the absence of *forsitan*, and the reading *concedere*, which is supported both by the manuscripts and by the editio princeps.

via a leading Catholic intellectual like Viollet to members of Catholic orders like Müller and Torquebiau in the 1930s, and that in the course of this development Durant gradually changed shape from a radical enemy of the papacy into, at worst, a somewhat intemperate friend of the papacy. None of the studies considered so far can be considered definitive and the same is true of the new departures made since World War II that are to be considered next.

In 1949 Hubert Jedin (1900–80), perhaps the most important church historian of the twentieth century, wrote a few sentences drawing attention to Durant at the beginning of the comprehensive and compelling review of conciliar theories in the thirteenth and fourteenth century he published in the first volume of his *Geschichte des Konzils von Trient*.<sup>71</sup> That doubtless helped to stimulate new research. Jedin stressed Durant's call for a reform of the head of the church, a return to the old law, and a restoration of episcopal power, but he did not believe that Durant could have been thinking of constitutional limits on papal power.<sup>72</sup> {223 | 224}

In 1955 the ball was picked up by Brian Tierney (born 1922), who devoted ten pages of his path-breaking book on the *Foundations of the Conciliar Theory* to William Durant the Younger.<sup>73</sup> Tierney's theses are well known. He established once and for all that one ought not to trace the origins of conciliarism to Ockham or Marsiglio. In his view, the conciliar theory was nothing like a deviation from the straight and narrow path of the Catholic Church, but thoroughly Catholic and built directly on the thought of the most highly respected canonists of the thirteenth and fourteenth centuries. Particularly important in that thought was the canonists' analysis of the relationship between the head and the members of a body politic, as for example a bishop and the members of his chapter, the case to which they devoted most of their attention.<sup>74</sup>

71 Jedin, *Geschichte*, 1:5–7. In addition to his monumental *Geschichte des Konzils von Trient*, Jedin's most important writings worth mentioning here are the widely read *Kleine Konziliengeschichte*, the *Atlas zur Kirchengeschichte* he co-edited, and the indispensable *Handbuch der Kirchengeschichte*. On his life and work see Iserloh and Repgen, eds., *Reformata reformanda*, particularly Samulski, "Bibliographie Hubert Jedin," *ibid.*, 2:665–704, and Brandmüller and Bäumer, eds., *Festgabe Hubert Jedin*, particularly Bäumer, "Hubert Jedin." {See now Jedin, *Lebensbericht*.}

72 Jedin, *Geschichte*, 1:5: "Für Duranti besteht die 'Reform des Hauptes' im richtigen Gebrauch der päpstlichen Gewalt; an eine konstitutionelle Beschränkung derselben denkt er nicht."

73 Tierney, *Foundations*, 179–82, 190–9. A convenient collection of many of Tierney's articles was recently published by Variorum Reprints as Tierney, *Church Law and Constitutional Thought*.

74 Tierney, *Foundations*, 245: "The roots of the conciliar tradition lie deeper in the past than has usually been supposed. . . . The Conciliar Theory, one might say, sprang from the impregnation of Decretist ecclesiology by Decretalist corporations concepts."

There is no need to go more deeply into Tierney's theses here, other than perhaps to characterize them as the expression of a revival of Catholic liberalism with new arguments. What does need to be pointed out is that they form the frame of reference for his interpretation of Durant. Unlike his immediate predecessors, Tierney pointedly asserted that Durant was the first to use the language of the conciliar movement properly speaking.<sup>75</sup> He based this assertion not so much on Durant's sharp attacks on papal centralization, which he took to be clear evidence for a kind of episcopal resistance motivated by the interests of a whole estate, and surely in Durant's self-interest, too,<sup>76</sup> but rather on Durant's claims "that a Pope alone could not override the legislation of previous Councils," and "that no Pope could establish a new law contrary to the canons of earlier Councils without summoning a new Council for the purpose."<sup>77</sup> In Tierney's judgment Durant "seems to have overstepped the bounds of Decretist thought in thus applying the *Quod omnes tangit* principle to the general legislative authority of the Papacy, for Joannes Teutonicus had maintained in a quite contrary sense that to deny the Roman See's right of establishing law for the whole church was heresy."<sup>78</sup> Durant's proposal {224 | 225} to give the council not only a constitutional role in the church, but also a kind of budgetary control over the finances of the papacy pointed in the same radical direction.<sup>79</sup> Typical for Durant thus was "the blending of a hierarchical

75 Ibid., 196: "Indeed, this sprawling ill-designed work . . . strikes for the first time the authentic note of the Conciliar Movement properly so called."

76 Ibid., 192: "The main purpose of Guilielmus Durantis in arguing thus that the Pope was not entirely *legibus solutus* was to justify the traditional rights of the bishops." Ibid., 182: "Like Joannes Monachus, Durantis was perhaps not wholly uninfluenced by personal considerations in his denunciations of ecclesiastical abuses. . . . But he too, by identifying his grievances with those of a whole estate of the Church, was able to infuse a glow of righteous indignation into his condemnations of papal centralization. . . . Durantis . . . condemned the whole system of centralized administration." These sentences are reminiscent of the views of Scholz.

77 Ibid., 195, 191.

78 Ibid., 195, with reference to Joannes Teutonicus's gloss on D. 19 c. 5 and VI *De regulis iuris* c. 29, *Corpus iuris canonici*, ed. Friedberg, 1:61, 2:1122.

79 Tierney, *Foundations*, 195–6: "The Council was not to be an extraordinary assembly summoned at rare intervals for some special purpose but was to meet regularly every ten years; and, moreover, the provision of revenue sufficient for the honourable upkeep of the curia was to be dependent on its observance of the laws of the Councils. . . . Durantis . . . wished to assign to the Council a regular constitutional role in the government of the Church, to make it the necessary channel for taxation and all important legislation." With reference to Durant, *Tractatus*, 2.27, fol. 59<sup>r</sup>.

view of the Church with a corporative view.”<sup>80</sup> He disputed that episcopal jurisdiction was derived from the papacy.<sup>81</sup> According to Tierney Durant’s significance overall rested on the foresight with which he expressed the interests of the episcopal estate as a whole, as opposed to those of individual bishops, and highlighted the conflict between papal centralization and ancient canon law. “His work provides an interesting link between the current theories of episcopal authority and later conciliar doctrine.”<sup>82</sup>

It is interesting that here Durant is again interpreted as a radical, in a manner reminiscent of Scholz. The attention Tierney paid to the role of the canon law of corporations is of course entirely new, and his interpretation of Durant has not yet found a substantial response. Nonetheless the following points are still worth making. As Torquebiau demonstrated so triumphantly, Durant never directly denied the right of the pope to act counter to conciliar laws. He limited himself to stating that the pope ought not to do so, and that “perhaps” he could not do so either. Thus Tierney’s observation that Durant may have committed heresy in making the papacy’s right to establish general laws dependent on conciliar participation needs to be corrected. It cannot be stressed firmly enough that this was not Durant’s account of existing law, but a proposal to change existing law that he put in the subjunctive mood and submitted to the Council of Vienne for deliberation—and we may add that he did so precisely in order to allow a general council to determine his proposal’s utility and conformity with Catholic doctrine. In addition it should at least be mentioned how sharply Tierney’s interpretation differs from that of Rivière. For the notion that the head of a corporate body is obliged to cooperate with the members, which Tierney considers to be central to Durant’s argument,<sup>83</sup> is entirely different from the notion {225 | 226} that the old law can only be followed with the help of reason and good advisers, which is what Rivière had

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80 Tierney, *Foundations*, 194: “Once again one finds the blending of a hierarchical view of the Church with a corporative view.”

81 *Ibid.*, 193–4: “He too regarded the papal authority of divine origin but not as the source of episcopal jurisdiction.”

82 *Ibid.*, 196: “The distinctive contribution of Guilielmus Durantis was to show how the natural desire of the bishops to defend their own status, which in itself seemed likely to produce only a disruptive particularism, could be expressed in a more constructive form through their corporate association in a General Council; his work provides an interesting link between the current theories of episcopal authority and later conciliar doctrine.”

83 *Ibid.*, 194: “The totality of all the churches formed a corporate unity of which the Roman church was ‘head’, but headship in such a ‘body’ did not imply an absorptive and absolute authority over all the members.”

regarded as central.<sup>84</sup> Finally it deserves to be underscored that Tierney's reference to Durant's proposal that the council should have some say over papal finances introduced a new element into the discussion that had previously been completely overlooked. Tierney's treatment of Durant deserves to be called the most stimulating to date.

That makes it all the more worth noting that since then the conciliar theory proposed in the *Tractatus de modo generalis concilii celebrandi* has nowhere been seriously addressed—even though in the meantime the Catholic Church witnessed the meeting of the Second Vatican Council and many informative books have been written about late medieval councils. Apart from isolated and generic references to Durant's significance, there are only three studies that deserve to be mentioned here, and they do not really add anything new to our understanding of Durant's conciliar theory.

In his book on the Council of Vienne, Joseph Lecler, S.J. (1895–1988) wrote a good, concise overview of Durant's life and the contents of the *Tractatus*, but dealt only superficially with Durant's conciliar theory.<sup>85</sup>

Louis Vereecke, C.S.S.R. (born 1920), an adviser to the Congregation for the Doctrine of the Faith, published an article on the reform of the church in 1976 in which he included a description of Durant's treatise that was entirely limited to paraphrase.<sup>86</sup> Its chief merit was perhaps to have made readers of *Studia Moralia* more familiar with the *Tractatus*.

Finally, Ernesto Bellone examined Durant's proposals for the reform of education and their place in history.<sup>87</sup> Given his focus on this particular aspect of Durant's ideas, it is no wonder that he paid no attention to conciliar issues.

Two general observations may be appropriate at the end of this survey. First, I hope to have shown how clearly both confessional affiliations and contemporary historical circumstances are reflected even in a mirror as tiny as the study of a single relatively unknown medieval author. That such factors stand in the way of an adequate understanding of the *Tractatus* seems obvious. Indeed, as I have already suggested, they must be considered to figure largely among the reasons why there has been little progress beyond Heber's position of long ago that Durant did not have any well-developed theory at all. Only a

84 See above, n. 55.

85 Lecler, *Vienne*, 38–50.

86 Vereecke, "Réforme de l'église," 286–304. Vereecke is also known for *Conscience morale et loi humaine selon Gabriel Vazquez*, based on his 1949 dissertation at the Pontificia Universitas Gregoriana.

87 Bellone, "Cultura e studi," with extracts from Durant's treatise *ibid.*, 97–107. Cf. Bellone, *Cultura e l'organizzazione*.

comprehensive study of the *Tractatus* can {226 | 227} determine whether or not this claim is justified.

Second, it deserves to be noted that, with the exception of Tierney, historians of the conciliar movement have ignored Durant almost entirely. Given how deeply they have been agitated by questions about the origins of conciliarism, that is a striking omission. Even Hirsch and Seidlmayer barely considered the *Tractatus* worth more than a footnote.<sup>88</sup> In recent years such neglect may perhaps be explained as a consequence of the aftermath of the Second Vatican Council and the intensity with which it focused scholarly interest on the Councils of Constance and Basel and the historical and dogmatic significance of their decrees. That focus helps to understand why, at least in the case of Durant, the stimulus Tierney gave to research into the origins of conciliarism has had no further results.

#### 4 Outlook

I hope it will not be taken amiss if I turn to the results of my own research by way of conclusion.<sup>89</sup> In an article published in 1978 I presented information about the surviving manuscripts.<sup>90</sup> It established that only two manuscripts contain the text of the *Tractatus de modo generalis concilii celebrandi* in its entirety,<sup>91</sup> and pointed out that there were three more or less fragmentary manuscripts that had never been noticed before.<sup>92</sup> It also drew attention to the possibility that the papal library in Avignon may have contained a manuscript of the *Tractatus* that stemmed from Durant himself, but is no longer extant today. Combined with an overview of the various printed editions of the *Tractatus* that were published in the sixteenth and seventeenth centuries, it drew on the names of the book's identifiable owners and readers to show that William Durant the Younger may have exercised a measure of influence on

88 Hirsch, *Ausbildung der konziliaren Theorie*, does not deal with Durant's treatise at all, and Seidlmayer, *Anfänge des Schismas*, 177–8, merely repeats the views of Posch.

89 Since I have regularly identified the confession of the scholars I have dealt with here, I should not conceal it from my readers that I am baptized Russian Orthodox, but grew up in a Protestant environment.

90 See above, chap. 1.

91 Paris, Bibliothèque Nationale, ms. lat. 1443, and Munich, Bayerische Staatsbibliothek, Clm 6605, fols. 2–69<sup>v</sup>.

92 Vatican City, Biblioteca Apostolica Vaticana, ms. Ottob. lat. 823, fols. 23–53; Rome, Biblioteca Nazionale Centrale, Fondo Varia ms. 1, fols. 85–196<sup>v</sup>; Zurich, Zentralbibliothek, ms. S 204 0, fols. 129–41.

thinkers and scholars of the rank of Nicholas of Cusa and Pierre Pithou that is worth taking seriously.

In an article published in 1981 I examined the manuscripts in order to determine the reliability of the printed editions.<sup>93</sup> It demonstrated {227 | 228} that all of the printed editions must have been based on what was probably a single, badly corrupted medieval manuscript that has been lost since then, and to which the editions owed the badly misleading shape in which they reproduced the treatise. That was the main reason why no one had previously noticed that Durant's treatise comprised, not one, but two entirely different works. The first, by far the longer, which I have called *Tractatus maior*, was a handbook of canon law, particularly ancient conciliar law, compiled in order to address the question of church reform. The second, *Tractatus minor*, was a pamphlet, or perhaps a sermon, in which Durant announced his ideas in a highly condensed fashion to the Council of Vienne. Both works were written on the occasion of the Council. Discovering that, and how, they are to be distinguished from each other made it possible to expose the supposed lack of order with which the *Tractatus* had been charged for so long as a myth that was based entirely on the flaws of the printed editions. The *Tractatus minor* is systematically organized according to topics, and the *Tractatus maior* consistently follows the sequence of the ancient councils as Durant found them in his most important source, the Pseudo-Isidorian collection.

These results reveal that a good many of the assertions made in earlier studies were unfounded. They also lay a foundation for a better understanding of the *Tractatus* than was possible as long as scholars placed uncritical trust on the printed editions. That makes it all the more urgent to prepare a critical edition in order to give scholars access to the new textual foundation that has thus been secured. It is equally necessary to move forward to a detailed analysis of the theoretical problems remaining to be solved. A convincing study of Durant's ideas will have to be framed in terms that are not preconceived, but drawn directly from research into the text itself in order to answer the question how exactly Durant justified his conciliar proposal and what he hoped to achieve with it. Only on the basis of such a study will it be possible to go beyond interpretations laboring under misleading distinctions between supposedly pro-papal and anti-papal positions and arrive at a proper understanding of Durant's attitude towards the papacy. It will be important to take a closer look at the significance for Durant's thinking, not only of the ideas of thirteenth-century canonists, but also of the revival of Aristotelian political theory,

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93 For details see above, chap. 2.

perhaps as mediated by Thomas Aquinas. Finally, Durant's place in the development of different branches of the conciliar movement will need to be determined with greater precision than has happened so far, both by tracing the influence he exercised on later thinkers and by showing more clearly how his ideas differed from those proposed in Constance and Basel.